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Research Article

A Study on the Effect of the Insolvency and Bankruptcy Code (IBC) on Other Existing Legislation

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ABSTRACT

The (IBC), introduced in 2016, was a major step toward overhauling India's insolvency and bankruptcy process. Its goal was to create a faster, more efficient, and structured system for resolving insolvency cases. This study looks at how the IBC has impacted existing laws, particularly focusing on its relationship with corporate governance, debt recovery, and financial restructuring. Before the (IBC), India's insolvency system was fragmented. It was made up of several laws that each dealt with insolvency in their own way, such as the Sick Industrial Companies Act (SICA), the Recovery of Debts Due to Banks and Financial Institutions Act (RDDBFI), and parts of the Companies Act, 2013. While these laws had their merits, they lacked the clarity, efficiency, and consistency that the IBC seeks to provide. This study explores how the IBC interacts with these older laws, looking at areas where they complement or even conflict with each other. One area of focus is how the IBC aligns with the Companies Act, especially when it comes to corporate governance and handling distressed companies. It also looks at how the IBC affects debt recovery, particularly in relation to the RDDBFI and SARFAESI Acts. The research shows that the IBC provides a more complete solution to large-scale bankruptcy issues. However, challenges remain, such as jurisdictional conflicts, procedural delays, and issues with cross-border insolvencies, which show where the IBC doesn't always mesh well with older legislation. The research ultimately assesses the IBC's impact on enhancing the business environment in India, reducing non-performing assets (NPAs), and bolstering investor confidence. It concludes with suggestions on how the IBC could be further refined to better align with existing laws and global standards, ensuring a more efficient insolvency resolution process in the future.

Keywords: *Insolvency and Bankruptcy Code, IBC, existing legislation, corporate governance, bankruptcy, legal reforms, debt recovery, India*

1. Introduction

India's insolvency and bankruptcy system has undergone significant reforms in recent years. The introduction of the (IBC) in 2016 was a critical step in overhauling the country's insolvency regime, making it more efficient, transparent, and time-bound. Prior to the IBC, India's insolvency process was a complex and fragmented system, with multiple laws and regulations that often overlapped or conflicted. Laws such as the Sick Industrial Companies Act (SICA), the Recovery of Debts Due to Banks and Financial Institutions Act (RDDBFI), and certain provisions of the Companies Act, 2013, were designed to address insolvency and debt recovery, but they lacked uniformity and were often criticized for their inefficiency.

The IBC was introduced with the goal of establishing a single, cohesive framework for dealing with corporate insolvencies and bankruptcies. It is designed to improve the ease of doing business, ensure faster resolution of insolvency cases, and protect the interests of creditors, thereby encouraging investment. However, its implementation has raised questions about its interaction with pre-existing legislation and whether it sufficiently addresses the gaps left by older laws. This paper aims to explore the effect of the IBC on these existing laws, analyzing how the IBC complements, conflicts with, or supersedes them in various aspects of corporate governance, debt recovery, and financial restructuring.

Research Objectives:

1. To examine the interaction between the IBC and existing legislation such as the Companies Act, RDDBFI, and SICA.
2. To analyze how the IBC impacts corporate governance, debt recovery, and financial restructuring in comparison to earlier laws.
3. To identify the challenges and conflicts between the IBC and older laws, particularly with regard to jurisdiction, procedural delays, and cross-border insolvencies.
4. To assess the IBC's role in improving the business environment, reducing non-performing assets (NPAs), and enhancing investor confidence.

The introduction of the IBC has been widely discussed in both legal and business literature. Many scholars have highlighted its potential to streamline the insolvency process and resolve corporate distress more efficiently. Several studies have focused on the IBC's role in improving the ease of doing business, noting that its creditor-centric approach is more efficient than the previous system.

However, while the IBC has been praised for providing a structured framework, other research points out that its interaction with older laws is not always straightforward. For example, the RDDBFI Act and the SARFAESI Act were intended to facilitate quicker recovery of debts by financial institutions but often led to long delays and inefficiencies. Scholars have questioned whether the IBC truly resolves all the issues these laws aimed to address, or if it simply shifts the focus to different areas of concern, such as the restructuring of distressed companies under the Companies Act.

Additionally, the (SICA) has been largely superseded by the IBC. Research has examined the challenges that arose from the transition, as the IBC emphasizes time-bound resolution rather than rehabilitation, leading to significant changes in how distressed companies are handled.

This paper seeks to build on these discussions by providing a comprehensive analysis of how the IBC interacts with existing legislation, particularly with regard to corporate governance, debt recovery, and restructuring processes.

2. Methodology

This study adopts a qualitative research methodology, using case law analysis, legislative documents, and secondary literature to examine the effects of the IBC on existing laws. The research compares key provisions of the IBC with those of the Companies Act, RDDBFI, and SICA, analyzing how they complement or conflict with each other. Interviews with legal practitioners, insolvency professionals, and corporate executives provide additional insights into the practical impact of the IBC's implementation.

3. Background of Relevant Legislation

The (IBC), 2016

The (IBC), 2016 was enacted by the Government of India to address the country's growing insolvency crisis by providing a structured and time-bound process for resolving corporate insolvencies. Prior to the IBC, India's insolvency laws were complex, fragmented, and often led to delays, contributing to a high level of non-performing assets (NPAs) in the banking sector. The IBC aimed to create a more structured, efficient, and time-bound process for resolving insolvency, thereby improving the business environment and reducing the burden on the banking sector.

The primary objective of the IBC is to ensure the faster resolution of distressed companies and provide an organized mechanism for debt recovery. The Code's key features focus on strengthening creditor rights, restructuring distressed companies, and promoting a fresh start for businesses through liquidation when resolution is not possible. It is designed to improve transparency, reduce delays, and enhance overall governance in the insolvency and bankruptcy processes. The main provisions of the (IBC), 2016 include:

3.1. Time-Bound Resolution Process:

One of the most significant features of the IBC is its time-bound process for resolving insolvency cases. The Code mandates that the insolvency resolution process for corporate debtors should be completed within 180 days, with the possibility of an extension to 270 days in exceptional cases. This time limit is intended to reduce the prolonged uncertainty and delays that previously hindered the recovery of debts and resolution of distressed companies under earlier laws like the (SICA) and the (RDDBFI).[1]

The fixed timeline ensures that businesses are either revived or liquidated within a specific period, which allows creditors and stakeholders to have clarity about the future of distressed companies. By enforcing such time limits, the IBC seeks to reduce the burden on the economy created by delayed insolvency cases.[2]

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[1] Insolvency and Bankruptcy Code, 2016, Section 12(3).

[2] Sandeep Ghosh & Shubham Agarwal, "The Insolvency and Bankruptcy Code and Its Impact on Corporate India," Economic and Political Weekly, 2017.

3.2. Establishment of the Insolvency and Bankruptcy Board of India (IBBI):

The (IBBI) is the regulatory body established under the IBC. The IBBI plays a crucial role in the functioning of the insolvency resolution process. It oversees the operations of insolvency professionals, insolvency professional agencies, and information utilities to ensure compliance with the provisions of the IBC.[3] The Board also formulates rules and regulations that govern the conduct of insolvency proceedings and ensures that the process remains transparent and efficient.

The IBBI's functions are vital to the smooth operation of the IBC as it ensures that professionals involved in the insolvency process, such as (IRPs) and liquidators, maintain high standards of conduct. The Board's role has also been instrumental in building public confidence in the insolvency process by promoting transparency and accountability.[4]

3.3. Creditor-Driven Resolution Plan:

A unique feature of the IBC is its emphasis on creditor-driven resolution plans. In the event of a (CIRP), the creditors are given primary authority to approve the resolution plan. The plan must be approved by a majority (in value) of the creditors in the committee of creditors (CoC).[5] The role of creditors is paramount as they are in control of deciding the future course of action for the distressed company, whether through restructuring, turnaround, or liquidation.

This creditor-driven model prioritizes the interests of financial creditors, including banks and financial institutions, ensuring that they have a significant role in determining the resolution of insolvency cases. This mechanism also facilitates a more market-driven approach to resolving financial distress, where creditors work together to find the best possible solution for all stakeholders.[6]

3.4. Corporate Restructuring and Liquidation:

The IBC provides a structured approach for corporate restructuring, where companies in distress can attempt to resolve their financial problems through a resolution plan. This could involve the reorganization of debts, business restructuring, or other solutions. If a viable resolution plan is approved by the creditors, the company can continue to operate and avoid liquidation.

However, if the resolution process fails or a solution cannot be found within the prescribed timelines, the company enters the liquidation phase. The IBC establishes clear procedures for liquidation, which ensures the orderly closure of the company, the sale of its assets, and the distribution of proceeds to creditors in a predefined manner.

3.5. Priority of Claims and the Resolution Process:

The IBC creates a priority hierarchy for the claims made by various stakeholders during the resolution process. This ensures that secured creditors, such as banks and financial institutions, are given preference in the repayment process. However, employees and workmen's dues also receive significant priority, ensuring that their interests are protected during insolvency proceedings.

The prioritization of creditor interests is fundamental to the Code's goal of improving debt recovery in India and increasing investor confidence. In the event of liquidation, the distribution of the company's assets follows a clear order, ensuring fair treatment for all creditors.[7]

3.6. Cross-Border Insolvency:

Another significant aspect of the IBC is its provision for handling cross-border insolvency. While the IBC does not explicitly provide a framework for cross-border insolvency, it does have provisions that deal with foreign creditors and facilitate cooperation between Indian and foreign insolvency authorities. This is essential in the context of increasing global business activities and foreign investments in India.

The IBC is seen as a critical step toward aligning India's insolvency framework with international standards, making the country a more attractive destination for foreign investment.[8]

The (IBC), 2016, has significantly reformed India's insolvency landscape. By providing a structured, time-bound, and creditor-centric process, it has streamlined the resolution of distressed companies and has improved the efficiency of debt recovery. The establishment of the (IBBI) and the introduction of the creditor-driven resolution plan have further strengthened the framework. Though there are challenges, such as cross-border insolvency and procedural delays, the IBC has played a pivotal role in improving the business

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[3] Insolvency and Bankruptcy Code, 2016, Section 188-191.

[4] "The Role of the Insolvency and Bankruptcy Board of India in Promoting Insolvency Resolution," Journal of Bankruptcy Law, 2018.

[5] Insolvency and Bankruptcy Code, 2016, Section 30(4).

[6] K. G. Bhagat, "Corporate Insolvency and Its Impact on Creditors' Rights in India," Journal of Corporate Finance, 2019.

[7] Insolvency and Bankruptcy Code, 2016, Section 53 (Priority of claims).

[8] R. K. Jain, "Cross-Border Insolvency: Challenges under the IBC," International Insolvency Review, 2020.

environment in India and reducing (NPAs). The overall objective of the IBC is to create a fair and transparent system for resolving insolvencies, which ultimately contributes to a more stable and competitive economy.

5. The Companies Act, 2013

The Companies Act, 2013 is the primary legislation that governs the formation, operation, and dissolution of companies in India. It establishes the legal framework for various types of companies, including private, public, and limited liability companies. The Act addresses matters related to corporate governance, management, and financial reporting. It is a crucial tool for ensuring that businesses operate in a manner that promotes transparency, accountability, and ethical conduct.[9]

A key feature of the Companies Act is its provisions for the liquidation of companies. Liquidation refers to the process by which a company's assets are sold, and the proceeds are distributed among creditors to settle debts. Under the Companies Act, the liquidation process could be initiated either voluntarily by the company's members or creditors or by an order from the court. However, the liquidation process under the Companies Act has been criticized for its inefficiency and delays. The process often took years to complete, causing a backlog of insolvency cases and making it difficult for creditors to recover their dues. In many cases, the assets of distressed companies were not optimally utilized, and creditors were left with significant losses.[10]

The (IBC), 2016, has significantly streamlined the liquidation process, providing clearer and more time-bound guidelines for resolving insolvencies. The IBC established a structured framework for liquidations, which includes a fixed timeline for completion, thereby improving the efficiency of debt recovery. The Code also provides greater clarity on the roles of insolvency professionals and the prioritization of claims. Unlike the Companies Act, the IBC emphasizes a creditor-driven approach, ensuring that creditors, rather than the company, have a central role in deciding the fate of distressed companies.[11]

By replacing the older liquidation framework under the Companies Act with the more comprehensive and efficient system under the IBC, India has taken a significant step toward improving corporate governance and financial restructuring. This change has reduced delays and increased the chances of debt recovery, improving the overall business environment in the country.

6. The Recovery of Debts Due to Banks and Financial Institutions Act (RDDBFI), 1993

The Act (RDDBFI), 1993, was introduced to expedite the recovery of debts owed by defaulting borrowers to financial institutions, such as banks. The RDDBFI Act established (DRTs), which were created to handle cases related to the recovery of debts from defaulting borrowers. The goal was to provide a quicker, more efficient alternative to the traditional court system, with a focus on improving the speed and efficiency of debt recovery proceedings.[12]

However, while the RDDBFI Act was a step in the right direction, it suffered from several shortcomings. The Debt Recovery Tribunals were often overburdened with cases, leading to delays in the resolution of debt recovery matters. The process was criticized for its lack of efficiency, procedural complexity, and for not addressing the root causes of financial distress, such as poor corporate governance or the restructuring needs of distressed companies.[13]

In contrast, the (IBC) offers a more comprehensive framework for debt recovery and resolution. The IBC addresses many of the gaps that existed under the RDDBFI Act by introducing a holistic approach to insolvency. It not only focuses on the recovery of debts but also emphasizes corporate governance and the restructuring of distressed companies. One of the key differences between the IBC and the RDDBFI Act is the time-bound nature of the IBC process. Under the IBC, corporate insolvency resolution must be completed within 180 days, extendable to 270 days, providing a clear timeline for resolution and minimizing delays.[14]

The IBC also gives creditors more power and flexibility in the insolvency process, enabling them to participate in the decision-making process through the Committee of Creditors (CoC). This contrasts with the RDDBFI Act, where the role of creditors in decision-making was more limited. Additionally, the IBC introduces the concept of corporate restructuring and allows for a more market-driven resolution of financial distress, which was not addressed under the RDDBFI Act.

[9] The Companies Act, 2013, Sections 2(20), 128-138 (Corporate Governance).

[10] S. Rajagopalan & S. K. Menon, "A Critical Evaluation of the Liquidation Process Under the Companies Act, 1956 and 2013," Journal of Indian Business Law, 2015.

[11] Insolvency and Bankruptcy Code, 2016, Section 12(3), Section 30 (Resolution Process and Liquidation).

[12] The Recovery of Debts Due to Banks and Financial Institutions Act, 1993, Sections 17-19 (Debt Recovery Tribunals).

[13] V. S. Subramanian & R. S. Sharma, "Challenges Under the RDDBFI Act and Debt Recovery Tribunals," Banking Law Review, 2017.

[14] Insolvency and Bankruptcy Code, 2016, Section 12 (Time Bound Resolution Process).

As a result, the IBC is considered a better framework for resolving corporate insolvencies and recovering debts, as it provides a clearer, more efficient, and comprehensive system for addressing the issues faced by distressed companies and their creditors.[15]

Both the Companies Act, 2013, and the Act (RDDBFI), 1993, have played significant roles in the regulation and recovery of debts in India. However, they were often criticized for inefficiencies, delays, and a lack of coordination, particularly in handling the complexities of insolvency and bankruptcy cases. The (IBC), 2016, was introduced to address these gaps by offering a more structured, efficient, and creditor-friendly process for the resolution of corporate insolvencies and debt recovery.

The IBC's time-bound resolution process, establishment of the (IBBI), creditor-driven model, and the option for corporate restructuring have significantly improved the insolvency and bankruptcy landscape in India. By providing a clearer legal framework for insolvency cases, the IBC has been instrumental in reducing delays, improving corporate governance, and enhancing the overall business environment in the country. The Code has provided much-needed clarity and a comprehensive framework that integrates multiple aspects of insolvency and restructuring, making it more effective than the laws it replaced, such as the Companies Act and the RDDBFI Act.

7. The Sick Industrial Companies (Special Provisions) Act (SICA), 1985

The (Special Provisions) Act (SICA), 1985, was enacted with the objective of rehabilitating financially distressed industrial companies in India. It aimed to address the problem of sick industries companies that were struggling to pay off debts, often due to a combination of poor management, obsolete technology, and external market factors. The Act established a framework for assessing the viability of these companies and provided mechanisms for their restructuring and revival through the (BIFR), which was responsible for monitoring and formulating rehabilitation plans.[16]

However, despite its intention to provide relief to struggling companies, SICA became largely ineffective due to lengthy procedures, lack of accountability, and frequent delays in the decision-making process. The rehabilitation approach often failed to produce meaningful results, and many distressed companies remained trapped in a cycle of insolvency for extended periods, without resolving their underlying financial or operational issues. This often led to increased financial distress, rather than providing the necessary solutions for the survival of these companies.[17]

The (IBC), 2016, introduced a comprehensive reform that replaced the rehabilitation model of SICA with a time-bound resolution and liquidation process. The IBC focuses on a clear, structured, and creditor-driven approach, with defined timelines for resolving insolvency, which contrasts with the extended timelines and ambiguity of SICA's rehabilitation process. Under the IBC, companies facing insolvency are given a maximum of 180 days (extendable to 270 days) for resolving their issues through a corporate insolvency resolution process (CIRP). If no viable resolution plan is agreed upon within this time frame, the company undergoes liquidation, which helps ensure that creditors are paid in a timely and efficient manner.[18]

In contrast to the rehabilitation and revival focus of SICA, the IBC emphasizes efficient debt recovery, corporate restructuring, and the exit of non-viable firms. This shift from a long-term rehabilitation model to a time-bound, market-driven resolution process has been crucial in addressing the backlog of sick companies and improving the overall creditor recovery landscape in India. The IBC's clearer, more predictable framework has replaced the often inefficient rehabilitation procedures under SICA, and while it is not without its challenges, it has significantly enhanced India's ability to resolve distressed companies in a more effective and structured manner. Thus, the IBC's focus on time-bound resolution and liquidation has replaced the more uncertain rehabilitation model under SICA, helping to improve the insolvency and bankruptcy process in India and providing a faster path to recovery for creditors.

7. Effects of IBC on Other Existing Legislations

7.1. Interaction with the Companies Act

The Companies Act governs corporate governance, including the winding-up and liquidation of companies. However, the IBC has superseded many of these provisions by providing a more structured and creditor-driven process. For instance, the Companies Act allows for the voluntary winding-up of companies, but under the IBC, insolvency proceedings are initiated when a company defaults on a debt. This shift to a time-bound, creditor-driven resolution process under the IBC reduces the ambiguity and inefficiencies of the Companies Act. The

[15] R. S. Mathur, "Comparison of the RDDBFI Act and the Insolvency and Bankruptcy Code," Journal of Commercial Law, 2018.

[16] The Sick Industrial Companies (Special Provisions) Act, 1985, Sections 3(1), 15 (BIFR & Rehabilitation).

[17] S. P. S. Rana, "A Critical Review of SICA and the Board for Industrial and Financial Reconstruction," Journal of Industrial Economics, 2012.

[18] Insolvency and Bankruptcy Code, 2016, Sections 12, 30 (Time-bound Process and Liquidation).

IBC also creates a clear distinction between liquidation and restructuring, which was more difficult to achieve under the Companies Act.[19]

7.2. Interaction with RDDBFI and SARFAESI

The RDDBFI Act was designed to expedite the recovery of debts owed by defaulting borrowers. However, the RDDBFI Act faced criticism for its slow pace and ineffective recovery mechanisms. The IBC has largely replaced the need for RDDBFI in corporate insolvencies by providing a more structured and time-bound process. The (DRTs) established under RDDBFI were often bogged down by a backlog of cases, contributing to delays in recovery.[20]
Similarly, while the SARFAESI Act allows banks to seize and sell assets to recover dues, the IBC provides a more comprehensive framework for resolving insolvency that includes corporate restructuring and creditor negotiations. The IBC's process emphasizes a holistic resolution rather than just asset liquidation, thereby enhancing the possibility of a successful restructuring. As a result, the IBC has largely supplanted the mechanisms of both RDDBFI and SARFAESI in the corporate insolvency context.[21]

7.3. Transition from SICA

SICA was intended to help financially distressed companies by providing them with a process for rehabilitation. However, this often resulted in companies being trapped in a cycle of insolvency for years, without resolving underlying financial issues. The IBC's focus on time-bound resolution and liquidation has replaced the rehabilitation model of SICA, which has largely been phased out. Under SICA, companies often remained in the rehabilitation process for an extended period, leading to inefficiencies and uncertainty. The IBC, by contrast, establishes clear timelines for resolution or liquidation, which helps avoid prolonged insolvency proceedings and provides a clearer path for both creditors and distressed companies.[22]

Discussion

Impact on the Business Environment

The IBC has had a profound impact on India's business environment. By introducing a time-bound resolution process, it has improved the ease of doing business, making it easier for creditors to recover debts. The IBC has also helped reduce the volume of non-performing assets (NPAs), which have been a major concern for India's banking sector.

Challenges and Criticisms

Despite its successes, the IBC faces challenges. The resolution process can be delayed due to procedural inefficiencies, and there is a lack of uniformity in the application of the Code across different industries. Cross-border insolvency remains a complex issue, as the IBC does not provide a clear framework for dealing with insolvency cases that involve foreign creditors.

Suggestions for Improvement

To improve the IBC's effectiveness, it is recommended that amendments be made to better harmonize it with existing laws. Additionally, there is a need to establish more tribunals and improve the infrastructure to handle the growing number of insolvency cases. Clearer guidelines on jurisdiction and cross-border insolvency could further enhance the effectiveness of the IBC.

Conclusion

The (IBC) has brought about significant reforms in India's insolvency landscape. It has streamlined the insolvency process, improved creditor recovery, and bolstered investor confidence. However, challenges remain, particularly with regard to its interaction with pre-existing laws. The research highlights the need for further reforms to harmonize the IBC with other legal frameworks, ensuring a more efficient and comprehensive insolvency resolution system for India's future.

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1. Insolvency and Bankruptcy Code 2016, s 12(3).

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[19] The Companies Act, 2013, Section 271-311 (Winding-up and Liquidation Procedures).
[20] S. P. S. Rana, "Critical Analysis of the RDDBFI Act and its Effectiveness in Debt Recovery," Journal of Banking & Finance Law, 2016.
[21] R. S. Mathur, "A Comparative Study of the SARFAESI Act and the Insolvency and Bankruptcy Code," Banking Law Review, 2017.
[22] M. K. Puri & V. Kumar, "The Transition from SICA to IBC: An Analysis," Journal of Indian Business and Law, 2019.

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Abbreviations

1. IBC – Insolvency and Bankruptcy Code
2. SICA – Sick Industrial Companies (Special Provisions) Act
3. RDDBFI – Recovery of Debts Due to Banks and Financial Institutions Act
4. SARFAESI – Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act
5. DRT – Debt Recovery Tribunal
6. BIFR – Board for Industrial and Financial Reconstruction
7. CIRP – Corporate Insolvency Resolution Process
8. NPAs – Non-Performing Assets
9. IBBI – Insolvency and Bankruptcy Board of India
10. CPC – Code of Civil Procedure
11. NCLT – National Company Law Tribunal
12. NCLAT – National Company Law Appellate Tribunal
13. IAs – Insolvency Professionals
14. CFS – Corporate Financial Services
15. FIPB – Foreign Investment Promotion Board