THE ARRANGEMENT OF THE INSOLVENCY LAW IN THE SHIFTING ECONOMIC PHASES OF INDIA: FROM 1951 TO 2015

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OBJECTIVE-

The main objective of this paper is to scrutinize the different economic phases India has been through between 1951-2015 and with the shift from one phase to further, an examination has been drawn on the relative changes in the judicial standpoint in dealing with the insolvency cases with the aid of landmark case laws. In doing so the author has attempted to underline two primary concerns with the corporate insolvency proceedings in India, which are-

1. The average time taken for the complete insolvency proceedings to end, and

2. What are the challenges in the corporate insolvency proceedings in the country?

INTRODUCTION-

In this paper the author has attempted to analyze the corporate insolvency resolution procedures of India within a common framework of well-specified principles. India at present lacks a single, comprehensive law that addresses all aspects of insolvency of an enterprise. The presence of multiple laws and adjudication fora has created opportunities for debtor firms to exploit the arbitrage between the systems to frustrate recovery efforts of creditors. This also adversely impacts timeliness of the resolution process. While the importance of a well-functioning insolvency resolution framework can hardly be overstated, there is no single framework with well-defined rules laid out for organizing an efficient insolvency resolution process. Hence we undertake a cross-country comparison, the underlying motivation being to highlight the similarities as well as differences across the laws and procedures of the three countries. The objective is to learn important lessons for India, in context of the formation of the Bankruptcy Law Reforms Committee

(BLRC) in 2014. The Committee has recently recommended an Insolvency and Bankruptcy Code that would be applicable to all non-financial corporations in India.

India has faced different economic phases in India such as firstly before Independence, secondly the economic phase between 1951 to 1968, then came the phase when India adopted the Japanese model with immense revolution in the Indian Banking sector to not just consolidate the banking regime on one hand and to prevent the Banks to fall prey of insolvency on the other, phase three was when Non Performing Assets were on rise in India, phase four when India experienced the outreach of microfinance and a special reference is rural sector insolvency and thereafter comes the phase when consumer insolvency is ascending. Thus with each of this phase came its own set of challenges and which in turn affected the way judiciary responded to the cases that came before the court. The legislative framework underwent immense changes with instances of such cases and response of the judiciary as follows-

The legislative framework in the insolvency proceedings that India has from 1951 till 2015-

1. **The Companies Act, 1956-**

The sole rationale of the ratification of this Act was to further fortify the legal position and set a standard legal norm to which each and every corporate in India shall be acquiescent to. With respect to Insolvency proceedings in the companies, the Act is functioning with the purpose of Winding up of the companies more then restructuring them. This Act as stated before is applied to all the Corporate in the country involved in the matters of insolvency. The forum to which the Act operates through are the Hon'ble High Courts established in the Country.[1]

2. SICA, 1985-

This Act came as resort for the companies which are not capable to manage their financial burdens. The sole rationale of the ratification of this Act was to further fortify "Rescue and rehabilitation"

[1] **Kang, N. and Nayar, N., 2004. The evolution of corporate bankruptcy law in India.** ***Money and Finance*****, (Oct. 2003–Mar. 2004), pp.37-58. "**This article casts evidence for innovations offers a new and compelling explanation for why the rescue procedure became slow and costly. Acknowledging and understanding the influence of the courts on the operation of this procedure may help to guard against India's new corporate rescue procedure suffering a similar fate"

of the sick companies in the country. This Act applies to all the Industrial Companies of India by means of BIFR as there forum.[2]

3. RDDBFI, 1993-

This Act was for providing the effective system for the recovery of debts by the companies. As noted so far, Indian companies had an option of winding up as their only recourse but this legislature paved a way for effective and efficient procedure for the recovery of debts by the companies. This Act applied to all the banks and financial institutions to recover the debts with a prescribed limit of financial capping of such debts that are of Rupees ten lakhs or more. Debt recovery Tribunals (DRT) and Debt recovery appellant Tribunals (DRAT) were established to principally handle the matters related to recovery of debts or insolvency as a whole. These tribunals served as a forum to the Act.

4. **SARFAESI, 2002-**

The secured creditors were those members of the companies suffering the hardest hit when the company goes insolvent. Seeing that the company they lend credit to, now is in no position to repay it back, it's the creditors bearing the highest risk. This legislature came as a way out for the secured creditors with the objective of enforcement of security. Another alteration that is brought to the procedure was non requirement of the Debt Recovery Tribunals to hear these matters. This Act provided for abandonment of the Courts in the procedure.

5. Companies Act, 2013-

The provisions concerning the insolvency regime are yet to be in force. However Chapter XIX provides for the rescue and rehabilitation of the companies and chiefly sets forth alternatives to the issues that the SICA posed. Further Chapter XX envisages a well consolidated provision regarding the winding up of the companies. NCLT i.e. The National Company law Tribunals which is not operationalized as so, is still entangled in litigation.

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[2] **Mohan, R., 2005. Financial sector reforms in India: policies and performance analysis.** ***Economic and Political Weekly*****, pp.1106-1121.**

BIFR (1987 – 2006):[3]

References made to BIFR:	5,412
Dismissed as non-maintainable:	1,707
Dismissed as repeat references:	218
Rehabilitation scheme sanctioned:	760
Liquidation recommendation:	1,303

BIFR (contd.)

2015 – 93 references to BIFR

Current Status	Current Status Number
Sickness being considered	46
BIFR reference abated	21
Non-Maintainable/Withdrawn/De-registered	11
Abatement being considered	9
Rehabilitation scheme being considered	5

Time Periods from Review of HC Cases

Measured from time of initial enforcement action or reference to BIFR to date of judgment

Time Taken	No. Of Cases	Comments
10 + years	7	5 were references from BIFR for winding up
5 – 10 years	3	
3 – 5 years	4	Up to 2 years 5, 3 of these involved FCCB holders

[3] Ministry of Finance, Economic Survey 2006 – 2007 (Government of India 2007), para 7.47)

Debt was not always money it was realized in the form of services too. Liability owe against the other and to discharge it the assets can be liquidated.[4] Creditor contributed towards cracking the common property. They started categorizing the property as secured and unsecured finance. The actors in corporate become more complex. Bank comes as creditors and as institutional. investors. Non-Banking Financial Institution were also brought into this ambit. Thus, money of small individual investors came into being along with promoters & other participants of the camp. [5]

Firm Mukandlal Veerkumer v. Purushottam Singh,[6] -Today insolvency law is far more than interest of creditors. The distinction of traders, shareholders, creditors has blurred as everyone's objectives is maximization of investment. It is also maximization of asset recovery.

Today objective of insolvency law is to balance the interest of diff. actors in the camp which has become challenging in the present insolvency law. Service contracts, receivables or market prospects – companies are also measured through this other then assets. There is imbalance in the interests of companies.

Insolvency law started recognizing the interests of various actors of the company. Strengthening new institutional forms as opposed to Administrative receivers is done by court or individual.

ECONOMIC PHASE I

What is to be brought in issue is insolvency models are based on three prime factors:

1. Country's Economy
2. Companies Structure
3. Local Scenario

It's dynamic and not static and many countries including India have to change from time to time.

1. Shareholder's v. Creditor's Models:

At the time of insolvency it was considered that the shareholders should be given primacy to be paid back a compared to others in priority. At the same time this model also brought forward an

[4] **Deakin, S., 2005. The coming transformation of shareholder value.** ***Corporate Governance: An International Review*, *13*(1), pp.11-18.**

[5] **Feibelman, A., 2010. Consumer Finance and Insolvency Law in India: A Case Study.** ***Brook. J. Int'l L.*, *36*, p.75.**

[6] **(1968)** 2 S.C.R. **862.**

entire system of how to deal with the adjudication of insolvency issues. India was in the early independence years showed high dependence on these models. The concept of promoters holding, preference shares allotment showed different development like two distinct shareholding patterns were noted as equity shares and preference shares. This was later reclassified as promoter's shareholding and Non-promoter shareholding. These non-promoters were allowed to make investments in the company but exercised lesser control.[7]

Shareholding patterns went through serious changes when the promoter's shareholding were further prioritized as keeping promoters first and non-promoters came later. The concept of "Financial Products" here was not there in a very structured and readily available manner. But later with the establishment the institutional shareholdings with the aid of pension funds, mutual funds, etc. which gradually got their grip in the Indian markets. ***Dhirendra Bhanu Sanghvi v. ICDS Ltd***[8]***; Kishor K. Mehta v. HDFC Bank Ltd.***[9]***; In re Siddharth Srivastava,***[10] The shareholders in India have different classes and they position themselves differently which just like many other major countries such as USA, UK, Singapore and Malaysia. Now since one single category of members are positioning themselves in several different sub categories gave rise to an immense increase in the internal conflict of interest. It became difficult to resolve the matters when the class itself seemed divided. Equity market went through numerous changes as-

1. Differential Equity
2. Sweat Equity
3. Employee Stock Option
4. Convertible Option

This shows that patterns despite being the same has different classes and hold different rights. [11]This right is to be dealt in the case of insolvency at different degrees of priority. This whole concept of conflict gives rise to tension between commons and anti commons. Shareholders model

[7] **Deakin, S., Demetriades, P. and James, G.A., 2010. Creditor protection and banking system development in India.** ***Economics Letters*****,** ***108*****(1), pp.19-21.**

[8] **2003** C.R. *5* (Bom.) **161**

[9] **2008 MhLj** 1 (Bom.) 451

[10] A.I.R. 2002 (Bom.) 494

[11] **Dube, I., 2008. Indian Corporate Insolvency Law: Efficiency and efficacy from a Cross Border Perspective.** ***Corporate Law Teachers Association, Annual Proceedings*****.**

in India didn't give exclusive primacy to the shareholders but just prioritized their claims over the others. Countries like Japan had same relations to their insolvency issues as India.

Rights consolidated in this model were structured to pave the way to foster shareholders position. The issues is the company's approach to revive itself or at the worst how to effectively and efficiently liquidate the insolvent company. [12]This model provided the share holders to also take decision in the decision making process. They were provided with the right to agree or disagree with the decision making process unlike the creditors. Shareholders' meeting is to be held before the decision on the insolvency mater is taken and consent of the majority is required to pass such a decision. ***Venkatachalam Chetty v. K. Poova Gounder and Ors.***[13]**-** This gives rise to another problem which is how to balance between majority consent and minority dissent. In India and in other major countries the decision goes in favour of majority. Indian company's shareholders have divided their groups in representative groups as quota. For instance small group quota or institutional shareholders quota etc. So every particular class is assigned as quota. [14]

KSL & Industries Ltd. v. Arihant Threads Ltd [15]**:** Supreme Court held that Section 22 of SICA (moratorium) prevails over Section 34 of the RDDBFI Act (overriding effect). The institutional arrangements in this case were not very structured as we talk about modern insolvency laws. The institution didn't really grow and mostly relied on the wisdom of existing process in government institutional mechanism, like stated in the beginning of the project one of the government institutional mechanism was the enactment of SICA for the Nidhi Companies. Thus there was no concept of replacing the management in case of liquidation of company by insolvency committee. Can sale be made under SARFAESI Act without leave of company court once winding up proceedings have commenced?

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[12] **Rathinam, F.X. and Raja, A.V., 2010. Law and Availability of Credit: Evidence from India.** ***Asian Journal of Law and Economics*****,** ***1*****(2).**

[13] 2000 (2) **C.T.C. 288** (Mad.)

[14] **Siems, M.M., 2009. Shareholder, creditor and worker protection: time series evidence about the differences between French, German, Indian, UK and US law.** ***Centre for Business Research, University of Cambridge, Working Paper*****, (381).** At the time of insolvency it was considered that the shareholders should be given primacy to be paid back a compared to others in priority. At the same time this model also brought forward an entire system of how to deal with the adjudication of insolvency issues. India was in the early independence years showed high dependence on these models. The concept of promoters holding, preference shares allotment showed different development like two distinct shareholding patterns were noted as equity shares and preference shares. This was later reclassified as promoter's shareholding and Non-promoter shareholding. These non-promoters were allowed to make investments in the company but exercised lesser control.

[15] ***Civil Appeal 5225/2008, October 27 2014***

Indian Bank v. Sub-Registrar (HC of AP and Telangana, decided on 11.11.2014) – Yes

BHEL v. Arunachalam Sugar Mills (Madras HC, decided on 12.04.2011) – No, need consent of Official liquidator

Krithika Rubber Industries v. Canara Bank (Karnataka HC, decided on 13.06.2013) – DRT cannot order sale without consent of Official liquidator.

Can secured creditors initiate proceedings under SARFAESI while proceedings under the RDDBFI Act were pending?

M/S Division Electronics Ltd. v. Indian Bank (Madras HC, decided on July 7, 2005) – No, need leave of DRT.

Bank of India v. Ajay Finsec Pvt Ltd and Ors (OA No. 167 of 2001,decided on 28.11.2003) – DRT ruled that banks could proceed with enforcement under SARFAESI while RDDBFI proceedings were pending.

M/S Punea Cold Storage v. State Bank of India (AIR 2013 Part I; II (2013) BC 501 Patna HC) - Cannot initiate proceedings under RDDBFI Act if SARFAESI enforcement action had begun.[16]

In the assessment of efficiency of the models was never given much of importance as it was never thought by the Indians that fall of a company would result into fall of the shareholders economy too.

ECONOMIC PHASE II- OF JAPANESE- INDIAN MODEL FROM 1968- 1990

Japan thought that government will have a great control on the economy, but not in industrial base, and not on social base. But what happened is Japan strengthened its financial institution. Japan allowed the private equity to flourish[17] – Hitachi Toyota are all examples of how finance from the family but by the government as these are highly financed & controlled by government.

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[16] **Deakin, S., Demetriades, P. and James, G.A., 2010. Creditor protection and banking system development in India. *Economics Letters*, *108*(1), pp.19-21**.

[17] **Armour, J. and Lele, P., 2009. Law, finance, and politics: the case of India.*Law & Society Review*, *43*(3), pp.491-526.** little progress has been made in the area of insolvency in India and thus the area demands immense development. When compared to USA India does not display a very fine and developed system of restructuring of the insolvent companies and government interference in the system is yet another reason as to why the country need stringent policy.

Government get money from the common man in order to continue the circle of money distribution in the economy. Japan actually did not left the insolvency to owners. It allowed the bank to concern monetarism. When the British left Indian economy was in themselves corporation out was a main factor for reducing the economic growth. The government thought of ownership in this matter. Two ownership pattern neo-rich/Private equity & Government. holding where Government. got actually hold most or 60-70%. It became a major player. government never bothered about insolvency.[18]

Sudhandiran v. S. Krishnan,- [19]LIC → Indians does not consider the risk in it. The concept is diff. in west. Government. introduced Mutual Fund by UTI by the 'Trust'. Banks financed these corporations. Government. never thought if insolvency law. There was no concept of failure as the Government. was trying to build the market Thus ,The concept License Raj prevailed. Concentration model in India with a different pattern.

Japanese model is financial institution model. They finance through financial institution. In Japan the financial institution used to finance any corporation. The efficiency level then automatically raised. They believed in pre-investment decision rather then post-investment. They never thought of failure – either succeed or re-habilitate. They could not develop insolvency law. Ownership was with financial institution which increased the efficiency level of the Japanese stock exchanges. They never needed corporate governance[20].

Innovations have created financial giants like Japan and Fannie Mae and Freddie Mac in the USA. According to Austrian – born American Management guru, the late Peter Drucker, the essential things in management are Marketing and innovation. Innovation is a discovery of a new idea which transforms into a product, service system or process. The most recent evidence of how technological innovation has changed businesses is seen in the publishing and music industries. Prime concern for innovation is the revenue growth which can be achieved by increasing the customer base through the through the customer satisfaction. It has been proved in survey

[18] **Deakin, S., Demetriades, P. and James, G.A., 2010. Creditor protection and banking system development in India.** ***Economics Letters*****,** ***108*****(1), pp.19-21**.
[19] A.I.R. **2006** (Mad.) **10**
[20] **Singh, Y. and Bhalla, A.S., THE IMPACT OF INSOLVENCY REGIMES ON CORPORATE GOVERNANCE: A CLOSER LOOK.**

conducted by the IBM Global Business Services, Plano, Texas (during 2006) that the sources of innovation are customers, employees, consultants, business partners etc.

In re Official Receiver, Jhansi v. Jugal Kishor Lachhi Ram Jaina, Hyderabad and Ors., [21]- Banking sector, the world over, is knows for the adoption multi-dimensional strategies from time to time with varying degrees of success. Banks are very important for the smooth functioning of financial markets as they are serve as repositories of vital financial information and can potentially alleviate the problems created by information asymmetries.

Banking has flourished in India since the ancient times. The Rig Veda mentions indebtedness and some of the earliest dharma shastras by down rates of interest and regulations governing debts and mortgages. Thus, a money economy existed in the ancient Vedic times. References to money lending for business purposes are found in the Manu Smriti too. In India, the indigenous Bankers played a very important role in lending money and financing foreign trade and commerce during the Moghul period. During the British Rule, the agency houses carried on the Banking business. The Banking system in India has played a crucial role in the growth and development of the economy. India, today, is one of the fastest growing economies in the world. It is now Asia's third largest economy and has made inroads into the global top 10 in terms of GDP. The Indian Banking system has been stable without any major crises. ***Mohammed Abbas Ali v. Masood Bin Mohammed Al-Khaili and Anr.***[22]***-*** It is relatively transparent in its operations and follows the international best practices of disclosure. Indian Banking system developed enormously after independence. Particularly after nationalization of banks there has been a multi-dimensional development.

The survival of the Banks in the contemporary banking environment is its financial innovation. The importance of the financial innovations in the financial arena was highlighted by the many scholars like Miller (1986) and Merton (1992). A commonly used term in banking is financial innovation which describes any change in the scale, scope and delivery of financial services. Liberalization and technology has brought several changes to Indian service industry especially in the Banking sector. It has now brought in E-banking, which is gradually replacing the traditional branch banking. Internet Banking has emerged as the biggest focus and targetable

[21] A.I.R. **1963 All.** 459
[22] **2007 A.L.D.** 1 (A.P.) **60**

area. [23]The commercial banks in India are now becoming more market-oriented and customer-friendly. Internet Banking is changing the banking industry and is having a significant and impact on the banking relationship. Banking industry is first growing with the use of technology in the form ATMs, On-line banking, Telephone Banking, Mobile Banking etc., Modern Banks provide a wide range of products and services to satisfy the financial and non-financial needs of all types of customers from the smallest account holder to the largest company and in some cases of non-customers. The range of services and products offered differs from bank to bank depending mainly on the type and size of the bank.

Padala Bulli Bhami Reddy v. Sura Nagabhushan Rao and Anr[24].- Banking Industry in India has also grown to new heights with the changing times. Customer services and customer satisfaction are prime responsibilities of any banks now days. Information technology has given rise to new innovations in the product and service designing and their delivery in the banking and finance industries. Banking through Internet and Mobile has emerged as a strategic resource for achieving higher efficiency, control of operations and reduction of cost by replacing paper based and labor intensive methods with automated processes thus leading to higher productivity and profitability. Financial innovation associated with technological change totally changed the banking philosophy and that is further tuned by the competition in the banking industry. Challenging business environment within the banking system create more innovation in the fields of product, process, service and market.[25]

- Automated Teller Machines (ATM) : The starting of ATMs by Banks has transformed banking by providing banking services **Any Time & Any Where, Any Bank** to the customer. The evolutionary trend from cash economy to cheque economy and onwards to plastic and economy is witnessed in the introduction of ATMs. Presently, a number of Indian and Foreign banks are offering ATM facility but mostly in cities. ATM can be interior (i.e., located in the branch premises) or exterior (located anywhere outside the branch premises). The penetration of ATMs across the country increases in 2012-13 with

[23] **Khanna, V.S. and Varottil, U., 2012. Developing the market for corporate bonds in India.** ***Available at SSRN 2021602***

[24] **2006 A.L.D.** 4 (A.P.) **30**

[25] **Van Zwieten, K., 2015. Corporate Rescue in India: The Influence of the Courts.** ***Journal of Corporate Law Studies*****,** ***15*****(1), pp.1-31.**

the total number of ATMs crossing 1,00,000, clocking a double digit growth during the year. The Banks increased their penetration further with the total number of ATMs reaching 0.18 million in 2015. However, there was a decline in growth of ATMs of both PSBs as well as PVBs. PSBs recorded a growth of 16.7 per cent during 2014-15 maintaining a share of around 70 per cent in total number of ATMs. (source : RBI.ORG)

- WLA (White Label ATMs) : ATMs set up, owned and operated by non-banks are called White Label ATMs. Non-bank ATM operators are authorised under Payment & Settlement Systems Act, 2007 by the Reserve Bank of India. Looking at the efficiency and cost-effectiveness of off-site ATMs, non-bank entities were allowed to own and operate ATMs called 'White Label ATMs (WLA)' by the Reserve Bank in 2012. As on October 31, 10,983 WLAs were installed.
- Phone Banking : Phone Banking is yet another Banking service offered by Banks. Under this system, like in ATM card, a secret code number is provided to each account holder. A customer wanting to know his bank balance or any other information relating to his bank account should dial up a particular phone number indicating by the Bank. When the number is dialled, a recorded voice will ask a person to identify himself with his account number and code number. If the numbers are tallied, one will get all the information one want to know about one's account. [26]
- Debit Card and Credit Card : A Debit Card is an electronic card issued by a Bank which allows bank clients access to their account to withdraw cash or pay for goods and services. This removes the need for bank clients to go to the bank to remove cash from their account as they can now just go to an ATM or pay electronically at merchant locations.
- Credit Card is issued by a financial company giving the holder an option to borrow funds, usually at point of sale. In 2012, there were 6.3 Credit Cards for every 100 Debit Cards, which declined to 3.8 in 2015. PSBs maintained a lead over PVBs and FBs in issuing Debit Cards. As on March 31, 2015 approximately 83 per cent of the Debit Cards were issued by

[26] **Rathinam, F.X. and Raja, A.V., 2008. Credit disbursal, growth and procedural law: evidence from India. In *International Conference on Growth, Inequality and Institutions, November* (pp. 27-29).**

PSBs, while around 80 per cent of the Credit Cards were issued by the PVBs (57.2 per cent) and FBs (22.4 per cent). (Source : RBI.ORG)

- Online Banking : It empowers customers to conduct financial banking transactions on a secure website which can be operated by a retail, virtual bank, credit union or building society. It makes some of the banking services faster and easy.
- Mobile Banking : Mobile Banking is a system that allows customers of a financial institution to conduct a number of financial transactions through a mobile device such as mobile phone or personal digital assistant. It is used for performing through mobile device such as a mobile phone or Personal Digital Assistant (PDA), Banking activities such as : Balance checks Account details, Portfolio management Account transactions, Payments and investments Credit applications and other transactions.
- NEFT : According to Reserve Bank of India, National Electronic Funds Transfer (NEFT) is a nation-wide payment system to facilitate one-to-one funds transfer. Under NEFT, individuals, firms and corporates can electronically transfer funds from any bank branch to any individual, firm or corporate having an account with any other bank branch in the country participating in the Scheme. Even individuals not having a bank account can deposit cash at the NEFT-enabled branches with instructions to transfer funds using NEFT. However, such cash remittances will be restricted to a maximum of Rs. 50,000/- per transaction. This is simple, secure, safe, fastest and cost effective way to transfer funds especially for Retail remittances.
- RTGS : Real Time Gross Settlement system (RTGS), introduced in India since March 2004, is a system through which electronics instructions can be given by banks to transfer funds from their account to the account of another bank. The RTGS system is maintained and operated by the RBI and provides a means of efficient and faster funds transfer among banks facilitating their financial operations. As the name suggests, funds transfer between banks takes place on a 'Real Time' basis Global Challenges ahead for Banking Sector.

Some of the expectations and challenges with advancements in the banking sector which are expected from the Banking sector Vision 2020 as discussed by the U.K.s finest minds in the financial technology sector who have gathered for the Financial News and WSJD inaugural Fintech Conference in London. The group, which included members of **"Financial News' 40 Leaders in Fintech"** were broken up into working groups, **each looking at different aspects of**

the future of banking to avoid or hedge the risks of insolvency in the financial institutuions including regulator requirements, security concerns, big data conundrums and rapidly changing customer demands are[27] :

1. **Banks and financial services firms will revolve around customers' choices**. For instance, as the customer develop and starts saving money, he/she will have the instant and personal choice to delegate the customer money management to a number of provides, or he/she can manage it herself.

2. **The banks of the future will be on mobile phones**. For example, the mobile phone which we use will be learning of investment opportunities on an instantaneous and ongoing basis and presenting them to you.

3. **There will be robot advisers that stop the customer from making unsound financial choices, in real time**. For example, if a customer tries to buy too many shares in a company, an automated Know Your Customer and suitability Tool will prevent the customer from doing so.

4. **Powerful algorithms will monitor the behaviour of a bank's data** to identify external and insider security threats.[28]

5. **Banks could become identity brokers**, analyzing and using the information they know about their clients, and giving that insight over to customers or other vendors for specific products and services, like insurance, and creditworthiness.

6. **Banks will be replaced by platforms** that are run almost entirely by algorithms and robots – they will essentially become technology companies that mediate information and analysis about customers, products, and markets.

7. **The Bank account of the future will be bank-agnostic :** An open ecosystem where the customer manages all of his current and future financial needs. The account will represent the

[27] **Allen, Franklin, Rajesh Chakrabarti, Sankar De, Jun Qian, and Meijun Qian. "Financing firms in India."** ***World Bank Policy Research Working Paper*** **3975 (2006).** If I compare to what is said in these article to the position of shareholders in Indian insolvency procedure we can say that patterns despite being the same has different classes and hold different rights. This right is to be dealt in the case of insolvency at different degrees of priority. This whole concept of conflict gives rise to tension between commons and anti commons. Shareholders model in India didn't give exclusive primacy to the shareholders but just prioritized their claims over the others. Countries like Japan had same relations to their insolvency issues as India.

[28] **Batra, Sumant. "Insolvency Laws in South Asia: Recent Trends and Developments." (2006)**

customer identity and he will be able to keep it regardless of who is providing the service, be it a bank, a large tech firm or a young company.

8. Block Chain Technology will be widely used to distribute, verify and record a wide-range of financial services, making the financial system more decentralized. Some risks will be eliminated, while some new risks will be introduced.[29]

9. Social trading will become widespread, with lending, borrowing, and trading on social network platforms.

10. Decentralized and crowd sourced loans, mortgages, and risk management products will become the norm. Traditional middlemen will be cut out, with institutional investors providing funds to consumers or business directly through online platforms.

'Report of the Arrears Committee' (Malimath Committee) (1989-90) as quoted in *L Chandra Kumar vs Union of India* [30]- The majority of established Banks already have the platforms to deliver new products and services – the challenge is in the exploitation. The first consideration for every bank should be the needs of the business to better serve its customers, which is included in the brand strategy and digital strategy. To deliver in this new era, successful banks are looking outside of the traditional banking fraternity. This strategy coupled with flexible product innovation is providing a formula for success in traditional banking environments which if followed will enable banks to compete with the new entrants and disrupters in the market.

Americans thought of building large capital base. They targeted people's money. Then the banks were not like this. There was no consolidated capital available in America. The concept of Limited Liability was not there then. Then America expressed a dispersed gap of shareholders. There was a shareholder privacy. But in America, they realized no gap can manage the company. The low then gave a lot of power of to managers. They strengthened run managerial power through the process of statistics. The managers having statutory power cannot be pulled down by any one.[31]

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[29] **Sengupta, R. and Sharma, A., 2015. *Corporate Insolvency Resolution in India: Lessons from a Cross-country Comparison*. Working Paper, FRG IGIDR.**
[30] **(1997) 3 SCC 261**
[31]**SAHOO, A., 2005. CORPORATE RESTRUCTURING—-PRINCIPLES AND PRACTICES. *Studies In Money, Finance And Banking*, p.43.**

Efficient management of wealth as they was the money of the common people. The Americans was very conscious about banking pay & insolvency because they worried about how to get the more out of money and pay to the people. Money has to be retrieved. Efficient management of resources – prime objective is to protect the assets build over the years. It is the work of specialized skilled people. They have created a lot of criteria to choose in management. This brings efficiency in the board.

Shareholder primacy in America in optimum and long term section to them and create value of the assets. Its not about management as in England.

Voting Crust – Who can be elected in board. They asked to make them proxy shareholders and they did what they were asked to. If they failed to meet the expectation of shareholder, they can be called back. The proxy system in America is highly developed. Class Action Litigation, also known as Derivative Action – if a particular gap of people is getting affected in the camp, they can approach the court to protect their interest. These who them form the 'minority' they go for Company Law.[32]

Gannamanthi Pedda Subbaiah v. Chittepu Narayana Reddy,[33]- Right to Debtors – interest of creditors are protected. Eg. Debenture Trustee. The resolutions can be passed. The object in America law was to injure efficiency in the system.

In United Kingdom – Business Foundation

British colonial expansion was only for trade. The monopoly of business was given by the King on geographical location. This increases trade was then successful. Many people simple in to the business – they are the relatives cities of the King's court. Deed of settlement (DOS) of companies which bursted. This created a havoc in the society. Rudimentary Joint block camp, 1894 was formed. Holding of shares was divided into all shareholders.

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[32] one learning that was common was that the shareholders value has been through immense transformation The shareholders in India have different classes and they position themselves differently which just like many other major countries such as USA, UK, Singapore and Malaysia. Now since one single category of members are positioning themselves in several different sub categories gave rise to an immense increase in the internal conflict of interest. It became difficult to resolve the matters when the class itself seemed divided. Equity market went through numerous changes as- Differential Equity, Sweat Equity, Employee Stock Option ,Convertible Option.

[33] **A.I.R. 2006 (A.P.) 89**

ECONOMIC PHASE III OF NON PERFORMING ASSETS FROM 1990

One of the inventions of the mankind is Coins and Currency Notes named as money as a replacement for barter system. The person who had surplus money started the deployment of money as money lenders for those who needed the same for purchase of goods and services. The organized form of money lending is termed as banks. The modern commercial banking system has started in early 19th century. The modern trade and commerce is possible only because of the services of modern commercial banks. The banks collect deposits from general public which is classified as liability in the books of banks, likewise what they lend for various activities will be classified as Assets in their books. As a conservative society Indians have the habits of bank of Indians have the habit of saving a portion of their Income for their future needs. The commercial banks design various schemes to attract this savings and mobilize funds for further lending purpose. As visualized by the government the banks were directed to lend for priority sector, Industry and agriculture activities. Since the banks top management was appointed by the government, they were forced by the politicians and bureaucrats to lend as per their dictates.

BHEL v. Arunachalam Sugar Mills Ltd., decided on 12.04.2011 (Madras High Court)

- Secured Creditor 1 filed an application in the DRT for debt recovery
- Secured Creditor 2 filed a company petition for winding up
- Secured Creditor 3 entered into an MOU with Secured Creditor 1 to get paid upon Secured Creditor 1’s recovery
- Trade creditor that had leased machinery to the debtor initiated proceedings invoking the arbitration clause in the contract
- Secured creditor 4 initiated proceedings under SARFAESI and sold assets by auction
- Unsecured creditor that had supplied a boiler to the debtor filed for debt recovery in the civil court

As per RBI Guidelines, Up to 31st March 2003, any Loan and Interest understanding for more than 91 days from the last payment made is to be classified as NPA and from 31st March 2004 if the same is due by more than 180 days it is NPA.[34]

***Union of India and Anr vs The Delhi High Court Bar Association and other[35]*- ** Classification of NPA/Asset Classification

1. Substandard Assets (Revised norms w.e.f 31.03.2005)

   Which has remained NPA for a period less than or equal to 12 months.

2. Doubtful Assets (Revised norms w.e.f 31.03.2005)

   Which has remained in the sub-substandard category for a period of 12 months.

3. Loss Assets (Revised norms w.e.f 31.3.2005)

Stressed Assets Management

SMA Sub-categories	**Basis for classification**
SMA-0	Principal or interest payment not overdue for more than 30 days but account showing signs of incipient stress.
SMA-1	Principal or interest payment overdue between 31-60 days.

Stress Assets = Gross NPA+Restructured Loans.[36]

Provisioning Norms for NPAs

[34] **Pandey, A. and Ghosh, S.K., 2005. NPA Management in India: In Search of a New Paradigm?. *Paradigm*, *9*(2), pp.64-76.**

[35] Appeal (civil) 4679 of 1995

[36] **SAHOO, A., 2005. CORPORATE RESTRUCTURING—-PRINCIPLES AND PRACTICES. *Studies In Money, Finance And Banking*, p.43.**

In terms of RBI circular No. RBI/2004/254/DBOD No. BP.BC.NO 97/ 21.04.141/2003-04 dated 17.06.2004, the Reserve Bank of India has decided that w.e.f March 31, 2005, the following norms to be applied.

Asset Classification	Period as NPA	Current provisioning (%)	Revised accelerated provisioning (%)
Sub-standard (secured)	Upto 6 months	15	No change
	6 months to 1 year	15	25
Sub-standard (unsecured ab-initio)	Upto 6 months	25 (other than infrastructure loans)	25
		20 (infrastructure loans)	
	6 months to 1 year	25 (other than infrastructure loans)	40
		20 (infrastructure loans)	
Doubtful I	2nd year	25 (secured portion)	40 (secured portion)
		100 (unsecured portion)	100 (unsecured portion)
Doubtful II	3rd & 4th year	40 (secured portion)	100 for both secured and unsecured portions
		100 (unsecured portion)	
Doubtful III	5th year onwards	100	100

- I. Public Sector Banks (27 Banks). 1. Allahabad Bank, 2. Andhra Bank, Bank of Baroda, 4. Bank of India, 5. Bank of Maharashtra, 6. Canara Bank, 7. Central Bank of India, 8.

Corporation Bank, 9. Dena Bank, 10. Indian Bank, 11. Indian Overseas Bank, 12. Oriental Bank of Commerce, 13. Punjab & Sind Bank, 14. Punjab National Bank, 15. Syndicate Bank, 16. UCO Bank, 17. Union Bank of India, 18. United Bank of India, 19. Vijaja Bank, 20. State Bank of India (SBI), 21. State Bank of Bikaner & Jaipur, 22. State Bank of Hyderabad, 23. State Bank of Mysore, 24. State Bank of Patiala, 25. State Bank of Travancore, 26. IDBI Ltd., 27. Bharatiya Mahila Bank

- II. Private Sector Banks (20 Banks). 1. City Union Bank Ltd., 2. ING Vysya Bank Ltd., 3. Tamilnad Mercantile Bank Ltd., 4. The Catholic Syrian Bank Ltd., 5. Dhanlaxmi Bank Ltd., 6. The Federal Bank Ltd., 7. The Jammu & Kashmir Bank Ltd., 8. The Karnataka Bank Ltd., 9. The Karur Vysya Bank Ltd., 10. The Lakshmi Vilas Bank Ltd., 11. Nainital Bank Ltd., 12. RBL Bank, 13. The South Indian Bank, 14. Axis Bank, 15. Development Credit Bank Ltd., 16. HDFC Bank Ltd., 17. ICICI Bank Ltd., 18. Indusind Bank Ltd., 19. Kotak Mahindra Bank Ltd., 20. YES Bank.

Limitation of the Study

The study is limited to select Public and Pvt. Sector Banks, the impact of NPA on the profitability of these banks. Thus, the important limitations are as follows :

- The study on management of non-performing assets is limited to select Public and Pvt. Sector Banks in general.
- The data collected is for 3 years i.e. 2012-13, 2013-14 and 2014-2015 only.
- The data collected is from RBI Website and Annual Reports of the banks.
- Secondary data validity cannot be authenticated by the banks officials since the NPA reflects the other side of the banks.
- The problem of NPA keeps on increasing year on year due to external factors like political changes, Industrial growth, inflation and Global factors. Hence it is highly impossible to predict when the situation will improve as far as NPA is concerned.

Comparison of NPA of Public and Private Sector Banks

Public Sector Banks

Particular	2013	2014	2015
Total Assets (Rs. In Crore)	6,961,988	7,968,416	8,678,770
Gross NPA (Rs. In Crore)	164,462	227,264	278,877
Net NPA(Rs. In Crore)	89,950	130,360	159,973
Total Income (Rs. In Crore)	611,656	685,358	751,782
Operating Profit (Rs. In Crore)	121,838	127,653	138,097
Provisions and Contingencies (Rs. In Crore)	71,256	90,633	100,277
Provisions to Operating Profit (%)	58.48	71.00	72.61
Net Profit (Rs. In Crore)	50,583	37,019	37,820
Advance (Rs. In Crore)	4,472,845	5,101,142	5,476,250
Net Profit to Advances (%)	1.13	0.73	0.69
Gross NPA to Advances(%)	3.68	4.46	5.09
Net NPA to Advances (%)	2.01	2.56	2.92
Stressed Assets to Advances (%)	10.9	11.04	12.68

Private Sector Banks

Particulars	2013	2014	2015
Total Assets (Rs. In Crore)	1,989,797	2,258,810	2,534,558
Gross NPA (Rs. In Crore)	21,070	24,542	33,361
Net NPA (Rs. In Crore)	5,994	8,862	13,680
Total Income (Rs. In Crore)	196,279	224,610	249,226
Operating Profit (Rs. In Crore)	48,656	59,257	68,402
Provisions and Contingencies	19,660	25,503	30,183

(Rs. In Crore)			
Provisions to Operating Profit (%)	40.41	43.04	44.13
Net Profit (Rs. In Crore)	28,995	33,754	38,219
Advance (Rs. In Crore)	1,143,249	1,342,935	1,543,917
Net Profit to Advances (%)	2.54	2.51	2.48
Gross NPA to Advance (%)	1.84	1.83	2.16
Net NPA to Advances (%)	0.52	0.66	0.89
Stressed Assets to Advances (%)	3.90	4.29	4.59

Analysis

1) Overall profitability of both Public and Pvt. Sector banks Net Profit was reducing year on year due to poor performance on collection resulting in NPA provision done from the operating profits. The Public sector Banks profit has come down by almost 40% in 2015 as compared to 2013. When we compare the profitability of Public Sector Banks and Pvt. Sector Banks, the Public Sector Banks are able to make only 50% of what the Pvt. Sector Banks are able to earn, i.e. Pvt. Sector Banks are making on an average of Net Profit to Assets of 2013-2.54%, 2014-2.51%, 2015-2.48% whereas Public Sector Banks earned 2013-1.13%, 2014-0.73%, 2015-0.69% only. This is due to the fact Public Sector Banks had made enormous provisions towards NPA as compared to Pvt. Sector Banks.

2) **Union of India vs Delhi High Court Bar Association** [37]The provisioning towards loss assets is very high in Public Sector Banks as compared to Pvt. Sector Banks. The Private Sector Banks make all out efforts to reduce NPA and provisioning towards loss assets by invoking all types of collection methods both legal and appointment of private collection agents for reducing outstanding advances. The Public Sector Banks have no system of fixing responsibility and accountability for the outstanding advances and no concrete steps are taken for collection of the same. Provisioning by Public Sector Banks is 2013-58.48%, 2014-71% & 2015-72.61% whereas Pvt. Sector Banks made provision of 2013-40.41%, 2014-43.04% & 2015-44.13%. In absolute

[37] **(2002) 4 SCC 275**

terms the provisions of Public Sector Banks increased to Rs. 1 Lakhs crores in 2015 as compared to Rs. 70 thousand but Pvt. Sector Banks stood at Rs. 30 thousand in 2015 & Rs. 20 thousand in 2013. Because of provisioning made only the PSU banks had to suffer in terms of profitability. The Public Sector Banks had made provisions more than the operating profits made all the Pvt. Sector Banks put together.

3) The Gross NPA of Public Sector Banks is almost twice of the Private Sector Banks when we compare the Gross NPA to Advances. The Public Sector Banks were advancing without proper due diligence and having no intelligence to find out early warning signals from the customers though they had enough knowledge about the various schemes used for diversion of funds to other speculations rather than from the purpose for which the loan was sanctioned. They merely encouraged the failed models like Multiple Banking from the west rather than following the proved Indian Model like Consortium arrangements. The Gross NPA to Advances of Public Sector Banks was 2015-5.09% compared to 2013-3.68% whereas Pvt. Sector Banks had 2015-2.16% compared to 2013-1.84%. The percentage had significantly increased on Public Sector Banks as compared to Pvt. Sector Banks.

4) The Net NPA of Public Sector Banks is four times compared to Pvt. Sector Banks in 2013 and three times in 2015. The Net NPA to Advances of Public Sector Banks is 2013-2.01%, 2014-2.56% & 2015-2.92% whereas Pvt. Sector Banks had 2013-0.52%, 2014-0.66% & 2015-0.89%.

5) The Stressed Assets to Advances of Public Sector Banks is three times compared to Pvt. Sector Banks from 2013 to 2015. The Stressed Assets to Advances of Public Sector Banks is 2013-10.09%, 2014-11.04% & 2015-12.68% whereas Pvt. Sector Banks had 2013-3.90%, 2014-4.29% & 2015-4.59%.

6) Both the Public Sector Banks and Pvt. Sector Banks are hiding behind the concept of Restructured Loans to avoid declaring of loss as per their books. The success rate of recovery of Restructured Loans is only around 20% as per RBI report. Even if we give consider the possibility of recovery of Restructured Loans to that extent both the Public Sector Banks and Pvt. Sector Banks should have already declared loss as per norms, but they are postponing the evil for some time but it is not possible to avoid altogether.

Jagdish Singh v. Heeralal[38]– SC held that SARFAESI Act ousted jurisdiction of civil court completely, even if related to parties other than the creditor and debtor

Official Liquidator, U.P. and Uttarakhand v. Allahabad Bank[39]– SC held that Company Court had no jurisdiction over matters pending before DRT, even if winding up petition was initiated. Official liquidator would need to file appeal to DRAT to protect other stakeholders

1. Banks are facing the problem of Stressed Assets and NPA from five major sectors i.e. infrastructure, iron and steel, textiles, mining (including coal) and aviation and these five sectors have contributed to 54% of the total stressed advances of PSBs. Hence the banks need to look into these advances and try to find solutions specific to each sector to overcome the problem of NPA.

2. The rule of the 'shadow banking system' overlapping with the regular banking is also to be closely monitored by the banks to overcome the problem of NPA, since the shadow banking system as a source of systemic risk had to be recognized and well tackled by the regular banking system to avoid risk of getting sidelined due to poor performance by them.

3. The banks should device proper systems to avoid financing of **Promoters Contribution** while financing large projects. Once 100% financing is done by the banks the promoters start diverting funds for other than the purpose for which they were sanctioned and banks have no infrastructure and managerial ability to take over the projects and run successfully to recover their dues.

4. The banks are well experienced to find out how the private operators do the business of **Kite Flying** and they should come out systems top find out early these kinds of operations and procedure should be devised to avoid this type of accounts being sanctioned in case of large sanctions which are especially done by the Board of Banks.

5. Imposition of higher degree of penalties for borrowers/promoters that do not cooperate with lenders. The Framework proposes higher interest costs for subsequent borrowing, but this should include measures that will drive borrowers/promoters to cooperate with lenders. [40]

Innovations & Strategies brought to Tackle NPA

[38] ***(2013) 12 SCALE 358)***
[39] **AIR 2013 SC 1823**
[40] Pinnamshetty Kavitha v. Gajelli Gangadhar, A.I.R. **2007** (A.P.) **239**

There is a strong need for the banking system to recognize signs of non-performance early and to take prompt steps towards any one of the following actions :

1. **Ram Singh v. VII Additional District Judge and Ors**[41] **-** Restructuring through Joint Lenders Forum (JLF) **:** As soon as the account is overdue between 61 to 90 days the lenders should form the JLF and formulate a joint corrective action plan (CAP) for early resolution of the stress in the account. The JLF should decide early whether it is feasible to restructure/recover to preserve the economic value of the underlying assets as well as the lenders loan.

2. **Samar Ghosh v. Rambaran Singh,**[42] **-**Restructuring under Corporate Debt Restructuring (CDR) **:** RBI had issued guidelines for this purpose and the banks should act promptly so that resolution can be obtained early and proper restructuring can be done at the earliest.

3. **R. Subramaniam v. Canara Bank and Anr.**[43] - Recovery **:** If both the above options are not feasible due recovery process is started by the lenders.

4. **T.T.V. Dhinakaran v. Dy. Director, Enforcement Directorate,**[44] -Sale of NPAs to Asset Reconstruction Companies **:** RBI has permitted the Banks to sell the financial relating to NPAs to Asset Reconstruction Companies (ARC's) formed for this purpose if they are reported as SMA-2, RBI has also issued guidelines how to deal with the sale proceeds and the shortfall thereof : (a) Reversal of excess provision on sale of NPA's to R & L account if the cash received on sale of NPAs is more than the book value of NPAs. (b) Book the loss on sale of NPAs if the sale value is less than the book value. (c) Use of floating provision for meeting the shortfall on sale value of NPAs.

5. **Nawratam Purohit v. Arvind Agarwal,** [45]- Refinancing of Project Loans : RBI has permitted the banks to enter into refinance agreement with other financial institutions for existing NPA infrastructure and other project loans after due diligence and the same will not be considered as restructured loans in the books of Banks.

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[41] 2007 A.I.R. 102 (All.)

[42] **1 CAL. L.T. 502 (2006)**

[43] **(2006)** 134 Comp. Cas. **363** (Mad.)

[44] **2003** A.I.R. **59** (Mad.)

[45] **2008** A.I.R. **70** (Cal.)

6. **Deepak Cochhar and Anr. v. Indusind Bank Ltd.,[46] -** Willful Defaulters, Accountability of Promoters/Directors/Auditors **:** (a) RBI had given powers to banks to classify the unreasonable and non cooperative lenders for bonafide resolution/recovery efforts as non cooperative borrowers and furnish the list of directors and promoters of such companies to credit Information Companies for further action. (b) The Banks will have to fill complaint with ICAI for Auditors who have issued false certificate based on which the banks have extended finance. The Auditors name should also be sent other regulators/MCA/CAG for needful action. (c) The Banks are also required to inform IBA the list of Advocates who have issued wring legal clearance certificates for the title of the Security and the values who have wrongly given the valuation certificates..,

7. **Kanakasubbu and Anr. v. Suryanarayana Shastri and Ors.,[47]** -Debt Recovery Tribunals (DRTs) and other Recovery Infrastructure **:** The banks have obligation to fill proper cases against the NPAs as early as possible for recovery of their dues through reference to Debt Recovery Tribunal to get better sale value for the underlying assets. For speedy disposal of NPA cases the banks are advised by RBI to approach the DRTs with special benches set up for SARFAESI related cases. The banks have to request the concerned High courts to establish special benches for referring the NPA cases involving Section 138 of Negotiable Instruments Act. **Sadasivam v. M. Muthuswamy and Ors.,** [48]

8. **Introduction of Indradhanush scheme for Capital infusion to Public Sector Banks :**

The central government has come out with capital infusion scheme for Public Sector Banks for next four years under this scheme. This is specifically to meet the capital requirements under ***Based III norms.*** The Government will invest Rs. 1.80 Lakh crores under this scheme.

The blame for the problem of NPA had to be shared by all the stakeholders like the management of the Banks, Regulators, promoters and Government. Instate of blame game it is high time that all the stakeholders should act to correct the situation at the earliest so that the situation does not go out of hand and the Indian banking industry survives unlike the banks of other countries. The Banking sector should set right their acts and starts taking corrective action

[46] **(2006) 3** Bom. C.R. ***520***
[47] 2002 A.I.R. **252** (Mad.)
[48] **1998** (2) **C.T.C. 238** (Mad)

for not letting the situation further worsen. The normal prudent norms for any industry to survive with bad debts are around 3% and for the financial industry to survive and grow it should be well within 2%. It is right time the banking industry should act on their own and be accountable for the present situation and learn from their past mistakes and bring down the NPAs to marginal levels, and hence the Public Sector Banks needs to be more vigilant in this regard.

Recently the Indian economy has witnessed the emergence of many banks in the private sector. The growth of such banks is not possible unless they witness some success in the context of customer satisfaction or may it be the net assets held by these banks, efficiency of their management or the networks of each bank both in private as well as the public sector bank. The following paper covers the performance comparison of private sector banks and the public sector banks and to give the reasons and suggestions for the same.

Though the funding of the commercial banks started with the emergence of the Bank of Calcutta later renamed the Bank of Bengal in the year 1806, thus making it the oldest commercial bank in the Indian subcontinent, but with its merger with the Bank of Madras, Imperial Bank of India which in turn became the State Bank of India emerged. Pursuant to the provisions of the State Bank of India Act, 1955, the Reserve Bank of India, acquired a controlling interest in the Imperial Bank of India thus on 1 July 1955, the Imperial Bank of India became the State Bank of India. Today State Bank of India enjoys a privilege of a position of preeminence as an agent of RBI. It is the only bank which has the largest network of 48 overseas offices spread over 28 countries. As on December 2013, its assets were valued at US$388 billion and a total of 16,000 branches, including 190 foreign offices spread over 34 countries, which makes it the largest banking and financial services company in India by assets. SBI had 14,816 branches in India, as on 31 March2013, out of which 9,851 (66%) are in Rural and Semi-urban areas. In the financial year 2012-13, its revenue was INR-200,560 Crores (US$36.9 billion), wherein domestic operations contributed to 95.35% of revenue, also, domestic operations contributed to 88.37% of total profits.

A study on public and private sector banks shows that a gap between expectations of consumers and perceptions of service delivered is highest in public sector banks and lower in private sector banks. Also it was found that public sector banks are better than private sector banks. Bahia, K and J Nantel (2000) suggested an alternative scale for measuring service quality in retail

banking and developed a scale called as Banking Service Quality Scale which contained factors like effectiveness and assurance, access, price, tangibles, service portfolio and reliability and was found to be more reliable than SERVQUAL. According to Sureshchandar (2002), the relationship between service quality and customer satisfaction in Indian banking sector were found to be independent but closely related. Debashis and Mishra (2005) measured customers were given questionnaires and it was found that computerization, accuracy in transactions, attitude of staff and availability of staff influenced customer satisfaction. Least important factor was promotion of the products and various schemes. Sharma S, et al (2007) made a comparative study of public and private banks with respect to perceptions of customers regarding service quality and was found that service quality is associated with satisfaction and there was significant difference between quality of services provided by banks in smaller cities are far behind big cities in this regard. Dr. Ravichandran et al (2010) tries to understand socio demographic and rational profile of public retail banking consumers. Also, the importance of service quality dimensions to predict the multidimensional model of behavioral intentions among public sector consumers in India are studied. Loyalty was found to be influenced by operating hours, error free records etc. Service quality parameters like tangibility, responsiveness were also found to be very important. Sachin Mittal & Rajnish Jain (2010-Findings indicated need to improve the IT based services for enhancing customer satisfaction. The studies mentioned above clearly points out to the importance of having a structured study on this where banks in different categories are compared with respect to the service quality aspect which will be help them to find out their core competencies and to capitalize on them and at the same time find out the areas

As discussed above, it has been witnessed that the major area of concern for any bank is the customer service and customer satisfaction, thus just like the private sector banks, it is high time that the public sector banks also start concentrating more on the customers and the services provided to them. To strive the cut throat competition given to the public sector banks by the private sector banks, the public sector will have to pull up their shoes to be at the better half part of the race else the time is very near which can make these public sector banks just a memory or a history for everyone.

ECONOMIC PHASE IV OF OUTREACH OF MICROFINANCE IN INDIA FROM 2000

Microfinance has changed the life of millions of poor women by increasing their income level and reduced poverty significantly. The outreach of microfinance is examined through savings, loan disbursed and loan outstanding. The stakeholders such as commercial banks, cooperative banks, Regional Rural Banks have helped to reach out the programme.

In re Sulthan Pillai v. Municipal Commissioner [49]***; Garre Venkata Lakshminarayana v. Medarametla Sarada and Ors.***[50]**-** .Microfinance no doubt has changed lives of million poor people in India. Many studies have found the positive effects of microfinance. In rural areas, poor people depends on moneylenders, who charges high interest rate, as the formal banking institutions seek collateral which poor people unable to comply. Majority of the poor people seek credit for non-productive purposes. However, the returns from their farm and non-farm activities are enough to their survival. The credit creation is low under the informal finance and higher proportion of the credit will be used for non-productive purposes, in this circumstances, the emergence of microfinance has paved the way for millions of poor people. Microfinance is defined as provision of thrift, credit and other financial services and products of very small amount to the relatively poor in rural, semi-urban and urban areas. The objective of microfinance is to provide credit to those who cannot easily obtain credit from the conventional formal financial system that requires collateral for borrowing. The important role of microfinance in enhancing the human capabilities through health expenditure and educational expenditure is no less important, though there is very little data on the purpose of the loans. For whatever purpose the loan is utilized any enhancement of the human capability, including the consumption smoothing is a welcome step. Extension of Microfinance and the expansion of outreach represent financial inclusion. Essentially, spread of Microfinance indicates increased financial inclusion.

Microfinance has spread in India quite rapidly in the recent years. The banking system, especially the Commercial Banks promoted Microfinance initially and then it spread fast to private sector non-banking financial organizations popularly known as Micro Finance Institutions (MFIs). MFIs are driven by profit motive more than the commercial banks, cooperative and regional rural banks that are involved in Microfinance. The excitement about Microfinance is more about the very low default rate of less than 3% in group lending (NABARD 2009).

[49] A.I.R. 2002 Ker. **230**
[50] A.I.R. **2007** A.P. 54

The Micro finance sector has grown but the exact share of Microfinance in the total credit is not clear, as a number of micro finance institutions operate in the country. Comparative studies are not available to judge the relative merits of banks vs. micro finance institutions in extending loans to the poor. However, it is easy to see that direct linkage of banks to self-help groups has certain advantages to the poor. Unlike the Micro finance institutions, banks do not exert extra constitutional measure to recover loans. The second advantage is that bank-self-help-group linkage provides loans at relatively lower rates to the self-help groups than the micro finance institutions that are driven by profits.

National Bank of Agriculture and Rural Development (NABARD) provides refinancing of the credit given by the banks Micro finance institutions of the self-help groups at a concessional rate. An amount of Rs. 3173.56 crore was provided as refinance in the year 2009-10. Refinance released up to 31.3.2010 was Rs. 12861.65 crore. Micro finance Institutions in turn lend to the self-help groups or individuals. There are several types of Micro finance Institutions. Some of them are registered as non-profits and some of them are registered as for profit non-banking financial Institutions (NBFI). These NBFIs cannot collect deposits from the clients. Some of the Micro finance Institutions were allowed to collect deposits from the public. Micro finance Institutions are also registered as companies. NABARD also funds dinancial assistance to the non-governmental organizations as well as individuals to promote and nurture the self-help groups linked to Banks. Since 2006-07, NABARD has been compiling and analyzing the data on progress made in microfinance sector, based on the returns furnished by the banks operating in the country.

ECONOMIC PHASE V OF CONSUMER INSOLVENCY FROM 2010 TILL TODAY-

State of Andhra Pradesh, Mohammed Abbas Ali v. Masood Bin Mohammed Al-Khaili, the high court requested clerks in every district of that state to report on the number of insolvency petitions pending at the time. The court stated that the district court clerks reported a total of **6,113** petitions pending. Andhra Pradesh, India's fourth largest state, had a population of ***75.7*** million in 2001, so six thousand insolvency petitions is a small number per capita.

The market for consumer finance in India has been expanding dramatically over the last twenty years. This growth in consumer lending appears to have been spurred, at least in

part, **by** reforms that have liberalized the country's financial sector. More importantly, there are good reasons to believe that this consumer ending has contributed to the country's economic growth and development. ***ICICI Bank v. Kaur, (2007) 2 S.C.C. 711, 712-*** Yet various costs associated with consumer lending probably serve as a drag on these beneficial effects and may even outweigh them. **If** so, they should be constrained.

Consumer lending will likely continue to expand in India, even without additional reforms to further liberalize the financial sector. But moderating the negative effects of consumer lending will likely require more affirmative efforts. For a country in India's position-perhaps facing a dramatic surge in domestic consumption and consumer borrowing-it would be encouraging to see an emerging regulatory commitment to aggressively addressing the potential costs of consumer finance, especially over-indebtedness. Doing so may dampen the expansion of consumer credit to some extent, but it would likely help ensure that any further expansion would be more efficient and productive.

Jolly George Varghese v. Bank of Cochin[51]**-** But this case only extends to cases in which a debtor acts innocently. Thus, if a debtor is found to act in bad faith with respect to a financial obligation, he or she may still be subject to imprisonment. As noted above, there are good reasons to believe that an effective consumer bankruptcy or insolvency regime can promote the efficient deepening of consumer financial markets in emerging economies like India. This Part notes some of the potential benefits of a consumer bankruptcy or insolvency law. It then describes India's insolvency regime as it applies to consumers, noting some of the formal and practical limitations of the current regime and proposing that, with even modest reforms, it might contribute more meaningfully to efficient expansion of consumer financial markets in India.

While there is much variation in bankruptcy laws around the globe, there are some basic components of these regimes that arguably define the category. Most fundamentally, bankruptcy regimes provide a mechanism **by** which an insolvent debtor, or one experiencing some form of financial distress, can stay the collection efforts of its creditors and seek an orderly resolution or restructuring of its obligations. In the absence of an effective bankruptcy mechanism, creditors may face a collective action problem and race to collect from a struggling debtor, making insolvency returns unpredictable and, in some circumstances, reducing the creditors' overall

[51] ***A.I.R. 1980 S.C. 470, 475***

recovery. Bankruptcy law can also provide a timely resolution of claims and disputes to reduce the erstwhile wasting of assets. In theory, these aspects of bankruptcy law provide an ex ante benefit to borrowers **by** reducing the cost of credit. The functions of bankruptcy law are somewhat different in the consumer and corporate context. Generally, consumer bankruptcy serves to stay collection of an individual's obligations and then provide for a scheme of repayment and/or discharge of obligations. As with corporate bankruptcy, consumer bankruptcy ideally increases the insolvency-state return of creditors **by** enforcing security arrangements, providing for the orderly distribution of available assets to unsecured creditors, and **by** enforcing other inter-creditor obligations. Unlike business associations, consumers obviously cannot be liquidated.'Thus, in addition to improving creditors' insolvency returns, a primary goal of consumer bankruptcy law is to enable debtors to return to productivity and to reduce various collateral costs of the debtor's insolvency. The availability of debt-relief in bankruptcy, which varies significantly across jurisdictions, is generally the most important tool for reducing the social costs of consumer finance. **By** providing a meaningful opportunity for debt relief, a bankruptcy regime can effectively insure debtors against some of the effects of financial distress or insolvency. Borrowers presumably pay for this insurance in the form of higher interest rates, though it may also reduce the availability of credit to some borrowers. In addition to providing debtors with a "fresh start," and supporting the smoothing function of credit, this insurance may also make individuals more inclined to borrow for productive purposes in the first place. For entrepreneurs, the availability of debt relief in bankruptcy can serve as a form of business-failure insurance. The formal sources of this regime are two laws adopted in the early twentieth century-the Presidency Towns Insolvency Act and the Provincial Insolvency **Act.173** The Presidency Towns Insolvency Act applies in what were formerly the Presidency Towns under the British Raj-Mumbai (formerly Bombay), Chennai (formerly Madras), and Kolkata (formerly Calcutta). 174 The Provincial Insolvency Act applies in most of the rest of the country. For the most part, the basic substantive provisions of the acts are similar. For example, under both acts, an individual must be determined to be insolvent before the other substantive provisions of the acts apply. To be deemed an insolvent, one must be a "debtor," a category that includes judgment debtors. The insolvency acts apply to both individual (i.e., consumer) and commercial debtors, but corporate debtors cannot be subject to involuntary petitions. Both acts provide that creditors as well as debtors can petition Indian insolvency laws allow courts to stay other related proceedings affecting an insolvent's property and efforts to collect

obligations of the insolvent. But the stay is not automatic upon filing of a petition. Under both acts, suits affecting the property of the insolvent are generally subject to stay only after the debtor has been adjudged an insolvent, though courts can authorize such suits thereafter. Courts also have authority to protect the insolvent from imprisonment for obligations within its jurisdiction.

Once a petition is filed, however, courts do appear to have some discretion to enjoin efforts to move against a debtor or the debtor's property, to appoint an interim receiver for the debtor's property, and to order that the debtor be released from imprisonment. The Presidency Towns Act provides that the presiding court must hold a public examination of the insolvent debtor that "the insolvent shall attend thereat, and shall be examined as to his conduct, dealings and property." Such an examination is not required under the Provincial Insolvency Act. Under both acts, creditors submit claims against the debt**or,** and the presiding court is given broad authority to determine the assets of the debtor that are available to creditors. The insolvency acts provide, however, that some property is exempt from recovery **by** creditors.

If India has a long-standing formal scheme for consumer insolvency with an established body of case law, it is nonetheless extremely difficult to discern even the most general aspects of the operation of this scheme. There are no available data about insolvency cases in India-for example, no state-wide or country-wide data exists concerning how many cases are filed, who files these cases, how long these cases take, how many debtors are deemed insolvent, how many of these debtors receive a discharge of debts, and how much debt is discharged. In addition, the practical effects of a discharge in India are unclear. It is not clear if individuals who receive a discharge can effectively obtain credit thereafter. It does not appear that there is any regulation of reaffirmation of discharged debts, a common phenomenon elsewhere, and there is no available data on whether debtors in India do frequently reaffirm discharged obligations or not. Furthermore, beyond a handful of authorities that describe the formal regime and a few selected important cases decided under the insolvency acts, there is basically no secondary literature on consumer or household insolvency in India. Consumer bankruptcy is not mentioned at all in the various reports of the Reserve Bank of India or the National Statistical Survey. This general silence creates a strong impression that commentators, scholars, and policymakers in India do not believe that the regime is a significant aspect of Indian society or of its economy. In fact, there are reasons to doubt that many debtors are inclined to utilize the regime or that they have reason to believe that it would be useful to do so. The consequences of being deemed an insolvent can be severe while the regime's

potential benefits to debtors and creditors appear uncertain and may be slight in many instances. As a threshold matter, it is conventionally understood that insolvency cases move extremely slowly through the judicial system. Furthermore, the substance of India's insolvency law suggests that debt-relief or stays-of-collection are not readily available and that judicial outcomes under the laws are unpredictable.

The India Law Commission recently convened a committee with **INSOL** India to propose reforms to the consumer insolvency system.[52] The committee was charged with "examining the existing laws relating to personal bankruptcy in India and the desirability of changes in existing laws in the backdrop of fast increasing and easy availability of credit from banks, financial institutions and other lenders to individuals for private, family or household purposes." That committee concluded its work without making any recommendations. Yet the creation of this committee may provide evidence that India's existing consumer bankruptcy system is dysfunctional and marginal in its contemporary context, failing to provide benefits to consumers or to the broader society. It also presumably indicates, however, that policymakers believed-at least initially- that there is something worth salvaging and reforming in the existing regime. It may also provide some indication that consumer insolvency law, however dysfunctional it may or may not **be,** is more salient in contemporary Indian society than the lack of commentary about it would indicate.

There are reasons to believe that improvements in the regulation of consumer financial markets in India can promote broader economic growth in that country. But the extent of that potential benefit depends on the ability of Indian policymakers to address and limit the costs associated with consumer over-indebtedness. **A** higher-energy consumer insolvency law regime may prove to be a valuable component of policies in India that are designed to facilitate expansion of consumer finance and to reduce the costs of consumer indebtedness. Although it appears that India's consumer insolvency law regime is employed **by** tens of thousands of debtors and creditors

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[52] DIXIT, DRSK, and PURUSHOTTAM GROVER. "REFORMS IN INSOL REFORMS IN INSOLVENCY LAW—A COMP Y LAW—A COMP Y LAW—A COMPARATIVE ANALYSIS OF SELECT COUNTRIES YSIS OF SELECT COUNTRIES." *1. Building Strategies for Future—A Professional's Perspective—NK Jain 1 2. Economic Efficiency through Competition Law: A Case for Globalisation of India Inc.*: 58.

each year, it also appears that the regime is dysfunctional in many respects. For the regime to better serve its potential functions, it may need to become more expeditious and predictable; it may also need to provide somewhat more generous relief to insolvent consumer debtors. These reforms need not be fundamental. Reforming a handful of provisions to reduce the judicial acts and decisions required **by** the current regime might significantly improve the role it plays in Indian society. **If** Indian policymakers succeed in making the country's consumer insolvency regime at least somewhat speedier and more predictable, then the regime may not only help reduce the ex post costs of over-indebtedness, it may also improve the ex ante efficiency of consumer financial markets. Either effect might promote the continued deepening of consumer financial markets and, in turn, contribute to broader measures of growth and development in India.

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