

Right Of Redemption Under Sarfaesi Act: Legal Issues, Judicial Trends, And the Need for Reform

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Abstract- The right of redemption under Section 13(8) of the SARFAESI Act, 2002 gives borrowers a final chance to recover their secured assets by paying the outstanding dues before the sale notice is published. At first glance, the provision appears straightforward. In practice, however, its application has led to repeated disputes. Courts have not always taken a consistent view, procedural rules remain somewhat unclear, and there is an ongoing stiffness with the principles laid down in the Transfer of Property Act, 1882. These issues together create uncertainty, both for borrowers seeking protection and for creditors aiming at speedy recovery.

This paper scrutinises these concerns in detail by tracing the judicial development of Section 13(8) and scrutinising key judicial decisions. Attention is given to recent Supreme Court rulings such as *Celir LLP v. Bafna Motors* (2023 INSC 838), *M. Rajendran v. KPK Oils and Proteins India Pvt. Ltd.* (2025 INSC 1144), and *Sanjay Sharma v. Kotak Mahindra Bank*. These cases attempt to settle the scope and timing of the right of redemption, yet certain interpretative gaps remain. The study also looks at the broader doctrinal stiffness between the SARFAESI framework—which is designed as a fast-track recovery mechanism—and the more substantive, equity-based ownership rights recognised under the Transfer of Property Act, 1882.

A key issue identified is the lack of clarity regarding the exact stage at which the borrower's right of redemption comes to an end. While the Supreme Court has attempted to bring uniformity, earlier High Court decisions reflect different approaches, leading to confusion in practice. Questions also arise in relation to the retrospective application of the 2016 amendment to Section 13(8), especially for loan accounts initiated before the amendment. In addition, procedural gaps in the Security Interest (Enforcement) Rules, 2002—particularly those relating to notice requirements—continue to create avoidable disputes. These gaps affect not only borrowers but also auction purchasers, whose confidence depends heavily on the finality and certainty of the sale process. Using a doctrinal and comparative method, the paper argues that the current framework requires targeted

reform rather than wide reform. It proposes specific amendments to Rules 8 and 9 to introduce clearer and more reliable notice procedures, including recognition of electronic modes of communication. It also recommends clarifying the concept of single-notice finality across different methods of sale, so that the point of termination of redemption rights is not left open to interpretation. Further, there is a need to streamline the functioning of Debt Recovery Tribunals to ensure consistent enforcement.

The proposed reforms focusing a workable balance. Creditors must be able to recover non-performing assets without unnecessary delay, yet borrowers should not be deprived of their equitable rights through practical ambiguity. A more coherent and predictable legal framework would support both objectives, strengthening confidence in the credit system while maintaining fairness in commercial dealings.

Keywords: Right of Redemption, SARFAESI Act 2002, Section 13(8), Transfer of Property Act, Supreme Court Judgments, DRT Jurisdiction, Auction Finality, Borrower Protection.

I INTRODUCTION

The SARFAESI Act, 2002 marked a significant milestone in the law relating to secured lending in India. It allows banks and financial institutions to enforce their security interests without approaching civil courts, which was earlier the usual route. This shift was largely driven by the mounting problem of non-performing assets (NPAs) and the slow pace of recovery through traditional litigation. The recommendations of the Narasimham Committee (1998) played a significant role here, as they pointed out how delays and case backlogs were weakening the credit system. In response, the Act presented a separate statutory mechanism, one that operates alongside—yet

often apart from—the framework of the Transfer of Property Act, 1882.

The working of this mechanism is set out in Section 13(2) to 13(4). It follows a structured sequence: the borrower is first issued a demand notice, then the secured asset may be taken into possession by bank/financial institution, and eventually it can be sold to recover the dues. Within this scheme, Section 13(8) appears to offer a precaution. It preserves what is usually known as the “right of redemption,” allowing the borrower to clear the outstanding amount and regain the property before the sale is completed. On paper, this seems to maintain a balance between recovery and equality. Yet, when applied in real situations, the position becomes less clear.

A fundamental question continues to trouble courts and practitioners alike: when exactly does this right of redemption come to an end? The statute, in its original form, did not give a precise answer. The 2016 Amendment attempted to address this by limiting the right to the period before the publication of the auction notice. At one level, this looks like a procedural clarification. In effect, though, it has reshaped the scope of borrower protection in a significant way. The change has led to conflicting interpretations across High Courts, and even the signals from the Supreme Court have not always been entirely consistent. As a result, a certain level of ambiguity has crept into the system—something that neither lenders nor borrowers can easily afford.

This lack of clarity is not just a technical issue. It affects how credit market’s function and how ownership rights are understood in practice. On one side, financial institution rely on probability and speed in enforcement. On the other, the idea of redemption is deeply rooted in property law and carries an equitable dimension that cannot be lightly set aside. The stiffness between these two objectives runs through much of the litigation under the Act.

This article takes up these concerns through a doctrinal analysis of the statutory framework, its legislative background, and the evolving case law. It focuses on three broad areas. First, the mismatch between statutory timelines and their judicial interpretation, which has led to unpredictable outcomes. Second, the issue of retrospectivity—particularly whether the 2016 amendment should apply to loan transactions that originated before the change. Third, the procedural gaps in the notice requirements under the Security

Interest (Enforcement) Rules, 2002, which continue to generate disputes at the ground level.

The discussion proceeds on the premise that the SARFAESI regime, despite being a special mechanism, should not operate in complete isolation from the principles of the Transfer of Property Act. A more workable approach would involve harmonizing the two, rather than allowing one to override the other entirely. The article suggests the need for clearer legislative drafting and more consistent procedures before the Debt Recovery Tribunals. The aim is not to dilute the efficiency of the recovery process, but to ensure that it functions within a framework that remains fair, predictable, and legally coherent.

II LITERATURE REVIEW

Scholarly engagement with the SARFAESI Act has largely focused on its role in strengthening India’s credit recovery framework, though the discussion around borrower protections—especially the right of redemption—has evolved more gradually. Early literature, written soon after the enactment of the Act, generally viewed SARFAESI as a necessary corrective to systemic delays in civil litigation. Authors during this phase emphasized efficiency, institutional stability, and the need to reduce non-performing assets. Over time, however, the focus began to shift. Legal scholars started examining the tension between traditional property law principle and SARFAESI’s expedited mechanisms. Various studies painted how the right of redemption, deeply rooted in equity under the Transfer of Property Act, was being redesigned within a rigid statutory framework. The pre-2016 position, which allowed redemption until the completion of sale, was often described as a compromise—retaining borrower protection while still enabling creditor recovery.

Post-2016 literature reflects a more critical tone. Commentators have questioned whether the amendment to Section 13(8), by limiting redemption to the stage before notice publication, tilts the balance too heavily in favour of creditors. Some scholars argue that this shift undermines the equitable nature of mortgage law, reducing redemption to a narrow procedural right rather than a substantive safeguard. Judicial decisions have also influenced academic writing. Analyses of *Celir LLP* and *M. Rajendran* tend to acknowledge the clarity that these rulings bring, but

they also point out the cost of such clarity. A recurring theme in the literature is that certainty has been reached, though perhaps at the expense of fairness in certain cases. Discussions around retrospective application and procedural gaps in notice mechanisms further indicate that the statutory framework is still developing.

Comparative studies, though limited, suggest that other jurisdictions often adopt a more cautious approach when restraining redemption rights, especially where contractual prospects are involved. This adds another layer to the debate, indicating that the Indian position, while efficient, may not be the only possible model.

Overall, the literature reveals a gradual movement—from initial support for efficiency-driven reform to a more balanced critique that seeks to resolve recovery mechanisms with equitable principles.

III RESEARCH METHODOLOGY

This study adopts a doctrinal method of legal research. The primary focus is on analysing judicial decisions, statutory provisions, and related legal principles governing the right of redemption under the SARFAESI Act.

The research relies on both primary and secondary sources. Primary sources include statutory manuscripts such as the SARFAESI Act, 2002, the Transfer of Property Act, 1882, and the Security Interest (Enforcement) Rules, 2002. Judicial pronouncements of the Supreme Court and various High Courts form a central part of the analysis, particularly in understanding how the law has been interpreted over time.

Secondary sources include academic articles, commentaries, and reports that examine the functioning of the SARFAESI framework. These sources help in identifying broader trends, doctrinal disagreement, and areas of concern that may not be immediately evident from case law alone.

The study also uses a comparative perspective in a limited manner, referring to general principles from other jurisdictions to assess how similar issues are approached elsewhere. This is not a full comparative analysis but serves to provide context.

The approach is logical rather than experimental. It focuses on interpretation, critique, and synthesis of legal materials. The aim is to understand not just what

the law states, but how it operates in practice and where it may require refinement.

IV. LEGISLATIVE FRAMEWORK: EVOLUTION AND STATUTORY ARCHITECTURE

IV(I) Enactment and Objectives

The SARFAESI Act did not emerge in isolation. It was shaped by a growing sense that India's financial system was struggling with slow and ineffective recovery processes. The Narasimham Committee (1998) highlighted this quite clearly, noting that civil recovery suits often took 7 to 10 years to conclude. Such delays were not just procedural inconveniences—they had a direct impact on banking stability and the availability of credit in the economy. In response to these concerns, the Government of India first introduced the law through an ordinance in September 1998, which later took the form of a full statute in 2002. The idea was to create a mechanism that allowed banks, financial institutions, and other secured creditors to recover their dues without having to rely entirely on the traditional court system. What followed was a framework that permitted what is often described as “extra-judicial” enforcement—meaning recovery could proceed with limited court intervention.

The preamble of the Act reflects a dual purpose. On one side, it aims to promote securitisation of financial assets, making it easier to convert loans into marketable instruments and attract institutional investment. On the other, it focuses on enforcing security interests through a process that is both time-bound and less dependent on litigation. To support this, the Act relies on the Debt Recovery Tribunal (DRT) system as a specialised forum. The expectation, at least in theory, was that this would reduce delays and bring a degree of efficiency that the civil courts could not consistently offer.

IV(II) Section 13 and the Redemption Framework (Pre-2016)

Section 13 lies at the heart of the SARFAESI mechanism. Before the 2016 amendment, Section 13(8) provided that a borrower could redeem the secured asset “at any time before the sale of the secured asset.” This wording is important. It closely resembles the language of Section 60 of the Transfer of Property Act, which recognises the mortgagor's

right to redeem until a final order or transfer is completed.

In practical terms, this meant that the borrower's right was quite broad. Even if the process of sale had begun, the possibility of redemption remained open until the sale was actually concluded. This approach seemed to carry forward the equitable principles of property law into the SARFAESI framework, despite the latter being designed for speed and efficiency.

Not surprisingly, courts often interpreted this provision in a borrower-friendly manner. For instance, the Telangana High Court in *M. Rajendran* (prior to its reversal by the Supreme Court) took the view that the right of redemption continued even after the publication of the auction notice and lasted until the final transfer of the asset. A similar position was seen in *Mathew Varghese v. M. Amritha Kumar* before the Madras High Court, where redemption was allowed up to the stage of actual conveyance.

These interpretations did protect borrowers, but they also introduced a different kind of problem. Auction purchasers were left uncertain about the finality of their bids. If a borrower could step in at a late stage and redeem the property, the entire sale process became unpredictable. Over time, this began to undermine confidence in SARFAESI auctions and made the recovery process less efficient than intended.

IV(III) The 2016 Amendment: A Paradigm Shift

The 2016 amendment marked a clear shift in legislative thinking. By introducing an explanation to Section 13(8), Parliament changed the timing of the right of redemption. The revised provision states that the borrower can exercise this right only up to the point before the sale notice is published in accordance with the applicable rules.

This change may appear technical at first, but its impact is quite significant. It effectively closes the door on redemption once the auction notice is issued. The reasoning behind this seems straightforward: for an auction system to work properly, there must be certainty. If bidders are unsure whether a sale might be undone at the last moment, the process loses credibility.

At the same time, the amendment has created its own set of concerns. One of the more debated issues is its application to older loan agreements—those entered before the amendment came into force. The law appears to operate both prospectively and, in some

cases, retrospectively. This raises questions about whether borrowers' existing rights have been curtailed after the fact.

The constitutional dimension of this issue is still not entirely settled. It remains unclear whether such retrospective application affects vested rights in a way that could attract scrutiny under Article 21, or whether it can be treated as a procedural adjustment that the legislature is free to introduce. Hon'ble Supreme Court has spoken related questions in different contexts, but a fully settled position on this specific point is still evolving.

Taken together, the 2016 amendment replicates an attempt to prioritise efficiency and finality in the recovery process. Yet, it also polishes the stiffness between commercial objectives and the traditional protections associated with property law. That tension continues to shape the interpretation and application of the SARFAESI framework today.

V. STATUTORY PROVISIONS AND RULE FRAMEWORK

V(I) Section 13(8): Text and Structure

Section 13(8), in its present form, states that at any time before the notice for sale is published in accordance with the prescribed rules, the secured creditor must return possession of the secured asset to the borrower upon receiving the full due amount. The 2016 addition of Explanation 1 makes the position more explicit—it clarifies that the borrower's right of redemption does not continue once the sale notice has been published.

This provision cannot be read in isolation. It operates within the broader structure of Section 13(2) to 13(4), which lays down the enforcement sequence. The process typically unfolds in stages: first, a demand notice is issued; then the secured asset may be taken into possession by lender/ bank; after that comes a limited window where redemption is still possible; and finally, the sale notice is published, followed by auction and completion of sale. Within this sequence, the right of redemption is confined to that narrow interval between possession and the publication of the sale notice. Once that stage passes, the statutory language leaves little room for revival of the right.

Even so, the clarity in wording does not always translate into clarity in application. Much depends on how one understands the exact moment at which a

“notice for sale” is said to be published, and this is where the rules become relevant.

V(II) Security Interest (Enforcement) Rules, 2002: Rules 8 and 9

The procedural aspects of enforcement are further developed under the Security Interest (Enforcement) Rules, 2002. Rule 8(6) requires the secured creditor to publish a notice inviting offers from the public for the sale of the secured asset. Rule 9(1), in turn, explains how such publication is to be carried out—traditionally through newspapers, and more recently through electronic platforms as well.

What is striking, however, is that these rules do not clearly define the precise point at which the right of redemption comes to an end. They describe how notice is to be issued and disseminated, but they stop short of tying this process directly to the extinguishment of redemption rights. This leaves open a practical question: does the right end when the notice is prepared internally, when it is formally approved, or only when it is made public?

Courts have not always answered this in the same way. The Supreme Court, in *Celir LLP v. Bafna Motors*, took the view that publication means public dissemination—once the notice is made available to the public, the borrower’s right stands extinguished. This provides a relatively clear benchmark. Yet, some High Courts have examined the issue differently. They have suggested that the notice under Rule 8(6) may serve two purposes at once: informing the borrower and inviting public participation. If that is so, it becomes arguable that only the latter function—public invitation—should trigger the cut-off point.

This distinction, though subtle, has led to considerable litigation. In practice, even small variations in timing or procedure can affect whether a borrower retains the right to redeem. The absence of a precise statutory link between the rules and Section 13(8) continues to create avoidable uncertainty.

V(III) Relationship with the Transfer of Property Act, 1882

The position becomes more complex when one considers Section 60 of the Transfer of Property Act, 1882. This provision recognises the mortgagor’s right to redeem the property at any time before the sale is completed. Traditionally, this right has been treated as

a substantive and enduring feature of property law—one that cannot easily be taken away.

The key question, then, is how this principal fits within the SARFAESI framework. Does Section 13(8) completely override Section 60, or does it simply place a time limit on an otherwise continuing right? The Supreme Court has leaned towards the former interpretation. In *Celir LLP v. Bafna Motors*, the Court relied on Section 35 of the SARFAESI Act, which gives it overriding effect, and held that the special nature of the legislation displaces the general law under the Transfer of Property Act.

From a doctrinal standpoint, this follows the established principle that a special law prevails over a general one. Still, the outcome is not free from difficulty. By restricting the time available for redemption, the SARFAESI framework alters what was once seen as a core equitable right. While this may support efficiency and certainty in the recovery process, it also raises concerns about whether the balance has shifted too far away from borrower protection. These concerns, though not always decisive in court, remain an important part of the broader debate.

VI JUDICIAL INTERPRETATIONS: THE LANDMARK RULINGS

VI(I) *Celir LLP v. Bafna Motors (Mumbai) Pvt. Ltd.* (2023 INSC 838)

This decision is often treated as a turning point in understanding the scope of the right of redemption after the 2016 amendment. The judgment, delivered by Justice Abhay S. Oka, addressed a direct dispute. The borrower, an automobile dealer, attempted to redeem the secured asset after the sale notice had already been published. The argument put forward was that the right under Section 60 of the Transfer of Property Act should prevail over the SARFAESI framework.

Hon’ble Supreme Court did not accept this line of reasoning. It approached the issue by first clarifying the statutory hierarchy. According to the Apex Court, SARFAESI, being a special law, overrides the general principles contained in the Transfer of Property Act. Section 35 of SARFAESI, which gives it an overriding effect, was central to this conclusion. In simple terms, where there is a conflict, SARFAESI prevails.

The Court then addressed the timing question more directly. It held that the borrower’s right of redemption

comes to an end once the notice for sale is published under Rule 8. The earlier understanding—that redemption could continue until the sale was completed or the property conveyed—was rejected. The emphasis shifted clearly towards certainty in the auction process. If redemption were allowed after publication, the Court observed, it would disrupt the expectations of bidders and weaken the system.

At the same time, the judgment did not entirely ignore the equity concerns rooted in property law. It acknowledged that the traditional approach under the Transfer of Property Act is more protective of borrowers. Still, the Court felt that the objectives of SARFAESI—especially the need for quick recovery of non-performing assets—justify this departure.

On the question of retrospectivity, the Court was somewhat cautious. While it upheld the validity of the 2016 amendment, it hinted that applying it to older loan agreements could raise concerns. These concerns were not fully resolved in the judgment, but the observation leaves space for further debate, possibly at the legislative level.

From a critical standpoint, *Celir LLP* brings clarity, but it does so by narrowing the borrower’s position quite sharply. The balance tilts in favour of institutional efficiency, and the older, equity-driven understanding of redemption is pushed to the margins.

VI(II) *M. Rajendran v. KPK Oils and Proteins India Pvt. Ltd.* (2025 INSC 1144)

Hon’ble Supreme Court revisited these issues in *M. Rajendran*, a decision delivered in September 2025. While the case broadly follows the reasoning in *Celir LLP*, it adds important procedural clarity, especially on the meaning of “publication” of the sale notice.

Here, the dispute turned on a practical detail. The lender had issued a composite notice—one that both informed the borrower and invited public bids. The borrower argued that true publication should be understood as the stage when the notice appears in newspapers or other public platforms, not when it is merely prepared or internally issued.

The Court agreed, at least in part, with this distinction. It clarified that publication occurs when the notice is made available to the public—through newspapers, e-auction portals, or other recognised means. Internal preparation or private communication does not amount to publication. This clarification is important because

it identifies a clear and observable point in time when the right of redemption comes to an end.

The judgment also took a firm stand against earlier High Court decisions that had allowed redemption even after publication. In particular, it rejected the approach seen in *Mathew Varghese*, stating that such extensions go against the statutory language and create uncertainty in commercial transactions.

On retrospectivity, the Court leaned towards treating the 2016 amendment as procedural. It held that applying it to pre-2016 loans is generally permissible, as it modifies the process rather than taking away a substantive right. Even so, the Court did not completely dismiss concerns. It noted that situations where borrowers are effectively deprived of an opportunity to redeem may require closer attention, possibly through legislative intervention.

Another point addressed was the role of the Debt Recovery Tribunal. The Court stressed that borrowers must use the remedies available under Section 17 if they believe there has been unfair delay or procedural irregularity. Direct recourse to High Courts through writ petitions should be limited, especially when an alternative remedy exists.

In many ways, *Rajendran* builds on *Celir LLP* but makes it more workable. It sharpens the procedural edges while still acknowledging, at least briefly, that the shift away from traditional equity is not entirely unproblematic.

VI(III) *Sanjay Sharma v. Kotak Mahindra Bank Ltd.* (2025, High Court Judgment)

This High Court decision from 2025 deals with a slightly different stage in the process—what happens after the auction is completed but before the final transfer of the property. The borrower, in this case, attempted to redeem the asset after the auction had been confirmed, arguing that the right should continue until formal conveyance.

The Court did not accept this argument. It held that once the auction is completed and the bid is accepted, the right of redemption comes to an end. Allowing redemption beyond this point, even if the transfer is not yet finalised, would undermine the certainty of the auction process.

The judgment also clarified that while there may be a very narrow window between the publication of the notice and the actual completion of the auction, courts should be cautious about extending this period. Any

such extension, even if well-intentioned, could disrupt the balance that the statute seeks to maintain.

An additional point made by the Court relates to the borrower's responsibility. It emphasised that the burden lies on the borrower to act within the prescribed time. If the opportunity to redeem is not exercised within that limited window, it is treated as effectively waived.

Taken together, these decisions show a clear judicial trend. The courts are moving towards a stricter, more time-bound understanding of the right of redemption under SARFAESI. While this approach strengthens the efficiency and predictability of the recovery process, it also leaves less room for the flexible, equity-based considerations that once shaped mortgage law.

VII CRITICAL LEGAL ISSUES AND DOCTRINAL TENSIONS

VII (I) Temporal Conflicts Between High Courts and Supreme Court Uniformity

A major point of friction lies in how different courts have understood the timing of the right of redemption. Before the 2016 amendment—and even shortly after—several High Courts took a more borrower-friendly view. Decisions from the Telangana, Madras, and Kerala High Courts suggested that redemption could continue even after the sale notice was published, extending up to the stage of actual sale or transfer.

This position, however, did not hold at the Supreme Court level. In *Celir LLP* and later in *M. Rajendran*, the Court drew a firm line, holding that the right ends with the publication of the sale notice. The shift is quite sharp. What was earlier seen as a flexible, equity-based right is now treated as a strictly time-bound statutory entitlement.

This change has not been entirely smooth in its consequences. Borrowers who relied on earlier High Court rulings may find that their expectations no longer hold. In a practical sense, the law has moved beneath their feet. At the same time, the period before this judicial clarification saw different approaches across jurisdictions, leading to uneven practices in auctions and enforcement.

There is also a deeper constitutional question here, though it has not been fully addressed. When higher courts overturn established interpretations, especially in a way that affects ongoing rights, it raises concerns

about fairness. One may ask whether such shifts, even if legally valid, should consider the reliance interests of affected parties. Whether this engages Article 21 protections is still an open question, and the jurisprudence has not yet settled into a clear position.

VII (II) Retrospectivity and Pre-Amendment Loan Agreements

Another layer of complexity arises from the retrospective effect of the 2016 amendment. The revised Section 13(8) is applied not only to loans entered into after the amendment but also to those that existed earlier. This creates a noticeable tension. Borrowers who entered into agreements under the earlier framework would have understood that their right to redeem extended until the actual sale. That expectation now stands reduced.

The legal issue here turns on how one classifies the amendment. If it is merely procedural, then retrospective application is generally acceptable. But if it affects a substantive right something tied to the borrower's core entitlement—then the matter becomes more delicate. The line between procedure and substance is not always easy to draw, and in this context, it feels particularly thin.

From a constitutional perspective, questions under Articles 14 and 21 begin to surface. Does shortening the redemption window alter the equality of treatment among borrowers? Does it interfere with a property-related interest in a way that requires stronger justification? Courts have so far leaned towards viewing the amendment as procedural, but the reasoning does not fully close the debate.

Looking beyond India, comparative legal thought tends to approach retroactive changes with caution. Contractual expectations are usually given weight, and any interference often requires a clear and compelling justification. Whether the SARFAESI amendment meets that standard is something that invites further reflection, especially in cases involving older loan agreements.

VII (III) Procedural Gaps in Notice Mechanisms (Rules 8–9)

The statutory rules governing notice—particularly Rules 8 and 9—introduce their own set of concerns. While they lay down the requirement of publishing a sale notice, they do not provide detailed guidance on how this should be done in a modern context.

Several practical questions remain only partially answered. For instance, the rules do not clearly state whether electronic publication, such as on e-auction platforms or official websites, is fully equivalent to traditional newspaper advertisements. There is also uncertainty about whether borrowers must receive a separate, direct intimation after publication, or whether a composite notice is sufficient.

Timing is another issue. The rules do not fix a minimum gap between the publication of the notice and the actual auction. In some cases, this interval can be quite short, leaving borrowers with very little real opportunity to act. In effect, the theoretical window for redemption may exist on paper but become difficult to exercise in practice.

These gaps create space for uneven practices. A secured creditor might technically comply with the rules by publishing in a newspaper with limited circulation or by relying heavily on digital platforms that are not easily accessible to all borrowers. Courts have occasionally tried to step in and ensure fairness, but without clear statutory guidance, their role remains somewhat limited.

An example often cited is *Khaitan v. ICICI Bank*, where a High Court observed that publication in a low-circulation newspaper met the formal requirement but did not serve the purpose of meaningful notice. Even so, such decisions tend to remain case specific. There is no consistent doctrinal framework that courts can rely on to address these concerns across the board.

VIII Implications for Auction Finality and Purchaser Confidence

The question of how long redemption should remain available also affects the functioning of auctions. When earlier High Court decisions allowed redemption even after the auction notice—or close to the final stages—it created uncertainty for bidders. A purchaser who is unsure whether a completed bid might later be undone is unlikely to participate confidently or offer competitive prices.

This hesitation has broader consequences. Lower participation can reduce the value realised from the sale, which in turn affects the recovery of dues. In cases involving public sector banks, it may even have an indirect impact on public finances.

The stricter approach adopted under the amended SARFAESI framework addresses this concern by creating a clear cut-off point. Once the notice is

published, bidders can proceed with greater confidence. That said, the solution may appear somewhat rigid. By sharply limiting the borrower's right, the law secures finality, but it also leaves little room for flexibility in exceptional situations.

This raises an interesting question. Is complete foreclosure of the right after a fixed point the only way to ensure certainty? Or could there be intermediate mechanisms—perhaps structured safeguards that allow limited redemption without undermining the auction process? Ideas such as conditional redemption or financial guarantees have been discussed in academic circles, though they have not yet found a place in the statutory framework.

The current position, therefore, reflects a clear policy choice. It favours certainty and efficiency, even if that means stepping away from the more flexible, equity-driven approach that traditionally shaped mortgage law. Whether this balance is optimal remains a matter of ongoing debate.

IX. ANALYSIS OF STATUTORY INTERPRETATION ISSUES

IX (I) The *Leges Speciales Derogant Legi Generali* Doctrine

Hon'ble Supreme Court's confidence on the principle that a special law overrides a general one has been central to its interpretation of the SARFAESI framework. In simple terms, since SARFAESI is a specialised statute dealing with the recovery of secured asset, it is treated as prevailing over the more general provisions of the Transfer of Property Act. From a doctrinal viewpoint, this reasoning is sound and widely accepted.

However, the application of this principle in the present context is not entirely free from doubt. The doctrine usually operates where there is a direct and unavoidable conflict between two statutes. In the case of SARFAESI and the Transfer of Property Act, one might argue that such a conflict is not absolute. SARFAESI primarily sets out a procedure for enforcement, while the Transfer of Property Act embodies substantive principles, especially those grounded in equity. It is at least possible to read the two in a way that allows them to coexist—where SARFAESI governs the process, and the Transfer of Property Act informs the underlying rights.

An alternative interpretive approach could have been to treat Section 13(8) as imposing a statutory time limit, rather than extinguishing the right itself. In this view, the borrower's ability to redeem may not disappear entirely after the publication of the notice; instead, it becomes subject to a different procedural route. For instance, the borrower might be required to approach the Debt Recovery Tribunal under Section 17, rather than asserting the right directly outside the statutory framework. This kind of reading would preserve the essence of the right while still respecting the procedural discipline imposed by SARFAESI.

The Court, however, has preferred a clearer, more definitive line. While this brings certainty, it also narrows the space for harmonising the two statutes. Whether a more balanced interpretation was possible remains an open question.

IX(II) Textual Ambiguity in "Published" and "Sale"

The wording of Section 13(8), both before and after the 2016 amendment, raises its own set of interpretive challenges. Under the original provision, the borrower could redeem the asset "before the sale." This phrase sounds simple, but it is not self-explanatory. What exactly counts as the "sale"? Is it the moment the auction begins, when the highest bid is accepted, when the sale certificate is issued, or only when the transfer is formally completed and registered?

The 2016 amendment tried to remove this uncertainty by shifting the focus from "sale" to the "publication of the notice for sale." This certainly narrows the window and provides a clearer reference point. Still, it introduces a new ambiguity. The term "published" is not defined with precision. Does it refer to the internal preparation of the notice, its formal approval, or the stage at which it is communicated to the public?

Judicial decisions have attempted to clarify this by linking publication to public dissemination—such as newspaper advertisements or online auction platforms. Even so, the absence of a clear statutory definition leaves room for dispute in marginal cases. Slight variations in how and when notice is issued can become legally significant.

From a drafting perspective, this suggests that the provision could benefit from greater specificity. For example, the statute could fix a definite cut-off point tied to the auction date itself or require that the exact deadline for redemption be clearly stated in the sale

notice. Such clarity would reduce litigation and make the process more predictable for all parties involved.

IX(III) Constitutional Scrutiny of Retrospective Amendment

The retrospective application of the 2016 amendment continues to raise unresolved constitutional questions. While the Supreme Court in *M. Rajendran* touched upon the issue, it did not undertake a detailed examination at the level one might expect for a question of this nature. The matter has not yet been considered by a larger constitutional bench in a definitive way.

At the core of the debate is whether the amendment affects substantive rights or merely alters procedure. If it is procedural, retrospective application is generally permissible. If, however, it changes the nature or extent of a borrower's right—particularly one tied to property—it may require closer scrutiny under Article 21, and possibly Article 14 as well.

One can imagine different possible approaches if the issue were to be examined more fully. The Court might uphold retrospective application by treating the amendment as part of administrative restructuring. Alternatively, it could hold that any change affecting the substance of redemption rights should apply only prospectively. A middle path is also conceivable, where transitional protections are extended to borrowers whose loans predate the amendment, but whose enforcement proceedings were still ongoing at the time of the change.

At present, the law leans towards allowing retrospective application, but the reasoning does not entirely settle the matter. There remains a sense that the issue has been acknowledged rather than conclusively resolved. This leaves space for future judicial clarification, and perhaps even legislative intervention, if the balance between efficiency and fairness is to be more carefully maintained.

X JUDICIAL REFORMS

Reform I: Ensuring Strict Timelines before the DRT

One of the recurring difficulties in the SARFAESI framework is not just the wording of the statute, but the way it is implemented on the ground. Delays at the level of the Debt Recovery Tribunal (DRT) often dilute the idea of a time-bound recovery process. Even

though the law is designed to be swift, the actual experience can be uneven.

A possible judicial intervention here would be for the Supreme Court to lay down clear and binding timelines. For instance, objections raised against measures under Section 13(4) could be decided within a fixed period of 30 days. Hearings themselves should ideally be scheduled quickly—say, within 15 days from the filing of the petition. These are not unrealistic targets, but they do require consistent enforcement.

There is also a case for introducing accountability on the creditor side. If a secured creditor delays the publication of the sale notice without reasonable cause, it can affect the borrower's already limited window to act. In such situations, the imposition of costs may act as a necessary check. The aim is not to penalise recovery efforts, but to prevent procedural advantage being taken through delay.

Reform II: A More Equity-Sensitive Approach to Notice

While the statutory framework now clearly links the end of redemption rights to the publication of the sale notice, the quality and manner of that publication still matter. Courts, especially High Courts exercising supervisory jurisdiction, can play a role in ensuring that notice is not treated as a mere formality.

A more careful interpretation of the phrase “notice for sale publication” would require that the notice is not only technically valid but also reasonably capable of reaching the borrower. For example, publication in a newspaper with negligible circulation, or on an obscure digital platform that is not easily accessible, may satisfy the letter of the rule but fail its purpose.

In such cases, courts could rely on established interpretive principles, including the idea that ambiguity should operate against the party responsible for drafting or issuing the notice (often referred to as *contra proferentem*). This would encourage secured creditors to adopt clearer and more transparent methods of communication. It also introduces a degree of fairness without directly altering the statutory text.

Reform III: Need for a Constitutional Bench Clarification

The question of retrospective application of the 2016 amendment continues to sit somewhat unresolved. While smaller benches of the Supreme Court have addressed aspects of the issue, there has not yet been a

comprehensive ruling that settles the constitutional position in a final and authoritative manner.

Given the importance of the issue—especially its connection with property interests and Article 21—it would be appropriate for the Supreme Court to constitute a constitutional bench. Such a bench could examine whether applying the amended Section 13(8) to pre-2016 loan agreements affects substantive rights, and if so, whether any form of transitional protection is required.

This is not merely a technical clarification. It goes to the heart of how legal changes interact with existing rights and expectations. A clear pronouncement would help reduce uncertainty, guide lower courts, and bring a more stable footing to the SARFAESI framework as a whole.

XI CONCLUSION

The right of redemption under Section 13(8) of the SARFAESI Act sits at a delicate intersection. On one side lies the need for an efficient and predictable credit recovery system; on the other, the long-standing protections associated with property rights. The judicial journey so far reflects this tension quite clearly. Earlier High Court decisions leaned towards protecting borrowers, often extending the redemption window. The Supreme Court, in contrast, has taken a firmer approach, setting a strict temporal boundary and prioritising certainty in the recovery process.

The 2016 amendment was intended to bring clarity, especially by fixing the cut-off point at the stage of sale notice publication. While it has achieved a degree of uniformity, it has also opened up new areas of concern. Questions around how notice is actually given, how the amendment applies to older loan agreements, and how far SARFAESI should override the equitable principles of property law continue to generate debate. The decisions in *Celir LLP* and *M. Rajendran* settle the timing issue to a large extent, but they do so by narrowing the borrower's space rather sharply. That shift, though legally justified, is not without its consequences.

Three broad challenges stand out from this discussion. First, the earlier divergence between High Court rulings and the later position of the Supreme Court has created a degree of inconsistency, especially in how auctions were conducted across jurisdictions. Second, the retrospective application of the 2016 amendment

raises constitutional concerns, particularly in relation to borrowers who entered into agreements under a different legal understanding. Third, the procedural gaps in Rules 8 and 9—especially around notice and timing—leave room for uneven practices and, in some cases, possible misuse.

Addressing these concerns does not necessarily require a complete overhaul of the system. Targeted reforms may be more effective. Clearer legislative drafting, especially in relation to notice procedures and timelines, would reduce ambiguity. A more nuanced approach to redemption—perhaps allowing limited post-auction remedies through the DRT while still preserving finality—could strike a better balance. There is also a need to revisit the issue of retrospectivity, at least to ensure that borrowers caught in transitional situations are not left without any meaningful protection. Alongside this, judicial measures such as stricter timelines for DRT proceedings and a more careful approach to interpreting notice requirements can help improve fairness in practice.

At a broader level, the debate is not simply about choosing between efficiency and equity. Both are essential to a stable legal and financial system. The SARFAESI framework has undoubtedly strengthened the ability of creditors to recover dues, but its long-term legitimacy depends on whether it can also accommodate basic principles of fairness. The right of redemption, even in a limited form, reflects that concern.

The way forward, therefore, lies in careful adjustment rather than rigid adherence to one objective. With thoughtful legislative refinement and measured judicial interpretation, it is possible to build a system where credit recovery remains efficient, yet does not entirely sideline the protective values that have traditionally shaped property law in India.

XII. FINDINGS / OBSERVATIONS

The analysis undertaken in this study leads to a few clear observations.

First, the law relating to the right of redemption under SARFAESI has undergone a noticeable shift. The earlier position, which allowed a broader time frame for redemption, has been replaced by a much narrower window. This change has brought clarity, but it has

also reduced the flexibility that courts previously exercised.

Second, judicial interpretation has played a decisive role in shaping the current framework. The Supreme Court's decisions in *Celir LLP* and *M. Rajendran* have settled the issue of timing, leaving little room for alternative interpretations. While this has improved consistency, it has also overridden earlier High Court approaches that were more protective of borrowers.

Third, the retrospective application of the 2016 amendment remains an area of concern. Although courts have generally treated the amendment as procedural, the practical effect is that borrowers under older agreements face a reduced scope of redemption. This creates a tension between legal form and real impact.

Fourth, procedural aspects—especially those relating to notice under Rules 8 and 9—continue to lack clarity. The absence of detailed guidelines allows variations in practice, which can affect the fairness of the process. In some cases, compliance with the rules may be technically correct but still inadequate in substance.

Finally, there is a broader structural tension between efficiency and equity. The SARFAESI framework is clearly designed to prioritise speedy recovery, yet this often comes into conflict with principles that traditionally protect borrowers in mortgage transactions.

XIII. SUGGESTIONS / RECOMMENDATIONS

Based on the findings, a few practical suggestions can be made.

A primary need is for clearer legislative drafting. Rules 8 and 9 should be amended to provide detailed guidance on notice requirements. This includes specifying acceptable modes of publication, ensuring that borrowers receive direct and effective communication, and fixing a reasonable time gap between notice and auction.

There is also scope to reconsider the rigid cut-off for redemption. A limited, structured mechanism—perhaps allowing redemption through the DRT even after notice publication in exceptional cases—could help balance finality with fairness. Such a system would need safeguards to prevent misuse, but it could address genuine cases of hardship.

The issue of retrospectivity should be clarified, either through legislative amendment or authoritative

judicial interpretation. Transitional provisions for pre-2016 loans may help reduce uncertainty and protect legitimate expectations.

On the institutional side, stricter timelines for DRT proceedings would improve efficiency without compromising fairness. Delays at this stage often undermine the purpose of the Act itself.

Finally, courts may adopt a slightly more equity-sensitive approach while interpreting procedural requirements. Even within the existing framework, there is room to ensure that statutory compliance does not become purely mechanical.

XIV. FUTURE SCOPE

The present study is limited to doctrinal analysis, and this leaves room for further research in several directions.

One possible area is empirical research on how SARFAESI proceedings function in practice. Data on timelines, recovery rates, and borrower outcomes could provide a clearer picture of whether the current framework is achieving its intended objectives.

Another area lies in comparative legal analysis. A detailed study of how other jurisdictions handle redemption rights in secured transactions could offer useful insights for reform. Such research may help identify alternative models that balance efficiency and fairness in different ways.

There is also scope for interdisciplinary work. The impact of SARFAESI on borrowers, especially small businesses and individuals, can be studied from an economic or socio-legal perspective. This would add depth to the largely doctrinal discussions currently dominating the field.

Finally, future research could focus on the role of technology in enforcement processes, particularly with the increasing use of e-auctions and digital notice systems. Questions of accessibility, transparency, and fairness in digital platforms are likely to become more relevant in the coming years.

Taken together, these areas suggest that while the legal framework has reached a certain level of maturity, there is still considerable room for refinement and deeper understanding.

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CONFLICT OF INTEREST

The author(s) declare that there is no conflict of interest associated with the publication of this article. No financial or institutional benefit has influenced the research design, analysis, or interpretation of findings.

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