

## CHALLENGES TOWARDS DISPOSAL OF NPA

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### ABSTRACT

*With the introduction of international norms for asset classification, Basel norms capital adequacy ratios, provisioning in banking sector, managing NPAs has become a major challenge for Indian banks. Off lately NPA has become a major component of bank's portfolio esp. Public Sector Banks and is a serious burden on banking sector sending distress signals over sustainability and functioning of affected banks. The progress on revamping the Institutional-Structural aspect is slow and is of considerable concern. The study also analyses the policies to be adopted by banks for speedy recovery of NPA's that are adversely affecting the profitability, liquidity and solvency of banks. Changes required in solving the NPA crisis would span over the entire gamut of Polity, Bureaucracy and Banking Industry as it is affecting the entire economy.*

**KEYWORDS:** NPAs, IBC-2016, Sarfesi Act, Willful Defaulters, Economic Growth, Capital Formation.

### Introduction

The Banking System acts as a driving force for any country's development. This is essentially because this system channelizes funds from saving surpluses towards investment, which eventually leads to capital formation that has extensive effect on economic growth. The credit and borrowing facilities provided by banks help in creation of various factors of production that increases income of various service providers. One's expense is other's income. This ensures high productivity and GDP Growth. Contraction in lending facilities by banks has adverse effect on development. But the main reason behind this contraction is the rising Non Performing Assets (NPA) of banks. This scenario becomes more worrisome with the fact that around 72% of all NPA's belongs to public sector banks amongst various scheduled commercial banks. The "**Twin Balance- Sheet Problem**" i.e. overleveraged companies and Bad- loans- encumbered- banks substantially increases the NPA of public banks that blocks investment in the economy. The Gross NPA of Indian banks rose a 1.31% from 8.29 lakh crore in June 2017 to 8.40 lakh crore in December 2017. Also the reason behind growth in NPA after September 2015 can be alleged to high credit growth created by banks before 2008. The gross lending by public sector banks rose from 18 lakh crore in 2008 to 54 lakh crore in 2014. This figure stood at 55.01 lakh crore in September 2017. It is astonishing that around 90% of these bad debts belonged to public sector banks. In comparison with first and second quarters of 2017-18, the bad loans of public banks were 7.33 lakh crore more and that of 17 private banks was 1.06-lakh crore- increase of 10.5 percent. One more important finding is that majority of these NPA, 86.5%, belong to large borrowers who have borrowed Five Crore or more. The maximum fall in NPA (both in terms of number and amount) is of those whose outstanding amount is between 20 Crore to 50 Crore. This is followed by those whose outstanding amount is between 50-100 Crore. The top 100 Borrowers form 15.2% of gross advances but their share in Gross NPA is 25.6 percent. Also the total stressed advances ratio towards industries was 23 percent while it was 6.3 percent and 7 percent in agriculture and service sector respectively. Out of this the stressed advances by PSB's was 28.8 percent when compared to private banks' 9.3 percent and foreign banks' 7.1 percent. This was primarily into basic metals, cement and its products, textiles and infrastructure sector. The reasons for this could be following:

- Loans given for capacity building without analyzing global trends and demand-supply mechanism.
- Loans given to illegible borrowers in spite of their default track records and their lethargic recovery.

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- Banks provided loans for purpose of equity investment to corporates without understanding its nature and functioning.
- The loans were used for expansion & modernization and not for the purpose for which it were raised.
- Commercial failure of projects due to over anticipation for results delay in execution of projects for various reasons.
- Willful defaulting in repayment of loans, personal usage of loan advances, frauds, illegitimate re-appropriation of funds etc.
- Fault in credit evaluation and unnecessary willingness for advances as well as recovery.
- Lack of surveillance mechanism by banks to check end use of issued loans and utilization of funds towards vested interests by the borrower through ghost companies.

For any new loan to transform into an NPA, a time period of 3-4 months usually occur. Usually the new NPA remain hidden during the boom period of the economy. This pseudo phenomenon happens as advances increase more rapidly in comparison to NPA. Thus banking system should have been more vigilant about changing circumstances through effective monitoring. Other than containing above-mentioned reasons, the banks should have promptly turned down loans and advances to willful defaulters and overtly ambitious projects. Also, the banks should have adhered to cautions and directives issued by RBI and must have declared the names of defaulters and non-cooperative borrowers openly.

The following provisions in the companies act allow banks to initiate actions against defaulters and transfer such cases to Serious Fraud Investigating Office (SFIO):

- Any action or error, concealment of facts, misuse of any office by a person, adverse affect on interest of company, stakeholders, creditors and attaining profits or loses through unfair means- all can be investigated by SFIO.
- Willful default cases can be sent to SFIO. This is mentioned in the article 447 of companies act, 2013 as a serious fraud. Unless the banks prove the faulty motive or wrong representation of the borrower, criminal investigation cannot be initiated against the borrower.
- A minimum of 6b months of imprisonment is imposed on proven defaulter that can be increased to 10 years. The penalty can be increased up to triple the amount of defaulted loans. Moreover, if the fraud has adversely affected general public interests, the imprisonment will not be less than three years.
- In India there are certain specific laws that helps banks in recovery of loans from borrowers- Recovery of Debts due to Banks and Financial Institutions Act, 1993 (RDDBFI Act), Securitization and Reconstruction of Financial Assets Enforcement of Security Interests Act, 2002 (SARFESI Act), and the most recent- Insolvency and Bankruptcy code, 2016(IBC).

SARFESI Act allows banks to acquire mortgaged properties and auction them without interference of law courts. It is a powerful tool for banks in recovery process and the mortgaged property can be sold off through proper procedure. As it can be seen that the defaulters try to adopt all available measures including false accusations to defeat banks and prevent there properties from being auctioned, criminal charges etc. In some cases, though, the bank management actively protects its employees but these events reduce the morale of the workforce and recovery process goes for a toss. Despite various declarations and Judicial Decisions going in favor of banks, this act has lost its sheen and banks are still not capable of recovery through this act. Under the provisions of SARFERSI Act, the banks had acquired 64,519 properties in 2015-16 and the data up to June, 2017 stands at 33,928. The Government should amend the act and direct District Magistrate and District Collector for physical handover of such properties falling under recovery process of banks.

The borrowers are never short of ideas and actions by which they try to upset the bank's effort to ensure repayment of loans. They play tricks with bankers since borrowers know that banks understand the position of borrowers and always try to help them out. But this creates a wrong image of banks in minds of genuine borrowers. The genuine borrower believes that in spite of regular payment of interests, taxes etc., and banks do not decrease interests rate for them. Only a small token of appreciation is provided to them, which is not much of importance in financial circles. Such borrowers also feel that dishonest borrowers misuse the allotted funds and also obtain rebate in interests through restructuring schemes and Top-up Loans.

To satisfy these genuine doubts of righteous borrowers, the Prime Minister of India in a recent interview mentioned that willful defaulters will not be spared and will be booked by law and severely

punished. The current government has taken a right step in this direction by amending the Insolvency & Bankruptcy Code that can act as a game changer. The government also issued Ordinances to draft a lethal act to tackle willful defaulters and stopping them from fleeing the country. The IBC will act as an elixir in checking NPA and its judicious use will depend on strong will and honest intentions. The decisions under IBC should be based on discretion of capable authority. The recent amendment in the IBC prevents the defaulter to buy back its property that he had originally defaulted. The assiduity of government is remarkable and is a clear sign to get rid of the menace of NPA. At the same time it does not allow anyone to make mockery of the system. This is the right time to make willful default a serious offence as defined by the RBI, which is so in certain countries. This step will change the mentality of such people who believe that it's their birth right to take public money for their own leisure and then not repay it. The time has come to settle scores with this displaced mentality of such offenders.

The government should come forward and appoint able promoters and heads of banks that have sufficient knowledge of banking system and its functioning. These Managing Directors, executive directors, CEO's and other honchos should have clear track records and be selected from a pool of eminent professionals. To ensure faster recovery of bad debts, the government should set up more National Company Law Tribunals (NCLT) as the current number of Debt Recovery Tribunals (DRT) is abysmal. To lessen the burden, the number of judges can be increased as the rise in matters related to defaults by Sole Proprietors, Enterprise Owners and Partners are on the rise and the delay in closing these cases can bring the entire mechanism to a standstill. Way forward, the banks should carry out Forensic Audit to identify end utilization of funds. Banks should follow footsteps of various Fintech Companies such as Big Data Analytics; Information Technology based solutions and other methods to identify real motives of the enterprise. Artificial Intelligence (AI) can help in identifying potential defaulting with accuracy of 80% before a year of it actually happening. The banks should excessively redo their Human Resource Policy and continuously train and upgrade the skills of its younger workforce.

With the implementation of various steps stated above, the culture of taking and granting loans would become more secure in future. This will ease out the pressure on banking system in the country. The efforts taken up by the government are impressive and will do a lot in changing the mentality of borrowers making them more responsible but still a lot needs to be done in strengthening the financial position of banks and its borrowers.

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