

Reassessing Cheque Dishonour Remedies in Semi-Urban India: A District-Level Study of Legal Efficacy under Section 138 of the Negotiable Instruments Act

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Abstract – Section 138 of the Negotiable Instruments Act, 1881 was enacted to enhance commercial credibility and ensure trust in negotiable instruments. Despite multiple legislative amendments aimed at expediting dispute resolution, cheque dishonour litigation continues to pose serious challenges at the district court level. This study examines the practical effectiveness of Section 138 in a semi-urban setting, using Mandasaur District as a representative case. Based on an empirical analysis of 15 decided cases (2018–2024), interviews with 20 key stakeholders, and a survey of 50 local businesses, the research reveals a significant gap between statutory intent and actual legal outcomes. Findings indicate that prolonged case duration, high litigation costs, procedural complexity, and weak enforcement mechanisms discourage legal recourse for small enterprises. To assess this gap systematically, the study develops a Legal Efficacy Gap Index (LEGI), which highlights structural inefficiencies in time, cost, procedure, and enforcement. The paper proposes a three-tier dispute resolution framework integrating pre-litigation mediation, fast-track adjudication, and simplified recovery mechanisms, tailored for district-level implementation. The study concludes that legal reform must move beyond legislative amendments and focus on institutional and procedural redesign to enhance commercial justice in semi-urban India.

Index Terms – *Negotiable Instruments Act, Section 138, Cheque Dishonour, Legal Efficacy, District Courts, Semi-Urban Commerce.*

I. INTRODUCTION

The Negotiable Instruments Act, 1881 constitutes a foundational pillar of India's commercial and banking law framework. Among its provisions, Section 138 holds particular importance as it introduces penal consequences for cheque dishonour arising from insufficiency of funds or closure of accounts. The legislative intent behind criminalizing cheque dishonour was to reinforce confidence in cheque-based transactions and to promote financial discipline in commercial dealings [1].

Over the decades, the increasing reliance on cheques by small and medium enterprises has simultaneously led to a sharp rise

in litigation under Section 138. District and magistrate courts across India now face a substantial backlog of cheque dishonour cases, raising serious concerns regarding the effectiveness of the provision as a dispute resolution mechanism [2]. While legislative amendments introduced in 2002, 2015, and 2018 aimed to simplify jurisdiction, allow interim compensation, and expedite trials, their real-world impact remains uneven, particularly outside metropolitan areas [3].

Semi-urban districts such as Mandasaur present a unique commercial environment characterized by informal credit practices, limited legal awareness, and constrained institutional capacity. In such contexts, prolonged litigation and uncertain enforcement may undermine the very objective of Section 138. This study therefore seeks to examine whether the legal remedy provided under the Negotiable Instruments Act remains practically accessible, economically viable, and outcome-oriented for small businesses operating in semi-urban India.

II. LITERATURE REVIEW

Academic discourse on cheque dishonour litigation in India has largely focused on doctrinal interpretation and procedural challenges. Singh identifies procedural delays, frequent adjournments, and evidentiary formalism as primary reasons for prolonged case disposal under Section 138 [4]. Kumar further highlights inconsistencies in judicial reasoning across jurisdictions, resulting in unpredictability and uneven enforcement [5].

From a theoretical standpoint, Cappelletti and Garth's access to justice framework emphasizes that the mere existence of legal rights does not guarantee justice unless mechanisms are affordable, timely, and understandable to litigants [6]. Tyler's concept of legal efficacy reinforces this perspective by arguing that public trust in law depends on fairness, transparency, and enforcement certainty [7].

Comparative studies from jurisdictions such as the United States demonstrate that cheque-related disputes are largely resolved through civil and summary mechanisms under the Uniform Commercial Code, minimizing criminal burden and reducing resolution time [8]. However, Indian scholarship has paid limited attention to district-level empirical realities, especially in semi-urban settings. This study addresses this gap by integrating quantitative case outcomes with qualitative stakeholder perceptions.

III. METHODOLOGY

3.1 Research Design

The study adopts a mixed-method empirical research design to capture both legal outcomes and stakeholder experiences. Fifteen decided cases under Section 138 from Mandsaur District Courts between 2018 and 2024 were selected through purposive sampling to ensure representation of different outcomes, including conviction, settlement, and acquittal.

To supplement judicial data, twenty semi-structured interviews were conducted with key stakeholders comprising bankers, practicing advocates, small business owners, and local policymakers. These interviews provided insights into procedural bottlenecks, evidentiary challenges, and enforcement realities. Additionally, a structured survey administered to fifty businesses offered quantitative context regarding litigation behavior and perceived barriers to legal action.

Data analysis involved descriptive statistical methods for case outcomes, thematic coding for interview responses, and content analysis of judicial reasoning. Ethical considerations were maintained through informed consent and respondent anonymity [9].

IV. FINDINGS

4.1 Case Outcome Analysis

TABLE I
CASE DISPOSITION PATTERNS (N=15).

Disposition Type	Cases	Percentage	Average Duration	Amount Recovery
Conviction	6	40%	2.1 years	72%
Settlement	4	27%	1.8 years	58%
Acquittal	3	20%	2.5 years	0%
Pending	2	13%	Ongoing	N/A

Source: Court Records Analysis

The case analysis reveals that convictions were secured in only 40% of cases, while settlements accounted for 27%. Acquittals and pending cases together constituted one-third of the sample.

The average case duration of 2.3 years significantly exceeds the operational cash-flow cycles of small enterprises, thereby diminishing the practical value of legal remedies even in successful cases [10].

4.2 Stakeholder Perceptions

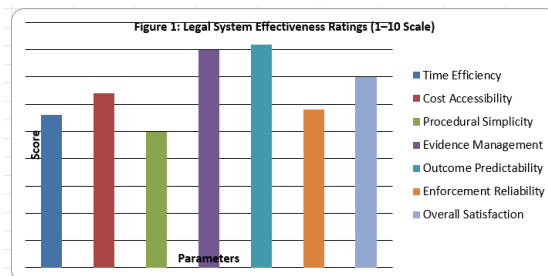


Fig. 1 Legal System Effectiveness Ratings (1-10 scale)

- **Time Efficiency (2.8/10):**
Stakeholders strongly felt that cheque dishonour cases take excessively long to conclude. Frequent adjournments and procedural delays reduce the practical usefulness of legal remedies.
- **Cost Accessibility (3.2/10):**
Business owners reported that litigation costs, including advocate fees and repeated court appearances, create significant financial pressure, especially for small enterprises.
- **Procedural Simplicity (2.5/10):**
Advocates and litigants highlighted rigid procedural requirements and technical formalities, which make the process difficult to understand and navigate for non-legal actors.
- **Evidence Management (4.0/10):**
Bankers noted moderate effectiveness in evidence handling; however, challenges persist due to poor documentation and lack of clarity regarding admissibility of informal and digital records.
- **Outcome Predictability (4.1/10):**
Stakeholders perceived outcomes to be uncertain, as similar cases often result in different judgments depending on procedural compliance and judicial discretion.
- **Enforcement Reliability (2.9/10):**

Even after favorable judgments, recovery of the cheque amount was reported to be slow and uncertain, reducing confidence in enforcement mechanisms.

- Overall Satisfaction (3.5/10):
The combined effect of delays, costs, and enforcement issues resulted in low overall satisfaction with the legal process under Section 138.

4.3 Barriers to Legal Recourse

TABLE II
 REASONS FOR NOT PURSUING LEGAL ACTION (MULTIPLE RESPONSES)

Barrier	Percentage	Severity (1-5)
Time Consumption	85%	4.7
Legal Costs	75%	4.2
Procedural Complexity	65%	3.9
Evidence Challenges	55%	3.5
Lack of Legal Knowledge	50%	3.2
Fear of Business Relations Damage	45%	3.0
Doubt About Recovery	40%	2.8

Source: Business Survey (n=50)

Survey results demonstrate that time consumption and legal costs are the most significant deterrents to litigation. Procedural complexity and evidentiary challenges further discourage legal action, especially among small traders with limited legal literacy. These findings suggest that formal legal remedies are often perceived as disproportionate to the value of disputes involved [12].

4.4 Legal Efficacy Gap Index (LEGI)

- Purpose of LEGI:
The Legal Efficacy Gap Index (LEGI) is developed to quantitatively measure the gap between the statutory intent of Section 138 and its actual performance at the district level.
- Conceptual Basis:
- LEGI is constructed using factor analysis by assessing six key dimensions that directly influence the effectiveness of cheque dishonour dispute resolution.
- Time Efficiency (Weight: 0.25 | Score: 2.8):
This dimension captures delays caused by adjournments and lengthy trial procedures. The low score reflects significant time-related inefficiencies.
- Cost Accessibility (Weight: 0.20 | Score: 3.2):

This assesses affordability of litigation. Moderate scoring indicates that legal costs remain a barrier, particularly for small and medium enterprises.

- Procedural Simplicity (Weight: 0.15 | Score: 2.5):
The lowest score among all dimensions, highlighting complex procedures and technical formalities that discourage litigants.
- Evidence Management (Weight: 0.15 | Score: 4.0):
This reflects moderate effectiveness in handling documentary and banking evidence, though informal transaction records pose challenges.
- Outcome Predictability (Weight: 0.15 | Score: 4.1):
Stakeholders perceived uncertainty in judicial outcomes, resulting in only average confidence in case predictability.
- Enforcement Reliability (Weight: 0.10 | Score: 2.9):
This dimension measures post-judgment recovery effectiveness. The low score indicates weak enforcement mechanisms.
- Overall LEGI Score:
Using the formula $\Sigma (\text{Dimension Score} \times \text{Weight})$, the Mandsaur District records a LEGI score of 3.21 out of 10, indicating a high legal efficacy gap.
- Analytical Significance:
LEGI provides a structured, district-specific tool to assess legal performance and identify areas requiring procedural and institutional reform [13].

V. DISCUSSION

The study demonstrates that Section 138, while symbolically significant, often fails to deliver timely and economically viable justice in semi-urban contexts. The criminal nature of proceedings increases procedural burden without guaranteeing effective recovery. Enforcement delays further erode confidence in judicial remedies, compelling businesses to rely on informal settlements or absorb financial losses [14][15].

VI. CONCLUSION

This study clearly demonstrates that the effectiveness of Section 138 of the Negotiable Instruments Act is shaped not merely by its legislative framework but, more importantly, by

the quality of its implementation at the district level. While statutory amendments have sought to improve procedural efficiency, the empirical evidence from Mandsaur District reveals persistent shortcomings in actual practice. Procedural complexity, prolonged adjudication timelines, and weak enforcement mechanisms continue to undermine the practical utility of cheque dishonour remedies for small and medium enterprises.

The findings highlight that without procedural simplification, time-bound adjudication, and assured post-judgment recovery, the deterrent and remedial objectives of Section 138 remain largely symbolic. In semi-urban commercial settings, where businesses operate on limited capital cycles and informal credit arrangements, delayed justice often translates into economic loss rather than legal relief.

The three-tier dispute resolution framework proposed in this study—integrating pre-litigation mediation, fast-track adjudication, and streamlined recovery mechanisms—offers a pragmatic and scalable solution. By aligning legal processes with local economic realities, this framework has the potential to enhance access to justice, reduce court backlog, and restore commercial confidence. The Mandsaur case thus provides valuable insights for policymakers and judicial administrators seeking to strengthen cheque dishonour dispute resolution across semi-urban India [19], [20].

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