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WHEN DOES INSOLVENCY LAW NUDGE? A MECHANISM-BASED ACCOUNT OF BEHAVIOURAL DESIGN IN INDIA'S INSOLVENCY AND BANKRUPTCY CODE

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I. ABSTRACT

Scholarship on India's Insolvency and Bankruptcy Code, 2016 ('IBC' or 'the Code') routinely describes the statute as an exercise in behavioural design, arguing that its architecture 'nudges' debtors and creditors toward cooperative, value-preserving conduct. The claim is rarely tested against what nudge theory actually requires. Because almost every legal rule is meant to change conduct, behavioural influence alone cannot separate a genuine nudge, which works by reshaping choice architecture while leaving the underlying menu of options intact, from an ordinary command, an economic incentive, or a reallocation of institutional authority. This article argues that the failure to draw this distinction has produced an inaccurate picture of how the Code operates and an unreliable method for judging whether its behavioural claims hold up. It develops a two-stage framework, separating the classification of a mechanism from the validation of its effects, and applies that framework to four IBC mechanisms selected because each tests a different form of legal influence: creditor control through the Committee of Creditors, the procedural timelines governing the Corporate Insolvency Resolution Process, the settlement route under section 12A, and the Pre-Packaged Insolvency Resolution Process (PPIRP). The analysis also asks whether a framework built around individual decision-makers can be applied without modification to the institutional actors, banks, committees, insolvency professionals, and tribunals, who actually operate the Code. It finds that most of the Code's central mechanisms are better explained as institutional redesign or procedural constraint than as choice architecture, that section 12A

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historically operated differently before and after constitution of the Committee of Creditors, but its substitution in 2026 removed the pre-CoC withdrawal route and converted the current mechanism into a CoC-gated coordination rule, and that PPIRP is best understood as a behaviourally informed institutional mechanism with nudge-like features rather than a pure nudge. The available evidence, drawn from Insolvency and Bankruptcy Board of India data and recent judicial and legislative developments, supports these classifications more confidently than it supports any claim about demonstrated behavioural effect. The article's contribution is this framework itself, offered as a tool for evaluating behavioural claims in insolvency law with greater precision than the existing literature allows.

II. KEYWORDS

Insolvency and Bankruptcy Code; nudge theory; behavioural law and economics; Committee of Creditor; pre-packaged insolvency resolution process.

III. INTRODUCTION

It has become almost routine to describe India's Insolvency and Bankruptcy Code, 2016 as a behavioural statute, one whose real achievement lies not in commanding compliance but in nudging debtors and creditors toward cooperation.⁴ The claim borrows, sometimes loosely, from Richard Thaler and Cass Sunstein's account of a nudge as an intervention that steers choices by altering the environment in which they are made, without foreclosing any option or materially changing its price.⁵ Applied to the Code, the argument runs that shifting control to creditors, imposing strict timelines on the Corporate Insolvency Resolution Process ('CIRP'), opening a settlement route under section 12A, and creating a pre-packaged process for small enterprises all work less as commands than as forms of choice architecture that make early, cooperative resolution the easiest path available.

⁴Anuradha Guru, 'The Code: A Behavioural Perspective' in Insolvency and Bankruptcy Board of India, Insolvency and Bankruptcy Code: A Miscellany of Perspectives (IBBI 2019) 217; Cyril Shroff and Dhananjay Kumar, 'Observing and Measuring Behavioural Change' in *ibid* 205.

⁵Richard H Thaler and Cass R Sunstein, *Nudge: Improving Decisions About Health, Wealth and Happiness* (Yale University Press 2008) 6.

The difficulty is that this claim rests on a premise that collapses on inspection: that any provision succeeding in changing behaviour must, for that reason, be a nudge. Almost no legal rule fails that test. A penalty for late filing changes behaviour. So does a mandatory deadline, a voting threshold, or joint and several liability. If behavioural effect were sufficient to qualify a rule as a nudge, the category would absorb the whole of positive law and stop meaning anything in particular. Nudge theory, properly read, is narrower than this. A nudge works through the architecture of choice: defaults, framing, salience, the order in which options appear, while the chooser keeps a genuine and low-cost route to a different option.⁶ A rule that removes an option, attaches a binding sanction, or forecloses a course of conduct altogether is a mandate, not a nudge, however powerful its behavioural effect.

That distinction is the spine of this article. Rather than accepting the premise that the IBC is ‘rooted in behavioural economics’, the article asks a narrower and more answerable question: when does a specific insolvency-law mechanism qualify as a nudge, and how is that judgment to be distinguished from a finding that the same mechanism operates as a command, an incentive, or a reallocation of institutional authority? The answer, the article argues, turns on the mechanism through which the law influences conduct, not on the bare fact that conduct changes.

Getting this distinction right matters for reasons beyond taxonomy. Misclassifying a coercive deadline or a supermajority voting rule as a nudge invites the wrong kind of evaluation, one that asks whether choice architecture worked when the real question is whether a sanction deterred, an incentive was priced correctly, or an institution was competently designed. It also risks overstating how much of the Code's apparent success can be attributed to behavioural insight rather than to the more familiar tools of legal command and economic incentive that insolvency law has always used.

None of this treat's behavioural economics as irrelevant to insolvency law. The argument is narrower: the term ‘nudge’ is being used too loosely in the literature on the Code, and insolvency scholarship needs a more exact vocabulary for behavioural influence before it can

⁶Cass R Sunstein, ‘Nudging: A Very Short Guide’ (2014) 37 *Journal of Consumer Policy* 583.

responsibly claim to have found any. Existing behavioural accounts of the IBC, most prominently the essays by Anuradha Guru and by Cyril Shroff and Dhananjay Kumar in the IBBI's edited volume, identify behavioural dimensions of the Code impressionistically, without a method for telling a nudge apart from an incentive or a command.⁷ This article supplies that method: a two-stage analytical framework, classification followed by validation, applied to four mechanisms chosen because each poses a different version of the classification problem, creditor control through the Committee of Creditors, the CIRP timelines, section 12A, and PPIRP.

Part II reviews nudge theory, behavioural law and economics, and insolvency theory, and identifies the gap between them. Part III sets out the two-stage classification and validation framework, and explains why the unit of analysis matters once the actors being nudged are institutions rather than individuals. Part IV examines the pre-2016 regime under SICA as the institutional baseline against which the Code's interventions should be read. Part V applies the framework to the four selected mechanisms. Part VI asks which recent legislative and judicial developments actually bear on the classifications reached in Part V. Part VII concludes that the Code does not operate through a single behavioural logic.

A. Research Objectives

This article has three principal objectives.

1. First, it seeks to develop a mechanism-based method for distinguishing a genuine nudge from a legal command, an economic incentive, or an institutional reallocation of authority within the Insolvency and Bankruptcy Code, 2016.
2. Second, it applies that method to four representative mechanisms: creditor control through the Committee of Creditors, the CIRP timeline, withdrawal under section 12A, and the Pre-Packaged Insolvency Resolution Process.
3. Third, it examines whether behavioural concepts developed primarily for individual decision-makers can be applied without modification to institutional

⁷Guru (n 1); Shroff and Kumar (n 1).

actors such as banks, committees of creditors, insolvency professionals and tribunals, and what kind of evidence is necessary before a behavioural effect can properly be attributed to an insolvency-law mechanism.

B. Research Questions

The article addresses the following research questions:

1. Under what conditions does a mechanism under the IBC qualify as a nudge rather than a command, economic incentive, coordination rule, or institutional redesign?
2. Does the conventional choice-architecture framework require modification when the relevant decision-makers are institutional or collective actors rather than individual consumers?
3. What evidence is capable of distinguishing a merely plausible behavioural mechanism from a demonstrated behavioural effect, and what implications does that distinction have for the evaluation and reform of the IBC?

C. Research Methodology

This article adopts a doctrinal and analytical research methodology. The doctrinal component examines the Insolvency and Bankruptcy Code, 2016, its amendments and subordinate regulations, relevant Supreme Court decisions, the reports of the Bankruptcy Law Reforms Committee and Insolvency Law Committee, and official materials published by the Insolvency and Bankruptcy Board of India. These sources are used to identify the legal structure, allocation of decision-making authority, procedural consequences and available choices created by each mechanism examined.

The analytical component applies the two-stage framework developed in Part III. Stage I classifies each mechanism according to its principal mode of operation, asking whether it functions through choice architecture, command, economic incentive, coordination or institutional redesign. Stage II separately considers whether available evidence is capable of validating the behavioural response predicted by that classification. IBBI data and other empirical materials are therefore used cautiously: aggregate outcomes are treated as

evidence of institutional performance unless they can be connected to the particular behavioural mechanism being tested.

The literature review is purposive and interdisciplinary. It covers foundational scholarship on bounded rationality, behavioural law and economics and nudge theory; classical economic and institutional accounts of insolvency law; and Indian scholarship and empirical work concerning the behavioural effects of the IBC. The latter includes the behavioural accounts of Anuradha Guru and Cyril Shroff and Dhananjay Kumar, the 2025 IIM Bangalore study on the behavioural impact of the IBC, and subsequent scholarship questioning whether coercive features of the Code should properly be characterised as nudges. The literature gap claimed in this article is accordingly a narrower one: existing work does not develop and consistently apply a mechanism-by-mechanism framework that first classifies the legal mode of influence and then separately tests whether the evidence validates the claimed behavioural channel.

IV. NUDGE THEORY, INSOLVENCY THEORY, AND THE GAP BETWEEN THEM

A. What Nudge Theory Actually Claims

Modern behavioural economics begins with Herbert Simon's observation that real decision-makers work under bounded rationality: limited information, capacity and time force actors to satisfice rather than optimise.⁸ Daniel Kahneman and Amos Tversky extended the point by cataloguing the heuristics, availability, representativeness, anchoring, through which judgment under uncertainty departs predictably from expected-utility theory.⁹ Kahneman's later synthesis distinguishes a fast, associative mode of cognition from a slower, effortful one, and attributes many biases to the dominance of the fast mode in decisions that would benefit from deliberate reasoning.¹⁰

⁸Herbert A Simon, 'A Behavioral Model of Rational Choice' (1955) 69 *Quarterly Journal of Economics* 99.

⁹Amos Tversky and Daniel Kahneman, 'Judgment under Uncertainty: Heuristics and Biases' (1974) 185 *Science* 1124.

¹⁰Daniel Kahneman, *Thinking, Fast and Slow* (Farrar, Straus and Giroux 2011).

Thaler and Sunstein's Nudge turned these findings into a policy proposal: since perfect rationality cannot be assumed, choice environments should be designed deliberately, and libertarian paternalism, structuring the environment to steer people toward welfare-improving outcomes while preserving their freedom to choose otherwise, offers a legitimate way to do so.¹¹ Their canonical definition is precise in a way frequently lost in translation to other fields: a nudge is any feature of choice architecture that alters behaviour predictably without forbidding any option or significantly changing its economic terms.¹² A default retirement-savings enrolment that an employee may decline at no cost is the standard example. A late-filing penalty, a hard deadline, or a rule withdrawing an actor's power to choose a course of conduct is not a nudge under this definition, whatever its behavioural effect, because it either forecloses an option or changes its price. Sunstein has since had to clarify the point explicitly, observing that 'nudge' is not a synonym for 'influence': many effective behavioural interventions are not nudges, and many nudges work precisely because they stop short of coercion.¹³

B. Behavioural Law and Economics and the Insolvency Literature

Christine Jolls, Cass Sunstein and Richard Thaler extended these findings into legal scholarship, arguing that law can and should account for bounded rationality, willpower and self-interest rather than assuming legal subjects respond to incentives as fully rational optimisers.¹⁴ This literature supplies the conceptual vocabulary, defaults, framing, salience, choice architecture, that this article uses throughout.

Insolvency scholarship, by contrast, has generally not framed its subject in behavioural terms at all. The classical law-and-economics account, associated with Thomas Jackson, Douglas Baird and Lucian Bebchuk, explains bankruptcy law as a solution to a creditors' collective action problem: left to their own devices, individual creditors have an incentive to race to

¹¹Cass R Sunstein and Richard H Thaler, 'Libertarian Paternalism Is Not an Oxymoron' (2003) 70 *University of Chicago Law Review* 1159.

¹²Thaler and Sunstein (n 2) 6.

¹³Sunstein (n 3).

¹⁴Christine Jolls, Cass R Sunstein and Richard Thaler, 'A Behavioral Approach to Law and Economics' (1998) 50 *Stanford Law Review* 1471.

seize assets even where a coordinated workout would preserve more value for everyone.¹⁵ On this account, insolvency law does its work through economic incentive and institutional design, priority, the stay, a forum capable of aggregating dispersed creditor preferences, rather than through choice architecture. Indian scholarship on the IBC has largely inherited this framing, explaining the Code's design by reference to creditor rights, time-bound procedure and the correction of a coordination failure SICA had left unaddressed for three decades.

C. The Gap the Existing Literature Leaves Open

These two bodies of scholarship, behavioural law and economics on one side and institutional or economic accounts of insolvency law on the other, have increasingly begun to intersect in the Indian context. Earlier behavioural accounts of the IBC, most notably the essays by Anuradha Guru and by Cyril Shroff and Dhananjay Kumar, emphasised changes in debtor and creditor conduct but did not develop a systematic test for distinguishing a nudge from a command, incentive or institutional reallocation. More recent work has deepened the inquiry.

The 2025 IIM Bangalore study submitted to the IBBI empirically examines changes in borrower discipline and creditor behaviour, while Sumant Batra has expressly questioned whether coercive features such as the threat of losing control should be described as nudges merely because they alter conduct. The remaining gap is therefore narrower but significant: existing work does not develop and apply a mechanism-by-mechanism method that first classifies the legal channel through which an IBC provision operates and then separately asks whether the available evidence validates the behavioural response attributed to it. This article supplies that method, distinguishing a nudge from a command, incentive or institutional redesign, and a demonstrated behavioural effect from an institutional outcome merely consistent with one.

¹⁵Thomas H Jackson, *The Logic and Limits of Bankruptcy Law* (Harvard University Press 1986); Douglas G Baird and Thomas H Jackson, 'Corporate Reorganizations and the Treatment of Diverse Ownership Interests' (1984) 51 *University of Chicago Law Review* 97; Lucian Arye Bebchuk, 'A New Approach to Corporate Reorganizations' (1988) 101 *Harvard Law Review* 775.

D. Four Categories, Not One

The existing literature on the IBC tends to compress everything that changes conduct into a single, undifferentiated 'behavioural' label. This article keeps four categories analytically distinct, while treating them as ideal types rather than as mutually exclusive boxes into which a provision must fall entirely.

A legal command is a rule backed by a sanction that forecloses non-compliance as a viable option: the liability attached to fraudulent trading, or a filing deadline enforced by dismissal. An economic incentive changes the relative price of a choice without removing any option from the menu: a priority rule paying secured creditors ahead of unsecured creditors changes the expected return from each creditor's choices without foreclosing any of them. Institutional redesign reallocates decision-making authority: transferring control of a restructuring from incumbent management to a body of creditors changes who decides, not how any individual chooser's options are framed. A nudge changes the presentation, salience, timing or default setting of a choice while the underlying menu and its economic terms stay substantially intact, and while a low-cost route to a different choice remains open. Treating these as ideal types rather than exclusive categories matters because real statutory provisions are rarely pure specimens of any one of them. A binding deadline may generate salience as a side effect of its coercive operation. An institutional reallocation of authority may work partly through status quo effects among the actors who lose control. None of this makes the mechanism a nudge.

The question this article asks of each provision is not whether it has any behavioural consequence at all, since almost everything does, but which mode of legal operation is doing the primary work: a mechanism's behavioural consequences do not, by themselves, determine its legal classification. The CIRP timeline examined in Part V.B illustrates the point: it may create urgency and influence settlement behaviour, but its primary legal operation remains a binding procedural constraint, and that classification is what should govern its evaluation.

V. A TWO-STAGE FRAMEWORK: CLASSIFICATION AND VALIDATION

A single checklist for identifying a nudge risk obscuring an important distinction: some conditions ask whether a mechanism has the structural characteristics of a nudge, while a further condition asks whether it actually produced the effect that classification predicts. These are different inquiries, and conflating them produces exactly the kind of overclaiming this article seeks to avoid, treating a mechanism's plausible behavioural design as evidence of a demonstrated behavioural response. The framework is accordingly set out here in two stages.

A. Stage I: Classification

Classification asks what kind of mechanism is under examination, before any question of effectiveness arises. Five questions structure the inquiry. First, what behavioural or institutional problem is the mechanism intended to address, debtor delay, creditor coordination failure, or strategic holdout, for example, rather than a generic reference to 'influencing behaviour'. Second, what precise statutory or regulatory feature is responsible for the claimed effect, identified down to the section or regulation.

Third, through what mechanism does the provision operate: a default rule, salience, altered timing, reduced procedural friction or simplified information, as distinct from a change in economic terms or a command. Fourth, does the provision alter the presentation, accessibility or salience of an existing choice, or does it instead impose a command, change incentives, redistribute authority, or create a distinct legal route altogether. Fifth, does the affected actor retain a meaningful ability to choose differently, without a materially altered legal position or a disproportionate cost.

A mechanism that fails the fourth or fifth question is not a nudge, whatever behavioural language the secondary literature attaches to it. A mechanism that clears all five moves to Stage II as a candidate, but candidacy is not yet a finding.

B. Stage II: Validation

Validation asks whether a mechanism classified as a candidate nudge actually produced a behavioural response, and whether the available evidence is capable of showing this. Four questions apply. What behavioural response would be expected if the mechanism operates as theorised. Does the available evidence measure that response directly, or does it measure only an institutional outcome consistent with several different causes. Could the observed outcome instead be explained by legal coercion, an economic incentive, institutional learning, market conditions, or a selection effect operating on the population of cases reaching the mechanism. And, finally, is the conclusion the evidence supports one about behavioural design, behavioural plausibility, or a demonstrated behavioural effect, since these are not the same claim and should not be presented as if they were.

The distinction matters because a mechanism may be behaviourally designed without producing any measurable behavioural response, PPIRP, examined in Part V.D, is the clearest instance of this in the IBC, and conversely a mechanism may produce a measurable institutional outcome without that outcome being attributable to any behavioural channel at all. Part VI of this article returns to this distinction when it asks what the IBBI's aggregate data can and cannot support.

C. The Unit of Analysis: Institutions, Not Individuals

A further limitation deserves attention before the framework is applied. Nudge theory was developed principally through examples involving individual consumers: retirement savings, organ donation, energy use. The actors governed by the IBC are almost always something else entirely, banks, asset reconstruction companies, committees of creditors, insolvency professionals, resolution applicants, promoters acting through corporate structures, and tribunals, and whether a framework built for individual decision-makers applies to these actors without modification is not a merely technical question, since the answer changes what kind of evidence a behavioural claim would need.

The claim defended here is not that institutional sophistication eliminates behavioural effects. It is that the relevant unit of analysis, once the decision-maker is a committee or a tribunal bench rather than a single person, is often the organisation or the collective process rather than any individual within it, and that this shift changes which behavioural

mechanisms are plausible. Bounded rationality persists inside organisations, but through different channels: standard operating procedures, division of labour and information filtering rather than individual cognitive shortcuts.¹⁶ Committees are vulnerable to groupthink, where pressure toward consensus suppresses dissenting information before it reaches the decision.¹⁷

Organisations are vulnerable to escalation of commitment, continuing to back a losing course of action because reversing it means admitting the earlier choice was wrong, with an obvious analogue in a bank's reluctance to write down a stressed account.¹⁸ And the relationships between a company's promoters and its creditors, and between creditors and the insolvency professionals acting for them, raise principal-agent problems largely independent of any behavioural bias.¹⁹

This matters directly for the mechanisms examined in Part V. A committee of creditors negotiating a resolution plan through experienced counsel is not a plausible subject for the defaults-and-framing account that explains why employees stay enrolled in a retirement plan. Where institutional creditors' conduct changes in response to an IBC mechanism, a strategic-actor account, sophisticated repeat players responding rationally to altered legal rights and voting rules, is at least as economical as a behavioural one, and should be preferred unless the evidence implicates something more particular, such as the escalation or agency dynamics described above. This does not rule out behavioural explanations in advance; it raises the evidentiary bar for accepting one, which is exactly what Stage II is designed to do.

VI. THE INSTITUTIONAL BASELINE: WHAT SICA LEFT UNRESOLVED

¹⁶James G March and Herbert A Simon, *Organizations* (Wiley 1958); Richard M Cyert and James G March, *A Behavioral Theory of the Firm* (Prentice-Hall 1963).

¹⁷Irving L Janis, *Victims of Groupthink: A Psychological Study of Foreign-Policy Decisions and Fiascoes* (Houghton Mifflin 1972).

¹⁸Barry M Staw, 'Knee-Deep in the Big Muddy: A Study of Escalating Commitment to a Chosen Course of Action' (1976) 16 *Organizational Behavior and Human Performance* 27.

¹⁹Michael C Jensen and William H Meckling, 'Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure' (1976) 3 *Journal of Financial Economics* 305.

The IBC is conventionally introduced by reference to the failure of SICA, and this article follows that convention for a narrower purpose than is usual: SICA is examined here only to establish the institutional baseline against which the Code's own mechanisms can be classified, not to argue that SICA failed for behavioural reasons that the IBC then corrected through behavioural design. That inference would overstate what the historical record can support.

SICA vested primary control over a sick industrial company in the company's own board, with reference to the Board for Industrial and Financial Reconstruction ('BIFR') triggered only once accumulated losses had already eroded net worth.²⁰ That threshold created its own problem: because BIFR jurisdiction attached only after substantial erosion, a promoter had every reason to delay acknowledging distress, since earlier acknowledgment brought forward the loss of control without any offsetting benefit. Creditors had no structured mechanism for acting collectively, and the BIFR process was frequently prolonged. Enforcement outside that process was, however, substantially constrained by section 22 of SICA, which suspended winding-up, execution, distress and specified recovery or security-enforcement proceedings while the statutory inquiry, scheme or appeal was pending, unless BIFR or the Appellate Authority consented.

The position was later qualified by the SARFAESI Act 2002: although qualifying enforcement under SARFAESI could proceed notwithstanding section 22, the third proviso to section 15(1) provided that a pending BIFR reference would abate where secured creditors representing not less than three-fourths in value of the outstanding financial assistance had taken measures under section 13(4) of SARFAESI.¹⁹ Without a binding, time-bound procedure, references could nevertheless remain pending for years, during which asset value dissipated and information about the underlying business grew stale. It is worth being precise about what this history shows. The incentives created by SICA did not operate uniformly in one direction.

²⁰Sick Industrial Companies (Special Provisions) Act 1985 (India).

Before a reference, the statutory sickness threshold and the consequences of entering BIFR could encourage incumbent management to postpone formal recognition of distress. Once the statutory process was engaged, however, section 22's protection against specified creditor enforcement could itself make the continuation of BIFR proceedings strategically valuable to the debtor. Long pendency is therefore consistent not only with optimism bias or administrative delay, but also with a rational response to a legal structure in which the debtor could benefit from the enforcement standstill while the reference remained alive.

The historical record accordingly supports competing incentive effects at different procedural stages rather than a single behavioural explanation for delay. This article does not need to choose between these explanations, since examining SICA here is institutional rather than diagnostic: SICA identifies the problems, debtor-favouring control, absent creditor coordination, and unbounded procedural time, that the IBC was designed to solve, whatever the underlying behaviour driving them.

The Bankruptcy Law Reforms Committee's 2015 report diagnosed this structure directly and designed the Code as a response to each element of it.²¹ Control was reallocated from the debtor's board to a Committee of Creditors, examined in Part V.A as an instance of institutional redesign. A statutory timeline was imposed on the resolution process, examined in Part V.B as a coercive constraint. Two further provisions, the settlement mechanism inserted as section 12A and the pre-packaged process introduced for micro, small and medium enterprises, were added specifically to reduce the transaction costs of reaching a negotiated outcome once the threat of liquidation exists, and are examined in Parts V.C and V.D as the mechanisms most plausibly carrying genuine choice-architecture features. The comparison that matters for this article, then, is not simply 'before' and 'after' SICA, but the specific institutional problem each IBC mechanism was built to answer, since that pairing is what the classification exercise in Part V depends on.

VII. APPLYING THE FRAMEWORK TO FOUR IBC MECHANISMS

²¹Report of the Bankruptcy Law Reforms Committee, vol I: Rationale and Design (Ministry of Finance, Government of India, November 2015).

A. Committee of Creditors: Institutional Redesign, Not Choice Architecture

The Code's most consequential structural choice transfers control over the restructuring decision from the corporate debtor's board to a Committee of Creditors ('CoC'), composed of financial creditors and empowered to approve, modify or reject a resolution plan by a voting threshold of sixty-six per cent of voting share for major decisions.²² Existing behavioural accounts of the Code treat this shift as a paradigmatic nudge, on the reasoning that it changes how debtors and creditors think about resolution and induces voluntary, cooperative conduct.²³

Applying Stage I, that characterisation does not hold up. The behavioural problem identified in Part IV, debtor delay tied to fear of losing control, and creditor coordination failure absent a collective decision-maker, is real enough. But the CoC mechanism does not answer that problem by reshaping the architecture of a choice still available to the debtor or to individual creditors; it removes the choice from the debtor entirely and vests it in a newly constituted body. Once a CIRP is admitted, the outgoing board has no low-cost route back to the choice it previously exercised: management vests in an interim resolution professional, and the moratorium forecloses the options, asset transfer, individual enforcement, continued unilateral control, that the board previously held.²⁴ Questions four and five of Stage I fail together: neither the underlying menu nor a low-cost alternative survives. This is institutional redesign, a reallocation of decision-making authority, not a nudge.

The same conclusion follows for creditors taken individually. A financial creditor does not confront an altered choice architecture; it becomes a member, by operation of law, of a collective body whose decisions bind it once the requisite majority is reached. The supermajority requirement, sixty-six per cent generally and ninety per cent for withdrawal under section 12A, discussed in Part V.C, is a voting rule, not a default a dissenting creditor may decline at low cost. That creditor's only options are to persuade the others, exit the credit

²²Insolvency and Bankruptcy Code 2016 (India), ss 21, 30.

²³Guru (n 1); Shroff and Kumar (n 1).

²⁴Insolvency and Bankruptcy Code 2016 (India), s 14.

relationship going forward, or accept the outcome, none of which is the meaningful choice at low cost that Stage I's fifth question requires.

The Supreme Court's treatment of the CoC's 'commercial wisdom' confirms this reading, though not in the direction earlier behavioural accounts suggest. In *K Sashidhar v Indian Overseas Bank*, the Court held that the CoC's commercial wisdom, once expressed through the requisite majority, is non-justiciable, and that neither the National Company Law Tribunal nor its Appellate Tribunal may substitute its own assessment for the CoC's.²⁵ *Essar Steel* confirmed the same principle, holding that the adjudicating authority's jurisdiction is confined to the limited grounds in section 30(2) and cannot extend to a review of the CoC's commercial judgment.²⁶ In February 2026 the Court reaffirmed the point in a dispute concerning *SKS Power Generation*, describing decisions on viability, valuation and acceptable haircuts as inherently commercial rather than judicial.²⁷ This kind of jurisprudential insulation is what one would expect of an institutional reallocation of authority to a specialised decision-maker, comparable to the deference given to business judgment in ordinary corporate law, rather than evidence of a nudge operating on any individual creditor's choice environment.

One complication deserves acknowledgment. Through 2025 and 2026 the Supreme Court's own deference to CoC commercial wisdom in the *Bhushan Power and Steel* matter drew sharp professional criticism for extending judicial restraint well beyond section 30(2).²⁸ The episode illustrates a risk an institutional-redesign account is better placed to name than a nudge-based one: a body insulated from review can serve a dominant creditor bloc's interests rather than the Code's value-maximisation objective.

None of this denies that creditor control changes behaviour. It removes the promoter's incentive to delay, since delay no longer preserves control, and aligns creditors' incentives with early, informed decision-making. But the channel through which this change occurs is

²⁵*K Sashidhar v Indian Overseas Bank* (2019) 12 SCC 150.

²⁶*Committee of Creditors of Essar Steel India Ltd v Satish Kumar Gupta* (2020) 8 SCC 531.

²⁷'CoC's Commercial Wisdom is Paramount; Courts Cannot Second-Guess Economic Decisions: Supreme Court' (Law Trend, 27 February 2026).

²⁸'How "Commercial Wisdom" Eclipsed Law In *Bhushan Steel Saga*' (LiveLaw, 28 June 2026).

a reallocation of authority, reinforced by the liquidation threat discussed in Part V.B, not a change in how a persisting menu of choices is presented to any individual actor. Classified honestly, creditor control is institutional redesign reinforced by economic incentive, a form of redesign that can carry behavioural consequences without becoming a nudge.

B. The CIRP Timeline: Coercion, Not Salience

Section 12 originally prescribed a corporate insolvency resolution process of 180 days, extendable once by ninety days, with the Insolvency and Bankruptcy Code (Amendment) Act 2019 fixing an outer limit of 330 days inclusive of any period spent in litigation.²⁹ Existing behavioural accounts describe this deadline as a nudge that encourages early resolution through the salience of an approaching limit.³⁰

The deadline fails Stage I's fourth question. A statutory limit enforced by the prospect of mandatory liquidation on expiry does not change how a choice is framed; it eliminates the choice to keep negotiating once the period lapses. This is a legal command in its plainest form, foreclosing an option rather than making one option more salient while preserving the rest. The Supreme Court's own handling of the timeline confirms the classification obliquely. In *Essar Steel* the Court struck the word 'mandatorily' from the 330-day provision, reading the deadline as ordinarily binding rather than absolute, precisely because a rigid deadline could force the liquidation of a viable enterprise for want of a few additional days, a result at odds with the Code's own value-maximisation objective.³¹

A genuine nudge would not need judicial softening to avoid this kind of perverse outcome, because a nudge by definition never forecloses the non-nudged option in the first place. That the timeline needed exactly this kind of softening is itself evidence that it was operating as a command.

None of this denies that time pressure has a behavioural dimension. An approaching deadline can make delay more salient than it otherwise would be, and salience is a

²⁹Insolvency and Bankruptcy Code 2016 (India), s 12, as amended by the Insolvency and Bankruptcy Code (Amendment) Act 2019 (India).

³⁰Shroff and Kumar (n 1).

³¹*Essar Steel* (n 25).

recognised behavioural mechanism.³² But salience is only one ingredient of a nudge; it must combine with a preserved, low-cost alternative, and the CIRP timeline preserves none. The better account is that the deadline is a coercive procedural constraint whose primary function is economic and institutional: it caps the erosion of value associated with prolonged proceedings and removes the very option, indefinite continuation, that gave incumbent management its strongest incentive to delay under SICA.

None of this denies that time pressure has a behavioural dimension. An approaching deadline can make delay more salient than it otherwise would be, and salience is a recognised behavioural mechanism.³¹ But salience is only one ingredient of a nudge; it must combine with a preserved, low-cost alternative, and the CIRP timeline preserves none. The better account is that the deadline is a coercive procedural constraint whose primary function is economic and institutional: it caps the erosion of value associated with prolonged proceedings and removes the very option, indefinite continuation, that gave incumbent management its strongest incentive to delay under SICA. The IBBI's January–March 2026 data distinguish between elapsed duration and the period remaining after exclusions ordered by the Adjudicating Authority.

As of 31 March 2026, the 1,419 CIRPs yielding approved resolution plans had taken an average of 744 days on an elapsed-time basis, but 621 days after periods excluded by the Adjudicating Authority were removed; the 3,003 CIRPs ending in liquidation had taken an average of 531 days to reach a liquidation order.³² By 30 June 2026, the corresponding unadjusted average duration for CIRPs yielding resolution plans had risen to 757 days. These figures continue to show substantial delay, although only the exclusion-adjusted measure is directly comparable to a statutory clock that accommodates judicially excluded periods. The persistence of such delay fits an imperfectly enforced procedural command more readily than a nudge, which is meant to operate through the chooser's response rather than through the state's capacity to compel timely compliance.

C. Section 12A: From a Two-Stage Mechanism to a CoC-Gated Coordination Rule

³²Tversky and Kahneman (n 6).

Section 12A was inserted with retrospective effect from 6 June 2018 to provide a statutory route for withdrawal of applications admitted under sections 7, 9 or 10. Under the regime prevailing before the 2026 amendment, its operation differed materially according to procedural stage. Former regulation 30A(1)(a) permitted the applicant, before constitution of the CoC, to make a withdrawal application through the interim resolution professional without obtaining a creditor vote.

The Supreme Court in *Abhishek Singh v Huhtamaki PPL Ltd* confirmed that such an application could not be kept pending merely so that the CoC could first be constituted.³⁶ After constitution of the CoC, by contrast, withdrawal required approval representing ninety per cent of its voting share. The former regime therefore supplied the two-stage structure on which the earlier behavioural classification of section 12A rested.

Viewed historically, the pre-CoC limb came closer to a genuine nudge than the other mechanisms examined in this article. It preserved the parties' ability either to continue the insolvency process or to pursue settlement while reducing the procedural friction associated with giving legal effect to a settlement reached shortly after admission. The post-CoC limb was different: the ninety per cent threshold made withdrawal depend upon collective creditor approval and therefore operated principally as a supermajority coordination rule. The former section 12A thus demonstrated that the same statutory withdrawal mechanism could assume different characteristics at different procedural stages.

That historical position is no longer the current law. Section 8 of the Insolvency and Bankruptcy Code (Amendment) Act 2026 substituted section 12A with effect from 26 May 2026. The substituted provision prohibits withdrawal of an admitted application before constitution of the CoC and after the first invitation for submission of a resolution plan has been issued. Within the remaining statutory window, withdrawal may be allowed only on an application made by the resolution professional with approval representing ninety per cent of the CoC's voting share. The Adjudicating Authority must pass an order within thirty days of receipt of that application and, if it does not do so, record reasons for the delay in writing.³⁷ Regulation 30A was thereafter substituted to operationalise this structure, requiring the resolution professional to file the withdrawal application within three days of

CoC approval, accompanied by a bank guarantee or demand draft securing specified CIRP expenses.

The legislative history confirms that this was a substantive restructuring rather than a technical clarification. The Select Committee recorded that the amendment was intended to address the interpretation under which the Adjudicating Authority could permit pre-CoC withdrawal through its inherent powers under rule 11 of the NCLT Rules, and to establish a definite outer withdrawal window.³⁹ The current provision therefore does not retain the feature that made the former pre-CoC route plausibly nudge-like. An admitted CIRP cannot presently be withdrawn before the CoC exists; once the CoC exists, withdrawal depends upon a ninety per cent collective vote and must occur within a confined statutory period. Stage I's fourth and fifth questions accordingly point in the same direction: the mechanism alters the legal availability of withdrawal rather than merely the presentation or accessibility of an otherwise preserved choice.

The present section 12A is therefore best classified as a **CoC-gated coordination rule**, reinforced by procedural constraint, rather than as a nudge. This legislative transition is itself useful evidence for the framework developed in this article. A feature of the former regime that reduced friction while preserving a pre-CoC exit was deliberately removed and replaced by collective creditor control. The example shows why behavioural classification must attach to the mechanism actually in force rather than to the statutory label under which earlier versions of that mechanism operated.

The commencement notification contains no section 12A-specific saving or transitional clause beyond bringing the substituted provision into force on 26 May 2026. Transitional questions concerning settlements, applications or CIRPs originating before that date should therefore be distinguished from the classification of withdrawals governed by the substituted provision. Recent appellate decisions have treated the timing of the settlement and relevant procedural steps as material in particular cases.⁴⁰ The analysis here consequently treats the former pre-CoC route as the historical baseline and confines its current-law classification to cases governed by substituted section 12A.

Finally, the aggregate withdrawal data should not be used to validate the behavioural effect of the new mechanism. By 30 June 2026, 1,333 of 9,166 admitted CIRPs had closed through section 12A withdrawal, approximately 14.5 per cent, but almost the entire cumulative population arose under the former legal regime.⁴¹ Those figures remain relevant to the historical importance of settlement under section 12A, but they cannot establish how debtors or creditors will respond to the materially narrower withdrawal mechanism introduced in May 2026.

D. PPIRP: The Hardest Case, and Why It Is Not a Pure Nudge

The Pre-Packaged Insolvency Resolution Process, inserted as Chapter III-A in April 2021 and available to corporate debtors classified as micro, small or medium enterprises, is the mechanism most often held up in the existing literature as an unambiguous example of behavioural design, and on its face it comes closer than any of the other three to satisfying Stage I of the framework.³³ PPIRP allows the debtor, remaining in possession, to negotiate a base resolution plan informally with financial creditors before filing, and to seek approval within a compressed statutory timeline, with the proposed resolution professional's identity and the base plan's terms disclosed to creditors in advance of any formal filing.

Several of PPIRP's features do align with Stage I's requirements more convincingly than anything examined so far. The debtor keeps possession and management throughout, so the choice architecture is altered through structured early disclosure and negotiation rather than by removing the debtor's control, answering the fourth question more persuasively than ordinary CIRP's transfer of control does. Participation is voluntary and gated by eligibility rather than mandatory, and a debtor that does not use PPIRP remains free to pursue ordinary CIRP or an out-of-court restructuring, speaking to the fifth question's requirement of a preserved, low-cost alternative. The mechanism also works substantially by reducing information asymmetry and procedural friction, since the base plan and the proposed resolution professional's identity are known in advance, closer to the behavioural

³³Insolvency and Bankruptcy Code 2016 (India), ch III-A, ss 54A–54P, inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance 2021 (India).

mechanisms of simplified information and reduced friction than to a command or a pure incentive.

It would nonetheless be a mistake to conclude, as the existing literature tends to, that PPIRP is a genuine nudge without qualification. PPIRP does not merely reshape the presentation of an existing choice; it creates a distinct statutory process with its own eligibility requirements, procedural safeguards, creditor-approval structure and consequences, features that sit closer to institutional redesign than to choice architecture. A debtor does not choose between two framings of the same underlying route; it chooses between two structurally different legal processes. The more defensible description is that PPIRP is a behaviourally informed institutional design mechanism with nudge-like features, rather than an unqualified instance of a pure nudge, and the qualification is not a hedge but the article's actual conclusion about the provision.

The empirical record makes the second half of the framework, validation, even harder to satisfy than the classification exercise. The empirical record makes the second half of the framework, validation, even harder to satisfy than the classification exercise. The Economic Survey 2025–26 observed that PPIRP had recorded only fourteen admissions in its first four years. Subsequent IBBI data show some additional use but do not materially alter that picture: sixteen applications had been admitted by 30 September 2025 and eighteen by 31 March 2026, five years after the process came into force on 4 April 2021.

Of those eighteen applications, one had been withdrawn and resolution plans had been approved in ten cases by 31 March 2026.⁴⁴ The resulting sample remains too small to sustain any general inference about PPIRP's behavioural efficacy. The IBBI's amendment of the PPIRP Regulations in February 2026, tightening filing thresholds and timelines in response to this underutilisation, is itself evidence that the regulator treats the mechanism's design, and not only debtor resistance, as a significant part of the explanation.

This creates a genuine asymmetry for the framework developed in this article. PPIRP is the mechanism whose structural features come closest to a nudge, yet it is also the mechanism for which the evidence of any actual behavioural response is weakest, precisely because take-

up has been too low to generate a meaningful evidentiary base. Two explanations compete and the available data cannot choose between them.

One is that the debtor-delay problem PPIRP targets has less to do with the architecture of the restructuring choice than with promoters' continuing aversion to the reputational and disclosure consequences of even a pre-packaged filing, a friction the mechanism's design does not directly address. The other is that eligibility restrictions, the filing fee relative to the scale of typical MSME distress, and low awareness among eligible debtors and their advisers are simpler, non-behavioural explanations for underutilisation.³⁴ Absent firm-level data on why eligible debtors have not filed, the choice between these explanations cannot be made on the present record, and that gap is itself the clearest illustration in this article of why classification and validation need to be kept separate.

VIII. CONTEMPORARY DEVELOPMENTS: WHAT ACTUALLY BEARS ON THE CLASSIFICATION

The IBC has been amended repeatedly since 2016, most recently by the Insolvency and Bankruptcy Code (Amendment) Act 2026, and any article claiming contemporary relevance has to decide which of these developments matter to its argument.³⁵ The test applied here is narrow and deliberate: a development is discussed only where it changes the legal mechanism being classified, changes the choices available to stakeholders, alters the institutional allocation of authority, or affects the empirical evidence available to test a behavioural claim. Developments that update the Code without touching any of these are outside this article's scope, whatever their independent importance.

Three developments meet that test. The first is the complete substitution of section 12A by the Insolvency and Bankruptcy Code (Amendment) Act 2026, brought into force on 26 May 2026. The amendment does not merely narrow the former post-CoC settlement window. It removes withdrawal before constitution of the CoC altogether, bars withdrawal after the first

³⁴Economic Survey 2025-26 (n 43).

³⁵Insolvency and Bankruptcy Code (Amendment) Act 2026 (India), Statement of Objects and Reasons; see also 'Insolvency and Bankruptcy Code (Amendment) Act, 2026 – Clause-wise Summary and Key Changes' (IBC Laws, 7 April 2026).

invitation for submission of a resolution plan, requires the resolution professional to make the application with approval representing ninety per cent of the CoC's voting share, and requires the Adjudicating Authority to decide it within thirty days.

The substituted regulation 30A operationalises that arrangement through a CoC-approved application filed by the resolution professional and accompanying safeguards for CIRP costs. The Select Committee expressly connected the reform to the earlier use of rule 11 inherent powers for pre-CoC withdrawal. On the framework developed here, the amendment therefore changes rather than merely sharpens the classification reached under the former regime: a historically low-friction, nudge-like pre-CoC exit has been legislatively removed, leaving a current mechanism whose primary operation is collective creditor coordination within a binding procedural window. Aggregate withdrawal data accumulated under the former section 12A cannot, without further post-amendment evidence, validate the behavioural operation of this redesigned mechanism.

The second is the 2026 Act's substitution of section 7(5), which makes admission of a financial creditor's application mandatory where the Adjudicating Authority is satisfied that a default has occurred, the application is complete, and no disciplinary proceeding is pending against the proposed resolution professional.⁴⁸ This change is better understood as statutory consolidation of the approach originally articulated in *Innoventive Industries Ltd v ICICI Bank* and reaffirmed in *M Suresh Kumar Reddy v Canara Bank*, rather than as a reversal of *Suresh Kumar Reddy*. In *Innoventive Industries*, the Supreme Court held that once the Adjudicating Authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete. *Vidarbha Industries Power Ltd v Axis Bank Ltd* subsequently recognised a measure of discretion under the then wording of section 7(5)(a), but *M Suresh Kumar Reddy* confined *Vidarbha* to its particular factual setting and expressly held that the rule in *Innoventive Industries* continued to govern.

The 2026 amendment removes the residual textual space left by *Vidarbha*. Substituted section 7(5)(a) provides that the Adjudicating Authority shall admit the application where default is established, the application is complete and no disciplinary proceeding is pending against the proposed resolution professional; Explanation I further provides that, once those

requirements are satisfied, no other ground may be considered for rejecting the application. On the framework developed here, this is a clearer legal command rather than a stronger nudge.

Any incentive for debtors to resist admission in the hope of discretionary relief is therefore best associated with the doctrinal uncertainty opened by *Vidarbha* in 2022 and substantially narrowed by *M Suresh Kumar Reddy* in 2023. The 2026 amendment converts that already-narrow judicial position into an express statutory rule and eliminates the remaining basis for treating considerations extraneous to the section 7(5)(a) conditions as grounds for refusal.

The third is the IBBI's February 2026 amendment of the PPIRP Regulations, tightening filing thresholds and timelines in direct response to the underutilisation documented in Part V.D. This development is significant for the argument advanced there: a regulator responding to underutilisation by tightening procedural rules, rather than by improving the salience of PPIRP at the point where an MSME debtor first experiences distress, is treating the problem as one of design compliance rather than one of behavioural uptake.

If the analysis in Part V.D is correct, and PPIRP's central difficulty lies in low awareness and continuing promoter aversion to disclosure rather than in the mechanics of the process itself, tightening thresholds addresses the wrong side of the problem, and future reform would do better to target the point of first disclosure rather than the procedural architecture of a process debtors are not yet finding their way to.

A further development, the 2026 Act's introduction of a Creditor-Initiated Insolvency Resolution Process under a new Chapter IV-A, falls outside the four mechanisms classified in detail here, but is worth flagging as an obvious candidate for the same method in future work, since it appears to combine creditor-side initiation with a compressed timeline in a manner this article's framework is well placed to disaggregate.³⁶

³⁶Insolvency and Bankruptcy Code (Amendment) Act 2026 (India), ch IV-A, introducing the Creditor-Initiated Insolvency Resolution Process; see 'Insolvency & Bankruptcy Code (Amendment) Act, 2026: A Structural Shift Towards a Creditor-Driven Insolvency Regime' (Lexology, 17 April 2026).

A final word is needed on what the IBBI's aggregate statistics can support, since Parts V.B and V.C both drew on them. A final word is needed on what the IBBI's aggregate statistics can support, since Parts V.B and V.C both draw on them. By 30 June 2026, cumulative CIRP admissions had reached 9,166. Of these, 7,301 had closed: 1,484 through approved resolution plans, 1,333 through withdrawal under section 12A, 1,410 through appeal, review or settlement, and 3,074 through commencement of liquidation, leaving 1,865 ongoing.⁵¹ These updated figures reinforce the need to distinguish long-run performance from fluctuations in individual quarters.

The resolution-to-liquidation ratio illustrates the point. On an annual basis, the ratio of approved resolution plans to liquidation orders moved from 0.20 in FY2017–18 to approximately 0.25 in FY2018–19 and FY2019–20, 0.34 in FY2020–21, 0.42 in FY2021–22, 0.46 in FY2022–23, 0.59 in FY2023–24 and approximately 0.90 in FY2024–25. The quarterly series is considerably more volatile. Using IBBI closure counts, the ratio was 0.84 in April–June 2025, 0.64 in July–September 2025, 1.74 in October–December 2025 and 0.75 in January–March 2026. The April–June 2026 newsletter reports 69 resolution plans and 54 liquidation orders during that quarter, corresponding to a ratio of approximately 1.28. The earlier figure of 1.89 for January–March 2025 was therefore a quarter-specific peak rather than the endpoint of a continuously rising trend.

None of these figures, individually or together, demonstrates behavioural change in the sense in which this article uses that term. Changes in the resolution-to-liquidation ratio remain equally compatible with institutional learning, changes in the pool of resolution applicants, variation in the composition and age of cases reaching disposition, market conditions, and successive regulatory amendments. Aggregate statistics report outcomes across the CIRP population rather than the decision process of any particular debtor or creditor, and therefore cannot apportion an observed change among these competing explanations. This is why the classifications in Part V rely, where possible, on mechanism-specific evidence rather than treating the aggregate trend as proof of any particular behavioural effect.

None of these figures, individually or together, demonstrates behavioural change in the sense this article has been using the term: an improved ratio is equally consistent with institutional learning, as the population of cases maturing through the system reflects parties who have grown familiar with the Code's mechanics; with a market effect, as the pool of specialised resolution applicants has grown since 2016; with a selection effect, as the mix of cases reaching CIRP shifts with the credit cycle; and with a regulatory effect, as successive amendments independently improve the resolution rate. Aggregate statistics of this kind report the outcome of the entire CIRP population rather than the decision process of any individual debtor or creditor, and cannot apportion an observed improvement across these competing explanations. This is why the classifications in Part V rest on the specific, disaggregated data available for each mechanism rather than on the aggregate trend, which this article treats as background context rather than as evidence for any particular mechanism's behavioural effect.

IX. SUGGESTIONS AND RECOMMENDATIONS

The analysis in this article suggests that reform of the IBC should proceed from mechanism-specific diagnosis rather than from a general assumption that behavioural change is itself evidence of successful nudging.

The first recommendation is therefore methodological. Legislators, regulators and scholars should identify the legal channel through which a provision operates before evaluating its behavioural effects. Commands should principally be assessed by their enforceability and consequences of non-compliance; economic incentives by their effects on relative payoffs; institutional redesign by the quality, accountability and competence of the decision-maker to whom authority is transferred; and genuine nudges by whether the altered choice environment predictably changes conduct while preserving a meaningful alternative.

Second, the evaluation of creditor control and CIRP timelines should focus on institutional performance rather than behavioural terminology. Because the CoC primarily reallocates decision-making authority, reform should concentrate on the quality of creditor decision-making, conflicts of interest, information available to the CoC and the accountability accompanying judicial deference to commercial wisdom. Likewise, persistent delay in CIRP

should be treated principally as a problem of procedural enforcement, adjudicatory capacity and litigation rather than as evidence that the deadline has failed to generate sufficient behavioural salience. Measures aimed at reducing avoidable procedural delay are therefore more closely connected to the mechanism actually employed by section 12 than attempts to strengthen its supposed nudging effect.

Third, section 12A should continue to be evaluated differently according to the procedural stage at which withdrawal is sought. Its pre-CoC operation should preserve a readily accessible settlement route where parties can resolve the dispute before collective creditor interests have fully crystallised. Post-CoC withdrawal, by contrast, should be assessed as a collective-action and coordination mechanism, particularly following the 2026 restriction on withdrawal after resolution plans have been invited. Future IBBI data should distinguish withdrawals by procedural stage, creditor category, claim size and timing so that the settlement-facilitating effect of the provision can be evaluated without attributing all withdrawals to a single behavioural explanation.

Fourth, reform of PPIRP should address the causes of its limited use rather than assume that further procedural prescription will itself increase uptake. The available evidence does not establish whether underutilisation principally reflects lack of awareness, reputational and disclosure concerns, eligibility constraints, transaction costs or other institutional frictions. The IBBI should therefore supplement aggregate admission statistics with firm-level or survey evidence concerning why eligible MSME debtors decline to use PPIRP. Regulatory reform can then target the identified source of friction, including through clearer early-stage information, reduced procedural complexity or appropriate adjustments to eligibility and filing requirements.

Finally, future empirical evaluation of the IBC should match the evidence to the actor and behavioural mechanism being studied. Aggregate numbers of admissions, resolutions, liquidations and settlements remain important measures of system performance, but they cannot by themselves establish why a debtor, creditor or committee acted as it did. Behavioural claims should therefore be supported, where possible, by disaggregated process data, surveys, decision-level evidence or other material capable of separating behavioural

response from coercion, altered economic incentives, institutional learning, case selection and changing market conditions. Such an approach would permit behavioural insights to inform insolvency reform without allowing the language of nudging to obscure the legal mechanism actually responsible for the observed result.

X. CONCLUSION

This article set out to answer a narrower question than the one the existing literature on the IBC usually asks. Rather than asking whether the Code as a whole is rooted in behavioural economics, it asked when a specific insolvency-law mechanism qualifies as a nudge, and developed a two-stage framework, classification followed by validation, capable of answering that question mechanism by mechanism rather than for the statute as a whole.

Applying that framework to four mechanisms produces a considerably narrower affirmation of the behavioural account than the existing literature offers, and a conclusion that resists a simple verdict. Creditor control through the Committee of Creditors is institutional redesign, reinforced by the economic incentive of a credible liquidation threat. The CIRP timeline is a coercive procedural constraint, its own judicial softening in *Essar Steel* confirming its character as a command rather than a nudge. Section 12A demonstrates that the classification of a legal mechanism may itself change over time.

Under the former regime, the pre-CoC withdrawal route plausibly possessed nudge-like features because it reduced settlement friction without requiring collective creditor approval, while the post-CoC route operated as a supermajority coordination rule. The 2026 substitution removed that pre-CoC route and confined withdrawal to a CoC-controlled statutory window requiring ninety per cent approval. The current provision is therefore better classified as a coordination rule reinforced by procedural constraint, rather than as choice architecture. And PPIRP, the mechanism most often treated in the literature as an unqualified nudge, is better described as a behaviourally informed institutional mechanism with nudge-like features, a design whose structural alignment with choice architecture has not yet been matched by any demonstrated behavioural effect, because take-up has been too low to generate the evidence Stage II requires.

What the analysis reveals, taken as a whole, is that the IBC does not operate through a single behavioural logic. Its mechanisms combine institutional redesign, procedural constraint, collective coordination and, in narrow and specific instances, genuine choice-architecture features, and a mechanism can influence behaviour without qualifying as a nudge just as readily as it can be behaviourally designed without producing a demonstrable behavioural effect. This bears directly on how insolvency law should be evaluated and reformed: a command should be judged by whether it deters, an incentive by whether it changes relative payoffs as intended, institutional redesign by whether it changes who controls an outcome and with what competence, and a nudge, on the rare occasions one is genuinely present, by whether the choice environment it creates actually shifts conduct.

None of this diminishes the significance of the IBC as a reform of Indian insolvency law. It relocates that significance more accurately: in the reallocation of decision-making authority to creditors, the imposition of credible time-bound procedure, and the reduction of transaction costs for negotiated exit at specific procedural stages, rather than in any general claim that the statute is rooted in behavioural economics. Scholarship that continues to describe the whole of the Code in behavioural terms risks losing sight of the specific mechanisms, and the specific distributive risks the Bhushan Power episode illustrates, that actually govern how the statute works in practice.

The framework developed here is offered in that spirit: not as a verdict on the IBC's behavioural credentials, delivered once and closed, but as a method later work can apply to provisions this article has not examined, including avoidance-transaction liability, the section 14 moratorium, and the Creditor-Initiated Insolvency Resolution Process introduced by the 2026 Amendment Act. As the Code enters its second decade under a substantially amended framework, the more useful question for future research is not whether it nudges, but which of its mechanisms do, under what evidentiary conditions that claim could be shown false, and what follows for reform once the answer is known mechanism by mechanism rather than assumed for the statute as a whole.

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