Chapter 7

An International Perspective of the Changes Proposed to the Debt Recovery Laws of India

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**ABSTRACT**

This chapter relates to the recent changes made to certain debt recovery laws enforced in India and the current parallel legal regime relating to debtor protection in U.S. and U.K. As per the statement of objects and reasons, these amendments are being proposed to facilitate the speedy disposal of cases by the debt recovery tribunals. This chapter analyzes the relevant international legal regime in place in U.S. and U.K. to suggest changes to the current Indian regime relating to debtor’s rights, so as to better balance the interests of the debtors with the interests of the creditor. The authors request the Indian legislature to draw guidance and inspiration from the current regime of legal rights as available to the debtors in U.S. and U.K. and pass laws for preventing banks and financial institutions from exploiting debtors further.

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INTRODUCTION

Bankruptcy is the legal process by which the debts of entities such as firms, individuals, and occasionally governments in financial distress are resolved. Bankruptcy law provides a collective framework for simultaneously resolving all debts of the bankrupt entity, it provides rules for determining how the assets and earnings used to repay are divided among creditors. Bankruptcy law also discourages debtors from defaulting and filing for bankruptcy by providing punishments.

In an important step aimed to resolve bad loans, the Lok Sabha on August 1, 2016 passed a bill to amend the existing Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI), and the Debts Due to Financial Institutions Act, 1993 (RDB Act) (Nair, 2016).

Recovery of Debts Due to Banks and Financial Institutions Act, 1993 created Debt Recovery Tribunals (DRTS) to adjudicated debt recovery cases. This was done to move cases out of civil courts, with the idea of reducing time taken for debt recovery, and for providing technical expertise. This was aimed at assisting banks and financial institutions in recovering outstanding debt from defaulters (Khullar, 2016).

This book chapter relates to the changes made to the RDB Act. As per the Statement of Objects and Reasons, these amendments are being proposed to facilitate the speedy disposal of cases by the Debt Recovery Tribunals. This book chapter additionally analyzes the relevant international legal regime in place in U.S and U.K to suggest changes to the current Indian regime relating to debtor’s rights as affected by provisions under DRT Act.

CURRENT LEGAL REGIME IN INDIA AS AMENDED BY DRT ACT WITH RESPECT TO MAJOR DEBTOR’S RIGHTS

The benefits of the SARFAESI Act and the DRT Act have been extended to the listed bond market in India. Debenture trustees appointed in respect of debt securities listed in accordance with applicable SEBI regulations have been specifically included as ‘secured creditors’ under the SARFAESI Act, and corresponding changes have been made to various provisions of both the SARFAESI Act and the DRT Act. These changes potentially allow lenders that do not independently have rights under the SARFAESI Act or the DRT Act (such as domestic funds, mutual funds, insurance companies, foreign portfolio investors and other investors in the corporate debt market) to benefit from such rights when acting through a debenture trustee in respect of listed bonds (Trilegal, 2016).
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