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Introduction

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Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

Description

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

ENFORCEMENT OF SECURITY INTEREST IN INTANGIBLE ASSETS UNDER THE SARFAESI ACT: LEGAL CHALLENGES AND EMERGING CONCERNS

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Abstract

The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) was enacted to empower secured creditors to enforce security interests without court intervention. While the Act has been effective in dealing with tangible assets, its applicability to intangible assets such as intellectual property (IP) and digital assets remains ambiguous. With the rapid growth of knowledge-based economies and digital finance, intangible assets increasingly form a significant portion of secured transactions. This paper critically examines the legal framework governing enforcement of security interests in intangible assets under SARFAESI, identifies key challenges in their recovery, and analyses judicial interpretations. It further explores comparative legal frameworks and suggests reforms to bridge existing gaps.

Keywords: SARFAESI Act, Intangible Assets, Intellectual Property, Digital Assets, Security Interest, Debt Recovery

1. Introduction

The transformation of global and domestic economies from asset-intensive industrial systems to knowledge-driven and technology-oriented frameworks has fundamentally altered the nature of secured transactions. Traditionally, lending institutions relied heavily on tangible assets such as land, buildings, plant, and machinery as collateral to secure loans. However, in the contemporary

financial ecosystem, intangible assets¹—including intellectual property, digital platforms, software, and data—have emerged as key value drivers. This shift necessitates a re-examination of existing legal frameworks governing secured credit, particularly in the Indian context.

The *Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002* (SARFAESI Act) was enacted with the primary objective of enabling banks and financial institutions to recover non-performing assets (NPAs)² efficiently without judicial intervention. By empowering secured creditors to enforce their security interests through³ mechanisms such as possession and sale of secured assets, the Act significantly streamlined debt recovery processes. However, the legislative design and enforcement mechanisms under SARFAESI are predominantly oriented toward tangible assets, raising serious concerns regarding its applicability to intangible property. The growing significance of intangible assets in sectors such as information technology, pharmaceuticals, media, and fintech has made them central to modern credit arrangements. For instance, startups and technology companies often possess limited physical assets but hold substantial value in intellectual⁴ property, proprietary software, or digital infrastructure. In such cases, lenders may accept these intangible assets as collateral. Nevertheless, the absence of clear legal provisions governing their enforcement under SARFAESI creates uncertainty and risk for both creditors and borrowers.⁵

A key issue arises from the conceptual difference between tangible and intangible assets. While physical assets can be easily identified, possessed, and sold, intangible assets lack physical form and are often governed by separate statutory regimes. This complicates their enforcement, particularly under provisions such as Section 13(4) of SARFAESI, which contemplates taking

¹ Sarkar, Sudipta De, and N. L. Mitra. "Secured Lending on Intellectual Property Rights in India: Issues on Valuation." *Asian Journal of Legal Education* 10.2 (2023): 217-242.

² The *Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002* (SARFAESI Act) was enacted with the primary objective of enabling banks and financial institutions to recover non-performing assets (NPAs)

³ Vidani, Jignesh. "A Study on Credit Facilities by Private Sector Banks In India." *Available at SSRN 4849738* (2024).

⁴ Jaiwani, Megha, and Santosh Gopalkrishnan. "Global resurgence: private asset reconstruction companies as legal catalysts for financial stability in India and beyond." *International Journal of Law and Management* (2024).

⁵ Anand, Shreyansh. "Recovery Of Debts Due to Banks and Financial Institutions With Special Emphasis on SARFAESI Act, 2002." *Available at SSRN 4810579* (2024).

possession of secured assets. The question of how “possession” applies to non-physical assets remains inadequately addressed.⁶

Moreover, the rise of digital assets—including cryptocurrencies, domain names, and virtual assets—has introduced additional layers of complexity. These assets often operate in decentralized environments, are subject to technological vulnerabilities, and lack comprehensive regulatory frameworks in India. As a result, enforcing security interests in such assets under SARFAESI becomes even more challenging. This paper seeks to critically analyse the extent to which the SARFAESI Act accommodates intangible assets within its enforcement framework. It explores the conceptual, legal, and practical challenges associated with such enforcement and examines relevant judicial interpretations. Further, the study undertakes a comparative analysis of international legal frameworks, particularly in jurisdictions such as the United States and the United Kingdom, where more developed systems exist for dealing with intangible collateral. Ultimately, the paper argues that while the SARFAESI Act provides a broad definition of “secured asset,” its enforcement mechanisms are inadequate for addressing the complexities of intangible assets. There is an urgent need for legislative reform, judicial clarification, and institutional innovation to align the Act with the realities of a digital and knowledge-based economy. Without such reforms, the effectiveness of secured lending in India may be significantly constrained in the years to come.

2. Concept of Intangible Assets in Secured Transactions

The concept of intangible assets has gained increasing prominence in modern financial and legal systems due to the rapid evolution of technology and knowledge-based industries. Unlike traditional assets, intangible assets do not possess a physical form; instead, they derive their value from legal rights, intellectual creation, or economic potential. In the context of secured transactions, understanding the nature and characteristics of intangible assets is essential for determining their suitability as collateral and the feasibility of their enforcement.

⁶ Sharma, Bhavya. "Analysing the Effectiveness of Debt Recovery Mechanisms for Banks in India: A Special Focus on the SARFAESI Act, 2002." *Issue 2 Int'l JL Mgmt. & Human.* 7 (2024): 1673.

Intangible assets encompass a wide range of property interests, including intellectual property rights such as patents, trademarks, copyrights, and trade secrets. Additionally, they include software, databases, goodwill, brand value, and digital assets such as cryptocurrencies, tokens, and domain names. These assets often represent a substantial portion of a company's total value, particularly in sectors such as technology, pharmaceuticals, media, and e-commerce. For example, a technology startup may have minimal physical infrastructure but possess highly valuable proprietary software or algorithms that form the core of its business.⁷

In secured transactions, collateral serves as a form of assurance for lenders, enabling them to recover their dues in case of borrower default. Traditionally, tangible assets were preferred due to their ease of identification, valuation, and transfer. However, with the increasing importance of intangible assets, lenders have begun to accept them as security. This shift reflects the changing nature of business models, where value is increasingly generated through innovation, intellectual effort, and digital presence rather than physical capital. Despite their growing importance, intangible assets present unique challenges when used as collateral. One of the primary issues is their lack of physical existence, which complicates the concept of possession and control. Unlike land or machinery, intangible assets cannot be physically seized or transferred through conventional means. Instead, their control is often exercised through legal rights, contractual arrangements, or technological access mechanisms. For instance, ownership of a patent is established through registration, while control over a digital asset may depend on access to cryptographic keys. Another significant challenge is valuation. The value of intangible assets is often subjective and may fluctuate based on market conditions, technological advancements, and consumer perception. Unlike tangible assets, which can be valued based on market price or replacement cost, intangible assets require specialized valuation methods, such as income-based or market-based approaches. This introduces uncertainty and risk for lenders, who must assess the adequacy of such assets as collateral. Furthermore, intangible assets are governed by diverse legal frameworks. Intellectual property rights are regulated under specific statutes such as the Patents Act, 1970, the Copyright Act, 1957, and the Trade Marks Act, 1999. Digital assets, on the other

⁷ Sapre, Kalyani. "Analysis of Sarfaesi Act: Practical Approach." *Issue 2 Indian JL & Legal Rsch.* 5 (2023): 1.

hand, are subject to evolving regulatory regimes, often lacking comprehensive legal recognition. This fragmentation complicates the creation, registration, and enforcement of security interests.⁸

In the Indian context, the legal infrastructure for dealing with intangible assets as collateral is still developing. While the SARFAESI Act provides a broad definition of “secured asset,” it does not explicitly address the unique characteristics of intangible property. As a result, there is a gap between the economic reality of intangible asset-based financing and the legal mechanisms available for enforcement.⁹

Therefore, a nuanced understanding of intangible assets is crucial for assessing their role in secured transactions. It requires a departure from traditional notions of property and security, and a recognition of the evolving nature of value in modern economies. Addressing these challenges is essential for ensuring that legal frameworks remain relevant and effective in facilitating credit and economic growth.¹⁰

3. Legal Framework under the SARFAESI Act

The SARFAESI Act, 2002 was enacted as a significant reform measure to address the growing problem of non-performing assets (NPAs) in the Indian banking sector. By allowing secured creditors to enforce their security interests without the intervention of courts or tribunals, the Act marked a departure from traditional debt recovery mechanisms, which were often time-consuming and inefficient. However, the effectiveness of this legal framework largely depends on the nature of the secured assets and the applicability of its provisions to different forms of property. At the core of the SARFAESI Act lies the concept of “security interest,” which is defined broadly to include any right, title, or interest upon property created in favour of a secured creditor. This definition theoretically encompasses both tangible and intangible assets, as it does not explicitly restrict the scope of property to physical assets. However, the practical application of the Act suggests a predominant focus on tangible property, such as immovable property and movable

⁸ *The Patents Act, 1970, The Copyright Act, 1957, and The Trade Marks Act, 1999* (India).

⁹ Gupta, Shaily, and Jyotsana Singh. "Bridging Law and Finance: The Role of Legal Institutions in Financial Recovery Mechanisms." *LawFoyer Int'l J. Doctrinal Legal Rsch.* 3 (2025): 682.

¹⁰ Mishra, Eeshan. "Analysing the Impact of the SARFAESI Act on the Recovery Rates of NPAs in Indian Banks." *LawFoyer Int'l J. Doctrinal Legal Rsch.* 2 (2024): 365.

assets capable of physical possession. The enforcement mechanism under the Act is primarily governed by Sections 13 and 14. Section 13(2) empowers¹¹ the secured creditor to issue a demand notice to the borrower, requiring repayment of the outstanding dues within sixty days. If the borrower fails to comply, Section 13(4) allows the creditor to take measures such as taking possession of the secured assets, taking over the management of the borrower's business, or appointing a manager to manage the secured assets. These provisions are designed with tangible assets in mind, where physical possession and control are feasible.

Section 14 further provides for the assistance of the District Magistrate or Chief Metropolitan Magistrate in taking possession of secured assets. This provision reinforces the emphasis on physical enforcement, as it involves the use of administrative authority to facilitate the transfer of possession. In the context of intangible assets, however, the role of the magistrate becomes ambiguous, as there is no clear mechanism for "taking possession" of non-physical property. Another important provision is Section 17¹², which allows aggrieved borrowers to approach the Debts Recovery Tribunal (DRT) for redressal against measures taken under Section 13(4). While this provision ensures procedural fairness, it does not address the substantive challenges associated with enforcing security interests in intangible assets. The Act also operates in conjunction with other legal frameworks, such as the Companies Act, 2013 and the Registration Act, 1908, which govern the registration of charges and interests. However, there is no unified system for registering security interests in intangible assets, leading to issues of priority and enforceability.¹³

Moreover, the SARFAESI Act does not explicitly provide guidelines for the valuation, transfer, or realization of intangible assets. This omission creates uncertainty for creditors, who may be reluctant to accept such assets as collateral due to the lack of clear enforcement mechanisms.

¹¹ *The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002*, Sec.13,

¹² *The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002*, Sec. 17 (India).

¹³ Sharma, Jyoti, and Kamal Vagrecha. "Effectiveness of Debt Recovery Tribunals in Resolving NPAs of Banks in India: A Critical Analysis." *Orissa Journal of Commerce* (2022): 75-91.

In practice, the enforcement of security interests under SARFAESI has been largely limited to tangible assets, such as land and buildings. Judicial interpretations¹⁴ have also focused on procedural aspects of enforcement rather than expanding the scope of the Act to include intangible assets. As a result, there is a disconnect between the broad statutory language and its practical implementation.

In conclusion, while the SARFAESI Act provides a robust framework for enforcing security interests in tangible assets, it falls short in addressing the complexities of intangible property. The absence of explicit provisions and clear enforcement mechanisms for such assets highlights the need for legislative reform and judicial clarification. Without such measures, the Act may struggle to remain relevant in an increasingly digital and knowledge-driven economy.

4. Challenges in Enforcement of Intangible Assets

The enforcement of security interests in intangible assets under the SARFAESI Act presents a range of conceptual, legal, and practical challenges. While the Act provides a relatively streamlined mechanism for dealing with tangible assets, its application to intangible property exposes several structural limitations.¹⁵ These challenges arise primarily due to the inherent nature of intangible assets, which differ significantly from traditional forms of collateral. One of the most fundamental challenges is the absence of physical possession. The SARFAESI framework, particularly under Section 13(4)¹⁶, is premised on the ability of secured creditors to take possession of secured assets. In the case of tangible property, such as land or machinery, possession can be physically established and transferred. However, intangible assets, by definition, lack physical existence. For instance, a patent or a trademark exists as a legal right rather than a physical object. Similarly, digital assets are often controlled through electronic access rather than physical custody. This raises critical questions about how “possession” should be interpreted in the context of intangible property. Another major challenge is valuation uncertainty. Intangible assets are

¹⁴ Sapre, Kalyani. "Analysis of Sarfaesi Act: Practical Approach." *Issue 2 Indian JL & Legal Rsch.* 5 (2023): 1.

¹⁵ Basu, Sudipta, and Gregory Waymire. "Has the importance of intangibles really grown? And if so, why?." *Accounting and business research* 38.3 (2008): 171-190.

¹⁶ *The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002*, Sec. 13(4) (India).

notoriously difficult to value due to their dependence on subjective and fluctuating factors.¹⁷ The value of intellectual property, for example, may depend on market demand, technological relevance,¹⁸ licensing potential, and competitive conditions. Digital assets, such as cryptocurrencies, are even more volatile, with prices subject to rapid fluctuations. This creates significant risk for lenders, who must assess the adequacy of such assets as collateral. The absence of standardized valuation guidelines further exacerbates this problem.

Legal fragmentation also poses a significant obstacle. Intangible assets are governed by a variety of specialized statutes. For instance, patents are regulated under the Patents Act, trademarks under the Trade Marks Act, and copyrights under the Copyright Act. Each of these statutes has its own system of registration, transfer, and enforcement. The SARFAESI Act does not clearly integrate with these frameworks, leading to conflicts regarding priority and enforceability. For example, it is unclear whether a security interest created under SARFAESI would take precedence over prior rights recorded in intellectual property registries. The transfer and realization of intangible assets present additional difficulties. Unlike physical assets, which can be sold through auctions or private treaties, intangible assets often require specialized markets and expertise. The pool of potential buyers may be limited, particularly for niche intellectual property. Furthermore, licensing restrictions, territorial limitations, and contractual obligations may restrict the transferability of such assets. As a result, creditors may find it difficult to realize the full value of intangible collateral.

The rise of digital assets introduces a new set of challenges. Cryptocurrencies and other virtual assets operate in decentralized environments, often beyond the control of traditional regulatory authorities.¹⁹ Ownership is typically determined by possession of private keys, which may be difficult to access or transfer. Additionally, the lack of a comprehensive legal framework governing digital assets in India creates uncertainty regarding their status as property and their

¹⁷ Chadha, Alka, and Raffaele Oriani. "R&D market value under weak intellectual property rights protection: the case of India." *Scientometrics* 82.1 (2010): 59-74.

¹⁸ Teece, David J. "Intangible assets and a theory of heterogeneous firms." *Intangibles, market failure and innovation performance*. Cham: Springer International Publishing, 2014. 217-239.

¹⁹ Kumar, Naveen. "Cryptocurrency in India: A Critical Analysis of Risks, Opportunities, and the Path to a Legal Framework." *NUJS J. Regul. Stud.* 10 (2025): 38.

eligibility as collateral. Another concern is the risk of technological vulnerabilities. Digital assets are susceptible to hacking, data breaches, and technical failures. Enforcement actions involving such assets may expose creditors to cybersecurity risks, further complicating the recovery process.²⁰

In conclusion, the enforcement of security interests in intangible assets under SARFAESI is fraught with challenges that stem from their unique characteristics and the limitations of the existing legal framework. Addressing these challenges requires a rethinking of traditional enforcement mechanisms and the development of new legal and institutional approaches.²¹

5. Judicial Perspective

The judicial approach to the enforcement of security interests under the SARFAESI Act has largely focused on procedural aspects and the rights of borrowers and third parties. While Indian courts have not extensively dealt with intangible assets in this context, their interpretations provide important insights into the limitations of the existing framework and the potential for its evolution.

In *Standard Chartered Bank v. V. Noble Kumar* (2013)²², the Supreme Court clarified the procedural options available to secured creditors under the SARFAESI Act. The Court held that creditors have multiple routes for enforcing their security interests, including direct possession under Section 13(4) or seeking assistance from the Magistrate under Section 14. This decision emphasized the flexibility of the enforcement mechanism but also highlighted its reliance on physical possession, thereby implicitly reinforcing the tangible asset-centric nature of the Act.

Similarly, in *Harshad Govardhan Sondagar v. International Assets Reconstruction Co. Ltd.* (2014)²³, the Supreme Court addressed the rights of tenants in properties subject to SARFAESI

²⁰ Muralidhar, Amrutha, and Muralidhar Lakkanna. "Regulating cryptocurrency and decentralized finance for an inclusive economy." *arXiv preprint arXiv:2407.01532* (2024).

²¹ Dewi, Kadek Novita, and I. Gede Agus Kurniawan. "Cryptocurrency and Digital Asset Regulation: A Comparative Analysis of Economic and Business Law in Indonesia and India." *Pena Justisia: Media Komunikasi dan Kajian Hukum* 24.1 (2025): 7896-7912.

²² *Standard Chartered Bank v. V. Noble Kumar*, (2013) 9 SCC 620 (India).

²³ *Harshad Govardhan Sondagar v. International Assets Reconstruction Co. Ltd.*, (2014) 6 SCC 1 (India).

proceedings. The Court held that bona fide tenants with valid leases are entitled to protection, and their rights cannot be arbitrarily extinguished by secured creditors. This case underscores the importance of balancing creditor rights with those of third parties, a principle that becomes even more complex in the context of intangible assets, where multiple stakeholders may have overlapping rights. Although these cases do not directly address intangible assets, they reveal the judicial tendency to interpret SARFAESI provisions in a manner consistent with traditional notions of property and possession. The emphasis on physical possession and control limits the applicability of these interpretations to non-physical assets. In cases involving intellectual property, Indian courts have generally dealt with issues of ownership, infringement, and licensing rather than enforcement of security interests. As a result, there is a lack of judicial precedent specifically addressing the use of intellectual property as collateral under SARFAESI. This absence of jurisprudence creates uncertainty for both lenders and borrowers. The Debts Recovery Tribunals (DRTs),²⁴ which play a crucial role in adjudicating disputes under SARFAESI, have also primarily dealt with tangible assets. Their decisions often focus on compliance with procedural requirements, such as the issuance of notices and adherence to timelines, rather than substantive issues related to the nature of the secured asset. The lack of judicial clarity on intangible assets is further compounded by the absence of statutory guidance. Courts are often constrained by the language of the Act, which does not explicitly address the unique characteristics of such assets. As a result, they may be reluctant to extend the scope of the Act through judicial interpretation alone. However, there is potential for judicial innovation. Courts could adopt a purposive interpretation of the term “secured asset” to include intangible property and develop principles for its enforcement. For instance, the concept of “possession” could be reinterpreted to include control over legal rights or digital access.

In conclusion, while the judiciary has played an important role in shaping the implementation of the SARFAESI Act, its contribution to the enforcement of intangible assets remains limited. Greater judicial engagement and interpretative innovation are necessary to bridge the gap between the statutory framework and the realities of modern finance.

²⁴Gupta, Tanya, and Shreya Nayak. "Assessing the Inefficiency of Debt Recovery Tribunals." *LawFoyer Int'l J. Doctrinal Legal Rsch.* 2 (2024): 751.

6. Comparative Legal Analysis

A comparative analysis of international legal frameworks reveals that several jurisdictions have developed more sophisticated mechanisms for dealing with intangible assets as collateral. Examining these systems provides valuable insights for reforming the Indian legal framework under the SARFAESI Act. In the United States, Article 9 of the Uniform Commercial Code (UCC) governs²⁵ secured transactions, including those involving intangible assets. The UCC adopts a functional and inclusive approach, recognizing a wide range of collateral, including intellectual property, accounts receivable, and digital assets. It provides clear rules for the attachment, perfection, and priority of security interests. One of the key features of the UCC system is the use of a centralized filing system, which allows creditors to register their interests and establish priority. This enhances transparency and reduces disputes.²⁶

The UCC also introduces the concept of “control” as a substitute for possession in the case of intangible assets. For example, control over a deposit account or electronic asset may be established through contractual arrangements or access rights. This approach addresses the limitations of traditional possession-based enforcement mechanisms and provides a more flexible framework. In the United Kingdom, security interests in intangible assets are recognized through mechanisms such as fixed and floating charges. These charges can be created over a wide range of assets, including intellectual property and receivables. The Companies Act requires the registration of such charges, ensuring transparency and protecting the interests of creditors. The UK system also allows for the appointment of receivers or administrators to manage and realize the value of secured assets. Both the US and UK frameworks emphasize the importance of legal clarity, registration systems, and flexible enforcement mechanisms. They recognize that intangible assets require different treatment from tangible property and have adapted their laws accordingly. In contrast, the Indian framework under SARFAESI lacks a comprehensive system for dealing with intangible assets. While the definition of “secured asset” is broad, the absence of specific provisions and mechanisms limits its practical applicability. There is no unified registry for

²⁵ Miller, Fred H., and William B. Davenport. "Introduction to the Special Issue on the Uniform Commercial Code." *Bus. Law.* 45 (1989): 1389.

²⁶ Welle, Elaine A. "A Introduction to Revised Article 9 of the Uniform Commercial Code." *Wyo. L. Rev.* 1 (2001): 555.

security interests, and the concept of possession remains central to enforcement. The comparative analysis highlights several key lessons for India. First, there is a need to adopt a more inclusive definition of collateral that explicitly recognizes intangible assets. Second, the concept of possession should be supplemented or replaced by alternative notions such as control. Third, a centralized registration system is essential for ensuring transparency and priority.

In conclusion, the experiences of the United States and the United Kingdom demonstrate that it is possible to develop effective legal frameworks for enforcing security interests in intangible assets. By drawing on these models, India can modernize its legal system and better align it with the needs of a digital and knowledge-based economy.²⁷

7. Emerging Concerns

The rapid evolution of technology and the increasing reliance on intangible assets have given rise to several emerging concerns that challenge the existing legal framework under the SARFAESI Act. These concerns are not only legal in nature but also involve technological, economic, and regulatory dimensions. One of the most significant concerns is the rise of the digital economy. Businesses today increasingly operate in virtual environments, relying on digital platforms, data analytics, and online services. As a result, assets such as software, databases, and digital currencies have become central to economic activity. The traditional asset-based lending model, which focuses on physical property, is no longer sufficient to address the needs of modern enterprises.

Another major concern is the lack of regulatory clarity for digital assets. In India, the legal status of cryptocurrencies and other virtual assets remains uncertain. While regulatory authorities have issued guidelines and warnings, there is no comprehensive legal framework governing their use as collateral.²⁸ This creates uncertainty for lenders, who may be hesitant to accept such assets due to the risk of legal and regulatory complications. Cybersecurity risks also pose a significant challenge. The enforcement of security interests in digital assets may involve accessing online

²⁷ Gabriel, Henry. "The Revision of the Uniform Commercial Code--How Successful Has It Been." *Hastings LJ* 52 (2000): 653.

²⁸ Kumar, Naveen. "Cryptocurrency in India: A Critical Analysis of Risks, Opportunities, and the Path to a Legal Framework." *NUJS J. Regul. Stud.* 10 (2025): 38.

accounts, transferring digital tokens, or managing electronic databases. These activities are susceptible to hacking, data breaches, and technical failures. Ensuring the security and integrity of such processes is essential for protecting the interests of creditors and maintaining confidence in the financial system.

The issue of jurisdiction is another emerging concern. Digital assets often operate across borders, making it difficult to determine the applicable legal framework. For example, a cryptocurrency wallet may be accessible from multiple jurisdictions, and its ownership may not be tied to a specific geographic location. This complicates enforcement actions and raises questions about the jurisdiction of Indian authorities. Additionally, there is a growing concern regarding the fragmentation of regulatory authority. Different aspects of intangible assets are governed by various regulatory bodies, including the Reserve Bank of India (RBI), the Securities and Exchange Board of India (SEBI),²⁹ and intellectual property offices. The lack of coordination among these authorities creates inconsistencies and gaps in regulation.

Finally, the increasing importance of intangible assets raises broader questions about the adequacy of existing legal concepts. Traditional notions of property, possession, and transfer may not be suitable for dealing with digital and intellectual assets. There is a need to develop new legal doctrines that reflect the realities of the digital age.

In conclusion, the emerging concerns surrounding intangible assets highlight the limitations of the current legal framework and the need for comprehensive reform. Addressing these issues requires a multidisciplinary approach that integrates legal, technological, and economic perspectives.

8. Suggestions and Reforms

In light of the challenges and emerging concerns associated with the enforcement of security interests in intangible assets, it is imperative to undertake comprehensive reforms to modernize the SARFAESI framework. These reforms should aim to enhance legal clarity, improve

²⁹ Mohan, Rakesh, and Partha Ray. *The roller coaster ride of non-performing assets in Indian banking*. Centre for Social and Economic Progress, 2022.

enforcement mechanisms, and align the Act with the realities of a digital and knowledge-based economy.

The first and most important reform is statutory clarification. The SARFAESI Act should be amended to explicitly recognize intangible assets, including intellectual property and digital assets, as valid forms of secured collateral. This would remove ambiguity and provide a clear legal basis for their enforcement. The definition of “secured asset” should be expanded to include non-physical property, and specific provisions should be introduced to address their unique characteristics.

Second, there is a need to develop alternative enforcement mechanisms. The concept of physical possession, which is central to the current framework, should be supplemented with the notion of “control.” For example, control over a digital asset could be established through access to electronic accounts or cryptographic keys, while control over intellectual property could be exercised through registration and licensing rights. These mechanisms would provide a more practical and effective means of enforcement.

Third, the establishment of a centralized registration system is essential. A unified registry for all security interests, including those in intangible assets, would enhance transparency and reduce disputes regarding priority. Such a system could be integrated with existing intellectual property registries and corporate filing systems.

Fourth, the development of standardized valuation guidelines is crucial. Regulatory authorities, in collaboration with industry experts, should establish methods for valuing intangible assets. This would reduce uncertainty and enable lenders to make informed decisions regarding the acceptance of such assets as collateral.

Fifth, there is a need for institutional capacity building. Enforcement agencies, including banks, tribunals, and magistrates, should be equipped with the necessary expertise to deal with intangible assets. This may involve training programs, technological tools, and the involvement of specialized professionals.

Sixth, judicial guidelines should be developed to provide clarity on key issues, such as the interpretation of possession, the rights of third parties, and the resolution of conflicts between different legal regimes. Courts can play a proactive role in shaping the law through purposive interpretation.

Seventh, the regulatory framework for digital assets should be strengthened. Clear rules should be established regarding their classification, ownership, and use as collateral. This would enhance confidence among lenders and facilitate the growth of digital finance.

Finally, a coordinated regulatory approach is necessary. Different authorities should work together to create a cohesive framework for dealing with intangible assets. This would reduce fragmentation and ensure consistency in regulation.

In conclusion, the enforcement of security interests in intangible assets requires a comprehensive and forward-looking approach. By implementing these reforms, India can create a robust legal framework that supports innovation, facilitates credit, and strengthens the financial system.

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