

A Critical Study on Winding of the Companies Under Company Law and IBC Act

Hema Priya R and Sharuk B

LLM (Corporate Law), 2nd Year

Hindustan Institute of Technology and Science, Chennai, India

hemashini97@gmail.com and sharuk11092000@gmail.com

Abstract: *The process of winding up a company refers to the legal procedure by which a company ceases operations, its assets are liquidated, liabilities are settled, and the company is formally dissolved. Winding up can be initiated voluntarily by shareholders or mandatorily through legal proceedings. In India, company winding-up provisions are primarily governed by the Companies Act, 2013 and the Insolvency and Bankruptcy Code (IBC), 2016. The Companies Act, 2013, under Sections 270 to 365, governs the traditional process of winding up, detailing both voluntary and compulsory winding-up procedures. Voluntary winding-up occurs when the members or creditors decide to close the company, either because the purpose of the company has been fulfilled or because it is no longer viable. Compulsory winding-up, on the other hand, is ordered by the tribunal, often initiated by creditors, shareholders, or the government when the company is insolvent or has acted against public interest. The IBC, enacted in 2016, introduced a more streamlined mechanism for dealing with insolvency and winding-up. It aims to consolidate and amend laws relating to reorganization and insolvency resolution in a time-bound manner. Under the IBC, a company can be wound up through a Corporate Insolvency Resolution Process (CIRP) if it is unable to pay its debts. If the resolution process fails, liquidation proceedings begin under Section 33 of the IBC, leading to the company's dissolution. The IBC prioritizes creditors' rights and ensures a systematic and time-bound recovery of debts. The integration of the IBC with existing company law has significantly improved the efficiency and speed of insolvency processes in India. While the Companies Act provides for both voluntary and tribunal-ordered winding up, the IBC emphasizes revival over dissolution, making liquidation the last resort after all efforts for revival through resolution fail. This abstract highlights the critical aspects of winding up companies under the legal framework of India, focusing on the roles and provisions of both the Companies Act, 2013, and the IBC, 2016. The synergy between these laws has significantly transformed the corporate insolvency landscape, fostering more efficient, creditor-centric resolution mechanisms.*

Keywords: The Companies Act,,2013,Insolvency and bankruptcy code(IBC),Voluntary, Winding up

I. INTRODUCTION

Winding up of companies is a legal procedure aimed at bringing a company's operations to a formal end, with its assets being liquidated and distributed to pay off debts and liabilities. This process becomes necessary when a company is unable to meet its financial obligations or has reached a point where it can no longer continue its business operations. In India, the laws governing the winding up of companies have evolved significantly, primarily through two legislative frameworks: the Companies Act, 2013, and the Insolvency and Bankruptcy Code (IBC), 2016. Both laws provide mechanisms for the dissolution of companies, but with differing approaches, timelines, and objectives.

Winding Up under the Companies Act, 2013

The Companies Act, 2013, governs various aspects of corporate governance, including the winding-up of companies. It provides for two types of winding-up: voluntary winding-up, which is initiated by the company's members or creditors, and compulsory winding-up, which is initiated by a court order, usually upon a petition filed by creditors. The Act outlines detailed procedures for settling debts, distributing assets, and dissolving the company. However, the winding-



up process under the Companies Act has long been criticized for its inefficiency and delays, often leading to long-drawn-out legal proceedings. The involvement of courts, coupled with procedural complexities, meant that creditors often faced significant delays in recovering their dues, and companies could languish in the winding-up process for years.

The Emergence of the Insolvency and Bankruptcy Code (IBC), 2016

In response to these challenges, the Insolvency and Bankruptcy Code (IBC) was introduced in 2016 to overhaul India's insolvency framework and create a more efficient and time-bound process for the resolution of corporate insolvency. The IBC shifts the focus from traditional liquidation under the Companies Act to a more dynamic, creditor-driven process. Its primary aim is to resolve insolvency and revive financially distressed companies, and only when resolution is not possible does liquidation become the final resort. The Corporate Insolvency Resolution Process (CIRP) under the IBC allows creditors to assess the viability of a company and decide whether it should be revived or liquidated.

One of the IBC's major strengths is the creation of the National Company Law Tribunal (NCLT), which oversees insolvency proceedings and ensures that cases are resolved within a stipulated time frame of 180 to 270 days. The IBC has significantly streamlined the insolvency process, reducing delays, and providing a framework for quicker recovery for creditors. Additionally, the IBC gives financial creditors more control over the insolvency process through the Committee of Creditors (CoC), which plays a central role in approving resolution plans.

Key Differences and Impact

While both the Companies Act and the IBC provide mechanisms for the winding-up of companies, the IBC has proven to be far more efficient in resolving insolvency cases. The Companies Act focuses on the formal winding-up of companies, often after they have become financially unviable, while the IBC is designed to rescue and revive companies before they reach that stage. The time-bound nature of the IBC is a key differentiator, offering a much faster resolution process compared to the lengthy procedures under the Companies Act. Furthermore, the IBC gives creditors, especially financial creditors, greater power in decision-making, ensuring that the interests of the creditors are prioritized.

The introduction of the IBC has also had a positive impact on the ease of doing business in India by improving corporate transparency and reducing the risk associated with delayed insolvency proceedings. It has brought about a cultural shift in India's corporate landscape, emphasizing the importance of responsible financial management and timely resolution of insolvency.

OBJECTIVES:

1. To ensure an orderly closer and distribution of the company's assets.
2. To protect all the parties or stakeholders involved in a consumer proposal or bankruptcy.
3. The IBC aims to preserve and enhance the economic value of a distressed company's assets to benefit all stakeholders.

II. REVIEW OF LITERATURE

Avtar Singh (2012) – Company Law In his book, Avtar Singh discusses the winding-up process under the Companies Act, highlighting its inefficiencies and procedural delays. He notes that while the Act provided a legal framework, it often led to prolonged litigation, which eroded the value of company assets. **Balakrishna (2015)** Balakrishna explores the differences in voluntary and compulsory winding-up procedures under the Companies Act and compares these processes to global practices, emphasizing the need for reforms that streamline the Indian framework. **Sangeeta Sharma (2017)** Sharma provides an in-depth analysis of the National Company Law Tribunal (NCLT) and its role in expediting winding-up cases. She highlights both the advantages and the limitations of the tribunal system under the Companies Act. **Rajesh Mehta (2020)** A Paradigm Shift Mehta compares the traditional company law-based winding-up mechanism with the IBC, focusing on the shift from liquidation to resolution. His study finds that the IBC has significantly reduced the timeline and increased creditor recoveries compared to the previous system. **Ravi Kumar and**



S. Mishra (2018) This paper focuses on the corporate insolvency resolution process (CIRP) under the IBC, emphasizing the IBC's objective of corporate revival rather than liquidation. The authors examine the benefits of the time-bound process and the role of the Committee of Creditors (CoC) in decision-making.

Shyam Singh (2019) An Empirical Study Singh empirically studies the impact of the IBC on corporate liquidation, finding that the time-bound nature of the process has improved the recovery rates for creditors. The study highlights how the CIRP often results in a better financial outcome than direct liquidation.

R. Kaushik (2020) Kaushik explores the shift in control from company management to creditors during insolvency under the IBC. His paper discusses how the Committee of Creditors (CoC) plays a decisive role in the company's restructuring or liquidation, marking a significant shift from the Companies Act.

Bhagwan Das and P. Sharma (2021) This paper discusses the challenges faced in the implementation of the IBC, such as the workload of insolvency professionals, inconsistent tribunal decisions, and difficulties in maximizing asset value. It also provides suggestions for improving the IBC framework.

Kumar and Sengupta (2022) Kumar and Sengupta discuss the positive impact of the IBC on India's corporate governance and business environment. They highlight how the IBC has improved investor confidence and positioned India as a more attractive destination for foreign investment by ensuring quicker debt recovery.

Arun Tiwari (2019) Tiwari's paper examines the liquidation process under the IBC, focusing on the distribution waterfall for prioritizing creditors. He finds that the IBC's defined structure has improved transparency and fairness in liquidating companies' assets.

P. Jaiswal (2018) – Impact of Insolvency and Bankruptcy Code on Winding Up of Companies in India Jaiswal's study evaluates the effect of the IBC on the winding-up process in India. He argues that the IBC has significantly streamlined the liquidation process, making it quicker and more efficient, benefiting creditors and stakeholders.

A. Gupta (2020) – Challenges Faced by Insolvency Professionals in IBC Cases Gupta analyzes the role of insolvency professionals in the IBC process and the challenges they face, including a lack of resources, inconsistent judicial interpretations, and managing large-scale liquidations.

M. Chatterjee (2019) – Role of Creditors in Corporate Insolvency Resolution: A Case Study of the IBC Chatterjee studies the role of creditors, particularly financial creditors, in shaping corporate insolvency resolutions. His research suggests that creditor empowerment under the IBC has led to faster and more effective resolution plans compared to the old regime.

S. Rao (2021) – IBC vs Companies Act: A Comparative Study on Winding Up of Companies Rao's paper compares the IBC and Companies Act with respect to the winding-up process, focusing on how the IBC's insolvency resolution mechanisms provide more structured and time-efficient alternatives to the liquidation-driven approach of the Companies Act.

D. Banerjee (2020) – Evaluating the Efficiency of the Insolvency and Bankruptcy Code in Corporate Winding Up Banerjee evaluates the efficiency of the IBC in handling insolvency cases, noting that the Code has led to faster resolutions, reduced litigations, and improved recovery rates for creditors.

S. Mukherjee (2018) – Corporate Liquidation Process: Learning from IBC's Initial Successes Mukherjee discusses the initial successes of the IBC, particularly its impact on reducing delays in the liquidation process. He emphasizes the role of NCLT and insolvency professionals in ensuring the smooth winding up of distressed companies.

Rajeev Jain (2017) – Winding Up of Companies: A Shift from Companies Act to IBC Jain traces the historical development of winding-up laws in India, focusing on the transition from the Companies Act to the IBC. He notes that the IBC's creditor-driven approach has led to better financial outcomes for insolvent companies.

S. Sharma (2021) – Challenges in Liquidation under the Insolvency and Bankruptcy Code: A Legal Perspective Sharma examines the legal challenges that arise during the liquidation process under the IBC. She suggests reforms that could help streamline court interventions and improve liquidation efficiency.

A. Sinha (2020) – Resolving Insolvency through IBC: Efficiency and Gaps in Implementation Sinha discusses the efficiency of the IBC in resolving insolvency cases, with a focus on CIRP. He identifies gaps in the implementation of the law, such as procedural inconsistencies and the need for a more robust framework for operational creditors.

G. Srinivasan (2019) – Impact of IBC on Winding Up of Companies: Case Law Review Srinivasan reviews case laws under the IBC, highlighting how judicial interpretations have shaped the IBC's implementation. He discusses how landmark rulings have clarified the rights of creditors and stakeholders during the winding-up process.

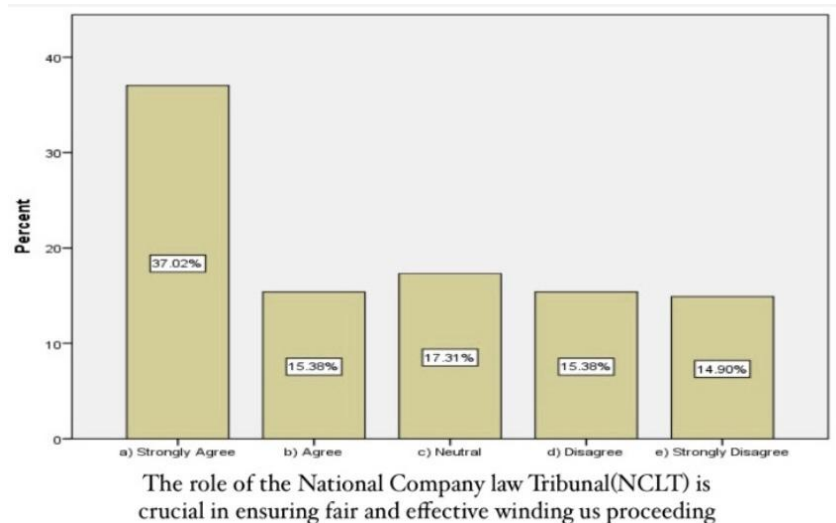


III. METHODOLOGY

The research method followed is descriptive research. The data is collected through a questionnaire and sample size is 200. Convenience Sampling method is adopted in the study to collect data. The samples were collected from the public with special reference to the chennai region. The independent variables are gender, age, education qualification, occupation, marital status of the respondent. The researcher used graphs to analyze the data collection.

IV. ANALYSIS

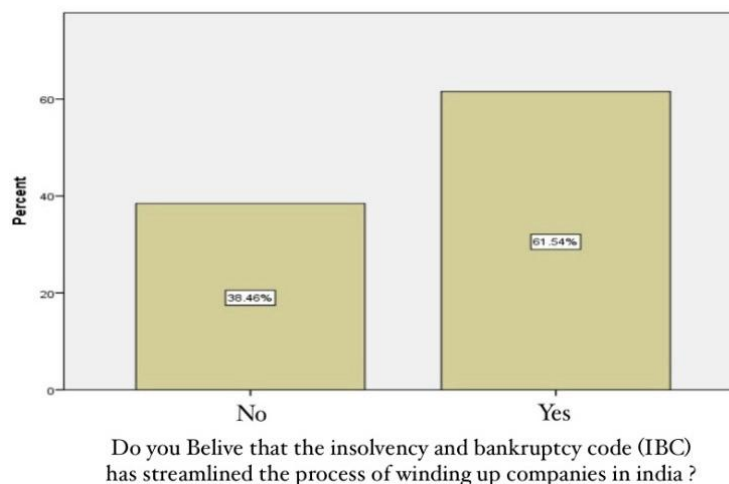
FIG 1.



LEGEND:

This graph say about the role of the national company law tribunal(NCLT) is crucial in ensuring fair and effective winding up proceeding.

FIG 2:

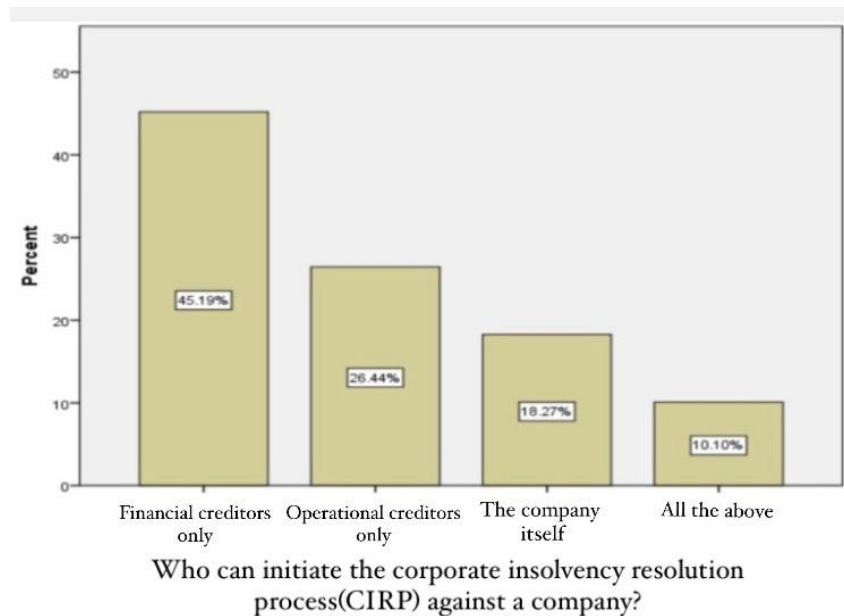


LEGEND:

This graph says that fo you believe that the insolvency and bankruptcy code(IBC) has streamlined the process of winding up companies in india



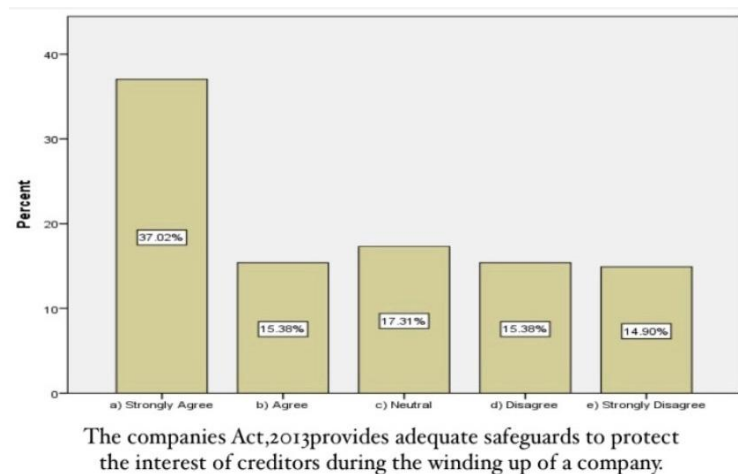
FIG 3:



LEGEND:

The graph represents that who can initiate insolvency resolution process(CIRP)against a company.

FIG 4:

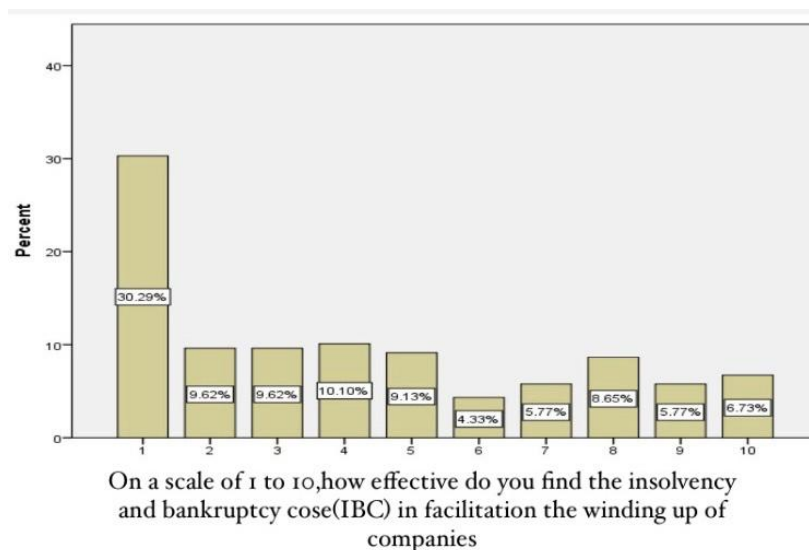


LEGEND:

The graph says that the companies act,2013 provides adequate safeguards to protect the interest of creditors during the winding up of the companies.



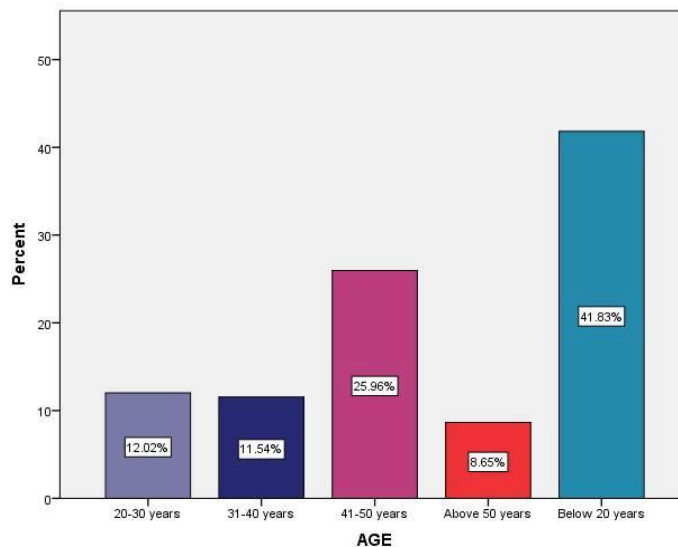
FIG 5:



LEGEND:

This graph says On a scale of 1 to 10 how effective do you find the insolvency and bankruptcy code (IBC), in facilitating the winding up of companies.

FIG 6:

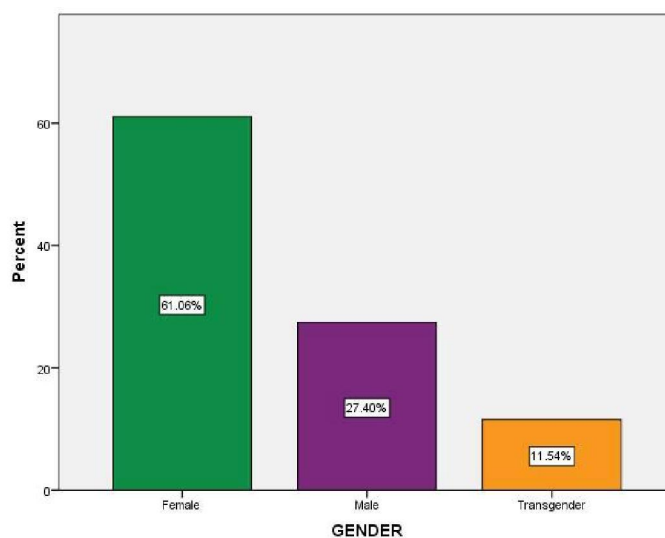


LEGEND:

The graph shows the age distribution of the respondents.



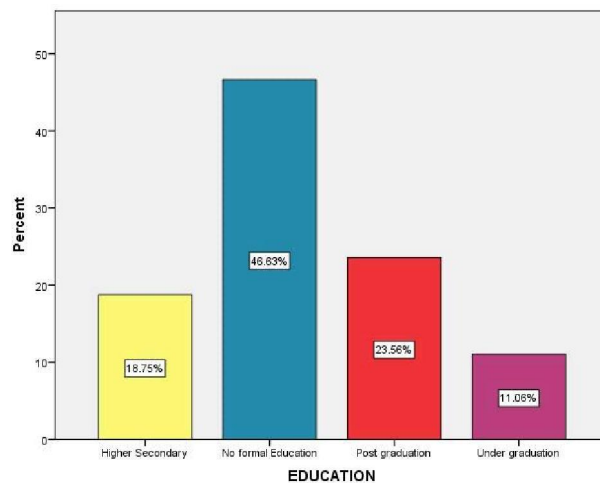
FIG 7.



LEGEND:

The graph shows the Gender group of the respondents.

FIG 8:

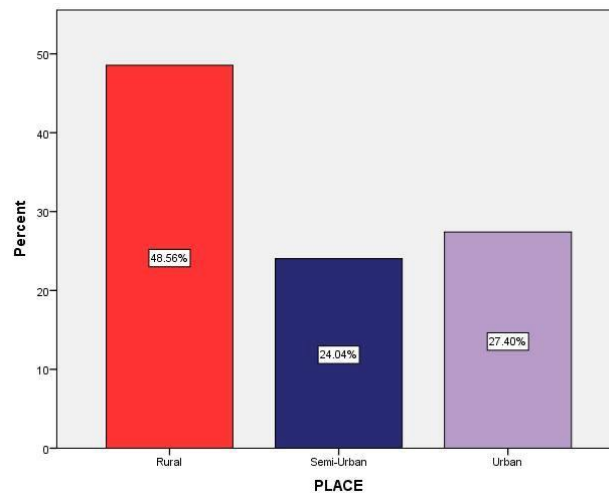


LEGEND:

The graph shows the education qualification of the respondents.



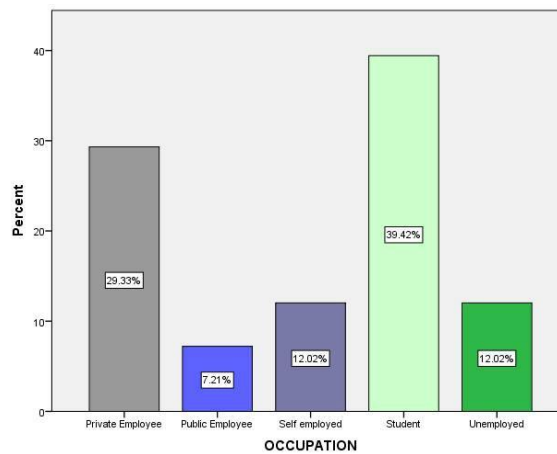
FIG 9.



LEGEND:

The graph shows the place of living of the respondents.

FIG 10:



LEGEND:

The graph shows the occupation of the respondents.



V. RESULT

This graph say about the role of the national company law tribunal(NCLT) is crucial in ensuring fair and effective winding up proceedings.Here the most of the respondents are strongly agreed(**Fig 1.**) This graph says that fo you belive that the insolvency and bankruptcy code(IBC) has streamlined the process of winding up companies in india.Here the most of the respondents have said yes.(**Fig 2.**)The graph represents that who can initiate insolvency resolution process(CIRP)against a company.Here the most of the respondents are said Financial creditors only.(**Fig 3.**)The graph says that the companies act,2013 provides adequate safeguards to protect the interest of creditors during the winding up of the companies.Here the most of the respondents are strongly agreed.(**Fig 4.**)This graph says On a scale of 1to 10 how effective do you find the insolvency and bankruptcy code (IBC), in facilitation the winding up of companies.The most of the respondents have rated 1.(**Fig 5**) The graph shows the Gender group of the respondents.(**Fig 6.**)The graph shows the Gender group of the respondents.(**Fig 7.**)The graph shows the education qualification of the respondents.(**Fig 8.**)The graph shows the place of living of the respondents.(**FIG 9**).The graph shows the occupation of the respondents.(**FIG 10.**).

VI. DISCUSSION

According to the graph, the majority of respondents have strongly agreed that the NCLT plays a crucial role in ensuring a fair and effective winding-up process. This positive perception indicates broad support for the NCLT's functioning and highlights several aspects of its role(**Fig 1.**)The graph reflects a significant consensus among respondents that the Insolvency and Bankruptcy Code (IBC) has streamlined the process of winding up companies in India, with the majority answering "yes." This suggests a broad belief that the IBC has succeeded in its primary objective of creating a more efficient and structured framework for resolving insolvency and liquidation issues.(**Fig 2.**)The graph reflects the perception that the Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code (IBC) can only be initiated by financial creditors, as the majority of respondents have indicated. While this belief aligns partially with the actual provisions of the IBC, it is not entirely accurate, as other categories of stakeholders also have the right to initiate the CIRP.(**Fig 3.**)The graph reflects that the majority of respondents have strongly agreed that the Companies Act, 2013 provides adequate safeguards to protect the interests of creditors during the winding-up process of companies.(**Fig 4.**)The overwhelmingly low rating for the effectiveness of the IBC in facilitating the winding-up of companies, as reflected by most respondents scoring it a "1," suggests significant dissatisfaction with the law's implementation in practice. Issues such as delays at NCLT, low recovery rates, litigation, and a lack of adequate infrastructure have contributed to this negative perception.(**Fig 5.**)The graph shows the Gender group of the respondents.(**Fig 6.**)The graph shows the Gender group of the respondents.(**Fig 7.**)The graph shows the education qualification of the respondents.(**Fig 8.**)The graph shows the place of living of the respondents.(**FIG 9**).The graph shows the occupation of the respondents.(**FIG 10.**).

LIMITATION

One of the major limitations of the study in the sample frame. There is a major constraint in the sample frame as it is limited to a small area. Thus, it proves to be difficult to extrapolate it to a larger population. Another limitation is the sample size of 200 which cannot be used to assume the thinking of the entire population in a particular country, state, or city.The study's capacity to offer reliable and useful results was greatly impeded by the study's small sample size in comparison to the size of the population. As a result, it cannot be expected to be representative, and so no broad conclusions can be drawn. Language limitations prevented the most efficient translations of the questionnaire, which might have influenced understandings on both the author's and respondent's sides.

SUGGESTION

To improve the winding-up process of companies under the Companies Act, 2013 and the Insolvency and Bankruptcy Code (IBC), 2016, several measures can be implemented. First, the infrastructure and capacity of the National Company Law Tribunal (NCLT) need to be strengthened, as delays often arise from overburdened courts. Introducing more pre-packaged insolvency resolutions for all companies, not just MSMEs, can help speed up the process.



Additionally, stricter adherence to the time limits set by the IBC would enhance efficiency. It is also important to improve stakeholder awareness, particularly for operational creditors, so they can actively participate in the resolution process. Revisiting liquidation preferences to ensure a more equitable distribution of assets among financial and operational creditors would promote fairness. Finally, simplifying procedures for small businesses and MSMEs and implementing better safeguards for operational creditors would help create a more balanced and effective winding-up framework.

VII. CONCLUSION

In conclusion, the winding up of companies under the Companies Act, 2013, and the Insolvency and Bankruptcy Code (IBC), 2016 reflects two distinct approaches to resolving corporate distress in India. The Companies Act provides a traditional framework for liquidation, but its processes have often been criticized for delays and inefficiencies. In contrast, the IBC was introduced to address these shortcomings by offering a more streamlined, time-bound, and creditor-focused mechanism for insolvency resolution. While the IBC has significantly improved the speed and efficiency of winding-up procedures and has empowered creditors through the National Company Law Tribunal (NCLT), challenges such as procedural delays, the capacity of the NCLT, and equitable treatment of all creditors remain. Moving forward, further reforms and enhancements to both frameworks, including improved infrastructure, stricter adherence to timelines, and better safeguards for stakeholders, are essential to achieving a more effective and fair insolvency and liquidation process in India.

