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ANALYSING THE DEBT RECOVERY MECHANISM IN INDIA: A CRITICAL STUDY OF THE RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993

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Abstract:

Debt recovery in India has long been a significant challenge for financial institutions and creditors, impacting economic stability and growth. The Debt Recovery Tribunals (DRTs), established under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, represent a pivotal step in streamlining the recovery process. This Act was introduced to expedite the resolution of disputes related to the recovery of debts owed to banks and financial institutions, thereby reducing the burden on conventional courts.

The DRTs operate with the objective of providing a specialized forum for creditors to address claims more efficiently. This abstract reviews the framework of the DRT Act, its operational mechanisms, and the legal provisions that empower these tribunals. It also examines the effectiveness of the DRTs in facilitating quicker recovery of debts, their impact on the banking sector, and the challenges faced, including delays in proceedings and enforcement issues.

Furthermore, this paper explores the evolution of debt recovery laws in India, highlighting the role of the DRTs in enhancing access to justice for creditors while considering the implications for debtors. It emphasizes the need for reforms to strengthen the effectiveness of the DRTs, address procedural bottlenecks, and ensure a balanced approach that protects the interests of all stakeholders.

Introduction

The financial landscape in India has long been marred by the complexities of debt recovery, presenting a formidable challenge for lending institutions and borrowers alike. In response to these pressing issues, the Debt Recovery Tribunal (DRT) Act of 1993 was introduced to expedite the resolution of disputes pertaining to non-performing assets. This significant legislative development aims to provide a cohesive framework for the recovery of debts, facilitating quicker legal processes outside the conventional court system. By focusing on specialized tribunals, the DRT Act seeks to alleviate the burden on traditional courts,

ensuring timely justice for creditors while providing borrowers with a structured mechanism for addressing their financial liabilities. Ultimately, understanding the implications of the DRT Act is crucial for grasping the evolving dynamics of debt recovery in India, as it plays a pivotal role in enhancing the efficiency and effectiveness of the financial recovery process.

A. Overview of Debt Recovery Mechanisms in India

Amidst the complexities of India's financial landscape, various debt recovery mechanisms have emerged to facilitate the resolution of non-performing assets (NPAs). The Debt

Recovery Tribunal (DRT) Act of 1993 significantly transformed the enforcement of debt recovery measures by establishing specialized tribunals to expedite the resolution process. These tribunals not only streamline legal procedures but also alleviate the burden on traditional civil courts, allowing for quicker and more efficient debt recovery for banks and financial institutions. Furthermore, the DRT Act empowers creditors to initiate recovery proceedings without facing the procedural hurdles characteristic of the conventional judicial system, thereby enhancing their ability to recover dues effectively. This proactive legal framework is supplemented by measures such as the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, which enables the sale of collateral to recover dues, further augmenting the arsenal available to creditors against defaulters.

II. Suggestions For Recovery Of Debt In India.

Recovering debt in India can be a complex process, and the strategy you choose will depend on the amount owed, the debtor's situation, and the available legal options. Below are several suggestions for debt recovery, ranging from informal methods to formal legal processes:

1. Initial Communication (Friendly Reminder)

- **Personal Contact:** Reach out to the debtor through phone calls, emails, or face-to-face meetings. Often, a polite reminder or discussion can help resolve the situation.

- **Written Reminder:** Send a formal letter reminding the debtor of the outstanding debt, specifying the amount, the due date, and the consequences of non-payment.

- **Documentation:** Ensure you have a record of all communications, including emails, text messages, or any written correspondence.

2. Negotiation and Restructuring

- **Payment Plan:** If the debtor is facing financial hardship, offer to restructure the debt or set up

an installment plan. This gives the debtor a more manageable way to repay.

- **Debt Settlement:** You may negotiate a lump-sum settlement for less than the full amount, especially if it seems unlikely the debtor can pay the entire sum.

3. Engage a Collection Agency

- If informal communication doesn't work, consider hiring a professional debt collection agency. These agencies specialize in recovering debts and use both legal and non-legal means.

- **Charges:** Agencies typically charge a fee based on a percentage of the recovered amount, so evaluate whether this route makes financial sense.

4. Legal Action (Civil Suit for Recovery)

- **Demand Letter (Legal):** If personal negotiations fail, the first formal step is to send a legal notice through a lawyer. The notice should state the debt amount, due date, and demand payment within a certain time frame (typically 15–30 days).

- **Filing a Civil Suit:** If the debtor fails to pay after receiving the legal notice, you may file a civil suit in a district court or a commercial court (depending on the amount). The court may issue a decree ordering the debtor to repay the debt.

- **Advantages:** Legal action gives you a formal order for payment, but it can be time-consuming and expensive.

5. Cheque Bounce Cases (Section 138 of the Negotiable Instruments Act)

- If the debt was paid via a cheque that bounced, you can file a case under Section 138 of the Negotiable Instruments Act. The debtor may face imprisonment, a fine, or both if found guilty.

- **Timeline:** This process is relatively quicker than a civil suit, and in many cases, the debtor may prefer to settle before a court appearance.

6. Summary Procedure (Under the Code of Civil Procedure)

- For debts below a certain threshold (typically INR 10 Lakhs), you can opt for the summary suit procedure under the Civil Procedure Code. This is faster than regular litigation, and the court may issue a judgment within a few months if the case is clear-cut.

7. Secured Debt Recovery

- If the loan is secured (e.g., backed by property, assets, or collateral), you can take possession of the collateral under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act).

- SARFAESI allows creditors to take possession of mortgaged assets without the involvement of the court, but it applies mostly to banks and financial institutions.

8. Insolvency and Bankruptcy

- Insolvency and Bankruptcy Code (IBC): For large debts, you may initiate insolvency proceedings under the Insolvency and Bankruptcy Code (IBC). The process can lead to the appointment of an insolvency resolution professional (IRP) who will attempt to resolve the debt.

- For Individuals: Personal insolvency petitions can be filed under IBC if the debt exceeds INR 1 crore.

- For Companies: Corporate debtors can face a resolution process, where the creditors are involved in deciding the future of the company and its assets.

9. Alternative Dispute Resolution (ADR)

- Mediation and Arbitration: If you want to avoid long court battles, consider resolving the dispute via mediation or arbitration. These methods are faster and can be legally binding if agreed upon by both parties. The process can be more amicable and cost-effective than a full court case.

10. Free Legal Aid and Government Schemes

- For smaller businesses or individuals, there are government schemes providing free legal aid for debt recovery, especially under the National Legal Services Authority (NALSA) or State Legal Services Authorities.

- These bodies can assist you in the filing of complaints, notices, and representation in court, especially if the case involves consumer debt.

11. Debt Recovery Tribunals (DRT)

Debt Recovery Tribunals (DRTs) are specialized tribunals for the recovery of debts owed to banks and financial institutions. If the debt is above INR 20 Lakhs and involves a bank or financial institution, you can approach a DRT for faster resolution.

- Appeals: DRTs provide a quicker resolution compared to regular courts, but appeals can be made to the Debt Recovery Appellate Tribunal (DRAT).

12. Ensure Proper Documentation

- Always maintain clear and accurate documentation of the debt, including contracts, loan agreements, payment records, and any communication. In India, the courts give great weight to the documentation when considering debt recovery cases.

Final Thoughts

While there are several legal routes for recovering debt in India, the choice will depend on the situation. For smaller debts, informal methods may suffice, but for larger amounts or persistent non-payment, legal recourse may be necessary. Engaging legal professionals, such as lawyers specializing in debt recovery or financial disputes, can streamline the process and ensure your actions are legally sound.

III. Historical of Debt Recovery in India

The evolution of debt recovery mechanisms in India reflects a complex interplay of socio-economic factors and legislative frameworks, significantly impacting the financial landscape.

Historically, the process was characterized by prolonged litigation, often leaving creditors vulnerable, and debtors with little incentive to repay. The traditional court system was slow, cumbersome, and lacked specialized enforcement measures, resulting in substantial backlog cases that hampered timely resolutions. Recognizing these inefficiencies, the Indian government introduced the Recovery of Debts Due to Banks and Financial Institutions Act in 1993, which established debt recovery tribunals (DRTs) as a specialized forum aimed at expediting the recovery process. This legal reform aimed not only to streamline adjudication but also to instill greater confidence among lenders, fostering an environment conducive to credit growth. Yet, despite these advancements, challenges persist, such as enforcement inconsistencies and the need for further legislative refinement to adapt to evolving economic realities (Patel U)

A. Evolution of Debt Recovery Laws Prior to the DRT Act 1993

Historically, debt recovery mechanisms in India were largely governed by a patchwork of laws that often proved inadequate and excessively prolonged. Before the enactment of the Debt Recovery Tribunal (DRT) Act in 1993, creditors faced significant hurdles through traditional court systems, characterized by lengthy litigation processes, stringent procedural requirements, and excessive delays. The limitations of the civil court framework were evident; cases could take years to resolve, creating a hostile environment for creditors seeking timely restitution. Additionally, existing statutes such as the Relief of Indebtedness Act, 1976, although well-intentioned, often failed to provide an effective recourse for both borrowers and lenders, which further impeded financial stability and credit flow in the economy. This scenario necessitated a reformative approach, culminating in the establishment of specialized tribunals aimed at expediting debt recovery processes and ensuring equitable ace

III. Key Provisions of the DRT Act 1993

The DRT Act of 1993 serves as a pivotal mechanism aimed at expediting debt recovery in India, delineating the jurisdiction and operational framework of Debt Recovery Tribunals (DRTs). A key provision is the establishment of DRTs, which facilitate faster resolution of disputes pertaining to debts exceeding ₹10 lakh, thus addressing challenges posed by traditional courts that are often mired in delays. This expedited process is essential, especially considering the current landscape where the corporate insolvency resolution process (CIRP) has demonstrated slow resolution rates and significant haircuts for lenders, as highlighted in the findings regarding the Insolvency and Bankruptcy Code (Dhar S et al.). Furthermore, the DRT Act mandates time-bound proceedings, emphasizing efficiency and effectiveness—a necessity in an era where potential litigants increasingly require predictability and access in dispute resolution, as noted in a comparative analysis of litigation forums (Manivannan P et al.). These provisions collectively enhance the overall framework of debt recovery, making it more accessible and effective for stakeholders involved.

A. Structure and Functioning of Debt Recovery Tribunals

Operating under the aegis of the DRT Act of 1993, Debt Recovery Tribunals (DRTs) are specifically designed to expedite the resolution of debt-related disputes, thereby alleviating the burden on conventional courts. These specialized forums function to recover debts due to banks and financial institutions, facilitating a faster adjudication process that significantly reduces the time frame within which a creditor can recoup outstanding dues. As highlighted in recent research, the chance of disposal of cases within the first year at DRTs is less than 20%, signifying a need for improvements in efficiency and effectiveness (Manivannan P et al.). Despite these delays, the structure of DRTs allows for a more adept handling of financial matters compared to

traditional courts, which is essential in addressing the insolvency issues exacerbated by the slow resolution processes noted in the corporate sector under the IBC 2016 (Dhar S et al.). Thus, while DRTs play a pivotal role in India's financial ecosystem, their operational challenges must be addressed to enhance their effectiveness in debt recovery.

Rule Of The Reserve Bank Of India To Recover Debt.

Notice of Default

Before taking any action, banks or lenders must send a notice of default to the borrower. This notice would inform the borrower about their missed payments and the consequences they would face if they failed to repay the loan.

Recovery Agents

RBI has specific guidelines for recovery agents. Banks should make sure that their agents are well-trained and follow ethical practices. Recovery agents should also not use abusive language or physical force during the loan recovery process.

Settlement Process

During the settlement process, banks must negotiate with the borrower to settle the outstanding loan amount. They can either restructure the loan or offer a one-time settlement to close the loan account.

Grievance Redressal

As per RBI rules and regulations, borrowers have the right to file complaints if they face any issues during the loan recovery process. Hence, all banks must have a grievance redressal mechanism to address these complaints.

Ways of Loan Recovery

Judicial Processes

Judicial processes are when the courts are involved. Here, the lender takes legal action against the defaulter. This may include filing a lawsuit to recover the loan amount.

Non-judicial Processes

As the name suggests, this does not involve courts. Non-judicial processes usually include methods like negotiation, settlement and the use of recovery agents to recover the loan.

RBI Guidelines for Loan Recovery Agents

Recovery agents must be properly trained and certified

Use of abusive language or physical force is strictly prohibited

Agents must show proper identification when visiting a borrower's home

Banks should monitor and regulate the activities of their recovery agents

When is a Loan categorised as NPA?

A loan is categorised as a Non-Performing Asset (NPA) when the borrower fails to make any payments for a period of 90 days or more. Once a loan is classified as an NPA, it becomes a serious concern for banks. It is majorly because when there is no loan repayments it would impact the financial health of the bank. As a result, the bank then initiates the loan recovery process to minimise losses.

IV. Conclusion

The implications of the Debt Recovery Tribunal (DRT) Act of 1993 have proven transformative within India's financial recovery landscape. By establishing specialized tribunals tasked with expediting the resolution of debt recovery cases, the DRT Act has significantly reduced the burden on traditional court systems while providing a more accessible mechanism for creditors seeking justice. In light of the persistent problems surrounding non-performing assets and the complexities of India's financial ecosystem, this legislation has emerged as a critical tool in fostering a more robust recovery framework. However, challenges remain, including enforcing judgments and ensuring that procedural delays do not undermine the Act's intended efficacy. Future reforms must address these concerns while enhancing the operational capacity of the

DRTs, thereby ensuring they serve their fundamental purpose of restoring financial equilibrium in India's economy (N Rao J). Ultimately, the DRT Act lays the groundwork for a more equitable and expedient recovery process, vital for fostering investor confidence and economic stability.

A. Assessment of the Effectiveness of the DRT Act 1993 in Debt Recovery Processes.

Evaluating the effectiveness of the DRT Act of 1993 reveals both its strengths and limitations within the debt recovery landscape. Initially designed to expedite the resolution of financial disputes, the Act aimed to alleviate the burdensome backlog in civil courts by establishing specialized Debt Recovery Tribunals (DRTs). While the DRTs have succeeded in reducing the time taken for recovery processes, significant procedural challenges remain. For instance, the complexity of legal requirements often deters creditors from pursuing claims, resulting in lower recovery rates than anticipated. Moreover, the lack of adequate infrastructure and trained personnel has hindered the tribunals' efficiency, prolonging delivery of justice. Ultimately, although the DRT Act of 1993 has certainly made strides in enhancing the debt recovery framework in India, a nuanced analysis suggests that further reforms are necessary to address these shortcomings and truly realize its intended objectives.

REFERENCES:

1. Pavithra Manivannan, Geetika Palta, Susan Thomas, Bhargavi Zaveri-Shah. "Evaluating courts from a litigant's perspective: A project report". 2023, https://papers.xkdr.org/papers/2023Manivannanetal_evaluatingCourtsFromLitigantPerspectiveReport.pdf
2. Satyajit Dhar, Avijit Bakshi. "ROLE OF NCLT IN NPA RESOLUTION IN INDIA". Time's Journey, 2018, http://timesjourney.co.in/wp-content/uploads/2020/12/TJ_2018_3.pdf
3. Urjit Patel. "Overdraft". Harper Collins, 2020-07-24, https://play.google.com/store/books/details?id=3_7IDwAAQBAJ&source=gbs_api
4. Vivek Sood. "Emergence of Commercial Justice: Insolvency & Arbitration, First Edition". Bloomsbury Publishing, 2021-06-10, http://books.google.com/books?id=6bYyEAAAQBAJ&dq=Evolution+of+debt+recovery+laws+in+India+before+the+DRT+Act+1993+and+its+impact+on+the+current+debt+recovery+framework&hl=&source=gbs_api
5. Jaswanth Rao. "ALTERNATE DISPUTE RESOLUTION IN INDIA AND WORKING OF ADR INSTITUTIONS IN HYDERABAD". Laxmi Book Publication, 2023-10-26, http://books.google.com/books?id=9EnfEAAAQBAJ&dq=Debt+recovery+in+India+DRT+Act+1993+conclusion+analysis&hl=&source=gbs_api