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Liquidation As A Legal Remedy: An Evaluation Of Its Effectiveness And Limitations Under Indian Law

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Abstract

This research examines liquidation as a legal remedy within Indian corporate and insolvency law, focusing on its effectiveness, efficiency, and impact on stakeholders. Liquidation is a key process that determines how a company's remaining assets are realized and distributed when it becomes insolvent or unable to continue business. The study aims to explore the legal foundations, implementation methods, and institutional functioning of liquidation under Indian laws, mainly the Companies Act, 2013, and the Insolvency and Bankruptcy Code, 2016 (IBC).Under the previous Companies Act, 1956, liquidation was a largely court-driven process, characterized by delays and limited involvement from creditors. The introduction of the Companies Act, 2013, followed by the IBC, 2016, changed India's approach to corporate insolvency by establishing time-bound procedures and allowing insolvency professionals to manage liquidation more effectively. This research critically assesses whether these reforms have truly succeeded in fostering fairness, transparency, and speed in the winding-up process. Additionally, the study evaluates the roles of key stakeholders, including liquidators, creditors, shareholders, and employees, and how well their rights and interests are protected during liquidation. It analyzes the priority of claims under Section 53 of the IBC, which sets the order of payment distribution, to see if it achieves a fair balance between secured and unsecured creditors.The paper also looks into practical and systemic challenges, such as asset undervaluation, lengthy proceedings, limited participation from bidders, and coordination issues between the National Company Law Tribunal (NCLT) and the Insolvency and Bankruptcy Board of India (IBBI). It examines how judicial interpretations and case laws, like Swiss Ribbons Pvt. Ltd. v. Union of India (2019) and ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta (2018), have influenced the understanding and application of liquidation as a last resort.Finally, this research aims to provide a well-rounded evaluation of liquidation as a legal tool, viewing it not just as a final process but as a means to balance economic efficiency, creditor recovery, and social justice. It also seeks to suggest policy and procedural reforms to improve the overall effectiveness of India's liquidation system, drawing on insights from international jurisdictions like the United Kingdom, Singapore, and the United States.

***Keywords**: Liquidation, Insolvency and Bankruptcy Code, Corporate Law, Creditors' Rights, Judicial Interpretation*

Introduction

Liquidation signifies the legal conclusion of a company's existence, wherein its assets are sold to discharge liabilities and any remaining funds are distributed among stakeholders. [1]In India, liquidation is recognized as a crucial legal remedy under corporate and insolvency law, governed by provisions such as Sections 270–365 of the Companies Act, 2013[2] and Chapter III of the Insolvency and Bankruptcy Code, 2016[3]. It serves as a mechanism to uphold financial discipline and protect creditors' rights when corporate insolvency resolution fails.

However, the practical application of liquidation in India often reveals significant challenges, including procedural delays, valuation disputes, and limited asset recovery. [4]The conflicting interests of creditors, shareholders, and employees further complicate the process. While the IBC has streamlined the legal structure by introducing time-bound mechanisms and professional oversight through liquidators, questions persist about its overall effectiveness and fairness.[5]

This research paper critically evaluates liquidation as a legal remedy in India, analysing its strengths, limitations, and judicial developments, and explores potential reforms to enhance efficiency, transparency, and stakeholder protection within the liquidation framework.

Research Objectives

- To examine the legal framework governing liquidation in India, with reference to the *Companies Act, 2013* and the *Insolvency and Bankruptcy Code, 2016*.
- To analyse the effectiveness of liquidation as a legal remedy in ensuring fair and equitable distribution of assets among creditors and stakeholders.
- To identify the key challenges and limitations in the liquidation process, including procedural inefficiencies and judicial delays.
- To assess the role of liquidators, adjudicating authorities, and creditors' committees in the liquidation process under the IBC framework.

[1] Rajesh Kumar, *Corporate Insolvency and Liquidation Laws in India* (Oxford University Press 2021) 45.
[2] *Companies Act 2013*, ss 270–365.
[3] *Insolvency and Bankruptcy Code 2016*, ch III, ss 33–54.
[4] Insolvency and Bankruptcy Board of India (IBBI), *Handbook on Liquidation Process* (2022) https://ibbi.gov.in/ accessed 20 October 2025.
[5] Arghya Sengupta and Smriti Parsheera, 'Reforming the Insolvency Framework in India: Challenges and Opportunities' (2020) 12 *NLS Business Law Review* 56.

- To propose recommendations for reform aimed at enhancing efficiency, transparency, and stakeholder protection in India's liquidation regime.

Research Questions

What are the statutory provisions and procedures that govern liquidation under Indian corporate and insolvency laws?

How effective is the current liquidation mechanism in achieving its objectives of fairness, efficiency, and creditor satisfaction?

What are the major limitations or challenges faced during liquidation proceedings in India?

How have Indian courts and tribunals interpreted and influenced the liquidation process through judicial decisions?

What reforms or policy changes could strengthen the effectiveness of liquidation as a legal remedy?

Literature Review

Liquidation as a legal process has been widely discussed in both Indian and international academic literature. The traditional concept of winding up under the *Companies Act, 1956*, was primarily court-driven and time-consuming, often resulting in minimal asset recovery (Saxena, 2012). The introduction of the *Companies Act, 2013*, sought to modernise the framework by incorporating provisions for voluntary and compulsory winding up, yet challenges of procedural inefficiency persisted.

The landmark reform came with the enactment of the *Insolvency and Bankruptcy Code (IBC), 2016*, which consolidated insolvency and liquidation laws under a single, time-bound mechanism. According to Bhattacharya (2018), the IBC aimed to transform India's insolvency regime from a "debtor-friendly" to a "creditor-centric" model. However, studies such as those by Sahoo (2020) and Datta (2021) note that liquidation proceedings under the IBC still face implementation challenges, particularly due to valuation disputes, delays in asset realisation, and inadequate coordination between creditors and insolvency professionals.

Judicial interpretations by the National Company Law Tribunal (NCLT) and the Supreme Court of India have further shaped the liquidation landscape. In *Swiss Ribbons Pvt. Ltd. v. Union of India (2019)*[6], the Supreme Court emphasised that liquidation should be treated as a last resort, prioritising corporate rescue over dissolution. Yet, practical cases under *Section 33 of the IBC* reveal that many companies still proceed directly to liquidation due to failed attempts at resolution (Kumar, 2022).

Comparative literature, including studies from jurisdictions such as the UK and Singapore, highlights

[6] *Swiss Ribbons Pvt Ltd v Union of India* (n 13).

the benefits of pre-pack liquidation models and creditor-driven processes that India could adopt to improve efficiency and stakeholder confidence (Mehta & Pillai, 2023).[7]

Overall, the reviewed literature demonstrates that while liquidation remains a vital legal remedy, its effectiveness in India is limited by procedural complexity, institutional capacity, and competing stakeholder interests. There is a clear need for legal and procedural reforms to strengthen India's liquidation regime within the broader insolvency framework.

Research Methodology

This research adopts a doctrinal and analytical approach. It relies primarily on secondary legal sources, including statutory provisions, judicial precedents, scholarly articles, and official reports. The study examines the legal framework governing liquidation under the *Companies Act, 2013* and the *Insolvency and Bankruptcy Code, 2016 (IBC),* alongside relevant rules and regulations such as the *Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016*.

The research also draws upon case law analysis from the Supreme Court of India and the National Company Law Tribunal (NCLT) to understand the judicial interpretation and practical implementation of liquidation provisions. Comparative references are made to foreign jurisdictions, such as the United Kingdom and Singapore, to identify best practices and potential reforms.

The methodology emphasises qualitative analysis, focusing on legal interpretation, policy evaluation, and critical assessment of the effectiveness of liquidation as a legal remedy. Data and statistics from the Insolvency and Bankruptcy Board of India (IBBI) and government publications are used to supplement doctrinal findings and evaluate procedural outcomes.

Analysis and Findings

1. Legal Framework of Liquidation in India

The legal framework governing liquidation in India is primarily contained within the Companies Act 2013 and *the* Insolvency and Bankruptcy Code 2016 *(IBC).* Under the Companies Act, Sections 270–365 outline the process for winding up, including both voluntary and compulsory liquidation. However, following the enactment of the IBC, the majority of corporate liquidation cases are now governed by the latter, particularly under Sections 33–54[8], which provide for the initiation, conduct, and closure of liquidation proceedings.[9]

[7] S Mehta and R Pillai, 'Learning from Global Practices: Pre-Pack Liquidation Models in the UK and Singapore' (2023) Comparative Insolvency Review 14.
[8] *Insolvency and Bankruptcy Code 2016* (IBC), ss 33–54.
[9] *Companies Act 2013*, ss 270–365.

Liquidation under the IBC may be initiated either (a) when the corporate insolvency resolution process (CIRP) fails to yield a resolution plan approved by the Adjudicating Authority,[10] or (b) when the Committee of Creditors (CoC) decides, with a requisite voting majority, to liquidate the corporate debtor during the CIRP.[11] The National Company Law Tribunal *(NCLT)* acts as the Adjudicating Authority for liquidation cases, while the Insolvency and Bankruptcy Board of India (IBBI) functions as the regulatory and supervisory body overseeing insolvency professionals and the liquidation process.[12]

A key distinction exists between **voluntary liquidation** and **compulsory liquidation**. Voluntary liquidation applies to solvent companies that wish to dissolve themselves by satisfying their debts in full, whereas compulsory liquidation generally arises from insolvency, initiated by creditors, debtors, or through a tribunal order.[9] The IBC has thus replaced a fragmented system with a unified, creditor-centric, and time-bound process that enhances efficiency and accountability.

2. Role and Responsibilities of the Liquidator

Upon commencement of liquidation under Section 33 of the IBC, the resolution professional appointed during the CIRP is ordinarily designated as the liquidator. [13]The liquidator's powers are enumerated under Section 35, which includes taking custody of all assets, evaluating claims, realizing property, and distributing proceeds in accordance with the statutory waterfall mechanism.[14]

Section 34 further empowers the liquidator to exercise wide discretion while ensuring transparency and compliance with the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016.*[15]* Their duties extend to verifying claims, maintaining registers, preparing asset memoranda, and distributing the sale proceeds. The liquidator also bears fiduciary responsibilities, acting in the interest of all stakeholders and ensuring equitable treatment of creditors.[16]

Despite these provisions, practical challenges persist. Valuation disputes often arise due to inconsistency in assessing asset worth, especially in cases involving non-performing assets or distressed firms.[17] Moreover, liquidators face hurdles in asset tracing, debtor cooperation, and conflict resolution among

[10] *Insolvency and Bankruptcy Code 2016* (IBC), s 33(2).
[11] *Insolvency and Bankruptcy Code 2016* (IBC), s 60.
[12] Insolvency and Bankruptcy Board of India (IBBI), *Handbook on Liquidation Process* (2022) https://ibbi.gov.in/ accessed 20 October 2025.
[13] *Insolvency and Bankruptcy Code 2016* (IBC), s 34(1).
[14] *Insolvency and Bankruptcy Code 2016* (IBC), s 35.
[15] Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016.
[16] M Sahoo, 'The Role of Liquidators under the Insolvency and Bankruptcy Code' (2021) *IBBI Journal* 34.
[17] R Bhattacharya, 'Valuation Challenges in IBC Liquidation' (2020) 8 *NLS Business Law Review* 67.

competing creditors. [17] The shortage of trained insolvency professionals further affects the speed and quality of liquidation outcomes.

3. Stakeholder Interests and Distribution Mechanism

The principle of equitable distribution lies at the heart of liquidation proceedings. Section 53 of the IBC prescribes a waterfall mechanism for the distribution of liquidation proceeds, prioritizing costs of insolvency, followed by secured creditors, workmen's dues, and other operational creditors.[18] This codified hierarchy reflects the legislature's intent to balance creditor protection with social justice.[19]

The law gives preferential treatment to **secured creditors**, who may either relinquish their security interest and claim under Section 53 or enforce it outside liquidation. Furthermore, **workmen and employees** are accorded high priority, reflecting constitutional commitments to labour welfare under Articles 39 and 43 of the Indian Constitution. However, concerns persist regarding fairness in distribution, particularly for unsecured and operational creditors, who often receive negligible recovery due to asset value erosion.[20]

Scholars have argued that while the waterfall mechanism ensures predictability, it may inadvertently disadvantage smaller creditors, thereby necessitating reforms for proportional distribution based on claim legitimacy.

4. Procedural and Practical Challenges

In spite of statutory deadlines requiring liquidation to be carried out within a year,[21] numerous Indian cases are pending beyond regulatory thresholds.[22] The average liquidation time of over 600 days was reported by IBBI in its 2025 quarterly report, indicating systemic inefficacies.

One of the biggest bottlenecks is the undervaluation of assets, especially in industries such as real estate, steel, and infrastructure, where market interest is still subdued. Non-cooperation of debtors also slows down the process, with promoters hiding assets or not furnishing documentation.[23] Additionally, administrative issues within the NCLT, like the lack of benches and a surfeit of caseloads, cause procedural lapses and asymmetric adjudication.[24]

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[18] *Insolvency and Bankruptcy Code 2016* (IBC), s 53.
[19] P Kumar, 'Equity in Liquidation: A Study of Section 53 of the IBC' (2022) 5 *NLIU Law Review* 59.
[20] *Insolvency and Bankruptcy Code 2016* (IBC), ss 39-53.
[21] IBBI, *Quarterly Newsletter: Liquidation Trends in India* (2025) https://ibbi.gov.in/ accessed 20 October 2025.
[22] Deloitte India, *IBC Insights Report* (2023).
[23] EY India, *Corporate Liquidation Study* (2022).
[24] V Niranjan, 'Judicial Delay and the Future of the NCLT' (2023) *Economic and Political Weekly* 19.

The lack of well-trained insolvency professionals and valuers adds to the complexity of liquidation processes.[25] Though the IBC brought in mechanisms for regulation and oversight, enforcement loopholes and procedural uncertainty still tend to mar the Code's effectiveness.

5. Judicial Interpretation and Case Analysis

Judicial interpretation has significantly influenced India's liquidation laws. In **Swiss Ribbons Pvt Ltd v Union of India**[26], the Supreme Court supported the constitutionality of the IBC. It stressed that liquidation should be a last resort and that the Code must encourage revival whenever possible. Similarly, in **ArcelorMittal India Pvt Ltd v Satish Kumar Gupta[27],** the Court clarified the eligibility criteria for resolution applicants, which strengthened the integrity of the insolvency process.

In **K Sashidhar v Indian Overseas Bank[28]**, the Supreme Court emphasized that the commercial wisdom of the Committee of Creditors is crucial and cannot be challenged, even in decisions that lead to liquidation. These judgments show a consistent judicial trend of respecting creditor autonomy while maintaining procedural fairness. However, critics argue that too much judicial deference may limit oversight in cases where creditor decisions disproportionately impact minority stakeholders.Evaluation of how these judgments have clarified or complicated liquidation procedures.

6. Comparative Perspective

Comparative analysis of liquidation frameworks in other countries offers valuable lessons for India. The United Kingdom's Insolvency Act 1986[29] outlines both compulsory and voluntary liquidation procedures, run mainly by liquidators under the supervision of insolvency practitioners. The UK's pre-pack administration model allows for the sale of assets before formal insolvency proceedings. This approach leads to faster recoveries and better preservation of value.

In a similar way, Singapore's Insolvency, Restructuring and Dissolution Act 2018 combines insolvency laws and focuses on mediation, digital filings, and professional regulation to improve efficiency. Both countries show that a creditor-driven yet transparent model can result in higher recovery rates and maintain business confidence.[30]

India could gain from adopting aspects of these frameworks, especially pre-packaged liquidation models and real-time digital monitoring, to reduce procedural delays and ensure effective coordination among stakeholders.

7. Findings

[25] IBBI, *Insolvency Professional Agency Report* (2024).
[26] *Swiss Ribbons Pvt Ltd v Union of India* (2019) 4 SCC 17.
[27] *ArcelorMittal India Pvt Ltd v Satish Kumar Gupta* (2018) 7 SCC 641.
[28] K Sashidhar v Indian Overseas Bank (2019) 12 SCC 150.
[29] *Insolvency Act 1986* (UK).
[30] *Insolvency, Restructuring and Dissolution Act 2018* (Singapore).

The analysis shows that liquidation is still a crucial legal protection. It helps dissolve failing companies fairly when revival is not possible. However, it mainly acts as a last resort option, rather than an effective resolution method. Despite changes made under the IBC, ongoing valuation problems, procedural delays, and institutional weaknesses prevent the best outcomes.

We need to strengthen the roles of liquidators and NCLT oversight. This can be achieved through better training, regular audits, and integrating digital tools to promote transparency and accountability. There is an urgent need for policy changes, improved training for insolvency professionals, and the introduction of pre-pack liquidation frameworks. These steps will help bring India's liquidation system in line with international standards.

Conclusion

Liquidation remains a vital component of India's corporate insolvency framework, serving as a legal remedy that ensures the orderly dissolution of financially distressed companies. The transition from the traditional winding-up system under the *Companies Act, 1956* to the modern framework under the *Insolvency and Bankruptcy Code (IBC), 2016* has significantly redefined the process—introducing transparency, accountability, and a time-bound approach. However, despite these advancements, the liquidation process continues to face several practical and procedural challenges.

Delays in completion, undervaluation of assets, lack of bidder interest, and limited professional capacity often undermine the objectives of fairness and efficiency envisioned by the IBC. While the Code emphasizes maximization of asset value and equitable distribution among creditors, the reality often falls short due to inadequate infrastructure and judicial backlog. Judicial precedents, such as *Swiss Ribbons Pvt. Ltd. v. Union of India (2019),* have reiterated that liquidation should be treated as a measure of last resort, emphasising resolution and revival wherever feasible.

Therefore, while liquidation serves as an effective legal safeguard against corporate default, its effectiveness as a remedy remains conditional on continuous reform, better institutional support, and strict adherence to statutory timelines.

Suggestions and Recommendations

- **Strengthening Institutional Capacity**:
  Enhance the efficiency of the *National Company Law Tribunal (NCLT)* by increasing the number of benches, improving case management systems, and ensuring timely adjudication of liquidation matters.

- **Enhancing Professional Standards:**
  Develop advanced training and accreditation programs for insolvency professionals to improve expertise in asset valuation, claims verification, and stakeholder communication.
- **Adoption of Technology and Digital Platforms:**
  Introduce online auction systems, centralized asset databases, and e-verification mechanisms to minimize human error, corruption, and procedural delays.
- **Encouraging Pre-Packaged Liquidation Models:**
  India could consider adopting pre-pack liquidation frameworks, similar to those in the UK and Singapore, allowing quicker realisation of assets through prior creditor consent and reduced litigation.
- **Improved Stakeholder Protection:**
  Strengthen mechanisms for protecting workmen, employees, and minority shareholders, ensuring equitable treatment in the distribution of liquidation proceeds as per *Section 53 of the IBC*.
- **Public Awareness and Transparency:**
  Mandate periodic public disclosures of liquidation progress, financial outcomes, and timelines by liquidators to enhance transparency and public confidence in the process.
- **Policy and Legislative Reforms:**
  Periodically review and update the *Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016* to address emerging challenges and align with international best practices.