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Balancing Interests: A Critical Examination Of Equitable Treatment For Operational Creditors Under The Insolvency And Bankruptcy Code (IBC)

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Abstract

The Insolvency and Bankruptcy Code, 2016 (IBC) was enacted as a landmark reform to create a consolidated, time-bound framework for insolvency resolution in India, with the stated objective of balancing the interests of all stakeholders. However, the treatment of operational creditors—suppliers of goods and services essential for a company's daily functioning—has raised significant concerns regarding equity and fairness. This paper critically examines the position of operational creditors under the IBC, focusing on their structural subordination through limited participation in the decision-making process and low priority in the distribution of assets. Through an extensive doctrinal and comparative analysis, this study reviews the existing corpus of literature, analyzes the competing theoretical underpinnings of creditor hierarchies, and evaluates the evolution of landmark judicial interpretations that have shaped the current landscape. It contrasts the Indian framework with the more mature insolvency regimes of the United Kingdom, United States, and Singapore to identify international best practices in protecting non-financial unsecured creditors. The paper argues that the current subordination of operational creditors is not only inequitable from a legal and ethical standpoint but also poses systemic risks to the broader economy, particularly the vital MSME sector which forms the backbone of India's supply chain. It concludes by offering specific, detailed legislative and regulatory recommendations aimed at recalibrating the Code to create a more balanced, just, and sustainable insolvency resolution process that recognizes the vital contributions and legitimate claims of operational creditors.

Keywords: *Insolvency and Bankruptcy Code, Liquidation, Corporate Insolvency, Creditor Rights, Bankruptcy Law*

1. Introduction

The enactment of the Insolvency and Bankruptcy Code, 2016 (IBC) was a watershed moment in the history of Indian commercial law. It sought to replace a moribund and fragmented insolvency regime that had languished for decades, characterized by a multiplicity of forums and debilitating delays. Before the IBC, corporate distress was addressed through a patchwork of ineffective laws, including the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI), and cumbersome winding-up proceedings under the Companies Act, 1956. This system was notoriously inefficient, with resolution processes often stretching for years, leading to significant erosion of asset value and abysmal recovery rates for all classes of creditors.[1]The debtor-in-possession model prevalent at the time was frequently misused, allowing defaulting promoters to retain control while stripping assets, leaving creditors powerless.

It was against this backdrop of systemic failure that the Bankruptcy Law Reforms Committee(BLRC), chaired by Dr. T.K. Viswanathan, was constituted. The BLRC's mandate was to design a robust and modern legal framework that would expedite the resolution process and shift the balance of power from debtors to creditors. The resulting IBC introduced a paradigm shift, establishing the "creditor-in-control" model, wherein a Committee of Creditors primarily composed of financial creditors , would determine the fate of a distressed company. One of the foundational principles articulated by the BLRC was the need to "balance the interests of all stakeholders," a group explicitly including not just financial lenders but also employees, suppliers (operational creditors), and the government.[2]

However, in the years since its implementation, a critical tension has emerged between the IBC's laudable goal of efficiency and its promise of balanced, equitable treatment. The Code's architecture, while empowering financial creditors to drive resolution, has simultaneously created a deep structural hierarchy that systematically disadvantages operational creditors. These creditors, who provide the essential goods and services that sustain a company's operations often extending trade credit without the security or financial covenants available to banks , find themselves relegated to the periphery of the resolution process. They possess

[1] The World Bank, *Doing Business Report* (2016).

[2] Ministry of Finance, *Report of the Bankruptcy Law Reforms Committee Volume I: Rationale and Design* (2015).

negligible influence in the Committe of Creditors and are placed near the bottom of the distribution hierarchy in the event of liquidation, as outlined in the "waterfall mechanism" of Section 53.

This research paper posits that this structural subordination is not merely a procedural issue but a fundamental flaw that raises profound questions of economic justice and long-term stability. The consistent marginalization of operational creditors, a group dominated by Micro, Small, and Medium Enterprises (MSMEs), risks creating a chilling effect on the availability of trade credit, which is the lifeblood of the Indian economy. While the IBC has been rightly praised for improving credit discipline and asset recovery for the banking sector, it may be inadvertently fostering a new crisis within the nation's supply chains. This paper, therefore, embarks on a critical examination of the equitable treatment of operational creditors under the IBC. It will trace the theoretical and legal foundations of their subordinate status, analyze the judicial pronouncements that have cemented this position, draw critical lessons from comparative international frameworks, and conclude by proposing a set of concrete reforms designed to recalibrate the Code towards a more just and sustainable equilibrium.

2. Literature Review: A Contested Terrain

The academic and professional discourse surrounding the IBC is extensive, with the specific issue of operational creditors forming a particularly contentious and evolving area of debate. The literature can be broadly divided into two opposing camps: one that defends the current hierarchy as an economic necessity for an efficient credit market, and another that critiques it as inequitable and systemically dangerous.

2.1 The Economic Rationale for Financial Creditor Primacy

The foundational justification for the IBC's creditor hierarchy is articulated in the BLRC's 2015 report, which remains the most influential document on the Code's philosophy. The report argues that financial creditors, defined as those to whom a "financial debt" is owed, are distinct from operational creditors in several crucial ways. First, they are typically involved in assessing the viability of a firm ex-ante and have the capacity to monitor its performance over the long term. Second, as providers of capital, their primary interest lies in the firm's financial health and its ability to generate future cash flows, making them the most suitable arbiters of a resolution plan's viability. The BLRC posited that involving a fragmented and diverse group of operational creditors in complex commercial negotiations would lead to delays and suboptimal outcomes.[3]

This perspective is firmly rooted in the "creditor bargaining model" and the principles of law and economics, most famously advanced by scholars like Thomas H. Jackson. This theory suggests that bankruptcy law should ideally replicate the hypothetical bargain that creditors would have struck among themselves if they could have negotiated costlessly before the firm's insolvency.[4] According to this view, sophisticated financial creditors would bargain for priority, and in return, the firm would benefit from a lower cost of capital. Operational creditors, being smaller and more dispersed, would implicitly accept a subordinate position. Some scholars, like Raghuram Rajan, have also argued that concentrating decision-making power in the hands of a few institutional creditors leads to more efficient resolutions and prevents hold-out problems that can derail the process.[5] This body of literature, therefore, defends the IBC's structure not as an act of discrimination but as a pragmatic and economically efficient design choice necessary to revive India's stagnant credit markets.

2.2 Critiques of the Framework: The Case for Equity and Systemic Stability

A larger and increasingly vocal school of thought challenges this efficiency-centric narrative, arguing that it overlooks fundamental principles of equity and ignores the significant macroeconomic risks associated with marginalizing operational creditors. This critique is multi-faceted.

First, scholars highlight the inherent vulnerability and involuntary nature of many operational creditors. Unlike banks, which can diversify their loan portfolios and demand extensive security, an MSME supplier may have its entire financial health tied to a single large corporate client. Kumari (2025), in a poignant analysis, describes their status as one of "unequal footing," arguing that this is not a "justified differentiation" but a systemic failure to protect the most vulnerable participants in the economic ecosystem.[6] The argument is that trade credit extended by operational creditors is a form of financing just as critical as bank loans, and its providers deserve commensurate protection.

Second, a significant body of empirical research has provided stark evidence of the adverse

[3] Ibid.
[4] Thomas H. Jackson, *The Logic and Limits of Bankruptcy Law* (Harvard University Press 1986).
[5] Raghuram G. Rajan and Luigi Zingales, 'The Great Reversals: The Politics of Financial Development in the Twentieth Century' (2003) 69(1) *Journal of Financial Economics* 5–50.
[6] P. Kumari, 'Operational Creditors under the IBC: Unequal Footing or Justified Differentiation?' (2025) 7 *International Journal for Multidisciplinary Research* 48663.

outcomes for operational creditors under the IBC. Landmark reports from institutions like the Vidhi Centre for Legal Policy and data released by the Insolvency and Bankruptcy Board of India (IBBI) have consistently demonstrated that recovery rates for this class are abysmally low. In many high-profile resolutions, such as Essar Steel and Bhushan Steel, operational creditors received payouts in the low single digits, while in numerous smaller cases, their recovery was nil.[7] This data challenges the theoretical assumption that the resolution process maximizes value for all stakeholders; in practice, it often appears to maximize value for financial creditors at the expense of others.

Third, legal commentators have expressed deep concern over the judiciary's expansive interpretation of the "commercial wisdom" of the Committe of Creditors. While intended to prevent judicial second-guessing of business decisions, this doctrine has been wielded to shield resolution plans from any substantive review of their fairness towards operational creditors. M. Singh (2021) critiques this as the "myth of commercial wisdom," arguing that it has created an accountability vacuum where the Committe of Creditors can approve deeply inequitable plans without meaningful judicial oversight, as long as the bare minimum liquidation value is provided.[8] This has led to a situation where the statutory floor has become the de facto ceiling for operational creditor recoveries, a result that seems contrary to the Code's broader objectives. This critical literature collectively argues for an urgent re-evaluation of the IBC's architecture, warning that its current trajectory could lead to a crisis of confidence in the trade credit system, with devastating consequences for the MSME sector and the Indian economy as a whole.

3. Research Gap

While the existing literature has effectively highlighted the plight of operational creditors, a holistic analysis that synthesizes legal theory, evolving judicial doctrine, and robust comparative law remains underdeveloped. Many studies focus on either empirical data or doctrinal critique in isolation. This paper seeks to fill this gap by providing an integrated analysis that: (1) connects competing theories of bankruptcy law directly to the IBC's provisions; (2) conducts a deep-dive analysis of the Supreme Court's jurisprudence from Swiss Ribbons to the post-Essar Steel era to trace the consolidation of the current doctrine;

[7] Vidhi Centre for Legal Policy, *Assessing the Functioning of the IBC: A Report Card* (2020); Insolvency and Bankruptcy Board of India, *Annual Report* (2020).
[8] M. Singh, 'The Myth of Commercial Wisdom: A Critical Review of the Supreme Court's Jurisprudence on the IBC' (2021) 3 *Indian Journal of Corporate Law* 45.

and (3) moves beyond a superficial comparison to analyze the specific mechanics of creditor protection ,such as the "prescribed part" in the UK and the role of Unsecured Creditors' Commiflees in the US, to derive actionable reform proposals for the Indian context.

4. Research Objectives

The primary objectives of this research are:

1. To critically deconstruct the theoretical and legal framework of the IBC that establishes and perpetuates the subordinate status of operational creditors.
2. To meticulously trace and analyze the evolution of judicial interpretation regarding the equitable treatment of operational creditors through a detailed examination of landmark Supreme Court and NCLAT judgments.
3. To conduct a detailed comparative study of the insolvency laws and practices of the United Kingdom, the United States, and Singapore to identify and evaluate alternative, and potentially more equitable, approaches to protecting unsecured creditors.
4. To synthesize the findings into a set of evidence-based, practical, and nuanced legislative and policy recommendations designed to reform the IBC and foster a more just and equitable balance of interests among all classes of creditors.

5. Research Methodology

This study employs a qualitative research design, primarily utilizing doctrinal and comparative legal methodologies. The doctrinal analysis involves a meticulous and critical examination of primary legal sources, including the Insolvency and Bankruptcy Code, 2016, the rules and regulations framed thereunder, and circulars issued by the IBBI. It also entails an in-depth exegetical analysis of secondary sources, most importantly the foundational BLRC report and pivotal judgments from the Supreme Court of India and the National Company Law Appellate Tribunal (NCLAT). The comparative method is used to systematically analyze the statutory frameworks, judicial precedents, and established practices in the selected foreign jurisdictions (UK, US, and Singapore). This comparative lens serves as a benchmark for evaluating the IBC's effectiveness and as a source of inspiration for potential reforms. The research is analytical and interpretive, relying on the synthesis of legal texts, case law, and scholarly commentary to build a coherent and persuasive argument.

6. Theoretical Framework: The Philosophical Tension Between Efficiency

and Equity

The architecture of any insolvency law is built upon a foundational, often unstated, theoretical preference. The IBC is a classic embodiment of the tension between two competing philosophies of bankruptcy: the "Creditors' Bargain Theory" and the "Communitarian" or "Stakeholder" theory.[9]

The Creditors' Bargain Theory: This influential theory, most prominently associated with Thomas H. Jackson, posits that insolvency law should not aim to redistribute wealth or enforce public policy, but should simply provide a collective enforcement mechanism that mirrors the agreement creditors themselves would have reached ex ante if they could have negotiated without transaction costs.[9] In this hypothetical bargain, sophisticated, secured financial creditors would demand priority in exchange for providing cheaper credit. Unsecured, fragmented operational creditors would, in theory, accept subordination. The law's role is merely to enforce this assumed bargain efficiently. The IBC, with its emphasis on the Committe of Creditors's supremacy and a rigid waterfall, is a clear reflection of this efficiency-driven model. Its primary goal is the preservation and maximization of asset value, which is then distributed according to pre-determined priorities, with liflle room for judicial intervention on grounds of fairness.

The Communitarian/Stakeholder Theory: In contrast, this theory views a corporation not just as a nexus of contracts but as a community of stakeholders, including employees, suppliers, customers, and the local community, in addition to financiers. From this perspective, insolvency is a collective problem, and the law should aim to distribute the burden of failure equitably among all who contributed to the enterprise. It prioritizes fairness and the preservation of the business as a going concern to protect these wider interests, even if it comes at the cost of some economic efficiency or deviates from strict creditor priority. This view suggests that the claims of operational creditors, whose goods and services were consumed by the debtor in the period leading up to insolvency, have a strong equitable claim to recovery, based on principles of unjust enrichment. A firm on the brink of collapse is, in effect, being sustained by the involuntary credit extended by its suppliers. A legal framework that allows the value created by these suppliers to be distributed almost exclusively to financial creditors is seen as fundamentally unjust.

This paper argues that while the IBC was designed firmly within the Creditors' Bargain

[9] Supra n 4.

framework to solve the problem of inefficiency, its rigid application has exposed the model's ethical and economic blind spots. A sustainable and mature insolvency regime requires a move towards a more hybrid model one that retains the efficiency of a streamlined process but incorporates mechanisms to ensure a baseline of fairness and equity for all stakeholders, particularly the most vulnerable ones.

7. The Legal Framework under the IBC: A Deep Dive into Structural Subordination

The subordinate status of operational creditors is not an accidental outcome but is meticulously codified in the IBC's provisions.

- **Defining the Divide (Sections 5(20) & 5(21)):** The Code begins by creating a fundamental distinction between "financial debt" and "operational debt." Financial debt is defined purely in terms of a time value of money transaction (e.g., a loan), whereas operational debt arises from the provision of goods, services, or employment. This definitional bifurcation is the starting point for the differential treatment that follows.
- **Unequal Pathways to Initiation (Sections 7, 8 & 9):** A financial creditor can initiate the Corporate Insolvency Resolution Process (CIRP) under Section 7 by simply furnishing evidence of default from a recognized information utility. In contrast, an operational creditor under Section 9 faces a higher procedural burden. They must first issue a "demand notice" under Section 8, giving the debtor 10 days to either pay or notify the existence of a "pre-existing dispute." The existence of any plausible, non-frivolous dispute is sufficient to block the admission of the application, a hurdle not faced by financial creditors. Furthermore, the threshold for initiating CIRP was raised from ₹1 lakh to ₹1 crore in 2020, a move that disproportionately impacted smaller operational creditors, effectively barring many of them from triggering the Code.
- **The Citadel of Power: The Committee of Creditors (Section 21):** This is the most critical provision. Section 21 mandates that the Committe of Creditors shall consist solely of financial creditors. They are given voting rights proportional to their share of the debt. Operational creditors are completely excluded from membership and voting. Their only right is a token provision allowing representatives to aflend (but not speak at) Committe of Creditors meetings if their aggregate dues meet a high threshold of 10% of the total debt, a condition that is seldom met in practice. This means all crucial decisions—approval of the resolution plan, appointment of the resolution professional, liquidation—are taken without any formal input from them.

- **The Illusion of Fairness (Section 30(2)):** This section lays down the requirements for a resolution plan. A key provision, Section 30(2)(b), mandates that the plan must provide for the payment of operational creditors in an amount that is not less than what they would receive in the event of a liquidation under Section 53. While this was intended as a protective floor, judicial interpretation (as discussed below) has allowed it to become a ceiling, effectively meaning that a plan can be deemed "fair and equitable" even if it provides a negligible or zero payout to operational creditors, as long as the liquidation value is also calculated to be negligible.
- **The Waterfall of Despair (Section 53):** This section provides the order of priority for the distribution of assets in a liquidation scenario, and it is a stark illustration of the operational creditor's plight. They are placed at the sixth position in the hierarchy, below insolvency resolution costs, secured creditors, workmen's dues, and unsecured financial creditors. Their claims rank pari passu with government dues. Given that the assets of an insolvent company are almost always insufficient to cover even the secured and high-priority unsecured debt, this ranking virtually guarantees a minimal recovery for operational creditors in most liquidation cases. This hierarchy is not just a procedural list; it is a powerful signal of the Code's priorities and directly influences the low payouts they receive even in resolution plans.

8. Judicial Interpretation: Cementing the Hierarchy

The Indian judiciary, particularly the Supreme Court, has played a pivotal role in interpreting the IBC and, in doing so, has largely affirmed the legislative subordination of operational creditors.

- **Swiss Ribbons Pvt. Ltd. v. Union of India[10]**: This 2019 judgment was the first major constitutional challenge to the IBC, where petitioners argued that the differential treatment of operational creditors was discriminatory and violated Article 14 of the Constitution. The Supreme Court rejected this challenge, upholding the distinction as being based on an "intelligible differentia." The Court leaned heavily on the BLRC report, holding that financial creditors are best positioned to assess the viability of a corporate debtor and are crucial for its revival, whereas operational creditors are primarily interested in recovering their money for goods and services sold. The Court reasoned that the primary objective of the Code was resolution and revival, not recovery, and for this, placing financial creditors in control was a rational and necessary choice. While

[10] *Swiss Ribbons Pvt Ltd v Union of India* (2019) 4 SCC 17.

acknowledging the need to protect operational creditors, the Court found the existing safeguards sufficient. This judgment provided a strong constitutional imprimatur to the IBC's basic structure.

- **CommiWee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta[11]**: This 2020 judgment is arguably the most significant pronouncement on creditor rights under the IBC. The case arose after the National Company Law Appellate Tribunal (NCLAT) modified the approved resolution plan to provide for a more equitable distribution between financial and operational creditors, effectively treating them on par. The Supreme Court emphatically overturned the NCLAT's decision. It established the doctrine of the "supremacy of the commercial wisdom of the Committe of Creditors" as a cornerstone of the IBC. The Court held that the Committe of Creditors's decision on how to distribute the proceeds of a resolution plan is a commercial mafler and is not subject to judicial review on grounds of fairness or equity, as long as it complies with the provisions of Section 30(2). It clarified that "equitable treatment" does not mean "equal treatment" and that the Committe of Creditors is well within its rights to approve a plan that provides for differential payments to different classes of creditors. The Court's ruling, while reinforcing the IBC's process-driven nature, had the profound effect of closing the door on most substantive challenges to inequitable distribution, solidifying the Committe of Creditors's near-absolute power.
- **Post-Essar Steel Jurisprudence:** Subsequent judgments, such as K. Sashidhar v. Indian Overseas Bank, have consistently followed the Essar Steel precedent, reinforcing the non-justiciability of the Committe of Creditors's commercial decisions.[12] The collective impact of this judicial interpretation has been to legally validate the subordinate position of operational creditors, leaving legislative reform as the only viable pathway for redress.

9. Comparative Perspective: Lessons from Mature Jurisdictions

A comparative analysis reveals that while creditor hierarchy is a universal feature of insolvency law, mature jurisdictions have evolved specific mechanisms to provide a safety net for unsecured creditors, a feature conspicuously absent in the IBC.

- **United Kingdom: The "Prescribed Part"**: The UK's Enterprise Act of 2002 introduced a crucial mechanism known as the "prescribed part." Under Section 176A of the

[11] *Committee of Creditors of Essar Steel India Ltd v Satish Kumar Gupta* (2020) 8 SCC 531.
[12] *K Sashidhar v Indian Overseas Bank* (2019) 12 SCC 150.

Insolvency Act 1986, when a company goes into insolvency, a certain portion of its assets subject to a "floating charge" (a type of security common for financial lenders) is carved out and reserved exclusively for distribution among unsecured creditors.[13] The prescribed part is calculated as 50% of the first £10,000 of net property and 20% of the property thereafter, up to a maximum of £800,000. This legislative intervention is a deliberate policy choice to ensure that unsecured creditors, including operational creditors, receive at least some recovery, even when a secured financial creditor's claim would otherwise exhaust all the assets. It represents a statutory check on the absolute priority of secured lenders in the interest of fairness.

- **United States: The Voice of the Unsecured Creditors' Committee (UCC)**: The US Bankruptcy Code, particularly under the widely used Chapter 11 reorganization process, provides a powerful institutional voice to unsecured creditors. Section 1102 of the Code mandates the appointment of an Official Commiflee of Unsecured Creditors in most large cases.[14] This commiflee, typically comprising the largest unsecured creditors, has a formal, statutory role in the entire process. It is empowered to hire legal counsel and financial advisors at the expense of the debtor's estate, investigate the debtor's conduct and finances, consult with the debtor-in-possession, and, most importantly, participate in the formulation and negotiation of the reorganization plan. The UCC acts as a crucial counterweight to the power of secured creditors and management, ensuring that the interests of the entire class of unsecured creditors are vigorously represented.
- **Singapore: A Flexible, Court-Supervised Approach**: Singapore's Insolvency, Restructuring and Dissolution Act 2018 (IRDA) is a modern, flexible framework that blends features from various global regimes. While it does not have a "prescribed part" or a mandatory UCC, its scheme of arrangement and judicial management processes are heavily court-supervised. The court plays a more active role in ensuring that a proposed scheme is fair and equitable to all classes of creditors and has the power to reject plans that are patently unjust. The framework encourages negotiation and consensus-building among different creditor classes, providing a more balanced and less rigid approach than the IBC's Committe of Creditors-dominated model.

Synthesis of Comparative Lessons: These international examples demonstrate a clear consensus: an efficient insolvency regime does not have to be an inequitable one.
Mechanisms like statutory carve-outs (UK) and institutional representation (US) are proven

[13] *Insolvency Act 1986* (UK) s 176A (as inserted by the *Enterprise Act 2002*).
[14] *United States Bankruptcy Code* 11 USC §1102.

methods of balancing the power dynamics between different creditor classes without derailing the resolution process. The IBC's current framework stands out as an outlier in its near-total exclusion of operational creditors from the decision-making process.

10. Challenges and Criticisms Summarized

The cumulative effect of the IBC's legal framework and its judicial interpretation has created a set of profound challenges:

1. **Systemic Inequity:** The system is structurally biased in favor of financial creditors, raising fundamental questions of justice and fairness.
2. **Economic Precarity for MSMEs:** The burden of corporate failure is disproportionately transferred to operational creditors, pushing many otherwise healthy MSMEs towards financial distress and creating a dangerous domino effect in the economy.
3. **Erosion of Trust in Trade Credit:** The high risk of non-recovery is likely to lead to a contraction of trade credit, making it harder and more expensive for businesses to operate, thereby hindering economic growth.
4. **Accountability Deficit:** The doctrine of "commercial wisdom" has created a governance model where the Committe of Creditors wields immense power without a corresponding accountability mechanism to ensure fairness to all stakeholders.

11. Recommendations for Comprehensive Reform

Addressing these deep-seated issues requires more than cosmetic changes. A multi-pronged reform agenda is necessary to recalibrate the IBC.

1. **Introduce a "Prescribed Part" for Unsecured Creditors:**
   - **Action:** Amend Section 53 of the IBC to insert a provision analogous to the UK's "prescribed part." This would mandate that a certain percentage of the assets of the corporate debtor (or proceeds from their sale) be set aside for distribution among all unsecured creditors (including operational creditors and unsecured financial creditors) before the claims of secured creditors are fully satisfied from those assets.
   - **Details:** The formula could be tiered, for example, 20% of the first ₹10 crores of realizable value and 10% thereafter, subject to a reasonable cap. This would ensure a guaranteed minimum recovery and provide a crucial financial cushion, especially for smaller creditors.
2. **Reform the Committee of Creditors to Ensure Representation:**
   - **Action:** Amend Section 21 of the IBC to grant operational creditors a voice in the

Committe of Creditors. This can be achieved through a tiered approach.

- **Details:**
  - **Observer Status:** For all CIRPs, a representative chosen by the largest operational creditors should have mandatory observer status with the right to be heard (but not vote).
  - **Voting Rights:** If the admifled claims of operational creditors constitute more than a certain threshold (e.g., 25%) of the total debt, they should collectively be granted a voting share in the Committe of Creditors, perhaps capped at 10-15%, to ensure their perspective influences the final decision. This gives them skin in the game without overpowering the financial creditors.

3. **Redefine and Strengthen the "Fair and Equitable" Standard:**
   - **Action:** Amend Section 30(2) to move beyond the liquidation value floor.
   - **Details:** The amendment should clarify that a plan, to be "fair and equitable," must not have a "grossly disproportionate" distribution of proceeds between different creditor classes unless supported by strong, documented commercial rationale. This would empower the Adjudicating Authority (NCLT) to apply a substantive fairness test and reject plans that are manifestly unjust, thereby acting as a check on the Committe of Creditors's absolute discretion.
4. **Empower the Resolution Professional (RP) to be a Neutral Arbiter:**
   - **Action:** Amend the duties of the RP under Section 25 to include a statutory obligation to ensure the interests of all stakeholders are considered.
   - **Details:** The RP should be required to submit a separate statement to the NCLT, along with the resolution plan, assessing the plan's fairness to operational creditors and confirming that their views were solicited and considered during the plan's formulation.

12. Conclusion

The Insolvency and Bankruptcy Code, 2016, is, without doubt, one of post-liberalization India's most significant and successful economic reforms. It has been instrumental in cleaning up bank balance sheets, instilling credit discipline, and shifting the corporate governance paradigm. However, the true test of a mature legal framework lies not just in its efficiency but in its fairness. In its current form, the IBC has created a system where the burden of corporate failure is borne disproportionately by operational creditors, the often-unseen cogs that keep the wheels of commerce turning.

The arguments of economic efficiency that justify the primacy of financial creditors are valid but incomplete. They fail to account for the long-term, systemic costs of eroding trust in the trade credit market and destabilizing the MSME sector. The jurisprudence of the Supreme Court, while legally sound in its interpretation of the existing statute, has solidified a hierarchy that cries out for legislative re-evaluation. The experiences of mature jurisdictions like the UK and the US provide a clear roadmap, demonstrating that it is possible to protect unsecured creditors without sacrificing the core objectives of a modern insolvency regime.

The time has come for the Indian Parliament to undertake the next generation of IBC reforms. By incorporating mechanisms like a "prescribed part," ensuring representation in the Committe of Creditors, and strengthening the standard of fairness, India can evolve its insolvency law from a highly effective but blunt instrument into a sophisticated, balanced, and truly world-class framework. For the IBC to fulfill its promise of balancing the interests of all stakeholders, it must recognize that the quiet contributions of the supplier are no less valuable than the loud capital of the lender.

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10. *US Bankruptcy Code* 11 USC §1102.