

# **An Analysis of the Legislative Intent, Process, Amendments and Institutional Framework Underlying Bankruptcy Reform**

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**Abstract:** *This paper provides a comprehensive analysis of the legislative intent, process, amendments and institutional framework required for bankruptcy reforms in India, particularly focusing on the enactment of the Insolvency and Bankruptcy Code (IBC), 2016. The study traces the historical context of bankruptcy laws, the economic imperatives that drove the reforms, and the legal framework that evolved with the aim of resolving insolvencies efficiently. The legislative intent behind the IBC was to consolidate fragmented laws into a unified code that could ensure timely resolution and improve ease of doing business. The paper examines key amendments in the IBC that address emerging challenges, including creditor rights, personal guarantor liabilities, and corporate insolvency proceedings. It also evaluates the institutional structures, such as the National Company Law Tribunal (NCLT) and the Insolvency and Bankruptcy Board of India (IBBI), that support the functioning of the IBC. Judicial pronouncements, economic objectives, and policy considerations are assessed to understand the dynamic nature of bankruptcy reform in India. This analysis highlights the importance of continued legislative and institutional development to meet the complex demands of insolvency resolution in a rapidly changing economy.*

**Keywords:** NCLT, IBC, Legislative IBBI, Judicial pronouncements and Economic etc.

## **I. INTRODUCTION**

The terms 'bankruptcy' and 'insolvency' are not synonymous. Bankruptcy simply means inability to repay debts and insolvency is the result of bankruptcy. When the liabilities of an entity exceed its assets then that situation is called bankruptcy and insolvency is the situation when the court of law declares the entity bankrupt and passes an order for resolution. Corporate insolvency is a situation in which a company is unable to repay its debts. The many earlier overlapping laws in India relating to insolvency and bankruptcy of companies, limited liability partnerships, partnership firms, individuals and other legal entities and their respective judicial bodies were inefficient and ineffective and failed to deliver the desired results.

Following the implementation of the IBC, India moved from 77th in 2018 to 63rd in the 2019 World Bank's Ease of Doing Business Index and India moved from 108th in 2018 to 52nd in the Ease of Resolving Insolvency Index among the largest economies. leapt off. The law is seen as an important catalyst for improving debtor behavior. Under this Code a third party insolvency practitioner (called a "resolution professional") takes control of the CD and prepares a restructuring plan within a strict time period which the creditors have to approve. In the event of default by the corporate debtor the OC, FC or CD can itself initiate insolvency of the CD. The Code inter alia envisages a new institutional framework involving IP, IPA, IU and IBBI. The establishment of these institutions provides for prompt and systematic tracking process of insolvent companies.

Chapter 2 is divided into three parts and highlights the legislative intent behind the codification of the IBC (from the inception of the insolvency law in the British period).

Explains the process of CIRP envisaged under the Code, lists the amendments made to the IBC till December 20, 2021, clarifies the pre-packaged insolvency resolution process and highlights the institutional arrangement of the four pillars of the Code.

India's economic growth and the globalisation of its corporate sector necessitated an efficient insolvency resolution mechanism. Prior to the IBC, India had a fragmented and ineffective system for insolvency resolution, governed by multiple laws such as the Sick Industrial Companies Act, 1985 and the Companies Act, 1956, which led to delays and complexities.

### **1. Objective:**

The objective of this paper is to analyse the legislative intent behind the IBC, the process of enacting and amending the Code, and the institutional framework developed to support its implementation.

### **1.2 Legislative intention behind the formation of Insolvency and Bankruptcy Code, 2016**

First, it is important to analyze the legislative history and understand the efficacy of previous corporate insolvency resolution frameworks in India. The legislative history in India lacks a comprehensive and cohesive single law to address insolvency issues so as to bring all stakeholders on one platform. Therefore, multiplicity of laws and regulations dealing with bankruptcy led to complexities and hurdles in the processes, overlapping of jurisdictions of different judicial forums and excessive delays in outcome. Insolvency and Bankruptcy is a subject of the Concurrent List in India (Entry 9 of List III in the Seventh Schedule – Article 246 of the Constitution of India) and allows both the Central and State Governments to develop the legislative framework. This means that both the Parliament and the State Legislature have the power to make laws on the subject of insolvency and bankruptcy. But in the event of conflict or conflict between the laws made by them, the laws made by the Parliament are valid unless the State seeks the assent of the President to its law, in which case that law is valid only in that State. come into force. This constitutional provision is similar to that of the United States. Bankruptcy laws generally fall under state jurisdiction, but once the bankruptcy process is initiated, they fall under federal law<sup>1</sup>.

In pre-independence times, we had the Provincial Insolvency Act of 1907, which proved unsuccessful as it gave undue protection to unscrupulous debtors. This Act was replaced by the Provincial Insolvency Act, 1920 (applicable to the whole of India except the erstwhile Presidency Towns) and we also had the Presidency Towns Insolvency Act, 1909 (applicable to the erstwhile presidency towns of Calcutta, Bombay and Madras). Both these Acts were almost a century old, embraced the whole of Bankruptcy law in the era of British India and were applicable in the cases of individual insolvency (including proprietorships and partnerships). Creditors sought recovery action, either through the route of the Indian Contract Act, 1872 or through special laws enacted Post- independence, such as the Sick Industrial Companies (Special Provisions) Act, 1985, Companies Act, 1956, 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 and the Companies Act, 2013. None of the laws had desired outcomes and they had neither been able to aid recovery for creditors nor aided restructuring of firms. This had hampered and lowered down the confidence of the lenders. As a consequence, the debt access for borrowers diminished and this state is reflected in the credit markets in India. Hence, we can conclude that In India, the legal and institutional machinery was not in consonance with the international standards for dealing with debt defaults. Under these circumstances, the recovery rates attained in India are amongst the lowest in the world. When default takes place, generally, lenders recover 20% of the value of debt, on an NPV basis.

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<sup>1</sup>Insidore E. Goldberg, “Constitutional Law: State bankruptcy or insolvency laws; Statutes dealing with the voluntary assignment for the benefit of creditors and the federal bankruptcy act” 11 Marquette Law Review 101-104 (1927).

### **1.3 Legislative Objective of Insolvency Reform in India**

#### **Economic Drivers for Reform:**

The IBC was introduced at a time when non-performing assets (NPAs) were rising at alarming rates, especially in the banking sector. The legislative objective behind the Code was to provide a comprehensive, time-bound bankruptcy framework that maximizes the value of assets and promotes entrepreneurship.

#### **Consolidation of existing laws:**

One of its key objectives was to replace the fragmented laws governing bankruptcy with a unified, coherent system. The IBC consolidated laws such as the Presidency Towns Bankruptcy Act, 1909 and the Provincial Bankruptcy Act, 1920 to create a streamlined mechanism.

#### **Protecting Creditors' Rights:**

The legislative objective was also to strengthen creditors' rights by providing them greater control over the bankruptcy process. It shifted the focus from debtor-centric laws to a creditor-friendly framework aimed at reducing the time and cost of resolving bankruptcy.

### **1.4 Process of enactment of Insolvency and Bankruptcy Code**

#### **Formation of Insolvency Law Reforms Committee (BLRC):**

The BLRC, headed by Dr. T.K. Vishwanathan, played a key role in framing the IBC. The committee's report laid the groundwork for the Code, which emphasised on a single window system for insolvency resolution, faster processes and involvement of financial creditors.

#### **Parliamentary Passage of IBC:**

Introduced in the Lok Sabha in 2015, the IBC was passed by Parliament in 2016. Deliberations focused on how the Code would promote a culture of timely repayment of loans and lead to a more robust financial system.

#### **Implementation Phase:**

After its passage, the IBC came into force with the establishment of judicial bodies such as the NCLT and NCLAT (National Company Law Appellate Tribunal) and the IBBI as the regulatory body. These institutions became crucial in implementing the law.

### **1.5 Key Amendments to the Insolvency and Bankruptcy Code**

#### **Inclusion of home buyers as financial creditors (2018 Amendment):**

In response to issues arising from the insolvency of real estate developers, this amendment granted home buyers the status of financial creditors, allowing them to participate in the Corporate Insolvency Resolution Process (CIRP).

#### **Personal Guarantors for Corporate Debtors (2020 Notification):**

The IBC was expanded to include personal guarantors of corporate debtors. This change ensured that guarantors standing as sureties for debtors were brought within the ambit of insolvency proceedings, thereby expanding the scope of recovery for creditors.

#### **Pre-packaged Insolvency for MSMEs (2021 Amendment):**

To facilitate faster and less costly resolution for micro, small and medium enterprises (MSMEs), the government introduced pre-packaged insolvency resolution schemes. This simplified the insolvency process and minimised disruptions for smaller companies.

#### **Cross-border insolvency:**

Ongoing discussions on introducing a cross-border insolvency framework based on the UNCITRAL Model Law are aimed at addressing the growing complexities of multinational insolvency cases.

### **1.6 Institutional framework supporting the IBC National Company Law Tribunal (NCLT):**

The NCLT acts as the adjudicating authority for corporate insolvency resolution and liquidation proceedings under the IBC. Its role is crucial in ensuring that insolvency cases are resolved in a timely manner, as envisaged by the Code.

**Insolvency and Bankruptcy Board of India (IBBI):**

The IBBI is the regulatory body overseeing insolvency professionals, insolvency professional agencies and information utilities. It plays a key role in ensuring the smooth functioning of the insolvency resolution process, maintaining high standards for the professionals involved.

**Committee of Creditors (CoC):**

The CoC, consisting mainly of financial creditors, plays a key decision-making role in the insolvency process. They have the authority to approve or reject resolution plans, giving them significant control over the future of the debtor company.

**Insolvency Professionals and Agencies:**

Insolvency professionals are tasked with managing the resolution process, running the debtor company during the CIRP, and ensuring compliance with legal requirements. Insolvency agencies monitor the conduct of these professionals, ensuring accountability.

**1.7 Judicial pronouncements and their impact on IBC**

**Swiss Ribbons Private Limited v Union of India (2019):**

The Supreme Court upheld the constitutional validity of the IBC, supporting the Code's provisions for priority of financial creditors over operational creditors.

**Lalit Kumar Jain v Union of India (2021):**

In this case, the Supreme Court upheld the notification that brought personal guarantors within the ambit of the IBC, reaffirming the importance of guarantor liability in corporate insolvency.

**Essar Steel India Ltd v Satish Kumar Gupta (2019):**

This judgment clarified the powers of the CoC and emphasised that commercial decisions of the CoC cannot be reconsidered by courts unless they violate legal principles.

**1.8 Challenges in implementation and future prospects**

**Delays in NCLT and NCLAT proceedings:**

While the IBC has prescribed strict timelines for insolvency resolution, delays in judicial processes and overburdened tribunals have led to cases stretching beyond the prescribed 330-day limit.

**Improving institutional capacity:**

There is a dire need to strengthen the capacity of the NCLT and NCLAT by increasing the number of judges and streamlining caseloads. Additionally, enhancing the training and capacity of insolvency professionals will be critical to improving the effectiveness of the IBC.

**Cross-border insolvency and future amendments:**

As the participation of multinational corporations in India's economic activities is increasing, it will be essential to develop a robust cross-border insolvency framework. The introduction of this framework will bring Indian insolvency laws in line with international standards.

**1.9 Conclusion**

The Code promises to bring about far-reaching reforms, a formal and time-bound insolvency resolution process by establishing IP, IPA, IU, IBBI and NCLT and ensuring effective and efficient administration and implementation of the provisions of the IBC. The formation of two new industries namely IP and IU have been established as competing industries and the four pillars together are considered as a strong building of the Code. IUs will remove asymmetry of information. IPs and IPAs are not self-regulated, instead IBBI has been entrusted with the responsibility of regulating their conduct and setting standards of performance.

The objective of maximizing the value of assets, as enshrined in the Preamble of the Code, is achieved through CIRP, where every possible effort is made by the Resolution Professional to select the best resolution plan (from among the proposed plans). Is. Resolution Applicant) which ensures maximum recovery of the value of the distressed CD's assets. CIRP ensures that the viable corporate is continued as a "going concern" through business re-structuring and re-

engineering tools in the resolution plan. Business restructuring and re-engineering plans (resolution plans may include increasing/decreasing the proposed capital, issuing debentures, mergers, takeovers/takeovers, joint ventures, etc.) serve the purposes of restructuring and bankruptcy of corporate, partnership firms, and Person If for recovery of creditors, every corporate is sent for liquidation then the company will soon collapse and will have no money left. Therefore, keeping viable businesses running through CIRP would be the best option.

The strict timeline<sup>2</sup> under the IBC ensures timely resolution of cases. The moratorium period provided under the IBC allows CDs<sup>3</sup> and CoCs to formulate the best fit resolution plan to realize the maximum value of the CD's assets. It is for this logic that the courts have upheld the supremacy of the moratorium period under the IBC. For the first time in Indian history, this economic reform has balanced the interests of all stakeholders (FCs, OCs, debtors, employees, workers, government dues etc.). Through an amendment brought under the IBC in 2018, home buyers are now categorized as FCs and suppliers of goods and services are given priority in payment of dues in the liquidation proceedings of CIRP and IBC. Also, the introduction of PPIRP in the insolvency resolution framework for MSMEs is highly commendable.

Section 238 of the Code is a non-repudiation clause that gives the IBC the power to overrule any other provision or law contrary or inconsistent with any provision of the IBC. The IBC was enacted because the existing insolvency and bankruptcy laws were inadequate, ineffective and resulted in excessive delays in the resolution process and the IBC is a consolidation of such laws and is, therefore, complete in itself. Therefore, the Code has been given overriding effect. This was concluded by the Hon'ble Supreme Court when it was first questioned in the case of Innovative Industries Ltd. vs. ICICI Bank (this case is analyzed in Chapter 4), which is why the IBC was given overriding effect Maharashtra Relief Undertakings (Special Provisions) Act, 1958. Therefore the objectives of the Code are to promote entrepreneurship and increase the availability of credit in the Indian economy. It can be conclusively said that IBC is an economic reform and beneficial law. This paper analyses the legislative intent, process, amendments and institutional framework for insolvency reform in India, with a focus on the Insolvency and Bankruptcy Code (IBC), 2016. The IBC has been an important step towards resolving insolvencies in a timely manner and improving the ease of doing business in India. Despite its success, the changing nature of insolvency laws, judicial oversight and timely amendments will be critical to address the challenges ahead. Future reforms should focus on institutional strengthening, cross-border insolvency frameworks and maintaining a balance between creditor and debtor interests.

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<sup>2</sup> The Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), s. 12.

<sup>3</sup> The Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), s. 14.