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CONFLICT BETWEEN INSOLVENCY AND BANKRUPTCY CODE, 2016 AND THE COMPANIES ACT, 2013

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ABSTRACT

The enactment of the Insolvency and Bankruptcy Code, 2016 marked a significant shift in India's approach to corporate insolvency by introducing a unified, time-bound, and resolution-oriented framework. However, despite its comprehensive design, the continued operation of provisions under the Companies Act, 2013 has led to overlapping jurisdictions, procedural ambiguities, and interpretational challenges. This study critically examines the interface between these two statutes, focusing on the structural coexistence that governs corporate distress in India.

Adopting a doctrinal methodology, the research analyses statutory provisions, judicial precedents, committee reports, and academic literature to identify key areas of conflict, including winding-up proceedings, schemes of arrangement, jurisdictional overlaps before the NCLT, and the scope of the overriding provision under the Code. It further evaluates how courts have addressed these conflicts through principles such as harmonious construction and statutory primacy, while also highlighting the limitations of reliance on judicial interpretation as a long-term solution.

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The study finds that although the IBC has established functional dominance in insolvency matters, the Companies Act continues to retain relevance in specific domains, resulting in a layered rather than fully consolidated framework. This coexistence, while offering a degree of flexibility, also contributes to procedural uncertainty, delays, and strategic litigation. The research concludes that clearer legislative demarcation, improved institutional coordination, and targeted reforms are necessary to enhance the efficiency and coherence of India's insolvency regime.

CHAPTER 1: HISTORICAL EVOLUTION OF INSOLVENCY FRAMEWORK IN INDIA

1.1. INTRODUCTION

This chapter examines the evolution of insolvency and bankruptcy law in India, beginning with its early foundations during the colonial period and progressing to the modern framework established under the Insolvency and Bankruptcy Code, 2016. It first clarifies the conceptual distinction between insolvency and bankruptcy, and then traces the historical development of the legal regime through various legislative and institutional reforms. The chapter also outlines the constitutional, statutory, and jurisprudential foundations that shape the operation of insolvency law in India, while highlighting the role of committees and policy developments in driving reform. In doing so, it provides the necessary background to understand the present framework and the emerging conflicts between the IBC and the Companies Act, 2013, which form the core focus of the study.

1.2. DEFINITION OF INSOLVENCY AND BANKRUPTCY

1.2.1. DEFINITION INSOLVENCY

Insolvency generally refers to a situation where a person or entity is unable to meet its financial obligations as they fall due, or where its liabilities exceed the value of its assets. It may arise where liabilities exceed assets or where there is insufficient liquidity to meet obligations as they fall due.

It can be defined as a financial condition or state experienced when-

- A legal entity's (close corporation or company) or a person's liabilities (Debts/ obligations) exceeds than its assets commonly referred to as **'balance-sheet' insolvency**. The condition is sometimes referred to as **'technical insolvency' or 'negative net worth'**. In a situation of balance sheet insolvency, this would show negative shareholders' equity, meaning: Liabilities > Assets; (or)

- When a legal entity (close corporation or company) or person can no longer meet their debt obligations on time as they become due, commonly referred to as **'cash-flow' insolvency**. This reflects a short-term liquidity problem rather than a long-term solvency issue. It occurs when a business or individual is unable to meet its financial obligations as they come due, despite potentially having assets that exceed its liabilities. This type of insolvency is focused on the timing of cash flows rather than the overall financial position of the entity. In such cases, an entity may appear financially sound in terms of assets, yet still be unable to meet immediate payment obligations due to lack of liquidity.

1.2.2. TYPES OF INSOLVENCY

1. **Equity insolvency:**

Black Law's Dictionary' describes insolvency as-

(1) The condition of being unable to pay debts as they fall due or in the usual course of business;

(2) The inability to pay debts as they mature- also termed “failure to meet obligations”[1]

This definition is often referred to as **'equity insolvency'**. Equity insolvency refers to a financial state where an individual or organization is unable to pay their debts and financial obligations as they become due in the ordinary course of business. This condition focuses on a lack of immediate cash or liquid assets to meet current payment demands, rather than a situation where total liabilities exceed total assets (which is known as balance sheet insolvency). An entity can be equity insolvent even if its total assets are greater than its total liabilities, simply because those assets are not readily convertible into cash to cover immediate expenses.

Thus, Equity Insolvency, means a situation where, a debtor's inability to pay debts as they become due in the ordinary course of business. Unlike balance sheet insolvency, which focuses on negative net worth, equity insolvency focuses solely on liquidity, meaning a company may be solvent on paper but still face equity insolvency. This is also known as **Cash-Flow Insolvency.**

2. Balance Sheet Insolvency:

According to Black's "another measure of insolvency" is often referred to as 'balance sheet' insolvency. It is when a person or legal entity (corporation or company) being the 'debtor', the Debtor's liabilities exceed the debtor's assets.

[1] The Black Law’s Dictionary

Balance Sheet Insolvency refers to a financial state where an individual or organization's total liabilities exceed its total assets, resulting in a negative net worth. This condition is assessed based on the entity's financial position at a given point in time, as reflected in its balance sheet, rather than its immediate ability to meet payment obligations. Unlike cash-flow (equity) insolvency, which is concerned with liquidity and the ability to pay debts as they fall due, balance sheet insolvency focuses on overall financial viability. Even if an entity is able to continue servicing its debts in the short term (i.e., has sufficient cash flow), it may still be balance sheet insolvent if the aggregate value of what it owes surpasses the total value of what it owns. In such a situation, the entity's assets, even if fully liquidated, would be insufficient to cover its outstanding liabilities. This indicates a structural financial deficiency, rather than a temporary liquidity constraint. Therefore, Balance Sheet Insolvency means a situation where a debtor's total liabilities exceed total assets, leading to negative net worth. Unlike equity insolvency, which is concerned with the timing of payments and liquidity, balance sheet insolvency is concerned with the long-term financial position and sustainability of the entity.

1.2.3. DEFINITION OF BANKRUPTCY

Bankruptcy refers to a legal process through which a person or entity is formally declared incapable of repaying its debts. Bankruptcy may arise through the following processes:

(i) An application to the relevant court by a legal entity or person in order to have themselves declared bankrupt; or

(ii) An application to the relevant court by a creditor of a legal entity or a person in order to have the legal entity or person declared bankrupt; or

(iii) A special resolution which a legal entity files with the Registrar of Companies in order to be declared bankrupt.

When an individual or entity is unable to repay its debts, it may initiate bankruptcy proceedings. The process enables individuals or entities to address their outstanding debts through a structured legal mechanism, either by repayment or by discharge. Bankruptcy starts with a petition to the court made by the entity that owes money to its creditors (the debtor). Officials investigate the actual amount of outstanding debt, and depending on the type of bankruptcy and the nature of the applicant's debts and business (a firm, an individual, a company: public or private). Via bankruptcy, the debts owed to creditors are forgiven and written off, either completely or in part, or paid off by selling off the company's assets. Bankruptcy refers to "a judicial process to resolve a debtor's problems in paying debts." Therefore, Bankruptcy can be defined as when an individual is declared bankrupt by the court because they are insolvent.

Bankruptcy is the commission of an act of bankruptcy followed by an adjudication order.[2]

1.2.4. DISTINCTION BETWEEN INSOLVENCY AND BANKRUPTCY

Insolvency and bankruptcy, though closely related, are not identical concepts. Insolvency refers to the financial state of being unable to meet obligations, whereas bankruptcy denotes the legal process that follows such financial failure. In practice, however, the distinction is not always strictly maintained, and the terms are often used interchangeably. From a legal perspective, the difference lies in the fact that insolvency describes a condition, while bankruptcy involves formal adjudication and legal consequences arising from that condition. Insolvency is a broader concept that covers different forms of financial distress affecting both individuals and companies. Bankruptcy, on the other hand, is a more specific legal classification that applies when such financial distress is formally recognised by a court. While insolvency may exist without immediate legal consequences, bankruptcy represents a structured legal response to that condition. Insolvency typically arises when an individual or entity is unable to meet its financial obligations as they fall due. This may result from factors such as liquidity constraints, rising expenses, or a decline in income or cash flow. It reflects a state of financial strain where obligations cannot be discharged in a timely manner. In practice, insolvency is generally assessed through two main tests. The cash-flow test examines whether an entity is able to pay its debts as they fall due, while the balance sheet test considers whether the total liabilities, including contingent and prospective liabilities, exceed the value of its assets. Even where a company holds significant assets, a lack of liquidity may still prevent it from meeting immediate obligations. In practical terms, insolvency can be seen as the financial difficulty itself, while bankruptcy is the legal step taken when that situation can no longer be managed through ordinary means. Modern legal frameworks increasingly focus on resolving financial distress at an early stage, placing greater emphasis on restructuring rather than allowing it to progress into formal bankruptcy. This distinction is not merely conceptual but assumes practical significance in the context of corporate insolvency frameworks. Under modern regimes such as the Insolvency and Bankruptcy Code, 2016, the focus lies on addressing insolvency at an early stage through structured resolution processes, rather than allowing financial distress to culminate in liquidation or bankruptcy. The manner in which insolvency is identified and addressed therefore directly influences the choice of legal mechanism, particularly in situations where, overlapping statutory provisions, such as those under the

[2] Law of Insolvency & Bankruptcy (The Insolvency and Bankruptcy Code,2016), Dr. S. R. Myneni

Companies Act, 2013, continue to operate alongside the Code.

1.3. HISTORY OF INSOLVENCY AND BANKRUPTCY IN INDIA

In British Period:

Before the advent of the British in India, there was no specific law relating to bankruptcy. Insolvency law developed alongside British rule and was largely influenced by English law, which itself treated bankruptcy as a statutory concept with only rudimentary provisions in its early stages. In India, the need for insolvency law first arose in the Presidency Towns of Calcutta, Bombay, and Madras, where commercial activity was concentrated. The earliest legislative recognition can be traced to Sections 23 and 24 of the Government of India Act, 1800[3], which conferred insolvency jurisdiction on the Supreme Court at Fort William, Madras, and the Recorder's Court at Bombay. These courts were empowered to frame rules and grant relief to insolvent debtors, following the principles of the British Parliament's Lord's Act of 1759. A more structured framework emerged with Statute 9 (Geo IV, C. 73), which led to the establishment of specialised insolvency courts in the Presidency Towns. Although presided over by judges of the Supreme Court, these courts functioned independently and were required to hear insolvency matters regularly, with the Calcutta court sitting at least once a month. Initially enacted for a limited duration, the statute was extended until 1848 with certain modifications. Subsequently, the statute of 1848 (11 and 12 Vict., C. 21) introduced a distinction between traders and non-traders and transferred insolvency jurisdiction to the High Courts, though still confined to the Presidency Towns. However, the provisions of the Indian Insolvency Act, 1848 proved inadequate to meet evolving economic conditions. In the 1870s, Sir James Fitzjames Stephen proposed a uniform insolvency law for India, modelled on English law, but this was not adopted due to differences in conditions in the mofussil areas. While insolvency law developed in the Presidency Towns, there was no corresponding framework in the mofussil regions, largely due to limited commercial activity. The general practice was the distribution of sale proceeds among decree-holders after satisfying the attaching creditor. The first attempt to introduce insolvency law in the mofussil was made through the Code of Civil Procedure, 1877, which incorporated insolvency provisions in Chapter XX[4]. These provisions, later re-enacted in the Code of Civil Procedure, 1882, conferred jurisdiction on District Courts to entertain insolvency petitions and grant discharge. However, they were limited in scope,

[3] Sections- 23 and 24, Government of India Act, 1800.

[4] Civil Procedure Code, 1877- Chapter XX

applying mainly to cases where decrees had already been obtained, and did not allow creditors to initiate insolvency proceedings. These limitations were addressed by the Provincial Insolvency Act, 1907, which introduced a more structured framework and allowed both debtors and creditors to initiate insolvency proceedings. This Act was subsequently replaced by the Provincial Insolvency Act, 1920, which, along with the Presidency-Towns Insolvency Act, 1909, governed personal insolvency in India until the enactment of the Insolvency and Bankruptcy Code, 2016. Despite these developments, the framework remained fragmented and lacked uniformity.

In Independent India:

Under the Constitution of India, “bankruptcy and insolvency” falls under Entry 9 of the Concurrent List, enabling both the Centre and States to legislate on the subject. At the same time, corporate matters such as incorporation, regulation, and winding up fall under Entries 43 and 44 of the Union List, reflecting the dual nature of insolvency law as both an economic and corporate regulatory mechanism[5]. In practice, insolvency continued to be governed by multiple statutes, including the Companies Act, the Sick Industrial Companies Act, 1985, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, and the SARFAESI Act, 2002. Each addressed specific aspects of financial distress but operated independently, resulting in overlapping jurisdiction, delays, and procedural inefficiencies. The process of winding up of companies was carried out under the Companies Act through court supervision. Although Article 19(1)(g) guarantees the freedom to carry on trade or business, restrictions exist on closure of industrial undertakings in the interest of preventing unemployment. Consequently, while there is freedom to start a business, closure is subject to regulatory control.

The following were key legislations governing insolvency and related matters in India:

- Transfer of Property Act, 1882
- Code of Civil Procedure, 1908
- Presidency-Towns Insolvency Act, 1909
- Provincial Insolvency Act, 1920
- Companies Act, 2013
- Sick Industrial Companies Act, 1985
- Recovery of Debts Due to Banks and Financial Institutions Act, 1993
- SARFAESI Act, 2002

[5] Indian Constitution, 1950

- RBI rules and regulations

The Insolvency and Bankruptcy Code, 2016, which received Presidential assent on 28 May 2016, repealed the Presidency-Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920, and introduced amendments to several existing statutes, including the Partnership Act, 1932, Income Tax Act, 1961, SARFAESI Act, 2002, Companies Act, 2013, and others. The coexistence of multiple legislations reflected an approach where different aspects of financial distress were addressed in isolation. Although each statute served a specific purpose, the absence of a unified framework resulted in overlapping jurisdictions, delays in resolution, and reduced effectiveness. These limitations ultimately necessitated the introduction of a comprehensive insolvency framework.

1.4. LAW COMMISSION'S OBSERVATIONS ON INSOLVENCY

The Law Commission of India, in its 14th Report (1958)[6], made important observations regarding insolvency law. It noted that insolvency jurisdiction in the Presidency Towns had been exclusively vested in the High Courts. The Commission was of the view that such entrustment ensured better administration of insolvency laws and recommended that this position should continue even if the two separate Acts were consolidated into a single statute. Further, in its 26th Report on Insolvency (1964)[7], the Law Commission supported the idea of a unified insolvency law. It observed that the High Courts of Bombay, Madras, and Calcutta had exercised insolvency jurisdiction for over a century, and public opinion in these commercial centres favoured its continuation. The Commission also emphasised that insolvency adjudication has serious implications for a person's status and reputation. It therefore stressed that such matters should be handled by higher courts, particularly in major commercial centres like Bombay, Calcutta, and Madras, where insolvency cases are more frequent and significant. At the same time, although other towns such as Delhi, Ahmedabad, Amritsar, Kanpur, Patna, Asansol, Nagpur, Hyderabad, and Bangalore are commercially important, the High Courts do not exercise original insolvency jurisdiction in these areas. Extending such jurisdiction uniformly was therefore considered impracticable.

1.4.1. COMMITTEES ON INSOLVENCY LAW IN INDIA

With the objective of improving ease of doing business and reforming bankruptcy laws, several

[6] The 14th Law Commission Report, 1958
[7] The 26th Law Commission Report, 1964

committees have been constituted in India.

(1) Tiwari Committee- At the end of the 1970s, the Government of India observed an alarming increase in industrial sickness, leading to loss of production, unemployment, reduction in state revenue, and increasing difficulties for banks and financial institutions. To address this issue, the Reserve Bank of India constituted a committee in 1981 under the chairmanship of Shri T. Tiwari to suggest remedial measures. Based on its recommendations, the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) was enacted to ensure timely detection of sick industrial companies and to provide preventive and remedial measures. However, due to inherent defects, the Act failed to achieve its purpose and was often misused by promoters, highlighting the need for a more structured and unified approach.

(2) Justice V. B. Balakrishna Eradi Committee- In 1999, a high-level committee under the chairmanship of Justice V. B. Balakrishna Eradi was constituted to review and reform existing laws relating to insolvency and winding up of companies and to align them with international practices. The Committee made several key recommendations. It emphasised the need for an effective corporate insolvency framework that prioritises revival of viable companies over liquidation, thereby preserving economic value and employment. It recommended vesting jurisdiction over winding up, rehabilitation, and revival in a National Company Law Tribunal (NCLT), replacing multiple existing forums such as the BIFR. It also proposed amendments to the Companies Act, 1956 to facilitate this transition, including transfer of pending proceedings. Further, the Committee suggested adoption of international practices, including faster asset realisation and postponement of claims adjudication. It highlighted the need to strengthen the office of official liquidators, recommended the establishment of a creditor-based Liquidation Committee, and proposed repeal of SICA with integration of its revival mechanisms into the Companies Act. It also recommended adoption of the UNCITRAL Model Law on Cross-Border Insolvency. These recommendations led to the Companies (Amendment) Act, 2002, which consolidated powers of courts, BIFR, and the Company Law Board into the NCLT, thereby streamlining the insolvency framework. The Committee’s work significantly influenced the institutional structure of modern insolvency law.

(3) N.L. Mitra Committee- In 2001, the Reserve Bank of India constituted the N.L. Mitra Committee to recommend reforms in bankruptcy law. The Committee strongly advocated the introduction of a consolidated bankruptcy law in the form of a separate code. This recommendation was eventually implemented through the Insolvency and Bankruptcy Code, 2016, which provides a comprehensive framework for insolvency and bankruptcy.

(4) J.J. Irani Committee- In 2005, the J.J. Irani Committee was constituted to review laws

relating to liquidation and restructuring of companies. It recommended reforms aimed at making restructuring and liquidation processes more efficient, transparent, and aligned with global standards. The Committee emphasised the need for a comprehensive and centrally administered framework governing the lifecycle of corporate entities. During this period, the Reserve Bank of India also permitted the establishment of Asset Reconstruction Companies under the SARFAESI Act. Institutions such as Asset Reconstruction Company (India) Limited (ARCIL) played a significant role in restructuring distressed assets. Additional measures, including the Credit Information Companies Act, 2005 and Corporate Debt Restructuring (CDR) mechanisms, further supported the evolving framework.

(5) Bankruptcy Law Reforms Committee (Viswanathan Committee), 2015- In the Union Budget 2015–16, the Finance Minister, Shri Arun Jaitley, identified bankruptcy reform as a priority for improving ease of doing business. Accordingly, the Bankruptcy Law Reforms Committee was constituted under the chairmanship of Dr. T.K. Viswanathan. The Committee submitted its report on November 4, 2015, outlining both the rationale and draft provisions for a comprehensive insolvency framework. The Committee proposed an institutional structure consisting of a regulator (IBBI), insolvency professionals, information utilities, and adjudicating authorities (NCLT for corporates and DRT for individuals)[8]. It recommended a unified framework enabling creditor-driven initiation of insolvency, early detection of distress, a moratorium period, replacement of management, time-bound resolution, and a structured liquidation process. These recommendations directly led to the enactment of the Insolvency and Bankruptcy Code, 2016.

(6) Bhupender Yadav Committee- The Bhupender Yadav Committee (2015) recommended inclusion of undischarged insolvents within the definition of bankrupt, protection of employee benefits such as provident fund, pension, and gratuity, and the introduction of provisions relating to cross-border insolvency.

Indian International Association of Restructuring Insolvency and Bankruptcy Professionals- (INSOL India)

INSOL India is an association of professionals including lawyers, chartered accountants, and company secretaries, working towards the development of insolvency law. It was established on September 27, 1997 under the guidance of Justice D.P. Wadhwa, with Justice Manmohan Sarin as its first President. The objectives of INSOL India include promoting research, organizing seminars and conferences, encouraging international cooperation, and developing

[8] Vishwanathan Committee Report, 2015

insolvency law as an instrument for social and economic change.

1.5. PRE-IBC REGIME – INSOLVENCY AND BANKRUPTCY STATUTES IN INDIA

1.5.1. Insolvency of Individuals under the Presidency-Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920

The law of insolvency is primarily intended to provide relief and protection to honest debtors who, due to unforeseen circumstances, become incapable of repaying their debts. Its objective is to ensure equitable distribution of the debtor's property among creditors and to grant discharge from liabilities, subject to prescribed conditions. Prior to the Insolvency and Bankruptcy Code, 2016, personal insolvency in India was governed by two principal legislations—the Presidency-Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920. Both enactments contained substantially similar provisions but differed in their territorial application. The Presidency-Towns Insolvency Act, 1909 applied to Kolkata, Mumbai, and Chennai, whereas the Provincial Insolvency Act, 1920 extended to the rest of India. These laws applied to individuals, including sole proprietors and partnership firms, but expressly excluded corporations and registered companies. In this regard, Section 107 of the 1909 Act[9] and Section 8 of the 1920 Act[10] prohibited the initiation of insolvency proceedings against companies. Structurally, the 1909 Act consisted of 127 sections with two schedules, while the 1920 Act contained 83 sections along with two schedules.

1.5.2. Corporate Insolvency

The Presidency-Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920 were limited to individuals and did not extend to corporate insolvency. Corporate insolvency, however, forms a crucial part of the economic legal system and requires a structured framework. Its objectives include revival of viable companies, maximisation of creditor returns where revival is not possible, equitable distribution of assets, and identification of causes of failure, including mismanagement. It also ensures independent supervision of assets, promotes collective decision-making among creditors, and prevents fraudulent dealings.

Before the introduction of the Insolvency and Bankruptcy Code, 2016, India did not have a unified law governing corporate insolvency. Instead, multiple legislations addressed different aspects of financial distress, including the Companies Act, 1956 and later the Companies Act,

[9] The Presidency Towns Insolvency Act, 1909, Section 107.
[10] The Provincial Insolvency Act, 1920, Section 8.

2013, the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), the SARFAESI Act, 2002, and the Payment and Settlement Systems Act, 2007. These statutes operated within limited domains, often resulting in parallel proceedings, jurisdictional inconsistencies, and the absence of a time-bound resolution mechanism.

(i) Companies Act (1956 and 2013)

Under the Companies Act, 1956, provisions existed for revival and rehabilitation of companies. Section 391 provided a mechanism for compromise or arrangement between a company and its creditors or members under court supervision[11]. Such schemes became binding upon approval by the prescribed majority, sanction by the Court, and filing with the Registrar. Separate meetings were required for different classes of creditors, and the Court could grant a stay on proceedings to ensure smooth implementation. The Act also governed winding up, either through compulsory winding up by the High Court or voluntary winding up. Insolvency was only one of several grounds for such action. The Companies Act, 2013 introduced a more structured approach, with provisions for revival under Chapter XIX and winding up under Chapter XX. However, following the enactment of the Insolvency and Bankruptcy Code, 2016, provisions relating to revival (Sections 253–269) were removed. Winding up is now carried out through the Tribunal, and voluntary winding up has been phased out. Chapter XX (Sections 270–365) governs the process[12].

(ii) Recovery of Debts Due to Banks and Financial Institutions Act, 1993

Banks and financial institutions play a key role in providing credit, but defaults due to mismanagement and misuse of funds posed serious recovery challenges. Based on recommendations of committees such as the Tiwari Committee and Narasimham Committee, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 was enacted.

The Act established specialised Debt Recovery Tribunals (DRTs) to provide a faster and more efficient mechanism than civil courts. Banks can file applications before DRTs, and cases are generally decided within a time-bound framework. The procedure includes issuance of summons, submission of replies, and evidence through affidavits. Appeals are permitted, though subject to deposit requirements. The system aims to ensure speedy recovery while maintaining fairness between lenders and borrowers.

(iii) Sick Industrial Companies (Special Provisions) Act, 1985

Industrial sickness arises when companies incur continuous losses and are unable to sustain

[11] The Companies Act, 1956, Section 391.
[12] Sections 270 to 365, The Companies Act, 2013.

operations. To address this, the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) was enacted to identify and revive sick companies or facilitate their closure. Under SICA, a company was considered sick if it had been in existence for at least five years and its accumulated losses equalled or exceeded its net worth. The Act established the Board for Industrial and Financial Reconstruction (BIFR) and the Appellate Authority (AAIFR). BIFR assessed the viability of companies and recommended revival measures or winding up where necessary. However, the Act was later repealed due to inefficiencies and delays, making way for a more modern framework.

(iv) SARFAESI Act, 2002

The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was enacted to enable banks and financial institutions to recover dues without court intervention. Under this Act, creditors can take possession of secured assets, sell or lease them, or take over management in case of default. They may also appoint managers for such assets.

The Act has an overriding effect and facilitates quicker recovery. It also provides for Asset Reconstruction Companies (ARCs), which acquire non-performing assets and attempt recovery. The Act focuses on enforcement of security interest, securitisation of assets, and transfer of bad loans, thereby strengthening the recovery framework.

1.6. MODEL LAW ON CROSS-BORDER INSOLVENCY, 1997

The UNCITRAL Model Law on Cross-Border Insolvency provides an internationally recognised framework for insolvency cases involving multiple jurisdictions. Cross-border insolvency arises where a debtor has assets or creditors in different countries, making resolution more complex. The Model Law aims to ensure fair and efficient resolution, protect stakeholder interests, and maximise asset value. It promotes cooperation between courts and authorities of different countries and is based on four key principles: access, recognition, relief, and cooperation. These principles allow foreign creditors to approach domestic courts, enable recognition of foreign proceedings, provide protection to assets, and facilitate coordination between jurisdictions. In India, while the Insolvency and Bankruptcy Code, 2016 governs insolvency, provisions relating to cross-border insolvency remain limited. Adoption of the Model Law is therefore considered important for aligning India's framework with global practices and improving efficiency in handling cross-border cases.

1.7. CONSTITUTIONAL, STATUTORY AND JURISPRUDENTIAL FOUNDATIONS OF THE CONFLICT BETWEEN THE INSOLVENCY AND BANKRUPTCY CODE 2016 AND COMPANIES ACT, 2013

1.7.1. CONSTITUTIONAL FOUNDATION

The constitutional basis of insolvency and bankruptcy law in India lies in the scheme of distribution of legislative powers under the Constitution. The subject of "bankruptcy and insolvency" is included under Entry 9 of the Concurrent List, enabling both Parliament and State Legislatures to enact laws. However, Article 254 ensures that in case of any inconsistency, the law made by Parliament prevails[13]. This provides the foundation for the enactment and supremacy of the Insolvency and Bankruptcy Code, 2016. Further, Entries 43 and 44 of the Union List grant Parliament exclusive power over incorporation, regulation, and winding up of companies. This explains how both the Insolvency and Bankruptcy Code, 2016 and the Companies Act, 2013 operate within the same constitutional space, often leading to overlaps.

The constitutional validity of the Code was upheld in **Swiss Ribbons Private. Ltd. v. Union of India[14]**, where the Supreme Court observed: *"The primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting it from its own management and from a corporate death by liquidation."* The Court held that the Insolvency and Bankruptcy Code is a beneficial and economic legislation aimed at revival rather than mere recovery, and therefore does not violate constitutional guarantees. It recognised the Code as consistent with the objective of economic stability and public interest.

1.7.2. STATUTORY FOUNDATION

The statutory framework of insolvency law in India has transitioned from a fragmented system to a unified regime under the Insolvency and Bankruptcy Code, 2016. Earlier, multiple laws such as the Companies Act, SICA, and SARFAESI governed insolvency-related matters, leading to delays and jurisdictional conflicts. The Code was enacted to consolidate these laws and provide a time-bound resolution process. However, the provisions relating to winding up under the Companies Act, 2013 continue to exist, creating overlaps between the two statutes.

This issue was addressed in **Innoventive Industries Ltd. v. ICICI Bank**, where the Supreme Court held: *"In view of Section 238 of the Code, the provisions of the Code will override*

[13]The Indian Constitution, 1950
[14]Swiss Ribbons Private Ltd. V. Union of India (2019) 4 SCC 17.

anything inconsistent contained in any other enactment.[15]*"* The Court clarified that the Insolvency and Bankruptcy Code has an overriding effect over all other laws, including state laws and earlier statutes, thereby establishing its primacy in insolvency matters. Similarly, in **Principal Commissioner of Income Tax v. Monnet Ispat and Energy Ltd.,** the Court observed: *"Given Section 238 of the Code, it is obvious that the Code will override anything inconsistent contained in any other enactment, including the Income Tax Act.*[16]*"* The Court reaffirmed that even government dues are subordinate to the framework of the IBC, reinforcing the idea that the Code is intended to be a complete and overriding statute in insolvency matters.

1.7.3. JURISPRUDENTIAL FOUNDATION

The jurisprudential basis of insolvency law is grounded in principles of fairness, efficiency, and economic balance. One of the central theories is the **creditor bargain theory**, which views insolvency law as a collective mechanism that prevents individual creditors from racing against each other for recovery. Instead, it ensures an organised process that maximises overall value. Another important principle is value maximisation, which is a core objective of modern insolvency regimes. This was emphasised in **Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta,** where the Supreme Court stated: *"The ultimate discretion of what to pay and how much to pay each class or subclass of creditors is with the Committee of Creditors."* The Court upheld the commercial wisdom of the Committee of Creditors (CoC) and limited judicial interference, thereby reinforcing that insolvency resolution should focus on maximisation of value and practical business decisions, rather than rigid legal formalities. Further, the Court also highlighted that: *"The Code is a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors."*[17] This reflects the **fresh start theory**, which supports the idea that viable businesses should be revived rather than liquidated. Additionally, insolvency law is guided by the **principle of balancing interests**, ensuring that the rights of creditors, debtors, and other stakeholders are fairly addressed. The courts have consistently applied the **doctrine of harmonious construction** to interpret overlapping statutes, but where conflict persists, the principle of overriding effect under Section 238 of the IBC[18] is applied. From a scholarly perspective, Thomas H. Jackson's theory of insolvency as a system of collective debt enforcement supports the idea that

[15] Innoventive Industries Ltd. V. ICICI Bank (2018) 1 SCC 407.
[16] Principal Commissioner of Income Tax V. Monnet Ispat and Energy Ltd. (2018) 18 SCC 786.
[17] Committee of Creditors of Essar Steel India Ltd. V. Satish Kumar Gupta (2020) 8 SCC 531
[18] Section 238, Insolvency and Bankruptcy Code, 2016.

insolvency law is designed to replace individual remedies with a coordinated legal process. This aligns with the Indian approach under the IBC. The constitutional, statutory, and jurisprudential foundations of insolvency law in India together create a comprehensive framework for dealing with financial distress. While the Constitution provides the legislative basis, statutes like the Insolvency and Bankruptcy Code, 2016 and the Companies Act, 2013 define the operational structure. Judicial interpretations and doctrinal theories further shape the application of these laws. However, despite the overriding nature of the Code, the continued coexistence of provisions under the Companies Act leads to areas of conflict, highlighting the need for greater clarity and harmonisation within the legal framework.

1.8. THEORETICAL JUSTIFICATIONS AND DOCTRINAL BASIS OF THE RESEARCH THEME

The theoretical foundation of insolvency law lies in the need to address financial failure in an organised and equitable manner. Insolvency does not merely affect the debtor; it has broader implications for creditors, employees, and the economy at large. Therefore, the law seeks to replace individual enforcement actions with a collective mechanism that ensures fairness, maximises value, and maintains economic stability. One important justification for insolvency law is that it prevents chaos among creditors. If there were no proper system, each creditor would try to recover their money individually, which could lead to unfair results. Some creditors might recover everything while others get nothing. To avoid this, the law brings all claims together and deals with them collectively, making the process more balanced and orderly. Another important aspect is that modern insolvency law does not always aim at shutting down a business. If a company still has the potential to survive, the law allows for its revival or restructuring. This approach is practical because it helps in saving jobs and keeping the business running, instead of immediately selling off all its assets. It also ensures that the value of the company is not lost unnecessarily. The law is also based on the idea of fairness. It tries to distribute the assets of the debtor in a proper order, so that similarly placed creditors are treated equally. At the same time, it also recognises that not all debtors fail intentionally. In genuine cases, the law gives them a chance to recover and start again, instead of permanently penalising them. Thus, the theoretical basis of insolvency law lies in maintaining a balance between competing interests. It tries to ensure that creditors recover their dues as far as possible, while also giving debtors an opportunity to resolve their financial problems in a fair and structured manner.

1.9. CONCLUSION AND SUGGESTIONS

1.9.1. CONCLUSION

This chapter has traced the evolution of insolvency law in India from its early colonial origins to the present framework under the Insolvency and Bankruptcy Code, 2016. It shows that insolvency law in India has developed gradually, influenced by economic needs, institutional limitations, and legislative experimentation. The earlier regime, though well-intentioned, remained fragmented and inefficient, with multiple statutes addressing different aspects of financial distress without coordination. This resulted in delays, overlapping jurisdiction, and ineffective resolution mechanisms.

The introduction of the Insolvency and Bankruptcy Code, 2016 marked a clear shift towards a more structured and time-bound system. It brought together various elements of insolvency law into a single framework and introduced modern principles such as creditor control, value maximisation, and resolution over liquidation. At the same time, the continued existence of provisions under the Companies Act, 2013 indicates that the transition to a fully unified system is not complete.

The chapter also highlights that insolvency law in India is not shaped solely by statutes but also by constitutional provisions, judicial interpretation, and theoretical principles. Courts have played a key role in clarifying the scope and application of the Code, particularly in resolving conflicts with other laws. However, the need for such continuous interpretation also suggests that the framework still contains areas of ambiguity.

Overall, the chapter establishes that while significant progress has been made, the insolvency regime in India continues to function as a layered system, where old and new laws coexist. This coexistence provides flexibility but also creates scope for conflict and uncertainty, which becomes the central concern of the subsequent chapters.

1.9.2. SUGGESTIONS

In light of the issues identified in this chapter, certain measures may be considered to strengthen the insolvency framework.

First, there is a need for clearer legislative demarcation between the Insolvency and Bankruptcy Code, 2016 and the Companies Act, 2013. While the Code is intended to be comprehensive, the continued operation of overlapping provisions creates uncertainty. Defining the scope of each statute more precisely would reduce confusion and limit unnecessary litigation. Second, greater emphasis should be placed on consistency in application. Since much of the current framework depends on judicial interpretation, variations in approach can lead to

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unpredictability. Clearer statutory guidance or consolidated principles could help ensure uniformity across cases.

Third, institutional capacity must be strengthened. The effectiveness of insolvency law depends not only on legal provisions but also on the efficiency of adjudicating bodies and supporting institutions. Addressing delays and improving coordination between forums would enhance the practical functioning of the system. Fourth, the framework should continue to focus on early identification and resolution of financial distress. Preventive mechanisms and timely intervention can reduce the need for prolonged proceedings and preserve economic value.

Finally, reforms should aim at balancing flexibility with certainty. While it is important to retain multiple mechanisms to address different situations, these should operate in a coordinated manner rather than in competition with each other.