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# EFFECTIVENESS OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016: A STUDY OF CREDITOR - DEBTOR BALANCE

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## I. ABSTRACT

*The Insolvency and Bankruptcy Code, 2016 is considered one of the important changes in business law after independence. It was created to resolve issues in the previous insolvency systems. To solve the problems IBC aimed to combine all the scattered laws into one system and created time bound process. It focused on maximising the value of company, protecting the interests of creditors and motivated people to start businesses. By giving the power to creditors IBC made the process flexible, faster, effective and introduced stringent timelines. Although the time taken to resolve the cases have been reduced from 4.3 years to 394 days in most cases and improved recovery rates as compared to earlier systems such as DRT, SARFAESI Act, and SICA challenges still continue to exist. Some of them are delays in resolving cases, increased number of cases ending in liquidation as compared to resolution, difference in treatment of creditors, low recovery, liquidation waterfall etc. The paper analyses whether IBC is able to achieve the balance between creditors and debtors. With the help of doctrinal and empirical approach the paper examines the judicial decisions (Essar steel, Swiss Ribbons, K. Sashidhar), structure of IBC, practical data and evidence. Further, legal- economic theories are also used (creditor bargain and stakeholder) to determine whether the more advantage is given to financial creditors, the impact on corporate governance and how people start their business. It also looks into how benefits and losses are distributed between operational creditors and society. The study highlights that while IBC has strengthened the rights of creditors and made businesses more responsible in taking loans or any risks, it also has created a difference between operational and financial creditors and has made people more cautious about starting or expanding a business. The paper highlights certain changes like giving protection to operational creditors, increasing the capacity of NCLT, making provisions for MSMEs.*

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## II. KEYWORDS

Insolvency and Bankruptcy Code, creditor-debtor balance, operational creditors, Committee of Creditors, recovery rates.

## III. INTRODUCTION

Every functioning market economy rest on prosaic but vital foundation that is the ability of the market to deal efficiently and effectively with failure. Whenever a business is not able to sustain, (for e.g. Companies like Kingfisher Airlines fails to pay huge debts raising doubts on how losses should be divided among banks, employees.) A business failing to pay off their debts on specified time, does not straight away bring up the choice of whether it needs to be winded up or can the business continue with its operations but the real questions that arise out of such situations include:

1. How to share losses transparently and fairly.
2. How to preserve the value that is left, which includes existing jobs, assets, business operations, etc.
3. How to direct a message to next generation of entrepreneurs and lenders in order for them to act responsibly, so that they don't end up in circumstances where they are not able to carry out basic operations of their respective businesses.

And for an epoch after independence India got this question woefully wrong. At that point of time, the legal infrastructure governing insolvency was not merely outdated, it was also scattered across a baffling patchwork of statutes, each with its own jurisdiction, timeline and not even a single statute with a splendid track record of resolving distress in such a way that it would have served economy at large.[3]

Insolvency system in India had a major structural change via, The Insolvency and Bankruptcy Code, 2016 (IBC), which was passed by the Parliament of India on 11th of

[3] Bankruptcy Law Reforms Committee, *Report of the Bankruptcy Law Reforms Committee – Volume I:* Rationale and Design (November 2015) https://ibbi.gov.in/BLRCReportVol1_04112015.pdf%3E

May 2016 and received the approval from President on 28th of May 2016[4]. Prior the Code, regime was quite fragmented, making the whole process slow, confusing and inefficient but with the upcoming of IBC, these irregularities were catered by consolidating fragmented laws into a single, unified framework governing insolvency resolution for individuals, partnerships, limited liability partnerships and corporates. Insolvency and Bankruptcy Code of India was curated to:

1. Maximise value of distressed assets.
2. Promote Entrepreneurship by allowing business owners to opt for an exit instead of being stuck in endless legal vexation
3. Balance the interest of all stakeholders while adhering to the specified strict timeline, initially 180 days, which is also extendable by 90 days in certain circumstances that stood in stark contrast to the years, sometimes decades.[5]

Ambitions and execution are entirely two different things and after almost 10 years of IBC, results are still mixed and complicated than expected. Issues that still exist in the system includes:

1. Recovery rates being low till date which serve as a huge concern for lenders who routinely accept haircuts upto 80% on their agreed claims.
2. Time limit that is meant to be sacrosanct, is not adhered strictly and this delay in the process of resolution is very common. In a famous case, Committee of Creditors Essar Steel India Limited v. Satish Kumar Gupta (2020), The Supreme Court of India intervened in order to address the delays in carrying out the procedure and also clarified various laws related to it.[6]
3. Operational Creditors (suppliers, vendors and small businesses) find themselves at the bottom of the priority waterfall, receiving little to nothing from the resolution process despite having claims often modest as compared to those of banks and financial institutions.

[4] Insolvency and Bankruptcy Code 2016.
[5] Insolvency and Bankruptcy Code 2016, Preamble and s 12
[6] Committee of Creditors *of Essar Steel India Ltd v Satish Kumar Gupta (2020) 8 SCC 531.*

4. Dynamics of corporate governance has completely altered with the significant amount of control that is vested amongst the Committee of Creditors in case of distressed companies during the process of insolvency.

This particular paper takes these issues gravely and inquires if the IBC, as curated and as interpreted by the judiciary, has achieved a balance between the interests of corporate debtors and rights of creditors or is just conveniently favouring one class at the expense of others.

This research is not merely an academic exercise but lies at the root level of how a legal system allocates risk, incentivises behaviour and also shapes the true character of an economy. Achieving the balance becomes the fundamental hurdle of Insolvency law, as the code that favours creditors more will take away the entrepreneurial risk taking and the one that is excessively debtor friendly will erode lender's confidence and will affect the supply of credit at large.

## A. Problem Statement

### 1. The ideal and its shortfall

Dr. T. K. Viswanathan chaired the Bankruptcy Law Reforms Committee, which laid down the key principles for the Insolvency and Bankruptcy Code, 2016. The committee in its report emphasized that an efficient insolvency framework must possess these features: time bound, transparent and accountable, maximising economic returns and fair to all stakeholders.[7]

The Insolvency and Bankruptcy Code was enacted to achieve the following objectives:

- If a company can still function, then it should be restored rather than liquidated.
- The process of insolvency must be completed within fixed time frame to avoid delays.

[7] Bankruptcy Law Reforms Committee (n 3).

Though all classes of creditors should be treated fairly (banks, suppliers and employees) but the distribution of funds may be different due to legally recognized priorities.

In practice, this structure of insolvency does not function in accordance with its objectives. There is an evident gap between what law aims to achieve and what actually happens in its implementation. The study now focuses on the duration within which the process is completed. According to the Section 12 of the code the process of CIRP was to be completed within 180 days but if it's necessary the 90 days extension may be allowed. An amendment was brought in 2019 which imposed a stringent time limit of 330 days to complete the insolvency cases.[8] This means that no case can exceed this prescribed time period and these 330 days also included the time spent in litigation.

Despite this the reports from IBBI quarterly newsletters constantly demonstrated that a large number of cases go beyond even this extended deadline.[9] In 2017 12 major non performing loan accounts were identified by RBI, and they order the banks to take these cases before the NCLT. These cases are called as illustrative because they are often used as examples to demonstrate how the insolvency process works. Whereas some cases like Essar steel were finally settled and creditors gained a significant amount of money. However, this resolution process took a lot of time highlighting major delays. These court cases and disputes connected to the resolution plan resulted in the evolution of new legal principles and case laws.

Prior to the IBC, 2016 the insolvency cases were settled over an average time frame of 4.3 years.[10] The IBC aimed to resolve these disputes under 330 days to make the process quicker. However, in reality the delays still persist. Due to these delays the business value declines with time which is exactly what law was trying to avoid.

[8] Insolvency and Bankruptcy Code 2016, s 12 (as amended by the Insolvency and Bankruptcy Code (Amendment) Act 2019).
[9] Insolvency and Bankruptcy Board of India (n 1).
[10] World Bank, *Doing Business Report 2015* (cited in Bankruptcy Law Reforms Committee (n 3)).

This highlights the question of recovery. The Insolvency and Bankruptcy Code was enacted with the presumption that it would considerably increase the recovery of dues by creditors (inclusive of banks) in cases of default by company. Prior to the enactment of IBC, the prevailing systems used to retrieve money from borrowers specifically from Lok Adalat's, Debt Recovery Tribunals (DRTs) and SARFAESI Act, 2002. However, this system did not really help the creditors from getting back their money and the results generated were not satisfactory. This Code was enacted to enhance how insolvent companies are managed. It did this by:

The IBC by bringing in temporary legal pause on independent retrieval or enforcement measures by creditors and adding all cases of insolvency under one jurisdiction the National Company Law Tribunal (NCLT) rather than permitting several separate proceedings. The main aim of these measures was to stop creditors from independently pursuing and liquidating company's resources Previously this method decreased the overall value of the company. Although IBC was intended to help the creditors from getting back more money but in reality, the consequences are often unsatisfactory. In various cases of insolvency that have been settled financial creditors(banks) faces huge losses called haircuts (i.e. banks get only small amount of what they were owed) and in various situations they lose more than 90% of their dues.[11] Due to these losses severe concerns are raised about whether IBC is actually fulfilling its objectives i.e. increasing the value of assets and guaranteeing improved retrieval mechanism for creditors.

### 2. The Structural Imbalance: Financial Creditors, Operational Creditors, and the Corporate Debtor

Arguably the most intense conflict among IBC'S framework concerns the unequal treatment of financial creditors (banks, lenders) and operational creditors (suppliers, employees). Section 21 and 24 of IBC establishes the Committee of Creditors which have supreme power over most important decisions in insolvency like accepting or rejecting the resolution plan.[12] Financial creditors have the power to do the same.

[11] Insolvency and Bankruptcy Board of India (n 1).
[12] Insolvency and Bankruptcy Code 2016, ss 21 and 24.

Whereas operational creditors have no right to vote and have no actual decision-making power. They can only attend meetings. On exclusion of operational creditors from making the decisions has been contested many times in courts. The question was mainly raised in the case of *Swiss ribbons pvt. ltd.* v *Union of India*. Supreme Court in this case upheld the classification valid.[13] It was also held that financial creditors do careful financial checks and have better access to knowledge. Due to this they are more competent to decide whether the resolution process is good or not and can also check whether company can survive.

Although the legal differentiation between financial and operational creditors is declared as constitutionally valid real-life challenges arising from that differentiation are not resolved. Operational creditors usually get minimal amount of money as compared to what they are owed. This happens because law follows an order called statutory waterfall.[14] Under this order if a company goes bankrupt small business are paid last because law gives priority to financial creditors. Study by Prasad Gupta and Mathur applies the game theory which states that operational creditors constantly get less amount of money than financial creditors. It is not a rare output instead it is created in the code itself. Due to this unequal treatment among various types of creditors suppliers may not give goods or services on loan. Since certain creditors have more control negotiation between parties is also changed during CIRP and also raises doubts about whether the insolvency process is fair or not in distributing the money between various creditors.

After CIRP starts the board of directors is removed from the authority. The power is then given to the Insolvency resolution professional and after that resolution professional who then looks after the company on behalf of creditors. The promoters of the company may be held partially responsible for the company's financial failure. They are removed from controlling the company. Section 29A was first introduced through the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 (effective 23 November 2017), and subsequently formalised and refined by the

[13] *Swiss Ribbons Pvt Ltd* v *Union of India* (2019) 4 SCC 17.
[14] Insolvency and Bankruptcy Code 2016, s 53.

Insolvency and Bankruptcy Code (Amendment) Act, 2018, under which certain persons were disqualified from submitting resolution plans to regain control of the company.[15] It applies to wilful defaulters or persons who were convicted of serious offences. Once these proceedings start creditors decides what's best for company even though their decisions are not always directed towards the survival of the company.

### B. Research Objectives and Hypothesis

The paper seeks to achieve the following objectives:

1. To analyse the development of insolvency laws and to interpret the role of IBC in this while comparing it with laws of other countries.
2. To interpret the legal framework of IBC with exclusive focus on the treatment of different classes of creditors (financial, operational) and corporate debtors.
3. To analyse whether IBC clearly manages the interests of both creditors and debtors while using both legal reasoning and real-world data.
4. To determine the challenges and limitations and recommend changes.

The study aims to test the following hypothesis:

1. The IBC has significantly increased the effectiveness of insolvency resolution process in India as compared to the previous laws before IBC like faster resolution and easy debt recovery.
2. The IBC is created in such a manner that it gives favour to financial creditors over operational creditors in the money recovery.
3. The decision-making authority goes from company's management to Committee of Creditors. Companies may act responsibly and they do not take rash decisions to lose the control. The way they handle borrowing, money and risk also changes. Business owners can become careful and can avoid taking risks which can decrease the growth of company.

[15] Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 (23 November 2017); Insolvency and Bankruptcy Code (Amendment) Act, 2018, s 29A.

### C. Research Questions

In order to systematically examine the creditor–debtor balance under the Insolvency and Bankruptcy Code, 2016, this study seeks to address the following research questions:

1. To what extent has the Insolvency and Bankruptcy Code, 2016 succeeded in achieving a balance between the interests of creditors and corporate debtors in practice?
2. Does the structural design of the IBC, particularly the role of the Committee of Creditors and the liquidation waterfall mechanism, result in a disproportionate advantage to financial creditors over operational creditors?
3. How do judicial interpretations and empirical outcomes under the IBC influence its effectiveness in ensuring equitable insolvency resolution and value maximisation?

### D. Methodology

This research was conducted in a mixed approach, carrying out Doctrinal Analysis as well as Empirical Analysis which gives an extra edge to the legal analysis by giving it a scientific application when backed with data-based analysis.

1. **Doctrinal analysis:** IBC's text, rules and regulations are closely observed under this. The main purpose it serves is to comprehend how law written and in which manner it is interpreted. It includes analysing important court judgments, which includes decisions from: -
    - NCLT
    - NCLAT
    - Supreme Court of India[16]
2. **Empirical Analysis:** This analysis takes in account already existing data to carry out the study, rather than the one that is collected by the author, which

[16] Key authorities include *Swiss Ribbons Pvt. Ltd.* v. *Union of India* (n 13), *Committee of Creditors of Essar Steel India Ltd.* v. *Satish Kumar Gupta* (n 6), and *K Sashidhar* v. *Indian Overseas Bank* (2019) 12 SCC 150.

makes this study heavily dependent on secondary data. It includes various sources like: - Academic based studies using statistical methods: -

- Difference in differences analysis
- Logistic regression
- BC's reports & Newsletter
- RBI-12 cases

Its main objective is to understand functioning IBC using real data.

3. **No Primary Research:** It is wholly & solely based on existing sources. Here researchers do not opt for collecting data via the means of surveys, interviews, etc.

## E. Review Of Literature

The academic discussion around Insolvency and bankruptcy code has evolved through various phases:

### 1. Early Assessments: Promise & Optimism (2016-2019)

Scholarships that came initially were majorly descriptive and wary optimistic.[17] In 2017, Rawal mentioned in her writing that it is quite liberating to have IBC as it bestows India with a decisive break from inconsistent and fragmented insolvency system. Having said that, she also mentioned the fact that it was too early to predict if this code would actually work and suffice the expectations with which it was enacted. Bang, Bansali, Doshi and Vedak in 2019 came up with a comprehensive study that did not just analyse its sustainability but the scalability as well and found that IBC was efficiently structured and has the capacity to foster transparency as well but still consists of certain grey areas, which could erode its efficiency and make it vague. Scholars were especially concerned about the NCLT'S capacity to handle the cases and the ambiguity of certain provisions that added nothing but mere confusion with respect to the Code. Pryor and Garg majorly focused on the difference of approach towards different classes of creditors; this does not just serve as an issue of fairness in

[17] Insolvency and Bankruptcy Board of India (n 1).

theory but in practice as well. Then came Chatterjee, Shaikh and Zaveri who provided one of the earliest empirical analyses of the Code's initial days, and focused on the judicial efficiency of the National Company law tribunal and the equilibrium between the debtor and creditors rights, stating - despite the Code had improved the resolution process by making it time bound, the quality of outcomes still remained variable.

Gupta added to the study by explaining the paradigm shift in the system and situated IBC within the broader context of credit delivery in India; earlier the system held the approach of debtor in possession while under IBC, its shifter to creditor in possession. This shift in the system came with its boon and bane. Dash and Mohanty raised a grave concern that highlighted the setback operational creditors had in case of resolution as well as liquidation. They laid emphasis on the potential of the Code to effectively enslave this class of creditors, whose claims were strategically undermined to financial creditors.

### 2. Mid-Period Scholarship: Empirical Depth and Critical Turns (2020-2023)

With the passage of time, Code accumulated critical mass of cases, making the scholarship more empirical rather than just being theory based. Deb and Dube in 2020 questioned why the IBC is curated as a system that is more creditors driven and asked if this design actually sits well in the real-world market. Van Zwieten, in 2019 at a conference suggested that India's approach when they came up with IBC was quite aspiring, to build a whole system on Insolvency framework from scratch in an economy which is characterised by its feeble institutional infrastructure (like delays, overburdened tribunals, etc) is just commendable.

Then Prasad, Gupta and Mathur in 2020 used game theory (mathematical analyses) which was quite innovative in its nature as they physically compared the payouts of operational creditors and financial creditors and came up with the reasoning that operational creditors were facing structural disadvantage.[18] Baxi gave few technical and critical insights as well which focused on interim finance under IBC and stated that it holds utmost significance in the Corporate Insolvency Resolution process but

[18] Prasad, Gupta and Mathur, 'Game Theoretic Analysis of Creditor Payouts under IBC' (2020).

under current framework it still remains inadequately provided. Agarwal & Singhvi exhibited that even though IBC increased overall supply of credit, yet it led to disproportionate reduction in case of secured debt for firms with high tangibility. This depicts that Insolvency and Bankruptcy Code is not beneficial uniformly for all sectors.

Ram Mohan and Gopalakrishnan gave the study on companies after carrying out resolution process and questioned if the companies were truly revived after the Insolvency process and performed better in subsequent years or does it merely transfer assets and ownership without improvement in real sense. Abidi and Gunturu stated that in case of stock market, improved confidence of investors reflected through the strengthening of creditor rights.

### 3. Recent Work: Refinement & New Frontiers (2024-2025)

According to contemporary research, better understanding for Insolvency & Bankruptcy Code can be observed, be it it's strengths or limitations. Kanojia and Gupta came up with a significant study that utilized advanced data analysis of about 320 cases to study the reason behind companies' resolution and liquidation.[19] They questioned the basis on which the company was either liquidated or resolved as it is of utmost significance to dig beyond the basic success rates and search for real reasons behind the curtain. Karanth and Prabhu focused on ameliorate recovery of NPAs yet were concerned about loiter in the process and inefficient rules for cross-broader insolvency.

Pandey Saxena, Kumar and Gupta perused the RBI -12 cases which included paramount of companies that had defaulted, were concerned about the large haircuts that were still on shoulders of creditors and inefficiency of the governance yet something caught their eye while studying was the boost in recovery rates under IBC and the incredible transformation from 4.3 years to about 394 days in resolution period. Tripathi and Sharma studied how distinct ailing firms behaved, they observed

[19] Kanojia and Gupta, 'Resolution vs Liquidation: An Empirical Study of 320 IBC Cases' (2024–25); Insolvency and Bankruptcy Board of India (n 1).

economically distressed firms and simultaneously they observed financially distressed firms and stated that under same creditor focused system, they respond differently, affixing more depth to analysis. Srivastava explored something that wasn't ever done before; Innovation and mentioned that stronger rights of creditors under IBC have heterogeneous effects on innovation.

Nair and Nemade raised a key question which still remains one of the core concerns of debates is, if IBC is serving for companies as it intended to through its resolution mechanism or is it just deteriorating existing value by pushing more companies into liquidation.

### 4. Identifying the Gap

A discernible lacuna exists within the existing body of scholarship. While substantial literature is available, it remains largely fragmented in its approach. Doctrinal studies predominantly focus on statutory provisions and judicial interpretation, often without sufficient engagement with empirical data reflecting practical outcomes. Conversely, empirical research tends to prioritise quantitative analysis while overlooking the underlying legal framework that shapes such outcomes. Furthermore, existing studies examining the creditor–debtor dynamic frequently adopt a unilateral perspective, focusing on one class of stakeholders. This study seeks to address these limitations by adopting an integrated approach that combines statutory analysis, judicial interpretation, and empirical evidence to provide a comprehensive evaluation of whether the Insolvency and Bankruptcy Code, 2016 achieves an equitable balance between creditors and debtors.

Insolvency and Bankruptcy Code, 2016 has been researched extensively in connection with enhancing the efficacy of the process of resolution and maximising recoveries to creditors, little focus has been accorded to the distributional implications of the Code, especially the ways in which it imposes costs on taxpayers. By giving precedence to claims of creditors over sovereign claims, there are considerable financial costs to the public, which remain undocumented and unmeasured.

Moreover, very little research has been conducted in terms of: -

- the aggregate fiscal burden on the public coffers
- moral hazard arising out of the lack of accountability on the part of the promoters and directors
- externality costs imposed on society

The overarching normative issue, which needs further investigation, concerns whether the Code distributes insolvency costs equitably or unfairly imposes such costs on the public.

## IV. DIRECT AND INDIRECT IMPACTS

The impact of this imbalance expands universally. The data shows that after IBC has enacted companies decreased their debts and borrowing costs as firms modified their financial policies in hope of effective legal rights and increased safeguards for creditors. The enactment of IBC behaved as actual study which researchers used to study through difference in difference analysis method. This evidence showed that IBC improved the conduct of financially weak companies mainly in managing the finances and helped them in getting credit. This code also had positive impact on India's economy. It helped India improve the ranking in global business standards and sent positive signal to foreign investors highlighting that India's insolvency system is now inclined towards global norms.

The code also has some negative impacts. The control is given to Committee of Creditors. Creditors can make decisions which may not be useful for the survival of company. Banks and many lenders face losses if their loans are not retrieved. The profits and capital structure is decreased which can affect how much credit they can give and interest rates they charge. The main work of IBC is to settle the disputes quickly however due to burden on courts and legal disputes it is decreasing its power to resolve the disputes.

### A. The Knowledge Gap

Present studies on IBC are categorized in two types:

1. **Doctrinal studies:** focus on law, courts decisions and legal reasoning.

2. **Empirical studies:** focus on recovery rates, time consumed and number of cases.

There is not much study done to identify IBC as a full system or to even show that IBC achieves its main objective. This paper fills the void by combining both the studies and also compare it with other systems. By doing this it aims to show both the present condition of code and how it can be improved.

## V. THEORETICAL FRAMEWORK

The study in this paper is based on two perspectives:

1. **Creditor bargain theory:** This theory was given by Thomas H Jackson.[20] It deals with how the Bankruptcy laws should operate. The law should copy an agreement that creditors will try to settle through negotiation in advance. This agreement is not real but illusionary but still highlights what is just and fair. This is done to avoid problems like several lawsuits, conflict amongst creditors, delays and also ensuring that company's assets are used in an efficient manner preventing them from being wasted or sold out. According to this theory the decision- making power is granted to the Committee of Creditors so that they can take practical and sound business decisions about the future of debtors (whether it should be settled or liquidated).
2. **Stakeholder theory:** This theory questions the sole focus of insolvency laws on the creditors. It states that an ideal insolvency framework is the one which caters to the interests of all people who are affected when a company is facing financial problem such as employees, operational creditors (vendors, suppliers) and the local community (which is dependent on the company). This theory finds it relevance from the statute itself and even the judgements given by Supreme Court. Sec 30(2) of the IBC states that resolution plan should give minimum amount of payment to operational creditors and even if some financial creditors disagree still treat them fairly and ensure they get minimum payment. In the case of *Swiss Ribbons Pvt. Ltd.* v. *Union of India* supreme court

[20] Thomas H Jackson, The Logic and Limits of Bankruptcy Law (Harvard University Press 1986).

held that the main objective of IBC is to ensure the survival of company in long run instead of recovery of debts.[21]

These two theories often conflict with each other, and this conflict is seen in the problems faced in practical life under IBC. The effectiveness of IBC is dependent on how good IBC manages the interests of creditors, debtors and all other stakeholders.

A closely related distinction is the difference between ex ante and ex post effectiveness in insolvency law. Ex ante efficiency means the impact of insolvency laws before company faces financial problem. It examines whether the law helps companies in borrowing responsibly, helps the lenders in lending carefully and decrease risky behaviour. And ex post efficiency means how good a company works after it is already facing a financial crisis. It deals with the impact of insolvency process like companies that can survive are saved and which cannot be closed in a way that gives maximum financial return from the process. The process of insolvency may give great outcomes but still it can create some bad results prior to like how money will be distributed among creditors, can make lenders act cautiously and borrowers can act in a negative manner. This difference shapes the way in which IBC treats the creditors and other stakeholders and how it will impact its business decisions.

## VI. SUBSTANTIVE ANALYSIS

### A. Evolution: From Fragmentation to Consolidation

The Insolvency system in India before IBC was enacted was not systematic and it lacked a proper structure. It was developed over time. The Insolvency act in the Presidency and provincial towns covered only individual Insolvency. Corporate Insolvency was covered under Companies act,1956(then Companies act, 2013). But due to delays and poor results these laws were not effective. Special recovery laws were also established like Recovery of Debts Due to Banks and Financial Institutions Act,1993 which created Tribunals for debt recovery. The SARFAESI Act, 2002 which

[21] Insolvency and Bankruptcy Code 2016, s 30(2); *Swiss Ribbons Pvt Ltd* v. *Union of India* (n 13).

gave more power to secured creditors to recover their money without the interference of court.[22]

The Sick Industrial Companies (Special Provisions) Act, 1985 created the Board for Industrial and Financial Reconstruction was a huge failure.[23] The board was created to assist weak companies (Sick) and help them in becoming financially independently. But instead of providing assistance the act helped owners and managers (Promoters) of the company. They delayed in giving money to the creditors and misused the process so that money could not be recovered. Cases continued for years (sometimes decades). Their assets lost the value and debts kept increasing. Therefore, this act was abolished when IBC came.

Various schemes were established by RBI to resolve bad loans:

1. Corporate Debt Restructuring (CDR)
2. Strategic Debt Restructuring (SDR)
3. Scheme for Sustainable structure of stresses assets (S4A)
4. Joint Lenders forum (JLF)

However, these schemes although were established to resolve the issue but didn't work effectively.

This happened because these schemes didn't have any stringent law enforcement, was not backed by any statutory authority and were dependent on the voluntary cooperation of banks and borrowers. The CDR scheme was criticised because promoters got allowances still did not fixed the business. Till 2015, NPAs increased heavily and became risky for banks. Government policymakers, courts, banks and financial institutions agreed that the prevailing system is so weak and has many loopholes that it could not be fixed anymore.

Since all the earlier systems failed and NPA was increasing Bankruptcy Law Reforms Committee report was issued in Nov 2015 which stated that instead of so many

[22] Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002; Recovery of Debts and Bankruptcy Act 1993.
[23] Sick Industrial Companies (Special Provisions) Act 1985 (repealed by the Insolvency and Bankruptcy Code 2016).

insolvency laws there should be one uniform law applicable on everyone. After that Insolvency and bankruptcy Bill was introduced in Lok Sabha in Dec 2015 passed in May 2016 then was passed by Rajya Sabha and it finally got Presidential assent in May 2016.This showed the urgency to solve the problem and all political leaders agreed to do so.

### B. Architecture: Design Choices and their Implications

The IBC'S legal framework highlights the range of policy decisions along with the consequences for both creditors and debtors.

1. **The CIRP Framework:** The procedure of CIRP starts when company is not able to pay a debt of at least 1 crore. Part 2 of the IBC deals with the resolution process of corporate Insolvency. It can be started by financial creditors (sec 7) operational creditors (sec 9) and even corporate debate (sec 10). When NCLT accepts the application, a stay is enforced under sec 14.[24] It stops all the proceedings and recovery actions such as filing lawsuits, selling the company assets and even stops the individual creditors from recovering their money. This is considered important because it ensures everyone is treated jointly rather than individually. Helps create an atmosphere to find the best possible solution. And also prevents the creditors from getting the assets first.
2. **Committee of Creditors:** Sec 21 deals with Committee of Creditors which consists of financial creditors. Their voting share depends upon how much money of them is due.(more the money, more voting share).It possess the following powers: Appointment of resolution professional(sec 22), approval or rejection of resolution plans(sec 30) and if no suitable plan is there can recommend liquidation(sec 33).The 2018 amendment decreased the limit from 75% to 66%.[25]It held that now no creditor or even small minority group cannot stop a reasonable plan for resolution. As soon as 66%

[24] Insolvency and Bankruptcy Code 2016, ss 4, 7, 9, 10 and 14.
[25] Insolvency and Bankruptcy Code 2016, s 21 (as amended).

people accepts the plan the decision is taken and its considered final and binding.

3. **Operational Creditors:** These creditors can start the CIRP process under sec 9. When resolution plan is made operational creditors are required to be given a minimum amount of payment. They can either get what they will get when the company is shut down and its assets are sold, and if the company got liquidated as insolvency process started (Sec 30(2)(b). According to sec 24(3)(c) they have the right to attend the meeting but do not have any voting power. This rule was laid down in the *Swiss Ribbons Pvt. Ltd.* v. *Union of India.*[26] The Supreme Court said that as financial creditors take more risk and also, they have better knowledge in helping the Companies. So, they have been given the voting power. This system is criticised stating that operational creditors are also impacted (suppliers, employees). Still, they do not have any real voting power.
4. **Sec 29A: The Promoter Bar:** According to sec 29A (added after 2018 amendment) there are some people who are not allowed to submit the resolution plans.[27] They are:
    - Wilful defaulters (those who did not paid the loan intentionally)
    - Persons whose loans are categorized as NPAs for more than 12 months
    - Persons who are convicted of serious offences and are punished with more than 2 years imprisonment

    This is done to stop the promoters who are in default from stopping the company getting insolvent and then buying it again cheaply. This is known as back door entry. But it has also decreased the persons with resolution due to which there's less competition and lower recovery rate and increases the chance for liquidation.

[26] *Swiss Ribbons Pvt Ltd* v. *Union of India (n 13)*
[27] Insolvency and Bankruptcy Code (Amendment) Act 2018, s 29A

5. **Sec 53: The Liquidation Waterfall:** Sec 53 states that if the dispute is not settled the company gets liquidated[28] and its assets are divided in a fixed manner:
    - Insolvency costs are paid first
    - Secured Creditors and workmen dues
    - employee wages
    - unsecured financial creditors
    - government dues
    - operational creditors and others are paid last

    The law clearly highlights that operational creditors are given less priority instead of financial creditors. This system is criticised many times.

### C. Judicial Interpretation: Shaping the Code through Adjudication

The judiciary has played crucial role in shaping the IBC and has given several landmark judgments that affect the creditor and debtor balance. Some of them are:

#### 1. Swiss Ribbons Pvt. Ltd. v. Union of India (2019)4 SCC 17

This case is called as fundamental constitutional pronouncement because it's the first landmark case deciding whether IBC is constitutional or not.[29] Many points were raised stating that IBC is not fair and is violating the constitution such as difference in treating the financial and operational creditors. The court held that the classification is valid and based on intelligible differentia because financial creditors check whether company can survive or not, they have expertise in that and also check the finances of the company that's why they are given more decision-making power. The objective of IBC is to maximise the value of company and giving more power to financial creditors helps in achieving this goal because they take better decisions. The court also said that main goal of IBC is resolving the disputes quickly and increase the value of company's assets and it not just benefits creditors but also employees, company, economy and local community.

[28] Insolvency and Bankruptcy Code 2016, s 53.
[29] *Swiss Ribbons Pvt Ltd* v. *Union of India (2019) 4 SCC 17.*

### 2. Essar Steel India Ltd. v. Satish Kumar Gupta (2020) 8 SCC 531

The case originated when RBI sent 12 accounts for insolvency under IBC.[30] One of them was Essar steel. It deals with whether the Coc have the power to determine how the money recovered will be distributed among different creditors. The supreme court said that Coc are experts in taking business decisions and also how much money will be allocated but according to the conditions given in Sec 30(2) and further held that NCLT and NCLAT should not impose their views. This decision strengthened the creditor debtor balance while at the same time upheld the rights of operational and financial creditors. This case was used as an example that IBC can solve complex cases also although it took 2 years to solve it.

### 3. K Sashidar v. Indian Overseas Bank (2019)12 SCC 150

Supreme Court in this case held that Coc especially financial creditors have final say in accepting or rejecting the plans.[31] Even though operational creditors feel that it's not fair it cannot be challenged easily in the court. This decision of court follows the creditor bargain theory (those who have lent the money can take decisions) but it overlaps with the stakeholder theory which says that all affected parties shall be treated in a fair manner.

### 4. Jaypee Infratech Ltd.

In this case a real estate developer went bankrupt due to which thousands of homebuyers were impacted. Since these homebuyers were not treated as financial creditors, they faced huge problems and couldn't protect their interests. The government amended this in 2018 by giving protection to the homebuyers. The amendment highlights that IBC is not static it keeps changing over time. Legislature, judiciary and real-world problems shape the IBC structure.

[30] *Committee of Creditors* of *Essar Steel India Ltd* v. *Satish Kumar Gupta* (2020) 8 SCC 531.
[31] *K Sashidhar* v. *Indian Overseas Bank* (2019) 12 SCC 150.

### D. Empirical Assessment: What the data reveals

The IBC is effective in some of the areas but while looking at actual data, facts an d evidence there are still some limitations and areas which needs improvement.

1. **Recovery rates:** The IBC has given higher recovery rates as compared to the system prevailing prior to IBC. Under the Debt recovery Tribunal (DRT) and SARFAESI act recovery rates banks used to get only minimum portion of amount they owed. The recovery rate under earlier mechanisms such as Debt Recovery Tribunals and the SARFAESI Act has been reported to be in the range of approximately 20–25%, as reflected in data published in the Insolvency and Bankruptcy Board of India (IBBI) Quarterly Newsletter (various issues, 2017–2019). For instance, if a bank lent ₹100, it would typically recover only about ₹20–25. However, following the enactment of the Insolvency and Bankruptcy Code, 2016, recovery rates have shown improvement, although they continue to vary significantly across cases.[32] The 12 companies identified by RBI highlights that IBC can work very well in some cases but not always. For instance, in the case of Committee of Creditors of Essar Steel India Ltd v. Satish Kumar Gupta, the approved resolution plan resulted in a recovery of approximately 92% for financial creditors, as reflected in IBBI data and the resolution plan approved by the adjudicating authority[33]. However, such outcomes are not uniform across all cases.
2. **Timelines:** The time period taken to resolve the disputes under IBC is also decreased as compared to the system present before IBC. Earlier it took around 4.3 years to resolve the disputes but now it's reduced to 394 days after the 12 cases of RBI, but the time taken varies in different cases.[34] In most cases which involve something complex or there are technicalities the

[32] Insolvency and Bankruptcy Board of India, *Quarterly Newsletter* (various issues, 2017–2019); Insolvency and Bankruptcy Board of India, *Newsletter* (Essar Steel case data and recovery outcomes).
[33] Committee of Creditors of Essar Steel India Ltd v. Satish Kumar Gupta (2020) 8 SCC 531.
[34] Ibid

time exceeds even 330 days. As NCLT lacks benches, infrastructure and there are too many cases the delays happen.

3. **Liquidation rates:** A constantly disturbing problem is the number of cases or companies which are liquidated instead of the matter getting resolved. The main aim of IBC is to ensure the survival of company, but high liquidation rate indicates that the IBC is not much effective. The study made by Nair and Nemade says that the creditor driven system may be intended towards encouraging the company for liquidation. They consider it as a problem in the code itself. Kanojia and Gupta studied 320 cases and identified the pattern to determine that during a case what influences whether company will go into liquidation or will be saved.[35] They gave some factors which determine the same: whether company is able to survive, the type of creditors and how fats the insolvency process will be finished.
4. **Impact on Corporate Behaviour:** The biggest achievement of IBC is that companies now act more responsibly even though this effect is not seen. The study made by Singh, Jadiyappa and Sisodia highlighted that after the IBC was enacted companies changed the way in which they handle money, they stopped borrowing so much money and as creditors got more control the companies became cautious. The study of Tripathi and Sharma expanded the above-mentioned study to differentiate between two types of troubled companies (financially stressed and economically stressed). They said that companies act differently depending on the type of stress. Kumar, Rastogi and Chaturvedi highlighted that IBC helped the financially disturbed companies by making it easier for them to get loans instead of making them cautious. Srivastava's study demonstrated that giving more control to the creditors can sometimes stops the company from innovating and hinders their development because they think that their assets will be sold.

[35] Kanojia and Gupta (n 18); Insolvency and Bankruptcy Board of India (n 1)

5. **Investor Confidence:** The effective and successful cases of insolvency under IBC helped India gain investors' confidence, stock prices were improved. India's global ranking also got better, and investors started trusting the legal system of India.

### E. The Balance Sheet where do we stand?

From the statutes, real world data, judgments by judiciary and evidence from the study the following analysis can be made.

The factors responsible for success of IBC are:

1. **Consolidation:** The code unified the scattered laws into one single place which is a huge achievement.
2. **Fixed timeframe:** Even though there are delays in resolving but deadlines in the code have somewhat made the code flexible and organized.
3. **Higher recovery rates:** The recovery rates in IBC is improved ad compared to the earlier systems like SARFAESI and DRT act.
4. **Behavioural discipline:** Companies now act more responsibly and are careful about the creditors interests and about how they manage money.
5. **Investor Confidence:** IBC also boosted the Investor confidence and gained their interest.

The limitations of IBC are as follows: -

1. **Operational Creditors subordination:** The difference in treatmen6of financial and operational creditors in decision making and allocation of funds highlights the impartiality.
2. **Haircut Sizes:** In many cases where companies have to accept the losses on the money, they are owed a doubt is raised on whether IBC is actually maximising the value and selling the assets when company is in trouble.
3. **Insolvency resolution Tribunal capacities:** Because of too many cases, poor infrastructure and lack of enough benches there is a delay in resolving the cases, recovery rates get affected and the value of company is decreased.

4. **Cross border insolvencies:** Sections 234 and 235 of the Insolvency and Bankruptcy Code, 2016 provide the legal framework for cross-border insolvency by enabling the Central Government to enter into bilateral agreements with foreign jurisdictions and permitting adjudicating authorities to issue letters of request to foreign courts. However, these provisions remain un-notified and effectively inoperative, which continues to pose a significant challenge in a globalised economy.
5. **High percentage of liquidations:** The number of cases ending in liquidation shows that IBC is not much effective in ensuring the survival of business.
6. **Treatment of MSMEs:** This code is mainly enacted for large corporate companies and medium, micro and small enterprises faces many challenges.

## VII. FINDINGS AND DISCUSSION

Findings from this research suggest a balanced assessment. First, the hypothesis (H1), which suggests that the IBC process has greatly contributed to improving the effectiveness of the insolvency resolution process, is strongly backed by data. The performance recovery rate in the context of the IBC is undeniably better compared to that before the enactment of the Code, and although the resolution process duration can be considered imperfect, it is substantially better than the years-long procedures typical of cases settled using SICA, RDDBFI, and SARFAESI. The fact that the duration of the process dropped from 4.3 years to approximately 394 days (RBI-12) is notable.[36]

This leads us to H2, which asserts that the IBC provides for a structural asymmetry in favour of financial creditors. The absence of operational creditors within the framework of the voting system in the CoC, the waterfall arrangement in liquidations, and empirical evidence of an asymmetric payout structure all reflect a Code that discriminates in favour of financial creditors against operational creditors. While the constitutionality of such discrimination has been settled by the Swiss Ribbons

[36] Insolvency and Bankruptcy Board of India (n 1).

judgment,[37] it cannot be denied that such a situation remains inherently discriminatory and inequitable. It makes the prospects of an operational

creditor, who may have claims worth a few lakhs, markedly inferior to those of a financial creditor with much larger exposure. This is seen in various CIRP outcomes where operational creditors receive less amounts.

Hypothesis three (H3), which looks at the effect of the change in governance on corporate behaviour, is supported only partially. There is no doubt that the IBC has changed the financial behaviour of companies in terms of lower levels of debt and cheaper access to borrowed funds.

However, the question of whether the powerful creditor rights prescribed by the Code could discourage innovativeness in entrepreneurship remains unanswered. In particular, Srivastava states that the creditor-related provisions of the code might inhibit the process of innovative work. Should the inhibitive influence be confirmed, the net effect of the Code on the welfare of the economy becomes uncertain because while the disciplining of corporations is beneficial, any negative effect on entrepreneurial risk taking can hardly be good. For instance, firms now avoid excessive leverage to avoid loss of control under IBC proceedings.

The creditor-debtor relationship, however, cannot be considered a static concept. It is dynamic and continuously changes with amendments, judicial interpretations, and evolving practices in the markets. Since the inception of IBC in 2016, numerous modifications have been made to the statute, including the addition of section 29A, lowering of the voting threshold for CoCs, adding homebuyers to the category of financial creditors, introducing a pre-packaged insolvency resolution procedure for MSMEs in the 2021 amendment to the Code.[38] In all these cases, there have been attempts at changing the current balance of interests in order to correct the initial calibration of the Code.

[37] *Swiss Ribbons Pvt Ltd* v. *Union of India* (n 13).
[38] Insolvency and Bankruptcy Code (Amendment) Act 2021.

The distinguishing feature of the IBC compared to prior insolvency legislation does not lie in the fact that it finally solves the issues that exist in the field, as no piece of legislation can solve every problem that might arise. Rather, it lies in the creation of institutions capable of recognizing and addressing the existing problems and working towards solutions within the given framework.

## VIII. POLICY AND RECOMMENDATIONS

The Insolvency and Bankruptcy Code, 2016, marks one of the biggest reforms to commercial law in India in years. The code has redefined the field of insolvency, as the former fragmented regime has been replaced by a time-bound and efficient system that has successfully increased recovery levels, shortened resolution periods, and instilled greater confidence among investors. All these represent important advances.

However, the Code is not without its issues. In many aspects, the delicate balance achieved between creditors' and debtors' rights in the Code tends to favour creditors excessively as follows: operational creditors have no chance; financial creditors make huge concessions that are contrary to maximising their value; the NCLT lacks sufficient resources for a timely resolution; and lastly, there is no working cross-border insolvency regime.

The following recommendations can be made:

1. **Improve operational creditor safeguards:** The minimum payment security guaranteed by section 30(2)(b) of the Code needs to be improved, while the possibility of allowing operational creditors a small degree of voting powers in the CoC especially if their cumulative claim constitutes a considerable amount of the admitted claims ought to be considered. For e.g. MSMEs delivering goods often face losses due to existing priority rules.
2. **Ensure that NCLT has sufficient capacity:** Additional benches of the NCLT, recruitment of members who possess technical knowledge and commercial experience, as well as investment in infrastructure and case management systems, is crucial in achieving the aims set out in the Code. Delays in tribunals like NCLT Mumbai highlights the need for more benches.

3. **Implement part III of the Code:** Part III of the Code, which pertains to cross-border insolvency, should be implemented after taking into consideration Indian concerns and coordinating with foreign courts and insolvency professionals where there are cases of multinational debtors.
4. **Further improve provisions related to MSMEs:** Pre-packaged insolvency resolution procedure established last year was a good move, but the Code needs further adjustments with regard to MSMEs.
5. **Encourage interim financing:** Enactment of legislative and regulatory provisions enabling the availability of interim financing during the CIRP process increases the chances of success of the process and reduces the percentage of cases that move to the liquidation stage.
6. **Liquidation monitoring and reduction:** The IBBI should conduct a thorough study of cases that underwent liquidation despite being viable with a view to establishing systemic reasons for the failure of the resolution process and introducing corrective measures.
7. **Periodic evaluation mechanism:** A provision for periodic evaluation of the IBC, along the lines of post-legislative scrutiny in the UK, ensures that the legislature receives credible information about the operation of the IBC and can take appropriate action to address any shortcomings.

The IBC, by its very nature, is a work-in-progress.[39] While stories like Bhushan Steel demonstrates IBC's potential, cases involving huge losses and delays reveal consistent issues in the system." This is not meant as a criticism, as no important legislation is ever static. The issue is whether there is a suitable institutional environment for such development and whether there is a willingness to implement necessary changes on the basis of evidence. Here, there is some encouragement, but much remains to be done.

[39] Insolvency and Bankruptcy Board of India (n 1).

# IX. CONCLUSION

The Insolvency and Bankruptcy Code, 2016 represents a transformative reform in India's insolvency regime, replacing a fragmented and inefficient framework with a consolidated, time-bound mechanism. The analysis undertaken in this study demonstrates that the Code has significantly improved recovery rates, reduced resolution timelines, and strengthened creditor confidence. At the same time, the findings reveal persistent structural concerns, particularly the disproportionate advantage accorded to financial creditors, delays in adjudication, and increasing instances of liquidation over resolution. \n\nThe study concludes that while the IBC has succeeded in enhancing the efficiency of insolvency resolution, it has not fully achieved an equitable balance between creditors and debtors. The creditor-driven design, though effective in disciplining borrowers and improving credit markets, raises concerns regarding fairness, especially for operational creditors and broader stakeholders. Therefore, the effectiveness of the Code must be assessed not only in terms of speed and recovery but also in terms of distributive justice and long-term economic impact.

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