

IBC - Philosophy, Process & Ecosystem: A Review

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Abstract

Insolvency Bankruptcy Code, 2016 is a major breakthrough in social engineering and behavioural law. The Code has philosophy of balancing the interest of stakeholders and with maximisation of value of assets. The Code envisages that appropriate legal framework would trigger socioeconomic and sociocultural objectives. The mandate of BLRC Report has visualised the entire process, ecosystem and its impact and accordingly Code was enacted. The shift from debtors driven to creditors driven mechanism and ease of exit is another challenge of the Code well taken in the process and ecosystem. The four pillars within the IBC and ecosystem outside the IBC in the Banking and financial sector and other agencies have facilitated the implementation of the Code in letter and spirit. The Adjudicating Authorities are in forefront in this performance. The Insolvency Profession has brought about sea change in the determining the measures and expediting the measures for resolutions or liquidation under the market mechanism. This in turn promotes entrepreneurship development. The IPs are playing substantial role under IBBI and with the professional support of Information Utilities. The timely executive, legislative and quasi-judicial function of IBBI is well applauded for its unparalleled success. The process with in the Code and Ecosystem have given all the necessary support and acceleration for the accomplishment of substratum of the Code.

Introduction:

The Insolvency and Bankruptcy Code, 2016¹ (Code) is a deep structural reform with far-reaching Implications for the Indian economy. It has been crafted with extreme care, after extensive consultation with stakeholders, to ensure that it delivers on its stated objectives on a sustained basis.² The code ensures timely

corrections to the dynamic legislation on learning from experience. The entire process in the structure laid under Code keeps moving on ongoing basis in balancing the interest of the stakeholders.

In the market economy innovation and competition only enables to sustain and grow. Innovate or perish is the slogan in competitive environment. The corporate entities despite its resources, unless they have competitive advantage with continuous improvement and innovation, cannot sustain and grow. In this context freedom to entry and exist must be present in the system to encourage entrepreneurship to take risks. Sick Industrial Companies (Special Provisions) Act, 1985³ did not provide adequately and appropriately for resolving the stress. There was no mechanisms to understand the stakeholders balance of interest rather it was virtually debtors driven. This long pending need in corporate sickness gave birth to Bankruptcy and Insolvency Code, 2016 to resolve stress in a time bound manner with major institutional reform of the insolvency regime.

The Code is a landmark piece of legislation which is creditor driven mechanism for reorganisation and insolvency resolution of corporate persons, partnerships firms and individuals adhering to the timeline and ultimately focusing on the maximisation of value of assets to stakeholders. This in turn also promotes entrepreneurship as timely repayment takes place or in the event of exit the investment gets released. The creditor is left with greater availability of credit. The interest of all the stakeholders are balanced.

Many milestones, in achieving these goals, were crossed rather quickly, with various provisions of the Code being implemented at an unprecedented pace. The entire regulatory framework for corporate insolvency resolution process, fast track insolvency resolution process, corporate liquidation and voluntary liquidation were put in place within a short span of time. The regulations pertaining to insolvency professionals, insolvency professional agencies and information utilities were rolled out swiftly to build a strong professional and technology-driven bedrock of service providers under the Code as mentioned in the preface of IBC Miscellany Perspective published by IBBI, in 2019⁴.

Timely amendments are brought ongoing basis swiftly. The World Bank's Doing Business Report has also taken cognisance of the path-breaking reform, in the form of the Code, and has improved India's ranking in the 'Resolving Insolvency' parameter from 136 in 2016 to 108 in 2018⁵.

The entire dynamic legislation, if one observes its background, philosophy, process and ecosystem, it can be discerned that it is based on a great conscious strategic process designed with strategic perspective. The dynamic economic legislation is focussed on major aspects viz a) balancing the interest of stakeholders, b) Ease of exit, c) Behavioural transformation on the part of creditors and debtors and Repayment culture d) Maximisation of Value of Assets e) Entrepreneurship Development f) Timeline for CIRP process and execution.

Objectives of the paper:

In this paper an attempt is made

- (a) To review the philosophy, nudge theory & behavioural perspective of IBC
- (b) To review major dynamic process which drives legislation, Philosophy underlying the process and
- (c) To review the ecosystem envisaged and its role under IBC.

a). To review the philosophy & social engineering perspective of IBC

The IBC is paradigm shift in the approach and process from erstwhile process, procedure and mechanism for

corporate sickness either for revival or for liquidation. IBC is focussing on legal framework as tool to trigger economic growth and economic activities by behavioural transformation. It appears, IBC Philosophy, legal framework, process and ecosystem is based on nudge theory⁶. This theory Offers 'Nudge' methods and related concepts as a 'Nudge' theory 'toolkit'⁷ so that the concept can be taught and applied in a wide range of situations involving relationships with people, and enabling people to improve their thinking and decision-making.

IBC & Nudge Theory - Socioeconomic, Legal and Political issues & implications:

Nudge theory is a flexible and modern concept for:

- Understanding of how people **think**, make **decisions**, and **behave**,
- **Helping** people improve their **thinking** and **decisions**,
- **Managing change** of all sorts, and
- **Identifying and modifying** existing **unhelpful influences** on people.

The concept has relevance in legal, political, socioeconomic and sociocultural dimensions of the concept of corporate sickness. In terms of Nudge theory with reference to the legal framework triggers socioeconomic and sociocultural dimensions to accomplish the desired results envisaged. The political intent and policy framework precede Legal frameworks. Therefore, basically political intent must be there for in its policy framework to emerge which in turn through legal framework would enable to achieve socioeconomic objectives. These policies must be manifested in the form of legal framework. Further, Law and Economics are interwoven in the legislation for fructifying their objectives. What was not possible in 67 years of independence in the field of GST and Corporate sickness was made possible with two codes viz. GST and IBC, 2016. The entire framework of code is based on the understanding of how people think, make decisions and behave. Precisely in the context of Code, how stakeholders of Code would behave. Further what kind of legal structure and economic objectives helps people improve their thinking and decision. How do we manage change of all sorts? Above all identifying, tracing and modifying the existing unhelpful influences and factors on people. In

this regard the kind of mind set prevailed in Licenceraaj, or protected economy under pre-liberalization era and more specially the defective SICA and operation of BIFR under such defective legal frameworks comprehended. Thereafter, what kind of paradigm shift was possible with nudge approach is attempted under IBC.

Nudge theory seeks to improve understanding and management of the 'heuristic'⁸ influences on human **behaviour** which is central to 'changing' people. Obviously, this is the central to the Code in achieving its objectives. The change or transformation is essential in the Code, its internal system and Ecosystem outside especially financial systems with compatible financial reforms. The central to behaviour is decision-making from the choices available. Nudge theory is mainly concerned with the **design of choices**, which influences the decisions we make. Nudge theory proposes that the designing of choices should be based on how people actually think and decide (instinctively and rather irrationally), rather than how leaders and authorities traditionally (and typically incorrectly) believe people think and decide (logically and rationally). This great philosophy and theory we have missed in SICA regime, hence it was debtors driven and the law was imposed in vein. The behaviours of other stakeholders were not adequately perceived and understood. Law ultimately need to be linked to human thinking and their reaction. Economics without understanding the behaviour of stakeholders and without appropriate law is likely to fail. The behavioural economics need to be properly understood. In this respect, among others, Nudge theory is a radically different and more sophisticated approach to achieving change in people than traditional methods of direct instruction, enforcement, punishment, etc. The use of Nudge theory is based on indirect encouragement and enablement. It avoids direct instruction or enforcement. This requires conscious framing of law, mechanism process and ecosystem. Therefore, the design of choice which influence the stakeholders shall be the entire process under IBC.

Nudge theory accepts that people have certain attitudes, knowledge, capabilities, etc., and allows for these factors (whereas autocratic methods ignore them). Nudge theory is based on understanding and allowing for the **reality** of situations and human tendencies (unlike traditional forcible instruction, which often ignores or discounts the reality of

situations and people). Fundamentally (and properly, according to its origins) Nudge theory operates by **designing choices** for people which encourage **positive helpful decisions**; for the people choosing, and ideally for the wider interests of society and environment, etc. The recognition of this theory perhaps enabled to understand imbalances under SICA especially among stakeholders. The SICA was working negatively, because its legal structure was not based on behavioural perspective of attitudes, knowledge, capabilities. The promoters' failures, need for change of management, shifting the Insolvency Professional to private professionals, overriding effect of Code over other laws are few reformative measures which yielded results to IBC as envisaged. This is precisely the purpose of IBC. Hence the very preamble of the Code is focussed on the reality of situations of human tendencies and it encourages the positive helpful decisions among the stakeholders. The philosophy and process are driven by the same including the ecosystem of the Code.

Additionally, Nudge theory offers a wonderful methodology for identifying, analysing and reshaping **existing** choices and influences that people are given by governments, corporations, and other authorities. Given that so many of these choices and influences are extremely unhelpful for people, this is a major area of opportunity for the development and use of Nudge theory, even if it were not envisaged as such by its creators. This is another major breakthrough for the Code, because the entire SICA regime there were several lessons drawn from the failure. The Nudge Theory has given methodology for identifying, analysing and reshaping the existing creditor driven, promoters controlled and defective economic policies and legal structure. The unhelpful environment in corporate sickness has given several behavioural dimensions of the stakeholders. The literature review of SICA regime helped to provide comprehensive behavioural law in the form of Code.

Nudge theory also draws from and connects to many other models of motivation and management, for example:

- the classic motivational theories of Maslow, McGregor⁹, Herzberg
- philosophical thinking, such as the psychological contract, and ethical business and management

These philosophies and understanding are consciously addressed by Banking Law Reforms Committee Report, 2015(BLRC Report).¹⁰ Dr.Vishwanathan was the chairman of the committee.Based on the Report, ultimately the Code emerged from his report. The mandate of Banking Law Reforms Committee Report, it appears took note of this theory in its recommendations and accordingly focussed on behavioural and strategic perspective of liquidation and resolution in maximising the value of assets by balancing the interests of stakeholders.

Nudge theory seeks to **minimize resistance and confrontation**, which commonly arise from Nudge theory initially emerged in the early 2000s USA as a radical approach to influencing people's interaction with financial systems, notably pensions, savings and healthcare - so as to improve quality of later life, (not to enrich financial corporations). This last point is significant - **Nudge was initially developed as an ethical concept**, by academics, for the **improvement of society**, not as a mechanism for commercial exploitation, or government manipulation. From these beginnings, the Nudge concept now offers vastly bigger implications and applications. more forceful 'directing' and autocratic methods of 'changing' people/behaviour. The Ecosystem under IBC has conscious understanding of the theory and its implications especially in the financial sectors and its reforms. The Banking system is revamped in tune with the framework of IBC. The entire philosophy and process under four pillars of IBC viz Adjudicating Authorities, Insolvency and Bankruptcy Board of India, Information Utilities and Insolvency Profession could create great impact in the accomplishment of objectives of the Code and could bring about social engineering as the underlying philosophy has roots in nudge theory. The entire mechanism under IBC has behavioural perspective rather than imposing the law under compulsion. That is why the response to the dynamic legislation from the stakeholders is very effective. The Theory blended ethical standards in the entire liquidation and resolution process. The socioeconomic dimensions are addressed comprehensively in the form of maximisation of value of assets and going concern concept. Nudge theory could give a philosophical framework for the designing the policy framework, legal framework and Institutional framework under IBC for its objectives. The entire process is driven by the behavioural dimensions and strategic perspective. It is based on social engineering.

In the next section the paper examines few reviews how the process and ecosystem is very effective under IBC.

b). To review major dynamic process which drives legislation, Philosophy underlying the process

The dynamic process is the fulcrum for IBC framework under four pillars. The maximisation of value of assets and balancing the interests of stakeholders in the given timeframe is all made possible by institutional framework with given due role by all the four pillars. The Adjudicating Authorities are in the forefront in this regard.

The dynamic Process under IBC has the following elements:

- **Balancing the interests of Stakeholders**
- **Ease of exit process & inter se rights of creditors**
- **Criminal Jurisprudence and the Code & behavioural implications**
- **Consolidation of law and one stop solution**
- **Promoting healthy competition**
- **Fiduciary role of Director**
- **Promoting entrepreneurship**

Balancing the interests of Stakeholders

The central the Code is for free and ease of exit with mechanism of balancing the interests of all the stakeholders in the given time frame. According to Viswanathan and Gaurav Gupte (2019)¹¹one of the objectives of the Insolvency and Bankruptcy Code, 2016 (Code), as stated in its preamble, is to 'balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues. These have significance in the capital markets. It is evident that the Indian insolvency law has adopted the principles of vertical equity and horizontal equity in the evaluation of resolution plan. While vertical equity is derived from the provisions of the Code itself, horizontal equity is a product of case law, particularly judgments of the NCLAT. The Code provides in its legal framework to establish the balance the interests of stakeholders in the insolvency process. It recognizes the rights of all the creditors. However, the Code does provide a

symmetrical uniform right of creditors as in certain cases it depends on the facts and situations of the case. In 'ensuring equitable treatment of similarly situated creditors', the Code meets a key objective of an effective and efficient insolvency law as laid down in the Legislative Guide on Insolvency Law prepared by the United Nations Commission on International Trade Law (UNCITRAL).

Ease of exit process & inter se rights of creditors

With an intention to maximize the value of assets, it was essential to provide for a sound framework for restructuring and rehabilitation of companies along with a framework for winding up and liquidation. It should recognise inter se rights of creditors and provide equal treatment to similar creditors, while dealing with small creditors equitably. The Code exactly focussed on this principle. Freedom to entry has gained a great momentum under the Code. The Code aims at preservation as well as maximisation of value of assets created by an entity. The Code achieves this objective by keeping an organization as a going concern and simultaneously resolving the financial stress on the entity. Accordingly, a large number of companies have been liquidated or are under liquidation. (Sunil Mehta, 2019)¹²

Criminal Jurisprudence and the Code& behavioural implications

The Law has power to trigger economic activity, also build the tradition and culture of discipline ultimately bring about behavioural transformation among the actors of resolution and liquidation process. The IBC has an objective to consolidate and amend the laws relating to reorganisation of the insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and to balance the interests of all stakeholders. The Code though assume a civil nature, however, has provisions that identify actions on corporate debtors, resolution professionals etc as criminal offences. (Virender Ganda, 2019)¹³. Accordingly, this approach promotes legal framework for building the culture of discipline and ethical standards.

Consolidation of law and one stop solution

The non-obstante provision, contained in section 238 of the Code, gives the Code an overriding effect over any other law as held in many judgements. The Code, being a later special enactment of the Parliament than the SEBI Act, PMLA, Companies Act, 2013 and the Advocates Act, 1961, will prevail by virtue of the non-obstante clause contained in the Code, in the event of an apparent conflict. (U. K. Chaudhary, 2019)¹⁴

Promoting healthy competition

Based on the BLRC reports and the Code, (Ritesh Kavdia and Shweta Vashishtha, 2019)¹⁵ observed that while determining the viability of a business is the crucial first stage in resolving insolvency: keeping viable firms in existence and helping unviable firms make way for new firms, thereby promoting healthy competition in the economy.

Fiduciary role of Director

The Directors have fiduciary role under section 166 of the Companies Act and they also have further obligations in respect of creditors during the twilight zone. In this regard, Utsat Mitra, 2019¹⁶ observers that the simple rationale behind this is to ensure that the directors do not engage in any wrongful or fraudulent activity, and do not mis-utilise the money that they owe to the creditors. Since the twilight zone means that the company is already in a precarious position, the directors must act in the bona fide interests of the creditors, and ensure that the company steers away from insolvency

Promoting entrepreneurship

In promoting the entrepreneurship and recognising the failures in competitive environment in respect of innovation apart from free exist such free exit should be on fast track in certain cases. Shreya Prakash, 2019¹⁷ observes that Chapter IV of Part II of the Code provides a fast-Track process for the resolution of insolvency of small companies, start-ups, and unlisted companies with total assets below Rupees one crore. The fast-track insolvency resolution process (fast-track process) essentially provides for the insolvency resolution process of such debtors to be conducted within a period of 90 days (extendable by a further 90 days), instead of one hundred and eighty days (extendable by a further 45 days) allowed under

the regular corporate insolvency resolution process (CIRP) under Chapter III of Part II of the Code.

C). What is the Ecosystem and how is it developed and functioning? - a review.

According to Prof. Malcolm K. Sparrow of Harvard University, "Regulators, under unprecedented pressure, face a range of demands, often contradictory in nature: be less intrusive – but more effective; be kinder and gentler – but don't let the get away with anything; focus your efforts – but be consistent; process things quicker – and be more careful next time; deal with important issues – but do not stray outside your statutory authority; be more responsive to the regulated community – but do not get captured by industry"

In contemporary society we find regulation as a pervasive factor in every activity. Of late it has become a socioeconomic tool. This tool is pertinent to policy development or regulatory design and also in policy implementation i.e. delivery mechanism socioeconomic tool for both policy development (regulatory design) and policy implementation (regulatory delivery mechanism). It is observed in a good regulatory framework five criteria viz., democratic legitimacy, accountability of the regulator, fair, accessible and open procedures, expertise and efficiency. The focus of regulation shall be not merely be based on technical procedure and formality, rather it should be based on the end result or outcomes.

The requisite ecosystem for implementation of Insolvency and Bankruptcy Code, 2016 (IBC) — touted as the second-biggest financial reform by the Centre after GST — needs to be first set up in the country. Without it, Banks may not utilise the Code, aimed to lower stress on the banking structure, SBI Chairman Arundhati Bhattacharya said.¹⁸ "Creation of the ecosystem involves creation of an information bank of the borrowers with the lenders, the performance track record of the borrowers as well as selection of judges to man the Debt Recovery Tribunal (DRT) and National Company Law Tribunal (NCLT)." She further stated that "With the law (IBC), you need to set up the eco-system as well. Banks are not rushing towards it. The ecosystem has been created to an extent but needs to be fully put in place", she added. She also said availability of data with the banks, track records of the lenders and selection of panel of judges are part of this IBC ecosystem.

According to a statement from the Finance ministry, the essential idea of IBC is that when a firm defaults on its debt, the control shifts from the shareholders and promoters of the defaulting company to a Committee of Creditors, who have 180 days and an additional 90 days to evaluate proposals to either resuscitate the company or take it into liquidation."

The ecosystem is well structured and reformed over the last 4 years to have effective implementation of the Code. The following are certain reviews in this regard.

The Ecosystem has the following few significant aspects:

- **Walking the Regulatory Tightrope**
- **winds of behavioural transition**
- **Insolvency Professionals and the Code of Conduct**
- **Role of Resolution Professionals**
- **Accountability of Professionals**
- **Need for Uniform Valuation Standards**
- **Litigation: A Tool or Weapon**
- **Cost and Benefit Analysis of Insolvency Regulations**

Significance of regulations and its mechanism

Regulations play a vital role in balancing the interests of stakeholders. Good governance and basic principles of justice, ethics would help in the process. **K. R. Saji Kumar**¹⁹ observes on this subject that Regulation is quite pervasive in our contemporary society. It is a key socio-economic tool for both policy development (regulatory design) and policy implementation (regulatory delivery mechanism). A 'good quality regulation' should meet five criteria viz., democratic legitimacy, accountability of the regulator, fair, accessible and open procedures, expertise and efficiency. Additionally, good regulation should emphasise on the achievement of the outcomes rather than mere technical compliance. Further he observes that regulator must act objectively, impartially and consistently, without prejudice, fear, apprehension or undue influence.

winds of behavioural transition

The enactment of Code, changed the legal and economic rescue landscape in India. The dynamic reforms brought behavioural changes amongst the various market players. As a progressive economic legislation, the Code has shifted the balance of power from the debtor to the creditor. It proved greater certainty of outcome of the insolvency and bankruptcy processes. The Code is based on the vital principle of mercantile law that 'the law should follow the merchant and not vice versa'. The very design and implementation of Code is in tune with the business practice pursuant to mercantile law. In the environment of information asymmetry, the regulations visualize the issues and addresses the same, which in turn bring change. The main focus is maintaining the time line. It was recognised that robust institutional frameworks should be put in place to attribute judicial and legislative certitude, as well as orderly conduct of processes under the law.

As the Indian insolvency regulator, it is tasked to formulate enabling ecosystem and regulatory framework, inter alia, for implementation of corporate processes which commenced on December 1, 2016²⁰. On the enactment of Code, the functions of IBBI are stipulated in section 196 of the Code. It has, broadly, three sets of functions, such as:

- Legislative: Making regulations for market intermediaries (service providers) and processes;
- Executive: Registering and regulating service providers for the insolvency process and taking measures for professional development and expertise for the market players through education, examination, training and continuous professional education; and
- Quasi-judicial: Adjudication of service providers for ensuring their orderly growth, development and functioning.

The vision of the regulation and strategic path to reach with right mission is the hall mark of a regulator. The strategic path establishes ensures consistency of thought and action with the given vision. The credibility apart from these also based on endeavour of every regulator to 'go by' the law and not to 'go to' the law, as the latter leads to diminution of the very institution of the regulator. This means the

effective in regulation envisages end result not just on means. Therefore, mere legal framework and its compliance is not enough, rather the tracing the strategic path and strategic deployment of means towards substratum becomes a strategic predisposition. It is observed that autonomy of the regulator is visible through the prism of democratic legitimacy and/or regulatory accountability to the consumers and to the society in general. Regulators need to understand their business well and that it is done easily, timely and effectively. The profits and gains of doing regulatory business is assessed, may be from lesser market interventions and not probably from over-regulation

IBBI's journey is not an exception. It has been treading a fair, accessible and broad approach to regulation. The regulatory discourse initiated by IBBI in the insolvency ecosystem is intertwined with fostering 'rule of law' and meta regulation. As stated by our first full-time Finance Minister in her maiden budget speech recently, *Karya purusha karnalakshyamsampadyate*, which means, with determined human efforts, the task will surely be completed. It is envisioned that IBBI will be able to accomplish its diverse tasks going by the spirit of the *Chanukyanithi*²¹

Insolvency Professionals and the Code of Conduct

The Code provided very effective ecosystem for its implementation²². The ecosystem consists of four pillars, viz., the Adjudicating Authorities (the National Company Law Tribunals and Debts Recovery Tribunals), IPs and Information Utilities (IUs), Insolvency Professional Agencies (IPAs) and the Insolvency and Bankruptcy Board of India (IBBI) to exercise regulatory oversight over IP agencies, IPs and IU.

As drawn from the works of Mukulita Vijayawargiya, 2019²³ an important component of the ecosystem is the Insolvency Professionals who are accountable for wide range of functions so as to effectively strive to maximise the value of assets of debtor. All the processes underlined in the Code, viz., CIRP or withdrawal of the CIRP or liquidation process is largely executed by IPs. His role is vital in process under the code and provide of link between the AA and CoC as also other stakeholders. As on

August, 2019, there are **2734** IPs registered with the IBBI.

Role of Resolution Professionals

Insolvency Profession is a novel of its kind in the Indian Legal Framework under the Code. IBBI regulates them. In terms of section 5 of the Code, the Resolution Professional is appointed to conduct corporate insolvency resolution process which includes interim resolution professional.

The IP is (a) tasked with facilitating the entire resolution process while attempting to address and balance the interests of all stakeholders. **(b)** shall conduct the entire corporate insolvency resolution process and manage the operations of the corporate debtor during the corporate insolvency resolution process period. (Sec 23 of the Code) **Vijaykumar Iyer and Abhishek Sood²⁴ observes in their work that** there are several practical challenges that he may face, which may or may not be explicitly envisaged under the Code. An RP has to overcome all these challenges in order to effectively discharge his duties during the CIRP, using the tools available to him under the Code. There are no clear readymade solutions to practical challenges and a RP is required to use his discretion on most occasions.

Accountability of Professionals

The profession. As found in the works of P.R. Ramesh, 2019²⁵ he is accountable to the ecosystem and its various constituent stakeholders. The significance of integrity and impact on building and preserving the reputation of the whole of cadre of professionals is highlighted. He further observes that the final test for an individual is to be his own judge and be governed by the principles of ethics and accountability

Need for Uniform Valuation Standards

Essentially these include financial reporting, managing the solvency of financial institutions, supporting lending or other investment decisions and the pricing of units in collective investment schemes. It is the crux and vital to resolution execution. According to Navrang Saini, 2019²⁶ a robust valuation contributes to the effectiveness of resolution actions,

including the legitimacy and soundness of the decision, and the achievement of the resolution objectives. He opines to be robust; a valuation must rely on the timely provision of high-quality data and information to the valuer. This envisages professional approach and requirement on the part of Institutions to further Institutions preparedness during planning the resolution. He further points out that valuation standards have a significant role to play in helping to regulate professional practice at national, regional and global levels, promote professional ethics, integrity, impartiality and trust in valuer activities. Many Governments and professional bodies are responding to international pressure to regulate the valuation profession by reviewing the regulatory environment, valuer training and compliance with standards. We need to have consistent, uniform and transparent valuation policies to enable harmonise the diverse practices in India. The uniform valuation standards should also have international recognition and should be compatible with Indian Legal and regulatory framework.

Litigation: A Tool or Weapon

It is an important law which has had a strong impact on business and the economy. **Swarupama Chaturvedi, 2019²⁷ observes that** time is the essence in the resolution process. IPs are trained people to handle the process. The research team provides adequate timely data on various courts' judgements and interpretations of the code various courts to AA. Further infrastructure, increasing the number Information Utilities and IPs getting further professional exposure and experience would certainly enable effective CIRP in maintaining the time line under the code. Four Pillars have shown great commitment in this regard as the process helps all the stakeholders.

Cost and Benefit Analysis of Insolvency Regulations

CBA has is aimed at addressing the issues whether a policy and regulation has reached its stakeholders and what cost. **Sumant Batra²⁸ observes that** notwithstanding the challenges, CBA will help IBBI in providing assurance to the market that it will not adopt economically harmful regulations. It also addresses democratic function with regulation open

for discussion and transparent. The Socio economic and sociocultural issues, ethics, integrity, transparency and other principles of good governance are maintained by IBBI in the process. It conveys that Stakeholders concerns are considered by sensible and knowledgeable experts through a credible and transparent process. He further observes that A rigorous, objective and transparent CBA will help IBBI reduce the risk by considering not only what direct costs and benefits may be associated with compliance with a particular regulation, but also to more broadly consider how IBBI as a regulator fits in with the regulatory apparatus as a whole.

Conclusion:

The entire philosophy, process and ecosystem is in perfect tandem and compatibility with the preamble of the Code. The Code designed with utmost care and vision after wide consultations. Its implementation process and mechanism still carefully planned and executed in maximising the value of assets of stakeholders apart from other objectives. The process and ecosystem are not only helped to implement the Code effectively but also system and grow with progressive success. The balancing of interest of stakeholders brought paradigm shift. The code therefore, is a dynamic economic legislation structured, provided with the process and ecosystem to reach its substratum.

References:

1. Insolvency and Bankruptcy Code, 2016, No. 31 of 2016
2. *Acknowledgements, Insolvency and Bankruptcy Code A Miscellany of Perspectives*, www.ibbi.gov.in. published by Insolvency and Bankruptcy Board of India, New Delhi, 2019.ppv
3. The Act 1 of 1986
4. *Preface, Insolvency and Bankruptcy Code A Miscellany of Perspectives*, www.ibbi.gov.in. published by Insolvency and Bankruptcy Board of India, New Delhi, 2019.ppvii-viii
5. Ibid
6. Nudge theory was named and popularised by the 2008 book, '*Nudge: Improving Decisions About Health, Wealth, and Happiness*', written by American academics Richard H Thaler and Cass R Sunstein. The book is based strongly on the Nobel prize-winning work of the Israeli-American psychologists Daniel Kahneman and Amos Tversky.
7. 'Nudge' theory 'toolkit', <https://www.businessballs.com/improving-workplace-performance/nudge-theory/#nudge-toolkit>
8. <https://www.businessballs.com/improving-workplace-performance/nudge-theory/#heuristics>
9. <https://www.businessballs.com/improving-workplace-performance/mcgregors-xy-theory-of-management/>
10. The Report of the Bankruptcy Law Reforms Committee, 2015 headed by Dr. T.K. Vishwanathan
11. L. Viswanathan and Gaurav Gupte, *Vertical and Horizontal Equity in Corporate Processes, Insolvency and Bankruptcy Code A Miscellany of Perspectives*, www.ibbi.gov.in. published by Insolvency and Bankruptcy Board of India, New Delhi, 2019.ppv57-64
12. Sunil Mehta, *Liquidation and Voluntary Liquidation Process, Insolvency and Bankruptcy Code A Miscellany of Perspectives*, www.ibbi.gov.in. published by

Insolvency and Bankruptcy Board of India, New Delhi, 2019.pp65-74

13. Virender Ganda, *Criminal Jurisprudence and the Code*, Insolvency and Bankruptcy Code A Miscellany of Perspectives, www.ibbi.gov.in. published by Insolvency and Bankruptcy Board of India, New Delhi, 2019.pp75-82

14. U. K. Chaudhary, *The Non-Obstante Clause in the Code*, Insolvency and Bankruptcy Code A Miscellany of Perspectives, www.ibbi.gov.in. published by Insolvency and Bankruptcy Board of India, New Delhi, 2019.pp83-88

15. Ritesh Kavdia and Shweta Vashishtha, *Employees of Distressed Companies*, Insolvency and Bankruptcy Code A Miscellany of Perspectives, www.ibbi.gov.in. published by Insolvency and Bankruptcy Board of India, New Delhi, 2019.pp89-9

16. Utsav Mitra, *Directors' Duties in the Twilight Zone*, Insolvency and Bankruptcy Code A Miscellany of Perspectives, www.ibbi.gov.in. published by Insolvency and Bankruptcy Board of India, New Delhi, 2019.pp95-103

17. *Re-designing the Fast Track*, Insolvency Process Shreya Prakash, Insolvency and Bankruptcy Code A Miscellany of Perspectives, www.ibbi.gov.in. published by Insolvency and Bankruptcy Board of India, New Delhi, 2019.pp105-114

18. https://www.business-standard.com/article/finance/bankruptcy-code-first-set-up-ecosystem-for-ibc-says-sbi-s-bhattacharya-117071101023_1.html

9. K.R. Saji Kumar, *Walking the Regulatory Tightrope*, Insolvency and Bankruptcy Code A Miscellany of Perspectives, www.ibbi.gov.in. published by Insolvency and Bankruptcy Board of India, New Delhi, 2019.pp105-114

20. Ibid

21. Ibid

22. Ibid

23. Mukulita Vijayawargiy, *Insolvency Professionals and the Code of Conduct*, Insolvency and Bankruptcy Code A Miscellany of Perspectives, www.ibbi.gov.in. published by Insolvency and Bankruptcy Board of India, New Delhi, 2019.pp141-150

24. Vijaykumar Iyer and Abhishek Sood, *Role of Resolution Professionals*, Insolvency and Bankruptcy Code A Miscellany of Perspectives, www.ibbi.gov.in. published by Insolvency and Bankruptcy Board of India, New Delhi, 2019.pp151-158

25. P.R. Ramesh, *Accountability of Professionals*, Insolvency and Bankruptcy Code A Miscellany of Perspectives, www.ibbi.gov.in. published by Insolvency and Bankruptcy Board of India, New Delhi, 2019.pp159-164

26. Navrang Saini, *Need for Uniform Valuation Standards*, Insolvency and Bankruptcy Code A Miscellany of Perspectives, www.ibbi.gov.in. published by Insolvency and Bankruptcy Board of India, New Delhi, 2019.pp165-174

27. Swarupama Chaturvedi, *Litigation: A Tool or Weapon*, Insolvency and Bankruptcy Code A Miscellany of Perspectives, www.ibbi.gov.in. published by Insolvency and Bankruptcy Board of India, New Delhi, 2019.pp175-180

28. Sumanth Batra, *Cost-Benefit Analysis of Insolvency Regulations*, Insolvency and Bankruptcy Code A Miscellany of Perspectives, www.ibbi.gov.in. published by Insolvency and Bankruptcy Board of India, New Delhi, 2019.pp 181-188