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Judicial Review and Tribunal System Under RDB, SARFAESI, and IBC

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Background:

India always has been the largest economy in the developing countries. The post-independence era was a vital period of growth in the nation's economic development. India worked towards developing the business sector as well as establishing other sectors during this period with the help of various initiatives. Money, being a crucial driver, Played vital role for the growth of businesses and companies. As businesses expanded further, the role of the banks increased. Banks provided essential financial support through both short-term and long-term loans, helping to promote business growth.

However, with financial assistance came various problems as well as uncertainties, especially regarding the recovery of debts. A huge number of cases were pending in courts related to debt recovery, and the long process of law often involved manifold delays in settling claims. Civil courts were overwhelmed with cases, which resulted in a lot of banks being unable to recover their dues or enforce securities. This meant that a large amount of funds in banks and financial institutions remained tied up in non-productive assets whose value depreciated with time. There was also an impact on the borrowers and guarantors because justice delivery was delayed.

Before 1993, the legal procedures for recovery of debt by banks and financial institutions were slow and ineffective. A significant amount of money was still tied up in non-performing assets. In 1981, a Committee headed by Shri T. Tiwari reviewed the legal challenges faced by banks and recommended changes in the law. The Tiwari Committee also recommended the setting up
of special tribunals to recover debts quickly through a summary procedure. In 19911, the

Committee2 on the Financial System, again headed by Shri M. Narasimhan, felt that the existing process needed urgent attention and thus recommended the government to set up special tribunals for efficient recovery.

So, in pursuit of quick judgments and recoveries of debts accruing to the banks and other financial institutions, the Parliament promulgated Recovery of Debts Due to Banks and Financial Institutions Act, 1993. The Act came into effect on June 24, 1993. It introduced the Debt Recovery Tribunal[3] (DRT) that aims to make the debt recovery process faster, which would thus settle financial disputes sooner. Over time, it became clear that enactment of the RDB Act was not sufficient to bring in the proper end for NPAs and bring in justice for real borrowers and guarantors. So, the government approached ways to improve the powers and abilities of banks while also making sure fair justice would be done for all. This resulted in the enactment of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the SARFAESI Act.)

Indian banks came under pressure to conform to international standards during this period. Consequently, Indian banks gradually conformed to international prudential norms and standards. The need for a level playing field between Indian and international banks increased. There was no

legal provision prior to 2002 that facilitated the

securitisation of financial assets or allowed banks to take possession of secured assets and sell them off. The SARFAESI Act[4], 2002 was enacted to fill this gap by strengthening creditors' rights. These right enabled banks and other financial institutions to exercise rights to seizure and sell the security interests; consequently, dues became recoverable speedily, with the costlier and more cumbersome process in the courts avoided.

With respect to the prevailing commercial practices and financial sector reforms, the SARFAESI Act was devised in order to bring the existing legal framework back on track to facilitate the efficient recovery of the defaulted loans that had piled up in the NPAs of the banks and other financial institutions. Narasimhan Committee I and II as well as Andhyarujina

[1] Singh, V. A. & Symbiosis Law School, Noida. (2022). EVOLUTION OF DEBT RECOVERY REGIMES AND THEIR EVALUATION IN ADDRESSING NPAs. *International Journal of Creative Research Thoughts*, *10*(6), 270–271. https://ijcrt.org/papers/IJCRT22A6267.pdf

[2] High Level Committee on the Financial System (Narasimham Committee I, 1991)

[3] *DRATS*. (n.d.). https://drt.gov.in/#/aboutus/actrule

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Committee recommended the changes needed in the system of law while reviewing the progress of banking sector reforms by the Central Government. These committees recommended the enactment of a new law to enable securitisation and to empower banks and financial institutions to take possession of securities and sell them without court intervention.

With this, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002 was enacted on June 21, 2002 to regulate securitisation and reconstruction of financial assets and the enforcement of security interests. The Ordinance was given assent by the President and it became an Act.

The SARFAESI Act was designed to allow banks to recover long-term assets, manage liquidity issues, balance asset-liability mismatches, and improve the recovery process by granting them the authority to take possession of secured assets, sell them, and reduce NPAs through measures outlined in the Act.

In India, the legal and institutional framework for addressing debt defaults has historically not aligned with global standards. The recovery process, under laws like the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, has faced limitations in achieving desired outcomes. To encourage entrepreneurship, improve credit availability, and align the interests of multiple stakeholders, the government intended the consolidation and simplification of the laws on insolvency and reorganization, ensuring a timely resolution and maximization of asset value.

In order to further address these problems, the Ministry of Finance, in August 2014, constituted the BLRC, headed by T.K. Viswanathan, and tasked it with formulating a new bankruptcy law. The committee presented its report[5] with a draft bill in November 2015. After taking public feedback into account, Erstwhile Finance Minister Arun Jaitley presented the Insolvency and Bankruptcy Code, 2015, in the Sixteenth Lok Sabha in December 2015. The bill was subjected to thorough analysis by a Joint Parliamentary Committee (JPC), which provided its revised draft in April 2016. The bill passed both houses of Parliament in May 2016 and received President's assent on 28 May 2016.

[5] Mukherjee, D. (2015). The Report of the Bankruptcy Law Reforms Committee Volume I: Rationale and Design. https://ibbi.gov.in/BLRCReportVol1_04112015.pdf

The Press Information Bureau[6], Ministry of Finance, Government of India, on 11 May 2016 prescribed the salient features of the IBC. Adjudication is considered a cornerstone of this institutional infrastructure. National Company Law Tribunal (hereinafter referred to as the NCLT) was established as the forum for corporate insolvency cases, and Debt Recovery Tribunals (hereinafter referred to as the DRTs) were designated to hear individual insolvency cases. The institution, along with its appellate body-the National Company Law Appellate Tribunal (hereinafter referred to as the NCLAT) and Debt Recovery Appellate Tribunals (hereinafter referred to as the DRATs) was adequately fortified to ensure world-class functioning bankruptcy processes.

Debt Recovery Tribunals:

The RDB Act of 1993 laid the foundation for the creation of Debt Recovery Tribunals (DRTs) and Debt Recovery Appellate Tribunals (DRATs) in India. The aim was to expedite the recovery of debts by banks and financial institutions.

RDB Act, mainly provides for a legal procedure for recovery of debts by the financial institutions and establishes Debt Recovery Tribunals (DRTs). As per Section 19[7], cases where the dispute amount exceeds Rs. 20 lakh are covered under the purview of the DRT.

Financial institutions seeking debt recovery file applications before these tribunals under Section 17, where the tribunal examines the claim and issues appropriate orders, such as the attachment of assets. Furthermore, Section 18 empowers the DRTs to order the sale of assets attached to recover the outstanding debt. Resolution procedures may also involve appeals to the Debt Recovery Appellate Tribunal (DRAT) under Section 21, if the borrower or creditor is not satisfied with the decision reached by the DRT. The law has a few limitations: notably, it lacks the authority for the DRTs to grant injunctions, which disallows them from halting the sale of the debtor's assets during the proceeding. Further, the DRTs have jurisdiction only over debts exceeding Rs. 20 lakh. Thus, it is not available to smaller creditors. Even with these specialized tribunals, the delay in recovery is very common due to pendency and procedural inefficiency.

The statistics[8] below clearly reflect a structured legal approach to recover debts under RDB Act:

Financial Year	**No. of OA* cases disposed of**
2017-18	26078
2018-19	33224
2019-20	30069
2020-21	8058
2021-22	13069
2022-23	29124
2023-24	36495
***OA: Original Application filed by Banks/Financial Institutions.*	

The SARFAESI Act, 2002 is enacted to let a secured creditor exercise his option over the defaulting borrower's property without any judicial involvement except in the presence of a dispute. Under Section 13, once a default occurs, the creditor can take actions such as the seizure and sale of the secured assets. The borrower is given a notice period of 60 days to clear the dues before the creditor can proceed with asset enforcement. If the borrower contests this, the case can be referred to the Debt Recovery Tribunal (DRT) under Section 17, which determines the legality of the creditor's actions. Section 14 grants a creditor recourse to the Chief Metropolitan Magistrate (CMM) or the District

Magistrate (DM) to enforce repossession. The borrowers have further right, according to Section 18, to appeal from an order passed by the DRT to the DRAT in case they do not like its order.

Even though under SARFAESI, the recovery process takes less time, it is applicable only to secured creditors, so unsecured creditors have no remedy under this enactment. The other important feature is that it is mostly asset-based, and the security interests are to be enforced. So the resolution is faster, but sometimes this does not solve the overall issues of debtors.

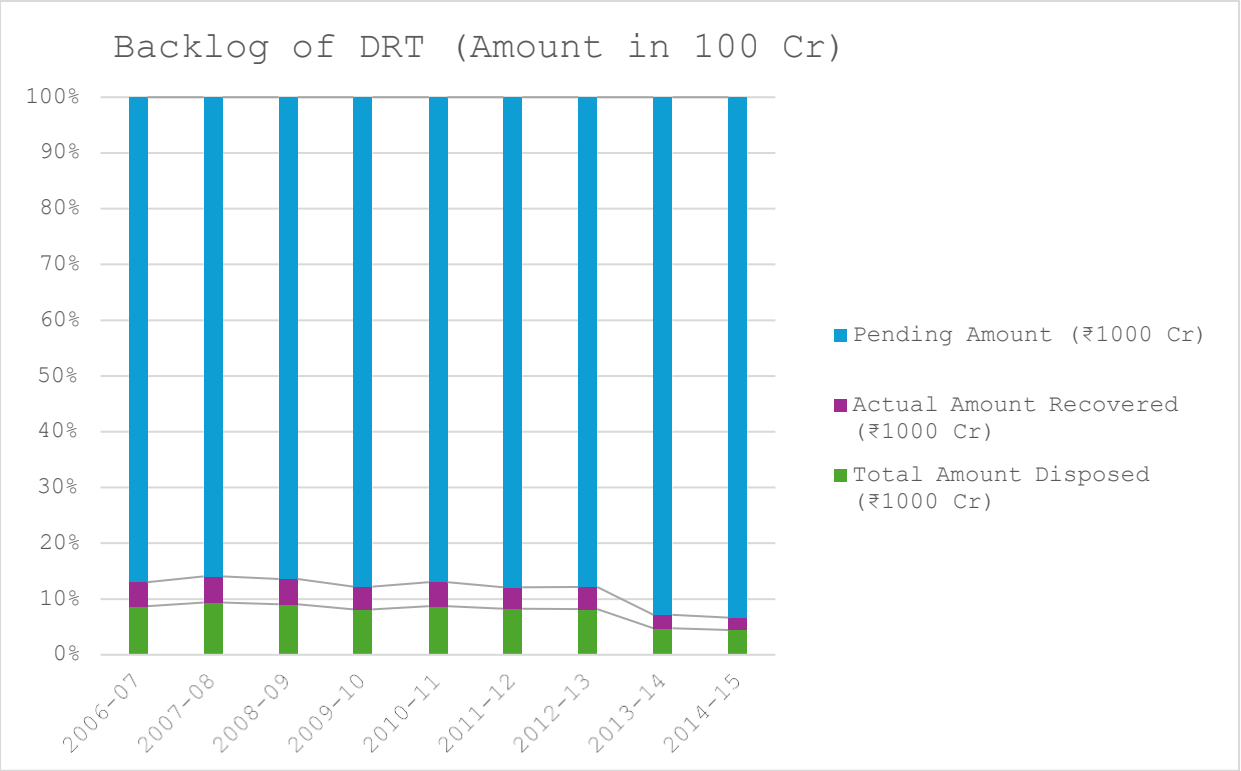
As outlined below, demonstrate a well-defined framework for financial institutions to enforce recovery through the sale of secured assets[9].

Financial Year	**No. of SA* cases disposed of**
2017-18	5851
2018-19	9459
2019-20	10301
2020-21	3754
2021-22	6330
2022-23	13061
2023-24	16146
**SA: Application under SARFAESI Act filed by Borrowers/Guaranters/Third Party*	

Despite these efforts, DRTs have struggled to achieve their objectives due to inefficiencies in infrastructure and procedural execution. The rising non-performing assets in India have increasingly led to dependence on Debt Recovery Tribunals. Yet, the pending cases continue to increase, and it was nearing Rs. 4 lakh crore in unsettled debts by FY 2015, thus highlighting the inefficiencies of the system. The delays in debt recovery create dynamic efficiency costs that prevent the cleaning up of balance sheets for both banks and the corporate sector.

This primarily is due to the failure of punishing wilful defaulters which erodes the legitimacy of the institutions. Powerful institutions like those of investigative agencies, by nature, delay processes because they perpetuate the status quo; at the level of public sector banks, managers cannot write off loans because they will be investigated which results in further delay in solving NPAs. This is how the backlogs get accumulated over time. Another point is that the "perpetrator pays" principle is rarely followed, leading to moral hazards and delaying the exit of distressed companies. Such systemic inefficiencies and lack of decisive decisions are the primary reasons why the DRT system is not very effective, and the debt defaults cannot be resolved effectively.

Figure. 1[10]



Key Challenges:

1. **Limited Number of DRATs:** While there are 39 DRTs in India, only five DRATs exist to handle appeals from multiple tribunals. This imbalance has led to significant congestion, slowing down the appellate process and delaying debt recovery.
2. **Infrastructural and Resource Limitations:** Many DRTs operate in inadequate facilities, affecting the smooth functioning of tribunals. Lack of basic amenities and insufficient trained personnel, such as recovery officers, have contributed to inefficiencies, making it difficult to manage cases effectively.
3. **Procedural Delays and Backlogs:** Despite being designed for quick debt recovery, DRTs face ongoing delays in processing cases. The increasing volume of cases, slow hearings, and frequent adjournments have led to backlogs, undermining the tribunals' goal of providing timely resolutions.
4. **Jurisdictional Conflicts and Legal Ambiguities:** The introduction of the Insolvency and Bankruptcy Code (IBC) in 2016 has created overlapping jurisdictions between DRTs and the National Company Law Tribunal (NCLT), leading to confusion and delays in case resolutions.
5. **Bar of Jurisdiction by High Courts:** Despite the RDDBFI Act and SARFAESI Act limiting civil court jurisdiction in debt recovery matters, High Courts continue to intervene under Article 226 of the Constitution, leading to conflicting decisions and further delays in proceedings.
6. **Enforcement of Orders:** Even when DRTs issue orders, enforcement remains a significant challenge. Debtors often use delay tactics to stall asset attachment and sales, prolonging the recovery process and undermining the effectiveness of DRT orders.
7. **Technological Limitations:** The DRT system has been slow to embrace modern technological tools like e-filing and virtual hearings, which could expedite case management. The COVID-19 pandemic highlighted the vulnerabilities of the paper- based system, underscoring the urgent need for a digital overhaul.

DRT and DRAT have increased the quantity of recovery as well as case disposal within due time in comparison to ordinary courts. Still, the effectiveness of the tribunals is less than the initial expectations. Thus, the government introduced a new framework for tribunals in the Insolvency and Bankruptcy Code, 2016 to make the system more effective.

National Company law tribunal:

The National Company Law Tribunal (NCLT)[11], the stalwart of the insolvency and bankruptcy framework of India as enshrined in the Insolvency and Bankruptcy Code, is basically the Adjudicating Authority AA for both the corporate debtor's insolvency resolution and liquidation. An NCLT court decides as per the location of the registered office of the corporate debtor. As soon as an application for insolvency is filed, the NCLT has to determine whether there is a default and admit or reject the same within a rigid time frame of 14 days.

Once admitted, it administers the Corporate Insolvency Resolution Process (CIRP), approves or rejects resolution plans and, in the event of unsuccessful resolution, passes an order of liquidation. The NCLT is also empowered to settle disputes, grant extensions of time, and deal with questions of law arising out of the insolvency resolution process under Section 60(5) of the IBC. The appellate authority for challenging the decisions of the NCLT is the National Company Law Appellate Tribunal (NCLAT), and further appeal lies in the Supreme Court on questions of law. Another dimension is that the IBC further restricts the jurisdiction of civil

courts and other authorities, leaving the NCLT and NCLAT as the primary forums for hearing insolvency-related matters. In this context, the NCLT assumes a very crucial role in efficiently resolving insolvency issues by following a structured corporate restructuring approach in India.

The role of the Adjudicating Authority (AA), which in most cases is the NCLT or NCLAT, becomes significant at the start of the corporate insolvency resolution process (CIRP). Once an application for initiating CIRP is filed, the AA has to admit the application after verifying that there is a default. Sections 7, 9 and 10 IBC specify a procedure for a CIRP but does not confer any such right to be heard. A rule has come under the provisions of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 mandates that a copy of the application must be issued to the corporate debtor. Rule has been rendered mandatory by cases in the superior courts.

Here are the significant effects of tribunals:

- **Single Window for Disputes**

The NCLT and NCLAT consolidate several functions hitherto spread over different bodies, including the Company Law Board (CLB), the Board for Industrial and Financial Reconstruction (BIFR), and the High Courts. The consolidation of these bodies into one form will position the new tribunals to make company law litigation less complicated and faster. It will reduce fragmentation and unnecessary duplication in legal procedures.

- **Class Action Claims**

One of the new features under the NCLT is the class action suit provision. Shareholders, especially minority shareholders, can now file class action claims against company management if they feel the company's affairs are not being properly managed. This mechanism may empower shareholders to challenge misconduct or oppressive actions, thereby providing a tool for shareholder activism in India. With the increasing importance of shareholder rights, this provision is a welcome addition.

- **Speedy Disposal of Cases**

The main objective behind the formation of NCLT and NCLAT is the speedy disposal of cases. NCLT has been empowered to regulate its procedures, which would be helpful in arriving at a quicker resolution. The timeline for the disposal of cases is also strictly three months, which

can be extended up to 90 days in exceptional circumstances. This speed-based emphasis might substantially increase the productivity of Indian corporate dispute resolution.

- Wider Reach and Accessibility

Unlike the CLB, which operated through only five benches, the NCLT will have 15 benches across the country, with the principal bench in New Delhi and Chennai. This will allow the tribunal to have a wider geographical reach and provide easier access for companies and litigants from different parts of the country. The expansion of the tribunal structure is likely to expedite case resolution by reducing delays caused by congestion in limited venues.

Role of NCLAT and NCLT in the Legal System

Appeal for the judgments of NCLT shall lie before NCLAT, and further appeal lies to be presented before the Supreme Court. Such a hierarchical structure provides for a very clear and well-defined process of reaching judgments, which contributes to the efficiency of the process of adjudication process.

Table 1.1

CASES FILED, PENDING AND DISPOSED UNDER SECTION 7, 9 AND 10 OF IBC						
FROM 01.11.2017 TO 30.09.2024						
Section of IBC, 2016	**No. of cases numbered**	**No. of cases pending (pre admission)**	**No. of cases pending (after admission)**	**No. of cases disposed of**	**No. of cases adjudicated [(4) + (5)]**	**% of Adjudication [(6) + (2) * 100]**
1	**2**	**3**	**4**	**5**	**6**	**7**
Sec 7	11,555	1,015	2,372	8,574	10,946	94.7%
Sec 9	23,555	1,403	2,030	21,135	23,165	98.3%
Sec 10	816	175	321	457	778	95.3%
Total	**35,926**	**2,593**	**4,723**	**30,166**	**34,889**	

Source: https://nclt.gov.in/

As of September 30, 2024, the CIRP for large cases with admitted claims above Rs. 1,000 crore is reported to be a mixed bag. While 164 such cases are under resolution with a total admitted claim of Rs. 9.97 lakh crore, the realizable value from these cases is Rs. 3.18 lakh crore, which is 31.91% of the total claims. The realisable value is, however, higher than the liquidation value, which stood at Rs. 1.90 lakh crore, with a realisation rate of 167.43% in comparison.

This would indicate that, although the resolution process has done better than liquidation in some cases, the gap between the claims of creditors and the amount realised remains large, which speaks to the difficulty in addressing corporate distress effectively.

The table is a record of cases filed, pending, and disposed under Sections 7, 9, and 10 of the Insolvency and Bankruptcy Code (IBC), 2016, from November 1, 2017 to September 30, 2024.

- Section 7: Total cases filed are 11,555, of which 1,015 cases are pending pre-admission and 2,372 cases are pending after admission. Of these, 8,574 cases were disposed of, which means a total adjudication of 10,946 cases. The percentage of adjudication under this section is 94.7%.
- Section 9: This received the largest number of cases filed, which stands at 23,555 cases. Of these, 1,403 are pending preadmission and 2,030 are pending after admission. Altogether, 21,135 cases were disposed of, resulting in the adjudication of 23,165 cases with a very high adjudication percentage of 98.3 percent.
- Section 10: In all, 816 cases were filed, and 175 were pending pre-admission and 321 pending after admission. Among them, 457 cases were disposed of and 778 were adjudicated. The percentage of adjudication in this section is 95.3%.

The total number of cases filed across all three sections is 35,926, while that pending pre- admission is 2,593 and after admission is 4,723. A total of 30,166 cases were disposed of that resulted in being adjudicated 34,889. Adjudication percentage across all sections is impressive as it deals with cases with high efficiency.

Table 1.2

Total Amount Involved in the Cases Disposed of Under Section 7,9 and 10 of IBC (From 01.01.2017 to 30.09.2024)		
Stage of Disposal	Total No. of Cases	Amount Involved (in Crore)
Settled Before Admission	29,733	11,33,606
Settled After Admission/ Sec 12A	1,512	39,552
Resolution Plan Approved	1,134	5,03,239
Total	32,379	16,76,397*
Amount realized under Sec. 43, 45 49 & 66; During Liquidation; section 94 and 95 of IBC, 2016 not included		

Source: https://nclt.gov.in/

Between January 1, 2017, and September 30, 2024, a total of 32,379 cases involving Rs. 16,76,397 crore were disposed of under Sections 7, 9, and 10 of the Insolvency and Bankruptcy Code. Of these, 29,733 cases, involving Rs. 11,33,606 crore, were settled before admission, showcasing the effectiveness of pre-admission resolutions. Another 1,512 cases, accounting for Rs. 39,552 crore, were withdrawn after admission under Section 12A. In addition, 1,134 cases with approved resolution plans involved Rs. 5,03,239 crore. This data also excludes amounts realized under specific sections and during liquidation, highlighting the IBC's substantial role in financial recovery and resolution.

Conclusion:

In conclusion, the tribunal system plays a crucial role in the effective implementation and enforcement of the RDB Act, SARFAESI Act, and the IBC Code. These tribunals have turn up as crucial tools for orderly dispute resolution and the speedy recovery of dues in the insolvency cases. The Debt Recovery Tribunals (DRTs) under the RDDBFI Act and the SARFAESI Act, and the National Company Law Tribunal (NCLT) under the IBC, have each developed over time to handle

an increasing volume and complexity of cases.

They protect creditors' rights but give an equal opportunity for debtors to rehabilitate or settle their liabilities. Through this, tribunals have experienced more maturity over time in dispute management and innovative ways to quicken and provide transparency in procedures. Though the process remains tough for the borrower and employees, undoubtedly the development of the tribunal system has brought much-needed reform that improves access to justice, enhances financial stability, and strengthens the legal infrastructure of India's financial ecosystem. And with time, as these tribunals are shaped further, their role in the future of financial and insolvency law in India will continue to be indispensable.

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