ENFORCEMENT GAPS IN THE COMPLIANCE OF NCLT ORDERS: A STUDY ON THE LEGAL AND PRACTICAL CHALLENGES IN INSOLVENCY PROCEEDINGS IN INDIA

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INTRODUCTION

Background and context of insolvency in India

Insolvency and business failure are natural results of a dynamic market economy. When companies face exit barriers, they often stay operational even when financially unviable. These kinds of barriers prevent the timely exit of distressed firms and lead to a misallocation of limited economic resources. The corporate insolvency landscape of India has evolved significantly over the last two decades. It evolved through transitioning from a creditor-unfriendly and fragmented regime to a consolidated framework under the "Insolvency and Bankruptcy Code (IBC)"[1]. Prior to the enactment of the IBC, insolvency was controlled by many pieces of legislation. A few of them are "Companies Act, 1956", "Sick Industrial Companies (Special Provisions) Act, 1985", and the "Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI Act)". According to "World Bank Doing Business Report", India ranks number 52 on resolving insolvency[2]. These disjointed laws provided extended court processes and procedural plugging points to leave business. Thanks to this, "non-performing loans (NPAs)" accumulated in the banking system and entrepreneurs were frightened by the threat of punitive bankruptcy regulations. The IBC shifts its paradigm to the time-bound resolution. Under this structure, the "Corporate Insolvency Resolution Process (CIRP)" has been established to enable the creditors and uphold judicial supervision through the assistance of dedicated tribunals. The creation of "National Company Law Tribunal (NCLT)" and "National Company Law Appellate Tribunal (NCLAT)", superseded the various forums and provided procedural parity[3]. The quicker insolvency and exit facilitation have become vital pump to maintain the entrepreneurship and economic growth in India.

"Role of NCLT in insolvency resolution"

"National Company Law Tribunal (NCLT)" is relevant in the process of insolvency in corporate adjusting power over the "Insolvency and Bankruptcy Code, 2016 (IBC)". A firm can move to the "NCLT" in order to initiate the "CIRP" when it defaults on debts. When the NCLT accepts the case, it appoints an "Interim Resolution Professional (IRP)" to manage the operations of the company. The NCLT proclaims a moratorium after the initiation. The IRP formed a "Committee of Creditors (CoC)" to review the resolution plans of potential investors. The CoC suggests the most valuable plan and submits it to the "NCLT" for approval[4]. The "NCLT" can approve the plan and allow the company to revive operations. If no suitable plans are found then the NCLT orders for liquidation.

Statement of the problem: enforcement gaps

[1] MS Sahoo and A Guru, 'Indian insolvency law' (2020) 45 *Vikalpa* 69. DOI: 10.1177/0256090920939809

[2] Insolvency and Bankruptcy Board of India, *Moving up in 'ease of resolving insolvency'* (2021) https://ibbi.gov.in/uploads/whatsnew/faf3af70524e6c7ccf0b6762ab70216c.pdf accessed 7 October 2025.

[3] Das A, Agarwal AK, Jacob J, Mohapatra S, Hishikar S, Bangar S, Parekh S, Basu S and Sinha UK, 'Insolvency and bankruptcy reforms: the way forward' (2022) 45 *Vikalpa* 115. https://journals.sagepub.com/doi/pdf/10.1177/0256090920953988

[4] Kaushik S, 'National Company Law Tribunal (NCLT) under the Indian Company Law Regime' (2020) 22 *Supremo Amicus* 93. https://supremoamis.org/wp-contincludesa gapisent/uploads/2020/11/SAARANG-KAUSHIK.pdf

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Despite statutory authority, there are still gaps between the NCLT orders and their effective compliance. Enforcement challenges occur when parties such as creditors, debtors, or regulatory agencies fail to adhere to tribunal directions. Another major issue includes the non-implementation of approved resolution plans and the delayed asset transfer. Other forces like the Enforcement Directorate (ED) or tax departments can work against the provisions of the moratorium as per IBC. It is aggravated by low authorities to impose orders, absence of specific execution system, and insufficient coordination between the "NCLT and the Insolvency and Bankruptcy Board of India (IBBI)]. The criminal sanctions against non-compliance in the penal provisions of the Section 74 of the "IBC" and 425 of the "Companies Act" have not been effective.

Objectives and significance of the study

The primary objective of this study is to examine the enforcement gaps in the compliance with the NCLT orders within the insolvency framework of India.

(i) Identify the types of NCLT orders that frequently face non-compliance

(ii) Analyse the legal, procedural, and institutional factors contributing to enforcement delays

(iii) Evaluate the effectiveness of penal provisions under the IBC and Companies Act

(iv) Propose reforms to enhance compliance and expedite insolvency resolution.

The study is significant because enforcement challenges undermine the credibility of the NCLT and delay corporate recovery. By evaluating both practical and legal obstacles, the research offers insights to strengthen the insolvency process.

Research Questions

(i) Which types of NCLT orders most frequently face non-compliance in corporate insolvency proceedings?

(ii) What legal, procedural, and institutional factors contribute to enforcement gaps in NCLT orders?

(iii) How effective are the penal provisions under the IBC and Companies Act in ensuring compliance?

(iv) What reforms can improve enforcement and strengthen the insolvency resolution process in India?

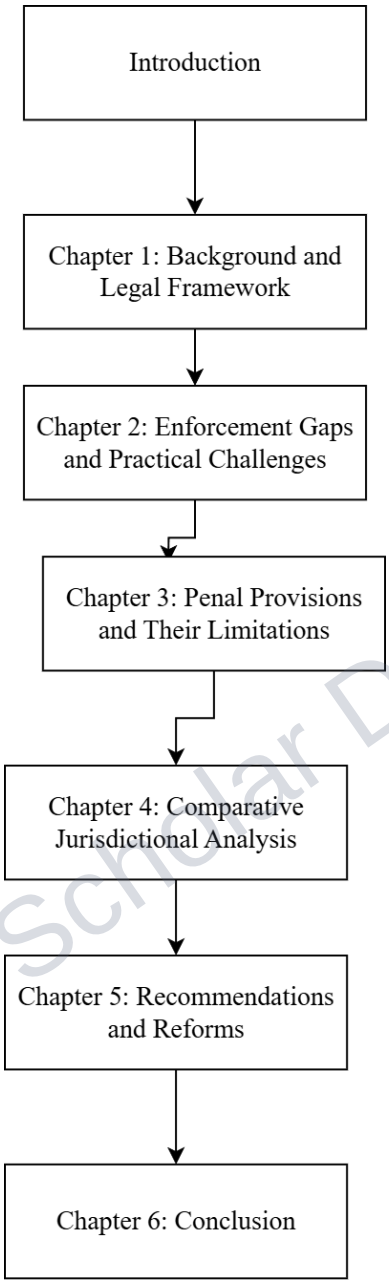
Methodology and scope

This study follows a case-based research methodology to evaluate the enforcement gaps in compliance with NCLT orders under the IBC. The research critically examines the selected corporate insolvency matters where enforcement challenges are important. These cases are analysed to identify the patterns of non-compliance, procedural delays, and conflict with other regulatory agencies. Secondary sources including IBIB reports, recent judgements, and CIRP failure/success statistics are used to supplement the case analysis. Additionally, the research adopts a comparative analysis and evaluates the enforcement models from different jurisdictions such as the US, the UK, and Singapore to highlight lessons for India. The scope is limited to corporate insolvency proceedings in India and focuses on legal enforcement issues excluding cross-border insolvency cases.

Structure of dissertation

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CHAPTER 1: BACKGROUND AND LEGAL FRAMEWORK

1.1 NCLT: Role, jurisdiction, and powers under IBC and Companies Act

The NCLT is the primary authority for corporate insolvency and related matters in India. This is developed under section 408 of the "Companies Act, 2013" and officially operated from 2016. It consolidated the functions of multiple tribunals such as the "Board for Industrial and Financial Reconstruction (BIFR)", "Company Law Board (CLB)", "Board for Industrial and Financial Reconstruction (BIFR)", and the "Appellate Authority for Industrial and Financial Reconstruction (AAIFR)". It has created a critical step toward specialisation, efficiency, and uniformity in corporate legal adjudication. Under the "IBC", the "NCLT" has exclusive jurisdiction to admit the corporate insolvency resolution and liquidation proceedings. Section 7 of the IBC empowers financial creditors to initiate the CIRP and Section 9 assist operational creditors to file applications[5]. Section 10 of the IBC allows corporate debtors to self-initiate and the "NCLT" can appoint an "IRP" to take control of the firm's operation[6]. One of the major powers of the "NCLT" is the moratorium under section 14 and which prevents all legal and recovery actions against the debtor from corporate. The "Committee of Creditors (CoC)" approves the resolution plans under sections 30 and 31[7]. They also supervise the liquidation process under sections 33 and 52 on the resolution. Through the combination of the Company Act and the "IBC", the "NCLT" plays a major role in corporate dispute resolution.

1.2 "Insolvency and Bankruptcy Code, 2016" – provisions on enforcement

The "Insolvency and Bankruptcy Code, 2016 (IBC)" presented as a landmark to reform the corporate insolvency landscape of India. It omits different fragmented laws such as the "Companies Act" winding-up provisions, the "Sick Industrial Companies Act, 1985 (SICA)", and the "Debt Recovery Tribunals (DRTs)". The IBC also sets out provisions for compliance and penalties. Section 19 mandates the management and control of the assets of the company in accordance with the code. Section 33 navigates the liquidation and Sections 52-54 provide detailed procedures for asset realisation and distribution to creditors. Section 74 prescribes penalties for officers and directors also. Section 75 extends liability for fraudulent or wrongful trading[8]. As of March 2020, 3774 CIRPs were initiated and only 221 resulted in successful resolution. While 914 ended in liquidation and 312 were closed due to settlement. Approximately 57 per cent of closed CIRPs culminated in liquidation and which indicates a systematic gap in execution and

[5] IBC Laws, 'Section 7 of IBC – Initiation of Corporate Insolvency Resolution Process by Financial Creditor' https://ibclaw.in/section-7-initiation-of-corporate-insolvency-resolution-process-by-financial-creditor-chapter-ii-corporate-insolvency-resolution-processcirp-part-ii-insolvency-resolution-and-liquidation-for-corpor/ accessed 7 October 2025.

[6] *Insolvency and Bankruptcy Code, 2016*, s 10 https://www.indiacode.nic.in/show-data?actid=AC_CEN_2_11_00055_201631_1517807328273&orderno=10 accessed 7 October 2025.

[7] IBC Laws, 'Section 30 of IBC – Submission of Resolution Plan' https://ibclaw.in/section-30-submission-of-resolution-plaper cent/ accessed 7 October 2025.

[8] Deb S and Dube I, 'Insolvency and Bankruptcy Code 2016: revisiting with market reality' (2021) 63 *International Journal of Law and Management* 125. DOI 10.1108/IJLMA-05-2020-0133

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compliance[9]. Delays in asset transfer, disputes among stakeholders, and limited effectiveness of penal provisions highlight the practical enforcement challenges. Lastly, the IBC gives a robust legal framework for enforcement but it highly depends on the compliance time, procedural efficiency, and coordination among stakeholders.

1.3 Companies Act, 2013 – contempt powers (Section 425)

Section 425 of the Companies Act, 2013, empowers the Tribunal and the Appellate Tribunal with the authority to punish for contempt of their orders. It also strengthens the enforcement of corporate compliance. Under this provision, the tribunals are aligned with the same powers, jurisdiction, and authority as the High Court in matters of contempt. This ensures that any person who disobeys or disregards the lawful direction of the Tribunal can be charged with legal penalties. The operational mechanism of Section 425 is derived from "Contempt of Courts Act, 1971". Quasi-judicial power creates a legal barrier against non-compliance and ensures proper implementation[10]. This provision strengthens the credibility of the corporate adjudication framework and promotes accountability. Section 425 is also an important tool for both NCLT as well as NCLAT.

1.4 Case law interpretations (Innoventive Industries, ArcelorMittal, Essar Steel)

Judicial interpretations by the Supreme Court of India have played an important role in shaping the contours of the Insolvency and Bankruptcy Code or IBC, 2016, particularly with respect to the enforcement of National Company Law Tribunal (NCLT) orders. In 'Innovative Industries Ltd. v. ICICI Bank' (2017), the Supreme Court laid the foundation for the IBC's time-bound resolution process, emphasizing that once default is established, the NCLT must admit the insolvency petition without delving into extraneous considerations[11]. Such ruling made it clear why NCLT orders were written as mandatory when the Section 7 mentioned and it emphasized that the Code is in conflict with all other laws (Section 28). But, as a matter of fact, numerous admissions have been subject to implementation of instructions of NCLT through delay caused by the bottlenecks of the procedure and absence of institutional coordination.

In the case of "ArcelorMittal India Pvt. Ltd." Satish Kumar Gupta (2018) the Court maintained the idea that the process of the promotion should include only bona fide candidates by citing the same section 29A[12]. Although the ruling made the resolution process more sacred, it also brought to light the challenges that NCLT encounters with getting disqualified promoters to comply and also with cementing future instructions regarding the transfer of assets of the management control. The case of "Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta (2019)" also

[9] Edelweiss, *Progress of Insolvency and Bankruptcy Code – June 2020* (2020) https://www.eaaa.in/wp-content/uploads/2021/04/India-Insights-Progress-of-IBC-June-2020-min-1.pdf accessed 7 October 2025.

[10] IBC Laws, 'Section 425 of the Companies Act, 2013: Power to punish for contempt' https://ibclaw.in/section-425-of-the-companies-act-2013-power-to-punish-for-contempt/ accessed 7 October 2025.

[11] Dimri, Ayush. "Resolution of non-performing assets: regulatory, supervisory and policy response in India in pre- and post-COVID-19 scenario." *Journal of Banking Regulation* (2025): 1-22.https://doi.org/10.1057/s41261-025-00275-0

[12] Kamalnath, Akshaya, and Aparajita Kaul. "Adding mediation to India's corporate resolution process." *International Insolvency Review* 31.2 (2022): 163-182.https://doi.org/10.1002/iir.1450

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supported the judicial deference to commercial decisions of the "Committee of Creditors (CoC)" without underlining that approved resolution plans were enforceable on all the stakeholders, including those in the government. In spite of this transparency, the various post-approval litigations and failure of implementation cases have revealed the dilution of the authority of NCLT orders by the weak enforcement mechanisms, thus deteriorating the effectiveness and predictability of the IBC framework.

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CHAPTER 2: ENFORCEMENT GAPS AND PRACTICAL CHALLENGES

2.1 Non-compliance in resolution plan implementation

One of the most urgent enforcement problems with regard to the IBC is non-implementation or partial compliance of approved resolution plans. Despite the acknowledgment by the judiciary that an approved plan could be binding in terms of the provision in Section 31, several instances as the Amtek Auto and Jet Airways showed a lack of a follow-up on the approval of the NCLT. Winners often take ages to meet their payment deadlines, do not operationalize their promises or want changes after the fact. This discredits the creditors and increases the insolvency durations beyond the statutory periods. Besides, the NCLT does not have a specific enforcement organ to check or force the adherence to its decisions. Resolution professionals have to seek contempt or execution cases that take a long time to be resolved and even blocked by jurisdictional issues[13]. Lack of procedural guidelines regarding how enforcement should be done after approval generates a grey area making the stakeholders unsure of the redress available in cases where the applicants of resolution default. Therefore, the spirit of the IBC safeguards time-constrained and value-maximizing resolution and becomes weakened by delays eliminating the worth of assets and winning over the goal of restoring financial discipline.

2.2 Challenges in winding-up and liquidation orders

Winding-up and liquidation proceedings under the "Companies Act, 2013" and the IBC continue to face serious implementation hurdles. Even after the NCLT issues winding-up or liquidation orders, practical execution remains slow due to poor coordination among liquidators and financial institutions. In many cases, banks or government agencies delay the transfer of assets while local administrations resist handing over possession, despite clear tribunal directions.

Further, the liquidator's powers under Section 35 of the IBC are broad but not adequately supported by administrative machinery[14]. Enforcement agencies often treat liquidation orders as civil disputes rather than binding judicial mandates, causing compliance fatigue. Delays in asset valuation, auction procedures and settlement of claims exacerbate the problem. The lack of standardized enforcement procedures and limited cooperation between NCLT and Debt Recovery Tribunals or DRTs further complicate liquidation processes. As a result, winding-up proceedings that were meant to ensure speedy dissolution frequently extend for years, defeating the efficiency goals of the IBC and burdening the judicial system.

2.3 Inadequate enforcement infrastructure and institutional overlap

However, serious hurdles in the implementation of winding-up and liquidation proceedings on the "Companies Act, 2013" and the IBC still exist. Although NCLT problems are ineffective and slow

[13] Goswami, Dr Parineeta. "Emergency Arbitration Procedures." *Emergency Arbitration Procedures, Satyam Law International* (2024).https://papers.ssrn.com/sol3/Delivery.cfm?abstractid=4759923

[14] GOYAL, JAY, and Priyank Dhaduk. "Reassessing Creditor Rights: The Impact of IBC on Distressed." *Reassessing the creditors rights_the Impact of IBC on distressed secured creditors* (2024).https://dx.doi.org/10.2139/ssrn.5238918

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to be enforced even after the winding-up or liquidation orders, the coordination between the liquidators and financial institutions is weak. In most instances, the transfer of assets is postponed by banks or government agencies as the local administrations refuse to relinquish the possession even when directed to do so by the tribunal.

In addition, the administrative machinery to back the powers of the liquidator in the Section 35 of the IBC is too wide but insufficient[15]. Liquidation orders are often viewed by the enforcement agencies as civil battles instead of being treated as enforceable judicial injunctions, leading to compliance fatigue. Settlement of claims, Auction procedures and delays in asset valuation make the situation worse. Also, the deficiency of uniform enforcement practices and poor collaboration between NCLT and Debt Recovery Tribunals or DRTs make liquidation even harder. Because of this, winding-up processes intended to facilitate a rapid dissolution are often prolonged years, frustrating the IBC efficiency objectives at the cost of the judicial system.

2.4 Case studies: Jaypee Infratech, DHFL, Videocon

The Jaypee Infratech, Dewan Housing Finance Corporation Ltd. (DHFL) and Videocon industries have shown a consistent lack of enforcement which goes against the spirit of IBC. In Jaypee Infratech, the development of NCLT passing a resolution plan was delayed because of land transfer delay and homebuyer conflict, which led to several years of legal proceedings[16]. The interventions of the Supreme Court were necessitated by repeated observation to help in making the tribunal comply as thus showing the low powers that the tribunal had to enforce its orders.

In the case of DHFL, despite the resolution plan being passed within record time, implementation after the resolution was met with resistance by some creditors and there were claims of undermarking. The numerous requests in NCLAT and the Supreme Court slowed down the final execution which proves the deterioration of the authority of NCLT by the lengthy legal proceedings[17]. Similarly, in Videocon Industries, the successful bidder, Twin Star Technologies, failed to proceed with payment obligations after approval[18]. NCLT orders remained unenforced for months, leaving creditors in uncertainty. The lack of deterrent consequences for non-implementation of approved plans set a problematic precedent.

These cases collectively reveal a systemic gap which is that it lacks mechanisms for post-approval enforcement while NCLT ensures procedural compliance during resolution. The resultant delays and litigations reduce recovery rates, erode creditor trust and compromise the predictability of insolvency outcomes, contradicting the time-bound resolution objective envisioned in the IBC.

2.5 Statistical insights: IBBI reports, CIRP success or failure rates

[15] Ispahany, Jamil, et al. "Ransomware detection using machine learning: A review, research limitations and future directions." *IEEE Access* 12 (2024): 68785-68813.https://ieeexplore.ieee.org/iel7/6287639/6514899/10521643.pdf

[16] Majumdar, Arjya B., and Mehreen Garg. "The Homebuyers Conundrum in Real Estate Insolvency." *Emerging Ideas on IBC, Insolvency and Bankruptcy Board of India* (2023).https://papers.ssrn.com/sol3/Delivery.cfm?abstractid=4628009

[17] LED, A. CREDITOR. "HYBRID INSOLVENCY RESOLUTION PROCESS." (2024).https://insolvencylawacademy.com/wp-content/uploads/2024/08/hybrid-insolveny-resolution-process-v3.pdf

[18] Chandrasekhar, C. P., and Jayati Ghosh. "A non-performing code for bad debt." *The Hindu BusinessLine* (2021).https://www.macroscan.org/fet/jun21/pdf/Non_Performing_Code.pdf

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Data from the "Insolvency and Bankruptcy Board of India or IBBI" reveals that while over seven thousand insolvency resolution of corporate processes have been initiated since 2016, less than 15% have resulted in successful resolution[19]. Approximately 45% have ended in liquidation, often after extended delays while the remainder are pending beyond the 330-day limit prescribed under the IBC.

According to IBBI's 2024 quarterly report, the average time for resolution stands at 590 days, almost double the statutory limit. Delays in plan implementation and non-compliance with NCLT orders are among the key contributing factors. Recovery rates have also declined in FY2019 to FY2024, reflecting diminishing enforcement efficiency[20]. These figures underline that enforcement lapses, weak monitoring and procedural ambiguity continue to erode the efficacy of India's insolvency regime. These figures underline that enforcement lapses, weak monitoring and procedural ambiguity continue to erode the efficacy of India's insolvency regime. Strengthening compliance mechanisms and introducing accountability measures for defaulters and resolution applicants are essential to realize the IBC's objective of timely and effective corporate revival.

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[19] Maniar, Ms Pooja Nakul, and Roksana Hassanshahi Varashti. "Unveiling Key Challenges In The IBC: A Critical Study Of Loopholes And Structural Issues In India's Insolvency Framework." *International Journal of Environmental Sciences* 11.10s (2025): 128-137.https://doi.org/10.64252/c6zsn811

[20] Kannan, Naresh. "A Financial Analysis and Valuation of DIAGEO PLC." *Available at SSRN 5468586* (2025).https://dx.doi.org/10.2139/ssrn.5468586

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CHAPTER 3: PENAL PROVISIONS AND THEIR LIMITATIONS

3.1 Section 74 of the IBC – punishment for contravention

Section 74 of the Insolvency and Bankruptcy Code (IBC), 2016 establishes penal consequences for willful contravention of resolution plans or moratorium orders issued by the National Company Law Tribunal (NCLT). Sub-section (1) provides that any corporate debtor or its officer who violates the moratorium under Section 14 shall be punishable with imprisonment up to five years or a fine extending to one crore rupees, or both[21]. Sub-sections (2) and (3) also provide punishments to creditors and resolution applicants who deliberately neglect to adhere to accepted plans of resolution or hide material facts in the process.

Although the language it used is quite robust, there is little practical implementation of Section 74. It is rarely invoked and aggressive prosecutions are infrequent predominantly because, within resolution and credit circles, there is an unwillingness to turn to penal measures, a measure that is likely to lengthen insolvency process time. Also, there is no special investigative mechanism that will be applied in the IBC structure, so it is challenging to recognize the willful contravention. Additional delays in enforcing due to procedural reliance on the Special Court under Section 236 are cases that have to be cleared by NCLT or NCLAT before trial[22]. Thus, while Section 74 was designed as a deterrent against non-compliance and fraudulent conduct, its implementation gap has rendered it largely symbolic. The provision's effectiveness is undermined by procedural delays, lack of clarity on locus standi for initiating action, and the overall prioritization of resolution over punishment within the insolvency ecosystem.

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3.2 Section 425 of Companies Act – contempt jurisdiction

Under Section 425 of the Companies Act, 2013, both the National Company Law Tribunal or NCLT and the National Company Law Appellate Tribunal or NCLAT are vested with the same jurisdiction, powers and authority in respect of contempt as those exercised by a high court. This

[21] Laws, I. B. C. "All about moratorium under section 14 of the insolvency and bankruptcy code, 2016 including judicial announcements." (2023).https://elischolar.library.yale.edu/cgi/viewcontent.cgi?article=2552&context=ypfs-documents2

[22] Singhal, Amit. "NCLT or NCLAT can interfere with a party's contractual right to terminate a contract-TCS Case Study." *MCO Legals LLP Knowledge Bank* (2022).https://dx.doi.org/10.2139/ssrn.5168038

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provision authorizes the tribunals to act under the framework of the Contempt of Courts Act, 1971 with necessary modifications. Specifically, references to a 'high court' in the 1971 Act are deemed to include the NCLT and NCLAT and references to the "Advocate General" under section 15 of the Act which are construed as referring to such Law Officers as the Central Government may specify[23].

In essence, Section 425 ensures that the orders and directions of the NCLT and NCLAT carry the same binding force as those of constitutional courts[24]. It empowers these tribunals to penalize willful disobedience, misconduct or interference in judicial proceedings. The provision serves a dual purpose such as safeguarding the authority of the tribunals and prompting compliance with insolvency and company law orders. Nonetheless, despite this legislative authorization, the fact of its practical implementation is scarce because of the uncertainties of the procedures, as well as the fact that there is no developed mechanism implemented to conduct contempt proceedings effectively.

3.3 Judicial approach to penalties and contempt (case laws)

Courts in India have been cautious to apply penal provisions of the IBC and the Companies Act going into view of corporate resolution instead of punitive actions to draw corporate recovery, and economic recovery. In the case of Innovative industries Ltd. v. ICICI Bank (2017), the Supreme Court stressed the need to comply with timelines and procedures but did not specify punitive actions in the case of non-compliance. On the same lines, in Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta (2019), the Court emphasised the binding force of the resolution plans under Section 31 however, did not dictate delays or violations in implementations[25].

The court at SBI v. V. Ramakrishnan (2018) understood that breaches may be punishable under Section 74 but stressed that the insolvency arranging procedure must not be impeded with punishment actions when interpreting the postponements arrangements during the process of the moratorium provisions interpretation. This reflects a court approach of balancing law enforcement with economic expediency. However, this has been unwittingly undermined by such restraints as bent

[23] Shrivastava, Anujay, and Anubhav Khamroi. "'Senior Advocates' In The Indian Legal Profession–Origins, Evolution, Demerits, And A Call For Reform." *The Indian Legal Profession–Origins, Evolution, Demerits, And A Call For Reform (September 15, 2022).[2022]* 11, no. 2 (2022): 142-211.https://dx.doi.org/10.2139/ssrn.4177431

[24] Shweta Kushe. 2023. "Paper Tigers: NCLT and NCLAT's Contempt Jurisdiction under the IBC." IRCCL. November 29, 2023. https://www.irccl.in/post/paper-tigers-nclt-and-nclat-s-contempt-jurisdiction-under-the-ibc.

[25] "Finality vs. Fraud: Unravelling the Supreme Court's Decision in Bhushan Power and Steel and Its Implications for the IBC Regime – by Adv. Bhoomika Pundir – IBC Laws." 2025. Ibclaw.in. May 24, 2025.https://ibclaw.in/finality-vs-fraud-unravelling-the-supreme-courts-decision-in-bhushan-power-and-steel-and-its-implications-for-the-ibc-regime-by-bhoomika-pundir/.

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the deterrent feature of the law. As an example, some NCLT benches have tried to use Section 425 to curb the issue of blatant disobedience in the acquisition made by Tata Steel of Bhushan Steel. Still the results have been haphazard with no clarity in procedures. Collectively, judicial interpretations have confirmed domination of the typically chosen method of solving problems where a breach of the rules is often pardoned or resolved informally and are therefore diminishing the enforceability of the system.

3.4 Analysis: Why penal provisions are weak deterrents

Despite this, the inability of penal guidelines to serve as strong deterrents to breaches of NCLT orders has been witnessed in spite of the fact that the legislative framework contains provisions dealing with the penalties imposed in the case of such non-compliance with the orders. It is possible to mention a number of reasons behind these weaknesses. To begin with, the complexity of the procedure that leads to the action under Section 74 or 425 presupposes the necessity of numerous levels of approvals and references to other laws. It puts the stakeholders off the path of enforcement. Second, NCLT lacks a specific enforcement system, without which the punishments are merely theoretical but not applied[26].

Third, courts and policy have stressed solution over punishment, which has inculcated an enforcement culture where compromise and postponement are valued instead of responsibility. This is further enhanced by lack of resources and institutional conflict where various agencies like that of Registrar of Companies, Enforcement Directorate and Special Courts work independently. Lastly, the absence of compliance checking on a case-by-case basis and the low rate of prosecution minimizes intimidation of penal punishment towards defaulting parties[27].

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[26] Manivannan, Pavithra. *Are Tribunals Still Relevant? Rethinking Adjudicatory Design in India*. No. 41. 2025.https://papers.xkdr.org/papers/2025Manivannan_indianTribunals.pdf

[27] Reading, Worth. "COMMUNITY JUSTICE." 2022.https://www.civicresearchinstitute.com/online/PDF/ICJA-3201-05-Complete.pdf

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CHAPTER 4: COMPARATIVE JURISDICTIONAL ANALYSIS

4.1 United Kingdom: Insolvency Service & Insolvency Practitioners

The insolvency system in the United Kingdom has a well-developed system that is regulated by the insolvency service which is a role of an executive agency under the department of Business and Trade. It is the administrator of any form of bankruptcy as it conducts investigations on company wrongdoing and regulates the performances of licensed Insolvency Practitioners or IPs[28]. Such practitioners as chartered accountants, solicitors or specialists are administrators, liquidators or receivers in insolvency. Their work is controlled by professional bodies that are recognised under the Insolvency Act 1986, in order to maintain competence, ethical behaviour and accountability.

The UK system is characterised by professional rules and protection of creditors. The insolvency practitioners evaluate viability, develop restructuring proposals and save business under the Corporate Insolvency and Governance Act 2020 in potential areas when a company is faced with a period of financial distress. Investigation of director misconduct and disqualification orders that help to deter the recurrence of such misconduct is also undertaken by the insolvency services[29]. An identifying characteristic is that it favours corporate rescue culture, which promotes administration over liquidation in every possible way. In addition, the procedure achieves a balance between flexibility and procedural integrity through both the use of court and administrative supervision. This bi-polar arrangement would assure that the routine issues were handled effectively by the professionals and leave the disputes to be judicially viewed[30]. In totality, the durability of the UK systems on professional independence, having a regulating framework and creditor-based decision-making gives the benchmark on some of the qualities that include

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[30] McCormack, Gerard. "Breaking Up Is Hard to Do–What Brexit Means for UK Insolvency and Restructuring Law." *European Company and Financial Law Review* 18, no. 3 (2021): 338-376.https://eprints.whiterose.ac.uk/id/eprint/176178/6/ecfr-3-2021-umbruch_v1-2%20MCCORMACK%20%283%29.pdf

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efficiency and transparency that India is still enhancing through its own Insolvency and Bankruptcy Code (IBC).

4.2 United States: Bankruptcy Courts & U.S. Trustee Program

The United States has adopted a judicially driven bankruptcy system under the U.S. Bankruptcy Code which is administered through specialised Bankruptcy Courts that operate under the federal judiciary. The courts oversee all bankruptcy cases to ensure due process, creditor equality and adherence to statutory timelines. A critical institutional feature is the U.S. Trustee Program or USTP. It is a part of the Department of Justice that is responsible for supervising case administration, appointing trustees and preventing fraud or abuse in bankruptcy proceedings[31]. In Chapter 11, corporate debtors should be allowed to carry on its operation as it restructures its debts. It represents a heavy debtor-in-possession philosophy. It is an effective method of rehabilitating instead of dissolving with the understanding that eventually businesses would achieve value and employment. USTP plays a significant role in debt performance tracking, scrutinizing fees application and fiduciary mandates are kept. Creditor committees act as representatives of unsecured creditors and also serve in the architecture of the checks and balances, and enhance participatory governance in insolvency proceedings.

Transparency and accountability are the keystones to the U.S model. All the filings, disclosures and motions are made accessible to the public through the federal court system or PACER and can be reviewed by creditors, regulators and the media[32]. The judicial robustness and procedural fairness of it have inspired confidence among the global stakeholders while the process can be lengthy and heavy-litigation. The U.S. system highlights the importance of specialised and independent supervisory institutions for India. The lessons can inform the continued evolution of the National Company Law Tribunal (NCLT) and the Insolvency and Bankruptcy Board of India or IBBI.

4.3 Singapore or Australia: simplified insolvency models

[31] Mearns, Lauren. "STATE BANKRUPTCY, COVID-19, AND THE UNITED STATES TRUSTEE PROGRAM." *Administrative Law Review* 73, no. 1 (2021): 195-222.https://administrativelawreview.org/wp-content/uploads/sites/2/2021/03/15.-ALR-73.1_Mearns-Comment_FINAL.pdf

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Both Singapore and Australia have adopted streamlined insolvency models to assist smaller businesses facing financial distress. The Insolvency, Restructuring and Dissolution Act 2018 introduced mechanisms that align closely with the UNCITRAL Model Law that combines efficiency with international harmonisation. The framework promotes pre-packaged schemes of arrangement and simplified debt restructuring by reducing procedural burdens on micro and small enterprises (MSEs). Judicial oversight remains as a core but accessibility and cost-effectiveness are enhanced by digital filling, short timelines and standardised documentation. Australia has launched a Small Business Restructuring (SBR) framework through its Corporations Amendment (Corporate Insolvency Reforms) Act 2020[33]. This model allows eligible companies with liabilities below a threshold to engage a registered practitioner who works collaboratively with directors to propose a restructuring plan to creditors without the need of full court supervision. The focus is on intervention at earlier, affordability and business continuity.

Both jurisdictions showcase how simplified and proportionate regulation can enhance compliance and speed without compromising accountability. These experiences underline the value of tailoring insolvency mechanisms to the scale and complexity of enterprises.

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4.4 Lessons and insights for India

The comparative experiences of the countries of the world such as the United Kingdom, United States, Singapore and Australia provide a lot of lessons to the insolvency system in India. The UK Insolvency Professionals have been recognised as a result of the professionalised approach that emphasises on the independence and ethical standards and sustained supervision of the Insolvency Professionals. To indicate this professionalism, India may intensify its disciplinary and accreditation procedures by the IBBI. The value of judicial specialisation and institutional checks in the U.S. can teach India the importance of judicial specialisation and institutional checks. India can improve on accountability and reduce procedure abuse in its insolvency system by establishing a more independent body that oversees insolvency processes as the U.S. Trustee Program. Moreover, to increase adoption of digital disclosure in case fillings and results would facilitate an increase in confidence among creditors and investors.

[33] Liu, Benjamin. "In search of a modern corporate rescue regime in New Zealand: Cross-jurisdictional perspectives from Australia, the United Kingdom and the United States." *The University of Auckland Business School Research Paper (forthcoming)* (2024).https://papers.ssrn.com/sol3/Delivery.cfm?abstractid=5042096

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The reduced models of Singapore and Australia demonstrate the advantages of adaptive models in small businesses. A simplified insolvency process which is paralleled in the IBC and specifically with MSMEs can lead to minimization of the costs of resolution and maximization of recovery rates[34]. Finally, such foreign experiences demonstrate that an efficient insolvency regime needs to be combative in the sense that it should combine expertise, the role of the judiciary, and accessibility. In the case of India, institutional capacity, incorporation of technology, and efficiency of procedures will be constantly enhanced; this will make the IBC a truly financially viable and believable instrument of cleaning up corporate fiascos all over the globe.

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CHAPTER 5: RECOMMENDATIONS AND REFORMS

5.1 Legislative reforms: strengthening IBC & Companies Act enforcement

Indian legislative coherence in the Insolvency and Bankruptcy Code (IBC) and Companies Act, 2013 is what determines the efficacy of the insolvency regime. What is vital in these statutes is to reinforce the enforcement mechanisms to guarantee that all such statutes are resolved faster, to curb misuse, and to protect the interests of the stakeholders. Among the changes that can be recommended is ensuring that there are no overlaps between the IBC and the Companies Act particularly on fraudulent trading, director liability, and liquidation proceedings. A balance between these provisions can be used to avoid jurisdictional conflicts that slow down courts. Secondly, accountability measures should be launched with time limits to accountable professionals, adjudicating authorities, and even the regulatory agency to reduce the procedure backlog. Better punishment terms on wilful default, non-disclosure of the assets or the breach of the terms of the plan of action would lead to greater prevention of wrongdoing.

Moreover, the legislative change is required to make digital the visibility of the information as a unified insolvency database with IBBI, NCLT and Registrar of Companies records being integrated into this unified database. This would enhance the traceability, data-driven decision-making and compliance monitoring. Lastly, integrating cross-border insolvency in a wholesome disposition of the UNCITRAL Model Law would put India as a reliable venue of foreign investors[35]. All these reforms would make the rule of the law in corporate insolvency stronger and would make the Indian financial ecosystem more credible and globally competitive.

5.2 Institutional reforms: role of IBBI, NCLT capacity building

There should be efforts to improve the organizational structures in order to increase the implementation of NCLT orders at the IBC. The Insolvency and Bankruptcy Board of India (IBBI) is playing a major role in the regulation of the insolvency professionals, to create a level of standard

[35] Singh, Vijay Kumar. "Internationalization of Cross Border Insolvency Regime-Pondering upon a G20 Model." *Available at SSRN 5393945* (2025).https://papers.ssrn.com/sol3/Delivery.cfm?abstractid=5393945

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in their operations and to see them adhering to the requirements of the statutes[36]. The extension of the mandate of the IBBI to work with proactive surveillance of case programs, real-time compliance inspections, and the integration with the enforcement agencies can enhance the overall effectiveness of penalties in parts 14 and 425. This could be some automated reporting systems, Risk-based audits and even some special implantation cells to look into non-compliance throughout the insolvency proceeding. Similarly, capacity building within the NCLT is also valuable because the majority of the benches have very large case backlog, lack of resources and also procedural doubtfulness that constrain the enforcement in time[37]. Finding better and more human resources available by introducing additional members of the judiciary, providing personnel with training on the insolvency-specific process and providing access to the new systems of managing the cases can increase both the image and the functionality of the tribunal.

5.3 Procedural reforms: timelines, digital compliance tracking

Persistent procedural lag and lack of systemic control is one of the greatest obstructions in the penalties of non-compliances with NCLT orders. This can be averted in case clear and enforceable deadlines are incorporated in everything about the insolvency process whether the filing, or implementation of the resolution. Equalization of clocks in creditor requirements, bid submission and compliance reporting assists in accelerating the procedure and controlling a predictable case flow[38]. These periods must be strictly observed, and penalties provided in case of deliberately missing them, real rather than merely bookish. Within the framework of NCLT and IBBI online integrated digital compliance monitoring (IDCM) system, the live tracking of corporate debtor compliances could be implemented. Possible violating behavior can be traced in its initial stages and an effective intervention by the regulators can be introduced through the automated alerting mechanism or through tracking performance and progress. Online submission and verification of documents, e-hearings, digital signatures could be some ways to check procedural delays and

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imbibe transparency. Procedural reforms which marry tight schedules with technology-enabled monitoring systems will facilitate responsibility, deter tactical delays and make imposing of penalties under Sections 74 and 425 of the IBC and Companies Act more efficacious[39]. In the end, this mechanism goes a long way in enhancing the credibility and efficiency of India's insolvency mechanism.

5.4 Comparative lessons adapted to India

Global insolvency frameworks provide important information for India. From the UK, India may adopt the ethical oversight and professionalism oversight of the insolvency practitioners that ensures that administrators operate independently while managing accountability. Lessons from the US also highlight the significance of specialized supervisory bodies such as U. S[40]. Trustee Program that monitors compliance, protects all types of procedural abuse as well as maintains confidence of the stakeholders. Australia and Singapore described that simplified, proportionate procedures for smaller enterprises improves the overall accessibility, minimizes cost and also expedites resolutions without compromising the regulatory integrity. In terms of India, these lessons recommend a multi-pronged adaptation, improves the professional standards, monitoring of insolvency professionals, establish dedicated institutional oversight mechanisms, and create simplified insolvency pathways for MSMEs. In addition to the digital compliance tracking and stricter timelines, these reforms may enhance enforcement of the NCLT orders, promote a compliance-based culture and improve the entire efficiency, transparency and global credibility of the Insolvency and Bankruptcy Code.

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CHAPTER 6: CONCLUSION

6.1. Summary of findings

The study provides significant areas of enforcement weakness in the observance of the NCIT orders within the IBC that reflects a complicated agreement of the institutional, legal and procedural issues. Although part 74 of the IBC and section 425 of the Companies Act provide punishment in case of non-compliance the actual impact of these provisions is weak because of complexity of the procedures, absence of special measures to enforce them and willingness of the judiciary to resolve issues rather than punish[41]. In this regard, the comparative analysis with the jurisdiction that covers the United Kingdom, United States, Singapore, and Australia that helps to show that professionalization, specialized oversight bodies, ones of digital monitoring, and simplified procedures with smaller enterprises can result in a better implementation of enforcement and compliance. Moreover, the research also highlights that the insolvency regime in India should have better institutional capacity, time-bound schedules, technological aspect, and compliance culture so that it can provide a solution within the time frame and safeguard stakeholder and creditor rights.

6.2. Reinforcing NCLT's authority in insolvency framework

A strong insolvency regulating body would have a significant enhancement of the powers of the NCLT. The means of making the latter not futile is to empower the tribunal with a better sense of how to do things, special enforcing cells, and Internet compliance with his or her will. Through collaborative action with the IBBI and other regulators, the NCLT will be able to foster a sense of accountability, amongst corporate debtors and stakeholders, and that will allow the integrity of the insolvency process to be achieved and synchronized and concurrently preserve the credibility of the insolvency regime and the corporate governance of India.

6.3. Policy/practical implications

The study recommends that the enactment of the NCLT orders should be based on real reforms and policy coherence. Legislators should soften the provisions of the penal code, streamline the specifications of the procedures, and make concessions on behalf of the given mechanism of action. The importance of digital compliance reporting, advance scheduling and coordination of

[41] Goswami, Dr Parineeta, and Aarushi Goswami. "Virtual Justice: The Role of Technology in Transforming Criminal Administration." *Available at SSRN 5121477* (2025). https://papers.ssrn.com/sol3/Delivery.cfm?abstractid=5121477

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the institutions among NCLT, IBBI and other regulators is noteworthy[42]. The law policy implication of the lessons learned is that the law should be structured to realistic levers, and procedural innovation and technology that can be utilized by practitioners to ensure that the process of insolvency resolution is transmissible and that it occurs in a way bonded by time.

6.4. Future scope of research

It is possible that future studies can investigate the general effect of the technological interventions such as AI-based compliance monitoring, on the improvement of NCLT orders implementation. Comparative analysis of SMEs insolvency processes in India and international systems in this respect can be used to identify adaptive mechanisms to an affordable solution. A different study of the interaction between judicial discretion and penal enforcement in the context of Sections 74 and 425 can provide information towards enhancement of compliance culture. Moreover, any empirical investigations that examine the prosecution statistics, the time of resolution, and the perception of anyone could be used to generate evidence-based reforms. In addition to that, the study of the models of inter-agency coordination and capacity-building can help develop the existing system of insolvency in India to a competitive and efficient system on a global scale.

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