

NATIONAL JUDICIAL ACADEMY



PROGRAMME REPORT – [SE-07]

NATIONAL SEMINAR FOR PRESIDING OFFICERS OF DEBT RECOVERY TRIBUNAL (DRT)

9th & 10th December, 2017

PREPARED BY PROGRAMME COORDINATOR:

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**1ST YEAR- LL.M. (CONSTITUTIONAL &
ADMINISTRATIVE LAW)**

GNLU, GANDHINAGAR

INTRODUCTION

The National Seminar for Presiding Officers of DRT was held on 9th December & 10th December, 2017, was conducted by the National Judicial Academy, Bhopal (hereinafter NJA). The participants are the presiding officers of DRT from all over the states of India. The entire Programme was divided into **Five Sessions** spread over **two days**.

The programme deliberated on the emerging issues related to the filing and disposal of DRT cases in effective manner and efficacious manner; infrastructural deficit, acute shortage of staff and need of expertise on judicial and administrative side discussed at length. Furthermore, Resource persons asked the participants problems which they are facing in their DRT in order to provide solutions through appropriate channels. In relation to all these issues, resource persons had fruitful discussion with participants pertaining to temporal application of laws and review petition in relation to debt recovery matter.

The programme was intended to provide a platform to the participants to exchange their experiences, knowledge and best practices in exercise of jurisdiction and to revisit with the help of domain experts evolving horizons of relevant law & jurisprudence. The presiding officers appreciated the endeavour put in by NJA and expressed their willingness to regularly revisit NJA for such continuous seminar programs.

LIST OF RESOURCE PERSONS

S. No.	Name of Resource persons	Designation
1.	Hon'ble Dr. Justice Vineet Kothari	Judge, Karnataka High Court
2.	Hon'ble Mr. Justice G.S. Kulkarni	Judge, Bombay High Court
3.	Hon'ble Mr. Justice Debangsu Basak	Judge, Calcutta High Court
4.	Hon'ble Mr. Justice Dama Seshadri Naidu	Judge, Kerala High Court
5.	Hon'ble Mr. Justice Sanjib Banerjee	Judge, Calcutta High Court
6.	Hon'ble Mr. Justice P.K. Bhasin	Chairperson, DRAT - Delhi
7.	Hon'ble Mr. Justice T.K Kaushal	Chairperson, DRAT - Chennai
8.	Hon'ble Mr. Justice S. Ravi Kumar	Chairperson, DRAT - Mumbai

SESSION-WISE PROGRAMME SCHEDULE

Day- 1 [9th Dec, 2017]

Session 1	Recovery of Debts by Banks and Financial Institutions: Legal Framework and Jurisdictional Issues Panel Dr. Justice Vineet Kothari Justice G.S. Kulkarni Justice Debangsu Basak
Session 2	Procedural Issues and Challenges faced by Debt Recovery Tribunals Panel Dr. Justice Vineet Kothari Justice G.S. Kulkarni Justice Debangsu Basak
Session 3	Role and Responsibilities of DRT post SARFESI Act Panel Dr. Justice Vineet Kothari Justice G.S. Kulkarni Justice Debangsu Basak

Day- 2 [10th Dec, 2017]

Session 4	Case Management: Improving Efficiency & Efficacy of DRT Panel Justice Sanjib Banerjee Justice Dama Seshadri Naidu
Session 5	Judicial Discretion; and the Art, Craft and Science of Drafting Judgments/Orders Panel Justice Sanjib Banerjee Justice Dama Seshadri Naidu

SESSION – 1

Theme: Recovery of Debts by Banks and Financial Institutions: Legal Framework and Jurisdictional Issues

Panel: Dr. Justice Vineet Kothari, Hon'ble Justice G. S. Kulkarni and Hon'ble Justice Debangsu Basak

Chairpersons of DRATs: Hon'ble Justice Tarun Kumar Kaushal, Hon'ble Justice P.K. Bhasin & Hon'ble Justice S. Ravi Kumar.

The first speaker J. Kothari started the session by emphasizing on need to establish the debt recovery tribunals. He has started the session by focusing on major recovery of debt from the Kingfisher Airlines where DRT allowed the banks to recover 6000 crore from the CEO of the company. He emphasized on the laws governing the debt recovery like SICA, 1985; 1993 RDDBFI Act and SARFAESI, 2002. The Debt Recovery Tribunals were established for expeditious recovery of debts due to the banks and financial institutions from the borrowers since civil courts were already overburdened. Therefore, DRT is a forum to recover bad debts (NPA) in timely manner.

The speaker also said that the work of DRT is not only restricted to giving certificate of recovery but also to act as a competent court where proper hearings to the contesting parties are adhered to.

The DRT were established with the object to dispose of the cases in speedy manner by creating a friendly regime but somehow they are failing to achieve their aim because of some problems which they are facing in respect to the provisions of the SARFAESI Act and RDDBFI Act. Section 14 of SARFAESI Act where District Magistrate has the power to assist the secured creditor in taking the possession of secured asset, section 17 where even borrower has an option to file an application if the secured creditor has taken an action against borrower u/ section 13(4) etc. are some provisions which require significant changes.

The second speaker Justice Kulkarni shared his experience when he was practicing in Bombay. He said there has to be new law in relation to debt recovery but with substantial background. In earlier days, during 1981 the economy was in bad shape. Approx 1.5 billion debts were there to recover but no such type of specific legislation was there to recover them. That time bank and financial institutions were required to institute a suit in civil court to proceed with recovery. The suit was tried and decided in accordance with the procedure laid down in CPC, 1908. A committee under the Chairmanship of Mr. T. Tiwari was formed to suggest reforms. The committee observed that Indian civil courts were burdened with diverse types of cases. In 1991, Narsimham committee was formed which gave the foundation of RDDBFI Act, 1993. But troubles did not end there. The Act was challenged in Delhi High Court on premise of violating the basic structure as laid down in Kesavananda bharati case. Then Supreme Court ordered that the specialised tribunal be constituted to adjudicate banking issues.

The speaker also pointed out an issue that there is 30 days time limit to get the application numbered, but in today's era of technological advancement, 30 days time limit is too much, hence a cause of delay in disposal of cases.

Third speaker Justice Basak talked about his exposure in respect to DRT matters which comes from the practicing days. During the period of 1993s where branch of law was evolving, RDDBFI Act 1993 was passed by the parliament which led to the establishment of DRT Kolkata and DRT Mumbai in 1994. After this, other DRTs were established across the country. In 2016 and 2017, radical changes and amendments took place empowering DRT to pass interim orders.

Then SARFAESI Act came, the scope of DRT became widen where section 17 gives the power to DRT in form of appeal, section 18 talks about the Debt Recovery Appellate Tribunal, other provisions where tenancy laws, purchaser rights also needs to be adjudicated.

After enactment of Insolvency and Bankruptcy Code, DRT is empowered to adjudicate insolvency of natural person and partnership firm whereas National Company Law Tribunal is empowered to adjudicate insolvency of corporate entity.

At last, speakers concluded the session by observing following points:

- i) The question of rate of interest can be raised under section 17 of SARFAESI Act in respect to not compliance of one of the measures as u/ section 13(4) where interest rate seems to be silent.
- ii) Supreme Court in one of the case held that Nationalized banks cannot charge interest above the maximum ceiling by looking at the power u/ section 13(4). Similarly, financial institutions cannot charge interest at a rate which is against the public policy.
- iii) DRT does not have inherent power. It derives its powers from statutory provisions hence cannot go beyond it and decide the matter. But intervention can be done by High Court and Supreme Court by filing the petition through borrowers' u/ article 226 and 32 of Indian Constitution respectively.

SESSION – 2

Theme: Procedural Issues and Challenges faced by Debt Recovery Tribunals

Panel: Dr. Justice Vineet Kothari, Hon’ble Justice G.S. Kulkarni & Hon’ble Justice Debangsu Basak

Chairpersons of DRATs: Hon’ble Justice Tarun Kumar Kaushal, Hon’ble Justice P.K. Bhasin & Hon’ble Justice S. Ravi Kumar

The session was started by putting a question by the participant:

- i) Whether the debenture trustees pending suits in High Court can be transfer to DRT?
- ii) Whether the DRT have jurisdiction by amendment which has retrospective effect?

The speaker observed that the definition of financial institution u/ section 2 u/ of 1993 Act has been amended which has widened the scope of “bank and financial institution”. Section 17 of SARFAESI talks about the power conferred on Tribunals where they have jurisdiction to decide all the applications from bank and financial institution. Answer can be derived from reading section 17 with section 18 of RDDBI Act where bar on jurisdiction of courts is given. The moment any particular entity comes under definition of Banks & Financial Institution; DRT has the jurisdiction to adjudicate the matter.

The question was thrown by the panel whether DRT has power to condone the delay in filing the appeal?

For this question, panel asked to refer the AR Venugopal v. Jothesswaran¹ where it was observed by the court that recovery officers are not tribunal whereas presiding officers are tribunals. Therefore, tribunal has no power to condone the delay in respect to securitization application.

The panel discussed about if security interest is not valid, can it be challenged. Then panel discussed about the original application (OA) and securitization application (SA) which are two different things. OA cases comes u/ the RDDBFI Act whereas SA cases comes u/ the SARFAESI Act. In SA, burden lies on the borrower whereas in OA, burden lies on the banker.

Then panel discussed section 14 and section 17 of SARFAESI Act in respect to Standard Chartered Bank v. V. Nobal Kumar². Two principal issues were discussed with respect to non-adherence of section 14:

- i) District Magistrate either take possession by himself or through his sub-ordinate authority.
- ii) District Magistrate delegates his authority to Additional District Magistrate.

Further the panel discussed about whether it is necessary to entertain the petition against the order of possession of secured assets u/section 14? Here panel stated to refer the Kanaiyalal Lalchand Sachdev v. State of Maharashtra³ judgment to get the answer of the above question.

¹ 2016) 16 SCC 588

² (2013) 9 SCC 620

³ (2011) 2 SCC 782

SESSION – 3

Theme: Role and Responsibilities of DRT post SARFAESI Act

Panel: Dr. Justice Vineet Kothari, Hon'ble Justice G.S. Kulkarni & Hon'ble Justice Debangsu Basak

Chairperson of DRATs: Hon'ble Justice Tarun Kumar Kaushal, Hon'ble Justice P.K. Bhasin & Hon'ble Justice S. Ravi Kumar

The speaker discussed in this session that the rights under the RDDBFI Act and SARFESI Act are independent of each-other. Relief can be sought under both the statute parallel to each-other, subject to the law of limitation. Since enforcement of security interests tantamount to proceedings for mortgage, under the Limitation Act, 1963, the limitation period for invocation of proceedings under SARFESI act is 12 years- same as that of mortgage proceedings.

The panel then discussed the need of SARFAESI Act in despite of RDDBI Act. It was felt that RDDBI was unable to achieve the desired result of efficiently recovering monies from the borrowers. This led to the enactment of the SARFESI Act, 2002 with an attempt to revamp the slow pace of recovery of defaulting loans and mounting levels of non-performing assets of banks and financial institutions. Panel discussed that because of SARFAESI Act, secured creditors got the right to enforce the security without the intervention of either the court or tribunal by following the procedure prescribed u/ section 13 of SARFESI act.

After this, Justice Debangsu Basak took over the session where he discussed about the Part-III of Insolvency and Bankruptcy Code which empowers DRT to adjudicate the matter with respect to natural persons and partnership firms.

Before concluding the session, Panel asked the Presiding officers about the problem they are facing in their respective DRTs:

- Most of the DRTs felt acute shortage of administrative staff like judicially trained registrars, stenographers, stamp reporters and recovery officers for efficient working of DRTs. The ad-hoc work by persons from different departments on deputation, including some staff provided by the Banks, who are secured creditors or applicants before the DRTs, was presented as the main cause of delay in disposal of cases by DRTs despite hard work put in by the Presiding Officers.
- At many places where there are no appointment of stenographers, the POs and Chairpersons of DRATs are themselves required to type their own orders.
- The requirement of training of the available staff for uniform and harmonized working by NJA Bhopal and even State Judicial Academies was mooted by the Presiding Officers. On a lighter vein, one of the members described DRT as 'DISCIPLINE REQUIRED TRIBUNAL'.
- One of the significant suggestions was that the Recovery Officer be a judicial officer of the Rank of Civil Judge and/ or there should be a full fledged DRT-PO as Executing Court. This would facilitate speedy and easier recoveries fulfilling the object of the legislations.
- The six-day working in a week, instead of usual five-day working, was yet another concern raising issues of efficiency and employee morale.

- The lack of financial grants on in divisional requisition basis instead of annual budgetary allocation even for administrative support like outsourcing of staff was a stated reason for falling short of the targets.
- Dealing with the high stake monetary matters as also sensitive cases under RDB Act 1993, SARFAESI Act 2002 and now even IBC 2016, the Presiding Officers also raised a serious concern for their own personal security to provide them tangible sense of safety and independence.
- Some DRTs also face even the lack of proper building and other infrastructure facilities.

SESSION - 4

Theme: Case Management: Improving Efficiency & Efficacy of DRT

Panel: Hon'ble Justice Sanjib Banerjee & Hon'ble Justice Dama Seshadri Naidu
Chairpersons of DRATs: Hon'ble Justice Tarun Kumar Kaushal, Hon'ble Justice S. Ravi Kumar & Hon'ble Justice P.K. Bhasin

The session was started by stating that whole idea of tribunalisation is wrong because it is not achieving the purpose or object for which it was established. Many committees were formed for its smooth functioning and speedy disposal of cases but desired result has not been achieved.

The staff which is appointed in DRT come from different department of ministries and lack legal knowledge or legal background. Justice Banerjee focused on some points in respect to efficiency in disposal of cases such as;

- (i) The people who are appointed for particular field should have expertise in that field.
- (ii) Presiding officers should have knowledge of the specialised subject.
- (iii) The government should provide at least basic infrastructure with updated technology.

Justice Banerjee stated that laws in respect to debt recovery are still evolving where u/ section 34 of SARFAESI Act, DRT and DRAT can no longer be focus only purely banking laws but lot of fundamental principles can be taken care of. Earlier, u/ section 34 plaint could be rejected as a whole, not partially but now it is possible to reject partially u/section 34.

Then Justice Banerjee talked about the court management and case management and how the both concept is different from each-other. He said that court management pertains to individual action which can be in between presiding officer, CEO of company and representative of litigants, whereas case management system is recognized by the Reckon Committee. During 1930s and 40s most comprehensive rules were framed by the Madras High Court in relation to case management system. Some of them were:

- (i) Separation of complex matters and simpler matters from the total bunch.
- (ii) Case management meetings and allocation of time to particular matter should be given so that it leads to the effective and speedy disposal of cases.
- (iii) Once they get to know about the complexity of issues, then priority to the matters should be given accordingly.

Justice Naidu highlighted the reasons of pendency of cases where he emphasized on lack of adequate staff, infrastructural deficit. Apart from it he stated that debtor also create the main cause for delay where after receiving notice, they ask for extra time to pay from court which leads to delay in proceedings. He mainly focused on two points:

- Infrastructural inadequacy
- Institutional inadequacy

Justice P.K. Basin stated that DRT is here to achieve the faster recovery of debt. But since the object is not achieved, it is time to think what we are participating in. It is time to adopt a different method from normal civil courts. He focused on the main issue where delay is caused by registrars only. When an application comes under section 19, after submission of pleadings and their statement, registrars keep giving dates and dates stating the reason for the exhibition of documents.

Some participants suggested that matter delays not because of the giving date by registrar but only because of the incompleteness of service by the banks. Banks should ensure that they should be present and service should be done time to time.

Towards the end of the session, Justice Banerjee highlighted the significance of case flow management by giving a detailed presentation to the participants:

i) What is Case flow management?

Case flow management is the process by which courts move cases from filing to closure. In another way, it is the process by which courts convert their “inputs” (cases) into “outputs” (disposals). There are three stages: Pre-trial, Trial and Implementation of orders

ii) Planning that are to be done in case flow management?

- Court system and trial court organization
- The management of judges by judges
- The identification, development, selection, and succession of chief judges and court managers
- Chief judge/court manager executive leadership teams
- Best use of multi-disciplinary executive teams

iii) Resources and Data

- Allocation of court resources
- Judges, managerial, technical and administrative staff
- Budgets
- Technology
- Courthouses and other facilities
- Case types, and particular types of hearings

iv) Application

- Application of court technology and the court’s research, data and analytic capability
- Coordination with the judiciary’s justice system partners

v) Knowledge, Skills And Abilities

- Court Purposes and Vision
- Fundamentals
- Leadership Teams and System-Wide Effectiveness
- Change and Project Management
- Technology
- Personal Intervention

vi) Purpose and Vision

- Caseflow management is a justice not an efficiency driven activity
- Caseflow management makes possible equal access, individual justice in individual cases, equal protection and due process
- Predictability and regularity in case processing

vii) The Rationale

- In witness-dependant adversarial system, undue delay leads to the loss of memory
- When memory is lost, litigants and lawyers cannot remember nor find facts
- If facts are lost or forgotten, justice is impossible The objective of caseflow management is not faster and faster and more and more, it is justice

viii) Fundamentals

- Relationship between the purposes of courts and effective caseflow and trial management
- Time standards, alternative case scheduling assignment systems
- Case management techniques include differentiated case management alternative dispute resolution
- Different case types have different case processing steps and dynamics
- Competent court managers understand the general principles, all case types and how principles apply to each case type.

ix) System –Wise Effectiveness

- Caseload management is a team sport that requires an effective court executive leadership team that includes the judge in charge and court managers
- Effective case processing is a cooperative effort of judges and court staff and public and private litigants and lawyers, as well as law enforcement, social services, health, detention, and correctional organizations

x) Continuing Process

- Effective caseload is a moving target
- The underlying purposes and case processing principles are constants, so are change and projects to bring about improvements
- Techniques and programs that once were innovative and effective do not work forever and require constant monitoring
- Caseload management competency means skillful and continuous evaluation and problem identification

xi) Technology

- Tying information technology to caseload management involves creating and maintaining records
- Supporting court management of pre-trial, trial and post-disposition events, conferences and hearings
- Monitoring case progress
- Flagging cases for staff and judge attention, tracking trends
- Providing needed management information and statistics

xii) Personal Intervention

- Effective leadership of caseload cannot be passive
- Neither day-to-day routines nor required change are self-executing
- Complex and interdependent processes carried out by people, departments, and organizations with independent responsibilities demand skilled and credible leadership

SESSION -5

Theme: Judicial Discretion; and the Art, Craft and Science of Drafting Judgments/ Orders

Panel: Hon'ble Justice Sanjib Banerjee & Hon'ble Justice Dama Seshadri Naidu
Chairpersons of DRATs: Hon'ble Justice Tarun Kumar Kaushal, Hon'ble Justice S. Ravi
Kumar & Hon'ble Justice P.K. Bhasin

In fifth session, panel discussed about the importance of scientific intricacy and technological intricacy in writing judgment. They stated that judgment writing is a qualitative process where judges put their ideas and express their views. The speakers discussed about the judgment writing skills of Justice V. R. Krishna Iyer, Justice K. K. Mathew and Lord Denning.

Here Justice Naidu expressed the term "*curse of the knowledge*" where he said that sometimes knowledge is curse because generally what the counsels do; instead of telling the whole story they just jump to the crux where they presume that the judge knows everything, which cannot be true always.

He gave importance on two words for writing judgment:

- **Symantic- meaning**
- **Synthetic- grammatical**

The speaker stated that if we focus on punctuation, writing would improve by 50%. Judgment should be written in the most simplistic way where it is understandable not only to the stakeholders of court but to the ultimate consumer. One should write normally, naturally keeping all the limitation in consideration.

J. Naidu connects the judgment writing with the four stages given by Betty S Flowers where in

- i) First stage- man gets woods from forest which he related with jargon down the words from arguments.
- ii) In Second stage, works as architecture pick up the woods from them and frame work which he related with jargon down the words in lineal method.
- iii) In Third stage, works as a carpenter where he joint things which he related with drafting.
- iv) And at last in fourth stage, works as judge where critically analysis has been done which he related with refining and editing.

Justice Banerjee stated that there are three stages that ought to be considered;

- First- to analyses the set of facts
- Second- apply rules on them
- Third- after scrutinizing facts with rules, come to the conclusion that should be Clear, Correct and Connected.

In relation to art, craft and science, Justice Naidu talked about avoiding long sentences. But Justice Banerjee said that sometimes long sentences are necessary in cases where judge wants to express his opinion or thought about particular subject matter. In those cases long sentences are necessary to express the whole thought of the judge, otherwise it leads to ambiguity.

One participant raised a question that in DRT, the presiding officers don't write judgments, they just pass orders. So in that case also, is the judgment writing skill necessary?

Speaker answered that if we see in layman language, judgment and order are same because in both cases you have to support your answer with the reasons. Therefore, to state the reason there has to be clarity in their writing because ultimately it should be understandable to the consumer.

At last, Justice Banerjee while concluding the session stated that every judgment is the command to the society which connotes that in such set of circumstances or facts, such will be the consequences, therefore it is necessary that every judgment/ order passed must be clear, correct and connected.