CHAPTER VIII
CONCLUSIONS AND SUGGESTIONS

The utility of any research depends upon the amplitude of effects the problem has on society. As the present topic deals with dishonouring of cheques in India, its utility could be realized only by studying the impact of the existing law on different spheres of life i.e. economic, political, social, criminal justice system etc. and by pondering over the changes and amendments necessitated in the existing legal framework.

In the case of Rangachari (N.) v. Bharat Sanchar Nigam Ltd.\(^1\), the Apex Court pointed out that the law merchant treated negotiable instruments as instruments that oiled the wheels of commerce and facilitated quick and prompt deals and transactions. This continues to be in the position as now recognized by legislation, though possibly a change is taking place with the advent of credit cards, debit cards and so on. It was said that negotiable instruments are merely instruments of credit, readily convertible into money and easily passable from one hand to another. With expanding commerce, growing demand for money could not be met by mere supply of coins and the instrument of credit took function of money which they represented and thus became by degrees, articles of traffic. A man dared not dishonor his own acceptance of bill of exchange, lest his credit be shaken in the commercial world.

8.1 Conclusion

After the introduction of Chapter XVII in the Negotiable Instruments Act, 1881 by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act 1988 and further exhaustive amendments by the Negotiable Instruments (Amendment and Miscellaneous provisions) Act of 2002, it was anticipated that the

\(^1\) 2007 (3) SCC 626.
problem relating to the dishonour of cheques shall be minimised to a
great extent and the people shall realize that in case of dishonour of
the cheques issued by them they may land in trouble and be constrained
to suffer penal consequences.

The Negotiable Instruments (Amendment) Bill, 2015 was
introduced in the Lok Sabha on May 6, 2015. The Bill seeks to amend
the Negotiable Instruments Act, 1881. The Act defines promissory
notes, bills of exchange, cheques and creates penalties for issues such
as bouncing of cheques. The Act specifies circumstances under which
complaints for cheque bouncing can be filed. However, the Act does
not specify the territorial jurisdiction of the courts where such a
complaint is to be filed. The Bill amends the Act to state that cases of
bouncing of cheques can be filed only in a court in whose jurisdiction
the bank branch of the payee (person who receives the cheque) lies. If
a complaint against a person issuing a cheque has been filed in the
court with the appropriate jurisdiction, then all subsequent complaints
against that person will be filed in the same court, irrespective of the
relevant jurisdiction area. If more than one case is filed against the
same person before different courts, the case will be transferred to the
court with the appropriate jurisdiction. The Bills also amend the
definition of ‘cheque in the electronic form’. Under the Act, it was
defined as a cheque containing the exact mirror image of a paper
cheque and generated in a secure system using a digital signature. The
definition has been amended to mean a cheque drawn in electronic
medium using any computer resource and which is signed in a secure
system with a digital signature, or electronic system.²

The Negotiable Instruments (Amendment) Act 2015 came in to
force with retrospective effect. According to the notification published
in the official Gazette dated 26.12.2015 the Amendment shall be
deemed to have come into force on the 15th day of June 2015. Rajya
Sabha passed the Negotiable Instrument (Amendment) Bill 2015 on 7th

² http://www.prsindia.org/billtrack/the-negotiable-instruments-amendment-bill-2015-3778/
accessed on December 2, 2016.
December 2015. Lok Sabha had passed the Bill in August 2015. The Act replaced Negotiable Instrument (Amendment) Ordinance which was re-promulgated on 25th September 2015.\(^3\)

The Cabinet, in December 2017, further approved an amendment to the current law to allow for payment of an interim compensation in cheque dishonour cases with a view not to allow unscrupulous elements holding payments, pending long trial, people in the know said. An amendment to the Negotiable Instruments Act will allow a court to order for payment of an interim compensation to those whose cheques have bounced due to dishonouring parties, a move aimed at promoting a less cash economy. The amendment is likely to be introduced in the ongoing winter session of parliament. Law minister Ravi Shankar Prasad, while briefing the media about the cabinet’s decisions, said amendment to Negotiable Instruments Act, 1881 has been approved. The minister, however, did not provide details about the proposed amendment. However, people familiar with the matter said the amendment would enable the court to order interim compensation to the payee of a cheque, a part of the cheque amount at the trial stage. If the drawer is acquitted, the court may direct the payee to repay the amount paid as interim compensation with interest, they said. Similarly, appellate courts would be enabled to order the appellant to deposit a part of the compensation awarded by the trial court at the time of filing appeal. The amendment has been proposed to help trade and commerce, particularly the micro, small and medium enterprises (MSME) sector, and in order to increase the credibility of the cheque as a financial instrument, people in the know added. Dishonour of cheques due to inadequate funds in the account of the drawer of the cheque or for other reasons causes lot of distress in the trade, business and MSME sectors. Dishonouring of cheque causes incalculable loss and inconvenience to payees and “erodes the credibility” of cheques to a large extent. The cabinet, officials said, considered the proposal to

amend the Negotiable Instruments Act to “address various representations” from the public as well as the trading community regarding the “injustice caused to payees” as a result of pendency of cheque dishonour cases. “The common themes in such representations are delay tactics by unscrupulous drawers of dishonoured cheques, relatively easy filing of appeals and obtaining stay on proceedings,” they said. A payee of a dishonoured cheque has to spend considerable time and resources in court proceedings to realise money due to him. The amendment is in line with the government’s push to make India a less cash economy. It is to be mentioned here that cheques are an integral part of the payments landscape, and form the backbone of trade and commerce, by being negotiable instruments.\footnote{http://www.livemint.com/Politics/mDMf9wKucO5E4pJ2LaXI4K/Cabinet-approves-amendment-to-law-on-cheque-bounce-cases.html, accessed on January 3, 2018.}

However, despite such amendments in the existing law, we find that the problem has not been solved rather it has been witnessed that there has been a flood of litigation resulting from the amended Act and unnecessary legal precautions, interpretations and time hurdles have eclipsed the entire spirit of the enactment.

8.2 Suggestions

Keeping in view the peculiar socio-economic set-up of our developing nation, some reformatory measures and changes may aid in enhancing the overall efficacy, acceptability, viability and legal practicability of the law relating to dishonour of cheques. So, the researcher proposes the following suggestions regarding –

8.2.1 Proof of Bank Documents

The offence defined under section 138 of the Negotiable Instruments Act is inherently technical in nature and therefore for just and effective adjudication of the matter, adducing the relevant bank record of the drawer’s and holder’s respective bank accounts becomes necessary in almost all cases. It can be recommended that there should also be an amendment in the Bankers’ Books Evidence Act, 1891, to avoid the time lag, it should not be necessary to summon the bankers of
the accused to prove the reason for return of cheque. Section 4 of the Banker’s books Evidence Act should be amended and it should be provided that the duly stamped memo relating to return of the cheque duly signed by the Manager/responsible officer shall be deemed to be authenticated proof for the purpose of proving the reason for the return of the cheque and no further proof shall be needed for recording the pre-summoning evidence. This has not been done and in fact it can be stated that it has come as a curse for the banker in the sense that it has become difficult for the bank to comply with the requirements of the courts and it has also become tedious to arrange to send on each date of hearing a representative of the banker with the relevant records and copies of the documents and statements of the accounts under the Bankers’ Books Evidence Act. The branch of the bank may be at place ‘X’ and the court where the record is summoned may be ‘Y’ or at place ‘Z’ situated at a distance of more than hundred kilometers and the record shall have to be sent to the said court on each date of hearing with the representative of the bank. This is well known that there are more chances of an adjournment of the date of hearing rather then the probability of the case being taken up. This proves to be time consuming and expensive process for the bank and creates conveyance and manpower problems relating to shortage of staff and employees.\(^5\)

For commercial institutions and banking set-ups it has become a life-sized problem as day-in day-out such financial bodies are being flooded with a number of summons from different courts whereby the representatives are required to be present on the date of the hearing so that their statements on the basis of the records summoned, may be recorded in court for the purpose of pre-summoning of the complainant. The original cheques, returning memos, debit advice and such like documents are to be proved by the bankers and it is only after this part of the game is over successfully that the summons to the accused can be sent.\(^6\)

\(^6\) Id. at 324.
It is a matter of common experience that usually Rs.20 to 25 are deposited for the clerk of the bank to come and give evidence usually, bank has to pay about Rs.100 as reimbursement to the clerk who is away on the date and is not expected to return back to duty on the said day and thus bank suffers a monetary loss to the extent of the amount which is not reimbursed by anybody and there is accumulation of work on this account and other customers suffer. It is not necessary that a person who goes to the court with the record of the bank summoned will come back after having his statement recorded on that very day. Experience shows that on most of the dates there are no chances of his going back to the bank on account of the reason that his statement could not be recorded as either the court is on leave or the opposite counsel is on leave and these matters are being dragged on from one date to the other without any progress in the complaint failed against the accused as procedural delays and the legal technicalities provide a long rope to the accused to escape punishment. The entire process proves to be tiresome, harassing, cumbersome and minimum time period required is about 2/3 years in most of the cases.\(^7\)

It is submitted that it is also common place that on date fixed for hearing, the entire summoned evidence is available but the complainant is not present on the ground of some exigency and as such no progress can take place. There is also the issue of bankers to maintain secrecy. Usually, the complainant summons the records of the banks for the entire month and although the complainant and the court are concerned only with one date, yet the information about the accounting details of the accused is summoned for all the dates in that particular month. Besides the above questions, there are a number of tactics adopted by the accused to get the matters delayed for longer periods viz. strike or suspension of work by lawyers, illness of counsel or his pre-occupation in some other urgent work, record not forthcoming on a particular date from any of the banks for a request having been received due to any reason, time not being available with the court for recording the evidence due to heavy pendency.

\(^7\) Id. at 326.
It is submitted that although section 146 of the Negotiable Instruments Act has brought a welcome change in respect of this problem by attaching a presumption of truth to slips and memos issued by banks nevertheless a more comprehensive amendment is called for in this regard. Apart from slips and memos, even the computerized bank account statements, debit advice notes, letters of intimation of dishonour sent by the bank to the holder and such like other documents which are in routine required to be adduced in evidence in almost all cases under section 138 of the Act, should be made *per se* admissible in evidence so that formal proof of such documents by way of oral statement of bank representative in court can be dispensed with. This would not only prove to be a substantial aid to the financial institutions but would also relieve the litigants and the courts of unnecessary procedural hurdles and delays.

8.2.2 Interpretation and Application of Law

The legislative intent behind inserting the provisions of sections 138 to 147 in Negotiable Instruments Act has to be taken into sight while interpreting the relevant sections as well as to seek solutions for resolving the problems which arise while dealing with the questions of law and deciding the cases. A crucial issue which casts and outcropping protrusion is whether strict or liberal approach should be adopted in interpretation of the statute in this regard. It cannot be denied that there are a handful of inherent defects, deficiencies and shortcomings in the enacted provisions of law and procedure to be followed. Due to varied and contradictory opinions expressed by different High Courts in India on a particular point, it sometimes become difficult for trial courts to do justice in real sense. Trial courts are bound by the law laid down by Supreme Court or its own High Court, however where on a particular issue or point there is no settled law of Supreme Court or one's own concerned High Court, then due to contradictory views expressed by various higher forums, complications arise regarding offence under section 138 Negotiable Instruments Act.

It needs to be reiterated that the offence is very complicated one
and complainant has to be very careful on each and every step for the success of the prosecution of the drawer accused. Thus first of all it is to be seen whether the court has to take lenient or strict view while giving interpretation to various provisions of the law of prosecution under Section 138 of the Act. Where the legislature lucidly puts forth its intent in the scheme and language of the statue, it is the functional responsibility of the court to give effect to the same without delving into its wisdom or policy and without substituting, adding or implying anything which is not in sync with or consistent with the expressed intent of the law given. Where the statute's meaning is unambiguous, words cannot be interpolated as the thought intended to be conveyed might be altered by the addition of new words. They should not be interpolated even though the remedy of the statute would thereby be enhanced, or a more advantageous or legally plausible result would occur. Even where the meaning of the statute is clear and sensible, either with or without the omitted word, interpolation is improper, since the primary source of the legislative intent is in the language of the statute.

However circumstances and exigencies varied and numerous may arise on account of several considerations, which could not have been fully visualized by the legislature at the time of framing of the statute. Hence while interpreting the statute, in all fairness, the basic object and purpose for which the Act was enacted should weigh in the judicial mind. If the foundation or the purpose intended by the law enacted gets disclosed in the proceeding initiated, merely because a particular contingency not vitally irreconcilable, had not been expressly stated, that would not suffice, to throw out the prosecution, even at the threshold.

It needs to be ascertained whether a liberal or strict approach is to be taken in respect of a particular point involved in interpreting the same. Some of the aspects may invite strict interpretation whereas some provisions may be liberally used. It can be said that liberal approach can be adopted while dealing with the procedural aspect but
for invoking penal provisions, strict approach should be adopted. Whether strict or liberal interpretation has to be adopted, it must be taken care of which help us in reducing or minimizing the defects, loopholes and technicalities of the law and to do effective justice to both parties and society at large.\textsuperscript{8}

\textbf{8.2.3 Statutory Bar of Limitation}

The time period for taking steps before filing complaint and thereafter for initiating the prosecution is so short that sometimes due to justified and genuine grounds on the part of complainant, honest prosecution may fail which gives unrich and unjust benefit to the cunning and clever drawer. Complainant sometimes due to reasons beyond his control is not able to send the notice of demand within 30 days of receipt of intimation about dishonour of cheque or fails to file the complaint within one month from the date of accrual of cause of action. Earlier complainant was totally barred to launch the prosecution after expiry of period of limitation and no extension of limitation was to be granted but now on showing sufficient cause, court may condone the delay due to adding of proviso in Section 142 of the Act, however still a great burden lies upon complainant to disclose the sufficient cause. The discretion is vested in the court whether to allow the condonation of delay in filing of the complaint or not.

Similarly the time range of 15 days from the date of receipt of notice of demand for making payment of the cheque amount to escape culpable liability, is also not sufficient. An honest drawer, to make payment of outstanding dues, especially where the amount of dishonoured cheque is very high, may require more time for making arrangement to make payment through arrangement of loan, sale of his assets, business arrangements etc. Thus it is felt that the time limit prescribed for making payment by the accused should be sufficiently increased. Though time for sending notice has been increased to one month by the amendment of 2002 but it can be increased further and drawer can be also given time of atleast three months to make payment.

It may be recommended that the period of filing of complaint in court is also required to be increased to at least 6 months from the date of accrual of cause of action instead of period of one month at present because in business community normally efforts for compromise may go on for longer period. Settlement of amount due though directly or through intervention of some associations or influential persons most of time succeed but takes time. To do justice to both parties and keeping in view their difficulties, the extension of time period is required from the present one and the Legislature is expected to take care of the fact and is expected to make suitable amendment in the law. Similarly courts should be also liberal to exercise their powers to extend the limitation period for filing the complaint in court.9

8.2.4 Speedy Trial and Set-up of Judicial Establishment/Infrastructure

In India on an average, about 10 judges are functioning against one million population. Establishment of more courts can be one major solution to take up day to day trial of complaints under section 138 and effective disposal of these cases would be possible in comparatively short time. Today the courts of Magistrates are heavily overburdened and equipped with inadequate infrastructure so find less time to effectively deal with the complaints under Section 138. It is required that special courts of Magistrates be established to exclusively deal with complaints under Section 138 as this type of litigation is increasing day by day and normal court of Magistrate who is also looking after state cases and other matters finds no sufficient time to deal with such complaints. Increase of strength of judges at least five times from existing strength certainly would help in shortening the period of trial and disposal of the cases.10

Over the years there have been many important changes in the way cheques are issued/bounced/dealt with. Commercial globalisation has resulted in giving big boost to our country. With the rapid increase

9 Id. at 341.
10 Ibid.
in commerce and trade use of cheque also increased and so the cheque bouncing disputes. Inclusion of additional forms of crime, for example, section 138 cases under the Negotiable Instruments Act or section 498-A cases under the Penal Code, contributed a large number of cases in the criminal courts. To deal with these types of cases we do not have additional number of courts, we do not have additional infrastructure. In many States sufficient budgetary provisions are not made for improving the infrastructure of the subordinate courts, including additional improvement of existing courts, court complexes.\footnote{Presidential address by Hon’ble Mr Justice K.G. Balakrishnan, C.J., at National Seminar on Delay in Administration of Criminal Justice System, 17-3-2007, Vigyan Bhavan, New Delhi available at http://supremecourtofindia.nic.in speeches-2007.}

Several central statutes including the Negotiable Instruments Act have contributed more than 50\% to 60\% of the litigation in the trial courts. These enactments are referable to List I or List III of the Seventh Schedule of the Constitution of India. Art. 247 of the Constitution enables the Union Government to establish additional courts for better administration of laws made by Parliament or existing laws with respect to a matter enumerated in the Union List.\footnote{Ibid.}

Mr Justice R.C. Lahoti, ex-CJI, (on the “Law Day” November 26, 2004) on the matter of pendency of cases quoted the following from the speech of late Dr. L.M. Singhvi, Senior Advocate and the then President, Supreme Court Bar Association:

“Increasing institution of cases, mounting arrears, accumulating congestion in courts and inevitable law's delays have given rise not to a body of scientific and rational blueprints in terms of institutional organisation and procedural methods or in terms of assessments of judicial manpower requirements, but to a spate of alarm signals and dire shibboleths. If there are more and more cases in courts, that is because we have a population explosion, we have a more complex and friction-
prone society, our dispute resolution and conciliation system are bereft of efficacy, we have increasingly greater awareness of rights, and perhaps because we have more injustice and more arbitrariness in our midst. The Governments are under an obligation to provide an adequate machinery for justice, to appoint more judges and to give them better emoluments and facilities, to build more courthouses, to enact better laws, to devise better dispute resolution procedures, and to administer more effectively and equitably, rather than to blame lawyers and judges for the increase and proliferation of litigation. Courts in India cannot apply a mechanical-statistical razor blade or wave a magic wand to wipe out the enormous pendency of arrears. Nor can the courts afford to turn a blind eye or a deaf ear to the rank injustices and incongruities of administration merely because they have already too much on their hands. If the courts begin to do that systematically, they might endanger the confidence and credibility they have come to enjoy.”

The criminal justice system in the country is designed to protect the citizens of this country from the onslaught of criminal activities of a section of the community which indulges in such acts. The outcome of any criminal justice system must be to inspire confidence and create an attitude of respect for the rule of law. An efficient criminal justice system is one of the cornerstones of good governance. When we think of criminal justice system it consists of the police, prosecuting agency, various courts, the jail and the host of other institutions connected with the system. The State as a guardian of fundamental rights of its citizens is duty-bound to ensure speedy trial and avoid excessively long delays

in trial of criminal cases that could result in grave miscarriage of justice. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible. But, unfortunately, there are a large number of cases pending in various courts. Various factors contribute to large pendency of criminal cases in the subordinate courts. Speedy trial of criminal cases should be recognised as an urgent need of the present judicial system in order to decide the fate of lakhs of litigants. It will help enhance the faith of general public in the present judicial system. In order to have a strong socio-economic system, it is important that each and every state of trial of an accused should move at reasonably fast pace. Speedy trial ensures that a society is free of such vice.\(^{14}\)

The challenges before the criminal justice system are to balance the rights of the accused while dispensing speedy and effective justice. The criminal justice system machinery must also meet the challenge of effectively dealing with the emerging forms of crime and behaviour of the criminals. In the trial of criminal cases a Judge should be a little more active and he can contribute to a great extent in preventing the delay in the administration of justice. In most of the cases, the blame for delay in administration of criminal justice system is put at the door of the courts. Courts are over congested with petty cases and many legislations are being enacted which result in filing of large number of cases before the courts. Inclusion of additional forms of crime, for example, S. 138 cases under the Negotiable Instruments Act or S. 498-A in the Penal Code, contributed a large number of cases in the criminal courts. Some of the new legislations like, the Domestic Violence (Prevention) Act, have come up which contribute some more cases to the criminal courts. To deal with these types of cases we do not have additional number of courts, we do not have additional infrastructure. In many States sufficient budgetary provisions are not made for improving the infrastructure of the subordinate courts,

\(^{14}\) Presidential Address of Hon’ble Mr Justice K.G. Balakrishnan, Chief Justice of India, at the National Seminar on “Delay in Administration of Criminal Justice System” held at New Delhi on 17 March, 2007.
including additional improvement of existing courts, court complexes.¹⁵

We require modernisation and computerisation of our criminal justice system. In many States courts are functioning from rented places. The building which was constructed for the purpose of residence is being used to house courts. There should be sufficient sitting arrangement for the witnesses or the clients. There should be suitable building for the proper functioning of the courts. The prosecuting agency should be given sufficient facilities for the court to conduct the cases. The accused and the witnesses should have resting rooms if the trial has become lengthy. All this could be provided only if there are courts with modern facilities. The States should gradually improve the infrastructure and there must be sufficient budgetary allocation in each year. Now the courts are provided only with budgetary allocation for the payment of salaries of staff members of the courts and for day-to-day expenses for running the courts. This situation could be changed, if sufficient funds are allocated every year for starting new courts and also to improve the conditions of the existing courts. The starting of Fast Track Courts have helped to a great extent in disposing of the pending Sessions cases and that, by itself, has proved that it is because of lack of large number of courts that the pendency of criminal cases is on the rise.¹⁶

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 get justice through courts, one must go through the complex and costly procedures of litigation. One has to bear the costs of litigation including court fee, stamp duties, etc. and also the lawyers’ fees. Apart from these, the litigant loses much more in financial terms such as loss of income arising from attending the court hearings. A poor litigant who is barely

¹⁵ Ibid.
¹⁶ Ibid.
able to feed himself will never be able to get justice or obtain redress for a wrong done to him through courts. Further, a large part of the population in India is illiterate and live in abject poverty. Therefore, they are totally ignorant about the court procedures and will be terrified and confused when faced with the judicial machinery. Thus most of the citizens of India are not in a position to enforce their rights, constitutional or legal, which in effect generates inequality contrary to the guarantees of Part III of the Constitution. Large population, more litigation and lack of adequate infrastructure are the major factors that hamper our justice system. Regular adjudication procedures through the constant efforts of Legal Services Authorities will act as catalysts in curing these maladies of our system.\textsuperscript{17}

Time has come to think of providing a forum for the poor and needy people who approached the law courts to redress their grievance speedily. However, the delay in disposal of cases in law court, for whatever reason it may be, has really defeated the purpose for which the people approach the courts for their redressal. Justice delayed is justice denied and at the same time justice hurried is justice buried. So, one has to find out a via media between these two to render social justice to the poor and needy who want to seek their grievance redressed through Law Courts. The Constitutional promise of securing to all its citizens justice, social, economic and political as promised in the Preamble of the Constitution cannot be realised unless the three organs of the State i.e. legislature, executive and judiciary join together to find ways and means for providing to the Indian poor equal access to its justice system.\textsuperscript{18}

Infrastructure for the Fast Track Courts is to be provided by the State Government and the selection of the Judges is to be made by the High Court. 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,

\textsuperscript{17} Ar. Lakshmanan, Voice of Justice, at 231-233 (2006).
\textsuperscript{18} Id. at 235.
our 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.

It is needless to say that realization of real justice needs cooperation of all the three wings of the Government with one single aim to reach out justice to individuals and thus, maintain rule of law. Interaction between the three wings of the Government is necessary to improve the justice delivery system and such cooperation should be seen in day-to-day dispensation of justice. Sessions trials in several courts in the country are held up because of unwanted adjournments on just asking either by the defence counsel or Public Prosecutor, not examining the witnesses within the scheduled time and the non-cooperation of the prosecuting agency. There is a general complaint that the police has no sufficient time or force, to serve in time the summons on the witnesses and keep the undertrial prisoners present in the Court, at the time of trial. There are instances coming to light that the offenders are sentenced but sentences imposed, are not executed because the convicts had already jumped bail and the police has no will and time to search them out.\(^\text{19}\)

Judiciary today is more deserving of public confidence than ever before. The judiciary has a special role to play in the task of achieving socio-economic goals enshrined in the Constitution while maintaining their aloofness and independence; the Judges have to be aware of the social changes in the task of achieving socio-economic justice for the people. The Indian judicial system is constantly exposed to new challenges, new dimensions and new signals and has to survive in a

\(^{19}\) Id. at 239.
world in which perhaps the only real certainty is that the circumstances of tomorrow will not be the same as those of today. The need of the hour is to correct misconception about the judiciary by making it more accessible and more explicit, by utilising the resources available to improve the service to the public, by reducing delays and making courts more efficient and less daunting.\textsuperscript{20}

The Law Commission of India recommended setting up of Fast Track Courts at Magisterial level with high-tech facilities. Huge backlog of cheque bouncing or dishonoured cheque cases need to be speedily disposed of through this measure, lest the litigants lose faith in the judicial system. Unless there is sufficient number of courts for resolving cheque bouncing disputes speedily and efficiently, the problem will continue to be alarming. Commercial circles in India and abroad must be assured a fast and efficient judicial system in India.\textsuperscript{21}

By expeditious disposal of the complaints most of the avoidable litigations may not even be initiated. This would further avoid multiplicity of litigation and wastage of precious court time. So keeping in view the object behind the enactment, Delhi High Court in United Ink & Varnish Co. Ltd. v. State & Ors. also ordered for constituting some special courts of Magistrates so as to exclusively deal with the complaint cases under Section 138 of the Act.\textsuperscript{22} Same opinion regarding establishment of more courts was again emphasized by Delhi High Court in Khanna Hotels (P) Ltd. v. State so that one metropolitan magistrate should not have more than 500 cases at a time.\textsuperscript{23} Division Bench of Bombay High Court also in Prithviraj Ambalal Patel v. State of Maharashtra held that increase of strength of judges is need of the day and unless sufficient number of judicial hands are provided, the arrears of cases cannot be reduced.\textsuperscript{24}

These directions certainly would help in clearing the backlog of pending cases and also reduce the period of trial. Besides increasing

\textsuperscript{20} Id. at 250.
\textsuperscript{21} Report No. 213 (November, 2008).
\textsuperscript{22} 2001 (2) RCR (Criminal) 95.
\textsuperscript{23} 2003 (48) SCL 105 (Delhi).
\textsuperscript{24} 2004 (1) DCR 24.
the strength of judges and constituting special courts, government should also adopt necessary measures for providing sufficient court staff including competent stenographers, honest process servers, latest computer softwares and other infrastructure to the courts to increase the efficiency of the entire judicial set-up.

Issuing a cheque which is dishonoured is crime in India. But we hardly see any people being punished for bouncing of cheques. People are dissuaded to trust bank cheques. This all because courts in India are awefully overburdened with dishonoured cheque cases.

Legal experts are unanimous in their opinion that the present system of criminal jurisprudence is destined to fail if the backlog of cases is not substantially reduced. Recently, the Law Commission of India mooted 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 levelled 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. Actually, the courts have been practically following such a practice, for several years, now.25

A speedy trial is not only required to give quick justice but it is also an integral part of the fundamental right of life and liberty, as envisaged in Art. 21 of the Constitution of India. The dispensation of justice has little meaning if it is not delivered in a reasonably short time, strictly speaking a delayed justice, frustrating the cause thereof, is no justice at all. A good legal system should not only yield proper and just solutions but also these solutions must be had quickly and as infallibly as human agency can guarantee. Delay is a great reproach, and the cry for speedier justice is heard from all quarters, slow justice would be futile, over speedy justice is undesirable, because the hurried justice implies buried justice, speedy disposal of cases should not be construed to mean that cases should be disposed of quickly to the determent of justice.

25 Supra Note 17.
Speedy justice has always been considered the "sine qua non" of an effective and efficient Criminal Justice System as basic premise of a criminal justice system is that the punishment must follow the judgment of guilt and should not precede it. Another basic precept of the Criminal Justice System is that accused is presumed to be innocent till his guilt is proved beyond all reasonable doubt by the prosecution. Therefore it is undesirable that the sword of Damocles should not hang over the head of accused for indefinite period. Speedy Justice is also essential in order to gain the confidence of the Public in Criminal Justice System. So the good approach toward crime prevention and control demands that the guilty should be punished while the events are still fresh in the public mind. The need for Speedy Justice cannot be gainsaid in Criminal Justice System to achieve the objectives of punishment and correctional programs. The Right to Speedy Justice is not only the very essence of an effective Criminal Justice System but is also consistent with the concept of fair and impartial trial.

The Law Commission of India is of the firm opinion that considering the alarming situation of the pendency of cases and the constitutional rights of a litigant for a speedy and fair trial, the Government of India should direct the State authorities for setting up of Fast Track Courts in the country, which alone, in the opinion of the Law Commission, will solve the perennial problem of pendency of cases, which are even summary in nature. The Law Commission is of the view that the backlog of cheque bouncing cases need to be speedily disposed of through this measure lest litigants may lose faith in the judicial system. The commercial circles should have confidence that we have quite faster judicial system. Accordingly, it has been recommended that Fast Track Courts of Magistrates should be created to dispose of the dishonoured cheque cases under S. 138 of the Negotiable Instruments Act, 1881. 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.\textsuperscript{27}

However, it cannot be lost sight of that establishment of additional courts at any level involves enormous expenditure capital as well as recurring. The appointment of old-time staff judicial as well as administrative, to the new courts involves considerable recurring expenditure. On the other hand if existing courts could be made to function in two shifts, with the same infrastructure, utilising the services of retired judges and judicial officers, reputed for their integrity and ability who are physically and mentally fit, it would ease the situation considerably and provide immense relief to the litigants. The Law Commission in its report dated 11/05/1988 had recommended, interalia, introducing shift system in Supreme Court to clear backlog of cases by deploying retired judges. Shift system is there in industrial establishments and has already been introduced in educational institutions to cope up with the increased demand. It is time that it needs to be introduced in the courts. Though the duration of 2\textsuperscript{nd} shift could be lesser than the 1\textsuperscript{st} one. The advantages would be:

- Minimum expenditure with maximum output.
- Existing court buildings, furniture, library and other infrastructure and equipment could be used for the 2\textsuperscript{nd} shift.
- The pre-employment of retired judicial officers and administrative staff would be far less burdensome to the exchequer as they would be paid only the difference between the salaries and emoluments payable to the serving judges and the officers of the same rank and their pension
- The induction of experienced judicial officers who enjoy high reputation for their integrity and ability will add to the credibility of the judicial system as a whole. With their rich experience they will be able to dispose of cases quickly and clear the area fast.

\textsuperscript{27} Ibid.
The prospect of pre-employment after retirement of most upright and efficient judges and judicial officers will act as an incentive to the serving judges and judicial officers to remain honest and discharge their duties to the satisfaction of all concerned.

Application of computer technology in court process.

Further it is submitted that a specified category of cases (subclassified according to subject matter) could be assigned to a particular trial judge having similarity with that branch of litigation, who will be in a better position to decide the cases more efficiently and expeditiously. By assigning the case to same judge from the date of institution, the judge will also be in a position to effectively monitor the progress of the suit relates disposal. The judge will also be in a position to ensure better compliance with the procedural rules regarding production of documents, discoveries, interrogatories, bringing the deeds of the key parties on record within the period of limitation and sector of the controversies between the parties could thus be narrowed down and the time for trial could be considerably reduced.

Small number of cases should be notified because in case of large number of matters being on the board, the lawyers, the parties or even the judge may not be in a position to have a realistic and practical estimate of the cases which are going to be taken up for trial. Instead depending on the classification of cases and duration for which they have been pending, if only a limited number of cases ripe for hearing are notified for trial say five or seven, the lawyers as well as litigants would be put to notice and the cases will go on trial and adjournment applications will not be granted. It will also make the task of a judge easier to manage the schedule. This will also reduce the burden on lawyers while having to attend a large number of cases, most of which are not to be tried in any case, but with uncertainty as to which cases
would be taken up for trial.

### 8.2.5 Procedure to be Adopted by Court

The complaints under section 138 have to be tried and decided as per the procedure laid down in the Code of Criminal Procedure. But the procedure prescribed can be shortened so as to curtail unnecessary time snags and obstacles. It is recommended that the necessity of recording of pre summoning evidence under Section 200 Cr.P.C even by way of affidavit can be dispensed with after filing of the complaint and accused (drawer) can be summoned straightway to face the trial. The version stated in the complaint along with original documents should be treated as sufficient to call the accused. Generally the offence under section 138 is based upon the documentary evidence such as dishonoured cheque, bank memos, written notice of demand, postal receipts, reply of the drawer and bills, cash memos or other written proof of transaction if any. When original documents are filed for perusal of the court with written version of the facts mentioned in the complaint, then the necessity of recording pre summoning evidence or taking of affidavit of complainant or his witnesses should be dispensed with for the summoning of an accused atleast. A cut short legal procedure would save time of the court and expenses of the complainant and expedite disposal of case.\(^28\)

Generally delay occurs in trial of such cases in securing presence of the accused in court. Difficulties arise mostly when the accused is resident of a place falling beyond the jurisdiction of summoning court. As per law, generally the service upon accused should be personally affected but there is no harm if various other efficacious steps are also taken in addition to the existing steps for service of summons upon the accused. In this regard now provisions have been added for service of accused with summons of the court through speed post and authorized courier as well.\(^29\)

\(^{28}\) *Supra* note 4 at 342.

\(^{29}\) *Id.* at 343.
It is observed that accused avoids the service through post as well as through process server by getting favourable report manipulated. Such types of false and manipulated reports can be avoided, if repeated and several different ways of service are taken simultaneously. Strict actions are also required to be taken against such postmen or process servers who manipulate reports. Sufficient training should be given to the process server by apprising them about legal formalities contained in relevant provisions in serving summons, so that their reports should not be discarded on technical defaults or irregularities.

Another way of service upon outstation accused is through the area Magistrate and concerned police head. Service through fax, e-mail wherever available as well as through the publication in newspaper, if complainant agrees to bear the expenses can be made even at first instance.

Another method of cutting short of time and expenses is to try the case summarily where it is possible. However when case is being contested, then at the start of the trial at the stage of recording plea of the accused on notice under Section 251 Cr.P.C he should not be simply asked whether he pleads guilty or not to be allegations but he must be asked specifically as per requirement of the provision whether he accepts his liability, issue of cheque and his signature on it, dishonour of cheque and the ground as given by his banker, receipt of notice of demand and its date as well as fact of non-payment of the cheque amount or not. The answers given and admissions of some facts made at that stage would cut short the trial and limit the defence of the accused.30

The law requires that at the time of framing notice under Section 251 Cr.P.C, accused should be asked what defence he has to make so the reply and plea of the accused on above questions and his defence plea also gives an opportunity to the court to restrict the evidence of the parties and unnecessary cross examination of the

30 Ibid.
witnesses. If accused accepts his cheques, ground of dishonour and receipt of notice of demand then the evidence of the bank witness and postal authorities can be dispensed with as facts admitted need not be proved under Evidence Act. Since the prosecution is generally based upon the documentary evidence, so immediately after appearance of accused and before taking any evidence, recourse can be taken to the provisions of Section 294 Cr.P.C also to admit or deny the documents of each other by both parties which would also help in shortening of the trial.31

As the cheque attracts the presumption of debt or liability under sections 118 and 139 of the Negotiable Instruments Act, so if other facts are admitted and only absence of debt or liability plea is raised or it is pleaded by the accused that he has discharged his debt and liability by making payment, then in that situation, sequence of recording of evidence can be suitably changed and accused can be ordered to lead his evidence first to rebut the presumption of the law and thereafter if need arises, complainant can be allowed to lead evidence in rebuttal. If accused fails to rebut the presumption of law then on the basis of his admission of facts and failure to discharge the burden, judgment of conviction can be pronounced. These steps help the court to fast disposal of the cases.

The applications moved by the accused for discharge should be outrightly dismissed without even calling for a reply from the side of the complainant because in the procedure prescribed for summons cases, there is no provision for discharge of accused at any stage. As observed by the Hon’ble Supreme Court in Adalat Prasad v. Rooplal Jindal32, the only remedy available to an aggrieved accused to challenge an interlocutory order is under section 482 of CrPC and not by way of an application to seek discharge. The offence under section 138 of the Negotiable Instruments Act is punishable with imprisonment upto two years and therefore is to be tried as a summons case. The

31 Id. at 344.
32 2004 (4) RCR (Criminal) 01.
procedure for trial of summons cases is covered by Chapter XX of the Code which does not contemplate a stage of discharge like section 239 and 245 dealing with warrant cases. So as held by the Allahabad High Court in *Sanjeev Rai v. State of U.P.*\(^{33}\) after referring to the decision of the Hon’ble Apex Court in *Subramaniam Sethuram v. State of Maharashtra*\(^{34}\), it is not open to the accused to seek discharge in a summons case and as such the summoning order cannot be recalled or revised in any manner.

### 8.2.6 Tackling the Problem of Blank Cheque

In a large number of cases, the accused raises the defence that complainant had obtained a blank cheque from him as security and now he has filed a false complaint whereas nothing is due to the complainant in respect of the contract under which the said cheque was given as a security to him no doubt in some cases it is alleged that blank cheque was given to someone else but he has got the complaint filed by filing in the name of his own men as payee. It has also been noticed that many private individuals who are directors of the companies running the business of finance or the partners of a firm carrying on the said business, file the complaint under section 138 of the Negotiable Instrument Act in the individual names. In suchlike cases the accused tries to prove that in fact he had taken a loan from the financing institution, of which the complainant is a partner/director and he has already discharged his liability in respect of said contract but the blank cheques obtained from him by said concern are being misused by filing the complaint by the director/partner in his individual name. On the other hand, the complainant raises the plea that the instant loan transaction was independent transaction and he had advanced loan to the accused in his individual capacity and the cheque was issued to repay the said loan.

Since the accused admits his signatures on the check by raising the plea that he had given a blank cheque to the complainant or

\(^{33}\) 2005 (2) RCR (Criminal) 361.

\(^{34}\) 2004 (4) RCR (Criminal) 349.
someone else, it becomes very difficult for the accused to wriggle out of such a case. Once the complaint makes the statement regarding issuance of the cheque by the accused which admittedly bears his signatures, the court has to raise presumption under section 139 of the Negotiable Instruments Act that the cheque was issued by him to discharge his legal liability. Therefore, there is no option before the court except to convict the accused. Sometimes the complaints are filed after a period of about 3 to 4 years of the settlement of the earlier matter in connection with the blank cheque allegedly given by the accused.

No such problem can arise when all the columns of the cheque are filled in by the accused in his own handwriting. The problem arises only when the columns of the cheque are filled in the writing of someone else. It is difficult to find out a solution to suchlike problem. When all and sundry can get the cheque book after opening the account with a bank, the misuse of this provision cannot be prevented. When a poor person is in need of the money, the creditor can easily obtain blank check from him on account of his dominating position in the transaction. The undersigned would like to share her own experience while holding special court with regard to cheque bouncing cases. It was observed that many financial institutions like GE Countrywide, ICICI, Muthoot FinCorp, Mittar Finance, Jaidka Finance etc. increase litigation pertaining to section 138 by giving loans to the needy and at the same time those people are made to sign number of blank documents and cheques for a very small amount which is the installment required to be paid by them, and in case of default of a single installment these financial institutions keep on filing cases every month for each and every single default which multiplies the pendency of the cases under section 138 of the Negotiable Instruments Act by many times. It has been observed by the researcher while holding the court that approximately 400 to 500 complaints pertaining to these small amounts are instituted every month in the court of Chief Judicial Magistrate in some districts or in the regular courts in other
districts which on perusal shows that the amount of cheque involved in these cases to be as low as Rs.1000/-. The cumbersome process of court has to be initiated by the already overburdened court staff which is busy while dealing with these cases. Further perusal of record in these cases shows that many documents are found on the file which are blank signed documents obtained by the financial institution from those people who are in need of loan and these documents are later on exploited to achieve mischievous designs of the financial institution. The present researcher has given considerable thoughts to find out some solutions to this problem and some suggestions in this regard are submitted as under.

According to the researcher, first of all, some effective steps are required to be taken to curb the practice of obtaining the signatures/thumb marks of the debtors by the financing institutions on the blank printed forms and other documents. It should be made mandatory for financing institution’s that all the documents should be got filled up properly before obtaining the signatures of the debtor thereon. The legislature should introduce a provision to lay down that the obtaining of the signature/thumb impression of the debtor on blank documents including cheque would be an offence of punishable with imprisonment or fine. Some authority should be empowered to check the record of financial institutions at random basis to find out if these are obtaining the signatures of the thumb impression on blank papers or not and to look into the complaints of this nature from the public.

The second suggestion in this regard is that it should be made mandatory for the account holder to fill in the counter foils at the time of issuance of the checks. Further there should be a provision for verification of the counter foils of every account holder by an officer of the bank after every month. The said officers should make an endorsement regarding the number of cheque issued by the account holder at the time of inspection. No doubt, even this system may not prove to be foolproof as the dominating creditor may even remove the counterfoil from the cheque-book and sometimes even the mysterious
account holder may himself remove the counterfoil from the cheque-book to get its benefit. However even then suchlike provisions will check the problem to a great extent. If a counterfoil is found missing by the bank authorities at the time of verification of the counterfoil it should be made obligatory for the bank officials to get the version of the account holder regarding said foil and give notice in this regard in the ledger so that it becomes a part of the permanent record of the bank. When the cheques are sent through post, usually covering letter is sent with the cheque. In those cases, the complainant can produce the said covering letter to show that the cheque was sent by the accused. Moreover, experience shows that this problem arises more or less in the cases relating to financial institutions. If suchlike provisions are made, the court will be in a better position to find out as if the cheque was really issued by the accused to the payee to discharge his liability towards him or complainant has misused the blank cheque obtained by him and in those cases where the counterfoil is missing a note given by the bank authorities in the ledger of the account holder can be taken into consideration by the court. If a payee is vigilant enough and he takes care that the counterfoil is aptly filled in by the drawer of the cheque, he can prove his case just by asking the drawer of the cheque to produce a counterfoil of the court. If such a procedure is adopted, the problem regarding the misuse of blank cheques can be controlled to some extent as a court will be in a position even if to find out the period during which said cheque was issued.

8.2.7 Settlement and Compromise

Although the offence under section 138 has been made compoundable by virtue of provisions of section 147 of the Negotiable Instruments Act, but it cannot be denied that Herculean efforts are required to achieve the object of compoundability. Practically due to efforts made by the court or otherwise, more than 50/60 percent cases are compromised as soon as accused appears in court. Either he pays the amount due or reaches at settlement of any other type with the complainant who is generally interested in his amount rather than
punishing the accused. After getting his payment in lump sum or in installments the complainant withdraws his case. Thus certain simple steps, interest and efforts on the part of the court at the initial stage for persuading the parties to reach at settlement can be one of the best modes to reduce the pendency of such cases. The Court of Magistrate should be conferred more and rather powers of Civil Court to induce the parties to reach at compromise and fix installments to be paid by drawer accused of the cheque amount to the complainant, if he is unable to pay the amount in lump sum.  

8.2.8 Alternative Dispute Redressal Systems

Cases under section 138 should be compulsorily referred to the Alternative Dispute Redressal Systems at least one to explore the possibility of settlement between the parties. Lok Adalats, Mediation and Conciliations Centers can and in fact do play a vital role in helping the parties in reaching an amicable settlement.

The philosophy of alternate dispute resolution system is well-stated by Abraham Lincoln:

"Discourage litigation persuade your neighbours to compromise whenever you can. Point out to them how the normal winner is often a loser in fees, expenses, cost and time".

Litigation does not always lead to a satisfactory result. It is expensive in terms of time and money. A case won or lost in a Court of law does not charge the mindset of the litigants who continue to be adversaries and go on fighting in appeals after appeals. The Alternative dispute resolution system enables the change in mental approach of the parties. There is a long and unbroken tradition in India of the encouragement of dispute resolution outside the formal legal system. With the advent of the British Raj, the traditional institution of disputes settlement fell into disrepute and were gradually substituted and supplanted by the formal legal system, which was introduced in

35 Supra Note 4, at 345.
India by British. This substitution and supplanting virtually affected the traditional or non-formal legal system. After independence and against the backdrop of the failure of the formal legal system to bring justice and rule of law to the doorstep of the millions of impoverished and underprivileged citizens, there was a renewal of the traditional form of dispute resolution. Today, therefore the question before us is not the substitution of one forum or one system of dispute resolution for the other, but of examining and choosing the right mix of the formal legal system and the alternative dispute resolution procedure.

The substantial advantages of the alternative dispute resolution procedures are speed, flexibility in scheduling the hearing, reduction in the litigation costs due to quicker termination of proceedings, freedom of the parties to choose a referee with particular experience or expertise and being freed from the random assignment of judges under the judicial system of the state and last but not the least the importance of secrecy which private hearings afford. The public at large also benefits, as these disputes no longer crowd and clog the public docket and often utilize existing judicial resources more efficiently e.g. services of retired judges whose knowledge and experience represents an important untapped resource of law.

The Alternative Dispute Resolution recipe, therefore involves a departure of what the philosopher Edward De Bona called vertical thinking and adoption of lateral thinking viz. the throwing up of new ideas and testing their efficiency. Like all other precepts alternative dispute resolution is also not stagnant in content and continuous endeavor has to be made to introduce new solutions and procedures to make it more efficacious, result oriented and relevant to the needs and aspirations of the society where it is sought to be applied.

Most important and vibrant alternative dispute resolution system in India is through Lok Adalats. The concept of Lok Adalats has advantage on account of its simplicity and the speed with which the cases are disposed off by way of compromise. This movement of Lok Adalats has gathered such a momentum that it has become very
effective way of settling the disputes, not only it had achieved popularity and public acceptance but it has got the legal sanction. Hence we find that at all levels from the Apex Court judges to the honorable judges of High Courts, the emphasis is being laid on holding, more and more number of Lok Adalats to dispose of as many disputes as possible including disputes at pre litigation stage.

The word 'Lok' has been profusely used in political contents and made use of by political parties as a part of their appellations. In the phraseology "Lok Adalats" both words namely "Lok" and "Adalats" are equally thoughtful and profound and influence the purpose of each other. "Lok" is a word of wide connotation. Apart from signifying the people in general, it conveys the abiding sense of supremacy and ultimate authority of the people especially in a democratic set up like ours. The word "Lok" prefacing the word Adalat would therefore influence the meaning of latter by requiring it to be an institution not of formal and static significance inspiring awe in the minds of the people, rather to be one entirely committed to serve the aspiration of speedy justice of people with a missionary zeal. The aims, objectives and raison-d'-etre of such Adalats must ultimately be judged and evaluated at the touchstone of the lofty concept of "Lok" even its functioning and methodology must be inspired by and must translate into practice, the hopes and aspirations of "Lok". In Lok Adalats, the "Lok" content i.e. the public opinion aspect and the "Adalat" content i.e. the accurate thorough deliberation aspect have to be judicially blended and balanced.

Presently many states in India have introduced Lok Adalats for urban and rural areas. These Adalats decide criminal, civil, and revenue cases pending before the law Courts by mutual consent of the parties, without going into the procedural details thus ensuring Speedy Justice. Lok Adalats have worked very well and satisfactorily in our country ever since 1987, when the concept of Lok Adalat has been giving statutory recognition. The concept of Lok Adalat is gaining popularity. Then it is sufficient to say that it has made substantial
contribution in taking justice to door step of common man and providing for speedy justice. But it is not able to achieve its objectives to the fullest extent due to inherent limitations of Criminal Justice System like compounding of offences therefore permitting the compounding of more offences under CrPC is the need of hour to achieve the aim of speedy trial and success of Lok Adalats, so that it truly would become the savior of our legal system.

It may be apt to add here that in India, the Panchayati Raj Institution has been in existence from ancient times. In the past, the scope of Panchayati Raj system was conferred to solve social problems with the help of few senior members of village called Panchas. The British rule caused irreversible deterioration of these institutions. After independence, the first Prime Minister of India Pt. Jawahar Lal Nehru adopted American block model to secure the participation of people. The Indian Constitution made special mention of Panchayati Raj institutions under the directive principles of state policy. Article 40 of the Constitution says:

"The State shall take steps to organize village Panchayats and endow them with such powers and authority be as may be necessary to enable them to function as a unit of self government".

After a lengthy discussion and consideration for about 4 years, the Parliament has passed two Constitutionals Amendment Act (73rd and 74th) in 1993 to ensure the effective participation of rural and urban people in the institutions of local self-government. The provisions of new acts are contained in Article 243 of the Constitution which invest these institutions with more power and responsibility functional and financial autonomy, regularity in election and organization and constitutional recognition. After passing of these acts, the rural and urban institution of local self-government have received much needed constitutional recognition like state level legislature and the union Parliament. Infact it is a constitutional recognition of grass root level democratic set up. The need of the day is that the Panchayati
Raj institutions should be given more teeth and even the power to decide petty matters including cheque bouncing matters pertaining to meager amounts, which would in effect mean taking the justice administration machinery to the grass root level.

The Law Commission in its 154th report has devoted a separate chapter on speedy justice in which it suggested and recommended the setting of Nyaya Panchayats to deal with the ordinary crimes which are not serious and heinous in nature. No doubt the simple procedure prescribed for the conduct of proceedings before the Nyaya Panchayats may ensure the expeditious disposal of cases placed before them and also reduce the docket explosion in the Courts. If petty matters are placed before the Nyaya Panchayats it would certainly relieve the workload of the judicial magistrate and they would be able to devote more time towards the cases of serious nature. The constitution of more and more Nyaya Panchayats would certainly be a positive step for reducing input of fresh cases for trial in regular Courts. Similarly petty cases like those pertaining to dishonouring of cheques of meager amounts which forms a good part of cases pending in the Courts can also be diverted to these Nyaya Panchayats for earliest and speedy disposal. Moreover on the spot disposal method can be adopted by these Nyaya Panchayats which would help in reducing the volume of cases for trial in Courts. Another advantages of these Nyaya Panchayats is that these suit the local needs and conditions. The purpose of organizing them is to make arrangement for settlement of petty disputes arising among rural citizens at the village level itself, without procedural defects of legal systems and without any financial burden. So these Panchayats can function as effective instrument of justice to the satisfaction of the people and ensuring speedy justice.

In India rural mobile Courts can a major role in speeding up the process of delivering justice to rural people at their door steps. The "Rural Zones" are to be created in which the cases will be classified according to their nature, contents and gravity. Based on these classifications it will be easy to dispose them of without long legal
entanglements. This can be achieved by setting up rural mobile courts for which retired judges could be appointed. This setup will encourage out of Court settlements and could reduce the work load in the formal Courts. The budding lawyers and law students, could work in rural mobile Courts and help in the speedy settlement of cases. The approach is to provide speedy justice, people oriented, poor oriented justice either with minimal cost or no cost, saving the people from getting entangled into lengthy, costly and complicated judicial system which delays justice.

Organized legal aid everywhere is the outcome of the universal ideology to create legal awareness among the lowly sections of the society and stretch the utilities of law and legal services at the doorsteps of the destitute millions. Besides such progressive notion the legal aid to be meaningful must be meant for all poor and needy but not a few of a particular group. The original idea of legal aid programme was that legal aid is to help an indigent litigant by providing the service of lawyer in a Court free of charge or with a token fee. Thus primitive concept of the legal aid service should be replaced with the progressive view that legal aid services should both be preventive and curative. Such services should comprise not only in helping a poor litigant in a Court of law pitted against the rich opponent but also aiding him with advice and assistance in resolving his dispute with his opponent by negotiation, conciliation, arbitration and other amicable means. This mission of legal aid service to its consumers is to discourage his foul litigating habits and instead, imbibe the disputing parties with sense of fellow felling and searching of hearts to overcome the points of dispute with a policy of give and take modern legal aid measures are social oriented the culture of the contemporary legal aid moves is to minimize disputes, mitigate the impact of such disputes and to ensure speedy justice.

8.2.9 Bail, Written Proof and Punishment

Although the offence under section 138 is an offence against a particular individual and not a crime against the society at large
nevertheless in view of the burgeoning number of cases of dishonouring of cheques and the consequent loss being occasioned to the commercial world, the idea of making the offence non-bailable can be considered. This change would aid in procuring early presence of the accused in court and would also cast a deterrent effect on prospective defaulters.

Number of instances can be quoted where stolen or lost cheques duly signed are misused. Similarly blank signed cheques can be obtained by the creditor or anti-social elements from the drawer by using methods of coercion, fraud, or undue influence that causes unnecessary harassment to the drawer in facing prosecution for no fault on his part. He is already a victim of misdeeds of others and circumstances. He is further crushed under the wheels of justice due to presumptions of law against him which increases his mental agony besides putting him under unnecessary financial burden. Thus to avoid such type of instances and to minimize misuse of cheque obtained by wrong and illegal means, it is necessary that suitable amendments be made in the provision to make it compulsory that loan, business transaction etc. which attracts payment through cheques be reduced in writing duly signed and accepted by the drawer. Such written mode of transaction would not only clear the intention of the parties and bring clarity in the transaction but shall be a tool to avoid misuse of the cheques through unfair means and minimize unjustified and unnecessary prosecution.37

Punishment is a means of social control. This idea of inflicting pain or suffering in awarding punishment has been modified in view of the modern reformatory methods introduced recently in dealing with the criminals. It is now generally acknowledged that the principal object of inflicting punishment should not be merely the prevention of the offences but also the reformation of the offender. The basic idea is to reform the offenders and to rehabilitate them as responsible

37 Supra Note 4, at 346.
members and law abiding citizens of the society. An amount of severity might be quite appropriate in certain cases while it might be quite uncalled for in the others. Punishment would indeed be a greater evil if the effects in a given case are likely to result in hardening the offender. Therefore sending the accused behind bars in default of payment of fine or compensation should depend upon the capacity and financial status of the accused. No useful purpose would be served, is accused is sent to prison because of his genuine inability to pay the fine or compensation being a poor person. So such circumstances should be given due weight at the time of awarding punishment by the court and maximum possible efforts should be made to minimise the grievance of both the parties by striking a balance between the two.

Offence under Section 138 is made a deemed offence and intention to commit this offence is not to be seen while prosecuting and punishing accused whereas normally all other criminal offences require the basis ingredients of the guilty mind at the time of committing offence. However, if after issue of cheque due to loss in business, natural calamity or circumstances beyond his control, accused is unable to pay the amount of the cheque after receipt of notice or during trial, will it be justified to punish him and imprison him simply on the ground that he is unable to pay the amount though his intention is clear and he is an honest person? Thus it is desirable that ingredients of guilty mind i.e. mens-rea should be made a part of this offence. There is no harm if an accused who is a cheater and cunning person be convicted and punished but an innocent person who is ready and willing to discharge his dues but was not able to pay the amount due to subsequent poor financial condition is made a scapegoat and punished then that shall amount to miscarriage of justice and mockery of law. Hence it is essential that intention of the accused regarding his willingness to discharge his debt or liability must be made a basic ingredient before prosecuting and punishing him.38

38 Ibid.
8.2.10 Cheque Issued Against Other's Liability

Various High Courts have observed that if a person issues a cheque in respect of liability of another in good faith or due to some close relation though he had no concern with the transaction in question, he becomes liable for the offence on dishonour of the cheque but the real person who entered into the transaction and enjoyed the benefit thereof is not called to face the trial and is let off. This may create confusion and problem may arise for the courts to effectively decide the matter. There is no dispute that drawer of the cheque becomes liable on account of dishonour of his cheque issued against the legal and existing debt and liability of another but the real person who has been benefited from the transaction should not be allowed to go scot free. He should be liable also for the offence as a conspirator or due to vicarious liability. Letting off the real person who induced the drawer of the cheque to discharge his liability be not allowed to be discharged easily from the case. Thus there should be suitable amendments in the Act that the drawer as well as the person who entered into the transaction and got benefit from it be prosecuted and if it is found that there was a good faith on the part of drawer or due to some false misrepresentation or fraud or coercion he issued the cheque which was subsequently dishonoured, be acquitted but the real culprit be punished.39

8.2.11 Misuse of the Cheque

It is a matter of common experience that legal provisions aimed at protecting the particular class are usually misused by the mysterious persons along into said category. The introduction of the criminal liability for the dishonour of the cheque was aimed that inculcating faith in the banking operations and enhance acceptability of cheque. Reluctantly the use of cheque was bound to increase and in fact there is a tremendous increase in the transactions through cheques since coming into force of the provisions of section 138 of the Negotiable Instruments Act.

39 Id. at 347.
However, nowadays, the person holding the dominating or superior position in the transaction get the check issued from the other party much prior to the accrual of actual liability to pay the said amount and sometimes they obtain the nature of the other party on the blank cheque, with a view to keep the said party under his direction. The checks are being misused in various transactions in the following manner

Loan Transaction: In the loan transactions the lender takes the post dated cheques from the borrower at the time of advancement of the loan. In general cases, the amount filled in the cheques cover the loan amount and the interest to accrue thereon, up to the date mentioned in the cheque. But in some cases, the moneylender obtained blank signed cheques of the debt. In suchlike cases, even when the loan amount is repaid in installments by the debtor. In a July cases, even when the loan amount is repaid in installments by the debtor, the financer / moneylender does not return the cheque is, rather he presents the same in the bank and after a founder thereof, he launches the criminal proceedings against the troll of a check with a view to pressurise him to extract more money from him. Sometimes, when a small amount is in fact due against the borrower, the moneylender/ financer fills in a huge amount in the check and then he institutes a criminal complaint against the loanee after dishonour of the check. Since the provisions of section 138 of the Act have been proved to be very useful for the financer is to recover their dues from the loanee, the business of finance/moneylending has become a lucrative and more and more persons are joining the same. Some newcomers in the field advance loan without ascertaining the capacity of proposed loanee. Such persons happily issue a cheque to get a huge amount. Once the amount is spent by them, he has no source to repay the loan amount. Such like cases are bound to go to the court. Moreover, even in the case of bona fide disputes between the creditor and debtor, the creditor institutes a complaint under section 138 of the Act on the basis of blank check obtained by him from the debtor at the time of advancement of the
loan, to have an upper hand over the debtor. Ultimately, the debtor has to yield to the demand of his creditors.

Other business transactions: Even in other business relations, the person holding the superior position obtains the blank cheques from the other party at the time of commencement of the business transactions between them will stop usually, the blank cheques are attained by manufacturing company from its distributor, by the distributor of a product from the retail dealers at sector. Even where the goods are supplied on shredded in accordance with the custom prevalent in a particular trade, the supplier of the goods obtained the blank check from the purchaser. The possibility of the misuse of cheque in such cases can’t be ruled out.

Blackmailing: Sometimes the stringent provisions of chapter 17 of the Act are misused by unscrupulous litigants to blackmail the other party to settle the account in a way acceptable to them. Such type of person obtains the cheque from the other party, to the drawee Bank without informing the drawer of the cheque about their intention to prevent the check stop due to this reason, the check is dishonoured by the drawee bank on account of insufficiency of the funds in the account of the drawee will stop thereafter, the payee of the cheque instead of issuing a notice regarding dishonour of the check sent some other papers to the drawer of the check through registered post or UPC to get a postal receipt from the post office and, thereafter, he lodges a complaint under section 138 of the negotiable instruments act with the court on the allegations that the notice regarding dishonour of the check was sent to the accused and he produces a carbon copy of the notice on the file stop suchlike mischief is committed when the complainant is not interested in recovering the amount of the check, rather he wants to use the proceedings as a tool to overawe the other party to pay other disputed amount or to get any other benefit of this nature.

The above discussion on these cases indicates that the provisions of section 138 of the Negotiable Instruments Act are being grossly
misused by filing the false complaints. Where the complainant sent any other document to the accused through registered post in place of the notice as per the requirements of clause B of the provisions of section 138 of the Act, it becomes very difficult for the accused to prove that in fact he did not received any notice. However, if the accused immediately on receipt of the summons in the complaint, makes an offer to pay the amount of the check with interest and on refusal of the complainant to accept the said amount, the court will certainly take the note of the conduct of both the parties at the time of appreciating the plea of the accused regarding non receipt of the notice. To be a better footing the accused can place the demand draft covering the amount of the check and the interest accrued thereon, got issued in the name of complainant, on the file to show that he has always been ready and willing to make the payment of the amount in question but he was not aware of the dishonour of the check and no notice was received by him. If after receipt of the registered cover containing any other paper then the notice, the accused to send any later date sector to the complainant, the said correspondence can also be useful to the accused to prove that no notice was received by him will stop the aforesaid in stance of some of the cases show that the provisions of chapter 17 of the Negotiable Instruments Act are being misused. It results into filing of a large number of complaints under section 138 of the Act. Suchlike proceedings keep on lingering on for a long period on account of involvement of complicated questions of the facts and the law therein.

8.2.12 Special Concession

In view of the guidelines laid down by the Apex Court with regard to compounding of the offence after appearance of the accused in the court and before starting of trial, after making the accused understand about the consequences of the trial and punishment provided in the offence, should be given one opportunity to make payment of the cheque amount with reasonable interest and costs as fixed by the court and if the same is paid within the time granted by

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40 2010 (2) RCR 851 SC.
the court, then the complaint should not be allowed to proceed further. But if this concession is not availed by the accused and ultimately he is found guilty then strict and harsh punishment can be awarded. This mandatory concession at the initial stage would also reduce the litigation and shall be in the interest of both the parties to maintain harmonious relations for future also.

8.2.12 Banking Rules and Regulations

In a recent notification the Reserve Bank of India has said cheques and drafts will have to be presented within three months from the date of issue as it has been brought to its notice by the government that some persons were taking undue advantage of the six month validity of cheques/drafts/pay orders/banker's cheques by circulating them like cash for this period.

Over the last few years, a system had evolved in which a cheque issued in favour of person A would be transferred to person B, on receipt of a commission, as banks were willing to credit them into someone else's account. With the new norms, RBI hopes to reduce such misuse. RBI has also asked banks to ensure that account payee cheques and drafts are only credited to accounts of the person named in the instrument. The bankers are of the view that the said move would affect individuals more as companies usually deposit cheques and drafts within hours of receiving them as they do not want to lose out on any interest income.41

It has also been suggested that banks must adopt a differential pricing pattern for transactions conducted in a paper-based manner, in order to sensitise customers to use electronic modes of fund transfer. It has also recommended that banks levy a charge for all paper-based cheques. As of now, banks themselves bear the service charges for MICR processing of cheques. For this, banks will require to educate

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customers on the need to migrate to electronic processing and make electronic fund transfers cheaper than paper modes.  

Electronic payments would spell major gains. For banks trying to lower branch-banking costs, by encouraging customers to avail of internet banking; for trade and commerce, for whom instantaneous funds transfer means a huge saving in costs; for tax authorities, who will get a handle on transactions that otherwise are off their radar, and for ordinary citizens who will get speedier service. Replacing cheques with electronic payments will also be environment friendly.

To conclude, there is no doubt that law of prosecution of drawer as incorporated in the Negotiable Instruments Act under Section 138 is very useful and important but due to the complexities and technicalities involved in the same, there is an inherent tendency of rejection of genuine claims on account of minor errors, defects and technical points. As a result of this the larger interest of justice gets buried under the statutory provisions and the courts are also rendered helpless as the words of the statute have to be interpreted strictly without any interpolations. Therefore in the present arena of expanding commercial horizons, the law relating to dishonour of cheques needs to be modified in the interest of justice and for the welfare of the society to some extent to make it a perfect law.

_The glory of justice and the majesty of law are created not just by the Constitution – nor by the court- nor by the officers of the law – nor by the lawyers – but by the men and women who constitute our society – who are the protectors of the law as they are themselves protected by the law._

-Robert Kennedy

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