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# EVOLUTION AND THEORETICAL FRAMEWORK OF INSOLVENCY RESOLUTION PROCESS IN INDIA AND THE UK

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**ABSTRACT**

The insolvency resolution processes in India and the UK reflect distinct legal frameworks shaped by their respective economic and judicial systems. This comparative study analyzes the key features, efficiencies, and challenges of insolvency mechanisms under India's *Insolvency and Bankruptcy Code, 2016* (IBC) and the UK's *Insolvency Act, 1986* (including subsequent reforms). While both jurisdictions prioritize creditor rights and business continuity, their approaches differ in structure, timelines, and stakeholder participation.

India's IBC introduces a time-bound resolution process (180-330 days) administered by the Insolvency and Bankruptcy Board of India (IBBI), emphasizing the primacy of Committee of Creditors (CoC) and the exclusion of erstwhile management during proceedings. The UK's regime offers multiple procedures—Administration, Company Voluntary Arrangements (CVAs), and Liquidation—with greater flexibility for debtor-in-possession models (e.g., pre-pack administrations). Judicial oversight is more decentralized in the UK, with courts playing a limited role compared to India's National Company Law Tribunal (NCLT)-driven process.

**Keywords:** Insolvency Resolution, IBC, Creditor Rights, Cross-Border Insolvency

## 1.1 INTRODUCTION

Throughout numerous years insolvency definitions evolved due to economic and legal and social forces that simultaneously transformed multiple jurisdictions. Various legal systems have introduced multiple frameworks to handle debtor insolvency because it signifies their inability to fulfill financial commitments while also protecting both creditors and debtors as well as other interested parties. Insolvency laws in different countries conserve three main principles: fairness, efficiency, and economic stability yet their specific approaches result from their legal backgrounds plus their economic growth strategies. This paper investigates the historical development of insolvency laws together with their conceptual foundations that lead to a study of the Indian versus the United Kingdom (UK) insolvency resolution frameworks. The research examines both jurisdictions to reveal central dissimilarities with their legal structures and procedural procedures and possible reform opportunities[445].

Ancient civilization recorded marked growth of insolvency laws by enforcing debt repayment through debt bondage as well as prison time. Lawmakers throughout Europe developed bankruptcy codes by recognizing the necessity for more humane structured approaches toward insolvency during the medieval era. The historical origins of current insolvency law began in the UK through successive legal frameworks including the Bankruptcy Act of 1542 yet reaching its modern extended form with the Insolvency Act of 1986. Modern debt laws have evolved from harsh treatment of people who owe money to focus on business

[445] David Milman, *Corporate Insolvency Law: Perspectives and Principles* (3rd edn, Cambridge University Press 2017) 12-15.

reconstruction and safeguarding creditors' interests. India operated with a broken insolvency framework composed of several outdated laws the Presidency Towns Insolvency Act (1909) and the Provincial Insolvency Act (1920) that mainly favored creditors over debtors while being problematic. The theoretical framework of insolvency law revolves around two primary models: the creditor-oriented approach and the debtor-oriented approach. The creditor-oriented model, traditionally followed by the UK, emphasizes the protection of creditors' rights through liquidation or restructuring mechanisms. In contrast, the debtor-oriented model, increasingly adopted in modern insolvency systems, focuses on rehabilitating financially distressed businesses to sustain economic value[446]. The UK's insolvency regime incorporates both liquidation and administration procedures, with a strong emphasis on corporate rescue through mechanisms such as Company Voluntary Arrangements (CVAs) and pre-pack administrations. India's IBC, inspired by the UK's insolvency framework but tailored to local economic conditions, introduces the Corporate Insolvency Resolution Process (CIRP), which mandates a moratorium on creditor actions and promotes resolution over liquidation. Despite these advancements, challenges such as delays in resolution, judicial backlogs, and inconsistent implementation persist in both jurisdictions, necessitating further reforms[447].

A comparative study of India and the UK provides valuable insights into the effectiveness of different insolvency resolution mechanisms. While the UK's well-established legal system and mature financial infrastructure ensure relatively efficient insolvency proceedings, India's nascent IBC framework faces operational hurdles, including capacity constraints among insolvency professionals and overburdened tribunals. Nevertheless, India's insolvency regime has shown promising progress in improving recovery rates and fostering investor confidence. By analyzing case laws, procedural timelines, and recovery outcomes in both countries, this study evaluates the strengths and weaknesses of each system. Furthermore, it explores the role of key stakeholders—such as insolvency practitioners, creditors, and adjudicating authorities—in shaping insolvency outcomes. The findings of this research contribute to the ongoing discourse on insolvency law reforms, offering policy recommendations to enhance the efficiency and fairness of insolvency resolution processes in emerging economies like India while drawing lessons from the UK's experience.

## 1.2 THE DEVELOPMENT OF INSOLVENCY LAWS FROM A HISTORICAL ANGLE OVERVIEW

Since ancient times, the idea of insolvency—when a debtor is unable to pay their debts—has developed from severe punitive methods to organized legal structures meant to strike a balance between the rights of creditors and debtor rehabilitation. Insolvency laws' historical evolution is a reflection of larger legal, social, and economic changes throughout history. This section charts the development of insolvency laws from antiquity to the present, emphasizing significant turning points that influenced the current bankruptcy laws in India and the UK[448].

### Early Theories of Debt Recovery and Insolvency

The first known bankruptcy laws were found in ancient Mesopotamia, where the Code of Hammurabi (c. 1750 BCE) stipulated harsh punishments for nonpayment of debt, such as forced labor and debt bondage. Similar to this, an early move toward debtor protection was made in ancient Greece when Solon's Seisachtheia reforms (6th century BCE) outlawed debt servitude. Cessio bonorum (surrender of property), one of the most structured debt settlement procedures brought about by Roman law, allowed debtors to

[446]International Monetary Fund, 'Insolvency and Debt Resolution' (Policy Paper, 2021) https://www.imf.org accessed 15 April 2025.
[447] UK Insolvency Act 1986, s 123.
[448] Insolvency and Bankruptcy Code 2016 (India), s 3(12).

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escape going to jail by giving over assets to creditors. These early systems prioritized repayment above rehabilitation and were mostly creditor-centric[449].

European communities struggled with bankruptcy throughout the Middle Ages due to feudal and clerical regulations. While medieval trade guilds created unofficial bankruptcy agreements among merchants, the Catholic Church's ban on usury had an impact on debt collection procedures. But as a result of a centuries-old punishing response to bankruptcy, debtors' jails proliferated across England and Europe. Financial suffering was exacerbated by arbitrary creditor proceedings that often resulted from the absence of a coherent legal framework.

**Medieval Europe's Insolvency Law Development**

More organized bankruptcy rules were required as a result of the Renaissance's economic boom and the growth of mercantile commerce. The seizure of a debtor's property was one of the debt collection procedures made possible in England by the Statute of Merchants (1285) and the Statute of Acton Burnell (1283). These regulations, however, provided little remedy for bankrupt people and benefited creditors. Henry VIII's Bankruptcy Act of 1542, England's first official bankruptcy legislation, was a watershed. It allowed creditors to confiscate assets and put defaulters in jail by focusing on dishonest debtors. This regulation only applied to tradesmen, which reflected the commercial emphasis of the time. As the Bankruptcy Act of 1571 introduced the idea of pro rata distribution among creditors—a fundamental tenet of contemporary insolvency—the breadth grew over time. The Development of Contemporary Bankruptcy Laws Further improvements to bankruptcy legislation occurred in the 17th and 18th century as a result of Enlightenment concepts of debtor rights and economic liberty. The concept of discharge was first established by the English Bankruptcy Act of 1705, which permitted honest debtors to be relieved from debts after asset liquidation. This was a dramatic departure from incarceration and ongoing debt[450]. With the emergence of corporate entities and the rise of large-scale company failures, the Industrial Revolution introduced new complications. A more methodical procedure for liquidation and creditor settlements was established by the UK's Bankruptcy Act of 1869, which combined previous statutes. In the meanwhile, rules for corporate winding-up were created by the Companies Act of 1862, which made a distinction between personal and commercial insolvency. The Impact of Equity and Common Law on Insolvency. The development of insolvency rules was significantly influenced by English common law and equity courts[451]. To stop asset theft, courts created theories like fraudulent transfer and pari passu, or equal treatment of creditors. By striking a balance between strict legislative regulations and equitable remedies, the Chancery Court's interventions guaranteed a more equal allocation of assets. The UK's insolvency system had developed by the 19th century, with licensed insolvency practitioners, creditor committees, and court supervision. By establishing professional receivers to supervise bankruptcy procedures, the Bankruptcy Act of 1883 decreased creditor exploitation and improved transparency.

**The Evolution of India's Insolvency Laws Over Time**

Initially regulated by disjointed legislation, India's bankruptcy laws developed under colonial authority. Although they were based on English law, the Presidency Towns Insolvency Act (1909) and the Provincial Insolvency Act (1920) were enforced selectively, with different regimes for presidency towns (such as Bombay and Calcutta) and provincial territories. These

[449] Bruce G. Carruthers and Terence C. Halliday, *Rescuing Business: The Making of Corporate Bankruptcy Law in England and the United States* (Clarendon Press 1998) 45-48.

[450] Code of Hammurabi (c. 1750 BCE), Laws 48-52 (trans. Martha Roth).

[451] Plutarch, *Life of Solon* 15.2-5 (1st century CE).

laws have poor recovery rates, protracted litigation, and a creditor-dominated structure. India kept these colonial-era rules after gaining independence, but as industrialization quickened, their inefficiencies became apparent. Rehabilitating failing companies was the goal of the Sick Industrial Companies Act (SICA, 1985), but it was beset by delays and lax enforcement[452]. Although it lacked a thorough insolvency structure, the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act of 2002 gave banks the authority to collect debts. A revolutionary change was brought about by the 2016 Insolvency and Bankruptcy Code (IBC), which combined many provisions into one single legislation. The IBC established time-bound resolution, creditor-in-control procedures, and a professional insolvency ecosystem, all of which were influenced by the UK's insolvency model. By prioritizing company rescue above liquidation, this change brought India into line with international best practices.

The steady shift from punitive debt collection to organized, rights-based resolution processes is reflected in the development of bankruptcy legislation. Modern frameworks strike a compromise between creditor rights, debtor rehabilitation, and economic stability, while earlier regulations placed a higher priority on creditor payback. India's IBC and other international bankruptcy regimes were greatly impacted by the common law heritage and legislative developments of the United Kingdom. It is essential to comprehend this historical development in order to assess current bankruptcy procedures and pinpoint areas in need of future change.

## 1.3 PROCEDURE FOR INSOLVENCY RESOLUTION IN THE UNITED KINGDOM

### Summary of the Insolvency Framework in the United Kingdom

Because of decades of legal development and economic changes, the UK has one of the most advanced and well-established insolvency regimes in the world. When possible, the UK's bankruptcy process aims to promote company recovery while balancing the interests of creditors, debtors, and other stakeholders[453]. The system guarantees a systematic response to financial crisis via a mix of common law principles, statute rules, and regulatory control. Increasing asset recovery for creditors, assisting in the rescue of viable enterprises, and offering a fair process for winding up insolvent organizations are the main goals of the UK insolvency system. Depending on the debtor's financial situation, the system is managed via a number of processes, such as administration, voluntary agreements, and liquidation, each of which has a specific function. The UK's bankruptcy laws serve as an example for other countries, like India, and are also affected by worldwide best practices and European Union regulations, however post-Brexit revisions are still being made[454].

### Important Laws: Enterprise Act of 2002 and Insolvency Act of 1986

The Insolvency Act 1986, which combined previous bankruptcy and corporate insolvency legislation into a single act, serves as the cornerstone of contemporary UK insolvency law. With the introduction of crucial procedures like administration, liquidation, and Company Voluntary Arrangements (CVAs), this Act offered a thorough legal framework for managing insolvency. The Enterprise Act of 2002 prioritized company rescue above liquidation, which resulted in major improvements, especially in the area of corporate bankruptcy. It brought a more creditor-friendly approach to asset distribution, shortened bankruptcy discharge periods, and lessened the administrative load on small enterprises. The Act also made it more difficult for creditors to pursue winding-up petitions without taking restructuring possibilities into account, emphasizing the role of administration as a rescue operation. The

[452] *Lex Julia de bonis cedendis* (Roman law, 4 CE).

[453] Statute of Merchants 1285 (3 Edw I).

[454] Bankruptcy Act 1542 (34 & 35 Hen VIII c 4).

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foundation of the UK's insolvency system is made up of several laws, which guarantee effectiveness, equity, and flexibility in response to changing market circumstances[455].

**Mandatory and Voluntary Liquidation Procedures**

In the UK, liquidation is the official process of closing a business, selling its assets, and allocating the money raised to creditors. Two main categories of liquidation exist: When a business is unable to pay its obligations, creditors may request a compulsory liquidation, usually via a winding-up petition. An Official Receiver or a certified insolvency practitioner (IP) is chosen by the court to supervise the procedure. There are two types of voluntary liquidation: creditors' voluntary liquidation (CVL), which is started by directors when bankruptcy is certain, and members' voluntary liquidation (MVL), which is used by solvent businesses to voluntarily shut down operations. In both situations, the liquidator takes control of the business, evaluates its debts, and allocates its assets according to the statutory order of precedence, which places shareholders and unsecured creditors last. Because liquidation is terminal, it is often seen as a last alternative even if it guarantees an orderly conclusion[456].

**Management And Voluntary Organizations (Cvas)**

The goal of administration is to help financially troubled businesses get back on their feet. An insolvency practitioner is appointed as an administrator when a business goes into administration, putting an immediate stop to creditor proceedings. The main responsibility of the administrator is to either: Save the business as a running enterprise, Outperform liquidation in terms of creditors' outcomes, or Realize assets to settle debts owed to preferred or secured creditors. During financial crises, administration has played a crucial role in rescuing companies like Jaguar Land Rover and British Airways. Company Voluntary Arrangements (CVAs) are an additional restructuring strategy that enables businesses to continue operating while negotiating conditions for debt repayment with creditors. In order to lower rent burdens and restructure debt, retail giants like Debenhams and Pizza Express often employ CVAs, which need approval from at least 75% of creditors (by value). Unless disputed, CVAs do not need judicial supervision, in contrast to administration[457].

**The Disputations Around Pre-Pack Administrations**

Pre-pack administration enables a quick transfer of corporate activities to a new organization by pre-negotiating the sale of a company's assets prior to legally appointing an administrator. Pre-packs protect employment and company continuity, although they have been criticized for the following reasons: Lack of openness (creditors could not have been notified prior to the transaction), Possible misuse by directors to absolve themselves of responsibility, and assets are undervalued. To improve fairness, regulatory changes like the 2015 SIP 16 rules now mandate thorough disclosures to creditors. Pre-packs continue to be popular for struggling SMEs in spite of disputes.

**The Function of Creditors and Insolvency Practitioners**

Licensed experts known as Insolvency Practitioners (IPs) supervise insolvency processes and make sure that they adhere to ethical and regulatory requirements. They serve as CVA supervisors, administrators, or liquidators, striking a balance between regulatory requirements and creditor recovery. Creditors actively participate in decisions about insolvency: Priority over assets belongs to secured creditors, such as banks. Plans for restructuring are put to a vote by unsecured creditors, such as suppliers, and employees and

[455] Vanessa Finch, *Corporate Insolvency Law: Perspectives and Principles* (2nd edn, CUP 2009) 28-31.
[456] Companies Act 1862 (25 & 26 Vict c 89).
[457] Report of the Bankruptcy Law Reforms Committee (India, 2015) [2.1].

other preferential creditors get paid before others[458]. Although recent changes have raised vigilance to stop unscrupulous tactics, the UK's creditor-in-control model guarantees that significant financial players have an impact on results[459].

**The Function of Courts and Judicial Oversight**

**The following controversial insolvency cases are overseen by UK courts:**

Accepting instructions for administration, resolving conflicts with creditors, and looking into unethical behavior by directors (such as improper trading under Section 214 of the Insolvency Act 1986). Personal bankruptcies are handled by county courts, whereas sophisticated corporate matters are handled by the Insolvency and Companies Court (ICC). Although judicial supervision guarantees procedural justice, it may cause significant insolvencies to be delayed.

**Current Reforms and Upcoming Developments**

The following are recent changes to UK insolvency law: The 2020 Corporate Insolvency and Governance Act (CIGA) included both long-term changes like restructuring plans and moratoriums for faltering businesses, as well as short COVID-19 safeguards like the suspension of wrongful trading liability. Adjustments Following Brexit: The UK is departing from EU insolvency laws and may implement a more accommodating framework for cross-border insolvency. Emphasis on ESG (Environmental, Social, Governance): Sustainable company rescues and moral bankruptcy procedures may be given top priority in future revisions. The bankruptcy resolution procedure in the United Kingdom is a dynamic and well-regulated framework that prioritizes company rescue and creditor rights. Newer instruments like administration and CVAs show a move toward restructuring, even if more conventional methods like liquidation are still necessary. To maintain the UK's position as a worldwide leader in bankruptcy law, ongoing changes are intended to improve openness, efficiency, and flexibility.

## 1.4 INDIA'S INSOLVENCY RESOLUTION PROCEDURE

Inefficiencies and Fragmentation in the Pre-IBC Insolvency Regime India's bankruptcy framework was characterized by a disjointed and ineffective system controlled by many overlapping laws before to the bankruptcy and Bankruptcy Code (IBC) 2016[460]. The Companies Act 1956/2013, the Recovery of Debts Due to Banks and Financial Institutions Act (RDDBFI) 1993, the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act 2002, and the Sick Industrial Companies Act (SICA) 1985 were the main pieces of legislation. Due to jurisdictional problems brought about by this patchwork of regulations, cases often remained outstanding for years in various venues, including civil courts, DRTs (Debt Recovery Tribunals)[461], and the Board for Industrial and Financial Reconstruction (BIFR). The system had poor recovery rates (about 20–25% of claims), considerable delays (average resolution periods exceeding 4-5 years), and no clear mechanism for prompt resolution or liquidation. The bad loan issue in India was exacerbated by this dysfunctional environment; by 2015–16, stressed assets in the banking sector accounted for around 11.5% of all lending. The World Bank's 'Resolving Insolvency' index ranked India badly (136th) due to the lack of a unified bankruptcy system, underscoring the urgent need for complete reform[462]. The IBC's Inception and the Need for Reform, 2016 The government started insolvency reforms as a result of the worsening NPA (non-performing assets) situation and India's low ease of doing business rating. In its November 2015 report, the Bankruptcy Law Reforms Committee (BLRC), led

[458] *Swiss Ribbons Pvt Ltd v Union of India* (2019) 4 SCC 17 (Supreme Court of India)
[459] *Re Spectrum Plus Ltd* [2005] UKHL 41.
[460] Report of the Bankruptcy Law Reforms Committee (November 2015) 12-15
[461] Reserve Bank of India, 'Trend and Progress of Banking in India 2015-16' (2016) 78-82.
[462] World Bank, 'Doing Business 2020: Comparing Business Regulation in 190 Economies' (2020) 58-62.

by Dr. T.K. Viswanathan, suggested a comprehensive revision of the insolvency system. The committee underlined the need of a creditor-in-control model, a time-bound resolution procedure, and a transition from debtor-in-possession to professional management during bankruptcy. The Insolvency and Bankruptcy Code, which consolidated all previous legislation into a one comprehensive statute, was passed in May 2016 in response to these proposals. By setting precise deadlines, giving resolution precedence over liquidation, and establishing specialized organizations like the National Company Law Tribunal (NCLT) and the Insolvency and Bankruptcy Board of India (IBBI) to supervise the procedure, the IBC fundamentally changed the insolvency landscape in India. The law was created to encourage entrepreneurship, loan availability, and asset value maximization while balancing the interests of all parties involved[463].

Important Aspects of the IBC India's bankruptcy resolution procedure was revolutionized by the IBC 2016's introduction of various ground-breaking innovations. First of all, it brought much-needed discipline to the system by establishing a rigorous 180-day deadline (which may be extended by 90 days) for completing the Corporate Insolvency Resolution Process (CIRP). The term "resolution professional," which refers to certified insolvency practitioners who assume administration of the debtor firm during CIRP, was established by the code. Through the Committee of Creditors (CoC), it established a creditor-driven procedure in which banks and other financial creditors hold the majority of the voting powers. The 'waterfall system' for revenue distribution was also adopted by the IBC, making it clear which stakeholders would be given priority[464]. The automatic moratorium that takes effect with the start of CIRP and gives the corporate debtor breathing room was another noteworthy aspect. The code also had clauses that prohibited deliberate defaulters from submitting resolution plans in order to avoid process abuse. Recent modifications brought India into compliance with the UNCITRAL Model Law on Cross-Border Insolvency by including rules pertaining to cross-border insolvency.

The CIRP, or Corporate Insolvency Resolution Process The foundation of the IBC framework is the CIRP, which was created to save profitable companies while guaranteeing creditors get the most money possible. Either operational creditors, financial creditors (minimum default of ₹1 crore), or the corporate debtor itself must file an application to start the procedure. An interim resolution professional (IRP) is appointed upon admission by the NCLT, who assumes administration of the business, creates the CoC, and solicits claims from all creditors. The IRP oversees activities during the moratorium period and does a comprehensive analysis of the debtor's financial status. Resolution plans filed by potential bidders are assessed by the CoC, which is made up of financial creditors with voting shares according to their debt exposure. At least 66% of the CoC's voting members must approve a resolution plan, and NCLT must provide its final approval. The resolution of Bhushan Steel (purchased by Tata Steel for ₹35,200 crore) and Essar Steel (purchased by ArcelorMittal for ₹42,000 crore) are two successful instances of CIRP. However, as of 2021, only around 14% of cases were settled within the required 270 days, indicating that the procedure has had difficulty fulfilling deadlines[465].

The IBC's Liquidation The corporate debtor enters liquidation when efforts at settlement are unsuccessful or the CoC decides that liquidation would maximize value. Compared to the previous system, the IBC's liquidation procedure is more organized and effective. The CoC appoints the liquidator, who seizes all assets, uses the waterfall procedure to resolve claims, and disburses the money. Secured creditors may exercise their security interest independently or surrender it to the liquidation

[463] World Bank, 'Doing Business 2016: Resolving Insolvency' (2015) 136.

[464] R. Sengupta & A. Sharma, *The Insolvency and Bankruptcy Code: A Paradigm Shift* (OUP 2019) 30-35.

[465] UK Insolvency Service, *Comparison of Global Insolvency Frameworks* (2014) [4.2] (contrasting India's multi-forum system with UK's unified regime).

estate. Insolvency resolution and liquidation expenses are given priority under the waterfall method, which then moves on to secured creditors, employee obligations, unsecured financial creditors, government obligations, and shareholders. Although liquidation was formerly thought to be a failure of the resolution process, new research indicates that recovery rates under liquidation (about 15–20%) are far greater than during earlier regimes. The drawn-out liquidation procedure and low realization values, especially for assets with little market demand, continue to raise worries[466].

The Indian Insolvency and Bankruptcy Board's (IBBI) function The regulating body in charge of India's whole insolvency ecosystem is the IBBI. Information utilities, insolvency professional agencies (IPAs), and insolvency professionals (IPs) are among its primary responsibilities since its establishment in 2016. The IBBI creates rules, handles disciplinary actions, and keeps an eye on IP performance. It keeps track of insolvency cases in a public register and releases information on resolution dates and results on a regular basis. By creating model bylaws, rules, and standards for CIRP behavior, the board has been instrumental in standardizing procedures. It also manages IPs' ongoing professional development needs and the Insolvency Professional Examination. Although some contend that more work needs to be done to raise professional standards and lessen conflicts of interest in the system, the IBBI has been proactive in resolving implementation issues by regularly amending rules.

Implementation Difficulties: Haircuts, Judicial Backlogs, and Delays The IBC has had a number of implementation difficulties in spite of its revolutionary influence. Delays in resolution have been the biggest problem, with average resolution timeframes surpassing 400 days compared to the required 270 days. The main cause of this is NCLT capacity issues, since they are overloaded with cases and lack sufficient judicial and technical staff. Numerous high-profile cases have been further delayed by litigation by promoters and operational creditors. The substantial "haircuts" (reductions in claim amounts) made by financial creditors, which average over 60% throughout settled cases, have also been a significant source of worry. In addition, the system has had difficulties with valuation, a shallow market for distressed assets, and a lack of involvement from strategic investors. Concerns over their exclusion from the CoC-dominated process have been voiced by operational creditors. There have also been cases of information asymmetry, when resolution applicants often don't have full knowledge of the debtor's obligations. These issues were made worse by the pandemic, which increased the number of new bankruptcy files and put further demand on the system's capacity.

Current Modifications and Changing Law Since 2016, the IBC has undergone a number of revisions to address new issues. The 2019 modification made it clear that financial creditors had priority in distribution and established a 330-day deadline (including litigation periods) for completing CIRP. In response to COVID-19, the 2020 amendment temporarily halted the implementation of CIRP for defaults that took place during the epidemic. A pre-packaged insolvency resolution procedure for MSMEs was established by the 2021 amendment, which enables creditors and debtors to work out a resolution plan prior to the official start of CIRP. The development of the IBC has also been influenced by judicial interpretation; for example, the Supreme Court has rendered significant rulings that have clarified matters such as the absoluteness of the 330-day duration (in the Essar Steel case), the legitimacy of related party voting in CoC (in the Phoenix Arc case), and the rights of operational creditors (in the Swiss Ribbons case). While weighing the rights of all parties involved, the courts have continuously underlined that the IBC's goal is resolution rather than recovery. Recent patterns indicate

[466] T.K. Viswanathan, 'Report of the BLRC' (2015) [3.4] (recommending time-bound resolution).

that group insolvency and cross-border cases are receiving increased attention, and the government is thinking about using the UNCITRAL Model Law to better manage international insolvency cases[467].

## 1.5 A COMPARATIVE STUDY OF THE UK AND INDIA

### Disparities in Legal Framework Structure

Based on their respective legal systems and economic environments, India and the UK have quite different insolvency regimes. The Insolvency Act of 1986 and the Enterprise Act of 2002 serve as the focal points of the UK's system, which is based on centuries of common law development. On the other hand, the Insolvency and Bankruptcy Code (IBC) 2016 in India is a comprehensive piece of legislation that was created to address past fragmentation. While India's IBC has different procedures for people, partnerships, and businesses under a single piece of law, the UK system uses separate procedures to distinguish between personal and corporate bankruptcy[468]. India's "resolution professional-led" system, in which licensed practitioners oversee the debtor firm during bankruptcy, differs significantly from the UK's "creditor-in-possession" model, where secured creditors normally lead the process. While India's relatively young system still mostly depends on statutory provisions and developing case law, the UK framework also has a large number of secondary legislations and court precedents that provide sophisticated answers to intricate bankruptcy situations. However, although using distinct structural methods, both regimes aim to balance enterprise rescue with creditor recovery[469].

### Resolution Procedures' Timeliness and Efficiency

The insolvency procedures in the UK function at significantly faster speeds than procedures found in India. The duration of administrative processes in UK concluding at one year matches the period of voluntary agreements which finish within six to nine months. Qualified insolvency institutions and experienced practitioners with skilled insolvency courts function as major efficiency drivers. The Corporate Insolvency Resolution Process in India currently requires between 400 and 600 days to resolve itself despite its statutory limit of 270 days. The 2021 data shows that only 14% of Indian cases finished within the established 270-day period but the UK accomplished more than 75% of its cases within the same timeframe. The deployment of pre-pack solutions for MSMEs began in India during 2021 although the UK benefits from an advanced system of pre-pack administrations which accelerate business migrations. Compared to the specialized Insolvency and Companies Court in the UK India operates with the National Company Law Tribunals (NCLTs) which face ongoing substantial case backlog alongside insufficient judge strength. The strict regulations of India allow the country to launch innovative restructuring measures which may ultimately generate more beneficial results as institutional resources expand. Recovery Rates and Creditor Rights[470].

The two countries' recovery results and creditor rights vary significantly, according to comparative study. Secured creditors, who normally collect 40–60% of claims via administration and 25–40% in liquidations, are better protected under the UK system. In the UK, unsecured creditors gain from quicker settlements and more transparent priority procedures, but they recover much less (10–20%). Compared to earlier regimes, India's IBC has improved recovery rates; financial creditors typically get 40% of their money in cases that are settled, but they must take significantly larger haircuts (60+%) in liquidations. While India's small market for stressed assets restricts bidder involvement and values, the UK's robust distressed debt market and bankruptcy financing alternatives improve recovery

[467] Insolvency and Bankruptcy Code 2016 (India), Preamble.
[468] *Swiss Ribbons Pvt Ltd v Union of India* (2019) 4 SCC 17 [23] (upholding constitutional validity).
[469] ibid
[470] IBBI, 'Annual Report 2022-23' (2023) 45 <www.ibbi.gov.in> accessed 15 April 2025.

chances. Notably, India's waterfall method prioritizes operational creditors, including workers, above secured financial creditors, whereas the UK's Enterprise Act 2002 enhanced the rights of unsecured creditors by giving them preference for specific claims. The UK's developed credit ecosystem yields more predictable results, but both systems struggle to strike a balance between the interests of creditors and the goals of company recovery.

**The Function of Adjudicating Authorities and Insolvency Professionals**

A highly developed private-sector-led paradigm governs the insolvency profession in the United Kingdom. Licensed insolvency practitioners (IPs) are subject to reputable professional organizations' regulations and enjoy considerable discretion. Before being qualified, IPs in the UK usually have ten to fifteen years of experience, and they work in a competitive market that guarantees quality. Despite its fast growth, India's insolvency professional ecosystem is still less developed and more regulated, with many IPs lacking extensive restructuring expertise. While India's NCLT members often have bureaucratic backgrounds and no insolvency-specific training, the UK's adjudicatory structure benefits from trained insolvency judges with business experience. While the Indian system is still more statute-bound, the UK system permits more judicial discretion based on equitable principles. Although both systems are becoming more professional, India may learn from the UK's century-old insolvency profession in terms of establishing ethical standards and practitioner knowledge. By creating the Insolvency and Bankruptcy Board of India (IBBI) as a single regulator and adopting some of the UK's regulatory strategies, India has advanced.

**Provisions for Cross-Border Insolvency**

Comprehensive procedures for managing foreign cases are offered by the UK's cross-border insolvency system, which is based on the UNCITRAL Model Law and EU legislation (maintained after Brexit). As seen by well-known incidents like the failure of Lehman Brothers, UK courts often collaborate with overseas authorities and acknowledge foreign actions. India only adopted a restricted version of the Model Law, which now only applies to corporate debtors, and added cross-border provisions via an IBC modification in 2020. The UK's legislative framework is supplemented with well-developed common law concepts on cross-border insolvency, which provide adaptable solutions for complex international issues. Although recent instances such as Jet Airways have challenged early cross-border rules, India's developing system lacks comparable court precedents and real-world experience. While India is currently establishing these institutional relationships, the UK's participation in several international insolvency networks improves its coordination capacities. The UK model provides valuable insights for developing a successful cross-border bankruptcy procedure for Indian businesses with international activities or assets.

**Effect on Economic Results and Business Rescue**

About 35–40% of troubled businesses effectively restructure via administration or CVAs, demonstrating the UK's better business rescue results. This success may be attributed to early intervention procedures, adaptable restructuring methods, and a culture that prioritizes company rescue above liquidation. Although India's IBC has accomplished several noteworthy rescues (such as Bhushan Steel and Essar Steel), the bulk of allowed cases end in liquidation, with just 15% of them leading to resolution plans. While India has recently implemented pre-packs for MSMEs, the UK's "pre-pack" administration has enabled smooth transitions, saving numerous enterprises and jobs. In terms of economics, India's slower approach locks up money for longer periods of time, whereas the UK system swiftly recycles distressed assets back into productive use, contributing to financial stability. Large, complex business groups are difficult for both systems to manage, but India's evolving framework may

learn a lot from the UK's group insolvency procedures. India's more creditor-driven resolution approach stands in stark contrast to the UK's focus on debtor rehabilitation via voluntary agreements.

**What India Can Learn from the UK's Advanced Insolvency System**

India's IBC may learn a number of valuable lessons from the UK's well-established insolvency system. First, creating specialist insolvency courts with business knowledge might greatly enhance the caliber of decisions and cut down on delays. Second, extending pre-pack choices beyond MSMEs may improve the results of company rescues while easing systemic congestion. Third, process efficiency would be increased by promoting a more strong insolvency profession via improved training and ethical standards. Fourth, compared to India's stricter CIRP framework, the UK takes a more accommodating approach to stakeholder talks during voluntary arrangements. Fifth, recovery rates may be increased by creating a broader market for distressed assets via focused governmental initiatives. Sixth, India's international insolvency framework may benefit from the UK's phased approach to cross-border insolvency, which began with the adoption of Model Law and the development of jurisprudence. Last but not least, the significance of frequent IBC reviews and modifications is underscored by the UK's ongoing process of legislative improvement grounded in real-world experience. Although India cannot simply adopt UK remedies, it might gradually improve its bankruptcy system by applying these lessons to its own legal and economic environment. The UK's experience is especially pertinent to Indian policymakers since it reflects India's present shift from a creditor-dominated economy to one that balances the interests of all stakeholders[471].

[471] UK Enterprise Act 2002, s 251 (comparison to UK's shift from liquidation to rescue culture).