# Cheque Bounce and the Insolvency Process: Key Facts

Economy and Judicial Process (Prelims: General Studies) | News context: judicial reference of 27 May 2026 | Published: 23 October 2026

## Why in the News

On 27 May 2026, a two-judge Bench of the Supreme Court referred some basic questions on the relationship between cheque bounce and the personal insolvency process to a three-judge Bench for consideration. The core dispute is whether the moratorium imposed under the insolvency law applies to the whole proceeding on dishonour of a cheque or only to its compensation part.

The Bench also gave its own analysis of both the criminal and the compensation aspects, yet said that a larger Bench is necessary for a final and authoritative decision. It should not be understood that two judges have overturned the decision of an earlier larger Bench.

## What Is Cheque Dishonour?

When a bank refuses to pay a cheque, it is commonly called a cheque bounce. But not every returned cheque automatically becomes an offence under Section 138 of the Negotiable Instruments Act, 1881. For that, one has to look at the conditions laid down in the law, such as the existence of a lawful liability, a notice within the fixed time, and an opportunity to pay.

The purpose of Section 138 is to maintain the reliability of payment by cheque. When the conditions are met, it provides for imprisonment, a fine or both, and the court can also direct that compensation be paid to the complainant. This dual nature, that is, the mixed character of punishment and compensation, is what brings it into conflict with the insolvency law.

## Key Facts

- **Reference:** On 27 May 2026, a two-judge Bench of the Supreme Court referred questions on the relationship between cheque dishonour and the personal insolvency process to a three-judge Bench.
- **Core dispute:** whether the stay of the insolvency process applies to the whole cheque bounce proceeding or only to the compensation part.
- **Section 138:** this section of the Negotiable Instruments Act, 1881 makes cheque dishonour an offence when the conditions are met; provision for imprisonment, a fine or both.
- **Moratorium:** a temporary stay on certain legal actions; not an automatic waiver of debt.
- **Section 96 versus 101:** 96 relates to an interim stay from the time the application is filed; 101 to the stay after the application is admitted.
- **Earlier reference:** the 2021 P. Mohanraj decision explained the relationship between a company's Section 14 stay and Section 138 proceedings.
- **Limit:** referring a matter is not a final overturning of an earlier larger Bench decision.

## From the Exam Point of View

For Prelims, remember: the meaning of cheque dishonour (Section 138 of the Negotiable Instruments Act), the stay of the insolvency process (moratorium), and the basic difference between the criminal and compensation aspects of cheque proceedings. The broader analysis of the insolvency moratorium, the company versus individual question and the interpretation of Sections 96/101 are in the Mains article (link in the sources below).

## Prelims Style: Practice Questions

### Question 1. Consider the following statements about cheque dishonour and the insolvency process:

1. Moratorium means automatic waiver of every related debt.
2. In a Section 138 proceeding, a question can arise about the criminal and compensation aspects.
3. Referring a question to a larger Bench is not the same as finally overturning an earlier larger-Bench decision.

How many of the above statements are correct?

(a) Only one

(b) Only two

(c) All three

(d) None

See Answer and Reason

**Answer: (b) Only two.** The second and third statements are correct. A moratorium is a temporary procedural stay, not an automatic discharge from debt.

## Sources and Limits

- Supreme Court: Original reference judgment of 27 May 2026 (read): Open original source
- Insolvency Board: Introduction to the process for personal guarantors (read): Open original source
- India Code: Text of the Negotiable Instruments Act: Open original source
- Legal explainer of 4 June 2026 (read): Open original source
- Independent legal report of 29 May 2026 (read): Open original source
- **Limits:** The decision of 27 May refers the questions to a three-judge Bench; it is not a final overturning of the earlier larger Bench decision. The status of the later proceedings before the three-judge Bench has not been settled in this article. Section 138 has been checked against the available text of the original Act and the reference judgment. The introductory leaflet on the personal guarantor process is old; no universal claim is made that it applies to all individuals as of October 2026.

The Mains (analysis) article on the same topic: Cheque Bounce and the Insolvency Process: The Scope of the Moratorium