

Personal Insolvency under the Insolvency & Bankruptcy Code

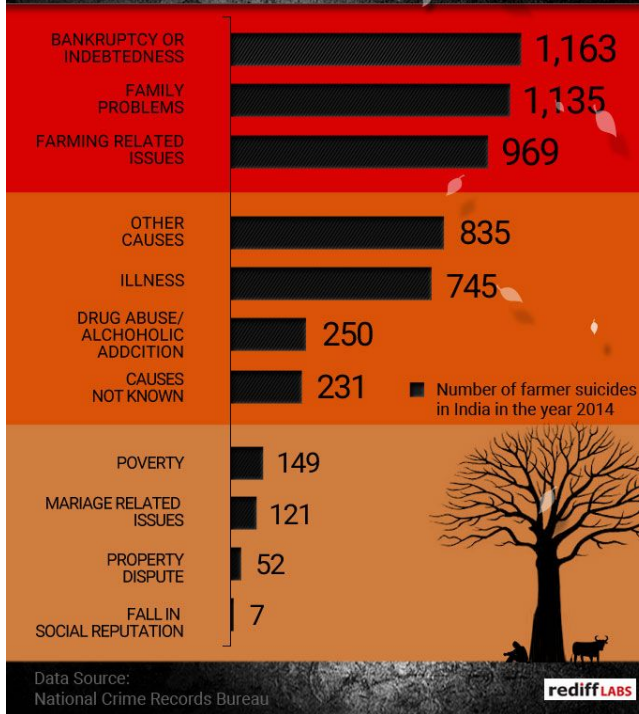
Shreya Garg
Research Fellow
Vidhi Centre for Legal Policy

- Part III of the Insolvency and Bankruptcy Code 2015 (IBC) deals with personal insolvency — individuals and unlimited liability partnerships
- Chapter I - PRELIMINARY
- **Chapter II - FRESH START PROCESS**
- **Chapter III - INSOLVENCY RESOLUTION PROCESS**
- **Chapter IV - BANKRUPTCY ORDER FOR INDIVIDUALS AND PARTNERSHIP FIRMS**
- Chapter V - ADMINISTRATION AND DISTRIBUTION OF THE ESTATE OF THE BANKRUPT
- Chapter VI - ADJUDICATING AUTHORITY FOR INDIVIDUALS AND PARTNERSHIP FIRMS
- Chapter VII - OFFENCES AND PENALTIES

Fresh Start Process

- Target group – little or no money and assets
- Not automatic
- Adjudicating authority exercises discretion – admission, discharge order
- Creditors can challenge
- Discharge from only ‘qualifying debts’ – unsecured, upto INR 35,000/-
- Time period – 6 months

REASONS FOR FARMER SUICIDES IN INDIA



- Insolvency Resolution Process
 - Negotiated repayment plan
 - Only failure can lead to bankruptcy
 - Trigger of bankruptcy - not automatic
 - Maximum time period – 6 months

- Bankruptcy Process
 - Liquidation of estate of the bankrupt
 - Last resort
 - Discharge in a year

Inadequacy of the existing law

- Existing law –
 - Presidency Towns Insolvency Act, 1909
 - the Provincial Insolvency Act, 1920
- Linear process
- Moratorium on fresh legal proceedings
- Trigger event – default in payment of debt (not below INR 1000)
- Waterfall
- Provision for debt waiver
- Provisions on arrest of debtor

Differences from the corporate process

- Distinction between financial and operational creditors – absent
- Liquidation is not automatically triggered
- Secured creditors can stay out of IRP
- Interim moratorium
- Fresh start
- NCLT - DRT