

**INSOLVENCY  
LAWS &  
PRACTICES**

**CS Vaibhav Chitlangia**





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## SANDESH



**CS Vikas Vohra    CA CS Harish A. Mathariya**

Welcome to YES Family!!

To begin with, we endorse our heartfelt thank you for showing your trust and confidence in YES Academy. We take pride to welcome you to this prestigious Academy, foundations of which are based on commitment, quality education and integrity. It has been our constant endeavour to deliver better and better. In our attempt to achieve mark of excellence and beyond, we would be even more grateful to have received your continued faith and love. We assure you, your trust will not go in vain and as reflected by our Vision Statement, we would continue to produce Best Company Secretaries as we have been doing for almost a decade now.

Combined experience of Team YES is 40 years+ and adding value each day. We have delivered outstanding results in the past with a bouquet of All India Rankers at all the levels of CS Course and with your efforts, we are confident, we will grow together.

Student convenience has always occupied a centre place at YES Academy and we strive to improve ourselves each day as we sincerely believe that improvement always has its own space, no matter what. Any suggestions from you are always welcome. Though Team shares a very good rapport with all of its students and the students feel very comfortable talking to any of their Teachers, still, if you wish to send us a suggestion, please feel free to write to us [yesacademypune@gmail.com](mailto:yesacademypune@gmail.com) or get in touch with us at 8888 235 235/ 8888 545 545.

We assure you the best of success and pride. And yes, its not just a bond of 3 years of your term, but a relationship for life now. We welcome you in advance to this prestigious course of Company Secretaries.

On behalf of **TEAM YES**

**CS Vikas Vohra    CA CS Harish A. Mathariya**  
**Founders**

# INSOLVENCY LAWS AND PRACTICES

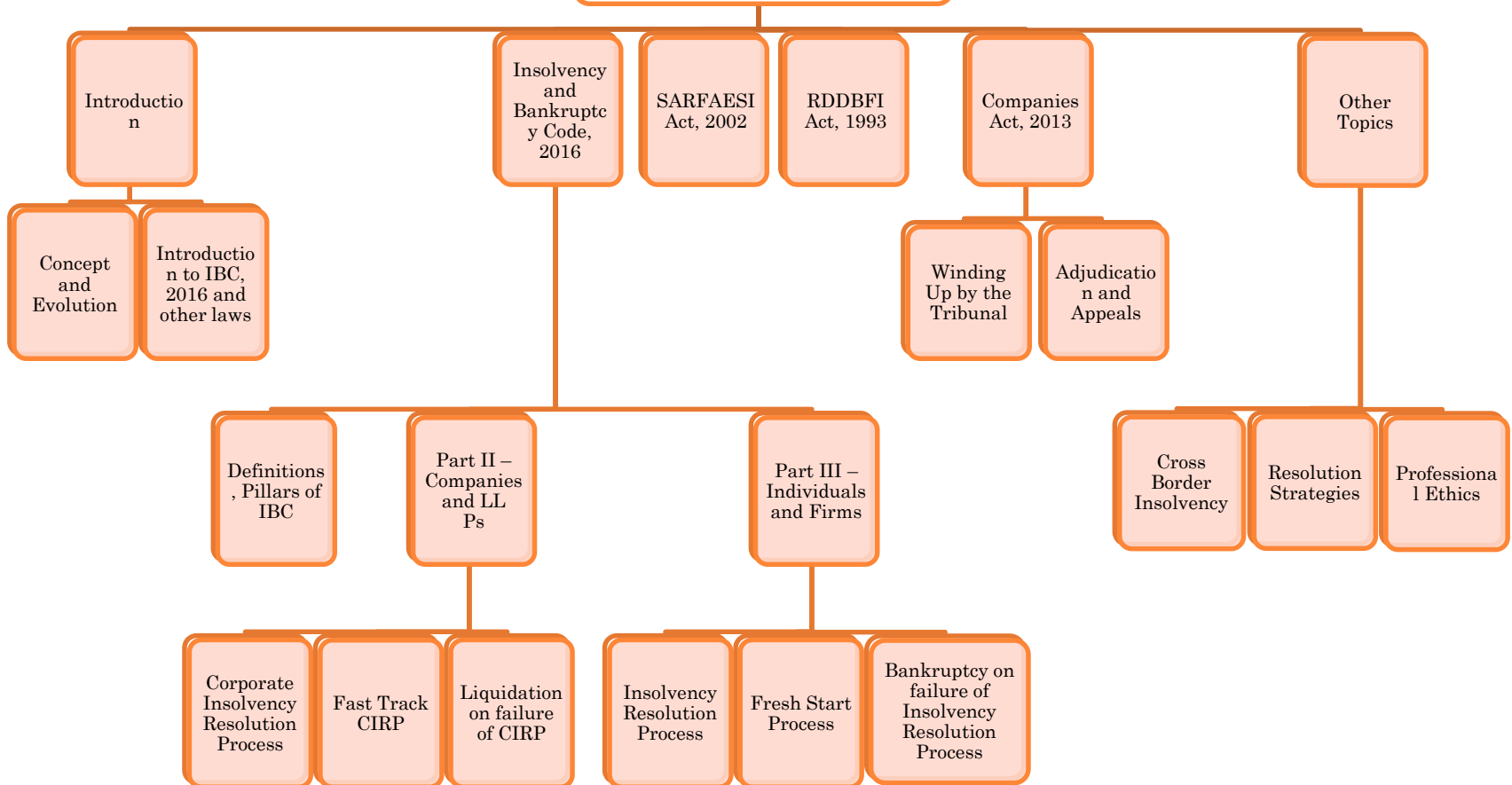
## MODULE III

### PAPER 9.8

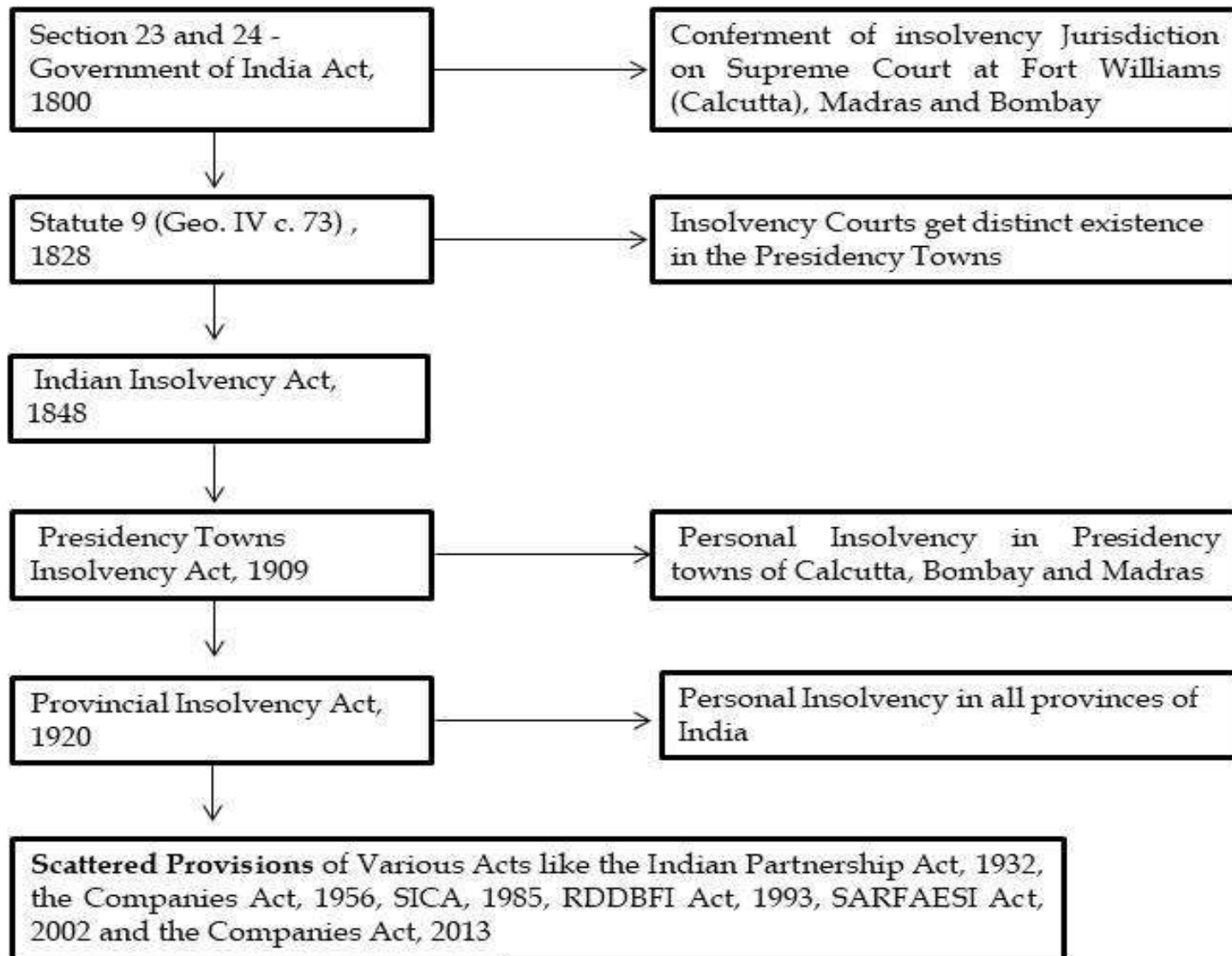
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# Content



# 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

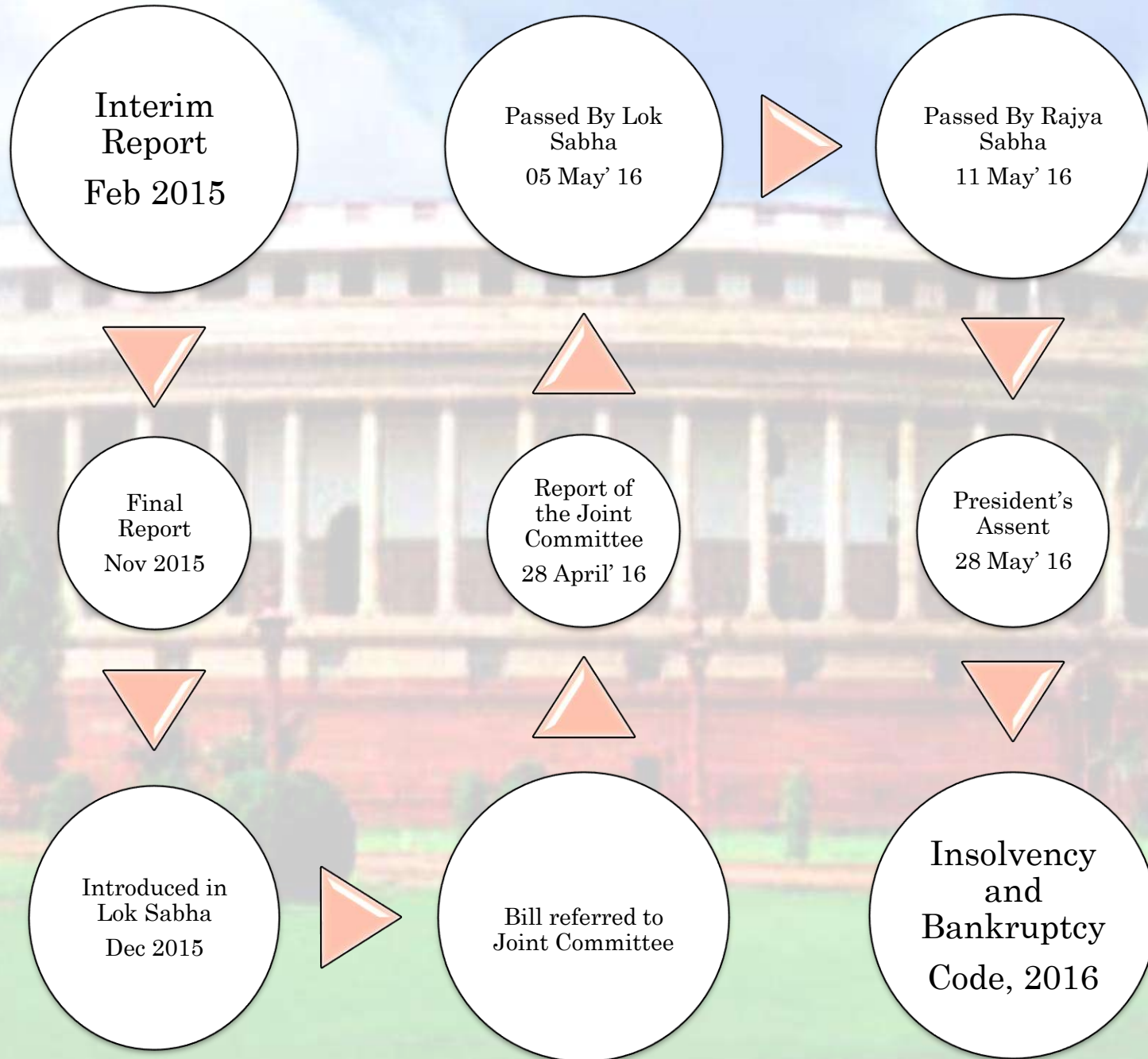
➤ Recommendations–

- ✓ 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





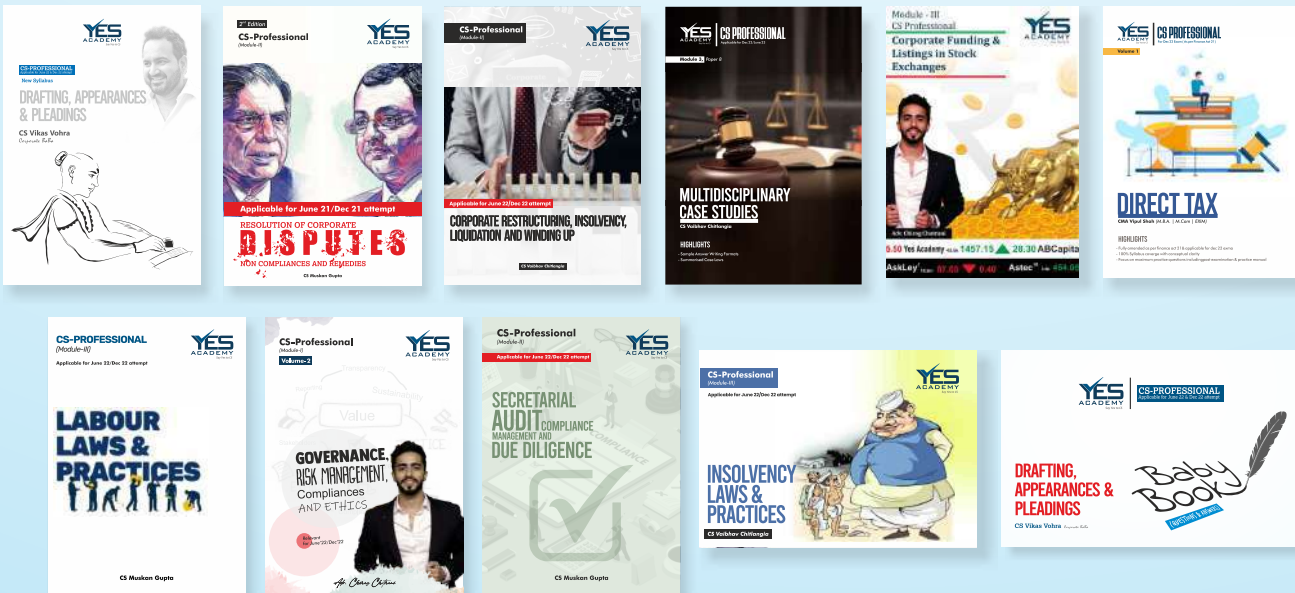


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**CS Vaibhav Chitlangia**

**CS Vaibhav Chitlangia** is a law graduate from ILS Law College, Pune and a Company Secretary with All India Ranks at all the three levels. He got 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 has an experience of working with one of India's best law firms for over 1.5 years where he dealt with the practical implications of corporate laws. He has also been guiding company secretary students since 2018 and has had an opportunity of teaching a number of students from across the country. His 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 mindset; if that is controlled, every feat is achievable"