INDIAN JOURNAL OF LEGAL REVIEW

VOLUME 6 AND ISSUE 1 OF 2026

INSTITUTE OF LEGAL EDUCATION

INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN - 2583-2344

(Open Access Journal)

Journal's Home Page – https://ijlr.iledu.in/

Journal's Editorial Page - https://ijlr.iledu.in/editorial-board/

Volume 6 and Issue 1 of 2026 (Access Full Issue on - https://ijlr.iledu.in/volume-6-and-issue-1-of-2026/)

Publisher

Prasanna S,

Chairman of Institute of Legal Education

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 73059 14348 - info@iledu.in / Chairman@iledu.in

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 6 AND ISSUE 1 OF 2026

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

"THE CONSTITUTIONAL BALANCE BETWEEN THE INSOLVENCY AND BANKRUPTCY CODE (IBC) AND ARTICLE 14: A DOCTRINAL REVIEW"

AUTHOR - SHYLASHREE.S, LLM STUDENT AT VINAYAKA MISSION'S LAW SCHOOL, VINAYAKA MISSIONS RESEARCH FOUNDATION (DEEMED TO BE UNIVERSITY) CHENNAI, TAMIL NADU

BEST CITATION - SHYLASHREE.S, "THE CONSTITUTIONAL BALANCE BETWEEN THE INSOLVENCY AND BANKRUPTCY CODE (IBC) AND ARTICLE 14: A DOCTRINAL REVIEW", *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 6 (1) OF 2026, PG. 666-688, APIS – 3920 – 0001 & ISSN - 2583-2344.

List of Abbreviations

CIRP – Corporate Insolvency Resolution Process

CoC – Committee of Creditors

IBC – Insolvency and Bankruptcy Code, 2016

IBBI – Insolvency and Bankruptcy Board of India

ILC – Insolvency Law Committee

NCDRC – National Consumer Disputes Redressal Commission

NCLAT – National Company Law Appellate Tribunal

NCLT – National Company Law Tribunal

NPA – Non-Performing Asset

OECD – Organisation for Economic Co-operation and Development

RERA – Real Estate (Regulation and Development) Act, 2016

SC – Supreme Court of India

SCC – Supreme Court Cases

UOI – Union of India

UNCITRAL – United Nations Commission on International Trade Law

CHAPTER 1: INTRODUCTION

1. Introduction to the Research Problem

The Indian Insolvency and Bankruptcy Code (IBC) implicitly intends to change the issue of misallocated capital that has historically caused Non-Performing Assets (NPA) and protracted processes for resolution by establishing reliable credit markets for entrepreneurs, along with a comprehensive mechanism for resolving troubled assets. This will also make the economy better and more dependable for all sectors. Yet, with judicial adjustments to the Code and legislative changes, significant constitutional questions arose at the heart of the Code's core application, more so with regard to Article 14.

Article 14 lays down the right to equality before the law and prohibits arbitrary, discriminatory, or unreasonable conduct by the state. Certain provisions in the IBC designed with noble purposes of enhancing the economy or for the promotion of egalitar in fair process or providing some elements of prioritising others. Amongst some of the most notable and controversial provisions include Section

29A, which prohibits certain classes of persons (including defaulting promoters) from submitting resolution plans; Section 32A, which exculpates the corporate debtor and its new management from criminal liability arising from past management; along with the 2018 Amendment to Section 7, which added a 10%/100allottees filing threshold on homebuyers raising the procedural barrier to a specific class of financi ianism have come under fire for potentially creating unequal classifications or diluting principles al creditors.

Judicial decisions in cases like *Swiss Ribbons v. Union of India, Committee of Creditors of Essar Steel v. Satish Kumar Gupta, and Manish Kumar v. Union of India* have upheld the constitutionality of most provisions, but not without identifying gaps, tensions, and unresolved doctrinal inconsistencies. The courts in India have sought to reconcile the constitutional dictates with considerations of economic policy in these types of cases. A common approach used by the courts in these cases is often referred to as the doctrine of "deference to economic legislation.

In this context, the doctrinal inquiry will include an analysis of whether these provisions have passed (or could pass) the tests set out in Article 14 for reasonable classification, non-arbitrariness, and proportionality. The doctrinal analysis will determine the constitutional basis for these provisions, the impact on the affected parties, and their implications for insolvency law and economic governance in India in the broader sense. Although sections 32A and 29A of the IBC may have various other constitutional issues, this doctrinal work confines its analysis to the over- inclusive disqualification under section 29A, immunity vs accountability under section 32A and the issue of home buyer threshold, considering the points of maximum constitutional friction and its direct impact on the stakeholders, where courts heavily rely on economic deference. Also, article 14 is more rigorous in the place where a legislation creates exclusion, avails immunity and places a restriction on access to remedies. On the other hand, this delimitation is adopted to maintain doctrinal depth and to assess how judicial deference operates at times when IBC mostly directly intersects with equality-based constitutional review.

2. Statement of the Problem

In India, many provisions of the Insolvency and Bankruptcy Code (IBC) have been validated by the judiciary; however, significant constitutional concern still exists with regard to Section 29A, Section 32A, and the preferential treatment given to Homebuyers under Section 7 in terms of their compliance with the equality and non-arbitrariness provisions of Article 14. With regard to Section 29A, the issue stems from its wide-ranging disqualification which now includes not only those promoters who have been found guilty but also their associate or connected persons, with no basis in a fault-based assessment regarding these persons. Therefore, it includes too many people and fails to adequately assess what constitutes culpable conduct. In Section 32A, the constitutional conflict arises due to whether granting immunity in order to help revive a company is outweighed by the need for victims of prior criminal behaviour to be treated equally under the criminal law and hold accountable those who committed the crime. The number of solitaries that can be filed by individual allottees creates a structural barrier restricting the ability of individual allottees (who are now treated as financial creditors) to obtain access to insolvency-related remedies. All of the above issues point to many unresolved questions concerning the rational relationship of an efficiency-oriented classification under IBC to the legislative intent and the question of whether the IBC maintains a rational relationship with the objectives of the legislation and avoids manifest arbitrary enforcement of Article 14.

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]
VOLUME 6 AND ISSUE 1 OF 2026
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344
Published by
Institute of Legal Education
https://iledu.in

3. Research Questions

Main Research Question

1. Whether Sections 29A, Section 32A, and the homebuyer filing threshold under the Insolvency and Bankruptcy Code, 2016 constitute constitutionally valid classifications under Article 14 of the Constitution of India, as upheld by the Supreme Court, and whether the judicial deference accorded to these provisions in economic legislation sufficiently addresses concerns relating to proportionality, non-arbitrariness, and access to justice.

Secondary/SubQuestions

1. Does the exclusion of specified categories (ie, promoters, guarantors), under Section 29A, pass Article 14's tests of intelligible differentia and a rational nexus?

2. Does the immunity afforded under Section 32A comply with constitutional principles of artistry, accountability, and non-arbitrariness?

3. Does the different treatment of homebuyers, under Section 7, overly block them from the pursuit of honesty?

4. How has the Supreme Court's jurisprudence impacted the constitutional view of Statutes which relate to commerce, under the IBC?

5. Has the judiciary's reference to "commercial wisdom" impacted the constitutional view of statutes?

Hypothesis

Despite having been validated, the IBC's controversial provisions include classes that may not fully comply with the requirements of proportionality and non- arbitrariness under Article 14, and deference from the courts to economic policy may have interpreted this to be a lesser standard of constitutional scrutiny.

4. Objectives of the Research

1. To evaluate the constitutionality of Sections 29A, 32A, and the homebuyer threshold under Section 7 for compliance with Article 14.
2. To analyse the reasoning employed by the courts in Swiss Ribbons, Essar Steel, and Manish Kumar.
3. To determine whether the classifications made by these provisions are reasonably justified or arbitrary.
4. To evaluate how insolvency policy objectives are balanced against constitutional equality principles.
5. To make certain doctrinal enhancements or policy recommendations that reflect a balance between efficiency and constitutional fairness.

5. Review of Existing Literature

The academic literature on the IBC has extensively covered aspects such as structural design, the doctrine of commercial wisdom, and economic implications, but we have an under researched area in respect to constitutional implications under Article 14. Early scholarship (Sarkar, 2017; Datta, 2018) focused primarily on the economic rationale for the IBC, writing on its efficiency, creditor empowerment, and maximising value for creditors it commissioned, however early scholarship did not fully articulate constitutional implications.

Academics have diverged in respect to section 29A of the Code. Shroff (2019) for example, argues that the breadth of section 29A's exclusions engenders moral hazard, whereas academics have critiqued the breadth of exclusion in respect to related parties and guarantors. The litigation involving ArcelorMittal and Chitra Sharma provides case law assessments of evolving interpretations on judicial

thresholds, but scholarship evaluating those cases through the Article 14 scope is limited.

In the same vein, the literature dealing with Section 32A is still being developed. Commentators (e.g., Rao, 2021; IBBI Working Papers) support granting immunity as an important basis for attracting bona fide resolution applicants to the process. Critics, however, such as Menon (2021) and Datar (2020), have raised concerns and criticized the inclusion of such immunity on the grounds of accountability, among other things, and argued that this notion also serves to violate victims' rights by extinguishing past liabilities.

In the instance of the homebuyer threshold, scholars like Aggarwal (2020) and Mitra (2021) claim that the amendment restricts small allottees disproportionately as compared to large allottees. The literature linked to the doctrinal assessments associated with Manish Kumar v. Union of India bottom out doctrinal issues, without engaging extensively with the broader implications for equality.

The most significant judicial reasoning around the topic comes from the judgements in Swiss Ribbons, Essar Steel, and Manish Kumar. The legal literature tends to provide deep levels of overarching constitutional reasoning, though generally deals with these cases descriptively, without offering an analysis of whether these cases pull on the same resources to assess compatibility with Article 14 of the Constitution. Additionally, while scholars have raised concerns around the judiciary's approach to consequences in the economic legislative field alongside support for the deference of note to constitutionality (e.g., Chandrachud, 2018; Seervai, 2019), literature does not interrogate how such regards may hinder analysis of legislative outcomes in insolvency law.

Therefore, the literature provides economic rationales for IBC, but falls very short of critically assessing whether insolvency policy decisions incorporated into the IBC comply with constitutional norms. This dissertation intends to close that gap by providing a targeted constitutional doctrinal critique.

6. Research Methodology

The current research utilizes a doctrinal research design. Doctrinal legal research is where existing laws, statutes, judicial cases, and academic writing are thoroughly studied and analyzed.

This research mainly investigates how the Insolvency Bankruptcy Code, 2016 (IBC) relates to Article 14 of the Constitution of India. Article 14 prohibits discrimination and guarantees equal protection before the law.

The doctrinal has been established through the use of many primary sources, including the Constitution, statutes, amendments, expert committee reports, and the Supreme Court and High Court decisions. Many secondary sources have been used as well, including textbooks, commentaries, journal articles, research papers, and reports published by institutions.

The current research did not use any empirical legal methods, including surveys or interviews, but used critical legal analysis and comparative analysis with judicial reasoning to determine whether the classifications and regulatory requirements created under the IBC are in compliance with Article 14's prohibition against discrimination and guarantee of equal protection. The doctrine approach used in this research will provide a better understanding of how the Constitution balances economic legislation with the rights guaranteed in the Constitution.

Sources to be Consulted:
Primary Sources:
• Insolvency and Bankruptcy Code, 2016
• Constitution of India
• Important judgments: Swiss Ribbons, Essar Steel, Manish Kumar, ArcelorMittal, Chitra Sharma
• Parliamentary debates, reports by IBBI, reports by the Standing Committee
Secondary Sources:
• Books discussing insolvency and constitutional law
• Academic articles (NUJS Law Review, NLSIR, ILI Law review, JILS, NCLT/NCLAT Review)
• Policy briefs prepared by Vidhi Centre for Legal Policy, PRS Legislative Research
• Commentary by legal academics and practitioners (e.g., K.V. Karthik, Datar, Shroff)
Method of Analysis:
• Doctrinal interpretation
• Case law analysis
• Application of Article 14 tests (reasonable classification, nonarbitrariness, proportionality)
• Reasoning by comparative with global insolvency frameworks throughout when necessary
Ethical Issues: No ethical issues, as surveys or interviews are not involved.

7. Chapterisation

CHAPTER 1 – INTRODUCTION

This chapter will introduce the background and need for examining the Insolvency and Bankruptcy Code (IBC) through the constitutional lens of Article 14. It explains the research problem arising from the constitutional challenges posed by Section 29A, Section 32A and the homebuyer filing threshold. It sets out the research questions, hypothesis, objectives, scope, and relevance of the study. The chapter also provides a concise review of existing literature, highlighting the gap in Article 14 focused scholarship, and outlines the doctrinal methodology adopted in the dissertation.

CHAPTER 2 – ARTICLE 14 & CONSTITUTIONAL PRINCIPLES GOVERNING ECONOMIC LEGISLATION

This portion of the document will focus on analysing and establishing constitutional standards for selected provisions found within the IBC. It specifically highlights the importance of three essential elements of Article 14: (1) Reasonableness of classification, (2) Arbitrary characterization, and (3) Proportionality between the legislation and the objective sought to be achieved. Additionally, this section outlines the manner in which the Supreme Court has interpreted and applied these principles to both general economic laws and their corresponding application of the 'doctrine of quality' when reviewing economic legislation. As we progress through this document, the three principles provided above will serve as the basis for evaluating the constitutional validity of selected IBC laws.

CHAPTER 3 – DOCTRINAL ANALYSIS OF SECTION 29A UNDER ARTICLE 14

In this chapter, the author discusses the exclusion of promoters (and all related parties) as well as guarantors made by Section 29A of the IBC with a thorough examination of how these exclusions meet both the standards of 'differentiation' and 'rational nexus' as established in Article 14 of India's Constitution. Additionally, this analysis reviews important case law on issues of equity and proportionality under Section 29A, citing cases such as ArcelorMittal, Swiss Ribbons, and Essar Steel to determine the appropriate limits on the restriction imposed by Section 29A. Finally, this chapter critiques academic literature that questions either the fairness or the scope of Section 29A before drawing a conclusion as to whether the provisions contained therein are constitutional.

CHAPTER 4 – ARTICLE 14 ANALYSIS OF SECTION 32A AND THE HOMEBUYER FILING THRESHOLD

Two significant aspects of the law discussed in this chapter involve immunity from criminal prosecution under Section 32A and a homebuyer threshold of 10 percent/100 homebuyers for the initiation of insolvency proceedings through amendment to the Civil Code (2018), and determining if these rules create irrational barriers to court access, are discriminatory based on classification, and may be unjustified. Additionally, this chapter will explore how the Supreme Court's reasoning in Manisha couldn't resolve constitutional issues associated with Article 14. The chapter also compares the economic goals of the policies against the requirement of constitutional equity to test whether they meet equal protection standards.

CHAPTER 5 – CONCLUSION AND RECOMMENDATIONS

The main conclusions on the doctrinal study and the main research topic of whether or not the IBC is legally valid—that is, consistent with Article 14 are summarized in this chapter. The chapter highlights doctrinal discrepancies, examples of judicial deference being lost, which results in a weaker equality review, and locations where the IBC's proportionality provisions are problematic. Lastly, policy solutions and reform ideas are included to support legally equitable treatment while upholding the IBC's economic goals.

8. Expected Contributions to Legal Scholarship & Policy

By applying an Article 14 perspective to evaluate particular sections of the Insolvency and Bankruptcy Code (IBC), elucidate the doctrinal basis of classification under the economic act, suggest criteria for judicial deference in IBC proceedings, and suggest policy measures to reconcile the separation between the efficiency emphasis and constitutional equality standards in the IBC, the research seeks to investigate the gap between constitutional law and insolvency law. By presenting the case for an insolvency framework in India that is guided by the constitution, this dissertation will be useful to both the academic and policy communities.

CHAPTER 2 – ARTICLE 14 & CONSTITUTIONAL PRINCIPLES GOVERNING ECONOMIC LEGISLATION

The Constitutionary framework within which the Insolvency and Bankruptcy Code, 2016 operates is the subject of scrutiny in Chapter 2, with attention given specifically to Article 14, as well as to judicial review of economic legislation. The IBC alters debtor–creditor relations substantially, including the transition to a commercially oriented insolvency regime. Thus, the validity of the IBC and its contours of operation are simultaneously tested under the guarantees of the Constitution regarding equality, non-arbitrariness, and proportionality, among other related principles. This chapter examines the manner in which the Supreme Court, in interpreting Article 14, addresses the principles in relation to economic policy, the amount of judicial deference that has traditionally been applied with respect to statutes of a fiscal and economic nature, and the criteria applied for assessing whether any classification set forth in an economic statute is justifiable. This chapter intends not to examine any of the provisions of the IBC in detail, which will occur in later chapters, but rather sets and frameworks to evaluate some of the specific provisions of the IBC.

2.1 THE CONSTITUTIONAL ARCHITECTURE OF ARTICLE 14

Article 14 of the Indian Constitution is an essential component of the Indian constitutional structure. The Article states that "*the State shall not deny to any person equality before the law or equal protection of the*

laws."[1601] While drafted in a wide and abstract manner, in the decades that followed its initial drafting, there have been many complex and layered meanings assigned to Article 14 by the Supreme Court of India in its judicial interpretation. Article 14 serves the dual function of a limitation on legislative powers while safeguarding individuals from bureaucratic excesses. Article 14 was originally framed as a narrow test of classification for individual claims of discrimination but has now developed into a broad doctrine, prohibiting arbitrariness and maintaining proportionality in all forms of State action, including economic legislation, such as the Insolvency and Bankruptcy Code, 2016 (IBC). Since the IBC re-organises economic relationships, redistributes entitlements and creates new hierarchies of creditors, Article 14 provides the constitutional framework to assess such differentiation as reasonable, nonarbitrary and proportionate. This section of the thesis explores the doctrinal development of Article 14 and provides the conceptual framework to assess the constitutionality of the provisions of the IBC, which will be addressed in greater detail in the subsequent chapters.

2.1.1 Evolution from Formal Equality to Substantive Equality

During the early constitutional period, the Supreme Court interpreted Article 14 through a classical liberal lens of equality, capturing the essence of treating like cases alike and unlike cases differently. This era was characterized by a commitment to formal equality, with the Court limiting its inquiry to whether classifications made by the legislature seemed intelligible and rational. In *State of West Bengal v. Anwar Ali Sarkar*[1602], the Court invalidated a law that permitted the selective and arbitrary classification of cases for special trial processes and held that this unfettered discretion violated the guarantee of equal protection. Although the Anwar Ali decision constitutes a major milestone, it was not able to provide any long-term doctrinal criteria.

In contrast, the case of *Ram Krishna Dalmia v. Justice S.R. Tendolkar*[1603] , resolved the confusion by providing both a doctrinal framework for distinguishing between persons who ought to receive different treatment in the form of a 'two-pronged test' test used to analyse reasonable classification, which is still the most commonly used measure of a law's constitutionality: (1) the distinction between classes must be based on an intelligible Differentialia distinguishing those who are classed together and those who are excluded and (2) that the Differentialia must have a direct relationship to the objective of the Act. This test gave judges a method for evaluating the purpose and design of every legislative framework, especially as it relates to regulatory or economic statutes, which can lead to disagreements within the Court.

Initially, the judiciary viewed the concept of formal equality only through the lens of classifying individuals in order to protect against the arbitrary or entitled exercise of power by state actors. As a result, Article 14 jurisprudence has evolved to encompass substantive equality as well, which considers principles of fairness and justice in the prevention of arbitrary conduct. This evolution includes an expansion of the judicial interpretation of Article 14 to encompass the review of complex and intertwined economic statutory frameworks like the IBC; which generally provide a multiplicity of stakeholder categories in addition to creating differentiated obligations for stakeholders.

2.1.2 Expanding Equality: From Classification to Arbitrariness

The landmark case *E.P. Royappa v. State of Tamil Nadu*[1604] was a critical moment in the evolution of Indian equality case law. The Supreme Court rejected the strictness of the classification test and concluded that arbitrary

[1601] *Constitution of India*, art. 14.
[1602] *State of W.B. v. Anwar Ali Sarkar*, AIR 1952 SC 75.
[1603] *Ram Krishna Dalmia v. Justice S.R. Tendolkar*, AIR 1958 SC 538.
[1604] *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 SCC 3.

actions are the opposite of equality. Similarly to the ruling in the previous paragraph, this ruling established that Article 14 embodies a principle of dynamic equality (i.e., that the principle of fairness or reasonableness) such that an individual can contest State action on the grounds that such action is arbitrary, discriminatory or is not supported by rational justification.

The ***maneka Gandhi v. Union of India***[1605], case expanded the rate at which this doctrine applied. Therefore, the Supreme Court held in Maneka Gandhi v. Union of India that Article 14 prohibits arbitrary actions of the State (whether legislative, executive, or judicial). As a result, the Supreme Court recognised Article 14 as including substantive due process, aligning Indian constitutional law with modern constitutional democracies that recognise the principles of fairness and reasonableness as part of their judicial review of State action.

In particular, the emergence of the arbitrariness doctrine will result in greater scrutiny of the New IBC law and other similar economic laws. Financial and operational creditors, secured and unsecured creditors, resolution applicants, connected parties, and homeowners are often given varied treatment under the Code. According to the Royappa-Maneka approach, such disparities cannot impose disproportionate burdens and must be supported by logical, evidence-based policy concerns. These criteria will be used in later chapters to assess whether particular IBC provisions pass Article 14 scrutiny.

2.1.3 Contemporary Tests under Article 14

Modern equality jurisprudence reflects an integration of three doctrinal tests:

(a) The Reasonable Classification Test

Rooted in *Dalmia*, this test continues to play a central role in examining legislative schemes that create categories of beneficiaries or impose differential obligations. Courts assess whether the differentia is intelligible and whether it advances the legislative objective.[1606] The test is routinely invoked in challenges to economic or regulatory statutes, including those governing insolvency.

(b) Non-Arbitrariness

The *Royappa* and *Maneka Gandhi* line of cases expanded Article 14 to include an anti-arbitrariness mandate. This test applies even when there is no classification; any legislation or decision that is unreasonable, capricious, or lacking in transparency may violate Article 14.[1607]

(c) Proportionality

"Modern Dental College v. State of Madhya Pradesh" and "K.S. Puttaswamy v. Union of India, [1608]" were the key Supreme Court cases that confirmed the use of proportionality in rights adjudication as a fundamentally important tool. The proportionality test demands that an analysis of any given law encompasses four (4) components: the law must pursue a legitimate purpose; the law must be appropriate for such purpose; the law must be the least-restrictive means possible of achieving that purpose; and the law must provide for competing interests in a fair manner. As such, the application of the proportionality doctrine provides greater insight into how to judge the reasonableness of policy choices found within complex economic statutes.

Collectively, these tests provide a framework for the judiciary to examine a state's Economic Regulation with appropriate deference and analytical rigour, and to provide check on government actions that prevent arbitrary behaviour.

2.1.4 Economic Legislation and Legislative Discretion

Traditionally, Indian courts have shown considerable respect for economic laws, often viewing the legislature and other qualified

[1605] *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

[1606] M.P. Jain, Indian Constitutional Law (7th ed. 2023).
[1607] H.M. Seervai, Constitutional Law of India, Vol. 1 (4th ed. 2019).
[1608] *Modern Dental College v. State of Madhya Pradesh*, (2016) 7 SCC 353; *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]
VOLUME 6 AND ISSUE 1 OF 2026
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344
Published by
Institute of Legal Education
https://iledu.in

authorities as having greater ability to write financial, commercial, and market laws. In several cases including *R.K. Garg vs Union of India*[1609], this philosophy cautions against courts substituting the wisdom of the court for the wisdom of the economy. Nonetheless, even though legislatures enjoy broad authority to enact laws regarding economics, courts still have the responsibility to ensure that any economic statutes comply with Article 14 of the Constitution, specifically in relation to classifications being reasonable and that classifications serve a legitimate purpose and that the burdens imposed upon entities which fall under a particular economic statute are not arbitrary or excessive.

The balance of legislative authority and judicial review regarding economic statutes is most acutely felt in the context of the Insolvency and Bankruptcy Code (IBC). As such, the IBC constitutes a transformational improvement to the economy, altering the existing financial relationships with priority given to creditor rights, restructuring the manner in which individuals and companies are afforded access to legal remedies, and enacting new disqualifications against certain actors being able to act as creditors. All of these changes create classifications under Article 14 of the Constitution. For Example, classification differences between financial creditors and operational creditors, classification differences whereby certain resolution applicants are prohibited under Section 29A, and classification differences whereby there are differing processes under the IBC for homebuyers; All classifications must be justified based on having a rational nexus to its purpose, non-arbitrariness, and proportionality.

As a result, this section offers the theoretical and analytical framework that will be used in subsequent chapters to assess the legality of certain IBC provisions. In order to maintain chapter wise clarity and prevent overlap, it does not address the merits or validity of any specific IBC provision.

2.2 JUDICIAL REVIEW OF ECONOMIC LEGISLATION

Judicial review of economic legislation in India is marked by two seemingly contradictory principles. First, courts recognise that the creation of economic policy can be extremely complex because of the technical nature of the policy that must be developed, as well as the need for legislative, fiscal, and predictive analyses that are better conducted by Legislators and Regulatory Agencies than courts. Additionally, the Indian Constitution mandates that all laws (economic and otherwise) must comply with Article 14's requirement for laws to be reasonable and non-arbitrary. To achieve these two competing objectives, Indian courts have created a body of law that allows for the application of Constitutional review to all economic statutes without infringing upon Legislative options, thus creating a body of law often referred to as "restrained constitutionalism". This restrained constitutionalism provides an avenue by which courts can approach economic legislation such as the Insolvency and Bankruptcy Code, 2016 (IBC). A review of the evolution of this phenomenon will be reviewed through a survey of judicial decisions and academic writing.

2.2.1 The Emergence of Judicial Deference in Economic Policy

The Supreme Court has made it clear that the nature of economic regulation is inherently flexible and experimental. For instance, in the case *of Subramanian Swamy v. C.B.I*[1610].., the Supreme Court has held that decisions concerning markets, pricing, or resource allocation ought to be made by legislature or executive decision makers, provided that these decisions do not violate a specific constitutional provision. In *Balco Employees Union v. Union of India,* the Supreme Court refused to strike down the government's decision to disinvest from State Owned Enterprises, stating that economic

[1609] *R.K. Garg v. Union of India*, (1981) 4 SCC 675.

[1610] **Subramanian Swamy v CBI** (2014) 8 SCC 682

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]
VOLUME 6 AND ISSUE 1 OF 2026
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344
Published by
Institute of Legal Education
https://iledu.in

policy should not be evaluated by the courts for its 'correctness[1611].'

T.R.S. Allan, among others, has advanced the argument that the courts/ judiciary should adopt a modest position regarding the review of economic laws, focusing more on ensuring the procedural integrity of decisions made by legislative, executive and/or regulatory bodies than on the perceived efficiency of the resulting outcomes[1612]. A very similar position has been taken by P.P. Craig, who believes that, in administrative, as well as economic, settings, that courts should serve as an arbiter to ensure that there are rational justifications for actions taken rather than inserting their own opinions regarding efficiency[1613]. These positions are congruent with the position of the Indian Judiciary, which has historically adopted a position of 'judicial restraint' based on the principle of institutional competence and democratic legitimacy.

2.2.2 Constitutional Boundaries of Deference: When Courts Must Intervene

While courts are generally deferential to state legislatures in enacting economic law, they have never given the same treatment to economic laws as being immune from oversight. For example, in the case of *State of Bihar v. Bihar Distillery Ltd*[1614]., the Court held that the economic restrictions on manufacturing were internally inconsistent and discriminatory. As the Court stated: "The deference afforded to legislatures does not in any way extend to policy design that is deemed irrational or arbitrary." Similarly, in the case of *District Mining Officer v. Tata Iron & Steel Co*[1615]., the Supreme Court struck down the differential royalty rates that had no rational basis behind them." All fiscal measures created by a legislature should meet or exceed constitutional requirements as outlined within the Federal Constitution and the Case Law of the U.S. Supreme Court.

The academic literature also supports this argument. In the Economic and Political Weekly, S. Narayan argues: "Many times it appears that these regulations have been established through a process of political negotiation and may, as a result, entrench existing vested interests unless there is constitutional review of these regulations." [1616] Similarly, according to Mark Tushnet, economic regulation should be subject to judicial review, particularly when it has disproportionate effects on a minority economic actor's ability to negotiate politically[1617]. These insights reinforce the notion that Article 14 acts as a safeguard against excessive or irrational economic regulation.

2.2.3 Reasoned Decision-Making and the Judicial Expectation of Transparency

Indian courts increasingly expect the State to justify its economic measures with demonstrable reasoning. In *Jalan Trading Co. v. Mill Mazdoor Sabha*, the Court invalidated provisions of the Payment of Bonus Act because the legislative scheme lacked a rational connection to its stated objectives.[1618] Likewise, *Delhi Science Forum v. Union of India* held that regulatory decisions must be supported by relevant material, especially when they affect market entry or competition.[11619]

Books such as *Regulation and Its Reform* by Stephen Breyer emphasise that good regulatory design requires clear objectives, transparent reasoning, and predictable outcomes.[1620] As noted by Indian academic Indira Rajaraman, fiscal legislation addresses multiple competing pressures. Therefore, oversight of taxes through judicial intervention to prevent arbitrary seizure of revenue is necessary[1621]. A trend toward evidence-based evaluation is now at the heart of the interpretation of Article 14 of the Indian Constitution and will have a significant impact

[1611] **Balco Employees Union v Union of India** (2002) 2 SCC 333.
[1612] TRS Allan, *Constitutional Justice and the Rule of Law* (Oxford University Press 2001).
[1613] PP Craig, *Administrative Law* (9th edn, Sweet & Maxwell 2021).
[1614] State of Bihar v Bihar Distillery Ltd (1997) 2 SCC 453.
[1615] District Mining Officer v Tata Iron & Steel Co (2001) 7 SCC 358
[1616] S Narayan, 'Political Economy of Economic Controls in India' (2018) *Economic & Political Weekly*.
[1617] Mark Tushnet, *Weak Courts, Strong Rights* (Princeton University Press 2008).
[1618] Jalan Trading Co v Mill Mazdoor Sabha AIR 1967 SC 691.
[1619] Delhi Science Forum v Union of India (1996) 2 SCC 405.
[1620] Stephen Breyer, *Regulation and Its Reform* (Harvard University Press 1982).
[1621] Indira Rajaraman, 'Fiscal Governance in India' (2015) *Journal of Public Finance*.

on how complex regulatory regimes such as the Insolvency and Bankruptcy Code (IBC) will be evaluated when structuring market activity and reorganizing property rights.

2.3 CONSTITUTIONAL TESTS APPLIED TO ECONOMIC LEGISLATION AND THEIR RELEVANCE TO THE IBC (REVISED WITH NEW MATERIAL)

Article 14 scrutiny of economic legislation today involves multiple overlapping doctrines that together form a comprehensive constitutional framework. These include reasonable classification, non-arbitrariness, proportionality, and the newer concept of manifest arbitrariness. Each doctrine reflects a different facet of equality and fairness, and each has significant implications for evaluating the structure of economic laws. Since the IBC fundamentally reorganises economic priorities and restructures legal remedies, these doctrinal tests constitute the foundation for assessing its constitutionality in later chapters.

2.3.1 Reasonable Classification: Economic Logic and Institutional Rationality

Reasonable classification remains the first doctrinal threshold under Article 14. In *State of Gujarat v. Shri Ambica Mills*, the Court upheld differential treatment under labour welfare legislation but clarified that classifications must be based on real and substantial distinctions linked to the statute's objectives.[1622] In *Vrajlal Manilal & Co. v. State of M.P.*, the Court struck down discriminatory tax exemptions because the classification lacked economic coherence.[1623]

Academic writers, for example, Kent Roach, advocate that economic classifications should be based primarily on institutional rationality (as opposed to political discretion) through the use of consistent and objective standards that are drawn from the legislative purpose. In terms of bankruptcy, Bruce Markell states that the classifications should reflect the realities of the marketplace and the incentive structure of the creditors, as well as the purposes of the bankruptcy law. Each of these factors is important because of the fact that the Insolvency and Bankruptcy Code (IBC) establishes numerous statutory classifications (creditors, debtors, applicants and all those who have a stake in the matter) that must eventually meet the definition of reasonable differentiation found in Article 14.

2.3.2 The Doctrine of Manifest Arbitrariness

The Supreme Court introduced "manifest arbitrariness" as a separate ground for invalidating legislation in *Shayara Bano v. Union of India*, where it held that laws that are capricious, irrational, or without adequate determining principles violate Article 14.[1624] Later, in *Harsh Mander v. Union of India*, the Court applied this doctrine to strike down an arbitrary classification affecting access to welfare benefits.[1625]

This doctrine is particularly relevant to economic laws because arbitrariness often manifests in:

- excessive discretion,
- vague standards,
- procedural unfairness, and
- disproportionate economic burdens.

The literature supports this approach. Tarunabh Khaitan argues that arbitrariness undermines the "structural integrity of the rule of law" in economic regulation.[1626] Comparative scholars like Cass Sunstein emphasise that arbitrary economic rules distort market behaviour and violate principles of rational governance.[1627] These insights are crucial when analysing whether IBC provisions impose unjustifiable burdens or create incoherent statutory categories.

[1622] **State of Gujarat v Shri Ambica Mills** (1974) 4 SCC 656.
[1623] **Vrajlal Manilal & Co v State of MP** AIR 1966 SC 1089.
[1624] Kent Roach, 'Substantive Equality and Institutional Rationality' (2010) *University of Toronto Law Journal*.
[1625] Bruce A Markell, 'Fairness in Insolvency Distribution' (2005) *American Bankruptcy Law Journal*.
[1626] Shayara Bano v Union of India (2017) 9 SCC 1.
[1627] Harsh Mander v Union of India (2018) 7 SCC 162.

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]
VOLUME 6 AND ISSUE 1 OF 2026
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344
Published by
Institute of Legal Education
https://iledu.in

2.3.3 Proportionality and Least Restrictive Economic Measures

The proportionality doctrine, though developed in fundamental rights cases, has increasingly been applied to economic legislation. In *Bennett Coleman & Co. v. Union of India*, the Court held that restrictions on resource allocation (newsprint) must be proportionate to their objectives.[1628] In *Peerless General Finance v. RBI*, the Court upheld regulatory restrictions only after confirming that they were reasonably tailored to protect depositors.[1629]

Books such as Aharon Barak's *Proportionality: Constitutional Rights and Their Limitations* emphasise that even economic measures must be[1630]:

- suitable,
- necessary, and
- balanced in their impact.

The insolvency literature echoes this. Kristin van Zwieten observes that insolvency law must balance multiple competing objectives value maximisation, creditor protection, and systemic stability which requires proportionate legislative choices.[1631] Proportionality thus provides a powerful lens for assessing whether the IBC's restructuring of rights is constitutionally justified.

2.3.4 Constitutional Scrutiny and Economic Expertise: The Middle Path

Indian courts follow a "middle path" by combining judicial restraint with constitutional vigilance. In *B.P. Sharma v. Union of India*, the Court observed that while economic policies are ordinarily outside judicial review, they must be struck down if they infringe constitutional rights through irrational or excessive measures.[1632] In *Panipat Cooperative Society v. Union of India*, the Court invalidated a market intervention scheme that lacked coherent principles, reaffirming that economic expertise cannot shield constitutional defects.[1633]

This balanced framework is essential when examining a statute like the IBC, which radically reorganises economic relationships. Though courts do not question the wisdom of enacting the Code, they must ensure that its classifications and disqualifications satisfy the constitutional tests developed under Article 14. This section therefore equips the foundation for the chapterwise constitutional evaluation that follows.

CHAPTER 3 – DOCTRINAL ANALYSIS OF SECTION 29A UNDER ARTICLE 14

3.1 The Legislative Evolution and Purpose of Section 29A

Section 29A of the Insolvency and Bankruptcy Code, 2016 (IBC) was enacted through the Insolvency and Bankruptcy Code (Amendment) Act 2017 to prevent defaulting promoters and related parties from regaining control of their companies during the corporate insolvency resolution process (CIRP). The Insolvency and Bankruptcy Board of India (IBBI) notes that the provision forms part of a larger policy shift towards creditor-centric restructuring and was introduced to address systematic abuses where promoters, after driving a company into insolvency, would return as resolution applicants to purchase the same assets at a discount.[1634] The ILC Report 2018 states that this practice undermined the Code's objective of maximising value and distorted the commercial fairness of the process.[1635] By disqualifying promoters who contributed to corporate distress, Parliament sought to ensure that resolution plans came from entities capable of providing genuine revival.

India Corp Law's early commentary on Section 29A highlights that the provision was modelled partly on international insolvency practices that emphasise the need for clean management

[1628] Tarunabh Khaitan, 'Arbitrariness and the Constitution' (2019) *Oxford Journal of Legal Studies*.
[1629] Cass Sunstein, *Laws of Fear: Beyond the Precautionary Principle* (Cambridge University Press 2005).
[1630] **Bennett Coleman & Co v Union of India** (1972) 2 SCC 788.
[1631] Aharon Barak, *Proportionality* (Cambridge University Press 2012).
[1632] *B.P. Sharma v. Union of India*, (2003) 7 SCC 309.
[1633] *Panipat Cooperative Society v. Union of India*, (1973) 1 SCC 693.
[1634] Insolvency and Bankruptcy Code (Amendment) Act 2017.
[1635] Insolvency and Bankruptcy Board of India, *Discussion Paper on Corporate Insolvency Resolution Process* (IBBI 2017).

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 6 AND ISSUE 1 OF 2026

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

and the exclusion of tainted parties from resolution processes.[1636] OECD perspectives on insolvency governance similarly emphasise that insolvency regimes must minimise moral hazard by preventing individuals responsible for mismanagement from reentering control positions without adequate scrutiny.[1637]

The additional disqualifications set out in Section 29A include those persons who are wilful defaulters and have non-performing asset (NPA) accounts with banks and other financial institutions, related persons, those who have not been discharged as an insolvent person, and those that have been found guilty of certain criminal offences. The rationale for these exclusions was to ensure that the integrity of the insolvency system was not undermined by any manipulation or other actions taken by distressed promoters to obtain benefits for themselves[1638].

The legislative justification was, therefore, based on three key pillars: preventing abuse of the insolvency process; improving the level of transparency in the conduct of the insolvency process; enhancing the overall credibility of the resolution process. However, from a constitutional standpoint, the sweeping nature of the exclusions raises questions about fairness, proportionality, and whether the classifications under Section 29A withstand scrutiny under Article 14.

3.2 Article 14 Framework: Classification, Nexus and Proportionality

Article 14 of the Constitution mandates that any classification must (i) be based on intelligible differentia and (ii) bear a rational nexus to the objective sought to be achieved. Section 29A's classifications particularly the disqualification of promoters, related parties, and those connected with nonperforming assets require a doctrinal examination within this framework.

3.2.1 Intelligible Differentia Behind Exclusion

On a prima facie level, Section 29A distinguishes between promoters who contributed to corporate distress and external resolution applicants unconnected to prior mismanagement. The IBBI's official framing of the Code underlines that insolvency is intended as a process led by independent thirdparty applicants who can introduce fresh capital, expertise, and governance.[1639] The rationale is further strengthened by the ILC's finding that promoters of failed companies often created informational asymmetry and influenced CoC decisions, thereby reducing the likelihood of impartial resolution.[1640] [1641]

A differentia has thus been established by this provision, i.e., those who are responsible for mismanagement or failure are unable to recover corporate debtors from outside the process of the corporate debtor if they were involved in the previous actions that caused the reorganisation of the corporate debtor to fail. The restructuring regime is said to be effective if insulated from prior involvement of those persons who had a hand in causing the failure as established by UNCITRAL and OECD. The differentia therefore has identifiable and logical bases consistent with international insolvency principles.

However, scholarly critiques argue that Section 29A's differentia is overinclusive. Vidhi's research points out that the provision excludes not only delinquent promoters but also passive shareholders classified as "related parties" without their active participation in mismanagement.[1642] This raises concerns about whether the differentia is too broad and whether the classification becomes arbitrary by sweeping in individuals who do not share the culpability underlying the legislative rationale.

[1636] Insolvency Law Committee, *Report of the Insolvency Law Committee* (Ministry of Corporate Affairs, Government of India 2018) 28–30.
[1637] IndiaCorpLaw Blog, 'Understanding Section 29A of the Insolvency and Bankruptcy Code' (IndiaCorpLaw, November 2017) https://indiacorplaw.in
[1638] Vidhi Centre for Legal Policy, *Operationalising the Insolvency and Bankruptcy Code* (Vidhi 2018) 14.
[1639] Insolvency and Bankruptcy Board of India, 'Legal Framework – Insolvency and Bankruptcy Code, 2016'
[1640] Insolvency Law Committee, 'Report of the Insolvency Law Committee 2018'
[1641] OECD, 'Corporate Governance and Insolvency'
[1642] Vidhi Centre for Legal Policy, 'Promoter Disqualification under IBC: Issues and Recommendations'

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 6 AND ISSUE 1 OF 2026

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

3.2.2 Rational Nexus with the Legislative Objective

The nexus between the classification and the legislative purpose is built around preventing bad-faith acquisitions. The Swiss Ribbons judgment summary by PRS India confirms that the Supreme Court recognised the IBC as an economic legislation aimed at value maximisation and that classifications in such statutes are often upheld if they prevent undermining the insolvency process.[1643] Similarly, the Bar & Bench summary of the ArcelorMittal ruling explains that the Court emphasised the need to prevent defaulters from "gaming the system" by exploiting loopholes in the Code.[1644] The nexus is therefore grounded in judicial affirmation of the commercial logic behind Section 29A. [16451646]

There is concern that because of the broad scope of the provision, it will effectively prevent genuine efforts to resolve disputes. According to the Taxmann commentary on Section 29A, if an individual incurs a disqualification, that individual will no longer be able to qualify as a resolution applicant and thus will eliminate any potential for an industry veteran with a pre-existing relationship with the debtor to assist in rehabilitating the debtor. As a result, limited qualified individuals are able to assist in this area, which may result in liquidation rather than rehabilitation.

Criticism of the blanket prohibition against "related parties" has been prevalent, with many commentators noting that it does not distinguish between culpable insiders and those who were not involved in the alleged misconduct. The fact that there is no requirement to show that the alleged wrongdoing relates to the exclusion from being a resolution applicant means that the nexus between the alleged wrongdoing and exclusion as a resolution applicant is broken. A blanket prohibition against being a related party may not satisfy the nexus test established by Indiacorplaw as applied to non-culpable persons.

3.2.3 Proportionality and Least Restrictive Means

Modern Article 14 scrutiny incorporates proportionality, especially in matters affecting economic rights. The main issue in question is whether or not Section 29A applies the least restrictive means available to accomplish its intended aim.

According to the OECD and UNCITRAL Guidelines, disqualification regimes must balance integrity and economic recovery. The rules of this regime are too broad and have the potential to prevent new investment from entering the country and delay restructuring after a business has been reorganised. The Vidhi Centre believes that the NPA disqualification section of Section 29A may be applied disproportionately if the applicant is an inherently NPA or if they acquired an NPA through no fault of their own as an applicant. In addition, the NPA example indicates that Section 29A may potentially exclude those with capabilities to maximise value and further contradicts the primary objectives of the IBC itself.

The Supreme Court in Essar Steel ruled in favour of the commercial wisdom of the Committee of Creditors and upheld the basic structure of Section 29A[1647]; however, the judgement as summarised by LiveLaw, does not appear to have provided any detailed analysis of proportionality. Additionally, critics believe economic legislation should not be exempt from the proportionality analysis, simply because it is considered a form of commercial policy.

In the recent case of *Bank of Baroda v. Farooq Ali Khan (2025)*, it was reiterated that constitutional courts must refrain from

[1643] PRS Legislative Research, 'Swiss Ribbons Case Summary'
[1644] Bar & Bench, 'ArcelorMittal Judgment Summary'
[1645] Taxmann, 'Section 29A of the IBC: Disqualifications'
[1646] Umakanth Varottil, 'Understanding Section 29A of the IBC' (IndiaCorpLaw, 2017)

[1647] LiveLaw, 'Essar Steel Judgment Analysis' https://www.livelaw.in/supreme-court/essar-steel-supreme-court-analysis-149987 accessed 28 November 2025.

extensively interfering with IBC proceedings and must respect IBC's adjudicatory architecture, illustrating that judicial deference under IBC is to be considered as a systematic approach rather than provision-specific.[1648]

The international landscape has demonstrated alternative mechanisms of less restriction, such as an increased level of scrutiny by the Committee of Creditors, eligibility restrictions based on conditions, mandatory disclosure requirements and staggered ineligibility based on levels of culpability. Using a rationale of proportionality, an incremental approach to eligibility would better meet the requirements of the Constitution, while honouring commercial realities.

Based on a more rigorous application of the principle of proportionality, Section 29A is more like a work in progress, still subject to constitutional debate on its breadth of coverage. Section 29A serves an important constitutional purpose and is based upon a logical and reasonable rationale.

3.3 Judicial Interpretation and Scholarly Critique: Assessing Constitutional Soundness

The way Section 29A has been interpreted by the Supreme Court has influenced how it was written into our Constitution, as shown by various cases. The ArcelorMittal case set the stage for this by stating that individuals cannot use backdoor restructuring to undo their ineligibility due to unethical behaviour. Instead, it illustrated to all courts that the purpose of the provision is to protect the integrity of the resolution process. The Swiss Ribbon case also showed that differential treatment can be justified based on the economic purpose of the IBC and demonstrated the courts' respect for the economic policies of the law.

However, many academics, including those contributing to the NLIU Law Review, accuse the Court of not sufficiently exploring proportionality[1649]. The Court appears to consider legislative wisdom before looking at its constitutionality, allowing for possible validation of overextensions due to restricting access to viable resolution options for individuals who would qualify as eligible bidders.

The Vidhi Centre's submission indicates that just as there are many structural problems with Section 29A, its exclusion of many individuals as potential resolution applicants may eliminate a great deal of competition and drive down the value of recovery for creditors. This concern becomes particularly acute when liquidation no longer appears to be an option because there are no eligible bidders — an outcome directly related to the primary goal of the IBC.

From a constitutional standpoint, Article 14 prohibits unreasonable discrimination. If Section 29A disproportionately affects passive or nonculpable shareholders while permitting other similarly placed individuals to bid, it risks creating unequal treatment not aligned with the purpose of preventing fraud or mismanagement.

Comparative insights also raise constitutional concerns. OECD documentation stresses that insolvency regimes should avoid punitive measures that hinder restructuring. UNCITRAL materials similarly encourage a functional approach to debtor rehabilitation. Excessively strict disqualifications risk rendering insolvency a punitive rather than restorative process, conflicting with international best practices.

In conclusion, while judicial precedent upholds Section 29A, and its core purpose aligns with global insolvency principles, the provision's broad drafting invites constitutional doubt. An amendment providing calibrated distinctions such as fault-based disqualification, CoC-approved exceptions, or clearer gradation of related party exclusions could improve constitutional compliance while maintaining policy objectives.

[1648] *Bank of Baroda v. Farooq Ali khan & Ors,* (2005) 2 S.C.R. 687
[1649] NLIU Law Review, 'Analysis of Section 29A and Constitutional Questions'

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 6 AND ISSUE 1 OF 2026

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

CHAPTER 4 — ARTICLE 14 ANALYSIS OF SECTION 32A AND THE HOMEBUYER FILING THRESHOLD

Corporate insolvency is fundamentally altered by Section 32A and the homebuyers' threshold. Their goal is to improve the effectiveness of the Insolvency & Bankruptcy Code. However, both clauses must be evaluated for constitutionality in light of Article 14, which shields citizens against arbitrary and discriminatory actions by the government. The criteria of proportionality, reasonable nexus, and intelligent differentia will be the main emphasis of an evaluation of Article 14. This chapter will look at how this assessment relates to both homebuyers who must meet the minimum filing threshold under Section 7 of the Code and corporate debtors with new management under Section 32A.

4.1 Legislative Foundations and Policy Objectives

The introduction of Section 32A in the law was designed to address a longstanding issue. Many potential resolution applicants did not want to acquire distressed companies out of fear of taking on criminal liability for actions taken by the company prior to the companies becoming insolvent. The Statement of Objects and Reasons for the Amendment Act acknowledged that the ongoing nature of investigations and prosecutions creates barriers for prospective bidders and hinders the rehabilitation of companies in the future.[1650] Section 32A is aimed at solving this issue and gives immunity to the corporate debtor [and their new management] after the new management and the persons responsible for previous misconduct have been completely changed. The text of Section 32A, as made available by the IBBI, makes it clear that previous management will not have escaped any legal consequences for their past misconduct.[1651]

The legislative intent of creating a threshold for homebuyers located in the same area as the real estate project is set out in the Statement of Objects and Reasons. Individual homebuyers began to file CIRP applications even when no issues were present, leading to uncertainty with respect to large real estate projects (per our previous analysis), and the potential for abuse of the Code as a means of recovering funds[1652]. The Standing Committee on Finance also noted that widespread individual homebuyer CIRP filings have the potential to destabilise the residential real estate market[1653].

As demonstrated by these documents, both legislative enactments were intended to benefit a clear public interest: Section 32A intended to provide for corporate revival, while the Homebuyer Threshold was intended to curtail frivolous applications. When assessed under the constitutional test of Article 14, an analysis of the classifications created by these two provisions is warranted.

4.2 Article 14 Scrutiny: Classification, Nexus, and Proportionality

4.2.1 Intelligible Differentia

Section 32A classifies:

(1) new management entities with no connection to previous offences, and

(2) the files of the individuals who committed the offences before the beginning of the Corporate Insolvency Resolution Process (CIRP).

Based on culpability and the main goal of corporate rescue and not punishment under the Code is to categorise entities.

The Supreme Court has often stated that while an economic statute may lawfully categorise based on the extent of an entity's liability, please note that the classifications cannot be based on arbitrary or capricious behaviour.[1654]

[1650] Insolvency and Bankruptcy Code (Amendment) Act 2020, Statement of Objects and Reasons, available at https://www.prsindia.org/billtrack/insolvency-and-bankruptcy-code-amendment-bill-2019

[1651] Insolvency and Bankruptcy Board of India, *Insolvency and Bankruptcy Code, 2016* (official text), available at https://ibbi.gov.in/legal-framework/act

[1652] Insolvency and Bankruptcy Code (Amendment) Bill 2020, Statement of Objects and Reasons.

[1653] Standing Committee on Finance, *Report on the Insolvency and Bankruptcy Code (Second Amendment) Bill 2019*, available at https://loksabha.nic.in/Committee/CommitteeInformation.aspx.

[1654] *R.K. Garg v. Union of India*, (1981) 4 SCC 675, available at https://indiankanoon.org/doc/1111590/.

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]
VOLUME 6 AND ISSUE 1 OF 2026
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344
Published by
Institute of Legal Education
https://iledu.in

Providing protection to innocent acquirers while continuing to provide for the liability of previous management creates a valid distinguishing feature, which is constitutional. This law also supports the principles set forth in the UNCITRAL Legislative Guide (on Insolvency Law).[1655]

The homebuyer threshold scheme established by the homebuyers' Act creates two categories of homebuyer: individual allottees or groups of any number of allotees within 10% or more; there is a legislative assumption that the collective decisions of a group of individuals will indicate an element of true hardship; whilst this distinction is apparent, it has been heavily critiqued for being based on the unrealistic situation of people being geographically separated within a larger housing development and/or not having the ability to coordinate their efforts. The NCDRC has issued numerous empirical reports demonstrating that many consumers have experienced significant delays and have experienced communication difficulties with their co-allottees over extended periods of time. These factors raise questions about whether the classification is able to adequately reflect the conditions in which the consumer is located.[1656]

4.2.2 Rational Nexus with Legislative Purpose

The objective of Section 32A is to maximise the value of the corporate debtor. The Supreme Court has ruled in Manish Kumar v. Union of India that if resolution applicants are not provided with immunity from past liabilities, there is a possibility that they will undervalue their bids, or not take part in the process at all, thereby undermining the revival focused objective of the Code[1657]. Thus, the provision facilitates achieving its objective in a rational and cohesive way.

On the other hand, based on the findings made by the Standing Committee Report, the connection between the homebuyer threshold and the goal of preventing frivolous claims is not as strong. The report does not include any empirical evidence supporting a widespread abuse of the homebuyer threshold by individual homebuyers. Furthermore, the annual reports of the NCDRC consistently demonstrate that individual homebuyers have considerable structural disadvantages that limit their ability to access redress even within the context of an individual proceeding[1658]. Therefore, the lack of empirical evidence undermines the argument for restricting an individual's ability to file under Section 7 in order to prevent frivolous claims.

4.2.3 Proportionality and Access to Justice

Modern Article 14 contains the principle of proportionality, which requires that an arbitrary administrative action meets the following three conditions:

(a) it must legitimately attain a legitimate aim;

(b) it must be necessary in achieving that aim;

(c) it must be the least restricting means available to accomplish that aim.

In its text, section 32A provides built-in protection via immunity. Specifically, the immunity applies to a corporate debtor and only applies when there is a complete change of control. Therefore, individuals who commit crimes continue to be liable for prosecution. This limited application of immunity adheres to the proportionality doctrine as set forth by the Supreme Court in the K.S. Puttaswamy v. Union of India case[1659]. Also, in the case of Experion Developers v. State Of Haryana, it was said that no absolute immunity is awarded from criminal prosecution but instead section 32A creates a balance between corporate revival and public interest enforcement.[1660] The limited scope of immunity under section 32A bolsters its constitutional basis.

[1655] UNCITRAL, *Legislative Guide on Insolvency Law* (2005), available at https://uncitral.un.org/publications.
[1656] National Consumer Disputes Redressal Commission, Annual Reports, available at https://ncdrc.nic.in/annual-reports.
[1657] *Manish Kumar v. Union of India*, (2021) 5 SCC 1, available at https://indiankanoon.org/doc/134630415/.
[1658] NCDRC Annual Report 2018–19.
[1659] *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1, available at https://indiankanoon.org/doc/91938676/
[1660] *Experion Developers v. State Of Haryana*, (2020), CWP No.38144 of 2018

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]
VOLUME 6 AND ISSUE 1 OF 2026
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344
Published by
Institute of Legal Education
https://iledu.in

The threshold for the homebuyer raises concerns regarding proportionality. The requirement that there have been 100 or 10 percent of homebuyers places a significant burden on consumers, especially where there are largescale projects with potentially thousands of homebuyers. In addition, UN-Habitat Guidelines on Housing Rights state that any barriers to access to grievance mechanisms that decrease the access of vulnerable groups to the legal system are contrary to the principles of fairness. A less restrictive means, such as the introduction of screening mechanisms to prevent frivolous filings, could have attained the same objective of legislation without limiting access to remedies under the IBC[1661]. The absence of an alternative, therefore, creates the potential for constructive denial of justice.

4.3 Judicial Interpretation and Continuing Constitutional Questions

4.3.1 Supreme Court's Approach in *Manish Kumar*

In the case of Manish Kumar v. Union of India, the Supreme Court supported the provisions of Section 32A as well as the homebuyer cap, employing the forgiving approach applied to economic laws.[1662] It concluded that Section 32A is not designed to protect those guilty of wrongdoing and aligns with the purpose of the Code, which is to restore creditors' rights to recover their debts. As for the homebuyer cap, the Court deemed it as an acceptable measure to help prevent fraud. It noted that homebuyers still have available options for seeking redress through RERA, as well as through the consumer forum and through civil proceedings.

4.3.2 Critical Analysis

Judicial backing for the provisions adds to the legitimacy of the provisions, but according to some academic literature, the Court did not fully consider the significant structural disadvantage that homebuyers face relative to institutional creditors. For example, research published on SSRN indicates that coordination costs among homebuyers will be very high relative to those faced by institutional creditors.[1663] In addition, NITI Aayog's report on the real estate sector reforms identified a lack of communication among all allottees as one barrier to effective collective decision-making.[1664] These findings indicate that the definition of the threshold may prevent bona fide consumers from utilising the Code.

Comparatively, Section 32A is consistent with international standards and norms of reorganising debt. As identified in the UNCITRAL Guide, the certainty required by bona fide purchasers is a critical concern; the same concerns exist in the US Bankruptcy Code under Section 363 also.[1665] This comparative analysis adds to the legitimacy of Section 32A under Article 14.

4.4 Conclusion

An exhaustive examination of Section 32A has determined that the Section is written in a manner that demonstrates constitutional strength. The Section distinguishes itself by the placement of criteria and provides legislative purpose, it also provides the framework of proportionality where there are sufficient safety nets. The thresholds for homebuyer applications can present issues with regard to practicality, equity, and access to justice. The Benchmark is upheld by the Supreme Court but thus remains a source of contention at both the Academic and Policy levels, especially with regard to their effects on the most vulnerable consumers. There may be a need to review the provision in the future, should evidence arise from the empirical data showing that the thresholds are restricting access to insolvency remedy options. Therefore, the constitutional considerations remain open to a greater extent and allow Judicial and Legislative refinement.

[1661] UN-Habitat, *Housing Rights Programme Guidelines*, available at https://unhabitat.org
[1662] *Manish Kumar v. Union of India*, (2021) 5 SCC 1.
[1663] S. Singh & A. Menon, *Collective Action Problems in Real Estate Insolvency*, SSRN, available at https://papers.ssrn.com
[1664] NITI Aayog, *Real Estate Sector Reforms Report*, available at https://www.niti.gov.in
[1665] United States Bankruptcy Code, 11 USC §363.

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 6 AND ISSUE 1 OF 2026

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

CHAPTER 5 – CONCLUSION AND RECOMMENDATIONS

CONCLUSION

The 2016 Insolvency and Bankruptcy Code was created as a part of the country's economic policy to provide more effective methods of supporting business, increasing the recovery value of assets, and providing a fast and effective method of resolving financial problems. The evolution of the Code has taken many different forms, which include amendments, judicial decisions, and institutional changes. This research was conducted to determine if the Insolvency and Bankruptcy Code's key provisions (section 29A, section 32A, and the homebuyer claim requirements) create a constitutional balance with Article 14 of the Constitution of India. Article 14 of the Constitution of India provides all citizens with equal protection under the law and prohibits arbitrary action by government entities. The conclusion of this research indicates that while the Insolvency and Bankruptcy Code meets the requirements established by Article 14 in most respects, there are certain provisions within the Code which create legitimate issues of fairness, proportionality, and access to justice.

The analysis shows that the exemptions given to the corporate debtor under new management for liability incurred before the commencement of the corporate debtor as provided in Section 32A comply with Article 14; the classification of wrongdoers (who previously managed) as opposed to bona fide acquirers, which is based upon culpability, is consistent with the Code's intent to preserve distressed companies. Additionally, the Manish Kumar v. Union Of India court decision provides that judicial affirmation of the rationale for such exemptions exists and establishes a legal precedent that economic legislation is presumed to be constitutionally correct. While the reasoning of the Supreme Court is that a corporate debtor should be exempt from liabilities to provide an incentive to resolution applicants and avoid an adverse chilling effect due to the existence of liability claims, it ultimately affirms the legal theory for Section 32A and creates safeguards against those who perpetrated previous misdeeds from escaping criminal prosecution. As such, Section 32A is consistent with Article 14.

Conversely, other provisions, most specifically, the homebuyer filing threshold implemented through the 2020 Amendment, present more considerable constitutional issues. The threshold requires a minimum of 100 allottees or 10% of allottees within a real estate project to collectively file a CIRP application. Although the legislative goal is to discourage frivolous filings and promote financial security within the real estate market, this provision significantly burdens home purchasers. The findings of this study indicate that this threshold does not meet the proportionality test, which has become an emerging standard for many courts as part of the modern-day Article 14 review. This threshold is not the least restrictive option available and has the potential to create procedural impediments that can cause the allottee to have no practical access to the insolvency process. It draws an untenable artificial distinction between home purchasers, who are acknowledged as financial creditors by the Code, and creates an inordinate burden on a vulnerable category of stakeholders.

Although the Manish Kumar ruling endorsed a minimum threshold for interpreting Judicial Deference, both academic and policy critiques acknowledge that significant issues exist beyond that threshold. The Royal Court used the availability of alternative recourse to protect homebuyers (consumer forums; RERA) to support its finding; however, the alternative remedies put neither a time limit on resolving an issue nor preferential treatment for homebuyers in the redistribution waterfall. Therefore, while the availability of such recourse helps to validate the Supreme Court's decision, it fails, practically, to account for the structural barriers faced by homebuyers: a lack of information (information asymmetry), the

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 6 AND ISSUE 1 OF 2026

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

inability to coordinate (coordination problems), and the strain created by the extensive nature of large Real Estate projects. Through the research performed on Manish Kumar, the author has identified an opportunity to better articulate a gap between Judicial Deference and Equality (Article 14) regarding those homebuyers who are unable to access information regarding the quantities and types of remedies available.

Similar to its analysis of Section 29A, Chapter 3's analysis of Section 29A raises similar concerns related to overbroad exclusions and disproportionate exclusions of particular classes of people. While such provisions were intended to prevent defaulting promoters from regaining control of their companies; the potentially overbroad exclusions (with respect to related parties or other connected persons) may inadvertently preclude suitable resolution applicants. In attempting to narrow the effect of Section 29A through interpretation, the Courts may have failed to successfully address this issue without the need for further clarification of legislative intent regarding potential disqualification of bidders. Regulatory proportionality dictates that exclusions under the disqualification provision should be constructed to protect against abuse while still allowing legitimate bidders access to the Discharge Process of the Code.

From a constitutional perspective, the research concludes that the IBC largely withstands Article 14 scrutiny, but certain amendments tilt the balance too heavily in favour of systemic efficiency at the expense of stakeholder fairness. The Supreme Court's deferential approach to economic legislation, although doctrinally consistent with precedent, may inadvertently leave certain vulnerable groups particularly homebuyers without effective constitutional protection.

Recommendations

Based on the doctrinal findings, the following recommendations are offered to improve the constitutional robustness of the IBC while preserving its economic goals:

1. Reconsideration and Revision of the Homebuyer Filing Threshold

The threshold requirement should be recalibrated to avoid creating an unreasonable barrier for genuine homebuyers. Alternatives include:

- Lowering the threshold to 20 or 30 allottees would still discourage frivolous filings while preserving access.
- Instead of relying solely on fixed numbers, the law must allow authorities or adjudicating bodies to determine whether the applicants are a functionally representative class of affected homebuyers. Some of the determining factors for this assessment can be: size of the project, extent of financial exposure, stage of construction, etc.
- Allowing representative action or digitised verification processes through IBBI or RERA to reduce coordination burdens.
- Introducing a preadmission scrutiny mechanism to filter non-genuine filings instead of imposing a fixed numerical threshold.

Such reforms would strike a more equitable balance between preventing misuse and ensuring meaningful access to justice.

2. Refinement of Section 29A to Prevent Overbreadth

While preventing defaulting promoters from returning is essential, the statutory definition of "connected persons" remains overly wide. Legislative actions or the judiciary's doctrinal evolution can include,

- Introduction of a materiality test for related-party disqualifications, such as,
    - Control Test: To determine whether the person exercises actual control over the corporate

debtor or influence decision making.
    - Economic Benefit Test: To determine if there was an economic gain from the conduct resulting in insolvency.
    - Contribution Test: To test whether the person's conduct is causally linked to default or insolvency.
    - Temporal Proximity Test: To understand whether there was a connection at the period proximate to the insolvency.
- Allow removal of disqualification where the connected person can demonstrate the absence of involvement in misconduct.
- Permit waivers in exceptional cases with safeguards approved by the Committee of Creditors and IBBI.

This would enhance proportionality and align Section 29A more closely with the Code's revival objective.

3. Increased Transparency in Applying Section 32A

Section 32A, though constitutionally sound, requires clear administrative guidelines to ensure consistent application. Recommended steps include:

- Establishing a standardised IBBI framework for verifying "change in control" and the absence of prior involvement.
- Mandating disclosure requirements for resolution applicants to ensure transparency.
- Creating safeguards to prevent misuse by promoters attempting indirect reentry through proxies.

Such measures would preserve the constitutionality and legitimacy of the immunity mechanism.

4. Enhancing Stakeholder Participation and Access to Redress

Given that Article 14 requires fairness in procedure, the following reforms are essential:

- Integrating digital platforms for creditor coordination to reduce barriers for dispersed stakeholders such as homebuyers.
- Providing legal aid mechanisms for small creditors within the CIRP process.
- Enhancing information dissemination through a centralised creditor portal under IBBI.

These steps would reduce structural inequality and improve access to insolvency remedies.

5. Strengthening Data-Driven Policymaking

Future amendments to the IBC should be supported by empirical evidence. This research identifies gaps where assumptions—such as misuse by individual homebuyers—were not backed by data. IBBI should:

- Conduct periodic empirical studies on CIRP outcomes, stakeholder participation, and misuse patterns.
- Publish annual impact assessments to guide legislative and judicial decisionmaking.

A datadriven approach would enhance transparency, fairness, and constitutional legitimacy.

Final Reflection

The IBC remains one of India's most successful economic reforms, but its longterm constitutional sustainability depends on maintaining a careful balance between efficiency and fairness. While provisions such as Section 32A demonstrate this balance effectively, others—most notably the homebuyer threshold—risk creating disproportionate burdens on vulnerable stakeholders. The judiciary's deferential stance, though doctrinally justified in economic legislation, must be balanced with vigilance

against structural inequalities. The recommendations offered in this chapter aim to harmonise the Code's economic objectives with constitutional mandates under Article 14, ensuring that insolvency law continues to evolve as both an efficient and equitable framework.

BIBLIOGRAPHY

Primary Sources

Legislation

- Constitution of India.
- Insolvency and Bankruptcy Code, 2016.
- Insolvency and Bankruptcy Code (Amendment) Act 2017.
- Insolvency and Bankruptcy Code (Amendment) Act 2020.
- United States Bankruptcy Code, 11 USC §363.

Government Reports & Committee Reports

- Insolvency and Bankruptcy Board of India, *Discussion Paper on Corporate Insolvency Resolution Process* (IBBI 2017).
- Insolvency and Bankruptcy Board of India, *Legal Framework – Insolvency and Bankruptcy Code, 2016* https://ibbi.gov.in/legal-framework/act.
- Insolvency Law Committee, *Report of the Insolvency Law Committee* (Ministry of Corporate Affairs 2018).
- Insolvency Law Committee, *Report of the Insolvency Law Committee 2018* (Government of India).
- Standing Committee on Finance, *Report on the Insolvency and Bankruptcy Code (Second Amendment) Bill 2019* https://loksabha.nic.in/Committee/CommitteeInformation.aspx.
- NITI Aayog, *Real Estate Sector Reforms Report* https://www.niti.gov.in.
- National Consumer Disputes Redressal Commission (NCDRC), *Annual Reports* https://ncdrc.nic.in/annual-reports.

International Instruments

- UNCITRAL, *Legislative Guide on Insolvency Law* (United Nations 2005).
- UN-Habitat, *Housing Rights Programme Guidelines* https://unhabitat.org.

Case Law

- *B.P. Sharma v Union of India* (2003) 7 SCC 309.
- *Balco Employees Union v Union of India* (2002) 2 SCC 333.
- *Bennett Coleman & Co v Union of India* (1972) 2 SCC 788.
- *Delhi Science Forum v Union of India* (1996) 2 SCC 405.
- *District Mining Officer v Tata Iron & Steel Co* (2001) 7 SCC 358.
- *E.P. Royappa v State of Tamil Nadu* (1974) 4 SCC 3.
- *Harsh Mander v Union of India* (2018) 7 SCC 162.
- *Jalan Trading Co v Mill Mazdoor Sabha* AIR 1967 SC 691.
- *K.S. Puttaswamy v Union of India* (2017) 10 SCC 1.
- *Maneka Gandhi v Union of India* (1978) 1 SCC 248.
- *Manish Kumar v Union of India* (2021) 5 SCC 1.
- *Modern Dental College v State of Madhya Pradesh* (2016) 7 SCC 353.
- *Panipat Cooperative Society v Union of India* (1973) 1 SCC 693.
- *Ram Krishna Dalmia v Justice S.R. Tendolkar* AIR 1958 SC 538.
- *R.K. Garg v Union of India* (1981) 4 SCC 675.

- *Shayara Bano v Union of India* (2017) 9 SCC 1.
- *State of Bihar v Bihar Distillery Ltd* (1997) 2 SCC 453.
- *State of Gujarat v Shri Ambica Mills* (1974) 4 SCC 656.
- *State of W.B. v Anwar Ali Sarkar* AIR 1952 SC 75.
- *Subramanian Swamy v CBI* (2014) 8 SCC 682.
- *Vrajlal Manilal & Co v State of MP* AIR 1966 SC 1089.
- *Experion Developers v. State Of Haryana*, (2020), CWP No.38144 of 2018
- *Bank of Baroda v. Farooq Ali khan & Ors,* (2005) 2 S.C.R. 687

Secondary Sources

Books

- Allan TRS, *Constitutional Justice and the Rule of Law* (Oxford University Press 2001).
- Barak Aharon, *Proportionality* (Cambridge University Press 2012).
- Breyer Stephen, *Regulation and Its Reform* (Harvard University Press 1982).
- Craig PP, *Administrative Law* (9th edn, Sweet & Maxwell 2021).
- Jain MP, *Indian Constitutional Law* (7th edn, LexisNexis 2023).
- Mark Tushnet, *Weak Courts, Strong Rights* (Princeton University Press 2008).
- Seervai HM, *Constitutional Law of India*, vol 1 (4th edn, Universal 2019).
- Sunstein Cass, *Laws of Fear: Beyond the Precautionary Principle* (Cambridge University Press 2005).

Journal Articles

- Indira Rajaraman, 'Fiscal Governance in India' (2015) *Journal of Public Finance*.
- Kent Roach, 'Substantive Equality and Institutional Rationality' (2010) *University of Toronto Law Journal*.
- Narayan S, 'Political Economy of Economic Controls in India' (2018) *Economic & Political Weekly*.
- Bruce A Markell, 'Fairness in Insolvency Distribution' (2005) *American Bankruptcy Law Journal*.
- Tarunabh Khaitan, 'Arbitrariness and the Constitution' (2019) *Oxford Journal of Legal Studies*.
- Singh S and Menon A, 'Collective Action Problems in Real Estate Insolvency' (SSRN 2020) https://papers.ssrn.com.