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EVOLUTION OF INSOLVENCY LAW IN INDIA: FROM SICA AND SARFAESI TO IBC 2016

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INTRODUCTION

In legal terms, insolvency refers to a situation when an individual or an organisation is unable to meet their financial obligations to a person. Such a situation happens when one's liabilities or debts exceed one's assets. It can occur due to a lack of cash flow, poor financial management, unexpected expenses, etc. When one becomes insolvent, it can lead to serious repercussions, such as bankruptcy, liquidation, or restructuring of one's assets. According to Black's Law Dictionary, insolvency is "The condition of a person who is insolvent; inability to pay one's debts; lack of means to pay one's debts. Such a relative condition of a man's assets and liabilities that the former, if all made immediately available, would not be sufficient to discharge the latter. Or the condition of a person who is unable to pay his debts as they fall due, or in the usual course of trade and business."[1301]

In India, insolvency is governed by the "Insolvency and Bankruptcy Code, 2016"[1302] in the present times. The Code creates a consolidated framework for governing both insolvency and bankruptcy proceedings in India, for both individuals and organisations.

Before the IBC there was the "Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002"[1303] which was preceded by the "Sick Industrial Companies (Special Provisions) Act, 1985"[1304]. The IBC created a time-bound and a comprehensive framework for governing insolvency matters in India, unlike SICA and SARFARESI which were narrower in scope. SICA did not provide for a mechanism which would help in timely disposal of cases, and SARFARESI focused more on benefiting the lenders than the borrowers. THE IBC brought a strict set of timelines, and did not only focus on repaying the creditors, but also reviving sick companies who had the potential to regrow.

[1301] *Insolvency*, THE LAW DICTIONARY, https://thelawdictionary.org/insolvency/ (last visited Sept. 4, 2025).
[1302] Insolvency and Bankruptcy Code, No. 31 of 2016 (India).
[1303] Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, No. 54 of 2002 (India).
[1304] Sick Industrial Companies (Special Provisions) Act, No. 1 of 1986 (India).

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ANALYSIS-

THE SICA ACT-

There was an existent problem of sick companies in India, therefore to create particular measures for the prompt identification of sick (and presumably sick) companies that own industrial undertakings, SICA was passed in 1985. According to Section 3 (o), "sick industrial company" means "an industrial company (being a company registered for not less than five years) which has at the end of any financial year accumulated losses equal to or exceeding its entire net worth."[1305]

Under SICA, the "Board for Industrial and Financial Reconstruction (BIFR)"[1306] was established to assess the health of these industries and recommend actions for the liquidation of unprofitable businesses or the resurrection of potentially profitable ones. It was a quasi-judicial body, which had to identify the sick companies first and then carry on the process of rehabilitating or liquidating them, depending on their potential to revive.

The problem with the Act was that even though the proceedings which were to be conducted by BIFR were mandatory, no time-frame was provided for BIFR to carry its process due to which the proceedings were delayed, which in turn caused the companies to face losses further. There was a slight chance of revival of the companies due to inefficiency of the Act. Further, it was biased towards rehabilitating a company even if it was on the verge of failing, and the promoters of such companies exploited the process of rehabilitation under Section 22[1307] of the Act which provided for moratorium provisions. Even the courts and board promoted the "socialist mentality"[1308] of reconstruction to avoid job losses, even if the process took endless time. Moreover, nor the company neither the Board was held accountable for these delays in proceedings.

The Hon'ble Supreme Court in M/S Madras Petrochem Ltd v. BIFR[1309] stated that the proceedings under SICA were uncertain due to lack of a time-bound mechanism and uncertainty. The same was upheld in Raheja Universal Ltd. v. NRC Ltd[1310]. So, a high-level committee was established to investigate the same. The committee was chaired by former Supreme Court Judge, Justice V. Balakrishna Eradi. And it gave the report titled "Report of High-Level Committee on Law Relating to Insolvency and Winding Up of Companies"[1311], in which it had recommended repealing the SICA act and amending the "Companies Act of 1956"[1312] to include the pertinent sections. In 2001, an advisory committee was led by N.L. Mitra[1313] recommended dissolving the BIFR and AAIFR, which was the appellate body due to the institution's troublesome organisational structure and ongoing delays.

On December 1, 2016 SICA was repealed and replaced by "The Sick Industrial Companies (Special Provisions) Repeal Act, 2003"[1314]. As a result of which the BIFR and other organisations established under SICA were dissolved. After the 1985 Act was repealed, it took a long time for the BIFR and AAIFR to handle cases of industrial sickness and revival. Furthermore, distinct cases pertaining to the same corporation were frequently pending before multiple fora under several statutes, for instance, the Companies Act and SICA. This frequently led to misunderstandings and disputes about these entities' respective jurisdictions. Therefore, it was

[1305] Sick Industrial Companies (Special Provisions) Act, No. 1 of 1986, §3 (o) (India).
[1306] Sick Industrial Companies (Special Provisions) Act, No. 1 of 1986, §4 (India).
[1307] Sick Industrial Companies (Special Provisions) Act, No. 1 of 1986, §22 (India).
[1308] Harshad Pathak, *The Loss of Industrial Character Under the Sick Industrial Companies (Special Provisions) Act, 1985: Addressing the Jurisdictional Conundrum*, 9 Nat'l U. J. Legal Stud. L. Rev. 45 (2016), https://nujslawreview.org/wp-content/uploads/2016/12/2016-9-1-2-Harshad-Pathak-The-Loss-of-Industrial-Character-under-the-Sick-Industrial-Companies-Special-Provisions-Act-1985-Addressing-the-Jurisdictional-Conundrum.pdf.
[1309] M/S Madras Petrochem Ltd v. BIFR, AIR 2016 SUPREME COURT 898.
[1310] Raheja Universal Ltd. v. NRC Ltd, AIR 2012 SUPREME COURT 1440.
[1311] V. Balakrishna Eradi, *Report of the High-Level Committee on Law Relating to Insolvency and Winding Up of Companies* (2001).
[1312] Companies Act,1 No. of 1956 (India).
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determined that one body should be established to handle all such concerns and to dispose of all pending matters.

As a result, the Companies Act of 2013[1315] established the "National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT)". The NCLT has the authority to consider cases involving among other things. The "Insolvency and Bankruptcy Code, 2016"[1316] has significantly strengthened the NCLT's jurisdiction as it provides for an organisation's corporate management, mergers and amalgamations, and firm resurrection or rehabilitation. After the Code[1317] went into effect, all cases that were pending before the AAIFR and BIFR were put on hold. It was also stated that the repeal of SICA would not impact any orders that sanction a scheme under SICA, according to the Repeal Act's[1318] provisions. However, this does not clarify how such schemes may be administered under the law.

Thus, the repeal of SICA paved the way for IBC which was a more time-bound approach than the inefficient Act.

THE SARFAESI ACT-

Narasimham Committee I was established by the government in 1991[1319] with the goal of enhancing the financial system. This committee observed that borrowers would seek stay orders from civil courts when they failed to repay their loans. As a result, banks, which were the lenders in this scenario, found it difficult to get their money back. Debt Recovery Tribunals (DRTs) were established in 1993 to address this issue. Hence, the banks were able to recover loans through these tribunals instead of ordinary courts.

The Narasimham Committee II, established in 1998[1320] stated that even these DRTs required more robust legal backing. Thus, the SARFAESI Act was passed by the government in 2002. This rule allowed banks to recoup loans by selling the borrower's assets like equipment or property without a judge's approval. Consequently, banks were able to recover assets and deal with non-performing assets (NPAs)[1321] more rapidly. The Act gives banks and other financial institutions the ability to recoup non-performing assets (NPAs) without going to court. In the event of default, it gives lenders the authority to sell residential or commercial properties at auction in order to recoup their loans. The Act expedites the recovery procedure and covers secured loans. For the advantage of both lenders and borrowers, SARFAESI also encourages the securitisation of financial assets and facilitates the effective restructuring of bad-loans. Banks and other financial institutions could collect debts from defaulting borrowers without the requirement for intervention of courts. The asset of the borrower that was pledged as collateral to the bank, and it was stated that it may be seized by the lender in the event that the borrower failed on a secured loan. The remaining loan balance may then be recouped by the lender through the asset's sale or auction. Giving banks and other financial institutions the authority to take aggressive steps to collect their debts from defaulting borrowers is the main goal of the Act. The act sought to safeguard lenders' interests and expedite the debt recovery process by establishing a legal framework for the enforcement of security interests.

The Act guaranteed a more effective process for managing distressed assets, which helps to maintain the financial sector's overall stability, which in turn simplifies debt recovery, and boosts the confidence of investors. For instance, the infamous businessman-Vijay Mallya's assets were seized by the State Bank of India,

[1315] Companies Act, No. 18 of 2013 (India).
[1316] *supra.*
[1317] *supra.*
[1318] *supra.*
[1319] Narsimhan Committee I Report on Financial Sector Reforms (1991).
[1320] Narsimhan Committee II Report on Financial Sector Reforms (1998).

[1321] "An asset becomes non-performing when it ceases to generate income for the bank. Earlier an asset was considered as non-performing asset (NPA) based on the concept of **'Past Due'**. A 'non performing asset' (NPA) was defined as credit in respect of which interest and / or installment of principal has remained 'past due' for a specific period of time." Reserve Bank of India, Notification No. RBI/2009- 10/64 DBOD. No. Leg. BC. 17/09.07.2005/2009-10 (July 1, 2009), https://www.rbi.org.in/commonman/English/Scripts/Notification.aspx?Id=889.

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Punjab National Bank, and 9 other Indian banks under the SARFAESI Act after declaring him as a willful defaulter[1322] as he had lent him over Rs. 9,000 crores which he wilfully did not pay and fled the country. His Kingfisher villa in Goa, and house in Mumbai were pledged as security by the banks and sold through auction to recover the debt Kingfisher had owed to these banks. The proceedings for the same were concluded by the DRT in the case of ***State Bank of India v. Vijay Mallya***[1323].

To make the process of debt recovery more efficient the Act was amended several times, with a major amendment being in 2016 through the Enforcement of Security Interest and Recovery of Debt Laws and Miscellaneous Provisions (Amendment) Act[1324], it gave the banks more streamlined powers to take possession of secured assets, and auction them more, and at the same time it secured the borrowers by giving them the power of appealing before DRT, and filing representations before the institutions.

The process under SARFAESI which allows the financial intuitions to bypass courts and tribunals to recover their lent amount is as follows-

- **Securitisation-** Securitisation is the process by which a bank or a financial institution provides loan to borrowers, such as home loans, car loans, etc. and then turns these assets into securities. If in any case, the loan is not repaid, these institutions sell such assets to "Qualified Institutional Buyers (QIBs)", including banks, insurance providers, and mutual funds. Then the money they receive from such buyers is used by the banks to recover the lent loans. Banks can transfer their bad loans to "Asset Reconstruction Companies (ARCs)" which are companies set up under Section 2 (ba) of the Act[1325] to deal with NPAs and bad loans, and through this mechanism, they lessen their financial burden, and secure their loaned amount.
- **Process of ARCs-** A bad loan is transformed into a more recoverable or controllable asset using the above method. When a borrower defaults on a loan, ARCs attempt to collect the money in a variety of ways, including:
    1. Taking over the borrower's company or selling it,
    2. Modifying the repayment terms (such as extending due dates),
    3. Purchasing the company's assets.
- **No judicial intervention-** According to the Act, a bank has the right to seize and sell the secured item without going to court if the borrower defaults on a secured loan. In this process, the borrower first receives a formal notice from the bank requesting repayment. Then the bank will then seize the asset if the borrower doesn't reply within 60 days and sell it to recover the loan.

THE INSOLVENCY AND BANKRUPTCY CODE-

The enactment of IBC was a turning point in the history of Indian financial laws. IBC consolidated and streamlined multiple statutes into a single framework. It covered insolvency and bankruptcy for companies, including limited liability partnerships, partnerships, and individuals, thereby removing the fragmented

[1322] "Wilful default occurs when a borrower intentionally defaults on repayment obligations despite having the capacity to pay or when funds are diverted or siphoned off. The revised guidelines expand the definition to include failures by promoters to infuse equity despite commitments and unauthorized disposal of assets."

[1323] State Bank of India v. Vijay Mallya, (2017), Debt Recovery Tribunal, Bengaluru (2017).

[1324] Enforcement of Security Interest and Recovery of Debt Laws and Miscellaneous Provisions (Amendment) Act, No. 44 of 2016 (India).

[1325] Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, No. 54 of 2002, §2 (ba) (India).

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approach that had earlier caused confusion and delays.

The Code provided for better and more balanced mechanisms for both borrowers and lenders, such as-

1. It consolidated the Companies Act, SICA, and RDDFBI[1326] Acts into one creating one single body to address all the disputes.
2. It provided for a time bound resolution in 180 days which was extendable to a maximum of 330 days under Section 12[1327].
3. It established "Corporate Insolvency Resolution Process (CIRP)", which is a process initiated when a company defaults on a loan of more than Rs. 1 crore. In such a case, a moratorium is imposed, and the powers of board of directors are suspended, and the interim resolution professional takes over the company, and voting on resolution process is done by a selected committee of creditors (COC). It is provided under Sections 6 to 12[1328].
4. It provided a balanced mechanism for both creditors and borrowers, and gave them equal powers and rights during the process of insolvency and bankruptcy.
5. It provided for cross-border insolvency proceedings under Sections 234 and 235[1329], to make bilateral agreements with other states.
6. The enactment of IBC also promoted ease of doing business[1330] as it makes the insolvency process more efficient, and time-bound which boosts the confidence of investors, hence attracting multi-national corporations to invest in India.
7. It enacted the "Insolvency and Bankruptcy Board of India" (IBBI) which is a statutory body which ensures that the provisions of the Code are followed with during the insolvency process. The Code provides its powers under Section 196[1331].
8. It introduced COCs which is composed of financial creditors and it has the authority to approve or modify or simply reject the resolution procedure proposed to it. It needs a 66% majority to pass a resolution. The same is governed by Sections 21-30[1332], with 21[1333] defining the COC.
9. "Insolvency professionals (IP)" are the individuals registered with the IBBI who have the responsibility to carry out the insolvency process. They take over the management of the debtor company, and manage its assets, they verify the claims of the creditors and then carry out the liquidation process or the resolution process. IPs are defined under Section 206-208[1334] of the Act.
10. It introduced the "water-fall mechanism"[1335] which is list of priority in distributing the proceeds from sale of assets to the creditors. First the cost of the proceedings are covered, followed by the secured creditors and workmen, followed by unsecured creditors, followed by the dues of the government, and lastly, the shareholders and equity holders.

Some landmark case-laws further strengthened the IBC, such as-

1. In ***Innoventive Industries Ltd v. ICICI Bank***[1336], it was held by the "Apex Court" that at the initiation of the admission stage, the NCLT's role is limited to

[1326] Recovery of Debts and Bankruptcy Act, No. 51 of 1993 (India).
[1327] Insolvency and Bankruptcy Code, No. 31 of 2016, §12 (India).
[1328] Insolvency and Bankruptcy Code, No. 31 of 2016, §6-12 (India).
[1329] Insolvency and Bankruptcy Code, No. 31 of 2016, §234-235 (India).
[1330] "The Ease of Doing Business (EoDB) index is a ranking system established by the World Bank Group. In the EODB index, 'higher rankings' (a lower numerical value) indicate better, usually simpler, regulations for businesses and stronger protections of property rights."
[1331] Insolvency and Bankruptcy Code, No. 31 of 2016, §196 (India).
[1332] Insolvency and Bankruptcy Code, No. 31 of 2016, §21-30 (India).
[1333] *supra.*
[1334] Insolvency and Bankruptcy Code, No. 31 of 2016, §206-208 (India).
[1335] Insolvency and Bankruptcy Code, No. 31 of 2016, §53 (India).
[1336] Innoventive Industries Ltd v. ICICI Bank, Civil Appeal No. 8337-8338 of 2017.

verifying that a default has been committed.

2. In ***Committee of Creditors of Essar Steel v. Satish Gupta***[1337], it was held that the COC will have the sole power to approve or reject a resolution plan.
3. In ***Swiss Ribbons Pvt. Ltd v. Union of India***[1338], it was stated that IBC was enacted to revive the disputed companies, and not to prioritise liquidation, and constitutional validity of the Code was upheld stating that it does not violate the classification of financial and operational creditors under Article 14.
4. In ***ArcelorMittal India v. Satish Kumar Gupta***[1339], the Court confirmed that promoters who are wilfull defaulters cannot claim any control over their companies under Section 29-A of the Code. However, the Supreme Court allowed the appellant to pay off their creditors' due within 2 weeks to prevent liquidation of their company.
5. In ***Lalit Kumar Jain v. Union of India***[1340], the Supreme Court upheld the notification of the government by which personal guarantors of corporate debtors were covered under IBC. It held that even personal guarantors could be proceeded against alongside the debtor.

Even though IBC has transformed insolvency proceedings in India, it still has some criticisms such as the NCLT and NCLAT is overburdened with insolvency cases, according to recent data provided by the NCLT a total of 30,745[1341] were pending before it, and a question answered in Rajya Sabha revealed that 3019[1342] cases are pending before NCLAT. Moreover, there is no provision for strict penalties or actions against the responsible persons for delaying the proceedings beyond the limit of 330 days, further, operational creditors are given a backseat while giving pay-outs and most of the credit amount is dispersed amongst the financial creditors as they get to be a part of the COC.

CONCLUSION AND CRITICAL COMMENTS-

The predecessors of IBC, SICA and SARFARESI had a narrow focus on securing the interests of secured creditors, and liquidation of an individual's or an organisation's assets, whereas IBC focused on both revival and recover, and balanced the interests of both creditors and borrowers.

Unlike SICA which only focused on revival of companies, and SARFARESI focused mainly on interests of creditors ignoring the debtors, IBC consolidated both under one framework and tried to balance both. Yet, challenges of persistent delays, backlog of cases remain which shows that there is a long way to be paved for further evolution in India's financial legislation.

However, IBC has boosted confidence of investors, and promoter accountability towards its creditors. A stricter legislation has to be implemented through amendments in curbing delays in conducting proceedings, and ensuring fairness among creditors. Lastly, the amount which is deducted while paying off final settlement of creditors needs to be reduced, as in Essar Steel case[1343], the lenders were only returned 57% of the debt, which was 42,000 crore of 49,000 crore.

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[1339] ArcelorMittal India v. Satish Kumar Gupta, Civil Appeal Nos. 9402-9405 of 2018.
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