SIMULTANEOUS CIVIL AND CRIMINAL PROCEEDINGS UNDER SECTION 138 OF THE NEGOTIABLE INSTRUMENTS ACT, 1881: LEGISLATIVE EVOLUTION, JUDICIAL DOCTRINE, AND PRACTICAL IMPERATIVES

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ABSTRACT

The dishonour of a cheque under Section 138 of the Negotiable Instruments Act, 1881 occupies a singular position in Indian jurisprudence straddling the boundary between civil remedy and criminal sanction. This article traces the historical trajectory of cheque-bounce law from its pre-1988 civil-only avatar, through the transformative insertion of Chapter XVII by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988, to the present-day regime shaped by the Negotiable Instruments (Amendment) Act, 2002, the Negotiable Instruments (Amendment) Act, 2015, and the paradigm shift brought about by the Bharatiya Nagarik Suraksha Sanhita, 2023. The article argues that the criminal remedy under Section 138 was never intended to displace the civil remedy; rather, both avenues co-exist and may be pursued simultaneously a position consistently affirmed by the Supreme Court. It further examines the quasi-civil nature of Section 138 proceedings as elucidated in P. Mohanraj v. Shah Brothers Ispat Pvt. Ltd., (2021) 6 SCC 258, the landmark guidelines issued in Sanjabij Tari v. Kishore S. Borcar, 2025 INSC 1158, and the evidentiary mechanics of retrieving a cheque exhibit from one proceeding for production in another a practical challenge that trial courts confront with regularity. The article concludes with a call for legislative clarity and a model procedural framework to harmonise the dual-track approach.

Keywords: Section 138 NI Act, Cheque Dishonour, Civil Remedy, Criminal Proceedings, Simultaneous Proceedings, Quasi-Criminal, BNSS 2023, Sanjabij Tari, Exhibit Retrieval.

I. INTRODUCTION

A cheque returned unpaid is not merely a financial embarrassment; it is a breach of commercial faith. In the modern economy, cheques serve as instruments of deferred payment and as tokens of creditworthiness. When a cheque bounces, the payee is left with two sets of weapons in the armoury of the law: a civil suit for recovery of the debt, and a criminal complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter 'the Act' or 'NI Act'). The question that recurrently agitates trial courts across India is whether the election of one remedy forecloses the other, and whether simultaneous pursuit of both is permissible in law.

The answer, as will be demonstrated in the pages that follow, is an unequivocal yes a position grounded in the text of the statute, the intent of Parliament, and a consistent line of Supreme Court authority spanning nearly four decades. Yet the question returns with clockwork frequency, partly because the criminal machinery of Section 138 has so thoroughly eclipsed the civil suit as the preferred remedy of aggrieved payees, and partly because the procedural consequences of running parallel proceedings particularly the mechanics of utilising a cheque exhibit tendered in one court in proceedings before another remain inadequately understood at the bar and on the bench.

This article undertakes a structured inquiry into these questions. Part II examines the pre-1988 legal landscape, when the dishonour of a cheque was exclusively a civil matter. Part III analyses the transformative legislative intervention of 1988 and the subsequent amendments that shaped the current regime. Part IV situates Section 138 within the broader canvas of civil-criminal concurrency, addressing the quasi-criminal character of the offence and the doctrine of simultaneous proceedings. Part V engages with the landmark Supreme Court pronouncements that have defined the jurisprudential contours of the field, including the path-breaking guidelines issued in 2025. Part VI addresses the practical mechanics of retrieving a cheque exhibit from one proceeding for production before another court a challenge unique to the dual-track approach. Part VII concludes with reflections on reform.

II. THE PRE-1988 LANDSCAPE: DISHONOUR OF CHEQUE AS A PURELY CIVIL WRONG

Prior to 1988, the Negotiable Instruments Act, 1881 a legislation of Victorian vintage, drafted by the Third Indian Law Commission under Sir Whitley Stokes and enacted to consolidate the law relating to promissory notes, bills of exchange, and cheques contained no penal provision for the dishonour of cheques. The Act regulated the rights and liabilities of parties to negotiable instruments in purely civil terms. A payee whose cheque was returned unpaid was relegated to the ordinary civil courts, armed with a cause of action for the recovery of the amount due under the underlying contract.

The civil remedy, while theoretically adequate, was practically cumbersome. A money suit under Order XXXVII of the Code of Civil Procedure, 1908 the summary suit procedure ideally suited for liquidated debts nonetheless required service of summons, filing of written statements, framing of issues, recording of evidence, and final arguments, a process that could consume years. The drawer of a dishonoured cheque, during this interregnum, could conveniently defer payment, transfer assets, or render himself judgment-proof, secure in the knowledge that no criminal consequence attended the dishonour. The cheque, in this environment, was an instrument of convenience rather than a reliable instrument of payment.

The social and economic consequences of this legislative lacuna became acute in the 1980s, as India's economy began its gradual liberalisation and commercial transactions conducted through cheques multiplied exponentially. Banking institutions, financial intermediaries, and individual creditors pressed for a legal framework that would lend teeth to the cheque as an instrument of payment. The stage was thus set for a fundamental legislative transformation.

III. THE LEGISLATIVE REVOLUTION: FROM CIVIL REMEDY TO CRIMINAL SANCTION

A. The Amendment Act of 1988

The Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 (Act 66 of 1988) inserted Chapter XVII into the Negotiable Instruments Act, 1881, comprising Sections 138 to 142. This insertion represented a paradigm shift of the first order. For the first time in the history of the Act, the dishonour of a cheque drawn on a bank account by reason of insufficiency of funds or exceeding the arrangement was made a cognisable, compoundable criminal offence punishable with imprisonment of up to one year, or fine up to twice the amount of the cheque, or both.

The essential ingredients of the offence, as structured by Section 138, are: (i) the drawer must have drawn a cheque on a bank account; (ii) the cheque must have been drawn for the discharge, in whole or in part, of a debt or other liability; (iii) the cheque must have been presented to the bank within the period of its validity; (iv) the cheque must be returned by the drawee bank as unpaid, either because the amount standing to the credit of the account is insufficient, or because it exceeds the amount arranged to be paid from the account; (v) the payee must issue a written demand notice within thirty days of receiving information of dishonour; and (vi) the drawer must fail to make payment of the said amount within fifteen days of the receipt of the notice.

Critically, Section 138 did not abolish the civil remedy. The provision created an additional, superimposed criminal remedy, leaving intact the payee's right to pursue recovery through civil process. This legislative design of parallel remedial tracks is the bedrock upon which the entire doctrine of simultaneous proceedings rests. The Statement of Objects and Reasons accompanying the 1988 Bill made the legislative intent pellucid: the amendment was intended 'to enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in case of bouncing of cheques.' The creation of criminal liability was a means to the end of commercial credibility not a replacement of the civil remedy, but its reinforcement.

B. The Amendment Act of 2002

The Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 (Act 55 of 2002) introduced several significant modifications. The punishment was enhanced from one year to two years' imprisonment. The territorial jurisdiction of courts was expanded by a new Section 142A, enabling the payee to file the complaint before the court within whose jurisdiction any of the following acts occurred: the cheque was drawn, the payment was to be made, the cheque was presented, or the demand notice was given. Sections 143 to 147 were inserted, providing for summary trials, service of summons through speed post or courier, affidavit-based evidence under Section 145, attachment of the accused's assets under Section 143A as interim relief, and compoundability under Section 147.

The introduction of Section 143A empowering the court to direct payment of interim compensation up to twenty percent of the cheque amount pending trial is of particular significance. It partially blurred the distinction between civil and criminal remedies by building a compensatory mechanism directly into the criminal proceeding. Similarly, Section 148, inserted by the 2018 amendment, empowered the appellate court to direct deposit of a minimum of twenty percent of the fine or compensation awarded by the trial court as a condition for entertaining an appeal. Both provisions reflect Parliament's recognition that the criminal proceeding under Section 138 is, at its core, compensatory.

C. The Amendment Act of 2015 and Jurisdictional Rationalisation

The Negotiable Instruments (Amendment) Act, 2015 (Act 26 of 2015) addressed a jurisdictional controversy that had created uncertainty across trial courts. The Supreme Court in Dashrath Rupsingh Rathore v. State of Maharashtra, (2014) 9 SCC 129 had held that the complaint under Section 138 could only be filed at the place where the cheque was dishonoured i.e., the bank branch of the drawee. This interpretation, while textually defensible, worked hardship upon payees by compelling them to travel to distant locations. Parliament responded with the 2015 amendment, inserting sub-section (2) to Section 142, which provides that the offence under Section 138 shall be inquired into and tried only by a court within whose local jurisdiction the bank branch of the payee, where the payee maintains the account, is situated. This restored a payee-centric jurisdictional framework and aligned the law with commercial convenience.

D. The BNSS Dimension

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which replaced the Code of Criminal Procedure, 1973, with effect from 1 July 2024, introduced further procedural changes affecting Section 138 proceedings. Under Section 223 of the BNSS which governs examination of complaints the Supreme Court in Sanjabij Tari v. Kishore S. Borcar, 2025 INSC 1158 has held that there is no requirement to issue summons to the accused at the pre-cognizance stage in Section 138 NI Act complaints. The BNSS framework, in conjunction with the 2025 guidelines, has thus further streamlined the summary trial procedure, reducing the scope for pre-cognizance delay a tactic habitually employed by accused persons to defer the commencement of trial.

IV. THE QUASI-CIVIL CHARACTER OF SECTION 138 AND THE DOCTRINE OF SIMULTANEOUS PROCEEDINGS

A. A 'Civil Sheep in Criminal Wolf's Clothing'

The character of the offence under Section 138 has been a subject of extended judicial reflection. The Supreme Court in Kaushalya Devi Massand v. Roopkishore Khore, (2011) 4 SCC 593 a judgment arising from a Section 138 matter out of Indore, Madhya Pradesh observed categorically that an offence under Section 138 of the NI Act is 'almost in the nature of a civil wrong which has been given criminal overtones.' This characterisation captures the essential hybridity of the provision: it employs the machinery of criminal law complaint, cognizance, trial, imprisonment to enforce what is fundamentally a civil obligation, namely, the repayment of a debt.

This insight was developed with greater analytical sophistication by the Supreme Court in P. Mohanraj v. Shah Brothers Ispat Pvt. Ltd., (2021) 6 SCC 258, where a three-judge bench described proceedings under Section 138 as 'a civil sheep in a criminal wolf's clothing.' The Court reasoned that whether a proceeding is civil or criminal in nature falls to be determined not by the nature of the penalty prescribed, but by the cause for which the penalty has been inflicted. Since the cause that animates Section 138 is the enforcement of the victim's private right to recover a debt, and since it is the victim alone not the State who initiates and drives the proceeding, the proceeding is, in its substantive content, compensatory rather than punitive. The Chapter XVII framework with compoundability under Section 147, interim compensation under Section 143A, and the fine being payable as compensation to the complainant reinforces this characterisation.

This quasi-civil character of Section 138 has a direct bearing on the question of simultaneous proceedings. If the proceeding were purely criminal directed at the vindication of a public wrong there might be a principled argument against permitting a parallel civil suit as an election of remedies. But where the proceeding is, in substance, directed at the private enforcement of a debt, there is no logical basis for holding that the initiation of one proceeding bars the other. The payee's civil right to recover the debt is an independent right conferred by the law of contracts and negotiable instruments; the criminal complaint under Section 138 is an additional statutory remedy. The two operate in different juridical spaces and their concurrent pursuit does not involve any double jeopardy, res judicata, or abuse of process.

B. The Statutory Basis for Simultaneity

The proposition that civil and criminal proceedings under Section 138 may be pursued simultaneously finds affirmation in the text of the statute itself. Neither Section 138 nor any other provision of Chapter XVII contains a non-obstante clause or a provision ousting the jurisdiction of civil courts. As the Supreme Court unambiguously held in Vishnu Dutt Sharma v. Daya Sapra, (2009) 13 SCC 729, there cannot be any doubt or dispute that a creditor can maintain a civil and criminal proceeding at the same time both proceedings run parallelly, and neither operates as a bar to the other. In the absence of any express exclusion of civil court jurisdiction, the suit for recovery remains fully available alongside the criminal complaint.

Section 147 of the NI Act, which makes the offence compoundable, is further instructive. The section enables the parties to reach a settlement and compound the criminal offence. But upon compounding, the question of the underlying civil liability including interest, costs, and any balance remaining may still require resolution before a civil court. The compounding of the criminal offence does not automatically extinguish the civil debt; it merely terminates the criminal proceedings. This legislative design presupposes that civil and criminal proceedings are juridically distinct and may operate in parallel.

V. THE JUDICIAL ARCHITECTURE: FROM PRINCIPLE TO GUIDELINES

A. The Foundational Authority: D. Purushottama Reddy

The foundational Supreme Court authority on the permissibility of simultaneous proceedings is D. Purushottama Reddy v. K. Sateesh, (2008) 8 SCC 505. The Court held, in terms that admit of no ambiguity, that 'a suit for recovery of money due from a borrower indisputably is maintainable at the instance of the creditor. It is furthermore beyond any doubt or dispute that for the same cause of action a complaint petition under terms of Section 138 of the Act would also be maintainable.' This judgment established the bedrock principle: the same cause of action the dishonour of a cheque simultaneously sustains both a civil suit for recovery and a criminal complaint under Section 138.

The Court further clarified, in Vishnu Dutt Sharma v. Daya Sapra, (2009) 13 SCC 729, that a judgment of a civil court is not binding on a criminal court and vice versa. The two proceedings are governed by different standards of proof preponderance of probabilities in civil proceedings, proof beyond reasonable doubt in criminal proceedings and different procedural codes. A civil court's finding of liability does not bind the criminal court; equally, a criminal court's finding of guilt or acquittal does not operate as res judicata in the civil suit. The two proceedings are parallel tracks that may converge at the point of enforcement but do not otherwise interfere with each other.

B. CREF Finance and the Categorical Affirmation

The principle received categorical affirmation in CREF Finance Limited v. Sree Shanthi

Homes Private Limited, wherein the court held that 'simultaneous civil suit and complaint case under Section 138 of the NI Act for the same cause of action are maintainable.' The Karnataka High Court, in the recent decision of Sri Lalji Kesha Vaid v. Dayanand R. (2024), following this line of authority, rejected a challenge to a Section 138 complaint on the ground that a civil suit had already been filed, holding that 'complaint for offence punishable under Section 138 of the Act would be maintainable, notwithstanding recovery proceedings initiated by institution of a civil Suit, though both spring from the same cause of action.'

C. P. Mohanraj and the Quasi-Civil Doctrine

P. Mohanraj v. Shah Brothers Ispat Pvt. Ltd., (2021) 6 SCC 258, while primarily concerned with the interaction between Section 138 proceedings and the moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016, made a contribution of enduring significance to the jurisprudence of Section 138. The three-judge bench, speaking through Justice R.F. Nariman, synthesised the quasi-civil character of Section 138 proceedings and articulated the 'civil sheep in a criminal wolf's clothing' metaphor that has since become the locus classicus on the point. The Court held that whether a proceeding is civil or criminal is not to be judged by the penalty prescribed, but by the cause for which the penalty is inflicted. Since the cause is the enforcement of a private right of recovery, Section 138 proceedings are substantively civil in character.

The Court further held that the moratorium under Section 14 of the IBC, which stays civil proceedings against the corporate debtor, also stays Section 138 proceedings precisely because those proceedings, despite their criminal form, are aimed at depleting the corporate debtor's assets. Critically, however, proceedings under Sections 138 and 141 against natural persons directors and other officers vicariously liable under Section 141 continue even during the moratorium. This nuanced holding underscores the hybrid nature of Section 138 proceedings and the need to examine them functionally rather than formally.

D. Sanjabij Tari: The 2025 Landmark and Its Systemic Reforms

The most recent and in many respects the most consequential pronouncement of the Supreme Court on Section 138 is Sanjabij Tari v. Kishore S. Borcar, 2025 INSC 1158, decided on 25 September 2025 by a bench comprising Justice Manmohan and Justice N.V. Anjaria. The case arose from the Bombay High Court (Goa Bench) setting aside concurrent findings of conviction by the trial court and sessions court, primarily on the ground that the complainant who received a monthly salary of Rs. 2,300 lacked the financial capacity to advance a loan of Rs. 6,00,000. The Supreme Court allowed the appeal and restored the conviction.

On the substantive law, the Court restated and reinforced three propositions of cardinal importance. First, once the execution of a cheque is admitted, the statutory presumptions under Sections 118(a) and 139 of the NI Act arise automatically in favour of the complainant. These presumptions that the instrument was made for consideration, and that the cheque was issued for the discharge of a legally enforceable debt can be rebutted only by cogent and credible evidence, not by speculative inferences about financial incapacity. Second, the Court held that a violation of Section 269SS of the Income Tax Act, 1961 which prohibits acceptance of loans above Rs. 20,000 in cash does not render the underlying transaction void or unenforceable for purposes of Section 138 NI Act; it merely attracts a penalty under Section 271D of the Income Tax Act. In doing so, the Court set aside the contrary view taken by the Kerala High Court in P.C. Hari v. Shine Varghese, 2025 SCC OnLine Ker 5535. Third, the Court reiterated that the High Court, while exercising revisional jurisdiction, cannot reappreciate evidence or interfere with concurrent findings of fact unless the findings are perverse or without jurisdiction as laid down in Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197 and Southern Sales & Services v. Sauermilch Design and Handels GmbH, (2008) 14 SCC 457.

Of equal, if not greater, significance are the systemic guidelines issued by the Court for the expeditious disposal of Section 138 cases. Taking note of the staggering pendency as on 1 September 2025, Delhi district courts alone had 6,50,283 Section 138 cases pending, Mumbai had 1,17,190, and Calcutta had 2,65,985 the Court directed a comprehensive revision of practice at the trial court level. Among the key directions: there shall be no requirement to issue summons to the accused at the pre-cognizance stage under Section 223 of the BNSS; the modified compounding cost schedule updates the Damodar S. Prabhu v. Sayed Babalal H., (2010) 5 SCC 663 guidelines by requiring higher proportional deposits at each appellate tier (10% at first hearing; 15% at sessions or High Court; 20% at the Supreme Court); and the writ of summons must inform the accused of the option to make payment at the initial stage. All High Courts and District Courts were directed to implement these guidelines by 1 November 2025.

The Sanjabij Tari guidelines represent a judicial acknowledgment that the twin problems afflicting Section 138 litigation excessive delay and inadequate early compounding are systemic and require systemic remediation. For the trial court judge, these guidelines are now binding directives that must inform every step of the proceeding, from the receipt of the complaint to the passing of judgment.

VI. THE EVIDENTIAL MECHANICS OF DUAL-TRACK LITIGATION: RETRIEVING THE CHEQUE EXHIBIT

A. The Problem Stated

One of the most practically vexing challenges of simultaneous civil and criminal proceedings is the question of documentary exhibits particularly the original cheque, the bank's return memo, and the demand notice which serve as the evidentiary foundation of both proceedings. In the ordinary course, the original cheque is produced before the criminal court as an exhibit. When the payee also pursues a civil suit or when a civil suit has been filed first and the cheque has been marked as an exhibit therein the trial court in the other proceeding requires the production of the original for the purposes of exhibition and appreciation.

The procedural impasse that arises is this: an exhibit formally tendered and accepted by one court is in the custody of that court and cannot ordinarily be removed without its permission. A party who has tendered the cheque as Exhibit P-1 in a civil suit cannot simply carry it to the criminal court, nor can the criminal court receive a mere photocopy as the primary evidence of the instrument without satisfying the requirements of the law of evidence relating to secondary evidence.

B. The Legal Framework for Exhibit Retrieval

The mechanism for resolving this impasse exists within the framework of the Code of Civil Procedure, 1908 and the Bharatiya Sakshya Adhiniyam, 2023 (BSA) / Indian Evidence Act, 1872 (IEA). The procedure operates as follows:

- **Step 1 Application to the Court in Custody of the Exhibit:** The party seeking to utilise the original cheque in the second proceeding must file a formal application before the court in whose record the exhibit is held. The application, filed under the general powers of the court to regulate its own procedure, should pray for either: (a) the temporary return of the original exhibit for production in the specified proceeding, with an undertaking to return it within a stipulated period; or (b) the issuance of a certified true copy of the exhibit under the seal of the court, for production in the other proceeding.

- **Step 2 Order of Return or Certified Copy:** Courts in India have consistently recognised their inherent power to direct the temporary return of original exhibits for use in other proceedings, subject to appropriate safeguards. The order should specify the period of return, the authority in custody during the intervening period, and the obligation to place the original back on the record upon conclusion of the proceeding in the other court. This practice is supported by Rule 7 of Order XIII CPC, which governs the return of documents produced in evidence, and the inherent powers under Section 151 CPC.

- **Step 3 Production in the Second Proceeding:** Upon receipt of the original exhibit pursuant to the court's order, the party produces it before the second court. The exhibit, having already been formally proved and tendered in the first proceeding, may be admitted in the second proceeding with the court's order of return serving as a link in the chain of documentary custody. Alternatively, where a certified copy is issued, the party may seek to produce it as secondary evidence, placing reliance on Section 63 of the BSA / Section 65 of the IEA, which recognise certified copies as admissible secondary evidence.

- **Step 4 Marking of the Exhibit in the Second Court:** The second court, upon production, marks the original (or certified copy) as an exhibit in its own proceedings. Where an original is produced, a court receipt or noting on the record should record its provenance i.e., that it is the same document already exhibited as [Exhibit No.] in [Case No.] before [Court] so that the chain of custody is complete and transparent.

C. The Secondary Evidence Route and its Evidentiary Implications

Where the return of the original is not practicable for example, because the criminal court has sealed the record pending appeal the party may rely upon the secondary evidence route. Under Section 63(1)(a) of the BSA / Section 65(a) of the IEA, copies made from the original by mechanical processes which in themselves ensure accuracy (such as photographic copies) are admissible as secondary evidence. More pertinently, under Section 63(1)(c) of the BSA /

Section 65(c) of the IEA, copies made from or compared with the original are admissible secondary evidence.

However, it must be borne in mind that in the context of Section 138 proceedings, the original cheque is not merely a document evidencing a transaction; it is the instrument itself, and its physical characteristics the signature, the ink, the date, the bank details are directly in issue. Secondary evidence of a document is admissible only upon satisfying the statutory pre-conditions enumerated in Section 63 of the Bharatiya Sakshya Adhiniyam, 2023 / Section 65 of the Indian Evidence Act, 1872. The party seeking to lead secondary evidence must account for the non-production of the original. It is equally pertinent to note that, as held in R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple, (2003) 8 SCC 752, an objection to the admissibility of a document as distinct from an objection to the mode of proof is not waived merely because the document was initially marked as an exhibit, and can be raised even at a later stage. Where the original is available in court custody, secondary evidence without a formal application for its production or return may therefore be objected to on admissibility grounds at any stage of the proceedings.

The most prudent course, from the perspective of evidentiary safety, is therefore the formal application route seeking the court's permission for temporary return of the original exhibit. This ensures that the original instrument is available for inspection, for forensic examination if ordered, and for cross-examination on its characteristics. It also avoids the secondary evidence objection entirely, preserving the integrity of both proceedings.

D. Practical Illustration

To illustrate: suppose A files a civil suit against B before the Civil Judge, Neemuch, seeking recovery of Rs. 5,00,000 due on a dishonoured cheque. The original cheque is produced and exhibited as Exhibit P-1 in the civil suit. Simultaneously, A files a complaint under Section 138 NI Act before the Judicial Magistrate First Class, Neemuch. When the criminal court reaches the stage of evidence, A needs to produce the original cheque. The procedure would be as follows: A files an application before the Civil Judge stating that the original cheque (Exhibit P-1) is required to be produced before the JMFC in Criminal Case No. [X], and prays for the temporary return of the exhibit for a period of [X] days. The Civil Judge, on being satisfied, passes an order directing the return of Exhibit P-1 to A, on A furnishing an undertaking to return the original within the stipulated time. Armed with the Civil Court's order and the undertaking, A produces the cheque before the JMFC, who marks it as Exhibit C-1 in the criminal case. After the purpose is served, A returns the original to the Civil Court for re-placing on the record.

This procedure, while not explicitly codified in a single provision, is consistent with the inherent powers of both courts and is the mechanism that best serves the interests of justice in dual-track litigation. Trial courts are encouraged to adopt a liberal and facilitative approach to such applications, recognising that the dual pursuit of remedies is a statutory right of the complainant-payee.

VII. THE CONTEMPORARY PREFERENCE FOR CRIMINAL PROCEEDINGS: CAUSES AND CONSEQUENCES

The empirical reality of Section 138 litigation in India today is one of overwhelming preference for the criminal route. The statistics cited by the Supreme Court in Sanjabij Tari over ten lakh Section 138 cases pending in the district courts of Delhi, Mumbai, and Calcutta alone reflect a litigation culture in which the criminal complaint has become the default, and frequently the sole, remedy pursued by payees. Several factors explain this preference.

First, speed and summary procedure: Section 143 of the NI Act mandates summary trial of Section 138 cases, with a timeline target of six months. While this target is honoured more in the breach than in the observance, the summary procedure nonetheless offers a faster track than an ordinary civil suit. Second, cost: there is no court fee payable in criminal proceedings under the CrPC/BNSS (though a nominal fee applies under some State regimes), whereas a civil suit for recovery of a money claim attracts ad valorem court fee a substantial expense on large cheque amounts. Third, coercive effectiveness: the spectre of imprisonment, even if remote, has a demonstrable deterrent effect that a civil decree enforceable only through the cumbersome machinery of execution does not possess. Fourth, interim compensation: Section 143A empowers the trial court to direct payment of twenty percent of the cheque amount as interim compensation during trial, providing immediate partial relief a remedy unavailable in ordinary civil suits.

The consequences of this overwhelming preference for the criminal route are, however, significant. The civil remedy, with its ability to grant interest, costs, and declaratory relief, is underutilised. More importantly, payees who pursue only the criminal remedy may find that, upon compounding or acquittal, they are left without an enforceable civil decree to execute against the drawer's assets. The prudent complainant will therefore pursue both remedies simultaneously or at least preserve the civil suit as a fallback so that the eventual outcome in one proceeding does not foreclose the possibility of recovery in the other.

VIII. TOWARDS A HARMONISED FRAMEWORK: REFLECTIONS ON REFORM

The dual-track architecture of Section 138 criminal complaint supplemented by civil suit is legally sound but procedurally cumbersome. Several reforms would enhance its coherence and efficiency. First, there is a compelling case for a statutory provision governing the inter-court transfer of exhibits between civil and criminal proceedings arising from the same transaction. Currently, the procedure is governed by general principles and inherent powers; a specific rule on the lines of Rule 7, Order XIII CPC addressing the temporary return of exhibits for use in parallel proceedings would bring clarity and uniformity.

Second, the interaction between civil decrees and criminal proceedings under Section 138 requires legislative attention. At present, a civil decree for recovery of the cheque amount does not, by itself, terminate the criminal proceedings; nor does acquittal in the criminal case bar the civil suit. This is legally correct, but it creates the possibility of the drawer paying twice once under a civil decree and once under the criminal court's compensation order. A provision analogous to Section 357 CrPC / Section 395 BNSS which provides for compensation orders in criminal cases that expressly provides for the adjustment of criminal compensation against civil decree amounts (and vice versa) would prevent unjust enrichment of the payee and ensure that the dual remedy serves its compensatory purpose without becoming a punitive windfall.

Third, the guidelines in Sanjabij Tari are a welcome judicial initiative, but their implementation requires infrastructure trained judicial officers, digitised records, and online payment facilities for accused persons who wish to compound at an early stage. The National Judicial Data Grid's monitoring of Section 138 pendency is a positive step; dedicated fast-track benches for Section 138 cases, as envisioned by the Supreme Court's earlier directions in Expeditious Trial of Cases Under Section 138 of NI Act 1881, In re, (2021) 16 SCC 116, must be operationalised across all districts.

IX. CONCLUSION

The story of Section 138 is, at its core, the story of Parliament's attempt to bring commercial discipline to a society in which the cheque was ubiquitous but unreliable. Beginning as a purely civil instrument in 1881, the cheque acquired criminal sanction in 1988 and with it, a new life as a lever of commercial enforcement. The amendments of 2002, 2015, and 2018 refined the mechanism, while the BNSS 2023 and the Sanjabij Tari guidelines of 2025 have introduced a new phase of procedural modernisation.

Throughout this evolution, one principle has remained constant: the criminal remedy under Section 138 does not displace the civil remedy. The payee who holds a dishonoured cheque stands at the intersection of two juridical systems and may invoke both. The courts of India from the Supreme Court to the courts of first instance have consistently upheld this right to dual pursuit, recognising in it the legislative design of a statute that is, as Justice Nariman so memorably observed, a 'civil sheep in a criminal wolf's clothing.'

For the practitioner navigating this dual-track terrain, the lesson is one of strategy: the civil suit preserves the right to a decree, interest, and costs; the criminal complaint brings coercive pressure and interim compensation. Used together, they constitute the most comprehensive remedy available to an aggrieved payee. For the trial court judge, the challenge is one of coordination: to ensure that the parallel proceedings do not result in conflicting outcomes, unjust enrichment, or procedural injustice while at all times upholding the right of the complainant to pursue both avenues to their logical conclusion.

The law, in this domain, is settled. What remains is the task of operationalising it with the clarity, consistency, and expedition that the magnitude of the litigation demands and that the commercial community, whose faith in the cheque as an instrument of payment the law was enacted to restore, deserves.

ENDNOTES / REFERENCES

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[2] Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 (Act 55 of 2002).

[3] Negotiable Instruments (Amendment) Act, 2015 (Act 26 of 2015).

[4] Negotiable Instruments (Amendment) Act, 2018 (Act 20 of 2018) (inserting Section 148 NI Act).

[5] Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), w.e.f. 1 July 2024.

[6] Kaushalya Devi Massand v. Roopkishore Khore, (2011) 4 SCC 593.

[7] P. Mohanraj v. Shah Brothers Ispat Pvt. Ltd., (2021) 6 SCC 258.

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[9] D. Purushottama Reddy v. K. Sateesh, (2008) 8 SCC 505.

[10] Dashrath Rupsingh Rathore v. State of Maharashtra, (2014) 9 SCC 129.

[11] Damodar S. Prabhu v. Sayed Babalal H., (2010) 5 SCC 663.

[12] Expeditious Trial of Cases Under Section 138 of NI Act 1881, In re, (2021) 16 SCC 116.

[13] Vishnu Dutt Sharma v. Daya Sapra, (2009) 13 SCC 729 (holding that acquittal in Section 138 criminal proceedings does not operate as res judicata in civil suit for recovery; both proceedings can run parallelly as standard of proof differs).

[14] R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple, (2003) 8 SCC 752.

[15] Rajaram S/o Sriramulu Naidu (Since Deceased) Through LRs. v. Maruthachalam (Since Deceased) Through LRs., (2023) 16 SCC 125.

[16] Tedhi Singh v. Narayan Dass Mahant, (2022) 6 SCC 735.

[17] Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197; Southern Sales & Services v. Sauermilch Design and Handels GmbH, (2008) 14 SCC 457 (both cited in Sanjabij Tari, 2025 INSC 1158, for the proposition that revisional courts cannot disturb concurrent findings of fact absent perversity or jurisdictional error).

[18] Sri Lalji Kesha Vaid v. Dayanand R., Karnataka High Court, October 2024 (citing D. Purushottama Reddy and CREF Finance Limited v. Sree Shanthi Homes Private Limited).

[19] P.C. Hari v. Shine Varghese, 2025 SCC OnLine Ker 5535 (set aside by the Supreme Court in Sanjabij Tari, 2025 INSC 1158).

[20] National Judicial Data Grid (NJDG) data as cited in Sanjabij Tari v. Kishore S. Borcar, 2025 INSC 1158: Delhi 6,50,283; Mumbai 1,17,190; Calcutta 2,65,985 Section 138 cases pending as on 01.09.2025.

[21] Order XIII, Rule 7, Code of Civil Procedure, 1908 (governing return of documents produced in evidence).

[22] Section 151, Code of Civil Procedure, 1908 (inherent powers of court).

[23] Section 63, Bharatiya Sakshya Adhiniyam, 2023 / Section 65, Indian Evidence Act, 1872 (secondary evidence).

[24] Section 143A, Negotiable Instruments Act, 1881 (interim compensation up to 20% of cheque amount, inserted by Act 20 of 2018).

[25] Section 148, Negotiable Instruments Act, 1881 (deposit on appeal, inserted by Act 20 of 2018).