The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

LEGAL ASPECTS OF CHEQUE BOUNCING IN INDIA

A Comprehensive Research Paper

An Analysis of Section 138 of the Negotiable Instruments Act,1881

-Achaleshwari Khinchi

Abstract

Cheque dishonour- colloquially known as cheque bouncing- represents one of the most prolifically litigates categories of financial offences in the Indian legal system. Governed primarily bt section 138 of the Negotiable Instrument Act,1881. (NI Act), the legal framework surrounding dishonoured cheques has evolved considerably over more than four decades of judicial interpretation, legislative amendment and policy reform. This paper offer a thorough examination of the legal ,procedural and socio-economic dimension of cheque bouncing in India.

The paper analyses the statutory framework established under section 138 to 147 of NI Act, the mandatory pre-complaint procedures, the burden of proof, the presumption available to the complainant, and the penalties prescribed. It traces significant legislative milestones, including the banking, Public financial Institutions and Negotiable Instrument Laws (Amendment) Act,2018.

The paper conclude with a set of reform recommendation aimed at strengthening the credibility of cheque transaction and improving access to timely justice for both payees and drawers.

Table of Contents

1.Introduction

A cheque is one of the oldest and most trusted instrument of financial commerce. In India, cheque facilitate million of transaction daily- from personal loans and business settlement to rent payment and salary disbursements. The underlying premise of a cheque transaction is trust; the drawer assure the payee that sufficient funds exist in the account to honour the instrument upon presentation. When this trust is violated- when a cheque is returned unpaid by the bank- the consequences transcend mere financial inconvenience and enter the domain of criminal liability.

Cheque bouncing in India is not merely a financial irregularity; it is a congnizable criminal offence under section 138 of the NI Act,1881. The criminalization of cheque dishonour was introduced in 1938 through an amendment to the NI Act, reflecting Parliament's recognition that the unchecked proliferation of dishonoured cheque was corroding confidence in banking instruments and disrupting commerce. Since then, cheque bounce has become one of the most commonly prosecuted offences in India.

The scale of cheque bounce litigation in India is staggering. As of 2025, over 44.7 lakhs cases under the NI Act are pending in courts across the country, with more than 25.9 lakh of them unresolved for over two years. In 2024 alone, over 1.22 million new cases were registered- a steady rise from 9,67,595 in 2021. The Supreme Court in a landmark suo motu proceeding in 2021 and through technology- driven direction in October 2025 has repeatedly intervened to address this crisis.

This paper undertake a comprehensive legal study of cheque bouncing in India- its historical roots, statutory framework, procedural requirement, judicial interpretation, and legislative evolution.

2. Historical Background and Legislative Evolution

2.1 The Pre- Amendment Era

The NI Act, 1881 was enacted during British rule as a codification of the law relating to promissory notes, bills of exchange, and cheques. In its original form, the NI Act did not creates a special criminal offence for cheque dishonour. A payee holding a bounced cheque was confined to civil remedies- a suit for recovery of money- which were notoriously slow and inadequate given the volume of such transaction.

The absence of a criminal deterrent led to widespread misuse. Drawer would issue cheque with the deliberate knowledge that they lacked sufficient funds, treating dishonour as a mere civil risk rather than a criminal liability. This practice undermined the credibility of cheque as a substitute for cash payment and created enormous financial exposure for payees, particularly small trader and individual creditors.

2.2 The 1988 Amendment: Birth of Section 138

The Banking , Public financial Institutions and Negotiable Instrument Laws(Amendment) Act, 1988- which came into force on 1st April 1989- inserted Chapter XVII (Section 138 to 142) into the NI Act. This was a watershed moment in Indian commercial law. For the first time, dishonour of cheque for insufficiency of funds or if it exceeded the amount arranged for was criminalised.

2.3 The 2002 Amendment

The NI (Amendment and Miscellaneous Provision) Act, 2002 substantially revamped the procedural architecture of section 138 cases. Key changes included; extension of notice period from 15 to 30 days, introduction of summary trial procedures under section 143, provision for evidence by affidavit under section 145, conferment of power on the court to try all offences at the place where the payee's bank was located, and expansion of the compounding provision under section 147.

2.4 The 2015 and 2018 Amendments

The NI (Amendment) Act, 2015 resolved the long- standing controversy over territorial jurisdiction by amending section 142(2) to provide that complaints under section 138 shall be filed in a court within whose local jurisdiction the branch of the bank where the payee maintain an account is situated. This reversed the earlier position introduced by the Supreme court in Dashrath Rupsingh Rathore v. Sate of Maharashtra (2014), which had held that jurisdiction lay with the court at the place of the drawer's bank.

The Negotiable Instrument (Amendment) Act, 2018 introduced two pivotal provisions; section 143A, enabling courts to grant interim compensation to the complainant during trial, and Section 148, empowering appellate courts to order the accused to deposit a minimum of 20% of the fine or compensation upon filing an appeal against conviction.

3. Statutory framework The Negotiable Instrument Act,1881

3.1 Structure of the NI Act

The Negotiable Instrument Act,1881 is divided into 17 chapters and contain 147 sections. Chapter XVII, comprising Section 138 to 147, deals exclusively with penalties in case of dishonour of certain cheques. This chapter was inserted by the 1988 amendment and has been the subject of more litigation than any other provision of the Act.

4. Section 138; Ingredients and Essential Conditions

Section 138 of the NI Act reads; "Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceed the amount arranged to be paid from that account by an agreement made with the that bank, such person shall be deemed to have committed an offence… ."

For an offence under Section 138 to be made out, the following essential condition must be satisfied conjunctively.;

4.1 The Cheque Must Be Drawn on a Bank Account

The instrument in question must be a cheque as defined under section 6 of the NI Act- a bill of exchange drawn on specified banker and not expressed to be payable otherwise than on demand. Post-dated cheque account payee cheque and bearer cheque all fall within the ambit of section 138.

4.2 The cheque Must Be for Discharge of a Debt or Liability

This is a crucial ingredient. The cheque must be issued in discharge- wholly or partly- of a legally enforceable debt or other liability. A cheque given as a gift , donation, or in anticipation of a future debt does not attract section 138. However, security cheque (issued as security against a future liability) have been held to attract the section once the underlying liability crystallises, as clarified bt he supreme court in M.M.T.C. Ltd v. Medchl Chemical and Pharma (P) ltd(2002).

4.3 Failure to Make Payment Within 15 Days

If the drawer fails to make payment of the said amount within 15 days of the receipt of the statutory notice, the cause of action to file a complaint accrues. Only upon such failure does the criminal liability under section 138 attach.

5 Section 138; Ingredients and Essential Conditions

5.1 Receipt of the Dishonour Memo

The procedural chain under section 138 is set in motion when the payee’s bank return the cheque unpaid, accompanied by a ‘Return Memo’ stating the reason for dishonour. The date of receipt of this memo is the starting point of all subsequent limitation periods. The payee must retain this memo as primary evidence.

5.2 Issuance of legal Notice (section 138 Proviso(b))

The payee must issue a written demand notice to the drawer within 30 days of receiving the dishonour memo. This notice: must be in writing ; must demand payment of the cheque amount; need not be sent by a lawyer (though it is advisable); should ideally be sent by registered post with acknowledgment due or speed post (as per section 27 of the General Clauses Act, service by post is deemed effected once a properly addressed letter is sent, regardless of actual receipt); and must precisely state the cheque amount.

The Supreme Court in Saketh India Ltd v. India Securities Ltd (1999) held that the notice must be sent within 30 days from the date of receipt of information as to dishonour, not merely from the date of dishonour itself.

5.3 Filing the Complaint (section 142)

If the drawer fails to pay within 15 days of receipt of notice, the payee may file a criminal complaint before the Judicial Magistrate of First Class (or Metropolitan Magistrate) within 30 days of the expiry of the 15 days notice period. The complaint must be filed by the payee or the holder in due course- not any other person.

6. High Court Perspectives(Allahabad High Court focus)

The Allahabad High Court, being one of the largest High Court, deals with a significant number of cheque bounce cases. It has consistently emphasised adherence to summary trial procedures and discouraged unnecessary adjournment.

The Court has also taken a cautious approach in exercising inherent powers under Section 482 CrPc, ensuring that cheque bounce proceeding are not quashed prematurely unless clear abuse of process is demonstrated. This reflects judicial restraint and respect for trial procedure.

7. Punishment and Penalties

7.1 Prescribed punishment

Section 138 prescribe the following punishment upon conviction imprisonment for a term which may extend to two years; or fine which may extend to twice the amount of the cheque; or both.

The provision thus provides for an either-or-both formula, giving the magistrate considerable discretion. In practice, the focus of section 138 proceeding is financial recovery rather than incarceration and courts frequently impose fines rather than imprisonment- particularly where the accused makes payment during the appellate stage.

7.2 Compensation to Complainant

Under section 357 of the Code of Criminal Procedure (now section 395 of the BNSS,2023), the court may award compensation to the complainant out of the fine imposed. The Supreme court has consistently held that courts should endeavour to award compensation equivalent to the cheque amount to make the remedy meaningful.

7.3 Bank Charges and Consequences

Beyond criminal penalties, a dishonoured cheque attracts bank charges (typically Rs.150 to Rs.800 per instance depending on the bank). Frequent dishonour adversely affect the drawer's credit rating, may lead to account closer, and can result in restrictions on issuing cheques. The Reserve Bank of India has issued guidelines permitting banks to withdraw cheques facility from customers with four or more cheque return within a year.

8. Landmark judicial decisions

8.1 Electronic Approaches to Service (Post-2025)

The Supreme Court in October 2025 issued comprehensive technology- driven guidelines allowing service of summons and notices through WhatsApp, Email, and QR codes in cheque bounce cases, recognising that traditional service mechanisms were a primary cause of delay.

8.2 Rangappa v. Sri Mohan (2010)- Constitution Bench on Presumption

A five-judge constitutional bench of the Supreme Court settled a long-standing conflict over the standard of proof required of the accused to rebut the presumption under section 139. The Court held that the accused need only raise a probable defence- a standard of preponderance of probabilities, not proof beyond reasonable doubt. This judgement provides the foundational framework for the burden of proof in section 138 trials.

8.3 Dashrath Rupsingh Rathore v. State of Maharashtra (2014)- Jurisdiction controversy

A Three-judge bench altered the jurisdictional ground rules by holding that section138 cases could only be filed where the drawer's bank was located. This created massive inconvenience for payee in distant location and resulted in the transfer of thousand of pending cases. The resultant chaos led Parliament to pass the 2015 amendment restoring jurisdiction to the payee's bank location.

8.4 Indian Bank Association v. Union Of India (2014)- Speedy Trial Guidelines

The Supreme Court issued detailed direction to Magistrate across India for expeditious disposal of cheque bounce cases, including mandatory day to day hearing, use of affidavit evidence, encouragement of compounding and issuance of process within two working days of filing of the complaint.

9. Corporate Liability: Section141 of the NI Act

One of the most significant- and litigated- provision in Chapter XVII is section 141, which deals with the liability of companies (including Limited Partnerships) for offence under section 138.

9.1 The Vicarious Liability Principle

Section 141(1)provides that where a company commits an offence under section 138, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of its business as well as the company itself, shall be deemed to be guilty of the offence. Section 141(20) further provides that where the offence is committed with the consent, connivance, or neglect of any director, manger, secretary or other officer of the company, such person shall also be liable.

9.2 Director's Personal Liability After Resignation

A director who had resigned before the cheque was presented for payment cannot be prosecuted, as the offence had not yet crystallised at the time of their resignation. However, this must be established with evidence of the resignation having been duly filed with the Registrar of Companies.

10.Judicial Backlog and the Crisis of Pendency

10.1 Scale of the problem

The pendency of cheque bounce cases in India represent one of the most acute challenges to the efficiency and credibility of the justice system. As of 2025, over 44.7 lakhs cases under the NI Act are pending in Indian courts, with over 25.9 lakh of them unresolved for more than two years. In 2021, over 1.22 million new cases were registered under the NI Act- a rise from 9, 67,595 in 2021, reflecting both increased financial transaction and the mounting enforcement challenges.

At the macro level, this problem is embedded within India's broader judicial backlog: nearly 4.80 crore cases are pending in trial courts across the country, of which cheque bounce cases constitute nearly 10%. The Supreme Court itself noted in the 2021 suo motu proceeding, that at one point in Delhi alone, approximately 1,000 new cheque bounce cases were being filed every day.

10.2 State -Wise Disparities

Disposal rates vary dramatically across states. Gujarat has achieved near-parity between case registration and disposal, while states like Uttar Pradesh, Bihar, and Rajasthan show deep deficits. Rajasthan alone had over 6.4 lakh pending cases as of December 2024. Legal experts attribute these disparities to judicial manpower shortages, inadequate infrastructure, and procedural adjournment.

10.3 Cause of Delay

- Shortage of Magistrate: India has approximately 21 judges per million citizen , far below comparable economies. In some districts, a single Magistrate may be handling thousand of cases simultaneously.
- Service of Summon Failures: Non-service of summon on accused parties- due to incorrect addresses, deliberate evasion, or postal failures- has historically been the single greatest cause of delay in cheque bounce cases.
- Inadequate Infrastructure: Many Magistrate courts lack basic digital infrastructure for e-filing ,video-conferencing, or digital evidence management.

11.Conclusion

Cheque bouncing in India occupies a unique and consequential place at the intersection of commercial law, criminal justice, and financial integrity. Section 138 of the NI Act 1881- introduced in 1988 as a mechanism to restore confidence in cheque-based transaction- has become one of the most litigates provision in Indian Law, generating over a million new cases annually and accounting for nearly one-tenth of all pending cases in India's trial court.

The legal framework has evolved considerably through legislative amendment in 2002,2015,and 2018 and through a rich body of Supreme Court jurisprudence that has clarified the ingredients of the offence, the standard of proof, the jurisdictional rules, the right of corporate accused and the mechanism for expeditious disposal.

Yet the crises of pendency- with over 44.7lakh cases pending as of 2025- remains the defining challenge. The law on paper is largely sound: it is the machinery of justice that requires urgent repair. The Supreme Court's October 2025 directions, leveraging digital technology for service, settlement, and proceedings, represent a promising direction. Their success will depend on sustained political will, adequate judicial resourcing and a cultural shift towards pre-litigation dispute resolution.

The ultimate goal of Section138- as articulated in numerous Supreme Court judgement-is not incarceration but the restoration of financial integrity. A cheque must mean what it says. When it does, commerce flourishes, when it does not, and when the legal system is too slow to correct the breach, trust erodes. India's challenge is to make the promise of section 138 as reliable as the promise of the cheque itself.

12.References

12.1 Statutes and Legislation

- Negotiable Instrument Act,1881 (as amended)
- Banking, Public Financial Institutions and Negotiable Instrument Laws (Amendment) Act, 1988
- Negotiable Instrument (Amendment and Miscellaneous Provisions) Act,2002
- Negotiable Instrument (Amendment)Act,2015
- Negotiable Instrument (Amendment)Act,2018
- Code of Criminal Procedure, 1973
- Bharatiya Nagarik Suraksha Sanhita,2023

12.2Judicial Decision

- Rangappa v. Sri Mohan, (2010) 11 SC 441 (Constitutional Bench)
- Dashrath Rupsingh Rathore v. State of Maharashtra, (2014) 9 SCC 129
- Indian Bank Association v. Union of India, (2014) 5 SCC 590
- Surinder Singh Deswal v. Virender Gandhi, (2019) 11 SCC 1
- In Re: Expeditious Trial of Cases under section 138 Ni Act , Suo Motu Writ Petition (Crl) No.2 of 2020

12.3Secondary Sources and Reports

- Reserve Bank of India, Guidelines on Cheque Dishonour and Customer Service (2013, updated periodically)
- National Judicial Data Grid (NJDG), case Pendency Statistics 2024-2025
- Ministry of law and Justice, Annual Reports 2022-2025
- Law Commission of India, 213th Report on Fast Track Magisterial Courts of Dishonoured Cheque Cases (2008)

**************End Of Research Paper****************