

**Presentation by
District -Dantewada**

**“AN OVERVIEW OF THE PROCEDURE FOR SECTION 138 OF
NEGOTIABLE INSTRUMENTS ACT (NIA) CASES. INNOVATIVE TOOLS
AND TECHNIQUES FOR DISPOSAL OF SECTION 138 NIA CASES.”**

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To

The Respected Director,
Chhattisgarh State Judicial Academy,
Bilaspur (C.G.)

Subject: Submission of Presentation Material on “*An Overview of the Procedure for Section 138 of the Negotiable Instruments Act (NIA) Cases & Innovative Tools and Techniques for Disposal of Section 138 NIA Cases*”

Respected Ma’am

With due respect, I am submitting herewith the presentation material on the above-mentioned subject for kind perusal and record. The material has been compiled and prepared with the objective of providing a comprehensive understanding of the procedure under Section 138 of the Negotiable Instruments Act, 1881, along with innovative tools and techniques for effective and expeditious disposal of such cases.

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It is humbly requested that the same may kindly be accepted.

INTRODUCTION

Cheque dishonour cases under Section 138 of the NI Act remain one of the most litigated areas in criminal courts. With increasing commercial transactions, courts and legislature have developed mechanisms to ensure quick, fair, and victim-centric justice.

Section 138 of the Negotiable Instruments Act, 1881 is a crucial piece of legislation in India that addresses the offence of cheque dishonor. It aims to enhance the credibility of cheques as a reliable mode of payment in commercial and financial transactions. This provision treats cheque bouncing as a criminal offence, not just a civil wrong.

2. Procedure for Section 138 Cases

The legal process for a Section 138 case is initiated by the **payee** (i.e. the person to whom the check is payable) after the check is dishonored. The steps are as follows:

1. **Check Dishonor and Bank Memo:** When a check is presented for payment and there are insufficient funds, the bank returns it to the payee. The bank issues a '**return memo**' indicating the reason for the dishonor, such as "insufficient funds." This memo is a crucial piece of evidence.
2. **Issuing a Legal Notice:** Within **30 days** of receiving the dishonored check memo, the payee must send a formal **legal notice** to the drawer (the person who issued the check). The notice must demand payment of the check amount.
3. **Failure to Pay:** The drawer has **15 days** from the receipt of the legal notice to make the payment. If the drawer fails to pay within this period, the payee can proceed with a legal complaint.
4. **Filing the Complaint:** If the drawer fails to pay within the 15-day window, the payee must file a complaint with the appropriate magistrate court within **30 days** of the expiry of the 15-day notice period. The complaint must be accompanied by the original dishonored check, the return memo from the bank, a copy of the legal notice, and proof of its delivery to the drawer.

5. Multiple notices may be issued by the payee, provided each notice is served within the statutory period of 30 days from the date of receipt of information regarding dishonour of the cheque.

6. Court Proceedings:

- **Cognizance and Examination:** The court takes **cognizance** of the complaint and may examine the complainant and their witnesses under oath.
- **Summons:** If the court finds a prima facie case, it issues **summons** to the accused (the drawer) to appear before the court.
- **Evidence and Trial:** The trial proceeds with the presentation of evidence by both parties. This includes the complainant's evidence and the accused's defense. The burden of proof is initially on the complainant, but once the check and signature are proven, a presumption arises that the check was issued for a legally enforceable debt.
- **Judgment:** If found guilty, the accused may face imprisonment for a term up to **two years**, a fine up to **double the check amount**, or both. The court may also order the accused to pay compensation to the complainant.
 - **As Per Section 143 proviso (3)** Cases under this Act shall be disposed of within a period of six months from the date of their presentation.

3. Time Frame In Respect Of The Offence Under Section 138, N.I. Act:-

As Per Section 138 proviso (a) the cheque has to be presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier.

But the Reserve Bank of India vide Notification No, DBOD.AML BC.No.47/14.01.001/ 2011-12 has made the period of validity of a cheque to be three months now. Hence, as of now, the cheque has to be presented within three months from the date on which it was drawn.

4. Legally Enforceable Liability

The ingredients required for complying with section 138 are such that, a person must have drawn a cheque for payment of money to another for the discharge of any debt or other liability.

5. The Procedure that is followed in matters with regard to Section 138 of the Act is as follows:-

The process is meticulously defined and must be followed to successfully prosecute a case.

Step 1: Check Dishonor: The payee presents the cheque to their bank within 3 months of its date of issue. If the cheque is returned unpaid due to "insufficient funds," the payee's bank issues a "**Cheque Return Memo.**"

Step 2: Legal Notice: The payee must send a legal notice to the drawer within 30 days of receiving the return memo. This notice must demand payment of the cheque amount.

Step 3: Cause of Action: The drawer has 15 days from receiving the notice to pay the amount. If they fail to do so, the "cause of action" for filing a criminal complaint arises.

Step 4: Filing a Complaint: The payee must file a complaint with the appropriate magistrate court within 30 days of the expiry of the 15-day notice

period. This complaint must be in writing and accompanied by all relevant documents.

Step 5: Trial and Judgment: The court takes cognizance, issues summons to the accused, and a trial proceeds. If convicted, the drawer can face imprisonment up to **two years**, a fine up to **double the cheque amount**, or both.

THUS,

I. Once a complaint is filed before a court, the complainant or his authorized agent should appear in the witness box and provide relevant details for filing the case.

II. If the court is satisfied and finds substance in the complainant, then summons will be issued to the accused to appear before the Court.

III. If after being served with the summons the accused abstains himself from appearing then the court may issue a bailable warrant. Even after this if the drawer does not appear a non-bailable warrant may be issued.

IV. On appearance of the drawer/accused, he may furnish a bail bond to ensure his appearance during trial. After which the plea of accused is recorded.

V. In case he pleads guilty, the court will post the matter for punishment. If the accused, denies the charges then he will be served with the copy of complaint.

VI. The Complainant may present his evidence by way of affidavit and produce all documents including the original in support of his complaint. The complainant will be cross examined by the accused or his counsel.

VII. The accused will be given an opportunity to lead his evidence. The accused will also be afforded an opportunity to submit his documents in support of his case, as well as witnesses in his support. Accused and his witnesses will be cross examined by the complainant.

VIII. The last stage of the proceeding is that of the arguments after which the court will pass a judgment. If the accused is acquitted then the matter ends, but the complainant can go on further appeal in the High Court,

similarly if the accused is convicted he can file an appeal in the Sessions Court.

It must be noted that the offence under section 138 of the Act has been made compoundable:-

After amendment and insertion of Section 147 it is compoundable. The purpose of compounding the offence has been stated in the decisions reported in AIR 2000 SC 3543- P.Mohanbabu Vs. D. Ramaswamy, AIR 2004 SC 3978 Anil Kumar Haritwal v. Alka Gupta, AIR 2008 SC 716 Vinay Devanna Nayak v. Ryot Seva Sahakari Bank Ltd., AIR 2010 SC 276 K. M. Ibrahim v. K. P. Mohammed. In the latest decision reported in AIR 2010 SC 1907 = 2010 AIR (SCW) 2929 = 2010-ADJ-4-464 – Damodar S. Prabhu vs. Sayed Babalal H, the Apex Court has issued the following guidelines. They are: In the circumstances, it is proposed as follows:-

That directions can be given that the Writ of Summons be suitably modified making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is made, compounding may be allowed by the Court without imposing any costs on the accused..

Similarly, if the application for compounding is made before the Sessions Court or a High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 20% of the cheque amount by way of costs.**But, this is not mandatory, it is upon the discretion of Court.**

Some more guidelines have been issued by the Apex Court in the case

of Madhya Pradesh State Legal Services Authority Vs. Prateek Jain reported in (2014) 10 SCC 690, as follows;

In the opinion of the Court, since Section 147 of the Act did not carry any guidance on how to proceed with compounding of the offences under the Act and Section 320 of the Code of Criminal Procedure, 1973 (now section 359 of Bharatiya Nagarik Suraksha Sanhita, 2023) could not be followed in strict sense in respect of offences pertaining to Section 138 of the Act, there is a legislative vacuum which prompted the Court to frame those guidelines to achieve the following objectives:-

- * To discourage litigants from unduly delaying the composition of offences in cases involving Section 138 of the Act;
- * It would result in encouraging compounding at an early stage of litigation saving valuable time of the Court which is spent on the trial of such cases; and
- * Even though imposition of costs by the competent Court is a matter of discretion, the scale of cost had been suggested to attain uniformity.
- * At the same time, the Court also made it abundantly clear that the concerned court would be at liberty to reduce the costs with regard to specific facts and circumstances of a case, while recording reasons in writing for such variance.

7. Recent Supreme Court rulings for speedy disposal of cases under Section 138 of the Act:-

In 2017, Delhi High Court in *Dayawati v. Yogesh Kumar Gosain* took into account the question whether an offence under Section 138, which is a criminally compoundable case, could be settled by mediation.² The Court held that even though an express statutory provision enabling the criminal court to refer the complainant and accused persons to alternate dispute redressal mechanisms has not been specifically provided by the Legislature. The Code

of Criminal Procedure ("**Cr.P.C.**") does permit and recognize settlement without stipulating or restricting the process by which it may be reached. Thus, there is no bar to utilizing the alternate dispute mechanisms including arbitration, mediation, conciliation (recognized under Section 89 of Civil Procedure Code, 19083) for the purposes of settling disputes which are the subject matter of offences covered under Section 320 of the Cr.P.C. It also stated the proceedings under Section 138 of the Act is distinct from other criminal cases and are really in the nature of a civil wrong which has been given criminal overtones.

In *Meters and Instruments (P) Ltd. v. Kanchan Mehta*, the Honourable Supreme Court established that while compounding with consent remains ideal, courts can exercise discretion to close Section 138 cases—even without complainant consent—if the accused offers full compensation. The judgment prioritizes expedient, compensatory justice and judicial efficiency.

8. Interim Compensation and its recovery :-

As per section 143A of the Act , Court has power to grant interim compensation during pendency of the proceedings. Power to Grant Interim Compensation in Cheque Bounce Cases under section 143A of N.I Act is Discretionary. The Hon'ble Supreme Court Issued Guidelines in Rakesh Ranjan Shrivastava vs. The State Of Jharkhand & Anr (Neutral Citation 2024 INSC 205).

The Hon'ble Supreme Court held that the exercise of power to grant interim compensation in cheque bounce cases under sub-section (1) of Section 143A of the Negotiable Instruments Act, 1881 (N.I. Act) is discretionary and not mandatory. The Court provided the following parameters for exercising the discretion under Section 143A of the N.I. Act:-

The Court must evaluate the merits of a case made out by the complainant and the defence pleaded by the accused in the reply to the application. "The financial distress of the accused can also be a consideration."

If a complainant made out a prima facie case, only then a direction to pay interim compensation could be issued by the Court.

The Court may exercise discretion in refusing to grant interim compensation if the defence of the accused was found to be prima facie plausible.

If the Court concludes that a case warrants interim compensation, it will also "have to apply its mind to the quantum of interim compensation to be granted." While doing so, the Court should also consider several factors such as the nature of the transaction, the relationship if any, between the accused and the complainant, etc.

The Court stated the parameters given by the Court were not exhaustive and that "there could be several other relevant factors in the peculiar facts of a given case."

Section 143A of the Act is prospective. Court has power to grant interim compensation during pendency of the proceedings, as held in the case of G. J Raja Vs Tejraj Surana, reported in (2019) 19 SCC 469 20 Interim compensation is not mandatory but discretionary directory as held by Delhi High Court in the case of M/S JSB Cargo and freight forwarder Pvt Ltd Vs State and another. Similar view has been expressed by Madras High Court in the case LGR enterprises Vs P Anbazhvgan.

9. Power of Appellate Court to order payment of fine or compensation:-

The Appellate Court can order for payment pending appeal against conviction under section 148 of the N.I ACT. Above provision is analogous to Section 143A of the N.I Act.

The amount deposited can be released to the complainant with condition to refund it back with interest, pending appeal, as held in the decision in the case of N Narasimhamurthy Vs. Santhosh J, reported in ILR 2019 Kar 2058=(2019) 2 Kar.LJ 713.

From the above discussion following aspects emerge with recent changes.

1. On Compromise and Compounding of Offence

- In Case Law of **Gimpex Private Limited v. Manoj Goel** (2021) Hon'ble Supreme Court held that the offence under Section 138 is "primarily a civil wrong in criminal clothing" and is **compoundable** even after a conviction has been affirmed by Hon'ble High Court. This means that if the parties reach a compromise and the complainant accepts the full and final settlement, the conviction can be set aside.

The Court emphasized that it must respect the parties' decision to resolve the dispute amicably.

2. On Legally Enforceable Debt

- In Case Law of **Dashrathbhai Trikambhai Patel vs. Hitesh .Mahendrabhai Patel** (2023).

Hon'ble Supreme Court held that If a part-payment of the debt is made after the cheque is issued but before it is presented, the offence under Section 138 would not be attracted unless the payee first endorses the part-payment on the cheque under Section 56 of the NI Act. The statutory notice must demand the *correct* amount, not the full cheque amount if a part payment has been made.

Example: If a cheque is for Rs. 50,000 but the drawer pays Rs. 10,000 before the cheque is deposited, the payee cannot file a complaint for the full amount. The payee's notice must demand only the remaining Rs. 40,000.

3. On Issuing Legal Notice

- In Case of **Rajendra vs State of UP 2025**, Court held that A legal notice under Section 138 can be sent through electronic means like **e-mail** , as long as it fulfills the requirements of the Information Technology Act, 2000.

Example: A lawyer sent a legal notice to an accused via e-mail, and the court held it to be a valid form of service, provided the delivery and read receipts can be proven.

Jurisdiction

Earlier Rule was Jurisdiction lies where the payee maintains the account in which the cheque was deposited.

But, in Aug 2025 in Case of Chimanlal Sheth vs. Jagruti Keyur (2025 INSC 897) Hon'ble Supreme Court reaffirmed that jurisdiction is **only with the court where the payee's bank branch is located**. Physical deposit location does not matter.

Example: If a cheque is drawn in **Raipur** but deposited into a payee's account in **Dantewada** branch, only **Dantewada** court has jurisdiction.

Nature of Offence: Compensatory vs Punitive

- **Earlier Principle** was Section 138 is primarily compensatory, with punitive elements only to secure compensation.

However, in March 2025 Hon'ble Supreme Court held that **the core object is compensation, not imprisonment**. Punishment is only to enforce payment. Courts are encouraged to focus on ensuring repayment with reasonable costs, rather than sending offenders to jail.

Compromise & Avoidance of Imprisonment

Compounding is allowed at any stage. Even **after conviction**, if a valid **compromise deed** is executed with the complainant, imprisonment can be avoided and conviction abates.

Liability of Partners & Firms

- **Earlier Position** was Firms and signatories both needed to be impleaded. **But, in July 2025 in Case of Dhanasingh Prabhu v. Chandrasekar (2025 INSC 831)** Complaint is **maintainable against partners** who signed the cheque, even if the firm is not arrayed as an accused.
Example: A partner issues a firm's cheque that bounces. Even if the firm is not made a party, that partner can still face Sec. 138 proceedings.

- **Frozen account ≠ Sec. 138 offence**

In Case of **Shine K.V vs Union of India** When a bank account is frozen or attached by law it can not be considered as **maintained** by the drawer. Therefore, a cheque drawn on such an account cannot attract criminal liability under section 138 of NI Act.

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What to do for Disposal of Cases

- **Plea Bargaining and Mediation:** These are highly effective methods for reducing the judicial backlog. Courts often refer cases to **Lok Adalats** (People's Courts) where parties are encouraged to settle their disputes

amicably. This leads to a faster resolution and saves judicial time and resources.

- **Technological Integration:** The judiciary is exploring the use of technology to streamline the process. The Supreme Court has suggested that some Section 138 cases could be handled "online," with digital filing of complaints and affidavits.
- **E-summons:** The use of e-mail and other electronic means for serving summons to the accused is being considered to overcome delays caused by unserved physical summons.
- **Specialized Benches:** Creating dedicated benches or fast-track courts solely for handling Section 138 cases is a proven strategy for speeding up the trial process.
- **Pre-Institution Mediation:** A key proposal is to make mediation mandatory before a complaint is filed in court. This could divert a significant number of cases from the court system.

Innovative tools and Techniques for Disposal of Section 138 NIA cases:-

Section 138 of the Negotiable Instruments Act deals with cheque dishonour (cheque bounce). These cases form a significant portion of criminal dockets in India, often leading to pendency and delay.

To ensure speedy justice and reduce backlog, several innovative approaches have been adopted:-

(i) Digital & E-Courts Mechanisms

(a) Digital & E-Courts Mechanisms have revolutionized the disposal of Section 138 NIA cases by enhancing speed and efficiency. The use of Video Conferencing for hearing allows witnesses to testify remotely, reducing delays due to travel or scheduling conflicts.

(b) E-filing of complaints and submission of documents via email, WhatsApp and SMS further minimize procedural lags, ensuring that parties can instantly receive summons and notices. These technological interventions make court proceedings more streamlined, cut down paperwork, and reduce bottlenecks in serve delivery. As a result, the entire lifecycle of a Section 138 case, from filling to disposal becomes significantly faster and more accessible for litigants.

(ii) Summary Trials

(a) Summary Trials & Plea Bargaining are vital judicial innovations to expedite the resolution of Section 138 NIA cases. Section 143 of the Act permits summary trials, enabling courts to quickly examine evidence and pronounce judgements, thus avoiding lengthy, regular trial procedures, This accelerates case disposal, helping to clear huge backlogs.

(b) Additionally, plea bargaining and compounding of offences are encouraged, allowing parties to settle disputes amicably at early stages, Such settlement mechanisms provide opportunities for the accused to accept responsibility and for the complainant to receive swift redressal, often without needing a full trial. Together, these processes make the justice system more efficient and responsive, ensuring timely justice for Section 138 cases.

(iii) Mediation & ADR (Alternative Dispute Resolution)

(a) Disposal of cases under Section 138 of the NIA involves a specific, legally mandated procedure to ensure speedy resolution. firstly, a cheque must be presented within its validity, and if returned unpaid due to insufficient funds, a legal notice must be sent to the drawer within 30

days demanding payment. The drawer then has 15 days to make the payment. If payment is not made, the payee files a complaint in the court.

(b) The law requires the complaint to be filed only after the 15-days period. Courts are urged to expedite trials due to heavy backlog, with weekly disposal reports and fast-track courts recommended for quick justice. The Supreme Court has emphasized expeditious trials to reduce pendency and ensure judicial efficiency in 138 NIA cases.

(iv) Use of Technology for Evidence & Process

(a) During the process magistrate examines the complaint and summons the accused. The trial is usually summary, aiming for expedited disposal, but is often converted to summons trial depending on the sentence involved. The court examines evidence from both sides and decides based on proof. The Supreme Court guidelines emphasize speedy disposal within 3 months to reduce case backlog.

(b) Summons can be sent through various means including post and electronic communication. Bail bonds may be required from the accused. The process aims to ensure creditors receive timely justice while protecting the rights of accused.

(v) Special Courts & Fast Track Mechanisms

(a) The disposal of Section 138 NIA cases faces delays due to procedural bottlenecks like issuance of summons and conversion of summary trials to summons trials. Many cases remain pending for years as courts follow exhaustive procedures, including witness examination and repeated trials if judicial officers are transferred. To tackle pendency, the Supreme Court initiated suo moto proceedings to expeditiously

dispose of such cases. It appointed amici curiae to suggest reforms and emphasized evidence recording through affidavits and direct admission of banking slips as primary evidence to fast-track trials.

(b) Courts are advised to use summary trial provisions strictly and avoid unnecessary conversions. The case load is significant involving over 35 lakh cases, posing a burden to the judiciary. Measures such as limiting summons and streamlining evidence collection have been proposed to ensure swift justice while balancing the accused's opportunity to defend.

(vi) Legislative & Judicial Innovations

(a) Legislative and judicial innovations have significantly enhanced the disposal of Section 138 NIA cases. The Supreme Court, recognizing the vast backlog and delays, has emphasized expeditious trials and recommended procedural reforms. Judicial innovations include the active use of Section 258 of the Criminal Procedure Code to discharge accused when no substantial grounds exist, thereby reducing unnecessary prolongation. Courts have also encouraged mediation and compounding of offences to promote settlements, easing the judicial burden. For instance, mediation referral of compoundable offences under Section 138 has been legally upheld, facilitating amicable resolutions.

(b) Furthermore, the Supreme Court has prohibited parallel prosecutions once a settlement is entered, preventing multiple litigations on the same issue. Legislatively, proposals for decriminalization aim to further ease case congestion, aligning with ease of doing business and reducing pendency without diluting resolution mechanisms. Collectively, these innovations foster rapid case disposal, protect parties' interests and improve judicial efficiency in Section 138 NIA cases.

(vii) Case Management & Group Disposal

(a) The offence under Section 138 arises when a cheque issued for discharge of a legally enforceable debt is dishonoured due to insufficient funds or other specified reasons. To dispose of such cases, courts must verify the existence of a legally enforceable debt, proper notice to the drawer and cheque dishonour. Trials under Section 138 are summary in nature to ensure swift justice. Magistrates conduct inquiry, examine complainant and witnesses and decide on summons issuance. The Supreme Court has prescribed guidelines urging timely summons, bail bonds and completion of examination within three months.

(b) Settlement or compromise between parties can lead to case disposal, as parallel proceedings are not allowed once settlement is entered. Speedy disposal is facilitated by allowing evidence through affidavits, summary trials, converting trials from summons trials only with recorded reasons and joint trial for related offences. These topics comprehensively guide the disposal of Section 138 NIA cases for fairness and expedition in the judicial process.

Conclusion:-

To sum up the integration of technology, mediation, summary trials and legislative reforms has transformed the disposal process of Section 138 NIA cases. The focus is on speedy, efficient and victim centric justice, reducing pendency and encouraging settlements.

--Thank You--