

EFFICIENCY OF NON-PERFORMING ASSETS (NPA) RECOVERY CHANNELS IN INDIAN BANKS: A STUDY

*Madhusmita Ronghangpi¹**

*Naveen Kumar ***

ABSTRACT

Banks are the driving wheels for achieving India's economic growth. When an asset of the bank fails to generate income for the bank and becomes irrecoverable as their interests or principal remains overdue for more than 90 days, the bank suffers from financial burden such assets are called Non-Performing Assets (NPAs), in accordance with RBI asset classification norms. It impacts the profitability and soundness of banks. Various recovery channels of NPA are One Time Settlement Schemes, Lok Adalats, DRTs, SARFAESI Act, 2002, and IBC, 2016. This paper attempts to study the concept of NPA, the recovery channels of NPA of banks, and the various judicial interpretations of the law to recover such NPAs. Furthermore, this paper also presents a comparative analysis of the effectiveness of recovery of NPA from different channels from 2016-17 to 2020-21 to understand the recent trends of recoveries NPAs by banks in India.

Keywords: Banks, NPA, OTSs, Lok Adalats, DRT, SARFAESI, IBC.

- I. Introduction**
- II. Overview of Non-Performing Assets in India**
- III. Various Recovery Channels for Recovering NPAs**
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I. Introduction

BANKS ARE business entities that emphasize monetary transactions and are a vital aspect of a nation's financial system. The banks' efficacy is a *sine qua non* for a country's healthy economy as it discourages a steady flow of credit.² "Webster's Dictionary defines a bank as an

* Research Scholar, Department of Law, North-Eastern Hill University, Shillong, email id: rmadhusmita20@gmail.com.

**Associate Professor, Department of Law, North-Eastern Hill University, Shillong, email id: nkumar-law@nehu.ac.in.

Neeraj Tiwari, "Resolution of NPA in India: The Role of Asset Reconstruction Companies" 7(6) *PRATT'S Journal of Bankruptcy Law* 552-558 (2021).

institution that deals in money, and establishes where the money is deposited, maintained, and issued”.³ The “Banking Regulation Act of 1949” defined banking as “the depositing of money by the public to lend or invest, which is repayable on demand or otherwise and withdrawn by cheques, draft, and order”.⁴ A Banking Company is described under the Act of 1949 as a company transacting the banking business in India.⁵ The bank's core purpose involves accepting and lending money to individuals⁶, this process is called the creation of credit in banks. In this sense, the term “performing assets” refers to the assets that generate earnings for the banks from the advances and loans lent to the individuals, respectively. Banks, on the other hand, lend money with the expectation that repayment is feasible. Further, they estimate the earnings by not mentioning the interest they collect from the loans/advances. Consequently, they remain unaware of their interests collected. Such loan accounts or assets that do not generate income when such “interest or principal remains overdue for more than 90 days” are “non-performing assets (NPA)”, “non-performing loans (NPL)” or “bad loans” of the banks.⁷ Excessive NPAs in banks may cause liquidity issues. Therefore, the Financial Institutions (FIIs) should exercise caution while making a loan. These assets impact the financial sector's health, i.e., capital liquidity and profitability, as it critically disrupts the nation's economic development.⁸

II. Overview of Non-Performing Assets in India

Preceding to 1991, India's legal system was inadequate for retrieving bad debts. In the post-liberalization period, the NPA problem has been acknowledged seriously, and hence, in order to boost the operational effectiveness of the banking sector as well as the recovery of NPAs, a number of strategies have been undertaken. The “Government of India” established the “Committee of Financial System (CFS) or Narasimham Committee I, 1991 (under the chairmanship of Shri M. Narasimham)” to analyze the banks' functions, structure, and actions

³ As cited in S.R. Myneni, *Law of Banking* 30 (Asia Law House, Hyderabad, 3rd edn., 2017).

⁴ The Banking Regulation Act, 1949 (Act 10 of 1949), s.5(b).

⁵ *Id.*, s. 5(c).

⁶ *Id.*, 3, s. 6(a).

⁷ RBI, *Master Circular- Income Recognition, Asset Classification, provisioning and Other Related Matters-UCBs*, November 1, 2021, available at: <https://rbidocs.rbi.org.in/rdocs/notification/PDFs/117MCIRACP41D584957C3A43BCACEBC391B91A3FA0.PDF> (last visited on June 22, 2022).

⁸ Shruti J Pandey, “Non-performing Assets of Indian Banks” 48 *Economic and Political Weekly* 91-93 (2013). See generally, Indira Rajaraman & Garima Vasistha, “Non-Performing Loans of PSU Banks: Some Panel Results” 37 *Economic and Political Weekly* 429-435 (2002).

on August 14, 1991.⁹ This Committee was formed to enforce rigorous capital management requirements, transparency, and fiscal norms in the banking industry based on the "Basel Capital Accord".¹⁰ Significant recommendations were made on the three critical aspects: operational flexibility, internal autonomy for Public Sector Undertaking (PSU) banks, and professionalism for the banking system. It recommended establishing an "Asset Reconstruction Companies (ARC)" for managing NPA-related challenges. Additionally, it urged that the Reserve Bank of India (RBI) formulate ethical norms for determining income for the purpose of classifying bank assets and rates.¹¹ This report expressed that the "interest of assets, advances, bills discounted, etc., remained due for *four quarters period, i.e., 180 days*"¹², which has been now decreased to "*two quarters, i.e., 90 days from March 31, 2004*" as NPAs.¹³ The "Government of India" subsequently formed a committee in 1997 headed by "Shri M. Narasimham" to examine banking sector reforms with the goal of boosting Indian banks and initiating global competition.¹⁴ The "Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act) of 2002" was enacted by the Parliament after this Committee enhanced the legal structure to recover bad debts.¹⁵ This Act of 2002 defined NPA as "*the asset or account of a borrower recognized by the bank or FIIs*".¹⁶ Further, the "Standing Committee on Finance (under Dr. M Veerappa Moily, Chairman)" presented a report on "Non-Performing Assets in Financial Institutions" on February 24, 2016.¹⁷ It defined NPA as "*a loan provided by FIIs, that don't produce earnings to such FIIs that is behind schedule for more than 90 days*".¹⁸ It also suggested that there must be three tiers to control over granting of the loan: "(a) RBI, banks, and borrowers; (b) restructuring of loan accounts; and (c) Corporate Debt Restructuring; and Strategic Debt Restructuring (SDR)".¹⁹ Master

⁹ Ramesh Singh, *Indian Economy* 12.12 (McGraw Hill, 11th ed., 2019).

¹⁰ Niranjana Chipalkanti & Meenakshi Rishi, "Do Indian Banks Understate their bad loans?" 40 *The Journal of Developing Areas*, Spring 76 (2007). See generally, Rakesh Mohan "Financial Sector Reforms in India: Policies and Performance Analysis" 40 *Economic and Political Weekly* 1106-1121 (2005).

¹¹ *Supra* note 9 at 76.

¹² *Id.*, at. 76, 77.

¹³ *Supra* note 6 at 3.

¹⁴ *Supra* note 8 at 12.13.

¹⁵ *Id.* at 12.14.

¹⁶ The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Act 54 of 2002), s.2 (o).

¹⁷ Standing Committee on Finance, "39th Report on Non-Performing Assets in Financial Institutions" 5 (Ministry of Finance, 2016-17).

¹⁸ PRS Legislative Research, Standing Committee Summary, PRS, available at: https://prsindia.org/files/policy/policy_committee_reports/1456814391_SCR%20Summary-%20NPAs_0.pdf (last visited on May 19, 2021).

¹⁹ *Supra* note 16 at 8, 13, 17.

Circular of RBI (2021) defined NPAs are assets that do not yield any income for the bank.²⁰ The “90-day overdue norm” is the metric to count the period of NPAs from March 31, 2004.²¹

Table 1: Parameters of NPA provided in Master Circular are -

| FACILITIES | CONDITIONS |
|--|--|
| Term Loan | Interest or Installment of principal remains overdue beyond 90 days |
| Overdraft or Cash Credit | Remains “out of order” |
| Bill Purchased or Discounted | Overdue beyond 90 days |
| Crop Loan for Short term | Installment of principal or interest remains overdue for two crop seasons. |
| Crop loan for Long-term | Installment of principal or interest remains overdue for one crop season. |
| Securitization transaction in terms of the RBI (Securitization of Standard Assets) Directions, 2021. | Provisions omitted beyond 90 days |
| Derivative contract | Remains unpaid for 90 days period from the specified due date for payment |

Source: RBI Master Circular²²

Classification of NPAs: The RBI has classified NPAs depending on the “non-payment period” and the “reliability of the dues”:²³

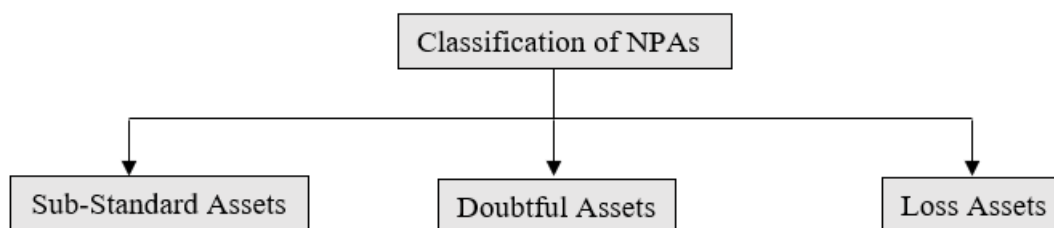


Fig. 1: Classification of NPA

²⁰ *Supra* note 6 at 3.

²¹RBI, *Master Circular - Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances*, October 1, 2021, available at: https://rbi.org.in/Scripts/BS_ViewMasCirculardetails.aspx?id=12171 (last visited on June 22, 2022).

²² *Supra* note 6 at 3.

²³ *Id.* at 12.

- i. Sub-standard assets: It means “*assets that remain NPA for less than or equal to 12 months, as effective from March 31, 2005.*”²⁴ These indicate financial instability and the risk of debt liquidation with potentially adverse effects on lending institutions. In such cases, the borrower’s current net worth or the market value of securities is insufficient for lending institutions to recover payments.
- ii. Doubtful assets: It means “*assets that remain NPA for more than 12 months, as effective from March 31, 2005.*”²⁵ Banks designate these loans as doubtful because there is significant uncertainty regarding the borrower’s ability to repay the loan. These assets carry the same risks as sub-standard assets but with added uncertainties around liquidation, making repayment highly questionable and unreliable.
- iii. Loss assets: These assets are identified as losses by banks, FIIs, or RBI, and have not been entirely written off.²⁶ They are considered irrecoverable for all practical purposes.

Metrics of NPA: There are two metrics of NPA to evaluate a bank's financial well-being are provided below:

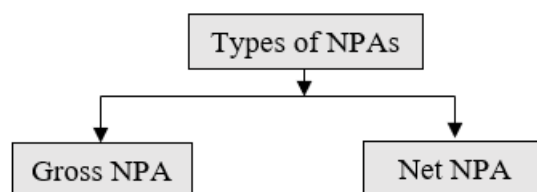


Fig. 2: Two Metrics of NPA

- i. Gross NPA (GNPA): It is the comprehensive calculation of all the NPA loan assets on the Balance Sheet. GNPA contains non-standard assets like “*sub-standard assets*”, “*doubtful assets*”, and “*loss assets*”. It is calculated by adding all the defaulted loans divided by the Gross Advances. GNPA refers to the banks' credit standards.
- ii. Net NPA (NNPA): It means the remaining amount after the bank has deducted the provision for doubtful and unpaid debts from the total GNPA. It is calculated by subtracting the total GNPA and provision for outstanding debts divided by the Gross Advances. NNPA is the actual burden on lending institutions.

²⁴ *Id.* at 12, 13.

²⁵ *Id.* at 13.

²⁶ *Supra* note 6 at 13.

Causes of rising NPAs in the banking sector in India

The Indian banking sector has been facing severe problems due to over rising of NPAs. The NPAs in banks are mounting due to internal as well as external reasons.

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Internal reasons for NPA:

1. Inefficient Credit Appraisal Process: The “Credit Appraisal Process” is defined as the procedure that has been undertaken by a bank to analyze both the debtor as well as the borrowing unit to determine the potential risks and the weakness associated with the unit before approving the loan to be granted. If the process of credit appraisal of the bank is poor, then this increases the risks of the number of wilful defaulters in the bank.

2. Defects in Management: It is imperative that banks consider and follow certain principles prior to lending loans, such as security, marketability, safety, risk diverseness, efficiency, and technical ability. Sometimes, banks' lack of compliance with such principles increases the number of NPAs in banks.

3. Inefficiency of technology: Today’s era has been dubbed the “Information Age” and the significance of computing systems and electronic gadgets is indisputable. It is, therefore, important that the banks undertake initiatives to implement “Management Information Systems (MIS)” and “Financial Accounting Systems” to avoid poor credit collection.

4. Defects in Lending: The procedure for lending that banks adhere to follows three sacrosanct principles that are cardinal to their functioning – “safety, liquidity, and profitability”. If there is non-compliance among the banks with these principles, then the number of NPAs in the banks will inevitably see an increase.

5. Unmet Loan Purposes: A loan is sanctioned against a purpose or a reason and the reason is highlighted by the borrower. However, a lot of times, the reasons highlighted by the borrower are either inadequate or not feasible vis-à-vis the loan amount sanctioned by the bank. Furthermore, the borrowers also become reluctant to repay the loan after its sanctioning, and willfully default on the repayment. Therefore, proper investigation by the bank before

sanctioning the loan is important, and a proper follow-up after the loan is granted is also significant for ensuring that the borrower does not default on the loan.

6. Borrowable Re-Lending: This means that the banks' credit cycle, wherein they indiscriminately use the money they receive from repaid loans to grant new loans without a thorough analysis of the feasibility of recovery of the new loan, ultimately leads to a scenario where the recovery of a large number of bad loans assumes a subordinate role.

External reasons for NPA:

1. Business Credit Cycle: The sale of products is contingent on customer demand, which fluctuates over time. The Credit Officer must be mindful of the cash flow issues and understand the periods of business peaks and deficits.

2. Ambitious Project Proposals: Business-related project reports often present overly optimistic projections due to the inherent optimism of entrepreneurs. Businesspeople are also aware of the bank's norms, such as the Debt Service Coverage Ratio (DSCR), which measures net operating income against total debt service. Consequently, banks should carefully evaluate cash flow projections and compare them with similar existing units and market standards.

3. Fund Misallocation: Banks rely on assessing the borrower's character, capacity, and capital to gain trust. However, it is observed that the borrower's attitudes change significantly before and after the credit is sanctioned. This shift in behaviour affects the accounts' health and the bank's ability to monitor it effectively.

4. Natural Disasters: the increase in non-performing assets (NPAs) in banks can also be attributed to natural disasters. Events such as cyclones and floods cause significant hardships for people, leading to defaults on loan interest and principal payments.

5. Over-reliance on Loans: When borrowers use loans to repay funds borrowed from friends and relatives immediately after the loan is sanctioned, it indicates over-leverage. A high level of solvency is essential for a sound banking system. Misuse of funds and over-leverage put the business at risk of failing to fulfill its obligations to the bank, turning the account into an NPA.

6. **Intentional Default:** If a business is performing well but fails to make repayments, it is considered an intentional default. Banks need to closely monitor such accounts.
7. **Insufficient Credit:** A shortfall in the funds can also lead to business failure and difficulty in maintaining the loan account resulting in NOAs. Additionally, if the bank approves insufficient funds for a project, it may fail due to the funding shortfall.
8. **Ineffective Recovery:** The Government of India established tribunals to recover NPAs. However, due to the tribunals' inefficiency and laxity, the recovery process is prolonged, affecting the bank's profits and credit facilities.
9. **Market Demand Deficiencies:** Businesses in India may fail to sell their products due to their lack of a suitable market platform, making them unable to repay the loans. As a result, banks attempt to repossess and sell the borrower's property.
10. **Changes in Government Policy:** The government frequently introduces new schemes and these plans change with each new administration. This can lead to an increase in NPAs in the lending institutions. The rescheduling and restructuring policies for NPAs are not properly and effectively aiding loan recovery.

III. Various Recovery Channels for Recovering NPAs

1. One-time settlement schemes (OTSs): OTSs are schemes that are introduced by the banks for the default borrowers to recover the interest and principal amount after negotiating with the borrowers and settling the dues at once. These schemes are initiated to call the borrowers to pay the amount less than the original amount. "*OTS Scheme of NPA Accounts for MSMEs Accounts*" defined "*Compromise settlement as a negotiated settlement where a borrower offers to pay, and the bank agrees to accept in full and final settlement of its dues an amount less than the total amount due to the bank under the relative loan contract*".²⁷ RBI guidelines on OTS of NPAs of 2018 had shown that banks had been collecting the default loan amount that became

²⁷ IDFC First Bank, *OTS Scheme of NPAs for Micro, Small & Medium Enterprises (MSME) Sector*, IDFC, available at: <https://www.idfcbank.com/content/dam/idfc/image/regulatory-disclosure/One-Time-Scheme-for-MSME-sector.pdf> (last visited on June 23, 2022).

NPA through negotiation with the borrowers and all PSBs had implemented this scheme to collect such NPAs.²⁸

2. Lok Adalats: The “Lok Adalats” were established under the “Legal Services Authority Act, 1987”, which came on November 9, 1995.²⁹ It is also called as 'People's Court' and stimulated by Justice P.N. Bhagwati, a former Chief Justice of India. The main goal is to Lok Adalat for the purpose of safeguarding the effectiveness and efficiencies of the legal structure in providing justice with equal treatment. S. 2 of Chap. VI of the Act states the proper structure of establishing Lok Adalat.³⁰ Further, it specifies the jurisdiction of such Adalat at different levels.³¹ This Adalat includes “serving or retired judicial officers or individuals” appointed by the authorities.³² Such Adalat must negotiate the matter between the parties under its jurisdiction.³³ The Guidelines of RBI directed the monetary ceiling of the Lok Adalat cases from “Rs.5 lakhs to Rs.20 lakhs”.³⁴

3. Debt Recovery Tribunals (DRTs): The “Recovery of Debts Due to Banks and Financial Institutions Act (RDDBFI), 1993” set up DRTs and “Debt Recovery Appellate Tribunal (DRATs)” to recover dues to banks and FIIs rapidly and proficiently.³⁵ Both the tribunals are established by the Central Government and lays down jurisdictions.³⁶ The Presiding Officer presides over such Tribunal³⁷, and the Chairman governs in a DRAT³⁸. Both the tribunals must act on applications and appeals of the financial entities for recovering the debts, respectively.³⁹ Other courts or authorities cannot have functions of the DRT.⁴⁰ Aggrieved with the DRT's

²⁸ PIB Government of India, *Ministry of Finance on OTS of NPAs*, PIB, available at: <https://pib.gov.in/newsite/PrintRelease.aspx?relid=177590> (last visited on July 23, 2022).

²⁹ Department of Justice, *National Legal Services Authority (NALSA)*, Ministry of Law and Justice, GOI, available at: <https://doj.gov.in/access-to-justice-for-the-marginalized/#:~:text=1987%2C%20the%20Legal%20Services%20Authorities,the%20basis%20of%20equal%20opportunity>. (last visited on June 23, 2022).

³⁰ The Legal Services Authority Act, 1987 (Act 39 of 1987), s. 2.

³¹ *Id.*, s. 19(1).

³² *Id.*, s. 19.

³³ *Id.*, s. 20.

³⁴ RBI, *Guidelines for Compromise Settlement of Dues of Banks & FIs through Lok Adalats*, 2001, available at: <https://rbidocs.rbi.org.in/rdocs/notification/PDFs/20561.pdf> (last visited on June 23, 2022).

³⁵ The Recovery of Debts due to Banks and Financial Institutions Act, 1993 (Act 51 of 1993), s. 3.

³⁶ *Id.*, ss. 3(1), 3(2) and 7(1).

³⁷ *Id.*, s. 4(1).

³⁸ *Id.*, s. 7(2).

³⁹ *Id.*, s. 17.

⁴⁰ *Id.*, s. 18.

order, they may file an appeal to DRAT within 45 days from the date of the order of DRT.⁴¹ There are different modes to recover debts by the Recovery Officer.⁴² The Recovery Officer may appoint a receiver.⁴³ Primarily, the DRTs' performance was well in recovering the debts, but with time, their growth suffered because of the overloading of cases.⁴⁴

In “*Delhi HC Bar Association and another v. Union of India (UOI) & Ors*”,⁴⁵ this case is related to the validation of the RDDBFI Act, 1993 on the grounds unreasonable and is violative of Article 14 of the Constitution. It was held that the Parliament is empowered to constitute a Tribunal. It holds that this Act is a valid piece of legislation.

In “*Punjab National Bank v. Bank of Baroda & Ors*”,⁴⁶ two banks were involved in lending money to the borrower. However, the borrower showed dishonesty and the banks were fighting for genuine title deeds for the property of the borrower. The court decided that the application of appeal was half allowed, and the appellant could have 50 % of the amount sold, and the respondent would receive a 50% share.

4. SARFAESI Act: The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, was introduced on the recommendation of Narasimham Committee II. It was enacted to fight NPAs. The Act can be divided into:

- a. *Securitization of financial assets and issue of security receipts;*
- b. *Reconstruction of financial assets;*
- c. *Enforcement of security interest.*

Pursuant to the Act, for the purpose of conducting asset reconstruction or securitization actions, “Securitisation Companies (SCs)” or “Reconstruction Companies (RCs)” must obtain a registration certificate.⁴⁷ ARCs are registered under section 3 of this Act. In 2022, a Master Circular was issued by RBI to provide guidelines or instructions for all the ARCs registered

⁴¹ *Id.*, s. 20.

⁴² *Id.*, s. 19(7).

⁴³ *Id.*, s. 25.

⁴⁴ Ajit Kumar, “A Study on the effectiveness of Recovery Channels for the recovery of NPAs: A Case Study on Scheduled Commercial Banks in India” 8(3) *International Journal of Recent Scientific Research* 16200-16205 (2017).

⁴⁵ AIR 1995 Delhi 323.

⁴⁶ (2020) BC 66 (DRAT) M.A. No. 36 of 2018.

⁴⁷ *Supra* note 15, s. 3.

under SARFAESI, 2002.⁴⁸ This legislation states the strategies for asset reconstruction like “proper management business of the borrowers, sale, or lease business of the borrowers; or rescheduling payment of the debt by the borrower, etc.”⁴⁹ ARCs shall undertake only the securitization and asset reconstruction activities. Under this Act, the borrower is accountable to the secured creditor in a security agreement.⁵⁰ Further, this legislation states that application in contradiction of actions for retrieving the “*secured debts*” and the actions taken in S. 13 (4) of the Act can be filed under DRT within 45 days from the measures taken.⁵¹ The Appeal can be made to the DRATs to the order of DRTs within 30 days from the receipt of such order.⁵²

In “*Mardia Chemicals v. Union of India*”⁵³, the SC examined the validity of the provisions of the SARFEASI Act and held that the aggrieved borrower could apply for the remedy available under section 17(1) of the Act of 2002 against any action taken by the secured creditor under section 13(4) of the Act of 2002.

In “*M/S Tarnscore v. Union of India & Anr.*”⁵⁴, it was stated that withdrawal of the original application (O.A.) pending before the DRT is not precedent before applying under the SARFAESI Act.

5. Insolvency and Bankruptcy Code: This Code of 2016 has been enacted with the amalgamation of different statutes for recovering debts. The Code of 2016 provides a comprehensive law on the insolvency of “*corporate bodies*”, “*partnership firms*”, and “*individuals*”.⁵⁵ The “*Insolvency and Bankruptcy Board of India (IBBI)*” is set up under this code. The code provides provisions to balance the relationship between creditors and debtors by initiating the insolvency resolution process and liquidation process. The duration fixed for such settlement is 180 days which can be extended to 90 days. In June 2017, the RBI furnished guidelines to banks to begin insolvency proceedings under IBC regarding NPA.⁵⁶

⁴⁸ RBI, *Master Circular - Asset Reconstruction Companies*, April 1, 2022, available at: <https://rbidocs.rbi.org.in/rdocs/notification/PDFs/03MCBAC6A43B0F3A45999CDE91EE1F970D5E.PDF> (last visited on June 22, 2022).

⁴⁹ *Supra* note 15, s. 9

⁵⁰ *Id.*, s. 13(2).

⁵¹ *Supra* note 15, s. 17.

⁵² *Id.*, s. 19.

⁵³ AIR 2004 SC 2371.

⁵⁴ Appeal (civil) 3228 of 2006.

⁵⁵ The Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), s. 2.

⁵⁶ M. Rajeshwar Rao, *Resolution of Stressed Assets and IBC*, RBI, available at: https://www.rbi.org.in/Scripts/BS_SpeechesView.aspx?Id=1306 (last visited on June 26, 2022).

The “Corporate Insolvency Resolution Process (CIRP)” can be initiated by the Financial Creditor (section 7 of the Code), Operational Creditor (section 8 of the Code), and corporate debtor. The adjudicating authority, i.e. “National Company Law Tribunal (NCLT)” may accept or reject the application. The commencement of the CIRP is completed within 180 days extended period of 90 days/ mandatorily 330 days with approval of at least 66% of the voting share of the “Committee of Creditors (CoC)”. The moratorium is declared by the adjudicating authority that the corporate debtor will not be allowed to institute or continue suits, transfer, alienate, etc. The interim resolution professional is appointed that constitutes the CoC. The CoC appoints a resolution professional (R.P.) to prepare the information memorandum. The resolution plan is made, which is approved by at least 66% of the voting share of the CoC. The resolution plan that the corporate debtor follows through the liquidation process must satisfy the adjudicating authority. The aggrieved can appeal to the” National Company Law Appellate Tribunal (NCLAT)” and Supreme Court (SC) (in matters of question of law).

The insolvency resolution for individual and partnership firms is filed to the adjudicating authority, i.e. DRT, by them with a default of not less than one thousand. The adjudicating authority can direct the Board to appoint a resolution professional. The debtor prepares a repayment plan. The moratorium is commenced on the admission of the application for 180 days and they will not be allowed to institute or continue suits, etc. The resolution professional examines the application of them and sends the report to the adjudicating authority. The adjudicating authority may approve or reject the repayment plan. The aggrieved can file an appeal to DRAT and SC (in a matter of question of law).

In “*Swiss Ribbons Pvt. Ltd. v. Union of India*”⁵⁷, the constitutional validity of the IBC is upheld. The SC laid the key implications, such as, “financial creditors” are different from “operational creditors”, the related party includes only those persons who are related to the business activity of the applicant, different benches of NCLAT must be established, etc.

In “*Committee of Creditors of Essar Steel Ltd. v. Satish Kumar Gupta*”⁵⁸, boosted the recovery of debts through the IBC. The SC laid precedents, such as the role of the resolution professional is administrative; the judicial review power of NCLT and NCLAT is limited, etc.

⁵⁷ WP(CIVIL) NO. 99 OF 2018.

⁵⁸ Civil Appeal No. 8766-67 of 2019.

In “*M/S Tata Steel Limited v. State of U P and 2 Others (Bhushan Steel case)*”⁵⁹, the application was filed settlement under Section 7 of the Code by the RBI. M/S Bhushan Steel Limited was declared bankrupt in 2017. Afterwards, M/s Tata Steel Ltd. purchased Bhushan Steel and submitted its resolution plan, which was approved by the CoC. A recovery of 63.5 % was made in this case.

In “*Sesh Nath Singh v. Baidyabati Sheoraphuli Co*”⁶⁰, the limitation for filing an application under IBC before adjudicating authority was discussed. The Appellant (Corporate Debtor) was engaged in the export business of textiles and garments. Section 238A was inserted in IBC (Amendment in 2018) that provides that the law of limitation will apply over NCLT, NCLAT, DRT, and DRAT. However, no specific time limit was prescribed in the Limitation Act of 1963 for IBC. The SC limitation period for making an application under Sections 7 & 9 of IBC is three years, according to Article 137 of the Limitation Act of 1963.

VI. Analysis of NPA Recovery in Various Recovery Channels

Table 2: Total NPAs Conferred, Amount Associated, Amount, Recovered (cr.), and % of recovery under different Channels from 2016-17 to 2021-22 (Lok Adalat, DRTs, SARFAESI Acts, and IBC)

| YEAR | SL. NO. | Basis | “LOK ADALATs” | “DRTs” | “SARFAESI ACT” | “IBC” | Total |
|-----------------------|---------|--------------------------|---------------|--------|----------------|-------|-----------|
| 2016-17 ⁶¹ | 1 | No. of NPA cases filed | 3,555,678 | 32,418 | 1,99,352 | 37@ | 3,787,485 |
| | 2 | Aggregate NPA Associated | 361 | 1,008 | 1,414 | - | 2,783 |
| | 3 | Aggregate NPA | 23 | 103 | 259 | — | 385 |

⁵⁹ 2022 Latest Caselaw 5750 ALL.

⁶⁰ Civil Appeal no. 9198 of 2019.

⁶¹ Reserve Bank of India, “Report on Trend and Progress of Banking in India” 64 (2017-18).

| | | | | | | | |
|---------------------------|---|------------------------------------|-----------|--------------|----------|--------------|---------------|
| | | Recover d | | | | | |
| | 4 | % | 6.3 | 10.2 | 18.3 | – | 13.8 |
| 2017- 18 ⁶² | 1 | No. of NPA cases filed | 33,17,897 | 29,345 | 91,330 | 704@ | 34,39,27 6 |
| | 2 | Aggregate NPA Associate d | 45,728 | 1,33,09 5 | 81,879 | 9,929 | 2,70,631 |
| | 3 | Aggregate NPA Recover d | 1,811 | 7,235 | 26,380 | 4,926 | 40,352 |
| | 4 | % | 4.0 | 5.4 | 32.2 | 49.6 | 14.9 |
| 2018- 19 ⁶³ | 1 | No. of NPA cases filed | 40,87,555 | 51,679 | 2,35,437 | 1,152@ | 43,75,82 3 |
| | 2 | Aggregate NPA Associate d | 53,484 | 2,68,41 3 | 2,58,642 | 1,45,45 7 | 7,25,996 |
| | 3 | Aggregate NPA Recover d | 2,750 | 10,552 | 38,905 | 66,440 | 1,18,647 |
| | 4 | % | 5.1 | 3.9 | 15.0 | 45.7 | 16.3 |
| | 1 | No. of NPA cases filed | 59,86,790 | 33,139 | 1,05,523 | 1,986 | 61,27,43 8 |

⁶² Reserve Bank of India, “Report on Trend and Progress of Banking in India” 52 (2018-19).

⁶³ Reserve Bank of India, “Report on Trend and Progress of Banking in India” 64 (2019-20).

| | | | | | | | |
|-----------------------|---|--------------------------|-----------|----------|----------|----------|-----------|
| 2019-20 ⁶⁴ | 2 | Aggregate NPA Associated | 67,801 | 2,05,032 | 1,96,582 | 2,24,935 | 6,94,350 |
| | 3 | Aggregate NPA Recovered | 4,211 | 9,986 | 34,283 | 1,04,117 | 1,52,597 |
| | 4 | % | 6.2 | 4.9 | 17.4 | 46.3 | 22.0 |
| 2020-21 ⁶⁵ | 1 | No. of NPA cases filed | 19,49,249 | 28,182 | 57,331 | 536 | 20,35,298 |
| | | Aggregate NPA Associated | 28,084 | 2,25,361 | 67,510 | 1,35,139 | 4,56,274 |
| | 3 | Aggregate NPA Recovered | 1,119 | 8,113 | 27,686 | 27,311 | 64,229 |
| | 4 | % | 4.0 | 3.6 | 41 | 20.2 | 14.0 |
| 2021-22 ⁶⁶ | 1 | No. of NPA cases filed | 85,06,741 | 30,651 | 2,49,645 | 891 | 87,87,928 |
| | | Aggregate NPA Associated | 1,19,006 | 68,956 | 1,21,718 | 1,97,959 | 5,07,639 |
| | 3 | Aggregate NPA | 2,778 | 12,035 | 27,349 | 47,409 | 89,571 |

⁶⁴ Reserve Bank of India, "Report on Trend and Progress of Banking in India" 62 (2020-21).

⁶⁵ Reserve Bank of India, "Report on Trend and Progress of Banking in India" 62 (2021-22).

⁶⁶*Id.*, at. 60.

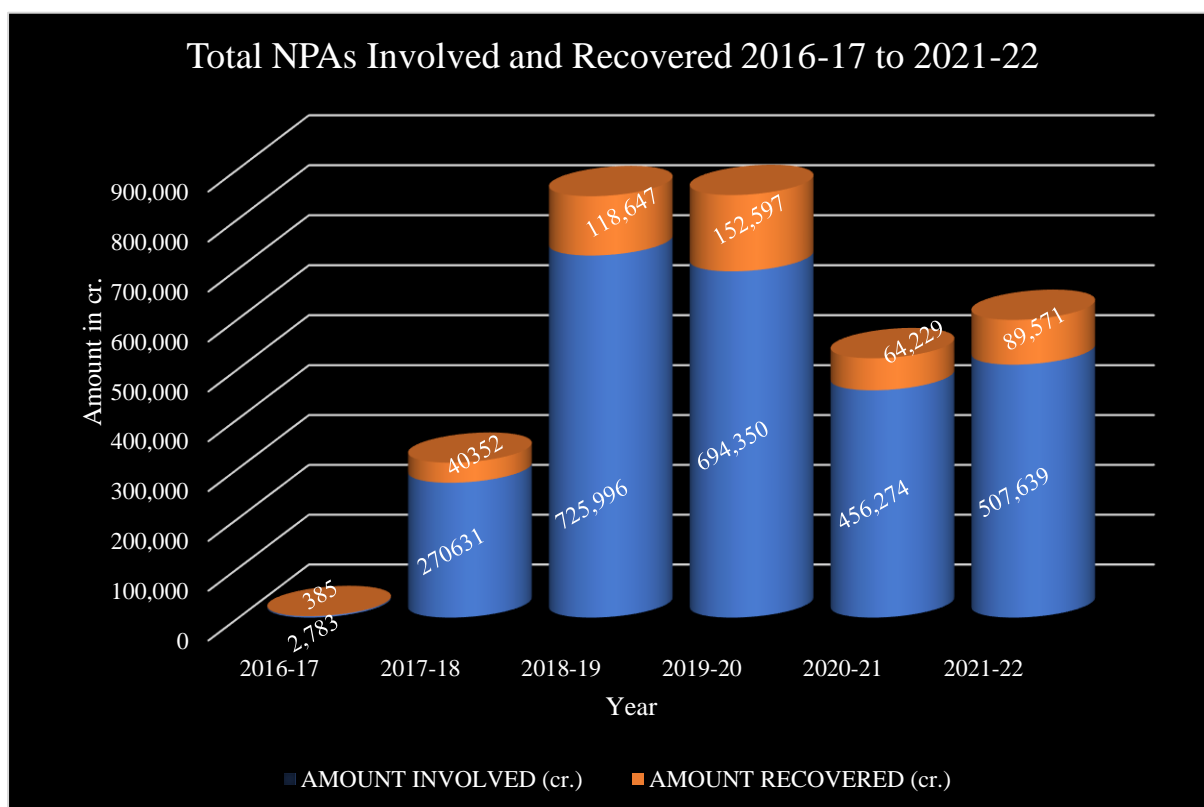
| | | | | | | | |
|--|---|---------------|-----|------|------|------|------|
| | | Recovere d | | | | | |
| | 4 | % | 2.3 | 17.5 | 22.5 | 23.9 | 17.6 |

NB:

1. @: Cases admitted by National Company Law Tribunals (NCLTs).

Source: RBI Database and “Report on Trend and Progress of Banking in India”⁶⁷

Chart 1: Total NPAs Amount Involved, Recovered recovery from 2016-17 to 2021-22.

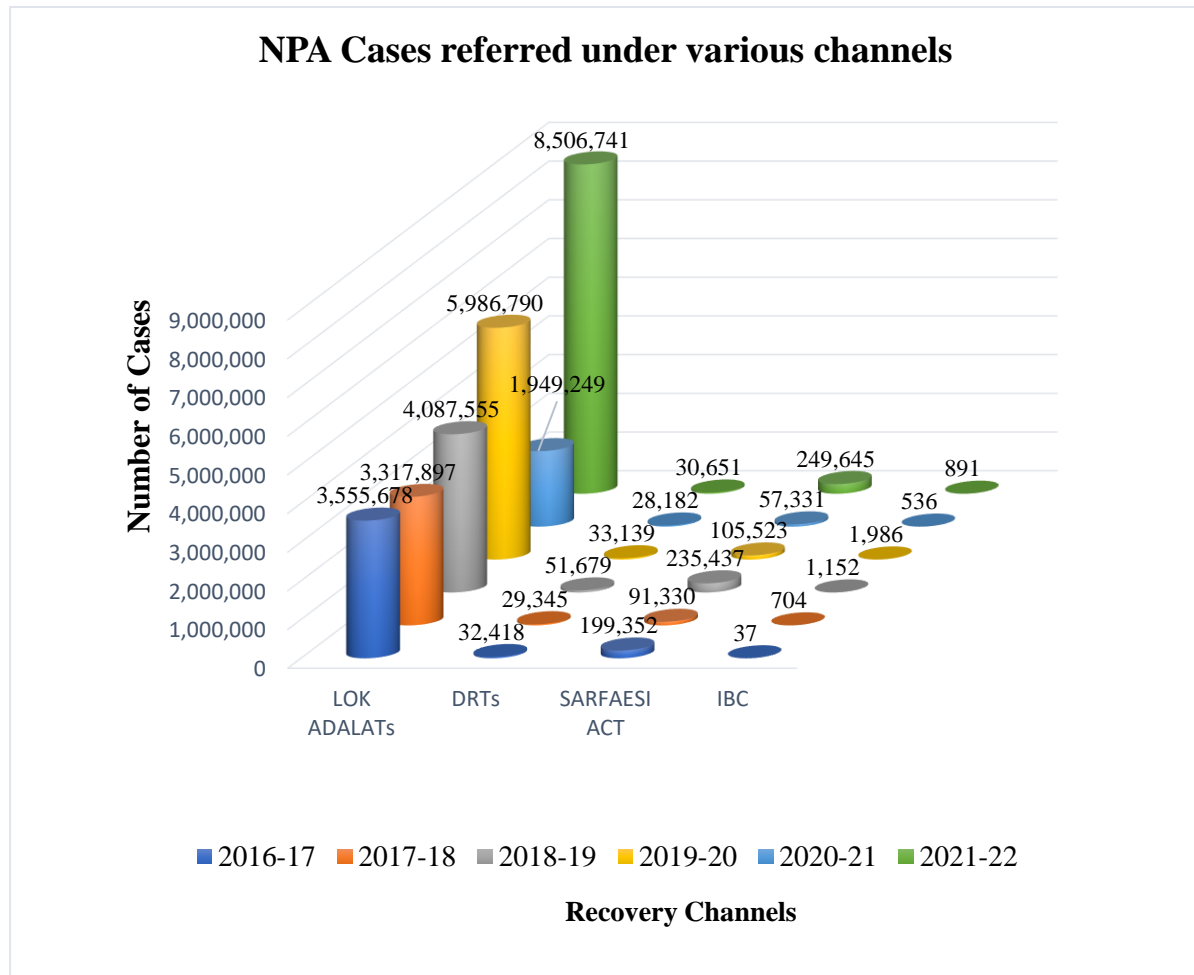


Observations: The total amount involved peaked in the years of 2018-19 and 2019-20, which decreased during 2020-21 and 2021-22 may be due to COVID-19 and the initiation of mergers of PSBs to deal with huge NPAs. Further, prior to 2018-19, the amount involved was less in comparison to other years.

⁶⁷ RBI, *Report on Trend and Progress of Banking in India*, 2016-17 to 2021-22, available at: <https://rbi.org.in/Scripts/AnnualPublications.aspx?head=Trend+and+Progress+of+Banking+in+India> (last visited on April 10, 2023).

Findings: The data shows that the NPA amount recovery is quite less in comparison to the NPA amount involved in the various NPA recovery channels in each year.

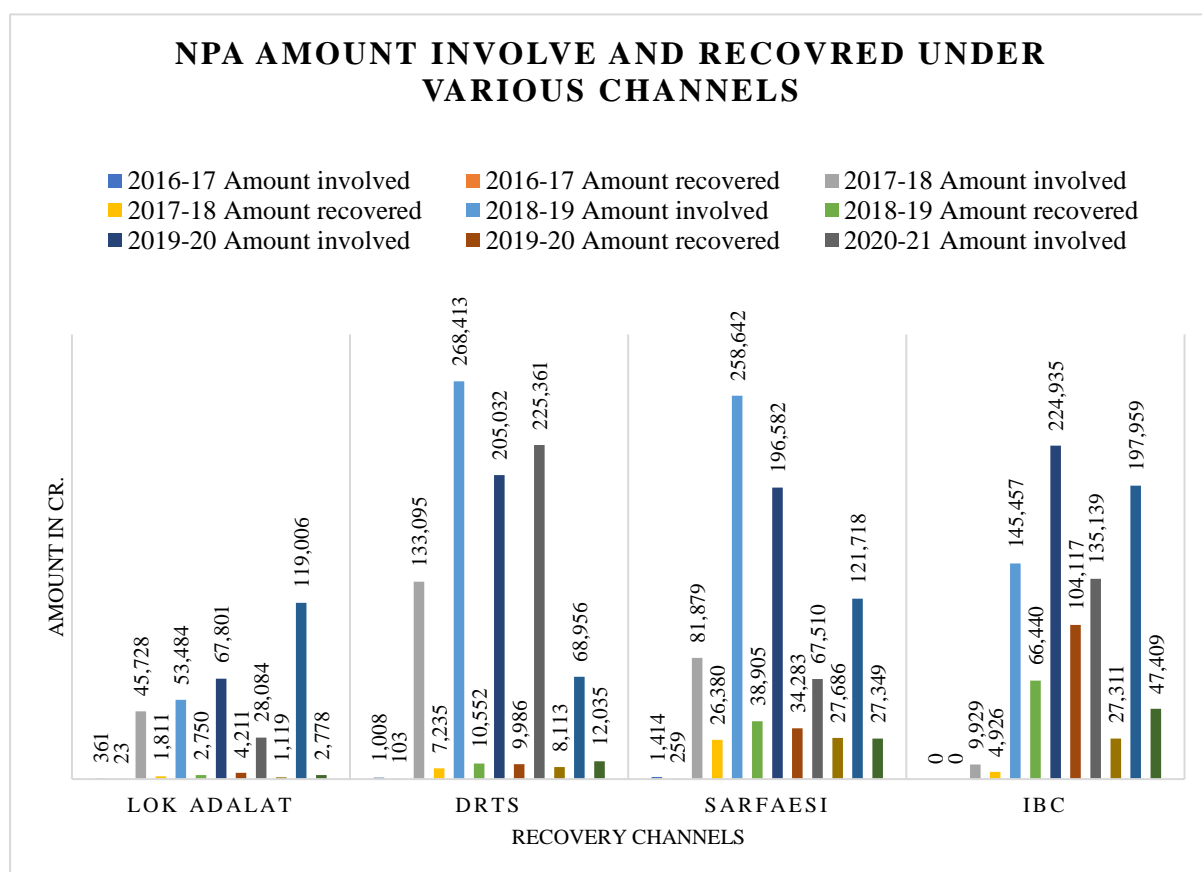
Chart 2: NPA cases referred under different Channels from 2016-17 to 2021-22.



Observations: NPA cases referred for recovery under various mechanisms grew from 2016-20 except in 2020-21 due to the impact of COVID-19, however, the cases referred in 2021-22 rise. Among all the mechanisms, the NPA cases raised in Lok Adalats were highest following the SARFAESI, the DRTs, and IBC, which include NPA cases admitted by NCLTs. In 2020-21, fewer NPA cases were admitted to the IBC due to the suspension of commencement of fresh insolvency proceedings under it commencing March, 2020 till March, 2021. Further, the debts happen due to non-payment during COVID-19 was not regarded as default. Compared to previous years, the number of cases referred to Lok Adalats and SARFAESI is the highest during 2021–2022.

Findings: Among the channels, the NPA cases referred to in Lok Adalats have always remained increasing following the SARFAESI, DRTs, and IBC. Cases referring to IBC have also increased from the time of its implementation.

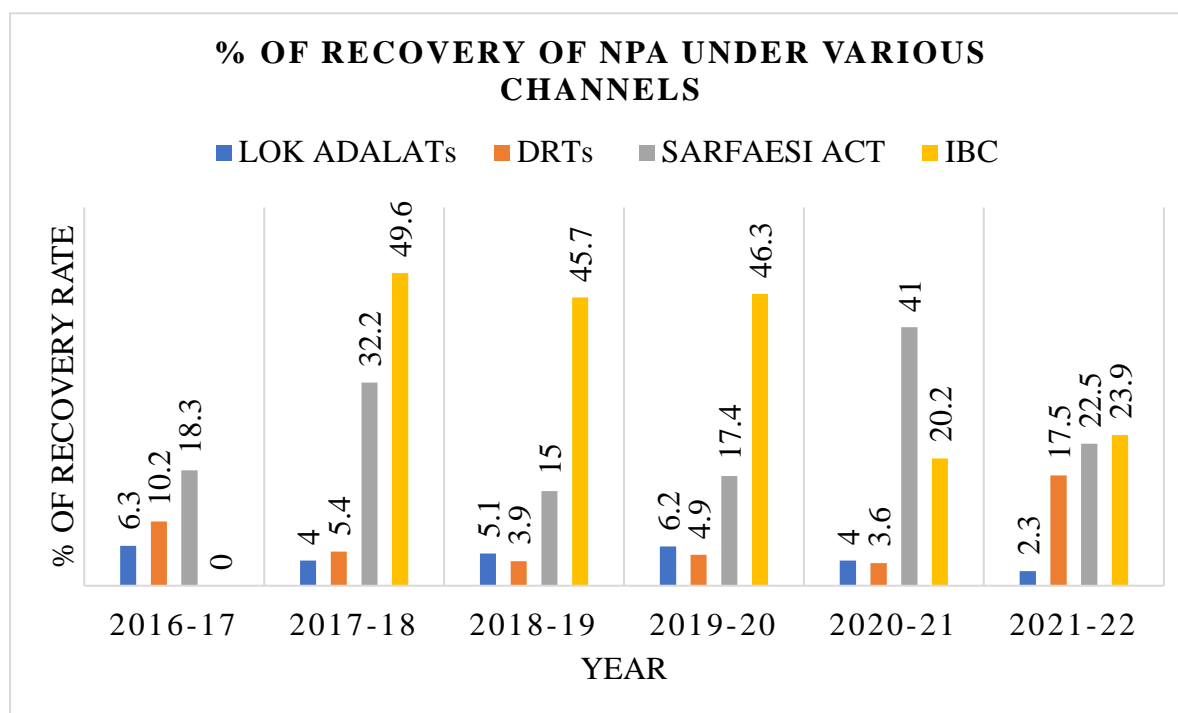
Chart 3: Amount Involved, Amount Recovered under different Channels from 2016-17 to 2021-22.



Observations: In terms of the amount involved and recovered, recovery of NPAs is highest in IBC following the SARFAESI, DRTs, and Lok Adalats and DRTs from 2016-17 to 2021-22. In 2016-17, the NPA amount recovered was the highest in SARFAESI following DRTs and Lok Adalats. No NPA amount was involved and recovered under IBC during that year as IBC was newly implemented in 2016. During 2016-17 to 2021-21, the NPA amount recovered was highest in IBC and SARFAESI, following DRTs and Lok Adalats.

Findings: Among the various channels, SARFAESI and IBC show major improvement in the speedier recovery of NPA amount with the dynamic efforts of banks. NPA recovery amount is less in Lok Adalat and DRTs.

Chart 4: % of NPA recovery different Channels from 2016-17 to 2021-22.



Observations: In 2016-17, all the channels were showing weak performance in SARFAESI DRTs and Lok Adalats in recovering the debts. IBC had no recovery % during that year, as it has been newly implemented as a mechanism of recovery. During 2017-18 to 2019-20 the % recovery of stressed assets improved through the IBC and SARFAESI, except DRTs and Lok Adalats. In terms of recovery % during 2020-21, the SARFAESI had performed well with its extension to cooperative banks, whereas, IBC is decreasing as fresh initiation has been suspended in respect of nonpayment commencing March, 2020 till March, 2021, as a safety measure for companies impacted by COVID-19, and particularly, Lok Adalats and DRTs is declining. In IBC, SARFAESI, and DRTs, the NPA recovery rate is excellent throughout 2021–2022, while the rate of NPA recovery in Lok Adalat has been poor.

Findings: Among the various channels, due to their increasing recovery rates, SARFAESI and IBC have emerged as the most significant channels for recovering NPAs. Further, IBC has shown to be an effective means of recovering NPAs since its implementation. The mergers of “Public Sector Banks (PSBs)” have also helped in reducing NPAs in the Banking Sector.

V. Conclusion

In India, due to the high number of NPAs in the banking industry in India, the recovery of such NPAs is a significant problem. The NPAs have been largely ignored till the mid-1990s in India.

However, with the advent of globalization and liberalization after 1991, the Indian banking sector saw radical changes. Various recovery channels have been established to recover such NPAs. However, as the size of NPAs is huge, the recovery rate is poor in India. Hence, RBI has initiated the Asset Quality Review (AQR) of the banks that help the financial institutions to enhance their account book. Further, as shown in the chart of this paper, among the major channels to recover NPAs, IBC is a dominant mode to recover debts as it includes both secured and unsecured debts. It also helps to rescue corporate bodies, individuals, and partnership firms. Another effective channel to recover NPAs is the SARFAESI Act. Its applicability has also been extended to the co-operative bank. In addition to the existing channels for recovery, the ARCs served as benefactors for the banks that had an enormous amount of NPAs by cleaning up “balance sheets” by selling their NPAs. Moreover, the government has implemented strict regulations and strategies including rescheduling, accountability, transparency, and various others such as mergers of PSBs in an effort to decrease excessive NPAs. Besides, during the COVID-19 pandemic, the RBI has also taken action by offering a three-month installment moratorium to borrowers to deal with their debts amid the pandemic.

To deal with such excessive NPAs, stringent regulations and sanctions must be taken against the willful defaulters in order to recover NPAs more swiftly. Further, to tackle willful defaulters, the "Fugitive Economic Offenders Act, 2018" was passed, and the RBI recommended that PSBs publish pictures of those defaulters. Furthermore, for the banks to recover NPAs as promptly as possible, there must be rapid dispute settlement and flexibility to recovery agencies and they must additionally incorporate the latest technology and acquire skills to use that technology. Banks should improve their “credit appraisal system” because, throughout time, borrowers have seen using various strategies to avoid repaying the loan. Besides, the “write-off” is a fundamental technique to decrease NPA in banks if the recovery channels fail to do so. Additionally, the bankers should get the appropriate training to tackle such NPA situations efficiently. The bankers need to organize awareness programs to enlighten and educate borrowers about NPAs.