GUJRAT NATIONAL LAW UNIVERSITY

GNLU CENTRE FOR LAW & ECONOMICS

ECONOMIC ANALYSIS OF BACKLOG OF SECTION 138 OF NEGOTIABLE INSTRUMENTS ACT, 1881 CASES

EMPIRICAL ANALYSIS

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[1] Dean of Research; Director of GNLU Centre for Law and Economics; Professor of Economics, Gujarat National Law University, Gandhinagar.
[2] Associate Professor of Economics, Gujarat National Law University, Gandhinagar.
[3] Research Data Analyst, Gujarat National Law University, Gandhinagar.
[4] Professor of Economics, Delhi School of Economics, Delhi
[5] Professor of Economics, Veer Narmad South Gujarat University, Surat
[6] Director; Professor of Public International Law, Gujarat National Law University, Gandhinagar.

FORWARD

This study makes an attempt to understand and analyze the issue Backlog of Dishonor of Cheque cases in India by means of an Empirical- Legal Analysis.

It strives to perceive the issue holistically and then analyze the same through numbers, to quantitatively ascertain the Trends of delays and pendency and Reasons for the same. Hence, a comprehensive review of existing Literature on Section 138 of Negotiable Instruments Act, 1988 Backlogs has been done. This laid down the road map for the empirical analysis. Post which, the process of data collection, interpretation and analysis to prove / disprove the research hypothesis has been undertaken.

For the data collection process, we have adopted a unique methodology of 'Quantification of data from Judgements'. A database of all S.138 Judgements of the delineated Universe has been coagulated from which data for various factors have been collected and analyzed using SPSS Software. Based on our empirical results, Statistical inferences have been drawn to identify trends an ascertain reasons. In furtherance, we have also made attempt to come up with policy suggestions and recommendations to tackle the issue.

This project is a prima facie attempt to undertake a data-driven economic analysis of backlog of cheque bounce cases in India. The examination is an empirical-legal analysis of the issue concurrently accommodating statistics and comparative perspectives as divulged by the data. It represents and professes only what the data results indicate, supplemented with inferences and analysis branching out of in-depth research into the issue.

The study represents a methodological quantitative approach towards addressing the legal issue at hand. It furthermore opens up avenues for advanced research in this regard.

Disclaimer: This project does not claim to be exhaustive of all aspects of the issue of Backlog of cheque bounce matters. It is an honest attempt to statistically analyse the issue at hand and come up with relevant policy suggestions, based on the primary data we collected from the selected Universe. A provision for margin of error with regard to data collection has to be taken into consideration as well.

PROJECT BACKGROUND

Backlog of cases is a huge concern for Indian judiciary. Especially with regard to Dishonour of Cheque cases under Section 138 of Negotiable Instruments Act, 1881, huge backlogs prevail across various courts. Section 143(3) of the Act requires the complaints in regard to cheque dishonour cases under Section 138 of the Act to be concluded within six months from the date of the filing of the complaint, however such cases seldom reach finality before three or four years let alone six months.

While the fact remains undeniable that there is delays and pendency, there is no empirical data to quantitatively measure or substantiate this assertion and also to ascertain the reasons for such inefficiency.

The consequences of backlogs may be dire in terms of repercussions on our business economy in the form of reduction in new investments, low ease of business ranking at the global level, etc. More importantly, Backlogs reflect negatively on court's efficiency. If the courts do not stand ready to meet all demands for their service, there is a possibility of the reduction of public confidence on judiciary and a corresponding increase in their inclination to approach socially undesirable means of adjudication.

To address this problem an empirical research backed with the tools of Economics is indispensable. An empirical analysis is necessary to represent an accurate account of the prevailing scenario, trends of such delays, reasons for such pendency etc. in order to come up with suitable policy solutions with a plausible legal coherency.

RESEARCH HYPOTHESIS

This research project aims to undertake a process of review of existing Literature, Data Collection, Interpretation & Analysis to Prove / Disprove the following Hypothesis:

I. The Courts dealing with S.138 cases spend considerable adjudication time on cases which have procedural issues or cases which are frivolous.

II. There is inefficient handling of S.138 matters by Courts.

III. The Courts compromise on victim's interest of debt recovery while adjudicating cases under S. 138.

IV. Mandatory settlement as method of resolving S.138 cases is an effective mechanism to reduce the adjudication time of the Courts.

PROJECT DESCRIPTION

This project aims to comprehensively understand the issue of backlog of S. 138 of NI Act, 1881 cases. In this regard, attempt has been made to delve into the issue in a three phased manner.

Phase One, Literature Review.

In this phase, a review of existing literature on backlog of S.138 cases shall be carried out, which includes recognition and retrieval of relevant literature, followed by theoretical and methodological analysis of the same. The assessment in this phase is to identify the lacuna in existing literature, specifically with regard to S.138 backlogs, so that a road map for venturing into the process of empirical data collection & analysis can be laid.

Phase Two, Quantification of Data from Judgements.

Quantification of Data from Judgements is a unique process of data collection. The initial step in this process would be compiling all the judgements of the delineated universe. Post which, this would involve looking into the Judgements and identifying all the key considerations that could answer the hypothesis. From these identified considerations, specific variables would be ascertained to quantitatively prove / disprove the hypothesis.

Phase Three, Empirical Analysis and Policy Suggestions and Recommendations.

A data-driven Economic Analysis of backlog of cheque bounce cases, shall be undertaken to quantitatively ascertain and analyze the reasons for delays and pendency of S.138 cases, trends of inefficiencies, loopholes in existing legal framework, etc. Econometric models shall be used to analyse the data collected to draw statistical inferences, correlations, comparative perspectives etc. Based on these empirical results, attempt shall be made to ascertain the key concerns circumventing the issue, draw reasoning, make observations and thereby provide suggestions and recommendations. The examination in this phase demonstrates a legal analysis of the issue but concurrently endeavoring to accommodate statistics, comparative perspectives, and theoretical analysis, within the legal research framework, in order to come up with realistic and appropriate recommendatory solutions.

PHASE ONE

Literature Review: Theoretical & Methodological Analysis

PART 1: CONSEQUENCES/ IMPACT OF BACKLOGS

The consequences of the backlog of cases under Section 138 of the Negotiable Instruments Act, 1881[7] necessitate the understanding of it from a generic perspective.. It will further require applying analogies to the judicial context of India and finally specific application under S. 138 of the said Act.

Introduction

An article entitled "Judicial Checks and Balances" concludes that judicial independence is particularly important in securing "economic freedom." It is increase in the attention paid to the role that public institutions play in promoting economic development, academics and policy analysts have sought to better understand the relationship between legal institutions and economic performance, while the development community has promoted legal and judicial reform projects that range from modest efforts to improve court administration to ambitious attempts to eliminate judicial corruption, promote judicial independence, and craft better, more equitable, and more market-friendly legal systems.[8] This chapter attempts at explaining the importance of public confidence in the judiciary and judicial duty to institute reforms for a more market-friendly legal system.

a. Repercussions on business and economy of India. (Reduction in new investments due to increased legal risks, time and costs etc.)

The law relating to negotiable instruments consists of certain principles of equity and usages of trade which general convenience and common sense of justice had established to regulate the dealings of merchants and mariners in all the commercial countries of the civilized world.

Due to large number of backlog of cases, the entire credibility of the business within and outside the country suffers a serious setback. Cheque dishonour leads to loss, injury, inconvenience to the payee and the credibility of issuance of cheque is also eroded to a large

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[7] ACT NO. 26 of 1881

[8] Matthew C. Stephenson, 'Judicial Reform in Developing Economies: Constraints and Opportunities' [2007] Annual World Bank Conference on Development Economics < http://www.law.harvard.edu/faculty/mstephenson/pdfsNEW/JudicialReformABCDE.pdf > accessed 13 July 2018

extent. This reduces the acceptability of the cheques as an instrument for settlement of liabilities.

Backlog of cases reduces the trust of public on negotiable instruments, and the number of pending cases casts a shadow on the credibility of trade, commerce and business. This increases the risk factor of a transaction in a market. With the increase in the risk factor the investors or the people in market look for alternate markets, which lead to loss of potential transactions, therefore loss of surplus. India is losing out on potential foreign investment because of this. In the present scenario, where international trade has gained so much importance and on the global platform, most of the transactions depend on the negotiable instruments. Speedy disposal of cases is seen as a major factor by the investors before investing in a foreign country. Hence, an effective judicial system on which the public, at large, repose their faith is a very crucial factor for sound economic development.

The suits for dishonour of cases are dragged on for many years which mean resources being locked up for those many years. If litigants have the advantage of speedy trials, the resources will be freed quickly and can be reintroduced in the market flow quickly.

A more legalistic view would be:

First, courts enforce contract and property rights, and secure property.Contract rights are important for fostering productive investment and arms' length economic transactions[9] Second, state-funded courts may improve economic performance by correcting various market failures. For example, judicial imposition of legal liability for certain types of harm may induce private parties to internalize what would otherwise be negative externalities associated with their conduct. To put the same point in more Coasian terms, a well-functioning judicial system may allocate liability in such a way that total social costs (including the transaction costs associated with bargaining around the initial allocation of legal rights) are minimized (Coase 1960). Third, judicial enforcement can make commitments—particularly commitments by government—more credible. The basic credible commitment problem identified by Finn Kydland and Edward Prescott (1977) has particular salience for the governments of developing economies, which need to convince both their citizens and international investors to invest in the long term without fear that the government will expropriate the value of these

[9] D North, *Institutions, Institutional Change and Economic Performance* (Cambridge University Press 1990);.

investments[10]. Because courts are supposed to resolve disputes according to pre-existing legal commitments—whether contained in contracts, statutes, or constitutions— judicial dispute resolution by independent, effective courts help in enabling parties, including government, to bind themselves to take or forgo certain actions under specified circumstances.[11]

Such economic development depends in the long run not just, for example, on attracting foreign direct investment but on attracting the creation of new local enterprises.

b. Reduction of Public Confidence on Judiciary

Better performing courts have been shown to lead to more developed credit markets. A stronger judiciary is associated with more rapid growth of small firms as well as with larger firms in the economy. Economic studies show that within individual countries, the relative competence of provincial and state courts affects the comparative economic competitiveness.

Studies from Argentina and Brazil show that firms doing business in provinces with better-performing courts enjoy greater access to credit. A new work in Mexico shows that larger, more efficient firms are found in states with better court systems. Better courts reduce the risks firms face, and so increase the firms' willingness to invest more.[12]

In general, the effectiveness of the judiciary is proportional to the public confidence of reverting to the system of law to redress disputes, in this case the bouncing of a cheque.

An analogy of Brazil's dysfunctional judiciary could be mad. Their Judiciary has increasingly been an obstacle to national development. It is a system that allows debtors of all kinds to abscond at will, knowing that none but the most determined of creditors will pursue them through the courts. It forces banks to lend at astronomical rates of interest because they cannot foreclose on debts. More worryingly, it means that vital infrastructure projects are stalled because investors cannot be sure that the judiciary will uphold their rights.

This lack of faith creates uncertainty in creditors to achieve the potential from the digitization curve the world is experiencing. It prohibits India from taking advantages a digital society provides. This potential is not achieved because risk involved currently in use of faculty such as cheque is too much for healthy investment. It places the onus of onerous litigation on the

[10] Aymo Brunetti and Beatrice Weder 'Political Credibility and Economic Growth in Less Developed Countries' (1994) 5(1) Constitutional Political Economy 23
[11] ibid
[12] Matthew C. Stephenson, 'Judicial Reform in Developing Economies: Constraints and Opportunities' [2004] Annual World Bank Conference on Development Economics 86

person claiming that the cheque received was dishonoured. It even goes on to the extent of requiring the holder to give notice within 15 days of the receipt of information by him regarding the return of cheque unpaid. This puts the good name of the judiciary to protect the interest of litigants at risk, though it may reduce vexatious litigation.

Even where the judiciary is competent and independent, national legal culture may place limits on substantive law improvement taking the form of transplantation of substantive law from other legal cultures. Kanda and Milhaupt give the example of the inclusion in the Japanese Commercial Code in 1950 of the "duty of loyalty," taken directly from U.S. law and generally considered today to be a key judicial tool in the United States for assuring good corporate governance: "For almost forty years after it was transplanted, the duty of loyalty was never separately applied by the Japanese courts, and played little role in Japanese corporate law and governance."[13] Similarly, the new amendment may bring substantive law, but as a country following common law, over reliance is placed on judicial decisions leading to an interpretation which may not be in line with the intention of the makers of the said law.

It also affects the prestige of the judiciary when low judicial salaries are co-related with the best-trained and most capable young law graduates being inclined to pursue careers in private practice. Consequently, lawyers with uncompetitive institutional pedigrees, undistinguished records of professional experience, and/or modest socio-economic backgrounds tended to pursue careers on the bench.[14]

In conclusion, pending case for long time period not only reduces the faith of litigants in the judicial system but also harms the public faith in general. Trust in the judiciary and cheque as an instrument is important for taking the advantage of the digitalization process. But the present scenario of substantial number of pending cases leads to uncertainty in the market and this uncertainty creates an unhealthy environment for investment.

c. Violation of Human Rights & Constitutional mandate of speedy and effective justice

First recognized in the year 1958 by the Law Commission in its 14th report, the constitutional mandate of a speedy trial was taken up by the Law Commission in successive Law Commission reports numbered 54, 77, 79 and 114 among others.

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[13] Kanda and Milhaupt, 'Re-examining Legal Transplants' [2003] EL 888

[14] Kenneth W. Dam, '*The Law-Growth Nexus: The Rule of Law and Economic Development*' (Brookings Institution Press 2006)

"The Law Commission of India first observed that in an organized society, it is in the interest of the citizens as well as the state that the disputes which go to the law courts for adjudication should be decided within a reasonable time, so as to give certainty and definiteness to rights and obligations."[15]

As has been held in Ansuyaben Kantilal Bhatt v. Rashiklal Manilal Shah,[16] the landlord, aged 54 years, sought to evict his tenant on the ground of his personal need to carry on his own business. When the matter finally reached the Supreme Court after a lapse of 33 years, in view of the protracted litigation bonafide requirement may not exist at that time. The landlord, at the age of 87 years, was not supposed to start a new business.

A holder of a negotiable instrument such as a cheque, cannot, similarly then be expected to wait for protracted litigation to complete in a dispute. A dispute that would also incur considerable legal fees beyond the fact that a business works on good cash flow, and any hampering of payment for the services rendered could lead to losses and the risk of foreclosure.

It can hence be understood that an effective judicial system is that where not only just results are reached but that they are reached swiftly. Faith in the judicial system is determined by its ability to provide accessible, speedy and cost-effective justice to all equally. It is a fundamental right of every citizen to get speedy justice, which also is the basic requisite of good judicial administration. Right to speedy justice is extended under the right to life guaranteed by the Constitution.[17] It is in the interest of the citizens as well as the state that the disputes which go to the law courts for adjudication should be decided within a reasonable time, so as to give certainty and definiteness to rights and obligations. If the course of trial is inordinately long, the chances of miscarriage of justice and the expenses of litigation increase alike.

PART 2: REASONS FOR BACKLOGS

a. Contemporary complications viz-a-viz digitalization of economy

Reducing the backlog and delays in cases is one of the foremost and crucial needs for the judiciary today. A well-functioning judiciary that can interpret and enforce laws efficiently and equitably is the need of the hour. Given these essential criteria, a number of issues can arise with the growing digitization of the economy and transactions taking place online.

[15] Law Commission of India, *Delay and Arrears in Trial Courts* (Law Com No 77, 1979) para 8.10
[16] *Ansuyaben Kantilal Bhatt v. Rashiklal Manilal Shah* [1997] 5 SCC 457
[17] Hussainara Khatoon v. State of Bihar, AIR 1979 SC 1369

Further, the increase in cross border transactions, jurisdictional issues crop up, which take a lengthy process to resolve. The various issues and problems can be looked at in the following points:

i. Judiciary is lacking expertise in electronic transactions: the selection and appointment of Judges and setting up of specialized benches to hear matters is a debatable issue. There are several restrictions imposed on such appointment of Judges, resulting in a complex area of law going to Judges, who lack the expertise to hear such disputes. Appointment of Judges who hear matters in which they are experts would considerably reduce backlog of cases as the disposal rate would be much faster.[18]Further, the average age of the Indian judiciary is approximately 60 years[19], which can possibly imply that they not yet equipped with adequate knowledge of online transactions and the growing issues resulting from digitization of the economy. There is also a need to appoint Judges who are of younger ages and are able to grasp the various implications of a digital economy in a faster manner and develop an expeditious approach.

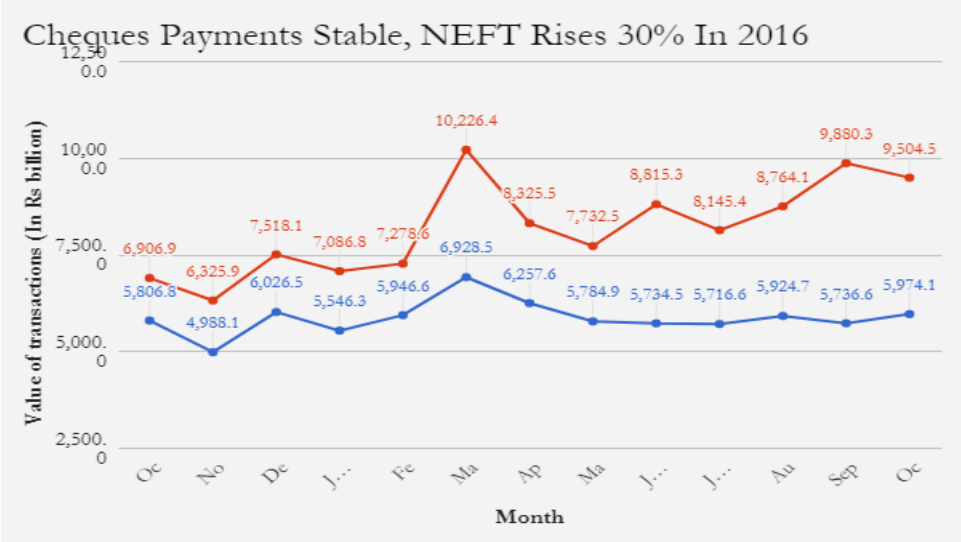
ii. Implications of government's push towards cash-less economy on clearance rate: Post the demonetization policy launched in 2016, the amount of cashless transactions has significantly gone up. Cheque transactions and payments remained largely unchanged over 2016, while money transfers using national electronic funds transfer (NEFT)– through which money is transferred in batches, after approval from the banks sending and receiving money–and transactions over Point of Sale terminals (debit card swipe machines) grew 16% and 35%, respectively, in 2016 (October over October), as compared to mobile, smartphone and app based payment platforms.[20] The government has been consistently investing in various reforms for greater financial inclusion. Therefore, after the demonetization move, the economy was ready with the infrastructure required to take the leap towards a cashless society. During the last few years, initiatives such as Jan Dhan accounts, Aadhaar-enabled payment system, e-wallets and National Financial Switch (NFS) have cemented the government's resolve to go cashless. RBI along with National Payments Corporation of India (NPCI)

[18]M J Antony, 'Stirrings of in house reforms' (*Business Standard,* 2 July 2015) < http://www.business-standard.com/article/opinion/m-j-antony-stirrings-of-in-house-reforms-115061601259_1.html > accessed :9 April 2018

[19] Abhinav Chandrachud, 'The Age Factor' (*Frontline,* 8 Oct 2011) < http://www.frontline.in/static/html/fl2821/stories/20111021282104900.htm > accessed 9 April 2018

[20] Business Standard, 'Digital Transactions Fall Despite Demonetization' (*Business Standard,* 5 May 2017) < http://www.business-standard.com/article/economy-policy/post-demonetisation-digital-payments-are-down-15-116122700098_1.html >; accessed 4 April 2018

leveraged technology and introduced newer avenues for banking with the overall objective of improving customer experience, security and ease of transactions. First, in 1988, computerized settlement operations at clearing houses were set-up and in 2008, the cheques truncation system was set up[21]. However, as it can be noted from the RBI News Bulletin, the cashless economy has not created a big impact on the clearance rates of cheques. It must be noted that several questions of cyber security and protection of digital transactions have emerged.



iii. Implications of 2015 amendment in NI Act on congestion rate: The government has notified the Negotiable Instruments (Amendment) Bill, 2015 which allows filing cheque bounce cases in a court at a place where the cheque was presented for clearance and not the place of issue. There are an estimated 18 lakh cheque bounce cases across the country, of which about 38,000 are pending in High Courts. Some litigants have to travel to different places from where the cheques were issued and not honoured. The law provides that cases of bouncing of cheques can be filed only in a court in whose jurisdiction the bank branch of the payee (i.e. the person who receives the cheque) lies. It will also result in fast prosecution of offenders. The legislation also mandates centralisation of cases against the same drawer.[22] The Amendment has aimed to help

[21] Sivaram Krishnan, 'Securing the Cashless Economy' (*PriceWaterHouse Coopers*, 19 June 2017) < http://www.pwc.in/assets/pdfs/publications/2017/securing-the-cashless-economy.pdf > accessed 9 April 2018

[22] PTI, 'Government notifies new Negotiable Instruments Act Amendment to Deal with cheque bounces cases' (*The Economic Times*, 5 Jan 2016) < http://economictimes.indiatimes.com/news/economy/policy/government-notifies-new-negotiable-instruments-act-amendment-bill-to-deal-with-cheque-bounce-cases/articleshow/50457231.cms > accessed 8 April 2018

trade and commerce by making the process of pursuing cheque bounce cases simpler and efficient.

iv. Prevailing Jurisdictional issues: in Brijendra Enterprise v. State of Gujarat[23], the Gujarat High Court discussed several issues relating to jurisdiction-

- The Court held that in view of the Amendment, a complaint for dishonour of cheque under Section 138 of the Act can be now filed only in the Court situated at the place where the bank, in which the payee has account, is located.
- Secondly, once a complaint for dishonour of the cheque is filed in one particular Court at a particular place, then later on, if there is any other cheque of the same party (drawer) which has also been dishonoured, then all such subsequent complaints for dishonour of the cheques against the same drawer will also have to be filed in the same Court (even if the person presents them in some bank in some other city or area). This would ensure that the drawer of the cheques is not harassed by filing multiple complaints for dishonour at different places.
- Thirdly, all criminal complaints for dishonour of cheques pending as on 15th June 2015 in different Courts in India would be transferred to the Court which has the jurisdiction to try such case in the manner mentioned above, i.e. such pending cases will stand transferred to the Court having jurisdiction over the place where the bank of the payee is located. If there are multiple complaints of dishonour pending between the same parties as on 15th June 2015, then all such complaints would be transferred to the Court having jurisdiction to try the first case.

The Amendment Act of 2015 brought sufficient clarity with regards to territorial jurisdiction of the Courts relating to cheque bounce cases, with the aim to reduce the heavy backlog in thse category of cases.

v. Overlapping of Laws governing NI act cases: An ordinary case of dishonour of cheque may attract several laws, the Negotiable Instruments Act, 1881, the Code of Criminal Procedure, 1973 and in some cases, the Payments and Settlements Act, 2007. In cases of electronic transactions and digital signatures, the Information Technology Act, 2000 would also be attracted.

[23] Livelaw News Network, 'Dishonour of Cheque- Gujarat HC explains the new Law on Territorial Jurisidiction' (*LiveLaw*, 31 March 2016) < http://www.livelaw.in/dishonour-cheque-gujarat-high-court-explains-law-relating-territorial-jurisdiction-post-2015-ni-act-amendment-read-jt/ > accessed 8 April 2018

vi. Legal uncertainty of NI Act regarding cross border transactions: the Negotiable Instruments Act fails to cover cross border transactions; however, reference can be made to the Payment and Settlement Act, 2007 which provides that in case of dishonour of any electronic fund transfer, a penalty analogous to that of the dishonour of cheque would be attracted.[24]

b. Inherent Complications in system leading to backlogs

i. Inefficient Behaviour of Stakeholders

- Judges: Absence, burdened with other tasks, Vacancy, liberal approach to delays, prolonged adjudication.

Under this sub-head, it is proposed that the average cost of absence of judges on the (time) cost of the litigation. The sanctioned leave period of the judges shall be analysed against the period for which the case delayed. It shall focus on the period of extension that the hearing gets due to the absence of a judge. The study shall also analyse the ancillary works that a judge, at different levels, is entrusted with and the amount of time that the judge needs to devote for such works. It shall also try to suggest if some of such works could be delegated to some other authorities so as to relieve the judges from the extra burden.

Vacancy of judges at various levels of the Indian Judicial System is a much debated topic. But here, what is felt is that the proportion of judges should be increased with the rate at which the incoming cases increase with respect to the disposed cases. But this can be debated and discussed before including in the final paper. The change in the approach to delays shall be emphasised with the need to record and maintain accurate data with respect to the cases in the Courts.

Absenteeism of judges is a likely factor which causes delay in proceedings. A study by the Vidhi Centre for Legal Policy found that in cases that took more than 2 years for disposal, 6% of all orders were adjournments granted for reason of judge being absent.[25] The Judiciary itself is in recognition of the same, as is clear from measures such as surprise checks on lower Court judges to ensure attendance.[26]

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[24]Payment and Settlement Systems Act 2007

[25] Vidhi Centre for Legal Policy, 'Ineffiiciency and Judicial Delay' (*Vidhi Centre for Legal Policy*, March 2017) < https://static1.squarespace.com/static/551ea026e4b0adba21a8f9df/t/58db85d25016e15e28a02a56/1490781674626/Inefficiency+and+Judicial+Delay_Vidhi.pdf > accessed 3 April 2017

[26]APN News, 'Absenteeism could attract HC Rap for Lower Courts in Delhi' (APN News, 31 August 2017) < http://www.apnlive.com/india-news/absenteeism-attract-hc-rap-lower-court-judges-delhi-25549 > accessed 7 April 2018

Judges of the High Courts and the Supreme Courts are allowed 3 years' worth of leave on half allowance, in addition to certain periods of leave on full allowance, medical leave, extraordinary leave as well as vacations, during the entire terms of their service.[27] There are also certain grounds on which additional leave can be credited to their leave accounts.

At present the length of the summer vacation for the Supreme Court is approximately seven-eight weeks. The Court also has a Christmas vacation of around 2 weeks, as well as holidays of 5-6 days for Holi, Dusshera and Diwali.[28]

High Courts often resort to mass transfers and reshuffling of judges in the lower judiciary, such as the Gujarat High Court, which does it twice a year.[29] Transferring of judges causes fresh judges to be appointed to hear a particular matter. This means that the new judge has to reacquaint himself with the matter at hand. A new judge will also be more likely to allow for more adjournments and other dilatory tactics, as such previous tactics were not in his presence.

Transfer of High Court judges is possible under Article 222 of the Constitution of India.[30] In the last decade or so, this has become a provision to punish errant judges for corrupt behaviours.[31] But this number is relatively low; there were only 5 transfers of HIGH COURT judges in 2017.[32]

- Counsel: Frivolous litigations, deliberate adjournments.

'Vexatious' litigation means habitually or persistently filing cases on the issues which have already been decided once or more than once or against the same parties or their successors in interest or against different parties. But so far as 'frivolous' litigation is concerned, a litigation may be frivolous,- without the need for persistent filing of similar case,- even if it has no merits whatsoever and is intended to harass the defendant or is an abuse of the process of the Court.[33]

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[27] The Supreme Court Judges (Salaries and Conditions of Service) Act 1958

[28] PIB, 'Vacations and Working Hours in the Judiciary' (Live Law, 28 April 2016) < http://www.livelaw.in/vacations-working-hours-judiciary/ > accessed 9 April 2018

[29] TNN, '236 Judges transferred' (The Times of India, 5 May 2017) < https://timesofindia.indiatimes.com/city/ahmedabad/236-judges-transferred/articleshow/58523164.cms > accessed 9 April 2018

[30] Indian Constitution, Art. 22

[31] Rajiv Dhawan, 'The Transfer of Judges' (The Hindu, 29 October 2004) < http://www.thehindu.com/2004/10/29/stories/2004102902351000.htm > accessed 9 April 2018

[32] 'Latest orders of Appointment, Transfer etc' (*Department of Justice*) < http://doj.gov.in/appointment-of-judges/latest-orders-appointment-transfer-etc > accessed 14 July 2018

[33] Law Commission of India, 'Report on Prevention of Vexatious Litigation' (Law Com No 192, 2005)

The Supreme Court has taken strict action against instances of frivolous litigation that wastes the Court's time in the past. In the case of Pradip Nanjee Gala v. STO,[34] the Court imposed the cost of Rs. 5,00,000.00 on the appellant for filing a frivolous appeal. In Vijay Malya v. Enforcement Directorate,[35] the Court imposed the cost of Rs. 10,00,000.00 on the appellant for abuse of process of law. Similarly, in the case of PGF Lit. v. Union of India,[36] the Court imposed the cost of Rs. 50,00,000.00 on the petitioner for abuse of process of law.

There are several enactments that aim to tackle the issue of frivolous litigation. In the Code of Civil Procedure, 1908, Order VII Rule 11 gives powers to courts in certain circumstances to reject the plaint. If courts exercise these powers strictly, the frivolous petitions may be thrown out at the threshold. In the Code of Civil Procedure, 1908, Section 35-A provides for compensatory costs in respect of false or vexatious claims or defenses. The maximum limit of the costs is Rs. 3000 or not exceeding the limits of its pecuniary jurisdiction, whichever amount is less. Though, this maximum limit of the cost must be increased and fixed up to two lakhs. In this regard, the necessary legislative amendments must be done by the legislature. Similarly, Section 35-B provides for imposition of costs for causing delay, wherein there is no limit on costs; the Court must only suffice the test of reasonability. In the Code of Criminal Procedure, 1974, Section 250 provides that in case of discharge or acquittal, the Magistrate may pass an order to pay such amount by way of compensation, not exceeding the amount of fine he is empowered to impose.

There is presently a Vexatious Litigation Prevention Bill that has been introduced in the Rajya Sabha.[37]

Frivolous or Vexatious Litigation is often filed by counsels to build pressure on the opposite party to get them to opt for settlement. Vexatious criminal litigation has the advantage of biasing a civil proceeding in favour of the complaining party. Finally, it is often a way for lawyers to get their clients to pay more to maintain the proceedings in the various forums

- Court Procedure: Complex procedure, over listing of cases, many days between hearings, lack of stringent mechanism to address delays

Some provisions, mainly adjournments are given unnecessarily by the courts which prolongs the case under consideration. The average number of listing of cases in the Courts under study

[34] (2015) 13 SCC 149.
[35] AIR 2015 SC 2726.
[36] AIR 2013 SC 3702.
[37] Bill XI of 2016.

shall be referred to and then the average amount of time thereby given by the Courts to the cases shall be analysed to determine the limitations of the Courts with respect to hearing of cases. The consequences of a case not being heard in the Court on the day it is listed shall also be mentioned. If possible, the time period between the hearings shall also be provided for a better comprehension of the problem.

c. Disincentives promoting delinquency

i. Scant budgetary allocation viz-a-viz ever-increasing cases

Budgetary allocation for judiciary is very low in India, even less than 1%. This hampers the improvement and establishment of better infrastructure. More courts could be set up and the existing ones could be improved if there is sufficient allocation of funds. On the other hand, the utilisation of the said allocated funds can also be analysed to see where the fund money is used and why. The allocation of budget shall help to come up with additional Tribunals, Special Courts, ADR Centres and other judicial bodies. It can help to reduce the burden of cases on a single unit of the judicial system. With the rise in population and economic engagements between people, disputes are bound to rise and hence there is an urgent need to develop a good judicial infrastructure in the country.

ii. Lack of stringent statuary mechanism to address delays

The Indian Judicial System follows the Common Law System. It has to follow some of the complex procedures that inherently delay the judicial resolution process. It is then coupled with the inbuilt flaws that are used by the Counsels to further delay the process. All this goes unchecked because there is no mechanism which can prevent the cases from being classified as delayed. The Court many-a-times gives no attention to the time the case required to get resolved. No one is liable for the case getting delayed. Moreover, the Counsels prefer getting the case delayed as it ensures future income for them. Adjournments and seeking dates have become a common practice and there exist no incentive, in any manner, for either the judge or the Counsels to speedily dispose of the case.

iii. Flawed system of payments to counsels (leading to deliberate and excessive adjournments)

One of the greatest incentives for the Counsels to prolong a case is that they charge a fee for every appearance. More appearance implies more income. This gives rise to deliberate adjournments. On the other hand there is no incentive for the judge to dispose of the cases at a quick manner. Hence, many a times, the cases go on for even a couple of decades.

iv. Inadequacy of Judges

Inadequacy of judges is proposed to be studied based on the ratio of incoming and outgoing number of cases as mentioned above. However, how vacancy is affecting delays shall also be studied. The reasons causing vacancy shall be mentioned too.

v. Possibility of Judicial Activism (Patronage)

Under this sub-head, the actions that the judges can take on their own shall be discussed. It shall include increasing transparency, maintain a detailed record of the statistics of the cases of the courts and all other relevant data, enforcing a strict rule against adjournments, seeking a time-bound disposal of cases, setting a time-table for each individual case at the beginning of the case that the parties needs to adhere to, etc. A study conducted in the Delhi High Court suggested that the judiciary condoned delay in almost 20% of the cases where delay was longer than 2 years.[38]

PART 3: CURRENT LAW/GUIDELINES DEALING WITH S.138 CASES

There is a dearth of legislative framework for a massive backlog of cases related to banking and negotiable instruments particularly dealing with Sec. 138 of Negotiable Instruments Act. Due to this, the High Courts of the country are overburdened with these cases which arein turn creating a backlog of cases. One of the reasons that these petitions are flooding the High Court is that the petitioners involved, in most of the cases, are affluent persons who do not wish to appear before the Courts of Metropolitan Magistrate [‘MM’] or consider it below their dignity to go to lower court and come rushing to High Court on mere passing of a summoning order and are successful in halting proceedings before the lower court on one or the other ground; while the kind of defences raised by the petitioners are required to be raised before the Court of Metropolitan Magistrate at the very initial stage as per law. The backlog of cases is a serious concern, with states like Calcutta having nearly 2,50,000 cases pending.[39]

Rajesh Agarwal vs. State and Anr[40], a Delhi High Court case dealt with the same issue. After discussing the nature of the offence of "dishonoured cheques" and the differences between a

[38] Vidhi Centre for Legal Policy (n 19).
[39] Esha Roy, ‘In Calcutta High Court, 2,50,000 cases pending and counting’ (*The Indian Express*, 2 April 2018) < http://indianexpress.com/article/cities/kolkata/in-calcutta-high-court-250000-cases-pending-and-counting-5119980/?utm_source=whatsapp&utm_medium=social&utm_campaign=WhatsappShare > accessed 8 April 2018.
[40] 2011(2) Crimes711.

summary trial and a summon trial, the Court laid down the procedure to be followed for offences u/s 138 N.I. Act as follows: -

i. On the day complaint is presented, if the complaint is accompanied by an affidavit of the complainant, the concerned Metropolitan Magistrate shall scrutinize the complaint & the documents and if commission of offence is made out, take cognizance & direct issuance of summons of accused, against whom case is made out.
ii. If the accused appears, the Metropolitan Magistrate shall ask him to furnish bail bond to ensure his appearance during trial and ask him to take notice u/s 251 Cr. P.C. and enter his plea of defense and fix the case for defense evidence, unless an application is made by an accused under section 145(2) of N.I. Act for recalling a witness for cross examination on plea of defense.
iii. If there is an application u/s 145(2) of N.I. Act for recalling a witness of complainant, the court shall decide the same, otherwise, it shall proceed to take defense evidence on record and allow cross examination of defense witnesses by complainant.
iv. To hear arguments of both sides.
v. To pass order/judgment.

In a recent case of 2017[41], the Hon'ble Supreme Court had a chance to discuss the object of S.138:

The object of introducing Section 138 and other such provisions, is to enhance the acceptability of cheques in the settlement of liabilities. The Drawer of cheque is made liable to prosecution on dishonour of cheque with safeguards to prevent harassment of honest drawers. The provision is said to be both punitive as well as compensatory in nature.

The offence punishable under Section 138 of the Act of 1881 is primarily related to a civil wrong and the Amendment Act [The Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002] of 2002 specifically made it compoundable. The burden of proof in such cases is on the accused in view of the presumption under Section 139 and the standard of proof is that of "preponderance of probabilities".

The Complainant could be given not only the Cheque Amount but also double the amount so as to cover interest and costs. Being quasi-criminal in nature, the provisions of Section 357 (1) (b) of the Code of Criminal Procedure, 1973 (Cr.P.C.) are also applicable. Where fine is not

[41] Meter and Instruments Private Limited v. Kanchan Mehta, AIR2017SC4594

imposed, compensation can be granted under Section 357 (3) of Cr.P.C. Thus, the object of Section 138 is not only penal but also to make the accused honour the negotiable instruments.

The Hon'ble Supreme Court in Damodar S. Prabhu v. Sayed Babalal H.[42], held that the accused could make an application for compounding at the first or second hearing in which case the Court ought to allow the same. If such application is made later, the accused is required to pay higher amount towards cost etc. It was also held in catena of judgments that since the concept of compounding involves consent of the Complainant, compounding could not be permitted merely by unilateral payment, without the consent of both the parties.

The Law Commission in its 213th Report, submitted on 24th November, 2008 noted that out of total pendency of 1.8 crores cases in the country (at that time), 38 lakh cases (about 20% of total pendency) were related to Section 138 of the Act.

One of the main objectives of the Amendment of 2002 was to have simplified and speedy trials. The process of adducing evidence has also been made simpler in cases relating to Section 138. Once evidence is given on Affidavit, the extent and nature of examination of such witness is to be determined by the Court. The Affidavit could also prove documents.

According to Section 143 of the Act of 1881, the Trial has to proceed on day to day basis with endeavour to conclude the same within six months. Affidavit of the Complainant can be read as evidence. Bank's slip or memo of Cheque Dishonour can give rise to the presumption of dishonour of the cheque, unless and until that fact was disproved.

The principle of Section 258 of Cr.P.C. can be applied and the Court can close the proceedings and discharge the accused on satisfaction that the cheque amount with assessed costs and interest is paid and if there is no reason to proceed with the punitive aspect.

Compounding at the initial stage has to be encouraged but is not debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the Court. Thus, though compounding requires consent of both parties, even in absence of such consent, the Court, in the interests of justice, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused.

[42] (2010) 5 SCC 663

In every complaint under Section 138 of the Act, it may be desirable that the complainant gives his bank account number and if possible e-mail ID of the accused. The relevant portion of the Judgment is reproduced hereinbelow: -

"In every summons, issued to the accused, it may be indicated that if the accused deposits the specified amount, which should be assessed by the Court having regard to the cheque amount and interest/cost, by a specified date, the accused need not appear unless required and proceedings may be closed subject to any valid objection of the complainant. If the accused complies with such summons and informs the Court and the complainant by e-mail, the Court can ascertain the objection, if any, of the complainant and close the proceedings unless it becomes necessary to proceed with the case. In such a situation, the accused's presence can be required, unless the presence is otherwise exempted subject to such conditions as may be considered appropriate. The accused, who wants to contest the case, must be required to disclose specific defence for such contest. It is open to the Court to ask specific questions to the accused at that stage. In case the trial is to proceed, it will be open to the Court to explore the possibility of settlement. It will also be open to the Court to consider the provisions of plea bargaining."

Due to large number of pendency of dishonoured cheque cases (over 38 lakhs), the entire credibility of the business within and outside the country is suffering a serious setback. Dishonour of cheque by a Bank causes incalculable loss, injury and inconvenience to the payee and the credibility of issuance of cheque is also being eroded to a large extent. The very purpose of the above amendments made in the Act for speedy disposal of dishonoured cheque cases is being lost. The Law Commission undertook this subject *suo motu* in view of the above circumstances and in pursuance of one of its terms of reference "to suggest suitable measures for quick redressal of citizens' grievances, in the field of law". The Commission examined the subject thoroughly along with the right to speedy trial. The 213th Law Commission Report is primarily based on Fast Track Magisterial Courts for Dishonoured Cheque Cases. The report has identified three core areas namely: Easy Access to Justice; Right to fair and Speedy trial; and Fast track courts. The Commission made the following recommendations:

(a) Fast Track Courts of Magistrates should be created to dispose of the dishonoured cheque cases under section 138 of the Negotiable Instruments Act, 1881; (b) The Central Government

and State Governments must provide necessary funds to meet the expenditure involved in the creation of Fast Track Courts, supporting staff and other infrastructure.[43]

Traditional concept of "access to justice" as understood by common man is access to courts of law. For a common man, a court is the place where justice is meted out. But the courts have become inaccessible due to various barriers such as poverty, social and political backwardness, illiteracy and ignorance etc. To encounter this problem this report has recommended provisions for fast track courts where judges would be appointed by High Court Judges which would ensure that the quality of adjudication is not compromised.

The scheme includes construction of new court rooms, appointment of ad hoc judges, Public Prosecutors and supporting staff and arrangement for quick processors. It would be appropriate to have, the existing in-service Judicial Officers to be appointed in these Courts, after giving them promotions on purely temporary ad hoc basis initially for two years, extendable by another two years or till they are promoted on regular basis. These appointments shall be made as far as possible in Fast Track Courts. Their future regular promotion shall depend on their performance in these Courts. Those Officers who are not found fit to travel on fast track, shall be off-loaded and sent back to their regular cadre. It is a joint venture of the Central Government, State Government and the High Court to tackle the problem on war footing.

The Eleventh Finance Commission recommended a scheme for creation of 1734 Fast Track Courts in the country for disposal of long pending Sessions and other cases. The Ministry of Finance, Government of India sanctioned an amount of Rs. 502.90 crores as "special problem and upgradation grant" for judicial administration. The scheme was for a period of 5 years. Out of 18.46 lakh cases transferred to them, 10.66 lakh cases were disposed of by these courts at the end of the said scheme on 31.03.2005. Keeping in view the performance of Fast Track Courts and contribution made by them towards clearing the backlog, the scheme has been extended till 31.03.2010 with a provision of Rs. 509 crores as 100 percent central assistance. Increase in the number of judicial officers will have to be accompanied by proportionate increase in the number of court rooms. The existing court buildings are grossly inadequate to meet even the existing requirements and their condition particularly in small towns and moffusils is pathetic. A visit to one of these courts would reveal the space constraints being faced by them, overcrowding of lawyers and litigants, lack of basic amenities such as regular

[43] Ministry of Law and Justice, 'Fast Track Magisterial Courts for Dishonoured Cheque Cases' (Law Comm No. 213, 2008) para 6.6

water and electric supply and the unhygienic and insanitary conditions prevailing therein. The National Commission to review the working of the Constitution noted that judicial administration in the country suffers from deficiencies due to lack of proper planned and adequate financial support for establishing more courts and providing them with adequate infrastructure. It is, therefore, necessary to phase out the old and outdated court buildings, replace them by standardized modern court buildings coupled with addition of more court rooms to the existing buildings and more court complexes

At the same time not keeping litigation as the only mode of dispute resolution, it is also necessary to incorporate Alternative Dispute Resolution mechanisms such as negotiations, conciliation and mediation, in which nobody is a loser and all the parties feel satisfied at the end of the day. The main problem being faced in this regard is that there are not many trained mediators and conciliators. Thus it is essential to impart training in mediation and conciliation not only to judicial officers but also to the lawyers. They will have to develop expertise to act as successful mediators and conciliators. We also need to provide adequate infrastructure for conciliation and mediation centres by giving them adequate space, manpower and other facilities. At the same time the concept of plea bargaining (pre-trial negotiations between the accused and the prosecution in which if the accused agrees to plead guilty for the charges leveled against him he would get in exchange certain concessions as a quid pro quo, by taking a lenient view by the courts, particularly in cases of lesser gravity) has also been introduced.

Additionally, as stated by the former Union Minister and Justice Veerappa Moily, one could also take into consideration the role played by Lok Adalats in speedy redressal of backlog of cases. We could use the practice adopted in Chennai as an example where out of 15,000 cheque-bounce cases under Section 138 of the Negotiable Instruments Act, 6,593 were disposed of in a single day through the Mega Lok Adalat which was arranged by the Tamil Nadu State Legal Services Authority (TNSLSA), Chennai.[44]

PART 4: RECOMMENDATIONS AND SUGGESTIONS

i. <u>For addressing Contemporary complications viz-a-viz digitalization of economy</u>

[44]Moily, Lok Adalat as best instrument to clear backlog (*The Hindu*, 20 July 2009) < http://www.thehindu.com/todays-paper/tp-national/tp-tamilnadu/Lok-Adalat-is-the-best-instrument-to-clear-backlog-of-cases-says-Moily/article16559161.ece. > accessed 8 April 2018

In this day and age, it is necessary to come up with legislation which can meet the requirements of a fast paced society. A redundant piece of legislation only creates further grounds for its disobedience. A Court in deciding a case pertaining to digital transactions is meant to look into:

- the need to observe the principle of upholding rather than destroying contracts,
- the need to facilitate the transacting of electronic commerce, and
- the need to reach commercially sensible solutions while respecting traditional principles applicable to instances of genuine error or mistake.

An overhaul of legislation is also required pertaining to this fact. Such overhauling should create a system more suited to the current times, with legal checks and protection for a party in an inferior bargaining position.

Such a plan should include:

a. Creating legal certainty with regard to digital transactions

Both the USA and EU Laws focus greatly on creating certainty and legal backing for digital transactions. The US Law is broader in its shape- with the US having separate Acts for computer information contracts. There are certain digital contracts which may be described differently and require a different treatment eg: payments made for stock exchange transaction, the creation of special acts for this is also necessary.

There is no certainty in law about when an electronic transaction is deemed to be complete. While the postal rule is contained in the Indian Contract Act which deems a contract to be complete when the acceptance is put in the mode of transmission, however, whether the same doctrine can be extended to an executed digital transaction which has failed intermittently is uncertain.

Courts have in cases such as the Chwee Kin Keong v Digilandmall.com[45] bought in internet advertising as a means of creating and attracting digital transactions, however, it is not certain whether such advertisements are offers or invitations to offer. This is said to be dependent on the wordings of the advertisement. From the producer side, to incentivize digital transactions, it is necessary to create a certain law dealing with this.

The RBI at present does not authorize payment gateways and only requires them to have a nodal account with the bank. This means that there is a lack of regulatory control of the RBI

[45] [2005] 1 SLR(R) 502.

over such gateways which are necessary to carry out any kind of digital transaction. They are easily able to disguise themselves and do not require any kind of approval from the RBI to function.

b. Incentivizing e-transaction methods & developing acceptance infrastructure.

For the purpose of making people use the method of e-transaction methods, we must disincentive the usage of traditional methods such as cheques. The RBI has made certain recommendations in 2013[46] for instance to reduce the amount of cheques that are in use. Certain recommendations were made in this regard which included adding extra cost to the use of cheques, putting a cap on the number of transactions as well as the number of cheques that are used by the consumers.

The reason why people prefer traditional means of payment is because they believe that they have more control over these means. An example is that of post-dated cheques ["PDCs"] where the person giving the cheque can decide when the same could be encashed. With digital transactions, this is not possible yet. Having a mechanism in place for this purpose could help increasing acceptance of this.

There is a lack of a personal element in an electronic transaction. Most transactions which take place through a website are based on standard form of contracts where the party on the other side may use mechanisms like browse wrap or click wrap licenses which require the user to agree to certain terms and conditions before proceeding to a website. These must not be enforced by courts as they create a situation of asymmetric information.

The usage of digital signatures in digital transactions makes them safer, however, obtaining a certificate for the use of such signature is complex and not each layman would be able to obtain the same. While it is necessary to ensure protection for all persons using digital transactions, it is also needed to simplify them in terms which can be easily understood. It has also been suggested to attach a digital signature to each Aadhar Card to facilitate ease of doing business.

There is a severe lack of digital infrastructure in India. Even where internet access and computers exist, there is lack of electricity to use them.

[46] Reserve Bank of India, 'A Discussion Paper on Disincentivizing the use of Cheques' (*RBI*, 2013) < https://rbidocs.rbi.org.in/rdocs/PublicationReport/Pdfs/DPDC300113_F.pdf > Accessed 14 April 2018

c. Development of a non-discriminatory approach to electronic records as evidence for cheque-bounce cases, i.e. removal of paper based obstacle to electronic records

Evidence recorded or stored by availing the electronic devices has been granted the evidentiary status. For example, the voice recorded with the help of a tape recorder, the digital voice recorder, digital cameras, digital video cameras, video conferencing have been added to new evidentiary assets. The position of video conferencing, call records relating to cellular phones and e- documents in the form of SMS, MMS and e-mail in India is well demonstrated under the law and the interpretation provided in various cases. In State of Delhi v Mohd Afzal[47]., it was held that electronic records are admissible as evidence. If someone challenges the accuracy of a computer evidence or electronic record on the grounds of misuse of system or operating failure or interpolation, then the person challenging it has to prove the same beyond reasonable doubt. The Court made an observation that mere theoretical and general apprehensions cannot make clear evidence defective and inadmissible. This case has very well demonstrated the admissibility of electronic evidence in various forms in Indian courts.

Although changes made in the Indian Evidence Act and the creation of the IT Act have created a legal basis for the usage of electronic evidence, the enforcement framework remains weak. As elaborated by the Supreme Court in the case of State of Punjab v. Amritsar Beverages Ltd[48]., courts are still apprehensive about the use of electronic evidence in dealing with matters because of lack of scientific knowledge and understanding of nuances of such evidence. It is necessary to employ persons with expertise in such evidence through a bureau to increase credibility thereof.

The Court in the aforementioned case also lays emphasis on the failings of the IT Act. This Act is more of a reactive mechanism than a proactive one. Amendments are brought about only when criminals discover new ones to bypass the law. It is necessary to employ a technical body of persons to contemplate reforms at periodic intervals.

The lower judiciary particularly lacks awareness about the usage of the special sections of the Indian Evidence Act which are meant for electronic evidence. They continue to apply Sections 63 and 65 of the Evidence Act which pertain to documents and not electronic evidence despite the insertion of Section 65A and 65B by the IT Act of 2000. Judges also need to be trained in these electronic nuances to reduce the discrimination in usage of electronic evidence. The lack

[47] 2003(3) 11 JCC 1669
[48] AIR 2006 SC 2820

of usage of these sections puts lesser burden on the person producing the electronic evidence to prove the credibility thereof and simple copies of such evidence can be accepted by the court. Curiously, the Supreme Court itself has accepted such an approach in the case of State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru[49]. This led to further confusion in the usage of the new sections. Although this confusion was resolved with regard to use of wiretap conversations in the case of Anvar v. P. K. Basheer[50] , with regard to digital transactions, the situation is still unclear.

d. **Feasibility of free-market and self-regulation rather than government rules to govern development and use of negotiable instruments in an electronic environment.**

The digital payment system in India is not mature enough to survive in an environment without any regulation whatsoever. But the present regulation must be drafted in a way to ensure that each participant in the transaction is made responsible to disclose all information that he possesses relevant to the transaction.

In tune with the self-regulated entrepreneurship that the government is encouraging, the system participant should be encouraged to submit a self-certification assessing and disclosing the technical risks it faces at an enterprise level that can balloon into systemic risks.

Free Regulation must not in any way affect the state of cyber security existing. Since Indian users are new to the digital environment, they are also more vulnerable and need protection, so, even if the economy was to be made subject to self-regulation, recourse to the government must always be available to ensure public faith in the same.

A great amount of capacity building is essential to ensure that even common people feel no fear in executing digital transactions. The population is not ready yet to function without middlemen. But the purpose of these middlemen must not be to impose transaction costs upon the parties in the transaction but rather, to improve efficiency of the parties..

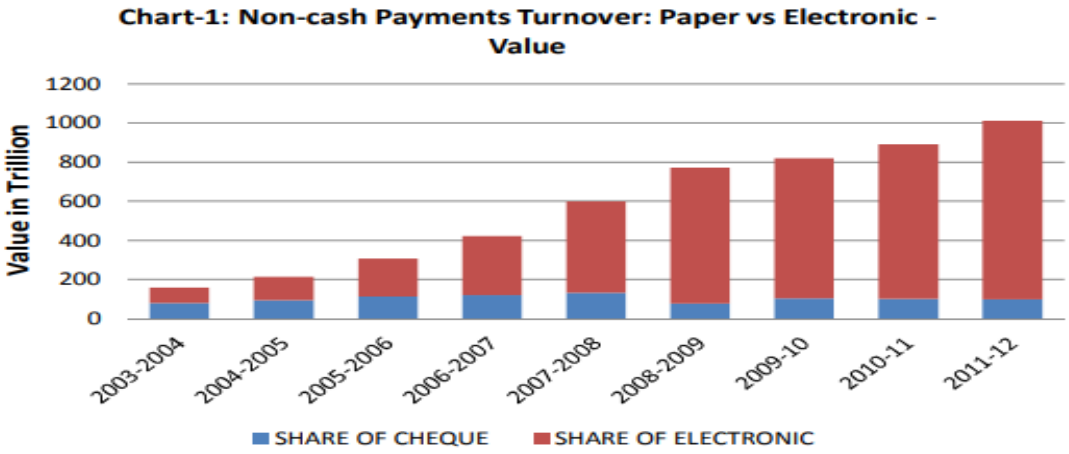
According to the Vision Document for Payment and Settlement Systems (2012-2015), all payment systems need to be developed to reduce use of cash in the economy in line with the move towards a relatively lesser cash based society and this can be done only by greater

[49] (2005) 11 SCC 600
[50] AIR 2015 SC 180

adoption of electronic modes of payments. One way to ensure this is be significant reduction of cheques and ensuring growth of electronic payments.

The inevitable decline in cheque usage has been attributed to the increase in electronic payments, and the Discussion Paper[51] sought to address the question of whether the regulation of the status quo should be left to the market forces or whether it should be managed. If it is managed, the reduction of cheque usage can be attained in a shorter period. Such an intervention will also prevent any economic strata of the society from being marginalised.

Cost and time considerations are to be taken into account along with incentives to increase electronic transactions and disincentives to reduce cheque based transactions.



The reason attributed to the high cheque usage rate in the country are "vast, low cost, and efficient cheque clearing infrastructure…as also the overall growth in the economy". Despite the development of electronic transactions, the reason why cheques are still remain at forefront of paper based transactions are due to:

- The ease of issuing a cheque, and the attached anonymity of using a bearer instrument,
- Apprehension of using a new mode of payment,
- Lack of knowledge of online transaction process,

[51] Reserve Bank of India (n. 40)(hereinafter 'Discussion Paper').

- The change in adoption of technology by the masses due to their mentality not being in line with the rapid change in technology, and the multiple interfaces/processes the customers have to interact with,
- Mismatch between supply and demand for electronic payment modes,
- Low levels of electronic transactions awareness,
- Security threat apprehension posed by electronic payments due to its global nature[52],
- Charge being imposed on initiation of electronic payments,
- Window to credit the requisite amount to be encashed between issuance and clearance of the cheque,
- Ease of exercising control over when the payment is made,
- Ease of maintaining physical records,
- The transaction ceiling imposed by an online transaction for security reasons is absent in paper-based transactions
- Home-bound individuals consider cheques to be a more personal form of gift or donation,
- Organizations accept cheques due to ease of matching payments with applications/invoices,
- Cheques are issued by organizations to facilitate making of irregular payments

Specifically, in the Indian context, the reasons for continued usage of cheques are:

- Belief that they are subject to the protection under NI Act only if they pay through cheques, despite the protection under Payment and Settlement Systems Act, 2007.
- Faster cheque clearing infrastructure in place, where the availability of 1200 (in 2003) clearing houses with small cooling period. The customers are content with the process in place.

[52] PTI, 'RBI working on regulation to curb frauds in e-transactions' (*India Today*, 3May 2016) < https://www.indiatoday.in/pti-feed/story/rbi-working-on-regulation-to-curb-frauds-in-e-transactions-600938-2016-05-03 > accessed 23 March 2018

The need for managing the decline in cheque usage-The justification for intervention to reduce cheque usage in India, prepared by The Report Target 2013: Modernising Payments in Ireland prepared by the National Irish Bank are as follows:

i. Social costs of cheque usage – especially in countries where high usage of cheque exists, and the financial costs related to cheque usage.

ii. Payment services are a network good – The percentage of population who accepts and uses electronic payment services could be managed by a decline of cheques. The rationale being that the cheque usage rate would decline if people would stop using cheques irrespective of its efficiency and expensiveness.

iii. Choice of payment mode is secondary – The mode of payment is determined largely by the sellers preference of mode of payment. For electronic payments to be bolstered, the seller should disincentivise the use of cheques and cash and replace it with an electronic mode of payment.

The Discussion Paper[53] does take note of the need to redirect the direction of payments after decline in cheque usage occurs into electronic payments. Despite the appreciation of all the aforementioned factors, causes, and possible solutions, the rate at which cheque usage has been discouraged has been slow despite lower cost and efficient electronic mode of transactions existing.

Developments in Electronic Payments: The various modes of electronic payments are:

i. Electronic Clearing Service (ECS): The Discussion Paper[54] covers the scope of National Electronic Clearing Service, and Regional Electronic Clearing Service. The functionality of the two variants of ECS, ECS (Credit) and ECS (Debit), are discussed. The use of Post-dated cheques (PDCs) to collect periodic instalments from borrowers for ECS (Debit) by insurance and loan companies are discussed as well.

ii. National Electronic Fund Transfer (NEFT): This facility is used for domestic fund transfer requirements. Its salient features like penal interest provision for delayed credit to beneficiary account or lack of minimum or maximum amount limitations have been discussed.

[53] Discussion Paper (n. 40).
[54] ibid

iii. Real Time Gross Settlement (RTGS) system: Both inter-bank and customer transactions with transfer of money occur on a real time basis. Such settlements are not subject to any waiting period. It also facilitates gross settlement, where the transaction is settled on a one to one basis. Any inter-bank payments and customer transactions above Rs. 2 Lakhs can be processed through this system.

iv. Inter-bank Mobile Payments (IMPS): This system facilitates inter-bank transfer of funds through mobile phones.

v. National Automated Clearing House: This is one of the prospective substitutes for the cheque system as it has the capacity to electronically manage Debit mandates.

vi. Aadhar Bridge Payment Systems (ABPS)

Both RBI and private banks are attempting to create awareness regarding the safety, security, and ease of operations using various platforms which facilitate electronic transactions.

Multi-pronged approach for cheque disincentivization

The Discussion Paper[55]is not ignorant of the fact that positive reinforcements for electronic payments alone will lead to reduction in cheque transactions. However, it is highly optimistic that the ends can be attained forcefully by reinforcement of the aforementioned measures. A multi-pronged strategy is visualised to ensure that upon reduction of cheque based transactions, the public does not transition to cash-based payments as it defeats the purpose of accountability and ease of transaction. Banks are a major stakeholder in the economy that can affect this process as they are the facilitator of cheques.

The strategies to reduce cheque usage and increase adoption of electronic payment services are as follows:

i. Segment the users and set suitable targets –

The first task is identifying the cheque using population and specifically developing disincentives, while being targeted toward the electronic mode of payment which best fits their requirements. Financial literacy efforts through programs like Electronic Banking Awareness and Training (e-BAAT) will ensure that the interim process to ensure adoption of electronic transactions will go a long way. The segmentation is done on the basis of the parties who are at the ends of the transaction – person to business, business to government, government to

[55] ibid

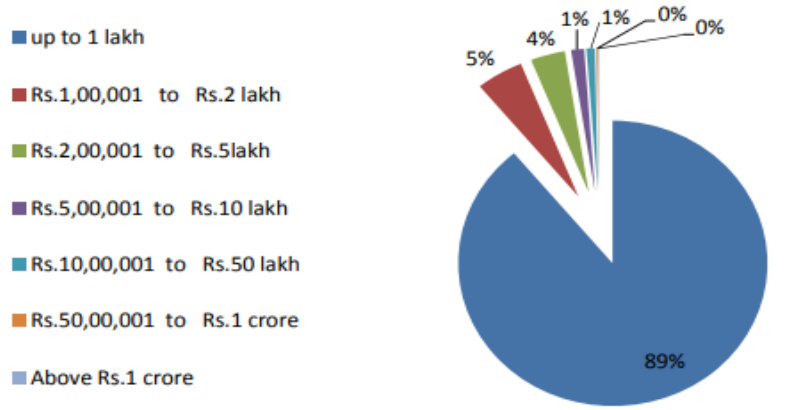
person, etc. These segments need to collectively work with banks in order to reduce cheque usage.

ii. Total stoppage of cheques above a threshold limit –

Prescribing a cut off in value terms, especially for current account cheques was recommended with illustrations of various countries that have implemented the method and have yielded results.

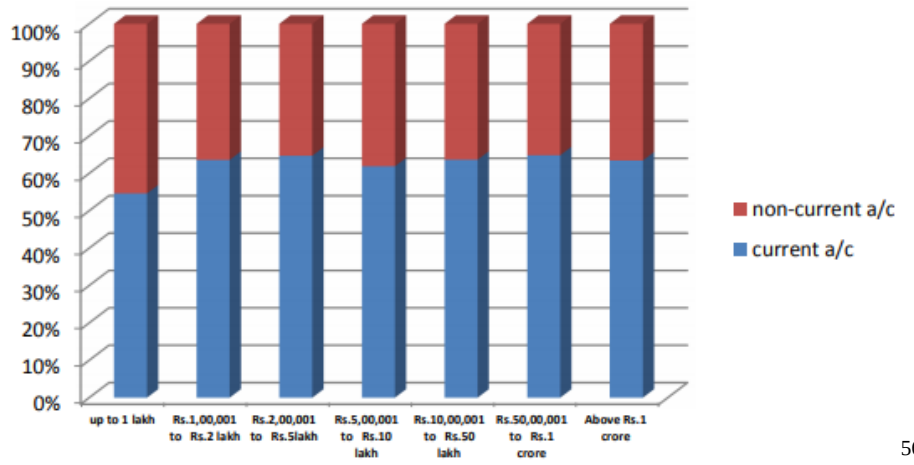
It has been mandated that all payments above Rs. 10 Lakh between RBI regulated entities and in RBI regulated markets are to be mandatorily made through electronic modes of payments. This is a welcome measure in light of the value above which the funds are expected to be transacted electronically. However, an analysis of the volume of cheques cleared through MICR Cheque Processing Centres (CPCs) across the country during the first half of the financial year 2012-2013 reflected approximately 89% of the cheques cleared through these centres to be below Rs. 1 Lakh.

Chart-3: Cheque Volume - As per value-band of instruments



The same study revealed that about 54% of the cheque volume belong to the current account related accounts, which utilize post-dated cheques as a common tool for transfer of funds. The remaining percent pertain to savings bank account, government accounts, demand drafts, etc.

Chart-4: Share of current account cheque volume



[56]

The reason for segmentation of the society was in order to understand the cheque usage pattern across the aforementioned segments – individuals, businesses, and governments – and their rate and value of transactions with each other. Before mandating an upper threshold limit, the data pertaining to the segments and their cheque usage rate and pattern should be thoroughly understood in order to prevent detrimentally affecting the interests of the small users to meet the larger ideal of reduction of cheque usage.

iii. Set limits or levy charges on issue of cheque books to account holders –

The Discussion Paper[57] stated that this dilemma is to be resolved by applying a limit to issues of cheques to account holders. The imposition of such rates should be steep enough to discourage its usage. Highlighting the extract segment to which issuance of cheque could be curtailed to would eliminate a lot of debate that exists, as these are stakeholders who have an alternative form of transacting funds as opposed to smaller businessmen, petty traders, micro and mini industrialists who use cheques as security for taking delivery of goods and or selling their product on credit, in order to keep their business running[58]. The nominal charge levied on the bigger players do not deter or impede cheque usage, and in order to effectively reduce cheque issuance by such institutions, either a larger charge should be levied on each cheque leaf, or they should be given a compelling incentive to migrate transacting from cheques to electronic transactions.

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[56] ibid
[57] ibid.
[58] 'Incentivise usage of electronic payment systems before dis-incentivising usage of cheques' (*Moneylife*, 14 Feb 2013) < https://www.moneylife.in/article/incentivise-usage-of-electronic-payment-systems-before-dis-incentivising-usage-of-cheques/31262.html > accessed 23 May 2017 (hereinafter 'Moneylife')

iv. Levy of charges on cheque usage – by both issuer of cheque and the beneficiary

The low cost associated with cheque payment is due to the drawer not bearing any charges for such issuance. If this were to be remedied and if the drawer were to be charges when cheques are cheques are issued, the rate of cheques being issued would reduce considerably and more individuals would turn to alternative methods of payment which would impose a low transaction cost. Another recommendation is imposition of a collection charge on the beneficiary of the cheque. If these move were to be adopted along with incentivizing electronic transactions, and imposing charges on cash withdrawal, then the combination of all these measures would meet the ideal of increase in electronic transactions and reduction of cheque usage.

v. Avoid slippage to cash transactions –

Keeping in mind the volume of cheque transactions and the ease of accessibility of ATMs across the country, any measures to reduce cheque issuance and usage should also direct efforts to ensure that there is no increase in cash transactions in the economy. The goal should not be deflected from on account of a negative externality where the measures did not take into consideration any possibility of re-direction of the payments to cash-mode.

In order to prevent such an externality, the banks have to actively discourage the use of cash and educate the society regarding the high cost of cash handling, and the reason why such measures are being adopted. To illustrate the cost of cash handling, if the banks were to inform the public regarding the cost of idle cash, maintenance of currency chests, cost of cash movement (transport, security, insurance, etc.), and finally what the customers directly incur in terms of the cost of cash dispensing from ATMs, the fraction of society which is in a position to electronically transmit funds would migrate from cash and paper based transactions to electronic transactions which incur lesser transaction costs. The social cost of cash transactions to the economy as a whole should be conveyed to the citizens in order to prevent an information asymmetry and ensure that there is concurrence on the action taken to the largest possible extent to ensure efficiency in the economic transactions.

Making electronic payment channels free of all charges sounds like a prospect which will result in losses being incurred initially. Rendering services at no cost to the customers in addition to financial literacy amongst the citizens, as to why it is better for the collective economy if there is a shift from a paper based transaction system to an electronic transaction system, will attract sufficient customers who will avail the services of electronic platforms which facilitate

transactions. This will result in the losses being recovered in a short span of time as the psychology of the people will be sustainably shifted to using online transactions.

A recommendation that could tremendously reduce the cost of a bank's operations is offering services to the consumers by way of reward systems or other monetary incentives that can be availed only upon shifting to an electronic platform for transactions.

Another important observation made by the Discussion Paper[59] is that in order to prevent the corporate users and large corporations who deposit large amounts of cash, all the banks in the economy collectively have to act to discourage cheque usage and charge heavily to remedy the status quo. If it is an act that is done sparsely across the banking sector[60], the large depositors will easily shift their activities from one bank to another. If such a requirement were to be mandated by the RBI, then the measure will have a larger impact.

Action Points – General Comments

The general comments are three pronged and aim to meet three very important objectives:

- Disincentivise cheque usage,
- Incentivize greater adoption of electronic payment modes,
- Eliminate migration of the public to cash based transactions (which will occur as an externality to the first two objectives if due measures are not taken to prevent it)

i. Setting of targets for implementation:

By setting target dates, with further division into phases on account of the various societal stratum, the implementation of the reduction of cheque issuance can be conducted. The targets set for urban and rural areas should be set, keeping in mind the financial interaction between individuals, institutions, and governments.

ii. Dispute resolution and complaints redressal:

The technological requirements and user's operational expectations should also be considered when setting up the electronic payment services, in order to make the migration from cheques

[59] Discussion Paper (n. 40) 6.
[60] The Logical Indian Crew, 'From This Month, SBI Card Users Need To Pay Rs 100 On Cheque Payments Less Than Rs 2000' (*The Logical Indian*, 19 Apr. 2017) < https://thelogicalindian.com/story-feed/awareness/sbi-cheque-charges/ > accessed 30 April 2017; 'SBI Card To Penalise Customers For Paying Back Through Cheques' (*Outlook India*, 18 Apr 2017) < https://www.outlookindia.com/website/story/sbi-card-to-penalise-customers-for-paying-back-through-cheques/298568 >accessed 29 April 2017

to electronic transfer user-friendly for both technologically adept citizens as well as the least aware of users. Any complaints arising out of the same should be easily redressed. If a dispute arises, there should be documentation by way of e-invoicing, for example, to ensure records evidencing the payments made. Incorporation of such payment details in bank account statements facilitates record-keeping requirements of customers, with lucid information regarding the transactions.

iii. Protection for bouncing of electronic payments –

The protection against dishonour of cheque on account of insufficiency of funds conferred on citizens by S. 138, Negotiable Instruments Act, is conferred on the citizens under S. 25, Payment and Settlement Systems Act, 2007 against dishonour of electronic funds transferred for insufficiency of funds in the payer's account. The existent problem is lack of awareness of these protective provisions. It is at the behest of the banks that such information can be dispersed to the citizens in order to ensure awareness regarding each user's legal rights, responsibilities, and penalty for non-compliance.

iv. Widespread accessibility to electronic payments –

The mismatch between demand and supply for payments as a network good would be plugged and rectified only when there is a strong network effect, and there is high growth in electronic payments. Greater awareness needs to be created about the availability of payment options, and the card acceptance infrastructure needs to be enhanced for accepting all types of payments.

v. Customer liability –

There needs to be absolute clarity regarding the extent of customer's protection, obligation, and liability. The information asymmetry should be mitigated as it will increase the risk of unauthorized transaction, and the customer's liability to bear the loss. This could greatly hamper the objective sought to be met by implementing measures to increase electronic transfers.

The Discussion Paper[61] brings clarity into the inefficiency of cheques when compared to electronic payments:

i. Cheques have high printing and processing costs,

[61] Discussion Paper (n. 40)

ii. Requires manual interventions in the form of encoding and keying in cheque details,

iii. Poses significant reconciliation challenges in terms of payables and receivables,

iv. Needs to be preserved for longer period as per legal and regulatory requirements,

v. Has longer clearing and processing cycle,

vi. Possesses inherent liquidity and credit risks[62]

In stark contrast, the electronic payments eliminate all the aforementioned inefficiencies and provide a more secured mode of transaction which is faster and efficient at the fraction of the cost. However, the problem which has been highlighted in light of the societal fragmentation in terms of information asymmetry imposes an onus on bankers who have to educate the customers regarding the inefficiencies of paper based transactions and how the economy as a whole will stand to benefit if the objectives discussed in the Discussion Paper[63] were met.

An idea that has been proposed is to consolidate the clearing locations of cheques into fewer grids, which will minimise the cost of both system operators as well as system participants from a systematic perspective. Banks will benefit from economies of scale as the grid CTS obviates the need for establishment of inward cheque processing infrastructure at various clearing locations. The subsuming of settlements into a single settlement will reduce the liquidity requirements for the banks, inclusive of opportunity costs. This will also reduce the cheque processing fee, reduction in operational overhead, elimination of clearing differences and reconciliation issues. The introduction of technology into the clearance and settlement scheme will reduce the recurring processing costs, although it will involve a capital expenditure of establishing the technology, and working capital expenditure to educate the citizens who will be availing the services of the technology.

This process is easier said than done in light of the consumer apprehension to change from a traditional mode of transaction which has been in place since 1770's. This can be remedied by education the citizens regarding the high cost of cash transactions on each stakeholder in the economy, and on the economy overall; instilling faith in the populace that there exists laws that provide the same protection as that under S.138, Negotiable Instruments Act; and by ensuring

[62] G Padmanabhan, 'Random payment system issues of systemic relevance for the new year' (BIS, 2 Jan 2013) < https://www.bis.org/review/r130111h.pdf > accessed 21 June 2017 (hereinafter 'Keynote Address')
[63] Discussion Paper (n. 40)

that there exists adequate available amenities to facilitate electronic transactions across the country despite reduction in usage of cheques[64].

This brings into picture an unresolvable dispute regarding the policy gap[65] that exists in place where the attempt to incentivize electronic transactions over withdrawal of cash from ATM's and cheques. That is however not within the scope of this literature review as it deals with the need to ensure accessibility of technology across the country, which we have sufficiently established would require a one-time capital expenditure. The penetration of electronic transactions can be ensured by using balanced incentives[66].

PART 5: POTENTIAL BENEFITS FROM INCORPORATING RECOMMENDATIONS

a. Optimization of current investments:

When companies have cases pending for a long time before the courts to enable them to obtain money from their debtors, companies lack access to the same money, and the opportunity cost of making more investment using that same money is high. Courts often compel the debtor to deposit some amount of money with the court. This money stagnates whilst the proceedings are still going on. It is very rarely that the court allows for such money to be invested instead of lying idle with the court. Hence, owing to inordinate delay, the investment is wasted. Further, for smaller companies such a waste of investment could be the last blow, due to which they may have to shut down. As it is necessary to implead companies as parties in S.138 cases[67], companies disclose these cases against them in their financial reports, tainting the image of the company in bad light, this is further greatly detrimental only to small companies and start-ups which need to have a clean slate to ensure greater investment. Repeated reflection of such pending cases which is a result of the delay caused in courts, and does not do well for the company's image, reducing the returns it gives on its existing investments as well.

b. Creation of new investments:

Strengthening the ideas of due process and justice is necessary to secure development in all states, which is why the United Nations General Assembly has repeatedly urged developing

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[64] Keynote address (n. 56)
[65] Ashish Das, 'Incentivising ATM-cash and cheques over electronic transactions - A policy gap' (*Department of Mathematics, IIT Bombay*, Jan 2016) < http://www.math.iitb.ac.in/~ashish/workshop/TechReport2016.pdf > accessed 13 June 2017 (hereinafter 'Policy Gap'); Moneylife (n. 52)
[66] Policy Gap (n. 59)
[67] N. Harihara v. J. Thomas, CRIMINAL APPEAL NO. 1534 OF 2017.

states to work on developing rule of law to promote greater international investment. On the same lines, the General Assembly has also urged states to adopt laws which encourage business formation.[68] Entry of global players into the Indian marketplace is increasing and the same is soon to skyrocket to about 1 trillion dollars in 2023. Most of this investment is done via digital means.[69] China, with its new transition into the digital space and e-commerce is an example, as it has seen a steep growth in investment as well. In order to continue this upward trend of investment, it becomes necessary and urgent to legitimize the same.

c. Mitigation of uncertainty / restoring public:

Public trust is crucial in maintaining the sanctity of the law and ensuring that people follow it. S.138 of the Negotiable Instruments Act must balance delicately between a creditor and a debtor, never giving too many advantages to an influential creditor or to a repeated debtor. It is extremely easy for both of them to take recourse to proceedings out of the court if the court proceedings are not incentivized. The reason to avoid out-of-court proceedings is the fact that these are more governed by power dynamics rather than actual legal provisions. Law is a public good. The public trust doctrine requires for this good to be used for the benefit of the people. To public trust, it is necessary for the system to be effective. Such effectiveness can only be achieved by making reforms in the process of dealing with such suits.

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[68] United Nations, 'Rule of Law and Development' < https://www.un.org/ruleoflaw/rule-of-law-and-development/ > accessed 23 February 2018.
[69] PTI, 'Digital Payments in India to reach $1 trillion by 2023' (*Economic Times*, 15 February 2018)

PHASE TWO

Quantification of Data from Judgements

Introduction

From an economic perspective, a Court System can be viewed as a 'Public Service Industry', as the basic purpose of a court system is to supply 'public services' by means of adjudication of disputes between parties. In pursuance, the number of cases being filed in relation to S.138 of NI Act, at a given time, represents the demand for judiciary in this regard. While, the number of cases being disposed by the courts, at a given time, indicates the supply by Judiciary in this regard.

The Equilibrium position where the Supply Equals Demand represents an Ideal situation where all the cases that have been filed has been disposed. However, with mammoth backlog of S.138 case, pending across various courts in India, the current 'Court Market' does not reflect an Equilibrium position. This Research project aims to consider various quantitative indicators (Variables) to measure efficiency of Court System and ascertain the reasons for inability to achieve the optimum efficiency as well as the means to attain the same.

Research Methodology

Quantification of Data from Judgements is a unique process of data collection. The initial step in this process would be compiling all the judgements of the delineated universe. Post which, this would involve looking into the Judgements and identifying all the key considerations that could answer the hypothesis. From these identified considerations, specific variables would be ascertained, for which data would be collected from the judgements. The data so collected shall be to analyzed using economic metric models to quantitatively prove / disprove the hypothesis.

Our delineated Universe for the project is all Section 138 Judgements delivered between 2014-2017 by the Supreme Court, the Delhi High Court, the Bombay High Court, the Madras High Court, and the Calcutta High Court. Doing so, we arrived at a dataset of 765 Judgements pertaining to Section 138. To quantitatively answer our hypothesis we narrowed down on the following variables for which data has been collected.

Variables

The identified variables for which data was collected are as follows:

1. Name of case

2. Citation
3. Has it been marked for citation (Is there an AIR/ Other Important citation available?)
4. Type of Negotiable Instrument
5. Value of the instrument in Rupees
6. Date on which Instrument was issued/used
7. Purpose of Instrument- e.g., repay the loan, to make payment for delivery received, etc.
8. Date of filing in the High Court
9. Is it Pre/ Post Amendment?
10. Date of High Court Judgement
11. Manner of Appeal in High Court (eg: CRR/ CRA/ Criminal Writ etc.)
12. Who filed the appeal? Receiver OR Issuer of instrument OR Both (cross appeal)
13. In whose favour is the judgement? (Receiver OR issuer)
14. Bench Strength
15. Is it related to digitalization? (Yes / No)
16. Number of Major High Court/ Supreme Court cases cited
17. Duration taken to dispose of the case (Date of judgement - Date of filing in High Court / Supreme Court)
18. Disposed of for procedural non-compliance.
    - Not presented to bank within time
    - Lapse of limitation period
    - Notice Void
    - Reasonable time not given to defaulter after notice to make repayment
    - Delay in filing complaint
    - Jurisdictional issues
    - Irregularity in hearing
    - Others
19. Marked as Frivolous Litigation
20. Disposed off on merits
21. Stage at which the judgment was passed
    - Filing of appeal/case
    - After the other side submitted the reply
    - After the two sides submitted rejoinders
    - After arguments were completed
22. Number of Adjournments

23. Duration Between adjournments
24. Reasons for adjournment
25. Was there an Acquital of the accused?
26. Was there a settlement between parties?
27. Was there a Conviction?
28. What was the nature of Liability imposed? (Criminal Conviction/ Civil Liability Imposed/ Both/ Not Applicable)

PHASE THREE

Empirical Analysis and Policy Suggestions and Recommendations

A data-driven Economic Analysis of backlog of cheque bounce cases, shall be undertaken quantitatively prove / disprove our Hypothesis, which are:

I. The Courts dealing with S.138 cases spend considerable adjudication time on cases which have procedural issues or cases which are frivolous.

II. There is inefficient handling of S.138 matters by Courts.

III. The Courts compromise on victim's interest of debt recovery while adjudicating cases under S. 138.

IV. Mandatory settlement as method of resolving S.138 cases is an effective mechanism to reduce the adjudication time of the Courts.

Econometric models using SPSS Software has been used to analyse the data collected to draw statistical inferences, correlations, comparative perspectives etc. Based on these empirical results, attempt has been be made to ascertain the key concerns circumventing the issue, draw reasoning, make observations and thereby provide suggestions and recommendations.

The examination in this phase demonstrates a legal analysis of the issue but concurrently endeavoring to accommodate statistics, comparative perspectives, and theoretical analysis, within the legal research framework, in order to come up with realistic and appropriate recommendatory solutions.

PART I: HYPOTHESIS ANALYSIS REPORT

In this part, we have tried to answer our hypothesis questions with the aid of the Empirical Results of the Data Analysis. We have also made an attempt to come up with relevant policy suggestions and recommendations, to address the issues at hand.

I. THE COURTS DEALING WITH S.138 CASES SPEND CONSIDERABLE ADJUDICATION TIME ON CASES WHICH HAVE PROCEDURAL ISSUES OR CASES WHICH ARE FRIVOLOUS.

OBJECT: To ascertain if the existing Indian Scenario with regard to Section 138 explicates a situation wherein Justice Delivery is delayed because of time spent on mere adjudication over procedure and frivolous litigation.

MEANS: Correlating certain Variables.

BRIEF OF FINDING:

Result: Hypothesis proved to be affirmative.

Synopsis: This hypothesis has been proven to be affirmative based on the below mentioned analogies, wherein we have tried to correlate the duration taken to dispose of cases under Section 138 to various factors (variables). These analogies are broadly divided into four categories:

1. Frequency Analysis of duration taken by the court to dispose of a case under Section 138;
2. Crosstab Analysis of duration taken by court to dispose of a case and Percentage of cases disposed of on merits;
3. Analysis pertaining to frivolous litigation; and
4. Analysis pertaining to cases of procedural non-compliance.

Based on the above four analogies we have concluded that the justice delivery system under Section 138 is delayed due to the time spent on frivolous and procedural matters and needs immediate attention. Frivolous cases which constitute 4% of the total number of cases and cases pertaining to procedural non-compliance which constitute 17.6% of the total number of cases take up considerable time of the court, which can be better utilized by the Courts to adjudicate genuine cases. With respect to frivolous litigation, we have also collected and analysed data as to which party files such cases. This is mainly in context of the 2017 Amendment Bill to the Negotiable Instruments Act, 1881 which aims at reducing the number

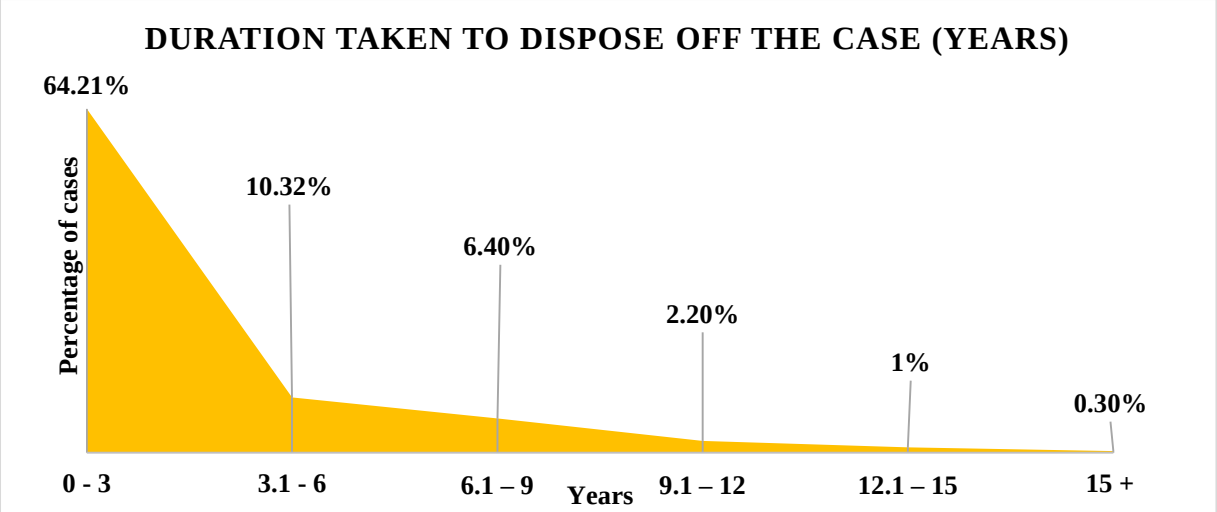
of frivolous cases. On analyzing this data, we believe that the Amendment Bill might be misguided. This is so as the amendments aims to deter only the issuer from filing frivolous litigation at an appellate forum and not the receiver. However, numbers indicate that out of the total frivolous litigations filed in an appellate tribunal 77.5%[70] of the cases have been filed by the receiver as against the issuer. In light of these figures, the new Amendment Bill is misguided as it does not address frivolous litigations filed by the issuer in the appellate tribunal, who in fact form the bulk of such cases. Not to ignore the prolonged Court process and time involved by way if this proposition. With respect to cases pertaining to procedural non-compliance, we have analyzed the different types of procedural non-compliances and the time taken to adjudicate cases falling under each category. The data show that the leading procedural non-compliance issue is related to jurisdiction. Based on our analysis, we have firstly recommended that a higher penalty may be imposed on those filing frivolous cases to ensure deterrence. Secondly, we suggest that a pre-litigation screening mechanism be adopted wherein a committee may be established to look into frivolous and procedural non-compliance matters before the same reach the court to weed out such cases and thus save the time of the court.

FINDINGS:

1. **DURATION TAKEN TO DISPOSE OF CASES UNDER SECTION 138**

Duration taken to dispose of the case (Years)	Percent
0 – 3	64.21%
3.1 – 6	10.32%
6.1 – 9	6.40%
9.1 – 12	2.20%
12.1 – 15	1%
15 +	0.30%
Not Available	15.58%
Total	100%

[70] 3% of it has been filed by the Receiver (Payee) and 1% by the issuer (Drawer)

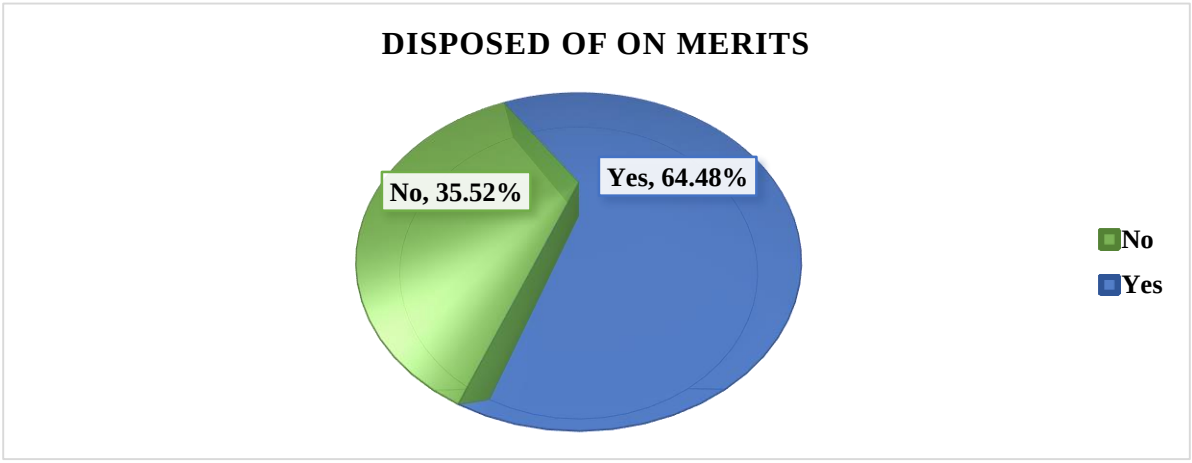


Empirical Result: The table gives a broad overview of the project. It is seen that 64.21% of the cases are disposed of within a period of 3 years but over 20%[71] of the cases are prolonged for a period more than 3 years.

Relevance: The delay in justice poses a threat to the trust that the public has in the judiciary. For the same reason, it is important for us to take measures to ensure that cases under Section 138 are disposed of within a shorter duration.

2. PERCENTAGE OF CASES DISPOSED OF ON MERITS

Disposed of on merits	
No	35.52%
Yes	64.48%
Total	**100%**



[71] 10.3% + 9.92%

Empirical Result: We observe that 64.5% of the cases are disposed of on merits as compared to 35.5% cases which are disposed of on grounds of procedural non-compliance, frivolous litigation, etc.

Relevance: The number of cases disposed of on merits should ideally be higher as it suggests that such cases constitute genuine cases which need application of judicial mind.

3. ANALYSIS OF FRIVOLOUS CASES

a. Duration taken to dispose of case and cases marked as frivolous litigation

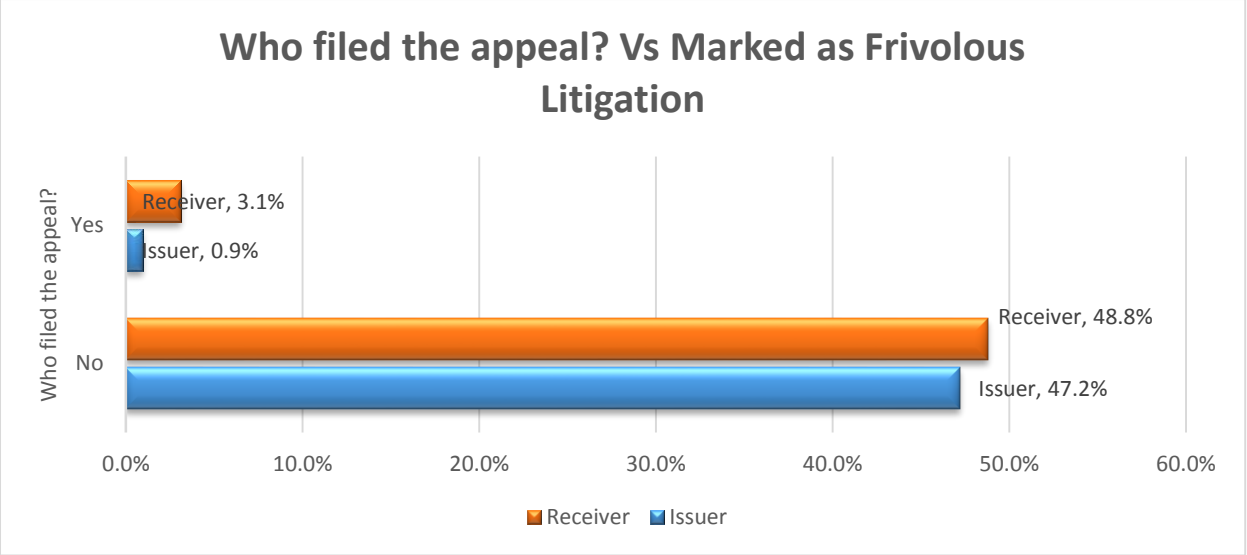
Duration taken to dispose of the case	**Marked as Frivolous Litigation**	
	No	Yes
0 – 3	61.5%	2.7%
3.1 – 6	9.7%	0.7%
6 +	9.9%	0.0%
Not Available	14.9%	0.7%
Total	96%	4%

Empirical Results: Out of the total number of cases, we notice that 4% of the total cases have been marked as cases of frivolous litigations. In that some cases have even spanned beyond three years.

Relevance: Frivolous litigation are cases with no substance and are filed by parties to vex and cause undue hardship to the other party. Time spent on even taking up frivolous matters eats into the time that could have been spent by Courts adjudicating genuine cases. The aim must be to bring the number of such cases to a null.

b. Who initiated the appeal - Frivolous litigations

Who filed the appeal?	**Marked as Frivolous Litigation**	
	No	Yes
Issuer	47.2%	0.9%
Receiver	48.8%	3.1%



Result: We notice that out of the cases marked as frivolous litigation, the receiver files 77.5%[72] of such frivolous litigation cases compared to a mere 22.5 % of the issuers who file such cases.

Relevance: At appellate forums, the trend leans towards receivers filing more frivolous cases than issuers. In the light of these figures, we believe that the 2017 Amendment Bill might be misguided. To elaborate, the object of the Amendment Bill states that it is being brought forth with the view to address the issue of undue delay and to discourage frivolous and unnecessary litigation and thereby save time. For the same, it has 2 propositions-

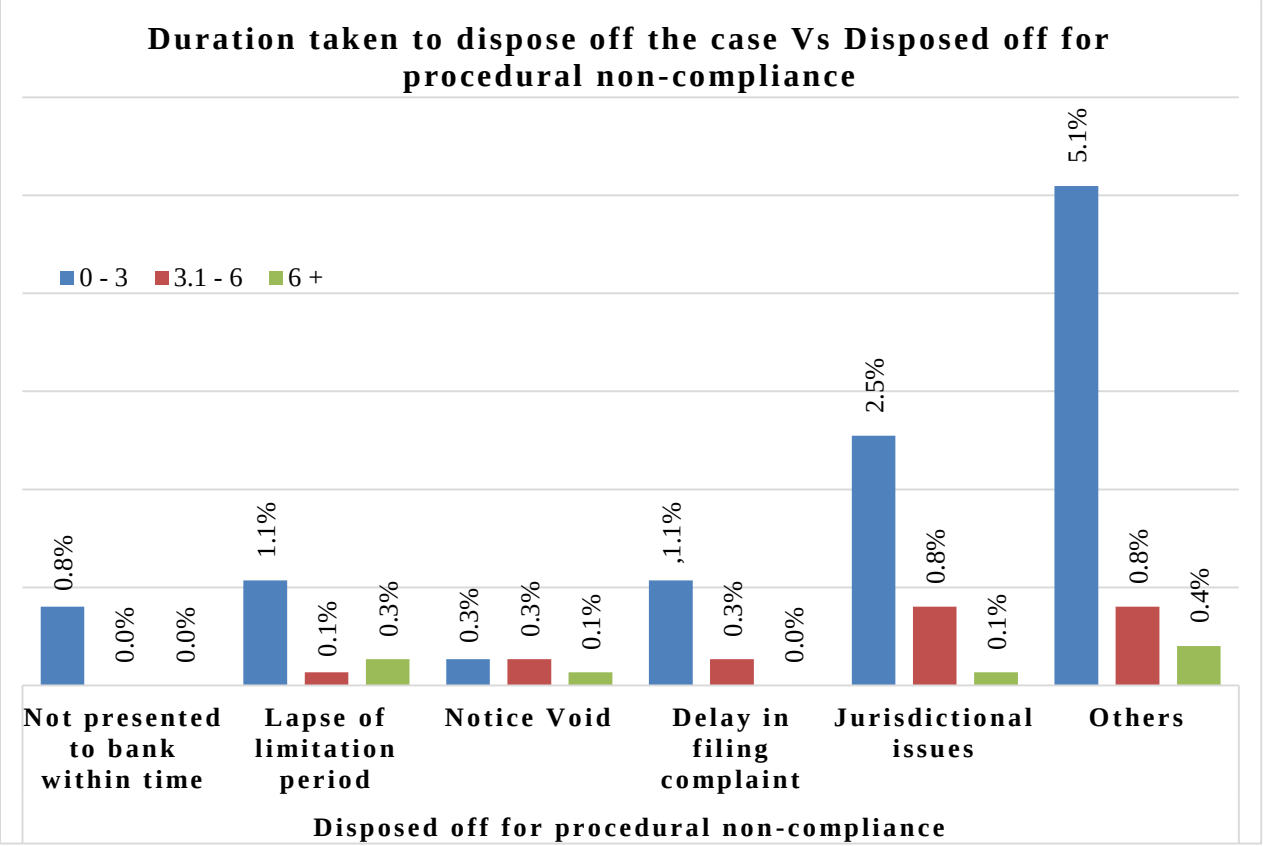
One of its propositions is to insert a new section 148 in the said Act to provide that in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent. of the fine or compensation awarded by the trial court. From our Crosstabs, it is clear that out of the total frivolous litigations filed in an appellate tribunal, 75% of the total frivolous litigation cases in an Appellate tribunal is being filed by the receiver as against the issuer. This new section only discourages frivolous litigations filed by the issuer (drawer) of the cheque, and not the ones filed by the receiver (payee). In light of the figures shown above, the new Amendment is misguided as it does not address frivolous litigations filed by the payee in the appellate tribunal, who in fact form the bulk of such cases. Not to ignore the prolonged Court process and time involved by way if this proposition.

[72] 3.1/4 * 100

The second proposition is to insert a new section 143A in the said Act to provide that the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant. The interim compensation so payable shall be such sum not exceeding twenty per cent. of the amount of the cheque. Insertion of such provision would only make the Need for speedier debt resolution less pressing and demanding, thereby providing a counter-incentive to the Courts / Judges / Parties to adopt an even more lax and sluggish approach towards the adjudication process. Further, the provisions is only going to prolong the entire debt resolution process by way increased number of hearings and administrative work involved.

4. ANALYSIS OF PROCEDURAL NON-COMPLIANCE CASES:

Duration taken to dispose of the case	**Disposed of for procedural non-compliance**						
	Not presented to bank within time	**Lapse of limitation period**	**Notice Void**	**Delay in filing complaint**	**Jurisdictional issues**	**No**	**Others**
0 – 3	0.8%	1.1%	0.3%	1.1%	2.5%	53.4 %	5.1%
3.1 – 6	0.0%	0.1%	0.3%	0.3%	0.8%	8.0%	0.8%
6 +	0.0%	0.3%	0.1%	0.0%	0.1%	9.0%	0.4%
Not Available	0.0%	0.0%	0.3%	0.1%	1.2%	12.1 %	1.9%



Legal Background: S.138 mandates certain procedures to be followed when a cheque returns unpaid. Failing to comply with these procedures, may be fatal for the maintainability of S.138 application. These procedures are as follows:

a) The Cheque in consideration must have been presented to the bank within a period of three months from the date on which it was drawn or within the period of its validity, whichever is earlier. (Not presented to bank within time)

b) The receiver has to make a demand for the payment of the said amount of money by giving a notice in writing, to the issuer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid. (Notice Void)

c) Notice has to be a valid notice. It should not be vague, lack requisite information etc. (Notice Void)

d) The issuer of such cheque must have failed to make the payment of the said amount of money to the receiver or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice. (Lapse of limitation period)

e) The complaint under Section 138 has to be filed within thirty days from expiry of fifteen-day repayment period. (Delay in filing complaint)

f) Complaint not filed in the proper jurisdiction. (Jurisdictional Issues)

Empirical Results: The results clearly show that approximately 17.6% of the total cases are disposed of on the grounds of procedural non-compliance. The main ground for procedural non-compliance is related to jurisdictional issues comprising 26.1%[73] of the total procedure cases. There are various types of procedural non-compliances such as not presenting the instrument to the bank within the stipulated time, filing of cases post the limitation period, when the notice which is to be issued to the other party is void, delay in filing of the complaint and jurisdictional issues. We observe that the main ground of procedural non-compliance is related to jurisdictional issues. On analyzing the data, we observe that the percentage of procedural non-compliance cases that span over 3 years is 22% which is a reason for concern.
Relevance: The aim is to reduce the time taken to dispose of cases pertaining to procedural non-compliance cases as these cases do not involve a legal issue which need application of mind by the judge. 22%[74] is a large percentage of cases and the aim must be to bring to reduce the time taken to dispose of these cases so that this time can be better utilized by the Courts.

Suggestions:

1. **Higher penalty for frivolous cases** –

Around 4% of the total cases have been marked as frivolous and even disappointing is that 22.6%[75] of these frivolous litigations have spanned for durations beyond 3 years. This is unwarranted and uncalled for and the number of frivolous cases have to be reduced to zero. For this we propose higher penalties to be imposed on those filing frivolous cases to deter them from doing so.

2. **Establishment of a Section 138 Committee** –

In light of our findings, it is suggested that a mechanism to filter out frivolous litigations and procedural non-compliance cases at a pre-litigation stage is required. Section 138 Committee is proposed to be established for achieving this purpose. This would essentially function as a compulsory pre-litigation screening mechanism, wherein the committee would review the cases prior to commencement of litigation process and give their comments as to whether the

[73] 4.6/17.6 * 100
[74] Frivolous cases and procedural non-compliance cases.
[75] 3.2/14.1 * 100

case is frivolous or has procedural disabilities which might be fatal to the maintainability of the case or whether it warrants adjudication on merits etc.

This mechanism is similar to the establishment of a Family Welfare Committee by the apex Court in Rajesh Sharma & Ors v. State of U.P. & Anr.[76] to deal with cases under Section 498A of the Indian Penal Code, 1860 which deals with cruelty by the husband or his relatives inflicted on the wife.

Model of the Committee

The same model can be used to set up a committee which would look into Section 138 complaints and function under the District Legal Services Authority.

a) Composition of the Committee: The Committee would consist of one para legal, an advocate who deals mainly with cheque dishonouring cases, a retired judge who is experienced with respect to Section 138 cases and a retired bank manager who understands the nuances of the working of cheques and reasons for dishonor.
b) Role of the Committee: The main functions of the Committee would include the following –
    - Interact with the parties to encourage settlement.
    - Understand the facts and circumstances of the case and summarize the same.
    - Issue an opinion as to whether the matter is frivolous or concerns an issue of procedural non-compliance which could be fatal to the maintainability of the case.
c) Procedure of the Committee: The complaint under S. 138 cases would first be heard by the Committee which would try to convince the parties to settle the matter. Additionally, it would read and analyze the facts of the case and issue an opinion, in form of a report, stating whether the case warrants adjudication on merits or whether it is a frivolous / procedural non-compliance case. This report must be given within 2 weeks of filing of the complaint. The same report would be forwarded to the court listening to the matter. The report would only be recommendatory in nature, with the object of alleviating the judiciary's burden. The report aids the judiciary to decide whether it wants to take up the case or not.
d) Benefits of establishing such a Committee: Establishment of such a committee would be beneficial for the following reasons –

[76] Rajesh Sharma & Ors v. State of U.P. & Anr., AIR 2017 SC 3869.

- the court will be in a better position to understand the nature of the cases as the committee has already reviewed and appended their prima facie conclusion of the nature of cases, prior to filing of those in the Court.
- Encourage out of court settlement thereby saving the time of the court and the parties.
- Provide for a speedier and more cost effective method of dealing with Section 138 cases.

3. **Revisit the 2017 amendment to the Negotiable Instruments Act, 1881** - which aims to reduce undue delay in resolution of s.138 cases and reduce the number of frivolous litigation cases. As already discussed above, we believe that the amendment bill might be misguided. We suggest that this Amendment must be revisited based on the above mentioned reason.

4. **Revisit the 2015 Amendment to Section 138 -** Additionally, to deal with jurisdictional issues, we could relook the 2015 Amendment to s.138 and test whether the same has any nexus with jurisdictional issue being the biggest ground for procedural non- compliance. This could be the area where there is scope for further research.

II. THERE IS INEFFICIENT HANDLING OF S.138 MATTERS BY COURTS

OBJECT: Justify quantitatively through the data collected that there is inefficient handling of S.138 matters by Courts.

MEANS: Correlating the following Variables

BRIEF OF FINDING:

Result: Hypothesis is proved to be affirmative.

Synopsis: Based on the below mentioned analogies which correlate the duration taken to dispose of the case with the number and reasons of adjournments, it is seen that the duration between each adjournment can in 28.2% be more than 3 months which prolongs the time taken by the court to hear and decide the matter.

We have also analyzed the major reasons for adjournments; the major cause is that the matter has been listed for a particular date but the same does not reach in the Court, this constitutes 18.2% of the cases related to adjournments. A detailed table along with the reasons is below mentioned in a table and analyzed further.

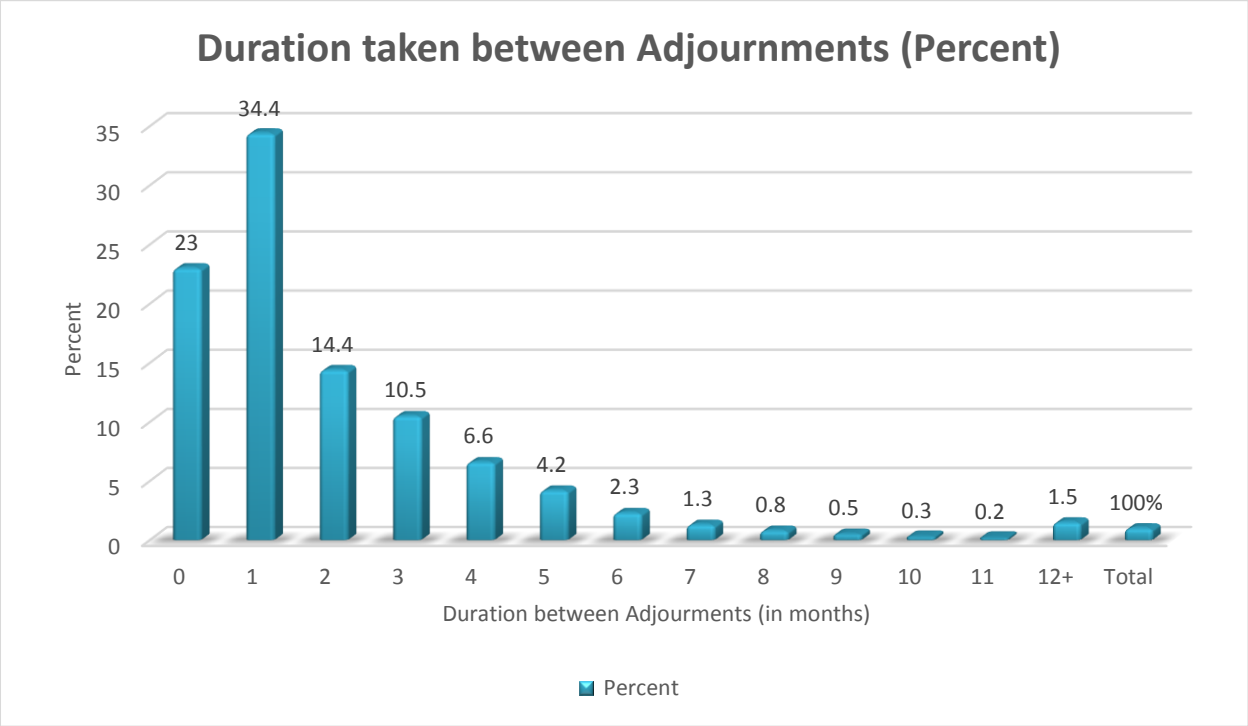
We suggest that a specialized tribunal be set up to look into cases pertaining to Section 138 to reduce the number of cases the court has to deal with. A tribunal comprising retired judges and bank practitioners could preside over the proceedings to provide speedy redressal as they would be dealing only with Section 138 cases. Additionally, we suggest that a strict timeline similar to the Insolvency and Bankruptcy Code, 2016 be prescribed in dealing with cases under Section 138.

FINDINGS:

1. DURATION TAKEN BETWEEN EACH ADJOURNMENT

Duration taken between each Adjournment (in months)	Frequency	Valid Percent
0	509	23.0
1	761	34.4
2	319	14.4
3	232	10.5
4	147	6.6
5	93	4.2
6	50	2.3

7	29	1.3
8	18	0.8
9	10	0.5
10	7	0.3
11	4	0.2
12+	34	1.5
Total	2213	100%



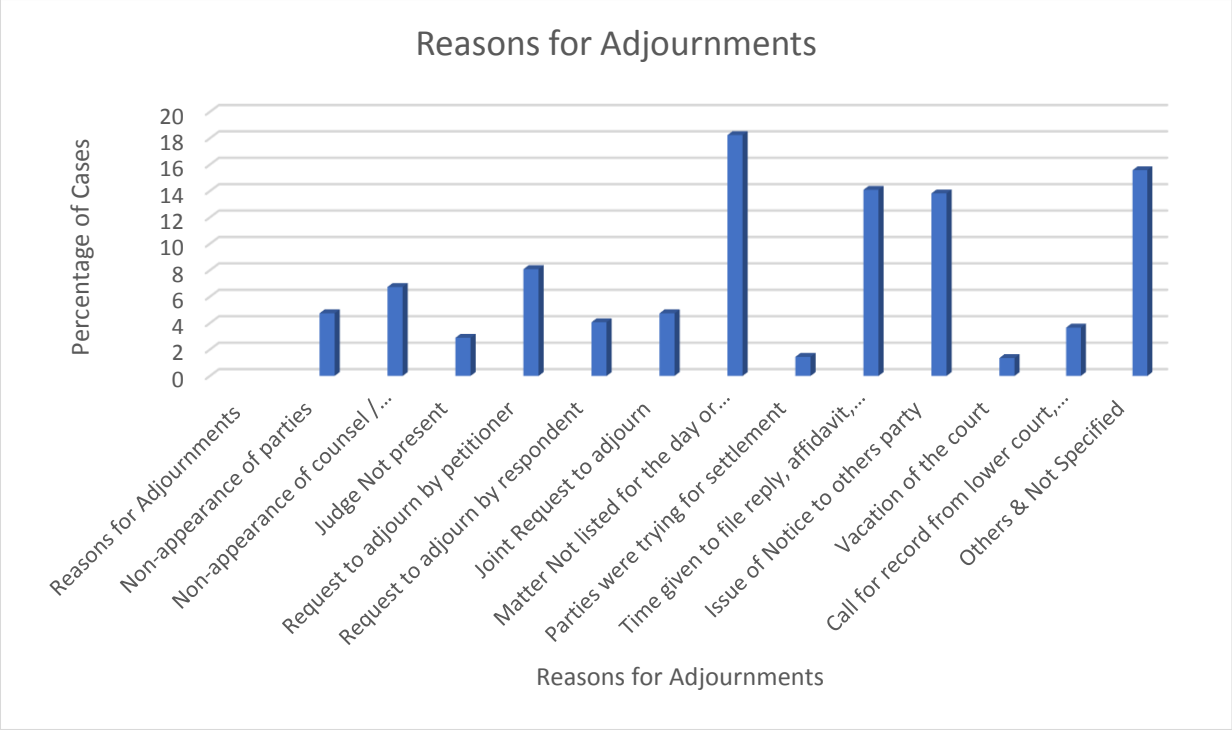
Empirical Result: We observe that in over 28.2%[77] of the cases, the duration between the adjournments has been more than 3 months which is alarming. The time period between adjournments must be reduced to ensure speedy grievance redressal.

Relevance: Adjournments is an important factor that leads to delay in dispending justice. With Courts giving adjournments for such long duration, the case drags on for a very long period of time and efforts must be made to reduce the time period and number of adjournments that Courts can give.

2. REASONS FOR ADJOURNMENTS

[77] 10.5 + 6.6 +4.2 +2.3 +1.3 +0.8 +0.5 +0.3 +0.2 +1.5

REASONS FOR ADJOURNMENTS	Frequency	Percent
Non-appearance of parties	105	4.7
Non-appearance of counsel / Unavailable Counsel	149	6.7
Judge Not present	64	2.9
Request to adjourn by petitioner	179	8.1
Request to adjourn by respondent	90	4.1
Joint Request to adjourn	105	4.7
Matter Not listed for the day or matter did Not reach	404	18.2
Parties were trying for settlement	32	1.4
Time given to file reply, affidavit, counter affidavit, rejoinder, amend pleadings etc.	312	14.1
Issue of Notice to others party	306	13.8
Vacation of the court	30	1.4
Call for record from lower court, Procedure [court fees etc.]	81	3.7
Others & Not Specified	345	15.6
Not Applicable	7	0.3
Not Available	6	0.3
Total	2215	100.0



Empirical Result: From this table it is clear that the main reason for adjournment is that the matter is listed for a particular date but the same does not reach constituting 18.2% of the total reasons for adjournment. This is followed by 14.1% of the cases which are adjourned on account of the time given to file reply, affidavits, counter affidavits, etc. The third major reason for adjournments is that the notice is not served to the other party which constitute 13.8% of the total cases

Relevance: Adjournments are one of the primary reasons for long drawn litigations and increasing backlog of cases. Every attempt to reduce the number and duration of adjournment would prove to be beneficial in saving the time of the court and the parties alike. This section is of great relevance to understand the reasons for adjournments.

3. DURATION TAKEN TO DISPOSE OF A CASE – NO OF CASE

Duration taken to dispose off the case (Years)	
0 - 3	64.21%
3.1 - 6	10.32%
6.1 – 9	6.40%
9.1 – 12	2.20%
12.1 – 15	1%
15 +	0.30%

Not Available	15.58%
Total	**100%**

Result: Average time to dispose of a S.138 case is too long that is 4.28[78] years in comparison to other legal provisions of similar nature. for instance, IBC allows only a compressed adjudication time of 180 days.

SUGGESTIONS:

1. **Strict Timeline**:

Under the Insolvency and Bankruptcy Code, 2016 strict timeline of 180 days extendable by a maximum of 90 days is prescribed. A similar time bound process would be established to ensure faster adjudication of matters.

2. **Limit on Adjournments:**

One of the policies that we suggest is a limit on the maximum number of adjournments given by the Court along with a maximum duration within which the Court must take up the matter.

3. **Establishment of a specialized forum for adjudicating over Section 138 cases:**

A specialized forum may be established to deal solely with cases under Section 138. The composition of the forum would include retired judges and bank practitioners so that their main focus is to deal only with Section 138 cases. This would firstly reduce the burden of the Courts and secondly, due to the fact this forum would deal only with Section 138 cases, their ability to understand the nuances of such cases would be better thereby ensuring faster disposal of cases.

Such specialized forums may be of two kinds:

a) <u>Tribunalisation – Setting up of a separate tribunal / court –</u>

A separate tribunal dealing exclusively with matters pertaining to section 138 may help in fastening the process and reducing the overflowing backlog of cases. Examples of such tribunals include the National Company Law Tribunal hearing only company or insolvency cases. While Article 323B of the Constitution provides for a list of matters on which the Parliament can set up tribunals. However, in the Apex Court decision of Union of India v. Delhi High Court Bar Association[79] where the constitutional validity the Debt Recovery Tribunal

[78] Multiplying the intervals with the number of cases.
[79] Union of India v. Delhi High Court Bar Association,

was challenged, it was held, "Articles 323A and 323B are enabling provisions which specifically enable the setting up of tribunals contemplated by the said Articles. These Articles, however, cannot be interpreted to mean that it prohibits the legislature from establishing tribunals not covered by these Articles, as long as there is legislative competence under an appropriate entry in the Seventh Schedule. Articles 323A and 323B do not take away that legislative competence."

Article 246(1) of the Constitution read with Entry 46 of List I which reads "Bills of exchange, cheques, promissory notes and other like instruments."

In the same case, the provision for transfer of pending cases was challenged, the Court rejected the argument and held that, "Once a DRT has been established, and the jurisdiction of Courts barred, it would be only logical that any matter pending in the civil court should stand transferred to the Tribunal. A similar scenario occurred on the establishment of Central Administrative Tribunal."

Hence, constitution of a tribunal for section 138 cases may provide a dual solution to reduce the existing backlog of cases and save valuable adjudication time.

b) Separate Courts –

A separate division can be set up at the district and the High Court, specially dealing with section 138 cases, with a view to reduce the burden on the normal courts. The Commercial Courts Act, 2015, serves as a good example and precedent for a system where special courts and divisions were set up to deal with disputes of a unique nature. This Act was enacted with a view to achieve efficiency and speedy resolution of disputes with the rise in commercial transactions taking place every day. The Act provides for setting up of commercial courts at the district level, and Commercial Divisions and a Commercial Appellate Division at the High Court level to address these issues. Importing this set up may be useful for the problem of backlogs in section 138 cases.

Composition of specialized forum: The specialized forum would be presided by retired judges and a bank practitioner may be appointed as an expert to develop an ease in understanding of the dispute. Other examples of separate courts include the Family Courts Act, 1984.

These specialized forums have the following advantages and disadvantages –

a) Advantages of establishment of a specialized forum: The main benefits of establishing a tribunal are as follows:

- Since there is an Expert on the panel adjudicating these matters, the subject knowledge is specialized thereby increasing the efficiency of judgments.
- Tribunals have been encouraged as the procedure followed in tribunals is more relaxed.
- Additionally, they are cost effective, easily accessible, speedier and free from technicalities.

b) Disadvantages of establishment of a specialized forum : The main disadvantages or hardships caused by the establishment of a tribunal are as follows:

- The forum will have to familiarize itself with the pending cases which might take time.
- May not serve as an immediate solution to the problem of backlogs as setting up of specialized forum may take time.

III. THE COURTS COMPROMISE ON VICTIM'S INTEREST OF DEBT RECOVERY WHILE ADJUDUCATING CASES UNDER S. 138.

MEANS: Frequency Analysis of the certain variables.

BRIEF OF FINDING:

Result: Hypothesis proved to be affirmative.

Synopsis: The analysis of frequencies indicates that the in bulk of the conviction cases under S.138, around 70%, the defaulter has been punished by way of imposition of imprisonment only. In cases where the court imposes punishment upon the defaulter by way of fine or by way of imprisonment and fine, the victim is in a position to recover the money owed to him through Section 138 itself with the help of S.357(1)(b) of CRPC, which allows the Court to direct the fine imposed towards payment of compensation for the loss caused to the receiver. But in cases where the sentence imposed does not include a fine but relates to only imprisonment, use of S.357(1)(b) is barred. The Court can direct the accused to pay compensation under Section 357(3) of the Code, which allows the Court to order the accused to compensate for the loss suffered by the Receiver (the debt owed to him as well as cost of litigation incurred). However, the Courts seldom invoke this provision.[80] Therefore, in such conviction cases, though a complainant could be successful in obtaining a conviction, he would have virtually lost the case, as he does not get compensation to recover the amount of the dishonoured cheque. Justice

[80] K.A.Abbas H.S.A v. Sabu Joseph & Anr., (2010) 6 SCC 230.

is served when victim is compensated. For this, it is suggested that in all cases where there is a conviction, there should be a consequential levy of fine of an amount sufficient to cover the cheque amount and interest thereon at a fixed rate of 9% per annum interest, followed by award of such sum as compensation from the fine. *Inter alia,* it is also recommended that the use of S.357(3) of CRPC must be increased by Courts in S.138 cases where the punishment imposed is only imprisonment.

LEGAL BACKGROUND:

a) **Penalty clause of Section 138 of Negotiable Instruments Act, 1881:** for an offence under Section 138, the person is punishable with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both.

b) **Section 357(1)(b) and 357(3) of Code of Criminal Procedure, 1908:** Order to pay compensation.

(1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied-

(a) in defraying the expenses properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

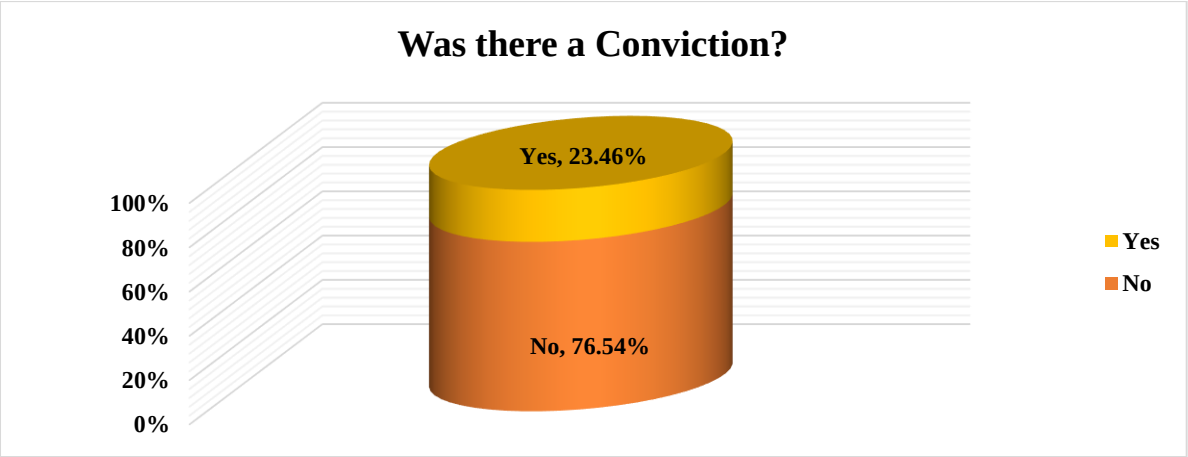
c) **Section 421(1) of Code of Criminal Procedure, 1908:** Warrant for levy of fine.

(1) When an offender has been sentenced to pay a fine, the Court passing the sentence may take action for the recovery of the fine in either or both of the following ways.

FINDINGS:

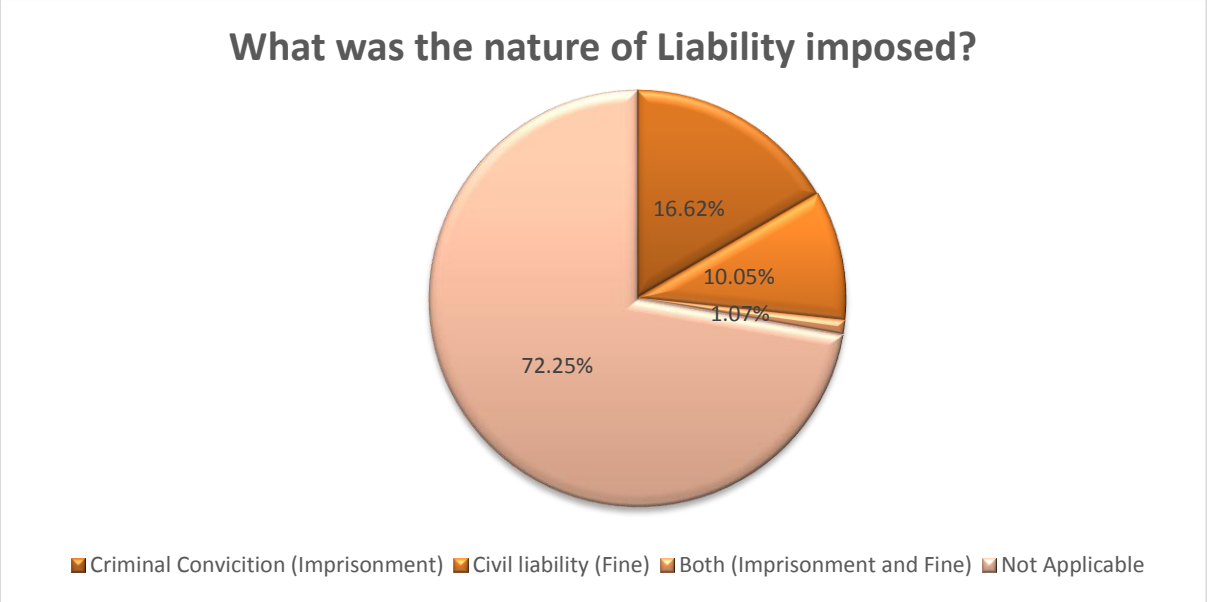
1. FREQUENCY ANALYSIS OF CONVICTION CASES

Was there a Conviction?	
No	76.54%
Yes	23.46%
Total	**100%**



2. FREQUENCY ANALYSIS OF THE NATURE OF LIABILITY IMPOSED UPON CONVICTION

What was the nature of Liability imposed?	
Criminal Conviction (Imprisonment)	16.62%
Civil liability (Fines)	10.05%
Both	1.07%
Not Applicable	72.25%
Total	**100%**



Empirical Result: The above table indicates that out the total conviction cases, which forms about 23.5% of the total cases, 70.6%[81] of the cases ended up in criminal conviction, i.e., the defaulter was punished by way of imprisonment only. The other conviction cases comprise of cases where only fine was imposed or imprisonment with fine was imposed.[82]

Relevance: Under S.138, it is upon the discretion of the court to punish the issuer of dishonored cheque with either imprisonment or with fine or both for the offence of dishonor of cheque.

Specifically talking about accommodating victim's interest of debt recovery (cheque amount) within the criminal framework of this provision, it is important to discuss about S.357 of Crpc. Sub-section (1) of section 357 provides that where the court imposes a sentence of fine or a sentence of which fine forms a part, the Court may direct the fine amount to be applied in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the court, recoverable by such person in a Civil Court.

Hence, though a complaint under section 138 of the Act is in regard to criminal liability for the offence of dishonouring the cheque and not for the recovery of the cheque amount, (which strictly speaking, has to be enforced by a civil suit), in practice once the criminal complaint is lodged under section 138 of the Act, a civil suit is seldom filed to recover the amount of the cheque. This is because of the provision enabling the court to levy a fine linked to the cheque amount and the usual direction in such cases is for payment as compensation, the cheque

[81] 16.6% / 23.5%
[82] Some of these cases wherein fines have been imposed are cases disposed of on procedure. Hence, the total percentage of conviction cases and the total percentage of cases where imprisonment, fine or both have been imposed do not coincide.

amount, as loss incurred by the complainant on account of dishonour of cheque, under section 357 (1) (b).[83] So, in cases where the court imposes punishment upon the defaulter by way of fine or by way of imprisonment and fine, the victim is in a position to recover the money owed to him through Section 138 itself with the help of S.357(1)(b).

But in cases where the sentence imposed does not include a fine, that is, where the sentence relates to only imprisonment, use of S.357(1)(b) is barred. The Court can direct the accused to pay, by way of compensation under Section 357(3) of the Code, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced. However, this clause is seldom used by the Court.[84] Further, there is no assurance as to whether the Court would order for compensation under Section 357(3) in a S.138 case as against the usual direction to route fines levied in favour of the victim by way of compensation under Section 357(1)(b) of the Code.

Therefore, in same type of cheque dishonour cases, after convicting the accused with imprisonment, some Courts have been granting compensation and some have not. The inconsistency gives rise to certain amount of uncertainty in the minds of litigants about the functioning of Courts. Citizens are not able to arrange or regulate their affairs/ determine their course of action in an efficient manner in a proper manner as they will not know whether they should simultaneously file a civil suit or not. Further, as already discussed a Section 138 case takes at least 4 years[85] to be disposed of. This gives rise to complications where civil suits have not been filed within three years[86] on account of the pendency of the criminal cases. [87]

Therefore, though a complainant could be successful in obtaining a conviction, he/she would have virtually lost the case, in the sense he / she does not get compensation to recover the amount of the dishonoured cheque.

Taking into account that S.138 is largely confined to the private parties and that victim's interest is to be considered, mere imprisonment without grant of compensation, at least for the cheque value, ultimately renders the victim remediless. Total Justice is served when victim is compensated as keeping the issuer behind bars, essentially serve no purpose for the receiver.

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[83] R. Vijayan v. Baby, (2012) 1 SCC 260, ¶ 15.
[84] K.A.Abbas H.S.A v. Sabu Joseph & Anr., (2010) 6 SCC 230.
[85] Average from data sheet
[86] Limitation period prescribes that for recovery of suit, at least 3 years is required.
[87] R. Vijayan v. Baby, (2012) 1 SCC 260.

SUGGESTION:

1. To make the provision more effective, in terms of both preserving the deterrent effect that S.138 strives to achieve and it terms of the debt resolution process, it is proposed that in all S.138 case, where there is a conviction, there should be a consequential levy of fine of an amount sufficient to cover the cheque amount and interest thereon at a fixed rate of 9% per annum interest, followed by award of such sum as compensation from the fine amount by way of S.357(1)(b) of CRPC. The above suggestion was first made by the Supreme Court in the case of R. Vijayan vs Baby & Anr.[88] The importance of payment of compensation for a victim has been time and again stressed by the Supreme Court. Some of these cases include, Kumaran Vs. State of Kerala & Anr,[89] K.A.Abbas H.S.A vs Sabu Joseph & Anr[90] etc.

2. *Inter alia*, it is also recommended that the use of S.357(3) of CRPC must be increased by Courts in S.138 cases where the punishment imposed is only imprisonment. This power is intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes and is indeed a step forward in our criminal justice system. This power of Courts to award compensation is not ancillary to other sentences but it is in addition thereto. Therefore, it recommended to all Courts to exercise this power liberally so as to meet the ends of justice in a better way. This suggestion was made by the Supreme Court in K.A.Abbas H.S.A vs Sabu Joseph & Anr as well.

[88] R. Vijayan v. Baby, (2012) 1 SCC 260.
[89] Kumaran v. State of Kerala, (2017) 7 SCC 471.
[90] K.A.Abbas H.S.A v. Sabu Joseph & Anr., (2010) 6 SCC 230.

IV. MANDATORY SETTLEMENT AS METHOD OF RESOLVING S.138 CASES IS AN EFFECTIVE MECHANISM TO REDUCE THE ADJUDICATION TIME OF THE COURTS.

OBJECT: To ascertain if proposing a mandatory settlement process to be undertaken prior to litigation, serves as a feasible and quick alternative to litigation for resolving disputes pertaining to section 138.

MEANS: Correlating the following Variables

BRIEF OF FINDING:

Result: Hypothesis proved to be affirmative.

Synopsis: This hypothesis has been proven to be affirmative based on the below mentioned analogies. The first analogy correlates the duration taken to dispose of the case to cases where the parties came to a settlement. The second analogy attempts to analyze whether the value of instrument influences parties' inclination to settle. The analogies can be further explicated as below:

a) A comparative analysis of the rate of disposal of cases when the issuer is acquitted, convicted and the matter is settled.
b) Analysis pertaining to the duration taken to dispose of a cases where the parties have reached a settlement;
c) Analysis as to whether the value of instrument has any impact on the decision of parties to resort to settle the matter.

Based on the analysis of the above analogies, it is noted that settlement is a quicker method of resolution of issues pertaining to section 138. The number of cases settled only constitute a minor portion of 11.4% of the total. Out of those, 84% of them were disposed of within 3 years, indicating the speedy disposal of cases when parties opt for settlement. While the rate of disposal for acquittal and conviction is found to be 74.91% and 69.6% respectively. Hence, if parties opt for settlement as opposed to litigation, then it may save the valuable adjudication time of the court and reduce the backlog on section 138 cases.

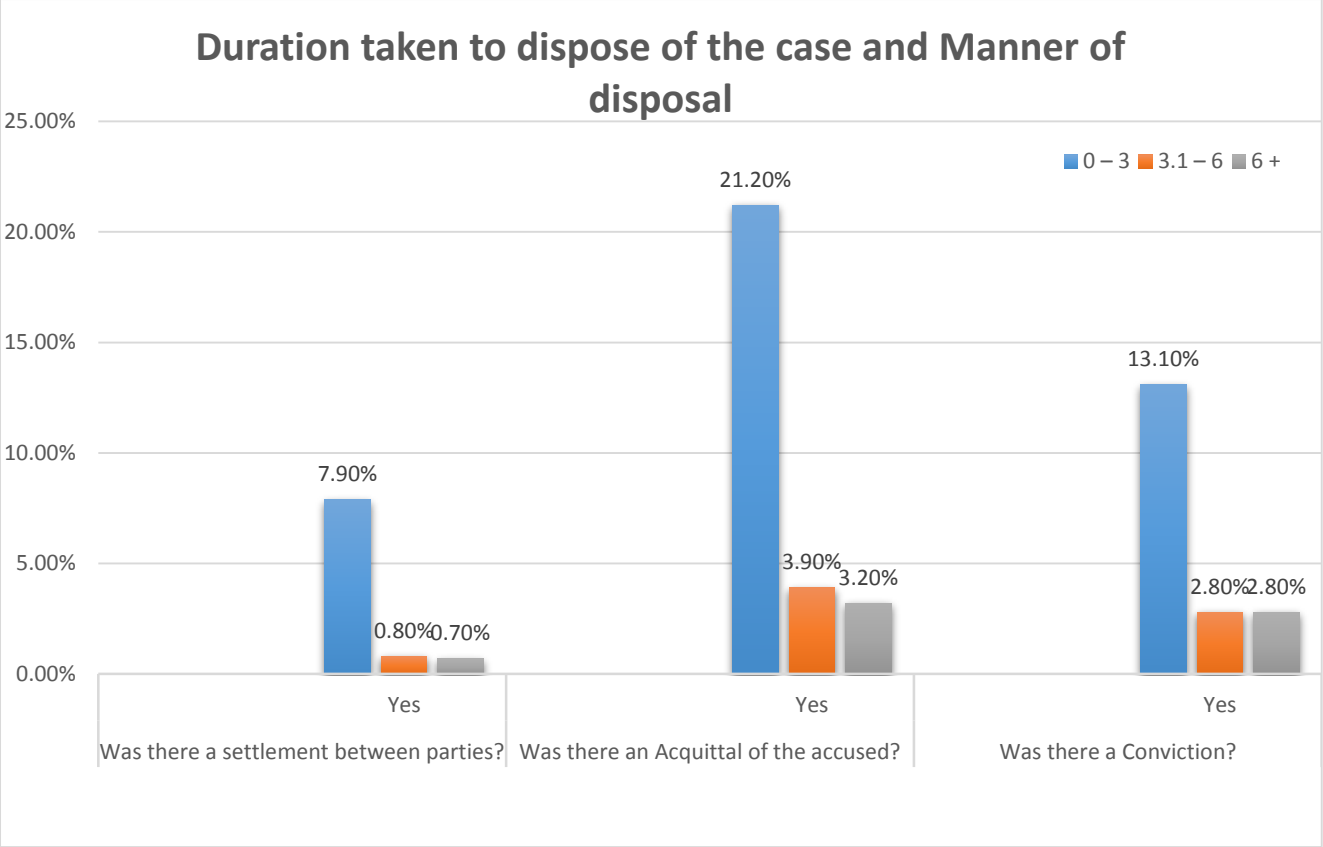
FINDINGS:

1. **COMPARING THE RATE OF DISPOSAL OF CASES FOR INSTANCES OF ACQUITTAL, CONVICTION AND SETTLEMENT**

Duration taken to dispose of the case	**Was there a settlement between parties?**	
	No	**Yes**
0 – 3	56.3%	7.9%
3.1 – 6	9.5%	0.8%
6 +	9.2%	0.7%
Not Available	13.5%	2.0%
Total	88.6%	11.4%

Duration taken to dispose of the case	**Was there an Acquittal of the accused?**	
	No	**Yes**
0 – 3	43.0%	21.2%
3.1 – 6	6.4%	3.9%
6 +	6.7%	3.2%
Not Available	10.1%	5.5%
	66.2%	33.8%

Duration taken to dispose of the case	**Was there a Conviction?**	
	No	**Yes**
0 – 3	51.1%	13.1%
3.1 – 6	7.5%	2.8%
6 +	7.1%	2.8%
Not Available	10.9%	4.7%
	76.5%	23.5%



Empirical Result: From the data analysis provided in the first table, it is observed that the percentage of cases settled and disposed of within 3 years is 84.04%[91] of the total settlement cases. On the other hand, the percentages of cases disposed of within 3 years when the decision was resulting in an acquittal and conviction by Court are 74.91%[92] and 69.6%[93] respectively. This clearly indicates that the rate of disposal of cases within 3 years for settlement is higher than instances where the outcome has been in acquittal or conviction by Court.

Relevance: The rate of disposal of cases within 3 years for the three possible scenarios i.e. acquittal, conviction and settlement represents the speed with which the final decision is arrived at. A higher percentage of disposal shows positive results implying that a higher number of cases are disposed of, which is beneficial in understanding and solving the problem of backlogs. From the data, it is clear that highest percentage of settlement cases have been disposed within three years;_thereby encouraging parties to go for settlement instead of litigation.

2. SETTLEMENT – VALUE OF THE INSTRUMENT

[91] Settlement cases disposed off within 3 years (7.9) / Total – unavailable (11.4-2).
[92] 21.2/28.3 * 100
[93] 13.1/18.8 * 100

Object: Does higher value of Instrument indicate a greater chance of settlement between the parties or is it otherwise?

Was there a settlement between parties?	
No	88.61%
Yes	11.39%
Total	**100%**

Value of Instrument	**Was there a settlement between parties?**	
	No	**Yes**
0 - 40,00,000	60.6%	7.2%
40,00,001 - 80,00,000	3.2%	0.3%
80,00,000 +	9.7%	2.3%
Not Available	15.1%	1.6%
Total	88.6%	11.4%

Empirical results: Only 11.4% of the total number of cases were settled, with the majority being in which the value of the instrument lying between Rupees 0-40,00,000. in this category only 10.67%[94] of cases were disposed by ay if settlement. While in cases when the value of the instrument was higher than 40,00,000, parties tendency to settle was higher, coming up to 16.8%.[95]This may indicate a trend as to when the value of the instrument is higher implying a higher risk for the parties, they prefer to settle and come to a solution which is favorable for both of them. Hence, it can be understood that settlement proves to be a less risky option as it gives them enough flexibility to come to a decision which is reasonable for both.

Relevance: Settlement is an important mechanism for quickly and efficiently resolving section 138 cases outside the court. The correlation between the value of the instrument and the settlement is relevant since it showcases a trend of what mechanism parties to such a dispute prefer, when the risk involved becomes higher.

SUGGESTIONS:

[94] Total number of cases settled in 0-40,00,000 / Total number of cases in 0-40,00,000 (7.2 / 67.8).
[95] Total number of cases settled above 40,00,000 / Total number of cases 80,00,000 (2.6 / 15.4).

Mandatory settlement of cases:

Based on the above analogies and analysis drawn from the available data, a mandatory out of court settlement process is proposed for the parties to resolve their dispute in a simple manner without involving the complications of the litigation process.

Out of the total quantum of cases in the Courts today, around 13-16% are related to section 138 of the Negotiable Instruments Act, 1881[96]. There is an urgent need to reduce this number and the burden on the court and ensure speedy disposal of such cases. Settlement of cases serves as a cheaper alternative and offers several advantages including speed and flexibility. The final outcome may be satisfactory for both the parties, which avoids the lengthy and expensive process of litigation.

Alternative dispute resolution of section 138 cases is a feasible option within the existing legal mechanism, which can be elaborated in the following points –

a) Section 138 is a compoundable offence.[97] A compoundable offence, in simple words is restraint on prosecution as a result of an amicable settlement between the parties. The victim may have received compensation from the offender and have condoned the act.[98] The only condition being that the consent of the both the parties is required.[99]
b) Settlement of offences is not a new concept to Indian jurisprudence and several examples can be noted where offences have been made compoundable allowing for settlement. For instance, the Indian Penal Code, 1860 provides for a list of offences which are compoundable including theft and criminal misappropriation of property.[100] The Supreme Court has issued detailed guidelines on the procedure for settlement in case of criminal compoundable offences.[101]
c) Even the Civil Procedure Code, 1906 suggests alternative methods of dispute resolution via a settlement outside court where parties may reach a compromise.[102] This facilitates and provides a quick solution for both the parties. The use of alternative dispute resolution mechanism through arbitration; conciliation; judicial settlement including settlement

[96] Khanna, Vikramaditya S., 'Law, Institutions and Economic Development: Examining the Development of the Home Mortgage Market in India - Can Two Wrongs Make a Right?' at 21 (September 5, 2017). Available at SSRN: https://ssrn.com/abstract=3032632 or http://dx.doi.org/10.2139/ssrn.3032632
[97] § 147 of the Negotiable Instruments Act, 1881.
[98] 237th Law Commission of India Report, http://lawcommissionofindia.nic.in/reports/report237.pdf
[99] JIK Industries Ltd v. Amarlal V.Jumani, (2012) 3 SCC 255.
[100] § 320 of the Indian Penal Code, 1860.
[101] Narinder Singh v. State of Punjab, (2014) 6 SCC 466.
[102] § 89 of the Civil Procedure Code, 1908.

through Lok Adalat of mediation may be made compulsory in cheque bounce cases by making suitable amendments to the Negotiable Instruments Act, 1881.

d) In a recent decision[103] before the Apex Court relating to the issue of backlogs, the Court issued guidelines on developing a better mechanism. The Court noted that compounding of section 138 cases at the initial stage must be encouraged and is not debarred at later stages.

In light of the above, it is proposed settlement of cases under section 138 should be made mandatory. This would imply that, prior to filing a case with the appropriate court for an offence under S.138, the parties will have to mandatorily go the process of Settlement. Only upon for failure of such mechanism, can the parties approach the Court for settlement of dispute. This would significantly reduce the number S.138 litigations and thereby the backlog of these cases in the Courts.

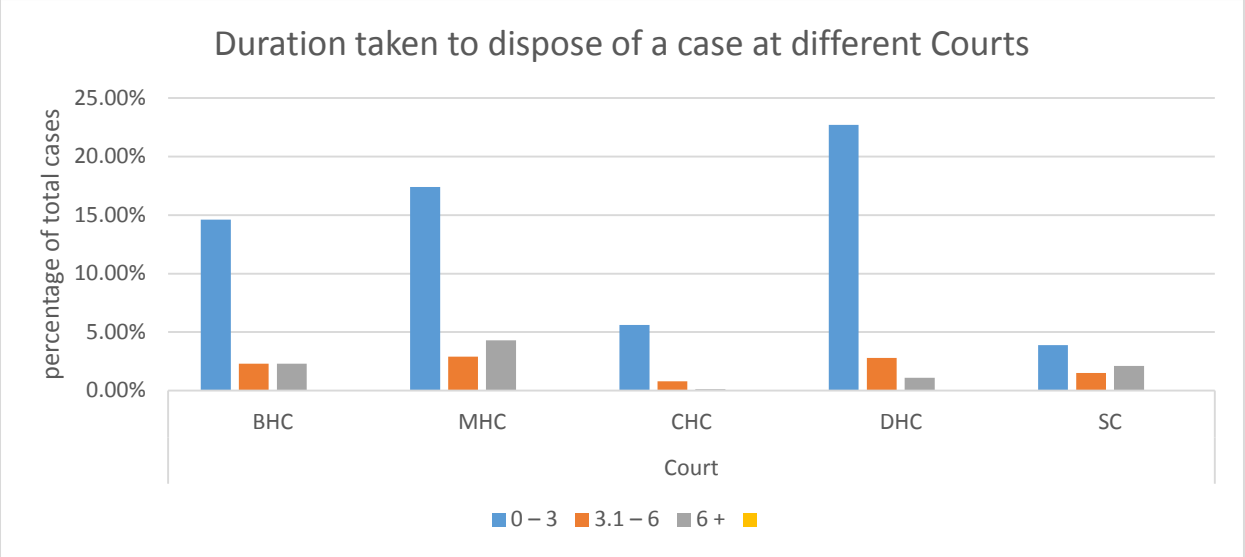
Part 2: OBSERVABLE TRENDS

In this part, we have made an attempt to Identify and describe all relevant observable trend from the Crosstabs and Frequency Analysis.

1. DURATION TAKEN TO DISPOSE OFF THE CASE AND COURT

Duration taken to dispose of the case	**Court**				
	BHC	**MHC**	**CHC**	**DHC**	**SC**
0 – 3	14.6%	17.4%	5.6%	22.7%	3.9%
3.1 – 6	2.3%	2.9%	0.8%	2.8%	1.5%
6 +	2.3%	4.3%	0.1%	1.1%	2.1%
Not Available	2.9%	5.6%	2.1%	3.9%	0.9%

[103] M/S. Meters and Instruments (P) Limited & Anr. v. Kanchan Mehta, (2018) 1 SCC 560.



Empirical Result: We have analyzed the time taken to dispose of the cases from four major jurisdictions such as Mumbai (BHC – Bombay High Court), Chennai (MHC – Madras High Court), Calcutta (CHC – Calcutta High Court) and Delhi (DHC – Delhi High Court, and the apex court of our country the Supreme Court (SC- Supreme Court). Through the above mentioned table, it is clear that a total of 64.2% of the cases are settled between within 3 years, 10.3% are settled between 3.1-6 years and 9.9% of the cases are settled after 6 years. It can also be seen that the Delhi High Court disposes off the highest number of cases within 1-3 years.

Delhi High Court has disposed of 76.9% of its 138 cases within 3 years, whilst Bombay High Court disposed 66.6 % of its cases. Calcutta High Court disposed around 64.5% of its cases and Madras High Court disposed merely 57.4 % of its 138 cases within 3 years. Supreme Court disposes only 47.6% of its 138 cases within 3 years.

Relevance: With increasing backlog of cases, it is important for us to understand the approximate time frame within which Courts in different jurisdictions dispose of cases and the burden that S. 138 imposes on the back log of cases. The trend suggests that most number of cases are disposed of within 3 years yet over 20% of the cases stretch beyond 3 years which is alarming.

Further, taking cognizance of the fact that the Delhi High Court disposes off the highest percentage off cases within 3 years, we could further analyze practices and Court management of Delhi High Court and decipher how to improve the efficiency of the Courts in other jurisdictions.

1. CORRELATING ACQUITTAL, CONVICTION - DURATION TO DISPOSE OF THE CASE.

Object: Ascertain when the judiciary takes more time, during acquittal or Conviction?

Duration taken to dispose off the case	Was there a Conviction?	
	No	Yes
0 - 3	51.1%	13.1%
3.1 - 6	7.5%	2.8%
6 +	7.1%	2.8%
Not Available	10.9%	4.7%

Duration taken to dispose off the case	Was there an Acquital of the accused?	
	No	Yes
0 - 3	43.0%	21.2%
3.1 - 6	6.4%	3.9%
6 +	6.7%	3.2%
Not Available	10.1%	5.5%

Empirical Result: From the above table, it is observed that approximately 74.9[104] percent of the conviction cases have been disposed of within 3 years. However, only 69.6 percent of the acquittal cases have been disposed of within 3 years.

Relevance: It is seen that Appellate Courts generally take more time to convict than to acquit.

2. VALUE OF INSTRUMENT – DURATION TO DISPOSE OF THE CASE.

Object: Ascertain if the higher valued instruments are disposed of at a faster rate.

Duration taken to dispose off the case	Value of Instrument			
	0 - 40,00,000	40,00,001 - 80,00,000	80,00,000 +	Not Available
0 - 3	42.9%	2.1%	8.6%	10.6%
3.1 - 6	7.5%	0.4%	1.1%	1.3%
6 +	8.4%	0.5%	0.5%	0.4%
Not Available	9.0%	0.4%	1.7%	4.4%

[104] 21.2/28/3 * 100

Empirical Result: From the data above, it is seen that in S.138 cases involving instruments valued lesser than or equal of Rs. 80,00,000, 72.6%[105] of the cases have been disposed of within 3 years. However, in cases involving instruments valued more than Rs. 80,00,000, 84.3%[106] of the cases have been disposed of within 3 years.

Relevance: This shows that there is an observable trend showing that cases involving high valued instruments are disposed of at a faster rate than the ones involving low valued instruments. One of the reasons for this could be that Courts don't want cheques of higher value to be locked for a long period of time.

3. CORRELATING WHO FILED THE APPEAL AND IN WHOSE FAVOUR IS THE JUDGEMENT?

In whose favour is the judgement?	**In whose favour is the judgement?**		
	Issuer	**Receiver**	**Case remanded to trial court for fresh disposal**
Issuer	18.4%	27.3%	2.4%
Receiver	24.5%	23.2%	4.2%

Empirical Result: Out of the total cases, 48.1% of the cases are filed by the Issuer and 51.9% of the cases are filed by the Receiver. It can also be observed that in both cases, in 50.5% of the cases, the case is decreed in favour of the Receiver as compared to 42.9% of the cases decreed in favour of the Issuer.

4. FREQUENCY ANALYSIS OF CONVICTION, SETTLEMENT, ACQUITTAL AND CASES REMANDED BACK TO THE LOWER COURT.

Legal background: Penalty clause in 138 stipulates that the issuer of dishonored cheque can be punished either with imprisonment upto two years or with fine upto twice the cheque amount or with both for the offence of dishonor of cheque.

Was there a Conviction?	
No	76.54%
Yes	23.46%
Total	**100%**

[105] 42.9 + 2.1/ 58.8 +3.1
[106] 8.6/ 10.2 * 100

Was there a settlement between parties?	
No	88.61%
Yes	11.39%
Total	**100%**

Was there an Acquittal of the accused?	
No	66.22%
Yes	33.78%
Total	**100%**

Was the case remanded back to the lower Court?	
No	93.6%
Yes	6.4%
Total	**100%**

Empirical Result: From the above table, it is seen that only 23.46%[107] of the total number S.138 cases ended up in Conviction of the issuer of dishonored cheque. The remaining 76.54% were either cases of acquittal (33.8%), settlement (11.39%), cases being remanded back to the lower court (6.4%) or cases which involved questions of law surrounding S.138.

Relevance: Such a low conviction rate has serious implications for the deterrence value of the law. According to the National Crime Records Bureau (NCRB), the overall conviction rate in India in 2016 for crimes under the Indian Penal Code, 1860 has been at 56.8%. In this backdrop, a conviction rate of mere 26.7% is disappointing.

5. DURATION TAKEN TO DISPOSE OFF THE CASE - CONVICTION

Duration taken to dispose off the case	**Was there a Conviction?**		**Total**
	No	**Yes**	
0 – 3	51.1%	13.1%	64.2%
3.1 – 6	7.5%	2.8%	10.3%
6 +	7.1%	2.8%	9.9%

[107] 100-72.3%

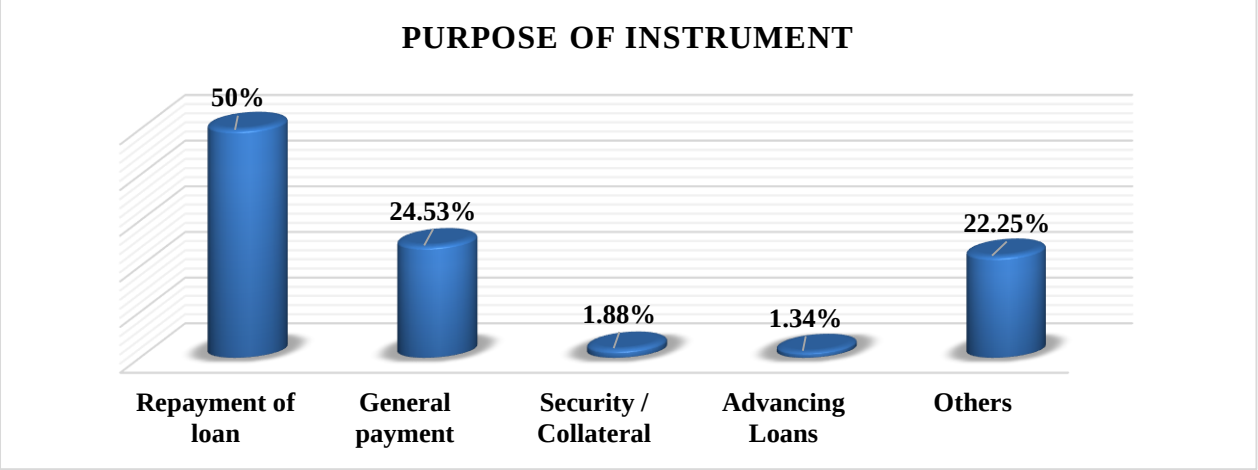
Not Available	10.9%	4.7%	15.5%
Total	76.5%	23.5%	100%

Empirical Result: The above frequencies indicate the conviction rate for cases adjudicated within 3 years is around 20.04% [108]as against conviction rate for cases adjudicated for a period more than three years, which is around 27.2%[109]

Relevance: Running correlation between the frequencies of conviction and duration taken to dispose of a case disproves the general assumption that prolonged adjudication results in lesser probability of conviction. The assumption is based on the premises that delays may lead to evidence becoming stale or witnesses forgetting details, which tends to reduce the accuracy of decision making and thereby leading to acquittal. The data analysis indicates that prolonged adjudication actually increases the probability of conviction, thereby disproving the general assumption.

6. PURPOSE OF INSTRUMENT & DURATION TAKEN TO DISPOSE OF THE CASE

a. Frequency Analysis of Purpose of Instrument



b. Crosstab for Duration taken to dispose off the case and Purpose of Instrument

Duration taken to dispose off the case	Purpose of instrument				
	Repayment of loan	General payment	Security / Collateral	Advancing Loans	Others

[108] 16.6% / 23.5%
[109] 2.8 + 2.8 / 10.3 + 9.9

0 – 3	31.5%	17.6%	1.1%	0.8%	13.3%
3.1 – 6	5.4%	2.0%	0.4%	0.3%	2.3%
6 +	5.5%	2.5%	0.4%	0.1%	1.3%
Not Available	7.6%	2.4%	0.0%	0.1%	5.4%
Total	50%	24.53%	1.88%	1.34%	22.25 %

Empirical results: The most prominent purpose of the issuing a negotiable instrument is found to be for repayment of loans, around 50% of the total cases. 74.2%[110] of such cases are disposed of within 3 years. Negotiable instruments issued for general payment constitutes the second most prominent reason. 71.5% of such cases were resolved in 3 years.

CONCLUSION

Backlog of dishonour of cheque case in India is a huge concern for Indian Judiciary, reflecting negativiety on Court's efficiency. Section 143(3) of the Negotiable Instruments Act, 1881 requires the complaints in regard to cheque dishonour cases under Section 138 of the Act to be concluded within six months from the date of the filing of the complaint, however from our data analysis, it is shown that the average duration of disposal is around four and half years. Delving further to narrow down the reasons for such delays indicate the following:

II. The Courts dealing with S.138 cases spend considerable adjudication time on cases which have procedural issues or cases which are frivolous.

Frivolous cases which constitute 4% of the total number of cases and cases pertaining to procedural non-compliance which constitute 17.6% of the total number of cases take up considerable time of the court, which can be better utilized by the Courts to adjudicate genuine cases. With respect to frivolous litigation, we have also collected and analysed data as to which party files such cases. This is mainly in context of the 2017 Amendment Bill to the Negotiable Instruments Act, 1881 which aims at reducing the number of frivolous cases. On analyzing this data, we believe that the Amendment Bill might be misguided. This is so as the amendments aims to deter only the issuer from filing frivolous litigation at an appellate forum and not the receiver. However, numbers indicate that out of the total frivolous litigations filed in an

[110] 31.5/42.4 * 100

appellate tribunal 77.5% of the cases have been filed by the receiver as against the issuer. In light of these figures, the new Amendment Bill is misguided as it does not address frivolous litigations filed by the issuer in the appellate tribunal, who in fact form the bulk of such cases. Not to ignore the prolonged Court process and time involved by way if this proposition. With respect to cases pertaining to procedural non-compliance, we have analyzed the different types of procedural non-compliances and the time taken to adjudicate cases falling under each category. The data show that the leading procedural non-compliance issue is related to jurisdiction. Based on our analysis, we have firstly recommended that a higher penalty may be imposed on those filing frivolous cases to ensure deterrence. Secondly, we suggest that a pre-litigation screening mechanism be adopted wherein a committee may be established to look into frivolous and procedural non-compliance matters before the same reach the court to weed out such cases and thus save the time of the court.

II. There is inefficient handling of S.138 matters by Courts.

It is seen that the duration between each adjournment in 28.2% has been more than 3 months, which prolongs the time taken by the court to hear and decide the matter. We have also analyzed the major reasons for adjournments; the major cause is that the matter has been listed for a particular date but the same does not reach in the Court, this constitutes 18.2% of the cases related to adjournments. This leads us to the wonder whether having a specialized forum to exclusively deal with S.138 matters could help in reducing backlogs. Additionally, we suggest that a strict timeline similar to the Insolvency and Bankruptcy Code, 2016 be prescribed in dealing with cases under Section 138.

III. The Courts compromise on victim's interest of debt recovery while adjudicating cases under S. 138.

The analysis of frequencies indicates that the in bulk of the conviction cases under S.138, around 70%, the defaulter has been punished by way of imposition of imprisonment only. In cases where the court imposes punishment upon the defaulter by way of fine or by way of imprisonment and fine, the victim is in a position to recover the money owed to him through Section 138 itself with the help of S.357(1)(b) of CRPC, which allows the Court to direct the fine imposed towards payment of compensation for the loss caused to the receiver. But in cases where the sentence imposed does not include a fine but relates to only imprisonment, use of S.357(1)(b) is barred. The Court can direct the accused to pay compensation under Section 357(3) of the Code, which allows the Court to order the accused to compensate for the loss

suffered by the Receiver (the debt owed to him as well as cost of litigation incurred). However, the Courts seldom invoke this provision.[111] Therefore, in such conviction cases, though a complainant could be successful in obtaining a conviction, he would have virtually lost the case, as he does not get compensation to recover the amount of the dishonoured cheque. Justice is served when victim is compensated. For this, it is suggested that in all cases where there is a conviction, there should be a consequential levy of fine of an amount sufficient to cover the cheque amount and interest thereon at a fixed rate of 9% per annum interest, followed by award of such sum as compensation from the fine. *Inter alia,* it is also recommended that the use of S.357(3) of CRPC must be increased by Courts in S.138 cases where the punishment imposed is only imprisonment.

IV. Mandatory settlement as method of resolving S.138 cases is an effective mechanism to reduce the adjudication time of the Courts.

Based on the data analysis, it is noted that settlement is a quicker method of resolution of issues pertaining to section 138. The number of cases settled only constitute a minor portion of 11.4% of the total. Out of those, 84% of them were disposed of within 3 years, indicating the speedy disposal of cases when parties opt for settlement. While the rate of disposal for acquittal and conviction is found to be 74.91% and 69.6% respectively. Hence, if parties opt for settlement as opposed to litigation, then it may save the valuable adjudication time of the court and reduce the backlog on section 138 cases. Hence, we believe that proposing a mandatory settlement process to be undertaken prior to litigation, serves as a feasible and quick alternative to litigation for resolving disputes pertaining to section 138.

It is no doubt that backlog of S.138 cases reflects negatively on Indian Court's efficiency and productivity. This mandates certain Policy and Administrative amends to be brought forth in order to tackle the issue efficiently. The results and suggestions we have made through this project may serve as head start towards achieving the same.

[111] K.A.Abbas H.S.A v. Sabu Joseph & Anr., (2010) 6 SCC 230.

AUTHORS

- Bedanta Chakraborty
- Cheta Sheth
- Simran A. Jain
- Sruti Parvathi Sivasubramanian
- Vishal Sinha

KEY CONTRIBUTORS

- Aiswarya Suresh
- Akhileshwari Anand Raj
- Alolika Chakraborty
- Angeline Priety
- Arunima Jaiswal
- Himanshu Kumar
- Manthan Nagpal
- Pratik Parasar Sarmah
- Prateek Gujjar
- Purva Anand
- Rattanmeek Kaur
- Ravin Abhyankar
- Renuka Naik
- Rishabh Aggarwal
- Samidha Mathur
- Sanchit Suri
- Shrasti Jain
- Swagat Baruah
- Vamsi K
- Vishesh Sharma
- Zaid Deva

APPENDIX

Data Sheets: *{LINK SHALL BE INSERTED HERE}*