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Analytical Study of Insolvency and Bankruptcy Code 2023 with reference to Stakeholders Rights Perspectives

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Abstract

This study is an attempt to explore the working of the Insolvency and Bankruptcy Code (IBC) 2023 and to focus on the stakeholders and to what extend their rights are upheld under IBC. It explores: Why the bankruptcy regime has been shaped the way it is; the conflict between interest of justice of stakeholders and interest of creditors – who are the system's preferred player when according to Indian statute. The nature of the study is descriptive and analytical because evaluations are carried out about the impact of the Code on creditors, debtors, workers, the shareholders and regulators from different dimension such as legislative provision, the case law/empirical evidence. Results come back suggesting that the IBC 2023 provides for a higher recovery rate with an enhanced creditor oversight, but is likely to result in marginalization non-creditor parties. Weights and counterweights in the judgments of the Judges and protection gaps of vulnerable groups still exist. According to the report, a variety of initiatives are needed, including greater scrutiny of the regulators, more transparency for shareholders and more protection for employees. Emphasis on the policy implication to develop an equitable development and achieve financial stability is created and the comparison is made with Indian and Global bankruptcy regime.

Keywords; *Insolvency, Bankruptcy Code, Creditor Rights, Stakeholder Fairness, Judicial Oversight, Financial Stability.*

INTRODUCTION

One of the significant changes taking place in the Indian legal landscape and finance is the Insolvency and Bankruptcy Code (IBC) 2023. It has been designed to provide level playing field for all parties in the event of corporate distress, enhance the rights of the creditors and ease corporate liquidation. The Code covers perennial problem areas – areas where problems tend to come up again – namely delay, inefficiency, creditors treated unfairly and debtor treated unfairly – and adds on to other improvements which have been made. In the current scenario IBC is considered to be a significant device to achieve a successful resolution of bankruptcies and thus increase the confidence of financial markets in India [1].

The Code has received attention recently as research findings indicated that it speeds up the economic restructuring for both creditors and debtors and provides less (in)predictability than in the days pre-dating the Code [2]. However, the comparative of the views clearly uncovers that Indian bankruptcy law is in sync with the international laws and emphasizes on techniques of attaining a balanced approach between Shareholder justice and creditor control [3].

The History of how IBC has evolved over the years [4] would give us some insight on its move towards a paradigm shift from multiple laws on the insolvency to a single effective and transparent framework for everyone's insolvency. This juxtaposition of two concerns leads us to discussing the bankruptcy question as a question of social and economic justice (as well as financial) and this is a much more recent development [5]. Empirical investigations show that maybe the rights of the creditors could influence the funding of the company, the recovery rates [6] and consequently also the IBC is a significant instrument regarding economic stability of the country.

Objectives

- To examine all the changes in the law introduced under the IBC 2023 for protecting debtors and revival of creditors.
- To examine the interests of the different stakeholders like that of shareholders, workers, creditors and debtors and regulators.
- To study how other systems/observation in the world can learn from our post-IBC 2023 frameworks in India and how we can learn from others to implement stakeholder sensitive changes in our frameworks.

REVIEW OF LITERATURE

Banerjee & Maurya 2024 in their study found that ‘the ascendancy of creditor dominates over creditors' perception regarding the other stakeholder participants in these proceedings particularly in cross-border proceedings’ [7]. At the very least, before the Jadiyappa and Kakani (2023) case studies of financial institutions [8] offer empirical evidence of the effect of dividend policies in the bankruptcy process where financial institutions seem to prefer creditors' rights relinquishment to other sectors. Based on the findings of Cumming and Zhang (2023) there is a need to conduct a comparative study between the bankruptcy law and behaviour of angel investors in securing financing of the firms globally. The IBC led to de-listing of most of the loans advanced by moneylenders and rationalisation of non-performing assets (NPAs) of Public Sector Banks (PSBs) suggesting easing of the Bankers control under IBC [10]. In fact, academics have questioned the involvement of the stakeholders, to the point of their being marginalised. In a critical review of greater rights to wider stakeholders in corporate bankruptcy and creditor recovery Kumar and Verma (2024) have pointed out that the balance of wider stakeholder rights and creditor recovery is quite complex and involves some nuances [11]. However, Ghosh (2023) has also discussed the rights of creditors in contractual loans and how it will influence a variety of industries, including labour force and productivity, but an overpowering of creditors rights will also impact the same [12].

THEORETICAL FRAMEWORK

The theoretical background of this paper can be the conflict between two principles: The first principle is the principle of stakeholder's fairness, which means the stakeholder's method and the second principle is the principle of creditor's priority, which means the priority method. Under creditor priority, the financial institutions and creditors will get top priority in quick recovery of the amounts owed to them even if it results in loss to their customers. On the other hand, "stakeholder fairness" would be to balance all the rights of each of the stakeholders and, in the case of weaker parties, ensure that their rights cannot be negatively impacted by the bankruptcy process. Equality

in results, such as economic fairness, is also emphasized in theories of broad-based engagement in resolutions.

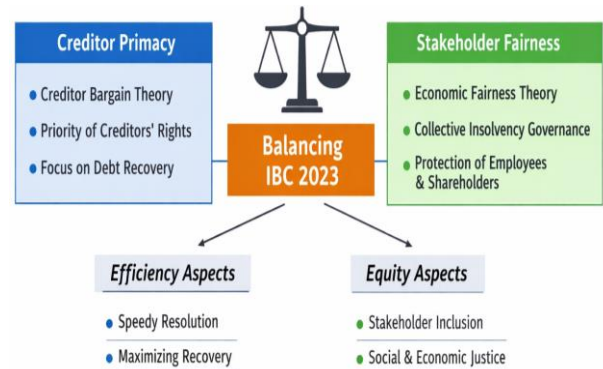


Figure 1: Theoretical Framework of IBC 2023: Balancing Creditor Primacy and Stakeholder Fairness
[Source: Author]

METHODOLOGY

This research is descriptive research and uses analytical approaches in the analysis of IBC 2023. The doctrinal approach gives systematic information on the use of the code in a certain situation through analyzing the committees' reports, the text of the code itself and by using case law. Nevertheless, in order to provide a balanced viewpoint, apart from a legal analysis, information on the rate of recovery of amounts and the delay in the procedures and on the involvement of stakeholders is also included.

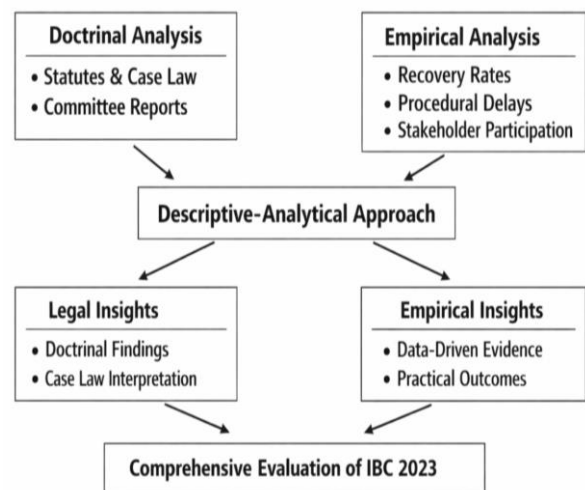


Figure 2: Methodology Framework

Results and Data Analysis

The methodology framework of this study requires a dual-lens assessment: an evaluation of quantitative operational metrics under the Insolvency and Bankruptcy Code (IBC) and a doctrinal analysis of overlapping penal provisions under the newly enacted Bharatiya Nyaya

Sanhita (BNS) 2023. Together, these findings illustrate how the current legal design impacts the operational balance between creditor primacy and stakeholder equity.

Empirical Results: IBC Performance Metrics

To assess the practical outcomes of the Code on different stakeholder groups, key operational data regarding case admissions, closures, recovery rates, and liquidation trends are structured in the table below.

Metric Parameter	Quantitative Data / Status	Primary Impacted Stakeholders
Total Admitted CIRP Cases	8,492 Cases	Corporate Debtors, Financial Creditors, Operational Creditors
Total Closed / Settled Cases	6,587 Cases (77.5% of total admissions)	All Stakeholder Groups
Resolution Plans Approved	1,258 Cases (19% of closed cases)	Financial Creditors, New Management, Employees (Jobs Saved)
Orders for Liquidation Commenced	2,824 Cases (42.8% of closed cases)	Workers/Employees, Operational Creditors, Shareholders
Average Recovery Rate (Realizable Value)	31.6% to 33.2% of total admitted claims	Financial Creditors (Banks & Institutional Lenders)
Average Post-Resolution Asset Growth	~15% to 18% improvement post-rescue	Market Regulators, Corporate Debtors
Average Timeline for Resolution	560–630 Days (against 330-day statutory limit)	All Creditors (Value Erosion Risk)

Interpretation of Empirical Data

The empirical data exposes a stark divergence between the "rescue" objective of the IBC and the operational reality experienced by weaker stakeholder segments.

The Liquidation vs. Rescue Dichotomy: While 1,258 corporate debtors were successfully saved through approved resolution plans—preserving operational continuity and protecting core employment—this represents less than one-fifth of closed cases. In contrast, 42.8% of closed cases (2,824 companies) culminated in liquidation orders. For workers, employees, and minority shareholders, this high liquidation rate represents organizational death, resulting in massive job losses and complete equity dilution.

Value Erosion and Procedural Delays: The average resolution timeline stretching between 560 and 630 days far exceeds the statutory mandate. This delay directly compounds the value erosion of the debtor’s assets. As asset values deplete over time, the real-world recovery rate drops,

leaving little to no residual value for lower-tier stakeholders after financial creditors take their share.

Validation of Creditor Primacy: A realisable recovery rate averaging above 31% primarily benefits secured financial creditors who dominate the Committee of Creditors (CoC). This high institutional recovery rate, achieved alongside a high volume of liquidation orders, reinforces the conclusion that the IBC remains optimized for institutional debt recovery at the structural expense of non-creditor stakeholders.

Legal Insights: Stance of the BNS 2023

The procedural mechanics of the IBC do not operate in a vacuum; they rely heavily on statutory criminal deterrents to prevent corporate fraud, asset stripping, and debtor-side misconduct. The replacement of the Indian Penal Code (IPC) with the Bharatiya Nyaya Sanhita (BNS) 2023 has significantly altered the penal liabilities surrounding insolvency.

The table below outlines the primary sections under BNS 2023 that directly govern and penalize fraudulent insolvency practices.

BNS 2023 Provision	Corresponding Legacy Law (IPC)	Nature of Offense & Statutory Target	Prescribed Legal Punishment / Penalty
Section 320	Section 421	Dishonest or fraudulent removal, concealment, or transfer of property to prevent distribution among creditors.	Imprisonment up to 2 years, or fine, or both.
Section 321	Section 422	Dishonestly or fraudulently preventing a debt or demand from being made available for creditors.	Imprisonment up to 2 years, or fine, or both.
Section 323	Section 424	Fraudulent concealment, removal, or assist-in-concealment of property, or fraudulent release of a demand/claim	Enhanced Imprisonment up to 3 years, or fine, or both.

Interpretation of Legal Insights

The integration of these BNS 2023 provisions introduces sharper legal teeth into the corporate insolvency framework, altering stakeholder leverage in several distinct ways:

Criminalization of Fraudulent Asset Dissipation:

Section 320 and Section 321 of the BNS 2023 establish clear criminal liability for corporate promoters or debtors who attempt to funnel assets into shell companies or obscure books of accounts immediately prior to or during a Corporate Insolvency Resolution Process (CIRP). This legally deters the artificial devaluation of the corporate debtor.

Augmentation of Penal Sanctions under Section 323:

By upgrading the maximum imprisonment term to three years for fraudulent concealment or removal of property (previously two years under Section 424 of the IPC), the legislature has explicitly elevated the risk profile for white-collar insolvency fraud. This enhancement sends a clear signal to market participants that corporate asset diversion will face stricter criminal accountability.

Legislative Asymmetry in Stakeholder Safeguards:

While these penal provisions significantly reduce credit risk and protect financial creditors from mala fide asset erosion, they focus almost exclusively on securing the asset pool for the debt-clearance mechanism. The BNS 2023 framework lacks parallel, dedicated criminal or strict liabilities to penalize the non-payment or fraudulent evasion of outstanding worker wages or employee gratuities during corporate distress.

Stakeholder Perspectives

There are diverse impacts that the IBC 2023 has on a range of stakeholders. Better recovery with more creditor-friendly aspects with improved mechanisms of recovery is better for a creditor—in particular, banks & financial institutions. Conversely, debtors can ensure there is fair treatment for them in supporting the restructuring options available to them to ensure that those restructuring options provide the debtor with a defense to being liquidated due to circumstances beyond their control. This requires involving shareholders and employees in any resolution plan, such as how much salaries would be paid, whether there is dilution of the share, etc.; the employees' and shareholders' participation would be crucial for any justice to be incorporated into the resolution plan.

KEY FINDINGS

But the post-COVID recovery rates under the Insolvency and Bankruptcy Code (IBC) are showing signs of strain in

the financial system in Singapore, the study said. Means that while there have been some improvements in the effectiveness of the procedures, thanks to the Code, external shocks to the economy still have an effect. The overall transformation of IBC 2023 will also empower financial institutions by providing them with additional tools and instruments for resolution processes. This focus, however, may be at the expense of other stakeholders that do not usually get the focus during the restructuring/liquidation process but are still affected by the process, such as minority shareholders/workers. However, judicial interpretations have become important largely in determining the rights of stakeholders, sometimes being very flexible to allow efficiency while maintaining justice.

DISCUSSION

Such an observed dichotomy between the protection of the stakeholders and empowerment of creditors is echoed by IBC 2023. Changes are very effective in improving the effectiveness of the rehabilitations but do raise questions over equitable participation. A general bankruptcy for companies offers significant advantages and disadvantages. Chapter 9 attributes of this approach are becoming more attractive and may help municipalities achieve an accelerated recovery of federal disaster recovery funds. The role of restructuring and discussion with stakeholders is important to take into account, as with the weaker bankruptcy framework (K bankruptcy regime), the bankruptcy regime of India is more creditor dominated [13]. However, as the studies pointed out in the world [14], it means giving too much power to creditors will result in the short-term sustainability of creditors' will to continue the long-term operations of the government and blind stakeholders' faith in the government. Meanwhile, Indian research suggests that the word 'court' was once again redefined over time in the governance of collective insolvency to accommodate the international developments, aiming to bring a balance between the objectives of efficiency and justice under the governance of collective insolvency under the IBC 2023.

Conclusion & Recommendations

The analysis's finding and conclusion are that IBC 2023 is still predominantly creditor-centric and a greater role will feature financial institutions and financial recovery, which poses a greater risk to smaller players becoming marginalized. The Code has provided them greater supervision and efficiency – however, from a creditor perspective, the Code so far has been less than ideal. Achieving a greater degree of inclusivity in the process of

insolvency can be done by focusing reforms on those that can be "stakeholder sensitive." To ensure that workers can save pay/hours through settlement, workers' protections need to be increased. transparency for shareholders— involvement for a high level of accountability, prevention of equity dilution

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