



## DECriminalIZING DISHONOUR OF CHEQUES: BALANCING COMMERCIAL EFFICIENCY, LEGAL ENFORCEMENT, AND ECONOMIC TRUST

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### ABSTRACT

*This research paper explores the evolving debate on the decriminalisation of cheque dishonour in India, focusing on the balance between commercial efficiency, legal enforcement, and financial trust. The dishonour of cheques, governed by Section 138 of the Negotiable Instruments Act, 1881, was criminalised in 1988 to deter fraudulent practices and enhance the credibility of cheques as substitutes for cash. However, with nearly 20 per cent of India's court cases now arising from cheque dishonour, questions are being raised about whether criminalisation continues to serve its purpose or instead burdens the judiciary and hinders business activity. The paper traces the historical evolution of cheque dishonour laws, their judicial interpretation, and the rationale behind criminal sanctions. It then examines the challenges posed by criminal penalties, including delays in litigation, reputational damage, and disproportionate costs for small businesses and creditors. Drawing on comparative practices from jurisdictions such as the United Kingdom, the United States, Singapore, and Turkey, the study highlights how many countries treat dishonour as a civil matter while reserving criminal sanctions for fraudulent intent. The research further evaluates the economic and social implications of decriminalisation, including its potential to ease judicial congestion, promote ease of doing business, and encourage digital payment adoption. At the same time, it addresses concerns that weakening deterrence may erode creditor confidence and financial discipline. Ultimately, the paper argues for a hybrid approach: retaining criminal liability only for habitual defaulters and fraudsters while shifting ordinary dishonour cases to civil remedies. Complementary reforms such as fast-track courts, alternative dispute resolution, interim compensation, and technological integration are recommended to strengthen enforcement while reducing judicial backlog. The study concludes that a carefully calibrated framework*

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*can preserve the credibility of cheques while fostering a more business-friendly and efficient legal environment.*

**Keywords:** Cheque Dishonour, Decriminalisation, Negotiable Instruments Act, Financial Trust, Judicial Reform

## **HISTORICAL AND LEGAL CONTEXT OF CHEQUE DISHONOUR LAWS**

The law relating to cheque dishonour in India is primarily governed by the Negotiable Instruments Act, 1881, a legislation that has its origins in the British colonial period and continues to remain in force today, though with significant amendments. The Act was originally designed to regulate the use of negotiable instruments, which are legal documents that derive their enforceability by virtue of law and are transferable. These instruments play an essential role in commercial transactions, ensuring trust and efficiency in business dealings.<sup>1</sup>

The history of the Act can be traced back to the work of the 3rd Indian Law Commission in 1866, which drafted the initial version. The Bill was introduced in December 1867 and referred to a Select Committee. However, strong objections were raised by the mercantile community, who felt that the Bill deviated significantly from English law. This led to a redrafting in 1877, followed by further reviews. In 1880, another Law Commission undertook revisions, and finally, after being redrafted for the fourth time, the Bill was passed into law on December 9, 1881, coming into effect on March 1, 1882.<sup>2</sup> The Act originally comprised 148 sections, arranged across 17 chapters, and provided a framework for three kinds of negotiable instruments: promissory notes, bills of exchange, and cheques.

## **EVOLUTION OF SECTION 138 OF THE NEGOTIABLE INSTRUMENTS ACT**

For more than a century after its enactment, the Negotiable Instruments Act did not provide any penal consequences for cheque dishonour. If a cheque was dishonoured due to insufficient funds, the drawer only faced civil liability. This meant that the payee had to approach civil courts for recovery, a process often lengthy and ineffective, undermining the credibility of cheques as instruments of commerce.

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<sup>1</sup> Shivam Goel, 'The Negotiable Instruments Act, 1881: Critical Analysis'.

<sup>2</sup> Harshit Jain, 'Decriminalisation of Section 138 Negotiable Instruments Act, 1881: The Way Forward' [2021] 24 *Supremo Amicus*.

This gap was addressed only in 1988 with the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988, which introduced Chapter XVII into the Act. The amendment, effective from April 1, 1989, inserted Section 138, criminalising the act of issuing a cheque without sufficient funds or beyond the arrangements made with the bank.<sup>3</sup> The purpose was to strengthen the acceptability of cheques as a substitute for cash and to ensure that drawers were deterred from fraudulent conduct.

However, the initial provisions under Sections 138 to 142 proved inadequate in addressing the rising number of cheque dishonour cases. To plug these gaps, the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 (Act 55 of 2002) was passed, effective from February 6, 2003. This amendment inserted Sections 143 to 147, which introduced summary trials to ensure speedy disposal, made offences under Section 138 compoundable, and increased the maximum punishment from one year to two years.<sup>4</sup> These reforms sought to reinforce the credibility of cheques as a reliable mode of payment in everyday business transactions.

In recent years, the law has continued to evolve. In June 2020, the Ministry of Finance proposed decriminalizing cheque bouncing under Section 138 to improve the ease of doing business and reduce imprisonment rates. However, this proposal faced widespread opposition from trade and business associations, who argued that criminal liability was necessary to deter wilful defaulters.

### **PURPOSE BEHIND CRIMINALIZING DISHONOUR OF CHEQUES**

The decision to criminalise cheque dishonour reflects a balance between promoting commercial efficiency and preventing fraud. Before 1988, the absence of criminal consequences made cheque transactions unreliable, as civil suits for recovery were slow and often failed to provide meaningful relief. The introduction of criminal penalties under Section 138 was therefore aimed at giving the law “teeth” by ensuring that drawers could not recklessly or dishonestly issue cheques without adequate funds.

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<sup>3</sup> P.R. THAKUR, ‘DISHONOUR OF A CHEQUE—A DEEMED OFFENCE UNDER SECTION 138 OF THE NEGOTIABLE INSTRUMENTS ACT 1881 (AS AMENDED IN 1988)’ Vol. 33, No. 3 Journal of the Indian Law Institute.

<sup>4</sup> Anjana Dave and R V Mehta, ‘An Analytical Study of the Provisions Relating to Dishonour of Cheques under Chapter XVII of the Negotiable Instruments Act, 1881’ (2014) 7 Pacific Business Review International.

The purpose is twofold. First, it seeks to deter fraudulent behaviour by punishing those who issue cheques without the intent or capacity to honour them. Second, it provides dual protection: on the one hand, criminal liability safeguards property rights by penalising wrongful conduct, while on the other hand, civil remedies remain available to the payee for recovery of dues. The underlying principle is to ensure that cheques, which serve as a substitute for cash and a symbol of trust in financial transactions, retain their integrity in the commercial world.<sup>5</sup> Without criminal sanctions, bad-faith drawers could repeatedly issue dishonoured cheques, erode trust and lead to increased litigation.

Globally, several jurisdictions, including India, Jordan, and parts of the United States, have criminalised cheque dishonour to maintain the credibility of negotiable instruments and protect against deception.

Over time, the Supreme Court of India has played a vital role in shaping the interpretation and application of Section 138. One major issue has been the question of territorial jurisdiction in cheque dishonour cases. Initially, conflicting views arose on whether jurisdiction lay where the cheque was drawn, presented, or dishonoured.<sup>6</sup> The Supreme Court clarified that jurisdiction lies with the court where the payee maintains their bank account, ensuring consistency in the law's application.

To address the mounting backlog of cheque bounce cases, which form a large proportion of pending matters in lower courts, the Supreme Court in 2021 issued seven binding guidelines. These included measures for speedy trials and the innovative use of mediation to resolve disputes at the earliest stage, a significant step in the domain of criminal litigation.

Judicial decisions have also clarified the limits on punishment: fines imposed under Section 138 cannot exceed twice the cheque amount. Courts have further sought to interpret the law broadly, for example, by considering whether issues like signature mismatch may come under its ambit, though this has also raised concerns about potential misuse.

The law on cheque dishonour in India reflects a careful balance between protecting the sanctity of financial instruments and deterring fraudulent conduct. From its colonial origins in 1881 to the major reforms of 1988 and 2002, and the continuing judicial interpretations, the objective

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<sup>5</sup> Nelson Enonchong, 'Contract Damages for Wrongful Dishonour of a Cheque' [2003] *Modern Law Review*.

<sup>6</sup> 'Controversy over Decriminalisation of Dishonoured Cheque: A Comparative Analysis' (2024) 27 *Journal of Legal Ethical & Regulatory issues*.

has remained consistent: to preserve trust in commercial transactions by making cheques a reliable substitute for cash.<sup>7</sup> Though debates on decriminalisation continue, Section 138 remains a cornerstone of India's commercial law, ensuring accountability and stability in the world of business.

### **COMMERCIAL EFFICIENCY VS. CRIMINALIZATION**

The relationship between criminal penalties, business transactions, and debt recovery has long been debated, as it represents a delicate balance between ensuring commercial efficiency and deterring misconduct. On one side, criminalisation is viewed as necessary to discourage fraudulent practices and safeguard financial systems.<sup>8</sup> On the other hand, excessive penalties may stifle business activity and place disproportionate burdens on individuals and corporations alike.

In recent decades, the scale of corporate penalties has been immense. In the United States, corporate criminal penalties, regulatory fines, and class-action settlements together have exceeded \$1 trillion since 2000. These penalties highlight the seriousness with which governments hold corporations accountable, but they also underscore the heavy costs imposed on businesses.

### **IMPACT OF CRIMINAL PENALTIES ON BUSINESS TRANSACTIONS AND DEBT RECOVERY**

Criminal penalties carry profound implications for businesses. The immediate consequence is financial: legal fees, fines, and settlements can rapidly deplete company resources. This is often compounded by increased insurance premiums, higher operating costs, and, in some cases, difficulty securing financing.

Equally damaging is the reputational fallout. A business facing criminal charges risks losing customer trust, investor confidence, and market credibility. Negative publicity often leads to reduced customer loyalty and discourages new business relationships. Even when companies survive penalties, they may face long-term reputational scars. Operational disruption is another

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<sup>7</sup> Vibhooti Malhotra, 'Rethinking the Regime Against Dishonoured Cheques in India' [2009] University of California, Berkeley.

<sup>8</sup> Do-Wang Jin, 'The Different Implications of Criminal Penalties' [2006] Journal of Guangxi University for Nationalities.

challenge.<sup>9</sup> When businesses are embroiled in criminal litigation, management attention and resources are diverted from core activities, slowing productivity and growth. Moreover, heightened scrutiny from regulators often follows, bringing more audits, compliance obligations, and inspections.

From a broader perspective, scholars debate whether criminal enforcement is too harsh, potentially deterring beneficial business activity, or too lenient, allowing corporate crime to persist. One major criticism is that entity-level fines affect shareholders rather than the individuals directly responsible for wrongdoing. For large corporations, penalties can sometimes be absorbed as a cost of doing business, with stock prices recovering quickly after fines are imposed.<sup>10</sup> This creates a disconnect between punishment and culpability, leaving questions about the actual deterrent effect.

Debt recovery presents similar challenges. When criminal penalties attach to debt obligations, they can create what is known as “criminal debt.” In the United States, such debt includes legal financial obligations, restitution, and unpaid child support. As of 2011, criminal debt exceeded \$50 billion, creating widespread social and economic issues. For debtors unable to pay, consequences can include mounting late fees, soaring interest penalties, ruined credit, and, in severe cases, reincarceration. This cycle hampers access to healthcare, jobs, and public benefits. Studies show that ex-offenders may owe up to 60% of their income towards criminal debts, making reintegration nearly impossible. Encouragingly, research has demonstrated that offering relief from fines and fees for indigent defendants reduces incarceration, arrest warrants, and debt collection activity over 44 months, underscoring the need for balanced approaches.

### **THE DETERRENT EFFECT: HAS CRIMINALIZATION ENSURED CHEQUE RELIABILITY?**

The criminalisation of cheque dishonour under laws like Section 138 of the Indian Negotiable Instruments Act, 1881, reflects the belief that the fear of punishment ensures reliability. However, its effectiveness is debated across jurisdictions.

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<sup>9</sup> ‘Optimal Penalties, Criminal Law and the Control of Corporate Behavior’.

<sup>10</sup> Nuno Garoupa, ‘Corporate Criminal Law and Organization Incentives: A Managerial Perspective’ [2000] Criminal Law & Procedure eJournal.

The effectiveness of deterrence depends not just on the severity of sanctions but also on their likelihood of enforcement. Research across countries suggests that internal sanctions, such as feelings of guilt or reputational harm, can deter minor, non-violent crimes more effectively than formal legal sanctions.<sup>11</sup> Legal penalties do have deterrent value, but it is often weak and highly variable. For offences such as tax evasion, speeding, or fraud, the probability of detection is a stronger deterrent than the harshness of punishment.

In Turkey, legal reforms offer an instructive example. Amendments in 2012 replaced imprisonment with monetary and administrative fines for dishonoured cheques. The surge in bad cheques around that time could not be explained solely by economic factors but appeared linked to the change in law, showing how adjustments in sanctions directly influence behaviour.<sup>12</sup> These findings highlight that sanctions, whether criminal or administrative, can be effective when coupled with appropriate enforcement infrastructure.

The Supreme Court of India has recognised this challenge and recommended multiple reforms. Suggestions include the establishment of special fast-track courts dedicated to cheque dishonour cases to ease backlogs and maintain faith in the judicial process. The Court has also highlighted the importance of alternative dispute resolution, such as mediation, to reduce pendency.

These delays have broader economic consequences, discouraging new investments and affecting the ease of doing business. With the growing role of digital transactions, scholars argue that legal frameworks must adapt to the digital era, possibly reducing reliance on cheques altogether. Ultimately, as the maxim goes, justice delayed is justice denied—and nowhere is this clearer than in the backlog of cheque dishonour litigation, where both creditors and debtors face prolonged uncertainty.

The tension between commercial efficiency and criminalisation lies at the heart of modern business law. Criminal penalties protect the sanctity of financial instruments like cheques and act as a deterrent, yet they also risk excessive burden on businesses and individuals, particularly when procedural inefficiencies delay outcomes. Experiences across jurisdictions show that while sanctions are important, their effectiveness depends on timely enforcement, supportive

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<sup>11</sup> Hengki M. Sibuea, Udin Silalahi, and Henry Soelistyo Budi, 'Criminalization of Individuals as a Deterrent Effect Upon Cartel Behaviour in Indonesia' [2024] *Journal of Judicial Review*.

<sup>12</sup> Ozan Ekşi, M. Gurdal, and C. Orman, 'Fines versus Prison for the Issuance of Bad Checks: Evidence from a Policy Shift in Turkey' [2016] *Journal of Economic Behavior and Organization*.

infrastructure, and a balance between civil and criminal remedies. As economies evolve and digital alternatives emerge, laws must adapt to preserve both commercial trust and fairness in debt recovery.

## COMPARATIVE JURISPRUDENCE

The way different jurisdictions address cheque dishonour reflects contrasting priorities between civil remedies and criminal sanctions. While India continues to criminalise cheque dishonour under Section 138 of the Negotiable Instruments Act, 1881, many other jurisdictions, including the United Kingdom, the United States, and Singapore, treat cheque dishonour largely as a civil matter. Examining these comparative approaches provides useful insights into how India might recalibrate its laws to balance commercial efficiency with deterrence.

## CIVIL MODELS OF CHEQUE DISHONOUR

**United Kingdom (UK):** In the UK, cheque dishonour is predominantly a civil issue, governed by the Bills of Exchange Act 1882 and the Cheques Act 1957. When a cheque is dishonoured, the holder must issue a written “notice of dishonour” to the drawer. Importantly, if a bank wrongfully dishonours a cheque, it may be held liable for substantial damages, even without proof of special loss—a significant departure from earlier common law positions that required strict proof of damages. The available defences against dishonour claims are limited, generally restricted to fraud, misrepresentation, duress, or incapacity. What is absent, however, is any criminal penalty for dishonour on grounds such as insufficient funds. The UK legal system focuses squarely on financial restitution and contractual liability, allowing the injured party to claim the owed sum and damages, without criminalising non-payment.

**United States of America (USA):** In the USA, cheques are primarily governed by Article 3 of the Uniform Commercial Code (UCC), supplemented by Article 4 for bank collections. A check is considered an unconditional order to pay a fixed sum of money on demand, drawn on a bank. While deliberately issuing a check with knowledge that it will bounce can attract criminal liability in certain states, the primary recourse is civil. The UCC framework emphasises contractual remedies and the speedy processing of claims. Federal law also supports efficient collection processes, ensuring that dishonoured checks can be pursued quickly. As in the UK, the usual defences are narrow—fraud, misrepresentation, or duress but the overall focus remains on recovering the owed amount rather than punishing the drawer through the criminal system.

**Singapore:** Singapore similarly adopts a civil-law orientation towards cheque dishonour. While intentional dishonour with fraudulent intent may trigger criminal consequences, the core framework is civil, emphasising commercial remedies. A dishonoured cheque, for instance, can have immediate contractual consequences, such as the forfeiture of a deposit or the lapse of an option to purchase property. Courts in Singapore generally enforce claims for dishonoured cheques unless fraud can be proved. Like the UK and USA, Singapore does not prescribe criminal penalties for insufficient funds; instead, its system ensures that the payee can secure financial recovery through civil litigation. The emphasis is on efficiency and fairness, without imposing the burdens of criminal prosecution for mere financial incapacity.

### **LESSONS INDIA CAN LEARN FROM INTERNATIONAL PRACTICES**

India's reliance on criminal sanctions under Section 138 marks a sharp contrast with the civil approaches of the UK, USA, and Singapore. While criminalisation was introduced in India to enhance the credibility of cheques and deter fraudulent practices, the model has also created challenges, including an enormous backlog of cases in criminal courts. By studying international models, India can draw several lessons:

**Reduce Criminalisation for Insufficient Funds:** In the UK, USA, and Singapore, dishonour due to insufficient funds is a civil matter. India could consider decriminalizing cheque dishonour in cases without fraudulent intent. Many defaults occur due to genuine mistakes or unforeseen financial difficulties, not deliberate fraud. Treating such cases civilly would relieve the pressure on criminal courts, while still allowing payees to recover their dues.

**Strengthen Civil Recovery Mechanisms:** Civil systems abroad provide robust recovery processes, ensuring that dishonoured cheque holders can enforce their rights efficiently. India could strengthen civil remedies, perhaps by introducing summary civil procedures for cheque-related debts, thereby ensuring faster resolution. Making civil judgments more enforceable would reassure payees without resorting to criminal prosecutions.

**Promote Alternative Dispute Resolution (ADR):** Given India's staggering backlog of cheque dishonour cases, mandatory mediation or arbitration could provide quicker, less adversarial resolutions. ADR mechanisms, successfully used in various international contexts, could reduce the strain on courts while maintaining fairness in outcomes.

**Focus on Banking System Penalties:** India could also look beyond the courtroom. In Cyprus, for example, the Central Bank maintains a database of individuals who issue dishonoured cheques, imposing administrative restrictions like bans on cheque issuance. Similar banking-level penalties, such as temporary account suspensions or blacklisting repeat offenders, could act as strong deterrents in India without burdening the judiciary.

## **TOWARDS A BALANCED FRAMEWORK**

Adopting lessons from international models does not mean weakening the protection accorded to payees. Rather, it suggests a shift towards a more balanced and efficient framework, where civil remedies and banking sanctions handle most cases, and criminal liability is reserved only for instances of fraudulent or malicious intent. This balance could achieve three goals simultaneously:

1. Preserve the sanctity of cheques in commercial dealings.
2. Reduce judicial backlogs, improving the efficiency of courts.
3. Encourage ease of doing business by ensuring that financial mistakes do not automatically trigger criminal liability.

By carefully incorporating these global best practices, India can maintain the credibility of cheque transactions while modernising its legal response to dishonour. This would align India's framework with global commercial practices and contribute to a more business-friendly and just legal system.

## **DECRIMINALIZATION DEBATE**

The decriminalisation of economic offences has emerged as a significant policy debate, particularly in countries like India, where the government is attempting to strike a balance between regulatory oversight and economic growth. This discussion involves recent government initiatives, arguments for and against decriminalisation, and the potential impact on commercial efficiency as well as public trust.

Globally, governments are rethinking how economic offences are treated, with many moving away from criminal penalties towards monetary fines and regulatory measures. The logic is simple: excessive criminalisation often stifles entrepreneurship and burdens the judiciary without proportionately deterring misconduct.

India has been at the forefront of this reform through several waves of decriminalisation. The most prominent initiative is the Jan Vishwas Bill, 2022, which seeks to amend forty-two central laws to reduce the compliance burden on individuals and businesses. The guiding philosophy of the bill is “trust-based governance,” emphasising the idea that not every economic lapse should attract criminal sanctions.<sup>13</sup> The proposed amendments cover diverse areas such as press regulation, registration of books, forests, environment, agricultural marketing, food and warehousing, drugs and cosmetics, industries, patents, shipping, railways, motor vehicles, rubber, and spices. Importantly, the bill does not erase offences altogether. Instead, it replaces imprisonment terms with monetary penalties, increases the quantum of fines, and introduces an automatic 10% upward revision every three years.

This is not the first step India has taken. In 2021, the government had already decriminalised forty-six penal provisions under the Companies Act, 2013 and twelve offences under the Limited Liability Partnership (LLP) Act, 2008. Similarly, in February 2023, the Union Finance Minister stated that more than 3,400 provisions have been decriminalised since 2014. Earlier, in June 2020, the Ministry of Finance decriminalised thirty-nine minor economic offences under nineteen different laws, including the widely used Section 138 of the Negotiable Instruments Act, 1881, which deals with cheque dishonour.<sup>14</sup> These measures were particularly aimed at boosting investor confidence and facilitating ease of doing business in the aftermath of the COVID-19 pandemic.

The Indian reform agenda is echoed elsewhere. For instance, Kazakhstan has moved towards decriminalising tax-related offences to draw clearer lines between genuine errors and criminal fraud. Meanwhile, in the Russian Federation, there has been an “avalanche-like process” of creating new economic crimes, often duplicating existing ones. However, even in Russia, there is a growing argument for decriminalising certain economic activities to prevent overreach and maintain fairness in business regulation.

## **ARGUMENTS IN FAVOUR OF DECRIMINALIZATION**

Supporters of decriminalisation emphasise three main benefits: reducing litigation, promoting ease of doing business, and addressing the problem of overcriminalisation.

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<sup>13</sup> Karan Choudhary, ‘Decriminalisation of Politics in India’ (2020) 3 International Journal of Law, Management & Humanities.

<sup>14</sup> Harshit Jain (n 2).

**Reducing Litigation and Unclogging Courts:** India's judiciary is heavily burdened, with nearly 72% of all pending cases being criminal in nature. A significant share of these arises from minor economic lapses. Decriminalising such offences reduces the number of cases brought before courts, enabling judges to focus on serious crimes.<sup>15</sup> This also helps enhance the credibility of the business environment, as disputes are resolved more quickly and efficiently.

**Promoting Ease of Doing Business:** Excessive criminalisation creates a climate of fear among entrepreneurs, deterring them from taking risks or innovating. Decriminalisation reduces this anxiety by ensuring that minor or technical lapses do not attract harsh punishments like imprisonment. Instead, businesses face financial penalties, which are more proportionate to the misconduct. This not only improves investor confidence but also aligns with India's stated goal of fostering "trust-based governance."

**Addressing Overcriminalization:** The concept of overcriminalization refers to the proliferation of laws with criminal penalties for even trivial matters. Some provisions are archaic, such as imprisonment for failing to provide a spittoon in a factory. Such laws, critics argue, "debase the moral moment of the criminal sanction," because they equate trivial violations with genuinely harmful crimes.<sup>16</sup> Decriminalisation corrects this imbalance by restricting criminal sanctions to serious misconduct while using regulatory and financial penalties for lesser offences.

## ARGUMENTS AGAINST DECRIMINALIZATION

Despite its advantages, decriminalisation has sparked criticism. Opponents fear it may undermine financial discipline and weaken public trust in the economy.

**Risks to Economic Trust:** Financial systems thrive on trust, and measures such as cheque dishonour laws have long played a role in safeguarding it. If criminal liability for dishonoured cheques or similar offences is removed, creditors may be less willing to lend money, fearing delayed payments or non-recovery. This could create unease in the economy and make financial transactions riskier.

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<sup>15</sup> Laura Gabrysch, 'Flow Control Ordinances That Require Disposal of Trash at a Designated Facility Violate the Dormant Commerce Clause.' (1995) 26 St. Mary's Law Journal.

<sup>16</sup> Ozan Ekşi, M. Gurdal, and C. Orman (n 12).

**Weakening Financial Discipline:** Replacing imprisonment with monetary penalties may embolden unscrupulous actors who treat fines as a mere cost of doing business. Without the deterrent of possible jail time, there is a risk of increased misuse, such as the deliberate issuance of false cheques.<sup>17</sup> In such cases, creditors and small businesses could be disproportionately affected, leading to financial instability.

**Difficulty in Proving Intent (Mens Rea):** Another challenge arises from the principle of mens rea, or criminal intent. Governments often promise that only malicious intent will be punished, but in practice, it can be extremely difficult to distinguish between genuine mistakes and deliberate fraud. If laws that previously imposed strict liability are decriminalised, offenders might exploit these loopholes to avoid accountability.

**Adverse Impact on Stakeholders:** While decriminalisation benefits investors and large businesses, it may hurt creditors, suppliers, or small enterprises that depend on the strict enforcement of contracts. For example, if cheque dishonour cases no longer carry criminal consequences, creditors may face prolonged struggles to recover dues, undermining confidence in commercial transactions.

The decriminalization debate highlights the need for a careful balance. On the one hand, reforms are necessary to promote entrepreneurship, attract investment, and ease the burden on courts. On the other hand, unchecked decriminalisation risks eroding financial discipline and public trust. Policymakers must therefore calibrate reforms in a way that distinguishes between inadvertent mistakes and deliberate fraud while ensuring speedy recovery mechanisms for aggrieved stakeholders.

In essence, decriminalisation of economic offences is not just a legal adjustment; it is a statement about how a country views entrepreneurship, accountability, and trust in its economic system. India's reforms through the Jan Vishwas Bill and other measures represent a bold step forward, but the long-term challenge will be to ensure that these changes foster economic growth without compromising the integrity and stability of financial dealings.

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<sup>17</sup> 'Controversy over Decriminalisation of Dishonoured Cheque: A Comparative Analysis' (n 6).

## **ECONOMIC IMPLICATIONS OF DECRIMINALIZING CERTAIN ECONOMIC OFFENSES**

The decriminalisation of certain economic offences carries significant implications for small businesses, creditors, financial institutions, and the broader financial system. It also has an important bearing on the ongoing transition towards digital payments. While the move may reduce unnecessary criminalisation of business disputes, it also raises concerns about weakening financial discipline and shifting burdens onto civil courts.

One of the most debated aspects of decriminalisation is its impact on small businesses and creditors, particularly in the context of offences like cheque dishonour. For small businesses, the effects can be both positive and negative.

On the positive side, decriminalisation reduces regulatory burden. Many small business owners find compliance with complex regulations time-consuming and expensive. Surveys show that 51% of small businesses believe regulatory compliance negatively affects their growth, while 47% report spending excessive time fulfilling these requirements. By reducing criminal liability for certain economic offences, small enterprises can devote more attention to growth, innovation, and investment, rather than worrying about navigating an intimidating legal framework. In fact, studies suggest that small business owners show stronger confidence in revenue, hiring, and expansion when not bogged down by compliance threats.

However, there are also clear disadvantages. The risk of increased cheque dishonour looms large. Traditionally, the criminal penalties under Section 138 of the Negotiable Instruments Act, 1881, served as a deterrent against issuing cheques without sufficient funds. If the offence is decriminalised, more parties may risk cheque defaults, eroding the credibility of cheques as a trustworthy payment mechanism.<sup>18</sup> Since small businesses often rely on post-dated cheques as a form of credit assurance, this credibility loss can disrupt trade practices and impact day-to-day transactions.

A dishonoured cheque is not merely a financial default; it represents a breach of financial trust. Decriminalisation could make creditors, especially smaller or less resourceful ones, more cautious in extending credit. They may become hesitant to accept cheques, particularly from new or untested debtors, thereby limiting access to trade credit for emerging businesses. There

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<sup>18</sup> Shivam Goel (n 1).

could also be a shift in lending behaviour. Financial institutions and private creditors adjust their practices based on the strength of creditor protections.<sup>19</sup> Where creditor rights are strong, borrowing costs fall, and financial constraints relax. If protections are weakened, lenders may raise interest rates, demand stricter collateral, or restrict lending altogether. Even without criminal penalties, this shift could reshape the cost and accessibility of credit in the economy.

The decriminalisation of economic offences also has significant consequences for banks and financial institutions. In some sectors, it reduces risks. For instance, in the case of cannabis-related businesses in the United States, banks have historically been hesitant to engage due to federal laws that criminalise marijuana, despite state-level legalisation. Legislation such as the SAFER Banking Act offers “safe harbour” protections, ensuring financial institutions are not penalised for serving cannabis businesses. This expands access to banking, lending, and insurance services for the industry, moving away from cash-only operations that posed safety risks like armed robberies and fraud.

However, compliance burdens can also increase. Even with decriminalisation, banks must carefully navigate overlapping regulations. In the U.S., for example, money traceable to marijuana operations could still technically be classified as illegal under federal law, raising concerns of money laundering.<sup>20</sup> Thus, financial institutions may not be entirely relieved of regulatory complexities.

Operational challenges remain a concern, too. Cash-only businesses, like legal dispensaries, face difficulties in safely managing profits and conducting large-scale transactions. Decriminalisation that integrates them into mainstream banking resolves these challenges, enabling safer, more traceable, and non-cash financial operations. Financial institutions are also undergoing rapid technological transformation, and decriminalisation could accelerate this trend. As traditional instruments like cheques lose credibility, institutions may push harder for secure, digital alternatives to maintain financial trust and efficiency.

## **POTENTIAL SHIFT TOWARDS DIGITAL PAYMENTS AND CONTRACTS**

Perhaps the most far-reaching consequence of decriminalisation lies in its potential to accelerate the adoption of digital payment systems and contracts.

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<sup>19</sup> Nuno Garoupa (n 10).

<sup>20</sup> ‘Optimal Penalties, Criminal Law and the Control of Corporate Behavior’ (n 9).

By reducing reliance on cheques, the move aligns with the government's broader push towards a cashless economy. When imprisonment and heavy fines no longer loom over cheque defaults, individuals and businesses may find it more convenient to transition to digital methods.

Digital transactions offer inherent advantages. They bring enhanced credibility and transparency, as payment platforms and online banking systems provide traceable records. This reduces disputes, strengthens financial trust, and deters fraud. Furthermore, digital payments offer greater efficiency and speed compared to cheques, which require multiple layers of authentication and processing through banks.<sup>21</sup> For cross-border transactions in particular, digital payments streamline operations, making global commerce faster and more secure.

Decriminalisation also contributes to the modernisation of legal frameworks. With the exponential growth of digital technologies, older laws crafted for paper-based instruments require re-evaluation. By shifting reliance away from traditional instruments like cheques, decriminalisation encourages lawmakers to focus on new regulatory areas such as data protection, cybersecurity, and digital currency. This ensures that the legal system remains adaptable to the realities of modern commerce.

The decriminalisation of economic offences is a double-edged sword. On one hand, it reduces regulatory burdens, encourages innovation, and promotes digital transformation. On the other hand, it risks eroding the deterrent value of criminal law, weakening creditor confidence, and increasing the caseload of civil courts. For small businesses and creditors, the shift could mean both opportunities for growth and new challenges in enforcing financial trust. For banks and financial institutions, it signals a future where compliance landscapes remain complex but digital transformation offers long-term resilience. Ultimately, the success of decriminalisation depends on balancing reduced criminalisation with stronger civil enforcement mechanisms and modern legal frameworks to support the transition into a digital financial ecosystem.

## **CIVIL REMEDIES AND ALTERNATIVE ENFORCEMENT MECHANISMS**

Civil remedies and alternative enforcement mechanisms are central to the enforcement of constitutional and statutory rights in the United States. These mechanisms provide individuals and institutions with avenues of recourse when their rights have been violated. Unlike criminal penalties, civil remedies often focus on compensation, deterrence, or injunctive relief, rather

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<sup>21</sup> Vibhooti Malhotra (n 7).

than punishment. The American regulatory system is distinctive because it relies on a wide range of regulators, including both governmental bodies and private parties, to enforce legal obligations. This structure reflects a broader commitment to ensuring accountability through diverse channels. Among the various enforcement options, civil money penalties have emerged as a particularly significant mechanism.<sup>22</sup> They can be effective in deterring misconduct and promoting compliance, but they also pose challenges, such as questions of fairness, proportionality, and administrative burdens.

A defining feature of the American legal system is Congress's authority to shape, expand, or foreclose the remedial schemes available to plaintiffs. Congress has the power to expressly prescribe the remedies available under federal law. When Congress chooses to do so, plaintiffs must follow the path outlined, even if it does not offer complete or adequate relief. The Supreme Court has emphasised that if Congress creates a remedial scheme, courts should respect that design and infer that other remedies are excluded. However, the situation becomes more complicated when Congress does not speak clearly about its intent. In such cases, determining whether Congress meant to foreclose traditional remedies requires courts to interpret legislative silence, which often produces difficult questions. Inferences drawn from the creation of congressional alternatives can fundamentally alter the outcome of a plaintiff's case. This means that the availability of remedies is not only a matter of judicial interpretation but also a reflection of congressional priorities.

## EVOLUTION OF THE SUPREME COURT'S APPROACH

The Supreme Court's approach to alternative remedies has shifted over time, particularly since the landmark case *Bivens v. Six Unknown Named Agents*. Initially, the Court assumed a greater role in crafting remedies when statutory guidance was lacking. However, over time, doubts arose about whether the judiciary should weigh policy considerations in designing remedies. These concerns led the Court to place increasing emphasis on whether Congress had already created alternative remedial schemes. This approach extended beyond *Bivens'* claims into other contexts, such as suits under Section 1983 and requests for injunctive relief under *Ex parte Young*.

In *Middlesex County Sewerage Authority v. National Sea Clammers Association*, the Court applied this reasoning to Section 1983 claims, finding that the existence of a comprehensive

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<sup>22</sup> 'Controversy over Decriminalisation of Dishonoured Cheque: A Comparative Analysis' (n 6).

statutory remedy could preclude a plaintiff from pursuing a Section 1983 action. Later, in *Seminole Tribe of Florida v. Florida*, the Court applied a similar analysis to claims under *Ex parte Young*, holding that an elaborate remedial scheme in the Indian Gaming Regulatory Act displaced the availability of equitable relief. Although the Court has suggested that the doctrinal test for congressional alternatives applies consistently across contexts, in practice, there are operational differences. *Bivens* claims are more vulnerable to displacement by congressional schemes than Section 1983 claims, and the Court has been more cautious about restricting *Ex parte Young* in constitutional cases.

## KEY REMEDIAL SCHEMES

**Bivens Claims for Damages Against Federal Officers:** The doctrine established in *Bivens* permits damages claims against federal officers for constitutional violations. This is a judicially created cause of action grounded in federal common law. The Court initially signalled in *Carlson v. Green* that Congress would face a heavy burden if it wished to replace or eliminate *Bivens* remedies. However, subsequent decisions reshaped this standard. In cases such as *Bush v. Lucas* and *Schweiker v. Chilicky*, the Court held that the existence of an elaborate or adequate remedial scheme provided by Congress could be sufficient to displace a *Bivens* claim, even if that scheme did not provide complete relief for constitutional violations. Importantly, this means that Congress does not need to fully remedy a constitutional harm for its alternative scheme to control; the mere presence of a structured remedial mechanism may be enough.

**Claims Against State Actors Under Section 1983:** Under 42 U.S.C. § 1983, plaintiffs may bring suits for both damages and injunctive relief against state officials for violations of constitutional or statutory rights. In *Sea Clammers*, the Court ruled that if an Act contains sufficiently comprehensive remedial devices, it may demonstrate congressional intent to preclude Section 1983 suits. While this principle exists, the Court has generally been reluctant to find that Section 1983 remedies are foreclosed. Indeed, in the decades since *Sea Clammers*, the Court has only identified three instances where Section 1983 was precluded. Each of those cases involved very specific circumstances, such as detailed procedural requirements or the exhaustion of administrative remedies. Unlike in the *Bivens* context, the presence of administrative mechanisms alone is usually insufficient to foreclose a Section 1983 action. This reflects a greater judicial willingness to preserve private rights of action against state officials.

**Suits for Injunctive Relief Under *Ex parte Young*:** *Ex parte Young* is a longstanding doctrine that allows plaintiffs to seek injunctive relief against state officials who are violating federal law. This equitable remedy plays a critical role in maintaining the supremacy of federal law over conflicting state actions. In the *Seminole Tribe*, however, the Court extended the congressional alternatives reasoning to *Ex parte Young*, holding that a “carefully crafted and intricate remedial scheme” could preclude injunctive relief. More recently, in *Armstrong v. Exceptional Child Centre, Inc.*, the Court confirmed that Congress can impliedly foreclose relief under *Young*, particularly when the statutory scheme is judicially unadministrable or when Congress has created detailed alternative remedies. Nonetheless, the Court has been more cautious about rejecting *Ex parte Young* suits for constitutional violations, appearing more comfortable limiting them in statutory contexts. This reflects an underlying recognition of the importance of equitable remedies in protecting constitutional rights.

Civil remedies and alternative enforcement mechanisms illustrate the complex interplay between congressional authority, judicial interpretation, and individual rights. While civil money penalties and private enforcement remain important tools, their effectiveness depends heavily on the broader remedial framework established by Congress and interpreted by the courts. Over time, the Supreme Court has increasingly deferred to congressional choices, especially in the context of *Bivens* claims, while showing greater reluctance to restrict Section 1983 and *Ex parte Young*. Ultimately, the availability of remedies depends not only on the existence of a violation but also on whether Congress has provided an alternative path, even if that path offers less than complete relief. This evolving doctrine underscores the central role of Congress in shaping the boundaries of enforcement and the judiciary’s cautious approach in balancing remedies with legislative design.

## **MAINTAINING CREDIBILITY OF NEGOTIABLE INSTRUMENTS WITHOUT CRIMINAL SANCTION**

The credibility of negotiable instruments, such as cheques, is fundamental to the functioning of modern commercial transactions. Traditionally, in some jurisdictions, criminal sanctions have been used to reinforce the trustworthiness of these instruments, particularly in cases of dishonour. However, many legal systems are now exploring or already adopting frameworks that maintain credibility without resorting to criminal liability. Instead, they rely on a combination of non-legal pressures, civil liability, and regulatory oversight.

Non-legal sanctions play a surprisingly strong role in ensuring compliance. Business actors often seek to maintain their reputations and long-term commercial relationships, which serve as a natural deterrent against issuing negotiable instruments without adequate backing. For instance, in Singapore, dishonour of a cheque does not result in criminal prosecution. Rather, the drawer of the cheque is subject only to civil liability. This approach emphasises civil remedies and reputational incentives rather than criminal punishment, while still supporting commercial trust.

### **ENFORCEMENT: PENALTIES, COMPENSATORY DAMAGES, BLACKLISTING, AND REGULATORY OVERSIGHT**

One of the most prominent mechanisms for enforcement without criminal sanctions is the imposition of financial penalties. Enforcement bodies frequently collect billions of dollars in fines and forfeitures to address misconduct. A notable example is the Financial Crimes Enforcement Network (FinCEN) issuing a Civil Money Penalty to TD Bank in 2013 for failing to file suspicious activity reports. Such penalties send a clear message to market participants that non-compliance carries significant financial consequences. Regulatory agencies use penalties not only as a deterrent but also as a means of compelling institutions to adopt stronger compliance measures.

Another important enforcement tool is the awarding of compensatory damages. These damages aim to make complainants whole by covering direct financial losses as well as ancillary expenses, such as litigation costs, expert witness fees, and reasonable attorneys' fees. In agency enforcement actions, compensatory damages are an integral part of remedial payments. Consumer protection laws sometimes go even further by authorising punitive damages or treble damages (triple the actual loss) to amplify deterrence.

In the specific context of negotiable instruments, compensatory remedies focus on ensuring that the complainant receives the cheque amount. In some cases, statutes may allow recovery of double the cheque value, accounting for interest, administrative costs, and legal fees. This highlights the compensatory objective: to ensure that creditors are not disadvantaged by the dishonour of a cheque, even without invoking criminal liability.

Although "blacklisting" is not always formally codified as an enforcement mechanism for negotiable instruments, the practical effects of regulatory oversight can mirror its impact. When financial institutions or individuals engage in unlawful activities—such as the illegal

movement of cash or bearer negotiable instruments to facilitate money laundering—they often face heightened scrutiny, reporting obligations, and reputational harm. Regulatory enforcement can indirectly lead to their exclusion from normal financial dealings, much like being blacklisted. The damage to reputation and operational capacity can serve as a powerful deterrent against future misconduct.

Regulatory oversight forms the backbone of non-criminal enforcement systems. Agencies such as FinCEN play a central role in issuing regulations to prevent misuse of financial systems by money launderers or terrorist financiers. These agencies have the authority to impose sanctions, monitor compliance, and shape rulemaking to ensure corporate accountability. Oversight also includes responding to failures within regulated firms, particularly in areas such as anti-money laundering controls, by imposing enforcement actions or corrective measures.

The goal of regulatory enforcement is twofold: first, to protect consumers from financial losses, and second, to foster greater vigilance in financial markets. By ensuring that firms and individuals comply with established standards, regulators help preserve the integrity of negotiable instruments and other financial tools, thereby sustaining trust in the broader financial system.

### **STRIKING A BALANCE BETWEEN DEBTOR PROTECTION AND CREDITOR CONFIDENCE**

Maintaining a balance between protecting debtors and ensuring creditor confidence is crucial for a stable financial environment. Creditors need reassurance that their interests will not be undermined by borrowers exploiting rehabilitation procedures or avoiding obligations. At the same time, debtors must be safeguarded against excessive creditor power to ensure fair and equitable financial relations.

Debtor protection mechanisms are designed to ensure fairness in credit relationships. Legal provisions aim to prevent exploitation and guarantee that debtors are treated with proportionality. Secured creditors, who hold claims over specific collateral, often enjoy the strongest legal protections. However, even these creditors face risks. For example, collateral with variable interest rates may prevent a lender from being considered a “holder in due course,” thereby exposing the lender to debtor defences.

Modern legal frameworks seek to strengthen debtor protections by regulating debt transfers and ensuring that obligations are managed equitably.<sup>23</sup> The principle of proportionality in credit agreements emphasises the need for equal opportunities for both parties, ensuring neither creditor nor debtor gains an unfair advantage.

On the other side, creditor confidence is maintained through mechanisms that guarantee the enforceability of debts and the reliability of financial instruments. Bond covenants illustrate this, as they restrict excessive borrowing and set limits on debt-to-asset ratios to protect lenders. For negotiable instruments, the key issue is credibility. Instruments like cheques are trusted substitutes for cash, and their acceptance in commerce depends on confidence in their reliability.

Maintaining the credibility of negotiable instruments without criminal sanctions requires a careful combination of non-legal pressures, civil enforcement, and regulatory oversight. Mechanisms such as financial penalties, compensatory damages, blacklisting effects, and proactive regulation all contribute to ensuring accountability. At the same time, the balance between debtor protection and creditor confidence must be preserved to sustain a fair and stable financial system.

While criminal sanctions have historically been used to reinforce trust in negotiable instruments, many jurisdictions demonstrate that credibility can also be secured through civil remedies and regulatory frameworks. The continued evolution of these mechanisms reflects the ongoing challenge of promoting financial discipline, safeguarding commercial trust, and protecting both creditors and debtors in the complex world of financial transactions.

## **POLICY RECOMMENDATIONS FOR DECRIMINALIZING CHEQUE DISHONOUR IN INDIA**

The debate over whether to decriminalize cheque dishonour in India raises important questions about balancing deterrence, efficiency, and trust in financial systems. At the centre of this discussion is Section 138 of the Negotiable Instruments Act, 1881, which currently criminalises the dishonour of cheques for insufficiency of funds. Policymakers and stakeholders are now considering whether India should partially or fully decriminalize cheque dishonour or adopt a

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<sup>23</sup> Jeremia Rizky Sianipar, 'Legal Protection for Debtors When There Is a Transfer Of Debt By Creditors Without The Debtor's Consent' [1945] International Journal of Social Sciences and Humanities.

hybrid approach where criminal liability is limited to habitual defaulters and fraudsters.<sup>24</sup> Alongside this debate, several reforms have also been proposed to make litigation for cheque dishonour more efficient and less burdensome on the judiciary.

### **SHOULD INDIA PARTIALLY OR FULLY DECRIMINALIZE CHEQUE DISHONOUR?**

The Ministry of Finance has proposed decriminalising the dishonour of cheques under Section 138 as part of broader reforms to improve the ease of doing business. The proposal, announced in February 2020 by Finance Minister Nirmala Sitharaman, aimed to foster economic growth, reduce the compliance burden on businesses, and relieve the courts of nearly four million cheque-bouncing cases. At present, cheque dishonour cases account for about 20 per cent of all pending court cases in India, a staggering burden on the judiciary.

Proponents of decriminalisation argue that shifting these cases to civil courts could ease judicial congestion and ensure faster resolutions.<sup>25</sup> Civil litigation primarily focuses on compensating the aggrieved party, which aligns more closely with the commercial purpose of cheques as instruments of payment rather than tools of punishment. Supporters also believe that decriminalisation fits into the government's broader policy of encouraging digital transactions and creating a cashless economy. By removing the fear of imprisonment, businesses and individuals may engage more confidently in financial transactions, relying on civil remedies for enforcement.

On the other hand, critics strongly oppose full decriminalisation, arguing that it would dilute the deterrent effect of existing laws. They note that the threat of imprisonment and substantial fines under Section 138 serves as an important safeguard against dishonourable practices. Without criminal sanctions, there is a risk that defaulters could issue cheques without sufficient funds, undermining their credibility as a reliable substitute for cash. The All-India Bank Employees Association (AIBEA), for instance, has publicly voiced opposition to complete decriminalisation, emphasising that criminal liability ensures financial discipline and protects creditors.

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<sup>24</sup> Dakshita Sangwan, 'NAVIGATING LEGAL WATERS: DIGITAL TRANSFORMATION AND THE DISHONOUR OF CHEQUE IN INDIA' [2024] ShodhKosh Journal of Visual and Performing Arts.

<sup>25</sup> Harshit Jain (n 2).

## **HYBRID MODEL: CRIMINAL LIABILITY FOR HABITUAL DEFAULTERS OR FRAUDSTERS**

As a middle path, some experts propose a hybrid model where criminal liability is retained only for habitual defaulters or those engaged in fraudulent practices. This approach balances deterrence with efficiency by targeting repeat offenders and dishonest actors, while allowing minor or first-time defaults to be treated as civil matters.

Under existing provisions, banks already have mechanisms to curb repeat offenders. For example, banks can ban habitual defaulters from issuing cheques or freeze their accounts until sufficient funds are available. Comparative practices in other jurisdictions strengthen this model. In France, individuals with frequent cheque dishonours can be disqualified from issuing cheques for up to five years, with their names placed on a national register. In the United States, although debtor prisons were abolished as early as 1833, repeat cheque defaulters face escalating penalties for each subsequent offence.<sup>26</sup> The Reserve Bank of India has similarly imposed strict penalties on habitual offenders to deter recurring cheque dishonour.

Another key aspect of the hybrid model is proving intent. In the UK and the USA, cheque dishonour becomes a criminal matter only if “deception” or “dishonesty” can be proven. The Gujarat High Court has also questioned the automatic presumption of mens rea (criminal intent) under Section 138, suggesting that intent must be determined based on the facts of each case.<sup>27</sup> This approach aligns punishment with culpability, ensuring that only willful or fraudulent conduct attracts criminal consequences.

Even if Section 138 is repealed, cheque fraud can still be prosecuted under Section 420 of the Indian Penal Code, which deals with cheating and dishonesty, or under other applicable laws. However, critics argue that relying solely on such provisions could lead to lengthier and more costly proceedings, leaving creditors inadequately protected. Addressing fraud, therefore, requires not only legal reforms but also policy measures such as improved security features in cheques and enhanced training for banking staff. The Supreme Court has itself highlighted the misuse of cheques for fraud and disruption in business, indicating that reforms could align with a more limited decriminalization framework.

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<sup>26</sup> Nelson Enonchong (n 5).

<sup>27</sup> Benjamin Geva, ‘Mobile Payments and Bitcoin: Concluding Reflections on the Digital Upheaval in Payments’ [2016] Palgrave Macmillan, London.

## REFORMS FOR IMPROVING EFFICIENCY IN CHEQUE DISHONOUR LITIGATION

Regardless of the direction of decriminalisation, reforms to improve the efficiency of cheque dishonour litigation are essential.

The Supreme Court has issued guidelines for the speedy disposal of Section 138 cases, including the use of modern technology and video conferencing to streamline proceedings. Legislative amendments now mandate summary trials for such cases, replacing lengthy regular trials. Encouraging settlements through mediation, conciliation, and Lok Adalats is another vital reform. Under the Legal Services Act of 1987, Lok Adalats have resolved many cheque dishonour disputes through compromise. In 2012, the Supreme Court held that Lok Adalat awards are enforceable as decrees, and in March 2020, it further emphasised settlement and compromise before proceeding to formal litigation. Ambiguities over trial jurisdiction once caused significant delays.<sup>28</sup> The 2015 amendment to the Negotiable Instruments Act clarified jurisdictional rules, and the Delhi High Court has confirmed that Indian courts have jurisdiction over foreign cheques deposited for encashment in India.

Section 143A, introduced by amendment, allows courts to award interim compensation to the complainant during trial, while Section 148 empowers appellate courts to order the drawer to deposit at least 20 per cent of the cheque amount before an appeal is heard. These provisions ensure immediate relief to creditors and discourage frivolous appeals. The RBI's Cheque Truncation System (CTS), which uses electronic images rather than physical cheques for clearance, has significantly sped up settlements. Courts have also adopted digital platforms for filing and tracking complaints, enhancing accessibility and transparency. With cheque dishonour cases forming nearly 20 per cent of all cases, reforms must address the judicial backlog.<sup>29</sup> Increasing the number of magistrates, setting up special courts, and delegating routine hearings to clerks are among the recommended measures.

Section 139 of the Act already presumes that the cheque holder received it for discharging a debt or liability. To further streamline litigation, some recommend strengthening this presumption, placing greater responsibility on the accused to disprove liability. The debate on decriminalizing cheque dishonour in India reflects the tension between ensuring creditor

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<sup>28</sup> Muluguri Srinivas, 'In Re: Expeditious Trial of Cases U/S 138 of N.I. Act, 1881 – a Welcome Judgment'.

<sup>29</sup> Laura Gabrysch (n 15).

confidence and reducing judicial burdens. Full decriminalisation may align with global business practices, but risks weakening deterrence, while retaining criminal liability in its current form continues to strain courts. A hybrid model that targets habitual defaulters and fraudsters while shifting ordinary cases to civil remedies offers a pragmatic compromise. At the same time, ongoing reforms such as expedited trials, ADR mechanisms, jurisdictional clarity, interim compensation, and technological integration are crucial to improving efficiency. Ultimately, the goal should be to preserve the credibility of cheques as reliable instruments of payment while fostering a business-friendly legal environment.