

A THESIS ENTITLED
**“SOCIO-ECONOMIC IMPACT OF DEBT
RECOVERY PROBLEMS”**

SUBMITTED TO
THE TILAK MAHARASHTRA VIDYAPEETH, PUNE

For the degree of
DOCTOR OF PHILOSOPHY
In the Subject: Management



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Principal

2018

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FORM B

DECLARATION BY THE STUDENT

I hereby declare that the work embodied in this thesis titled, “SOCIO-ECONOMIC IMPACT OF DEBT RECOVERY PROBLEMS” completed and written by me has not previously formed the basis for the award of any degree or other similar title of this or any other university or examining body.

Place: Pune

Shilpa Gajanan Talhar

Date: / /2018

Research Student

FORM C

CERTIFICATE

This is to certify that the thesis entitled, “SOCIO-ECONOMIC IMPACT OF DEBT RECOVERY PROBLEMS” which is submitted herewith for the award of DOCTOR OF PHILOSOPHY in Management of Tilak Maharashtra Vidyapeeth, Pune, is the result of original research work completed by Shilpa Gajanan Talhar under my supervision and guidance.

To the best of my knowledge and belief the work incorporated in this thesis has not formed the basis for the award of any degree or similar title of this or any other university or examination body.

Place: Pune

Dr. G. Y. Shitole

Date: / / 2018

Research Guide

ACKNOWLEDGEMENTS

I am highly indebted to my guide, Dr. G.Y. Shitole, former Head, Department of Commerce, S.N.D.T. Women's University, Mumbai and presently Principal of Balaji College of Arts, Commerce and Science College, Pune for his scholastic guidance and inspiration right from the selection of topic till the completion of this research work. His untiring efforts to gain knowledge inspired me much.

I offer my humble thanks to the authorities of the Tilak Maharashtra University Pune for allowing me to do research in the Management Faculty.

I am greatly indebted to Mr. N.C. Joshi (Nana) and Mrs. Mandakini Joshi founder Members of IBMR Wakad for allowing me to use necessary infrastructure of the institution for this work.

I shall be failing in my duties if I don't record my deepest sense of gratitude to Dr. Shriram Shimpi, director, IBMR, Pune, and the Staff members, Ashok Kumbhar and Dr. Rupali Kudre who helped me lot in the completion of this thesis. I am thankful to Professor Dr. Kaveri Lad (B.A.M.U. Aurangabad).

My thanks are also due to Dr. Brijesh of Indira Institute of Pune and Prof. Dr. Kanchan Patil of Symbiosis Institute of Management, Pune and Prof. Yogesh Raut of Sinhgad Institute of Management, Pune for necessary suggestions and guidance particularly in helping me to get necessary feedback from Internet.

I have high regards for Advocate Ajay G. Talhar, and Advocate Pramod Gaikwad, Aurangabad, Advocate U. R. Kulkarni, Jalna, Advocate Urma Fadiya,

Mumbai and many advocates from Mumbai and Aurangabad, Pune; for soliciting advice in respect of certain legal provisions and reported cases. My special thanks are due to Dr. Shamsuddinsaheb, Presiding Officer of DRT, Aurangabad and his staff members for giving me required information in respect of the working of DRT and DRAT and appeals to the higher courts.

I take this opportunity to express my thanks to all the experts and authors of the books whose references have been of immense help in my research. Once again I thank to all authorities and experts, who directly or indirectly helped me in completing this elephantine task in time, bound work.

I express my gratitude to my father Prin. Dr. G. M. Talhar, Ex-Dean of the Commerce and Management Faculty, Pune University, Pune, who inspired me to take up this research and select the subject.

Last but not the least the work could have been not completed if my family members and especially my Husband, Mr. Manish Linge, my brother Dr. Uday G. Talhar, Son Mr. Mihir Linge, Mr. Madhav Talhar and Adv. Tushar Daware for preparation of graphs and tables and sparing their time and allowed me to complete this mission.

Shilpa Gajanan Talhar

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ABBREVIATIONS

ADC	Access Deficit Charges
ADM	Application Development Management
ADR	American Depository Receipts
BFSI	Banking, Financial Services and Insurance
BI	Business Intelligence
BPO	Business Process Outsourcing
BSI	British Standards Institution
CADM	Custom Application Development and Maintenance
CSR	Corporate Social Responsibility
CAGR	Compounded Annual Growth Rate
CDMA	Code Development Multiple Access
CEO	Chief Executive Officer
CII	Confederation of Indian Industry
CIO	Chief Information Officer
CMM	Capability Maturity Model
CMMI	Capability Maturity Model Integration
COO	Chief Operating Officer
COPC	Customer Operation Performance Centre
ERM	Enterprise Resource Management

ERM	Enterprise Risk Management
ERP	Enterprise Resource Planning
GAAP	Generally Accepted Accounting Principles
HR	Human Resource
HRM	Human Resource Management
ICT	Information, Communication and technology
IDC	International Data Corporation
QMS	Quality Management Systems
SEZ	Special Economic Zone
SMB	Small and Medium Business
SME	Small and Medium Enterprise
SPV	Special Purpose Vehicle
STQC	Standardization, Testing and Quality Certification
TRIPS	Trade Related Intellectual Property Rights
TPSPs	Third Party service Providers
VCC	Venture Capital Company
VSAT	Very Small Aperture Terminals
VAT	Value Added Tax.
CV	Coefficient of variables
OD	Over Draft
CC	Cash Credit
OTS	One Time Settlement
RC	Reconstruction Company

SC	Supreme Court
HC	High Court
RDBI	Recovery of Debts Due To Banks
DCS	Direct Credit System
EMI	Equated Monthly Installment
WTA	Wealth Tax Act
RC	Recovery Cell
DRA	Debt Recovery Agent
ARC	Assets Reconstruction Company
SCB	State Commercial Bank
QIB	Quality Indian Bank
GNPA	General Non Performing Asset
NPA	Non Performing Asset
AIR	All India Law Reporter
RDBA	Recovery of Debt Due to Bank
DRT	Debt Recovery Tribunal
DRAT	Debt Recovery Appellate Tribunal
PMG	Project Management Group
ROE	Return Equity
RONW	Return on Net Worth
DER (D/E)	Debt Equity Ratio
R/R	Risk and Return
ROA	Return on Average Assets

EIR	Expenses to Income Ratio
CAR	Capital Adequacy Ratio
CAGR	Compound Annual Growth Ratio
ER	Efficiency Ratio
DA	Distress Asset
DT	Debt Tenor
SPV	Special Purpose Vehicle
SDR	Strategic Debt Reconstruction
ROA	Return on assets
ROE	Return on equity
PAT	Profit after tax
WOG	Write-off Growth
FSR	Financial Stability Report.

PREFACE

Performance of Financial Sector influences the entire economy of any country.

In India we have adopted the policy of the welfare state. It is therefore state is duty bound to do needful for welfare of the community. In view of this it is necessary to maintain sufficient flow of fund to finance various activities in the interest of the society. NPA implies Non Performing Assets. NPAs attack on the profitability of banks and therefore banks have to resort to the policy of safe lending. This results in the erosion of flow of fund in the market and affects the entire economy adversely. A large number of borrowers in India are in the state of default. Recently the RBI has released a “Strategic Debt Restructuring Scheme”, which is aimed at improving the working of banks grappling with defaulters. It has socioeconomic impact wide ranging in size anywhere from local effects on a small community to entire society. Ajay Shah in his article titled “Unbalanced Sheets” published in Indian Express (Issue dated 26th June 2015), puts that, ‘the machinery that kicks in upon default is quite messy. It destroys value on a large scale. The fear of messy defaults has restricted lending to only to low-risk companies and, thus, harmed access to credit’. He further states that, ‘A third of the corporate sector is facing balance sheet distress. This is feeding back into the system as difficulties for lenders. Some banks may be spending good money after bad, giving more loans to distressed companies to make it like things are fine. Naturally, this reduces credit availability for healthy companies. He observed, ‘many banks are also lending less due to concerns about their solvency and it too, reduces the credit that is available to healthy companies.’

It is reported that there exists about Rs.64,000 crore of bad loans by Indian Banks. It has become one of the biggest challenges for the present government to clean up the pile of bad loans of Indian banks. As have been reported, over 10 percent of outstanding loans (Rs. 3 lakh crore) have either turned bad or had to be restructure by the year 2015. It happened because, as have been revealed, banks issued guarantees worth Rs.3,000 crore against a collateral of just Rs.150 crore. According to RBI, companies use to divert working capital funds to wholly owned overseas subsidiaries as investment and loans. ANERNST & Young survey of Indian bankers in September 2015, revealed that at least 87 percent felt that diversion of funds to unrelated businesses through fraudulent means is one of the root cause of the bad loan crisis. RBI has reported the names of 10 companies who defrauded banks seeking “concerted “action against them.

According to the latest Financial Stability Report (FSR) “the banking stability indicator revealed, that risks to the banking sector increased since the publication of the previous FSR, mainly on account of deteriorating asset quality, lower soundness and sluggish profitability. During the period of March, 2015 and Sept.2015, Net NPAs as percentage to total net advances increased to 2.8 percent from 2.5 percent PSBs have shown the highest level of stressed assets (about 14.1 percent), as compared to the private sector (just 3.4 percent). This is not positive indicator, because on one hand growth is faltering and on the other side, the main financiers of a possible recovery are sinking deeper in trouble. It entails urgent action in respect of financial reforms.

The main thrust of the study has been, to examine Socio-Economic impact of Debt Recovery Problems in India in general and in the study area in particular.

Researcher has tried to examine problems leading to NPAs, its consequences on the society and effect on the working of banks. This study confines to the selected cases of DRT, DRAT Mumbai and Mumbai High Court and its Bench at Aurangabad in Maharashtra along with certain Apex Court's decisions. This study is of the exploratory nature and therefore multistage stratified sampling techniques have been used for the collection of data. The major shares of the cases are from Mumbai DRT, DRAT and Aurangabad DRT jurisdiction. Both direct and indirect methods of collection of data have been used. In view of the discussion as regards to the introduction of various issues related to the present study the breakup of the work is made into 5 chapters, which are as under:-

Chapter-I includes introduction of the subject-Significance, Conceptual Framework of Study. Under this caption various definitions and explanation of title concepts relating to loan, debt and other relevant terms have been dealt with Debt Recovery System in India. In this chapter discussion on the judicial system in India has been carried out followed by the historical perspective of the same. Socio-Economic Impact of Securitization Act in India followed by summary.

Chapter-II is a review that has been taken up on the subject matter and literature on judicial decisions, followed by the summary.

Chapter III is a Research Methodology, Scope of the Study-Hypothesis on data basis-Significance-Methodology of study-Need and sources of Primary and Secondary Data-Sampling Frame-Data Analysis (Tools used)-Summary.

Chapter-IV comprises, analysis of data and interpretation (results and discussion)

Chapter-V is a Summary of conclusions. Suggestion, recommendations and concluding remarks followed by Annexures and last but not least are the Bibliography.

Researcher feels that, this study is important in the present global scenario and the suggestions pin pointed in this study would be helpful to the banks, policy makers, social workers and researcher having interest in the financial matters and social cause.

Research student

CHAPTER I

INTRODUCTION

1.1 Introduction

At present Indian banking sector and especially financial sector is facing pressure of the increasing trend of NPAs of banks. It has badly affected the financial sector by providing limitations on banking industry in respect of financing various development projects. Financial sector worried of the unwholesome attitude of corporate sector which has duped banks by defaulting crores of rupees. King Fisher's Vijay Mallya ran away from India by defaulting crores of Rupees taken from Indian banks and investing the same in foreign countries. Presently Indian economy is facing number of problems due to demonetization and announcement of GST. It would be seen that RBI is taking various steps to come out of this troubled water by declaring cut in the rate of interest on saving and a middle class is facing due to fall in their investment which was their main source of income and particularly in respect income from interest on saving which is the main source of finance after retirement. It has a socioeconomic impact, wide ranging on a small community to entire society by way of loosing expected income on the bank saving, limiting bank' capacity to advance loan, erosion of band that could have been made available for financing trade and industries , loss of employment to closer of industries, creating political chaos .. Ajay Shah in his article titled "Unbalanced Sheets" published in Indian Express (Issue dated 26th June 2015)¹, puts that," the machinery that kicks in upon default is quite messy.

1. Shah Ajay, "Unbalanced Sheets" published in Indian Express (Issue dated 26th June 2015).

It destroys value on a large scale. The fear of messy defaults has restricted lending to only to low-risk companies and, thus, harmed access to credit. According to him, “a third of the corporate sector is facing balance sheet distress. This is feeding back into the system as difficulties for lenders. Some banks may be spending good money after bad, giving more loans to distressed companies to make it like things are fine.” Naturally, this reduces credit availability for the market.

When banks pull back from lending, it naturally hurts the macroeconomic situation; and it badly affects the lending capacity of banks. This situation hampers the flow of funds into the market. This erosion of funds hits the infrastructure sector badly creating hurdles in the economic development of the country. In the light of this scenario, the Reserve Bank of India, on 25th June 2015 warned the banks against the rising bad loans. It should be noted that some of the big business houses have put the financial sector in India in the grip of sorrow and political crisis. For example Mallya ran away from India to avoid payment of loan taken from many banks which run in crores of rupees. Along with this, our economy in general and financial institutions in particular is facing some unexpected shock due to demonetization and announcement of GST though these measures were necessary for financial reforms. Of course economy will take its time to absorb this shock However effect of all these is going to be on the society and financial sector for instance; on industrial growth, employment opportunities for the time being. In this context it will be worth to note that according to the RBI, under baseline PSU banks gross non-performing asset (NPA) ratio is likely to go up to 5.7 per cent by the end of March 2016 and further it likely to up to 7.0 per cent. Researcher feels that under such a situation

erosion of fund will result affecting the industrial development of the country and continued stress on asset quality of public sector banks and constant pressure on capital adequacy is a matter of increasing concern.

In view of above cited discussion, present study was considered important. Considering this study, objectives and hypotheses have been designed and presented.

Non-performing Assets are assets which do not earn income. All those assets which generate periodical income are called as Performing Assets (PA). Assets which do not generate periodical income are called as Non-performing Assets (NPA).

“In India, the time frame given for classifying the asset as NPAs is 180 days as compared to 45 days to 90 days of international norms”.² According to Kamath K.V. ,”in India, NPA were very high in the beginning of 90’s. Over a period of time there has been a considerable decline in the NPAs of all banks In the case of public sector banks, gross non-performing assets were 9.4 per cent in 2002-03 and it declined to 7.8 per cent in 2003-04. The net NPA during the same period declined from 4.5 percent to 3 percent and continued this trend up to 2009 and later on increasing trend.³”According to the recent report of the RBI, it jumped to 5.6 percent at the end of March 2015. It is also reported that it is likely to go up and it is going to affect the Indian economy adversely.

2. Tannon ‘s,” Banking law and practice 21st edition treaties, 2005”Wadhwa and Co. Nagpur.

3. Kamath K.V. “Poised for Greater Growth”, Business World, 4th Dec.2006.Banking Law and Practice, Treaties, 2005, Wadhwa and Co. Mahal, Nagpur.

“The history of the Indian Banking is associated with the launching of India’s freedom movement. Many domestic banks began their operations in the beginning of Twentieth century.⁴” Historical perspective has been taken up can substantiate this. “The financial reform initiated in the early 90’s made a paradigm shift in the Indian banking industry.”⁵ A new chapter in the life history of the Indian banking system started after the report of Narasimham Committee. The Committee put stress on efficiency and productivity of the Indian Banking and recommended the part of new private sector banks in the Industry. The Committee was of the view that the freedom of entry into the financial system be liberalized and RBI has to step in to permit the establishment of new banks in the private sector. The Committee was of the view that the freedom of entry into the financial system be liberalized and RBI has to step in to permit the establishment of new banks in the private sector.

The efficient financial services vis-à-vis banking services have been considered to be a key driver of business growth and profitability and the ability of the people to meet their needs for housing and other lifestyle aspirations. In view of this fact Government of India introduced various steps like reforms and legal enactments. Despite all these efforts the rate NPAs is showing increasing trend and it should be considered a note of caution for nation’s economy. Failure of Lehman Brothers Bank of America is the best lesson for our country. In Greece as is evident, NPAs had hit 40 percent of their portfolios in the year 2014 and it has forced Greece to

4. RBI, Directives (Classification of Assets) <https://www.rbi.org.in>

5. Indian Express, Nov. 24, 2015 news Report about Credit.

impose capital controls, requiring banks to set aside more provisions against the bad loans and constraining them from funding the economy.

1.2 Significance of the Study

It is said that the implementations of the Narasimham Committee's recommendations caused great strain on the efficiency, productivity and profitability of the banks in India. In view of the adoption of the policy of public welfare state, the elected government has to resort to various skills and decisions like that of financing of Govt. sponsored schemes such as IRDP, GRY, SSY, PMRY, IAS, insisting up on to provide 40 per cent of advances' quota to priority sector; such as Agriculture, Small Scale Industries, Retail Trade and such other schemes. Along with this the political decisions of the Govt. are responsible for transmitting wrong message to the society, that, loan taken are not meant for repayment. All these issues have adversely affected the efficiency of Financial Institutions and due to this the fates of crore of depositors have been put in dark. The recent failure of number of credit societies in Maharashtra and also Central Co-operative banks in Maharashtra are on oxygen and some have gone into liquidation. The deposits come from the society and it is the public money. No one has right to encroach upon the rights of this public money. The effect of increasing NPAs is glaring and the whole economy has to suffer. The scruples observed by the notorious defaulters have put the whole Indian economy to the test of survival. The researcher herein feels that this is a crucial issue and necessitates special attention to this issue. In view of this the researcher has been fully justified in selecting this vital issue for the research. Indian banking sector is facing a serious problem of NPAs. Bad loans ballooned 27 percent in this year. The extent of NPAs is comparatively higher in public sectors

banks and the total NPAs as on Sept.2015 amounts to 3.36 lakh crore. Already burdened by bad loans, 37 banks led by public sector ones have shown 26.8 per cent rise in NPAs. These are the banks having significant exposures to sectors such as steel, aviation, mining, infrastructure, real estate and as such having potential for employment. It is reported that as many as 299 mega projects involving an outlay of Rs. 18.13 lakh crore have been stalled with the Project Management Group till March 2015. Thus, it would be seen that NPAs have wide ranging socio economic effect on the country's economic development.

After considering the significance of the subject matter, it has been decided to discuss following issues which are of paramount importance from this studies point of view:

- Effect of growing NPAs on the credit capacity of Public-sector banks.
- Effect of provisions for NPAs out of the income earned by them out of the performing assets.

The term socioeconomics has been used as a term with different usages. Socio-economic study aims at the study of the social impact of some sort of economic change. Such social effects are wide ranging in size anywhere from local effects on small community to an entire society. Economic changes could be identified as, closing down of factory, market manipulation, signing of international trade treaties, change in laws, changes in the physical environment, ecological changes. All such changes are bound to affect patterns of consumption, the distribution of incomes and wealth and overall quality of life. Problem and the gravity of increasing trend of NPAs may put our economy in the gravity of socio economic problems. NPAs attack on the profitability of the banks resulting in the erosion of funds of banks to be

flowed into the market. This limits the funding for infrastructural development, paucity of funds for various government plans like road construction public spending on social-welfare activities like education, cultural activities, creating water resources, carrying on various schemes for the society like housing schemes, health care services, food guarantee schemes etc. In view of the above discussion this study has been considered significant in the present situation

1.3 Conceptual Framework of the Study

Transition of the Indian economy; as is evident has shown remarkable GDP growth rate from 4.4 percent to 6.00 percent by 2006-2007 and increased to 7.5 percent more recently in Sept.2015. The target of the eleventh five year plan has been 8.00 per cent and as our prime minister has declared; that even if GDP growth is aimed at 8-9 percent we can become superpower in the near future. However, now GDP is 7.4 percent and estimated to be 7.5 percent in the financial year 2017-18 according to our finance minister Arun Jetali. In view of the significant achievements, the Govt. of India has discontinued receiving aid from certain countries other than Japan, U.K., Germany, U.S.A. and Russia and have started making pre-payment of bilateral credit to these countries. The development of any nation rests upon the industrial and agricultural development. As has been stated by Paish,⁶ “finance is the lifeblood of Trade, Industry and Commerce”.

Financial Institutions are the veins of every economic activity. The financial service sector plays a crucial role in fulfilling the needs of the growing and increasingly diverse

6. Paish Opct. M.C.Shukla, “Business Organisation, Principles and Practices”, 1967.New Delhi.

economy, offering higher quality services to business and individuals. With the advent of the process of liberalization in the early nineties, the demand on banks' resources and capabilities increased as banks had to meet the challenges of being financial service provider in a globalized, competitive environment (RBI-2012:4). It is considered that the availability of efficient financial services vis-à-vis banking services is a key driver of business growth and profitability, and the ability of the people to meet their needs for housing and other lifestyle aspirations. It is a matter of prestige for India that we have successfully created world class financial institutions catering to the entire gamut of needs of households, business and agriculture. It is significant to note that the Indian Financial sector vis-à-vis Banking has shown growth in Consumer credit, building strong economic growth propelled by the Knowledge economy and favorable demographic profile with more than 70 per cent population being less than 35 years of age has spurred consumption demand. As have been put by Kamath K.V., in his article "Poised for Greater Growth" published in Business World (4th December 2006 issue): "Although banks have been serving this market; potential remains large." He further remarked that⁷, "With the income levels poised to improve further and favorable demographic profile ensuring that the large proportion of the population is in the economically active working age group, Consumer Finance will continue to grow in the coming years."

1.3.1 Concepts Relating to Banking activities and Prudential Norms

The efficient market theory is the much needed theory. According to this theory the value of firm depends on the long run performance and efficient share prices.

⁷. Ibid

“The ratios like return on net worth (RONW); return on equity (ROE) Debt –Equity ratio (D/E ratio) defines the long run performance of the company.”(Risk and Return in Banking Industry in India: (Concept and Measurement, by. Bhanumurthy K.V and Gupta Lovleen.⁸(The Indian Journal of Commerce Vol.68, No.2, April-June 2015.) Banks required a balance between the liquid and non-liquid components of its asset. Therefore banks have to be careful about the margin of solvency through liquid assets for their survival. Absence of liquidity means instability of banks. Thus, banks have to maintain proper balance between liquid assets and non-liquid assets⁹. In view of the situation that has been created by the liberalization, privatization and globalization and changing international scenario Indian Banking sector has been compelled to adhere to the strict prudential norms. “The prudential norms relate to income recognition, asset classification and making provision for non-performing assets and do not recognize income on such non-performing assets and create provision against such assets out of profits. Basal Norms provide an additional coverage against the non-performing loans by giving it a weight according to the risk involved therein. Simultaneously banks have to play a crucial role in our economy by floating funds for the economic and social built up of the country¹⁰.”

1.3.2 Concept Relating to NPA as a Socio-Economic Problem

8. Bhanumurthy K.V. and Lovlen Gupta. “Risk and Return in Banking Industry in India”:Concept and Management. The Indian Journal of Commerce. April-June 2015.

9. RBI Directives (RBI Bulletin). 2010.

10.Mishra and Ajay Singh Yadav, “A Comparative Study of Financial Performance of SBI and ICICI Bank.”The Indian Journal of Commerce. April-June 2015.Vol.68 No.2.

As per RBI directives,¹¹ “an asset account (term loan / cash credit / overdraft / bills purchase or discount) is classified as Non-Performing Asset (NPA) if it remains irregular or out of order for a period of one quarter or 90 days. The prescribed period is one quarter or 90 days since 01-04-2004 as against two quarters prior to 01-04-2004. Major impact and effect of NPAs would be: NPA don’t generate income; they require provisions, resulting in further erosion of profits substantially; they enhance administrative, legal and recovery costs; borrowed sources are locked in NPA whereas the banks have to pay the cost of outlay of these funds, resulting in negative spread; the cost of poor quality loans is shifted to bank customers through higher interest rate on advances.”

Studies have revealed that one of the main causes of NPA in banking sector is considered the direct credit system (DCS) under which commercial banks are directed to provide at least their yearly advance quota to private sector viz. agriculture, Small scale industries and other segments such as small business, retail trade, construction of small roads and water transport operations, professional and self-employed persons and educational loans. When NPAs occurs; to that extent bank has to suffer and conversely society suffers, since it leads to delay and denial of credit resulting in low off-take of lendable funds. According to P. Mishra & Yadav Ajay Sing, “Such socioeconomic impact can be wide-ranging in size, anywhere from local effects on a small community to change on entire society”.

In this chapter an attempt has been made to explain various key words which have been commonly used in this thesis.

¹¹. RBI Directives. (RBI Bulletin 2010).

¹³ Mishra etl.The Indian Journal of Com.April June 2015, Vol.68 No.2.

1.3.3 Concepts Relating to Non-Performing Assets and Definition of

Related Terms

Meaning of Non-Performing Assets:

“The banking sector in our country is challenged by the problem of increasing Non-performing Assets¹²”. The NPA of Public Sector Banks (PSB) has increased 30.1 percent to Rs. 57301 Crore in 2009-10 from Rs 44039 crore in 2008-09 (Unni Mukund P, Feb. 2011)¹³. According to Unny Mukund P, “despite the existence of various methods for debt recovery NPAs have been shooting up. As today Indian banks and financial institutions hold Non-performing Assets worth Rs. 130000 crore.”

NPAs are also called non-performing loan, are loans, made by a bank or finance company, on which repayments or interest payments are not being made on time. According to RBI Directives, “A loan is an asset for a bank as the interest payments and the repayment of the principal create a stream of cash flows. It is from the interest payments than a bank makes its profits. When payments are late for a short time a loan is classified as past due and when payment becomes late (usually 90 days) loan is classified as Non-performing.¹⁴”

¹².Unni Krishnan Mukund P. Centre for Public Policy Research.www.cprr.in

¹³. Ibid.

¹⁴. RBI Directives (RBI Bulletin). 2010-11.

Prof. Khan M.Y.¹⁵ (2007) has classified the type of Non-Performing Assets as, standard, sub-standard, doubtful and loss as ,”Standard Assets, Doubtfull Assets, Loss Assets.”

Standard Assets: “These are assts on which banks receive the principal and interest repayment, systematically from the borrower. Another aspect according to him is that the arrears of the principal as well as interest does not surpass more than 90 days on closing of the financial year. Sub-Standard assets according to him is an asset which has remained an NPAs for a period of less than or equal to 12 months.”¹⁶

“**Doubtful Asset** is one which has remained as NPA for a period exceeding 12 months¹⁷. A loan classified as doubtful has all weaknesses of sub-standard assets.¹⁷

Loss Asset is defined as one where loss has been identified by the bank or its internal or external auditors, or by the RBI inspection and written off wholly.

Financial ratios are indicative of the trends in the banking sector as a whole or in specific segments and to carry out a systematic analysis.

It is also used for performing stress testing and scenario analysis. E.g. ROA, Net NPAs to net advances, E/I Ratio, CAR, earning per share and profit per employee, AGR, CAGR.

Return on average assets (ROA) means the ratio of profits after tax to average asset. It refits the efficiency which with bank deploy their assets. In short ROA indicates the ability of

¹⁵.Khan M.Y. “Indian Financial System”, 2nd ed.Tata McGraw-Hill, New Delhi.

¹⁶.RBI(2012), Report on “Trend and Progress of Banking in India”, 2011-12,RBI (Mumbai).

management of the financial institutions to acquire deposits at a reasonable cost and invest them in the profitable.

Expenses to Income Ratio (EIR): This ratio is computed to measure the income generated by the banks per rupee cost indicating the expenses by the bank to produce the unit of output. In view of this every financial institute of bank should try to have lower rate of IAR.

Capital Adequacy Ratio (CAR). This ratio shows the bank's financial health and soundness of the financial institutions. This ratio is provided by equity plus reserves over total assets. Thus CAR is the mirror of the strength if bank, showing its ability to sustain during the period of crisis. This ratio shows the banks performance in respect of extension of branches lending in high risk, man power recruitment and diversification through subsidiary or through success of branches. RBI issued directive in the year 1992, requiring each bank in India to have CAR of 8 percent earnings per share and Profit per employee. This ratio shows operating performance of the bank if AGR is positive then it means total number of banks is increasing.

Annual Growth Rate (AGR) is used to analyze the growth rate the trades in banking business profitability if AGR is negative it means there is negative growth rate for bank.

Compound Annual Growth Rate (CAGR) this ratio depicts trends in banking business profitability. In short it shows the performance of bank in terms of net profit.

Net NPA and Net Advances: Net NPA to Net Advances ratio is supposed to be a key indicator to represent the performance of bank as regards to the control of NPA. "Success of bank depends upon the method of management and keeping them within tolerance level. NPA is a disorder resulting in non-performance of portion of loan portfolio leading to no recovery or less

recovery/ income to the lender. NPA represents the quantified “Credit Risk” (Mishra P. and Yadav Ajay Singh)¹⁷.” It also plays havoc on the mental makeup of the banker wherein the banker tries to go slow on lending fearing NPAs; it may lead to delay and denial of credit resulting in low off-take of lending funds. It is supposed to be an inevitable burden on the banking industries (Mishra P. and Yadav Ajay Singh).¹⁸

Efficiency Ratio: The significance of Off-balance sheet item is shown through efficiency ratio and is represented as,

$$ER = \frac{\text{Output}}{\text{Input}}$$

“The Off balance sheet items do not appear on the balance sheet until the contingency is realized. E.g. issuing stand by guarantees on behalf of constituents in India and outside India, expecting obligations in the form of acceptances, endorsements in the form of letters of credits and bills accepted by the bank on the behalf of its costumers’ liability on account of outstanding forward exchange contracts and other items like bills rediscounted, etc. (Bhanumurthy K.V. and Gupta Lovlen).¹⁹”

17. Mishra P and Yadav Ajay Singh, “A Comparative Study of Financial Performance of SBI and ICICI Bank. The Indian Journal of Commerce. April-June 2015. Vol.68 No.2.

¹⁸.Ibid.

19. BhanumurthyK.V, and Gupta Lovlen.,“Risk &Return” in Banking Industry in India :Concept and Management. The Indian Journalof Commerce. April-June 2015.

1.3.4 General Concepts Relating to the Problem of Distressed Assets

“The term, ‘distressed’ implies a summary remedy by which a person is entitled, without legal process to take up into his possession the personal chattels of another person, to be held as a pledge to compel the performance of duty, or the satisfaction of a debt or demand. By almost universal sanction, the term ‘distress’ is now used to designate both the process of taking, and the chattels taken , though originally it applied only to the taking.(Advanced Law Lexicon, by Aiyer Ramnath 3rd ed.2005.General editor, Justice Y. C. Chandrachud,²⁰” Former Chief Justice of India,1439. According to Financial Times’, Lexicon²¹ “an asset, that is put on sale, usually at a cheap price, because its owner is forced to sell it (Lexicon.ft.com.)A distressed asset is an asset that is being sold because its owner is forced to sell it. To simplify it, when loan becomes overdue and debtor finds it difficult to meet or repay it in time, the debtor to keep his social image he tries to dispose of such asset at a price whatever it may fetch. It is because when purchaser or buyer smells that a fellow is under pressure to sell the asset has no bargaining capacity, the buyer bargain for lower price.”

The pledged asset when become ‘Distressed assets’, is usually sold out for below their expected value due to the fact that, the owner is being forced to sell. When debtor is under pressure to sell his assets, buyers realizing his inability to bargain, try to put the debtor under pressure to sell it at throwaway price. Such asset is called Stressed Asset .Such a situation arises in bankruptcy at the time of insolvency.

²⁰.Advanced Law Lexicon, by Ramnath Aiyar 3rdedd.2005.General editor, Justice Y.C. Chandrachud, Former Chief Justice of India,1439.

²¹.Financial Times’, Lexicon.

“**Distressed asset** means an asset, generally a security or real property that features a sharply reduced value as a result of actual or potential losses created by an excess of CREDIT RISK, MARKET RISK, or LIQUIDITY RISK. Securities, LOANS, or MORTGAGES of obligors that are at high risk of DEFAULT and those that contain significant amounts of LEVERAGE or ILLIQUIDITY may trade at deep discounts that are Characteristics of distressed assets. VULTURE FUNDS and other sophisticated institutional investors periodically invest in such assets.” (FIRE SALE. Law Dictionary: What is DISTRESSED ASSET? Definition of DISTRESSED ASSET (Black's Law Dictionary).It simply means such asset dose not fetch competitive price since in market it is supposed an asset whose owner has lost creditworthiness and is supposed to have lost or no bargaining power.

Stressed Asset is defined as an account wherein principle and \or interest remains overdue for more than 30 days. Really to say it is that asset which has been pledged but due to certain circumstances debtor may be not in position to make timely payment or discharge his responsibility .Such assets may become Paying Asset in due course.

Debt - Refers to a sum of money owed by one person or entity (debtor) to another person or entity (creditor). Thus there are two parties to a debt-debtor who receives money by way of a debt; and creditor who lends money to the debtor. **Debtor**²² includes his heir, legal representatives’ assignees also debtor governed by Mohammedam Law (Kaliyamal Vs.Raghurama Gounder. AIR 1989 Mad. HC. 288,297 (FB) Tamil Nadu Debt Relief Act (38 of 1972), S.2 (3)“Debtor”, means any person from whom any debt is due. T.N.D.R. Act (40 of

²².T.N.D.R. Act (40 of 1979), Sec.3 (3), referred in the case M. N. Abdul Ramoof Vs. Pichamuthu (2000) Sec. 2 Para 4: AIR 2000SC.124.

1979), Sec.3 (3), referred in the case M.N. Abdul Ramoof Vs. Pichamuthu (2000) SCC 2 Para 4: AIR 2000SC.124.The term Debt has been defined by the Hon. Kerala High Court in the matter of Green hills P. Ltd. Vs Coffee Board as, a sum of money which is now payable or will become payable in future by reason of present obligation. The existing obligation to pay a sum of money is the *sine qua non* of debt (Green hills P. Ltd. Vs Coffee Board, 2001 106 Com cases 391, P403, Kant Companies Act, 1956, S.433).²³

Debt includes, claims by banks and Financial Institutions (Unique Btyle Tube Industries(P) Ltd.Vs.V.P.Financial Corp.Ltd.,2003 113 com.cases 374 (SC.))²⁴

“The term Debt has to be given the ordinary condition of loan which, commonly understood, is an advance of money or is kind at interest. The normal connotation of the word ‘debt’, dosenot include a claim for damages but a liqidated money demand.(Mohhamad Hasan Khan Vs. Ahemad Aiz Khan,AIR 1957 Nag H.97, 100.[M.P. Abolition of Proprietary Rights.(Estate, Mhals, Alinated lands) Act(1 f 1955), S.43.²⁵

According to The Wealth Tax Act (27 of 1957) S.2(m), Debt means’ a certain sum due from one person to another either by record under a speciality or deed or under simple contract by writing or oral.(Commissioner of Wealth Tax Vs.Ahemad Tea Co.AIR 1967 Ass 63,65.)²⁶

²³.Green hills Pvt.Ltd. Vs Coffee Board, 2001 106 Com cases 391,P403,Kant Companies Act,1956,S.433.

²⁴.Unique Btyle Tube Industries(P) Ltd.Vs.V.P.Financial Corporation.Ltd.,2003, 113 com.cases 374 (SC.).

²⁵.Mohhamad Hasan Khan Vs. Ahemad Aiz Khan,AIR 1957 Nag H.97, 100.[M.P. Abolition of Proprietary Rights.(Estate, Mhals, Alinated lands) Act (1 f 1955).

²⁶. Commissioner of Wealth Tax Vs.Ahemad Tea Co.AIR 1967 Ass 63,65.

A liability depending upon a contingency is not a 'debt' unless contingency has happened. (Commissioner of Income Tax Vs. Lukas T.V.S. Ltd.,2001,10 of SC c.544 para 4.²⁷

The Consideration which remains unpaid in respect of assets purchased by assessee (Comm.of Wealth Tax ActMadras Vs.Spancer &Co.Ltd.AIR 1973 SC.2376,2377.)²⁸is debt.

“A Debt is one which can be ascertained or readily calculable amount.” (Com. of W.T. Vs.Harison & Crossfield Ltd.).AIR 1965 Ker.H. 209.²⁹

Debt owing and debt due :-“Debt is applicable to a sum of money which has been promised at a future debt as to a sum now due and payable. (Union of India Vs.Raman Iron Foundry,AIR 1974. SC. 1265.)³⁰”

Debt Payable: “This term has two meanings; one being owing and another is payable at a particular point of time,and when this expression is used without any qualification it generally Means payable atonce.” (S.P.L Narayan Chettiyar Vs. M.H.R. Annamalai Chettiyar, AIR1961Mad. H.313,31.³¹

Thus,from the verdict of verious High Courts and the Apex Court's it appears that the term has been defined considering each and every aspect connected to the word debt and it could

²⁷. Commissioner of Income Tax Vs .Lukas T.V.S. Ltd.,2001,10 of SC c.544 para 4.

²⁸.Comm.of Wealth Tax ActMadras Vs.Spancer and Company Ltd.AIR 1973 SC.2376,2377.

²⁹.Com. of W.T. Vs.Harison & Crossfield Ltd.).AIR 1965 Ker.H. 209.

³⁰.Union of India Vs.Raman Iron Foundry,AIR 1974. SC. 1265.43.

³¹.NarayanChettiyarVs.M.H.R.AnnamalaiChettiyar., AIR1961Mad.H.313,315.

be concluded that,debt is a sum payable agaist the loan or borrowing or due to certain obligation to pay at some future fix date and no ambiguity is there in this regard.

1.4 Recovery of Debt (meaning)

Recovery of debt implies, “collection of recovery of money from the debtor by, or on behalf of the creditor, after it has become due for payment in accordance with the debt terms agreed between the creditor and the debtor.’³²

1.4.1 Method of Recovery of Dues

Whenever money is lent it is done so with the expectation that it will be returned back. Of course like other lenders banker also resort to the same expectation and it is the common prevailing practice.

Whenever a loan account becomes 'overdue' as per the due dates specified in the agreement, the bank will adopt necessary measures to recover it invoking provisions of Sec.17 if aggrieved by any of the measures in sub-section 4 of section 13. In this process, banks have the right to file a suit with the debt recovery tribunal and possess the security, in case the situation demands it!

Default cases are handled by the collection department of the bank who entrust agencies with the task. Loan recovery process is just like any other job in which targets are set and incentives are paid!

³².Shankar K.(1977), Planning for Capital adequacy in public sector Banks,The Management Accountant,32(2),100-104.

1.5 Borrower's rights in the eyes of law

All borrowers are provided the opportunity and have a right to approach the bank if there is any difficulty in paying installments and to choose an option to restructure their debt to enable a smooth repayment process.

Preliminary notices are sent to the borrower mentioning the over dues with interests and penal interests. If the bank has reason to believe that the customer is willfully delaying the repayment, or if the customer has not come forward with a definite plan of action to repay the dues, the bank can opt for legal proceedings. If there is a guarantor, the bank might approach him, as according to the guarantor agreement he is supposed to pay the loan when the applicant defaults.

The follow up from the bank will start as soon as a single repayment is broken. But further proceedings depend upon the customer's approach to the issue and his current circumstances. The legal procedures will definitely not emerge out of the blue; it is a process resorted to if initial measures do not yield results.

Under certain circumstances like death, ill-health or accidents that can unintentionally break the repayments. In such cases banks will give justifiable relief to the customer (Debtor, borrower) or his/her family.

The Reserve Bank of India's guidelines says banks should give reasonable time to pay up and also forbids using 'muscle power' to recover loans. There is a laid down code of conduct which banks need to adhere.

Collection efforts, lawsuits and subsequent hearings may require the lender a legal representation to pursue. The borrower has an opportunity to approach a lawyer with full details especially if he/she feels that there is justice in his side or injustice from the bank.

In the case of a home loan, the lender who receives the liens can seize the property legally and liquidate it to recover the debt. A legal solution sometimes takes years. Also as property prices vary with time there are chances for delaying the liquidation or the borrower could delay their eviction from the house with justifiable reasons.

In the case of auto loans, the bank informs the police before seizing the vehicle and in cases where they do not find the vehicle; they seek police assistance to locate it. Banks registers seized vehicles in their name to avoid disputes. In case of unsecured loans like personal loans, the banks file civil or criminal suits against the borrower for cheque dishonor. Compared to a home loan, action is quick for other loans.

Of course it is a challenge to put the whole process of loan recovery and holiday periods in a formal framework due to its delicate nature. It will always involve some element of pressure and coercion and the borrower is liable for the debt as well as the collection and legal costs incurred by the bank for its recovery.

There have been many instances of ill-treatments faced by the borrower from debt recovery agents. RBI guidelines strictly protect the interest of the borrower and any unethical practices by recovery agents. It is also mandatory to complete a certificate course and training from the Indian Institute of Banking and Finance (IIBF) to be employed as a loan recovery agent. Consumers can take action against banks if agents harass them (case of ICICI Bank).

“Any kind of loan agreement is a legal contract under the Contract Act. Therefore if the borrower fails to repay, lender can resort to the legal means, though an exact period for an official declaration of a 'default' and related proceedings varies from case to case. Consumers (borrower/debtor) always have the right to raise their voice against any unethical practices or insufficient time provided.³³”

1.5.1 Methods of recovery of debts

There are following two methods of recovery loans.

- 1) Bank’s own machinery namely ‘taking recourse of legal measures and or by recovery cell and or through the recovery agents.
- 2) Through The Asset Reconstruction Company.³⁴

Many a times bank establishes its own machinery by creating a special cell as ‘Recovery Cell’ to deal with the recovery matters. However finding it difficult to concentrate on loan recovery matters, work is assigned to the agents specialized in this matter.

1.5.2 Appointment of Asset Reconstruction Company. U/s. sub section (2), (3), (4), (5), (6) of Section 3 of the Securitization Act (Chapter II of the Act)

Any Shareholder who holds 1percent or more of the equity capital of an ARC is considered the sponsored of such company; in terms of SARFAESI Act³⁵. The ARC team

³³.BankBazaar.com - an online marketplace for your personal [loan](#) and home loan needs.

³⁴. Ibid.

comprises of selected brand of professionals armed with specialized skill and banking background and experts in their respective fields.

The business model is designed for the recovery of NPAs because NPA unclogs the processing pipeline making room for new business and it safeguards value erosion. ARC has setup a trust for acquiring NPAs on the Books of Banks / Financial Institutions.

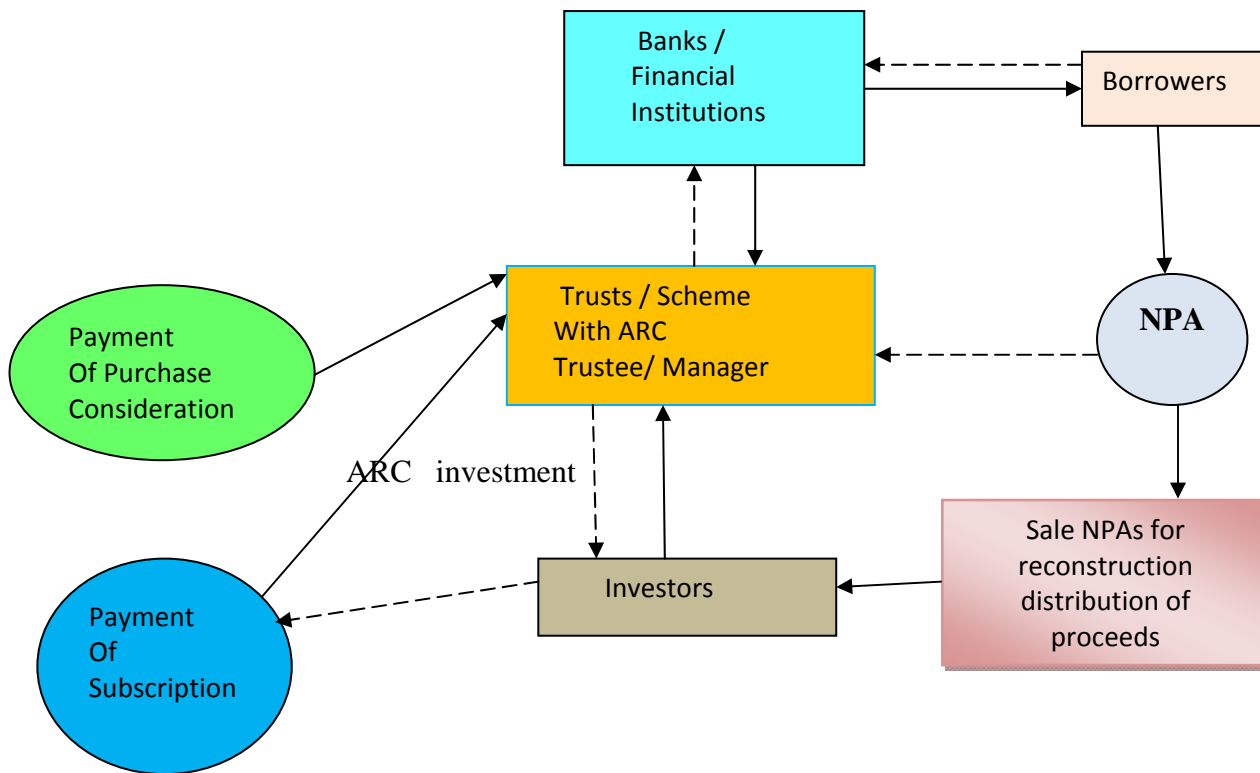
³⁵. Baxi P.M. "SARFAESI Act". Professional Publications, New Delhi.

Procedural Set Up is as under

Thus, it would be seen that almost all Banks & financial institutions have their own mechanism for the recovery of loans; however holders get good return in these transactions. Thus ARC relieves the financial Institutions from the burden of NPAs and makes them free for concentration on their core activities. It is so because due to NPAs. Capital which should have been available for supporting economic growth remains locked in and dissipates over time denting the economy. It should be worth to mention have that despite ARCs role in the recovery process simultaneously they have to deal with unlocking, recycling and channelizing such locked resources for the continued economic development. Considering the significant role of ARC there “needs engagement of multi-disciplinary skill in the area of banking structured finance, law, information technology, Negotiations and marketing.

In view of these there needs a pool of talents to work with its specific functional areas and of course training programs. Working of the ARC Company requires technical quality and knowledge of the business norms, terms, conditions and legal knowledge considering the unique feature of the company. Figure(Plate no.1.1) is indicative of the flow of working of the ARC companies in the securitization process.

Plate: 1.1: Flow of Transaction in Reconstruction Process (borrowed the idea from Jt Banarjee's modell)



Researcher feels that there is a need of modification in the legal and regulatory frame work; for continued growth of ARCs – especially in the areas of foreign investment in the SRs of trusts.

* <http://indialawfirms.blogspot.in/2007/11/types-of-mortgages-in-india.html>

1.7 General Concept Relating to the Securitization Problem

According to Just. Banargee, “Debts or asset securitization is one of the latest techniques which financial market has commenced witnessing. Under asset Securitization, a financial institution pools and packages, individual loans and receivables, creates securities against them, get them rated, and sell them to investors in a market.”⁵⁰ Thus, asset Securitization is nothing but simulating assets in to securities and securities into liquidity on an ongoing basis, increasing thereby turnover of business and profits, while also providing for flexibility in yield, pricing, pattern, size, risks and marketability of instruments.” Bank converts loans or debts into a pool called security and on this basis get advances from other banks or other institution and these institutions on this basis raise loan further.”⁵¹ In this chain if one agency defaults subsequent others also have to face and get in to the grip of NPAs e.g., Lehman Brother’s case.

The first structured asset securitization occurred in 1970 in the United States, when the newly created Government National Mortgage Association began publicly trading in securities backed by a pool of mortgage loans.

These securities, known as “mortgage pass through securities”, facilitated the investors to purchase a fractional undivided interest in a pool of mortgage loans by providing for a share in the interest income and in the principal payments generated by the underlying mortgage.

These securities, known as “mortgage pass through securities”, facilitated the investors to purchase a fractional undivided interest in a pool of mortgage loans by providing for a share in the interest income and in the principal payments generated by the underlying mortgage. In creating pools of mortgages, the lenders were careful to put together those assets with similar

characteristics in regard to quality, term and interest rate. The pool of mortgages placed with a trust was actually sold in the form of certificates to investors, either directly or through private placement.

In recent years, it is seen that more complex Securitization structures have been evolved to help or provide some classes of investors with an instrument that has a more certain maturity or average life and thus a more predictable average yield. Some new features have added complexity to Asset Securitization; those have enhanced marketability of assets backed securities in a big way. In the United States, asset Securitization has grown on a large scale since its beginning in 1970 and the annual issuance of securities backed by assets other than mortgage has increased to almost \$60 billion by the end of 2000. The asset backed securities market in the U.S., however, is dominated by securities backed by automobile loans, credit card receivables, computer and automobile leases, mobile home receivables, insurance premium receivables etc.

Securitization³⁶ is a much more a recent development in the U.K. compared to the U.S. Reports available indicates that the first mortgage Securitization issue was arranged in London for the international market was MINI, a 50 Million refinancing of certain Bank America Finance Limited U.K. property mortgages which was launched in January, 1985.

Just Banargee opined that the reason for the quick success of asset securitization in both the USA and the UK has been the rather simple legal procedures evolved by them in respect of mortgage and debt securitization.³⁷

³⁶. Banargee P.B "Public Administration in Ancient India" Wadhawa Publication, Nagpur.

³⁷. Ibid.

“Procedure of Securitization of assets involves a lending institution, termed as the originator, whose loans and receivables will be converted in to securities and a trust or a Special Purpose Vehicle (SPV). Through SPV the originator liquefys its assets³⁸”. The originator has to picks up a pool of assets of homogenous nature, lifts them from its balance sheet and have to passes them on the SPV through, pass through transaction. The latter in turn converts them in to appropriate form of marketable securities for investment. The resultant cash flow SPV to the originator would enable the latter create further assets, while the periodical cash flows from the underlying collaterals by way of repayment of loans and interest payments will enable the SPV pay off its obligations of principal and interest of its debtors.

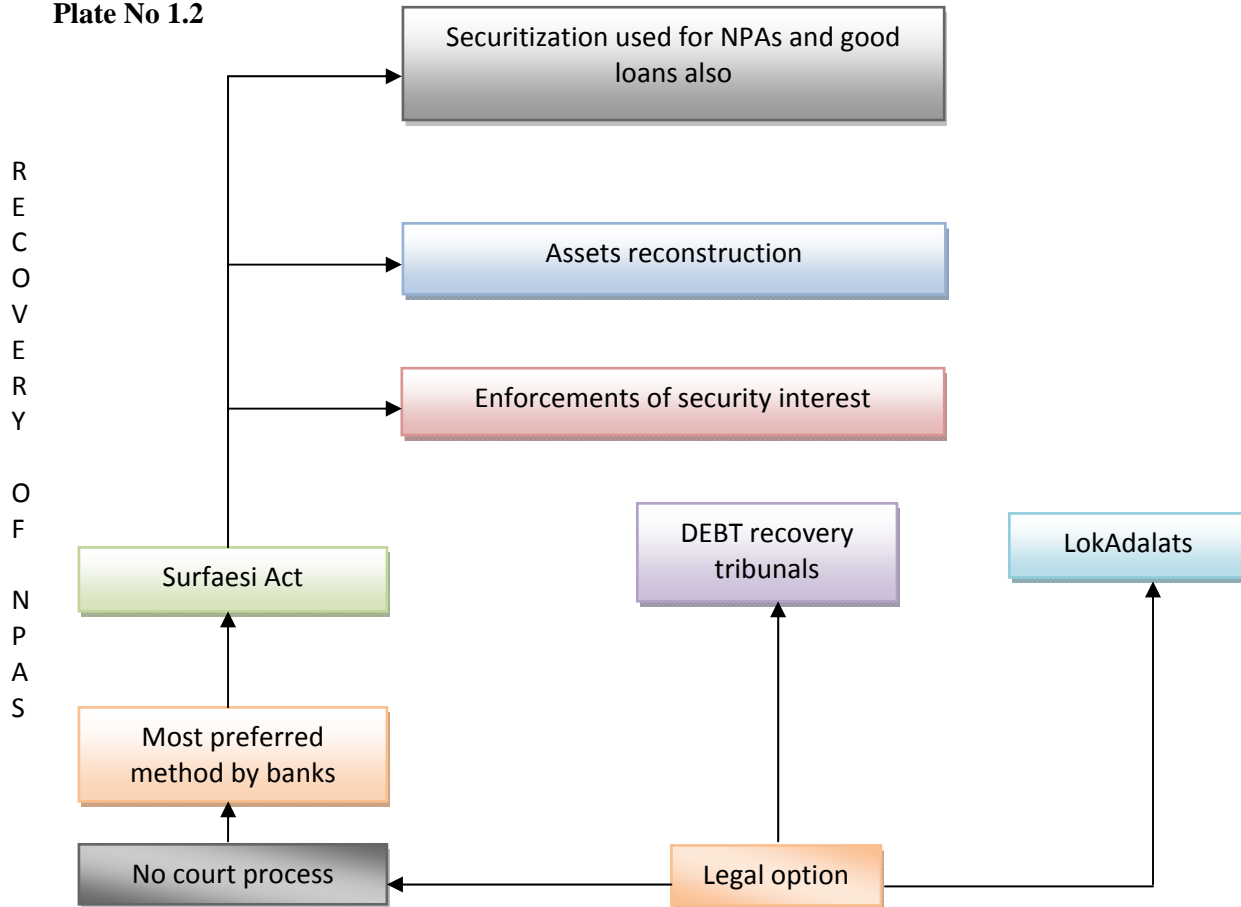
“A variety of receivables or loans could be used for asset Securitization. Thus, housing loans, loans, credit card loans, vehicle trade receivable finance etc., of varying maturities can be converted in to securities of appropriate duration. However, it is absolutely necessary to pool asset of homogenous natures together to ensure follow up.³⁹” In this way it would be seen that the major parties involved in the process of Securitization are the originator, the SPV the merchant or investment banker, the credit rating agency, a servicing agency, and of course the original borrowers and the buyers of the securities. The originator may be a financial institution or a bank which decides to its select pool of securities loans and receivables with a view to creating liquidity. It identifies the loans and receivables from its portfolios to form a basket or

³⁸. Ibid.

³⁹. Banergee PB “Public Administration in Ancient India” Wadhawa Publication, Nagpur.

pool of homogenous asset for Securitization propounded by Ho.ble Jt. Banerjee P.B. is reproduced here for better perusal.

Plate No 1.2



Source:⁴⁰

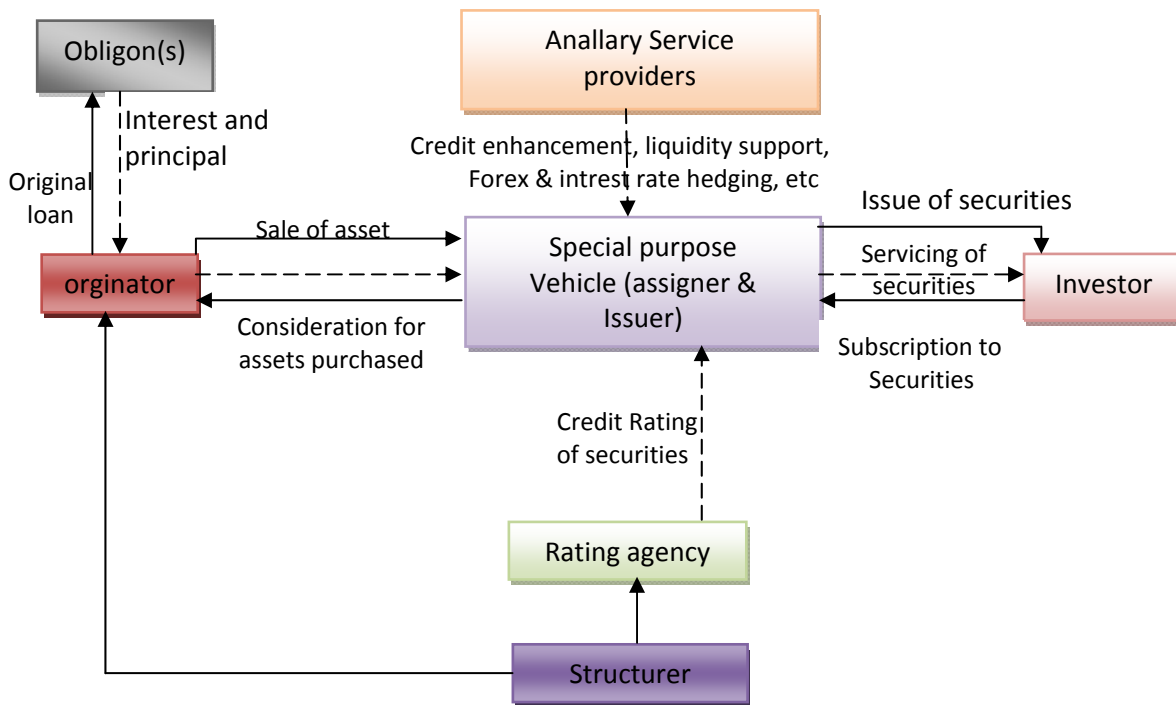
After making such a pool, the originator passes on the assets to the SPV by way of a pass through transaction, which is an outright sale for consideration or for a collateralized loan. The SPV is normally an organization distinct from the originator.

Its main tasks are, structuring the deal, raising proceeds by issuing pass through certificates, as they are known and arranging for payments of interests and principles to the debtors. Payments of interest and principles would not fail, as the SPV or the trust is entitled for all the monies

⁴⁰ Justice Banarji P.B. Valueofdissent.blogspot.com For construction of plate.

derived from the underlying assets portfolio. Normally, SPV is an extended arm of the originator and its entire activities are controlled by the former pass through certificates directly confer ownership rights over the underlying assets, repayment pattern, interest rate with a spread etc., the issuer normally has little freedom to restructure cash flow from receivables in to payments on several debts with varying maturities. There are also pay through certificates, which are more flexible in nature permitting sequential retirement of bonds, higher collateralization of assets where needed, thus raising the quality of instruments. Plate 1.3 propounded by Just Banargee is reproduced here to explain the whole mechanism:

Plate 1.3: Securitization Structure: Flow Chart



Source: Jt.Banerjee, "Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest, Law and practice, Wadhwa Nagpur pp. 849.⁴¹

⁴¹. Justice Banerjee, Securitization and Reconstruction of Financial assets and Enforcement of Security Interest, Law and practice, Wadhwa Nagpur pp. 849.

It should be remembered that merchant bankers have a key role to play in asset Securitization as they would advise on timing of seals, their pricing, making arrangements for marketing and underwriting, etc.,

1.7 Judicial system for the Recovery of Debt in India

The indigenous system of banking existed in India for many centuries, and catered to the credit needs of the economy of that time. The famous Kautilya Arthashastra, finds references to creditors and lending. For instance, it says “If anyone became bankrupt, debts owed to the state had priority over other creditors”. Similarly, there is also a reference to “Interest on commodities loaned” (PRAYOG PRATYADANAM) to be accounted as revenue of the state⁴². Thus, it appears that lending activities were not entirely unknown in the medieval India and the concepts such as ‘priority of claims of creditors’ and ‘commodity lending’ had been the established business practice.

As is commonly known, before independence i.e. in British Regime, the bankers or the financial institutions or the money lenders were required to file a suit for recovery under the Code of Civil Procedure considering the pecuniary as well as territorial jurisdiction. A new section 89 was introduced in the code of civil procedure for this purpose. This provided for the settlement of disputes. This empowered the courts to formulate the terms of settlement and refer the same for, (a) Arbitration. or (b) Conciliation, or (d) Judicial settlement through Lok Adalat; or (e) Mediation.

⁴² Banargee P.N, “Public Administration in Ancient India”. Wadhwa, Nagpur.

For arbitration and counseling; Arbitration & Conciliation Act 1996 (sect.26 of 1996) was made applicable. For the purpose of judicial settlement through Lok Adalat sub section of sect. 20 of the Legal Service Authority Act, 1987 (39 of 1987) and all provisions have been made applicable in respect of matters referred to the civil courts. As regards to arbitration court can effect a compromise between the parties in accordance of the prescribed procedure.

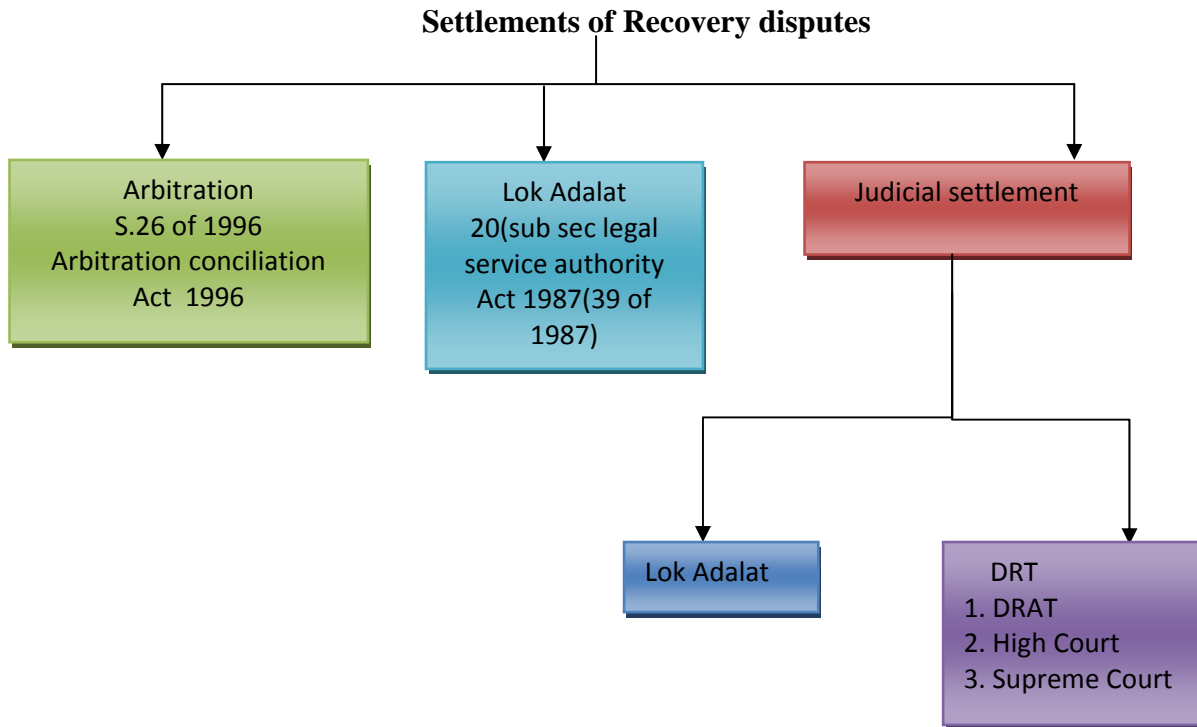
In the nut shell, for the recovery of debt two machineries prevail:

1st is for dealing with Special Civil Suits in Civil Court; when recovery amount is below 10 Lac and only nationalized banks are entitled for this remedy. In the same fashion Co-operative Banks, as per the verdict of Hon. Supreme Court; Co-operative Court u/s 91 can file suits even if claim is for more than 10 Lac. For Multi-State Co-operative banks' case can be referred for arbitration.⁴³

Another course available is that of Debt Recovery Tribunals in case the recovery claim exceeds 10 lakh.

43. "Code of Civil Procedure" Published by Arora Shikha for Professional Book Publisher, New Delhi.

Plate No.1.4 (Prepared on the basis of literature)



1.7.1 Recovery of Loan and Judicial System in India

Considering the technical procedure and delay in the disposal of suits for recovery, the legislature decided to have a law for speedy recovery of loan and accordingly an Act came to be passed namely, 'Recovery of Debts Due to Bank and Financial Institutions Act, 1993', whereby a Tribunal was constituted as per Article 323 (b) of the Constitution of India for the recovery of loan and as per the said enactment the banks whose debt exceeds Rs.10 Lakh and it is defaulted, then said bank have been given the right to institute an application u/s 19 of the said Act of 1993. It is pertinent to mention that only the banks which are defined u/s 2 of the said Act entitled to institute an application before the Debts Recovery Tribunal and as per the mandate of the said law it is supposed to decide the application for recovery within 180 days i.e. within six

months.⁴⁴ The intention of legislature underlying the said provision is that there has to be a speedy recovery of debts and bypass the lengthy procedure civil court and sec.69 and sect.69-A of the Transfer of Property Act⁴⁵.

So far as recovery of loan pertains to co-operative banks in Maharashtra, the co-operative bank have two remedies under the Maharashtra Co-operative Societies Act; firstly u/s 91 of the Act the co-operative court which is constituted under the said Act have to decide the dispute referred to it under the provisions of the said Act. The provisions of code of civil procedure in respect of pleading, taking evidence, cross examination etc. are applicable to the co-operative court. In this regards it is just like a civil court. Considering this, and since the co-operative court is constituted under the said Act, it is named as co-operative court. However, the awards passed by the co-operative court are required to be executed before the civil court. So far as other remedy under the said Act is concerned, Section 101 wherein, the co-operative bank or the co-operative credit societies have right to preferred an application for recovery of certain sums and arrears due to the said society as arrears of land revenue. As per said Section the Assistant Registrar of the Co-operative Societies on the basis of statement of account and after following the prescribed procedure under the Rules, it would be supposed to issue, 'Recovery Certificate' and as per Rule 107 of the MCS Rules the registrar have right to recover the said loan as per the Recovery Certificate.

44.Recovery of Debts Due to Bank and Financial Institutions Act,1993'. Bare Act Professional Publications. New Delhi.

45.Baxi P.M. "The Transfer of Property Act.1882." Universal Law Publishing Company Pvt.Ltd.2011.

As regards to the Multi State Co-operative Societies Act, 2002,” the Multi State Co-operative Banks have right and remedy to institute a claim against the borrower before the Arbitrator as per Section 83 of the Multi State Co-operative Societies Act, 2002⁴⁶.”

1.8 Use of Lok Adalat*

The Honorable Supreme Court also observed that loans, personal loans, credit card loans and housing loans with less than Rs. 10lakh can be referred to LokAdalats. In this connection, banks’ attention is invited to Circular DBOD.No.Leg.BC.21 /09.06.002 /2004-05 DATED August 3, 2004 wherein they were advised to use the forum of LokAdalats organized by Civil courts for recovery of loans.⁴⁷ Banks are advised that they should preferably use the forum of LokAdalats for recovery of personal loans, credit card loans or housing loans with less than Rs. 10lakh as suggested by the Honorable Supreme Court.⁴⁸

So far as the Securitization Act is concern, no doubt the object of the said Act ought to be in the public interest, but while considering the said performance and object one ought to bear in mind that, the public interest shall prevail over the purpose and object. As per the provisions of the Securitization Act the power is given to the authorized officer to recover the debt without the intervention of the Courts and Tribunal. So as per my perception the very basic principle of law

⁴⁶“Multi State Co-operative Societies Act, 2002”. Bare Act, Professional Publications, New Delhi.

⁴⁷. RBI Guidelines. <https://www.rbi.org.in> (<http://finmin.nim/report/BLRC> Report Vol104112015 pdf

⁴⁸.Supreme Court, India. Circular DBOD.No.Leg.BC.21 /09.06.002 /2004-05 DATED August 3, 2004.

that no one is judge of his own cause is to be given weight age. If we considered the provisions of the Securitization Act as already stated herein above the power is given to the authorized officer to recover the debt without intervention of court and tribunal. This very principle of law is being violated e.g. sometime borrower raises some objection *qua* to some credit or debit entries and the bankers saying that, they have maintained the statement as per the prescribed procedure and therefore there is no defect or mistake in maintaining the statement of account. However it is the experience that, some time there are number of unwarranted debt entries made by the banks. This is based on the presumption that, bank cannot commit mistake in maintaining the statement of account. Such unwarranted debts and entire consequential action will be that there is a swelling in the amount and it may cause derailment of the entire project and ultimately the account maybe classified as NPA. In that circumstances if borrower raises any objection or make representation then the authorized officer may say that they have maintained the proper statement of account as per the provisions of the Act.

The right is given to the borrower to take objection to the notice u/ 13 (2), but according to me it is futile exercise, and there has to be independent machinery to look in to the said aspect i.e. in respect to the disputed statement of account. If we peruse the provisions of the Securitization Act, the Securitization Act has nowhere mentioned or nowhere provided that the adjudication of correctness of statement of account is to be the hands of independent judicial machinery as per the Securitization Act the right is given to the authorized officer to recover the amount as per the statement of account and therefore the very basic principle of law that no one is being judge of his own cause is being ignored. If we peruse the provisions as per Section 17 of the Act the powers of the Tribunal is confined to see only whether the prescribed procedure

while taking recourse of the Securitization Act is followed or not is to be seen, only and I could not able to go through any other provisions of the said Act empowering the tribunal to go in to the disputed questions of fact qua to maintenance of statement of account, so according to me the said Securitization Act is requires to be amended, so as to give wide powers to the Tribunal to see that the bank's action while dealing with the case of the Tribunal is in accordance with law. That, on many occasion because of the inaction or mistake committed by the banks, the account of the borrower running in losses, so in that case the tribunal must empower to compensate to the borrower and there has to be some power to the tribunal to grant appropriate justice to the borrowers.

On many occasion it found that, the provisions of the Securitization Act invoked so as to put the properties of the defaulted borrower for sale by the vested interested persons in that case there has to be an independent judicial machinery to grant justice to the borrower, considering the provisions of the Securitization Act it is only a procedural law if the prescribed procedure is followed then the tribunal cannot interfere in the matter, but as already pointed out herein above that there are some vested interested persons are there in invoking the provisions of the Securitization Act then in that case there are every chances to exploit the said borrower. So far as the provisions of the Securitization Act is concern, the said Act given wide powers to the securitization and Reconstruction Companies, to take over the assets of the borrower and to recover the loans. Similar powers are given to the banks and the financial institutions. But in fact the purpose for which they said powers have been given to the said Securitization Company and the banks to recover the loan that is not being followed by the Securitization Companies and the banks. The banks / financial institutions and Securitization companies they are only recovering

the loans but I have not gone through any single case in which the bank / financial institutions / Securitization Company has given helping hand to the borrower and reconstructed the loan. So while granting service to the Securitization Company and while invoking the provisions of the Securitization Act there has to be a provisions in respect of Para farina or infrastructure in the hands of bank / financial institutions / Securitization Company after taking over the possession of the unit, immediately, the said business is handed over to the persons those are dealing in the said business. On number of occasion the banks / financial Institutions / Securitization Company taken possession of the industrial unit and the secured asset was sold. While selling the said secured asset nobody is bother to secure the statutory dues of the government. On number of occasion I did found that the industrial units purchased by the persons who are dealing in the scrap business, so this is very dangerous to our Economy and in the public interest also. If the provisions of the Securitization Act is to be invoked then the banks must be equipped with all arms to see that the said unit should be revived or should be reconstruct and to be run in smooth manner after taking recourse of the Securitization Act because the business or industry can be transferred to the person who is dealing with the similar type of business.

Bank can proceed with the recovery process and proceed with the property mortgaged as a security without recourse to traditional Civil Courts. It's true that the Bank may not be able to recover the money from the debtor or it may get unreasonably delayed if they have to approach the Civil Courts for recovery and consequential steps. As is a common practice in Civil Courts and many know as to how to delay a Civil Case for so many years. Under SARFAESI Act, 2002, the Bank itself determines the amount of debt when there is default and proceeds with the property mortgaged in accordance with the provisions of the Act and the concerned regulations.

The Bank makes a demand for payment, receives the reply if any, address the grievance of the debtor if required and if it is not satisfied with the reply, then, accordingly, the Bank proceeds with auctioning the property in accordance with law and thereby quickens the recovery process. Thus, the object of SARFAESI Act, 2002, then, there should be effective remedy available to the innocent owner of the property.

Act itself provides a relief to the aggrieved to file an appeal challenging the steps taken by the Bank pursuant to the notice issued by the Bank under section 13(2) of the SARFAESI Act, 2002, however, many feels that the remedy is not effective despite establishing a clear case against the Banks in many cases. It is also seen that the Debt Recovery Tribunal constituted under the Act which deals with the grievance of the aggrieved, passes conditional order any times while granting stay. It is true that in some peculiar cases, a conditional order can be passed, but, it has become routing as I have seen and heard from my colleagues at the Bar. What can an innocent owner do when he is not provided with an effective remedy against the Bank? He may hesitate to approach the High Court directly as many legal practitioners advice the aggrieved to approach Tribunal as it is likely that the High Court may not entertain a Writ Petition directly and in many cases such Writ Petitions are disposed off, giving liberty to the aggrieved to approach the Tribunal. It is really understandable and in such cases, the Debt Recovery Tribunal should really be effective and should not invite any criticism against officers of the Debt Recovery Tribunals and Appellate Tribunals. Some presiding officers of the Debt Recovery Tribunals may adopt a different and right approach, but, every legal practitioner can tell or guess as to what happens before the Tribunal. There may be cases where the debtors may

try to delay the recovery process by filing cases and nobody sympathizes in those cases and those cases to be dealt with very strictly.

It cannot be said that the provisions of the special legislation to be implemented in letter and spirit without thinking at the consequences and it cannot be said that the ultimate object of the enactment is to be taken into consideration while dealing with the cases challenging the action initiated by the Bank under SARFAESI Act, 2002. For example, with a very laudable object, the Chapter-XVII was introduced in Negotiable Instruments of money. Section 139 of the N.I. Act says that there would be presumption available in favor of the Complainant that the cheque is issued for discharging a legally enforceable debt. Despite such clear wording and special provision dealing even with the procedure in cheque bouncing cases, the Courts have interpreted the provisions from time to time protecting the rights of the innocent and providing protection to the innocent against motivated harassment using the special law. As such, the rights of the innocent or the innocent owners or the debtors have to be protected under SARFAESI Act, 2002 and the remedy should really be effective and adjudication to be really logical.

1.9 Socio-Economic Impact of the Mounting NPA on Society in General and Economy in Particular

India has adopted the policy of welfare state and law makers have to bear in mind that industry should be allowed to flourish but not to perish. In order to speed up the recovery of loans SAPACI Act was enacted. It was aimed that instead of taking recourse of the Court to rehabilitate he betters/company /assets creditors take interest in possessing the property. In this way, the Bankers without any paraffinic take possession of assets of the defaulters and sale them

in the market without considering any business principle or retained in the possession of the bank without any liquidity. When bank takes possession, “activities of the companies, unit, and factory come to complete standstill throwing number of the employees jobless. The whole family of jobless employees has to suffer a lot for no fault of them. Many a times even residential house possess and whole family owner of factory is sealed and thrown on road without residence. This is against the principles of fundamental rights given in the constitution. By such types of action, owner of that house property loses his shelter. Such types of the actions give birth to many antisocial element like goonda element in the society. Researcher feels that in doing so the very purpose of the Act is lost Researcher aware of her limitation in drawing. Certain conclusions relied on the interview of some legal practitioners, Bank officers and defaulters and certain judicial decisions. For the whole study researcher visited various DRT and DRAT and high courts in Maharashtra and refers certain SC decisions and theory of social engineering while collecting the data it was done after considering title of the study, significance of the subject matter, place of study, interview of the related persons, Courts advocates, banks and defaulters, guarantors etc. This study is confined to the period from 2002 to 2015 and has been incorporated recent developments up to 31st March 2015.

The literature available on the subject under reference is limited in nature and scope. It is so because the problem of mounting NPA in the financial sector is of recent times. In view this literature found in the form of popular write-ups, reports of Committee/ Commissions, working groups, research studies/ articles of researchers, bank officials, economists and the comments of economic analyst have been considered for the review of literature. In this context the stress has

been given to focus attention on certain topics essentially on causes of NPA, quantum of NPA, trends of NPA in Indian banking which are of microeconomic in nature

The landmark judgment of the Apex Court delivered in *Mardia Chemicals Ltd. Etc. versus Union of India and others etc. etc.* transferred Case no 9295 of 2002 (2004(7) SRJ 239) dealt with the problem of appeal under the Section 17(2) of Securitization Act 2002 its constitutional validity and it was held ultra virus and Articles 14 of the Constitution. The Hon'ble Apex Court held that Section 13(2) and section 13(4) requires the creditor to communicate to the debtor the reasons for not accepting the objections⁴⁹.

It is the experience of researcher that the very importance of this purpose has lost the sight of judiciary and bankers. Bankers / creditors on other hand try to take action u/s 13(4), Sec 17 etc. without having any paraffinic. It is the researcher's feelings that a practical view must be considered by judiciary and bankers in the public interest or in the interest of society. One must keep in mind Law is meant for men and not men for law. The inactive bank's personnel; their negative and impractical attitude and judiciary decisions; strictly relying on the provisions than decisions and some habitual defaulters hand in gloves are the hurdles in settlement of NPAs.

This researcher would like to take liberty in citing certain cases in which the honest borrowers have to lose everything in the life merely because of being defaulter. These citations will throw torch light on the bite and havoc of /mental torture of honest borrowers due to NPA recovery process.

⁴⁹Baxi P.M. Securitisation Act 2002,Professional Publication,New Delhi.

A matter came for hearing in DRT Aurangabad in which Agriculture Graduate from farmer's family of a village sold his all agriculture properties and parental property and raised fund for doing something great in life. He prepared project for sugar factory in the Marathwada area. In addition to his own fund and support from his family, he raised fund by taking loan from bank. The proposal was okayed and factory started on regular basis employing about fifteen thousand including male and female from nearby villages. For three to five years factory was properly working in profit. It is pertinent to note that while employing various types of workers many infrastructural providers were also involved e.g. transport, shops markets canteen, etc. everything was going smooth. However, because of the continuous draughts in the Marathwada area in last five years, the factory started teething trouble and because of the non availability of raw materials and many other related reason its balance sheet management was disturbed. As a result of this discharge of liability of loan, the factory started taking last breath and started suffering on account of paucity of fund and could not pay loan installment regularly and stage came when it became defaulter. Recovery process was started by lending bank and by an order put seal stop the factory working because creditor bank got the possession of factory.

Now this factory has been closed down throwing fifteen thousand employees jobless of course dependents of these families loss their livelihood for no fault of theirs. A sad part of this story is that factory is closed, over expenses are going on, legal battle is in process means expenses are still without any earning and dried completely. The factory owner is thrown on road having many obligations to pay and flustered.

There is another story to tell from Goa that came to DRT Mumbai. In this case, a borrower (defaulter) had taken loan schedule bank of Rs. 6,00,000/-. He bought a running hotel.

Later on it was demolished by corporation finding it encroachment. Thus this borrower lost everything on account of demolishment of the hotel and as result he became defaulter. After finding it difficult to make repayment of funds, has committed suicide along with his spouse and his two children.

There is another case from Aurangabad DRT, a family Karta took loan from schedule bank against the housing property for doing business. After becoming defaulter, bank had started recovery process and put seal on house property of the family. Recovery officer of the bank came to take possession of the property putting lock and seal on the property. The family members had gone to market at that time, when family members came back they found seal on their house. It is shocking that their all belongings were inside the house and the family had to take shelter to the family. However Hon. Court passed an order allowing the party entry in the house and take out their belongings during the pendency of the dispute.

There is a case in which schedule bank took possession of the smoothly running Unit without following due procedure of Law. In the said matter, there was raw material in the factory and due to unwarranted possession of the unit the same got perished and borrower suffered huge loss. The same resulted that he could not make repayment of loan and the unit was closed.

In one of the matter the borrower went into depression and thereby he could not take care of his business and suffered loss and could not make repayment of installment of loan amount. The situation got worse when his shop was closed. In the said matter the borrower attempted to suicide.

There are such other untold stories, wherein instances of granting loan without following due process of law, giving loan to defaulters, making wrong entry of interest in the books of accounts, granting loan in the name of dead, recovery process against the person who did not take loan etc.

1.10 Complications in the Appeal before the DRT

It is the experience that, there are instances of inevitable complications in an Appeal before the Debt Recovery Tribunal and it is so where the property belongs to Company and many proceedings were pending against the Company. There can be liquidation in respect of the Company and in such cases; the Official Liquidator should defend the rights of the Company before the Tribunal. There can be a scheme pending for consideration before the High Court in respect of a Company and these issues complicate the cases before Debt Recovery Tribunal at times. But, in other cases, there cannot be any complications and there should be effective remedy available to the aggrieved if there is merit in the contention and I do strongly feel that the High Court is required to entertain Writ Petitions even in respect of “SARFAESI Act” if required and in exceptional cases. We know that there can be people to approach the High Court with ulterior motives and such cases can easily be dealt with. But, there should be effective remedy to the innocent owners and the innocent owners should not get troubled with the irregularities committed by the Bank or committed by individuals with the involvement of Bank either directly or indirectly.

Looking to the history of banks, earlier banks were in the hands of the corporate sector. Banks were meant for only the corporate sector. Kirloskar owned Bank of Maharashtra; Birla Group

owned United National Bank etc., they were reluctant to give loan to small traders and therefore they were against the nationalization of banks. Till today lobby of this sector is against the nationalization of banks. Nationalization, banks used to give loans only to landlords, big business houses i.e. only those who owned land, properties. Thus, banks were operating only for creditworthy people and not for a common man. Corporate sector used to get 80percent loan and due to nationalization the farmer, small traders, small industries also get the right of getting loan. As would be seen there is a diversion of 30 percent loan to such people. And therefore corporate sector was resisting to the nationalization of banks earlier corporate sector was getting one butter roti without any share attempt and now they are getting only half roti due to nationalization hence they were against the nationalization of banks and today also they are against the nationalization.

According to late Prime Minister Indira Gandhi, early banks were creditworthy but it will be now project worthy (speech on nationalization of banks before parliament). E.g. man having intellectual property and have a project for a viable unit to get loan then, the small sector could not get loan as per their requirement of project / unit and this is one of the reason that their accounts become NPA. The percentage of loan is 1 lakhs to 100 lakhs and banks used to take action against only this small sector, but as experience tells they are reluctant to take action against the big houses / corporate sector.

As there is an increase in NPAs the politicians and corporate sector; pressure on government to reduce the percentage of NPA and as a result of this various committees such as Narasimham Committee, I, II, Tiwari Committee, Adhyarjuna Committee came to be constituted by the Central Government. Narasimham committee suggested establishment of special tribunal

for recovery and enactment of law for recovery in which well override the CPC, Evidence Act consequent to this in 1993, DRT Act was enacted. After all matters and loan transactions having recovery of more than Rs.10 lakh were transferred to these DRTs.

1.11 Chapter Scheme

In view of the discussion as regards to the introduction of various issues related to the present study the breakup of the work is made into 6 chapters, which are as under:-

Chapter-I includes introduction of the subject-Scope of the Study- This chapter provides information as regards to title of the thesis, a breakdown of the problem in to the relevant elements justification for the present study, scope, conceptual framework. the Conceptual Framework of Study .includes Under this caption various definitions and explanation of title concepts relating to loan, debt and other relevant terms have been dealt with. Conceptual Framework helps in getting a clear idea about the different concepts used in the thesis. In the course of this study researcher found that there are various concepts which are new for the ordinary person. In view of giving tacit understanding of the subject matter to a layman and understand the related problems a bird's eye view has been taken up.

Chapter-II is a review of literature that has been taken up on the subject matter and literature on judicial decisions, followed by the summary. Survey of literature is important from the point of view of studying the available literature in the form of popular write-ups, reports of the committees/commissions/working groups/ the research studies/ articles of researchers/bank officials/economists and the comments of economist. The researcher herein has discussed the issues which were of micro-economic in nature has been considered for review. Literature

relating to NPA, management of NPA, social obligation of banks has been reviewed. For the better understanding and simplicity this chapter has been divided into 3 parts namely: A) Review of literature relating to Judiciary, B) Review of literature relating to Social problems and C) Review of literature relating to Economic problems.

Chapter-III this chapter is related to the methodology of the research and statistical tools used, it includes objectives of the subject, hypothesis, sample size, selection of samples, profile of the sample area and relevant information. Collection of primary and secondary data, conduct of pilot study, preparation of questioner, for borrowers, bankers, .it also includes details of the survey conducted In the first part of this chapter, causes of NPAs according to the borrowers and lenders (creditors) have been identified and economic issues connected to the debt recovery problems have been highlighted. While doing so some common causes identified by various studies have been recorded. It is observed that there are about 22 different causes due to which borrowers become defaulters. In this chapter opinions of borrowers (defaulters) have been sought and analyzed to draw inference. After this impact of NPAs on the defaulters and social effects has been studied and conclusions have been drawn to focus on social impact of NPAs on the debtors have been drawn.

Chapter-IV This chapter is the analysis and interpretation of the collected information.

A discussion on social and economic problems associated to the debt recovery problems has been studied. For this purpose some economic problems related to the business and industry have been studied citing certain cases issues emerging out of the default in the repayment have been discussed along with certain land mark judgments by the Apex Court and High Courts have been

cited. Socio-economic as well as psychological impact of the NPAs on the life of defaulters has been studied.

Issues identified by the secondary data and RBI have been studied to throw torch light on the economic health of the India's financial sector has been pinpointed. Along with this various law cases have been cited which could serve as the guidelines for the social workers, legal practitioners, lenders, borrowers, co-obligators connected to NPAs in getting rid of this crucial–problem having glaring effect on the society and financial sector.

Chapter-V is a Summary of conclusions and findings revealing many inherent issues and problems related to the rising NPAs which bite the banking sector it includes. Summary of Suggestions, Recommendations, Implications, Limitations and Recommendations which can help the planners, Finance Ministry, Judiciary, Lenders, Borrowers and the society. In this chapter along with this, various area of research has been proposed the scope for future research.

Last but not least is the Appendices followed by Bibliography.

1.12 Conclusion

Mention of lending and borrowing is millenniums old. The practice of banking is as old as that of human history; started from the economic transaction. Considering the hurdles in the recovery matters, 1993 Recovery of Debts Due to Banks and Financial Institutions Act, 1993 was enacted and Tribunals had been established under Article 323 of the Constitution. Civil Court had jurisdiction which was time consuming and without result. In view of this SARFACIE Act 2002 was passed to override all the courts' jurisdiction except Supreme Court. This Act was passed just to bypass the lengthy process of civil courts and to do away from the provisions of

section 69- A of the Transfer of Property Act Property Act. (Act IV of 1882). According to this Act; property belonging to the defaulter could not be possessed without the intervention of court. Lenders first require obtaining Decree from the civil court for possession of the property of the defaulter and as it prevails it is time consuming.

The borrower can file appeal only in the DRT aggrieved by the action of the creditor / bank if the recourse of Section 13 (4) of SARFACI Act is not followed. In this context researcher feels that considering the provisions u/s 13 (2) as regards to the notice & DRT having no jurisdiction to entertain grievances of borrower the very purpose of justice is defeated in view of the Article 50 of the Constitution (Separation of judiciary from executor and also against the maxim "*audiatour et alterapars*"). In this way one who is aggrieved is left with no choice when his objections are not accepted by the banks. The same lies in Section 13 (4), in which creditor takes symbolic or physical possession without their competency to keep the factory going on thousands of workers, employees are thrown and owner of the factor is thrown on road. Researcher feels that this is inhuman and one sided for favoring the bank and undue protection to the bank officers.

CHAPTER II

REVIEW OF LITERATURE

2.1 Introduction

India's banking system has gone a sea change this decade. India resorted to a series of economic reforms in the wake of serious balance of payment crisis in 1991.¹ "To start with the reform process central bank was to carry out reforms in the financial sector with the banking, being the main stay of financial intermediations. The object of banking reforms was to promote a diversified, efficient and competitive, banking and financial system with the ultimate objective of improving the allocate competence of resources through operational flexibility, improved economic viability, institutional strengthening and superior level of productivity."²

The transformation of the banking sectors in India needs to be viewed in the light of the overall economic reform process, along with the rapid changes that have been taking place in the global environment within which a bank operates. Technological revolution particularly in the Information Technology has acted as a spring-board for this eye-opening development. Changes are so fast that yesterday's knowledge has become obsolete today and today's text books are going to become outdated tomorrow. As we know our companies are capturing industrial houses in foreign countries. In this decade more than five million dollars have been spent to acquire more than eighty foreign companies. In the earlier days it was said that big

¹. "Management of NPA in Indian Public Sector Banks, Jarkhand," Centre for Public Policy Research. www.cppr.in

². Ibid.

fish eats small fish in the process of globalization but now we can see that small fish is gathering strength and prepared to eat big fish.

Our constitution has given us certain fundamental rights. ARTICLE 21 guarantees peaceful life to common man as regards to Justice: Social, Economical, and Political. It has been constant endeavor of successive governments to reduce the gap between rich and poor.³ “Various plans have been framed, programs have been executed, lots of money has been spent, yet eradication of poverty has remained a distant dream”. As we know that all credit programs launched by our government are characterized by subsidizing interest rates, easy loan terms including very low or nil down payment, long loan maturities and long grace periods and saving has not been recognized as a source of funds. Thus, it would be seen that Role Credit System (RCS), rely either on concessionary re-finance from financial institutions or international donors. However, it is a sad commentary on the part of our whole system that all these advantages are the schemes that rarely reach the poor, “On the other hand the mainstream financial institutions which constitute the core financial infrastructure of the country are reluctant to finance the poor on the ground that these are neither economic nor commercial”⁴. These roadblocks in the financing of the poor by financial institutions to build the human capital are hurdles in the progress. No one can be blamed for this. The study made by the experts and researchers, even various committees appointed by the government have put thumb on the issue of NPA which is the result of such policies of Government at the cost of Banking institutions

³. Bakshi P.M, “Constitution of India”, Universal Law Publishing Company Pvt.Ltd.2011.

⁴. Khasnobis S (Capturing value from the impaired assets, Global CEO) www.iupindia.org

In this chapter available literature related to this subject has been reviewed to peruse the knowledge on the related aspects of the topic so that the research study goes into the right direction. For better understanding of the subject, researcher has classified reviewed literature under the following parts:

1. Review of Literature Relating to Banking Sector in India
2. Review of Literature Relating to Judiciary and Judicial Decisions
3. Review of Literature Relating to Socio- economic Problem arising out of NPA Recovery.

2.2 Review of Literature Relating to Economic Problems arising due to outstanding

The literature available on the subject under reference is limited in nature and scope. It is so, because the problem of mounting NPAs in the financial sector is of recent times. In view of this the literature found in the form of popular write-ups, reports of committees/commissions, working groups, research studies/articles of researchers/bank officials/economists and the comments of economic analyst have been considered for the review of literature. In this context the stress has been given to focus attention on certain topics essentially on causes of NPA, quantum of NPA, trends of NPA in Indian banking which are of microeconomic in nature have been studied and described below in this chapter.

“Many discussion of East India crisis addressed proximate and short run causes of crisis such as the current account’s deficit; exchange rate misalignment and large short run external date relative to foreign exchange reserves”⁵. This was

⁵. Ghani and Suri “East Asian financial crisis taking Malaysia”, A case study. Financial Management Journal, 2010.

pinpointed by Ghani and Suri while examining East Asian financial crisis taking Malaysia as a case study. They further observed that banking sector played a critical role in transforming and accelerating large savings into capital accumulations.

Karm Pal and Goel Pooja⁶ conducted the study to examine the functional relationship between earnings and productivity of bank employees and come out with some workable suggestions to boost the performance of bank employees. Landi and Venturelli (2002)⁷ found that diversification is positively related to efficiency. They found that X-efficiency score in terms of cost and profit efficiency show a strong positive correlation with positive diversification.”

According to Lepetit and Nicerous (2005)⁸ “noninterest income activity presents a higher level of risk than banks which principally supply traditional intermediation activity. “

Arora Sangeeta and Shubprit Kaur⁹ while taking review of Indian banking sectors, observed, “That over the period non-interest income growth shows an increased correlation in net interest income over the last decade”. For this purpose they analyze performance of diversified banks over a period of 2000-2005. For this purpose they carry out this study on various internal and external factors like economies of scale and scope, competition, risk reduction etc. that are responsible for the diversification of banks.

⁶Karm Pal and Pooja Goel , “The functional relationship between earnings and productivity of bank employees”. The Indian Journal of Commerce, Quarterly Journal of Indian Association, 2014.

⁷.Venturelli (2002) and Landi.

⁸. Lepetit and Nicerous (2005). Indian banking Sectors”, <http://www.cprr.in>.

⁹Arora Sangeeta and Shubprit Kaur – “Indian banking Sectors” <http://www.cprr.in>.

Ritu Goel and RajendraKaur¹⁰ made the study on performance of new private bank sectors in India.and observed that, “ there is a declining trend of net NPA’s to net advances for all banks except Kotak and CBOP which show a growing trend. They further observed that the ratio of advances to assets has shown an increasing trend for all banks showing an increase in their lending operations except for YES bank.”

Santi and Soma (2006)¹¹conducted study on the productivity and profitability of 5 public and 5 private sector banks in India during the period 1996-97 to 2003-2004 and observed that, “ except for few cases the productive index was greater than one for all selected banks despite no definite trend was observed. It was observed by them that, ACGR for P/E ratio of all sample banks was negative during study period.”

Sathish Sharad and Surinder (2005)¹² took up 55 banks to analyze their performance for the year 2004-2005 and found that, “the Indian banking system looks sound and information technology will help the banking system grow in the future. M.S. Gupta made a study on Micro-finance through SHG groups and observed that there has been a significant growth of Micro-finance activities in the recent years”¹³.

Pandey Manas¹⁴ made a case study of Eastern Uttar Pradesh and made a study on Micro-Finance and observed that, “ the need for Micro-Finance in India has arisen

¹⁰ GoelRity and Rajendra Kaur, “The study on performance of new Private Bank Sectors in India”
Journal of Banking and Finance. 2012.

¹¹.Santi and Soma (2006), “Study on the productivity and profitability of 5 Public and 5 Private sectors banks in India during the period 1996-97 to 2003-2004. The Indian Journal of Commerce, Quarterly Journal of Indian Association, 2010.

¹².SathishSharad and Surinder (2005) 2004-2005.

¹³. Gupta M.S. ‘A study on Micro-finance through SHG groups’.

¹⁴. Pandey,Manas. ‘A case study of Eastern Uttar Pradesh in Micro-finance’.

due to failure of formal banking system in meeting the credit needs of millions of employees and urban people. He observed that formal banking sector always demands high discipline in collateral security, procedures and impracticable repayment schedule.”

K Rajender¹⁵ carried out the study on the subject Management of NPAs in Public sector Banks and found that the asset wise classification recorded a high degree negative co-relation between Performing and Non-Performing Assets. He further observed that, “in respect of sector-wise NPAs there is a significant difference among sectors in recovery of mounting NPAs. He further observed that, there is a high degree negative co-relation in the other sector of priority sector which shows a significant increase in the mounting NPAs for the study period. While making the concluding remarks K Rajender¹⁶ observed that, “ the reform in the legal system in the recent years such as SARFAESI Act 2002, Asset Reconstruction Companies(ARC), LokAdalats, One time settlements (OTS), Debt Recovery Tribunals (DRTs) in the faster recovery of mounting NPAs”.¹⁷

K Reddy Prashant (October 2002)¹⁸ in his paper entitled “A Comparative study of NPA in India in the global context” studied the experience of other Asian countries in handling NPAs. He suggested that, “foreign experience should be utilized along with clear understanding of the local conditions to create a tailor-made solution which should be transparent and fair to all stake holders.”

¹⁵. Rajender K.’ study on the subject management of NPSs in public Sector Banks.’

¹⁶. Ibid.

¹⁷.Rajender K. – ‘Study on the subject management of NPSs in public Sector Banks.’

¹⁸. Reddy Prashant k (Oct 2002) paper titled “A comparative study of NPA in India in the global context.(<http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan013132.pdf>)

Kang & Moon Soo (2001)¹⁹ observed, "that, increasing NPAS would have not disturbed the economy even if spending would have been increased.

The landmark judgment of the Apex court delivered in Mardia Chemicals Ltd. Etc. etc.²⁰ Versus Union of India and others etc. etc. transferred case no. 92- 95 of 2002 [2004(7) SRJ 239] dealt with the problem of appeal under the section 17(2) of SARFAESI Act 2002 its constitutional validity and it was held that it is ultra virus and Article 14 of the Constitution. The Honorable Apex court held that section 13(2) and Section 13(4) requires the creditor to communicate the reasons for not accepting the objections. For this purpose honorable high court cited about 40 case laws. The case law list is attached herewith as index at end of Thesis. While giving the judgment honorable apex court observed from Para 81 in view of discussion "held in judgment and findings and directions contained in the preceding paragraphs, it is held that the borrowers would get a reasonably fair deal and opportunity to get the matter adjudicated upon before the debt recovery tribunal." Hon. Court observed that,"the effect of some of the provisions may be a bit harsh for some of borrowers but on that ground the impugned provisions of the act cannot be said to be unconstitutional in view of the fact that the object of the act is to achieve speedier recovery of the dues declared as NPAs and better availability of capital liquidity and resources to help in growth of economy of country and the welfare of people in general which would sub serve the public interest. A continuous decline in the interest margin after 2001 indicates that a low level interest margin pushes bank to generate income from alternative sources of revenue other than interest income. Review of literature

19. Kang and Moon Soo (2201).

20. Mardia chemicals Ltd.Vs. Union of India and others and transferred case no. 15-95 of 2002 (2004(2) SRJ 239).

indicates that problem of NPA is a social problem. Deposits with the bank are public money and no one has given a mandate to siphon it. Financial reforms have helped to bring down NPA's. It is also suggested by experts that NPA management is a matter of concern for the entire banking system. There are various factors responsible for the emergence of NPA's some of which are beyond the control of bankers and also borrowers but constant and effective monitoring and control will definitely minimize this problem. Apex court in the land mark reported case of Mardia Chemicals insisted on the latest observation of the SARFAESI Act 2002..

Mr. Reddy (2004)²¹ carried out study on issues relating to terms of credit of Indian banks. According to him a default is not an entirely an irrational decision it is so because defaulter takes into account probabilistic assessment of various cost and benefits of this decision. Mohan T. (2003)²² developed the concept of lazy banking. These views very much speak the fact that (bank's lending policy is a major driver of non-performing loans (McGovern1993, Christine 1995, Sergio 1996, Bloem and Gorters 2001)²³. Mr. Mohan T. feels that "given the deficiency in this area, it is imperative that banks need to be guided by fairness based upon economic and financial decisions rather than system of conventions, if reform has to server meaningful purpose."²⁴ The purpose of SARFAESI Act 2002 is reconstruction of loans and rehabilitation of borrowers. It is the experience of researcher that the very importance of this purpose has lost the sight of judiciary and bankers.

21.Reddy (2004), Study on issues relating to terms of credit of Indian banks. .(<http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan013132.pdf>)

22. Mohan T. (2003) McG1993.christine

23. MC Goven 1993, Christine 1995, Sergio 1996, Bloem and Gorters 2001.

24.Mohan T., (2003) McG1993.christine

Bankers/creditors on other hand try to take action u/s 13(4), Sec 17 etc. without having any paraffinic.

It means the very objective of the act is to reconstruct and rehabilitation is ignored and working company's activities are put to stand still throwing thousands of workers and employees jobless. It is the researcher's feelings that a practical view must be considered by judiciary and bankers in the public interest or in the interest of society. One must keep in mind that Law is meant for men and not Men for Law.

According to Muniappa (2002),²⁵ "the problem of NPA is related to several internal and external factors confronting to borrowers. According to him "The internal factors are diversion of funds for expansion/diversification/modernization, taking up new projects, helping/promoting associate concerns , time/cost overruns during the implementation stage, business (product, marketing etc.) failure, inefficient management, strained labor relations, inappropriate technologies, technology problems, product obsolescence, etc. while external factors are recession, nonpayment in other countries, input/power shortage, price escalations, accidents and calamities." *To add more to this list the inactive bank personnel their negative and impractical attitude and judiciary decisions strictly relying on provisions than decision and some habitual defaulters hand in gloves are the hurdles in settlement of NPAs.* In this context it would be not out of state to mention the case of Sumiti packaging Vs United Western bank (DRT Aurangabad)²⁶; in which researcher was on behalf of Sumiti packaging. The said client paid taxes of Rs. 1, 79, 00,000 and the recovery was of only Rs. 30, 00,000. Banker sold the property only for Rs. 30 lakhs. In another case

²⁵Muniappan (2002) The NPA over change Magnitude, solution and legal Reforms. RBI Bulletin. <http://www.publishingindia.com/GetBrochure.aspx>

²⁶.Samiti Packaging Vs. United Western bank DRT Aurangabad.

Lovely foods (Sanghvi papad Udyog Jalgaon) Vs SBI , Lovely Foods²⁷ started papad making and borrowed a loan of Rs.1.5 Crore outstanding (NPA) was of Rs.2.5 crore. The case is very simple.

In this company part of machinery was found defective and it was to be imported from Germany. This process took more than a year.

Therefore the company was not working; however bank's meter of interest charge was in progress putting the company as NPA. After the case before DRT Aurangabad Company had to settle and bank after taking possession of the factory sold out Reconstruction Company for Rs 20 lakh and the company had to pay settlement amount to RC company about Rs 90 lakh. In this process RC company earned profit of Rs. 70lakhs. In this the borrower suffered unnecessarily and

SBI (public undertaking) earned only Rs.20 lakhs against NPA of Rs.1.5 crore and RC company earned Rs.70 lakhs. It simply means hand in gloves with RCs bank officers are exploiting the borrowers and cheating judiciary and also a public bank. On another hand there are certain cases that are called as willful defaulters. These defaulters are such who despite their good financial health default or delay the loan payments. In this case also researcher found that without active part of bank officers it is not possible. One of the respondents told the researcher that he had taken loan of Rs 7crore in 1995. Some loan of more than Rs. 1crore from another bank and now in one time settlements (OTS) is prepared to settle the account with various banks having some concession. He told researcher that the cost of those Rs.7 crore and Rs. 1crore has gone up like anything and during this period he earned lot of money without

²⁷.Lovely Foods (Sanghavi Papad Udyog Ltd. Jalgaon) Vs. SBI.

paying single penny to the bank. He told the researcher that he has spent only Rs. 3lakhs by paying as advocate fees.

Keeping in view of the importance of NPAs management in banks in the process of reducing NPAs, large number of studies has been carried out by researchers, on the concept, type, impact, reasons and measures for NPAs in banking industry. Reddy Prashanth k (2002)²⁸ in his study focuses on comparative study of nonperforming Assets in India in the Global context-similarities and dissimilarities, remedial measure and the importance of a sound understanding of the macroeconomic variables and systemic issues pertaining to banks and the economy for solving the NPA problem along with the criticality of strong legal framework and legislative framework. Foreign experiences must be utilized along with a clear understanding of the local conditions to create a tailor made solution which is transparent and fair to all stakeholders. Harpreet Kaur and Pasaricha J.S., (2004)²⁹concluded a research on management of NPAs in Public sector banks over a 8 years period ending 2002 and show that gross NPAs have registered a constant increase from 1995-2002. This study point out the sector wise and bank wise position of NPAs in PABs. It was suggested that, 'follow proper policy of appraisal', supervision and follow up of advances be taken up to controlling the NPAs. He Dong, IMF (2004)³⁰investigated the procedure of resolving NPAs of the Indian banking system-the role of ACRs.Janardhar G. V. Bhavani Prasad;Veena D. (2001)³¹studied NPAs in Indian Banking Sector –Trends and Issues and concluded that PSBs, which currently account

²⁸ReddyPrashanthk(2002).

<http://unpan.un.org/intradoc/groups/public/documents/apcity/unpan013132.pdf>

²⁹.Harpreet Kaur and Pasaricha J.S. (2004). Management of NPAs in PSB.

³⁰.He Dong (IMF – 2004),“Resolving NPA of Indian Banking System the Role of ACR”.

³¹.Janardhan G.V. et al. ‘Study of NPAs in Indian Banking’.

for more than 78 percent of total banking industry assets are saddled with NPAs, falling revenues from traditional sources, lack of modern technology and a massive workforce while the new private sector banks are forging ahead and rewriting the traditional banking business model by way of their sheer innovation and service and adoption and modern technology³². Shalu Rani (2011)³³ examined the existing position of banks in SCBs of India in respect of NPAs, the causes and remedial measures thereof and concluded that the level of NPA has increased, eroding whatever reduction was made with the ever increasing level of fresh NPAs and tightening of norms by RBI time to time. Total elimination of NPA is not possible in banking business. It is wise to follow the proper policy for appraisal, supervision and follow up of advances to avoid NPAs.

It is revealed that, “gross NPAs ratio of PNB is less and it has been reduced over the period in comparison to SBI on the other side as far as private banks are concern HDFC has better performance in comparison to ICICI. And also NPAs ratio and problem assets ratio is reduced of PNB in PSBs and HDFC in private Sector Bank. There is more variation in GNPA and NNPA ratio of PNB while in problem assets ratio ICICI has more variability. So, it is necessary for bank to keep the level of NPA as low as possible. Because NPA is one kind of obstacle in the success of bank and affects the performance of bank negatively so, for that the management of NPA in bank is necessary. And this management can be done by following way.³⁴”

- i) Framing reasonably well documented loan policy and rules.

32.Naik Janardhan, Bhavani Prasad G. V. Veena D. “Trends and Issues in Indian Banks 2011.

33.Shalu Rani (2011).’NPA Management issues and Problems a case study on Indian Banks. Research Journal, June, 2011.

34. <https://www.coursehero.com/file/p2hatsc/10-Analysis-NPA-position-is-different-and-present-in-PSb-Private-Banks-of/>

- ii) Sound credit appraisal on well-settled banking norms with emphasis on reduction in Gross NPAs rather than Net NPAs.
- iii) Pasting of scale notice/wall posters on the house pledged as security.
- iv) Recovery efforts should start from the month of default with prompt legal action.
- v) Position of overdue accounts is reviewed on a weekly basis to arrest slippage of fresh account to NPA.
- vi) Half yearly balance confirmation certificates should be obtained from the borrowers.
- vii) A committee is constituted at head office, to review irregular accounts.
- viii) Due to lower credit risk and consequent higher profitability, greater encouragement should be given to small borrowers.

Enforcement problems will be associated with the efficiency of the Judiciary in disposing the cases and number of judges per population. Country specific micro level studies using judicial delays and/ or excessive formalism show that quality of judicial enforcement is correlated with easy availability of external finance in Italy(Jappelli, Pagnano and Bianco 2005; Guiso, Sapienza and Zingales, 2001), Argentina, Brazil and Mexico (World bank, 2005).³⁵

Judicial delay itself, however, is a consequence of other institutional weaknesses such as the nature of the procedural laws that govern the lending and borrowing behavior. Any procedural development that reduces the cost of availing legal services for contract enforcement should increase the total credit advanced in a credit-constrained economy. The support structure or the mechanism that makes

35. Jappelli, Pagnano & Bianco 2005 et al. World Bank Report. 2005.S

substantive law function smoothly is inadequately dealt with the literature. The country case studies concentrate on the efficiency of disposal of cases and not on the supportive laws that go into making the substantive law operational.³⁶

If supportive law is important then what sort of supportive law is required to make contract law an effective and low costs enforcement mechanism. Credible third party enforcement requires multiple legal institutions for smooth functioning. The code of Civil Conduct that defines the procedure to establish the fact i.e. the breach of contract should ensure justice, efficiency and speed. The procedures such as, who determine facts and the value at stake; what evidence is admissible; within how many days the hearing or trial should commence; what the penalties for non-compliance are, would determine the time, cost and efficiency of fact discovery.³⁷

Hadfield (2004)³⁸ illustrates the importance of enforcement through a comprehensive description of a range of necessary support structure such as the organization of courts, the judiciary, the legal profession, enforcement services, and process of lawmaking and legal innovation. Hadfield (2004)³⁹ further, elucidates “procedural and structural rules such as these governing evidence, discovery, and jurisdiction and soon have an impact not only on the efficacy of contract law in theory but also, very importantly, in practice. These rules play a fundamental role in deterring the transaction costs of using contract law as an enforcement mechanism.

36. Francis XavierRathinam, Fellow, Feb 2010 ICRIER, New Delhi, India Feb 2010.’ Procedural Law, Judicial Efficiency and Deb Finance, Evidence from India.’

37.Ibid.

38.Hadfield G. “Legal institutions that support structural commitments”, Hand Book of International Economic Supra Note 4, 145, Page No. 180 – 200.

113. Hadfield G. “Legal institutions that support structural commitments “Hand Book of International Economic Supra Note 4, 145, Page No. 180 – 200.

Extensive pre-trial discovery process, while potentially promoting increased accuracy in fact-finding, may also rise to costly strategic behavior and delays. The more expensive these processes are and the greater the delay and unpredictability in resolution they create, the less effective contract law is as an enforcement mechanism as the cost of enforcement exceeds the value of commitment gains in an increasing number of agreements.”⁴⁰

Visaria (2007)⁴¹ analyzes the relationship between procedural law reforms and commercial bank lending in India. She uses a comprehensive data on loans taken by 1831 firms from an Indian Private Bank which contains the information on contractual repayment in each quarter in a differences-in differences (D-i-D) set up. She utilizes “the exogenous variation due to the introduction of DRT’s at the level of region, time and claim size to estimate the effect of DRTs” (Visria, 2007)⁴². Further she also tests for legality of DRT introduction as there is no relationship between state-level economic, judicial and political variables and the decision to introduce DRT in particular state⁴³. Therefore, the staggered introduction of DRTs could be issued in a D-i-D framework to identify the causal effects of law on credit.

“Willful default refers to a situation where a borrower defaults on the repayment of a loan, despite having adequate resources. As of December 2015, the public sector banks had 7,686 willful defaulters, which accounted for Rs 66,000 crore of outstanding loans. The Standing Committee of Finance, in February 2016,

40. Ibid.

41. Sujata Visariya (2007), “Legal Reforms and Loan Repayment, Micro Economic Impact of Debt Recovery Tribunals in India”, Pager 157, Boston University.

42. Ibid.

43. Ministry of Finance, Government of India, Report of Standing Committee.

observed that 21% of the total NPAs of banks were from willful defaulters. It recommended that the names of top 30 willful defaulters of every bank be made public. It noted that making such information publicly available would act as a deterrent for others.”⁴⁴

“ARCs purchases stressed assets from banks, and try to recover them. The ARCs buy NPAs from banks at a discount and try to recover the money. The Standing Committee observed that the prolonged slowdown in the economy had made it difficult for ARCs to absorb NPAs. Therefore, it recommended that the RBI should allow banks to absorb their written-off assets in a staggered manner. This would help them in gradually restoring their balance sheets to normal health.”⁴⁵

“The process of recovering outstanding loans is time consuming. This includes time taken to resolve insolvency, which is a situation where a borrower is unable to repay his outstanding debt. The inability to resolve insolvency is one of the factors that impacts NPAS, the credit market, and affects the flow of money in the country.^[v] As of 2015, it took over four years to resolve insolvency in India. This was higher than other countries such as the UK (1 year) and USA (1.5 years).⁴⁶

“The Insolvency and Bankruptcy Code seeks to address this situation. The Code, which was passed by Lok Sabha on May 5, 2016, is currently pending in Rajya Sabha. It provides a 180-day period to resolve insolvency (which includes change in repayment schedule of loans to recover outstanding loans.) If insolvency is not

44. Ministry of Finance, Government of India, Report of Standing Committee.

45. “Non-Performing Assets of Financial Institutions’, 27th Report of the Department-related Standing Committee on Finance, http://164.100.47.134/lssccommittee/Finance/16_Finance_27.pdf.

46. Bankruptcy Law Reforms Committee, November 2015.

resolved within this time period, the company will go in for liquidation of its assets, and the creditors will be repaid from these sale proceeds.”⁴⁷

2.3 Review of Literature Relating to Judiciary and Judicial Decisions

The results show that legal reforms have helped reduce loan defaults/repayment delay by between 3 and 11 percent and further, the banks reduced the interest rates by 1.4 to 2 percentage points for new loans.

Mishra Pushpendra and Yadav Ajay Singh carried out, Comparative study of Financial Performance of SBI and ICIC Bank. They observed that, ‘success of a bank depends upon the methods of managing NPAs and keeping them within tolerance levels’⁴⁸

Financial sector reforms in the post independent India were mainly aimed at raising funds for government development initiatives. Further, to improve private investment in socially important sectors, there were compulsory priority sector lending, credit limits and interest rate controls. As there was no effective legal decree, banking sector health was eroded in the process of financing these objectives. Low commercial lending (GOI, 1991)⁴⁹, substantial under-lending to private sector (Banerjee et al, 2003)⁵⁰, excessive investment in risk-free government securities and high NPAs were the characteristics of Indian banks (Bhide, and Ghosh, 2001)⁵¹. Most of the banks in India had to resort to the out-of court settlements in the case of

47. Report of the Bankruptcy Law Reforms Committee, Ministry of Finance, November 2015, http://finmin.nic.in/reports/BLRCReportVol1_04112015.pdf.

48. Mishra Pushpendra, Delhi, India Feb 2010,” Procedural Law, Judicial Efficiency and Deb Finance, Evidence from India.”

50. Op cit. Banerjee et al, 2003.

51. Bhide, and Ghosh, 2001.

disputes or in the first place have recourse to relational lending (Moog, 1997)⁵² and credit rationing (Banerjee et al 2003).⁵³

Inadequacies in legal apparatus for financial transactions, especially contract enforcement regarding collateral liquidation were among the major causes of inefficiency in Indian banking Sector, (GOI, 1981 and 1991)⁵⁴.

Prior to legal reforms pertaining to financial Sector, the banks had to move the court to recover the dues or to liquidate the collateral in the event of default. The functioning of Civil Courts in India then was guided by the Code of Civil Procedure (1908) which defines the procedure to file a case in a civil court, rules for proceedings of a case and the right to appeal to higher courts.

Ramchandran Committee (1977)⁵⁵ report on amending Transfer of Property Act encapsulates the archaic legal apparatus as “economic conditions have vastly changed. The role of the unscrupulous moneylenders dominating in the field of credit is no longer valid, without reliance on institutionalization of credit, the banks and other financial institutions are the major moneylenders of credit today. In their dealing with their mortgagors, it is anachronistic to assume that they will adopt the unscrupulous moneylenders.”

Government of India had constituted the Tiwari Committee in 1981 to analyze the deficiencies in laws governing financial transactions in India and to recommend the required reforms to overcome the problems. The committee has correctly

52. Moog, 1997,

53. Op cit. Banarjeel. 2003.

54. GOI, 1981 and 1991.

55. Ramchandran Committee, 1977.

identified the required reforms to overcome the problems. The committee has correctly identified the root cause as Court delay and recommended to constitute a special court for financial disputes due to banks. In the committee's own words, "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 periods" (Tiwari Committee, 1981).⁵⁶The Narasimhan Committee (1991) report on banking reforms in India citing the Ramchandran Committee (1977) and the Tiwari Committee (1981), recommended for a special court to resolve cases involving bank loan defaults.

Thus, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 came in to being which led to the constitution of Debt Recovery Tribunals (DRTs) with the aim "... For expeditious adjudication and recovery of debts due to banks and financial institutions and for matters connected therewith or incidental thereto".

The Debt Recovery Tribunals (DRTs) as against the civil courts governed by the Code of Civil Procedure (1908) follow a summary procedure for ascertainment of dues. The DRTs are a quasi-judicial entity in the sense that they are established by the special statute as a part of executive arm of the government and fall under the purview of the Ministry of Finance, unlike civil and criminal courts, which are part of the judiciary. The substantive laws governing debt recovery cases remain the same as they were before. The Act directs the Tribunals to speed up the process of fact-finding; gives defendants only 30 days to respond to summons; demands swift

⁵⁶DRT Office, Aurangabad.

execution of the decree; and grants only one further appeal to Debt Recovery Appellate Tribunal (DRAT), however, it requires the defendants to deposit 75 percent of the disputed value before further appeal as a deterrent against excessive appeal. Further, the DRTs are allowed to stay the defendant from disposing of the disputed assets and detain him/her in case of noncompliance.

When a legal reform improves the efficiency of judiciary in resolving the credit disputes, banks can expect to liquidate the collaterals sooner and realize a higher value. With effective and faster legal arrangements to curb defaults and speed up assets liquidation, risk associated with commercial credit would be lower than the earlier scenario. These developments would have an impact on the behavior of the debtors and the banks. We hypothesize those improvements in adjudication due to procedural law reforms would lead to higher advances made to commercial sector and higher profits.⁵⁷

It is also observed and noted that asset wise classification recorded high degree negative co-relation. In other priority sector and it shows that significant increase in the level of NPA during the study tenure. It was also noted that the reform in the legal system in the recent years such as introduction of SARFACI Act, 2002, as Asset reconstruction companies Act, settlement through Local Adalat, schemes of OTS, DRT contributed in the fast recoveries of NPAs. A landmark judgment of Apex Court in *Mardia chemical* it has focused attention of Constitutional provisions and considering importance of fundamental rights held that Section 13(2) and 13(4)

57. Francis Xavier Rathinam, Fellow, Feb 2010 ICRIER, 'Procedural Law, Judicial Efficiency and Deb Finance, Evidence from India New Delhi, India.

require the creditor for not objecting the objections of the debtor and in support this cited 40 cases.⁵⁸

Study reveals that the bank's lending policy is a major driver of the NP loans. In view of this it is expedient to say that Banks need to be guided by fairness based upon financial and economic conditions rather than the system of conventions.

The very purpose of Securitization Act is the reconstruction means to reconstruction and rehabilitation of unit but this very purpose has lost the sight. Most of the recovery agents have experience or quality to manage sick a nit and factory and companies are put to stands still throwing thousands of employees and workers jobless. Creditors have been taking recourse u/s 3(4), without having any paraffinic. There is a need of scrutiny of the action of the bank and bank officers and their negative and impractical attitude.

Researcher feels that there is need of taking practical view by banking sector and Judiciary in the public interest because law is meant for people but not people for law. One should bear in mind that non-performing loans epitomized bad investment and responsible for diversion from good projects and ends in misallocation of capital and by extension of natural and labour resources that results in the economic showing results below production potential.

According Mandar⁵⁹, one major problem the Banks in India are facing is problem of recovery and overdue loans. The reasons behind may vary for different financial institutions as it depends upon respective nature of loans.

58. Mardia chemicals Ltd Vs Union of India and others and transferred case no. 15-95 of 2002 (2004(2) SRJ 239).

59.Mandar. Centre for Public Research.www.cprr.in

In this regards Author has recorded causes for defaulting of loans from industrial sector have been listed as under:

- i) Improper selection of an entrepreneur.
- ii) Deficient analysis of project viability.
- iii) Inadequacy of collateral security/ equitable mortgage against loan.
- iv) Unrealistic Terms and Schedule of Repayment.
- v) Lack of follow up of measures
- vi) Labour Problems.

All borrowers are provided the opportunity and have a right to approach the bank if there is any difficulty in paying installments and to choose an option to restructure their debt to enable a smooth repayment process.

Preliminary notices are sent to the borrower mentioning the over dues with interests and penal interests. If the bank has reason to believe that the customer is willfully delaying the repayment, or if the customer has not come forward with a definite plan of action to repay the dues, the bank can opt for legal proceedings. If there is a guarantor, the bank might approach him, as according to the guarantor agreement he is supposed to pay the loan when the applicant defaults.

The follow up from the bank will start as soon as a single repayment is broken. But further proceedings depend upon the customer's approach to the issue and his current circumstances. The legal procedures will definitely not emerge out of the blue; it is a process resorted to if initial measures do not yield results.

There are situations like death, ill-health or accidents that can unintentionally break the repayments. In such cases banks will give justifiable holidays to the customer or his family.

The Reserve Bank of India's guidelines says banks should give reasonable time to pay up and also forbids using 'muscle power' to recover loans. There is a laid down code of conduct which banks need to adhere.

Collection efforts, lawsuits and subsequent hearings may require the lender a legal representation to pursue. The borrower should approach a lawyer with full details especially if he feels that there is justice in his side or injustice from the bank.

In the case of a home loan, the lender who receives the liens can seize the property legally and liquidate it to recover the debt. A legal solution sometimes takes years. Also as property prices vary with time there are chances for delaying the liquidation or the borrower could delay their eviction from the house with justifiable reasons.

In the case of auto loans, the bank informs the police before seizing the vehicle and in cases where they do not find the vehicle; they seek police assistance to locate it. Banks registers seized vehicles in their name to avoid disputes. In case of unsecured loans like personal loans, the banks file civil or criminal suits against the borrower for cheque dishonor. Compared to a home loan, action is quick for other loans.

It is a challenge to put the whole process of loan recovery and holiday periods in a formal framework due to its delicate nature. It will always involve some element of pressure and coercion and the borrower is liable for the debt as well as the collection and legal costs incurred by the bank for its recovery.

There have been many instances of ill-treatments faced by the borrower from debt recovery agents. RBI guidelines strictly protect the interest of the borrower and any unethical practices by recovery agents. It is also mandatory to complete a

certificate course and training from the Indian Institute of Banking and Finance (IIBF) to be employed as a loan recovery agent. Consumers can take action against banks if agents harass them.

Any kind of loan agreement is a legal contract. Therefore if the borrower fails to repay, lender can sort it through legal means, though an exact period for an official declaration of a 'default' and related proceedings varies from case to case. Consumers always have the right to raise their voice against any unethical practices or insufficient time provided.⁶⁰

2.4 Review of Literature Relating to Scio-Economic Problem arising out of NPAs

Recovery

“There have long been conflicting expectations of the nature of companies’ responsibilities to society. However, for those businesses that do undertake what might be termed “corporate social responsibility”, what is actually socially responsible behaviour as opposed to management of corporate image management or other activity aimed predominantly at business benefits? This article reviews definitions of corporate social responsibility from both practice and the literature and looks at theories to explain why such behaviour takes place. The literature has strong divides between normative or ethical actions and instrumental activities. The article concludes by posing the question of when instrumental activities become business activities rather than largely social responsibility”.⁶¹

⁶⁰. Bank Bazaar.com - an online market place for your personal loan and home loan needs.

⁶¹. Umurthi and Guta Lovleena (2015). Indian Journal of Commerce. Vol.68.

Umurthi and Gupta Lovleen (2015)⁶², carried out the study on, “ Significance of Off Balance Sheet items in Risk-Return analysis’, and pointed that, “these items give rise to contingency risk and these items do not appear in on the balance sheet until contingency is realized for instance issuing standby guarantees on behalf of constituent in India, and outside India accepting obligations in the form of acceptances ,endorsements in the form of letters of credit and bills accepted by banks on behalf of customers etc. He further observed that, “business risk arises on account of bank indulging in off-balance sheet activities; both the authors computed Market Risk, Default Risk, and Business Risk. For this purpose the used 10 years, data in respect of total earning of PSBs, Old Private Banks, New Private Banks and Foreign Banks. “

Correlation between risk and return is computed at 0.05 level (2 tailed).It is observed by the authors, that, “low and positive correlation between market risk and return (0.107) indicating more the market risk more is the return. This relates to the lending and borrowing by the bank as a major function.”

It is further observed that, there is a high and positive correlation between business risk and return (0.8).As regards to the correlation between default risk and return there is a low negative correlation, but not significant. The relationship of market risk with default risk is seen very high and positive (0.98).Very high and positive correlation has been observed (0.67) and highly insignificant. High Positive correlation is noted between default risk and business risk but not much significant. After eluding the concluding remarks both the authors underlined that; if banks undertake more lending NPAs are bound to generate, thereby reducing profitability the result shows negative correlation. Thus authors by evolving various relationships

⁶². Ibid.

between default risk and other risk stressed the need of adherence to the Prudential norms mandated by the RBI.⁶³ Thus Bad Loans put unnecessary stress on the performing assets of the corporate sector and as would be seen it results in the closer of production units or insolvency throwing many jobless. This situation is harmful for the society's social health giving birth to many anti-social elements and disturbances in civil life of the society. NPAs also restrict fund flow that is required for the economic development and social causes. Thus, it could be concluded that NPAs cause bad effect on the socio economic development of the country.

Lance Moir, (2001)⁶⁴ in his article on corporate social responsibility and Corporate Governance: published in the international journal of business in society, remarked that, "there have long been conflicting expectations of the nature of companies' responsibilities to society."⁶⁴

Prakash⁶⁵ in his article, 'Corporate social responsibility', opined that, "As companies face themselves in the context of globalization; they are increasingly aware that Corporate Social Responsibility can be of direct economic value. Although the prime goal of a company is to generate profits, companies can at the same time contribute to social and environmental objectives by integrating corporate social responsibility as a strategic investment into their business strategy. A number of companies with good social and environmental records indicate that CSR activities can result in a better performance and can generate more profits and growth. It means,

63.RBI. Prudential Norms. RBI Bulletin.

64. (2001), "Corporate Social Responsibility and Corporate Governance" International journal of business in society.

65.Prakash. Atma. "Research Report submitted to Delhi University by Research Committee." Noida.

better performance should be not considered as burden for the business, but it is a sort of investment for future of business.”

According to the Research⁶⁶, company CSR programs influence to an extensive degree consumer purchasing decisions, with many investors and employees also being swayed in their choice of companies. A major challenge for companies today is attracting and retaining skilled workers. There is not only an image gain for the companies using CSR, but it is also important for the employees. Within the company, socially responsible practices primarily involve employees and relate to issues such as investing in human capital, health and safety and managing change.

In India there are an existent but small number of companies which practice CSR. This engagement of the Indian economy concentrates mainly on a few old family owned companies, and corporate giants such as the Tata and Birla group companies which have led the way in making corporate social responsibility an intrinsic part of their business plans. As is known Tata and Birla Group companies have been deeply involved with social development initiatives in the communities surrounding their facilities. Jamshedpur, one of the prominent cities in the northeastern state of Bihar in India, is also known as Tata Nagar and stands out at a beacon for other companies to follow. Jamshedpur was carved out from the jungle a century ago. TATA’s CSR activities in Jamshedpur include the provision of full health and education expenses for all employees and the management of schools and hospitals.⁶⁷

⁶⁶.Ibid.

⁶⁷.Prakash.Atma. Research Report submitted to Delhi University by Research Committee. Noida.

NPAs occur in agriculture, small scale industries and other segments such as construction of roads, water transportation, and self employed persons. The banks are the lending party suffers a lot resulting in the erosion of funds. Lending authority in particular and the society in general suffers a lot, since it leads to delay and denial of credit resulting in to off take of lend and able funds (Mirsa P and Sing Yadav A.)⁶⁸.

2.5 Conclusion

Survey of the litterateur helps to have bird's eye view on the inherent problems in respect of the subject matter. Researcher herein after study of the available literature on the recovery of loan found that there is limited literature available on this important issue and whatever material available from the internet is nothing but an academic exercise loosing the sight of legal side. Being practitioner it could be concluded that, this finding has a glaring socio economic impact and therefore, there is a need of detailed study of banking practices, various Acts; for instance Banking Regulation Act,1949alongwith amendments, Contract Act, Debts Recovery due -----, SARFACI Act. Limitations Act, 1963, Transfer of Property Act, Civil Procedure Code, Companies Act, Constitutional provisions related fundamental rights, duties.

A landmark judgment of Apex Court in Mardia chemical, have focused attention of Constitutional provisions and considering importance of fundamental rights and it has been held that, Section 13(2) and 13(4) of Securitization Act 2002

⁶⁸. Mirsa P and Sing Yadav A. The Indian Journal of Commerce' 2015.Vol.68 No.2.

requires the creditor for responding to the objections raised by the debtor and in support 40 cases have been cited.⁶⁹

Study reveals that the bank's lending policy is a major driver of the NPAs loans. In view of this it is expedient to say that Banks need to be guided by fairness based upon financial and economic conditions rather than on the conventions.

The very purpose of Securitization Act is the reconstruction means to reconstruction and rehabilitation unit but this very purpose has lost the sight. Most of the recovery agents have no experience or ability to manage sick unit and factory and as a result of it companies' activities are put to stands –still, throwing thousands of employees and workers jobless. Same is the case of Creditors taking recourse u/s 3(4). It is without having any paraffinic. There is a need of scrutiny of the actions of the bank and bank officers and their negative and impractical attitude.

Researcher feels that there is need of taking practical view by banking sector and Judiciary in the public interest because law is meant for people but not people for law. One should bear in mind that non-performing loans epitomized bad investment and responsible for diversion from good projects and ends in misallocation of capital and by extension of natural and labour resources that results in the economic showing results below production potential.

⁶⁹Bhanumurthy K.V. and Gupta Lovleen, 'Risk and Return, in Banking Industry: Concept and Measurement'. The Indian Journal of Commerce Vol.No.2 April-June 2015.

CHAPTER III

Research Methodology

Research Methodology

- Introduction
- Objectives
- Scope of the study
- Hypotheses and Testing
- Data collection
- Source of Data and Sample selection
- Conclusion

CHAPTER III

RESEARCH METHODOLOGY

In this chapter research methodology has been discussed. It was decided to explore the work done by eminent authorities, researchers, authors of the books and conclusions have been drawn. After discussing varying problems related to the subject matter with the guide as regards to the title of thesis, significance of the subject, utility of the study under present circumstances this work was divided into three parts, namely Exploratory work; Planning for final investigation; and Execution of the Research Plan. For this purpose following two ways have been followed.

1. Literature survey and 2. Experience survey.

Experience survey demonstrates that literature surveys and experience surveys and analysis of relevant court cases proved to be productive in exploratory research.

In the light of above cited discussion, in view of this study, objectives and hypothesis have been designed and presented as under.

3.2 Objectives of the Study

The main thrust of the study has been, to examine Socio-Economic impact of Debt Recovery Problems in India in general and in the study area in particular. Mountain of NPAs hits the portfolio of lending banks. This resulted in to the erosion of funds, consequently adversely affected the nation's economy and the society at large. In view of this, this researcher has tried to examine problems leading to NPAs, its

consequences on the society and effect on the working of banks. However, present study aims at the following specific objectives:

1) To make overall study of the effects and problems of Debt recovery on the lending institutions in general and national economy in particular.

NPA or Non- performing Assets or Loss Assets or Stressed Assets are the assets which do not generate income. When banks pull back from lending, it naturally hurts the macroeconomic situation; and it hurts the asset quality of banks. This situation hampers the flow of funds into the market. This erosion of funds hits the infrastructure sector badly creating hurdles in the economic development of the country. There are number of constrains related to the blooming NPAs having socioeconomic impact. Hence overall study of the effects and problems of NPAs have been considered important.

2) To make overall study of the state of NPAs in India and identifying causes thereto.

NPAs being nonperforming assets do not generate income and it becomes burden on the society and national economy. It has been observed that due to the increase in NPAs financial institutions become weak in their lending capacity and one of the major functions of lending of the banks receive blow affecting erosion of fund in the money market. In view of this it is essential to search causes for the NPAs and taking steps to put NPAs in the ambit of control in the interest of national economy's point of view.

3) To make the study of mechanism introduced to tackle the bad loan recovery problems in India.

History of lending and borrowing is prevailing since a barter age. Its mention is found in our literature. The efficient financial services vis-à-vis banking services have been considered to be a key driver of business growth and profitability and the ability of the people to meet their needs for housing and other lifestyle aspirations. In view of this fact Government of India introduced various steps like reforms and legal enactments. In order to overcome these problems in general and study of debt recovery mechanism by the government was considered important and hence this has been taken one of the objectives of the present research.

4) To study the impact of various legal recourses available and dealing with the recovery of NPAs and particularly impact of various causes of NPAs and legal steps undertaken to overcome them from time to time vis-à-vis Securitization Act 2002 and subsequent amendments thereto.

Debt recovery problem is becoming a major concern in our financial sector.

According to the recent report of the RBI, it jumped to 5.6 percent at the end of March 2015. It is also reported that it is likely to go up and it is going to affect the Indian economy adversely. Prior to the establishment of the DRTs/DRATs, the process of recovery of debts used to be quite protracted and cumbersome. In the year 1990, more than 15 lakh cases filed by Banks and Financial Institutions were pending before various courts involving an amount of more than Rs. 6,000 crore. With the establishment of DRTs/DRATs, the recovery position was expected to improve.

Subsequently Securitization Act 2002 was enacted. In view of these developments this objective was incorporated.

5) To take up the review of landmark judicial decisions in the matter of recovery of NPAs in Indian banking sector.

Study could be not completed unless judgments by various courts, Apex Court and a land mark judgment delivered by the Apex Court in Mardia chemical case is studied and hence this objective was taken up for the study.

6) To examine the socio-economic impact of NPAs on the society in general vis-à-vis on the country in particular.

NPAs attack on the profitability of the banks resulting in the erosion of funds of banks to be flowed into the market. This limits the funding for infrastructural development, paucity of funds for various government plans like road construction public spending on social-welfare activities like education, cultural activities, creating water resources, carrying on various schemes for the society like housing schemes, health care services, food guarantee schemes etc. In view of this and other reasons this study has been considered significant in the present situation.

7) To identify the scope for further research in controlling NPAs through legal and other measures.

Present study is just an effort to search one aspect of the subject matter. There is a wide scope for further research in respect of NPA related problems and issues.

There are legal consequences and a set- up of judiciary and debt recovery laws hence this objective was considered important.

3.3 Scope of the Study

Despite the limitations of time and money at the disposal of the researcher, it has been decided to confine this study to the selected cases of DRTs, DRAT Mumbai and Mumbai High Court and its Bench at Aurangabad in Maharashtra along with certain Apex Court's decisions. This study is of the exploratory nature and therefore multistage stratified sampling techniques have been used for the collection of data. The major shares of the cases are from Mumbai DRT since the researcher's domicile is in Mumbai and the case in which she appears consists of cases in Mumbai DRT. It has been also decided to incorporate variety of the cases related to NPAs and to verify such problems out of the Mumbai jurisdiction. Therefore, researcher decided to make the study of certain cases at Aurangabad DRT. It has been also decided to take up few landmark cases ignoring the number of cases especially reported cases. Thus, sample space of study was decided as under:

- i) High Court Jurisdiction: High Court Mumbai and its bench at Aurangabad.
- ii) DRT: Mumbai and Aurangabad DRT.
- iii) DRAT: Mumbai.
- iv) Advocates: Practicing advocates from Mumbai, Pune and Aurangabad.

Care has been taken to see that maximum coverage of samples are taken up for the present study and it will represent the universe.

3.4 Hypotheses and their Testing

Indian bank's Non-Performing Exposures (NPE's) which includes loans in arrears is in major stress on the fund flow of banking institutions. It has hit banks' portfolio recently, which has gone up to 5.7 per cent as on 31st March 2015 and there is no hope to come down in near future. In view of it, it has been considered as the major issue in this study. NPAs causes erosion of funds of the banking institutions has wide-ranging effects from small to large society. In the light of this rational of the study in the present situation, the objectives have been designed. In order to attain these objectives following main hypothesis has been set up and has been tested.

Hypothesis 1: "Debt Recovery problems have wide ranging socio-economic impact on country's economy in general and society in particular".

Following are the sub hypotheses of developed and decided to be tested.

H1.1: Government policies in respect of directions to the banks to finance the nonproductive activities, habitual defaulters and certain factors are responsible for the mountain of NPAs in Indian banks.

H1.2: Increase in bad loans requires the banks to make provisions for meeting bad loans and this constrains banks from funding the country's economy.

H1.3: NPAs hit the banks' portfolio and have socio-economic impact on the society, wide ranging anywhere from local effects on small community to changes on the entire society.

H1.4: When leverage increases, the ability to repay debt (Solvency Ratio) and debt serving ability (Interest Coverage Ratio) of the corporate sector increases.

H1.5: The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 and Amendments thereto have been much more effective in solving the problems of Debt Recovery of Financial Institutions.

H1.6: The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 have been effective in arming the Judiciary to help the Debt Recovery positions of Financial Institutions in India vis-à-vis Maharashtra.

H1.7: Financial Institutions have effectively utilized the Securitization Act 2002 as a tool of recovery due to positive attitude of the Judiciary.

In the present study attempts have been made to find out causes of NPAs and recovery of the same which has become the major concern for the Indian banks. The scope of the subject is wide ranging and in view of this every care has been taken to see that study should become representative of the universe. Considering this fact personal visits have been paid to all the DRT offices in Maharashtra located at Mumbai, Pune, Aurangabad and Nagpur. It would be seen that, the working procedure of the debt recovery and judicial system are one and the same throughout the country. Debt Recovery Tribunals have been set up by the central government under article 323(B), 125

to facilitate speedy recovery of loans and bypass the prevailing lengthy recovery procedure. A pretesting of some of the questions made to the defaulters and Bankers (Bank Officers) and some renowned Advocates was made. Whatever feedback was received was again refined and detailed questioner was prepared for the collection of data. After this a pilot study was undertaken. Pilot study is a small-scale replica and a rehearsal of main study¹⁴⁵. Pilot study revealed that causes of bad loan, recovery problems, defaulters' attitude and legal practitioners' attitudes appear to have been similar everywhere. In view of the revelations it was decided to use both direct and indirect methods of the collection of data. During the entire course of study researcher has visited DRT offices at Nagpur, Aurangabad, Pune, and Mumbai and collected formal information and after discussing the matter and related information with the guide; the scope of the study, sample space and nature of collection of required data was decided. This study is of the exploratory nature and in view of this it was decided to use stratified sampling method for the collection of necessary data. Under this caption detailed process of collection of data has been explained simultaneously as under.

3.5.1 Data Collection

While collecting the data and selection of the sample the researcher has focused on the following points.

- i) Title of the study.

145. Ahuja Ram, "Research Methods", P. 150. "Rawat Publications, Jaipur", India 2001.

Socio-Economic Impact of Debt Recovery Problems

ii) Significance of this study.

The study is significant because NPA has socio-economic impact on the society in general and on the nation's economy in particular.

iii) Scope or place of study.

The place of study is Mumbai and the jurisdiction of the court is Mumbai High Court and its bench at Aurangabad and DRTs in the jurisdiction of Mumbai and Aurangabad High Court.

iv) Nature of data.

The data relates to the personal interview of the Judges, officials, Advocates and also clients. The information has been also collected from the reported cases of the Apex Court.

v) Period of study.

The period of study started from the inception of Securitization Act up to cases 2010 -2015.

vi) Nature of Primary data.

It has been explained under the caption Sample Designing. Filling well structured questionnaires, personal interview and observations.

vii) Technique of the Data Collection.

For the collection of Primary data personal interview observations and questionnaire techniques have been applied. For Secondary data various publications, bulletins and reported court cases have been used.

viii) Methods used for Data Analysis.

Time Series Analysis, Tabulation, Graphs and Averages and Percentage have been used.

ix) Style of the report.

The style of the report is according to the conventional norms of the report writing, followed by the purpose of the thesis, strictly as per the specifications of the Tilak Maharashtra Deemed University, Pune.

The source of data is generally classified as Primary and Secondary Data. Pauline V. Young opined that the data could be classified into documentary source and Field source. Books, Manuscripts, Diaries, and Letters etc. could be considered as a secondary source or documentary sources while the information gathered by individuals and group of individuals is the primary field source. The difference between primary and secondary data is a matter of relativity: data which are primary in the hands of one becomes secondary for others.

Both direct and indirect methods of collection of data have been used for gathering the information. For the collection of primary information the researcher relied upon interview method and questionnaire method. The sample space of the information used by the researcher is as under:

- Various Bank officials facing NPA problem.
- Chartered Accountants.
- Borrowers or Defaulters, Co-obligators.
- Academicians and Analysts.
- Debt Recovery Agencies.
- Court Judges.

3.5.2 Sample space

Present study is confined to the jurisdiction of Debt Recovery Tribunals in the state of Maharashtra. There are six Debt Recovery Tribunals in Maharashtra. Out of six debt recovery tribunals 3, are located in Mumbai (Mumbai No.1, Mumbai No.2, Mumbai No.3) and one each in Pune, Aurangabad and Nagpur respectively. Jurisdiction of respective Debt Recovery Tribunals is as under:¹⁴⁶

3.5.2.1 Debt Recovery Tribunals in Maharashtra

The Tribunal has been constituted vide notification GSR No: 654(E) 17-7-1994. The territorial jurisdiction of the Hon`ble Tribunal covers over Debt Recovery Tribunal Aurangabad, Debt Recovery Tribunal Mumbai-1, Debt Recovery Tribunal Mumbai-2,

146. <http://www.bankreport.rbi.org.in> drt.gov.in

Debt Recovery Tribunal Mumbai-3, Debt Recovery Tribunal Nagpur and Debt Recovery Tribunal Pune.

3.5.2.1 Profile of Maharashtra and Study Area.¹⁴⁷

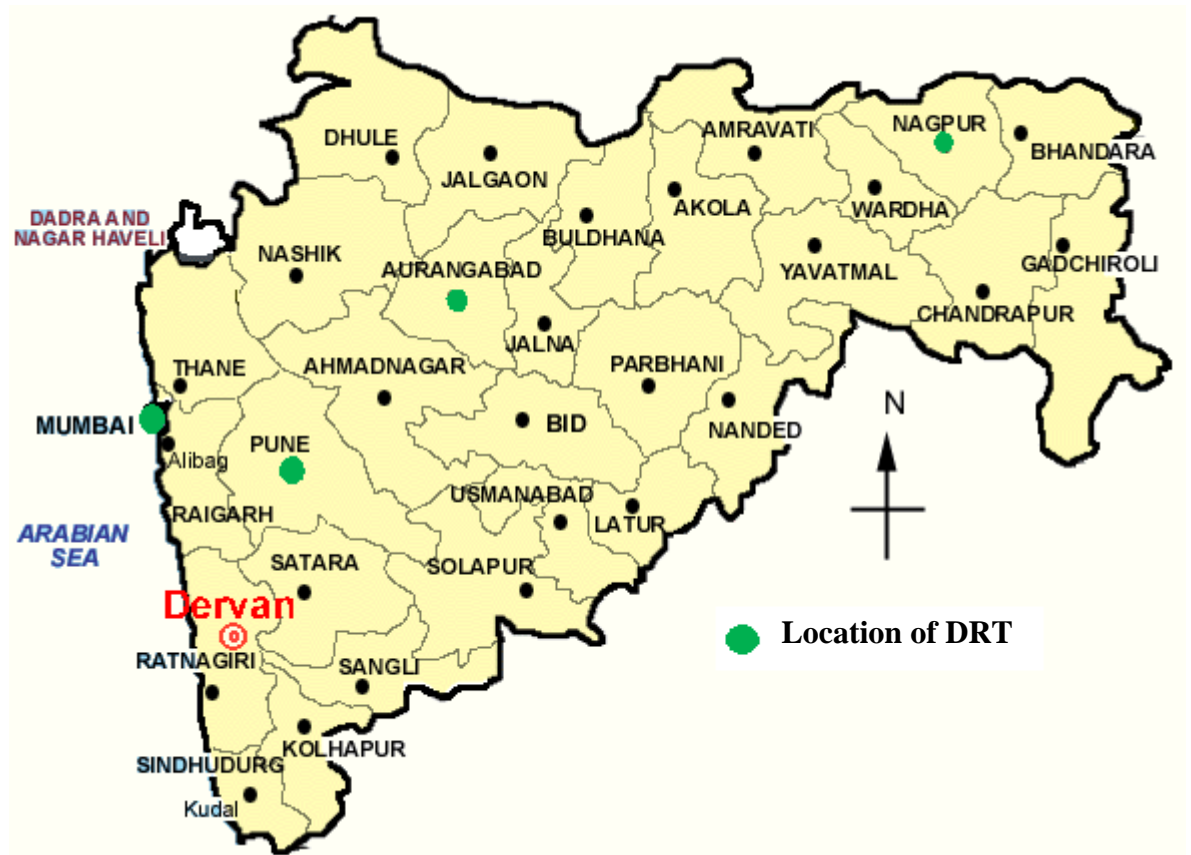
Maharashtra is a state in the western region of India and is India's third-largest state by area and is also the world's second-most populous sub-national entity. It has over 110 million inhabitants and its capital, Mumbai, has a population of approximately 18 million. Nagpur is Maharashtra's second capital as well as winter capital. Maharashtra's business opportunities along with its potential to offer a higher standard of living attract migrants from all over India.

Ancient and medieval Maharashtra included the empires of the Satavahana dynasty, Rashtrakuta dynasty, Western Chalukyas, Mughals and Marathas. Spread over 118,809 sq mi (307,710 km²), it is bordered by the Arabian Sea to the west and the Indian states of Karnataka, Telangana, Goa, Gujarat, Chhattisgarh, Madhya Pradesh and the Union territory of Dadra and Nagar Haveli. The major rivers of the state are Godavari, Krishna, Narmada and Tapi. Maharashtra is the second most urbanized state in India. The state has several tourist destinations including the popular Hindu places of pilgrimage, Pandharpur, Dehu and Alandi. Other places that attract pilgrims from other parts of India and beyond include Hazur Sahib Gurudwara at Nanded, and Sai Baba shrine at Shirdi.

147. <https://en.wikipedia.org/wiki/Mumbai>

Maharashtra is one of the wealthiest and the most developed states in India, contributing 25% of the country's industrial output and 23.2% of its GDP(2010–11).^[7] As of 2011, the state had a per capita income of 1.0035 lakh (US\$1,500), more than the national average of 0.73 lakh (US\$1,100). Its GDP per capita crossed the 1.20 lakh (US\$1,800) threshold for the first time in 2013, making it one of the richest states in India. However, as of 2014, the GDP per capita reduced to ₹1.03 lakh (US\$1,500) Agriculture and industries are the largest parts of the state's economy. Major industries include chemical products, electrical and non-electrical machinery, textiles, petroleum and allied products.

Map of Maharashtra showing location of DRTs 3.1*



Profile of Mumbai and DRTS^{148*}

Mumbai lies on 18⁰.56' N 72^o 33'E Latitude having Population as per 2011 census is 12,442,373 and it is reckoned as the financial capital of India. Map of Mumbai will show its location and it is depicted on this page. Mumbai is also reckoned by nicknames as the city of seven islands and city of dreams, gate way to India, Hollywood of India.

Mumbai is India's largest city (by population) and is the financial and commercial capital of the country as it generates 6.16% of the total GDP. It serves as an economic

148, https://en.wikipedia.org/wiki/Mumbai_Metropolitan_Region*

hub of India, contributing 10% of factory employment, 25% of industrial output, 33% of income tax collections, 60% of customs duty collections, 20% of central excise tax collections, 40% of India's foreign trade and ₹4,000 crore (US\$590 million) in corporate taxes. Along with the rest of India, Mumbai has witnessed an economic boom since the liberalization of 1991, the finance boom in the mid-nineties and the IT, export, services and outsourcing boom in 2000s. Although Mumbai had prominently figured as the hub of economic activity of India in the 1990s, the Mumbai Metropolitan Region is presently witnessing a reduction in its contribution to India's GDP.

As of October 2015, Mumbai's GDP is \$278 billion (from 2014) and its per-capita (PPP) income in 2009 was ₹486,000 (US\$7,200), which is almost three times the national average. Its nominal per capita income is ₹125,000 (US\$1,900), (US\$2,094). Many of India's numerous conglomerates (including Larsen & Toubro, State Bank of India (SBI), Life Insurance Corporation of India (LIC), Tata Group, Godrej and Reliance), and five of the Fortune Global 500 companies are based in Mumbai. This is facilitated by the presence of The Reserve Bank of India (RBI), the Bombay Stock Exchange (BSE), the National Stock Exchange of India (NSE), and financial sector regulators such as the Securities and Exchange Board of India (SEBI).

Until the 1970s, Mumbai owed its prosperity largely to textile mills and the seaport, but the local economy has since then diversified to include finance, engineering, diamond-polishing, healthcare and information technology. The key sectors contributing to the city's economy are: finance, gems & jeweler, leather processing, IT and ITES, textiles, and entertainment. Nariman Point and BandraKurla Complex (BKC) are Mumbai's major financial centers. Despite competition from 133

Bangalore, Hyderabad and Pune, Mumbai has carved a niche for itself in the information technology industry. The Santacruz Electronic Export Processing Zone (SEEPZ) and the International InfoTech Park (Navi Mumbai) offer excellent facilities to IT companies.

State and central government employees make up a large percentage of the city's workforce. Mumbai also has a large unskilled and semi-skilled self-employed population, who primarily earn their livelihood as hawkers, taxi drivers, mechanics and other such blue collar professions. The port and shipping industry is well established, with Mumbai Port being one of the oldest and most significant ports in India. Dharavi, in central Mumbai, has an increasingly large recycling industry, processing recyclable waste from other parts of the city; the district has an estimated 15,000 single-room factories.

Mumbai has been ranked sixth among top ten global cities on the billionaire count, 48th on the Worldwide Centers of Commerce Index 2008, seventh in the list of "Top Ten Cities for Billionaires" by *Forbes* magazine (April 2008), and first in terms of those billionaires' average wealth. As of 2008, the Globalization and World Cities Study Group (GaWC) has ranked Mumbai as an "Alpha world city", third in its categories of Global cities. Mumbai is the third most expensive office market in the world, and was ranked among the fastest cities in the country for business startup in 2009¹⁶⁸.

Map:Mumbai: 3.2 *



Debt Recovery Appellate Tribunal Mumbai:

Debt Recovery Tribunal-1 Mumbai:

The Tribunal has been constituted vide notification GSR No: 524 (E) dated 16.7.1999. The territorial jurisdiction of the Hon`ble Tribunal covers City Area of A Ward as defined by Mumbai Municipal Corporation bounded as below excluding areas of Nariman Point :- East : Dock area, Ballard Estate, Shahid Bhagat Singh Road, P.Demello Road West :Marine Drive North : Anandilal Poddar Marg, Lokmanya Tilak Marg South : Colaba.

Debt Recovery Tribunal-2 Mumbai:-

The Tribunal has been constituted vide notification GSR No: 945(E) dated 29.12.2000. The territorial jurisdiction of the Hon`ble Tribunal covers Nariman Point in A ward bounded as south : Arabian Sea & Nathalal Parekh Marg West : Dorabjee Tata Road North : Madam Cama Road East : Maharshi Karve Road and B ward to G Ward i.e.; excluding the areas of jurisdiction of Mumbai DRT No.1 and excluding Suburban & extended suburban areas of Greater Bombay.

Debt Recovery Tribunal-3 Mumbai:

The Tribunal has been constituted vide notification GSR No: 945(E) dated 29.12.2000. The territorial jurisdiction of the Hon`ble Tribunal covers Areas of H Ward to T Ward i.e.; Suburban & extended Suburban areas of Greater Bombay and districts of Thane, Raigad, Ratnagiri and Sindhudurg in Maharashtra state and the state of Goa and any other areas of Mumbai not covered by Mumbai DRT No.1 & Mumbai DRT No.2.

Debt Recovery Tribunal Aurangabad:

Aurangabad is an important major city in Maharashtra. It is in the Delhi Aurangabad industrial corridor as declared by the central government. It is connected on the north side by Karnataka and lies on NS 6 and connected by Eastern Railways. Aurangabad lies on 18.56 north longitude 72^o East latitude. Aurangabad historically founded in 1610 by Malik Ambar, Aurangabad was then known as "Khidki" meaning window. The city served the real purpose of its ancient name as the Mughals could look into the Deccan through it. Later in 1953 the city was renamed as Aurangabad when 136

Aurangzeb took over the Deccan kingdom. Aurangabad is most famous for its historical monuments and caves. It is one of the most renowned tourists' attraction of Aurangabad is Bibi-Ka-Maqbara, built in memory of Aurangzeb's wife, Begum Rabia Durani. Among others there are Aurangabad Caves, Panchakki, Himroo Factory, Darwazas, Daulatabad Fort, Khuldabad, Shirdi, Griheshwar Temple, Paithan, Ajanata and Ellora Caves, and History Museum of Marathwada University.

Map Of Aurangabad:3.3 *



Tribunal in Aurangabad has been constituted vide notification GSR No: 909 (E)dated 7.12.2000. The territorial jurisdiction of the Hon`ble Tribunal covers Aurangabad, Nanded, Jalna, Beed, Parbhani, Hingoli, Dharashiv, Latur, Ahmadnagar, Jalgaon, Dhulia, Nandurbar and Nasik districts of Maharashtra state.²¹⁴

3.5.2.1 Debt Recovery Tribunal-1 Mumbai : *The Tribunal has been constituted vide notification GSR No: 524 (E) dated 16.7.1999. The territorial jurisdiction of the Hon`ble Tribunal covers City Area of A Ward as defined by Mumbai Municipal Corporation bounded as below excluding areas of Nariman Point :- East : Dock area, Ballard Estate, Shahid Bhagat Singh Road, P.Demello Road West:Marine Drive North : Anandilal Poddar Marg, Lokmanya Tilak Marg South : Colaba.*

3.5.2.2 Debt Recovery Tribunal-2 Mumbai : The Tribunal has been constituted vide notification GSR No: 945(E) dated 29.12.2000. The territorial jurisdiction of the Hon`ble Tribunal covers Nariman Point in A ward bounded at south : Arabian Sea & Nathalal Parekh Marg West : Dorabjee Tata Road North : Madam Cama Road East : Maharshi Karve Road and B ward to G Ward i.e.; excluding the areas of jurisdiction of Mumbai DRT No.1 and excluding Suburban & extended suburban areas of Greater Bombay.

3.5.2.3 Debt Recovery Tribunal-3 Mumbai : The Tribunal has been constituted vide notification GSR No: 945(E) dated 29.12.2000. The territorial jurisdiction of the Hon`ble Tribunal covers Areas of H Ward to T Ward i.e.; Suburban & extended Suburban areas of Greater Bombay and districts of Thane, Raigad, Ratnagiri and Sindhudurg in Maharashtra state and the state of Goa and any other areas of Mumbai not covered by Mumbai DRT No.1 & Mumbai DRT No.2.

3.5.2.4 The Appellate Debt Recovery Tribunal: This is in Mumbai having appellate jurisdiction over Mumbai, Pune, Aurangabad and Nagpur Debt Recovery Tribunals.

3.2.5 Debt Recovery Tribunal in Aurangabad has been constituted vide notification GSR No: 909(E) dated 7.12.2000. The territorial jurisdiction of the Hon`ble Tribunal covers Aurangabad, Nanded, Jalna, Beed, Parbhani, Hingoli, Dharashiv, Latur, Ahmadnagar, Jalgaon, Dhulia, Nandurbar and Nasik districts of Maharashtra state.

3.5.2.1.7 Debt Recovery Tribunal Pune :

3.5.2.1.8 Debt Recovery Tribunal Nagpur: Since the Debt Recovery Tribunals in Maharashtra are located in the major cities such as Mumbai, Pune, Aurangabad and Nagpur and since the researcher has taken up Mumbai DRT and Aurangabad DRT, it covers almost all varieties of problems at two different places. In view of this the researcher never felt the need of taking up parameters for the selection of the sample space. Thus the sample space comprises Debt Recovery Tribunal in Mumbai and Aurangabad. In this way selection of the sample should be considered justified.

Hence Sample Set or $\Omega = \{\text{All 3 Mumbai DRTs, Aurangabad DRT}\}$ However, following few characteristics of the cases were deliberately considered having direct bearing on the subject matter:

- i) Quantum of the NPA.
- ii) Nature of action taken by the bank and Financial Institutions.
- iii) Different issues such as period of limitations, nature of case such as issue of notice, delay in condemnation of time limit, symbolic possession of securities, physical possession etc.
- iv) Cases reported for appeals to DRAT / High Court/ Supreme Court.

- v) Extra-ordinary matters, for instance Decree obtained by the banker against party not in existence or against deceased.
- vi) Location of Debt Recovery Appellate Tribunal in Mumbai.

For the reference of Debt Recovery Tribunals, hence forth a word DRT and for the Appellate Debt Recovery Tribunal abbreviation DRAT have been used for the sake of convenience and as a prevailing practice in judiciary.

3.5.3 Sources of Data

As have been mentioned earlier both primary as well as secondary data have been used which helped the researcher to analyze and draw suitable conclusions and for recommending useful suggestions for the study of the socio-economic impact of debt recovery problems in general and on the economy of the nation in particular.

3.5.3.1 Primary data

The primary data has been collected through the circulation of the well structured Questionnaire. Questionnaire consists of the closed-ended questions and open-ended questions. Some of the information has been collected through the face to face interview and observations. Final questionnaire comprises 6 parts and classified as **Part A, B, C, D and E.** **Part A** relates to the Profile of Respondents, **Part B** consists of Employment Profile of the respondents, 'business units; **Part C** consists of questions requiring information in respect of Financial Management; **Part D** include question pertaining to Judicial Process; and **Part E** relates to the socio-economic impact of the Debt Recovery process and related effects such as stress of the recovery process etc. Information was also collected through the observation by the researcher and a part of information through the face to face interview of the respondents and bank personnel and practicing advocates. Collected information was analyzed, classified, tabulated and conclusions drawn.

3.5.4 Secondary Data

The researcher has freely used secondary data from the following sources:

- Various Law Journals.

- Reports of Various Committees.
- RBI guidelines. Bulletins of SBI and RBI of the relevant periods.
- Reported cases and judgments.
- Reference books.
- Published and unpublished thesis.
- Articles in News Papers, Journals.

The collected data has been properly scrutinized, analyzed, classified, tabulated and discussed. While doing so the researcher has taken up the review of the available literature on the subject.

3.5.5 Sampling Frame

A stratified sampling technique has been used for the collection of the primary data. Simple and convenient random sampling method has been used. Sampling size has been substantiated with the help of some mathematical formulas at 95 percent level of confidence.

3.5.6 Pilot Study

At the outset of the nature of the research and at the instance of guide pilot study was undertaken. “The words/concepts used in the questionnaire/ schedule, or the length of questionnaire, or ambiguity in meaning, or relevance of some questions can be examined and data collection instruments can be improved and modified through the pilot study.”¹⁴⁹

149. Sarantakos, S., “Social 1998:293; Oppenheim,” 1992 Macmillan Press, London.

Before incepting into the pilot study the researcher discussed various matters and issues related to the research topic with her colleagues. A set of close-ended questions were prepared for the interview of respondents, court judges and advocates. After discussing with the guide, the final set of questions was prepared. After this the researcher met two advocates who were actively practicing in the DRT; one of whom is the Banker's advocate on record and another advocate who generally used to appear or represent borrowers or defaulters. For conducting the pilot study in all 40 bank officers were selected from various banks at random with purposive sampling method .For example 5 officers from different Commercial Banks, 5 officers from the cooperative banks, 7 officers from nationalized banks and 3 officers from other financial institutions. A set of about 30 statements were prepared for recording the response. A set of 5 practicing advocates of which 3 were from Mumbai and 2 were from Aurangabad were selected for the personal interview. The same setoff 30 statements have been used for interview. About 20 defaulters belonging to various categories such as Partnership Firm, Hindu Family business, sole traders and 5 obligators were taken up and the same set of 30 statements were used for recording their views. After soliciting necessary information and guidelines some more questions were incorporated and some unwanted questions were dropped. Consequently the questionnaire containing 22 statements with specifying set of alternative responses was finalized. The result from the pilot test assures the content validity of the questionnaire. The content validity of the questionnaire has been checked with help of statistical parameters used. In order to confirm the reliability of the scale, Cronbach's Alfa measure has been applied. The reliability coefficient for response quality has been

computed as 0.913. According to the prevailing presumptions, 0.6 values or above is considered a satisfactory reliability level.

3.5.7 Sample Size

While deciding the sample size sufficient care was taken it would be unbiased and representative of Universe. In view of this, following points considered important:

- a) Size of population
- b) Nature of population
- c) Purpose of study
- d) Qualitative and quantitative nature of data
- e) Accessibility of the elements
- f) Variability required
- g) Level of confidence
- h) Sampling error
- i) Stratification required

3.5.8 Formula used for deciding Sample Size

Taro Yamane (1970:886-87)¹⁵⁰ has been used to determine the sample size. For this study from the study area as have been stated earlier size of sample for study was considered. Considering total population as 500(N) and confidence level 95 percent error (e) as 0.05, the sample size according to Taro Yamane formula. It would be 222.

¹⁵⁰.Taro,Yamane (1970:886-87), Statistics: An Introductory Analysis, Harper and Row, and New York.

$$= \frac{500}{1 + (1.96)^2} = \frac{500}{1 + 3.8416} = \frac{500}{4.8416} = 222$$

According to Kosecoff (1995:62)¹⁵¹, following formula determines the sample size.

N (sample size) = $(Z/e)^2(p)(1-p)$, (wherein p is estimate proportion of cases considered). And Z at 95 percent confidence level is 1.96. The value of N arises at 77. Considering the answers as above our size of selected sample is far more than the minimum number of sample required.

Kaiser-Meyer-Olkin (KMO)¹⁵² test has been used to measure the sampling adequacy. It was as 0.899 which support the adequacy of sample. The questionnaire used has been verified with the help of content validity. For the opinion survey of practicing advocates, financial experts, Hon judges and bank officers connected to the subject matter and review of literature have been systematically evaluated to determine the validity of scale represented for measurement.

The respondents were required to select an alternative which closely reflect their choice on 5-point Likert scale regarding their agreement or strongly disagreement.

The questionnaire has been designed based on 5 points Likert scale, characterized absolutely not applicable; yes it is there; it is a major cause; it is highly responsible cause and it is one having significant impact.

151. Kosecoff J., Fink and Arlene, "How to Conduct Survey", Sage Publications, London, 1995.

152. Olkin (KMO), "Behaviourial approach" Newyork Press.

The collected information / response have been analyzed by attaching points 1, 2, 3, 4 and 5 respectively for the answers. For the analysis purpose actual mean was computed on the basis of score and it is compared with the expected mean actual mean of score is calculated by dividing total score by number of respondents.

The expected mean is calculated by adding score for each point; thus; $1 + 2 + 3 + 4 + 5 = 15/5=3$. When calculated mean exceeds actual mean it is indicative of the cause that it is significant and is the cause highly responsible for NPA.

Similar process has been followed in case of the interview of related bank officers and interview of the selected practicing advocates. Profile of the selected samples has been presented in the following tables:

Table 3.1: Type of organization of respondents

Sr. no	Type	Mumbai	Aurangabad	Total
1.	Individual Proprietor	200(67)	100(33)	300(100)
2.	Joint Hindu family business	20(40)	30(60)	50(100)
3.	Partnership firm	40(80)	10(20)	50(100)
4.	Joint stock company	40(80)	10(20)	50(100)
5.	Others	30(60)	20(40)	50(100)
	Total	330(66)	270(34)	500(100)

Source: Primary data.

Figures in parentheses are percentage.3.1

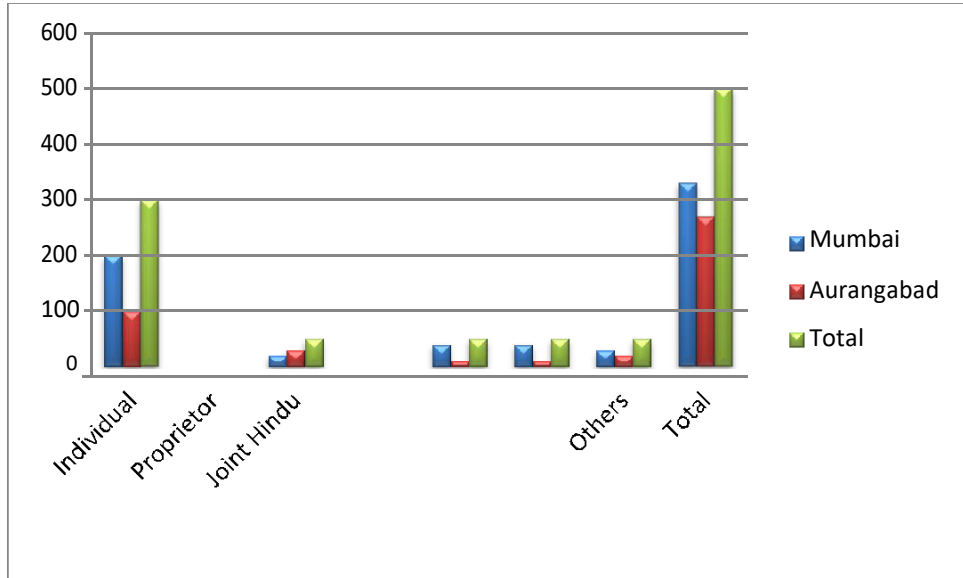


Fig. 3.1: Types of organization

Source: Primary data

Following parameters were used for selecting the clients:

1. Willful Defaulters.
2. Failure due to delay in sanction of loan and borrowing from other sources at exorbitant rates.
3. Non-Application of mind by the bank officers to the cause
4. Absence of knowledge of business of the applicant.
5. Market failure
6. Failure due to government policy

After the perusal of the defaulters' cases obtained from the office of the DRT's offices of the samples it has been observed that the number of individual borrowers was negligible and mostly problems related to losing job were seen. In view of this fact

and circumstance it was decided not to include individual borrowers' cases for this study.

In the selection of the experts whoever and whenever they were available at the time of actual visit to Debt Recovery Tribunal at Aurangabad and in Mumbai have been requested to fill the questionnaire and give their response in the matter of causes of NPA. For this purpose some advocates of clients and some of the advocates of bank were taken up and convenient sampling method was used. No special permission was taken at the time of interview except in case of detail interview of advocates.

Table 3.2: Respondent sample

Sr. no.	Industry	Questionnaire Distributed	Questionnaire Received	Percentage of Questionnaire Received
1.	Small scale unit(SSI)	250	200	80
2.	Medium scale	150	100	67
3.	Large scale	100	70	70
4.	Total	500	370	70

Source: Primary data.

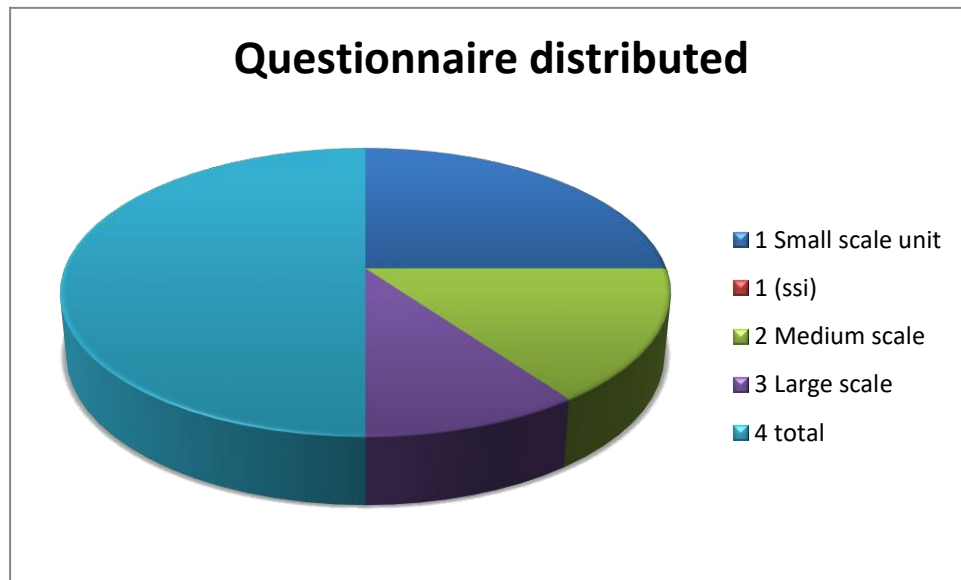


Figure 3.2

Table3.3: Profile of Bank Officers (Interviewed)

Sr. No.	Banks	Numbers	Percentage
1	Commercial Banks	20	33
2	Co-op. Schedule Banks	20	33
3	Nationalized Banks	28	19
4	Other Financial Institutions	12	15
	Total	80	100

Source: Primary data.

While selecting the bank officers no special methodology was applied but the banks officers met at the time of cases in DRT were directly interviewed and their opinions were solicited. The questionnaires were given personally. Total 100 questionnaires were distributed, however only 80 bank officers responded. While

receiving the questionnaire researcher took an opportunity to put them certain questions 149

in respect of their opinion on causes of the NPAs and allied matters and the same were recorded.

The researcher met the guide and discussed the results obtained through pilot study and discussed about the new questionnaire to be used for final research. After discussion at length the process of preparation of the final questionnaire was completed up to the end of 31st January 2015.

After completing this process the researcher prepared a schedule of interview as under:

1st Round of Interview: 6th May –15th May 2015 – Interview of Legal Practitioners in DRT in Mumbai- 30 practicing advocates were interviewed.

2nd Round of Interview: 17th May-5th June 2015 – Interview of Legal Practitioners in DRT in Aurangabad and staff of Aurangabad DRT-15 advocates were interviewed and all the staff members were also interviewed.

3rd Round of Interview: 9th June, 15th June, 28th June and 8th July 2015- Interview of Defaulters, Bankers / Financial Institutions. The Bankers includes SBI, Dena Bank, Bank of India, Punjab National Bank, People's Co-operative bank Jalgaon, JDCC Jalgaon, Kotak- Mahindra Bank, ICICI Bank.

4th Round of Interview: 15th July – 18th July 2015- Review of earlier data and collection of the additional information.

After reallocation of the guide, the researcher visited to all the DRT centers in Maharashtra and incorporated some additional information and added more number of respondents considering the change in the objectives and hypotheses, after

considering 150

the experience of this preliminary preparations, a visit was made to Aurangabad on 2nd Aug. and 3rd Aug, 2015. On 4th Aug, 2015, 14th, 20th Aug, 2015 and on 7th, 8th 15th Sept. 2015; visited DRT and DRAT Mumbai to collect information related to the subject matter. Simultaneously met some advocates and discussed the cases and noted their opinion.

After collecting the information; work of analysis has been started. The work of Analysis has been completed by the end of 30th September 2015. The researcher met her guide on 7th Sept 2015 and discussed with him the overall progress of the work. After the work has been Okayed by the guide, the researcher started the work of writing the report.

Difficulties Faced in the Collection of Data

While collecting the data the researcher had to face certain difficulties which are as under:

It was decided to take time on the phone and as usual the respondents were pleased to co-operate. However, only 17 advocates were available for discussion. At the same time some others had promised to make them available on the next time but due to the bulk of the work with them and requiring to report in other Courts it were not possible to carry on discussion at length with them. However in formal way some of them solicited necessary guidelines in the matter of law.

The experience of collecting information at Aurangabad was very encouraging. About

7 advocates could be interviewed. Here also some senior advocates could not be available because of their engagements with other Courts. Bankers advocate and 151

Bankers official did not co-operate much. However researcher was in position to meet some of them and get their interview. For example: SBI, Janata Sahakari Bank, Bank of India, Punjab National Bank and KOTAK-Mahindra Bank.

The researcher herein feel that whatever the number of respondents were available for interview it has served her purpose by making sufficient information and feels that almost all problems leading to recovery of NPAs SARFAESI Act, appeals and other relevant acts have been duly collected which have been freely used by the researcher in the analysis of data and coming to conclusion.

3.5.9 Literature Survey

Survey of literature is important from the point of view of studying the available literature in the form of popular write-ups, reports of the committees/commissions/working groups/ the research studies/ articles of researchers/bank officials/economists and the comments of economist. The researcher herein had discussed the issues which were of micro-economic in nature has been considered for review. Literature relating to NPA, management of NPA, social obligation of banks has been reviewed. Researcher found that literature available in the field under reference was limited in nature and scope.

3.5.10 Data Analysis and Techniques

To analyze the data researcher resorted to certain statistical methods like time-series analysis, percentage mean, mode and certain test of significance Standard Deviation, Coefficient of Variance, Crunched Alfa depending upon the need of subject.

The nature of research is of analytical nature and therefore no special statistical tool or model has been used. Whole nature of the project is of descriptive nature.

3.5.11 Limitations of Study

The researcher herein has been fully aware of her limitations mainly that of time and money at her disposal. The researcher aware of these limitations knows that these limitations have direct bearing on the selection of samples and case laws. The researcher herself has dealt with more than 100 cases in the Debt Recovery Tribunal and appeals in the Appellate and few cases in the Mumbai High Court. However, the scope of the study and availability of the limited resources, only sample cases have been taken up for her study. In doing so it is just possible that certain issues might have lost the sight of the study. However, aware of all these limitations which are exclusively her own; has taken due care to see that almost all the issues are covered and make this study a representative of the universe and provides insight for further research.

3.5.12 Other Limitations of this Study are as under

In the selection of court cases; area sampling method is used and stratified sampling in selecting different areas and types of respondents. This is likely to affect the study. However, aware of this limitations the researcher has taken due care to make this study representative in findings.

Primary data is subject to personal bias and prejudices affecting the results. The researcher has taken due care to make this study representative. While analyzing the court cases in the matter of Securitization Act, 2002 the arguments of the appellant and judicial decisions; the researcher's findings are subject to her limitation of identifying

the effect of the Act. Every care is taken to see that while doing so it will not affect the main issue.

3.6 Conclusion

Indian banking sector is facing a serious problem of NPAs. Bad loans ballooned to 27 percent in this year. The extent of NPAs is comparatively higher in public sectors banks and the total NPAs as on Sept.2015 amounts to 3.36 lakh crore. Already burdened by bad loans, 37 banks led by public sector have shown 26.8 per cent rise in NPAs. These are the banks having significant exposures to sectors such as steel, aviation, mining, infrastructure, real estate and as such having potential for employment. It is reported that as many as 299 mega projects involving an outlay of Rs. 18.13 lakh crore have been stalled with the Project Management Group till March 2015. Thus, it would be seen that NPAs have wide ranging socio economic effect on the country's economic development. In order to improve the efficiency and profitability of financial market, the NPAs have to be rescheduled. Various steps are being taken up by the government to reduce the NPAs. It is highly impossible to have zero percentage of NPAs. But at least Indian banks can try competing with foreign banks to maintain international standard. It has been observed that there has been significant increase in advances over the entire period of the study.

Note: Word SARFAESI implies Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Henceforth for the sake of brevity it is used as SARFAESI Act

This study is basically aimed at studying the socio-economic impact of debt recovery problems. The total study is qualitative in nature in which various core decisions, interview of practicing advocates, survey of defaulters, interview of bank officials, DRT judges have been made. For this purpose sample of 100 defaulters and 50 advocates, 20 bank officers and 3 DRT judges were interviewed. Sample of text cases were taken up for analysis. While analyzing the cases the break-up was made as gist of the case, grounds of appeal, supporting judgment of higher court, decision of DRT and causes of appeal to DRAT/High Court, till the finality of decision have been discussed followed by researcher's observations. Without any prejudice researcher has taken due care to keep the study unbiased and representative in character.

CHAPTER IV

ANALYSIS AND INTERPRETATION

4.1 Introduction

Direct impact of NPA results in the closure of industry. It results in the decline of family's incomes. It is a sad commentary on the part our generation that there has been an increase in malnutrition among children due to the difficult economic circumstances facing many people in the past years. It would be seen that, child labor prevails in India despite, the existence of Child Labour Act, though it is considered illegal. Economic stress has made sufferings by poor families in recent years. The socio economic problems in India as noted are "over population, economic issue (poverty, sanitation, corruption, education and violence (naxalism, religious, caste related and terrorism). "These socioeconomic factors are responsible for the changing attitudes, and lifestyle, fall in the moral values, cultural values and ethos. Law-enforcement agencies throughout the country often cite the socioeconomic factors responsible for poverty as being related to areas with high crime rates. Socio Economics Problems focuses on the relationship between social behavior and economics. Social economics examines how social norms, ethics and other social philosophies that influence consumer behavior shape an economy, and uses history, politics and other social sciences to examine potential results from changes to society

or the economy.”¹(AtmaPrakas Innovative Institute of recognized by Bar Council of India New Delhi Affiliated to CCU Meerut Greater Noida).

Industries as any a business activity they generate employment. Thousands of them and their families depend on the Employment Profile of the sample borrowers. In order to know the impact of NPAs and related problems on the society, and state of CSR (Corporate Social Responsibility) prevailing in the respondents’ units a set of questions was provided in the questionnaire. Existence of the awareness about the moral and ethical values in the business is considered essential in the society. Hence provision of such social welfare activities has been considered of significant importance. When business or industry becomes defaulter creditor initiate the recovery process invoking the Security Interest (Enforcement) Act and following Rules 2002, starting process from demand notice u/r 3(1). In case as a matter of process if creditor get possession (symbolic or legal possession) at once business activities come to standstill. Once business activities are stopped the whole family of the owner is put in financial crisis and consequently workers are thrown jobless. After losing job along with workers their dependents are also have to suffer. It creates social havoc and it is a social evil. Despite all these consequences it was decided to throw torch light on the state of employment scenario and social awareness of the respondents’ information from each borrower sample unit as regards to the employment was obtained and analyzed. This chapter has been divided into three

¹-AtmaPrakas Innovative Institute of Recognized by Bar Council of India New Delhi Affiliated to CCU Meerut Greater Noida).

parts. **First** part relates to the analysis of primary data as regards to the profile of the sample and labor problems/. Part **two** comprises analysis of questionnaire related to personal interview. Part **three** relates to analysis of economic problems due to debts recovery problems and results and discussion thereto

And part four comprises analysis of the secondary data related to review of literature and relevant data.

Part I: Analysis of Primary Data related to the Labour Problems

4.2.1 Employment Profile of the Respondents under Study

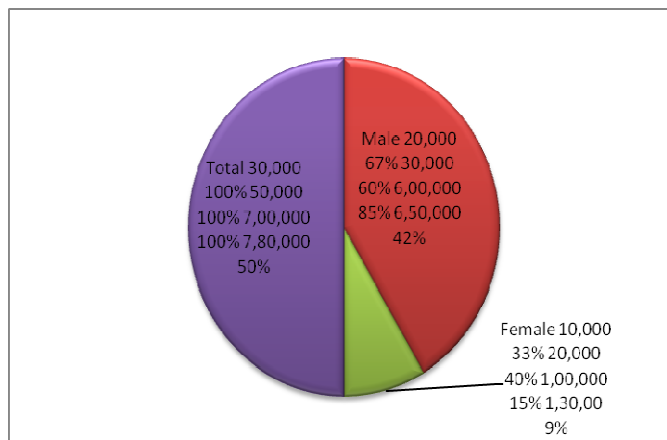
Table 4.2.1 below indicates the total number of employees working in the different size of sample respondents.

Table 4.2.1: Number of employee (business size wise)

Sr. no	Industry	Male	Female	Total
1	Small	20,000 (67)	10,000 (33)	30,000 (100)
2	Medium	30,000 (60)	20,000 (40)	50,000 (100)
3	Large	6,00,000 (85)	1,00,000 (15)	7,00,000 (100)
	Total	6,50,000 (83)	1,30,00 (17)	7,80,000 (100)

Source: Primary data

parentheses
percentage.



Figures in
are in
Fig. No.4.2.1

Table 4.2.1 and fig.4.2.1 above indicate that, a small scale industry about 30,000 employees (4.7percent) followed by 50,000 employees in (7.3percent) in Medium scale and 7,00,000 (88percent) employees in Large Scale Industries were working. It simply means, about 8 lakh employees and their families were depending for their livelihood on these sample units. It is crystal clear that, if something goes wrong with these borrowers such as lock-outs, closure of business, then a large number of families and dependents have to suffer a lot. It could be concluded that employees and their families or dependents have to suffer a lot, if large scale business activities are stopped and it has a great impact on the society.

4.2.2 Classification of employees

Employees belonging to different categories have been presented in table 6.2.2.

Table 4.2.2: Classification of Classification of employees

Sr. no	Type	Male	Female	Total
1.	Administrative Staff	700	300	1,000
2.	Clerical staff	1,000	1,000	2,000
3.	Class iv employees	7,000	3,000	10,000
4.	Contract basis(periodic)	3,000	2,000	5,000
5.	Daily wages	7,000	5,000	12,000
	Total	18,700	11,300	30,000

Source: Primary data.

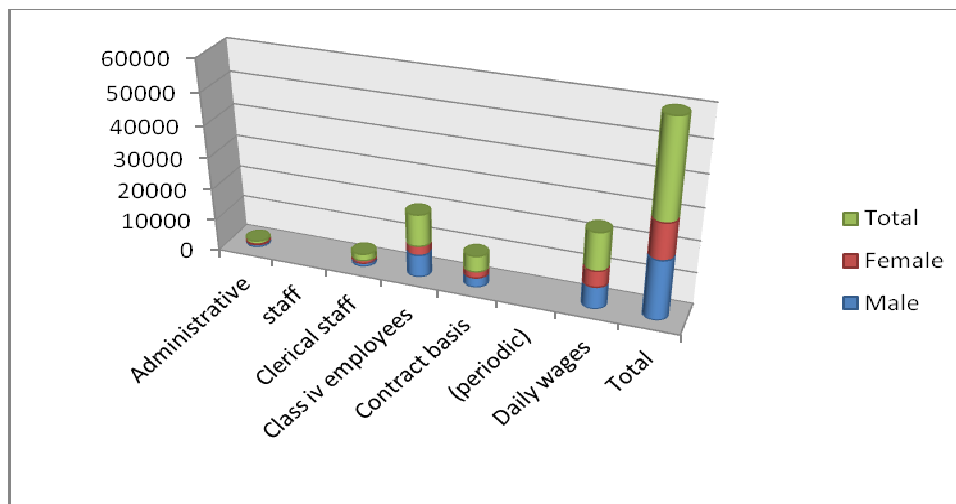


Fig.4.2.2: Classification of employees

Table 4.2.2 above reveals that there were total 30,000 employees of different categories working in the sample borrower units of which 18,700 were male, 11,300 were percent female. Table 4.2.1 further reveals that a large number of class IV employees were working either on contract basis (5000) and daily basis (12,000). Enquiry reveals that class IV employees working on contract basis are appointed when there is seasonal requirement of employees and some time when an emergency is required. A large number of employees; male as well female are engaged in sweeping, cleaning, etc. on daily basis. Fig.4.2.2 better explain the facts.

4.2.3 Welfare Activities

Information as regards to the state of welfare activities by the sample respondents was collected, such as, welfare activities, sanitary facilities, canteen, facilities, transportation, etc. was collected and presented in table 6.2.3 below :

Table 4.2.3: House accommodation provided to the employees

Sr. no	Size unit	Response		Total
		Yes	No	
1.	SSI	144 (89)	16 (11)	160 (100)
2.	Medium	60 (93)	10 (7)	70
3.	Large	70 (100)		70
	Total	274 (91)	26 (9)	300

Source: Primary data

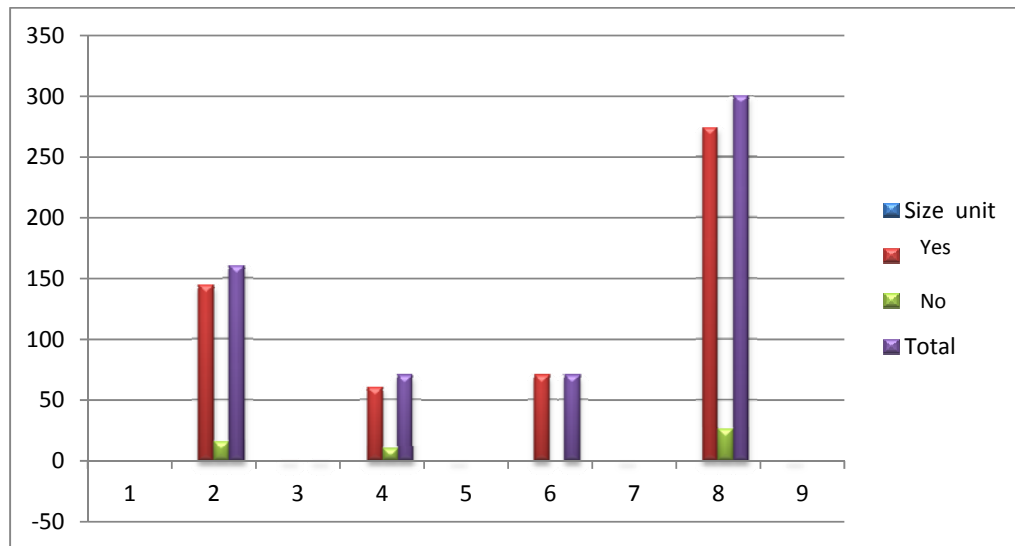


Figure 4.2.3: House accommodation provided to the employees

Table 6.2.3 reveals that in SSI units about 144 (89 percentage) units were providing welfare activities for the employees and only 16 sample borrowers (11percent) seem indifferent on this account. Table further reveals that for medium size sample are concerned, 93 percentage units were providing welfare activities negligent percentage of (7percent) seems to be indifferent. In case of large scale

industries 100 percent have to provide for welfare activities since it is mandatory. Industrial inspector's enquiry reveals that industrial inspector usually take the account of welfare activities by the units. Thus it could be concluded that when it becomes compulsory, business provide welfare activities otherwise not.

4.2.4 Regarding Insurance Policy of Employees

Table 4.2.4 was prepared to know whether sample units take insurance of employees take or not.

Table 4.2.4: Insurance policy of employees

Sr. no	Industry	Response		Total
		Yes	No	
1.	SSI	16 (10)	144 (90)	160
2.	Medium	14 (20)	56 (80)	70
3.	Large	20 (28)	50 (72)	70
	Total	50	250	30

Source: Primary data

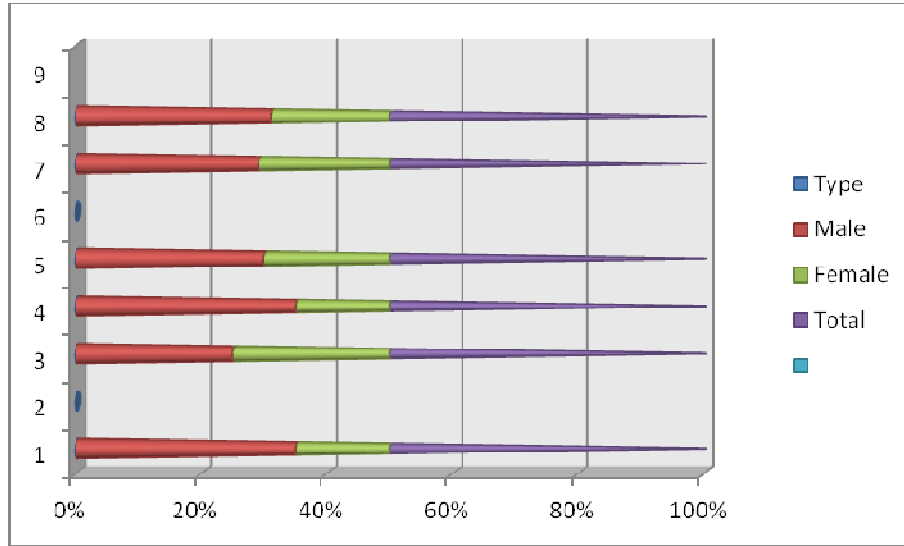


Fig. 4.2.4: Insurance policy of employees

Table 4.2.4 above and figure 4.2.4 show that, there is negligible percentage of small units SSI i.e. 10 percent about 20 percent medium size a units and 28 percent large units take insurance of their employees. It simply means that a large number of respondents are reluctant to cover their employees by insurance. When enquired about this indifference attitude by them it was told that they do not feel it is necessary. It is further revealed that those sample units who say that they provide insurance cover to their employees are the business units where work with machinery is involved.

4.2.5 Regarding Medical & Sanitary Facilities

Every business house is required to provide First Aid box and provide medical facilities, sanitary facilities as a mandatory condition. In order to know availability of such facilities in respondents' factory is prepared and presented in table 4.2.5 below:

Table 4.2.5: Medical & Sanitary Facilities to Employees

Sr. no	sIndustry	Medical facilities		Total
		Yes	No	
1.	SSI	150	10	160
2.	Medium	65	5	70
3.	Large	70	-----	70
	Total	285	15	300

Source: Primary data

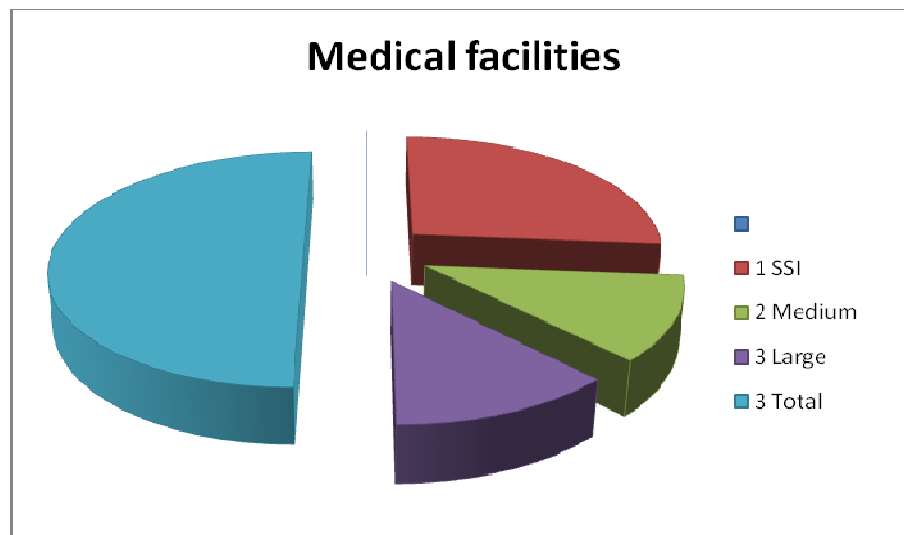


Fig. 4.2.5: Medical & Sanitary Facilities to Employees

Table 4.2.5 reveals that a negligible percentage of business units under study questioned don't have such facilities or they do not care for such facilities. On being questioned it was told by the units that they do not care for such facilities or those who are running small shops or in trading activities. It was further told that whenever regular employees face such type of problem, they help them by arranging treatment in hospital. From this it could be concluded that, small scale units do not have such

facilities, since it is not affordable for them. It means larger the size of business, more is the ability to spend on such activities.

4.2.6 Pension Payment to Employees

Table 4.2.6 is prepared to find out the state of pension & other retirement benefits provided by the employer to the employees.

Table 4.2.6: Pension & other retirement’s benefits to employees

Sr. no	Industry	Pension and other retirement benefits		Total
		Yes	No	
1.	SSI	10 (6)	150 (94)	160 (100)
2.	Medium	7 (10)	63 (90)	70 (100)
3.	Large	20 (43)	40 (57)	70 (100)
	Total	47	254	300

Source: Primary data.

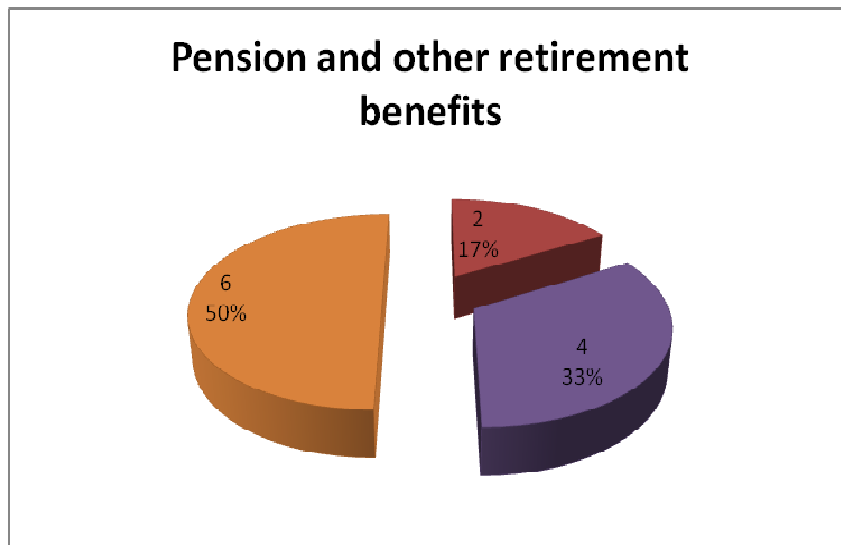


Fig. 4.2.6

Table 4.2.6 and fig. 4.2.6 reveal that a very negligent percentage of respondents are providing pension and other retirement benefits to their employees. However, in large scale units under study, 43 percent of the respondents told that they have to provide such facilities since it is mandatory under the factory Act. It means where it is compulsion or mandate; then retirement benefits are provided since such units are duty bound.

4.2.7 Payment of Bonus

Table 4.2.7 gives the breakup of response, as regards to the payment of bonus to the employees by various business units under study. Bonus includes one month salary, compulsory 8.33 percent and also Diwali bonus, festival bonus, encashment of leave, free traveling, middle meal to employees etc.

Table 4.2.7: Payment of Bonus

	Industry	Bonus		Total
		Yes	No	
1.	SSI	150 (98)	10	160 (100)
2.	Medium	70 (100)		70 (100)
3.	Large	70 (100)		70 (100)
	Total	290	10	300

Source: Primary data.

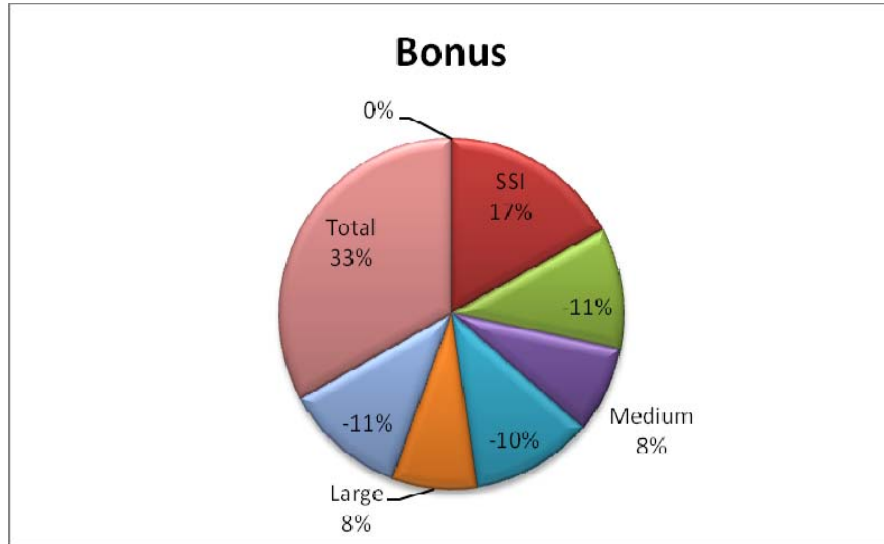


Fig. 4.2.7: Payment of Bonus to employees

Table 4.2.7 and fig.4.2.7 show that 98 percent of the SSI units, 100 percent of medium and large percentage of large scale units provide such type of the additional benefits to their employees. Enquiry revealed that sometimes it is obligatory and many a times it is customary to make such additional payment to the employees. According to the respondents they consider it to reward the employees for their devotion and dedication to the unit. It provides incentives to the employees for hard work and large scale turn-over and gets quality work done by the employees. Most of the respondents told the researcher that, they consider it as their moral responsibility. Thus it could be concluded that respondents under study are aware of their moral responsibility about the social welfare of their employees.

4.2.8 Provision of Recreation of Facilities

Table 4.2.8 depicts information collected from the questionnaire as regards to recreation facilities made available i.e. being made available to the employees by the employers.

Table 4.2.8: Recreation facilities

Sr. no	Industry	Recreation facilities		Total
		Yes	No	
1.	SSI	150	10	160
2.	Medium	70	----	70
3.	Large	70	----	70

Source: Primary data.

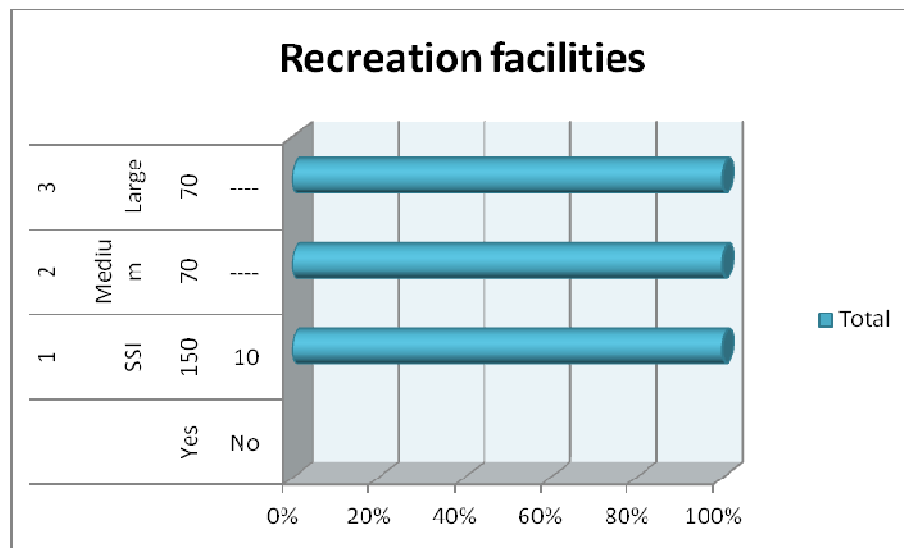


Fig.4.2.8

Table 4.2.8 and fig 4.2.8 reveal that almost all the respondent holding provide recreation facilities to their employees. Recreation facilities include, social gatherings, get together, arranging festivals, competitions, trips for the employees and their

families etc. Most of the respondents find that such activities help to create healthy atmosphere inside the campus. Perusal of the observation reveals that respondents are aware of the recreation facilities for their employees.

Part II

4.2.9 Analysis of Questionnaire: Personal Interview

In this part analysis of the questionnaire have been made and discussed, have been interpreted, and inferences drawn. All questions have been grouped in to 22 group of opinion .The results have been depicted using 5 point Likert analysis as discussed earlier. This primary data has been utilized to analyze the response of advocates, clients and bank officers simultaneously.

Table 4.2.9 (Result of Analysis): As have been explained Likert Scale was used to analyze the experts; response. In the selection of the advocates whoever were available at the time of actual visit to DRT at Aurangabad and in Mumbai were requested to fill the questionnaire and give their response in the matter of causes of NPA. For this purpose some advocates of clients and some of the advocates of bank were taken up and purposive random sampling method was used. No special permission was taken at the time of interview except in case of detail interview of the advocates.

Table 4.2.9: Experts' Response

Sr no.	Reason	Points	points	Points	points	points	A M	Actual mean
1	Lack of owner' stake	50	00	00	00	00		1.00
2	Heavy borrowing from outside sources at exorbitant cost of raising margin money Delay in disbursement of loan	6	44	30	40	00		2.5
3.	Delay in disbursement of loan	04	04	24	80	80		3.8
4.	Lack of experience and exposure	20	44	24	08	00		2.4
5.	Slowdown in business	02	88	12	00	00		2.04
6.	Mismanagement of funds	16	68	00	00	00		1.65
7	Political interference/ influence	04	48	12	64	10		2.79
8.	Unexpected and adverse development in external environment	02	36	12	104	00		3.08
9.	Recessionary trend	00	60	48	08	08		2.48
10.	Lack of research and development	46	08	00	00	00		1.5
11.	Vagabond spending on unnecessary items	04	96	00	00	00		1.9
12.	Lack of proper planning in sanction of loan	00	00	60	120	00		3.6

13.	No care taken at the time of granting loan	00	00	78	16	100		3.5
14.	Wrong selection of borrower	10	00	120	00	00		2.6
15.	Wrong valuation of security	24	12	60	00	00		1.52
16.	Over leverage of existing borrowers	00	40	90	00	00		2.6
17.	Not following strictest procedure of granting loan	26	48	00	00	00		1.5
18.	Neglecting RBI's mandatory guidelines for sanction of loans	10	32	72	00	00		2.3
19.	High competition	10	80	00	00	00		1.8
20.	Officers personal interest in borrower	10	80	00	00	00		1.8
21.	Wrong selection of guarantor and his credibility	50	00	00	00	00		1.00
22.	Uncertain change in government policy	00	04	39	40	00		3.3
	TOTAL	294	39	360	260	99		50.71

Source:Primary data.

Table 4.2.9 was prepared with the help of feedback of questioner filled by the Questionnaires having been grouped under 22 groups. Table 6.2.9 shows that point No. 3(delay in disbursement of loan and point no. 13 (no care taken at the time of granting loan) are the highly significant causes.

Table 4.2.10: Analysis of Debtors' Views

Sr. no.	Reason	Points	Points	Points	points	Points	Average score	Actual mean
		1	2	3	4	5	3	
1	Lack of owner' stake	160	80	00	00	00		1.33
2	Heavy borrowing from outside sources at exorbitant cost of raising margin money	00	00	60	160	700		4.60
3.	Delay in disbursement of loan	00	00	60	160	700		4.60
4.	Lack of experience and exposure	180	120	60	80	100		2.2
5.	Slowdown in business	00	00	36	70	150		4.49
6.	Mismanagement of funds	180	40	00	00	00		1.10
7	Political interference/ influence	200	00	00	00	00		1.00
8.	Unexpected and adverse development in external environment	00	00	00	88	890		4.89
9.	Recessionary trend	00	00	30	80	850		4.80
10.	Lack of research and development	200	00	00	00	00		1.00
11.	Vagabond spending on unnecessary items	180	40	00	00	00		1.1

12.	Lack of proper planning in sanction of loan	00	00	60	80	800		4.7
13.	No care taken at the time of granting loan	200	00	00	00	00		1.1
14.	Wrong selection of borrower	200	00	00	00	00		1.00
15.	Wrong valuation of security	180	40	00	00	00		1.1
16.	Over leverage of existing borrowers	200	00	00	00	00		1.00
17.	Not following strictest procedure of granting loan	200	00	00	00	00		1.00
18.	Neglecting RBI's mandatory guidelines for sanction of loans	200	00	00	00	00		1.00
19.	High competition	200	00	00	00	00		1.00
20.	Officers personal interest in borrower	200	00	00	00	00		1.00
21.	Wrong selection of guarantor and his credibility	200	00	00	00	00		1.00
22.	Uncertain change in government policy	00	00	00	80	180		4.90
	TOTAL							

Source: Questionnaire.

Table 4.2.10 indicates that debtors (defaulters) lack of experience and exposure, mismanagement of funds, political influence, lack of research and development, vagabonds spending on unnecessary items and non-use of mind while getting loan, defective proposal, false valuation of security, over leverage, absence of procedure, neglecting RBI Mandatory guidelines, existence of competition, officers personal interest in borrower, wrong selection of guarantor are the immaterial causes

of NPA putting borrowers in trouble. Since the reasons explained as above calculated mean is less than expected mean. In simple words these are the reasons which are not significant causing NPA from the point of view of clients.

Feedback from borrowers show that point 2 (heavy borrowings from outside resources at exorbitant rate, point 3 (delay in disbursement), point 5 (slow down in the business, point 9 (recessionary trends, point 12 (lack of proper planning and delaying sanction of loan and point 22 (uncertain government policies).

According to the respondent borrowers,(table 4.2.10) ; major causes of the high NPA or causing trouble in the payment of loan are That, they have to resort to heavy borrowing from outside sources at the exorbitant cost of raising margin money from outside sources because delay in disbursement of loan (average 4.75), similarly other reasons as propounded by the respondents is slow down in business (Average 4.49), unexpected and advertisement development in external environment, recessionary trend in the market, lack of properly planning in sanction of loan by the banks and uncertain changes in the government policy as regards to the supply of raw material VAT and other restrictions. Thus it could be said that according to clients delay in the disbursement of loan, slowdown in the business expected changes in the global level, recessionary trend and non-application of mind by the bankers in the sanction of loan along with uncertain change in the government policy are the major causes of NPAs.

Table 4.2.11: Analysis of Banks and Finance Institutions' Response

(Creditors' Response: Score)

Sr. no.	Reason	Points	Points	Points	points	Points	Average Score 3	Actual mean
		1	2	3	4	5		
1	Lack of owner' stake	00	12	30	96	00	3.00	3.5
2	Heavy borrowing from outside sources at exorbitant cost of raising margin money	00	00	42	80	30	3.00	3.8
3	Delay in disbursement of loan	06	04	30	64	30	3.00	3.25
4	Lack of experience and exposure	00	40	12	32	00	3.00	2.9
5	Slowdown in business	06	60	12	00	00	3.00	1.9
6	Mismanagement of funds	00	24	18	80	00	3.00	3.5
7	Political interference/ influence	04	68	06	00	00	3.00	1.9
8	Unexpected and adverse development in external environment	02	72	00	00	00	3.00	1.85
9	Recessionary trend	00	00	60	40	20	3.00	3.00
10	Lack of research and development	40	00	00	00	00	3.00	1.00
11	Vagabond spending on unnecessary items	00	20	60	40	00	3.00	3.00
12	Lack of proper planning in sanction of loan	00	00	60	120	00	3.00	4.50
13	No care taken at the time of granting loan	40	00	00	00	00	3.00	1.00

14	Wrong selection of borrower	18	04	00	00	00	3.00	1.05
15	Wrong valuation of security	30	20	00	00	00	3.00	1.25
16	Over leverage of existing borrowers	40	00	00	00	00	3.00	1.00
17	Not following strictest procedure of granting loan	40	00	00	00	00	3.00	1.00
18	Neglecting RBI's mandatory guidelines for sanction of loans	40	00	00	00	00	3.00	1.00
19	High competition	10	60	00	00	00	3.00	1.75
20	Officers personal interest in borrower	36	08	00	00	00	3.00	1.10
21	Wrong selection of guarantor and his credibility	40	00	00	00	00	3.00	1.00
22	Uncertain change in government policy	00	00	30	120	00	3.00	3.75
	TOTAL						3.00	

Source: Questionnaire.

Table 4.2.11 reveals that, point 1 (lack of owners stake) point 2 (heavy borrowings by borrowers from other sources by private traders, owners, relatives wherein rate of interest is very high, point 3 (delay in disbursement of loan), point no.6 (mismanagement funds by bank), point 12 (lack of proper planning in sanctioning loan) are the significant causes of NPA or non recovery of loan.

Table 4.2.12 is prepared to show the analysis and causes of NPA propounded by experts, debtors and creditors have been prepared by under.

Table 4.2.12: Analysis of Views expressed by Debtors, Creditors, and Experts

Score

	Score	Experts	Debtors	Creditors	Significant(S)/ Not Significant (NS) for Drs. & Crds
1	1	Nil	Nil	Yes	
2	2	Nil	Yes	Yes	S
3	3	Yes	Yes	Yes	S
4	5	Nil	Yes	Nil	NS
5	6	Nil	Nil	Yes	NS
6	8	Nil	Yes	Nil	NS
7	9	Nil	Yes	Nil	NS
8	12	Nil	Yes	Yes	S
9	13	Yes	Nil	Nil	NS
10	22	Nil	Nil	Yes	NS

Comparison of the questionnaire filled in by the Debtors, Creditors and Experts:

INTERPRETATION: Study of the opinions of advocates and clients and bank officers reveals that they defer in stating the causes of amount becoming NPA for example according to bank and the advocates lack of owners stake is the immaterial factor responsible for NPA whereas it is the major cause according to the banks. As regards to heavy borrowing from outside are the major causes of NPA according to bank officers and borrowers. In respect of delay in disbursement of loan bank officers and clients and advocates agreed and it is one of the major reasons

according to them. The fourth cause i.e. lack of experience is not much significance from all the three parties point of view. Slow down in the business is the major cause according to clients, however banks do not agree to this and same is the opinion of advocates. Mismanagement of the funds has nothing to do with the cause of NPA according to clients and advocates but it is one of the major causes told by bank officers. Unexpected and adverse environment is the one of the major cause according to clients and to some extent supported by the advocates but according to banks this is not the major reason. Recessionary trends causes adversely on the repayment capacity of the borrowers and according to clients it is the major cause (mean 4.80). To some extent bank also support this cause, but advocates disagree. According to bank officer's vagabond spending is the root cause of NPA whereas it has nothing to do with NPA according to clients and advocates. Lack of proper planning in sanction of loan is supposed to be the major cause according to bank officers, legal experts and the clients. Absence of care taken at the time of disbursement of loan is the main cause according to advocates but do not supported by clients and bank officers. In respect of uncertain changes in the government policy is very significant cause of NPA according to bank officers, advocates and clients.

This discussion reveals the fact that bank officers do not agree on certain points in which they could be held responsible for example; lack of experience and exposure, slowdown in business, political interference, no care taken at the time of granting loan, wrong selection of borrowers and wrong valuation of security, over leverage of existing borrowers, non-following the mandatory directives of the RBI, personal interest of the officers in granting loan, wrong selection of the guarantor and

his credibility are not the causes responsible for NPAs. Researcher feels that it is but natural that bank officers will never accept such type of the allegations which are likely to go against them in the whole loan transaction. In the similar way in majority of the cases client will not accept in which they are responsible for default e.g. vagabond spending, political influence, lack of experience, mismanagement of fund because these are the reasons for which clients themselves are responsible. As regards to the views expressed by the advocates in certain cases advocates agree with their clients and in some respect with the bank officers e.g. cause such as delay in disbursement of loan, mismanagement of the funds by the borrowers and uncertain changes in the government policy. This is but obvious that the bank officers as against the client and their advocates cannot have agreement on the points unfavorable to them. After studying and inquiry, researcher came to the conclusion that in majority of the cases delay in the disbursement of loan and mismanagement of the funds are some of the major causes for becoming the account NPA. Similarly bank officers interest in some clients and uncertain changes in the government policy are the other reasons responsible for amount becoming NPA.

After having detailed interview with all three parties it was revealed that whatever the cause of NPA may be following remedial steps should be taken to provide control on NPAS:

- i) Controlling and preventing funds diversion by the promoters.
- ii) Scrutinizing the level of inventories / receivables at point of assessment of working capital.

- iii) Careful watch on the warning signals; non-payment of quarterly interest, dishonor of cheques.
- iv) Introduction of effective inspection system.
- v) Proper internal control system to check loan transaction.
- vi) Introducing legal audit of the loaning transaction.
- vii) Making proper provisions for NPA of the bank as per the directives of RBI
- viii) Re-phasing unpaid loan installments.
- ix) There is a need to strengthen the banks by injecting capital. It is to raise capital from the market. so because ,banks under pressure of stressed assets are not in position to raise the money from the markets and will have to depend entirely on other agencies.

4.3 Analysis of interview of the staff members of the DRT officials

Researcher paid visit to Aurangabad DRT Office and DRT Mumbai Office as per the schedule discussed earlier. However, when she started her doctoral work, she visited these offices and met with some staff members personally and solicited the required information. Information received by her is presented here as under:

Both DRT office at Aurangabad and Mumbai revealed that there is inadequacy of the staff at various levels, clerical staff – IV and Judges Posts. It is further revealed that about 25 to 30 Shortage of staff is there.

In Aurangabad DRT Office filing is not much, and therefore no major complaint is heard from the staff members here. However in Mumbai DRT / DRAT Offices; it is revealed that they are over burdened with filing and hence shortage of

staff is the main problem in these offices. This factor is responsible for delay in putting the cases on board and taking the record that fixing dates for hearing etc., this creates anxiety and advocates have to tactics for getting the cases on the board.

Personal interview with the top officers in Mumbai DRT told this researcher that there are chances of corruption on large scale in filing and getting dates. Off the record one officer told this researcher that, unless you grease hands with bribe you cannot expect to get your work on line. He further told that most of the junior staff has luxurious cars and investments and therefore they never care for advocates and clients. When hands are to be greased advocates take out such sum from their client's. It is necessary to carry out a sting operation or a system of internal control to provide control on the activities of these employees. Researcher would suggest e-governance and on line facility in the Mumbai DRT and DRAT Office.

Interview further revealed that, in most of the cases advocates by this or that way try to linger the proceeding by way of various tactics. Researcher aware of her limitations is unable to disclose certain stories behind curtain. She only can suggest a time bound program and strict observation of the Securitization Act and Apex Courts Directions.

When researcher inquired about the recovery through sales in auction, it was told that sale in auction is a mockery of procedure. There is a vicious circle in which right from the DRT office to the ultimate purchaser are involved. It was told that as soon as auction is declared it is smelled by shrewd businessmen, property dealers, contractors, builders and politicians along with some advocates and this is the reason why many a times properties sold out at a throwaway price. However, in some

judicial decisions such sales have been revoked. It is also observed that in this whole chain there are some honest people but they are cornered and have to face consequences for trying to break this vicious circle.

In this chain such people are involved that no one can dare to go against them. A national level chain is involved and no one can go against this system. In this way the very purpose of recovery procedure is defeated.

Researcher was told that even if DRT passes some order; the same is challenged in the DRAT and in this process again 4 to 5 years are lost. After DRAT, the same is challenged in High Court and subsequently in the Supreme Court. In these tactics which are done deliberately by the shrewd borrowers period of 10 to 15 years is lost and when final order is passed that time market value of the borrowed money goes down because by that time property prices are shoot up. Even after passing final order OT settlement is arranged at some adjusted amount waiving interest and other charges like penal interest etc., and in this way advantage is ripped by some people hand in gloves with the bank officers.

Researcher cannot disclose the dark side of this whole game, for want of protection; however, she feels that all such auctions be scrutinized since ultimately society has to suffer. This point has been categorically stated by DRT judges in their judgments, which has been noted earlier in this thesis. Researcher would like to draw attention of the academicians to take this issue for research and unearth the true story of this recovery process.

State of the disposal of securitization application (S.A.) and disposal will show the position of the matters in Maharashtra. In the three months periods that is April, May, June 2016.

Table 4.3.1: Disposal and pending cases

Sr. no	Name of the city	April	May	June	Total
1.	Mumbai	52	27	12	91
2.	Nagpur	1	0	2	3
3.	Pune	42	36	21	99
4.	Aurangabad	9	3	4	16
	Total	104	66	39	209

Source: Finance Ministry of India.

Fig.4.3.1 Disposal and pending cases

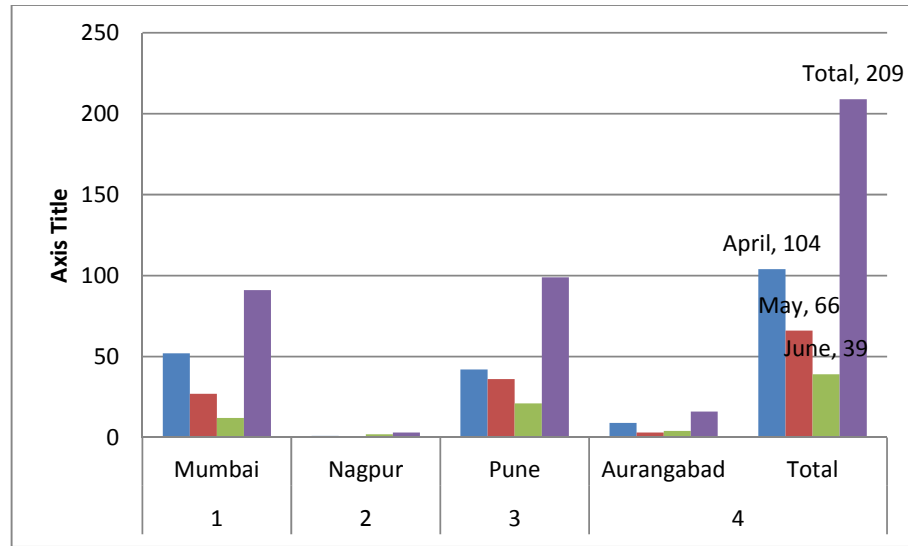


Table 4.3.2: Total pending cases before DRT in Maharashtra and India

Sr. no	Name of the city	April	May	June	Total
1.	Mumbai	1715	1526	1923	5164
2.	Nagpur	261	268	279	808
3.	Pune	511	478	480	1469
4.	Aurangabad	216	222	225	663
5.	Maharashtra	2703	2494	2907	8104
6.	All India	25962	26171	26214	78347

Source: Finance Ministry of India.

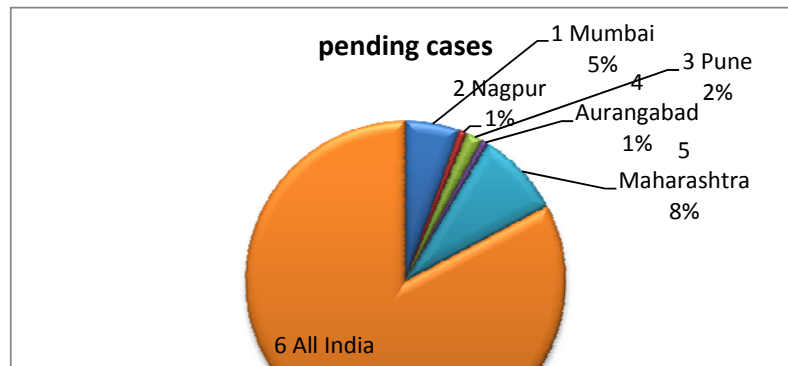


Fig.4.3.2

4.4 Analysis of the Experts' Interview

According to the advocates interview it is opined that the very principle of law is violated because when borrowers raises some objection for some credit or debit entries the bankers may accept or may not and if bank rejects it is considered that it is correct. No chance is given to the debtor / guarantor to have any hearing and it is against the constitutional procedure and violation of constitutional provisions. It is also revealed that there are number of unwarranted debit entries and no one can challenging such entries e.g. unwarranted debt entries, penal entries though the RBI vide Circular No. 72 has strictly warned the bankers not to charge penal interest unless and until such a situation exists.

Experts' interview revealed that many occasion Securitization Act is invoked to put the properties of defaulted borrower for sale by the vested interested persons and in that case there is no independent judicial mechanism to grant justice to the borrower in Securitization Act because it is only a procedural law.

Securitization Act has given wide powers to Securitization and Reconstruction Companies to take over the assets of the borrowers for the recovery of loans and similar powers are also given to the banks and financial institutions. In this respect no care is taken to see whether the Securitization Company or Financial Institution is competent to allow the business run. It is so because they take interest only in recovering the loan but never give helping hands to the borrower and reconstruction

of the loan. There is a need of rehabilitation either by supporting the borrower or like China, Japan; Korea government should undertake the responsibility of financing such type of NPAs.

In certain cases taking the recourse of Securitization Act for the reasons beyond the control of businessmen or factory owner possession is taken by the bankers / reconstruction companies without any parafernia and the whole activities of the business was stand still by throwing many jobless and making the owner of the factory or business without shelter, which is against our constitution. Madras High Court Comprising Honorable Justice Ibrihim Kalifull and Justice Kirubakaran N.K. in Writ Petition No.15272 of 2009 has taken a serious view of procedural irregularities committed by the bank taking the shelter of SARFAESI Act and provided an instant relief to the aggrieved.

One advocate having a practice of more than 25 years has another story to tell. According to him the very purpose in the nationalization of the bank was to use this channel for the benefit of common man. In the earlier days before nationalization these big banks were being managed and owned by the big business magnets like Tata, Birla, Singhanian, Kirloskar and others, who were managing, controlling and enjoying about more than 70% of the funds for their own business purposes and that's why they were reluctant to accept the idea of nationalization. However, the then Prime Minister Mrs. Indira Gandhi took a staunch view and declared the nationalization of the banks in 1969 and open the doors for small traders, agriculturists, poor farmers, feriwalas and as such. This was never liked by the big businessmen and this is why by various tactics they tried to bring hurdles in the way

of development and channelizing the financial resources to the common man. Enactment of the SARFAESI Act provisions are favorable to the big business houses and this could be evidence from the fact that no Tata, Birla, Bajaj could be brought in lime light for the recovery of enormous amount of loan and only small borrowers like, small traders, feriwalas, small scale industries they are victimized. According to him there is a need to have a Nelson's eye on these transactions by the judiciary.

Advocate of the Bank told that many times Bank make nominal payment of interest amount on the loan to show that loan has not become NPA to avoid provisions of Limitation Act. By this Act of Bank, try to evade the provisions of Limitation Act. This Act of escapism is a crime. Judiciary should take note of such tactics.

It could be concluded that "lender does not receive market return on their capital. Depositors do not receive return market interest, non performing loans epitomize bad investment, non performing loans spill over the banking system while making recovery of loan the concessions enjoyed by the defaulters is totally neglected, bank recovery officers play unhealthy tactics, habitual defaulters create hurdles in the way of recovery, big business houses are the main defaulters causing NPA. Thus it is a socio economic problem and great loss to the country' economy." This supports the conclusion drawn in Part I and II.

Asset is considered resource controlled by enterprises as a result of past events from which future economic benefits are expected to flow to the enterprises. Assets generating periodical income are called performing assets. For the speedy recovery of loans DRT Act, 1993 and subsequently Securitization Act, 2002 were enacted to

bypass a time consuming procedure of Civil Courts and Section 69 and 69-A of the Transfer of Property Act, however after carrying pros and cons of the Securitization Act its provisions various cases interview with the Advocates, clients it was seen that it violates the spirit of Article 50 of the Constitution and also Article 14. It is also seen that all the provisions of the Act helps the financial institutions and no care is taken of the honest borrowers and their guarantor's grievance

In view of this researcher has tried to verify the objectives and relevant hypothesis and it is concluded that the very purpose of the enactment of Securitization Act is not served as per expectations.

In view of this discussion it is concluded that, Hypotheses No.H.1.1, H.1.2, H.1.3, H.1.4 have been accepted and H.5, H.1.6 and H.1.7 have been rejected.

PART III

ECONOMIC PROBLEMS DUE TO DEBT RECOVERY PROBLEMS

It should be born in mind that for discharging social responsibility, size of business firm and its capacity to spend should be considered essential. In view of this it was decided to verify the financial state of the respondents and to know how erosion of fund that may happen due to the NPA that may directly or indirectly affect the society, creditors and debtors. In view of the above stated facts and circumstances questions were designed to assess the state of financial management by the respondents.

4.5 Source of finance

The source of finance has been broadly classified as owned capital, help from family member, relatives & friends & borrowings/loan raised from FI, Banks, etc. The information collected from the questionnaire in the form of percentage. The breakup of percentage of finance procured is depicted in the following table No.7.1.

Table 4.5.1: Source of finance

Sr. no	Source of finance	Units		
		SSI	Medium	Large
1.	Own Capital	10	10	10
2.	Family member contribution	05	10	---
3.	Relatives and family	05	---	---
4.	Borrowings/loan raised from bank or F.I.	80	80	90
	Total	100	100	100

Source: Primary data

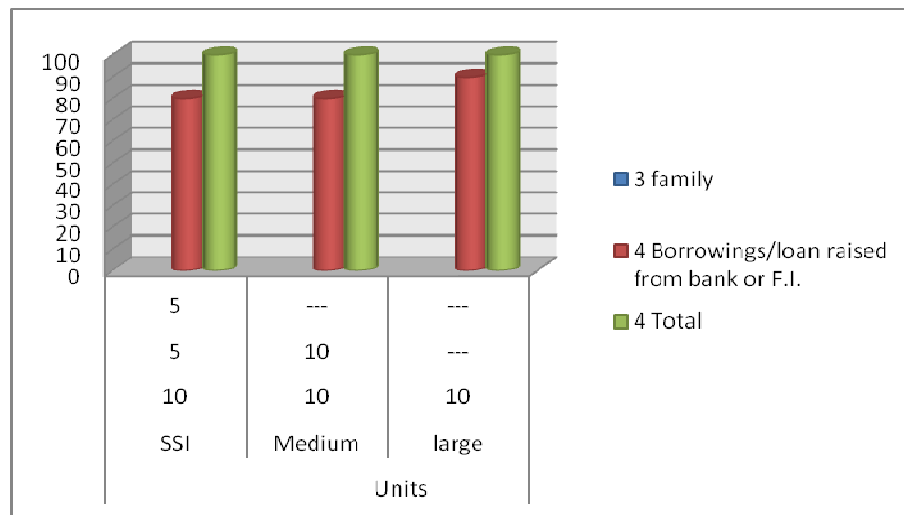


Fig. 4.5.1

As far as the finance raised by the SSI units it reveals that about 80 percent of the amount was raised from borrowings followed by owned capital (10percent) family members (5 percent relatives and friends (5 percent). As regards to the medium size respondents 80 percent of loan is found to be raised by borrowing followed by owned contribution and family members and no help from relatives and friends. As per as large scale business is concerned it is revealed that 90 percent respondents were relying on borrowing and 10 percent from owned capital and no family members and relatives. The conclusion emerges on this information pinpoints that borrowings play an important role in the total finance of the respondent units. Hence, it could be concluded that almost all respondents rely mainly on loan/borrowings for their finance.

Source of loan

Table 4.5.2 is prepared to show the source of loan availed by the respondents.

Table 4.5.2: Source of Loan

Sr. no	Source	Respondents			Total
		SSI	Medium	Large	
1.	Private bank	16 (10)	20 (26)	10 (14)	46 (15)
2.	Nationalized bank	128 (80)	40 (80)	50 (72)	218 (73)
3.	Co-bank	16 (10)	10 (14)	10 (14)	36 (12)
	Total	160 (100)	70 (100)	70 (100)	300 (100)

Source: Primary data.

Figures in parenthesis denote percentage.

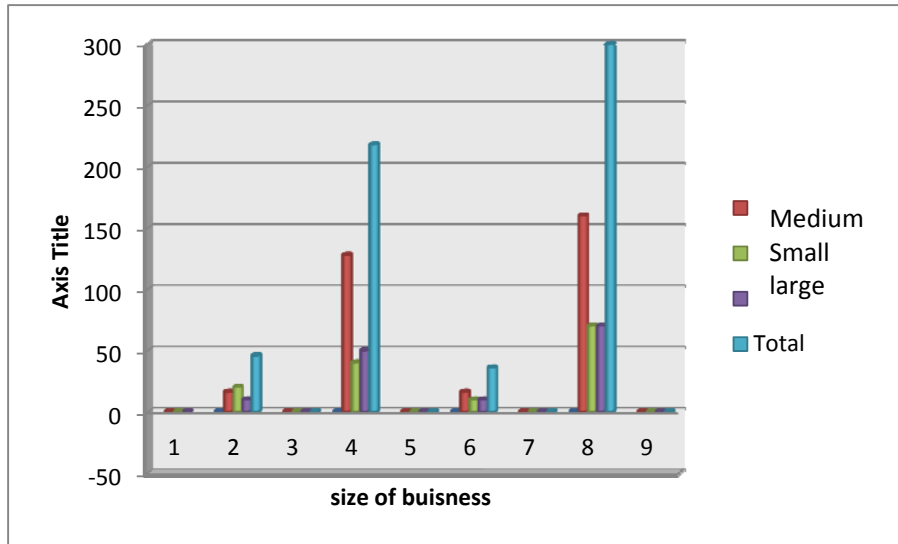


Fig.4.5.2

Table 4.6.2 and fig. 4.6.2 show that Nationalized bank is the main source of borrowing (80 percent in case of SSI, 60 percent in case of medium size business and 72 percent in case of Large Scale). It amply proves that almost all respondent under study prefer nationalized bank for taking loan as compared to private and co-op bank. It could be concluded that Large scale borrowing is made by the respondent from the nationalized bank and naturally nationalized banks are put to loss due to NPA. It clearly indicates that it is loss of public money and danger to national economy.

• Utilization of loan

Generally it is seen that no one wants to disclose how they spent amount but the nature of expenditure has the direct impact on the repayment capacity of the business houses. After analyzing the questionnaire in respect of nature of loan

utilization by the respondents it was revealed that the main expenditure is incurred on the preliminary expenses, personal purposes (purchase of car, hiring of luxuries articles, etc.) & business purposes. The breakup of the loan utilization is depicted in the following table 4.5.3.

Table 4.5.3: Utilization of Loan

Sr. no	Item of expenditure	Respondents			Total
		SSI	Medium	Large	
1.	Personal purpose	48 (30)	7 (10)	7 (10)	62 (21)
2.	Business purpose	60 (96)	56 (60)	56 (80)	208 (67)
3.	Parliamentary expenses	16 (10)	7 (10)	7 (10)	30 (10)
	Total	160 (100)	70 (100)	70 (100)	300

Source: Primary data

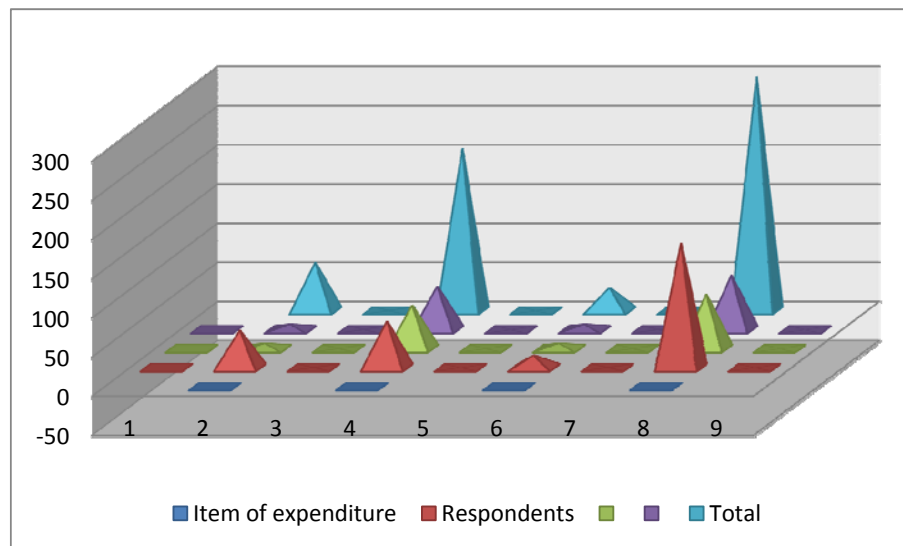


Fig. 4.5s.3

Table 4.5.3 and fig.4.5.3 above reveal that though a large part of loan is raised it is spent for business (60 percent of SSI units, 80 percent by medium scale 80

percent by large scale units), expenditure on personal and preliminary expenses play a significant role in the utilization of loan. E.g. followed by in case of SSI units expenditure on preliminary and personal expenses together account for 40 percent and 17percent in case of med. and large scale business. It could be concluded from the analysis of above table that a significant amount of loan is spent on unproductive things that may be one of the reasons for the NPA.

Nature of capital Expenses in business

It would be seen that the main items on expenses of business are of two types one relates to fixed capital investment and second is working capital expenses for day to day business. The breakup of the percentage is presented in table number 4.5.4.

Table 4.5.4: Capital expenses (items of expenditure)

Sr. no	Items of expenditure	Percentage	Mid point
1.	Purchase of land	10 to 15	12.5
2.	Construction of building	05 to 10	7.5
3.	Purchase of machinery	15 to 25	20
4.	Working capital expenses	60 to 70	65

Source: Primary data.

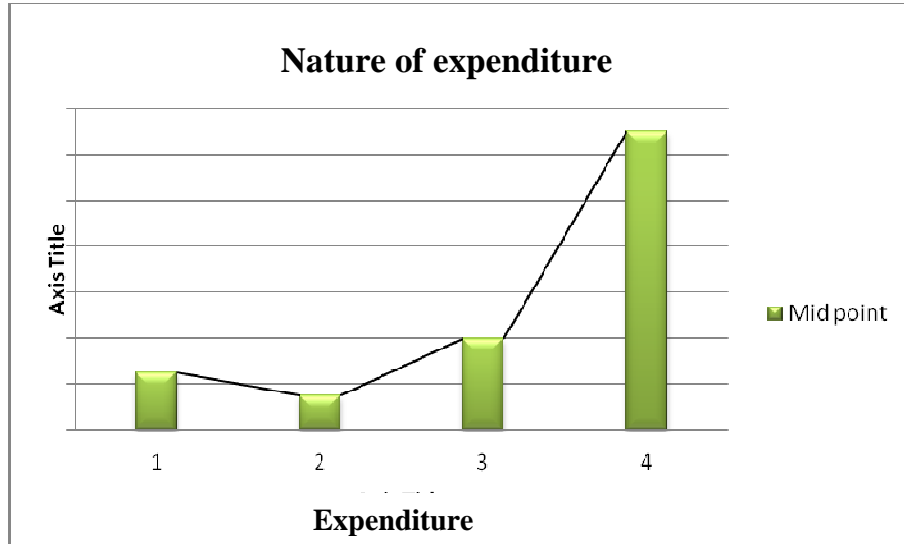


Fig. 4.5.4

Analysis of table number 4.5.4 and fig.4.5.4 show that about 20 percent amount is spent on purchasing machinery followed by purchase of land (10percent) construction of building (5percent) in descending order of value. It is also seen that about 70 percent of the amount is utilized as working capital (transportation, purchase of raw materials, taxes, wages, etc).

Working capital Provision

A question was put to respondent as to whether they take loan for working expenses or not. The breakup of the response is presented in following table No. 4.5.5.

Table 4.5.5: Sources of working capital requirement

Sr. no	Respondents	Response		Total
		Yes	No	
1.	SSI	150 (94)	10 (6)	160 (100)
2.	Medium	60 (86)	10 (14)	70 (100)
3.	Large	60 (86)	10 (14)	70 (100)
	Total	270 (20)	30 (10)	300

Source: Primary data.

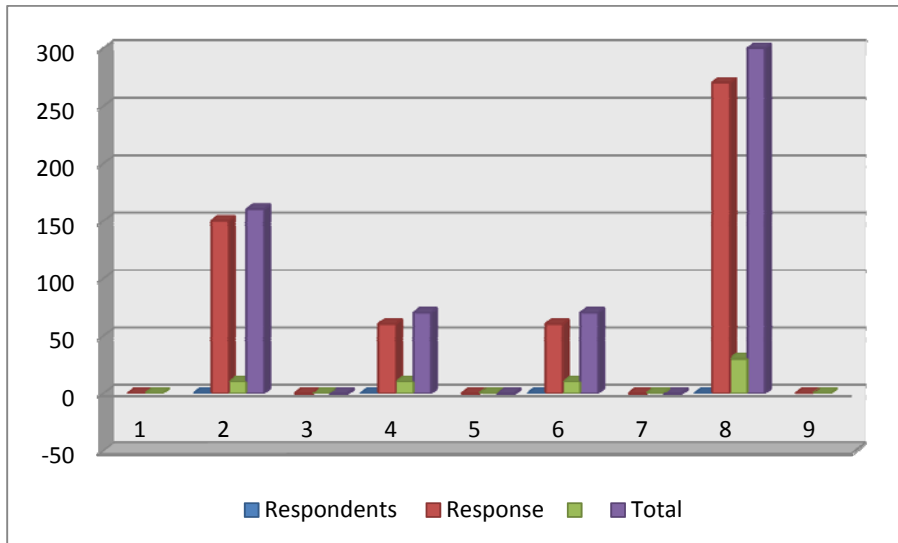


Fig. 4.5.5

Table number 4.5.5 and fig.4.5.5 above reveal that a large number of sample respondents said yes and insignificant percentage of respondent said number. It would be seen that about 94percent of SSI units and 60 percent of medium and large scale business units opined that they take loan for working capital whereas 6 percent SSI

units, 40 percent medium and large units reply said number. Thus on an average 90 percent of respondents responded that they take loan for meeting out working expenses and 10 percent working. It could be concluded in view of this that large amount of business units/resp. use to take loan for meeting out working expenses. Hence it could be further concluded that if working expenses are not recovered properly, it puts business units in the state of shortage of funds. The shortage of funds means paucity of funds for production and marketing activity, putting the business in the loss due to fall in the working capital.

Type of loan for working Capital

Breakup of the loan taken for working capital by the respondents depicted in Table No.4.5.6 below:

Table 4.5.6: Type of Loan for working capital

Sr. no	Respondents	Overdraft		Security of stock		Total
		Yes	No	Yes	No	
1.	SSI	60 (160)	---	150 (94)	10 (6)	16
2.	Medium	70 (100)	---	70 (100)	---	70
3.	Large	50 (71)	20 (29)	70 (100)	---	70
	Total	93 (280)	7 (20)	96 (290)	4 (10)	300 (100)

Source: Primary data.

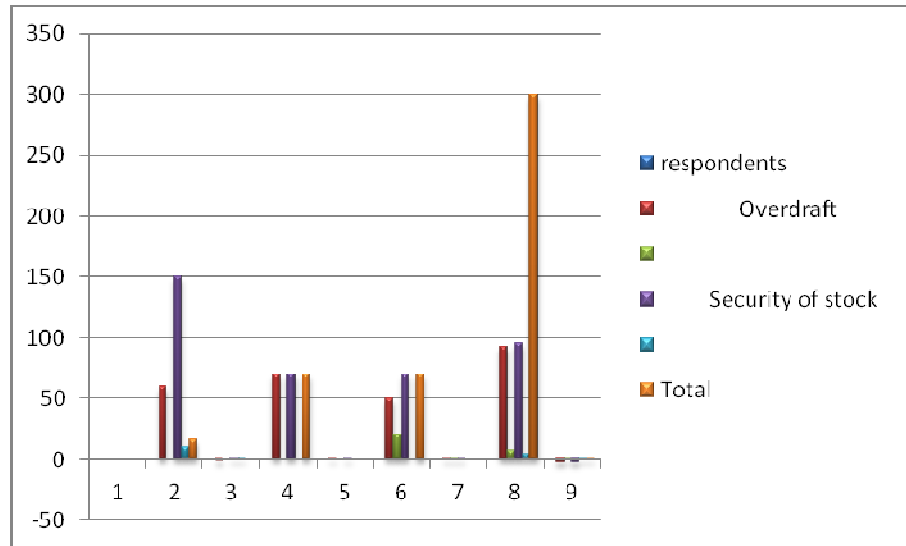


Fig. 4.5.6

Table 4.5.6 and fig. 4.5.6 above indicates that, almost all SSI units resort to overdraft followed by medium size units (100 percent) and large scale units 71 percent. Table reveals that about 29 percent large scale respondents do not take overdraft. When questioned it was told that large scale unit requires to take loan from banks on security of stocks. When question was put to SSI units as regard to loan raised by them along with overdraft; about 150 and 94 percent respondents told that they raise loan for working capital on the pledge and stock of go down, Medium size respondents told that they raise 100 percent loan on security of stock. It is indicative of the fact that almost all respondents use to resort to overdraft for the urgent needs on current account and at the same time raise loan on the security of stock for meeting short term capital requirement.

Table 4.5.7: Subsidy Availed By the Respondents

Sr. no	Respondents	Response		Total
		Yes	No	
1.	SSI	160 (100)		160 (100)
2.	Medium	60 (85)	10 (15)	70 (100)
3.	Large	20 (28)	50 (72)	70 (100)
	Total	240 (80)	60 (20)	300 (100)

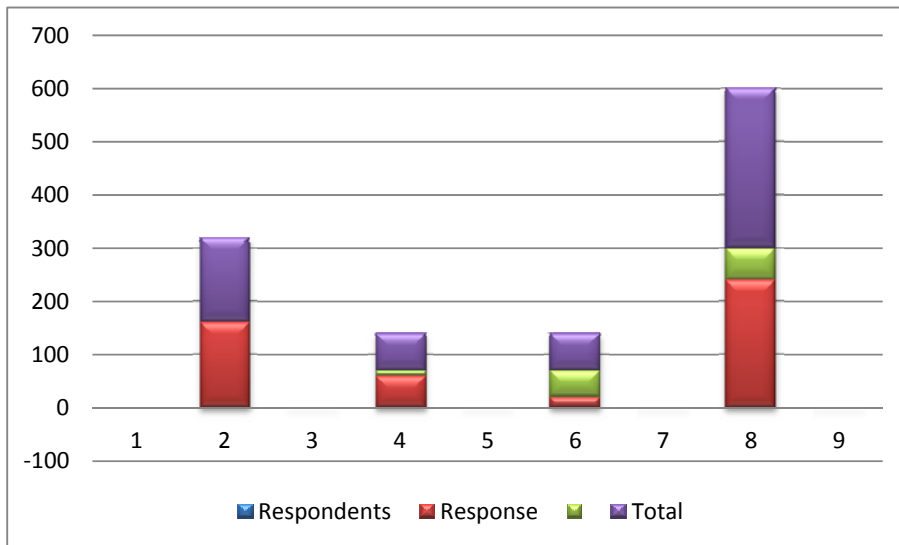


Fig. 4,5.7 Subsidy Availed

Table 4.5.7 was prepared to know the state of subsidy enjoyed by the respondents. This was considered important since during the process of recovery this part completely seen neglected and it is great loss to the national economy. As matter of promoting industrialization of different parts of the country, special facilities like tax concession, subsidy, provision of plot in the industrial area etc. are provided.

However when recovery of loan by creditor is decided, only loan and interest on it is considered by the courts and in this process all these financial benefits to industries remain neglected. It is a loss to the national economy and loss of public money. Considering this aspect it was considered to highlight on this most neglected factor.

Table 4.5.8: Subsidy enjoyed by the respondents

Sr. no	Respondents	Response		Total
		Yes	No	
1.	SSI	160 (100)	---	160 (100)
2.	Medium	60 (85)	10 (15)	70 (100)
3.	Large	20 (28)	50 (72)	70 (100)
	Total	240 (80)	60 (20)	300 (100)

Source: Primary data.

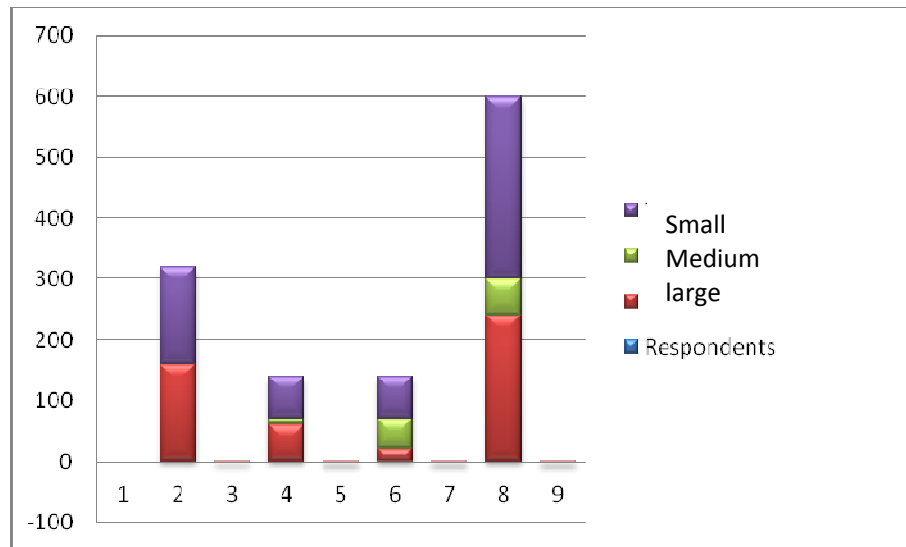


Fig.4.5.8

As a matter of giving encouragement for the development of the industries various schemes have been declared by Govt. of India. For the backward are as tax concession is granted, moratorium period is granted to enable industries to become viable in the initial stage, some shade, advanced technology. Recently government has declared policy of Start up India, Make in India and necessary financing is done on concessional rate or subsidy is granted on loan taken by them. While studying the NPA researcher came across very strange fact that while discussing NPA's problem every stress is given on the recovery of loan taken from banks or financial Institutions. Govt. of India recently declared policy of helping the Banks to save them from loss of NPA. In this process, nobody has given any thought to the recovery of part of subsidy enjoyed by the industry in the event of insolvency or bankruptcy. Even in court of Law also, this fact has lost sight of the said problem. In order to know as to whether respondents herein have been benefited by enjoying subsidy from the state or central Govt. table 20 is prepared.

Table 4.5.8 and fig.4.5.8 above reveal that almost all (100percent) resp. small scale units (100 percent) followed by medium size industries (80 percent) and large scale units (28 percent) in descending order said that they have enjoyed subsidy from the various schemes of Govt. Table further reveals that about 10 medium size units (15 percent) and 50 large scale respondents (72 percent) told that they have not enjoyed subsidy. When enquired it was told that those who have told they have not enjoyed the subsidy; they are old units started before such declaration. It could be concluded that most of the resp. have enjoyed subsidy of this or that kind and those who have not enjoyed are very old respondents.

Percentage of Subsidy enjoyed

There are various schemes declared by the state as well as the central government for helping the industrialization of different areas and as part of incentives in this regard subsidy on loan is granted as a matter of industrial policy. In table 4.10 subsidy enjoyed by the respondents is depicted in percentage.

Table 4.5.9: Percentage of subsidy enjoyed by the respondents

Sr. no	Respondent	Subsidy in percent					Total
		50	70	75	80	8 above 80	
1.	SSI	20 (12.50)	5 (3)	25 (15)	100 (64.25)	10 (6.25)	160
2.	Medium	05 (7)	05 (7)	10 (14.25)	40 (57)	10 (14.25)	70
3.	Large	10 (14.25)	10 (14.25)	20 (29)	10 (14.25)	20 (29)	70
	Total	35	20	55	150	40	300

Source: Primary data.

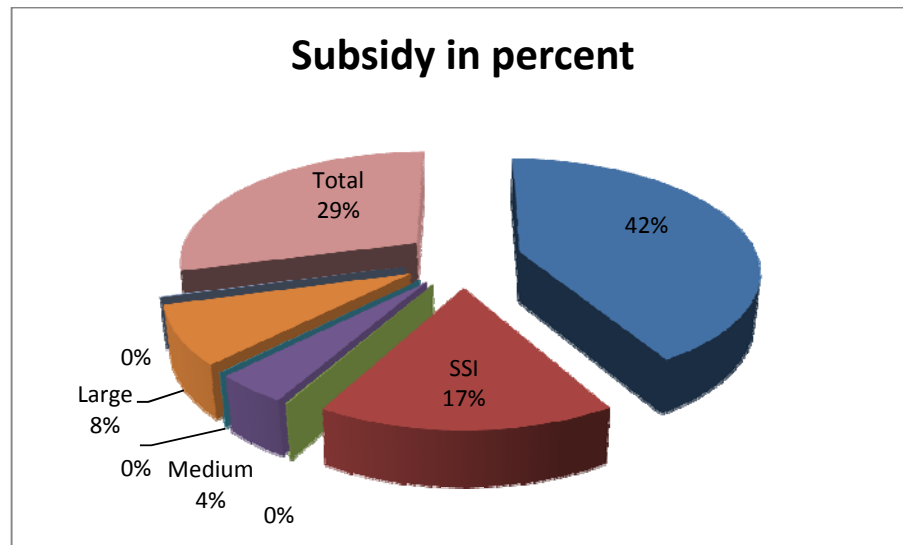


Fig.4.5.9

Table 4.5.9 and figure 4.5s.9 reveal that about 64.25 percent of the small scale units have enjoyed subsidy at about 80 percent on loan raised for building, machinery technology, establishment etc. followed by 75 percent and 70 percent subsidy in descending order of value. As regards to the Med. Size units maximum no. of units (57) have enjoyed about 90 percent subsidy followed by 70 percent by 10 units (14-25 percent) and the same number more that 80 percent. It also shows that medium scale unit have enjoyed subsidy at 50 percent and 70 percent and about 10 units (14-25) 75 percent subsidy and the same number i.e., 10 units (14.5percent) enjoyed 80 percent subsidy.

As regards to the large scale business units 10 units (14.5 percent) each have enjoyed 50 percent, 70 percent and 80 percent subsidy and about 20 respondent units enjoyed more than 80 percent subsidy. Enquiry reveals that those who enjoyed more than 80 percent subsidy were agro-based large scale units like sugar factories and manufacturing industries. Thus, it could be concluded that almost all of the respondents seems to have enjoyed subsidy at varying rates prevailing at the time of their establishments.

Inflow of Fund

Table 4.5.10 below depicts the state of inflow of funds as disclosed by the respondents.

Table 4.5.10: Inflow of fund average percentage of inflow of fund

Sr. no	Items	Size of respondents			Total
		SSI	Medium	Large	
1.	Self earnings	05 (7)	10 (7)	05 (3.5)	20 (12.50)
2.	Family members	05 (7)	05 (3.5)	---	10 (6)
3.	Savings	05 (7)	05 (3.5)	05 (3.5)	15 (9)
4.	Sale of goods or services	25 (35)	20 (14)	50 (35)	95 (68)
5.	Govt. subsidy	120 (44)	70 (22)	10 (7)	160
		160 (100)	70 (23)	70 (23)	300

Source: Primary data.

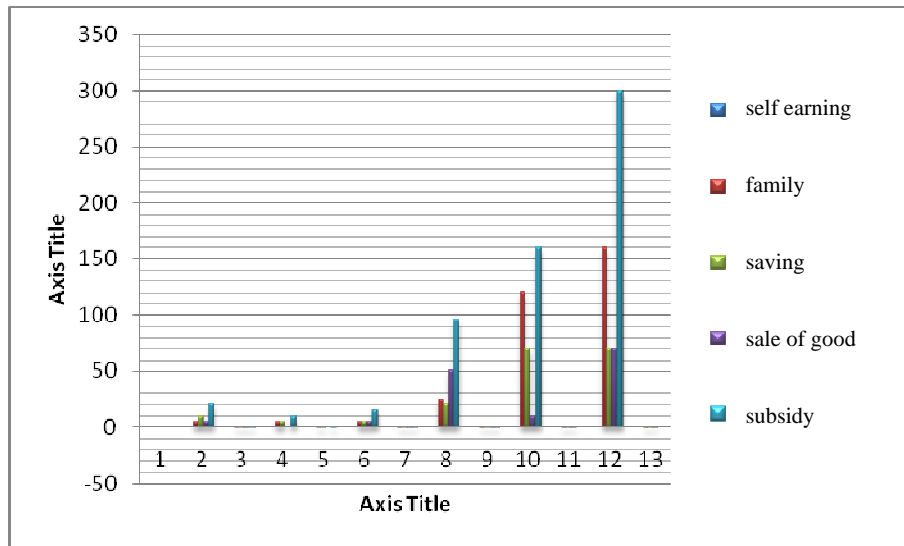


Fig. 4.5.10

Table 4.5.10 and fig.4.5.10 reveal that as far as small size business is concerned large scale inflow of funds source in Govt. subsidy (44 percent units)

followed by sale of goods and services(35 percent inflow), 7percent each from self earning and family members and source of savings.

Table 4.5.10 further reveals that medium size units respondent about 30 out of 70(22 percent) got govt. subsidy followed by sale and goods and services income inflow (14 percent)self finance (7 percent) and family members helps 5 units (3.5 percent)and surplus from savings 3.5 percent. As far as large scale units are concerned 50 respondents (35 percent) told that their main source of inflow of capital relates to the earnings from sales of goods services followed by govt. services by 10 respondents (7 percent) by each 5 units (5 percent each) from self earnings and help from family members respectively.

In view of the above cited discussion it follows that inflow of funds from sale of services and goods and govt. subsidy forms the main source of inflow of funds. It clearly indicates that a large part of inflow is raised from govt. service and sale of goods and services. It means any change in this inflow effects in the financial health respondent units.

Preparation of Fund Flow Analysis

Table 4.5.11 gives the state as to whether fund analysis is prepared by the respondents or not.

Table 4.5.11: Fund Flow Analysis

Sr. no	Respondents	Response		Total
		Yes	No	
1.	SSI	160 (100)	---	160 (100)
2.	Medium	70 (100)	---	70 (100)
3.	Large	70 (100)	---	70 (100)
	Total	300	---	300

Source: Primary data.

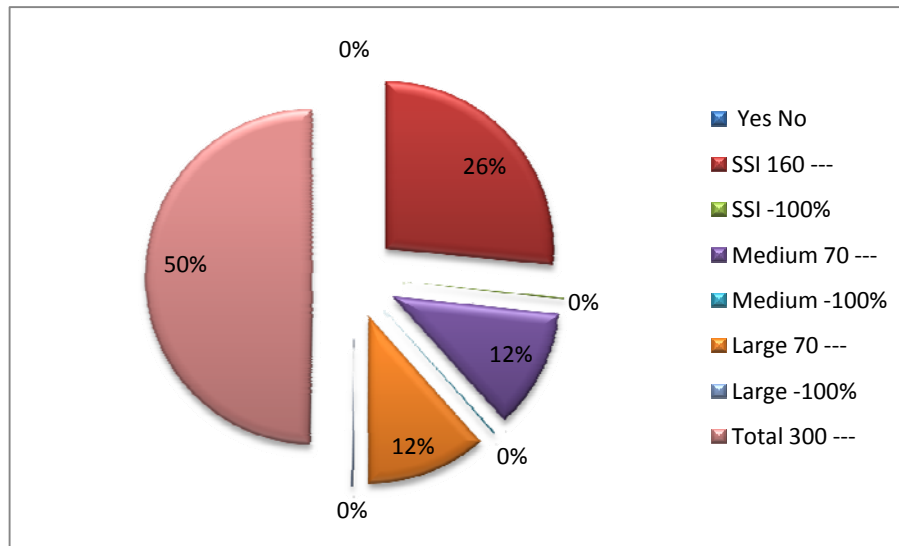


Fig. 4.5.11

Table 4.5.11 and figure 4.5.11 reveal that all respondents told that they have to prepare fund flow analysis as a mandatory condition. It could be concluded that fund flow analysis statement is prepared by all the respondents. Since it is pre condition for project DEMO Loan rising.

Table 4.5.12: Fund Flow matching Experience of Fund

Sr. no	Respondents	Score					Total
		1	2	3	4	5	
1.	SSI	10 (6)	20 (12)	10 (6)	20 (12)	100 (54)	160
2.	Medium	05	07	14	04	40	70
3.	Large	10 (14)	14 (21)	21 (30)	5 (7)	30 (43)	70
	Total	25	41	45	29	160	300

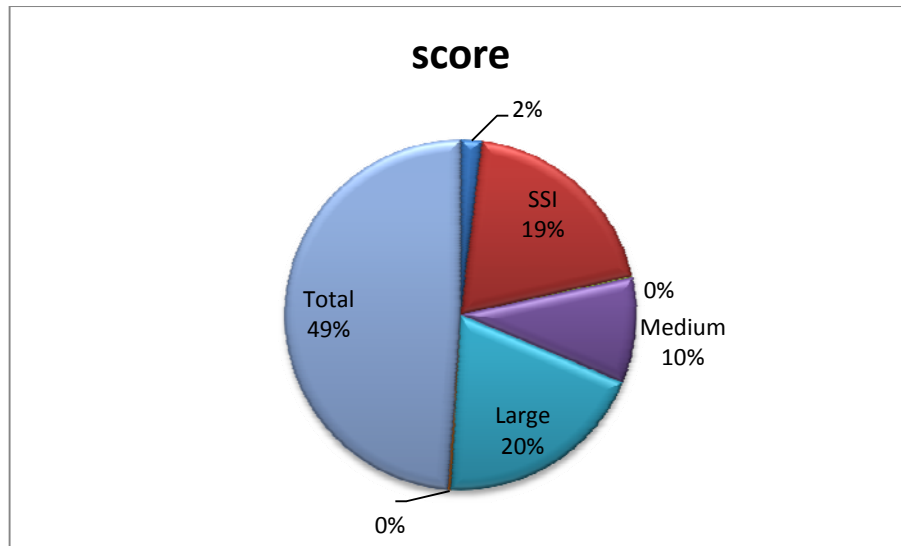


Fig. 4.5.12

Proper flow of funds helps the business or industry to adhere to the loan repayment schedule. In order to know the state of satisfaction about flow of fund table is 4.5.13 is prepared to depict the information.

Inflow and outflow of Fund (Impact)

Table 4.6.13 depicts the state of experience opinioned by the respondents as very good, satisfactory, somewhat satisfactory, not so good and worst.

Table 4.5.13: Impact of bad inflow of fund causing NPA

Sr. no	Respondents	A	b	C	Total
1.	SSI	10 (14.5)	10 (14.5)	140 (71)	160
2.	Medium	20 (29)	20 (29)	30 (42)	70
3.	Large	30 (42)	20 (29)	20 (29)	70
	Total	60	50	190	300

Source: Primary data.

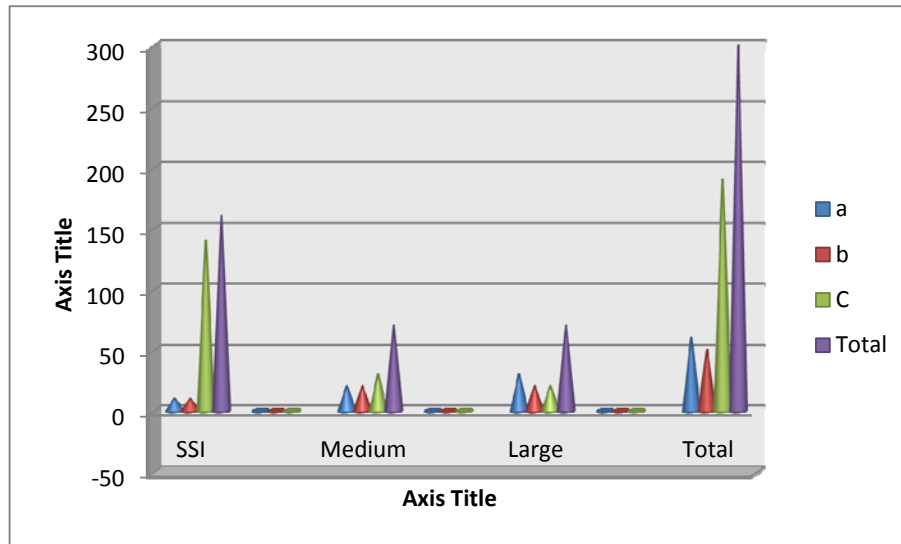


Fig.4.5.13: Impact of bad inflow of fund causing NPA

Table 4.5.13 and figure.4.5.13 above show that about 100 SSI respondents (54 percent) says worst, 20 respondents (12 percent) 10 respondents (6 percent) and 10 respondents (6 percent) opined worst, satisfactory, somewhat satisfactory, experience. It means in actual business, about 120 respondents (66 percent) opined that they were not been able to adhere to the in-flow of fund as per expectations. Table 4.5.13 further reveals that out of 70 medium size respondents could not get adequate inflow and 14 respondents were also not in good position. Similarly out of 70 medium size respondents 35 respondents (50 percent) have bad inflow and 21 respondents (30percentage) have shown not much satisfaction. It is indicative of the fact that majority of the respondents seems to be not in position to get inflow to cover expenses therefore It could be concluded that more than 50 percent respondents have to face paucity of fund in their business.

Impact of Bad Loan

Table 4.5.14 shows the analysis of opinion as regards to the impact of bad inflow of funds.

Table 4.5.14: Impact of bad in flow of funds causing NPAS

Sr. no	Respondents	A	B	C	Total
1.	SSI	10 (14.5)	10 (14.5)	140 (71)	160
2.	Medium	20 (29)	20 (29)	30 (42)	70
3.	Large	30 (42)	20 (29)	20 (29)	70
	Total	60	50	190	300

Source: Primary data.

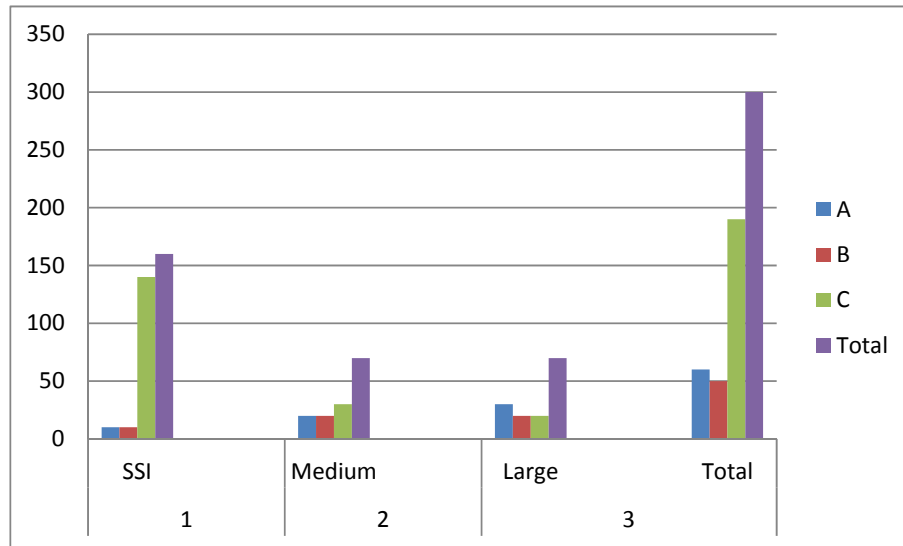


Fig. 4.5.14

Table 4.5.15 reveals that out of 160 small size units about 140 (71 percent), out of 70 medium size units 30 units (42 percent) 10 units, each opinioned that bad inflow is the cause of bad impact and large number opinioned (above 85 percent) that it affects their business significantly and it is the major cause of being defaulters. It would be seen that small size units along with large business units have sought the same opinion.

From the discussion as above; it clearly shows that bad inflow is the main cause of being defaulter.

As soon as loan becomes NPA, lender send Demand notice to the borrower n/s 19/(2) requiring borrower to make the payment of installments due sometimes borrower acknowledge the notice and send reply and some defaulters neglect the

same. A question was put to the respondent defaulters about their reaction on being demand notice serve to him. The state of response is depicted in table 4.6.15 below:

Table 4.5.15: Response to the demand Notice

Sr. no	Size of sample Unit	Reply	Consult Expert	upset and detract	Total
1	SSI	150	100	160	160
2	Med	70	40	30	70
3	Large	70	60	30	70
4	0	290	200	220	300

Source: Primary data.

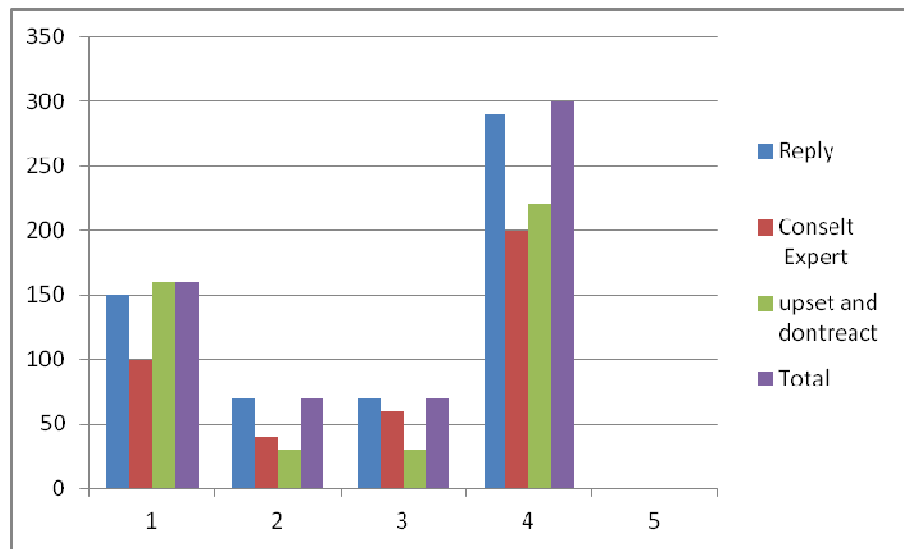


Fig.4.5.15

Table 4.5.15 and figure4.5.15 reveal that about 150 respondent SSI units (72 percent) immediately acknowledge the demand notice by sending reply while medium and large scale units about 70 each (24 percent) said that reply the Demand notice. It shows that Med and large scale unit s do not pay attention.

When creditor find indifferent attitude of the borrower at this or that pretext, matter is filed for recovery by the lender with DRT of that jurisdiction u/s 17 of the Act. Such matters either remains in DRT court till final hearings and decision by the court. In case if decision of DRT is not favoured either of the party files appeal to DRAT being aggrieved of the DRTs decision. On being aggrieved by the decision of DRAT either of the aggrieved party files recovery in the appeal ultimately in S.C. Supreme Court.

As have been discussed earlier there are various stages in the process of recovery of loan amount along with interest due. During this process matters remain pending due to the legal process. In order find the volume of pending cases a question was put in the questionnaire. Table 4.5.16 denotes the information as regards to the stage of recovery case.

Table 4.5.16: Stage of recovery case

Sr. no	Size of sample Unit	DRT	DRAT	High court	Apex Court	Total
1	SSI	140	10	10	0	160
2	MED	30	20	15	5	70
3	LARGE	30	15	20	5	70
	Total	200	45	45	10	300

Source: Primary data.

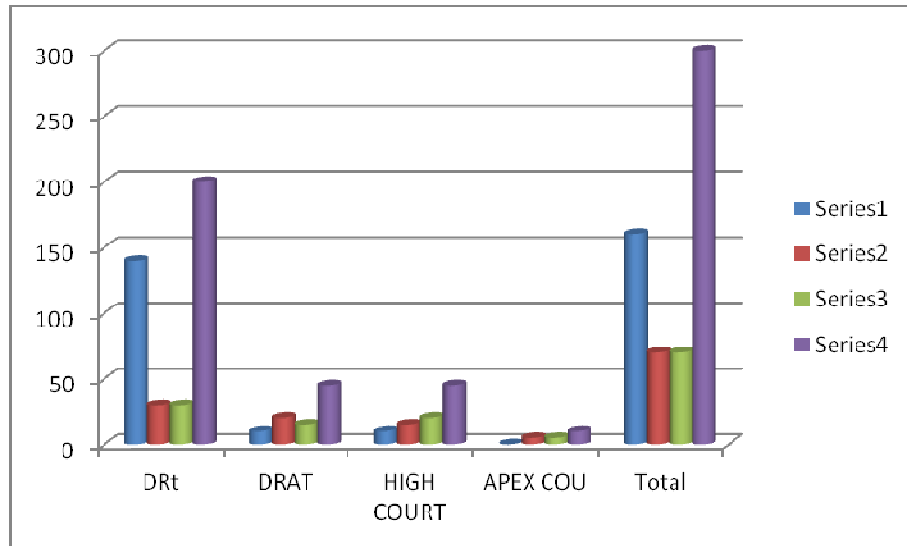


Fig.4.5.16

Table 4.5.16 above depicts that large number of matters about 200 (67 percent) were in the DRT court. It is also observed that large number of pending matters belong to the small scale units (88 percent). Study also reveals that about 45 respondents cases were lying with the DRAT (It could be seen that about 20 cases (29percent) related to the med. Size resp. units followed by 15 (21 percent) of L.S. units and only 10 (6 percent)cases were of the S.S.S. units

Action for Possession

Many times DRT immediately give relief to the hander allows to take symbolic possession till final order of possession or grant relief to the borrower keeping matter in abeyance till further order. In order to know what happened in DRT

as regards to the matter in DRT a question was put as to whether property of possession of has been taken by the lender or not. Information received is depicted in table 4.5.17 below.

Table 4.5.17: Action of Possession by the Creditor

Sr. no	Size of sample Unit	Response		Total
		Yes	No	
1	SSI	130	30	160
2	MED	60	10	70
3	LARGE	60	10	70
	Total	250	50	300

Source: Primary data

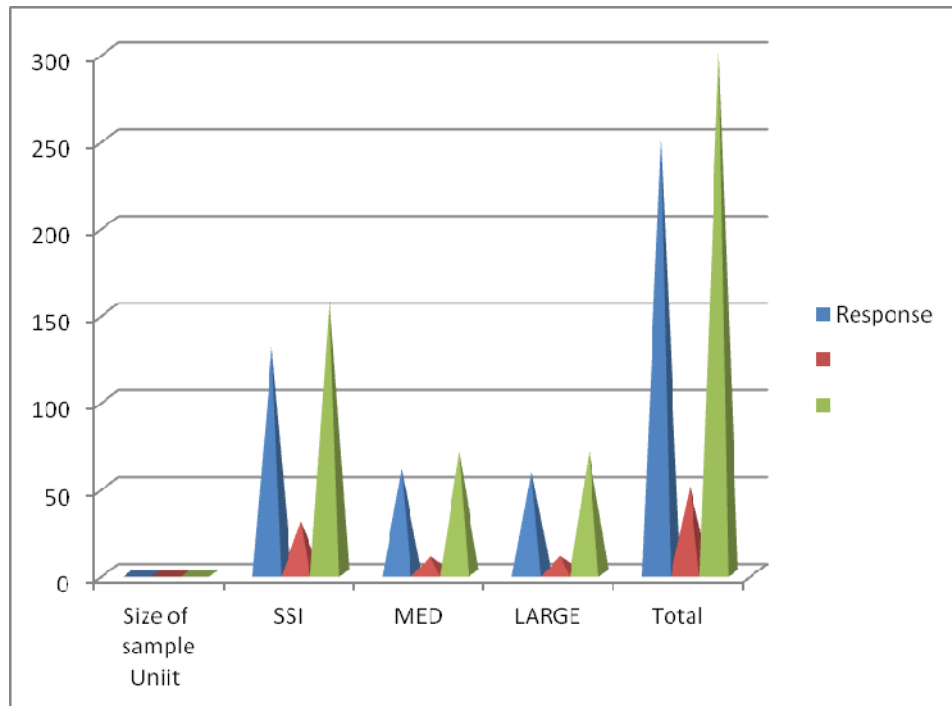


Fig. 4.5.17

Approach to High Court under Art. 226 of the Constitution

On being aggrieved by the order passed by DRAT aggrieved party (mostly borrowers) may approach the High Court under Article 226 constitution. It is seen that in such cases it is observed that majority of the parties file writ in the High Court. Analysis of the cases filed in the High Court is depicted in table 38 below.

Table 4.5.18: Approach to Higher Court

Sr. no	SizeSample Unit	Response		Total
		Yes	No	
1	SSI	130	30	160
2	MED	40	30	70
3	LARGE	50	20	70
	Total	220	80	300

Source: Primary Data.

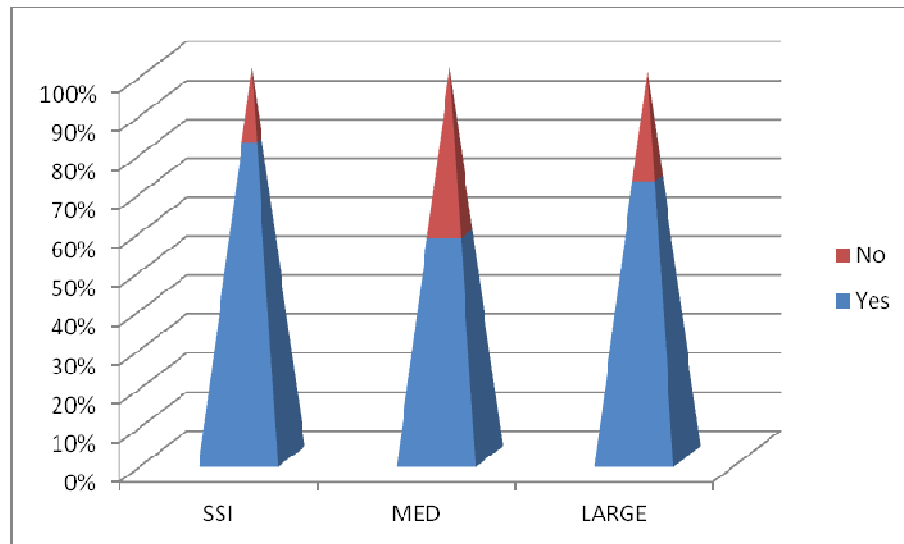


Fig. 4.5.18

It may be observed from Table 4.5.18 and perusal of fig.4.5.18, that a large number of SSI units i.e. 130 units (82 percentage) file appeal in the High court and 30 (18 percentage) are seen reluctant. As regards to Medium size respondents about 40 (57 percent)said that, “yes” they approach to High Court against the order of DRAT. (43 percent do not) In case of large respondents about 50 (71 percent) approach to the High court and rest of them do not. Overall observation would reveal that in all 220 respondents 73 percent file appeal in the High court. It is revealing the fact that in the majority of the cases appeal is filed in the High Court against the order or DRAT. When questioned it was told by the respondents that as per the advice of the advocate appeal is filled to prolong the matter or to keep matter lingering or just to kill time. It is also revealed that there are few genuine cases wherein there are reasonable grounds and in which certain Supreme Court Judgments prevail. On the perusal of his discussion and facts,

Result of S.A. it could be concluded that in majority cases aggrieved party file appeal against the order of DRAT and there are reasonable ground in some cases and in some cases it is intentionally done to take the advantage of judicial system to prolong the matter or keep matter lingering.

Regarding possession restored by the Court. --- Possession may be symbolic or physical Possession. After the Court’s decision (Tribunal, Appellate & High Court) Possession by the Bank or financial institution may be restored by the court for the obvious reasons, such as; settlement or payment made by the borrower or the co-obligator. There are number of causes for the restoration of possession of the borrower’s property on technical ground on the fulfillment of demand of the lender or

satisfied by the Court. Cases of restoration of possession have been studied and presented in table No. 4.5.19.

Table 4.5.19: Rejection of S.A.

Sr. no	Size of sample Unit	Response			
		S.A	S.A	S.A	S.A
		Accepted	Rejected	Pending	Total
1	SSI	130	20	10	160
2	MED	50	10	10	70
3	LARGE	30	30	10	70
	Total	210	60	30	300

Source : Primary data.

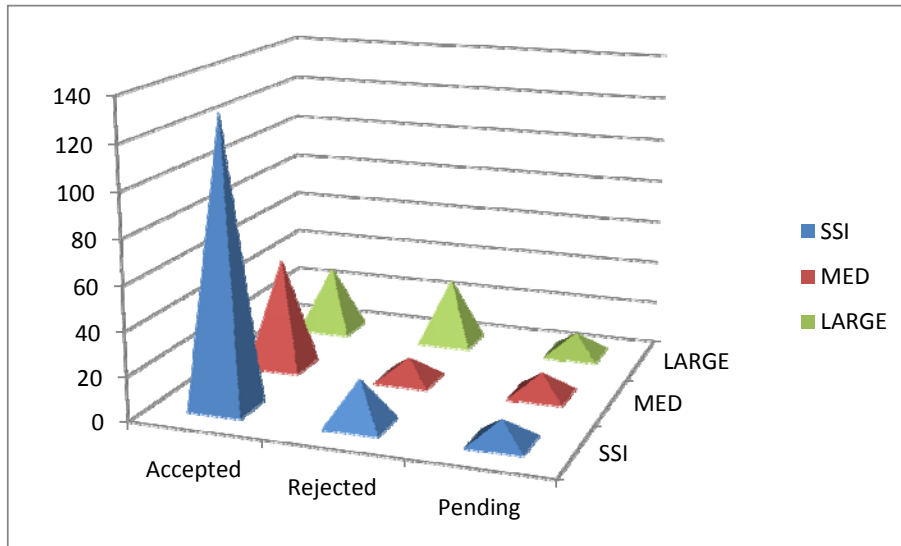


Fig. 4.5.19

Table No.4.5.19 and figure 4.5.19 show that, in case of SSI respondents in 100 cases (60 percent) respondent properties possession restored followed by medium size respondents (70 percent) and 65 large scale respondents (93 percent respondents). Detailed study revealed that large scale business units settled the matter followed by medium size and SSI respondents in descending order of value. It is further revealed that large scale units make financial adjustments through number of measures followed by medium and SSI respondents in descending order of magnitude. It is so because large scale units are in a better position to make settlement because of size of their business and engaging competitive advocates because of their mighty resources followed by medium size respondents. It is also found that small scale units because of their limited resources are unable to sustain or absorb the losses and cases of restoration are lost.

After considering this analysis of this observation and facts and circumstances, it could be concluded large no. respondents get restoration of possession through settlements and in this respect large scale respondents are in better position followed by medium SSI and large SSI units in descending order.

Nature of Settlement

Possession of property is restored by the lender after getting court's order to that effect. It is observed that in majority of cases possession of the property is restored after the court's order and it is through one time settlement (OTS) of the account. Information collected is presented in the following table No.4.6.21 nature of settlement.

Table 4.5.20: Nature of settlement

Sr. no	Respondents	Relief granted			Total
		1	2	3	
1.	SSI	80 (50)	80 (50)	Nil	160
2.	Med	40 (60)	30 (40)	Nil	70
3.	Large	65 (43)	5 (10)	Nil	70
	Total			Nil	300

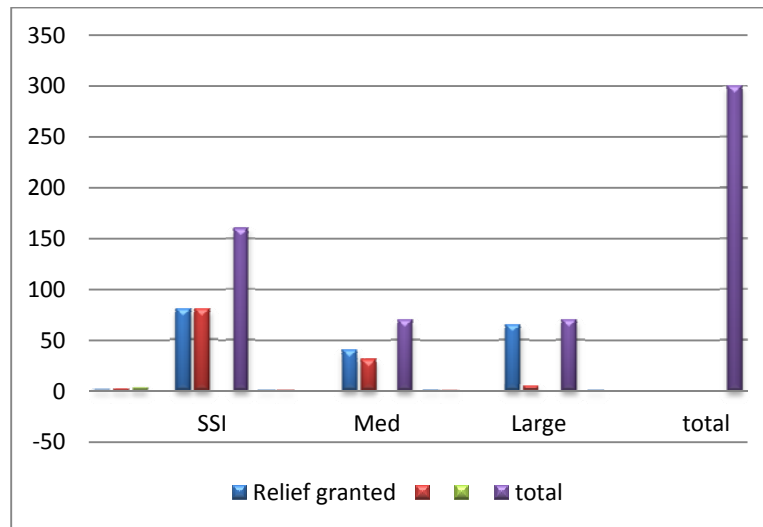


Fig.4.5.20: Nature of settlement

In case of SSI units, medium scale unit medium scale units and large scale unit respondent settlement is caused by one time settlement. When enquired it was revealed that almost all the respondents prefer settlement through court because thereby they enjoy relief by way of payment by installment and sometimes concession in the interest payment from this observation it could be concluded that respondents

intentionally try to settle the matter one time settlement because in compromise formula respondents enjoy relief in payment of debt and in interest.

Social Impact of NPAs

Socio-economic impact is wide ranging in size, from local effects on a small community to changes on the entire society.² During the course of study researcher herein observed that it has wide ranging social impact on lenders as well as borrowers. In view of these facts it was decided to enquire about the impact of the NPAs and the prolonged court battle on the respondents it was revealed that most of the respondents had to face depressed state of mind. Analysis of the collected information and revealing facts have been represented in table number 4.5.21 below—

Table 4.5.21: Emotional Impact

Sr. no	Size of sample Unit	Family Members went into depression		Total
		Yes	No	
1	SSI	150	10	160
2	MED	60	10	70
3	LARGE	20	50	70
	Total	230	70	300

Source: Primary data.

² Mirsa P and Sing Yadav A. "A Comparative Study of Financial Performance of SBI and ICICI Bank.

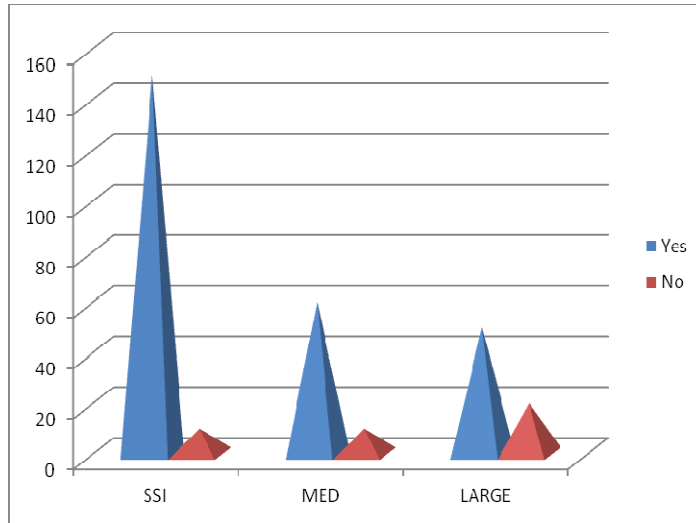


Fig. 4.5.21

Table 4.5.21 and figure 4.5.21 depict that about SSI units about 50 (93 percent) out of 160 said that “yes” they were emotionally depressed followed by 60 medium size respondents (85.71) out of 70 and large scale respondents 50 (71 percent) out of 70 respondents in descending order of value. Study of the total scenario reveals that out of the 300 respondents about 260 (86 percent) told that they were emotionally depressed. When questioned for this it was told that once matter is made public because of NPA and prolonged Court Battles disturbed their state of mind for no. of obvious reasons, such as family members have to suffer emotionally and total family is disturbed. In society their goodwill suffers a lot and it is another mental and psychological harassment. It is also told that in market their credit

worthiness is lost and relatives and their attitude is very bad and have to suffer due to scornful comments and this put the whole family and respondents in a grief of sorrow and anarchy. It was also told that many times a depressed like suicide also come or crops in the mind. In view of these observations it could be concluded that NPA problems have long ranging effect on the respondents and their families and goodwill or prestige lost in the society.

Effect on state of mind of Proprietor

There are four parties in the loan transaction, namely, lender or debtor, obligator, guarantor and their family members, worker, etc. When loan becomes NPA all these parties are affected. Since the work or business of company comes to stand still. A question was put as to how respondent feel after getting demand notice u/s 13(2) of securitization Act. Feelings were recorded as; (a) upset, (b) Greatly upset (c) loose moral and (d) feel helpless and depressed. Response is identified and presented in table no. 4.5.22 below:

Table 4.5.22: Effect of NPA on state of mind of the Respondents

Sr. no	Size of business	Response			
		A	b	C	D
1.	SSI	160	140	Nil	20
2.	Medium	60	10	Nil	Nil
3.	Large	60	10	Nil	Nil
4.	Total	280	160	Nil	20

Source: Questionnaire.

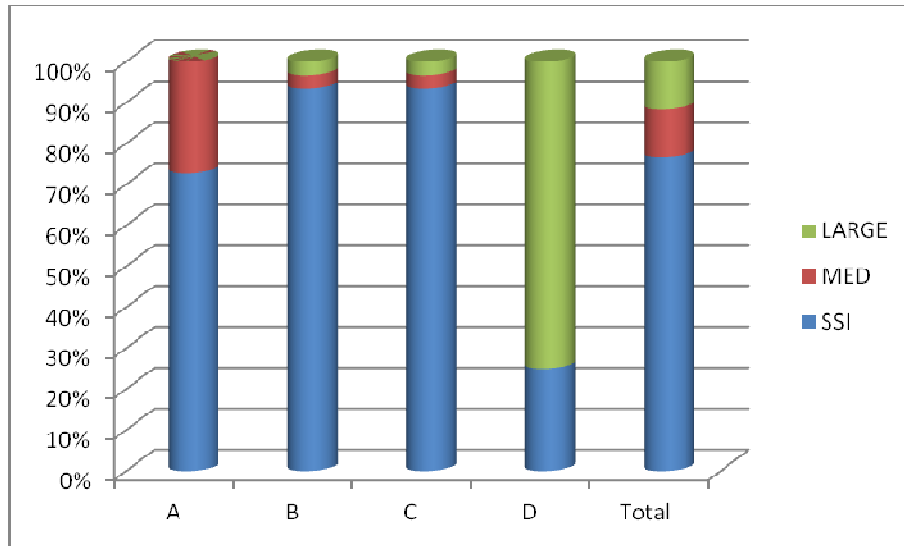


Fig. 4.5.22: Effect of NPA on state of mind of the Respondents

Table 4.5.22 and figure 4.5.22 above reveals that as per as SSI unit is concerned at first all 160 respondents told that greatly upset followed 60 medium scale size units (92 percent approximately). About 140 respondents (94 percent) exclaimed that were greatly upset having severity of depression. Similarly 140 sample respondents of sample unit told that it caused loosing the moral and confidence and (25 percent of 80) 20 SSI respondents found that they are helpless and find no efficacious way of survival. Above table further reveals that these feelings are not much sever in case of medium scale and large scale units. Enquiry revealed that medium and large scale businesses have more absorption in ability to absorb the shock of loss because there are others too share this shock. and SSI respondents do

not have this ability since many a times such units are run by either individual proprietor or family proprietorship. In view of these observation it could be concluded that NPAs and consequent to it other effects get severe blow to their feeling and emotion.

Table 4.5.23: Set back to Goodwill or reputation

Sr.no	Size of sample Unit	Yes	No	Total
1	SSI	160	0	160
2	MED	70	0	70
3	LARGE	60	10	70
	Total	290	10	300

Source: Primary Data.

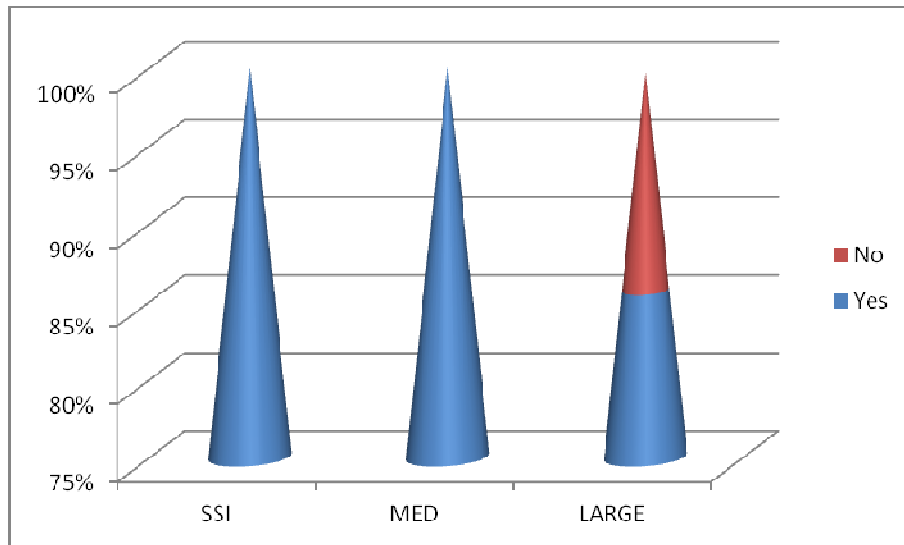


Fig.4.5.23

A loan is an asset for a bank and liability for debtors. In the earlier table it was orally told by the respondents that in the whole process of NPA and legal battle

reputation of their business lost. Response is mentioned in following table No 4.5.24 and figure.4.5.24 show that about 290 respondents out of 300 respondents told that majority of them have lost reputation and have set back to their goodwill or reputation and therefore they could not raise capital. Fluctuations in the business and other reasons have nothing to do with the creditors because their main aim is the recovery loan amount. Out of 160 SSI respondents all said that their reputation is lost, followed by 70 medium size respondents out of 70 (i.e. 100 percent) and 60 large scale units respondents (about go percent) respondent in descending order. From this observation it could be concluded that, due to NPA and consequent to it, legal battle for recovery affect the reputation of business.

Result of the setback has been identified as (a) bad, (b) very bad (c) worst. A question was put to assort the effect on reputation according to the respondents. The breakup of response is presented in following table No. 4.5.24

Table 4.5.24: Result of Setback of reputation

Sr. no	Size of sample Unit	1	2	3	Total
1	SSI	10	50	100	160
2	MED	5	5	60	70
3	LARGE	0	5	65	70
	Total	15	60	225	300

Source :Primary data.

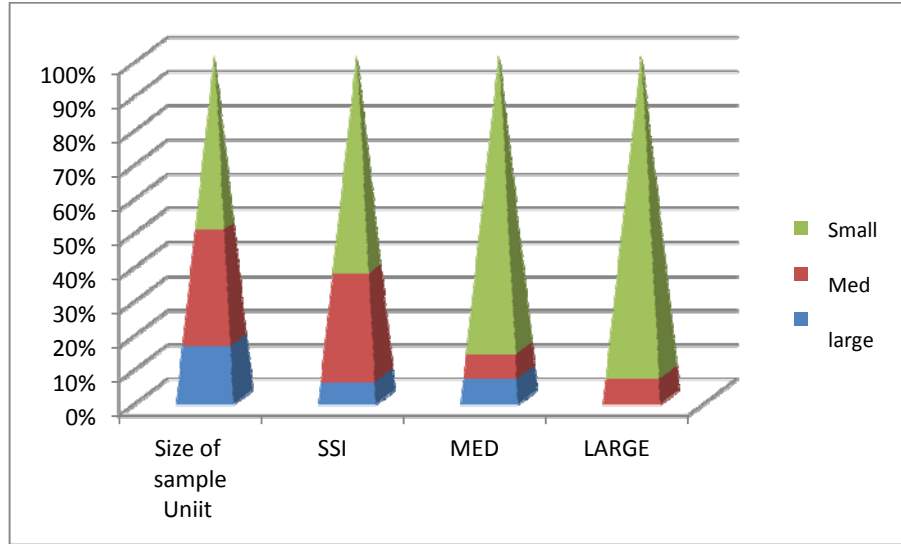


Fig. 4.5.24

Table 4.5.25 reveals that out of 160 small scale units respondents 100 (62 percent approx) said that it was worst and 50 respondents (i.e. 22 percent) said that effect was very bad. As far as medium size respondent is concerned out of 70 respondent 60 (85 percent approx) said that effect was worst and in case of large scale units out of 70 respondents 65 (86 percent) said that it has suffered worst. The study of the overall respondents response reveal that affect of loss of goodwill (i.e. out of 300 total sample about 225) respondents (75 percent) were of the opinion that effect of was worst patting their business in peril. It could be concluded from these observations, that loss of goodwill has worst impact on the survival of the business of the respondents.

4.7 Part A: Analysis and Interpretation of Primary Data.

Analysis of the labour connected issues pertaining to the respondents revealed that a large number of employees; male as well female are engaged in sweeping, cleaning, etc. on daily basis. It is noted that industrial inspector usually take the account of welfare activities by the units. Thus it could be concluded that when it becomes compulsory, business provide welfare activities otherwise not. It is revealed that those sample units who say that they provide insurance cover to their employees are the business units where work with machinery is involved. Table 4.2.1 indicates that, a small scale industries have about 30,000 employees (4.7 percentage) followed by 50,000 employees in (7.3 percentage in Medium scale and 70,000 (88percent) employees in Large Scale Industries were working. It simply means, about 8 lakhs employees and their families were depending for their livelihood on these sample units. It is crystal clear that, if something goes wrong with these borrowers such as lock-outs, closure of business, then a large number of families and dependents has to suffer a lot. It could be concluded that employees and their families or dependents have to suffer a lot, if large scale business activities are stopped and it has a great impact on the society.

Analysis of the causes according to the experts, debtors and lenders revealed that in majority cases delay in the disbursement of loan and mismanagement of the funds are the major causes besides other causes. It is also found that in many cases of loan involvement of the bank officers' vested interest in some borrowers and

sometimes gloves in hands is the reason of being willful defaulters and it is glaring and crime and must be deterred at any cost by taking legal action. Analysis revealed that borrowers are put to the mercy of creditors and this requires needful amendment in the relevant Acts in the interest of constitutional rights. It is also revealed that if SARFACI Act is properly revoked and DRT judges adopt skill recovery of loan problem could be solved in good spirit of law and purpose. It is also observed that after the enactment of the SARFACI Act, quantum of recovery of loan has improved.

The analysis of table 4.5.4 reveals that a significant amount of loan is spent on unproductive things that may be one of the reasons for the NPA. It is observed that large amount of business units/resp. use to take loan for meeting out working expenses. Hence it could be further concluded that if working expenses are not recovered properly, it puts business units in the state of shortage of funds. The shortage of funds means paucity of funds for production and marketing activity, putting the business in the loss due to fall in the working capital. It is found that almost all respondents use to resort to overdraft for the urgent needs on current account and at the same time raise loan on the security of stock for meeting short term capital requirement.

As matter of promoting industrialization of different parts of the country, special facilities like tax concession, subsidy, provision of plot in the industrial area etc. are provided. However when recovery of loan by creditor is decided, only loan and interest on it is considered by the courts and in this process all these financial benefits to industries remain neglected. Enquiry revealed that those who enjoyed more than 80 percent. Subsidy was agro-based large scale units like sugar factories and

manufacturing industries. Thus, it could be concluded that almost all of the respondents seems to have enjoyed subsidy at varying rates prevailing at the time of their establishments. It follows that inflow of funds from sale of services and goods and govt. subsidy forms the main source of inflow of funds. It clearly indicates that a large part of inflow is raised from govt. service and sale of goods and services. It means any change in this inflow of funds affects the financial health respondent units.

It is concluded that in majority cases aggrieved party file appeal against the order of DRAT and there are reasonable ground in some cases and in some cases it is intentionally done to take the advantage of judicial system to prolong the matter or keep matter lingering.

It is seen that a large number of respondents get restoration of possession through settlements and in this respect large scale respondents are in better position followed by medium SSI and large SSI units in descending order. It is revealed that almost all the respondents prefer settlement through court because thereby they enjoy relief by way of payment by installment and sometimes concession in the interest payment from this observation it could be concluded that respondents intentionally try to settle the matter one time settlement because in compromise formula respondents enjoy relief in payment of debt and in interest. It was revealed that almost all the respondents prefer settlement through court because thereby they enjoy relief by way of payment by installment and sometimes concession in the interest payment from this observation it could be concluded that respondents intentionally try to settle the matter one time settlement because in compromise formula respondents enjoy relief in payment of debt and in interest.

It is also revealed that due to the declaration of defaulter and loss of possession borrower's credit worthiness is lost and relatives and their attitude is very bad and have to suffer due to scornful comments and this put the whole family and respondents in a grief of sorrow and anarchy. It was also told that many times becomes a victim of depression and thought like suicide also come or crops in the mind. In view of these observations it could be concluded that NPAs problems have long ranging effect on the respondents and their families and goodwill or prestige lost in the society.

There are four parties in the loan transaction, namely, lender or debtor, obligator, guarantor and their family members, worker, etc. When loan becomes NPA all these parties are affected. Since the work or business of company comes to stand still. It is revealed that medium and large scale businesses have more absorption in ability to absorb the shock of loss because there are others too share this shock and SSI respondents do not have this ability since many a times such units are run by either individual proprietor or family proprietorship. In view of these observation it could be concluded that NPAs and consequent to it other effects get severe blow to their feeling and emotion. Fluctuations in the business and other reasons have nothing to do with the creditors; because their main aim is the recovery of loan amount. Out of 160 SSI respondents, all said that their reputation is lost, followed by 70 medium size respondents out of 70 (i.e.; 100 percent) and 60 large scale units respondents (about 50 percent) respondent in descending order. From this observation it could be concluded that, after getting declared as defaulter and consequent to it, legal battle for recovery affect the reputation of business.

Part B: Analysis and Interpretation of Secondary Data

4.6 In this Part Researcher has made the analysis of trend of NPA, analysis of the data and observations pertaining to the objectives and hypotheses of the study. For this purpose available literature, primary data and secondary data have been discussed and interpreted to draw conclusions and it is the crux of this thesis.

4.6.1 Scenario of Non-Performing Assets in India

Study would reveal that, India showed a negative growth in percentage of Gross NPAs (the percentage of Gross Advances to the Gross NPAs) from 2003 to 2007. The rate of Gross Advances inked a sharp stride from the 2003 level to 2005, which dropped in 2005. It was followed by a meager rise (in Gross Advances of Scheduled Commercial Banks), again in 2007. The Gross NPAs rose steadily from March 2007 to June 2009. However, it has shown a receding trend in the first quarter of 2010. According to the report submitted by the RBI, since 2013-14 this ratio is showing sharp rise and it is 4.45 percent at the end of 2015. The fact is depicted in the following table, 4.6.1:

Table 4.6.1: Trends in growth of gross advances and gross NPAs of SCBs³

(Amount in Rs. crore)

Year	Gross Advances	Gross NPA
2000-01	5587.66	324.61
2001-02	6809.58	355.54
2002-03	7780.43	296.92
2003-04	9020.26	243.96
2004-05	11526.82	217.54
2005-06	15513.78	185.43
2006-07	20125.10	201.01
2007-08	25078.85	247.30
2008-09	30382.54	315.64
2009-10	35449.65	387.23
2010-11	40120.79	417.00
2011-12	46655.44	649.00

Source: RBI Reports of relevant year.

³RBI Reports of relevant years.

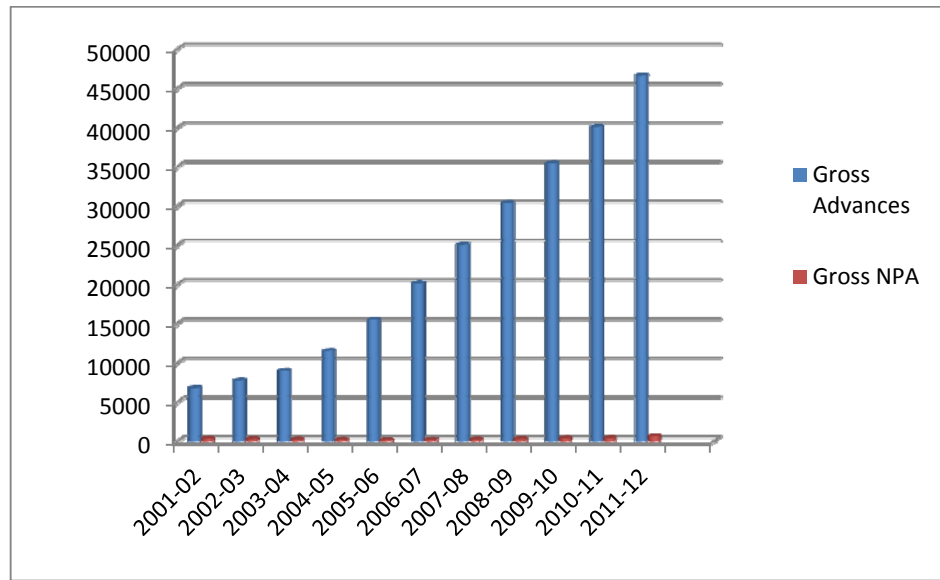


Fig.4.6.1: Trends in growth of gross advances and gross NPAs of SCBs⁴

Table 4.6.1 and figure 4.6.1 above indicates, increasing trend and as on 2015 31st March it reveals the same trend continuing as per RBI's recent report.

The gross NPA ratio of SCBs placed at 14.6 per cent at end-March 1999 had declined steadily to 2.25 per cent at end-March 2008. During the crisis year 2008-09, the Gross NPA ratio remained unchanged for Indian banks. However, during 2009-10, the Gross NPA ratio showed an increase to 2.39 per cent (table 8.3). After netting out provisions, there was a rise in the net NPA ratio of SCBs from 1.05 per cent at end-March 2009 to 1.12 per cent at end-March 2010. At the bank group level, the Gross NPA ratio was the highest for foreign banks at end-March 2010, followed by private sector banks. On the other hand, it was the lowest for public sector banks.

⁴RBI Reports. rbi.org.in/scripts/notifications_user.asp

The increase in the Gross NPA ratio between 2009 and 2010 could be seen across all bank groups, except in the case of private sector banks. An increase in the Gross NPA ratio during this period was perceptible for foreign banks. Rating agency CRISIL expects Gross NPAs of the Indian banking system to swell to around 5 per cent of the advances in March 2011 and having the same trend up to March 2015 and it has been recorded at 8.5 percent which is to be alarming.

Analyzing Table 4.6.1, it could be concluded that private sector banks and foreign banks saw a dip in Sub-standard Assets dipped from the 2009 level to 2010. While there is a decrease in the Standard and Sub-standard assets of foreign banks, the doubtful and loss assets of the banks have increased. One factor that has to be identified here is the increase in the distribution of NPAs for Doubtful and Loss-Making. Attorney general of India submitted that the SRFAESI Act was enacted to cure the mandate of growing NPAs (Mardia Chemicals Ltd. Vs Union of India Para 26 Apex court). According to him NPAs affects the banks and financial institutions which is ultimately against the public interest. He further observed that due to non-recovery of the dues the banks also run out of the financial resources to further carry on the financial activities and to meet the need and requirements of its other depositors and clients. The figures of NPA which have been given border around 1 lac crore after coming into force of the recovery of dues/ dates due to banks and financial institutions. This Act is an establishment of Debt Recovery Tribunals. However the study would reveal that, success in recovery has not been very encouraging. This fact could be seen from the fact disclosed in Rajya Sabha on Dec. 2015 (while answering the starred Q.No.17 on April 26, 2016) that, “the public sector banks had 7,686 willful

defaulters, which account for Rs. 66,000 crore of outstanding loans. It is also reported by the Standing Committee of Finance that 21 percent of the total NPAs of banks were from willful defaulters.” In view this committee has recommended declaring the names of 30 willful defaulters of every bank to deter others.⁵

Table 4.6.2: Amount of Default in crore Rs. year wise⁶

Sr.no	Year	Defaulted amount in crore rupees
1.	2007-2008	25078.85
2.	2008-2009	30382.54
3.	2009-2010	35449.65
4.	2010-2011	40120.79
5.	2011-2012	46655.44
6.	2015-2016	60000.00

Source: Economic Survey of India, 2015-16

⁵Economic survey of India. 2014.Ministry of Finance Government of India.

⁶ibid

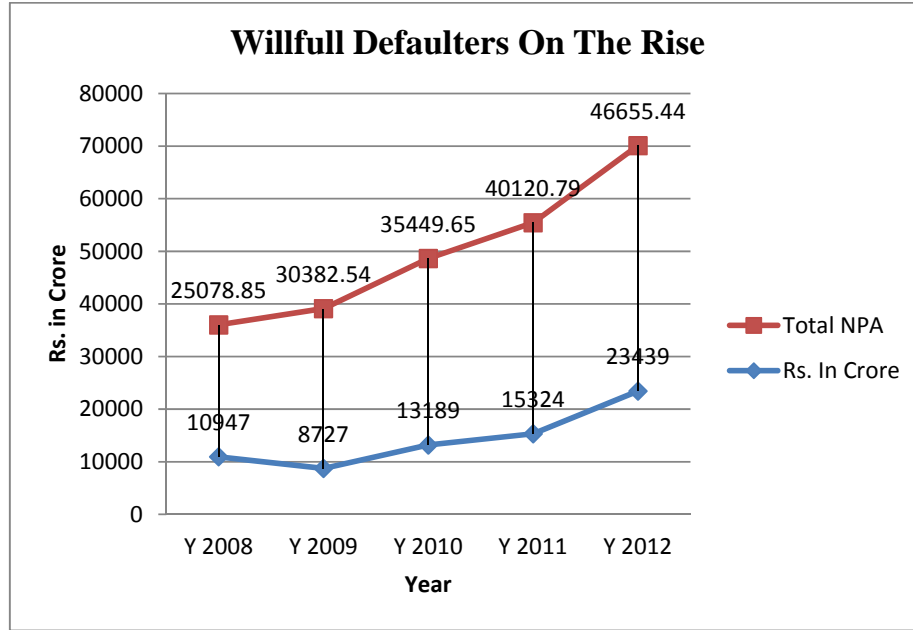


Fig.4.6.2

Table 4.6.3: Percentage of Willful Defaulters to total NPA⁷

Sr. no	Year	Percentage of defaulter
1.	2007-2008	43.7
2.	2008-2009	28.7
3.	2009-2010	37.2
4.	2010-2011	38.2
5.	2011-2012	50.2
6.	2015-2016	60.0*

Source: RBI reports/CBIL

Fig.4.6.3

⁷RBI Reports.<https://www.rbi.org.in>

In view this, the need felt for a faster procedure empowering the secured creditors to recover their dues The jurisdiction of the Civil court was thought to be necessary to avoid lengthy legal processes in realizing the amount due. According to Advocate Harish N Salve appearing for ICICI Bank submitted that the purpose of enacting the Act would be self evident from the statement of objection reasons for the enactment of SRFAESI Act. The question of enactment of the Act was under consideration for a long period and the first Narasimham Committee and then Andhyarujina Committee were constituted by Central Govt. for introducing reforms in the banking sector necessary for recovery of outstanding dues of financial institutions. In this case while giving judgment⁴ Honorable Apex court puts that, “ In view of the discussions held in the judgment and the findings and directions contained in the preceding paragraphs, we hold that the borrowers would get a reasonably fair deal and opportunity to get the matter adjudicated before the Debt Recovery tribunal.” [2004(7) SRJ 239, Hon. Chief Justice Brijesh Kumar and Jt. Arun Kumar].

Recovery of NPAs through various Channels

Table 4. 8.9 below indicates percentage of recovery of NPAs through various channels, i.e., Lok-Adalat, DRTs,Sarfaesi Act and One-Time settlement.

Table 4.6.4:⁸Percentage of NPAs Recovered through various Channels

Year	LokAdalats	DRTs	Sarfaesi Act	One time Settlement
2003-04	14.02	17.20	14.73	40.86
2004-05	14.11	18.77	18.08	66.07
2005-06	20.25	76.92	34.82	78.76
2006-07	14.0	37.8	41.4	-
2007-08	8.2	51.9	61.0	-
2008-09	5.4	81.1	33.0	-
2009-10	1.55	32.0	30.0	-
2010-11	2.87	27.89	37.78	-
Mean	10.05	42.95	33.85	23.21

Source: Report on Trend and Progress in India 2000-2011. Jasbir Singh (2013), 'Recovery of NPAs in Indian Commercial Banks', (IJTBM) 2013, Vol. No. 2, Issue No. 3, Jan-Mar.opc.

Table 4.6.4 reveals that very low percentage of recovery. It is about 33% as an average. It means despite various efforts and Securitization Act percentage of defaulters are increasing and percentage of recovery is less. And hence it shows that H1.6 is rejected. In the similar passion H1.7 is also rejected.

Table 4.6.5 shows result of recovery efforts from 2003-4 to 2011-12.⁹

⁸Jasbir Singh (2013), 'Recovery of NPAs in Indian Commercial Banks', (IJTBM) 2013, Vol. No. 2, Issue No. 3, Jan-Mar.

⁹.ibid

Table 4.6.5: NPAs recovered by SCBs through Various Channels (Amount in Rs. Crore)

		1time settlement/ compromise Scheme	LokAdalats	DRTs	SARFAESI Act
2003-04	No. of Cases referred	139562	186100	7544	2661#
	Amount Involved	1510	1063	12305	7847
	Amount Recovered	617	149	2117	1156
2004-05	No. of Cases referred	132781	185395	4744	39288#
	Amount Involved	1332	801	14317	13244
	Amount Recovered	880	113	2688	2391
2005-06	No. of Cases referred	10262	268090	3534	41180#
	Amount Involved	772	2144	6273	8517
	Amount Recovered	608	265	4735	3363
2006-07	No. of Cases referred	-	160368	4028	60178#
	Amount Involved	-	758	9156	8517
	Amount Recovered	-	106	3463	3363
2007-08	No. of Cases referred	-	186535	3728	83942#
	Amount Involved	-	2142	5819	7263
	Amount Recovered	-	176	3020	4429
2008-09	No. of Cases referred	-	548308	2004	61760#
	Amount Involved	-	2142	5819	7263
	Amount Recovered**	-	176	3020	4429
2009-10	No. of Cases referred	-	778833	6019	78366#
	Amount Involved	-	7235	9797	14249
	Amount Recovered**	-	112	3133	4269
2010-11	No. of Cases referred	-	616018	12872	118642#
	Amount Involved	-	5300	14100	30600
	Amount Recovered**	-	200	3900	11600
2011-12	No. of Cases referred	-	476073	13365	140991#
	Amount Involved	-	1700	24100	35300
	Amount Recovered**	-	200	4100	10100
# Number of notices issued under section 13(2) of the SARFAESI Act.					
Source: Report on Trend and Progress of Banking in India, Various issues, RBI.					

Table 4.6.5 shows that despite introduction of Securitization act and various efforts like taking recourse of LokAdalat, OTS recovery is not significant and very purpose of enactment of Securitization Act is rejected. Willful defaulters are on rise and study reveals that it is due to habitual defaulters, lengthy Court procedure and Govt. policies. Hence it could be concluded that lengthy procedure of recovery, Judicial Delay, provisions of Contract Act, Advocates, delaying tactics, high rate of defaulters of big business houses inactive recovery officers their negative and impractical attitude , judicial process are the hurdles in the recovery of NPA. In view of this observation of Hypothesis no. 6 and 7,” that Securitization Act and Judicial procedure enabled the speedy recovery of defaulted amount” are rejected.

“Money control Bureau International ratings agency Moody's”, remarked, on the upgraded India's banking system as 'stable' from 'negative'; due to an improvement in operating environment for banks. Vadlamani Shrikanth, Vice President and Senior Credit Officer, opined: "The stable outlook on India's banking system over the next 12-18 months reflects our expectation that the banks' gradually improving operating environment will result in a slower pace of additions to problem loans, leading to more stable impaired loan ratios." But the pace of improvement is likely to be slow and steady as the recovery in asset quality is expected to be U-shaped rather than V-shaped, due to highly leveraged balance sheets, he adds. The agency's stable outlook is based on Moody's assessment of five drivers: Operating Environment (improving); Asset Risk and Capital (stable); FUNDING and Liquidity (stable); Profitability and Efficiency (stable); and Government Support (stable). Operating Environment Moody's expects India to record a GDP growth of around 7.5 percent in 2015 and

2016. Growth has been supported by low inflation and the gradual implementation of structural reforms. Moody's points out that an accommodative monetary policy should support the growth environment. Asset Risk and Capital Moody's expects asset quality to stabilize. While, it expects the banks' stock of non-performing loans (NPLs) to continue to rise, Moody's says the pace of new impaired loan formation in the current FINANCIAL year will be lower than the levels seen in the past four years' Capital Levels. Moody's remarked that, the public-sector (PSU) banks, with low capital levels, exhibit common equity Tier 1 ratios of only 6 percent-10 percent, and their coverage of non-performing loans with loan-loss reserves averages 55 percent. While the government's plan to inject Rs 70,000 crore is a credit positive, the ratings agency points out that it is still short of the banks' overall capital requirements. "Ability to access equity capital MARKETS remains key if the PSU banks have to address their capital shortfall." Adding that by contrast, "high capital levels are a credit strength of the private-sector banks", that Moody's rates. FUNDING& Liquidity Moody's says FUNDING and liquidity are credit strengths for Indian banks because retail deposits are their primary source of funding. "Most banks comply comfortably with required liquidity coverage ratios, even though only part of their holdings of government securities is categorized as high-quality liquid assets." it adds. Moody's rated 15 banks in India. This together is around 70 percent of system assets. Four are private-sector banks and the remaining 11 are PSU banks".¹⁰

¹⁰.Moody's Report on FUNDING & Liquidity of Indian Bank 2015-2016.

Rising stressed assets of big business groups have raised concern and their impact on the financial system of India. A significant increase in the gross non-performing assets ratios of large borrowers among public sector banks from 6.1 percent in March 2015 to 8.1 percent in Sept.2015 led to an increase in the NPA ratio of the system .It is reported that proportion of highly leveraged firms have been up at 15.3 percent in September 2015. All these developments have made a bad impact on the profitability of the SCBS. Table 4.6.6 below would vouch the severity of the problem and impact of NPAs.

Banks give loans and advances to borrowers which may be categorised as: (i) standard asset (any loan which has not defaulted in repayment) or (ii) non-performing asset (NPA), based on their performance. NPAs are loans and advances given by banks, on which the borrower has ceased to pay interest and principal repayments.

Table: 4.6.7: Growth in NPA (year wise)

Sr. no	Year	Percentage growth
1.	2008	2.3
2.	2009	2.3
3.	2010	2.5
4.	2011	2.4
5.	2012	3.0
6.	2013	3.2
7.	2014	3.8
8.	2015	4.3

Source: RBI Bulletins of relevant years.

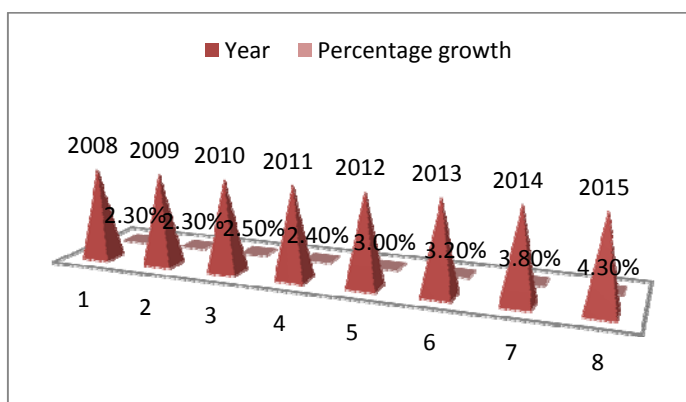


Fig. 4.6.7: Growth in NPA (year wise)

In recent years, the gross NPAs of banks have increased from 2.3% of total loans in 2008 to 4.3% in 2015. The increase in NPAs may be due to various reasons, including slow growth in domestic market and drop in prices of commodities in the global markets. In addition, exports of products such as steel, textiles, leather and gems have slowed down.¹¹

Willful default refers to a situation where a borrower defaults on the repayment of a loan, despite having adequate resources. As of December 2015, the public sector banks had 7,686 willful defaulters, which accounted for Rs 66,000 crore of outstanding loans. The Standing Committee of Finance, in February 2016, observed that 21% of the total NPAs of banks were from willful defaulters. It recommended that the names of top 30 willful defaulters of every bank be made public. It noted that making such information publicly available would act as a deterrent for others.

¹¹ 'Non-Performing Assets of Financial Institutions', 27th Report of the Department-related Standing Committee on Finance, http://164.100.47.134/lssccommittee/Finance/16_Finance_27.pdf; PRS.

There are various legislative mechanisms available with banks for debt recovery. These include: (i) Recovery of Debt Due to Banks and Financial Institutions Act, 1993 (DRT Act) and (ii) Securitization and Reconstruction of Financial Assets and Security Interest Act, 2002 (SARFAESI Act). The Debt Recovery Tribunals established under DRT Act allow banks to recover outstanding loans. The SARFAESI Act allows a secured creditor to enforce his security interest without the intervention of courts or tribunals. In addition to these, there are voluntary mechanisms such as Corporate Debt Restructuring and Strategic Debt Restructuring, which these mechanisms allow banks to collectively restructure debt of borrowers (which includes changing repayment schedule of loans) and take over the management of a company.¹²

In recent years, several committees have given recommendations on NPAs. We discuss these below. Willful default refers to a situation where a borrower defaults on the repayment of a loan, despite having adequate resources. As of December 2015, the public sector banks had 7,686 willful defaulters, which accounted for Rs 66,000 crore of outstanding loans. The Standing Committee of Finance, in February 2016, observed that 21% of the total NPAs of banks were from willful defaulters. It recommended that the names of top 30 willful defaulters of every bank be made public. It noted that making such information publicly available would act as a deterrent for others.

¹⁷¹ 'Non-Performing Assets of Financial Institutions', 27th Report of the Department-related Standing Committee on Finance,
http://164.100.47.134/lssccommittee/Finance/16_Finance_27.pdf; PRS.

ARCs purchase stressed assets from banks, and try to recover them. The ARCs buy NPAs from banks at a discount and try to recover the money. The Standing Committee observed that the prolonged slowdown in the economy had made it difficult for ARCs to absorb NPAs. Therefore, it recommended that the RBI should allow banks to absorb their written-off assets in a staggered manner. This would help them in gradually restoring their balance sheets to normal health. ¹³

Table 4.6.8: Profitability of SCBS¹⁴

Period	ROA	ROE	PAT	Nil Risk Provision	Write-offs	Growth
Mar 11	1.1	11.6	23.6	34.6	38.0	-50.6
Mar 12	1.1	13.4	14.6	15.8	35.6	-13.1
Mar13	1.0	12.9	12.9	10.8	10.2	-8.5
Mar 14	0.8	9.5	-14.1	11.7	41.9	80.3
Mar 15	0.8	9.3	10.1	8.5	7.0	23.4
Sep 15	0.7	8.5	-4.4	8.6	22.2	49.2

Note: Figures in Percentage. Prepared from the data available from RBI Reports.

Source: Reserve Bank of India. Report on Profitability Of SCBS. Dt-Dec.23 2015.

4.6.8 Reveals fall in bank's profitability by 4.4 percent in 2015 and risk provision growth only 22.2 and write offs growth; ballooned by 49.2 percent in the same period. It is indicative of limited flow of funds in the market. This is not a fair picture when GDP is showing at 7.5 percent in the same period.

¹³ 'Non-Performing Assets of Financial Institutions', 27th Report of the Department-related Standing Committee on Finance,
http://164.100.47.134/lssccommittee/Finance/16_Finance_27.pdf; PRS.

¹⁴. Reserve Bank of India. Report on Profitability Of SCBS. Dt-Dec.23 2015.

Thus, it could be concluded that, public sector banks will need more capital to continue in market for maintaining healthy economic growth to enhance ability to repay. It means, there is a need of increasing leverage. It confirms that, Hypothesis No.4 is accepted.

Experts' interview revealed that many occasion Securitization Act is invoked to put the properties of defaulted borrower for sale by the vested interested persons and in that case there is no independent judicial mechanism to grant justice to the borrower in Securitization Act because it is only a procedural law.

Securitization Act has given wide powers to Securitization and Reconstruction Companies to take over the assets of the borrowers for the recovery of loans and similar powers are also given to the banks and financial institutions. In this respect no care is taken to see whether the Securitization Company or financial institution is competent to allow the business run. It is so because they take interest only in recovering the loan but never give helping hands to the borrower and reconstruction of the loan. There is a need of rehabilitation either by supporting the borrower or like China, Japan; Korea government should undertake the responsibility of financing such type of NPAs.

In certain cases taking the recourse of Securitization Act for the reasons beyond the control of businessmen or factory owner possession is taken by the bankers / reconstruction companies without any parafernia and the whole activities of the business was stand still by throwing many jobless and making the owner of the factory or business without shelter, which is against our constitution. Madras High Court Comprising Honorable Justice IbrihimKalifull and Justice Kirubakaran N.K. in

Writ Petition No.15272 of 2009 has taken a serious view of procedural irregularities committed by the bank taking the shelter of SARFAESI Act and provided an instant relief to the aggrieved.

One advocate having a practice of more than 25 years has another story to tell. According to him the very purpose in the nationalization of the bank was to use this channel for the benefit of common man. In the earlier days before nationalization these big banks were being managed and owned by the big business magnets like Tata, Birla, Singhanian, Kirloskar and others, who were managing, controlling and enjoying about more than 70% of the funds for their own business purposes and that's why they were reluctant to accept the idea of nationalization. However, the then Prime Minister Mrs. Indira Gandhi took a staunch view and declared the nationalization of the banks in 1969 and open the doors for small traders, agriculturists, poor farmers, feriwalas and as such. This was never liked by the big businessmen and this is why by various tactics they tried to bring hurdles in the way of development and channelizing the financial resources to the common man. Enactment of the SARFAESI Act provisions are favorable to the big business houses and this could be evidence from the fact that no Tata, Birla, Bajaj could be brought in lime light for the recovery of enormous amount of loan and only small borrowers like, small traders, feriwalas, small scale industries they are victimized. According to him there is a need to have a Nelson's eye on these transactions by the judiciary.

Advocate of the Bank told that many times Bank make nominal payment of interest amount on the loan to show that loan has not become NPA to avoid provisions of Limitation Act. By this Act of Bank, try to evade the provisions of

Limitation Act. This Act of escapism is a crime. Judiciary should take note of such tactics.

It could be concluded that “lender does not receive market return on their capital. Depositors do not receive return market interest, non performing loans epitomize bad investment, non performing loans spill over the banking system while making recovery of loan the concessions enjoyed by the defaulters is totally neglected, bank recovery officers play unhealthy tactics, habitual defaulters create hurdles in the way of recovery, and big business houses are the main defaulters causing NPA. Thus it is a socio economic problem and great loss to the country’ economy.” This supports the conclusion drawn in Part I, II and III.

Asset is considered resource controlled by enterprises as a result of past events from which future economic benefits are expected to flow to the enterprises. Assets generating periodical income are called performing assets. For the speedy recovery of loans DRT Act, 1993 and subsequently Securitization Act, 2002 were enacted to bypass a time consuming procedure of Civil Courts and Section 69 and 69-A of the Transfer of Property Act, however after carrying pros and cons of the Securitization Act its provisions various cases interview with the Advocates, clients it was seen that it violates the spirit of Article 50 of the Constitution and also Article 14. It is also seen that all the provisions of the Act helps the financial institutions and no care is taken of the honest borrowers and their guarantors grievances. In view of this researcher has tried to verify the objectives and relevant hypothesis and it is concluded that the very purpose of the enactment of Securitization Act is not served as per expectations.

In view of this discussion it is concluded that, Hypotheses No.H.1.1, H.1.2, H.1.3, H.1.4 have been accepted and H.5,H.1.6 and H.1.7 have been rejected.

Part III ‘C’: Analysis of the Land mark Judgments in the matter of Debt Recovery and Allied matters.

Performance of bank is considered a text of profitability. However, increasing NPAs have adversely affected on the bank’s profitability since legally banks are not allowed to book income on such accounts and at the same time banks are forced to make provision on such assets as per the Reserve Banks of India Guidelines.

With increasing deposits made by the public in the banking system, the banking industry cannot afford defaults by borrower; since NPAs affects the repayment capacity of banks.

Further, Reserve Bank of India (RBI) successfully creates excess liquidity in the system through various rate cuts and banks fail to utilize this benefit to its advantage due to the fear of non-performing assets. In this chapter Researcher has taken up certain cases to throw torch light on the various issues and problems of NPAs, role of bankers / financial institutions and DRT decisions and view of the judiciary. For this purpose idle 5 cases have been cited and analysis of the cases incorporated in this study earlier has been presented.

Case Regarding the ICICI Bank: ICICI Bank fined Rs. 500,000 for rough recovery methods¹⁵

¹⁵ ICICI Bank Vs Prakash Sarvankar.

A consumer commission has ordered ICICI Bank, the country's largest private sector lender, to pay a fine of Rs.500,000 for use of force by the bank's recovery agent on a defaulting customer. The client who defaulted on loan had approached the consumer affairs commission in Delhi complaining of use of force by the bank's recovery agents. It was alleged that the recovery agent impounded his vehicle and beat a friend's son with rods, mistaking him as the defaulter.

Other big lenders like Citibank and HDFC Bank have also dealt with consumer complaints about the Strong-arm tactics of recovery agents. The banks often dismiss the recovery agents when confronted with such complaints

Earlier, an ICICI Bank customer in Mumbai committed suicide after alleged harassment by recovery agents. The bank later paid to his family compensation of Rs. 15 lakh.

DRT and SARFESI Act: RBI guidelines on NPA and interpretation

It is very important for the Banks to deal with the 'willful defaulters' and to reduce 'NPA' in the interest of the Banking Industry and in the interest of the country too. There were constant efforts to enable the banks to speedily recover the dues from the borrowers. Bank could not recover their dues effectively by approaching Civil Courts and as a result 'The Recovery of Debts Due to Banks and Financial Institutions Act, 1993' was enacted. Under the RDDBI Act, a Special Tribunal called 'Debts Recovery Tribunal' was established and the Banks could file an application under section 19 RDDBI Act seeking a 'Certificate of Recovery' against the borrowers and this 'Certificate of Recovery' is considered as a decree passed by a Civil Court.

The DRT need not follow Civil Procedure Code while entertaining the application filed by the Banks under section 19 of RDDBI Act, 1993 and there was a special mechanism for execution of the orders too. Even with this RDDBI Act, 1993, Banks could not achieve considerable results forcing the legislature to think further effective mechanism to recover the dues and as a results and based on the recommendations of the committee. 'The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002' (SARFAESI Act) was enacted. Under the SARFAESI Act, 2002, the Banks need not approach Court or Tribunal to get the dues of the borrowers determined and to proceed against the 'Secured Asset'.

Under the SARFAESI Act, 2002, if an account is classified as 'NPA', then, the Banks can proceed to recover the dues. Under the said Act, the Banks will give a demand notice to the borrower and guarantor under section 13(2) of the Act and they will deal with the objections of the borrowers to the demand notice and if the objections of the borrowers are overruled, then, the Bank will proceed taking symbolic possession of the property, taking symbolic possession of the property, taking physical possession of the property and then will dispose of the same in accordance with the provisions of the Act and connected rules. Under SARFESI Act, 2002, there is no need for the Banks to approach any Court or Tribunal for recovery of their dues and they may have to get the assistance of the Magistrate Court under Section 14 of the Act while taking physical possession.

If the borrower is aggrieved at the action initiated by the Bank under SARFAESI Act, 2002, then, he can approach the Debt Recovery Tribunal under

Section 17 of the Act by paying the prescribed fee. Many legal issues under SARFESI Act, 2002 are now settled. The important issues dealt by the Courts under SARFAESI Act, 2002, are as follows:

- (a) At what stage the borrower can approach the Debt Recovery Tribunal challenging the action initiated by the Bank?
- (b) Can the borrower challenge the notice issued by the Bank under section 13(2) of SARFAESI Act, 2002?
- (c) The jurisdiction of High Court under Article 226 of Constitution of India in dealing with SARFAESI matters?
- (d) The powers of the DRT and as to whether the DRT can look into the correctness of the 'outstanding due' arrived by the Bank?
- (e) Can the DRT order the restoration of possession if it is proved that the Bank is not right in proceeding under the provisions of SARFAESI Act, 2002?
- (f) Is it right to say that the DRT can only look into the procedural irregularities while entertaining an Appeal filed by the borrower under Section 17 of the Act?
- (g) The issue of deposit to be made to the DRAT while preferring an Appeal against the final order of the DRT?
- (h) The nature of guidelines issued by Reserve Bank of India?
- (i) The jurisdiction of Civil Court in respect of SARFAESI matters?

- (j) Can the Bank simply rejected the objections raised by the borrowers under section 13(3A) of the Act?

These are the few important issues, the Constitutional Courts have dealt with so far laudably and all these are, in fact, directed towards protecting the interests of the borrowers and without disturbing the object of SARFAESI Act, 2002.

There were many complaints from the borrowers that the Bank is unreasonable in proceeding against them under SARFAESI Act, 2002 and many say that they are not the willful defaulters and the action of the Bank affects them severely. It is settled that the RBI guidelines dealing on 'Asset Classification' of mandatory and not recommendatory. RBI does frame and update the guidelines dealing with 'Classification of Assets' from time to time keeping in view of various issues. A reading of the RBI guidelines appears very fair and in fact, the guidelines enable the Bank to exercise their own fair judgment on many issues. The RBI guidelines on 'Asset Classification' are specific on certain issues and on many other issues; RBI emphasized the need for not troubling the good borrowers or the bonafide/genuine borrowers. It is seen that according to the guidelines that the Banks needs not rely on technical deficiencies if the record of recovery of Account is good.

The RBI guidelines on 'Assets Classification'¹⁶ appears to be fair and the

The Debts Recovery Tribunals should function effectively and when there is a prima facie case and when it appears that the banks are unreasonable in proceeding against the borrower, an interim relief can be granted to the borrower and even the

¹⁶RBI guidelines on 'Assets Classification' <https://www.rbi.org.in>

borrower can be asked to regularize his account or continue making payments as committed originally. But, what happens normally is that the borrower will be spending huge expenses for paying Court Fees and for paying legal fees and even then, the relief is not guaranteed.¹⁷

“It is true that there can be borrowers who try to delay the payment as committed to the Banks, but, it is also to be noted that the banks too can be unreasonable to the genuine borrowers at times.”¹⁸

“SARFAESI ACT 2002 and Amendments thereto: 17th Aug.2013”.¹⁹

Once Borrower becomes defaulter his resources of raising loan are blocked or barred as per the direction of the RBI. In such a case situation of the genuine borrower becomes worst and he is put in the difficult financial situation. In order to help such a borrower R.C. or S.C. has been empowered to do needful to settle the accounts considering the potential viability of the proposal of settlement by virtue of the provisions of this Act. In view this provision SC/RC can make payment directly to the lender/banker or FI to settle the account and in turn some relaxation in time limit for repayment is granted to the borrower. In this process bank is not allowed to transact the business and RC/SC is empowered to reconstruct the loan.

In the normal course Lender bank or FI has power to settle the loan only in case of directives by the RBI as per sub section (a),(aa) of section 35 A of the

¹⁷.SARFAESI ACT 2002 and Amendments thereto: 17th Aug.2013, Bare Act Professional Publication.

¹⁸ Bre Act.SARFAESI ACT 2002 and Amendments thereto: 17th Aug.2013 Ministry of Finance. Govt. Of India.Professional Publications.

¹⁹.Ibid

Banking Regulation Act. After taking the possession of the defaulting borrower u/s 13(4) Bank cannot handle the property nor can run the business of borrower. SC/RC having paraffinic to manage the property or to run the said acquired business by adopting commercial or business skill in the corners of law. It is to be noted that except two or three cases no such settlement is done. It simply means RC/SCs have shown interest in recovery of loan amount and or making out profit from such recovery cases. It is evident from one of such a case as under:

In one case, the ICICI bank had given the loan Of Rs.4,00,000/- (Rs. Four lakh), It was defaulted and was assigned to RC. RC claimed for recovery of Rs.11,00,000/- .In this case defaulter had submitted proposal and willingness to settle this A/c to pay all dues along with interest which stood at Rs.5,35,000/- as on the date of NPA. After the date of NPA lender Bank or the RC/FC is not allowed to charge agreed interest, since it is presumed that said A/c ceases to generate the profit for the bank. There has to be modality to see whether borrower's case is genuine or that of the willful defaulter. The bank or RC/Sc ought to have devised some mechanism and protect the genuine borrower and only then the very purpose of the Act would have been served ; otherwise it is defeated and it would adversely affect the society in general and purpose of the Act in particular. It is sad part that, most of the depositor's money has been frittered away by the banks at the instance of politicians, while the same depositors are being made to pay through taxes to cover the losses of the bank

A case for seeking to buy time²⁰

Bansal A.K. (Executive Director, Indian Overseas Bank), said, "that big borrowers with outstanding of over Rs.10 crore, stall the bank's efforts in taking possession of assets under SARFAESI Act, by getting a stay from the High Court or Debts Recovery Tribunal." A senior General Manager of a public sector bank said that nine out of 10 borrowers, who have been issued notices under SARFAESI, take banks to DRT to buy time. It should be remembered that no Civil Court (with the exception of the High Court) has judiciary powers when it comes to SARFAESI Act (Section 34).

Under the Securitization Act, banks should be able to recover their bad debts in three months time (with a notice period of 60 days). However, due to a large number of cases pending with judiciary, it takes close to year or more before banks can take possession of the property for auction, said the General Manager.

Currently, Indian Bank has issued SARFAESI notices to about 10,000 bad loans amounting to Rs.1,000/- crore.

Sluggish property market adding to the banks woes is the sluggish nature of the property market in the last two years, due to which banks were unable to recover the loans amount from such auctions. One and half years ago, a major bank could not find bidder at an auction for a property in Thyagaraja Nagar (T. Nagar), in the heart of Chennai, for Rs. 1.5 Crore. Today, the same property has been sold over at Rs.4 Crore.

²⁰. Bansal A.K. (Executive Director, Indian Overseas Bank).

A case holding auction illegal if purchaser of the property in auction is not paid in time -

In “Hemalata Ranganathan Vs Indian Bank” Circle case considering Sect.13(4) &Sect.14 Hon. High court held that ,in case if purchaser does not make payment in time as per the auction then they said auction is illegal.[Madras High Court.2012. D.G.LS (Bank)293].²¹

During the pendency of proposal for OTS bank cannot proceed:

In Sharma Ice Cold Storage (Pvt. Ltd) Vs Syndicate Bank, it has been held that during pendency of OTS proposal bank cannot proceed under this Act.[D.G.LS(Bank)139].2012.

Case regarding the following the procedure is a must.

If procedure laid down in the Act is not followed then possession will be restored.[D.G.LS Bank 172.K.R. Krishnagowda Vs Kotak Mahindra Bank ltd.²²

There are instances in which lender bank’s officer act as director. buyer advocate cannot act as authorized officer.

In Sambuerna BattuVs ICICI Bank ltd, Hon. Andhra H.C. held that Advocate cannot act as the Authorized officer.2012 D.D.LS Bank, 122.²³

21.HemalataRanganathan Vs Indian Bank [Madras High Court. 2012. D.G.LS (Bank) 293].

22. D.G.LS Bank 172. K.R. Krishnagowda Vs Kotak Mahindra Bank ltd

23.SambuernaBattu Vs ICICI Bank ltd, 2012 D.D.LS Bank, 122.

Regarding possession of security against recovery of loan.²⁴

Without deciding representation/objection, Bank cannot proceed to take possession of the properties of the defaulter. [Tetuliga Cake Plant Ltd.Vs BDI Zarkhand H.C.2012 D.G.LS(Bank)118.

Borrower has right to get 30 days previous notice.

Haji Abdul GaniVs Central Bank and others. In this case hon. Andhra Pradesh H.C. held that 30 days notice to the borrower is mandatory [2012 D.G.LS Bank 99].²⁵

Right of redemption at any point is available to the debtor:²⁶

Ladliprasad ShriwastvaVs Punjab National Bank ltd 2012 D.G.LS (Bank) 24.In this case Debt Recovery Applet Tribunal Allahabad held that, ‘before sale or before transfer the right of redemption at any stage and at any time as described by the legislature u/s13(6)would be available.

Movable property belonging to third property cannot be a subject of Act:²⁷

In Priya Vs Indian Overseas Bank case Hon Madras High Court held that, ‘movables belonging to the third party is to be returned and it cannot subjected to SARFEASSI Act.[2012,D.G.LS Bank,6.

24.Tetuliga Cake Plant Ltd. Vs BDI Zarkhand H.C. 2012 D.G.LS (Bank) 118.

25.Haji Abdul Gani Vs Central Bank,2012 D.G.LS Bank 99.

26.LadliprasadShriwastva Vs Punjab National Bank ltd 2012 D.G.LS (Bank) 24.

27.Priya Vs Indian Overseas Bank,2012, D.G.LS Bank, 6.

Regarding proposal of settlement as per scheme bank is duty bound to settle the account.²⁸

2011 D.G.LS (Bank) 671.equivalent citation reported in Bank Journal 636 Vol.II, 2012 it was held by The Hon. Patna High Court in Shafique Ahemad & Others Vs SBI that if the proposal for OTS is made as per the scheme then Bank is bound to settle the A/c.

Restoration of Possession if procedure is not followed by the lender²⁹

Rathi Pappins Bank Journal 636 Vol.II, 2012. Pvt. & Others.Vs PNB, it was held by the DRT Aurangabad, that the possession is to be restored if procedure of possession as laid down in the Act is not followed.

A case regarding registration of mortgage is must:³⁰

In Arun Jagannath Gedam Vs SBH case it was held by the Mumbai DRT that, if the agreement to mortgage is here and it is not registered the bank cannot take possession.

Case of Cooperative Act:³¹

As per the verdict propounded by the DRT Aurangabad in the case, Asha Oil Food Pvt. Ltd.Vs Jalgaon Janta Sahakari bank ltd.Jalgaon, S.101 of the Co-op Act has overriding effect on all other Acts.

196.ShafiqueAhemad& Others Vs SBI, Bank Journal 636 Vol.II, 2012.

29.Rathi Pappins Bank Journal 636 Vol.II, 2012. Pvt. & Others.

30. Arun JagannathGedam Vs SBH.

31 .Asha Oil Food Pvt. Ltd. Vs JalgaonJantaSahakari bank ltd. Jalgaon.

A case of restoration of Possession:³²

Mumbai HC in Bharat Coop Bank (Mumbai) Ltd. Vs Cyril Kotian & another, held that 'there is nothing wrong with the impugned order passed by the DRT Mumbai, wherein DRT had ordered the Bank to restore possession of gala no.7 & 10 of the market.

Order of damages to the borrower:³³

Onkar Industries Ltd and others ordered the bank to pay damages at the rate of Rs.5000/- cost.(Act's S.13(2),13(3),(4)&s.17 of the Act. Similar case is reported by DRT Pune.[2004 D.G.LS (bank) 266.]

Case of service of notice in Demand Notice u/s 3 (2):³⁴

Notice for damages must be served as per rule 3 of the Act. The Service Demand Notice as referred in sub sect.2 of the sect.13 of the Ordinance. The Notice served must have record of it either RPAD, courier, Fax, e-mail etc., otherwise notice cannot be said to have been served and hence action of the bank u/s13(4) is set aside and possession is restored'.2004 D.G.LS(bank) 275. DRT Pune equivalent citation, 2005 (1) DRTC 275, R.R.ConstructionVsAnandCooperative Bank Ltd Pune. 2004 D.G.LS (Bank)A.P.HC. Equivalent cases:2004(5) AID 517:2004(2) Bank Journal

³². Bharat Coop Bank (Mumbai) Ltd. Vs Cyril Kotian & another,

³³.Onkar Industries Ltd and others (Act's S.13(2),13(3),(4)& s.17 of the Act. DRT Pune. [2004 D.G.LS (bank) 266.]

²³³DRTC 275, R.R. Construction Vs Anand Cooperative Bank Ltd Pune. 2004 D.G.LS (Bank) A.P.HC.

²³⁴Mardia Chemicals Ltd Vs Union of India (2004) SCC 31³⁴ and K. Subba Reddy Vs A.P.S F.C. (AIR 1987, A.P.119 (F.B.).

885:2005(58) SCL (AP) 24:Rajhamsa International & others Vs Indian Overseas Bank and another.[S.13,S.35 of the Act].

Creditor has power to proceed against surety directly:³⁵

There is no bar for creditors to proceed against surety without exhausting remedies against principle debtor. (para 7-8). 2004:D.G.LS (Bank) 340: Pramod Kumar & another Vs PNB, Allahabad HC.

Summary of Analysis

The main thrust of the study is to examine socio-economic impact of Debt recovery problems in India in general and in the study area in particular. In view of this the researcher tries to examine problems leading to NPA, its consequences on the society and effect on the working of banks. After studying the analysis of questionnaires, historical perspective, salient features of the Securitization Act and DRT Act, 1993 and interview with institutions Advocates, Bank Officers, Clients and certain law offices, Researcher has verified the proof of the objectives and hypothesis as under:

Objective No. 1: To make overall study of the effects and problems of NPAs on the lending institutions in general and national economy in particular.

Observations: In respect of this objective researcher has taken up the due scrutiny of the various provisions of the Securitization Act in the thesis. A detailed of the

³⁵.Pramod Kumar &Another Vs PNB, Allahabad HC. (para 7-8). 2004:D.G.LS (Bank) 340.

²³⁶.The State Owned Enterprises (SOE's).

provisions and their effects through various comments and judgments have been taken up. The trends of the NPAs of various banks and financial institutions have been studied in detail. Thus, the purpose of first objective that of taking up a detail study of the effects and problems of NPAs on the lending institutions and the national economy and society has been served.

Conclusion: It could be concluded that the Securitization Act has empowered the banks and recovery agencies to take up recovery of the NPAs with the help of Securitization Act by passing the Civil Procedure Code and Section 69 and 69-A of the Transfer of Property Act without the intervention of the Civil Courts and thus in certain cases have helped to speedy recovery of the NPA to the extent of 33percent only. It means total purpose is not served. It could be concluded that H1.5 and H1.6* stating recovery position improved after enactment of Securitization Act have been rejected.

Objective No.2: To make overall study of NPAs and identifying causes thereto. Researcher has made overall study of NPA in India identifying various causes of NPA in detail identify various causes of NPA(internal as well external) and legal steps undertaken to overcome them from time to time vis-à-vis Securitization Act 2002.

Observation: In view of this objective Researcher through the historical perspective of the banks, problem of recovery at global level vis-a-vis in India, review of literature, and interview with bank officers, advocates, DRT officials, Judges pinpointed various causes of NPA. Accordingly there are various internal and external factors responsible for the NPA.

Conclusion: In view of this study it is revealed that there are number of reasons responsible for amount becoming NPA e.g. vagabond spending by borrowers, delay in disbursement of loan, absence of proper collateral securities, personal interest by bank officers in selling cream projects, granting loan on the basis of hypothecation on property only and not on the basis of the ability of the loan seeker. Business surrounds, ups and downs in the business world, impact of international economic crises, changing government policies, deficient analysis of project viability, unrealistic terms and schedule of repayment, absence of timely action by the bank, despite knowing the symptoms of the NPA, lack of follow up of measures etc. Thus hypothesis H1.1 and H1.2* have been accepted.

Objective No.3: To make the study of mechanism introduced to tackle the bad loan problems in India. Review the role of DRTs in Maharashtra in the utilization of the Securitization Act 2002 in dealing with the cases of NPAs, causes / reasons and grounds for appeals in the High Court (Chapter IV). In consonance of this objective hypothesis H1.5 and H1.6* were developed and were to be tested:

In view of the observations hypotheses H1.5 and H1.6* have been rejected.

Observation: While taking the review of the role of DRT's in Maharashtra in the utilization of Securitization Act, 2002 in dealing with the cases of NPAs it is seen from the various interviews, case laws and personal visit to these offices that the provisions of the Securitization Act have been taken without any application of mind and just to favor the banks. It is also observed that the percentage of the recovery is not as per expectations or to the extent of expectations, but in many a cases the provisions of the Securitization Act have been miss-utilized by the bank officers hand

in gloves with some officials of DRT practitioners builders lobby and no justice have been given to the honest borrowers who take repayment of loan as a pious obligation, on the contrary there is no instance of case against big business houses though government is aware of large scale NPAs or overdue from these business magnets.

Conclusion: It is concluded that the very purpose of the Securitization Act is not served in total but has a limited success and this purpose could have been served by having a special judge at each district level for recovery. It is also revealed that though Securitization Act is enacted to bypass the delaying procedure of Civil Courts then alone the very purpose could be served to the limited extent only because study revealed that some businessmen or the willful defaulter prolonged the matter by applying various tactics. In view of this it may be concluded that the very purpose of enactment of the Securitization Act is not served and hence hypotheses No.H1.5 and H1.6 have been rejected.

Objective No.4: To study the impact of various legal recourses available and dealing with the recovery of NPAs and particularly impact of various causes of NPAs and legal steps undertaken to overcome them from time to time vis-à-vis Securitization Act 2002 and subsequent amendments thereto.

Financial Institutions have tried effectively to utilize the Securitization Act 2002 as a tool of recovery due to indifferent attitude of the Judiciary; however it is observed that the Securitization Act has been not much effective in solving the problems of NPA.

Observation: Various Court decisions and remarks in respect of the socio economic impact reveals that courts have to rely on the technical points in the Securitization Act, they cannot go beyond this, however in some decisions courts have struck down the actions of the bankers under the Securitization Act. Similarly actions of the Securitization Company Agents have been struck down (ICICI Bank). This has provided check to some extent on the excesses of the banks or financial institutions in the recovery process.

Conclusion: In view of the hypothesis no. H1.5 and H1.6 have been rejected.*

Objective No.5: To take up the review of landmark judicial decisions in the matter of recovery of NPAs in Indian banking sector in order to serve this objective, researcher has given reference of various case laws, e.g. High Court and Supreme Court Judgments and in addition to these along with the judgment delivered by Hon'ble Apex Court in Mardia Chemical case and twenty three landmark cases. Hence this objective is fully served.

Observation: In view of this hypothesis and objective researcher concluded that there is a wide scope for further research in the matter of Debt Recovery process and role of judiciary.

Conclusion: In view of these observations, hypotheses no. H1.5, H1.6, H1.7* have been rejected.

Objective No. 6: To examine the socio economic impact of NPAs on the society in general vis-à-vis on the country's economy in particular.

Observation: The study reveals that NPA attack on the banks portfolio adversely. This restricts lending their lending capacities and allow fund of flow of funds in the market. It restricts fund flow for the infrastructural developments and basic amenities like financing for agriculture, social welfare activities, transportation, road construction, etc. in this way increasing NPAs have bad impact on socio- economic activities.

Conclusion: Hypothesis no.H1.2 is proved.*

Objective No. 7: To identify the scope for further research in controlling NPAs through legal and other measures.

Observation : The in depth study of various aspects of NPAs legal recourses for recovery of bad loan, trends in NPA, Advocates opinion, bank officers and advocates interviews have revealed that considering the changing international financial market, there is scope for further research.

Conclusion: There is wide scope for further research in this regard.

4.8.7 Conclusion

Study revealed that, success in recovery has not been very encouraging. This fact could be seen from the fact disclosed in Rajya Sabha on Dec. 2015.

Rising stressed assets of big business groups have raised concern and their impact on the financial system of India. A significant increase in the gross non-performing assets ratios of large borrowers among public sector banks from 6.1 percent in March 2015 to 8.1 percent in Sept. 2015 led to an increase in the NPA ratio of the system .It is reported that proportion of highly leveraged firms have been up at

15.3 percent in September 2015. All these developments have made a bad impact on the profitability of the SCBS.

Default cases are handled by the collection department of the bank who entrust agencies with the task. Loan recovery process is just like any other job in which targets are set and incentives are paid! Whenever money is lent it is done so with the expectation that it will be returned back. This expectation is no different from a bank. Whenever a loan account is 'overdue' as per the due dates specified in the agreement, the bank will adopt necessary measures to recover it. In this process, banks have the right to file a suit with the debt recovery tribunal and possess the security, in case the situation demands it! Default cases are handled by the collection department of the bank who entrust agencies with the task. Loan recovery process is just like any other job in which targets are set and incentives are paid!

N.B. Hypothesis 1: “Debt Recovery problems have wide ranging socio-economic impact on country’s economy in general and society in particular”.

H1.1: Government policies in respect of directions to the banks to finance the nonproductive activities, habitual defaulters and certain factors are responsible for the mountain of NPAs in Indian banks.

H1.2: Increase in bad loans requires the banks to make provisions for meeting bad loans and this constrains banks from funding the country’s economy.

H1.3: NPAs hit the banks’ portfolio and have socio-economic impact on the society, wide ranging anywhere from local effects on small community to changes on the entire society.

H1.4: When leverage increases, the ability to repay debt (Solvency Ratio) and debt serving ability (Interest Coverage Ratio) of the corporate sector increases.

H1.5: The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 and Amendments thereto have been much more effective in solving the problems of Debt Recovery of Financial Institutions.

H1.6: The Judicial reforms have been effective in arming the Judiciary to help the Debt Recovery positions of Financial Institutions in India vis-à-vis Maharashtra.

H1.7: Financial Institutions have effectively utilized the Securitization Act 2002 as a tool of recovery due to positive attitude of the Judiciary.

CHAPTER V

CONCLUSIONS AND FINDINGS

5.1 Introduction

The main thrust of the study has been, to examine the socio-economic impact of Debt Recovery Problems in India in general and in the study area in particular. Subject matter is of crucial importance since the subject is of significant from the points of Finance Ministry, social workers, political leaders, researchers, judiciary, and legal practitioners. This study involves legal points, issues related to financial sector, trade and commerce, business ethical factors, morality and above all the whole national economy. In view of these facts and circumstances researcher had prepared two types of questionnaires incorporating set of a large number of questions. One set of questionnaire was prepared for the debtors, and lenders. After pre-testing of questionnaire, a scrutiny of the questions was carried out. After scrutiny questionnaire was refined and finding the need of a personal interview of the related parties, such as creditors, debtors and experts one more questionnaire having a set of 22 questions related to the causes of NPAs was also prepared and on spot interview was undertaken following convenient sampling method. Thus this study is the result of study involving 500 samples. Sufficiency of samples has been justified with help of standard mathematical formulas. Feedback was scrutinized, analyzed, tabulated, processed and inferences were drawn to arrive at conclusions.

Subject is descriptive one and hence limited statistical tools were applied. For the study of legal output; sufficient land mark judgments of various High Courts in India and Apex Court's

rulings have been referred without prejudice to substantiate the findings. When account becomes NPA and it becomes loss assets; bank is the looser but ultimately public has to suffer, because it is a public money. In this chapter an attempt has been made to summarize the conclusions. To bring about a set of conclusions is an elephantine task since the subject matter and relevant discussion is a long journey. This subject is crucial from the points of finance department, social workers, trade and industry and financial institutions. In view of the nature of the study, this researcher decided to classify the inferences into two sets, namely conclusions and findings. Researcher has categorized them as general conclusions and findings which were common and specific conclusions and findings relating to specific issues in this study.

5.2 General Conclusions

In the light of the study undertaken by the researcher general conclusions which emerges as common issues of the study have been summarized as under:

- 1) A large number of borrowers in India are in the state of default. Recently the RBI has released a “Strategic Debt Restructuring Scheme”, in order to overcome hurdles in the working of banks dealing with defaulters since pressure of NPAs of banks has a socioeconomic impact, on a small community to entire society.
- 2) It is found that, the machinery that is expected to overcome this problem is not up to the expectations and as a result of this, it is seen that it has put limitation on the lending capacity of the banks and as result credit is given only to low-risk companies. This has prevented the financial institutions from access to credit’ market.

- 3) It has been observed that the banks suffering on account of the increasing bad loan showing decline in the company's market capacity.
- 4) In the light of this scenario, the Reserve Bank of India, on 25th June 2015 warned against the rising bad loans and the ability of over-leveraged corporate sector to service its debt.
- 5) It is noted that continued stress on asset quality of public sector banks and constant pressure on capital adequacy is causing great harm to the country's economy. Presently our economy is showing healthy economic progress; but further deterioration in the asset quality and it is going to adversely affect the health of our banking system.
- 6) Non-performing Assets are known as NPAs. All those assets which generate periodical income are called as Performing Assets (PA). Assets which do not generate periodical income are called as Non-performing Assets (NPA).
- 7) Study reveals that public sector banks', gross non-performing assets were 9.4 per cent in 2002-03 and it declined to 7.8 per cent in 2003-04. The net NPA during the same period declined from 4.5percent to 3 percent and continued this trend up to 2009 and letter on following increasing trend and at the end 20015 it rose to 9 percent.
- 8) The Committee was of the view that, "the freedom of entry into the financial system be liberalized and RBI has to step in to permit the establishment of new banks in the private sector."
- 9) The efficient financial services vis-à-vis banking services have been considered to be a key driver of business growth and profitability and the ability of the people to meet their needs

for housing and other lifestyle aspirations. In view of this fact; Government of India introduced various steps like reforms and legal enactments carrying various amendments.

- 10) Despite all the efforts the NPAs is showing increasing trend and it should be considered a note of caution for nation's economy. Failure of Lehman Brothers Bank of America is the best lesson for our country. In Greece as is evident, NPAs had hit 40 percent of their portfolios in the year 1914 and it has forced Greece to impose capital controls, requiring banks to set aside more provisions against the bad loans and constraining them from funding the economy.
- 11) It is seen that the implementations of the Narasimham Committee's recommendations put great strain on the efficiency, productivity and profitability of the banks in India.
- 12) The adoption of the policy of public welfare state, the elected government has to resort to various skills and decisions like that of financing of Govt. sponsored schemes such as IRDP, SSY, PMRY, IAS insisting up on to provide 40 per cent of advances' quota to priority sector; such as Agriculture, Small Scale Industries, Retail Trade and such other schemes. Along with this the political decisions of the Govt. are responsible for sending wrong message to the society, that, loan taken are not meant for repayment. All these issues have adversely affected the efficiency of Financial Institutions and due to this the fates of crore of depositors have been put in dark. The recent failure of number of credit societies in Maharashtra and also Central Co-operative banks in Maharashtra are on oxygen. The

deposits come from the society and it is the public money. No one has right to encroach upon the rights of this public money.

- 13) The effect of increasing NPAs is glaring. In view of this the researcher has been fully justified in selecting this vital issue for the research. Indian banking sector is facing a serious problem of NPAs.
- 14) According to the economic survey, “bad loans ballooned by 27 percent in this year”. The extent of NPAs is comparatively higher in public sectors banks and the total NPAs as on Sept.2015 amounts to 3.36 lakh crore. As have been noted according to the report of RBI,” already burdened by bad loans, 37 banks led by public sector ones have shown 26.8 per cent rise in NPAs. These are the banks having significant exposures to sectors such as steel, aviation, mining, infrastructure, real estate and as such having potential for employment. “
- 15) It is reported that as many as 299 mega projects involving an outlay of Rs. 18.13 lakh crore have been stalled with the Project Management Group till March 2015. Thus, it would be seen that NPAs have wide ranging socio-economic effect on the country’s economic development.
- 16) NPA makes attack on the bottom lines of Public-sector banks making their survival difficult.
- 17) Interest applied on Non Performing assets is not taken into account by the banks because it is considered only on realization of the interest. It is so because NPAs accounting is done on accrual basis.
- 18) It has been pin pointed by the experts that, “banks or financial institutions required making provisions for NPAs out of the income earned by them and it is out of the performing assets.

Continuous high level of NPAs in the loan portfolios of banks make them fragile leading ultimately to their failure.” If this state of situation is allowed to continue it will lose confidence of both the domestic and global investors in the banking system. Hence NPAs have to be brought to the minimum to inject and maintain investors’ confidence in the system.

5.3 Specific Conclusions

Researcher has drawn following specific conclusions in respect of the judicial decisions, recovery of loan, its impact on lending institutions, on borrowers and related parties social as well as financial issues and economy of India as a whole.

- 1) The study revealed that the NPAs do not generate income. NPA requires certain provisions which ultimately results in further erosion or profits substantially. NPAs enhance administrative burden, legal and recovery cost, not only that but also borrowed resources are locked in NPA. At the same time banks have to pay for the cost of maintaining these firms, resulting in the negative spread as a result of which the cost of poor quality loans is shifted to bank customers to higher advanced rate interest.
- 2) When loan becomes outstanding or bad debt ultimately depositors have to suffer and it is public money and therefore has much more social consequences. Loan must be recovered at any cost and for that purpose legal remedy is the only answer.
- 3) The term socioeconomics has been used as a term with different usages. Socio-economic study aims at the study of the social impact of some sort of economic change.

- 4) Economic effects could be identified as, closing down of factory, market manipulation, signing of international trade treaties, change in laws, changes in the physical environment, ecological changes. All such changes are bound to affect patterns of consumption, the distribution of incomes and wealth and overall quality of life.
- 5) Sampling adequacy has been tested to have proper coverage of the sample for study. It is to be noted that size of selected sample is far more than the minimum number of sample required. Kaiser-Meyer-Olkin (KMO) test has been used to measure the sampling adequacy.
- 6) Presently Indian economy is in the grip of bad atmosphere showing ever fall in rupee in terms of dollar that is one dollar equal 65.67 on the day when the thesis was completed. This forced the Govt. of India to declare the cut in certain subsidiaries and increase in the price of Petroleum products, declares hike in the price of petrol. Researcher feels that all these factors are going to put the banking sector in trouble resulting into the rise in NPAs level in the coming years to the extent of 30percent or more.
- 7) The main aim of this study was not to comments on the causes of NPA or to estimate project volume of NPA and assessing the legality of various measures only, but to identify the socio-economic impact of this debt recovery problem on the common man.
- 8) When account becomes NPA and it becomes loss assets, bank is the loser.

But ultimately public has to suffer, because it is the public money. SARFAESI Act empowers the recovery of the loans by the bank/FIS without the intervention of the Civil Court and application of Section 69 and 69-A of the Transfer of Property Act. Section 19

of the SARFAESI Act does not empower the DRT to consider the claim of borrower/guarantor in Nahar Industrial Enterprises Ltd. Vs Hong Kong and Shanghai Banking case; Apex Court has held that borrower's, guarantors cannot be entertained by DRT though there is a provision.

- 9) Without the help of Court or Tribunal creditor has power to recover loan u/s 69 and 69 A of 'Transfer of Property Act'. This Act requires a decree or Court order for the recovery of loan. In order to bypass this delaying procedure; SARFAESI Act, 2002 was enacted.
- 10) As per the Securitization Act, "DRT has no jurisdiction to entertain the grievance of the borrower or guarantor and in this way the very principle of Natural Justice "i.e. fair opportunity should be given to each party" is totally defeated. (Article 50) Separation of Judiciary from executive (It amounts to the violation of Article 50 of the Constitution of India).
- 12) Researcher observed that, whatever the outcome of the recovery may be; everything is considered in the favor of creditor for recovery but no one has taken care of the benefits of subsidiary received try the defaulter from the Government under various schemes Banks money is recovered even tax dues are not recovered but the subsidiary and concessions in terms of finance by the State and Central Government under various schemes enjoyed by the defaulters has been not considered by any authority up till now.
- 13) In this context researcher herein surprisingly observed that, there are certain borrowers who are the willful defaulters who enjoyed subsidy from Government and do not pay the creditors. Sometimes something is recovered by the Creditor but subsidiary enjoyed by

such defaulter is not at all recovered nor any attention been given to this aspect. It is the Society's money. Subsidy is given as a matter of policy as an incentive to start the industry and to develop the industry in the hope that it would help industrialization, generate employment and ultimately society would be benefitted. However, this factor has been completely neglected. Researcher came into strange finding that such type of the de It has been also noted that, the reform in the legal system in the recent years such as introduction of SARFAESI Act, 2002, as Asset reconstruction companies Act, settlement through Lok Adalat, schemes of OTS, and DRT contributed in the fast recoveries of NPAs.

- 14) Debtors gloves in hands with creditors and government officers observe scruple; take undue advantage of the facilities from the government; those giving birth to a new scam, for instance in order to show that there is no NPA creditor's officer, director pay only interest amount to show that NPAs do not exists.
- 15) Indian economy has experienced romantic development in the technology, railways, steamship, mobiles, aviation nuclear weapons and they are playing due part/ role in our life. One of the most important quarters is the sphere of banking. Indian banking Law is based to a vast extent upon the English Banking Law and review of main Landmarks of the history of banking Legislation in England can substantiate this statement.
- 16) It is probably true to say that the ground was prepared for making for modern banking in England by the influence of gold from America in the Elizabethan age and the simultaneous growth of foreign trade (Tanna page 7 volume 1).

- 17) However, India's genus banking of the good old days has undergone many changes on account of many forms and functions and extreme complexity of modern business.
- 18) In the course of time, Indian banking system has undergone many changes after the establishment of Reserve Bank of India as Central Bank. Formation of SBI rise of joint stock Banks in India and various Schemes and co-operative Banking, Rural Banking etc.
- 19) In 1931, when Indian Central Banking Enquiry Committee was appointed for the study of working and problems of banking in India. Thereafter many changes and development took place in banking system of India.
- 20) Government of India imposed "Social Control" on banks by incorporating certain provisions in that. These were introduced with the intention to ensure the bank advances are not confined to large scale industries and big business houses but it was thought to be directed in due proportion to important sectors like agriculture, small scale industries and exports means. This is substantiated that Govt. was aware of the Social importance of banks and its role in economy.
- 21) From 19th July 1969, 14 major Indian banks having deposits more than Rs. 50 crore, were nationalized. For these 14 new corporate bodies were set up under the banking Companies (Acquisition and transfer of Undertakings) Act, 1970. On 15th April 1980, 6 more banks were nationalized having demand and time liabilities of not less than Rs. 200 crore.
- 22) Study reveals that despite opposition to the nationalization of banks which were being managed and controlled by big business houses like Tata, Birla, Gaikwad, Kirloskar,

Singhania, etc. The then Indian Prime Minister Indira Gandhi, took a strong step and declared Nationalization of 14 major banks and in this way old banking sector was relieved from the clutches of big business houses and freed for the common man. Thus in the history of Indian banking started a new chapter.

- 23) Studies have revealed that one of the main causes of NPA in the Banking Sector is the direct credit system (DCS) under which commercial Banks are directed to provide at least their yearly advance quota to private sector, e.g., agriculture small scale industry and other segments like small business, retail trade, construction of small roads and water transport operation and professional and self employees persons and educational loans. However, researcher does not accept this view and feels that these allegations are not acceptable and feels that these are the small people to take every care to make repayment of every loan. And there are many big houses that are never booked for NPA; for instance, king fisher airways, Bajaj.
- 24) When NPA occurs to large extent Bank to suffer a lot and society has also to suffer. In this context, Apex Court has rightly put that it is public money and no one has authority to siphon it.
- 25) India has adopted the policy of welfare state and law makers have to bear in mind that industry should be allowed to flourish but not to perish. In order to speed up the recovery of loans SARFAESI Act was enacted. It was aimed that instead of taking recourse of the Court to rehabilitate. Study revealed that creditors take interest in possessing the property. In this way, the Bankers without any paraffinic take possession of assets of the

defaulters and sale them in the market without considering any business principle or retained in the possession of the bank without any liquidity or sell at a throwaway price.

- 26) When bank takes possession, “activities of the companies, unit, and factory come to a standstill throwing number of the employees jobless. The whole family of the jobless employees has to suffer a lot for no fault of them. Many a times even residential house belongings to the whole family owner of factory have been sealed and thrown on road without residence. This is against the principles of fundamental rights of the constitution. It is to be noted that, by such types of action, owner of those houses have to lose his shelter. Such types of the actions give birth to many antisocial elements like goonda element in the society. Researcher feels that in doing so the very purpose of the Act is lost and researcher is aware of her limitation in drawing certain conclusions. Relying on the interview of some legal practitioners, bank officers and defaulters and certain judicial decisions for the whole study researcher visited various DRT and D R A T and High Courts in Maharashtra and have been referred certain SC decisions and theory of social Engineering. While collecting the data it was done after considering title of the study significance of the subject matter, place of study interview of the related persons, Courts advocates, banks and defaulters, guarantors etc. Thus this study was confined to the period from 2002 to 2010 and has incorporated recent developments up to 31st March 2015.
- 27) Willful default refers to a situation where a borrower defaults on the repayment of a loan, despite having adequate resources. According to the Finance Ministry’s report “as of December 2015, the public sector banks had 7,686 willful defaulters, which accounted

for Rs 66,000 crore of outstanding loans. The Standing Committee of Finance, in February 2016, observed that 21% of the total NPAs of banks were from willful defaulters.” It recommended that the names of top 30 willful defaulters of every bank be made public. It noted that making such information publicly available would act as a deterrent for others.

- 28) According to the RBI report the defaulter companies use to divert working capital funds to wholly-owned overseas subsidiaries as investments and loans. It is revealed that company never exported commodities despite export finance availed by them from consortium member banks(Case of Sanjay Jain and Raju Jain availed funds from Punjab National Bank whom Bank declared willful defaulter).
- 29) According to the latest survey by the RBI, stressed assets (non-performing loans plus restructured assets have been rising ever since 2010, badly affecting the capital positions.
- 30) It has resulted into limiting banks flow of credit to the real economy in bid to conserve capital.
- 31) During the December quarter (2015) several public sector banks are seendeclaring significant rise in providing for non-performing assets. This has resulted into following the policy of caution while granting loan. In view of this Govt. of India and RBI have announced certain steps to recapitalize banks and incentivize banks to come together with their borrowers to rehabilitate stressed assets. In the survey of RBI, it has been categorically expected to take necessary steps by the government requiring recognition, recapitalization, resolution and reforms. The survey also stressed that, “the government

should execute sale of assets which are no longer wanted to be hold and utilize the proceeds to make additional investment in the bank.”

- 32) Primary and secondary data have been used for the collection of information and it was properly scrutinized, analyzed and classified to make it convenient for inter pretention. The entire study is qualitative one and hence relied on qualitative one and hence relied on qualitative information than quantitative information.
- 33) The literature available on the subject under reference is limited in nature and scope. It is so because the problem of mounting NPA in the financial sector is of recent times. In view of this literature found in the form of popular write-ups, reports of Committee/ Commissions, working groups, research studies/ articles of researcher’s bank officials, economists and the comments of economic analyst have been considered for the review of literature. In this context the stress has been given to focus attention on certain topics essentially on causes of NPA, quantum of NPA, trends of NPA in Indian banking which are of microeconomic in nature have been studied.
- 34) The landmark judgment of the Apex Court delivered in Mardia Chemicals Ltd. Etc. versus Union of India and others etc. etc.; transferred Case no 9295 of 2002 (2004(7) SRJ 239) dealt with the problem of appeal under the Section 17(2) of SARFACI Act 2002 its constitutional validity and it was held virus of Articles 14 of the Constitution. The Honorable Apex Court held that Section 13(2) and section 13(4) requires the creditor to communicate the reasons for not accepting the objections.

- 35) It is the experience of researcher that the very importance of this purpose has lost the sight of judiciary and bankers. Banker creditors on other hand try to take action u/s 13(4), Sec 17 etc. without having any paraffinic. It is the researcher's feelings that a practical view must be considered by judiciary and bankers in the public interest or in the interest of society. One must keep in mind that, Law is meant for men and not men for law. The inactive bank personnel their negative and impractical attitude and judiciary decisions strictly relying on provisions than decisions and some habitual defaulters hand in gloves are the hurdles in settlement of NPAs.
- 36) Section 19 of the SARFAESI Act does not empower the DRT to consider the claim of borrower / guarantor as contemplated in Nahar Industries Vs Hong Kong and Shanghai Banking Corporation reported in 2009 (8) SCC 646 Case. Apex Court has held that, "borrowers guarantors cannot be entertained by DRT though there is provision."
- 37) When loan becomes outstanding or bad ultimately depositors and particularly small investors and middle class people have to suffer. Middle class people have to suffer a lot by way of loosing employment, fall in the investment in Fixed Deposits etc. and consequently number of family problems.
- 38) The borrower can file appeal only in the DRT aggrieved by the action of the creditor / bank if the recourse of Section 13 (4) of SARFACI Act is not followed. In this context researcher feels that considering the provisions u/s 13 (2) as regards to the notice & DRT having no jurisdiction to entertain grievances of borrower the very purpose of justice is defeated in view of the Article 50 of the Constitution (Separation of judiciary from

executor and also against the maxim “*audiatour et alterapars*”). In this way one who is aggrieved is left with no choice when his objections are not accepted by the banks. The same lies in Section 13 (4), in which creditor takes symbolic or physical possession without their competency to keep the factory going on thousands of workers, employees are thrown and owner of the factor is thrown on road. Researcher feels that this is inhuman and one sided for favoring the bank and undue protection to the bank officers.

- 39) Total study is a qualitative in nature in which various core decisions interview of court decisions, survey of defaulters, interview of bank officials, DRT judges have been made. For this purpose a sample of 100 defaulters, 25 advocates 3 DRT Judges and 20 bank officers were interviewed.
- 40) It is seen that in the recent years since the Indian economy is passing from the crises which is the effect of global scenario; it is feared that NPA will increase. Study of the DRT Mumbai and Aurangabad office reveals that there is a temporary staff and shortage of staff at all level and this has adversely affected the disbursement of applications.
- 41) It should be noted that there exists provision of cross, trial in the Civil Courts, however, there is no such provisions of trial, cross in the DRT. Whatever application is filed is supported with the affidavit is accepted as true and correct. This leads to contradictory statement and DRT always favor the statement of bank. No sufficient opportunity is given to the borrowers, guarantors in matter of DRT. This is a sad part of this act and against the spirit of Constitution. DRTs are established and 3 to 4 Districts are accommodated in one DRT. Therefore aggrieved person has to go from his native to the

place of DRT for justice and for the same he has to incur expenses. That means to get justice he has to spend money from his own pocket. This is against the spirit of the Constitution.

- 42) It is also revealed that most of the advocates and clients were of the opinion that Securitization Act gives protection only to big business houses and bankers or financial institutions and no care is taken of the small scale industries and small business houses in view of this the very spirit of nationalization of the banks is lost and at the same time very purpose of DRT Act and Securitization Act not served.
- 43) It is also revealed that in most of the cases big business houses like Bajaj are not prosecuted and they tried to linger the process by taking the advantage of judicial process. In this way the very purpose of Securitization Act is not served.
- 44) High interest rates and lower economic growth has impacted the repayment capacities of borrowers; pushing up the NPAs of banks to the tune of more than Rs. 1.30 lakh crore during the last 9 months of 2014-2015.
- 45) The study has been completed by considering the specific objectives specified in Chapter – 1 and in consonance of objectives hypothesis were developed. It is pertinent to note that the purpose of the study has been served totally by taking up theoretical information, analytical data information revealed through interviews of clients, advocates, bank officers and judges and the null hypotheses have been rejected and researchers hypotheses is accepted revealing the defeat of very purpose of the enactment of the Securitization Act. Researcher observed that whatever the outcome of the recovery may

be everything is considered in the favor of creditor for recovery but no one has taken care of the benefits of subsidiary received by the defaulter from the government under various schemes.

- 46) As is evident, banks' money is recovered even tax dues are to be recovered but the subsidy and concessions in terms of finance by the State and Central Government under various schemes have been not considered by any authority up till now. Researcher herein surprisingly observed that there are certain borrowers who are the willful defaulter enjoy subsidy from government and do not pay the creditors.
- 47) Sometimes something is recovered by the creditor but subsidy enjoyed by such defaulter is not at all received nor is any thought given to this aspect. It is the society's money; subsidy is given as a matter of policy for the start the industry and to develop the industry in the hope that it will help industrialization, generate employment and ultimately society will be benefitted. However, this factor is completely neglected. Researcher came to strange findings that such type of the debtors gloves in hand with creditors and government officers observes scruples take undue advantage of facilities and giving births to new scam.
- 48) It is revealed from the study of the court matters that creditors used to take advantage of legal provisions and accordingly co-obligator or the guarantors are prosecuted for the recovery of loan. It is done deliberately and sometimes gloves in hand with the creditor. In such cases creditor enjoy relief and all obligators are transferred to debtors who is put under pressure of repayment.

- 49) It is crystal clear that, if something goes wrong with these borrowers such as lock-outs, closure of business, then a large no. of families and dependents has to suffer a lot. It could be concluded that employees and their families or dependents have to suffer a lot, if large scale business activities are stopped and it has a great impact on the society.
- 50) It is revealed that there were total 30,000 employees of different categories working in the sample borrower units of which 18,700 were male, 11,300 were percent female. It further reveals that a large number of class IV employees were working either on contract basis (5000) and daily basis (12,000). Enquiry reveals that class IV employees working on contract basis are appointed when there is seasonal requirement of employees and sometimes when an emergency is required. A large no. of employees male as well female are engaged in sweeping, cleaning, etc. on daily basis.
- 51) It is revealed that in SSI units about /44 (89 percentage) units were providing welfare activities for the employees and only 16 sample borrower in 11percent seem indifferent on this account. It is further revealed that for medium size sample are concerned, 93 percentage units were providing welfare activities negligent percentage of 7percentage seems to be indifferent. In case of large scale industries 100 percent have to provide welfare for activities since it is mandatory. Industrial inspector enquiry reveals that industrial inspectors usually take the account of welfare activities by the units. Thus it could be concluded that when it becomes compulsory, business provide welfare activities otherwise not.

- 52) It is observed that there is negligible small percentage of units SSI i.e. 10 percent about 20 percent medium size a units and 28 percent large units take insurance of their employees. It simply means that a large number of respondents are reluctant to cover their employees by insurance. When enquired about this indifference attitude by them it was told that they do not feel it is necessary. It is further revealed that those sample units who say that they provide insurance cover to their employees are the business units where work with machinery is involved.
- 53) It is observed that, whenever regular employee faces such type of problem they help them by arranging treatment in hospital. From this it could be concluded that, small scale units do not have such facilities, since it is not affordable for them. It means larger the size of business, more is the ability to spend on such activities.
- 54) It is found reveals that a very negligent percentage of respondents are providing pension & other retirement benefits to their employees. However, in large scale units, under studies 43 percent of the respondents told that they have to provide such facilities since its mandatory under the factory Act. It means where it is compulsion or mandate; then retirement benefits are provided since such units are duty bound.
- 55) It is seen that 98 percent of the SSI units,100 percent of medium and a large percentage of large scale units provide such type of the additional benefits to their employees. Enquiry revealed that sometimes it is obligatory and many a times it is customary to make such additional payment to the employees. According to the respondents they consider it to reward the employees for their devotion and dedication to the unit. It

provides incentives to the employees for hard work and large scale turn-over and get quality work done by the employees. Most of the respondents told the researcher that, they consider it as their moral responsibility.

- 56) It is revealed that almost all the respondents provide recreation facilities to their employees. Recreation facilities include, social gatherings, get together, arranging festivals, competitions, trips for the employees and their families etc. Most of the respondents find that such activities help to create healthy atmosphere inside the campus.
- 57) The conclusion emerges that borrowings play an important role in the total finance of the respondent units. Hence, it is concluded that almost all respondents rely mainly on loan/borrowings for their finance.
- 58) It is seen that nationalized bank is the main source of borrowing (80 percent in case of SSI, 60 percent in case of medium size business and 72 percent in case of Large Scale) and it amply proves that almost all respondent understudy prefer nationalized bank for taking loan as compared to private and co-op bank.
- 59) It could be concluded that large scale borrowing is made by the respondent from the nationalized bank and naturally nationalized banks are put to loss due to NPA. It clearly indicates that it is loss of public money and danger to national economy.
- 60) It is observed that though a large part of loan raised is spent for business (60 percent of SSI units, 80 percent by medium scale 80 percent by large scale units), expenditure on personal and preliminary expenses play a significant role in the utilization of loan

followed by SSI units expenditure on preliminary and personal expenses together account for 40 percent and 17 percent in case of medium and large scale business.

- 61) It could be concluded from the analysis of above table that a significant amount of loan is spent on unproductive things that may be one of the reasons for the NPA.
- 62) Analysis shows that about 20 percent amount is spent on purchasing machinery followed by purchase of land (10percent) construction of building (5percent) in descending order of value. It is also seen that about 70 percent of the amount is utilized as working capital (transportation, purchase of raw materials, taxes, wages, etc.)
- 63) It would be seen that about 94 percent of SSI units and 60 percent of medium and large scale business units opined that they take loan for working capital whereas 6 percent SSI units, 40 percent medium and large units reply said number. Thus on an average 90 percent of respondents responded that they take loan for meeting out working expenses and 10 percent working.
- 64) It could be concluded in view of this that large amount of business units/resp. use to take loan for meeting out working expenses. Hence it could be further concluded that if working expenses are not recovered properly, it puts business units in the state of shortage of funds. The shortage of funds mean paucity of funds for production and marketing activity, putting the business in the loss due to fall in the working capital.
- 65) It is observed that almost all SSI units resort to overdraft followed by medium size units (100 percent) and large scale units 71percent. Table reveals that about 29 percent large scale respondents do not take overdraft. When questioned it was told that large scale unit

requires to take loan from banks on security of stocks. When question was put to SSI units as regard to loan raised by them along with overdraft; about 150 and 94 percent respondents told that they raise loan for working capital on the pledge and stock of godown, Medium size respondents told that they raise 100 percent loan on security of stock.

- 66) It is indicative of the fact that almost all respondents use to resort to overdraft for the urgent needs on current account and at the same time get loan on the security of stock for meeting short term capital requirement.
- 67) Central government has declared policy of Startup India, Make in India and necessary financing is done on concessional rate or subsidy is granted on loan taken by them. While studying the NPA researcher came across very strange fact that while discussing NPA's problem every stress is given on the recovery of loan taken from banks or financial Institutions. Govt. of India recently declared policy of helping the Banks to save them from loss of NPA. In this process, nobody has given any thought to the recovery of part of subsidy enjoyed by the industry in the event of insolvency or bankruptcy.
- 68) It is revealed that almost all (100percent) respondent small scale units (100 percent) followed by medium size industries (80 percent) and large scale units (28 percent) in descending order said that they have enjoyed subsidy from the various schemes of Govt. It is further found that about 10 medium size units (15 percent) and 50 large scale respondents (72 percent) told that they have not enjoyed subsidy. When enquired it was

told that those who have not enjoyed the subsidy; they are old units started before such declaration of subsidy.

- 69) It could be concluded that most of the respondents have enjoyed subsidy of this or that kind and those who have not enjoyed are very old respondents.
- 70) Study reveals that about 64.25 percent of the small scale units have enjoyed subsidy at about 80 percent on loan raised for building, machinery technology, establishment etc. followed by 75 percent and 70 percent subsidy in descending order of value. As regards To the Med. Size units maximum no. of units (57) have enjoyed about 90percent subsidy followed by 70 percent by 10 units (14-25 percent) and the same number more that 80 percent. It also shows that medium scale unit have enjoyed subsidy at 50 percent and 70 percent and about 10 units (14-25) 75 percent subsidy and the same number i.e., 10 units (14.5percent) enjoyed 80 percent subsidy.
- 71) As regards to the large scale business units 10 units (14.5 percent) each have enjoyed 50 percent 70 percent and 80 percent subsidy and about 20 respondent units enjoyed more than 80 percent subsidy. Enquiry reveals that those who enjoyed more that 80 percent subsidy were agro-based large scale units like sugar factories and manufacturing industries.
- 72) It could be concluded that almost all of the respondents seems to have enjoyed subsidy at varying rates prevailing at the time of their establishments.
- 73) It is observed that as far as small size business is concerned large scale inflow of funds source in Govt. subsidy (44 percent units) followed by sale of goods and services (35

percent inflow), 7percent each from self earning and family members and source of savings.

- 74) It is found that medium size units respondent about 30 out of 70(22 percent) got govt. subsidy followed by sale and goods and services income inflow (14 percent) self finance (7 percent) and family members helps 5 units (3.5 percent) and surplus from savings 3.5 percent. As far as large scale units are concerned 50 respondents (35 percent) told that their main source of inflow of capital relates to the earnings from sales of goods services followed by govt. services by 10 respondents (7 percent) by each 5 units (5 percent each) from self earnings and help from family members respectively.
- 75) In view of the above cited discussion it follows that inflow of funds from sale of services and goods and govt. subsidy forms the main source of inflow of funds. It clearly indicates that a large part of inflow is raised from govt. service and sale of goods and services. It means any change in this inflow effects on the financial health respondent units.
- 76) It could be concluded that fund flow analysis statement is prepared by all the respondents. Since it is precondition for project DEMO Loan raising.
- 77) It is observed that about 100 SSI respondents (54percent) say worst, 20 respondents (12percent) 10 respondents (6percent) and 10 respondents (6percent) opined worst, satisfactory, somewhat satisfactory, experience. It means in actual business, about 120 respondents (66percent) opined that they were not able to adhere to the in-flow of fund as per expectations.

- 78) It is revealed that out of 70 medium size respondents could not get adequate inflow and 14 respondents were also not in good position. Similarly out of 70 medium size respondents 35 respondents (50percent) have bad inflow and 21 respondents (30 percent) have shown not much satisfaction. It is indicative of the fact that majority of the respondents seems to be not in position to get inflow to cover expenses therefore.
- 79) It could be concluded that more than 50 percent respondents have to face paucity of fund in their business. It clearly shows that bad inflow is the main cause of being defaulter.
- 80) As soon as loan becomes NPA, lender send Demand notice to the borrower n/s 19/(2) requiring borrower to make the payment of installments due sometimes borrower acknowledge the notice and send reply and some defaulters neglects the same. It is observed that about 150 respondent SSI units (72 percent) immediately acknowledge the demand notice by sending reply while medium and large scale units about 70 each (24 percent) said that reply the Demand notice. It shows that Med and large scale unit s do not pay heed to the notice.
- 81) When creditor find indifferent attitude of the borrower at this or that pretext, matter is filed for recovery by the lender with DRT of that jurisdiction. Such matters either remains in DRT court till final hearings and decision by the court. In case if decision of DRT is not favored either of the party files appeals to DRAT being aggrieved of the DRTs decision. On being aggrieved by. The decision of DRAT either of the aggrieved party file recovery in the appeal ultimately in S.C. Supreme Court.

- 82) It is found that large number of matters about 200 (67percent) were in the DRT court. It is also observed that large number of pending matters belong to the small scale units (88percent). Study also reveals that about 45 respondents cases were lying with the DRAT (It could be seen that about 20 cases (29percent) related to the med. Size resp. units followed by 15 (21percent) of L.S. units and only 10 (6 percent) cases were of the S.S.S. units
- 83) Many times DRT immediately give relief to the hander allows to take symbolic possession till final order of possession or grant relief to the borrower keeping matter in abeyance till further order.
- 84) On being aggrieved by the order passed by DRAT aggrieved party (mostly borrowers) may approach the High Court under Article 226 constitution. It is seen that in such cases majority of the parties file writ in the High Court. Analysis of the cases filed in the High Court is depicted in table 38 Under Art 226 of the constitution of India.
- 85) It is observed that a large number of SSI units i.e. 130 units (82 percentage) file appeal in the High court and 30 (18 percentage) are seen reluctant. As regards to Medium size respondents about 40 (57 percent)said that, “yes” they approach to High Court against the order of DRAT. (43 percent do not) In case of large respondents about 50 (71 percent) approach to the High court and rest of them do not. Overall observation would reveal that in all 220 respondents 73 percent file appeal file appeal in the High court. It is revealing the fact that in the majority of the cases appeal is filed in the High Court against the order or DRAT.

- 86) When questioned to the respondent it was told by the respondents that as per the advice of the advocate appeal is filed to prolong the matter or to keep matter lingering or just to kill time. It is also revealed that there are few genuine cases wherein there are reasonable grounds and in which certain Supreme Court Judgments prevail. On the perusal of this discussion and facts, it could be concluded that in majority cases aggrieved party file appeal against the order of DRAT and there are reasonable ground in some cases and in some cases it is intentionally done to take the advantage of judicial system to prolong the matter or keep matter lingering.
- 87) Study shows that, in case of SSI respondents in 100 cases (60 percent) respondent properties possession restored followed by medium size respondents (70 percent and 65 large scale respondents (93 percent respondents. Detailed study revealed that large scale business units settled the matter followed by medium size and SSI respondents in descending order of value. It is further revealed that large scale units make financial adjustments through number of measures followed by medium and SSI respond in descending order of magnitude. It is so because large scale units are in a better position to make settlement because of size of their business and engaging competitive advocates because of their mighty resources followed by medium size respondents. It is also found that small scale units because of their limited resources are unable to sustain or absorb the losses and cases of restoration are lost.
- 88) After considering this analysis of this observation and facts and circumstances, it could be concluded large number of respondents get restoration of possession through

settlements and in this respect large scale respondents are in better position followed by medium SSI and large SSI units in descending order.

- 89) Possession of property is restored by the lender after getting court's order to that effect. It is observed that in majority of cases possession of the property is restored after the court's order and it is through one time settlement (OTS) of the matter.
- 90) In case of SSI units, medium scale unit medium scale units and large scale unit respondent settlement is caused by one time settlement (OTS). When enquired it was revealed that almost all the respondents prefer settlement through court because thereby they enjoy relief by way of payment by installment and sometimes concession in the interest payment from this observation it could be concluded that respondents intentionally try to settle the matter one time settlement because in compromise formula respondents enjoy relief in payment of debt and in interest.
- 91) When NPAS occur; agriculture, small scale industries and other segments such as construction of roads, water transportation, self employed persons. The banks are the lending party suffers a lot resulting in the erosion of funds. Lending authority in particular and the society in general suffers a lot, since it leads to delay and denial of credit resulting in to off take of lend and able funds (Mishra P and Yadav A).
- 92) Socio-economic impact is wide ranging in size, from local effects on a small community to changes on the entire society. During the course of study researcher herein observed that it has wide ranging social impact on lenders as well as borrowers. In view of these facts it was decided to enquire about the impact of the NPAs and the prolonged court

battle on the respondents it was revealed that most of the respondents had to face depressed state of mind.

- 93) Study reveals that about SSI 50 (93 percent) out of 160 said that “yes” they were emotionally depressed followed by 60 medium size respondents (85.71) out of 70 and large scale respondents 50 (71 percent) out of 70 respondents in descending order of value. Study of the total scenario reveals that out of the 300 respondents about 260 (86 percent) told that they were emotionally depressed and prolonged Court Battles disturbed their state of mind for number of obvious reasons, such as family members have to suffer emotionally and total family is disturbed. In society their goodwill suffers a lot and it is another mental and psychical harassment.
- 94) It is also told that in market their credit worthiness is lost and relatives and their attitude is very bad and have to suffer due to scornful comments and this put the whole family and respondents in a grief of sorrow and anarchy. In view of these observations it could be concluded that NPA problems have long ranging effect on the respondents and their families and goodwill or prestige lost in the society.
- 95) There are four parties in the loan transaction, namely, lender or debtor, obligator, guarantor and their family members, worker, etc. When loan becomes NPA all these parties are affected. Since the work or business of company comes to stand still.
- 96) It is found that as per as SSI unit is concerned at first all 160 respondents told that greatly upset followed 60 medium scale size units (92 percent approximately). Above 140 (94 percent) exclaimed that were greatly upset having severity of depression. Similarly 140

sample respondents of sample unit told that it caused loosing the moral and confidence and (25 percent of 80) 20 SSI respondents found them helpless & finding no other way of survival. It further reveals that these feelings are not much severing in medium scale and large scale units.

- 97) Enquiry revealed that medium and large scale business have more absorption ability to absorb the shock of loss because there are others too share this shock and SSI respondents do not have this ability since many a times such units are run by either individual proprietor or family proprietorship. In view of these observation it could be concluded that NPAs and consequent to it other effects get severe blow to their feelings and emotion.
- 98) A loan is asset for a bank and liability for debtors. It is revealed that in the whole process of NPA and legal battle; reputation of the business defaulters is lost and loss of cred worthiness limits the possibility of raising loan in the market. 1.
- 99) Fluctuations in the business and other reasons have nothing to do with the creditors, because their main aim is the recovery of their dues. Out of 160 SSI respondents all said that their reputation is lost, followed by 70 medium size respondents out of 70 (i.e. 100 percent) and 60 large scale units respondents (about go percent) respondent in descending order. From this observation it could be concluded that NPA and consequent to it legal battle for the recovery of loan and interest thereon affects the reputation of business.
- 100) It is revealed that out of 160 small scale units respondents 100 (62 percent approx) said that it was worst and 50 respondents (i.e. 22 percent) said that effect was very bad. As far

as medium size respondent is concerned out of 70 respondent 60 (85 percent approx) said that effect was worst and in case of large scale units out of 70 respondents 65 (86 percent) said that it has suffered worst. The study of the overall respondents response reveal that affect of loss of goodwill (i.e. out of 300 total sample about 225) respondents (75 percent) were of the opinion that effect of was worst patting their business in peril. It could be concluded from these observations, that loss of goodwill has worst effect on the survival of the business of the respondents.

Most of the respondents find that such activities help to create healthy atmosphere inside the campus. Perusal of the observation reveals that respondents are aware of the recreation facilities for their employees.

About 8 lakh employees and their families were depending for their livelihood on these sample units. It is crystal clear that, if something goes wrong with these borrowers such as lock-outs, closure of business, then a large no. of families and dependents has to suffer a lot. It could be concluded that employees and their families or dependents have to suffer a lot, if large scale business activities are stopped and it has a great impact on the society.

Industrial inspector enquiry reveals that industrial inspector usually take the account of welfare activities by the units. Thus it could be concluded that when it becomes compulsory, business provide welfare activities otherwise not.

5.4 General Findings

Some findings which appeared to be common related to the issues of the study are presented as under:

- 1) It is observed that a large number of respondents are reluctant to cover their employees by insurance. When enquired about this indifference attitude by them it was told that they do not feel it is necessary. It is further revealed that those sample units who say that they provide insurance cover to their employees are the business units where work with machinery is involved.
- 2) On being questioned it was found that as far as following the labour welfare activities by the units; they do not care for such facilities or those who are running small shops or in trading activities. It was further found that whenever regular employees face such type of problem, they help them by arranging treatment in hospital. From this it is seen that, small scale units do not have such facilities, since it is not affordable for them. It means larger the size of business, more is the ability to spend on labour welfare activities by the respondents.
- 3) Table 5.6 and revealed that a very negligent percentage of respondents are providing pension & other retirement benefits to their employees. However, in large scale units, under studies 43 percent of the respondents told that they have to provide such facilities since its mandatory under the factory Act. It means where it is compulsion or mandate; then retirement benefits are provided since such units are duty bound.
- 4) Recreation facilities include, social gatherings, get together, arranging festivals, competitions, trips for the employees and their families etc. Most of the respondents find that such activities help to create healthy atmosphere inside the campus. Perusal of the observation reveals that respondents are aware of the recreation facilities for their employees.

- 5) It has been observed from the information gathered from the borrowers' feedback that, there are certain causes of becoming defaulters like, lack of experience and expose on their part, that mismanagement of funds political influence, lack of research and development, vagabond spending on unnecessary items, non-application of mind while getting loan, defective proposal of loan, false valuation of security and uncertain changes in the government policy as regards to the supply of raw material VAT and other restrictions. Thus it could be said that according to borrowers; delay in the disbursement of loan, slowdown in the business expected changes in the global level, recessionary trend and non-application of mind by the bankers in the sanction of loan along with uncertain change in the government policy are the major causes of NPAs.
- 6) Study reveals that, lack of owner's stake, heavy borrowings by borrowers from other sources from private traders, owners' relatives wherein rate of interest is very high, delay in disbursement of loan by the banks, mismanagement funds by bank lack of proper planning in sanctioning loan are the significant causes of NPA or non recovery of loan.
- 7) After study and inquiry, researcher came to the conclusion that in majority of the cases delay in the disbursement of loan and mismanagement of the funds are some of the major causes for becoming the account NPA. Similarly bank officers interest in some clients and uncertain changes in the government policy are the other reasons responsible for amount becoming NPA.
- 8) It has been observed that in certain cases; taking the recourse of Securitization Act for the reasons beyond the control of businessmen or factory owner possession is taken by the

bankers / reconstruction companies without any parafernia and the whole activities of the business was stand still by throwing many jobless and making the owner of the factory or business without shelter, which is against our constitution. Madras High Court Comprising Honorable Justice Ibrihim Kalifull and Justice Kirubakaran N.K. in Writ Petition No.15272 of 2009 has taken a serious view of procedural irregularities committed by the bank taking the shelter of SARFAESI Act and provided an instant relief to the aggrieved.

- 9) It is seen that, enactment of the SARFAESI Act's provisions are favorable to the big business houses and this could be evidence from the fact that no Tata, Birla, Bajaj could be brought in lime light for the recovery of enormous amount of loan and only small borrowers like, small traders, feriwalas, small scale industries they are victimized. According to him there is a need to have a Nelson's eye on these transactions by the judiciary.

In this case it has been observed that, many times bank make nominal payment of interest amount on the loan to show that loan has not become NPA to avoid provisions of the Limitation Act. By this Act of Bank, they try to evade the provisions of Limitation Act. This Act of escapism is a crime. Judiciary should take note of such tactics.

- 10) Study pin points that, "lender does not receive market return on their capital depositors do not receive return market interest since non performing loans epitomize bad investment, non performing loans spill over the banking system .While making recovery of loan the concessions enjoyed by the defaulters is totally neglected, bank recovery officers play unhealthy tactics, habitual defaulters create hurdles in the way of recovery, big business

houses are the main defaulters causing NPA. Thus it is a socio economic problem and great loss to the country' economy.” This supports the conclusion drawn in Part I and II.

- 11) In view of this discussion it is concluded that, Hypotheses No.H.1.1, H.1.2, H.1.3, H.1.4 have been accepted and H.5, H.1.6 and H.1.7 have been rejected.
- 12) It has been found that, direct impact of NPA due to closure of Industry results in decline in family incomes, coupled with drops in nutrition, health, hygiene and education levels of children, all contribute to environmental degradation and tend to negatively impact youth the most. There has been an increase in malnutrition among children due to the difficult economic circumstances facing many people in the past years. There is a growing phenomenon of children between 6-8 years on the streets to earn money to sustain their families .Child labor exists in India despite, the existence of Child Labour Act and though it is considered illegal. Child abuse is thought to have increased due to the economic stress endured by poor families in recent years. The socio economic problems in India are, “over population, economic issue (poverty, sanitation, corruption, Education and violence (Naxalism, religious, caste related and terrorism). Socioeconomic factors are the social and economic experiences and realities that help mold one's personality, attitudes, and lifestyle.
- 13) It is seen that the recovery process starts from the stage of invoking the Security Interest (Enforcement) Act and following Rules.2002, starting process from demand notice u/r 3(1). In case as a matter of process if creditor get possession (symbolic or legal possession) at once business activities come to standstill. Once business activities are stopped the whole family of the owner is put in financial crisis and consequently workers are thrown jobless. After

losing job along with workers their dependents also have to suffer. It creates social havoc and it is a social evil.

- 14) “Willful default refers to a situation where a borrower defaults on the repayment of a loan, despite having adequate resources. As of December 2015, the public sector banks had 7,686 willful defaulters, which accounted for Rs 66,000 crore of outstanding loans. It is reported that, about 21 percent of the total NPAs of banks were from willful defaulters. It recommended that the names of top willful defaulters of every bank should be made public, so that it will act as a deterrent for others.”
- 15) It is evident from the available literature that, social problems and economic problems go hand in hand. It is difficult to separate social problems from economic problems. Social responsibility is represented by the contributions undertaken by companies to the society through its business activities and it’s a social investment. This is also to connect the concept of sustainable development for the company in general and society in particular.
- 16) It is revealed that 90 percent respondents were relying on borrowing and 10 percent from owned capital and no family members and relatives. The conclusion emerges on this information pinpoints that borrowings play an important role in the total finance of the respondent units. Hence, it could be concluded that almost all respondents rely mainly on loan/borrowings for their finance.
- 17) It could be concluded that, “Large Scale borrowing is made by the respondent from the nationalized bank and naturally nationalized banks are put to loss due to NPA.” It clearly indicates that it is loss of public money and danger to national economy.

- 18) It could be concluded from the analysis that, a significant amount of loan is spent on unproductive things that may be one of the reasons for the NPA. It could be concluded in view of this that large number of business units/resp. use to take loan for meeting out working expenses. Hence it could be further concluded that if working expenses are not recovered properly, it puts business units in the state of shortage of funds. The shortage of funds means paucity of funds for production and marketing activity, putting the business in the loss due to fall in the working capital.
- 19) It is found that, almost all respondents use to resort to overdraft for the urgent needs on current account and at the same time raise loan on the security of stock for meeting short term capital requirement. As matter of promoting industrialization of different parts of the country, special facilities like tax concession, subsidy, provision of plot in the industrial area etc. are provided. However, when recovery of loan by creditor is decided, only loan and interest on it is considered by the courts and in this process all these financial benefits to industries remain neglected. It is a loss to the national economy and loss of public money. Considering this aspect it was considered to highlight on this most neglected factor.
- 20) Enquiry reveals that those who enjoyed more than 80 percent subsidy were agro-based large scale units like sugar factories and manufacturing industries. Thus, it could be concluded that almost all of the respondents seems to have enjoyed subsidy at varying rates prevailing at the time of their establishments. It follows that inflow of funds from sale of services and goods and govt. subsidy forms the main source of inflow of funds. It clearly indicates that a large

part of inflow is raised from govt. service and sale of goods and services. It means any change in this inflow effects n the financial health respondent units.

- 21) It has been observed that in majority cases aggrieved party file appeal against the order of DRAT and there is reasonable ground in some cases and in some cases it is intentionally done to take the advantage of judicial system to prolong the matter or keep matter lingering.
- 22) It is concluded that a large number of respondents get restoration of possession through settlements and in this respect large scale respondents are in better position followed by medium SSI and large SSI units in descending order.
- 23) It is revealed that almost all the respondents prefer settlement through court because thereby they enjoy relief of payment by installment and sometimes concession in the interest payment from this observation it could be concluded that respondents intentionally try to settle the matter by way of one time settlement (OTS); because in compromise formula respondents enjoy relief in payment of debt and in interest.
- 24) Rising trend in NPAs may also make banks unwilling to lend. This could be because there are lesser chances of debt recovery due to prevailing market conditions. For example, banks may be unwilling to lend to the steel sector if companies in this sector are making losses and defaulting on current loans.
- 25) Willful default refers to a situation where a borrower defaults on the repayment of a loan, despite having adequate resources. As of December 2015, the public sector banks had 7,686 willful defaulters, which accounted for Rs 66,000 crore of outstanding loans. It is reported

that in February 2016, about 21percent of the total NPAs of banks were from willful defaulters.

26) ARCs purchase stressed assets from banks, and try to recover dues from its realization. The ARCs buy NPAs from banks at a discount and try to recover the money. The Standing Committee observed that the prolonged slowdown in the economy had made it difficult for ARCs to absorb NPAs. Therefore, it recommended that the RBI should allow banks to absorb their written-off assets in a staggered manner. This would help them in gradually restoring their balance sheets to normal health of the banks facing stress of NPAs.

27) The process of recovering outstanding loans is time consuming. This includes time taken to resolve insolvency, and it is a situation where in a borrower is unable to repay his outstanding debt. The inability to resolve insolvency is one of the factors that impacts NPAs, the credit market, and affects the flow of money in the country. As of 2015, it took over four years to resolve insolvency in India. This was higher than other countries such as the UK (1 year) and USA (1.5 years).The Insolvency and Bankruptcy Code has been passed by Parliament on May 5, 2016 and it is currently pending in Rajya Sabha for perusal.

28) It has been observed that there are instances of taking undue advantage of legal process by the shrewd defaulter,

29) It is seen that sometimes social obligations compel the borrower to repay the loan. In one of the cases in Debt Recovery Tribunal at Aurangabad, a local political leader was under the impression that being farmer he needs not to pay the loan. But when matter was filed under the Securitization Act, the Tribunal on hearing the bank issued the attachment order of

mortgaged properties of that political leader, realizing political and social status at stake he paid out the loan.

5.5 Specific Findings

Researcher has brought out some specific findings related to emerging issues and have been summarized as under:

- 1) In the “Jolly George V Bank of Cochin case(1980 DGLES, S. C., AIR SC, 470)¹ much discussion was initiated to by-pass this old system of loan, some measures had been initiated and legal enactments had been made e.g.; prohibition of Sahukari Act². Before 1993, there existed a pecuniary jurisdiction of Civil Court. However, this process of initiating or moving the Civil Court was seen time consuming and involving lengthy process of detailed enquiry and trials. In this process, the defendant and guarantor were given an opportunity to make counter-claim and defend alleging faults of the bankers and despite all this the result was the zero recovery. In view of this Narasimham Committee I and II, Tiwari Committee and Adhyarjuna Committee were appointed by Govt. of India in order to suggest the means for the recovery of debts of lenders.
- 2) It has been observed that consequent to this situation, Parliament took initiatives in pursuance of Article 323 B of the Constitution of India³ to set up the Tribunal with special powers; excluding the jurisdiction of all courts except the jurisdiction of SC under Article

1. Jolly George V Bank of Cochin (1980 DGLES, S. C., AIR SC, 470).

².Sahukari Act, Bare Act Professional Book Publications Delhi.

³.Tops T.K., ‘Constitutional Law of India’, Eastern Book Co. Lucknow, 2014.

136 of Constitution of India⁴with respect to all and any of the matters falling within the jurisdiction of the Tribunals.

- 3) It is revealed that, on many occasions the provisions of the Securitization Act are invoked so as to put the properties of the defaulted borrower for sale by the vested interested persons. In that case there is a need of independent judicial machinery to grant justice to the borrower, considering the provisions of the Securitization Act it is only a procedural law, that is, if the prescribed procedure is followed then the tribunal cannot interfere in the matter. But as already pointed out herein, that there are some vested interested persons who by invoking the provisions of the Securitization Act deliberately to exploit the borrower. So far as the provisions of the Securitization Act are concerned, the said Act has given wide powers to the securitization and Reconstruction Companies, to take over the assets of the borrower and to recover the loans. Similar powers are given to the banks and the financial institutions. But in fact the purpose for which said powers are given to the said Assets Securitization Company and the banks to recover the loan that are not being followed by the Securitization Companies and the banks. The banks / financial institutions and Securitization companies they take interest only in recovering the loans but not a single case in which the bank / financial institutions / Securitization Company have given helping hand to the borrower and reconstructed the loan.
- 4) It would be seen that, while granting service to the Securitization Company and while invoking the provisions of the Securitization Act there has to be a provisions in respect of

249. S.Basu P.D., 'Shorter Constitution of India, Wadwa&Wadwa Publication, Nagpur. 2014.

Para farina or infrastructure in the hands of bank / financial institutions / Securitization Company. After taking over the possession of the unit, immediately, the said business is handed over to the persons those are dealing in the said business. On number of occasion the banks / financial Institutions / Securitization Company taken possession of the industrial unit and the secured asset is sold out. While selling the said secured asset nobody bother to secure the statutory dues of the government. On number of occasions it is found that the industrial units purchased by the persons who are dealing in the scrap business, so this is very dangerous to our economy and in the public interest also. If the provisions of the Securitization Act is to be invoked then the banks must be equipped with all arms to see that the said unit should be revived or should be reconstruct and to be run in smooth manner after taking recourse of the Securitization Act because the business or industry can be transferred to the person who is dealing with the similar type of business.

- 5) From the perusal of Securitization Act and various Court's verdicts, it is seen that the Tribunal is not competent to look into violation of fundamental rights and constitutional rights and as a matter of fact, this Court being a custodian of Constitutional rights is entitled to examine the matter. A Constitution Bench of the Honorable Supreme Court in its judgment in State of West Bengal and others-Vs- The Committee for protection of Democratic Rights, West Bengal and others reported in 2010(2) Scale 467 held that Article 226 of the Constitution of India can be exercised for enforcing any legal right conferred by a statute and it is further held that under Article 226 of the constitution of India, the High Court has got more wider power than the Honorable Supreme Court..

- 6) The financial reforms initiated in early 90 made a paradigm shift in the Indian Banking Industries and a new chapter in the lift history of banking History of India started new chapter after Narasiham Committee report. The landmark judgment of the Apex Court delivered in Mardia Chemicals Ltd. Etc. versus Union of India and others etc. etc. transferred Case no 9295 of 2002 (2004(7) SRJ 239) dealt with the problem of appeal under the Section 17(2) of SARACI Act 2002 its constitutional validity and it was held virus and Articles 14 of the Constitution. The Hon'ble Apex Court held that Section 13(2) and section 13(4) requires the creditor to communicate the reasons for not accepting the objections.
- 7) It is observed that, the landmark judgment of the Apex Court delivered in Mardia Chemicals Ltd. Etc. versus Union of India and others etc. etc. transferred Case no 9295 of 2002 (2004(7) SRJ 239) dealt with the problem of appeal under the Section 17(2) of SARACI Act 2002 in respect of its constitutional validity and it was held virus and Articles 14 of the Constitution. The Hon'ble Apex Court held that Section 13(2) and section 13(4) requires the creditor to communicate the reasons for not accepting the objection.
- 8) Study revealed that, inactive banks' personnel, their negative and impractical attitude and judiciary decisions, strictly relying on the provisions than decisions and some habitual defaulters hand in gloves are the hurdles in settlement of NPAs cases.
- 9) It is observed that, despite having a clear case, the aggrieved may hesitate to approach the High Court under Article 226 or 227 of Constitution of India looking at the 'Principle of availability of alternative remedy, however, the Hon'ble High Court has dealt with the issue elaborately in the judgment under reference.

- 10) It has been observed that in many matters banks are not seen maintaining statement of account as per the rules and regulations and norms of RBI. If the loans are disbursed as per the norms, circulars of RBI, then 90 percent industries which are shut down can be again reconstructed or they can restart their business.
- 11) Our culture doesn't allow us to dupe the loan. The culture which says without repayment of loan one will not get Moksha.. Our cultural values and ethics tell the concept of pious obligation. As we know at the time of Pind-dan whatever was remained to do by the deceased is promised to be fulfilled by his / her son / daughter. So there is no such tendency of our Indians to dupe the loan.
- 12) Researcher is of the opinion that, there is a need of some amendments in the Act so that spirit of nationalization and social justice will be protected. One has to see that willful defaulters will not escape and honest borrowers will be given justice. Instead of DRT at each district level there could be a special court hearing / fast track courts to handle the NPAs matters. However, experience of Enron, World Com, Xerox, Global Crossing, Mallya do not give much heed to banks and courts in India.
- 13) Interview further revealed that in most of the cases advocates by this or that way try to linger the proceeding by way of various tactics. Researcher aware of her limitations is unable to disclose certain stories behind curtain. She only can suggest a time bound program and strict observation of the Securitization Act and Apex Court's Directions.
- 14) When researcher inquired about the recovery through sales in auction, it was told that sale in auction is a mockery of procedure. There is a vicious circle in which right from the DRT

office to the ultimate purchaser are involved. It was told that as soon as auction is declared it is smelled by shrewd businessmen, property dealers, contractors, builders and politicians along with some advocates and this is the reason why many a times properties sold out at a throwaway price. However, in some judicial decisions such sales have been revoked. It is also observed that in this whole chain there are some honest people but they are cornered and have to face consequences for trying to break this circle.

- 15) It is observed that, in this chain such people are involved that no one can go; dare to go against them. A national level chain is involved and no one can go against this system or break the vicious circle and in this way the very purpose of recovery procedure is defeated.
- 16) Researcher observed that even if DRT passes some order the same is challenged in the DRAT and in this process again 4 to 5 years are lost. After DRAT, the same is challenged in High Court and subsequently in the Supreme Court. In these tactics which are adopted deliberately by the shrewd borrowers; a period of 10 to 15 years is lost and when final order is passed that time market value of the borrowed money goes down because by that time property prices are shoot up. Even after passing final order OTS settlement is arranged at some adjusted amount waiving interest and other charges like penal interest etc., and in this way advantage is ripped by some people hand in gloves with the bank officers.
- 17) Willful default refers to a situation where a borrower defaults on the repayment of a loan, despite having adequate resources. It is recommended that the names of top willful

defaulters of every bank be made public. It is noted that making such information publicly available would act as a deterrent for others.

- 18) It is revealed that almost all the respondents prefer settlement through court because thereby they enjoy relief by way of payment in installments and sometimes concession in the interest payment. From this observation it could be concluded that respondents intentionally try to settle the matter through one time settlement (OTS); because in compromise formula respondents enjoy relief in payment of debt and in interest.
- 19) It is revealed that in market honest borrowers have to suffer due to scornful comments by the relatives and traders and this put the whole family and respondents in a grief of sorrow and anarchy. It was also told that many a times due to depression a thought like committing suicide also come or crops in the mind of honest defaulters. In view of these observations it could be concluded that NPA problems have long ranging effect on the respondents and their families and goodwill or prestige lost in the society; hence it becomes a social problem.
- 20) There are four parties in the loan transaction, namely, lender or debtor, obligator, guarantor and their family members, worker, etc. When loan becomes NPA all these parties are affected. Since the work or business of company comes to complete halt.
- 21) It is revealed that medium and large scale businesses have more absorption ability to absorb the shock of loss because there are others too share this shock. However, SSI respondents do not have this ability since many a time such units are run by either individual proprietor or family proprietorship. In view of these observation it could be

concluded that NPAs and consequent to it other effects get severe blow to their feeling and emotion.

- 22) It is seen that, fluctuations in the business and other reasons have nothing to do with the creditors. It is so because their main aim is the recovery of loan amount. Out of 160 SSI respondents all said that their reputation is lost, followed by 70 medium size respondents out of 70 (i.e. 100 percent) and 60 large scale units respondents (about 90 percent) respondent in descending order. From this observation it could be concluded that, due to NPA and consequent to it, legal battle for recovery affect the reputation of business.
- 23) It would be revealing that, under the Securitization Act, banks should be able to recover their bad debts in three months time (with a notice period of 60 days). However, due to a large number of cases pending with judiciary, it takes close to year or more before banks can take possession of the property for auction, said the General Manager. Currently, Indian Bank has issued SARFAESI notices to about 10,000 bad loans amounting to Rs.1,000/- crore.
- 24) It is observed that the sluggish property market adding to the banks woes is the sluggish nature of the property market in the last two years, due to which banks were unable to recover the loans amount from such auctions. One and half years ago, a major bank could not find bidder at an auction for a property in Thyagaraja Nagar (T. Nagar), in the heart of Chennai, for Rs. 1.5 Crore. Today, the same property has been sold over Rs.4 Crore.
- 25) It is seen that industries as any a business activity them generate employment. Thousands of them and their families depend on the Employment Profile of the sample borrowers. It is

seen that, a small scale industry about 30,000 employees (4.7percentage) followed by 50,000 employees in (7.3 percent) in Medium scale and 7,00,000 (88 percent) employees in Large Scale Industries were working. It simply means, about 8 lakhs employees and their families were depending for their livelihood on these sample units. It is crystal clear that, if something goes wrong with these borrowers such as lock-outs, closure of business, declaration by the courts that a site is reserved for some project; then a large number of families and dependents have to suffer a lot. It could be concluded that employees and their families or dependents have to suffer a lot, if large scale business activities are stopped and it has a great impact on the society) Table 7 reveals that there were total 30,000 employees of different categories working in the sample borrower units of which 18,700 were male, 11,300 were percent female. Table 7 further reveals that a large number of class IV employees were working either on contract basis (5000) and daily basis (12,000). Enquiry reveals that class IV employees working on contract basis are appointed when there is seasonal requirement of employees and sometimes when an emergency is required. A large no. of employees male as well female are engaged in sweeping, cleaning, etc. on daily basis.

- 26) It is revealed that in SSI units about 44 (89 percentage) units were providing welfare activities for the employees and only 16 sample borrowers in 11percent seem indifferent. On this account Table further reveals that for medium size sample are concerned, 93 percentage units were providing welfare activities negligent percentage of 7percentage seems to be indifferent. In case of large scale industries 100 percent have to provide welfare for activities since it is mandatory. Industrial inspector enquiry reveals that

industrial inspector usually take the account of welfare activities by the units. Thus it could be concluded that when it becomes compulsory, business provide welfare activities otherwise not.

- 27) It is revealed that there is negligible small percentage of units SSI i.e. 10 percent about 20 percent medium size a units and 28 percent large units take insurance of their employees. It simply means that a large number of respondents who are reluctant to cover their employees by insurance. When enquired about this indifference attitude by them it was told that they do not feel it is necessary. It is further revealed that those sample units who say that they provide insurance cover to their employees are the business units where work with machinery is involved.
- 28) It is concluded that a negligible percentage of business units under study do not have such facilities or they do not care for such facilities. On being questioned it was told by the units that they do not care for such facilities or those who are running small shops or in trading activities. It was further told that, whenever regular employee faces such type of problem they help them by arranging treatment in hospital. From this it could be concluded that, small scale units do not have such medical facilities, since it is not affordable for them. It means larger the size of business, more is the ability to spend on such activities.
- 29) It is observed from the study that a very negligent percentage of respondents are providing pension and other retirement benefits to their employees. However, in case of large scale units, under studies; 43 percent of the respondents told that they have to provide such

facilities since its mandatory under the factory Act. It means where it is compulsion or mandate; then retirement benefits are provided since such units are duty bound.

- 30) Bonus includes one month salary, compulsory 8.33 percent and also Diwali bonus, festival bonus, encashment of leave, free traveling, middle meal to employees etc.
- 31) It is found that, 98 percent of the SSI units, 100 percent of medium and large percentage of large scale units provide such type of the additional benefits to their employees. Enquiry revealed that some time it is obligatory and many a times it is customary to make such additional payment to the employees. According to the respondents they consider it to reward the employees for their devotion and dedication to the unit. It provides incentives to the employees for hard work and large scale turn-over and get quality work done by the employees. Most of the respondents told the researcher that, they consider it as their moral responsibility.
- 32) It is revealed that almost all the respondent holdings used to provide recreation facilities to their employees. Recreation facilities include, social gatherings, get together, arranging festivals, competitions, trips for the employees and their families etc. Most of the respondents find that such activities help to create healthy atmosphere inside the campus.
- 33) The conclusion emerges that, borrowings play an important role in the total finance of the respondent units. Hence, it could be concluded that almost all respondents rely mainly on loan/borrowings for their finance.
- 34) It is amply proved that, almost all respondent under study prefer nationalized bank for taking loan as compared to private and co-op bank. It could be concluded that large scale

borrowing is made by the respondent from the nationalized bank and naturally nationalized banks are put to loss due to NPA.

- 35) It could be concluded from the analysis of the information sought that a significant amount of loan is spent on unproductive things that may be one of the reasons for the NPA.
- 36) Analysis of the data shows that about 20 percent amount is spent on purchasing machinery followed by purchase of land (10percent) construction of building (5percent) in descending order of value. It is also seen that about 70 percent of the amount is utilized as working capital (transportation, purchase of raw materials, taxes, wages, etc.)
- 37) It is revealed that, on an average 90 percent of respondents use to take loan for meeting out working expenses. It could be concluded that large amount of business units/respondents use to take loan for meetings out working expenses.
- 38) It is concluded that, if working expenses are not recovered properly, it puts business units in the state of shortage of funds on account of working capital. The shortage of funds means paucity of funds for production and marketing activity, putting the business in the loss due to fall in the working capital.
- 39) It is found that almost all respondents use to resort to overdraft for meeting out their urgent needs on current account and at the same time raise loan on the security of stock for meeting short term capital requirement.
- 40) It could be concluded that most of the respondents have enjoyed subsidy of this or that kind and those who have not enjoyed were very old respondents.

- 41) It is revealed that about 64.25 percent of the small scale units have enjoyed subsidy at about 80 percent on loan raised for building, machinery technology, and establishment
- 42) It is concluded that almost all of the respondents seems to have enjoyed subsidy at varying rates prevailing at the time of their establishments.
- 43) It is revealed that in case of small size business, large scale inflow of funds source is Govt. subsidy followed by sale of goods and services (35 percent inflow), 7 percent each from self earning and family members and source of own savings.
- 44) It is revealed that as far as large scale units are concerned, their main source of inflow of capital relates to the earnings from sales of goods and services followed by govt. subsidy and from self earnings and help from family members respectively.
- 45) It is concluded that the inflow of funds from sale of services and goods and govt. subsidy forms the main source of inflow of funds. It clearly indicates that a large part of inflow is raised from govt. service and sale of goods and services. It means any change in this inflow effects on the financial health respondent units.
- 46) It could be concluded that, fund flow analysis statement is prepared by all the respondents since it is precondition for project DEMO Loan rising.
- 47) It is found that majority of the respondents seems to be not in position to get inflow to cover expenses therefore near about fifty percent respondents have to face paucity of fund in their business.
- 48) It clearly shows that bad inflow is the main cause of being defaulter.

- 49) It is concluded that as soon as loan becomes NPA, lender send Demand notice to the borrower n/s 19/(2) requiring borrower to make the payment of installments due; sometimes borrower acknowledge the notice and send reply and some defaulters neglect the same.
- 50) Study reveals that a majority of respondent SSI units immediately acknowledge the demand notice by sending reply while medium and large scale units do not pay any heed to the notice and try to linger the matter in this or that way..
- 51) When creditor find indifferent attitude of the borrower at this or that pretext, matter is filed for recovery by the lender with DRT of that jurisdiction. Such matters either remains in DRT court till final hearings and decision by the court. In case if decision of DRT is not favored either of the party files appeals in DRAT being aggrieved of the DRTs decision. On being aggrieved by the decision of DRAT either of the aggrieved party files recovery process in the appeal ultimately in Supreme Court.
- 52) Study reveals that large number of matters was pending in the DRT court. It is also observed that large number of pending matters belong to the small scale units.
- 53) It is observed, that a large number of SSI units i.e. 130 units (82 percentage) file appeal in the High court and 30 (18 percentage) are seen reluctant. As regards to the Medium size respondents, about 40 (57 percent) said that, “yes” they approach to High Court against the order of the DRAT. (43 percent do not) . In case of large respondents about 50 (71 percent) approach to the High court and rest of them do not. Overall observation would reveal that in all 220 respondents 73 percent file appeal file appeal in the High court. It is revealing the

fact that in the majority of the cases appeal is filed in the High Court against the order or DRAT. When questioned it was told by the respondents that as per the advice of the advocate appeal is filled to prolong the matter or to keep matter lingering or just to kill time. It is also revealed that there are few genuine cases wherein there are reasonable grounds and in which certain Supreme Court Judgments prevail. On the perusal of his discussion and facts, it could be concluded that in majority cases aggrieved party file appeal against the order of DRAT and there are reasonable ground in some cases and in some cases it is intentionally done to take the advantage of judicial system to prolong the matter or keep matter lingering.

54) It is concluded that in case of SSI respondents in 100 cases (60 percent) respondent properties possession restored followed by medium size respondents 70 percent and 65 large scale respondent 93 percent respondents. Detailed study revealed that large scale business units settled the matter followed by medium size and SSI respondents in descending order of value. It is further revealed that large scale units make financial adjustments through number of measures followed by medium and SSI respondents in descending order of magnitude. It is opined that large scale units are in a better position to make settlement because of size of their business and engaging competitive advocates because of their mighty resources followed by medium size respondents. It is also found that small scale units because of their limited resources are unable to sustain or absorb the losses and cases of restoration are lost.

55) After considering this analysis of this observation and facts and circumstances, it could be concluded large number of respondents get restoration of possession through settlements

and in this respect large scale respondents are seen in better position followed by medium SSI and SSI units in descending order of value.

- 56) It is concluded that, in case of SSI units, medium scale units medium scale units and large scale units respondent settlement is caused by one time settlement. When enquired it was revealed that almost all the respondents prefer settlement through court because thereby they enjoy relief by way of payment in installments and sometimes concession in the interest payment from this observation it could be concluded that respondents intentionally try to settle the matter one time settlement because in compromise formula respondents enjoy relief in payment of debt and in interest.
- 57) Study depicts that about SSI 50 (93 percent) out of 160 said that “yes” they were emotionally depressed followed by 60 medium size respondents (85.71) out of 70 and large scale respondents 50 (71 percent) out of 70 respondents in descending order of value. Study of the total scenario reveals that out of the 300 respondents about 260 (86 percent) told that they were emotionally depressed.
- 58) Analysis of the respondent’s information about the state of filing of case in the court; revealed that once matter is made public because of NPA and prolonged Court battles disturbed their state of mind for no. of obvious reasons, such as family members have to suffer emotionally and total family is disturbed. In society their goodwill suffers a lot and it is another mental and psychological harassment. It is also told that in market their credit worthiness is lost and relatives and their attitude is very bad and have to suffer due to scornful comments and this put the whole family and respondents in a grief of sorrow and

anarchy. It was also told that many times a depressed like suicide also come or crops in the mind. In view of these observations it could be concluded that NPA problems have long ranging effect on the respondents and their families and goodwill or prestige lost in the eyes of society.

- 59) It is observed that, there are four parties in the loan transaction, namely, lender or debtor, obligator, guarantor and their family members, worker, etc. When loan becomes NPA all these parties are affected. Since the work or business of company comes to stand still. A question was put as to how respondent feel after getting demand notice u/s 13(2) of securitization Act. Feelings were recorded as; (a) upset, (b) Greatly upset (c) loose moral and (d) feel helpless and depressed.
- 60) Study reveals that as far as SSI unit are concerned at first all 160 respondents told that greatly upset followed 60 medium scale size units (92 percent approximately). Above 140 (94 percent) exclaimed that they were greatly upset having severity of depression. Similarly 140 sample respondents of sample unit told that it caused loosing the moral and confidence and (25 percent of 80) 20 SSI respondents found that they felt helpless and finding no other way of survival. It is further reveals that these feelings are not much severing in case of medium scale and large scale units. Enquiry revealed that medium and large scale businesses are in better position to absorb the shock of loss because there are others to share this shock and SSI respondents do not have this ability since many a times such units are run by either individual proprietor or family proprietorship. In view of these observation it could be concluded that NPAs and consequent to it other effects get severe blow to their feeling and emotion.

- 61) A loan is asset for a bank and liability for debtors. It is found that, in the whole process of NPA and legal battle; reputation of their business is lost. Majority of respondents told that majority of them have lost reputation and got set back to their goodwill or reputation and therefore they could not raise capital. Fluctuations in the business and other reasons have nothing to do with the creditors. Because, their main aim is to recover loan outstanding. Out of 160 SSI respondents all said that their reputation is lost, followed by 70 medium size respondents out of 70 (i.e. 100 percent) and 60 large scale units respondents (about 86 percent) respondent in descending order. From this observation it could be concluded that NPA and consequent to it legal battle to recovery affect the reputation of business.
- 62) Study reveals that out of 160 small scale units respondents 100 (62 percent approx) said that it was worst and 50 respondents (22 percent) said that effect was very bad. As far as medium size respondent is concerned out of 70 respondent 60 (85 percent approx) said that effect was worst and in case of large scale units out of 70 respondents 65 (86 percent) said that it has suffered worst. The study of the overall respondents response reveal that affect of loss of goodwill (i.e. out of 300 total sample about 225) respondents (75 percent) were of the opinion that effect of NPAs was worst putting their business in peril. It could be concluded from these observations, that loss of goodwill has the worst effect on the survival of the business of the respondents.
- 63) It is concluded that defaulters' lack of experience and exposure, mismanagement of funds, political influence, lack of research and development, vagabond spending on unnecessary items and non-use of mind while getting loan, defective proposal, false valuation of security, over leverage, absence of procedure, neglecting RBI Mandatory guidelines,

existence of competition, officers personal interest in borrower, wrong selection of guarantor are the immaterial causes of NPA putting client in trouble. Since the reasons explained as above calculated mean is less than expected mean. In simple words these are the reasons which are not significant causing NPA from the point of view of clients.

- 64) Experts interview revealed that many occasion Securitization Act is invoked to put the properties of defaulted borrower for sale by the vested interested persons and in that case there is no independent judicial mechanism to grant justice to the borrower in Securitization Act because it is only a procedural law.
- 65) Securitization Act has given wide powers to Securitization and Reconstruction Companies to take over the assets of the borrowers for the recovery of loans and similar powers are also given to the banks and financial institutions. In this respect no care is taken to see whether the Securitization Company or financial institution is competent to allow the business run. It is so because they take interest only in recovering the loan but never give helping hands to the borrower and reconstruction of the loan. There is a need of rehabilitation either by supporting the borrower or like China, Japan; Korea government should undertake the responsibility of financing such type of NPAs.
- 66) It is observed that in certain cases taking the recourse of Securitization Act for the reasons beyond the control of businessmen or factory owner, possession is taken by the bankers / reconstruction companies without any application of mind and the whole activities of the business was put to halt at once by throwing many jobless and making the owner of the factory or business without shelter, which is against our constitution. Madras High Court

Comprising Honorable Justice Ibrihim Kalifull and Justice Kirubakaran N.K. in Writ Petition No.15272 of 2009 has taken a serious view of procedural irregularities committed by the bank taking the shelter of SARFAESI Act and provided an instant relief to the aggrieved.

- 67) According to the experts the very purpose in the nationalization of the bank was to use this channel for the benefit of common man. In the earlier days before nationalization these big banks were being managed and owned by the big business magnets like Tata, Birla, Singhanian, Kirloskar and others, who were managing, controlling and enjoying about more than 70 percent of the funds for their own business purposes and that's why they were reluctant to accept the idea of nationalization.
- 68) It is observed the SARFAESI Acts provisions are favorable to the big business houses and this could be evidence from the fact that no Tata, Birla, Bajaj could be brought in lime light for the recovery of enormous amount of loan and only small borrowers like, small traders, feriwalas, small scale industries they are victimized. According to him there is a need to have a Nelson's eye on these transactions by the judiciary. It has been observed that many a times bank make nominal payment of interest amount on the loan to show that loan has not become NPA to avoid provisions of Limitation Act. By this Act of Bank, try to evade the provisions of Limitation Act. This Act of escapism is a crime. Judiciary should take note of such tactics.
- 69) It is concluded that lender does not receive market return on their capital. Depositors do not receive return market interest, non performing loans epitomize bad investment, non

performing loans spill over the banking system while making recovery of loan the concessions enjoyed by the defaulters is totally neglected, bank recovery officers play unhealthy tactics, habitual defaulters create hurdles in the way of recovery, and big business houses are the main defaulters causing NPA. Thus it is a socio economic problem and great loss to the country' economy.” This supports the conclusion drawn in Part I, II, and III.

- 70) Asset is considered resource; controlled by enterprises as a result of past events from which future economic benefits are expected to flow to the enterprises. For the speedy recovery of loans DRT Act, 1993 and subsequently Securitization Act, 2002 were enacted to bypass a time consuming procedure of Civil Courts and Section 69 and 69-A of the Transfer of Property Act, however after carrying pros and cons of the Securitization Act; its provisions study of various cases; interview with the advocates, borrowers and lenders it has been seen that it violates the spirit of Article 50 of the Constitution and also Article (14). It is also seen that all the provisions of the Act helps the financial institutions and no care is taken of the honest borrowers and their guarantors grievances. In view of this researcher has tried to verify the objectives and relevant hypothesis and it is concluded that the very purpose of the enactment of Securitization Act is not served as per expectations.
- 71) In view of this discussion it is concluded that, Hypotheses No.H.1., 1, H.1.2, H.1.3, H.1.4 have been accepted and H.5, H.1.6 and H.1.7 have been rejected.
- 72) Study reveals that debtors' (defaulters') lack of experience and exposure, mismanagement of funds, political influence, lack of research and development, vagabonds spending on

unnecessary items and non application of mind while getting loan, defective proposal, false valuation of security, over leverage, absence of procedure, neglecting RBI Mandatory guidelines, existence of competition, officers personal interest in borrower, wrong selection of guarantor are the immaterial causes of NPA putting borrowers in trouble. Since the reasons explained as above calculated mean is less than expected mean. In simple words these are the reasons which are not significant causing NPA from the point of view of clients.

- 73) Feedback from borrowers show that point 2 (heavy borrowings from outside resources at exorbitant rate, point 3 (delay in disbursement), point 5 (slow down in the business, point 9 (recessionary trends, point 12 (lack of proper planning and delaying sanction of loan and point 22 (uncertain government policies).
- 74) According to the respondent borrowers, major causes of the high NPA or causing trouble in the payment of loan are that, they have to resort to heavy borrowings from outside sources at the exorbitant cost of raising margin money from outside sources because delay in disbursement of loan (average 4.75), similarly other reasons as propounded by the respondents; is slow down in business (Average 4.49), unexpected and advertisement development in external environment, recessionary trend in the market, lack of properly planning in sanction of loan by the banks and uncertain changes in the government policy as regards to the supply of raw material VAT and other restrictions. Thus it could be said that according to clients delay in the disbursement of loan, slowdown in the business expected changes in the global level, recessionary trend and non-application of mind by the

bankers in the sanction of loan along with uncertain change in the government policy are the major causes of NPAs.

- 75) Study reveals that, point 1 (lack of owners stake) point 2 (heavy borrowings by borrowers from other sources by private traders, owners, relatives wherein rate of interest is very high, point 3 (delay in disbursement of loan), point no.6 (mismanagement funds by bank), point 12 (lack of proper planning in sanctioning loan) are the significant causes of NPA or non recovery of loan.
- 76) Study of the opinions of experts and borrowers and bank officers reveal that they defer in stating the causes of amount becoming NPA for example according to bank and the advocates lack of owners stake is the immaterial factor responsible for NPA whereas it is the major cause according to the banks. As regards to heavy borrowing from outside are the major causes of NPA according to bank officers and borrowers. In respect of delay in disbursement of loan bank officers and clients and advocates agreed and it is one of the major reasons according to them. The fourth cause i.e. lack of experience is not much significance from all the three parties point of view. Slow down in the business is the major cause according to clients, however banks do not agree to this and same is the opinion of advocates.
- 77) It is conclude that, mismanagement of the funds has nothing to do with the cause of NPA according to clients and advocates but it is one of the major causes told by bank officers. Unexpected and adverse environment is the one of the major cause according to clients and to some extent supported by the advocates but according to banks this is not the major

reason. Recessionary trends causes adversely on the repayment capacity of the borrowers and according to clients it is the major cause (mean 4.80). To some extent bank also support this cause, but advocates disagree.

- 78) Study reveals that According to bank officer's vagabond spending is the root cause of NPA whereas it has nothing to do with NPA according to clients and experts. Lack of proper planning in sanction of loan is supposed to be the major cause according to bank officers, legal experts and the clients. Absence of care taken at the time of disbursement of loan is the main cause according to advocates but do not supported by clients and bank officers. In respect of uncertain changes in the government policy is very significant cause of NPA according to bank officers, experts and clients.
- 79) This discussion reveals the fact that bank officers do not agree on certain points in which they could be held responsible for example; lack of experience and exposure, slowdown in business, political interference, no care taken at the time of granting loan, wrong selection of borrowers and wrong valuation of security, over leverage of existing borrowers, non-following the mandatory directives of the RBI, personal interest of the officers in granting loan, wrong selection of the guarantor and his credibility are not the causes responsible for NPAs. Researcher feels that it is but natural that bank officers will never accept such type of the allegations which are likely to go against them in the whole loan transaction. In the similar way in majority of the cases client will not accept in which they are responsible for default e.g. vagabond spending, political influence, lack of experience, mismanagement of fund because these are the reasons for which clients themselves are responsible. As regards to the views expressed by the advocates in certain cases advocates agree with their clients

and in some respect with the bank officers e.g. cause such as delay in disbursement of loan, mismanagement of the funds by the borrowers and uncertain changes in the government policy. This is but obvious that the bank officers as against the client and their advocates cannot have agreement on the points unfavorable to them. After studying and inquiry, researcher came to the conclusion that in majority of the cases delay in the disbursement of loan and mismanagement of the funds are some of the major causes for becoming the account NPA. Similarly bank officers interest in some clients and uncertain changes in the government policy are the other reasons responsible for amount becoming NPA.

80) After having a detailed interview with borrowers, creditors and banks it is revealed that whatever the cause of NPA may be following remedial steps should be taken to provide control on NPAS: by way of controlling and preventing funds diversion by the promoters, scrutinizing the level of inventories / receivables at point of assessment of working capital, Careful watch on the warning signals; non-payment of quarterly interest, dishonor of cheques etc., introduction of effective inspection system, proper internal control system to check loan transaction, introducing legal audit of the loaning transaction, making proper provisions for NPA of the bank as per the directives of RBI, re-phasing unpaid loan *installments. There is a need to strengthen the banks by providing finance. America's example in protecting Lehman Brothers by infusing finance government and getting rid of recessesion* is well known.

81) According to the advocates interview it is opined that the very principle of law is violated because when borrowers raises some objection for some credit or debit entries the bankers may accept or may not and if bank rejects it is considered that it is correct. No chance is

given to the debtor / guarantor to have any hearing and it is against the constitutional procedure and violation of constitutional provisions. It is also revealed that there are number of unwarranted debit entries and no one can challenging such entries e.g. unwarranted debts entries, penal entries though the RBI vide Circular No. 72 has strictly warned the bankers not to charge penal interest unless and until such a situation.

- 82) Experts' interview revealed that on many occasion Securitization Act is invoked to put the properties of defaulted borrower for sale by the vested interested persons and in that case there is no independent judicial mechanism to grant justice to the borrower in Securitization Act because it is only a procedural law.
- 83) Securitization Act has given wide powers to Securitization and Reconstruction Companies to take over the assets of the borrowers for the recovery of loans and similar powers are also given to the banks and financial institutions. In this respect no care is taken to see whether the Securitization Company or financial institution is competent to allow the business run. It is so because they take interest only in recovering the loan but never extended helping hand to the borrower and reconstruction of the loan. There is a need of rehabilitation either by supporting the borrower or like China, Japan; Korea government should undertake the responsibility of financing such type of NPAs.
- 84) In certain cases taking the recourse of Securitization Act for the reasons beyond the control of businessmen or factory owner possession is taken by the bankers / reconstruction companies without any application of mind and the whole activities of the business was stand still by throwing many jobless and making the owner of the factory or business

without shelter, which is against our constitution. Madras High Court Comprising Honorable Justice Ibrihim Kalifull and Justice Kirubakaran N.K. in Writ Petition No.15272 of 2009 has taken a serious view of procedural irregularities committed by the bank taking the shelter of SARFAESI Act and provided an instant relief to the aggrieved.

- 85) One advocate having a practice of more than 25 years has another story to tell. According to him the very purpose in the nationalization of the bank was to use this channel for the benefit of common man. In the earlier days before nationalization these big banks were being managed and owned by the big business magnets like Tata, Birla, Singhania, Kirloskar and others, who were managing, controlling and enjoying about more than 70 percent of the funds for their own business purposes and that's why they were reluctant to accept the idea of nationalization. However, the then Prime Minister Mrs. Indira Gandhi took a staunch view and declared the nationalization of the banks in 1969 and open the doors for small traders, agriculturists, poor farmers, feriwalas and as such. This was never liked by the big businessmen and this is why by various tactics they tried to bring hurdles in the way of development and channelizing the financial resources to the common man. Enactment of the SARFAESI Act provisions are favorable to the big business houses and this could be evidence from the fact that no Tata, Birla, Bajaj could be brought in lime light for the recovery of enormous amount of loan and only small borrowers like, small traders, feriwalas, small scale industries they are victimized. According to him there is a need to have a Nelson's eye on these transactions by the judiciary.
- 86) It has been observed that many times bank make nominal payment of interest amount on the loan just to show that loan has not become NPA to avoid provisions of Limitation Act.

By this act of banks, they try to evade the provisions of Limitation Act. This act of escapism is a crime. Judiciary should take note of such tactics.

- 87) It has been concluded that, as a result of NPAs, “lender does not receive market return on their capital deposits, do not receive return on market interest, non performing loans epitomize bad investment, non performing loans spill over the banking system while making recovery of loan the concessions enjoyed by the defaulters are totally neglected, bank recovery officers play unhealthy tactics.
- 94) It is observed that, habitual defaulters create hurdles in the way of recovery, big business houses are the main defaulters causing NPA and a case of Malya and Sahara group could be cited in this regards. Thus it is a socio economic problem and great loss to the country’s economy.” This supports the conclusion drawn.
- 95) Asset is considered resource controlled by enterprises as a result of past events from which future economic benefits are expected to flow to the enterprises. Assets generating periodical income are called performing assets. For the speedy recovery of loans DRT Act, 1993 and subsequently Securitization Act, 2002 were enacted to bypass a time consuming procedure of Civil Courts and Section 69 and 69-A of the Transfer of Property Act, however after carrying pros and cons of the Securitization Act its provisions various cases interview with the Advocates, clients it was seen that it violates the spirit of Article 50 of the Constitution and also Article 14.
- 96) It is also seen that all the provisions of the Act helps the financial institutions only and no care is taken of the honest borrowers and their guarantors grievances. In view of this

researcher has tried to verify the objectives and relevant hypothesis and it is concluded that the very purpose of the enactment of Securitization Act is not served as per expectations.

97) In view of this discussion it is concluded that, Hypotheses No.H.1.1, H.1.2, H.1.3, H.1.4 have been accepted and H.5, H.1.6 and H.1.7 have been rejected.

98) The study has been completed by considering the specific objectives specified in Chapter – 1 and in consonance of objectives hypothesis were developed. It is pertinent to note that the purpose of the study has been served totally by taking up theoretical information, analytical data information revealed through interviews of clients, advocates, bank officers and judges and the null hypotheses have been rejected and researchers hypotheses is accepted revealing the defeat of very purpose of the enactment of the Securitization Act. Researcher observed that whatever the outcome of the recovery may be everything is considered in the favor of creditor for recovery but no one has taken care of the benefits of subsidiary received by the defaulter from the government under various schemes.

SUGGESTIONS AND RECOMMENDATIONS

This part includes general suggestions, specific suggestions followed by general recommendations and specific recommendations.

5.6 General Suggestions

In the light of study undertaken by the researcher general suggestions emerges as under:

1. Govt. of India should declare the cut in certain subsidiaries since, these factors are going to put the banking sector in trouble resulting into the rise in NPAs level in the coming years to the extent of 30 percent or more.
2. There is need of providing necessary guidelines by the Finance ministry of Central Government of India and Reserve Bank of India to direct every effort to bring down and check the growth of NPAs because it has a glaring effect on the lending capacity of financial institutions which may restrict flow of funds in the money market to be availed for financial marketing, manufacturing, education and social services and related activities.
3. It is suggested to the Government of India to amend the Securitization Act since section 19 of the SARFAESI Act does not empower the DRT to consider the claim of borrower/guarantor. This point was dealt in by the Apex Court in Nahar Industrial Enterprises Ltd. Vs. Hong Kong and Shanghai Banking case; Apex Court has held that borrower's, guarantors cannot be entertained by DRT though there is provision. It is suggested that Government of India should make necessary changes in this regard.
4. It is suggested that Securitization Act be amended to provide necessary right to the borrower to make appeal Without the help of Court or Tribunal creditor has power to recover loan u/s 69 of Transfer of Property Act because one, must have a decree or Court order to bypass this. SARFAESI Act, 2002 was enacted u/s 13 of the SARFAESI Act when notice u/s 13 (2) is issued borrower has to give reply within 7 days or so. It is not binding on the bank to accept the objections and there is no provision in the Act to challenge the validity of bonafide

intention of the bank or financial institutions. It means bank acts as complainants as well as Judge also.

5. It is suggested that DRT be empowered to entertain the grievances of borrowers and co-obligators since, at present DRT has no jurisdiction to entertain the grievance of the borrower or guarantor and in this way the very principle of Natural Justice “i.e. fair opportunity should be given to each party” is totally defeated. (Article 50) Separation of Judiciary from executive (violation of Art 50 of the Constitution of India).

7. It is suggested that at the time of recovery of loan besides loan and interest on it care should be taken to recover the benefits (cash and in kind) enjoyed by the defaulters; especially those who are the willful defaulters. Researcher has observed that, whatever the outcome of the recovery may be; everything is considered in the favor of creditor for recovery but no one has taken care of the benefits of subsidiary received by the defaulter from the Government under various schemes Banks money is recovered even tax dues are not recovered but the subsidiary and concessions in terms of finance by the State and Central Government under various schemes enjoyed by the defaulters has been not considered by any authority up till now.

8. It is suggested that willful defaulters will not be allowed to escape from the Government’s obligation. In this context researcher herein surprisingly observed that, there are certain borrowers who are the willful defaulters who enjoyed subsidy from Government and do not pay the creditors. Sometimes something is recovered by the Creditor but subsidiary enjoyed by such defaulter is not at all recovered no attention have been given to this aspect. It is the

Society's money. Subsidy is given as a matter of policy as an incentive to start the industry and to develop the industry in the hope that it would help industrialization, generate employment and ultimately society would be benefitted. However, this factor has been completely neglected. Researcher came into strange finding that such type of the debtors glove in hand with creditors and government officers observes scruple, take undue advantage of the facilities giving birth to a new scam.

9. It is need of day that Indian should develop moral and observe ethics in the light of international scenario since we are becoming the power on the globe. Indian economy has experienced romantic development in the technology, railways, steamship, mobiles, aviation nuclear weapons and they are playing due part/ role in our life. One of the most important quarters is the sphere of banking. Indian banking Law is based to a vast extent upon the English Banking Law and review of main Landmarks of the history of banking Legislation in England can substantiate this statement.
11. In the course of time, Indian banking system has undergone many changes considering these developments and international scenario there is a need of some financial reforms to strengthen the banking sector in India giving necessary powers to Reserve Bank of India in respect of the emerging financial issues such as demonetization, introduction of GST.
12. It is suggested that Central Government should pay necessary attention to financial sectors and issue instructions and directions; to follow necessary guidelines to various banking institutions and improve balance sheet Government of India imposed "Social Control" on banks by incorporating certain provisions, to ensure that the bank advances are not confined

to large scale industries and big business houses but it to be directed in due proportion to important sectors like agriculture, small scale industries and exports .

13. It is suggested to provide necessary control through a special agency on the loan proposal of big business magnets without any mercy. Studies have revealed that one of the main causes of NPA in the Banking Sector is the direct credit system (DCS) under which commercial Banks are directed to provide at least their yearly advance quota to private sector, e.g., agriculture small scale industry and other segments like small business, retail trade, construction of small roads and water transport operation and professional and self employees persons and educational loans.
14. It is suggested to do needful in regards to the possession of defaulters' property as against the loan amount by the bank and DRTs. Care be taken to see the possibility of survival of the business to rehabilitate the unit before initiating court procedure.
15. It is suggested that the lawmakers should pay necessary attention to the activities of lenders so that business and economical activities and consequent to it social welfare of the society will not suffer. As have been observed when bank takes possession, "activities of the companies, unit, and factory come to a standstill throwing number of the employees jobless. The whole family of jobless employees has to suffer a lot for no fault of them. Many a times even residential house belongings and whole family owner of factory have been sealed and thrown on road without residence. It is suggested to the financial authorities to make it mandatory to the audit of amount utilized by the borrowers in the first two months and at the end of every financial year. According to the RBI report the defaulter companies diverted

working capital funds to wholly-owned overseas subsidiaries as investments and loans. The company never exported commodities despite export finance availed by them from consortium member banks(Case of Sanjay Jain and Raju Jain availed funds from Punjab National Bank, whom Bank declared willful defaulter).

16. It is suggested that Government of India should ask the financial institutions about assets which are lying idles in their possession. Government should take necessary steps in respect of requiring recognition, recapitalization, resolution and reforms.
17. It is suggested to the financial authorities to communicate the reasons in details for the rejections of their submissions by the bank. Section 13(2) and section 13(4) of Securitization Act requires the creditor to communicate the reasons for not accepting the objections.

5.7 Specific Suggestions

1. It is necessary to have a special mechanism to provide vigilance on the activity of the inactive bank personnel, their negative and impractical attitude and judiciary decisions strictly relying on provisions than decisions and some habitual defaulters hand in gloves do not indulge in conspiracy in the settlement of NPAs.
2. Section 19 of the SARFAESI Act does not empower the DRT to consider the claim of borrower / guarantor as contemplated in Nahar Industries Vs. Hong Kong and Shanghai Banking Corporation reported in 2009 (8) SCC 646case.In this case Apex Courts' has held that borrowers guarantors cannot be entertained by DRT though there is provision and it is to be strictly observed.

3. It is suggested that borrower be given every opportunity of being heard and his grievances be considered in the sale of acquired property.
4. As per Article 50 of the Constitution, Judiciary is separated from executive. Here as per Securitization Act, Bank is taking action & no mechanism is provided before taking such a drastic action of possession. So before taking steps for possession as provided in sec 13(a), of Securitization Act, some mechanism of judiciary is required to be provided.
5. It is suggested to provide control on the Gloomng NPAs. It is seen that in the year 2016-17 there is increasing trend in the Net NPA in net advances for all the banks in India and it is the effect of global scenario. Tt is feared that NPA will increase further in the coming years.
6. It is suggested to the competent authority to do needful in order to provide adequate number of judges and required number of other staff. Study of the DRT Mumbai and Aurangabad office reveals that there is a temporary staff and shortage of staff at all level and this has adversely affected the disbursement of applications.
7. It is suggested that due care should be taken to protect the interest of small and medium size business considering their contribution in the economic and social context. It is also revealed that in most of the cases big business houses like Bajaj, Mallya, Jain are not prosecuted and they tried to linger the process by taking the advantage of judicial process. sTherefore it is suggested that necessary care be taken to see that no one will take the undue advantage of the judicial process.
8. High interest rates and lower economic growth has impacted the repayment capacities of borrowers; pushing up the NPAs of banks to the tune of more than Rs. 1.30 lakh crore during

the last 9 months of 2014-2015. It is suggested to have judicious mind in handling the NPA matters so that honest borrower will not suffer and willful defaulter will be penalized and will not escape.

9. The study has been completed by considering the specific objectives specified in Chapter – 1 and in consonance of objectives hypothesis were developed. It is pertinent to note that the purpose of the study has been served totally by taking up theoretical information, analytical data information revealed through interviews of clients, advocates, bank officers and judges and the null hypotheses have been rejected and researchers hypotheses is accepted revealing the defeat of very purpose of the enactment of the Securitization Act Researcher observed that whatever the outcome of the recovery may be everything is considered in the favor of creditor for recovery but no one has taken care of the benefits of subsidiary received by the defaulter from the government under various schemes.
10. Subsidy and concessions in terms of finance by the State and Central Government under various schemes have been not considered by related authority. It is observed that there are certain borrowers who are the willful defaulter and enjoy subsidy from government but do not pay the creditors.
11. Subsidy is given as a matter of policy for the start the industry and to develop the industry in the hope that it will help industrialization, generate employment and ultimately society will be benefitted. Care should be taken to see that such type of the debtors gloves in hand with creditors and government officers who observe scruples; will not take undue advantage of the facilities and gives births to a new scam.

12. It is revealed from the study of the court matters that the creditors used to take undue advantage of legal provisions and thereby co-obligators or the guarantors are prosecuted for the recovery of loan. It is done deliberately and sometimes goes in hand with the creditor. In such cases creditor enjoy relief and obligators are put under pressure of repayment. It is suggested that necessary amendment be made in the Indian Contract Act.
13. Insolvency process is time consuming and it is a major hurdle in the speedy recovery of NPAs.
14. It is suggested to provide check on the delaying tactics by the relevant parties in the matter of recovery cases. For this purpose recent Insolvency and Bankruptcy Code Passed by the Parliament on May5, 2016 and pending in the Upper House be passed urgently.

5.8 General Recommendations

In view of the observations it is specifically recommended that:

1. It is recommended that while granting possession of the security to the lending bank a special judicial committee's no objection certificate should be made mandatory. As per Article 50 of the Constitution, Judiciary is separated from executive. Here as per Securitization Act, Bank is taking action no mechanism has been provided before taking such a drastic action of possession. So before taking steps for possession as provided in sec 13(a), of Securitization Act, some mechanism of judiciary is required to be provided.
2. It is recommended that DRT should be empowered u/s 17 of the Act to verify as to whether the presentable procedure while taking action under Securitization Act is followed or not, then action can be taken down. However, if there are disputed facts then DRT has no jurisdiction to go into disputed facts. So DRT should be empowered to see calculations of applicability of prudential norms by R.B.I & follow various circulars.
3. In case of subsidized units an independent mechanisms is to be provided so as to secure the recovery of the subsidy engaged by Unit against whom action is taken.
4. Some borrowers avail the loan facility for subsidy purpose only. So as to protect the public money independent mechanism should be provided.

In view of this it is recommended to take into account the subsidy enjoyed by the defaulter concerned. For this purpose special enactment must be made in the Act so that no one will escape from this liability because it is a public money.

5. It is recommended that if bank is taking steps to homeless the borrower, then in that eventuality government should provide the list of persons those are in need of the residential houses and only those persons should be allowed to take part in the auction; who are having no residential house at all. From such a list only the persons in the list should be held eligible for taking part in auction. This will bar the brokers/dealers builders from taking part in auction. If this is done it will provide check on the activities of the parties purchasing such properties for business purposes. This will also help, common man to get house property at cheaper rate and it is a social moral duty of the State.
6. It is recommended that criminal action should be initiated under IPC against the defaulters and persons involved especially against the willful defaulters. It is also suggested that there should be one, 'fact finding cell', to make the scrutiny of such transactions and the persons involved. There has been a news in the media on 18th August 2016 that a borrower has taken and defaulted three leading banks in Mumbai who had taken loan on the security of single property.
7. Banks should use whatever powers have been given by the RBI in order to recover bad debts, for instance; strategic debt restructuring (SDR), giving publicity to the willful defaulters etc.
8. There is a need of improvement in the credit appraisal capacity of banks. For this purpose banks should be directed to make appointment of the necessary and competent manpower. In view of this it is recommended that banks should take help of professionals.

9. It is recommended that banks should adopt flexibility in the recovery of bad loans, because thereby genuine defaulters would be given chance to overcome the situation and would be able to sustain.
10. It is recommended that there is a need of some amendment as regards to the recovery steps so that in the first instant, principal borrower should be held responsible for the repayment of loan and after exhausting all resources of principal borrower if dues still remains then subsequently guarantor be prosecuted for the remaining unpaid dues. This will control collusion of main borrower with the creditor defaulter.
11. It is recommended that necessary amendments in the Securitization Reconstruction of Financial Assets & Enforcement of Securitization Act 2002 Act should be made for granting recognition to the secured commercial borrowings by the Indian Financial Institutions, as a secured debt and to some non-banking finance companies as a Qualified Institutional Buyers (QIBs).
12. While assigning the possession power to the Assets Reconstruction Company, such a company's competency as regards to the ability and experience to manage the business be verified. It is so because it has been observed that this part is remained neglected and as a result the very purpose of rehabilitation of the business unit is not served and most of the machineries and movables are sold at throw away price in the market. Sometimes it is done in collusion of the buyers and defaulters.

13. In order to provide control on such corrupt practices and to bring about transparency in the transactions, a standard process for selling the NPAs should be initiated. If required necessary amendment in the Act may be made.
14. Every Loan Proposal should be duly scrutinized as per the standard norms laid down by the RBI. It is recommended to make necessary provision for setting up Legal Audit of every proposal before finality of the Loan Proposal.
15. Tribunal should be empowered to appoint the special auditor to verify the claims of the lenders, check book entries, to ascertain financial irregularities if any and other relevant calculations by the claimants. It so because the recovery of loan amount requires calculation of interest on it, enormous bank entries, complicated accounting procedure, Income Tax statement and its calculations calculation of interest on it, enormous bank entries, complicated accounting procedure, needs qualified chartered accountants or professionals.

16. It is recommended that DRT should be given power to verify the sale deals of the Mortgaged properties and verify whether sale fetches proper price of the sold assets. There is a need to strict adherence to the loan administration process in order to provide vigilance on borrowers seeking access to multiple lenders, Margins and collaterals should be properly accounted for the regular accounting supervision.
17. It is recommended to creat internal control system like internal audit to provide the vigil on the activities of the officers involved in the loan sanction work.
18. The bad debt load has worsened and Greece has been back into recession and has been forced to impose capital controls, requiring banks to set aside more provisions against the bad loans and constraining them from funding the economy. In order to overcome this situation, Greece has introduced various rigorous measures to tackle this segment of impaired loan; like establishment of specialized court chambers for corporate, to engage professionals in insolvency administration, restructuring loans, to stricter screening in order to deter so called strategic defaulters from taking undue advantage of a home foreclosure protection law and increasing the number of judges to address the backlog of insolvency cases. It is recommended to do necessary homework in this regards and do needful.

5.9. Specific Recommendations

1. It is recommended that banks should adopt flexibility in the initiation of recovery process to safeguard the interest of honest defaulters so that they would get rejuvenated and overcome the situation.
2. There should be strictest control on the diversion of funds by the companies to their wholly owned subsidiaries and investment and loans. A special shell should be established under the control of Enforcement department (E.D.)
3. It is recommended that government should take necessary steps to recapitalize banks and incentivize them to rehabilitate stressed assets. In view of this RBI and government of India should take lesson from other countries and follow policy of Recognition, Recapitalization, Resolution and Reform. And rehabitalization.
4. It is recommended that government should sale of such assets those are no longer required to hold and utilize the proceeds to bring out burden of NPAs of the banks.
5. It is recommended that detailed scrutiny of the loan proposal be made at the sanctioning point only and the same should be signed by a special authority who should be held responsible for such loan transaction. Act of 1993 and subsequently Securitization Act, 2002 were passed to enable the financial institutions to have speedy recovery of their dues from the defaulters to bypass the time consuming procedure of Civil Court and Section 69 and 69-A of the Transfer of Property Act. However, study of various cases filed with DRTs opinion of advocates viewed that these provisions violated the spirit of Article 50 and Article 14 of the Constitution of India. In addition to this; it also seen from some bank top officers

interviewed, that with full knowledge, many a times due care is not taken while sanctioning of the loan and with knowledge deliberately no care is taken though clear symptoms of NPAs are seen.

6. It is recommended that a practical; view should be adopted while initiating the loan recovery process so that willful defaulters will be not spared and honest defaulter will be given chance to rehabilitate by allowing extension o time for installment payment.
7. It is recommended that, to tackle the segment of impaired loan and special efforts should be made by the government of India and RBI; like establishment of specialized court chambers for corporate, to engage professionals in insolvency administration, restructuring loans, to stricter screening in order to deter so called strategic defaulters from taking undue advantage of a home foreclosure protection law and increasing the number of judges to address the backlog of insolvency cases. This may be a right lesson for India to prevent such a situation.
8. As per Article 50 of the Constitution, Judiciary is separated from executive. Here as per Securitization Act, Bank is taking action & no mechanism is provided before taking such a drastic action of possession. In view of this it is recommended that, before taking steps for possession as provided in sec 13(a), of Securitization Act, some mechanism of judiciary should be provided.
9. DRT is empowered u/s 17 of the act to see whether the presentable procedure while taking action under Securitization Act is followed or not, then action can be taken down. However, if there are disputed facts then DRT has no jurisdiction to go into disputed facts. So it is

recommended that DRT should be empowered to see calculations of applicability of prudential norms by R.B.I and follow various circulars.

10. In case of subsidized units an independent mechanisms is to be provided so as to secure the recovery of the subsidy engaged by Unit against whom action is taken. This is because some unit's availing the loan facility for subsidy purpose only. So as to protect the public money it is recommended that an independent mechanism should be provided or a special department should establish for this purpose.
11. It is recommended that, if bank is taking steps to homeless the borrower, then in that eventuality government should provide the list of persons those are in need of the residential houses and only those persons should be allowed to take part in the auction who are having no residential house at all. From such a list only the persons in the list should be held eligible for taking part in auction. This will bar the brokers/dealers builders from taking part in auction. If this is done it will provide check on the activities of the parties purchasing such properties for business purposes. This will also help, common man to get house property at cheaper rate and it is a social moral duty of the State.
12. It is suggested that criminal action should be initiated under IPC against the defaulters and persons involved. It is also suggested that there should be one, 'fact finding cell', to make the scrutiny of such transactions and the persons involved.
13. It is recommended that banks should be asked to use whatever powers have been given by the RBI in order to recover bad debts, for instance; strategic debt restructuring (SDR), giving publicity to the willful defaulters etc.

14. There is a need of improvement in the credit appraisal capacity of banks. For this purpose banks should be directed to make appointment of the required manpower.
15. It is recommended that banks should adopt flexibility in the recovery of bad loans, because thereby genuine defaulters would be given chance to overcome the situation and would be able to sustain.
16. Study reveals that there is a need of some amendment as regards to the recovery steps so that in the first instant, principal borrower should be held responsible for the repayment of loan and after exacting all resources of principal borrower if dues still remains then subsequently guarantor be prosecuted for the remaining unpaid dues. This will control collusion of main borrower with the creditor defaulter.
17. It is recommended that, necessary amendments in the Securitization Reconstruction of Financial Assets & Enforcement of Security Act 2002 Act be made for granting recognition to the secured commercial borrowings by the Indian Financial Institutions, as a secured debt and to some non-banking finance companies as a Qualified Institutional Buyers (QLBs).
18. While assigning the possession power to the Assets Reconstruction Company, such a company's competency as regards to the ability and experience to manage the business be verified. It is so because it has been observed that this part is remained neglected and as a result the very purpose of rehabilitation of the business unit is not served and most of the machineries and movables are sold at throw away price in the market. Sometimes it is done in collusion of the buyers and defaulters.

19. In order to provide control on such corrupt practices and to bring about transparency in the transactions, a standard process for selling NPAs be initiated. If required necessary amendment in the Act may be made.
20. Every Loan Proposal should be duly scrutinized as per the standard norms laid down by the RBI. It is recommended to make necessary provision for setting up Legal Audit of every proposal before finality of the Loan Proposal.
21. Tribunal be empowered to appoint the special auditor to verify the claims of the lenders, check book entries, to ascertain financial irregularities if any and other relevant calculations by the claimants.
22. It is recommended that the DRTs should be given power to verify the sale deals of the mortgaged properties and verify whether sale fetches proper price of the sold assets. There is a need to strict adherence to the loan administration process in order to provide vigilance on borrowers seeking access to multiple lenders, Margins and collaterals should be properly accounted for the regular accounting supervision.
23. The bad debt load has worsened and Greece has been back into recession and has been forced to impose capital controls, requiring banks to set aside more provisions against the bad loans and constraining them from funding the economy. It is recommended to follow the steps adopted by Greece.
24. There should be strictest control on the diversion of funds by the companies to their wholly owned subsidiaries and investment and loans.

25. It is recommended, that government should take necessary steps to recapitalize banks and incentivize them to rehabilitate stressed assets. In view of this RBI and government of India should take lesson from other countries and follow policy of Recognition, Recapitalization, Resolution and Reform.
26. It is recommended that, banks' should be allowed to make sale of such assets those are no longer required to hold and allow them to ease the burden of NPAs.
27. There should be an independent machinery to assess the entry in the statement of account and interest of calculation made by the lending bank to check the statements of Accounts submitted by the lenders to the assist the DRT.
28. It is recommended that there should be a special machinery to observe misuse of auctions of the property in sale.
29. There is need of taking due care and precautions to see that the defaulter or relatives of the defaulter and politicians taking undue advantage and blackmailing of due process in the matter of recovery of loan.
30. There is need to amend Contract Act in respect of loan agreement and borrowers and guarantors' responsibilities in respect of the priority of loan repayment. It so because according to present law a creditor can sue the guarantor directly without exhausting the remedies against the borrowers to bring under legal liability in respect of discharge of loan and should not be allowed to escape from liability of payment of loan. This will provide check on the activities of shrewd defaulters who take undue advantage of the present of provision in the present Contract Act.

5.10 Implication of the Study

This research is carried out by the researcher with a view to analyze the socio economic impact of debt recovery problem in the light of judiciary decisions particularly since the inspection of SARFAESI Act, 2002.

This study has unfolded many untold stories related to the recovery problems and it is going to help the planners and social workers and researchers to concentrate their attention to control and check the scruples and undoing's of bank officers, recovery agents, willful defaulters, which ultimately help the society to control such activities. Even today Electronic Media can play key role to control such activities.

Mounting pressure of bad debts and loss assets has put Indian banking system in a crucial stage and concern and it is a global phenomenon. As per the directives of RBI an asset account viz. term loan/cash credit/overdraft/bills purchased or discounts is to be considered as nonperforming asset if it remains irregular or out of order for a period of one quarter or 180 days. The effects of NPAs are that it does not generate income. NPA requires certain provisions which ultimately results in further erosion of profits substantially. NPAs enhance administrative burden, legal and recovery cost, not only that but also borrowed resources are locked in NPAs. At the same time banks are bound to pay for the cost of maintenance of these firms, resulting in the negative spread: as a result of which the cost of poor quality loans is shifted to bank customers to higher advanced rate of interest. When loan becomes outstanding or bad debt, ultimately depositors have to suffer. It is public money and therefore has much more social consequences. Loan must be recovered at any cost and for that purpose legal remedy should be

the only answer. NPAs has two fold effect on the society Viz; on one hand loan becomes costly and at the same time depositors have to suffer due to cut in the rate of interest on their deposits. In such a case middle class people and especially pensioners are the worst sufferers. Banks and Financial institutions follow policy of caution in extending loan in the market and that affect many projects as well as industrial sector by way of making cut in the employment, limiting their activities and all these developments have direct impact on the society. Prior to 1993 the financial institutions had to resort to civil courts remedy for the recovery of dues. Study revealed that, the process of law guided by the code of Civil Procedure of 1908 was time consuming and did not suit to the demand of changing economy. It was noted by the Hon.Apex Court that, “the bar of jurisdiction of the civil court was thought to be necessary to avoid the lengthy legal process in realizing amount due. (Mardia chemical Ltd. vs. Union of India)It is reported that, due to lengthy process of law more than 15 lakh cases were pending in the courts and fund blocked in the litigation was about Rs. 5622 crore of public sector banks. Study revealed that, Public sector banks registered 90% of total of non-performing assets in 2013-2014.Total write-offs of loans made by the commercial banks in the last 5 years is about Rs.1,61,08 crore amounting to 1.27 percent of GDP in the near future. It is feared that there could be more write-offs in the near future. There is a need to take necessary steps to see that there would be no more write-offs in the near future. To overcome this situation Securitization Act was enacted. Many times while taking recourse of Section 14 of Securitization Act, at the time of physical possession of especially of dwelling house property female members of the defaulter use to create many hurdles and resist the entry of bank officers and judicial persons by abusing and attacking them

and obstruct the possession procedure. This is a serious issue and needful provision in the Act empowering the bank officers and judicial members is imperative to get rid of this situation.

This study is basically aimed at studying the socio-economic impact of debt recovery problems. The total study is qualitative in nature in which various core decisions, interview of court decisions, survey of defaulters, interview of bank officials, DRT judges have been made. For this purpose sample of 100 defaulters and 50 advocates, and 3 DRT judges were interviewed. Sample of 10 text cases were taken up for analysis. While analyzing the cases the break-up was made as gist of the case grounds of appeal, supporting judgment of higher court, decision of DRT and causes of appeal to DRAT/high court till the finality of decision have been discussed followed by researcher's observations. Without any prejudice researcher has taken due care to keep the study unbiased and representative in character. It is suggested that if needful is done in respect of the suggestions made herein, the very purpose of the enactment of Securitization Act and establishment of DRT will serve its purpose in the true spirit of socio economic benefit to the society.

5.12 Suggestions for further Research

Study reveals many untold problems connected with the topic of debt recovery problems and researcher feels that following projects can be of much utility to the society.

1. “Study of the debt recovery by the creditors and quantum of losses of statutory claims (various taxes, parts of subsidy enjoyed).”
2. “Study of the tendency of the borrowers not to repay the loans and to step controls such defaulter’s attitude.”
3. “Study of the efficiency of the SARFAESI Act.”
4. “Study of the working and practices of Securitization and Reconstruction Companies while recovery of dues with special reference to various Court Judgments to control malpractices by recovery agents.”

Researcher feels that there is a need of necessary amendments by the Parliament to take cognizance of the issues raised in this thesis.

5.13 Summary of Conclusions

Increasing NPAs have become a problem at the global level, however countries like China, Korea, Japan they have solved this problem by creating special mechanism. In China, Japan, Korea governments have taken the responsibility of rehabilitation of the business houses by giving guarantee to the bank However in India under Securitization Act, 2002, the job of recovery is entrusted to the Securitization Companies or other agencies and sometimes recovery by the institutions directly. In doing so main view taken by the creditors is to recover the amount

and no care is taken to see that the business goes continuing. Unfortunately there are many cases of symbolic possession and direct possession of the factory or business by the bankers and no care is taken to see the consequences of such type of action. In fact the industries are playing vital role in development of the economy of the nation, and against the said unit only a drastic action is taken. In this process the factory or the business is at once sealed throwing number of the employees on the road homeless and a sad part of it is that the owner of the factory who was once enjoying luxurious residence now is without home and it is against the spirit of constitution. Researcher feels that there is a need of necessary amendments by the Parliament to take cognizance of the issues raised in this thesis.

Recovery Act of 1993 and subsequently Securitization Act, 2002 were passed to enable the financial institutions to have speedy recovery of their dues from the defaulters to bypass the time consuming procedure of Civil Court and Section 69 and 69-A of the Transfer of Property Act. However, study of various cases filed with DRTs and opinion of advocates viewed that these provisions violated the spirit of Article 50 and Article 14 of the Constitution of India. In addition to this; it also seen from some bank top officers interviewed, that with full knowledge, many a times due care is not taken while sanctioning of the loan and with knowledge deliberately no care is taken though clear symptoms of NPAs are seen. The Securitization Act thus suffers from certain drawbacks and needed to be amended.

Study reveals that Debts Recovery Problems have socio economic impact on the society. NPAs causes blocking of the capital of financial institutions, limiting their capacity to extend finance to the new projects and restricts the flow of capital action u/s 13 (4) sometimes becomes evil for the honest defaulters by way of closers of activities, continuing overhead changes,

throwing many jobless and stoppage of production and trading activities. It is also observed that there is a vicious circle which plays its role when auction of property is declared, in which some agent's officers in the DRT office, some advocates and big builders and contractors are involved. These peoples encircle the whole process and hand in gloves does not allow taking drastic action by the honest officers. It is suggested that only persons having no other accommodation should be held eligible for taking the part in the auction of sale of residential houses. It is suggested that bank should verify whether loan seeker is competent to complete the project than hypothecation or mortgage. For this purpose bank officers should carefully examine the title deeds being deposited by the borrowers.

There is a need of proper scrutiny of every loan proposal and viability of the project considering ability to run the business credibility, professional approach, knowledge of business, social attitude, his communication skill and practical approach towards the project instead of considering only security while granting the loan. After all a regular follow-up of the repayment can minimize the chances of NPA and timely action will be possible against the willful defaulter. In view of the findings and suggestions researcher honestly feel that if proper care is taken at the time of sanction of the loan and the timely progress report of the debtors and timely action in respect of the recommendations and suggestions as above connection; the very purpose of the Securitization Act will be served in the interest of society at large.

In India under Securitization Act, 2002, the job of recovery is entrusted to the Securitization Companies or other agencies and sometimes recovery is done by the institutions directly. In doing so, main view taken by the creditors has been to recover the loan amount and not to care for the survival of business. Unfortunately there are many cases of symbolic

possession and direct possession of the factory or business by the bankers that no care is taken to see the consequences of such type of action. In fact the industries are playing vital role in development of the economy of Nation, and against them such a drastic action is taken. In this process the factory or the business is at once sealed throwing number of the employees on the road and a sad part of it is that the owner of the factory is thrown homeless without bare necessities, and it is against the spirit of constitution. Researcher feels that there is a need of necessary amendments by the parliament to take cognizance of points raised in this thesis.

Greece has taken steps to tackle the mountain of the pressure of bad loans, weighing on its banks as a part of its deal with the international creditors. Greek bank's "Non-performing exposures" (NPEs) which includes loans in arrears for more than 90 days (NPLs) and restructured credit is unlikely to be repaid has hit 40 percent of their portfolios existed in the year 2014. The bad debt load has worsened since then as Greece has been back into recession and has been forced to impose capital controls, requiring banks to set aside more provisions against the bad loans and constraining them from funding the economy. After this emerging situation, Greece has introduced various rigorous measures to tackle this segment of impaired loan; like establishment of specialized court chambers for corporate, to engage professionals in insolvency administration, restructuring loans, to stricter screening in order to deter so called strategic defaulters from taking undue advantage of a home foreclosure protection law and increasing the number of judges to address the backlog of insolvency cases. This may be a right lesson for India to prevent such a situation.

Study reveals that Debts Recovery Problems have socio economic impact on the society. NPAs causes blocking of the capital of financial institutions, limiting their capacity to extend finance to the new projects and restricts the flow of capital action u/s 13 (4) sometimes becomes evil for the honest defaulters by way of closers of activities, continuing overhead changes, throwing many jobless and stoppage of production and trading activities. It is also observed that there is a vicious circle which plays its role when auction of property is declared, in which some agent's, officers in the DRT office some advocates and big builders and contractors are involved. These peoples encircle the whole process and do not allow taking drastic action by the honest officers. It is suggested that only persons having no other accommodation should be held eligible for taking the part in the auction of sale of residential houses.

In view of the above findings and suggestions and recommendations, researcher honestly feels that if proper care is taken at the time of sanction of the loan and the timely progress report of the borrower is checked followed by timely action in this connection; then the very purpose of the Securitization Act will be served in the interest of society at large. In conclusion let the researcher cite the spirit of Rig Veda (versa 8.47.17), that "Let us drive away the evil effects of bad dreams, just as we pay off debts".

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A P P E N D I C E S

Appendices

- QUESTIONNAIRE I AND II
- SUBSIDY SCHEMES

APPENDIX I

QUESTIONNAIRE

Dear Sir/Madam,

This questionnaire is prepared for a Ph.D. research registered with Tilak Maharashtra University. The answers given by you will be kept confidential and data will be used for the academic purposes only. Please note that there is no right/wrong answer for the questions below, so do give your spontaneous response. Kindly tick () the appropriate option. Study relates to Socio-Economic Impact of Debt Recovery Problems. (A Study of Judicial Decisions from the Inception of Securitization Act 2002.)

Thanking you for your valuable help.

Research student

1. Name:

(Optional).....

2. Gender-Male / Female

3. Marital Status : Unmarried / Married

4. Age (in years):

20-29

30-39

40-49

50 & above

5. Education:

Under-Graduate Graduate Post- Graduate

6. Household income/month (in Rs):

Below 19,999

20,000-39,999

40,000-59,999

60,000-79,999

80,000 +

7 Are you aware about surfessi Act and Debt Recovery Process ?

Yes No.

A Business Profile

Q-1 What is the type of your business?

Tick correct option

- i) Individual Proprietor
- ii) Joint Hindu family business
- iii) Partnership firm
- iv) Joint stock company

Private company A

Jt-stock company B

2. What is the size of your company ?

- i) Small scale unit
- ii) Medium scale unit
- iii) Large scale

3. State the type of or nature of your business activity?

- i) Manufacturing (Nature of manufacturing) (No. of Shifts)
Seasonal /Regular 1 2 3 shifts / both
- ii) Trading
- iii) Any other

B Employment Profile ()

4) State the no. of employees in your organization

- a) male 1) b) female 2) c) child labour d) transgender

5) State the number of employees in your organization

a) Administrative staff

i) Administrators _____

ii) Clerical staff _____

iii) Class IV th employees _____

iv) Contract basis (periodic) _____

v) Daily wages basis _____

6) Do you Spend on welfare activities of the employees Yes No.

i) Arrangement Yes No

ii) If yes – percentage--- Yes No

ii) Insurance Policy for employees ----- Yes No

iii) Medical facilities ----- Yes No

iv) Pension scheme --- to contributory Pension

Pension Retirement PF

v) Arrangement of gathering / programmes. Yes No

7) If yes tell whether

a) Ganesh festival

b) Diwali Festival

c) Any other Festival (state the name)-----

vi) Do you pay bonus to employees.

Yes No.

If Yes, then, when; yearly monthly as per Govt. Rule 8.33% or

more

(C) Finance Management

8) What is the source of your finance?

i) Self contribution

ii) Family member contribution

iii) borrowings

If loan raised by borrowings; state the sources of borrowings.

i) Loan taken from family member

ii) Loan taken from friends

iii) Loan taken from and bank/financial/institutions

9) If loan taken from Bank/financial/institutions

State the source a) Private Bank

b) Nationalised Bank

c) Scheduled Bank

d) Co-op. Bank

10) How do you utilize the loan amount other than business ?

i) For personal purposes like purchase of Car, Purchase of Home, purchase of marriage in family members

any other

11) Loan spent exclusively for business then what are the items of expenditure?

(1) Preliminary Expenses ----

- i) For the purpose of purchase of Land.
- ii) For the purpose construction of building.
- iii) For the purpose purchase of machinery.
- iv) Used for working capitol.

12) Do you raise loan for working capitol? Yes No

If 'Yes' then state the type of loan (Please tick)

a) Over draft . b) On stock of raw materials. c) On stock of manufacturing goods.

13) Do you have utilized the subsidy of Govt.

Yes No

14) If yes state the percentage(Please tick)

50%, 70%, 75%, 80%, 85% subsidy

15) What is the average monthly inflow of funds from self income, family members savings, sale of goods on services, Govt. Subsidy Please tick the answer.

16) Had you prepared fund flow analysis while submitting the project in starting?

Yes No

17) If yes

What is your experience about fund flow statement in actual business.

- 1) satisfactory 1) Not Much satisfactory 3) Bad 4) Not satisfactory at all
5) Worst

18) If the answer is not satisfactory or bad then state the impact of the bad in flow of fund (In respect of sale income) on your business.

- a) Loan installments not being paid regularly
b) Became defaulter
c) Leads to NPAs

19) If loan became NPA, what are the problems faced by you?

i) Notice served by the lender u/s

ii) What you did after receipt of notice :-

- a) Requested for OTS
b) Raised objection to notice about—Interest calculation/other reasons
c) Whether you paid immediately the installment

20) Approached to the court Yes No

21) How you responded to the notice of DRT/ creditor ?

- a) Requested for one time settlement in installments.
b) Request by settlement in installments.

22) What is the present stage of your recovery case ?

- i) Pending with DRT
- Pending with DRAT
- Pending with High Court
- Pending with S.C.

23) Whether Bank/Creditor initiated action by taking possession

Yes No

24) If Yes → what kind of possession

Symbolic Physical

25) If possession is taken, have you approached to DRT

Yes No

26) If Yes what is the result –

Accepted Rejected

27) If accepted

i) Enjoyed Relief

28) If S.A. rejected have you approached to Appellate court by you of appeal

Accepted Rejected

29) If accepted what kind of relief

→withdrawn case Possession set aside

30) If rejected have you approached to High Court

Yes No

What kind of relief.

31) If rejected have you approached to Supreme Court

Yes No

32) What kind of the relief?

33) Whether the possession is restored by Court?

Yes No Pending

34) If possession is granted what is the nature of settlement.

- i) One time settlement
- a) In lumpsum at once
- b) In installments
- c) Account is regularized

E) Consequence of recovery Process (Economical, Social moral)

35) State what you feel when you receive demand notice u/s 13 (2) of securitization Act ?

a) Emotionally depressed

Yes No

36) If answer is yes what kind of emotions, feelings ----

a) My family members all went into depression/shock yes No

37) If answer is yes what is the effect on your state of mind?

a) I felt sleepless

b) I felt lost everything in life

c) Feeling blank future of the family

d) Decided to fight

e) Any other

38) Do you feel that your reputation has suffered a setback ?

Yes No

39) What is the result of setback of reputation/ goodwill friends ?

i) Members and relatives, started avoiding me

ii) Lost Bank credit worthiness

39) What is the result of set back on your good will/reputation?

- a) Loan raising power lost
- b) Resulted in erosion of funds
- c) Shortage of working capital

40) What is the result of shortage of working capital ?

a) Production activities stopped.

Yes No

b) Other business activities stopped like sale, purchase, etc

41) What is the result of this stoppage ?

- a) Standing expenses continued
- i) Payment of employees stopped
- ii) Payment of light bills.
- iii) Payment of taxes

42) What is the result of it ?

- a) Workers started leaving the job.
- b) Workers held Dharanas&Morchas
- c) Union at labours files suit in labour court
- d) Earning stopped but expenses continued and further erosion of funds and income.

43) What is the result on the workers/employments ?

a) Employees lost their job.

b) How many employees lost their job ? Give no. of employees.

44) Despite all the above questions and problems state your remarks and opinion freely on various allied issues you are facing in the whole process of being defaulter. State your experience.?

a) I spent my all belongings—like house, land, fixed deposits, jeweler to procure funds.

b) Obtained license for starting business from various agencies which took my 2-3 precious years of life.

c) After slackness in business in flow of fund was not regular.

d) I was a regularly paying the loan. Installments and not the willful defaulter.

e) I had started business with great hope of creating employment and service to my country.

f) Whole machinery blocked by Banks. Govt. provided aid in obtaining facilities.

g) I overcame all these with real and intuition.

h) I feel bank authorities lack the practical knowledge of business. They stick to technologies

- i) It is suggested that RBI or Govt. in consultation of judiciary should properly sort out viable units and if they are not the habitual defaulters, necessary funds may be made available to such units still it becomes viable. If necessary Govt. should become guarantor to the loan and pay the installments to creditor-Bank directly and allow the unit to start its business activities.
- j) In any industrial/business unit is ultimately the national property hence stoppage of business or industry is loss to the Govt.
- k) When industry stopped due to possession taken by the Creditor Bank of employees have to lose their jobs. When employee loses his job, his family members also have to suffer (Education of Children maintaining family, health, insurance, etc.) It is the Govt. policy to raise the employment, but in such cases employment is lost by many. Under such circumstances (closure of industry), in the society disturbances start and peace of mind is lost and law and order suffers and situation becomes worse.

In addition to the above if you feel any other consequences, please tell them and if necessary use additional sheet of paper.

45) Reason absolutely not applicable

a) Reason b) Point

Yes it exists

If yes then : () the appropriate cause :

a) It is a major cause 1

b) It is highly responsible 2

c) It has significant impact 3

d) It has somewhat impact 4

e) It has no impact at all 5

46) If any other additional you wish to state then it is requested to specify and if require please write on another paper sheet

Yours Sincerely,

(Researcher)

APPENDIX II

QUESTIONER PREPARED FOR FINDING OUT CAUSES OF NPA

Prepared for response from borrowers creditors with the help of feedback through various responses defaulter to be analyzed by attaching point to be answered and Likert scale ----

Response

Points1: Absolutely not available (do not agree)

Point 2: Yes it is there (agree)

Point 3: It is highly responsible cause (strongly agree)

Point 4: It is a major cause (strongly agree)

Point 5: It is a major cause having significant cause (strongly agree and significant)

Sr no.	Reason	points	points	Points	points	points	Actual mean
1	Lack of owner' stake						
2	Heavy borrowing from outside sources at exorbitant cost of raising margin money Delay in disbursement of loan						
3.	Delay in disbursement of loan						
4.	Lack of experience and exposure						
5.	Slowdown in business						
6.	Mismanagement of funds						
7	Political interference/ influence						
8.	Unexpected and adverse development in external environment						
9.	Recessionary trend						
10.	Lack of research and development						
11.	Vagabond spending on unnecessary items						

12.	Lack of proper planning in sanction of loan						
13.	No care taken at the time of granting loan						
14.	Wrong selection of borrower						
15.	Wrong valuation of security						
16.	Over leverage of existing borrowers						
17.	Not following strictest procedure of granting loan						
18.	Neglecting RBI's mandatory guidelines for sanction of loans						
19.	High competition						
20.	Officers personal interest in borrower						
21.	Wrong selection of guarantor and his credibility						
22.	Uncertain change in government policy						
	TOTAL						

APPENDIX III

SUBSIDY SCHEMES

In Order to promote the development of the industrial sector, especially MSME sector, the government has introduced various schemes that provide financial subsidy to the eligible enterprises. Some of these subsidy schemes are specifically for certain industrial sectors, while some of them like CLCSS are available for a wide range of industries.

Some of the major subsidy schemes of the government and public institutions are provided below. These can be categorized as follows:

Subsidy Schemes for Specific Industries

Textile Industry - Technology Up gradation Fund Scheme (TUFS)

Ministry of Textiles introduced the Technology up gradation fund scheme (TUFS) for textiles and jute industry in April 1999 to facilitate induction of state-of-the-art technology by the textile units.

The benefits under the scheme include:

5% interest reimbursement of the normal interest charged by the lending agency on RTL, or

5% exchange fluctuation (interest & repayment) from the base rate on FCL, or

15% credit linked capital subsidy for SSI sector, or

20% credit linked capital subsidy for power loom sector (An option for 'front ended' subsidy provided w.e.f. 1st October, 2005), or 5% interest reimbursement plus 10% capital subsidy for specified processing machinery.

IDBI, SIDBI and IFCI were the nodal agencies for Non-SSI textile sector, SSI textile sector and Jute sector respectively. However, w.e.f. 1st October, 2005, 13 additional nodal banks have been appointed under TUFs for determining eligibility & releasing the subsidy for the cases financed by them.

Food Processing Industry - Scheme for Technology Up gradation/ Establishment/ Modernization for Food Processing Industries:

This Scheme covers the following activities: Setting up/expansion/modernization of food processing industries covering all segments viz. fruits & vegetable, milk product, meat, poultry, fishery, oil seeds and such other agro-horticultural sectors leading to value addition and shelf life enhancement including food flavors and colors, oleoresins, spices, coconut, mushroom, hops. The assistance is in the form of grant subject to 25% of the plant & machinery and technical civil work subject to a maximum of Rs. 50 lakh in General Areas and 33.33% upto Rs. 75 lakh in Difficult Areas.

Leather Industry – Integrated Development of Leather Sector (IDLS)

The scheme is aimed at enabling existing tanneries, footwear, footwear components and leather products units to upgrade leading to productivity gains, right-sizing of capacity, cost cutting, design and development simultaneously encouraging entrepreneurs to diversify and set up new units.

The financial assistance under the Scheme will be investment grant to the extent of 30% of cost of plant and machinery for SSI and 20% of cost of plant and machinery for other units (i.e. non small scale units) subject to ceiling of Rs.50 lakh for technology up gradation /modernization and/or expansion and setting up a new unit. The rate of assistance would be @ 20% for all units (both SSI and Non-SSI) above Rs.50 lakhs subject to ceiling of Rs.2 crore.

The nodal agency for release of assistance, monitoring and interface and coordination with FIs, Banks and the Government is SIDBI.Coir industry

The Coir Board runs various subsidy schemes for the coir sector, as provided below:

For Rejuvenation, Modernization and Technology Upgradation of the Coir Industry.

A Central Sector Scheme on Rejuvenation, Modernization & Technology Up gradation of the Coir Industry was launched during 2007-08, on a pilot basis, to facilitate the sustainable development of the Spinning and Tiny/Household Weaving Units of the coir industry by providing proper work sheds and enabling replacement of traditional age old ratts with motorized ratts in the Spinning sector and replacement of traditional looms with the mechanized looms in the Tiny/Household sector in the first phase, during XI Plan. The main objectives of the scheme include modernization of Coir industry by adoption of modern technology in production and processing of Coir in the spinning and weaving sectors; Upgradation of the production and processing technology for improving the productivity and quality; and increasing the efficiency

and productivity for enhancing the earnings of the workers and income of spinners/ tiny-household sectors, among others.

The norms of assistance are as below:

Spinning unit: The financial assistance or government grant/subsidy would be 40% of the project cost subject to a maximum of Rs. 80,000 (Rupees eighty thousand only) per unit.

Tiny/ household unit: The financial assistance or government grant/subsidy would be 40% of the project cost subject to a maximum of Rs. 2,00,000 (Rupees two lakh only) per unit.

Extension of Financial Assistance to Coir units in the Brown Fibre sector:

The Coir Board runs a scheme for financial assistance to the coir units in the brown fiber sector. The rate of financial assistance under the scheme is 25% of the cost of equipments and infrastructural facilities subject to certain ceiling limits based on the type of unit. The purpose of the scheme is to give one time subsidy to fiber/ curled coir production units in the brown fiber sector to carry out production at periods of power cut/ low voltage and to ensure supply of brown fiber and curled coir to meet the requirements of rubberized coir products, coir rope, yarn and mats and matting sectors.

The quantum of subsidy for one unit will be 25% of the cost of generator set subject to a maximum of Rs.50,000/-. This will be a onetime financial assistance and will be granted on the basis of expenditure incurred by the unit.

Other Subsidy Schemes of the Central Government

Credit Linked Capital Subsidy Scheme for Technology Up gradation (CLCSS):

The Scheme was launched in October, 2000 and revised w.e.f. 29.09.2005. The revised scheme aims at facilitating Technology Up gradation of Micro and Small Enterprises by providing 15% capital subsidy (12% prior to 2005) on institutional finance availed by them for induction of well established and improved technology in approved sub-sectors/products. The admissible capital subsidy under the revised scheme is calculated with reference to purchase price of Plant and Machinery. Maximum limit of eligible loan for calculation of subsidy under the revised scheme is also been raised Rs. 40 lakhs to Rs. 100 lakh w.e.f. 29-09.2005.

The Small Industries Development Bank of India (SIDBI) and the National Bank for Agriculture and Rural Development (NABARD) will continue to act as the Nodal Agencies for the implementation of this scheme.

Quality Up gradation/Environment management for small scale sector through incentive for ISO 9000 /ISO 14001 /HACCP Certifications.

In order to enhance the competitive strength of the small scale sector, the Government introduced an incentive scheme for their technological upgradation/ quality improvement and environment management. The scheme provides incentive to those small scale/ ancillary undertaking who have acquired ISO 9000/ISO 14001/HACCP certifications. The scheme for ISO 9000 reimbursement in operation since March, 1994 has now been enlarged so as to include reimbursement of expenses for acquiring ISO 14001 certification also.

The Scheme envisages reimbursement of charges of acquiring ISO-9000/ISO-14001/HACCP certifications to the extent of 75% of the expenditure subject to a maximum of Rs. 75,000/- in each case. The Scheme is valid upto 31st March 2012.

Market Development Assistance Scheme for Micro, Small & Medium Enterprises

The scheme offers funding for participation by manufacturing Small & Micro Enterprises in International Trade Fairs/ Exhibitions under MSME India stall; sector specific market studies by Industry Associations/ Export Promotion Councils/ Federation of Indian Export Organization; initiating/ contesting anti-dumping cases by MSME Associations and reimbursement of 75% of one time registration fee (w.e.f. Ist January 2002); and 75% of annual fees (recurring) (w.e.f. Ist June 2007) paid to GSI (Formerly EAN India) by Small & Micro units for the first three years for bar code.

The permissible subsidy is as below:

The Govt. of India will reimburse 75% of air fare by economy class and 50% space rental charges for Micro & Small manufacturing enterprises of General category entrepreneurs.

For Women/SC/ST Entrepreneurs & Entrepreneurs from North Eastern Region Govt. of India will reimburse 100% of space rent and economy class air fare.

The total subsidy on air fare & space rental charges will be restricted to Rs.1.25 lakhs per unit.

Financial Assistance on Bar Code.

The basic objective of financial assistance is to enhance the marketing competitiveness of Micro & Small Enterprises (MSEs) by way of:

Providing 75% of one-time registration fee and annual recurring fee (for first three years) paid by MSEs to GS1 India.

Popularizing the adoption of bar codes on large scale amongst MSEs, and Motivating and encouraging MSEs for use of bar codes through conducting seminars on Bar Code, etc.

Subsidy Schemes of NSIC:

Raw Material Assistance

Raw Material Assistance Scheme aims at helping Small Scale Industries/Enterprises by way of financing the purchase of Raw Material (both indigenous & imported). This gives an opportunity to SSI to focus better on manufacturing quality products. The benefits of the scheme include:

Financial Assistance for procurement of Raw Material up to 90 days.

SSI helped to avail Economics of Purchases like bulk purchase; cash discount etc.

NSIC takes care of all the procedures, documentation & issue of Letter of credit in case of imports.

Marketing Assistance

Under the Scheme, marketing support is provided to Micro, Small & Medium Enterprises through National Small Industries Corporation (NSIC) to enhance competitiveness and marketability of their products, through following activities:

Organizing International Technology Exhibitions in Foreign Countries by NSIC and participation in International Exhibitions/Trade Fairs, Organizing Domestic Exhibitions and Participation in Exhibitions/ Trade Fairs in India Support for Co-sponsoring of Exhibitions organized by other organizations/industry associations/agencies, Buyer-Seller Meets, Intensive Campaigns and Marketing Promotion Events, Other Support Activities.

Performance and Credit Rating

A scheme for performance and credit rating for SSIs has been formulated in consultation with Indian Banks' Association (IBA) and Rating Agencies. NSIC has been appointed the nodal agency for implementation of this scheme through empanelled agencies.

Turn Over of SSI	Reimbursement of Fee through NSIC
Upto Rs 50 Lacs	75% of the fee or Rs 25000/- (Whichever is less)
Above Rs 50 to 200 lacs	75% of the fee or Rs 30000/- (Whichever is less)
More than Rs 200 lacs	75% of the fee or Rs 40000/- (Whichever is less)

Source: Finance Department, Government of India.

ANNEXURE 'D'

SPECIMEN DECLARATION BY APPLICANT'S PARENT(S) OR GUARDIAN FOR ISSUE OF PASSPORT TO MINOR

(On plain paper)

I/we, resident ofhereby affirm that the particulars given below are of(name of the child), son/daughter of Shriand Smt of whom I/we am/are the parents /guardian.

Particulars of minor child

Name :

Date of birth :

Place of birth :

2. The minor child mentioned above is a citizen of India.
3. I/We undertake the entire responsibility for his/her expenses.
4. I/we solemnly declare that he /she has not lost, surrendered or been deprived of his/her citizenship of India and that the information given in respect of him/her in this application is true.
5. It is also certified that I/we am/are holding /not holding valid India passport(s).

Place:

Date

Signature of father

Signature of mother

Signature of legal guardian(s)

Passport No.; or

Passport No.; or

Passport no.....; or

Aadhaar Card No.....; or

Aadhaar Card No.....;or

Aadhaar Card No.....; or

Voter ID Card No.....;

Voter ID Card No.....

Voter ID Card No.....