

Whether Relaxation in Law is the Main Reason for Increasing Non-Performing Loans of Commercial Banks of Bangladesh

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Abstract

The banking sector of Bangladesh is facing multiple problems now, of which the Non-Performing Loan (NPL) problem is the most discussed one. The government of Bangladesh, as well as Bangladesh Bank, has been undertaking steps towards reducing Non-Performing Loans. However, no step has proven effective in solving the issue. As of September 2022, the NPL ratio stood at 9.4%, which appears to be double that of the international standard. In this regard, a lot of research has been undertaken. It is pertinent to mention that our finance minister stated in Parliament in June '22 on non-performing loans. He determined the main reasons for Non-performing loans as a) Irregular practice in the local and international arena, b) the Bank's failure to select an appropriate borrower, c) Inadequate security against loans, keeping the same security in more than one bank and showing value of security more than actual market value, d) irregular documentation and lack of verification of genuineness of security document, e) diversion of loan-fund, allowing loan facility without assessing actual need and capacity, enhancement of credit limit frequently, allowing rescheduling and restructuring facility etc. Notably, no loophole in the legal system was absent for those reasons for non-performing loans. That is why the study of this topic is being demanded of time. This study attempts to identify whether relaxation in law is the main reason for the increase in the number of non-performing loans of commercial banks in Bangladesh. Both qualitative and quantitative approaches were used to attain the purpose of this study. This study revealed a significant result in recovering NPL through a court of law by passing complex rules by learned

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judges against loan defaulters. The study's outcome must be noted for future policy-making and NPL management in Bangladesh.

Keywords: *Non-performing Loans (NPL) · credit limit · Artha Rin Adalat · rescheduled*

Introduction

A loan that is in default or close to default is called a Non-performing loan (NPL). A higher NPL shows the bank's inability to recover its loans from clients. It is an acute problem for the banks of Bangladesh nowadays. The NPL ratio of the Banking sector was 6.1 percent in 2011, and after a sharp increase (10 %) in 2012, it reduced to 8.9 percent at the end of 2013. Later in 2014, the NPL ratio again increased to 9.7 percent but declined to 8.8 percent in 2015. Though there has been an upward trend in the NPL ratio in recent years, a downward movement of the NPL ratio has been found since 2019. At the end of June 2021, it stood at 8.2 per cent, and as of September 2022, the NPL ratio stood at 9.4 percent which appeared to be double that of international standards. The government of Bangladesh, as well as Bangladesh Bank, has been undertaking steps towards reducing Non-Performing Loans (NPL). However, no step has proven effective in solving the issue. The finance minister of Bangladesh, Mr AHM Mustafa Kamal, said in the Parliament in June '22 that the main reasons for Non-performing loans are: a) Irregular practice in the local and international arena, b) Bank's failure in selection of appropriate borrowers, c) Inadequate security against loans, Keeping same security in more than one bank and showing value of security more than actual market value, d) irregular documentation and lack of verification of genuineness of security document, e) diversion of loan-fund, allowing loan facility without assessing actual need and capacity, enhancement of credit limit frequently, allowing rescheduling and restructuring facility etc. Notably, any loophole in the legal system was absent for those reasons of non-performing loans. This study attempts to identify whether relaxation in law is the main reason for the increase in the number of non-performing loans of commercial banks in Bangladesh. This report will discuss non-performing loans along with the reasons for them and will try to find out whether relaxation in law is the main reason for the increase in the number of non-performing loans of commercial banks in Bangladesh. This paper will also recommend some policies related to the legal system to be adopted to eliminate the so-called "default culture" of Bangladesh.

Research Questions

What is the present situation of non-performing loans in Bangladesh?

What are the main reasons for commercial banks' non-performing loans in Bangladesh?

Is relaxation in law the main reason for the increase in non-performing loans of commercial banks in Bangladesh?

What are the policy recommendations for updating the country's law to eradicate the NPL problem in Bangladeshi commercial banks?

Objective of the study

The financial sector is suffering due to the alarming position of commercial banks in Bangladesh that are not performing loans. Different research papers and investigations have already discussed the many reasons behind this. However, many cases were pending before the country's Artha Rin Adalat (Money Loan Court) without significant results. This study tried to find an answer to the question of whether relaxation in law is the main reason for increasing non-performing loans of commercial banks in Bangladesh. Finding out the weakness in the country's laws may be helpful for policymakers in taking necessary measures to reduce NPLs in the country.

Methodology

This report is mainly prepared using secondary sources of evidence and some primary sources of information. The study is qualitative in nature. It uses different financial statistics, theoretical research, personal observations through media and online financial news, and financial reports from recognised financial institutes and newspapers. I have collected information and necessary data from primary and secondary sources.

Primary Sources: As mentioned earlier, the primary source of data used in our report is our personal observation from interviews with different experienced Bankers and keypersons of different institutions.

Secondary sources: The report is mainly based on secondary information and data from different sources. I got help from other academic books, websites, journals, newspapers, and published sources from the Bangladesh Bank and various departments of the Bangladesh government.

Background of the Study

The study has been undertaken to determine the actual scenario of non-performing loans in Bangladesh. Another reason is determining whether relaxation in law is the main reason for the increase in the number of non-performing loans of commercial banks in Bangladesh. The study was conducted to present it at the biennial conference 2023 of the Bangladesh Economic Association-Chattogram Chapter. The Non-Performing Loans situation in Bangladesh's economy has risen to an alarming level, which is a significant threat to the smooth growth of the economy. For the sake of

the economy, there is no way to check the rise in NPL, which is now at about 10%. In developed nations, only 2% of a bank's loans are allowed to be non-performing loans. So, a necessary policy is required to be adopted to reduce the NPL of the country as per the policy recommendation of research in this regard.

Non-Performing Loans (NPL)

IMF defines "a loan as non-performing when payments of interest and principal are past due by 90 days or more, or at least 90 days of interest payments have been capitalised, refinanced or delayed by." A loan becomes non-performing in Bangladesh when classified as sub-standard (as per Bangladesh Bank directives). Non-performing loans ("NPLs") refer to those financial assets from which banks no longer receive interest and/or instalment payments as scheduled. They are known as non-performing because the loan ceases to "perform" or generate income for the bank. In a financial system, NPLs can further thwart economic recovery by shrinking operating margins and eroding the capital base of the banks to advance new loans. In addition, NPLs, if created by the borrowers willingly and left unresolved, might act as a contagious financial malaise by driving good borrowers out of the financial market. A bank with a high level of NPLs is forced to incur carrying costs on non-income-yielding assets that strike at profitability and the capital adequacy of a bank. Consequently, the bank faces difficulties in augmenting capital resources.

In other words, NPLs (Non-performing loans) include loans that show signs of weakness in the credit quality. When the quality of a loan deteriorates, the first signal comes as irregularity in the client's loan repayment. Often, a loan account starts having past dues. International best practices require that a loan be classified as non-performing if its principal and/or interest are three months or more in arrears. Banks in Bangladesh are allowed to classify non-performing loans based on a time frame of six months.

Effects of NPL

NPL has a double effect on financial institutions. There is no income from NPL, and the capacity of further loans is reduced due to the provisioning rule against NPL. NPLs negatively impact the income statement because of provisioning for loan losses. In extreme cases, a high level of NPLs in the banking system causes systemic risk, inviting a panic run on deposits and sharply limiting financial intermediation investment and growth. The main effects of NPL on the economy are summarised below: a) Loss of current revenue, b) High loan loss provision, c) Erosion of bank's capital, d) Financial crisis, e) High-risk premium, f) High loan price, g) Low rate of investment, h) Low economic growth.

Non-Performing Loan Ratio in Different Countries

Table 01 shows that the NPL ratio (available) of most of the world's countries is between 0.1% and 5%. Only nine countries' NPL ratios are within the range of 5.1 to 10%, and Bangladesh's ratio is at the bottom of that range, which is in the group of 9.1 to 10%.

Table 1: Comparison of Non-Performing Loans Ratio by Country during 2021-2022.

Country Name	NPL Ratio
Albania, Argentina, Armenia, Australia, Austria, Belgium, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Brunei, Bulgaria, Canada, Chile, China, Colombia, Croatia, Czech Republic, Denmark, Ecuador, Egypt, Estonia, Finland, Georgia, Hong Kong, Hungary, Indonesia, Ireland, Israel, Italy, Japan, Kazakhstan, South Korea, Kosovo, Kuwait, Laos, Latvia, Lithuania, Macau, North Macedonia, Malaysia, Mexico, Netherlands, Norway, Oman, Palestine, Panama, Paraguay, Peru, Philippines, Portugal, Romania, Saudi Arabia, Serbia, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Taiwan	0.1% to 5%
Mauritius, Montenegro, Poland	5.1% to 6%
Moldova	6.1% to 7%
India, Iran, Pakistan	7.1% to 8%
Morocco	8.1% to 9%
Bangladesh	9.1% to 10%
Cyprus, Ghana, Kenya, Kyrgyzstan, Mongolia	Above 10%

Table 02 shows that the NPL ratio of the Banking sector was 6.1 per cent in 2011, and after a sharp increase (10 per cent) in 2012, it reduced to 8.9 per cent at the end of 2013. Later in 2014, the NPL ratio again increased to 9.7 percent but declined to 8.8 percent in 2015. Though there has been an upward trend in the NPL ratio in recent years, a downward movement of the NPL ratio has been found since 2019. At the end of June 2021, it stood at 8.2 percent. It reveals from other sources that as of September 2022, the NPL ratio of Bangladesh stood at 9.4%.

Table 2: Ratio of Gross NPLs to Total Loans by Types of Bank

Bank Types	(In Percent)										2021 End June
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	
SCBs	11.03	23.9	19.8	22.2	21.5	25.0	26.50	30.0	23.9	20.9	20.6
SBs	24.6	26.8	26.8	32.8	23.2	26.0	23.4	19.5	15.1	13.3	11.4
PCBs	2.9	4.6	4.5	4.9	4.9	4.6	4.9	5.5	5.8	4.7	5.4
FCBs	3.0	3.5	5.5	7.3	7.8	9.6	7.0	6.5	5.7	3.5	3.9
Total	6.1	10.0	8.9	9.7	8.8	9.2	9.3	10.3	9.3	7.7	8.2

Source: Bangladesh Bank Annual Report 2020-2021

As of June 2021, the NPLs of the SCBs, SBs, PCBs, and FCBs were BDT 438.36 billion, BDT 36.85 billion, BDT 491.91 billion, and BDT 24.93 billion, respectively; for the whole banking sector, it was BDT 992.05 billion.

Table 3: Amount of NPLs by Types of Banks.

Bank Types	(in billion BDT)										2021 End June
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	
SCBs	91.7	215.2	166.1	227.6	272.8	310.3	373.3	487.0	439.9	422.7	438.4
SBs	56.5	73.3	83.6	72.6	49.7	56.8	54.3	47.9	40.6	40.6	36.9
PCBs	72.0	130.4	143.1	184.3	253.3	230.6	294.0	381.4	441.7	403.6	491.9
FCBs	6.3	8.5	13.0	17.1	18.2	24.1	21.5	22.9	21.0	20.4	24.9
Total	226.5	427.4	405.8	501.6	594.0	621.8	743.1	939.2	943.2	487.3	992.1

Source: Bangladesh Bank Annual Report 2020-2021

Non-performing Loan: Theoretical Aspects

The term “Overdue” is defined in the Circulars of Bangladesh Bank as follows: (i) Any Continuous Loan, if not repaid/renewed within the fixed expiry date for repayment, will be treated as past due/overdue from the following day of the expiry date. (ii) Any Demand Loan, if not repaid/rescheduled within the fixed expiry date

for repayment, will be treated as past due/overdue from the following day of the expiry date. (iii) In case any instalment(s) or part of instalment(s) of a Fixed Term Loan (not over five years) is not repaid within the fixed expiry date, the amount of unpaid instalment(s) will be treated as past due or overdue from the following day of the expiry date. (iv) In case any instalment(s) or part of instalment(s) of a Fixed Term Loan (over five years) is not repaid within the fixed expiry date, the amount of unpaid instalment(s) will be treated as past due/overdue after six months of the expiry date. (v) The Short-term Agricultural and Micro-Credit, if not repaid within the fixed expiry date for repayment, will be considered past due/overdue after six months of the expiry date.

Loans may be termed non-performing, both from the objective and subjective judgment. Bangladesh Bank grossly sets objective criteria for loan classification. The Instruction Circulars guide subjective decisions by the bank officials from the top management. Bangladesh Bank prescribed the following objective criteria for loan classification vide BRPD Circular No. 03, dated 21 April 2019:

A Continuous Loan, Demand Loan, Fixed Term Loan or any instalment(s)/part of instalment(s) of a Fixed Term Loan which will remain past due/overdue for three months or beyond but less than nine months, the entire loan will be put into the “Sub-standard (SS)”.

A Continuous Loan, Demand Loan, Fixed Term Loan, or any instalment(s)/part of instalment(s) of a Fixed Term Loan that remains past due /overdue for a period of 9 months or beyond but less than 12 months will have the entire loan put into the “Doubtful (DF)”.

A Continuous Loan, Demand Loan, Fixed Term Loan, or any instalment(s)/part of instalment(s) of a Fixed Term Loan that remains past due/overdue for a period of 12 months or beyond will have the entire loan put into the “Bad/Loss (B/L).”

Causes of Non-Performing Loans

In this section, we will discuss the causes of Non-Performing loans, which the senior bankers and researchers have acknowledged who have been interviewed.

Clients Related Causes

1. **Diversion of Funds:** One of the main reasons for NPLs is the diversion of funds. Loan funds are diverted for dealing purposes, family businesses, repaying loans taken from various causes, house construction, etc.
2. **Willful Defaulter:** Some willful defaulters are habitual defaulters. They acquire loans from banks with the bad intention of not paying back the loans.

3. **Low cash flow:** Low cash flow due to low market share may cause loan default. Low market share means low sales and low sales mean low income, which results in default.
4. **Unrealistic Installment Size:** In many cases, the borrower cannot comply with the conditions of credit terms as the instalment size is too big or the repayment period is too small for them to execute.
5. **Failure to Collect Sale Proceeds:** The borrower faces a loss in business due to sales on credit. As soon as they fail to recover the money from the debtors in due time, they fail to run production and fail to pay.
6. **Lack of Financial Knowledge:** Many customers default due to a lack of financial knowledge. They do not know the good and bad sides of banking procedures, at least not enough to run the accounting contacts.
7. **Lack of Experience:** Lack of experience is one cause of loan repayment failure.

Bank Related Causes

1. **Failure to timely disbursement:** For some businesses, investing the money at the right time is very important. But sometimes banks fail to provide loans at the right time because of their limitations. Borrowers face the problem with the invested money they partially injected into the business. The non-availability of loan funds may negatively impact the return of the client and may cause a loss, which may lead to non-performing loans.
2. **Higher Rate of Interest:** A higher interest rate is always a big problem. Moreover, sometimes banks change the interest rate without obtaining consent from the client as the sanction letter permits them to change the interest rate from time to time.
3. **Barrier in Extension of Loan Period:** If clients face difficulties in their business and fail to repay loans because of a loss in business in a specific time, Banks reject to allow extra time for the current loan. So defaulters cannot get out of trouble and cannot continue their business. Therefore, they can never repay all the money they borrow from banks.
4. **Lack of Ensuring End Use of Money.** Loans are provided for a certain purpose, which the banker should monitor to ensure proper fund usage. However, a lack of monitoring of loan usage can lead to default.
5. **Right action at the right time:** When corrective actions are taken at the right time, the chance of a loan default lessens. If a customer misses an instalment, the bank's related officer must take action to learn about the

customer and understand the problem. If the right action is taken, the chance of loan default is reduced.

6. Unskilled Banker: If the loan proposal is assessed by an unskilled banker, the loan will obviously be in default.
7. Unscrupulous banker: Some unscrupulous bankers are accountable for creating default loans in the banking sector to some extent by disbursing loans to little-known or fake companies, which the companies do not deserve.
8. Directed Loan: If the loan is allowed under the direction of higher authority or political pressure, it is disbursed without appropriate or satisfactory credit calculation or compliance with credit norms. This loan will ultimately become a default.

Economic and Political Reasons

1. Political uncertainty: Political uncertainty hinders the smooth production and supply of products, and political chaos is reflected as one of the other reasons for loan default in our country.
2. Miscreants: It is found that miscreants' activity affects the profitability of the businesses. It forces donations and sometimes lowers the profitability of the company.
3. Lack of Power Supply, Utility, etc.: Lack of uninterrupted power supply and lack of infrastructure facilities might be one of the most important causes of loan default.
4. Sudden Change of Government Policy: Government policy is reflected as a reason for the loan default since it affects the local sales and distribution of the companies' products.

Other Reasons

Other reasons for loans are imperfect offering practice, lack of enquiry into business risks, lack of proper appraisal of security or mortgage assets, undue influence by debtors, external pressure, loans from Government associations, Government policy for disbursement of loans, and lack of legal act.

Different types of Legal Actions

Though there are two specific laws, the Artha Rin Adalat Act 2003 and the Bankruptcy Act 1997, for financial institutions of Bangladesh, there are some other laws under which lending bankers can file suit in associated courts. All the legal measures are as follows:

- (a) Filing certificate cases under the Public Demand Recovery Act 1913.
- (b) Loans can be recovered by selling the mortgaged property or taking over management of the defaulting concern.
- (c) Filing criminal cases for breach of trust under 406/420 BPC.
- (d) Filing criminal cases under section 138 of N. I Act 1994.
- (e) Filing money suitcases under the Artha Rin Adalat Act 2003.
- (f) Filing Bankruptcy cases under the Bankruptcy Act 1997.

Now, we would like to briefly highlight the above legal recourses: Filing certificate cases under the Public Demand Recovery Act. 1913

However, these courts will try all cases about loan recovery for loans up to Tk. 50,000 given by Bangladesh Krishi Bank (B.K.B), Rajshahi Krishi Unnayan Bank (R.A.K.U.B), and other government-owned financial institutions, certificate cases may also be filed under the Public Demands Recovery Act-1913 (act no. III of 1913) instead of filing cases in Money loan courts.

Filing criminal cases for breach of trust under 406/420 BPC

Financial Institutions may file cases against the borrower before the Criminal Court as per Sections 406 and 420 of the Penal Code 1860. The sections are as follows:

Section 406: Punishment for criminal breach of trust.: Whoever commits a criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, with a fine, or both.

Section 420: Cheating and dishonestly inducing delivery of the property.: Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Financial institutions also effectively resort to filing criminal cases under section 138 of the Negotiable Instrument Act (N.I Act) 1994. Cases under the N. I Act. 1994 are sometimes obtained by commercial banks while allowing loans. The cheques are a commitment to repayment of the loan. If the cheque is returned unpaid, the lending institution can sue under the N.I Act, 1994.

A loophole in Laws related to the recovery of NPL

There is a famous maxim, “justice delayed is justice denied”. This can be applied to banks, especially in developing countries like Bangladesh, owing to corruption and opaqueness in the settlement process and poor enforcement of laws that

usually create a fertile ground for wilful defaulters. In the case of Bangladesh, although several laws have been enacted and amended to ensure the safety and soundness of the banking system, the banking sector still witnesses an alarming amount of NPLs. Therefore, measuring the actual performance of different courts in terms of the number of suits filed, settlement rate, and recovery rate of NPLs over the years would be meaningful.

Banks in Bangladesh are burdened with heavy non-performing assets. Banks are endeavouring hard to find ways to recover non-performing loans. The Money Loan Court is likely the last resort for Banks to realise their dues. The total number of suits filed in Artha Rin Adalat of the country stood at 207896 at the end of 2021. During that period, only Tk.1970.3 million, i.e. only 28.13%, was actually recovered against settled suit value of Tk.7000.0 million. The suit value of filed cases in the Artha Rin Adalat is Tk.14369.4 million.

The court's recovery performance is totally disappointing. It is more interesting that the settlement ratio is satisfactory, but the recovery ratio is dissatisfactory, which shows the ineffectiveness of the legal framework.

For the people who are willing defaulters, loans appear to be obstacles to settling these cases. They secure stay orders from the court not to allow the case to be disposed of. As a result, these cases remain pending for years and generation after generation.

Most of the cases filed in Artha Rin Adalat take time of about five to ten years to award a decree. However, granting a decree does not guarantee the recovery of money. After getting a judgement in favour of the bank, the bank will not have any effective measure towards recovering bank dues by selling mortgaged property. In the absence of mortgaged property, upon appeal of the banks, the learned court passes the order of warrant of arrest against the judgment debtor. When the learned court passes an order of arrest warrant, then the judgment debtors come forward forthwith towards adjustment of liabilities (see Case Study 01 and 02)

The primary function of Artha Rin Adalat appears to be passing a judgment and arranging an auction sale of the mortgaged property. If the court fails to sell the mortgaged property through auction due to lack of a buyer of the property, then the court will bestow the unsold property to the plaintiff bank by transferring the property title. As a result, the borrower's liability remains unadjusted indefinitely. In the case of a warrant of arrest against the Negotiable Instrument Act, the borrowers come forward quickly to adjust their liability to avoid arrest. As Artha Rin Adalat cannot pass the warrant of arrest before selling the mortgaged property, the cunning borrowers have the scope to delay the court process either for cursory reasons or by the High Court's stay order.

Besides the Money Loan Court, banks have another option to take legal action against defaulting borrowers under the Bankruptcy Act. Since the enactment of the Bankruptcy Act in 1997, the court's performance has been disappointing. It is said that the intense lobbying of the defaulters deliberately slowed down the functioning of the law. The performance of recovery is 11.95% of the total claim. Banks are less interested in resorting to the Bankruptcy Court. Moreover, the court's performance, like Artha Rin Adalat, is disappointing.

The performance of the PDR Act is also reportedly dissatisfactory. The recovery under the Act is a small portion of total NPL, which does not play a significant role in the recovery of NPL.

This situation demonstrates the ineffectiveness of the legal framework in tackling the problem of bad loans.

The main hindrance to recovering default loans at this moment seems to be the poor enforcement status of laws and the slow execution of decrees. In this connection, it must be mentioned that the law itself is not solely responsible for the delay in settling cases related to NPLs; rather, a number of parties, such as plaintiffs or complainants, defendants, lawyers, and judges, are also involved in the process.

The default borrowers get privileges to file a writ petition against the bank's claim. In some instances, the borrowers file several writs against a particular case. An investigation reveals that about 95 per cent of judgments passed by the Money Loan Court are hanging through stay orders/injunctions imposed by the higher courts. Less than 5 per cent of all cases filed by the banks in the Money Loan Court end up successfully realising the money.

The detention order against the default borrowers passed by the Court does not reach the concerned Police Station in a timely and proper manner. Even if it reaches the concerned Police Station, the law-enforcing agencies do not take the desired action. The law-enforcing agencies do not even inform the Court regarding the position of default borrowers. In this process, many cases remain stuck.

It is observed that the colossal loan delinquency of the Bangladesh banking system reflects, among other things, the weakness of the legal infrastructure, which cannot ensure lenders' recourse on borrowers. The inefficacy on the part of the legal system also sometimes encourages borrowers to refrain from paying legitimate dues to the banks. The main hindrances in Bangladesh seem to be the existing legal framework and its lengthy procedures. These legal measures are time-consuming, resource-draining and ineffective, resulting in poor recovery performance.

Analysis of Facts and Data

Data analysis and different interviews with experienced bankers reveal that the loan recovery process is more effective in court if the court passes a warrant of arrest.

As there is much scope on the borrower's part to delay the process of Artha Rin Adalat, a necessary amendment in the law is needed to expedite the recovery process of NPLs. It is observed that the main focus of the Artha Rin Adalat is to sell the mortgaged property rather than recover the bank's claim. If the Court fails to dispose of the property due to a lack of buyer, then the court will complete its job by bestowing the mortgaged property to the bank and transferring the title of the property in question. As a result, banks cannot proceed further to recover their dues.

It is also observed that the recovery rate through the court is more satisfactory in the case of a loan allowed without any collateral security than in a collateralised loan. So collateral security appears less critical to the bankers only because of loopholes in the law. It is observed in many cases (see Case Studies 1 & 2) that the borrowers come forward immediately to settle the liability to the bank after the court issues a warrant of arrest.

Case study 1

A 100 % Export Oriented Readymade Garments Industry used to manufacture and export Ready Made Garments to different countries. They started banking with a bank in 2005. They were enjoying a composite limit facilities of TK.150.00 million comprising BTB L/C and Packing Credit. Later on, they were allowed a Term Loan of TK.23.00 million. There was a collateral security of Tk.50.00 million. Later, due to non-compliance rules set by foreign buyers, their RMG business was shut down, and they failed to repay the bank dues. In 2014, the client approached the bank for partial adjustment of their liability by selling mortgaged properties and factories. As per the Bank's approval, the client adjusted Tk.30.00 million. The client could not run their business, so their account became stuck. As a result, the bank initiated legal action against them to recover the classified liability. The bank filed a legal suit before Artha Rin Adalat in 2016 and got a decree in 2017. As the client did not pay off their liability, the bank filed an Execution Suit before the same court in 2018. However, the client refrained from adjusting their liability. The court issued a warrant of arrest 2019 against all company directors, which the client stayed in the Honourable High Court. The bank vacated the stay order in 2020. The Artha Rin Adalat again issued a warrant of arrest against all company directors. Finally, all the directors came forward with the necessary down payment to settle their liabilities by executing their sole name.

Case study 2

An export-oriented RMG unit has been banking with a bank since 2005 by availing composite investment facilities. Due to non-payment of their liabilities, the account became classified in 2009. The bank filed a lawsuit before the Artha Rin Adalat in 2009. In 2011, Artha Rin Adalat passed a partial decree to pay the principal amount of Tk.37.00 million without a claim of interest thereon. Subsequently, the bank filed the First Appeal in 2011 before the Honourable High Court Division, Supreme Court of Bangladesh, against the Judgment and decree of the Artha Rin Adalat. The Honourable High Court, vide their order dated 11.03.2020, passed a Judgment in favour of the bank, directing the defendants to pay the entire claim of Tk.40.00 million along with 12% pendent late interest from the date of filing suit till disposal of the suit within one year in 4 equal instalments. As the client didn't pay the decretal amount as per the order of the honourable high court, the bank filed an Execution Suit before the court of Artha Rin Adalat in 2021. In the process of execution suit, the honourable court issued a warrant of arrest in 2022, giving five months' imprisonment against the Judgment Debtors. Accordingly, they were arrested in 2022. One of the Judgment debtors has been awarded bail for one month to give 25% of outstanding liabilities to the bank within one month, while other Judgment Debtors will remain in prison. Finally, the client paid a partial amount and agreed to pay off all of the bank's dues under *solehnama*.

Findings

1. The total number of suits filed in Artha Rin Adalat of the country stood at 207896 at the end of 2021. During that period, only Tk.1970.3 million, i.e. only 28.13%, was actually recovered against settled suit value of Tk.7000.0 million. On the other hand, the suit value of filed cases in the Artha Rin Adalat is Tk.14369.4 million, against which only Tk.461.0 million was recovered. That means only 3.29% was recovered against the claimed amount through Artha Rin Adalat. It is a proven matter that Artha Rin Adalat is inadequate in preventing NPL or cannot ensure recovery of NPL of commercial Banks of Bangladesh.
2. Most cases filed in Artha Rin Adalat take about five to ten years to award a Decree. However, awarding a decree does not guarantee the recovery of money. After getting a judgment in favour of the bank, the bank will not have any effective measure towards recovering bank dues by selling mortgaged property. Whereas in the absence of mortgaged property, upon appeal of the bank, the learned court passes the order of warrant of arrest against the judgment debtor. When the learned court passes an order of arrest warrant, the judgment debtors come forward forthwith towards adjustment of liabilities.

3. The people who are willful defaulters, in those cases, loans appear as obstacles in the settlement of these cases. They secure stay orders from the court not to allow the case to be disposed of. As a result, these cases remain pending not only for years but for generations after generations.
4. The primary function of Artha Rin Adalat appears to be to pass judgment and arrange for the auction sale of the mortgaged property. If the court fails to sell the mortgaged property through auction due to a lack of buyer of the property, then the court will bestow the unsold property to the plaintiff's bank by transferring the property title. As a result, the borrower's liability remains unadjusted indefinitely. Upon passing a warrant of arrest by Artha Rin Adalat or the Court of Negotiable Instrument Act, the borrowers come forward quickly to adjust their liability to avoid arrest. As Artha Rin Adalat cannot pass the warrant of arrest before selling the mortgaged property, the cunning borrowers have the scope to delay the court process either for cursory reasons or by the High Court's stay order.
5. Banks always take Promissory Notes as a charging document before disbursing a loan. Like a Cheque, a Promissory Note is also a Negotiable Instrument. But no suit against that Promissory Note is filed in Criminal Court. As a result, the borrowers escape brutal punishment.
6. The number of money loan courts and judges in the country is inadequate compared to the demand. Both the loan givers and takers are suffering because of the pending cases.
7. The bank can sell the mortgaged property directly if it is authorised by dint of Authority for sale executed by the mortgagor/owner. However, the bank cannot successfully recover its dues by practising that authority as per section 12 (3) of Artha Rin Adalat Ain 2003, as the defaulter borrowers successfully manage the order of the higher court of law on the process of the bank. That is why the section of that law has become almost ineffective, leading the banks to augment the number of suits in Artha Rin Adalat.

Limitations of the study

There are some limitations involved in the study, such as:

There was a time constraint. The report was required to be completed within a short period. Only a few interviewed persons on the matter came under the report. The bankers generally do not disclose the inherent causes and sensitive data, especially on NPL.

Recommendations

It should be considered criminal activity by the borrower if the borrower does not repay the loan within the promised schedule. In that case, Artha Rin Adalat should be empowered to issue a warrant of arrest against the borrower/guarantor at any stage of the suit.

The holder's interest in the due course of a dishonoured Promissory Note should be protected like that of a dishonoured cheque through the N.I Act and/or other related laws.

As the writ petition seeking a stay order against the bank's claim is an excellent barrier to speedy case disposal, it may be adequate to impose a mandatory deposit provision on some portion (at least 10%) of the bank's claim for filing each writ petition.

Suppose it is proved that the mortgagor deliberately transferred their property to anybody before creating the mortgage. In that case, Artha Rin Adalat might punish him by imprisonment at any stage of the suit.

If it is proved that the Miscellaneous Case (Misc. Case) was filed by the defendant or any third party to delay the process of the suit, Artha Rin Adalat may issue an order of punitive action against the miscreants.

The number of Money Loan Courts should be increased, especially for Dhaka and Chattogram. A High Court bench in the Divisional Headquarters should be established to dispose of money matters.

Once the mortgagor confers authority upon the bank to sell the property in case of default, the bank's selling process must not be challenged by anybody, even by the higher court of law.

Conclusion

The banking sector of Bangladesh is a significant sector that significantly contributes to GDP growth. At the end of December 2020, the country's loans and advances were Tk.11239.22 billion of 10752 Branches under 61 Banks (6 State-owned, 3 Specialized, 9 Private Foreign, 43 Private). The economy has a burden of huge non-performing loans, which stood at 9.4% as of September 2022, which appears to be double that of international standards. It is, therefore, imperative to diagnose the causes of NPL so that preventive measures are taken and appropriate steps are identified to reduce NPL of banks.

If the loans become non-performing, bankers cannot go for foreclosure immediately, as there are so many bars in the liquidation of the collateral security like prolonged legal process, countersuit by the borrower, inadequate and wrong documentation, lack of buyer of security, third party's claim on the security etc. The government and banks take different preventive measures to address all causes

of NPL. However, to exert the best efforts, it is necessary to determine the main reasons for NPL. It is presumed that the relaxation of the law is the main reason for the increasing NPL in the country. The study was designed to analyse whether the relaxation of law is the main reason for the growing NPL of commercial banks in the country. The study's findings and recommendations will help streamline the NPLs of Bangladesh, which may be a path to salvation from Bangladesh's default culture.

Bangladesh was the 35th largest economy in 2022, with a GDP of USD 460.8 billion. It is the fastest-growing economy in the world. The country's per capita income increased to USD 2,824. Bangladesh's economy's growth rose to 7.25% in the 2021-22 fiscal year from 6.94% the previous year. However, the NPL ratio is at the bottom level of countries in the world, which is 9.4% as of September 2022, which is not acceptable.

From my above analysis, I believe that the relaxation in law is the main reason for the increase in non-performing loans of commercial banks in Bangladesh. So, policymakers may take steps per the recommendations cited in the report to eliminate Bangladesh's NPL problem.

References

Bangladesh Bank Annual Report 2020-2021, Bangladesh Bank, Dhaka.

Different website.

BRPD Circulars, Banking Regulation and Policy Department, Bangladesh Bank, Dhaka.

The daily Bonik Barta, The daily Azadi, of different dates

Synopsis on Credit Management Training, BIBM, Dhaka.

Studies in Bangladesh Banking, June 2000, BIBM, Dhaka.

Bangladesh Economic Review 2022, Finance Division, Ministry of Finance, Govt. of Bangladesh.

Companies Act. 1991.

Artha Rin Adalat Act 2003

Bank Company Ain 1991 (BCA)

The Bankruptcy Act 1997.

Negotiable Instruments Act 1881.

Financial Institution Act, 1993.

Money Laundering Prevention Act, 2002.

Maheshwari, S. N, *Banking Law & Practice*, 1999, Kalyani Publishers, New Delhi, India.

Chowdhury, L.R. (1983), *A Handbook of Bank's Advances*, Fair Corporation, Dhaka.

Kashem, M.A, 1980, *The Law and Practice of Banking*, Dhaka.

Holden, J. Milnes, 1986, *The Law and Practice of Banking*, Pitman, Great Britain.

Hamid, Md. Abdul, 1987, *Money and Banking*, Sahittya Kuthir, Bagura.

Zaker, S.M, 2004, *Ethics in Banking*, The Institute of Bankers Bangladesh, Dhaka.

Journal of the Institute of Bankers Bangladesh, Dhaka, January 2001-June 2002.

Journal of the Institute of Bankers Bangladesh, Dhaka, July-December 2005.

Taher, S.M, 1981, *A Guide to a Lending Banker*, Dhaka.

Mojumder, A.K.M. Imdadul Hoque, *Modern Analysis of Banking System and Monetary Theory*, 1984, Bangla Academy, Dhaka.

Hai, Md. Enamul, 1996, *Bank Management*, Zen Publishers, Dhaka.

Siddiqui, M.S, 2008, *Default Loan Culture*, Mridul Prokashon, Dhaka.