



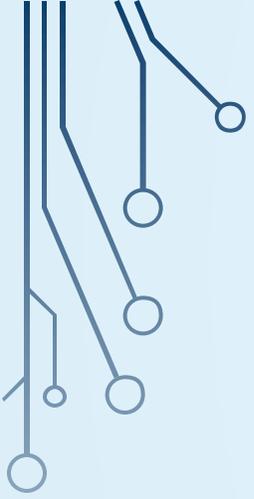
# Catch and Release: Data in the IBC Ecosystem

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## Main points

- Policymakers and regulators have a unique opportunity at this early stage to ensure sure that the IBC system generates accurate, comprehensive, and useful data.
- But this requires very deliberate and careful consideration of what data is useful and important and how it is to be generated.
- Such data generated by the system will be useful to regulators policymakers but it should also be available to stakeholders and researchers to the greatest extent possible.



# Road Map

- Emphasize the importance of data generated by the IBC
  - Describe examples of the types of data that might be gathered from the IBC
  - Describe some relevant aspects of the US experience with bankruptcy data
  - Consider sources and methods of catch and release; comparative institutional advantages
  - Address challenges, propose a pilot study
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# Background

**IBC, section 194**: The Board shall “publish such information, data, research studies and other information as may be specified by regulations; ... collect and maintain records relating to insolvency and bankruptcy cases and disseminate information relating to such cases; [and] ... maintain websites and such other universally accessible repositories of electronic information as may be necessary ....”

- Code, regulatory materials, and orders published on the IBBI website
- Sreyan Chatterjee, Gausia Shaikh, Bhargavi Zaveri, *Watching India's Insolvency Reforms: A New Dataset of Insolvency Cases*
- IBBI newsletter, includes aggregate data on cases,

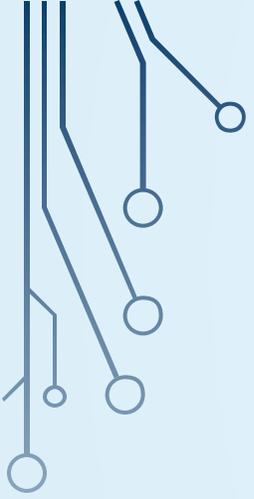
# IBBI Newsletter

## Aggregate data on

- number of cases, including outcomes (e.g., approval of plan or liquidation)
- number of cases initiated by type of party
- number of voluntary liquidations (and by cause)
- number of IPs, and times that interim RPs were replaced

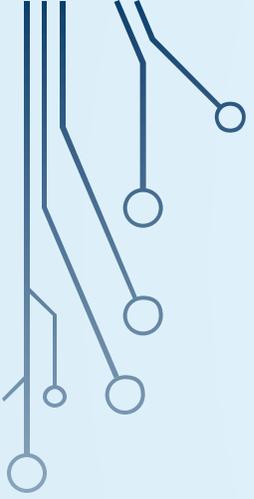
## Case level data on cases yielding resolution plans:

- initiating parties
- claims by financial creditors
- liquidation values
- recoveries by fc's (also as a % of claims and as a % of liquidation value)
- cases ending in liquidation orders



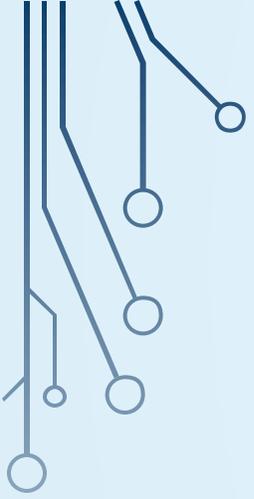
## Two broad categories of concern:

- Data about the system
  - Data from the system, about the economy/society
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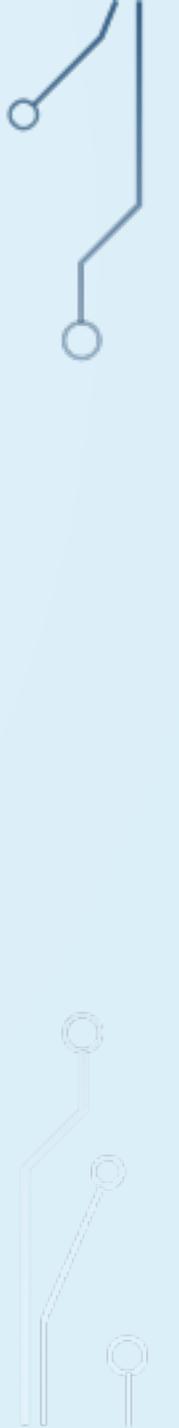
# Importance of data *about the system*

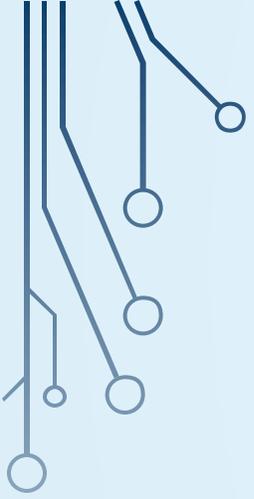
- How it operates
  - What function it serves
  - What impact it has
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# Importance of data *about the system*

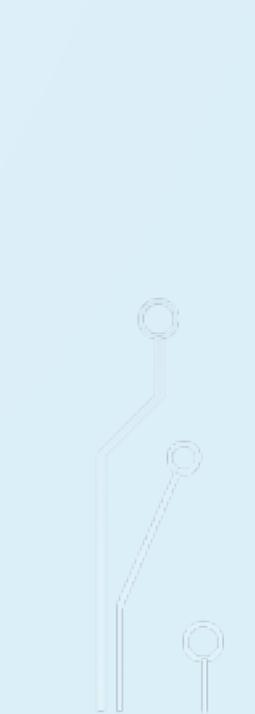
## For policymakers:

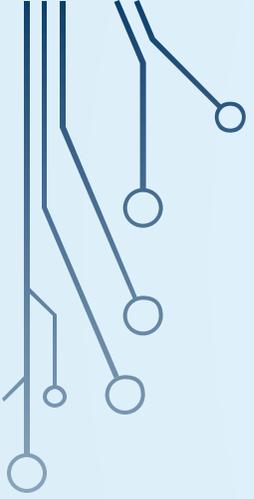
- to be able to assess the efficiency, effectiveness, and costs of the system
  - to help allocate scarce resources
  - to help identify needs for substantive changes to the system
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# Importance of data *about the system*

For stakeholders:

- to be able to assess the outcomes, timing, and costs of the system
  - to help inform decision-making about transactions, debt collection, renegotiations, etc.
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# Categories of data about the system

- Parties
  - Process
  - Institutions
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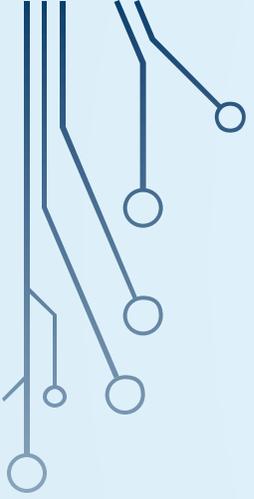


# Data about parties, for example:

- **characteristics or demographic information** about debtors who are in the system;
- how much **debt they owe**, in total and on average;
- **characteristics of creditors**;
- types of **claims** in the system, including the nature, status, and maturity;
- debtors' **assets**, distinguishing assets exempt from creditor recovery.
- information about **who utilizes the system** most actively - involuntary vs voluntary, filed by financial vs operational creditors
- **value creditors recovered** from their debtors, and in what form;
- how much **debt** was **discharged** or restructured;
- **fate of debtors**, reorganized or liquidated, and subsequent insolvency or bankruptcy cases.

## Data about process, for example:

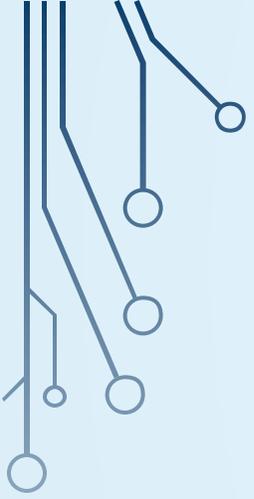
- **applications filed** under each chapter of the Code in each jurisdiction, voluntary and involuntary;
- applications accepted and rejected;
- subsequent **dismissals**;
- **duration** of cases;
- meetings of creditors;
- actions to recover **preferential payments**, and the rate of success;
- various aspects of **creditor voting**, including outcomes;
- **legal challenges** and appeals of decisions made;
- frequency of disputes about the amount or existences of claims, and their success rate;
- the frequency of other procedural objections made or actions taken.



## Data about institutions, for example:

- number of tribunals
  - number of judges per tribunal
  - cases heard per judge;
  - number of IPs
  - number of IPAs
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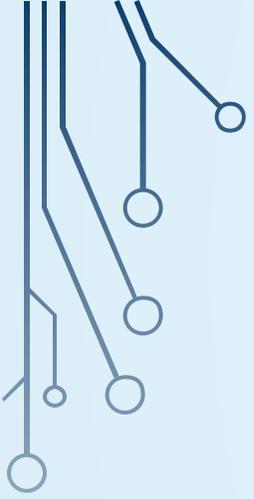




## Examples of IBC data about society and the economy:

In particular:

- **characteristics of debtors;**
  - **how much debt they owe,** in total and on average;
  - **characteristics of creditors;**
  - types of **claims;**
  - debtors' **assets;**
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## Examples of IBC data about society and the economy:

- determinants of financial distress
  - how firms and households cope before entering the system
  - more generally, detailed trends in corporate and household borrowing and areas of vulnerability in the market
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# Importance of IBC data about society and the economy:

## Can inform economic and financial policymaking:

- a unique window into the economy/society
- can reveal broad economic vulnerabilities, pockets of dysfunction
- can reveal useful micro trends as well, regarding, e.g.,
  - profiles and plight of debtors in distress
  - nature of products, relationships, especially as they transform under stress

Can also inform stakeholders, especially creditors, about the general trends and circumstances affecting their counter-parties.

# U.S. policies regarding bankruptcy data

## Court documents publicly accessible

- electronically through PACER since 2001
- for a fee
- some personal info omitted or redacted (acct #s, DOB, etc.)

## Administrative Office of the US Courts

- helps promulgate carefully designed forms and schedules
- reports basic aggregate data
- expanded in 2005, by BAPCPA for consumer cases
- requires standardization of data included in trustee reports in consumer cases

## US Trustee reports additional aggregate data

# Administrative office of the US Courts aggregate data, e.g.:

Business and consumer cases and adversary proceedings filed, terminated, and pending – per chapter and jurisdiction

Consumers cases (“BAPCPA report”):

- Debtors’ assets and liabilities
- Debt discharged
- Duration of case
- Reaffirmation (of debt) agreements
- Property valuation orders
- Chapter 13 completions, dismissals, and modifications
- Prior/no-prior filings by debtors

# U.S. Trustee aggregate data, e.g.:

- Caseloads
- Enforcement actions against debtors, e.g.:
  - denial of discharge motions
  - dismissal for abuse motions
- Enforcement actions against creditors, e.g.,:
  - mortgage servicers
  - bankruptcy petition preparers
- Trustee involvement in Chapter 11 cases
- Trustee disbursements to creditors

# Examples of US studies about the bankruptcy system:

## Baird & Rasmussen, *Chapter 11 at Twilight* (2003)

Found that 80% of large chapter 11 reorg cases in 2002 involved asset sales or pre-negotiated plans; arguing that the traditional account of Chapter 11 as a tool for reorganizing firms with unlocked going concern value was largely wrong.

## Lawless & Warren, *The Myth of the Disappearing Business Bankruptcy*, (2005)

Found that official data undercounted business bankruptcies, counting them instead as personal cases; refuting claims that bankruptcy law was increasingly unimportant for commercial debtors and creditors.

## Porter, *The Pretend Solution: An Empirical Study of Bankruptcy Outcomes* (2011)

Studied Chapter 13 (consumer) cases in which plans were not completed, found that most debtors did not ultimately succeed in their stated goal of keeping their home, arguing that Chapter 13 does not serve its policy aim of debtor rehabilitation.

Examples of US bankruptcy studies reflecting information society and the economy:

**Medical debt:**

Warren et al, *Medical Problems and Bankruptcy Filings* (2000)

- Found that 1/3 of consumer debtors in bankruptcy had medical bills of at least \$1,000 not covered by insurance. See also, Himmelstein, et al. *Medical Bankruptcy in the United States*, 2007.

Dobkin, et al., *Myth and Method – The Case of Medical Bankruptcies* (2018)

- Found that a much smaller percentage of debtors with medical expenses filed bankruptcy as a result.

## **Student loan debt:**

Sullivan, et al., *As We Forgive our Debtors* (1999)

- Found that 6.5% of debtors in bankruptcy owe student loan debt.

Pardo & Lacey, *The Real Student Loan Scandal: Undue Hardship Discharge Litigation* (2009)

- Described the difficulty and expense of discharging such debt and found that approximately 57% of debtor who sought a discharge obtained one.

## **Creditor control of corporate firms:**

Baird & Rasmussen, *Chapter 11 at Twilight* (2003)

- Found that 80% of large chapter 11 cases in 2002 involved asset sales or pre-negotiated plans, arguing that this reflected governance control by creditors, at least around insolvency.

## **Disaster relief:**

Lawless, *Bankruptcy Filing Rates After a Major Hurricane* (2005).

- Found that bankruptcy filing rates increase 12-36 months in affected areas after a major hurricane.

# Aggregate vs. Case Level

- Baird & Rasmussen, *Chapter 11 at Twilight*, 2003
- Lawless & Warren, *The Myth of the Disappearing Business Bankruptcy*, (2005)
- Porter, *The Pretend Solution: An Empirical Study of Bankruptcy Outcomes* (2011)
- Warren et al, *Medical Problems and Bankruptcy Filings* (2000)
- Dobkin, et al., *Myth and Method – The Case of Medical Bankruptcies* (2018)
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- **Lawless, *Bankruptcy Filing Rates After a Major Hurricane* (2005).**

# Challenges for generating IBC data

- parties providing data, rp's as intermediaries (uniformity, reliability)
- forms must be designed to generate useful data (fields, definitions, etc.) – e.g., Section 29 Information Memorandum!
- data management (ideally, all electronic)
- administrators must be consistent across jurisdictions in Tribunal-generated data and in compiling aggregate information

# Challenges for generating IBC data

Ensuring coordination and uniformity within and between two pathways for data:

- IPs, IPA's, and Board
- Tribunals and the MCA

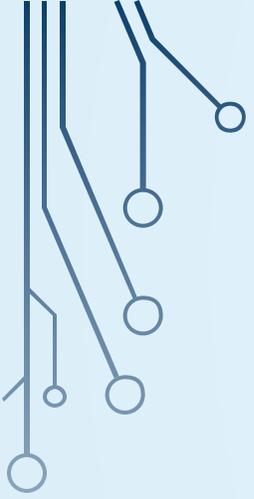
# Relative institutional advantages?

## Tribunals, MCA:

- data about cases and outcomes
- procedural actions taken by Tribunals and courts

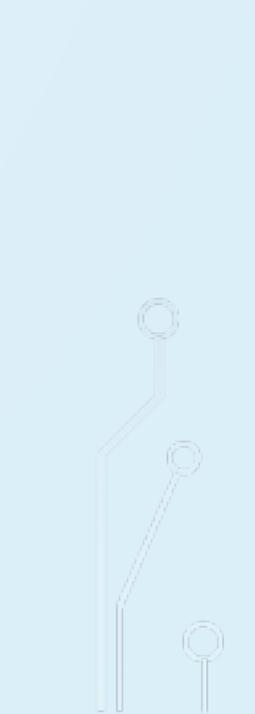
## IPs, IPAs, Board:

- substantive information about parties, claims, assets, etc.
- data about resolution plans, proposals, voting
- procedural actions taken by IPs



# Challenges

## Access

- public documents?
  - limited access to researchers?
  - granted by whom – Tribunals, MCA, IBBI?
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# Proposal

Pilot study of all documents and data from a sample of cases:

- how are forms being used?
- how are parties and RPs disclosing data absent forms, e.g., information memorandums?
- how are procedural actions and docket information being entered and gathered?
- how are documents generated by parties and RP's connected to orders and docket information generated by Tribunals?
- is information consistent along the two pathways (NCLT/IBBI) and how does it flow between them?