

# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary  
Peer Reviewed

[www.ijlra.com](http://www.ijlra.com)

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

## **EDITORIALTEAM**

### **EDITORS**

#### **Dr. Samrat Datta**

*Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board*



#### **Dr. Namita Jain**

*Head & Associate Professor*

*School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.*

*Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi. (2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019*



## Mrs.S.Kalpana

Assistant professor of Law

*Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.*



## Avinash Kumar



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

## **ABOUT US**

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS  
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

# **INCLUSION OF INDIVIDUALS UNDER IBC: THE ROLE OF BANKS**

AUTHORED BY - TEEVRA SINHA

5<sup>th</sup> Year Student at St. Joseph's College of Law, Bangalore

## **Abstract:**

The inclusion of individuals under the Insolvency and Bankruptcy Code (IBC), particularly through Part III of the Insolvency and Bankruptcy Code, 2016, has significant implications for banks and their management of non-performing assets (NPAs). This research examines the evolving role of banks in individual insolvency proceedings, analysing the extent to which they will be actively involved in the resolution process. It explores key technical aspects, including the determination of outstanding liabilities based on prior repayments, the positioning of banks within the waterfall mechanism for debt distribution, and the mechanisms ensuring that agreements between banks and insolvent individuals remain fair and equitable.

Further, this study assesses whether the original loan agreement should be scrutinised to determine whether the debt was fairly contracted, raising questions about predatory lending practices and the broader impact on financial stability. By analysing legal provisions, case law, and banking regulations, this paper aims to provide insights into how the inclusion of individuals under the IBC may reshape credit risk assessment, debt recovery strategies, and NPA resolution frameworks for banks.

## **Hypothesis:**

The inclusion of individuals under the IBC will significantly impact banks by introducing a structured mechanism for resolving personal insolvency – however, its effectiveness will depend on how actively banks engage in the process.

## **Research Questions:**

1. Whether the inclusion of individuals under the Insolvency and Bankruptcy Code (IBC) will require banks to take a more hands-on approach in the insolvency resolution process or if they will remain largely passive participants?

2. Whether the technical aspects of individual insolvency resolution adequately ensure an equitable outcome for all stakeholders?
3. Whether the original loan agreement should be examined during the insolvency process to determine if the debt was fairly contracted, thereby preventing the resolution framework from legitimising predatory lending practices?

### **Introduction:**

The Insolvency and Bankruptcy Code, 2016 (“Code/IBC”) is the umbrella legislation for insolvency resolution of all entities in India—both corporate and individuals. The provisions relating to insolvency and liquidation of corporate persons came into force on December 1, 2016, while those of insolvency resolution and bankruptcy of personal guarantors to corporate debtors (CDs) came into effect on December 1, 2019. The aim of codifying insolvency law is to provide for greater coherence in law and facilitate the application of consistent and lucid provisions to different stakeholders affected by business failure or the inability to pay debt. To this end, the Code repealed the Presidency Towns Insolvency Act, 1909, and the Provincial Insolvency Act, 1920, and made amendments to 11 laws, including the Companies Act, 2013, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, to give effect to the newly codified legislation.

The IBC fundamentally transformed India’s legal framework for handling corporate financial distress. It introduced a structured, market-driven, and time-sensitive approach that aligns with economic incentives. By correcting market failures and addressing information gaps, the Code facilitates an orderly exit mechanism for businesses and entrepreneurs through corporate insolvency resolution processes. Its primary focus is on resolution, followed by the objective of maximising the value of the corporate debtor’s assets, and lastly, fostering entrepreneurship, improving credit availability, and balancing stakeholder interests. These objectives are prioritised in a specific and deliberate sequence. As a major economic reform, the Code has shifted the advantage from borrowers to creditors, fostering stronger fiscal and credit discipline to safeguard economic value.

The provisions of the Code are being brought into force in phases, and insolvency and

bankruptcy provisions for the category of individuals are yet to be notified.<sup>1</sup> As of now, insolvency of individuals is dealt with by Part III of the Code, which is not in force yet. In 2017, the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Individuals and Firms) Rules were drafted for a certain class of debtors, namely individuals with business debt and personal guarantors. However, since only the part on corporate insolvency in the IBC has been notified, these draft rules are not in force either. The objective of this research paper is to critically examine the role banks will play in the adjudication mechanism for individual insolvency proceedings.

### **Legal Framework for Individual Insolvency under the IBC:**

The scope of personal insolvency under the IBC is wide, covering all individuals and partnerships, as well as all creditors—financial and operational, secured and unsecured, formal and informal — into its fold.<sup>2</sup>

The “**Fresh Start**” process offers debt relief to individuals who satisfy strict eligibility criteria related to their income, assets, and debt levels, making it applicable to a limited group. By this process, a debtor can make an application, either personally or through a resolution professional, for a fresh start process under Part III of the Code. An interim-moratorium shall commence on the date of filing of said application in relation to all the debts and shall cease to have effect on the date of admission or rejection of such application. During this period, all pending legal proceedings against the debtor shall be stayed, and no new proceedings can be initiated. Where an application is filed by the debtor through a resolution professional, the Adjudicating Authority shall direct the Board to confirm the appointment of the Resolution Professional, and when it is filed personally, the Adjudicating Authority shall appoint a resolution professional. The resolution professional shall examine the application made and submit a report to the Adjudicating Authority, either recommending acceptance or rejection of the application. If the application is accepted, all pending legal proceedings against the debtor shall be stayed, and no new proceedings can be initiated. The moratorium ceases to have effect at the end of the period of one hundred and eighty days beginning with the date of admission. The resolution professional shall prepare a final list of qualifying debts and submit such list to

---

<sup>1</sup> *Understanding the IBC, KEY JURISPRUDENCE AND PRACTICAL CONSIDERATIONS: A HANDBOOK*, Insolvency and Bankruptcy Board of India, <https://www.ibbi.gov.in/uploads/whatsnew/e42fddce80e99d28b683a7e21c81110e.pdf>.

<sup>2</sup> Sane, R., 2019. The way forward for personal insolvency in the Indian Insolvency and Bankruptcy Code. Available at SSRN 3309470.

the Adjudicating Authority at least seven days before the moratorium period comes to an end. The Adjudicating Authority shall pass a discharge order with respect to the qualifying debt as well as any penalties, interests, or other sums owed in respect of such debts.

The “**Insolvency Resolution Process**” allows debtors and creditors to negotiate a structured repayment plan. A debtor who has defaulted or a creditor may initiate the individual insolvency resolution process by applying to the Adjudicating Authority, either personally or through a resolution professional. Upon application, an interim moratorium is triggered and remains in effect until the application is admitted or rejected. A resolution professional is then confirmed or appointed to examine the application and submit a report recommending admission or rejection. If admitted, a moratorium commences for 180 days or until a decision is made on the repayment plan. The Adjudicating Authority must issue a public notice within seven days, inviting creditors to submit claims within 21 days. The resolution professional compiles a list of creditors, and the debtor, in consultation with the professional, prepares a repayment plan proposing restructuring of debts. The repayment plan is then approved or rejected by the Adjudicating Authority based on the resolution professional's report. If approved, it becomes binding on both the debtor and listed creditors. Finally, the resolution professional applies for a discharge order for the debts covered under the plan, which the Adjudicating Authority may grant.

If this resolution fails, the “**Bankruptcy**” process—entailing liquidation of the debtor’s assets—can be initiated. The law assigns the role of adjudicating authority for individual insolvency cases to the Debt Recovery Tribunals (DRTs), given their broader geographical presence compared to the National Company Law Tribunals (NCLTs), which oversee corporate insolvency matters. An application for initiating bankruptcy proceedings against a debtor may be submitted to the Adjudicating Authority either by the debtor or by a creditor, individually or jointly with other creditors. Upon such application, an interim moratorium takes effect from the date of filing, staying all actions against the debtor’s property in respect of his debts, and continues until the bankruptcy commencement date.

Following the confirmation or nomination of a bankruptcy trustee, who may be an insolvency professional or any other eligible person, the Adjudicating Authority is required to pass a bankruptcy order within fourteen days. Upon issuance of the order under Section 126:

- The estate of the bankrupt vests in the bankruptcy trustee under Section 154;

- The estate is to be distributed among the creditors;
- Creditors are barred from initiating or continuing legal proceedings against the bankrupt's estate without leave of the Adjudicating Authority.

Secured creditors retain the right to enforce their security interests, as if the bankruptcy order had not been passed, provided they act within 30 days of the bankruptcy commencement date; otherwise, they lose entitlement to post-commencement interest on their debt. The Adjudicating Authority shall publish a public notice to invite and register creditor claims. Once the list of creditors is finalised, the bankruptcy trustee must convene a meeting of creditors. Finally, a discharge order shall be issued either one year from the commencement of the bankruptcy or within seven days from the creditors' committee's approval of the trustee's final report. This order discharges the bankrupt from all debts included in the bankruptcy proceedings.

### **Banks' Role in Individual Insolvency Proceedings:**

Although personal loan NPAs are generally perceived to be lower than those from corporate lending, emerging trends indicate growing stress in the personal credit segment. Notably, NPAs on housing and education loans have risen to 12% and 9% respectively, and the rapid growth in personal credit could lead to higher defaults in the future. Additionally, loans under the priority sector, such as agriculture and small enterprises, have historically contributed significantly to total NPAs, comprising 23% in 2016–17 and peaking at 41% in 2012–13. Lending through schemes like the Kisan Credit Card and Mudra Yojana also shows signs of financial stress. As household indebtedness increases and borrowing from multiple lenders becomes more common, challenges related to collective recovery and coordination among creditors are expected to intensify.<sup>3</sup>

Furthermore, although banks and financial institutions that provide secured loans have access to recourse for NPAs under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Act (SARFAESI), 2002, by taking possession of collateral security without court intervention, the efficiency has been falling over time – by 2013 the recovery rate was down to 22% from 61% in 2008.<sup>4</sup>

Therefore, a bank's role as a financial creditor in the insolvency adjudication process of

---

<sup>3</sup> Id at pg. 8-9.

<sup>4</sup> RBI Report on Trends and Progress in Banking in India, 2008-2013.

individuals is of paramount importance in order to ensure the effective implementation of Part III of the Code. Commercial banks are the largest formal source of institutional credit for households in India<sup>5</sup> and their active participation would not only make the process as efficient as possible, but also inspire confidence in the Code for other creditors looking to recover dues. As per **Section 86**, in the Fresh Start process, a creditor to whom a qualifying debt is owed may object to the list of qualifying debts prepared by the insolvency professional only on the following grounds, namely – (a) inclusion of a debt as a qualifying debt; or (b) incorrectness of the details of the qualifying debt specified in the order under section 84.

In the Insolvency Resolution Process, according to **Section 109**, a creditor is entitled to vote at every meeting of the creditors in respect of the repayment plan in accordance with the voting share assigned to him and this share is determined by the resolution professional in the manner specified by the Board (IBBI). **Section 110** enumerates the rights of secured creditors in relation to the repayment plan, which are as follows:

1. Right to Participate and Vote: Secured creditors are entitled to participate in and vote at the meetings of the creditors convened in relation to the repayment plan.
2. Forfeiture of Enforcement Rights upon Voting: If a secured creditor chooses to vote on the repayment plan, they shall forfeit the right to enforce their security interest during the period of the repayment plan, in accordance with its terms.
3. Right to Retain Enforcement by Limiting Vote to Unsecured Portion: If a secured creditor does not wish to forfeit the enforcement rights, they must submit an affidavit to the resolution professional at the creditors' meeting stating: (a) that the creditor's voting right is exercised only in respect of the unsecured portion of the debt; and (b) the estimated value of the unsecured portion of the debt.
4. Treatment of Debts as Separate: In cases where an affidavit under Clause 3 is submitted, the secured and unsecured components of the debt shall be treated as distinct and separate debts.
5. Requirement of Concurrence: Where a secured creditor does not participate in the voting but the repayment plan contains provisions that affect their right to enforce the security, their specific concurrence must be obtained.

Lastly, **Section 111** states that the repayment plan shall be required to be approved by a majority of more than three-fourths in value of the creditors present in person or by proxy and

---

<sup>5</sup> Akshi Chawla (2023), "Where do Indian households borrow money from?" *Centre for Economic Data and Analysis (CEDA)*, Ashoka University. Published on [ceda.ashoka.edu.in](http://ceda.ashoka.edu.in).

voting on the resolution in a meeting of the creditors.

Finally, in relation to bankruptcy orders, **Section 135** stated that creditors shall be entitled to vote in the meetings of the committee of creditors according to their voting share, which is to be decided by the resolution professional. **Section 153** states that the bankruptcy trustee must obtain the prior approval of the committee of creditors to perform certain acts, which include conducting business, handling legal proceedings, raising funds through the sale or mortgage of property, and exercising rights or powers forming part of the estate. The trustee may also enter into compromises or arrangements with creditors or third parties and appoint the bankrupt to assist in managing or supervising the estate.

Banks, as major institutional creditors to households, are expected to play a crucial role in the implementation of the fresh start, insolvency, and bankruptcy proceedings for individuals under Part III of the IBC, once the relevant provisions and rules are notified. Given the persistent issue of rising Non-Performing Assets (NPAs), their participation becomes even more significant. Unlike corporate insolvency resolution processes (CIRP), where a waterfall mechanism governs the priority of debt repayment, the individual insolvency framework under the IBC does not accord such repayment preferences, placing banks on an equal footing with any other creditors.

Banks, in their capacity as financial creditors, are empowered to propose resolution plans that outline the strategy for resolving the insolvency of an individual. These plans may include restructuring of debt, repayment schedules, or asset disposal mechanisms. The approval of such plans depends on a voting process in which banks, along with other creditors, participate. Their voting share is critical in determining whether a resolution plan is accepted. Furthermore, banks engage and coordinate with the resolution professional appointed by the Adjudicating Authority (typically the Debt Recovery Tribunal) to manage the insolvency proceedings.

In the course of the resolution process, banks play a vital role in facilitating the sale of the debtor's assets to recover dues. They may also be involved in negotiating directly with the debtor to reach mutually agreeable terms that could lead to debt restructuring or an out-of-court settlement. These efforts are integral to achieving effective debt resolution and ensuring maximum recovery of dues. The importance of banks in this process also has wider implications. During the 1990s, judges routinely presided over a wide range of disputes,

including financial matters. At the time, banks frequently encountered significant challenges in recovering loans they had extended, often struggling to access or reclaim the funds. As a result, they rarely pursued winding-up proceedings, given the low likelihood of recovery and the prolonged duration such processes entailed. However, the importance of enabling banks to recover their dues lies in fundamental economic principles—without a steady flow of capital within the economy, financial systems weaken, ultimately threatening economic stability and growth.<sup>6</sup>

To conclude, the inefficacy of the pre-existing legislation for debt recovery from individuals, the declining recovery rate, and the rising occurrences of NPAs simply leaves banks with no choice but to play an active role in every part of the insolvency proceedings relating to an individual, the same way in which they have for corporate debtors.

### **Scrutiny of Original Loan Agreements:**

Predatory lending is any lending practice where the borrower is taken advantage of by the lender. Predatory lenders impose lending terms that are unfair or abusive. This predatory practice is often committed against victims who are elderly or low-income. Examples of predatory lending include failing to disclose information or disclosing false information, high interest rates or fees, and risk-based pricing. These actions, and a variety of other practices, either individually or in concert, further a predatory lender's goal of the loan ultimately not being paid back and the debtor defaulting.<sup>7</sup>

Currently, the lending practices of banks are regulated by RBI guidelines on priority sector advances, and the interest rates are regulated by the Usurious Loans Act, 1918, and RBI Circulars on Rate of Interest (ROI). For decades, informal farmer-to-farmer lending was widespread in rural India. To enhance the country's socio-economic structure, the Indian government took steps to promote access to credit in these communities by encouraging, incentivising, and at times mandating institutional lending. These initiatives led to the rapid growth of the microfinance sector. However, this expansion also fostered an environment where predatory lending practices could flourish. In response to years of exploitative lending,

---

<sup>6</sup> TRANSCRIPT OF THE XI ANNUAL NATIONAL LAW SCHOOL OF INDIA REVIEW SYMPOSIUM ON THE INSOLVENCY AND BANKRUPTCY CODE. (2018). *National Law School of India Review*, 30(2), 136–172. <https://www.jstor.org/stable/26743941>.

<sup>7</sup> Legal Information Institute, Cornell Law School, [https://www.law.cornell.edu/wex/predatory\\_lending](https://www.law.cornell.edu/wex/predatory_lending) (last visited June 3, 2025).

both consumers and the government began to push back, seeking reforms to curb such practices.<sup>8</sup>

The IBC, under **Section 50**, allows the resolution professional or liquidator to apply to the National Company Law Tribunal (NCLT) to avoid extortionate credit transactions—loans where the terms require exorbitant payments or are unconscionable under contract law principles. Predatory lending often involves excessively high interest rates or unfair terms that impose severe financial hardship on the borrower, and this provision should be made applicable to individual insolvency proceedings as well, to protect vulnerable debtors in case of exploitation. In cases where an insolvency professional feels that there has been a default on a loan due to the inherent unfairness of the terms on which the loan operates or such a claim is brought to their attention, they must be given the power to investigate such claims and if they find any substance to them, must be empowered to remove such a debt from the list of qualifying debts.

### **Conclusion:**

The framework for individual insolvency under Part III of the Insolvency and Bankruptcy Code, 2016, holds the potential to revolutionise personal debt resolution in India, just as the corporate insolvency regime has done. However, for this potential to be realised, the active and informed participation of banks and financial creditors is indispensable. Given their dominant role as institutional lenders and the growing volume of personal loan NPAs, banks must move beyond a passive creditor stance and adopt a proactive, hands-on approach throughout the fresh start, insolvency resolution, and bankruptcy processes.

Banks are vested with significant powers under the Code—they can object to qualifying debts, vote on repayment plans, influence the restructuring process, and participate in asset distribution. Yet, the efficacy of these powers depends on how rigorously they are exercised. As India faces a surge in household indebtedness and financial distress among small borrowers, the importance of coordinated creditor action and vigilant enforcement of the IBC becomes even more critical.

Furthermore, banks must not only act as recovery agents but must also ensure to practice

---

<sup>8</sup> Mullen, D.J., 2014. To Catch a Predatory Lender. *Temp. Int'l & Comp. LJ*, 28, p.83.

financial fairness. Scrutinising original loan agreements for unconscionable terms or signs of predatory lending during the insolvency process is essential to ensuring it results in equitable outcomes. The ability to detect and challenge extortionate or abusive credit transactions must be extended to individual insolvency proceedings, with insolvency professionals empowered to examine such claims and eliminate illegitimate debts from the resolution process.

Ultimately, enabling banks to recover their dues efficiently is not just about institutional profitability—it is fundamental to economic stability. Capital recovery ensures the circulation of credit in the economy and preserves trust in financial systems. Therefore, the success of Part III of the IBC rests heavily on the vigilance, engagement, and accountability of banks as both creditors and custodians of systemic financial health.

