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Critical Study on the Evolution of Corporate Governance norms under the Shadow of the IBC in India

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ABSTRACT

The evolution of corporate governance norms in India has been significantly influenced by the introduction of the IBC in 2016. Designed to streamline insolvency resolution and improve creditor recovery, the IBC has transformed the corporate governance landscape, shifting the focus from shareholder-centric models to a more stakeholder-inclusive approach. This study critically examines the impact of the IBC on corporate governance practices in India, highlighting the challenges and opportunities it presents for businesses, creditors, and regulators. The IBC's emphasis on transparency, accountability, and financial discipline has redefined the roles and responsibilities of corporate boards, promoting a culture of timely debt resolution and financial prudence. It has also introduced stricter oversight mechanisms, reducing the scope for managerial misconduct and enhancing creditor rights. However, the rapid implementation of the IBC has also exposed several challenges, including procedural delays, inconsistent judicial interpretations, and the need for more robust corporate governance frameworks to prevent financial distress. This paper explores these issues, drawing insights from recent case studies and analyzing the evolving role of insolvency professionals, resolution professionals, and committee of creditors in the governance of distressed companies. It also assesses the long-term implications of the IBC on corporate accountability, investor confidence, and economic stability. This study underscores the need for continuous reforms to strengthen India's corporate governance regime, ensuring that the IBC remains a

powerful tool for corporate recovery and economic growth. It highlights the importance of aligning corporate governance norms with global best practices, fostering a culture of financial discipline, and promoting sustainable business practices in a rapidly changing economic landscape.

KEYWORDS

Corporate Governance, IBC, Financial Discipline, Creditor Rights, Corporate Accountability.

1. INTRODUCTION

Corporate governance refers to the systems, principles, and processes by which companies are directed and controlled. In India, the need for robust corporate governance mechanisms became particularly apparent in the wake of high-profile corporate scandals, non-performing asset crises, and ineffective resolution mechanisms that failed to protect stakeholders' interests. The enactment of the IBC, 2016 marked a watershed moment in India's corporate legal framework, directly impacting how companies are managed and held accountable.

The IBC was introduced to streamline the insolvency resolution process, consolidate existing laws related to insolvency, and provide a time-bound mechanism for resolution. However, beyond its primary function, the Code has significantly influenced corporate governance norms, ushering in a new era of accountability, transparency, and efficiency in corporate functioning¹.

India's corporate sector faced a crisis of credibility, with promoters often enjoying unchecked control despite financial failures, and creditors struggling to recover dues. The IBC fundamentally altered this landscape by shifting the control of distressed companies from defaulting promoters to an independent resolution professional, under the supervision of the National Company Law Tribunal (NCLT). This change introduced a corporate governance paradigm where stakeholders especially creditors play a pivotal role in decision-making. The evolution of corporate governance norms under the IBC also emphasized the importance of timely disclosures, professional management, and ethical conduct. The Code, by empowering the Committee of

¹ *A Comprehensive Analysis of India's Insolvency and Bankruptcy Laws | Legal Service India - Law Articles - Legal Resources*, <http://www.legalserviceindia.com/legal/article-13123-a-comprehensive-analysis-of-india-s-insolvency-and-bankruptcy-laws.html> (last visited May 13, 2025).

Creditors (CoC), emphasized decision-making based on financial viability and commercial wisdom, rather than promoter interests². Moreover, the concept of the “Resolution Applicant” and the insistence on plans that ensure sustainable business practices has further strengthened governance ideals.

Judicial pronouncements under the IBC have contributed to refining governance standards. The Supreme Court and NCLAT have emphasized fairness, equity, and creditor rights, reinforcing the idea that corporate governance is not just about boardroom ethics but also about stakeholder protection in times of crisis. Thus, the IBC, though primarily an insolvency legislation, has become a transformative force in reshaping corporate governance in India. Its impact is not just limited to companies undergoing resolution but extends as a cautionary tale to all corporates, nudging them toward better compliance, risk management, and accountability frameworks.

2. OBJECTIVES OF THE IBC

The IBC, enacted in 2016, was a landmark reform aimed at addressing the challenges of India’s fragmented and inefficient insolvency framework. Its primary objective is to provide a consolidated, time-bound, and efficient mechanism for the resolution of insolvency and bankruptcy cases involving companies, partnerships, and individuals. One of the central goals of the IBC is to ensure the maximization of the value of assets. Prior to its enactment, companies undergoing insolvency often lost value due to delays and mismanagement. The IBC aims to preserve business continuity and avoid asset deterioration by resolving insolvency within a strict time frame 180 days, extendable up to 330 days³.

Another major objective is to promote entrepreneurship and availability of credit. By providing a reliable legal framework for creditors to recover dues, the Code increases lender confidence, which in turn facilitates better access to credit for businesses. This has a direct impact on India’s business environment and ranking in global indices like the Ease of Doing Business. The Code also emphasizes a creditor-in-control model, shifting decision-making power from defaulting promoters to a Committee

² Aishwarya Agrawal, *Evolution of Corporate Governance in India*, LawBhoomi (Jun. 7, 2024), <https://lawbhoomi.com/evolution-of-corporate-governance-in-india/>.

³ taxguru_in & CS UTKARSH MITTAL, *IBC, 2016 – Objective, Insolvency Resolution Process, Challenges & Way Forward*, TaxGuru (Feb. 14, 2023), <https://taxguru.in/corporate-law/ibc-2016-objective-insolvency-resolution-process-challenges-way-forward.html>.

of Creditors (CoC). This discourages moral hazard and ensures commercial decisions are made by those with the highest financial stake⁴.

IBC seeks to balance the interests of all stakeholders, including operational creditors, financial creditors, employees, and shareholders. It promotes equitable treatment during the resolution process. Further, IBC aims to create a robust institutional framework, with specialized bodies like the National Company Law Tribunal (NCLT), Insolvency and Bankruptcy Board of India (IBBI), and a regulated cadre of Insolvency Professionals (IPs), ensuring consistency, transparency, and expertise in insolvency proceedings.

3. IMPACT OF THE IBC ON CORPORATE GOVERNANCE STRUCTURES

The IBC, 2016, though primarily an insolvency reform, has had a profound impact on corporate governance structures in India. Before its enactment, corporate governance in many Indian companies was weak, with promoters exercising unchecked control even in the face of financial distress. The IBC has changed this narrative by introducing a regime focused on accountability, transparency, and stakeholder-driven decision-making. One of the most significant shifts brought about by the IBC is the transfer of control from the defaulting management to an independent Insolvency Resolution Professional (IRP) during the Corporate Insolvency Resolution Process (CIRP)⁵. This move curbs the misuse of corporate powers by promoters and protects the interests of creditors and other stakeholders.

Another major reform is the empowerment of the Committee of Creditors (CoC), comprising primarily financial creditors. The CoC now plays a central role in decision-making during insolvency, including the approval of resolution plans. This marks a departure from promoter-centric governance to creditor-centric governance, where financial discipline and commercial prudence guide the future of a company. Additionally, Section 29A of the IBC disqualifies defaulting promoters and related parties from bidding for their own companies during insolvency. This discourages wilful defaults and encourages ethical conduct in

⁴ *Constitution of Committee of Creditors (CoC) under Section 21 of Insolvency and Bankruptcy Code 2016 (IBC) - IBC Laws*, <https://ibclaw.in/constitution-of-committee-of-creditors-under-section-21-of-ibc/?print=print> (last visited May 13, 2025).

⁵ taxguru_in & SHIVANAND CHAUDHARY, *Corporate Insolvency Resolution Process (CIRP) Under IBC, 2016*, TaxGuru (May 9, 2022), <https://taxguru.in/corporate-law/corporate-insolvency-resolution-process-cirp-ibc-2016>

corporate affairs⁶.

The IBC has also improved transparency and disclosure norms. Companies are required to maintain accurate financial records and undergo audits, which ensures that information asymmetry is minimized during the resolution process. Moreover, the fear of losing control has made many companies proactive in improving internal governance, risk management, and compliance. Thus, the IBC has acted as a deterrent and simultaneously as a catalyst for stronger corporate governance. In essence, the IBC has not only changed how insolvency is addressed but has also strengthened the core of corporate governance in India.

4. REGULATORY FRAMEWORK FOR CORPORATE GOVERNANCE UNDER IBC

The IBC, 2016, has significantly influenced corporate governance in India by establishing a robust regulatory framework during insolvency proceedings. Though the IBC is not a governance-specific law, it enforces good governance practices by bringing transparency, accountability, and oversight into corporate management, especially during financial distress. The National Company Law Tribunal (NCLT) and the Insolvency and Bankruptcy Board of India (IBBI) are the principal regulatory authorities under the IBC. The NCLT adjudicates insolvency cases and ensures procedural fairness, while the IBBI oversees the conduct of Insolvency Professionals (IPs) and regulates insolvency proceedings⁷.

A core aspect of the regulatory framework is the appointment of an Insolvency Resolution Professional (IRP) to take over the management of the corporate debtor. This professional operates under a defined code of conduct, ensuring independence, neutrality, and professional governance, replacing potentially conflicted or negligent promoters. The Committee of Creditors (CoC), consisting of financial creditors, is a statutory decision-making body that approves resolution plans, evaluates business viability, and ensures that stakeholder interests are protected. The CoC's decisions are guided by commercial wisdom but must comply with legal standards of fairness and non-discrimination,

⁶ Editor IBC Laws, *IBC Laws Blog* *Navigating Ineligibility: An Examination Of Section 29A In The Insolvency And Bankruptcy Code, 2016 – By Adhya Gupta*, <https://ibclaw.blog/navigating-ineligibility-an-examination-of-section-29a-in-the-insolvency-and-bankruptcy-code-2016-by-adhya-gupta/> (last visited May 13, 2025).

⁷ Rachit Garg, *What Is the Role Played by NCLT in Insolvency Proceedings*, iPleaders (Jan. 7, 2021), <https://blog.ipleaders.in/role-played-nclt-insolvency-proceedings/>.

especially toward operational creditors and employees⁸.

5. OPPORTUNITIES AND CHALLENGES FOR DIRECTORS AND MANAGEMENT IN THE POST-IBC ERA

The implementation of the IBC, 2016, has brought about a paradigm shift in the role of company directors and senior management, especially in the context of financial distress. While it has posed new challenges, it has also opened up opportunities for more responsible and accountable corporate leadership. One of the primary challenges is the loss of control during insolvency proceedings. Once a company is admitted under the Corporate Insolvency Resolution Process (CIRP), the board of directors is suspended, and an Insolvency Resolution Professional (IRP) takes over management. This undermines the authority of directors and forces them to relinquish operational powers temporarily, even if they were not directly responsible for the default.

Further, under Section 19 of the IBC, directors are legally obligated to cooperate with the IRP, failing which they may face penalties or prosecution. The fear of personal liability for misconduct or non-cooperation has increased compliance pressure on company executives⁹.

However, the IBC also creates opportunities for directors to strengthen governance practices. Companies now focus more on risk assessment, debt management, and compliance to avoid insolvency. This proactive approach improves overall governance and strategic planning. There is also a growing emphasis on transparency, stakeholder engagement, and financial disclosure, allowing responsible management teams to gain trust and build investor confidence. The IBC imposes stricter accountability on directors and management, it simultaneously encourages a culture of ethical leadership, long-term planning, and corporate resilience transforming challenges into opportunities for improved governance and sustainability.

6. STRIKING A BALANCE BETWEEN CREDITOR RIGHTS AND SHAREHOLDER INTERESTS

One of the central tensions in insolvency proceedings under the IBC, 2016, is balancing the rights of creditors with the interests

⁸ Vanshika Kapoor, *Committee of Creditors- Roles, Responsibilities & Functions*, iPleaders (Jul. 4, 2024), <https://blog.ipleaders.in/committee-of-creditors-roles-responsibilities-functions/>.

⁹ *Section 19 of IBC – Insolvency and Bankruptcy Code, 2016: Personnel to Extend Cooperation to Interim Resolution Professional – IBC Laws*, <https://ibclaw.in/section-19-personnel-to-extend-cooperation-to-interim-resolution-professional/> (last visited May 13, 2025).

of shareholders. While the IBC prioritizes resolution and debt recovery, it also indirectly affects shareholder rights, leading to a complex interplay between financial recovery and corporate ownership. The IBC adopts a creditor-in-control model, where, upon the commencement of the Corporate Insolvency Resolution Process (CIRP), the management of the debtor company vests with an Insolvency Resolution Professional (IRP), and decision-making shifts to the Committee of Creditors (CoC)¹⁰. This shift significantly reduces the role of shareholders, including promoters, during the insolvency process. Shareholders have no voting rights in the CoC, which is empowered to approve or reject resolution plans based on commercial wisdom¹¹.

Despite this, the IBC mandates that resolution plans should aim to maximize asset value and ensure fairness to all stakeholders, including shareholders. Courts have emphasized that while creditors' interests dominate, shareholder rights cannot be entirely ignored, especially in cases where viable restructuring is possible without total equity erosion.

7. ROLE OF RESOLUTION PROFESSIONALS IN CORPORATE GOVERNANCE

The RPs play a critical role in shaping corporate governance during the Corporate Insolvency Resolution Process (CIRP) under the IBC, 2016. Their responsibilities extend beyond insolvency resolution; they are entrusted with ensuring that governance processes are transparent, accountable, and fair to all stakeholders. One of the key roles of an RP is to manage the affairs of the distressed company once the insolvency process is triggered. During this time, the company's board of directors is suspended, and the IRP takes charge. The RP oversees the company's day-to-day operations, ensuring that the company adheres to legal and financial regulations. They act as a neutral and independent figure, preventing the misuse of power by previous management and ensuring that the company operates in the best interest of creditors¹². RPs are responsible for formulating

¹⁰ Devesh Saxena, *All about Corporate Insolvency Resolution Process (CIRP) under IBC, 2016.*, S&D Legal Associates (Sep. 22, 2020), <https://www.sndlegalassociates.com/post/all-about-corporate-insolvency-resolution-process-cirp-under-ibc-2016>.

¹¹ *Comparative Analysis of the Two Insolvency Framework Models, i.e., "Creditor-in-Control" and "Debtor-in-Possession"* – Priyanshu Fauzdar – *IBC Laws*, <https://ibclaw.in/comparative-analysis-of-the-two-insolvency-framework-models-i-e-creditor-in-control-and-debtor-in-possession-priyanshu-fauzdar/> (last visited May 13, 2025).

¹² Diva Rai, *Role and Duties of Resolution Professional under the IBC, 2016*, iPleaders (Jan. 27, 2020), <https://blog.ipleaders.in/role-and-duties-of-resolution-professional-under-the-insolvency-and-bankruptcy-code-2016/>.

a resolution plan, which may involve restructuring the business, selling assets, or other strategies to maximize recovery. In doing so, they collaborate closely with the Committee of Creditors (CoC), which provides input on the proposed plan. The RP's role here is vital in ensuring that all decisions are made based on commercial wisdom rather than personal interests, and that all creditor interests, including those of operational creditors, are equitably considered.

The transparency and ethical standards maintained by the RP are crucial in ensuring the integrity of the resolution process. They are required to make detailed disclosures, ensuring that all stakeholders are informed of developments in the insolvency proceedings. Moreover, RPs help establish a governance framework that enhances compliance, ensuring that the company adheres to regulatory requirements, corporate ethics, and best practices in financial reporting¹³. Resolution Professionals are central to effective corporate governance in distressed companies. They ensure that governance remains impartial, transparent, and focused on resolving financial issues in the most equitable manner possible.

8. CASE STUDIES

- A. One prominent case is Jet Airways. The airline's insolvency process began in 2019 after it defaulted on substantial debts. The insolvency proceedings under IBC highlighted a major challenge in resolving large corporate debts, particularly when the company had both operational creditors (employees, vendors) and financial creditors. The case brought into focus how Resolution Professionals manage complex corporate governance, dealing with the suspension of management, coordination between stakeholders, and ensuring that the resolution plan maximizes asset value. The final outcome involved the sale of the airline to a consortium of investors, but the lengthy resolution process raised concerns about the timeliness of the IBC in dealing with high-profile cases¹⁴.

¹³ *Role, Duties and Rights of a Resolution Professional in Insolvency Proceedings*, Legal Articles in India, <https://www.legalservicesindia.com/law/article/1875/3/Role-Duties-and-Rights-of-a-Resolution-Professional-in-Insolvency-Proceedings> (last visited May 13, 2025).

¹⁴ *Collapsed Resolutions of Aircraft Insolvencies, End of an Icon: An in-Depth Analysis of the Jet Airways Case*, SCC Times (May 6, 2025), <https://www.scconline.com/blog/post/2025/05/06/collapsed-resolutions-of-aircraft-insolvencies-end-of-an-icon-an-in-depth-analysis-of-the-jet-airways-case>.

- B. Essar Steel, which underwent insolvency resolution under IBC after defaulting on loans. The case became significant due to the intense legal battle between the creditors and the promoters. The Committee of Creditors (CoC) was empowered to approve the resolution plan, and the resolution was eventually won by the ArcelorMittal consortium. The Essar Steel case highlighted the effectiveness of the IBC in promoting a creditor-in-control model, with the CoC playing a decisive role in safeguarding creditor interests. However, the case also emphasized the challenges of ensuring fairness to operational creditors and maintaining a balance between different stakeholders' rights¹⁵.

9. RECOMMENDATIONS

While the IBC, 2016, has revolutionized corporate insolvency and governance in India, there are still several areas where improvements can be made to enhance its effectiveness.

9.1 *Timeliness Of The Resolution Process*

Despite the IBC's emphasis on a time-bound resolution process, many cases, particularly those involving large corporations, face delays due to legal challenges, complex asset structures, or lack of clarity in the process. To address this, stricter timelines and procedural reforms should be enforced, ensuring that resolution processes are completed within the prescribed 330 days, with minimal extensions.

9.2 *Balancing Creditors' And Shareholders' Interests*

While the IBC prioritizes creditor recovery, there is a need for better mechanisms to balance the interests of shareholders, particularly minority shareholders, and operational creditors. Ensuring that shareholders receive a fair share of the resolution proceeds, even in distressed situations, will promote fairness and encourage greater stakeholder participation in the process¹⁶.

¹⁵ *Operational Creditors In Insolvency: A Tale Of Disenfranchisement*, <https://www.mondaq.com/india/insolvencybankruptcy/971940/operational-creditors-in-insolvency-a-tale-of-disenfranchisement> (last visited May 13, 2025).

¹⁶ Anubhav Pandey, *Financial Creditors vs. Operational Creditors – Who Is Better off and Why?*, iPleaders (Oct. 5, 2017), <https://blog.ipleaders.in/financial-creditors-vs-operational-creditors-better-off>

9.3 Strengthening The Role of Insolvency Professionals

The role of Insolvency Resolution Professionals (IPs) is crucial, but the current framework requires stronger regulations and training. Standardizing practices and enhancing the qualifications of IPs would ensure greater transparency and reduce the likelihood of malpractice. Additionally, there should be a more robust mechanism for holding IPs accountable for their decisions and actions during the resolution process¹⁷.

9.4 Improving Transparency and Information Sharing

Ensuring greater transparency in the resolution process can minimize disputes. The use of technology and digitization of documents would help in providing timely and accurate information to all stakeholders, improving trust and reducing conflicts during insolvency proceedings.

9.5 Promoting Pre-Packaged Insolvency (PRE-PACKS)

Introducing provisions for Pre-Packaged Insolvency (Pre-Packs) would allow for faster resolutions, particularly for smaller businesses or distressed companies with relatively straightforward financial structures. This would streamline the process and prevent the prolonged delays often seen in large, complex cases¹⁸.

10. CONCLUSION

The IBC, 2016, has emerged as a cornerstone of India's legal framework for corporate governance and insolvency resolution. Since its enactment, the IBC has redefined the approach toward corporate insolvency, addressing long-standing issues such as delayed recoveries, management inefficiencies, and inadequate regulatory oversight in distressed companies. While the IBC has been transformative in streamlining insolvency proceedings, its practical implementation has highlighted both the successes and challenges of balancing the interests of creditors, shareholders, and other stakeholders.

At its core, the IBC's key innovation lies in creating a time-bound, transparent resolution process that maximizes the value

¹⁷ *THE ROLE OF INSOLVENCY PROFESSIONALS IN THE RESOLUTION PROCESS*, The Law Codes (Jan. 6, 2025), <https://thelawcodes.com/the-role-of-insolvency-professionals-in-the-resolution-process/>.

¹⁸ *Pre-Pack Insolvency Resolution Process*, Drishti IAS, <https://www.drishtiias.com/daily-updates/daily-news-analysis/pre-pack-insolvency-resolution-process> (last visited May 13, 2025).

of assets. The creditor-in-control model, where the management of a distressed company is handed over to an Insolvency Resolution Professional (IRP) and decision-making powers are transferred to the Committee of Creditors (CoC), ensures that creditors' interests are prioritized. This shift has introduced a major change in corporate governance, where financial discipline takes precedence over promoter-driven management. The rigorous deadlines for resolution and the disqualification of defaulting promoters from bidding for their companies during insolvency further reinforce the Code's commitment to enhancing accountability.

However, the IBC is not without its challenges. One major concern is the delays in the resolution process, particularly in large and complex corporate cases. While the law envisions a resolution timeline of 180 days, extendable to 330 days, the reality often sees delays due to legal disputes, inefficiencies, and complex business structures. This calls for a more robust procedural framework to expedite the resolution process and minimize disruptions to businesses.

Another area for improvement is the balancing of creditor rights with shareholder interests. While creditors are given primacy, shareholders, particularly minority shareholders, often find their interests sidelined during the insolvency process. Ensuring fairness and transparency in this regard is critical to maintaining investor confidence and promoting long-term corporate sustainability. IBC has significantly improved the landscape of corporate governance and insolvency resolution in India. While there is room for enhancement, its successful implementation so far has made it a critical tool in India's legal and economic system, ultimately fostering a healthier, more resilient business environment.