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A Critical Analysis of the Insolvency and Bankruptcy Code, 2016 in the Context of Sick Banking Institutions in India

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ABSTRACT

The Insolvency and Bankruptcy Code, 2016 (IBC) represents one of the most significant legal reforms in the financial and corporate regulatory landscape of India. Enacted by the Government of India, the IBC was designed to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate entities, partnerships, and individuals in a time-bound manner. It emerged as a response to the growing crisis of non-performing assets (NPAs) that had crippled the Indian banking sector, particularly public sector banks (PSBs), and threatened the overall financial stability of the economy. Before the IBC, the existing framework for insolvency resolution was fragmented and inefficient, involving multiple laws such as the Sick Industrial Companies (Special Provisions) Act, 1985, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002, and certain provisions of the Companies Act, 2013. These laws lacked synergy and often led to lengthy legal battles, low recovery rates, and considerable delays, which adversely affected creditor confidence and discouraged investment in distressed assets.

The IBC sought to revolutionize this landscape by introducing a creditor-in-control model, setting strict time limits for the corporate insolvency resolution process (CIRP), and establishing institutional *mechanisms like the National Company Law Tribunal (NCLT), Insolvency Professionals (IPs), and the Insolvency and Bankruptcy Board of India (IBBI). For the first time, a unified and comprehensive insolvency resolution framework empowered creditors to initiate proceedings against defaulting debtors and ensured that companies were either revived or liquidated efficiently. This research paper aims to provide a critical analysis of the implementation and effectiveness of the IBC, 2016, with a particular focus on its impact on sick banking institutions—that is, banks burdened by high NPAs, poor recovery prospects, and capital erosion. The paper explores whether the Code has met its intended objectives of enhancing recovery rates, reducing the resolution time, and fostering a culture of credit discipline in the Indian financial system. While the IBC has undoubtedly led to some notable successes, including the resolution of large corporate defaulters and improved recovery for lenders, its journey has also been marked by several structural and procedural challenges. These include delays in resolution, overburdened tribunals, frequent litigation and judicial interventions, and concerns regarding deep haircuts taken by banks during resolution plans. Moreover, the balance between protecting creditor interests and ensuring fairness for debtors remains a subject of ongoing debate.*

Therefore, this paper not only assesses the efficacy of the IBC as a tool for bank asset recovery but also examines the broader implications of the Code on the financial health of Indian banks, the resolution ecosystem, and the future of insolvency jurisprudence in India. Through this analysis, the paper seeks to provide informed insights and recommendations for strengthening the insolvency framework and ensuring its long-term sustainability.

1. Introduction

In the years preceding the enactment of the Insolvency and Bankruptcy Code (IBC), 2016, India's banking sector—especially the public sector banks (PSBs)—was grappling with a deepening financial crisis. These institutions, which constitute a major share of the Indian banking landscape, found themselves burdened with a growing volume of non-performing assets (NPAs). The crisis was not merely cyclical but structural in nature, stemming from years of aggressive lending during the economic boom (2008–2012), poor credit appraisal mechanisms, willful defaults, and delayed project implementations. This created a category of companies that were operationally unviable or financially insolvent, contributing to the rise of what were commonly referred to as "sick" companies.The rising tide of bad loans impaired the balance sheets of banks and undermined their ability to lend, creating a vicious cycle of economic stagnation and financial fragility. According to RBI data from that period, gross NPAs of scheduled commercial banks reached nearly ₹6 lakh crore by the end of FY 2016, with PSBs accounting for over 85% of this burden. The situation was further exacerbated by ineffective debt recovery mechanisms and protracted legal battles, which meant that lenders had to wait for years—often with little or no recovery.

India's insolvency and recovery ecosystem at that time was governed by a patchwork of statutes such as:

The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002

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

The Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) (now repealed)

Relevant provisions of the Companies Act, 1956 and later the Companies Act, 2013

These legislations suffered from fragmentation, procedural delays, lack of coordination between stakeholders, and overlapping jurisdictions, resulting in ineffective outcomes. Creditors often lacked enforcement power, and defaulters continued to operate their companies without meaningful consequences, thereby weakening the integrity of the financial system.Recognizing the need for a comprehensive, efficient, and time-bound insolvency regime, the Government of India introduced the Insolvency and Bankruptcy Code, 2016. The IBC aimed to consolidate and replace the earlier legal framework, bringing all insolvency laws under one unified code. It introduced key reforms, such as the shift from a debtor-in-possession to a creditor-in-control model, strict resolution timelines (180 days, extendable to 270 days), and the establishment of dedicated adjudicatory bodies like the National Company Law Tribunal (NCLT) and the Insolvency and Bankruptcy Board of India (IBBI).The IBC was thus envisioned as a game-changing reform—not only to facilitate efficient recovery of dues by banks and other creditors but also to revive viable businesses, promote entrepreneurship, and improve the overall ease of doing business in India. It created a structured environment in which sick companies could either be restructured through a resolution plan or liquidated in a time-bound manner, thereby preventing further erosion of value.In essence, the enactment of the IBC in 2016 was a bold and necessary step to restore the health of the banking sector and address the endemic problem of loan defaults. Its success, however, would depend on its implementation, judicial efficiency, institutional strength, and stakeholder cooperation.

2. The Problem of Sick Banking Institutions

2.1 Definition and Causes

A “sick” banking institution refers to a bank that is financially unsound due to high NPAs, poor asset quality, capital inadequacy, and low profitability. The root causes included:

- Excessive lending during the boom period (2008–2012)
- Weak credit appraisal systems
- Political interference and willful defaults
- Judicial delays in enforcement

2.2 Impact on Indian Banks Pre-IBC

By the end of Financial Year (FY) 2016, India’s banking sector was under severe financial duress, with stress levels reaching historically high proportions. The most pressing concern was the alarming surge in non-performing assets (NPAs)—loans and advances for which principal or interest payments had remained overdue for more than 90 days. According to data published by the Reserve Bank of India (RBI), the gross NPAs of scheduled commercial banks (SCBs) had crossed ₹7.5 lakh crore, reflecting a substantial deterioration in the quality of assets across the sector. This surge in bad loans severely affected the profitability, liquidity, and overall functioning of these financial institutions.

A major share of this stress was concentrated within public sector banks (PSBs), which hold the majority of total banking assets in India. More than 12% of the total advances made by PSBs were classified as “stressed assets”, a category that includes both NPAs and restructured or written-off loans. This figure indicated not only poor asset quality but also a high degree of credit risk concentration, especially in sectors like infrastructure, steel, power, and telecommunications—many of which had suffered due to policy paralysis, delays in project implementation, and global market volatility.

The growing volume of NPAs triggered a cascade of financial implications for banks:

1. Capital Erosion: As NPAs rise, banks are required to make provisioning—setting aside capital to cover potential loan losses. This provisioning eats into the bank's profitability and capital reserves, thereby eroding their net worth and weakening their financial standing.

2. Balance Sheet Impairment: With large portions of their loan books turning non-performing, banks saw shrinking returns on assets (ROA) and deterioration in capital adequacy ratios (CAR). The balance sheets of many PSBs, which already operated under thin margins, became increasingly fragile.

3. Restricted Lending Capacity: Weakened capital buffers and reduced investor confidence hindered the ability of banks to extend new credit to businesses and individuals. This resulted in a credit crunch, stalling economic activity and investment, especially for small and medium enterprises (SMEs) that rely heavily on bank financing.

4. Government Recapitalization Burden: To prevent a systemic collapse, the central government was forced to infuse capital into these banks periodically, putting pressure on the national exchequer and diverting resources from other developmental priorities.

In this context, the traditional mechanisms for debt recovery—such as the SARFAESI Act (2002) and the Debt Recovery Tribunals (DRTs)—proved largely ineffective in handling the scale and complexity of bad loans. Lengthy legal procedures and limited enforcement capabilities contributed to poor recovery rates and prolonged resolution timelines, offering little hope for meaningful recovery.Thus, the banking sector's deteriorating financial health in FY 2016 served as a wake-up call for comprehensive reform. The situation underscored the urgent need for a modern, unified, and time-bound insolvency and resolution framework, ultimately paving the way for the Insolvency and Bankruptcy Code (IBC), 2016.

3. The Insolvency and Bankruptcy Code, 2016: Salient Features

- **Time-Bound Resolution**: 180–270 days for Corporate Insolvency Resolution Process (CIRP).
- **Creditor-In-Control**: Unlike the "debtor-in-possession" model, control shifts to creditors via Insolvency Professionals.
- **Information Utility & Adjudicating Authorities**: NCLT/NCLAT as forums for corporate insolvency.
- **Waterfall Mechanism**: Prioritizes claims with secured financial creditors at the top.
- **Moratorium**: Legal proceedings and debt recovery actions are paused upon admission.

4. IBC and Sick Banking Institutions: Positive Outcomes

4.1 Boost to Recovery

One of the most tangible and significant impacts of the Insolvency and Bankruptcy Code, 2016 (IBC) has been the noticeable improvement in the recovery rate of bad loans by creditors, particularly financial institutions. Prior to the enactment of the IBC, creditors—especially banks—relied heavily on earlier legal frameworks such as the SARFAESI Act, 2002, and the Recovery of Debts Due to Banks and Financial Institutions (RDDBFI) Act, 1993. However, these mechanisms suffered from prolonged delays, inadequate enforcement provisions, and systemic inefficiencies that led to very low recovery rates and substantial erosion of asset value over time.According to data published by the Insolvency and Bankruptcy Board of India (IBBI) and the Reserve Bank of India (RBI), the average recovery rate before IBC hovered around 26%, meaning that creditors could recover only a quarter of their dues from defaulting borrowers through these traditional legal routes. This inefficiency not only deepened the financial stress of banks but also disincentivized timely legal action and resolution.

With the implementation of the IBC, a creditor-in-control model was introduced along with time-bound resolution processes, which fundamentally altered the dynamics of insolvency proceedings. Creditors were empowered to initiate action swiftly and decisively, while professional resolution applicants and committee-based voting ensured market-driven restructuring decisions. As a result, the average recovery rate under the IBC improved significantly to around 43%, nearly doubling the effectiveness of previous mechanisms.This improvement is not merely statistical but is evidenced by several high-profile corporate insolvency resolution cases that led to substantial recoveries for banks and financial institutions. Notable among them are:

Essar Steel India Limited: This was one of the largest and most contested insolvency cases under the IBC. Eventually resolved through a bid by ArcelorMittal, banks recovered approximately ₹42,000 crore, representing over 85% of the total admitted claims, making it a landmark case in terms of both recovery and legal precedent.

Bhushan Steel: Acquired by Tata Steel under the IBC framework, this case resulted in a recovery of over ₹35,000 crore. It helped stabilize the steel sector and restored confidence in the resolution ecosystem.

Binani Cement: In another competitive bidding process, UltraTech Cement emerged as the successful resolution applicant, with financial creditors recovering nearly 100% of their admitted claims, a rare occurrence under any insolvency regime.

These cases demonstrate that the IBC not only improved recovery outcomes but also facilitated the continuation of economically viable businesses through corporate restructuring. The resolution of such large-scale defaults under the IBC sent a strong message to borrowers and investors, helping to reinforce credit discipline and revive market confidence in India's legal and financial systems.However, it is also important to note that while average recoveries have improved, outcomes vary widely across sectors and cases, and a number of proceedings still face significant delays and legal hurdles. Therefore, while the IBC has undoubtedly raised the bar for recovery and resolution, continuous reform and institutional strengthening are required to sustain and further improve its effectiveness.

4.2 Improved Credit Culture

One of the most transformative effects of the Insolvency and Bankruptcy Code, 2016 (IBC) has been the significant behavioural shift it triggered among corporate borrowers and promoters. Before the enactment of the Code, it was not uncommon for promoters of defaulting companies to retain control over their firms even while dragging out resolution or recovery proceedings for years. However, under the IBC's new framework, once a corporate insolvency resolution process (CIRP) is initiated, the control of the debtor company is immediately taken away from the existing management and handed over to a resolution professional appointed by the Committee of Creditors. This "creditor-in-control" model represented a major break from the past and created a real sense of consequence for defaulting borrowers. As a result, many promoters began to fear losing control of their companies altogether, which, in turn, prompted more proactive efforts at debt restructuring, repayment, or pre-IBC settlements to avoid being pushed into insolvency proceedings.

To further strengthen the resolution process and prevent its misuse by errant promoters, Section 29A was inserted into the IBC through the Amendment Act of 2018. This provision introduced a disqualification clause that barred certain persons from submitting resolution plans, including those who had contributed to the downfall of the company or were responsible for its non-performing status. Specifically, promoters of companies that had defaulted for more than one year, willful defaulters, undischarged insolvents, and those convicted of serious offences were prohibited from reclaiming their companies during insolvency resolution. This move was designed to prevent a situation in which defaulting promoters could exploit the resolution process to buy back their companies at a fraction of their value, effectively defeating the spirit of the Code. Section 29A encouraged greater participation from genuine resolution applicants and investors with financial credibility, thereby enhancing fairness and value maximization in the resolution process.

The impact of Section 29A, along with the threat of losing control, had a deterrent effect on strategic defaults and helped instill greater credit discipline across the corporate landscape. Borrowers became more mindful of repayment timelines and engaged more constructively with creditors. Moreover, the Supreme Court's validation of Section 29A in the landmark case of Swiss Ribbons Pvt. Ltd. v. Union of India in 2019 further strengthened its constitutional footing and ensured its continued application. While the provision has faced some criticism, particularly in cases involving genuine business failure rather than malfeasance, it has nonetheless been a cornerstone in building a more responsible and responsive credit ecosystem in India under the IBC.

4.3 Strengthening Bank Balance Sheets

The implementation of the Insolvency and Bankruptcy Code (IBC), 2016 brought about significant financial relief for Indian banks, particularly those burdened with high levels of non-performing assets (NPAs). One of the key benefits of the IBC was that it allowed banks to recognize recoveries from resolved insolvency cases within a reasonable timeframe, thereby reducing the need for excessive provisioning. Prior to the IBC, banks were required to make large provisions against bad loans, which directly impacted their profitability and weakened their capital adequacy ratios. With faster and more effective recoveries under the IBC regime, banks were able to write back some of the provisions previously made for NPAs. This, in turn, improved their overall financial health, strengthened balance sheets, and enhanced compliance with regulatory capital norms such as the Basel III guidelines. Improved capital adequacy also enabled banks to extend fresh credit to viable sectors, thereby contributing to broader economic growth.

In addition to the tangible financial improvements, the resolution framework under the IBC significantly bolstered investor sentiment, particularly toward public sector banks (PSBs) and non-banking financial companies (NBFCs). Investors, both domestic and international, began to view the Indian financial system as more transparent, disciplined, and conducive to recovery and restructuring. The shift from a debtor-friendly to a creditor-driven approach sent a clear message that defaults would no longer go unpunished and that there were viable mechanisms in place to address insolvency efficiently. As a result, the credibility of PSBs, which had suffered from mounting bad loans and governance issues, began to recover. Similarly, NBFCs, which often deal with higher credit risks, benefited from the improved ecosystem that allowed for structured resolution of borrower defaults. Overall, the IBC played a pivotal role in restoring trust in India's financial institutions and attracted renewed interest from institutional investors, credit rating agencies, and global markets.

5. Limitations and Criticisms

5.1 Delay in Resolution

Although the Insolvency and Bankruptcy Code, 2016 (IBC) was introduced with the promise of a time-bound resolution framework—specifically prescribing 180 days for the completion of the Corporate Insolvency Resolution Process (CIRP), extendable by a maximum of 90 days in exceptional circumstances—the reality has diverged significantly from this legislative intent. In practice, a substantial proportion of cases have failed to adhere to these timelines. According to data released by the Insolvency and Bankruptcy Board of India (IBBI), more than 65% of insolvency cases have exceeded the upper limit of 270 days, with many languishing in the system for over a year or more. This delay undermines one of the core objectives of the IBC—ensuring swift and efficient resolution to preserve enterprise value and creditor confidence.

Several factors contribute to these prolonged timelines. A major cause is the increasing frequency of judicial interventions, particularly appeals and counter-litigation by promoters seeking to regain control of their companies or challenge the initiation of insolvency proceedings. While legal remedies are essential to safeguard procedural fairness and natural justice, excessive and repetitive litigation has often been used as a stalling tactic. Promoters, operational creditors, and even competing resolution applicants frequently approach the National Company Law Tribunal (NCLT), National Company Law Appellate Tribunal (NCLAT), and even the Supreme Court, which inevitably delays the resolution process. Additionally, operational inefficiencies within the NCLT system, such as shortage of benches, lack of infrastructure, and insufficient manpower, have further contributed to procedural backlogs and delayed adjudications. The combined effect of legal delays and institutional bottlenecks has not only compromised the timelines envisioned under the Code but also resulted in value erosion of distressed assets, thereby weakening potential recovery for creditors.

5.2 Haircuts and Low Recovery

While the Insolvency and Bankruptcy Code, 2016 (IBC) significantly improved the legal and institutional framework for debt recovery in India, it has also raised serious concerns over the magnitude of financial losses suffered by creditors, particularly banks, in the form of haircuts—the portion of loan value that is foregone during resolution. In many high-profile insolvency cases, banks have had to accept average haircuts ranging from 60% to 70%, meaning that only a fraction of the total admitted claims was ultimately recovered. This has generated substantial debate on whether the recoveries under IBC are actually efficient or simply symbolic, with banks writing off huge portions of defaulted loans in the name of resolution. For instance, despite the legal framework offering a structured process, the recovery amount in many resolutions has been far below expectations, adversely affecting the financial performance and balance sheets of public sector banks.

The situation was even more alarming in certain extreme cases, such as the Videocon Group insolvency, where banks reportedly had to take a haircut of over 95%, recovering only around ₹2,900 crore out of total admitted claims exceeding ₹60,000 crore. Such cases have triggered widespread concerns regarding asset undervaluation, weak bidding competition, and the potential misuse of the resolution process. Critics argue that in some instances, stressed assets may have been sold at throwaway prices due to inadequate due diligence, limited interest from potential resolution applicants, or manipulation by vested interests. This has raised important questions about the efficacy of the IBC framework in ensuring fair valuation, transparency, and maximization of asset value, as originally envisaged. Although the Code has brought about a more disciplined credit environment, the extent of haircuts—especially when they border on near-complete write-offs—undermines the economic objectives of the resolution process and highlights the urgent need for reforms in valuation mechanisms, bidder eligibility, and regulatory oversight.

5.3 Limited Use for MSMEs and Individual Insolvency

While the Insolvency and Bankruptcy Code, 2016 (IBC) was envisioned as a comprehensive legal framework covering all categories of debtors—including corporates, Micro, Small and Medium Enterprises (MSMEs), and individuals—the practical implementation of its provisions has remained largely skewed in favor of corporate insolvency, with the MSME and individual insolvency mechanisms remaining underutilized or partially non-operational. Although MSMEs constitute the backbone of the Indian economy, contributing significantly to employment and GDP, the specialized insolvency framework meant to address their unique challenges has seen limited uptake. The pre-packaged insolvency resolution process (PPIRP) introduced in 2021 for MSMEs was a step in the right direction, offering a simplified, debtor-in-possession model to facilitate quicker and cost-effective resolutions. However, despite its potential, the adoption of PPIRP has been minimal due to a lack of awareness, procedural ambiguities, and limited capacity among insolvency professionals and adjudicating authorities to handle such cases effectively.

Similarly, individual insolvency provisions under Part III of the IBC, intended to cover personal guarantors, sole proprietors, and other non-corporate debtors, have not been fully brought into force. While the provisions relating to personal guarantors to corporate debtors were notified in 2019 and are being actively used—often in tandem with corporate insolvency proceedings—the broader framework for individual bankruptcy remains in a state of legislative dormancy. This gap has left many small borrowers, entrepreneurs, and sole proprietors without a viable legal remedy for debt resolution, particularly in the aftermath of the COVID-19 pandemic, when financial distress among individuals and small businesses sharply increased. The incomplete implementation of these segments of the Code reflects an urgent need for regulatory attention, capacity building, and stakeholder engagement to make the insolvency framework truly inclusive and effective across all levels of the economy.

5.4 Abuse of Process

The introduction of the Pre-Packaged Insolvency Resolution Process (PPIRP) under the Insolvency and Bankruptcy Code was intended to provide a faster, more cost-effective, and less disruptive alternative to the conventional Corporate Insolvency Resolution Process (CIRP), especially for Micro, Small and Medium Enterprises (MSMEs). Under this model, a debtor and creditor agree on a resolution plan in advance, which is then submitted to the National Company Law Tribunal (NCLT) for approval. While the pre-pack mechanism was designed to preserve business continuity and reduce the economic damage caused by prolonged insolvency proceedings, its implementation has raised serious concerns regarding transparency and creditor protection.

In several cases, pre-packaged insolvency resolutions have been misused to bypass the standard IBC safeguards, effectively short-circuiting the rights of financial and operational creditors. The closed-door nature of pre-pack negotiations has led to situations where the plan is finalized between the debtor and a small group of creditors, often without meaningful participation from all stakeholders. This undermines the principles of fairness, value maximization, and creditor equality that form the backbone of the IBC. Further, there have been instances where promoters—disqualified under Section 29A from submitting resolution plans in regular CIRP—have attempted to indirectly regain control of their companies through pre-pack routes, sometimes by routing plans through related parties or shell entities.

Such tactics defeat the purpose of disqualification norms and erode trust in the resolution process. Critics argue that if left unchecked, the misuse of pre-packs could create backdoor entries for errant promoters, allowing them to reacquire their businesses at deeply discounted values, thereby causing significant losses to lenders and damaging the credibility of the insolvency regime. These developments underscore the urgent need for regulatory vigilance, clear procedural safeguards, and stricter scrutiny by adjudicating authorities to ensure that pre-packs are used as an efficient resolution tool, not as a mechanism to manipulate outcomes or compromise creditor rights.

6. Judicial Interpretations and NCLT/NCLAT Role

- **Swiss Ribbons v. Union of India (2019)**: Upheld constitutionality of IBC; emphasized balance between creditors and debtors.
- **Essar Steel Case**: Affirmed primacy of financial creditors over operational creditors.
- **Jaypee Infratech Case**: Highlighted homebuyers' rights and real estate stress.

However, judicial delays in disposal and inconsistent interpretations sometimes caused confusion and loss of momentum in resolutions.

7. Regulatory and Policy Support

- **RBI’s Feb 12 Circular (2018)**: Mandated time-bound resolution before insolvency filing; later replaced with June 7 circular.
- **National Asset Reconstruction Company Ltd. (NARCL)** and **India Debt Resolution Company Ltd. (IDRCL)** (2021): Inspired by the IBC model, these institutions aim to resolve bad loans beyond IBC.

8. Recommendations for Strengthening IBC Framework

1. **Digitization of Process**: Use of technology and AI to assess viability, claims, and timelines.
2. **Strengthening NCLT/NCLAT**: More benches, specialized judges, infrastructure investment.
3. **Balanced Haircuts**: Ensuring resolution plans reflect fair market value through independent valuation.
4. **Fast-track MSME Framework**: Tailored insolvency proceedings for small enterprises.
5. **Pre-Pack Monitoring**: Transparent safeguards to prevent misuse.

9. Conclusion

The Insolvency and Bankruptcy Code, 2016 is undoubtedly a transformative legal reform that has begun to address the deep-rooted problem of stressed assets in India's banking system. It empowered banks to tackle sick borrowers and promoted accountability. However, the journey is far from over. To restore complete banking health, continuous improvement in legal processes, institutional capacities, and creditor protections is crucial. The success of IBC lies in its dynamic adaptability, and in ensuring it does not merely become a procedural tool but a genuine mechanism for financial and economic revival.

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