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Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing PH.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Inter-country adoption laws from Uttarakhand University, Dehradun' and LLM from Indian Law Institute, New Delhi.

Dr. Rinu Saraswat



Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, PH.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, PH.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University. More than 25 Publications in renowned National and International Journals and has authored a Text book on CR.P.C and Juvenile Delinquency law.



Subhrajit Chanda



BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); PH.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

THE HISTORICAL DEVELOPMENT AND JUSTIFICATION OF THE BANKRUPTCY LAW REFORMS COMMITTEE: FORMULATING THE INSOLVENCY AND BANKRUPTCY CODE, 2016.

AUTHORED BY - POOVARASAN R & GOMATHI K
SRM Institute of Science and Technology, Kattankulathur

Abstract

This paper examines the historical context, intellectual underpinnings, and legislative evolution culminating in the enactment of India's Insolvency and Bankruptcy Code (IBC), 2016. It illustrates how the IBC unified a disjointed, ineffective, and philosophically discordant insolvency framework prior to 2016 into a cohesive, time-sensitive structure. The study says that the work of the Bankruptcy Law Reforms Committee (BLRC), which Dr. T.K. Viswanathan is in charge of, is very important to Indian economic law. The BLRC came up with a clear, logical plan that changed how people in the country think about credit and how businesses deal with disagreements. The committee made one of India's most important modern economic changes possible by changing the model from "debtor-in-possession" to "creditor-in-control" and building a new institutional ecosystem. Changes to the law and court decisions are still happening today because of this reform.

Key Words: Insolvency and Bankruptcy Code (IBC)-Bankruptcy Law Reforms Committee (BLRC)- insolvency framework-legislative reform-corporate restructuring

I. The Structure of a Dysfunctional System: India's Insolvency Crisis Prior to 2016

Before 2016, India's system for resolving insolvency was not only ineffective, but it was also a failure of the whole system. This was because of a deadlock in the legislature that caused delays, lost value, and hurt creditors' rights. The framework was not consistent with its philosophy, which caused predictable and harmful economic effects that eventually required a complete overhaul.

A. The Disjointed Legal Obstacle

The pre-IBC insolvency framework was spread out over many laws, which made for a "uneven and sometimes contradictory bankruptcy system." These laws included old colonial laws like The Provincial Insolvency Act, 1920, and The Presidency Towns Insolvency Act, 1909, as well as newer laws that were split up, such as the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA); the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI); the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI); and various parts of the Companies Act of 1956 and 2013¹.

The many laws that applied to different types of creditors and debtors made it hard to work together, and they often led to conflicting results. There was no single framework, so creditors had a "race to collect" structure that encouraged them to compete with each other. The first one to start the process often had an unfair advantage. Instead of a group process that aimed to maximize the troubled entity's value, this led to disconnected recovery actions². The main problem with this system was that its economic and legal ideas were very illogical at their core. Before the IBC, different ideas fought each other all over the world³. SICA was a protective "debtor-in-possession" model that put revival above all else. It often protected dishonest or ineffective management by pretending to be helping them get better. SARFAESI, on the other hand, was a harsh recovery model that put "secured creditors first" and let banks act on their own. This basic disagreement meant that there was no single national policy for bankruptcy. The outcome of a corporate default was based on which stakeholder could invoke which law first, not on a logical evaluation of viability. Because of this, there was no way for an orderly, value-maximizing solution to happen. Debtors could use SICA's pause to stop banks from starting recovery actions under SARFAESI.

B. The Cost of Inefficiency to the Economy

The real-world effects of this broken system were terrible. It was common for insolvency cases to take a long time to resolve; on average, they took an amazing 4.3 years. This was very different from international standards, which were one year in the UK and one and a half years

¹ Aparna Ravi, "The Insolvency and Bankruptcy Code: A Missed Opportunity" (2017) 50(51) Economic and Political Weekly 12.

² A. Ramaiya, *Guide to Companies Act* (19th edn., LexisNexis 2020).

³ Rituparna Sen, "Corporate Insolvency Resolution Process under the IBC: A Critical Appraisal" (2020) 62(3) Journal of the Indian Law Institute 385.

in the US. Even though there had been efforts to make things better in the past, like the creation of Debt Recovery Tribunals (DRTs) and the passage of the SARFAESI Act, these delays kept happening. Creditors' recovery rates were terrible. The lenders only got back less than 25% of their debts, and often much less. The World Bank's 2015 Doing Business report showed that secured creditors in India only got back 25.7 cents on the dollar, which is a sign of this failure. The BLRC came to the same conclusions. It found that creditors usually only got back 20% of what they were owed, which made them less likely to lend to all but the biggest and safest businesses⁴. Because of these systemic problems, India did poorly on international guides. The fact that India was ranked 136th out of 189 economies in the World Bank's 2015 "Resolving Insolvency" metric was a big warning to international businesses and policymakers. The bad effects on the economy caused a growing problem of non-performing assets (NPAs) on bank balance sheets. This slowed India's GDP growth, made credit markets less accessible, and kept a lot of money that could be invested locked up.

C. Legislative Failure Case Studies

SICA and SARFAESI are two important laws that show how bad things were before the IBC.

SICA and BIFR: A Debtor's Dream

The Sick Industrial Companies Act of 1985 was passed with the good goal of finding industrial sickness early on and helping successful businesses get back on their feet through the Board for Industrial and Financial Reconstruction (BIFR), which is a quasi-judicial body. But in reality, SICA was used incorrectly. The most powerful part of Section 22 was the automatic and indefinite suspension of legal proceedings. This was meant to give everyone time to calm down so that restructuring could happen. Instead, promoters who didn't pay their debts often used it to protect their businesses from valid claims from creditors, turning the BIFR into a safe place for businesses that didn't pay their debts.

The BIFR's success rate in bringing businesses back to life was much lower than expected, and it was plagued by "huge delays" and procedural problems. These problems had been around for a long time before a high-level committee led by Justice V. Balakrishna Eradi brought them to light in 1999. The SICA Repeal Act was passed in 2003. It wasn't until December 1, 2016, after the IBC had already been passed, that this repeal act was officially announced and put into effect. This shows how little the government was doing at the time.

⁴ Pratik Datta, "India's Insolvency and Bankruptcy Code: An Institutional Innovation" (2016) 9 NUJS L Rev 115.

SARFAESI: A Strong but Limited Tool

The SARFAESI Act of 2002 dealt with the long waits that were caused by the DRTs. It gave secured creditors a much-needed tool by letting banks and other financial institutions enforce their security interests and take collateral without having to go to court. But the Act's reach was mostly limited. It only protected secured loans; operational and unsecured creditors had no legal options. It also specifically left out farmland, which is an important type of collateral in many parts of the country⁵. Most importantly, SARFAESI was not a way to solve collective insolvency; it was a law for individual creditors to get their money back. Instead of trying to keep the struggling business's value as a going concern, it pushed for an unplanned sale of its assets.

II. The Bankruptcy Law Reforms Committee (BLRC) started the process of reform.

There was no doubt that India needed to make big changes because its insolvency system was falling apart. The Bankruptcy Law Reforms Committee was set up as a direct and planned response to the growing problem of non-performing assets (NPAs) and the damage it did to India's reputation as a place to invest.

A. The Need for Change

By the middle of the decade, the economic costs of the broken insolvency system were too high for most people to bear. The country's low score in the World Bank's Doing Business report made it hard to get foreign investment, and the growing number of non-performing assets (NPAs) put the banking industry at risk. The Indian government knew this and made it clear that it wanted to pursue broad reform. Union Finance Minister Shri Arun Jaitley set the stage for a complete overhaul of the law when he said in his Budget Speech for 2015–16 that reforming bankruptcy law was a "key priority for improving the ease of doing business in India."⁶

B. The T.K.'s Job and Method the Viswanathan Committee

The Ministry of Finance officially set up the Bankruptcy Legislative Reforms Commission

⁵ Shubham Mishra, "Judicial Delay and the Insolvency and Bankruptcy Code: Challenges Ahead" (2019) 11(1) NLUJ Law Review 47

⁶ Vikramaditya S. Khanna & Shaun J. Mathew, "Developing the Insolvency and Bankruptcy Code in India: A Comparative Analysis" (2017) 12(2) Law and Business Review of the Americas 105.

(BLRC) on August 22, 2014. Dr. T. K. Viswanathan, a well-known legal scholar and former Union Law Secretary, is in charge of it. The committee had a broad but clear job: to look into the current system, find its problems, and come up with one modern bankruptcy law that applies to people, businesses, and partnerships. The goals were to cut down on the time it takes to resolve issues, raise the rate at which creditors get their money back, and then help India's credit and debt securities markets grow.

The BLRC used a two-phase, organized approach to reach its goal. The main goal of the first phase was to find quick changes that could be made to the current legal system. This led to an interim report that was made public in February 2015 and suggested changes to the corporate insolvency provisions of the Companies Act, 2013, which had just been passed. The second step, which was much more important, was to build a whole new, organized legal system from the ground up⁷. Because of this hard work, the BLRC's Final Report was sent in on November 4, 2015. The report was carefully split into two parts. Volume 1, "Rationale and Design," talked about the proposed new regime's economic beliefs, guiding ideologies, and institutional framework. Volume 2, on the other hand, showed the real legislative result: a complete draft of the 2015 Insolvency and Bankruptcy Bill.

III. The Intellectual Architecture: Why and How the BLRC Report Was Made

The BLRC's Final Report, especially Volume 1, was more than just a proposal for new laws; it was an intellectual blueprint for a new economic order. It wasn't just about making better laws; it was about making a whole, independent ecosystem to fix the problems of the past.

A. The Core Philosophy: From "Debtor-in-Possession" to "Creditor-in-Control"

The report's proposal of a new fundamental theory for Indian insolvency law was its most radical contribution. The BLRC says that a limited liability company is a deal between debt and equity. As long as the company is still in business, equity owners have full control. But "control is supposed to transfer to the creditors when default takes place; equity owners have no say." This principle directly rejected the SICA rule, which said that promoters often kept control long after default.

⁷ Rohan Alva, "The IBC and the Revival of Corporate Governance in India" (2018) 23(1) National Law School of India Review 1.

The Committee's main point was that deciding whether to restructure or pay a company that is in default is a "business decision" that only the creditors should make⁸. This led to the deliberate exclusion of courts or government agencies from judging whether a business is viable, since they didn't have the knowledge to do so⁹. This signalled the last philosophical shift from the old "debtor-in-possession" model to the current "creditor-in-control" model by letting financial creditors run the resolution process.

B. The New Institutional Framework's Four Pillars

The BLRC learned from the institutional failure of groups like the BIFR that a modern law needs a modern, specialized, and interconnected institutional framework to work. It proposed a novel architecture founded on four stable pillars, an ecosystem wherein each component was designed to reinforce the others:

The Regulator (IBBI): 1. The report says that the Insolvency and Bankruptcy Board of India (IBBI) should be set up as a separate, specialized regulator. The IBBI would be in charge of the whole insolvency system, which includes information utilities and insolvency experts. It could also make rules, which kept the Code flexible and able to adapt to changes in the market without needing to be changed by lawmakers all the time.

The Adjudicators (NCLT/DRT): The BLRC chose the National Company Law Tribunal (NCLT) for businesses and the Debt Recovery Tribunals (DRT) for people and partnership firms as the Adjudicating Authorities. Importantly, their job was made easier and limited to making sure that due process and the law were followed, not questioning the creditors' business decisions.

Insolvency Professionals (IPs): A new group of licensed and regulated insolvency professionals was supposed to take care of the corporate debtor's business during the resolution process. The IP would take over the company's operations and assets and replace the current board of directors when an insolvency plea was filed. This would stop the value of the company from going down and speed up the resolution. Insolvency Professional Agencies (IPAs) would be in charge of these IPs, but the IBBI would be in charge of them all.

⁸ *Innoventive Industries Ltd. v. ICICI Bank* (2018) 1 SCC 407.

⁹ Rituparna Sen, "Corporate Insolvency Resolution Process under the IBC: A Critical Appraisal" (2020) 62(3) *Journal of the Indian Law Institute* 385.

Information Utilities (IUs):

The BLRC proposed the creation of Information Utilities (IUs), which was a groundbreaking move for India. These regulated groups would be in charge of collecting, compiling, verifying, and sharing information on debt and defaults as central repositories of financial data. This pillar was made to directly deal with the long-standing problems of information asymmetry and long arguments about whether or not debts exist, which were the main reasons for delays in the old system.¹⁰

C. Important New Ways of Doing Things

The BLRC proposed several essential procedural mechanisms that were constructed upon this institutional framework:

Time-Related Resolution: The report said that the Corporate Insolvency Resolution Process (CIRP) should take a strict 180 days, with the possibility of a one-time extension of 90 days in complicated cases. It also said that speed was "the most important objective" to keep value. If a solution couldn't be found in this time frame, the business would have to go through automatic liquidation.

The Committee of Creditors (CoC): The Committee of Creditors (CoC) was made up entirely of financial creditors and was at the heart of the "creditor-in-control" model. This group was given the "commercial wisdom" to look at and approve the resolution plan, and they voted based on how much debt they had. The BLRC first suggested that a plan be passed with a 75% majority vote.

Automatic Moratorium: The report suggested an automatic suspension that would begin as soon as an application for bankruptcy was accepted. This would give everyone a "calm period" to work things out. This would stop all legal actions against the debtor, which would protect the company's assets and stop a rush of individual recovery actions¹¹.

Clear Liquidation: The BLRC suggested a clear "waterfall" method for dividing up the money in a liquidation. In a big policy change meant to encourage lending, the traditional priority

¹⁰ Umakanth Varottil, "Corporate Rescue in India: The Influence of the Insolvency and Bankruptcy Code" (2018) 29 International Company and Commercial Law Review 190.

¹¹ Alok Prasanna Kumar, "Insolvency and the Indian Judiciary: Early Trends" (2018) 53(2) Economic and Political Weekly 16.

given to the sovereign was reversed. Now, central and state government debts are ranked lower than the claims of unsecured financial creditors.

IV. The Legislative Journey and the Final Code: From Blueprint to Law

The BLRC's report gave a good and complete plan. During the following legislative process, this vision was made into law, which froze the committee's intellectual heritage.

A. What the Joint Parliamentary Committee (JPC) does

The government introduced the Insolvency and Bankruptcy Bill, 2015, in the Lok Sabha on December 21, 2015, after the BLRC's final report was made public. People agreed that the reform was important, so the Bill was sent to the Joint Committee of Parliament (JPC) for a full review and consultation with stakeholders¹². This step was necessary to get widespread support from lawmakers for such a groundbreaking piece of economic legislation.

The JPC looked over the Bill very carefully and asked industry groups, regulatory agencies, and experts for their thoughts. It sent in its report on April 28, 2016¹³. The report mostly backed up the BLRC's basic structure and guiding ideas. The JPC's changes focused on making certain parts of the law clearer and easier to follow. For example, they added definitions for terms like "financial institution" and "operational creditor."

B. A side-by-side look at the BLRC Draft Bill and the IBC, 2016

The president signed the Insolvency and Bankruptcy Code, 2016 into law on May 28, 2016. A side-by-side look at the final passed Code and the BLRC's draft Bill shows that the committee's main goals were mostly met. The final Act kept the "creditor-in-control" model, the four-pillar institutional framework (IBBI, adjudicators, IPs, and IUs), the strict deadlines for resolution, the automatic suspension, and the creditor-driven CoC. The Code, as it was passed, also followed the BLRC's suggestion to bring the separate legal systems together by getting rid of the Provincial Insolvency Act of 1920 and the Presidency Towns Insolvency Act of 1909 and changing a number of other laws.

There were a few small changes and later developments, even though everything was very

¹² Surbhi Kapur, "Cross-Border Insolvency in India: The Unfinished Agenda of the IBC" (2021) 44(2) Company Law Journal 112.

¹³ V. Ramakrishnan, *Law Relating to Insolvency and Bankruptcy Code, 2016* (2nd edn., LexisNexis 2020).

similar. For example, the BLRC's original suggestion for a 75% vote to start the CoC was changed to 66% to make it easier for plans to be approved. This shows that the BLRC's framework was both strong and flexible, allowing for improvements based on real-world experience.

V. The Code's Legacy and Ongoing Changes

The implementation of the IBC, based on the BLRC's blueprint, has had a big and measurable effect on India's economy. Even though there are still problems with how it is being put into practice and how the courts interpret it, it has not only made an important system of measurement better, but it has also started a deeper cultural shift in how companies are run and how credit is handled.

A. A Change in India's Credit Culture: How to Measure the Effect

The IBC had a huge and immediate effect on India's reputation around the world. India's position in the World Bank's "Resolving Insolvency" index rose from 136th place in 2016 to 52nd place in 2020. The report also said that the recovery rate for creditors went up a lot, from 26.5 cents to 71.6 cents on the dollar during the same time period.

Data from within the country backs up this trend. Post-IBC recovery rates, which range from 30% to 35%, are much higher than those of earlier systems like SARFAESI (22%), DRTs (7%), and Lok Adalats (3%). But the Code may have had the most revolutionary effect of all. The IBC has made a big difference in how corporate borrowers act. The "creditor-in-control" model has made it very likely that people will lose control of their business if they don't pay their bills. This has changed the power dynamic in credit relationships a lot. Because of this, promoters have had to actively pay off their debts to avoid going bankrupt¹⁴. IBBI data shows that thousands of applications involving trillions of rupees in debt have been withdrawn before they were accepted because the parties' reached agreements. This strong deterrent effect has led to a new "culture of compliance" and some financial discipline that were previously missing from the Indian business world.

B. The Judiciary as a Co-Architect: Important Interpretations

The Supreme Court of India has played a big role in shaping the IBC because it helped create

¹⁴ Krishnamurthy, *Commentary on the Insolvency and Bankruptcy Code, 2016* (Bloomsbury 2019).

the modern insolvency system. The Court has cleared up any doubts, upheld the Code's constitutionality, and used its basic ideas in a number of important decisions. In important cases like *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta* (2019)¹⁵ and *Swiss Ribbons Pvt. Ltd. v. Union of India* (2019)¹⁶, the Court made it very clear how important the "commercial wisdom of the Committee of Creditors" is. *Ltd. v. Union of India* (2019). It found that the NCLT and NCLAT, which are the bodies that make decisions about cases, have a limited ability to review cases and can't make their own decisions about whether a resolution plan is viable or possible. This has been an important protection for the BLRC's planned creditor-driven process.

One of the controversial parts that the courts have also given critical interpretations of is Section 29A, which says that promoters and other related parties who are in default cannot submit resolution plans¹⁷. In cases like *Arcelor Mittal India Pvt. Ltd. v. Satish Kumar Gupta* (2018)¹⁸, where the Court upheld the provision's intent to stop those who caused a company to suffer from getting back control at a lower price.

C. Problems that keep happening and what to do about them

The IBC has had issues, but it has been very successful. The biggest issue is that the process of resolving things is taking longer and longer. It now takes more than 600 days to finish CIRP, which is much longer than the legal limit of 330 days. These delays, which are often caused by courts that are too busy, complicated procedures, and long lawsuits, could hurt one of the Code's main goals.

There has also been talk about how well the process works to get the most value, since some high-profile resolutions have forced creditors to take big "haircuts" (the amount of debt written off). The IBC has been changed many times since 2016 to fix problems like these and others. These changes have made things easier, especially in areas that are hard to manage, like real estate. The IBC is a flexible framework that needs constant attention to detail and changes to stay useful. This process of improvement shows that.

¹⁵ *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta* (2019) 16 SCC 1.

¹⁶ *Swiss Ribbons Pvt. Ltd. v. Union of India* (2019) 4 SCC 17.

¹⁷ Afra Afsharipour, "Corporate Governance and the IBC: Emerging Lessons from India" (2020) 41(4) *Northwestern Journal of International Law & Business* 243.

¹⁸ *ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta* (2018) 13 SCC 83.

Conclusion

India's economy changed a lot when the broken and disconnected insolvency system was replaced by the modern, combined administration of the Insolvency and Bankruptcy Code, 2016. This change came about because of a careful and well-thought-out process led by the Bankruptcy Law Reforms Committee. The T.K. Viswanathan Committee made a clear and detailed plan for institutions and ideas that looked at the real reasons why things went wrong in the past instead of just suggesting changes.

The BLRC set up the framework for a law that has completely changed India's credit culture by pushing the "creditor-in-control" model, making an interconnected institutional ecosystem, and putting a lot of importance on resolving issues quickly. The IBC has given creditors more power, taught borrowers how to manage their money, and made it easier and more reliable to fix business problems. The BLRC's basic structure has been strong and successful, but there are still big problems with how it is being used, especially when it comes to delays and getting value back. The legislature and the courts need to fix these issues. The Code has set the stage for a more advanced, open, and stable credit economy in India. It is still a reminder of what the committee wanted.

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4. Innoventive Industries Ltd. v. ICICI Bank (2018) 1 SCC 407.
5. K. Sashidhar v. Indian Overseas Bank (2019) 12 SCC 150.
6. Lalit Kumar Jain v. Union of India (2021) 9 SCC 321.

