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Enforcement without Adjudication? A Critical Analysis of the SARFAESI Act, 2002: Rights of Secured Creditors vis-à-vis Borrowers

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Abstract

The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act" or "the Act") gives the banks and notified financial institutions the power to enforce security interest on the NPA without involving the court or tribunal. This paper attempts to consider the issue of maintaining a defensible balance between the interest of borrower to ensure procedural fairness and to protect his property and the interest of the creditor for recovery of the money. The inquiry is doctrinal and analytical of the statutory text and the Security Interest (Enforcement) Rules, 2002 and the key judicial decisions (from Mardia Chemicals (2004) to the Supreme Court decision on auction time and redemption (2025 and 2026), and includes a quantitative reading of the Reserve Bank of India's recovery statistics. The paper concludes that the Act is empirically effective as recoveries under the Act totalled ₹32,466 crore in 2024-25 with a recovery rate of 31.5 per cent, but that several features of the Act, such as the statutory pre-deposit for appeals, compression of borrower's right of redemption, dependence on capacity constrained Debts Recovery Tribunals, and inconsistent drafting of Section 13(8) and Rules 8 and 9, tilt the balance in favour of the secured creditor. Finally, there are proposals for the harmonisation of the law and for more calibrated procedural safeguards.

Keywords: SARFAESI Act; secured creditor; borrower; Section 13(4); Section 17; right of redemption; Debts Recovery Tribunal; non-performing assets; Insolvency and Bankruptcy Code.

1. Introduction

Resolution of non-performing assets (NPAs) is an important aspect of stability of a bank-centric financial system like India. However, until the early 2000s, a lender who wanted to enforce a mortgage or hypothecation had to file a civil suit and, whether the lender was a bank or a financial institution whose claim exceeded the prescribed limit, had to invoke the adjudicatory jurisdiction of the Debts Recovery Tribunals (DRTs) established under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 ("RDB Act"). Both roads were slow. That is why, in order to move away from that concept, the SARFAESI Act was passed, which allows a secured creditor to enforce its security "without the intervention of the court or tribunal" [1, s. 13(1) transferred the power to start enforcement from the adjudicator to the creditor, and put judicial action as a remedy after enforcement. This architecture poses a doctrinal and normative question. Such a law giving self-help powers over one's property should be examined in terms of the guarantees of Article 14 and Article 300A of the Constitution and the fundamental rule that no one should be a judge in his own cause. The borrower's right of protection under the Act is mainly based on the pre-enforcement notice, representation procedure, appeal to the Debts Recovery Appellate Tribunal (DRAT) under Section 18 and appeal to the Debts Recovery Tribunal (DRT) under Section 17. The question this paper addresses is whether these protections are adequate; are they timely and accessible. This study is organized in the direction of three research questions. First, where does the Act place the powers of enforcement and the rights of procedural protections in the hands of secured creditors and borrowers? Second, how has the courts' allocation of those interests been "calibrated" in light of that determination, particularly by the Supreme Court? Third, what is the evidence from experience of the effectiveness and the distributional impacts of the Act? The methodology is basically doctrinal, which involves studying the statute, the Rules and reported and recent decisions, with the assistance of secondary quantitative analysis of the annual Report on Trend and Progress of Banking in India published by the Reserve Bank of India (RBI) [9]. The empirical aspect has its limitations. The RBI series is aggregated, lacks borrower-level data, and does not provide amounts collected in a

year that are necessarily related to cases referred in prior years, and thus can be used to make inferences of relative effectiveness, but not inferences about the fairness of individual enforcement actions.

2. Legislative Background and Statutory Architecture

2.1 Origins

The origin of the Act is in the diagnosis of delay in debt recovery. In 1991, the Narasimham Committee on the Financial System (NCFPS) recommended for establishing specialised tribunals for bank dues and the RDB Act; and a Committee on Banking Sector Reforms (CBSR) (1998) considered legal changes needed for the introduction of asset reconstruction companies and a legal structure which would allow secured lenders to realise security without prolonged litigation [10]. The Act (Act 54 of 2002), which entered into force on 21 June 2002, replaced the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance. The Act has three substantive elements, namely regulation of securitisation and asset reconstruction companies (ARCs) in Chapter II, enforcement of security interest in Chapter III and, as amended subsequently, the Central Registry of securitisation, asset reconstruction and security interest (Chapter IV-A). The present paper is mainly focussed on the most important part of the paper which is Chapter III which defines the relationship between the secured creditors and the borrow

2.2 Amendments of 2004 and 2016

The Act has been amended twice to address constitutional and operational problems. As a result of the Supreme Court's ruling in Mardia Chemicals Ltd. v Union of India, which upheld the Act but invalidated the condition in the original Section 17(2) for a borrower to make a seventy-five percent contribution before seeking the intervention of the DRT [2, ¶ 80], Parliament amended the Act in 2004. This amendment added section 13(3A) requiring the creditor to take account of the borrower's representation with the demand notice and to communicate reasons for refusing

the same and moved the pre-deposit requirement to the appellate stage under section 18 at a reduced rate of fifty per cent. The Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016, which came into effect from 1 September 2016, has ushered in several consequential amendments. It set time limits on the district magistrate's assistance under Section 14, provided that debts of secured lenders would be paid first before any other dues under section 13(8); and introduced section 26E which gives debts of secured creditors preference before other debts and over revenues, taxes, cesses and rates payable to governments and local authorities, provided the secured interest is registered. These changes strengthened the creditor's position in enforcement while enlarging, in specific respects, the scope of the DRT's relief.2.3 Scope and Exclusions. The Act applies to secured creditors as defined in the Act (including banks and ARCs and notified financial institutions) and financial assets that are secured by a security interest. The following are excluded from the operation of Section 31: security interests in agricultural land; and cases where the amount due is less than twenty per cent of the principal amount and interest [1, s. 31]. Section 34 excludes jurisdiction of civil courts under the Act in respect of matters where jurisdiction is vested with the DRT or DRAT under the Act and Section 35 provides that the Act shall have overriding effect over any inconsistent law. The net result of such provisions is that the DRT becomes the first judicial forum and the entire statute would become a self-contained statute.

3. The Rights of Secured Creditors

3.1 Extra-judicial enforcement

Section 13(1) allows a secured creditor to enforce his security interest without the intervention of any court and the provisions of Sections 69 and 69A of the Transfer of Property Act, 1882. The process commences when the borrower's account is declared NPA as per the directions/guidelines of the RBI and the borrower fails to repay the loan. The creditor is then required to give the borrower a written notice in accordance with Section 13(2) to pay all the debts. The notice shall specify the amount of the indebtedness and the secured assets proposed to

be enforced and, if the borrower does not comply, the creditor may take the assets over by lease, assignment or sale, take over the management of the business of the borrower, appoint a manager to manage the assets, or require any person holding a secured asset from the borrower to pay the secured creditor the amounts necessary to defray the debt. The effect of a transfer under Section 13(6) is that all rights in the secured asset are vested in the transferee as if it had been done by the owner. Section 13(9) provides that in cases where the borrower has borrowed from more than one creditor, enforcement can only be done if there is an agreement between the creditors who represent the prescribed majority in the quantum of the outstanding amount. Section 13(10) provides that in such situation; the creditor can apply to the DRT to recover the shortfall. The Act provides also the secured creditor with an instrument enabling him to enforce the mortgage upon the land, which is a form of machinery available after decree, but which, in other words, comprises the mortgagee's substantive rights.

3.2 Administrative assistance and priority

One of the unique features of the enforcement scheme is that they use executive assistance. The creditor may by notification ask the Chief Metropolitan Magistrate or the District Magistrate to take possession of the secured property and hand it over to the creditor as per Section 14. After the amendment from 2016, the magistrate must make appropriate orders within 30 days, which may be extended to a maximum of 60 days, if he is satisfied as to the contents of the creditor's affidavit [1, s. 14]. This was a change from discretionary to time-based process in order to overcome the phenomenon where the magistrate's assistance itself became a bottleneck. The secured creditors are given priority in Section 26E, which settles the disagreement between secured lenders and State on the priority of these dues. This aspect, together with the Central Registry, helps to improve the security of recovery and minimise the information costs of lending on the basis of collateral.

3.3 Relationship with the RDB Act and the Insolvency and Bankruptcy Code

The creditor's rights in the Act survive and are concurrent with his/her rights under the RDB Act. In Transcore v. Union of India, the Supreme Court interpreted both the statutes together and concluded that the doctrine of election did not bar the secured creditor from invoking the SARFAESI Act only because he had approached the DRT previously as both the Acts shared the common purpose of speedy recovery of dues. The remedy provided by the Act, therefore, supplements the adjudicatory remedy, rather than replacing it. The relationship is of a different nature with Insolvency and Bankruptcy Code, 2016 ("IBC"). The moratorium under section 14 of IBC bars enforcement of security interest including under SARFAESI Act once corporate insolvency resolution process has been commenced. It is therefore strategic for the creditor to exercise this choice between the two regimes, and the relative recovery results discussed in Part 6 will affect the choice.

4. Safeguards Available to Borrowers

4.1 Pre-enforcement safeguards

The borrower's first line of defense is the Section 13(2) notice which gives the borrower 60 days to regularize the account, negotiate, or arrange for repayment. Section 13(3A) which came into operation subsequent to Marida Chemicals, gives the creditor the discretion of considering any representation or objection received and, if not accepted, communicating the reasons within 15 days. However, it is worth noting that the reasons communicated, or the likely action of the creditor, at such stage do not, in themselves, provide a right to approach the DRT under Section 17. The representation mechanism is thus a procedural courtesy with a legal basis, but not an independent mechanism of adjudication: the creditor looks at its own demand. The Security Interest (Enforcement) Rules, 2002 provide additional protective measures at the time of sale.

Rule 8 sets out the process for acquiring possession of the secured asset, for valuing the asset and for setting a reserve price, while Rule 9 sets out, inter alia, that no sale shall be made prior to the end of thirty days from the date of giving of a notice of sale to the borrower and of its publication; and that the purchaser shall pay the balance of the price within the prescribed time. The courts have found compliance to be a condition to a valid sale, which is discussed in Parts 5 and 7.

4.2 The application under Section 17

The common remedy is the application to the DRT under Section 17(1) which can be filed by "any person (including the borrower)" against any measure under Section 13(4), and the application is usually to be filed within forty-five days of the measure. The DRT is asked to terminate the application in sixty days with extension for not more than four months [1, s. 17]. Section 17(3) provides that where the DRT finds that the measures were not taken in accordance with the Act and the Rules, he may declare the measures invalid and restore the possession or management to the borrower or the aggrieved person. Proper scope of standing has given rise to continuous judicial attention and recent decisions have laid emphasis on the right under Section 17 being not limited to the borrower, but it has been held that relief that can be granted by the DRT to the person claiming interest in the secured asset is subject to the conditions laid down in the statute. The timing of the remedy was the issue in Hindon Forge Pvt. Ltd. v. State of Uttar Pradesh. A Full Bench of Allahabad High Court had earlier said that an application under Section 17(1) could only be filed post the borrower's physical possession. The Supreme Court had set it aside and held that a borrower can approach the DRT at the stage of possession notice under Rule 8(1) and Rule 8(2) as each of the two set of measures under Rule 8 is also a measure to be taken under Section 13(4) for the purpose of Section 17(1). The Court also noted that the secured creditor continues to be a secured creditor, and is not the owner under Section 13(6). The decision extends the ability of borrowers to gain access to a tribunal ahead of the asset being alienated, and corrects an interpretation that would have made the remedy unhelpful in the most obvious of cases.

4.3 Appeal, pre-deposit and compensation

The appeal against the order of the DRT lies to the DRAT within 30 days as per Section 18 of the Act. The second proviso to Section 18(1) provides that no appeal shall be heard unless the borrower has deposited fifty per cent of the amount of debt due as claimed by the secured creditor or as determined by the DRAT whichever is less, and the third proviso allows DRAT to reduce the deposit to not less than twenty-five per cent for reasons stated in writing. The requirement is a must and the DRAT does not have the authority to waive the deposit completely. The most controversial of the borrower's procedural requirements is the pre-deposit, which is examined in Part 8. The borrower may approach the DRT or DRAT for compensation and costs of money where the DRT or DRAT considers possession was taken in a manner which is not in accordance with the provisions of the Act. This clause recognizes that there may be situations in which the clause is misapplied, but, as far as I can see, it has little practical utility unless the borrower can keep the action going until it reaches a final decision.

5. Judicial Calibration of the Statutory Balance

5.1 Validity and the limits of creditor power

In Mardia Chemicals Ltd. v. Union of India the constitutional basis of the Act was laid down. The Supreme Court was satisfied that Parliament had the competence to make the statute and that most of its provisions had been correctly drafted, and that the purpose of recovering the public money that banks and financial institutions had lent was sufficient to allow a special and swift procedure. However, it found that the original Section 17(2) which required a borrower, in order to approach the DRT, to deposit seventy-five per cent of the amount claimed, was arbitrary and in violation of Article 14 as it made the remedy virtually unavailable to the borrower challenging the amount claimed [2, ¶ 80]. The principle that it establishes still applies today: the legislature can aid in the recovery, but can't make the borrower's statutory remedy a sham.

5.2 Harmonisation with the RDB Act and the restraint of writ jurisdiction

As mentioned earlier, in the above case of Transcore v Union of India, the Court had to decide the relation between SARFAESI Act and RDB Act and had held that cumulative remedies can be granted [3]. In United Bank of India v Satyawati Tondon, the Court considered another question pertaining to the readiness of High Courts to accept petitions under Article 226 against any actions taken by the Act. It had held that in the presence of an effective statutory remedy under Section 17, the High Court should not bypass it in most cases and interference is permissible only in special cases like a lack of jurisdiction and a denial of fundamental rights and natural justice. This is consistent with the legislative design, but has a salient structural implication, which is that almost all borrower complaints are directed to the DRT, and the strength of the protections is dependent on the capacity and the procedural discipline of the DRT.

5.3 Procedural compliance in sale

As a result, the Supreme Court has always given the Rules governing possession and sale the interpretation of being "rules of necessity" and not "rules of form. The Court in Mathew Varghese v. M. Amritha Kumar, took an adverse note on the powers of sales of the creditors and observed that such a power must be exercised strictly within the ambit of Rules 8 and 9, which act as conditions to the exercise of the power and which are to be read with the statute itself in effect, as extra-judicial powers over property cannot be exercised without reading the conditions with it. This reasoning offers some interpretive context to the Court's more recent decisions on the subject of notice, redemption and when the auction purchaser pays, which will be discussed in Part 7.

6. Empirical Assessment of Enforcement under the Act

Data on the comparative performance of recovery channels of the scheduled commercial banks are available in a systematic manner on an annual basis in the Report on Trend and Progress of

Banking in India published by RBI. Table 1 below restates the key data and includes two derived measures for 2024-25.

Table 1: Recovery of NPAs by Scheduled Commercial Banks through principal channels, 2024-25

Channel	Cases referred	Amount involved (₹ crore)	Amount recovered (₹ crore)	Recovery rate (%)
SARFAESI Act	2,15,709	approx. 1,03,000	32,466	31.5
IBC	732	1,49,045	54,528	36.6
Debts Recovery Tribunals	34,430	1,29,516	12,363	9.5
Lok Adalats	1,49,12,705	1,97,907	approx. 4,742 (derived)	2.4

Source: RBI, Report on Trend and Progress of Banking in India, 2024-25 [9]. The amount recovered through Lok Adalats is derived as the difference between the reported aggregate recovery of ₹1,04,099 crore and the sum of the other three channels; the SARFAESI amount involved is reported by the RBI as ₹1.03 trillion.

Several observations follow. In the absolute sense, the SARFAESI channel proved to be the second most productive with a recovery of ₹32,466 crore in 2024-25 or around 31.2 per cent of the total recovery of ₹1,04,099 crore. Overall, the IBC recovery rate increased from 49.5 per cent in the previous year to 52.4 per cent, while the recovery rate across channels went up from 17.2 per cent to 18 per cent. Second, while the number of cases referred for recovery dropped slightly from 216,571 to 215,709, the amount of recovery increased from ₹1.19 trillion to ₹1.03 trillion [9] as the SARFAESI recovery rate improved from 25.4 per cent in 2023-24 to 31.5 per cent in 2024-25. The percentage of ARCs that had completely redeemed their security receipts also rose,

from 38.2 to 41.8 per cent. Thirdly, the long series indicates that the contribution of the channel has been significant for several years. In 2020-21, the Act recovered ₹27,700 crore, while the IBC recovered ₹4,900 crore in that year (and fewer during the pandemic). The recovery rate in SARFAESI prior to 2024-25 has remained in the range of 15 to 25 per cent in most years – a highly unusual recovery rate for the channel. There are two instructive derived indicators. The average recovery amount in SARFAESI cases for 2024-25 was at about ₹48 lakh per case, while, the average recovery amount in DRT cases stood at around ₹3.8 crore per case, IBC cases at ₹204 crore per case and in Lok Adalat cases, at about ₹1.3 lakh per case. Hence, the SARFAESI channel lies somewhere between the range of exposure where the IBC is generally called into play and the range of disputes that are basically compromise oriented and involve limited value which can be resolved through Lok Adalats. The averages are based on the RBI aggregate and are only indicative because the aggregate does not provide information on the distribution of case sizes. RBI's note on the data is also clear that the amount recovered in a year may be linked to the cases referred in the previous year, making the recovery rate a flow ratio rather than the outcome of cases referred in a year. The data corroborates the assertion in the narrow sense of providing for a higher rate of recovery as compared to the adjudicatory DRT route. They do not, on the other hand, assess the expense incurred by the borrower, the number of misapplied or improperly applied enforcement actions, or the success or failure of the applications made pursuant to Section 17. That is a gap in the evidence, and, indeed, the assessment of a statute that empowers extra-judicial powers depends upon the facts of unlawful exercises of those powers.

7. Recent Judicial Developments, 2025–2026

7.1 The right of redemption under Section 13(8)

The most impactful recent ruling was given in M. Rajendran v. KPK Oils and Proteins India Pvt. Ltd. by Pardiwala and Mahadevan JJ. in September 2025. Prior to the amendment made in 2016, Section 13(8) enabled the borrower to pay the dues anytime before the date of the sale or transfer and courts based on Transfer of Property Act, 1882 took the view that right of redemption would

remain even after the date of sale or transfer was executed. When updated in 2016, it replaced the date of the notice for public auction with "when the notice was published. The Court said this was an intentional act of the Legislature to make the redemption period shorter, and that the right to redeem is lost upon adequate "publication" of the sale notice. It read “publication” in a mode-neutral way that is, the right to publish the composite notice of sale as prescribed in that form for the mode of sale was valid and ended when the notice of sale was published in newspapers and, in the case of a private treaty sale, served on the borrower and affixed on the property. The Court further disagreed with the interpretation that the Rules mandate two separate thirty-day notices, reasoning that Rules 8 and 9 envision a single composite notice and that the thirty-day embargo under Rule 9(1) begins at the time of the later of service, publication and affixation. It said that on confirmation of the sale, the auctioneer who had bought the property had an enforceable right to the property, consistent with its earlier finding in Celir LLP v. Bafna Motors, and a private settlement between the borrower and creditor could not overturn this. It applied the amended Section 13(8) to enforcement proceedings commenced after 1 September 2016, but commenced before that amend to the Act, taking the view that the Act was a remedial measure and that its procedural provisions were going to apply to future action in pending cause of action. The Bench also noted that the provision had not coincided with the Rules, and had generated a "continuous litany of litigation" in the DRTs and DRATs, and asked the Ministry of Finance to reconsider the provision. This is a significant case in which the Court has pointed to the bad drafting as a reason for institutional congestion.

7.2 Auction timelines and the incomplete sale

Two auctions of 2026 qualify the finality of auctions sales. In E. Muthurathinasabathy v. Sri International, decided on 1 April 2026, Supreme Court has refused to interfere with the High Court's decision to set aside an auction even after issuance of sale certificate where balance consideration was not paid within 180 days of auction; it was reported that the effect of the decision in this case would be that if the balance of consideration is not paid within 180 days from the auction, the auction would be set aside, and the property would be returned to the

borrower when the debt is discharged. In M. R. Vasumathi v. The Court set the time-limit for payment as mandatory and cancelled an auction sale which was completed in 2010 after five days of delay in payment of the balance consideration. When the separate questions are considered, these decisions will represent the Rajendran. The 2026 decisions set the bar high for the purchaser by holding that the conduct of sale must comply with the Rules and failure to perform does not vitiate the sale. Rajendran sets the bar low for the borrower by holding that the point at which the sale's finality is extinguished is when the sale is conducted in a valid manner. Together, they illustrate the Court's approach that the creditor's enforcement power is subject to the strictures of the statutory order, but also that the dispute can drag on for a long time, in one case more than sixteen years, with the attendant risk that it will impact the certainty that is the lifblood of auctions and lenders.

8. Critical Analysis

8.1 Structural asymmetry at the point of enforcement

The Act puts the power to classify the account, to serve the demand, to consider the borrower's representation and to start the process of placing the account in the creditor's hands in his possession. Section 13(3A) stipulates that reasons must be provided for the denial of a representation, but Section 17 does not provide grounds for challenging the provision of these reasons. Judicial review is thus postponed till the time of the exercise of Section 13(4) measure and the power of DRT to give back possession under Section 17(3) has to co-exist with Section 13(6) which puts the transferee in the shoes of an owner. As per the practical experience, the borrower who gets the benefit before the DRT after transferring the asset to a BFP might be limited to compensation as per Section 19. The Act is based on the concept that bank lending is a use of public funds and that the delay in its enforcement carries systemwide costs, which Mardia Chemicals has accepted. This is the basis for the existence of the enforcement power, but does not in itself justify all the procedural aspects of its exercise; the proportionality of the procedural aspects must be evaluated individually.

8.2 The pre-deposit requirement

The pre-deposit under Section 18 serves as a financial barrier for review by the appellate court. According to the statute, fifty per cent of the debt due as specified by the creditor or as assessed by the DRT, whichever is lower, shall be reduced with a minimum cut-off of twenty-five per cent reduction – the DRAT does not have the authority to waive the deposit completely [1, s. 18]. If applied to the derived average exposure of around ₹48 lakh per SARFAESI case, then the statutory rate means that the deposit of around ₹24 lakh would have to be made before the appeal can be heard and even if the maximum reduction is allowed, the deposit of at least ₹12 lakh would have to be made. The liquidity needed is significant for a borrower who has already forfeited the use of the property securing the loan. The argument in Mardia Chemicals centered on the arbitrariness of the condition of a deposit that precluded the remedy; the present scheme is more moderate as imposing the condition at the appellate, not the first-instance, stage of proceedings and allowing for partial reduction, but it leaves unanswered whether a strict threshold is proportionate. A graduated approach, which separates the truly disputed portion of the debt from the undisputed portion would follow the logic of that decision.

8.3 Institutional capacity and the doctrine of alternative remedy

However, the ability of the safeguards in the Act to work depends on the speed of the DRT, as Satyawati Tondon points out that as long as there are no exceptional cases, borrowers will be directed to the DRT. The law sets a disposal period of sixty days, may be extended for four months [1, s. The statutory period is often not adhered to as witnessed by the Supreme Court's comment in Rajendran that the interpretative uncertainty has choked the DRTs and DRATs and 17(5). The outcome is a paradox: the Act aims to prevent the delays of the civil courts but "transfers" the delays to the tribunals and the creditor can move for possession and sale in the meantime (without having secured a stay).

8.4 Legislative drafting and the cost of uncertainty

One big example of the lack of harmonisation is that amended Section 13(8) contradicted Rules 8 and 9. But this time the Supreme Court addressed the question by reading into the text the concept of "publication" in a mode-neutral way, and has explicitly asked the legislature to correct their interpretation. Both parties risk: The borrower has an unknown redemption period, while the creditor and the auction purchaser risk reopening. Clarification in the legislation would eliminate the disputes without any costs to the goal of the Act.

8.5 Relationship with the IBC and the question of efficiency

The RBI data indicate that the IBC has achieved higher recovery rate with a greater proportion of the total recovered amount. The SARFAESI Act still has a unique role to play. It has the second highest recovery rate of the channels, it is applicable to exposures that are well below the level at which it is economically viable to undertake a corporate insolvency process and it does not include a moratorium on the borrower's business. The two regimes are complementary; the Act is the main vehicle for secured lending of moderate size. This complementarity makes it even more critical that the procedural protections of the Act are sufficient since the borrowers targeted are likely to be the least able to take action against an institutional lender.

9. Recommendations

The analysis is backed by five reforms. First, the Parliament should rewrite together Section 13(8) and Rules 8 and 9 to define the event that will extinguish right of redemption for every mode of sale and to enact a single notice regime, such as to give statutory interpretation to the interpretation of the Rajendran so that the incidence of litigations on this issue decreases. Secondly, the pre-deposit under Section 18 should be re-stated as a graduated requirement allowing for a bank guarantee to be lodged by the DRAT (for reasons recorded) and permitting a lower level of pre-deposit to be made by micro and small borrowers while at the same time ensuring that the portion of the debt not contested is secured. Third, the capacity of the DRTs and DRATs to be strengthened should be augmented by filling vacancies, digitisation of filing or

listing and compliance with the sixty day and four months disposal time limit as provided in Section 17(5). Fourth, disaggregated information regarding the number of applications under Section 17, their outcomes, the time taken for disposal, and the percentage of enforcement actions that are defective should be reported by the RBI or the Ministry of Finance, as the current reporting of aggregated data allows recovery evaluation but not fairness. Fifth, the Section 13(3A) process should be enhanced to include a reasoned communication which specifically addresses the borrower's objections, and to offer a structured settlement prior to issuance of the sale notice

10. Conclusion

The main goal of the SARFAESI Act – the speedier and more efficient recovery mechanism compared to the adjudicatory process under the RDB Act – has been realised. It got recovered by ₹32,466 crores with a recovery rate of 31.5 per cent in 2024-25, and its contribution has been sustained over the past few years. Besides the validity of the DRT, which has been affirmed by the Supreme Court, it has corrected the most obvious constitutional objection raised in Mardia Chemicals, has given greater access to the borrower to the DRT in Hindon Forge, and has recently insisted on strict adherence to the statutory order of the sale. But the Act still shows a disparity in its structure. The initiation of enforcement is made by the creditor, judicial review is hindsight and is limited by the tribunals' capacity, the appeal is subject to a substantial deposit and the borrower's right of redemption is curtailed by a provision which the Supreme Court itself has labelled as 'defective'. A balanced assessment is that the Act is constitutionally viable and economically viable, but that it is fair only if legislative harmonisation, institutional strengthening and better information is available. The changes outlined above are designed to maintain the recovery aspect of the Act whilst providing for the extra-judicial powers it grants within the context of due and timely review on a proportional basis.

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