RECOVERY MECHANISM OF NON PERFORMING ASSETS IN PUBLIC SECTOR BANKS IN INDIA- A LEGAL STUDY

Dissertation submitted to National Law University and Judicial Academy, Assam

In partial fulfilment for the award of the degree of

MASTERS OF LAWS

Supervised by

Mr. Ankur Madhia
Assistant Professor of Law

Submitted by

Madhusmita Ronghangpi
UID - SF0219012
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SUPERVISOR CERTIFICATE

It is to certify that Ms. MADHUSMITA RONGHANGPI is pursuing Master of Laws (LL.M.) from National Law University and Judicial Academy, Assam and has completed her dissertation titled "RECOVERY MECHANISM OF NON PERFORMING ASSETS IN PUBLIC SECTOR BANKS IN INDIA- A LEGAL STUDY" under my supervision . The research work is found to be original and suitable for submission.

Date: 17th August, 2020

(Mr. Ankur Madhia)
Assistant Professor of Law
National Law University and
Judicial Academy, Assam

DECLARATION

I, MADHUSMITA RONGHANGPI, pursuing Master of Laws (LL.M.) from National Law University and Judicial Academy, Assam, do hereby declare that the present dissertation titled "RECOVERY MECHANISM OF NON PERFORMING ASSETS IN PUBLIC SECTOR BANKS IN INDIA- A LEGAL STUDY" is an original research work and has not been submitted, either in part of full anywhere else for any purpose, academic or otherwise, to the best of my knowledge.

Date- 17th August, 2020

(Madhusmita Ronghangpi)
UID - SF0219012

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(Madhusmita Ronghangpi)

UID - SF0219012
LL.M 2nd Semester, 2020
National Law University and
Judicial Academy
Assam

PREFACE

Banks accept deposits and borrow money and those funds have to be returned and interest for these funds have to be paid. Banks earn income and interest through those loans and advances. These loan accounts in return produce income for the bank. Income Recognition Asset Classification (IRAC) norms by Reserve Bank of India (RBI) standardized the bank accounting. These norms stipulates procedure to be followed and how income is recognized and classified as asset. These loan accounts are performing assets when it generate income for the bank. But if this assets don't bring any income for the banks, they are Non-Performing Assets (NPA). There are many parameters to become NPA with the nature of facility. But generally, if the interest or installment of principal remains overdue beyond 90 days the loan account becomes NPA. NPA accounts are serious problems for banks. Banks are suffering the cost of carrying the assets in the books. The Banking system of India used many recovery mechanism for NPA like the One Time Settlement Schemes, Lok Adalats, Debt Recovery Tribunal (DRT), Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002, Corporate Debt Reconstruction (CDR**)** and Insolvency and Bankruptcy Code (IBC), 2016

In this research paper, the researcher has studied the concept of NPA and its recovery by the aforesaid mechanisms and analysed the data provided by the RBI. The researcher also study the level of NPA in the major Public Sector Banks through the data of GNPA and NNPA, which are collected from the RBI site. The priority, non-priority and public sectors of the Public Sector Banks are also studied here in this research paper. The research project also involve structured questionnaire method to do empirical study on the NPA management and the efficiency of the bankers to control the NPAs in the banks of India. In this paper, the researcher mainly focuses on the study of legal framework involved in controlling NPA in the bank and the involvement of judiciary to provide provisions in recovering the debts of the default borrowers. The researcher also tries to give the recommendations and suggestions for declination of high NPA in the banks that impact the financial system and economy of the country.

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TABLE OF ABBREVIATIONS

SL. NO.	ABBREVIATIONS	MEANING
1.	AIR	All India Reporter
2.	Anr	Another
3.	Art	Article
4.	AQR	Asset Quality Review
5.	ARCs	Asset Reconstruction Companies
6.	BFRS	Board for financial Regulation and Supervisions
7.	BoB	Bank of Baroda
8.	CCBs	Capital Conservation Buffers
9.	CDR	Corporate Debt Restructuring
10.	CFS	Committee on Financial System
11.	Chap.	Chapter
12.	CIBIL	Credit Information Bureau (India) Limited
13.	CoC	Committee of Creditors
14.	CoF	Cost of Fund
15.	Co.	Company
16.	Cr.	Crore
17.	Corpn.	Corporation
18.	CRE	Commercial Real Estate
19.	DRTs	Debt Recovery Tribunals

20.	DRATs	Debt Recovery Appellate Tribunals
21.	DSCR	Debt Service Coverage Ratio
22.	ECGC	Export Credit Guarantee Corporations
23.	EMI	Equated Monthly Installment
24.	EVA	Economic Value Additions
25.	FY	Financial Year
26.	GNPA	Gross Non-Performing Assets
27.	Govt.	Government
28.	GST	Goods and Services Tax
29.	HC	High court
30.	IBC	Insolvency and Bankruptcy Code
31.	IRAC	Income Recognition and Asset Classification
32.	IRR	Internal Rate of Return
33.	ITRs	Income Tax Returns
34.	IVPs	Indira Vikas Patras
35.	KVPs	Kisan Vikas Patras
36.	KYC	Know Your Customer
37.	Ltd.	Limited
38.	MIS	Management Information System
39.	MSME	Micro, Small and Medium Enterprises

40.	NBFC	Non-Banking Financial Companies
41.	NCLT	National Company Law Tribunal
42.	NCLAT	National Company Law Appellate Tribunal
43.	NNPA	Net Non-Performing Assets
44.	NPLs	Non-Performing Loans
45.	NPAs	Non-Performing Assets
46.	NSCs	National Savings Certificates
47.	OA	Original Application
48.	Ors	Others
49.	OTS	One Time Settlement
50.	PACs	Public Accounts Committees
51.	PO	Presiding Officer
52.	PSBs	Public Sector Banks
53.	PVBs	Private Sector Banks
54.	Pvt.	Private
55.	RBI	Reserve Bank of India
56.	RCs	Reconstruction Companies
57.	RDDBI	Recovery of Debts Due to Banks and Financial Institutions Act
58.	RO	Recovery Officer
59.	ROCE	Return on Capital Employed
60.	ROI	Return on Investment

61.	RRB	Regional Rural Banks
62.	RSA	Restructured Standard Advances
63.	SA	Securitisation Application
64.	SARFAESI Act	Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act
65.	SBI	State Bank of India
66.	SCs	Securitisation Companies
67.	SC	Supreme Court
68.	SDR	Strategic Debt Restructuring
69.	Sec.	Section
70.	SLP	Special Leave Petition
71.	SMA	Special Mention Accounts
72.	SRs	Security Receipts
73.	UOI	Union of India

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CHAPTER 1

INTRODUCTION

Banks are money-oriented institutions. These are the keystone of the financial system. The country's healthy economy depends on the smooth functioning of the banking sector. "Webster's Dictionary" defined Bank as "an institution that deals in money, and establish where the money is deposited, maintained, and issued".[1]

The term of the Bank is defined by experts

"Dr. Samuel Johnson"	"A bank is a place where the money is laid up to be called for occasionally".[2]
"Dr. Herbert L. Hart"	"Bank as a company carrying business of receiving money and collecting drafts for customers subject to the obligation of honouring cheques drawn upon them for customers to the degree of the sums accessible on their current accounts".[3]

The statutory definition is provided under

"Banking" is defined under "Sec. 5 (b) The Banking Regulation Act, 1949."	"Banking is defined as who accepts deposits money from the public for the lending or investment of such deposits and it is repayable on demand or otherwise and withdrawn of deposits by cheques, draft, and order or otherwise".[4]
"Banking Company" under "Sec.5 (c) The Banking Regulation Act, 1949."	"Banking Company is a company which transacts the business of banking in India".[5]

The bank's primary business is to receive money from people and lend money to individuals.[6] This process is called the creation of credit in banks. Banks have income from loans/advances and interest computed during financial tenure. The bank is earning

[1] S.R. Myneni, LAW OF BANKING, 3rd ed., 2017, p. 30.
[2] *Ibid*.
[3] *Ibid*.
[4] BANKING REGULATION ACT, 1949, § 5(b).
[5] *Ibid* § 5(c).
[6] *Ibid* § 6(a).

income and that income needs to be recognized without collecting interest. The loan accounts that produce earnings are called the "Performing assets".

The banks lend money that involves the risk of repayment. Banks recognize their income without counting interest, therefore, they are not aware whether they have collected the interest on loan this may lead to liquidity or bankrupt. Therefore, while lending money the banker should be very careful. One of the risks involved in lending money is Non-performing assets (NPA). Simply, we can be defined as bad loans of the banks that are called NPA.

"Narasimham Committee Report (1991)" expressed that "the interest of assets, advances, bills discounted, etc., remained due for four quarters period, i.e. 180 days is NPAs, but the period decreased to two quarters, i.e. 90 days from March 1995".[7]

According to "Master Circular-Prudential norms on Income Recognition, Asset Classification and Provisioning about Advances, 2015", if borrower doesn't pay the property or money within the definite period of 90 days, that loan fails to produce earnings for the banks defined as NPA. [8] Such assets or loans converted to bad debts are also called as "Non-performing loans" (NPL). When agriculture loans become NPA depending on the period of crops. NPA affects the credit cycle in Banks. Therefore, the recovery of NPA is important as it affects its profits, growth, and development.

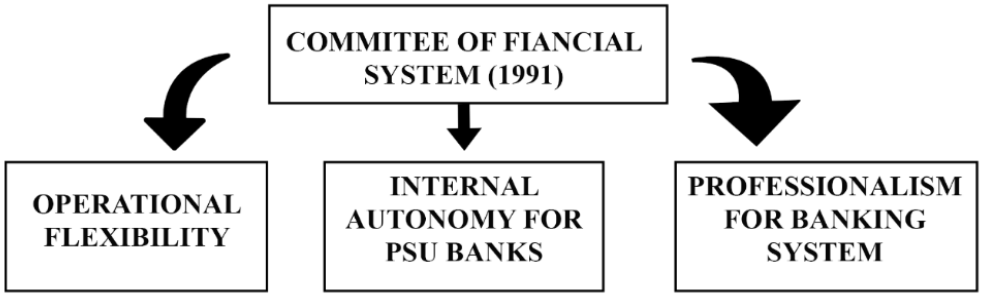
1.1. BANKING REFORMS AND NPA IN INDIA

The "Indian Central Banking Enquiry Committee, 1931" proposed the exercise of banking in India is discovered from the "Vedic Period, i.e. 2000-1400 B.C".[9] The structure of the banks in India has changed from phases to phases. Prior to Independence, the private sector is organised through "Joint Stock Companies". "The Reserve Bank of India Act, 1934", and "the Companies Act, 2013" regulate and supervise the banks. "The RBI was set in the year1935". "The Banking Regulations

[7]"Management NPAs and its implications", SODHGANGA, https://shodhganga.inflibnet.ac.in/bitstream/10603/151330/17/chapter%205%20management%20of%20non-performing%20assets%20and%20implications.pdf (April 10, 2020, 02:13 PM).
[8] Master Circular-Prudential norms on Income Recognition, Asset Classification and provisioning pertaining to Advances, RBI Notification No. RBI/2015-16/101, (01/ 07/ 2015), https://www.rbi.org.in/SCRIPTS/BS_ViewMasCirculardetails.aspx?id=9908 p. 1(April 2, 2020, 08:21 PM).
[9]MYNENI, *supra* note 1 at p. 2.

Act, 1949" empowers RBI to manage the financial structure of India. "The State Bank of India Act, 1955 established SBI on 1st July 1955". "14 banks and 6 banks were nationalized on 19th July 1969 and 15th April 1980 respectively and New bank of India was merged with the PNB in September 1993".[10] The number of nationalized banks became 19.[11]

The "Committee on Financial System (CFS)" or "Narasimham Committee I", where "Shri M. Narasimham" was the Chairman and the then 13th Governor of RBI, analyse the functions, structure, and actions of the banks on 14th August 1991.[12] The significant recommendations:



The CFS recommended for NPA is to establish an "Asset Reconstruction Companies (ARC)" to resolve matters of NPA. It suggested that RBI should initiate "Prudential norms relating to income recognition, asset classification, and provisioning by banks". The Narasimham Committee Report brought Liberalization in the banks and financial systems in 1992 and provide in moderation in restrictions of government in social and economic policy.[13] In December 1997, the Government of India establishes a committee where Shri M. Narasimham was the Chairman. The aim is to look into the banking sector reforms and toughen the structure of banks of India and initiate international competition.[14] This Committee toughens the legal structure in recovering the loans. The Parliament passed the SARFAESI Act (2002).[15]

"Standing Committee on Finance", where the chairman was "Dr. M Veerappa Moily" presented a report on "Non-Performing Assets in FIIs" on "February 24, 2016" and it suggested:

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[10] ML Tannan, TANNAN'S BANKER'S MANUAL- A COMMENTARY ON BANKING LAWS & ALLIED ACTS, 1st ed., 2015, p. 22.
[11] *Ibid.*
[12] Ramesh Singh, INDIAN ECONOMY, 11th ed., 2019, p. 12.12.
[13] Sujay Ilnu, "Liberalisation in Indian banking and regulations", LEGAL SERVICES INDIA, http://www.legalservicesindia.com/article/1023/Liberalisation-of-Indian-Banking-&-Regulation(April 10, 2020, 01:07 PM).
[14] SINGH, *supra* note 12, at p. 12.13.
[15] *Ibid* at p. 12.14.

a. For continuous control over granting of the loan, three tiers were set up:

(i) RBI

(ii) Banks

(iii) Borrower.

b. "Restructuring" of loan accounts.

c. "Corporate Debt Restructuring (CDR)".

d. "Strategic Debt Restructuring (SDR)".

The PSBs works have gone down continuously. The GNPAs of PSBs, according to the RBI data, rose from "₹6, 84,732 crores", on March 31st, 2017, to "₹8, 95,601 crores", on "March 31st, 2018", and came down to "₹7, 39,541 crores", on March 31st, 2019.[16]

1.1.1. *ASSET CLASSIFICATION NORMS*

Before, the bank used to classify the asset into four categories-

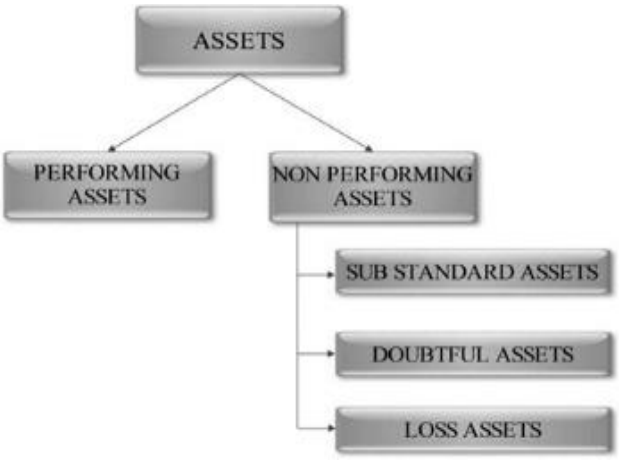
a. Good and fully secure

b. Good and secured by the guarantee

c. Doubtful

d. Bad

Later on, Bank assets were classified based on the health code that is in cases like writing off bad accounts and making ad-hoc provisions for accounts come under doubtful. These classifications where all before the notification "Income Recognition Asset Classification (IRAC) norms" of RBI. It provides the procedure to be followed and how income is recognized and the classification of assets and applies to all Banks in India. The classifications are:



[16] "NPAs of public sector banks stand at ₹7.27 lakh crore as on H1FY20", LIVEMINT, https://www.livemint.com/industry/banking/npas-of-public-sector-banks-stand-at-rs-7-27-lakh-crore-as-on-h1fy20-govt-11580733371206.html (Apr. 10, 2020, 02:48 PM)

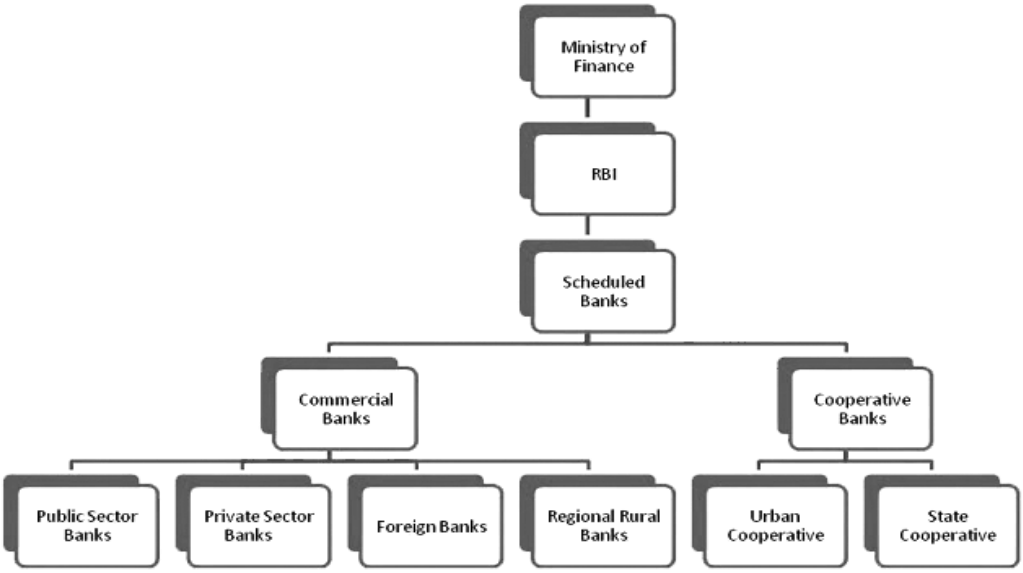
Source: Sodhganga[17]

Among the four classifications, the Banks need to classify NPA into "Sub-standard assets, Doubtful assets, and Loss assets" depending on "non-performing period" and "the reliability of the dues".

The RBI inspected all banks and analyse monetary position on March 31, 2018, in connection with RBI directions on IRAC norms. RBI concluded after the investigations that the charge regarding disobedience to the RBI directions on IRAC norms imposed the financial penalty.

According to the order October 16, 2019, the RBI imposed ₹1 crore sanction on "Janata Sahakari Bank Ltd.", Pune for infringing to RBI IRAC norms. According to the notification of January 29, 2020, the RBI imposed "₹ 50 lakhs" on "Dombivli Nagari Sahakari Bank Ltd." for infringing on RBI IRAC norms.[18] "Sec. 47A (1) (c) along with Sec. 46(4)(i) and Sec. 56 of the Banking Regulation Act, 1949" is applicable to breach of RBI IRAC norms, based on deficiencies in regulatory.[19]

1.2. DIFFERENT KINDS OF BANKS IN INDIA



Source: Google Image.[20]

[17]SODHGANGA, *supra* note 7 at 12.

[18] The RBI imposes monetary penalty on Dombivli Nagari Sahakari Bank Limited, RBI Notification No. RBI/2019-2020/1832 (30/01/2020), https://www.rbi.org.in/scripts/BS_PressReleaseDisplay.aspx?prid=49284 (Apr 9, 09:00 PM).

[19]The RBI imposes monetary penalty on Janata Sahakari Bank Ltd., RBI Notification No. RBI/2019-2020/1049 (29/10/2019), https://www.rbi.org.in/scripts/BS_PressReleaseDisplay.aspx?prid=48501 (April 10, 03:00 PM).

[20] "Types of banks and List of banks in India", ACCOUNTS$TUTORIALS, http://www.accounts4tutorials.com/2014/01/type-of-banks-list-of-banks-in-india (April 8, 2020, 01:00 PM).

1.2.1. *PSBs IN INDIA*

"Public sector banks" (PSBs) refer that "the Govt. has more than 50 % vital shares of banks". "There were 8 PSBs, i.e. SBI and 7 SBI associate banks till July 1969 and after that, 14 commercial banks were nationalized; the Govt. held 100% vital shares of banks in 1969, and 6 more private banks were nationalized in 1980". [21] All those banks having ownership of the Central Government are denoted as public sector banks.

The recommendations of "CFS or Narasimham Committee I (1991)" is reducing PSBs through mergers and acquisitions for effectiveness in functions of banks.[22] The SBI associated banks were merged. "The first merged was the State Bank of Saurashtra on 13 August 2008".[23] "The State Bank of Indore was merged with Bank of India on August 27, 2010".[24] "The State Bank of Bikaner & Jaipur, State Bank of Hyderabad, State Bank of Mysore, State Bank of Patiala and State Bank of Travancore, and Bharatiya Mahila Bank were merged with State Bank of India".[25] "Vijaya Bank and Dena Bank were merged with Bank of Baroda on 1 April 2017". "Nirmala Sitharaman, Union Finance Minister of India" announced the amalgamation of PSBs in the year 2019.[26] "Indian Bank is merged with Allahabad Bank; PNB is merged with the Oriental Bank of Commerce and United Bank of India; Union Bank of India is merged with Andhra Bank and Corporation Bank; and Canara Bank is merged with Syndicate Bank on April 1, 2020".[27]

1.3.CREDIT APPRAISAL PROCESS AND CREDIT MONITORING IN BANKING SECTOR

The credit Appraisal process is the process where the borrowing unit is studied to inherit the weaknesses and the risks before granting the loan to that unit. Credit Appraisal is a covenant part of loan sanction so that banks can mitigate the risk. Illustration: ABC is a bank, before giving a loan the Loan officer KYC (Know Your Customer), Payslip,

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[21] Kirti, "Types of banks", LEARNTALKMONEY, https://www.learntalkmoney.com/types-of-banks-in-india/l (Apr 8, 2020, 01:00 PM).
[22] SINGH, *supra* note 12 at p. 12.13.
[23] Sowmya Ramanathan & Prajakta Valiv, "Mergers & Acquisitions and SBI's amalgamation", OSR-JBM, E-ISSN: 2278-487X, ISSN: 2319-7668, pp. 21-25.
[24] *Ibid.*
[25] *Ibid.*
[26] Vijay Kumar, "List of Merger of Public Sector Banks in India 2020", GRADE UP, https://gradeup.co/bank-merger-list-india-i (April 9, 2020, 03:12 PM).
[27] *Ibid.*

Form 16, ITRs (Income Tax Returns), Bank statement, CIBIL report, etc. and will visit for checking. The bank has a panel of Engineers and Advocates for technical and legal evaluation. The title of the property is to be check by the Advocates. The market valuation will be evaluated by the Technical evaluators. After examining the technical and legal viability, the Loan Officer will analyse the data and prepare the Credit Assessment Memorandum. This memorandum is sent to the Credit Risk Team for evaluation. The sanctioning Authority approves the case and loan amount to the borrower. The sanction letter must be approved by the borrower.

Credit monitoring is an important part of credit management to maintain a sustainable good relation between Banker and Borrower. The fundamental requirements for credit monitoring are:

1. Credit should be used for the intended purpose.
2. The payment of interest and the installments or principal is according to the agreed term.
3. The borrower should disclose every information about security, the conduct of business, etc. as per requirement.
4. The banker and borrower should not take any steps that will collapse the banking relationship between them.

1.4. RESEARCH BACKGROUND

When "CFS or Narasimham Committee I" under "Shri M. Narasimham", chairman of the committee and the then Governor of RBI was established by the Govt. of India in 1999, the reforms in Indian lending institutions began to start. The "Narasimham Committee I" recommendations helped RBI to issue some major guidelines in 1993 and these guidelines focused on the identification and reduction of NPA. NPA is an obstacle to the social and economy of India. The Credit risk management of a bank indicates its efficiency by decreasing the NPA in that particular bank. In the year 2019-20, the pale growth in credit indicates the high NPA.[28] However, The RBI has provided precautionary measures of NPA in banks like strengthening the supervising of credit risk and continuously evaluating the credit risk. The banks have made an attempt to nourish credit control and risk management and detect the bad signals in time. The non-

[28] Operations and Performance of Commercial Banks, Annual publication of RBI (24/12/2019), https://m.rbi.org.in/Scripts/PublicationsView.aspx?id=19365 p. 38 (April 8, 2020, 1:00 PM).

attendance fast and productive legal address of a speedy and efficient legal redress defined "moral hazard" in banks and this produces more defaulters in banks.[29] The PSBs have shown in a deteriorating condition in their asset quality in the past decades though there asset quality of PSBs has shown development, there is a decrease in the GNPA and NNPA ratios in the year 2018-19 but still, the amount of NPA is high.

Year	Amount in ₹ crore	As Percentage Gross Assets	Amount in ₹ crore	Net Assets %
2017-18	8,95,601	14.6	4,54,483	8.0
2018-19	7,39,541	11.6	2,85,123	9.8

Table 1: GNPA and NNPA in PSBs.[30]

Source: RBI

According to the table provided below, there is an improvement in the proportion of the standard asset which indicates the PSBs conduct. However, in PSBs the upgrade in

Bank Group	End-March	Standard Assets		Sub-Standard Assets		Doubtful Assets		Loss Assets	
		Amount	Per cent*	Amount	Per cent*	Amount	Per cent*	Amount	Per cent*
PSBs#	2018	46,02,125	84.5	2,05,340	3.8	5,93,615	10.9	46,521	0.9
	2019	50,86,874	87.8	1,37,377	2.4	5,06,492	8.7	66,239	1.1
PVBs ^	2018	24,50,552	96.0	27,203	1.1	69,978	2.7	5,243	0.2
	2019	31,03,581	95.2	42,440	1.3	1,04,696	3.2	9,576	0.3
FBs	2018	3,49,475	96.2	3,831	1.1	8,364	2.3	1,635	0.5
	2019	3,94,699	97.0	3,163	0.8	7,985	2.0	1,034	0.3
All SCBs**	2018	74,02,152	88.1	2,36,374	2.8	6,71,957	8.0	53,398	0.6
	2019	85,85,154	90.2	1,82,980	1.9	6,19,173	6.5	76,849	0.8

Notes: 1. Constituent items may not add up to the total due to rounding off.
2. *: As per cent to gross advances.
3. #: Includes IDBI Bank Ltd for 2018.
4. ^: Includes IDBI Bank Ltd for 2019.
5. **: Excludes SFBs.

Source: Off-site returns (domestic operations), RBI

[11] Defined as the amount recovered as a per cent of amount involved.

"sub-standard assets" and "doubtful assets" altered in rising "loss assets".

Table 2: CLASSIFICATION OF LOAN ASSETS - BANK GROUP-WISE.[31]

Source: RBI

The bank-wise GNPA and NNPA of PSBs:

[29] Ankit Garg, "A study on management of non-performing assets in context of Indian banking system", Vol.3 Issue 11, IJETMER, ISSN: 2454-1907 (2016).
[30] RBI, *supra* note 28, at p. 51.
[31] *Ibid.*

SL NO.	BANKS	GNPAs (in cr.)	NNPAs (in cr.)
1.	ALLAHABAD BANK	28704.78	7419.31
2.	ANDHRA BANK	28973.97	9091.40
3.	BANK OF BARODA	48232.77	15609.50
4.	BANK OF INDIA	60661.12	19118.96
5.	BANK OF MAHARASHTRA	15324.49	4559.93
6.	CANARA BANK	39224.11	22955.11
7.	CENTRAL BANK OF INDIA	32356.04	11333.24
8.	CORPORATION BANK	20723.68	6926.64
9.	DENA BANK	12767.94	4166.97
10.	INDIAN BANK	13353.45	6793.11
11.	INDIAN OVERSEAS BANK	33398.12	14368.30
12.	ORIENTAL BANK OF COMMERCE	21717.07	9439.62
13.	PUNJAB AND SIND BANK	8605.87	4994.23
14.	PUNJAB NATIONAL BANK	78472.70	30037.66
15.	STATE BANK OF INDIA	172750.36	65894.74
16.	SYNDICATE BANK	24680.37	12627.73
17.	UCO BANK	29888.33	9649.92
18.	UNION BANK OF INDIA	48729.15	20332.42
19.	UNITED BANK OF INDIA	12053.38	5786.61
20.	VIJAYA BANK	8923.30	4018.37
TOTAL	PUBLIC SECTOR BANKS	739541.00	285122.77

TABLE 3: PSBs WISE GNPA AND NNPA.[32]

[32] PSBs wise Gross NPA (GNPA) and Net NPA (NNPA), THE RESERVE BANK OF INDIA DATABASE ON INDIAN ECONOMY, https://dbie.rbi.org.in/DBIE/dbie.rbi?site=home (April 9, 2020, 03:00 PM).

Source: RBI

The 10 PSBs were merged in 4 banks, i.e. "Punjab National Bank merged with Oriental Bank of Commerce and United bank of India; Canara Bank merged with Syndicate bank; Indian bank merged with Allahabad Bank; and Union Bank of India merged with Andhra Bank and Corporation bank on April 1, 2020".[33] It was notified by "Union Finance Minister, Nirmala Sitharaman" in 2019.[34] One of the reasons for such amalgamation was bad loans intensity.[35] After amalgamation, there are 12 PSBs including SBI and Bank of Baroda.[36] The net NPA has been merged between the banks that have been merged.

The RBI has set up curative measures like "Lok Adalat", "SARFAESI Act", "Asset Reconstruction Companies (ARCs)", "Debt Recovery Tribunals (DRTs)", etc. for collecting NPA. The stressed assets recovered very well under IBC from 2018 to 19.[37] However, the other recovery mechanisms, other than Lok Adalats decreased in the period 2018-19 shown in the table below.[38] The referring cases increased to "27 % in volume and value tripled". [39] The IBC implementation helped to recover more NPA amount. The recovery of NPA in SCBs through Various Channels in the year 2018-19 and 2018-19:

Recovery Channel	2017-18				2018-19 (P)			
	No. of cases referred	Amount involved	Amount recovered*	Col. (4) as per cent of Col. (3)	No. of cases referred	Amount involved	Amount recovered*	Col. (8) as per cent of Col. (7)
1	2	3	4	5	6	7	8	9
Lok Adalats	33,17,897	45,728	1,811	4.0	40,80,947	53,506	2,816	5.3
DRTs	29,345	1,33,095	7,235	5.4	52,175	3,06,499	10,574	3.5
SARFAESI Act	91,330	81,879	26,380	32.2	2,48,312	2,89,073	41,876	14.5
IBC	704@	9,929	4,926	49.6	1,135@	1,66,600	70,819	42.5
Total	**34,39,276**	**2,70,631**	**40,352**	**14.9**	**43,82,569**	**8,15,678**	**1,26,085**	**15.5**

Table 4: NPAS RECOVERED BY VARIOUS CHANNELS IN SCBS.[40]

Source: RBI

@: National Company Tribunal Limited

[33] RAMANATHAN & VALIV, *supra* note 23.
[34] *Ibid.*
[35] *Ibid.*
[36] *Ibid.*
[37] RBI, *supra* note 28, at p. 52.
[38] *Ibid.*
[39] *Ibid.*
[40] *Ibid.*

1.5. STATEMENT OF PROBLEM

The present challenges that the PSBs and other banks are facing are NPA. The main function of Banks is to lend and borrow credit and other functions are to carry out the assets quality, transactions, etc. The Bank grants loan through the Credit Appraisal process, where different departments check the borrower's background i.e. their CIBIL score provided by the "Credit Information Bureau of India Ltd (CIBIL)". If the borrower mortgages any property for a home loan or any loan the title deeds need to be check by the lawyers appointed by the banks and many more. After the satisfaction of the banks, it grants loans to the borrowers. When a loan account is not regularised it becomes overdue and eventually becomes NPA. The borrowers' non-remittance of the amount of the loan for 90 days and after 90 days (specified by RBI) that loan account is regarded as NPA. The borrowers make default in repayment because of many internal and external reasons. The most common reason is diversification of loan amount, that the borrower used the loan amount in other work rather than using to borrow the loan and therefore he cannot pay back the vital sum and interest at the right time and the loan account becomes NPA.

People mostly prefer to deposits their money in the PSBs because they have a belief that PSBs will safeguard their money as the Government has more than 50% of shares in such types of banks. The PSBs have many roles in reviving the economy of the country. But due to NPA in such banks, they become a failure in the smooth running of their functions. According to the annual publication of the RBI report, in PSBs through standard assets has shown an improvement in the year 2018-19 than in the year 2017-18, there is also a reversed scenario of "sub-standard assets" and "doubtful assets" with the rise in "loss assets" in the year 2018-19 than in the year 2017-18.

The Government has tried many ways in controlling the NPA in such banks and has implemented various guidelines made on suggestions provided by CFS in the year 1991. But still, from decades we have seen the NPA growth in PSBs. The borrowers used many fraud techniques to borrow loan from the bank and that loan account becomes NPA as they used to diversify the loan money in their luxurious lifestyle or they run away to another country where they think the Indian Government will not arrest them or the extradition process will take much time as the Indian Government

has signed agreement of extradition only with a few countries. Sometimes, the borrower leases the mortgaged property which is also being mortgaged in the bank or they transfer the ownership of the property to another person so that the bank becomes unable to take the property for non-remittance of the loan amount. The high incidence of wilful defaulters has been bringing a high incidence of cases of NPA in banks. In such a way, the Recovery Officer faces many problems in recovering the loan amounts from such borrowers and it consumes a lot of money and time for such recovery. The asset quality of such a loan account becomes worse over time and the bank faces loss and this also, in turn, impacts the economy of the country.

The focus of this study is to have a detailed study on the recovery mechanisms available for NPA and the legal background involved with relevant case laws. This study will also try to find out the level of NPAs in PSBs through RBI data and empirical research carried out by the researcher. Further, this study shall dwell on the NPA influence in recent times in the economy and banking of India. Henceforth, the study will be helpful to find ways to reduce NPAs in PSBs by finding loopholes present in the banks for improving the banking system.

1.6.RESEARCH AIMS AND OBJECTIVES

1. To comprehend the ideas of NPA and its classifications according to "RBI Master Circular - Prudential Norms on Income Recognition, Asset Classification and Provisioning about Advances (2015)" and the reasons for its increasing cases in Banks of India.
2. To analyse recovery mechanisms available for NPA in PSU's Banks and the legal procedures and framework involved in the recovery of NPA in such banks.

3. To know the level of NPA in PSBs' Banks in India with statistical data provided by RBI and also through the structured questionnaire prepared by the researcher.

4. To study the NPA's major impact in the Banking system and economy of India and steps taken by the Government to tackle NPA.

5. To propound suggestions and recommendations for the regulators of PSU's Banks to control NPA in the banking system.

1.7.SCOPE AND LIMITATIONS

The scope under the research are:

1. The study focuses on the impact of NPAs on the performance of the banks.

2. The study of NPA growth involves the necessity of legal provisions for the development of the banks.

The limitations of the research are:

1. Our study is limited to PSBs.

2. The study only limited to the selected recovery mechanisms and their related procedures and their data collected from FY 2014-15 to 2018-19.

1.8. LITERATURE REVIEW

The review of textbooks and journals relevant to the study have been presented in chronologically order under the categories of books and journals.

BOOKS

M.L. Tannan (2016) [41] in his book "Tannan's banker's manual- A commentary on banking laws & allied acts" has described the origin of banks in the world and also in India. He has also described many provisions of Banking Laws like "the Reserve Bank, 1934", "the Banking Regulation Act, 1949", "Securitisation and Financial Assets and Enforcement of Security Interest Act, 2000", etc. and the relevant case laws.

R.N. Chaubhary (2009)[42] in his book "Banking laws" has described that banks are the blood vessel of the country. He has mainly focused on the laws of banks like "the Negotiable Instruments Act, 1881", "the Banking Regulation Act, 1949" and "the Reserve Bank of India Act, 1934". He has written that the role of banks is important in improving the monetary condition of India.

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[41] M.L. Tannan, TANNAN'S BANKER'S MANUAL- A COMMENTARY ON BANKING LAWS & ALLIED ACTS, 25th ed. 2016, Lexis Nexis, USA.
[42] R.N. Chaubhary, BANKING LAWS, 1st ed. 2009, Central Law Publication, Allahabad.

Ramesh Singh (2019)[43] in his book "Indian economy" has described Indian Banking. He also described the RBI, NPA, and Stressed Assets and its resolutions, reforms take place in the Banking Sector, etc.

S.N. Myneni (2017)[44] in his book "Law of banking" has described the relevant laws of Banks. He has incorporated the "Banking Law (Amendment) Act, 2012", "The Negotiable Instruments (Amendment) Act, 2015", "the Companies Act, 2013" and "Information Technology Act, 2000".

JOURNALS

Ajay Jain and Chandra Shaardha (2016) [45] in their paper "The impact of SARFAESI Act 2002 in recovering the non-performance assets in public sector banks: A study on recovery in SBI, CBI, CB, BOB and PNB (2008 to 2014)" have described the impact of SARFASEI Act 2002 and the NPA influence in PSBs. They have also reviewed the impact of "Lok Adalat, SARFAESI, DRTs, and CDR in the SBI, PNB, BoB, etc.

Ajit Kumar (2017) [46] in his paper "A study on the effectiveness of Recovery channels for the Recovery of Non-Performing Assets: A study on Scheduled Commercial Banks in India" has described that NPA influence bank and economy of India. He has also described NPAs collection through tools like DRTs, Lok Adalats and SARFAESI evaluated data from 2006 to 2015.

Ankit Garg (2016) [47]the paper "A study on Management of Non-Performing Assets in the context of Indian Banking system" has described NPAs problem degrade the banks' business. He shows that NPA problem has a bad influence on liquidity, profitability, etc.

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[43] Ramesh Singh, INDIAN ECONOMY, 11th ed., 2019, MC Graw Hill, Chennai.
[44] S.N. Myneni, LAW OF BANKING, 3rd ed. 2017, Asia Law House, Hyderabad.
[45] Ajay Jain and Chandra Shaardha, "The impact of SARFAESI Act 2002 in recovering the non-performance assets in public sector banks: A study on recovery in SBI, CBI, CB, BOB and PNB (2008 to 2014)", Vol. 11 No. 7, IJAER, ISSN 0973-4562 (2016), pp 5218-5224.
[46] Ajit Kumar, "A study on the effectiveness of Recovery channels for the Recovery of Non-Performing Assets: A study on Scheduled Commercial Banks in India", Vol.8 Issue 3, IJRSR (March, 2017) pp. 16200-16205.
[47] Ankit Garg, "A study on Management of Non-Performing Assets in the context of Indian Banking system", Vol.3 Issue 11, IJETMER, ISSN: 2454-1907(November, 2016).

B. Senthil Arasu, et al. (2019) [48] in their paper "A study on analysis of Non-Performing Assets and its impact on Profitability" have described that AQR. AQR maintenance is important. In the present day, AQR is decreasing in PSBs. He analyses the GNPA and NNPA 10 PSBS and PVBs 2014 to 2018.

Chandan Mohanty (2019) [49] in his paper "Non-Performing Assets: Recovery measures and role of bankers" has described that to remove NPA. The mechanisms used in banks are such as DRTs, CDR, SARFAESI, CIBIL, ARCs, Lok Adalats, etc. They have also discussed the role of Banks. The NPA is regarded as a sign of inefficiency and incapability of Banks.

Jaslene Kaur Bawa, et al. (2019) [50] in "An analysis of Non-Performing Assets of Indian Banks: Using the comprehensive framework of 31 financial ratios" has described analyzing banks of India from 2007-2014. The solvency, capital adequacy, profitability, etc. in Indian banks can help in reducing NPAs.

Meenakshi Rajeev and HP Mahesh (2010) [51] in "Banking sector reforms and NPA: A study of Indian commercial banks" have examined NPAs drift. They also explained bank initiatives to reduce NPAs through continuous identifying and observance. They have shown that PSBs works in contributing welfare to the public and turn down NPAs. The "Joint liability groups (JLGs)" / "Self-help groups (SHGs)" contribution is discussed in the paper.

Pradeep Bhardwaj and Isha Chaudhary (2018) [52] in their paper "A study of non-performing assets of commercial banks and its recovery in India" have described the drift and status of NPAs in SCB. They have also described the reasons for high NPAs

[48] B. Senthil Arasu,, P.S. Sridevi, P. Nageswari, and R. Ramya, "A study on analysis of Non-Performing Assets and its impact on Profitability", Vol.5, Issue 6, IJSRMS (June, 2019), pp. 01-10.
[49] Chandan Mohanty, "Non-Performing Assets: Recovery measures and role of banker", ISSN-2249-3352(P) 2278-0505 (E)(2019).
[50] Jaslene Kaur Bawa, Vinay Goel, S.K. Mitra, and Sankarshan Basu, "An analysis of Non-Performing Assets of Indian Banks: Using the comprehensive framework of 31 financial ratios", IIMB Management Review (2019) pp. 51-62.
[51] Meenakshi Rajeev and HP Mahesh, "Banking sector reforms and NPA: A study of Indian commercial banks", ISEC, ISBN: 978-81-7791-108-4 (2010).
[52] Pradeep Bhardwaj and Isha Chaudhary, "A study of non-performing assets of commercial banks and its recovery in India, ICRDASSES", ISBN: 978-93-87793-29-3 (16th-17th June, 2018).

in SCB. It also explains about the recovery of NPAs working mechanisms different means to recover NPA in SCB in India.

Surojit Dey (2016)[53] in his paper "Recovery mechanisms of non-performing assets in Indian commercial banks: An empirical study" has described that the NPA recovery tools through Lok Adalat, DRTs and SARFASEI and the influence on NPA from the period 2003-04 to 2016-17. He also illustrates the different mechanisms in detail.

Sowmya Ramanathan & Prajakta Valiv (2019) [54] in their paper "Mergers & acquisitions and SBI's amalgamation" describes the amalgamation of the SBI and the associates' banks. They also illustrate the impact of the amalgamation of SBIs' in the financial system of the country.

Varuna Agarwala and Nidhi Agarwal (2019) [55] in their paper "A critical review of Non-Performing Assets in the India Banking Industry" have described that NPAs are like the signal that provides information about the efficiency of banks in India best. They have also described the NPA control in different banks from 2010 to 2017.

Yamuna and S. Subramanian (2019) [56] in their paper "Bank-level challenges on the management of loan quality in Public Sector Banks" have described the PSBs problems in India in AQR. NPA affects the loan account and AQR. They have also described that the NPA and risks involved.

1.9. RESEARCH QUESTIONS

1. What is NPA, its classifications, and the reasons for NPAs in the Banks of India?

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[53] Surojit Dey, "Recovery mechanisms of non-performing assets in Indian commercial banks: An empirical study", Vol.1 No.2, NSOU-OPEN JOURNAL, ISSN: 2581-5415 (July 2018).
[54] Sowmya Ramanathan & Prajakta Valiv, "Mergers & acquisitions and SBI's amalgamation", OSR-JBM, e-ISSN: 2278-487X, p-ISSN: 2319-7668, (2019), pp 21-25.
[55] Varuna Agarwala and Nidhi Agarwal, "A critical review of Non-Performing Assets in the India Banking Industry", Emerald Insight, RAMJ. 13, 2 (2019).
[56] Yamuna and S. Subramanian, "Bank-level challenges on the management of loan quality in Public Sector Banks", VOL.8 ISSUE-254, IJTE, ISSN: 2277-3878 (July, 2019).

2. What are the recovery mechanisms involved in recovering NPA in PSBs?

3. What is the level of NPA in PSBs in India and the movement of NPAs in different recovery mechanisms?

4. What role does the NPA play in influencing the banking system and the economy of India?

5. What are the suggestions and recommendations for the regulators to deal with NPA in PSBs?

1.10. RESEARCH HYPOTHESIS

The following are the research null hypothesis for the reason of the study

1. H_o = There is no significant difference among cases referred to Lok Adalats, DRTs SARFAESI Act and IBC.
2. H_o = There is no significant difference among amount recovered through Lok Adalats, DRTs SARFAESI Act and IBC.

1.11. RESEARCH METHODOLOGY

"Webster's International Dictionary" has defined "research as a careful, critical inquiry or explanation in seeking facts or principles, diligent investigation to ascertain something". This paper is constructed on Doctrinal Methodology and Empirical Methodology.

The researcher has collected secondary sources that include books, Legal Articles, and Referred Journals by eminent writers, sources from the internet, and the legislations in National, and inserted in the paperwork.

The researcher has also collected responses through the Structured Questionnaire Method from at least 8 Banks regarding NPA in their particular banks. The data of the NPAs in the Banks and recovery mechanisms collected has been analyzsed through statistical analysis and also through Anova and Turkey HSD tool.

1.12. RESEARCH DESIGN

1. Chapter 1 shows the visualization of Banks and NPAs in brief and the Banking reforms about NPA. The PSBs have been studied briefly with its recent incidents. This chapter includes IRAC issued by RBI and the Credit Monitoring and Credit Appraisal process of the Bank. It also includes the Research Background; Statement of the problem; aims and objectives; literature review; research questions, etc.

2. Chapter 2 illustrates the detailed study on NPA and stressed assets through definitions of legal experts and legislations and also the asset classification of NPA and guidelines. It also includes internal and external reasons for NPA.

3. Chapter 3 demonstrates the recovery mechanisms of NPA in PSBs in detail along with the data provided by the RBI's annual publications. This chapter focuses on the legal provisions related to recovery mechanisms and the relevant case laws related to the validity of the relevant legislation and the recovery of the NPA.

4. Chapter 4 displays the level of NPA in PSBs and PVBs through data provided by RBI's site. It also analyses the data and displays it through bar diagrams. The statistical analysis of the recovery mechanism by using different tools like the "Anova tool" is performed under this Chapter. It also shows the statistical analysis of data collected from PSBs officials through a structured questionnaire method.

5. Chapter 5 expresses the NPAs' impact on the banks of India and the Indian economy through the annual data provided by RBI. It also provides a glimpse of the steps taken by RBI on NPA during the "Covid-19 pandemic".

6. Chapter 6 deals with the conclusion of the research study. The researcher tries to provide recommendations and suggestions to regulators in the relation of NPA under this chapter. It also depicts the future work which the researcher will carry in this interesting topic.

CHAPTER 2

CONCEPT OF NON PERFORMING ASSETS AND STRESSED ASSETS

In the year 1991, "Shri M.Narasimham as Chairman" led "CFS or Narasimham Committee I" and he suggested that the well-being of banks in their balance sheets is important. Therefore, RBI introduced "Prudential norms for income recognition, asset classification and provisioning for the advances portfolio for the banks". "Narasimham Committee I, 1991" defined NPA that "if interest or installments of principal or both remain unpaid for more than 180 days but from March 2004, the period is changed to 90 days, such assets may be called as NPA."[57]

"Sec. 2(o) of the SARFEASI Act, 2002" provided that NPA means an "asset or account of a borrower, which has been classified by a bank or FIIs as sub-standard, doubtful or loss asset in banks or FIIs regulated by established authority or body, constituted or appointed by any law for the time being in force or in accordance with the directions or guidelines relating to assets classifications issued by the Reserve Bank".[58]

"Standing Committee on Finance (Dr. M Veerappa Moily, Chairman)" on its report on "Non- Performing Assets of FIIs, February 24, 2016" defined NPA as "loan provided by FIIs, that don't produce earnings to such FIIs that is behind schedule for more than 90 days." [59]

"Master Circular Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances (2015-16)" defined NPA as "an asset, including a leased asset, becomes non-performing when it ceases to generate income for the bank".[60] The interest or installment of the principal of the loan amount becomes past due to the duration mentioned.[61] As per the Circular (2015), past due amount means that "remains are undone for 30 days beyond the due date but from March 31, 2001". However, the past due relinquished and time is computed from the date payment is not

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[57] SINGH, *supra* note 12.
[58]SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST (SARFAESI) ACT, 2002, § 2 (o).
[59]39th Standing Committee on Finance Report, Standing Committee on Finance on Non-performing assets of financial institutions(2016-17), http://164.100.47.193/lsscommittee/Finance/16_Finance_39.pdf (June 10, 2020, 11:21 PM).
[60] RBI, *supra* note 8.
[61] *Ibid.*

made.[62] The banking system of India tried international functions for providing transparency. "The 90 days standard behind schedule is used to recognize NPAs from March 31, 2004".[63]

The specified time decreased time to time as under by RBI.

Ended March 31 (Year)	Time
1993	4 Qtrs.
1994	3 Qtrs.
1995	2 Qtrs.
2001	180 Days
2004	90 Days

SOURCE: RBI

2.1. PARAMETERS FOR LOAN OR ADVANCE TO BECOME NPA

The parameters for loan or advance to become NPA is provided under "the Master Circular by RBI on 1st July 2015, i.e. the Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances (RBI/2015-16/101) (DBR.No.BP.BC.2/21.04.048/2015-16) applies in all banks but not in RRB". [64] They are provided in the table below

FACILITIES	CONDITIONS
"Term Loan"	Either or combination of Interest or "Instalment of principal remains overdue beyond 90 days".
"Overdraft or Cash Credit"	Remains "out of order" "Out of Order means the outstanding balance remains continuously more than the sanctioned limit/drawing power".

[62] RBI, *supra* note 8.
[63] *Ibid*.
[64] *Ibid.*

"Bill Purchased or Discounted"	"Overdue beyond 90 days".
"Crop Loan for Short term"	"Instalment of principal or interest remains overdue for 2 crop seasons".
"Crop loan for Long term"	"Instalment of principal or interest remains overdue for 1 crop seasons".
"Derivative transaction"	"Remains unpaid for 90 days period from the specified due date for payment".

SOURCE: RBI

2.2. INCOME RECOGNITION POLICY FOR NPA

The "income recognition policy" of NPA depends on the recovery rate. Globally, NPA remuneration identified when received only on a cash basis.[65] So, when advances become NPA includes Government guaranteed accounts than interest doesn't come "income account" unless released and this should be recognized on a cash basis.

Nevertheless, the interest on advances that becomes NPA on "Term deposits", "National Savings Certificates (NSCs)", "Indira Vikas Patras (IVPs)", "Kisan Vikas Patras (KVPs)", etc. undertaken in the "income account" on date of due i.e. recognized on an accrual basis, provided adequate margin is available.[66] Likewise, Banks earning fees and commissions at the time of renegotiation or rescheduling are recognized only in an "accrual basis".

Advances, which become NPA, include bills purchased or discounted or Government guaranteed accounts then the interest that has been deposited in "income account" prior will be turned back "by debiting the profit and loss account if not realized".[67]Likewise, fees or commissions or similar income related to gone time is back-pedal, if remain ungathered.

"The Finance Charge Component of finance income of AS 19 Leases which the Council of the Institute of Chartered Accountants of India on leased asset" is accrued and credit

[65] RBI, *supra note* at 8 at p. 2.
[66] *Ibid.*
[67] *Ibid.*

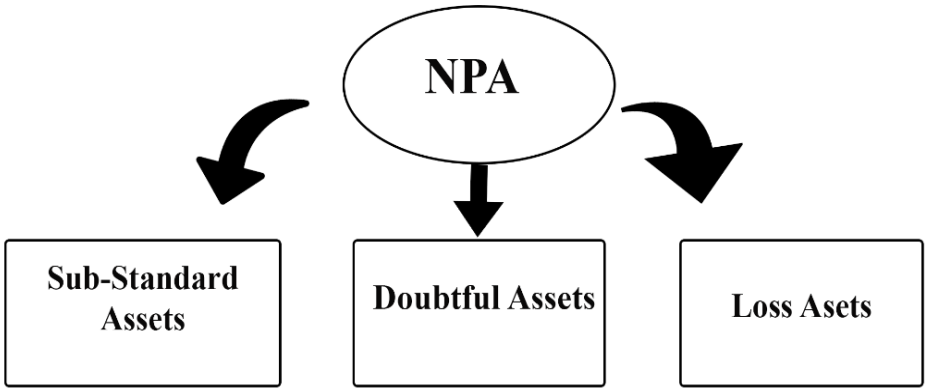
before becoming NPA and not perceive that should be turned back of present financial tenure.[68]

If interest is given regarding NPA, that can be entered in "income account". However, if interest is realized on a fresh or additional credit facility allowed to the borrower that cannot be taken into the account.[69] A bank should record which are not realized in the account books unconsidered during the "Gross advances" calculation.[70]

2.3. NPA ASSET CLASSIFICATION

As per RBI Master Circular by (2015), the Banks divide NPA assets into the three. It depends on

1. "Period that remained non-performing";
2. "Dues capable of being releasable".[71]



2.3.1. *SUBSTANDARD ASSETS*

"The Substandard assets are assets remaining NPA for less than or equal to 12 months with effect from March 31, 2005."[72] It defines credit fragility that risks the liquidation of the debt with possible characteristics and lending institutions face bad impacts. Here, "the present borrower net worth"/ "the current securities market value" is not abundant for collecting payments from the lending institutions.[73]

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[68] RBI, *supra note* 8 *a*t p. 2.
[69] *Ibid.*
[70] *Ibid.*
[71] *Ibid* at p. 4.
[72] *Ibid.*
[73] *Ibid.*

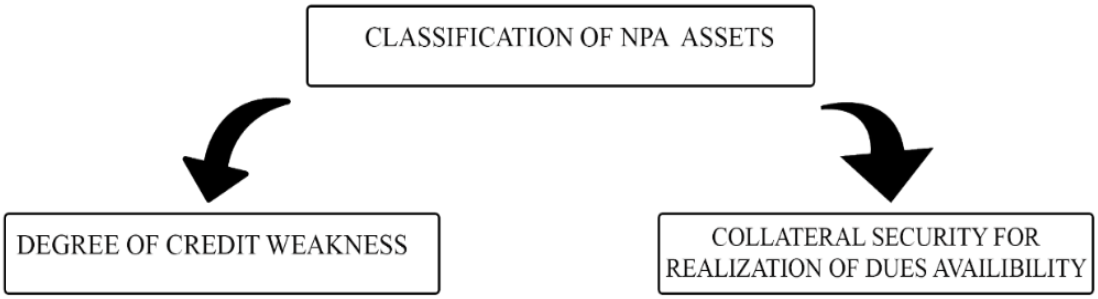
2.3.2. *DOUBTFUL ASSETS*

"The Doubtful assets are assets remaining NPA for more than 12 months with effect from March 31, 2005."[74] Banks classified these loans as doubtful because they have doubts that the borrower will ever repay the loan amount. These assets are defined with the risks inherent in substandard assets, with the added features of risks making liquidation, which is highly doubtful and inauthentic.

2.3.3. *LOSS ASSETS*

"The Loss assets refer to assets where identified loss by the bank or internal or external auditors or the RBI inspection, but the amount has not been written off wholly."[75] These assets are regarded as not capable of being collected.

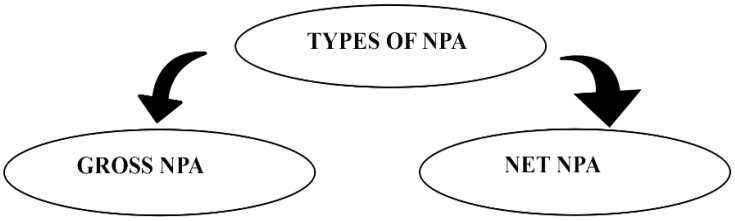
2.4. GUIDELINES OF NPA CLASSIFICATION



Banks should set up suitable internal management systems and suitable recognition NPAs regarding large borrowable accounts. They should not avoid delays in the identification of NPAs. Adoption of a least considerable value validating the whole financial tenure, deciding the high-value account which depends on business levels. They fixed management and authorization for appropriate divisions According to guidelines, doubts in respect of asset classification should be settled within one month through various internal channels.

[74] RBI, *supra note* 8 at p. 4.
[75] *Ibid.*

2.5. TYPES OF NPA



2.5.1. *GNPA*

"Gross NPA **(**GNPA) means the total of all loan assets classified as NPAs as per RBI guidelines as on Balance Sheet date".[76] GNPA refers to the banks' credit standards. This contains non-standard assets like "sub-standard assets", "doubtful assets" and "loss assets".

Mathematical Formula for calculation [77]

"GNPA Ratio = [Gross NPAs / Gross Advances] X 100"

Illustration: Like in FY 2017-18, the "Gross advances" amount is 6141698 and the GNPA amount is 895601. If we divide the GNPA by "Gross Advances" we get 0.1458 which will be multiplied with 100 and the GNPAs Ratio is 14.58 i.e. rounding off is 14.6.

2.5.2. *NNPA*

"Net NPA (NNPA) means that the bank has deducted the provision regarding NPAs".[78] NNPA is the genuine load on the lending institutions.

Mathematical Formula for calculation[79]

"NNPA = [Gross NPAs – Provisions / Gross Advances – Provisions] X 100"

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[76] StockEdge, "Difference between Gross NPA and Net NPA", STOCKEDGE BLOG, http://blog.stockedge.com/difference-between-gross-npa-and-net npa/#:~:text=Net%20non%2Dperforming%20assets%20%3D%20Gross,of%20Net%20NPA%20to%20advances(June 3, 2020, 3:23 PM).

[77] *Ibid.*

[78] *Ibid.*

[79] *Ibid.*

Illustration- In the financial year 2017-18, the "Net advances" amount is 5697350 crore and the Net NPA amount is 454473 crore. If we divide the GNPA by "Gross Advances" we get 0.079 which will be multiplied with 100 and the GNPAs Ratio is 7.9 i.e. rounding off is 8.

2.6. NPA PROVISIONING NORMS IN BANKING SECTOR

The table for NPAs provisioning norms in the banking sector[80].

ASSETS	PARAMETERS	PROVISIONING NORMS
"STANDARD ASSETS"	Agriculture and SMEs	"0.25 % of funded outstanding".
	Advances to CRE (Commercial Real Estate)	"1.00% of funded outstanding".
	CRE Residential Housing Sector	"0.75% of funded outstanding".
	"Housing loans given at Teaser rates and restructured advances"	"2.00% during teaser rate period" and "0.4% after 1 year of rate rest."
	All other loans except above mentioned.	"0.40% of funded outstanding".
	Restructured accounts Under moratorium	For restructured advances (Sub-standard assets)
		"2.00% for first 2 years from the date of restructuring". For "all restructured account @ 2% in first year from the date of upgrade".

[80] RBI, *supra* note 8 at p.21.

		"2.00% in first 2 years from the date of restructuring".
		"2.00% for moratorium period and further 2 years (4 years)".
"SUB-STANDARD ASSETS"	Medium Enterprise	0.40% of funded outstanding
	All other advances	0.40% of funded outstanding
	All sectors	"15% of outstanding without making any allowances for ECGC (Export Credit Guarantee Corporations) and security available".
	"Unsecured Advances"	"Additional 10% that is 25% on outstanding balance" and "for infrastructure loans total 20% provided Escrow mechanism is available".
"DOUBTFUL ASSETS"	"All sectors"	"SECURED PORTION" "25% upto 1 year 40% upto 1-3 years 100% more than 3 years respectively". "UNSECURED PORTION" "100% provisioning"
	ECGC	"Net of ECGC guaranteed and realizable at the above rates".
"LOSS ASSETS"	All sectors	"To be written off to 100% of the outstanding".

SOURCE: RBI

2.7. STRESSED ASSET

Stressed assets are the indicators of the health of the indicator of banks. Stressed assets are assets that will become NPA in the coming future. Those loan accounts which has stressed are regarded "Special Mention Accounts (SMA)" and the division are[81]

"SMA Sub-categories"	Basis for classification – "Principal or interest payment or any other amount wholly or partly overdue between"
SMA-0	1-30 days
SMA-1	31-60 days
SMA-2	61-90 days

SOURCE: RBI

In regards to funds the SMA divisions are[82]

"SMA Sub-categories"	Basis for classification – "Outstanding balance remains continuously more than the sanctioned limit or drawing power, whichever is lower, for a period"
SMA-1	31-60 days
SMA-2	61-90 days

SOURCE: RBI

Mathematical Formula[83]

STRESSED ASSETS = NPA + RESTRCUTURED LOANS + WRITTEN OF ASETS

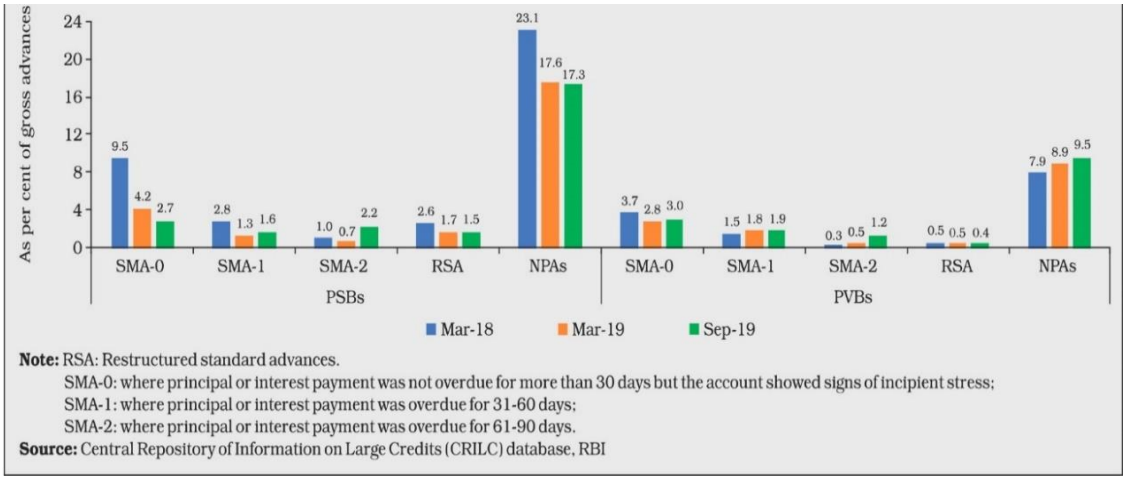
[81]Prudential Framework for Resolution of Stressed Assets, RBI Notification No. RBI/2018-19/203 (07/06/2020)**,** https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11580&Mode=0 at 2 **(**April 25, 2020 1:00 PM).
[82] *Ibid.*
[83] *Ibid.*

Restructured assets are assets that got repayment period extended, reduction in interest rate converting the loan into equity, and providing other additional financings.[84] "Written off assets" refer assets which the lending institutions or creditor does not regard the sum that the debtor has taken it.[85]

2.8. STRESSED ASSET IN LARGE BORROWER ACCOUNT

NPAs of high-value accounts of the borrower ("exposure of ₹5 crores or more") donated "91% of total GNPAs in 2017-18". The "Scheduled Commercial Banks (SCBs)" reduce in SMAs divisions such that "SMA-0, SMA-1 and SMA- 2", "Restructured Standard Advances (RSA)" and improvement in AQR in 2018-19.[86] It contains "53 %of gross loans and advances" and donates "82% of GNPAs at end-March 2019"[87]. The large borrower accounts stress has risen in both PVBs and PSBs in 2019-20.[88]

CHART 1: STRESSED ASSETS IN LARGE BORROWAL ACCOUNTS[89]



Note: RSA: Restructured standard advances.
SMA-0: where principal or interest payment was not overdue for more than 30 days but the account showed signs of incipient stress;
SMA-1: where principal or interest payment was overdue for 31-60 days;
SMA-2: where principal or interest payment was overdue for 61-90 days.
Source: Central Repository of Information on Large Credits (CRILC) database, RBI

SOURCE: RBI

2.9. ASSET QUALITY REVIEW (AQR)

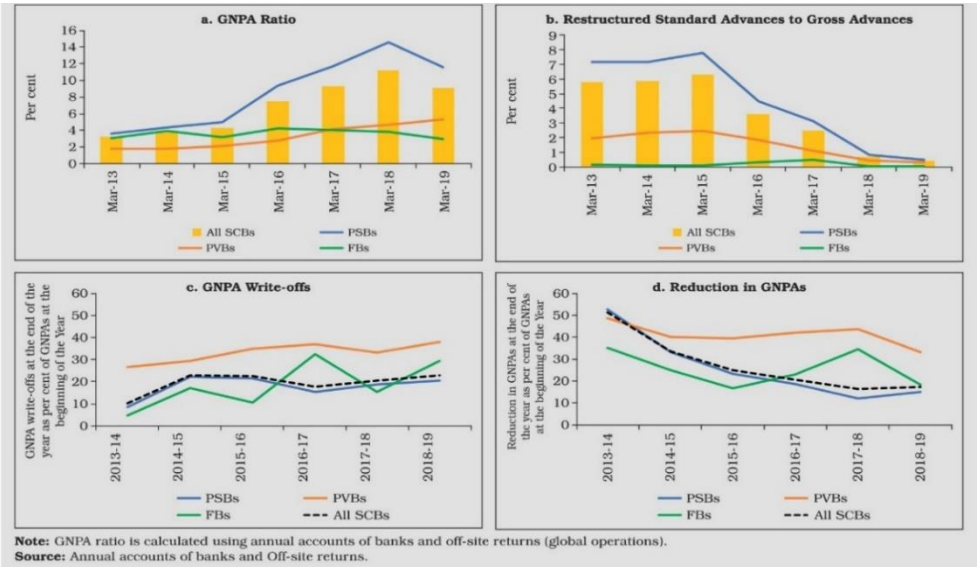
According to RBI data, "Gross advances" of PSBs grew from "₹ 16, 95,051 crores on 31.3.2014" to "₹. 45, 90,570 crore as on 31.3.2018".[90] The reasons for bad assets are

[84] RBI, *supra* note 81.
[85] *Ibid.*
[86] RBI, *supra* note 28 at p. 52.
[87] *Ibid.*
[88] *Ibid.*
[89] *Ibid.*
[90] *Ibid.*

wilful defaulters or loan frauds or corruption, etc. AQR initiated in 2015 for good and virtuous in the financial statement that gives rise in NPAs.[91] AQR is necessary for proper as asset classification by the banks and postponing bad loans. "Former RBI Governor, Raghuram Rajan" said that "At the Reserve Bank, corporations and banks come to us saying- 'Give us some forbearance, don't call our loans bad even if it has not been paid for three years. Allow us to postpone recognition.' This is the wrong way to go about it."[92]

As per data of RBI, GNPAs of PSBs rose from "₹ 2, 67, 065 core on 31.3.2015 to 8, 45,475 crore on 31.3.2018".[93] "The GNPA ratio of all SCBs declined in 2018-19 after rising for seven consecutive years (March 2013-19)" (Chart a: GNPA RATIO) and "the restructured standard advances to gross advances ratio began declining due to AQR in 2015" (Chart b: RESTRUCTURED STANDARD ADVANCES TO GROSS ADVANCES).[94] "Improvement of GNPA write-off in the year 2018-19" (Chart c: GNPA WRITE-OFFS) and "reduction of GNPA in the year 2018-19 and 2015-16" (Chart d: Reduction of GNPAs). [95]

CHART 2: GNPA RATIO; RESTRUCTURED STANDARD ADVANCES TO GROSS ADVANCES; GNPA WRITE-OFFS and Reduction of GNPAs.



Source: RBI[96]

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[91] RBI, *supra* note 28 at p.52.

[92] Manojit Saha, "Asset Quality Review", THE HINDU, https://www.thehindu.com/business/Industry/Asset-Quality-Review-and-its-impact-on-banks/article14494282.ece (May 29, 2020, 12:22 P.M.).

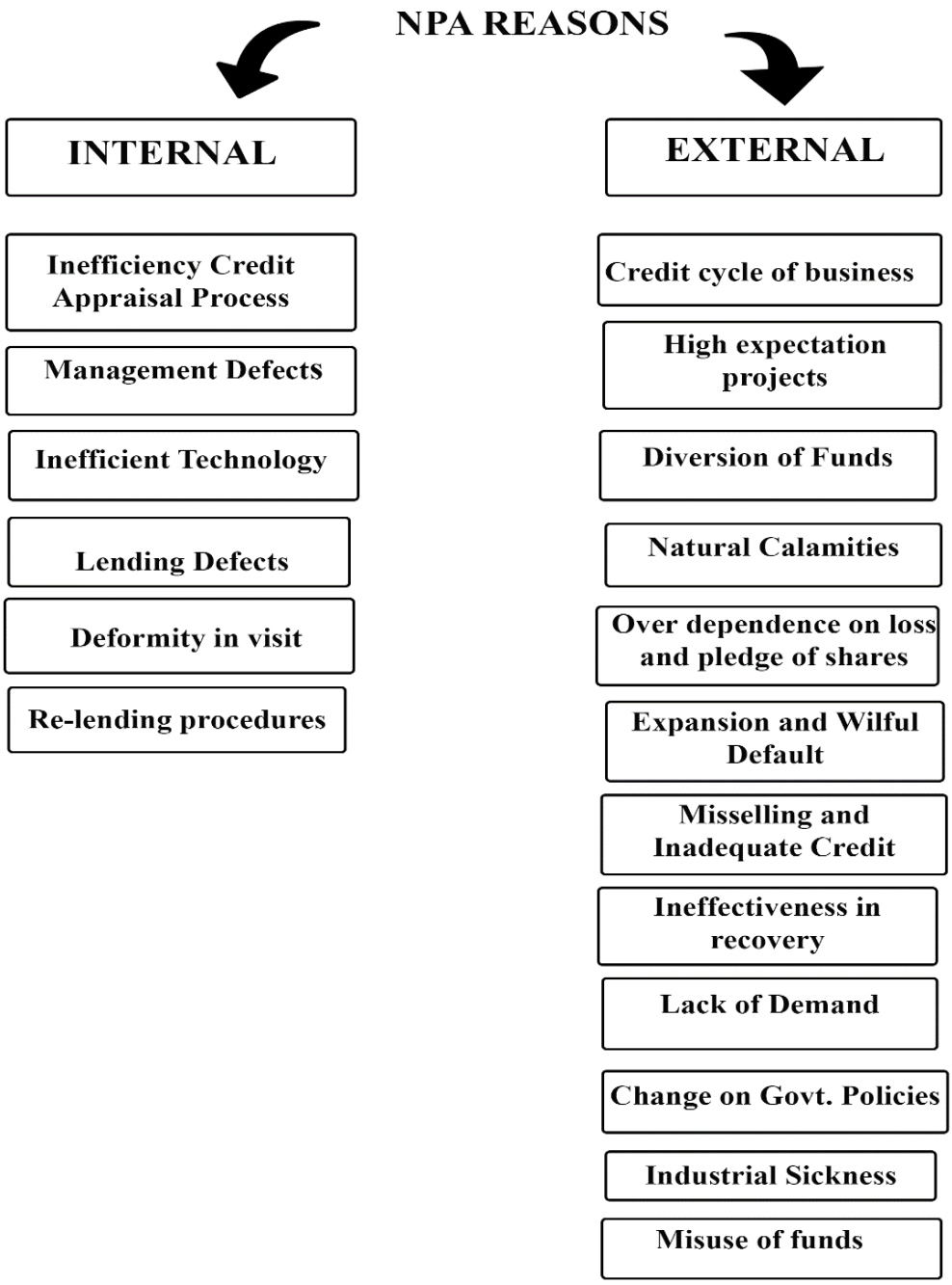
[93] RBI *supra* note 28 at p. 50.

[94] *Ibid*.

[95] *Ibid*.

[96] *Ibid*.

2.10. REASONS OF NPA IN BANKING SECTOR



2.10.1. *INTERNAL REASONS OF NPA IN BANKING SECTOR*

2.10.1.1. INEFFICIENCY CREDIT APPRAISAL PROCESS

"Credit Appraisal Process" defines as procedures in the bank that analyse debtor or borrowing unit to determine the risks and weaknesses before granting the loan to such a unit. The poor credit appraisal process in the bank is the most important internal factor

for NPA. This internal factor results in granting loans to borrowers who cannot repay the principal amount or interest to the bank and the loan account cannot be recognised as performing assets means those assets cannot be converted to the cash amount. This increases the numbers of wilful defaulters in banks that indicate increasing NPA in banks. Therefore, banks should adopt a very efficient credit appraisal system with efficient staff that will examine the borrowers so that they don't use the loan amount for purposes other than the said purpose.

2.10.1.2. MANAGEMENT DEFECTS

Banks should consider the principles before lending loan–

a. *Security*: The bank grants loan to the borrower after calculating the risks inherited by the examination of that borrower. The security must be tangible assets that are free from encumbrances, adequate, and easily realizable. It should be a sufficient margin to provide against fluctuations in value.

b. *Marketability*: The security must be a demandable product in the market and unless that product is sold in a profitable way, the unit cannot run smoothly.

c. Managerial ability: The banks must have the ability to manage their units. The competency of the banks lies in how they manage the interrupted schedules.

d. Safety: Safety should be the priority of the banks before granting any loan to the borrowers. This safety means the borrower's capabilities for paying back the amount. This means payment capabilities, willingness to pay, and the collateral security that is offered by the borrower to the bank.

e. *Risk Diverseness*: The diversification of risks depends on the quotes "Do not keep all the eggs in one basket" that defines "the banker should not grant advances to a few big farms only or to concentrate them in few industries or a few cities".

f. Efficiency: The bank should manage efficiently to achieve the aims and objectives. They can only achieve by giving the best training to their employees.

g. *Technical ability*: The banks must have well-trained employees to work efficiently.

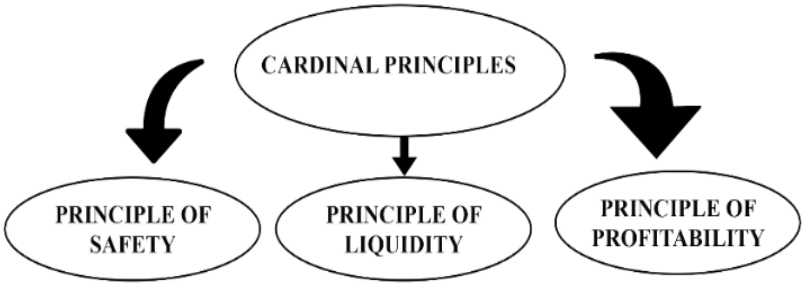
2.10.1.3. INEFFICIENT TECHNOLOGY

The present era is the Era of Information and everywhere we can found the importance of computer or electronic medium. Therefore, it is very important as the banks take

initiative for the implementation of "Management Information System (MIS)" and "Financial accounting system". It should be initiated to avoid poor credit collection, this, in turn, increases NPA in the bank.

2.10.1.4. LENDING DEFECTS

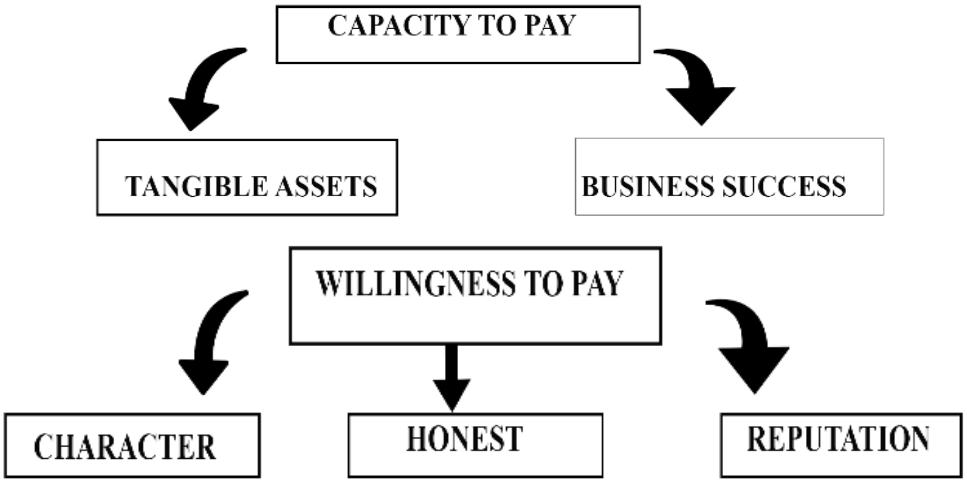
The Lending process of Banks involved three cardinal principles.



a. *Safety*: This refers that the borrower is in the borrower's capabilities for payment of the loan amount. The borrower's capabilities for payment of the loan amount based on:

i. Capacity.

ii. Willingness.



b. *Profitability*: The main aim of the bank is to earn the profit. The principle of profitability refers to earning profits to invest by providing short term loans.[97]

c. *Liquidity*: The principle of liquidity refers to the capability of an asset for conversion into cash without a loss in less time. [98] In the banking world, payment of deposited money on demand of customers.

[97] "Principles of commercial banks", IEDUNOTE, https://www.iedunote.com/principles-commercial-bank (April 30, 2020, 09:07 PM).
[98] *Ibid.*

2.10.1.5.DEFORMITY IN VISIT

The borrowers take a loan from the bank for a purpose therefore the bank employee must be investigated before lending the loan amount. After taking the money, the borrower sometimes willfully make no repayment of the loan. Therefore, the bank must look out for the work of the borrower from the loan amount. But there is always an irregularity in checking on the borrower that increases the willful defaulters in banks. These increasing wilful defaulters in bank increases in NPA. Therefore, the bank must take initiative to watch on the borrower.

2.10.1.6. RE-LENDING PROCEDURES

The borrowable re-lending of the bank's credit cycle affects the recovery of bad loans amount of large. Because "Capital Conservation Buffers (CCBs)", "Public Accounts Committees (PACs)", "Orissa State Cooperative Bank (OSCB)" has risen the NPAs. The CCB ideas under "the international Basel III norms".[99] The lending institutions detect amounts to regard as NPA.

2.10.2. *EXTERNAL REASONS OF NPA IN BANKING SECTOR*

2.10.2.1. CREDIT CYCLE OF BUSINESS

The customers change their demand for the product with time and for that reason, the sale goes up and down. E.g.: Woollen Industry, where sale goes up during winter and sale goes down during summer and the sale of the refrigerator industry will be high during summer. But there is an exception, "Perennial Demand", e.g.: Food and Vegetables. The management of business depends on the seasonality of sales. The critical element is that they need to plan their production depending on the demand forecast. The Credit Officer should keep in mind the issues arriving at the cash flows and he should know when the business will be at the peak and when it will be the deficit. There business cycle variations depend on famine or flood which impacts the economy and therefore, the regulators should ask the bank to reschedule the dues and borrowers as well.

[99] Anup Roy, "What is CCB and why is implementation of final phase of it being delayed?", THE BUSINESS STANDARD, https://www.business-standard.com/article/finance/what-is-ccb-and-why-is-implementation-of-final-phase-of-it-being-delayed-118112201148_1(April 4, 2020, 08:23 P.M.).

The Modern business market is more complex and interdependent on markets. The increasing rate of interest affects many business units. The events within the country also affect an entire industry.

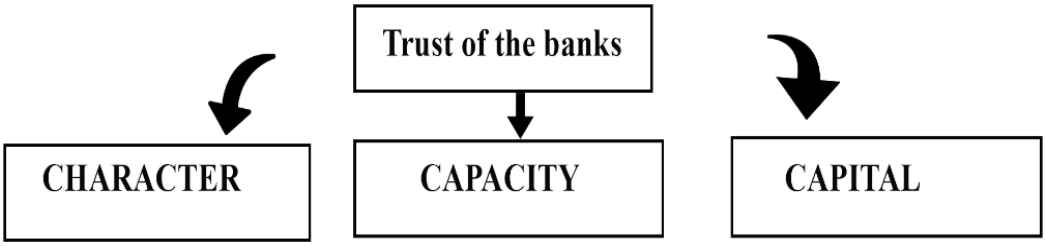
2.10.2.2. HIGH EXPECTATION PROJECTS

People associated with business prepare project reports that tend to give ambitious projections because business people are too optimistic about their projection. The businessmen are also aware of the norms. They know about “Debt Service Coverage Ratio (DSCR)” and other ratios of banks look to access the viability of the project. “DSCR means the ratio of net operating income in consideration to total debt service”. E.g.: the 1, 20, 000 “net operating income” and 1, 00, 000 “total debt service” then dividing, we get 1.20 times. If the DSCR >1.0 that means there are not enough credits for shielding the debt and if the DSCR <1.0 that means that there are sufficient credits for shielding the debt. The business people project the sales and cash position on the higher side. Therefore, the bank should be careful when they arrive at cash flows. They should also study and compare the cash flows of the borrowers with similar existing units and market practices. They should see what the credit period in case of sales is and purchase and also do sensitivity analysis to what extent this borrower can tolerate the sale increase, raw material cost. Credit Officer has to satisfy that the cash flow of the borrower is representative of the business. Illustration: A is the businessman who is carrying out business but the cash flows are used for alternative business. The borrower is saying that he will give Credit only in 45 Days. The preparation of cash flow based on 45 days makes it highly unlikable. The event cash flows create doubt among the bankers because the sector requires at least 60 days.

When the Credit Officer studies the cash flow, he ensures that the debt service takes place and sufficient caution is taken in continuing the business. The cash flow is not only for the interest and principal in rewarding the owners and meeting the margin requirements. The main reasons of NPA are the ambitious and very conservative cash flow projections that impact the running of the loan account.

2.10.2.3.FUND DIVERSIFICATION

To gain the trust of the borrower, the banks depend on three series of ‘C’ like:



The three series of 'C' is efficient when the borrower respects the terms of the credit, that is, the repayment, margins and adheres to the financial discipline. But in practice, it can be seen that the attitude of the borrowers before the credit is sanctioned and after it is sanctioned is very different. E.G.: the borrower will advise routing all the transactions through cash credit account but the borrower may not route all business transaction through the cash credit account; the principal lender will give a condition that borrower should open a current account only in that bank and not with other banks but borrower open a current account with other banks for avoiding recover; the borrower use the business funds for personal uses and financial indiscipline shows the character borrower results in NPA. The avoidance of the borrower impacts the health of the account concerning the monitoring of accounts by the bank.

The banks act as the most liberal ones at the beginning but when they see diversion it becomes strict, which is not a good practice. Thus, the bankers generally ignore the monitoring citing on the work pressure and the primary and collateral security available because collateral is an exit route and not a tool to bring the account into proper share. If there is a diversion, then it is very difficult to set that right regular strict monitoring should be there, to ensure that it doesn't slip into NPA.

2.10.2.4.NATURAL DESTRUCTION

The amount of NPA in PSBs is also affected through calamities occurs naturally. In India, many people suffer a lot due to cyclones, floods, etc. The borrowers make default in paying their interest and loan amount. The banks must adopt measures to indemnify the loans and help them in rescheduling payment of the amount.

2.10.2.5.OVER DEPENDENCE ON LOSS AND PLEDGE OF SHARES

a. *Overdependence on Loan*: Business will be seen over-leveraged, when borrower brings inequity and borrowings from friends and relatives and immediately, after sanctioning those funds are returned. For the sound banking system, there should be a

high level of solvency. The funds are used elsewhere and over-leverage pushes the business into the risk of failure of responsibility towards the bank and thus, the account becomes NPA.

b. *Pledge of owners share as additional security*: The banks insist Debt to Equity ratio of 2:1. Here, if DER ratio is 2/3, it refers to debt and if the DER ratio is 1/3, it refers to equity. The 1/3 ratio of borrower's stake should be available in the business. The 1/3 ratio of stake is reduced by pledge because the company goes for additional or temporary limits.

The banks face serious issues when an account goes bad because the market price of share gets reduced due to default and DER is stipulated. The bank should look after that there should not be any indirect reduction of ratio.

2.10.2.6.EXPANSION AND WILFUL DEFAULT

a. *Expansion*: Expansion itself doesn't lead to NPA. Every business will grow and when they grow they need funds to ensure growth. It should be reckoned on appraisal and renewal of limits. If the appraisal doesn't factor for growth or bank doesn't provide additional finance wherever accounts needed may fail. If the bank doesn't provide finance, the customer may move to another new bank and the bank will not be able to grow. If a bank wants to grow, it should allow its customer to grow. But there is an issue, as many business ventures into unnecessary business diversification. In India there are several instances, business houses attempted diversification beyond their core competencies, accounts have become bad. Before a business goes for expansion, banks and borrowers should have a clear and good understanding of growth opportunities and help both of them. If expansion is handled correctly, it will give good results or otherwise lead to NPA.

b. *Wilful Default*: If Business is doing well but the repayments of accounts don't happen, it refers to wilful default. Therefore, monitoring should be done to such accounts. Those accounts should be brought to the notice of the management and quick action should be taken and for this kind of borrower banks should not reschedule or offer CDR packages and other facilities to this kind of account.

2.10.2.7. MISSELLING AND INADEQUATE CREDIT

a. *Misselling*: One of the reasons for NPA is cross-selling. It is one of the challenges in retailing, so it is very difficult to avoid misselling. Misselling got to be avoided because banks come with products like Balloon repayment and Adjustable Rate Mortgage and that eventually harm the borrower. The banks should ensure that there is no misspelling. The banks are generally incentivizing the sale of retail assets. The officer got motivated by that incentive and they push assets to the customer where the credit rises is very high and eventually lend to defaults. Cases of selling derivatives: There exists danger because it is a highly complex product and eventually the customer will disown knowledge of the product saying that it is misselling. A derivative is a good tool for hitching high-level risk and therefore, a derivative is beneficial otherwise cost for the customer.

b. *Inadequate Credit*: Giving too much credit could lead to NPA because of diversion. Not giving adequate credit will also bring NPA. As banker will come across a project which is not viable. Instead of refusing, the lower amount of sanctioned, equal to poison. Because the project will recast to suit bank norms and proponent agrees to the sanction and goes ahead with his original plan. Funds shortfall results in failure of assets and NPA. So, the bank should avoid inadequate credit.

2.10.2.8. INEFFECTIVENESS IN RECOVERING

The Govt. of India established tribunals to recover NPAs. But ineffectiveness and laxity of the tribunals, the recovery of NPAs takes a longer time and it affects the profits and credit facilities in banks.

2.10.2.9. LACK OF DEMAND

The business in India fails to sell its products as they don’t get the requisite market platform and thus make them incapable of repayment of the loan amount. Therefore, the banks try to repossess their property and take the procedures for selling them.

2.10.2.10. ALTERATION IN GOVERNMENT SCHEMES

The Government has always developed new schemes and as the Government change, the schemes also changes. Thus, it rises NPAs in lending institutions. The reschedule and restructure policies of the Government of NPAs is not helping in getting back the loan amounts.

2.10.2.11. DEFECTS IN INDUSTRIAL ACTIVITIES

The activities in an Industry should be handle properly and incidents like inappropriate management projects, fruitless governance, etc. these all affect in recovering the loan amount and in return affects the profits and liquidity of Banks.

2.10.2.12. MISUSE OF FUNDS

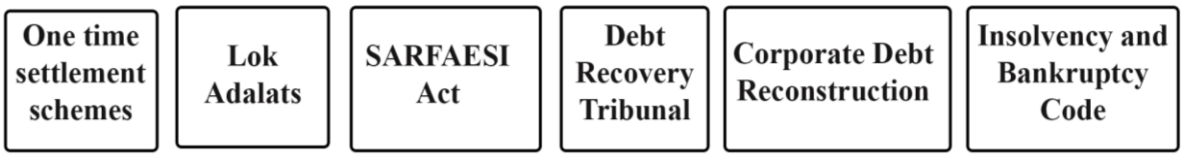
The Diversion of funds is also a form of misuse. When the borrower approaches a bank for a loan but borrower applied funds to another business for acquiring long term asset which is a serious issue. As banks lend for an agreed purpose which has not to achieve. Since because loan account is regular, misuse cannot be justified. Since because account repayment is regular, we cannot justify that account is not overdue as there is misuse. To preclude this kind of misuse:

1. There should be a procedure to end misuse.
2. The loan is for the purchase of an asset disbursement should take place directly to the sellers of assets and not to the borrowers.

E.g., if the company wants to buy plants and machinery, the bank should pay directly to the seller of machinery, and the consent of the borrower is required and the selection of machinery is done by the borrower.

CHAPTER 3
RECOVERY MECHANISMS FOR NON PERFORMING ASSETS IN BANKING SECTOR

The recovery mechanisms are below:



3.1. ONE TIME SETTLEMENT SCHEMES

OTS are negotiable schemes initiated by banks for recovering NPA. It involves a process where defaulter (borrower) proposes a proposal for settlement of dues at one time and the bank welcomes that proposal for an amount less than the amount originally due. The RBI acts as a guide by providing policies for all the banks to recover loans through negotiations and to settle the NPA. OTS Scheme of NPA Accounts for MSMEs Accounts defined Compromise settlement:

"Compromise settlement is a negotiated settlement where a borrower offers to pay and the Bank agrees to accept in full and final settlement of its dues an amount less than the total amount due to the Bank under the relative loan contract."[100]

According to the "Press Information Bureau Government of India Ministry of Finance" on OTS of NPAs, on 16 March 2018, provides that according to the guidance of RBI, banks have to recollect the loan amount inter-alia negotiated settlements of NPAs.[101] According to the information received, all the PSBs have OTS Schemes. These Board of banks approved OTS schemes and in respect of sectors like agriculture, MSMEs, weaker sections and education loans, etc. OTS of NPAs of the year 2010[102] provided that the appointed authority should provide a certificate that will state that the compromise or negotiation settlements is abiding to the guidelines of RBI.

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[100] OTS Scheme of NPAs for Micro, Small & Medium Enterprises Sector, RBI Notification No. RBI/2008-09/ 41 (01/07/2008), https://www.idfcbank.com/content/dam/idfc/image/regulatory-disclosure/One-Time-Scheme-for-MSME-sector.pdf (July 14, 2020, 10:30 AM).

[101] Press Information Bureau Government of India Ministry of Finance on OTS of NPAs, THE PRESS INFORMATION BUREAU, https://pib.gov.in/newsite/PrintRelease.aspx?relid=177590 (July 14, 2020, 10:33 AM).

[102] Compromise/Negotiated/One Time settlement of NPA, RBI Notification No. RBI/2009-10/500 (21/06/2010), https://www.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=5733(July 14, 2020, 10:42 AM).

Some of the Guidelines of RBI on OTS:

3.1.1. *OTS FOR LOAN ACCOUNTS WITH SANCTIONED LIMITS UPTO RS. 25,000 (2001) & REVISED GUIDELINES FOR COMPROMISE SETTLEMENT OF CHRONIC NPAS OF PSBS (2003)*

Applicability of these guidelines was to all banks for recovery of loan dues up to Rs. 25,000, that become NPA on March 31, 1998, that would not include interest and didn't depend on the nature of trade and this would continue to be in function up to June 30, 2002. [103] Banks should recover the settlement amount at "once payment or installment of 25% down payment and retrieved in one year from the date of settlement". It covered suit filed and decreed debts but didn't cover cases of wilful defaults, Fraud, etc. Another revised compromise settlement guidelines for dealings poor NPAs of PSBs (2003) was initiated by RBI. These guidelines were a very simple and not non-compulsive and not biased mechanism. The revised guidelines covered loan accounts that convert into "sub-standard assets, doubtful assets and loss assets on March 31st, 2000". [104] The amount was 10 crores and below on the fixed date. These guidelines covered cases under SARFAESI Act and cases in Courts / DRTs/ BIFRs. These guidelines didn't cover the cases of wilful default, fraud, etc. The last date of the received was 30th April 2003 and completed by 31st October 2003. The money should be paid at once. "If he or she is unable to pay the amount, 25% of the amount should be made first and the remaining 75% of the amount paid in one year and interest computed from the settlement date".

3.1.2. *ONE-TIME SETTLEMENT SCHEME OF NPA ACCOUNTS FOR MICRO, SMALL AND MEDIUM-SIZED ENTERPRISES (MSMEs) ACCOUNTS*

"Master Circular - Lending to Micro, Small and Medium Enterprises (MSME) Sector"[105], the Bank has adopted OTS for NPAs under MSME Sector, subject non-discretion. "The Net Present Value (NPV) of the settlement amount not less than NPV of realizable securities is taken care of by the banks". The Bank can try to compromise of the accounts which are under criminal action or investigation of authorities such as CBI etc. but

[103] OTS for loan accounts with sanctioned limits upto rs. 25,000, (2001), RBI Notification No. BP.BC. 53 / 21.04.117 /2001-02 (22/12/2001), https://www.rbi.org.in/commonman/Upload/English/Notification/PDFs/25191.pdf (July 14, 2020, 10:42 AM).

[104] Revised guidelines for compromise settlement of chronic Non-Performing Assets (NPAs) of public sector banks, RBI Notification No. DBOD No. BP. BC 108 / 21.04.117/2002-2003 (23/05/2003) https://rbidocs.rbi.org.in/rdocs/notification/PDFs/36387.pdf (14 July, 2020, 10:33 PM).

[105] RBI, *supra* note 100.

before it, the bank has to apply to such authorities and if Bank takes criminal actions then the actions decide by "the Chief Vigilance Officer (CVO) of the Bank".

Eligibility under this guidelines is NPA accounts (that includes "written off accounts of Micro, Small and Medium Enterprises of MSMED Act, 2006") regarded as NPA within March 31st and September 30th, without considering that Bank filed any suit or obtained a decree or steps in the SARFAESI Act. "The borrower should pay in a single payment of 90 days and if he or she is unable to pay, 25% of the amount should be given within 30 days from date of sanction". If the period is extended beyond 90 days, then the settlement continues with simple interest at the benchmark rate and 3% on balance that is reduced from the date of announcement of sanction.

"SIDBI with Department of Financial Services, Ministry of Finance, Government Of India", have prepared a scheme for OTS for MSMEs and factors to be considered under OTS proposal[106] include NPV Realisable security charged and Net value of assets excluding the liabilities of the borrower or promoters or guarantors; present status or financial performance of the borrower unit or company; to look for better means of recovery like SARFAESI or legal action; OTS proposal effects on the profits of Bank; OTS for doubtful and loss NPAs of "Micro, Small and Medium Enterprises", etc.

3.1.3. *SPECIAL OTS SCHEME- "CORP-RIYAYATI VI"*

Special OTS scheme- "CORP-RIYAYATI VI" covered NPA loan accounts with book balance up to and inclusive of ₹.10.00 lakh outstanding as on 31.03.2018 under Doubtful or Loss asset category and were classified as NPA on or before 31.03.2016. [107] The Scheme also covered suit filed and decreed debts. NPA accounts with a balance of 1 lakh based on the age of NPAs without reckoning the securities available, under Doubtful or Loss asset category of NPAs up to 31.03.2014 are also covered in the Scheme under the Special Concessional Settlement Benefit (SCSB). The Scheme was operative from 01.05.2018 to 31.03.2019.

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[106] Scheme for one time settlement of MSMES NPA accounts, THE RESERVE BANK OF INDIA https://corpbank.com/sites/default/files/corpbank-page-files/OTS%20scheme_1.pdf (July 14, 2020, 10: 45 PM).

[107] Special OTS scheme- CORP-RIYAYATI VI, https://corpbank.com/sites/default/files/corpbank-page-files/ots_in_website.pdf (July 14, 2020, 10: 45 PM).

3.1.4. *SPECIAL OTS SCHEME- "CORP-RIYAYATI PLUS"*

Special OTS scheme- "CORP-RIYAYATI PLUS" covered NPA loan accounts with outstanding book balance exceeding 10 lakhs up to and inclusive of 25 Lakhs which are classified as NPA on or before 31.03.2016 and are under Doubtful category and Loss category as on 31.03.2018 are under the settlement scheme. [108] The Scheme also covered suit filed or decreed debts and also failed OTS cases. The Scheme was operative from 16.08.2018 to 31.12.2018. The borrowers were to approach their respective branches to know the eligibility of their account under the scheme and if covered, the amount payable under the scheme.

3.1.5. *ONE TIME RECONSTRUCTION SCHEMES (2020) ("Micro, Small and Medium Enterprises (MSME) sector – Restructuring of Advances")*

These conditions required under these guidelines[109]

a) On January 1, 2020, the total exposures facilitated by Banks and NBFCs (includes facilities of banks that don't involve fund outlay from the bank) to the borrower should not be beyond 25 crores.[110]

b) On January 1, 2020, the default borrower's account continues to be a standard asset to the date of initiation of the restructuring.[111]

c) On or before 31 December 2020, restructuring of the default account of the borrower.[112]

d) Taking under registered GST establishment on the execution of the restructuring date.[113]

3.2. LOK ADALAT

The Lok Adalats has initiated the "Legal services Authority Act, 1987" that came on 9th November 1995. One of the objectives of this Act was the establishment of Lok Adalats for safeguarding the effective functioning and performance of the Litigation

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[108] Special OTS scheme- "CORP-RIYAYATI PLUS, https://corpbank.com/sites/default/files/corpbank-page-files/ots_in_website.pdf (July 14, 2020, 10: 45 PM).
[109] ONE TIME RECONSTRUCTION SCHEMES (2020) (Micro, Small and Medium Enterprises (MSME) sector – Restructuring of Advances), RBI Notification No. RBI/2019-20/160 (11/02/2020), https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=11808&Mode=0 (July 14, 2020, 10: 45 PM).
[110] *Ibid.*
[111] *Ibid.*
[112] *Ibid.*
[113] *Ibid.*

system and encourage justice concerning equal opportunity and treatment. "The organization of the Lok Adalats is provided in Sec. 2 of this Act, Chapter VI".[114] The Central authority of "National Legal Services Authority (NALSA)" and other authorities that are State Authorities, District Authorities and Taluk Legal Committee encourage for establishment of Lok Adalats[115] in every district[116] and within Taluk[117] for benevolent settlement of the pending cases including High Court cases[118] before any court of law and peacefully compromising a dispute before litigation.[119] Lok Adalat is one of the kinds of Alternative Dispute Settlement Redressal Forum. The motto of the NALSA is to "ACCESS TO JUSTICE TO ALL".[120] Sec. 89 of the CPC provides for "disputes settlement through ADR methods such as Arbitration, Conciliation, Lok Adalats and Mediation".

"Chapter VI of the Act from Sec. 19-22E" provides about the organization of Lok Adalat, acknowledgment of cases, award and powers respectively. "Chapter VI-A of this Act from Sec. 22A-22E" provides for "Pre-Litigation Conciliation in Settlement" and mentioned "Permanent Lok Adalats" that includes definitions, its establishment, acknowledgment of cases procedures and award respectively. "It is organised at a certain interval of time to perform the defined jurisdiction as the case required by such State Authority, District Authority or SC Legal Services Committee or HC Legal Services Committee that is Taluk Legal Services Authority".[121] "The Lok Adalat includes serving or retired judicial officers and individuals appointed by the State Authority, District Authority or SC Legal Services Committee or HC Legal Services Committee that is Taluk Legal Services Authority".[122] The Lok Adalat jurisdiction must determining and arriving negotiation between the parties regarding pending case or matter comes under the jurisdiction or not in front of any court but "Lok Adalat" doesn't have jurisdiction for matters connected with the offence.[123] "The Lok Adalats' award is

[114] LEGAL SERVICES AUTHORITY ACT, 1987, § 2.
[115] *Ibid* § 4(e).
[116] *Ibid* §10(b).
[117] *Ibid* § 11B (b).
[118] *Ibid* § 7(b).
[119] "National Legal Services Authority", NALSA, https://nalsa.gov.in/lok-adalat (April 5, 2020, 10:29 P.M.).
[120] *Ibid.*
[121]LEGAL SERVICES AUTHORITY ACT, 1987, §19(1).
[122] *Ibid.*
[123] *Ibid.*

final and binding on the parties to the dispute and no appeal lies".[124] The "Permanent Lok Adalat" can act as "Civil Court" like:

a. "Summoning and enforcing the attendance of witness";

b. "Discovery and production of the document", etc.

"The Permanent Lok Adalats award is final and binding on all the parties and no appeal lies and regarded as a decree of a Civil Court".[125]

3.2.1. *GUIDELINES FOR COMPROMISE SETTLEMENT OF DUES OF BANKS & FIS THROUGH LOK ADALATS – ENHANCING THE CEILING FROM RS.5 LAKH TO RS.20 LAKH (2004)*

The Government with RBI has decided that "the monetary ceiling of the cases to be referred to the Lok Adalats as 'Civil Courts' stands from Rs.5 lakh to Rs.20 lakh".[126]

3.2.2. *RECOVERY OF NPA BY LOK ADALAT*

YEAR	CASES REFERRED	AMOUNT INVOLVED (cr.)	AMOUNT RECOVERED (cr.)	%
2014-15	2958313	31000	1000	3
2015-16	44566340	72000	3200	4
2016-17	2152895	105787	1811	4
2017-18	4080947	53506	2816	4
2018-19	4080947	53506	2816	5.3

TABLE 5: RECOVERY OF NPA BY LOK ADALAT FROM FY 2014-15 TO 2018-19.[127]

SOURCE: RBI

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[124] LEGAL SERVICES AUTHORITY ACT, 1987, §20(2).
[125] *Ibid* §22E(1) & 22E(2).
[126] Guidelines for Compromise Settlement of Dues of Banks & FIs through Lok Adalats – Enhancing the ceiling from Rs.5 lakh to Rs.20 lakh, RBI Notification No. RBI/2004-05/ 95 (03/08/2004), https://www.rbi.org.in/scripts/BS_CircularIndexDisplay.aspx?Id=1813#:~:text=2.,20%20lakh%20with%20immediate%20effect (April 20, 2020, 9:00 PM).
[127] NPAs of Scheduled Commercial Banks Recovered through Various Channels, THE RESERVE BANK OF INDIA DATABASE ON INDIAN ECONOMY https://dbie.rbi.org.in/DBIE/dbie.rbi?site=publications#!4 (April 18, 2020, 8:34 P.M).

3.3. DEBT RECOVERY TRIBUNAL

"The Recovery of Debts Due to Banks and Financial Institutions Act (RDDBFI), 1993" bestows DRTs for systematic appropriate repossess dues to banks and FIIs enacted on the 24th day of June 1993". It was amended by "Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016".
The definitions under this Act:
"Sec. 2(a) of the Act" defined "Appellate Tribunal" that is established under Sec.8 (1) of the Act. Sec. 2 (d) of this Act provides the definitions of "Bank". Sec. 2 (e) of this Act provides the definitions of "Banking Company" as same as Sec.5 (c) "Banking Regulation Act, 1949".[128] Sec. 2 (g) of this Act defined "debt". Sec. 2 (ga) of this Act provides "debt securities" means "debt securities" made by SEBI under the SEBI Act, 1992". Sec.2 (h) of this Act defined "FIIs" means "a public FII within Sec. 4A of the Companies Act, 1956"; "the SCs or RC having registration certificate under Sec.3(4) of the Act 2002"; "other institutions specified by the Central Government concerning the business activity and the area of its operation in India". "Sec. 2(ja) of this Act" provides about the "Prescribed Officer" and Sec. (k) of this Act defines "Recovery Officer" of the DRTs of Sec. 7(1) of this Act. Sec. 2(la) of this Act "secured creditor" has the same meaning under "Sec. 2(1) (zd) of the Act". "Sec. 2(lb) of this Act" defined "Security Interest".

3.3.1. *ESTABLISHMENT OF DRT*

The DRT and DRAT establishment is under the hand of the Central Government and it should specify jurisdictions in "Sec. 3(1) of the Act, Sec.3(2) of the Act and Sec.7(1) of the Act". "The Central Government appoint PO in a tribunal".[129] There should be a Chairman in a DRAT.[130]

3.3.2. *JURISDICTION OF DRT*

"The DRT must functions on and from the appointed day the jurisdiction, powers and authority for making decisions on applications of the banks and FIIs for recovering debts of the banks and FIIs".[131] "The DRAT must functions on and from the appointed

[128] RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993, § 2(e).
[129] *Ibid* § 4(1).
[130] *Ibid* § 7(2).
[131] *Ibid* § 17.

day the jurisdiction, powers and authority to make decisions on the appeals and the DRAT's Chairperson shall regulate and dominance over the DRTs". [132] The DRAT's Chairperson must move the case from Tribunal to other Tribunal. "The court or other authority cannot function the jurisdiction, powers or authority (excluding the SC and HC in Arts. 226 and 227 of the Constitution) in Sec.17 of this Act".[133]

3.3.3. *APPLICATION OF DRT*

The banks or FIIs must apply the DRT during any default of borrowers like the defendant or each of the defendants inhabit or voluntary inhabit or operates a business or personal work for income or any of the defendants inhabit or voluntary inhabit or operates a business or personal work for benefits when filed.[134] If a bank or FII apply to DRT towards an individual and towards the aforesaid individual different bank or FII also make an application for repossessing loan due, then, they may join together at any steps of proceedings before the final order.[135] "The DRT issues summons the defendant to reply in 30 days from date of service of the summons and the defendant can give a written statement at or before the first hearing or in such time".[136] The defendant in an application may "counter-claim" towards the applicant's content and such counter-claim has similar to "cross-suit" so that the DRT to give necessary actions.[137] The applicant is eligible to file a "written statement" to the "counter-claim" of the defendant. If the applicant contends not to be disposed of the claim through "counter-claim" but independently, he or she goes to the DRT to exclude the "counter-claim".[138] The DRT may pass "interim order" towards the defendant that he or she is disqualified to "transfer, alienate or dispose of property and assets" of him or her without the authority of the DRT.[139] At any proceeding steps, DRT is well pleased, that the defendant has "obstruct or delay or frustrate" order of debt recovery through disposing of "the whole or any part of his or her property" or "remove local limits of the DRT's jurisdiction" or "damage the property" or "generating third party interest",

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[132]RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993, § 17(A).
[133] *Ibid* § 18.
[134] *Ibid* § 19.
[135] *Ibid* § 19(2).
[136] *Ibid* § 19(4).
[137] *Ibid* § 19(8).
[138] *Ibid* § 19(11).
[139] *Ibid* § 19(12).

DRT may point the defendant for furnishing security specified in the order enough to satisfy the "debt recovery certificate".[140] "Whenever he or she didn't manifest why he should not furnish security or furnish the security, DRT may direct to the attachment whole or part of the properties claimed by the applicant to please the debt".[141] "If there is any disobedience of an order, the DRT may direct the guilty to be detained in the civil prison for 3 months, unless the DRT release".[142] DRT may designate a "receiver" of any property.

"Where a recovery certificate directed towards the company of the Companies Act, 1956, the DRT may direct sale proceeds among secured creditors as per Sec.529A of the Companies Act, 1956". "After giving the opportunity of being heard to the applicant and the defendant, the DRT may pass interim or final order". "The PO direct certificate following the DRT's order to RO for debt recovery". "If the property is situated within the jurisdiction limits of two or more DRTs, the concerned DRT may send copies of the recovery certificate to such other Tribunals". "The DRT shall dispose of the application within 180 days from the date the application receipt".[143]

3.3.4. *APPEAL*

Unhappy with the DRT's order, he or she may file an appeal to DRAT in the period of "45 days from the date on which a copy of the order made" and provided that DRAT may take after 45 days.[144] The DRAT may pass orders of confirming, changing, or abandon the order.[145] "The appeal of DRAT shall dispose of the appeal in the period of 6 months from the date the appeal receipt".[146] The DRT and DRAT don't follow the CPC, 1908 procedures but follow the "principles of natural justice". The DRT and DRAT shall perform under this Act and have powers the same as the civil court of the CPC, 1908 such as "summon and enforce the attendance of person", "the discovery and production of documents", etc.[147] The proceeding of the DRT or DRAT is regarded as

[140] RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993,§ 19(13).
[141] *Ibid* § 19(15).
[142] *Ibid* § 19(17).
[143] *Ibid* § 19(24).
[144] *Ibid* §20.
[145] *Ibid.*
[146] *Ibid.*
[147] *Ibid* § 22.

judicial proceeding under "Sec.193 and 228 and Sec. 196 of the IPC" and DRT or DRAT is a "civil court" of "Sec.195; "Chap. XXVI of the Cr.PC, 1973".[148]

3.3.5. *MODES OF RECOVERY*

Post certificate receipt, the RO under "Sec. 19(7) of the Act", proceed to recover the debt under modes like:

a. "Attachment and sale of the movable or immovable property of the defendant";
b. "Arrest of the defendant and his detention in prison";
c. "Appointing a receiver".[149]

The other modes of recovery[150] include that if any person to the defendant has due, the RO should deduct the said amount from such person or the defendant and such person give to the RO and not apply if the sum excused under "Sec. 60 of the CPC, 1908".[151] The RO may give notice in writing to a person or defendant who has a due or may become due or to any person who holds the money on behalf of the defendant to pay to the RO within the specified time and money should be enough to pay the debt due.[152] "The notice may be given to any person who holds money on behalf of the defendant jointly with other person and the joint holders' shares shall be presumed equal to the amount until evince unequally and the copy of the notice shall be given to the defendant at his last address and in the matter of the joint account to all the joint holders at their last addresses".[153] Everyone must comply with the notice and if the notice is given to "post office, bank, FI, or an insurer" then it is not important to produce before the payment is made.[154] "If a person to whom notice given, oppose through a statement on oath as the whole or part of the sum is not due to the defendant or doesn't hold any money on behalf of the defendant, then he is not be obliged to pay the whole or part sum but if the statement was false, then he would be answerable to RO to the extent of his liability to the defendant on the date of the notice or to the extent of the defendant's liability for any sum due".[155] "RO should give a receipt for any amount paid in compliance with the notice and the individual paying shall be fully discharged from his

[148] RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993, § 22.
[149] *Ibid* § 25.
[150] *Ibid* § 28.
[151] *Ibid.*
[152] *Ibid*.
[153] *Ibid.*
[154] *Ibid.*
[155] *Ibid.*

liability to the defendant and he shall be personally liable to the RO to the extent of his liability or the extent of the defendant's liability for any debt due and if he fails to make such payment, he is regarded to be a defendant in default and proceedings may be taken against him as if it were a debt due from him under Sec. 25, 26 and 27 of the Act".[156] The RO may apply to the court that the person, who include:

"The defendant's money, for payment of the entire amount or to discharge the amount of debt due and he or she may require (any person and any company officers against whom the recovery certificate is issued), declare on affidavit the particulars of assets".[157] RO may recover debt under "Third Schedule to the Income-Tax Act, 1961".

3.3.6. *CASE LAWS OF DRT*

In "*Delhi HC Bar Association and another* v. *UOI & Ors"*[158] the validity of "the DRT Act was challenged".

Judgement: The HC state - Parliament is empowered to constitute Tribunal even though the provisions are not provided under the meaning of "Arts. 323-A and 323-B of the Indian constitution" and "Administration of Justice" under "Entry 11-A of List III of the Seventh Schedule to the Constitution includes Tribunals as well administering justice." It regarded "unconstitutional" for eradicating the "Independence of judiciary" and was "irrational, discriminatory, unreasonable, and arbitrary". "Art.14 of the Constitution" hit the Act. The HC announced the Act as "irrational and arbitrary" and "Sec.17 of this Act" as it doesn't provide provision for "counter-claim" in CPC. "It is given that the Tribunal will decide suits for recovery of money exceeding Rs.10 lacs, the suits for an amount between Rs.5 lacs and Rs.10 lacs filed before the Delhi HC and for less than Rs.5 lacs before the subordinate Courts and thus, the HC's reputation was lowered".

In "*Assam Leather Industry* v. *Union of India (UOI) & Ors"*[159] the Gauhati HC examined "the validity of the DRT Act".

Judgement: The HC held that "the Parliament has the competence to enact the law but as it had abrogated the power of judicial review as the Act was void as it had violated

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[156] RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993, §28.
[157] *Ibid.*
[158] *Delhi HC Bar Association and another* v. *UOI & Ors.,* AIR 1995 Delhi 323.
[159] *Assam Leather Industry* v. *Union of India (UOI) & Ors*., 16 August, 1999: 2001 104 CompCas 115.

the basic feature of the Constitution". "Sec. 17 of this Act" was invalidated because it is "unreasonable". It also invalidated "the appointment of RO" and "Sec.25 and 28(1) and (2) of this Act" regarded as "arbitrary", "unreasonable", etc. "It quashed Sec. 31of this Act to the transfer of suits or proceedings and Sec. 34(1) of this Act gives overriding effect".

In "*Union of India & Anr.* v. *Delhi High Court Bar Association & Ors.*"[160] also construed the DRT Act.

Judgement: The Hon'ble SC held that "the HC decisions were challenged as the DRT Act is unreasonable and Art.14 of the Constitution hit the Act and beyond the legislative competence of the Parliament". The Hon'ble SC provides contentions:

a. The Parliament's power to legislate legislation is absolute and uncovered under "Entry, List II and List III of Constitution".

b. "Arts.323-A and 323-B of Constitution" allow enacting laws for "the establishment of Tribunals". The Parliament is empowered to enact a law for establishing a Tribunal that doesn't come under in "Art 323-A or 323-B of Constitution" is not taken away.

c. "Art. 323-A and 323-B of Constitution" allow the establishment of Tribunals. "The Arts. cannot be interpreted to mean that it prohibits the legislature from establishing Tribunals not covered by these Arts, as long as there is legislative competence under an appropriate entry in the Seventh Schedule and these Arts do not take away that legislative competence". HC Karnataka in *"D.K. Abdul Khader v. UOI and Ors"*[161] does not give the correct law.

d. "Entry 45 of List I" relates to "Banking". "Banking functions include accepting of loans and deposits, granting loans, and recovery of the debts due to the bank. The parliament can provide the mechanism where amounts of money due to the Banks and FI can be recovered. The Tribunal's function is set up according to the preamble of the Act for expeditious adjudication and recovery of debts due to banks and FI and for matters under Entry 45 of List I of the constitution".

e. "The SC doesn't assent with the Delhi HC decision that the DRT Act or any other provision is arbitrary or bad in law. In the pendency of the appeal, the DRT Act has

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[160] *Union of India & Anr.* v. *Delhi High Court Bar Association & Ors.*,AIR 2002 SC 1479, 2002(2) SCR 450, 2002 (4) SCC 275

[161] *D.K. Abdul Khader v. UOI and Ors.*, AIR 2001 Kar 176 : (2001) 105 CompCas 579 : (2001) ILR (Kar) 1809 : (2001) 2 KarLJ 534.

been amended and whatever lacunae's or infirmities existed have now been removed by the said Amending Act and with the framing of more rules".

f. The Banking Tribunal replaces Civil Court regarding the bank's due. "Arts.323-A and 323-B of the Constitution provide for the establishment of a Tribunal and that does not erode the independence of the judiciary".

g. The Tribunals are a vital part of the judicial system. "These institutions may not strictly come within the judiciary under Art.50 of the Constitution and cannot be presumed that such Tribunals are not an effective part of the justice delivery. The decision of the appellate Tribunal is not final and subject to judicial review by the HC under Arts.226 and 227 of the Constitution".

h. "Sec. 31of the Act provides transfer of pending cases from Civil Courts to the Tribunal. The Court does not find such a provision being in any way bad in law and under Sec. 18 of the Act provides jurisdiction of Courts barred any matter pending in the Civil Court should stand transferred to the Tribunal".

i. Gauhati HC held that "Sec. 25 and 28 of the Act" are "arbitrary" and "unreasonable", and such observations "made before the amendment of this sections" and "Sec. 25 of the Act provides for modes of recovery of debts" and "Sec. 28 of the Act provides for modes of recovery". "It also held that a perusal of the aforesaid provisions cannot lead one to the conclusion that the same is arbitrary, unreasonable or without any guidelines".

j. "Sec. 29 of the Act" provides that "the Second and Third Schedules to the Income Tax Act, 1961 and the Income Tax (Certificate Proceedings) Rules, 1962 applicable for the realization of the dues by the RO". "Sec. 30 of the Act after amendment mentioned right to any person aggrieved by an order of the RO, to prefer an appeal to the Tribunal". Thus, the efficient defense is given that the RO in "arbitrary" or "unreasonable" way.

It allowed that "the appeals of the Union of India and the Bank provided the RDDBFI Act, 1993 is a valid piece of legislation and writ petitions or appeals filed by various parties challenging the validity of the said Act are dismissed".

In the case law "*Allahabad Bank* v. *Canara Bank & Anr.*"[162], the influence of the RDDBFI Act on "the Companies Act, 1956" was raised. "The Hon'ble SC allowed the appeal and the judgement of the HC were set aside".

[162] *Allahabad Bank* v. *Canara Bank & Anr.,* AIR 2000 SC1535, 2000(4) SCC 406.

Facts: “There was a dispute between the Allahabad Bank obtained a simple money decree towards the debtor M/s. M.S. Shoes (East) Co. Ltd belonging to the DRT, Delhi under the RDDBFI Act, and Canara Bank claim as a secured creditor is pending before the same Tribunal against the same company”. The Appellant appealed before “the SC opposing the learned Company Judge order in Sec. 442 and 537 of the Companies Act regarding stay in sale proceedings of Allahabad Bank before the RO”. “The applications for winding up the defendant company are pending in the Delhi HC”.

The respondent contended that there is an obligation of “seek leave” from “the Company Court” mentioned under “the Companies Act, 1956” on the side of the appellant. “The Company Court can stay these proceedings in Sec. 442 and 537 of the Companies Act, 1956 for deciding the priorities of winding up order appointing a provisional liquidator in Sec. 446(1) of the Companies Act, 1956”.

The appellant stated that RDDFFI Act is a “special Act” for efficient judging. “Sec.18 of RDDBFI Act provides ousts the jurisdiction of all courts or other authorities (except the SC and the HC exercising powers under Arts. 226, 227 of the Constitution) about matters covered by Sec. 17 and Sec. 17 of RDDBFI Act provides entire procedure from the filing of an application under Sec. 19 of the Act to the adjudication and recovery”. Hence, he contended that “the proceedings under the RDDBFI Act cannot be stayed by the Company Court not can they be transferred to the Company Court and no leave of the Company Court is necessary either for filing of the OA for adjudication of the debt nor for executing the decree passed by the Tribunal”. “Sec. 34(2) of RDDBFI Act proceedings saves only six statutes and the Companies Act, 1956 is not one of them and hence, the RDDBFI Act, 1993 overrides Sec. 442, 537 and also Sec. 446 of the Companies Act”. “Sec. 446 of the Companies Act is not applied as there is no winding up order nor an order to appoint a provisional liquidator and Sec. 529-A of the Companies Act applied in a limited purpose if a question of workman’s portion is involved”. The respondent issued that “when a winding-up petition is pending in the Company Court, the leave of the Company Court must be obtained for obtaining a decree before the Tribunal or for execution before the RO in Sec. 537 of the Companies Act even if no winding-up order is passed”. “The Company Court” can sell the properties of the company during winding up. The recovery proceedings must be “stayed and transferred to the Company Court”. Hence, “the Company Court proceeds of sale and will have to distribute the amounts of money mentioned in Sec. 446(2) (d), 529, 529-A and 530 of the Company Act”.

The Apex court consider:-

a. “Whether in respect of proceedings under the RDDBFI Act at the stage of adjudication for the money due to the Banks or FIIs and at the stage of execution for the recovery of amounts of money under the RDDBFI Act, the Tribunal and the ROs are conferred exclusive jurisdiction in their respective spheres?

b. Whether for initiation of various proceedings by the Banks and FIIs under the RDDBFI Act, leave of the Company Court is necessary under Sec. 537 before a winding-up order is passed against the Company or before provisional liquidator is appointed under Sec. 446(1) and whether the Company Court can pass orders of stay of proceedings before the Tribunal, in the exercise of powers under Sec. 442?

c. Whether after a winding-up order is passed under Sec. 446(1), the Company Court can stay proceedings under the RDDBFI Act, transfer them to itself, and also decide questions of liability, execution, and priority under Sec. 446(2) and (3) read with Sec.529, 529-A and 530, etc., of the Companies Act or whether these questions are all within the exclusive jurisdiction of the Tribunal?

d. Whether in case it is decided that the distribution of monies is to be done only by the Tribunal, the provisions of Sec.73 CPC and Sec. 529(1) and (2), Sec. 530 of the Companies Act or whether these questions are all within the exclusive jurisdiction of the Tribunal?

e. Whether given provisions in Sec. 19(2) and 19(19) as introduced by Ordinance 1 of 2000, the Tribunal can permit the appellant Bank alone to appropriate the entire sale proceeds realized by the appellant except to the limited extent restricted by Sec.529-A? Can the secured creditors like the Canara Bank claim under Sec. 19(19) any part of the realizations made by the RO and is there any difference between cases where the secured creditors opt to stand outside the winding up and where he goes before the Company Court?

f. What is the relief to be granted on the facts of the case since the Recovery Officer has now sold some properties of the company and the monies are lying partly in the Tribunal or partly in this Court?”

The Court decided that “the DRT Act is the result of two reports- Report of 1981and 1991 Committees headed by Sri.T.Tiwari and by Sri.M.Narasimhan respectively”. On 30-09-1990, “more than 15 lakh cases filed by PSUs and about 304 cases filed by FIIs were pending in various civil courts and recovery of debts to Banks in a sum of Rs.5, 622 crores and to FIIs in a sum of Rs.391 crores”, which was the background of this

Act. Hence, "the jurisdiction of the Tribunal is exclusive adjudication". The DRT Act requires "the Tribunal alone to decide applications for recovery of debts due to Banks or FIIs". When DRT gives any order that the debt is due, "the Tribunal has to issue a certificate under Sec. 19(22) of the Act to the RO for recovery of the debt". Hence, "the jurisdiction of the RO is exclusive and the certificate has to be executed only by the RO". "The Tiwari Committee" suggested that "a Special Tribunal in 1981 for recovery of debts due to Banks and FIIs stated in its Report that the exclusive jurisdiction of the Tribunal must relate adjudication of the liability and execution proceedings". "The Company Court has no jurisdiction to entertain and adjudicate the claims of Banks and FIIs". "There is no need for the appellant to seek leave of the Company Court to proceed with its claim before the DRT or in respect of the execution proceedings before the RO and nor can they be transferred to the Company Court". The purpose of the DRT Act is more important than the purpose of "Sec. 442, 446 and 537 of the Companies Act".
In "*Punjab National Bank, Dasuya v. Chajju Ram and others"*[163], the Hon'ble SC held that "the legal complexities relating to the jurisdiction of the DRT to entertain execution petition, when the decree of Civil Court is for more than Rs.10.00 lacs came up for consideration." The Hon'ble SC held that "Sec. 31 of RDDBFI Act not only the transfer of a suit but also the transfer of a proceeding which may be other than a suit, as an execution application, when the amount due to the Bank under the decree became more than Rs.10 lakhs and an application for execution was filed, it could only be entertained by the DRT and not by the civil court."

In "*PNB* v. *Bank of Baroda & Ors*."[164], it was held that "the appeal was partly allowed." Facts: The appellant bank provided a term loan, overdraft, ₹ 8 lakhs to the borrower, Respondent 2 in this case, in the name of "M/s. M.S. Exports &others" and the borrower mortgage "a plot no. 1866, 26th Street with a total measuring two grounds and 76 sq. ft. in Thiruvallur Kudiyiruppu, Anna Nagar West Chennai 640040". The appellant bank also sanctioned "a sum of 10 lakhs on some other properties of the borrower". But the borrower failed "to repay the housing loan and some other loans of the firms". The appellant bank preferred MA for recovery of the loan amount. It came into light during the investigation that the defaulter also took credit from the "Bank of Baroda", "Indian

[163] *Punjab National Bank, Dasuya v. Chajju Ram and others*, AIR 2000 SC 2671.
[164] *PNB* v. *Bank of Baroda & Ors*., I (2020) BC 66 (DRAT) M.A. No. 36 of 2018- Decided on 18.7.2019.

Bank", "Indian Overseas Bank", "Vijaya Bank", "Central Bank of India" and "Allahabad Bank". Therefore, the borrower has shown dishonesty and secured number of title deeds for one property alone. The banks are blaming one each other on who is having the genuine title deeds documents. It is provided that due to the dishonesty of the borrower, the bank cannot sacrifice their rights to recovery. Therefore, it was held that "the appellant bank is allowed for 50 % of the amount sale received by RO and the respondent will receive 50% share". Therefore, the order of the RO is modified.

In "*SBI v. Samrat Dairy Pvt. Ltd."*[165] , the appeal was allowed against "the order dated 27.9.2018 passed by the PO, DRT of Visakhapatnam, where the respondent filed was allowed setting aside the attachment order of RO as impugned order passed by PO is perverse and unstainable and set aside".

Facts: The respondent took a loan from SBI and SBI "filed O.A." before the Tribunal as appellant made default and was OTS for "Rs. 76.75 lakh" and the respondent paid "Rs. 18.03 lakh" and failed to pay the balance amount and OTS was failed. O.A. decreed and recovery certificate was issued "Rs. 5, 16, 39, 305, 28" and RO initiated recovery proceedings and auctioned two mortgaged properties. The respondent assailed the e-auction which was dismissed and moved the Apex court by filing SLP and he deposited balance OTS amount of "Rs. 58.75" in Registrar's account of Hon'ble SC. The SLP was dismissed on 17.2.2014 and the respondent can withdraw the deposited amount. The appellant got attached to the amount in the "Oriental Bank of Commerce" under order dated 30.5.2014 in the interlocutory petition of RO. The Hon'ble SC held that "the demand draft issued in favour of respondent shall be deposited in any bank barring the appellant and the credited amount shall not be withdrawn for six weeks and the appellant shall not give effect to the attachment order and it will be open to the respondent to assail the attachment order by preferring an appeal as per law." The appellant moved for attachment of Rs.69, 27, 586 belonging to the respondent in "Jagruti cooperative Urban Bank Ltd." and RO allowed and was attached on 30.12.2015. The Hon'ble HC held that "the appellant-Bank was entitled to attach the amount and further matter to RO to decide whether he can attach the property which is not included in the recovery certificate". RO concluded the matter in favour of the

[165] *SBI v. Samrat Dairy Pvt. Ltd.,* I (2020) BC 85 (DRAT) Appeal No. 195 of 2018-Decided on 5.11.2019.

appellant on 21.11.2016 and attached it under this Act. The aggrieved-respondent filed before the PO and held to return the amount the respondent and this appeal was filed. The scope of the appeal was only to examine as to whether the amount which was not mentioned in the recovery certificate could be attached or not. Once HC held attachment as valid after considering the order of SC, there was no occasion for Tribunal below to again consider the same issue and interpret the same. "Sec.28 of this Act empowers RO without prejudice to modes of recovery specified in Sec. 25 of this Act of one or more of the modes". Even if the amount is not mentioned in the recovery certificate, the same can be attached under Sec. 28 of this Act, there is infirmity or illegality in the order of RO.

3.3.7. *RECOVERY OF DATA BY DEBT RECOVERY TRIBUNAL*

YEAR	CASES REFERRED	AMOUNT INVOLVED (cr.)	AMOUNT RECOVERED (cr.)	%
2014-15	22004	60400	4200	7
2015-16	24537	69300	6400	9
2016-17	28902	67089	16393	24
2017-18	29551	133095	7235	5.4
2018-19	52175	306499	10,574	3.5

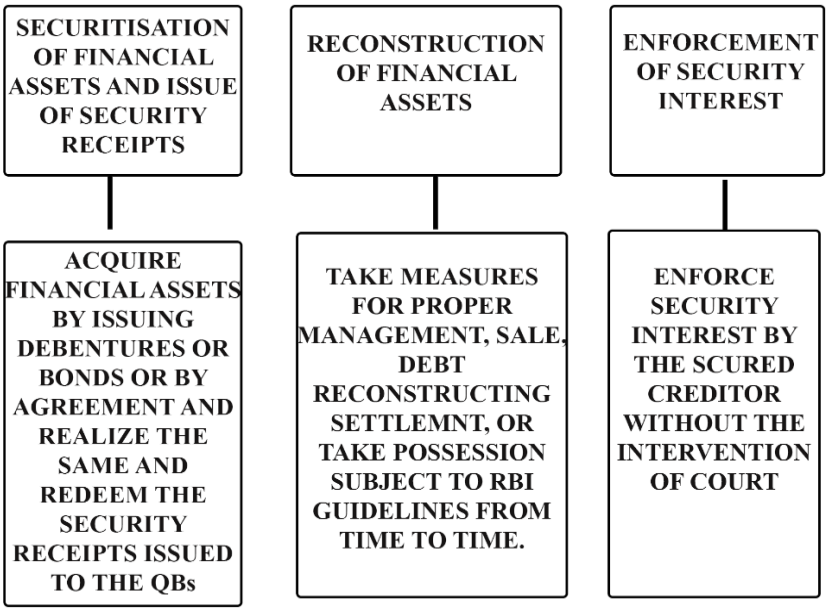
TABLE 6: NPA RECOVERED BY DRT FROM FY 2014-15 TO 2018-19.[166]

SOURCE: RBI

3.4. SARFAESI ACT

"The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 enacted to fight NPAs and came into force on the 21st day of June 2002". It can be divided into three parts:

[166] RBI, *supra* note 127.



It is amended by "Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016". "Sec. 2(1) (b) of the Act" provides about "asset reconstruction that means the acquisition by any ARCs of any right or interest of any bank or FII in any financial assistance for the realization of such financial assistance". "Sec. 2(l) (l)" of the Act provides about "financial asset that is debt or receivables and includes**:** a claim to any debt or receivables whether secured or unsecured; or debt or receivables secured by mortgage or charge on immovable property"; etc. "Sec. 2 (o) of the Act" provides definitions of NPA. "Sec.2(1)(z)of the Act" provides that "Securitisation is the mechanism for acquisition of financial assets by an ARC from any originator, whether by raising of funds by such securitisation companies (SCs) or reconstruction companies (RCs) from qualified institutional buyers (QIBs) by the issue of SRs representing undivided interests in such financial assets or otherwise". Sec.2(1)(zb)of the Act provides about "security agreement is an agreement or instrument or any other document or arrangement under which security interest created in favour of the secured creditor including the creation of mortgage by deposit of title deeds with the secured creditor". "Sec. 2(1) (zc) of the Act" provides a "secured asset means the property on which security interest is created". "Sec. 2(1)(zd)of the Act" provides about "secured creditor" that is:

(i) "Any bank or FII or any consortium or group of banks or FIIs holding any right, title or interest upon any tangible asset or intangible asset" or

(ii) "Debenture trustee appointed by any bank or FII", etc.

Sec. 2(1) (ze) of the Act provides "secured debt includes a debt which is secured by any security interest". "Sec. 2(1)(zf)of the Act" provides "security interest that is right, title or interest of any kind except specified in Sec. 31 of the Act, on property created in favour of any secured creditor and includes any mortgage, charge, hypothecation, assignment or any right, title or interest of any kind, on the tangible asset, retained by the secured creditor as an owner of the property, given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of the asset", etc. "Sec. 2(1) (zg)of the Act" provides "security receipt that is a receipt or other security, issued by an asset reconstruction company to any qualified buyer according to a scheme, evidencing the purchase or acquisition by the holder thereof, of an undivided right, title or interest in the financial asset involved in securitisation".

Sec.3 of the Act gives that "without registration certificate of SCs or RCs cannot carry the business of securitisation or asset reconstruction and owned fund of not less than two crore rupees or such higher income notified by RBI". Sec. 4 of the Act provides that "the RBI can also cancel the registration certificate to SCs or RCs if they cease to carry on business or cease to receive or hold any investment from QIB; or fails to comply with RBI's direction"; etc.

Sec. 5 of the Act provides that "SCs or RCs may gain rights and interests in financial assets of banks and FII through bonds or debentures agreed between the company and the bank or FIIs or agreement with banks or FII to transfer of financial assets to such banks". Sec. 7 of the Act provides SCs or RCs without prejudice to CA, 2013, SC(R) A, 1956 and SEBI, 1992 to issue SRs to QIBs. Sec. of 8 the Act provides that any SRs issued by the SCs or RCs or any transfer of the SRs notwithstanding with "Sec. 17(1) of the Registration Act, 1908" not obtain "compulsory registration". Sec. 9 of the Act provides for "measures for asset reconstruction" like "proper management business of the borrowers"; or "sale or lease business of the borrowers"; or "rescheduling payment of the debt by the borrower"; etc. Sec. 11 of the Act provides that "any disputes relating to SCs or RCs or non-payment of dues including interest amongst the parties arises, that should be resolved by the arbitration and conciliation provided in Arbitration and Conciliation Act, 1996". "Sec. 13(1) of the Act" provides that "any security interest created for any secured creditor then may notwithstanding with Sec. 69 or Sec. 69A of the Transfer property of Act, 1882, without intervention court or tribunal by such creditor of the legislation's provisions". "Sec. 13(2) of the Act" provides that the

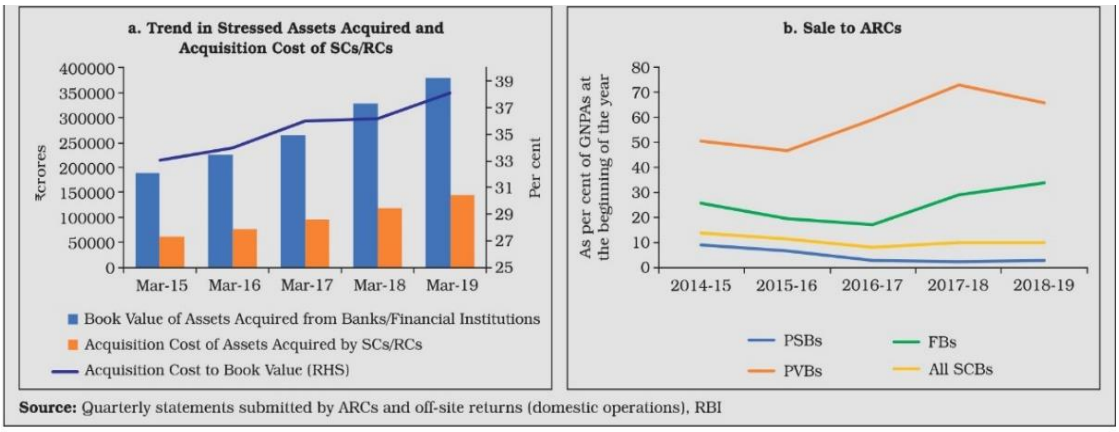
borrower is responsible towards “a secured creditor” in “a security agreement”. If he or she doesn’t pay “secured debt or any installment” and his or her account regarded as NPA, then “the secured creditor may by written notice for dispensing the liabilities to the secured creditor in sixty days from the date of notice and if he fails again, the secured creditor shall be entitled to exercise all or any of the rights”. “Sec.13(4) of the Act” provides that “if the borrower fails to discharge his liability, the secured creditor may take steps to recover his secured debt like to take possession of the secured assets of the borrower including the right to transfer by way of lease”, etc. “Sec.14 of the Act” provides that “where the possession of secured assets is taken by the secured creditor or if the secured assets are to be sold or transferred by the secured creditor, the secured creditor may give written request the Chief Metropolitan Magistrate (CMM) or the District Magistrate (DM) under local limits the secured asset or other documents exists and the CMM or the DM to take possession and documents of the asset of the secured creditor”. Sec. 15(1) of the Act provides that “when the management of borrower’s business is possessed by ARC in Sec. 9(a) of the Act or a secured creditor of Sec. 13 (4) (b) of the Act, it may publish a notice in English language and Indian language newspaper in which the principal office of the borrower is situated; in which the borrower’s company under Companies Act, 1956 or the borrower’s business administrator”. Sec. 17 of the Act provides that “application against measures for recovering secured debts” where a person is unhappy of the steps in Sec. 13 (4) of the Act can apply under DRT having limits in “45 days from the date such measure is taken”. Sec. 19 of the Act mentioned “appeal to the DRATs” dissatisfied of any order given by the DRTs made under Sec.17 of the Act in the period of “30 days from the date of receipt of such order”.

3.4.1. *ASSET RECONSTRUCTION COMPANIES (ARCs)*

The aforesaid Act provides for ARCs. ARCs are set up for repossessing NPAs of lending Institutions. ARCs accumulated all the NPAs of the lending institutions so that they can smoothly function their duties. The lending institutions sell bad loans or NPAs to ARC. It can recover a sum through “attachment, liquidation”, etc. Its aims and objects are to offer assistance to banks in making “clean books” in reducing NPA amounts. They also make a profit by buying NPAs at a lower price. “The recovery cases through mechanisms in cleaning the balance sheets through *the* sale of stressed assets

to ARCs decelerated on a y-o-y basis and declined proportion to GNPAs at the beginning of 2018- 19".[167] "The ARCs acquisition cost in proportion to the book value of assets increased shows that the banks had to incur lesser haircuts on account of these sales".[168]

CHART 3: "STRESSED ASSET SALES TO ARCs" [169]



Source: RBI

3.4.1.1. *FINANCIAL ASSETS SECURITISED BY ARCs*

"The share of subscriptions by banks to SRs issued by ARCs declined to 69.5 % by end-June 2019 from 79.8 % a year ago, concerning reducing their investments in SRs and to diversify investor base in SRs".[170]

Item	Jun-16	Jun-17	Jun-18	Jun-19
1. Book Value of Assets Acquired	2,37,653	2,62,733	3,30,563	3,88,069
2. Security Receipt issued by SCs/RCs	79,020	93,918	1,20,308	1,46,409
3. Security Receipts Subscribed to by				
(a) Banks	65,119	77,653	95,951	1,01,733
(b) SCs/RCs	11,406	14,159	20,165	27,480
(c) FIIs	326	326	505	1,735
(d) Others (Qualified Institutional Buyers)	2,170	1,779	3,686	15,521
4. Amount of Security Receipts Completely Redeemed	7,200	7,355	8,830	12,906
5. Security Receipts Outstanding	64,117	78,312	98,118	1,14,615

Source: Quarterly statements submitted by ARCs

[167] RBI, *supra* note 28 at p. 53.
[168] *Ibid.*
[169] *Ibid.*
[170] *Ibid.*

TABLE 7: DETAILS OF FINANCIAL ASSETS SECURITISED BY ARCs[171]

Source: RBI

3.4.2. *THE SECURITISATION COMPANIES AND RECONSTRUCTION COMPANIES GUIDELINES AND DIRECTIONS, 2003*

The RBI initiates "the guidelines to provide directions relating to registration, measures of asset reconstruction, functions of the company, prudential norms, acquisition of financial assets and matters in connection to Sec. 3, 9, 10 and 12 of the SARFAESI Act, 2002".[172] It is amended on June 30, 2015. The RBI issued in considering the factors like: "in the interest of the public or to regulate the financial system to the advantage of the country and to prevent the affairs of any SCs or RCs from being detrimental to the interest of investors or prejudicial to the interest of such SCs or RCs".[173]This guideline came into effect from April 23, 2003.[174] "Sec. 2 of the guidelines" provides that "the guidelines and directions shall apply to SC or RC registered with the RBI of Sec. 3 of the aforesaid Act". "Sec. 3(vi) of the guidelines" provides that "NPA means an asset of interest or principal or installment is overdue for 180 days or more from the date of acquisition or the due date as per the contract between the borrower and the originator or interest or principal or installment is overdue for 180 days or more from the date fixed for receipt in the plan formulated for realisation of the assets or interest or principal or installment is overdue on expiry of the planning period and no plan is formulated for realisation of the assets or any other receivable is overdue for 180 days or more in the SCs or RCs book". "Sec. 4 of the guidelines" provides that "Registration and matters that every SCs or RCs shall apply for registration in the form of application and obtain a certificate of registration from the Bank under Sec. 3 of the SARFAESI Act". It has started the business "within 6 months from the date of grant of Certificate of Registration by the Bank". "Sec. 5 of the guidelines" provides that "Owned Fund" that "every SCs or RCs seeking the Bank's registration under Sec. 3 of the SARFAESI

[171]RBI, *supra* note 28 at p. 53.
[172]The Securitisation Companies and Reconstruction Companies (Reserve Bank) Guidelines and Directions, 2003, RBI Notification No. RBI/2015-16/94 (01/08/2015), https://www.rbi.org.in/Scripts/BS_ViewMasCirculardetails.aspx?id=9901 (May 20, 2020 9:00 PM).
[173] *Ibid*.
[174] *Ibid.*

Act have minimum Owned Fund of Rs.2 crore". "SCs/ RCs of minimum Owned Fund not less than 15% of the total financial assets acquired by the SCs/ RCs on an aggregate basis or Rs.100 crore". "Sec. 6 of the guidelines" provides that "Permissible Business that an SCs or RCs should function the securitisation and asset reconstruction and the functions in Sec. 10 of the aforesaid Act and unraised sums through deposit". "Sec. 8 of the aforesaid guidelines provide Securitisation".

3.4.3. *RBI GUIDELINES ON SALE OF NON PERFORMING ASSETS, 2005*

"Guidelines on purchase or sale of NPAs on 13 July 2005 given to the lending Institutions to resolve their NPAs and develop a healthy secondary market for NPAs, where SCs or NPAs not included and to issue guidelines on purchase or sale of NPAs". [175]NPAs sale or purchase to administer the banking sector with "due diligence and care". These guidelines would be relevant to the lending institutions that purchase or sell NPA from the lending institutions except SCs/RCs.

3.4.4. *CASE LAWS OF SARFAESI ACT*

In the case law "*Mardia Chemicals v. Union of India"*[176], "the validity of the provisions of the SARFEASI Act" construed by the Hon'ble SC.

Judgement: The SC held that "if the borrower had any tangible grievance against the notice issued under Sec.13 (4) or action taken under Sec.14 of the SARFAESI Act and she should have taken the remedy by applying under Sec. 17(1) of this Act". It undertakes that "the borrower and guarantor or any other person affected by the action taken under Sec. 13(4) or 14 of this Act". "The DRT and DRAT are empowered to pass interim orders under Sec. 17 and 18 of this Act and are required to decide the matters within a fixed schedule". The remedies for the discontented individuals under this Act are "expeditious" and "effective". "But the HC overlooked the settled law that the HC will ordinarily not entertain a petition under Art. 226 of the Constitution if an effective remedy is available to the aggrieved person and this rule applies with greater rigor in matters involving the recovery of taxes, cess, etc. and the lending institutions debts".

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[175] Guidelines on purchase/sale of Non Performing Assets, RBI Notification No. RBI/2005-06/54 (13/07/2005), https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=2372&Mode=0 (June 26, 2020, 2:30 PM),

[176] *Mardia Chemicals v. Union of India*, AIR 2004 SC 2371.

"The stay of an action commenced by the state or its agencies or instrumentalities for recovery of taxes, cess, fees, etc. seriously impedes execution of projects of public importance and disables them from discharging their constitutional and legal obligations of the citizens". "The matters to the recovery of the dues of banks, FIIs, and secured creditors, stay granted by the HC would have a serious adverse impact on the financial health of such bodies affects the economy of the nation". The HC must be more "careful" and "circumspect" in using its "discretion" for granting the stay. The Hon'ble SC held that "the provisions of the SARFEASI Act are validity except Sec. 17(2), which is ultra vires of Art. 14 of the Constitution of India".

In "*M/S Tarnscore v. Union of India & Anr."*[177], a question arises that "whether the withdrawal of O.A. in terms of the first proviso to Sec. 19(1) of DRT Act, 1993 is a condition precedent to taking recourse to the SARFAESI Act, 2002". The SC held that **"**the withdrawal of the O.A. pending before the DRT under the DRT Act is not a pre-condition for taking recourse to SARFAESI Act".

Facts: "In March 1999, Indian Overseas Bank filed O.A before the DRT, Chennai for recovery of dues from the appellant and the claim was disputed". Bank filed an "interlocutory application in the O.A. to sell the properties" and O.A. is pending. A notice was issued under "Sec. 13(2) of the SARFAESI Act". "Sec. 19(1) of the RDDBFI Act" under the amendment of 2004 provided that "the bank or FI may with the DRT permission and on an application made by it, withdraw the application whether it is made before or after the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004 for action under SARFAESI Act, 2002 and if no such action had been taken earlier under that Act". "This bank issued Possession Notice on 8.1. 2005 under Sec. 13(4) of the SARFAESI Act read with Rule 8 of the Security Interest (Enforcement) Rules, 2002". "The appellant has to repay an amount of Rs. 4.15 crores together with the interest within 60 days but he failed to repay the amount". A notice was also given to "the guarantor". "The bank has taken possession of the immovable properties under the notice" and that "the appellant" and "the guarantor" were not directed to deal with those immovable properties. "The immovable properties were put to auction but due to pending civil appeal, auction sale had stayed".

[177] *M/S Tarnscore v. Union of India & Anr.,* Appeal (civil) 3228 of 2006.

The appellant submitted that "the respondent have not invoked the SARFAESI Act under Sec.19 (1) of the DRT Act without the prior permission of the tribunal before whom O.A. was pending. Before the insertion of the provision, the bank issued a notice under Sec. 13 (2) of the SARFAESI Act and that the notice was merely a show-cause notice and such notice did not constitute under the first proviso of Sec. 19(1) of DRT Act. The respondent was obliged to make an application to the DRT seeking withdrawal of O.A. The possession notice dated 8.1.2005 is illegal and liable to set aside as the bank cannot invoke under the SARFAESI Act".

The respondent contended that "the Sec.19(1) of the DRT Act enables the banks and FI to have an independent right to recover debts. Banks or FI are not mandatorily obliged to obtain the prior leave of DRT and the proviso is not a condition precedent to take recourse to the SARFAESI Act. SARFAESI Act is the special Act that overrides all other laws inconsistent".

In "*R.V. Saxena v. Union Of India (Uoi) And Ors."*[178], "writ petition filed to challenge the DRAT order and to pray to declare Sec. 18(1) of the SARFAESI Act as ultra-vires Art.14 of the Constitution" and held that "petition is dismissed".

Facts: The petitioner and respondent-3, "M/s Graffiti Infotech Ltd.", fall in "the Indian Companies Act" dealing in laptops, computers, etc. and respondent-4 managed. The respondent-3 took credit of "Rs. 30 lakhs". The respondent -2 "Punjab & Sind Bank" and respondent-3 were facing loss. Hence, respondent -2 declared respondent -3 as NPA. The respondent -2 sent "notice" under "Sec. 13(2) of the SARFAESI Act" with "a sum of Rs. 44, 77,239/- along with interest @ 18.15% per annum". The respondent -2 claimed "Rs. 47, 08,662/-". In reply to the notice, the petitioner said in the letter that "Rs. 2.09 lakhs" deposited by "the principal borrower or respondent -3 Company" and the still large sum is to be given and seek for no litigation initiative against him and further added that respondent -3 gave "Rs. 16.50 lakhs".

The Petitioner and respondent -3 to 5 filed "writ petition" challenged the "SARFAESI Act" and the order of "the Chief Metropolitan Magistrate" for properties custody mortgaged to respondent -2. The respondent -3 with the respondent - 2 deposited "a sum of Rs. 2.50 lakhs". The said writ petition was disposed of with the SC observations

[178] *R.V. Saxena v. Union Of India (Uoi) And Ors*., AIR 2006 Delhi 96, II (2006) BC 455, 2006 133 CompCas 100 Delhi, 127 (2006) DLT 267, (2006) 142 PLR 67.

in the "*Mardia Chemicals case*"[179]. The petitioner got notice. The "Chief Metropolitan Magistrate" appointed the receiver for properties custody, that is, "Flat No. B-21, South Park Apartments, Kalkaji, New Delhi" and "Flat No. 80, NPL Apartments, Vikaspuri, New Delhi". It is stated "negotiation a sum of Rs. 4.53 lakhs" was given to respondent -2. The "writ petition" stated that contradictory of the bank guarantee, property "Flat No. 80, NPL Apartments, Vikaspuri, New Delhi" was taken under custody. "The other property Flat No. B-21, South Park Apartments, Kalkaji, New Delhi" possession under the notice is "still with the guarantor". "No action has been taken on the property and is alleged that the action of respondent -2 in taking over possession of the property is contrary to the provisions of the Act". It is alleged that "since the property has not been mortgaged following the law and therefore, the respondent -2 bank is not a secured creditor and thus no proceedings could be initiated under the SARFAESI Act". It is claimed that "no mortgage of the property could be created without the prior permission and the petitioner had no intention to create a mortgage of the said property in favour of the bank". It is claimed that "respondent -4 and 5 got certain papers signed from the petitioner which were submitted to the respondent bank". It also claimed that "there is no legal, valid or enforceable mortgage of the said property". It is stated that "submission of the share certificate be said to be creating mortgage of the property bearing Flat No. 80, NPL Apartments, Vikaspuri, New Delhi". The petitioner received notice that "the respondent -2 threatened to sell the property in case the amount demanded was not paid within 30 days". "The public notice appeared in the Indian Express" stated that "the said property was sought to be sold and bids were invited". It is stated that "the action of the respondent bank was illegal since there was no mortgage nor was respondent-2 a secured creditor and hence it could not invoke under the SARFAESI Act". The petitioner approached the DRT by the appeal that "restrained respondent -2 from selling the property without the prior permission of the Tribunal". "But the respondent bank did not receive any bid, hence it issued auction notice but the tribunal restrained the bank from inviting bids or selling the property". The respondent-4's father filed that "an appeal for property bearing Flat No. B-21, South Park Apartments, Kalkaji, New Delhi". The petitioner filed that "an appeal for property bearing Flat No. 80, NPL Apartments, Vikaspuri, New Delhi which were both heard together". "The Tribunal dismissed the petitioner appeal and held that the guarantor is

[179] *Mardia Chemicals case* AIR 2004 SC 2371

given certain rebate and discounts and the balance amount will be paid minus of the amount of the petitioner flat". The petitioner filed an appeal under "Sec. 18(1) of the Act before the DRAT". The DRAT required the petitioner to "deposit 25% of the outstanding amount due to the respondent bank". The petitioner has challenged "the Constitutional validity of Sec. 18(1) second proviso of the Act which provides no appeal filed under this section to the DRAT shall be entertained unless the borrower has deposited with the Tribunal 50% of the amount of the debt due from him as claimed by the secured creditors". The DRAT directed the petitioner to deposit "25% of the debt within 2 weeks". "The petitioner has submitted he is a retired Government servant, 71 years of age and has no means to make the deposit and hence has to be waived". The DRAT held that "it does not have the discretion to reduce the amount of deposit below 25%". "The writ petition has been filed in this Court".

The Court held that "there is no merit in this petition. The right of appeal is not an inherent right and creature of the statute and the legislature imposes conditions". Sec. 18 of the Act does not require "the entire amount to be deposited but only 50% that can be reduced to a minimum of 25% of the sum". The court found legality.

In "*SBI* v. *Deba Dash & Ors."*[180], it was held that the appeal was allowed.

Facts: "The appeal was filed against the order passed by the PO, DRT, Cuttack where S.A. has been filed by the respondent and the tribunal quashed all the notices of "Sec. 13(2) & Sec. 13(4) SARFAESI Act and sale notice dated 18.4.2017 and sale certificate dated 12.6.2017 to appellant Bank & respondents". The respondent-1 availed credit facility from the appellant bank and respondent-2 is the guarantor or mortgagor in the loan transaction. "The respondent failed and the account classified as NPA and demand notice and possession notice initiated under Sec. 13(2) and 13(4) of the SARFAESI Act respectively". "The bank took possession of the property on 4.7.2016". The bank sold the mortgaged property at Rs. 29, 04, 000 on 19.5.2017 with sale notice on 18.4.2017 and confirmation of sale and issuing sale certificate on 12.6.2017. The physical possession to respondent -3 on 20.12.2017 by obtaining orders of District magistrate. The respondent-1 and respondent-2 filed S.A. on 30.12.2017 to quash the sale proceedings and sale certificate dated 12.6.2017. S.A. was allowed and was filed. In

[180] *SBI* v. *Deba Dash & Ors.,* I (2020) BC 74 (DRAT) Appeal No. 42 of 2019- Decided on 15.11.2019.

the judgement given it was clear that S.A. was filed on 30.12.2017 seek relief to quash the sale certificate dated 12.6.2017 and for maintaining status quo on the property in question and no relief was set for the demand notice and possession notice and the DM's order in "Sec. 14 of SARFAESI Act". The respondents didn't file challenged within 45 days the demand notice issued by the bank. The reliefs granted by the Tribunal status quo demand notice, possession notice, and sale notice was time-barred. The appellant stated that the respondent has deposited amount after the first demand notice dated on 6.2.2015 and after classifying the account as NPA on 28.12.2015 fresh demand notice was issued on 24.2.2016 and therefore, different dates of NPA doesn't suffer from any infirmity. The valuation report submitted by the respondent was obtained 1.5 years from the date of the sale and therefore, it cannot be taken to be a true report applicable at the time of sale conducted by the bank. The order of the HC was being informed on 17.6.2017 after the sale certificate was issued on 12.6.2017. The Sale deed has been executed and possession of the property has been handed on 20.12.2017 and sale became absolute. The borrower or guarantor had never appeared before the bank to redeem the property before the publication of the sale notice. Therefore, the "right to redeem the property" extinguished, and the valuable right has been credited in favour of the auction purchaser.

In "*UOI v. Anjali Enterprises & Ors."*[181], the appeals are allowed.

Facts: The parties and the issues involved in both the appeals are the same and these are being decided by this common order. It appears that the appellant granted loan facility to the respondent -1 through its partners' respondent -2 to 3. The loan was secured by mortgage of property belonging to the respondent -4. Bank guarantee was invoked by the beneficiary, therefore, the bank had made payment and claimed from the respondents by filing O.A. proceeded in "the SARFAESI Act for sale and the mortgage of the property" filed the S.A. before the Tribunal below. The Tribunal below vide impugned order dismissed the O.A. of the Bank observing that the Bank failed to prove the mortgage. S.A. was allowed and the Bank has preferred the SARFAESI. "The application in O. 41 R. 27 of the C.P.C. was filed by the Bank stating that matter pertains to 1993 hence at that time of filling O.A. and during the trial, despite due diligence, the

[181] *UOI v. Anjali Enterprises & Ors*., I (2020) BC 101 (DRAT) Appeal No.s 33, 21 of 2016- Decided on 2. 12.2019.

sanction advice and supplementary memorandum could not be traced". "Both the documents having nexus with the Bank guarantee facility extended against title deeds deposited by the respondent -4 with the Bank". The respondents are not denying such documents nor there any allegation of fraud. Bank has submitted an affidavit that despite due diligence documents cannot be traceable at that time of filling O.A. It is held that there are sufficient as matters in 1993 and documents could not be traced essential to decide a conflict between parties and could not produce for valid reasons before the Trial court and the application filed by the Bank is allowed. If these factual aspects are considered at the appellate stage, it would curtail one right of parties for challenging the order. Matter remanded back to the Tribunal and not objected. "The orders are set aside and both the appeals are allowed". The Tribunal shall decide both the matters fresh. DRT will decide the matter in the period of "3 months from the date of receipt of this order". The parties appear before the Tribunal. The judgement copy sent to the parties as well as the DRT.

In "*Indian Bank & ANR* v. *K. Pappireddiyar & ANR"*[182], the HC, Madras allowed "the appeals and set aside the impugned judgment and order of the HC". It held that "the proceedings initiated by the appellant under the SARFAESI Act are a nullity". This Act is "inapplicable to agricultural land and the security interest in agricultural land cannot be enforced".

Facts: "A term loan was granted by the appellant, Yelagiri Dairy Farm for setting up a dairy farm on a property of 6.10 acres situated at Peddakallupalli Village, NH Road, Vaniambadi, and Tamil Nadu in 1989". The respondent-1 appointed "N. K. Arumugham as his attorney" and permitted to "sell or mortgage the property". He was "the managing partner of the partnership farm" and had mortgaged the property in favour of the appellant. The respondent -1 was a "guarantor". The account became NPA. "Bank filed a suit for recovery and was transferred to the DRT-III, Chennai in 1995". DRT-III allowed the claim of "Rs. 31, 00,238 with interest at 9 % per annum of the Bank" in 2010. "The recovery certificate was issued on 10 February 2011 an amount of Rs. 74, 31,233.14". "On 2 August 2011, the Bank issued a demand notice under Sec. 13(2) of the SARFAESI Act for Rs. 85, 41,662". "Overruling an objection as the

[182] *Indian Bank & ANR* v. *K. Pappireddiyar & ANR,* Civil Appeal No. 6641 of 2018 arising of Special Leave Petition (C) No. 29268 of 2016 & Civil Appeal No. 6645 of 2018 arising of Special Leave Petition (C) (D No. 15774 of 2017.

property is agricultural, it took possession on 31 October 2011". "The Bank issued sale notice on 2 April 2012 challenged in the original suit and was dismissed in default". The respondent-2 was "the successful bidder at an auction sale on 12 May 2012". "He paid a consideration of Rs. 1.27 crores". "The sale certificate issued on 14 June 2012 and rectified on 7 September 2012 and challenged in writ proceedings before the HC, Madras". "The petition was dismissed on 4 April 2013 with the liberty to the respondent-1 for adopting measures". The respondent-1 moved to DRT-III, Chennai challenged "the sale certificate and was dismissed on 17 May 2013". "An appeal filed by the first respondent was allowed by the DRAT on the ground that the property which was sold, was agricultural and was exempt from the provisions of the Act on 11 September 2014". "Both the Bank and the auction purchaser filed petitions before the HC Madras in Art. 226 of the Constitution". The HC dismissed the petitions. It states that "security interest had been created in agricultural land and SARFAESI Act provisions were not attracted". "The aggrieved Bank and the auction purchaser" instituted proceedings before this Court in "Art 136 of the Constitution" and was granted. "The appellant's learned counsel contended that the property was the subject matter of the mortgage of dry land and not exempt under SARFAESI Act and that the mere classification of a property in the revenue records as agricultural does not render it agricultural land". He stated that "no agricultural activity was taking place on the date of the creation of the mortgage and was classified as dry land in the land acquisition proceedings". The Court held that "the character of the land and the purpose is set apart and the land in question is not agricultural land. The HC misdirected that the land was merely an agricultural land as in the revenue entries, even though the application made for such conversation lies pending till date. The HC, Madras has failed to adjudicate the issue as to whether the land in respect of which the security interest was created, was agricultural in nature. The Tribunal rejected the objection of the debtor that the land was agricultural and the DRAT checked in appeal and the impugned judgment of the HC contains no discussion of the material which was relied upon by the parties in support. The Bank urged that the land was not agricultural while the debtor urged that it was. The question was whether the land is agricultural has to be determined based on the totality of facts and circumstances including the nature and character of the land, the use to which it was put, and the purpose and intent of the parties on the date on which the security interest was created. The HC judgment set aside and to remit the proceedings for being considered afresh".

3.4.5. *RECOVERY OF NPA BY SARFAESI*

YEAR	CASES REFERRED	AMOUNT INVOLVED (cr.)	AMOUNT RECOVERED (cr.)	%
2014-15	175355	156800	25600	16
2015-16	173582	80100	13200	17
2016-17	80076	113100	7758	7
2017-18	91330	1067	265	24.8
2018-19	248312	289073	41876	14.5

TABLE 8: NPA RECOVERED BY SARFAESI FROM FY 2012-13 TO 2018-19.[183]

SOURCE: RBI

3.5. CORPORATE DEBT RECONSTRUCTION

"Corporate Debt Restructuring (CDR)" system mechanism issued under "Circular DBOD No. BP. BC. 15/21.04.114/2000-01, August 23, 2001".[184] "The Working Group make the CDR mechanisms more efficient" under "the Chairmanship of Shri Vepa Kamesam, Deputy Governor of RBI" and taken under "the Finance Minister in the Union Budget", FY 2002-2003 in consultation with the Government".[185] CDR mechanisms were revised in "Circular DBOD No. BP.BC. 68/21.04.114/2002-03, February 5, 2003".[186] "A Special Group was constituted Smt .S. Gopinath, Deputy Governor, RBI in September 2004 as the Chairperson". [187]The main features under CDR system are two categories of debt restructuring:[188]

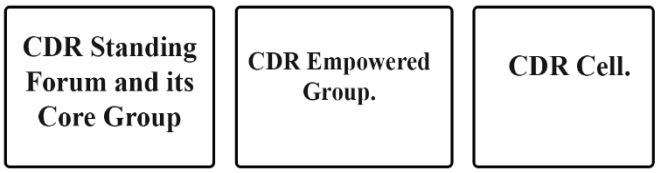
First Category: "Accounts classified as Standard and Sub-Standard in the books of the creditors restructured";

Second category: "Accounts classified as Doubtful in the books of the creditors would be restructured".

[183] RBI, *supra* note 127.
[184] Revised Guidelines on Corporate Debt Restructuring (CDR) Mechanism, THE RESERVE BANK OF INDIA, https://www.rbi.org.in/upload/notification/pdfs/67158.pdf p. 1 (July 20, 2020, 12:00 PM).
[185] *Ibid.*
[186] *Ibid.*
[187] *Ibid.*
[188] *Ibid* at p. 2.

This aim is “to ensure a timely and transparent mechanism for restructuring the corporate debts (outside the BIFR, DRT, and other legal proceedings) and also at preserving viable corporates affected by internal and external factors”.

The three-tier structure of CDR:



3.5.1. *CDR Standing Forum and its Core Group*

“The CDR Standing Forum act as the representative general body of all lending institutions taking part in their interest in CDR system”. It is a self-empowered body that lays down policies and guidelines and regulate CDR. It provides “an official platform for both the creditors and borrowers for peaceful policies and guidelines for CDR”. It consists of “Chairman & Managing Director, IDBI Ltd; Chairman, SBI; Managing Director & CEO, ICICI Bank Ltd.”, etc. The institutions like “General Insurance Corpn.”, “Life Insurance Corpn.”, etc. may take part in the CDR. It has “the Chairman for one year with the principle of rotation”. It may have “Working Chairman as a whole-time officer” for convoy and help to make decisions. The RBI doesn’t participate in the Forum and Core Group and limited in giving instructions. It meets at least “once every 6 months” and watch the CDR mechanism. It lays the policies and guidelines including the critical parameters to be followed by “the CDR Empowered Group and CDR Cell”. It can also look into any individual decisions of “the CDR Empowered Group and CDR Cell”.

3.5.2. *CDR Empowered Group*

“The CDR Empowered Group consisting of ED level representatives of Industrial Development Bank of India Ltd., ICICI Bank Ltd. and State Bank of India as standing members, in addition to ED level representatives of FIIs and banks who have an exposure to the concerned company shall determine individual cases of CDR”. “The standing members” will conduct “the Group’s meetings voting is in proportion to the creditors”. To construct “the CDR Empowered Group effective and smooth”, it secures that participating lending institutions approve “a panel of senior officers” to represent them in “the CDR Empowered Group.” It provides to “decide each case of debt

restructuring, examine the viability and rehabilitation potential of the Company, and approve the restructuring package within 90 days or 180 days of reference to the Empowered Group".[189] It may be applicable:

1. "Return on Capital Employed (ROCE) ";
2. "Debt Service Coverage Ratio (DSCR) ";
3. "Gap between the Internal Rate of Return (IRR) and Cost of Fund (CoF)";
4. "Extent of sacrifice".[190]

"CDR Empowered Group decisions are final". "If approved, the company is put on the restructuring mode, whereas, not approved, the creditors are free to take steps for dues recovery or liquidation or winding up the company (collectively or individually)".

3.5.3. *CDR Cell*

The "CDR Standing Forum" and the "CDR Empowered Group" is aided by "CDR Cell". "It makes the initial scrutiny of proposals received from borrowers or creditors within 1 month to figure out whether rehabilitation is prima facie feasible and prima facie feasible, the CDR Cell will prepare Rehabilitation Plan with the help of creditors and experts from outside and not found prima facie feasible, the creditors may start action for dues recovery". "It shall be duty of the lead institution or major stakeholder of corporate for a preliminary restructuring plan in consultation with other stakeholders and submission to the CDR Cell within 1 month".[191] It will make "the restructuring plan" accepted by the "CDR Standing Forum". It is given for consideration of the Empowered Group "within 30 days".[192] "The CDR Empowered Group" accept/ recommend. The final decision is taken "within 90 days but the period can be extended to 180 days from the date of reference to the CDR Cell".[193] The price in CDR mechanism including "CDR Cell meet from the contribution of the lending institutions in the Core Group at the rate of Rs.50 lakh each and contribution from other lending institutions at the rate of Rs.5 lakh each".[194]

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[189] RBI *supra* note 182 at p. 5.
[190] *Ibid* at p. 6.
[191] *Ibid* at p. 7.
[192] *Ibid.*
[193] *Ibid.*
[194] *Ibid.*

3.5.4. *Legal Basis of CDR*

"CDR is a non-statutory mechanism and voluntary system constructed upon Debtor-Creditor Agreement (DCA) and Inter-Creditor Agreement (ICA)". The DCA and ICA give the legal basis to the CDR mechanism. The debtors shall have "to accede to the DCA in the period of original loan documentation/reference to CDR Cell and all participants in the CDR set foot in a legally binding agreement through the membership of the Standing Forum". ICA signed by the creditors "valid for 3 years and renewal for 3 years". "The foreign currency lenders outside the country" are not a part of CDR system and can be a part CDR by signing the transaction to transaction ICA. ICA would "legally bind agreement amongst the creditors with necessary enforcement and penal clauses". The creditors accede that "if 75 % of creditors by value and 60 % of the creditors by number agree to a restructuring package of existing debt and would be binding on the remaining creditors".[195] "Category 1 CDR Scheme" includes "standard and sub-standard accounts of 75 % of the creditors by value and 60 % of creditors by number to become performing".[196]

3.5.5. *Prudential and Accounting Issues*

"Restructuring of corporate debts" steps includes "before the commencement of commercial production"; "after the commencement of commercial production but before the asset classified as sub-standard"; and "after the commencement of commercial production and the asset classified as sub-standard or doubtful". Accounts restructured in these mechanisms comprise of "accounts classified as doubtful under Category 2" would be eligible in "asset classification and provisioning on writing off" only:

i. "Restructuring under CDR mechanism is done for the first time";
ii. "The unit becomes viable in 7 years and the repayment period for restructured debts does not exceed 10 years";
iii. "Promoters' sacrifice and additional funds brought by them should be a minimum 15% of creditors' sacrifice";
iv. "Personal guarantee is offered by the promoter except when the unit is affected by external factors to the economy and industry". [197]

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[195] RBI *supra* note 182 at p. 10.
[196] *Ibid.*
[197] *Ibid* at 16.

3.5.6. *Moratorium*

"When a standard asset is restructured before the commencement of production and the restructuring package provides a longer period of moratorium on interest payments beyond the expected commercial production date vis-à-vis the original moratorium period and the asset cannot be treated as a standard asset and may be treated as sub-standard".[198] Similarly, "if the standard asset for reorienting after the commencement of production and the restructuring package provides for a period of moratorium on interest payments than the original moratorium period".[199]

3.6. INSOLVENCY AND BANKRUPTCY CODE

"The Insolvency and Bankruptcy Code, 2016, provides for consistent and extensive provisions on the insolvency of corporate persons, partnership firms and individuals".[200] The creditors retrieve the information regarding the possibility of growth of the debtors and agree to make up a plan for their improvement and speedy liquidation. It provides a systematic framework for speedy and formal "insolvency resolution process and liquidation process". It was amended in 2019 under "Insolvency and Bankruptcy (Amendment) Code". The goals of the Code are as follows:

a. Harmonizing "the relationship between the creditors and the debtors" and negotiation among them.
b. "Consolidating and amending laws of reorganization" and "insolvency resolution process and liquidation process" of "corporate persons, partnership firms and individuals".
c. Fixing time duration that is "180 days" for insolvency settlement.
d. "Insolvency and Bankruptcy Board of India" establishment and more.

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[198] RBI *supra* note 182 at 16.
[199] *Ibid.*
[200] Ishrat Siddiqui, "Synopsis on SARFAESI Act v. IBC, 2016", TAXGURU, https://taxguru.in/coroprate-law/synopsis-sarfaesi-act-insolvency-bankruptcy-code-2016 (May 21, 2020, 10:30 PM).

It applies to "company and Banking companies" under "the Companies Act, 2013" or under any previous company law to their "insolvency, liquidation, voluntary liquidation or bankruptcy".[201]

3.6.1. *INSOLVENCY RESOLUTION AND LIQUIDATION FOR CORPORATE PERSON*

"Part II of IBC" provides "Insolvency Resolution and Liquidation for Corporate Persons". "Chap. 2 of the Code" provides the "Corporate Resolution Process". "Sec. 6 of the Code" provides about "persons may initiate corporate insolvency resolution process (CIRP) where corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate CIRP in matters to the corporate debtor". "Sec. 7(1) of the Code" provides for CIRP by "financial creditor" and him or her "either itself or jointly with other financial creditors or any other person on behalf of the financial creditor by the Central Govt. may file an application for CIRP against a corporate debtor before the Adjudicating Authority on the default". When Adjudicating Authority discovers and pleased that "there is the existence of a default from the records of an information utility or other evidence furnished by the financial creditor within 14 days", a notice will be given to the applicant to modify the application within "7 days from date of receipt of the notice".[202] CIRP starts "from the date of admission of application".[203] CIRP is completed "within 180 days from the date of admission of the application"[204] and can be extended. In 2019, the code was amended, and inserted in Sec. 12 that "the resolution process must be mandatorily concluded within 330 days and to bring discipline amongst the stakeholders to avoid inordinate delays in the insolvency resolution process", but "when no resolution plan is achieved within 330 days from the date of admission of the Application, then liquidation of defaulting firm will start".[205] Adjudicating Authority in Sec. 7 or 9 or s 10 of the Code shall "declare a moratorium"[206] to prohibit "any action to recover", "any action under the SARFAESI Act, 2002", etc. "A resolution applicant" may submit "a

[201] THE INSOLVENCY AND BANKRUPTCY CODE, 2016, § 2.
[202] *Ibid* § 7 (5).
[203] *Ibid* § 7 (6).
[204] *Ibid* § 12(1).
[205] Manish Aryan & Mini Raman, "Effectiveness of Insolvency and Bankruptcy Code as a solution to NPAs",LEXORBIS https://www.lexology.com/library/detail.aspx?g=c1f21f1c-3853-4bd1-9731-592cfca4bc12 (July 15, 2020, 01:33 PM).
[206] THE INSOLVENCY AND BANKRUPTCY CODE, 2016, § 13(a).

resolution plan to the resolution professional prepared".[207] "Any appeal from an order approving the resolution plan" provided under Sec. 61(3) of the Code.[208] "Chap. 3 of Part II of the Code provides for the liquidation process". If the Adjudicating Authority doesn't receive a resolution plan or rejects the resolution, then he or she gives "an order requiring the corporate debtor to be liquidated or issue a public announcement of the corporate debtor is in liquidation or require such order to be sent to the authority with which the corporate debtor is registered".[209] When Adjudicating Authority gives "an order for liquidation of the corporate debtor, the resolution professional shall act as the liquidator unless replaced".[210] "Sec. 60 of Chap. VI of the Code provides that Adjudicating Authority is the NCLT regarding insolvency resolution and liquidation for corporate persons having territorial jurisdiction over the registered office place of a corporate person". NCLT shall be "vested with all the DRT powers". Sec. 61 of Chap. VI of the Code provides for an appeal to the NCLAT within "30 days from the date of receipt of such order that can be extended to 15 days". Sec. 62 of the Code provides an aggrieved person by NCLAT order may file an appeal to the SC "on a question of law arise in 45 days from the date of receipt of such order that can be extended to 15days". There is no jurisdiction of the civil court.

3.6.2. *INSOLVENCY RESOLUTION AND BANKRUPTCY FOR INDIVIDUALS AND PARTNERSHIP FIRMS*

"Part III of this Code" provides for "Insolvency Resolution and Bankruptcy for individuals and partnership firms" applicable to matters relating to "fresh start, insolvency and bankruptcy of individuals and partnership firms where the amount of the default is not less than 1,000 rupees" The "Central Government" by notification specify "the minimum amount of default of higher value which shall not be more than 1 lakh rupees". The adjudicating refers to DRT. Sec. 80 of this Code issues "a debtor, unable to pay his debt shall be entitled to make an application for a fresh start for discharge of his qualifying debt but must fulfill the conditions like the gross annual income of the debtor does not exceed 60,000 rupees or the aggregate value of the assets of the debtor does not exceed 20,000 rupees; or the aggregate value of the qualifying debts does not exceed 35,000 rupees; or he is not an undischarged bankrupt or he does

[207] THE INSOLVENCY AND BANKRUPTCY CODE, 2016, § 30(1).
[208] *Ibid* § 32.
[209] *Ibid* § 33(1).
[210] *Ibid* § 34.

not own a dwelling unit or a fresh start process, insolvency resolution process or bankruptcy process is not subsisting against him; or no previous fresh start order has been made about him in the preceding 12 months of the date of the application for a fresh start". In "Sec. 80 of the Code", the Code issues "an application is filed by the debtor through a resolution professional, the Adjudicating Authority shall direct the Board within 7 days of the date of receipt of the application and seek confirmation from the Board that there are no disciplinary proceedings against the resolution professional".[211] In the same section, the Code issues "where an application is filed by the debtor himself and not through the resolution professional, the Adjudicating Authority shall direct the Board within 7 days of the application receipt's date to nominate a resolution professional for the fresh start process".[212] The Board shall nominate "a resolution professional within 10 days of receiving the direction issued by the Adjudicating Authority".[213] "The resolution professional examine the application made in Sec. 80 of the Code within 10 days of his appointment, and submit a report to the Adjudicating Authority for acceptance or rejection of the application".[214] Adjudicating Authority may in "14 days from the date of submission of the report by the resolution professional issues an order either admitting or rejecting the application".[215] "On the date of admission of the application, the moratorium period shall commence in respect of all the debts". "Chap. III of Part III of the Code" mentioned the "insolvency resolution process". "A debtor who commits a default may apply to the Adjudicating Authority for the insolvency resolution process by applying".[216] "A creditor may apply either by himself or jointly with other creditors or through a resolution professional to the Adjudicating Authority for the insolvency resolution process by submitting an application".[217] "An interim-moratorium shall commence on the date of the application concerning all the debts and shall cease to affect the date of admission of such application".[218] If the application in Sec. 94 and 95 of the Code are applied through "a resolution professional", the Adjudicating Authority issued "the Board within 7 days of the date of the application that no

[211] THE INSOLVENCY AND BANKRUPTCY CODE, 2016, § 82(1).
[212] *Ibid* § 82(3).
[213] *Ibid* § 82(4).
[214] *Ibid* § 83(1).
[215] *Ibid* § 84(1).
[216] *Ibid* § 94(1).
[217] *Ibid* § 95(1).
[218] *Ibid* § 96(1).

disciplinary proceedings are pending against resolution professional".[219] An application under "Sec. 94 or 95 of the Code" is applied by "the debtor or the creditor himself and not through the resolution professional", the "Adjudicating Authority" issued "the Board within 7 days to file such application to nominate a resolution professional for the insolvency resolution process".[220] "The resolution professional examined the application under Sec. 94 or Sec. 95 of the Code in 10 days of his appointment and submit a report to the Adjudicating Authority for approval or rejection of the application".[221] The Adjudicating Authority shall within "14 days from the date of submission of the report in Sec. 99 of the Code passes an order either to admit or reject the application in Sec. 94 or 95 of IBC".[222] The application applied in Sec. 100 of the Code, "a moratorium shall commence concerning all the debts and shall cease to affect at the end of 180 days beginning with the date of admission of the application or on the date the Adjudicating Authority passes an order on the repayment plan under Sec. 114 of IBC".[223] The debtor shall "prepare a repayment plan that contains a proposal to the creditors for restructuring of his debts or affairs in consultation with the resolution professional".[224] "The repayment plan or any modification to the repayment plan shall be approved by a majority of more than three-fourth in value of the creditors present in person or by proxy and voting on the resolution in a meeting of the creditors".[225] The Adjudicating Authority by "an order approve or reject the repayment plan based on the report of the meeting of the creditors submitted by the resolution professional in Sec. 112of the Code".[226] An appeal from an order of the DRT is issued within "30 days before the DRAT extended for 15 days".[227] An appeal from an order of the DRAT on "question of law shall be filed before the SC within 45 days extended for 15 days".[228] "Chap. IV of Part III of the Code" provides "Bankruptcy order for individuals and partnership firms". "Sec. 121 of the Code" provides "bankruptcy application for a debtor may be made by a creditor individually or jointly with other creditors or by a debtor to the Adjudicating Authority" under where an order has been passed by an

[219] THE INSOLVENCY AND BANKRUPTCY CODE, 2016, § 97(1).
[220] *Ibid* § 97(3).
[221] *Ibid* § 99(1).
[222] *Ibid* § 100(1).
[223] *Ibid* § 101(1).
[224] *Ibid* § 105(1).
[225] *Ibid* § 111.
[226] *Ibid* § 114(1).
[227] *Ibid* § 118(1)
[228] *Ibid* § 119(1)

Adjudicating Authority of "Sec. 100(2), 115(4) or 118(3) of the Code". An application for bankruptcy shall be filed within months of the date of the order.

3.6.3. CASE LAWS OF IBC

In "*Swiss Ribbons Pvt. Ltd. v. UOI"*[229], it was held that "the constitutional validity of the IBC, 2016 is upheld".

Judgement: The Hon'ble SC observed:

a. Appointment of members of the NCLT and the NCLAT: According to the "Companies (Amendment) Act, 2017", "two judicial members and two executive members" are to be appointed in the NCLT and NCLAT. Earlier appointments were also as per the precedents of the SC and are "valid". The Apex court relied on the "*UOI v. R. Gandhi, President, Madras Bar Association*[230]" and provided for administrative support for all Tribunals from "the Ministry of Law and Justice" and ordered the UOI to follow the judgement both in "letter and spirit".

b. NCLAT bench only at Delhi: Depending on "*Madras Bar Association v. UOI 2014 10 SCC 1*", it was given that "permanent benches needed to be established at the seat of every jurisdictional HC and if not possible, at least a circuit bench was to be established at every place where the aggrieved party could avail remedy". The SC directed that the UOI set up "Circuit Benches of the NCLAT" within "6 months from the date of the judgement".

c. Between financial creditor and operational creditor**:** The SC analysed "the Bankruptcy Law Reforms Committee Report", "the Insolvency Law Committee Report, 2018 and the Regulations" that state classification is not violative of "Art. 14 of Constitution" as financial creditors are, from the beginning involved with assessing the corporate debtor viability. "They engage in the restructuring of the loan as well as reorganization of the corporate debtor's business when there is financial stress and operational creditors cannot do". Thus, for ensuring high recovery for all creditors, "financial creditors" are different from "operational creditors". If no notice is given to "the financial debtor", the SC states that "the information in respect of debts incurred by financial debtors is easily available through information utilities". "In Sec. 7(5) of the Code, the corporate debtor is served with a copy of the application filed with the

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[229] *Swiss Ribbons Pvt. Ltd. v. UOI*, WRIT PETITION (CIVIL) NO. 99 OF 2018.
[230] *UOI v. R. Gandhi, President, Madras Bar Association* (2010) 11 SCC 1.

adjudicating authority and has the opportunity to file a reply". If information is false, "penal provisions" can be invoked. "Concerning financial debtor not being entitled to the dispute of the financial creditor's claim", the SC states that "the trigger for a financial creditor's application is non-payment of dues when they arise under the loan agreements". The "legislative policy" is deviating from "the concept of inability to pay debts" for the determination of default at present. "A claim gives rise to debt only when it becomes due, whereas a default occurs only when a debt becomes due and payable and not paid by the debtor". It is for this reason that "a financial creditor has to prove default as opposed to an operational creditor who merely claims a right to payment of liability or obligation in respect of a debt". Concerning "voting rights of the operational creditors", the SC states that since the financial creditors are in the business of money lending, banks and FIIs can "assess viability and feasibility of the corporate debtor's business". Whereas "operational creditors" furnish "goods and services and involved only in recovering amounts paid for such goods and services and unable to assess viability and feasibility of business". NCLAT look "the viability and feasibility of resolution plans" approved by the CoC and check "whether operational creditors are given the same treatment as financial creditors and if they are not such plans are either rejected or modified so that the operational creditors' rights are safeguarded". A resolution plan cannot pass under "Sec. 30(2) (b) and 31 of the Code" unless a "minimum payment is made to operational creditors, being not less than liquidation value". "Amendment of Regulation 38 of the Insolvency and Bankruptcy Board of India Regulations, 2016, strengthens the rights of operational creditors by statutorily incorporating the principle of fair and equitable dealing of operational creditors' rights, together with priority in payment over financial creditors".

d. Section 12A of the code validity: SC relied on "*Brilliant Alloys Private Ltd v. Mr. S. Rajagopal and Others*"[231], stated under that "Regulation 30A (1) of the CIRP Regulations" is "directory" in nature. "An application for withdrawal may be allowed in exceptional cases even after issuing of invitation for expression of interest under Regulation 36A of the CIRP Regulations". The SC observed that "once the Code gets triggered by the admission of a creditor's petition under Sec. 7 to 9 of the Code, proceeding that is before the adjudicating authority, being a collective proceeding, is a proceeding in rem and is necessary that the body which is to oversee the resolution

[231] *Brilliant Alloys Private Ltd v. Mr. S. Rajagopal and Others*, decided on December 14, 2018.

process must be consulted before any individual corporate debtor is allowed to settle its claim". This "threshold of approval of 90%" given in "the Insolvency Law Committee report, 2018" that "all financial creditors have to put their heads together to allow such withdrawal as, ordinarily, an omnibus settlement involving all creditors ought, ideally, to be entered into and the committee of creditors do not have the last word on the subject and same can be set aside by the NCLT and thereafter by the NCLAT under Sec. 60 of the Code".

e. Powers of resolution professional: "Sec. 18 of the Code" along with "Regulations 10, 12, 13 and 14 of the CIRP Regulations", the SC observed that "the resolution professional is given administrative as opposed to quasi-judicial powers". The resolution professional cannot act in some matters without the approval of the committee of creditors under "Sec. 28 of the Code". It is an organiser of the process of resolution.

f. Section 29A of the code validity: "A statute is not retrospective merely because it affects existing rights nor it is retrospective because a part of the requisites for its action is drawn from a time antecedent to its passing". Depending in "*ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta and Ors.* " [232], the SC stated that "a resolution applicant under Sec. 29A(c) of the code has no vested right to apply for being considered as a resolution applicant, their vested rights were not affected with the retrospective application of Sec. 29A of the Code". "Sec. 29A(c) of the Code" is inspected and the SC observed that "where an erstwhile manager is not guilty of malfeasance or acting contrary to the corporate debtor interests, there is no reason for not taking part in the resolution process". The legislative objectives Sec. 29A of the Code continues to permit the section applies to "resolution and liquidation also". Concerning "barring the relatives of the erstwhile promoters under Sec. 29A (j) of the Code", persons who act "jointly or in concert with others are connected" with "the business activity of the resolution applicant". "Sec. 5(24A) of the Code" provides that "persons must be connected with the resolution applicant within the Sec. 29A (j) of the Code". The concerned person should be proved that "he is connected with the business activity of the resolution applicant and that person cannot be disqualified under Sec. 29A (j) of the Code". The "connected person" in "Explanation I, clause (ii) to Sec. 29A (j) of the Code", doesn't refer to an indeterminate person, but to a person who is in the saddle of

[232] *ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta and Ors.* Decided on October 4, 2018.

the business of the corporate debtor either at an anterior point of time or even during the implementation of the resolution plan.

g. Section 53 of the code validity: The difference between "secured financial debts and unsecured operational debts" is important to the achieved object of the Code. This provides an "intelligible" difference between "financial debts and operational debts" which are unsecured and achieved by the Code. In "workmen's dues", "unsecured debts" is above most other debts. There is some "legitimate interest" sought to be protected in question to "Art. 14 of the Constitution" that does not get violated.

In "*Committee Of Creditors Of Essar Steel Ltd. v. Satish Kumar Gupta"*[233]the Hon'ble SC "dealt with and provided clarity on certain concepts of the IBC".

Judgement: The Hon'ble SC observed:

a. "The role of the resolution professional" under this Code is "administrative and not adjudicatory".

b. "The decision taken by the majority of the CoC would prevail in any case". The NCLT or NCLAT cannot swipe away this power of the COCs.

c. The "judicial review" of NCLT and NCLAT is "limited". "It shall not trespass upon a business decision of the majority of the CoC". They can stare "whether the CoCs have taken into account the fact that the corporate debtor needs to keep going as a going concern during the CIRP". They can analysis "the fairness and equitability" of a resolution plan.

d. "The amended Regulation 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 doesn't regard all the creditors at an equal footing". "Fair and equitable treatment of operational creditors" refers that "a resolution plan should protect their interests but didn't refer proportionate payment of debts". The "unequal treatment" is a breach to "the object and purpose of the IBC". "Secured and unsecured financial creditors" separated in "resolution plans" and "operational creditors" are also distinctly outlook.

e. "The CoCs have the power to approve a resolution plan under Sec. 30(4) of the IBC and this power cannot be delegated to any other body". "Sub-committees" can be formed through ratification by the CoCs.

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[233]*Committee Of Creditors Of Essar Steel Ltd. v. Satish Kumar Gupta* Civil Appeal No. 8766-67 of 2019.

f. "Sec. 31(1) of Code" laid down that once a resolution plan is approved by the CoCs and should be "binding on all stakeholders, including guarantors".

g. The "rule of presumption of constitutionality" was applied and laid down that "the legislature had not directly set aside the judgment of the NCLAT by the Amendment Act" and therefore, could not be laid out.

h. "The constitutional validity of Sec. 30(2) (b) of IBC was upheld" and held that "there was no residual equity jurisdiction in the NCLT/NCLAT to interfere in the merits of a business decision taken by the majority of the CoCs and should be in conformity with the IBC and the CIRP Regulations".

i. The SC removed the word mandatorily from Sec. 12 of the Code as it is "violative" of "Arts. 14 and 19 of the Constitution of India".

In "*Harsukhbhai P. Lakkad v. Bank of Baroda (Erstwhile Dena Bank)"*[234], the NCLAT allowed the appeal.

Facts: "The BoB (erstwhile Dena Bank), Financial Creditor" filed "an application under Sec. 7 of the IBC, 2016" for the starting of CIRP in opposition to "Sunrise Ginning Private Limited, Corporate Debtor". The NCLT, Ahmedabad admitted, "the application on 20th November 2019". The learned counsel for the appellant presented that "the application under Sec. 7 of the IBC filed by the BoB is barred by limitation as default took place on 1st June 2015 and NPA declared on 28th October 2015". However, the learned counsel appearing for the Respondents submitted that the claim is not barred. "The equitable mortgage had detailed in the Affidavit under the head collateral security and Art. 62 the Limitation Act would apply, where the period is 12 years". The "Dena Bank" (now BoB) granted cash of "Rs.9, 00, 00,000 to the Corporate Debtor on 27th September 2012". Bank granted cash of "Rs. 1, 50, 00,000/- to the Corporate Debtor". The "account statement" of the bank, "the Corporate Debtor" defaulted in repayment of the loan on 31st May 2015. The account of the "Corporate Debtor" was declared NPA on 28th October 2015. The Bank also issued a notice on 28th December 2015 under "Sec. 13(2) of the SARFAESI Act" to the "Corporate Debtor demanding payment of an amount of Rs.12, 57, 86,554/88 within 60 days". However, the "Corporate Debtor" filed demur on 24 February 2016Thereafter, the Bank took steps under "Sec. 13(4) of the SARFAESI Act, 2002 on 8th March 2016". The

[234]*Harsukhbhai P. Lakkad v. Bank of Baroda (Erstwhile Dena Bank)* Company Appeal (AT) (Insolvency) No. 32 of 2020

Bank also moved "O.A. before the DRT, Ahmedabad for recovery of a sum of Rs.13, 07, 14,630/- taking the date of trigger point of limitation as 30th January 2014 on 10th March 2016". "The Corporate Debtor disputed its liability and action of the Respondent including Sec. 14 of the SARFAESI Act, 2002 order passed by the District Magistrate on 26th July 2016" and therefore, preferred a "Securitisation Appeal No. 155 of 2016" before the DRT- II Ahmedabad. When the matter remained pending, the Bank moved "application under Sec. 7 on 19th October 2018 for initiation of the CIRP against the Corporate Debtor", in which "the impugned order" has been passed. The learned counsel on behalf of the appellant has contended that "Art.137 being a residuary article would apply on the facts of this case, and as the right to sue accrued only on and from 21-7-2011, three years having elapsed since then in 2014, the Sec. 7 application filed in 2017 is clearly out of time" and referred "*B.K. Educational Services (P) Ltd. v. Parag Gupta and Associates,*[235] that Art. 137 of the Limitation Act which will apply to the facts of this case". The learned Counsel on behalf of the respondents presented in referred to "*B.K. Educational Services (P) Ltd. v. Parag Gupta and Associates*(2019) 11 Supreme Court Cases 633 and Art. 62 of the Limitation Act that would be attracted to the facts of this case".

It is cleared from the facts that "Art. 62 of the Limitation Act only applies to suits". "An application filed under Sec. 7 of the IBC fall under Art. 137 of the Limitation Act". "The learned counsel on behalf of the appellant began to run on 21-7- 2011, as a result of which the application filed under Sec. 7 of the IBC would be time-barred". According to the "*B.K. Educational Services (P) Ltd. case* (2019) 11 Supreme Court Cases 633*"*, "the Report of the Insolvency Law Committee" stated that "the intent of the Code could not have been to give a new lease of life to debts which are already time-barred". It was evident that "application under Sec. 7 of the IBC the date of default is to be noticed for counting the period of limitation under Art. 137 of the Limitation Act, 1963".

Dena Bank, Appellant has brought on record a photocopy of O.A. filed on 10th March 2016 enclosed as "Annexure A-5" before the DRT No. II, Ahmedabad under "Sec. 19 of the RDDBFI Act, 1993". "M/s. Sunrise Ginning Private Ltd.", Corporate Debtor was the Defendant No.1. It was evident that "steps taken under Securitisation Act issued a

[235] *B.K. Educational Services (P) Ltd. v. Parag Gupta and Associates,* (2019) 11 Supreme Court Cases 633.

notice under Sec. 13(2) of the SARFAESI Act, 2002 on 3rd September 2014 and declaration of NPA". The applicant Bank demanded the payment of "Rs.12, 57, 86,554/88 within 60 days from the receipt of the said notice", however, the defendants failed to make payment of "the total amount of Rs.12, 57, 86,554/88". Therefore, it could be found that "Sec. 13(2) of the SARFAESI Act, 2002 notice was issued on 3rd September 2014" and Corporate Debtor made default in repayment but the DRT had been taken as back as in 2016. It is clear that "the cash credit facility was NPA before issuance of notice". "The application under Sec. 7 of the Code filed on 19th October 2018 is beyond three years and barred by limitation and referring subsequent date of NPA i.e. 28th October 2015, the Bank cannot derive advantage under Sec. 7 of the Code that it is within three years".

According to the case, "the application under Sec. 7 of the Code had not been filed within three years from the date of default or NPA having been declared before 3rd September 2014, as pleaded before the DRT, Ahmedabad in O.A.". The application under "Sec. 7 of the Code is time-barred" and hence, the application was not maintainable and should be dismissed. "The impugned order dated 20th November 2019" of the Adjudicating Authority, Ahmedabad has been set aside and dismissed "the application under "Sec. 7 of the Code" filed by the BOB. The NCLAT closed the proceeding. The "Corporate Debtor"" is released and is allowed to function independently through its Board of Directors from immediate effect. The Adjudicating Authority fixed the fee of "Interim Resolution Professional" and CIRP cost. The BoB will pay the fees of the "Interim Resolution Professional" and CIRP cost.

In "*SBI v. Rohit Ferro Tech Ltd."*[236], the appeal is allowed.

Facts: The appellant applied under "Sec. 7 of the Code" for the "Corporate Insolvency Resolution Plan" against the respondent. The Adjudicating Authority noted that "there is a debt payable by the respondent and there is default but dismissed the application in Sec. 7 of IBC of Circular" issued by RBI to file "Corporate Insolvency Resolution Plan" declared to be ultra-vires and illegal by SC in "*Dharani Sugars and Chemicals Ltd. v. UOI and Ors"*.[237] The appellant submitted in Sec. 7 of the Code, not according to "RBI circular on 12th February 2018". The said application was filed on 23rd August 2018

[236] *SBI v. Rohit Ferro Tech Ltd* I (2020) BC 76 (NCLAT).
[237] *Dharani Sugars and Chemicals Ltd. v. UOI and Ors* Transferred Case (Civil) No.66 of 2018 In Transfer Petition (Civil) No.1399 of 2018.

before the deadline of 180 days under the Circular. "The Circular of RBI an application under Sec. 7 of IBC can be filed after 180 days after 31st August 2018". "The Court found under the Sec. 7 of IBC application is not filed by the SBI according to circular of 12 February 2018". The corporate debtor has not requested for the restructuring of its loan as per RBI "circular" guidelines. "According to learned Counsel for the appellant as the Restructuring was not permissible, there was no other option, but to apply under Sec. 7 for the resolution". The petition under Sec. 7 of the Code considered by Adjudicating Authority on the records and in absence of any evidence to show that SBI filed application only because of circular issued by RBI and Adjudicating Authority cannot reject the application. "Objection of the Corporate Debtor is that application was not filed by an authorised person is concerned, however, such submission was rejected, as the application is filed by Officer under SBI". "The Adjudicating Authority set aside the order of 28th June 2019 and remit case to NCLT, Kolkata to admit the application in Section 7 of Code after notice of Corporate Debtor enabling to settle the matter".

3.6.4 *RECOVERY OF NPA BY IBC*

YEAR	CASES REFERRED	AMOUNT INVOLVED (cr.)	AMOUNT RECOVERED (cr.)	%
2016-17	37	-	-	-
2017-18	701	9929	4926	49.6
2018-19	1135	166600	70819	42.5

TABLE 9: RECOVERY OF NPA BY IBC FROM 2016-17 TO 2018-19.[238]

Source: RBI & IBBI Newsletter

[238] RBI, *supra* note 127.

CHAPTER 4

DATA ANALYSIS OF NON PERFORMING ASSETS IN BANKS WITH SPECIAL REFERENCE TO PUBLIC SECTOR BANKS

4.1. GNPA AND NNPA IN PSBs (FY 2014-15 TO 2018-19)

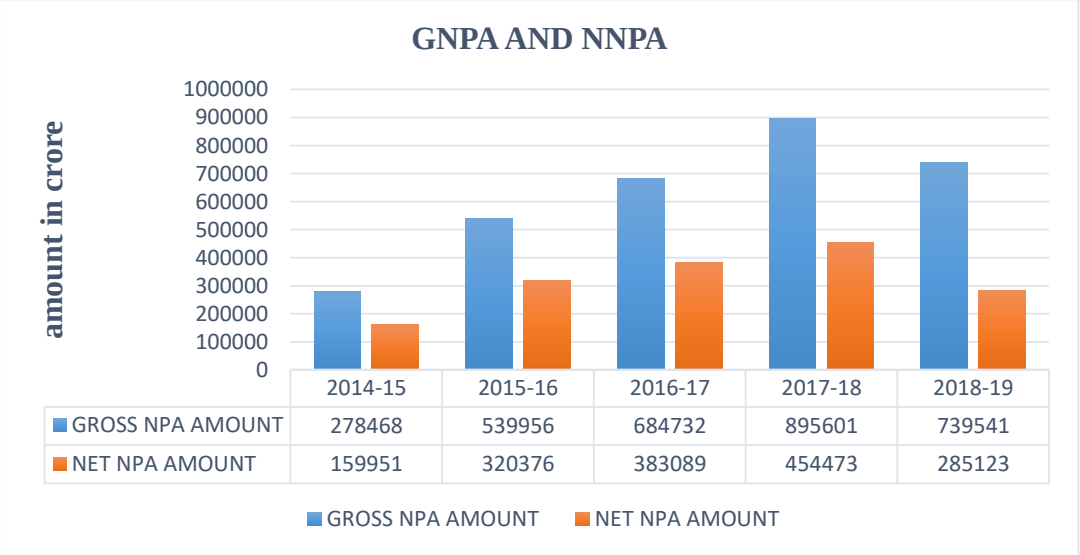
In table 10, the GNPA and NPA and their ratios are shown from the FY 2014-15 to FY 2018-19. From the table 10 and Chart 4 and 5, we see an increasing GNPA and NNPA from FY 2014-15 to FY 2017-18 and decline in FY 2018-19.

YEAR (END MARCH)	GNPA AMOUNT (cr.)	GNPAs AS PERCENT OF "GROSS ADVANCES"	NNPA AMOUNT (cr.)	NNPAs AS PERCENT OF NET ADVANCES
2014-15	278468	5.0	159951	2.9
2015-16	539956	9.3	320376	5.7
2016-17	684732	11.7	383089	6.9
2017-18	895601	14.6	454473	8.0
2018-19	739541	11.6	285123	4.8

TABLE 10: GNPA AND NNPA IN PSBs, FY 2014-15 -FY 2018-19.[239]

SOURCE: RBI

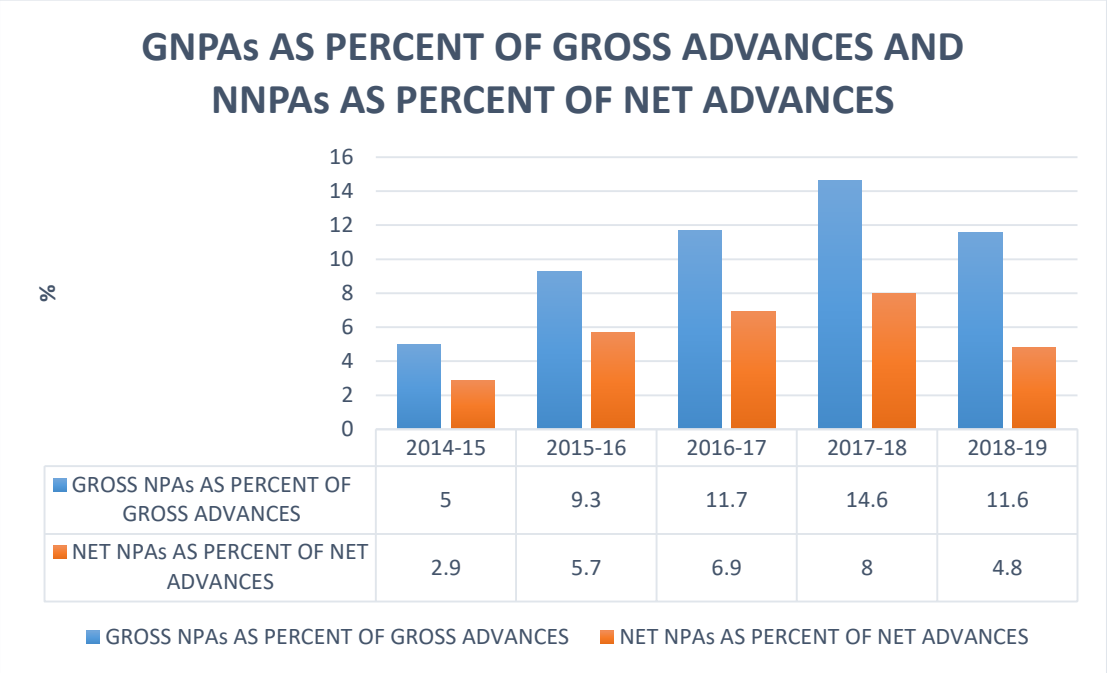
CHART 4: GNPA AND NNPA IN PSBs.



[239] GNPA and NNPA in Public Sector Banks, THE RESERVE BANK OF INDIA DATABASE ON INDIAN ECONOMY , https://dbie.rbi.org.in/DBIE/dbie.rbi?site=publications#!4 (April 18, 2020, 8:34 PM).

As per Chart 4, the amount of GNPA is comparatively higher in every year than the amount of NNPA. It can be seen that in the year 2017-18, the amount of GNPA and NNPA is the maximum.

CHART 5: GNPAs AS PERCENT OF GROSS ADVANCES AND NNPAs AS PERCENT OF NET ADVANCES IN PSBs



As per Chart 5, the GNPA as percent of Gross advances is comparatively higher in every year than the NNPAs as percent of Net Adavnces . The chart shows that in the year 2017-18, the GNPA as percent of Gross advances and NNPAs as percent of Net Adavnces is high.

4.2. GNPA AND GROSS ADVANCES IN PSBs (BANK WISE)

In the FY 2018-19, GNPA of PSBs is "₹ 739541.00 crore", Gross Advances is "₹ 6382460.85 crore" and "Gross NPAs to Gross Advances Ratio" (%) is 11.59%.

SL No.	Banks	GNPAs (cr.)	Gross Advances (cr.)	GNPAs to Gross Advances Ratio (%)
1.	ALLAHABAD BANK	28704.78	163552.33	17.55

2.	ANDHRA BANK	28973.97	178689.57	16.21
3.	BANK OF BARODA	48232.77	501706.39	9.61
4.	BANK OF INDIA	60661.12	382860.38	15.84
5.	BANK OF MAHARASHTRA	15324.49	93466.70	16.40
6.	CANARA BANK	39224.11	444215.55	8.83
7.	CENTRAL BANK OF INDIA	32356.04	167728.91	19.29
8.	CORPORATION BANK	20723.68	135048.25	15.35
9.	DENA BANK	12767.94	60598.25	21.07
10.	INDIAN BANK	13353.45	187896.06	7.11
11.	INDIAN OVERSEAS BANK	33398.12	151996.35	21.97
12.	ORIENTAL BANK OF COMMERCE	21717.07	171549.46	12.66
13.	PUNJAB AND SIND BANK	8605.87	72747.47	11.83
14.	PUNJAB NATIONAL BANK	78472.70	506194.30	15.50
15.	STATE BANK OF INDIA	172750.36	2293454.12	7.53
16.	SYNDICATE BANK	24680.37	217148.86	11.37
17.	UCO BANK	29888.33	119573.01	25.00
18.	UNION BANK OF INDIA	48729.15	325391.81	14.98
19.	UNITED BANK OF INDIA	12053.38	73123.41	16.48
20.	VIJAYA BANK	8923.30	135519.67	6.58
	PUBLIC SECTOR BANKS	739541.00	6382460.85	11.59

TABLE 11: GNPA AND GROSS ADVANCES IN PSBs (BANK WISE). [240]

SOURCE: RBI

[240]GNPA AND GROSS ADVANCES IN PSBs (BANK WISE), *supra* note 127.

4.3. GNPA AND NNPA IN PSBs (BANK WISE)

In the FY 2018-19, GNPA of PSBs is "₹ 739541.00 crore", Net NPA is "₹ 285122.77crore".

SL NO.	BANKS	GROSS NPAs (cr.)	NET NPAs (cr.)
1.	ALLAHABAD BANK	28704.78	7419.31
2.	ANDHRA BANK	28973.97	9091.40
3.	BANK OF BARODA	48232.77	15609.50
4.	BANK OF INDIA	60661.12	19118.96
5.	BANK OF MAHARASHTRA	15324.49	4559.93
6.	CANARA BANK	39224.11	22955.11
7.	CENTRAL BANK OF INDIA	32356.04	11333.24
8.	CORPORATION BANK	20723.68	6926.64
9.	DENA BANK	12767.94	4166.97
10.	INDIAN BANK	13353.45	6793.11
11.	INDIAN OVERSEAS BANK	33398.12	14368.30
12.	ORIENTAL BANK OF COMMERCE	21717.07	9439.62
13.	PUNJAB AND SIND BANK	8605.87	4994.23
14.	PUNJAB NATIONAL BANK	78472.70	30037.66
15.	STATE BANK OF INDIA	172750.36	65894.74
16.	SYNDICATE BANK	24680.37	12627.73
17.	UCO BANK	29888.33	9649.92
18.	UNION BANK OF INDIA	48729.15	20332.42
19.	UNITED BANK OF INDIA	12053.38	5786.61

20.	VIJAYA BANK	8923.30	4018.37
TOTAL	ALLAHABAD BANK	739541.00	285122.77

TABLE 12: GNPA AND NNPA IN PSBs (BANK WISE)[241]

SOURCE: RBI

4.4. TOTAL NPAs IN PRIORITY SECTOR, NON-PRIORITY SECTOR, PUBLIC SECTOR OF PSBs

Table-13 shows from 2015-19 have been taken into consideration and according to the data, there is an increase in NPA from the year from 2015-18 but the decline of NPA in 2019. The ratio of priority sector is high in the year 2018. The ratio of NPA in the non-priority sector is high in the year 2019. The NPA in PSBs is high in 2017.

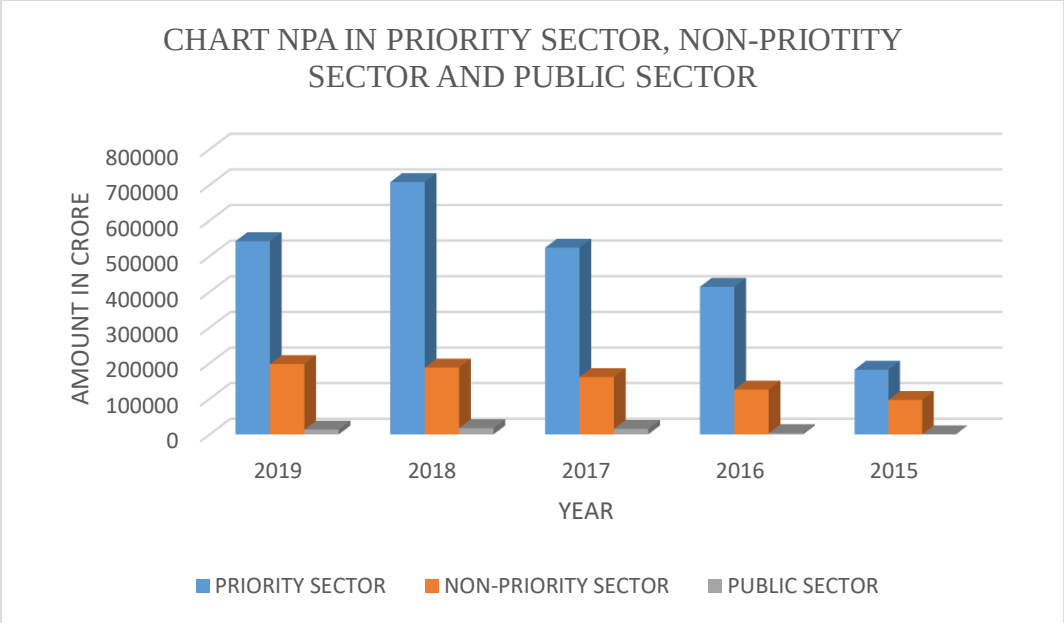
YEAR	PRIORITY SECTOR		NON-PRIORITY SECTOR		PUBLIC SECTOR		TOTAL
	Amount (cr.)	%	Amount (cr.)	%	Amount (cr.)	%	Amount (cr.)
2019	542206.53	73.32	197334.47	26.68	13394.66	1.81	739541.00
2018	708090.00	79.06	187511.00	20.94	17388.00	1.94	895601.00
2017	523790.71	76.50	160941.60	23.50	15466.02	2.26	684732.31
2016	414148.00	76.70	125809.00	23.30	3482.00	0.64	539957.00
2015	181598.49	65.21	96611.00	34.69	258.92	0.09	278468.41

TABLE 13: RBI PROVIDED DATA FROM THE YEAR 2015-19 OF PSBS[242]

SOURCE: RBI

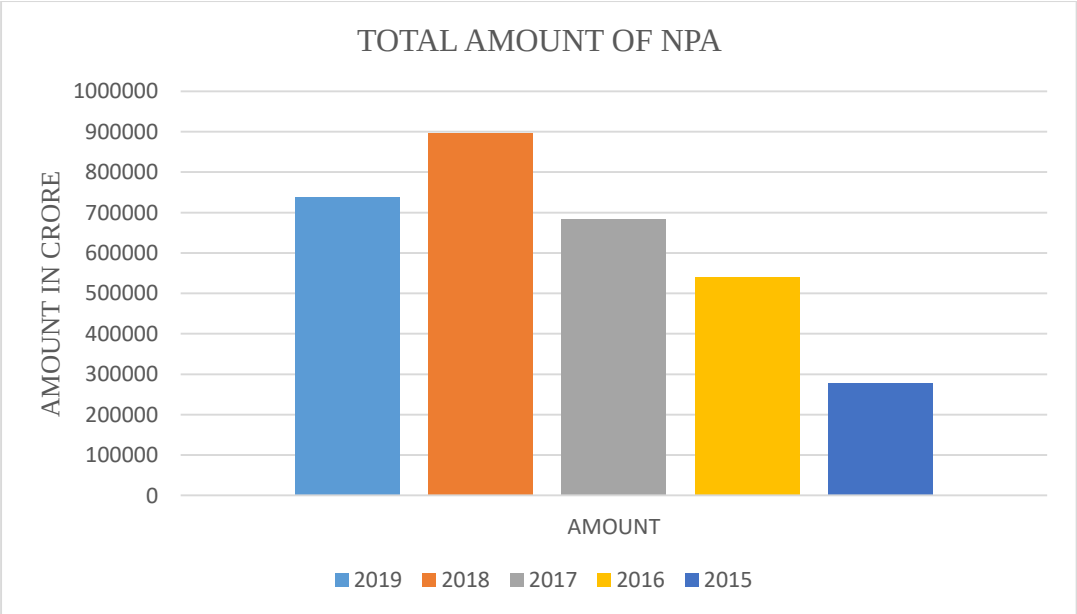
[241] GNPA AND NNPA IN PSBs (BANK WISE), *supra* note 127.
[242]PSBs NPA IN PRIORITY SECTOR, NON-PRIOTITY SECTOR AND PUBLIC SECTOR, *supra* note 127.

CHART 6: PSBs NPA IN PRIORITY SECTOR, NON-PRIOTITY SECTOR AND PUBLIC SECTOR



As per Chart 6, the amount of NPA in PSBs in the priority sector is comparatively higher than the amount of NPA in the non-priority sector and public sector. The chart illustrates that amount of NPA in the priority sector and the public sector is high in the year 2018; on the other hand, the amount of NPA in non-priority is maximum in the year 2019.

CHART 7: TOTAL NPA IN PSBs



As per Chart 7, the total amount of NPA in PSBs is comparatively higher in the year 2018 than in other years.

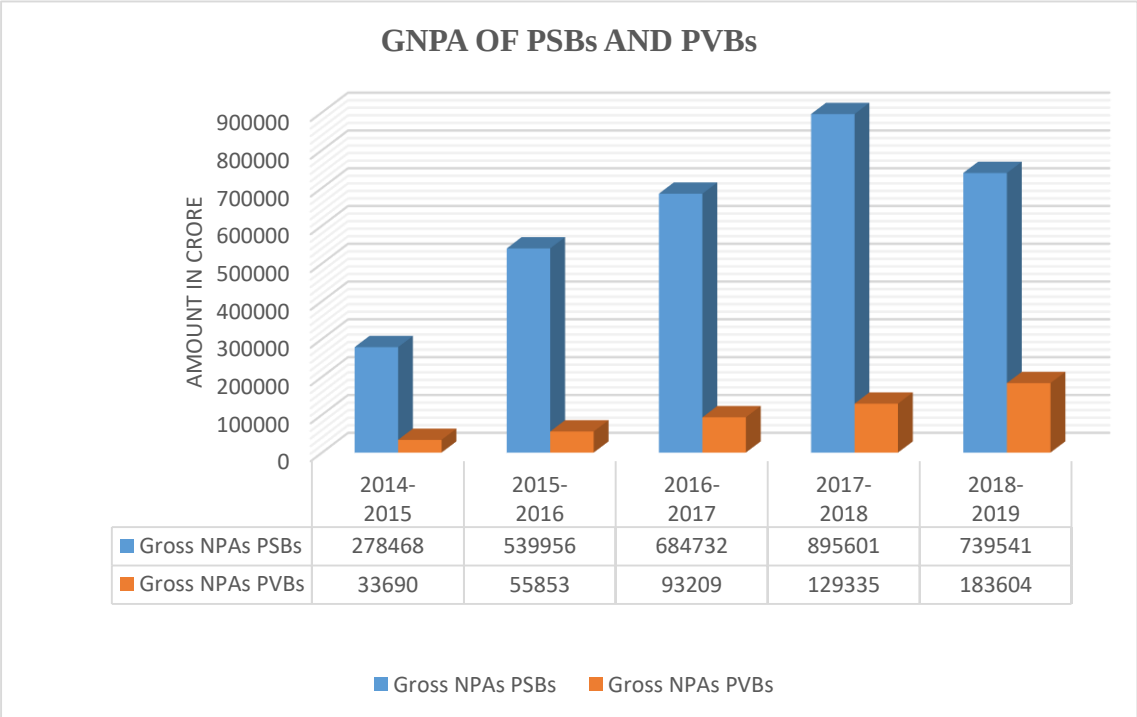
4.5.GNPAs and NNPAs of PSBs and PVBs.

TABLE 14: GNPA OF PSBs AND PVBs FROM FY 2014-15 to 2018-19.[243]

YEAR	GNPAs PSBs(cr.)	GNPAs PVBs(cr.)
2014-2015	278468	33690
2015-2016	539956	55853
2016-2017	684732	93209
2017-2018	895601	129335
2018-2019	739541	183604

Source: RBI

CHART 8: GNPA OF PSBs AND PVBs FROM FY 2014-15 to 2018-19.



[243] "GNPAs and NNPAs" of PSBs and PVBs, *supra* note 127.

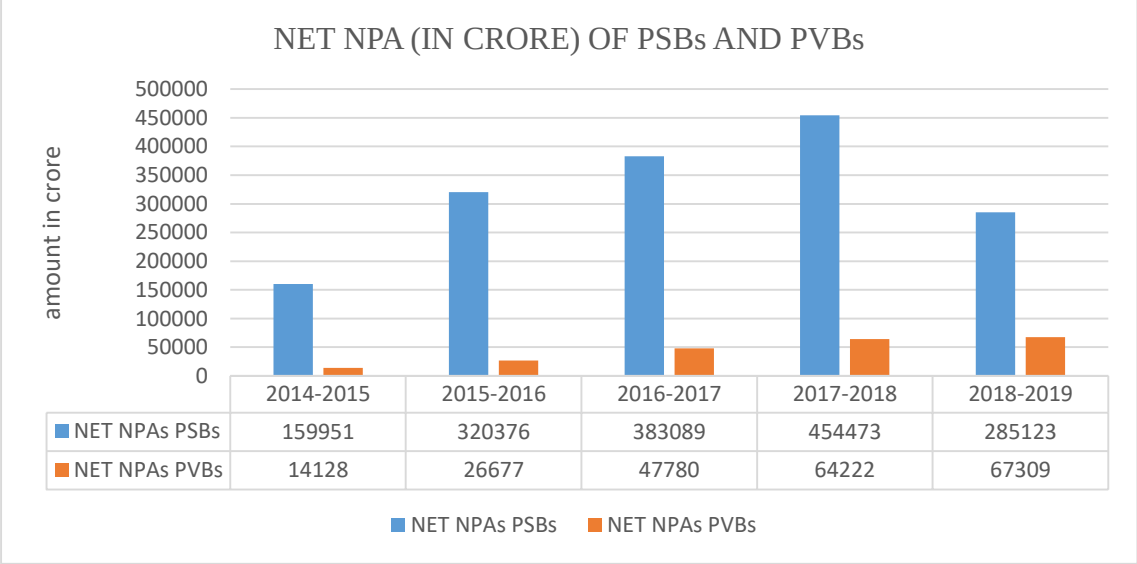
As per Chart 8, the amount of GNPA in PSBs is comparatively higher than the amount of GNPA in PVBs. It can be seen that the amount of GNPA in PSBs is very high in the year 2017-18 and the amount of GNPA in PVBs is maximum in the year 2018-19

TABLE 15: NET NPA (IN CRORE) OF PSBs AND PVBs FROM 2015-19.[244]

YEAR	NET NPAs PSBs (cr.)	NET NPAs PVBs(cr.)
2014-2015	159951	14128
2015-2016	320376	26677
2016-2017	383089	47780
2017-2018	454473	64222
2018-2019	285123	67309

Source: RBI

CHART 9: NET NPA (IN CRORE) OF PSBs AND PVBs FROM YEAR 2015-19.



As per Chart 9, the amount of NNPA in PSBs is significantly higher than the amount of NNPA in PVBs. In the year 2017-18, the amount of NNPA in PSBs is very high and in the year 2018-19, the amount of NNPA in PVBs is maximum.

[244] NET NPA (IN CRORE) OF PSBs AND PVBs FROM YEAR 2015-19, *supra* note 127.

4.6. NPA RECOVERY BY DIFFERENT RECOVERY CHANNELS

The "stressed assets" increased in 2018-19 during the initiation of IBC. The decreasing of recovery rates in all tools excluding "Lok Adalats" in 2018-19, mainly in the SARFAESI. However, the recovery cases under various mechanisms increase to "27 %" due to IBC.

TABLE 16: NPA RECOVERY BY DIFFERENT RECOVERY CHANNELS FROM FY 2014-15 to 2018-19.[245]

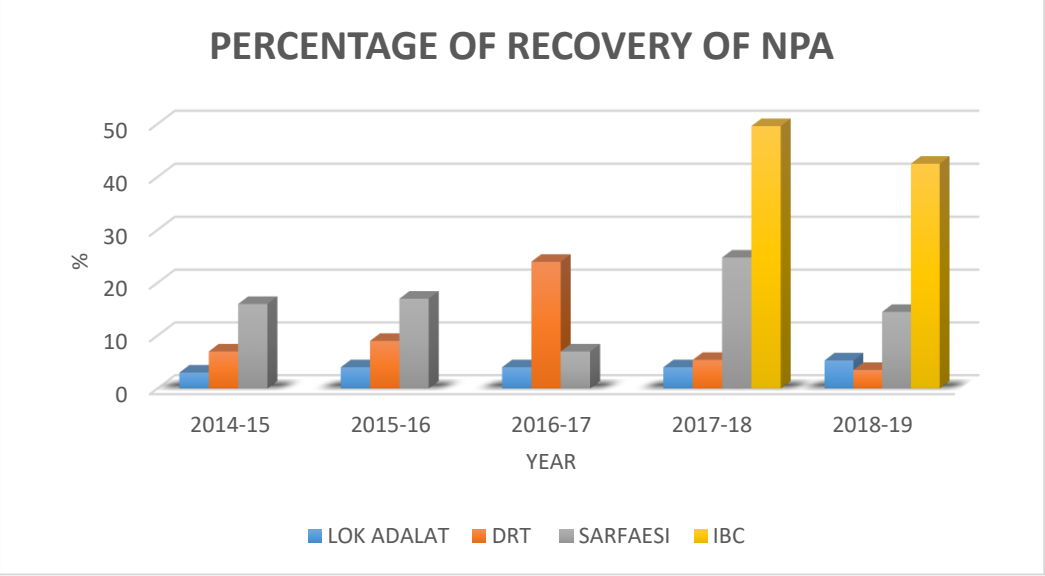
YEAR (MARCH)	SL. NO.	RECOVERY CHANNEL	LOK ADALAT	DRT	SARFAESI	IBC
2014-15	1.	NO. OF CASES REFERRED	2958313	22004	175355	
	2.	AMOUNT INVOLVED (cr.)	31000	60400	156800	
	3.	AMOUNT RECOVERED (cr.)	1000	4200	25600	
	4.	%	3	7	16	
2015-16	1.	NO. OF CASES REFERRED	44566340	24537	173582	
	2.	AMOUNT INVOLVED (cr.)	72000	69300	80100	
	3.	AMOUNT RECOVERED (cr.)	3200	6400	13200	
	4.	%	4	9	17	
2016-17	1.	NO. OF CASES REFERRED	2152895	28902	80076	37
	2.	AMOUNT INVOLVED (cr.)	105787	67089	113100	
	3.	AMOUNT RECOVERED (IN CRORE)	3803	16393	7758	

[245] NPA RECOVERY BY DIFFERENT RECOVERY CHANNELS FROM FY 2014-15 to 2018-19, *supra* note 127.

	4.	%	4	24	7	
2017-18	1.	NO. OF CASES REFERRED	3317897	29551	91330	701
	2.	AMOUNT INVOLVED (cr.)	45728	133095	1067	9929
	3.	AMOUNT RECOVERED (cr.)	1811	7235	265	4926
	4.	%	4	5.4	24.8	49.6
2018-19	1.	NO. OF CASES REFERRED	4080947	52175	248312	1135
	2.	AMOUNT INVOLVED (cr.)	53506	306499	289073	166600
	3.	AMOUNT RECOVERED (cr.)	2816	10574	41876	70819
	4.	%	5.3	3.5	14.5	42.5

SOURCE: RBI

CHART 10: PERCENTAGE OF RECOVERY OF NPA IN DIFFERENT RECOVERY CHANNELS



According to Chart 10, the percentage of NPA recovery of Lok Adalat is very high in the year 2018-19; the percentage of NPA recovery of DRT is high in the year 2016-17;

the percentage of NPA recovery of SARFAESI is very high in the year 2017-18; and the percentage of NPA recovery of IBC is very high in the year 2017-18.

4.7. DATA ANALYSIS OF HYPOTHESIS UNDER ANOVA

The null and alternate hypothesis under ANOVA for this project:

1. H_o= There is no significant difference among cases referred to Lok Adalats, DRTs SARFAESI Act and IBC.

$H_{1=}$ There is significant difference among cases referred to Lok Adalats, DRTs SARFAESI Act and IBC

2. H_o= There is no significant difference among amount recovered through Lok Adalats, DRTs SARFAESI Act and IBC.

$H_{1=}$ There is no significant difference among amount recovered through Lok Adalats, DRTs SARFAESI Act and IBC.

DATA ANALYSIS

1. H_o= There is no significant difference among cases referred to Lok Adalats, DRTs SARFAESI Act and IBC.

   $H_{1=}$ There is significant difference among cases referred to Lok Adalats, DRTs SARFAESI Act and IBC

YEAR	LOK ADALAT	DRT	SARFAESI	IBC
2014-15	2958313	13408	175355	
2015-16	44566340	28258	173582	
2016-17	2152895	22004	80076	37
2017-18	4080947	24537	91330	701
2018-19	4080947	28902	248312	1135

TABLE 17: NUMBER OF CASES REFERRED IN FOUR RECOVERY CHANNELS FROM FY 2014-15 TO 2018-19.

Source: RBI

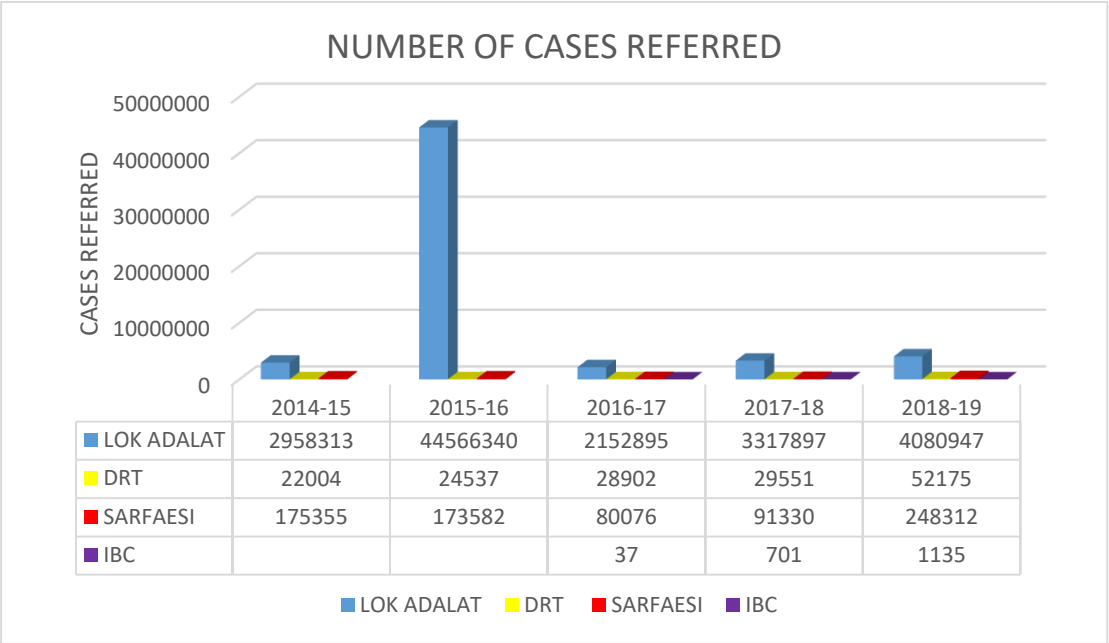


CHART 11: NUMBER OF CASES REFERRED IN FOUR RECOVERY CHANNELS FROM FY 2014-15 TO 2018-19.

According to Chart 11, the cases referred to in the Lok Adalat is highest in comparison to other mechanisms. The cases referred to in the Lok Adalat are very high in the year 2015-16. The cases referred to in DRT, SARFAESI and IBC increased in the year 2018-19.

ANOVA SINGLE FACTOR

SUMMARY

Groups	Count	Sum	Average	Variance
LOK ADALAT	5	5.8E+07	11567888	3.4094E+14
DRT	5	117109	23421.8	39237860.2
SARFAESI	5	768655	153731	4781542241
IBC	3	1873	624.3333	305809.333

Source Variance	Degree of freedom	Sum of Square	Mean SS	F Ratio	P-value	F crit

Between	3	4.77597E+14	1.592E+14	1.6342567	0.226484	3.343889
Within	14	1.36379E+15	9.741E+13			
TOTAL	17	1.843139E+15				

TABLE 18: CALCULATED BY USING ANOVA (SINGLE FACTOR)

The p is 0.226484 > 0.05 and therefore, the null hypothesis taken under that is there is no significant difference between these recovery channels in terms of the number of cases referred is accepted.

TABLE 19: TURKEY HSD

TREATMENT PAIR	TURKEY HSD Q STATISTIC	TURKEY HSD P VALUE	TURKEY HSD INFERENCE
LOK ADALAT v. DRT	2.6155	0.292729	INSIGNICANT
LOK ADALAT v. SARFAESI	2.5859	0.301566	INSIGNICANT
LOK ADALAT v. IBC	2.2695	0.408559	INSIGNICANT
DRT v. SARFAESI	0.0295	0.899995	INSIGNICANT
DRT v. IBC	0.0045	0.899995	INSIGNICANT
SARFAESI v. IBC	0.03	0.899995	INSIGNICANT

According to TURKEY HSD, there is no significant difference among all the recovery channels is accepted.

2. H_o= There is no significant difference among amount recovered through Lok Adalats, DRTs SARFAESI Act and IBC.

   $H_{1=}$ There is no significant difference among amount recovered through Lok Adalats, DRTs SARFAESI Act and IBC.

YEAR	LOK ADALAT	DRT	SARFAESI	IBC
2014-15	1000	4200	25600	

2015-16	3200	6400	13200	
2016-17	3803	16393	7758	
2017-18	1811	7235	265	4926
2018-19(P)	2816	10,574	41876	70819

TABLE 20: AMOUNT RECOVERED IN DIFFERENT RECOVERY CHANNELS FROM FY 2014-15 TO FY 2018-19.

Source: RBI

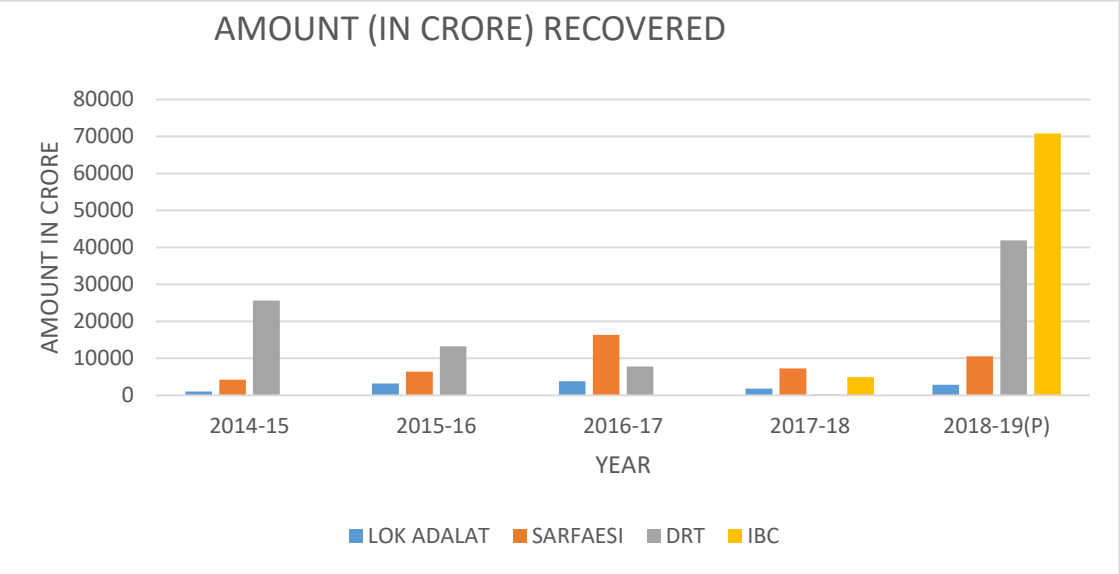


CHART 12: AMOUNT (IN CRORE) RECOVERED IN DIFFERENT RECOVERY CHANNELS FROM FY 2014-15 TO FY 2018-19.

According to the Chart 12, the amount recovered in DRT and IBC is high in comparison to other mechanisms in 2018-19. But in comparison to case referred in Lok Adalat the amount recovered is very less.

ANOVA SINGLE FACTOR

SUMMARY

Groups	Count	Sum	Average	Variance
LOK ADALAT	5	12630	2526	1252252
DRT	5	44802	8960.4	2.3E+07
SARFAESI	5	88699	17740	2.7E+08
IBC	2	75745	37872.5	2.2E+09

Source Variance	Degree of freedom	Sum of Square	Mean SS	F Ratio	P-value	F crit
Between	3	1.98E+09	6.67E+08	2.57157	0.099	3.41
Within	13	3.33E+09	2.57E+08			
TOTAL	16	5.316E+09				

TABLE 21: CALCULATED BY USING ANOVA (SINGLE FACTOR)

The p is 0.099 > 0.05 and therefore, the null hypothesis has been taken under that is there is no significant difference between these recovery channels in terms of the amount recovered is accepted.

TABLE 22: TURKEY HSD

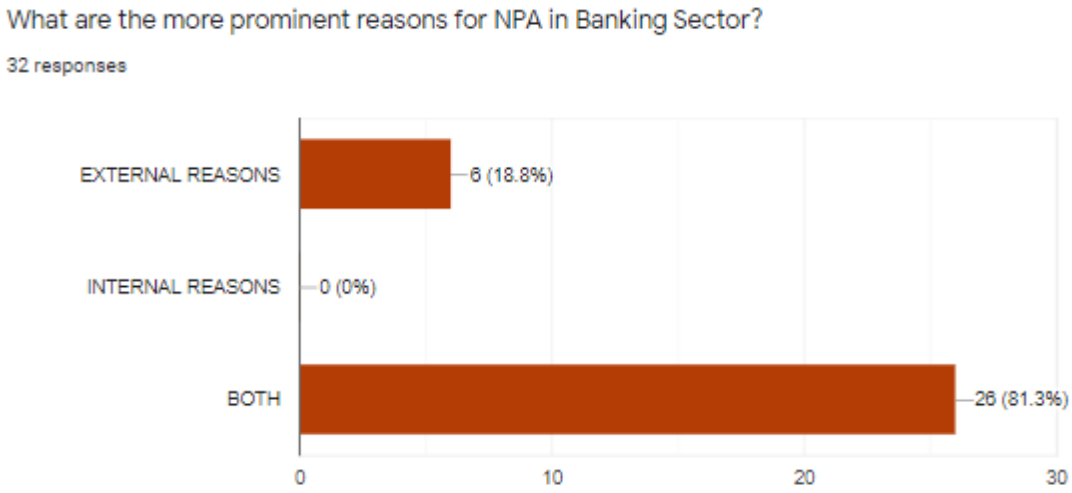
TREATMENT PAIR	TURKEY HSD Q STATISTIC	TURKEY HSD P VALUE	TURKEY HSD INFERENCE
LOK ADALAT v. DRT	0.5983	0.8999947	INSIGNICANT
LOK ADALAT v. SARFAESI	2.1063	0.4717599	INSIGNICANT
LOK ADALAT v. IBC	3.6992	0.0875207	INSIGNICANT
DRT v. SARFAESI	1.508	0.06984567	INSIGNICANT
DRT v. IBC	3.2469	0.1496179	INSIGNICANT
SARFAESI v. IBC	2.107	0.4714931	INSIGNICANT

According to TURKEY HSD, there is no significant difference among all the recovery channels is accepted.

4.8. DATA COLLECTED THROUGH "STRUCTURED QUESTIONNAIRE METHOD"

1. TABLE 23: RESPONSE OF BANKERS ON REASONS FOR NPA

REASONS FOR NPA	NO. OF RESPONSES	%
EXTERNAL REASONS	6	18.8
INTERNAL REASONS	0	0
BOTH REASONS	26	81.3

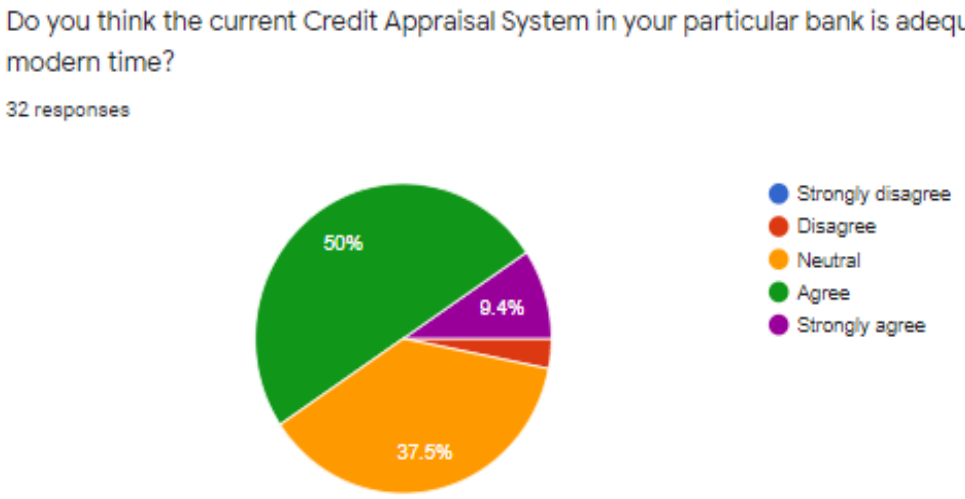


From Table: 23, the bankers have given high responses on the option of 'both' (internal and external reasons**)** i.e., 81.3%, reflecting that they are the main factors for the high level of NPA. However, we can see that 18.8% of the bankers opted only for external reasons option. As well as on the other hand, there are no responses to be seen towards only the internal reasons for NPA in the banking sector. Thus, we can conclude that both external and internal reasons are aiding for the high level of NPAs in banks.

2. TABLE 24: RESPONSE OF BANKERS ON CREDIT APPRAISAL SYSTEM

ADEQUACY OF CREDIT APPRAISAL SYSTEM IN MODERN DAYS	NO. OF RESPONSES	%
STRONGLY DISAGREE	0	0
DISAGREE	1	3.1
NEUTRAL	12	37.5
AGREE	16	50

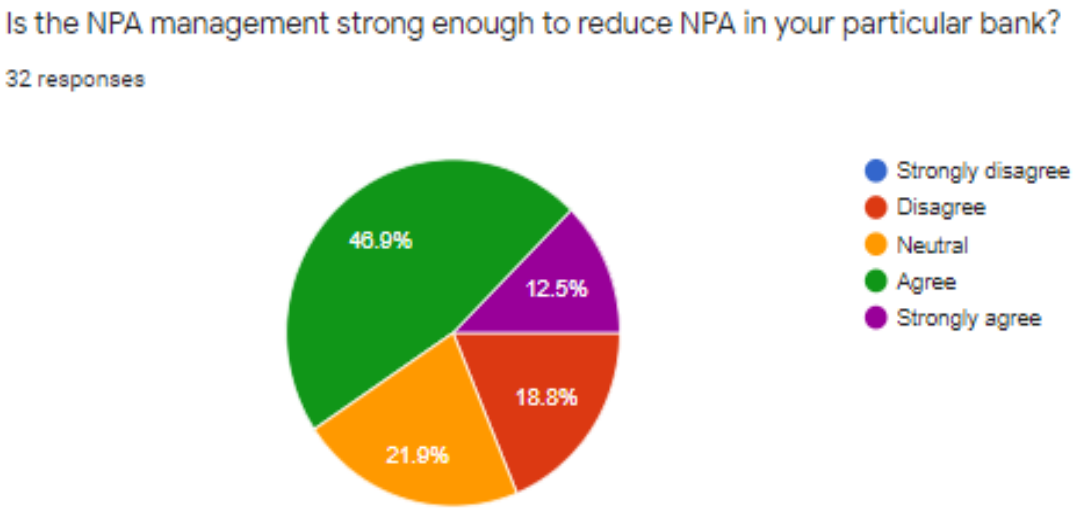
STRONGLY AGREE	3	9.4



Upon analysing the Table: 24, we can see that the responses from bankers on the credit appraisal system in their banks are high on agree i.e. 50%. The bankers have also given their choices on neutral i.e.37.5, strongly agree i.e. 9.4%. Further, we can state that bankers have given many positive feedback regarding their current credit appraisal system in their banks. Besides, the bankers also provide disagree response as 3.1% upon the current credit appraisal system in their bank. Overall, as a result, we come to see that there are positive responses towards this system in their banks and this system is mostly helping in reducing NPA in their banks.

3. TABLE 25: RESPONSE OF BANKERS ON NPA MANAGEMENT TO REDUCE NPA

NPA MANAGEMENT TO REDUCE NPA	NO. OF RESPONSES	%
STRONGLY DISAGREE	0	0
DISAGREE	6	18.8
NEUTRAL	7	21.9
AGREE	15	46.9
STRONGLY AGREE	4	12.5



As per the Table: 25, the bankers on the question on the strength of NPA management in reducing NPA in their bank have given high reviews on agreeing as 46.9%. The bankers have also positively reviewed selecting strongly agree i.e. 12.5% on NPA management. Also, some bankers disagree i.e. 18.8% on the NPA management in their banks, the reasons for high NPA. The bankers also provided their responses on neutral i.e. 21.9% in strengthening NPA management. On account of the bankers' strong positive responses, we can conclude that the NPA management of banks is strong enough to reduce NPA.

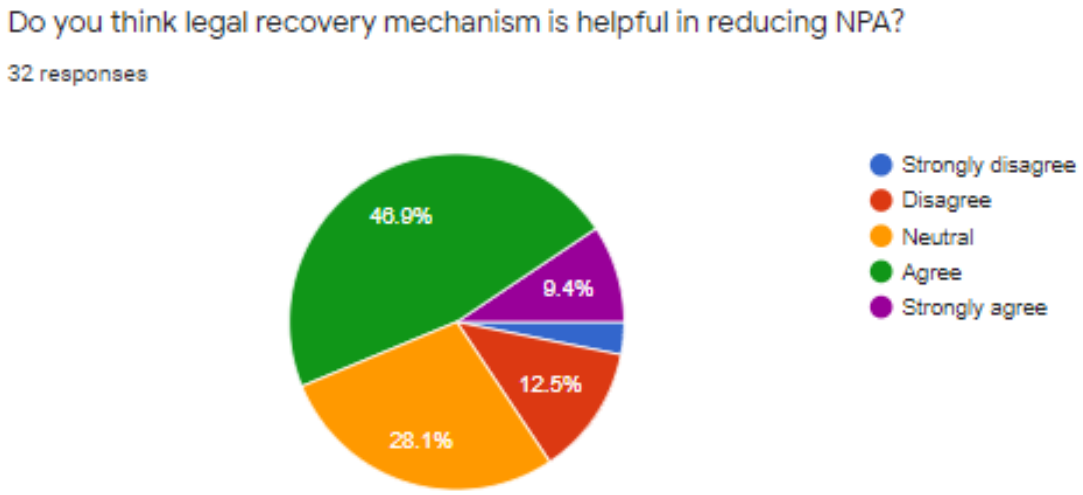
4. TABLE 26: RESPONSE OF BANKERS ON PROPER TRAINING FOR THE STAFFS OF BANKS

PROPER TRAINING FOR THE STAFFS OF BANKS	NO. OF RESPONSES	%
STRONGLY DISAGREE	0	0
DISAGREE	1	3.1
NEUTRAL	1	3.1
AGREE	11	34.4
STRONGLY AGREE	19	59.4

According to Table: 26, the bankers have given the most positive responses on strongly agree i.e. 59.4% and agree i.e. 34.4 % that proper training is required for the staff for effective supervision and risk management in their banks. There are also some negative responses towards this viewpoint of proper training from the bankers that disagree i.e. 3.1% and neutral i.e. 3.1%. From the overall analysis, we can entirely agree that proper training is necessary for the staff of banks for effective supervision and risk management in banks.

5. TABLE 27: RESPONSE OF BANKERS ON LEGAL RECOVERY MECHANISM HELPFUL IN REDUCING NPA

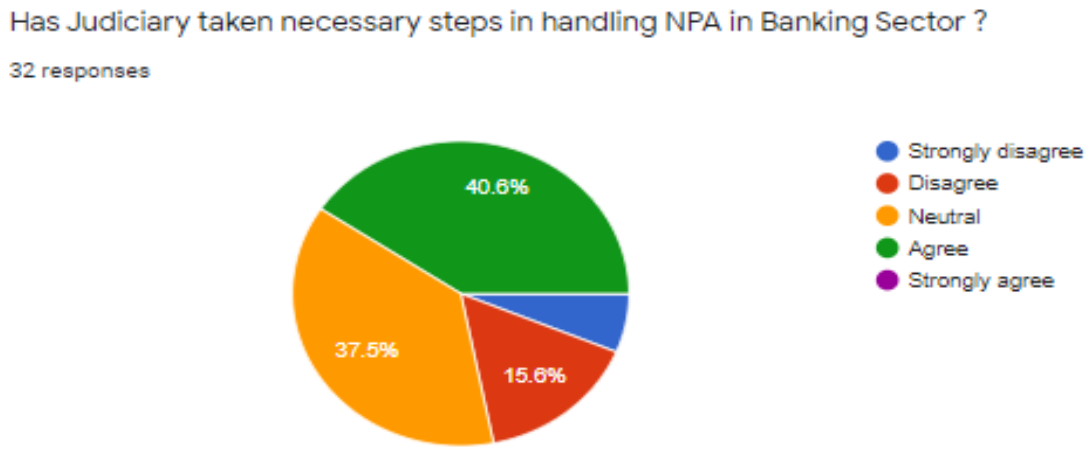
LEGAL RECOVERY MECHANISM HELPFUL IN REDUCING NPA	NO. OF RESPONSES	%
STRONGLY DISAGREE	1	3.1
DISAGREE	4	12.5
NEUTRAL	9	28.1
AGREE	15	46.9
STRONGLY AGREE	3	9.4



From the above Table 27, the bankers have given most responses on agree i.e. 46.9% signifying that legal recovery mechanism helps reduce NPA in their banks. The bankers are also given responses on strongly agree i.e. 9.4%. It could be seen that some of them gave neutral response i.e. 28.1% upon the viewpoint. As well as, there are also some negative views upon legal recovery mechanism i.e. strongly agree, 3.1% and disagree, 12.5%. On considering their responses, we conclude that the legal recovery mechanism is needful in helping to reduce NPA.

6. TABLE 28: RESPONSE OF BANKERS ON JUDICIARY HANDLING NPA IN BANKING SECTOR

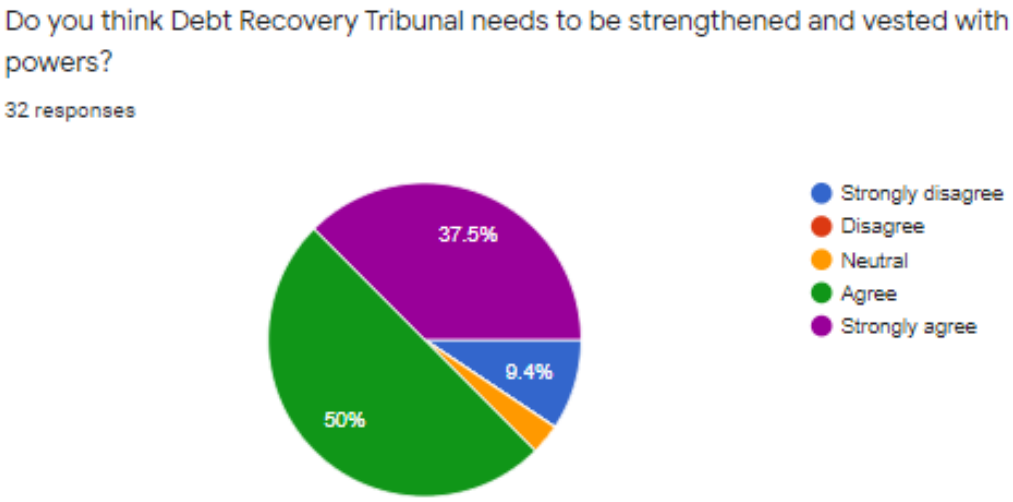
JUDICIARY HANDLING NPA IN BANKING SECTOR	NO. OF RESPONSES	%
STRONGLY DISAGREE	2	6.3
DISAGREE	5	15.6
NEUTRAL	12	37.5
AGREE	13	40.6
STRONGLY AGREE	0	0



Analysing the Table: 28, we can see that there are maximum positive reviews i.e. agree as 40.6% upon the view that the judiciary has taken necessary steps in handling NPA in the banking sector. It could be noticed that there are also some negative responses i.e. strongly disagree as 6.3% and disagree as 15.6%. The bankers have also selected the neutral options i.e. 37.5% on these questions on the judiciary. From this, we can summarise our conclusion to the view that Judiciary has taken the necessary steps in handling NPA in the banking sector.

7. TABLE 29: RESPONSE OF BANKERS ON STRENGTHENING OF DEBT RECOVERY TRIBUNAL

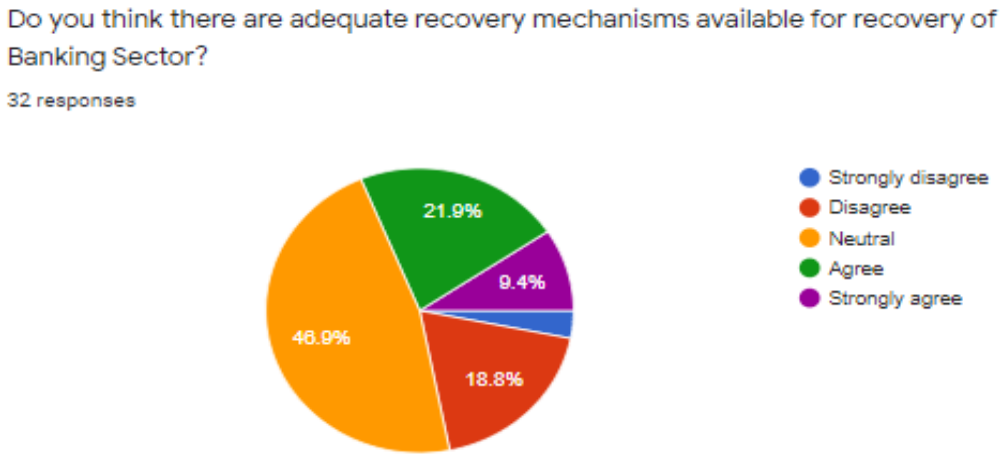
STRENGTHENING OF DEBT RECOVERY TRIBUNAL	NO. OF RESPONSES	%
STRONGLY DISAGREE	3	9.4
DISAGREE	0	0
NEUTRAL	1	3.1
AGREE	16	50
STRONGLY AGREE	12	37.5



As per Table: 29, the bankers' have given highly positive feedback upon the view that DRT needs to be strengthened and vested with more powers i.e. agree as 50% and strongly agree as 37.5%. As well as, there is only one response of bankers who have given neutral response i.e. 3.1% to it. The bankers have also disagreed i.e. 9.4% regarding the strengthening of DRT and giving them power. Thus, overall we can conclude that DRT is necessary to be strengthened and vested with more powers.

8. TABLE 30: RESPONSE OF BANKERS ON ADEQUATE RECOVERY MECHANISMS FOR RECOVERY OF NPA

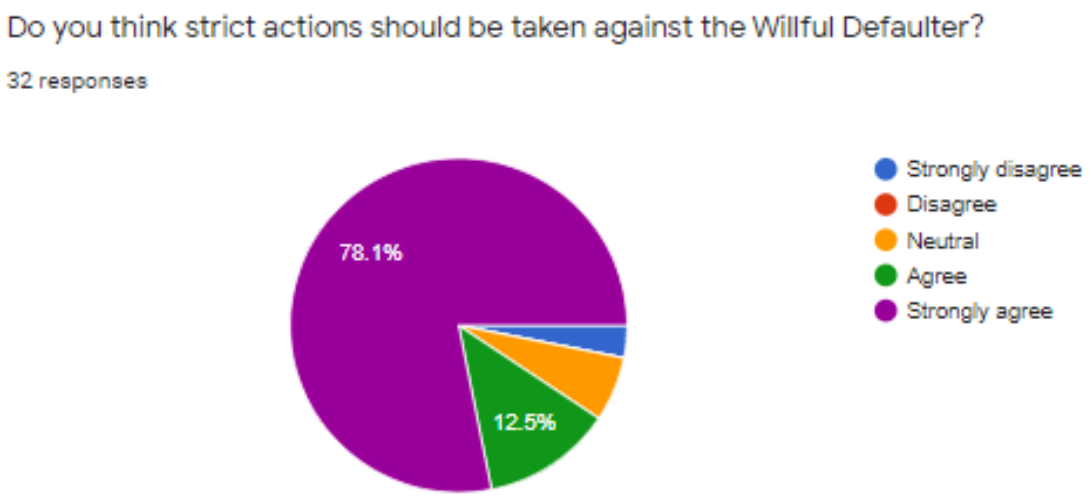
ADEQUATE RECOVERY MECHANISMS FOR RECOVERY OF NPA	NO. OF RESPONSES	%
STRONGLY DISAGREE	1	3.1
DISAGREE	6	18.8
NEUTRAL	15	46.9
AGREE	7	21.9
STRONGLY AGREE	3	9.4



From Table: 30, there are more neutral responses i.e. 46.9% form the bankers. Most of the bankers also gave some positive views on agree i.e. 21.9% and strongly agree i.e. 9.4% towards adequate recovery mechanisms in banks. We can also notice that there is negative responses from the bankers i.e. strongly disagree as 3.1% and disagree 18.8%. Thus we can summarise from these responses of the bankers that adequate recovery mechanisms should be made necessary for the recovery of NPA in the banking sector.

9. TABLE 31: RESPONSE OF BANKERS ON ACTION AGAINST WILFUL DEFAULTER

ACTION AGAINST WILFUL DEFAULTER	NO. OF RESPONSES	%
STRONGLY DISAGREE	1	3.1
DISAGREE	0	0
NEUTRAL	2	6.3
AGREE	4	12.5
STRONGLY AGREE	25	78.1



Scrutinizing Table: 31, the bankers have given a very high positive response i.e. strongly agree as 78.1% and agree as 12.5% that strict actions should be taken against the wilful Defaulter. Wilful Defaulters are the main reason for the high level of NPA. Also, we could notice that there are also some neutral responses as 6.3% upon this viewpoint. Here, the bankers have given one negative feedback i.e. 3.1% upon it. Thus, we finally conclude that it should be necessary to take strict actions against the wilful defaulters.

CHAPTER 5

IMPACT OF NON PERFORMING ASSETS IN BANKING SECTOR AND INITIATIVES OF GOVERNMENT OF INDIA

The NPA is a nightmare for the financial system and the economy of the country. As per the definition of NPA, it happens when the borrower makes any default in repayment within 90 days. There is always a risk during recollecting the loan amount by the banks due to the defaulters who willfully make default. Therefore, for the smooth running of the banking system, the banks should keep away with NPA. In this globalization and liberalization era, the banking and financial sectors have been given more importance. The NPA affects the credits and profits of the bank and its financial sectors. However, the banks act cautiously in granting loans during the sanctioning of loan amounts. The NPA dictates the ability and competency of the credit risk management of the bank. The significance of NPA in banks has shown a major impact on the economy of India. GNPA refers to "the loan quality of the banks" and NNPA refers to "the actual burden of banks". Chart: 6 and 7 and Table: 13 show high NPAs in the "priority sector and non-priority sector". NPAs in PSBs are higher than PVBs according to the data of RBI under Table: 14, 15 and Chart: 8, 9. Therefore, the lending institutions have taken major initiatives to reduce NPAs. The areas affected by NPAs can be stated as:

1. Profitability: NPAs affect the profit of banks as it acts as a barrier in bringing profits to the banks. NPA in the banks brings a bad image to those particular banks and also affects the smooth running of their banking activities. It doesn't only impact the present profits but also affects the future profitability of them.

2. Safety: The safety of the money in which customer deposits in the bank is very necessary. But the high NPA in PSBs is creating a fear among the customers to have faith upon the banks.

3. Liquidity: The liquidity is very necessary to provide credit facilities. As NPA creates a barrier, the bank cannot access to the money and cannot grant loans to other borrowers and the bank requires money to have an existence in the market.

4. Efficiency: NPA also affects the efficiency of banking activities. The lack in the banks' efficiency and management brings NPA. The lack in accessing the risk involved in granting loans allows the default borrower to diversify the loan and classify the account as NPA.

5. Marketability: When lending institutions suffer due to NPA, the financial market in the country also suffers. Money is an essential commodity for a good business in the market but NPA brings default and banks suffer loss.

6. Loss: The bank suffers credit loss due to NPA. It will hamper the brand image and also on people depositing their money in the banks. For example, accounts of "Kingfisher", "Nirav Modi", etc. affected the economy of the country.

1.1.STEPS TAKEN BY GOVERNMENT

In 2015, the Govt. of India has launched "Mission Indranush" that aims at "revamping" the PSBs' performance for competing with the PVBs.[246] According to "Press Information Bureau Govt. of India Ministry of Finance on 16 March 2018", IBC implemented for "resolution of stressed assets" and "the Banking Regulation Act, 1949" was modified to authorise the Govt. and RBI that the lending institutions should initiate "the insolvency resolution process" under IBC. RBI directed to certain banks to refer "12 accounts" of amount more than "Rs. 5,000 crore" and with "60% or more" regarded as NPA on 31.3.2016 for "the insolvency resolution process".[247] RBI prescribes a "revised framework for resolution of Stressed Assets" that stated, "time-bound resolution of high-value stressed accounts and insolvency application in IBC regarded to Non-Performing of Resolution Plan of 180 days". [248]The DRTs and SARFAESI Act amended in 2016 and six new DRTs have been established. The PSBs reforms Agenda announced by the Government in January 2018,

[246] "Mission Indranush for PSBs", BYJU'S, https://byjus.com/free-ias-prep/mission-indradhanush-psbs (JULY 03, 2020, 12:00 PM).
[247]Ministry of Finance, Bank NPA, PRESS INFROMATION BUREAU, GOVERNMENT OF INDIA https://pib.gov.in/PressReleseDetailm.aspx?PRID=1575490 (May 03, 2020, 12:00 PM).
[248] *Ibid.*

According to "Press Information Bureau Government of India Ministry of Finance" under "Rise in NPAs of PSBs" on 9 July 2019, provides that Government has adopted comprehensive 4 R's strategy consisting of NPA "recognition, resolution and recovering stressed accounts, recapitalizing PSBs and financial ecosystem". The measures taken under this are to harmonize in creditor-borrower relationship modified through the IBC to regulate the business that makes any non-payment to the credit given by the lending Institutions and not allowing them to take any credit; PSBs were recapitalized with "Rs. 3.12 lakh crore with the infusion of Rs. 2.46 lakh crore" and movement of "Rs. 0.66 lakh crore" by Government and PSBs respectively over the last four financial years; and PSBs Reforms include PSBs broad schemes, managing has been strictly segregated from sanctioning of loans, etc.[249]

The "Finance Minister, Nirmala Sitharaman" has claimed that "PSBs bad loans came down to ₹7.27 lakh crore at the end of September 2019".[250] This happened because the government wanted to bring well-being to the lending institutions.[251] The rehabilitation taken for PSBs in declination of NPA is the enhancement of "governance, underwriting, monitoring, recovery and technology".[252] On March 31, 2018, the PSBs had "₹ 8,95,601 crore" NPAs and was "₹2,16,763 crore" during 2018-19. "The recovery was ₹ 1,33,844 crore, and written-off was ₹ 1,83,391 crore and the closing figure was ₹ 7,39,541 crore on March 31, 2019".[253] The NPA decreased to "Rs. 7.27 lakh crore" on September 30, 2019. "The recovery was less than the written-off amount during 2018-2019".

"The RBI report on Chapter II of FIIs: Soundness and Resilience, dated December 27, 2019" showed that "the GNPA ratio of SCBs was at 9.3 % between March and September 2019 and the GNPAs level increased by 0.2 %". "The RBI report Financial Stability Report, December 2019" states that profit of PSBs gone down for "weak credit growth and slow resolution of NPAs".[254]

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[249] PIB, *supra* note 246.
[250] S Kalyanasundaram, "Have NPAs of Public Sector Banks dipped?", THE BUSINESS LINE https://www.thehindubusinessline.com/opinion/have-npas-of-public-sector-banks dipped/article30965239.ece (May 03, 2020, 12:41 PM).
[251] *Ibid.*
[252] *Ibid.*
[253] *Ibid.*
[254] *Ibid.*

1.2.COVID-19 STEPS TAKEN BY RBI

The COVID-19 Regulatory Package (Revised) of RBI[255]:

a. *Rescheduling of payments*: Concerning term loans of all commercial banks, co-operative banks, all-India FIIs, and NBFCs are authorised to permit "moratorium" of "3 months installments between March 1, 2020, and May 31, 2020".[256] The "repayment schedule" will be shifted to "3 months" after "the moratorium period and interest" shall extend to accrue. [257]The "working capital facilities" sanction granted CC or OD, banks are authorised to postpone the recovery of interest between March 1, 2020, and May 31, 2020 adjournment and after that repossessing "accrued interest" straight away.[258]

b. *Working capital financing:* In "working capital financing" granted in CC or OD to the debtor difficulty as the economy of the country fall because of Covid-19 and banks compute "the drawing power" or reassessing "the working capital cycle" and the cure applies to May 31, 2020, and is unforeseen to the banks to reassure themselves that is imperative and relief given to such accounts should be checked by the authority due to Pandemic.[259]

c. *SMA and NPA*: The "drawing power" given to the debtors due to the Pandemic is not available for modifying credit agreements because the debtor is facing money problems.[260] The divisions of the assets of "term loans" getting subsidy depends on the modified "due dates" and modified "repayment schedule".[261] In "working capital facilities" in which subsidy is given, SMA and "out of order status" computed in looking into the application instantly after the accomplishment of the adjournment time.[262]

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[255]COVID-19 – Regulatory Package (Revised) RBI/2019-20/186 DOR.No.BP.BC.47/21.04.048/2019-20, March 27, 2020, RBI Notification No. RBI/2019-20/244 (23/05/2020), https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11902&Mode=0 (June 17, 2020, 12:51 PM.).
[256] *Ibid.*
[257] *Ibid.*
[258] *Ibid.*
[259] *Ibid.*
[260] *Ibid.*
[261] *Ibid.*
[262] *Ibid.*

d. *Miscellaneous*: The institutions shall frame the Board to approve the strategies for providing subsidies for qualified debtors. If the bank's vulnerability to the debtor is "₹ 5 crores or above" on March 1, 2020, it initiates MIS.[263]

"RBI under the circular" of March 27, 2020, notified steps to resolve the debt in this Pandemic and yielded "3 months Moratorium on their installment or interest" in "between March 1, 2020, and May 31, 2020". These measures were checked by the HC Delhi in "Stay Petition" on April 13, 2020, in *"Shakuntla Educational & Welfare Society v. Punjab & Sind Bank"*[264] *with* first due happened on Dec. 31, 2019. The HC Delhi prevents "Punjab and Sindh Bank" from classifying the "Shakuntla Educational & Welfare Society" accounts NPA. The HC Delhi said, "a prima facie case" developed concerning the Petitioner for preventing the respondent from classifying NPA in this Pandemic. It is not terminated till May 4, 2020, and the parties to the disputed must accomplish the prayerful.

[263] RBI, *supra* note 250.
[264] *Shakuntla Educational & Welfare Society v. Punjab & Sind Bank*, W.P.(C)2959/2020.

CHAPTER 6
CONCLUSION AND SUGGESTIONS

The FIIs of our country play an important for the country's economy. The liberalization and globalization reformation made in the financial sectors in 1991 change the scenario of the financial mechanism in the country. The AQRs of the banks help the lending institutions in the enhancement of their account book. The Banks had implemented the modern technologies for the business process in due course of time. The process of litigation was bad in repossessing the bad loans which take several years before the year 1991 and the bankers have to face many problems in fighting for the declination of NPA. After the year 1991, the Govt. and RBI has implemented many major legislation and schemes to control NPAs in the banks. The "RDDBFI Act, 1993" provides provisions for the foundation of DRTs for debt repossessing by lending Institutions in one year better in comparison to the court proceedings that is costly and time-consuming. Initially, the DRTs performed well but later on they slowed down because of overburdened cases. The "SARFAESI Act, 2002" is a landmark reformation made by the Parliament of India and showed major recovery by the construction of ARCs and SCs/RCs which acted as the bad bank and well-wisher for the banks, containing a high amount of NPA. As per RBI guidelines, "Lok Adalats" can repossess lendings up to Rs 20 lakhs. The "SARFAESI Act, 2002" helped to recover 80% of the amount in comparison to the number of cases brought up to "Lok Adalat". "The Insolvency Bankruptcy Code, 2016" helps the Corporate Persons, Individuals and Partnership Firms by providing speedy and effective CIRP and liquidation processes. This code shows a high percentage of NPAs recovery in 2018 and 2019. The IBC has a major impact on the recovery of NPA as it includes secured and unsecured debts but SARFAESI only includes secured debts. The Govt. has taken appropriate measures to control high NPAs in PSBs by initiating inflexible rules and adopting measures like rescheduling, transparency, etc. The banks should give proper training to their employees to recover the bad loans. The RBI has also taken steps for the borrowers in the Covid-19 pandemic period by providing a moratorium of 3 months installments. After the enactment of IBC, the RBI has struck down many schemes for the restructuration of loan accounts. The CDR mechanisms have also been struck down after adopting IBC in the recovery of NPA.

This study shows NPA recovery by various channels with mechanisms like OTS, Lok Adalats, DRTs, SARFAESI, CDR and IBC. This study shows that the data of their recovery in NPAs by all these mechanisms collected from the RBI site and relevant journals. It also shows that there is no difference in number of cases referred in the Lok Adalats, DRTs, SARFAESI and IBC and there is no difference in amount recovered in the Lok Adalats, DRTS, SARFAESI and IBC analysed through "Anova" and "Turkey HSD" tools in Table 18, 19 and Table 21, 22 respectively in Chap. 4. According to Chart 11and 12, the cases referred to in the Lok Adalat are high but the amount of recovery is less in comparison with other mechanisms. The cases referred to increased in DRT, SARFAESI and IBC in the year 2018-19. The amount recovered in DRT and IBC is high in comparison with other mechanisms as per Chart 12 of Chap. 4 in the year 2018-19.

According to the study, the external and internal factors are the main reasons for NPA in banks. The credit process and NPA management in the banks should be strong enough in handling the NPA in banks. The judiciary has also taken an active part in reducing the NPA. The DRT should be strengthened enough for declining the NPAs in banks. Further, the recovery mechanisms are efficiently working in reducing NPA. The strict actions should be taken against the wilful defaulter.

6.1.SUGGESTIONS

The suggestions which help to reduce the NPAs are-

6.1.1. *STRICT ACTIONS AGAINST WILFAULT DEFAULTERS*

Strict actions and penalties should be imposed against the wilful defaulters as it is a crime. The Parliament should make more laws to handle such cases as borrowers run away to another country to save themselves from punishment by committing default. The "Fugitive Economic Offenders Act, 2018" has been enacted to control wilful defaulters and the RBI has suggested the PSBs for publications of the wilful defaulters' photos. However, we can see that the cases of wilful defaulters are increasing with due course of time.

6.1.2. *FREEDOM FOR RECOVERY AGENTS*

The borrowers are always trying to create problems in recovering the debts, therefore, it takes a lot of time and energy to recover the NPAs. Therefore, fast tract resolution

of disputes & freedom to recovery agencies is necessary to recover NPAs in the banks.

6.1.3. *AWARENESS AMONG BORROWERS*

Awareness programs should be organised by the banks to spread information and create consciousness among the borrowers regarding NPA and how it is impacting the banking system and the economy of the country. Further, the borrowers should be aware of the penalties in making default in payment of the loan amount.

6.1.4. *UPGRADING THE CREDIT MONITORING MANAGEMENT*

The credit appraisal system should be enhanced in the banks because with due course of time the borrowers have used many techniques in making default in payment of the loan amount. Therefore, the bankers should check the borrowers before sanctioning any loan or advance and visit their businesses regularly in time so that they can't diversify the amount. The authenticity of the borrower's securities should be checked properly by the authorities without negligence. The bankers should check that the borrower has a limit in withdrawing the loan amount.

6.1.5. *TRAINING FOR THE EMPLOYEES OF THE BANKERS*

The bankers should be given proper training to make them well organised and efficient in handling the NPA cases. They should know all techniques and methods to collect the NPA for the betterment of the banking sector.

6.1.6. *REMOVE CORRUPTION AMONG THE BANKERS*

The higher authority should act as a watchdog to remove the corruption among the employees of the banks. The Parliament should make laws to bind the employees of the banks so that it can punish such corrupt employees.

6.1.7. *WRITE-OFF*

A write-off is a necessary tool in reducing NPA. The write-off is obligatory when all the recovery mechanisms have failed in recovering the loan amount.

6.1.8. *IMPLEMENTATION OF MODERN TECHNOLOGIES*

The PSBs are slow in their work so they should implement modern and advanced technologies for the fast and efficient service of the banks. These high technologies are

also necessary to keep the details of the cases of NPAs because the borrowers are keen on creating problems in the proceedings.

6.2. SCOPE FOR FUTURE STUDY

The researcher has not covered the impact of NPA after mergers and acquisitions of PSBs of India. There are many loopholes in the recovery of the debts which the reaseracher cannot research at present as the time is very limited. The RBI and the Govt. always modifies their guidelines and policies time to time and henceforth, it requires a lot of time to analyse and implement those guidelines and policies. The impact at present cannot be determine as the COVID-19 pandemic has changed the scenerio of whole financial system of India. The powers of the judiciary are binding with limitation and thus, the borrowers have become conscious of all the ways to ignore the legal hold onto them. Therefore, in the future, the researcher is interested to carry on this research on all those points which has not been covered in this research paper.

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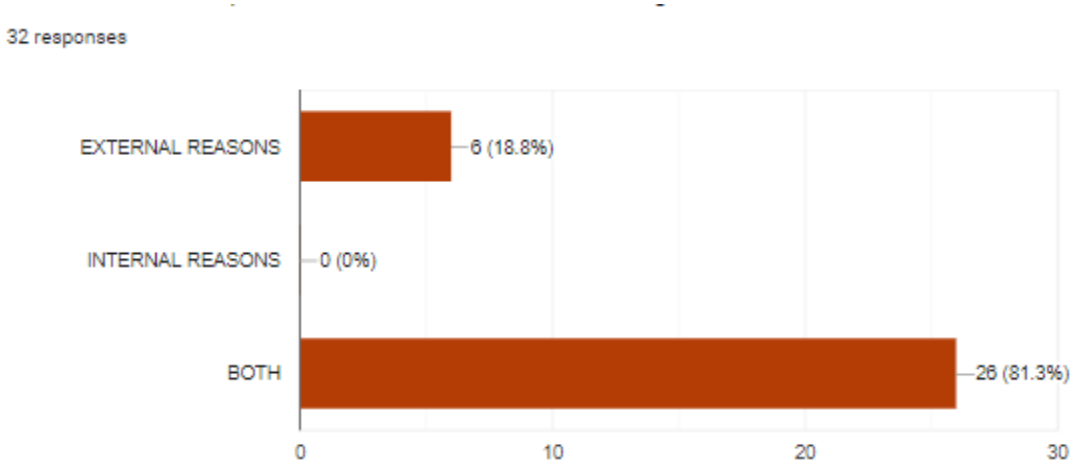
APPENDIX

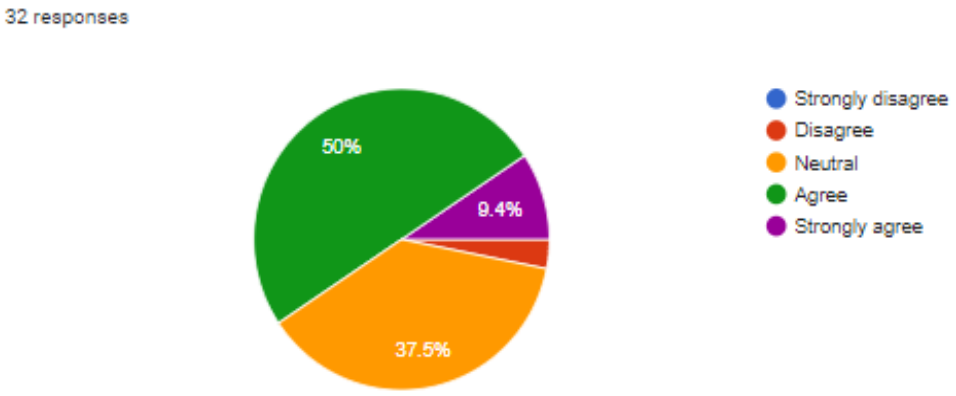
RESEARCH QUESTIONNAIRES

1. What are the more prominent reasons for NPA in Banking Sector?



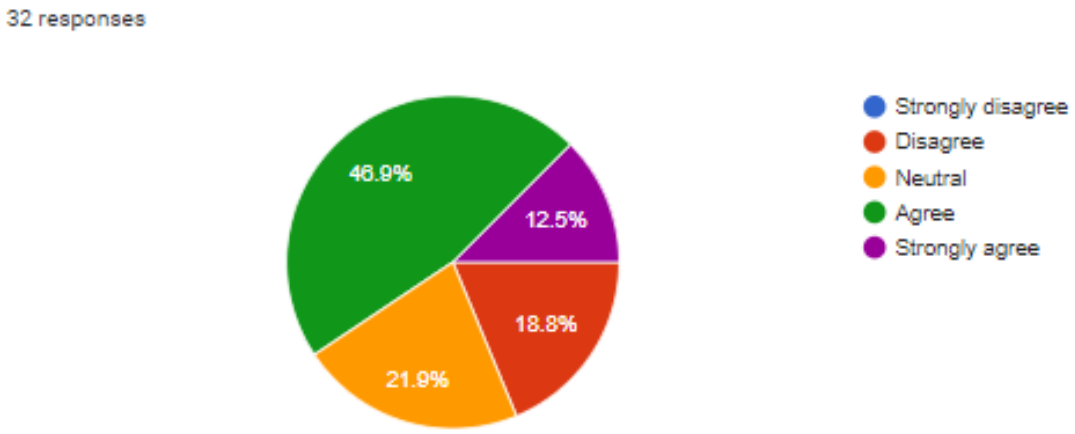
These are the responses collected by the researcher from the bankers on the factors responsible for the high level of NPA in the banks of India. From this, we can conclude that both the external and internal reasons are responsible for the high level of NPA in the banks of India.

2. Do you think the current Credit Appraisal System in your particular bank is adequate in this modern time?



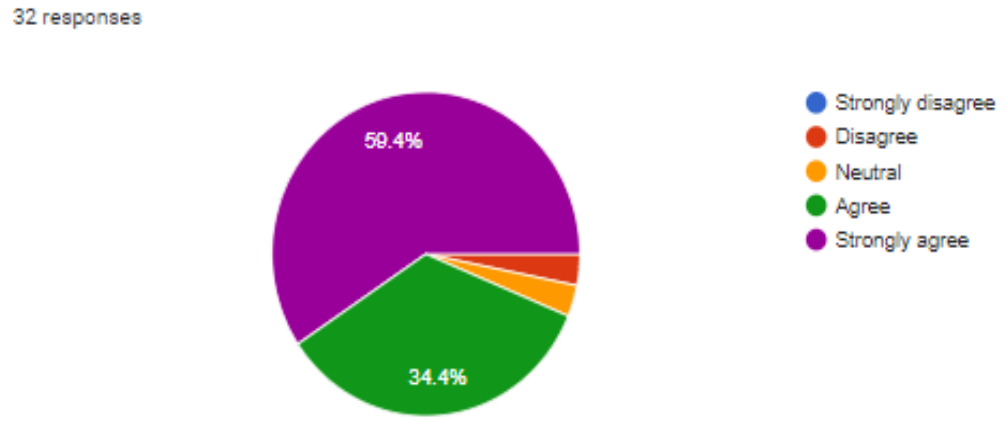
These are the responses collected by the researcher from the bankers on the adequacy of the current Credit Appraisal System in their particular bank during this modern time. As per the responses, we can conclude that the current Appraisal System in their particular bank is adequate in this modern time.

3. Is the NPA management strong enough to reduce NPA in your particular Bank?



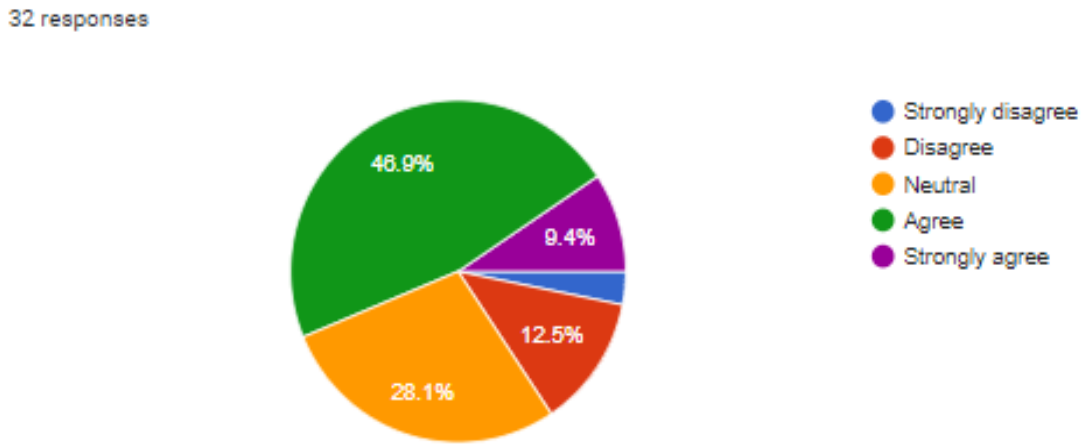
These are the responses collected by the researcher from the bankers on the strength of the NPA management in reducing NPA in their particular bank. The positive responses illustrates that the NPA management is strong enough to reduce NPA in their particular bank.

4. Do you think proper training is required for the staffs for effective supervision and risk management in Banks?



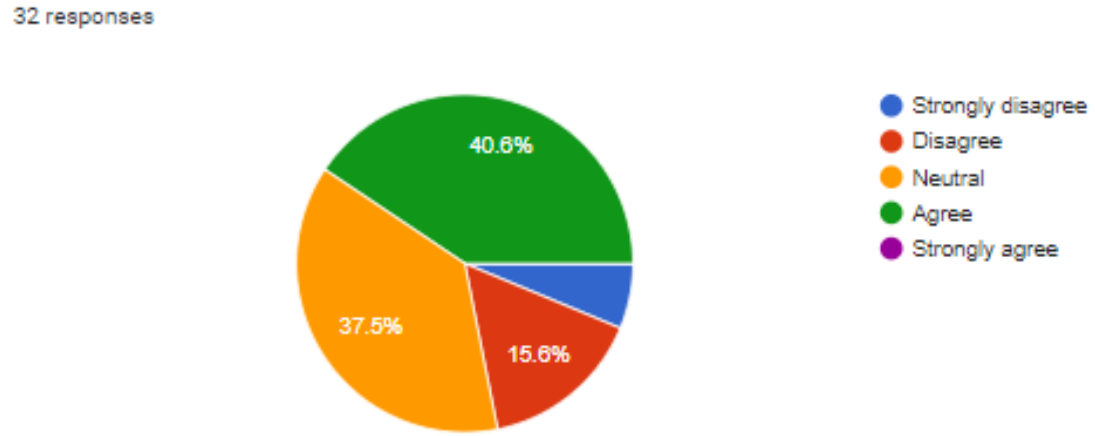
These are the responses collected by the researcher from the bankers on the requirement of proper training for the staffs of the banks for effective supervision and risk management in banks. As per the positive responses, there must be proper training for the staffs of the banks for effective supervision and risk management in banks.

5. Do you think legal recovery mechanisms are helpful in reducing NPA?



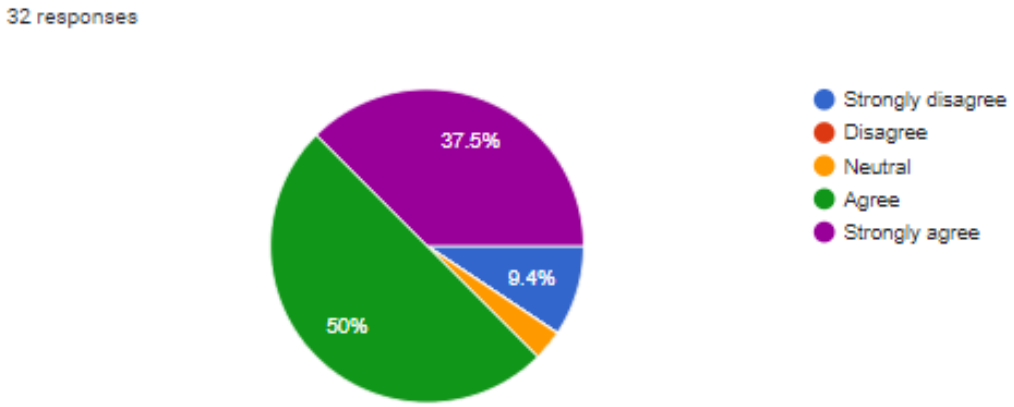
These are the responses collected by the researcher from the bankers on functions and operations of the the legal recovery mechanisms in reducing NPA. According to the positive responses, the legal recovery mechanisms are helpful in reducing NPA.

6. Has Judiciary taken necessary steps in handling NPA in Banking Sector?



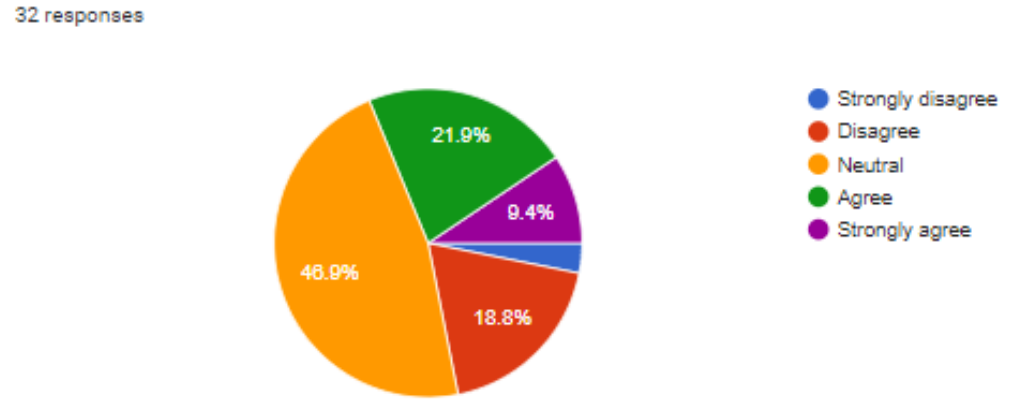
The reasercher has collected responses from the bankers on the necessary steps taken by the Judiciary in handling NPA in Banking Sector. Overall responses shows that the Judiciary is trying to take necessary steps to handle NPA in the banking sector.

7. Do you think Debt Recovery Tribunal needs to be strengthened and vested with more powers?



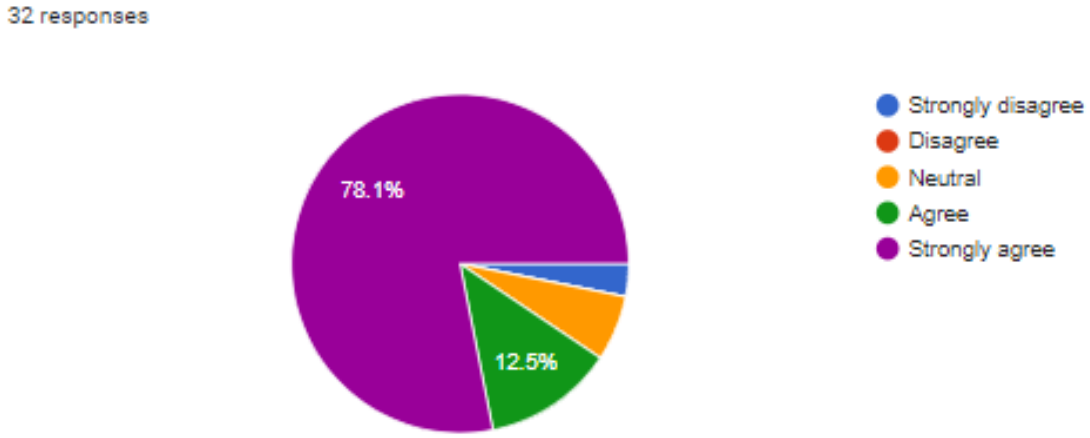
These are the responses collected by the researcher from the bankers on the strength and powers of the Debt recovery Tribunal. The positive responses illustrates that the the strength and powers of the Debt recovery Tribunal should be increased.

8. Do you think there are adequate recovery mechanisms available for recovery of NPA?



These are the responses collected by the researcher from the bankers on the adequacy of the recovery mechanisms for recovery of NPA. The bankers responses provides that there must be more recovery mechanisms for recovery of NPA.

9. Do you think strict actions should be taken against the Wilful Defaulters?



The researcher has collected the responses from the bankers on the requirement of the strict actions against the Wilful Defaulters. The high positive responses demonstrates that strict actions should be taken against the Wilful Defaulters.