The Increasing Criminalization of Contractual Disputes: A Study of First Information Reports (FIRs) in Commercial Transactions

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ABSTRACT

The increasing use of criminal law to resolve essentially civil and commercial disputes has emerged as a significant concern within India's criminal justice system. Commercial defaults involving breach of contract, delayed payments, short delivery of goods, or dishonored cheques are increasingly accompanied by allegations of cheating, criminal breach of trust, and related offences, thereby exposing parties to the coercive consequences of criminal proceedings. This paper examines the legal and institutional dimensions of this phenomenon, focusing on the distinction between genuine commercial fraud and ordinary contractual breach. It analyses the Supreme Court's jurisprudence, particularly the requirement of fraudulent or dishonest intention at the inception of a transaction and argues that the principal difficulty lies not in the substantive legal test but in the stage and manner of its application.

A comparative examination of the United Kingdom and United States demonstrates the value of structured prosecutorial screening before criminal proceedings are initiated. The paper therefore proposes reforms centred on rigorous preliminary inquiry under the Bharatiya Nagarik Suraksha Sanhita, 2023, independent prosecutorial screening, exemplary costs for misuse of criminal process, and objective guidelines for identifying genuine commercial fraud. It concludes that strengthening pre-FIR institutional safeguards can preserve access to criminal remedies for genuine victims while preventing criminal law from becoming an instrument of coercive debt recovery.

KEYWORDS

FIR, Criminalisation, Cheating, Commercial, Fraud, Prosecution.

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INTRODUCTION

When a commercial transaction fails due to a cheque dishonoured, goods short-delivered, payment delayed, the aggrieved parties could look into civil remedies like a suit for breach of contract, recovery of dues, or damages. But increasingly complainants bypass this by filing a First Information Report (FIR) using the provisions such as cheating or criminal breach of trust. The attraction is obvious: an FIR mobilises the coercive machinery of the state, arrest, custodial interrogation, the threat of prosecution, far more swiftly than a civil court can act, and this pressure is frequently used to extract a settlement rather than to secure a conviction. The consequence is a quiet but significant diversion of police resources, meant for the investigation of genuine crime, toward what is in substance a debt-recovery exercise. The object shifts from doing justice to applying pressure.

This paper examines the phenomenon of criminalisation of commercial disputes across a range of provisions including cheating, criminal breach of trust, dishonour of cheques under the Negotiable Instruments Act, and allied offences as they are invoked in essentially contractual disputes. It situates the Indian position against comparative practice in the United Kingdom (UK) and the United States of America (USA), where civil-criminal boundaries in commercial matters are more firmly policed at the pre-charge stage, before proposing procedural reforms to curb this trend in India. The central argument advanced is that the difficulty is not primarily one of legal definition, but of institutional design: specifically, of who applies the civil-criminal distinction, at what stage of the process, and on what evidentiary threshold.

STATUTORY FRAMEWORK

The provisions most frequently used to criminalise commercial disputes are cheating (Section 415/420, Indian Penal Code 1860 ("IPC"); now Section 318, Bharatiya Nyaya Sanhita 2023 ("BNS"))[2] and criminal breach of trust ("CBT") (Section 405/406, IPC; now Section 316, BNS). Cheating requires proof that the complainant was induces by the accused to act to their determent reacting to a false or misleading representation made with fraudulent intention from the start of the transaction. Criminal breach of trust, by contrast, presupposes lawful entrustment of property, followed by its dishonest misappropriation or conversion by the person so entrusted. The two offences rest on opposite factual premises were deception

[2]Bharatiya Nyaya Sanhita, No. 45 of 2023, §§ 316, 318, 319 (India).

preceding entrustment, as against entrustment preceding betrayal and the Supreme Court has recently held them to be legally "antithetical" and incapable of being charged together on an identical set of facts.[3]

Notwithstanding this it remains common practice for both offences to be invoked simultaneously in a single FIR arising out of a single commercial transaction, the Supreme Court has itself criticised as reflecting mechanical rather than reasoning application of the law by investigating officers telling evidence of the screening failure this paper identifies. The Bharatiya Nyaya Sanhita, 2023 has also increased the punishment prescribed for both offences (cheating from one to three years' imprisonment; criminal breach of trust from three to five years), increasing rather than reducing the coercive stakes for an accused facing what may in substance be nothing more than a contractual default.

A distinct but related provision is Section 138 of the Negotiable Instruments Act, 1881, which penalises the dishonour of a cheque issued in discharge of a debt.[4] Although frequently invoked alongside cheating in cheque-related disputes, Section 138 is a self-contained statutory offence with its own ingredients; the mere dishonour of a cheque does not, without independent evidence of dishonest intention at the time of issuance, amount to cheating. Complainants seeking to invoke criminal process frequently plead facts selectively, omitting the commercial context of the failure and instead alleging that the accused never intended to perform, thereby dressing up what is, in substance, a contractual dispute as a criminal one.

JUDICIAL RESPONSE IN INDIA

A review of the jurisprudence spanning over two decades reveals that the doctrinal test for distinguishing cheating from breach of contract, the presence of fraudulent or dishonest intention at the inception of the transaction has remained substantively unchanged. What continues to demand judicial attention is not the test itself but the stage at which it is applied. The test is designed for retrospective application: it presupposes the existence of a factual record from which "inception" and "intention" can be reconstructed. Yet in practice, it is invoked at the FIR-registration and cognizance stage before investigation, before evidence, and often before the accused has even been heard.

[3] Delhi Race Club (1940) Ltd v. State of Uttar Pradesh, 2024 INSC 626; see also Arshad Neyaz Khan v. State of Jharkhand, 2025 INSC 1151.

[4] Negotiable Instruments Act, No. 26 of 1881, § 138 (India).

In *Hridaya Ranjan Prasad Verma v. State of Bihar*[5], a land transaction went sour when cheques issued toward the balance consideration were dishonoured. The sellers filed a criminal complaint over the dishonoured cheques; in a counter-complaint, the buyer alleged cheating on the ground that the sellers had not disclosed a pending partition suit. The Supreme Court quashed the cheating charge, holding that a subsequent failure to disclose does not, without more, establish dishonest intention at the inception of the transaction, the foundational articulation of the intention-at-inception test.

In *Indian Oil Corporation v. NEPC India Ltd*[6], Indian Oil Corporation (IOC) alleged theft, criminal breach of trust, and cheating against Natural Energy Processing Company (NEPC) over the removal of aircraft engines in alleged violation of a hypothecation deed. The Supreme Court found the essential ingredients of each offence absent on the pleaded facts and quashed the complaints, observing that there is "a growing tendency in business circles to convert purely civil disputes into criminal cases", attributable to a perception that civil remedies are slow and inadequate.

By contrast, in *V Ravi Kumar v. State*[7], the Supreme Court declined to quash an FIR alleging cheating and fabrication of documents arising from commercial dealings with a mill, holding that where the complaint contains specific allegations of fraudulent intention and fabricated evidence, the correctness of those allegations can only be tested at trial, not summarily quashed. The case illustrates that the intention-at-inception test does not operate exclusively in favour of the accused; it is genuinely fact-sensitive, and its outcome depends on the specificity and plausibility of what is actually pleaded.

In *Vesa Holdings (P) Ltd v. State of Kerala*[8], the Court reiterated that the mere availability of a civil remedy does not, by itself, bar a criminal prosecution where deception at inception is properly alleged, an important corrective against reading the jurisprudence as blanket hostility to genuine criminal complaints arising from commercial dealings.

Most recently, in *Vijay Kumar Ghai v. State of West Bengal*[9], an investor who had paid Rs 2.5 crore in exchange for a future allotment of shares filed a cheating and criminal breach of trust

[5]Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168.
[6]Indian Oil Corporation v. NEPC India Ltd., (2006) 6 SCC 736.
[7]V Ravi Kumar v. State, Rep by Inspector of Police, District Crime Branch, Salem, Tamil Nadu, Criminal Appeal No. 111 of 2011, decided 14 December 2018 (SC).
[8]Vesa Holdings (P) Ltd v. State of Kerala, (2015) 8 SCC 293.
[9]Vijay Kumar Ghai v. State of West Bengal, (2022) INSC 171, 2022 LiveLaw (SC) 305.

complaint when the shares were not allotted as promised. The Supreme Court quashed the proceedings, holding that the dispute was, at its core, a breach of contract, and cautioned against the use of parallel civil and criminal proceedings as a form of forum shopping.

Because a complainant retains considerable control over how the facts are pleaded, the same underlying transaction can, through selective omission or strategic framing, be made to satisfy the language of the cheating provision on its face. The real locus of the problem, therefore, is procedural rather than doctrinal: correctly and rigorously applied at the earliest stage, the inception-intention test should filter out ordinary contractual failures while permitting genuine fraud, as in V Ravi Kumar, to proceed to trial; applied loosely or without scrutiny, it instead becomes a gateway through which civil disputes are smuggled into the criminal process.

It is also worth noting that the corrective role played by the Supreme Court and High Courts in these cases is, by its nature, a remedy of last resort. Quashing under the inherent jurisdiction typically arrives only after an FIR has been registered, an investigation has proceeded, and often after years of litigation up the appellate ladder by which point the accused has already borne the reputational, financial, and personal costs of the criminal process, regardless of the eventual outcome. A jurisprudence that is doctrinally sound but consistently invoked only after the harm has occurred is, from the perspective of an accused facing a purely commercial default, of limited practical comfort. This temporal mismatch between when the test is authoritatively applied at the quashing stage and when it ought to be applied at the FIR stage is itself the strongest evidence that the reform needed lies upstream, in the design of the pre-investigation process, rather than in further refinement of the substantive test.

COMPARATIVE PERSPECTIVE: UNITED KINGDOM AND UNITED STATES

A comparative analysis makes clear that the difficulty lies not primarily in how the offence of cheating or fraud is worded, but in the design of the criminal process itself, specifically, in who is entrusted with applying the civil-criminal distinction, at what stage of the process, and on what evidentiary threshold. In India, that determination is made, in the first instance, by a police officer at the FIR stage, often on the complainant's version alone.

In the United Kingdom, a private complainant cannot simply have a criminal case registered; the decision to charge is made by the Crown Prosecution Service ("CPS") applying the Full

Code Test, comprising an evidential-sufficiency stage and a public-interest stage. The CPS's own legal guidance on the Fraud Act 2006 expressly instructs prosecutors that they "should guard against the criminal law being used as a debt collection agency or to protect the commercial interests of companies and organisations", and that "the criminal law is not a suitable vehicle to regulate such disputes" where the matter is more appropriately resolved through civil or regulatory means.[10] This is a structured, written, and publicly available policy filtering commercial disputes out of the criminal process before any charge is laid — precisely the kind of trained gatekeeping that is absent, or at best informal and inconsistent, at the Indian FIR stage.

In the United States, prosecution is similarly the exclusive prerogative of a public prosecutor, a district attorney or United States Attorney exercising broad discretion; a private citizen has no direct means of compelling registration of a criminal case. Federal fraud offences require proof of specific intent to defraud, and the Department of Justice's own commercial litigation guidance directs that civil remedies such as actions for breach of contract, unjust enrichment, or statutory fraud claims are the primary avenue for redressing commercial wrongdoing against the government, with criminal prosecution reserved for more serious misconduct.[11] Federal prosecutorial principles direct prosecutors to weigh the availability of "civil or regulatory alternatives" before pursuing criminal charges against a business entity.[12]

The common feature in both comparator jurisdictions is a trained, accountable gatekeeper interposed between the complainant and the invocation of the criminal process, a role that, in India, is performed, if at all, only informally and unevenly by the police at the point of FIR registration. This suggests that the Indian problem is not that the substantive legal test for cheating is wrongly framed, but that no equivalent institutional filter exists to apply it rigorously before the coercive machinery of arrest and investigation is set in motion.

Transplanting either model wholesale would be neither feasible nor advisable. India's criminal justice system operates at a scale, and with resource constraints, quite different from those of the CPS or the American district attorney system, and any Indian equivalent would need to be calibrated accordingly, for instance, by confining prosecutorial screening to complaints above a defined transactional value, or to specific categories of commercial offence, rather than

[10]Crown Prosecution Service, Fraud Act 2006 (Legal Guidance, July 30, 2026), https://www.cps.gov.uk/legal-guidance/fraud-act-2006 (last visited July 30, 2026).
[11]U.S. Dep't of Just., Justice Manual § 4-4.000, Commercial Litigation.
[12]U.S. Dep't of Just., Justice Manual § 9-28.1200, Civil or Regulatory Alternatives.

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applying it universally. What the comparison usefully establishes, however, is not a template to be copied but a principle to be adapted: that a decision with such serious consequences for individual liberty should not rest solely with an investigating officer acting on an ex parte complaint, and that some form of structured, accountable review before coercive process begins is both achievable and consistent with India's existing institutional architecture.

INSTITUTIONAL COSTS

The costs of this trend are borne unevenly across the criminal justice system. For the police, time and manpower devoted to investigating what is, in substance, a contractual dispute are resources diverted from genuine crime, a straightforward opportunity cost given the well-documented strain on Indian police manpower. For the accused, the consequences precede any finding of guilt: arrest, the burden of seeking bail, repeated appearances before investigating officers, and reputational and commercial harm that can outlast the proceedings themselves, regardless of the eventual outcome.

For the judiciary, the burden manifests at two levels, trial courts absorb cases that ought never to have reached them, while High Courts spend considerable time adjudicating petitions under Section 482 of the erstwhile Code of Criminal Procedure (now Section 528, Bharatiya Nagarik Suraksha Sanhita 2023) to determine, often years after the FIR was registered, whether the dispute was ever truly criminal at all. That a “business contract dispute wrongly filed as a cheating case” is recognised as a standard category of quashing petition is itself telling of how routine this misuse has become. Courts have, in analogous contexts, shown willingness to award costs against complainants who prolong frivolous proceedings[13], a deterrent power that remains under-utilised specifically in the commercial-dispute context.

Finally, and perhaps most significantly, this diversion is not costless to genuine victims of fraud: police and courts occupied with commercial disputes masquerading as crime have correspondingly less capacity to investigate and try cases involving actual dishonesty and loss, delaying justice for those the criminal process was designed to protect.

[13] Mary Angle v. State of Tamil Nadu, (1999) (Madras HC).

REFORMATIVE SUGGESTIONS

Four reforms follow from the analysis above. First, the preliminary-inquiry mechanism already recognised in *Lalita Kumari v. Government of Uttar Pradesh*[14] and now statutorily codified in Section 173(3) of the Bharatiya Nagarik Suraksha Sanhita 2023 which permits a preliminary inquiry, with the prior permission of an officer not below the rank of Deputy Superintendent of Police, for offences punishable between three and seven years, a band into which both cheating and criminal breach of trust now fall, must be applied with rigour and consistency in commercial-transaction complaints, rather than left to inconsistent, ad hoc police discretion.[15]

Second, India could adapt the gatekeeper model evident in the United Kingdom and United States by introducing a stage of independent prosecutorial review, whether through a Public Prosecutor or a specialised commercial-offences unit, before coercive criminal process (arrest, custodial interrogation) is set in motion, mirroring the evidential and public-interest screening the CPS undertakes in England and Wales.

Third, courts should more consistently impose exemplary costs on complainants found to have misused criminal process for debt recovery or settlement leverage, drawing on the Court's recognised inherent power to award costs against parties who prolong frivolous proceedings; the deterrent value of this remedy remains significantly under-utilised in the commercial-dispute context specifically.

Fourth, statutory or judicially issued guidelines should set out objective indicators of false representations made at the inception of the transaction, forged documentation, proven misappropriation to assist police in distinguishing genuine fraud from ordinary commercial failure at the point of FIR registration, reducing reliance on ad hoc, case-by-case judicial correction long after the fact, often years later, as seen across the cases discussed in Part III.

CONCLUSION

The central argument advanced in this paper is that the difficulty confronting Indian law in this area is not one of legal definition but of institutional design. The distinction between civil breach and criminal cheating is, doctrinally, well settled: dishonest or fraudulent intention must exist at the inception of the transaction. The difficulty lies in the fact that this test is routinely

[14]Lalita Kumari v. Government of Uttar Pradesh (2014) 2 SCC 1.
[15]Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, § 173(3) (India).

applied at the FIR stage, before any meaningful evidence exists to test it against, allowing ordinary commercial disputes to enter and remain trapped within the criminal justice system for years before a court finally applies the settled test and quashes the proceedings.

The comparative experience of the UK and the USA suggests that the answer lies not in redefining the offence of cheating, but in interposing a trained, accountable filter between the complainant and the coercive machinery of the state. This is a serious problem, with real consequences for litigants, for the efficient administration of criminal justice, and for genuine victims of fraud whose cases compete for the same finite police and judicial resources.

It is not, however, beyond repair. Targeted procedural reform at the pre-FIR stage, rigorously applying the preliminary-inquiry safeguard already codified in the Bharatiya Nagarik Suraksha Sanhita, introducing structured prosecutorial screening, and deterring malicious complainants through costs offers a realistic path to a criminal justice system that protects genuine victims of commercial fraud without becoming an instrument of coercive debt recovery.