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"DEBT RECOVERY MECHANISMS IN INDIA: ANALYZING LEGAL AND INSTITUTIONAL FRAMEWORKS"

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Abstract

The main objective of working on this Research Paper about “Debt Recovery Mechanism in India” is to get a clear idea of how financial institutions recover the loans granted by them to the general public and organizations. This Research discusses the importance of debts, how are debts granted by Banks, how those loans are recovered back by financial institutions, what happens in the case of default in repayment of Loans, what laws govern this process of recovering the loans, and the procedures laid down in the legislations regulating the Banks and other institutions regarding this particular process of recovering the loan amounts, challenges faced by the Banks in this process, and some recommendations to reform the present-day legislations to improve the recovery of debts and reducing the NPA’s with which the performance of banks improves and ultimately enhances trust of the people and the investors.

This paper begins with an introduction to the concept of Debts or Loans and their importance, followed by the procedure of granting loans, processes by which loans are recovered, consequences in the case of default of repayment of loans, NPA’s which means Non-Performing Assets, laws and provisions that govern the process of recovering the Debt like Recovery of Debt due to Banks and Financial Institutions Act of 1993, The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act of 2002 (SARFAESI Act), Establishment of Debt Reconstruction Tribunals and Debt Reconstruction Appellate Tribunals, National Company Law Tribunals, The Insolvency and Bankruptcy Code, And Non-Judicial mechanisms like One Time Settlements scheme, Lok Adalat’s, Special Recovery Drives and the ways in which different financial institutions, such as public and private banks, as well as how online instant loan apps operate the loan recovery processes and will conclude with the challenges involved in Debt Recovery procedures, and Recommendations for Legal and Structural Reforms to ensure smooth and effective Recovery Mechanism which helps in improving the performance of the Banking structure.

Keywords: Debt Recovery Mechanism, Loan Recovery Laws, Non-Performing Assets, Reforms and Recommendations.

Research Methodology:

The research method used in writing this paper is the Doctrinal Method i.e., secondary data was collected from different commentaries, books, research papers, and websites and it is with this declared that this paper is of an objective nature rather than subjective. Personal choices and opinions were not depicted in this paper and only findings that were mentioned and published in different sources were only used to write this paper.

Research Questions

- What are the key debt recovery mechanisms used by Indian banks?
- How effective are the judicial and non-judicial recovery mechanisms in reducing NPAs?
- What role do Online instant loan applications play in debt recovery and how are they similar to that of traditional methods?
- What challenges do banks face in recovering the debts and what are the necessary changes to be done in the practices and procedures?

Research Objectives

- To evaluate the effectiveness of debt recovery mechanisms in India.
- To assess the role of laws like RDB, SARFAESI, and IBC in shaping debt recovery.
- To examine the practices of online lending platforms and their debt recovery processes.
- To analyze the challenges banks face in recovering the debts.

Hypothesis

Indian Debt Recovery System includes different Judicial and Non-Judicial mechanisms used by financial institutions like banks to recover the debts granted by them to the needy. These mechanisms though help and contribute to some extent in the recovery of unpaid debts, they require more effective procedures and practices to be included to make the debt recovery processes more efficient.

Literature Review

From the study made by Surojit Dey in the year, it was found that the reason for more NPAs is poor recovery mechanisms and this study emphasized the need for better monitoring methods and recovery procedures. In a study by Inderdeep Singh Ahluwalia, it was found that Debt recovery methods through the DRT Act and SARFAESI Act play a major role in recovering debts in India but challenges like delays in proceedings, and infrastructure make it difficult to bring out the best output. A study done by Sujata Visara, found the benefits of DRTs' performance in India, like low interest rates on new loans, reduced delays in judicial institutions, and upheld the success of DRTs in reducing non-performing loans.

Introduction

Debt or loan, also called credit in general, means the amount given or granted by one person called the creditor to the one in need, i.e., the debtor. In simple words, one party borrows money and is obligated to return the amount with the interest value. These credits or loans are very important for businesses mainly as they help expand, maintain working capital, buy fixed assets, manage cash flows, repay other credits, and other needs. Financial institutions like banks provide these loans in the present-day scenarios, thus these banks are called the driving forces of the economy as they are the main players who act as intermediaries who direct the funds from savers to borrowers and finance the businesses.

These debts are of different kinds like:

Secured Debts: - Loans that are backed by collateral (mortgages)

Unsecured Debts: - Loans without collateral (credit cards, personal loans etc)

Corporate Debts: - Loans to the companies for operational and capital purposes

Retail Debts: - Loans provided to individuals (home loans, education loans, etc)

As per the provisions and rules of the Reserve Bank of India, secured loans are backed by assets as collateral which range from 1 lakh rupees to 1000 crores or more depending on the collateral value, and unsecured loans like personal loans and amounts drawn through credit cards are the loans that do not require any assets as collateral, these ranges from Rs.10,000 to Rs.50,000 lakhs.

The procedure to be followed by the Banks before granting loans to individuals as well as to businesses as per the provisions, rules, and guidelines of different legislations is as follows:

- **Know Your Customer (KYC) compliance:** As per Section 35A of the RBI Act of 1934 and RBI KYC Master Directions, the borrower's identity and address are verified by collecting documents like PAN, Aadhar, Passport, utility bills, etc.
- **Creditworthiness and Risk Evaluation:** As per Sections 21 and 35A of the Banking Regulation Act of 1949, the borrower's credit score is checked and the income will be assessed using documents like salary slips, tax returns, etc.
- **Collateral Assessment (For Secured Loans):** As per Sections 21 and 35A of the Banking Regulation Act of 1949 and SARFAESI Act of 2002, the value of the assets (gold or property) that will be pledged as collateral is evaluated and verified by reviewing the legal ownership documents.
- **Loan Documentation:** As per Section 45U of the RBI Act of 1934 and Banking Regulation Act of 1949, necessary documents like income proofs, property deeds, and financial statements are collected and reviewed.
- **Loan Sanctioning and Credit Approval:** As per Section 35A of the Banking Regulation Act of 1949, the credit committee reviews and approves the loan followed by the issuance of a sanction letter with the terms and conditions of the loan account.
- **Assessment of Repayment Capacity:** As per Section 35A of the Banking Regulation Act of 1949 and Basel III Guidelines, the borrower's ability to repay is evaluated based on income/ cash flow, and the debt-to-income ratio is calculated.
- **Monitoring End-Use of Loan:** As per Section 21A of the Banking Regulation Act of 1949 and Master Circular on Loan Utilization Monitoring of the RBI, it is ensured that the loan granted is used for the declared purpose only.
- **Execution of Loan Agreement:** As per Section 45X of the RBI Act of 1934 and Section 13 of the SURFAESI Act of 2002, the borrower's signature is taken on the loan agreement with terms and the bank creates a charge on collateral.
- **Disbursement of Loan:** As per Section 21 of the Banking Regulation Act of 1949 and RBI's Master Circular on Disbursement of Loans, the Loan amount is disbursed either in full or at partial based on the documentation.
- **Post-Disbursement Monitoring:** As per the Master Direction on Asset Classification & Provisioning, Loan repayment is monitored regularly and irregular accounts and defaults are also followed up.
- **Recovery Process in Case of Default:** As per Section 13 of the SARFAESI Act, 2002 and Section 7 of the Insolvency and Bankruptcy Code (IBC) of 2016, unpaid loans are

recovered through the sale of the collateral under the SARFAESI Act in the case of Secured loans and legal actions will be taken for Unsecured loans.

- **Prudential Guidelines on Capital Adequacy:** As per Section 24 of the Banking Regulation Act of 1949 and the Basel III Framework, Banks have to maintain proper capital reserves to cover risky loans.

Consequences of Default

The debtors or the borrowers sometimes fail to repay the debt amounts to financial institutions like banks and in such situations, Banks practice Debt recovery which means collecting unpaid debts from individuals or entities who have failed to repay the loan amounts. This process of debt recovery involves several procedures like issuing legal demand notices, and negotiating the terms of repayment. It may also initiate legal proceedings by filing recovery suits in the courts of law, which may even result in the declaration of NPAs.

Non-Performing Assets

As per the guidelines of the Master Circular of the Reserve Bank of India, an asset becomes non-performing when it does not generate any more income for the bank. A non-performing asset (NPA) was defined as a loan in respect of which interest amount or instalment of the principal amount has remained due for more than 90 days in the case of Commercial loans and 180 days in the case of consumer Loans. NPAs are a serious concern for banks as they would affect the financial health and stability of the bank and may also result in losing customer trust.

RBI Guidelines¹

- **Default Notice:** All the banks are regulated by the RBI to follow certain guidelines in the process of recovery of loan amounts, among which this is one of the primary guidelines that have to be followed by any bank, that is the issuance of Notice of Default, which would inform the borrower about their default in paying the instalment amount and also the consequences they would face if they failed to repay the loan in further.
- **Recovery Agents:** RBI regulated the banks regarding the functions of the recovery agents mandated the training and followed ethical practices by not using foul or abusive

¹ <https://www.rbi.org.in/commonperson/english/Scripts/Notification.aspx?Id=787>

language and physical force with the borrowers or customers in the process of Debt recovery.

- **Settlement Opportunity:** The borrowers have to be allowed to settle the loan payment issue thorough negotiating the loan structure or by offering a one-time settlement opportunity to repay the loan.
- **Grievance Resolution:** It is directed to all the banks to maintain a grievance resolution mechanism to help the borrowers i.e., the customers complaining about their difficulty being faced during or because of the loan recovery process.

These RBI Rules, Regulations, and Guidelines play a major role and are of great importance as they ensure fair practices in the process of loan granting and the recovery of loans that protect the rights of both lenders and borrowers. It also helps maintain the financial stability of the Banks and the whole financial system.

Need for Debt Recovery Laws

- **Protecting Lender's Rights and Interests:** For Financial Institutions like Banks to maintain solvency, they need to rely on recovering the loan amounts provided by them. Thus, these debt recovery laws legally enable them to reclaim the loans and safeguard their financial stability.
- **Reducing Non-Performing Assets:** The More the NPAs, the less the financial stability and security of the banks, if an asset turns into a liability in the balance sheet of any bank, it brings an adverse effect on the performance of the Banks. Thus, the debt recovery laws provide a mechanism for reducing these NPAs and maintaining financial stability and discipline.
- **Economic Stability:** Reducing the NPAs, through loan recovery processes, helps maintain the health and stability of the banking sector prevents any crisis, and allows banks to lend loans that are so required for economic growth.
- **Increases Investor Confidence:** The regulations and debt recovery laws, help in improving the investor's and customers' trust and confidence in the banking sector.

Judicial Mechanisms

Some laws govern the debt recovery by the financial institutions of India, let's get to know about those laws.

Recovery of Debt Due to Banks and Financial Institutions Act, 1993²

In 1981, the Government of India set up a committee led by T. Tiwari to evaluate the debt recovery process, and another committee led by M. Narasimham suggested the creation of a separate body to handle the debt recovery situations and cases. Based on these recommendations, the Recovery of Debts Due to Banks and Financial Institutions Bill of 1993 was introduced in the parliament and the act was passed which led to the establishment of Debt Recovery Tribunal³ (DRT) and Debt Recovery Appellate Tribunals (DRAT) to resolve debt recovery cases more effectively. After reviewing the provisions of this act in Union of India Vs. Delhi High Court Bar Association case, the Supreme Court upheld the act's constitutionality.

Section 3 of the act allows the central government to set up one or more tribunals or benches and can define their jurisdictions. It can also appoint a presiding officer for DRT, who must be eligible to serve as a district court judge and not more than 62 years of age with a tenure of 5 years. In the case of DRAT, the presiding officer must be eligible to serve as a High Court Judge, with at least 3 years of experience in Grade 1 of the Indian Legal Service, or who had served as a presiding officer of a tribunal for 3 years.

According to Section 17, DRT handles cases related to recovering debts owed to banks and other financial institutions, and Section 17A allows the chairperson to manage and govern the tribunals under their control and can transfer the cases to speedy resolution. Section 18 of this act, limits the authority of all other courts (except the Supreme Court and High Courts) in debt recovery cases.

As per Section 19 of this act, Banks or financial institutions can apply in a tribunal in situations where the defendant resides or does business, in case of multiple defendants, if at least one must reside or do business within the limits of the tribunal's jurisdiction or where the cause of action arose. There is a provision that allows other banks or financial institutions to collaborate on the same case if it involves the same debtor. After receiving the application, the tribunal sends a notice to the defendant, requiring a response within 30 days, the tribunal by executing

² Inderdeep Singh Ahluwalia (2024) - Protecting Borrowers and Securing Stability: A Critical View of Debt Recovery Processes in India- International Journal for Multidisciplinary Research (IJFMR)

³ Sujata Visaria (2009) - Legal Reform and Loan Repayment: The Microeconomic Impact of Debt Recovery Tribunals in India - American Economic Journal: Applied Economics, July 2009, Vol. 1, No. 3 (July 2009), pp. 59-81

its powers can issue provisional orders to prevent a defendant from disposing of assets and can also seize assets or imprison the defendant if they don't comply with the orders.

An application filed must be resolved within 180 days and Appeals can be submitted or filed in the DRAT.⁴ i.e., Debt Recovery Appellate Tribunal within 45 days.

As per Section 25 of the act, the recovery officer as a part of the due diligence can seize and sell the properties, arrest the defendants, and appoint a receiver to manage the defendant's assets. Section 28 talks about alternative debt recovery methods and as per Section 31, ongoing cases can be transferred to the tribunal but do not apply to cases where appeals are pending. As per Section 34, DRT can take precedence over other Laws but complements some acts like The Industrial Finance Corporation Act, 1948, The Unit Trust of India Act, 1963, The State Financial Corporations Act, 1951, The Sick Industrial Companies (Special Provisions) Act, 1985, The Industrial Reconstruction Bank of India Act, 1984, The Small Industries Development Bank of India Act, 1989.

The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act)⁵

This legislation grants substantial authority to financial institutions like banks to assist in recovering the debts efficiently and effectively. Whoever had granted secured credits can enforce security interests like mortgage properties without the intervention of courts in the case of default of repayment by the borrowers. This enforcement includes processes like transferring assets, securitization, or enforcing the collateral or mortgage which have been pledged to the creditor.

As per Section 13(2) of the act, by ensuring and executing the principles of natural justice and transparency in legal practices, before taking legal action, the borrower must be served with a legal notice intimating about their default in repaying the loan, along with the outstanding amount that has to be paid, other details of the collateral and the subsequent consequences of non-payment of credit amount. Section 13(3) of the act provides for the right of the borrower to respond and give an explanation or provide their view or response and the creditors must

⁴ <https://drt.gov.in>

⁵ Inderdeep Singh Ahluwalia (2024) - Protecting Borrowers and Securing Stability: A Critical View of Debt Recovery Processes in India- International Journal for Multidisciplinary Research (IJFMR)

reply to the statements of the borrower within a reasonable time frame.

If the borrowers don't respond to the notice given by the creditors, Section 13(4) of the act allows the creditors to seize the secured assets which can be movable and immovable, and as mentioned in Sections 14 and 17, the valuation of such assets is done by the registered valuers. As per Sections 13(8) and 15 of the act, the seized properties or assets have to be sold by following transparent procedures through competitive bidding, and to ensure legal clarity in ownership and transfer, the certificate of sale is given to the buyer after the sale as per Section 14(1). Funds from the sale proceeds can be first used to cover legal expenses and then can be used to pay the creditors.

SARFAESI and DRT⁶

Both SARFAESI and DRT Acts i.e., Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act and Debt Recovery Tribunals Act were brought into existence to offer better and complementary mechanisms of debt recovery to the creditors. SARFAESI allows non-judicial methods to recover the debts i.e., it allows the creditors to recover the debts without the intervention of courts in the recovery procedure but the DRT Act allows for judicial adjudications or the judicial methods in which special courts or benches of courts hear the cases related to the recovery of debts.

Both SARFAESI and DRT can be used simultaneously by the creditors and the borrowers can also use the provisions of these legislations to challenge the actions by filing appeals in the DRATs. Both these operate independently but both of them aim to facilitate the recovery of debt through a consistent legal framework.

Insolvency and Bankruptcy Code of 2016⁷

This legislation was brought into existence to resolve insolvency cases and also to facilitate the recovery of loans. This law helps both lenders and borrowers and frames a path for dispute resolution. There is a process that is followed as per this law called CIRP i.e., Corporate Insolvency Resolution Process which is initiated against a corporate debtor for the act of default in loan repayment. The minimum amount of default has to be Rs.1 crore for initiating CIRP

⁶ <https://financialservices.gov.in/beta/en/page/debts-recovery-tribunals-debts-recovery-appellate-tribunals>

⁷ <https://ibclaw.in/debt-recovery-tools-employed-by-banks-by-aiswaria-p-j/>

and once initiated, a moratorium period is declared and this prevents legal actions against the debtor. This period would be beneficial for the debtor so that in that period, it would be easy for them to restructure their loan and it would be better as there won't be any legal action taken against them during this period.

NCLT i.e., National Company Law Tribunal is one of the special courts or benches established as known and this tribunal appoints an Insolvency professional to manage the affairs of the debtor during the CIRP, this professional is called a Resolution Professional. And this professional will be taking control of the assets and operations to protect the interests of the creditors. And then comes into the picture, the Committee of Creditors (CoC) which will be formed after the claims of the creditors are submitted, and then the CoC may approve or reject the plans for resolution and if required may take the necessary decisions during the resolution process. Before this, several Resolution Plans are submitted, evaluated, and approved by the CoC within a specific time and this plan proposes a process by which the debt is restructured, and if the plan fails then NCLT will order for liquidation of the debtor. Once this order of liquidation is passed, the assets of the debtor will be sold off and the proceeds will be distributed among the creditors (repayment of credit amounts) as per the priority laid out in the Code.

Till now what we have seen is about corporate debts and corporate debtors. But IBC also handles the insolvency of individuals as well as partnership firms. Individuals are categorized into 3 kinds say, personal guarantors to corporate debtors, partnership firms and proprietorship forms, and other individuals. There is another process that is followed under IBC is PIRP i.e., the Pre-packaged Insolvency Resolution Process which is faster and more efficient in which the companies themselves prepare a resolution plan before the formal insolvency proceedings begin. This is initiated after obtaining the approval of creditors and the consent of directors. Though this process is similar to that of PIRP approval, this will be initiated by the debtor, and this aims to provide structural and smooth restructuring of loss-making companies.

Non-Judicial Mechanisms⁸

Some other non-judicial mechanisms are used in the process of debt recovery in India, in these practices or processes, there won't be any intervention of the courts of law or any other judicial authorities, and things happen in an informal way when compared to the Judicial mechanisms

⁸ <https://ibclaw.in/debt-recovery-tools-employed-by-banks-by-aiswaria-p-j/>

using specific legislations and court procedures, this helps in speedy resolution of the cases without taking much time and money from the parties.

Compromise Settlements

This is one of the methods used in the debt recovery procedures, that is used in most cases. In this mechanism, both parties will sign an agreement after having some negotiations and agree to certain conditions and terms about settling the dues with some concessions like discounts in paying the interest amounts or granting more time to repay the loans. This non-legal process is supported and backed by financial institutions like banks themselves, in which both parties have to sacrifice to finish the deal or to close the loan accounts by paying back the loan amount to the banks and even banks want to close the accounts with less bad debt instead of NPA's. This helps in resolving the issue closely and also avoids lengthy and long legal procedures and dates.

One-Time Settlement

This is a process in which the borrower applies to the banks and seeks permission to settle the loan amounts at a discounted rate and banks accept a lesser amount than that of the original amount which is payable by the borrower this process is used only for long-term deficient loan accounts, i.e., those loan accounts in which payments were not been done from a long period of time. The main reason behind choosing this process is due to the difficulty in restructuring the loans. This is advantageous as it helps prevent the liquidation of assets of the borrower and also protects the interests of lenders by granting the payment of loan amounts by the borrower rather than creating the NPAs.

Lok Adalat⁹

This is a quasi-judicial body that is a part of ADR i.e., Alternative Dispute Resolutions which are established for quick and speedy disposal of cases that also cost less and this is generally used in settling the recovery cases of small debts. These are organized under the Legal Services Authority Act of 1987 and the maximum claim amount allowed by the Lok Adalat is Rs.20 lakhs the orders given by the Lok Adalat are binding in nature as they are equivalent to the decrees passed by the civil courts and no appeals are allowed on the orders given by the Lok

⁹ Surojit Dey (2018) - Recovery Mechanisms of Non-Performing Assets in Indian Commercial Banks: An Empirical Study - NSOU-OPEN JOURNAL Vol.1 No.2 (July 2018) A multidisciplinary Online Journal of Netaji Subhas Open University, INDIA

Adalat. Using Lok Adalat is helpful as they are inexpensive, and aim to dispose of the cases speedily and quickly.

Special Recovery Drive

These drives organized by financial institutions like banks follow a targeted approach i.e., they organize these drives to achieve a certain target of getting certain amounts of loans repaid by the debtors by using different recovery tools and methods. These are organized to strengthen the debt recovery processes when the rates of default are too high than the usual rate. The main purpose of organizing these drives is to increase the recovery rate and to cut off the prolonged default loan accounts.

Debt Recovery through Arbitration and Mediation

One of the methods for debt recovery is through Arbitration which helps in resolving the issues fast as the dispute would be resolved out of the court as per the arbitration clause agreed upon by both parties. An independent arbitrator is appointed jointly by both parties and this whole process is governed by the Arbitration and Conciliation Act of 1996. Another most used method is Debt Counselling and Mediation which is also a non-legal method of restructuring debts where a debt counselor assists the borrower in negotiating the terms with the creditors for better repayment, monitored by a mediator and this method is used only in cases of smaller debt when compared. These methods help in resolving the issues in a speedy manner and also reduce the burden on courts and encourage the settlement through different modes of Alternative Dispute Resolution.

Online Instant Loan Applications

The online loan applications came into existence, with the increasing technological advancements and rise in fintech solutions and digital lending. Due to COVID-19, online banking saw rapid growth as traditional banking was slow due to situations during the pandemic. There are some unique characteristics of online banking and online loan applications like more convenience with online operations and paperless transactions, these online applications grant loans for short-term periods but with high interest rates, and they operate only digitally but not physically i.e., they won't be any physical branches, it is easy to operate and get a loan just with the help of mobile phone and the process of disbursement of loan and such other processes take place without any delay with a high speed.

Along with the NBFC i.e., Non-Banking Financial Institutions, online loan applications are also regulated by the Reserve Bank of India and these institutions have to comply with the lending norms and lending guidelines given by RBI to curb malpractices, Ministry of Electronics and Information Technology is one of the prime departments that monitors the actions of these applications and ensures protection of customer's data. As per the rules of RBI, banks have to know about the customers with the help of the process of KYC Compliance, which means Know Your Customer, through which details of customers by collecting documents like Aadhar and PAN. These banks also need to obtain permission from their customers to access their phone data such as contacts, SMS, location, and more. Borrowers must accept app terms digitally before getting into any deal with online banks.

The process followed by these instant loan apps begins with an application submitted by the borrower to the Application followed by KYC verification in which documents like Aadhar and PAN are submitted online by the borrower and then the interface of banks accesses alternative data like phone usage, social media behaviour, and UPI transactions, etc. upon the approval of these details after due verification, funds will be disbursed and transferred to the borrower's account instantly. The loan Recovery process followed by these apps consists of methods like Automated Reminders in which reminders are sent to the borrowers through SMS, push notifications, emails, etc., and penalties like High interest and late fees are also levied in case they miss their payments, followed by initiating soft recovery calls and then some apps misuse the permissions given by the borrowers and access their contacts to recover the loan amounts, and there is another most commonly used method is to send legal notices to warn about the consequences of non-payment of loan amounts.

Certain challenges have to be faced by these online application administrators with the customers or the borrowers including Digital Fraud i.e., borrowers sometimes provide fake addresses and contact numbers to these apps and after getting the loan they change or block the application and it would be difficult for the lenders to locate such people and recover the loan amounts, dealing with Non-Responsive Borrowers is also one of the biggest challenges for the lenders as they don't respond for the notices and calls made to recover the amounts, as everything operates online, and due to lack of physical branches and operations, it would be difficult to track down the borrower without proper residence or official addresses, in these conditions the representatives sometimes become harsh out of frustration and act vigorously and regulatory bodies like RBI limits such actions.

Illegal Recovery Methods

Some illegal methods used in recovering the debts granted are as follows:

- **Harassment:** These loan applications use some aggressive methods in the process of recovering the loans granted by them. Such methods include making threatening calls to the borrowers, misusing the contact numbers by calling them, and defaming and public shaming the borrowers among their relatives through contact numbers accessed by the app during the registration for application.
- **Overcharging:** In the case of delay in repayment of debts, these apps charge high-interest amounts and more charges in some or the other heads.
- **Data Misuse:** These apps will have access to the borrower's contact numbers, photos, or other personal information available on the mobile, and this information is used unauthorisedly and misused such information for blackmailing.

Advantages of Loan Applications¹⁰

- **Fast Processing:** Loans are granted and disbursed so quickly within minutes after applying and checking the details, when compared to the physical banks and processes to grant such loans, using these online instant loan apps is easier and beneficial in terms of saving time.
- **Paperless:** There is no need to go through the paperwork that is mandatory in the physical bank loan processes and this saves a lot of time, and loans can be received with fewer formalities and it saves a lot of costs as well.
- **Wide Accessibility:** The access to avail the loans from these online instant loan apps is wider when compared to having access to receive loans and credits from physical banks and other institutions, as the process of getting these loans is also not so difficult and the process of getting these loans is not lengthy, there is more access available.
- **Convenience:** It is very convenient for the borrowers to take loans from these lenders as there is no need for a physical presence in the physical branches or offices of the banks and loans can be availed using smart mobile phones with an internet connection and this makes the process so convenient.

¹⁰ <https://www.bajajfinserv.in/benefits-of-using-instant-loan-apps>

Disadvantages of Loan Applications

- **High-Interest Rates:** The interest rates charged by these online applications are way more when compared to the interest charged by traditional banks, granting the loans in an easy and quick manner gives these apps the liberty to charge more interest.
- **Aggressive Recovery Tactics:** Due to the lack of proper and stricter rules ruling the recovery of debts by the online apps from the regulators, and though they have rules they won't follow due to their inconvenience because of the illegible behaviour of the borrower, these online apps use aggressive practices like pressurizing the borrowers through continuous calling and such other acts.
- **Short Loan Tenures:** The loans granted by these online apps are only for the short term and the repayment period is very thus the borrowers may be trapped in the case of emergency requirements of money they take these loans without thinking about the consequences of repayment deadline.
- **Data Privacy Issues:** Borrowers are giving access to their contact details, photos, and other personal data to the lending apps without proper knowledge about the consequences of such actions, they are facing some problems when these lenders misuse that data with which their privacy will be violated and infringed.

Some challenges in regulating these applications are Unregulated Entities or applications which operate without proper permissions and registration from the regulators as these apps do not follow the rules and guidelines of the regulators. Protecting the data of borrowers from getting violated and misused is another challenge for regulators, some cross-border operations i.e., operations of some banks are done from other countries in which the regulators won't have any control to regulate and govern or take actions.

Examples of some of the popular Loan applications are EarlySalary, KreditBee, MoneyTap, and CASHe, these all operate with the same type of loans i.e., short-term lending models, and offer instant granting of loans with high interest rates.

Challenges in the Debt Recovery Mechanism in India¹¹

- Large number of pending cases in the debt recovery tribunals leads to slow and delayed disposal of cases and increased backlog and burden to the judicial officers.
- Lack of enough budget allocated to the Judiciary, results in low performance of the tribunals because of no proper infrastructure like poor courtrooms and less use of technological advancements.
- These tribunals will have limited jurisdictions, with parties having no proper knowledge about these jurisdictions, they file cases in multiple places which ultimately leads to delays in resolving the problems.
- There are no specialized judges and judicial officers appointed with special knowledge and training in the recovery laws and even the staff won't be aware of the proceedings that are different from that of other types of cases and face difficulties in handling the cases and this may result in incorrect and inefficient judgments.
- Recovery mechanisms like asset seizure are time-consuming and are not so efficient as there will be several procedures to be followed before proceeding to the seizure of assets, thus it would not really scare the debtor to repay the loans.
- Some borrowers act cunningly by hiding and transferring their properties to others after defaulting on the repayment to avoid seizure and sale by the authorities in the process of recovery of debt.
- Some borrowers having political contacts may influence the repaying of debt and that leads to more complications in clearing those loans.
- Current legal mechanisms are effective and applicable only to the larger loans but these laws don't help in recovering the loans that are of small scale.
- Lack of proper adoption of technology makes it difficult to manage cases digitally and reduces the efficiency and performance of the system.

Recommendations or Way Forward

- Increasing the number of courts and benches i.e., tribunals and their jurisdictions can help in resolving more cases and reduce the backlog.

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[https://kanoonjunction.com/debt-recovery-tribunal-in-india-challenges-and-way-forwards/#:~:text=Debt%20Recovery%20Tribunals%20\(DRT\)%20in,in%20the%20recovery%20of%20debts.](https://kanoonjunction.com/debt-recovery-tribunal-in-india-challenges-and-way-forwards/#:~:text=Debt%20Recovery%20Tribunals%20(DRT)%20in,in%20the%20recovery%20of%20debts.)

- If the Funding to the judiciary and these tribunals increases, it can help in improving the infrastructure and also able to adopt more technology that helps in doing things faster and easier.
- There is a requirement for special training for judges and judicial officers regarding special laws that govern so that it won't be difficult for them to take up and resolve cases.
- There is a need for a mechanism that helps in liquidating the assets quickly with stronger enforcement ideas, which helps in increasing awareness about the consequences of defaults in repaying the loans.
- Regulations regarding borrowers and borrowings have to be stricter in such a way that in the aftermath of granting a loan, there must be a stringent monitoring system to monitor the activities of the borrower and ensure that the loan taken is being used for the purpose for which the credit was granted.
- People should be made aware of financial discipline and the consequences of being indisiplined in financial matters.

Conclusion

In this paper, I have referred to different sources and studied about Debt, its types, values of debts, the procedure banks follow before granting a loan, and the consequences of default in repaying the debt amount and non-performing assets. Followed the RBI guidelines for financial institutions regarding debt recovery and different Judicial and non-judicial mechanisms for debt recovery followed by online instant loan applications, their operations, characteristics, advantages, and disadvantages, along with the types of recovery methods they use. Lastly, I have mentioned some challenges of the Debt Recovery mechanism in India and some recommendations for the system.

It was found that the present-day debt recovery mechanisms in India are working in a well-versed manner but with the increasing number of cases of default in payments of loan amounts, no proper financial support from the government, lack of specialized training in dealing with these cases, insufficient use of technological advancements due to lack of enough funding, debtors having political influences that are affecting the debt recovery processes, there is a need to have lot more improvements to the present system of recovering the debts from the loan takers and such improvements must focus on overcoming the challenges mentioned in the paper

exclusively and recommendations given can also be taken into consideration to help in betterment of the debt recovery systems in India.

References

1. <https://www.rbi.org.in/commonperson/english/Scripts/Notification.aspx?Id=787>
2. <https://ibclaw.in/debt-recovery-tools-employed-by-banks-by-aiswaria-p-j/>
3. <https://financialservices.gov.in/beta/en/page/debts-recovery-tribunals-debts-recovery-appellate-tribunals>
4. <https://drt.gov.in>
5. [https://kanoonjunction.com/debt-recovery-tribunal-in-india-challenges-and-way-forwards/#:~:text=Debt%20Recovery%20Tribunals%20\(DRT\)%20in,in%20the%20recovery%20of%20debts.](https://kanoonjunction.com/debt-recovery-tribunal-in-india-challenges-and-way-forwards/#:~:text=Debt%20Recovery%20Tribunals%20(DRT)%20in,in%20the%20recovery%20of%20debts.)
6. Surojit Dey (2018) - Recovery Mechanisms of Non-Performing Assets in Indian Commercial Banks: An Empirical Study - NSOU-OPEN JOURNAL Vol.1 No.2 (July 2018) A multidisciplinary Online Journal of Netaji Subhas Open University, INDIA
7. Inderdeep Singh Ahluwalia (2024) - Protecting Borrowers and Securing Stability: A Critical View of Debt Recovery Processes in India- International Journal for Multidisciplinary Research (IJFMR)
8. Sujata Visaria (2009) - Legal Reform and Loan Repayment: The Microeconomic Impact of Debt Recovery Tribunals in India - American Economic Journal: Applied Economics, July 2009, Vol. 1, No. 3 (July 2009), pp. 59-81