

Stressed Assets- A Study of the Socio-Economic Impact

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Abstract

The purpose of this paper is to pin-point the socio-economic impact of the NPAs (Stressed Assets) on the economic development of the country in general and lending capacity of the Indian banking/financial sector. Most of the researchers have discussed this issue highlighting reasons and causes of NPAs only. In view of this fact and circumstances, it was decided to take up this issue for this paper. Considering the limitations of time and infrastructure at the disposal of the researcher, a simple analytical method has been adopted. Researcher decided to limit this study to the matters / cases confine to the jurisdiction of Mumbai High Court and its branch at Aurangabad in Maharashtra. This paper aims at giving insight in to the social consequences of the NPAs and related problem on society in general and India's economy in particular. This study should be considered important in view of the present scenario of Indian economy.

KEYWORDS: Socio-economic, NPAs, Stressed Assets, DRTs, DRAT, Jurisdiction, Symbolic Possession, Securitization.

Introduction

Performance of the financial sector influences the entire economy and consequently social life of any country and India is no exception to this. Banking sector recently received a severe blow due to the mounting pressure of the attack of NPAs. NPAs attack on the profitability of banks resulting into the erosion of flow of fund. This compels the banks to resort to the policy of safe lending. As is noted a large number of borrowers in India are in the state of default. Recently some of the large borrowers have duped the banks and took shelter in foreign and they are beyond reach of the Indian banks. Government of India and RBI are seen helpless in these cases. Government of India and RBI has geared up machinery to bring them in the ambit of Judiciary. Ed, ITD, CBI have been put into the action against these defaulters. This has adversely affected the reputation of Indian banking sector. The fear of messy defaults has restricted the lending to only to low-risk companies and it has harmed the access to credit.

It is reported that there exists about Rs.90,000 crore of bad loans by Indian Banks. It has become one of the biggest challenges for the present government to clean up the pile of bad loans of Indian banks. As have been reported, over 10 percent of outstanding loans (Rs. 3 lakh crore) have either turned bad or had to be restructure by the year 2015. It happened because, as have been revealed, banks issued guarantees worth Rs.3,000 crore against a collateral of just Rs.150 crore. According to RBI, companies use to divert working capital funds to wholly owned overseas subsidiaries as investment and loans. ANERNST & Young survey of Indian bankers in September 2015, revealed that at least

87 percent felt that diversion of funds to unrelated businesses through fraudulent means is one of the root cause of the bad loan crisis. RBI has reported the names of 10 companies who defrauded banks seeking “concerted “action against them.

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

The main thrust of the study has been, to examine Socio-Economic impact of Debt Recovery Problems in India in general and in the study area in particular. Researcher has tried to examine problems leading to NPAs, its consequences on the society and effect on the working of banks. This study confines to the selected cases of DRT, DRAT Mumbai and Mumbai High Court and its Bench at Aurangabad in Maharashtra along with certain Apex Court’s decisions. This study is of the exploratory nature and therefore multistage stratified sampling techniques have been used for the collection of data. The major shares of the cases are from Mumbai DRT, DRAT and Aurangabad DRT jurisdiction. Both direct and indirect methods of collection of data have been used.

Stressed Asset is defined as an account wherein principle and \or interest remains overdue for more than 30 days. Really to say it is that asset which has been pledged but due to certain circumstances debtor may be not in position to make timely payment or discharge his responsibility .Such assets may become Paying Asset in due course. However, when rumors spread in the market about the NPAs, and borrower wants to sell out property to discharge his responsibility of due amount, purchasers try to get such assets at throw away price, since he loses his bargaining capacity.

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

Review of Literature:-

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

The landmark judgment of the Apex Court delivered in *Mardia Chemicals Ltd. Etc. versus Union of India and others etc. etc.* transferred Case no 9295 of 2002 (2004(7) SRJ 239) dealt with the problem of appeal under the Section 17(2) of Securitization Act 2002 its constitutional validity and it was held ultra virus and Articles 14 of the Constitution. The Hon'ble Apex Court held that Section 13(2) and section 13(4) requires the creditor to communicate to the debtor the reasons for not accepting the objections¹.

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

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

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

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

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

hotel. Later on it was demolished by corporation finding it encroachment. Thus this borrower lost everything on account of demolition of the hotel and as result he became defaulter. After finding it difficult to make repayment of funds, has committed suicide along with his spouse and his two children. There is another case from Aurangabad DRT, a family Karta took loan from schedule bank against the housing property for doing business. After becoming defaulter, bank had started recovery process and put seal on house property of the family. Recovery officer of the bank came to take possession of the property putting lock and seal on the property. The family members had gone to market at that time, when family members came back they found seal on their house. It is shocking that their all belongings were inside the house and the family had to take shelter to the family. However Hon. Court passed an order allowing the party entry in the house and take out their belongings during the pendency of the dispute.

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

Objectives of the Study

The main thrust of the study has been, to examine Socio-Economic impact of Debt Recovery Problems in India in general and in the study area in particular. Mountain of NPAs hits the portfolio of lending banks. This resulted in to the erosion of funds, consequently adversely affected the nation's economy and the society at large. In view of this, this researcher has tried to examine problems leading to NPAs, its consequences on the society and effect on the working of banks. However, considering the provisions u/s 13 (2) as regards to the notice & DRT having no jurisdiction to entertain grievances of borrower the very purpose of justice is defeated in view of the Article 50 of the Constitution (Separation of judiciary from executor and also against the maxim "*audiatour et alterapars*"). In this way one who is aggrieved is left with no choice when his objections are not accepted by the banks. The same lies in Section 13 (4), in which creditor takes symbolic or physical possession without their competency to keep the factory going on thousands of workers, employees are thrown and owner of the factor is thrown on road. Researcher feels that this is inhuman and one sided for favoring the bank and undue protection to the bank officers.

Collection of Data:-

Both direct and indirect methods of collection of data have been used for gathering the information. For the collection of primary information the researcher relied upon interview method and questionnaire method. Researcher aware of her limitation in drawing. Certain conclusions relied on the interview of some legal practitioners, Bank officers and defaulters and certain judicial decisions. For the whole study researcher visited various DRT and DRAT and high courts in Maharashtra and refers certain SC decisions and theory of social engineering while collecting the data it was done after considering title of the study, significance of the subject matter, place of study, interview of the related persons, Courts advocates, banks and defaulters, guarantors etc. This study

is confined to the period from 2002 to 2015 and has been incorporated recent developments up to 31st March 2018:

Sample space

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

Thus, Sample Set or $\Omega = \{ \text{All 3 Mumbai DRTs, Aurangabad DRT} \}$

However, following few characteristics of the cases were deliberately considered having direct bearing on the subject matter:

- i) Quantum of the NPA.
- ii) Nature of action taken by the bank and Financial Institutions.
- iii) Different issues such as period of limitations, nature of case such as issue of notice, delay in condemnation of time limit, symbolic possession of securities, physical possession etc.
- iv) Cases reported for appeals to DRAT / High Court/ Supreme Court.
- v) Extra-ordinary matters, for instance Decree obtained by the banker against party not in existence or against diseased.
- vi) Location of Debt Recovery Appellate Tribunal in Mumbai.

The collected information / response have been analyzed by attaching points 1, 2, 3, 4 and 5 respectively for the answers. For the analysis purpose actual mean was computed on the basis of score and it is compared with the expected mean actual mean of score is calculated by dividing total score by number of respondents. Similar process has been followed in case of the interview of related bank officers and interview of the selected practicing advocates. Profile of the selected samples of defaulting borrowers has been presented in the following tables:1.

Table .1: Type of organization of respondents

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

5.	Others	30(60)	20(40)	50(100)
	Total	330(66)	270(34)	500(100)

Source: Primary data. Figures in the parentheses are percentage to total.

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

Table 2: Respondent sample

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

Source: Primary data.

Literature Survey

Survey of literature is important from the point of view of studying the available literature in the form of popular write-ups, reports of the committees/commissions/working groups/ the research studies/ articles of researchers/bank officials/economists and the comments of economist. The researcher herein had discussed the issues which were of micro-economic in nature has been considered for review. Literature relating to NPA, management of NPA, social obligation of banks has been reviewed. Researcher found that literature available in the field under reference was limited in nature and scope. State of the disposal of securitization application (S.A.) and disposal will show the position of the matters in Maharashtra in the three months periods that is April, May, June 2016.

Table 3: Disposal and pending cases

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

	Total	104	66	39	209
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Source: Finance Ministry of India.

Survey of the state of pending cases of recovery in the study area 2017-18:-

Possession of property is restored by the lender after getting court's order to that effect. It is observed that in majority of cases possession of the property is restored after the court's order and it is through one time settlement (OTS) of the account. Information collected is presented in the following table No.6 nature of settlement.

Table 4: Nature of settlements

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

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

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Table 5: Total pending cases before DRT Court in Maharashtra on 31st March 17.

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

Social Impact of NPAs: Analysis and Interpretation:-

Socio-economic impact is wide ranging in size, from local effects on a small community to changes on the entire society. During the course of study researcher herein observed that it has wide ranging social impact on lenders as well as borrowers. In view of these facts it was decided to enquire about the impact of the NPAs and the prolonged court battle on the respondents it was revealed that most of the respondents had to face depressed state of mind. Analysis of the collected information and revealing facts have been represented in table number 6 below—

Table 6: Emotional Impact

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

Table 6 depicts that about SSI units about 50 (93 percent) out of 160 said that “yes” they were emotionally depressed followed by 60 medium size respondents (85.71) out of 70 and large scale respondents 50 (71 percent) out of 70 respondents in descending order of value. Study of the total scenario reveals that out of the 300 respondents about 260 (86 percent) told that they were emotionally depressed. When questioned for this it was told that once matter is made public because of NPA and prolonged Court Battles disturbed their state of mind for no. of obvious reasons, such as family members have to suffer emotionally and total family is disturbed. In society their goodwill suffers a lot and it is another mental and psychological harassment. It is also told that in market

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

Effect on the state of mind of Proprietor:-

There are four parties in the loan transaction, namely, lender or debtor, obligator, guarantor and their family members, worker, etc. When loan becomes NPA all these parties are affected. Since the work or business of company comes to stand still. A question was put as to how respondent feel after getting demand notice u/s 13(2) of securitization Act. Feelings were recorded as; (a) upset, (b) Greatly upset (c) loose moral and (d) feel helpless and depressed. Response is identified and presented in table no. 7 below:

Table 7: Effect of NPA on state of mind of the Respondents

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

Source: Questionnaire.

Table 7 above reveals that as per as SSI unit is concerned at first all 160 respondents told that greatly upset followed 60 medium scale size units (92 percent approximately). About 140 respondents (94 percent) exclaimed that were greatly upset having severity of depression. Similarly 140 sample respondents of sample unit told that it caused losing the moral and confidence and (25 percent of 80) 20 SSI respondents found that they are helpless and find no efficacious way of survival. Above table further reveals that these feelings are not much sever in case of medium scale and large scale units. Enquiry revealed that medium and large scale businesses have more absorption in ability to absorb the shock of loss because there are others too share this shock. and SSI respondents do not have this ability since many a times such units are run by either individual proprietor or family proprietorship. In view of these observation it could be concluded that NPAs and consequent to it other effects get severe blow to their feeling and emotion.

Table 8: Set back to Goodwill or reputation

Sr.no	Size of sample Unit	Yes	No	Total
1	SSI	160	0	160
2	MED	70	0	70

3	LARGE	60	10	70
	Total	290	10	300

Source: Primary Data.

A loan is an asset for a bank and liability for debtors. In the earlier table it was orally told by the respondents that in the whole process of NPAs and legal battle reputation of their business lost. Response is mentioned in following table No 9 show that about 290 respondents out of 300 respondents told that majority of them have lost reputation and have set back to their goodwill or reputation and therefore they could not raise capital. Fluctuations in the business and other reasons have nothing to do with the creditors because their main aim is the recovery loan amount. Out of 160 SSI respondents all said that their reputation is lost, followed by 70 medium size respondents out of 70 (i.e. 100 percent) and 60 large scale units respondents (about go percent) respondent in descending order. From this observation it could be concluded that, due to NPA and consequent to it, legal battle for recovery affect the reputation of business.

Result of the setback has been identified as (a) bad, (b) very bad (c) worst. A question was put to assort the effect on reputation according to the respondents. The breakup of response is presented in following table No. 9

Table9: Result of Setback of reputation

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

- Source : Primary data.

Observation and Revelations:-

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

Socio-Economic Impact of the Mounting NPA

India has adopted the policy of welfare state and law makers have to bear in mind that industry should be allowed to flourish but not to perish. In order to speed up the recovery

of loans SARFPCI Act was enacted. It was aimed that instead of taking recourse of the Court to rehabilitate the debtors/company /assets creditors take interest in possessing the property. In this way, the Bankers without any paraffinic take possession of assets of the defaulters and sale them in the market without considering any business principle or retained in the possession of the bank without any liquidity. When bank takes possession, “activities of the companies, unit, and factory come to complete standstill throwing number of the employees jobless. The whole family of jobless employees has to suffer a lot for no fault of them. Many a times even residential house possess and whole family owner of factory is sealed and thrown on road without residence. This is against the principles of fundamental rights given in the constitution. By such types of action, owner of that house property loses his shelter. Such types of the actions give birth to many antisocial elements like goonda element in the society. Researcher feels that in doing so the very purpose of the Act is lost.

It is revealed that the borrowers get into depression and thereby they could not take proper care of their business and suffered loss and could not make repayment of loan. The situation becomes worst when factory or shop is closed and it is seen in such a matter the borrower attempted to commit suicide.

It is revealed that there are instances of granting loan by banks without following the due process of law, giving loan to defaulters, making wrong entry of interest in the books of accounts, granting loan in the name dead person , initiative recovery process against person who did not take loan.

Conclusion:-

Mention of lending and borrowing is millenniums old. The practice of banking is as old as that of human history; started from the economic transaction. Considering the hurdles in the recovery matters, 1993 Recovery of Debts Due to Banks and Financial Institutions Act, 1993 was enacted and Tribunals had been established under Article 323 of the Constitution. Civil Court had jurisdiction which was time consuming and without result. In view of this SARFACIE Act 2002 was passed to override all the courts’ jurisdiction except Supreme Court. This Act was passed just to bypass the lengthy process of civil courts and to do away from the provisions of section 69- A of the Transfer of Property Act Property Act. (Act IV of 1882). According to this Act; property belonging to the defaulter could not be possessed without the intervention of court. Lenders first require obtaining Decree from the civil court for possession of the property of the defaulter and as it prevails it is time consuming. The borrower can file appeal only in the DRT aggrieved by the action of the creditor / bank if the recourse of Section 13 (4) of SARFACI Act is not followed. In this process borrower has to suffer mentally socially and economically since despite willingness to repay loan amount; asset being distressed. Now passing of Bankruptcy Act by the Parliament. _____

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