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Prasanna S,

Chairman of Institute of Legal Education

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 73059 14348 - info@iledu.in / Chairman@iledu.in

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DECRIMINALISING THE PROCESS, NOT THE LAW: MEDIATION IN CHEQUE DISHONOUR CASES

AUTHOR - SAKSHAM KHANDARE, STUDENT AT THE MAHARAJA SAYAJIRAO UNIVERSITY OF BARODA

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Abstract

Section 138 of the Negotiable Instruments Act, 1881 criminalises cheque dishonour for insufficiency of funds or exceeding the arranged amount. Though framed as a criminal offence, its primary purpose is to secure repayment of a legally enforceable debt rather than to punish the drawer through incarceration. Complainants typically seek recovery of money, and the threat of jail serves mainly as leverage. As a result, most cases are eventually settled or compounded, with only a small fraction reaching full trial and conviction.

Despite amendments and Supreme Court guidelines for speedy disposal, over 43 lakh Section 138 cases remain pending across India, accounting for a large share of magisterial court workload, especially in major cities. The offence has a distinct quasi-civil character: criminal in procedure but compensatory in substance, as repeatedly noted by the Supreme Court.

The compounding framework under Section 147 allows settlement at any stage, yet it lacks a structured pathway to facilitate negotiations. This paper argues for decriminalising the process, not the law, retaining the deterrent effect of the offence while introducing mandatory pre-trial mediation as the default first step after cognizance.

Mediation, supported by the Mediation Act, 2023, offers a faster, confidential, and party-driven mechanism to reach enforceable settlements, including payment schedules. Where mediation fails or bad faith is evident, ordinary criminal proceedings can continue without delay. This approach aligns with the compensatory objective of Section 138, reduces judicial burden, and draws on international models that favour civil recovery and administrative sanctions over routine criminal prosecution for simple defaults.

Keywords: Cheque Dishonour, Section 138 NI Act, Mediation, Process Decriminalisation, Compounding of Offences, Judicial Backlog, Restorative Justice, Digital Dispute Resolution

I. INTRODUCTION

"Unlike that for other forms of crime, the punishment here (in so far as the complainant is concerned) is not a means of seeking retribution, but is more a means to ensure payment of money. The complainant's interest lies primarily in recovering the money rather than seeing the drawer of the cheque in jail. The threat of jail is only a mode to ensure recovery. As against the accused who is willing to undergo a jail term, there is little available as remedy for the holder of the cheque. If we were to examine the number of complaints filed which were `compromised' or `settled' before the final judgment on one side and the cases which proceeded to judgment and conviction on the other, we will find that the bulk was settled and only a miniscule number continued."[1244]

The reliability of cheques as a mode of payment remains critical for the smooth

[1244] Arun Mohan, Some thoughts towards law reforms on the topic of Section 138, NI Act - Tackling an avalanche of cases (New Delhi: Universal Law Publishing Co. Pvt. Ltd., 2009) at 5.

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functioning of commercial transactions in India. To instil trust in banking operations and enhance the credibility of negotiable instruments, the legislature inserted Chapter XVII (Sections 138-142) into the Negotiable Instruments Act, 1881[1245] (hereinafter referred to as 'NI Act'), via the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988[1246]. Section 138 criminalises the dishonour of a cheque issued for discharge of a legally enforceable debt or liability due to insufficiency of funds or exceeding the amount arranged to be paid.

However, the exponential growth in cheque transactions has been accompanied by a corresponding surge in dishonour cases. Despite multiple legislative interventions (including the Negotiable Instruments (Amendment) Act, 2015 on jurisdiction and the 2018 amendments introducing interim compensation under Sections 143A and 148) and repeated Supreme Court directions for expeditious disposal, Section 138 cases continue to overwhelm the criminal justice system.[1247] As per a written reply by the *Ministry of Law and Justice to Lok Sabha Unstarred Question No. 4190 dated 20 December 2024*[1248], as many as 43,05,932 cheque dishonour cases were pending across the country. Recent judicial notice taken by the Supreme Court in September 2025 further reveals staggering metropolitan pendency: 6,50,283 cases in Delhi district courts, 1,17,190 in Mumbai, and 2,65,985 in Calcutta as on 1 September 2025, with Section 138 cases constituting nearly 50% of total trial court pendency in Delhi.[1249] Earlier, the *Law Commission of India in its 213th Report*[1250] had also highlighted the alarming growth of such cases and their impact on judicial delays, particularly in Magistrates' courts. These figures underscore that cheque bounce litigation alone accounts for a disproportionate share of the judicial cases, severely straining magisterial courts.

The offence under Section 138 is sui generis. As the Supreme Court observed in *Damodar S. Prabhu v. Sayed Babalal H.*[1251], the punishment primarily serves as a mechanism to secure repayment rather than to inflict retribution. The complainant's predominant interest lies in monetary recovery, not incarceration. Consequently, the bulk of such disputes are eventually settled or compounded, with only a minuscule fraction proceeding to full trial and conviction. This compensatory nature is expressly reflected in Section 147, which contains a non-obstante clause declaring the offence to be compoundable. In effect, it allows the parties to resolve their dispute through mutual settlement, even though the proceedings are initiated under criminal law. Judicial pronouncements such as *Vinay Devanna Nayak v. Ryot Sewa Sahakari Bank Ltd*[1252]. and *K.M. Ibrahim v. K.P. Mohammed*[1253] have consistently emphasised the quasi-civil nature of these proceedings.

The Supreme Court has issued multiple guidelines to ensure speedy trial which are discussed further yet such guidelines operate in a vacuum when systemic factors like delayed service of summons, repeated adjournments, and lack of mandatory settlements persist. The absence of a structured, early-stage mechanism for negotiated resolution exacerbates delays and converts what is essentially a civil debt recovery dispute into prolonged criminal litigation.

In this backdrop, mediation has emerged as a transformative tool capable of decriminalising the process without diluting the deterrent value of the substantive law. By facilitating early,

[1245] The Negotiable Instruments Act, 1881, No. 26, Acts of Parliament, 1881 (India).
[1246] The Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988, No. 66, Acts of Parliament, 1988 (India).
[1247] Makwana Mangaldas Tulsidas v. State of Gujarat, (2020) 4 SCC 695 (India).
[1248] Ministry of Law and Justice, Written Reply to Lok Sabha Unstarred Question No. 4190 (Dec. 20, 2024) (India), https://loksabha.nic.in
[1249] Expeditious Trial of Cases Under Section 138 of NI Act 1881, In re, 2022 SCC OnLine SC 649
[1250] Law Commission of India, Fast Track Magisterial Courts for Dishonoured Cheque Cases, Report No. 213, at 10 (2008), https://lawcommissionofindia.nic.in/reports/report213.pdf
[1251] Damodar S. Prabhu v. Sayed Babalal H., (2010) 5 SCC 663 (India).
[1252] Vinay Devanna Nayak v. Ryot Sewa Sahakari Bank Ltd., (2008) 2 SCC 305 (India).
[1253] K.M. Ibrahim v. K.P. Mohammed, (2010 (1) SC 798) (India).

party-driven settlements whether through structured payment plans, partial waivers, or other mutually acceptable terms, mediation aligns with the compensatory ethos of Section 138 while drastically reducing judicial burden. The enactment of the Mediation Act, 2023[1254] provides a statutory framework for both pre-litigation[1255] and court-annexed mediation[1256], including enforceability of mediated settlement agreements as decrees[1257].

II. Legal framework of cheque dishonour under section 138 of the NI Act

The NI Act was enacted to consolidate and define the law relating to promissory notes, bills of exchange, and cheques. Originally a purely civil statute aimed at facilitating the free circulation of negotiable instruments, the Act underwent a transformative shift with the insertion of Chapter XVII (Sections 138–142), which came into force on 1 April 1989. This amendment criminalised the dishonour of cheques for insufficiency of funds or for exceeding the amount arranged to be paid, thereby elevating what was hitherto a civil wrong into a statutory offence. The legislative intent was to instil greater confidence in cheque-based transactions, deter dishonest drawer conduct, and promote the culture of using cheques as a reliable mode of payment in commercial dealings.

The 1988 amendment was further strengthened by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002[1258], effective from 6 February 2003. This legislation enhanced the punishment under Section 138 from one year to two years' imprisonment, extended the notice period from 15 to 30 days and offence to be compoundable[1259]. Subsequent amendments have continued to fine-tune the act. These provisions reflect Parliament's ongoing endeavour to balance the deterrent effect of criminal liability with the compensatory needs of the payee.

Negotiable instruments form an important part of modern commercial dealings because they allow money-related obligations to be transferred smoothly, securely, and with legal certainty, without the immediate movement of physical cash. They have long been recognised as reliable financial instruments that promote transparent transactions and reduce dependence on informal or unrecorded methods of payment thereby preventing corruption and black money. Under Indian law, the principal categories of negotiable instruments include promissory notes, bills of exchange, and cheques, all of which may generally be transferred in accordance with established legal rules through endorsement or delivery.

Among these instruments, cheques hold particular practical significance in everyday trade and business. A cheque is essentially a written instruction issued by one person directing a bank to pay a specific amount to another person on demand. Unlike many other payment instruments, it is directly linked to a banking account and becomes payable whenever it is properly presented.

The Supreme Court in *Kusum Ingots & Alloys Ltd. v. Pennar Peterson Securities Ltd.*[1260] laid down the essential ingredients that must be satisfied to constitute an offence: (i) a cheque must be drawn by the drawer for discharge, in whole or in part, of a legally enforceable debt or liability; (ii) the cheque must be presented for payment within its validity period (six months or as prescribed by RBI); (iii) it must be returned unpaid due to insufficiency of funds or exceeding the arranged amount; (iv) a written demand notice must be issued by the payee/holder in due course within 30 days of receiving information of dishonour; and (v) the

[1254] The Mediation Act, 2023, No. 32, Acts of Parliament, 2023 (India).
[1255] Id § 5.
[1256] Id § 7.
[1257] Id § 27.
[1258] The Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002, No. 55, Acts of Parliament, 2002 (India).
[1259] The Negotiable Instruments Act, 1881, § 147, No. 26, Acts of Parliament, 1881 (India).
[1260] Kusum Ingots & Alloys Ltd. v. Pennar Peterson Securities Ltd., (2000) 2 SCC 745 (India).

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drawer must fail to make payment within 15 days of receipt of the notice.

Further, in *Harman Electronics Pvt. Ltd. v. National Panasonic India Ltd*[1261]., the Court clarified that the offence is complete only upon failure to make payment within fifteen days of receipt of notice.

The legal framework governing cheque dishonour proceedings is structured to make enforcement practical while maintaining fairness to both parties. Once a cheque is returned unpaid and the required notice period has passed, the law generally places an initial burden in favour of the person holding the cheque by presuming that it was issued toward a genuine financial obligation, unless the issuer can establish otherwise. Certain defences based merely on lack of expectation of dishonour are not readily entertained. The same is also interpreted very well in *Modi Cements Ltd. v. Kuchil Kumar Nandi*[1262]. Where the cheque has been issued by a company or business entity, responsibility may also extend to those who were actively managing and controlling its affairs at the relevant time. Proceedings can begin only through a formal written complaint by the entitled holder, and this must be filed within the prescribed limitation period of 30 days before a competent magistrate. Jurisdiction is ordinarily linked to the location of the bank through which the cheque was presented or processed, thereby reducing unnecessary disputes over forum selection. To ensure quicker resolution, these matters are commonly dealt with through a simplified and faster trial procedure, though courts may convert them into regular trials where circumstances require.

Most significantly, the section 147 reflects a practical and settlement-oriented approach rather than a purely punitive one. Although the proceedings are initiated through the criminal justice system, the central objective is often to secure repayment of the underlying amount and restore commercial relation. For this reason, parties are permitted to resolve the dispute through mutual settlement at various stages of the case, even after proceedings have commenced. Legislative changes have further strengthened the position of the complainant by enabling courts to order a portion of the cheque amount to be paid during the pendency of the trial, and similarly during appeal, so that the claimant is not left without relief for prolonged periods. The Supreme Court has consistently interpreted this framework as creating a sui generis offence that is criminal in form but civil in substance. In *Damodar S. Prabhu v. Sayed Babalal H.*[1263], the Court observed that the primary object is recovery of the debt rather than punishment, and laid down guidelines for compounding at different stages to reduce litigation. This blended nature is often described as quasi-civil, where deterrence and repayment operate side by side.

III. The Quasi-Civil Nature of Section 138 Proceedings

The Supreme Court in *Kaushalya Devi Massand v. Roopkishore Khore*[1264] recognised this distinct nature by observing that such matters are largely civil disputes carrying criminal features. The emphasis, therefore, is not merely on punishment, but on ensuring accountability in financial dealings.

In *P. Mohanraj v. Shah Brothers Ispat Pvt. Ltd.*[1265], where the Court highlighted that these proceedings, though criminal in form, substantially protect the financial rights of the aggrieved party. The Court described Section 138 proceedings as a *"civil sheep in a criminal wolf's clothing"*.

In *R. Vijayan v. Baby*[1266], the Court similarly noted that cheque dishonour litigation often concerns compensation to the complainant, making

[1261] Harman Elecs. Pvt. Ltd. v. National Panasonic India Ltd., (2009) 1 SCC 720 (India).
[1262] Modi Cements Ltd. v. Kuchil Kumar Nandi, (1998) 3 SCC 249 (India).
[1263] Damodar S. Prabhu, supra note 8.
[1264] Kaushalya Devi Massand v. Roopkishore Khore, (2011) 4 SCC 593 (India).
[1265] P. Mohanraj v. Shah Brothers Ispat Pvt. Ltd., (2021) 6 SCC 258 (India).
[1266] R. Vijayan v. Baby, (2012) 1 SCC 260 (India).

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monetary redress a central objective of the proceedings.

Further, in *Goaplast Pvt. Ltd. v. Chico Ursula D'Souza*[1267], the Supreme Court explained that the broader legislative purpose behind cheque dishonour law is to preserve confidence in banking transactions and strengthen the reliability of negotiable instruments in trade. Thus, the legal character of such proceedings is best understood as quasi-civil in substance and criminal in procedure, combining deterrence with compensation to support commercial certainty.

IV. Steps taken to reduce the pendency

The volume of cheque dishonour litigation in India has long ceased to be a judicial inconvenience. With over 43 lakh cases pending across trial courts and Section 138 matters constituting nearly half of total criminal pendency in metropolitan jurisdictions like Delhi, the inadequacy of the existing framework is no longer debatable.[1268]

The most structurally ambitious executive intervention came in 2020, when the Ministry of Finance proposed decriminalising certain minor economic offences, including cheque dishonour, as part of its broader ease-of-doing-business initiative.[1269] The proposal encountered immediate and well-reasoned opposition. The All India Bank Employees' Association (AIBEA) argued that the criminal character of Section 138 was a deliberate policy choice, the threat of imprisonment was the very mechanism that gave cheques their commercial credibility, and removing it risked normalising dishonour and undermining financial discipline.[1270]

Importantly, the AIBEA did not advocate for the status quo entirely. Its counter-proposal introducing monetary thresholds so that criminal prosecution attaches only to higher-value cases while smaller-value matters are routed through civil or summary recovery reflects the same jurisprudential instinct visible in the Supreme Court's reasoning in *Damodar S. Prabhu v. Sayed Babalal H.*[1271], that the real object of Section 138 is payment rather than punishment. The proposal was ultimately not pursued.

The enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023[1272] (BNSS), read alongside the Information Technology Act, 2000,[1273] provided courts with firm statutory authority to serve summons electronically through email and messaging platforms, directly addressing one of the oldest causes of delay in Section 138 proceedings. A substantial proportion of adjournments historically occurred simply because summons were returned unserved, allowing accused persons to delay commencement of proceedings for months. Electronic service compresses this window considerably.[1274]

More innovatively, the integration of QR codes and UPI payment links directly into court summons creates a settlement pathway at the very beginning of proceedings, before the accused has appeared before a magistrate.[1275] Where the drawer is willing to pay this mechanism enables resolution without the case ever burdening the trial label. It is, in effect, a technology-driven first-stage settlement filter that resolves the most straightforward cases at the earliest possible moment.

At the institutional level, the Supreme Court have directed to establish dedicated digital dashboards to track disposal rates,

[1267] Goaplast Pvt. Ltd. v. Chico Ursula D'Souza, (2003) 3 SCC 232 (India).
[1268] Ministry of Law and Justice, supra note 5; see also Law Commission, supra note 7.
[1269] Ministry of Finance, Decriminalisation of Minor Offences for Improving Business Sentiment (2020) (India). https://economictimes.indiatimes.com/news/economy/policy/finmin-proposes-to-decriminalize-host-of-minor-offences-under-19-legislations/articleshow/76302412.cms
[1270] All India Bank Employees' Ass'n, Statement on Decriminalisation of Cheque Bounce Offences (2020). https://www.thenewsminute.com/money/don-t-decriminalise-cheque-bounce-fix-financial-limits-instead-bank-employees-union-126562
[1271] Damodar S. Prabhu, supra note 8.
[1272] The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India).
[1273] The Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India).
[1274] Kross Television India Pvt. Ltd. v. Vikhyat Chitra Production, 2017 SCC OnLine Bom 1433.
[1275] Sanjabij Tari v. Kishore S. Borcar, 2025 INSC 1158 (India).

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adjournment frequency, and ADR outcomes across district courts, enabling real-time identification of systemic blocks. High Courts have further been directed to constitute dedicated committees for periodic review of Section 138 case flows, with initiatives for specialised and evening courts at various stages of implementation.[1276] Concurrently, the Reserve Bank of India's Cheque Truncation System (CTS) has accelerated clearance by eliminating physical movement of instruments between banks, compressing the overall timeline from dishonour to legal commencement.

The decriminalisation debate identified the right question but could not answer it politically. What is missing is a structured, mandatory, early-stage process designed to convert the parties' acknowledged willingness to settle into actual, enforceable resolution. Against this backdrop, the concept of process decriminalisation emerges as a pragmatic and balanced solution. Rather than eliminating criminal liability altogether, the focus is on restructuring the procedural pathway so that settlement becomes the primary mode of resolution. Mechanisms such as mediation, pre-institution settlement frameworks, and technology-enabled payments can resolve a substantial proportion of disputes at an early stage. Criminal prosecution is then reserved for cases involving deliberate default, bad faith, or refusal to comply.

V. How internationally the cheque bounce case are resolved?

In the United Kingdom (England and Wales), cheque dishonour is governed by the Bills of Exchange Act 1882[1277], where the holder's remedy lies in filing a civil claim to recover the amount of the cheque along with interest and related expenses. Criminal consequences are not triggered merely because of insufficient funds; they arise only in cases involving clear elements of fraud or deception. Similarly, Singapore follows a civil-oriented framework in which liability arises out of the contractual and financial obligation underlying the cheque, without invoking criminal prosecution for simple default.

A comparable position exists in Australia, where the law provides civil remedies enabling the holder to recover the cheque amount and applicable interest from the liable parties. In the United States, the framework is largely governed by the Uniform Commercial Code, which treats cheque dishonour as a commercial liability. Although certain states permit criminal action in cases involving intentional fraud, the primary emphasis remains on financial recovery. Repeat defaulters may face escalating monetary penalties, reinforcing compliance without relying heavily on criminal prosecution.

Alongside civil remedies, several countries employ administrative and banking-level sanctions as an effective deterrent mechanism. In Japan, a strict "two-strike" rule is followed, whereby an account holder who issues two dishonoured cheques within a short period faces suspension of banking facilities for a substantial duration. For corporate entities, such restrictions can have severe commercial consequences, including suspension of trading activities.

In France, regulatory control is exercised through a centralised database that records instances of cheque dishonour. Individuals who repeatedly default may be prohibited from issuing cheques for a defined period, effectively restricting their participation in cheque-based transactions. Similarly, Malaysia adopts a structured banking response, where repeated instances of dishonoured cheques lead to blacklisting through the national credit system, resulting in closure of accounts across banks. In Cyprus, the Central Bank maintains a database of offenders and imposes restrictions on cheque issuance as a form of administrative control.

These international models demonstrate that effective regulation of cheque dishonour does

[1276] Sanjabij Tari, supra note 32, Directions I–L.
[1277] Bills of Exchange Act 1882, 45 & 46 Vict. c. 61 (UK).

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not necessarily depend on criminal prosecution. Instead, a combination of civil recovery mechanisms and strict banking or regulatory sanctions can achieve financial discipline while reducing the burden on criminal courts. For India, this comparative experience offers a valuable perspective: while the deterrent effect of criminal law may still be necessary in cases of wilful default, integrating stronger civil enforcement and administrative controls could significantly enhance efficiency and reduce litigation backlog.

VI. Compounding of Offences

The law relating to cheque dishonour strongly favours resolution through settlement rather than prolonged criminal prosecution. This approach is reflected in the statutory provision that permits parties to compound offences under the NI Act, meaning that the complainant and the accused may voluntarily settle the dispute and bring the criminal case to an end. The rationale behind this framework is that such matters usually arise from unpaid financial obligations, and once the amount is paid or mutually resolved, continued prosecution often serves little practical purpose.

In *K.M. Ibrahim v. K.P. Mohammed*[1278], the Court held that settlement may be accepted even at the appellate stage, demonstrating that the opportunity to resolve the dispute does not end with the trial. Likewise, in *O.P. Dholakia v. State of Haryana*[1279], compounding was permitted even after conviction, recognising that repayment and reconciliation can still justify closure of proceedings at a later stage.

A major development came in *Damodar S. Prabhu v. Sayed Babalal H.*[1280], where the Supreme Court emphasised that the real object of cheque dishonour law is to secure payment rather than impose punishment. To discourage unnecessary delay and encourage timely compromise, the Court introduced a graded cost system under which later settlements would attract higher monetary costs payable to legal services authorities.

A significant refinement to the law on compounding in cheque dishonour matters came through the Supreme Court's decision in *Sanjabij Tari v. Kishore S. Borcar*[1281], where the earlier framework on graded costs was reconsidered to encourage quicker settlements and reduce the heavy backlog of pending cases. Recognising changing economic conditions and the need for more practical dispute resolution, the Court adopted a more settlement-friendly structure by lowering the financial burden attached to delayed compromise.

Under the revised framework, if the accused settles the matter and pays the cheque amount before the stage of defence evidence, compounding may be permitted without any additional cost or penalty. Where settlement takes place after evidence has progressed but before the final judgment, compounding can still be allowed subject to payment of the cheque amount along with a modest cost of five per cent, generally directed to the Legal Services Authority. If the dispute is resolved during appellate or revisional proceedings before the Sessions Court or High Court, the cost may increase to seven and a half per cent of the cheque amount. In matters reaching the Supreme Court, the highest graded cost of ten per cent may be imposed.[1282]

The compounding framework, as surveyed above, is undeniably well-developed. It operates across all stages of proceedings, carries statutory backing under Section 147, enjoys judicial endorsement at the highest level, and has been progressively refined to lower barriers to settlement. Yet for all its doctrinal sophistication, it suffers from one fundamental structural limitation: it provides a destination without a pathway.

Compounding tells parties *that* they may settle and *what* it will cost them to do so at various

[1278] K.M. Ibrahim, supra note 10.
[1279] O.P. Dholakia v. State of Haryana, (2000) 9 SCC 741 (India).
[1280] Damodar S. Prabhu, supra note 8.
[1281] Sanjabij Tari, supra note 32.
[1282] Id.

stages, but it provides no structured mechanism *through which* that settlement is to be negotiated and reached. In practice, this means that parties who are in principle willing to resolve their dispute must either negotiate informally between themselves, rely on the goodwill of counsel to facilitate discussions, or wait for the court to nudge them toward compromise during proceedings. None of these pathways is systematic, none is time-bound, and none is designed to address the informational, emotional, and commercial barriers that frequently prevent settlement even where both parties would benefit from it.

This is the structural gap that mediation is uniquely positioned to fill. Unlike compounding mediation is a process: structured, facilitated, confidential, and conducted by a trained neutral whose function is precisely to help parties reach the agreement that the compounding framework will then formalise. The Mediation Act, 2023[1283] provides the statutory infrastructure for this process, and the Supreme Court's direction in *Sanjabij Tari (Supra)* to promote mediation and Lok Adalats as primary mechanisms for addressing Section 138 backlog reflects judicial recognition that compounding alone, without a structured settlement pathway, is insufficient. It is to that mechanism, and the case for making it mandatory at the pre-trial stage, that this paper now turns.

VII. Mediation as an Effective Dispute Resolution Mechanism

Cheque dishonour disputes are increasingly being addressed through Alternative Dispute Resolution mechanisms, particularly mediation, as courts have recognised that these matters are essentially financial disputes more suited to negotiated settlement than prolonged criminal litigation. Since offences under cheque dishonour law are legally compoundable, mediation has emerged as an effective bridge between formal prosecution and voluntary repayment. Judicial support for this approach was clearly affirmed in *Dayawati v. Yogesh Kumar Gosain*[1284], where the Delhi High Court held that cheque dishonour proceedings may validly be referred to mediation because they arise primarily from private monetary claims and are capable of lawful settlement.

When parties opt for mediation, the process generally concludes with a structured settlement agreement recording the amount payable, the mode of payment, instalment schedules where necessary, and the consequences of default. The agreement is signed by both parties, authenticated by the mediator, and submitted before the court. Once the complainant acknowledges satisfaction and seeks withdrawal of the complaint, the court may record the compromise and terminate the proceedings, resulting in acquittal or discharge of the accused. This gives mediation practical enforceability rather than leaving it as a purely informal arrangement.

Mediation offers several advantages over ordinary criminal trial. Traditional cheque dishonour cases often continue for years due to repeated adjournments, procedural delays, and mounting litigation costs. By contrast, mediation is faster, less adversarial, and economically efficient. It allows parties to retain control over the outcome rather than having a decision imposed by a court. This flexibility is particularly valuable where commercial or personal relationships continue between the parties. Mediation proceedings are also private, helping preserve reputation and reducing the stigma associated with criminal prosecution.

According to Rajasthan State Legal Services Authority under the Pre-Institution Mediation and Settlement (PIMS) framework approximately 47.8% is the overall settlement success rate, with certain years performing even better Though the data is not limited to cheque dishonour matters, it provides a useful indicator for commercial and monetary

[1283] Mediation Act, supra note 11.

[1284] Dayawati v. Yogesh Kumar Gosain, 2017 SCC OnLine Del 11032 (India).

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disputes.[1285] National ADR statistics for the period April 2024 to March 2025 record 98,406 successful settlements through mediation across India, demonstrating that consensual dispute resolution has become a functioning part of the justice system. A total of 11,101 mediators were deployed nationwide, including judicial officers, lawyers, and other trained neutrals. Maharashtra, Kerala, and Madhya Pradesh together accounted for more than half of all settlements, showing that where mediation is institutionally prioritised, disposal rates significantly improve.[1286]

At the same time, mediation is not suitable for every cheque dishonour case. In some matters, the drawer may intentionally misuse cheques, prolong settlement discussions, or employ mediation only as a tactic to delay payment. Where mala fide conduct, repeated default, or deliberate abuse of process is evident, strict criminal prosecution remains necessary to preserve commercial discipline and public confidence in negotiable instruments. Therefore, mediation should not replace criminal liability altogether.

A balanced reform model would be to make mediation the mandatory first procedural step immediately after cognizance or issuance of summons. Bona fide disputes may then be settled swiftly through repayment or negotiated terms. If mediation fails, or if the accused acts in bad faith, the matter should proceed promptly through criminal trial. Such a two-stage mechanism would combine restorative justice with deterrent enforcement, reduce pendency, secure faster compensation, and modernise cheque dishonour adjudication without weakening the substantive offence.

In modern jurisprudence, the Supreme Court in *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. Pvt. Ltd.*[1287] recognised mediation as an integral part of the justice delivery system, encouraging courts to adopt alternative dispute resolution mechanisms for efficient case management.

A significant strength of the cheque dishonour framework lies not only in permitting settlement, but also in ensuring that settlements are enforceable. A recurring concern is the situation where an accused person agrees to pay during compounding or mediation, but later defaults on the terms of settlement. In such circumstances, the court is not left powerless. Judicial practice recognises that where a settlement has been recorded by the court, the agreed amount may be recovered through statutory mechanisms in the same manner as recovery of a court-imposed fine under the provisions of the CrPC. This gives legal certainty to mediated outcomes and assures complainants that settlement is a meaningful remedy rather than a mere promise.

The law also creates important statutory incentives that encourage compounding. Under Section 143A of the NI Act, the trial court may direct payment of interim compensation up to twenty per cent of the cheque amount during the pendency of proceedings. In practice, this often motivates parties to negotiate and conclude final settlement at an early stage. Similarly, under Section 148, where a conviction is challenged in appeal, the appellate court may require deposit of a minimum portion of the awarded amount before entertaining the appeal.

The increasing volume of cheque dishonour litigation has simultaneously exposed the limits of ordinary criminal trial procedure. Recognising this challenge, the Supreme Court in *Indian Bank Association v. Union of India*[1288] issued directions to streamline these cases through simplified procedure, prompt service of summons, and efficient handling of evidence.

[1285] Rajasthan State Legal Servs. Auth., Pre-Institution Mediation and Settlement (PIMS) - Statistical Data, https://rajasthan.nalsa.gov.in/pre-institution-mediation-and-settlement-pims/

[1286] Nat'l Legal Servs. Auth., Annual Report on Mediation - April 2024 to March 2025, https://cdnbbsr.s3waas.gov.in/s32e45f93088c7db59767efef516b306aa/uploads/2025/06/2025110218830150 27.pdf

[1287] Afcons Infrastructure Ltd. v. Cherian Varkey Constr. Co. Pvt. Ltd., (2010) 8 SCC 24 (India).

[1288] Indian Bank Ass'n v. Union of India, (2014) 5 SCC 590 (India).

Accordingly, courts have favoured summary procedure unless exceptional circumstances require a full summons trial. The complainant's evidence is expected to be completed expeditiously, matters should ideally proceed on a day-to-day basis, and endeavours are to be made to conclude trials within a reasonable timeframe. These measures reflect the judicial understanding that cheque dishonour cases should not consume years of litigation when the real dispute concerns payment of money.

VIII. Conclusion

A. Summary of Findings

This paper has examined the evolving legal landscape of cheque dishonour litigation in India through a single organising question: how can a legal system reduce the crushing burden of over 43 lakh pending Section 138 cases without dismantling the criminal deterrence that makes cheques commercially reliable? The answer this paper has developed, decriminalising the process while preserving the law, is not merely a rhetorical formulation.

The paper has traced how Section 138 of the Negotiable Instruments Act, 1881, though criminal in form, has always been civil in substance. From the Supreme Court's characterisation of it as a *sui generis* offence in *Damodar S. Prabhu (Supra)* to the vivid description of Section 138 proceedings as a *"civil sheep in a criminal wolf's clothing"* in *P. Mohanraj (Supra)* the judiciary has consistently acknowledged that the real objective of this provision is payment, not punishment. The statutory compounding framework under Section 147, progressively refined through *K.M. Ibrahim (Supra) and O.P. Dholakia (Supra)* and most recently *Sanjabij Tari (Supra)* reinforces this compensatory orientation at every stage of proceedings.

The paper has further demonstrated that executive and technological interventions, the BNSS's electronic service provisions, UPI-enabled summons, judicial dashboards, and the Cheque Truncation System, have created the conditions for faster resolution but have not, by themselves, provided a structured mechanism for achieving it. The 2020 decriminalisation proposal failed precisely because it sought to remove criminal liability rather than redirect it. Comparative experience from the United Kingdom, Singapore, Australia, Japan, and France confirms that effective deterrence in cheque dishonour matters does not require criminal prosecution as its primary instrument, civil recovery, administrative sanctions, and structured settlement mechanisms can achieve equivalent outcomes with significantly lower systemic cost.

This paper has established three propositions that, taken together, constitute its original contribution to the literature.

First, the compounding framework, despite its doctrinal sophistication, suffers from a structural gap: it provides a destination - settlement - without a pathway to reach it. Parties willing to settle have no structured process to facilitate that willingness into agreement. This gap is responsible for a significant proportion of unnecessary pendency in Section 138 cases, where matters linger not because parties are irreconcilably opposed but because no institution exists to bring them to terms.

Second, mediation, as now governed by the Mediation Act, 2023, is precisely the process-level intervention that this structural gap demands. It is facilitated, confidential, time-bound, conducted by a trained neutral, and produces an agreement enforceable as a decree under Section 27 of the Mediation Act. It complements rather than displaces criminal liability: where mediation succeeds, the compounding framework formalises the outcome; where it fails, criminal trial proceeds with no prejudice to either party.

Third, mandatory pre-trial mediation in Section 138 cases is constitutionally defensible and institutionally feasible. It does not violate Article 21's guarantee of speedy trial, it accelerates it. It does not infringe Article 20(3)'s protection

against self-incrimination, mediation is voluntary in substance even when mandatory in initiation. And it does not weaken the deterrent value of Section 138, the criminal consequence remains fully operative for those who refuse genuine settlement or act in bad faith.

C. Specific Recommendations

Key Recommendations

1. **Mandatory Pre-Trial Mediation:** Introduce a provision requiring courts to refer cheque dishonour cases to mediation within a fixed timeframe after taking cognizance. Proceedings should move forward only if mediation fails, ensuring early-stage settlement and reducing unnecessary litigation.
2. **Specialised Mediation Centres:** Establish dedicated mediation centres for cheque dishonour disputes in districts with high case volumes. These centres should be managed by trained mediators in commercial matters and operate under the supervision of legal services authorities.
3. **Digital Settlement Mechanism:** Develop an integrated online platform enabling parties to participate in mediation and complete payments digitally (via UPI/NEFT), allowing immediate settlement and reducing procedural delays.
4. **Statutory Recognition of Mediated Settlements:** Clarify the law to explicitly recognise mediation-based settlements as valid compounding, ensuring that such agreements lead directly to closure of proceedings.
5. **Safeguards Against Misuse:** Introduce stricter consequences for parties acting in bad faith during mediation, including mandatory interim compensation, to prevent delay tactics and maintain the effectiveness of the process.

The future of Section 138 does not lie in choosing between deterrence and settlement, it lies in sequencing them intelligently. Criminal liability must remain the law's ultimate sanction, reserved for those who dishonour cheques with deliberate intent and refuse all reasonable settlement. But for the vast majority of cases, where the drawer is willing to pay, the complainant needs recovery, and both parties would prefer to avoid years of litigation, the criminal trial is an unnecessarily blunt and expensive instrument. Mediation offers a sharper, faster, and more humane alternative that serves the same compensatory objective at a fraction of the systemic cost.

The Mediation Act, 2023 has given India the statutory foundation it needs. The Supreme Court's direction in *Sanjabij Tari (Supra)* has given it judicial momentum. What remains is the legislative will to make mandatory pre-trial mediation the procedural norm in Section 138 case, not an optional detour, but the first road every cheque dishonour dispute must travel before it enters the criminal trial system. When that reform is made, India will have finally aligned the procedure of Section 138 with its purpose: not punishment, but payment; not retribution, but restoration.

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NO. 08, ARUL NAGAR, SEERA THOPPU,
MARUDHAANDA KURICHI, SRIRANGAM - 620102,
TAMILNADU, INDIA.

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