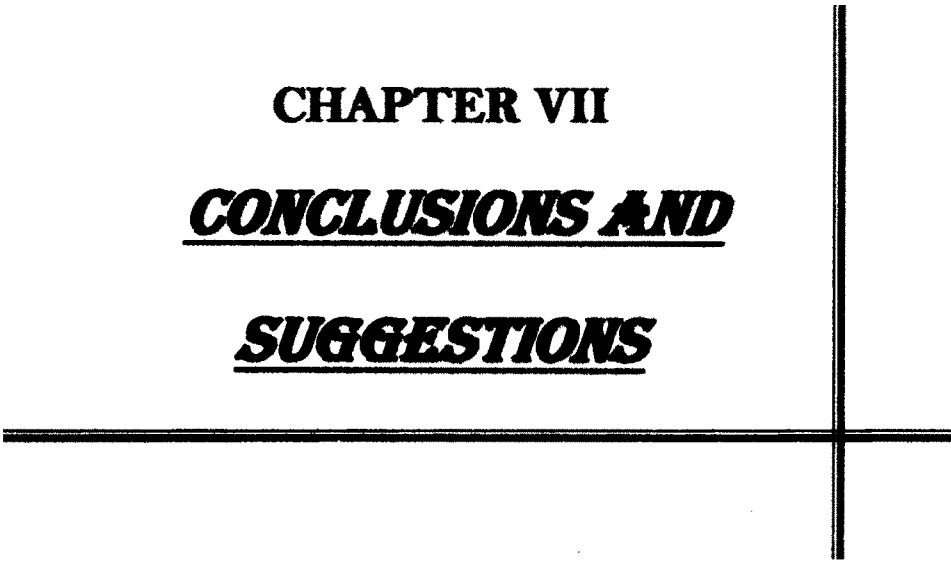


**CHAPTER VII**  
**CONCLUSIONS AND**  
**SUGGESTIONS**

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**CHAPTER VII**

**Conclusion and Suggestion**

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## **CHAPTER - VII**

### **1. Conclusion and Suggestions**

#### **Conclusion**

The above data is collected and presented in forgoing chapter .In order to find out, whether SARFAESI Act which was introduced for curbing mounting overdue percentage of banks along with other object such as problem of recovery, adequacy of legal machinery, effectiveness of SARFAESI Act Vis-a- Vis MSC Act 1960 with reference to section 91 and 101.

The above data and the replies given to questionnaire help the researcher to come to conclusion on following objectives.

#### **1. To study the concept of NPA's & enforcement of security interest.**

The NPA's of all nationalised, commercial, co-op banks are rising year after year. The banks which have advanced money to borrowers have not repaid interest and loan installment amount. This has resulted blockage of funds and money function and thus recycling is contracted.

The legal remedy of filing suits in civil court is a time consuming and lengthy and expensive procedure. Borrowers mind set became negative and he does not co-operate with bank.

The central banks of developed countries decided at Basle to introduce disciplinary norms for presentation of transparent balance sheet. The norms were accepted by RBI and made obligatory to all types of banks. The concept of Non Performing Asset (NPA) was introduced since 1991. The asset which is not yielding any return is classified as NPA's .These asset value gets

deteriorated over period of time; therefore provision is made before arriving at profit.

The assets whose value is diminished over period of time need to be liquidated. But this liquidation procedure delays due to legal hurdles. Therefore there was need to introduce an act which enables banks to possess the securities and onwards transfer to Asset Reconstruction Company and get back its money. The overall picture of Urban Co-op Banks in Sangli District resembles the overall situation of the country related to NPA's.

## **2. To study the major causes of increasing NPA's.**

All banks and FI's are facing recovery problems. As the causes of NPA's are mentioned in the chapter III (3.3), same are the causes of non recovery of loan amounts. The officers of the selected banks stated various internal and external causes which creates problems in the recovery.

Directors of the banks and scrutiny committee sometimes take wrong decision in advancing the loans to its members. UCB's are not keeping the professional view in lending like commercial banks. As the large amounts are sanctioned to few borrowers which need follow-up but the banks do not take the follow up of the borrowers. The banks have not developed any formal risk rating system to evaluate the risk involved lending. Some borrowers are in close contact with the board. Banks do not verify physical assets in case of personal loan. In many cases the funds are diverted for personal or other non productive purposes by the borrowers. They do not have knowledge of financial management, SWOT analysis for the management, which increases the cost. Some borrowers of the banks are willful defaulters who are taking advantage of lengthy legal procedure. Directed lending according to the direction of RBI

to the priority sectors also one of the causes which creates the problem of recovery.

### **3. To examine appropriate legal machinery for recovery of bank loans.**

UCB's are registered under Co-op Society Act 1960 in the state of Maharashtra therefore they are governed and controlled by two controlling agencies. In case of banking activity they are under control of RBI and in case of co-op management, election and other disputes they are governed by Co-op Society's Act 1960. Disputes touching the management of societies are dealt with co-op act under section 91. Since if member of co-op bank fails to repay the loan amount, co-op bank approaches to Co-op Court and Registrar for praying decree or certificate against the borrowers.

As mentioned in chapter IV there are four options before the banks and FI's to recover due amount from borrower.

- i) Civil court: - under CPC 1908 u/s 60, the secured property is liable to attached and sale in execution of decree. This is very lengthy procedure to recover the due amount because already piles of civil suits are pending there.
- ii) Co -op Court: - under MSC Act 1960 separate forum is established for only co-op banks .Co-op banks can enforce their security interest by executing the decree or by obtaining certificate from registrar u/s 91 and 101.
- iii) DRT and DRAT: - as per the recommendations of Tiwari Committee, the government of India setup special Debt Recovery Tribunals for speedy recovery. The co-op banks can apply in the DRT for the due amount from the borrowers. But here the due amount must be more than 10 Lakhs to apply in the DRT. If any person aggrieved by the decision of DRT he may file appeal in the DRAT within 45 days .

- iv) SARFAESI Act 2002:- Above all 3 legal machinery provides measures through which UCB's can recover due amount. But bank cases took years and decades for trial, decrees and appeals. There are lot of pending cases in the trial courts and hurdles in taking possession of secured properties. So government of India passed SARFAESI Act through which banks and FI's can enforce its security interest without intervention of court.

#### **4. To study the need, objectives & importance of enacting securitisation act 2002.**

Setting up of DRT & DRAT, introducing OTS & Restructuring schemes have not been succeed in reducing the problem of recovery of banks and FI's. There was no provision in T.P. Act for transfer of an actionable claim, which is secured by any mortgage, hypothecation or other charge. There were some hurdles in taking possessions of mortgaged property without intervention of court. So government of India enacted the SARFAESI Act 2002 by giving wide powers to banks and FI's to enforce their security interest by simply sending a demand notice u/s 13 (2 )of this act. The powers of banks and FI's are discussed in chapter V elaborately.

#### **5. To assess and analyse SARFAESI Act 2002.**

The securitisation act is dynamic legal channel not only to banks but also non banking financial institution. Before the promulgation of act various methods were introduced to recover the overdue loans of the banks. This method proved helpful but it sent wrong signals to sincere and punctual borrowers. Instead of repaying amount as per agreement they prefer to delay the payment of loan installment and interest. They request the bank to settle the account through OTS scheme and bank's

compromise formula. RBI and the co-op department has discontinued OTS scheme since 13/6/06.

Already sufficient light is focused on the legal procedure. Banks are helpless once the dispute is instituted in court of law and they are more worried even they obtain decree or certificate under co-op law. In this circumstance banks find SARFAESI Act as blessing in recovery of overdue amount.

The impediments and hurdles lies in the process of recovery totally are eliminated by this act this can be listed below.

- i) The account once declared NPA's account it qualifies for implementation of SARFAESI Act.
- ii) There is no necessity to obtain decree from court for recovery of mortgaged or hypothecated property.
- iii) The bank starts execution activity by giving simply 60 days notice to the borrowers without approaching trial court.
- iv) The bank is empowered to decide on the representation of the borrowers on whom the notices is served.
- v) The aggrieved party can approach DRT or DRAT and the court may grant stay order subject to certain percentage of loan outstanding amount deposited in bank.
- vi) The bank during the period of 60 days may settle account if borrowers come forward to close the account.
- vii) The asset of the bank is well protected by bank since it takes possession of the property.
- viii) The bank can either auction the asset or transfer it to ARC for consideration and thus blocked amount in NPA' s is realised due to SARFAESI Act.

So the bank and NBFC's can effectively use the provisions of SARFAESI Act .This has been proved in case of study of UCB's in Sangli district within a period of 3 year 21and 19 accounts are closed down and amount of rupees 614 and 99.

Lakhs are realised form the borrowers of VSSB and SUCB respectively under SARFAESI Act.

Since it is beginning of the implementation of the act. The NPA's involved and realised appears to be small but if the legal instrument is effectively implemented it would prove useful act in reducing NPA's .

## **6. To study regulation of securitization & reconstruction of financial assets of the Urban Co-Op Banks in Sangli.**

The SARFAESI Act is made applicable in the year 2002 and later on UCB's are covered under the act. Initially both the selected banks have started issuing notices under this Act.

In the year 2003 only 13 and 3 demand notices were served by VSSB and SUCB respectively. Before issuing notices the bank must observe that, it has complied condition specified Act. viz. - the account must be categorised in NPA's and it must have mortgaged property. If property is acquired/possessed the corresponding steps must be taken such as calculation of upset price, finding out prospective buyers, the expected cost for maintaining the property etc.

It seen from collected data that both the banks have advanced money to the borrowers on an average 50 % and 20 % by VSSB and SUCB against mortgaged property. But the percentage of notices issued under SARFAESI Act is very less.

The researcher has discussed the problem of low percentage of notices issued under section 13 (2) with the officers of both banks. They informed that there are number of reason for that which are listed on next page.



- 1) Both the banks have already filed cases in Co-op courts which are pending and they do not want to issue notices to the defendant, even there is provision under 13(2).
- 2) In order to show the account as performing asset, the bank have not classified the account as NPA's in spite of the fact that there are seeds of defaults.
- 3) The banks earlier were not particular in executing documents properly and diligently. In some case they have executed documents incompletely.
- 4) The banks have to appoint authorised officer who is to monitor the entire procedure of securitisation. Generally all banks have allotted that port folio to the officers working in legal departments. The officers working in legal department accustomed, conversant with the procedure of co-op court under societies act section 91 and 101. Initially there was no training facility to the officers so they tempted to remain away from the new Act.
- 5) The bank have issued notices and taken possession of the secured property. They have started incurring expenditure on maintenance and protection of the property. Since they have not found suitable buyers. The acquired property is a burden on the bank. This must be dispensed other wise possession of property will be an additional liability. The formation of ARC is still dream to the bank.

## **7. To study the need of SARFAESI Act 2002 vis-à-vis Maharashtra Co-op Societies Act 1960.**

Enactment of the SARFAESI Act 2002 was the need of commercial and nationalised bank. As illustrated in the earlier chapter implementation of SARFAESI Act was the urgent need. Earlier Urban Co-op Banks were not included in the act. But as it is

state and national level federation, represented the central government to include Urban Co-op Bank and so they are included in the act.

Therefore it is necessary to list out merits and demerits of the MSC Act section 91 and 101 and provision of SARFAESI Act .

### **DIFFERENCE BETWEEN TWO LEGISLATION**

<b>MSC Act 1960 section 91 and 101</b>	<b>SARFAESI Act 2002</b>
1. The bank has to prove that borrower has taken credit facility by executing promissory note, guarantee bond, loan document, hypothecation agreement etc. Statement of Account is the prime importance in case of filling a suit under section 101.	1. The bank has to prove the account is NPA's and borrower has executed mortgage deed, pledge and hypothecation bond
2. As per Civil Procedure Code all steps such as plaint, written statement, summons , framing of issues, examination in chief and cross examination, argument are to be observed.	2. No necessity of any Civil Procedure at the time of issuance of demand notice under section 13 (2) it means here Civil Procedure is totally eliminated.
3. The bank should prove the due amount to get decree or certificate from registrar.	3. There is no necessity to prove the due amount for sending demand notice and possession notice.
4. Here case is tried before co-op court through advocates.	4. Banks need not appoint any advocate. This procedure exists in case of borrower goes to DRT or DRAT.

5. The court pays attention to the technical matters, section of CPC, contract act, Transfer of property Act, consumer protection Act. etc	5. Technicality or interpretations of law are not considered. Only proper documentation is needed here. Contents of notice are important.
6. Borrowers have provision of appeal against banks to the appellate court.	6. The borrower applies to the banks for reconsideration notices issued under section 13(2)
7. Over all justice is delayed here due to lengthy legal procedure	7. The execution process starts after the 60 days period over.
8. It is a judicial and quasi judicial order	8. It is only a quasi judicial order
9. Here execution of award, order is through Civil Court , District Collector and Assistant Registrar	9. Authorised officers of the bank start enforcement of security interest after 60 days of notice.

Thus it can be concluded that activities of Co-op Court and Registrar are akin to Civil Court .Therefore they may be time consuming in spite of the fact that the State Government has carved out separate legal channel to try the co-op cases. Therefore it is concluded that Urban Co-op Banks have started taking benefits of securtisation Act

## ➤ **Suggestions**

The researcher after collecting primary and secondary data has illustrated and presented her case study on selected UCB's. The observation is made on the basis of objectives which are given above. From these points researcher tried to give some suggestions in particular and in general to all other UCB's in the district.

1) The Board of Directors or scrutiny committee should properly make the scrutiny of loan application. Advances should be made only for productive purposes .

2) The UCB's should work on commercial principle rather than philanthropic approach. Co-op movement was commenced by dedicated and co-operators before independence and there fore commercial aspect was neglected. But now the country is facing problem related to globalisation. The nationilised and commercial banks have changed their strategy of marketing and concentrated on retail banking.

3) In order to get attractive loan business the bank some times neglect collecting all relevant information which is must for the safety of bank. Bank should release the account only by taking proper document related to credit facilities.

4) Bank should pay pre-sanction and post-sanction visits to the borrowers. Then only borrowers will change their tendency to divert the loan amount to different purposes other than applied purpose.

5) Bank should maintain branch wise computerised statistical data system. Loan accounts must be monitored and reviewed continuously. It should establish a separate a legal department with qualified personnel.

6) The practice of documentation should be improved. The loan sanction memo must be signed by the borrower. The branch manager prepares a set of loan documents and sends to head office's legal department. The officer of the law department must check the document and advise the branch manager to complete documents before disbursement of loan amount.

7) Bank should accept only those properties as securities, which have more ability, marketability and liquidity.

8) The public notice in local news paper must be published with the help of advocate, while the bank desires to create charge of mortgage upon property inviting attention of the public and know whether the properties are without encumbrance.

9) The success of implementation of SARFAESI Act lies upon the perfect documentation and proper procedure according to securitisation rules 2002. So banks must be perfect in implementing this act based on documentation.

10) The success of any program is dependent upon the quality, awareness, education, and understanding and execution ability of officers and staff members whom the work is shouldered by the Board of Directors. Above qualities could be possessed by officers if they are given constant training and exposure of new trend of market. So banks should aware of training program for officers on newly enacted laws.

11) The banks are given different legal tracks to deal with recovery program. It is not important which track should be selected but to see which track gives instant and immediate relief to the bank's recovery. Therefore bank should remain flexible in adopting that legal track which gives immediate order or decree. Bank should see that other tracks are blocked by other cases so that defaulters should not take advantage of it. So banks should adopt the track of SARFAESI Act which gives immediate relief.

