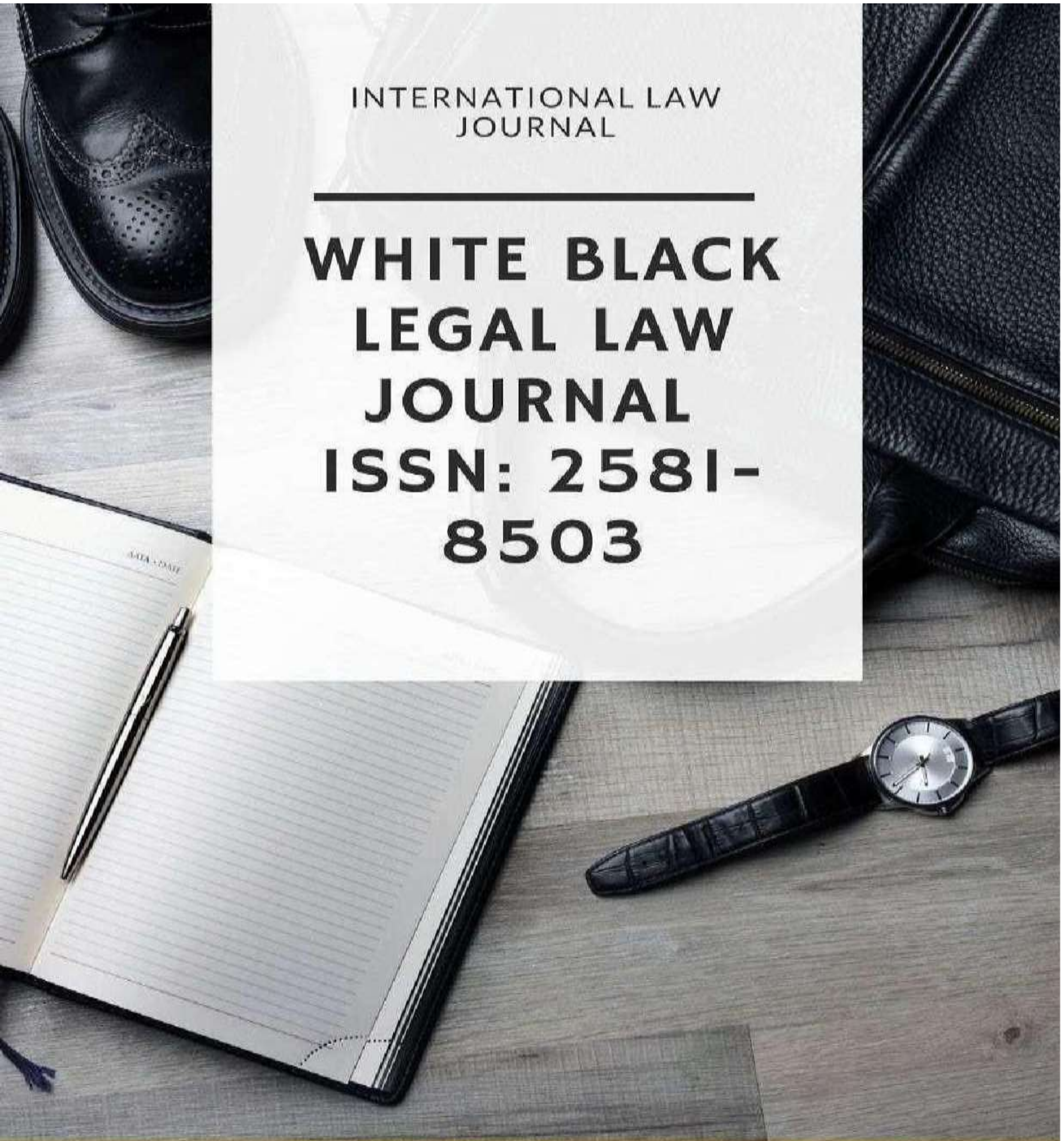

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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated 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

EVOLUTION OF INSOLVENCY LAWS IN INDIA: A CRITICAL ANALYSIS

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Abstract

This paper critically examines the evolution of India's insolvency framework, tracing its transition from a fragmented, liquidation-centric regime to a unified and resolution-oriented system under the Insolvency and Bankruptcy Code, 2016 (IBC). It analyzes the inefficacies of pre-IBC statutes—including the Companies Act, 1956 and 2013, Sick Industrial Companies Act (SICA), the Recovery of Debts Due to Banks and Financial Institutions Act (RDDBFI), and the SARFAESI Act—which failed to deliver timely, coordinated, and effective resolutions. The chapter highlights systemic issues such as procedural delays, lack of institutional capacity, and the dominance of liquidation over restructuring, all of which eroded creditor confidence and exacerbated the non-performing assets (NPA) crisis. It further explores the economic and international pressures that necessitated reform, culminating in the establishment of the Bankruptcy Law Reforms Committee (BLRC) and the eventual enactment of the IBC. The Code's key features—such as a creditor-in-control model, strict timelines, and the creation of a supporting institutional ecosystem—are discussed as transformative steps in aligning India's insolvency laws with global best practices. This chapter sets the foundation for understanding the IBC's emergence as a critical pillar in India's financial and legal architecture.

Introduction

India's insolvency regime has undergone a profound transformation, paralleling its shift from a state-controlled economy to one that favours market liberalization and global competitiveness. An effective insolvency framework is not merely a legal necessity—it is a critical economic tool that ensures credit discipline, enhances investor confidence, and fuels innovation and sustainable growth. Prior to the establishment of the Insolvency and Bankruptcy Code, 2016 (IBC), the country operated under a patchwork of disjointed and often conflicting statutes, resulting in inefficiency, uncertainty, and prolonged resolution timelines.

1 Legal Landscape Before the Advent of the IBC

In the pre-IBC era, insolvency and corporate restructuring were governed by multiple, compartmentalized legislations. These included the Companies Act (1956 and subsequently 2013), the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA),[1] the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI),[2] and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI).[3] These legal instruments operated independently and lacked synergy, often leading to procedural overlaps, jurisdictional conflicts, and inordinate delays that significantly eroded asset value and investor confidence.

1.2 The Companies Act Regime: A Liquidation-Oriented Framework

Under the Companies Act, 1956,[4] the primary mode of addressing corporate insolvency was through winding-up proceedings initiated in the High Courts, especially under Section 433(e), which allowed creditors to seek dissolution on the grounds of non-payment of debts. This model emphasized closure rather than recovery or restructuring. The process was largely adversarial and did not provide space for collaborative resolution strategies.

This liquidation-focused mechanism lacked provisions for revival or restructuring. Creditors had minimal involvement beyond initiating the process, and government-appointed Official Liquidators—often overburdened and undertrained—handled the liquidation. The absence of trained insolvency professionals and specialized adjudicatory bodies compounded the inefficiencies. Asset values diminished drastically as proceedings dragged on.

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[1] Sick Industrial Companies (Special Provisions) Act, No. 1 of 1986, INDIA CODE.
[2] Recovery of Debts Due to Banks and Financial Institutions Act, No. 51 of 1993, INDIA CODE.
[3] Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, No. 54 of 2002, INDIA CODE.
[4] Companies Act, No. 1 of 1956, INDIA CODE.

Although the Companies Act, 2013[5] attempted to streamline insolvency processes and introduced tribunal-based adjudication through the National Company Law Tribunal (NCLT), it retained several limitations from its predecessor. The system remained litigation-heavy and failed to establish an expedited, resolution-centric framework.

1.3 SICA, 1985: Unrealized Goals of Industrial Rehabilitation

The Sick Industrial Companies (Special Provisions) Act, 1985, was envisioned as a proactive mechanism to identify and revive ailing industrial units.[6] The Act introduced the Board for Industrial and Financial Reconstruction (BIFR) as the central body to assess financial health and suggest rehabilitation strategies.

However, in practice, SICA failed to deliver effective outcomes. Companies often continued operations after being labelled "sick," without making meaningful progress towards revival. Referrals to BIFR were voluntary, enabling promoters to delay recovery measures. BIFR lacked the authority to enforce its decisions effectively, and jurisdictional overlaps with civil courts led to further delays. Section 22, which imposed a moratorium on recovery actions post-BIFR reference,[7] was frequently misused by defaulters to obstruct enforcement efforts. Despite legislative attempts to repeal SICA in 2003, it remained operational until the IBC came into force in 2016.[8]

1.4 RDDBFI Act, 1993: A Narrow Focus on Debt Recovery

The Recovery of Debts Due to Banks and Financial Institutions Act was introduced to establish specialized forums—Debt Recovery Tribunals (DRTs) and Appellate Tribunals (DRATs)—aimed at expediting the recovery process for banks and financial institutions.[9]

However, the RDDBFI Act lacked a comprehensive resolution mechanism. It was concerned solely with recovery, not restructuring. The DRTs, although intended to relieve pressure from civil courts, suffered from poor infrastructure and inadequate staffing, leading to significant backlogs. With no provisions for corporate rescue, the Act proved ineffective in addressing financial distress holistically. As non-performing assets (NPAs) surged in the late 1990s and early 2000s, the limitations of the RDDBFI framework became increasingly evident, with

[5] Companies Act, No. 18 of 2013, INDIA CODE.
[6] Sick Industrial Companies (Special Provisions) Act, No. 1 of 1986, § 4, INDIA CODE.
[7] Id. § 22.
[8] The Sick Industrial Companies (Special Provisions) Repeal Act, No. 1 of 2003, INDIA CODE.
[9] Recovery of Debts Due to Banks and Financial Institutions Act, No. 51 of 1993, § 3, INDIA CODE

recovery rates often failing to exceed 25% of claim values.[10]

1.5 SARFAESI Act, 2002: Strengthening Enforcement without Restructuring

The SARFAESI Act represented a major shift by empowering secured creditors to enforce their rights without requiring court intervention.[11] Under Section 13, creditors could seize and sell secured assets once a loan was classified as a non-performing asset.

Though the Act accelerated the enforcement process, it remained focused solely on asset recovery. It excluded unsecured creditors, operational creditors, and employee interests. Moreover, borrowers often resisted enforcement by initiating litigation, thereby stalling actions and diluting the Act's intended efficiency.

Crucially, SARFAESI lacked any framework for restructuring or revival of distressed businesses. The emphasis on liquidation led to piecemeal asset sales, reducing the possibility of preserving enterprise value. RBI data revealed persistently poor recovery rates despite the statutory powers available under the Act.[12]

1.6 Systemic Shortcomings of the Pre-IBC Framework

India's insolvency mechanism, prior to the IBC, suffered from fragmentation and structural inefficiency. Multiple statutes governed different aspects of insolvency and operated through separate forums. The absence of coordination led to jurisdictional conflicts and encouraged forum shopping, with debtors strategically selecting venues like BIFR or civil courts to delay proceedings under laws like SARFAESI or RDDBFI.

The lack of a unified regulatory body and trained professionals further aggravated delays. Existing mechanisms focused predominantly on liquidation, neglecting the potential for business recovery. In most cases, distressed companies were dismantled rather than restructured, leading to significant value destruction.

This disjointed system undermined creditor trust. Financial institutions, weary of long delays and poor enforcement, became reluctant to lend to stressed firms. These deficiencies underscored the pressing need for a consolidated and modern insolvency regime, culminating in the enactment of the IBC in 2016.

1. Drivers Behind the Reform

[10] Report of the Committee on Financial Sector Reforms (Raghuram Rajan Committee), Planning Commission, 2009.
[11] Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, No. 54 of 2002, § 13, INDIA CODE.
[12] Reserve Bank of India, *Report on Trend and Progress of Banking in India* (2014-15).

The restructuring of India's insolvency laws was driven by economic urgency as much as by legal inefficiency. The fragmented framework had become a bottleneck, unable to cope with growing financial stress and rising NPAs. A coherent and efficient resolution mechanism was critical for restoring creditor confidence and maintaining financial stability.

2. Fragmented Legal Ecosystem

A primary impetus for reform was the lack of a unified insolvency law. Different legislations—SICA, Companies Act, RDDBFI, and SARFAESI—addressed only parts of the insolvency spectrum and often conflicted with each other. This overlap led to procedural delays and inconsistent outcomes.

Debtors exploited these loopholes to their advantage, engaging in forum shopping and delaying recoveries. There was no harmonized process for claim settlement or a clear hierarchy for creditor rights, resulting in judicial uncertainty and long-drawn proceedings.

3. Resolution Delays and Suboptimal Recoveries

Cases under the earlier regime often dragged on for years. The World Bank's Doing Business Report 2015 noted an average resolution time of 4.3 years in India, significantly longer than the 1.7-year average in OECD countries.[13]

Such delays drastically reduced asset values and discouraged investor participation. Lenders typically recovered just 25–30% of their claims, causing significant strain on bank balance sheets and choking credit availability in the economy.

4. Mounting NPAs and Financial Instability

The early 2010s witnessed a sharp spike in NPAs, particularly in public sector banks. The lack of robust debt recovery and restructuring mechanisms exacerbated the crisis. By March 2016, NPAs had ballooned past ₹6 lakh crore, posing a systemic threat to economic stability.[14]

Despite laws like SARFAESI and RDDBFI, asset deterioration by the time of enforcement rendered recovery difficult. The absence of a timely and structured resolution process proved detrimental to all stakeholders involved.

5. Weak Institutional and Professional Infrastructure

Before the IBC, the absence of trained insolvency professionals and specialized tribunals posed

[13] World Bank Group, *Doing Business 2015: Going Beyond Efficiency* 188 (12th ed. 2014).
[14] Reserve Bank of India, *Financial Stability Report*, June 2016, at 26.

a major hurdle. Liquidation was typically managed by court-appointed officials who often lacked commercial and restructuring expertise.

There was no central regulatory authority to ensure uniform standards or to monitor professional conduct. This institutional vacuum resulted in ad hoc decisions, prolonged timelines, and unpredictable legal outcomes, ultimately hurting stakeholder interests.

6. Liquidation as the Default Outcome

Most laws preceding the IBC focused on liquidation over revival. Neither the Companies Act nor SICA provided effective frameworks for rehabilitation or restructuring. This liquidation bias led to asset stripping and business shutdowns, foregoing opportunities for economic recovery.

Without platforms that aligned the interests of creditors, debtors, and regulators, the legal system failed to preserve enterprise value. The absence of revival-centric policies stifled entrepreneurial activity and economic productivity.

7. Declining Creditor Confidence and Economic Impact

Over time, inefficiencies in the system eroded lender confidence. Without a reliable recovery mechanism, banks hesitated to extend credit to potentially viable but stressed firms, leading to a contraction in credit flow and an increase in capital costs.

India's weak enforcement framework and dismal contract enforcement rankings adversely affected its standing on global business indices.[15] Improving the insolvency framework became essential for attracting foreign investment and strengthening economic fundamentals.

8. International Pressure and Need for Harmonization

India's erstwhile insolvency framework lagged behind international standards, particularly in an era of increasing globalization and cross-border investments. Major international bodies such as the IMF and the World Bank repeatedly stressed the urgency of reforming India's insolvency system to make it more transparent, creditor-friendly, and efficient in resolving distressed assets within defined time limits.[16]

To address both internal inefficiencies and growing global expectations, the Ministry of Finance established the Bankruptcy Law Reforms Committee (BLRC) in 2014 under the leadership of T.K. Viswanathan. In its 2015 report, the committee recommended a drastic

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[15] World Bank Group, *Doing Business 2015: Going Beyond Efficiency* 188 (12th ed. 2014).

[16] Int'l Monetary Fund, *India: Staff Report for the 2016 Article IV Consultation*, IMF Country Report No. 16/75, at 13 (Mar. 2016).

overhaul of the insolvency regime.[17] Key suggestions included shifting to a creditor-in-control approach, adhering to strict resolution timelines, and creating an ecosystem comprising insolvency professionals, information utilities, and specialized tribunals.

1.7 The Enactment and Core Tenets of the Insolvency and Bankruptcy Code, 2016

A. Overview-

The Insolvency and Bankruptcy Code, 2016 (IBC), represents a paradigm shift in India's approach to handling insolvency and financial distress. Prior to its enactment, the legal framework governing insolvency was scattered across multiple laws, leading to delays, conflicting procedures, and uncertainty for stakeholders. The lack of a streamlined system hampered asset recovery and undermined investor trust. The introduction of the IBC addressed these systemic issues and aligned India's insolvency laws with international standards by promoting swift and predictable resolutions.

The drive for reform was significantly influenced by the ballooning non-performing assets (NPAs) in the banking sector and India's poor performance in global ease-of-doing-business rankings, particularly in the insolvency resolution category. These concerns triggered a complete reimagining of the legal regime, culminating in a time-bound, market-driven, and transparent insolvency mechanism.

B. Legislative Journey:

The inception of the IBC can be traced back to August 2014, when the Ministry of Finance formed the BLRC, with Dr. T.K. Viswanathan as chairperson. The Committee's mandate was to evaluate the existing legal and institutional setup for insolvency and suggest comprehensive reforms. After engaging with various stakeholders and experts, the BLRC released its final report in November 2015, advocating for a cohesive legal framework with definitive timelines and institutional clarity.

Based on these recommendations, the IBC was drafted and introduced as a Money Bill in the Lok Sabha in December 2015. The Bill received approval from the Lok Sabha on May 5, 2016, followed by the Rajya Sabha on May 11, 2016. It received Presidential assent on May 28, 2016, and was subsequently notified in the official Gazette. Implementation began in phases, starting with the establishment of the Insolvency and Bankruptcy Board of India (IBBI) and the

[17] Ministry of Finance, Government of India, *The Report of the Bankruptcy Law Reforms Committee* (Nov. 2015).

formulation of rules for insolvency professionals, adjudicatory authorities, and information utilities.

This legislative milestone formed part of a broader economic agenda aimed at revitalizing the banking sector, improving the investment climate, and fostering investor confidence by establishing a predictable insolvency system.

C. Fundamental Features of the IBC, 2016:

The IBC brought about sweeping changes that fundamentally restructured insolvency proceedings in India. It introduced a time-bound, creditor-driven, and process-oriented resolution model aimed at maximizing value.

1. **Unified Legal Structure**:

   Earlier, insolvency matters were governed by a patchwork of statutes such as the Companies Act, SICA, RDDBFI Act, and SARFAESI Act. This multiplicity often led to procedural overlap and confusion. The IBC consolidated these laws into a single, coherent framework, thereby promoting consistency, reducing delays, and ensuring legal clarity.

2. **Defined Timelines for Resolution**:

   One of the Code's cornerstone features is the imposition of strict timelines for concluding the Corporate Insolvency Resolution Process (CIRP). The process must be completed within 180 days, extendable by another 90 days under exceptional conditions. This timeline aims to minimize value depreciation and expedite creditor recoveries.

3. **Shift to Creditor-in-Control Mechanism**:

   The IBC replaced the traditional debtor-led process with a creditor-centric model. Upon admission into insolvency, control of the debtor company shifts to an Interim Resolution Professional (IRP), and critical decisions are made by a Committee of Creditors (CoC). This model ensures that decision-making is driven by those with financial stakes, not defaulting management.

4. **Automatic Moratorium:**

   Under Section 14, once insolvency proceedings are initiated, an automatic moratorium takes effect, suspending all ongoing and future legal actions against the debtor. This moratorium offers a period of calm to assess and negotiate a resolution plan without external disruptions.[18]

5. **Professional Ecosystem and Information Utilities**:

[18] Insolvency and Bankruptcy Code, 2016, § 14, No. 31, Acts of Parliament, 2016 (India).

The Code institutionalized the role of licensed Insolvency Professionals (IPs), who are pivotal in managing the debtor's affairs during the resolution process. These IPs are registered with and regulated by the IBBI, which also accredits Insolvency Professional Agencies (IPAs). In parallel, Information Utilities (IUs) serve as digital platforms to maintain financial records, ensuring transparency and accuracy in verifying claims and defaults.

6. **Robust Institutional Infrastructure**:

The IBC mandates a tiered institutional structure:

- The NCLT serves as the primary forum for corporate insolvency proceedings.
- The DRT handles cases involving individuals and partnership firms.
- Appeals from NCLT decisions are heard by the NCLAT, with further legal challenges permissible before the Supreme Court.
- The IBBI acts as the overarching regulatory authority for the implementation of the Code and oversight of IPs, IPAs, and IUs.

7. **Resolution Over Liquidation**:

A key philosophical shift under the IBC is the emphasis on rescuing viable businesses rather than dissolving them. Liquidation is only considered when resolution efforts are unsuccessful. High-profile resolutions such as Essar Steel and Bhushan Steel underscore the Code's capacity to preserve enterprise value and protect jobs.[19]

8. **Structured Distribution in Liquidation**:

Section 53 outlines a priority-based waterfall mechanism for distributing liquidation proceeds. Insolvency-related expenses and dues owed to secured creditors are settled first, followed by workers' claims, unsecured creditors, government dues, and finally, shareholders.[20] This structure ensures orderly and equitable recovery.

9. **Cross-Border Insolvency Provisions:**

Though still in a developmental phase, Sections 234 and 235 of the IBC allow for engagement with foreign jurisdictions in cross-border insolvency cases. A draft framework based on the UNCITRAL Model Law has been proposed to facilitate seamless international cooperation.[21]

10. **Coverage of Individuals and Partnerships**:

[19] *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 SCC 531 (India).
[20] Insolvency and Bankruptcy Code, 2016, § 53, No. 31, Acts of Parliament, 2016 (India).
[21] UNCITRAL, *UNCITRAL Model Law on Cross-Border Insolvency* (1997)

Beyond corporate entities, the Code encompasses individuals and partnership firms, offering a uniform insolvency resolution mechanism across different types of debtors. Specific provisions for personal guarantors have already been operationalized, expanding the Code's applicability.

1.8 Institutional Architecture Under the IBC:

The IBC establishes a comprehensive ecosystem for the efficient and fair resolution of insolvency cases. It comprises adjudicatory bodies like the NCLT, a regulatory authority in the form of the IBBI, and a cadre of trained Insolvency Professionals.

National Company Law Tribunal (NCLT):

As per Section 60 of the IBC, the NCLT functions as the dedicated adjudicating authority for corporate insolvency matters and those involving their personal guarantors. Originally created under the Companies Act, 2013, the NCLT was given expanded responsibilities under the IBC from 2016 onwards.

Initiation of insolvency proceedings under Sections 7, 9, or 10 is made to the NCLT by creditors or the corporate debtor. Upon satisfaction that a default exists, the NCLT admits the application, appoints an IRP, and invokes a moratorium under Section 14.

Key Responsibilities of the NCLT:

1. **Scrutiny and Admission of Applications**:

   The NCLT assesses applications under relevant sections to determine whether a default has occurred. Although the IBC mandates a 14-day decision period, courts have treated this timeframe as indicative rather than binding due to logistical challenges.[22]

2. **Appointment and Oversight of IRPs**:

   Once the insolvency process is triggered, the NCLT appoints an IRP who later may be replaced or confirmed by the CoC. The Tribunal supervises the IRP's conduct and can take corrective actions when necessary.

3. **Imposition of Moratorium**:

   The NCLT is empowered to enforce a moratorium under Section 14, effectively freezing all recovery and legal actions against the debtor to facilitate uninterrupted resolution.

4. **Validation of Resolution Plans**:

   Although the CoC holds primary authority in approving resolution plans, final approval

[22] *Surendra Trading Co. v. Juggilal Kamalapat Jute Mills Co. Ltd.*, (2017) 16 SCC 143 (India).

lies with the NCLT under Section 31. The Tribunal ensures compliance with legal requirements, including equitable treatment of creditors and adherence to insolvency costs and laws.

5. **Liquidation Orders**:

   If no resolution is reached within the prescribed period or if an approved plan collapses, the NCLT is obliged to initiate liquidation under Section 33 and appoint a liquidator to manage the process.

6. **Adjudication of Disputes**:

   The NCLT also resolves claims and disputes regarding transactions that are preferential, undervalued, fraudulent, or extortionate, as defined under Sections 43 to 51. It holds powers to examine directors' roles in any such conduct.

Case Law: *Essar Steel India Ltd. v. Satish Kumar Gupta*
This landmark case highlighted the pivotal role of the NCLT and the NCLAT in insolvency proceedings. While the CoC approved ArcelorMittal's resolution plan, the NCLAT modified it to equate the treatment of operational and financial creditors, raising questions about the extent of judicial intervention in commercial decisions. Ultimately, the Supreme Court reinstated the CoC's discretion, reaffirming the commercial wisdom principle.[23]

The Supreme Court reversed the modification in question, underscoring that the National Company Law Tribunal (NCLT) is tasked only with ensuring that procedural and legal requirements under Section 30(2) of the Insolvency and Bankruptcy Code (IBC) are met. The NCLT's role does not extend to reassessing the commercial merits of a resolution plan. It declared: "The NCLT can return a resolution plan to the Committee of Creditors (CoC) if it fails to meet the Section 30(2) criteria, but it cannot override the CoC's commercial judgment." This ruling decisively distinguished between judicial and commercial discretion, reaffirming that the NCLT's function is limited to statutory checks, not value-based decisions regarding financial matters. Moreover, it reinforced the IBC's emphasis on timely resolutions and maximizing value for stakeholders.

Ultimately, the NCLT serves as a critical adjudicatory body within the IBC framework. As the procedural gatekeeper, legal reviewer, and supervisory authority, the NCLT ensures that insolvency processes adhere to legal standards, maintaining procedural integrity and facilitating balanced engagement with stakeholders. The effective operation of the IBC depends on the NCLT's ability to render timely, well-considered decisions.

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[23] *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 SCC 531 (India).

1.9 Insolvency and Bankruptcy Board of India (IBBI)

The Insolvency and Bankruptcy Board of India (IBBI) is the primary regulatory body established under the Insolvency and Bankruptcy Code, 2016 (IBC). Tasked with overseeing the various entities involved in India's insolvency framework, the IBBI operates with a blend of quasi-legislative, quasi-judicial, and quasi-executive powers. It plays a central role in implementing and enforcing the provisions of the IBC.

Formed under Section 188 of the IBC, the IBBI began operations on October 1, 2016, and is based in New Delhi.[24] The Board's responsibilities span across the regulation, registration, and oversight of insolvency professionals (IPs), professional agencies, and information utilities (IUs), in addition to framing regulations to streamline the insolvency process.

Key Functions and Powers of the IBBI

1. **Regulation and Certification of Insolvency Professionals (IPs):**
   A core responsibility of the IBBI is the certification and regulation of IPs, who manage corporate insolvency and liquidation proceedings. The Board sets eligibility criteria, monitors conduct, and ensures that IPs act impartially and ethically. It also enforces a code of conduct and takes disciplinary action when necessary.
2. **Oversight of Insolvency Professional Agencies (IPAs):**
   The IBBI supervises IPAs, which are the main regulatory bodies for IPs. These agencies handle tasks such as admitting members, building professional capacity, and monitoring conduct. The IBBI conducts audits and inspections to ensure proper oversight.
3. **Regulation Drafting and Procedural Frameworks:**
   Exercising its quasi-legislative role, the IBBI creates subordinate regulations essential for implementing the IBC.[25] These include rules governing Corporate Insolvency Resolution Process (CIRP), liquidation, voluntary liquidation, and individual insolvency, ensuring transparency, fairness, and adherence to statutory timelines.
4. **Disciplinary and Enforcement Powers:**
   The IBBI holds the authority to impose penalties on professionals, agencies, or utilities that violate the provisions of the IBC. Through its Disciplinary Committee, it may levy fines or suspend or revoke licenses.

[24] Insolvency and Bankruptcy Code, 2016, § 188, No. 31, Acts of Parliament, 2016 (India).
[25] IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Gazette of India, Extraordinary, Part III, Sec. 4 (India).

5. **Strengthening Market Infrastructure:**
   The IBBI plays a crucial role in enhancing the insolvency ecosystem, including regulating IUs. These institutions collect, verify, and provide financial data to stakeholders, which helps build trust, reduce conflicts, and expedite resolutions.
6. **Research and Advocacy:**
   As part of its developmental duties, the IBBI conducts research, publishes reports, and facilitates educational initiatives. It collaborates with academia, industry groups, and international organizations to raise awareness and promote best practices.
7. **Monitoring and Performance Assessment:**
   The IBBI monitors insolvency proceedings, evaluating the conduct of resolution professionals, Committees of Creditors (CoCs), and adjudicating authorities. It periodically releases reports to ensure transparency and aid informed policymaking.
8. **Advisory Role to the Government:**
   The IBBI also serves as a consultative body to the Central Government, providing recommendations on policy matters, suggesting amendments, and highlighting practical challenges within the insolvency framework.

1.10 Resolution Professionals (RPs):

Resolution Professionals (RPs) play an essential role in managing the Corporate Insolvency Resolution Process (CIRP) under the IBC. They are tasked with executing proceedings impartially and efficiently, with two stages in their appointment: the Interim Resolution Professional (IRP), who is appointed at the start, and the Resolution Professional, who may either continue as the IRP or be appointed by the CoC. Their powers and duties are defined under Sections 16 to 25 of the IBC[26] and governed by the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.[27]

Responsibilities and Functions of Resolution Professionals

1. **Taking Charge of the Corporate Debtor:**
   Upon appointment, the IRP takes control of the corporate debtor's operations, suspending the board of directors. The IRP or RP must ensure the debtor continues as a going concern during the CIRP.

[26] Insolvency and Bankruptcy Code, 2016, §§ 16–25, No. 31, Acts of Parliament, 2016 (India).
[27] IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, Gazette of India, Extraordinary, Part III, Sec. 4 (India).

2. **Public Notice and Claims Collection:**
   Within three days of appointment, the IRP must issue a public notice to solicit claims from creditors. This enhances transparency and helps establish the CoC.
3. **Forming the Committee of Creditors (CoC):**
   The IRP categorizes and evaluates claims to form the CoC, primarily consisting of financial creditors. The CoC serves as the key decision-making body during CIRP.
4. **CoC Meetings Management:**
   The RP organizes and facilitates CoC meetings, documents the proceedings, and assists in decision-making. Major decisions require a voting threshold, typically 66%.
5. **Inviting and Assessing Resolution Plans:**
   The RP invites potential resolution plans and evaluates their eligibility, particularly under Section 29A. Qualified plans are submitted to the CoC for review.
6. **Ensuring Legal Compliance:**
   The RP ensures the resolution plan complies with the stipulations in Section 30(2), including the payment of insolvency costs and safeguarding the rights of operational creditors.
7. **Initiating Avoidance Applications:**
   RPs may initiate proceedings before the NCLT to reverse transactions that may harm the debtor's estate, such as preferential, undervalued, or fraudulent transactions, preserving asset value.

8. **Maintaining Neutrality and Confidentiality:**
   RPs must maintain neutrality and fiduciary responsibility to all stakeholders, keeping information about resolution plans and bidders confidential until official disclosure.
9. **Transitioning to Liquidation:**
   If no resolution plan is accepted or the CIRP fails, the RP typically assumes the role of the liquidator and initiates liquidation proceedings unless directed otherwise by the NCLT.

Judicial Clarification on the Role of RPs:

In *Swiss Ribbons Pvt. Ltd. v. Union of India*, the Supreme Court clarified that RPs are not vested with adjudicatory powers.[28] Their role is largely administrative, supervised by the CoC and subject to NCLT oversight. The Court emphasized: "The resolution professional is a facilitator

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

in the resolution process whose administrative functions are overseen by the CoC and subject to the NCLT's jurisdiction." This decision reaffirmed the RP's role as an administrator rather than an adjudicator, ensuring a clear distinction between administrative duties and judicial authority.

Conclusion:

The evolution of insolvency laws in India reflects the nation's broader economic and legal transition towards efficiency, transparency, and global integration. The pre-IBC framework, riddled with fragmented legislations like the Companies Act, SICA, RDDBFI, and SARFAESI, failed to provide timely and effective resolution mechanisms. These laws prioritized liquidation over recovery, lacked coordination, and suffered from institutional weaknesses, leading to prolonged proceedings, reduced asset recoveries, and eroded creditor confidence.

The mounting crisis of non-performing assets, inefficiencies in enforcement, and international pressure for reform served as critical catalysts for change. The enactment of the Insolvency and Bankruptcy Code, 2016, was a transformative response to these challenges. By introducing a creditor-in-control model, strict timelines, and a structured institutional ecosystem, the IBC marked a decisive shift from a fragmented system to a consolidated and resolution-centric framework. It aligned India's insolvency regime with international standards and contributed significantly to restoring lender confidence and enhancing the ease of doing business.

However, while the IBC has achieved considerable progress, challenges remain—such as resolution delays at the NCLT level, capacity constraints, and the need for consistent judicial interpretation. Continuous reforms, stakeholder training, and institutional strengthening will be essential to ensure that the IBC realizes its full potential in fostering economic stability and sustainable corporate growth.

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