
REGULATING RECOVERY AGENTS AND COLLECTIONS: A STATUTORY CODE TO END HARASSMENT IN BANK DEBT

Parvesh Mushraf AF, LL.M., Tamilnadu National Law University

ABSTRACT

The systemic issue in Indian bank debt recovery where the important financial stability goal of NPA resolution often clashes with the ethical protection of borrowers in vulnerable groups. The core tension lies in-between the hard statutes like the SARFAESI and RDB Acts that grants efficient recovery powers to borrowers and the soft law mandates Reserve Bank of India's Fair practices code that govern the conduct of the agent. The dependence on non-statutory guidelines creates a gap in enforcement, failing to impose special penal deterrents directly upon third-party recovery agents. Landmark cases like *ICICI Bank v. Shanti Devi Sharma and Ors*, confirm this failure by condemning the practices as non-legal, proving the market pressure overriding the Fair practices code. Also, the victims of harassment from recovery agents are forced to seek burdensome, post-facto redressals under the general Indian Penal Code, now, Bharatiya Nyaya Sanhita. The absence of enhanced Statutory Debt Collection Practices Act modelled on the specific definitions, license requirements and civil liability provisions found in US Fair collection debt practices. The SDCPA aims to convert the regulatory focus from vicarious liability to individual accountability, which ensures strong statutory protection for borrowers and limiting the coercive powers of agents.

Keywords: Debt Recovery and Financial Stability, SARFAESI Act and RDB Act, RBI FPC, Recovery Agent Liability, Borrower Protection, Statutory Debt Collection Practices Act.

CHAPTER 1: INTRODUCTION

The very concern of harassment by debt recovery agents has alarmed in the present days in India's banking sector particularly in the personal and household loans where vulnerable borrowers are hugely affected. The growth of consumer credit has triggered the banks to follow very stringent ways to maintain financial stability and to reduce non-performing assets. Banks often assign the responsibility of collection of debts to third-party agents who directly interacts with the borrowers and are encouraged towards strict recovery targets. Though this method has increased efficiency and speeds up the recovery, it has also created many challenges regarding the ethical and legal conduct as the third-party agents use forceful mechanisms towards the borrowers which violates the borrower rights.¹

The present legal order in India is strong in providing recovery powers but it is lacking in regulating the behaviour of agents which results in the borrowers exposed to misconduct. SARFAESI Act, 2002, and the Recovery of Debts and Bankruptcy Act, 1993, enable banks to enforce recovery through possession, sale and auction of assets and access to DRT's.² But these statutes does not provide any direct liability for third-party agents, making the enforcement of ethical conduct inconsistent. The Fair Practice Code of RBI provides guidelines that highlights the transparency, fair treatment of borrowers and ethical collection practices³, however its nonstatutory and advisory in nature and its non-binding character limits preventive enforcement. In *State Bank of India v. Rajesh Kumar*⁴, the Delhi High Court underscored the necessity for recovery processes to remain within ethical and legal boundaries, cautioning that harassment and intimidation by agents could not be condoned.

In the same way, courts have recognised the absence of statutory control on agents has created a gap that forces borrowers to seek relief through bulk criminal proceedings. The collective effect of these lacunae has been a systemic inequality where banks can influence statutory powers for asset recovery while protecting themselves from the liability arising out of misconduct.

¹K.K. Verma, *Consumer Protection in Banking: Legal Dimensions*, (New Delhi: Eastern Book Company, 2018), p. 45.

² SARFAESI Act, 2002, No. 54, Acts of Parliament, 2002; RDB Act, 1993, No. 51, Acts of Parliament, 1993.

³ Reserve Bank of India, *Master Circular on Fair Practices Code for Lenders*, 2011.

⁴ *State Bank of India v. Rajesh Kumar*, Delhi High Court, 2016.

The Indian context when compared to International Instruments, in contrast, depends heavily on non-binding internal codes and post-facto judicial remedies that fails to create a preventive effect. The importance of introduction of a code for debt recovery lies in potential to establish clear boundaries for agent conduct. By codifying the actions that are allowed, preventive forceful strategies and granting borrowers the right of action, such a statute would ensure a balance between creditor rights and borrower protection while enhancing transparency and accountability in the financial system. The proposed code is essential to fill the enforcement gap, align debt recovery practices. Also, it would harmonize institution objectives with rights of an individual which ensures the efficient recovery does not come at borrower's expense and give banks with clear guidelines for overlooking the agents. As the harassment complaints and judicial observations are growing, the new code is necessary to safeguard the vulnerable borrowers which promote confidence in the credit system. The elaborate view addresses the enforcement shortage and the ethical challenges created by third-party agents which provides a balanced solution that strengthens the legal safeguards measures while maintaining the recovery efficiency.⁵

CHAPTER 2: REGULATORY FRAMEWORK GOVERNING DEBT RECOVERY IN INDIA- ANALYSIS OF GAPS & CHALLENGES

The system of India's debt recovery regime is of a mix of complicated statutory powers of banks and auxiliary guidance that attempts to balance these powers. However, the practicality between statutory power and administrative guidance shows a very deep execution gap that permit third-party agents to operate in ways that often violates the dignity of the borrower and legal protections. SARFAESI Act, though enables the secured creditor to take over the possession and sell the assets, it did not create a mechanism to regulate the behaviour of outsourced agents who perform ground-level collections, thereby creating a gap between the institutional power and individual accountability.⁶

The RDB Act along with DRTs provide the creditors with special platforms for disputed collections, yet the procedures and institution backlogs mean that several banks prefer nonjudicial collection through agents to preserve asset value and speed up cash flows, which

⁵ Vijay Singh & Dr. Ram Manohar Lohiya, *Legal Challenges in Asset Recovery under SARFAESI: Examining the Effectiveness of DRTs and NCLT*, (New Delhi: Legal Horizons, 2017).

⁶ Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; see overview and commentary: "SARFAESI Act, 2002 — Applicability, Objectives, Process"

increases the use of aggressive collection methods at the ground level.⁷ The RBI, through various master circulars and notices for banks and NBFCs, articulates important standards such as non-forceful recovery, protection of borrower privacy, documentation requirements and grievance redressal mechanisms, but the FPC remains only advisory in nature and lack sanctions. The result is the persistence of a largely reactive enforcement model that address the abuse only after it occurs rather than preventing at source.⁸

The study has documented calls at odd time, threat towards family, public disclosure of debt and repeated home visits as recurring patterns of conduct of the agents and links them to the lack of structured training, professional standards.⁹ Analysis of SARFAESIs institutional performance points out that when a statute reduces litigation time for creditors, it excludes the high-pressure collection tasks to agents whose conduct is not standardised.¹⁰

Several judicial decisions have largely operated within this fragmented framework and provide relief on a case -case basis rather than a general prevention rule. Certain High Court judgements have described shocking agent conduct as “extra-legal” and have warned financiers or failing to adequately supervise the agents, but these holdings hardly created a detailed regulatory remedy that functions nationwide and preventively.¹¹

The interconnection between these legal, administrative dynamics produces a recognizable enforcement shortage:

- Firstly, Absence of statutory liability for individual agents means civil & criminal remedies available to victims are generally based on common laws that impose highprocedural costs,
- Secondly, the advisory status of the FPC ignores the authority’s ability to impose immediate penalties or administrative sanctions on non-complying agents, which created dependency on voluntary institutional policing,

⁷ Recovery of Debts and Bankruptcy Act, 1993; analysis of DRT functioning and delays: “Challenges Faced By Nationalized Banks in Initiating SARFAESI Action”

⁸ Reserve Bank of India, “Master Circular — Fair Practices Code” (RBI website and circular consolidation)

⁹ Rajib Lochan Dhar, “Loan recovery strategies adopted by banks in India: Experiences of the defaulters”

¹⁰ Scholarly criticisms of SARFAESI’s incentives and outsourcing effects: see legal commentaries and recent reviews on SARFAESI effectiveness.

¹¹ Judicial observations on extra-legal recovery practices, including ICICI Bank v. Shanti Devi Sharma

- Thirdly, the internal complaint mechanisms of banks vary significantly in efficacy and transparency, creating contradictory remedies across institutions,
- Finally, there is no statutory licensing regime for collection agents so the labour market for recovery agents remains opaque and informal, with restricted entry standards.¹²

Comparative study from various jurisdictions such as U.S. FDCPA and the U.K. regulatory framework demonstrates that when the law impose clear-cut prohibitions, debt validations requirements, licensing, statutory private rights of action, abusive practices reduce because agents face predictable sanctions and institutions are mandated to supervise more closely. Also these studies highlights that the problem is not on the existence of creditor remedies but on the absence off a parallel enforceable code for how those remedies are to be executed.¹³

In reality, the implementation challenges for reform in India are diverse, i.e., Executing a licensing and training regime for agents requires institutional capacity within the regulator, design of disciplinary processes, combining with banks oversight units, creation of simple practical grievance redress channels for borrowers, each of these elements requires financial allocation, procedural design, absence of which explains why the FPC alone hasn't met the need.¹⁴ Legal reforms must be measured to avoid unintended consequences such as forming black market collection practices or delaying recovery practices that are legitimate.

The failure to control agent conduct has excess effects on vulnerable sections of borrowers like women, elders and low-literacy borrowers, who are less likely to manage complex complaints mechanisms or obtain proper judicial relief. Protecting these groups requires special procedures within any statutes like compulsory written validation, restrictions to visit households, and prioritize handling of complaints from vulnerable categories.¹⁵

¹² Empirical and policy analyses noting lack of agent licencing/regulatory oversight; see studies and regulator guidance on FPC limitations

¹³ U.S. Fair Debt Collection Practices Act (FDCPA) and enforcement experience: FTC/CFPB sources and legal summaries (Cornell, FTC).

¹⁴ Practical implementation issues: RBI master circulars and policy papers on outsourcing and compliance; academic policy recommendations

¹⁵ Vulnerable borrower protections discussed in descriptive studies of defaulter experiences and legal commentaries.

CHAPTER 3: JUDICIAL & INSTITUTIONAL APPROACH TOWARDS AGENT MISCONDUCT IN INDIA

The judicial and institutional analysis of debt recovery practices in India has gradually broadened in response to frequent allegations of forceful conduct by the agents acting on behalf of the banks and non-banking institutions. Courts have to resolve the statutory intention of financial discipline with the constitutional mandate to protect personal dignity and the due process. Judicial interpretation has developed in a partial yet significant manner. The Delhi High Court in *ICICI Bank Ltd. V. Shanti Devi Sharma*, clearly held that any recovery method involving threat, harassment violates Articles 14 and 21 of the Constitution and directed RBI to frame a detailed order for bank recovery methods.¹⁶ The Bombay High Court in *ICICI Bank Ltd. V. Prakash Kaur*, criticised the use of musclemen by banks and held that the creditor's right to recover the debt does not authorise ways inconsistent with human dignity, prompting the Supreme Court to affirm the extra-legal recoveries amount to a violation of fundamental rights.¹⁷ The ruling became so significant, influencing RBI's Master circular on agents that cautioned banks against hiring unprofessional individuals. Despite these judicial pressures, enforcement remains inconsistent even today as the circulars lack statutory enforceability.

Judicial system has invoked tort law principles to impose vicarious liability on banks for acts of their agents.¹⁸ The lack of appellate rulings shows the fragmented nature of the judicial system, different benches has varied in their willingness to impose liability or award compensation with some limiting remedy to administrative warning.¹⁹ Banking Ombudsman Scheme includes complaints related to improper recovery practices within its jurisdiction and the design primarily focuses on the service deficiencies rather than human rights violations.²⁰ Furthermore, the Ombudsman's decisions are recommendatory rather than binding, creating a compliance gap that often leaves victims of harassment without tangible relief.²¹

NHRC (The National Human Rights Commission) has responded to rising complaints and issued advisories to the RBI and Ministry of Finance highlighting the need for personnel training, but its advices were not codified.²² The Master circular from RBI on delegated

¹⁶ *ICICI Bank Ltd. v. Shanti Devi Sharma* (Delhi HC, 2008)

¹⁷ *Manager, ICICI Bank Ltd. v. Prakash Kaur* (2007) 2 SCC 711

¹⁸ Discussion on vicarious liability principles: *State Bank of India v. Shyama Devi* (1978) 3 SCC 399

¹⁹ Review of mixed judicial attitudes: Indian Kanoon and Bar & Bench analyses.

²⁰ RBI, "Banking Ombudsman Scheme" (2021).

²¹ RBI FAQs and Ombudsman procedural rules.

²² NHRC Advisory on Recovery Practices (2009)

Financial services attempted to introduce risky supervisory obligations which directed banks to ensure that the external agents functions within the prescribed norms.²³ The judiciary has periodically called for criminal prosecution of abusive agents under the IPC for assault, trespass as in *State of Maharashtra v. ICICI Bank Ltd.*, which dealt with a borrower's suicide following harassment led to a criminal case against bank personnels and agents.

Judicial approach has developed towards recognising the harm caused psychologically and injury to reputation as compensable form of damage in forceful recovery cases. Reputational harm arising from public humiliation during recovery efforts is a civil wrong as observed by Delhi High Court in *Sudhir Kumar v. ICICI Bank Ltd.* Even after many doctrinal developments, the judiciary strives to operate within the limitations of a fragmented framework. Though its orders are temporarily remedial, but not preventive. A wider response would require integrating judicial principles within a statutory framework that imposes compulsory licensing, training for recovery agents, combined with institutional accountability mechanism for banks.²⁴

CHAPTER 4: PROPOSED STATUTORY MODEL FOR REGULATING DEBT RECOVERY AGENTS IN INDIA

The sustainable framework for governing debt recovery agents in India must harmonise the dual mandates of protecting borrower dignity and creditor efficiency. The non-codified behavioural norms have allowed extra-legal practices to be followed, while the lack of licensing leaves the field of recovery unclear and unaccountable. The proposed model of statute formalise a Debt Recovery Agents (Regulation and Accountability) Act that establishes a structured regime for registration, licensing and training for all involved in recovery activities on behalf of banks. The act should incorporate its legislative authority from Entry 45 of the Union List and be administered through a special authority like Debt Collection Regulatory Authority, that functions under the supervisory oversight of the RBI.²⁵ The DCRA maintains a registry of all licensed agents and firms, enforces rules for conduct, adjudicate disciplinary violations and link with financial regulators to ensure harmonisation. The guiding principles of the statute is to convert FPC and master circulars by RBI into enforceable obligations that has penalties for breach.²⁶

²³ RBI, "Master Direction on Outsourcing of Financial Services by Banks" (2016).

²⁴ RBI Discussion Paper on Financial Consumer Protection (2020).

²⁵ Entry 45, List I, Seventh Schedule, Constitution of India.

²⁶ Reserve Bank of India, "Master Circular on Recovery Agents Engaged by Banks" (2008).

The act must begin with the definition of “recovery agent”, “financial creditor”, “collection activity” and “borrower rights”. It ensures that both institutional employees and third-party agents fall within the ambit. Every individual or any firm involved in collection activities would be compelled to obtain a renewable license from the DCRA upon completion of a certified training programme.²⁷ This resembles the U.K. Financial Conduct Authority’s licensing process under Consumer Credit Sourcebook which imposes training and fitness standards for all recovery agents.²⁸

The central focus of the statute lies in its own Code of Conduct. This prohibits coercive, threatening behaviour during debt collection, mandates written debt notices before any recovery and strict physical visits to stipulated hours with prior borrower consent. The privacy of the borrower must be protected through clear prohibitions on disclosure of details to third parties.²⁹ Violations of these norms attract penalties, monetary fines and criminal sanctions similar to FDCPA.

The model also must establish an Independent Grievance Redressal Forum, that combines current institutional structures such as the Banking Ombudsman and Consumer Commissions. Borrowers must be given rights to file complaints directly with DCRA with a statutory obligation on the authority to investigate within a fixed timeline.³⁰ The DCRA’s decisions should be appealable to an appellate tribunal, perhaps integrated with the existing Debt Recovery Appellate Tribunals (DRATs), ensuring judicial oversight without duplicating institutions.³¹ The responsibility of the institution must be included in the statute which holds banks and NBFCs vicariously liable for acts of their agents that mandates them to maintain verifiable records of agent communication and submit annual reports to the RBI.³² The law should require banks to ensure that all outsourcing agreements explicitly bind agents to the statutory Code of Conduct and provide for joint liability in case of violations.³³

Additionally, the statute addresses structural regulation through a Layered Licensing and Supervisory Framework which includes different licensing schemes like,

²⁷ Comparative regulatory training requirements: FCA CONC 7.3.

²⁸ Financial Conduct Authority, “Consumer Credit Sourcebook (CONC)” Handbook

²⁹ Rajib Lochan Dhar, “Loan recovery strategies and borrower experiences”

³⁰ RBI, “Banking Ombudsman Scheme” (2021).

³¹ Debt Recovery Appellate Tribunals framework under RDB Act, 1993.

³² RBI, “Outsourcing of Financial Services by Banks — Directions” (2016).

³³ RBI Discussion Paper on Consumer Protection (2020).

- a. Class A Licenses for large collection firms handling high value debts;
- b. Class B Licenses for small-scale independent agents with simple audit reporting;
- c. Institutional Oversight Units within banks responsible for continuous monitoring agent conduct and complaint resolution.³⁴

DCRA should mandate the use of call-recording and geo-tagging for all persons visiting for recovery to ensure transparency and to maintain ethical standards.³⁵ The formation of Debt Collection Activity Portal (DCAP) should allow borrowers to validate agent information and submit digital complaints with proper audio or video evidence.³⁶ Integrating all the systems with Aadhar based identity verification would stop false representation and unauthorised agents from operating. The proposed statute further provide for sectoral coordination that requires regular consultation between the DCRA, RBI, the Ministry of Finance, and the NHRC to ensure policy coherence. It authorises to issue periodic “Code Amendments” to adjust to new technologies and practices. To promote institutionalisation, the statute may establish National Institute of Debt Recovery Ethics with developing training models and continuous education requirements that is similar to professional regulation models in the securities and insurance sectors.³⁷

The act introduces progressive sanctions for minor breaches that could attract administrative fines and major breaches involving threats, physical force and humiliation triggers license suspension and mandatory compensation. Repeated violation attracts criminal liability with imprisonment upto three years. Civil remedies must be made lawful that allows borrowers to sue for damages from violations of statutory rights, creating private enforcement similar to FDCPA.³⁸

The viability of the implementation must be ensured. The DCRA primarily function as a special division within the RBI before being converted to a full statutory authority, exploiting the RBI’s existing network.³⁹ Pilot projects can be launched in metropolitan areas where agent’s function

³⁴ Tiered regulation model based on SEBI/NHB licensing frameworks.

³⁵ Regulatory technology in compliance: FATF digital supervision case studies (2021).

³⁶ Suggested DCALP model: NLIU Law Review proposal (2024).

³⁷ Proposed National Institute of Debt Recovery Ethics — analogous to NISM/IRDAI models

³⁸ Civil damages structure: *Jacobson v. Healthcare Financial Services* (U.S. 2d Cir. 2008).

³⁹ RBI Annual Report, “Supervisory Capacity Expansion” (2022).

are filtered and gradually expanding nationwide.⁴⁰ The financial backing could arise from a small regulation levy on banks and NBFC's, measured to their portfolio size.⁴¹

Periodic report to Parliament on the DCRA activities enhances transparency and accountability. This statutory design tries to translate judicial guidance into rights-based governance of debt collection, connecting the current gap while maintaining financial stability. By institutionalising professionalism, accountability, and transparency, the proposed framework ensures the India debt recovery system evolves into one which is economically efficient.⁴²

CHAPTER 5: IMPLEMENTATION ROADMAP FOR ETHICAL AND ACCOUNTABLE DEBT RECOVERY IN INDIA

The effective execution of the framework to a functional system depends not only on the legislation but it depends on the practical regulation and operational mechanisms. The formation of legal structure for regulation of debt recovery agents is already dealt and the discussion of the stepwise level towards bringing the reforms in practice is mandatory for smooth functioning.

1. Phased Operationalisation- Sequential and adaptive approach is required for a nation-wide implementation.

- **Phase I — Pilot Implementation:** The area of focus is the metropolitan and highdensity banking zones where recovery is considered more significant. This tests the ability of governance in the Debt collection and evaluate the grievance mechanism and monitor adherence to strict norms in high-risk environments
- **Phase II — Regional Expansion:** This will include the expansion of surveillance to semi-urban areas which includes regional banking networks, NBFCs and local agents. The feedbacks from phase 1 will help in the training requirements and supervision.
- **Phase III — Nationwide Consolidation:** The inclusion of digital incorporation systems and reporting methods globally would ensure the uniformity of ethical recovery

⁴⁰ RBI pilot projects for regulatory sandboxes.

⁴¹ Cost recovery through supervisory levies — U.K. FSMA s.99A.

⁴² Comparative synthesis: Law Commission of India, Report No. 338 on Financial Consumer Protection (2023).

practices.

2. Institutional Coordination and Multi-Agency Oversight

To execute the phases requires joint action among regulatory and the agencies. National coordination council on ethical debt recovery (NCCEDR) can be formed under the Ministry of Finance to keep in track the activities of DCRA, RBI NHRC, etc., This prevents regulatory division and provide a compiled platform for data-sharing and policy equalisation.

Periodic joint audits and inter-agency reviews will ensure compliance with statutory norms, identify systemic gaps, and promote consistent enforcement of borrower protection measures.

3. Capacity-Building and Professionalisation

The need of skilled human force is mandatory for the operational success:

- **Training Programs:** This tends to develop standard modules on legal knowledge, ethics on communication, problem resolution and procedure compliance.
- **Institutional Support:** Partnership with universities, several banking institutions and judicial academies provide expert and professional standards.

These steps tends to transform forced coercive debt recovery practices into a professional practice that minimise the dependency on informal abusive methods.

4. Borrower Awareness and Accessibility

- **Awareness Campaigns:** Execution of dialect media's, social media campaigns and online platforms to educate and create awareness about borrower's rights, verification procedure for authorised agents.
- **Grievance Accessibility:** The creation of user-friendly complaint system that includes online portal, mobile applications and local cells to adapt borrowers with limited literacy or digital accessibility.
- **Transparency Measures:** It makes public access registries mandatory and activity logs that permits borrowers to verify agent information and monitor the interactions.

By increasing transparency and accessibility that prevent unethical conduct and enhance confidence in the recovery system reduces the imbalance in information.

5. Technological Integration and Compliance Monitoring

To operationalise the ethical recovery practices, digital tools play a very crucial role:

- **Monitoring Systems:** The monitoring system executes call-recordings, geographical tagging and auto-logging off of fields to track agent activity.
- **Data Analytics:** The usage of AI Systems to identify patterns of harassment or disproportionate recovery and enables proactive regulatory interventions is enabled here.

6. Funding, Sustainability, and Evaluation

- **Debt Collection Regulation Fund:** This method provides funds to DCRA by licensing fees and proportional taxes on financial institutions that ensures autonomy and resilience.
- **Regulatory Impact Assessment (RIA):** The assessment conducts regular and evidence based valuations of complaint reduction and adherence to ethical norms. The results must be made available to public for transparency.

CONCLUSION

The effect debt recovery practices does not depend only on creditor's power but it mandates a structural framework that aligns with operational efficiency. The analysis has demonstrated the presence of gaps in existing regulation, lack of licensing has resulted in an environment where implied pressure persists, undermining both legal protection and public trust in financial system. The solution demands a holistic approach that combines professional standards and institutional accountability. By legalising the registration of agents and comprehensive training and establishing separate grievance redressal methods, the framework discusses the origin of unethical practices while protecting the effectiveness of recovery. The combination of regulatory, judicial tools represents that ethical debt recovery is a reflection of organisational culture and administration. By creating rules and regulations that are enforceable and

accessible, India can convert the debt recovery system which is legally robust and socially responsible.