BALTIC JOURNAL OF LAW & POLITICS
A Journal of Vytautas Magnus University
VOLUME 15, NUMBER 7 (2022)
ISSN 2029-0454

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Cite: *Baltic Journal of Law & Politics* 15:7 (2022): 1426-1441
DOI: 10.2478/bjlp-2022-007106

An analysis on recovery of debts dues to banks in india with special reference to sarfaesi act, 2002

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Received: October 19, 2022; reviews: 2; accepted: December 15, 2022

Abstract

The foundation of economic development and growth is the banking system. The banking performance has been categorised based on the percentage level of non-performance assets. For the banking industry to recover NPAs from defaulters, chaos must be encountered. Non-performing assets have a negative effect on the national economy in addition to having a significant impact on a bank's balance sheet and accounts. Reducing the level of non-performing assets requires healthy assets that have been properly restructured. More legislation is needed to implement these measures and speed up the NPA recovery process. Banks and other financial institutions can now recover uncollectible loans thanks to the 2002 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act. The act can be applied in a number of different ways to deal with the issue of non-performing assets (NPAs). Only secured loans, though, are covered by this. For non-payment of unsecured loans, banks should request that a civil action be initiated by the court. To learn the opinions of financial creditors, guarantor borrowers, mortgagors, tenants, and advocates, the researcher primarily used an empirical methodology. In order to carry out the analytical, critical, descriptive, and comparative methods used to identify the solution to the research problems, the researcher must also adhere to the doctrinal research. The study combines doctrinal and empirical components. In the empirical study, the opinions of the participants were collected using a random sampling technique and analysed to determine how to address the issues raised by the study. The legal implications of various acts, including the SARFAESI Act, RDDBI Act, tenancy laws, and judicial pronouncements, were interpreted and analysed to reach a conclusion in the doctrinal study. To reach a decision, the opinions of the borrower, guarantor, financial institutions'

advocates, and the tenants must be sought out. A suitable data analysis technique must also be used. The study found that the SARFAESI Act's current provisions are not adequate to address the challenges and issues related to its implementation. The study demonstrates that the complaint redressal mechanisms provided by the SARFAESI Act are insufficient to provide guarantors and borrowers with full justice.

Keywords

SARFAESI Act 2002, NPA, DRT.

Introduction

India's efforts to quickly expand the economy of the country have been greatly aided by the financial sector. Due to the fact that the current legal framework for business transactions has not kept up with changing business practises and the banking industry. As a result, banks and other financial institutions can expect to see rising amounts of nonperforming assets and a poor rate of loan recovery. The Narasimham Committees I and II, as well as the Andhyarujina Committee, were set up by the central government to look into banking sector reforms. These committees evaluated the need for modifications to the legal system in these sectors. The SARFAESI Act, 2002, was created as a result of the recommendations made by these committees regarding new laws for securitization and allowing financial institutions to hold securities and sell them promptly without court intervention. Banks in India have been given permission under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002, to buy the security provided by the defaulting borrower against the loan and sell it to recover losses, without the intervention of any court of law, giving them a way to significantly reduce their non-performing assets (NPAs). The SARFAESI Act or simply SARFAESI is the acronym for the law. The law permits banks to seize and auction off the security against the loan in the event of a borrower default.

The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, or SARFAESI Act, was passed in 2002 and enables banks and other financial institutions to efficiently recover bad loans. The act can be used in a variety of ways to address the issue of non-performing assets (NPAs). However, only secured loans are eligible for this. Banks should ask the court to open a civil case of defaulting for unsecured loans. This law eliminates the need for court intervention in secured loan cases. Under this act, ARCIL, India's first asset reconstruction company (ARC), was established. Secured creditors (banks or other financial institutions) have numerous rights to enforce security interests under section 13 of the SARFAESI Act. If a recipient of financial aid defaults on any loan or instalment payment and the secured creditor designates his account as a non-performing asset, the secured creditor may demand, prior to the expiration of the statute of limitations, that the borrower repay all outstanding debts in full within

60 days while clearly stating the amount owed and the creditor's intention to enforce.

The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act of 2002 (SARFAESI) gives banks and other financial institutions the authority to enforce security interests and collect debts without the need for judicial or administrative intervention. Every right that the Bank has under the Act's definition of a secured creditor must be exercised through an authorised officer. The Authorised Officer is an officer of the Bank designated by its Board of Directors who is not below the rank of a Chief Manager under the Security Interest (Enforcement) Rules, 2002. According to our bank's Domestic Recovery Policy 2009, Senior Management Grade/Scale IV to Scale VI Executives (including Branch Head of respective Scale/Grade IV, V & VI) are given the authority to initiate actions under the SARFAESI Act, 2002 in accordance with the applicable Discretionary Lending Powers, subject to reporting to the next higher authority. For proposals falling under the purview of Regional Heads in the rank of Assistant General Manager, including those falling under the purview of HOGMCC-, HOCC subject to reporting to Head Office, shall be the Competent Authority for authorising the branches for initiation of action under SARFAESI Act, 2002.

Previous Studies

The SARFAESI Ordinance was criticised by Puri Ashwin (2005). "The ordinance is seen as biased against creditors, it is open to abuse by creditors, and it may not solve the problem of Non- Performing assets," he said. It hasn't differentiated between defaulters and genuine defaulters. Banks must compile a list of both wilful and genuine defaulters. Genuine defaulters should be given a break and financial assistance so that they can overcome their difficulties and continue to run their businesses smoothly." The author's point is extremely sensitive. There is no fool proof method for distinguishing between a genuine defaulter and a willful defaulter. Once a borrower has been identified as a willful defaulter, decisive action must be taken against him. To take harsh measures, another amendment to the law is required.

"Banks are controlled by various kinds of risks such as credit risk, market risk, liquidity risk, interest rate risk, foreign exchange risk, commodity price risk, equity price risk, solvency risk, operational risk," writes K.M. Bhattacharya (2006) in his book. If the credit-granting process is flawed, banks will undoubtedly face recovery issues. Due to the lack of an effective credit review mechanism, banks are experiencing asset quality issues. Its goal is to provide appropriate checks and an independent judgement of asset quality that is not influenced by the borrower's relationship. One of the major causes of credit problems is a failure to monitor and follow up on post-sanctioned accounts."

This Act, according to Sanghvi Hitesh (2009), is "unfavourable to foreign lenders." Certain provisions of the SARFAESI Act appear to discourage foreign lenders from lending to Indian borrowers, preventing genuine Indian businesses

from accessing low-cost international financing. The SARFAESI Act allows some secured creditors to enforce security without the intervention of the courts. Offshore lenders, on the other hand, would not be considered secured creditors under the SARFAESI Act unless they were specifically notified by the Central Government in this regard. In the event of a borrower default, the foreign lender's remedy under the SARFAESI Act would be unavailable. As a result, foreign lenders are unable to take advantage of the SARFAESI Act's relevant provisions, which allow for security enforcement without going to court. This puts foreign lenders at a disadvantage when it comes to competing with Indian banks. They also have no choice but to enforce their Indian security by filing a lawsuit in the appropriate court." The author points out a flaw in the SARFAESI Act: foreign lenders do not have access to the SARFAESI Act's remedy.

According to Singh Jogindar and Yadav Omkar (2010) "the enactment of the SARFAESI Act 2002 has aided in the recovery of bank bad loans." Its impact has yet to be felt on the ground. The SARFAESI Act, on the other hand, has flaws." They propose that the government and the RBI work together to strengthen the recovery process and create an environment in which wilful defaulters cannot hide behind the guise of legal documents.

The study "Non-Performing Assets (A Study with Reference To Public Sector Banks)" by Gurumoorthy T.R. and Sufha B. (2012) examines the classification of loan assets in PSBs, the composition of NPAs in different sectors, and the position of NPAs in PSBs. PSBs used stringent control measures to reduce the level of NPAs, according to this study. Non-performing assets may not turn banks into non-performing banks, according to the author, but steps should be taken to convert non-performing assets into now-performing assets. To clean up its balance sheet, a bank can either remove old NPAs on its own or sell the assets to asset management companies (AMCs). The bank should implement proper policies to prevent new NPAs.

In his paper "Non-Performing Assets and Profitability of Commercial Banks in India: Assessment and Emerging Issues," Balasubramaniam C.S. (2012) highlights the significance of the RBI's proposal to implement Basel III norms in the banking sector beginning in January 2013. The Basel III framework of guidelines, developed by the Bank for International Settlements (BIS) in consultation with central banks from around the world, expects participating banks to follow sound financial and operational management policies in their respective economies. There are four sections to the paper. The first section discusses the concept of Non- Performing assets (NPA) in the context of identification and control procedures, as well as the impact of NPA on bank profitability and financial soundness in general. The second section includes a trend analysis of Non-Performing assets (NPAs), followed by a series of in-depth analyses of the high level of borrowings from the banking sector, indicating a buildup of sectoral credit booms in general and raising concerns about borrowers' financial performance and operations. The third section focuses on the impact of banks restructuring advances

based on asset classification. Finally, as a conclusion, certain issues and perspectives/challenges regarding the banking sector's performance and the economy's financial stability emerge.

Chanchal Rani (2013) Evaluation of various techniques used by public sector banks for the management of Non- Performing assets (NPAs)-International Journal of Research in Economics and Social Sciences- A study was conducted to determine the impact of securitization legislation on the management of Non-Performing assets (NPAs) in selected financial institutions. The following banking institutions operating at the local, regional, and zonal levels have been approached to provide the necessary data and information in order to meet this goal. NPAs have not only harmed the profitability and productivity of banks and financial institutions, but they have also tarnished the image of Indian banking and drained the society's value system, according to the study.

In their paper "A Comparative Analysis of Non-Performing Assets (NPAs) of Selected Commercial Banks in India," Samir and Deepa Kamra (2013) examine the position of NPAs in three banks: State Bank of India (SBI), Punjab National Bank (PNB), and the Central Bank of India (CBI). It also discusses the policies used by banks to deal with Non- Performing assets (NPAs) and proposes a multi-pronged strategy for a quick recovery of NPAs in the banking sector. The research covers the years FY1996-1997 through FY2009-2010. The authors look at NPA trends in terms of dollar amounts, gross and net NPAs as a percentage of gross and net advances, and gross and net NPAs as a percentage of total assets. The paper discusses the classification of Non- Performing assets (NPAs) by sector, the reasons for their occurrence, the effects of NPAs on banks, and the frequency distribution of public sector banks by net NPAs to net advances.

Chanderaappa, P (2014) NPAs have been fighting cyclical movement or dieses on week patients, which is a feature of chronic poverty and underdevelopment. It reflects the performance of financial institutions. Reduced NPAs give the impression that banks have improved their appraisal processes over time, whereas increased NPAs necessitate the use of provisions, which reduces banks' overall profitability.

M. Rao and A. Patel (March 2015) looked at aggregate data from public, private, and foreign banks in an attempt to compare, analyse, and interpret NPA management from 2009 to 2013. The findings show that the ratio of Gross NPA to Gross Advances is increasing for public banks, that the ratio of Loss Advances to Gross Advances is higher in foreign banks, that the Estimated Gross NPA for 2014 is also higher in public banks than in private and foreign banks, and that the ANNOVA test shows that the ratio of Gross NPA to Gross Advances for public, private, and foreign banks does not differ significantly between 2009 and 2013.

M. C. Shaardha and A. Jain (2016) investigated the impact of the SARFAESI Act 2002 on recovering non-performing assets in public sector banks: a case study of SBI, CBI, CB, BOB, and PNB (2008 to 2014). The Narasimham Committee II recommended the introduction of the SARFAESI Act 2002, which has been

instrumental in recovering the identified NPA without the intervention of the court. It enables the bank to recoup the loan by acquiring / possessing the financial assets Hypothecated or mortgaged with the bankers when borrowers took out loans. The purpose of this paper is to investigate the process and impact of the SARFASEI Act 2002 on the recovery of non-performing assets in India's public sector banks. To compare the SARFAESI Act's recovery process to the other recovery methods used in public sector banks, such as Lok Adalats, DRT, and CDR. The purpose of the study was to determine the percentage of recovery made under the SARFAESI Act 2002 versus Lok Adalat and DRT, as well as the number of cases referred to the Lok Adalat, DRT, and SARFAESI Act 2002 with respect to the banks State Bank of India, Canara Bank, Central Bank of India, Bank of Baroda, and Punjab National Bank. It demonstrates that the amendments to the SARFAESI Act 2002 have made it easier for bankers to recover overdue amounts that have been identified as non performing assets in their books of accounts.

Munish Gupta and Naresh Malhotra (2018) conducted a sector-by-sector comparison of NPAs of Scheduled Commercial Banks in India before and after the SARFAESI Act 2002 was enacted. In India, Non- Performing assets (NPAs) have always been a major issue for banks. It is not only a problem for banks, but also for the economy. The growth of Non- Performing assets has a direct impact on bank profitability. In the pre-SARFAESI period, the compound annual growth rate (CAGR) of Gross Non- Performing Assets in New Private Sector Banks (19.57%) was higher than Scheduled Commercial Banks (-9.20%), Foreign Banks (3.55%), and Old Private Sector Banks (-3.02%), according to the study. The CAGR of public sector banks has been lower (-10.09%) than that of scheduled commercial banks. Which shows that public sector banks in India have reported lower growth in Non-Performing assets (NPAs) than other banking sectors. However, in the post-SARFAESI period, Public sector banks showed a higher CAGR (1.48 percent) than Scheduled commercial banks, whereas New Private sector Banks (-4.97 percent), Old Private sector Banks (-6.17 percent), and Foreign Banks (-0.76 percent) showed lower CAGRs than Scheduled commercial banks. It is clear that the SARFAESI Act's effectiveness is higher in new private sector banks, old private sector banks, and foreign banks than in public sector banks. According to the findings, the SARFAESI Act has significantly reduced the level of non-performing assets in Scheduled Commercial Banks.

The implementation and impact of the SARFAESI Act 2002 were investigated by R. Khosla and M. V. Kumar (2020). Banks are the foundation of any nation because they are necessary for a country's monetary advancement. Any business is nothing without its investors. Banks serve as intermediaries between investors and borrowers. This link breaks down when the borrower fails to repay the essential and premium sum; as a result, the banking sector focuses on the issue of Non-Performing Assets. In India, prior to 2002, banks had no choice but to implement the security through a court/tribunal in order to recoup their duty. The banking sector breathed a sigh of relief when the Narasimham Committee proposed the

SARFAESI Act 2002. This demonstration allowed banks and budgetary organisations to obtain the borrowers' secured resources held with the bankers at the time of loan application. This paper focuses on the implementation and impact of the SARFAESI Act 2002 on the management of Non- Performing assets in Indian banking. The data available on NPA recovery was analysed using articles and papers published in various business journals, magazines, newspapers, and periodicals. For analysis, statistical tools such as percentages are used. DRTs performed well at first, but their progress was slowed when they became overburdened with the large number of cases assigned to them.

In his book "Securitisation Asset Reconstruction and Enforcement of Security Interests," Vinod Kothari, (2017), elaborated on securitisation, asset reconstruction, and enforcement of security interests. The author included several chapters on securitization as a financial instrument that explain the basics of the technology, the Indian securitization market, and detailed comments on the RBI's securitization guidelines. The business of asset reconstruction has been examined in several chapters, first in a global context and then in a more specific Indian context. In addition, the Author included some chapters on secured lender's rights, as well as how to choose between various remedies, in both a global and Indian context.

In their book "Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Law," S.C. Mitra and R. P. Kataria (2014) divided the subject into four divisions, with all amendments, notifications, and case-laws received up to October 31, 2013 finding a place in the book. The authors give a brief explanation of the Apex Court's and different High Courts' decisions on all important grounds. Further commentary clarifies the subject matter while also shedding light on the subject's grey areas and providing the necessary assistance in resolving important issues, some of which may appear intractable.

The law of securitisation is an amalgam from several sophisticated concepts and is concurrently averse to several other equally sophisticated concepts, according to R. G. Chaturvedi (2018) in his book "Law & Practice of Securitisation & Reconstruction of Financial Assets and Enforcement of Security Interest." The concepts excluded are as litigious as those included. When the concepts excluded are subjected to the tentacles of the Act's scope and applicability, they are prone to significant case-law, and this book was forced to eventually address the need for elaboration and expansion of those concepts in their instinctive expanse. Even though a commentary on a complex enactment, such as the one in hand, may reveal the tedium of a tremendous order, there has been an ingenious effort to delve deeply into the concept of securitisation and, after that, to analyse the sections attempting to assuage their intricate content, aided by precedents and a ready indication to the provisions of other laws both agnate and cognate. Apart from the bare Act of SARFAESI, the author included the most recent and revised RBI Guidelines as well as extracts from various related enactments and rules in his book.

Apart from the conceptual framework of the SARFAESI Act, 2002, Hernando De Soto (2007) elucidated the benefits of the SARFAESI Act 2002 in his book "The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else." The author outlined some of the benefits of securitization, including money liquidation and investment opportunities. Securitization is preferred for a variety of reasons, including increased capital return, improved return on assets, portfolio diversification, and reduced credit risk. Banks and financial institutions can securitize their assets under Section 5 of the SARFAESI Act 2002. In the traditional loaning process, a bank provides an advance, collects the loan amount and interest, and holds the assets until the loan matures. As a result, many of the bank's assets are obstructed in these advances, requiring the bank to raise additional assets from the market. Securitization is a technique for gaining access to these restricted resources.

It is always welcome to give banks the ability to recover their debts under the SARFAESI Act of 2002. It is well known that approaching a Civil Court and requesting a decree and having that decree executed is extremely difficult for banks. The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 was enacted with the goal of allowing banks to reduce their Non- Performing assets (NPAs) by allowing them to recover dues more quickly. Despite the RDDBI Act of 1993 establishing "Debt Recovery Tribunals" and establishing special procedures to be followed before the Tribunal, banks were unable to reduce their NPAs as expected, prompting the legislature to enact "The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002." It's understandable, given that banks deal with public funds, and reducing the banks' Non- Performing assets (NPA) is clearly in the public interest. However, no one in this country should be denied access to an effective remedy, and there has been criticism that the provisions of the SARFAESI Act, 2002 are sometimes misused by banks and are draconian. The Supreme Court upheld the constitutional validity of the SARFAESI Act, 2002 in the case of Mardia Chemicals v. Union of India, but the judiciary was wary of the borrowers' interests and failed to provide them with an effective remedy. Since then, the judiciary in this country has made every effort to ensure that the SARFAESI Act, 2002's purpose is not diluted while also protecting the interests of borrowers. There was a lot of confusion about how certain provisions of the SARFAESI Act, 2002 should be interpreted at first; however, many issues have been resolved now, with the judiciary taking consistent stands on many issues.

As previously stated, the Debt Recovery Tribunal has civil court-like powers when it comes to hearing cases. However, it must decide the case solely on the basis of natural justice principles, rather than the Civil Procedure Code's provisions. Furthermore, the borrower and guarantor, tenants can only approach the Honorable Debt Recovery Tribunal under the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 if the financial creditor has taken possession of the disputed property under the Securitization and

Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002. Whether they can only approach the Tribunal after they have been evicted requires further investigation. In this context, the researcher formulates the research questions that will be used to answer the study's questions.The statutes could be used to recover debts owed to financial institutions. Are there any other statutes that can be used to recover debts from someone other than a financial institution? The Acts and provisions available to protect tenants while enforcing the SARFAESI action, as well as the Acts available to protect financial institutions, the laws and procedures available to protect debtors for actions initiated under the SARFAESI Act, and the laws protecting the borrower for any action taken by the financial institution for negligence under the SARFAESI Act. To ensure that the financial institution benefits from the action taken under the SARFAESI Act and that the financial institution's views on the recovery for the action taken under the SARFAESI Act are taken into account.

The Tenants' perspective on eviction for the action taken under SARFAESI Act, the Government institutions' perspective on priority and recovery vs. the Financial Institution's perspective on recovery for the action taken under SARFAESI Act, the Advocate's perspective on recovery for the action taken under SARFAESI Act, and the Guarantors' perspective on recovery for the action taken under SARFAESI Act.The impact of the financial institution's eviction action on the tenants, and whether or not the tenants' interests and rights are protected while taking action under the SARFAESI Act. While taking action under the SARFAESI Act, the Borrower/rights Guarantor's are protected. Under the SARFAESI Act, the Debt Recovery Tribunal is the appropriate forum, and the Chief Judicial Magistrate, Chief Metropolitan Magistrate, or Civil Court has jurisdiction to hear tenants' complaints about the SARFAESI Act. While trying the tenancy dispute, the Debt Recovery Tribunal considered the impact of the summary procedure. Tenancy rights are a social and economic issue, and recovery is a country's primary economic issue. The way forward is to protect them and determine whether tenancy laws prevail over mortgage rights.

Methodology

The methodology followed by the researcher is mainly in the empirical nature to find out the views of the financial creditors, guarantor borrowers, mortgagors, tenants, and the advocates. The researcher shall also follow the doctrinal research to carry out the analytical critical descriptive and comparative methods used to find out the solution to the research problems. The research is partially empirical and partially doctrinal. In the empirical study, the views of the stakeholders were obtained by using random sampling technique and analyzed to find out the solution to the research problems. In the doctrinal study, the legal position of the various acts like SARFAESI Act, RDDBI Act, Tenancy laws and judicial pronouncements were interpreted and analyzed to conclude. The views of the borrower, guarantor, Financial Institutions advocates and the tenants shall be

obtained concerning the Tenancy and suitable data analysis technique shall also be used to arrive at a conclusion. The Act, Rules and Regulations are the primary sources of the research and judgments, articles published in the legal magazine, and newspaper articles related to the tenancy and mortgage. The Law Commission Report, RBI Report, Legal experts' articles, research papers of scholars, Notification by the various ministries like Finance Ministry, Ministry of Corporate affairs, speech by the Senior advocates and Judicial members, textbooks and surveys carried out by various departments of the Central and State Government and Non-Government agencies were also used as the primary source of research. The research is also used in the questionnaire obtained from the various persons like the owner of the property and tenants, borrowers, guarantors, and advocates of the tribunal are also the secondary source for the research.

Major Findings of the Study

1. According to the study, the SARFAESI Act's current provisions are insufficient to address the difficulties and problems associated with its implementation.
2. The study shows that the SARFAESI Act's complaint redressal mechanisms are insufficient to give guarantors and borrowers full justice.
3. The study shows that the SARFAESI Act's passage helped the banking industry recover its non-performing assets.
4. The study discovers that many SARFAESI Act provisions are bank- or probanker-oriented. There is a general perception that many of the Act's provisions favour the banks, leaving the fate of real borrowers and guarantors in the hands of the banks' authorised officers.
5. The study shows that the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002's purposes have only partially been achieved and that changes to the Act's provisions are necessary to make its implementation more effective.
6. The study shows that the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002's provisions are somewhat successful in helping banks and financial institutions collect their debts.
7. The complaint resolution process established by the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act of 2002 is ineffective in upholding the rights of legitimate guarantors and borrowers.
8. The securitization and reconstruction of financial assets and enforcement of security interest act of 2002 only permits the officers designated as authorised officers to exercise certain quasi-judicial powers. The Authorised Officer must receive ongoing training in order to carry out their quasi-judicial responsibilities.
9. The officers designated as authorised officers in accordance with the provisions of the 2002 Act on the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest are acting outside the scope of their authority.

10. The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act of 2002 is not fully understood by the borrowers and guarantors. It is important to raise awareness of the Act's provisions and their effects. When obtaining credit facilities from banks, the majority of borrowers and guarantors have never even heard of the SARFAESI Act.
11. The majority of respondents believe that the 15-day window given by Section 13(3)(a) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act of 2002 for responding to representations made by borrowers and guarantors is adequate. However, some respondents, particularly those in the banking industry, feel that given the structural layers present in public sector banks, 15 days is not enough time to respond to the borrower or guarantor.
12. During the survey, the respondents were asked to specifically state whether they are fully aware of the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act. It is inferred that more than 95 percent of stakeholders are fully aware of the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act and only 5 percent of stakeholders are not fully aware of the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act.
13. During the survey, the respondents were asked to specifically state whether the objects for the enactment of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 have been fulfilled. The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act of 2002 has been fulfilled, according to almost 41% of stakeholder opinions, according to 24% of stakeholder opinions who agreed somewhat, and according to 35% of stakeholder opinions who said the SARFAESI Act's objectives have not been met.
14. The respondents to the survey were specifically asked to respond to the question of whether the individuals designated as Authorised Officers under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 are able to exercise their quasi-judicial powers. According to the data, only 19% of stakeholders were able to specifically state whether the officers designated as Authorised Officers under the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act were in fact such officers. This means that 60% of stakeholders were unable to say whether the officers in question were in fact such officers.
15. In the survey, participants were specifically asked to comment on whether or not the officers designated as Authorised Officers pursuant to the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 are acting in excess of their authority. According to 66 percent of stakeholders, Authorized Officers

operating under the terms of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, are acting outside the scope of their authority while carrying out their responsibilities. According to 18 percent of stakeholders, Authorized Officers operating under the terms of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, are acting outside the scope of their authority to some extent while carrying out their duties.

16. In the survey, participants were specifically asked to respond to the question of whether the 15-day window for providing representation under S1.3(3)(A) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act is adequate. It is clear that 78 percent of interested parties believe that 15 days is a sufficient amount of time to submit a representation, while only 17 percent believe that 15 days is only partially adequate and 5 percent believe that 15 days is insufficient.
17. In the survey, respondents were specifically asked to state whether the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act's provisions granting banks the ability to participate in public auctions might be unfair. According to the afore mentioned table, 54% of stakeholders believe that giving banks the right to participate in public auctions may pre-judicial them, 22% believe that this right may partially cause prejudice against banks, and 23% believe that there will be no prejudice against banks given this right.
18. The respondents to the survey were specifically asked if they thought the DRT/Civil Court procedures were quicker and more efficient than those under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act. When compared to DRT/Civil Court procedures, 78 percent of stakeholders say the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act's procedures are more swift and efficient, while 22 percent of stakeholders say the DRT/Civil Court procedures are more swift and accurate.
19. The best way to lower the amount of non-performing assets held by banks is to implement the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, the respondents were specifically asked to state during the survey. The Sarfaesi Act is one of the measures for implementing the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, according to 55% of stakeholders, and it is the best measure to reduce non-performing assets of the banks. The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act's provisions are best implemented, according to 30% of stakeholders, through the Sarfesi Act, which is also the best way to reduce non-performing assets held by banks. According to 14% of stakeholders, the implementation of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest

Act's provisions is the best way to reduce the amount of non-performing assets held by banks.

20. The majority of respondents believe that not all provisions of the 2002 act on the securitization and reconstruction of financial assets and the enforcement of security interests have complied with the principles of natural justice. The respondents are making reference to Section 13(3A) of the SARFAESI Act, which states that before moving forward, the objections or representations of the guarantors and borrowers must be taken into account. In spite of this provision, the objections or representations are not usually taken into careful consideration. These protestations/representations are ritualistically examined, and answers are given without the use of a discerning mind.
21. According to the majority of respondents, the right granted to banks to take part in the public auction under the terms of the 2002 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act may be detrimental to guarantors and/or borrowers. The respondents are asking for more safeguards and controls to make sure that the bank's rights are exercised responsibly.
22. Compared to the drt/civil court procedures, the securitisation and reconstruction of financial assets and enforcement of security interest act, 2002 procedures are quicker and more efficient. The respondents believe that the SARFAESI Act's provisions will be implemented more quickly and expeditiously, but that the natural justice and borrower/guarantor redress mechanisms will need to be changed for better outcomes.
23. The majority of respondents across all categories believe that the best way to lower the nonperforming assets of banks is to put the provisions of the 2002 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act into practise. The respondents do warn that the interests of the guarantors and borrowers have been hurt by the Authorised Officers' indiscriminate use of their authority.
24. The majority of respondents in the categories of borrowers/guarantors, judicial officers, and attorneys have stated that the provisions of the SARFAESI Act should be superseded by the tenancy laws, whereas respondents in the categories of bank officers and the general public have stated that the provisions of the 2002 act on the securitization and reconstruction of financial assets and the enforcement of security interests should be superseded by the SARFAESI Act.
25. The provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act of 2002 need to be amended, according to all respondents across all categories. According to the respondents, the SARFAESI Act needs to be amended in order to become more equitable and user-friendly.
26. All of the respondents, with the exception of the bank officers, believe that the authorised officers are arbitrarily applying the securitization and

reconstruction of financial assets and enforcement of security interest act of 2002's provisions. The respondents believed that additional clauses were necessary to protect the interests of the real guarantors and borrowers.

27. Except for bank officials, the majority of respondents believe that the 2002 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act favours banks. The respondents demand changes be made to the SARFAESI Act in order to make it more fair.

28. The majority of respondents, with the exception of the borrowers and guarantors, believe that the securitization and reconstruction of financial assets and enforcement of security interest act of 2002's provisions allowing an authorised officer to take possession of property helps banks recover debts in a more efficient and effective way. According to the respondents, this clause will speed up the process and prevent court intervention.

29. The vast majority of respondents believe that a lenders liability act needs to be introduced. According to the respondents, the lenders liability act will be able to control bankers' behaviour and will increase their discipline and adherence to the law.

Conclusion

The laws relating to recovery of dues to Banks and Financial Institutions especially the SARFAESI Act have travelled through various stages in its evolution. In such a long journey, these Acts have subjected to various judicial scrutinies at different judicial forums and faced stiff legal obstacles. In its long journey, the recovery laws both DRT and Sarfaesi have proved to be a beneficial legislation in facilitating the recovery of large dues to the Banks albeit with attentive delay and unavoidable litigation and instances of misuse and arbitrary use of powers by Authorised Officers of Banks. The redressal mechanism as provided under the SARFAESI Act haven't been able to solve the difficulties faced by the borrowers and guarantors while implementing the provisions of the Act. It is no doubt that the Recovery of Debts Due to Banks and Financial Institutions and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act have got tremendous effect on the jurisprudence relating to the laws governing the recovery of dues to the Banks. However, as time evolves, the inherent deficiencies in these Acts have come out for adjudication before the various judicial forums. The issues aroused out of the practical difficulties faced by the borrowers and guarantors have reached judicial forum at various occasions.

Having said about the interference of judicial forums in shaping up the recovery laws, it is equally important to state about the established stand taken by the highest courts in our country regarding the maximum restraint in economic legislation. The judicial system in our country, as such is sensitive to the issue that less judicial interference is less required in economic legislations. This is true in case of the laws pertaining to the recovery of dues to the Banks/Financial Institutions. The judicial system in our country, even the highest court of the

country, the Supreme Court kept maximum restraint in interfering with the provisions of the SARFAESI Act. The economic mechanism is highly sensitive and complex and primarily such legislations are directed to solve the practical problems. Most of the economic problems are singular and contingent and the economic laws addressing such problems are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry. The economic matters are essentially empiric and it is based on experimentation or trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid. The decision of the Hon'ble Supreme Court to strike down Section 17 of the SARFAESI Act is a classic example of such self-restraint followed by the Hon'ble Supreme Court. Edmund Burke, a British political writer, once stated that "bad laws are the worst form of tyranny." The worst kind of tyranny will be the laws once they deteriorated. To make sure that there are no unjust laws in the nation, the Legislature, Executive Branch, and Judiciary have a responsibility. Additionally, it is the duty of every citizen to contribute their insightful opinions to the improvement of national laws and to ensure that only just laws are applied to them. The laws, or Acts, passed by the Parliament or State Legislativeure, go through numerous trial and error procedures before becoming perfect in their ability to serve the citizens of the nation. The overall goal of this research is to offer solutions to remove obstacles to the SARFAESI Act's provisions being implemented and to propose actions to improve the SARFAESI Act for the benefit of all citizens in this nation. Edmund Burke once said that bad laws are the worst kind of tyranny, and this research aims to suggest ways to make sure that the SARFAESI Act will not be one.

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