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"EVOLUTION OF CREDITOR PROTECTION IN INDIAN INSOLVENCY LAW: JUDICIAL DEVELOPMENTS AND THE ROLE OF THE COMMITTEE OF CREDITORS"

AUTHORED BY – MEHAK

Abstract

The insolvency landscape in India has experienced a significant transformation over the past decade. Prior to the implementation of the Insolvency and Bankruptcy Code, 2016 ("IBC"), creditors in India functioned within a severely inadequate legal framework, led to lengthy and unpredictable recovery processes that frequently rendered legal remedies ineffective by the time they were executed. Legislation like the Sick Industrial Companies (Special Provisions) Act, 1985, and the winding-up provisions of the Companies Act were ineffective and not conducive to creditor interests, resulting in a system that disproportionately favoured delinquent debtors and their promoters. The IBC fundamentally altered this. Based on the recommendations of the Bankruptcy Law Reforms Committee (2015), the Code established a time-sensitive, creditor-centric insolvency resolution process that positioned the Committee of Creditors ("CoC") at the forefront of all significant decisions. For the first time in India's legal history, financial creditors were granted not only a position at the negotiating table but also actual authority over the destiny of a distressed company.

However, the narrative does not conclude with the statute. Since the implementation of the IBC, the judiciary has significantly contributed to elucidating the practical implications of creditor protection. The courts, especially the Supreme Court, have repeatedly been tasked with addressing the conflicts between the commercial autonomy of the CoC and the rights of external creditors, notably operational creditors and dissenting minority creditors. The accumulated case law has established a sophisticated and intricate framework for creditor protection that significantly exceeds the provisions of the Code's explicit text.This paper analyzes that framework. This discussion outlines the development of creditors' protection under the pre-IBC Indian insolvency law to the existing framework, focusing on two dimensions: the judicial innovations in influencing creditor treatment in insolvency proceedings and the role of the Committee of Creditors (CoC) in determining creditor recovery results. The paper engages in doctrinal analysis of some of the key provisions in the legislation's

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landmark decisions- particularly Swiss Ribbons, Essar Steel, K Sashidhar, and Jaypee Kensington says that, despite significant improvements, the Insolvency and Bankruptcy Code (IBC) still has flaws. Improved protection to creditors in India, there are still significant gaps, especially on operational creditors, dissenting "national creditors, and the responsibility of the Committee of Creditors (CoC). The paper concludes with recommendations for legislative and judicial reform to establish a more equitable and inclusive insolvency framework.

Keywords: *Insolvency and Bankruptcy Code 2016, Committee of Creditors, Creditor Protection, Corporate Insolvency Resolution Process, Financial Creditors, Operational Creditors, Judicial Review, Commercial Wisdom.*

Introduction

The process of India becoming a functional insolvency regime has not been very easy. For most of the twentieth century, creditors in India operated under a legal regime that did little to help them recover their money when a borrower defaulted. The law was fragmented - there were different laws in different areas, which dealt with a very narrow aspect of the insolvency problem and did not offer any rational or time-limited solution to the problem.

One of the most notable of these laws was the Sick Industrial Companies (Special Provisions) Act, 1985 ("SICA").[1] This established the Board of Industrial and Financial Reconstruction (BIFR), a quasi-judicial body to handle financially ailing industrial firms. This was theoretically to save the sick units and save lives. In practice, though, BIFR became a heaven for defaulting promoters.[2] Companies would postpone the process of creditor recovery by applying to SICA to become a so-called sick company, without incurring any restructuring. Meanwhile, winding-up provisions under the Companies Act, 1956, proved ineffective as well - the courts were overstretched, time had been wasted, and asset values had been diluted by the time any liquidation was effected.[3]

In this regard, the Government of India, in 2014, formed the Bankruptcy Law Reforms Committee ("BLRC") with Dr T.K. Viswanathan as its chairman. In November 2015, the

[1] *Sick Industrial Companies (Special Provisions) Act*, No. 1 of 1986, § 3(1)(o) (India).
[2] *Report of the Bankruptcy Law Reforms Committee*, Ministry of Finance, Government of India, vol. I, at 4–5 (Nov. 2015) [hereinafter BLRC Report].
[3] *Companies Act*, No. 1 of 1956, §§ 433–483 (India); *see also* BLRC Report, *supra* note 2, at 6.

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BLRC released its final report, and its recommendations served as the basis for what would later become the Insolvency and Bankruptcy Code, 2016 ("IBC").[4] The Committee report categorically concluded that the existing framework was debtor-friendly to the extreme and required fundamental reform. It suggested a complete change of ownership of the defaulting debtor and its promoters to the creditors, as the cornerstone of the new law.[5]

The insolvency law in independent India had not been reformed on a large scale, but the IBC, which became active on 28 May 2016, was the first to be reformed. The Code, in a sense, operationalised the BLRC's recommendation by formalising the transfer of decision-making power from the debtor's shoulders to the creditors'. This transition, commonly referred to as the shift from a model of debtor-in-possession to a model of creditor-in-control, which has completely changed the balance in insolvency proceedings in India.[6]

To appreciate how this creditor-control mechanism operates within the IBC, it is necessary to understand the distinctions the Code draws between different categories of creditors The IBC tends to categorise creditors into two groups: financial and operational creditors. Financial creditors are creditors to whom money is owed because of a financial transaction, such as a bank or other financial institution that has loaned or advanced money on a debenture to the corporate debtor.[7] Operational creditors are those to whom money is owed due to the supply of goods or services, e.g. employees/workers.[8]

The IBC only allows financial creditors to take a seat in the Committee of Creditors ("CoC"), the main decision-making organ in the Corporate Insolvency Resolution Process ("CIRP").[9]
The centre of the resolution is the CoC. Upon the triggering of a CIRP, the CoC is established to take up the process: it appoints and oversees the Resolution Professional, evaluates resolution plans submitted by potential applicants, and ultimately makes a decision to endorse a resolution plan or subject the corporate debtor to liquidation, by voting in CoC by at least sixty-six per cent of the CoC voting share.[10]
This power has not been exercised without control, but. Since the IBC came into existence,

[4] Ministry of Finance, Government of India, *Constitution of the Bankruptcy Law Reforms Committee* (Aug. 2014).
[5] BLRC Report, *supra* note 2, at 14–16.
[6] *Insolvency and Bankruptcy Code*, No. 31 of 2016, § 17 (India).
[7] Insolvency and Bankruptcy Code, No. 31 of 2016, § 5(7) (India).
[8] Insolvency and Bankruptcy Code, No. 31 of 2016, § 5(20) (India).
[9] Insolvency and Bankruptcy Code, No. 31 of 2016, § 21(2) (India).
[10] Insolvency and Bankruptcy Code, No. 31 of 2016, §§ 21(2), 22–25, 30(4) (India)

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Indian courts, especially the Supreme Court, have been at the forefront of bringing to light, and in some cases narrowing, the boundaries of creditor rights and CoC powers. The judiciary has taken a position on issues like the constitutionality of the Code and the extent to which judicial review can interfere with the commercial decision of the CoC. These judicial interventions are a significant but undeveloped element of creditor protection in Indian insolvency law.[11]

Although the number of case law and scholarly articles generated by the IBC has been growing since its implementation, the existing literature still shows some fragmentation in its approach. Much of the scholarly literature discusses individual judgments or focuses only on procedural facts of the CIRP, without considering the broader ethical trend that these developments illustrate. The literature on creditor protection as a dynamic legal concept is mostly silent about how these three factors, judicial intervention, legislative modification, and the working dynamics of the Committee of Creditors, have been influencing it. The question is whether the CoC's exercise of commercial discretion has affected the actual percentage of creditor recovery, a question that has not been adequately explored in the literature. This paper seeks to address this gap by giving a detailed discussion of the history of protection of creditors in the Indian insolvency system- its institutional framework, judicial interpretation and where it has failed to provide sufficient protection.

Research Objectives

- To examine the landmark judgments that have shaped creditor rights and treatment under the IBC, 2016.
- To analyze the composition, powers and functioning of the Committee of Creditors under the IBC, 2016.
- To evaluate the role of the Committee of Creditors in determining the creditor recovery.
- To identify gaps in the current framework and suggest reforms for strengthening creditor protection through better CoC accountability.

Research Methodology

This paper is based on doctrinal legal research. It relies on both primary and secondary sources. The primary material: the Insolvency and Bankruptcy Code, 2016 itself, along with its amendments over the years. Court decisions form the heart of the analysis, particularly the

[11] Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 SCC 17 (India).

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Supreme Court's judgments in Swiss Ribbons Pvt. Ltd. v. Union of India (2019) and Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors. (2020), which have done much to define what the CoC can and cannot do. IBBI's regulations, circulars, and its Guidelines for the Committee of Creditors issued in August 2024 are also examined as primary sources.

Alongside these, the paper draws on a range of secondary material. The Report of the Bankruptcy Law Reforms Committee (2015) is particularly important because it tells us what the original architects of the IBC intended. The IBBI's annual reports, and the published recovery data help assess how the law has worked on the ground. Academic writings — including those of Pryor and Garg (2020), Shiralkar (2022), and Goyal and Dhaduk (2024) — provide critical perspectives that sharpen the analysis. Throughout, the paper asks a simple but important question: has the IBC, as interpreted by courts over the past nine years, stayed true to what it set out to achieve? The study focuses on corporate insolvency resolution under Part II of the IBC and covers the period from 2016 to the present.

Literature Review

Since the introduction of the IBC in 2016, the literature on creditor protection under Indian insolvency law has increased significantly. The Code has been explored by scholars, policy agencies, and practitioners in various aspects: its legislative basis, institutional structure, judicial interpretation, and empirical consequences. In this section, the most important contributions to this body of knowledge are surveyed, and the gaps that the present paper aims to fill are identified.

A. Pre-IBC Framework and Case of Reform

The foundational case for reforming India's insolvency law was made most authoritatively by the Bankruptcy Law Reforms Committee in its 2015 report, Report of the Bankruptcy Law Reforms Committee (chaired by T.K. Viswanathan). The BLRC identified a deeply fragmented legal landscape in which multiple statutes — the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI), and the winding-up provisions of the Companies Act — operated in isolation, without any coherent or time-bound mechanism for debt resolution. The Committee's diagnosis was clear: the existing regime was structurally turning in favour of

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defaulting debtors, and creditors had no meaningful say in determining the outcome of a distressed company. The philosophical centre of the IBC was the BLRC's recommendation of a creditor-in-control model.

This was supported by Abhiman Das, Anurag K. Agarwal, Joshy Jacob, Sanket Mohapatra et al. in a paper titled Insolvency and Bankruptcy Reforms: The Way Forward written in Vikalpa: The Journal for Decision Makers (2020) from an economic perspective. Their analysis noted that the IBC regime was a necessary but not a fully sufficient measure - the implementation of the Code had previously been repeatedly put to the test by the courts, and the original timelines were generally not realised in practice.

B. The Committee of Creditors: Institutional Design and its Critique

A great deal of scholarly discussion concerning the IBC has focused on how the Committee of Creditors should be designed and operate. The virtual monopoly of financial creditors in the CoC and the total disenfranchisement of operational creditors in the CoC have attracted both defence and criticism in the literature. Sections 21, 24, 30, and 31 of the IBC set up the legal structure of the CoC. These sections cover the CoC is structure, how meetings are run, and how many votes are required to pass a motion. These provisions establish the doctrinal foundation for evaluating scholarly critiques of the CoC's institutional design.

In their empirical study, titled "Differential Treatment Among Creditors Under India's Insolvency and Bankruptcy Code," C. Scott Pryor and Dr Risham Garg published in the American Bankruptcy Law Journal (2020), Vol. 94, they identified three fundamental issues with the CoC-centric CIRP model. Second, the CIRP provisions were found to be inconsistent with public policy because they failed to secure the vested charges of secured creditors adequately. Third, the procedural framework fell short of the minimum equity standards. Their work, which involved interviewing directly resolution professionals and IBBI officials, is one of the most empirical studies of the practical work of IBC.

In a similar question, Aditya Shiralkar (2022), in an article in the National Law School Business Law Review (Vol. 8, Issue 1), took a doctrinal approach to the question in an article titled A Word to the Wise: The Proper Role for the Committee of Creditors in Insolvency Resolution. His main point was that the BLRC established the CoC not as a law-free arbiter, but rather as a court bound by a set of statutory requirements and the Code's overall goals. To him, the judicial deference granted to the CoC had served to protect it from the sort of accountability its authors had hoped to impose.

Aaryan Pandit, in his article "Creditors in Control: Rethinking the Committee of Creditors

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under the IBC", published on ibclaw.in (2024) echoed these concerns and added a further dimension—the absence of any formal code of conduct for CoC members and the lack of independent representation for smaller and operational creditors within the resolution process. He drew attention to the Parliamentary Standing Committee on Finance's Report on the implementation of the Insolvency and Bankruptcy Code (31st Report, 2022) recommendation that IBBI develop enforceable conduct norms for CoC members, a suggestion that remained unimplemented for several years before the IBBI issued its Guidelines for the Committee of Creditors in August 2024.

C. Court Decisions and the Creation of Creditor Rights

Much of the literature on the judicial role concerns the interpretation and refinement of creditors' rights under the IBC. The Supreme Court decisions have been examined in terms of individual decisions and the overall jurisprudential trend.

The ruling in Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 SCC 17, is generally considered a constitutional turning point in the IBC. The Supreme Court's move to support the disparate treatment of financial and operational creditors, because financial creditors have the expertise and financial interest to make informed decisions on resolution issues, has been observed by scholars to have legitimised the exclusive composition of the CoC and overcome early constitutional challenges to the Code.

The Supreme Court's decisions have gotten most of the academic attention, but the legal path that led to creditor rights started at the tribunal level. The NCLT and NCLAT decisions have been very important in interpreting admission thresholds, creditor classification disputes, and the scope of resolution plan approvals. The Supreme Court then made these decisions into binding precedent.

Even greater scholarly interest has been drawn to the judgment in the Committee of Creditors of Essar Steel India Limited (through Authorised Signatory) v. Satish Kumar Gupta and Ors., (2020) 8 SCC 531. The twin roles of the judgment in reassessing the commercial wisdom doctrine and, at the same time, insisting that resolution plans needed to treat all classes of creditors equally or fairly (whichever was not applicable) came under the microscope of further scholarship: what equitable treatment really meant in practice?

Empirical data on outcomes of resolutions and recovery rates and CIRP timelines were useful data in the IBBI itself, with its own Handbook on the Insolvency and Bankruptcy Code (2020) jointly authored by M.S. Sahoo and Anuradha Guru, published as Indian Insolvency Law in Vikalpa (2020) and its subsequent annual reports and quarterly newsletters. This information

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has been extensively cited in the literature to determine whether the promise made in the Code regarding improved creditor recovery is realised in practice. The statistics paint an ambivalent picture - the recovery of creditors under the IBC has notably compared with the pre-IBC regime in absolute terms. Nevertheless, haircuts remain high, and the recovery gap between financial and operating creditors remains a concern.

Newer policy contributions have highlighted new issues of concern and change. RBI Deputy Governor Rajeshwar Rao suggested a code of conduct for CoC members to be imposed, along with greater openness in the resolution process, in a speech at the Bank for International Settlements (BIS) in December 2024. This demonstrated that questions of CoC responsibility had ceased to be discussed in an academic forum and had shifted to discussions of regulation and central banking. The EY India report Nine Years of IBC: Transforming the Insolvency Landscape in India (2026) also indicated that although the Code had transformed the insolvency landscape in India, recovery rates had recently been declining, so lawmakers should focus more on the problem.

D. The Research Gap

The literature has contributed significantly to the design of the IBC and its real-world implications. The bulk of the academic literature has, however, been inclined to either abide by individual judicial rulings or to analyse a single aspect of the issue that is either the institutional design of the CoC or the recovery rates of creditors and not to relate them to the overall trajectory of judicial history. This paper attempts to address the existing gap by offering a comprehensive analysis that follows the judicial path from the NCLT to the Supreme Court, investigates how the composition and functioning of the CoC result in varying recovery outcomes, and proposes a targeted accountability-driven reform agenda for the CoC—an analytical synthesis that is currently lacking in the literature.

Judicial Evolution, COC Functioning, and Creditor Recovery Under the IBC

3.1 Landmark Judgements Shaping Creditor Rights

Creditor protection under the IBC has been built up in the judicial architecture, layer by layer, with each important pronouncement added to what the statute itself offers. It starts at the tribunal level and not at the Supreme Court. The National Company Law Tribunal, as the Adjudicating Authority under Section 60 of the IBC, has played a foundational role in

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admitting CIRP applications and issuing moratorium orders under Section 14, which automatically bar individual creditor actions against the assets of the corporate debtor. The precise scope and legal boundaries of these powers, however, have been progressively clarified by the higher courts through appellate review.[12]

The Swiss Ribbons Pvt. Ltd. v. Union of India was the initial and most fundamental Supreme Court intervention, where the petitioners questioned the constitutionality of the IBC on the ground of differentiation of the financial and the operational creditors and consequently, the exclusion of the operational creditors from CoC was arbitrary and contrary to Article 14 of the Constitution of India.[13] The Supreme Court rejected this objection, noting that the financial creditors are in a radically different position from the operational creditors due to their long-term financial exposure and expertise in credit evaluation. Such an approval, in addition, cleared the constitutional test and authorised the sole composition of the CoC as a deliberate and rational policy decision.[14]

The most detailed statement of the doctrine of commercial wisdom was made in Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta.[15] The Supreme Court ruled that neither the NCLT nor the NCLAT could interfere with the commercial wisdom of Coc. At the same time, the Court provided an equally significant corrective: resolution plans must be fair and equitable to both operational and other classes of creditors.[16]

This was further limited in K. Sashidhar v. Indian Overseas Bank, where the Court held that the CoC's refusal to approve a resolution plan is not subject to judicial review on commercial grounds in the case of operational creditors who were not part of the CoC voting.[17]

The protection of creditors was then extended in Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd., which ruled that homebuyers are financial creditors and that minority CoC rights are protected.[18] The court found that resolution plans could not completely nullify minority participation.

There have been major developments in the 2024 and 2025 cases that have moved this legal path forward a lot.

To begin with, in DBS Bank Ltd. v. Ruchi Soya Industries Ltd., the Supreme Court had to

[12] Insolvency and Bankruptcy Code, 2016, No. 31 of 2016, §§ 14, 60.
[13] Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 SCC 17 (India).
[14] *Id.* at ¶¶ 28–32.
[15] Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2020) 8 SCC 531 (India).
[16] *Id.* at ¶ 54.
[17] K. Sashidhar v. Indian Overseas Bank, (2019) 12 SCC 150, ¶ 39 (India).
[18] Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd., (2021) 9 SCC 1, ¶ 117 (India).

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grapple with the status of dissenting financial creditors under an approved resolution plan.[19] The Court did not find it possible to force dissenting financial creditors to accept terms of resolution plans that would grant them less than liquidation value, with no justifiable reasons being given by the CoC. This ruling directly addresses the gap left by Essar Steel by operationalising the fairness floor for dissenting minorities in the CoC itself.[20] This protection previously existed only in principle, not in practice.

Second, the recent decision by the Madras High Court to reframe the relationship between the CoC and operational creditors, as of 2024, is the most conceptually important recent development. The Court believed that, as a structural matter, the CoC plays a trustee role in respect of the rights of operational creditors in the CIRP, the CoC members thus being subject to a fiduciary-type duty to place the interests of operational creditors into account in the work of evaluating and approving resolution plans.[21]

Thirdly, the case of SBI v. Murari Lal Jalan and Ors. considered the responsibility of the monitoring committee formed after the resolution plan was approved.[22] The Court also ruled that creditors have enforceable rights despite the NCLT approving a resolution plan, and that the monitoring committee should be under judicial supervision. This goes beyond the CIRP itself in creditor protection into the implementation phase - something that the current framework has failed to apply in a significant way.

The 2024-2025 judicial developments, when taken together, indicate the existence of an actively corrective court system in addressing the asymmetries caused by the original framework, especially towards dissenting financial creditors and the structural oversight of operational creditors.

3.2 CoC Composition, Powers and Working

Under Section 21 of the IBC, the Committee of Creditors is constituted with the following membership limited to financial creditors, whose voting shares must be proportional to the financial debt owed; the CoC has three types of decisive power, namely; appointment and replacement of the Resolution Professional under Section 22; evaluation and approval of

[19] DBS Bank Ltd. v. Ruchi Soya Indus. Ltd., Civil Appeal No. 9133 of 2021 (Supreme Court of India, decided 2024).
[20] Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2020) 8 SCC 531 (India).
[21] National Sewing Thread Co. Ltd. v. The Superintending Engineer, W.P. No. 29845 of 2022 (Madras H.C. June 7, 2024).
[22] State Bank of India v. Murari Lal Jalan & Ors., Civil Appeal No. 5893 of 2023 (Supreme Court of India, decided 2024).

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resolution plans under Section 30(4) by a vote of not less than sixty-six percent.[23] In the IBBI published its Guidelines to the Committee of Creditors in August 2024, the first formal effort to regulate CoC behaviour via self-governance since the enactment of the Code.[24] These guidelines cover the procedures of meetings, information-sharing practices among CoC members and the Resolution Professional, and the overall behavioural expectations. They fail, however, in two respects: no mechanism for binding enforcement with specified penalties has been established, and no formal role for operational creditors has been established.

3.3 CoC Functioning and Creditor Recovery Performing.

Details of CIRP cases as on December 31, 2025

Status of CIRPs	**No. of CIRPs**
Admitted	8833
Closure:	6954
Withdrawn under section 12A	1260
Closed on appeal or review or settled	1366
Resolution plans approved	1376
Liquidation orders passed	2952
Ongoing CIRP cases	**1879**

Source: Insolvency and Bankruptcy Board of India, Status of CIRPs as of 31 December 2025.[25]

The numbers tell a clear story. Since the IBC came into force, 8,833 companies have been admitted into the CIRP. Of these, 6,954 cases have reached a conclusion. But of those concluded cases, only 1,376 — roughly one in five — actually ended with an approved resolution plan that revived the company or its business. The far more common outcome was liquidation: 2,952 cases, or 42.4% of all concluded CIRPs, ended with a liquidation order — meaning the company was wound up and its assets sold off. In simple terms, a distressed company entering the CIRP is more than twice as likely to end up in liquidation as it is to be successfully resolved. The remaining cases were either settled or withdrawn before completion. As of 31 December 2025, another 1,879 cases are still ongoing — and the vast majority of

[23] Insolvency and Bankruptcy Code, 2016, No. 31 of 2016, §§ 24(3), 22, 30(4), 33.
[24] Insolvency & Bankruptcy Board of India, Guidelines for the Committee of Creditors (Aug. 2024), *available at https://ibbi.gov.in/uploads/legalframwork/db3d7327523500331bd793bed7835ff2.pdf*
[25] Insolvency & Bankruptcy Board of India, Quarterly Newsletter for July–September 2025, at 7–9 (Nov. 20, 2025), *available at https://ibbi.gov.in/uploads/publication/63ca2664fde1e59fb2c438e93a0d50f6.pdf*

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these have already been running beyond the 270-day mark that the law envisages as the outer limit for resolution. The longer a CIRP drags on, the more the company's assets lose value, which ultimately means less money recovered for all creditors.

The average recovery rate for financial creditors of admitted claims is about 32-36%, and for operational creditors, about 2-5%.

The EY India report published in 2026 found that recovery rates have been declining in recent years despite institutional maturation of the framework, directly contradicting the assumption that process refinement alone would improve outcomes.[26] This structural finding is corroborated by the IIM Bangalore Behavioural Study of 2025, which examined CoC decision-making patterns across a sample of concluded CIRPs and found evidence of systematic self-interest bias: CoC members representing larger financial creditors consistently structured resolution plan approvals to maximise their own recoveries at the expense of smaller financial creditors and operational creditors.[27] The study concluded that this bias is not adequately corrected by the existing judicial review framework, given the narrow scope of review established in K. Sashidhar, and that structural intervention — either through CoC composition reform or binding conduct obligations — is necessary to produce genuinely equitable outcomes.

3.4 Gaps and Reform Imperatives

The above analysis reveals three structural gaps, each with a direct legislative or regulatory impetus. The former is the deficit of operational creditors. Operational creditors are neither CoC members nor recover much in either resolution or liquidation, and they have no effective judicial redress. Madras High Court 2024 trustee-framing is a promising doctrinal route, but it needs Supreme Court approval to be systemic. The Insolvency and Bankruptcy Code (Amendment) Act, 2026, provides operational creditors above a certain threshold with a formal consultative role in the CoC, marking the first structural correction to the framework since the adoption of the Code.[28] The second gap is CoC accountability. The 2024 IBBI Guidelines and the 2025 CIRP Fourth Amendment Regulations are positive regulatory moves, but the lack of a penalty to enforce CoC malpractices is a significant weakness. The first judicially enforceable

[26] *Ernst & Young India, Nine Years of IBC: Transforming India's Insolvency Landscape 14–17 (2026), available at https://www.ey.com/en_in/insights/strategy-transactions/nine-years-of-ibc-transforming-india-s-insolvency-landscape*

[27] Indian Institute of Management. Bangalore, Behavioural Patterns in Committee of Creditors Decision-Making: An Empirical Study of CIRP Outcomes 22–27 (2025), *available at https://ibbi.gov.in/uploads/whatsnew/1af62766c26f90a284c1fa996faa6e97.pdf*

[28] The Insolvency and Bankruptcy Code (Amendment) Act, 2026, No. 8 of 2026.

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accountability standard, beyond the limited illegality review of K. Sashidhar, introduced by this judgment in the form of the JSW Steel v. Bhushan Power judgment of 2025, which held that the CoC conduct is also subject to accountability review when it leads to results that are inconsistent with the objectives of the Code, is the first such accountability standard. The third gap is the delay issue. The statutory 330-day limit under Section 12 is frequently exceeded, compromising asset values and diminishing recovery for all creditors. This is taken care of in the Insolvency and Bankruptcy Code (Amendment) Act, 2026, by imposing compulsory timelines and greater powers for the NCLT to manage cases.[29]

3.5 Summary

The results of this chapter show that the IBC has already achieved its original goal of enabling debtors in control to become creditors in control, and that the judiciary has gradually enhanced this structure through a series of rulings from Swiss Ribbons to JSW Steel. However, the IBC protection of creditors is structurally unequal. The CoC achieves a meaningful recovery for financial creditors compared to operational creditors who are not part of the CoC. Recovery rates are decreasing. The IIM Bangalore Behavioural Study confirms that the self-interest bias in the CoC is a structural, not an incidental issue. The 2024-2025 legal and regulatory changes (DBS Bank, the Madras HC trustee decision, JSW Steel, the Fourth Amendment Regulations of the IBBI, and the Insolvency and Bankruptcy Code (Amendment) Act, 2026) are all strong indications that the legal system has recognised these shortcomings and is seeking to address them. Do these answers, combined, suffice, or ought a more radical legislative overhaul to be undertaken? This paper leads to the opinion that the latter is true.

Conclusion and Suggestions

The Insolvency and Bankruptcy Code, 2016, is the greatest change in India's creditors and insolvency history. Prior to the IBC, creditors were not entitled to sit at the table. The promoters in default may spend years hiding behind the BIFR process as the value of the assets declined, and the courts were more focused on trying the case as a lottery than as law. The Code has transformed this radically. It transferred power, as between debtors and creditors, to a time-limited procedure, constituted the Committee of Creditors as the decision-maker in the centre of the stage, and first put financial creditors in real control over the destiny of a troubled company. These are real accomplishments, and they must be rewarded as such.

[29] The Insolvency and Bankruptcy Code (Amendment) Act, 2026, No. 8 of 2026, § 14

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The judicial record supports this picture. Since Swiss Ribbons v. Essar Steel, since Jaypee Kensington v. DBS Bank and JSW Steel, the Supreme Court has steadily broadened the creditor protection regime - confirming the constitutionality of the Code, defining the commercial wisdom doctrine, broadening the category of financial creditors to the homebuyer, and most recently holding the CoC itself to accountability standards. The decision of the Madras High Court in 2024, that the CoC is a trustee to the rights of operational creditors, should the Supreme Court uphold it, might be the most important doctrinal change since the passage of the Code. Combined, the nine years of judicial interpretation have created a framework that is far more complicated than the statute's text would reasonably imply.

However, the statistics are less comfortable. Among 8,833 CIRPs taken since 2016, 1,376 (not one in five) resulted in an approved resolution plan. Of the 2,952 adjudicated cases, 42.4% were liquidated. Recovery rates are much better than during the pre-IBC period, but are highly unequal: financial creditors recover around 30-35% of their presented claims, whilst operational creditors recover less than 10%. The mean haircut across all creditors is 67. The average resolution approval period is 597 days, compared to the statutory 330 days. These are not petty implementation issues. They are formal aspects of a system created to favour financial creditors and have produced precisely what it was created to produce - at the cost of those it has excluded.

The conclusion that this paper makes is thus a considered one. The IBC has achieved its main goal of ensuring that India's insolvency regime is creditor-friendly. It has yet to achieve creditor-equity status. It is the gap between the two things that now requires the attention of the reform agenda.

Suggestions

To begin with, there is a need to provide operational creditors with a formal voice. The existing system completely marginalises them as CoC members and provides them with only a judicial fairness floor, which has been challenging to apply in practice. An amendment conferred by the operational creditors who hold claims exceeding a specified limit, say ₹1 crore, formal consultative status under the CoC, with the right to file written objections to resolution plans, would mitigate this imbalance in part, without affecting the decision-making efficiency of CoC. The Insolvency and Bankruptcy Code (Amendment) Act, 2026, is in this direction and ought to be proceeded without any watering down.

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Second, CoC should be held accountable. The August 2024 IBBI Guidelines to the Committee of Creditors are a welcome first step, although they are not enforceable. It is required to have a statutory code of conduct for CoC members, supported by the IBBI, to impose penalties for breaches and, in severe instances, nullify resolution plans passed in breach of the CoC. The IIM Bangalore Behavioural Study of 2025 provides empirical data showing that self-interest bias in CoC is a fact and a quantifiable issue. It will not be fixed by regulatory goodwill.

Third, dissenting creditors, financial and operational, should have a guaranteed floor to recovery. The 2024 DBS Bank judgment and the 2025 CIRP Fourth Amendment Regulations of the IBBI have made strides in this direction by obligating, at least pro rata, the payment of dissenting financial creditors during the phased plan implementation. This must be enacted in the statute itself, and with a more definite floor pegged to liquidation value, in order that the objecting creditors have a predictable and enforceable priority instead of a judicial one.

Fourth, delays should be considered a matter of creditor right, rather than a procedural matter. Delay in the CIRP is not a procedural inconvenience — it is a measurable destruction of value at the direct expense of creditors. The provisions of the Insolvency and Bankruptcy Code (Amendment) Act, 2026 regarding the implementation of a compulsory timeline and the increase in NCLT's powers to handle cases must be taken seriously. Delay is measurable and not an abstraction, as the negative relationship between resolution timelines and creditor recovery is a 15% reduction in realisations after 330 days.

The IBC is nine years old. It has changed the culture of insolvency in India in such a manner that it would have been hard to believe a few years back, in 2015. The Code's induction of pre-filing settlement behaviour, the decline in gross NPAs of scheduled commercial banks to a multi-decadal low of 2.58%, and the S&P upgrade of India's insolvency framework in December 2025 are all testament to the transformative impact the IBC has achieved. The thing now is not to defend what is there but to finish what was begun, a system that secures all the creditors, not only those who can sit at the table.