Bill No. 165 of 2017

THE FINANCIAL RESOLUTION AND DEPOSIT INSURANCE BILL, 2017

A

BILL

to provide for the resolution of certain categories of financial service providers in distress; the deposit insurance to consumers of certain categories of financial services; designation of systemically important financial institutions;and establishment of a Resolution Corporation for protection of consumers of specified service providers and of public funds for ensuring the stability and resilience of the financial system and for matters connected therewith or incidental thereto.

Wrong Diagnosis, Harmful Prescription

A Critique of Financial Resolution and Deposit Insurance (FRDI) Bill, 2017

(Draft)

November 2017

All India Bank Officer's Confederation
National Alliance of People's Movements
New Trade Union Initiative
Centre for Financial Accountability

BE it enacted by Parliament in the Sixty-eighth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Financial Resolution and Deposit Insurance Act, 2017. Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different provisions of this Act.

2. In this Act, unless the context otherwise requires,— Definitions.

(1) "Appellate Tribunal" means the National Company Law Appellate Tribunal established under section 410 of the Companies Act, 2013; 18 of 2013.

(2) "approved financial sector regulator" means a financial sector regulator specified under the First Schedule, and includes the lead sector regulator where the specified service provider is regulated by more than one financial sector regulator; and in that case such regulators shall, from amongst them, designate a lead regulator by entering into memorandum of understanding, and in case of any disagreement, the Central Government may designate a lead regulator; 5

(3) "banking" means the banking as defined in clause (*b*) of section 5 of the Banking Regulation Act, 1949; 10 of 1949.

(4) "banking institution" means a banking company as defined in clause (*c*) of section 5 of the Banking Regulation Act, 1949 and includes— 10 of 1949.

(*i*) a corresponding new bank as defined in clause (*da*) of section 5 of the Banking Regulation Act, 1949; 10 of 1949. 10

(*ii*) an eligible co-operative bank;

(*iii*) a multi-state co-operative bank as defined in clause (*cciiia*) of section 56 of the Banking Regulation Act, 1949; 10 of 1949.

(*iv*) a Regional Rural Bank established under sub-section (*1*) of section 3 of the Regional Rural Banks Act, 1976; and 21 of 1976. 15

(*v*) the State Bank of India constituted under sub-section (*1*) of section 3 of the State Bank of India Act, 1955 and its subsidiary banks as defined in clause (*nd*) of section 5 of the Banking Regulation Act, 1949; 10 of 1949.

(5) "bankruptcy" means the bankruptcy as provided in the Provincial Insolvency Act, 1920 and limited by shares, created by the Corporation under section 50; 20

(6) "central counterparty" means an entity that interposes itself between counterparties to contracts traded in one or more financial markets, becoming the buyer to every seller and the seller to every buyer and thereby ensuring the performance of open contracts, and includes a system provider operating as a central counterparty under the Payment and Settlement Systems Act, 2007 or a clearing corporation under section 8A of the Securities Contract Regulation Act, 1956; 25 51 of 2007. 42 of 1956.

(7) "co-operative bank" means—

Wrong Diagnosis, Harmful Prescription

A Critique of Financial Resolution and Deposit Insurance (FRDI) Bill, 2017

Introduction

On 10 August 2017, Financial Resolution and Deposit Insurance (FRDI) Bill was introduced in the Lok Sabha by the Minister of State for Finance, Arjun Ram Meghwal. The said purpose of this Bill is to provide a comprehensive framework for the resolution of banks, insurance companies and financial sector entities facing bankruptcy. Its stated aims are to protect the customers in times of financial distress; inculcate discipline among the financial institutions by monitoring them, resolving (through merger) or liquidating them in case of failure and by limiting the use public money to bail them out; and provide time bound resolution process by creation of Resolution Corporation. It is meant to complement the Insolvency and Bankruptcy Code, 2016 (dealing with resolution of non-financial entities) in providing a comprehensive resolution framework for the economy. However, the Bill in its present form holds detrimental impacts for the public sector banks (PSBs), bankers, the people of India and the Indian economy.

In his 2016-17 budget speech while speaking on financial sector reforms, Union finance minister Arun Jaitley announced that the government will introduce a Bill on resolution of financial firms in the Parliament during 2016-17. He said, "The bill relating to resolution of financial firms will be introduced in the current Budget Session of Parliament. This will contribute to stability and resilience of our financial system. It will also protect the consumers of various financial institutions. Together with the Insolvency and Bankruptcy Code, a resolution mechanism for financial firms will ensure comprehensiveness of the resolution system in our country." Accordingly, on 15th March 2016, a Committee was set-up under the Chairmanship of Shri Ajay Tyagi, Additional Secretary, Department of Economic Affairs, Ministry of Finance with the mandate to submit a Report and a draft Code, which they did in September 2016. A press release[1] from Ministry of Finance issued on 28 September 2016, invited public comments on the Report[2] and the Draft Bill known as 'The Financial Resolution and Deposit Insurance Bill, 2016'[3] by 14 October 2016.

Another press release[4] issued by the cabinet on 14-June-2017 announced that the Union Cabinet, chaired by Prime Minister Narendra Modi, has given approval to introduce the Financial Resolution and Deposit Insurance (FRDI) Bill, 2017 in the Parliament. It was then introduced in the Lok Sabha on 10 August 2017, the penultimate day of the Monsoon Session of the Parliament, which meant that there was no scope for meaningful debate among the parliamentarians. There were disruptions among the opposition on the cavalier manner in which the Bill was tabled without distributing the copies timely among members before the introduction. However, despite the commotion, the Bill was allowed to be introduced.

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[1] http://pib.nic.in/newsite/mbErel.aspx?relid=151215
[2] http://dea.gov.in/sites/default/files/report_rc_sept21_1.pdf
[3] http://dea.gov.in/sites/default/files/FRDI%20Bill-27092016_1.pdf
[4] http://pib.nic.in/newsite/PrintRelease.aspx?relid=165620

On the same day, it was referred to a joint committee without even a preliminary reading of the Bill and a debate on its principles and spirit. Objections were raised by some parliamentarians on the need of joint committee when there was already a standing committee on finance, which was empowered to look into the Bill and also had representation from all political parties. It was alleged that the standing committee was being circumvented in a quest to secure passing of the Bill in both the houses, which are bound by the report of the Joint Committee. It seemed that either the government had some hidden agenda or was worried that the Bill would be blocked in Rajya Sabha, where the ruling party did not enjoy the majority. A list of members of the joint committee is given in Table 1.

Box 1: List of members of Joint Committee on the Financial Resolution and Deposit Insurance Bill, 2017

Members from Lok Sabha

S.No.	Name of Members	Political Party
1	Anil (alias Padmakar) Gulabrao, Shirole, Shri	Bharatiya Janata Party (BJP)
2	Baheria, Shri Subhash Chandra	Bharatiya Janata Party (BJP)
3	Dr. Kirit Somaiya	Bharatiya Janata Party (BJP)
4	Dubey, Shri Nishikant	Bharatiya Janata Party (BJP)
5	Galla, Shri Jayadev	Telugu Desam Party (TDP)
6	Gogoi, Shri Gaurav	Indian National Congress (INC)
7	Jaiswal, Dr. Sanjay	Bharatiya Janata Party (BJP)
8	Karunakaran, Shri P.	Communist Party of India (Marxist) (CPI(M))
9	Kirtikar, Shri Gajanan Chandrakant	Shiv Sena (SS)
10	Mahtab, Shri Bhartruhari	Biju Janata Dal (BJD)
11	Muddahanumegowda, Shri S.P.	Indian National Congress (INC)
12	Pal , Shri Jagdambika	Bharatiya Janata Party (BJP)
13	Paswan, Shri Chirag	Lok Jan Shakti Party (LJSP)
14	Reddy, Shri Konda Vishweshwar	Telangana Rashtra Samithi (TRS)
15	Roy, Prof. Saugata	All India Trinamool Congress (AITC)
16	Shetty, Shri Gopal Chinayya	Bharatiya Janata Party (BJP)
17	Singh, Shri Abhishek	Bharatiya Janata Party (BJP)
18	Udasi, Shri Shivkumar Chanabasappa	Bharatiya Janata Party (BJP)
19	Venugopal, Dr. Ponnusamy	All India Anna Dravida Munnetra Kazhagam(AIADMK)

Vacant Seat: 1

1. Shri Gajendra Singh Shekhawat resigned from the membership of the Joint Committee w.e.f. 04.09.2017 on his appointment as Minister.

Members from Rajya Sabha

S.No.	Name of Members	Political Party

1	Yadav, Shri Bhupender	Bharatiya Janata Party(BJP)
2	Anand Sharma, Shri	Indian National Congress (INC)
3	Gujral, Shri Naresh	Shiromani Akali Dal (SAD)
4	Kalita, Shri Bhubaneswar	Indian National Congress (INC)
5	Misra, Shri Satish Chandra	Bahujan Samaj Party (BSP)
6	Patel, Shri Praful	Nationalist Congress Party (NCP)
7	Ray, Shri Sukhendu Sekhar	All India Trinamool Congress (AITC)
8	Sancheti, Shri Ajay	Bharatiya Janata Party(BJP)
9	Singh, Shri Ram Chandra Prasad	Janata Dal (United)
10	Verma, Shri Ravi Prakash	Samajwadi Party

Joint Committee on the Financial Resolution and Deposit Insurance Bill, 2017 was constituted on 19 August 2017 under the Chairmanship of Shri Bhupender Yadav and was mandated to submit its report by the last day of the first week of the next session. It invited public comments on the Bill via a press release[5] on 8 September 2017, to be submitted by 29 September 2017. It needs to be mentioned here that the entire process has taken place in a hurried manner and enough time has not been given to foster a meaningful public debate.

The following is a critique of the Financial Resolution and Deposit Insurance (FRDI) Bill, 2017 from the perspective of its impact on public sector banking and non-banking institutions, public sector insurance companies, etc. [For the sake of convenience we will use public sector banks (PSBs) to represent all of these].

According to this Bill, in case of a sick PSB, the resolution can be undertaken in following ways- (i) transferring the assets and liabilities of the firm, (ii) creating a bridge service provider, (iii) bail in, (iv) merger or amalgamation of the firm, (v) acquisition, or (vi) liquidation (subject to approval by the National Company Law Tribunal). This implies that assets and the liabilities can be transferred to private companies, bridge service provider can be a private company, depositors can lose their deposits under the provision of bail in, and merger, amalgamation and acquisition can lead to privatization of banks. The current drive in government towards privatization of PSBs is a clear indication of the direction in which the wind is blowing.

However, it has to be pointed out that accumulation of non-performing assets (NPAs) and the bad lending practices are the direct result of faulty government policies, the individuals responsible for sanctioning loans to wilful and repeat defaulters, and the wilful defaulters themselves. It is unwise to punish the victims and let the offenders go free, which is what passing this Bill will entail.

Its impact on the safety and security of people's deposits, as also on emoluments and the very job security of the employees and officers is apparent and manifest on the face of it; but the most dangerous consequence is that it will take out the issue of existence or liquidation of a public sector bank from the domain of public debate and leave it to

[5] http://pib.nic.in/newsite/PrintRelease.aspx?relid=170610

the whims of bureaucratic dictates. This in return, will affect farmers, small, marginal and landless peasants, all sections of urban working people, small traders and businessman, employed and unemployed people. These people and others who are dependent on the public sector banks for saving their money as well as loan will have an economic meltdown.

Concerns Regarding the Provisions of the Bill

1. Establishment of All Powerful "Resolution Corporation":

This Bill seeks to establish a Resolution Corporation (RC) as provided for in Chapter 2 of the Bill. This Corporation will work as a principal agency to provide deposit insurance, classify banks based on risk to viability, provide for resolution and liquidation of a specified service provider (SSP) and act as an administrator for the SSPs classified as being "critical".

The board of RC would have sweeping powers to order amalgamation, merger, liquidation and acquisition of any bank- including the SBI and other nationalised banks, regional rural banks, co-operative banks and payment banks, any insurance company including the LIC and other nationalised general insurance companies and any non-banking financial institution if, in its opinion and judgement, the concerned institution (bank or insurance company) has got "imminent" or "critical" risk to viability. The RC will thus become an all powerful body, usurping the domain of Reserve Bank of India (RBI) and other regulatory institutions.

Following are the ways in which RC will become undesirably powerful-

- Section 42(2)(b), 43(3)(b)(iii), 49(1)(i), 58(3)(c) and 60(1) refer to denial of bonus, denial of emoluments, change in service conditions and summary termination of employees under various states of resolution of a SSP. Such provisions provide the RC with excessive power with no accountability for ensuring farness or justice. According to the Bill, no employee can question the decision of RC in case of termination or loss of job once the Corporation takes over the financial institution. It is written in Chapter XI, 58, 3(c) that "no person shall, notwithstanding anything in any other law or in any contract, or the memorandum or articles of association of the specified service provider, be entitled to claim any compensation for the loss or termination of his office". This is the violation of the rights of the workers. This also means that the workers will be left at the mercy of bridge service providers and the RC.
  The Constitution under Right to Constitutional Remedies provided under Sec 32 (4) says "The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution". But this Bill has a provision under Sec 65 as well as Sec 133 prohibiting Constitutional remedies by specifically saying that no proceedings for liquidation of a service provider shall be entertained by any Court or Tribunal other than the Tribunal in accordance with the provisions of this Act (i.e. National Company Law Tribunal – NCLT). Sec 133 says "Unless otherwise provided in this Act, no court or other tribunal shall

have jurisdiction to entertain or adjudicate upon any matter which the Corporation, the appropriate regulator, the Tribunal or the Appellate Tribunal is empowered to decide or determine under this Act and no court or tribunal shall grant any injunction in respect of any actions proposed or reverse any such action"

- Under Section 36(5), the RC will have the power to classify SSPs into the five categories of risk to viability- low, moderate, material, imminent and critical. Currently RBI undertakes risk assessment of financial institutions. However, the Bill will transfer the absolute power to the RC and the regulator will merely enjoy advisory powers. Under Section 37, the Corporation has the power to override the regulator's classification of an SSP as being at material risk. It also leaves open the possibility for the Executive to discriminate against public sector financial institutions.
- According to Section 4 on composition of RC, 7 out of 11 board members will be appointed by the Central Government. This implies that the Board will be under the influence of the Executive and not subject to the oversight of the Parliament. Thus, the RC will regulate the entire financial system with an executive fiat and this will mean that the autonomy of the body is questionable.
- Section 10 ensures that RC will not be held accountable to defects in its constitution and defects in appointing a member or in the event of "irregularity of procedure not affecting the merits of the case", effectively leaving regulation of the entire financial system to Executive fiat.
- There are no clauses to ensure scrutiny of the decisions of the RC and its oversight.
- Resolution Corporation is expected to cover all firms regulated by the RBI, SEBI, IRDA and PFRDA.
- RBI has already initiated restoration plans for certain weak banks under its Prompt Corrective Action framework and the power of RC to intervene in banks having "material" risk to viability with interfere with the former.
- A service provider can directly approach RC for voluntary resolution, bypassing the regulator, even if they do not fall under the critical or imminent risk category.
- The regulators are required to share information to RC- basis of classification and on inspection findings regardless of risk to viability to a service provider.

What is proposed in this Bill is creation of a Supreme Authority which will be more powerful than Reserve Bank of India, Central Vigilance Commission and even Central Bureau of Investigation. Such an authority will be under the Finance Ministry as the Ministry has powers to appoint the Chairperson and most of its member. This implies that the independence of this authority will be subject to the political party in power.

When the government, RBI, board of the banks have all played an active part in disbursing the loans and in their subsequent restructuring, then can the government now relegate their responsibility when the economy is in a slowdown with the manufacturing sector stagnant? The public sector banks enjoy the trust of the people even under such severe stress because they are government banks and come with an implicit sovereign guarantee. Hence, people do not fear run on PSBs. If the government, through this Bill,

begins to hand over its responsibility and that of the RBI to a Resolution Corporation, it would be breaking this trust.

A situation of conflict of interest may arise in case of a specified service provider being declared critical risk to viability. Here, as per Section 58, the management of the affairs will vest in the Corporation as the administrator. Therefore, in such a situation, the RC will be responsible for both management and monitoring of the before mentioned specified service provider.

2. Deposit Insurance and Annulment of DICGC

FRDI envisages forthwith closure of a subsidiary of the RBI "Deposit Insurance and Credit Guarantee Corporation" (DICGC) established in 1961, which has so far been the insurance cover for the savings of the depositors. This Bill has clearly stated that the Deposit Insurance and Credit Guarantee Corporation Act, 1961 will become void. However, it does not clarify if the deposit insured limit (one lakh per person) will be increased or altered or will it remain the same?

Sections 22(2) and 29(1) seize the power of the Parliament to fix both the premium amount deposit insurance payable by insured SSPs as well the amount guaranteed legislatively to the depositors currently under the DICG Act 1961 and transfers it to the Resolution Corporation. Section 22(2) states that "Every insured service provider shall additionally pay such amounts, at such intervals and in such manner, as premium for deposit insurance, as may be specified by regulations made by the Corporation" and Section 29(1) states that "The Corporation shall, in consultation with the appropriate regulator, specify the total amount payable by the Corporation with respect to any one depositor, as to his deposit insured under this Act, in the same capacity and in the same right."

3. Bail-In:

According to Section 48(1)(c), the RC can choose to resolve a SSP classified as critical risk to viability through bail-in instrument. Bail-in refers to a situation wherein, the depositor's money, beyond the deposit insured, can be converted into equity and the depositors can be made shareholders with/ without their consent. This means that the innocent depositors will have to bear the brunt and sacrifice their hard earned savings for the greater good of saving the banks and the borrowers will go scot free. Thus the Bail in concept is a double whammy. Here the Bill is taking away the right of the depositors to get back what they deposited in a Public Sector Bank in full trust that their money is safe, as the PSBs are backed by the sovereign guarantee of the country. This raises an important question that how can a depositor who has no authority in deciding the investments of a financial institution be made to bear the brunt of the failure of such reckless lending?

Post 2008, in order to protect big banks from economic recession, several provisions were made to keep liquidity in the bank and the option of bail-in was introduced.

This crisis took place recently in Cyprus where the depositors lost almost 50% of their savings when the resolution corporation implemented a "bail-in", which is similar to that proposed in this Bill. In March 2013, the people of Cyprus had to face the choice where depositors with over €100,000 would either lose 40% of their money (Bank of Cyprus) or lose 60% (Laiki). While the banks survived, the depositors lost their savings. Just in February that very year (a month before the bail in was implemented), the government of Cyprus announced that it had reached an agreement for bail out with the European Union and yet the country opted for bail in instead of bail out. There was even a limit over withdrawal above €100 put by banks.

The government knows that problem of bad loans have been caused by large corporate borrowers, including some who are wilful defaulters. It is then unfortunate that through this Bill the burden for debt repayment is shifted on to the depositors and not borrowers.

4. Haircut:

As per Section 44(1)(a), the appropriate regulator can "allocate uncovered losses caused by participant default, including variation margin haircutting." In section 44(2)(b), haircut is defined as "percentage reduction in the amount that is payable to the creditors."

The term haircut has been in the financial lexicon for a while now. It is nothing but writing off a part of principle loan amount, which means the borrower will have to repay only a part of loan taken and the lenders will incur losses. If the purpose of the Bill is to help the banks address the problem of NPAs, the government should have been putting efforts in recovering the money that is due to the banks and not writing it off. Writing off money does not constitute recovery of loan or mitigation of losses. The changes in legislations are not promising when the RBI on one hand directs banks to file bankruptcy proceedings against companies and on the other orders them to keep 100 percent provisions for bad loans in case of liquidation! Such provisions are nothing but stealing from the poor to pay the rich.

5. Merger And Liquidation Of The Public Sector Banks:

This Bill, in Section 48(1)(d), provides for merger or amalgamation of the specified service provider for the purpose of resolution.
The merger of State Bank of India with its subsidiaries on the 1st April 2017 was claimed to be a "success" that has catapulted SBI into top 50 global banks in terms of its assets, expanding its customer base to 37 crore, with a deposit base of Rs. 26 lakh crore. However, the first quarterly results[6] of financial year 2018 saw the operating profit of SBI group declining by 13.72% from Rs. 13,762 crore in the first quarter of 2017 to Rs. 11,874 crore in the same period for the year 2018. Despite this revelation, which invalidates the argument that merger will increase the assets of a bank, the

[6]https://www.sbi.co.in/portal/documents/44589/101996501/Press+Release+Q1FY18/19bd6486-72f7-41cc-8b38-b80d22e2af8d

government is hell bent on more mergers, when even rating agencies[7] have shown scepticism of its effectiveness in fighting NPAs.

Post this debacle the Finance Minister recently said that the government would now merge stronger banks together and not stronger ones with weak banks. The merger of Banks will only advance monopoly capital and not help the common citizen of the country. Merger also means reduction in brick and mortar branches, which will be detrimental to the country which is still under banked when compared with other developing and developed nations. Hence what India needs is an expansion of banks and not their consolidation! Branch closure will lead to surplus staff and consequently cutting down on the staff.

The banking crisis is today being used as an opportunity to overhaul the banking system as we know it. The combination, of merging small banks to create a few 'lending giants' along with the introduction of payment banks, is a perfect way to end brick and mortar branches.

Apart from mergers, the Bill also proposes to bring about various amendments across legislation like SBI Act to create provisions for liquidation of SBI, RRBs, other Public sector banks and Co-operative banks. Any Act passed in the Parliament which is the supreme law making authority of the country should create confidence in the minds of the people. In our country more than 80% of the depositors are classified as household depositors with small savings which they keep in the bank with the absolute trust that the government will ensure repayment of the same. The trust in the public sector banks is more because of the sovereign guarantee. However, this Bill has brought in SBI as well as other PSBs under its ambit and has provided a clause for liquidation of these banks. This will create insecurity among the depositors. Everyone should recall that in spite of the US financial crisis 2008 which spread to Europe and most part of the world there was no run on Indian Banks because of this trust. If this trust is broken it can lead to turmoil even in case of a small crisis in financial sector. People will not like to keep them their savings in the banks as they may lose them in case of liquidation.

6. Systematically Important Financial Institutions (SIFI):

Under Section 25, the ability to characterize what is a SIFI is vested specifically with the Central Government. Moreover, Sections 26 (2) and 38(2), treat all SIFIs that are classified as being 'low' or 'moderate' risk as if they were permanently under 'material' and 'imminent' levels of risk. These clauses adequately read together to give the Executive the ability to have control over the immediate, everyday, control of any financial institution. Doing this would not only delay the decision-making and response time but also aggravate the SIFI's lack of autonomy and also serve as a deterrent for further growth.

Speaking of the Indian scenario, the RBI has already identified the State Bank of India, ICICI Bank and HDFC Bank as SIFI. What is new is that the Bill in Section 25(1)

[7]https://www.bloombergquint.com/business/2017/06/08/consolidation-not-the-answer-to-banking-sector-stress-say-moodys-and-icra

states: “any person designated as Domestic Systematically Important Bank by the Reserve Bank of India shall be deemed to be a systematically important financial institution for the purposes of this Act, for a period of six months with effect from such date as the Central Government may, by notification, specify.” If the SIFI can be de-designated so easily by the Central Government after 6 months, then this defeats the entire purpose of identifying systematically important institutions. They have been identified as SIFI, in the first place, because they are large, complex and have huge impact on people. How can that change in just six months? What can happen to a large financial institution in six months that it loses its significance? If something is systematically important, something is too big to fail, or if it is so important that its failure will be highly destructive for economy, then how can the government let it fail in six months? This defeats the entire purpose of identifying SIFIs.

7. Bridge Service Providers:

This Bill proposes the establishment of bridge service providers. Its members will be appointed by the Resolution Corporation and even private companies can be considered for the same. According to Section 50 (1), “The Corporation may create a bridge service provider by incorporating a company under the provisions of the Companies Act, 2013” and Section 50 (4) states that “The bridge service provider shall have a board of directors comprising of at least three directors and not more than ten directors, as appointed by the Corporation.” However, the nature of the persons who can be appointed and the criteria for a company to be selected is not mentioned. Therefore, there is ambiguity regarding the nature of the bridge service provider.

If a private service provider is given the mandate to resolve a public sector bank, what is the guarantee that it will proceed in an unbiased manner and try all other means before calling for its liquidation? Stipulated time period for a service provider is one year (which can be extend by another year), but is this time sufficient? This will only push banks into liquidation, rather than any other durable solution. This service provider can also be politically biased.

8. Making the Judiciary non-functionary:

Section 65(1) states “Notwithstanding anything in any other law for the time being in force, no proceeding for liquidation of a specified service provider shall be entertained by any court or tribunal other than the Tribunal, in accordance with the provisions of this Act.” Section 133 also prohibits constitutional remedies by preventing courts and Tribunals from entering any proceedings for liquidation of a service provider. The Corporation according to this Bill can act with impunity and the only appellate body is the National Company Law tribunal (NCLT), which is highly understaffed compromising only 11 benches, 16 judicial members and seven technicians.

A similar restriction is imposed on the employees who are terminated under this act, that they cannot avail a judicial relief. Proposing such a provision in the Bill will put up

restrictions on the judiciary and abridge peoples' rights, which make this provision unconstitutional.

9. Key Attributes For Financial Resolution Of The Financial Stability Board:

The 2008 financial recession was a strong blow to monopoly capital as their "too big to fail" model crumbled in the market crash. The state, which had been pushed out of the economic game, governed by the rules of the market, had to step in to bail out many of the banks and corporations. The global economy is still haunted by the spectre of 2008. Hence 2008 became a defining moment in the recent financial history giving birth to new and innovative ideas to save monopoly capital.

The Financial Stability Board, 2009 (FSB) was formed or rather renewed from its earlier descent of Financial Stability Forum (1999) by the G7 countries, which was the aftermath of the global recession. Its primary objective was to ensure the stability of the big corporate companies and monopoly banks. Thus, the Financial Stability Board brought out a resolution regime into picture. A report titled "Key Attributes of Effective Resolution Regimes of Financial Institutions", for Financial Resolution, was adapted in November 2011 by the G20 Heads of the States as new International standards for resolution regimes. This was endorsed by IMF. FSB and IMF were to individually and jointly assess the progress of the implementation of these policies through peer review of member countries and inform their progress to G20 countries.

The Resolution Authority (as mentioned in the report) is the institution that would ensure this financial stability. At the risk of being dismissed as over simplification – the simplest way to understand the purpose of the Resolution Authority is to ensure that there is money at the financial institutions at all times, just in case the market crashes again.

The FRDI Bill is in fact the product of this report of the Financial Stability Board. However, many parts of this Bill along with the Resolution Corporation just reproduce the model and other recommendations of the report in letters as well in spirit without even considering the Indian scenario. These include the provision of bail-in, bridge service provider, international resolution, haircut, Resolution Corporation and its discretionary and sweeping powers, all taken from the report. Some parts of the Bill have even been adopted verbatim from the "Key Attributes of Effective Resolution Regimes for Financial Institution" document published in October 2014. In RBI's "Financial Stability Report December 2016", it is mentioned in Section 3.25 that " the setting up of Resolution Corporation would help India adhere to Financial Stability Board's Key Attributes (FSB-KAs) of Effective Resolution Regimes for Financial Institutions". All of this has been done with no due consideration for the people of the country that stands to lose if these resolution tools, such as the bail-in are implemented.

Contrary to all this, India was relatively insulated from the effects of the market crash because, among other reasons, the Indian banks were majorly deposit driven. The Indian economy survived because it had state run financial institutions (public banks). The Indian economy and its intuitions are very different from that of the west. In such a

situation, there is no reason for the government to accept this report and adhere to it without taking the Indian reality into consideration? The committee headed by Mr. Ajay Tyagi, Additional Secretary, Department of Economic Affairs has only copied from the recommendations of the Financial Stability Board and has not gone into the assessment of the Indian financial sector. Hence, the recommendations are not practical and not suitable for our country.

We cannot compare the public sector banks in India with the banks of the western countries. Between 2008 & 2012, 465 banks failed in the United States of America during the financial meltdown because they were private. Many of them were small and some of them were big. Some were undertaking only specific areas of business like "Mortgage Banks". On the other hand, in India post 1969, due to the government guarantee, no bank has failed.

10. Privatisation Route through FRDI

State Bank of India Act has a provision that SBI can never be liquidated, whereas this Bill proposes to amend various Acts including SBI Act and create a provision for liquidation of SBI, public sector banks, RRBs and co-operative banks. Moreover, it seems that instead of being liquidated, these banks will be handed over to the private sector. It was only because of the mismanagement by the private sector that the banks were nationalised. After nationalisation banks have played a major role in development of the economy. Even now for the growth recovery of the economy, banks have to play a key role. At this crucial juncture the passage of this Bill will only lead to further deterioration of the economy.

Conclusion

A Bill of this nature has the potential of changing the financial landscape of the country. Yet, it has not engaged seriously with the Indian systems of finance in its drafting. The Bill negates the existing systems of resolution instead of strengthening it and has focused on blindly adopting the FSB's recommendations. Given that the PSBs are already facing NPA crisis, the government should look into recapitalizing and recovering the loan money with the intent of helping the financial institutions. Instead this Bill will tear down the institutions and burden the people of this country.

The committee in its invitation for views had mentioned 'all stake holders'. The largest stake holders are the working people and retirees who have deposits and savings in the banks and a large number of them are unaware of the stakes against them.

It is known that over 89 percent of the bad loans are those of big corporate companies. Given the slump in the growth and stagnation of many vital sectors in the recent past this situation was inevitable. That being said, the government has not taken any steps against wilful defaulters. Even the Supreme Court had in its verdict asked for the names of the wilful defaulters to be published. Publishing the names of the wilful defaulters and holding them accountable would certainly be less tedious than to liquidate banks and bail-in the deposits of hundreds of people of the country.

Life Insurance Corporation (LIC) of India which was started with just an investment of Rs. 5 crore by the Government of India has today grown into a great institution with excellent track record of honouring the insurance policies and the LIC also contributes a huge sum to the annual budget of the country. LIC is also a shareholder in most of the banks and financial institutions as per the directives of the government. With the passage of the Bill, an institution as great as LIC and General Insurance Corporation (GIC) of India will also come under the ambit of resolution through Resolution Corporation. Moreover, RRBs, which have a large outreach in rural areas and cooperative banks which cater to the rural and remote parts of the country, will also be easily liquidated. State governments and NABARD support them as they provide the last mile outreach of credit to farmers and poor. Therefore, the Bill also infringes on the powers of the state governments. What is this, if not an attack on the people, especially those who are more dependent on the State for their survival and livelihood?

When the government, RBI, board of the banks have all played an active part in disbursing the loans, then the government cannot relegate its responsibility now. The public sector banks enjoy the trust of the people even under such severe stress because they are government banks and are regulated by the Central Bank of the country. The public sector banks form the backbone of the economy. If the government through this Bill reshapes public sector banks and redefines their role (by minimising it) in the Indian economy, without addressing policy measures (including the lack of them) that have contributed to the crisis of public sector banks and the needs of the economy, then the government will further deepen the economic crisis. This would amount to breaking the trust of the people.

For Copies:
Centre for Financial Accountability
Address - R–21, Ground Floor,
South Extension-2, Delhi – 110049

Phone: +91-11-49123696 | E-mail: info@cenfa.org
Website: http://www.cenfa.org/