

## EMPOWERMENT OF BANKS UNDER THE SARFAESI ACT

Vikas Agarwal<sup>1</sup>, Dr. Shiv Prakash Singh<sup>2</sup>

1. Research Scholar, Faculty of Juridical Science, RAMA University, Kanpur, UP

2. Associate Professor, Faculty of Juridical Science, RAMA University, Kanpur, UP

### Abstract

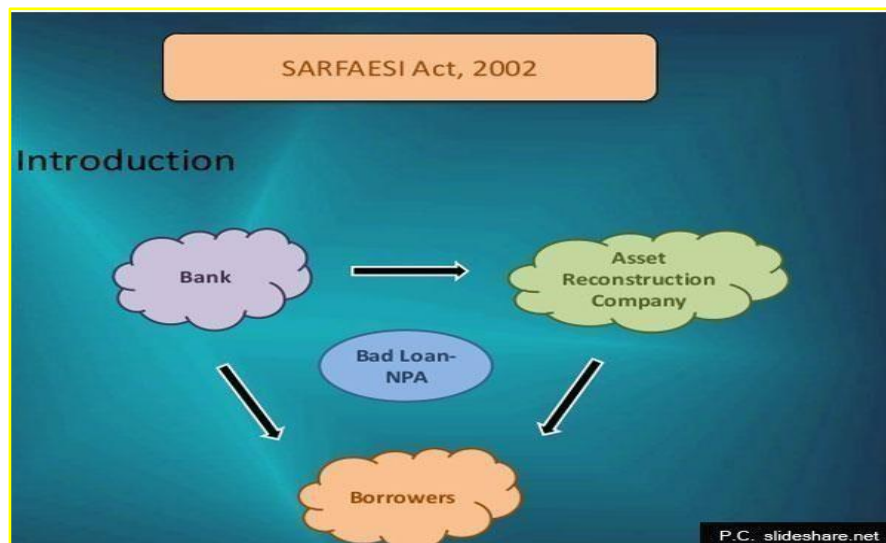
“Securitization And Reconstruction of Financial Assets and Enforcement of Security Interest Act” (SARFAESI ACT ) 2002 is the law's full name. In India, it gives banks and financial institutions the freedom to seize non -performing assets (NPAs), enforce their security interest in those assets, and sell those assets to pay off their debts all without the need for court innervation. The SARFAESI Act 2002 enables banks and other financial institutions to recoup loans from defaulting borrowers by selling commercial or residential assets at auction. Also, this regulation allows banks considerable control over NPA recovery and it has been proven to help banks fight the NPA menace. Banks can thus use recovery and rebuilding techniques to lower their nonperforming assets thanks to the SARFAESI Act, of 2002. This essay will look at the SARFAESI Act's 2002 benefits and drawbacks, How it has given banks more power, and how they are now handling their NPAs. It also examines the SARFAESI Act's 2002 current status and the role of the judiciary.

### Keywords

*Debt Recovery, Creditors Protection, Security Interest, Financial Intermediaries, NPAs, PSBs, Deliberate Default.*

## Introduction

A law provision or rule may have more than one meaning, similar to how a coin has two sides, and it is the responsibility of sovereign courts to determine the legislature's intended meaning. It is important to consider whether the SARFAESI Act of 2002 was strictly Pro-Creditor or whether the Debtor's privileges were also guaranteed and the legal analysis balanced the interests of both Creditors and Debtors because the Debtors initially viewed the law as being extremely demanding (Alamelumangai *et al*, 2019). The SARFAESI ACT of 2002's declaration of purposes and justifications provides clear evidence of the legislature's aim to give the creditor legal authority to assert an attractive insecurity. It is important to consider whether judicial rulings have an absolute Pro-Creditor interpretation or whether they have also protected the legal rights of borrowers. When it was implemented, the law was seen as severe by the debtors and labeled as completely ProCreditor. This issue is clarified by an in-depth review of the following crucial clauses, which grant the debtors both substantial and legal protections.



**Figure 1: SARFAESI Act, 2002**

(Source:Malek, 2022)

## Review of Literature

According to Savadi *et al*, (2019), any legal relationship is governed and changes as a result of precedent-setting judicial decisions as well as the applicable statutes. One of the main forces behind India's success in achieving rapid economic growth has been the financial sector. While the Indian banking industry is gradually adhering to international prudential standards and accounting practices, there are some areas where the banking and financial sectors do not compete on an equal footing with other participants in the global financial markets.

According to Malhotra, in the Indian banking industry, rising non-performing assets are spreading like cancer. This fatal illness has infected almost all banks in India. Although all of these laws attempted to recover the NPA, they were only partially successful. However, more research is

required to determine which recovery method has proven to be more effective than alternative methods. An analysis of the effectiveness of key recovery mechanisms in comparison to the SARFAESI Act 2002 has been attempted in his research paper.

The author Alias, (2020) researched in his journal that The SARFAESI Act, 2002 was passed to strengthen the lender's rights through the abandonment and implementation of securities by banks and financial institutions, by giving loan managers the option to hold onto the resource that is guaranteed and offer the equivalent to quickly recover the debts by avoiding the expensive and time-consuming legal process through courts. This study also suggests ways to strengthen the provisions in the current recovery laws for effective recovery.



**Figure 2: SARFAESI Act, 2002**

(Source: Alias, 2020)

According to the author Singh *et al*, (2020), the development and expansion of the nation's economy are dependent on banks. Bank quality and stability are significantly impacted by nonperforming assets (NPAs). The author's overarching goal was to conduct research to identify solutions to aid in the implementation of the SARFAESI Act 2002 and to suggest policies to ensure that the law is best suited for the general welfare of the people of this nation.

## Materials and Methodology

“In 2002, the Indian government passed the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act (Devi, 2021). It gives financial institutions like banks a legal framework for recovering non-performing assets (NPAs) by enforcing the security interest generated in favorable circumstances.”

“Here are a few insights about the SARFAESI Act:”

1. **“Applicability:** The SARFAESI Act covers secured creditors, such as banks and financial institutions, who have made loans backed by tangible assets like real estate, buildings, machinery, stocks or other immovable items.
2. **Applicable loans:** The Act covers loans that are categorized as non-performing assets (NPAs), or accounts where the borrower has missed payments for 90 days or more.
3. **Security Interest:** The Act permits lenders to execute their security interests without the need for a court or administrative agency by taking possession of, selling, or leasing the assets that serve as security (Pandey *et al*, 2020). After giving the borrower a notice, the Act grants this power.
4. **Notice:** Before pursuing any legal action under the Act, the secured creditor must send the borrower a demand notice u/s 13(2) of the Act requesting payment of the past-due debt within 60 days. The amount due, the default, and the intention to seize or sell the property must all be mentioned in the notice.

5. **Reaction to the notification:** The borrower is permitted to object to the notification sent

by the

must

request

due

within

receiving

6. **Security**

The

may seize the secured assets and sell or lease them if the borrower disregards the notice and fails to make good on the unpaid debt within the allotted time. You can accomplish this by adhering to the Act's specified procedures (Savadi, *et al*, 2019).

7. **Central Registry:** The SARFAESI Act also creates a Central Registry that is run by the

Central Registry of Securitization, Asset Reconstruction, and Security Interest of India (CERSAI), and it keeps track of all transactions involving securitization and asset reconstruction (Afaq *et al*, 2022).

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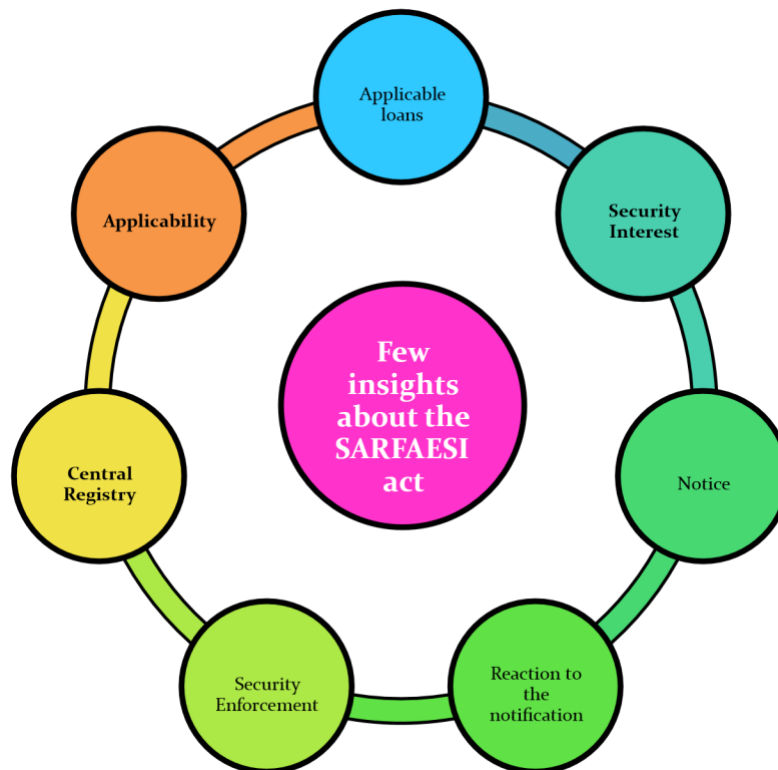
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it (Saini, 2019)'.  
**Enforcement:**

secured creditor



### Figure 3: Few insights about the SARFAESI act

(Source: Self-Created)

The SARFAESI Act 2002 is a complicated piece of legislation with numerous sections and formal requirements, it is crucial to remember that. It is advised to refer to the Act itself or legal experts familiar with Indian banking and finance regulations for extensive and particular information.”

## Results and Discussion

### The objective of the SARFAESI ACT, 2002

- 1. Securitization of the e financial Assets-:** The Securitization of Financial Assets Act (SFA) is a regulation that safeguards the movable or immovable assets used as security for debts paid to borrowers and releases those assets if the borrower is unwilling or unable to repay the loan in full.
- 2. Reconstruction of Financial Assets-:** The bank must properly manage the assets it has acquired, sell them, restructure its debt, and adhere to all RBI (Reserve Bank of India) regulations.



Figure 4: The objective of the SARFAESI ACT, 2002

(Source: Self-Created)

3. Secured Security

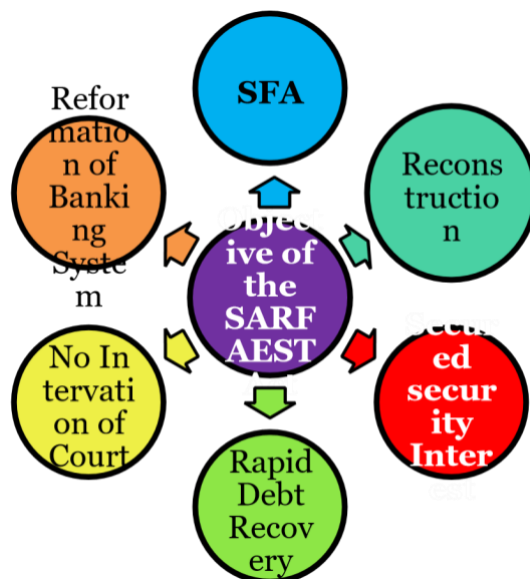
secured security, the one that the

4. Rapid Debt

Recovery is a law that assists banks and other financial institutions in settling NPAs or in selling or bidding on NPA-designated property (Mahato, 2022). The most crucial information in this article is that the bank must designate the property as an NPA property online and send the borrower a notification with a 60-day deadline if the borrower does not respond within that time.

5. **No Intervention of Court:** There won't be any court action, and the bank can successfully resolve the dispute without the court's involvement.

6. **Reformation of Banking System:** The act's primary goal was to regulate the banking industry, and one change it made was how debts were settled when borrowers had taken on debts they were unable or unwilling to repay.



of the SARFAESI ACT,

**Interest-:** A secured security interest is a creditor is fully aware of.

**Recovery:** Rapid Debt

**The substances of the SARFAESI ACT, 2002, SECTION 13, 13(2).21**

The secured creditor has the authority to give the borrower a possession notice under this provision of the SARFAESI Act following the passing of the 60-day window specified in the demand notice.

The borrower is informed by the possession notice that the secured creditor wants to seize the secured property.

The possession notice must include a breakdown of the borrower's obligations, including interest and other fees, as well as a deadline by which the borrower must relinquish control of the secured property. A minimum of 30 days from the date of the possession notice are given to the borrower for compliance.

The secured creditor may seize the secured assets if the borrower disregards the possession notice. The Act stipulates rules for taking and maintaining possession, ensuring that adequate precautions are taken to maintain and safeguard the assets' worth.

It's crucial to remember that the SARFAESI Act contains numerous other sections and provisions that describe the rights and obligations of both the secured creditor and the borrower in situations involving non-performing assets and the enforcement of security interests. This particular provision is just one of such sections and provisions.

### **The materials of the SARFAESI ACT, 2002, 13(3A)**

It is claimed that the SARFAESI statute of 2002 makes it very apparent that borrowers may give objections or representations to either a secured creditor or the AO, but only the AO may respond. Giving copies of the loan agreement to the bank manager, who is the secured creditor's representative, is not wrong because the loan agreement was signed between them, and the case is therefore void under section 13(3A).

If the Borrower gives notice under this paragraph after receiving an objection or objection, the Secured Creditor shall consider that notice or objection and if the Secured Creditor concludes that such notice or objection is not acceptable or sustainable. , within one week after receiving such notice or objection, he must inform the borrower of the reasons why the notice or objection was not accepted.

Provided that neither the reasons so presented nor the probable action of the secured creditor at the stage of giving reasons shall entitle the Borrower to prefer an application to a debt collection court under section 17 or to a district court judge under section 17A.

### **Conclusion and Future Scope**

**Problems with the SARFAESI Act:** According to the law commission, if cases are resolved quickly, the standard of fairness will suffer, resulting in errors in the court's ruling and a rise in appeals. Additionally, the RBI will begin to examine the ARCs, which will bring about a change

and a loss of autonomy (Thapaet *al*,2020). Due to this, the ARC's autonomy and the RBI's ability to obstruct its free operation will be lost.

**The Banking System Needs to Reform:** The difficulty in repaying loans made by the bank at the borrower's request necessitated the reform of the Indian banking system. Before this legislation, the bank had to settle the loan in court. To address the issue of debt recovery, the two FastTrack courts, DRT and DRAT, were established. If the borrower or the bank is dissatisfied with the court's decision, they may appeal to the DRAT court, which would take 180 days to resolve the case of recovery. As more cases were filed over time, the court was able to resolve them all in 180 days. For the debt to be paid back on time, the central government changed the procedure for collecting payment from the borrower so that the bank would have complete control (Debbarma, S., 2021). Two committees were set up by the central government to examine the need for the bank and how to quickly recover a loan. Following the declaration of the property, the bank will deduct the debt balance and the amount used for the auction before returning the remaining sum to the borrower.

**The Borrower's Rights under This Act:** The Borrower of a Loan or Debt has the Right to Provide the Amount of the Default before the Auction or Taking of Possession of the Security under the SARFAESI ACT. The borrower will receive compensation from the bank if the default was made by an officer or other person in charge of the bank. If the borrower has a complaint against the bank or another authorized authority, they may file it with the Debt Recovery Tribunal following Section 17 of the Act. These are some of the most crucial rights granted to the borrower because if power is concentrated in one hand, it may lead to arbitrary decisions that will harm the borrower.

## Recommendations

The amendment that was proposed in 2016 for the Debt Recovery Tribunal (DRT) and the SARFAESI Act has been put into effect. The NPA has decreased, dealing with the DRT is now done online, the RBI is given the authority to audit or inspect the ARCs, and the SARFAESI ACT's scope has been expanded by adding the hire, lease, and financial company. It also permits loan recovery within 30 days. If a debtor wants to appeal a DRT decision and is not happy with the outcome, they must first pay half of the total debt. The SARFAESI ACT increases the likelihood of recovering a loan and shortens the time that cases are pending. Doing this ensures that the cases are resolved quickly and with a minimum amount of pending time.

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