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## **A COMPARATIVE STUDY ON CORPORATE INSOLVENCY ECONOMIC REFORMS IN INDIA AND OTHER COUNTRIES**

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**Abstract:** This Article compares the insolvency laws of different countries such as US, UK, Germany, Singapore, and Australia with the Indian legal procedures in Insolvency law. Four years since passing of this legislation, this article seeks to analyze the effectiveness of the Indian Insolvency Law (IBC) in comparison with its counterparts. This Article also sees the differences in how the insolvency laws differ and how their implementation differs from country to country.

**Keywords:** Insolvency, comparative, World Bank doing business report, US Bankruptcy Code, UK Insolvency, Corporations Act 2001, Germany Insolvency Code, Chapter 50 of Companies Act (Singapore)

### **Introduction**

The Insolvency and Bankruptcy Code 2016 (hereinafter referred to as “Code/IBC”), implemented in phases since August 5, 2016, was enacted to overhaul the outdated and complex corporate insolvency laws in India to address economy-wide problem of bad loans, resulting impact on the banking sector and access to credit as such. The Code has materially impacted rates of default on loan repayments in the stages. In other words as such, repayment rates materially improved owing to a fear among controlling shareholders of Indian debtors, which may lose control of their (largely) family owned businesses if placed in insolvency in the region. It is so equally important for existing creditors and shareholders to take note of the change in debtor-creditor dynamics introduced by the Code, given it is now possible for creditors to credibly enforce the rights, including in ways that result in change in ownership of debtors.

This Research Article focuses on the aspects of the practical implementation of the Insolvency and Bankruptcy Code, 2016 in India. The timelines have been drastically changed to tackle the delay in settlement of cases under the said law; however its practical impact is matter of assessment and therefore the need for present research. Four years since passing of this legislation, this article seeks to analyze the effectiveness of the Indian Insolvency Law (IBC) in comparison with its counterparts. This Article has drawn a comparison of insolvency and bankruptcy

legal procedures in India from other countries such as US, UK, Germany, Singapore, and Australia.

### **Literature Review**

•**Srivats, K.R. (2018)**, the present write up reported that there is increase in the FDI inflows in 2017-18 to \$61.96 billion as compared to \$60.08 billion in 2016-17. It mentions that the cross-border insolvency framework will help India in further enhancing ease of doing business, providing a mechanism of cooperation between India and other countries in insolvency resolution, protecting global investors, increasing M&A deals and make India an attractive FDI destination by giving certainty and increased predictability to the foreign investors. [1]

•**Jason, J. (2018)**, this research paper for the purpose of studying the impact of insolvency laws on the FDI levels has made an analysis of two figures which are the scores given by the World Bank: (i) for the legal rights of creditors in a given state and (ii) data of FDI inflows of the countries. The result of the analysis shows that the countries with more developed legal rights for the creditors are inclined to have higher levels of FDI and there are many economies which have increased FDI inflows immediately after the revisions and updates made in their insolvency laws. [2]

•**Langhorne, S., McMyn, A. (2018)**, the authors of this article have envisaged IBC as a consolidated insolvency and bankruptcy landscape in India. The authors have proposed the restructuring and liquidation processes under the IBC to open a number of opportunities through different paths for the foreign investors to invest in the distressed assets in India through the investment platforms for FDI which are – Asset reconstruction companies, Non-banking financial companies, Alternative investment funds, Foreign investment portfolios and External commercial borrowings. [3]

•**Paul, A. (2018)**, the rising level of NPAs in the Indian economy is studied in this research study. It said that the Estimates Committee of Lok Sabha is examining the increasing NPAs in the public sector banks and the available loan recovery mechanisms. It recognizes IBC as a regulatory measure taken to resolve the problem of NPAs. [4]

•**Rao, MSR. K. P. (2018)**, the author has recognized that the EODB has been recognized as a cross-border barometer for doing business and acknowledged the widespread acceptability of the 'EODB'. This paper has analyzed the current status and progress of the EODB in India as India broke into the top 100 in the World Bank's Doing Business Report, 2018 on the index of 'EoDB' rankings and notched up the biggest improvement among all countries on a number of measures. The paper noted the India's rise to 100<sup>th</sup> position from 130<sup>th</sup> has made India one among the top 10 best-improved countries. [5]

## **Research Methodology**

The research in the present study is an empirical research involving review of the earlier insolvency and bankruptcy laws existed before the advent of IBC and the present insolvency and bankruptcy legislation in India, its impact on the economic development of India. The present study is Empirical and an Economic Policy Research. The research design is exploratory as such is chosen for this study. Since, the study explore the impact of IBC on Indian Economy, therefore, it is exploratory in nature as such.

## **Analysis and Results**

One of the question arises in our minds is how is Indian IBC 2016 compared to other Insolvency Codes practiced internationally. Since internationally Insolvency and bankruptcy laws have been in place for a long time, and have dealt with several cases a look into their laws may give some more insight. As we know, IBC 2016 was enacted in May 2016 and is therefore, young and evolving. It should be really appreciated how proactively and speedily the regulator (Insolvency & Bankruptcy Board of India) is reacting to every emerging situation by bringing rules and regulations to deal with various situations appropriately.

The World Bank's Doing Business report assesses 190 economies on eleven parameters every year. As such the doing Business (DB) project, of the World Bank provides useful data on the ease of doing business, rank each location and recommend reforms to improve performance in each of the indicator areas. DB studies as such the time, cost and outcome of insolvency proceedings, involving domestic entities as well as strength of the legal framework applicable to liquidation, reorganization proceedings. The data for resolving, insolvency indicators derived from questionnaire responses by local insolvency practitioners, verified through a study of laws and regulations, as well as public information on insolvency systems as such. The ranking, of the economies on ease of resolving insolvency is determined, by sorting distance to frontier scores for resolving insolvency, as such. These scores are simple average of distance to frontier scores for recovery rate and strength of insolvency framework index. The table below provide comparative snapshot of rankings of ease of doing business and resolving insolvency, as study is focused as such.

**Table 1: Ease of Doing Business and resolving insolvency Ranks from year 2017 to 2020**

Country	Ease of doing business				Ease of resolving insolvency		
	2017 (190)	2018 (190)	2019 (190)	2020 (190)	2017 (190)	2018 (190)	2019 (190)
India	130	100	77	63	136	103	108

United States (US)	8	6	8	6	5	3	3
United Kingdom(UK)	7	7	9	8	13	14	14
Germany	17	20	24	22	3	4	4
Singapore	2	2	2	2	29	27	27
Australia	15	14	18	22	21	18	20

Source: compiled from World Bank's Doing Business report 2017 to 2020

The above table signifies, nation-wise progress achieved ease of doing business and resolving insolvency from the year 2017 to 2020. India made remarkable progress, as such. India's huge stride in becoming a business-friendly nation has come in last two years, with a total jump of 53 places in year 2019 and 14 places in year 2020 as such. Singapore has been consistent throughout these years. As for Ease of Resolving Insolvency, India's ranking declined by 5 places to settle at 108. This occurred despite the adoption of the Insolvency and Bankruptcy Code, which has started to show promising results on the ground, as such. The other nations have more or less changes in rankings when compare from 2016 to 2019. The DB report, ultimately emphasis continuous reforms in policies and legislations for smooth functioning of business activities in any nations. The reports published by World Bank are taken into consideration for analysis.

*Doing Business* studies of World Bank pinpoints the time, cost and outcome of insolvency proceedings involving the domestic legal entities, as such. These variables used to calculate recovery rate, which is recorded as cents on dollar recovered by secured creditors through reorganization, liquidation or debt enforcement (foreclosure or receivership) proceedings, as such. To determine present value of the amount recovered by creditors, *Doing Business* uses, lending rates from the International Monetary Fund, supplemented with data from central banks and the Economist Intelligence Unit, as such.

**Table 2:**

**Insolvency Resolution Parameters and Credit Data**

Indicator	India	US	Germany	UK	Australia	Singapore
Rank	52	2	4	14	20	27
Recovery Rate	71.6%	81%	79.8%	81%	82.7%	88.7%
Time (years)	1.6	1.0	1.2	1.0	1.0	0.8

Source: World Bank Doing Business Report, 2019.

<https://www.doingbusiness.org/en/data/exploretopics/resolving-insolvency>

According to a World Bank Doing Business Report, 2019, it takes an average of 1.6 years for insolvency resolution of a company in India, whereas its 1.0 year in US, UK and Australia, 1.2 years in Germany and it takes 0.8 years in Singapore. Also, recovery rate is 71.6% lower than other countries in comparison.

At this juncture, it is pertinent to examine the practice in other jurisdictions for some guidance in bringing about reform in Indian insolvency regime. The reason for selecting the comparison of insolvency laws between India and these countries, is that as per the rankings of World Bank, India ranks at 52 in its insolvency resolution, while US ranks at 2, Germany is at 4, UK is at 14, Australia and Singapore are at 20 and 27 respectively. Hence, despite India's ranking is improving but there is still a long way to go for India in terms of 'Insolvency Resolution' in comparison with these countries.

The amount of recoveries made from insolvency cases before and after the implementation of the Code— Prior to the implementation of the Reform:

The Table 3. below has been compiled from the data provided in the various issues of the Reports released by the RBI – Trends and progress of Banking in India. In the year 2012-13, total 1044636 insolvency cases were under the forums namely, Lok Adalats, DRTs and SARFAESI Act and the amount involved was Rs. 1,05,700 crore, out of which Rs. 23,300 crore was recovered under these channels and this is merely a recovery of 22% made.

**Table 3.**

**Amount recovered in the insolvency cases (under various forums) prior to the implementation of the IBC-**

(Amount in 'Crore)

Years	Total Cases	Amount Involved in the Cases	Amount Recovered	Recovery made (in % of the amount involved)
<b>2012-13</b>	1044636	105700	23300	22 %
<b>2013-14</b>	1859922	173800	32000	18%
<b>2014-15</b>	3155672	248200	30800	12%
<b>2015-16</b>	4654753	221400	22800	10%
<b>2016-17</b>	2261873	285976	27954	10%

Source: compiled by the authors.

The year 2016-17 witnessed a huge number of insolvency cases, i.e., 2261873, the total amount involved was Rs. 2,85,976 crore out of which a very small amount was recovered amounting to Rs. 27,954 crore and this is approximately 10% of the amount involved under these cases. The average of the rate of recovery made from 2012-13 to 2016-17 comes to-

**Average = Total amount involved/ Total amount recovered\*100**

**Total amount involved = Rs.1,05,700 crore + Rs. 1,73,800 crore + Rs. 2,48,200 crore + Rs. 2,21,400 crore + Rs. 2,85,976 crore = Rs. 10,35,076 crore**

**Total amount recovered = Rs. 23,300 crore + Rs. 32,000 crore + Rs. 30,800 crore + Rs. 22,800 crore + Rs. 27,954 crore = Rs. 1,36,854 crore**

**Average = 1,36,854 / 10,35,076 \* 100**

**= 13% approximately**

So, the average rate of recovery (in the insolvency and bankruptcy cases) made in the period 2012-13 to 2016-17 under Lok Adalats, DRTs and SARFAESI Act (before the implementation of the IBC) was just 13% approximately.

**After the implementation of the Reform:**

**Table 4.**

**Amount recovered in the insolvency cases (under NCLT) after the implementation of the IBC-**

(Amount in 'Crore)

Years	Total Cases	Amount Involved in the Cases	Amount Recovered	Recovery made (in % of the amount involved)
2017-18	22	4405	3070	70%
2018-19	72	168954	71427	42%
2019-20	127	211077.7	102176.7	48%

Source: compiled by the authors from the data provided in the various issues of the Quarterly Newsletters released by the IBBI.

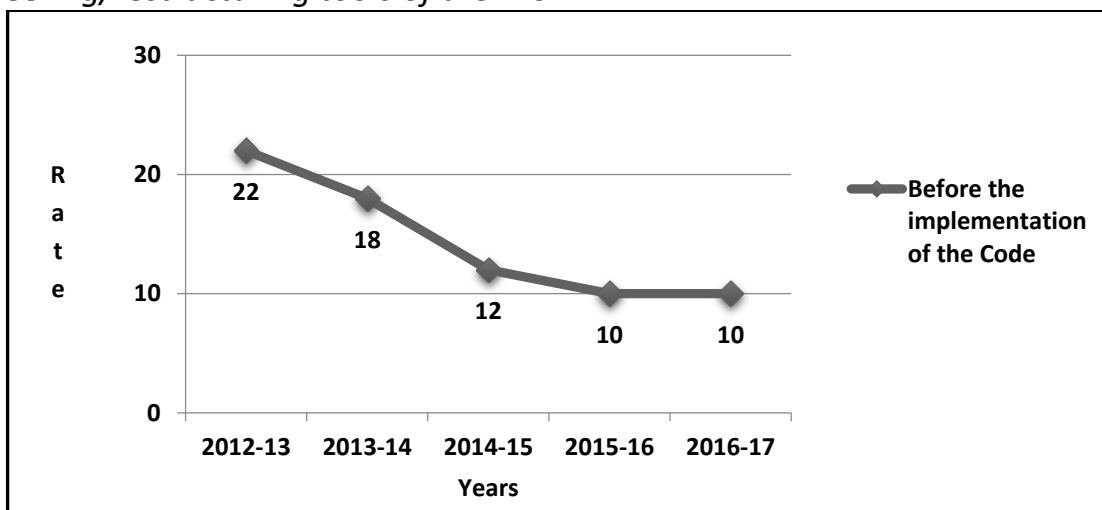
In the year first year of the implementation of the IBC i.e., 2017-18, total 22 insolvency cases resulted in resolution under the NCLT and the amount involved was Rs. 4,405 crore, out of which Rs. 3,070 crore were recovered and this is a large recovery of 70% made.

In the second year of the implementation of the Code i.e., 2018-19, 72 cases yielded in resolution plans, the total amount involved was Rs. 1,68,954 crore out of which Rs. 71,427 crore were recovered and this amounts to 42% of the amount involved under these cases. In 2019-20, i.e., in the third year of the implementation of the IBC, 127 cases ended in resolution which recovered amount of Rs. 1,02,176.7 crore out of Rs. 2,11,077.7 crore involved and the rate of recovery is 48% of the

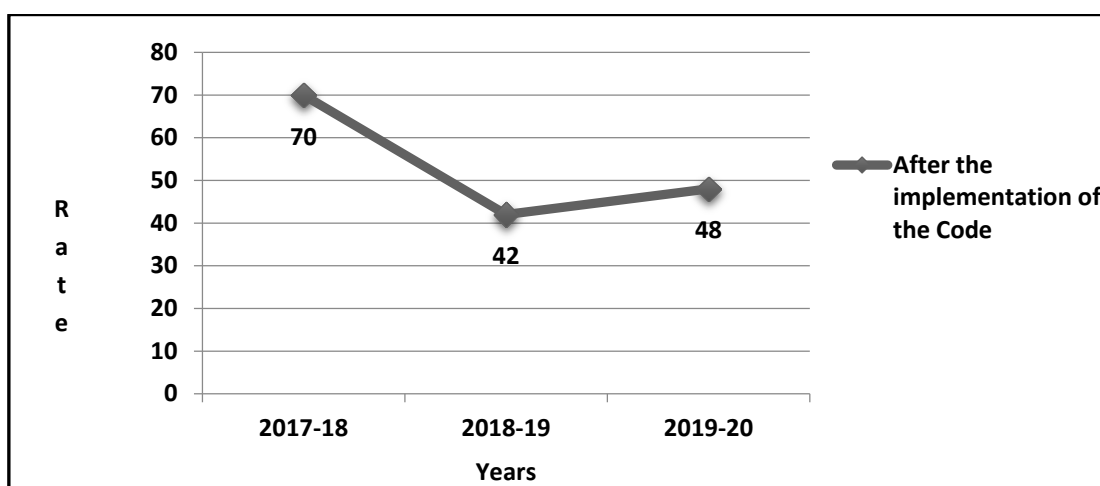
amount involved. The average of the rate of recovery made from 2017-18 to 2019-20 comes to-

$$\begin{aligned} \text{Average} &= \text{Total amount involved} / \text{Total amount recovered} * 100 \\ \text{Total amount involved} &= \text{Rs. 4,405 crore} + \text{Rs. 1,68,954 crore} + \text{Rs. 2,11,077.7} \\ &\quad \text{crore} = \text{Rs. 3,84,436.7 crore} \\ \text{Total amount recovered} &= \text{Rs. 3,070 crore} + \text{Rs. 71,427 crore} + \text{Rs. 1,02,176.7} \\ &\quad \text{crore} = \text{Rs. 1,76,673.7 crore} \\ \text{Average} &= 1,76,673.7 / 3,84,436.7 * 100 \\ &= 46\% \text{ approximately} \end{aligned}$$

So, the average rate of recovery (in the insolvency and bankruptcy cases) made during the period 2017-18 to 2019-20 under the NCLT (after the implementation of the IBC) is 46% approximately. This 46% rate of recovery is approximately 3.5 times of the rate of recovery made under various forums earlier. *This rate of recovery is never seen before in India and is a remarkable recovery made by the NCLT under the re-engineering/restructuring tools of the IBC.*







Charts 1-2: Graphical representation of the Rate of recoveries made before and after the implementation of the IBC

This comparison of the rate of recoveries made is shown through the graphical representation in Charts 1-2. which clearly shows that the rate of recoveries made in the insolvency and bankruptcy cases is 3.5 times higher than the recoveries made under the earlier regimes. The Table 5. defines the main criteria of cross country comparison of insolvency framework.

**Table 5. Cross Country Comparison of Insolvency Framework Criteria:**

S.No.	Factors of Comparison	Description
1.	<b>Initiation of Process:</b> -Who can initiate -How is it initiated	Creditors are usually the ones who initiates insolvency process. However, there can be a reversal of this process too. Further, creditors may be of different types i.e. financial, operational, secured, unsecured etc.
2.	<b>Period of Insolvency proceedings</b>	Insolvency proceeding is a time bound process of resolution or if resolution is not work out then liquidation.
3.	<b>Management during CIRP</b>	Control may be retained by BOD or RP.
4.	<b>Resolution Plan</b>	The objectives of the management is to opt for reorganization of the firm. On the other hand, creditors are more likely to suggest measures which are quick like sale of assets or entire business so as to liquidate the firm. The resolution plan is adopted by Committee of Creditors.
5.	<b>Moratorium</b>	The moratorium in terms of IBC is described as a period wherein no judicial proceedings for recovery, enforcement of security interest, sale or transfer of assets, or termination of essential contracts can be instituted or continued against the Corporate Debtor.
6.	<b>Priority of payment distribution</b>	Everyone must have fair share by following a waterfall mechanism which gives priority to secured creditors over unsecured creditors, treatment for employees and government dues are also prescribed.
7.	<b>Insolvency Proceeding</b>	Costs is occurred during insolvency proceedings. Generally

	<b>Costs</b>	the such cost is born by the person who initiate the proceedings.
<b>8.</b>	<b>Role of IPs and Courts/Tribunals</b>	Role of IP and Courts/Tribunal in the insolvency resolution process affect the cost of process as well as the time taken.

Source: compiled by the authors.

The Table 6. Presents the main differences in how the insolvency laws differ and how their implementation differs from country to country .

**Table 6. A Bird's eye views on cross country comparison:**

No.	Details	India	UK	US	Australia	Germany	Singapore
1.	<b>Law governing Insolvency</b>	IBC, 2016	UK Insolvency Act, 1986	Chapter 11 of US Bankruptcy Code	Bankruptcy Act, 1966, the Corporations Act, 2001 and Australian Securities and Investments Commission Act, 2001.	German Insolvency Code ( <i>InsO</i> )	Chapter 50 of the Companies Act, 1967
2.	<b>Who can start proceeding</b>	Creditors, Corporate Debtor	Creditors, debtors, Holders of qualifying floating charges (QFC)	Debtor Company	Creditors, Directors or Debtor	Debtor company or creditors	Company, its directors or its creditors.
3.	<b>Moratorium</b>	Yes	Yes	Yes	Yes	Yes	Yes
4.	<b>Management Control</b>	Board of directors are suspended with the appt. of IP	Insolvency Practitioner but daily operations remains with the directors	Management continues. Debtor in Possession (DIP) approach	Receiver and administrator	Debtor in case of self administration, else Debtor	Judicial Manager (officer of the court) takes over running of company
5.	<b>Approval of Resolution Plan</b>	Approved by CoC by 66% votes	By simple majority in value of creditors	by majority and 2/3 in amount actually voting	Approval from majority of the creditors is required	By majority of creditors	By majority of creditors
6.	<b>Insolvency Proceeding Costs</b>	Whoever initiates the process	Born by Debtor	Borne by Debtor	Whoever initiates the process	Born by debtor	Whoever initiates the process
7.	<b>Cross Border Insolvency</b>	Sec.234 & 235 of the Code, UNCITRAL not yet adopted	Inside EU - EU Insolvency Regulation, Outside EU - UNCITRAL Model Law	UNCITRAL model law has substantially been adopted	Australia also adopted UNCITRAL model law	UNCITRAL Model law is not adopted, own set of rules are complied	Singapore adopted the UNCITRAL model of Cross Border Insolvency Law

Source: compiled by the authors.

## **Conclusions and Recommendations**

Indian Insolvency & Bankruptcy law is a progressive law and the main emphasis is on its resolution process. One of the major difference compared to the US laws is that US laws stipulate a “Debtor in Possession” approach (management remains in control on running the company) where as Other countries & Indian laws envisage the management of the company through Insolvency professional. Although both the situations have their own merits, for example, US laws believe that the management of the company is best suited for running the company for a quick re-engineering re-structuring plan rather than a new person who will have own learning curve as well cost, as such. However UK & Indian laws envisage that, the company can best be run by Insolvency Professional over the previous management.

All the laws look for a resolution plan on going concern basis over liquidation. Insolvency regulator IBBI is proactively addressing the emerging situation which is remarkable. IBC has brought a culture change in corporate India, but it is a journey which has only just started, as such

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