Effectiveness of Debt Recovery Tribunals in Resolving NPAs of Banks in India: A Critical Analysis

Jyoti Sharma[1*] and Kamal Vagrecha[2]

[1]*Research Scholar, School of Management Studies, Indira Gandhi National Open University, New Delhi.*
E-mail: jyotiajay2001@gmail.com

[2]*Professor, School of Management Studies, Indira Gandhi National Open University, New Delhi.*
E-mail: kamalvagrecha@ignou.ac.in

[*]*Corresponding Author*

Abstract: Debt Recovery Tribunals (DRTs) were established in the country in a phased under the recovery of debts due to Banks and Financial Institutions Act, 1993. DRTs were established to expedite recovery from non-performing assets (NPAs) in case of Banks and Financial Institutions (FIs). Even though initially DRTs were quite effective but over the years their effectiveness has reduced. The present study has been conducted to evaluate the effectiveness of DRTs in terms of recovery percentage and disposal time. An attempt has also been made to find the deficiencies in DRTs which are affecting their effectiveness and give recommendation for addressing the same. The study has relied on primary data as well secondary data from 2011-2019. The secondary data has been collected from DRT website and RBI publications. The study has concluded that DRTs have not remained an effective mechanism for recovery of NPAs. It has identified the deficiencies in DRTs affecting their effectiveness and given suggestions for improving the same.

1. Introduction

The civil courts were overburdened with large number of regular cases due to which they could not give priority to recovery matters of the banks and financial institutions (FIs) in the 1990s. Banks and FIs were, therefore, facing the huge challenge of recovering debts from the borrowers in the civil courts. The locking up of a huge amount of public money in litigation prevents proper utilisation and recycling of funds for the development of the economy. It was, therefore, decided to pass The recovery of debts due to Banks and Financial Institutions Act, 1993 (Substituted by Act 31 of 2016 known as The Recovery of Debts and Bankruptcy Act, 1993) (RDB Act). Debt Recovery Tribunals (DRTs) under RDB Act were established in the country in a phased manner depending on the number of cases transferred to them from civil courts and the applications for recovery filed with them by banks and FIs. There are currently

39 DRTs in 25 cities and five Debt Recovery Appellate Tribunals (DRATs) in India. As RDB Act is operationalised through DRTs, this mechanism of recovery is commonly known as DRTs.

In the case of stressed assets i.e. non-performing assets (NPAs) and restructured accounts, banks try to do restructuring if the viability of the borrower's entity is established. If the account becomes NPA, they try to recover their dues through One Time Settlement (OTS)/ Negotiated Settlement (NS) or by taking action under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI Act), 2002 if they have easily marketable security. If the NPA cannot be resolved through the above means, banks have an option to file an Original Application (OA) in DRT under the RDB Act for recovery of their debt valued not less than Rs 20 lakh. The civil courts do not directly intervene on the main issue of recovery of debts due to banks on which DRTs rule. The desired time for disposal by Presiding Officer (PO) is 180 days from the date of receipt of OA from Banks. The PO of the DRT issues a certificate of recovery along with the final order to the Recovery Officer (RO) for recovery of the amount of debt specified in the certificate. The RO can recover dues by attaching part/ whole property of the defendant, appointing a receiver for the management of the same and selling the same. The DRTs can also order a person to be detained if he disobeys DRT's orders. A person aggrieved by the order of DRT can file an appeal to the DRAT having jurisdiction in the matter. The appeal has to be made within 45 days from the order of the DRT, which can be relaxed by the DRAT. The DRAT is expected to dispose of the appeal within six months. The aggrieved party, if it wants to appeal against DRT's order, has to deposit 75% of the amount determined by the order of the DRT. This amount can be reduced to 25% of such amount for the reasons which should be recorded in writing by DRAT. An appeal against the judgment of DRAT can be filed in the High Court and the Supreme Court. SARFAESI Act was enacted so that banks can recover their dues without the intervention of the courts. However, the borrower aggrieved by the action of the lender bank can file a Securitisation Application (SA) in DRT. RDB Act and SARFAESI Act were enacted to help banks to recover their money in case of NPAs, whereas the Insolvency and Bankruptcy Code (IBC) is to be triggered for resolving insolvency for borrowers in default. In case of insolvency of individuals, DRTs have been given the power of Adjudicating Authority (AA) even though the notification for this is yet to be issued by the Government.

Even though initially DRTs were quite fast in the disposal of cases filed by banks and FIs and were helping banks in the recovery of NPAs but over the years their effectiveness has reduced. This research paper aims to study the effectiveness of DRTs in terms of recovery percentage and disposal time. The study has relied on primary as well as secondary data and analysed the same to find the effectiveness of DRTs. The study has concluded that most bankers do not find DRTs as an effective means of recovery of their dues from NPAs which is also supported by analysis of secondary data. Besides, the paper highlights the deficiencies in the DRTs and gives suggestions for addressing the same for improving their effectiveness.

2. Review of Literature

The literature reviewed has been grouped into four parts: comparing the effectiveness of DRTs with other channels of recovery of NPAs, the effectiveness of DRTs, the use of information technology for improving the effectiveness of DRTs and data availability in courts.

2.1. Comparing the Effectiveness of DRTs with Other Channels of Recovery of NPAs

Sahoo and Majhi (2020), Thomas (2018), Dey (2018), Kumar *et al.* (2017), Rao (2012), Rajeev and Mahesh (2010) examined the secondary data of NPAs based on RBI's publications and their recovery through various mechanisms viz. Debt Recovery Tribunals (DRTs), SARFAESI Act and Lok Adalats for various years and compared their performance for the periods of their study based on their recovery percentage.

2.2. Effectiveness of DRTs

Thakkar *et al.* (2020) examined the efficacy of the status of cases disposed of and pending in DRTs. It was found in the study that the number of cases disposed of was not satisfactory in comparison to new cases filed and unresolved. India's Ease of doing business rank was 130 in 190 economies as compared to 78 and 40 for China and Russia respectively (The World Bank, 2016). This was one of the worst among similar economies. It was indicated there that it took 4.3 years on an average in India to resolve insolvency, more than twice as long as in China and Russia. The average recoveries were just 26 % in India as compared to over 35% in China and Russia. Even though the rank of India has improved as per subsequent Doing Business reports but that is attributed mainly to the implementation of the Insolvency and Bankruptcy Code (IBC) in December 2016 and other economic reforms.

Regi and Roy (2017) studied 22 cases of DRT-III, Delhi covering 474 orders among them. The research studied the orders to find the reasons for the failures of hearings. Gandhi (2017) observed in his address that though RDB Act and SARFAESI Act, 2002 had been in vogue for several years and had facilitated faster recovery for banks and FIs; yet much more was desired to be done. He said certain procedural improvements had been made in the functioning of DRTs by amendments to RDB Act and SARFAESI Act in 2016. Ravi (2015) studied 15 judgements of DRTs and DRATs and found that different interpretations of the RDB Act and SARFAESI Act by POs of DRTs and High Courts, were leading to delays in the disposal of cases in DRTs. The government of India (2013) gave recommendations to address infrastructure issues in DRTs for increasing their efficiency and effectiveness. Dwivedi and Raza (2016) gave suggestions for improving the effectiveness of DRTs

2.3. Use of Information Technology for Improving the Efficiency of the Courts

Standing Committee on Finance (2020) reiterated its recommendations, inter-alia, of establishing e-courts for faster disposal of cases and speedy resolution. Earlier Sengupta (2017) recommended simplifying procedures, appropriate capacity building, and the use of technology for reducing delays in courts in India. It cited the example of Singapore, where the implementation of similar reforms in the 1990s increased the efficiency of the courts tremendously. Even Phadnis and Prabhala (2015) had recommended automation of the court process as DRTs are fact-finding courts and their orders are restricted to find if a debt is legally owed. The requirement of electronic records of both identity and property title was necessary for the automation of the court process. Central Registry of securitisation, Asset Reconstruction and Security Interest of India (CERSAI), set up in 2011, maintains records of immovable, movable, intangible properties and assignment of receivables. It provides access to all creditors and also provides the facility of filing attachment orders and court orders, to provide complete

details of any encumbered/ attached property. However, a separate study may have to be carried out if CERSAI has been able to help in the early disposal of OAs in DRTs.

2.4. Data Availability in Courts

Phadnis and Prabhala (2015) observed that research on DRT requires correct data on filings of OAs and their disposal. However, many DRTs' orders may not be reportable and these are not collected by Westlaw and other commercial databases. It is observed that due to this reason, commercial databases cannot be considered the right sources for aggregate research on DRTs and researchers have to rely on a random sampling of cases in DRTs

2.5. Research Gap

Many studies have compared the effectiveness of recovery of three recovery channels viz. Lok adalats, SARFAESI Act and DRTs are based on secondary data of the number of cases and recovery percentage collected from RBI's publication of different years. Regi and Roy (2017) & Ravi (2015) studied the orders to find the reasons for delays in the disposal of cases in DRTs and gave some suggestions for addressing the same. Dwivedi and Raza (2016); and Unny (2011) gave suggestions for increasing the effectiveness of DRTs. However, the authors could not find any paper where the effectiveness of different DRTs was evaluated based on secondary data on the disposal time of OAs. Besides, the authors could not find any paper where the effectiveness of different DRTs based on disposal time of OAs, has been compared. The authors could also not find any paper where the primary data was collected from various bankers regarding the effectiveness of DRTs, deficiencies in their working and their suggestions for mitigating the same.

3. Objectives and Hypotheses of the Study

3.1. Objectives of the Study

• To study the effectiveness of the DRTs in resolving NPAs of banks in India (The effectiveness of the RDB Act has been measured by the recovery percentage of debts from OAs filed by banks with DRTs for recovery of their debt and their disposal time.)

• To find out the deficiencies in DRTs which are affecting their effectiveness.

• To offer suggestions for improving the effectiveness of DRTs.

3.2. Research Questions and Hypotheses

a. To achieve the objective "To study the effectiveness of the DRTs in resolving NPAS of banks in India", the following research questions have been asked:

o Is DRTs an effective mechanism for resolving NPAs of banks in India?

o What has been the average disposal time in the sample DRTs during the study period?

o Is the disposal time of OAs in sample DRTs the same?

The following hypotheses have been formulated to answer this question:

H_0: There is no significant difference in the average disposal time of the three sample DRTs.

H_1: There is a significant difference in the average disposal time of the three sample DRTs.

o   Is the average period of pendency of OAs the same in-sample DRTs?

The following hypotheses have been formulated to answer this question:

H_0: There is no significant difference in the average time of pendency of OAs of three sample DRTs.

H_1: There is a significant difference in the average time of pendency of OAs of three sample DRTs.

o   What has been the average recovery percentage in DRTs for the study period?

o   Has the effectiveness of DRTs increased after the amendments to RDB Act in 2016?

b. To achieve the objective "To find the deficiencies in DRTs which are affecting their effectiveness", the following research question is asked:

o   What are deficiencies in DRTs which are reducing their effectiveness in resolving NPAs of banks in India?

c. To achieve the objective "To offer suggestions for improving the effectiveness of DRTs" the following research question is asked:

o   How can the effectiveness of DRTs in resolving the NPAs of banks in India be increased?

4.   Research Methodology

4.1. Period of Study

The data for disposal time in DRTs were collected for the years 2011 to 2019 and it was collected in December 2019 and January 2020. The data for the recovery percentage of DRTs were studied for the period 2010-11 to 2018-19. The data for recovery percentage was collected from 2010-11 as the NPAs of banks had started increasing from that year. For the same purpose, the data up to 2018-19 only was studied so that data for the study of disposal time and recovery percentage is synchronous. The Covid-19 pandemic which started in March 2020 was an exceptional event so the data is not updated as it may not give the correct picture of the effectiveness of DRTs in a normal situation.

4.2. Sources of Data and Data Collection

4.2.1. Primary Data

An exploratory survey was conducted using a structured questionnaire through interviews of twelve senior officers dealing with the resolution of stressed assets in the five biggest public sector banks (PSBs), four big private sector banks and three asset reconstruction companies (ARCs). For choosing the banks and ARCs, judgement sampling was done as the banks and ARCs chosen had a significant share of NPAs

in the industry. The Banks sell their NPAs to ARCs and ARCs step into the shoes of the Banks. The interviews were conducted to get answers to the above research questions in February 2020.

4.2.2. Secondary Data

The first set of secondary data was collected from the website of DRT. This data was collected to find out the disposal time of OAs during the study period in the sample DRTs. Sample Data of 168 OAs for nine years from 2011 to 2019 was taken from three DRTs located in Mumbai, Hyderabad, and Bengaluru to find out the time taken for the issue of decree certificate from the time of registration of OAs in DRTs. As of date, there are 39 DRTs but judgemental sampling was resorted to. It was decided to take sample data from three DRTs as the purpose was limited to analysing the disposal time of OAs by POs of sample DRTs and to see if there was consistency in the disposal time of the sample DRTs. DRT-1, Mumbai was chosen as it is located in Metro and was set up in 1999 (in the initial years of the RDB Act regime). DRT-1, Hyderabad was chosen as it is located in a non-metro and was set up in 1999 (same time as DRT-1, Mumbai). DRT-2, Bangalore was chosen as it is one of the six DRTs established in the country in 2017 in the last phase. For each year, the first eight available OAs were included in the data for each chosen DRT. Two outliers were removed from the data as they would have distorted the data. Two more data entries were removed as they appeared to be prima-facie incorrect. This sample data was collected between December 2019 and January 2020.

The second set of secondary data regarding recovery in respect of OAs filed by banks was collected from RBI's publication: "Report on Trend and progress of banking in India" of respective years to find out recovery percentage in respect of OAs filed with DRTs.

4.3. Tools and Techniques

The primary data is presented by using pie charts and bar chart. The secondary data of disposal time and recovery percentage is analysed using descriptive statistics such as average. Single-factor analysis of variance (ANOVA) was used to test two hypotheses regarding variance in average disposal time and average time of pendency of OAs in three DRTs.

5. Data Analysis and Interpretation

5.1. Effectiveness of DRTs in Resolving NPAs of Banks in India

5.1.1. Perception of Respondents Regarding the Effectiveness of DRTs for Resolving NPAs of Banks in India

58% of the respondents of the primary survey did not consider DRTs as an effective mechanism for resolving NPAs of banks in India. Their opinion was based on the fact that it takes unduly long in the disposal of cases in DRTs and the recovery percentage is also very low. Besides, they stated that after the issue of the recovery certificate, it took at least one-two years for recovery. However, if a borrower went into liquidation, it took even eight to ten years also. Their view is also substantiated by analysis of secondary data of OAs of three DRTs collected by the authors and secondary data of recovery of OAs collected from RBI publications.
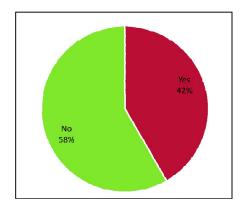
Figure 1: Perception of respondents regarding the effectiveness of DRTs for resolving NPAs of banks in India

Source: Primary data collected by the authors

5.1.2. What has been the Average Disposal Time in the Sample DRTs during the Study Period?

Table 1: Disposal of OAs in Three DRTs in Sample Data during 2011-2019

	Total OAs examined	Disposed of	2 as % of 1	Average disposal time (In years)	Disposal of OAs in up to 180 days	5 as % of 1	Pending as on 31.12.2019
	1	2	3	4	5	6	7
DRT 1, Mumbai	70	8	11.4	3.5	0	NA	62
DRT 1, Hyderabad	72	65	90.3	2.3	11	15.3	7
DRT 2, Bangalore	22	14	63.6	0.9	4	18.2	8
Total	164	87	53.0	2.2	15	9.1	77

Source: Authors' Compilation from data of OAs for 2011-2019

As seen in Table 1 above, only 53 % of the total OAs received were disposed of during the study period. Only 9.1% of OAs received were disposed of in the desired time of 180 days as per the RDB Act. The average disposal time was 2.2 years for the three DRTs taken together.

5.1.3. Is the Disposal Time of OAs in Sample DRTs the Same?

There was no consistency in the average disposal time in different DRTs. A single factor ANOVA was applied to the data of disposal time of disposed of OAs of three DRTs to check the hypotheses stated as follows:

H_0: There is no significant difference in the average disposal time of the three sample DRTs.

H_1: There is a significant difference in the average disposal time of the three sample DRTs.

Table 2: ANOVA Results of Disposal Time in Three DRTs

SUMMARY

Groups	Count	Sum	Average	Variance
DRT-1, Mumbai	8	338	42.25	176.7857
DRT-1, Hyderabad	65	1797	27.64615	480.576
DRT-2, Bengalore	14	154	11	68.76923

ANOVA

Source of Variation	SS	Df	MS	F	P-value	F crit
Between Groups	5430.259	2	2715.13	6.934699	0.001631	3.105156608
Within Groups	32888.36	84	391.5281			
Total	38318.62	86				

Source: Authors' Compilation from data of OAs for 2011-2019

The results in Table 2 revealed that the value of the F statistic is 6.934699 which is more than the value of F critical at 3.105157 (at a 5 per cent level of significance and for 86 degrees of freedom). The p-value is 0.001631 which is lower than 0.05, so the null hypothesis is rejected. This indicates that there is a significant difference in the average disposal time of the three sample DRTs and so an alternate hypothesis is accepted.

5.1.4. Is the Average Period of Pendency of OAs the Same in-sample DRTs?

The data of pending OAs of three DRTs is given below in Table 3:

Table 3: Pending OAs in Three DRTs (in years) in Sample Data during 2011-2019

DRT/Years	0-1	1-2	2-3	3-4	4-5	5-6	6-7	7-8	8-9	Total
DRT1, Mumbai	8	1	2	14	8	9	7	2	11	**62**
DRT 1, Hyderabad	-	-	1	2	-	3	0	-	1	**7**
DRT 2, Bangalore	2	5	-	1	-	-	-	-	-	**8**
Total	10	6	3	17	8	12	7	2	12	77

Mean pending period of "OAs" for three DRTs=4.5 years

Source: Authors' Compilation from data of OAs for 2011-2019

To answer the above question, the following hypotheses were formulated: $H_{0:}$ There is no significant difference in the average time of pendency of OAs of the three sample DRTs. $H_{1:}$ There is a significant difference in the average time of pendency of OAs of the three sample DRTs. A single factor ANOVA was applied to the data of the time of pendency of pending OAs of three DRTs to check the hypothesis. The analysis of the data is given below:

Table 4: ANOVA Results of Period of Pendency in Three DRTs

SUMMARY

Groups	Count	Sum	Average	Variance
DRT-1, Mumbai	62	3564	57.48387	866.6473
DRT-1, Hyderabad	7	417	59.57143	611.2857
DRT-2, Bengalore	8	126	15.75	73.92857

ANOVA

Source of Variation	SS	df	MS	F	P-value	F crit
Between Groups	12640.52	2	6320.261	8.19796	0.000608	3.120349
Within Groups	57050.7	74	770.9554			
Total	69691.22	76				

The results in Table 4 revealed that the value of the F statistic is 8.19796 which is more than the value of F critical at 3.120349 (at a 5 per cent level of significance and for 76 degrees of freedom). The p-value is 0.000608 which is lower than 0.05, so the null hypothesis is rejected. This indicates that there is a significant difference in the average time of pendency of OAs in the three DRTs, so the alternate hypothesis is accepted.

60% and 57% of the cases admitted during the period of Study in DRT-1, Mumbai, and DRT-1, Hyderabad respectively have been pending for more than four years. This is not applicable in the case of DRT-2, Bangalore as it was established only in 2017. The mean time for which OAs were pending during the period of study in three DRTs taken together was 4.5 years. DRT-1, Mumbai was not having a PO for over two years and the PO of DRT-3, Mumbai had been given additional charge of DRT-1, Mumbai and DRT-2, Mumbai. Besides, DRT-1, Mumbai and DRT-2, Mumbai are located on the same premises where DRAT, Mumbai is located which indicate that it may be easier for borrowers to file an appeal after the issue of a recovery certificate by PO. However, this will need another detailed research study if this is an important reason for the pendency of cases in DRT-1, Mumbai apart from the fact that it did not have PO for over two years.

5.1.5. What has been the Average Recovery Percentage in DRTs for the Study Period?

Table 5: Disposal of OAs in DRTs from 2010-11 to 2018-19 and their Average Recovery Percentage

(Amount in Rs Crore)

S.No.	Year (July-June)	No of the cases referred	Amount involved	Amount recovered#	% recovery	Average recovery (%) @
1	2010-11*	12872	14100	3900	27.7	10.9
2	2011-12*	13365	24100	4100	17.0	
3	2012-13*	13408	31000	4400	14.2	
4	2013-14*	28258	55300	5300	9.6	
5	2014-15	18397	53203	3484	6.6	
6	2015-16*	24537	69300	6400	9.2	
7	2016-17*	32408	100800	10300	10.2	
8	2017-18	29345	133095	7235	5.4	4.4
9	2018-19	51679	268413	10552	3.9	
	Total	**224269**	**749311**	**55671**	**7.4**	

N.B. # Refers to the amount recovered during the given year, which could be regarding cases referred during the given year as well as during the earlier years

* For these years, the amount in Rs Billion converted into Rs Crore

@ before amendment of RDB Act (Up to 2016-17) and after amendment of RDB Act from 2017-18 (%)

Source: Authors' Compilation from RBI's Report

As seen in Table 5, the average recovery was only 7.4 % in respect of DRT cases for the study period which is very low. It was 27.7 % in 2010-11 which reduced to 3.9% in 2018-19. Besides, while indicating recovery percentage, the time value of money is ignored. If we consider the time value of money as indicated in the Doing Business Report 2017 above, since it takes on an average of 4.3 years for recovery, the recovery will be just meagre.

Only 9.1% of cases were disposed of in the desired timeframe of 180 days (Table 1) and the average recovery percentage of 7.4% (Table 5) was also very low. Even 58% of the respondents of the primary survey (Figure 1) opined that DRTs are not an effective mechanism for the recovery of NPAs of banks. Given the above, it is inferred that DRTs are not an effective mechanism for resolving the NPAs of banks in India. This finding is also supported by previous studies (Thakkar *et al.,* 2020; Regi and Roy, 2017; Ravi, 2015)

5.1.6. Has the Effectiveness of DRTs Increased after the Amendments to RDB Act in 2016?

The following main amendments were made to RDB Act in 2016. The core legislative concern was the need for "expeditious disposal of recovery applications, such matters being pending for many years due to various adjournments and prolonged hearings" (*The Deputy Director, Directorate of Enforcement, Delhi v Axis Bank & Ors, 2019*)

- The Chairperson of DRAT can direct the DRTs to furnish information under RDB Act

- The Chairperson of DRAT can convene a meeting of POs of DRTs periodically to review their performance.

- The Chairperson can send the report to Central Government for misbehaviour or incapacity of PO of DRT and recommend action against him.

- The timelines have been incorporated for different steps to be followed by the parties to the case and the Tribunal.

- The application/ written statement/ any other pleadings/ documents are to be filed in electronic form.

- Any summons/ notice/ other communication may be delivered in electronic form.

- Uniform procedure for the conduct of proceedings (To be laid down by Central Government).

- PO can grant time for payment of the amount as per the Recovery certificate only if the defendant pays at least 25% of the amount specified in the Recovery Certificate. Earlier this amount could be completely waived off.

- The appeal against any order of the RO can be entertained only if the defendant deposits 50% of the debt due as determined by DRT.

The above amendments were made to increase the accountability of POs, increase the efficiency of DRTs by technological improvement and reduce the number of appeals by borrowers.
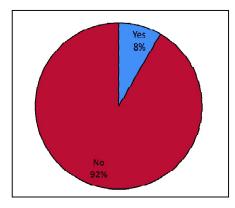

Figure 2: Perception of Respondents Regarding Improvement in Effectiveness of DRTS after Amendments to RDB Act in 2016

Source: Authors' Own Compilation

When the respondents were asked during the primary survey, if the effectiveness of the RDB Act had improved after amendments to RDB Act in 2016, as shown in Figure 2, 92% of the respondents opined that the effectiveness of the RDB Act had not increased after its amendments in 2016. The

analysis of secondary data collected by the author regarding disposal time in DRTs revealed that after the RDB Act was amended, the average disposal time improved to approximately nine months in the case of DRT-1, Hyderabad from two years before the amendment. However, none of the OAs in the sample data of DRT-1, Mumbai was disposed of since 2017. In the case of DRT, Bangalore, it is not applicable as it was established in 2017 after the amendment of the RDB Act. So, the secondary data collected by the author for three DRTs is not conclusive regarding improvement in disposal time after the amendment of the RDB Act in 2016. The secondary data regarding the recovery percentage of NPAs in DRTs revealed that the recovery percentage reduced from an average of 10.9% (Table 5: from 2010-11 to 2016-17) to an average of 4.4 % (Table 5: from 2017-18 to 2018-19) after the amendment to RDB Act in 2016. However, it will need another research study to find reasons for the same. It appears that the amendment in the RDB Act in 2016 has not resulted in improving the effectiveness of DRTs in resolving NPAs of banks in India.

5.2. What are the Deficiencies in DRTs and thus in the RDB Act which are Reducing its Effectiveness in Resolving NPAs of Banks in India?

During the primary survey, the respondents were asked to give a score from 1-10 for nine different reasons for the ineffectiveness of DRTs. The average score for each reason has been plotted in Figure 3 given below:
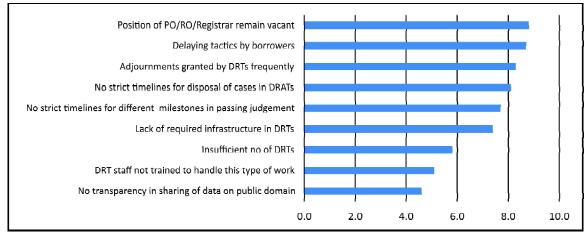

Figure 3: Reasons for Ineffectiveness of DRTs in Descending Order of Importance

Source: Primary data collected by the authors

The position of key officers i.e. PO, RO and Registrar remain pending in DRTs for a very long. This is supported by the example of DRT, Aurangabad (Registrar, 2020) which is not an isolated case. There the post of PO, DRT, Aurangabad was vacant since May 2016 (for about four years) and PO, DRT, Pune was holding charge since February 2017 and PO, DRT, Hyderabad since January 2020. The post of Registrar and RO were vacant since January 2010 (vacant for ten years) and October 2016 (for

over three years) respectively. Ten posts were vacant as against sanctioned strength of 30 in DRT, Aurangabad.

Similar issues were also illustrated in the Bombay High court order on Writ Petitions (International Asset Reconstruction Co Pvt. Ltd v. DRT, Mumbai & Others and Kotak Mahindra Bank v. DRT, Mumbai & Others, 2020). These Writ petitions were filed by the former due to an OA filed in 1999 and the latter due to two OAs filed in 2012 and 2016 respectively which were not disposed of. The Honourable Judges observed that the reasons for pendency of these cases in DRTs were non-appointment of POs of three DRTs in Mumbai, and non-appointment of POs in DRTs in other cities of Maharashtra requiring the DRT, Mumbai to handle the work of the said DRTs. The other reasons were that adequate staff was not appointed in DRTs, space was not provided to DRTs and not increasing the number of DRTs to handle the increased workload. The Honorable judges had directed the Respondents to place the orders before the Honourable Union Minister of Finance who should issue necessary directions.

There are quite a few delaying tactics by borrowers in DRTs. Large borrowers (defendants in OAs) keep on filing petitions for various reasons in DRT and other courts against banks. Besides, they file an appeal in the form of Securitisation Applications (SAs) in DRT against the action of the bank against the borrower under sections 13(2) or section 13 (4) of the SARFAESI Act. The action under SARFAESI Act or IBC stalls DRT proceedings against the borrower. If a borrower is admitted to National Company Law Tribunal (NCLT) under IBC, a moratorium is imposed till the insolvency is resolved under IBC. Earlier, under the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), a reference filed with the Board for Industrial and Financial Reconstruction (BIFR) could stall proceedings against the borrower in DRT till the reference was pending in BIFR. An OA was permitted to be continued in DRT only if BIFR granted permission for the same. Raghuram Rajan stated in his reply to the parliament that "DRT and SARFAESI Act were initially successful before they became overburdened as large borrowers understood how to game them" (The New Indian Express, 2018). Regy and Roy (2017) observed in the dataset of DRT cases examined by them that 43 % of the hearings failed due to adjournments sought by parties to get more time for filing documents or seek client's instructions. 15% of the hearings failed due to the absence of PO/RO and 12 % of hearings failed due to the absence of lawyers. However, it was observed by them that private sector banks sought adjournments less frequently on account of time for filing documents and the absence of lawyers than PSBs.

National Judicial Academy (n.d.) and PTI (2016) highlighted infrastructural inadequacy and institutional inadequacy being reasons for the inefficiency of DRTs and DRATs. Ravi (2015) observed that the POs of DRTs and High Court judges were interpreting RDB Act and SARFAESI Act differently in different DRTs and High Courts. The question of jurisdiction in DRTs and different courts was also leading to delays in the disposal of cases. It was also observed that the approval of stay petitions in a majority of the cases, ex-parte stays and granting more time to borrowers for making payments could also be the reasons for the delay in disposal of OAs in DRTs. Gandhi (2014) also highlighted the deficiencies in working of DRTs and DRATs e.g. it sometimes took more than six months between dates of two hearings and even frivolous applications from borrowers, were entertained.

Given the above, we can say that there are deficiencies in DRTs which are reducing the effectiveness of DRTs in resolving NPAs of banks.

5.3. Can the Effectiveness of DRTs in Resolving the NPAs of Banks in India be Increased? If So, How?

The following suggestions were given by respondents during the primary survey for increasing the effectiveness of DRTs and thus the RDB Act:

- Not to keep the position of POs/ ROs/ Registrar vacant in DRTs
- Establish more DRTs to absorb the growing workload
- Issue directions to DRTs for avoiding repeated adjournments
- Fortnightly Review of pending cases of DRTs by DRATs
- Improvement in the infrastructure of DRTs
- Training of POs and staff of DRTs
- E-proceedings
- Rejecting frivolous SAs

Some out-of-the-box suggestions for revamping DRTs were:

- Keeping a dedicated cadre of judges conversant with recovery laws for appointment as POs
- Financial incentives to DRTs' staff for quality and time-bound disposal of recovery cases

The vacancies in the position of POs, RO and other staff of DRTs had emerged as the main reason for the ineffectiveness of DRTs in the primary survey. If the vacancies in all DRTs are filled up, the PO of each DRT will be able to focus on cases in his own DRT and he will not have to shoulder the responsibilities of other DRTs who do not have a PO. The establishment of more DRTs was also recommended because the respondents felt that this might help in reducing the workload of existing DRTs and absorb the growing workload. The respondents felt that clear directions should be given to POs of DRTs and that adjournment should be granted only on a selective basis on the merits of the case and not for routine matters.

The respondents felt that there should be an improvement in the infrastructure of DRTs. *International Assets Reconstruction Co Pvt Ltd v. The Registrar, Hon'ble Debt Recovery Tribunal, Mumbai* (2020) highlighted that adequate space was not provided to DRTs. It is, therefore, suggested that the infrastructure of DRTs should be improved for the smooth functioning of DRTs.

Training of POs and staff of DRTs was an important recommendation of the working group of the Banking and Financial Sector Legislative Reforms Commission (GOI, 2013).

E-proceedings in DRTs and Courts had started during Covid-19 for attending to urgent matters. This can be adopted for routine cases also to increase the efficiency of the system. The study group constituted by The Indian Institute of Insolvency Professionals of ICAI has recommended more adoption of digital modes such as holding virtual meetings of courts and deploying Artificial Intelligence even after the restoration of normalcy as digital technology has time-saving benefits.

As DRTs have jurisdiction for filing SAs, attending to these also increases the workload of POs and the staff. There should be a procedure for rejecting frivolous SAs with a penalty which should act as a deterrent for other borrowers who use SAs as a delaying tactic.

E-DRT software is being implemented in DRTs which includes e-filing, e-payment of fees, uploading of orders and viewing case status. However, banks are still facing teething problems in the e-filing of documents as the size of the documents allowed for uploading is very less i.e. only 20 MB in 4 pockets of 5 MB each. Besides, they have to file the application and documents in physical form as well within seven days of e-filing. Sengupta (2017) had given an example of how the use of technology had helped in expediting the disposal of cases in Singapore. The Government may try to use technology for expediting the disposal of cases.

As Banks file OAs, they should not be allowed generally to ask for more time for the submission of documents. One more reason for the delay was adjournments sought by lawyers of lenders. It emerged from the discussion with some respondents that PSBs had not revised the fee for lawyers hired by them for many years; therefore, attending hearings in their cases may not be their priority. Besides, lawyers are paid in many cases hearing-wise and not for timely disposal of the case, so getting the disposal of the case delayed can be the motive of some lawyers.

6.   Summary and Conclusion

DRTs are a mechanism available with the banks for recovery in loan accounts that have become NPAs. The study concluded that DRTs have not remained effective mechanisms for the recovery of NPAs. They are beset with so many problems which are reducing their effectiveness. DRTs have not been able to hear cases due to massive vacancies across them. The Supreme Court, therefore, requested the high courts concerned entertain the cases which otherwise are to be heard exclusively by DRTs and DRATs (Anand, 2021). If the Government takes steps as suggested in para 5.3 above, the time for disposal of OAs in DRTs may reduce and their recovery percentage may increase. The realisable value of the assets on which banks have a security interest diminishes with time. The reduction in disposal time in DRTs is likely to enhance the recovery percentage for banks. The government should make appropriate use of technology for the modernisation of DRTs for increasing their efficiency. Now with the introduction of IBC, the insolvency applications of individuals will be handled by DRTs. If the deficiencies in the DRTs are not addressed as an emergency, the already choked system of DRTs may crumble. The findings of this study may be useful for banks, ARCs, The Government of India and the Judiciary for improving the effectiveness of DRTs.

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