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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

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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 8Articles in various reputed Law Journals. Conducted 1Moot 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.

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ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANLAYSIS 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.

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NON PERFORMING LOAN: - A NATIONAL PROBLEM AND PROCEDURE FOR ITS ENFORCEMENT

AUTHORED BY - NEETI GOYAL[1]

What is the problem?

The problem of Non-Performing loans is a global problem and has been receiving attention from banks, economist, regulators and the public alike over the years. Non-Performing loans arise primarily due to two reasons: bad lending decision and systematic banking crisis. Banking crisis is the main cause of concern that continues to stay on the balance sheet of the bank. Non-Performing loans are both consequence as well as cause of banking crisis. The Asian Bank Document Asian Development Outlook, 2004 says "NPL create problems for the banking sectors balance sheet on the assets side. They also create a negative impact on the Income Statement as a result of provisioning for loan losses. Ultimately a riskier loan portfolio combine with lower net income makes new lending more difficult, often resulting in slower credit growth. In the worst scenario, a high level of NPL in a banking system possesses a systematic risk, inviting a panic run on deposits in sharply limiting financial intermediation, and subsequently investment in growth, in the economy."

Non-Performing loans are a big drain on the system. In most cases the amount sunk in bad loans had eventually affected the public at large-either in terms of being funded out of taxes or leading to failure of banks and the public losing with savings. In either case non-performing loans are a social cost which cannot be justified. One of the main reasons for NPLs is the presence of state banking. Statistics shows that percentage of NPLs in State owned banks are much higher than that of privately owned banks, which is understandably the cause of politically lending. The Asian Development Document referred above says, "In countries with large NPLs ratio (Bangladesh, Pakistan and some Central Asian Republic), NPL tend to be concentrated in public sectors bank, mainly resulting from substantial loans provided on other than commercial considerations. For example, the PRCs NPL are concentrated in the state owned commercial banks as a result of transfer of loans scheme, which was launched in the 1980' s. this scheme aimed to route state

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budgetary allocations to SOEs through the banking system. As a consequence the financial system vulnerability in the PRC became increasingly evident in the late 1990s. The recent decline in NPL ratio in the countries where they are high has been mainly driven by the transfer of NPL to Asset management companies, except in Bangladesh where there is no AMCs so far. In the Case of PRC the decline was also driven by the reason rapid increase in total loan. Slack loans-loss provisioning in strict rules for writing off bad debts for combined with quota controls and requirements for prior ministry of Finance approval, have led to only modest debt writes- off so far in the PRCs."

Of the 33 banking crises from 1977 to 2002 studied by Hoggarth, Reidhill & Sinclair (2004) NPLs were noticed in between 17 and 33% of total loans of the banks. If we the statistics Japan, in the middle of their crisis, their NPLs were estimated at $469 billion, in 1955 to $725 billion, in 1998, and in 2002 they comprised 35% of total loans (Reinhart & Rogoff 2008).[36] Sweden had NPLs which were estimated at 13.2% of total loans; In Sweden NPLs were only placed or occurred in few major banks, while in Japan the NPLs were present in almost evenly types of financial institutions. NPLs in every financial institution make it difficult to pin-point the problem, and increase manpower and research requirements.

Classification of non-performing assets

For the purpose of realisation of the amount of recovery of bad loans banks are required to classify the bad loans on the basis of the time period for which they they have remained bad in three categories:-

- Sub-standard assets
- doubtful assets, and
- Loss assets.

ASSISTANCE BY CHEIF METROPOLITAN MAGISTRATE OR THE DISTRICT MAGISTRATE

Where in regard to the secured assets and to take the possession of secured asset by any secured creditor or he wants to sell or transfer the asset under this act, the secured creditor may for the purpose of taking the possession or control request in writing the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction such secured asset and the document is situated, the Chief Metropolitan Magistrate or the District Magistrate shall take following steps:-

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- "Take possession of such asset and documents".
- "Forward such asset and documents to the secured creditor".

Manner and effect of takeover of management

"When the management of business of a borrower is taken over by a securitisation company or reconstruction company under clause (a) of section 9[2]or, as the case may be, by a secured creditor under clause (b) of sub-section (4) of section 13, the secured creditor may, by publishing a notice in a newspaper published in English language and in a newspaper published in an Indian language in circulation in the place where the principle office of the borrower is situated, appoint as many person as it thinks fit-

a) In a case in which the borrower is a company as defined in the Companies Act, 1956 to be the directors of that borrower in accordance with the provisions of that Act;
b) In any other case, to be the administrator of the business of the borrower".

On publication of a notice under sub-section (1),--

a) "In any case where the borrower is a company as defined in the companies Act, 1956, all person holding office as directors of the company and in any other case, all person holding any office having power of superintendence, direction and control of the business of the borrower immediately before the publication of the notice under sub-section (1), shall be deemed to have vacated their offices as such;
b) any contract of management between the borrower and any director or manger thereof holding office as such immediately before publication of the notice under sub-section (1), shall be deemed to be terminated;
c) the directors or the administrators appointed under this section shall take such steps as may be necessary to take into their custody or under their control all the property, effects and actionable claims to which the business of the borrower is , or appears to be, entitled and all the property and effects of the business of the borrower shall be deemed to be in the custody of the directors of administrator's, as the case may be, as from the date of the publication of the notice".
d) "the directors appointed under this section shall, for all purposes, be the directors of the company of the borrower and such directors or, as the case may be, the administrators appointed under this section, shall alone be entitled to exercise all the power of the directors or , as the case may be, of the persons exercising power of superintendence, direction and

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control, of the business of the borrower whether such powers are derived from the memorandum or articles of association of the company of the borrower or from any other source whatsoever".

"Where the management of the business of a borrower, being a company as defined in the Companies Act, 1956, is taken over by the secured creditor, then, notwithstanding anything contained in the said Act or in the memorandum or articles of association of such borrower,--

a) it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company;
b) no resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the secured creditor;
c) no proceeding for the winding up of such company or for the appointment of a receiver in respect there of shall lie in any court, except with the consent of the secured creditor".
d) Where the management of the business of a borrower had been taken over by the secured creditor, the secured creditor shall, on realisation of his debt in full, restore the management of the business of the borrower to him.

ENFORCEMENT OF SECURITY INTERST AND RECOVERY OF DEBTS LAWS (AMENDMENT) ACT, 2012

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act and Recovery of Debts due to Bank & Financial Institution (RDBF) Act has been amended by the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2012 so as to improve the regulatory and institutional mechanism related to recovery of debts due to bank and financial institutions.

Amendment Act, 2012 has brought debt into equity which shall help banks to improve their operational efficiency, they will be able to use more funds for credit disbursement to retail investors, home loan, borrower, etc. without risk of recovery, mandatory registration of subsisting security interest (equitable mortgages) promote innovation in credit information.

Amendment Act, 2012 strengthen the ability of banks to recover debts due from the borrower, enhance the ability of the banks to extend credit to both corporate and retail borrower, reduce the cost of funds for banks and their customers and reduce the level of non-performing assets.

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Salient features of Enforcement of Security Interest and Recovery of Debts Laws (AMENDMENT) ACT, 2012

- "Provides for conversion of any part of debt into shares of a borrower company and such conversion shall be deemed always to have been valid as if the provisions of said conversion were in force at all material times";
- Included the multi-States co-operative banks in the definition of 'bank' under clause (c) of section 2 of the said Act ;
- Increased the period of response to be sent by the banks or financial institution to the representation of the borrower from seven days to fifteen days.
- Empower the banks or financial institution to accept the immovable property in full or partial satisfaction of the claim of the bank against the defaulting borrower.
- Enables the banks or any person to file a caveat so that before granting any stay, the bank or such person is heard by the Debts Recovery Tribunal.
- Provides for registration of transactions of securitization, reconstruction or creation of security interest in the Central Registry, which are subsisting on or before the establishment of Central Registry and also to give powers to the Central Government to extend time for filing of such transaction with the Central Registry.

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