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BEYOND DEBT RECOVERY: REIMAGINING THE INSOLVENCY AND BANKRUPTCY CODE, 2016 AS AN INSTRUMENT OF CORPORATE GOVERNANCE AND ECONOMIC CONSTITUTIONALISM IN INDIA

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Abstract

The **Insolvency and Bankruptcy Code, 2016 (IBC)** is one of the most significant structural reforms in India's post-liberalisation legal framework. Although commonly viewed as a mechanism for time-bound insolvency resolution, its significance extends beyond debt recovery. The Code marks a shift from a debtor-centric system to a creditor-driven governance model that promotes market discipline, institutional accountability, and efficient capital allocation. It has consequently emerged not merely as an insolvency statute but as an instrument of economic governance that advances constitutional values of fairness, transparency, equality, and economic efficiency.This paper examines the transformation of India's insolvency regime through an interdisciplinary approach combining legal doctrine, corporate governance, constitutional principles, and economic analysis. It analyses the evolution of the IBC through landmark Supreme Court decisions, including *Innoventive Industries Ltd. v. ICICI Bank Ltd.*, *Swiss Ribbons Pvt. Ltd. v. Union of India*, *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, *K. Sashidhar v. Indian Overseas Bank*, *Ebix Singapore Pvt. Ltd. v. Committee of Creditors of Educomp Solutions Ltd.*, and *Vidarbha Industries Power Ltd. v. Axis Bank Ltd.* The paper also evaluates the practical performance of the insolvency framework by examining institutional delays, resolution outcomes, liquidation trends, and the functioning of the National Company Law Tribunal. While acknowledging the IBC's contribution to strengthening creditor confidence and improving India's credit culture, the paper argues that challenges such as judicial delays, valuation disputes, inconsistent jurisprudence, and institutional capacity constraints continue

to affect its effectiveness. It concludes that the future of Indian insolvency law depends less on frequent legislative amendments than on stronger institutions, continued judicial restraint, and reforms addressing cross-border insolvency and technological developments.

Keywords: Insolvency and Bankruptcy Code, Corporate Governance, Economic Constitutionalism, Committee of Creditors, Commercial Wisdom, Corporate Rescue, Credit Culture, Judicial Review, Resolution Process, Economic Reform

I. Introduction

Corporate failure is an inevitable feature of every modern economy. While insolvency reflects financial distress and the inability of an enterprise to meet its obligations, it also performs an essential economic function by reallocating resources, preserving viable businesses, and strengthening confidence in credit markets. Insolvency law therefore extends beyond debt recovery; it regulates market behaviour, allocates economic risk, and promotes financial stability[1]. The effectiveness of an economy depends not only on the ease of doing business but also on the efficiency with which business failure is resolved.

Prior to 2016, India's insolvency framework was fragmented across multiple statutes, including the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), the Recovery of Debts Due to Banks and Financial Institutions Act, 1993[2], the SARFAESI Act, 2002[3], and the Companies Act[4]. This overlapping framework resulted in procedural complexity, prolonged litigation, erosion of asset value, and rising non-performing assets (NPAs), while allowing defaulting promoters to retain control and delaying creditor recoveries.

The enactment of the Insolvency and Bankruptcy Code, 2016 (IBC) marked a fundamental shift by consolidating insolvency laws into a single framework, establishing the Insolvency and Bankruptcy Board of India (IBBI), introducing insolvency professionals, prescribing time-bound resolution, and empowering the Committee of Creditors (CoC). The Code

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[1] Vanessa Finch & David Milman, *Corporate Insolvency Law: Perspectives and Principles* (3d ed. 2017).
[2] Recovery of Debts Due to Banks and Financial Institutions Act, No. 51 of 1993.
[3] Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, No. 54 of 2002.
[4] Sick Industrial Companies (Special Provisions) Act, No. 1 of 1986.

transformed insolvency from a debtor-centric process into a creditor-driven mechanism while strengthening corporate governance, contractual discipline, and market transparency[5].

Despite these achievements, the IBC continues to face challenges, including delays in resolution, judicial intervention, issues relating to operational creditors, governmental dues, valuation disputes, and increasing liquidations. Emerging concerns such as cross-border insolvency, digital assets, and group insolvency further underscore the need for continued reform.[6]This paper argues that the Insolvency and Bankruptcy Code, 2016 is more than a debt recovery statute; it is a transformative instrument of corporate governance and economic reform. By examining its legislative framework, judicial interpretation, and practical implementation, the paper evaluates whether the Code has achieved its objective of creating an efficient, transparent, and constitutionally grounded insolvency regime while identifying areas for future reform.

. THEORETICAL FOUNDATIONS: INSOLVENCY LAW BEYOND DEBT RECOVERY

- **Insolvency Law as an Institution of Economic Governance**

The study of insolvency law has traditionally been confined to the narrow framework of debt enforcement and asset distribution. While legally accurate, this approach overlooks the broader institutional role of insolvency systems in modern market economies. Insolvency legislation does not merely regulate financial failure; it allocates economic risk, enforces contractual obligations, redistributes productive capital, and sustains confidence in credit markets. Every insolvency regime therefore reflects the relationship between the State, private enterprise, creditors, and the public interest.

Contemporary insolvency systems are no longer designed solely to maximise creditor recoveries through liquidation. Instead, they aim to preserve viable enterprises, protect employment, maintain credit markets, and ensure the efficient allocation of productive resources. Insolvency law thus functions as an instrument of economic governance rather

[5] Insolvency and Bankruptcy Code, No. 31 of 2016.

[6] Insolvency and Bankruptcy Board of India, *Quarterly Newsletter* (latest ed.).

than merely a procedural mechanism for debt recovery[7]. India's pre-IBC insolvency framework illustrates the limitations of treating insolvency primarily as a recovery process. Fragmented statutory regimes encouraged individual enforcement while overlooking the wider economic consequences of corporate failure, including stressed assets, disrupted supply chains, job losses, investor losses, and declining confidence in financial markets.

The Insolvency and Bankruptcy Code, 2016 represents a decisive shift from this fragmented approach. Rather than focusing solely on debt recovery, it seeks to preserve enterprise value through collective decision-making among stakeholders. This transition from individual creditor enforcement to collective value maximisation recognises that coordinated restructuring often produces superior economic outcomes.

Accordingly, insolvency law should be understood as a mechanism for the orderly reallocation of productive resources. By determining when distressed firms should be revived or liquidated, it directly influences investment, credit availability, entrepreneurial risk-taking, and long-term economic growth.

- **The Law and Economics Perspective**

The intellectual foundations of modern insolvency law are deeply rooted in the discipline of Law and Economics, which evaluates legal rules according to their ability to promote efficient resource allocation. Rather than viewing insolvency as a moral failure, economic theory treats business failure as an inevitable feature of competitive markets. Efficient legal institutions should therefore minimise the social costs of failure while preserving incentives for productive investment.

Thomas Jackson's influential **Creditors' Bargain Theory** provides one of the strongest economic justifications for insolvency law. Jackson argues that insolvency proceedings solve the "common pool problem" that arises when multiple creditors simultaneously seek to recover assets from an insolvent debtor.[8] Individual enforcement often leads to premature asset sales and reduced value, whereas collective proceedings prevent this destructive race through coordinated decision-making.

[7] Thomas H. Jackson, *The Logic and Limits of Bankruptcy Law* (1986).
[8] Thomas H. Jackson, *The Logic and Limits of Bankruptcy Law* 7–19 (1986)

The IBC embodies this principle through the statutory moratorium under Section 14, which suspends legal proceedings and enforcement actions immediately upon the commencement of the Corporate Insolvency Resolution Process (CIRP). The moratorium is not merely procedural; it preserves the going-concern value of the enterprise while stakeholders negotiate an appropriate resolution.

Economic analysis also explains the transfer of control from promoters to creditors during insolvency. While management ordinarily possesses superior knowledge of the business, insolvency creates incentives to delay restructuring or undertake excessive risks to retain control. The creditor-in-control model adopted by the IBC therefore reflects a rational response to these altered incentives, aligning decision-making with value preservation.

- **Schumpeter's Theory of Creative Destruction and Corporate Failure**

One of the most influential theoretical insights relevant to insolvency law originates from Joseph Schumpeter's theory of **creative destruction**, which views capitalism as a process of continual renewal through the replacement of inefficient firms by more productive enterprises. Corporate failure is therefore not a sign of market failure but an essential feature of economic progress.[9]

From this perspective, insolvency law must distinguish between enterprises suffering temporary financial distress and those that have become economically unviable. The former deserve restructuring, while the latter should exit the market through orderly liquidation.

The IBC incorporates this philosophy by prioritising resolution while recognising liquidation as necessary where restructuring cannot maximise value. Its objective is not to preserve every company but to rescue those capable of generating greater value as going concerns.

This distinction is particularly significant because earlier Indian insolvency laws often prolonged the existence of chronically distressed firms through litigation and governmental intervention. Such enterprises locked up valuable capital without generating productive returns. By introducing strict timelines and market-based decision-making, the IBC

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[9] Joseph A. Schumpeter, *Capitalism, Socialism and Democracy* (1942).

recognises that delay itself destroys enterprise value as assets deteriorate, employees leave, suppliers withdraw, and market confidence declines.

- **Corporate Rescue versus Debt Recovery**

A defining feature of modern insolvency jurisprudence is the distinction between **corporate rescue** and **debt recovery**. Debt recovery focuses on enforcing contractual rights and maximising repayments to creditors, whereas corporate rescue seeks to preserve the enterprise through restructuring, protecting employment, business continuity, and market confidence.

The IBC formally embraces the philosophy of corporate rescue. Its Preamble places "reorganisation and insolvency resolution" ahead of liquidation, indicating that preservation of enterprise value is the primary legislative objective.[10]

Nevertheless, tensions remain between maximising creditor recoveries and protecting broader public interests. Courts have frequently been required to balance commercial efficiency with distributive justice, commercial certainty with social welfare, and creditor autonomy with public accountability. Insolvency law therefore extends beyond private contract enforcement into the broader sphere of economic policy.

- **Economic Constitutionalism and the Indian Insolvency Framework**

An increasingly important dimension of the IBC is its relationship with **economic constitutionalism**, which recognises that constitutional principles shape economic institutions and market regulation. Although the Constitution does not expressly recognise a right to insolvency protection, Articles 14, 19(1)(g), and 21 increasingly influence the interpretation of commercial legislation by requiring fairness, reasonableness, and procedural accountability[11].

The IBC illustrates this constitutionalisation of commercial law. Judicial review has gradually expanded beyond technical statutory compliance to evaluate whether insolvency proceedings

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[10] Insolvency and Bankruptcy Code pmbl.

[11] INDIA CONST. arts. 14, 19(1)(g), 21.

respect principles of fairness, transparency, proportionality, and institutional accountability. Questions relating to creditor classifications, operational creditors, governmental dues, and judicial intervention increasingly involve constitutional reasoning alongside statutory interpretation.

Viewed through this lens, the Insolvency and Bankruptcy Code is more than a specialised commercial statute. It is a constitutional institution that reconciles private economic autonomy with public regulatory oversight, demonstrating that market efficiency and constitutional values are complementary rather than competing objectives.

FROM FRAGMENTED RECOVERY TO INSTITUTIONAL REFORM: THE EVOLUTION OF INDIA'S INSOLVENCY FRAMEWORK

- **The Pre-IBC Insolvency Landscape: A System Designed for Litigation Rather than Resolution**

The enactment of the Insolvency and Bankruptcy Code, 2016 cannot be fully appreciated without understanding the institutional deficiencies that characterised India's insolvency regime for more than three decades. The Code was not merely enacted to replace outdated legislation; it responded to the cumulative failure of multiple legal frameworks that, despite pursuing legitimate objectives individually, collectively produced an insolvency system incapable of preserving economic value[12].

Before 2016, India's insolvency framework consisted of a fragmented network of statutes. Corporate rehabilitation was governed by the **Sick Industrial Companies (Special Provisions) Act, 1985 (SICA)** through the Board for Industrial and Financial Reconstruction (BIFR); bank recoveries were addressed under the **Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI Act)** through Debt Recovery Tribunals (DRTs); secured creditors exercised independent enforcement under the **SARFAESI Act, 2002**; company winding-up remained under the Companies Act; while individual insolvency continued to be regulated by the colonial-era Presidency Towns Insolvency Act, 1909 and Provincial Insolvency Act, 1920.

[12] BANKRUPTCY LAW REFORMS COMM., *THE REPORT OF THE BANKRUPTCY LAW REFORMS COMMITTEE* vol. I, at 17–32 (2015).

Although each statute served a distinct purpose, their simultaneous operation produced overlapping jurisdictions, conflicting procedures, and inconsistent remedies[13]. A distressed company could face proceedings before the BIFR, DRTs, civil courts, High Courts, arbitral tribunals, and regulatory authorities at the same time. Rather than encouraging coordinated restructuring, this multiplicity promoted forum shopping, prolonged litigation, and strategic delay.

The absence of a unified framework meant that different statutes pursued competing objectives—industrial revival, debt recovery, or creditor enforcement—without any institution having authority to balance stakeholder interests or maximise enterprise value. Consequently, insolvency proceedings often lasted for years, during which productive assets deteriorated, employees departed, business relationships collapsed, and commercial goodwill disappeared.

- **The Failure of SICA and the BIFR: Protection without Accountability**

The **Sick Industrial Companies (Special Provisions) Act, 1985** represented India's earliest attempt to rescue financially distressed enterprises. Enacted during an era of state-led industrial policy, SICA established the **Board for Industrial and Financial Reconstruction (BIFR)** to identify and rehabilitate sick industrial companies while preserving employment and industrial capacity.[14]

Despite these objectives, SICA's institutional design proved ineffective. Proceedings before the BIFR became excessively delayed, allowing financial distress to deepen while enterprise value steadily declined. Promoters frequently used the protective framework to retain control and postpone creditor action, even where revival was commercially unrealistic. At the same time, the BIFR lacked the institutional capacity and commercial expertise required to evaluate increasingly complex restructuring proposals.

[13] BANKRUPTCY LAW REFORMS COMM., *THE REPORT OF THE BANKRUPTCY LAW REFORMS COMMITTEE* vol. I, at 21–26 (2015).

[14] Sick Industrial Companies (Special Provisions) Act, No. 1 of 1986.

By the early 2000s, the BIFR had become associated more with procedural delay than industrial revival, exposing the limitations of a rehabilitation model that prioritised protection without corresponding accountability.[15]

- **SARFAESI and DRTs: Efficient Recovery without Collective Resolution**

The enactment of the **SARFAESI Act, 2002** strengthened creditor rights by allowing secured creditors to enforce security interests without prior judicial approval.[16] Similarly, the **Debt Recovery Tribunals (DRTs)** established under the RDDBFI Act sought to expedite recovery proceedings involving financial institutions[17].

While these reforms significantly improved debt enforcement, they focused on individual creditor recovery rather than collective insolvency resolution. Secured creditors pursued independent recovery strategies, often resulting in piecemeal asset sales rather than coordinated restructuring. Unsecured creditors, employees, and operational creditors remained largely outside the process, highlighting the absence of a comprehensive mechanism capable of balancing the interests of all stakeholders.

This distinction between debt recovery and insolvency resolution later became one of the defining conceptual innovations of the IBC.

- **The Mounting Crisis of Non-Performing Assets**

The weaknesses of India's insolvency framework became increasingly apparent following the rapid expansion of corporate lending during the first decade of the twenty-first century. Banks extended substantial credit to sectors such as infrastructure, steel, power, construction, telecommunications, aviation, and real estate. Many of these projects subsequently encountered regulatory delays, governance failures, adverse market conditions, and global financial instability, leading to a sharp increase in non-performing assets (NPAs)[18].

The crisis extended beyond individual borrowers. Public sector banks experienced capital erosion, credit availability declined, investor confidence weakened, and concerns emerged

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[15] BANKRUPTCY LAW REFORMS COMM., *THE REPORT OF THE BANKRUPTCY LAW REFORMS COMMITTEE* vol. I, at 25–27 (2015).
[16] Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, No. 54 of 2002.
[17] Recovery of Debts Due to Banks and Financial Institutions Act, No. 51 of 1993.
[18] Reserve Bank of India, *Trend and Progress of Banking in India* (latest relevant edition).

regarding India's commercial dispute resolution system. The legal framework also created incentives for promoters to retain control despite persistent defaults, while banks delayed recognising stressed assets in the hope of future recovery.

The NPA crisis therefore reflected not merely banking inefficiencies but deeper institutional weaknesses in India's insolvency framework.[19]

- **The Bankruptcy Law Reforms Committee: Reimagining Insolvency**

Recognising these structural deficiencies, the Government of India constituted the **Bankruptcy Law Reforms Committee (BLRC)[20]** under the chairmanship of **Dr. T. K. Viswanathan** in 2014. Rather than proposing incremental amendments, the Committee concluded that India's insolvency regime required comprehensive institutional reconstruction.

The BLRC recommended a single consolidated insolvency framework, strict statutory timelines, transfer of management from defaulting promoters to insolvency professionals, commercial decision-making by a Committee of Creditors (CoC), and limited judicial intervention confined primarily to legal supervision.

Most importantly, the Committee redefined the purpose of insolvency law. Instead of focusing on debt recovery or punishment of default, it proposed a framework aimed at maximising the value of distressed enterprises while balancing the interests of all stakeholders. These principles became the intellectual foundation of the Insolvency and Bankruptcy Code.[21]

- **The Insolvency and Bankruptcy Code, 2016: A Change in Institutional Philosophy**

The Insolvency and Bankruptcy Code fundamentally transformed the institutional approach to financial distress. Its most significant innovation was replacing the debtor-in-possession model with a creditor-in-control framework. Upon commencement of the Corporate

[19] Reserve Bank of India, *Financial Stability Report* (latest relevant edition).

[20] Ministry of Finance, Government of India, Notification Constituting the Bankruptcy Law Reforms Committee (2014).

[21] BANKRUPTCY LAW REFORMS COMM., *THE REPORT OF THE BANKRUPTCY LAW REFORMS COMMITTEE* vol. I (2015).

Insolvency Resolution Process (CIRP), management shifts to an independent Resolution Professional under the supervision of the Committee of Creditors, reducing opportunities for promoters to delay proceedings.

The Code also created an integrated institutional ecosystem comprising the **Insolvency and Bankruptcy Board of India (IBBI)**, licensed insolvency professionals, information utilities, and specialised adjudicatory bodies such as the **NCLT** and **NCLAT**. Unlike the fragmented pre-IBC regime, these institutions operate within a unified statutory framework.[22]

Equally significant was the emphasis on time-bound resolution. Recognising that delay itself destroys enterprise value, the Code introduced strict timelines to preserve assets, maintain commercial relationships, and improve the prospects of successful restructuring.

The IBC therefore represents a shift from administrative protection to market discipline, from fragmented enforcement to collective resolution, and from prolonged litigation to institutional efficiency.

- **Why Incremental Reform Was Never Enough**

The evolution of Indian insolvency law demonstrates that the IBC was not simply another legislative reform but the culmination of decades of institutional learning. Earlier statutes failed because they pursued competing objectives without an integrated framework capable of balancing stakeholder interests or preserving enterprise value.

The IBC redefined insolvency as a matter of public economic importance rather than a private dispute between debtors and creditors[23]. Through coordinated institutional intervention, market-based decision-making, and judicial restraint, it transformed the philosophy of insolvency law and established a modern framework for addressing corporate financial distress in India's market economy.

THE INSOLVENCY AND BANKRUPTCY CODE AS A REVOLUTION IN CORPORATE GOVERNANCE

- **Corporate Insolvency as a Governance Failure Rather than a Financial Event**

[22] Insolvency and Bankruptcy Code, No. 31 of 2016, §§ 17–25.

[23] BANKRUPTCY LAW REFORMS COMM., *THE REPORT OF THE BANKRUPTCY LAW REFORMS COMMITTEE* vol. I (2015).

Traditional legal discourse often portrays insolvency as the inevitable consequence of financial incapacity. Such a characterisation, however, overlooks the governance failures that usually precede corporate collapse. Insolvency rarely arises as an isolated accounting event; it is more often the culmination of weak board oversight, poor risk management, excessive leverage, strategic mismanagement, and the erosion of fiduciary responsibility. Financial distress therefore reflects institutional deficiencies within the governance structure of the enterprise.[24]

The Insolvency and Bankruptcy Code, 2016 (IBC) fundamentally alters this perspective by treating insolvency as an issue of corporate governance rather than merely debt enforcement. Once a company enters financial distress, shareholder interests can no longer remain the sole focus of managerial decision-making. Creditors become the principal residual risk bearers as shareholder equity is substantially diminished.

This shift has important consequences. While directors ordinarily owe fiduciary duties to the company and its shareholders, insolvency increasingly requires consideration of creditor interests. The IBC institutionalises this transition by transferring control from existing management to an independent Resolution Professional operating under the supervision of the Committee of Creditors (CoC)[25]. Insolvency is therefore reconceptualised as a change in corporate governance rather than merely a change in financial status.

- **From Debtor-in-Possession to Creditor-in-Control: A Fundamental Redistribution of Corporate Power**

One of the most transformative innovations of the IBC is the replacement of the debtor-in-possession model with a creditor-in-control framework.[26]

Earlier insolvency laws allowed defaulting promoters to retain operational control despite prolonged financial distress, creating serious agency problems. Managers responsible for corporate failure continued exercising authority while creditors relied on lengthy judicial proceedings to enforce their rights. This encouraged delay, concealment of financial information, and speculative attempts to avoid restructuring.

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[24] OECD, *G20/OECD Principles of Corporate Governance* (2023).
[25] Insolvency and Bankruptcy Code, No. 31 of 2016, §§ 17–23.
[26] Insolvency and Bankruptcy Code, No. 31 of 2016, §§ 17–25.

The IBC rejects this model by recognising that insolvency fundamentally changes the distribution of economic risk. Once default occurs, creditors—not shareholders—bear the greatest financial exposure and should therefore influence the future of the enterprise[27].

This redistribution of authority is not punitive but reflects the principle that those assuming the greatest economic risk should exercise the greatest institutional control. The Resolution Professional manages the corporate debtor as a fiduciary responsible for preserving enterprise value while enabling informed decisions by the Committee of Creditors. The result is a more transparent and accountable governance structure based on collective commercial decision-making.

- **The Committee of Creditors and the Emergence of Commercial Democracy**

The Committee of Creditors (CoC) is among the most significant institutional innovations of the IBC. Unlike earlier regimes where courts exercised extensive supervisory powers, the Code entrusts commercially sophisticated financial creditors with determining the viability of distressed enterprises[28].

The CoC evaluates resolution plans, negotiates restructuring strategies, appoints Resolution Professionals, and ultimately decides whether a company should be revived or liquidated. It effectively becomes the temporary governing body of the insolvent corporation.

This framework reflects confidence in market expertise rather than judicial assessment. Financial creditors possess commercial knowledge and financial expertise that courts ordinarily lack. Accordingly, the Code assigns commercial decisions to market participants while limiting courts to ensuring procedural legality[29].

The CoC thus represents a form of **commercial democracy**, where those with the greatest financial stake collectively determine the enterprise's future. This model also improves predictability within credit markets by reducing dependence on judicial discretion.

- **Commercial Wisdom and the Constitutional Limits of Judicial Intervention**

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[27] THOMAS H. JACKSON, *THE LOGIC AND LIMITS OF BANKRUPTCY LAW* 20–30 (1986).
[28] Insolvency and Bankruptcy Code, No. 31 of 2016, §§ 21–30.
[29] *K. Sashidhar v. Indian Overseas Bank*, (2019) 12 SCC 150.

The doctrine of **commercial wisdom** has become central to IBC jurisprudence. It recognises that courts are competent to interpret the law but should not substitute their economic preferences for the commercial judgments of financial creditors.[30]

In **K. Sashidhar v. Indian Overseas Bank**, the Supreme Court held that decisions of the Committee of Creditors regarding resolution plans are ordinarily beyond judicial review except where statutory procedures are violated. This principle was reaffirmed in **Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta**, where the Court emphasised that judicial review is confined to legality rather than commercial desirability.[31]

The doctrine reflects constitutional principles of institutional competence and separation of functions. Courts acknowledge the expertise of specialised market institutions while ensuring compliance with statutory requirements, natural justice, procedural fairness, and constitutional equality. Judicial restraint therefore complements, rather than diminishes, the rule of law.[32]

- **Redefining Promoter Accountability**

Before the IBC, promoters often retained effective control of financially distressed companies despite repeated defaults. Debt restructuring frequently occurred without meaningful changes in management, allowing those responsible for financial deterioration to continue directing corporate affairs.

The IBC fundamentally altered these incentives. The commencement of the Corporate Insolvency Resolution Process immediately transfers management control, signalling that financial default carries governance consequences. This encourages boards to monitor financial performance more closely, maintain transparency, and pursue timely restructuring before insolvency becomes unavoidable.[33]

Section 29A further strengthens this philosophy by disqualifying defaulting promoters and other ineligible persons from regaining control through the resolution process. More than a

[30] *K. Sashidhar v. Indian Overseas Bank*, (2019) 12 SCC 150.
[31] *Comm. of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 SCC 531.
[32] *Swiss Ribbons (P) Ltd. v. Union of India*, (2019) 4 SCC 17.
[33] Insolvency and Bankruptcy Code, No. 31 of 2016, §§ 17–18.

procedural rule, it reinforces the principle that insolvency cannot be used to reclaim assets after contributing to their financial decline.[34]

- **The Transformation of India's Credit Culture**

Perhaps the IBC's most enduring contribution lies in transforming India's credit culture. Legal institutions influence economic behaviour through the incentives they create. Before 2016, prolonged insolvency proceedings reduced the practical consequences of default, encouraging delay by borrowers and repeated restructuring by lenders.

The introduction of a credible, time-bound insolvency framework altered these expectations. The possibility of losing managerial control increased the costs of strategic default, while financial institutions gained greater confidence in the enforceability of contractual rights. [35]Borrowers became more conscious of insolvency risks, and lenders adopted more disciplined credit assessment and earlier intervention strategies.

This behavioural shift extends beyond individual cases, strengthening investor confidence, improving financial discipline, and contributing to a more predictable commercial environment.

- **Corporate Governance Beyond Insolvency**

The influence of the IBC extends well beyond companies that actually enter insolvency proceedings. Its existence has reshaped governance practices across corporate India.

Boards now devote greater attention to debt sustainability, risk management, liquidity, disclosure obligations, and financial discipline. Financial institutions have strengthened credit monitoring, while investors increasingly incorporate insolvency risk into corporate valuation.

In this sense, the IBC performs a preventive function. By creating credible consequences for financial distress, it encourages stronger governance and earlier corrective action. Its greatest

[34] Insolvency and Bankruptcy Code, No. 31 of 2016, § 29A.
[35] Insolvency Law Committee, *Report of the Insolvency Law Committee* (2018).

institutional achievement may therefore lie not only in resolving insolvent companies but also in reducing the likelihood of insolvency itself.[36]

ECONOMIC CONSTITUTIONALISM AND THE JUDICIAL CONSTRUCTION OF THE INSOLVENCY AND BANKRUPTCY CODE

- **Constitutionalising Insolvency Law**

Commercial legislation has traditionally been viewed as distinct from constitutional law. Insolvency proceedings, in particular, were long regarded as technical mechanisms concerned with debt enforcement, asset distribution, and financial restructuring. The jurisprudence developed under the Insolvency and Bankruptcy Code, 2016 (IBC), however, has fundamentally altered this perception. Through a series of landmark decisions, the Supreme Court has progressively transformed insolvency law into a constitutional discourse where market efficiency is examined alongside equality, fairness, institutional competence, and the rule of law.[37]

This constitutionalisation does not mean that the Constitution directly regulates every commercial transaction. Rather, it reflects the principle that economic legislation derives legitimacy from its conformity with constitutional values such as transparency, procedural fairness, reasoned decision-making, proportionality, and equality.[38]

The constitutional significance of the IBC lies in reconciling two complementary objectives. While it promotes economic efficiency through time-bound resolution and creditor autonomy, it also ensures that these objectives operate within a framework of fairness, accountability, and non-arbitrariness. The Supreme Court's jurisprudence consistently seeks to maintain this balance.[39]

- ***Innoventive Industries*: Establishing the Primacy of the Code**

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[36] OECD, *G20/OECD Principles of Corporate Governance* (2023).

[37] *Swiss Ribbons (P) Ltd. v. Union of India*, (2019) 4 S.C.C. 17.

[38] INDIA CONST. arts. 14, 19(1)(g), 21.
[39] *Swiss Ribbons (P) Ltd.*, (2019) 4 S.C.C. 17.

The Supreme Court's decision in **Innoventive Industries Ltd. v. ICICI Bank Ltd. (2017)** marked the first major judicial interpretation of the IBC and established its institutional foundations[40]. The dispute concerned whether state legislation protecting certain industrial undertakings could prevent the commencement of insolvency proceedings. Rejecting this contention, the Court held that the IBC constituted a comprehensive and overriding framework governing insolvency resolution. Allowing debtors to rely on parallel legal regimes, it observed, would defeat the legislative purpose of the Code.[41]

Beyond statutory interpretation, the Court emphasised that certainty in insolvency law is essential for commercial confidence, investment, and financial stability. By affirming the supremacy and coherence of the IBC, **Innoventive Industries** established legal certainty as a constitutional value underpinning India's insolvency framework.[42]

- ***Swiss Ribbons*: Insolvency Law as a Constitutionally Valid Economic Reform**

If **Innoventive Industries** established the primacy of the Code, **Swiss Ribbons Pvt. Ltd. v. Union of India (2019)** affirmed its constitutional validity.[43]

The principal challenge alleged that the distinction between financial and operational creditors violated Article 14. The Supreme Court rejected this argument, holding that Article 14 permits reasonable classification where it bears a rational connection to legislative objectives. Financial creditors possess greater expertise in credit assessment, restructuring, and commercial evaluation, making their central role in the Committee of Creditors constitutionally justified.[44]

The Court further clarified that the IBC is aimed at **resolution rather than debt recovery**, recognising that preserving enterprise value serves broader public interests beyond individual creditor claims.

[40] *Innoventive Indus. Ltd. v. ICICI Bank*, (2018) 1 S.C.C. 407.
[41] *Innoventive Indus. Ltd.*, (2018) 1 S.C.C. 407.
[42] *Innoventive Indus. Ltd.*, (2018) 1 S.C.C. 407.

[43] *Swiss Ribbons (P) Ltd. v. Union of India*, (2019) 4 S.C.C. 17.

[44] *Swiss Ribbons (P) Ltd.*, (2019) 4 S.C.C. 17.

Equally significant was the Court's endorsement of judicial restraint in matters of economic policy[45]. Recognising legislative expertise in designing commercial regulatory frameworks, it held that constitutional review should intervene only where legislation is manifestly arbitrary, reinforcing the principles of institutional competence and democratic legitimacy[46].

- ***Essar Steel* and the Doctrine of Commercial Wisdom**

The judgment in **Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta (2019)** is perhaps the most influential decision under the IBC.[47] It defined the constitutional relationship between courts and commercial institutions. The Supreme Court held that adjudicating authorities cannot reassess the commercial merits of a resolution plan approved by the Committee of Creditors[48]. Decisions concerning business viability, restructuring, and financial feasibility involve commercial expertise beyond the institutional competence of courts.

The doctrine of **commercial wisdom** therefore allocates institutional responsibility[49]: financial creditors determine commercial outcomes, while courts ensure compliance with statutory requirements and constitutional safeguards. Judicial review remains available where legal provisions or procedural fairness are violated, but not to substitute judicial preferences for commercial judgments. The significance of **Essar Steel** extends beyond insolvency law by reinforcing constitutional governance based on institutional competence rather than institutional supremacy[50].

- ***Ebix Singapore*: Certainty as a Constitutional Value**

In **Ebix Singapore Pvt. Ltd. v. Committee of Creditors of Educomp Solutions Ltd. (2021)**, the Supreme Court further strengthened the integrity of the insolvency framework by emphasising commercial certainty.[51]

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[45] *Swiss Ribbons (P) Ltd.*, (2019) 4 S.C.C. 17.
[46] *Swiss Ribbons (P) Ltd.*, (2019) 4 S.C.C. 17.
[47] *Comm. of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 S.C.C. 531.

[48] *Comm. of Creditors of Essar Steel India Ltd.*, (2020) 8 S.C.C. 531.

[49] *K. Sashidhar v. Indian Overseas Bank*, (2019) 12 S.C.C. 150.
[50] *Comm. of Creditors of Essar Steel India Ltd.*, (2020) 8 S.C.C. 531.
[51] *Ebix Singapore (P) Ltd. v. Comm. of Creditors of Educomp Solutions Ltd.*, (2022) 2 S.C.C. 401.

The Court held that a successful resolution applicant cannot unilaterally withdraw or modify an approved resolution plan merely because market conditions have changed. Resolution plans are not ordinary contracts but integral components of a statutory process involving multiple stakeholders whose decisions depend upon finality and predictability[52]. By protecting certainty within insolvency proceedings, the Court recognised legal predictability as an essential constitutional value supporting economic governance.

- ***Vidarbha Industries*: Judicial Discretion and the Limits of Mechanical Insolvency**

In **Vidarbha Industries Power Ltd. v. Axis Bank Ltd. (2022)**, the Supreme Court introduced an important qualification to earlier jurisprudence by holding that the National Company Law Tribunal possesses limited discretion while considering applications under Section 7 of the IBC.[53]

On the facts, the corporate debtor possessed a substantial regulatory award capable of resolving its financial difficulties, suggesting that immediate insolvency might not be economically justified. The decision generated considerable debate, with critics warning that broader judicial discretion could undermine certainty, while supporters argued that rigid application of the law may sometimes produce unjust outcomes. From a constitutional perspective, the judgment illustrates the continuing balance between efficiency and fairness, recognising that exceptional circumstances may justify limited judicial discretion consistent with statutory objectives.[54]

- ***Rainbow Papers*: Equality Among Stakeholders and Legislative Clarification**

In **State Tax Officer v. Rainbow Papers Ltd. (2022)**, the Supreme Court considered whether statutory government dues could qualify as secured debts within insolvency proceedings.[55]

The decision generated uncertainty regarding the priority structure established by the IBC, prompting subsequent judicial interpretation and legislative clarification.[56] The controversy

[52] *Ebix Singapore (P) Ltd.*, (2022) 2 S.C.C. 401.

[53] *Vidarbha Indus. Power Ltd. v. Axis Bank Ltd.*, (2022) 8 S.C.C. 352.

[54] *Vidarbha Indus. Power Ltd.*, (2022) 8 S.C.C. 352.

[55] *State Tax Officer v. Rainbow Papers Ltd.*, (2022) 9 S.C.C. 330.

highlights that insolvency law governs not only private creditors but also the position of the State within the insolvency process, requiring a careful balance between fiscal interests, commercial efficiency, and legislative coherence.

- **The Emerging Constitutional Identity of the IBC**

Collectively, these judgments demonstrate that the Insolvency and Bankruptcy Code has acquired a constitutional identity extending beyond its statutory framework.[57]

The Supreme Court has consistently interpreted the Code through four interrelated constitutional principles:

- **Institutional competence**, recognising that commercial decisions should ordinarily rest with financially sophisticated creditors.
- **Rule of law and legal certainty**, through predictable and time-bound insolvency procedures.
- **Procedural fairness**, ensuring that commercial autonomy remains subject to statutory safeguards.
- **Economic efficiency in the public interest**, acknowledging that insolvency law serves broader societal objectives beyond debt collection. [58]

These principles demonstrate that the IBC is no longer merely a commercial statute. It has evolved into a constitutional institution governing the relationship between markets, private enterprise, and public authority, illustrating that economic governance itself is a constitutional project grounded in both market efficiency and institutional legitimacy[59].

PROMISE, PERFORMANCE, AND PERSISTENT CHALLENGES: A CRITICAL EVALUATION OF THE INSOLVENCY AND BANKRUPTCY CODE

- **Measuring Success: Beyond Resolution Statistics**

[56] Insolvency and Bankruptcy Code (Amendment) Act, 2023; *State Tax Officer v. Rainbow Papers Ltd.*, (2022) 9 S.C.C. 330.
[57] *Swiss Ribbons (P) Ltd.*, (2019) 4 S.C.C. 17; *Comm. of Creditors of Essar Steel India Ltd.*, (2020) 8 S.C.C. 531.
[58] *Swiss Ribbons (P) Ltd.*, (2019) 4 S.C.C. 17; *Innoventive Indus. Ltd.*, (2018) 1 S.C.C. 407.
[59] *Swiss Ribbons (P) Ltd.*, (2019) 4 S.C.C. 17; *Comm. of Creditors of Essar Steel India Ltd.*, (2020) 8 S.C.C. 531.

The success of an insolvency regime cannot be measured merely by the number of completed proceedings. Such an approach confuses procedural activity with institutional effectiveness. A meaningful assessment must consider whether the framework preserves enterprise value, strengthens corporate governance, improves credit discipline, reduces systemic financial risk, and enhances market confidence.[60]

Measured against these objectives, the Insolvency and Bankruptcy Code (IBC) has brought significant institutional change. The existence of a credible insolvency mechanism has altered the behaviour of borrowers and lenders alike[61]. Promoters now recognise that persistent default may result in the loss of managerial control, while financial institutions possess a stronger legal framework for addressing financial distress before asset values deteriorate.

The Code has also transformed banking practices by replacing repeated restructuring and prolonged negotiations with a greater emphasis on timely commercial resolution. However, these achievements remain constrained by persistent implementation challenges that continue to affect its effectiveness.[62]

- **The Problem of Time and Institutional Capacity**

One of the greatest challenges confronting the IBC is the widening gap between its statutory timelines and practical implementation. The Code is founded on the principle that insolvency proceedings should be completed swiftly because prolonged uncertainty erodes enterprise value[63]. As delays increase, customers shift to competitors, employees leave, suppliers withdraw, and productive assets depreciate.

In practice, however, many proceedings extend well beyond the prescribed timelines due to complex litigation, repeated appeals, valuation disputes, and, most importantly, the limited institutional capacity of the **National Company Law Tribunal (NCLT[64])**, which supervises every major stage of the Corporate Insolvency Resolution Process. Rising case volumes, vacancies in judicial and technical positions, administrative constraints, and inadequate

[60] BANKRUPTCY LAW REFORMS COMM., *THE REPORT OF THE BANKRUPTCY LAW REFORMS COMMITTEE* vol. I (2015).
[61] Insolvency and Bankruptcy Board of India, *IBC Newsletter* (latest ed.).
[62] Reserve Bank of India, *Financial Stability Report* (latest relevant ed.).
[63] Insolvency and Bankruptcy Code, No. 31 of 2016, § 12.
[64] Insolvency Law Committee, *Report of the Insolvency Law Committee* (2020).

infrastructure have significantly slowed admissions, approvals, and liquidation proceedings, reducing creditor recoveries and weakening confidence in the insolvency framework.

These challenges demonstrate that the principal obstacle to the IBC is no longer legislative design but effective institutional implementation. Strengthening the capacity of the NCLT[65] is therefore essential to achieving the Code's objective of timely and value-maximising insolvency resolution.

- **Haircuts, Value Maximisation, and the Economics of Resolution**

One of the most debated aspects of the IBC concerns the substantial "haircuts" accepted by financial creditors under certain resolution plans. Public criticism often treats these reductions as evidence of institutional failure.[66]

Such criticism, however, overlooks the objective of insolvency law, which is to maximise the realisable value of distressed assets rather than recover the full historical value of outstanding debt. Since financially distressed companies rarely retain assets equal to their liabilities, significant reductions may reflect economic reality rather than legal failure. Nevertheless, exceptionally high haircuts raise legitimate concerns regarding valuation methods, transparency, competitive bidding, and market participation. The challenge is therefore not to eliminate haircuts but to ensure that recoveries accurately reflect fair market value.[67]

- **Operational Creditors and the Search for Equitable Treatment**

The distinction between financial and operational creditors remains one of the most debated features of the IBC[68].Financial creditors dominate the Committee of Creditors because they possess the expertise required to evaluate restructuring proposals. Operational creditors—including suppliers, employees, and service providers—generally lack comparable voting rights.

While this distinction is economically justified, concerns remain regarding distributive fairness. Small suppliers and employees often suffer disproportionately during insolvency despite being integral to the commercial ecosystem. The challenge is therefore to preserve

[65] Ministry of Corporate Affairs, *Annual Report* (latest ed.).
[66] Reserve Bank of India, *Financial Stability Report* (latest ed.).
[67] *Comm. of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 S.C.C. 531.
[68] Insolvency and Bankruptcy Code, No. 31 of 2016, §§ 5(20), 5(21), 21.

commercial efficiency while ensuring that operational creditors receive fair treatment consistent with statutory safeguards and judicial interpretation.[69]

- **Cross-Border Insolvency: The Next Frontier**

Globalisation has transformed corporate insolvency into an increasingly transnational phenomenon. Modern corporations frequently maintain assets, creditors, and operations across multiple jurisdictions, making purely domestic insolvency proceedings insufficient.

Although the IBC provides limited mechanisms for international cooperation, India has yet to adopt a comprehensive cross-border insolvency framework based on the **UNCITRAL Model Law**[70]. This creates uncertainty regarding recognition of foreign proceedings, overseas assets, and coordination between jurisdictions.

The insolvency proceedings involving **Jet Airways (India) Ltd.** demonstrated both the necessity and complexity of cross-border cooperation.[71] As India's economy becomes increasingly integrated with global markets, comprehensive cross-border insolvency legislation will become indispensable.

- **Insolvency in the Age of Technology and Artificial Intelligence**

Technological developments present significant opportunities for improving insolvency administration.Digital information utilities already reduce informational asymmetry through authenticated financial records.[72] Future innovations such as automated claim verification, digital document management, predictive valuation, and artificial intelligence-assisted analysis can further improve efficiency.

However, technological tools must remain subject to legal oversight. Insolvency decisions involve commercial judgment, fairness, and stakeholder rights that cannot be delegated

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[69] *Swiss Ribbons (P) Ltd. v. Union of India*, (2019) 4 S.C.C. 17.

[70] U.N. Comm'n on Int'l Trade Law, *UNCITRAL Model Law on Cross-Border Insolvency* (1997).
[71] *State Bank of India v. Jet Airways (India) Ltd.*, Company Appeal (AT) (Insolvency) No. 707 of 2019 (NCLAT).

[72] Insolvency and Bankruptcy Code, No. 31 of 2016, pt. IV.

entirely to algorithms. Technology should therefore enhance, rather than replace, institutional decision-making.[73]

- **The Future of Reform: Institutional Maturity over Legislative Expansion**

Since its enactment, the IBC has undergone continuous legislative and judicial refinement. Future success, however, depends less on further statutory amendments than on strengthening institutional capacity.[74] Key priorities include improving the NCLT through timely appointments and technological modernisation, adopting a comprehensive cross-border insolvency framework, encouraging pre-insolvency restructuring mechanisms—particularly for MSMEs—and maintaining judicial restraint that respects the balance between commercial autonomy and constitutional accountability.[75]

The long-term effectiveness of the Code will ultimately depend not on expanding legislation but on developing stronger institutional expertise among courts, insolvency professionals, regulators, financial institutions, and market participants.

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[73] Insolvency and Bankruptcy Board of India, *Information Utilities Regulations*.

[74] Insolvency Law Committee, *Report of the Insolvency Law Committee* (2020).

[75] *K. Sashidhar v. Indian Overseas Bank*, (2019) 12 S.C.C. 150; *Comm. of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 S.C.C. 531.

CONCLUSION

A decade after its enactment, the **Insolvency and Bankruptcy Code, 2016** stands as one of the most significant legal reforms in India's contemporary economic history. More than replacing fragmented insolvency laws with a unified framework, it redefined the philosophy of corporate failure by shifting from a debtor-centric to a creditor-driven model, prioritising collective resolution, and introducing a time-bound institutional process. In doing so, the Code transformed insolvency into an instrument of economic governance.[76]

This paper has argued that the IBC extends well beyond debt recovery. It has strengthened corporate governance, enhanced promoter accountability, improved credit discipline, and fostered a more responsible credit culture. Judicial decisions such as *Swiss Ribbons*, *Essar Steel*, *Innoventive Industries*, and *Ebix Singapore* have further established the Code as a constitutional institution where fairness, legal certainty, institutional competence, and economic efficiency shape commercial regulation. Despite these achievements, persistent delays, institutional capacity constraints, valuation disputes, and the absence of a comprehensive cross-border insolvency framework continue to limit its effectiveness[77]. These challenges demonstrate that legislative reform alone cannot guarantee success; effective insolvency administration depends upon strong institutions, professional expertise, consistent jurisprudence, and sustained regulatory commitment.

The future of Indian insolvency law therefore lies less in frequent statutory amendments than in strengthening institutional implementation. As India's economy becomes increasingly global and technologically advanced, the IBC must continue to evolve while preserving its commitment to transparency, efficiency, and fairness.[78]

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[76] Insolvency and Bankruptcy Code, No. 31 of 2016; BANKRUPTCY LAW REFORMS COMM., *THE REPORT OF THE BANKRUPTCY LAW REFORMS COMMITTEE* vol. I (2015).

[77] *Swiss Ribbons (P) Ltd. v. Union of India*, (2019) 4 S.C.C. 17; *Comm. of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 S.C.C. 531; *Innoventive Indus. Ltd. v. ICICI Bank*, (2018) 1 S.C.C. 407; *Ebix Singapore (P) Ltd. v. Comm. of Creditors of Educomp Solutions Ltd.*, (2022) 2 S.C.C. 401.

[78] Insolvency Law Committee, *Report of the Insolvency Law Committee* (2020).

Ultimately, the Insolvency and Bankruptcy Code is more than legislation governing corporate failure. It is a framework through which a constitutional democracy allocates economic risk, preserves enterprise value, disciplines market participants, and upholds the rule of law. Its enduring legacy will be measured not only by recovery rates or resolution statistics but by its contribution to a corporate culture founded on accountability, commercial responsibility, and constitutional values[79]. A modern economy is judged not only by how it enables businesses to succeed, but also by how effectively its legal institutions respond when they fail.[80]

[79] THOMAS H. JACKSON, *THE LOGIC AND LIMITS OF BANKRUPTCY LAW* (1986); JOSEPH A. SCHUMPETER, *CAPITALISM, SOCIALISM AND DEMOCRACY* (1942)
[80] *Swiss Ribbons (P) Ltd. v. Union of India*, (2019) 4 S.C.C. 17; Insolvency and Bankruptcy Code, No. 31 of 2016.

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