

Paper - 9

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# Insolvency Laws and Practices

**Module-III**

CS Vaibhav Chitlangia



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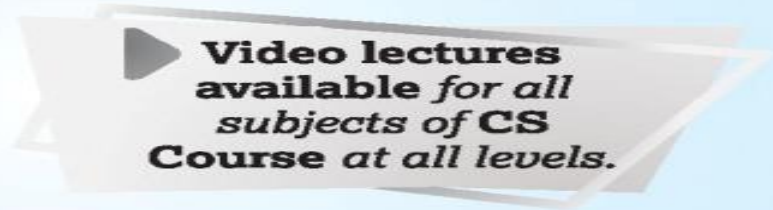
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# INSOLVENCY LAWS AND PRACTICES

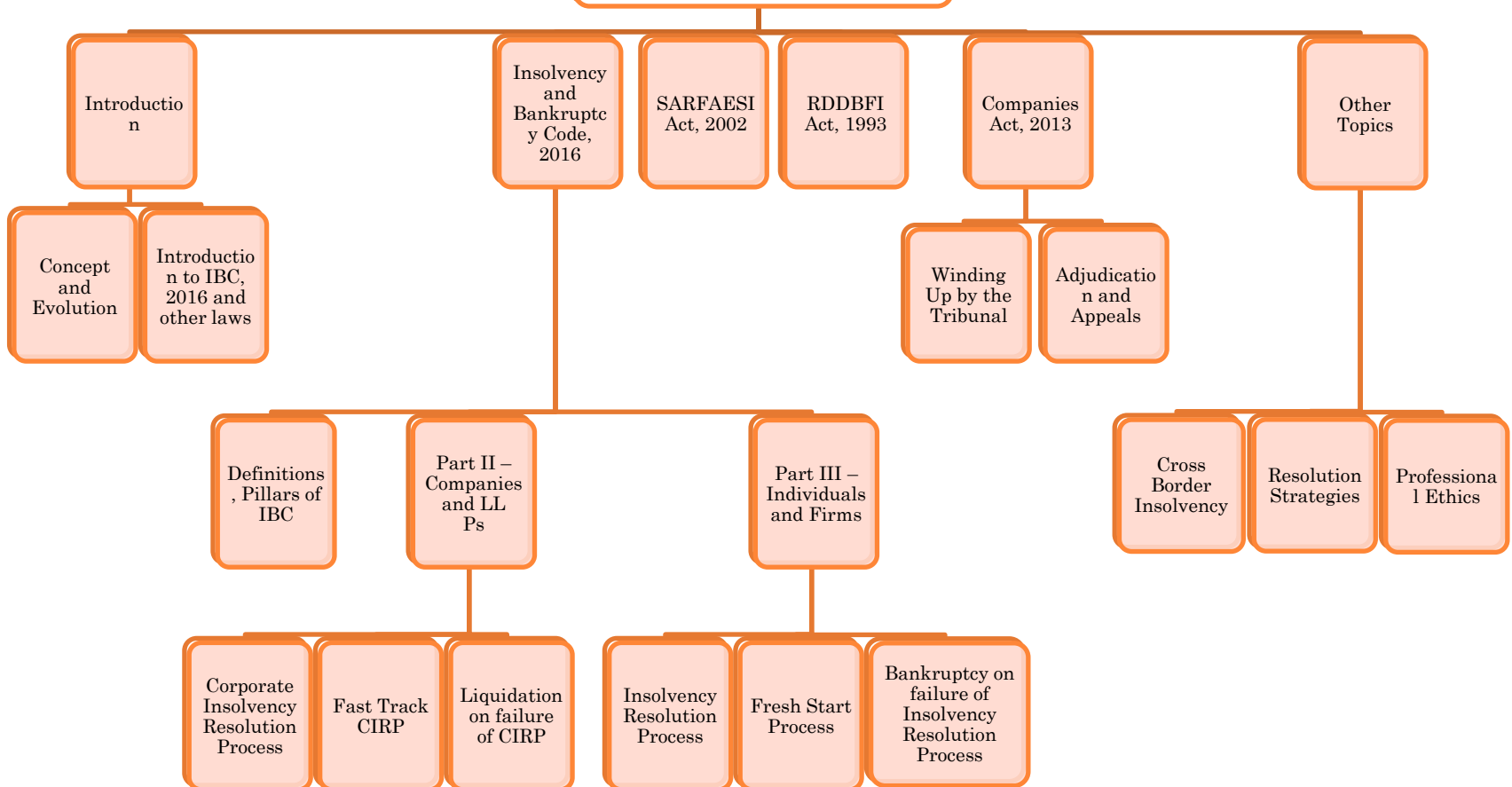
## MODULE III

### PAPER 9.8

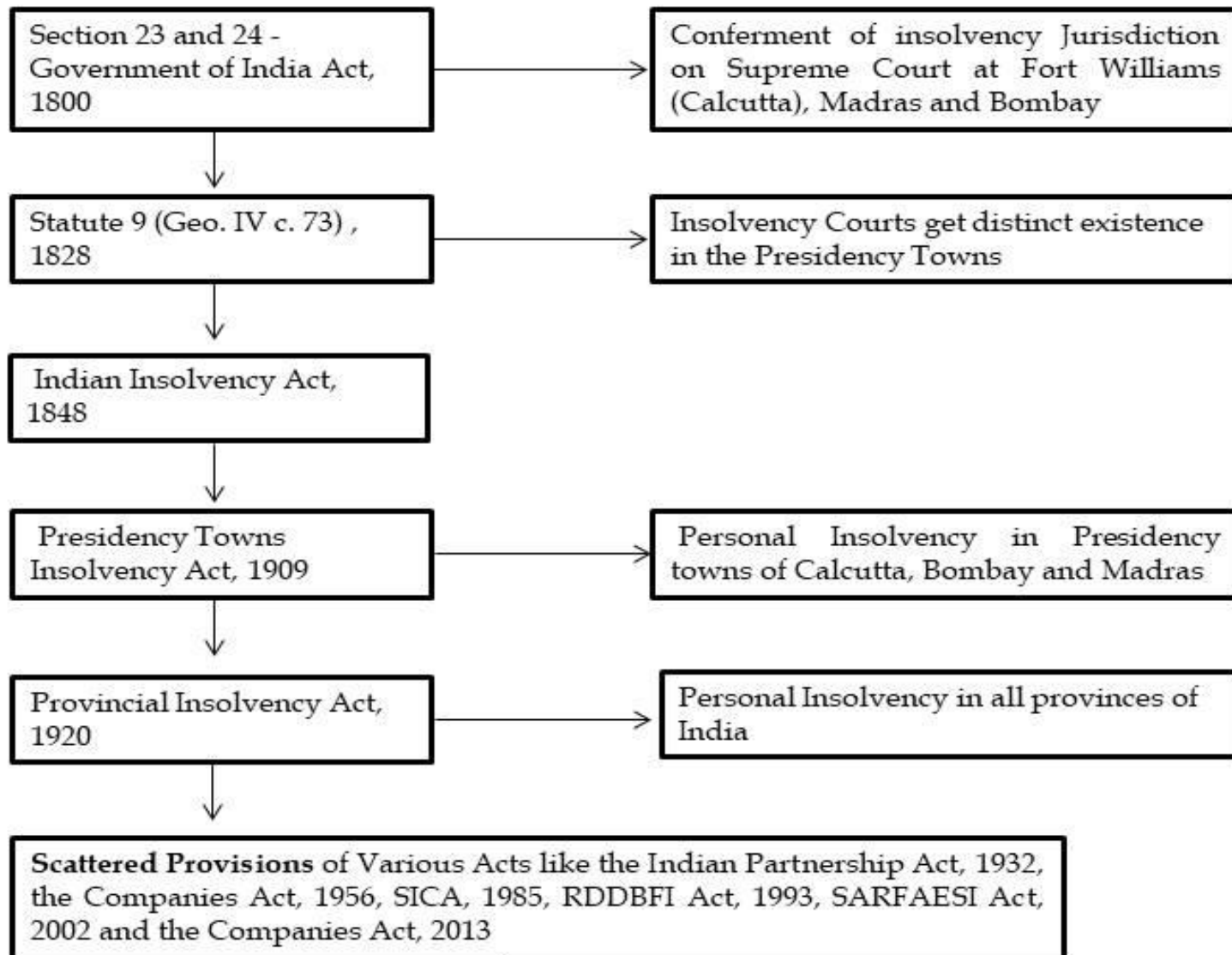
CS VAIBHAV CHITLANGIA



# Content



# Concept and Evolution



Q. Where does the Central Government derive its powers from to frame laws on Insolvency and Bankruptcy?

A. Under the Constitution of India 'Bankruptcy & Insolvency' is provided in Entry 9 List III - Concurrent List, (Article 246 –Seventh Schedule to the Constitution) i.e. both Center and State Governments can make laws relating to this subject.

Q. Where were the major laws governing Insolvency and Bankruptcy in India prior to the beginning of the 21<sup>st</sup> Century?

A. Companies Act, 1956, relating to winding up of companies.  
The Sick Industrial Companies (Special Provisions) Act, 1985.





## Government Committees On Bankruptcy Reforms

Committee	Year	Recommendation
Tiwari Committee	1981	Enactment of the Sick Industrial Companies (Special Provisions) Act, 1985, (SICA)
Narsimha Committee I	1991	Enactment of the Recovery of Debts Due to Banks and Financial Institutions (RDDBFI) Act, 1993
Narsimha Committee II	1998	Enactment of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI), 2002
Justice Eradi Committee	1999	Recommended setting up of a National Company Law Tribunal (NCLT)
J J Irani Committee	2005	Proposed significant changes to make the restructuring and liquidation process speedier, efficient and effective and accordingly amendments were made to (RDDBFI) Act, 1993 and (SARFAESI), 2002
Bankruptcy Law Reform Committee	2014	Reviewed the existing bankruptcy and insolvency framework in the country and proposed the enactment of Insolvency and Bankruptcy Code as a uniform and comprehensive legislation on the subject

## Justice Eradi Committee - 1999

### ➤ Aim –

To examine and make recommendations with regard to the desirability of changes in existing law relating to winding up of companies so as to achieve more transparency and avoid delays in the final liquidation of the companies

### ➤ Recommendations–

- ✓ That considering international practices, the law of insolvency should not only provide for quick disposal of assets but in Indian economic scene, it should first look at the possibilities of rehabilitation and revival of companies.
- ✓ That the jurisdiction, power and authority relating to winding up of companies should be vested in a National Company Law Tribunal instead of the High Court as at present.
- ✓ Appointment of people who are members of ICAI, ICSI, ICWAI, Bar Councils or corporate managers who are well versed in Corporate management as Insolvency Professionals



## J J Irani Committee- 2005

## ➤ Recommendations–

- ✓ That Insolvency Tribunal should have a general, non-intrusive and supervisory role in the rehabilitation and liquidation process.
- ✓ That selection of President and Members of the Tribunal should be such so as to enable a wide mix of expertise for conduct of its work
- ✓ That laws should prescribe an adequate qualification criterion for appointment to the Tribunal as well as training and continuing education for judges/members.
- ✓ That Rules should be made in such way that ensure ready access to court records, court hearings, debtors and financial data and other public information.
- ✓ That standards to measure the competence, performance and services of the Tribunal should be framed and adopted so that proper evaluation is done and further improvements can be suggested.
- ✓ That the Tribunal should have clear authority and effective methods of enforcing its judgments.

➤ Aim –

To develop an entrepreneur friendly legal bankruptcy framework for SMEs to enable easy exit.

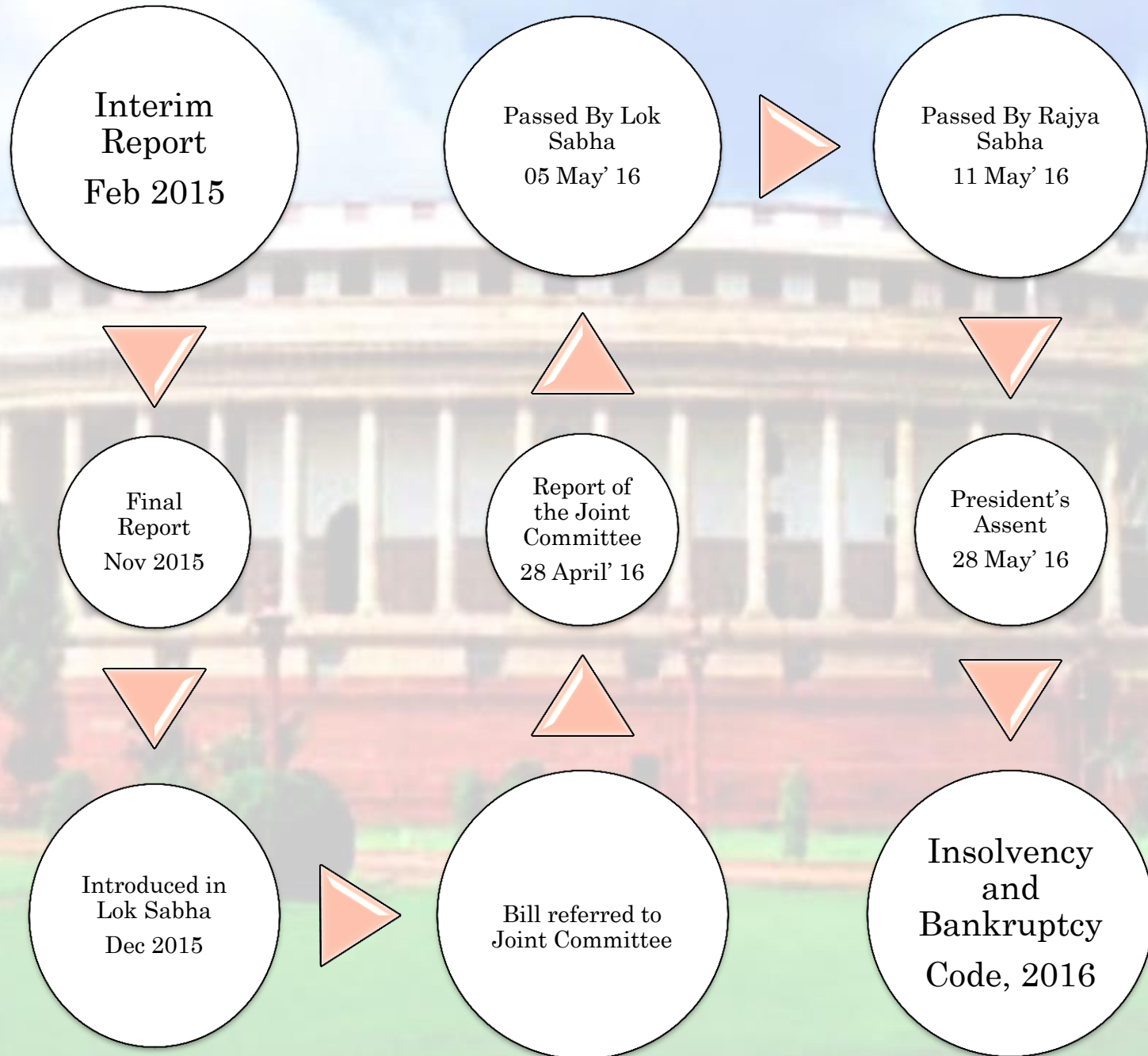
To resolve insolvency with: lesser time involved, lesser loss in recovery, and higher levels of debt financing across instruments

➤ Recommendations–

- ✓ Consolidation of the existing legal framework, by repealing two laws and amending six others.
- ✓ Establishment of a creditors' committee, where the financial creditors will have votes in proportion to their magnitude of debt
- ✓ A process which may be initiated by both, the debtor or the creditors.
- ✓ Proposal to allow the operational creditors, such as employees whose salaries are due, to initiate the insolvency resolution process.
- ✓ Management of the process by a licensed insolvency professional.

- ✓ Management and control of the assets of the debtor to vest with the Insolvency Professional in order to ensure that they are protected, while the negotiations take place.
- ✓ Setting up of Insolvency Professional Agencies.
- ✓ Provision for speedy insolvency resolution and time bound negotiations between creditors and the debtors.
- ✓ Establishment of information utilities to maintain a range of information about firms, and thus avoid delays in the IRP typically caused by a lack of data
- ✓ Establishment of the Insolvency and Bankruptcy Board of India as the regulator, to maintain oversight over insolvency resolution in the country







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**CS Vaibhav Chitlangia** is one of the very few people to have completed the Company Secretary Course at the age of 21 with All India Ranks at all the three levels. He got the All India Rank 15 in Foundation Programme (June 2016), All India Rank 22 in Executive Programme (June 2017) and All India Rank 04 in the Professional Programme (June 2018).

Vaibhav's interests include Mergers and Amalgamations, Competition Laws and Insolvency and Bankruptcy Code, amongst others. He also has prior experience in teaching subjects like Corporate Restructuring and Resolution of Corporate Disputes to the students of CS Professional Programme. He believes that

*"the only impediment in the path of success is a person's own mind; if that is controlled, every feat is achievable"*