

IBC -its Impact: A Review

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Abstract - The insolvency and Bankruptcy Code, 2016 (Code) is indeed a great reformative economic legislation has huge impact on the Economy at macro level and Individuals and Corporates at micro level in terms of balancing the interest of stakeholders and maximisation of value of assets. The Code its positive impact both on liquidation or resolution or reorganization in maximisation of value of assets. The ease of exit has created entrepreneurship development. The impact on Creditors and Banking and Financial sectors is progressive and very conducive for competitive environment. The roots are in the understanding of the people, beliefs of the people and attitudes of the people. The behavioural dimension is well addressed by code in its legal framework to trigger economic growth and development. The nudge theory and strategic perspective has brought about sea change in the code and ecosystem. The process and ecosystem under Code has resulted in paradigm shift in the outlook of stakeholders in the accomplishment of objectives of the code. The four pillars under Code and ecosystem have perfect compatibility under the code in achieving the substratum of the code. This review of few experts works on impact of Code speaks substantially these issues and implications.

keywords - IBC, Resolution, Economic growth, Insolvency

Introduction :

The Insolvency and Bankruptcy Code, 2016¹ has shown a diversified approach and strategic path in field of corporate sickness and corporate restructuring. The Code is a deep structural reform with far-reaching Implications for the Indian economy. It has been crafted with extreme care, after extensive consultation with stakeholders, to ensure that it delivers on its stated objectives on a sustained basis.²The code ensures timely corrections to the dynamic legislation on learning from experience. The entire process in the structure laid under Code keeps moving on ongoing basis in balancing the interest of the stakeholders.

The Code has given great source of inspiration especially upcoming entrepreneurs. In the market economy innovation and competition only enables to sustain and grow. Innovate or perish is the slogan in competitive environment. The corporate entities despite its resources, unless they have competitive advantage with continuous improvement and innovation, cannot sustain and grow. In this context freedom to entry and exist must be present in the system to encourage entrepreneurship to take risks. Sick Industrial Companies (Special Provisions) Act, 1985³ did not provide adequately and appropriately for resolving the stress. This long pending need in corporate sickness gave birth to Bankruptcy and Insolvency Code, 2016 to resolve stress in a time bound manner with major institutional reform of the insolvency regime. (own)

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

The success of the Code lines in its legal framework, Institutional framework and corporate governance, ecosystem. All these created a huge impact on several dimensions such as socioeconomic and sociocultural apart from benefitting directly debtors and creditors. Protecting the stakeholders' interest by balancing their interest and maximisation of value of assets at every stage is the hall mark of the Code. Many milestones, in achieving these goals, were crossed rather quickly, with various provisions of the Code being implemented at an unprecedented pace. The entire regulatory framework for corporate insolvency resolution process, fast track insolvency resolution process, corporate liquidation and voluntary liquidation were put in place within a short span of time. The regulations pertaining to insolvency professionals, insolvency professional agencies and information utilities were rolled out swiftly to build a strong professional and technology-driven bedrock of service providers under the Code as mentioned in the preface of IBC Miscellany Perspective published by IBBI, in 2019⁴.

Apart from Policy and Legal framework the institutional framework under the Code needs special mention, which is evident from the operations of Four Pillars of the Code, viz., Insolvency and Bankruptcy Board of India (IBBI), Adjudicating Authorities (AAs), Insolvency Professionals (IPs) and Information Utilities (IU). The Institutional communication, cultural and process and ecosystem has unique significance in the implementation of the Code. The Code has excellent internal professional Institutional development and culture and external ecosystem. The ecosystem is cohesive and compatible with the substratum of the Code. The Code could achieve it is desired results because of the process and ecosystem. The impact is

apparent in the process, behavioural and strategic perspective. The Impact therefore has origin in nudge theory and social engineering concepts. Timely amendments are brought ongoing basis swiftly. The World Bank's Doing Business Report has also taken cognisance of the path-breaking reform, in the form of the Code, and has improved India's ranking in the 'Resolving Insolvency' parameter from 136 in 2016 to 108 in 2018⁵.

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

In this paper an attempt to identify certain impact from the works of functionaries and professionals under IBC framework. Firstly, the theoretical aspects of nudge theory is traced and later the reviews on impact is reviewed.

Behavioural Perspective - Nudge theory and its implications:

The Code and its framework, process, ecosystem and its impact on critical analysis, it could be inferred that the Code has strong background of behavioural perspective. The IBC is paradigm shift in the approach and process from erstwhile process, procedure and mechanism for corporate sickness either for revival or for liquidation. IBC is focussing on legal framework as tool to trigger economic growth and economic activities by behavioural transformation. It appears, IBC Philosophy, legal framework, process and ecosystem is based on nudge theory⁶. This theory Offers 'Nudge' methods and related concepts as a 'Nudge' theory 'toolkit'⁷ so that the concept can be taught and applied in a wide range of situations involving relationships with people, and enabling people to improve their thinking and decision-making.

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

Nudge Theory can be perhaps could be comprehended with following aspects:

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

It appears, the Nudge theory with reference to corporate sickness has created huge impact especially through the Code. The concept has relevance in legal, political, socioeconomic and sociocultural dimensions of the concept of corporate sickness. In terms of Nudge theory with reference to the legal framework triggers socioeconomic and sociocultural dimensions to accomplish the desired results envisaged. The political intent and policy framework precede Legal frameworks. Therefore, basically political intent must be there for in its policy framework to emerge which in turn through legal framework would enable to achieve socioeconomic objectives. These policies must be manifested in the form of legal framework. Further, Law and Economics are interwoven in the legislation for fructifying their objectives. What was not possible in 67 years of independence in the field of GST and Corporate sickness was made possible with two codes viz. GST and IBC, 2016. The entire framework of code is based on the understanding of how people think, make decisions and behave. Precisely in the context of Code, how stakeholders of Code would behave. Further what kind of legal structure and economic objectives helps people improve their thinking and decision. How do we manage change of all sorts? Above all identifying, tracing and modifying the existing unhelpful influences and factors on people. In this regard the kind of mind set prevailed in Licenceraj, or protected economy under pre-liberalization era and more specially the defective SICA and operation of BIFR under such defective legal framework is comprehended. Thereafter, what kind of paradigm shift was possible with nudge approach is attempted under IBC.

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

All said and done ultimately it is people and their aspirations matters. Nudge theory accepts that people have certain attitudes, knowledge, capabilities, etc., and allows for these factors (whereas autocratic methods ignore them). Nudge theory is based on understanding and allowing for the **reality** of situations and human tendencies (unlike traditional forcible instruction, which often ignores or discounts the reality of situations and people). Fundamentally (and properly, according to its origins) Nudge theory operates by **designing choices** for people which encourage **positive helpful decisions**; for the people choosing, and

ideally for the wider interests of society and environment, etc. The recognition of this theory perhaps enabled to understand imbalances under SICA especially among stakeholders. The SICA was working negatively, because its legal structure was not based on behavioural perspective of attitudes, knowledge, capabilities. The promoters' failures, need for change of management, shifting the Insolvency Professional to private professionals, overriding effect of Code over other laws are few reformative measures which yielded results to IBC as envisaged. This is precisely the purpose of IBC. Hence the very preamble of the Code is focussed on the reality of situations of human tendencies and it encourages the positive helpful decisions among the stakeholders. The philosophy and process are driven by the same including the ecosystem of the Code. The diversified thinking under the Code requires the whose think to perceived differently with systematic process and procedure in solving the existing issues. Additionally, Nudge theory offers a wonderful methodology for identifying, analysing and re-shaping **existing** choices and influences that people are given by governments, corporations, and other authorities. Given that so many of these choices and influences are extremely unhelpful for people, this is a major area of opportunity for the development and use of Nudge theory, even if it were not envisaged as such by its creators. This is another major breakthrough for the Code, because the entire SICA regime there were several lessons drawn from the failure. The Nudge Theory has given methodology for identifying, analysing and reshaping the existing creditor driven, promoters controlled and defective economic policies and legal structure. The unhelpful environment in corporate sickness has given several behavioural dimensions of the stakeholders. The literature review of SICA regime helped to provide comprehensive behavioural law in the form of Code.

Further, Nudge theory also draws from and connects to many other models of motivation and management, for example: (a) the classic motivational theories of Maslow, McGregor⁹, Herzberg; (b) philosophical thinking, such as the psychological contract, and ethical business and management

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

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

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

The Impact of IBC has following elements:

- Impact of Code on Economic Growth
- Impact of the Code on expeditious Resolution Process
- Impact of Code on Strategic and Behavioural Change

Impact of Code on Economic Growth

According to G.N. Bajpai¹¹ it is observed that the Code is influencing the behaviour of various participants in the chain of economic growth, viz., lenders, operational creditors, borrowers, entrepreneurs, workforce and the economy at large. It is established that an efficient bankruptcy system to the economy of a country makes the financial market, in particular the debt market more efficient. The pricing becomes transparent and finer. Further an efficient bankruptcy system reduces friction in the movement of resources from suboptimal to higher and best use. This has been validated by Jackson and Skeel (2013)¹².

The Code brought paradigm shift as now the promoters and managers have lost their hold in the resolution process in balancing the interest of stakeholders. They have to accept the haircuts. Now they are at the receiving end and have to accept the verdict of NCLT. He further observes that this exit policy is likely to eradicate crony capitalism, gold plating, under and over invoicing, serial defaulters and lead to lower leveraging, responsible behaviour and above all better allocation of capital. He further observes that Bankruptcy system is known as the plumbing of economics. It enables the economy to flush out inefficient businesses and reallocate capital to more efficient uses.

The Government legislative a dynamic pathbreaking economic the legislators shall be acknowledged and credited for bringing about a pragmatic, thoughtful legislation, which substantially closes the escape routes and also lays down a watertight timeframe for disposal of the cases that are referred to NCLT. **The Government exhibited utmost concern for stakeholders**

which in turn has socioeconomic and sociocultural implications. The legal structure is fine to the core and the attitude of lenders, borrowers and the business environment as such is undergoing a traumatic transformation, which will result in better utilisation of resources and thereby higher economic growth

There are positive impacts on the behaviour of various actors, however there is a requirement to strengthen the adequacy of legal structure, the efficacy of court proceedings, the efficiency of enforcement mechanism and speed and effectiveness of the entire range of intermediary processes.

The economic agents do adopt game theory in Indian financial markets at every stage. It is understood these theories is deep rooted as can be comprehended with the overshooting in time lines, increasing costs and lower recoveries. The Government and IBBI are quickly responding with appropriate policy and action in preventing the situation.

Impact of the Code on expeditious Resolution Process

Rajnish Kumar, 2019¹³, observes that the Code has delivered a potent tool in the hands of creditors for quick and flexible resolution and despite several issues faced in its implementation due to novelty of the law, infrastructural weakness, underdeveloped ecosystem and slowdown in the economy, the Code has performed beyond expectations of the stakeholders. Being a new and dynamic law, it will continue to evolve and litigated, but has proved its worth as an effective mechanism for resolution of insolvent businesses

Impact of Code on Strategic and Behavioural Change

The paradigm shift of Code is vivid in behavioural changes in the stakeholders' approach and attitude. **Cyril Shroff and Dhananjay Kumar¹⁴ works shows that** they have understood that it is only through balancing the interests of all the stakeholders only the resolution would proceed. It is understood from that more than 6000 cases were disposed of prior to admission which involved around rupees 32.84 lacs crores. Repeated attempts by the promoters to regain control of the CDs have been subjected to 1617 intensive judicial scrutiny.

It speaks about collapse of defaulters 'paradise'. The purpose of code collective decision making is fructified. Behavioural responses of the stakeholders have so far worked in tandem with one of the core objects of the Code, i.e. to balance the interest of all the stakeholders. The code in course of time would be further more effective and create an environment of better financial discipline, continue to redefine the roles of stakeholders in fulfilling the objective of Code. The Code has also changed the behaviour of the key stakeholders, i.e. the creditors, with FCs using it as a last resort and OCs using it as a weapon of choice to recover their dues.

According to Anuradha Guru, 2019¹⁵, the design of law in a particular society is dependent upon the collective thinking of the society in terms of what is a desirable and what is a not-so-desirable action. The structure of incentives and deterrents in the law is dependent on this collective thinking which then encourages socially desirable actions and penalises non desirable actions. It, in some sense, puts fetters on freewill of individuals and their behaviour in the interest of harmonious social existence.

According to Roscoe Pound¹⁶, a distinguished American legal scholar and educator, called 'jurists' as 'social engineers' tasked with maintaining a balance between the competing interests in a society. The Laws are applied as tool to shape society and influence people's behaviour. He says social engineering theory envisages that law is an attempt to shape the behaviour of humans. Its effectiveness can be judged by the behavioural changes it is able to bring about. This is where the socioeconomic and sociocultural factors have implications. Once the interests of stakeholders interest are getting balanced through a legal process or outside the legal process because of behavioural impact, then such reforms can bring about substantial changes in ethical standards, values, socio economic values, sociocultural upholding etc.

Further according to Friedman 'legal rules are to be judged by the structure of incentives they establish and the consequences of people altering their behaviour in response to those incentives.' Anuradha Guru¹⁷ further says 'While law seeks enforcement of a certain kind of behaviour in a society, economics, in particular behavioural economics, helps explain an economic agent's choice behaviour from the menu of choices presented to him. The evolution of the law and economics movement, established the paradigm style for the economic analysis of law'.

The beliefs, values, attitudes and resultant behaviour and culture are the great source to understand the attitudinal dimensions of the people. Further Anuradha observes that 'to start with, and having addressed an important aspect of ease of doing business in the country. The law, being preventive in nature, is also being touted as having brought about a cultural shift in the dynamics between lenders and borrowers, and promoters and creditors.'

The source of the attitude and behaviour or culture is belief and habits. For beliefs and habits the sources are perception and observation. Once we address the belief mechanism, it is comfortable to address the attitude and behavioural and thereby the culture. This is what we could witness in the paradigm in the culture among the creditors and debtors under the Code. The code brought change in culture of creditors for repayment of debts. The incipient sickness and default is being viewed very seriously by the both creditor and debtors. This is a preventive attitude a new dimension. This midshift mechanism of debtors are all voluntary failing which they would be contributing for the debacle. The code making the stakeholders to work in distress together. The timely reorganisation is enabling to maximise valuation of assets and promoting entrepreneurship.

Any compulsion to change the culture or shift in the attitude or behaviour will be difficult, unless it is addressed to change the belief and values. Once values are formed as to a particular mechanism then the habits, attitudes towards that change will lead to culture. It is further observed by Anuradha Guru¹⁸ that 'Taking recourse to the Code is absolutely voluntary. Where one exercises its voluntary options in favour of the Code, the fall out is compulsory for all other stakeholders. Therefore, it is one of the parties to the insolvency process and not the State who imposes an outcome on all other players. This can be viewed as one of the most powerful 'nudges' requiring all stakeholders to exhibit their best behaviour, firstly to prevent triggering of an insolvency and if triggered, to ensure that interests of all stakeholders are taken care of.' The voluntary behaviour is influenced with desired legal framework for further compliance for economic objectives.

The roots of behavioural principles can be traced to principles of governance and economics. There is complementary relation between law and economics. In the equilibrium process justness is borrowed from law and efficiency is borrowed by economics. In other words, the law precedes economics and enables economic activities. If the law is not very effective this will have negative impact on economy and its agents in their performance. Therefore, then the economy and its agents cannot perform to their full potential, leading to inefficient allocation of scarce resources. The observation intends to encourage regulation that is designed to be efficient, accessible to all and simple to implement. To further infer the implication of law and economics, law inculcates the behaviour, and this behaviour envisages economic outcome and in turn to maximisation of social welfare. The code thus through behavioural perspective accomplishes its objectives strategically.

Conclusion:

The Code has brought paradigm shift in the minds of stakeholders' perception and observation and thereby behavioural and cultural transformation was made possible. The transformation has happened mind set of all the stakeholders and also in the ecosystem. The Code has very strongly addressed the source of understanding and addressed the same with policy, legal and institutional framework in terms of Code and its ecosystem, to bring about the desired change. The strategic perspective with given shift in the behavioural perspective could bring diversification in the thinking of all the stakeholders and the system, which ultimately paved for the success of the Code.

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