
INSOLVENCY LAW MAKING POST IBC, 2016 - ROLE AND FUNCTION OF INSOLVENCY LAW COMMITTEE

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ABSTRACT

This paper examines the pivotal role and function of the Insolvency Law Committee in shaping India's insolvency regime following the implementation of the Insolvency and Bankruptcy Code (IBC) in 2016¹. The IBC marked a watershed moment in India's economic reforms, aimed at addressing the long-standing challenges of debt resolution and corporate insolvency. In this context, the Insolvency Law Committee emerged as a crucial body tasked with reviewing the implementation of the IBC and recommending necessary amendments to enhance its effectiveness. The research explores how the Committee, through its advisory capacity, has influenced the evolution of insolvency law in post-IBC India. It analyzes the Committee's composition, mandate, and working methodology, highlighting its function as a bridge between stakeholders, policymakers, and the judiciary. The paper delves into key recommendations made by the Committee and their subsequent impact on legislative amendments and regulatory frameworks.

The paper critically assesses the ILC's strengths, limitations, and future directions, providing insights into its potential role in adapting insolvency laws to emerging economic realities. This research contributes to the understanding of the ILC's significance in the ongoing evolution of India's insolvency law framework and its impact on insolvency proceedings and outcomes.

Keywords: Insolvency and Bankruptcy Code (IBC), Insolvency Law Committee, corporate insolvency, debt resolution, law-making, regulatory framework, economic reforms, jurisprudence, stakeholder consultation, legislative amendment. Cross-border insolvency, economic adaptation.

¹ The Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India).

Introduction

India's insolvency laws have undergone significant transformation over the past few decades, culminating in the landmark Insolvency and Bankruptcy Code (IBC) of 2016. Prior to the IBC, India's insolvency regime was fragmented, with multiple laws governing various aspects of insolvency and bankruptcy. This fragmentation often led to prolonged legal proceedings, value erosion of assets, and inefficient resource allocation.

India's strategy for resolving insolvencies underwent a paradigm shift in 2016 with the implementation of the IBC. The goal of this extensive legislation was to revise and unite the rules pertaining to corporate restructuring and partnership firm and individual insolvency resolution. Promoting entrepreneurship, optimizing asset value, balancing the interests of all stakeholders, and providing a timeline-bound settlement procedure were among the main goals of the IBC. The urgent need for a more cogent framework that could handle the intricacies of insolvency in a fast-changing economic environment led to this legislative change.

The Insolvency Law Committee (ILC) was founded in 2017² by the Ministry of Corporate Affairs in recognition of the ongoing need to modify and adapt the insolvency framework. The ILC was entrusted with evaluating the IBC's implementation, spotting problems that might affect how effectively the insolvency resolution procedure operates, and suggesting solutions to these problems. The ILC, which is made up of professionals from a variety of disciplines including law, finance, and regulation, is crucial for addressing the problems faced by individuals involved in insolvency procedures. Its mandate comprises evaluating the IBC's performance on a regular basis and recommending changes based on feedback from stakeholders and practical experience. The ILC is a crucial advisory group that influences legislative changes intended to strengthen the insolvency system; it does more than just provide recommendations. The ILC has identified several crucial areas for development through its reports, including improving stakeholder involvement, streamlining processes, and harmonizing the IBC with other relevant laws. The committee's actions will play a major role in ensuring that India's insolvency legislation change to reflect current economic realities and worldwide best practices.

² Ministry of Corporate Affairs, Government of India, "Constitution of Insolvency Law Committee," Press Information Bureau, November 16, 2017, <https://pib.gov.in/newsite/PrintRelease.aspx?relid=173607>

Structure and Composition of the Insolvency Law Committee

A. Formation and Mandate

i. Establishment of the ILC

The Insolvency Law Committee (ILC) was set up by the Ministry of Corporate Affairs on November 16, 2017. It was developed as a calculated response to the 2016 Insolvency and Bankruptcy Code (IBC), which is still in need of modifications. The IBC was a groundbreaking reform that created a comprehensive legal framework for handling bankruptcy and insolvency issues efficiently and promptly. Difficulties in implementation were faced by creditors, insolvency professionals, and corporate debtors, in addition to judicial interpretations, as was the case with any new law. It became evident after the Code's adoption that an expert body was needed to review the IBC and suggest modifications within a year of its adoption. The government understood how important it was to maintain the IBC's adaptability and responsiveness to the evolving financial and economic environment. As a result, the ILC was created as an advisory body tasked with reviewing the Code and making recommendations to address any problems, uncertainties, or shortcomings. The major objectives of the ILC's creation were to resolve the problems that came up during the IBC's initial deployment and guarantee that the law remained adaptable to the evolving economic landscape³.

ii. Mandate and Composition

The scope of the Insolvency law committee (ILC) is broad and includes evaluating the way the Insolvency and Bankruptcy Code has been implemented, identifying issues that could affect the effectiveness of the insolvency resolution process, and suggesting solutions to these problems⁴. Experts from a range of disciplines make up the committee, guaranteeing a thorough approach to insolvency law reform. Typically, its membership consists of:

- Legal experts with expertise in insolvency law
- Financial sector professionals

³ Insolvency and Bankruptcy Board of India, "Report of the Insolvency Law Committee," February 2020, p. 7-8.

⁴ Ministry of Corporate Affairs, "Terms of Reference of the Insolvency Law Committee," Government of India, 2017.

- Representatives from regulatory bodies
- Members of the judiciary with experience in commercial law matters
- Academics specializing in insolvency and bankruptcy studies

B. Membership and Expertise

The ILC's membership reflects a diverse range of expertise crucial for a holistic review of the insolvency framework. Key members have included:

- Chairperson (usually a senior government official or legal expert)
- Representatives from the Ministry of Corporate Affairs
- Legal experts: Judges, senior advocates, and legal scholars with deep knowledge of insolvency law and corporate regulations.
- Financial professionals: Representatives from financial institutions such as banks, and professionals with experience in corporate debt restructuring.
- Regulatory authorities: Representatives from the Insolvency and Bankruptcy Board of India (IBBI) and the Securities and Exchange Board of India (SEBI).
- Insolvency professionals: Practitioners who directly deal with insolvency resolution processes, bringing practical insights from the field.

C. Working Methodology

The ILC employs a systematic approach to fulfilling its mandate:

- **Regular Meetings:** The committee convenes periodically to discuss emerging issues and review the IBC's implementation.
- **Subcommittee Formation:** For in-depth analysis of specific topics, the ILC often forms specialized subcommittees.
- **Data Analysis:** The committee reviews empirical data on insolvency proceedings to

identify trends and challenges.

- **Stakeholder Consultations:** The ILC actively engages with various stakeholders to gather diverse perspectives on the insolvency regime

D. Reporting Structure

The ILC operates within a structured reporting framework:

- **Report Preparation:** The committee prepares detailed reports containing its findings and recommendations.
- **Submission to Ministry:** These reports are submitted to the Ministry of Corporate Affairs for review and consideration.
- **Public Dissemination:** Many ILC reports are made publicly available to ensure transparency and facilitate wider discussion.
- **Follow-up:** The committee often conducts follow-up reviews to assess the implementation and impact of its recommendations⁵

Role and Function of the Insolvency Law Committee

I. Review and Recommendations

The continuing development of India's insolvency framework is greatly aided by the ILC. It carefully examines the IBC and makes recommendations for changes to address problems and gaps found. The following are a few of the important reports and how they affected important changes:

- **March 2018 Report:** This report led to the IBC (Second Amendment) Act, 2018⁶, which recognized homebuyers as financial creditors, clarification on voting rights in the Committee of Creditors (coc), and a faster process for the resolution of msme.

⁵ Ministry of Corporate Affairs, "Action Taken Report on the Recommendations of the Insolvency Law Committee," Government of India, 2019.

⁶ Ministry of Corporate Affairs, "Action Taken Report on the Recommendations of the Insolvency Law Committee," Government of India, 2019.

- **February 2020 Report:** This report influenced amendments related to the treatment of personal guarantors to corporate debtors⁷.

Additionally, the ILC has been instrumental in suggesting pre-packaged insolvency frameworks for msme, enhancing the speed and efficiency of the resolution process.

II. Stakeholder Consultation

The ILC's stakeholder consultation process is integral to its functioning. It regularly engages with:

- Creditors (financial and operational)
- Insolvency professionals
- Regulatory bodies (e.g., IBBI, RBI)
- Industry associations
- Legal and financial experts

This inclusive approach ensures that diverse perspectives are considered in the review process, leading to more balanced and effective recommendations.

III. Advisory Role

The ILC's advisory role extends beyond legislative recommendations. It also contributes to shaping regulations and guidelines for various stakeholders in the insolvency ecosystem. This includes:

- Advising on best practices for insolvency professionals
- Recommending improvements to the corporate insolvency resolution process
- Suggesting enhancements to creditor rights and participation in the insolvency process

⁷ The Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, No. 26, Acts of Parliament, 2018 (India).

- Providing insights on the regulatory framework for the insolvency profession⁸

The Insolvency Law Committee, with its diverse perspective, remains indispensable in enhancing and fortifying India's insolvency laws, guaranteeing their applicability and efficiency in a constantly changing economic landscape.

Key Areas of Focus for the ILC

A. Addressing Implementation Challenges of the IBC

The IBC has encountered numerous implementation obstacles since its beginnings. Resolving the implementation issues that arose in the early years of the IBC's enforcement has been one of the ILC's main goals. The legislation brought about a dramatic change in India's bankruptcy laws, transferring the country from a debtor-in-possession to a creditor-in-control framework. This change created a number of real-world challenges for interpretation and implementation. The ILC has been crucial in recognizing these issues and suggesting fixes for them:

- **Delays in Resolution Process:** The ILC recommended stricter adherence to timelines, leading to amendments that mandated completion of the corporate insolvency resolution process (CIRP) within 330 days⁹.
- **Definition of Related Party:** The committee suggested refining the definition to prevent abuse, resulting in amendments to exclude certain categories of financial creditors from being considered as related parties¹⁰.
- **Section 29A Eligibility Criteria:** The ILC's recommendations led to modifications in the eligibility criteria for resolution applicants, striking a balance between attracting genuine investors and preventing errant promoters from regaining control¹¹.
- **Operational Creditors' Role:** Operational creditors often faced difficulties in claiming their dues under the IBC. The ILC recommended amendments to clarify the rights of

⁸ Insolvency and Bankruptcy Board of India, "Regulatory Framework for Insolvency Professionals," accessed [17.10.2024], <https://ibbi.gov.in/legal-framework/regulations>.

⁹ Insolvency and Bankruptcy Code (Amendment) Act, 2019, No. 26, Acts of Parliament, 2019 (India).

¹⁰ Insolvency Law Committee, "Report of the Insolvency Law Committee," February 2020, p. 21-25.

¹¹ Insolvency and Bankruptcy Code (Amendment) Act, 2018, No. 26, Acts of Parliament, 2018 (India)

operational creditors, ensuring that they have a defined role in the Committee of Creditors (coc) and are considered during insolvency resolution processes.

Case Law: In *arcelormittal India Private Limited v. Satish Kumar Gupta*¹², the Supreme Court interpreted Section 29A, reflecting the ILC's recommendations on eligibility criteria for resolution applicants.

B. Harmonizing IBC with Other Laws

The ILC has worked towards ensuring coherence between the IBC and other relevant legislation:

- **Companies Act Interface:** Recommendations were made to align provisions of the Companies Act, 2013¹³, with the IBC, particularly concerning moratoriums and winding-up procedures.
- **Securities Laws:** The committee proposed amendments to reconcile the IBC with securities laws, especially regarding delisting procedures and public shareholding norms during resolution¹⁴.
- **Tax Laws:** Efforts were made to address conflicts between tax recovery proceedings and the IBC's moratorium provisions¹⁵.
- **Arbitration and IBC:** The ILC also examined the interplay between arbitration proceedings and the IBC. It clarified that once insolvency proceedings are initiated, arbitration proceedings are stayed, ensuring that insolvency matters are resolved under the IBC framework without interference from parallel litigation. This harmonization ensures that insolvency matters are prioritized and not delayed due to ongoing arbitration disputes.

Case Law: The Supreme Court's decision in *Pr. Commissioner of Income Tax vs. Monnet Ispat*

¹² *ArcelorMittal India Private Limited v. Satish Kumar Gupta*, (2019) 2 SCC 1

¹³ Ministry of Corporate Affairs, "Report of the Company Law Committee," November 2019, p. 33-36

¹⁴ Securities and Exchange Board of India, "Report of the Committee on Corporate Governance," October 2017, p. 61-63

¹⁵ Central Board of Direct Taxes, Circular No. 26/2017, July 25, 2017.

And Energy Ltd¹⁶. Highlighted the need for harmonization between tax laws and the IBC, an area the ILC has been actively addressing.

C. Enhancing Cross-Border Insolvency Framework

Acknowledging that business are becoming more global, the ILC has concentrated on creating a strong framework for cross-border insolvency¹⁷. The lack of a thorough structure under the existing IBC makes handling cross-border insolvency difficult for creditors and multinational corporations with assets spread across several jurisdictions.

In its 2018 report, the ILC recommended implementation of the UNCITRAL Model Law on Cross-Border Insolvency¹⁸, which provides a legislative framework for cooperation between courts of different nations in cross-border insolvency matters. Among the countries that have already adopted this model law are Japan, the US, and the UK. The ILC's proposal aims to facilitate more seamless collaboration between Indian courts and foreign jurisdictions in bankruptcy processes involving abroad assets, with some modifications made to suit the Indian situation.

Jet Airways Case¹⁹: With insolvency procedures filed in both India and the Netherlands, the cross-border insolvency framework was put to the test. Such instances, which demonstrated the necessity of a formal legal framework to manage cross-border insolvency proceedings effectively, had an impact on the ILC's advocacy for adopting the UNCITRAL model.

Reciprocity Provisions: Proposals were made to include reciprocity provisions to ensure cooperation from other jurisdictions

Center of Main Interests (COMI): The ILC suggested guidelines for determining COMI in cross-border cases.

D. Improving Corporate Rescue Mechanisms

The ILC has focused on enhancing mechanisms for corporate rescue and rehabilitation:

¹⁶ Pr. Commissioner of Income Tax vs. Monnet Ispat And Energy Ltd., Civil Appeal No. 6483 of 2018.

¹⁷ Insolvency Law Committee, "Report on Cross Border Insolvency," October 2018, p. 15-20.

¹⁸ Ibid., p. 25-27

¹⁹ Jet Airways (India) Ltd v. State Bank of India, 2019 SCC OnLine NCLAT 967

Pre-packaged Insolvency Resolution: The ILC suggested introducing pre-packaged insolvency resolutions in its 2020 report²⁰, particularly for Micro, Small, and Medium-Sized Enterprises (msmes). A corporation can restructure its debts with creditor permission prior to the formal insolvency proceedings being initiated via a pre-packaged insolvency. This approach seeks to cut expenses, avoid protracted litigation, and speed up the resolution process. Implemented through an order in 2021, it is especially advantageous for msmes, the backbone of India's economy but sometimes unable to resist protracted insolvency processes.

Group Insolvency Framework: Proposals were made for a comprehensive group insolvency framework to address the complexities of interconnected corporate entities²¹.

Fresh Start Process: The ILC suggested modifications to the fresh start process to make it more accessible and effective for eligible debtors²².

Fast Track Corporate Insolvency Resolution: The ILC has also recommended a fast-track insolvency **process** for small and medium enterprises and other corporate entities that meet specific criteria. This process shortens the insolvency timeline and simplifies procedures, ensuring that the resolution of smaller companies is swift and cost-effective.

Case Law: The National Company Law Appellate Tribunal's decision in *State Bank of India v. Videocon Industries Limited*²³ underscored the need for a group insolvency framework, an area the ILC has been actively working on.

E. Balancing Stakeholder Interests

A key focus of the ILC has been ensuring a fair balance between the interests of various stakeholders:

- **Homebuyers' Rights:** One of the significant recommendations of the ILC, which was incorporated into the IBC through an amendment in 2018, was to recognize homebuyers

²⁰ Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021, No. 3, Ordinances of Parliament, 2021 (India).

²¹ Insolvency and Bankruptcy Board of India, "Report of the Working Group on Group Insolvency," September 2019

²² Insolvency Law Committee, "Report of the Insolvency Law Committee," March 2018, p. 42-45.

²³ *State Bank of India v. Videocon Industries Limited*, Company Appeal (AT) (Insolvency) No. 370 of 2019.

as financial creditors²⁴. This allowed homebuyers to be represented in the Committee of Creditors (coc), giving them a voice in insolvency proceedings that affect their investments in real estate projects. This amendment was a result of numerous cases where homebuyers were left without recourse when real estate developers became insolvent.

- **Operational Creditors:** Proposals were made to enhance the rights of operational creditors in the resolution process, including provisions for mandatory minimum payment²⁵.
- **Creditors' Voting Rights:** The ILC recommended modifications to the voting threshold for approving resolution plans, aiming to expedite decision-making while ensuring adequate representation²⁶. This has helped balance the decision-making power between financial and operational creditors, preventing dominance by large financial institutions and ensuring that smaller creditors have a say in the resolution process.

Case Law: In *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta*²⁷, the Supreme Court upheld the primacy of financial creditors in the resolution process, reflecting the delicate balance of stakeholder interests that the ILC strives to maintain.

Through its focus on these key areas, the Insolvency Law Committee continues to play a crucial role in shaping India's insolvency regime, ensuring its effectiveness, fairness, and alignment with global best practices.

Major Recommendations and Their Impact

The Insolvency Law Committee (ILC) has played a pivotal role in shaping the evolution of India's insolvency regime through its recommendations. This section examines the key amendments suggested by the ILC, their implementation, and their impact on the insolvency landscape.

²⁴ Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, No. 26, Acts of Parliament, 2018 (India)

²⁵ Insolvency Law Committee, "Report of the Insolvency Law Committee," February 2020, p. 30-33.

²⁶ Ibid., p. 36-39

²⁷ *Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta*, (2020) 8 SCC 531

Significant Reforms Post-IBC

A. Analysis of Key ILC Reports

The ILC has submitted several reports since its formation, with each report focusing on addressing specific issues in the implementation of the IBC and suggesting amendments to enhance the code's effectiveness.

1. First ILC Report (2018)

The first report of the ILC, submitted on 26th March 2018²⁸, focused on addressing early challenges in the implementation of the IBC. Key recommendations included:

- Treating homebuyers as financial creditors
- Exempting msme from certain disqualifications under Section 29A
- Voting Thresholds for Committee of Creditors (coc) ie., reducing the voting threshold 75% to 66%

The report's recommendations led to significant amendments in the IBC, notably recognizing homebuyers as financial creditors. This enhanced homebuyer protection in real estate insolvencies. The MSME exemptions and reduced voting thresholds streamlined the resolution process, making it more efficient and inclusive for various stakeholders.

2. Second ILC Report (2018)

The second major report, submitted on 16th October 2018²⁹, addressed more nuanced issues that had emerged. Key recommendations included:

- Adoption of UNCITRAL Model Law on Cross-Border Insolvency
- Amendments to Existing Provisions related to cross-border insolvency

²⁸ Ministry of Corporate Affairs, Government of India, "First Report of the Insolvency Law Committee" (2018)

²⁹ Ministry of Corporate Affairs, Government of India, "Second Report of the Insolvency Law Committee" (2018)

- Clarification on Recognition Procedures

The report's focus on cross-border insolvency laid the groundwork for India's adoption of international standards. While not immediately implemented, these recommendations have shaped ongoing discussions and draft legislation for a comprehensive cross-border insolvency framework, potentially enhancing India's global business standing.

3. Third ILC Report (2020)

The **third ILC report**, submitted on 20th February 2020³⁰, addressed several new challenges that arose during the implementation of the IBC, particularly in light of the economic impact of the COVID-19 pandemic. The pandemic had a significant effect on businesses across various sectors, leading to an increase in insolvency cases and requiring amendments to ensure quicker and more efficient resolutions. Key Recommendations included:

- Introduction of Pre-Packaged Insolvency for msme
- Threshold Increase for Default Amount
- Simplification of Fresh Start Process

This report's recommendations were crucial in addressing COVID-19's economic impact. The introduction of pre-packaged insolvency for msme provided a faster, more cost-effective resolution mechanism. The increased default threshold helped prevent an overwhelming influx of cases, allowing for more focused resolution efforts.

4. Fourth ILC Report (2021)

The Fourth Report, submitted on 16th July 2021³¹, primarily focused on recommendations related to improving corporate insolvency resolution processes and enhancing stakeholder participation. Key recommendations included:

- Pre- initiation requirements

³⁰ Ministry of Corporate Affairs, Government of India, "Third Report of the Insolvency Law Committee" (2020)

³¹ Ministry of Corporate Affairs, Government of India, "Fourth Report of the Insolvency Law Committee" (2021)

- Conduct of the Pre-pack process
- Closure of the pre-pack process

The report's focus on pre-pack processes led to the implementation of a structured pre-packaged insolvency resolution framework. This has enabled quicker, more efficient resolutions, particularly benefiting msme. The recommendations have streamlined the insolvency process, potentially reducing time and costs involved.

5. Fifth ILC Report (2022)

The Fifth Report, published on 20th May 2022³², provided comprehensive recommendations aimed at improving various aspects of the IBC's implementation. Some significant proposals included:

- Mandating Information Utilities for Financial Creditors
- Curbing Unsolicited Resolution Plans
- Look-Back Period for Avoidable Transactions

These recommendations aim to enhance the efficiency and integrity of the insolvency process. Mandating Information Utilities could improve information symmetry. Curbing unsolicited plans may lead to more focused resolutions. The look-back period adjustment could impact the treatment of avoidable transactions, potentially affecting creditor recoveries.

B. Key Amendments Suggested by the ILC

i. Homebuyers as Financial Creditors (2018 amendment)

One of the most significant reforms suggested by the ILC was the recognition of homebuyers as financial creditors. This recommendation was implemented through the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018³³. The amendment aimed to protect the

³² Ministry of Corporate Affairs, Government of India, "Fifth Report of the Insolvency Law Committee" (2022)

³³ The Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, No. 26, Acts of Parliament, 2018 (India)

interests of homebuyers in real estate projects and give them a voice in the insolvency resolution process.

Case Law: In *Pioneer Urban Land and Infrastructure Limited v. Union of India*³⁴, the Supreme Court upheld the constitutional validity of this amendment, affirming the status of homebuyers as financial creditors.

Impact: This amendment has had a profound impact on real estate insolvencies, allowing homebuyers to initiate insolvency proceedings against defaulting developers and participate in the Committee of Creditors (coc).

ii. Cross-border Insolvency Framework (ongoing discussions)

The ILC has been at the forefront of developing a cross-border insolvency framework for India. In its 2018 report, the committee recommended the adoption of the UNCITRAL Model Law on Cross-Border Insolvency with certain modifications³⁵.

While the framework is still under discussion, its potential impact includes:

- Enhanced cooperation between Indian and foreign courts in cross-border insolvency cases
- Increased predictability for foreign investors
- Better handling of assets located in multiple jurisdictions³⁶

iii. Pre-Packaged Insolvency for msme

Recognizing the unique challenges faced by Micro, Small, and Medium Enterprises (msmes), the ILC recommended a pre-packaged insolvency resolution framework. This was implemented through the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021³⁶.

Impact: The pre-pack framework aims to provide a quicker, cost-effective insolvency

³⁴ *Pioneer Urban Land and Infrastructure Limited v. Union of India*, (2019) 8 SCC 416

³⁵ Insolvency Law Committee, "Report on Cross Border Insolvency," October 2018, p. 15-20.

³⁶ The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021, No. 3, Ordinances of Parliament, 2021 (India)

resolution process for MSMEs while maintaining business continuity.

iv. **Fast Track Corporate Insolvency Resolution Process (CIRP)**

The ILC suggested modifications to enhance the effectiveness of the Fast Track CIRP, which was initially introduced in the IBC. These recommendations aimed to streamline the process for smaller companies and reduce the time and cost of resolution³⁷.

Impact: While the uptake of Fast Track CIRP has been limited, the recommendations have paved the way for more efficient processes, particularly for smaller entities.

Challenges and Criticisms

Despite its significant contributions, the ILC has faced several challenges and criticisms:

1. **Implementation Delays:** Some recommendations have faced delays in implementation due to legislative processes and stakeholder concerns.
2. **Balancing Competing Interests:** The ILC has been criticized for favouring certain stakeholders (e.g., financial creditors) over others in some of its recommendations.
3. **Complexity of Reforms:** Some proposed reforms have drawn criticism for their complexity and possible difficulties in implementation, especially in the area of cross-border insolvency. For instance, the cross-border insolvency system needs to be coordinated with governments and courts abroad, which complicates the legislative process and keeps it from being completely implemented. Although progress on these issues has been slower than expected, the ILC is still working on them.

C. Impact on Insolvency Proceedings and Outcomes

The ILC's recommendations have had a substantial impact on insolvency proceedings and outcomes:

1. **Enhanced Efficiency in Admission of Cases:** The ILC recommends relying on Information Utilities (ius) for establishing defaults in the Corporate Insolvency

³⁷ Insolvency Law Committee, "Report of the Insolvency Law Committee," March 2018, p. 50-52

Resolution Process (CIRP), reducing time spent by the National Company Law Tribunal (NCLT) in verifying defaults and enhancing the efficiency of insolvency proceedings.

2. **Clarification on Avoidable Transactions:** The ILC proposes that avoidable transactions proceedings can continue even after a resolution plan is approved, addressing accountability concerns and enhancing the integrity of the resolution process.
3. **Increased Stakeholder Participation:** Amendments like recognizing homebuyers as financial creditors have broadened stakeholder participation in the insolvency process.
4. **Strengthened Framework for Liquidation Processes:** The ILC proposes amendments to improve liquidation processes, including mandatory consultations with scs, to ensure oversight and accountability, potentially improving asset recovery outcomes.
5. **Judicial Interpretations and Legal Clarity:** ILC recommendations have led to clearer judicial interpretations of insolvency law, upholding changes related to homebuyers' rights and clarifying procedural matters concerning avoidable transactions.

D. Judicial Interpretations of ILC-influenced Amendments

Courts have played a crucial role in interpreting and applying the amendments influenced by ILC recommendations:

1. In *Swiss Ribbons Pvt. Ltd. V. Union of India*³⁸, the Supreme Court upheld the constitutional validity of various provisions of the IBC, many of which were shaped by ILC recommendations.
2. The National Company Law Appellate Tribunal (NCLAT) in *Binani Industries Limited v. Bank of Baroda & Anr*³⁹. Emphasized the importance of maximizing value of assets, a principle consistently advocated by the ILC.

³⁸ *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 SCC 17

³⁹ *Binani Industries Limited v. Bank of Baroda & Anr.*, Company Appeal (AT) (Insolvency) No. 82 of 2018

3. In *Anuj Jain Interim Resolution Professional for Jaypee Infratech Ltd. V. Axis Bank Ltd*⁴⁰, the Supreme Court interpreted provisions related to avoidance transactions, an area the ILC had provided recommendations on.

These judicial interpretations have further refined and clarified the application of ILC-influenced amendments, contributing to the evolving jurisprudence of insolvency law in India.

Critical Evaluation of ILC's Role

A. Strengths and successes

The ILC has successfully identified and addressed key issues within the Insolvency and Bankruptcy Code (IBC), leading to significant reforms. One of its major strengths lies in its ability to adapt to emerging challenges, such as recognizing homebuyers as financial creditors, which has improved their participation in insolvency proceedings. The ILC's recommendations for adopting the UNCITRAL Model Law on Cross-Border Insolvency have also positioned India closer to international best practices, enhancing legal certainty for foreign investors and creditors. Furthermore, the committee's focus on streamlining processes, such as mandating Information Utilities for financial creditors, has contributed to faster resolution times and improved efficiency in insolvency proceedings.

B. Limitations and challenges

Despite its achievements, the ILC has a number of drawbacks. The delay of legislative action in response to its recommendations is one major obstacle. Even though a lot of the recommendations have been positively received, timely reforms are hampered by parliamentary approval delays. Furthermore, it is still controversial to strike a balance between debtor safeguards and creditor rights; certain parties claim that some recommendations would unjustly benefit creditors at the expense of debtors' interests. Because the ILC is only advisory and cannot impose binding legislation changes, its efficacy is occasionally questioned.

C. Comparison with similar committees in other jurisdictions

⁴⁰ *Anuj Jain Interim Resolution Professional for Jaypee Infratech Ltd. v. Axis Bank Ltd.*, Civil Appeal Nos. 8512-8527 of 2019

The ILC's approach is commendable for its emphasis on ongoing evaluation and enhancement of the IBC when contrasted with comparable organizations in other jurisdictions, such as the US Bankruptcy Commission and the UK Insolvency Service. The UK Insolvency Service, for instance, also focuses on reviewing and updating insolvency laws, but it has adopted a more proactive stance in cross-border insolvency matters, having already implemented the UNCITRAL Model Law.

In contrast, the ILC has been more cautious in recommending large-scale reforms, often taking a phased approach. This has allowed the ILC to consider stakeholder feedback thoroughly but has also led to delays in implementing critical reforms such as group insolvency frameworks.

D. Stakeholder perceptions of ILC's effectiveness

Perceptions of the ILC's effectiveness vary among different stakeholders:

Legal Community: Generally positive, with appreciation for the committee's efforts to address complex legal issues.

Financial Creditors: Mixed perceptions, with support for measures enhancing creditor rights but concerns about some debtor-friendly provisions.

Insolvency Professionals: Largely positive, particularly regarding efforts to streamline processes and provide clarity on procedural aspects.

Debtors and msme: Appreciative of efforts to introduce pre-packaged insolvency and other debtor-friendly measures, but concerns remain about the overall complexity of the insolvency process.

International Observers: Generally positive view of the ILC's role in modernizing India's insolvency regime, particularly efforts towards adopting international best practices.

In conclusion, the ILC continues to encounter difficulties in implementation and striking a balance between the interests of many stakeholders, despite having a major influence on the development of India's bankruptcy law and achieving notable successes. Its effectiveness is noteworthy when compared to other organizations of a similar nature around the world, but

there is still need for improvement in terms of its authority and the speed at which its recommendations are carried out.

Future Directions for Insolvency Law Making

I. Emerging trends in insolvency law

The landscape of insolvency law in India is continually evolving, with several emerging trends shaping its future direction.

One notable trend is the growing emphasis on **cross-border insolvency**. As Indian businesses increasingly operate in global markets, the need for a comprehensive framework to manage insolvency cases involving international assets is critical. The adoption of the **UNCITRAL Model Law on Cross-Border Insolvency** remains a priority for the ILC and is expected to be implemented soon. Additionally, there is an increasing focus on **pre-packaged insolvency frameworks**, especially for large corporations, which will facilitate quicker resolution of financially distressed businesses.

The rise of technology in insolvency proceedings is also an emerging trend. The use of artificial intelligence and blockchain in managing insolvency processes, from claim verification to asset tracking, is likely to gain traction in the coming years.

II. Areas requiring further attention

Despite significant progress, several areas in India's insolvency regime require further attention. One such area is the treatment of homebuyers in real estate insolvencies. While recent amendments have improved their status, balancing their interests with those of other stakeholders remains a challenge.

The resolution of financial service providers' insolvencies is another area needing attention. The current framework for banks and nbfc's requires refinement to address sector-specific challenges and systemic risks.

Group insolvency is an area where the legal framework is still evolving. Developing comprehensive rules for dealing with interconnected corporate groups in insolvency could enhance the efficiency of the resolution process.

III. Potential reforms in ILC's structure or mandate

As the insolvency landscape evolves, there may be a need to reconsider the structure and mandate of the Insolvency Law Committee (ILC). One potential reform could be to make the ILC a permanent body with a dedicated secretariat, allowing for continuous monitoring and timely recommendations.

Expanding the ILC's mandate to include proactive research on emerging global trends and their applicability to the Indian context could enhance its effectiveness. This could involve regular collaboration with international bodies and academic institutions.

Another potential reform could be to increase the diversity of the ILC's composition, incorporating more representatives from various stakeholder groups, including operational creditors, employees, and sector-specific experts. This could lead to more balanced and comprehensive recommendations.

Finally, establishing a formal mechanism for the ILC to receive and consider public feedback on its recommendations could improve transparency and stakeholder engagement in the law-making process.

These potential reforms could strengthen the ILC's role in shaping India's insolvency regime, ensuring it remains responsive to emerging challenges and aligned with global best practices.

Conclusion

The Insolvency Law Committee (ILC) has been instrumental in shaping India's insolvency regime post-IBC, recommending key amendments to address practical challenges, streamline insolvency processes, and ensure the law's adaptability to changing economic realities. Its contributions, such as treating homebuyers as financial creditors and introducing pre-packaged insolvency for msme, have significantly improved the efficiency and inclusiveness of the Insolvency and Bankruptcy Code (IBC). The ILC's advisory role has helped shape a more creditor-friendly, time-bound insolvency framework, promoting corporate rescue over liquidation.

In terms of effectiveness, the ILC has successfully addressed several early challenges and introduced crucial reforms. However, areas such as cross-border insolvency, group insolvency,

and better protection for operational creditors still require further attention. The committee must also continue refining the resolution process to account for evolving business models and international practices.

Looking ahead, the ILC is poised to play a pivotal role in future reforms, particularly as India adapts to economic changes stemming from global financial crises and the COVID-19 pandemic. The adoption of cross-border insolvency frameworks and individual insolvency mechanisms will be critical in ensuring that India's insolvency laws remain relevant, efficient, and robust, facilitating business continuity and economic growth.

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