Concerns with Insolvency and Bankruptcy Code

What is the issue?

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- Insolvency and bankruptcy code was introduced in 2016 to address the bad loan issues.
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- In practical scenario there new legal issues are arising with in Insolvency Act.
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What is Insolvency and bankruptcy code?

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- The Insolvency and Bankruptcy Code (IBC) was enacted in 2016 for the recovery of giant bad debt volume built up in recent years.
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- Under IBC, either the creditor (banks) or the loaner (defaulter) can initiate insolvency proceedings.
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- It is done by submitting a plea to the adjudicating authority, in this case, the National Companies Law Tribunal (NCLT).
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- The Insolvency and Bankruptcy Code stipulates cases should be heard within 14 days.
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- After admission, the insolvency resolution process has to be completed in 180 days (extendable by 90 days).
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- IBC provides for Insolvency Resolution Professionals (IRPs) who will take charge of a company when it’s taken to the bankruptcy court.
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What is the significance of Insolvency act?

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- The time period prescribed under the Code was held to be procedural in nature, a tool in the expeditious dispensation of justice and is directory.
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- India’s Insolvency Act has been modelled on similar codes in the UK and the US.
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- But one big difference from the US is that when a company there files for bankruptcy, the management stays in place.
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- Here, the management is immediately replaced by the IRP, who has six months to sort out the company’s affairs.
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- This is because in India, top management is usually also the main shareholder and that’s one reason why it can’t be left in place.
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What are the practical concerns with India’s IBC?

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- **Clogging Tribunals -** The NCLT started off well but they are clogging up now, they’re taking much longer than they did earlier.
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- More than 9,000 cases are before the 11 NCLT tribunals that have been set up around the country.
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- National Company Law Appellate Tribunal (NCLAT) and that includes more than 2,500 insolvency cases.
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- **Concerns with time stipulation -** Regarding the time stipulation, in few cases the tribunal laid down that the 14-day period is only directive and not mandatory.
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- Also, the NCLAT has held that the provisions of the Limitation Act, which sets out the time-limits under which a complainant can approach the courts for redress, do not apply to proceedings under the Insolvency Code.
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- **Authoritative IRPs -** The IBC’s provision to throw the management out and replacing them with IRPs is consider to be draconian.
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- IRPs are a mix of chartered accountants, cost accountants, MBAs and retired public sector executives but there are many concerns has raised over the quality of the IRPs.
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- **Drafting loopholes -** Inevitably, there are loopholes in the Insolvency Act and some lawyers complain of poor drafting too.
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- For instance, the act has no provision for an amicable settlement once a case has been admitted.
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What measures needs to be taken?

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- There is need for setting up more tribunals in different parts of the country to handle the greater-than-expected volume of cases.
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- IBC must consider that there are distinct advantages if the existing management is allowed to keep running the company such as knowledge, information and expertise.
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- India is more concerned with the recovery of NPA, not with the running of units, thus the first priority is to save the banking system.
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- Thus the banks also must push policy makers towards this move because they’re unlikely to get more if the case comes before the NCLT.
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Source: Business Line

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