

Building institutional capacity for adjudication

Bhargavi Zaveri
Finance Research Group
Indira Gandhi Institute of Development Research, Mumbai

March 16, 2019

Structure

- ▶ State of adjudication pre-IBC
- ▶ State of adjudication post-IBC
- ▶ Capacity building

Recap: State of general adjudication in India

WB Ease of Doing Business 2018: Enforcing contracts in India

Time (in days)	1445
Service	45
Trial & judgement	1095
Enforcement of judgment	305

Recap: State of general adjudication in India

WB Ease of Doing Business 2018: Enforcing contracts in India

Time (in days)	1445
Service	45
Trial & judgement	1095
Enforcement of judgment	305
Cost (% of claim value)	31
Attorney fees	22
Court & enforcement fees	8

Recap: State of general adjudication in India

WB Ease of Doing Business 2018: Enforcing contracts in India

Time (in days)	1445
Service	45
Trial & judgement	1095
Enforcement of judgment	305
Cost (% of claim value)	31
Attorney fees	22
Court & enforcement fees	8
Quality of judicial processes index (0-18)	10
Court structure & proceedings (-1-5)	4.5
Case management (0-6)	1.5
Court automation (0-4)	2
Alternate dispute resolution (0-3)	2

Recap: Insolvency adjudication in India pre-IBC

SICA days (1985-2002)

► Outcomes¹

Dismissed / abated	53%
Recommended for liquidation	22%
Rehabilitation	9%
Pending	15%

¹Sengupta, Sharma, and Thomas 2016.

²**ibid.**

³Ravi 2015.

SICA days (1985-2002)

▶ Outcomes¹

Dismissed / abated	53%
Recommended for liquidation	22%
Rehabilitation	9%
Pending	15%

▶ Time taken

Disposal before BIFR	6 years ²
Winding up	38% more than 10 years ³

¹Sengupta, Sharma, and Thomas 2016.

²**ibid.**

³Ravi 2015.

Debt recovery tribunals (1993 -)

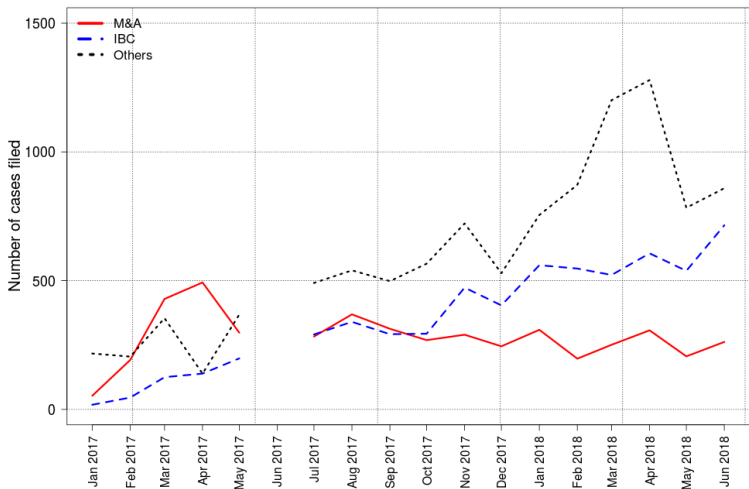
- ▶ In a sample of 15 cases, 60% took anywhere between 2 and 10 years. (Ravi 2015)
- ▶ In cases filed by lenders, tribunal accounts for 26% of the delay. (Regy and Roy 2017)

Post IBC

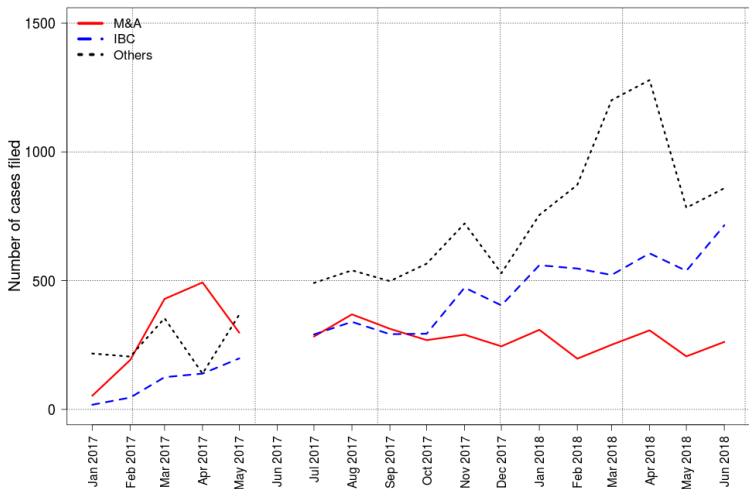
IBC: three structural changes

1. Reformed the role of judiciary in resolution.
2. Timelines throughout the linear resolution process.
3. Capacity

Workload build-up (January 2017-June 2018)



Workload build-up (January 2017-June 2018)



Misleading!

Time-span of cases under IBC

761 petitions admitted from December 2016 until June 2018⁴:

Within 180 days	24
180-270 days	73
270-360 days	62
More than 360 days	9

⁴Bhatia, Singh, and Zaveri n.d.

Time-span of cases under IBC

761 petitions admitted from December 2016 until June 2018⁴:

Within 180 days	24
180-270 days	73
270-360 days	62
More than 360 days	9

Not all of this is attributable to judiciary!

⁴Bhatia, Singh, and Zaveri n.d.

Adjudication in the early days of IBC

Empirical analysis of NCLT orders disposing of insolvency petitions⁵:

- ▶ Sample period: 1st December, 2016 to 30th November, 2017
- ▶ 831 orders of the NCLT
- ▶ 23 fields - binary values, numerical values, qualitative categories
- ▶ Hand collected data.

⁵Bhatia, Marwah, et al. 2018.

Adjudication in the early days of IBC

Empirical analysis of NCLT orders disposing of insolvency petitions⁵:

- ▶ Sample period: 1st December, 2016 to 30th November, 2017
- ▶ 831 orders of the NCLT
- ▶ 23 fields - binary values, numerical values, qualitative categories
- ▶ Hand collected data.

Only represents upto 1/2 the life cycle of a case.

⁵Bhatia, Marwah, et al. 2018.

Duration of disposal

T0: Date of filing

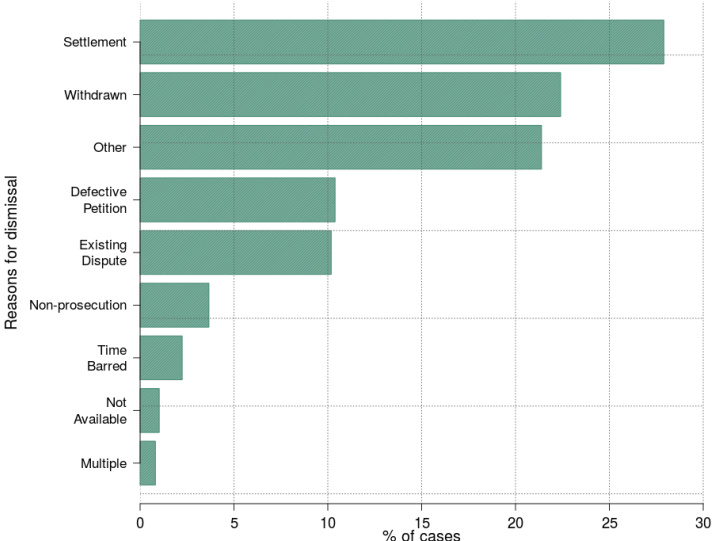
T1: Date of first hearing

T2: Date of final disposal

Stages	Observations	Median time (in days)
T0 to T1	69	14
T1 to T2	211	16
T0 to T2	115	34

Time taken for disposal of petitions

Grounds of dismissal



Capacity building

BLRC 2015 contemplated:

BLRC 2015 contemplated:

- ▶ Maximum use of technology and minimum human intervention, such as:
 1. E-filing

BLRC 2015 contemplated:

- ▶ Maximum use of technology and minimum human intervention, such as:
 1. E-filing
 2. Case management software

BLRC 2015 contemplated:

- ▶ Maximum use of technology and minimum human intervention, such as:
 1. E-filing
 2. Case management software
 3. Facility for remote audio-visual hearings

BLRC 2015 contemplated:

- ▶ Maximum use of technology and minimum human intervention, such as:
 1. E-filing
 2. Case management software
 3. Facility for remote audio-visual hearings
- ▶ Pre-hearing conferences
- ▶ Research assistance for tribunal members
- ▶ Performance and financial accountability measures

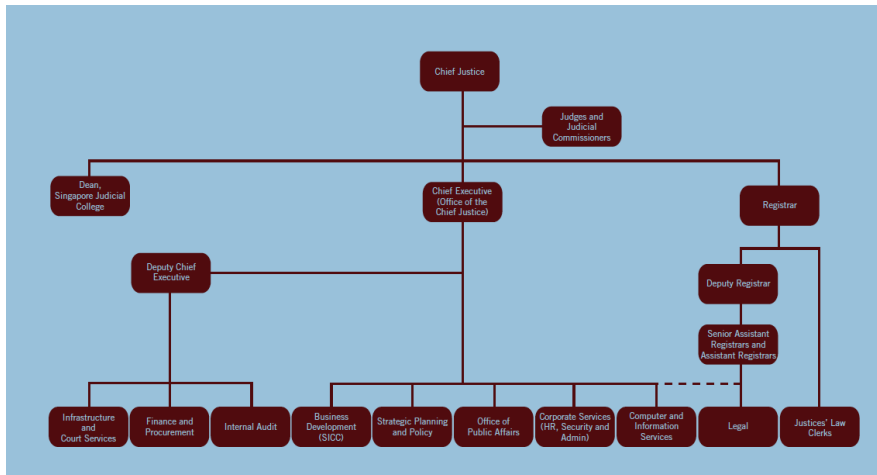
Data, data and more data!

- ▶ Understanding outcomes of the law
 - ▶ Proceedings (filings, transcripts of hearings and orders) to be published after completion.

Data, data and more data!

- ▶ Understanding outcomes of the law
 - ▶ Proceedings (filings, transcripts of hearings and orders) to be published after completion.
- ▶ Case-load forecasting

Institutional capacity: Singapore



Organisation chart of Supreme Court of Singapore

Thank you
www.ifrogs.org



Bhatia, Surbhi, Varun Marwah, et al. (2018). "Insolvency And Bankruptcy Code: One-Year Report Card". In: *BloombergQuint*. URL: https://www.bloombergquint.com/insolvency/2018/05/16/insolvency-and-bankruptcy-code-one-year-report-card#gs.kVjX_5I.



Bhatia, Surbhi, Manish Singh, and Bhargavi Zaveri. "Time to resolve insolvencies in India". In: *The Law, Economics and Policy Blog*.



BLRC (2015). *The report of the Bankruptcy Law Reforms Committee*. Tech. rep.



Ravi, Aparna (2015). "The Indian insolvency regime in practice: an analysis of insolvency and debt recovery proceedings". In: *The Economic and Political Weekly*. URL: http://ifrogs.org/releases/Ravi2015_indianInsolvencyRegime.html.



Regy, Prasanth and Shubho Roy (2017). "Understanding judicial delays in India: Evidence from Debt Recovery Tribunals". In: *NIPFP Working Paper*. URL: http://www.nipfp.org.in/media/medialibrary/2017/05/WP_2017_195.pdf.



Sengupta, Rajeswari, Anjali Sharma, and Susan Thomas (2016).

“Evolution of the insolvency framework for non-financial firms in India”. In: URL: <http://ifrogs.org/PDF/WP-2016-018.pdf>.