SARFAESI ACT

AN EFFECTIVE TOOL FOR RECOVERY OF NON-PERFORMING ASSETS IN INDIA

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Abstract: The banking sector now in India is in severe crisis with the upsurge in non performing assets, the decrease in profitability of public sector commercial banks and wilful defaulters absconding abroad. Bad loans have approximately doubled over in India's banking sector in the past four years. Finance is the lifeblood of commerce and banks are the soul and heart of business. This shows the importance of banking sector and today the growth of banking sector is falling. As per RBI, the Statistics show that annual growth of banks credit in India had crossed 30 percent in the years of 2004-2007, but has been decreased to 9.7% in 2014-15 and further in 2015-2016 it reduced to 9.4%. The steep increase in non performing loans has declined credit growth of banking sector. Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI ACT) in the year 2002 came as breather into effect to recover non performing assets without the interference of the court. This article studies the process and efficiency of SARFAESI Act 2002 and its impact on recovering the non-performing assets in India. It defines various modes of recovery of non-performing assets (NPA) such as Lok Adalats, Debt Recovery Tribunal (DRT), and SARFAESI act. The study has been done to find out the total number of cases raised under Lok Adalat, Debt recovery tribunal & SARFAESI Act 2002 and percentage of recovery of bad loans using SARFAESI Act 2002 in comparison with Lok Adalat & DRT.

Keywords: SARFAESI Act 2002, NPA, DRT, Lok Adalat

Introduction

Non-Performing Assets (NPA) is an crucial feature to recognize banks performance. Banks are the backbone of economic growth and development. The percentage level of Non-performance assets has categorised the banking performance. The Banking sector has to come across chaos's to recover the NPAs from defaulters. Non performing assets not only impact severely on a bank balancesheet and accounts but also adversely impact the national economy. Non-Performing Assets level reduction, the assets have to be in good health and appropriately restructured. These measures require more legislation to quicken the NPA recovery procedure.

The process of recovery of NPAs from defaulters is to get an order from Civil Court, banks will have to file the case in civil court. When the notice gets issued, the court passes associate degree order of Decree. Then, the decree is once more challenged by means that of charm to Supreme Court and to end the judgment it takes nearly between five years to twenty years. The Execution Court when issues notice it will get the property of defaulter accessible through auction. There would be a menace of dismissal of suit conjointly, and indeed the ways of recover of NPAs gets problematic.

To make the structure more accessible for the retrieval of the bad loans from the borrowers, Narasimham Committee II suggested the creation of SARFAESI Act 2002. The NPAs get recovered from the borrower without the interference of court by keeping the assets of the defaulters. The bankers sell the assets to Asset Reconstruction Company.

According to RBI as on December 2017, NPAs of banks in Public sector upraised at INR 7.34 lakh crore and majority of these came from corporate borrowers.

Among the PSBs, SBI was on top list of NPAs at Rupees 1.86 lakh cr. Punjab National Bank stands second with Rs 57,630 cr, Bank of India was on third with Rs 49,307 cr, Bank of Baroda was on fourth with NPA of Rupees 46,307 cr, Canara Bank was on fifth with Rs 39,164 cr and Union Bank of India was sixth place with NPA of Rupees 38,286 cr.

Among private sector banks, NPAs were highest in ICICI Bank with Rs 44,237 cr by September 2017, followed by other banks such as Axis Bank Rupees 22,136 cr, HDFC Bank Rupees 7,644 cr and lastly Jammu & Kashmir Bank Rupees 5,983 cr.

The above figures and facts got published in "Economic Times" newspaper on December 24, 2017, shows the performance of PSBs in India affects its economic growth and also affects the profits of the banks in India. The significant role played in these bad loans are from corrupted business people, negligent and corrupt bankers, complicit auditors and loopholes in the laws of banking regulations.

PSU banks are in a continuous surge of bad loans. The gross NPAs as on September 2015, of banks have rised to Rs 3,00,743 cr from Rs 2.67 lakh crore of March 2015. As per the RBIs Financial stability report published in December 2017, non performing assets may still further rise. According to this report, NPAs (gross) in banks may get to rise from 10.2% of gross loans in September 2017 to 10.8% in March 2018 and again further rise to 11.1% by September 2018.

Modes of recovery of NPAs

The various modes of the recovery of NPAs:
1. **Lok Adalats**
2. **Debt Recovery Tribunal (DRTs)**
3. **SARFAESI Act 2002**
4. One Time Settlement Scheme
5. Corporate Debt Restructuring
6. Asset Reconstruction Companies
7. Information about the borrowers of the loan by RBI
8. Credit Information Bureau

From the above, the most best ways for recovering NPAs from borrowers are DRT, Lok Adalats and SARFAESI ACT 2002, these are discussed below:

Lok Adalat: Lok Adalat was developed by Legal Services Authorities Act, 1987. It is also known as "People's court". Lok Adalat is the State Authority mock courts called as Lok Adalats. The first Lok Adalat was set up in Gujarat on March 14, 1982. Lok Adalat's help banks to settle down loans repayments by way of compromise between lender and borrowers of the bad loans. Debt Recovery tribunals are authorised to form the Lok Adalat to give verdict on cases of NPAs of Rupees. 10 lakhs and more. The systems seemed to be best for recovery of bad loans by quick judgement on the cases referred. Lok Adalat has been used typically for recovery on smaller loans.

DRT: DRT stands for Debt Recovery Tribunal. Under this context Debts Recovery Appellate Tribunals (DRAT) were established under the DRT Act. This act was an arrangement for the speedy settlement and recovery of debts due to lenders by the borrowers. DRT is empowered to judge the claims filed by the defaulter against the action of the Secured Creditor originated under the Sarfaesi Act. The DRTs have been established in India under an Act of Parliament (act 51 of 1993) for the quick recovery of NPAs to banks and financial establishments by Government of India. The DRT is appellate authority for the proceedings started by secured creditors in SARFAESI Act 2002.

SARFAESI Act: Sarfaesi stands for Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest. SARFAESI bill passed as an ordinance, and SARFAESI Act came into effect in the year 2002, June 21st. This Act aims at recovery of Non-performing loans of banks and financial institutions. It was time that has come to that which saw reverse relationship, Debtors chasing the creditors and start repaying loans to banks and financial institutions. The sarfaesi act enables the banks to apprehend long-term loans, improve repossession by using the powers to take ownership of securities, sell non performing assets and reduce the burden of non-performing assets. Its done by following the measures for the recovery of assets or reconstruction of asset. According to Sarfaesi act there are three ways for NPA recovery and they are as below

- Securitization of Financial Asset
- Reconstruction of Financial asset
- Enforcement of Security without the intervention of the court

Securitization of financial assets: Securitization of financial assets under section (3) of Sarfaesi act implies the issue of security receipt by raising funds or receipts by Securitisation Companies (SC) / Asset Reconstruction

Companies (ARC). Banks sell NPAs to SC/ARC. The Securitization company/Reconstruction company raises funds by issuing securities to the Qualified Institutional Borrowers (QIBs). The funds raised from QIBs get distributed to banks. Thus non performing assets start generating income through securitisation. SC/ARC have to follow using proper books of accounts for every acquiring asset on investments made by QIBs. Qualified Institutional Buyers are the investors in the non performing assets.

Reconstruction of financial assets:

According to section (9) of Sarfaesi act, Reconstruction of financial assets or settlement of debts will be discussed with the borrower by Asset Reconstruction Company/Securitisation company.

This settlement of debts could include-

- Extension of repayment of loans/ partly payment of loans
- Conversion of loans into shares of borrowing companies
- Acquiring the rights control and rights of borrowing company
- Lease of unencumbered property
- Proper management of business by change in, or takeover of the existing management
- Sale/lease of part/whole of the business
- Rescheduling the payment of debts
- Partly or fully Enforcement of security interest
- Settlement of dues
- Taking possession of property
- Asset Reconstruction company (ARC) can act as an manager for Bank to recover dues
- If appointed by court or tribunal ARC can act as receiver of dues
- Members of Reconstruction Company (RC) will trace the borrowers who have been absconding non payment of dues
- For customers who are unable to make payments, RC will authorized to offer some amount of waivers or easy debt repayment plans. This includes
- Reducing the interest rates for ease of repayment.
- Waiving of partial payment of amounts instead of full payment of debts.
- Reducing the tenure of payment without interest.
- Agreeing to take over the assets from borrower instead of debt payment
- Taking over the management of business of the borrower. Once the Reconstruction Company takes over the business of borrower, it should according to the guidelines of the RBI.
- Facilitating sale of ideal properties of firm/promoters.
- Conversion of debt into shares of a borrowers company
- Taking Lease of borrowers property

Basically this section (9) focuses on loan settlement, as The best solution to all disputes is to compromise.

Enforcement of Security Assets: According to section (13) of Sarfaesi act, banks can recover non performing assets without the interventions of the court. Secured creditor/Banks will issue a notice to the borrower and borrower needs to pay within 60 days from the notice if not make a representation. If the borrower does not pay the debt within 60 days from the notice, the bank can take specific measures such as taking the possession of assets, take over the management, appoint a manager of a secured asset or secured creditor can bid auction for the mortgaged asset. The purchase price will get reduced from the claim.

Review of literature

India's legislative system has historically been friendly towards borrowers and magnificently slow and inefficient. Once a bank issues any loan to the organisation, it is little or no talks regarding paying back or getting its hands on assets that formally securitise the loan. In 1993, (DRTs) got wind of precisely to avert this downside, to offer banks quicker access to justice. In the year 2002, a step to empower banks came in to effect called as the SARFAESI Act. According to the act, ARCs will take NPAs from the balance sheet of banks and recover them from the borrower or securitise mortgaged assets to generate income. The review sets the need for analysis and explores the area for study.

Parvathy Menon(2015) the amount of foreign terrorist organisation in camera sector banks is under their nationalised counterparts. It might flow from to raised credit standards maintained by these personal players. Saikat Ghosh Roy(2014)The dreaded factor is that each one the developed and developing countries have already managed to curb the NPA level from the high of 2008-09 at the time of world recession, wherever it is still rising in our country. Mukund P(2011)found that the cases get delayed extraordinarily in a Debt Recovery Tribunals. Banks have expressed their discontentment with the system that was introduced to confirm speedy recovery.

The objective of the Study

To understand SARFAESI Act 2002 and compare its effectiveness with other tools of recovery of non performing loans.

Sources of data

The data collected for the study is secondary data. The secondary data for this paper includes the literature published by Indian public and private sector Banks, Reserve Bank of India, various finance magazines, Journals, RBI database warehouse and other research papers.

Research Methodology

The Research design used in this article to study is empirical research. It deals with statistical data, the primary objective of this report is to analyse the effectiveness of recovery mechanisms in comparison with SARFAESI Act 2002. For this study, data related to the recovery of NPA's through Lok Adalat, DRTs and SARFAESI Act are considered. This study is analysed by data collected for last ten years from the financial year 2006-07 to 2016-17. Statistical data is represented in the form of charts, graphs and tables.

Tools of Analysis

To achieve the objective of study, the data collected from secondary sources is presented using MS Excel and SPSS. Data is arranged in cross-sectional tables, depending upon the requirements of the analysis. The tabulation includes total figures, and these are a simple percentage and statistical analysis using Average, Standard Deviation, F-test using One-way ANOVA technique.

Hypothesis of the Study

1) Ho: There is no significant difference in recovery of Non-Performing Assets using Debt Recovery Tribunals, Lok Adalat in comparison with SARFAESI act.

2) H1: There is no significant difference in recovery of Non-Performing Assets using Debt Recovery Tribunals, Lok Adalat in comparison with SARFAESI act.

Analysis and interpretation

Table:1 NPA recovered by Scheduled Commercial Banks through various channels (Amount in Crores)

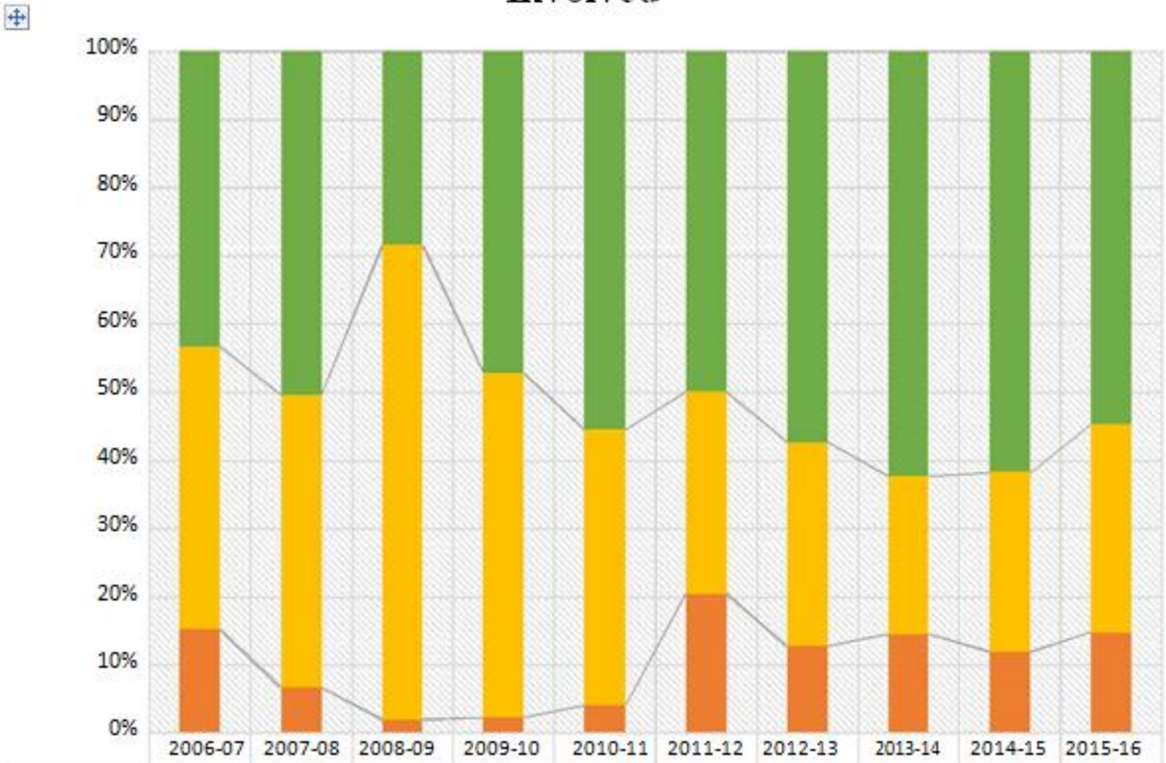
Year	Particulars	Lok Adalat	DRTs	SARFAESI Act
2006-07	No. of Cases referred	160368	4028	60178
	Amount involved	758	9156	8517
	Amount recovered	106	3463	3363
	Percentage of Amount recovered	13.98%	37.82%	39.49%
2007-08	No. of Cases referred	186535	3728	83942
	Amount involved	2142	5819	7263
	Amount recovered	176	3020	4429

	Percentage of Amount recovered	8.22%	51.90%	60.98%
2008-09	No. of Cases referred	54308	2004	61760
	Amount involved	4023	4130	12067
	Amount recovered	96	3348	3982
	Percentage of Amount recovered	2.39%	81.07%	33.00%
2009-10	No. of Cases referred	778833	6019	78366
	Amount involved	7235	9797	14249
	Amount recovered	112	3133	4269
	Percentage of Amount recovered	1.55%	31.98%	29.96%
2010-11	No. of Cases referred	616018	12872	118642
	Amount involved	5254	14100	30600
	Amount recovered	151	3900	11600
	Percentage of Amount recovered	2.87%	27.66%	37.91%
2011-12	No. of Cases referred	476073	13365	140991
	Amount involved	1700	24100	35300
	Amount recovered	200	4100	10100
	Percentage of Amount recovered	11.76%	17.01%	28.61%
2012-13	No. of Cases referred	840691	13408	190537
	Amount involved	6600	31000	68100
	Amount recovered	400	4400	18500
	Percentage of Amount recovered	6.06%	14.19%	27.17%
2013-14	No. of Cases referred	1636957	28258	194707
	Amount involved	23200	55300	94600
	Amount recovered	1400	5300	24400
	Percentage of Amount recovered	6.03%	9.58%	25.79%
2014-15	No. of Cases referred	2958313	22004	175355
	Amount involved	3098	6037	15678
	Amount recovered	98	421	2560
	Percentage of Amount recovered	3.16%	6.97%	16.33%
2015-16	No. of Cases referred	4456634	24537	173582
	Amount involved	7203	6934	8010
	Amount recovered	322	637	1318
	Percentage of Amount recovered	4.47%	9.19%	16.45%

Source: Reserve Bank of India

Table- 1 shows NPAs recovered from various channels. In the year 2006-07, the highest number of cases referred was in Lok Adalat, and the highest recovery of non performing assets was under DRT. Sarfaesi act was in nascent stages in the year 2006-07, and it was low in amount recovery from defaulters. The picture changed from the next following years from 2007-08 to 2015-2016, the highest number of amounts recovered from NPAs was only under sarfaesi act. It shows the effectiveness of sarfaesi act 2002.

Figure: 1 Percentage NPA amount recovered to Total Amount Involved



	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
SARFAESI act	39.49	60.98	33.00	29.96	37.91	28.61	27.17	25.79	16.33	16.45
DRTs	37.82	51.90	81.07	31.98	27.66	17.01	14.19	9.58	6.97	9.19
Lok Adalat	13.98	8.22	2.39	1.55	2.87	11.76	6.06	6.03	3.16	4.47

Figure 1 shows that the percentage of Non Performing Assets amount recovered. Recovery under DRT's was higher till 2008-09 in contrast to SARFAESI act and Lok Adalat, i.e. 81.07% through Debt Recovery Tribunal's in comparison to 33% in SARFAESI and just around 2.39% in Lok Adalats. However, from 2009-10, SARFAESI Act has displayed incredible performance in the recovery of NPAs. To prove the efficiency, statistical technique One way ANOVA is applied.

Table: 2 ANOVA Summary

Particulars	N	Mean	Std Deviation	Std Error
Lok Adalat	10	6.0503	4.14875	1.31195
DRTs	10	28.7376	23.42985	7.40917
SARFAEST	10	31.5687	12.88728	4.07532
Total	**30**	**22.1189**	**19.03114**	**3.47459**

From the above Table -2 it looks that Lok Adalat associated with lowest mean level of percentage in the recovery of Non-Performing Assets. The total amount involved, i.e. Mean Lok Adalat= 6.05 and SARFAESI Act associated with statistically highest mean level of percentage recovery of NPAs to Total Amount involved, i.e. Mean SARFAESI = 31.568. While DRT's associated with statistically in between Mean DRT's=28.73 level to compare with Lok Adalat and SARFAESI Act. To test the hypothesis, i.e. to evaluate the effectiveness of SARFAESI act in comparison with Lok Adalat, DRT's and SARFAESI Act, one way ANOVA is executed.

Table:3 ANOVA Results

Particulars	Sum of Squares	DF	Mean Square	F	Sig.
Between Groups	3913.073	2	1956.536	8.016	0.002
Within Groups	6590.267	27	244.084		
Total	**10503.340**	**29**	**2200.620**		

From the above Table-3, it looks that there is a statistically significant difference between groups as determined by one way ANOVA, i.e. FSTAT (2, 27) = 8.016 > F CRITC = 3.354.

Test level significance is 0.05 > 0.002 (test result significance). Thus, the null hypothesis of no significant difference between recovery of Non-Performing Assets through Lok Adalat, Debt Recovery Tribunals and SARFAESI act gets rejected.

Table 4 Tukeys Honest Significant Difference Post Hoc AnalysisTest

(I) NPA Measures	(J) NPA Measures	Mean Difference(I-J)	Std. Error	Sig.
Lok Adalat	DRTs	-22.68730	6.98690	0.008
	SARFAESI	-25.51847	6.98690	0.003
DRTs Mean	Lok Adalat	22.68730	6.98690	0.008
	SARFAESI	-2.83117	6.98690	0.914
SARFAESI	Lok Adalat	25.51847	6.98690	0.003
	DRTs	2.83117	6.98690	0.914
** The mean difference is significant at the 0.05 level.*				

From the above Table-4, we evaluate the nature of the difference between three means. Further, the statistically significant ANOVA was followed up with Tuckey Post hoc test.It also explains the difference between the recovery mechanism of Lok Adalat, and DRT's is considerably different, i.e. mean significance 0.05 > p = 0.008. Likewise, the difference between the recovery mechanism of Lok Adalat and SARFAESI Act is significantly different, i.e. 0.05 > p =0.003.

Thus to find out the highly efficient device, it can be clear from Table - 2 the Mean Lok Adalat = 6.05 is lower than Mean DRT's= 28.73 and Mean SARFAESI = 31.568. Hence, it can be concluded that there is significant difference between the effectiveness of Lok Adalat, DRT's and SARFAESI act.

The SARFAESI act 2002, is an effective tool of recovering the non performing assets in India.

Conclusion

One of the significant challenges for banking system in India is to deal with the NPA issue. NPA has great impact on the productivity of banks and curtailing the future lending options for banks especially for long-term purposes. The NPAs have always created a big menance in Indian banking industry. It is not just problem for the banks but the country's economy too. Profitability of banks affected due to growth in non-performing assets. The study shows that Lok Adalat and DRT have not shown considerable success in the recovery of NPA. SARFAESI Act proved to be the most effective tool in the recovery of Non performing assets.

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