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Debt Recovery Laws of India and USA A Comparison



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Introduction

India has a socialistic pattern of federal democracy having the centripetal characteristics of unitarism. All its policies, legislations etc. are directed towards public welfare, keeping pace with the development of the country. Still then, days are gone of squeezing itself within a certain circumscribing area. It is the time to know the international position of India, be it the country-economy, capital or money market position or lending operations or debt recovery laws.

As far as the debt recovery laws are concerned, Indian Central Government has passed the Recovery of Debts Due to Banks and Financial Institutions Act in 1993. In 2002, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act has been passed. Both of these legislations are trying their best to empower the Banks and Financial Institutions in the place of creditor in order to sweep India's developing economy towards a developed one, but are silent about the safety of the borrowers. Whereas it's clearly evident from the Fair Debt Collection Practices Act, 1977 of United States of America (USA) that the same is more borrower-friendly.

Objectives

The prime objectives of the present study are (1) to draw a comparison between the debt recovery law of India and USA and (2) to suggest some key points to improvise the Indian Laws.

Hypothesis

Relying upon the secondary source of data, i.e. the legislative materials, from different books and websites, the present research work is intended to test the hypothesis, "the debt recovery laws of United States of America are more borrower friendly than that of India".

Recovery Laws in India

The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 has made it very clear from the statement of object and reasons, that the aim behind passing the Act are (1) to establish the Debt Recovery Tribunals (DRTs) and Appellate Tribunals (DRATs) (2) to lessen the burden of civil courts (3) to decrease difficulties of Bank and Financial Institutions etc. The Act has 37 sections and 6 chapters including preliminary (CH-I) and Miscellaneous (CH-VI). The body of the legislation i.e. from CH-II to V are about establish-

ment of DRTs and DRATs, jurisdiction, powers and authority of Tribunals, procedure of Tribunals and Recovery of Debt determined by Tribunal respectively.

The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was intended to (1) register and regulate the securitisation or Reconstruction Companies by Reserve Bank of India (2) enable Banks and Financial Institutions to realise long term assets and to manage the problems of liquidity, asset liability mis-match (3) to enable Banks and FIs to take the possession of securities, sell them and reduce the Non-Performing Assets etc. These aims can be clearly seen in the statement of object and reasons of the Act. The Act contains 42 sections and 6 chapters including the preliminary (CH-I) and the Miscellaneous (CH-VI). Chapter-II to V are upon the topics Regulation of Securitisation and Reconstruction of Financial Assets of Banks and Financial Institutions, Enforcement of Security Interest, Central Registry and Offences and Penalties respectively. The above discussed two Acts are the major legislations in the field of debt recovery. Many Rules and Regulations were passed in order to make them effective.

Recovery Legislation of USA

The specific debt recovery legislation of USA is Fair Debt Collection Practices Act which was passed in 1977 and amended time to time latest in 2006. The Act has 19 sections from 801 to 819 and has no chapterisation. The section 802 says about the purpose of the Act, whereas section 802(e) specifically enshrines that the aims of the legislation are to (1) eliminate abusive debt collection practices by the debt collectors and (2) promote consistent State action to protect consumers against debt collection practices along with other objectives. Section 806, 807, 808 and 812 particularly prohibit the harassment or abuse, false or misleading representation, unfair practices and furnishing certain deceptive forms by the debt collectors respectively, while section 813 creates civil liability of the debt collectors, in case there is failure in complying the provisions of Act. Rest of the Sections of the Enactment give the due procedure of collecting the debt, interpretation of terms etc.

Findings :

A comparison between Indian and USA Recovery Laws The 1993 Act and 2002 are the specific legislations for recovery of debt. But two of them are silent about the protection of borrower's right and abusive practices of debt collection, which is very clear from the statement of object and reason of the two Act and from their provisions as well.

Though the 5th chapter of the 1993 Act headed as "Recovery of Debt Determined by Tribunal" (Section 25 to 30) could have contained some borrower-supportive provisions instead it is strictly confined to the execution of the decision of the Tribunal to recover the debt from the borrower. At the same time the 5th chapter of the 2002 Act under the title of "Offences and Penalties" (Sec.27 to 30) is strictly revolving around the offences of and penalties for the Securitisation and Asset Reconstruction Companies non-compliance of directions of Reserve Bank of India and regarding intimating the Central Registry etc. Any protective measures for debtors are not specified, there in any

provisions of the Act. Whereas the USA Act of 1977 clearly mentions the abusive practices by the debt collectors with definitions, inferences and liabilities therefor. Hence the hypothesis taken for the present study is proved.

Conclusion and Suggestions :-

Being a developed economy, United States of America has made it's legislation more inclined towards the rights of the borrowers which proves that the amount that is blocked in the hands of defaulting borrowers is very small in proportion to the entire amount lent by the creditor. India is a developing country for which it could not have been so lenient for the debtors. It is worth-while to give some suggestions in this regard.

- (1) Indian Laws should define some prohibitory practices, during the debt recovery procedure.
- (2) Recovery by debt collecting agents other than the Securitisation and Asset Reconstruction Companies should get a legislative position, having some code of conduct to be followed reasonably.
- (3) Borrowers should have a mind set to repay the debt and not to deceive the creditor.

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