

Reforming IBC

What is the issue?

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- IBC 2016 was introduced as a single law for insolvency and bankruptcy.

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- It is facing practical constraints, this need to be addressed.

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What are the significance of IBC?

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- The Code outlines separate insolvency resolution processes for individuals, companies and partnership firms.

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- The process may be initiated by either the debtor or the creditors.

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- The Insolvency and Bankruptcy Code (IBC) envisions a 180-day period in which bids are invited for a defaulted firm.

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- If 75 per cent of the debt votes in favour of a bid, that bid is accepted.

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- Insolvency and Bankruptcy Board of India has been appointed as a regulator and it can oversee these proceedings.

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- IBBI has 10 members from Finance Ministry and Law Ministry the Reserve Bank of India.

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- IBC permits hiring services of licensed professionals who have total control over assets of debtor while the proceedings are going on at a tribunal.

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- Two tribunals have been authorised to resolve insolvency issues and pronounce their judgement on them.

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- One is National Company Law Tribunal for companies and the other Debt Recovery Tribunal for individuals

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What areas IBC was expected to address?

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- **Bankrupt firms** - If a company goes bankrupt the creditors of the companies were in a distressing situation due to the uncertainty in recovering the debts.

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- In the bankruptcy process, there is an open opportunity for many people to bid for the firm so that recovery of debts is guaranteed.

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- **Real estate firms** - Bankrupted real estate companies delayed payments, and took capital from buyers and they became unsecured creditors.

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- The IBC will be triggered quickly when a real estate company gets into trouble and problems of buyers will be addressed.

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- **Defaulters** - Earlier the information about defaulters was kept secret and their trading continued in the stock markets.

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- IBC has made default by a company as a mandatory information which must be disclosed immediately.

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What are the practical constraints in IBC framework?

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- Open and transparent process results in the promoter regaining control of the firm, who is likely responsible for running the company aground.

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- Recovery rates for 10 or 15 year old cases are abysmal even after the procedural problems of the IBC are fixed.

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- In one recent case, a bid was accepted to give lenders 6 per cent of the value of their debt of a defaulted firm.

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- There is much concern about some developments in bankruptcy reform as the lenders get a low recovery rate.

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- Home buyers who have paid large advances to real estate companies are worried about their losses.

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What measures can be taken in IBC?

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- An amendment is required to fix the mistakes in the 2016 IBC law.
- The Insolvency and Bankruptcy Board of India (IBBI) has to achieve the scale required for a high-performance regulator.
- An array of well-drafted regulations has to be issued by the IBBI, for a robust regulation-making process.
- A competitive industries of private Information Utilities (IUs), Insolvency Professional Agencies (IPAs), and Insolvency Professionals (IPs) has to arise.
- The bankruptcy process must commence immediately after the first default, and the new arrangement must be quickly put in place.
- To ensure an optimal restructuring plan, collectively financial firms need to build capacity on insolvency resolution process.

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Source: Business Standard

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