

Evaluating the Effectiveness of Insolvency Resolution Processes under India's Insolvency and Bankruptcy Law

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Abstract: The Insolvency and Bankruptcy Code (IBC), 2016, represents one of the most significant legal and economic reforms in India aimed at addressing the long-standing challenges of corporate insolvency, financial distress, and asset recovery. This study evaluates the effectiveness of insolvency resolution processes under the IBC by examining its structural framework, implementation experiences, and actual outcomes across various sectors. The Code's emphasis on time-bound resolution, creditor empowerment, and market-driven mechanisms has contributed to a more disciplined credit environment and improved recovery rates compared to the pre-IBC era. However, despite these achievements, the resolution framework continues to face substantial challenges including delays in case disposal, frequent litigation, capacity constraints within the National Company Law Tribunal (NCLT), limited bidder interest in certain industries, and inconsistencies in recovery values. The study also highlights sector-specific complexities, operational limitations of insolvency professionals, and ambiguities arising from evolving judicial interpretations. Recent reforms and policy developments, including amendments to the IBC and initiatives to strengthen institutional infrastructure, demonstrate ongoing efforts to enhance efficiency and transparency. Overall, the study concludes that while the IBC has significantly transformed India's insolvency landscape, continuous refinement and capacity building are essential to ensure the long-term sustainability and effectiveness of insolvency resolution processes.

Keywords: Insolvency and Bankruptcy Code (IBC), Insolvency Resolution, Corporate Insolvency, Insolvency Professionals, Asset Reconstruction, Legal Framework

1. Introduction

The background of insolvency issues in India is deeply rooted in the structural and procedural weaknesses that existed long before the introduction of the Insolvency and Bankruptcy Code (IBC) in 2016. For several decades, India struggled with an ineffective insolvency system characterized by slow legal processes, fragmented laws, and limited recovery options for creditors. The earlier frameworks were unable to address the growing problem of non-performing assets, and the absence of a coordinated mechanism for dealing with distressed businesses resulted in significant delays and economic inefficiencies. Insolvency cases often dragged on for years, with no certainty of recovery, causing severe losses to banks, investors, and the broader economy.

Prior to the IBC, the insolvency landscape was governed by multiple overlapping laws such as the Sick Industrial Companies Act (SICA), the Recovery of Debts Due to Banks and Financial Institutions Act (RDBFI), the Companies Act provisions related to winding up, and the SARFAESI Act. Each of these systems had its own procedures and authorities, often leading to jurisdictional conflicts and duplication of efforts. Cases shuttled between the Board for Industrial and Financial Reconstruction (BIFR), debt recovery tribunals, high courts, and other authorities, creating a complicated and inefficient process. This fragmentation meant that no single authority was responsible for overseeing insolvency resolution, leading to confusion and inconsistent outcomes.

The situation became more critical during the early 2000s and 2010s when the Indian banking sector witnessed a sharp rise in non-performing assets (NPAs). Various factors contributed to this surge, including economic

slowdown, poor lending practices, and stalled infrastructure projects. The absence of a modern and time-bound insolvency mechanism compounded the crisis, making it difficult for lenders to recover dues or revive distressed companies. Debtors often misused the loopholes in the system to delay proceedings, while creditors had little power to enforce their claims. As a result, valuable assets continued to deteriorate during prolonged legal battles, reducing their eventual recovery value.

Moreover, the older laws lacked clarity on the roles and rights of different stakeholders. There was no structured process to facilitate negotiations between debtors and creditors, nor were there professional insolvency practitioners equipped to manage stressed companies during the resolution phase. The system was largely debtor-friendly, allowing defaulting companies to retain control even in situations where revival was unlikely. This often led to the erosion of asset value and contributed to a culture of delayed repayments and weak credit discipline within the corporate sector.

Against this backdrop of mounting financial stress, ineffective legal frameworks, and the urgent need for a predictable insolvency ecosystem, the Government of India recognized the necessity for a comprehensive and unified law. The economic environment demanded a modern system that would ensure timely resolution, maximize asset value, and reinforce confidence in the financial system. This culminated in the enactment of the Insolvency and Bankruptcy Code in 2016, marking a transformative shift in India's approach to handling insolvency and laying the foundation for a more disciplined, creditor-focused, and transparent resolution process.

2. Need for a Legal Framework for Insolvency Resolution

The need for a comprehensive legal framework for insolvency resolution in India arose from decades of inefficiencies, delays, and fragmented systems that hindered the timely revival or closure of financially distressed businesses. Before the enactment of the Insolvency and Bankruptcy Code (IBC), insolvency matters were handled under multiple laws and judicial forums, leading to prolonged procedures and inconsistent outcomes. As a result, creditors faced significant challenges in recovering dues, and debtors often exploited procedural loopholes to delay action. This not only weakened the financial health of lending institutions but also undermined the overall stability of the economy.

A unified legal framework became essential because the existing mechanisms failed to provide a predictable and time-bound resolution system. Insolvency proceedings often extended for several years, during which the value of stressed assets deteriorated substantially. Without a centralized authority or clearly defined roles for stakeholders, cases moved between various institutions such as BIFR, debt recovery tribunals, civil courts, and high courts. This led to jurisdictional conflicts, limited coordination, and an absence of strategic decision-making. A modern insolvency system was needed to streamline the process, consolidate the legal framework, and ensure that resolution took place within a fixed timeframe to preserve the value of assets.

The rise in non-performing assets further highlighted the urgency for reform. Banks and financial institutions were burdened with growing loan defaults, especially in sectors like infrastructure, steel, and power. The lack of an efficient resolution mechanism meant that lenders were unable to recover funds or revive distressed companies, leading to a systemic crisis in the financial sector. A comprehensive framework was required not only to address the case-by-case failures but also to strengthen credit discipline and create a deterrent for strategic defaults. By empowering creditors and establishing a clear hierarchy of claims, such a framework could contribute to restoring trust in the lending system.

Moreover, a robust insolvency resolution system was crucial for improving India's global economic competitiveness. Foreign investors and multinational corporations often viewed India's slow and uncertain insolvency procedures as a significant barrier to investment. Without a reliable mechanism to handle business failures, entrepreneurship and innovation were also affected, as companies lacked confidence that financial risks

would be managed efficiently. A comprehensive insolvency framework was therefore necessary to enhance transparency, promote ease of doing business, and attract long-term investment by ensuring that business failures were resolved in a predictable and orderly manner.

Ultimately, the need for such a framework became indispensable not only for resolving distressed assets but also for promoting a healthier economic environment. A strong insolvency system supports corporate governance, encourages responsible borrowing and lending, and provides a clear pathway for the restructuring or closure of unviable businesses. The introduction of the IBC served this purpose by consolidating laws, establishing institutional mechanisms, and introducing a time-bound resolution process, thereby addressing long-standing gaps in India's insolvency landscape.

3. Overview of the Insolvency and Bankruptcy Code (IBC), 2016

The Insolvency and Bankruptcy Code (IBC), 2016, represents one of the most significant reforms in India's economic and legal landscape, designed to overhaul the country's outdated and fragmented insolvency framework. It serves as a comprehensive legislation that consolidates and replaces several earlier laws governing insolvency, bankruptcy, and restructuring of companies, individuals, and partnership firms. The fundamental objective of the IBC is to create a time-bound, transparent, and efficient mechanism for resolving financial distress, ensuring that the value of stressed assets is preserved and maximized.

At its core, the IBC introduced a creditor-driven process where financial and operational creditors can initiate insolvency proceedings upon a default. The law emphasizes swift resolution by imposing strict timelines—initially 180 days, extendable to a maximum of 330 days—for completing the Corporate Insolvency Resolution Process (CIRP). Once insolvency proceedings begin, a moratorium is declared, preventing any legal actions or recovery proceedings against the debtor. Control of the company shifts from the existing management to an Insolvency Professional, who supervises operations while formulating a resolution plan in consultation with the Committee of Creditors (CoC). This shift from a debtor-in-possession to a creditor-in-control model was a transformative departure from earlier practices.

The IBC also established a strong institutional structure to support the insolvency process. The National Company Law Tribunal (NCLT) serves as the adjudicating authority for corporate insolvency, while the National Company Law Appellate Tribunal (NCLAT) hears appeals. Insolvency Professionals (IPs) and Information Utilities (IUs) play critical roles in managing the process and providing reliable financial information. These institutions work together to ensure that insolvency cases are handled efficiently, professionally, and in accordance with the Code.

A notable feature of the IBC is its emphasis on resolution over liquidation. The aim is to revive viable businesses by enabling restructuring, mergers, or new ownership through approved resolution plans. Liquidation is considered only when revival is not possible, and the Code provides a clear priority or "waterfall" mechanism for distributing proceeds among stakeholders. This focus on revival aligns with the broader economic goal of protecting jobs, sustaining enterprise value, and promoting long-term financial stability.

Since its introduction, the IBC has undergone several amendments to address emerging challenges and refine the framework. It has significantly improved recovery rates for creditors compared to earlier systems and contributed to a stronger credit culture by discouraging willful defaults. The Code has also enhanced India's global reputation by strengthening its insolvency environment and positively influencing the country's ranking in the Ease of Doing Business index. Overall, the Insolvency and Bankruptcy Code (IBC), 2016, serves as a comprehensive, modern, and efficient insolvency framework that has transformed the approach to handling financial distress in India. Its structured processes, institutional support, and commitment to timely resolution have made it a cornerstone of India's economic reforms.

4. Structure of Insolvency Resolution under IBC

The structure of insolvency resolution under the Insolvency and Bankruptcy Code (IBC), 2016, is built on a clear, systematic, and time-bound process designed to ensure the efficient handling of financial distress. The Code establishes a uniform framework for resolving insolvency for companies, individuals, and partnership firms, although the corporate insolvency mechanism is the most widely implemented. The structure emphasizes transparency, predictability, and stakeholder involvement, with the overarching objective of maximizing the value of assets and preserving viable businesses.

At the heart of the corporate insolvency framework lies the Corporate Insolvency Resolution Process (CIRP), which can be initiated by financial creditors, operational creditors, or the distressed company itself upon a default. Once admitted by the National Company Law Tribunal (NCLT), the process begins with the declaration of a moratorium that halts all legal proceedings, enforcement actions, and recovery efforts against the debtor. Control of the business shifts from the existing management to an Interim Resolution Professional (IRP), who later may be confirmed or replaced as the Resolution Professional (RP). This professional takes charge of running the company as a going concern while collecting claims, preparing financial information, and facilitating the formulation of a resolution plan.

A central component of the structure is the Committee of Creditors (CoC), comprising primarily financial creditors who hold the decision-making authority. The CoC evaluates the resolution plans submitted by potential bidders and approves one through a voting system that requires a specified majority. The RP plays a supervisory role, ensuring that the plans adhere to the provisions of the Code while presenting them to the CoC for consideration. Once a plan is approved by the CoC, it is submitted to the NCLT for final approval. If no viable resolution plan emerges within the stipulated timeline—initially 180 days, extendable to a maximum of 330 days—the company proceeds to liquidation.

The liquidation process is a structured mechanism designed for cases where revival is not feasible. Under liquidation, the liquidator—often the RP—takes control of the assets, sells them, and distributes the proceeds according to the priority waterfall prescribed by the Code. Secured creditors have the option to relinquish their security interest to the liquidation estate or enforce their security outside the process. Liquidation is viewed as the last resort, undertaken only when resolution attempts fail.

The IBC also provides a framework for individual and partnership insolvency, though its large-scale implementation is still forthcoming. The structure includes processes such as fresh start, insolvency resolution, and bankruptcy proceedings aimed at offering relief to individuals facing financial distress. Additionally, the Code introduced pre-packaged insolvency resolution (pre-pack) for micro, small, and medium enterprises (MSMEs), allowing quicker and more debtor-involved restructuring while maintaining creditor oversight.

To support this highly structured system, the IBC relies on a robust institutional framework comprising the NCLT and NCLAT for adjudication, Insolvency and Bankruptcy Board of India (IBBI) for regulation, Insolvency Professionals for management, and Information Utilities for record-keeping. Together, these components form a cohesive structure that allows insolvency matters to be dealt with in a transparent, time-bound, and value-maximizing manner, transforming the landscape of insolvency resolution in India.

5. Assessing the Effectiveness of Insolvency Resolution Processes

Assessing the effectiveness of insolvency resolution processes under the Insolvency and Bankruptcy Code (IBC), 2016, is crucial for understanding how well the system fulfills its intended objectives of timely resolution, value maximization, and strengthening credit discipline. Since its implementation, the IBC has brought significant changes to India's insolvency landscape, but its performance must be evaluated across several dimensions to

determine its overall impact. These dimensions include the timeliness of the resolution process, recovery outcomes for creditors, institutional efficiency, and the behavioral changes it induces among stakeholders.

One of the most critical indicators of effectiveness is the speed of resolution. The IBC was designed with strict timelines—180 days extendable to a maximum of 330 days—to ensure that insolvency cases are settled without undue delay. While the Code succeeded initially in shortening the resolution time compared to previous regimes, delays have gradually resurfaced due to increasing caseloads, frequent litigations, and limited capacity at the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT). Many cases now overshoot the mandated deadlines, which affects asset value and undermines the goal of quick resolution. Assessing effectiveness in this area requires close observation of how consistently timelines are being met and what procedural or institutional barriers continue to cause bottlenecks.

Recovery rates serve as another vital measure of effectiveness. Compared to the earlier legal mechanisms, the IBC has significantly improved recovery for creditors, particularly banks and financial institutions. In many high-profile cases, creditors have secured better value than they would have under liquidation or the pre-IBC framework. However, the recovery rates vary across sectors and cases, often influenced by the nature of assets, the interest of bidders, and market conditions. In some instances, creditors have accepted substantial haircuts, raising questions about whether the outcomes truly reflect value maximization. A nuanced assessment therefore must consider how recovery rates compare with global standards, historical performance, and the specific conditions of each case.

The efficiency of institutional mechanisms also plays a key role in evaluating insolvency resolution under the IBC. Insolvency professionals (IPs), information utilities (IUs), and the NCLT/NCLAT system form the backbone of the resolution process. While IPs have brought professionalism and structure to insolvency management, there have been cases where lack of expertise, coordination issues, or excessive workload affected the process. Similarly, NCLT benches face significant pressure due to increasing insolvency filings, leading to delays in admission, hearings, and approval of resolution plans. Assessing this aspect involves examining the adequacy of institutional capacity, regulatory oversight, and the need for procedural reforms.

Another important dimension is the behavioral impact of the IBC on debtors and creditors. The fear of losing control of the business during insolvency has pushed many debtors to settle dues before the admission of cases. This shift toward early resolution has helped reduce the number of defaults and encouraged better financial discipline. Creditors, on the other hand, now have greater confidence in enforcing their claims, resulting in more proactive and responsible lending practices. Evaluating effectiveness here requires analyzing data on pre-insolvency settlements, improvements in credit culture, and changes in business practices.

Overall, assessing the effectiveness of insolvency resolution processes under the IBC reveals a mixed yet substantially positive picture. The Code has undoubtedly transformed the insolvency framework, improved recovery outcomes, and strengthened financial discipline. However, challenges remain in terms of delays, institutional capacity, and variability in recovery values. A comprehensive evaluation must therefore acknowledge both the achievements and the areas where further reform is needed to ensure that the IBC continues to evolve as a robust and efficient insolvency resolution mechanism.

6. Challenges and Weaknesses in the Current Resolution Framework

The current insolvency resolution framework under the Insolvency and Bankruptcy Code (IBC), 2016, has significantly transformed the approach to dealing with financial distress in India. However, despite its achievements, several challenges and weaknesses continue to affect its efficiency and overall effectiveness. These limitations stem from structural issues, institutional constraints, procedural complexities, and market-related factors that hinder the timely and value-maximizing resolution of distressed assets.

One of the most pressing challenges is the persistent delay in the resolution process. Although the IBC mandates completion of the Corporate Insolvency Resolution Process (CIRP) within 180 days, extendable up to 330 days, many cases extend far beyond this timeline. A major cause of delay is the high volume of litigation that accompanies insolvency proceedings. Appeals at various stages, disputes over claims, and challenges to resolution plans contribute to prolonged timelines. Additionally, the National Company Law Tribunal (NCLT) faces capacity constraints due to limited benches, shortage of judges, and growing case backlogs. This judicial burden undermines the Code's objective of timely resolution and often leads to erosion of asset value.

Another weakness lies in the variability of recovery rates and the frequent requirement of large haircuts by creditors. Although creditors have seen improved recoveries under the IBC compared to the pre-IBC regime, several high-profile cases have resulted in exceptionally low recoveries. This raises concerns about whether the resolution process always maximizes value or whether it sometimes forces creditors to accept suboptimal outcomes due to limited bidder interest or deteriorating asset conditions. The market's inability to attract a sufficient number of resolution applicants in certain sectors further limits competition and impacts the quality of resolution plans.

The effectiveness of the IBC is also constrained by operational challenges faced by Insolvency Professionals (IPs) and Information Utilities (IUs). IPs play a critical managerial and supervisory role during the resolution process, yet many lack the required sector-specific expertise, especially in handling complex industries such as power, telecom, or real estate. Inadequate access to financial records, delays in cooperation from suspended management, and limited resources further hinder their efficiency. On the other hand, IUs, which are supposed to provide authenticated financial information, have not yet reached full operational maturity, resulting in continued reliance on traditional documentation and manual claim verification.

Another significant challenge relates to frequent amendments and evolving judicial interpretations of the Code. While these changes aim to address emerging issues, they also create uncertainty among stakeholders and prolong litigation. Ambiguities in provisions related to the eligibility of bidders, treatment of operational creditors, and distribution of proceeds often require judicial intervention, further delaying resolution. Moreover, the Code has faced criticism for being overly creditor-centric, which may discourage debtor cooperation in certain situations.

Sector-specific issues also pose limitations. Industries such as real estate and infrastructure face unique challenges, including incomplete projects, regulatory hurdles, and multiple stakeholders, which complicate insolvency proceedings. Additionally, the framework for cross-border insolvency remains underdeveloped, making it difficult to resolve cases involving foreign assets, creditors, or subsidiaries.

Despite these challenges, the IBC continues to evolve as a strong and transformative insolvency mechanism. Addressing the shortcomings through judicial reforms, capacity building, technological upgrades, and clearer policy guidelines will be essential for strengthening the framework and ensuring that it fulfills its intended objectives more effectively.

7. Conclusion

The evaluation of insolvency resolution processes under India's Insolvency and Bankruptcy Code (IBC), 2016, reveals both remarkable progress and persistent challenges in the country's insolvency landscape. The introduction of the IBC marked a paradigm shift from a fragmented and creditor-unfriendly regime to a more streamlined, time-bound, and market-driven framework. Over the years, the Code has significantly strengthened the credit culture, improved recovery mechanisms, and enhanced investor confidence by offering a structured and predictable process for resolving financial distress.

However, the practical implementation of the IBC continues to face hurdles that limit the full realization of its objectives. Delays in resolution due to litigation, capacity constraints at the National Company Law Tribunal,

inconsistent recovery rates, and sector-specific complexities highlight the need for continuous refinement. The challenges encountered by insolvency professionals, the evolving nature of judicial interpretation, and the limited maturity of institutional infrastructure such as Information Utilities further underscore the dynamic nature of the insolvency ecosystem.

Recent reforms and policy developments demonstrate the government's commitment to improving the system by enhancing procedural clarity, strengthening stakeholder rights, and expanding the scope of the framework. These developments reflect an adaptive approach, ensuring that the Code evolves in response to economic realities and emerging market challenges.

Overall, while the IBC has undeniably transformed India's insolvency landscape, its long-term success depends on sustained institutional strengthening, consistent policy reforms, and effective coordination among regulators, judiciary, and market participants. With continued improvements, the insolvency resolution framework can become more efficient, equitable, and resilient, ultimately contributing to greater financial stability and economic growth in the country.

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