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Evolution of the Insolvency and Bankruptcy Code (IBC) in India

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ABSTRACT

The work offers a thorough examination of the development and use of India's Insolvency and Bankruptcy Code (IBC). It outlines the main difficulties the prior disjointed insolvency framework faced as well as the justification for the IBC's implementation. There is a thorough discussion of the goals, characteristics, and several changes made to the IBC over the years. The report looks at the effects of the IBC's implementation, such as how it has affected the number of non-performing assets, the rights of creditors, the prompt resolution of distressed assets, and the ease of doing business in India. The report also explores the attempts to connect the IBC with the UNCITRAL Model Law by incorporating a cross-border insolvency framework, as well as the anticipated advantages and difficulties of doing so.

***Keywords**: Insolvency and Bankruptcy Code (IBC), Corporate Insolvency Resolution Process (CIRP), Micro, Small and Medium Enterprises (MSMEs), Cross-border insolvency, Non-Performing Assets (NPAs), Amendments to the IBC.*

I. INTRODUCTION

The Insolvency and Bankruptcy Code (IBC) was enacted in 2016 as India's first unified bankruptcy law. Before the IBC, the framework governing insolvency and bankruptcy was fragmented and inefficient, leading to long delays and uncertainty. The pre-existing laws, which included the Sick Industrial Companies Act (SICA), the Recovery of Debts Due to Banks and Financial Institutions Act (RDDBFI), and the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI), among others, each addressed different aspects of insolvency but lacked coherence and speed. Consequently, India experienced low recovery rates and extended timelines for resolving bad debts, which affected both the banking system's stability and the broader economy.

II. GENESIS AND RATIONALE OF THE IBC

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The idea for a consolidated insolvency law was first proposed by various committees, most notably the Bankruptcy Law Reform Committee (BLRC), which was formed in 2014. The BLRC, headed by Dr. T.K. Viswanathan, identified significant gaps in India's insolvency laws and recommended creating a single, comprehensive code. The committee's report served as the basis for the IBC, aimed at establishing a time-bound resolution process to promote efficiency and ensure that assets were utilized to their maximum potential.

(A) Objectives of the IBC

The IBC was designed with multiple objectives, each contributing to the development of a robust and efficient insolvency framework:

- **Time-bound Resolution Process:** The IBC mandates a maximum of 180 days for completing the insolvency resolution process, with a possible 90-day extension, thereby ensuring quicker resolution.
- **Maximizing Asset Value:** The IBC prioritizes maximizing the economic value of assets under insolvency by preventing further erosion of value during lengthy proceedings.
- **Creditor-driven Framework:** IBC introduces a creditor-in-control model, shifting the decision-making power from debtors to creditors, and empowering the Committee of Creditors (CoC) to decide on the fate of the distressed asset. This model incentivizes repayment and disincentivizes wilful defaults, aligning with global best practices in insolvency.
- **Improvement of Business Climate**: The IBC aims to create a business-friendly environment by improving the ease of doing business in India.
- **Encouragement of Entrepreneurship:** By providing a clear exit mechanism and managing insolvency cases more predictably, the IBC promotes entrepreneurship. Entrepreneurs can now undertake new ventures with confidence, knowing there is a transparent process for managing insolvency should their ventures fail.

(B) Key Features of the IBC

- **Unified Code for Corporate and Personal Insolvency:** IBC integrates insolvency proceedings for companies, partnership firms, and individuals, thereby replacing the need for separate legislation. This integration allows for a smoother and less fragmented process, reducing jurisdictional overlaps.
- **Fast-Track Corporate Insolvency Resolution Process (CIRP):** For certain

categories of entities, including small companies and startups, the IBC provides a fast-track resolution mechanism that can be completed within 90 days, offering a faster alternative to regular proceedings.

- **Operational vs. Financial Creditors:** The IBC makes a clear distinction between financial creditors (e.g., banks and financial institutions) and operational creditors (e.g., suppliers and employees). This differentiation enables more structured and fair handling of creditors' claims, with the Committee of Creditors (CoC), comprised mainly of financial creditors, being empowered to make key decisions on resolution.
- **Establishment of Adjudicating Authorities:** Under the IBC, the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) serve as adjudicating authorities for corporate insolvency, ensuring that cases are resolved in specialized forums with dedicated benches, which improves efficiency and consistency in rulings.
- **Role of Insolvency Professionals (IPs):** The IBC introduces Insolvency Resolution Professionals (IRPs) who oversee the insolvency resolution process, manage the assets of the debtor, and ensure fair handling of creditor claims. This professional management helps prevent asset stripping by distressed entities, which was common under prior laws.
- **Impact and Global Reception:** Since its implementation, the IBC has garnered positive feedback from both domestic and international stakeholders. The World Bank and other global institutions have recognized the Code as a substantial reform in India's economic framework. It has not only enhanced investor confidence but also brought India closer to international insolvency practices by encouraging discipline, transparency, and time-bound resolutions.

(C) Challenges Before the Insolvency and Bankruptcy Code (IBC)

Prior to the enactment of the Insolvency and Bankruptcy Code (IBC) in 2016, India's insolvency landscape faced numerous challenges. These issues, stemming from a fragmented legal framework, inefficient resolution processes, and a debtor-centric regime, contributed to prolonged insolvency cases, asset value erosion, and the mounting Non-Performing Assets (NPAs) crisis within the banking sector. Below is a summary of the key challenges that existed before the IBC's implementation:

- **Fragmented Legal Framework** Insolvency cases in India were governed by multiple overlapping laws, including the Companies Act, Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI), Recovery of Debts Due to Banks and Financial Institutions Act (RDDBFI), and Sick Industrial Companies Act (SICA). This disjointed structure led to jurisdictional overlaps, inefficient proceedings, and prolonged litigation. The lack of a unified framework meant that creditors and debtors alike faced delays and uncertainty, with no clear path for insolvency resolution.

- **Lengthy and Inefficient Resolution Process** With no time-bound procedures, cases dragged on for years, leading to substantial asset value erosion. Entities such as the Board for Industrial and Financial Reconstruction (BIFR) and Debt Recovery Tribunals (DRTs) were often ineffective, and by the time resolutions were achieved, assets had significantly depreciated. This lack of timely resolution made recovery efforts less effective, further complicating creditors' attempts to recover dues.
- **High Non-Performing Assets (NPAs) and Banking Sector Stress** The prolonged insolvency process was a major contributor to the NPA crisis, particularly in public sector banks. The inability of banks to resolve bad loans meant that they had to make provisions for these assets, negatively impacting their profitability and capacity to extend credit for new ventures. This situation hindered economic growth as banks were reluctant to lend, thus stalling capital flow within the economy.
- **Lack of Creditor Protection and Rights** India's insolvency regime was heavily debtor-oriented, offering limited legal power to creditors. The debtor-centric approach allowed debtors to exploit loopholes, delay repayments, and initiate appeals to evade liabilities. Creditors, especially unsecured ones, found it difficult to recover their dues due to the weak enforcement of creditor rights, which discouraged investment and affected the overall confidence in the system.
- **Limited Professional Expertise and Institutional Capacity: DRTs** and other recovery forums were frequently overburdened, creating backlogs and leading to inefficiency. Moreover, there was a lack of qualified professionals to handle insolvency cases, and this scarcity of institutional capacity and trained insolvency professionals further hindered the resolution process. This limited expertise and infrastructure led to an underdeveloped insolvency ecosystem.
- **Minimal Coordination between Creditors** Without a cohesive framework for creditors, different creditors pursued conflicting strategies, often leading to fragmented

recoveries and excessive losses. Secured creditors, for example, might prioritize asset seizure, while unsecured creditors may look for repayment plans, leading to a lack of coordinated action and ineffective resolutions. This lack of cooperation further delayed insolvency cases and reduced potential recoveries.

- **Asset Value Erosion** Due to delays in the resolution process, distressed assets often lost a considerable portion of their value. The absence of a quick, efficient resolution mechanism led to situations where assets deteriorated while cases were pending in courts. This diminished asset value meant that creditors, even when able to recover dues, received only a fraction of what was originally owed.
- **Impact on Ease of Doing Business** India's fragmented insolvency regime contributed to its poor performance in the World Bank's Ease of Doing Business rankings, particularly in "resolving insolvency." The lengthy, uncertain processes discouraged foreign investors, making India less attractive as an investment destination. This, in turn, hurt India's economy by limiting foreign capital inflow and hampering domestic business growth.
- **Complex Judicial Processes and Frequent Appeals** Multiple appeals and lengthy judicial processes characterized India's pre-IBC insolvency cases. Legal complexities and opportunities for indefinite appeals created significant barriers to swift resolutions. Debtors often exploited these processes to delay or avoid resolutions, which further undermined creditors' ability to recover dues efficiently.
- **Limited International Compatibility** India's lack of a cross-border insolvency framework made it challenging to handle cases involving multinational corporations with assets or creditors in multiple jurisdictions. This limitation in international compatibility made it difficult to harmonize insolvency procedures and created challenges in handling complex, cross-border insolvency issues, reducing India's alignment with global standards.

(D) Details of the Insolvency and Bankruptcy Code (IBC) Framework

The Insolvency and Bankruptcy Code (IBC) of 2016 marked a transformative shift in India's approach to insolvency and bankruptcy by providing a comprehensive, streamlined framework aimed at ensuring a time-bound resolution process. The IBC framework integrates and harmonizes insolvency laws, consolidating procedures for individuals, partnerships, and corporations into a unified code that benefits all stakeholders. Below are the key components of the IBC framework:

- **Insolvency Resolution Process** The IBC provides a detailed process for resolving insolvency, primarily divided into Corporate Insolvency Resolution Process (CIRP) and individual or partnership insolvency.
- **Corporate Insolvency Resolution Process (CIRP):** CIRP is the process for corporate debtors (companies) facing financial distress. It starts when an application is filed by a creditor (financial or operational) or the debtor itself, and is accepted by the adjudicating authority, the National Company Law Tribunal (NCLT).
- **Initiation**: Insolvency proceedings can be initiated by financial creditors, operational creditors, or the debtor company itself.
- **Moratorium:** Once the NCLT accepts the application, a moratorium is declared, during which no legal action can be taken against the debtor, giving it a “breathing space” for resolution.
- **Appointment of Insolvency Resolution Professional (IRP):** An Insolvency Resolution Professional (IRP) is appointed to take over the debtor’s management and oversee the resolution process.
- **Committee of Creditors (CoC):** The CoC, mainly composed of financial creditors, is formed to decide on the resolution plan’s fate. They may accept, modify, or reject the plan proposed by prospective buyers or promoters.
- **Resolution Plan:** Prospective investors or promoters submit a resolution plan to revive or sell the debtor’s assets. The CoC must approve this plan by a 66% majority.
- **Liquidation:** If no resolution plan is approved, the company enters liquidation, where the IRP oversees asset sale to recover dues.
- **Fast-track CIRP:** For small or medium-sized businesses and startups, the IBC offers a fast-track insolvency resolution process that must be completed within 90 days (extendable by 45 days).
- **Adjudicating Authorities** The IBC designated specific bodies for adjudicating cases to prevent forum shopping and ensure consistency:

    a. **National Company Law Tribunal (NCLT): The** NCLT is the adjudicating authority for corporate insolvency cases. It has the power to initiate CIRP, approve resolution plans, and order liquidation.

    b. **Debt Recovery Tribunal (DRT):** For individuals and partnership firms, the

Debt Recovery Tribunal (DRT) serves as the adjudicating authority.

Both the NCLT and DRT are supported by appellate bodies—the National Company Law Appellate Tribunal (NCLAT) for corporates, and the DRT Appellate Tribunal for individuals.

c. **Committee of Creditors (CoC)** The IBC introduces the Committee of Creditors (CoC) as a central decision-making body in the resolution process. The CoC, primarily composed of financial creditors, has the authority to:

- Evaluate and approve resolution plans.
- Select and appoint the Insolvency Professional.
- Decide the fate of the debtor, including whether to liquidate assets or implement a revival plan.

The creditor-in-control model has been a major shift in favor of creditors, as it empowers them to make key decisions based on commercial viability rather than being subject to debtor control.

Moratorium Period A moratorium period is enforced as soon as the NCLT admits an insolvency application. During this period:

- All pending or new lawsuits against the debtor are suspended.
- Creditors are prevented from recovering dues or seizing assets independently.
- This temporary freeze is intended to give the debtor a fair chance at restructuring while also protecting creditors from losing out due to uncoordinated asset seizures.

The moratorium period is crucial for stabilizing distressed businesses and providing a conducive environment for resolution.

Role of Insolvency Professionals (IPs) The IBC has formalized the role of Insolvency Professionals (IPs), who are certified and regulated individuals responsible for managing the insolvency process. IPs are empowered to:

- Take over the debtor's management during CIRP.
- Conduct an evaluation of the debtor's assets.
- Act as a neutral party to manage the resolution process or asset liquidation.

By involving trained professionals, the IBC ensures that cases are managed impartially, with a focus on protecting both creditor and debtor interests.

Liquidation Process If the CoC is unable to approve a resolution plan, the debtor proceeds to liquidation. During liquidation:

1. Assets are sold, and proceeds are distributed according to a priority waterfall, with secured creditors at the top.
2. The Insolvency Professional acts as the Liquidator, managing the sale of assets to recover dues.
3. The IBC's liquidation framework ensures that creditors' interests are prioritized while aiming to prevent unnecessary asset devaluation.

(E) Cross-border Insolvency (Proposed)

The IBC has begun integrating cross-border insolvency provisions to handle cases involving assets or creditors in multiple jurisdictions. This framework, based on the UNCITRAL Model Law, will facilitate cooperation with foreign courts and ensure smoother proceedings in cases of cross-border insolvency.

The IBC framework has introduced a comprehensive and systematic process for handling insolvency cases. By prioritizing timely resolutions, creditor rights, and professional management, the IBC has greatly strengthened India's insolvency regime, contributing to a healthier financial ecosystem and improving investor confidence.

III. CONSEQUENCES OF IBC IMPLEMENTATION

The Insolvency and Bankruptcy Code (IBC) has profoundly impacted India's economic and legal landscape since its implementation in 2016. Designed to address the inefficiencies of the previous insolvency framework, the IBC has transformed how distressed assets and insolvencies are managed in India. The code's introduction of a time-bound, creditor-driven insolvency process has had far-reaching consequences on the banking sector, corporate sector, foreign investment, and India's position in the global economy. Here are the key consequences of the IBC:

(A) Reduction in Non-Performing Assets (NPAs)

- **Improved Recovery Rates:** The IBC's time-bound resolution process and emphasis on creditor control have improved recovery rates for banks. Rather than spending years attempting to recover dues through protracted litigation, banks now have a clear path to recovering dues, often in a shorter timeframe. This has contributed to a reduction in non-performing assets (NPAs) for many financial institutions, improving their balance sheets and profitability.
- **Discouraging Strategic Defaults:** The IBC has also created a deterrent effect. The possibility of losing control over assets in a bankruptcy proceeding discourages

borrowers from intentionally defaulting, known as strategic defaults. Corporate promoters, aware of the CoC's control over distressed assets, are more motivated to repay dues.

(B) Enhanced Creditor Rights and Confidence

- **Shift to Creditor-Controlled Model:** Under the IBC, the Committee of Creditors (CoC), primarily composed of financial creditors, plays a central role in approving resolution plans. This shift to a creditor-controlled model has strengthened creditor rights and confidence, as banks and other financial institutions now have greater influence over the resolution process.
- **Increased Lending Willingness:** With better legal safeguards in place for loan recovery, lenders are more willing to extend credit, knowing that the IBC provides them with a structured mechanism for recovery. This has positively affected credit flow in the economy, supporting economic growth and investment.

(C) Timely Resolution and Prevention of Asset Value Erosion

- **Reduced Resolution Time:** The IBC mandates a 180-day resolution period (extendable by 90 days), reducing delays that previously eroded asset value. By providing a predictable, swift timeline, the IBC helps ensure that distressed assets retain value, benefiting both creditors and the economy.
- **Enhanced Asset Utilization:** Since assets can be quickly reallocated or sold to more efficient market players, the IBC framework facilitates productive asset utilization. The faster resolution of cases has allowed for more timely intervention, enabling financially viable businesses to avoid liquidation and continue operating.

(D) Improved Ease of Doing Business and Investment Climate

- **Boost in World Bank Ranking:** The IBC has helped improve India's ranking in the World Bank's Ease of Doing Business report, particularly in the "resolving insolvency" parameter. This has enhanced India's image as an investment destination, attracting both domestic and foreign investment.
- **Investor Confidence:** The IBC's robust framework provides foreign investors with a clear process for recourse in the event of financial distress, thus increasing investor confidence. By aligning with global best practices, the IBC has made India's legal environment more predictable and attractive to international investors.

(E) Positive Impact on Banking Sector Health

- **Strengthened Balance Sheets: As** banks recover funds from distressed assets more effectively, they can allocate fewer resources to NPAs, leading to stronger balance sheets. Improved financial health allows banks to make new loans and finance economic growth.
- **Provision and Risk Management Improvements**: The improved NPA situation allows banks to set aside lower provisions for bad loans, which translates to better risk management and increased profitability. This improved health also benefits public sector banks, making them more resilient and improving government finances.

(F) Enhanced Corporate Discipline

- **Discouraging Financial Mismanagement:** The IBC has contributed to greater financial discipline among corporate borrowers. Businesses now prioritize sound financial management to avoid insolvency proceedings, which could result in losing control of their assets. As a result, the IBC has fostered a culture of accountability and prudence in financial practices.
- **Restructuring of Distressed Companies:** The IBC promotes corporate restructuring over liquidation, enabling businesses to reorganize and continue operating, rather than dissolving. This framework has created a more resilient corporate sector, where distressed companies have the opportunity to turn around rather than shutting down entirely.

(G) Development of a Professional Insolvency Ecosystem

- **Growth of Insolvency Professionals (IPs):** The IBC has led to the development of a specialized insolvency profession in India. Certified insolvency professionals (IPs) and Insolvency Professional Agencies (IPAs) have become integral to the resolution process, bringing professionalism and expertise to case management.
- **Emergence of National Company Law Tribunal (NCLT) as a Key Adjudicator:** The National Company Law Tribunal (NCLT) and its appellate body, the NCLAT, have played a crucial role in implementing the IBC. These bodies have gained substantial expertise in insolvency cases, fostering consistency in judgments and efficiency in case resolutions.

(H) Promotion of Cross-Border Insolvency Framework

- **Alignment with Global Insolvency Standards:** The IBC's ongoing adoption of a cross-border insolvency framework, in line with the UNCITRAL Model Law, signifies India's commitment to harmonizing with global insolvency practices. This addition is expected to improve India's ability to handle complex cases involving multinational corporations.

- **Facilitating International Cooperation:** Cross-border insolvency provisions enhance cooperation with foreign courts and support the efficient handling of cases where assets or creditors are spread across multiple jurisdictions. This has positive implications for global investors and multinational corporations with operations in India.

Modifications in the Insolvency and Bankruptcy Code (IBC) Since its enactment in 2016, the Insolvency and Bankruptcy Code (IBC) has undergone several modifications to address emerging challenges and adapt to the evolving economic landscape. These amendments have focused on improving process efficiency, safeguarding specific stakeholder interests, and introducing flexibility to accommodate the needs of diverse entities. Here are some of the key modifications in the IBC:

(I) Homebuyers as Financial Creditors (2018 Amendment)

- **Context and Need:** Initially, homebuyers had limited recourse in insolvency proceedings, often left unprotected when real estate developers faced insolvency.
- **Amendment:** In 2018, an amendment to the IBC recognized homebuyers as financial creditors, granting them a seat on the Committee of Creditors (CoC) and giving them voting rights.
- **Impact:** These changes empowered homebuyers, allowing them to directly participate in resolution decisions and protect their financial interests. The amendment also led to faster resolutions in real estate insolvency cases by holding developers accountable.

(J) Threshold for Initiation of Insolvency (2020 COVID-19 Amendment)

- **Context and Need:** During the COVID-19 pandemic, many small and medium-sized enterprises (SMEs) faced financial difficulties, leading to potential insolvency filings.
- **Amendment:** To protect these businesses from an overwhelming number of insolvency cases, the government raised the threshold for default from Rs. 1 lakh to Rs. 1 crore. This provided SMEs with temporary relief from insolvency proceedings due to pandemic-induced disruptions.
- **Impact:** This adjustment prevented the insolvency framework from becoming overburdened and allowed financially viable businesses to recover without the threat of

immediate insolvency action.

(K) Pre-Packaged Insolvency Resolution Process (Pre-Pack CIRP) for MSMEs (2021 Amendment)

- **Context and Need:** Micro, Small, and Medium Enterprises (MSMEs) needed a simplified insolvency framework due to their limited resources and the impact of the pandemic on their financial health.
- **Amendment:** In 2021, the IBC introduced the Pre-Packaged Insolvency Resolution Process (Pre-Pack CIRP) for MSMEs, allowing them to enter into insolvency proceedings more swiftly and with fewer procedural requirements. The process must be completed within 120 days.
- **Impact:** The Pre-Pack CIRP streamlined the insolvency process for MSMEs, reducing resolution costs and offering a quicker path to financial recovery or restructuring. This has provided a flexible alternative that encourages MSMEs to resolve distress without going through full CIRP.

(L) Moratorium on COVID-19 Related Defaults (2020)

- **Context and Need:** The economic impact of COVID-19 forced many companies into financial distress, which could have led to a surge in insolvency cases.
- **Amendment:** The government introduced a moratorium on insolvency proceedings for defaults occurring between March 25, 2020, and March 24, 2021. During this period, creditors could not initiate insolvency proceedings for COVID-related defaults.
- **Impact:** This temporary suspension protected businesses from the risk of insolvency during the pandemic, helping them to maintain continuity and focus on recovery efforts. It also reduced strain on the insolvency ecosystem by preventing an overflow of cases.

(M) Threshold Voting Requirement Changes for Committee of Creditors (CoC)

- **Context and Need:** Under the original IBC framework, the CoC required a 75% voting threshold for major decisions, which sometimes slowed down decision-making.
- **Amendment:** The IBC reduced the voting threshold to 66% for key decisions, such as approving a resolution plan or liquidation. For routine decisions, the threshold was further reduced to 51%.
- **Impact:** The reduced voting requirement facilitated faster decision-making within the

CoC, expediting the overall resolution process. This change allowed financially viable companies to achieve more timely outcomes.

(N) Introduction of Cross-Border Insolvency Framework (Proposed)

- **Context and Need:** With India's growing involvement in global markets, cross-border insolvency issues have become more prevalent, necessitating a clear framework for handling multinational cases.
- **Proposed Amendment:** A draft amendment was proposed to introduce a cross-border insolvency framework aligned with the UNCITRAL Model Law on Cross-Border Insolvency. This framework would enable cooperation with foreign courts and establish procedures for handling international assets.
- **Impact:** While still awaiting implementation, this amendment would align India's insolvency framework with global standards, facilitating more effective resolutions in cross-border cases. It would benefit foreign investors and companies with international operations, enhancing India's appeal as an investment destination.

(O) Clarity on Limitation Period for Insolvency Applications

- **Context and Need:** Initially, there was ambiguity around the limitation period (the timeframe within which a creditor must file for insolvency) under the IBC.
- **Amendment:** The Supreme Court clarified that the IBC is subject to the Limitation Act, 1963, which sets a three-year limit for filing insolvency cases from the date of default.
- **Impact:** This clarification brought uniformity to the application of limitation periods, preventing prolonged delays and ensuring that cases were brought to the NCLT within a reasonable time frame. It has streamlined the process by filtering out older cases that may no longer be relevant.

(P) Improved Framework for Liquidation and Distribution of Assets (2019 Amendment)

- **Context and Need:** The original liquidation provisions needed refinement, as creditors' priorities and asset distribution were sometimes inefficient.
- **Amendment:** The 2019 amendment clarified the order of priority for asset distribution, prioritizing secured creditors, workmen dues, and employees over government dues.

- **Impact:** This adjustment ensured fair and predictable distribution among creditors, reduced disputes over asset distribution, and encouraged more transparent liquidation proceedings.

(Q) Fast-Track Corporate Insolvency Resolution Process (CIRP)

- **Context and Need:** Smaller cases, startups, and certain MSMEs required quicker resolutions without the extensive procedures typical of larger corporate insolvencies.
- **Amendment:** The fast-track CIRP, which is meant to conclude within 90 days (extendable by 45 days), was introduced to handle simpler cases efficiently.
- **Impact:** This modification expedited the resolution of smaller cases, relieving NCLT's caseload and making insolvency resolution more accessible for MSMEs and startups.

These modifications have helped shape the IBC into a more flexible, inclusive, and resilient framework that aligns with India's dynamic economy. By addressing specific stakeholder needs, enhancing creditor protection, and simplifying processes for smaller businesses, the IBC has become more adaptable and effective in ensuring prompt, equitable resolutions in complex insolvency cases.

IV. CROSS-BORDER IMPLEMENTATION OF THE INSOLVENCY AND BANKRUPTCY CODE (IBC)

As globalization increasingly interconnects economies, companies with cross-border operations face insolvency and restructuring challenges that may span multiple jurisdictions. To address the complexities associated with cross-border insolvency cases, India is working toward incorporating a cross-border insolvency framework within the Insolvency and Bankruptcy Code (IBC). This effort aligns with international standards and provides a clear mechanism to address the concerns of foreign creditors, manage assets abroad, and cooperate with foreign insolvency courts. Here are the key aspects and challenges associated with cross-border implementation of the IBC:

(A) Need for Cross-Border Insolvency Framework

- **Global Business Integration:** Many Indian corporations operate in multiple countries, and foreign companies also have a presence in India. In cases of insolvency, these cross-border assets and liabilities require a cooperative approach across jurisdictions to ensure fair treatment of creditors and efficient asset management.

- **Lack of Formal Mechanisms:** Prior to the development of a cross-border insolvency framework, the IBC did not offer explicit provisions for dealing with international insolvency cases. This limited the ability of Indian courts to collaborate with foreign courts in cases involving multinational assets.

(B) Adoption of the UNCITRAL Model Law on Cross-Border Insolvency

- **Overview of the UNCITRAL Model Law:** The United Nations Commission on International Trade Law (UNCITRAL) introduced the Model Law on Cross-Border Insolvency in 1997 to standardize cross-border insolvency procedures. It provides a framework for cooperation between domestic and foreign courts, recognition of foreign insolvency proceedings, and fair asset distribution.
- **Proposed Adaptation in India:** India is working to incorporate key principles of the UNCITRAL Model Law into the IBC. This would allow Indian courts to recognize and cooperate with foreign insolvency proceedings, improving case efficiency and facilitating global investor confidence.

(C) Key Elements of the Cross-Border Framework under UNCITRAL

- **Recognition of Foreign Proceedings:** The Model Law allows for the recognition of foreign insolvency proceedings, distinguishing between "foreign main" and "foreign non-main" proceedings based on the debtor's primary operations. Recognizing such proceedings helps streamline case management and avoid conflicting court rulings.
- **Cooperation and Communication: The** Model Law emphasizes cooperation between domestic and foreign courts, allowing for communication, coordination, and collaboration to ensure a unified approach. This is essential for cases where assets and creditors span multiple countries.
- **Automatic Stay on Proceedings:** Upon recognizing a foreign main proceeding, courts may automatically stay domestic proceedings against the debtor, protecting the debtor's assets and ensuring an orderly resolution process.
- **Access to Domestic Courts for Foreign Representatives:** Foreign insolvency representatives are granted access to domestic courts, which helps them manage the debtor's assets located within the jurisdiction. This enhances the representative's ability to protect creditors' rights and address claims efficiently.

- **Expected Benefits of Implementing Cross-Border Insolvency Provisions in the IBC**

- **Enhanced Creditor Protection:** A structured cross-border insolvency framework would improve protections for both domestic and international creditors, allowing for equitable asset distribution across jurisdictions.
- **Increased Foreign Investment**: By adopting globally recognized standards, India strengthens the confidence of foreign investors and multinational corporations that they will have legal recourse in the event of insolvency, potentially attracting more investment.
- **Streamlined Cross-Border Resolutions:** Recognizing foreign proceedings would reduce duplicative efforts, avoid asset depletion, and enable more efficient resolutions in cases involving complex, multinational assets.

(D) Challenges in Cross-Border Implementation

- **Jurisdictional Conflicts:** One of the primary challenges in cross-border insolvency is addressing potential jurisdictional conflicts. Countries may have different legal systems, and harmonizing these can be complex.
- **Variation in Bankruptcy Laws Across Jurisdictions**: Insolvency laws vary widely across countries, and aligning India's IBC with international laws may require modifications to address differences in creditor rights, asset distribution, and treatment of secured versus unsecured creditors.
- **Complexity in Asset Repatriation:** Repatriating assets from foreign jurisdictions to India, or vice versa, can be challenging, as each country's insolvency framework may have distinct requirements and restrictions. Ensuring compliance with domestic and international laws can make asset recovery difficult.
- **Regulatory Coordination with Foreign Entities:** Successful implementation requires cooperation not only with foreign courts but also with regulatory bodies that may have oversight on issues like taxation, asset transfers, and financial reporting.

(E) Implementation Steps and the Way Forward

- **Legislative Amendments:** To operationalize cross-border insolvency provisions, the Indian government is expected to amend the IBC, incorporating principles of the UNCITRAL Model Law while customizing it to India's legal context.
- **Bilateral and Multilateral Treaties:** In addition to legislative changes, India may explore bilateral and multilateral treaties with major trading partners to enhance cross-

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border cooperation.

- **Judicial Training and Capacity Building**: Adapting to cross-border insolvency practices requires training judges and insolvency professionals on international insolvency laws and cooperation procedures. Building this capacity is essential to manage complex cases effectively.
- **Pilot Projects and Testing:** Before full implementation, India may consider pilot programs or test cases involving cross-border insolvency to identify challenges and improve procedural efficiency.

Incorporating cross-border insolvency provisions into the IBC marks a significant step toward modernizing India’s insolvency framework and aligning it with international standards. By enhancing cooperation with foreign courts, India can ensure that its insolvency system remains robust and capable of handling the complexities of global commerce. This framework would protect creditors, support fair asset distribution, and foster a business environment that is responsive to the needs of multinational investors and stakeholders.

V. CONCLUSION

By resolving the long-standing problems of the earlier disjointed insolvency system, the Insolvency and Bankruptcy Code has revolutionized India's economic environment. The IBC has greatly increased recovery rates, decreased non-performing assets, and promoted a more orderly business climate by instituting a time-bound, creditor-driven process. The code's flexibility and responsiveness to the changing needs of various stakeholders, especially small and medium-sized businesses, have been further improved by the numerous revisions made to it.

To bring India's insolvency system into compliance with international norms, the continuous attempts to include a cross-border insolvency framework in the IBC are essential. This will improve India's appeal as an investment destination, allow for more expedient resolution of cases involving multinational assets, and increase international creditors' and investors' trust in the Indian market.

All things considered, the IBC has proven to be a strong and flexible framework that has significantly enhanced the ease of doing business and strengthened India's financial ecosystem. The code is positioned to play a crucial part in supporting the nation's sustainable economic growth and development as it develops further and adjusts to new difficulties.

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VI. References

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