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# **EXAMINING STRUCTURAL DEFICIENCIES IN INDIA'S INSOLVENCY FRAMEWORK UNDER THE IBC, 2016**

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## **Abstract**

The Insolvency and Bankruptcy Code, 2016 (IBC) was enacted to bring about a high level of changes to the existing insolvency regime in India, which was full of inefficiencies, to bring about a time based settlement of distressed assets. Even though there has been an improvement in recovery rates and creditor confidence due to the Code implementation, the way the Code has been implemented has made its structure flawed in one or two ways. The paper critically contemplates the institutional, procedural and systemic issues which discourage the appropriate functioning of the IBC including delays in the Corporate Insolvency Resolution Process, judicial activism, carrying capacity of the adjudicatory bodies and Committee of Creditors problems. Through a doctrinal and analytical method, the paper sheds light on the gap between the purpose and the reality of legislations. It also continually compares on the international forms of insolvency seeking to discover the most appealing ideas. It will conclude the paper with a series of proposed reforms that would contribute to making the India insolvency regime more efficient, transparent and with increased institutional capacity.

**Keywords:** Insolvency and Bankruptcy Code, 2016; Corporate Insolvency Resolution Process; Judicial Overreach; Institutional Capacity; Committee of Creditors; Insolvency Law Reforms

## **1. Introduction**

A gradual shift away of an informal and debtor-based system towards a more systematic and creditor-based system has typified the progress of insolvency law in India<sup>1</sup>. Until the Insolvency and Bankruptcy Code, 2016 (IBC), the insolvency (in India) was governed by various acts which were independent of each other and created overlapping jurisdictions and

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<sup>1</sup> S. Sethi & S. Baranwal, The Case for an Independent Bank Resolution Framework: Identifying the Flaws in the Current Bank Insolvency Regime in India, 3 Nat'l L. U. Delhi Stud. L.J. 89 (2021).

delays. The absence of a central structure experienced no recovery rate, value being debased and investor confidence not shown to the credit market in India with institutions such as the Board of Industrial and Financial Reconstruction (BIFR) becoming synonymous with ineffectiveness and time-consuming insolvency procedures that merely allowed defaulting companies to not only make use of systemic loopholes but actually fix the problems.

This has created a paradigm shift when the insolvency regime of India has introduced the IBC that came into effect in 2016. “The IBC, as a whole was a time bound and consolidation mechanism, to unify laws that already existed, and to create a creditor in control template under the Corporate Insolvency Resolution Process (CIRP)<sup>2</sup>. The main goals of the Code were maximization of asset value, facilitation of entrepreneurship, credit availability provision and balancing all the stakeholders. The IBC tried to solve the endemic sluggishness that characterized previous models by prescribing rigid timeframes initially 180, but extendable to 330 days. “In addition, it was institutionalized by the establishment of specific adjudicatory courts, such as National Company Law Tribunal (NCLT) and Insolvency and Bankruptcy Board of India (IBBI).

A healthy financial system is one in which good insolvency management is involved. Late resolution lowers the value of the bad assets but it also has negative effects to the creditors, investors and economy in general<sup>3</sup>. Having a good insolvency regime, the capital which is not productive will be recycled to productive activity thereby ensuring the economy becomes efficient. The significance of a time-constrained and efficient insolvency mechanism can be underscored in developing economies like in India where historically non performing assets (NPAs) have been identified to impose a significant burden on the banking sector and where credit discipline has been on the increase and strategic defaults have been on the decrease.

The introduction of the IBC has not been without a couple of hurdles despite having a potential of revolutionising the industry. Some of the most pressing of these issues are the slowness in moving on resolutions that are usually ascribed to excessive litigating, and limited constitutional capacity. With a tribunal of appeal NCLAT that is often overworked, backlogs

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<sup>2</sup> S.A. Asif & A. Asif, The Future of Real Estate Insolvency in India: Towards a Sector-Specific Resolution Framework, 8 J. on Governance 133 (2025).

<sup>3</sup> S.R. Vyas, Evaluating the Effectiveness of Insolvency Resolution Processes under India’s Insolvency and Bankruptcy Law, Anusandhanvallari 1034 (Nov. 19, 2024).

in the appeals have come to the fore to nullify time-bound stipulation of the Code. Although, overreach of the judiciary as courts interfering in areas of commercial activity, on the Committee of Creditors (CoC), have also been subject to concerns; poor infrastructure and lack of professional insolvency judges and lawyers also contribute to these problems. In addition, the fact that the liquidation rate is higher as compared to the successful resolution casts doubts over the success of the Code in fulfilling its most important mission, which is corporate revival.

Against this backdrop, this research article aims to critically review the inherent flaws in the current insolvency system in India, as enshrined in the IBC, 2016. It tries to go beyond the superficial measures of recovery rates and case outcomes, to explore the internal institutional and systemic forces, which thwart effective implementation<sup>4</sup>. This paper will be split into the following sections; review of existing literature about the IBC, determination of gaps in the research, statement of the research problem. Next, the method to be followed in the research is outlined and the discussion of structural weaknesses is presented in detail. The paper will finish off by findings, recommendations and an overall thought on the future of insolvency law in India.

## 2. Research Gap

Although there has been an increase in the literature on the IBC, gaps are still enormous in the understanding of the existing scholarship. An important aspect of the study has been the quantitative estimates of; recovery rates, resolution time and cases. Even though such measures can be utilized to receive a valuable data concerning the effectiveness of the insolvency system, it does not give a very detailed image of issues at work that structure behind the presented data. It would be desirable to look at short-term results in evaluating the success of the IBC when it is not yet the time to look at the institutional and systemic problems that predetermine its success.

In addition, structural and institutional factors of insolvency framework are not well examined. How different stakeholders relate to each other is a problem that has not been tackled properly, the responsibility and existence of insolvency professionals and the ability of adjudicatory bodies. The interaction between the judicious system and insolvency practitioners especially is under-studied, yet it can have an immense difference in the decision-making process.

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<sup>4</sup> M.V. Saurav, *Navigating Group Insolvency in India: Analysing Implementation Challenges and Enterprise Dynamics for Modern Day Business Structure* (Doctoral dissertation, Amity Univ.).

Moreover, currently the literature tends to disregard comparative sustainability of IBC and dwells more on the short-term effects and on the policy reactions.

The other gap identifiable is that there is a lesser integrations of the comparative lens into the debate about the insolvency regime in India by comparison. Other studies are based on foreign models, yet even more rigorous and context-based comparisons, which may be utilized to implement changes in the policy, are needed. The lack of such analysis does not allow to conclude about the meaningful lessons based on the global best practices. The paper aims to fill these gaps by assuming a structural and institutional perspective on studying the IBC, which, in turn, adds to creating a more comprehensive picture of its benefits and drawbacks.

### **3. Research Problem**

The research problem which will be referred to as the central one in the present paper is whether the Insolvency and Bankruptcy Code, 2016 has any structural issues that make its effective use difficult, despite the good intentions it has as the piece of legislation and its initial success. Although the understanding of the Code came up with a timely and effective process to solve the insolvency problem, its usage has prompted a number of issues within the system, which compromises its goals. These problems bring up significant questions of whether or not the existing framework is sufficient and institutional reform is necessary.

The fundamental issue in this problem is dislocation between the law in books and the law in action. In as much as the legal framework of the IBC is inclusive and well articulated with well laid down procedures and schedules, the reality of the implementation tends to go off track. The inability to resolve cases quickly, intrusion in business decisions by the jury, and the lack of capacity in media institutions outline the difference between the theoretical design of the Code and its efficiency in practice. This paper aims to critically observe this gap and find out the structural factors that lead to this gap.

### **4. Research Objectives**

- In order to examine the structure framework of the IBC, 2016.
- To detect systemic gaps that impact on the resolution outcomes.
- To assess the place of institutions (NCLT, IBBI, IRPs)
- To suggest reforms for improving efficiency

## 5. Research Questions

- What are the disadvantages of an IBC framework?
- What are the effects of institutional constraints on times of resolution?
- Will the IBC be diluted in the courts?
- What can be done to establish the system of insolvency?

## 6. Research Methodology

The research design in this study will be a doctrine or legal research because it will involve a systematic study of the law and statutes, and the case law related to the Insolvency and Bankruptcy Code, 2016. The doctrinal method is particularly well suited to examine the insolvency framework in terms of its institutional and structural aspects as it allows us to analyze comprehensively the law provisions and how the law is applied by the courts. The suggested study will focus on both primary and secondary sources in order to ensure the findings of the study provide a comprehensive view of the issues in question.

The text of The Insolvency and Bankruptcy Code, 2016, and the amendments, rules, and regulations are considered to be the major sources of this study. The judgments that have been handed down by the Supreme Court, NCLT, and NCLAT are an important component of the analysis as they influence the interpretation and implementation of the Code. Some of the secondary sources include journal articles in the academic journals, books, policy reports and publications by organizations such as the IBBI, Reserve Bank of India (RBI) and the World Bank. These sources can provide an idea of how the insolvency regime operates in real life and the effects it may have on the overall economy.

The present paper adopts an analytical and comparative approach to the discussion of structural flaws of the IBC. The analytical part is divided into its first part of critical analysis of legal provisions and institutional mechanisms and then is the second part, the comparative one which is founded on the international regime of insolvency with singleness of the regimes of the United States and the United Kingdom. This two pronged plan can help in determining the best practices and potential areas of reform.

## 7. Overview of IBC Framework

The Insolvency and Bankruptcy Code, 2016 (IBC) refers to a legal framework, aimed at addressing insolvency and bankruptcy in India in a time-specific fashion. The Code is structured and is broken down into various sections that are in touch with corporate insolvency, individual insolvency and institutional mechanisms. It is the most significant of them and is known Corporate Insolvency Resolution Process (CIRP) which provides a well-organized procedure of corporate distress resolution on a short term basis<sup>5</sup>. The Code is built around the creditor-in-control model whereby the administration of the company involved in debt is moved to an insolvency practitioner in the insolvency process. This is a radical overhaul compared with what existed before in the debtor-in-possession regime thereby instilling confidence in the creditors and responsibility.

There are a number of important players in the institutional structure of the IBC. Corporate insolvency The National Company Law Tribunal (NCLT) has the National Company Law Appellate Tribunal (NCLAT) as their next appeals to and lastly the Supreme Court. The insolvency applications are received by these bodies which give authority to the resolution plans and oversee the implementation in order to meet the statutory provisions<sup>6</sup>. Insolvency Professionals (IPs) are key in providing management of the corporate debtor in this CIRP, value preservation, Mule of Creditors (CoC) and the conduct of the resolution process. The CoC comprising of financial creditors plays the mandate of having access and approving the resolution plans in terms of their commercial viability. The relations between these parties are the bases of IBC framework because it tries to offer some sort of level of efficiency and fairness in insolvency operations.

### 7.1 Structural Deficiencies in IBC

#### A. *Delay in CIRP*

A major structural weakness of the IBC that has remained unchanged is the inability to complete the Corporate Insolvency Resolution Process (CIRP) on time. Although the Code provides a very strict deadline of 180 days, which can be extended to 330 days, in the reality, there are numerous incidents, which exceed this limit by far<sup>7</sup>. Such delays discourage the

<sup>5</sup> M. Banerjee, Integrating the UNCITRAL Model Law into India's Insolvency Framework: Challenges and Solutions (Mar. 15, 2025).

<sup>6</sup> A. Kamalnath, Corporate Insolvency Resolution Law in India—A Proposal to Overcome the “Initiation Problem,” 88 UMKC L. Rev. 631 (2019).

<sup>7</sup> A. Das et al., Insolvency and Bankruptcy Reforms: The Way Forward, 45 Vikalpa 115 (2022).

essence of value maximization since the continued processes of the proceedings usually result in the degradation of assets and diminished recovery to creditors. Empirical evidence shows that significant proportion of cases is yet to be effectively solved within the statutory duration, therefore, negating the essence of a time-limited mechanism.

The delay causation is multi faceted. One of the main factors is litigation, as stakeholders often address adjudicatory bodies in different stages of the process. Objections to admission orders, resolution plans, and liquidation choices are reasons that lead to protracted proceedings. Moreover, natural limitation in the NCLT, such as the number of benches, and a high guide volume of cases, carry on delays. These systemic inefficiencies point to the disconnect between legislative intent of the IBC and its actual implementation<sup>8</sup>.

### ***B. Judicial Overreach***

Judicial overreach has emerged as another significant concern in the functioning of the IBC. While the role of the native judiciary plays a critical role in, not only providing procedural fairness and legal legalities but also overaction in business decision-making. The Committee of Creditors has on more than one occasion been subjected to review and even amendment by the NCLT, NCLAT and even the Supreme Court, thus intruding on the field of commercial wisdom<sup>9</sup>.

This intervention results in uncertainty and postponement since parties can be tempted to litigate instead of negotiating. It also derives or water downs the creditor-driven character of the IBC by relocating powers of making decisions to the courts. In spite of the fact that arbitrariness needs to be stopped via judicial oversight, the balance must be found in order to maintain the independence of CoC and provide the expeditious resolution. The dilemma is how to delimit judicial review in a manner that does not interfere with the integrity of the process.

### ***C. Institutional Capacity Issues***

The ability and performance of the IBC organizational structure is critical towards the effectiveness of the IBC. Nonetheless, its usage is still impeded by serious capacity limitations. The NCLT is plagued with a lack of benches, judicial members and therefore has an overstretched system with large case backlog. This not only slows the system of the case admission and resolution in addition to the quality of adjudication.

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<sup>8</sup> B. Kumar, N. Chawla & G. Patel, *Resolving Insolvency and Ease of Doing Business Reforms in BRICS Nations with Particular Reference to India* (Authorea Preprints, Jan. 23, 2024).

<sup>9</sup> A.P. Singh, R. Setia & N. Sharma, Comparative Footing of Stakeholders under the IBC 2016, 2 Indian J. Integrated Rsch. L. 1 (2022).

Besides capacity in the judiciary, Insolvency Professionals have been scrutinized. Where IPs are supposed to be neutral facilitators, issues have been raised on their expertise and independence in addition to accountability<sup>10</sup>. Poor training and experience in dealing with complicated insolvency cases may negatively affect the process of resolving. Such institutional failures underscore the need to have better infrastructure, better standards in the profession and proper resource deployment to facilitate operations of the IBC.

#### ***D. Committee of Creditors (CoC) Issues***

One of the most significant structures of the insolvency resolution process is the Committee of Creditors (CoC), the activity of which is not deprived of its challenges. The most significant problems concern the domination of the financial creditors since they are more likely to relegate the interests of the operational creditors, and other stakeholders in the back seat. This kind of inequality raises doubts as to whether the IBC is particularly considering and partial in its process of decision making.

Additionally, CoC proceedings have not been transparent and this has not been spared of criticism. The approving or disapproving of resolution plans is more often a subject of an in-house debate, with limited publicity given to the reasons<sup>11</sup>. Such transparency may result in claims of arbitrariness and lack of trust with the stakeholders. Further complicating the situation is the doctrine of commercial wisdom, which limits judicial review when making CoC decisions. Even though such a doctrine is expected to introduce efficiency, it may work out to have suspicious decisions insulated against scrutiny<sup>12</sup>.

#### ***E. Liquidation vs Resolution Imbalance***

One of the most significant issues during the implementation of the IBC is that the number of liquidations is very high, compared to successful resolutions. Although the main task of the Code is to help the companies that are in bad shape to recover, a lot of cases are liquidated. This trend is an indication that the resolution process may not always help in achieving its intended results.

Several factors could explain the preference of liquidation, such as the absence of any workable resolution approvals, the process taking too long, and depreciating asset values. Liquidation

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<sup>10</sup> J. Bhagwati, *Insolvency and Bankruptcy Code (IBC) and Long-Term Bulk Lending in India* (Ctr. for Soc. & Econ. Progress, 2022).

<sup>11</sup> V.K. Singh, *Modern Corporate Insolvency Regime in India: A Review*, 7 NLS Bus. L. Rev. 22 (2021).

<sup>12</sup> A. Baxi, *India's Experience in Insolvency Laws: Learnings for the Global South* (RIS, Research & Info. Sys. for Dev. Countries 2024).

usually leads to low recovery, loss of jobs and hence the economy at large. This asymmetry of resolution and liquidation makes interesting issues regarding the design and operation of the IBC, especially whether it would encourage corporate rescue.

### ***F. Information Asymmetry and Valuation Issues***

Another structural flaw of IBC framework is information asymmetry and valuations issues. The creditors and the resolution applicants have to make informed decisions using the correct and timely information. Mostly, however, insufficient or inaccurate data on financial position of the corporate debtor undermines the resolution process.

Issues also arise in respect of valuation disputes as various estimations of asset value can be made by various valuers<sup>13</sup>. These inconsistencies may result in the conflict between the stakeholders and postponements in adopting resolution plans. The absence of standard methodologies of valuation and the lack of efficient information systems exacerbate these problems, and additional transparency and uniformity in the insolvency process is necessary.

## **7.2 Case Law Analysis**

IBC in application has been reliant on judicial pronouncements to interpret and enforce. Supreme Court helped to affirm the constitutional validity of the Code in *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 SCC 17) and highlighted its intent of minimizing time and maximizing values. The Court determined the importance of a creditor led process and pointed out that a small role should be played by the judiciary in commercial decisions.

In a similar case *K. Sashidhar v. Indian Overseas Bank*, (2019) 12 SCC 150, the Supreme Court affirmed the primacy of the commercial wisdom of the Committee of Creditors saying that the adjudicating authorities must not interfere with the merits of a plan of action issued by a Committee of Creditors. This decision consolidated the notion that financial creditors in the best place to ascertain practicability of resolution plans.

The Supreme Court in *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 SCC 531) further interpreted judicial review under IBC. The Court accredited the supremacy of the CoC and at the same time stressed that there was a need to balance the interests of all the stakeholders<sup>14</sup>. All these historic decisions are pointers to the new jurisprudence of the IBC and the ongoing effort to strike a balance between judicial control and

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<sup>13</sup> N. Mistry, Impact of IBC, 2016 on Non-Performing Assets with Respect to the RBI Circular, 2 *Indian J. Integrated Rsch. L.* 1 (2022).

<sup>14</sup> M. Khanna, Comprehensive Examination of the Constitutionality of the Insolvency and Bankruptcy Laws, 5 *Indian J.L. & Legal Rsch.* 1 (2023).

commercial freedom.

### 7.3 Comparative Analysis

The comparison of the insolvency regime of India and the international regimes can contribute much light to the positive and negative aspects of it. A debtor-in-possession model is adopted in the United States Bankruptcy Code, specifically, Chapter 11, which enables the current management to continue its control over the process of restructuring. It is an elastic approach that encourages early intervention, but may lead to delays and conflict of interest.

Conversely, United Kingdom insolvency regime emphasises efficiency of administration and safeguarding creditors through administration and company voluntary arrangement. The UK model is insighted with reasonably developed institutional framework and an experienced insolvency practitioners, which adds to faster resolution<sup>15</sup>.

The IBC in India is a hybrid of the two systems but there are issues of implementation due to institutional constraints and a dynamic jurisprudence. The experience in such jurisdictions has revealed that there should be greater flexibility, institutional capacity is needed and the roles of the stakeholders are not well established. Through these solutions, India can maximise the efficacy of its insolvency protocol and the goal of ensuring that India meets its goal of time and efficiency in its resolution.

## 8. Findings

This discussion denotes that, despite tremendous improvement in recoveries and regained creditor confidence, which has been brought about by Insolvency and Bankruptcy Code, 2016 (IBC), it still has some serious structural and operational gaps. The most prominent ones are the delays in Process of Corporate Insolvency Resolution (CIRP) which are largely due to the increased litigation and overstretched adjudicatory institutions. Institutional weaknesses are also present that do not encourage quick cases resolutions like in the National Company Law Tribunal (NCLT) and inform insolvency professionals. The inefficiencies in the structure, such as information asymmetry, and inconsistency in valuation and domination by financial creditors in the Committee of Creditors (CoC) also render the process unjust and ineffective. All these difficulties are eloquent signs of the existing gap between the law intention of the IBC which presupposes the time-bound solution and value maximization and their practical

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<sup>15</sup> J.M. Garrido & A. Rosha, Strengthening Private Debt Resolution Frameworks, in India's Financial System 2023 (Int'l Monetary Fund 2023).

implementation.

## 9. Recommendations

There are reforms that are required to curb these deficiencies. To begin with, it should improve the infrastructure and capacity of the NCLT, by making efforts to establish additional benches, as well as, having qualified judicial members in the bench. Second, it would be beneficial to limit the judiciary review of the commercial CoC decisions, which would result in the efficiency and creditor-oriented nature of the process. Third, enhancing the quality of insolvency procedures can be realized by training, regulating and holding the insolvency professionals accountable. Moreover, it is vital to rework on the CoC composition and transform it to be more transparent and inclusive. The conflict and delays can be minimized by adopting standardized valuation arrangements and enhanced systems of information. Lastly, more focused policy changes are required to clean up the processes and implement tighter deadlines in order to have a quicker and successful resolution in insolvency.

## 10. Conclusion

To conclude on a seemingly exhausted note, the IBC is a milestone in an otherwise chaos-filled insolvency regime in India, introducing the much-needed form and discipline to the process. Nonetheless, structural inefficiencies and institutional constraints restrict its performance belittling its primary aims. Although the Code has had a success story in enhancing the culture of recovery and credit, the need to continually reform the code remains apparent and should never be replaced by a wholesome overhaul". Empowering institutional capacity, promoting transparency and holding people to timescales will be crucial in realizing the full potential of the IBC. In terms of the future, the moderate path to combination and integration of legal sophistication and institutional fortification will be needed to support and promote the Indian insolvency system.

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