

## **Various Committee Reports on Insolvency**

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**Week 02**

**Lecture 09**

Welcome to all.

As a part of the course on Insolvency and Bankruptcy Law in India, today we are going to discuss various committee reports. So, yesterday and day before yesterday in the last two sessions, we have discussed various committee reports in continuation of that. Today we are going to discuss Bankruptcy Law Reforms Committee that is BLRC committee is one of the important committee, based on which we are having IBC code. Ok, In the subsequent lessons we are going to discuss IBC code. Actually, this IBC code came into picture based on the recommendations given by BLRC committee.

It is famously known as BLRC committee. So, let us recap what we have discussed in the previous class. In the previous class, we have discussed Justice Erradi Committee Report in the year of 1999, where the Justice Erradi Committee recommended, they have examined the laws relating to winding up of the company and they have recommended the creation of NCLT, National Company Law Tribunal. And, also Appellate Tribunal. And, they recommended to have the consolidation of insolvency laws so there is an outcome, I mean under the IBC so if you observe even IBC first part okay so initial part of the IBC if you look at the legislation.

So, it says that it is a law relating to, it is a law consolidating the laws relating to insolvency. ok, So, it was recommended by Justice Erradi Committee in the year of 1999, where they recommended that we need to consolidate the laws relating to insolvency. And they stressed on the time bound process, procedure and promotion of corporate restructuring. Ok, These are all the various recommendations by Justice Erradi Committee. Then subsequently, in the previous class, we have discussed JJ Irani committee 2005.

So, they have entered, they recommended fast track mergers and acquisition. Right now, we are having under the companies as section 233, ok, where, which provides for fast-track mergers and acquisition. Then, this committee supported the shift from debtor in possession under the SICA to creditor in control. So, as already we have discussed, so if you observe the SICA regime, the regime was debtor in possession. That means even

after the sickness, when the company was admitted to the BIFR, when they went for an appeal, I mean when they filed an application with the BIFR. Okay, so, the debtor will be in position.

Okay, whereas they recommended that creditor must be in position. Okay, now let us discuss the BLRC committee. What was the background? So, the Bankruptcy Law Reforms Committee was constituted in 2014 in the month of August by the Ministry of Finance, Government of India. Okay, what is the basic objective of this committee? So, the objective was to study the existing framework, and propose a comprehensive overall of India's corporate partnership and individual insolvency law. Why? Because at that point of time even now also the insolvency law relating to companies, partnership firms and LLPs and individuals used to be very different.

I mean each and every entity has different legislations. So, now they have to, the government recommended that, government suggested that we need to have, can we have a comprehensive legislation. So, there is a basic objective of this committee. Then, under the chairmanship of Dr. T.K. Viswanathan, the former union law secretary and secretary general of Lok Sabha. Okay, BLRC committee was established. Now, what is the need for the committee? Why there is a need is there? So, India's insolvency framework was highly fragmented as already we have discussed and inefficient and creditor unfriendly. So, if you observe we are having some provisions under the Companies Act relating to winding up and we are having some provisions under the SICA that is via BIFR. And we are also having other legislations by that time in the year of 1993, RDDBFI Act for the debt recovery. Then, we are also having another legislation called as SARFAESI Act, Securitization and Asset Reconstruction.

Then these are all various legislations relating to corporate sector. And if you observe individual, we are having piecemeal legislation called, I mean resolution process for the individuals and partnership firms under the provincial presidency town insolvency act and provincial town insolvency act. So, I can say the legislation relating to insolvency in India is very scattered. And it is inefficient. So that's why, there is a necessity is there to have a consolidated legislation which deals with insolvency matters in India.

So, the problems identified are long delays, average of 4.3 years to resolve the insolvency. So, if you observe at that point of time, the insolvency proceedings used to take around 4 years to 3 months. Then poor recovery rates, ok, so approximately 25 percent of the amount only, we are able to recover. Then weak institutional framework, the institutional framework that we were having that is at that point of time we were having BIFR. Ok, so and also DRT, even now also DRT is there, so BIFR, so these are all weak institutions, ok.

Then absence of unified law for individuals, partnership firms and companies. So, because the law relating to companies is different, the law relating to individuals and partnerships both are different ok. So, it is very scattered ok. So, there is a necessity, there to have uniform legislation applicable to all the categories of persons ok. Then, Submission and Structure. The final report of BLRC was submitted in November 2015 and it was released in two parts.

First part, Volume 1, Rational and Design. They have discussed in detail. If you observe, if you read the BLRC committee. Actually, it was very wonderful piece of document. So, one can one has to read. Actually, if you want to if you want to have knowledge on insolvency law one has to read the BLRC committee report Okay, so volume one deals with the rational and design and volume two draft insolvency bankruptcy bill 2015.

Okay. Now, what is the core philosophy? Okay, behind our core philosophy followed by BLRC committee. So, time bound resolution. So, they propose 180-day CIRP process. So corporate insolvency resolution process simply it is called a CIRP process, which can be extended up to 90 days. So maximum period that is allowed for the CIRP process is 180 plus 90, 270 days within 270 days you have to complete so anyway so again another section under the IBC provides that you have to complete it within 330 days as a whole. So, anyway in the subsequent lessons we are going to discuss okay how to calculate this 180 days. Okay, what to be considered what not to be considered while calculating this 180 days. we are going to discuss subsequently okay.

Then speed is essential to preserve the value and avoid erosion of assets. So, one of the basic principle fundamental principle for the IBC is that we have to complete the process quickly so that you can maximize the asset value. Why? because if you are unable to complete the process quickly ok obviously there is depreciation will always be there. The asset value will reduce, will arise over a period of time. So, you can't recover maximum.

So that is one of the core philosophy behind this IBC, I mean this committee. Then shift from debtor in position to creditor in control as already we have discussed even in the previous classes also. like J. J. Irani committee, Eradi committee also recommended the same thing ok. So, previously under the SICA regime we having debtor in possession regime, now we have to shift to creditor in controls regime ok. Then upon initiation the management is suspended and replaced by resolution professional. So, they recommended that once the CIRP process started ok, once the resolution professional is appointed.

Then, the resolution professional is going to replace the board of directors okay the existing board of directors will be replaced by the resolution professional okay. So, this is one of the core feature of the IBC. I can say okay, now creditors okay there is committee of the creditors will decide the resolution plan so now who is going to decide the

resolution plan it is committee of the creditors. So, the resolution plan resolution professional he is going to facilitate the committee of the creditors then committee of the creditors is going to decide the resolution plan. Accordingly, you are going to have the approve the resolution plan if it is a failure then you are going for liquidation. Okay, so in the subsequent lessons, we are going to discuss okay in detail about the the professional resolution professional and committee of the creditors their powers etc etc everything we are going to discuss in the subsequent lessons.

Okay, then unified and comprehensive law so they recommended that Because these legislation, the committee recommended that the legislation should include corporate persons, LLPs, partnership firms and individuals. Everyone must be included within the framework of the legislation. So, they recommended that we need to repeal the SICA. And harmonized with the Companies Act, RDDBFI Act is there, SARFAESI Act is there. So, all these legislations must be harmonized in accordance with the IBC.

So, that's why, subsequently after these recommendations, when we enacted IBC, we have repealed some provisions even under the Companies Act also. So, if you observe the provisions relating to liquidation and winding up, majority of the provisions were repealed now. So, now all the provisions relating to winding up. They are there in the IBC right now, ok. So, they the committee recommended harmonization of Companies Act also, ok.

Then, what is the role of market participants? They have identified the role of market participants also, ok. this committee recommended or this committee recognized there is a need is there to have the insolvency professionals and information utilities and adjudicating authorities all these people must be there so they are all market participants so in subsequent lessons we are going to discuss about all these things subsequently so this committee recognized the need for insolvency professionals We are expected to have insolvency professionals and information utilities and NCLTs.

Now, let us concentrate on the recommendations given by the BLRC committee. So, they recommended development of an institutional framework. They proposed the regulatory body that is Insolvency Bankruptcy Board of India known as IBBI. So, we have to establish IBBI. They empower IBBI to regulate IPs that is insolvency professionals to give the license to IUs and oversee professional conductance standard. And please remember even IBBI is also going to regulate the IPAs also. Okay, so what is this IPAs insolvency professional agencies we are going to discuss more about this in the subsequent lessons. So, IBBI is going to regulate IPs, IPAs and IUs, insolvency professionals, insolvency professional agents and information utility ok.

Then clear waterfall mechanism, okay. So, if you observe the IBC code, clear waterfall mechanism is there. So, they have set up an order of priority in the liquidation process. If

you observe section 53, waterfall mechanism is there. So, first you have to pay to whom, then subsequently you have to pay to whom. So, order, okay. So, in which order you are supposed to pay and if you observe IBC. Okay, so the government dues, they have taken a step backward, I can say, okay. So, first you have to pay to the financial creditors, then subsequently you have to pay to the government, okay. Again, it is subject to rules and regulations.

So, I can say government has taken a step backward compared with the other creditors, okay, intentionally, it was intentional, okay. So, clear waterfall mechanism was prescribed, then first you have to pay to the CIRP cost. Then, you have to pay to the secured creditors and workmen dues, then unsecured creditors. Subsequent to that if any government dues are there, then equity shareholders last. Okay, so previously under the previous regimes, first you have to pay to the government dues. But now, as already I told you, government has taken a step backward. Okay, so because it is not going to impact the government, but if financial creditors and operational creditors if they do not receive their business is going to be affected. Ok, So, that is why under the waterfall mechanism first we have given importance to secure creditors and workmen anyway before that we have given importance to CIRP cost. Ok.

Then insolvency trigger mechanism is also introduced. Ok, So, allowed both debtors and creditors to initiate insolvency. okay so under the IBC code both debtors as well as creditors so debtors again they were categorized into two financial debtors and sorry creditors okay the creditors again they were categorized into two financial creditors and operational creditors. So, corporate debtor, financial creditor, operational creditor. So, these three categories can initiate the proceedings under the legislation, ok.

And the emphasis on the default, not inability to pay. So, because if you observe previous regime, inability to pay is considered a sickness, whereas now they have considered the default, so if there is a default then only you can initiate the proceedings. Then under the IBC this committee recommended, even individual and partnership insolvency must be a part of IBC, so they recommended two stage process. Okay, one is fresh start for low-income debtors and repayment plan or bankruptcy order for the others.

Okay, so this part is not yet notified till now, but this IBC, I mean through BLRC committee, the committee recommended two stage process, fresh start for low-income debtors and repayment plan or bankruptcy order for the others. Okay, in case of individuals. Then it has to be adjudicated by the DRTs.

Then legislative outcome. What is the outcome of this committee? The main outcome of this committee is Insolvency Bankruptcy Code 2016, okay. So, Insolvency Bankruptcy Code 2016, IBC 2016, which was passed by the Parliament in May 2016 and which came into enforcement on December 2016. Ok, Now, it repealed. Ok, this based on these

recommendations. Ok, the IBC repealed SICA and they have amended 11 plus legislations, ok, like Companies Act. Okay, and even under these, we are having take over code, even under take over code, Companies Act, under various legislation, they made the changes, okay. And they consolidated India's insolvency law into one comprehensive framework. I can say, previously the law used to be very scattered.

You have to see Companies Act, SICA, SARFAESI Act. sorry Companies Act and Presidency Town Insolvency Act, Provincial Town Insolvency Act, but if you read IBC now that is sufficient more than sufficient ok. So, a one comprehensive framework was introduced through IBC ok.

Then, so please remember the bankruptcy law reforms committee BLRC led by uh Dr. T.K. Vishwanathan was the most influential body in india's insolvency law history okay. So, because why because IBC is based on BLRC committee only BLRC committee recommendations more or less because they have even framed the draft bill also okay so the draft bill is adopted by the parliament of india and it was made as a legislation okay So, I can say it is most influential body in India's insolvency law history, ok. Then they have integrated previous recommendations. It is not that they have not considered the previous recommendations. Ok, The Vishwanathan committee, the BLRC committee, they have integrated the previous recommendations made under, made by Eradi committee, Irani committee, Narasimhan committee, ok.

So, all these recommendations were considered, then accordingly they made the recommendations accordingly, ok. Then this committee established the foundation for IBC, ok. Now, it is actually globally recognized. Ok, So, subsequent to that do we have any committee? Yes, even so after this committee that is BLRC committee now we having IBC code. So, once the IBC code started implementing, I mean already it was implemented.

So, IBBI as and when there is a requirement is there. So, they have to update. So, for updates, the government of India, they have found various committees. So, one of the committees is ILC committee. Generally, we will call it as ILC, Insolvency Law Committee.

Let us look at the reports given by ILC. So, the Insolvency Law Committee was constituted in 2017 by MCE, Ministry of Corporate Affairs after the implementation of IBC, ok. So, this Insolvency Law Committee, BLRC committee was a foundation for IBC. After IBC got enacted, that is after it is enforced, Ministry of Corporate Affairs, they formed ILC. Ok, So, Insolvency Law Committee. Ok, What is the goal of ILC? continuously review and recommend amendments to the court based on the stakeholder feedback, judicial developments and global best practices.

So, if you observe the previous regime, the committee used to recommend and subsequently we used to have legislation. Now already legislation is there, OK. Now we started implementing the legislation, so when we start implementing the legislation. Actually, we were having few judgments also given by the Supreme Court. They recommended something, few changes in the IBC, so all these recommendations, everything and the stakeholder feedback because the law is evolving, it is dynamic in nature, the IBC is very dynamic in nature, OK.

So, it has so many facets, OK, so many angles we have to consider. OK, So, that is why MCA, Ministry of Corporate Affairs, they found ILC company to review, OK, and to get the feedback from the stakeholder so that you can make the changes accordingly. OK, Now, who is the chairperson? Mr. Injeti Srinivas, the then secretary of the Ministry of Corporate Affairs, who was the chairman of ILC. Now, first ILC report, it is not only one report, so many reports are there. First ILC report, March 2018. So, what is the objective of this ILC report? Review implementation issues and recommend clarification and amendments. So, because 2017 we started implementing. So, IBC. So, they have to review the implementation issues.

So, key recommendations include home buyers as financial institution. So, they recommended that the home buyers must be recognized as financial creditors. So, now subsequent to the recommendations given by ILC, actually we were having one judgment also given by the Supreme Court. So, homebuyers must be treated as financial creditors. Now, the law was amended, now the law is crystallized where even homebuyers are also considered to be financial creditors. We are going to discuss more about this in the subsequent lessons. Then they recommended treating homebuyers, allottees under the RERA as financial creditors enabling them to be part of COC. Okay, even they can be a part of COC. And withdrawal of CIRP application. So, section 12A.

So previously, we do not have the provisions relating to withdrawal. Once the CIRP process was started, it is started. Okay, so we do not have the provisions. But the judiciary has allowed, OK, through special leave petitions the judiciary allowed by exercising the powers under the constitution of India, judiciary already allowed withdrawal of the applications made under the CIRP. Now, they also recommended that whether it is necessary is there to change the law. So, based on the recommendations, OK, so they recommended that this committee recommended that we have to add one section, section 12A where it allowed the withdrawal of CIRP application. We are going to discuss in detail about section 12A in the subsequent lessons, OK. So, when you can allow the withdrawal, it allowed section 12A allowed the applicant to withdraw the CIRP application with 90% of the COC approval, OK. So, if 90% of the committee of the creditors give the approval, then you can withdraw the application, OK.

Then let us look at the recommendations, OK. Voting threshold reduction, OK. They

recommended that reducing the COC voting threshold from 75% to 66%, ok. So, for the routine matters, majority is sufficient. For the important decisions, 66%. Previously, it used to be 75 percent, ok. Then relief for MSME, so MSME promoters not to be disqualified under section 29A. So, under section 29A, there are there are provisions are there who is not eligible to act as a resolution applicant. Okay, so MSME was exempted.

Then clarity on section 29A so this report gave the clarity on section 29A suggested clarity uh suggested clarifying the scope of related party who is considered to be related party and connected persons okay to avoid the overreach they gave the clarity on this. Okay, then time bound liquidation process suggested streamlining liquidation procedure for the faster realization. okay so these are all the basic recommendations. Okay, given by the first ILC okay so which led to IBC second amendment act 2018 okay so once the ibc came into picture there are so many amendments are there to the IBC.

Then second ILC report 2018 October. Okay. So, prima facie please remember this ILC report basically concentrate mainly concentrates on cross border insolvency. Okay. So, what is the objective of this report? Recommend the framework for cross border insolvency resolution.

Okay. So, if you observe the key recommendations, adopt the UNCITRAL model. So, they recommended to adopt the UNCITRAL model law and they proposed to establish the concepts like recognition of foreign proceedings, we have to recognize the foreign proceedings and there is a main center of main interest. Then cooperation between the Indian and foreign courts ok, how to cooperate between Indian courts and foreign courts ok. So, they propose a new part that is part Z in IBC for the cross border provisions ok. So, we having separate provisions are there for the cross border.

So, these are all the recommendations of second ILC report. Then we are having third ILC report, so February 2020. what is the scope focus of this third ILC report so group insolvency. Okay, so third ILC report concentrated on the group insolvency and they gave some clarity on key provisions improving the resolution timelines. Okay, so if you observe the key recommendations group insolvency framework there is a phase one so initiate procedural consolidation of corporate data in the same group. Then, common RP will be appointed combined COC meetings where beneficial where it is beneficial okay then they have introduced pre-packaged insolvency for msme also. They recommended then recommended uh introduction of PPIRP. Okay, so we are going to discuss uh in the last lesson uh that is lesson session number 40 we are going to discuss about the PPIRP. 39-40 we are going to discuss PPIRP. Okay, so recommended introduction of PPIRP and especially post covid okay.

Then, they have to avoid okay because we are having so many frivolous litigations were there by using the section 7, 9, 10. So, that's why, ILC report they commented that we

have to avoid the frivolous litigation process okay. then we are having another committee same committee ILC another report is there there is fourth ILC report so it was submitted on January 2021. So, what is the focus of this report? Okay. So, streamlining the liquidation process and improving ease of doing the business.

Okay. So, how ease of doing the business is related to liquidation. So, if you can have the exit mechanism properly, okay, so it is easy for you to do the business. Okay. So, if you want to do the business, even you are expected to have the exit mechanism also properly ok. Then if you observe the key recommendations, allow distribution of assets during the liquidation even if the final distribution is pending, they allow the distribution of assets and facilitate the sale of corporate debtor as a going concern. So, as a going concern, if someone is interested, you can sell the assets as it is. Then empower liquidator to assign not just debt, but other assets also like licenses, contracts also can be considered.

Then what is the outcome? It led to amendments in the liquidation regulations. So based on the fourth ILC report, we made certain amendments to the liquidation regulations. So, these things we are going to discuss in the subsequent lessons. Then fifth ILC report, October 2022. So, the focus of the fifth ILC report is comprehensive review of IBC for streamlining the resolution process.

So, they wanted to streamline the resolution process. So, they reviewed the IBC in detail ok. So, which is boosting the investor confidence and discouraging misuse of insolvency law ok. So, there are instances where the section 7 or 8 was section 7 or 9 was used by the operational creditor or financial creditor just to threaten the just to threaten the corporate debtor. Ok, So, to discourage these type of practices they gave the recommendations ok so if you observe the key recommendations time-bound admission of applications so you have to admit the application so once if you make an application under section 7 or 9 so NCLT that is adjudicating authority is expected to admit the application within 14 days ok So, it was recommended by fifth ILC ok.

Then common resolution process for group companies. So, actually there were judgments are there by the supreme court. So, based on the recommendations given in the judgments common group companies insolvency was also developed ok. Then codify settlement during the CIRP with court and COC permission. then introduce electronic data room for the faster due diligence they have introduced then strengthen provisions for avoidance of transactions and fraudulent transactions ok so we having some provisions relating to avoidance of transactions and fraudulent transactions generally it is called as PUEF transactions ok. So, avoidance fraudulent transactions ok, unfair transactions, prejudicial transactions ok. So, it is also called as PUEF transactions, PUEF transactions.

These things you are going to discuss under the liquidation lessons ok.

Let us conclude.

The law committees if you observe in insolvency law committees. they have played a central role in evolving the insolvency law ok. So, why because till BLRC committee they concentrated on the framing the law. But once if you start implementing, even the legislators also or the authorities also, they felt that there is a requirement is there to update the legislations on a regular basis. So, to study that, they have formed Insolvency Law Committee. So, this Insolvency Law Committee, they have played a crucial role I can say. okay they have played a crucial role in evolving the law because from time to time they recommended based on the recommendations made by insolvency law committee even the government also changed the law accordingly okay then each report has address operational legal gaps. Because you are framing the law, but when you are implementing it, then you will understand. So, these gaps were identified through these committees, then promoted faster and fairer resolution and balanced debtor and creditor interest. They tried to maintain the balance between debtor's interest and creditor's interest through their recommendations, then encourage adoption of international best practices. So, these are all the various recommendations given by the ILC and the importance of the insolvency law committees ok.

Now, let us recap what we have discussed in today's lesson.

So, in today's lesson we have mainly concentrated on the BLRC committee report ok. So, where then subsequent to that we have concentrated on the first ILC report because once the legislation was implemented. So, Ministry of Corporate Affairs formed the committee. So, there is insolvency law committee first ILC report was given on March 2018. Then second ILC report mainly concentrating on cross-border insolvency and third ILC report 2020. Then fourth ILC report January 2021 and fifth ILC report. Even subsequent to that also having ILC reports are there. I recommend the students to refer subsequent ILC reports also.

Thank you.