

The background of the journal cover features a top-down view of a desk. On the left, a pair of black leather brogue shoes is partially visible. In the center, an open notebook with lined pages and a silver pen lies on a light-colored wooden surface. To the right, a black leather bag with a zipper and a black leather watch with a silver face are also visible. A large, semi-transparent white rectangular box is centered over the image, containing the journal's title and ISSN information.

INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, translated, or distributed in any form or by any means—whether electronic, mechanical, photocopying, recording, scanning, or otherwise—without the prior written permission of the Editor-in-Chief of *White Black Legal – The Law Journal*.

All copyrights in the articles published in this journal vest with *White Black Legal – The Law Journal*, unless otherwise expressly stated. Authors are solely responsible for the originality, authenticity, accuracy, and legality of the content submitted and published.

The views, opinions, interpretations, and conclusions expressed in the articles are exclusively those of the respective authors. They do not represent or reflect the views of the Editorial Board, Editors, Reviewers, Advisors, Publisher, or Management of *White Black Legal*.

While reasonable efforts are made to ensure academic quality and accuracy through editorial and peer-review processes, *White Black Legal* makes no representations or warranties, express or implied, regarding the completeness, accuracy, reliability, or suitability of the content published. The journal shall not be liable for any errors, omissions, inaccuracies, or consequences arising from the use, interpretation, or reliance upon the information contained in this publication.

The content published in this journal is intended solely for academic and informational purposes and shall not be construed as legal advice, professional advice, or legal opinion. *White Black Legal* expressly disclaims all liability for any loss, damage, claim, or legal consequence arising directly or indirectly from the use of any material published herein.

ABOUT WHITE BLACK LEGAL

White Black Legal – The Law Journal is an open-access, peer-reviewed, and refereed legal journal established to provide a scholarly platform for the examination and discussion of contemporary legal issues. The journal is dedicated to encouraging rigorous legal research, critical analysis, and informed academic discourse across diverse fields of law.

The journal invites contributions from law students, researchers, academicians, legal practitioners, and policy scholars. By facilitating engagement between emerging scholars and experienced legal professionals, *White Black Legal* seeks to bridge theoretical legal research with practical, institutional, and societal perspectives.

In a rapidly evolving social, economic, and technological environment, the journal endeavours to examine the changing role of law and its impact on governance, justice systems, and society. *White Black Legal* remains committed to academic integrity, ethical research practices, and the dissemination of accessible legal scholarship to a global readership.

AIM & SCOPE

The aim of *White Black Legal – The Law Journal* is to promote excellence in legal research and to provide a credible academic forum for the analysis, discussion, and advancement of contemporary legal issues. The journal encourages original, analytical, and well-researched contributions that add substantive value to legal scholarship.

The journal publishes scholarly works examining doctrinal, theoretical, empirical, and interdisciplinary perspectives of law. Submissions are welcomed from academicians, legal professionals, researchers, scholars, and students who demonstrate intellectual rigour, analytical clarity, and relevance to current legal and policy developments.

The scope of the journal includes, but is not limited to:

- Constitutional and Administrative Law
- Criminal Law and Criminal Justice
- Corporate, Commercial, and Business Laws
- Intellectual Property and Technology Law
- International Law and Human Rights
- Environmental and Sustainable Development Law
- Cyber Law, Artificial Intelligence, and Emerging Technologies
- Family Law, Labour Law, and Social Justice Studies

The journal accepts original research articles, case comments, legislative and policy analyses, book reviews, and interdisciplinary studies addressing legal issues at national and international levels. All submissions are subject to a rigorous double-blind peer-review process to ensure academic quality, originality, and relevance.

Through its publications, *White Black Legal – The Law Journal* seeks to foster critical legal thinking and contribute to the development of law as an instrument of justice, governance, and social progress, while expressly disclaiming responsibility for the application or misuse of published content.

**"MEDIATION AS A PRE-RESOLUTION MECHANISM
UNDER THE INSOLVENCY AND BANKRUPTCY CODE:
A STUDY OF PRACTICAL VIABILITY AND
STAKEHOLDER'S PERSPECTIVE"**

AUTHORED BY - AMISHA

Master of Laws (LL.M.)

FACULTY OF LAW, SRM UNIVERSITY, SONIPAT

ABSTRACT

The Insolvency and Bankruptcy Code, 2016 (IBC) represents a paradigm shift in India's insolvency framework by introducing a consolidated, creditor-driven, and time-bound mechanism for resolving financial distress. Despite its structural robustness, the implementation of the IBC has encountered significant challenges, including procedural delays, excessive litigation, value erosion, and institutional overburdening. These concerns have prompted a growing discourse on the need for integrating alternative dispute resolution mechanisms within the insolvency framework.

This research paper examines the potential of mediation as a pre-resolution mechanism under the IBC, focusing on its practical viability and the perspectives of key stakeholders. It argues that mediation, by virtue of its flexibility, confidentiality, and consensual nature, offers a viable alternative to adversarial insolvency proceedings, particularly at the pre-admission stage. The study adopts a doctrinal and comparative methodology, analyzing statutory provisions, judicial pronouncements, policy reports, and international practices.

The paper further explores the intersection of insolvency law with mediation frameworks such as the Mediation Act, 2023, and evaluates the scope for integrating mediation into the IBC without undermining its core objectives. It critically assesses stakeholder dynamics, including the interests of financial creditors, operational creditors, and corporate debtors, and examines how mediation can address conflicts and promote cooperative resolution.

Through a detailed analysis of legal, economic, and behavioral dimensions, the paper concludes

that mediation has the potential to enhance efficiency, reduce litigation, and preserve enterprise value. However, its successful integration requires targeted legislative reforms, institutional capacity building, and a shift in stakeholder perception.

Keywords

Insolvency and Bankruptcy Code, Mediation, Pre-Resolution Mechanism, CIRP, Alternative Dispute Resolution, Stakeholder Perspective, Insolvency Law, Mediation Act 2023, Corporate Insolvency, Negotiated Settlement.

1. INTRODUCTION

1.1 Background and Rationale of the Study

The evolution of insolvency law in India reflects a transition from fragmented and inefficient mechanisms to a unified and structured legal framework. Prior to the enactment of the Insolvency and Bankruptcy Code, 2016, insolvency resolution was governed by multiple legislations, including the Sick Industrial Companies Act, 1985, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, and provisions under the Companies Act. These frameworks suffered from significant shortcomings, including jurisdictional overlap, procedural delays, and inadequate recovery mechanisms, resulting in erosion of asset value and reduced investor confidence.¹

The introduction of the IBC marked a transformative shift by consolidating insolvency laws into a single, coherent framework. The Code introduced a creditor-in-control model, emphasizing time-bound resolution, value maximization, and balancing stakeholder interests. Institutional mechanisms such as the National Company Law Tribunal (NCLT), Insolvency Professionals (IPs), and the Insolvency and Bankruptcy Board of India (IBBI) were established to ensure effective implementation.²

However, despite its conceptual strength, the practical functioning of the IBC has revealed several structural and procedural challenges. The Corporate Insolvency Resolution Process (CIRP), which is intended to be completed within 330 days, often exceeds this timeline due to litigation and procedural complexities.³ This delay not only undermines the objective of timely resolution but also leads to significant value erosion. Furthermore, insolvency proceedings are frequently invoked as a strategic tool for debt recovery rather than as a genuine mechanism for resolution. This misuse has resulted in an increased caseload for adjudicating authorities and has diluted the foundational

objectives of the Code.⁴

¹ M.S. Sahoo, *Insolvency and Bankruptcy Code: A New Framework* (2016)

² *Bankruptcy Law Reforms Committee Report* (2015)

³ *Insolvency Law Committee Report, Ministry of Corporate Affairs* (2018)

⁴ V. Niranjana, *Insolvency and Bankruptcy Code: A Critical Analysis* (2019)

In this context, mediation emerges as a potential solution to address these challenges. As a form of Alternative Dispute Resolution (ADR), mediation offers a flexible, confidential, and non-adversarial mechanism for resolving disputes. It enables parties to negotiate mutually acceptable solutions, thereby reducing reliance on formal adjudication.

The enactment of the Mediation Act, 2023 further strengthens the legal framework for mediation in India, signaling a policy shift towards promoting pre-litigation dispute resolution.⁵ This development creates an opportunity to explore the integration of mediation into insolvency law, particularly as a pre-resolution mechanism under the IBC.

The rationale of this study lies in examining whether mediation can effectively address the limitations of the current insolvency framework by facilitating early resolution of disputes, reducing litigation, and improving stakeholder outcomes.

1.2 Statement of the Problem

Despite the structured framework of the IBC, several systemic issues persist in its implementation. One of the primary concerns is the failure to adhere to statutory timelines for the completion of the CIRP. In practice, many cases exceed the prescribed limit due to litigation, procedural delays, and institutional constraints.⁶

Another significant issue is the absence of a formal mechanism for resolving disputes prior to the initiation of insolvency proceedings. Creditors often file applications under Sections 7 or 9 of the IBC as a coercive measure to recover dues, rather than as a genuine effort to resolve insolvency.⁷ This practice contributes to the overburdening of adjudicating authorities and undermines the efficiency of the insolvency framework.

The adversarial nature of insolvency proceedings further exacerbates conflicts among stakeholders, including creditors, debtors, and resolution professionals. This not only increases the cost and duration of proceedings but also reduces the likelihood of successful resolution.

⁵ Mediation Act, 2023

⁶ Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 SCC 17

⁷ Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd., (2018) 1 SCC 353

Additionally, the current framework does not adequately account for behavioral and negotiation dynamics that influence stakeholder decision-making. Cognitive biases, strategic behavior, and power imbalances often lead to inefficient outcomes and hinder consensus-building.

The absence of a structured pre-insolvency dispute resolution mechanism represents a critical gap in the IBC framework. Addressing this gap through the integration of mediation could enhance efficiency, reduce litigation, and promote cooperative resolution.

1.3 Literature Review

The existing body of literature on insolvency law and mediation provides valuable insights into the strengths and limitations of the current framework, while also highlighting the potential for integrating alternative dispute resolution mechanisms.

M.S. Sahoo (2016), in his analysis of the IBC, emphasizes the transformative nature of the Code in consolidating insolvency laws and introducing a time-bound resolution process. However, he acknowledges that institutional capacity and procedural efficiency remain critical challenges.⁸ His work underscores the need for complementary mechanisms to enhance the effectiveness of the insolvency framework.

V. Niranjana (2019) critically examines the judicial interpretation of the IBC and highlights the increasing tendency of creditors to use insolvency proceedings as a recovery tool. He argues that this practice undermines the core objective of resolution and calls for alternative approaches to dispute settlement.⁹

Shubham Jain and Shashwat Tripathi (2021) explore the intersection of ADR and insolvency law, suggesting that mediation can play a significant role in resolving disputes at an early stage. They argue that mediation can reduce litigation and improve stakeholder cooperation but note the absence of statutory recognition within the IBC framework.¹⁰

⁸ M.S. Sahoo (2016), *supra*

⁹ Niranjana, V. (2019), *supra*

¹⁰ Jain, S. & Tripathi, S., “ADR and Insolvency: A Comparative Study” (2021)

The Insolvency Law Committee Report (2018) identifies delays and inefficiencies in the CIRP and recommends measures to streamline the process. While the report does not explicitly advocate for mediation, it highlights the need for reducing litigation and improving procedural efficiency.¹¹

The UNCITRAL Legislative Guide on Insolvency Law (2005) provides a comparative perspective and recognizes the role of negotiation and mediation in insolvency proceedings. It emphasizes that pre-insolvency workouts and informal restructuring mechanisms can enhance efficiency and preserve value.¹²

N.R. Madhava Menon (2018), in his work on mediation, highlights the importance of ADR in reducing judicial burden and promoting amicable dispute resolution. He advocates for the integration of mediation into commercial disputes, including insolvency-related conflicts.¹³

Despite these contributions, there remains a significant research gap in analyzing the practical viability of mediation as a pre-resolution mechanism under the IBC, particularly from a stakeholder perspective. This paper seeks to address this gap through a comprehensive and interdisciplinary analysis.

Beyond the foundational scholarship discussed earlier, a deeper engagement with interdisciplinary and comparative literature reveals additional dimensions relevant to the integration of mediation within insolvency law.

Richard A. Posner (2014), through his economic analysis of law, emphasizes that legal frameworks must be evaluated based on their efficiency in minimizing transaction costs and maximizing social welfare.¹⁴ Applied to insolvency, this perspective suggests that mechanisms such as mediation, which reduce litigation costs and expedite resolution, can significantly enhance economic efficiency.

Similarly, Thomas H. Jackson (1986), in his seminal work on bankruptcy law, conceptualizes insolvency as a collective debt-collection mechanism designed to maximize the value of the debtor's estate.¹⁵ However, Jackson's framework assumes rational coordination among creditors—

¹¹ Insolvency Law Committee Report (2018), *supra*.

¹² UNCITRAL Legislative Guide on Insolvency Law (2005)

¹³ N.R. Madhava Menon, *Mediation: Practice and Law* (2018)

¹⁴ Richard A. Posner, *Economic Analysis of Law* (2014)

¹⁵ Thomas H. Jackson, *The Logic and Limits of Bankruptcy Law* (1986)

an assumption that is frequently undermined in practice due to conflicting interests and strategic behavior. Mediation offers a corrective by facilitating coordination and consensus-building among stakeholders.

From a comparative standpoint, Vanessa Finch and David Milman (2017) analyze the UK insolvency regime and highlight the increasing reliance on negotiated restructuring and informal workouts.¹⁶ Their work underscores the importance of flexibility and stakeholder engagement in achieving effective insolvency outcomes.

In the context of Singapore, research by the Singapore International Mediation Centre (SIMC) emphasizes the role of mediation in cross-border insolvency and restructuring.¹⁷ The integration of mediation into institutional frameworks has been identified as a key factor in enhancing efficiency and reducing litigation.

Behavioral scholarship also contributes to the discourse. Christine Jolls, Cass Sunstein, and Richard Thaler (1998) demonstrate that legal rules must account for bounded rationality and cognitive biases in decision-making.¹⁸ This insight is particularly relevant in insolvency, where stakeholders operate under uncertainty and emotional stress. Mediation, by facilitating dialogue and reframing issues, can mitigate these behavioral distortions.

Despite the richness of this literature, a critical gap persists. Existing studies largely treat mediation and insolvency as distinct domains, with limited exploration of their intersection. Moreover, there is insufficient empirical and doctrinal analysis of how mediation can be operationalized within the Indian insolvency framework.

This paper seeks to bridge this gap by providing a comprehensive analysis of mediation as a pre-resolution mechanism under the IBC, with particular emphasis on practical viability and stakeholder perspectives.

1.4 Research Objectives

¹⁶ Finch & Milman, *Corporate Insolvency Law* (2017)

¹⁷ SIMC Report on Mediation in Insolvency (2019)

¹⁸ Jolls, Sunstein & Thaler, “Behavioral Approach to Law and Economics” (1998)

The present study is guided by a set of interrelated objectives that aim to explore both the theoretical and practical dimensions of mediation within the insolvency framework.

First, the study seeks to examine the feasibility of integrating mediation into the Insolvency and Bankruptcy Code, 2016, particularly as a pre-resolution mechanism. This involves analyzing the compatibility of mediation with the statutory structure and objectives of the IBC.

Second, the research aims to evaluate the practical viability of mediation in insolvency disputes, considering factors such as institutional capacity, enforceability, and stakeholder acceptance.

Third, the study endeavors to analyze the perspectives of various stakeholders, including financial creditors, operational creditors, corporate debtors, and insolvency professionals, with regard to the adoption of mediation.

Fourth, the research seeks to identify the legal, economic, and behavioral challenges associated with the integration of mediation into the insolvency framework.

Finally, the study aims to propose policy recommendations and reforms that can facilitate the effective incorporation of mediation into the IBC.

1.5 Research Questions

The study is structured around the following central research questions:

1. Whether mediation can serve as an effective pre-resolution mechanism under the Insolvency and Bankruptcy Code, 2016?
2. Whether the integration of mediation can reduce delays, litigation, and costs in insolvency proceedings?
3. Whether stakeholder interests are better protected through mediation as compared to formal adjudicatory processes?
4. What are the legal and institutional challenges in incorporating mediation into the IBC framework?
5. How can international models of mediation in insolvency be adapted to the Indian context?

These questions collectively guide the analytical framework of the study and inform its conclusions.

1.6 Research Methodology

This research adopts a doctrinal, comparative, and analytical methodology, supplemented by interdisciplinary insights. The doctrinal approach involves a detailed analysis of primary legal sources, including the Insolvency and Bankruptcy Code, 2016, the Mediation Act, 2023, and relevant judicial decisions of the Supreme Court and NCLT/NCLAT. This approach enables a critical examination of the existing legal framework and its limitations. The comparative methodology involves studying insolvency and mediation practices in jurisdictions such as the United States, the United Kingdom, and Singapore. This comparative perspective provides valuable insights into best practices and potential models for integration.

The research also incorporates insights from law and economics and behavioral law and economics, enabling a deeper understanding of the economic and psychological dimensions of insolvency and mediation. Secondary sources, including books, journal articles, policy reports, and institutional publications, have been extensively utilized to support the analysis. While the study primarily relies on qualitative analysis, it also draws upon available empirical data and case studies to assess practical viability.

1.7 Scope and Limitations of the Study

The scope of this study is primarily confined to the Indian legal framework governing corporate insolvency under the IBC. However, comparative analysis of selected international jurisdictions has been undertaken to provide a broader perspective.

The study focuses on mediation as a pre-resolution mechanism, rather than examining its role during or after insolvency proceedings. Individual insolvency and personal bankruptcy are not extensively covered.

Certain limitations must also be acknowledged. First, the integration of mediation into insolvency law in India is still at a nascent stage, resulting in limited empirical data. Second, the absence of explicit statutory provisions for mediation under the IBC poses challenges in assessing its practical implementation.

Despite these limitations, the study provides a comprehensive and critical analysis of the subject, contributing to the ongoing discourse on insolvency reform.

2: LEGAL FRAMEWORK OF INSOLVENCY AND MEDIATION

2.1 Overview of the Insolvency and Bankruptcy Code, 2016

The Insolvency and Bankruptcy Code, 2016 represents a transformative reform in India's legal and economic landscape. Enacted with the objective of consolidating insolvency laws and ensuring time-bound resolution, the Code seeks to address the inefficiencies of the previous regime.¹⁹

The IBC is founded on several key principles, including value maximization, time-bound resolution, and balancing of stakeholder interests. It adopts a creditor-in-control model, wherein financial creditors exercise decision-making authority through the Committee of Creditors (CoC).²⁰

The Code applies to corporate persons, partnership firms, and individuals, thereby providing a comprehensive insolvency framework. It establishes institutional mechanisms such as the Insolvency and Bankruptcy Board of India (IBBI), Insolvency Professionals (IPs), and Information Utilities (IUs).²¹

A defining feature of the IBC is its emphasis on strict timelines. Section 12 mandates completion of the Corporate Insolvency Resolution Process (CIRP) within 180 days, extendable up to 330 days.²² This time-bound approach is intended to prevent value erosion and ensure efficiency.

Judicial interpretation has reinforced these objectives. In *Swiss Ribbons Pvt. Ltd. v. Union of India*, the Supreme Court emphasized that the primary objective of the Code is resolution rather than recovery.²³

However, despite its strengths, the IBC has faced challenges in implementation, including delays, litigation, and institutional constraints. These challenges highlight the need for complementary mechanisms such as mediation.

¹⁹ Bankruptcy Law Reforms Committee Report (2015)

²⁰ Iyer, V., *Insolvency Law in India* (2019)

²¹ IBBI Annual Report (2020)

²² Section 12, IBC, 2016

²³ *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 SCC 17

2.2 Corporate Insolvency Resolution Process (CIRP)

The Corporate Insolvency Resolution Process (CIRP) constitutes the core mechanism under the IBC for resolving corporate insolvency.

The process is initiated upon default by the corporate debtor and may be triggered by financial creditors (Section 7), operational creditors (Section 9), or the corporate debtor itself (Section 10).²⁴

In *Innoventive Industries Ltd. v. ICICI Bank*, the Supreme Court clarified that the adjudicating authority's role at the admission stage is limited to verifying the existence of default, thereby ensuring expeditious initiation of proceedings.²⁵

Upon admission, a moratorium under Section 14 is imposed, suspending all legal proceedings against the corporate debtor. This creates a “calm period” during which resolution efforts can be undertaken.²⁶

An Interim Resolution Professional (IRP) is appointed to manage the affairs of the corporate debtor and constitute the Committee of Creditors. The CoC exercises significant control over the resolution process, including approval of resolution plans.

In *K. Sashidhar v. Indian Overseas Bank*, the Supreme Court held that the commercial wisdom of the CoC is not subject to judicial review, thereby reinforcing creditor autonomy.²⁷

Despite its structured design, the CIRP has become increasingly litigation-intensive, resulting in delays and increased costs. This underscores the need for alternative mechanisms such as mediation to reduce reliance on formal adjudication.

2.3 Role of Adjudicating Authorities (NCLT/NCLAT)

The National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) serve as the adjudicating and appellate authorities under the IBC.

²⁴ Sections 7, 9, 10, IBC, 2016

²⁵ *Innoventive Industries Ltd. v. ICICI Bank*, (2018) 1 SCC 407

²⁶ Section 14, IBC, 2016

²⁷ *K. Sashidhar v. Indian Overseas Bank*, (2019) 12 SCC 150

The NCLT is responsible for admitting applications, supervising the CIRP, and approving resolution plans, while the NCLAT hears appeals against NCLT decisions.²⁸

Judicial decisions have played a crucial role in shaping insolvency jurisprudence. In *Embassy Property Developments Pvt. Ltd. v. State of Karnataka*, the Supreme Court clarified the jurisdictional limits of the NCLT.²⁹

Similarly, in *Vidarbha Industries Power Ltd. v. Axis Bank Ltd.*, the Court recognized that the NCLT has discretion in admitting applications under Section 7, introducing a degree of flexibility.³⁰

However, the NCLT and NCLAT face significant challenges, including case backlog and limited infrastructure. These constraints highlight the importance of alternative dispute resolution mechanisms in reducing judicial burden.

2.4 Concept and Evolution of Mediation in India

Mediation has evolved significantly in India as a preferred mode of dispute resolution, particularly in commercial contexts.

Rooted in principles of voluntariness, confidentiality, and party autonomy, mediation offers a non-adversarial approach to resolving disputes.³¹

The statutory recognition of mediation began with Section 89 of the Code of Civil Procedure, 1908, which empowers courts to refer disputes to ADR mechanisms.³²

In *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co.*, the Supreme Court emphasized the importance of mediation and laid down guidelines for its implementation.³³

The establishment of mediation centers and the increasing acceptance of ADR reflect a broader shift towards collaborative dispute resolution in India.

²⁸ Companies Act, 2013; IBC, 2016

²⁹ *Embassy Property Developments Pvt. Ltd. v. State of Karnataka*, (2020) 13 SCC 308

³⁰ *Vidarbha Industries Power Ltd. v. Axis Bank Ltd.*, (2022) 8 SCC 352

³¹ N.R. Madhava Menon, *Mediation Practice* (2018)

³² Section 89, CPC, 1908

³³ *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co.*, (2010) 8 SCC 24.

2.5 Legal Recognition under the Mediation Act, 2023

The enactment of the Mediation Act, 2023 marks a decisive moment in the institutionalization of mediation in India. For the first time, mediation has been accorded a comprehensive statutory framework that recognizes its role not merely as an adjunct to litigation but as an independent and primary mode of dispute resolution. This legislative development is particularly significant in the context of commercial disputes, where speed, confidentiality, and flexibility are essential.

A central feature of the Act is the introduction of pre-litigation mediation, which mandates parties to attempt mediation before instituting certain categories of civil or commercial proceedings.³⁴ This reflects a clear policy orientation towards reducing the burden on courts and encouraging consensual dispute resolution at an early stage. While the Act does not explicitly include insolvency proceedings within its scope, its underlying philosophy is directly relevant to disputes that precede insolvency filings—particularly those involving debt, default, and contractual disagreements.

Another critical aspect of the Act is the enforceability of mediated settlement agreements. The statute provides that such agreements shall have the same status and effect as a judgment or decree of a court.³⁵ This provision addresses one of the longstanding concerns regarding mediation, namely, the lack of binding force of outcomes. In the insolvency context, this feature assumes particular importance, as enforceability is crucial when multiple stakeholders are involved.

The Act also establishes a framework for the accreditation and regulation of mediators, as well as the recognition of mediation service providers. This institutional dimension is essential for ensuring quality, consistency, and credibility in mediation processes.

However, a significant limitation lies in the absence of an explicit interface between the Mediation Act and the IBC. Insolvency proceedings are governed by a specialized statutory regime, and the integration of mediation into this framework requires careful legislative design. Without such integration, the application of mediation in insolvency contexts remains indirect and uncertain.

³⁴ Mediation Act, 2023.

³⁵ *Ibid.*

Nevertheless, the Mediation Act, 2023 provides a strong normative and institutional foundation for the incorporation of mediation into insolvency law. It signals a broader shift in Indian legal policy towards preventive and collaborative dispute resolution, which aligns with the objectives of the IBC.

2.6 Comparative Analysis: Pre-Insolvency Mediation in Other Jurisdictions

A comparative examination of international insolvency regimes reveals that mediation and negotiated restructuring have become integral components of modern insolvency frameworks. The experiences of jurisdictions such as the United States, the United Kingdom, and Singapore offer valuable insights into how mediation can be effectively integrated into insolvency processes.

(a) United States

The United States insolvency regime, particularly under Chapter 11 of the Bankruptcy Code, is characterized by a high degree of flexibility and reliance on negotiation. The debtor-in-possession model allows the management of the distressed entity to retain control, thereby facilitating restructuring through dialogue and consensus.

Mediation plays a significant role in Chapter 11 proceedings, especially in complex cases involving multiple stakeholders. Bankruptcy courts frequently appoint mediators to resolve disputes related to claims, valuation, and restructuring plans.³⁶ These mediators, often experienced judges or professionals, facilitate negotiations and help parties reach mutually acceptable solutions. The success of mediation in the US context can be attributed to several factors, including judicial support, institutional infrastructure, and a legal culture that values negotiated outcomes. Importantly, mediation is not viewed as a deviation from formal proceedings but as an integral part of the insolvency process.

(b) United Kingdom

³⁶ US Bankruptcy Code, Chapter 11 Practice (2019)

The UK insolvency framework places considerable emphasis on **informal workouts and negotiated restructuring**. Mechanisms such as schemes of arrangement and restructuring plans allow companies to reorganize their debts through court-approved agreements with creditors.

While mediation is not formally embedded in insolvency statutes, it is widely used in practice as a means of facilitating negotiations between stakeholders.³⁷ The UK approach reflects a pragmatic recognition that consensual solutions are often more efficient and effective than adversarial proceedings.

The success of this model is supported by a strong professional ecosystem, including insolvency practitioners, legal advisors, and financial experts who actively engage in negotiation and mediation processes.

(c) Singapore

Singapore has emerged as a leading jurisdiction in the field of insolvency and dispute resolution, combining elements of both US and UK models. The Insolvency, Restructuring and Dissolution Act, 2018 provides a flexible framework for restructuring, while institutions such as the Singapore International Mediation Centre (SIMC) play a central role in facilitating mediation.³⁸

Singapore's approach is notable for its institutional integration of mediation, including the use of "med-arb" and hybrid processes. Mediation is actively promoted in both domestic and cross-border insolvency cases, supported by a robust legal and institutional framework.

Comparative Insights

The comparative analysis highlights several key lessons:

- Mediation is most effective when supported by institutional infrastructure and judicial endorsement.
- Flexibility in insolvency frameworks enhances the scope for negotiated solutions.
- Legal recognition and enforceability of mediated settlements are critical for success.

³⁷ Finch & Milman, *Corporate Insolvency Law* (2017)

³⁸ Singapore Insolvency, Restructuring and Dissolution Act (2018)

These insights suggest that the integration of mediation into the Indian insolvency framework is both feasible and desirable, provided that appropriate legal and institutional reforms are undertaken.

2.7 Interface Between Insolvency Law and Alternative Dispute Resolution

The relationship between insolvency law and alternative dispute resolution mechanisms presents both opportunities and complexities. At a conceptual level, insolvency proceedings and ADR operate on fundamentally different paradigms.

Insolvency law is collective, statutory, and coercive, designed to address the rights of multiple stakeholders within a structured legal framework. ADR mechanisms, including mediation, are voluntary, flexible, and consensual, emphasizing party autonomy and negotiated outcomes.

This divergence creates certain tensions. One of the primary challenges is the multi-party nature of insolvency proceedings, which complicates the use of mediation. Unlike bilateral disputes, insolvency involves numerous stakeholders with competing interests, making consensus-building more difficult.

Another issue is the binding nature of outcomes. While mediation relies on voluntary agreements, insolvency proceedings require decisions that are binding on all stakeholders. Ensuring that mediated settlements achieve this level of binding effect requires careful legal design.

Despite these challenges, there is significant scope for synergy between insolvency law and ADR. Mediation can complement insolvency proceedings by resolving disputes at an early stage, reducing litigation, and facilitating cooperation among stakeholders.

The integration of mediation into insolvency law therefore requires a hybrid approach, combining the strengths of both paradigms. Such an approach would preserve the statutory structure of insolvency proceedings while incorporating the flexibility and efficiency of mediation.

3: MEDIATION AS A PRE-RESOLUTION MECHANISM UNDER IBC

3.1 Conceptual Framework of Pre-Resolution Mechanisms

Pre-resolution mechanisms in insolvency law refer to processes that aim to address financial distress before the formal initiation of insolvency proceedings. These mechanisms are grounded in the principle that early intervention can prevent value erosion, reduce costs, and improve outcomes for stakeholders.

Traditionally, insolvency regimes have focused on formal adjudication as the primary means of

resolving financial distress. However, contemporary approaches increasingly emphasize preventive restructuring and early negotiation, recognizing that insolvency is often the culmination of unresolved disputes and financial mismanagement.

Mediation, as a pre-resolution mechanism, operates within this preventive framework. It enables parties to engage in structured negotiations, identify underlying interests, and explore mutually beneficial solutions. Unlike adjudication, which imposes a decision, mediation allows parties to retain control over the outcome.

The theoretical justification for pre-resolution mediation lies in several principles:

- Efficiency: Early resolution reduces transaction costs and delays.
- Value preservation: Prevents deterioration of business operations.
- Autonomy: Allows parties to design customized solutions.
- Cooperation: Promotes dialogue and reduces adversarial conflict.

In the Indian context, the absence of a formal pre-insolvency mediation mechanism under the IBC represents a significant gap. While mechanisms such as PPIRP incorporate elements of negotiation, they do not fully utilize the potential of mediation as a structured process.

3.2 Scope for Mediation Before Initiation of CIRP

The scope for mediation within the IBC framework must be examined in light of both statutory provisions and judicial interpretation. Although the Code does not explicitly provide for mediation, there are several points at which mediation can be introduced. At the pre-admission stage, disputes often arise regarding the existence of default, quantum of debt, or contractual obligations. These disputes are particularly common in cases involving operational creditors. In *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.*, the Supreme Court held that the existence of a pre-existing dispute is sufficient to reject an application under Section 9 of the IBC.³⁹ This principle implicitly recognizes that not all disputes warrant insolvency proceedings and that alternative mechanisms may be more appropriate. Mediation can be effectively utilized at this stage to resolve disputes before they escalate into insolvency proceedings. By encouraging parties to engage in mediation prior to filing applications, it is possible to filter out cases that do not require formal adjudication. The Mediation Act, 2023 further strengthens this possibility by introducing pre-litigation mediation. Although not explicitly linked to the IBC, its principles can be applied to insolvency-related disputes. Additionally, mediation can play a role in informal restructuring processes, where

creditors and debtors negotiate repayment terms outside formal insolvency proceedings. Formalizing these negotiations through mediation can enhance transparency and effectiveness. However, certain constraints remain, including the absence of statutory recognition, concerns regarding enforceability, and the complexity of multi-party disputes.

3.3 Judicial Trends and Case Laws for Mediation in Insolvency

Judicial developments provide important insights into the evolving role of mediation and settlement in insolvency law.

In *Swiss Ribbons Pvt. Ltd. v. Union of India*, the Supreme Court emphasized that the objective of the IBC is resolution rather than liquidation.⁴⁰ This principle supports the use of consensual mechanisms such as mediation.

In *Lokhandwala Kataria Construction Pvt. Ltd. v. Nisus Finance*, the Court allowed settlement even after admission of insolvency proceedings by invoking its powers under Article 142.⁴¹ This reflects judicial recognition of the importance of settlement.

³⁹ *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.*, (2018) 1 SCC 353

⁴⁰ *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 SCC 17

⁴¹ *Lokhandwala Kataria Construction Pvt. Ltd. v. Nisus Finance*, (2017) 13 SCC 655

Section 12A of the IBC further institutionalizes this approach by allowing withdrawal of applications based on settlement, subject to approval by the Committee of Creditors.⁴²

These developments indicate a gradual shift towards acceptance of negotiated solutions within the insolvency framework. However, the absence of a formal mediation framework limits the systematic use of such mechanisms.

3.4 Institutional and Procedural Challenges in Integrating Mediation under the IBC

The integration of mediation into the insolvency framework under the Insolvency and Bankruptcy Code, 2016 presents a series of institutional and procedural challenges that must be addressed for its effective implementation. While the theoretical benefits of mediation are widely acknowledged, the practical realities of insolvency proceedings introduce complexities that cannot be overlooked. One of the primary challenges lies in the absence of explicit statutory recognition of mediation within the IBC. Unlike other areas of civil and commercial law where mediation has been formally incorporated through legislative provisions, insolvency law remains largely adjudicatory in nature. The lack of statutory clarity creates uncertainty regarding the permissibility, scope, and procedural framework for mediation in insolvency disputes.⁴³ A second challenge arises from the multi-party nature of insolvency proceedings. Unlike traditional disputes involving two parties, insolvency cases typically involve multiple creditors, each with distinct claims, priorities, and strategic interests. Achieving consensus among such a diverse group of stakeholders is inherently complex. Mediation, which is traditionally designed for bilateral disputes, must therefore be adapted to accommodate multi-party negotiations, requiring specialized techniques and institutional support. The issue of enforceability of mediated settlements also presents a significant obstacle. While the Mediation Act, 2023 provides for the enforceability of mediated settlement agreements, its interaction with the IBC remains unclear. Insolvency proceedings involve collective decision-making mechanisms, particularly through the Committee of Creditors (CoC), and any mediated settlement must align with these statutory requirements to be effective and binding. Institutional capacity constitutes another critical concern. The successful implementation of mediation requires the availability of trained mediators with expertise in insolvency law, finance, and corporate restructuring. At present, the pool of mediators in India is limited, particularly in specialized

⁴² Section 12A, IBC, 2016

⁴³ Insolvency Law Committee Report (2018)

domains such as insolvency. This gap in expertise may hinder the effectiveness of mediation in complex financial disputes. Further, the procedural rigidity of the IBC poses challenges for the integration of flexible mediation processes. The Code operates within strict timelines and structured stages, leaving limited room for discretionary interventions. Introducing mediation into this framework requires careful balancing to ensure that it does not undermine the objective of time-bound resolution. Finally, there is a broader issue of institutional mindset and legal culture. Insolvency proceedings in India have traditionally been adversarial, with stakeholders relying on litigation to assert their rights. Transitioning towards a collaborative model of dispute resolution requires a shift in perception, which may take time to achieve.

3.5 Role of Insolvency Professionals and Mediators

Insolvency Professionals (IPs) play a pivotal role in the Corporate Insolvency Resolution Process (CIRP), acting as intermediaries between stakeholders and facilitating the resolution process. Their unique position within the insolvency framework makes them key actors in the potential integration of mediation. IPs are responsible for managing the affairs of the corporate debtor, verifying claims, and coordinating the activities of the Committee of Creditors. In performing these functions, they often engage in informal negotiations with stakeholders, which resemble mediation in practice. Formalizing this role within a structured mediation framework could enhance efficiency and transparency. IPs can contribute to mediation in several ways. First, they can identify disputes that are suitable for mediation, particularly at the pre-admission stage. Second, they can facilitate communication between stakeholders, helping to clarify issues and reduce misunderstandings. Third, they can assist in the formulation and implementation of settlement agreements. However, the involvement of IPs in mediation raises questions regarding neutrality and conflict of interest. As officers of the court, IPs are required to act in the best interests of all stakeholders, which aligns with the principles of mediation. Nevertheless, their statutory responsibilities may limit their ability to function as neutral facilitators.

Mediators, on the other hand, are specifically trained to facilitate negotiations and guide parties towards mutually acceptable solutions. In the context of insolvency, mediators must possess not only legal expertise but also an understanding of financial restructuring, stakeholder dynamics, and negotiation strategies. The integration of mediation into insolvency proceedings may require the development of a collaborative model, wherein IPs and mediators work together. IPs can

provide technical and procedural expertise, while mediators can focus on facilitating dialogue and consensus-building. Such a hybrid approach would combine the strengths of both roles, enhancing the effectiveness of mediation in insolvency contexts.

3.6 Economic and Efficiency Analysis of Mediation in Insolvency Context

From an economic perspective, the integration of mediation into insolvency law can be justified on the grounds of efficiency, cost reduction, and value preservation. Insolvency proceedings are inherently costly, involving legal fees, administrative expenses, and opportunity costs associated with delays. These costs are collectively referred to as transaction costs, which can significantly reduce the value available for distribution among creditors.⁴⁴ Mediation, by facilitating early resolution, can reduce these costs and enhance overall efficiency. One of the key advantages of mediation is its ability to expedite dispute resolution. Unlike formal insolvency proceedings, which are subject to procedural requirements and judicial delays, mediation can be conducted in a flexible and time-efficient manner. This is particularly important in insolvency cases, where delays can lead to rapid deterioration of asset value. Mediation also contributes to the preservation of going-concern value. Insolvency proceedings often disrupt business operations, leading to loss of customers, employees, and market reputation. Early intervention through mediation can prevent such disruptions and improve the prospects of successful restructuring. Another important economic benefit is the reduction of information asymmetry. Insolvency disputes are often characterized by incomplete and asymmetric information, which can lead to strategic behavior and inefficient outcomes. Mediation encourages open communication and information sharing, thereby improving decision-making. However, the economic benefits of mediation must be balanced against potential risks. The absence of binding outcomes may result in failed negotiations, leading to additional costs and delays. Moreover, the effectiveness of mediation depends on the willingness of parties to cooperate, which may not always be present. Despite these challenges, economic analysis suggests that mediation can significantly enhance the efficiency of insolvency processes, particularly when used as a pre-resolution mechanism.

⁴⁴ Richard A. Posner, *Economic Analysis of Law* (2014)

4: STAKEHOLDER PERSPECTIVE AND PRACTICAL VIABILITY

4.1 Identification of Stakeholders in Insolvency Proceedings

The insolvency framework under the IBC is characterized by a complex network of stakeholders, each with distinct interests and priorities. Understanding these stakeholders is essential for evaluating the practical viability of mediation.

The primary stakeholders include financial creditors, operational creditors, and the corporate debtor. Financial creditors, typically banks and financial institutions, hold significant influence through the Committee of Creditors and are primarily concerned with maximizing recovery.⁴⁵

Operational creditors, including suppliers, employees, and service providers, have relatively limited decision-making power under the IBC, despite their economic significance. This asymmetry has been a subject of judicial and academic debate.

The corporate debtor represents the entity undergoing insolvency and seeks to preserve business continuity and avoid liquidation. However, once the CIRP is initiated, control shifts to the Insolvency Professional.

Other stakeholders include Insolvency Professionals, adjudicating authorities, regulatory bodies, employees, shareholders, and resolution applicants. Each of these actors plays a role in shaping the outcome of insolvency proceedings. The multiplicity of stakeholders and the diversity of their interests create a complex environment for dispute resolution, which poses both challenges and opportunities for mediation.

4.2 Stakeholder Interests and Conflicts

The insolvency process inherently involves conflicting interests among stakeholders, which significantly influence the feasibility of mediation.

⁴⁵ Section 21, Insolvency and Bankruptcy Code, 2016.

Financial creditors prioritize recovery and may prefer liquidation if it yields higher returns. Operational creditors, on the other hand, seek timely payment and are more vulnerable to adverse outcomes due to their limited bargaining power.⁴⁶

The corporate debtor seeks to avoid liquidation and maintain operations, often advocating for restructuring plans that may not align with creditor interests. Conflicts also arise within the Committee of Creditors, where different creditors may have divergent preferences based on their risk exposure and security interests.

These conflicts create significant challenges for mediation, as achieving consensus among stakeholders with competing interests is inherently difficult. However, mediation also provides a structured platform for addressing these conflicts and exploring mutually beneficial solutions.

4.3 Perception of Mediation Among Stakeholders

The perception of mediation among stakeholders is a critical factor in determining its practical viability.

Financial institutions have traditionally relied on litigation and statutory mechanisms for debt recovery. However, there is growing recognition of the limitations of these approaches, including delays and costs.⁴⁷ This has led to increasing openness towards alternative mechanisms such as mediation.

Operational creditors may view mediation as a more accessible and cost-effective option, although concerns regarding enforceability and power imbalance may affect their willingness to participate. Corporate debtors are generally more receptive to mediation, as it provides an opportunity to negotiate restructuring terms and avoid insolvency proceedings.

Insolvency Professionals and legal practitioners have expressed mixed views. While some recognize the potential of mediation to reduce case backlog and improve efficiency, others highlight the lack of statutory support and procedural clarity.

⁴⁶ Iyer, V., *Insolvency Law in India* (2019)

⁴⁷ RBI Report on Banking Trends (2020)

Overall, stakeholder perception is evolving, but significant barriers remain in terms of awareness, trust, and institutional support.

4.4 Advantages of Mediation in Insolvency Context

Mediation offers several advantages that enhance its suitability as a pre-resolution mechanism under the IBC.

One of the most significant advantages is time efficiency, as mediation can resolve disputes more quickly than formal insolvency proceedings.⁴⁸ Cost-effectiveness is another key benefit, as mediation reduces legal and administrative expenses. Confidentiality allows parties to negotiate without public scrutiny, which is particularly important in commercial contexts. Mediation also promotes flexibility and creativity, enabling parties to explore solutions beyond legal remedies, including restructuring and rescheduling arrangements. Importantly, mediation helps preserve business relationships and going-concern value, increasing the likelihood of successful resolution.

4.5 Limitations and Risks of Mediation in Insolvency Context

While mediation offers significant advantages as a pre-resolution mechanism, its application within the insolvency framework is not without limitations. A critical and balanced analysis necessitates an examination of the inherent risks and structural constraints associated with its adoption.

One of the foremost concerns is the issue of power asymmetry among stakeholders. Financial creditors, particularly large institutional lenders, possess significantly greater bargaining power compared to operational creditors and corporate debtors. In a mediation setting, this imbalance may influence negotiations and result in outcomes that disproportionately favor dominant parties.⁴⁹ Such disparities raise concerns regarding procedural fairness and equity.

Another limitation lies in the non-adjudicatory nature of mediation. Unlike judicial proceedings, mediation does not guarantee a binding outcome unless a settlement is reached. In cases where negotiations fail, parties may incur additional costs and delays before reverting to formal

⁴⁸ N.R. Madhava Menon, *Mediation Practice* (2018)

⁴⁹ Iyer, V., *Insolvency Law in India* (2019)

insolvency proceedings. This potential duplication of processes may, in certain circumstances, undermine the efficiency gains associated with mediation.

The collective character of insolvency proceedings further complicates the use of mediation. Insolvency involves multiple stakeholders with diverse and often conflicting interests. Achieving consensus in such a context is inherently challenging, particularly in cases involving complex financial structures and large creditor pools.⁵⁰

Concerns regarding enforceability also persist. Although the Mediation Act, 2023 provides for the enforceability of mediated settlement agreements, its interaction with the IBC framework—particularly with respect to binding all stakeholders—remains uncertain. Without clear legislative integration, the effectiveness of mediation outcomes may be limited.

Additionally, there is a lack of specialized institutional infrastructure and expertise. Insolvency-related disputes require mediators with a deep understanding of financial restructuring, corporate law, and stakeholder dynamics. The current mediation ecosystem in India is still evolving and may not yet be equipped to handle such complex disputes effectively.

Finally, the cultural and behavioral resistance to mediation cannot be ignored. The Indian legal system has traditionally been adversarial, with stakeholders relying heavily on litigation to assert their rights. Shifting towards a collaborative model of dispute resolution requires a change in mindset, which may take time to develop.

4.6 Case Studies and Practical Instances

Although the formal use of mediation in insolvency proceedings in India remains limited, certain developments and practices provide valuable insights into its potential applicability.

The introduction of the **Pre-Packaged Insolvency Resolution Process (PPIRP)** for Micro, Small, and Medium Enterprises (MSMEs) represents a significant step towards incorporating elements of negotiated resolution into the insolvency framework.⁵¹ While PPIRP is not strictly mediation, it embodies principles of pre-insolvency negotiation and consensus-building, demonstrating the benefits of early intervention.

⁵⁰ UNCITRAL Legislative Guide on Insolvency Law (2005)

⁵¹ IBC (Amendment) Ordinance, 2021 (PPIRP)

In international jurisdictions, the use of mediation in insolvency is more established. In the United States, bankruptcy courts frequently employ mediation in Chapter 11 proceedings, particularly in complex cases involving multiple stakeholders.⁵² These mediations often facilitate agreement on restructuring plans, reducing litigation and expediting resolution.

Similarly, in Singapore, mediation has been integrated into the insolvency framework through institutions such as the Singapore International Mediation Centre (SIMC). The use of hybrid processes, such as “med-arb,” highlights the adaptability of mediation in addressing complex commercial disputes.⁵³

In India, informal restructuring practices among banks and financial institutions often involve negotiation and compromise, which closely resemble mediation. However, the absence of formal recognition and structured processes limits their effectiveness and transparency.

These case studies suggest that while mediation is not yet fully institutionalized within the Indian insolvency framework, its underlying principles are already being applied in practice. Formal integration could enhance these practices and improve outcomes.

4.7 Assessment of Practical Viability in the Indian Context

The practical viability of mediation as a pre-resolution mechanism under the IBC depends on a combination of legal, institutional, and behavioral factors.

From a legal perspective, the absence of explicit provisions for mediation within the IBC constitutes a significant barrier. The integration of mediation requires statutory recognition and procedural clarity to ensure consistency and enforceability.

Institutionally, there is a need for specialized mediation infrastructure, including trained mediators with expertise in insolvency law and financial restructuring. Capacity-building initiatives, including training programs and accreditation mechanisms, are essential for developing this expertise.

⁵² US Bankruptcy Code, Chapter 11 Practice (2019)

⁵³ Singapore International Mediation Centre (SIMC) Report (2019)

Stakeholder acceptance is equally critical. The success of mediation depends on the willingness of parties to engage in good faith negotiations. Awareness campaigns, pilot programs, and judicial encouragement can play a key role in fostering acceptance.

Despite these challenges, the potential benefits of mediation are substantial. By reducing litigation, enhancing efficiency, and promoting cooperation, mediation can significantly improve the functioning of the insolvency framework.

In particular, mediation is most viable at the pre-admission stage, where disputes are more amenable to consensual resolution. By resolving disputes before the initiation of CIRP, mediation can reduce the burden on adjudicating authorities and prevent unnecessary escalation.

5. CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion: Key Findings of the Study

This research has undertaken a comprehensive examination of mediation as a pre-resolution mechanism under the Insolvency and Bankruptcy Code, 2016, focusing on its practical viability and stakeholder perspectives.

The analysis reveals that while the IBC represents a significant advancement in India's insolvency framework, its implementation is constrained by structural inefficiencies, including delays, excessive litigation, and institutional limitations. These challenges undermine the objectives of timely resolution and value maximization.

Mediation emerges as a promising mechanism for addressing these challenges. Its flexibility, confidentiality, and consensual nature enable early resolution of disputes, reduce transaction costs, and preserve business value. The study demonstrates that mediation aligns with the fundamental objectives of insolvency law, particularly in promoting efficiency and stakeholder cooperation.

However, the integration of mediation into the IBC is not without challenges. Legal uncertainties, institutional limitations, and stakeholder resistance must be addressed to ensure its effective implementation.

5.2 Policy Recommendations for Integration of Mediation

Based on the findings of this study, several policy recommendations can be proposed.

First, there is a need for explicit statutory recognition of mediation within the IBC. This may involve the introduction of provisions mandating or encouraging pre-admission mediation in appropriate cases.

Second, the interface between the IBC and the Mediation Act, 2023 must be clarified, ensuring consistency and coherence between the two frameworks.

Third, the establishment of specialized mediation centers for insolvency disputes, possibly linked to the NCLT, can enhance institutional capacity.

Fourth, training and accreditation programs should be developed to create a pool of specialized mediators with expertise in insolvency and financial restructuring.

Fifth, awareness initiatives should be undertaken to promote the acceptance of mediation among stakeholders, including financial institutions, corporate debtors, and legal practitioners.

5.3 Legislative Reforms and Institutional Mechanisms

Legislative reform is essential for the effective integration of mediation into the insolvency framework. Specific amendments to the IBC may include:

- Introduction of a pre-admission mediation requirement for certain categories of cases
- Provision for referral to mediation by the NCLT at appropriate stages
- Recognition of mediated settlement agreements within the insolvency process

Institutionally, the role of the Insolvency and Bankruptcy Board of India (IBBI) can be expanded to include the regulation and accreditation of mediators.

5.4 Future Scope for Research

The integration of mediation into insolvency law represents an emerging area of research with significant potential for further exploration.

Future studies may focus on empirical analysis of mediation outcomes in insolvency cases, comparative evaluation of international models, and the development of hybrid dispute resolution frameworks.

The preceding analysis demonstrates that the Insolvency and Bankruptcy Code, 2016, while constituting a landmark reform in India's financial and legal architecture, continues to operate within a predominantly adjudicatory paradigm that is increasingly strained by practical realities. The persistence of delays, the proliferation of litigation, and the strategic use of insolvency proceedings as a recovery mechanism collectively reveal a disjunction between the normative objectives of the Code and its operational outcomes. This disjunction underscores the need for a conceptual and structural rethinking of the insolvency framework.

Mediation, when situated within this context, emerges not merely as an alternative procedural tool but as a transformative mechanism capable of recalibrating the foundational logic of insolvency

law. Its significance lies in its ability to shift the focus from adversarial enforcement of rights to collaborative resolution of interests. In doing so, it addresses not only procedural inefficiencies but also the deeper behavioral and relational dynamics that shape insolvency outcomes.

A critical insight emerging from this study is that insolvency is not solely a legal or financial phenomenon but a complex socio-economic process involving multiple stakeholders with interdependent interests. The traditional adjudicatory model, with its emphasis on binary outcomes and rigid procedural structures, is often ill-equipped to manage such complexity. Mediation, by contrast, offers a flexible and adaptive framework that can accommodate the diversity of stakeholder interests and facilitate negotiated solutions.

The analysis further reveals that the integration of mediation aligns with the core objectives of the IBC, particularly in terms of value maximization, time efficiency, and stakeholder balance. By enabling early intervention, mediation can prevent the escalation of disputes into formal insolvency proceedings, thereby preserving enterprise value and reducing transaction costs. Moreover, by fostering communication and cooperation, it enhances the prospects of successful restructuring and continuation of business operations.

However, the study also highlights significant challenges that must be addressed to realize the full potential of mediation. These include the absence of statutory recognition within the IBC, institutional limitations, concerns regarding enforceability, and resistance from stakeholders accustomed to adversarial processes. These challenges are not insurmountable but require a coordinated and multi-dimensional approach involving legislative reform, institutional development, and cultural change.

Importantly, the comparative analysis of international jurisdictions demonstrates that the successful integration of mediation into insolvency frameworks is contingent upon legal clarity, institutional support, and stakeholder acceptance. Jurisdictions such as the United States, the United Kingdom, and Singapore have shown that mediation can coexist with formal insolvency processes and enhance their effectiveness.

In the Indian context, the enactment of the Mediation Act, 2023 provides a significant opportunity to bridge the gap between insolvency law and alternative dispute resolution. By extending the

principles of pre-litigation mediation to insolvency-related disputes, it is possible to create a more integrated and responsive legal framework.

Ultimately, this study affirms that mediation has the potential to serve as a pre-resolution mechanism that complements and strengthens the insolvency regime, rather than undermining it. Its integration into the IBC represents a shift towards a more holistic, efficient, and stakeholder-oriented approach to insolvency resolution.

BIBLIOGRAPHY

I. PRIMARY SOURCES

A. Statutes and Legislations

1. Insolvency and Bankruptcy Code, 2016 (India).
2. Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 (PPIRP).
3. Mediation Act, 2023 (India).
4. Companies Act, 2013 (India).
5. Code of Civil Procedure, 1908 (Section 89).
6. Recovery of Debts Due to Banks and Financial Institutions Act, 1993.
7. SARFAESI Act, 2002.
8. UK Insolvency Act, 1986.
9. US Bankruptcy Code, Chapter 11.
10. Singapore Insolvency, Restructuring and Dissolution Act, 2018.

B. Case Laws

1. Innoventive Industries Ltd. v. ICICI Bank & Anr., (2018) 1 SCC 407.
2. Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 SCC 17.

3. Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd., (2018) 1 SCC 353.
4. K. Sashidhar v. Indian Overseas Bank, (2019) 12 SCC 150.
5. Embassy Property Developments Pvt. Ltd. v. State of Karnataka, (2020) 13 SCC 308.
6. Vidarbha Industries Power Ltd. v. Axis Bank Ltd., (2022) 8 SCC 352.
7. Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co., (2010) 8 SCC 24.
8. Lokhandwala Kataria Construction Pvt. Ltd. v. Nisus Finance, (2017) 13 SCC 655.

C. Reports and Committee Findings

1. Bankruptcy Law Reforms Committee Report (2015).
2. Insolvency Law Committee Report, Ministry of Corporate Affairs (2018).
3. Insolvency and Bankruptcy Board of India (IBBI) Annual Report (2020).
4. Reserve Bank of India, Report on Trend and Progress of Banking in India (2020).
5. UNCITRAL Legislative Guide on Insolvency Law (2005).
6. Singapore International Mediation Centre (SIMC) Report (2019).

II. SECONDARY SOURCES

A. Books

1. Sahoo, M.S., *Insolvency and Bankruptcy Code: A New Framework* (2016).
2. Iyer, V., *Insolvency Law in India* (2019).
3. Niranjana, V., *Insolvency and Bankruptcy Code: A Critical Analysis* (2019).
4. Menon, N.R. Madhava, *Mediation: Practice, Policy and Law in India* (2018).
5. Posner, Richard A., *Economic Analysis of Law* (2014).
6. Jackson, Thomas H., *The Logic and Limits of Bankruptcy Law* (1986).
7. Finch, Vanessa & Milman, David, *Corporate Insolvency Law* (2017).

8. Kahneman, Daniel, *Thinking, Fast and Slow* (2011).
9. Thaler, Richard H., *Misbehaving: The Making of Behavioral Economics* (2015).
10. Simon, Herbert A., *Administrative Behavior* (1957).

B. Journal Articles

1. Jolls, Christine; Sunstein, Cass; Thaler, Richard, "A Behavioral Approach to Law and Economics," *Stanford Law Review* (1998).

2. Kahneman, Daniel & Tversky, Amos, “Prospect Theory: An Analysis of Decision under Risk,” *Econometrica* (1979).
3. Tversky, Amos & Kahneman, Daniel, “Judgment under Uncertainty: Heuristics and Biases,” *Science* (1974).
4. Jain, S. & Tripathi, S., “ADR and Insolvency: A Comparative Study” (2021).

C. Online Databases and Websites

1. SCC Online (www.sconline.com)
2. Manupatra (www.manupatra.com)
3. Insolvency and Bankruptcy Board of India (www.ibbi.gov.in)
4. Ministry of Corporate Affairs (www.mca.gov.in)
5. Reserve Bank of India (www.rbi.org.in)
6. Singapore International Mediation Centre (www.simc.com.sg)
7. UNCITRAL Official Website (www.uncitral.un.org)