UNAUTHORIZED LENDERS THREAT TO INDIAN FINANCIAL SYSTEM

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Abstract- In this article the authors have tried to analyze how these digital lenders are threat to Indian financial system and this critically analyze what are the guidelines issued by R.B.I. in relation to digital lending and where these digital lenders violate and play with the loopholes of law

This article also analyses the contractual agreement and contractual liability of the parties involved in digital lending and what are the loss sharing ratio between the two under what conditions. The article is silent on the following whether all necessary procedures have been followed by the digital lenders in bringing their entity into existence

The article also focuses under which circumstances penal liability will arise on the digital lenders from the borrowers' side and also focuses on the other side of the coin that is the fault of the borrower and when borrower will be a part of contributory negligence

This article how this authorized digital lending is not according to the procedure established by law and hence threat to the Indian Financial System

1. INTRODUCTION

In the present era everyone is in the thirst for growth or working hard to capture the market share is the main motive of every market player existing in the market either they acquire the other smaller to grow big and expand their business and capture greater share in the purchasing power of the consumer budget

So they lubricate them with exciting offers such as discounts, one plus one offer, pay later options to their consumer and they involve some subsidiary to provide this services without verifying their background whether they have proper authorization provide this services

When we come to online food ordering platforms such as swiggy, zomato have tie ups with simpl and other player who provide pay later option by this platform are they have the authorization to do the same, have they followed the actual standards prescribed by the R.B.I.

The article focuses to analyse this aspect and how it is a threat to consumer and unknowingly the comes under the ambit of financial crimes. They also violates the ambit of caveat emptor let the buyer be aware and the buyers are not aware of the fact wether the companies providing these services have authority are those requirement have been fulfilled and they are following the standard established by R.B.I

This organisation also collects the personal data from the consumers when we take example mpocket they ask you to fill various information digitally such as your pan number, adhar number and other valuable details are they authorized to do even the two persons are unknown to each other which again becomes a base for online fraud

The persons collecting data may be not as the system with the company may with the possession of different persons not with a single person but according to the duty hours of different person which is easily accessible to each and every person which again curtails the ambit of Article 21 which there is a essence of right to privacy

The obiter dicta from Keshavnanda Bharti v.s. State of kerela has already stated that the fundamental rights cannot be violated but this companies becomes the mechanism to curtail this fundamental right this apps and subsidiary is also becoming a great threat to threat to the consumer protection

2. CASE STUDY WITH RELATION TO R.B.I GUIDELINES FOR DIGITAL LENDERS

A. As per the guidelines of R.B.I. the regular entities should provide key fact statements (KFS) to the borrower before executing the contract, the kfs should be provided in the standardized format on all digital lending products as per the annexure

The authors raises the question for adhering this guideline by digital lenders Mpocket, lazypay and many other players existing in the market does they provide kfs to the people availing their services which is also against the R.B.I. and also violates the doctrine of caveat emptor

The key fact statement apart from other necessary information should contain the details of APR, the recovery mechanism, details of grievance rederasal officer specially designated to deal with digital lending, fintech related matter and cooling off and lock up period.

As per the authors by not providing this information the main motive of the digital lenders like lazypay and other players have the intention to commit fraud with the consumer who are availing their services as they knowingly conceals these facts, as the market players like Zomato who provide this opportunity to their subsidiary to join hands with them to capture the share of the market are equally liable U/S 34 of INDIAN PENAL CODE 1860 which states about common intention
B. DIGITALLY SIGNED DOCUMENTS This guideline ensures that to follow the requirement of digitally signed documents on the letter head of RES (REGULATED ENTITIES) that should be kfs summary, loan product sanction letter terms and conditions, privacy policies should automatically flow to the borrower through s.m.s. but when any lender borrows some amount of loan from mpocket or any online digital money lenders neither they provide their privacy policies and other digitally signed documents. Inspite they play in this opportunity of the person who is need of finance opt this means to fulfill their financial needs, as this digital lenders have duty of care against the borrower providing them all information as stated in the guidelines they breached that duty due that breach of duty the defendant suffered losses, so digital lenders are also liable under law of torts. As this act cannot be commuted under section 304B OF INDIAN PENAL CODE 1860 as there is no criminal liability is being formed but this act of plaintiff give rise to tortious liability and unliquidated damages SO this case falls under the law of torts.

C. LOAN DISBURSAL SERVICING AND REPAYMENT This guideline established by R.B.I. covers the area of loan disbursal, servicing, repayment of loan to digital lenders. This guideline clearly states that the digital lenders will clearly states about the servicing fees, loan disbursal and other mandate regarding this area, as it is clearly stated the repayment should be made to the RE (REGULATED ENTITY) account and the loan disbursal should be made to the borrowers account only and not in the third party account until and unless the R.B.I. guidelines permit that for the digital lenders or any other law prevailing in the land permits the same. The authors critically analyze that the digital lenders like mpocket and others are operating digitally they are not clearly stating their processing fees and even the borrowers are not about the RE status and their financial details as the question arises whether the digital lenders guiding the borrower to make payment in their actual account or they are getting the same in third party as none of the parties are aware of the accurate financial details and hence it is violative of the R.B.I. guidelines stated above. As the borrower cannot be asked to repay the amount as per the INDIA CONTRACT ACT 1872 Section 4 says the communication when complete as the digital lender has not made their communication must be complete but in the above case their no proper communication so the contract between two parties are not valid so the digital lenders are not authorized to recover the amount from the borrower as per this section it is clearly stated in the case of Mohribibi vs Dharmodas. As section 76 OF INDIAN PENAL CODE states that mistake of fact is an excuse but mistake of law is not an excuse “IGNOTANTIA FACTI EXCUSANT IGNORANTIA JURIS NON EXCUSANT” As the lender might not be aware of the financial details such as that the account number provided by the borrower belongs to the borrower only the ignorance of this fact may be an excuse but they are aware of the R.B.I. guidelines which cannot be an excuse. As per the authors the digital lending companies is liable under section 420, 405, 465 of INDIAN PENAL CODE, 1860 section 16 and 18 of INDIAN CONTRACT ACT 1872.

GRIEVIANCE REDRASAL. As per the guidelines established by R.B.I. in relation to grievance redressal officer the RES and lsps engaged by should ensure they have appointed a proper grievance redressal officer for dealing the matter of complaint raised by borrower and issues and the grievance officer is also entitled to deal the complaint against their respective DLAS. The contact details of the grievance nodal officer should be displayed in respective of the RE and its LSPS and DLAS and also in the KFS (KEY FACT STATEMENT) provided to the borrower and the procedure for lodging complaint should be made on the website of the digital lenders and thus this complaint should be stipulated within a period of 30 days. The complaint can be lodged in any of the remedies available to the borrower- Complaint Management scheme (C.M.S), Bank Integrated ombudsman scheme complaint must be lodged as per the guidelines provided by the R.B.I.

The authors would like to comment that digital lenders don’t publish any information about the grievance redressal officer in which some people are daily dealing with it as it is operated through internet the outreach of this crime by this entities becomes large and hence this guideline also asks to provide K.F.S in which the above stated information should be present. THE Digital lenders violates the basic maxim CAVEAT EMPTOR which means let the buyer be aware without following the provisions they are dealing in borrowing and lending business they can also be made liable under cheating, forgery under the Indian penal code. The author would also like to comment that the communication is not complete and the contract is not valid and hence the borrower is not liable to pay the amount and these digital lending companies end up in destroying the cibil score of the borrower which represents the borrower as a financial cheater in the financial world as his reputation is hampered. Therefore the digital lender should also be liable under section 499 of INDIAN PENAL CODE 1860 as the digital lenders are themselves the unauthorized financial lenders and threat to Indian financial system and they represent that the borrower are not paying their borrower but according to the actual they are not liable to pay any amount on unauthorized lenders.

COOLING OFF/ LOOK UP PERIOD As per this guideline of R.B.I. in terms of digital lending the borrower shall be given an opportunity by an explicit position to exit the loan by paying the principal amount and the proportionate APR without penalty during this period, the cooling period should be decided by the board of RE. The period decided should not be less than three days and can be tenured up to seven days, even after the lock lock up period adhering the guidelines of R.B.I. pre payment continue to be allowed.

The author would like to comment that the digital lenders does not disclose this information to the borrower which again violates the basic principle of CAVEAT EMPTOR which means let the buyer be aware but the borrower taking this services are not aware of this fact.
The communication is incomplete u/s 4 of the Indian Contract Act 1872 which violates the basic principle of this section that is communication must be complete hence there is no valid contract between the parties therefore the borrower is not liable to pay any money to the digital lender.

The digital lender should also be liable under fraud, misrepresentation with the borrower under the valid provision of Indian Penal Code and even a strict step should be taken by the regulating body to control this type of financial fraud in the name of late payment fees and mentally harassing the borrower as this act of the digital lenders affects cibil score of the borrower due to which they are made ineligible for availing financial services by the banks in the country.

**COMPREHENSIVE PRIVACY POLICY** According to this guideline to adhere with the privacy policy complaint lodged with applicable laws associated regulation with R.B.I guidelines for the collection of the data of the borrower should make a comprehensive policy.

The author would like to comment that the digital lenders is merely not concerned with adhering the guidelines of R.B.I., the digital lender should provide a standard form of personal data protection of the borrower but they must provide the same in K.F.S. but the digital lenders are least concerned about the data protection of the borrower.

The authors on their own research came to know that the borrower get system generated Call for the repayment.

The authors are in a great dilemma what about the personal data of the individual as it violates article 21 of constitution of India and hence this digital lender serve as a source of data for the cyber criminals, hence they come under the ambit of cyber laws.

**According to Article 21 of Indian constitution** states that there is a fundamental right of right to life and personal liberty which also includes as stated in the R.B.I. guidelines it clearly stated that there must be a comprehensive policy for collecting and handling of the collected data of the borrower but they lacks to implement this guideline so the digital lenders are involved in infringement of fundamental Rights of their borrower.

**In the landmark judgement keshavnanda bharti v/s state of kerela** it was clearly stated that fundamental right is the part of basic structure of the constitution cannot be waived off.

The authors would like to comment that this digital lenders intentionally involved in violating the fundamental rights of the borrower (citizen) as they intentionally don’t provide the key fact statements (K.F.S.) to the borrower hence the policy of this digital lenders being inconsistent to the fundamental right.

The concerned should to take an strict measure that the digital lenders should adhere the R.B.I. guidelines in a strict sense or an order for the closure of these companies as infringement shall not be served as an opportunity for any individual, legal entity or corporates until and unless there is a procedure established by law.

**REGULATORY FRAMEWORK** According to this guideline of R.B.I. the regulatory framework in relation to the Credit Information Companies that any lending done by the digital lenders and their subsidiaries shall be reported to the C.I.Cs irrespective of their nature and tenor, if the digital lenders are providing their services on merchant platform in any aspect must be reported to the Credit Information Companies.

The authors would like to comment that the authors are unaware with the internal reporting system of the digital lenders, so the regulatory body should keep an check whether the necessary guidelines implemented by them are being followed or not.

**LOSS SHARING ARRANGEMENT IN CASE OF DEFAULT** The R.B.I. adheres certain guidelines in respect to this respect too, As the Digital lenders offering financial product must have contractual agreement with the borrower First Loss Default Guarantee (FLDG) in which the third party guarantees to compensate certain percentage of loss in loan portfolio of the RE shall ensure that they should adhere with master direction of Reserve Bank Of India Reserve Bank of India (securitisation of standard assets)

The authors would like to comment that no such information is given to the borrower in case of default, hence the digital lenders is involved in cheating, misrepresenting the information to the borrower and hence they are liable under section 420 of Indian Penal Code 1860 and they also violates the maxim caveat Emptor which means let the buyer be aware and hence the communication is not complete hence there is no valid contract between the parties.

Hence the borrower is not liable to repay the amount to the digital lenders.

**CONCLUSION**

The authors would like to conclude this unauthorized lenders are a threat to Indian financial system as this article analyses that the digital lenders are not adhering the guidelines issued by the regulating authority and hence they are binding their borrowers without a valid, as the authors already stated that there is no valid contract between the parties due to incomplete communication between the parties. Hence the negative reports from the digital lenders affects the credit score and the general public who are the victim of the acts of digital lenders cannot avail any credit facilities as due the act of this digital lenders the customers shares a negative image in the financial world.

As due this negative the individual can get financial aid for their individual growth and they might be not able to start a new venture due to lack of financial resources due to the negative report imposed by them in the financial world.

Today even a 16 years old child can be victim of this digital lenders and due to their negative reports the child may not get opportunity to avail education loans and all or the borrowers might be not be able get housing loans which again threatens the economy prosperity which becomes a hurdle on the way of an individual raising their standard of living and per capita income of the individual which ultimately leads to the growth of the gross domestic product.

This digital lenders are like worms who are unauthorized lenders decaying the economic prosperity and hence this unauthorized lenders are threat to Indian Financial system.