



## A STUDY ON DEBT-RECOVERY-TRIBUNALS STRUCTURE AND PROCESSES WITH RESPECT TO LOANS

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### ABSTRACT

*Given its pivotal role in economic growth, India's lending landscape necessitates a close examination of debt recovery. The laws governing debt collection are covered in detail in this study, which is crucial for maintaining economic stability. Since loans are frequently secured by financial assets or collateral, close oversight is required to ensure that the conditions are met. The "Recovery of Debt Due To Banks and Financial Institutions Act, 1993" established the Debt Recovery Tribunal (DRT), which is one legal option used by financial institutions to reduce the risk of default. Another is the use of internal debt recovery teams. This study clarifies the levels that necessitate legal action by examining the reasons behind the extreme measures taken by lenders action and the complicated steps that are needed. It also looks at things from the point of view of borrowers, pointing out the consequences of not paying and possible ways to ease debt loads. This study shows how lending practices, regulatory frameworks, and debt recovery mechanisms all work together in a complex way by looking at legal safeguards and borrower protections. In the end, it aims to help people understand better how to handle debt in today's financial world.*

**Keywords:** DRT, Debt, Recovery, Tribunal, SARFAESI.

### Introduction

The lending ecosystem in India facilitates access to capital for individuals and businesses, and is a major force behind economic growth and development. However, there are risks associated with this system that both lenders and borrowers must manage. The core of this dynamic is debt recovery. It is essential to maintaining economic stability and ensuring the smooth operation of lending systems. One Lending companies may initiate collection actions to recover money from borrowers who fail to make loan payments on time. This is typically carried out by the institution's internal debt recovery teams. 2. The terms of the loan agreement and the lender's regulations determine the precise methods of debt recovery. Lenders have the ability to alter the terms of repayment sometimes to make it easier for borrowers to meet their obligations. But if efforts to get the money back fail, lenders may take back collateral, which are things that were put up as security for the loan. There are legal ways for lenders to get their money back if the debt gets too big. For example, the "Recovery of Debt Due To Banks and Financial Institutions Act, 1993" set up the Debt Recovery Tribunal (DRT). There is a formal way to settle debt recovery disputes through the DRT. This gives lenders a way to protect their rights and gives borrowers a chance to be heard.<sup>3</sup> The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) is a significant legislation in India that aims to empower secured creditors, including banks and financial institutions, to enhance their ability to recover outstanding dues in cases of borrower non-payment.<sup>4</sup> This research paper will go into detail about how to recover debts in India. It will look at the different methods used by lending institutions and the laws that govern these activities. We want to give you a full picture of how debt recovery works in India by looking



at the roles and responsibilities of both borrowers and lenders, as well as the regulatory protections that are in place. In the end, we want to shed light on the difficulties and chances that come with managing debt and add to the ongoing conversation about making the lending environment more stable and fair.

### Literature Review

**Dr. Karunesh Saxena [2023]** Non-performing assets have a direct effect on the profitability of the Indian banking sector. It is among the primary problems that the banking industry in India is facing. The execution of several committees' recommendations and the government of India's ongoing attempts have had a favourable influence on the economy by lowering the NPA of the Indian banking sector. After 2018, it started to progressively decline as a percentage of net advances as a result of strategic planning by the Reserve Bank of India and the finance departments. This paper aims to assess the impact of non-performing assets (NPA) on bank profitability as well as the strategies employed by banks to lower NPA. The study is based on secondary data that was collected from a variety of bank audited reports, yearly reports from the RBI, websites, etc. It has been determined that the NPA is gradually shifting into a declining mode following the adoption of RBI directives and modification of NPA management strategy.

**SAHITI ANNAM [2022]** This research paper goes on to analyse the functioning of the Debt Recovery Tribunals (hereinafter referred to as 'DRT' for brevity) in India, the laws that govern these Debt Recovery Tribunals as well as the issues and loopholes that are faced by the legal framework of such Tribunals. Section 2(g) 1 "Debt" means - any liability (inclusive of interest) which is alleged as due from any person by a Bank or Financial Institution or by a consortium of Banks. But it should be subsisting one and recoverable also. Banking in India faces the difficulty of mounting Non-Performing Assets (NPA), which is unfavourable for the bank's financial health. Banks have had to wait for very long time in Civil Courts to get cases concerning debt-recovery disposed and recovered. As a result, millions of rupees are stuck in the courts and banks are unable to repay, forcing the government to set up Debt Recovery Tribunals (DRTs) to ensure speedy recovery process. Debt Recovery Tribunals (DRTs) were established under the Recovery of Debts from Banks and Financial Institutions Act, 1993 to ensure speedy resolution and recovery of debts owed to banks and financial institutions. This research paper analyses the recent developments in the DRT Act and various measures and recommendations that can be taken to ensure speedy resolution and plug the loopholes that currently exist in the system.

**Hiteshkumar Thakkar [2020]** The performance of an economy can be judged by the rate of disposal of non-performing assets. India is struggling with them. Measures have been taken to address the rate of their increase but no effective remedy has been found so far. Parliament enacted the Recovery of Debts for Banks and Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interests Act, 2002 to regulate debt recovery. The Enforcement of Securities Rights and Recovery of Debts and Other Provisions (Amendment) Act, 2016 amended the 1993 Act and the 2002 Act and other consolidated laws. This amendment act aimed to fill the existing regulatory gap. This paper proposes the development of an exchange market for the effective settlement of such

assets. A statistical analysis of the effectiveness of the Debt Recovery Tribunal and Act, 2002 in addressing this issue examines the impact of this act on debt recovery.

**Mukesh Dwivedi [2016]** This study has two objectives. Firstly, to study the functioning of Debt Recovery Tribunals and secondly, to analyse the law of Debt Recovery Tribunals in India. For ease of understanding, the work has been divided into eleven parts, each dealing with a different topic. The work begins with an introduction to Debt Recovery Tribunals and the aspects related to it. Further, the law of Debt Recovery Tribunals and the importance of recovery in the light of Indian judicial rules have also been discussed. The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002 and the concept of non-performing assets have also been discussed in this paper.

**Aparna Ravi [2015]** While there is much anecdotal evidence on the abysmal track record of courts and tribunals in resolving insolvency proceedings there are only a few empirical studies on how Indian insolvency laws work in practice. This paper is based on an analysis of selected High Court and Tribunal decisions with an aim to gain a deeper understanding of the existing corporate insolvency process and where there are delays and bottlenecks. Three themes emerged from this exploratory study: (i) significant inefficiencies and inconsistencies arising from different laws and legal forums for managing troubled companies, (ii) various legal innovations and weak institutions that have led to significant delays in insolvency proceedings, and (iii) misinterpretation of the law by Debt Recovery Tribunals while considering cases for enforcement of claims under the Securitisation and Reconstruction of Financial Assets Act, which are not in the interest of national security. As India moves towards adopting a new Insolvency and Bankruptcy Code, it is hoped that this study will help understand the urgent need for reforms and provide initial insights into the direction the new law should take. Recovery of Debt Due To Banks and Financial Institutions Act, 1993

### **Jurisdiction, Powers and Authority of tribunals**

Section 17 of the DRT Act empowers the Tribunal to consider and decide applications for recovery of debts from financial institutions and banks. The Tribunal has the power to decide matters relating to debt recovery. Further, under the above provisions, the Appellate Tribunal is mandated to hear appeals arising out of orders made or deemed to have been made by the Debt Recovery Tribunal (DRT). Further, Section 17A empowers the Chief Appellate Tribunal to supervise and direct the Tribunals under its jurisdiction. Further, it also has the power to transfer cases from one Tribunal to another to facilitate resolution. Section 18 limits the powers of all courts and commissions, except the Supreme Court and the Court of Appeal, in relation to the matters referred to in section 17. The section ensures that the Debt Recovery Tribunal (DRT) and the Court of Appeal have sole authority in debt recovery matters and prevents other agencies from interfering in such cases.

### **Procedure to be followed by tribunals**

According to Section 19 of the DRT Act, a bank or financial institution may apply for recovery of debt in a court within its jurisdiction in the following cases:

a. Where the defendant, domiciled in a place, voluntarily carries on business or personal activity;



b. In cases where there are multiple defendants, and at least one of them willingly resides or engages in business activities.

c. If the cause of action is wholly or partly within the jurisdiction of the court. Moreover, as long as the application is made against the same person or entity, other banks or financial institutions have the opportunity to cooperate with the applicant in recovering debts from the same debtor. Upon receipt of these applications, the court will send a summons to the defendant, requiring him to submit within 30 days a valid reason why relief should not be granted. The defendant must file a written defense before or during the first hearing, or within such period as the court may allow. The court has the power to consider any counterclaim by the defendant, but such counterclaim must be filed within the specified period. A preliminary injunction may be issued to prohibit the defendant from disposing of assets without prior approval from the court. The court has the power to require the defendant to provide security if it finds that the defendant wishes to liquidate his assets. Failure to comply with a court order may result in the defendant's assets being seized or imprisonment in civil prison. The court has the power to appoint a receiver, disqualify an individual from holding assets, and take other necessary measures to ensure justice. To expedite the process, the application must be disposed of within 180 days of receipt. Any person or organisation dissatisfied with the decision of the Tribunal is given the opportunity to appeal to the Debt Recovery Appellate Tribunal within 45 days, unless there is a valid reason for the delay. Tribunals and Appellate Boards do not legally have to follow the Code of Civil Procedure, 1908, but they must follow the principles of natural justice. To carry out their functions, they are given powers similar to those of the Civil Courts as provided in the Code of Civil Procedure, 1908. The Limitation Act, 1963 applies to applications filed before the Tribunal and sets the period within which such applications must be filed.

#### • Recovery of debt determined by tribunal

Section 25 of the DRT Act explains the obligations of a debt collector upon receiving a copy of a certificate issued under Section 19(7). The debt collector must initiate debt recovery proceedings in various ways, such as attaching or selling the property, arresting the defendant, or appointing a receiver to oversee the defendant's assets. Further, Section 28 contains specific information on alternative debt recovery methods such as deduction. Section 31 relates to the transfer of ongoing court proceedings. It states that any lawsuit or legal proceeding already ongoing before the establishment of a tribunal shall be transferred to the relevant tribunal. However, this provision does not apply to appeals currently awaiting a decision from the Court. Section 34 gives priority to the DRT Act over other laws. However, it expressly states therein that the provisions of the DRT Act and its Rules are in addition to and not in conflict with certain other laws like the Industrial Finance Corporation Act, 1948, the Unit Trusts of India Act, 1963, State Acts such as the Finance Companies Act, 1951, the Sick Industrial Companies (Special Provisions) Act, 1985, the Bank of India Industrial Reconstruction Act, 1984, the Small and Medium Enterprises Development Bank of India Act, 1989.

#### Methodology

Before institution of the Debt Recovery Tribunal the banks were in a predicament before the



advent of the Debt Recovery Tribunal. Debt recovery cases were like other civil cases and had to be filed in ordinary civil courts. Court proceedings were dragged for long periods, at times more than 15 years. This took its toll on the financial health of the banks, as the chunk of the stressed assets got snagged in the litigation. The bank found it very difficult to fund their further advances. This grave situation led the economy into the trajectory of sluggish growth. Industry found it tough to get credit to fund projects. The Government then appointed the Narasimhan Committee, which made a path-breaking recommendation to install tribunals to deal with cases of debt recovery.

Recovery of Debts Due to Banks and Financial Institutions Act, 1993: The need for a comprehensive law on the recovery of debts was stressed by the Tiwari Committee Report (1981) which stated:

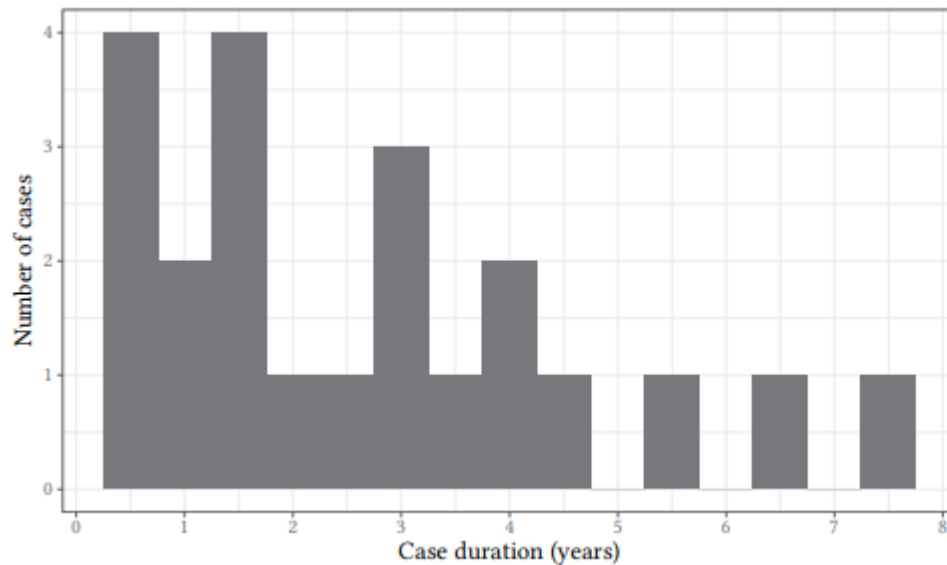
“The civil courts are burdened with diverse types of cases. Recovery of dues due to banks and financial institutions is not given any priority by the civil courts. The banks and financial institutions like any other litigants have to go through a process of pursuing the cases for recovery through civil courts for unduly long period.”

The Tiwari Committee report was approved by the Narasimhan Committee in 1991. Following the recommendations of the Narasimhan Committee, the government enacted the landmark Banking and Financial Institutions Debt Recovery Act (popularly known as the RDB Act) in 1993. The functions of the Debt Recovery Tribunal were regulated by the RDB Act. It may be noted that this Tribunal was established by an Act of Parliament empowered under Article 247 of the Constitution of India. The RDB Act revolutionised the way asset recovery cases were resolved in India. This has been discussed in various reports. In 1995, the constitutionality of the DRT was challenged in the Delhi High Court and won, holding that as the possibility of filing a counterclaim was not provided for, the courts could not take effective action. The RDB Act was subsequently amended and the Supreme Court upheld the constitutionality of the amended Act. As things stand, borrowers have the right to file a "counterclaim" under Section 19 of the RDB Act.

## **Results**

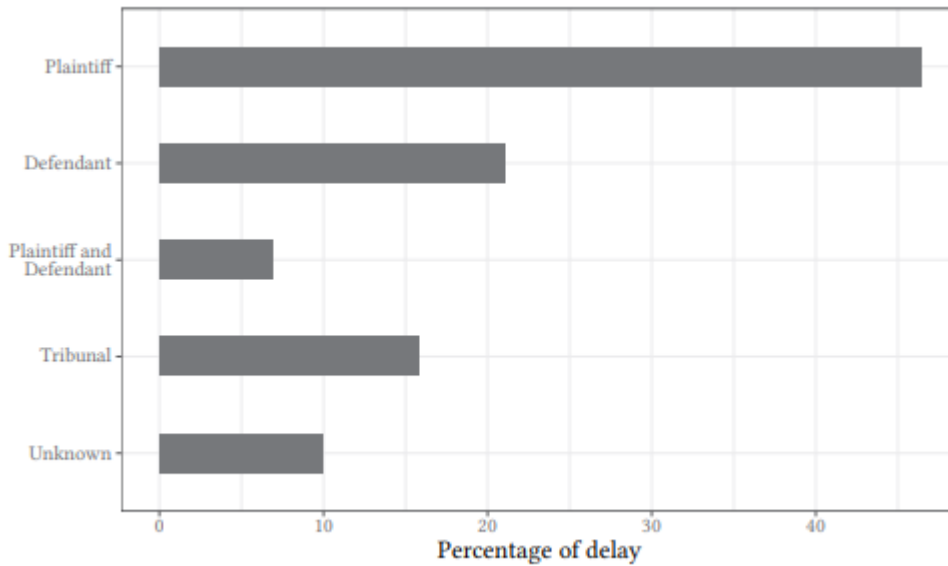
### **Delays**

Our study shows that each failure delays the case by about 40 more calendar days. The cases we examined went on for about 2.7 years on average. This aggregate conceals a lot of variance — the duration varied from as few as 5 months to as many as seven and a half years (Figure 1). How much of this was necessary? In other words, if the system had functioned well, how much delay could have been avoided? It turns out that of these 474 hearings, 274 hearings (about 58%) were failures. These failures accounted for more than half the time taken by the cases. So, to a first approximation, we could reduce the duration of the average case by half if we were able to avoid trial failures. But that is not all — if there were fewer trial failures, cases would finish sooner, freeing up slots on the judicial dockets. This would let the remaining cases have more frequent hearings. So the delay would decrease by more than half if these failures were avoided.



**Figure 1: Histogram of case durations. Duration varies from ve months to eight years. Who causes delays?**

Negotiation failures can be caused by one or more of three parties: the plaintiff, the defendant, or the court itself. In general, we expect that borrowers have an incentive to prolong litigation. Borrowers already have money to spend and want to pay it back over time. This expectation is supported by the data. Looking at borrower-initiated litigation, delays attributable to borrowers and plaintiffs account for 46% of total lost time, while approximately 21% is the fault of the lender and approximately 16% is the fault of the court (see Figure 2). Now let's look at lender-initiated cases. In these cases, it is expected that the lender/plaintiff would want the case to be resolved quickly. After all, he lent the money and he probably wants it back as soon as possible. Interestingly, in these cases, the main reason for delays turns out to be the plaintiff: 40% of delays are the fault of the lender/plaintiff, 21% are the defendant, and 26% are due to the court (Figure 3). Many of these delays are due to lenders requesting postponements while they search for and submit documents. This goes against our expectations that lenders want their money back quickly. These lenders are sophisticated financial institutions and are expected to maintain full documentation of their debts. They have on-site lawyers and standard processes in place for dealing with defaults. Given all this, it's not clear.



**Figure 2: Breakup of delays for the cases led by the borrower. Predictably, the borrower-plainti- accounts for most of the delay.**

### Conclusion

Ultimately, the Debt Recovery Tribunals (DRT) Act and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act (SARFAESI Act) are crucial to India's debt recovery system as they provide avenues for creditors to recover outstanding amounts from defaulting borrowers. However, many impediments remain, including protracted resolution of DRT cases, limitations under the SARFAESI Act, inadequate legal infrastructure and borrower resistance. These impediments impede speedy and effective loan recovery, affecting both lenders and borrowers. The findings are broadly consistent with the proposed hypotheses. The type of legal action taken, such as filing a case before the Debt Recovery Tribunal, depends on various factors, including the size of the debt, the likelihood of recovery and the cost-effectiveness of legal action. Moreover, regulations such as the Recovery of Debts by Banks and Financial Institutions Act, 1993 play an important role in protecting the interests of borrowers and lenders during the debt recovery process. Furthermore, the study points out that the efficiency of the credit recovery process is highly dependent on the interplay of the Debt Recovery Tribunals Act and the SARFAESI Act. Finally, as hypothesized, increased transparency, accessibility and borrower education may indeed improve debt recovery outcomes.

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