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Evolution Of Insolvency Laws And Key Features Of Insolvency And Bankruptcy Code, 2016

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Abstract: This research traces the evolution of insolvency laws in India, culminating in the enactment of the Insolvency and Bankruptcy Code (IBC), 2016. It examines the fragmented and ineffective pre-IBC legal framework and highlights the significant role played by the Bankruptcy Law Reforms Committee (BLRC) in shaping a unified insolvency regime. The study further explores the institutional architecture and key features of the IBC, such as time-bound resolution, creditor-driven processes, and the establishment of specialized adjudicating authorities. By analyzing these aspects, the research underscores how the IBC has transformed India's insolvency landscape, promoting efficiency, accountability, and financial stability.

Index Terms - Insolvency and Bankruptcy Code, IBC 2016, Insolvency Laws in India, Bankruptcy Law Reforms Committee, Pre-IBC Framework, Corporate Insolvency Resolution Process, Insolvency Professionals, NCLT, Financial Distress, Institutional Framework, Creditor Rights, Debt Resolution, Legal Reforms in India, Insolvency Ecosystem, Economic Recovery.

I. INDIA'S PRE-IBC INSOLVENCY STRUCTURE

The insolvency system of India, prior to the enforcement of the Insolvency and Bankruptcy Code (IBC), 2016, was multi-forum based, fragmented in nature, and at times self-contradictory to implement. The industry was regulated through several statutes, with a resultantly overlapping jurisdiction, procrastination of resolution, and inefficient recovery mechanism of debts. The legislations' heterogeneity, such as the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI), Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI), and the Companies Act, brought fragmented and extended insolvency procedures. These acts were implemented based on some economic problems at a particular time but were unable to provide a system of resolution that was time-bound and holistic in approach. This statutory fragmentation necessitated one single insolvency regime, and that finally came with the arrival of the IBC.

SICA, 1985

Sick Industrial Companies (Special Provisions) Act, 1985, was enacted to the extent of its implementation to acknowledge and revive sick industrial companies suffering from financial trouble, ultimately to salvage employment and revitalize potentially profitable enterprises. The Act also instituted the Board for Industrial and Financial Reconstruction (BIFR) as a quasi-judicial body to execute the process. The moment a firm was categorized 'sick,' its case would be forwarded to the BIFR, who would advise revival schemes or liquidation as a final alternative. Though legislative reasoning of SICA was right, it became self-destructive in practice. The Act extended promoters the benefit of the "debtor-in-possession" method under which they were to keep their management control undiluted even when the company was being revived irrespective of the health of the firm. This model was grossly misused, with most promoters applying the procedural safeguards to indefinitely postpone payment or restructuring, thus thwarting creditors' interests. The lack of tight timeframes and a failure of accountability mechanisms for promoters added to the problem, making SICA generally ineffective as a recovery or rehabilitation mechanism.[1]

RDDBFI Act, 1993

The Recovery of Debts Due to Banks and Financial Institutions Act, 1993, was brought into force as a reaction to the increasing non-performing assets (NPAs) of Indian banks. It resulted in the establishment of Debt Recovery Tribunals (DRTs) and Debt Recovery Appellate Tribunals (DRATs) for the expeditious adjudication of bank and financial institution claims. The aim of the RDDBFI Act was to establish a streamlined and quick recovery mechanism for lenders. Even though the Act has given a specialized platform to financial creditors, it has not dealt with corporate insolvency in an integrated way. It has focused more on recovery than resolution and has not considered the wider aspects of restructuring or turnaround of companies. Also, DRTs became congested soon with piling up of litigation and had poor infrastructure and staff. This brought about the lagging process of adjudication and created mammoth backlogs. Therefore, by virtue of its mandate to upgrade the recovery ambiance, RDDBFI did not produce meaningful results on the account of time-based and effective disposition of troubled assets.[2]

SARFAESI Act, 2002

Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, was another bank-friendly and financial institution-friendly legislation. It enabled the creditors to enforce security interests outside the courts of law, but only where security debts were in question. The Act empowered the lenders to recover dues by seizing secured assets and selling them in an auction process, doing away with the necessity of lengthy legal proceedings. Yet, even after handing over the creditors such a strong weapon, the sweep of SARFAESI was limited. It did not extend to unsecured creditors, operational creditors, or marginal borrowers, and thus could not be used to tackle holistic corporate insolvency in any shape or form. Also, operationally, there was resistance by the borrowers in terms of legal interventions as well as valuation disputes. SARFAESI did not also have any mechanism for revival or rehabilitation of distressed firms. There was a sole focus on asset recovery, without stretching systemic solutions to insolvency resolution, and piecemeal enforcement resulted in value destruction of assets.[3]

Companies Act Insolvency Provisions

The 1956 Companies Act and the 2013 Act both made provisions for winding up companies on grounds of insolvency. Both these provisions were liquidation oriented and were meant to wind up ill units instead of reviving them. Winding-up petitions were made before the High Courts under the 1956 Act, which was administered through Company Law Boards (and subsequently the National Company Law Tribunal under the 2013 Act). The procedure was slow judicially, procedure-bound, and plagued by gigantic delays. Courts had no technical expertise in commercial restructuring on their part, and insolvency cases once competed with other civil and criminal cases for hearing. There was no centralized or coordinated process for creditors to push a unified solution strategy. The provisions of the Companies Act did not sufficiently take precedence of creditors and ensure maximum claims, which resulted in disorganized and protracted proceedings. In this regard, such provisions were not viewed to appropriately deal with large-scale insolvency of companies in a dynamic financial environment.[4]

Combined, the legislations created a patchwork of Indian insolvency law that was not providing time-bound, predictable, and transparent results. The inefficiencies and inconsistencies led the government to contemplate overall reform. The enactment of the IBC through legislation in 2016 was a paradigm shift with one, creditor-in-control, time-bound framework to address insolvency in a structured and systemic way.

II. INSOLVENCY AND BANKRUPTCY CODE ENACTMENT, 2016

IBC enactment, 2016 was a watershed in Indian financial and judicial history. The Code consolidated and cohered India's erstwhile scattered regime on insolvency into a seamless manner that erased a weak regime of undue delays, overlapping jurisdictions, and minimal recovery returns. The path to the IBC was based on the understanding that India's insolvency system needed to be overhauled to its core to mirror the vision of a new, emerging economy. The low recovery rates and protracted resolution times under earlier frameworks

[1] S. Rajagopala Reddy, Law Relating to Sick Industrial Companies (3rdedn, LexisNexis 2008) 102.
[2] M.L. Tannan, Banking Law and Practice in India (28th edn, LexisNexis 2021) Vol. 2, 1450.
[3] R.K. Gupta, SARFAESI Act: Law and Practice (2nd edn, Taxmann Publications 2015) 66–68.
[4] Avtar Singh, Company Law (18th edn, Eastern Book Company 2019) 1021.

were identified as the main roadblock to credit growth, investor confidence, and economic efficiency overall. The IBC was therefore formulated not only as an insolvency resolution law, but also as a credit discipline enhancing instrument, as well as a promotion of entrepreneurship and improvement of the World Bank's Ease of Doing Business index ranking of India.

The intellectual underpinnings of the IBC were established by the Bankruptcy Law Reforms Committee (BLRC), which the Ministry of Finance set up in 2014. The committee, led by Dr. T.K. Viswanathan, conducted a comprehensive review of domestic and international insolvency laws and suggested a single-unified legal framework to focus on time-bound resolution, value maximization of assets, and fair treatment of stakeholders. The BLRC noted that Indian insolvency legislation was unclear in distinguishing between business failure and bad faith, and that delay in adjudication caused loss of asset value that in turn injured debtors and creditors. It hence proposed a framework of predictability, equity, and institutional efficiency. The BLRC's last report, which was submitted in November 2015, became the lead draft for the IBC legislation.[5]

The Code was introduced in Lok Sabha on 5th May 2016 and ratified by Lok Sabha on 5th May 2016. The Rajya Sabha ratified the Code on 11th May 2016. The Code came into effect through presidential assent on 28th May 2016 and was gazetted. The Code was welcomed due to it being a unified and integrated insolvency law approach in dealing with corporate entities, partnership firms, and individuals in a single legislation. Its most notable aspect was the move away from a debtor-in-possession regime, as witnessed in previous regimes such as SICA, to creditor-in-control. This meant that once default had been noticed, the creditors could trigger a Corporate Insolvency Resolution Process (CIRP) and replace the management of the debtor company, placing it in the hands of an insolvency professional on the eve of the adjudicating authority.[6]

Yet another transition that was required by the IBC was its orientation towards resolution and not towards liquidation. Whereas earlier acts were primarily geared towards recovery or winding up, the IBC had its orientation on saving the economic value of defaulting companies by encouraging their revival through restructuring and infusion of funds. The aim was to enable provision for a process of transfer of assets of a failing firm into more capable hands without loss of value and economic stabilization. The Code mandated strict timeframes for the resolution process—first 180 days, later extendable by 90 days—to prevent that the proceedings were pending forever, as in earlier legislations.[7]

Institutional reforms went hand in hand with legislative reform. The Code envisaged the creation of such fundamental institutions as the Insolvency and Bankruptcy Board of India (IBBI) to be the regulator for insolvency professionals (IPs), insolvency professional agencies (IPAs), and information utilities (IUs). The National Company Law Tribunal (NCLT) and its appellate tribunal, the National Company Law Appellate Tribunal (NCLAT), were instituted as the adjudicating tribunals for corporate insolvency cases, in lieu of the jurisdiction of the High Courts and BIFR. The Debt Recovery Tribunal (DRT) and Debt Recovery Appellate Tribunal (DRAT) were responsible for insolvency cases of individuals and partnerships. This institutional change significantly reduced the multiplicity of forums and improved institutional accountability[8]

The legislative framework of the IBC was inspired by global best practices and well-suited to the Indian economic and legal context. In designing the Code, the BLRC and legislators reviewed insolvency laws in other countries like the United States (Chapter 11), the United Kingdom (Insolvency Act, 1986), and Singapore (Insolvency, Restructuring and Dissolution Act, 2018). But the Indian framework was exceptional in its focus on timelines, market-driven results, and judicial minimal intervention. Although courts remained watchdogs, especially through the NCLT, their focus had moved to enabling creditors and professionals to drive the process within statutorily defined limits. This realignment was especially essential for a system long plagued by judicial delays and varying interpretations.[9]

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[5] World Bank Group, Doing Business Report 2016: Measuring Regulatory Quality and Efficiency (World Bank Publications 2016) 88.

[6] Bankruptcy Law Reforms Committee, The Report of the Bankruptcy Law Reforms Committee Volume I: Rationale and Design (Ministry of Finance, Government of India, November 2015) 7–10.

[7] V. Ramachandran, Insolvency and Bankruptcy Code: Law and Practice (2nd edn, Bharat Law House 2021) 125–126.

[8] Avtar Singh, Company Law (18th edn, Eastern Book Company 2019) 1080.

[9] Insolvency and Bankruptcy Board of India, Annual Report 2020–21, https://ibbi.gov.in accessed 10 April 2025.

The IBC was introduced also with the aim to make India a business-friendly jurisdiction. India had a low ranking in the World Bank Ease of Doing Business index prior to the Code, especially under the "Resolving Insolvency" factor. The IBC was able to transform this ranking upwards very quickly, from 136 in 2016 to 52 in 2019. This was not just a statistical change—it was a developing view among investors both in and outside India that India had finally instituted a credible and transparent insolvency framework. The brilliant success stories like the resolution of Essar Steel, Bhushan Steel, and others had shown the efficacy of the Code in recovering large, distressed assets and restoring value to stakeholders.

But what needs to be noted is that the coming into force of the IBC did not place everything on its head from day one. During the initial years, the Code underwent interpretational vagaries, hostility by entrenched promoters, and congested tribunals. Besides that, the global economic downturn in 2019 and the subsequent COVID-19 pandemic required various changes and temporary exemptions of crucial provisions. Notwithstanding the associated difficulties, the Code was always a dynamic and responsive law. Its sporadic changes, fluctuating NCLAT and Supreme Court jurisprudence, and policy actions by the IBBI demonstrate a changing landscape attempting to harmonize conflicting interests without being unfaithful to fundamental principles of efficiency and equity.

Briefly, the passing of the IBC in 2016 was a turning point for Indian economic and legal governance. It substituted a weak and decentralized regime with one that was integrative, time-bound, and stakeholder-focused. By empowering the creditors, professionalizing the resolution process, and prioritizing the preservation of economic value, the Code was a sea change in insolvency and business failure practices. Though its journey has not been easy, the IBC is a groundbreaking move towards a more effective, powerful, and investor-friendly insolvency regime for India.

III. CONTRIBUTION OF THE BANKRUPTCY LAW REFORMS COMMITTEE (BLRC)

The Bankruptcy Law Reforms Committee (BLRC) played an important role in conceptualizing and developing India's new insolvency regime. Comprising the Ministry of Finance in August 2014 headed by Dr. T.K. Viswanathan, the then Union Law Secretary, the BLRC was given a wide mandate: to examine the current bankruptcy legislations in India and recommend a framework that would facilitate the resolution of insolvency in a timely and effective manner for individuals as well as for corporate persons. Its suggestions shaped the legislative framework of the Insolvency and Bankruptcy Code, 2016 (IBC), thus being one of the most crucial economic reforms of post-liberalization India.

The genesis of the Committee was the recognition of the fact that India's then current insolvency regime was fractured, out-of-date, and lacking in substantial redress for creditors and distressed businesses. Before the intervention of the BLRC, insolvency was regulated by several acts such as the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI Act), the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), and the Companies Act. All these laws dealt with different aspects of financial distress but were not coordinated and integrated. The BLRC was therefore set up to cover these gaps and provide an integrated regime[10]

The BLRC philosophy was that insolvency law would enable the early detection of distress and initiate a resolution process that maximizes the value of the assets of the debtor. The Committee took an economic and institutional approach in examining the fall of the current regime. Part of its first instincts was that insolvency is not law but a matter of delayed economic decision-making. Therefore, any adequate system of insolvency solution must be constituted to bring about a time-bound and sure environment where power could be transferred to the legitimate stakeholders to stop the financial meltdown[11]

The central contribution of the BLRC was that it centered on shifting the control of the distressed entity from the debtor to the creditor. The Committee favored a "creditor-in-control" scenario where the administration of the insolvent entity would be placed under an insolvency professional (IP) with the initiation of insolvency proceedings. This was a break from the previous "debtor-in-possession" model in which control was wielded

[10] Ministry of Finance, Government of India, Press Release on Constitution of Bankruptcy Law Reforms Committee, 2014.
[11] Bankruptcy Law Reforms Committee, The Report of the Bankruptcy Law Reforms Committee – Volume I: Rationale and Design (2015) 5.

by promoters, leading to delay and dilution of assets. The BLRC also suggested that a Committee of Creditors (CoC) of financial creditors take commercial decisions about the resolution plan, and operational creditors were provided with limited voting rights to safeguard their interests

The BLRC also recommended the introduction of a time-bound resolution process, suggesting a total time limit of 180 days (extendable by 90 days in exceptional cases). This on the assumption that delayed resolution of insolvency reduces asset value and enhances systemic risk. The Committee emphasized that insolvency law needs to encourage early action by stakeholders and discourage strategic default. For this end, it suggested a regime under which resolution would take precedence over liquidation, but where resolution is not possible, the debtor shall be liquidated at speed in a bid not to further destroy value[12]

Another groundbreaking suggestion of the BLRC was the creation of a regulated environment in which to enact the insolvency regime. It proposed the establishment of the Insolvency and Bankruptcy Board of India (IBBI) as the standalone regulator, which will oversee insolvency professionals (IPs), information utilities (IUs), and insolvency professional agencies (IPAs). The Committee stressed the need for quality intermediaries to keep the process of insolvency credible and transparent. It also proposed the establishment of Information Utilities that would hold and authenticate financial data to prevent information asymmetry between lenders and facilitate quick decision-making

BLRC also gave the structural framework of adjudication mechanism. It suggested that the adjudicating function in corporate insolvency be assigned to the National Company Law Tribunal (NCLT) and individual cases of insolvency be dealt with by the Debt Recovery Tribunal (DRT). This encouraged specialization and eased pressure on the civil courts. The Committee also emphasized minimum judicial intervention and suggested that adjudicating authorities can determine facts and compliance with due process only and commercial judgments are still in the domain of creditors[13]

The BLRC report, "The Report of the Bankruptcy Law Reforms Committee – Volume I: Rationale and Design", was tabled in November 2015. It had sketched out the broad outline of a new insolvency law with international best practice bias. The Committee borrowed from foreign models of insolvency like those in the United States, United Kingdom, and Singapore but framed its suggestions within India's economic and institutional context. The report emphasized legislative clarity, procedural predictability, and stakeholder accountability in resolving insolvency. The annexed draft Bill of the report formed the foundation of the Insolvency and Bankruptcy Code, 2016, which was brought to Parliament a few months later[14]

The legacy of the BLRC goes beyond the passing of the IBC. It established a precedent for evidence-based policymaking, stakeholder consultation, and institutional reform. Its suggestions continue to shape amendments and judicial interpretations of the Code. The IBC's emphasis on resolution rather than recovery, time-sensitive procedures, and creditor predominance can each be traced to the foundational principles established by the Committee. The BLRC is therefore a landmark in the legal and economic reform process in India, and the BLRC's role stands at the heart of comprehending the rationale, architecture, and aims of the IBC.

IV. INSTITUTIONAL FRAMEWORK UNDER THE IBC

The Insolvency and Bankruptcy Code, 2016 (IBC) was enacted not only as a legislative overhaul but as a reform that required a robust and dynamic institutional ecosystem. The efficiency, transparency, and timely resolution envisioned under the Code rely significantly on the institutions responsible for its implementation. The institutional framework under the IBC is designed to provide regulatory oversight, professional expertise, and procedural integrity in the insolvency and bankruptcy processes. This framework is supported by four essential pillars:

- the Insolvency and Bankruptcy Board of India (IBBI),
- the Adjudicatory Authorities, namely the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT),
- the Insolvency Professionals (IPs), and
- the Information Utilities (IUs).

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[12] Ibid 21–23.
[13] V.S. Datey, Corporate Laws (9th edn, Taxmann Publications 2020) 1181.
[14] Sandeep Parekh, Fraud, Manipulation and Regulation in Securities Markets (2nd edn, LexisNexis 2018) 243.

These bodies operate in a coordinated fashion, ensuring effective implementation of the Code.

4.1. Insolvency and Bankruptcy Board of India (IBBI)

The IBBI, established under Section 188 of the IBC, serves as the apex regulator overseeing insolvency and bankruptcy proceedings for corporates, individuals, and partnership firms. The Board commenced operations on 1st October 2016, assuming a central role in shaping the insolvency landscape in India.

IBBI performs multiple functions, including registering and regulating Insolvency Professionals, Insolvency Professional Agencies, and Information Utilities. It also frames regulations governing the Corporate Insolvency Resolution Process (CIRP), liquidation, voluntary liquidation, individual insolvency, and fast-track resolution processes. It monitors performance, issues guidelines, conducts inspections, and ensures compliance through disciplinary mechanisms.

The Board comprises representatives from key ministries and regulators, such as the Ministry of Finance, Ministry of Corporate Affairs, Reserve Bank of India, and independent members with expertise in finance, law, and economics. This multi-disciplinary composition facilitates policy coherence and regulatory harmonization.

Over the years, IBBI has played a proactive role in addressing practical bottlenecks by issuing timely amendments, FAQs, and circulars, thereby enhancing the clarity and operability of the Code. It has also contributed to capacity-building initiatives through training, webinars, and the development of sector-specific jurisprudence.

4.2. National Company Law Tribunal (NCLT) and Appellate Tribunal (NCLAT)

The NCLT, designated as the adjudicating authority under Section 60 of the IBC, is responsible for initiating and supervising the insolvency process for corporate persons. It entertains applications filed by financial creditors, operational creditors, or the corporate debtor itself. The Tribunal is also tasked with approving or rejecting resolution plans and ordering liquidation when resolution fails.

The NCLAT functions as the appellate forum under Section 61, hearing appeals against decisions of the NCLT. Its jurisdiction extends to appeals from orders passed by the IBBI and, on points of law, its decisions are further appealable to the Supreme Court of India under Section 62 of the Code.

The NCLT operates through multiple benches across India, but the increasing caseload has led to considerable delays, highlighting the need for greater administrative efficiency and digital infrastructure. Despite this, the tribunal-based system offers a significant improvement over the fragmented pre-IBC mechanisms involving civil courts, Debt Recovery Tribunals, and the Board for Industrial and Financial Reconstruction (BIFR).

Furthermore, NCLT and NCLAT have played a vital role in evolving IBC jurisprudence, especially in areas such as the treatment of homebuyers as financial creditors, the admissibility of claims, limitation periods, and the eligibility of resolution applicants.

4.3. Insolvency Professionals (IPs)

Insolvency Professionals (IPs) are licensed individuals responsible for conducting insolvency processes, including CIRP, liquidation, voluntary liquidation, and bankruptcy. They are enrolled with Insolvency Professional Agencies (IPAs) and registered with the IBBI under Section 207 of the Code.

Upon admission of an insolvency application, an IP is appointed as an Interim Resolution Professional (IRP) or Resolution Professional (RP). Their duties include managing the debtor's affairs as a going concern, verifying claims, forming the Committee of Creditors (CoC), conducting CoC meetings, and overseeing the resolution or liquidation process. Their role is quasi-judicial, requiring a high level of neutrality, transparency, and technical proficiency.

The IBBI has issued the Model Code of Conduct for IPs, which mandates independence, integrity, diligence, and confidentiality in their conduct. Violation of these standards invites disciplinary action, including suspension or cancellation of registration.

IPs are critical for the integrity of the IBC regime as they serve as fiduciaries of the process. Their accountability, however, has come under scrutiny in high-stake cases, leading to increased regulatory vigilance and calls for enhanced training, supervision, and performance audits.

4.4. Information Utilities (IUs)

Information Utilities (IUs) constitute a relatively novel institution in India's insolvency landscape. Envisaged under Chapter V of the IBC, IUs are centralized electronic repositories for storing, authenticating, and providing access to financial information related to debt, default, and security interests.

The primary role of an IU is to facilitate timely and reliable access to debt-related data, reducing disputes regarding the existence or amount of default. The data submitted by creditors and authenticated by debtors becomes prima facie evidence of default, thus aiding the adjudicating authority in admitting or rejecting insolvency applications swiftly.

The IBBI regulates IUs and has licensed National e-Governance Services Ltd (NeSL) as the first IU in India. NeSL maintains a digitally secure and legally recognized platform for storing financial information, which is accessible to creditors, debtors, IPs, and adjudicating authorities.

IUs play a pivotal role in achieving the objectives of the IBC, particularly the principle of time-bound resolution, by streamlining evidence-based admission of claims. Their integration with banks, financial institutions, and IPs has improved information symmetry and minimized delays caused by verification disputes.

However, the usage of IUs is still in its nascent stage. Many stakeholders, especially operational creditors and smaller entities, are either unaware of or hesitant to use IU services. Increasing awareness, expanding the network of IUs, and mandating usage in more cases could significantly enhance the transparency and speed of the insolvency process.

The institutional framework under the IBC is a dynamic ecosystem designed to operationalize the Code's objectives of maximizing asset value, ensuring creditor confidence, and promoting entrepreneurship. Each of the pillars—IBBI, NCLT/NCLAT, IPs, and IUs—performs a distinctive yet interconnected role. Continued evolution of these institutions, capacity building, and technological integration are essential to uphold the spirit of the Code and address the challenges of India's complex insolvency environment.

V. KEY FEATURES OF THE IBC

The Insolvency and Bankruptcy Code, 2016 (IBC) introduced a paradigm shift in India's insolvency regime by bringing in a consolidated, structured, and time-bound framework for resolving insolvency and bankruptcy. The Code was enacted with the objective of improving the ease of doing business, ensuring the revival of financially distressed entities, and maximizing the value of assets while balancing the interests of all stakeholders. Among its defining features are its emphasis on a creditor-driven process, a strict timeline for resolution, the establishment of a committee-based decision-making structure, and a clear liquidation hierarchy. The key features of the IBC are discussed below:

a) Time-bound Resolution

One of the cornerstone features of the IBC is its emphasis on a time-bound resolution process. Under Section 12 of the Code, the Corporate Insolvency Resolution Process (CIRP) is required to be completed within 180 days, extendable by 90 days upon approval by the adjudicating authority. In the case of real estate and other complex matters, the maximum time permitted is 330 days including all extensions and litigation delays[15]. This provision was introduced to prevent undue delays that plagued earlier insolvency mechanisms such as proceedings under the Sick Industrial Companies (Special Provisions) Act, 1985.

The rationale behind this strict timeline is to preserve the value of the distressed asset, which deteriorates over time, and to provide certainty to creditors and investors. However, judicial interpretations and practical challenges have led to several cases exceeding the stipulated period. Nevertheless, the time-bound resolution remains a defining and aspirational characteristic of the Code that continues to shape its implementation.

[15] Insolvency and Bankruptcy Code 2016, s 12; Essar Steel India Ltd v Satish Kumar Gupta, (2020) 8 SCC 531.

b) Corporate Insolvency Resolution Process (CIRP)

The CIRP is the central procedure under the IBC for resolving corporate insolvency. It is initiated when a corporate debtor defaults on payment of a debt exceeding ₹1 crore (revised from the earlier threshold of ₹1 lakh)[16] The process can be triggered by a financial creditor, operational creditor, or the corporate debtor itself under Sections 7, 9, and 10 respectively.

Upon admission of the insolvency petition by the NCLT, a moratorium is imposed, and an Interim Resolution Professional (IRP) is appointed to take control of the management. The IRP verifies the claims of creditors and constitutes the Committee of Creditors (CoC), which plays a decisive role in the resolution process. The IRP may be replaced by a Resolution Professional (RP), who prepares and presents the resolution plan.

The plan must be approved by at least 66% of voting shares in the CoC and then sanctioned by the NCLT. If no plan is approved within the stipulated period, the corporate debtor moves into liquidation. CIRP is therefore a structured mechanism that aims to balance debt resolution with business continuity, ensuring that viable businesses are revived rather than dissolved.

c) Committee of Creditors (CoC)

The Committee of Creditors (CoC) is a vital institution under the IBC, composed primarily of financial creditors. It is the CoC that decides the fate of the corporate debtor during CIRP, including approval or rejection of resolution plans and replacement of the Resolution Professional. The CoC operates on a majority voting basis (minimum 66%) and has the authority to direct the conduct of the resolution process.

The IBC gives primacy to financial creditors over operational creditors on the ground that financial creditors are better equipped to assess the viability of the debtor. However, operational creditors are protected by ensuring a minimum payout under the resolution plan.

The CoC embodies the creditor-in-control principle, a significant departure from the earlier debtor-in-possession model. This shift has empowered creditors and introduced commercial prudence into the insolvency process. However, concerns have been raised regarding transparency, fairness in decision-making, and the lack of adequate representation for small and operational creditors.

d) Moratorium

A unique feature of the IBC is the imposition of a moratorium under Section 14 of the Code, immediately upon admission of the CIRP application. The moratorium prohibits the institution or continuation of suits or proceedings against the corporate debtor, including recovery actions and enforcement of security interests[17]. It also restrains the transfer of the debtor's assets and foreclosure or recovery under SARFAESI or similar mechanisms.

The objective of the moratorium is to provide a breathing space for the corporate debtor and ensure that the assets are preserved while a resolution plan is formulated. It creates a litigation-free environment and maintains the status quo of the business.

The scope of the moratorium has been subject to judicial clarification, especially in relation to personal guarantors, third-party assets, and criminal proceedings. Courts have taken a balanced view to uphold the sanctity of the process while protecting stakeholders' rights. This provision is crucial for enabling a focused and orderly resolution process.

e) Liquidation and Waterfall Mechanism

If no viable resolution plan is approved within the CIRP timeframe, the corporate debtor proceeds into liquidation under Chapter III of the Code. The liquidator is appointed to realize the assets and distribute the proceeds in accordance with the waterfall mechanism provided under Section 53 of the IBC[18]

The waterfall hierarchy mandates the following order of distribution:

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[16] Ministry of Corporate Affairs, Notification S.O. 1205(E), 24 March 2020.

[17] Insolvency and Bankruptcy Code 2016, s 21.

[18] Ibid, s 14.

- Insolvency resolution process costs and liquidation costs.
- Secured creditors and workmen's dues (for the preceding 24 months);
- Other employee dues (for the preceding 12 months);
- Unsecured financial creditors.
- Government dues and remaining secured creditors.
- Other creditors.
- Shareholders or partners.

This clear order seeks to provide predictability and fairness in the distribution of liquidation proceeds. The Code also allows secured creditors to either participate in liquidation or realize their security outside the process.

Unlike previous frameworks, the IBC does not prioritize government dues over secured creditors, aligning itself with international best practices and creditor-friendly principles. Liquidation is seen as the last resort under the Code, and the emphasis remains on resolution and revival wherever possible.

The IBC, through its key features, has fundamentally restructured the insolvency ecosystem in India. By enforcing a time-bound and creditor-driven approach, ensuring legal certainty through the moratorium, empowering creditors via the CoC, and laying out a fair liquidation hierarchy, the Code has addressed long-standing inefficiencies. However, the actual implementation remains subject to various challenges including delays in adjudication, limited institutional capacity, and frequent litigations. Notwithstanding these hurdles, the foundational features of the IBC have significantly contributed to transforming India's insolvency jurisprudence and aligning it with global standards.

VI. CONCLUSION

The enactment of the Insolvency and Bankruptcy Code, 2016 marked a watershed moment in India's financial and legal landscape. As this research has explored, the pre-IBC era was marked by a fragmented, sluggish, and inefficient insolvency regime that lacked coherence and predictability. Multiple legislations such as the Sick Industrial Companies Act (SICA), the Recovery of Debts Due to Banks and Financial Institutions Act (RDDBFI), and the SARFAESI Act operated in silos, often resulting in protracted litigation and poor recovery rates.

The need for a comprehensive overhaul culminated in the formation of the Bankruptcy Law Reforms Committee (BLRC), which played a pivotal role in designing a unified legal framework to address both corporate and individual insolvency. The IBC emerged as a forward-looking and time-bound mechanism that emphasized creditor empowerment, resolution over liquidation, and institutional accountability.

The institutional framework established under the IBC—comprising the Insolvency and Bankruptcy Board of India (IBBI), Insolvency Professionals (IPs), Information Utilities (IUs), and Adjudicating Authorities (NCLT and DRT)—ensures the robust implementation of the Code. Its key features, including the corporate insolvency resolution process (CIRP), strict timelines, moratorium provision, and waterfall mechanism for asset distribution, collectively reflect a systemic shift towards efficiency, transparency, and predictability in insolvency proceedings.

While challenges remain in the form of judicial delays, capacity constraints, and evolving jurisprudence, the IBC has significantly improved the ease of doing business in India and enhanced creditor confidence. It continues to evolve through legislative amendments and judicial interpretations, reinforcing its relevance and resilience.

In conclusion, the IBC stands as a transformative piece of legislation that has redefined the insolvency ecosystem in India. By fostering a culture of timely resolution and financial discipline, it has not only addressed the inefficiencies of the past but also laid the groundwork for a more robust, inclusive, and creditor-friendly economic environment.