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# **CRITICAL ANALYSIS OF IBC 2016: EFFECTIVENESS IN CORPORATE INSOLVENCY RESOLUTION**

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HISTORY AND EVOLUTION OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016

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## **3.1 Introduction**

India's path to a thorough and effective insolvency framework has been a protracted and difficult one. India's insolvency system was disjointed, ineffective, and plagued by lengthy delays until the Insolvency and Bankruptcy Code (IBC), 2016 was passed. A significant turning point was the implementation of the IBC, which unified the laws pertaining to bankruptcy and insolvency across a variety of industries. This chapter examines the evolution of Indian insolvency laws over time, the forces that prompted reform, and the legislative changes that led to the IBC.

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## **3.2 India's earliest insolvency laws**

India's insolvency laws have historically developed piecemeal, with many statutes controlling various debtor categories and procedures. Among the principal laws were:

### **3.2.1 The Provincial Insolvency Act of 1920 and the Presidency Towns Insolvency Act of 1909**

These laws, which were influenced by British insolvency law, mainly addressed individual insolvency. But they were antiquated and unfit for the demands of contemporary business.

### **3.2.2 Winding-up Provisions under the Companies Act of 1956**

Although the Companies Act allowed for liquidation, it lacked a formal framework for a company's rebirth or rehabilitation. Value was destroyed because winding-up was frequently considered the last option.

### **3.2.3 The 1985 Sick Industrial Companies Act (SICA)**

Through Board for Industrial and Financial Reconstruction (BIFR) assistance, SICA sought to revitalise ill industrial businesses. It gained notoriety, nonetheless, for permitting businesses to abuse safeguards, leading to protracted delays without lasting solutions.

### **3.2.4 Banks and Financial Institutions Recovery of Debts Act (RDDBFI), 1993**

Debt Recovery Tribunals (DRTs) were created by this Act to speed up debt recovery. It partially answered the concerns of creditors, but it did not offer a system for resolving collective insolvency.

### **3.2.5 The Security Interest Enforcement and Securitisation and Reconstruction of Financial Assets Act (SARFAESI), 2002**

Banks and other financial institutions were able to enforce security interests without the need for court participation because to SARFAESI. Its use was restricted to secured creditors, though, and frequently resulted in disjointed recovery.

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## **3.3 India's Insolvency Crisis**

India's insolvency system suffered from inefficiency, delays, and low recovery rates in spite of numerous laws. Prior to 2016, as stated in the World Bank's Doing Business Reports:

It takes an average of 4.3 years to settle insolvency.

Rate of recovery: about 26 cents per dollar

Insolvency Resolution Ranking: One of the world's bottom five

The systemic flaws that allowed defaulting entrepreneurs to avoid responsibility while creditors found it difficult to collect debts were brought to light by cases such as Kingfisher Airlines.

Due to these inefficiencies, the banking industry's non-performing assets (NPAs) grew significantly, causing a financial crisis that necessitated immediate reforms.

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### 3.4 The Committee for Bankruptcy Law Reforms (BLRC)

The Bankruptcy Law Reforms Committee (BLRC), chaired by Mr. T. K. Viswanathan, was established by the Ministry of Finance in August 2014 in response to the urgent need for a unified insolvency framework.

The BLRC's mandate was unambiguous:

Create a single insolvency legislation that applies to businesses, partnerships, and individuals.

Address the structural flaws that are generating the delays.

Create a mechanism for creditor-driven resolution.

Encourage a culture that recognises and addresses financial difficulties early on.

The IBC was founded on the BLRC Report, which was turned in in November 2015.

#### The BLRC's main recommendations included:

- A deadline-driven resolution procedure (180 days, with a 270-day extension option)

- Using the Committee of Creditors (CoC) to empower creditors

Licensed Insolvency Professionals (IPs) are appointed.

- The Insolvency and Bankruptcy Board of India (IBBI) was established; specialised adjudicating authorities were established, such as the NCLT for corporations and the DRT for individuals.

According to the paper, "The creditor must be given primacy and control once the debtor defaults."

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### 3.5 The Insolvency and Bankruptcy Code of 2016's Legislative Journey

On December 23, 2015, the draft Insolvency and Bankruptcy Bill, 2015 was presented to the Lok Sabha in response to the BLRC Report. To examine the proposed law, a Joint Parliamentary Committee (JPC) was established.

Following careful consideration and the inclusion of other recommendations, the final bill was approved:

- Passed by Lok Sabha: May 5, 2016
- Passed by Rajya Sabha: May 11, 2016
- Presidential Assent: May 28, 2016

Phased implementation of the Code began on December 1, 2016.

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### 3.6 Important New Developments the IBC Introduced

The IBC fundamentally altered India's insolvency laws in a number of ways:

A single piece of legislation that unifies all current bankruptcy and insolvency laws.

Time-bound Procedure: The Corporate Insolvency Resolution Process (CIRP) must be finished in 180 days, with a 90-day extension possible (later amended to 330 days).

Creditor-in-Control Model: Through the CoC, creditors gained authority over debtor management.

Moratorium Period: After insolvency is acknowledged, all legal actions are automatically put on hold.

Licensed Insolvency Professionals: Skilled handling of assets in crisis.

creation of IBBI: An oversight organisation for information utilities, insolvency practitioners, and insolvency procedures.

Establishment of Specialised Courts:

For corporate debtors, there is the National Company Law Tribunal (NCLT).  
individual debtors through the Debt Recovery Tribunal (DRT).

Priority in Liquidation: During liquidation, organised priorities were provided via the cascade system under Section 53.

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### 3.7 Significant IBC Amendments

The IBC has been amended multiple times since it was passed in order to meet new issues:

#### 3.7.1 The 2017 Bankruptcy and Insolvency (Amendment) Act

During insolvency, linked parties and wilful defaulters were excluded from bidding.

#### 3.7.2 The Second Amendment to the Insolvency and Bankruptcy Act of 2018

Voting thresholds for CoC decisions (66% majority) have been clarified.

Financial creditors include homebuyers.

#### 3.7.3 The 2019 Bankruptcy and Insolvency (Amendment) Act

CIRP must be finished within 330 days.

Operational creditors have more rights to contest decisions.

#### 3.7.4 COVID-19 Related Suspension (2020)

Suspended fresh insolvency filings for defaults arising during the pandemic period.

#### 3.7.5 Pre-packaged Insolvency Resolution Process (2021)

Introduced a fast-track resolution mechanism for MSMEs.

These amendments reflect the IBC's dynamic and evolving nature.

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### 3.8 The IBC's effects on the Indian economy

**The influence of the IBC has been revolutionary:**

Ease of Doing Business: With the passage of the IBC, India's standing in "Resolving Insolvency" increased dramatically.

decrease in non-performing assets (NPAs): Banks were able to recoup sizeable sums from troubled assets.

Behavioural Change: Many debtors paid off their debts before to official insolvency procedures (pre-IBC settlements) out of fear of losing management control.

Investment Climate: A renewed sense of trust among investors in India's business and financial sectors.

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### 3.9 Remarks and Ongoing Difficulties

Despite its successes, certain complaints still exist: -

NCLT Delays: The Code's time-bound promise is undermined by ongoing backlogs and procedural delays.

Huge Haircuts: Banks have occasionally taken as little as 10% of the unpaid balance.

Concerns raised by operational creditors include unfair treatment in contrast to financial creditors.

Lack of a comprehensive structure in line with the UNCITRAL Model Law regarding cross-border insolvency.

However, many people agree that the IBC is a positive move for India's economic reforms.

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### 3.10 Conclusion

An important turning point in India's legal and economic history was reached with the adoption of the Insolvency and Bankruptcy Code, 2016. The IBC has fundamentally changed how insolvency is resolved in India by combining various laws, instituting a time-bound procedure, and giving creditors more authority.

The trip is far from over, though. For the IBC to reach its full potential, it must be continuously improved, institutional capacity must be strengthened, and it must be in line with global best practices.

Thus, the history of the IBC shows both the enormous progress that has been done and the difficulties that still need to be overcome in order to create a strong, resilient bankruptcy ecosystem in India.