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## ISSUES FACED BY THE DEBT RECOVERY TRIBUNAL AND WAYS TO ENSURE SPEEDY ADJUDICATION

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### ABSTRACT

This research paper goes on to analyse the functioning of the Debt Recovery Tribunals (hereinafter referred to as 'DRT' for brevity) in India, the laws that govern these Debt Recovery Tribunals as well as the issues and loopholes that are faced by the legal framework of such Tribunals. Section 2(g) 1 "Debt" means - any liability (inclusive of interest) which is alleged as due from any person by a Bank or Financial Institution or by a consortium of Banks. But it should be subsisting one and recoverable also.

Banking in India faces the difficulty of mounting Non-Performing Assets (NPA), which is unfavourable for the bank's financial health. Banks have had to wait for very long time in Civil Courts to get cases concerning debt-recovery disposed and recovered. This led to the trapping of crores of rupees in litigation proceedings, which the bank could not re-advance, forcing the Government to establish a Debt Recovery Tribunal (DRT) to assure expeditious recovery proceedings. The Debt Recovery Tribunals (DRT) are established following the Recovery of Debts due to Banks and Financial Institutions Act, 1993<sup>1</sup> in order to ensure speedy adjudication and recovery of debts due to banks and financial institutions.

This research paper goes on to analyse the recent developments with respect to the DRT Act and the various measures and recommendations that can be undertaken to ensure speedy adjudication and mend the loopholes that currently exist in the system.

<sup>1</sup>See, Section 3 of the Recovery of Debt Due to Banks and Financial Institutions Act, 1993.

## REVIEW OF LITERATURE

Research Paper	Findings
<p><b><i>“Asset Quality &amp; NPA of Commercial Banks”</i></b> by Ahmed, JU (2008)</p> <p>Published: 1<sup>st</sup> Edition, MD Publications Pvt. Ltd. page 156</p>	<ul style="list-style-type: none"> <li>• NPA recovery management and DRT functions.</li> <li>• SARFAESI Act’s importance in debt recovery.</li> <li>• Explained various statutes governing the process of debt recovery.</li> </ul>
<p><b><i>“Outlook of the Indian Financial Sector”</i></b> by Patel and Urijit Pandey.</p> <p>Published: Economic and Political Weekly, Volume XXXV, No.45, Nov 4<sup>th</sup>,2000, page 29-38</p>	<ul style="list-style-type: none"> <li>• Highlighted issues around bad loans and growing level of NPA’s.</li> <li>• Effective lending practices should be adopted by banks and supervisory authorities.</li> <li>• More stringent disclosure, principles, transparency practices must be followed by corporate entities.</li> <li>• The need for effective laws for quick recoveries of dues.</li> </ul>

The above research papers lack the mentioning of the effective legislature and implementation needed to ensure faster recovery of debts. Hence, this research paper goes on to analyse the recent developments with respect to the DRT Act and the various measures and recommendations that can be undertaken to ensure speedy adjudication and mend the loopholes that currently exist in the system.

## INTRODUCTION

Prior to the establishment of DRT’s, debt recovery cases were like other civil cases and had to be filed in ordinary civil courts. Court proceedings were dragged for long periods, at times more than 15 years. This took its toll on the financial health of the banks, as the chunk of the stressed assets got snagged in the litigation. This led to the economy into trajectory of sluggish growth.<sup>2</sup>

<sup>2</sup>Section 3 of the Recovery of Debt Due to Banks and Financial Institutions Act, 1993 reads as: Establishment of Tribunal.— (1) The Central Government shall, by notification, establish one or more Tribunals, to be known as the Debts Recovery Tribunal, to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under this Act. (2) The Central Government shall also specify, in the notification referred to in sub-section (1), the areas within which the Tribunal may exercise jurisdiction for entertaining and deciding the applications filed before it.

The Debt Recovery Tribunals (DRT's) were established under the recommendations of the Tiwari Committee under the Chairmanship of Shri. T Tiwari which wanted to establish Special Tribunals to expedite the recovery process for debts.<sup>3</sup> Rules have been framed and notified under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The Debt Recovery Tribunals are fully empowered to pass comprehensive orders like in Civil Courts. The Tribunal can hear cross suits, counter claims and allow set offs.

However, they cannot hear claims of damages or deficiency of services or breach of contract or criminal negligence on the part of the lenders. The Debt Recovery Tribunal is empowered to appoint Receivers, Commissioners, pass ex-parte orders, ad interim orders, interim orders apart from powers to Review its own decision and hear appeals against orders passed by the Recovery Officers of the Tribunal. The Presiding Officer of a Debt Recovery Tribunal is the sole judicial authority to hear and pass any judicial order.<sup>4</sup>

Debt Recovery Tribunals (DRT's) were initially set up for speedy adjudication and recovery of debts due to banks and financial institutions. Initially DRTs did perform well and helped lenders recover substantial parts of bad debt, but their progress stumbled when it came to large and powerful borrowers, who were able to stall proceedings on various grounds, including that claims against the borrowers were pending in civil courts.

If the DRT were to adjudicate the matter and auction their properties irreparable damage would occur to them while cases were still pending elsewhere in the judicial system.<sup>5</sup> DRT also enforces the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interests (SARFAESI) Act, 2002.

The SARFAESI Act, 2002 has been enacted with an intention to strengthen the creditor's rights through foreclosure and enforcement of securities by banks and financial institutions, by conferring on the creditors the right to seize the secured asset and sell the same in order to recover the dues promptly. However, there exists a great pendency of cases in these Debt Recovery Tribunals. In spite of setting up a number of DRTs, the number had risen to 500 billion by 2016.<sup>6</sup>

<sup>3</sup> The Report on Banking Reforms, 1991, submitted to the Government of India

<sup>4</sup> See, Section 4 (1) of the Recovery of Debt Due to Banks and Financial Institutions Act, 1993.

<sup>5</sup> Nidhi Singh and Ritika Singh, 'Debt Recovery Tribunal: An Analysis', Journal of Legal Studies and Research (JLSR); Volume 2 Issue 3.

<sup>6</sup> Sayan Ghosh. "Debt recovery tribunals fail to clear cases on time; outstanding debts stand at Rs 4,50,000 crore". In: The Financial Express (May 17, 2016)

## ANALYSIS

### **1. ISSUES FACED BY DEBT RECOVERY TRIBUNALS**

Banks and money related organizations had been encountering extensive troubles in recuperating credits, and implementation of securities accuse of them. The Debts Recovery Tribunal now deals with two different Acts, namely the Recovery of Debts Due to Banks and Financial Institutions Act as well as the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act.<sup>7</sup>

While the aim of the both the Acts is one and the same, but their route is different. The Debts Recovery Tribunal has had to deal with extremely complex commercial laws within the narrow ambit of the two laws. Over the years the Debts Recovery Tribunals have evolved into fine bodies with lot of expertise.<sup>8</sup> There is a plethora of judgments from the Supreme Court as well as the various High Courts which have paved the way of the Debts Recovery Tribunals to chart their courses.

It has been remarked that the most effective method of dispute resolution in these courts are the out of the court settlement, withdrawals and compromises. The cases both in the district court and the High Court are subject to long delays. While the legal scholars point various for the inefficiency of the court system, it is widely acknowledged that the loopholes are important factors.<sup>9</sup>

### **2. JUDICIAL APPROACH**

The recovery of debts and related cases are vested in the DRTs and DRATs through the RDD & FI Act, the jurisdiction of the courts have been excluded in this matter, but the problem is that the role of civil courts in settlement of issues cannot be completely precluded, the supreme court has held that DRTs powers are limited to section 17<sup>10</sup> and related matters like KYC norms, succession or issuance of receipts has to be dealt with by civil courts which delays the process.

Further, the inception of DRTs and DRATs were to reduce the burden on the judiciary and to provide for an effective measure, but the problem only has been transferred to the DRTs, as per the Deshpande Committee Report,<sup>11</sup> the ideal number of cases to be handled by any DRT at any given time was supposed to be 30, this number even in the initial stages were around 4000 in major cities.<sup>12</sup>

<sup>7</sup> Una Galani, *Breakdown: Solving Asia's other bad debt problem*, Reuters, June 30, 2016

<sup>8</sup> Nidhi Singh & Ritika Rishi, *Debt Recovery Tribunal: An Analysis*, 2 Jlsr (2016)

<sup>9</sup> Prasant Reddy, *India's banking crisis is made worse by the poor performance of its debt recovery tribunals*, The Reuters

<sup>10</sup> Standard Chartered Bank V. Dharminder Bhoji and ors, (2013) 15 S.C.C 341(India).

<sup>11</sup> Shri N.V. Deshpande, *Working Group to Review the functioning of DRTs*, Law Commission of India, [http://lawcommissionofindia.nic.in/adr\\_conf/adivarahan1.pdf](http://lawcommissionofindia.nic.in/adr_conf/adivarahan1.pdf).

<sup>12</sup> *Ibid.*

The success rates of DRTs have been pegged at below 25% which is a concern. Furthermore, DRTs got burdened with issues of state dues, dues of workmen and claims involving unsecured assets, the borrowers also stalled proceedings by raising claims against lenders in civil courts.

The most important case with regards to debt recovery is the case of *Union of India v Delhi High Court Bar Assoc, & Ors*<sup>13</sup> in which the constitutionality of the RDDB & FI Act 1993 was challenged. The Delhi High court held the act to be unconstitutional but the Supreme Court held the Act to be valid and ordered certain changes.

Although the legislature intended to have a creditor friendly approach, the courts have interpreted some of the provisions to protect the debtors, even though CPC doesn't apply and the proceedings are summary in nature, court has reiterated that natural justice principles cannot be done away with, one example is the case of *Mathew Varghese vs. M. Amritha Kumar*<sup>14</sup> in which the court has held that under rules 8 & 9 of SARFAESI Act notice to defaulter before sale of secured asset was held to be a mandatory provision.

Another problem which has arisen is the problem of frustration of jurisdiction of DRTs through filing of suits in Civil courts, the Supreme Court has held that consent is not necessary for transferring cases<sup>15</sup> but another case has an opposite holding,<sup>16</sup> successive cases have not clarified the stance. The concern raised was that the DRTs have summary proceedings and they are not equipped to address complex questions of law and questions of fraud and misrepresentation.

### **3. IMPORTANCE OF DEBT RECOVERY**

A speedy debt recovery is important for the following reasons:<sup>17</sup>

- i. A bank's money can be termed 'public money'. This is because, in case of Public Sector banks, it is the Government's money that runs the banks and the capital infusion is done by the government. In case of Private Sector Banks, it is the capital of the millions of investors that steers the bank. Moreover, the funds of the banks are intended to be served to the general public and for the commercial initiatives that largely influences the people, who depends on it. When money is trapped, a bank faces difficulty in funding projects, which it could earlier do.
- ii. NPA's affects the profitability of the bank; hence debt recovery is made essential to ensure that it functions smoothly.

<sup>13</sup> Union of India v Delhi High Court Bar Assoc, & Ors, 2002 2 S.C.R 450(India).

<sup>14</sup> Mathew Varghese vs. M. Amritha Kumar, 2014 5 S.C.C 610(India).

<sup>15</sup> SBI v Ranjan Chemicals Ltd, (2007) 1 S.C.C 97(India).

<sup>16</sup> Indian Bank v ABS Marine Products, 2006 5 S.C.C 72(India).

<sup>17</sup> Deolalkar, G. H., The Indian Banking Sector: On the Road to Progress; available at: [http://www.adb.org/Documents/Books/Rising\\_to\\_the\\_Challenge/India/india\\_bnk.pdf](http://www.adb.org/Documents/Books/Rising_to_the_Challenge/India/india_bnk.pdf)

- iii. If the bank succumbs to a financial crisis, it will leave the employees, management, and all the stakeholders in the dark
- iv. A large amount of NPA will tarnish the image of the bank, and can discourage investors
- v. ROI of the bank decreases, if the NPA is not recovered speedily.
- vi. Cost of Capital (interest) gets stranded. It is the bank's prime source of income

#### **4. RECENT DEVELOPMENTS**

In recent times major changes have been made to overhaul the debt management, Credit Information Bureaus have been setup under the Credit Information Bureau Act of 2005.<sup>18</sup> In any debt Industry, Credit information regarding credit worthiness and Credit rating plays a prominent part. Many Credit rating agencies have now come into existence and the practice of credit based on rating is slowly being adopted.

In order to improve the current position of pendency in the Tribunals as well as the framework, the Government has undertaken a few endeavours. One of the new significant ones is the change to the RDBBFI Act 1993 out of 2016. The new Insolvency and Bankruptcy Code offer forces to DRTs to think about instances of Bankruptcy from people and boundless risk associations.<sup>19</sup>

The following are the primary changes made to the RDBBFI Act in 2016 however the alterations are yet to be upheld. The revision gives timetables for different strides in the mediation procedure before the obligation recuperation councils. Time constraints for documenting of composed articulations, going of requests, bids, and so on have been lessened.<sup>20</sup>

The Act Empowers the Central Government to accommodate uniform procedural guidelines for the procedures in the Debts Recovery Tribunals and Appellate Tribunals. The amendment has also increased the retirement period of Presiding Officers of Debt Recovery Tribunals from 62 years to 65 years and that of the Chairpersons of Appellate Tribunals from 65 years to 67 years.

It additionally makes Presiding Officers and Chairpersons qualified for reappointment to their positions. The alteration enables banks to document cases in DRTs having locale over the region of bank office where the obligation is pending, rather in the DRT which have purview over the respondent's region of living arrangement or business.<sup>21</sup>

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<sup>18</sup> Rakesh Mohan and Partha Ray, *Indian Financial Sector: Structure, Trends and Turns*, International Monetary Fund, <https://www.imf.org/en/Publications/WP/Issues/2017/01/20/Indian-Financial-Sector-Structure-Trends-and-Turns-44554>.

<sup>19</sup> Mukund P. Unny. A Study on the Effectiveness of Remedies Available For Banks in a Debt Recovery Tribunal: A Case Study on Ernakulam DRT. CPPR Working Papers. Feb. 2011; Remya Nair. "Debt recovery tribunals' overhaul on the cards to tackle pendency". In: Live Mint (Dec. 24, 2015)

<sup>20</sup> The Statement of Objects and Reasons of the "RDBBFI Act"

<sup>21</sup> Deolalkar, G.H. *The Indian Banking Sector: On the Road to Progress*. Available at: [http://www.adb.org/Documents/Books/Rising\\_to\\_the\\_Challenge/India/india\\_bnk.pdf](http://www.adb.org/Documents/Books/Rising_to_the_Challenge/India/india_bnk.pdf)

Essentially, to decrease delays, the he cost on a borrower to defer recuperation timetables through extended interests and procedures has been expanded.<sup>22</sup> Borrowers should store no less than 25% of the extraordinary sums with the obligation recuperation re-appraising court (DRAT) under the DRT Act to benefit an interest. Already, this arrangement was required just under the SARFAESI Act.

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## CONCLUSION & RECOMMENDATIONS

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The goal of financial institutions and banks is to ensure speedier and more effective method of recuperation of obligations. Absence of legal preparing for recuperation officers as they are officers named by the Government of India for helping the managing officers, conflicting systems took after by various DRTs, noteworthy deferral in procedures as the prescribed time is a half year, though procedures in reality keep going for a long time or more, are a portion of the explanations behind poor working of DRTs.

There is a strong need to bring in more accountability for the DRT. Lack of judicial training for recovery officers as they are officers appointed by the Government of India for assisting the presiding officers, inconsistent procedures followed by different DRTs, significant delay in proceedings as the recommended time is six months, whereas proceedings actually last for two years or more, are some of the reasons for ill working of DRTs.

There exist very few numbers of DRTs and Debt Recovery Appellate Tribunals, where judgments of DRT's can be appealed. While there are 33 DRTs, there are just five Debt Recovery Appellate Tribunals in the nation. There is positively a requirement for a greater number of DRTs. There is a need for a feedback mechanism to be put in place and people involved with DRTs should be encouraged to point out the areas of pain.

Our legal framework is both obstructed and lacks foundation, which backs off any redressal procedure. Recuperation can be speeded up just when there is a settled time span for all transfers, and acknowledgment of benefits could be speeded up by having unique courts to manage such recuperations.

The working of DRTs is additionally keeping the Reserve Bank of India (RBI) worried. On the off chance that financiers can't recover their cash, they are not going to give credits at modest cost. In this way, ensuring obligation recuperation councils work better, ensuring that we don't have abundance number of stays, overabundance number of requests – this is additionally should have been engaged.

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<sup>22</sup> Ibid

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