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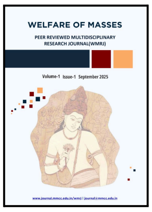

Fraudulent Practices, Abuse Of Implementation Process, And Judicial Control Under The Sarfaesi Act 2002- An Insight Through Some Case Examples

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ABSTRACT

The SARFAESI) Act, 2002, was brought into existence to transform the debt recovery scenario in India to empower banks and financial institutions to recover the overdue loans, without the involvement of a court. The law has certainly helped in expediting the resolution of NPAs, but its stringent provisions have slowly become vulnerable to systemic fragilities. This document offers a comprehensive review of the development of deceptive practices and the deliberate exploitation of the execution process by secured lenders, sanctioned officials, and unscrupulous borrowers.

This study looks at the rules of Sections 13(2) 13(4) and 14 of the Act. It shows how the SARFAESI Act implementing agencies take advantage of loopholes to confiscate and sell properties for low prices, avoid waiting periods and force out tenants or co-owners who have done nothing wrong. The study also examines how the Supreme Court of India, other High Courts and the Debt Recovery Tribunals work to make sure everything is fair and in a way how some verdicts have highlighted the unfair practices in work right now. The study uses court cases to show the actual law implementation practices and the purposeful or without-purpose practices lacunae left on the canvas and how it is affecting the

Judicial judgements on SARFAESI frauds, Analysis of Banking fraud judgements/rulings.

very purpose of the statute. The study gives ideas for how to improve the rules and make the system more honest.

The SARFAESI Act is used in cases and the study looks at how it has been used in a unfair way. It also examines the role of courts and tribunals for having a check on such bad practices and loopholes left behind. The Supreme Court of India and other courts must make sure the SARFAESI Act is not used to confiscate the lawful rights of the borrowers. The study is important because it helps us understand how the SARFAESI Act works and how it can be improved. The study looks at the SARFAESI Act, how it affects people.

1. INTRODUCTION

The introduction of the SARFAESI Act in 2002 was a change in India's economy and laws, specifically the Indian Banking System. This Act was made to address the problem of -Non Performing Assets or NPAs which was getting worse. The SARFAESI Act allowed banks and financial institutions to realise the assets that were used to secure loans so they could recover the loan amount. This was a difference from the traditional way of recovery proceedings, which relied on the courts and long due process of law. It made the process of getting back debts faster which helped to put more money into the Indian banking system.[1]

However, giving much power to banks and financial institutions under the SARFAESI Act also had some problems. In years the way the Act has been used has caused some big issues. The fact that the courts are not involved before assets are taken in possession and that the people in charge have control over the process set by the law in an unfair way. Financial institutions and the people they hire to recover debts are abusing their power. This goes against the principles of natural justice, which are meant to protect the rights of the people. The SARFAESI Act and the way it is being used by financial institutions need to be addressed.

Faced with this systemic weaponization of the law, the Indian judiciary has stepped in as a vital constitutional guardian, through Debt Recovery Tribunals (DRTs), High Courts, and the Supreme Court, judicial control has evolved dynamically. The courts and tribunals strictly enforce the regulatory boundaries of the SARFAESI Act to protect the fundamental rights of borrowers and third-party tenants.

This paper provides a critical assessment of the intersection between legislative intent, systemic abuse, and judicial corrective action. By examining landmark and recent judicial precedents, this study exposes the loopholes in the enforcement mechanism. Finally, it outlines necessary policy reforms to balance economic efficiency with equitable justice

1. PROBLEM STATEMENT

The core problem investigated in this study arises from the implementation practices, structural vulnerabilities within the self-enforcement mechanism and actual implementation of the SARFAESI Act, 2002, which we can produce through three distinct dimensions:

1.1. Administrative and Procedural Misuse: The statutory bypass of civil courts at the stage of possession of the assets, allows secured creditors and corrupt authorized officers to weaponize recovery procedures and use it arbitrarily. This results in fraudulent, collusive public auctions, deliberate under-valuation of properties, and systemic evasion of mandatory notice requirements under the Security Interest Rules, 2002.

1.2. The Judicial Dilemma: The DRTs and courts are heavily overburdened by an influx of SARFAESI-related litigation. The judiciary struggles to establish a uniform standard of control that successfully detects and penalizes fraud, while simultaneously preventing systemic delays caused by mala fide, obstructionist petitions.

[1] Ministry of Finance, Government of India, Report of the Expert Committee on Legal Measures for Recovery of Dues of Banks and Financial Institutions [Andhyarujina Committee] (2000).

2. SCOPE OF THE STUDY

The scope of this research paper is strictly delineated to examine the intersection of systemic gaps and vulnerabilities, fraudulent practices, and corrective judicial control mechanisms within the enforcement framework of the SARFAESI Act, 2002. Geographically, the study is confined to the legal and financial jurisdictions of India, focusing on the operations of commercial banks, financial institutions, and Asset Reconstruction Companies (ARCs).[2]

Thematically, the research paper focuses on the recovery mechanisms adopted by Sections 13(2), 13(4), and 14 of the Act, alongside the SARFAESI Act Rules, 2002. The analysis covers two primary dimensions of procedural vulnerability:

2.1. **Institutional Overreach:** Evaluating structural corruption and systemic lapses among secured creditors i.e financial institutions and specifically its authorized officers, specifically focusing on misuse of the powers conferred for recovery proceedings, the malicious undervaluation of assets and the deliberate circumvention of mandatory timeline notices.

2.2. **Borrower lack of knowledge towards law:** Investigating the lack of knowledge of the borrowers regarding the SAEFAESI Act 2002 and the advantage of this less educatedness, taken by the officials of the financial institutions.

The temporal scope of the study focuses on the evolutionary trajectory of judicial interpretation from the foundational ruling in **Mardia Chemicals (2004) up to recent Supreme Court jurisprudence.** The study primarily utilizes qualitative doctrinal research to analyze statutory provisions and judicial precedents from the Supreme Court of India, various State High Courts, and Tribunals. It intentionally excludes quantitative statistical trends of Non-Performing Assets (NPAs), cross-border asset recovery laws, and insolvency mechanisms outside the direct purview of the SARFAESI Act.[3]

2.3. STATUTORY ARCHITECTURE OF THE SARFAESI ACT: MECHANICS OF ASSET ENFORCEMENT

2.3.1. **Section 13(2):** Classification of an account as a Non-Performing Asset (NPA) triggers the issuance of a statutory 60-day demand notice requiring the borrower to discharge liabilities in full.

2.3.2. **Section 13(3A):** Entitles the borrower to raise representations or objections against the demand notice, which the secured creditor must consider and reply to within fifteen days with a reasoned order.

2.3.3. **Section 13(4):** If the borrower fails to comply, the secured creditor may adopt measures to take symbolic or physical possession of the secured asset, manage the asset, or appoint a manager for realization.

2.3.4. **Section 14:** Mandates Chief Metropolitan Magistrates (CMM) or District Magistrates (DM) to assist secured creditors in taking physical possession of properties upon the filing of a comprehensive Nine-Point Affidavit.

2.3.5. **Security Interest (Enforcement) Rules, 2002:** Sets the granular boundaries governing independent property valuation [Rule 8(5)], mandatory individual and public sale notices [Rule 8(6)], and public e-auction parameters [Rule 9(1)].[4]

3. REVIEW OF LITERATURE

Since the inception of the SARFAESI Act, 2002, have generated a substantial volume of legal and economic literature. Academics, regulatory bodies,

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[2] Security Interest (Enforcement) Rules, 2002, Gazette of India, pt. II sec. 3(i) (ext.) (Nov. 18, 2002).

[3] *Mardia Chemicals Ltd. v. Union of India*, (2004) 4 SCC 311.

[4] The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, § 8,9,13,14, No. 54, Acts of Parliament, 2002 (India).

and legal jurists have extensively analysed the socio-economic impacts of bypassing judicial intervention in debt recovery matters. This review synthesizes existing literature into three core thematic domains.

3.1. Institutional Power Imbalance-The Shift to Non-Judicial Debt Recovery:

Prior to 2002, the recovery of distressed banking assets under the Recovery of Debts Due to Banks and Financial Institutions (RDDBFI) Act, 1993, was widely critiqued for institutional paralysis and excessive procedural delays. Legal scholars argue that the introduction of the SARFAESI Act was a necessary macroeconomic imperative designed to restore liquidity to a crippled banking sector by establishing non-judicial enforcement.[5]

However, early critical literature flagged the dramatic shift in power dynamics. Researchers have observed that by making the secured creditor an adjudicator in its own cause under Section 13(2), the legislature stripped away vital pre-enforcement procedural shields, introducing an unprecedented vulnerability into the enforcement framework. Critics assert that the complete absence of independent administrative screening during the demand and repossession phases paved the way for institutional overreach, transforming what was intended as an economic remedy into a tool susceptible to bureaucratic arbitrariness.[6]

3.2. Systematic Vulnerabilities and Procedural Misuse:

More recent legal scholarship focuses on the precise operational modalities where the SARFAESI process is systematically misused. Legal literature identifying corporate and institutional malpractices highlights a recurring pattern of collusive fraud between financial institution's officials and corrupted authorized officers, and preferred external bidding cartels. Commentators emphasize that the lack of transparent, independent oversight over the fixation of the "reserve price" under Rule 8(5) [7]frequently leads to the deliberate undervaluation of properties, directly violating the borrower's constitutional right to property under Article 300A.[8]

Conversely, banking literature and regulatory reports published by the Reserve Bank of India (RBI) highlight the widespread issue of borrower-led litigation fraud. Academic papers document how defaulting borrowers aggressively exploit the "rent control" loophole by generating sham, unregistered, and backdated lease agreements. Authors demonstrate that these fraudulent tenancies are strategically constructed to frustrate the execution of Section 14 physical possession orders by District Magistrates, thereby devaluing repossessed collateral and freezing bank capital in prolonged litigation.

3.3. The Dynamic Boundaries of Judicial Correction:

The evolution of judicial review from a passive post-facto mechanism to an active constitutional regulatory force forms the third major pillar of existing research. Early legal commentaries focused heavily on the landmark ruling in Mardia Chemicals Ltd. v. Union of India (2004)**,** praising the Supreme Court for striking down structural barriers to access justice, such as the initial 75% pre-deposit requirement.[9]

Subsequent literature tracks a distinct shift in judicial philosophy. Contemporary scholars argue that while the judiciary initially leaned toward protecting borrower equity and enforcing strict natural justice—as seen in **Mathew Varghese (2014)** courts have recently pivoted toward an approach of structural self-restraint. Modern legal reviews of Supreme Court jurisprudence note an aggressive institutional pushback against the misuse of constitutional writ jurisdictions under Article 226. Legal analysts conclude that the current judiciary is attempting to forge a highly complex, equilibrium-based standard: creating a strict barrier against alternative-remedy forum shopping by

[5] The Recovery of Debts Due to Banks and Financial Institutions Act, 1993, No. 51, Acts of Parliament, 1993 (India).

[6] Security Interest (Enforcement) Rules, 2002, Gazette of India, pt. II sec. 3(i) (ext.) (Nov. 18, 2002).

[7] Security Interest (Enforcement) Rules, 2002, Gazette of India, pt. II sec. 3(i) (ext.) (Nov. 18, 2002).

[8] India Const. art. 300A.

[9] *Mardia Chemicals Ltd. v. Union of India*, (2004) 4 SCC 311.

borrowers while simultaneously demanding total, uncompromised compliance with statutory timelines from secured financial institutions.[10]

4. INCIDENCES OF THE PROVEN FRAUDS COMMITTED BY THE BANKS WITH SOME CASE EXAMPLES.

Wrongdoing claims under SARFAESI often point to abuse of power, twisted facts, or secret deals with outsiders - rarely just small errors. Such matters typically unfold through harsh legal battles at Debt Recovery Tribunals or via probes launched by law enforcement agencies.

Here come some real cases where courts or regulators spotted sketchy moves. One time, fake invoices showed up in company books. Another case involved shifting money between accounts to hide losses. A firm once sold shares without telling buyers about serious risks. In one report, insiders got early tips before public announcements. False customer numbers appeared in a quarterly filing. Payments were rerouted through shell firms during an audit. Officials later caught altered contracts in a bankruptcy review

4.1. Collusive Fire Sales and Under-pricing of an assets of debtors.

This has been a consistent issue with banks being accused of colluding with valuers and prospective buyers to sell assets at a significantly lower price than they are worth in the market.

Example Case: The case is connected with **Mathew Varghese v. M. Amritha Kumar (2014) principles.** (Chand, n.d.)[11]
Although the decision was directly about compliance with the various procedures with respect to the notice periods, most of the underlying cases in the DRT level have express claims of rigged auctions.

The Allegation: Borrowers claim that the bank is manipulating the reserve price by employing biased or unqualified valuers, who are giving artificial low estimates. In the e-auction, inadequate publicity is provided so that only a few prospective bidders, usually with bank connections are notified about the sale.

The Result: DRTs are allowed to void the sale in the case of the production of evidence of gross undervaluation (e.g. the sale of a 1 crore property at 50 lakh) and the bank is obliged to re-auction the property after following the prescribed proper, transparent regulations.

4.2. Incorrect Tiering of Borrowers to evade Protection.

There have been allegations that banks have been categorizing borrowers knowingly through misclassifying them to avoid legal timelines and notifications.

Sample Case: M/S Pro Knits Vs Board of Directors of Canara Bank and Others.[12]
With analysis by advocacy groups and legal commentary, certain banks are claimed to ignore the regular 17 months to move an MSME account to a Non-Performing Asset (NPA) and then to a Doubtful/Loss.

The Accusation: Banks occasionally preemptively declare a routine business NPA into a "wilful defaulter" based on unspecified and/or fabricated reports (e.g. the borrower embezzled funds without actual evidence). This misclassification is applied in order to take instantaneous and severe steps under the SARFAESI Act without a prerequisite of 60 days' notice as in Section 13(2).

The Result: Should the borrower be able to demonstrate in the DRT that the wilful defaulter status was unwarranted or was not formulated in good faith, it can be said that the whole SARFAESI process can be abridged or halted as an abuse of natural justice.

[10] *Mathew Varghese v. M. Amritha Kumar*, (2014) 5 SCC 610.
[11] *Mardia Chemicals Ltd. v. Union of India*, (2004) 4 SCC 311.
[12] M/S. PRO KNITS v. THE BOARD OF DIRECTORS OF CANARA BANK | Supreme Court Of India | Judgment | Law | CaseMine

4.3. Manipulation of Titles and Mortgages Frauds.

In some of the complex cases concerning third parties, the courts have found instances in which the formation of the mortgage itself was founded upon fraudulent conduct by many persons including the bank workers.

Courts involved: Punjab National Bank Vs. Gauhati High Court (2022).[13]

In the current case, a plaintiff alleged that a loan and mortgage was formed between PNB and another defendant which was a fraudulent mortgage formed by the defendant to defraud and mislead the plaintiff.

The Allegation: The plaintiff also claimed that the bank had authorised a loan without due diligence on the title of the property and that the dealings were collusive. The High Court noted that it was necessary to investigate allegations of fraud committed between the respondent No. 2 and the petitioner Bank between each other.

The Ruling: The court upheld the fact that allegations of a complex fraud on title and mortgage validity is within the jurisdiction of a Civil Court, as opposed to only the DRT, by enabling the aggrieved party to have a full trial and reveal the alleged fraud.

4.4. Conspiracy in Promoting Assets to ARCs.

Criticisms are also raised where the banks choose to sell an NPA to an Asset Reconstruction Company (ARC) instead of making a One Time Settlement (OTS) with the original lender.

The Accusation: The critics say that banks prefer ARCs (that purchase loans at deep discounts, usually approximately 85 cents on the dollar) [14]to an OTS that could result in better recovery to the bank. Such non-transparent preference creates doubts of collusion or systematic prejudice that is akin to shortchanging the borrower and limiting the opportunity to recover the greatest amount of funds in the community.

The Resultant Consequence: Although commercial decisions are much in the prerogative of the bank, such practices have prompted regulatory requests that the OTS option should be fully exhausted before an asset is sold to an ARC.

4.5. The Right of Redemption Lingers on to the Last Phase.

The most frequent example of judicial intervention that I have encountered was safeguarding a borrower in their right of redemption at a very late stage as long as the bank had not finalized the legal sale of them.

G. V Vikram Kumar vs Authorised Officer, Indian Bank (Supreme Court, 2023)[15]**:**

The court determined that the right of a borrower to redeem the secured asset applies until the transfer of the property actually takes place i.e. until the issuance of the sale certificate, its registration, and delivery of the possession. They emphasized that the bank is not allowed to supersede this right in case the borrower pays the entire sum before the sale has been legally finalized.

4.6. Absence of Due Diligence of Property Titles.

In other cases, banks have been subjected to bitter criticisms and negative adjudications due to their inability to perform due diligence regarding titles of properties that they take as a security which can indicate negligence, or even willful blindness.

P. Satyanarayana vs†Smt. V. Anjana (Telangana High Court, 2025)[16]**:**

The plaintiff of this case argued that various defendants, one of them a bank, had conspired to generate forged documents so as to deny her the possession of her property.

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[13] Page No.# 1/3 vs The Punjab National Bank And Anr on 26 September, 2022 by India Kanoon.

[14] Asset Reconstructions Companies: Asset Reconstruction Companies Boost Recovery on Unsecured Loans amid Bank Caution, ETBFSI

[15] THE AUTHORIZED OFFICER, v. GOPAKUMAR T | Kerala High Court | Judgment | Law | CaseMine

[16] E Newsletter Telangana Highcourt 10_31T13_15_22VOLUME_7_ISSUE_NO_1_FOR_THE_PERIOD_OF_01_01_2025_TO_31_03_2025.pdf

The Allegation: The bank was charged with lending money without conducting the necessary procedures in terms of verifying the property.

The Ruling: The court permitted the civil action to be commenced, which means that the complicated fraud and title claims have to be resolved by a qualified civil court as it is not under the summary jurisdiction of the DRT.

4.7. Violation of Statutory First Charges.

Borrowers (and other parties) have been safeguarded by courts when the banks are seeking to recover their debts by defeating rules that are statutory in that they take priority over all their claims.

Jalgaon District Central Coop. Bank Ltd. vs. State of Maharashtra and ors. (Supreme Court, 2025)[17]:

According to the decision of the Supreme Court, the priority of the secured creditors granted by Section 26E of the SARFAESI Act is lower than a statutory first charge established as per Section 11(2) of the EPF and MP Act in respect of dues of a provident fund.

The Result: This ruling safeguards the employers/borrowers to the banks that they must surrender their assets to allow them to pay the essential statutory obligations, and a bank cannot claim that it has an overall priority when the law declares it otherwise.

4.8. Lack of Jurisdiction of Civil Court in Fraud Cases.

Although Section 34 of the SARFAESI Act is quite categorical against civil suits, the courts have provided a loophole in the case of actual, institutionalized fraud.

Aavas Financiers Ltd. Vs. Smt. Bhagwanti Mahawar (Madhya Pradesh High Court, 2023): [18]

The High Court in its ruling stated that the Civil Court has the jurisdiction over the action of the secured creditor in case the latter is alleged to be fraudulent. The court also pointed out that when a suit has been initiated based on particular pleas of fraud and deceit by the bank, the same can be upheld, provided that the principle of the initial landmark case of Mardia Chemicals.

4.9. Sale of Mortgaged Properties to Particular Debts.

The courts have also barred the banks to fraudulently use their general lien powers to foreclose property of a particular loan to collect unrelated liabilities.

Nand Kumar Adil Vs. State Bank of India (Chhattisgarh High Court, 2023)[19]:

The Court decided that where title deeds of a property had been presented as security to a particular term loan, a general power of lien under Section 171 of the Contract Act could not be used by the bank to assert security over the property in relation to other and unrelated amounts of loan.

The Ruling: Court determined that the bank had not exercised reasonable cause in exerting general lien which is occasionally manipulatively applied to gain a greater leverage over the borrower.

Court cases pointing to bank fraudulent practices in the implementation of SARFAESI Act are typically focussed on such severe procedure impropriety as collusion in the sale process, gross understatement or record manipulation. This is frequently contested in the Debt Recovery Tribunals (DRT) or underlying criminal complaints (CBI/Police) and the courts grant relief in situations where fraud, or material irregularity, is established.

4.10. The Sale of Assets at a Pittance (Gross Underestimation).

There have been several instances where the courts have intervened on the basis that the reserve price offered by the bank and the final auction price are evidently lower than the fair market value hence, an indication of a non-transparent process.

[17] EPF First Charge vs SARFAESI Section 26E Priority: Commentary on Jalgaon District Central Coop. Bank Ltd. v. State of Maharashtra: Supreme Court Of India | CaseMine

[18] AAVAS FINANCIERS LIMITED v. BHAGWANTI MAHAWAR | Supreme Court Of India | Judgment | Law | CaseMine

[19] Nand Kumar Adil Vs. State Bank of India – Chhattisgarh High Court – IBC Laws.

Case Principle: Sales have been rejected in several cases of DRT and High Court proceedings in accordance with the principles of **Mathew Varghese v. M. Amritha Kumar (2014).**[20]

The Incidence: Borrowers have proven through independent valuation reports that their property was highly much more than the value that it received at a bank auction. The determination by the court that the bank did not provide adequate publicity or applied an artificial low reserve price usually demonstrates the possibility of fraud or a material irregularity to void the sale.

Judicial Result: The courts declare that, although the bank had the power to sell the asset, it had an obligation to the borrower to sell the asset at the most desirable price. The inability to do so amounts to misusing the provisions of the Act.

4.11. <u>Material Facts Hiding During Auction.</u>

Banks have been sued on grounds of having hidden key information about the secured property to the potential buyers during the auction.

Facts: A police officer was on patrol when he approached a vehicle and discovered both occupants were being loud and abusive toward one another.

Case Instance: Authorised Officer v. Brahmo Construction Pvt. Ltd. (2014)[21]

The Incidence: The initial incidence in this particular case was the allegations of deceit by the bank on the part of the initial auction buyer. It is also claimed that the bank had secretly hid the fact that the property was in statutory attachment by the Income Tax Department, at the time of the auction.

Judicial Ruling: The Trial Court in this case ruled that a case on fraud put a matter within the jurisdiction of the Civil Court despite the bar established under Section 34 of the SARFAESI Act. Such a ruling suggests that the civil action may be pursued in cases that are associated with the bank activities that include deception, and concealment of material facts.

4.12. <u>False Representation and Fraud of Documentation of Loans.</u>

Borrowers have filed police complaints and civil suits in addition to DRT applications when they claim that their documents or title deeds have been used without their knowledge or with other purposes of loan that had been agreed upon.

Case Facts: Tajunissa and Anr. Vs. Mr. Vishal Sharma and Ors. (Delhi High Court, 2022)[22]

The Incidence: On behalf of the plaintiffs, they have claimed that the co-defendant, in conspiracy with the bank officials, acted with their property title deeds and forged documents to take a big loan with the bank. The plaintiffs asserted that they were never aware of the mortgage until recovery notices were made.

Judicial Determination: The High Court did not dismiss the case because it passed judgment that such grave fraud claims of third parties and the possibility of bank collusion were subject to a complete judicial inquiry and not just regular SARFAESI litigation.

4.13. <u>Evading Statutory Requirements of Possession.</u>

Although it is not always referred to as a "fraud, banks which have tried to seize possession without following very strict preconditions do not succeed and are overturned by the courts.

Case scenario: IDFC First Bank Ltd. Vs. State of Haryana and others (Punjab and Haryana high court, 2022).[23]

The Incidence: At a time when the bank in this instance was trying to enforce a Section 14 order, there are regular cases where the banks have assumed possession without necessarily following all the legal requirements. The credit was given free will to take further steps since the former proceedings had been invalid.

Court Result: The courts take the necessary steps in ensuring that the high standards outlined in the Act are exercised only when the letter of the law is adhered to, as it offers a relief to the

[20] Supreme Court of India-CIVIL APPEAL NO. 12174 OF 2025, CIVIL APPEAL NO. 12175 OF 2025[Special Leave Petition (Civil) No. 14696 of 2023

[21] Legal Implications of Selling Mortgaged Property to Third Parties

[22] Tajunissa & Anr. vs Mr. Vishal Sharma & Ors. on 4 January, 2022

[23] Idfc First Bank Limited vs State Of Haryana And Others on 13 December, 2022

borrowers in the times when the banks cut corners or they are misusing the possession process.

5. FINDINGS OF THE STUDY

Unfair and Unlawful Practices by Financial Institutions

5.1. Malicious Undervaluing of Assets and Arbitrary Reserve Pricing: A primary finding is that authorized officers frequently abuse their valuation powers under Rule 8(5). Banks often collude with empanelled property valuers to fix the "reserve price" of secured assets drastically below their actual market value or prevailing circle rates. This artificial distress pricing allows banks to execute rapid liquidations to favoured or cartelized buyers, destroying the borrower's asset equity and violating their constitutional right to property under Article 300A.[24]

Case Example: In *Raj Pal v. PNB Housing Finance Ltd.* (2008), the court struck down an auction sale because gross, systematic undervaluation and institutional bad faith in fixing asset pricing completely vitiated the legality of the recovery process.[25]

5.2. Surreptitious Bypassing of Mandatory Notice Timelines: The paper finds that secured creditors routinely treat the mandatory 30-day individual and public notice requirements under Rules 8(6) and 9(1) as mere administrative formalities rather than non-negotiable statutory safeguards. Financial institutions frequently rush to hold public auctions on short notice, explicitly aiming to prevent borrowers from exercising their statutory right of redemption or approaching the Debt Recovery Tribunal (DRT) for an interim stay.

Case Example: In the landmark ruling *Mathew Varghese v. M. Amritha Kumar* (2014), the Supreme Court heavily penalized a bank for executing an auction without strict timeline compliance. The Court held that rushing an asset sale without the mandatory 30-day notice is a structural fraud upon the law, rendering the entire transaction an absolute nullity.[26]

5.3. Procedural Perjury and Fabrication of Timelines to avoide the liability: The study reveals that financial institutions occasionally resort to active evidentiary fraud. When facing the strict deadlines of the SARFAESI Act, authorized officers have been caught retroactively forging postal dispatch receipts, manipulating courier tracking records, or backdating newspaper advertisement dates to manufacture a false paper trail of statutory compliance.

Case Example: In *Mardia Chemicals Ltd. v. Union of India* (2004), while the Supreme Court upheld the Act's overall validity, it explicitly built in the requirement for banks to meaningfully reply to borrower objections under Section 13(3A) to stop banks from operating with complete procedural arbitrariness and fabricating compliance.[27]

5.4. Abuse of Section 14 Machinery through Misleading Affidavits in CMM Courts, DM office: To bypass the resistance of a defaulting borrower, financial institutions aggressively utilize the administrative machinery of Section 14. The paper finds that banks routinely commit perjury by submitting false or misleading Nine-Point Affidavits to the District Magistrate (DM) or Chief Metropolitan Magistrate (CMM). They systematically conceal pre-existing legal disputes, ongoing civil litigations, or severe structural defects in the asset's title simply to secure swift physical possession orders.

Case Example: In recent jurisprudence clarifying Section 14, courts have established that while the DM/CMM cannot adjudicate the validity of the loan, they must refuse administrative assistance if the bank's affidavit is found to contain fraudulent or misleading statements.[28]

[24] India Const. art. 300A.
[25] *Raj Pal v. PNB Housing Finance Ltd.*, 2008 (3) LH (P&H) 2556.
[26] *Mathew Varghese v. M. Amritha Kumar*, (2014) 5 SCC 610.
[27] *Mardia Chemicals Ltd. v. Union of India*, (2004) 4 SCC 311.
[28] The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, § 14, No. 54, Acts of Parliament, 2002 (India).

5.5. Arbitrary Evictions and Coercive Force Against Bona Fide Tenants: Financial institutions regularly employ coercive strong-arm recovery tactics, completely ignoring the statutory protections granted to legitimate third parties. Instead of taking lawful, symbolic possession of properties occupied by valid, long-term lessees, banks use recovery agents to forcefully and physically evict residents, flagrantly violating state rent control legislations. ***Case Example:*** In *Harshad Govardhan Sondagar v. International Assets Reconstruction Co. Ltd.* (2014), the Supreme Court clamped down on this institutional practice. The Court ruled that financial institutions cannot use the SARFAESI Act as a blunt instrument to trample upon legitimate, pre-existing third-party real estate rights, ordering that valid tenancies must be legally respected until their expiration.[29]

6. RECOMMENDATIONS

To address the systematic vulnerabilities, institutional overreach, and procedural lapses identified in the implementation of the SARFAESI Act, 2002, the framework must undergo structural reforms. The following recommendations provide strategic suggestions to establish transparent **fair practices**, **fortify regulatory prospectuses**, and guarantee the comprehensive **protection of borrowers' rights**.

6.1. Reforms for Prospectus Transparency & Independent Valuation of assets.

- **Requirement of Mandatory Multi-Agency Valuation Audits:** To eliminate the malicious undervaluation of secured assets, the law should mandate that the "reserve price" under Rule 8(5) be determined by an average of two independent, government-approved institutional valuers.
- **Use of Blockchain E-Auction Portals:** Financial institutions must move away from isolated, bank-managed digital auctions. A unified national e-auction platform backed by blockchain technology should be introduced to publicly log all bid histories, preventing cartelization, proxy bidding, and the retroactive tampering of bid timelines by authorized officers.
- **Comprehensive Disclosure in the Auction Prospectus:** The sale prospectus issued by the bank must transparently disclose any "clouds on the title," pending litigation, structural defects, or existing third-party tenancy claims. Selling an asset on an "as-is, where-is" basis should not exempt a financial institution from the tort of fraudulent concealment.

6.2. Structuring Fair Practices Modul for Financial Institutions

- **Strict Digital Logging of Statutory Notices:** To stop the fabrication of procedural timelines, the dispatch of the mandatory 60-day demand notice [§ 13(2)] and the 30-day auction notice [Rule 8(6)] must be integrated into a secure, third-party electronic registry. This registry would serve as definitive, unalterable proof of service for the Debt Recovery Tribunal (DRT).
- **Reasoned and Mandatory Adjudication of Objections:** Financial institutions must move beyond issuing boilerplate rejections to borrower objections under Section 13(3A). The authorized officer should be statutorily required to provide a detailed, "reasoned order" addressing every specific material objection raised by the borrower. Failure to provide a reasoned reply should automatically halt subsequent Section 13(4) measures.
- **Codified Code of Conduct for Recovery Agents:** A strict, statutory code of fair practice must govern bank-paneled recovery agents. The use of coercive or strong-arm physical eviction tactics outside the precise administrative order of a Section 14 Magistrate must lead to immediate financial penalties on the bank and criminal prosecution of the offending individuals.

6.3. Enhanced Protection of Borrowers' and Third-Party Rights

- **Statutory Expansion of the Right of Redemption:** Following the spirit of ***Mathew Varghese (2014)***, the statutory right of redemption under Section 13(8) should be explicitly extended up to the exact moment the auction transfer deed is registered, rather than

[29] *Harshad Govardhan Sondagar v. International Assets Reconstruction Co. Ltd.*, (2014) 5 SCC

terminating upon the publication of the auction notice. This provides the borrower with a final, uncompromised opportunity to salvage their property.

- **Summary Screening Mechanism Under Section 14:** While the role of the District Magistrate under Section 14 is administrative, a mandatory "Notice to Occupant" rule must be codified. Before executing a physical eviction order, the Magistrate must provide a brief, 15-day window for any third-party resident to present a registered lease or utility bills, operationalizing the protective guidelines laid out in ***Harshad Govardhan Sondagar (2014)***.
- **Accountability and Penalties for Perjury:** If a bank is found to have submitted a false or misleading Nine-Point Affidavit under Section 14, or is found guilty of structural fraud during post-facto review under Section 17, the DRT must have the statutory power to levy exemplary damages on the financial institution and initiate mandatory disciplinary action against the authorized officer.

7. CONCLUSION:

The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002, was undeniably an economic necessity. It rescued the Indian banking sector from structural stagnation by establishing an expedited, non-judicial debt recovery architecture. However, this study demonstrates that removing prior judicial intervention has inadvertently exposed the enforcement process to severe bad-faith manipulation. The findings reveal a disturbing dual vulnerability: a top-down threat characterized by institutional overreach, malicious property undervaluation, and the manipulation of timeline notice constraints by secured creditors; and a bottom-up threat driven by defaulting borrowers who exploit regulatory gray areas through fabricated tenancies and anti-competitive e-auction cartelization. In this environment of conflicting malpractices, the evolution of judicial control has proved essential. From the landmark intervention in Mardia Chemicals to modern rulings like Phoenix ARC, the Indian judiciary has continually recalibrated its stance. It maintains a dual responsibility: aggressively policing the procedural integrity of asset liquidations to protect individual constitutional rights under Article 300A, while firmly blocking frivolous, obstructionist writ petitions from choking specialized tribunals like the DRT.Ultimately, judicial control shouldn't have to carry the burden of correcting basic structural flaws in the law. For the SARFAESI Act to achieve its primary economic purpose without compromising systemic fairness, the legislative and regulatory frameworks must evolve. Implementing blockchain-backed central e-auction registries, mandating multi-agency asset valuation audits, and strictly enforcing penalties for procedural perjury will bridge the gap between financial efficiency and natural justice. Only through these structural changes can the SARFAESI Act transform from a potentially arbitrary tool of administrative power into a mature, equitable, and transparent mechanism for national economic recovery.

8. REFERENCES AND BIBLIOGRAPHY:

1. Secondary Sources: Books & Treatises

1.1. M.L. Tannan, Tannan's Banking Law and Practice in India (28th ed. 2024).
1.2. S.N. Gupta, The Banking Law in Theory and Practice (6th ed. 2021).
1.3. Taxmann, Guide to SARFAESI Act, 2002 & Enforcement of Security Interest Rules, 2002 (2025).
1.4. Rashmi Shukla, Non-Performing Assets in Banks: Management, Recovery and Impact (2019).
1.5. V.A. Avadhani, Securities Analysis and Portfolio Management (12th ed. 2023).

2. Reports of Committees & Regulatory Bodies

2.1. Reserve Bank of India, Report of the Committee on Banking Sector Reforms [Narasimham Committee II] (1998).
2.2. Reserve Bank of India, Report of the Committee on Secondary Market for Corporate Loans [T.N. Manoharan Committee] (2019).
2.3. Reserve Bank of India, Report of the Committee to Review the Working of

Asset Reconstruction Companies [Sudarshan Sen Committee] (2021).

2.4. Ministry of Finance, Government of India, Report of the Expert Committee on Legal Measures for Recovery of Dues of Banks and Financial Institutions [Andhyarujina Committee] (2000).

2.5. Reserve Bank of India, Financial Stability Report (June 2025).

3. Table of Authorities

3.1. Constitutional Provisions

3.1.1 India Const. art. 14.

3.1.2 India Const. art. 226.

3.1.3 India Const. art. 300A.

4. Statutes

4.1. The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, No. 54, Acts of Parliament, 2002 (India).

4.2. The Recovery of Debts Due to Banks and Financial Institutions Act, 1993, No. 51, Acts of Parliament, 1993 (India).

5. Delegated Legislation / Rules

Security Interest (Enforcement) Rules, 2002, Gazette of India, pt. II sec. 3(i) (ext.) (Nov. 18, 2002).

6. Cases

6.1. *Authorised Officer, State Bank of India v. Brahmo Construction Pvt. Ltd.*, (2015) 5 SCC 601.

6.2. *Bajarang Shyamsunder Agarwal v. Central Bank of India*, (2019) 9 SCC 561.

6.3. *Harshad Govardhan Sondagar v. International Assets Reconstruction Co. Ltd.*, (2014) 5 SCC 1.

6.4. *Mardia Chemicals Ltd. v. Union of India*, (2004) 4 SCC 311.

6.5. *Mathew Varghese v. M. Amritha Kumar*, (2014) 5 SCC 610.

6.6. *Phoenix ARC Private Limited v. Vishwa Bharati Vidya Mandir*, (2022) 5 SCC 345.

6.7 Raj Pal v. PNB Housing Finance Ltd., 2008 (3) LH (P&H) 2556.