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CHEQUE DISHONOUR AND CRIMINAL JURISPRUDENCE IN INDIA: ANALYSING THE SHIFT TOWARDS DECRIMINALISATION

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I. ABSTRACT

Cheque dishonour occurs when a cheque is returned unpaid due to insufficient funds or other reasons. Section 138 of the Negotiable Instruments Act, 1881 criminalises such dishonour under certain conditions. This has made cheque dishonour one the most litigated forms of financial offence in India with millions of pending cases in front of the courts today. Cheque dishonour was introduced as part of an amendment in 1988 to enhance the credibility of cheques and ultimately prevent payment defaults. Over time, concerns surrounding strict liability, excessive criminalisation of commercial disputes and increasing backlogs in the judicial system have arisen. Many legal scholars, policymakers and institutions including the Supreme Court of India and the Reserve Bank of India have been debating whether criminal prosecution continues to be an appropriate way to deal with bounced cheques. This article examines the legal framework and jurisprudential foundation of criminalising bounced cheques in India. Additionally, this paper looks at the current policy discussion regarding possible reforms. This study follows a doctrinal legal approach to determine the compatibility of Section 138 with important principles of criminal jurisprudence including mens rea, proportionality and restorative justice; however, this paper concludes that criminal liability for cheque dishonour should only apply to cases that involve fraud or intentional deception. Ordinary disputes over cheque dishonour should be handled through civil or administrative means. This study proposes a Hybrid model that includes civil remedies, administrative sanctions, and institutional reform through the creation of Financial Tribunals and the use of Mediation and Online Alternative Dispute Resolution (ADR).

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II. KEYWORDS

Cheque Dishonour, Section 138 NI Act, Decriminalisation, Mens Rea, Judicial Backlog

III. INTRODUCTION

Cheques have been a critical part of India's financial system for many years and are an important component of many people's methods for making payments. Cheques were used by many commercial establishments as the primary means of making transactions prior to the widespread adoption of digital methods. The Indian Parliament passed an amendment that added Chapter XVII (Section 138)[3] to the Negotiable Instruments Act, 1881 (NI Act),[4] to protect the integrity and credibility of cheques, thus making it a criminal offence to dishonour a cheque. This amendment came at a time when cheques represented the primary way to make non-cash payments and it was critical that the public had confidence in negotiable instruments in order to ensure stability within the commercial marketplace.

The commercial environment in India has changed dramatically over the years since then, and today India boasts one of the fastest-growing digital payment ecosystems in the world, powered by payment networks such as the Unified Payments Interface (UPI) and the various policy initiatives of the Reserve Bank of India (RBI).[5] While cheque transaction volumes have declined, the number of cheque dishonour cases continues to overwhelm the courts. Estimates indicate that currently, there are between 35 lakh and 40 lakh cases of cheque dishonour being prosecuted as a criminal offence pursuant to Section 138, and they make up nearly 20% of criminal case volume in the courts of India. This raises significant issues of judicial economy/effectiveness, the appropriateness of using criminal laws to resolve what are essentially civil economic disputes, and questions of the efficacy of India's criminal justice system.

The recent reforms in criminal jurisprudence in India, including an emphasis by the courts on Mens Rea, proportionality and restorative justice, as well as the concept that

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[3] *Negotiable Instruments Act, 1881* (India), Section 138.
[4] *Negotiable Instruments Act, 1881*, No. 26, Acts of Parliament, 1881 (India).
[5] Reserve Bank of India. (2023). *Annual report 2022–23*.

criminal statutes should be applied as minimally as possible, indicate that Section 138's strict liability approach, which allows a person to be criminally liable without the necessary intention, is increasingly incompatible with contemporary theories of criminal law.

Criminalisation of a dishonoured cheque makes a person who defaults on a commercial transaction a criminal, even if the person did not default because of wilfulness, but because of lack of financial ability to pay, business failure or some other incident that was not in their control.

The Indian Supreme Court has on numerous occasions expressed concern that section 138 is being mishandled and misused, as well as causing a procedural burden to the litigants who are involved in section 138 cases. The Supreme Court, in cases such as M/s Meters and Instruments v. Kanchan Mehta (2017),[6] has encouraged compounding and mediation as a means to resolve section 138 disputes. In more recent cases, such as Makwana Mangaldas Tulsidas v. State of Gujarat (2020)[7], the court has urged for systemic reform to handle the backlog in cases that have been filed due to section 138. The courts' interventions indicate a move away from a punitive approach to a conciliatory approach to dispute resolution.

The Government of India has also explored the possibility of decriminalizing economic crimes that affect business confidence, as part of its policy agenda. The Department of Financial Services published a consultation document in 2020[8], proposing to decriminalize various minor economic crimes such as Section 138 (the dishonour of a cheque). The objective was to eliminate concern by business owners regarding the decriminalization and to improve India's ranking on 'Ease of Doing Business'. There were mixed reactions to the proposal, including some industry associations raising concern regarding reducing the deterrent effect of penalties;

[6] M/s Meters & Instruments Pvt. Ltd. v. Kanchan Mehta, (2018) 1 SCC 560 (Supreme Court of India).
[7] Makwana Mangaldas Tulsidas v. State of Gujarat, Special Leave Petition (Criminal) No. 5464 of 2016, decided on 5 March 2020, (2020) 4 SCC 695 (Supreme Court of India).
[8] Department of Financial Services, Consultation Paper on Decriminalisation of Minor Economic Offences (Ministry of Finance, Government of India, 2020).

however, the proposal is viewed as a key event in the policy arena which has led to renewed academic research on the subject.

From a financial standpoint, the potential for criminal prosecution of cheque dishonour would increase transaction costs to business, the legal system and individual citizens. Criminal courts are created to deal with matters that affect society at large as opposed to individuals and for events that have moral harm to society. Cheque dishonour is typically the result of a financial dispute between two private parties. By using criminal penalties to enforce breach of contract may result in improper use of penal law and place additional burdens on criminal courts that could be more efficiently resolved by civil or administrative means.

On this basis, decriminalisation is more than a legislative amendment, it is a complete re-evaluation of how the criminal law operates in relation to the regulation of the economy; in particular, whether or not cheque non-payment should be a criminal offence and whether criminal law is the best and most effective tool for achieving transactional integrity in an increasingly digital economy.

A. Research Objectives

The present study seeks to examine the criminalisation of cheque dishonour under Section 138 of the Negotiable Instruments Act, 1881, in light of contemporary principles of criminal jurisprudence and India's evolving financial ecosystem. The specific objectives of the study are:

1. To analyse the statutory framework and judicial interpretation of Section 138 of the Negotiable Instruments Act, 1881.
2. To evaluate the compatibility of Section 138 with the principles of mens rea, proportionality, presumption of innocence, and constitutional due process.
3. To assess whether criminal prosecution remains an appropriate mechanism for resolving cheque dishonour disputes that are primarily commercial in nature.
4. To examine the impact of cheque dishonour litigation on judicial backlog and economic efficiency.

5. To propose a hybrid reform model that preserves criminal liability for fraud or intentional deception while shifting ordinary cheque dishonour disputes towards civil, administrative, mediation-based, and online dispute resolution mechanisms.

B. Research Questions

This study is guided by the following research questions:

1. Whether the strict liability framework under Section 138 of the Negotiable Instruments Act, 1881 is compatible with the requirement of mens rea in criminal law?
2. Whether the criminalisation of cheque dishonour satisfies the constitutional and jurisprudential requirement of proportionality?
3. Whether the statutory presumptions under the Negotiable Instruments Act create concerns regarding fairness, burden of proof, and due process under Article 21 of the Constitution of India?
4. Whether the continued criminal prosecution of cheque dishonour contributes to judicial backlog and imposes avoidable economic costs on litigants, businesses, and the justice system? 5. Whether a hybrid model based on civil remedies, administrative sanctions, mediation, ODR, and limited criminal liability for fraudulent conduct would provide a more effective and proportionate enforcement framework?

C. Research Methodology

This paper adopts a doctrinal legal research methodology. The study is based on an analysis of primary legal sources, including the Negotiable Instruments Act, 1881, constitutional principles, and judicial decisions of the Supreme Court of India concerning cheque dishonour, criminal liability, compounding, mediation, and expeditious trial of Section 138 cases. It also relies on policy materials, institutional reports, and secondary literature, including writings on criminal jurisprudence, over-criminalisation, economic offences, judicial backlog, dispute resolution, and financial regulation.

The analytical approach of the paper is doctrinal, comparative, and reform-oriented. It examines the legal character of Section 138 by testing it against core criminal law principles such as mens rea, proportionality, restorative justice, and presumption of innocence. It further evaluates the economic and institutional consequences of criminalising cheque dishonour and assesses whether civil, administrative, mediation-based, and online dispute resolution mechanisms can offer a more suitable enforcement model. The methodology is therefore directed towards identifying doctrinal inconsistencies in the present framework and developing a balanced reform proposal for India.

D. Literature Review

The research on the issue of cheque dishonour in India can be categorized into five different areas. These areas align with the various perspectives used in analysing cheque dishonour doctrinal research, jurisprudential research, empirical research on judicial burden and business costs, research on comparative international models and policy research suggesting structural changes. The existence of these different areas of research leads to an extremely complex body of literature, where each of the areas has been analysed by several different researchers from many different conceptual, economic, institutional and comparative viewpoints, creating an extremely contested intellectual landscape. As a result, much of the literature about cheque dishonour in India can be construed to provide a higher level of consistency than may otherwise be evident when viewed holistically.

IV. DOCTRINAL LITERATURE ON SECTION 138: FOUNDATIONS AND CRITIQUES

A. Early Advocacy for Criminalisation

The early doctrinal writings, especially those written during the 1990's and 2000's, strongly advocated that criminalisation of cheque dishonour was essential for maintaining the integrity of negotiable instruments. The authors of these writings, such as Sen (1994), Mehta (1999) and Gupta (2002)[9], believed that cheques were the primary method of transacting business during this time in India and that civil remedies by themselves could not provide sufficient deterrent effect against widespread defaults in payment. The authors have characterised Section 138 as a new type of enforcement tool that combined elements of both civil and criminal law, which, according to them, would create "coercive compliance" and provide some degree of financial discipline where civil courts had failed because of procedural inefficiencies.

B. Doctrinal Criticism and Reassessment

In the late 2000s, there was an increase of interest by doctrinal scholars to critique the theoretical basis of criminalising default in payment of money. Rajan (2010) and Rao (2014)[10] argued that the NI Act is primarily a commercial law statute, and therefore criminalising behaviour is inconsistent with this premise. They concluded that Section 138 of the NI Act creates a blurring between civil breach of contract and criminal conduct, and punishes individuals for their actions without a requirement to prove either intent or moral culpability.

More recent scholars, such as Abraham (2020), Kumar (2021), and Thomas (2022)[11], have added greater depth to this criticism by also addressing the strict liability nature of the offence under Section 138. These scholars argue that Section 138 violates numerous core principles of criminal law by removing the requirement of Mens Rea, thus criminalising conduct which is often the result of financial difficulty or legitimate commercial challenges. Furthermore, they assert that the original justification for criminalising dishonoured cheques has diminished significantly as the digital finance environment in India continues to expand and develop, and new, alternative safeguards to cheque-based credit transactions, including UPI, IMPS, and NEFT, exist to reduce the systemic risk of dishonest or deceitful dishonourment of a cheque.

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[9] Sen, P. (1994). Negotiable instruments and evolving commercial practices. Journal of Commercial & Economic Policy, 6(3), 45–61.
[10] Rao, V. (2014). Revisiting Section 138: Constitutional and economic implications of criminalising payment defaults. Indian Law Review, 3(1), 75–98.
[11] Thomas, J. (2022). Decriminalisation of economic offences in India: Policy directions and legal implications. Economic Policy & Governance Quarterly, 10(2), 89–116.

V. JURISPRUDENTIAL DEBATES: MENS REA, STRICT LIABILITY, AND OVER-CRIMINALISATION

1. Strict Liability and Its Limits

Criminal law academics have consistently expressed concerns about certain provisions of Section 138 of the Negotiable Instruments Act being harshly penalising (strictly liable). Chandrasekaran (2017) and Fernandes (2019)[12] both point out that criminal liability is only imposed on a person who commits a crime when he has harmed the community too much. Therefore, the imposition of strict liability for cheque dishonour (dispute between two private party contracts) does not meet the definitions for taking into consideration mens rea. Statutory interpretation must be based on the absence of intent, knowledge or recklessness to the classical law basis.

2. Proportionality and the Misuse of Criminal Law

Research found that scholars utilize the principle of proportionality suggesting that a penalty should be used only when no other means are available to achieve an outcome (ultima ratio). Previous research proposes that criminalising the conduct found in Section 138 is disproportionate and serves merely to promote the rapid recovery of loss of money through financial means rather than civil means. A significant number of authors have characterised Section 138 as a "criminalised method of recovering debt" and that the complainants abuse the criminal justice system by using it as a mechanism to coerce repayment instead of seeking justice through the system based on actual crimes[13].

3. Judicial Contradictions and Conceptual Instability

Academic research reveals inconsistencies in the judiciary's ruling. In the past, judges were primarily focused on deterrence and enforcing the law (strict liability); however, changing directions with rulings like M/s Meters & Instruments v. Kanchan Mehta have changed how courts define cheque dishonour: civil wrongs rather than crimes,

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[12] Chandrasekaran, V. (2017). The limits of strict liability in commercial crimes: An Indian perspective. Asian Journal of Criminal Law, 8(1), 77–94.
[13] Rajagopal, K. (2019), *Cheque bounce cases clogging courts: A legal analysis*, *The Hind.*

and encouraging mediated settlement (not through litigation). There is no clear understanding of what it means to be in violation of the law under Section 138[14], leading to demands for significant amendments to current legislation.

VI. EMPIRICAL LITERATURE: JUDICIAL BACKLOG, ECONOMIC COST, AND SYSTEMIC STRESS

1. Scale of Pendency and Judicial Overload

There is a large and growing collection of data on the massive impacts of Section 138 on the criminal justice system through empirical research studies based on data from the National Judicial Data Grid (NJDG) and other institutions such as Indian Institute of Public Administration (2019) report: Iyer (2018)[15] estimates between 35-40 lakhs cheques that are pending (i.e. dishonoured), or almost 20% of all criminal cases pending in India. The low rates of disposal are the result of multiple adjournments; logistical difficulties in serving summonses; and the heavy caseloads that magistrate courts operate under.

2. Economic Impact on Businesses and Market Behaviour

In addition, commercial crime can have a high economic cost on businesses due to the potential for costly delays in cash flow and damage to reputation from criminal protection suits against and/or arrests of key business personnel, both of which can impede an MSME's or small trader's ability to conduct business on credit terms. For example, India's School of Business study confirms the chilling effect of the fear of criminal sanction on an entrepreneur's willingness to take a risk on new venture creation.

3. Ineffectiveness of Criminal Sanctions in Ensuring Repayment

[14] Supreme Court of India. (2018). *M/s Meters & Instruments Pvt. Ltd. v. Kanchan Mehta*, (2018) 1 SCC 560.
[15] Iyer, S. (2018). Judicial pendency in negotiable instruments cases: A quantitative analysis. National Law & Economic Review, 5(1), 22–49.

According to the Vidhi Centre for Legal Policy's report (2020)[16], criminal prosecution will not lead to quicker repayment and will actually delay the resolution of disputes longer. Due to the nature of criminal litigation as an adversarial process there will be fewer opportunities to negotiate a settlement between parties. This empirical data supports the overall contention that the criminal law is a very ineffective and expensive means of enforcing monetary obligations.

VII. POLICY LITERATURE: DECRIMINALISATION, ADR, AND INSTITUTIONAL REFORM

1. Decriminalisation as an Economic Reform Measure

In 2020, India's Government began a series of discussions to consider how to change Section 138's treatment as a crime. Research by institutions such as NITI Aayog[17], Takshashila Institution, and the Vidhi Centre indicates that using criminal penalties to deter people from becoming entrepreneurs or creating new jobs results in reduced economic activity and higher costs of doing business. In addition, their studies indicate the need for decriminalising Section 138 also aligns with larger reforms intended to reduce the cost of complying with laws governing business.

2. ADR and ODR as Modern Dispute Resolution Tools

Mandatory mediation, pre-litigation conciliation, ODR platforms, and Lok Adalats are supported extensively by policy literature for cheque dishonour cases. Each of these approaches is intended to decrease the backlog of courts while providing quick resolution of disputes with less chance for adversarial relations between parties. Research has consistently demonstrated that the use of ADR methods produces higher rates of settlement as well as lower overall litigation expenses[18].

3. Specialised Tribunals and Technological Integration

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[16] Vidhi Centre for Legal Policy, Reforming Section 138 NI Act: Judicial Efficiency and Economic Considerations (2020).
[17] NITI Aayog. Strengthening India's Dispute Resolution Ecosystem: Structural and Digital Reforms (2021).
[18] Reserve Bank of India. (2022). *Report on trend and progress of banking in India 2021–22.*

Multiple policy papers have recommended creating specialized courts for finance-related cases as part of the NI Act. Also recommended are systems for the exchange of digital evidence between banks and courts, as well as automated systems for tracking cases from filing through resolution. The above reforms to institutions are considered critical elements to a future-proof framework to dispute resolution[19].

VIII. CRIMINAL JURISPRUDENCE ANALYSIS: OVER-CRIMINALISATION, MENS REA, AND PROPORTIONALITY

A. Understanding Over-Criminalisation in the Context of Section 138

Overcriminalisation as a concept has been heavily discussed recently in relation to modern criminal jurisprudence, especially within countries like India that frequently have legislatures expanding their statute books (and adding criminal sanctions) to areas that would otherwise fall under civil law. The primary focus of this discussion is Section 138 of the Negotiable Instruments Act of 1881[20].

This statute was intended to enhance trust and the ability to accept both cheques and bills of exchange; however, this provision has become a vehicle for criminalising breaches of financial obligations, such as when an individual/organisation fails to pay the amount owed under a contract, where the contract between the parties is primarily commercial in nature. On one hand, criminal law is designed to punish public wrongs against the moral, physical and social well-being of society; on the other hand, however, dishonouring a cheque involves only a financial obligation in a civil context between two private parties; therefore, there is no violence involved, no social disruption, and no immoral conduct on the part of either party.

Therefore, because of the existence of Section 138, there is now a high degree of overcriminalisation of individuals and business entities because the dishonour of an instrument is now in the scope of criminal courts.

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[19] NITI Aayog. (2021). *Designing the future of dispute resolution: The ODR policy plan for India.*
[20] Law Commission of India. (2017). *Expeditious trial of cases under Section 138 of the Negotiable Instruments Act, 1881 (Report No. 267).*

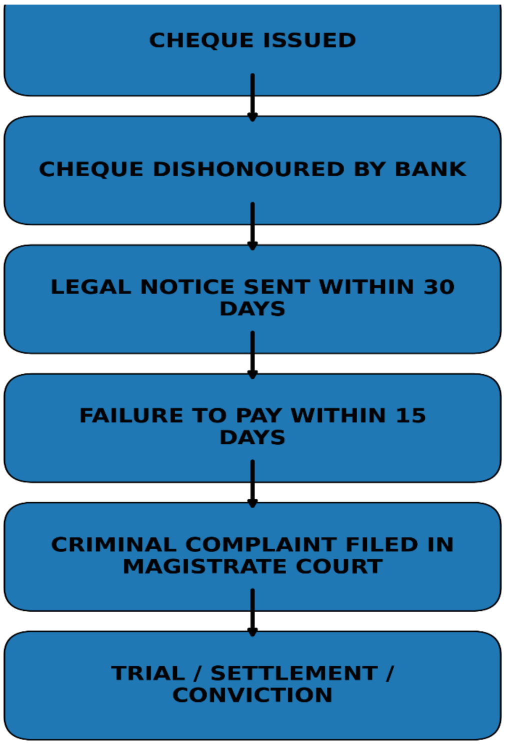

Figure 1: Legal procedure for prosecution of cheque dishonour under Section 138 of the Negotiable Instruments Act, 1881.

Source: Negotiable Instruments Act, 1881 (Sections 138–142), Government of India[21].

The overcriminalization of cheque dishonour has resulted in a large number of prosecutions throughout India. With approximately 35–40 lakh cases [22] pending, criminal courts have been overwhelmed with litigation of little relevance to what were once serious social crimes.

This structural imbalance imposes systemic costs; magistrates are required to devote a large amount of their judicial time to the resolution of debt-recovery cases, thus hindering their ability to exercise their judicial function in relation to protecting personal liberty, preventing violent crime, and maintaining public order. The criminal justice system has become so bogged down by delays and procedural congestion it has been unable to provide timely results to either complainants or the accused[23]. The

[21] *Negotiable Instruments Act, 1881* (India), §§ 138–142, Government of India.
[22] National Judicial Data Grid, Statistics on Pendency of NI Act Cases (Government of India, 2022).
[23] Supreme Court of India. (2020). *Re: Expeditious trial of cases under Section 138 of the Negotiable Instruments Act, 1881*, Suo Motu Writ Petition (Crl.) No. 2 of 2020

problem with overcriminalization in this context is that it does not just create a legal issue, it creates a fundamentally problematic structure that has severe consequences on society, hampers judicial efficiency and fundamentally undermines the intended purpose of criminal law.

B. Absence of Mens Rea and the Conflict with Criminal Law Principles

The concept of Mens Rea, or 'guilty mind', is a key element of criminal law. It serves as a moral base for criminal liability, providing a distinction between wrongful conduct that is culpable and wrongful conduct that is unintentional or unavoidable in the business world.

However, the behaviour described in Section 138 is contrary to this principle and rests on strict liability, where the mere act of presenting a cheque for payment and having it dishonoured is enough to constitute an offence, regardless of whether the person intended to deceive, default or cause the recipient of the cheque to suffer a loss. Courts have consistently ruled that it is irrelevant to consider whether someone intended to commit an offence; therefore, people can be found guilty of the offence laid out in s.138 even if they were experiencing financial difficulty at the time their cheque was presented for payment, because their account balance was low, or as a result of unforeseen operational difficulties ensuing from other reasons[24].

This lack of Mens Rea means that Section 138 is in direct contrast to the philosophical framework of criminal law as interpreted in the context of Indian constitutional jurisprudence. Criminal offences are generally governed by some moral fault and without moral fault, there is no basis to impose criminal punishment. Strict liability crimes are generally only applied in a regulatory context for the benefit of the public such as in food safety or environmental protection, where the interest is in preventing large-scale damage to the public.

Cheque dishonour does not have a public benefit aspect; cheque dishonour involves private financial transactions that do not cause harm to a broad category of people

[24] Negotiable Instruments Act, 1881, Section 138.

and do not have irreversible effects. Consequently, imposing criminal liability to an act without mens rea creates a blending of the normative lines between criminal law and civil law, thus creating a doctrinal conflict which disrupts the integrity of India's penal system[25].

A further challenge arises from the presumption of guilt contained in Section 139, which requires courts to presume that every cheque is issued for a legally enforceable debt. This shift in burden of proof directly contradicts the presumption of innocence provided for in Article 21 of the Constitution of India[26].

It completely places the burden of proof on the accused so that the accused must prove their non-liability in an environment where procedural protections have been eroded due to the nature of the offence being one of strict liability. The combined effect of these provisions raises serious issues related to constitutional fairness, proportionality, and the philosophical legitimacy of criminal prosecution for cheque dishonour.

Table 1: Doctrinal conflict between traditional criminal law principles and Section 138 NI Act.

Source: Chandrasekaran (2017); Fernandes (2019); Negotiable Instruments Act, 1881.

Criminal Law Principle	**Requirement**	**Position under Section 138**
Mens Rea	Intent or guilty mind required	Not required (strict liability)
Proportionality	Punishment must match harm	Imprisonment possible for financial default

[25] Law Commission of India. (2017). *Expeditious trial of cases under Section 138 of the Negotiable Instruments Act, 1881 (Report No. 267)*
[26] Constitution of India, art. 21.

Presumption of Innocence	Burden on prosecution	Section 139 shifts burden to accused

C. The Proportionality Doctrine and the Excessiveness of Criminal Penalties

According to modern jurisprudence, punishment must correspond to the nature and gravity of the harm caused. The Indian Supreme Court has recognised proportionality as a constitutional principle governing the legitimacy of punitive laws. A close reading of Section 138 shows that the possibility of imprisonment up to two years, along with fine or compensation, may be disproportionate where the underlying wrong is a private monetary default rather than fraudulent or morally culpable conduct.

The injury caused by a dishonoured cheque is ordinarily measurable, reversible, and capable of being remedied through monetary compensation. Nevertheless, the statutory framework continues to attach penal consequences to conduct that may arise from commercial difficulty, cash-flow disruption, or non-fraudulent default. The proportionality concern is further intensified by later legislative amendments to the Negotiable Instruments Act.

The Negotiable Instruments (Amendment) Act, 2018 inserted Section 143A, which empowers the trial court to direct the drawer to pay interim compensation of up to twenty per cent of the cheque amount at a pre-conviction stage, including where the accused pleads not guilty in a summary trial or summons case. This mechanism may assist complainants in securing early relief, but it also raises serious due process concerns because a monetary burden may be imposed before guilt is finally established.

When read with the reverse presumption under Section 139, Section 143A strengthens the concern that the accused is procedurally disadvantaged in a framework that already departs from ordinary criminal law principles. Section 148, also inserted by the 2018 Amendment, authorises the appellate court, in an appeal against conviction under Section 138, to direct the appellant to deposit a minimum of twenty per cent of the fine or compensation awarded by the trial court. Although this provision operates after conviction and seeks to discourage dilatory appeals, it remains relevant to proportionality because it adds a further financial condition to the appellate process. The combined effect of Sections 143A and 148 shows that cheque dishonour law has increasingly moved towards recovery-oriented enforcement within a criminal framework.

This supports the argument that ordinary cheque dishonour disputes are better addressed through civil, compensatory, or administrative mechanisms, while criminal liability should be reserved for fraud, forgery, or intentional deception. The 2015 Amendment is also significant from the standpoint of judicial efficiency and procedural burden. In Dashrath Rupsingh Rathod v. State of Maharashtra, the Supreme Court held that territorial jurisdiction in cheque dishonour complaints ordinarily lay where the drawee bank dishonoured the cheque.

Parliament responded through the Negotiable Instruments (Amendment) Act, 2015 by inserting Sections 142(2) and 142A, thereby shifting jurisdiction to the court where the payee's bank branch is situated in cases where the cheque is delivered for collection through an account, and by providing for transfer of pending cases in accordance with the amended jurisdictional rule. This legislative reversal demonstrates that procedural design directly affects the volume, location, and efficiency of Section 138 litigation. It also reinforces the need for a broader reform model that reduces avoidable procedural burdens and aligns cheque dishonour enforcement with judicial economy.

D. Limitations of Criminal Law as a Mechanism for Commercial Enforcement

The purpose of criminal law is to protect the peace in society, punish immoral behaviour, and discourage people from committing serious crimes. Monetary disputes that arise from commercial activities do not satisfy the purposes mentioned above. Initially, the change in dishonoured cheques being treated as a crime was justified as a way of deterring dishonest behaviour.

However, studies and the courts have shown that the deterrent effect has mostly not been achieved. The increasing number of cases regarding the dishonour of cheques shows that even though Section 138 is punitive in nature, it has not meaningfully affected how businesses trade with each other[27].

Additionally, the criminal justice system has many complicated rules and procedures (e.g., subpoenas, arrest warrants, testifying through cross-examination) that result in prolonged time frames for resolving disputes but do not increase the success of recovery from damages awarded to the aggrieved party. As a result, criminal courts face an enormous backlog of cases and limited resources to be able to efficiently hear all of the cases before them.

Therefore, this type of legal process does not serve as an effective method of deterring crime or providing for quick resolution of a case[28]. The gathered evidence regarding commercial disputes will lead to a much greater success rate through the use of restorative processes (such as compensating the injured party and settling through negotiation) rather than criminal prosecution. Criminal prosecution serves to inhibit the restorative process by forcing the parties involved into opposition to one another while creating a longer duration of time for resolution. This disconnects between the intended purpose behind legislation and the actual result of the prosecution of commercial disputes provides additional evidence as to the ineffectiveness of criminal law as a tool to enforce commercial obligations.

E. The Case for Decriminalisation within Criminal Jurisprudence

The combined doctrinal, constitutional and procedural evaluations indicate that cheque dishonour usually does not fall under the purview of criminal law. The act of decriminalising is consistent with fundamental principles of jurisprudence; that is, it reinstates the Mens Rea requirement; rebalances proportionality; ensures constitutional rights against government interference; and reduces pressure on the criminal court system.

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[27] Law Commission of India. (2008). *Fast track magisterial courts for dishonoured cheque cases (Report No. 213)*.
[28] Supreme Court of India. (2020). *Re: Expeditious trial of cases under Section 138 of the Negotiable Instruments Act, 1881*, Suo Motu Writ Petition (Crl.) No. 2 of 2020.

Decriminalisation also promotes civil remedies that meet the economic character of wrongdoing while enabling faster and more effective remedies. Most importantly, decriminalising cheque dishonour does not mean there will be no state sanctions whatsoever. A model that provides for criminal liability only in cases of fraud or a volitional act that amounted to some type of deception would protect society and free up the excess penalties currently imposed by criminal law.

IX. ECONOMIC ANALYSIS OF CRIMINALISING CHEQUE DISHONOUR IN INDIA

1. Introduction: Economic Dimensions of a Criminal Legal Framework

Cheque dishonour as a criminal offence under Section 138 of the Negotiable Instruments Act, 1881 carries with it serious economic consequences that go well beyond the direct relationship between the drawer and the payee. What started as a method of ensuring financial discipline has become an escalating economic burden on our judiciary, businesses and the economy at large. A proper economic analysis of this criminal enforcement mechanism would require an evaluation of systemic costs; the market effects of this enforcement; a measure of business confidence; if criminal enforcement of dishonoured cheques is efficient relative to civil or administrative alternatives. This section will delve into these various aspects and illustrate that the current criminal regime creates significant economic inefficiencies that are at odds with contemporary commercial practice[29].

2. The Judicial Burden and Its Economic Costs

One of the major economic consequences of making cheque dishonour a criminal offence is the heavy pressure on the criminal judiciary in India. There are currently over 35-40 lakh (3.5-4 million) pending section 138 cases throughout India's criminal justice system, which means a significant number of judicial resources are being used to deal with private financial disputes. Criminal cases require significant court time due to their lengthy procedural safeguards, trials and appeals, making them longer

[29] Reserve Bank of India. (2022). *Report on trend and progress of banking in India 2021–22.*

and more complex than civil systems. Every time the court issues a summons, adjourns a case, examines a witness, or authenticates a document we expend resources that could otherwise be utilized for adjudicating on serious crimes that pose a threat to public safety or involve immoral conduct[30].

This judicial diversion causes economic issues of great magnitude. There are large state expenditures associated with court administration (i.e., salaries of judges and other staff, maintenance of court facilities and the supporting infrastructure, and related logistics). With so many cases of cheque dishonour occupying the courts, the opportunity costs are extreme: serious criminal matters will be delayed for long periods; resources for tax-supported judicial expenditures will be limited; and litigants in other areas of law will experience delays because of the bottlenecks associated with the cheque dishonour cases. The inefficiency created by this diversion also decreases the overall productivity of the judicial system and imposes indirect economic costs upon taxpayers and upon businesses that rely on having timely access to the courts.

X. POLICY PROPOSAL & HYBRID REFORM MODEL FOR INDIA

A. Introduction: The Need for a Pragmatic Policy Reorientation

The ongoing conversation regarding the decriminalisation of cheque dishonour in India is not a singular reform; rather, it reflects a larger change in the philosophy behind regulation and the approach to economic efficiency, proportionality of justice and judicial rationalisation. The criminal system contained within Section 138 of the Negotiable Instruments Act 1881 is no longer an appropriated response to the realities of a global, technological, digital, consumer-driven economic environment.

There are now millions of unprocessed, unsatisfied claims for cheque bounce cases; massive backlogs in magistrate court systems; and escalating costs of pursuing litigation. These realities provide compelling evidence to develop a clearly defined policy shift. A successful reform will have to strike the appropriate balance between

[30] Law Commission of India. (2017). *Expeditious trial of cases under Section 138 of the Negotiable Instruments Act, 1881 (Report No. 267).*

accountability, commercial trust and overall systemic efficiency. A hybrid reform model, using global best practices while tailoring each solution to specifically fit the institutional conditions of India, will be proposed in this section[31].

B. Rethinking the Objective of Section 138: From Punitive to Restorative Enforcement

The first step to designing a successful policy is to re-evaluate the common purposes behind Section 138 and the criminalisation of cheque transactions. When first enacted, Section 138's purpose was to safeguard the integrity of cheque transactions; this was based on a time when cheque transactions made up a significant majority of the economic activity in India (and around the world) and all of this occurred in a non-digital environment. As we have shifted to a digital environment where payments occur through digital payment methods (which are regulated by the Reserve Bank of India) such as UPI, NEFT, RTGS, and IMPS, we need to change how we enforce Section 138[32].

Considering these changes to how cheque transactions occur, criminal prosecution is no longer an appropriate tool for enforcing the law due to its lack of correlation with the transactional conduct of individuals or the associated financial risks involved in transactionally[33].

To modernise the purpose of Section 138, our proposed change aims to implement restorative justice principles. The focus will be on restitution as opposed to punishment by utilising restitution, negotiated settlements, and financial responsibility as a guiding principle in the enforcement process; these enforcement methods are more representative of the civil nature of the harm created. By modifying Section 138's purpose, we will create the basis for a hybrid model of enforcement, where criminal law is applied only as a last resort, and the preponderance of enforcement efforts will be through civil and administrative means.

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[31] NITI Aayog. (2021). *Designing the future of dispute resolution: The ODR policy plan for India.*
[32] National Payments Corporation of India. (2023). *UPI product statistics.*
[33] Law Commission of India. (2017). *Expeditious trial of cases under Section 138 of the Negotiable Instruments Act, 1881 (Report No. 267).*

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C. Civil Courts and Commercial Tribunals as the Primary Enforcement Forum

The hybrid model relies on changing the jurisdiction of ordinary cheque dishonour matters from criminal courts to civil and/or commercial courts. To do so will require enhancing and expanding the jurisdiction of the commercial courts, small claims courts and expedited civil tribunals to serve efficiently as an avenue for resolution of monetary disputes.

Civil courts have several advantages over criminal courts regarding the resolution of monetary disputes. The civil procedural framework is already established to determine issues of restitution, compensation, and breach of contract. Civil courts provide flexibility in the structuring of payment arrangements; they also facilitate negotiated resolutions to disputes; and they generally provide a less expensive means of resolving disputes than criminal courts. As such, civil courts are the most appropriate forum for settling disputes based on financial default as opposed to criminal conduct.

However, simply transferring disputes to civil court without reforming the institutions that adjudicate them will simply replicate the same inefficiencies found in the criminal justice system. Thus, in addition to transferring cheque dishonour matters, civil courts must be provided with better case management systems, easy-to-understand rules on proof of negotiable instruments and statutory time frames for disposing of cheque dishonour cases. A pre-litigation mandatory mediation process will also assist with reducing the number of disputes by encouraging parties to reach agreed resolutions prior to seeking court intervention[34].

Table 2: Institutional reforms proposed for improving cheque dishonour dispute resolution.

Source: NITI Aayog (2021); Vidhi Centre for Legal Policy (2020).

Reform Mechanism	Objective	Expected Outcome

[34] eCommittee, Supreme Court of India. (2022). *Phase III of the e-Courts project: Strategy document.*

Mandatory Mediation	Reduce litigation	Faster settlements
Online Dispute Resolution	Digital case handling	Lower costs
Specialised Tribunals	Faster adjudication	Reduced backlog
Civil Enforcement	Financial compensation	Efficient recovery

D. Narrowed Scope of Criminal Liability: Targeting Fraudulent and Wilful Misconduct

Criminal sanctions are intended to penalize the activities of those who commit fraud or otherwise deceive others, and therefore should only be used in situations where there is clear proof of intent to commit fraud, or where someone intentionally deceives someone else. This is consistent with not only accepted practices within the framework of Global Law, but also with the moral components of the Criminal Law[35].

A fraudulent cheque can include issuing a cheque that is drawn on a closed bank account, having the cheque signed by a forger, or intentionally misleading the payee as to their intention, or ability, to pay the amount of the cheque to the payee.

By limiting the application of Criminal Liability to those cases where clear evidence exists to support the application of criminal law to the conduct, the criminal justice system will be used for conduct that truly warrants moral condemnation and reproach from the public. Limiting the application of Section 138 to these cases will also bring Section 138 in line with the broader principles of Criminal Jurisprudence that relate to the degree of culpability, intent and proportionality of the conduct. If the responsibility of law enforcement and prosecutors to investigate and prosecute individuals who may be involved in criminal activity is based solely upon the

[35] United Nations. (1966). *International Covenant on Civil and Political Rights* (ICCPR)

existence of mens rea, the number of criminal filings will decrease considerably while increasing the level of enforcement activity with regard to the most serious crimes[36].

E. Conclusion: Building a Balanced and Modern Enforcement Mechanism

Hybrid reform is a rational, proportionate and economically efficient way of addressing cheque dishonour in modern-day India. By moving most regular cases to civil or administrative forums; only keeping criminal sanctions for cases of fraud; using both mediation and ODR processes; setting up special tribunals; and updating India's legal framework while maintaining the commercial integrity, this will modernise the way the law is interpreted and implemented in India[37].

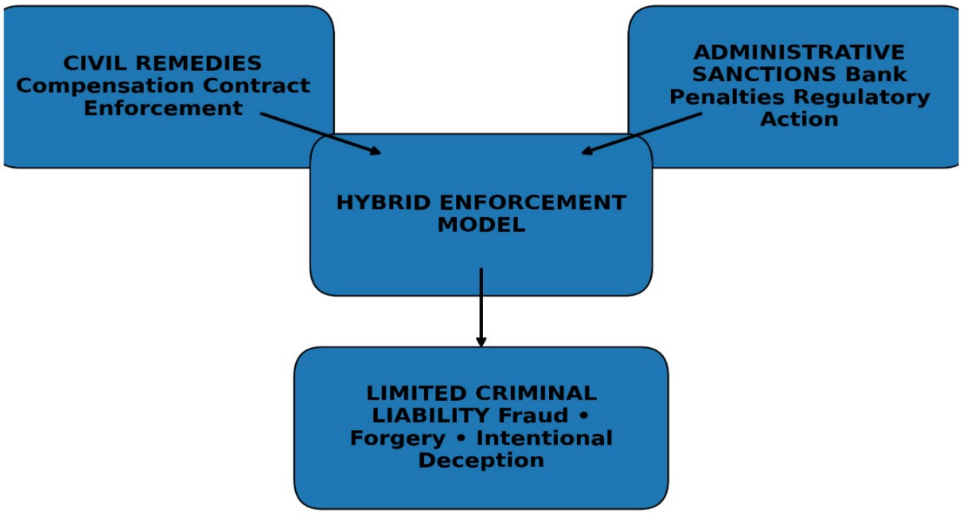

Figure 2: Hybrid enforcement framework combining civil remedies, administrative sanctions, and limited criminal liability for cheque dishonour disputes.

Source: Author's conceptual framework based on Thomas (2022) and Vidhi Centre for Legal Policy (2020).

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[36] Law Commission of India. (2017). *Expeditious trial of cases under Section 138 of the Negotiable Instruments Act, 1881 (Report No. 267).*

[37] Law Commission of India. (2017). *Expeditious trial of cases under Section 138 of the Negotiable Instruments Act, 1881 (Report No. 267).*

XI. OVERALL ANALYSIS & CONCLUDING DISCUSSION

A. Introduction: Synthesising Legal, Economic, and Comparative Insights

The previous sections of this report provide a coherent but complex picture concerning the criminalisation of cheque dishonour in India. Drawing on doctrinal, constitutional and economic analysis shows that Section 138 of the Negotiable Instruments Act 1881 has lost its efficacy with respect to the rapidly evolving financial ecosystem in India and now only serves as a relic of a bygone era of commerce where cheques were the primary means of conducting business, and criminal penalties were thought necessary to promote financial discipline. In light of India's shift to a digital economy, its need to promote efficiency in its Judicial System and the trend internationally to resolve cheque-related disputes through non-criminal means; a re-assessment of the role played by Criminal Law in resolving cheque disputes has become imperative[38].

This section integrates all of the strands of the research into a single analytical conclusion that supports that decriminalisation as a hybrid method of implementation would be the most appropriate path forward.

B. Inconsistencies Between Criminal Law Principles and the Realities of Cheque Dishonour

The findings from the analysis reveal a significant disconnect between the fundamental tenets of criminal law and the manner in which Section 138 is drafted. Indian criminal law, as determined by the Supreme Court, places a great deal of weight on men's rea, proportionality, fairness, and constitutional due process. Conversely, Section 138 has abandoned the mens rea element altogether, instead applying strict liability and reversing the burden of proof through statutory presumptions[39].

[38] NITI Aayog. (2021). *Designing the future of dispute resolution: The ODR policy plan for India.*
[39] Supreme Court of India. (2010). *Rangappa v. Sri Mohan*, (2010) 11 SCC 441.

As a result, there are individuals that could be criminally punished for issuance of a dishonoured cheque due to events or occurrences that may not be within an individual's control such as slow/no payment from customers, financial strains, temporary cash flow difficulties, or accidental errors in accounting. These circumstances are all part of commercial risk and not criminal conduct. To date, court decisions such as Meters and Instruments v. Kanchan Mehta have attempted to address some of these conflicts; however, without changes to the law, these remedies will continue to be applied on an inconsistent basis.

C. Economic Inefficiency and Judicial Overload: A Systemic Cost Too High

The costs associated with the prosecution of criminal cases for the dishonour of cheques are enormous for the Indian Justice System. Approximately 3.5 to 4 million cases are pending in the context of Section 138, which represents one of the largest areas of the criminal docket in India. Criminal courts waste massive amounts of resources on which can essentially be classified as private domestic monetary issues i.e. summons, warrants, witness examination, adjournments[40].

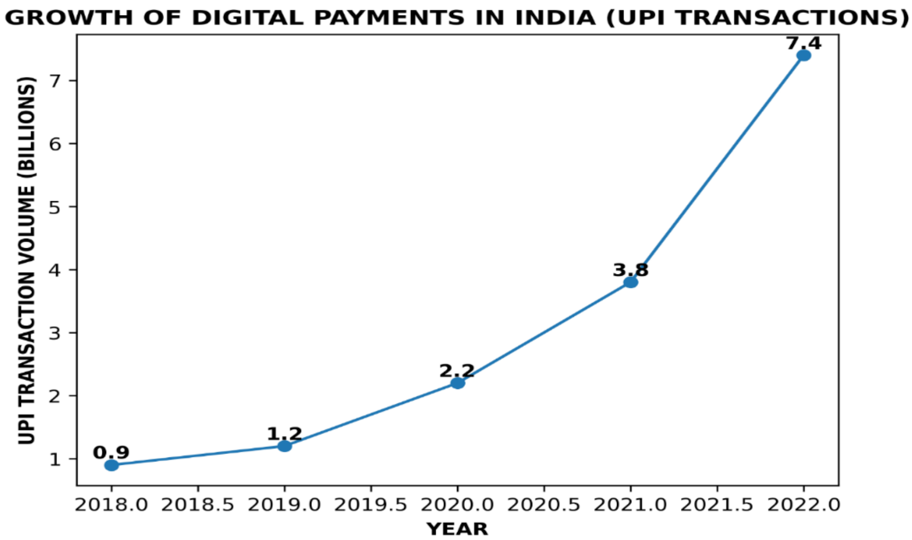

Figure 3: Growth of digital payments in India showing the rapid increase in UPI transactions from 2018–2022.

[40] Law Commission of India. (2017). *Expeditious trial of cases under Section 138 of the Negotiable Instruments Act, 1881 (Report No. 267).*

Source: Reserve Bank of India (2021), *Payment and Settlement Systems in India*, RBI Annual Report.

For MSME businesses, long-term criminal litigation can severely hinder cash flow and reduce working capital, as well as contribute to legal expenses that destroy profitability. Furthermore, the threat of a possible criminal conviction or arrest serves as a deterrent to engaging in credit transactions, thereby limiting economic productivity. These problems demonstrate a fundamental flaw in the ability of the criminal system to accomplish its function in relation to the economic aspects of cheque-related disputes.

A modern legal system must allocate its resources according to the priorities of society, and therefore, criminal courts should hear only cases relating to public harm; violence; or moral culpability and should avoid hearing all commercial disputes. Commercial disputes can be resolved more appropriately through civil or administrative procedures.

D. The Emergence of a Digital Financial Ecosystem and the Obsolescence of Cheque-Centric Enforcement

The financial landscape in India has dramatically changed over time with the introduction of UPI, IMPS, NEFT and other forms of digital transactions that are supervised by the Reserve Bank of India[41]. The use of cheques has steadily decreased, particularly in urban and semi-urban areas, while the legal framework continues to be based on an age when all transactions were conducted by way of paper-based methods[42].

This creates a legal-economic paradox whereby Section 138 creates a criminal penalty for a transaction type that is becoming increasingly obsolete in a society that has transitioned to a digital-based economy. In addition, because digital transactions are now protected by automated safeguards such as instant verification of transactions, checking account balance in real time, fraud detection analytics etc; the rationale for

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[41] Reserve Bank of India, Payment and Settlement Systems in India, Annual Report (2021).
[42] National Payments Corporation of India. (2023). *UPI product statistics*.

penalizing cheque dishonour using the threat of criminal prosecution becomes even weaker. The enforcement mechanisms must evolve to keep pace with the evolving financial industry they serve and, therefore, prosecuting for cheque dishonour by means of a criminal offence does not fit with today's digital financial system that is present in India[43].

E. The Hybrid Reform Model as a Balanced and Pragmatic Solution

The hybrid reform model proposed in this study represents the most methodical and feasible approach moving forward with regards to resolving the issues related to dishonoured cheques on a commercial scale. This hybrid model attempts to balance conflicting considerations of proportionality, deterrent effect, volume of trustworthiness by commercial entities and efficiency in the administration of justice. The following outlines some key features of the hybrid model:

1. Thus, cheque dishonours that occur on a routine basis would be moved to a commercial and/or civil proceeding, where restitution is the primary remedy.
2. Administrative penalties imposed by banks would be imposed on a frequent and proportional basis for behaviours that are considered to be habitual, or high risk.
3. Criminal liability would still be retained for fraud, forgery or dishonesty; therefore, keeping the moral aspect of criminal law intact.

F. Institutional and Legislative Challenges to Implementation

Although the case for reform is strong, its implementation will require coordinated action by legislative, judicial, regulatory, and institutional actors. Parliament would need to amend the Negotiable Instruments Act, 1881 to clearly distinguish ordinary civil liability from cheque dishonour involving fraud, forgery, or intentional deception. The judiciary would also have to recalibrate case allocation and procedural

[43] National Payments Corporation of India. (2023). *UPI product statistics*.

management so that routine monetary disputes are redirected away from criminal courts and towards appropriate civil or specialised forums.

Civil courts and commercial tribunals would require additional capacity, simplified evidentiary rules, strict timelines, and effective case-management systems to handle the possible increase in cheque-related monetary claims. Banks, financial institutions, and digital payment regulators would also need to assume a stronger administrative role by imposing proportionate sanctions, maintaining reliable transaction records, and facilitating the production of digital evidence. Resistance may arise from parties accustomed to using criminal prosecution as a coercive debt-recovery mechanism; therefore, successful reform would require sustained political commitment, institutional coordination, and meaningful engagement with affected industries and stakeholders.

G. Conclusion: Towards a Modern, Efficient, and Just Legal Framework

In an examination of the criminal law system in India, it has been established that the current criminal law enforcement scheme for cheque dishonour represents an economically inefficient, doctrinally inconsistent and anomalous system of global enforcement and a burdensome institutional model of enforcement. These principles demonstrate that the system of criminal law enforcement has effectively become a mechanism for debt recovery, which is inconsistent with the foundations of criminal laws, ultimately creating a drain on the productivity of the judicial system.

The most suitable long-term solution to the current enforcement of dishonoured cheques involves a using a hybrid civil and administrative enforcement model; thus, reserving criminal sanctions for fraud. Not only will such change produce greater judicial efficiencies but it will also support economic development, bring India into closer compliance with global standards, and modernise the legal framework of the enforcement of financial transactions via electronic means.

India is at a critical juncture with the proposed change from punitive enforcement; to a balanced, restorative and electronically integrated system of enforcement. This change will not only assist in the elimination of the backlog of judicial enforcement but will also change the shape of the Indian commercial legal environment in a manner that supports trust, efficiency and the long-term health of the overall economy.

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