



**THE LAW GOVERNING “*PARATE EXECUTION RIGHTS*”
TO SAFEGUARD THE INTERESTS OF BOTH THE
DEBTOR AND THE CREDITOR:
LESSONS FROM INDIA AND MALAYSIA**

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Abstract

This study explores legislative initiatives and/ efforts to broaden civil rights, as well as their effects and judicial treatment of those initiatives. The research examines historical and comparative analyses with an emphasis on laws, the common law system, and case laws. The debt recovery laws of Malaysia and India will serve as the foundation for this comparative analysis. While protecting the interests of both the creditor and the debtor, the recommendations will be made to speed up the debt recovery process in the financial business sector. Previously the State Mortgage Bank, Bank of Ceylon, the Peoples Bank, and other state owned and operated financial institutions were only entities with the right of parate execution. All licensed commercial banks received separate execution powers in 1990 with the intention of discouraging willful defaulters, but it has purposefully denied other financial institutions, such as specialized banks and finance companies (hereinafter referred to as the other financial institutions), access to this extrajudicial power.

By, Recovery of loans by banks (Special Provision) Act No 4 of 1990 gave the right of Parate Execution which was earlier limited to Peoples Bank, Bank of Ceylon and other state owners to all commercial banks and extends this right in respect of both immovable and movable property. It gives the right to the board of directors of any commercial or other specified banks by resolution in writing to authorize any person to sell by auction any property mortgaged to the said bank and to take possession of such property and thereafter, to manage and maintain such property until all monies due to the bank have been fully paid.

If the amount of the loan granted is below 5 million, Parate execution is not available to the financial institution. This is considered to be a limitation for the speedy recovery through Parate Action and requires further amendment to the law.

This essay examines concerns related to partial execution while identifying suitable legal frameworks. This looks into the government's reluctance to give other financial institutions partial execution rights.

With a focus on the provisions of the Recovery of Loans by Banks (Special Provisions) Act No.4 of 1990, comparisons are made to relevant jurisdictions. It also includes recommendations to mitigate the issues in the current legal framework.