

IMPACT OF SARFAESI ON NPA

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ABSTRACT

Commercial Banks are playing a very important role in the fiscal and lending systems. Banks are 'unique' as they are the financial intermediaries which plays vital role to mobilize and distribute public savings to provide protection and saver return. The implementation of economic reforms provides more flexibility and independence to banks to improve their profitability, productivity and efficiency. Public Sector banks (PSBs) make a major contribution in every sector such as agriculture, various industries, trade, education, and infrastructure to develop the Indian economy.

Banks are providing loans to borrowers so that they can also improve their profitability, productivity and efficiency. But it's very unfortunate that because of borrowers' deliberate defaults, the increased number of NPA account holders are at the alarming rate. NPAs have impacted not only banks' productivity and profitability, but also banks' overall performance. Asset quality is a primary factor for measuring banks' efficiency and overall functioning.

Increasing number of NPAs is a major problem now, which actually affecting the economic growth of the country and reducing the economic strength of the banks. In this research paper an attempt has been done to examine the reasons responsible for NPAs and to analyze the role of different ad judicatory authorities who are part of banking system.

Keywords: Financial Intermediaries, NPAs, PSBs , Deliberate Default

INTRODUCTION

Banks are the foundation of the country's development and economic growth. Non-Performing Assets (NPA) is an important factor in determining the quality and stability of banks. Lesser number of NPAs acts as a good benchmark in the performance of the bank. Banks are having different methods to recover the bad debt. Borrowers' bad debts have been recovered by the banks but it's a time taking process. These have an adverse impact not only on a bank account,

but also on the national economy. The resources must be recovered and adequately restructured to reduce the NPA rate. Various legislation has been made still NPAs are spreading like a disease having very unsystematic impact on banking and financial institution. The magnitude of the problem, although severe, is suffered by Nationalized Banks, followed by the SBI Group and All India Financial Institutions.

The loans issued by the banks are categorized as performing and non-performing assets on the following basis:

1. Performing assets are also known as standard assets. The performing asset is the one that generates income for the bank. It is an asset where interest and/or principal is not due for more than 180 days (modified to 90 days w.e.f. March 2004) at the end of the financial year.
2. Non-Performing Assets: Account is to be regarded as a non-performing asset when it ceases to generate revenue for the bank. An asset may be treated as a Non-Performing Asset (NPA) if interest and/or instalment of principal remain due for a period of more than 180 days (amended to 90 days w.e.f. Mar 04) and Banks and FIs should not take into account their Income account interest accrued on such NPAs unless it is actually received / recovered.

NPAs are further classified¹ as:

- a. **Substandard Assets:** Loans which are non-performing for a period not exceeding two years, where the current net-worth of the borrower or the current market value of the security, against which the loan is taken, is not enough to ensure full recovery of the debt.
- b. **Doubtful Assets:** Loans which have remained nonperforming for a period exceeding two years and which are not classified as loss assets by for the management or the internal/external auditor appointed by RBI.
- c. **Loss Assets:** Assets where loss has been identified by the internal/external auditor of the bank or the RBI, but the amount has not been written-off wholly or partly. These assets are considered unrecoverable and are of little value to the lending institution

INSTRUMENTS FOR NPA RECOVERY

A number of methods are available for the restoration of NPAs. All measures are mainly aimed at recovering of amount from the borrower. The most popular means of restoring non-performing properties are as follows:

1. Lok Adalat

Lok Adalat is a mechanism to resolve the matters relating to recovery of dues, out of court. Lok Adalat has no due legal process. It is a mutual forum for a mutual settlement between the bank and the borrower. The same shall be put before the Court when both parties sign the agreement. The court would then issue relevant orders in compliance with settlement terms. In the higher courts, such orders cannot be challenged. This forum is currently possible for accounts in the doubtful and loss categories that are above Rs. 5 lakh. For the quick justice and recovery of small loans Lok Adalats has demonstrated its efficiency.

2. Debt Recovery Tribunals (DRT's) ⁱⁱ

When a bank is badly classified as NPAs then the bank has to initiate legal proceedings against the borrower to collect its loan amount immediately. The DRT recovery is one of those instruments available with the lender bank. If the dues exceeding rupees of 10 lakh from the borrower, the lender bank may prefer to commence recovery through DRT.

3. SARFAESI Securitization and Reconstruction of Financial Assets and Enforcement Of Security Interest Act ⁱⁱⁱ

Though we have Lok adalats and DRTs but yet the problem remains the same. There was no such relief under the present law and dues were made very long, which were detrimental to public interest and affected domestic growth. In 2002 SARFAESI Act was introduced. This Act provides enforcement of security interest for realization of the dues without the intervention of courts or Tribunals. SARFAESI is thus considered to be one of the most effective NPA recuperation tools. In accordance with the Securitization Act, financial assets should be securitized and reconstructed through two special purpose vehicles. The Securitization process was adopted to speed up banks and financial institutions' debt recovery process by attaching their assets, without a decree being obtained by the competent Court of Law through a regular legal process.

This Securitization Act has been made not only for the defaulting parties, but also to send, correct signals to the creditors in general. It should be noted that only proper credit assessment and risk management mechanism can achieve a lasting solution to the NPAs problem.

RATIONALE OF THE STUDY

Increasing number of non-performing asset in public-sector banking is an immense crisis. It affects the growth and profitability in banking sector. RBI has taken a number of measures to reduce the growth of NPA rates in the banking sector. It also introduced various strategies for controlling growth levels because it starts influencing the country's economic growth. The borrowing system also becomes pretentious as the rate of NPAs rises. Proper lending recoveries will only boost lending and improve banks ' profit growth.

OBJECTIVES OF THE STUDY

1. To study the recovery of NPA in Indian public sector banks prior to and after the enactment of the SARFAESI Act 2002.
2. To analyze of trends in NPAs recovered by the SARFAESI Act 2002
3. To study the measures currently being followed for the recovery of NPA by nationalized banks
4. To discusses the effectiveness of recovery methods under SARFAESI Act 2002 and to compare with other recovery methods like Lok Adalats, and DRT
5. To study its influence on Indian economy and the effect of non-performing assets on nationalized banks

ANALYSIS AND DATA INTERPREATION

NPAs of SCBs Recovered through Various Channels

Table-1: Showing NPA recovered by SCBs through LokAdalats (Amount in Crore) ^{iv}

Item	2008	2009	2010	2011	2012	2013	2014	2015	2016
Number of Cases Referred	1,86,535	5,48,308	7,78,833	6,16,018	4,76,073	8,40,691	16,36,957	2958313	4456634

Amount involved	2142	4023	7235	5254	1700	6600	23200	31000	7200
Amount Recovered	176	96	112	151	200	400	1400	1000	3200
% of Amount recovered	8.2	2.4	1.55	2.87	11.8	6.1	6.2	3.2	4.4

Table 1: shows that during the study period 2008 to 2016, commercial banks were recuperated by LokAdalats. The analysis shows that the number of LokAdalats cases in which business banks recovered NPAs in 2012 increased considerably from 2008. In this respect, it is clear from the analysis of the table. But if we look at LokAdalats ' recovery during the study period, it shows a steady drop between 2008 and 2009, and an improvement between 2010 and 2012. An incoherent decrease trend shows after 2012. It is far less than other canals of recovery. These LokAdalats were only able to recover Rs 3,200 crore from Rs 72,000 crore in 2016, just 4.4% of the total amount of the business banks ' NPAs.

Table 2- NPAs recovered by SCBs through DRTs (Amount in crore)^v

ITEM	2008	2009	2010	2011	2012	2013	2014	2015	2016
Number of Cases Referred	3728	2004	6019	12872	13365	13408	28258	22004	24537
Amount Involved	5819	4130	9797	14092	24100	31000	55300	60400	69300
Amount Recovered	3020	3348	3133	3930	4100	4400	5300	4200	6400
% of Amount Recovered to Total Amount	51.9	81.1	32.00	27.89	17.00	14.1	9.5	7.0	9.2

An analysed in this Table shows that through the time period and also through the amount involved and the amount recovered through DRTs, the number of cases for the recovery of the NPAs referred to as DRTs has been increasing. DRTs have demonstrated their efficiency during 2008-2009 where the amount recovered from DRTs is quite large, recovering 81,1 percent of the total amount of NPAs. This is the fundamental reason why DRTs are approaching commercial banks for the recovery of NPAs compared to Lok Adalats with a very low percentage of recovered NPAs. We can say that the proportion of the DRTs of commercial banks ' NPAs recovered in 2016 decreases significantly from 2009.

Table-3- NPAs of SCBs Recovered through SARFAESI Act 2002 (in Crores) ^{vi}

Year	No. of cases referred	Amount Involved	Amount Recovered	% of amount recovered to total amount
2003-04	2,661	7847	1156	14.73
2004-05	39,288	13224	2391	18.08
2005-06	38,969	9831	3423	34.81
2006-07	60,178	9058	3749	41.40
2007-08	83,942	7263	4429	61.00
2008-09	61,760	12067	3982	33.00
2009-10	78,366	14249	4269	30.00
2010-11	1,18,642	30604	11561	37.78
2011-12	1,40,991	35300	10101	28.60
2012-13	1,90,537	68100	18500	27.10
2013-14	1,94,707	94602	24402	25.80
2014-15	1,75,355	156800	25600	16.30
2015-16	1,73,582	80100	13200	16.50

The Table-3 shows that data related to NPAs of SCBs recovered through SARFAESI Act 2002. Number of cases referred under act was 2,661 in the year 2003-04 and increased up to 1, 73,582 in the year 2015-16. Trend in the no. of cases referred increasing year on year from 2003 to 2016. The above table exhibited that amount involved was Rs. 7,847 crore in the year 2003-

04 and increased up to Rs.80100 in the year 2015-16. It also shows increasing trend year on year.

Data related to amount recovered highlighted that Rs. 1,156 crore recovered in the year 2003-04 and increasing up to Rs.13200crore in the year 2015-16. It is also shows increasing trends which is good for the all the banks. The result of the table revealed that percentage of NPAs recovered in SCBs through SARFAESI act 2002 shows increase from 14.73% in the year 2003-04 to 16.5% in the year 2015-16. The result of the table concluded that recovery of NPAs in the SCBs improved after the enactment of the Act 2002.

It has been seen that with the help of the procedure of SARFAESI Act the recovery of amount is done on a big scale. That means the number of NPAs is also on the reducing side This Act actually helps in getting more and more amount recovered.

SUGGESTIONS

If we want SARFAESI Act to implement in a proper way there are certain points where need to work out ...

1) Introduction of industrial credit insurance:

A method of industrial credit insurance be introduced and the small scale entrepreneur should be made to pay the premium for the policy. If the defaulter does not repay within a reasonable period of time, the banks could claim the repayment from the Insurance companies. Necessary legislative support has to be sought by the banks from the government.

2.) Steps to be taken to rationalize the analysis while sanctioning the loan:

It is recommended that in future, the legal and practical scrutiny of the loan application be entrusted to specialized consultants. Outsourcing this action would help objective analysis of the proposal and the work can be expedited at the quickest feasible time.

3) Overture of incentives for timely payment:

It is, therefore, recommended that incentives be re-introduced for prompt repayers and the punitive interest rates be hiked so as to force the defaulters to make prompt repayment.

4. Accountability to be set on the bank officers:

The bank officers scrutinize the loan applications and the bank managers (either at regional or head office) authorize and disburse the loan. When the loan becomes steamy the cash is approved on to the branch manager and he stands answerable. Here the liability has to be mutual. The bank officer renders a staff role and the bank manager does the line task. The line and staff of an organization should share both credit and discredit. Hence, it is recommended that for loan sanction, loan disbursement, loan supervision and loan recovery both the bank officers and bank managers be equally made accountable.

5) Political leaders need not to create obstruction in recovery process:

The political parties consist in their election manifesto loan waiver and interest waiver schemes. In order to persuade the naive voters, promises are made to relinquish small industry loans. The central refinancing agencies like IDBI are in opposition to such waiver proposals, as it would change the feasibility of the commercial banks. But in practice the political parties go on with doing promises to small entrepreneurs that they will waive off the loans. There is sturdy need to de-politicise the recovery drives. It would not be out of place if we recommend to the Election Commission of India should de-recognise the political parties who make promises to waive off the loans raised from any financial institution including commercial banks.

6) Formation of Special Courts:

Bankers are bound to resort to legal methods to recover the dues when other methods fail to capitulate the result. The Government has empowered the banks to recover the loans at the initial point by fleeing the SARFAESI Act. Under this, the banks can acquire direct control of the property of the defaulting units without going to the court of law. Externally this appears as a strong mace in the hands of bankers. But in truth it is not so. The Act gives the chance to the defaulting party to move toward the normal court of law at any time the when banks try to seize the property of the defaulting unit. This takes massive time and the funds get protected. Therefore, it is recommended a separate special court be constituted in each district to manage these cases expeditiously. The defaulting units can come up to these special courts and these courts ought to clear the cases within a particular period of time. Such time limit is noticed in case of consumer courts.

CONCLUSION

Edmund Burke (1729-1797) wrote once that "the worst form of tyranny is bad laws." The laws that were once evil are the worst form of tyranny. Legislative, executive and judicial authorities are responsible to ensure that in the country there are no bad laws. In addition, each citizen is responsible for giving valuable feedback on the development of national legislations and also for ensuring that they are governed only by superior laws.

The progress made in this Act was important, as demonstrated by the fact that in 2002-03 when the act came into force, non-performing loans were reduced from 14% in 1999-00 to 3.8% in 2016 to 9.4% of gross advances. Recoveries in NPAs are allowed by changes to the SARFAESI Act 2002 and open the way for banks to reclaim their unpaid sums listed in their account books as non-performing assets.

The overall aim of this research is to find solutions to assist the implementation of the SARFAESI Act and to propose measures so that the law best suited for the common good of the people of this country.

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ENDNOTES

ⁱ Banking Regulation Act , 1949

ⁱⁱ Recovery Of Debts Due To Banks And Financial Institutions Act, 1993

ⁱⁱⁱ Securitization and Reconstruction of Financial Assets and Enforcement Of Security Interest Act, 2002

^{iv} Source: RBI

^v Source: RBI Table-2 shows NPAs of commercial banks recovered through DRTs during the study period of 2008 to 2016.

^{vi} Source: (RBI) Report in Trends and Progress of Banking in India, RBI.