Catch and Release: Data in the IBC ecosystem

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Context

- The IBC was enacted in 2016.
- Over 1000 cases have been initiated under the system.
- Approximately 2000 insolvency professionals and three insolvency professional agencies have been registered.
- One information utility has been approved.
- Initial IBC case flow came mainly from non-bank creditors (Felman, Marwah and Sharma, 2018).

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- Initial IBC case flow came mainly from non-bank creditors (Felman, Marwah and Sharma, 2018).
- Independent observers cannot regularly determine even the most basic information about the system

This paper

- Emphasizes the need for data in the Indian set-up
- Lessons from the US experience
    - What drove the need for data collection?
    - What is the institutional setting in which data is collected and dissemminiated?
    - What is the research that such data has generated?
- Bankruptcy data for India
    - What types of data about the Indian system should be gathered and made available?
    - How should data be gathered - the responsibility of the Board, and the Tribunals, and policies on release of data.

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Why do we need data?

Current status: The RBI 12

- May, 2017: Banking Regulation (Amendment) Ordinance promulgated. Introduced Section 35AA and 35AB.

- June, 2017: 12 accounts comprising 25% of banking system NPAs identified for IBC referral. These are large and complex cases.

- Litigation around these cases is likely to shape agenda.

- Frequent changes to the legal framework on feedback from participants.

Wishlist: Some data fields on the 12

Name of company	Industry	Main promoter (if any)
Date of admission	Initial default	Liquidation value
Total claim admitted	From fin creditors	From op creditors
Names of fin creditors	Claims by each	
Name of RP		
Date of CIRP deadline		
Names of bidders		
Name of winner (if any)	Value of the bid	
Liquidation status		

Why is this important?

- Information to participants and stakeholders can improve present decision making, bring in more transparency.
- Evidence based policy making.
- The bankruptcy system generates extremely useful information about the Indian economy - can provide a window into commercial and consumer financial markets.

The US experience

Regulatory stakeholders in the bankruptcy system

- Government actors have been required to collect and disseminate data since 1898 by the US Congress.
- In 1948, this responsibility was given to the Administrative Office of the U.S. Courts.
- The US Trustee Program of the U.S. Department of Justice is charged with oversight of bankruptcy cases and private bankruptcy trustees.

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- The US Trustee Program
    - publishes data on overall caseload
    - actions against debtors for denial of discharge and dismissal of cases,
    - actions against creditors, attorneys and other parties
    - criminal referrals
    - professional fees
    - objections to plan confirmations in the Chapter 11
    - trustee disbursements to creditors
    - and approval of, and fees charged by, debtor financial counseling and education providers

PACER

- Beginning 1980s, federal courts adopted PACER, the Public Access to Courts Electronic Records program, which is operated by the Administrative Office.

- Provides electronic access, for a fee, to most relevant documents and case level information.

- Redacts certain personal information such as Social Security numbers and financial account numbers

Policy reports

- 1973: Report of the Commission on the Bankruptcy Laws of the United States
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- 1997 : National Bankruptcy Review Commission
  - called for making public all electronic data gathered by bankruptcy courts
  - a pilot effort to aggregate bankruptcy data from their various sources
  - the appointment of federal bankruptcy data collector
  - the establishment of a comprehensive bankruptcy data system

- 1999: National Bankruptcy Review Commission's final report

  The empirical studies that do exist are based on a small sampling that [had] been manually and laboriously compiled, and the conclusions of these studies cannot be updated without similar effort

Academia

- Early empirical research on bankruptcy law made pleas for data
- 1980s: data collection by Sullivan, Warren, and Westbrook for the Consumer Bankruptcy Project. Led to, As We Forgive Our Debtors: Bankruptcy and Consumer Credit in America.
- 1994: UCLA-Lopucki Bankruptcy Research Database, culminating in the book, Courting Failure, an influential critical assessment of large corporate reorganizations in the U.S
- Research also drew attention to pervasive data quality problems calling for
  - standardized bankruptcy forms
  - routine, computerized, systematic data gathering

Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCA)

- Increased the scope of data collection and release by the Administrative Office of the U.S. Courts
- Some examples of data include:
    - debtors' total assets and liabilities, including per category of assets and liabilities, income and expenses
    - the total amount of debt discharged
    - the average time between the filing and the closing of cases
    - various data related to debtors' reaffirmation of debts in bankruptcy
    - the number of cases which creditors were sanctioned for misconduct and the amount of punitive damages awards as a result
    - the number of cases in which damages or sanctions were imposed against a debtor's attorney

BAPCA contd.

- Other requirements in the Act
  - Requires the U.S. Attorney General to issue rules requiring and standardizing final and periodic case reports by bankruptcy trustees.
  - The Act requires that the rules provide for what kind of data should be in the trustees' final reports.
  - The Act also requires for specific information in the periodic reports under Chapter 11.
  - The Act requires the U.S. Trustee and the Administrative Office to develop a process for auditing information that individual debtors are required to provide under Chapters 7 and 13.
  - Commissioned a number of studies, including one by the U.S. Government Accountability Office, an independent agency that provides investigative assistance to Congress, on the quality and availability of bankruptcy statistics

GAO study

> [F]or several reasons the statistics required under the act are likely to be of limited value. For example, many of the statistics are relatively narrow in scope and were not intended to provide certain key information, such as the causes of bankruptcy and the demographic characteristics of filers...
>
> .. while some of the data reported is too narrow to offer a complete picture of facets of the system, the aggregate statistics, such as those reported by the Administrative Office and the U.S. Trustee, were too broad and not as valuable as case-level data.

Learning's from the US experience

- Large amount of discussion on the quality and availability of data before BAPCA
- BAPCA provisions on data marked an improvement in the quality, usability, and scope of available aggregate data
- Yet not expanded the ability to shed light on micro-questions
  - determinants of financial distress for firms and individuals
  - how the system operates
  - its impact on direct stakeholders
- Aggregate data a useful starting point, but need case level data.
- Not trivial to ensure the quality, uniformity, and accessibility of underlying raw data generated by the system

Bankruptcy data for India: What to collect?

What would be useful to know?

- How is the institutional infrastructure is faring?
  - Judiciary
  - Resolution professionals
  - The Insolvency and Bankruptcy Board of India
- How is the IBC actually being used?
- What is the impact of the system on the direct stakeholders, and the economy more broadly?

How is the institutional infrastructure is faring?

Some data fields

- how many applications are admitted, how many withdrawn by the courts
- of applications admitted, how many are completed
- the date on which a petition was filed,
- the type of petition filed,
- the time taken from the filing of the petition to each important milestone in the case,
- the reasons for trial failure (if any), the number of hearings before the final hearing.
- how are IPs being chosen
- how often there are objections to IPs chosen by a party
- the total and average fees for insolvency professionals and other administrative claims

How is the IBC actually being used?

Some data fields

- the number of cases filed under each process in each jurisdiction

- cases filed by whom financial creditors, operational creditors, or debtors,

- for what levels of debt.

- how many applications result in discharge of debt

- how many cases involve actions for preferences and other actions by IPs

- aspects of voting

- legal challenges, outcomes

- types of disputes

Impact of the IBC

Some data fields

- Case level data, and not aggregate data

- whether outcomes under IRP, or liquidation differ in relation to

  - financial or demographic attributes of debtors
  - their debt profiles
  - the types of their creditors
  - who selects the insolvency professional.

- the nature, timing, and maturity of debtors' obligations.

- post discharge outcomes for the debtors

Bankruptcy data for India: Who will collect?

Judiciary

- Indian system does not provide easy access to court documents.
- Access to court documents is restricted to those that have a "right to inspect" them (Section 76, Indian Evidence Act)
- All documents, especially the pleadings, related to any proceeding cannot be easily obtained from the court system.
- Information on case listing dates, judgments and orders (interim or final) is usually put up on court websites.
- Data is not in the form of a research ready database.
- Example: different courts having different definitions for similar sounding terms.
- Example: access requires some details of the case (party name, or the bench)
- The access from judiciary depends on how pro-active they choose to be. No move as of present.

How can the Tribunal collect data?

- The FSLRC recommended setting up a Financial Sector Appellate Tribunal.
- This had recommendations for business process re-engineering of courts
- Separate the administrative from the judicial function.
- The administrative wing can be tasked with collection and dissemination of data.
- The Ministry of Company Affairs can possibly drive this change.

Regulators

- Track record of Indian regulators slightly better than that of the judiciary

- The IBC specifically requires the Board to gather and disseminate data about the new system.

- The FSLRC recommended the setting up of a Financial Data Management Centre (FDMC), which would be the repository of all financial regulatory data.

- The Board will be required to make filings to the FDMC.

How will the IBBI collect data?

- The Board has no formal authority to obtain data directly from the Tribunals.
- Only has authority to obtain data from IPs and IPAs.
- For this the Board needs to
  - create a system where regulated entities have to make filings to the Board.
  - the filings have to be uniform and standardized
  - this becomes an electronic registry of case-related documents, actions, and decisions
  - this has to be machine readable

Data collection and dissemination: Principles

- Data standardization: data labels, data definitions, data entry formats, frequency of data submissions
- Data collection: electronic filings, XBRL (eXtensible Business Reporting Language), offline submissions, validation checks, data storage
- Data access: confidentiality, security, transparency.

Bankruptcy data for India: Examples

Design of forms

- First point of contact when persons file for insolvency.
- Example of detailed forms: Form 206 and 207 in the US.
- These require debtors to fill up the details on their financial positions.
    - details on property (Schedule A/B)
    - creditors Who Have Claims Secured By Property (Schedule D)
    - creditors Who Have Unsecured Claims (Schedule E/F)
    - executory Contracts and Unexpired Leases (Schedule G)
    - details on co-debtors (Schedule H)
- Indian form requires the debtor to furnish a statement of affairs (Annex VI) in Form 6 (released by the MCA).
- No stated format hence no consistency in how data is entered in the system.

- Dissemination is as important as collection.
- Tension between privacy and transparency.
- Develop a PACER like database for ease of access to all participants/stakeholders.
- Develop a framework to share detailed data with researchers to study the system.

In conclusion

Way forward

- No systematic data yet available about the system.
- Changes to the code derived from practical difficulties that have arisen in the implementation of the Code, not based on system-wide empirical analysis (though it is early days)
- Future reforms can be based on careful empirical analysis of existing system
- Need to develop frameworks for collection and dissemination of data.
- The first port of call should be design of forms that are used for filing various petitions.