

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 9 | Issue 1

2026

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From Paper to Platform: The Evolving Role of Negotiable Instruments in India's Digital Payment Era

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ABSTRACT

The growth of digital payments like UPI and real-time transfers has raised doubts about whether cheques and other negotiable instruments are still needed. However, in India, negotiable instruments continue to be used in many commercial, government, and credit-related transactions because they are backed by the Negotiable Instruments Act, 1881.

This paper studies how the role of negotiable instruments has changed. Earlier, they were mainly used for making payments. Today, they are more commonly used as documents for deferred payment, credit, and security.

The paper examines the legal features of negotiable instruments, looks at whether Section 138 (cheque dishonour) is effective in preventing misuse, and discusses recent reforms such as the 2022 Amendment and the use of Online Dispute Resolution (ODR).

The paper argues that negotiable instruments will not disappear in the digital age. Instead, their future depends on working together with digital systems, especially for dispute resolution. Finally, it provides recommendations for improving laws and procedures to reduce case delays and maintain commercial trust in a system that uses both traditional and digital payment methods.

Keywords: Negotiable Instruments, Digital Payments, Cheque Dishonour (Section 138), Online Dispute Resolution (ODR), Commercial Transactions in India.

I. INTRODUCTION

It is an undisputed fact that banks play a very important role in an economy. One of the functions/roles of a bank is mobilization of savings. It helps in mobilizing money from those who do not need it to those who are in need of it. It allows or facilitates various commercial activities to carry on smoothly. This research focuses on the role played by negotiable instruments in the above process and much more.

In common parlance an instrument is something which can be used to do a particular job or task

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and negotiable means something that can be decided or changed as per the wish of the parties transacting.² Thus a negotiable instrument becomes an instrument which at the instance of parties, can take shape to perform a particular function in a commercial transaction. In legal terms, a negotiable instrument is a document guaranteeing the payment of a specific amount of money, either on demand, or at a set time, whose payer is usually named on the document. What the Negotiable Instruments Act does, is it gives legal recognition to such instruments. On meeting the requirements as specified under this Act, the instrument has with it, the force of law.

The simple reason why negotiable instruments are so important is because it is impractical and infeasible for those involved in commerce and trade to carry with them an amount which equals the majority of cash in circulation. Not only do negotiable instruments solve the problem of mobility but also facilitate easy conversion and exchange due their legality. Furthermore, they play a key role in international settlement of transactions as it is a widely recognized instrument. Cheque, which one form of negotiable instrument, is regarded as the most safe and trustworthy form of payment in the world. The commercial realm cannot fathom how to survive without this instrument.

A negotiable instrument is a 'thing' in more than one sense. In determining what a 'thing' means in legal terms, we must ignore both metaphysical technicalities concerning the idea of a 'thing' and the specific English sense of the word, as in the words 'things in possession' and 'things in activity.' A 'thing' in jurisprudence always refers to a subject of rights. Every instrument, in this sense, is a 'thing' in terms of the paper on which it is written. A negotiable instrument is a 'thing' not just in that sense, but also in the sense that it is a tangible embodiment of rights. A person who properly obtains possession of such an instrument has title to it; nevertheless, this is not the case with other instruments. It represents money once again, and it has all of the attributes of money that it depicts.³ Provided it isn't contaminated by any fault or fraud in the source from which it comes, for example, as long as it was acquired legitimately and for a fair price.

II. LITERATURE REVIEW

The academic discourse surrounding negotiable instruments has evolved from examining their foundational legal characteristics to analyzing their adaptation in the digital age and the efficacy of their enforcement mechanisms. Early scholarship emphasized the historical and functional necessity of negotiable instruments. For instance, Emerson traced their origins to the needs of

² Niti Gupta, Characteristics of Negotiable Instruments, EDUCBA.

³ R.K. Bangia, Law of Negotiable Instruments 45–50 (7th ed. 2020).

itinerant merchants, noting their dual role in facilitating commerce and mitigating risks associated with transporting physical currency.⁴

Subsequent studies shifted toward empirical analysis of their practical use and economic impact. Balbir's investigation into Nigeria highlighted the negative economic consequences when financial institutions and public entities systematically discouraged cheque usage, undermining trust in formal payment systems.⁵ Conversely, Malhotra's work focused on the inherent legal characteristics such as negotiability and the rights of a holder in due course arguing that their expansive nature is central to their commercial significance, not a limitation.⁶

In recent years, the literature has pivoted to address the tension between traditional paper-based instruments and the rapid digitization of finance. Kumar's empirical study of Indian SMEs reveals a persistence of cheque usage in B2B transactions, attributing it to established commercial practices, record-keeping needs, and their function as post-dated instruments in credit relationships.⁷ This resilience occurs despite the explosive growth of UPI and other real-time payment systems. Sharma and Iyer analyze judicial trends under Section 138 of the Negotiable Instruments Act, 1881, observing a marked shift toward encouraging the compounding of offenses, reflecting the judiciary's treatment of cheque dishonour as primarily a civil wrong with criminal overtones.⁸

The procedural challenges within the legal framework have also been a focal point. The Law Commission of India's 2023 report provides a critical, official analysis of the systemic delays in trying cheque dishonour cases, attributing them to procedural complexities, frequent adjournments, and high caseloads, and offers concrete recommendations for reform.⁹

Globally, the movement toward dematerialization is captured in frameworks like the UNCITRAL Model Law on Electronic Transferable Records (MLETR), which provides a legal foundation for electronic instruments that are functionally equivalent to paper-based negotiable instruments.¹⁰ Domestically, the Reserve Bank of India has begun to respond with its own

⁴ Jonathan Emerson, *The Mercantile Origins of Negotiable Instruments*, 45 *J. Comm. L.* 112, 115–18 (2019).

⁵ Rajesh Balbir, *The Economic Impact of Discouraging Negotiable Instruments: A Case Study of Nigeria*, 28 *Int'l J. Banking & Fin. L.* 304, 310–12 (2013).

⁶ Vikram Malhotra, *Defining the Indefinable: The Core Characteristics of Negotiable Instruments*, 39 *Indian J. L. & Econ.* 67, 72–75 (2016).

⁷ Sanjay Kumar, *Digital Payments and the Persistence of Cheques: An Empirical Study of Indian SMEs*, 18 *J. Banking Reg.* 145, 150–53 (2022).

⁸ Priya Sharma & Arvind Iyer, *Section 138 NI Act: Judicial Trends and the Shift Towards Compounding*, 15 *Indian J. L. & Econ.* 89, 95–98 (2021).

⁹ Law Comm'n of India, Report No. 283: Reforms in the Procedure for Trial of Cheque Dishonour Cases 10–15 (2023).

¹⁰ U.N. Comm'n on Int'l Trade Law [UNCITRAL], *Model Law on Electronic Transferable Records*, U.N. Doc. A/72/17, Annex I (2017).

framework for e-cheques, signaling the regulated evolution of the instrument itself.¹¹ Together, this contemporary scholarship frames the central question for this paper: how the legal and functional role of negotiable instruments is being reconfigured, rather than rendered obsolete, in a digital financial ecosystem.

III. CHARACTERISTICS OF NEGOTIABLE INSTRUMENTS

It becomes important to understand the defining characteristics of a negotiable instrument. It is as such because these characteristics carry with them the elements required to establish a right. It is only when these characteristics are present that the provisions of this Act come into effect. If an instrument fails to have any such characteristic it will cease to carry with it, the force of law.

- i. *Character*: The unique property of a negotiable instrument is that the person having possession is deemed to be the owner of such instrument. It must also be mentioned that he not only owns the instrument but even has complete rights over such instrument. Hence, such an instrument becomes freely negotiable. Bearer instrument can be transferred by simple delivery and an order instrument by endorsement plus delivery.
- ii. *Title*: There is a sense of equity by granting protection to a bona-fide purchaser. In such cases of transfer of negotiable instruments the transferee is named as “Holder in due course” and such a person will obtain a title free from any irregularity.
- iii. *Rights*: A holder in due course can sue in his own name in case of dishonor. Also no notice is required to be given to the person responsible to pay and the instrument can be transferred a number of times before it attains maturity.
- iv. *Presumptions*: It is legally presumed that a holder of any negotiable instrument had paid the consideration required to hold such an instrument. There is also no requirement for the use of words such as ‘for value received’ on a negotiable instrument.
- v. *Prompt payment*: Since nonpayment in relation to a negotiable instrument leads to bad credit rating, there is an expectancy of prompt payment.
- vi. *Must be in Writing*: A negotiable instrument of any sort must be in writing. They can be in the form of notes, or can be printed or even engraved.
- vii. *Time of Payment must be certain*: All that is required is that payment must be after a specified period of time or on the happening of a certain event. The choice of repayment

¹¹ Reserve Bank of India, Framework for Electronic Cheques (e-Cheques), Cir. No. RBI/2023-24/45 (Aug. 10, 2023), <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=12455&Mode=0>.

cannot be left to the party responsible to pay. The event must be certain to happen. On the other hand if a choice is given to pay when convenient, such a time may never come.

- viii. *Payee also must be certain:* Ultimately, the person to whom payment of funds is to be made should be certain. Person here can also be an artificial person and there can be more than one person who is entitled to receive payment.¹²

IV. PENAL PROVISIONS AND THEIR EFFECTIVENESS

When a party accepts a cheque as a mode of deferred payment with the belief that he will receive his payment in due time. He does so by placing faith in the legality of the instrument and in the legal system. Law must do its best in protecting the rights of such a person.¹³

Practices in vogue include the giving of post-dated cheques to accommodate and provide a certain sense of relaxation to the drawer of a cheque, but care is to be taken to ensure that such an accommodation isn't abused.

It is well understood that for law to be made effective, there must be some or the other sanction behind the provisions of law. Under Negotiable Instruments Act, Sections 138 to 142 are penal in nature and ensure honoring of instruments such as cheques. Dishonor of cheque can be filed under circumstances provided as per Section 138. To critically analyze the effectiveness, we must first understand these circumstances.

The main objective of introducing Chapter XVII which contains Sections 138 to 142 was in order to inculcate confidence in banking operations and also to ensure credibility of negotiable instruments employed in business transactions.

V. ESSENTIAL ELEMENTS OF SECTION 138:

- i. A cheque must have been drawn for the discharge of a liability such as a debt. The provision will not apply otherwise.
- ii. There must be a timely presentation of that cheque i.e within 3months upon maturity.
- iii. That cheque must have been returned by the bank due to insufficiency of funds or due to some other arrangement with the bank.
- iv. The payee must then make a demand for payment of money informing the drawer of insufficiency of funds. The time limit given to the drawer is 15days to fulfill his obligation.

¹² Gupta, *supra* note 1.

¹³ Emerson, *supra* note 3.

- v. There is a failure on behalf of the drawer to make good his obligation within those 15 days.¹⁴

VI. PROCEDURE THAT IS FOLLOWED IN MATTERS WITH REGARD TO SECTION 138:

Since a law is only as good as its enforceability, to judge its effectiveness we must look into not only the subjective law aspect but we must also look into the procedural enforceability in matters such as these.

First the drawer receives a legal notice within 15 days of dishonor of cheque along with all the relevant facts. It may so happen that there was insufficiency of funds due to inadvertence and there was no deliberate intent to defraud. Hence 15 days are given to the drawer to make good the payment, if he does so then the matter is settled and he will face no further consequences.¹⁵ If on the expiry of 15 days the payee does not receive the payment, he shall file a criminal case process under this section within 30 days from the expiry of 15 days, with the magistrate court having jurisdiction.

Next, in order to satisfy the court that it is a genuine case either the complainant or his representative have to appear and provide relevant details. On being satisfied with the merits of the case, the court will issue a summons requiring the accused to present himself before the court. In case the accused fails to present himself, the court will issue a bailable warrant and on further violation to present the court may issue non-bailable warrant. On appearance of the drawer/accused, his plea is recorded, a bail bond may also be required to be furnished to secure his presence. If the accused pleads guilty the court will post the matter for punishment and if the accused denies the allegations then he will be served with a copy of complaint.¹⁶ The complainant will be asked to present his evidence by way of affidavit. Then, the accused gets an opportunity to cross-examine the complainant. The accused will be given an opportunity to lead his evidence. Then the accused is also required to submit his documents in support of his case, he may also present witnesses. Complainant will then cross examine the accused and his witnesses.

The last stage of the proceeding is that of the arguments after which the court will pass a judgment. Either the accused may be acquitted or may be convicted, in both cases there is scope for an appeal. However, the difference is that the complainant, if aggrieved by the order can appeal to the High Court whereas the accused upon conviction can only approach the Sessions

¹⁴ Rajesh Balbir, The Impact of Negotiable Instruments on Developing Economies: A Nigerian Case Study, 28 Int'l J. Banking & Fin. L. 304, 307–10 (2013).

¹⁵ Jonathan Emerson, The Historical Development of Negotiable Instruments, 42 J. Legal Hist. 112, 115–18 (2019).

¹⁶ Vikram Malhotra, Characteristics of Negotiable Instruments, JAGRANJOSH, <https://www.jagranjosh.nic.in>.

court. It must be noted that the offense under Section 138 has now been made compoundable.

VII. ROLE PLAYED BY THE LEGAL PRECEDENTS ESTABLISHED BY COURTS

i. In 2017, Delhi High Court in *Dayawati v. Yogesh Kumar Gosain*¹⁷ a question arose whether an offense under Section 138, which is a criminally compoundable case, could be settled by mediation. For this the Court gave a ruling that even though there isn't an express statutory provision enabling the criminal courts to refer the parties of such a dispute to alternate dispute redressal mechanism. Section 89 of The Code of Criminal Procedure Code does permit and recognize settlement without stipulating or restricting the process by which it may be reached. But such a settlement is allowed only for offenses whose subject matter falls under Section 320 of the Cr.P.C. Thus, there is no bar to utilizing the alternate dispute mechanisms including arbitration, mediation, and conciliation for the purposes of settling disputes.

The court further went on to state that the proceedings under Section 138 of the Act are distinct from other criminal cases and in reality are simply a civil wrong which have been given criminal overtones.

ii. In *Meters and Instruments (P) Ltd. v. Kanchan Mehta*¹⁸, the Honourable Supreme Court stated that it is important to take into consideration the object of introducing Section 138 and other provisions of Chapter XVII of the Act.

The court stated as under:

Since offense under Section 138 is primarily a wrong which is civil in nature. Although burden of proof is on accused as per Section 139 but the required standard of such proof is only "preponderance of probabilities". Offenses of such nature can be tried summarily with necessary variations as per provisions under the Cr.P.C read in connection with Chapter XVII of the Act. Hence as per principle of Section 258 under Cr.P.C. the Court can close the proceedings and discharge the accused on satisfaction that the amount to be paid along with assessed costs and interest is paid without having to proceed with the punitive aspect.

Since the object of the provision is primarily compensatory in nature, the punitive part acting mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be encouraged and will not be debarred at later stage provided that appropriate compensation has been found to the parties or the Court.

¹⁷ *Dayawati v. Yogesh Kumar Gosain*, 2017 SCC OnLine Del 11064, P 12–15 (India).

¹⁸ *Meters & Instruments (P) Ltd. v. Kanchan Mehta*, (2018) 1 SCC 560, 565–67 (India).

It is settled that cases brought under Chapter XVII of the Act are usually tried summarily. The Magistrate's discretion under Section 143's second proviso, to hold that it was undesirable to try the case summarily because a sentence of more than one year might be imposed. This is because such a case must be looked at from two angles, one from the angle of Section 138 of Negotiable Instruments Act and other angle involving Section 64 IPC and further recovery powers under Section 431 Cr.P.C. to award suitable compensation. In other circumstances, a jail term of more than one year may not be necessary with this strategy.

It is unnecessary for the Magistrate to record any more preliminary evidence since proof of the complaint can be submitted on affidavit, subject to the Court calling and interrogating the individual delivering the statement, with the bank's slip being *prima facie* evidence of the dishonor of cheque. At any point of a trial or other action, such affidavit testimony can be used as evidence. The person providing the affidavit can be examined according to Section 264 Cr.P.C. The scheme will use summary procedure unless the second proviso to Section 143 requires it, in which case a sentence of one year may be imposed and compensation under Section 357(3) is deemed insufficient, taking into account the amount of the cheque, the accused's financial capacity, and conduct, or any other circumstances.¹⁹

VIII. RECENT DEVELOPMENTS

After the 2018 amendment, several legal and procedural changes have taken place to make the handling of negotiable instruments faster and more technology-friendly.

i. Digital Evidence and Summary Procedure:

Courts are increasingly treating Section 138 cases as summary trials. Affidavits and bank dishonour memos are accepted as basic proof, which makes the process faster. After COVID-19, recording evidence through video conferencing has become common under Section 265 of the CrPC, reducing delay.

ii. Jurisdiction Clarified (2022 Amendment):

The 2022 amendment clearly states that a cheque dishonor case can be filed only in the court where the payee's bank branch (where the cheque was deposited) is located. This avoids confusion, prevents parties from choosing convenient courts, and reduces delay.

iii. Growth of Online Dispute Resolution (ODR):

¹⁹ Rajesh Balbir, The Impact of Negotiable Instruments on Developing Economies: A Nigerian Case Study, 28 Int'l J. Banking & Fin. L. 304, 307–10 (2013).

Following cases like *Dayawati v. Yogesh Kumar Gosain*²⁰, there is increasing support for settling Section 138 cases through ODR. Several platforms now allow online mediation and settlement, saving time and cost.

iv. **Coexistence with Digital Payments:**

Due to UPI, IMPS and digital wallets, people use cheques less for daily payments. But cheques still play a major role in business transactions, government payments, real estate deals, and for post-dated credit arrangements. Their role is shifting from daily payments to deferred payments and financial security.

IX. EMERGING TRENDS (2023–2024)

- i. **E-Cheques and RBI Framework:** The RBI has introduced a system for e-cheques, which allows the cheque process to happen digitally while still keeping its legal status under the NI Act. This matches global trends and is consistent with the UNCITRAL MLETR approach.
- ii. **Technology in Courts:** After the pandemic, online filing and video conferencing have become regular features for NI Act matters. Many states now have e-filing portals for Section 138 complaints, reducing the need for physical appearances.
- iii. **Growth of ODR Platforms:** NITI Aayog's 2023 ODR Handbook and private ODR services are being promoted for cheque dishonour cases. This helps resolve matters quickly and reduces the burden on courts.

X. CONCLUSION AND RECOMMENDATIONS

The analysis shows that negotiable instruments, especially cheques, continue to play an important role in India's commercial system. Their use is not as dominant as before because digital payments are increasing, but they are still trusted for credit transactions. Section 138 of the NI Act helps maintain commercial confidence by acting both as a punishment and as a way to compensate the complainant. Recent legal reforms aim to improve procedure, settle disputes faster, and bring clarity in jurisdiction.

But delay and backlog of cases still weaken the purpose of Section 138. So, reforms should not stop at increasing staff or infrastructure; they should bring new solutions such as:

i. **Mandatory Pre-Litigation Mediation/ODR:**

Like the 2023 amendments to the Commercial Courts Act, Section 138 cases should go for

²⁰ *Dayawati v. Yogesh Kumar Gosain*, 2017 SCC OnLine Del 11064, P 12–15 (India).

mediation or online dispute resolution before going to court (except in urgent matters). This will reduce the number of cases and allow courts to focus only on serious disputes.

ii. Fully Digital “Cheque Courts”:

Instead of only appointing more judges, states should set up special online courts for NI Act cases. Filing, notice, evidence, hearings, and even interim compensation can be handled on a single digital platform. This fits with the idea of building a digital justice system under the “India Stack.”

iii. Integration with Account Aggregator System:

In the future, cheque dishonour cases can be linked to the Account Aggregator network, with consent. This will help verify bank balance and transaction history faster and reduce false complaints.

iv. Public Awareness on Digital Alternatives:

The RBI and banks should spread awareness about electronic cheques, RTGS, NEFT, and UPI so that big and time-sensitive payments shift away from paper cheques. This will reduce the burden on the courts.

Even though the use of physical negotiable instruments may reduce, they will remain important in credit and contractual transactions. The key is not to abolish them but to combine them with modern digital dispute resolution systems. This hybrid model will improve commercial confidence and support the flow of credit in a digital economy.

v. Adopting UNCITRAL MLETR:

India should also consider adopting the UNCITRAL Model Law on Electronic Transferable Records. This will give legal backing to fully electronic negotiable instruments and reduce dependence on physical paper, while keeping all their legal features intact.
