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India's Experience in Insolvency Laws: Learnings for the Global South

Amol Baxi*

Abstract: Effective legal institutions such as bankruptcy laws have been linked to favorable economic and social outcomes. Bankruptcy laws are regarded as one of the key determinants of financial development. Many countries, such as India, have introduced pioneering insolvency reforms, which have had consequences for debt markets and their participants. India's insolvency reforms operate in a country with vast depth and heterogeneity of participants. Examining India's insolvency law (Insolvency & Bankruptcy Code, 2016), its dimensions, and insolvency frameworks adopted in less developing countries, this study examines whether India's insolvency model can offer learnings for the 'Global South' and can ultimately lead to improved economic and social outcomes. This paper concludes that while each country must decide its insolvency path based on its institutional infrastructure/realities, broad learnings from India's establishment of four pillars of Insolvency can be shared towards capacity building in countries choosing to implement or reform their existing insolvency systems (and specifically, creditor-in-control models). Further potential for south-south cooperation exists in cross-border insolvency law in sharing experiences and negotiating terms under the UNCITRAL framework.

Keywords: Insolvency, Bankruptcy, Global South, Creditor Rights, IBC

Introduction

Insolvency laws[1] are a significant determinant of positive social and economic outcomes. La Porta *et al.*'s seminal law & finance papers (1997, 1998)[2] (henceforth known as LLSV) showed the importance of bankruptcy laws and their creditor rights to a country's financial development. Insolvency laws are forms of Institutions,[3] and the link between institutions and economic growth has been researched since long.[4] However, their measurement and empirical linkages to financial development gathered steam after the seminal papers of LLSV.

Internationally, countries differ in their Insolvency laws,[5] which take shape in many models (for instance, debtor /creditor oriented).[6] Many international organizations, such as UN Commission for International

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Trade Law (UNCITRAL)[7] and the World Bank,[8] have attempted to frame unified frameworks for insolvency law or compared legal frameworks for countries. For instance, the World Bank Doing Business Project[9] ranked 190 countries worldwide in terms of the strength of legal rights and resolving insolvency framework.[10] The World Bank measures have been used widely in bankruptcy, creditor rights, and the law and finance literature.

India introduced its insolvency reforms in 2016 by introducing the Insolvency & Bankruptcy Code (2016).[11] India's insolvency model has largely been hailed as creditor-oriented due to its creditor-in-control model,[12] under which the existing management is dismissed, and a court-appointed Insolvency Professional (IP) is appointed to manage the firm's affairs during bankruptcy. Since then, India has seen a significant volume of cases admitted under IBC, with over 40 per cent of admitted cases successfully resolved till date by resolutions, withdrawals, or settlements.[13] India's IBC, while an evolving legislation, has largely been seen as a success over prior legislations in resolving debtor-creditor issues.

While India has seen considerable action on the insolvency front (in terms of cases admitted) with established infrastructural pillars (adjudicating authority, insolvency professionals, information utilities, and the regulator),[14] relatively less is discussed about the distinctive features of insolvency regimes in developing countries[15] or the Global South. The term 'Global South' broadly refers to less developed non-western countries in Asia, Africa, and Latin America[16] (others have geographically categorized such countries to comprise Africa, Central America, Latin America, Most parts of Asia, and the Middle East).[17] In recent times, there has been growing research on the working of insolvency laws in developing or emerging economies.[18] Gurrea-Martinez (2020),[19] for instance, argued for a greater focus on insolvency laws in 'emerging countries' (a term he used as a synonym to describe developing countries) as they are distinct in terms of their economic and financial development.

This study extends the debate and explores the potential for cooperation on whether India's insolvency reform can be a model for

Global South countries while initially examining a sample of 45 countries in Latin America, Asia, and Africa.[20] This study asks the following primary research questions: (1) What has India's experience been with insolvency? (2) What is the position of insolvency laws in the Global South? (3) Can India be a model for the global South? (4) What are some lessons from countries like India for the Global South?

This study analyzes India's insolvency law (IBC) and whether it is replicable to the Global South (and if so, to what extent). This study will also examine the standing of southern countries in terms of their insolvency regimes and whether they can benefit from borrowings from the Indian experience. As such, this paper will explore potential avenue for extending cooperation and learnings with Global South countries in the context of insolvency law. The ensuing sections discuss the methodology, role of insolvency laws, their objectives and design, position in the Global South, India's experience with insolvency laws, whether India can be a model for the Global South, some learnings for Global South, and conclusion.

Methodology

The study refers to various sources across law & finance literature, regulatory publications (including newsletters), World Bank reports, and other scholarly sources focusing specifically on developing countries. Bankruptcy laws and financial development are covered extensively in the law & finance literature. In addition, multilateral organizations like the World Bank have worked on the international classification of laws and developed various creditor-right or insolvency indices, which will be used to ascertain the status of insolvency practices in some Global South countries. In the context of IBC, there have also been active publications from the regulator (Insolvency & Bankruptcy Board of India [IBBI']). Further, certain recent books by some scholars have focused on insolvency laws in emerging markets.[21] Additionally, this study will rely on country-specific resources from other institutions that have worked on the international classification of insolvency laws (such as UNCITRAL).

Insolvency Laws and their Role in Development

A large volume of literature has focused on the importance of insolvency laws to development. The seminal LLSV (law & finance) papers in the late 1990s spurred research in this segment. LLSV empirically established through their cross-country studies that stronger creditor protection /rights arising from a country's bankruptcy laws /reforms deepen credit markets (a barometer for financial development). This has been followed by over two decades of empirical research in the law & finance domain, trying to establish a link between creditor rights and credit markets (supply and demand sides).[22]

The link between creditor rights and financial developments is intuitive. Strong creditor protection induces favorable outcomes by enhancing creditor recoveries (especially in countries with insolvency frameworks having reorganization procedures),[23] giving lenders more confidence to extend credit on better terms.[24] Financial development ultimately leads to economic growth.[25] The development of credit markets is also recognized as one of the key objectives of bankruptcy laws.[26] However, unduly strong creditor protection can depress credit markets by depressing corporate borrowings.[27] This has led to growing demand-side research examining the impact of insolvency laws on firms. Insolvency laws thus remain complex due to the presence of multiple stakeholders,[28] and many scholars have argued that such laws must balance the rights of creditors and borrowers effectively.[29]

Not only financial development but insolvency laws are also crucial for resolving financial crises and orderly workout from excessive indebtedness. Insolvency laws ensure that the resources of troubled enterprises are reemployed in the system in the most efficient form or closed at the earliest, which is crucial for the economic performance of society.[30]

Insolvency laws have also been shown to be associated with a higher level of investments and positive for a country's GDP.[31] Implementing effective reorganization procedures (saving viable enterprises from liquidation through rescue) is one of the important benefits and objectives of insolvency laws. Such norms enhance investments through improved business confidence to operate in such jurisdictions.

Further, Insolvency can strike corporations with a presence across multiple jurisdictions, especially those engaged in trade. Hence, the lack of comprehensive insolvency laws (including cross-border frameworks) in countries can impact international trade.[32]

Hence, a crucial element is the design of bankruptcy laws, given their impact on credit markets and a country's development across spheres. Table 1 summarizes some of the main benefits of insolvency laws in the literature.

Table 1: Main (Macro) Benefits of Insolvency Laws

Financial development	LLSV (1997, 1998)
Banking development (and economic growth)	Levine (1998)[33]
Bond Market development	BLRC
Industrial disease cure	BLRC
Credit Markets (lending/supply / terms)	LLSV (1997, 1998), Qian *et al*., (2007)[34];
Reallocation of Capital	Froute (2007)
Unsecured credit	BLRC
Value protection	BLRC
Promotion of investments	World Bank (2020)[35].
Facilitation of International Trade	UNCITRAL[36]
Promotion of entrepreneurship (risk-taking)	Claessens & Klapper (2005)[37]
Reduction in poverty	Gurrea-Martinez (2020)[38]
Job Preservation	Armour *et al*. (2015)
Capital formation	Haselmann & Watchel (2010)[39]
SME lending	Haselmann & Watchel (2010)[40]

Source: Author Compilation.

The importance of insolvency law is demonstrated by over 40 countries having implemented or reformed their insolvency framework since 2006.[41] There has also been an accelerated trend of reforms, especially post-COVID-19,[42] primarily oriented towards the introduction of hybrid workouts, specialized procedures for MSMEs, promotion of out-of-court restructuring, and discharge of debt of individual entrepreneurs.

Insolvency Laws, their Objectives and Design

There is no established design for insolvency laws, and it is often said to depend on a country's institutional or legal practices /traditions,[43] although multilateral bodies have made efforts to harmonize insolvency laws. For instance, UNCITRAL introduced the first 'draft legislative guide on insolvency law' in 2004 (evolved over the years to include many more sections) detailing the elements of sound insolvency law.[44]

Insolvency laws vary, however, widely in terms of their legal orientation (debtor, creditor, or mixed),[45] strength, and recovery rates.[46] Insolvency laws have many objectives, and countries may differ in the law design based on their perception of the importance of some or all of these objectives. The macro benefit of insolvency laws is primarily achieved through the achievement of their goals. Table 2 lists some of the critical objectives of bankruptcy laws as per UNCITRAL:

Table 2: Key Objectives of Bankruptcy Laws as Per UNCITRAL

1	Provision of certainty in the market to promote efficiency and growth
2	Ensuring a transparent and predictable insolvency law that contains incentives for gathering and dispensing information.
3	Provision of timely, efficient, and impartial resolution of Insolvency.
4	Maximization of value of assets
5	Striking a balance between liquidation and reorganization.
6	Preservation of the insolvency estate to allow equitable distribution to creditors
7	Ensuring equitable treatment of similarly situated creditors
8	Recognition of existing creditor rights and establishing clear rules for ranking of claims.
9	Establishment of a framework for cross-border Insolvency.

Source: The report of the Bankruptcy Law Reforms Committee (BLRC)[47]

In addition to the above, many other scholars or regulators have articulated the objectives of bankruptcy laws differently. Table 3 details some of the other objectives of bankruptcy law enumerated in the literature:

Table 3: Other Articulations of Objectives of Bankruptcy Laws

Orderly Process of Reorganization / Liquidation.	Hart(2000)
Prevention of expropriation by insiders[48]	Schleifer & VIshny (1996)
Screening (liquidation/reorganization)	White (1989)
Achievement of ex-post outcomes	Aghion *et al* (1994), Hart (2000)
Achievement of ex-ante outcomes (avoidance of bankruptcy, penalization of managers, and prevention of reckless decisions)	Aghion *et al* (1994), Hart (2000), Rajan & Zingales, Claessens & Klapper (2005)
Protection of absolute priority of claims	Aghion *et al* (1994), Hart (2000)
Prevention of reckless lending	Claessens & Klapper (2005)
Prevention of reckless borrowing	Sahoo & Guru (2020)
Drawing the line between malfeasance and failure	BLRC
Promotion of entrepreneurship/ Innovation	Gurrea-Martinez (2020)
Facilitation of credit markets	BLRC
Promotion of entrepreneurship	BLRC
Balancing Rights of Stakeholders	BLRC

Source: Aouthor's compilation

Insolvency law also aims for orderly resolutions of companies with international operations. As far back as 1997, UNCITRAL developed the 'model cross-border insolvency laws' to deal with the Insolvency of the corporate debtor /group across multiple jurisdictions.[49] The importance of having sound cross-border laws has since been recognized by many countries, including India,[50] which have adopted or are contemplating the adoption of the UNICTRAL model on cross-border insolvency law with some modifications.[51] Over 60 countries have adopted the model cross-border insolvency framework law to date.[52] India is contemplating implementing cross-border insolvency law based on the UNICTRAL model with some modifications.[53]

However, countries take different enforcement routes to resolve Insolvency, and there is no one-size-fits-all approach.[54] Insolvency laws remain characterized by heterogeneity in design and the degree of its orientation towards debtors or creditors.[55] Law & Finance researchers have also been categorizing bankruptcy codes in various jurisdictions in terms of their orientation (debtor/creditor) or outcomes (liquidation/reorganization).[56] Bankruptcy laws that provide more rights to creditors are called creditor-oriented. In comparison, those that provide more rights to debtors during bankruptcy are termed debtor-oriented.[57] The former is said to promote liquidations, while the latter is said to be more reorganization-friendly. For instance, the US Bankruptcy Code has adopted the Debtor-in-Possession model with separate chapters for reorganization and liquidation. In contrast, the IBC has adopted the creditor-in-control model of Insolvency proceedings.[58] Many scholars have used different methods to classify countries based on creditor protection indices. However, various measures have been developed (with no consensus) to measure the orientation of bankruptcy laws.[59]

Insolvency Laws in the Global South

The term 'Global South' broadly refers to developing countries often characterized by wide variations in population and income.[60] Scholars have described the Global South as less developed non-western countries located in Asia, Africa, and Latin America.[61] Others have categorized countries such as Africa, Central America, Latin America, most parts of Asia, and the Middle East.[62] In this study, I examine whether India's insolvency reform can be a model for Global South countries while initially focusing on 45 countries in Latin America, Asia, and Africa.[63]

To understand how countries in the Global South differ regarding their insolvency framework, this paper relies on the Resolving Insolvency Index (RII)[64] from the last published World Bank Doing Business Report (2020).[65] The RII is based on the methodology of Djankov *et al*. (2008), classifying dominant insolvency procedures as foreclosure, reorganization first, or liquidation. Djankov *et al*. noted that broadly, there are three legal procedures countries adopt to resolve their Insolvency: foreclosure (with or without court), liquidation, or reorganization ("court-supervised procedure aimed at rehabilitating companies").[66] Reorganization can often lead to subsequent liquidations in countries having a unified bankruptcy process (hence also known as 'reorganization first'). These can lead to going concerns or piecemeal sale outcomes (with going concerns outcomes often associated with greater efficiency and found more in rich countries).[67] Djankov *et al*. also identified legal origins and per capita income as essential determinants of the efficiency of these procedures. While all or a combination of these procedures can be found in many countries, outcomes vary.

The World Bank RII measures whether countries have effective insolvency procedures and recoveries (discounted for time, cost, and outcomes) and ranks countries taking the average of two measures (strength of insolvency framework and recoveries) as a proxy for efficiency of insolvency regime. The RII also sheds light on the dominant mode of debt enforcement in these countries (for instance, countries may have reorganization norms, but liquidation may be more prevalent in practice).

Table 4 summarizes the level of creditor protection of samGlobal South countries and their relative rank as per the last World Bank Doing Business Report (2020).[68]

Table 4: Global South Countries and their Insolvency Position as per World Bank RII (2020)

	Countries	**Dominant Insolvency Mechanism (in practice)**	**Expected Outcome**	**Recovery Rate**	**SIF (Strength %)**	**Ranking (RII) 2020[69]**
	Asia					
1	Thailand ***	Reorganization	Going Concern	75.5%	78.1%	24
2	Indonesia***	Reorganization	Going Concern	70.1%	65.6%	38

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3	Malaysia***	Receivership	Going Concern	87.2%	46.9%	40
4	Kazakhstan**	Liquidation	Piecemeal	42.8%	90.6%	42
5	China***	Liquidation	Piecemeal	39.8%	84.4%	51
6	India**	Reorganization	Going Concern	77%	46.9%	52
7	Pakistan**	Foreclosure	Piecemeal	44.9%	71.9%	58
8	Philippines**	Liquidation	Piecemeal	22.7%	87.5%	65
9	Nepal**	Foreclosure	Piecemeal	44.4%	50%	87
10	Sri Lanka**	Foreclosure	Piecemeal	46.3%	43.8%	94
11	Uzbekistan**	Liquidation	Piecemeal	37.1%	50%	100
12	Vietnam**	Liquidation	Piecemeal	23%	53.1%	122
13	Iran**	Foreclosure	Piecemeal	38.9%	31.3%	133
14	Bangladesh**	Foreclosure	Piecemeal	31.3%	25%	154
15	Syria*	Foreclosure	Piecemeal	22.8%	31.3%	158
16	Yemen*	Liquidation	Piecemeal	22.6%	31.3%	159
17	Myanmar**	Foreclosure	Piecemeal	15.8%	25%	164
18	Turkey***	Liquidation	Piecemeal	11.3%	65.6%	120
19	Iraq***	No Practice	-	-	-	-
20	Saudi Arabia****	No Practice	-	-	-	-
	Africa					
21	Nigeria**	Receivership	Piecemeal	29.9 %	31.3%	148
22	Ethiopia*	Liquidation	Piecemeal	29.4%	31.3%	149
23	Egypt**	Foreclosure	Piecemeal	25.5%	59.4%	104
24	Congo*	Liquidation	Piecemeal	20.8%	56.3%	119
25	Tanzania**	Receivership	Piecemeal	21.9%	56.3%	116
26	South Africa***	Liquidation	Piecemeal	37.3%	71.9%	68
27	Uganda*	Receivership	Going concern	43.4%	43.8%	99
28	Sudan*	Liquidation	Piecemeal	32.6%	25%	152
29	Algeria**	Foreclosure	Piecemeal	54.7%	43.8%	81
30	Morocco**	Liquidation	Piecemeal	30.9%	75%	73

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31	Angola**	No Practice	-	-	-	-
32	Ghana**	Liquidation	Piecemeal	25.8%	25%	161
33	Mozambique*	Foreclosure	Piecemeal	33.1%	62.5%	86
34	Madagascar*	Foreclosure	Piecemeal	13.3%	56.3%	135
35	Ivory Coast	Liquidation	Piecemeal	39.6 %	56.3 %	85
36	Niger*	Foreclosure	Piecemeal	22.4%	56.3%	114
37	Mali*	Liquidation	Piecemeal	30.5%	56.3%	102
38	Malawi*	Liquidation	Piecemeal	16.8%	53.1%	134
39	Zambia**	Foreclosure	Piecemeal	54.9%	43.8%	79
	Latin America					
40	Brazil***	Liquidation	Going Concern	19.6%	81.3%	77
41	Mexico***	Reorganization	Going Concern	68.8%	71.9%	33
42	Colombia***	Reorganization	Going Concern	74%	68%	32
43	Argentina ***	Foreclosure	Piecemeal	20.7%	59.4%	111
44	Peru***	Liquidation	Piecemeal	33.7%	59.4%	90
45	Venezuela***	Liquidation	Piecemeal	5.8%	31.3%	165
46	Chile****	Liquidation	Piecemeal	45.1%	75%	53

Source: (Author): *Low income, ** Lower middle income ***Upper middle income ****High income): Country names sourced from Shankar Acharya (2024). Rankings were collated from the World Bank Doing Business Report (Economy Profiles 2020).

As evident from Table 4, sample Global South countries differ in their route to resolve Insolvency and their relative ranking. As per international experience, bankruptcy laws are characterized by heterogeneity, and the Global South is no different. However, many countries have yet to rely on reorganization procedures effectively, thereby showing potential for improvement in the insolvency ecosystem.[70] Not many countries have reorganization as the dominant procedure with going concern outcomes (associated with higher bankruptcy efficiency). From this lens, the data suggests scope for reforms in Global South countries.

India's Experience with Insolvency Laws

India introduced the landmark IBC in 2016 in an environment with high Non-Performing Assets (NPAs)[71] and following the recommendations of the Bankruptcy Law Reforms Committee (BLRC).[72] Before IBC, India primarily relied on Debt Recovery Tribunals (DRT) and SARFAESI act (collateral law), whose performance has been criticized as inefficient, with liquidation bias[73] and poor enforcement.[74] IBC brought about a landmark change in allowing all creditors (financial and operational) to initiate Insolvency in the event of default in payment of dues by the Corporate Debtor(CD).[75] Hence, IBC provided much-needed rights to operational creditors (including workmen and employees) to initiate bankruptcy. IBC also bought in the creditor-in-control model, unlike previous laws in India, where the debtor remains in possession of the defaulting entity.[76] More importantly, IBC heralded the arrival of reorganization, allowing viable companies a chance to survive and, if not, be liquidated in a timebound and efficient manner. Djankov *et al*. (2008) noted that reorganizations are more efficient as they are associated with more survival/going concern outcomes rather than piecemeal sales.[77] While drafting the IBC, the BLRC noted that reorganizations are generally associated with higher creditor recoveries.[78]

IBC was implemented at a time when the Indian economy had been witnessing high NPA levels.[79] As per RBI data, the gross NPA of banks in 2016 stood at 7.5 per cent[80] (reduced to a decade-low of 3.9 per cent presently).[81] Before IBC, India lacked an insolvency framework rescuing viable entities and was liquidation-oriented. Due to weak creditor rights in pre-existing laws and low associated anticipated recoveries, lending was concentrated to a few large corporates with a low probability of default.[82] Hence, it was felt essential and envisaged by the BLRC[83] to have a creditor-driven insolvency model (suspension of existing management and appointment of a court-appointed insolvency professional to drive the insolvency process).

The IBC was thus enacted with its main objectives of resolution (first order), protection of value (second order), facilitation of credit, promotion of entrepreneurship, and balancing stakeholder interest (third order objectives) in that order of priority.[84] The four pillars of the IBC ecosystem were outlined (insolvency professional, regulator, information utility, and adjudicating authority).[85] Key landmarks in IBC's evolution since 2016 are as follows:

Table 5: IBC- Key Milestones

Milestone	Year
IBC – Framework for Corporate Persons	2016
IBC- Pre-pack for MSMEs*	2021
IBC- Individual Insolvency norms**	2019
IBC- Group Insolvency & Cross Border Insolvency	Yet to be implemented

Source: (Author) *Essentially Hybrid schemes **In line with UNCITAL framework for simplified insolvency norms for MSMEs also adopted by many other countries such as the US, Singapore, and Colombia (Gurrea-Martinez, 2021)[86]

Salient achievements of IBC and relative to its objectives are detailed in Table 6 and below:

Table 6: IBC- Key Metrics

Key Metrics	
Cases admitted (CIRP)	7325 (Initiated by OCs: 3586)
Cases resolved (including withdrawals/settlements)	3050 (891 resolutions)
Liquidations (initiations)	2376 (830 closed, 43 going concern)
Live Cases	1899
Length of Bankruptcy	671 days (resolutions)/486 days (liquidation)
Recoveries as % of Liquidation Value	168.6% resolutions, 86% liquidations
Recoveries as % of claims	31.9% of admitted claims
NPA Recoveries (SCBs) under IBC	40.3% (2022-23)

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NPA Recoveries under SARFAESI	27.6% (2022-23)
NPAs Recoveries under DRT	9.2% (2022-23)

Source: (IBBI News Letter October – December 2023)[87]

However, much has been said about the impact of IBC. There have been two distinct streams of active debate: how IBC should be assessed[88] and its actual performance. The regulator has also voiced the need to develop suitable metrics/perspectives for assessing IBC[89]. This paper stresses that IBC's performance may best be analyzed against its objectives[90] and is discussed below:

Resolutions

As per IBBI data, till December (2023), approximately 55 per cent of closed cases (including where orders have been passed) have been resolved through resolutions/ex-ante settlements/withdrawals/appeals and balance through liquidations. The high liquidations have been attributed to a backlog of legacy cases[91] from earlier legal regimes (SICA/DRT) with significant value erosion at the initiation stage itself.[92] Hence, from this perspective, IBC has been largely hailed as essentially achieving its objectives of resolutions. However, data challenges remain in assessing whether companies have been efficiently resolved or inefficiently liquidated based on their ex-ante business or financial potential. From an ex-post perspective, a recent empirical study by IIM (Ahmedabad)[93] has shown that IBC has improved the financial performance and position of resolved firms, thereby showing success in rehabilitating viable entities.

Protection of Value

Few metrics show how much value has been protected under IBC. However, some relevant reflective indicators can include the length of bankruptcy, creditor recoveries, enabling provisions for interim finance and avoidance transactions. Concerning the length of bankruptcy, IBC has faced increased criticisms of extended CIRP period (refer to table 6) for various reasons, including promoter litigations.[94] Regarding creditor recoveries, it has increasingly been argued that recoveries must be analyzed in the context of liquidation value (and not against admitted claims). From this perspective, IBC has been lately lauded for higher creditor recoveries (168 per cent of liquidation value). However, IBC is an evolving legislation, and much of its assessment depends on the framework of view (for instance, against admitted claims, creditor recoveries remain at only 32 per cent).[95] Further, the consensus has been that IBC must not be viewed as a recovery (but as a resolution tool).[96] IBC has, however, been increasingly lauded for its ex-ante deterrent effect (as per IBBI, approximately 40 per cent of closed cases have been through settlements or withdrawal of applications).

With respect to interim finance during bankruptcy, which is internationally recognized as an important tool to promote value, IBC has an enabling legal framework. However, its mobilization remains an issue.[97] In the context of avoidance transactions, there have been some successes, with 255 applications successfully disposed of to date (out of a total of 1106 applications) involving a sum of over Rs 63.19 billion. However, progress remains slow, and there is a significant backlog of undisposed applications.[98] Hence, while the IBC has enabling provisions in place for value protection, it faces significant efficiency challenges in the context of the timelines of Corporate Insolvency Resolution Process(CIRP), clearance of avoidance applications, and the provision of funds during bankruptcy to maintain the going concern status of the corporate debtor.

Facilitation of Credit

The BLRC has emphasized bankruptcy laws should improve the credit environment.[99] However, empirical evidence on the impact of IBC on credit markets is recent but mixed. While Bose *et al*. (2020)[100] found IBC improved credit access to distressed firms, Agarwal & Singhvi (2023)[101] and Jose (2020)[102] found IBC depressed firm borrowings for distressed and high tangible firms, respectively (due to fear of the liquidation effect). Further, whether IBC has successfully broadened its focus from secured to unsecured credit as envisaged by the BLRC is yet to be ascertained.

Promotion of Entrepreneurship

Improved visibility of saving viable companies and exiting inefficient enterprises can motivate and provide a safety net to entrepreneurs.[103] Improved credit access brought about by IBC can also promote entrepreneurship. Further, some recent studies have shown improved financial performances of businesses resolved under IBC.[104] However, while IBC has all the elements (reorganization/value protection) that can spur entrepreneurship,[105] considering IBC's recent evolution, empirical literature on its actual impact on entrepreneurship is scarce.

Balancing Interests of Stakeholders

Balancing the interests of all stakeholders is an important objective of IBC. However, IBC has been periodically criticized for continuing to take secured creditors' perspective and not considering adequately operational and dissenting creditors. While financial creditors are provided voting rights in CoC (considered better equipped to evaluate decisions than operational creditors), equity is at the core of IBC. It has been noted that while FCs vote during CIRP, they are obliged to ensure that the rights of OCs are considered and that balancing interests is paramount.[106] IBC has been criticized for its indifferent treatment of dissenting creditors (who only get liquidation value in a reorganization). OCs are also assured only minimum liquidation value in reorganization.[107] Even within secured creditors, IBC has been criticized for not considering the differential security value of creditors.[108] Under IBC (s 53), priority take out of secured creditors is based on claims admitted and resultant voting share, not the basis of security value.

In short, India's law is evolving, and there have been successes and challenges necessitating many amendments since its introduction. As noted by BLRC,[109] international experience has shown that it can take years for bankruptcy laws to stabilize or evolve successfully in countries. India has attempted a reorganization regime in a creditor-controlled framework and, while seeing success, also faces challenges from many fronts, including length of bankruptcy (which the regulator is trying to resolve through amendments). In the next wave of reforms, it has been widely reported that India is expected to make many changes to IBC, including adopting cross-border insolvency norms and the group insolvency framework, both of which are linked and need to be implemented in tandem.[110]

Can India be a Model for the Global South?

Whether India can be a model for the Global South concerning bankruptcy reforms has two aspects: (1) a broader question of whether laws/reforms can be transplanted /copied across nations and (b) whether dynamics between developed and developing countries in terms of insolvency frameworks are different.

LLSV postulated that creditor protection/rights are inherited by nations based on their legal origins. Countries have no say in their destiny, and such laws are inherited, with common law countries having strong creditor protection and civil law countries having the weakest creditor protection laws. However, literature has also recognized that legal origins can influence credit markets through many other channels.[111] Further policy reforms to institutions such as bankruptcy law are also, to a large extent, endogenous, and countries can improve their laws/reforms to meet the demands of their growing financial sector development. Countries can also adopt their legal systems based on international or peer benchmarks.

With respect to the second aspect, research has focused more on insolvency law design in developed countries than in developing or emerging countries.[112] In recent times, however, there has been growing research on the design of insolvency laws in developing or emerging economies[113] while not necessarily using the terminology 'Global South.' Broadly, the following themes have been discussed.

Need for a Distinct Focus

Many scholars and institutions have argued that developing countries require a specific focus in the context of insolvency laws due to their different legal and national characteristics.[114] Developing countries have certain distinct features, such as lower economic & financial development,[115] less sophisticated court /judicial infrastructure,[116] weak law enforcement,[117] and higher levels of corruption.[118] The World Bank stressed that a robust system for secured credit rights is especially vital in developing countries with weak social protection mechanisms, financial institutions, and equity markets.[119] Recently, Gurrea-Martinez (2020)[120] argued for a distinctive focus on 'emerging countries' (a term he used as a synonym to describe developing and emerging economies), as such countries differ in the context of their economic and financial development. Gurrea-Maritnez observed emerging economies normally have certain features (such as the weak rule of law, lack of judicial infrastructure, corruption, outdated legislative frameworks, unattractive insolvency frameworks, lack of IPRs, lack of trained Insolvency professionals, and a higher level of uncertainty).[121] Hence, he argues that insolvency laws in emerging economies often fail to stimulate growth and, hence, need a relook at their design.

Role of Alternate Institutions/Factors

Additionally, literature has observed a more significant role of other institutions /other factors (such as property rights,[122] informal institutions,[123] and information systems) in developing countries. For instance, Claessens & Klapper (2005) surmised, "less developed countries depend more on informal sources of finance and thus do not rely on bankruptcy procedures."[124] Djankov *et al*. (2007) found information-sharing systems to be a more important determinant of private credit in economically weaker countries than creditor rights (domain of rich countries).[125] Bae & Goyal (2009) argued for the relatively higher importance of property rights protection (measured by corruption, risk of repudiation of contracts, and risk of expropriation of private property) for loan size and debt maturity. Houston *et al*. (2010)[126] noted creditor rights impact bank risk-taking, which, while having positive implications for the growth of debt markets, can also precipitate a financial crisis. This is, however, moderated by sound information-sharing frameworks (more so in developing countries). Qian (2017),[127] while examining the impact of bankruptcy laws in 25 developing countries,[128] argued that such countries are characterized by less sound formal institutions, highlighting the influence of 'law enforcement and informal institutions' in such countries.[129] In a similar vein, Ariss (2015)[130] analyzed the interacting influence of legal systems and corruption ('integrity of law'[131]) in 22 developing economies, finding strong laws moderate the direct impact of corruption on debt finance (leverage) while having a standalone positive impact on debt maturity. The authors also called for a distinct focus on the impact of laws in developing countries (relative to developed countries).

Need for more Tailor-made/Alternate Solutions

Given the distinctive features, many scholars have often called for more simplistic insolvency procedures involving less court role in developing countries. For instance, Shleifer and Vishny (1996)[132] noted that developing countries with imperfect legal infrastructure might need less complicated procedures. In a similar vein, Djankov *et al*. (2008), while concluding debt enforcement efficiency is linked to legal origins and per capita income, argued against the trend of developing countries imitating developed countries in terms of their insolvency frameworks, arguing that less formalistic or complex resolution mechanisms would result in greater efficiency. The authors noted that while developing countries typically follow rich countries in insolvency-related reforms (rich countries manage to preserve the firm's value in complex reorganization), they have poor insolvency outcomes characterized by increased piecemeal sales. Djankov *et al*. noted while rich countries have the infrastructure to handle more complex insolvency procedures, relatively poorer countries "should avoid debt enforcement mechanisms that involve detailed and extensive court oversight since the administrative capacity of their courts may not tolerate such proceedings and simple Foreclosure can also effectively address insolvency without the much formal bankruptcy. "[133] However, the authors noted that such countries can always change their existing regimes, such as foreclosure with a floating charge, which may lead to better enforcement outcomes. In a similar vein, Safvian & Sharma (2007) observed that when judicial reforms take time to implement, countries may rely on more out-of-court mechanisms or empowerment of creditors.[134] Similarly, Gurrea-Martinez (2020) advocated out-of-court settlements and workouts in countries with weak judicial infrastructure. He additionally observed that countries that lack trained insolvency professionals (IPs) may be better off not designing laws centered around IPs taking control of firms.

Hence, the choice of an insolvency system depends on several factors, such as per capita income, financial development, judicial infrastructure, property rights, and sophistication of institutions. Such practices may also be inherited (legal traditions) or shaped in the context of political or institutional factors.[135] Countries may accordingly choose between reorganizations, liquidations, or debt enforcement (foreclosure or receivership).[136] Hart (2000) noted that there is no one-size-fits-all bankruptcy procedures. For instance, within bankruptcy, the choice between debtor-in-possession or creditor-in-control models of Insolvency is best left to individual countries to decide based on their specific regional factors.[137] Further, it is also important to consider tradeoff effects (for instance, a creditor-in-possession model can also inhibit timely debtor filings).[138]

However, considering the importance of economic use of resources and more so for resource-scarce developing countries, it is reasonable to expect that all insolvency regimes would lean towards common objectives of filtering out inefficient companies and saving healthy companies and value protection (which could be then achieved through bankruptcy modes such as creditor-in-control or debtor-in-possession, depending on each country's orientation). India has already gone through a process of implementing reforms and learnings. Hence, while IBC is an evolving legislation in terms of structural features, countries in the Global South may benefit from India's learnings and experience in designing and implementing insolvency reforms.

Learnings for the Global South

India's implementation of reorganization reforms (while evolving) has largely been hailed as positive,[139] focusing on reorganizations generally associated with higher creditor recoveries (and other benefits such as efficiently redeploying resources and prevention of job loss through effective going concern outcomes).[140] The Global South comprises several countries with differing populations, per capita incomes, political systems, and institutional environments. For countries choosing to adopt bankruptcy laws or related reforms, the role of India for the Global South may be in three directions: first towards sharing of generally established practices (model of bankruptcy laws), second towards sound infrastructure pillars for effective working of insolvency laws and lastly towards establishing a cooperative framework to deal with cross-border laws.

Overall Perspective

From an overall objectives viewpoint, India's IBC is reorganization-oriented (while at the same time being creditor-oriented), aiming to provide viable companies options to survive. At the same time, IBC has provisions for liquidating inefficient entities while protecting creditor rights, ranking claims, and ensuring fair distribution. India adopted a creditor-in-control model within this framework to provide a maximum ex-ante deterrent effect while protecting the creditor's priority in liquidation. India's IBC has moderate court supervision recognizing the commercial wisdom of the Committee of Creditors (CoC). Time under IBC is recognized as an essential determinant of value protection. It is also noteworthy that India had functioning collateral laws, although often criticized for its performance[141] before implementing IBC. Countries aiming to improve their insolvency systems could look at India's experience with insolvency and work towards a more resolution oriented framework for their respective insolvency laws. However, as noted by Djankov *et al*. (2008), it is not necessary that formal bankruptcy or reorganization procedures can only lead to the best outcomes, and in countries with impaired judiciaries, foreclosure (with a floating charge on all assets) may work just as well. However, within bankruptcy proceedings, India has rich experience to offer in terms of the overall model of insolvency and the establishment of a functioning ecosystem/

Institutional Infrastructure (Four Pillars)

A wide pool of Insolvency Professionals

Many emerging economies lack qualified insolvency professionals besides judicial infrastructure.[142] The IPs play a critical role in insolvencies, especially in the creditor-in-control model. India introduced IBC and, in a short time, has developed a vast and trained professional community that takes on the role of IPs or IPEs of corporate debtors. As per recent data from India's regulator (IBBI), India presently has a pool of over 4000 registered IPs (including IPEs).[143] Significant learnings have been made since the incorporation of IBC in 2016. India can share the softer aspects (skill, training) and the more intangible elements (experience) in the extension of learnings to the Global South community

Regulator (IBBI)

India established IBBI as the regulator for all insolvency cases under IBC with powers to oversee all matters relating to IBC implementation, including registration and overseeing service providers (IPs/IPEs/Valuers). The IBBI is also empowered to develop regulations regarding all IBC matters. Apart from the core responsibilities of administrating IBC in India, the regulator has also been engaging in fixing issues with IBC and effecting relevant policy-level reforms.

Adjudicating Authority (AA)

For an insolvency regime to be effective, it requires the setting up of specialized courts[144] and institutions of trust.[145] India accordingly established the National Company Law Tribunal (NCLT) as a specialized court for hearing IBC cases. The National Company Law Appellate Tribunal (NCLAT) was also established to hear appeals against decisions by NCLT. To date, 16 benches have been established across India, with 63 members. There are plans at present to increase the strength of NCLT benches significantly.[146]

Information Utility (IU)

Effective bankruptcy law needs support from information utilities for timely information and evidence on debtor defaults, which form the basis of application to the courts. India accordingly established the National E-Governance Services Ltd (NeSL), which is considered a unique institution in India.[147] The function of the IU is to serve as a data bank and "to collect, collate, and disseminate financial information and facilitate insolvency resolution."[148] Thereby solving the problem of Information asymmetry."[149] All new cases under IBC need a default record from the IU.[150] The performance of the IU has been largely hailed as successful, with significant adherence to information filing (record of liabilities and default) by financial intermediaries, which has facilitated the functioning of the IBC ecosystem.[151] However, scope for improvement exists with an increased focus on digitalization and integration with other IT platforms.[152]

Cross-Border Insolvency

Perhaps a more significant contribution can come from an effective dialogue and sharing of views on the UNCITRAL model cross-border insolvency law framework, noted to be vital for facilitating international trade and rehabilitating companies with international operations. Adopting a law for cross-border insolvency has been recognized as one of the primary objectives of any insolvency law. The BLRC had also articulated that cross-border insolvency laws are highly relevant for Indian companies that have claims on global companies (and vice versa).[153] As per UNCITRAL, over 60 countries have adopted the cross-border framework based on the model law. Of the same, several countries in the Global South have adopted the model law, and they include Brazil, Chile, Congo, Ghana, Uganda, Kenya, Malawi, Mail, Morrocco, Niger, Mexico, Colombia, Chile, Kenya, Philippines, Saudi Arabia, Angola and South Africa among others. India is contemplating the adoption of the UNCITRAL model, albeit with some modifications as recommended by the Insolvency Law Committee on Cross-Border Insolvency (2018).[154] Countries that have adopted the model law have done so with some changes to its form. India is yet to sign the model law. Currently, IBC (ss 234, 236) only allows bilateral agreements or enabling provisions to allow domestic courts to request cooperation for cases in other jurisdictions described as ad-hoc and time-consuming.[155] In the interim, there remains potential for engagement with Global South countries to learn from the experiences of countries that have implemented the model law and common issues of interest that may be safeguarded and negotiated from the perspective of developing countries.

Conclusion

In sum, while there is no single standard one-size model to tackle Insolvency (for instance, foreclosure, liquidation, or reorganization) that can be imposed on countries, for those choosing to implement legal mechanisms to deal with corporate default or remodel their existing insolvency regimes, practices can be borrowed from model laws (such as UNCITRAL framework) or country specific experiences such as from India (IBC). With India's significant volume of insolvency cases and experience in dealing with extensive financial participants (state-owned and private) burdened with NPAs, India can share significant experiences for capacity building in countries in the Global South looking at introducing or reforming their insolvency laws. Potential exists for mutual sharing of experiences across insolvency law reforms across developing countries. Further, considering the importance of cross-border insolvency law to international trade and only a few countries that have adopted the UNCITRAL model law, scope exists for greater cross-learning and engagement with Global South countries to tackle challenges and issues in implementing the framework. Additionally, there is a need for dialogue and sharing of experiences across the Global South to improve the efficiency of insolvency regimes. However, it is noted that any reform or introduction of new bankruptcy laws may bring about transition challenges.[156]

Endnotes

1 In this study the terms insolvency and bankruptcy are used interchangeably in the context of reference to laws. However in technical terms they are different. Bankruptcy may be looked at as a formal method to resolve insolvency. There may be other mechanisms as well (for instance foreclosure)

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