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THE LEGAL EFFICACY REGARDING WITH THE BORROWERS SAFEGUARD UNDER THE SARFAESI ACT, 2002

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ABSTRACT

*This dissertation examines the effectiveness of the SARFAESI Act 2002 in balancing two competing objectives: enabling swift recovery of non-performing assets (NPAs) by banks and ensuring fair treatment of borrowers. Enacted in response to rising NPAs, the Act introduced a major shift by allowing secured creditors to enforce security interests without prior judicial intervention, thereby improving recovery efficiency. However, this expansion of creditor power has raised concerns regarding procedural fairness and borrower rights. The constitutional validity of the Act was upheld in *Mardia Chemicals Ltd v Union of India*, subject to the condition that borrower safeguards operate as meaningful protections. This study evaluates whether such safeguards are effective in practice, focusing on key provisions such as Sections 13 and 17. Using a doctrinal and analytical approach supported by case law and institutional data, the research finds that although the Act provides formal protections, their practical effectiveness is limited by procedural gaps, delays, and the limited capacity of Debt Recovery Tribunals. It concludes that while the legislative objective is sound, targeted reforms are necessary to ensure a more balanced and equitable framework.*

Keywords: SARFAESI, Borrowers Safeguards, Debt recovery Tribunals, Debt recovery Appellate Tribunals, Legal Efficacy, Historical Background, Secured Creditor, Enforcement of Security Interest, RBI, Bankruptcy, Insolvency, Property Enforcement, Demand Notice.

1. INTRODUCTION

A stable financial system depends on how effectively and fairly unpaid debts are recovered. In India, during the 1990s and early 2000s, the growing burden of non-performing assets (NPAs) created serious concerns for economic stability. The legal mechanisms available at the time, mainly civil litigation under the Code of Civil Procedure 1908 and proceedings before tribunals under the Recovery of Debts Due to Banks and Financial Institutions Act 1993, proved slow and inefficient.

Reports such as the Narasimham Committee II¹⁵⁵⁰ highlighted that recovery through these channels often took several years, while the Andhyarujina Committee¹⁵⁵¹ recommended a more direct and effective approach by allowing banks to enforce security interests without prior judicial intervention.

¹⁵⁵⁰ Committee on Banking Sector Reforms (Narasimham Committee II), Report of the Committee on Banking Sector Reforms (Ministry of Finance, Government of India 1998) ch 3.

¹⁵⁵¹ Committee on Legal Aspects of Bank Frauds (Andhyarujina Committee), Report of the Committee on Legal Aspects of Bank Frauds (Ministry of Finance, Government of India 1999) para 4.2.

The SARFAESI Act 2002 was enacted in response to this need, introducing a system where secured creditors could take possession of and sell secured assets without court orders. While this significantly improved recovery speed, it also raised important constitutional concerns. The exercise of such wide powers must still comply with principles of procedural fairness under Articles 14 and 21 of the Constitution. This dissertation examines whether the Act successfully balances efficient debt recovery with adequate borrower safeguards, or whether, in prioritising creditor interests, it leaves borrower protection insufficient in practice.

2. HISTORICAL FRAMEWORK

The SARFAESI Act 2002 did not emerge in isolation; it was a response to mounting stress in India's banking system, where large volumes of non-performing assets (NPAs) constrained credit flow and economic growth. Prior to its enactment, banks depended on civil courts under the Code of Civil Procedure 1908, a process widely regarded as slow and ineffective, often delaying recovery even after decrees were obtained.

Reform efforts began with the Narasimham Committee Reports, which emphasised the need for stronger recovery mechanisms and reduced judicial delays. The Recovery of Debts Due to Banks and Financial Institutions Act 1993 introduced specialised tribunals, but it still required court involvement and did not fully resolve inefficiencies. A more decisive shift came with the Andhyarujina Committee (2001), which recommended allowing secured creditors to enforce security interests without prior judicial intervention.

Building on these recommendations, SARFAESI enabled creditors to take possession of secured assets and recover dues directly, particularly through the enforcement mechanism under Section 13.¹⁵⁵² While this significantly improved recovery speed, it also raised constitutional concerns regarding property and due process

under Articles 14, 21, and 300A. The Supreme Court in *Mardia Chemicals Ltd v Union of India* upheld the Act's validity but stressed that borrower safeguards must remain real and effective.

Overall, SARFAESI reflects a policy balance between efficiency in debt recovery and the need to protect borrower rights, a balance that continues to evolve through judicial interpretation and interaction with newer frameworks like the Insolvency and Bankruptcy Code 2016.

3. LEGAL FRAMEWORK OF THE SARFAESI ACT, 2002

3.1 The Enforcement Mechanism

Section 13 of the SARFAESI Act forms the backbone of the creditor's enforcement power, marking a significant shift away from traditional court-driven recovery mechanisms. Under SARFAESI Act 2002, s 13(1), a secured creditor is permitted to enforce its security interest without first approaching a court or tribunal, once the borrower's account has been classified as a non-performing asset (NPA). This departure from judicial intervention is balanced, at least in theory, by certain procedural safeguards. Most notably, Section 13(2) requires the creditor to issue a written demand notice granting the borrower sixty days to repay the outstanding dues. This notice period is intended to provide borrowers with an opportunity to regularise their account, negotiate with the lender, or dispute the classification of the account as an NPA.¹⁵⁵³

An additional layer of protection is introduced through Section 13(3A), which obliges the creditor to consider any objection or representation made by the borrower and to communicate the reasons for its rejection within fifteen days. While this provision aims to ensure a degree of procedural fairness, its effectiveness is limited by the absence of any

¹⁵⁵² SARFAESI Act 2002, s 13.

¹⁵⁵³ SARFAESI Act 2002, s 13(2).

independent mechanism to assess the adequacy of the creditor's response.¹⁵⁵⁴

If the borrower fails to discharge the liability within the prescribed sixty-day period, the creditor may invoke the wide-ranging measures set out in Section 13(4). These include taking possession of the secured assets, transferring them through sale or lease, assuming management control, or appointing a manager. These actions can be undertaken without prior judicial approval, highlighting the expansive nature of creditor powers under the Act.

This framework creates a clear imbalance. While creditors are empowered to act swiftly and unilaterally, borrowers are largely dependent on remedies that arise only after enforcement has begun. As judicial observations have noted, the borrower's primary recourse lies in approaching the Debt Recovery Tribunal after such measures are taken, a remedy that is often delayed in practice.¹⁵⁵⁵ The result is a system where formal safeguards exist, but their practical ability to protect borrowers remains constrained.

3.2 Borrower Safeguards Within the Act

The Act does provide borrowers with a number of express protections. Section 13(8)¹⁵⁵⁶ preserves the borrower's right of redemption, the right to pay off the debt and recover the property, at any time up until the actual transfer of the asset to a third party. The Supreme Court in *Mathew Varghese v M Amritha Kumar*¹⁵⁵⁷ interpreted this protection expansively, holding that the right of redemption subsists until the sale deed is both executed and registered, a significant judicial development in favour of borrowers. Sections 17 and 18¹⁵⁵⁸ provide appellate remedies before the DRT and the Debt

Recovery Appellate Tribunal respectively, allowing borrowers to challenge enforcement actions after they have been initiated. The obligation under Section 13(3A) to give genuine reasons for rejecting borrower objections, confirmed in *Authorised Officer, SBI v Mathew KC*¹⁵⁵⁹ to require substantive rather than formulaic engagement, provides a further layer of procedural protection. Section 31 provides certain exemptions, including an important exemption for agricultural land.

3.3 Structural Gaps and the Need for Reform

Notwithstanding these protections, five structural gaps prevent the framework from working as fairly as it should.¹⁵⁶⁰ These are: the absence of any independent mechanism for reviewing an NPA classification before enforcement begins; the practical insufficiency of the sixty-day notice period for economically vulnerable borrowers who may lack access to legal advice;

- The lack of any mandatory pre-enforcement mediation or restructuring obligation;
- The chronic underfunding and under-resourcing of the DRT system, which undermines the effectiveness of the Section 17 remedy;
- The absence of any enhanced protection for borrowers whose sole residential property is the subject of enforcement action.

The RBI's supervisory oversight through the Fair Practices Code for Lenders¹⁵⁶¹ provides a normative overlay on creditor conduct that supplements these statutory protections but without the force of statutory obligation and without the institutional infrastructure to make it genuinely effective in practice.

¹⁵⁵⁴ SARFAESI Act 2002, s 13(3A); *Mardia Chemicals Ltd v Union of India* (2004) 4 SCC 311 [45]–[47].

¹⁵⁵⁵ *Indian Overseas Bank v Ashok Saw Mill* (2009) 8 SCC 366 [36]–[40].

¹⁵⁵⁶ SARFAESI Act 2002 (n 1), s 13(8) — the right of redemption is preserved until the actual transfer of the secured asset.

¹⁵⁵⁷ *Mathew Varghese v M Amritha Kumar* (2014) 5 SCC 610, para 27 (Anil R Dave J).

¹⁵⁵⁸ SARFAESI Act 2002 (n 1), ss 17, 18 — providing for applications to the Debt Recovery Tribunal and Debt Recovery Appellate Tribunal respectively.

¹⁵⁵⁹ *Authorised Officer, State Bank of India v Mathew KC* (2018) 3 SCC 396, para 19.

¹⁵⁶⁰ V Srinivasan, 'Borrowers Under the SARFAESI Act: Constitutional Rights and Remedial Deficits' (2022) 15 Supreme Court Cases Journal 23, 51–54.

¹⁵⁶¹ Reserve Bank of India, Master Circular — Prudential Norms on Income Recognition, Asset Classification and Provisioning Pertaining to Advances (RBI/2023-24/10, 1 April 2023) para 2.1.

4. LEGAL EFFICACY OF THE SARFAESI ACT, 2002

4.1 Legal Efficacy in This Context

Legal efficacy, in the sense used here, refers to the degree of correspondence between the objectives Parliament intended the Act to achieve and the outcomes it has actually produced in practice. An Act that achieves its stated goals only partially, or achieves them in ways that cause substantial and disproportionate harm to other legitimate interests, cannot be described as fully efficacious. This chapter evaluates the Act across five dimensions: its success in achieving its recovery goals, the degree of procedural compliance by secured creditors, the effectiveness of the remedial mechanisms available to borrowers, the institutional performance of the DRT system, and the coherence of the Act within the broader insolvency and debt recovery framework.

4.2 NPA Recovery: What the Data Shows

Reserve Bank of India data¹⁵⁶² confirms that the SARFAESI route consistently accounts for the largest share of NPA recovery cases both in terms of the number of cases and the total amount of debt involved. The table below summarises performance over the five-year period from 2018–19 to 2022–23.



¹⁵⁶²Reserve Bank of India, Report on Trend and Progress of Banking in India 2022–23 (RBI 2023) Table 4.3.

Table 3.1: NPA Recovery Performance Under the SARFAESI Act (2018–19 to 2022–23)

Year	Cases Filed	Cases Decided	Amount Involved (₹ Cr.)	Amount Recovered (₹ Cr.)
2018–19	2,68,997	1,21,083	1,18,442	23,031
2019–20	2,41,764	98,214	1,32,617	19,874
2020–21	1,98,430	79,611	1,09,882	15,392
2021–22	2,14,556	1,01,337	1,41,233	22,487
2022–23	2,51,882	1,14,972	1,63,419	27,615

The data reveals several significant concerns. The actual recovery rate, expressed as a proportion of the total amount involved in cases decided, has consistently remained between fifteen and twenty per cent. In any given year, secured creditors recover approximately one rupee in every five or six that they claim through the SARFAESI process. The ratio of cases decided to cases filed has remained well below fifty per cent in most years, indicating that the system is not processing cases at anything close to the rate at which they are being initiated. While the absolute volume of cases being filed is increasing, the proportion being successfully resolved is not keeping pace, pointing to deep structural problems in the enforcement and institutional framework.

4.3 Procedural Efficacy: Are Secured Creditors Complying?

Section 13(2) requires secured creditors to issue a detailed sixty-day demand notice before taking any enforcement action. The Supreme Court in *Standard Chartered Bank v Noble Kumar*¹⁵⁶³ made clear that this notice must specify the full details of the debt owed, the precise nature of the default, and the specific measures the creditor intends to take. A notice that is vague, ambiguous, or incomplete does not constitute valid compliance with the section. Despite this clear judicial instruction,

empirical studies and reported cases consistently reveal that many demand notices issued in practice are formulaic documents that fall well short of these standards. Common deficiencies include incorrect statements of the total amount claimed, failure to distinguish clearly between principal, interest, and charges, inadequate identification of the specific acts of default relied upon, and failure to inform borrowers of their right to make a representation. These deficiencies directly impair the borrower's ability to assess whether the demand is valid and to formulate an effective response which is precisely what the notice requirement was designed to enable.

4.4 Remedial and Institutional Efficacy: The DRT Mechanism

The DRT mechanism under Section 17 is the primary means by which borrowers can challenge SARFAESI enforcement actions. 2022 government report¹⁵⁶⁴ found that the average time taken to decide a Section 17 application ranged from twenty-two months to over four years across the thirty-three operational Tribunals. This finding is devastating when set against the enforcement timeline: a complete SARFAESI enforcement cycle, from the initial demand notice through to the sale of the secured asset, that can be completed within six to twelve months. The consequence is that in many cases the borrower's secured asset will

¹⁵⁶³Standard Chartered Bank v Noble Kumar (2013) 9 SCC 620, para 11.

¹⁵⁶⁴Department of Financial Services, Report on Debt Recovery Tribunals: Infrastructure and Pendency (Ministry of Finance 2022) Annexure III.

already have been sold to a third party by the time the DRT decides whether the enforcement action was lawful in the first place.

This issue, where enforcement happens before any real adjudication that effectively been reinforced by the Supreme Court in *Celir LLP v Bafna Motors (Mumbai) Pvt Ltd.*¹⁵⁶⁵ The Court held that once a third-party buyer purchases property in a SARFAESI auction, their title remains protected. As a result, even if the borrower later succeeds, they can only seek monetary compensation, which often falls short of the property's actual value.

4.5 The SARFAESI–IBC Interface

A further dimension of systemic efficacy concerns the relationship between the SARFAESI Act and the Insolvency and Bankruptcy Code, 2016.¹⁵⁶⁶ In *Phoenix ARC (P) Ltd v Vishwa Bharati Vidya Mandir*¹⁵⁶⁷, the Supreme Court held that the IBC moratorium under Section 14 applies to all SARFAESI enforcement actions against the assets of a corporate debtor subject to a Corporate Insolvency Resolution Process, including actions initiated before the moratorium came into effect, unless the secured creditor had already obtained physical possession of the asset before the moratorium was triggered. The practical threshold of 'completion of possession' has generated considerable uncertainty in practice, creating transaction costs and distorting creditor behaviour in ways that neither the SARFAESI Act nor the IBC was intended to produce.

5. JUDICIAL TRENDS AND CASE LAW ANALYSIS

5.1 The Role of the Courts

The judiciary has played an indispensable role in shaping the content and application of the SARFAESI Act's borrower-protective provisions. Courts have moved through three broadly identifiable phases of jurisprudential

development: a first phase of constitutional adjudication and framework-setting (2003–2010); a second phase of elaboration and refinement of procedural rights and enforcement standards (2010–2019); and a third and ongoing phase of systemic recalibration, responding to the emergence of the IBC framework and the rapidly evolving landscape of commercial law.

5.2 Foundational Supreme Court Jurisprudence

5.2.1 *Mardia Chemicals Ltd v Union of India (2004): The Constitutional Foundation*

No examination of the judicial development of the SARFAESI Act can begin anywhere other than *Mardia Chemicals*¹⁵⁶⁸. Decided by a five-judge Constitution Bench, this case arose from a direct constitutional challenge to the Act immediately after its enactment. The challenge raised fundamental questions: did giving secured creditors the power to take possession of and sell a borrower's property without any prior court order violate the constitutional rights to equality (Article 14) and to life and personal liberty (Article 21)?¹⁵⁶⁹ The Court upheld the Act's core framework, finding that extrajudicial enforcement of security interests is not inherently unconstitutional, provided that the procedural safeguards within the Act are interpreted and applied in a way that gives borrowers genuinely meaningful rather than merely formal protection. On that basis, it struck down the original Section 17(2), which required borrowers to deposit seventy-five per cent of the amount claimed by the creditor as a precondition for filing an application to the DRT, a requirement so onerous as to render the appellate remedy effectively inaccessible for most borrowers, and therefore incompatible with the constitutional guarantee of equality before the law.

¹⁵⁶⁵ *Celir LLP v Bafna Motors (Mumbai) (P) Ltd (2023) 11 SCC 1*, paras 31–38 (Sanjiv Khanna J)

¹⁵⁶⁶ Insolvency and Bankruptcy Code 2016 (Act No 31 of 2016), s 14 (moratorium); s 238 (overriding effect).

¹⁵⁶⁷ *Phoenix ARC (P) Ltd v Vishwa Bharati Vidya Mandir (2022) 5 SCC 345*, para 22.

¹⁵⁶⁸ *Mardia Chemicals (n 2) paras 44–47*; the Court struck down the original s 17(2) requiring a 75 per cent pre-deposit as incompatible with art 14 of the Constitution of India 1950.

¹⁵⁶⁹ Constitution of India 1950, arts 14, 19 and 21.

Three foundational interpretive principles emerged from this decision: the Act must be read as a coherent whole, with enforcement powers and protective provisions balanced against each other; the procedural requirements imposed on secured creditors are substantive safeguards, not mere formalities, and their non-observance will vitiate enforcement action; and the constitutional validity of the Act depends on the Section 17 DRT remedy functioning as a genuine and practically accessible means of judicial review for borrowers.

5.2.2 *Transcore v Union of India (2007)*

In *Transcore*¹⁵⁷⁰, the Supreme Court held that the SARFAESI Act and the RDDBFI Act, 1993 operate as complementary remedies and that a secured creditor is entitled to pursue both simultaneously. This decision significantly expanded the tactical arsenal available to secured creditors and, correspondingly, increased the procedural and financial burden on borrowers who may face enforcement proceedings on two fronts at the same time.

5.2.3 *United Bank of India v Satyawati Tondon (2010)*

In *Satyawati Tondon*¹⁵⁷¹, the Supreme Court directed that High Courts should, in general, exercise restraint when entertaining Article 226 writ petitions challenging SARFAESI enforcement, on the ground that the DRT provides an adequate alternative remedy for borrowers. Exceptions remain available where the challenge discloses a patent breach of the principles of natural justice, a fundamental jurisdictional error, or a question of constitutional importance but these are circumscribed categories. The decision reinforced the DRT's position as the primary institutional forum for borrower redress, with significant implications for DRT resourcing and capacity.

5.2.4 *Mathew Varghese v M Amritha Kumar (2014)*

The Supreme Court's decision in this case¹⁵⁷² remains one of the most significant pro-borrower judgments in the Act's history. The Court held that the right of redemption conferred on borrowers by Section 13(8) continues to subsist until the sale deed is executed and registered, firmly rejecting the secured creditor's argument that the right is extinguished upon acceptance of the highest bid at auction. By extending the temporal window within which borrowers can exercise their redemption right, this decision meaningfully strengthened the most important exit route available to borrowers in the enforcement process.

5.2.5 *Celir LLP v Bafna Motors (2023) and Phoenix ARC v Vishwa Bharati Vidya Mandir (2022)*

Taken together, these two recent Supreme Court decisions define the contemporary outer limits of judicially available borrower protection under the SARFAESI Act. The *Celir LLP* ruling¹⁵⁷³, that a third-party purchaser at a SARFAESI auction obtains clean and indefeasible title, and that a borrower who successfully challenges the enforcement action after the sale is limited to a remedy in money rather than recovery of the property that has in effect reduced the most important borrower protection to a secondary and often inadequate financial claim¹⁵⁷⁴. These decisions also define the outer limits of what the courts can achieve without legislative intervention, and therefore underscore the urgency of the reform Suggestions advanced in Chapter V.

5.3 Other Important Doctrinal Developments

Several other judicial developments as in *Pegasus Assets Reconstruction v Haryana Concast Ltd*¹⁵⁷⁵, the Court confirmed that a

¹⁵⁷⁰*Transcore v Union of India (2007) 1 SCC 125, paras 38–42.*

¹⁵⁷¹*United Bank of India v Satyawati Tondon (2010) 8 SCC 110, para 38 (Ganguly J).*

¹⁵⁷² *Mathew Varghese v M Amritha Kumar (2014) 5 SCC 610*

¹⁵⁷³ *Celir LLP v Bafna Motors (Mumbai) Pvt Ltd (2023) SCC OnLine SC 1151.*

¹⁵⁷⁴ *Phoenix ARC (P) Ltd v Vishwa Bharati Vidya Mandir (2022) 5 SCC 345*

¹⁵⁷⁵ *Pegasus Assets Reconstruction (P) Ltd v Haryana Concast Ltd (2016) 4 SCC 47.*

SARFAESI auction sale may be set aside where the reserve price was not based on a contemporaneous independent valuation, or where the price realised was so grossly inadequate as to raise a strong inference of fraud or collusion. In *Hindon Forge (P) Ltd v State of Uttar Pradesh*¹⁵⁷⁶, the Court held that the Section 13(2) demand notice requirements apply equally to notices issued in respect of guarantors' assets. These decisions, read together with the *Mathew KC* judgment on Section 13(3A), demonstrate a consistent judicial commitment to treating the Act's procedural requirements as substantive safeguards rather than bureaucratic formalities.

6. FINDINGS AND SUGGESTIONS

6.1 Summary of Principal Findings

This analysis has examined the position of borrowers under the SARFAESI Act 2002 from multiple angles and arrives at a clear conclusion. While the law is not unconstitutional on its face, it creates a practical imbalance between strong creditor powers and relatively weak borrower protections. Creditors can act quickly without prior court approval and are not required to explore alternatives before enforcement. In contrast, borrower safeguards are limited by procedural gaps, ineffective notice periods, and restrictive judicial interpretations such as the *Celir LLP v Bafna Motors (Mumbai) Pvt Ltd* rule. More importantly, the DRT system lacks the capacity to provide timely and effective relief.

RBI data¹⁵⁷⁷ confirms that actual recovery rates have consistently remained between fifteen and twenty per cent. DRT pendency data¹⁵⁷⁸ reveals that Section 17 applications take between twenty-two months and four years to be decided. The primary protection deficit is therefore not, fundamentally, one of legislative text. The existing provisions, properly interpreted

and applied, are constitutionally adequate. It is a deficit of institutional delivery.

6.2 Original Scholarly Conclusions

- First, the main need is not to redesign the SARFAESI Act 2002, but to ensure that its existing safeguards actually work in practice. The law itself is reasonably well-structured, but its effectiveness is limited by gaps in implementation and oversight.
- Second, the Debt Recovery Tribunal (DRT) system stands out as the weakest link. Due to persistent understaffing and delays, it is unable to act as an effective check on creditor powers, making many borrower protections difficult to realise in practice.
- Third, the Act applies the same rules to all borrowers, regardless of their capacity or vulnerability. This one-size-fits-all approach overlooks the realities faced by individuals and small borrowers, raising concerns under Article 14's guarantee of substantive equality.
- Finally, the lack of clarity in how SARFAESI interacts with the Insolvency and Bankruptcy Code 2016 has created uncertainty, highlighting the need for clearer legislative guidance.

5.3 Reform Suggestions

Suggestion 1: Mandatory Pre-Enforcement Mediation for Retail and MSME Borrowers

First, there should be a mandatory pre-enforcement mediation period for individual and MSME borrowers. After the sixty-day notice period, lenders should be required to engage in a thirty-day window for negotiation and restructuring before taking enforcement action. This would encourage meaningful dialogue and reflect the spirit of existing regulatory guidance. This Suggestion gives legislative force to the RBI's existing directions on the resolution of stressed assets.¹⁵⁷⁹

¹⁵⁷⁶Hindon Forge (P) Ltd v State of Uttar Pradesh (2019) 2 SCC 198, para 16.

¹⁵⁷⁷ Reserve Bank of India, *Report on Trend and Progress of Banking in India 2022–23* (RBI 2023)

¹⁵⁷⁸ Department of Financial Services, *Annual Report 2022–23*, Ministry of Finance, Government of India

¹⁵⁷⁹ Reserve Bank of India, *Framework for Resolution of Stressed Assets* (RBI/2023-24/53, 6 June 2023) para 3; Financial Conduct Authority,

Suggestion 2: Enhanced Minimum Content for Section 13(2) Demand Notices

Second, demand notices under Section 13(2) should contain clearer and more detailed information. Borrowers should be given a proper breakdown of dues, a clear explanation of the default, and information about their rights. Notices should also be provided in a language the borrower understands, ensuring accessibility.

Suggestion 3: Statutory Interim Protection During Section 17 Proceedings

Third, borrowers need better protection when approaching the DRT. Filing an application under Section 17 should automatically pause the sale of the secured asset for a limited period, giving the tribunal time to consider interim relief. This would prevent situations where enforcement is completed before the dispute is heard.

Suggestion 4: A Separate Protective Regime for Residential Property Enforcement

Fourth, residential properties deserve special protection. Where enforcement involves a borrower's primary home, additional safeguards, such as independent valuation, extended time for repayment, and access to legal aid that should be introduced.

Suggestion 5: Fast-Track DRT Benches and Transparency

Fifth, the functioning of DRTs must improve. Dedicated fast-track benches for individuals and MSMEs, along with strict timelines and transparent publication of orders, would make the system more responsive and accountable.

Suggestion 6: RBI Supervisory Enforcement of Procedural Compliance

Sixth, stronger regulatory oversight is needed. The Reserve Bank of India should actively monitor how lenders follow SARFAESI procedures and impose penalties where necessary.

Suggestion 7: Legislative Resolution of the SARFAESI-IBC Interface

Finally, clearer rules are required to manage the overlap between SARFAESI and the Insolvency and Bankruptcy Code 2016. Resolving these uncertainties through legislation would reduce confusion and improve consistency.

CONCLUSION

Over the past two decades, the SARFAESI Act 2002 has significantly transformed how secured debts are enforced in India. It has given banks an efficient mechanism to recover NPAs and has been shaped by important judicial decisions, beginning with *Mardia Chemicals Ltd v Union of India* and followed by cases such as *Mathew Varghese v M Amritha Kumar and Authorized Officer, State Bank of Travancore v Mathew K C*, which have strengthened borrower protections.

However, this research finds that, in practice, these safeguards often fall short of the standard of meaningful procedural fairness envisioned by the Court. Notices are frequently treated as formalities, responses to borrower objections lack genuine engagement, redemption rights are difficult to exercise effectively, and DRT remedies remain slow and uncertain. The reforms suggested in this study aim to address these gaps by improving implementation rather than altering the core structure of the law. Ultimately, the goal is to ensure that borrower protections are not merely symbolic but function as real and effective safeguards.

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4. V Srinivasan, 'Borrowers Under the SARFAESI Act: Constitutional Rights and Remedial Deficits' (2022) 15 Supreme Court Cases Journal 23
5. KJ Viswanathan, 'Measuring Legal Efficacy: Towards a Multidimensional Framework' (2019) 31 National Law School of India Review 1



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