Analysing the Emergence of Insolvency and Bankruptcy Law in Indian Economic Landscape

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Abstract
An effective bankruptcy legislation is integral requirement for an economy to thrive. Insolvency laws strive to assist distressed enterprises in reorganizing and restarting their operations. If resolution is not possible, the law should provide a seamless process for liquidation and withdrawal from the market. The state should facilitate the exit of unsuccessful businesses, allowing for more efficient use of economic resources. The process for effectively exiting unsuccessful enterprises from the Indian market was lacking.
Effective insolvency resolution leads to increased investment in the economy by making it easier to conduct business. The World Bank and OECD created measures to assess and compare nations' insolvency regimes, with time taken for resolution being a crucial criterion.
The emergence of insolvency and bankruptcy law in Indian economic landscape has brought about a significant shift in how distressed assets are dealt within the country. With the introduction of Insolvency and bankruptcy code in 2016, a more structured and streamlined framework has been put in place for resolving insolvency cases. This has provided a more efficient mechanism for creditors to recover dues from defaulting entities and has also given a boost to the ease of doing business in India. The implementation of IBC has also led to increased investor confidence as they now have a well-defined process for addressing insolvency issues, thereby improving the overall business environment in the country. The IBC framework aims to speed up insolvency resolution by focusing on recovering significant amounts from corporate debtors within a specified timeline. If resolution is not possible, liquidation is initiated to maximize asset value. Previous approaches failed to meet deadlines for resolutions. As a result, the assets' value decreased, leaving the creditor with little or no recovery. This Act prioritizes timely resurrection and resolution to maximize the value of debtors' assets.
This study examines the impact of the new code on corporate insolvency and rehabilitation for financial organizations. This will help us comprehend how efficient IBC is in comparison to other systems. An overview of the new code's functionality and goals is given via the case studies. The effectiveness of the bankruptcy code will be reviewed by this study.

Keywords: Asset Reconstruction Companies, Bankruptcy Law Reforms Committee, Corporate Debtors, Corporate Insolvency Resolution Process, Insolvency and Bankruptcy Code, Insolvency and Bankruptcy Board of India, Financial Distress

Introduction
The Insolvency and Bankruptcy Code, 2016 is a law addressing the conundrum of equity and debt. It

contains specific provisions based on the notion of public interest and further facilitates the doctrine of good corporate governance.[1] India started a new regime of insolvency resolution with the enactment of the Insolvency and Bankruptcy Code (IBC) in 2016. By this act, all post-independence insolvency laws have been integrated. The objective is to give a boost to the settlement of stressed assets, which under the previous bankruptcy legislation was quite challenging.

Committees constituted for Bankruptcy Reforms

The committees analyzed existing laws and proposed modifications based on current economic conditions. The established committees and their recommendations are given below.

1. The committee to examine the legal and other challenges faced by banks and financial institutions in rehabilitating sick industrial undertakings and propose solutions, including legal changes (1981).

Chairperson: Shri T. Tiwari. The Committee recommended formation of Sick Industries Companies Act (SICA). SICA was made with the primary goals to monitor the sickness and expedite the recovery of possibly practical industries and closure of unsustainable industries.

2. Committee on the Financial System (1991)

Chairperson: Justice P.S. Narsimha

Recommendation: Setting up of a quasi-autonomous agency within the Reserve Bank of India that supervises banks and financial institutions. The committee also recommended setting up an Asset Reconstruction Fund.

3. Committee on Banking Sector Reforms (1998)

Chairperson: Justice P.S. Narsimha

Recommendation: Securitization And Reconstruction of Financial Asses and Enforcement of Securities Interest Act (SARFAESI) was enacted.

4. High Level Committee on Law Relating to Insolvency and Winding Up of Companies (1999).

Chairperson: Justice V B Eradi.

Recommendation: This Committee proposed that insolvency laws in India prioritize reviving enterprises over disposing of assets quickly, in line with global standards.

5. Advisory Group on Bankruptcy Laws (2001)

Chairperson: Shri NL Mitra

Recommendation: Creating a National Tribunal with benches in each High Court jurisdiction to handle bankruptcy, restructuring, and insolvency petitions, with appeals to the High Court and SLP to the Supreme Court. Additionally, each High Court should have a dedicated bench for bankruptcy, reorganization (similar to Chapter 11 of the US code), and insolvency proceedings to ensure fast tracking.

6. Expert Committee on Company Law (2005)

Chairperson**:** Dr. JJ Irani

Recommendation**:** The Committee proposed reforms to the (RDDBFI) Act, 1993 and (SARFAESI), 2002 to improve the restructuring and liquidation process, making it more efficient and effective[2].

7. Financial Sector Legislative Reforms Commission (2013)

Chairperson: Justice Shri Krishna

[1] Chitra Sharma v Union of India, [2017] W.P.(C)744
[2] *The Institute of Company Secretaries of India* (Part II/2020) 6.

Recommendation: Rebooting the Financial Sector Legislative Framework through a non-sectoral, principle-based approach. Rebuilding current regulatory agencies and developing new ones if needed to give clear mandates, powers, and accountability mechanisms for financial institutions. The mandate includes addressing consumer protection, sensible regulation, resolution mechanisms, capital limits, systemic risk, financial inclusion, market development, and monetary policy in non-sectoral method. The FSLRC recommended a seven-agency structure for the financial sector, including the Reserve Bank of India (RBI), Unified Financial Agency (UFA), Financial Sector Appellate Tribunal (FSAT), Resolution Corporation (RC), Financial Redressal Agency (FRA), Financial Stability and Development Council (FSDC), and Public Debt Management Agency (PDMA)[3].

8. Banking Law Reforms Committee (2014)

Chairperson: Shri T K Vishwanathan

Recommendation: Examined the country's bankruptcy and insolvency structure and suggested the Insolvency and Bankruptcy Code as comprehensive legislation.

Historical context of Insolvency and Bankruptcy Laws in India

The way to IBC has not been easy but it has been laid with many laws and enactments based on past experiences. The Reserve Bank of India (RBI) and the Central Government have implemented steps to help banks efficiently handle stress. Historically, the banking sector has established new organizations to address non-performing assets (NPAs). The Board for Industrial and Financial Reconstruction (BIFR) was established in the 1980s, followed by Debt Recovery Tribunals (DRT) in the 1990s. FY 2001, gross non-performing assets (NPAs) accounted for over 14% of total banking credit. In 2002, a three-pronged strategy was implemented, including empowering banks to enforce security through the SARFAESI Act, introducing the Corporate Debt Restructuring (CDR) mechanism, and establishing Asset Reconstruction Companies (ARCs) to acquire toxic assets from banks' balance sheets.

1. Pre-Independence

In 1828, a bill was passed that established legislation governing corporate insolvency. This statute only applied to the Presidency Towns of Calcutta, Madras, and Bombay. In 1848, the Indian Insolvency Act was passed, which distinguished between traders and non-traders. The jurisdiction over insolvency was moved to High Courts, but only for Presidency towns[4]. In 1909, the Presidency Towns Insolvency Act 1909 was approved, but it only applied to presidency towns; there was no regulation for other sections of the country. Chapter 20 of the Civil Procedure, 1882 introduced the first insolvency legislation for non-presidency cities. The code allows district courts to hear insolvency petitions and issue discharge orders. The Provincial Insolvency statute of 1920 repealed the statute of 1907 in other regions as well.

2. Post-Independence

Prior to 1985, the Companies Act of 1956 served as the sole legal foundation for corporate insolvency and bankruptcy proceedings. It was based on the suggestions of the Bhabha Committee. Section 425 of the Companies Act established a framework for both insolvency resolution and voluntary dissolution[5].

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[3] Financial Sector Legislative Reforms Commission, *Revamping the Legislative Framework Governing the Financial Sector*(2013) [II] < https://dea.gov.in/sites/default/files/fslrc_report_vol2_1.pdf > accessed on 9 September 2024

[4] Pihu Mishra and Sushanta Kumar Das, 'Social Ramifications of Bankruptcy Law' (2020) IBBI 83 <https://ibbi.gov.in/uploads/resources/83be0f71252d977298fd9edd373df5ee.pdf > accessed on 4 September 2024

[5] A Abhirami and T Rahul 'On the Effectiveness of Insolvency and Bankruptcy Code, 2016: Empirical Evidence From India' (2022) Law and Business 20 < https://intapi.sciendo.com/pdf/10.2478/law-2022-0003> accessed on 19 September 2024

The 1956 Act lacked provisions for dealing with corporate insolvencies, although including sections on resolution. Majority of matters were sent to court, where they were handled by liquidators with limited knowledge of the company's operations.

- **Sick Industries Companies Act (SICA) 1985**

Industrial Sickness was at its pinnacle in the 1980s. The Companies Act of 1956 did not address insolvency issues. In 1981, the government constituted a committee chaired by Shri T Tiwari (Chairman of Industrial Reconstruction Corporation of India) to explore the causes of industrial disease and implement steps to resuscitate sick enterprises. The Tiwari Committee proposed a quasi-judicial body to address industrial disease. The statute aims to identify sick and possibly sick firms, and give therapeutic steps to resuscitate them. The Eradi Committee expedited the implementation of steps to revive ill enterprises and restore the industry to its viability.

The Act established the Board for Industrial and Financial Reconstruction (BIFR) and the Appellate Authority for Industrial and Financial Reconstruction (AAIFR). BIFR has the authority to make judgments for the discovery, prevention, and rehabilitation of ill firms[6]. According to SICA, if a firm is declared sick, its board of directors must notify BIFR within 60 days. BIFR must identify strategies for revitalizing and rehabilitating struggling businesses. If the BIFR determines that the company cannot be revived, it will advise the superior Court to liquidate it in accordance with the terms of the Companies Act, 1956.

Even after all these provisions, SICA quickly developed a reputation for prolonging the process. SICA was criticised for procedural slow down and exploitation by debtors who used BIFR as "safe havens" to divert payments from creditors[7]. There were numerous flaws with SICA, such as the current management of the insolvent company remaining in control during the rescue processes, resulting in the siphoning of funds from the creditors. SICA failed to provide timely solutions to ill companies. It was projected that it would take about 5 to 7 years to restore a sick company under SICA[8]**.** Section 22 of the Act permitted firms to suspend legal processes, arbitration, recovery cases, and enforcement of securities interest. However, some unscrupulous promoters used this provision to avoid paying creditors. Another issue with SICA was the delay in the winding-up procedure. The high courts, not SICA, were responsible for liquidating the corporation due to procedural delays in BIFR and AAIFR, resulting in a late decision to wind up the company.

- **Recovery of Debts Due to Banks and Financial Institutions (RDDBFI)**

SICA proved incompetent in delivering results and creditors were unable to collect their dues. The recovery process was slowed by the need to get a final decree from the courts in civil actions. The requirement of the hour was to establish a strategy through which financial institutions' overdue could be realized. The government has formed a committee led by Omkar Goswami to deliberate on the proposed revisions to the insolvency and bankruptcy laws. It was becoming exceedingly difficult for creditors to recover their dues from debtors due to the specious design of SICA, and it took virtually years for the court to issue a decree on civil proceedings[9]**.** The Goswami Committee's preamble emphasized the

[6] Sick Industrial Companies (Special Provisions) Act, 1985
[7] K. Zwieten, 'Corporate Rescue in India: The Influence of the Courts (2015) Journal of Corporate Law Studies 1
[8] Nimrit Kang, and Nitin Nayar, 'The Evolution of Corporate Bankruptcy Law in India, Money and Finance' (2004) ICRA Bulletin Money and Finance 37
[9] Ashish Pandey, "The Indian Insolvency and Bankruptcy Bill: Sixty Years in the Making" (2016) [3(1)] Indore Management Journal 26

existence of ill corporations, banks, financial institutions, and unpaid workers. However, there are seldom any sick promoters. This is the core issue. The group suggested establishing special recovery tribunals to expedite adjudication and streamline the procedure. The committee's recommendations helped in the introduction of the Recovery of Debts Due to Banks and Financial Institutions (RDDBFI) Act in 1993. To give a push to recovery process, banks can apply to specially constituted Debt Recovery Tribunals (DRTs) for a 'Certificate of Recovery'. DRTs can issue orders to recover debts by selling assets or imprisoning debtors. The RDDBFI initially operated effectively, but slowed down for large and powerful borrowers due to SICA's precedence over RDDBFI. Slow disposal led to DRTs becoming overburdened.

- **Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest (SARFAESI) Act**

In 2002, Government established SARFAESI act to speed up the recovery procedure for bank dues, as DRT was ineffective due to overloaded courts. The SARFAESI Act was passed in December 2002 after the proposal of Narsimham Committee I. This Act empowered banks to expedite recovery without court intervention. It authorized the disposal of secured assets and established Asset Reconstruction Companies. The goal was to bring banks on par with international financial institutions in managing NPAs. The measure allowed banks and financial organizations to sell securities without court involvement. SARFAESI did quicken the recovery process, but only for secured assets. SARFAESI, like RDDBFI, lacks powers to propose restructuring and reorganization. SARFAESI and RDDBI often exercised parallel jurisdictions, causing misunderstanding on primacy[10]**.** Debtors disputed the legitimacy of SARFAESI and its definitions which were finally decided by the Supreme Court in 2014. In addition to SARFAESI, the Government of India established the Corporate Debt Restructuring program in 2001.

- **Corporate Debt Restructuring (CDR) and Strategic Debt Restructuring (SDR)**

RBI started the CDR scheme in 2001. CDR was applicable to accounts when numerous banks lent money and the total exposure was Rs 100 million or above.

To receive a restructuring or bailout package, at least 75% of the Joint Lenders Forum needed to approve. The CDR mechanism underwent numerous revisions between 2001 and 2015. While a few cases were successfully revived with bailout packages, the bulk of cases failed during implementation. Infrastructure industries took longer to recover from the scheme's two-year moratorium, resulting in many failed instances. Infrastructure projects typically take a long time to build, have a lengthy repayment period, and require bank loans with five to seven-year duration and short-term restructuring alternatives.

To address failed restructuring packages, the government implemented the Strategic Debt Restructuring (SDR) scheme. Under this model, lenders had influence over the company's management and could sell it to buyers or earn a higher price for their equity. This initiative was implemented by the RBI in June 2015. The SDR initiative might be taken by a consortium of banks or JLF that provided loans to the delinquent firm. The Joint Lender Forum (JLF) is a committee made up of bankers who have supplied loans to potentially stressed or stressed borrowers. However, the RBI's scheme also performed poorly. Bankers' lack of experience in the corporate sector and the lengthy process of converting debt to equity were significant challenges. Some debt-to-equity conversion agreements were not appropriately constructed.

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[10] Nimrit Kang, and Nitin Nayar, 'The Evolution of Corporate Bankruptcy Law in India, Money and Finance' (2004) ICRA Bulletin Money and Finance 37

Performance of Insolvency Schemes before IBC

1. **Sick Industries Companies Act (SICA)**

The Sick Industrial Companies Act (SICA) was introduced in 1985. Since 1987, there have been 5644 registered instances, with the highest number in 2001. Data shows that just 801 of the 5644 recorded cases were resurrected. SICA's success rate was barely 14%. In the first five years of implementation, just 17 out of 1117 registered cases were revived, representing a meagre 1.5%. The data highlights BIFR's inefficiencies and poor efficacy in lowering NPAs. The data also shows that as on December 31, 2000. Since the implementation of SARFAESI in 2002, the number of registered cases has steadily decreased, reaching its lowest in 2009[11].

2. **Recovery of Debt Due to Banks and Financial Institutions (RDDBFI)[12]**

The implementation of RDDBFI resulted in the construction of DRTs, but they quickly became inundated with cases, taking an average of nearly 4 years to dispose of them.

3. **Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act (SARFAESI)**

The SARFAESI act provided relief in resolving non-performing assets (NPAs) for banks and financial institutions by eliminating the need for court intervention. In 2008-09, DRTs had a greater recovery rate of 81.07% compared to SARFAESI's 33%. Since 2009, SARFAESI has performed well in recovering NPAs. SARFAESI had the highest success rate of any NPA recovery strategy, with an average of 25%[13].

THE INSOLVENCY AND BANKRUPTCY CODE, 2016

The bankruptcy and Bankruptcy Code, 2016 (Code/IBC) governs bankruptcy resolution for all entities in India, including corporate and individuals. The laws for corporate insolvency and liquidation went into effect on December 1, 2016, while those for insolvency resolution and bankruptcy of personal guarantors to corporate debtors (CDs) began on December 1, 2019[14] . Codifying Insolvency law aims to improve legal consistency and clarity for stakeholders affected by corporate failure or debt. The Code repealed the Presidency Towns Insolvency Act, 1909, and the Provincial Insolvency Act, 1920[15].

The state's institutional framework should promote freedom of entry, doing business, and exit for commercial entities. The Indian regulatory framework recognizes the first two freedoms, but the Code enables troubled enterprises to address insolvency in a timely and orderly manner. The Code transformed India's business distress resolution system into a market-driven, incentive-compliant, and timely approach. It tackles market flaws and information asymmetries, providing commercial entities and entrepreneurs with "freedom to exit" through corporate insolvency resolution. The Code is a law governing insolvency. The Code was a key milestone towards India becoming a mature market economy. This law aims to resolve debtor insolvency, maximize asset value for creditors, and facilitate firm closures. The Code is a significant economic change that shifts power from the debtor to the creditor. It has strengthened budgetary and credit discipline, preserving economic value.

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[11] Reserve Bank of India, *Report of the Committee to Review the Working of Asset Reconstruction Companies*, (2021).

[12] The Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

[13] Attar Shafiya Yasin and Ramyanagari Shirur, 'Critical Study of Non-Performing Assets (NPAs) and Sustainable Measures for Non- Banking Financial Company (NBFC) in India'(2024) [14(7)] International Journal of Management, IT & Engineering

[14] International Finance Corporation, '*A Handbook on Understanding the IBC: Key Jurisprudence and Practical Considerations*', (May 2019)

[15] Vinayek Mehra, 'Debt Recovery Laws and Recent Changes' (2020) iPleaders Blog <Debt recovery laws and recent changes - iPleaders >

The Supreme Court upheld the constitutionality of the IBC in the case of **Swiss Ribbons Private Limited vs. Union of India and Others**[16]**.** It was observed by the Court that IBC aims to reorganize and resolve the corporate debtor's insolvency in a timely manner.

In **Binani Industries Ltd vs. Bank of Baroda & Others**[17]**,** the National Company Appellate Law Tribunal stated that IBC has three objectives: resolution, maximization of firm assets, and promoting entrepreneurship, credit availability, and stakeholder balance. This order of objectives is sacred.

Principal features of the IBC

The code's major feature is its architecture, which enables quick deployment of the insolvency resolution procedure. The code introduces the National Company Law Tribunal (NCLT), Insolvency Resolution Professional Agencies, Insolvency Professionals, and Information Utilities to streamline the resolution process and eliminate inefficiencies. The code includes four pillars, which are:

1. The Insolvency and Bankruptcy Board of India: The Insolvency and Bankruptcy Board of India is the key entity under this code. It regulates and controls agencies and professionals involved in insolvency resolution. The regulator oversees insolvency professionals, agencies, and information utilities. This is a crucial component of the code's ecology, ensuring that the process aligns with its aims.

2. Insolvency Professionals (IPs): Individuals registered with the Insolvency Professional Agency (IPA), which is governed by the board will handle the resolution process; they will serve as trustees in bankruptcy and liquidators; they are chosen by creditors and have precedence over the board of directors. IPs are able to provide performance bonds equivalent to the company's assets in cases of insolvency.

3. Information Utilities (IU): Creditors' financial data would be accepted, stored, authenticated, and made accessible by Information Utilities (IUs), a centralized repository of borrowers' credit and financial data.

4. Adjudicating Authorities: A crucial pillar of the Code is Adjudicating Authorities (AA) which oversees insolvency resolution, liquidation, and bankruptcy processes in accordance with IBC rules and regulations. The system comprises of the National Company Law Tribunal (NCLT) and an appellate body, the National Company Appellate Law Tribunal (NCLAT). The Principal Bench of the NCLT is in New Delhi. The Debt Recovery Tribunal adjudicates insolvency cases for individuals and partnerships. The Debt Recovery Appellate Tribunal (DRAT) hears appeals from DRT orders before the Supreme Court of India hears them all.

India's Insolvency and Bankruptcy Code (IBC) is a significant step in reforming the economy that integrates earlier insolvency and bankruptcy laws. The Central Government and IBBI handles procedural and other problems[18]**.** The rationale is to quickly modify the law to changing conditions.

The IBC empowers the Central Government to create rules to implement the Code's provisions and designates specific areas for rule-making. The IBC allows creditors and debtors to initiate insolvency resolution, but the Insolvency and Bankruptcy (Application to Adjudicating Authorities) Rules, 2016, notified by the Central Government, outline the application process to the Adjudicating Authorities.

The IBC empowers the IBBI, the regulator, to create regulations that align with the Code and rules, ensuring compliance with its provisions. The Insolvency and Bankruptcy Board of India's (Insolvency

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[16] AIR (2019) SC 739

[17] Company Appeal(AT) (Insolvency) No. 82 of 2018.

[18] International Finance Corporation, '*A Handbook on Understanding the IBC: Key Jurisprudence and Practical Considerations'*, (May 2019)

Resolution Process for Corporate Persons) Regulations, 2016, outline provisions for conducting insolvency resolution for corporations.

Corporate Insolvency Resolution Process

Corporate Debtors (also known as CDs) can be resolved or liquidated using the Insolvency and Bankruptcy Code's Corporate Insolvency Resolution Process (CIRP). According to the IBC CIRP, if a CD defaults, its creditors or the CD itself might commence the CIRP. To start the CIRP process, submit an application. All attempts are taken to resolve the CD when a CIRP is initiated, and this could lead to any of the following results:

Resolution: The CD can be resolved once a resolution plan is accepted by a majority of the Committee of Creditors (CoC) and the AA.

Liquidation: The CD may be liquidated by the AA if no resolution plan is received or approved by a majority of the CoC.

A. Flow of Corporate Insolvency Resolution Process

The CIRP process begins with an application to the AA and finishes with an order approving a resolution plan or liquidating the corporate debtor.

B. Commencement of CIRP

A Financial Creditor (FC), Operational Creditor (OC) or Corporate Debtor (CD) can begin a CIRP under Section 6 of the IBC against the CD if they incur a default as specified in Chapter II of Part II of the IBC[19]. The CD sets the default trigger for launching CIRP. According to section 4 of the IBC part II, the minimum default amount for initiating the CIRP is Rs 100,000. On March 24, 2020, the central government increased the default level to Rs 10 million in response to COVID-19.

C. Moratorium

According to Oxford Dictionary, a moratorium is "a temporary prohibition of activities"[20]. Section 14 of Insolvency and Bankruptcy Code outlines the moratorium security provided to the Corporate Debtor. This moratorium covers the whole duration of Corporate Insolvency Resolution Process and suspends all legal proceedings and recovery activities against the CD to allow them to resolve their status. On the Insolvency Commencement Date (ICD), the Insolvency Resolution Professional (IRP) takes over the Board of Directors' functions until the AA orders the CD to be resolved or liquidated.

Whether to designate another Insolvency Professional as Resolution Professional (RP) or retain the Insolvency Resolution Professional in that role is up to the Committee of Creditors (CoC). Resolution Professionals manage the Corporate Debtor as a going distress & follows IBC and CIRP regulations under the CoC's supervision. The Banking Law Reform Committee (BLRC) suggests establishing a 'quiet period' to prioritize settlement efforts.

D. CIRP Timelines

After the application is approved by the Adjudicating Authority (AA), the CIRP process begins. This is the day on which Insolvency Commencement Day (ICD) is observed. The CIRP must be finished in 180 days, under Section 12(1). Should a resolution be approved by 66% of the CoC, the time may be extended for another 90 days. This is a one-time use only extension. Two clauses were added to Section

[19] Nisha Vyas, 'A study of Corporate Insolvency Resolution Process of Bhushan Steel Ltd. Concerning 'Insolvency and Bankruptcy Code 2016' (2023) International Journal for Multidisciplinary Research 101 <https://www.ijfmr.com/special-issues/2/89.pdf>

[20] Meaning of the word Moratorium, https://www.betterwordsonline.com/dictionary/moratorium.

12(3) of the Insolvency and Bankruptcy (Amendment) Act, 2019 and it altered the previous clause. According to the first clause, a CIRP must be finished, including any extensions and court procedures related to the resolution process, within 330 days of the date the insolvency began. According to Provision 2, a CD's CIRP must be completed within 90 days if it has been unfinished for longer than 330 days.

IMPACT OF IBC ON INDIAN ECONOMY

1. Resolution of Non-Performing Assets in Banking Sector

The Indian banking sector has long faced concerns about high levels of non-performing assets (NPAs). Banks may quickly deal with and eliminate credit problems through the time-bound resolution process of the Insolvency and Bankruptcy Code, preventing them from accumulating and negatively impacting their financial statements. The Insolvency and Bankruptcy Code has helped banking institutions reduce non-performing assets (NPAs) by recovering dues from defaulters. According to the RBI's 2021-22 Report on Trends and Progress of Banking in India, Scheduled Commercial Banks (SCBs) recovered 23.8% of their claims under IBC in FY 2021-22. SCBs have recovered more money through IBC than any other avenue. SCBs have recovered the most through IBC compared to other channels. In March 2023, NPAs reached a 10-year low of 3.9% due to stricter loan distribution practices and IBC compliance.

2. The insolvency procedure which was previously dispersed among numerous laws is now more efficient thanks to the Insolvency and Bankruptcy Code,2016. Due to overlaps and disagreements brought about by the disjointed strategy, there were procedural obstruction and ambiguities. These procedures were condensed into a single, universal code by the IBC. As a result, problems have been resolved more quickly and with less complexity.

3. The IBC established **stringent timelines for completing the insolvency resolution process.** Ideally, the full application procedure, including legal challenges should be finished within 330 days. This time-bound method prevents partners from being left in doubt permanently and preserves the financial worth of debtor's properties. IBC favours resolving a firm over liquidation. The Code establishes explicit stages for decision-making, from forming a committee of creditors to inviting and approving a resolution plan, to guarantee organizations have a realistic prospect of resurrection within a set timeframe.

4. The IBC has **increased creditor confidence** by providing a clear and predictable method for recovering debts in case of default. The primary goal is to revive the corporate debtor.

Increased confidence has boosted lending to firms and consumers, promoting economic growth.

5. Having a strong framework in place **encourages business owners to manage their finances well and avoid insolvency.** Until May 2023, about 25,565 CIRP petitions with underlying defaults totaling Rs. 8.23 lakh crore were settled prior to admission. IBC has improved credit discipline in firms and promoted favourable behavioral changes among promoters.

6. The IBC has **increased the flow of credit in the economy** by improving the reliability and timeliness of loan repayment. More confidence in the system leads to more lending by financial institutions, which benefits businesses and economic growth. As of June 30, 2023, creditors received ₹2.92 lakh crore under resolution plans in 720 cases.

7. The Committee of Creditors, made up of all financial creditors, ensures collective decision-making and reduces potential biases. Major decisions, such as selecting resolution plans, require a majority vote of the CoC to prevent undue influence from a single creditor. This encourages transparency and enables communal decision-making. Resolution specialists responsible for administering the CD during the insolvency process must disclose relationship and cost information to their registered IPA on a regular basis. Section 29A of the Code prevents irresponsible promoters from accessing the CD by rendering them unfit to submit resolution proposals during the insolvency process. The Board provides periodic updates to stakeholders, such as quarterly newsletters and reports every year to assess the process's effectiveness and outcomes.

8. The IBC tailors measures for MSMEs to address their specific issues and prevent undue burden throughout the insolvency process. Section 240A of the Code exempts MSMEs from the ineligibility rules under section 29A. The PPIRP, a specialized insolvency framework for MSMEs, is gradually gaining pace, with six cases admitted and two concluded.

9. Prior to the IBC, Indian banks and financial institutions experienced low recovery rates for defaulted loans. Protracted insolvency processes made it harder to recover dues, resulting in NPAs and impaired balance sheets for institutions. The IBC's time-bound process leads to quicker and more efficient remedies, **increasing creditors' potential recoveries.** The Code encourages competitive bidding for defaulting firms' assets, resulting in improved value realization. The Code's quick resolution process prevents bankrupt company assets from deteriorating owing to long-term litigation or neglect, resulting in improved recovery rates for creditors. The IBC's rigorous requirements and timelines discourage prospective defamation claims.

10. The World Bank's ' Ease of Doing Business' report assessed economies based on regulatory ease for starting and operating businesses. This report's key criterion, 'Resolving Insolvency,' evaluates the efficiency, timeliness, and cost-effectiveness of insolvency processes across countries. A higher score in this study indicates a country's business-friendly environment, which can lead to increased foreign investment and collaboration. After implementing the IBC, **India's standing in the World Bank's 'Ease of Doing Business' index improved significantly,** particularly in the 'Resolving Insolvency' component. India improved its ranking from 136 to 52 in terms of resolving insolvency. According to World Bank data, creditor recovery rates increased from 26.0 to 71.6 cents per dollar, while insolvency resolution times decreased from 4.3 to 1.6 years. India leads South Asia in resolving insolvency, outperforming the average of OECD high-income economies in terms of recovery rate, time taken, and cost of a CIRP. India ranked 47th in the Global Innovation Index for 'Ease of Resolving Insolvency' in 2020, up from 111th in 2017. This demonstrates the universal awareness of the reform's efficacy.

11. The IBC's clear and predictable insolvency structure boosts confidence among foreign investors. They can rest convinced that insolvency will be handled in a systematic manner. The IBC stresses transparency in the settlement process. Transparency on the roles of resolution specialists and creditors allows foreign investors to make educated decisions. A structured insolvency resolution procedure lowers corporate risks associated with investments. Foreign investors who trust that their rights and claims will be handled properly are more willing to invest in the country's firms. India's improved rating in the World Bank's 'Ease of Doing Business' report, particularly in the 'Resolving Insolvency' criteria after the IBC, reassures foreign investors about the country's economic environment.

CHALLENGES AND FUTURE OUTLOOK

Challenges

A) Operational issues and the evolution of insolvency proceedings: Though Insolvency and Bankruptcy Code (IBC) significantly shaped India's juridical and financial landscape in positive way but as is the case with any other innovative enactment, the execution presented numerous practical obstacles. Some of the challenges are listed below:

- The implementation of the IBC resulted in an **immediate rise in cases,** which was a significant difficulty. This highlights the requirement of a structured and effective insolvency process. The National Company Law Tribunal (NCLT) and its successor, the National Company Law Appellate Tribunal (NCLAT), faced extraordinary case traffic during this boom. In order to deal with these cases, an efficient infrastructure is required which also means people having the knowledge of insolvency and bankruptcy process.
- **The difficulty of not having basic physical and organizational structure**: The high volume of patients quickly overloaded the existing infrastructure, both physical and technical. There was a compelling need to enlarge and modernize courtrooms, improve case management technology, and ensure effective communication among parties. Our efforts led to considerable improvements in several areas, resulting in a smoother and more efficient resolution process.
- **The complexity of insolvency proceedings presents a hurdle**. Complex financial structures, cross-border aspects, or massive conglomerates necessitated a thorough understanding of both domestic and international insolvency rules and norms. As an appellate authority, the NCLAT must balance legal and economic considerations when making decisions.
- **The IBC's implementation required periodic adjustments** to meet emerging issues and fill gaps as it evolved and adapted over time. The NCLAT identified some sections of Insolvency and Bankruptcy Code and called for their revision, maintaining the code's flexibility to adapt to changing situations.

After discussing operational problems, Iet us delve deeper into the insolvency regime in India

B) The role of technology in simplifying processes: Technology has become a vital tool in many aspects of life, including insolvency and bankruptcy. Technological innovations have profoundly impacted and improved the application and evolution of the Insolvency and Bankruptcy Code (IBC).

- **E-filing and material serving as a record:** The conventional technique of putting forward physical documents has always been time-consuming, error-prone, and inefficient. The emergence of e-filing technology has altered the procedure. Stakeholders can now submit documents online for faster processing and reduced risk of misplacement or destruction. This digital change improved access to case documents for all parties involved, enhancing transparency.
- **Finally, technology plays a role in virtual hearings:** Recent worldwide concerns, such the COVID-19 pandemic, have highlighted the significance of virtual platforms. Virtual hearings played a crucial role in maintaining justice despite extraordinary hurdles. These platforms ensured continuity and flexibility for stakeholders, minimizing the need for physical meetings.

C) Upcoming problems and changing outlook: The Insolvency and Bankruptcy Code, 2016 has significantly changed country's bankruptcy scene. A dynamic framework must react to the changing economic and legal environment. Here are some expected issues and the changing landscape:

- **Consider the global economic uncertainties:** The global economy is increasingly intertwined. Global events, such as trade wars, pandemics, and financial crises, can have a significant impact on India. The IBC must adapt to global uncertainty and resolve insolvencies efficiently and effectively.
- **Rapid technological improvements can make some sectors or business models obsolete.** The IBC should address insolvencies caused by disruptions and efficiently reallocate resources.

- **Cross-border insolvencies are likely to increase as Indian enterprises grow abroad**. The IBC should accord with international norms and conventions to provide smooth collaboration across countries.
- Finally, **large conglomerates may experience group insolvencies**. Managing group insolvencies, which involve many entities, will be challenging. To effectively address such circumstances, the IBC must develop comprehensive systems.

D) In addition to a strong legal foundation, the Insolvency and Bankruptcy Code (IBC) needs to be implemented effectively, and this requires people with the necessary **training to handle the code's intricacies.** The practical realization of the objectives of the IBC has been made possible through the crucial role played by training and capacity building.

- **The training of Resolution Professionals (RPs)** is another illustration: RPs need extensive training since they are in charge of the insolvency resolution procedure. This covers financial analysis, negotiation techniques, stakeholder management, and the legal aspects of the IBC. Frequent training sessions, certification exams, and refresher courses make sure RPs are prepared to face the difficulties posed by insolvency procedures.
- The National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) are crucial in implementing the Insolvency and Bankruptcy Code. The judiciary stays up-to-date with IBC innovations, interpretations, and best practices through ongoing training programs, seminars, and workshops.
- **Providing training to corporate stakeholders**. Having a good knowledge of the Insolvency and Bankruptcy Code is critical for corporate organizations, possible acquisitions, and investors. Tailored training programs guide company stakeholders through the IBC landscape, enabling informed decisions.
- **Academic research and training are crucial in the ever-changing IBC sector.** A culture of research and innovation can be fostered by partnerships with academic institutions and research centres as well as by offering specialised courses on insolvency and bankruptcy.
- **Understanding international insolvency regimes** and best practices is critical in today's global corporate environment. Exchange programs, workshops, and relationships with worldwide insolvency agencies offer useful cross-border perspectives.
- Finally, there is the aspect of **technological training.** As technology permeates insolvency processes, it is imperative to provide training on digital instruments, electronic filing systems and virtual hearing platforms. Parties can use technology to speed and improve the insolvency process.
- Finally, training and capacity building are ongoing efforts rather than one-time endeavours. As the IBC evolves, stakeholders' training requirements will alter. Proactive training and capacity building help keep the IBC a successful tool for insolvency and bankruptcy resolution in India.

Recommendations

1. **Building infrastructure:** The NCLT and NCLAT require additional support to handle the growing workload. This involves physical infrastructure and technology tools for efficient case administration, e-filing, and virtual hearings.
2. **Up skilling people:** The training needs of stakeholders will become precise as the Insolvency and Bankruptcy Code develops. Programs for stakeholders, such as Judges and resolution specialists, that are specifically designed to address certain challenges can be beneficial.

3. **Developing a cross-border insolvency framework**. As firms become more global, it is crucial to have a cross-border bankruptcy framework that follows international norms like the UNCITRAL Model Law.
4. **Developing Insolvency Mechanism:** The IBC should provide a clear framework to address group insolvencies in conglomerates with several entities, providing holistic handling.
5. **Boost involvement with stakeholders**: Frequent meetings with corporations and financial institutions can yield insightful inputs and ensure that the Insolvency and Bankruptcy Code provides what they desire.
6. **Periodic legislative review** is recommended to ensure the IBC's provisions stay relevant to the changing economic and business context.

Conclusion

The Insolvency and Bankruptcy Code (IBC) revolutionized India's perspective towards insolvency and bankruptcy. The IBC has demonstrated India's commitment to developing a strong, transparent, and efficient insolvency regime. Despite operational and legal problems, stakeholders, the judiciary, and policymakers have worked together to strengthen the IBC.

However, the journey is not over. The recommendations give a path for future improvements to the IBC. The IBC's focus on training, capacity building, stakeholder engagement, and legislation revision helps it adapt to changing economic and business conditions.

The IBC is more than just legislation; it reflects India's economic objectives and commitment to fostering a business-friendly environment. The IBC will significantly impact India's economic future by promoting growth, innovation, and resilience.

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