Rajshahi University Journal of Law and Land Administration (RUJLLA)
2026, Vol 1, Issue 1, 144-160
DOI: https://doi.org/10.5281/zenodo.23155532

Legal Recourse for Cheque Dishonour Cases in Metropolitan Subordinate Judiciary, Dhaka: An Empirical Study

Md. Mahfuzur Rahman[1]
Md. Abdullah AL Mozid[2]

ABSTRACT: This research offers a descriptive empirical and doctrinal analysis of cheque dishonour litigation pursuant to the Negotiable Instruments Act, 1881 (NI Act) in the Metropolitan Subordinate Judiciary of Dhaka. Utilising an exploratory mixed-methods framework, this study examines n=200 trial court case files (2018–2024) in conjunction with qualitative perspectives from legal professionals, bank legal representatives, and judicial clerks (n=23). The empirical evidence indicates that inadequate funds constitute 73% of dishonoured instruments, with signature inconsistencies (19%) and premature presentation (8%) as the leading factual bases in trial records. Anchored in Legal Positivism and Deterrence Theory, the article rigorously analyses the operational pressure of inflexible legislative presumptions under Sections 138 and 140 in light of significant Appellate Division rulings regarding contractual consideration. It underscores critical systemic impediments such as extended trial durations of 18 to 36 months, delays in process serving, and evidentiary complications regarding digital banking records, while advocating for specific structural reforms like obligatory security check registries, pre-trial mediation, and direct API-integrated electronic verification systems.

KEYWORDS: Negotiable Instruments Act 1881, Cheque Dishonour, Metropolitan Subordinate Judiciary, Dhaka, Financial Litigation, Empirical Legal Studies.

[1] Associate Professor, Department of Law, University of Rajshahi, Rajshahi.
[2] Assistant Professor, Department of Law, Bangladesh Islami University, Dhaka.

Article History: Received: 17 September 2026; Revised: 28 September 2026; Accepted: 30 September 2026

1. Introduction

A cheque is a basic negotiable document that constitutes an unconditional written directive instructing a designated bank to disburse a specific amount of money upon request. Notwithstanding the prevalence of cheques in enabling business dealings and corporate credit throughout Bangladesh, cheque dishonour continues to be a significant trigger for legal disputes, imposing considerable pressure on the lower courts. According to the Negotiable Instruments Act of 1881, a cheque is considered dishonoured when the drawee bank refuses payment due to inadequate funds, account termination, signature inconsistencies, or payment cessation directives, thereby undermining economic confidence and the smooth flow of credit. The legal structure established in Sections 138, 140, and 141 of the NI Act imposes stringent punitive measures for defaults, however trial tribunals at the initial level often face intricate substantive and procedural challenges. Current national scholarship on negotiable instruments legislation is primarily theoretical, emphasising Supreme Court appellate rulings, while mainly neglecting trial court records, empirical patterns of dishonour, and practical operational challenges. This research tackles this significant empirical void by investigating cheque dishonour adjudication in the Metropolitan Subordinate Judiciary of Dhaka. In accordance with the legal provisions of the Negotiable Instruments Act, 1881, complaints regarding cheque dishonour are submitted to the Chief Metropolitan Magistrate (CMM) Court for preliminary acknowledgement and the issue of process. Nonetheless, in accordance with the allocation of statutory jurisdiction and local case management procedures, the trial of Section 138 offences within the Dhaka metropolitan area is carried out by a court of no lesser standing than that of a Joint Metropolitan Sessions Judge when the cheque's face value surpasses Tk. 5 (five) lac; all other offences subject to Section 138 shall be adjudicated by a Metropolitan Magistrate's court.[3] Rooted on Legal Positivism and Deterrence Theory, the study examines n=200 trial court case files (2018–2024) in conjunction with qualitative perspectives from advocates, bank legal representatives, and judicial clerks (n=23). This research connects formal legal statutes with actual courtroom situations by methodically classifying the reasons for dishonour, which include liquidity shortfalls (73%), signature discrepancies (19%), and early presentation (8%).

[3] The Negotiable Instruments Act 1881 s 141(c) as inserted by the Negotiable Instruments (Amendment) Act 2026 s 2.

Additionally, it assesses the conflict between inflexible legal presumptions and evolving burden-of-proof criteria as established by significant Appellate Division decisions (for instance, *Md. Abul Kaher Shahin v Emran Rashid*). This research ultimately highlights critical systemic impediments, such as extended 18-to-36-month trial durations, delays in process serving, and challenges related to digital banking documentation, while advocating for specific legislative changes, including obligatory security cheque registries, pre-trial mediation periods, and direct API-integrated electronic verification systems.

2. Literature Review

The enforcement of dishonoured cheques under the NI Act has sparked considerable legal debate concerning judicial efficacy and credit oversight in Bangladesh. Previous legal research has thoroughly investigated the procedural obstacles under Section 138, including statutory notification durations, evidential criteria, and enforcement strategies. Current studies often emphasise structural impediments, such as lengthy trial durations, challenges in obtaining bank testimonies, and procedural holdups in executing statutory summonses. Nevertheless, a significant portion of the current domestic literature is predominantly doctrinal, devoid of empirical support from primary trial court documentation. Although appellate rulings from the Supreme Court of Bangladesh are extensively scrutinised, there is a scarcity of research offering quantitative analyses of trial court dockets or investigating the practical application of statutory presumptions at the Metropolitan Sessions tier. This study tackles this deficiency by integrating case file coding with stakeholder interviews in the metropolitan area of Dhaka.

3. Research Scope and Objectives

This study employs an exploratory and descriptive empirical framework to investigate cheque dishonour litigation in the Metropolitan Subordinate Judiciary of Dhaka. This research prioritises establishing a detailed, contextual foundation of dockets and procedural dynamics within Dhaka's main commercial court, instead of engaging in macro-level temporal time-series or multi-regional comparative modelling. The research specifically targets the following four refined objectives:

1. To classify and measure the principal factual reasons for cheque dishonour within active court records.

2. To examine the legal stipulations outlined in Sections 138, 140, and 141 of the NI Act, and to assess qualitatively the actual implementation of the burden-of-proof criteria modified by significant appellate rulings in trial court discussions.
3. To methodically discern operational, evidentiary, and administrative impediments encountered by practitioners, financial institutions, and the judiciary during trial processes.
4. To develop evidence-based policy suggestions focused on enhancing trial efficiency and mitigating malicious predatory submissions.

4. Methodology and Theoretical Framework

4.1 Data Sampling Protocol

This research utilises a descriptive mixed-methods framework that integrates quantitative case-file examination and qualitative stakeholder interviews.

Quantitative Sample: A selection of n=200 NI Act case files (including both ongoing/pending trials and resolved matters out of approximately 1200 cases) was extracted from the master filing registers and docket archives of the Metropolitan Subordinate Judiciary in Dhaka, encompassing filings from 2018 to 2024, utilising a Simple Random Sampling method with a Computer Generated Random Number Table to guarantee an impartial representation. The sample consisted of 114 completely resolved case files (57%) and 86 ongoing/pending cases (43%). Instances were chosen using simple random selection to exemplify standard trial pathways. To uphold statistical integrity and avert temporal distortion, the entire trial period (18 to 36 months) was assessed solely from fully resolved case files. Active and pending dockets were excluded from the overall lifecycle computations; instead, they were scrutinised solely to assess stage-specific adjournment trends, notice adherence, and intermediate procedural impediments. Owing to inherent archival constraints—where physical records for active cases solely document current stage-wise postponements and numerous closed files lack comprehensive outcome summaries—the audit concentrated on confirmed procedural durations and grounds for dishonour instead of overall judgement results.

Qualitative Sample: To provide context for case-file data and identify procedural challenges at the grassroots level, semi-structured qualitative interviews were performed with essential legal participants: practicing advocates (n=15), legal officers from commercial banks (n=5), and judicial clerks (n=3), resulting in a total qualitative sample of n=23.

4.2 Data Analysis

Quantitative data were categorised and organised into tables to ascertain descriptive percentage distributions of reasons for dishonour. Qualitative content and topic analysis were utilised on interview transcripts, court order documents, and judicial filings to assess litigation strategy, evidentiary requirements, and procedural impediments.

Table 1: Qualitative Stakeholder Interview Sample and Key Thematic Insights (*n*=23)

Stakeholder Category	Sample Size (*n*)	Primary Qualitative Themes & Key Operational Insights Identified
Practicing Advocates	*n*=15	•Frequent use of signature mismatch as a defense against exploitative lenders. •Extended postponements resulting from unsuccessful execution of summons or warrants. •Trial judges exhibit reluctance to acknowledge digital/EFT clearing logs without physical signatures.
Bank Legal Officers	*n*=5	•Operational pressure resulting from incessant court summons to authenticate standard dishonour notifications. •Working capital liquidity deficits as the leading driver of corporate default. •Need for direct API clearing verification to reduce manual testimony.
Judicial Clerks	*n*=3	•Acute backlog caused by lack of specialized benches for NI Act complaints. •Process-server accountability gaps resulting in 3 to 6 months delay in securing initial appearance. •Incomplete physical court registers lacking post-judgment conviction/acquittal summaries.

4.3 Theoretical Framework

The research is guided by Legal Positivism and Deterrence Theory.

Legal Positivism[4]: Offers a critical perspective for scrutinising Section 138 as a clear legal mandate that establishes stringent criminal culpability in cases of technical default, predominantly detached from subjective ethical or contractual contexts.[5]

Deterrence Theory[6]: Argues that punitive measures, particularly incarceration and monetary penalties, function to ensure adherence to transactions and discourage deliberate financial noncompliance.[7]

This paper assesses the practical conflict that emerges when rigid positive regulations are enforced without considering the foundational contractual elements, leading to susceptibilities for exploitative legal actions.

4.4 Ethical Considerations and Research Approval

All personal identifiers, business designations, and account information obtained from court records and interview transcripts have been rendered anonymous in compliance with academic research protocols. Informed verbal consent was acquired from all 23 interviewees before initiating semi-structured interviews, adhering to an authorised institutional consent policy.

---

[4]John Austin (1790–1859) was a British legal philosopher of the 19th century who fundamentally established the principles of legal positivism. Austin's particular variant of optimism is referred to as the Command Theory. He characterised "law properly so called" by means of three distinct, interconnected components:

• Directive: Statutes are manifestations of aspiration or intention supported by the potential for coercion. They are authoritative instructions guiding individuals on permissible and impermissible actions.

• The authority of these directives must originate from a politically dominant entity—the sovereign. Austin characterised the sovereign as an individual or entity that the majority of a community routinely follows, yet does not consistently submit to any other human authority.

• A directive is deemed a law solely when the authority possesses both the capability and the will to impose a detriment (a penalty or punishment) for noncompliance.

According to Austin, the absence of any of the three elements—command, sovereign, or sanction—renders it not positive law. H.L.A. Hart (1907–1992) entirely transformed and updated legal positivism with his seminal work, The Concept of Law, published in 1961.Hart contended that Austin's "Command Theory" was excessively basic, since it equated law to a "gunman scenario on a grand scale," implying that individuals comply with the law solely due to the fear of punishment, akin to a bank teller yielding to an armed robber. Hart formulated the idea by redirecting attention from force to societal norms. He contended that a developed legal framework comprises two separate categories of regulations.

[5] Austin J, *The Province of Jurisprudence Determined* (John Murray 1832); HLA Hart, *The Concept of Law* (Clarendon Press 1961).

[6]Jeremy Bentham (1789) and Gary Becker (1968) epitomise the initial two phases of Deterrence Theory. Bentham established the intellectual foundation through Enlightenment-era utilitarianism, but Becker contemporised it almost two hundred years later by employing mathematics and microeconomic principles. Deterrence theory fundamentally regards the prospective offender as a rational evaluator. It posits that individuals engage in criminal activities due to the anticipation that the advantages surpass the drawbacks. To deter criminal activity, the government must elevate the penalties beyond the incentives.

[7]Bentham J, *An Introduction to the Principles of Morals and Legislation* (1789); Becker GS, *Crime and Punishment: An Economic Approach* (1968) 76(2) Journal of Political Economy 169.

5. Statutory Framework of the NI Act

5.1 Section 138: Criminal Liability and Procedural Conditions

Section 138(1) of the Negotiable Instruments Act, 1881 renders the dishonour of a cheque a criminal offence primarily due to insufficiency of funds or where the amount exceeds the arrangement with the bank.[8] Upon conviction, the drawer faces imprisonment for up to one year, or with fine which may extend to thrice the value of the cheque, or both.[9] To initiate prosecution under Section 138, strict procedural preconditions must be met:

- The cheque must be presented to the bank within its validity period (six months from the date of issue).[10]
- The payee or holder in due course must issue a formal legal notice of demand in writing to the drawer within thirty (30) days of receiving notification of dishonour from the bank.[11]
- The drawer must be granted thirty (30) days from the receipt of the notice to pay the demanded sum.[12]
- If payment is not made, a formal complaint must be filed in court within thirty (30) days following the expiry of the statutory payment window.

5.2 Mandatory Appellate Deposit ("Pay-to-Appeal")

Under Section 138A, a convicted drawer seeking to prefer an appeal against a trial court judgment must first deposit at least 50% of the fine amount awarded by the trial court. This statutory deposit requirement aims to prevent frivolous appellate delays and secure partial recovery for the complainant during appellate pendency.[13]

5.3 Section 140 and Corporate Liability

Section 140 applies penal liability to corporate entities.[14] Section 140 clarifies that if the person committing the offence under Section 138 is a company or corporate body, every person who, at the time the offence was committed, was in charge of and responsible to the company for the conduct of its business shall be deemed guilty alongside the corporate entity.[15]

---

[8] The Negotiable Instruments Act 1881, s 138(1).
[9]NI Act (n 8).
[10]Ibid s 138(1)(a).
[11]Ibid s 138(1)(b).
[12]Ibid s 138(1)(c).
[13]NI Act (n 8) s 138A, as inserted by the Negotiable Instruments (Amendment) Act 2006, s 3.
[14]NI Act (n 8) s 140.
[15]Ibid.

6. Empirical Findings: Categorization and Descriptive Insights

Examination of the selected case files (n=200) uncovers three fundamental factual bases for instrument dishonour within the Metropolitan Subordinate Judiciary of Dhaka. Table 2 establishes the quantitative foundation for grounds of dishonour, whereas the functioning of statutory presumptions and the shifting standards of burden of proof are examined qualitatively via stakeholder interviews and case order-sheet discussions (section 8), since court records do not quantify evidentiary responsibilities. The percentage distribution of dishonoured grounds remained uniform across both resolved and pending subsets.

Table 2: Empirical Breakdown of Dishonour Grounds (n=200)

Categorical Ground for Dishonour	Case Count (n)	Percentage Proportion (%)
Insufficient Funds / Account Liquidity Deficit	146	73%
Signature Discrepancy / Authorization Dispute	38	19%
Premature Presentation of Post-Dated Cheques	16	8%
Total	200	100%

Note on Categorical Classification and Digital Clearing Architecture:

(1) **Conceptual Classification:** Insufficient amounts and signature discrepancies are significant banking grounds for dishonour, whereas the early presentation of post-dated cheques indicates a temporal contention regarding the legitimacy of the presentation. Nonetheless, as bank return memos and official court documents clearly designate premature presentation as a separate operational basis for returning instruments unpaid, it is incorporated here as a principal factual impetus in trial dockets.

(2) **Digital Payments & Clearing Framework:** According to Section 138 of the NI Act 1881, criminal responsibility is exclusively linked to tangible negotiable cheque instruments, not to direct electronic fund transfers like debit or credit card transactions or mobile financial services. Contemporary commercial banking in Bangladesh handles physical cheques via automated clearing systems, namely the Bangladesh

Automated Cheque Processing System (BACPS) and the Bangladesh Electronic Funds Transfer Network (BEFTN). As a result, although the digital payment framework manages the backend clearing process, the official legal bases outlined in bank dishonour memos continue to fall under conventional banking categories (such as insufficient funds, signature inconsistencies, or timing-related presentation issues) as demonstrated in Table 2 above.[16]

6.1 Insufficient Funds (73.0%)

Inadequate financial resources represent the predominant portion of the sample instances (73%). Qualitative interviews with five bank legal officers indicate that these issues predominantly arise from defaults in working capital, postponed cash flows from enterprises, and unfulfilled credit lines. A senior legal officer of a bank noted that in more than 70% of commercial default instances, debtors typically do not want to engage in fraud; instead, systemic cash-flow delays across the supply chain lead to unforeseen shortfalls on the due date, resulting in automatic technical dishonour.

6.2 Signature Discrepancies (19.0%)

Discrepancies in signatures represent 19% of the examined cases. Such occurrences transpire when the drawee bank refuses payment because of discrepancies between the drawer's recorded specimen signature and the actual instrument submitted. Although categorised under the official banking designation of 'Signature Differs' in the dishonour memorandum, this basis is significantly presented in trial arguments as a defence against unauthorised execution or fabrication. Defence attorneys (n=15) indicated that discrepancies in signatures are often presented as key defences to assert fabrication, unauthorised execution of documents, or coercion. A seasoned defence attorney remarked that discrepancies in signatures frequently serve as our primary line of defence. In numerous cases, non-bank financiers or business associates acquire signed blank checks under coercion or as informal security, subsequently entering unauthorised sums. Emphasising signature discrepancies compels the court to transcend the strict presumption of proper execution.

[16]Bangladesh Bank, Operating Rules and Procedures for Bangladesh Automated Cheque Processing System (BACPS) (Payment Systems Department, Bangladesh Bank) https://www.bb.org.bd accessed 15 September 2026.

6.3 Premature Presentation of Post-Dated Cheques (8.0%)

Comprising 8% of the dataset, these conflicts pertain to post-dated cheques that are presented before their designated maturity date or submitted subsequent to the termination of the contract. These instances illustrate procedural discord between foundational commercial agreements and legal presentation deadlines.

6.4 Case Trial Duration and Contextual Docket Realities

Despite the absence of standardised outcome metrics in official court records, empirical examination of a sample of 200 case files reveals that the typical duration of an NI Act case within the Metropolitan Subordinate Judiciary of Dhaka spans from 18 to 36 months from the initial filing to its current status. This extended timeframe, which sharply contrasts with the legal requirement for expedited resolution, is chiefly caused by delays in executing summonses and the absence of official bank witnesses.

Methodological Clarification on Duration and Disposition Metrics: A significant structural constraint in court archives is the lack of standardised outcome indexing. Among the analysed n=200 dockets, cases were systematically categorised into active/pending processes (exceeding 40%) and resolved matters to assess litigation timelines precisely. Active dockets were scrutinised solely to measure stage-specific delays, including the issuance of summons and witness participation, without inferring the overall trial length from unfinished cases. In contrast, comprehensive trial lifespan projections (spanning 18 to 36 months) were derived exclusively from archived case information. Among the discarded documents, order sheets often concluded with procedural dismissals, out-of-court Section 138 settlements, or transfers, without definitive final judgements that specify the bases for conviction or acquittal. As a result, although this sample effectively delineates the empirical disaggregation of dishonour grounds (Table 2) and sequential delay factors, deriving a statistically correct ratio of ultimate conviction to acquittal rates was impracticable from the accessible docket records. Future investigations employing specialised post-judgment monitoring are advised to differentiate these disposition criteria.

7. Systemic Procedural Bottlenecks: Qualitative Stakeholder Synthesis

Data synthesized from court record evaluations and semi-structured discussions with legal participants (n=23) reveal four principal procedural impediments within the Metropolitan Subordinate Judiciary, Dhaka:

7.1 Summons and Warrant Service Delays

Qualitative interviews conducted with judicial clerks (n=3) and practicing advocates (n=15) indicated that process-serving procedures constitute the most significant pre-trial impediment inside the Metropolitan Subordinate Judiciary, Dhaka. Judicial clerks highlighted that physical process-servers sometimes neglect to deliver legal summonses in a timely manner because of antiquated address databases, unverified party information, and deficiencies in administrative oversight. Interviews with clerks reveal that this phase typically results in a procedural delay of 3 to 6 months, necessitating multiple postponements to ensure the accused's official court appearance or to obtain arrest warrants in accordance with Code of Criminal Procedure guidelines.

7.2 Evidentiary Proof and Bank Witness Attendance

Acquiring certified bank return memos and necessitating the physical presence of commercial bank representatives to validate dishonour logs generates significant operational friction. Legal officers from the bank (n=5) indicated that branch managers and operational officers are frequently summoned to various metropolitan courts on the same day. A legal officer from a commercial bank observed that branch personnel dedicate considerable time travelling to court merely to validate physical signatures on standard computerised dishonour slips. This operational pressure leads to unavoidable delays, as bank officials often seek rescheduled dates owing to competing business responsibilities.

7.3 Caseload Volume and Administrative Docket Strain

Interviews with all three stakeholder categories (n=23) highlighted the systemic pressure resulting from excessive docket burdens. Judicial clerks (n=3) verified that initial NI Act grievances are categorised with general criminal cases instead of specialised commercial dockets. Proponents (n=15) noted that trial judges are compelled to oversee more than 100 scheduled cases daily, resulting in a mere 2 to 3 minutes allocated per case during procedural hearings. This bureaucratic impediment directly obstructs speedy trials and necessitates regular postponements.

7.4 Digital and Internet Banking Integration and Evidentiary Friction

The growing dependence on digital payment systems, corporate online banking, and automated clearing networks, such the Bangladesh Electronic Funds Transfer Network (BEFTN) and National Payment Switch Bangladesh (NPSB), has revolutionised the cheque clearing process.[17] Nonetheless, this digital advancement generates considerable operational and evidential discord within trial courts. Table 2 classifies dishonours according to conventional statutory criteria indicated on physical bank memos, however the essential proof needed to substantiate these defaults increasingly depends on computer-generated clearing records[18], digital metadata, and electronic transaction slips. In the Metropolitan Subordinate Judiciary, trial judges exhibit a continual reluctance to accept computer-generated clearing receipts without manual seal verifications and physical witness testimonies from banking officials. The Evidence (Amendment) Act, 2022 introduced new regulations to officially acknowledge electronic and digital evidence,[19] necessitating stringent certification of computer-generated bank logs and digital dishonour slips to establish data integrity and admissibility; however, subordinate trial courts presently do not possess uniform practice directives or judicial guidelines for authenticating digital clearing metadata and API logs. As a result, trial judges frequently summon branch managers to provide in-person testimony exclusively to validate automated clearing memos, leading to extended trial delays and undermining the expedited purpose of Section 138 procedures.

8. Judicial Interpretation, Burden of Proof, and Abuse of Process

8.1 Consideration and Rebuttable Presumptions: *Md. Abul Kaher Shahin v Emran Rashid*

Section 118(a) of the NI Act creates legal assumptions that a cheque was issued for legitimate consideration, albeit these assumptions can be challenged. In the pivotal ruling of *Md. Abul Kaher Shahin*, the Appellate Division of the Supreme Court of Bangladesh elucidated the relationship between Section 138 of the NI Act and the overarching tenets of contract law as stipulated in the Contract Act of 1872.[20] The Court determined that when a defendant presents evidence that creates reasonable doubt about the presence of underlying consideration (such unmet land contracts or undelivered loan payments), the legal presumption reverts to the

[17]Ibid
[18]The Evidence Act 1872 s65B as inserted by the Evidence (Amendment) Act 2022.
[19] Ibid ss 22A, 65A, 65B as inserted by the Evidence (Amendment) Act 2022.
[20]*Md. Abul Kaher Shahin v Emran Rashid and Another* (2020) 72 DLR (AD) 145.

complainant.[21] If the plaintiff does not establish the foundational debt or consideration, criminal responsibility under Section 138 cannot be upheld. From a Legal Positivist viewpoint, this decision inhibits the automatic application of formal legislative language in the absence of foundational contractual duties. This doctrine was later validated by the High Court Division in *Mahmudul Hasan v The State*.[22]

This legal trajectory underlines a clear operational conflict with Austinian Legal Positivism. From a rigorous legal positivist perspective, Section 138 functions as an inflexible directive from the sovereign, whereby the dishonour of a technical instrument invariably results in criminal culpability, regardless of any foundational contractual considerations. Nevertheless, the stance of the Appellate Division in *Md. Abul Kaher Shahin* mitigates this strict positivism by permitting trial courts to consider factors outside the explicit statutory directive. Allowing defendants to counter the presumptions of Section 118(a) with evidence of absent consideration, the judiciary tacitly acknowledges that rigid positivism in negotiable instruments disputes encourages process misuse, necessitating the interpretation of explicit statutory language in conjunction with overarching equitable contract principles.

8.2 Security Cheques and Banking Remedies: *Nure Alam Siddique (Tulu) v State*

In *Nure Alam Siddique (Tulu) v State*, the High Court Division addressed the practice of commercial banks obtaining blank or security cheques prior to disbursing loan facilities.[23] The Court affirmed that financial institutions must primarily exhaust civil remedies for outstanding claim under the Artha Rin Adalat Ain, 2003[24] by auctioning mortgaged assets before pursuing supplementary criminal litigation under Section 138 of the NI Act for remaining deficits. This hierarchical approach aligns with Deterrence Theory by limiting penal criminal sanctions to genuine, unrecovered bad-faith defaults.

8.3 Predatory Litigation: Illustrative Composite Case Study

To investigate the potential misuse of stringent statutory responsibilities, contemplate a representative composite case profile derived from stakeholder interviews and legal documents:

---

[21]Ibid.
[22]*Mahmudul Hasan v The State and Another* (2022) 74 DLR (HCD) 310.
[23]*Nure Alam Siddique (Tulu) v State and Others* (2019) 71 DLR (HCD) 570.
[24]'The Implication of Recent Landmark Decision of Apex Court on Cheque Dishonour Cases' Dhaka Courier, November 20, 2020.

Composite Profile: *A fictional composite profile depicts a business borrower seeking immediate liquidity who has turned to an informal third-party lender. The lender acquired two signed blank security cheques as a prerequisite for loan processing. The creditor neglected to provide the stipulated loan funds, withheld the collateral cheques, submitted them to the bank to acquire dishonour notifications, and thereafter lodged criminal charges pursuant to Section 138. As a result of the preliminary legal presumption established in Section 118(a), the borrower underwent trial and was convicted, so incurring the obligatory 50% deposit requirement under Section 138A to initiate an appeal. Subsequent investigations disclosed that the lender had initiated multiple such proceedings utilising kept security cheques.*
This composite profile demonstrates how malicious individuals might take advantage of legislative presumptions under Section 138 without first judicial scrutiny.

Examining Bentham's Deterrence Theory, the observation that 73% of instances stem from working-capital liquidity shortages instead of deliberate fraud indicates a significant structural discord. Deterrence theory posits that stringent punitive measures dissuade malicious defaults; however, when financial defaults arise from widespread macroeconomic illiquidity, the prospect of incarceration under Section 138 proves ineffective as a behavioural deterrent, merely exacerbating trial docket congestion. In contrast, during cases of exploitative lawsuits and improper enforcement of security cheques (illustrated by the 19% signature variance threshold), the deterrence mechanism collapses completely—punitive measures are manipulated by malicious individuals to extort settlements, transferring the responsibility of deterrence from deliberate fraud to susceptible market players. This composite dynamic explicitly relates to the 19% signature discrepancy level noted in Table 2, illustrating that defence parties often reference the judicial principles of *Abul Kaher Shahin* to substantiate absent consideration for retained security cheques.

8.4 Institutional Friction between Automated Banking Frameworks and Judicial Formalism

In addition to the procedural lag in the delivery of summons, there is a significant operational discord between Bangladesh's updated financial clearing system and the trial court's evidence standards as stipulated in Section 138 of the NI Act. Commercial banking activities extensively employ the Bangladesh Electronic Funds Transfer Network (BEFTN), National Payment

Switch Bangladesh (NPSB), and automated digital payment systems, however trial adjudication is still reliant on traditional proof criteria. Trial courts in the Metropolitan Subordinate Judiciary often exhibit a profound adherence to formalism, refusing to acknowledge electronic delivery confirmations or automatic digital dishonour records absent physical signatures and conventional bank seal verification. This organisational discord results in a systemic lag: whereas financial exchanges transpire immediately in the digital realm, establishing technical misconduct in court necessitates lengthy manual witness appearances just to comply with outdated evidentiary protocols. Reconciling this gap necessitates a direct correlation between the digital clearing requirements of Bangladesh Bank and the evidentiary statutes outlined in Section 138.[25] Moreover, the extended duration of trial processes (18 to 36 months) and the rigid opposition to digital/API clearing logs further diminish the deterrent effectiveness of Section 138. Deterrence Theory is fundamentally dependent on the promptness and reliability of punishment; when legal proceedings are prolonged for years due to manual summons delivery and strict compliance with physical evidence criteria—a characteristic of formalist procedural positivism—the legal system's ability to deter financial defaults diminishes, resulting in systemic friction within urban commercial courts.

8.5 Operationalization of Theoretical Framework with Empirical Case Data

The empirical results from the n=200 trial court case files explicitly illustrate the analytical conflict between Legal Positivism and Deterrence Theory within the Metropolitan Subordinate Judiciary of Dhaka. Instead of perceiving procedural delays as mere administrative setbacks, the case evidence converts theoretical legal principles into quantifiable practical metrics. The conceptual framework of 'Systemic Institutional Friction' within Austinian Positivism is exemplified by the extended interval between initial awareness and witness testimony, during which 73% of liquidity-related defaults and 19% of signature discrepancy conflicts encounter significant trial delays due to recurrent postponements for manual bank seal validations. Moreover, the notion of 'Procedural Asymmetry' is implemented via process-serving measures; in a significant number of examined dockets, non-compliance with summons service resulted in an artificial pre-trial postponement of 3 to 6 months. This research illustrates that procedural delays represent a structural expression of theoretical friction, which diminishes the prompt deterrent effectiveness of Section 138 proceedings, by systematically aligning verifiable order-

[25]Bangladesh Bank (n 16).

sheet entries—like time-petitions, unexecuted warrants, and manual witness subpoenas—with fundamental theoretical dimensions.

9. Recommendations for Legislative and Policy Reforms

This research suggests three specific modifications based on empirical evidence to address procedural impediments and mitigate exploitative lawsuits:

- **Mandatory Registration of Security Cheques:** The NI Act ought to be revised to mandate that commercial agreements containing security cheques expressly document cheque numbers in a centralised registry or banking portal, therefore averting unauthorised submissions.
- **Pre-Trial Screening and Mediation Windows:** Mandatory 30-day pre-trial mediation periods for initial financial defaults would alleviate court congestion and facilitate peaceful debt resolution.
- **Integration of Modern Digital Verification and Electronic Notice Protocols:** To eradicate administrative impediments and update trial processes, Section 138 of the NI Act and pertinent service regulations must be revised to acknowledge validated electronic summonses (via confirmed email and SMS monitoring). Moreover, banking authorities, in collaboration with the Ministry of Law, ought to create a cohesive digital verification system that facilitates direct API-driven transfer of dishonour return slips and clearing logs from commercial banks to trial courts. This institutional transformation will eradicate the requirement of physically summoning bank officials only for standard manual seal verification, therefore accelerating evidential processes.

10. Conclusion and Theoretical Implications

This research has conducted a detailed empirical analysis of cheque dishonour litigation in the Metropolitan Subordinate Judiciary of Dhaka, integrating empirical data (n=200 case files, n=23 qualitative interviews) with doctrinal scrutiny.

Theoretical and Policy Implications:

The empirical and qualitative evidence bolsters Austinian Legal Positivism by demonstrating how rigid statutory directives under Section 138 function as inflexible orders from the sovereign, establishing stringent criminal responsibility for technical infractions. Nonetheless,

the courtroom dynamics and exploitative behaviours illustrated in this research reveal the functional constraints of Bentham's Deterrence Theory. Solely relying on formal criminal penalties is insufficient to dissuade deliberate defaults or avert exploitative filings when procedural impediments, including delays in summons, hinder prompt resolution. Genuine deterrence necessitates a well-rounded framework in which affirmative legal mandates are moderated by first judicial examination of foundational contractual considerations, along with advancements in procedural structure.

Limitations: The results of this research are confined to a singular regional sample inside the metropolitan area of Dhaka. The results of this research establish essential empirical benchmarks concerning cheque dishonour adjudication in Dhaka's main commercial center; however, the sample size (n=200) sourced solely from the Metropolitan Subordinate Judiciary, Dhaka, imposes intrinsic geographic and methodological constraints. The Metropolitan Subordinate Judiciary addresses a substantial volume of institutional and corporate financial conflicts, yet the operational characteristics, trial lengths, and frequency of delays in non-metropolitan or rural District and Sessions Judge Courts can vary considerably due to regional business customs, differing docket demands, and unique administrative frameworks. As a result, although the qualitative and quantitative findings presented here accurately depict initial commercial litigation in Dhaka, caution should be exercised when extrapolating these conclusions to wider national patterns without additional multi-district comparison verification. Aside from the spatial limitation to the Dhaka metropolitan region, a significant empirical constraint is to the organization of court record archives. Due to trial registries monitoring daily postponements instead of substantive judicial results, and given that a significant number of the sampled dockets were ongoing matters, precise statistical ratios concerning final conviction rates compared to overturned acquittal rates could not be delineated in distinct tabular formats. The archival records of the Metropolitan Subordinate Judiciary in Dhaka monitor intermediate procedural delays instead of consolidated post-judgment results. As a result, a consolidated quantitative comparison of convictions to acquittals could not be discerned, indicating a fundamental data constraint inside trial court records.