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HISTORY AND EVOLUTION OF THE IBC

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INTRODUCTION

Insolvency refers to a company or individual's inability to pay off debts within a specified period, while bankruptcy is the legal process to seek relief from outstanding financial liabilities. Since bankruptcy laws require balancing the conflicting interests of numerous parties, including banks, suppliers, employees, operational creditors, bondholders, and the government, they are essential for effectively reallocating capital in a failed business.

Both socioeconomic (demand for law) and political (supply of law) contexts must be considered when examining how bankruptcy laws have changed over time. Although 1993 marks the beginning of India's bankruptcy and insolvency laws, it is crucial to remember that this is not the actual beginning. Hishikar et al. (2019)[2] Contend that India's bankruptcy and debt recovery laws have a lengthy history that dates back to the country's Smriti traditions.

The Presidency Towns Insolvency Act of 1909 and the Provincial Insolvency Act of 1920 were passed during the colonial era to regulate individual insolvencies, mainly affecting individuals and traders. Since there was no framework for corporate insolvency, the scope of these laws was constrained. Due to inefficiencies and delays in the process, they were also ineffective at managing the complexity of contemporary insolvency requirements.

Post-independence debates about the role of the private sector in a system of socially regulated industrialization influenced changes in bankruptcy and insolvency laws. The idea of bankruptcy was typically ignored under socialism since the State owned all significant means of production and distribution.

The bankruptcy and winding-up provisions of company and personal insolvency laws stayed the same throughout the colonial era. Nonetheless, it was wiser for lawmakers to test debt recovery legislation instead of bankruptcy legislation.

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[2] Abhiman Das et al., Insolvency and Bankruptcy Reforms: The Way Forward, *VIKALPA*, Vol. 45, Issue 2, Apr.-June 2020, at 1, https://journals.sagepub.com/doi/pdf/10.1177/0256090920953988.

Following independence, the Companies Act of 1956 and the Industrial Development and Regulation Act of 1951 became the primary legislation governing corporate insolvency and bankruptcy in India.

These laws gave the high courts jurisdiction over matters about bankruptcy and insolvency, but they had drawbacks, including a short timeline, incompetence of the official liquidator, a lack of information about the company, and creditors' ability to take action through the liquidation of an insolvent business.

Due to severe industrial stagnation during the Fourth and Fifth Plan phases (1965–1975), the Sick Industrial Companies Act, 1985 (SICA), which established the Board for Industrial and Financial Reconstruction, was passed. SICA was a preventive law that favored restructuring over winding up. However, it had several drawbacks, such as the misuse of Section 22, which permitted businesses to request a ban on execution, arbitration, recovery suits, and security interest enforcement.

The post-reform period in India saw legislative efforts to recover debt in failed businesses, influenced by the baggage of failures, the balance of payment crisis of 1993, and the recommendations of the Narasimham Committee-I (1991). These efforts were divided into two sets: those made by the Government of India and those made by the Reserve Bank of India (RBI). The RDDBFI legislated the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, which created Debts Recovery Tribunals (DRTs).

However, the system was overburdened with pending cases. The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002) safeguarded the interest of secured creditors and created asset reconstruction companies (ARCs). The RBI introduced the Corporate Debt Restructuring (CDR) mechanism in 2001, which initially worked well but later became used more to avoid the recognition of non-performance of stressed assets.

The RBI withdrew the forbearance on asset classification in May 2013 but allowed asset classification benefits for certain types of restructuring schemes. After 60 years since independence, no comprehensive framework or strategy was established to effectively tackle insolvency and bankruptcy proceedings.

The Insolvency and Bankruptcy Code (IBC), proposed by the Bankruptcy Legislative Reforms Committee in 2014, aims to amend and combine the laws about insolvency resolution and reorganization for individuals, partnership firms, and corporations. Maximizing asset value, encouraging entrepreneurship, and balancing stakeholder interests were the goals of the IBC. With the separation of judicial and commercial aspects, the IBC, enacted in May 2016, strives for time-bound insolvency resolution by insolvency professionals. Instead of the Department of Revenues (DRTs), the National Company Law Tribunal (NCLT) will serve as the adjudicating body.

Previous laws have less significance now that the IBC is the only law addressing insolvency, bankruptcy, and the reorganization of failed businesses. For instance, on the global stage, India's ranking on the resolving insolvency parameter improved from 108 in 2018 to 52 in 2019. Additionally, the average recovery period for insolvency cases was reduced from 4.3 years in 2018 to just 1.6 years in 2019.[3] In 2019, Justices Nariman and Sinha[4] upheld the constitutional validity of the Insolvency and Bankruptcy Code (IBC) and its enforceable nature. They upheld the commercial wisdom of the committee of creditors and ruled that the IBC has no provision allowing Tribunals to interfere with the CoC's commercial decision. The BLRC suggested safeguards for operational and dissenting creditors, aligning with UNCITRAL and World Bank DBR parameters.

The landmark judgment addressed the right to experimentation in economic legislation and the IBC's positive role in timely, confidence-enhancing debt resolution and recovery. A standardized generic framework for resolving stressed assets through IBC was established in February 2018 when the RBI eliminated the previous CDR guidelines. In India, the IBC is still the only law that governs corporate reorganization, bankruptcy, and insolvency.

EARLY INSOLVENCY LAWS IN INDIA

Insolvency law in India originated in English law. The term "bankrupt" originates from the Italian term banca rotta, meaning "broken bench," which was used by money dealers in Italy. The French equivalent, banqueroute, became the English term. In ancient Greek civilization, debt slavery was used to work off debts, often lasting a lifetime.

Philip II of Spain declared four state bankruptcies in 1557, 1560, 1575, and 1596, becoming the first sovereign nation to do so. The discharge of debts was introduced to Anglo-American bankruptcy in 1705 with the statute of 4 Anne ch. 17, offering rewards to bankrupts who cooperated in asset gathering. Bankruptcy is also documented in the Far East, with the Yassa of Genghis Khan mandating the death penalty for three consecutive bankruptcies.

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[3] Dr. S. Paradhasardhi, Dr. Annie Sunil & Dr. Malathi Devi Kulkarni, *IBC: Ease of Doing Business - A Review,* 13(2) Dogo Rangsang Research Journal 1 (Feb. 2023),https://journal-dogorangsang.in/no_1_Online_23/82_feb.pdf .
[4] Ibid

In the three Presidency towns of Bombay, Calcutta, and Madras, where the British conducted business, the need for a legal framework to handle insolvency was initially recognized in India. Sections 23 and 24 of the Government of India Act, 1800, Statute 9, passed in 1828,[5] The Indian Insolvency Act, of 1848, and the Presidency-towns Insolvency Act, of 1909, are the earliest known insolvency provisions. Bombay, Calcutta, and Madras are still subject to the Presidency-towns Insolvency Act, of 1909, which addresses the insolvency of individuals, partnerships, and associations of individuals.

There was no insolvency law for non-Presidency town areas until the early 1900s. For the other areas, the first insolvency law was the 1907 Provincial Insolvency Act, which was eventually superseded by the 1920 Provincial Insolvency Act. The insolvency law, which addresses the insolvency of individuals, including proprietors, is still in effect outside of the Presidential towns of Bombay, Calcutta, and Madras.

The Law Commission of India suggested merging the two statutes in 1964[6] to have a single insolvency law that applied to the whole nation. This, however, was not put into practice. The Presidency Towns Insolvency Act of 1909 and the Provincial Insolvency Act of 1920 remain the applicable laws for individual and association insolvency resolution.

MAJOR LEGISLATION GOVERNING CORPORATE INSOLVENCY

THE FIRST LAW FOR CORPORATE INSOLVENCY: THE COMPANIES ACT, 1956

The words "bankruptcy" and "insolvency" were added to the Concurrent List of the Indian Constitution when it was passed in 1950.[7]But incorporation, regulation, and winding up of corporations[8] fell under the Union List.[9]The Companies Act was passed by the Parliament in 1956 using these powers. This Act regulated every aspect of a company's operations, including winding

[5] Rajeswari Sengupta, Anjali Sharma & Susan Thomas, *Evolution of the Insolvency Framework for Non-Financial Firms in India*, Indira Gandhi Institute of Development Research, Mumbai (June 22, 2016), http://www.igidr.ac.in/pdf/publication/WP-2016-018.pdf.
[6] 26th Report of the Law Commission of India.

[7] As Entry 9 of List III of the Seventh Schedule. Both Center and State governments can make laws relating to this subject.
[8] Entry 43 and 44 of List I of the Seventh Schedule. There are some exceptions such as incorporation, regulation, and winding up of cooperative societies, which is covered in List II of the Seventh Schedule.
[9] Subjects on which only Parliament can make laws

it up. The act only addressed "inability to pay debts" and did not define the terms insolvency or bankruptcy. Though, it was the sole law that addressed corporate insolvency.

The law allows creditors with unpaid dues to petition the court for winding up a company. This process is preceded by liquidation, managed by an appointed Official Liquidator (OL). The OL collects company assets and manages the sale and distribution of proceeds according to the Act's priority.

This Act passed during India's industrialization policy, prioritizes workmen's and government's dues over secured creditors' dues. The Companies Act, 1956 allows companies or creditors to reorganize, but these provisions are not specific to insolvency or bankruptcy situations.

There were only 9.5 lakh active companies out of 14 lakh registered in India in 2013.[10] The High Courts only had 6,500 winding-up cases registered between 2008 and 2010, with 250–350 new cases added and 300–600 cases finished each year. This demonstrates the inability of the High Courts to handle the volume of cases they receive and the low utilization of the Companies Act procedures for handling corporate insolvency. It usually takes five to eight years, and twenty-five to thirty years in severe situations, to wind up under the Act.

The insolvency provisions of the Companies Act of 1956 were to undergo significant changes as proposed by the Companies (Amendment) Act of 2003; however, notification was impeded by legal challenges. Despite the passage of the 2013 Companies Act, which largely complies with the Second Amendment of 2002, implementation issues continue to exist, guaranteeing that the 1956 Act's provisions are upheld.

SICK INDUSTRIAL COMPANIES ACT (SICA) 1985

Between 1956 and 1985, the Companies Act of 1956 was the sole law that addressed corporate insolvency. More funding was needed for the government of India's initial manufacturing sector development policies after gaining independence in 1947. However, the Indian economy was one of the many developing economies in the world at the time, and the government was constantly trying to raise money through several sizable development finance organizations.

These financial institutions were established to promote industrial development. However, the firms may offer shares or board seats in exchange for the funds or credit provided by these

[10] Rajeswari Sengupta, Anjali Sharma & Susan Thomas, *Evolution of the Insolvency Framework for Non-Financial Firms in India*, Indira Gandhi Institute of Development Research, Mumbai (June 22, 2016), http://www.igidr.ac.in/pdf/publication/WP-2016-018.pdf.

development financial institutions. The creditors were given direct control over the management of these businesses as a result. Poor economic capital distribution was the outcome of this.

By the early 1980s, the problem of illness had spread to industrial enterprises. Between 1981 and 1985, the number of sick industrial units rose from 26,758 to 119,606. [11]Therefore, a committee known as the Tiwari Committee was established in 1980 to offer recommendations on how to address the problem of industrial sickness.

This Committee's creation led to the 1985 passage of SICA legislation. The purpose of this Act's enactment was to acknowledge the industry's sickness and restore them to their rightful place. This Act established two new courts: the Board of Industrial and Financial Reconstruction (BIFR) and the Appellate Authority for Industrial and Financial Reconstruction (AAIFR).

SICA was the first Act that solely addressed company restructuring. Even so, the enactment's scope was limited to the industrial companies that appeared sick. According to the Act, the Firm's Board is in charge of reporting illness. Following the disclosure of illness, the Act provided for the automatic suspension of all litigation, claims, and procedures against the company.

The procedure outlined in the Companies Act was different in that a stay was not always granted; rather, it was up to the High Court's discretion. Furthermore, SICA granted the debtor corporation control over its assets and business activities despite its declaration of illness.

TRANSFORMATIONAL POSITION OF INSOLVENCY LAWS IN INDIA

The Indian financial system has undergone significant changes over the past twenty years. The main goal of the government's significant financial sector decisions was to promote a competitive, well-structured, efficient, and effective financial market or system that would accelerate economic growth through appropriate resource use.

Since India has the largest economy in the world, as is well known, policymakers and legislators have worked hard to make Indian laws and policies comparable to those of other countries. This has attracted investors to the Indian financial markets.

We go over how changes are made to the insolvency and bankruptcy legislation:

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[11] Jatin Jadwani & Pulkit Dua, *The Evolution of Insolvency and Bankruptcy Laws in India*, International Journal of Advanced Legal Research, Vol. 5, Issue 2, [ISSN: 2582-7340] https://ijalr.in/volume-3-issue-3-2023/the-evolution-of-insolvency-and-bankruptcy-laws-in-india-jatin-jadwani-pulkit-dua/#_ftn12

NARASIMHAN COMMITTEE I, 1991

In 1991, a high-level committee called the Narasimha Committee was formed. The committee's outcome was the passage of the "Recovery of Debts due to the Banks and Financial Institutions Act 1983" (RDDBFI, 1993). Banks had several difficulties in pursuing cases in civil courts to collect the money due to borrowers while the Committee focused on the expansion of the financial institution.

The Committee suggested the establishment of specialist tribunals to speed up the resolution of cases of this nature. After the RDDBFI Act was passed, the proposal created "Debt Recovery Tribunals (DRT) and Debt Recovery Appellate Tribunals (DRAT)". The DRTs and DRATs were established as specialist tribunals to help banks and a certain group of financial institutions recover debt from defaulters as quickly as possible.

NARASIMHAN COMMITTEE II, 1998

The Narasimhan Committee was established once more in 1998 in response to worries about the growing amount of non-performing assets (NPAs) in the banking system. On the Committee's recommendation, the "Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest" (SARFAESI, 2002) Act was passed in 2002.

The Act provided banks and other financial organizations with extensive power to recover non-performing secured loans. Since the DRTs had not yet proven to be as successful in promoting recovery as expected, the SARFAESI Act provided an alternative route for recovery. Without a court order, the Act allowed banks and financial institutions to seize the collateral security. Its objective was to reduce the growing non-performing assets (NPA) balances of banks and other large public financial institutions.

However, SARFAESI only granted exceptional enforcement capabilities to banks, a particular class of secured creditors. Additionally, under the SARFAESI, enforcement actions take precedence over the BICR procedure if approved by 60% of the creditors' value. The winding-up procedure under the Companies Act or SICA would be delayed with the use of the SARFAESI.

ERADI COMMITTEE (1999)

To improve transparency, the Government of India formed a high-level committee in 1999 under the direction of Justice VB Eradi to conduct investigations and provide recommendations on whether it would be beneficial to amend the current law about company winding up.

The Committee concludes that the concept behind insolvency laws should not only address the speedy liquidation of assets after examining international laws and provisions regarding insolvency. In India, the first step should be to determine how to safeguard and repair the businesses.

The Committee also recognized that India's current insolvency regulations urgently need to be brought into compliance with international law, since differences in national laws and practices can have serious consequences for a business that has assets and liabilities in multiple nations. The Committee also suggested that instead of any High Court currently handling company liquidations, the "National Company Law Tribunal" (NCLT) should be given jurisdiction, power, and authority.

In addition, the Committee recommends that the authorities designate individuals with solid corporate expertise and experience, as well as those who are members of the Institute of Company Secretaries of India (ICSI), the Institute of Chartered Accountant of India (ICAI), the Institute of Cost and Work Accountants of India (ICWAI), Bar Councils, or corporate managers.

N L MITRA ADVISORY COMMITTEE (2001)

Specifically, the N L Mitra Advisory Committee examined conflicting court decisions about the criminalization of justice. Tribunal justice is a special characteristic of the civil law system. This rivalry between the two systems is not new in India. Since standard law systems have adopted administrative justice and the administrative authority structure for managing various state functions, the common law and civil law systems are now coming closer to one another. Conversely, the judicial process and accusatory system are features of the civil law system.

Thus, the entire topic of the advisory group's discussion was how to prevent dualism from occurring in the system so that a company's liquidation process can be finished as soon as possible. Therefore, the group proposed the following two approaches to this:

1. Create a National Tribunal that is governed by the High Court and has multiple benches. It would therefore be able to receive and handle all petitions of bankruptcy or insolvency and company restructuring, with an appeal file in the High Court and Special Leave Petitions in the Apex Court; and
2. Every high court has a bench dedicated to bankruptcy cases, allowing for speedy liquidation through insolvency and reorganization processes. The only way to appeal is to petition the Apex Court for special leave.

The advisory body also concluded that the current court proceedings would be strengthened by the creation of a professional body of experts capable of handling bankruptcy-related issues or proceedings. This will accomplish the goal of expediting legal proceedings.

COMMITTEE UNDER THE CHAIRMANSHIP OF JJ IRANI (2005)

On December 2, 2004, the Ministry of Corporate Affairs (MCA) formed a group to offer recommendations and ideas for changes to the Companies Act, of 1956. The goal is to create a law or statute that is compact enough to address changes in the national and international environment, allow for the adoption of widely accepted best practices, and enable rapid evolution by allowing for sufficient flexibility and creating innovative arrangements in response to business models.

The effort to provide India with a modern company law that would meet the economy's needs in a cutthroat global marketplace was admirable. The following were the committee's recommendations:

1. In the rehabilitation and liquidation process, the Insolvency Tribunal should play a general, nonintrusive, and supervisory role. It must step in further only when resolving disputes through a fast-track process. The Tribunal ought to resolve disputes nearly while adhering to established legal norms of procedural fairness.
2. The Tribunal should set high standards and maintain the level of accountability, fairness, and impartiality that the public requires. For the Tribunal to function effectively, its members and president should be selected to bring a variety of skills to the table.
3. Addressing the issues brought before the Tribunal will require specialized knowledge. The statute shall provide a sufficient qualification standard for appointment to the Tribunal and the training and continuing education of judges and members.
4. The establishment of regulations should guarantee simple access to court records, court proceedings, financial and debtor data, and other public data.
5. To make an accurate assessment and provide further improvements, creating and implementing standards for evaluating the Tribunal's capabilities, output, and services is imperative.
6. The Tribunal will possess a well-defined range of authority and realistic resources to enforce its decisions. It should have the power required to end abusive or illegal behavior.

RECENT EVOLUTION

The current insolvency and bankruptcy law in India has undergone many changes, partly based on suggestions from various committees, including more recent and pertinent ones, based on the suggestions of various committees.

T. TIWARI COMMITTEE

The Reserve Bank of India (RBI) expressed concerns in 1981 about the non-performing assets and fund blockages of sick industrial companies, which resulted in losses in revenue, employment, and production.

To solve this problem, a committee led by T. Tiwari was established, and the Sick Industrial Companies (Special Provisions) Act 1985 (SICA) was proposed as a means of identifying and implementing corrective and preventive measures promptly. The creation of a Board for Industrial and Financial Reconstruction, however, finished under its goals.

JUSTICE V.B. BALAKRISHNA ERADI COMMITTEE

In order to oversee the recovery and rehabilitation of failing industrial companies, the National Company Law Tribunal (NCLT) was established in response to the 1999 Tiwari Committee's recommendations. A voluntary winding up of firms, adoption of the UNCITRAL Model Law for Cross-Border Insolvency, changes to the Companies Act 1956, and criteria for corporate sickness, such as the incapacity to pay debts, were also recommended in the report.

N L MITRA COMMITTEE

The Advisory Group on Bankruptcy Laws was established in 2001, with Dr.N.L.Mitra serving as its head. The RBI appointed this committee. It made several recommendations for changes to bankruptcy law, one of which was the convergence of all the various bankruptcy legislation into a distinct code. However, nothing was done.

J. J. IRANI COMMITTEE

The J.J. Irani Committee Report was subsequently prepared in 2005, with the prime objective of examining and revising Company Law, especially to create a transparent framework for international insolvency and restructuring procedures. It recommended amending the law so that the process of restructuring and liquidation would be expedited. The recommendations were meant to provide a unified structure for a specialized adjudicatory authority that would deal with corporate insolvency.

REFORMS COMMITTEE ON THE LAW OF BANKRUPTCY (2014)

Establishing the "Bankruptcy Law Reforms Committee (BLRC) 2014,"[12] a reforms committee on bankruptcy laws headed by Dr. TK Viswanathan was a significant step taken by the Ministry of

[12] Bankruptcy Law Reforms Comm., Report of the Bankruptcy Law Reforms Committee, Volume I: Rationale and Design (Nov. 2015) (India).

Finance to change the bankruptcy laws. In contrast to the current system, this committee was created to create a bankruptcy code that would apply to both individuals and non-financial institutions in their entirety. The committee focused on the following topics in its report and draft proposal on the Insolvency and Bankruptcy Code, which was submitted in November 2015:

1. According to the report, insolvency will be resolved more quickly and with less loss while more debt financing across instruments is recovered.
2. The report suggested uniform legislation, which implies that all current laws of bankruptcy and insolvency should be considered. It suggested amending six other enactments and repealing the two laws. Therefore, the Provincial Insolvency Act of 1920 and the Presidency Towns Insolvency Act of 1909 were repealed. Following amendments, the laws were referred to as:

(i) Companies Act of 2013, (ii) Sick Industrial Companies (Special Provisions) Repeal Act of 2013, (iii) Limited Liability Partnership Act of 2008, (iv) Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act of 2002, (v) Recovery of Debts due to Banks and Financial Institutions Act of 1993, and (vi) Indian Partnership Act of 1932.

3. The Committee had established certain tribunals to handle the complaints related to bankruptcy and insolvency:

The National Company Law Tribunal, which will have authority over the winding up of LLPs and companies as well as the insolvency resolution process; and (ii) the "Debt Recovery Tribunal," which will have authority over both the insolvency and bankruptcy resolution process for individuals.

4. The Committee proposed the establishment of the Insolvency & Bankruptcy Board of India (IBBI) as a regulator or controller to oversee and manage the nation's entire insolvency resolution process (IRP). To create a suitable system and regulations for the liquidation process nationwide, IBBI will oversee all professional organizations and information utilities in the nation that are dealing with the bankruptcy and insolvency process.
5. The company suggested a speedy IRP and time-limited discussions between the lender and the borrower. It was suggested that the entire IRP be completed in 180 days. The 180 days may be extended up to 90 days if the situation becomes more complicated, but this requires the approval of 75% of creditors.
6. The Committee had proposed that the entire IRP be supervised by a certified insolvency specialist. During the IRP, the expert would supervise and manage the debtor's assets to ensure their safety during discussions.

7. The Committee had proposed forming a committee of creditors, with the number of votes each debtor would receive based on their financial obligations.
8. To create a revival or repayment plan, the report recommended that the creditor's committee hold talks with the debtor.
9. The procedure for individuals and companies to deal with insolvency was explained in the paper. The process can be initiated by the creditors or the debtor.

DRAFTING AND ENACTMENT OF THE IBC

The Indian bankruptcy resolution system was regulated by the Sick Industrial Companies Act, of 1987, which sought to encourage the recovery of financially distressed businesses, before the creation of the Insolvency Code ("code"). The board for industrial and financial stress was established more easily owing to the statute.

Through the Act, the Board for Industrial and Financial Reconstruction (BIFR) was established, tasked with identifying financially troubled businesses and assisting in their recovery. Despite the admirable idea, the act's many contradictions were the main reason it didn't accomplish its goals. The insolvency and bankruptcy legislation were then put into effect to completely topple the previous government and provide a more dependable and effective legal framework for the resolution of indebted businesses.

An object of insolvency lawn – Indian context

1. The law of insolvency is a social legislation that has been enacted to provide respite and relief to the honest debtors who due to any unfortunate or unforeseen circumstances become incapable of paying back their debts.
2. Its object is also to secure the distribution of a debtor‘s estate among his creditors equitably and thereafter to release him under certain conditions from liability in respect of his debts and obligations.

In Yenamulla Malludora v. P. Seetharatnam (AIR 1966 SC 918),[13]

Supreme Court of India observed,

The goal of the insolvency legislation is to take ownership of an insolvent person's property before they can spend it and divide it among their creditors. However, not every debtor who has taken out more debt than he is capable of paying or even one whose property is seized in order to satisfy his debts is susceptible to this kind of control. Certain actions that are referred to as acts of

[13] Yenamulla Malludora v. P. Seetharatnam, AIR 1966 SC 918.

insolvency and that grant his creditors the power to petition the court for an adjudication mark the beginning of the Court's jurisdiction.

BASIC FEATURES OF THE NEW INSOLVENCY AND BANKRUPTCY CODE 2016

Corporate Insolvency Resolution Process:

- Who can initiate insolvency process
- default
- There are two categories of creditors: operational and financial.
- Four pillars under IBC 2016:
- Adjudicating Authority, Information Utility, Insolvency and Bankruptcy Board of India (IBBI), Insolvency Professional
- Committee of Creditors,
- Moratorium
- Reports of BLRC 2015 (relevant parts)
  -In Pioneer Urban Land and Infrastructure Limited v. Union of India (2019)[14]
- *Specific issues:*
- Liability of personal guarantor under IBC
- Pre-packaged Insolvency Resolution process
- Applicability of Limitation Act for insolvency issues under IBC
- Whether home buyers are financial creditors.
- Time limits for completion of CIRP

WHY NEW LEGISLATION IS REQUIRED

- No single law in India
- Multiple legislations - Sick Industrial Companies Act, 1985, Recovery of Debut Due to Banks and Financial Institutions Act, 1993, Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Companies Act, 2013.
- **(**conflict between SARFAESI Act and IBC Indian Overseas Bank vs M/S RCM Infrastructure Ltd.[15] on 18 May 2022) SC, 2022 SCC OnLine SC 634
- Many Resolutions Fora

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[14] Pioneer Urban Land and Infrastructure Ltd. v. Union of India, Writ Petition (Civ.) No. 43 of 2019.
[15] Indian Overseas Bank v. RCM Infrastructure Ltd., (2022) SCC OnLine SC 634 (India).

- Process (before 2016) is inadequate, ineffective,
- Need for an effective legal framework for timely resolution – development of credit market — improve ease of doing business – facilitate more investment
  - Necessity to distinguish between commercial decisions and judicial intervention
  - World Bank data – 4.3 years for creditor to get from insolvent company (2018) – *now it is 1.6 years (2019)*

According to World Bank Ease of Doing Business reports, India's ranking in 2019 in terms of 'resolving insolvency' has moved to 52nd from 108th. This development has been credited to the Insolvency and Bankruptcy Code, of 2016. Also, the recovery rate under the nascent statute is 42.5% for the previous year, while the rates under SARFESI and DRTs are 14.5% and 3.5%, respectively.

The IBC code aims to combine the principles of value maximization, insolvency resolution, and reorganization. Although the goal of recovery is not stated alongside other items, it is generally assumed to be a recovery mechanism in the current situation. The data about insolvency resolution indicates that the statute still has a lot of work to do, aside from the recovery component.

Only 1604 cases have been resolved out of the 3774 applications for insolvency resolution. It is even more disheartening to note that, of all cases that are resolved, 58.9% of them end in liquidation.[16] The question is, Why was IBC enacted in the first place? is relevant given the information previously mentioned. Has it succeeded in achieving the goals outlined in the code? and What is the current resolution scenario under it?

- BLRC constituted in 2014

why we need reforms

- Deficiencies of old laws on insolvency
- longest times and highest costs by world standards -while repaying dues on debt
- Financial failure and Business failure
- Better resolution of disputes between the debtor and creditors
- Avoid destruction of value
- allocate losses

[16] https://factly.in/data-review-of-the-insolvency-bankruptcy-code-ibc/

UNCITRAL Legislative Guide on Insolvency,

objectives for a regime of collaborative insolvency resolution (UNCITRAL, 2005):[17]

1. Market certainty is provided to encourage productivity and expansion.
2. Maximization of value of assets.
3. Striking a balance between liquidation and reorganization.
4. Ensuring that creditors in comparable circumstances receive fair treatment.
5. Offering immediate, efficient, and unbiased insolvency resolution.
6. Preserving the insolvency estate to enable fair allocation
7. Ensuring an insolvency legislation that is clear, expected, and includes incentive for information collection and distribution.
8. Recognition of creditor rights and clear rules for priority of claims.
9. Establishment of a framework for cross-border insolvency

Committees on Insolvency in India

- Eradi Committee (2000) (national tribunal be set up with benches all over India)
- N.L. Mitra Committee (2002)-comprehensive code – Streamlining Companies Act, Repeal of SICA)
- Irani Committee Report (2005)
- Guidelines of RBI
- BLRC (2014)

UNCITRAL Legislative Guidelines

- Code has been divided into 5 parts
- Part I: preliminary provisions
- Part II insolvency resolution and liquidation of corporate persons
- Part III: Resolution of insolvency and bankruptcy for both individuals and partnerships
- Part IV: regulation of insolvency professions
- Part V: miscellaneous provisions
- Supreme Court in Manish Kumar V Union of India (2021 SCC on line 30)[18] IBC is *not enacted* to provide for a manner of recovery of debts by the creditors. (to use the law by

[17] https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/05-80722_ebook.pdf

[18] Manish Kumar v. Union of India, (2021) SCC Online SC 30.

small creditors as a debt collection tool, thereby undermining its objective)

- It is to provide for insolvency resolution.
- The IBC's objective is to safeguard both creditors' and borrowers' rights.

THE FEATURES AND DIFFICULTIES OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016

In India, there were several overlapping laws and adjudicating agencies that dealt with both individual and corporate insolvency. There were four main The Recovery of Debts due to Banks and Financial Institutions Act 1993 (RDDBFI Act), the Securitization, Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (SARFAESI), the Companies Act 1956/2013, and the Sick Industrial Companies (Special Provisions) Act 1985 (SICA) were among the laws that addressed corporate insolvency.

As a result, the procedure was complicated and delayed by four distinct adjudicating organizations: the High Courts, the Company Law Board, the Board for Industrial and Financial Reconstruction (BIFR), and the Debt Recovery Tribunals (DRTs). These authorities had overlapping jurisdiction.

India aimed to introduce an integrated legislation on insolvency, similar to the US Bankruptcy Code. The insolvency and bankruptcy laws in India have undergone several amendments to address immediate problems. The most recent attempt was the constitution of BLRC and the IB Code 2016, which is a comprehensive insolvency legislation for all companies, partnerships, and individuals, except financial firms.

The winding up of companies in India was previously regulated by the Companies Act 1956 and court-supervised. However, after the Companies Act 2013 and IB Code 2016, the procedure is now under the supervision of the National Company Law Tribunal (NCLT).

The Provincial Insolvency Act of 1920 and the Presidency Towns Insolvency Act of 1909 were repealed by the Insolvency and Bankruptcy Code,[19] which also changed 11 other pieces of legislation:

Section of IBC,2016	Amendment Act	Schedule of IBC,2016
245	Indian Partnership Act,1932	I

[19] Insolvency and Bankruptcy Code, 2016, § 243, No. 31, Acts of Parliament, 2016 (India).

246	Central Excise Act 1944	*II*
247	Income Tax Act 1961	III
248	Customs act 1962	IV
249	Recovery of debts due to the Banks and Financial Institutions Act 1993	V
250	Finance act 1994	VI
251	Securitization and reconstruction of financial assets and enforcement of security interest act 2002	VII
252	Sick industrial companies (special provisions) repeal Act 2003	VIII
253	Payment and Settlement Systems Act 2007	IX
254	Limited Liability Partnership Act,2008	x
255	Companies Act,2013	XI

The main feature of the Code is that it declares a moratorium followed by a public notice. This allows the creditors of the company to analyze the viability of a corporate debtor and then come up with a plan for its revival; failing which, it can be liquidated speedily.

Additionally, the Code allows for time-bound, rapid-resolution procedures.[20]

The issues surrounding the overlap of jurisdictions have been eliminated with the implementation of the Code. There is currently only one authority, DRT for individuals and NCLT for corporations.[21]

[20] Insolvency and Bankruptcy Code, 2016, § 12, No. 31, Acts of Parliament, 2016 (India).
[21] Insolvency and Bankruptcy Code, 2016, § 60, No. 31, Acts of Parliament, 2016 (India).

The Code stipulates a two-phase procedure: [22]The process of resolving insolvency is the first stage. Financial creditors, operational creditors, or the corporate debtor itself may apply insolvency resolution. [23]A minimum default of Rs. 1 lakh is required to start the bankruptcy resolution process; the government may increase this amount to Rs. 1 crore.

Before the Code's passage, insolvency was not defined as such; instead, the inability of the company to pay its debts was the sole need for starting the winding-up process under the Companies Acts of 1956 and 2013. The second phase is the liquidation process, which is carried out if the bankruptcy resolution plan fails or the company's financial creditors choose to shut it down.

The Code establishes an institutional structure that includes adjudicatory mechanisms, information utilities, insolvency professional agencies, and a new regulator, the Insolvency and Bankruptcy Board of India.[24] These are the authorities and intermediates who will support a legal, time-bound process for liquidation and insolvency resolution.

Even though the Code has brought about new, crucial changes to the insolvency/liquidation regime, there are still some practical implications to its implementation, such as managing accumulated non-performing assets; ensuring prompt debt recovery or winding up, whichever is useful; and balancing the interests of various credit categories, such as financial and operational, secured and unsecured, etc.

Provisions requiring prior consent from creditors before insolvency professionals sell the assets of corporate debtors may make it difficult for them to carry out their duties. It remains to be seen if the protections offered by the Code are appropriate to fulfill the objective behind its enactment.

KEY AMENDMENTS TO THE IBC

The Insolvency and Bankruptcy Code (IBC), 2016, which offers an organized and time-bound resolution process, has fundamentally changed India's bankruptcy environment. Since its passage, many amendments have been proposed to improve creditor rights, handle new issues, and expedite the insolvency resolution procedure. This section looks at the main IBC modifications and how they affect Indian corporate insolvency.

[22] Part II of the IB Code provides for Insolvency Resolution and Liquidation for Corporate Persons
[23] Section 6 of the IB Code 2016
[24] Section 188 of the IBC,2016 provides for establishment and incorporation of the IBBI.

INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) ACT, 2017

Acceptance of Homebuyers as Financial Creditors: Under Section 7 of the IBC, the modification permitted homebuyers to start corporate insolvency resolution procedures (CIRP) as financial creditors.

Reduction in Committee of Creditors (CoC) Voting Threshold: In order to speed up resolution procedures, the CoC's voting threshold was lowered from 75% to 66% for important concerns and 51% for routine matters.

INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) ACT, 2018

Promoters' ineligibility (Section 29A): Prevents associated parties, intentional defaulters, and defaulting promoters from placing bids for their businesses during insolvency proceedings.

Operational Creditor Rights: By mandating a just and equitable allocation of resolution funds, the rights of operational creditors were strengthened.

Withdrawal of Insolvency Applications: Section 12A permits the withdrawal of insolvency petitions, provided that the CoC gives its 90% consent.

INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) ACT, 2019

Time-Bound Resolution Process: A rigorous 330-day timeframe was set for completing the CIRP, which included timelines for litigation.

Operational Creditors' Priority: Improved safeguards for operational creditors when allocating settlement funds.

Group Insolvency Framework: Added clauses to address insolvency cases involving companies that belong to the same corporate group.

INSOLVENCY AND BANKRUPTCY CODE (SECOND AMENDMENT) ACT, 2020

Raised obstacles for Initiation: To protect micro, small, and medium-sized businesses (MSMEs) from unnecessary bankruptcy procedures, the default barrier was raised from Rs. 1 lakh to Rs. 1 crore.

Pre-Packaged Insolvency Resolution Process (PPIRP) Introduction: PPIRP was introduced under Section 54A to give MSMEs an easier and less costly means to resolve their insolvency.

IBC Suspension During COVID-19: To lessen the financial burden of the pandemic, new bankruptcy proceedings for defaults that took place between March 25, 2020, and March 24, 2021, were suspended.

INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) ACT, 2021

Pre-Packaged Insolvency Implementation: facilitated a speedier resolution by giving MSMEs a pre-negotiated resolution package.

Creditor Empowerment: Made it easier for financial creditors to approve pre-packaged resolutions.

INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) ACT, 2022

Cross-Border Insolvency Framework Introduction: In accordance with the UNCITRAL Model Law on Cross-Border Insolvency, this modification included clauses to address cross-border insolvency cases. It ensures thorough resolution of insolvency cases involving assets and creditors across different jurisdictions by facilitating collaboration between Indian and foreign courts and insolvency professionals.

Strengthening the Role of the Committee of Creditors (CoC): The CoC now has more authority to approve resolution plans and make important decisions during the Corporate Insolvency Resolution Process (CIRP) because of to an expansion of its decision-making capabilities.

INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) ACT, 2023

Launch of a Unique Structure for MSMEs (micro, small, and medium-sized businesses): A streamlined insolvency resolution procedure was implemented in recognition of the particular difficulties faced by MSMEs, enabling a more rapid and affordable resolution. A debtor-in-possession model under the supervision of a resolution professional is one example of this.

Improved Protection for Workers and Employees: The amendment protected workers' and employees' interests in insolvency proceedings by guaranteeing that payments owed to them are given importance during the liquidation process.

INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) ACT, 2024

Individual Insolvency Framework Implementation: This amendment made the regulations relating to individual insolvency effective and gave people an organized approach to deal with their insolvency problems. For individuals and partnership firms, it contains rules for bankruptcy, insolvency settlement, and a fresh start process.

Establishment of Conciliation and Mediation as Pre-Resolution Procedures: With the goal of reaching amicable settlements before to the start of official insolvency proceedings, the amendment made mediation and conciliation optional pre-resolution procedures in order to support alternative dispute resolution mechanisms.

With the goal of strengthening India's insolvency system by tackling real-world issues and implementing international best practices, these revisions represent the IBC's dynamic evolution.

CHALLENGES DURING THE EVOLUTION OF THE IBC

The framework for insolvency resolution in India has undergone major change as a result of the Insolvency and Bankruptcy Code (IBC), 2016. But in spite of its achievements, a number of difficulties came to light as it has developed. These difficulties have affected the insolvency resolution process's effectiveness, certainty, and fairness.

1. OVERBURDENED TRIBUNALS AND JUDICIAL DELAYS (NCLT/NCLAT DELAYS)

The backlog of cases before the National Company Law Appellate Tribunal (NCLAT) and the National Company Law Tribunal (NCLT) has been growing. The goal of a time-bound resolution process has been undermined by the significant postponements caused by excessive dependency on these tribunals for insolvency remedies. The adjudicatory mechanism is under additional strain due to the rise of case pending cases following COVID-19.

2. LOW CIRP RECOVERY RATES

Value maximization and effective insolvency resolution were the main goals of the IBC when it was first implemented. In reality, though, recovery rates have fallen short of estimates. Instead of being revived, many cases that go through the Corporate Insolvency Resolution Process (CIRP) wind up in liquidation, which destroys company value and eliminates opportunity for employment.

3. REGULAR CHANGES MAKING THINGS UNCERTAIN LEGALLY

The IBC has been amended several times since it was passed (2018, 2019, 2020, 2021, 2022, 2023, and 2024). Although the goal of amendments is to fill in the gaps, their frequent occurrence has led to legal ambiguities, which makes it challenging for investors and companies to adjust to the changing insolvency environment. As parties contest new terms, this ongoing evolution also raises the danger of litigation.

4. INSUFFICIENT SPECIALIZED KNOWLEDGE AMONG RESOLUTION PROFESSIONALS (RPS)

The management and resolution of insolvency proceedings heavily relies on the work of Insolvency Professionals (IPs). Nevertheless, a lot of RPs lack sector-specific knowledge, which results in ineffective solutions. Furthermore, the decision-making process is further delayed and the efficacy of insolvency resolution is reduced when professionals with little managerial and financial experience are appointed.

5. CROSS-BORDER INSOLVENCY'S COMPLEXITIES

A specific cross-border insolvency framework is still lacking, despite India's insolvency legislation being in line with the UNCITRAL Model Law on Cross-Border Insolvency. As a result, it is challenging for businesses with global creditors and assets spread across several jurisdictions to effectively settle their insolvency proceedings. International trade and foreign investment face obstacles by unclear cross-border insolvency procedures.

6. DILUTING THE AUTHORITY OF THE COMMITTEE OF CREDITORS (COC)

A key player in the process of resolving insolvency is the Committee of Creditors (CoC). However, subsequent changes (2023 and 2024) have reduced the autonomy of creditors in decision-making by introducing government intervention. Furthermore, unequal treatment in CIRP settlements has resulted from the power disparity between operational creditors (like suppliers and vendors) and financial creditors (like banks).

7. DIFFICULTIES IN RESOLVING INDIVIDUAL AND MSME INSOLVENCIES

Micro, Small, and Medium-Sized Enterprise (MSMEs) insolvency resolution has not been adequately covered by the IBC. The 2021-introduced pre-packaged insolvency resolution process (PPIRP) is still not being used to its full potential. Furthermore, small business owners and sole proprietors find it challenging to resolve financial difficulties due to the incomplete implementation of individual insolvency resolution systems.

8. DIVERGENT COURT INTERPRETATIONS

There is legal ambiguity as a result of the Supreme Court and other High Courts' contradictory rulings on insolvency cases. The function of personal guarantors in CIRP, the applicability of moratorium laws, and the rights of homebuyers as financial creditors are among the important issues that have been interpreted differently by judges. The predictability of insolvency outcomes is impacted by this difference, which makes it more difficult for companies to plan their restructuring plans.