

ISSN: 2582-6433



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed 6th Edition

**VOLUME 2 ISSUE 7**

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

## **EDITORIAL TEAM**

### **EDITORS**

#### **Megha Middha**



*Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar*

*Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society*

#### **Dr. Samrat Datta**

*Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board*



## Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

## Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



## Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

## **ABOUT US**

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

# **Assessing Outcomes And Analysing The Effectiveness Of Bankruptcy Law In The USA.**

*Authored By- Harshika Mehta*

## **Abstract**

The third thing to keep in mind when determining how to evaluate the benefits of a particular bankruptcy process is that it is impossible to evaluate the efficacy of bankruptcy law in resolving issues of financial ruin by concentrating solely on the ways in which the law reduces a single category of costs. Because of the need for complexity in both the regulatory standards that discuss insolvency issues and solutions as well as the expense of and cost-saving benefits of bankruptcy processes, the appropriate primary objective of bankruptcy law is to decrease (1) the price increases of insolvency issues and (2) the spendings of trying to restore the difficulties of insolvency more broadly. This is because of the requirement of refinement in both the regulatory standards that discuss insolvency issues and solutions in addition to the expense of and cost-saving benefits of bankruptcy processes. In this introduction, I will use my criticisms of contemporary academic theories to both set the stage for the discussion that will follow and show how each of the three components of bankruptcy law functions and is important in defining the corrective content of the law as well as offering a workable solution to the problems that prompted the need for bankruptcy laws in the first place. I will also show how the conversation that will follow will be able to better understand my arguments. The data gathered from bankruptcy law will be evaluated using one of three fundamental approaches: (1) as a unique debt-collection instrument that persists to discuss the "collective-action dilemma" and, in essentially, clearly represents the kinds of treatments creditors may indeed start negotiating for if they could negotiate jointly before lending money (the "collective-action approach"); (2) as a distinctive debt-collection method that is susceptible to actual coercive force; or (3) as a special borrowing method that is vulnerable to actual coer.

## Background

### Statement of the Problem

A long-standing and unusual aspect of our legal system is bankruptcy law. It has occasionally occurred historically as a combination of unusual treatments put together to respond to three fundamental questions: (1) What are some appropriate actions to do with the person of a bankrupt debtor? (2) How should the assets of the bankrupt debtor be handled? (3) What ought to be done with the obligations of the insolvent debtor?

### Objectives of Research

I contend that the collective-action conundrum is only one of several issues relating to insolvency that bankruptcy law must address. There are three of these: (1) Particular challenges with disputes arbitration and payment discrimination; (2) Special challenges with over- or under-investment and additional moral hazard; and (3) Non-recoverable collecting, surveillance, and costs incurred by a debtor as a result of their financial disaster and its accompanying costs. Issues like these should be addressed together because they interfere with the normal operation of markets, result in unusual externalities, in addition to fostering other forms of waste, inefficiency, and unequal treatment. Because it would be ludicrous to overload ordinary non-bankruptcy marketplaces with exactly equal processes and also because the requirement of a reparative insolvency reaction solely emerges in the scenario of insolvency, bankruptcy law rightly gets involved as a distinctive reparative tool to handle them. This is why bankruptcy law gets involved as a distinctive reparative tool to handle them. Although a great number of academics have analysed, or at the very least emphasised, many aspects of the challenges associated with insolvency that were discussed earlier as a comprehensive justification for the requirement of a bankruptcy law, my method is innovative in that it does so in a way that is organisational and substantively distinct. In light of the significance of these cornerstone principles of bankruptcy law, the option of pursuing a correction market strategy is preferable than pursuing debt collection or a big deficit for a number of different reasons. As a question of characterization, it more accurately represents what the actual accomplishments of bankruptcy law, and, as a result, offers not only a more accurate depiction of the current system for which the development of alternatives can be assessed but also a more suitable conceptual framework for assessing its potential and use.

## Hypothesis

In conducting the analysis, I make the assumption that the best response to insolvency issues is that which contributes to the best possible result for the framework in its entirety, rather than just that which may be to the greatest benefit of a particular group of creditors or to the greatest benefit of creditors generally. This covers what is best for everyone involved, including creditors and debtors alike, as well as those who would otherwise foot the bill for a bankruptcy legal system. In this context, bankruptcy management cannot manage to place an undue focus on processes that have the effect of lowering borrowing costs, or alternately, focusing narrowly on substance regulations aimed to fix perceived problems in non-bankruptcy markets as a whole. Rather, the effective debt-forgiveness, having to borrow, and debt-adjustment procedures that are available through bankruptcy law must be aimed more accurately to discuss the insolvency problems that call for them to be invoked in the first place, taking into consideration the effect they have on the financial procedure that is followed by non-bankruptcy systems.

## Chapter 1

### **A Publication of the Bankruptcy Judges Division**

The document known as "Bankruptcy Basics" has been written with the intention of educating debtors, creditors, court officials, journalists, and the public at large on a variety of facets of the federal bankruptcy rules. In addition to this, it offers a concise explanation of the many insolvency chapters that can be used to file a case and provides answers to a number among the questions that are asked the most frequently about the steps involved in the bankruptcy procedure for individuals who may be contemplating declaring insolvency themselves. The information provided on Bankruptcy Basics is only of a general nature. While it is true that every effort has been made to ensure the integrity of the content included therein at the time of publication, It does not provide a comprehensive and trustworthy explanation of the laws pertaining to any particular subject. It is not recommended that the information contained in this publication be utilised in place of the United States Bankruptcy Code or the Federal Rules of Bankruptcy Procedure. It is not appropriate to cite it or rely on it as a source of legal authority. The most significant thing to remember is that you ought to not use Bankruptcy Basics as a substitute for the aid or advice of a qualified financial or legal professional. This is the single most important point to keep in mind. It is not feasible for the Bankruptcy Judges or the Executive Office of the Courts of the United States to offer

individuals with legal or financial counselling. These services are not available.

## The Method

The United States Constitution's Article I, Section 8 grants Congress the power to pass uniform bankruptcy laws. Congress passed the Bankruptcy Code in 1978 with this power. Since it was enacted, the Bankruptcy Code, which would be contained in title 11 of the US Code, has undergone numerous amendments. The same federal statute is applied in all bankruptcy proceedings. The Federal Rules of the Insolvency Process and local regulations of each bankruptcy court regulate the procedural components of the bankruptcy process. A number of forms are included in the Bankruptcy Rules for use in bankruptcy cases. The Bankruptcy Code, the Bankruptcy Regulations, as well as any applicable municipal rules, detail the formal legal procedures that can be followed in order to resolve people's and businesses' debt problems. There is a court of bankruptcy located in each and every administrative district in the country. Each state may contain anywhere from one to several districts. There are ninety insolvency districts located all around the United States. The bankruptcy courts, in the vast majority of instances, have their very own clerk's offices. The US bankruptcy judge, who is a judge in a district court in the United States, is the authority within the judicial system who has responsibility over cases pertaining to federal bankruptcy. The bankruptcy court has the authority to make decisions on any matter pertaining to a bankruptcy proceeding, such as who is eligible to file a petition and whether or not a debtor should be given a discharge of their obligations. In spite of this, a significant percentage of the process of filing for bankruptcy is administrative in nature and occurs outside of the courts. An administration process is carried out by a supervisor who has been tasked with managing the case in cases falling under chapters 7, 12, or 13, and even on occasion in situations falling under chapter 11. In most cases, a debtor will have very limited interaction with the court overseeing their bankruptcy case. A normal chapter 7 debtor will not attend court on time in order to appear with the state judge unless there is an issue in the case that requires their presence. It's possible that all a chapter 13 debtor needs to do is show up for the confirmation hearing for their payment plan in front of the bankruptcy court. The only official hearing in which a borrower is normally compelled to make an appearance is the meeting of creditors. This meeting takes place frequently at the office of the United States trustee. The debtor is required to attend this conference per section 341 of the Bankruptcy Code, which states that he or she must do so in order for the

creditors to question the debtor regarding the obligations and assets that they hold. This is the origin of the meeting's colloquial name, which is a "341 meeting." One of the primary goals of the legislation regarding personal bankruptcy that was approved by Congress in the United States is to provide debtors with a financial "fresh start" by relieving them of burdensome financial obligations. The Bankruptcy Code outlines six primary classifications of cases that can be filed for bankruptcy, and this article will discuss each of them in detail. In most books, the names of the chapters that go into detail about the instances are given to the occurrences themselves. In accordance with the rules of Chapter 7, which is titled Liquidation, an executor will assume control of the assets of the estate of the debtor, convert those assets into cash, and then distribute the proceeds to the debtor's creditors. This distribution will take place in a manner that is subordinate to the borrower's ability to keep the certain explicitly excluded estate and the perks of secured creditors. This process will be carried out in an organised fashion under the supervision of the court. In the vast majority of Chapter 7 bankruptcies, there is often very little to no nonexempt property, which means that there might not be a meaningful liquidation of assets. They are generally referred to as "no-asset cases." If the situation involves assets and the creditor files evidence of claims with the bankruptcy court, then the creditor will only be eligible for a distribution from the estate of the bankrupt person. If the debtor is a natural person, they will almost always be granted a release in chapter 7 procedures, which absolves them of any further personal liability for certain due and payable obligations. Typically, the debtor gets discharged from their debts within a matter of weeks after the petition is filed. To qualify for chapter 7 bankruptcy protection, consumer debtors must meet a minimum income standard, as established by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. Chapter 7 bankruptcy protections may not apply if the debtor in issue makes more than the income threshold. Those who have a consistent source of income can file for bankruptcy protection under Chapter 13 of the US Bankruptcy Code, often known as the Resolution of Outstanding debt of a Person With Regular Income. Since it allows the debtor to preserve a valuable asset, such a home, and because it allows the debtor to present a plan to repay lenders over a period of time, usually between three and five years, chapter 13 is often referred to as chapter 7. Also, some often refer to Chapter 13 as Chapter 7. Borrowers who cannot file for assistance under Chapter 7 due to a lack of disposable income might file for relief under Chapter 13. If the court determines that the borrower's payment schedule satisfies the verification standards established by the Bankruptcy Law, it will either approve the plan or reject it. For the life of the plan, it is clear that the debtor in a chapter 13 case retains

control of the estate's assets and pays creditors via the trustees, chapter 13 is fundamentally different from chapter 7 in this respect. In opposition to chapter 7, the debtor will not have their obligations quickly discharged in chapter 13 bankruptcy. In order for the debtor to be eligible for the discharge, they must first complete making all of the required payments as outlined in the plan. During the time that the program is in effect, the debtor is protected from legal action, other processes brought by creditors, and wage garnishments. In contrast to the release described in chapter 7, the one described in chapter 13 is slightly more expansive. Chapter 11, which is referred to as "Reorganization," is often the option that is selected by commercial enterprises that seek to maintain operating while also repaying lenders through a reorganisation plan that has been approved by the court. The chapter 11 debtor normally has the exclusive right to file a scheme of reorganisation for the first 120 days after the case has been filed. Moreover, the chapter 11 debtor is obligated to send creditors a disclosure statement that contains adequate information to allow them to evaluate the plan. In the end, the court gives its stamp of approval (confirmation) to the plan of restructuring. In order to bring the overall amount owed down, the approved plan enables the debtor to settle certain of its obligations while releasing itself from responsibility for others. In order to regain profitability, the debtor may also end onerous contracts and leases, recover assets, and restructure its business. In a bankruptcy proceeding under Chapter 11, the debtor will often go through a phase of consolidation before emerging from the process with a reduced total debt and a reorganised business. Chapter 12 of the Bankruptcy Code, which is headed "Modification of Debts of a Family Farmer or Fishery with Regular Annual Income," makes it possible for family fishermen and farmers who get regular income to secure debt relief. The process of filing for bankruptcy under chapter 12 is, in many respects, analogous to filing for bankruptcy under chapter 13, in that the debtor must present a plan to repay the debt over a period of time—no longer than three years, or, in the event that the court enables a longer time, no more than five years—but with the a lesser maximum. In every case filed under chapter 12, there is also a trustee, whose duties are very comparable to those held by a custodian in a chapter 13 filing. The method by which a chapter 12 trustee distributes monies to creditors within the framework of an approved plan is analogous to that of a chapter 13 trustee. Throughout the execution of the strategy, it is permissible for a family farm or fisherman to continue operating their company, as stated in Chapter 12. A Municipality's Outstanding Debt Will Be Canceled After This Adjustment In general, reorganisation is permitted under chapter 9, which is analogous to the reorganisation allowed under chapter 11. Under chapter 9, a petition to initiate bankruptcy may be submitted only

by a "municipality," which encompasses cities, counties, municipalities, townships, taxing districts, local utility districts, and school districts. In Chapter 15, which is titled "Ancillary and Other Cross-Border Cases," there is presented a system that is both effective and efficient for addressing bankruptcy cases that include many countries. This document covers the use of Chapter 15 when a debtor or its assets are governed by the laws of the US and one or more other nations. The Servicemembers' Civil Relief Act, which shields military personnel from the entrance of default judgements and gives the court the authority to halt proceedings against military debtors, is covered in Bankruptcy Fundamentals along with the fundamental sorts of bankruptcy cases. An explanation of the Securities Investor Protection Act's ("SIPA") liquidation procedures is also included in this document. Although a stockbroker liquidation process is allowed under the Bankruptcy Code, it is much more probable that a failing brokerage firm would end up facing a SIPA proceeding. SIPA's goal is to return stocks and money to investors that were left with failing brokerages. In 1970, Congress established the Securities Investor Protection Corporation to ensure the safety of bond and stock deposits up to \$500,000 per client at member brokerage firms. Throughout the complex bankruptcy procedure, legal concepts such as automatic stay, clearance, exclusions, and assume are used. Therefore, the bulk of legal principles pertinent to complaints brought under the Bankruptcy Code are explained in plain English in the lexicon of bankruptcy terminology that finishes this book.

## **The Discharge in Bankruptcy**

The discharge granted to a debtor is different in Chapters 7, 11, 12, and 13. In an effort to answer some basic questions about the discharge accessible to individual debtors under each of the four chapters of bankruptcy, Bankruptcy Basics addresses topics like:

1. A discharge in bankruptcy: what does that mean?
2. When will we start seeing the discharge?
3. How is a discharge granted to a debtor?
4. To what extent (if any) have the debtor's obligations been released?
5. Can creditors contest the discharge or does the debtor get a right to one?
6. May the debtor afterward obtain a second discharge?
7. Is the discharge revocable?

8. After the bankruptcy case is over, may the debtor still pay a discharged debt?
9. If a creditor tries to recoup a discharged obligation after the case is over, what can the debtor do?
10. Can an employer dismiss a debtor only because they are in debt or have not paid a discharged debt?

## **What does a bankruptcy discharge mean?**

A bankruptcy discharge exempts the debtor from being held personally liable for a list of specific debts. In other words, any discharged obligations are no longer enforceable against the debtor. A permanent injunction called a discharge forbids the debtor's creditors from engaging in any type of debt collection activity, including going to court and contacting the debtor directly through phone calls, letters, or in-person meetings. A lawful lien that was not avoided (i.e., made invalid) in the bankruptcy process will still exist even though the debtor is no longer held personally accountable for discharged obligations. Thus, a secured creditor has the right to pursue the lien in order to reclaim the assets it has secured.

## **When will the discharge take place?**

The timing of the discharge can greatly differ based on the chapter where the case was initially brought. For instance, in a chapter 7 (receivership) case, once the timelines for submitting a complaint objecting to start releasing and a request to dismiss the complaint for serious abuse have passed (60 days from the initial scheduled date for the 341 conferences), the court will typically grant the discharge right away. This is because the court considers the allegations of serious abuse to be grounds for dismissal of the case. In most cases, this takes place four months after the debtor has presented the petition to the clerk of the bankruptcy court. It is common practise for the court to grant the release as soon as it is reasonably possible after the debtor completes all repayments required by the program in individual cases including chapters 11 and 12, as well as instances involving chapters 13 and 11. It is fairly uncommon for the discharge to not take effect till four years after the petition was filed, as payments under a chapter 12 or chapter 13 plan may be spread out over a time frame ranging from three to five years. A debtor's case in chapter 7 or chapter 13 bankruptcy may be denied discharge if the debtor does not complete a financial management education programme required by the court. If the United States trustee or the bankruptcy

inspector finds that there are inadequate instructional programmes, the debtor is disabled or incapable, or the debtor is currently serving on active duty in a conflict zone, then the debtor is exempt from the "financial management" requirement.

## **How is a discharge granted to a debtor?**

Most of the time, the debtor will receive a discharge without having to go through any kind of legal battle over any challenges to the discharge. According to the Federal Rules of Bankruptcy Procedure, the U.S. trustee, the trustee in the matter, and the trustee's counsel, if any, are obliged to receive a copy of the decree of discharge by mail from the bankruptcy court clerk. This requirement is in place to ensure compliance with the law. Copies of the discharge order are also given to the debtor and the debtor's lawyer. The notification, which is merely a copy of the final discharge order, is vague about the debts that the court ruled were non-dischargeable, or not included in the discharge. The notification notifies all creditors that any outstanding debts have been dismissed and advises them against making any further collection efforts. The warning warns them that if they keep up their collection attempts, they might be punished for contempt. The legality of the order awarding the discharge is unaffected by any unintentional inability of the clerk to send a duplicate of the release order to the borrower or any creditors as soon as possible within the time frame stipulated by the regulations.

## **To what extent (if any) have the debtor's obligations been released?**

Not that every debt gets pardoned. Every chapter of the United States Bankruptcy Code contains its own unique list of debts that may be discharged in the event of bankruptcy. The discharge that is available to personal debtors under Section 523(a) of the Code does not apply to particular types of debts, as stated explicitly in that section. The borrower must still pay up their obligations even after filing for bankruptcy. Due to their nature or the fact that they were incurred as a result of the debtor's bad activity, such as driving while intoxicated, The debts in question have been deemed ineligible for cancellation by Congress due to concerns regarding matters of national policy. Chapters 7, 11, and 12 prohibit the discharge of 19 different types of debt. For situations covered by chapter 13, there is a more constrained set of exceptions. Usually speaking, If the terminology described in section 523(a) is applicable, then the discharge restrictions will also be applicable.

Some tax assertions, debts that were not noted by the borrower on the standings and timetables the debtor was compelled to offer up with the judge, debts for getting married or welfare payments or payments for child support, debt payments for intentional and malicious injury problems to specific individuals or investments, debts to government entities for taxes and fees, debts for the vast majority of state funded or reassured student loan or advantage extra payments, and debts for indiscriminate spending are examples of the types of debts that are not dischargeable. A debtor has access to a substantially bigger pool of obligations that are eligible for discharge when they declare bankruptcy under chapter 13, as compared to chapter 7, which allows them to dismiss a smaller portion of their debts. When you apply for bankruptcy under Chapter 13, you could be capable of eliminating some categories of debt that are not eligible for discharge when you declare bankruptcy under Chapter 7. Debts for intentional and malicious damage to property, debts racked up to fulfil non-dischargeable tax demands, and debts deriving from settlement agreements in divorce or split cases are examples of the types of debts that fall under this category. There are a few particular situations in which a lender may ask the court for a hardship discharge even though they have fallen behind on their plan payments. This is despite the fact that a chapter 13 debtor usually only obtains a discharge after trying to make all of the payouts specified by the judicially (also known as confirmed) amounts of financial. However, there are a few specific situations in which a lender may ask the court to grant a hardship release even though they have fallen behind on their plan payments. Only debtors who are unable to fulfil their payments as outlined in the repayment plan due to circumstances that are beyond their control are eligible for this sort of discharge. When it comes to the categories of obligations that are not cleared away by the bankruptcy discharge, the "hardship discharge" that may be obtained through chapter 13 is functionally equivalent to the "hardship discharge" that can be obtained through chapter 7. In the occasion that the debtor is unable to finish the strategy installments as a result of circumstances for which the debtor cannot be held properly accountable, a hardship discharge may also be acquired through the utilisation of chapter 12 bankruptcy. This is because the debtor may not be held properly accountable for the circumstances.

## **Can creditors contest the discharge or does the debtor get a right to one?**

The borrower does not always have the right to remission in chapter 7 situations. A creditor, the trustee handling the case, or the U.S. trustee may all oppose the discharge of the debtor. Soon after

the complaint is submitted, creditors get a notice that contains critical details, including the time for filing an objection to the discharge. A creditor must submit a case in bankruptcy court within the deadline specified in the notice in order to contest the debtor's discharge. A lawsuit known as an "adversary process" in bankruptcy is initiated by filing a complaint. The borrower does not always have the right to remission in chapter 7 situations. A creditor, the trustee handling the case, or the U.S. trustee may all oppose the discharge of the debtor. Soon after the complaint is submitted, creditors get a notice that contains critical details, including the time for filing an objection to the discharge. If a creditor wishes to challenge the debtor's discharge, they must do so in bankruptcy proceedings within the given deadline in the notice. A bankruptcy "adversary process," or lawsuit, begins with the filing of a complaint. In chapter 12 and 13 cases, if the debtor has fulfilled all of their obligations under the plan, they may be eligible for a discharge. Discharge in Chapter 13 may not be feasible if the debtor does not complete the required personal finance management course, just as in Chapter 7. Furthermore ineligible for a chapter 13 discharge is a debtor who has already received a discharge in another case filed within the applicable time limits. The debtor's creditors have no standing to challenge the discharge in Chapters 12 or 13, in contrary to Chapter 7. Creditors can dispute the confirmation of the repayment plan but not the discharge if the debtor has completed all payments under the plan.

## **May the debtor afterward obtain a second discharge?**

If the debtor earned a discharged in a chapter 7 or chapter 11 case that was initially filed more than 8 years before the subsequent plea was filed, the court will not issue a discharged in the subsequent chapter 7 case. The court will not grant a discharge under chapter 7 if the debtor has did receive a release in a chapter 12 or chapter 13 case filed in under six years from the date of the 2nd case's filing, with the following considerations: (1) the debtor paid all "permitted unsecured" assertions in full during the initial incident; (2) the debtor paid a quantity under the first court's plan that helped bring the sum to at 10% of the debt owed during the initial incident.

## **Is the discharge revocable?**

A discharge may be revoked by the court under specific situations. For instance, in a chapter 7 case, an executor, debt collector, or the U.S. trustee may ask the court to rescind the debtor's release on the grounds that the debtor decided to commit one of the improper acts specified in

section 727(a)(6) of the Bankruptcy Code, obtained the release dishonestly, did not disclose that they had acquired or gained the right to purchase land that would be characteristic of the company's debts, acquired the release dishonestly, failed to explain why they had done so. A request to rescind a debtor's release often needs to be submitted within a year of the release or, in some situations, before the matter is officially completed. If these accusations are genuine, the court will decide whether to uphold the discharge or not. The confirmation or discharge of a plan in chapters 11, 12, or 13 cases may be revoked by the court if it was obtained fraudulently.

## **After the bankruptcy case is over, may the debtor still pay a discharged debt?**

A debtor who is awarded a discharge is exempt from making any additional payments on any debts that have been freed as a result of the discharge. Despite the fact that a debt which has been discharged cannot be legally enforced anymore, the debtor might remain obligated to pay back the amount that was originally owed. Occasionally a debtor may agree to pay back a loan because it is owed to a family or because it's owed to anybody for whom the debtor's image is crucial, such as a family doctor. Other times, a debtor would agree to repay a loan since it's owed to everyone for whom the borrower's reputation is vital. On other occasions, a debtor will consent to repaying a loan because the money is owed to a financial organisation.

## **If a creditor tries to recoup a discharged obligation after the case is over, what can the debtor do?**

A motion to disclose collection actions on a discharged debt can be submitted to the court by the debtor, who can also request that the matter be revived so that it can be dealt with. This measure is routinely taken by the bankruptcy court in order to ensure that the clearing is not disregarded in any way. The discharge serves as a legal court injunction that precludes creditors from taking any action, such as initiating a lawsuit, that is aimed to recoup a debt that has been dismissed. One possible implication of this is that a creditor may continue to pursue legal action against the debtor for the amount owed that was discharged. In the case that a creditor violates the discharge injunction, the court maintains the ability to impose sanctions in accordance with its discretion. If

a release injunction is violated, the typical repercussions include being convicted of civil contempt, which may lead to the imposition of a monetary fine.

## **Can an employer dismiss a debtor only because they are in debt or have not paid a discharged debt?**

The law makes it crystal clear that neither governmental nor private employers may engage in any form of discrimination against debtors. It is against the law for a public entity or a private employer to treat someone differently simply due to the fact that somebody was a debtor, was bankrupt either before or during the course of the case, or hasn't paid a debt that was discharged in the case. The legislation makes it illegal for the government to engage in any of the following forms of discrimination: terminating an employee; discrimination against job applicants; refusing to award, cancel, suspend, or renew a licence, concession, or other privilege. It is illegal for a private company to discriminate against prospective workers based on whether or not they have filed for bankruptcy. This includes situations in which the employment decision is based solely on the bankruptcy filing.

## **Liquidation Under the Bankruptcy Code**

A repayment plan is not required to be submitted when filing for bankruptcy under chapter 7, in contrast to filing under chapter 13. Instead, in accordance with the Bankruptcy Law, the trustee in bankruptcy will collect and sell the nonexempt assets of the debtor, and then use the proceeds to pay off the creditors who have claims against the debtor (creditors). It is possible that some of the loan portfolio have liens or mortgages placed on them, which pledges those goods to other creditors. A trustee will transfer of the bankrupt's remaining funds; nevertheless, the Bankruptcy Code will let the bankrupt to keep certain "exempt" property in particular circumstances. The leftover funds will be liquidated by the trustee of the bankrupt estate. So, prospective debtors need to be informed that the procedure of filing an application under chapter 7 could lead to the forfeiture of property in some situations. This is an important consideration for them to take into account. Borrowers ought to be informed that chapter 7 relief is not the only option available. For instance, business-operating debtors, such as companies, firms, and sole proprietorships, may elect to carry on with operations rather than go through with liquidation. Such debtors ought to think

about submitting a chapter 11 complaint under the Bankruptcy Code. Under chapter 11, the debtor may ask for a debt adjustment, such as a debt reduction or an extension of the repayment period, or a more thorough restructuring. Chapter 13 of the Bankruptcy Law may also be able to provide relief for sole proprietorships.

## Alternatives To Chapter 7

Debtors ought to be aware that chapter 7 relief is not the only option available. For instance, business-operating debtors, such as corporations, firms, and sole proprietorships, may elect to carry on with operations rather than go through with liquidation. Such debtors ought to think about submitting a chapter 11 petition under the Bankruptcy Code. Under chapter 11, the debtor may ask for a debt adjustment, such as a debt reduction or an extension of the repayment period, or a more thorough restructuring. Chapter 13 of the Bankruptcy Law may also be able to provide relief for sole proprietorships. Additionally, in chapter 13 of the Bankruptcy Law, individual debtors with a consistent source of income may request a debt adjustment. Chapter 13 is advantageous for a number of reasons, one of which is that it provides individual debtors with the opportunity to catch up on past due payments and so avoid the repossession of their houses. This is accomplished through the use of a repayment plan. In addition, if the court concludes that the provision of relief would constitute an improper use of chapter 7, it has the authority to dismiss a chapter 7 case that was brought by a client whose obligations are primarily comprised of retail debts rather than commercial debts. The Bankruptcy Code requires the implementation of a "means test" in order to determine whether or not a chapter 7 petition is presumptively abusive. This is determined by determining whether or not the debtor's "current monthly income"<sup>1</sup> is higher than the state median. If the debtor's cumulative current monthly income over a period of five years is greater than either \$11,725 or (ii) 25% of the debtor's nonpriority unsecured loans, provided that sum is at least \$7,025, then it is presumed that the debtor has engaged in abusive financial behaviour. The only way for the debtor to contest the inference of misuse is to provide evidence of extraordinary circumstances that support additional costs or modifications to the already existent monthly income. In most cases, the case will be transferred to chapter 13 or dismissed if the debtor is unable to disprove the assumption that there was abuse. But, debtors ought to be aware of the potential alternative to declaring bankruptcy, such as out-of-court agreements with creditors or debt counselling services. Debtors who are aware of these alternatives may be able to avoid the negative consequences of filing for bankruptcy.

## Eligibility Of Chapter 7

The debtor can be a partnership, corporation, or any other kind of business entity, and they may still be entitled for relief under chapter 7 of the Bankruptcy Code. In accordance with the means test that was described earlier for specific debtors, a debtor may qualify for relief under Chapter 7 of the Bankruptcy Code regardless of the total amount of their obligations or whether or not they are now solvent. However, if within the previous 180 days a prior bankruptcy application was denied due to the debtor's deliberate incapability to show up far before judge or comply with the court's commands, or if the borrower wittingly and voluntarily turned down the previous case after financiers decided to request cure from the bankruptcy proceedings to pay back estate upon which they retain liens, then an individual may very well file under chapter 7 or another chapter. This exception applies only if the debtor intentionally failed to appear well before court or failed to conform with the court. Also, a person must have received credit counselling from an accredited credit counselling organisation within 180 days prior to filing in order to qualify as a debtor under chapter 7 or any other section of the Bankruptcy Code. This counselling can be received individually or in a group setting. There are some exceptions, such as when the U.S. trustee (or bankruptcy administrator) determines there aren't enough licenced agencies available to offer the necessary counselling. A debt management plan must be filed with the court if one is created at the required credit counselling session. Giving an honest individual debtor a "new start" by discharging certain debts is one of the main goals of bankruptcy. Discharged debts are not owed by the debtor. Nevertheless, in a chapter 7 case, a discharge is only accessible to an individual debtor; partnerships or corporations are not eligible. Although a dismissal of debts is typically the outcome of a chapter 7 case, this right is not unconditional, and certain kinds of obligations are not released. Also, a bankruptcy clearance does not remove a property lien.

## Workings Of Chapter 7

A chapter 7 case starts when the debtor submits a request to the bankruptcy court that handles the district in which they reside, their business is organised, or where their main assets are located. 3

The debtor must also submit the following documents to the court in addition to the petition: a list of assets and liabilities; a plan of current revenue and expenses; a report on financial affairs; and a schedule of executory contracts and unpaid leases. Borrowers must also give the appointed case

administrator a copy of their most current tax return or transcripts, as well as any tax returns submitted during the case. Individual debtors who mostly owe consumer debt must submit supplementary paperwork. They must submit the following documents: a certificate of credit counselling, a duplicate of any debt payment schedule created through credit counselling, proof of payout from employers, if any, received 60 days prior to filing, a statement of monthly net income, along with any projections for increases in income or costs following filing, and a list of any interest the debtor may have in federal or state-qualified education or tuition accounts. A single petition or a joint petition may be submitted by a couple. A husband and wife must comply with all documentation filing requirements for separate debtors even if they file jointly. The administration fee of \$46 and the trustee surcharge of \$15 can both be paid by the debtor in installments if they so choose. The filing fee, admin fee, and trustee fee need only be paid once when 2 or more persons submit a joint petition. Debtors who are not prepared to pay these costs risk having their case thrown out. The court may waive the requirement that the service costs be paid if the borrower's salary is significantly below 150% of the income criterion and the borrower is unable to pay the fees now in installment installments. This caveat applies only if the lender cannot pay the fees in full, even if they are spread out over time. If the trustee is to complete the plea, account of financial dealings, and schedules that make up the Official Insolvency Papers, the debtor must supply the following information. A monthly accounting of all of the debtor's outlays for necessities such as sustenance, clothing, shelter, utilities, taxes, public transportation, medicine, and so on. The list of creditors, together with the claims' amounts and descriptions. How much it is, how often, and where the debtor gets paid. Full details on the debtor's possessions. A complete accounting of the debtor's month-to-month outlays on necessities. Whether they are filing a joint petition, many separate applications, or regardless of how many is necessary, all of the following apply. Regardless of whether they are submitting a joint petition, separate individual applications, or even if only one spouse is submitting, married individuals are required to acquire this information for their spouse. If only one partner is declaring bankruptcy, he trustees, the judge, and the lenders will need information on the non-filing spouse's earnings and expenditures in order to evaluate the household's current financial state. A schedule of "free" property is one of the files that a single debtor is required to submit as part of the bankruptcy process. An individual debtor can use the Bankruptcy Code to shield some of their property from the claims of creditors if the property is exempt under either federal bankruptcy act or the rules of the debtor's home state. The Bankruptcy Code contains a provision that enables each state to enact its own exempt statute in

place of the national exemptions. This option has been taken full advantage of by a large number of states. In some countries, the particular debtor has the choice of selecting either a federal exemptions package or the exemptions that are available under the applicable state law. This is not the case in other jurisdictions. So, the question of whether or not a particular asset is exempted and may be preserved by the debtor is frequently one that is governed by state law. The debtor ought to seek the advice of an attorney in order to ascertain the exemptions that are offered in the state in which the debtor resides. The debtor must cooperate with the trustee and provide them with any needed financial records. The Bankruptcy Code mandates that the holder ask the borrowers questions at the meeting of creditors to ensure the debtor is aware of the potential consequences of filing for bankruptcy. The debtor's ability to plead guilty under a separate part, the effect of obtaining a release, the impact of reaffirming a debt, and the impact on the debtor's credit report are all examples of these potential effects. Prior to the creditor's meeting, the trustee is responsible for making sure the borrower is conscious of these possible outcomes. Some trustees distribute written materials addressing the aforementioned themes either before or during the meeting to ensure that the debtor is aware of the data at hand. Bankruptcy judges are prohibited from participating in the conference of Creditors so that they can continue to make fair rulings. A debtor may file a Chapter 7 bankruptcy case under another chapter of the Bankruptcy Code if the debtor is eligible to be a debtor in that chapter. This is done so that the bankrupt might feel complete freedom from their debts. However, if the case has ever been converted to chapter 7 from some other chapter in the past, the debtor will be unable to willingly transfer the case to chapter 7. As this is the case, the debtor will not be able to keep transferring it to different chapters.

## **THE PART THAT THE CASE TRUSTEE PLAYS**

When a Chapter 7 petition is filed, the United States Trustee will designate a case trustee who will be impartial. This trustee is in charge of handling the case and liquidating any assets that are not excluded from bankruptcy. There will be no distribution to debt holders since the trustee will file a "no asset" statement with the court if all of the loan portfolio are exempt or subject to valid liens. When all of the loan portfolio fit into one of the aforementioned categories, this situation arises. The vast majority of chapter 7 bankruptcies involving individual borrowers include no assets. However, if it appears that the case will be a "asset" case from the beginning, unsecured creditors have a deadline of ninety days after the initial date that has been set for the conference of creditors

to register their claim with the court. Yet, from the time a claim is filed until a government agency must provide a response to a lawsuit, 180 days passes. In a normal chapter 7 case, there are no resources, hence there is no distribution, the creditors do not need to file proofs of claims because there is no requirement for them to do so. If the trustee is finally successful in collecting property for repayment to debt holders, the Bankruptcy Court will provide notification to creditors and will extend the time for lenders to file proof of claim. In a chapter 7 bankruptcy proceeding. Although a creditor's legal title or lien need not be evidenced by a proof of claim, that doesn't mean the creditor won't submit one for other reasons. The advice of an attorney is highly recommended for any creditor who is engaged in a case that has been brought under chapter 7 with a claim on the property of the debtor. The principal duty of a chapter 7 trustee is to optimize the funds that are accessible for distribution to the debtor's debt holders through the sale of the debtor's non-exempted assets. To do this, the trustee sells the debtor's property if it is free and clear of all liens (assuming the estate is not exempt) or if the market worth of the property exceeds the total of all secured creditors' claims, any liens against the estate, and the debtor's exemptions. The trustee has the "avoiding powers," which allow them to try to recover misplaced assets. In order to avoid liability, the trustee can undo security interests and other requirements of real estate transactions that were not properly honed under nonbankruptcy laws in effect at the point of the plea; cast aside preferential trades done to debt holders within 90 days leading up to the plea; continue to pursue nonbankruptcy claims such as tort committed and bulk transmission remedies available under state law; and more. Also, if the debtor is a firm, the bankruptcy court may allow the trustee to keep running the business for a certain period of time if it is in the best interest of the creditors and will facilitate the efficient liquidation of the estate. The assets of the estate must be distributed in accordance with Section 726 of the Bankruptcy Law. It appears that there are six distinct categories of claims, each of which must be fully reimbursed before the next lower category receives any payment (at all) under section 726. The debtor will be repaid only after all other claims have been satisfied. Hence, the debtor has no vested interest in how the trustee uses the estate's assets, with the possible exception of paying off any obligations that cannot be discharged in bankruptcy. Specifically, the debtor is exclusively concerned with nondischargeable obligations. The primary objectives of an individual debtor in Chapter 7 bankruptcy are the protection of exempt property and the acquisition of a discharge that eliminates as many of the debts as possible.

## Discharge under Chapter 7

When an individual debtor receives a discharge, they are released from personal culpability for the majority of their debts, and the creditors to whom those debts are owed are prohibited from conducting any collection activities against the debtor. Debtors should engage qualified counsel before filing for bankruptcy under chapter 7 in order to discuss the extent of the release and the fact that a chapter 7 release is subject to a variety of exceptions. In much more than 99 percent of chapter 7 cases, individual debtors are granted a discharge; however, this percentage does not include cases that are dropped or changed. Unless a group in involvement brings an action taking offence to the release or a motion to extend its period to object, the bankruptcy judge will generally issue a discharge order pretty early in the case, usually between sixty and ninety days after the date that was initially set for the gathering of creditors. This is the case even if the party in interest files a motion to extend its period to object. In a chapter 7 proceeding, the reasons for refusing an individual debtors a discharge are quite limited and are construed in a way that works against the party that is moving for the denial. The court has the discretion to deny the debtor a discharge for a variety of reasons, including but not limited to the following: the debtor did not maintain or produce sufficient books or bank documents; the borrower did not clarify satisfactorily any asset loss; the debtor decided to commit an insolvency crime, such as lying under oath; the debtor ended in failure to obey a legal order of the bankruptcy court; the debtor fraudulently transferred, concealed, or damaged property that would have become the asset of the estate; or the debtor. Even after a clearance is obtained, secured creditors may still have some rights to claim the property that was used as collateral for the original debt. If a debtor wants to maintain particular secured assets (such an automobile), for example, the debtor may choose to "reaffirm" the obligation in order to do so. This decision is based on the specifics of the debtor's situation. Although the debt may have been discharged in the bankruptcy, the debtor and the creditor may agree in a reaffirmation that the debtor will remain liable for the obligation and will keep paying all or a portion of the amount due. The creditor agrees not to repossess the vehicle or any other collateral as long even as debtor is current on payments. If a lawyer has been retained to represent the debtor in connection with the reconfirmation agreement, that lawyer must certify in writing that the debtor was advised of the seriousness of the consequences that would result from a breach of the agreement. If the debtor does not have legal representation, the attorney must certify in paper that the debtor was informed of the agreement's potential consequences. The

lawyer must also confirm that the debtor understands and agrees to the agreement, and that the reassertion of the debt will not cause the debtor or the borrower's dependents undue financial hardship. The Bankruptcy Law requires the bankrupt to appear at a reaffirmation hearing if the debtor was not accompanied by a lawyer during the drafting of the arrangement or if the judge does not approve of the reconfirmation agreement. Regardless of whether a reaffirmation agreement exists, the debtor retains the right to voluntarily repay any obligation.

