Indian Institute of Insolvency Professionals
of ICAI (IIIPI)

Efficacy of Insolvency Law in India Vs other countries

A Research Report sponsored by IIIPI

Dr. Ankeeta Gupta

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FOREWORD

The Research Committee of the Indian Institute of Insolvency Professionals of ICAI (IIIPI) is pleased to present its Research Report on "Efficacy of Insolvency Law in India Vs other countries" developed by Dr. Ankeeta Gupta and sponsored by IIIPI. This report was released on the occasion of the 1st Research Web conference conducted by IIIPI on 19th September 2025.

Dr. Ankeeta is an Assistant Professor of Law, at Faculty of Law, University of Delhi and has a teaching experience of over 5 years. She was previously teaching at National Law University Odisha where this project by IIIPI was awarded to her. She has completed her PhD from Faculty of Law, University of Delhi in the area of Insolvency Laws.

The report is focusing on the efficacy of insolvency laws in India in comparison with global insolvency regimes. Insolvency law forms the backbone of a resilient economic system by providing mechanisms to address corporate distress efficiently and fairly. As the economies across the world become increasingly interconnected, harmonizing domestic insolvency laws with internationally accepted best practices is not only desirable but essential.

Research report undertakes the task of surveying insolvency frameworks in 156 countries, identifying key trends, successes, and challenges faced by diverse jurisdictions. What stands out in this research is the emphasis on practical suggestions tailored to the Indian context, ranging from technological enhancements and ethical enforcement to cross-border cooperation and stakeholder communication. These recommendations are grounded in extensive comparative analysis and reflect a deep understanding of India's evolving economic and legal infrastructure.

I would like to take this opportunity to express my thanks to Dr. Navrang Saini and CA Surendra Raj Gang, IP for reviewing the report and in providing their valuable input during the research by the researcher.

I also appreciate the efforts put in by CA. Rahul Madan - Managing Director, CA Leena Aggarwal - Dy Director, and CS Sakshi Aggarwal, in charge of the Research Department of IIIPI for providing their technical and administrative support in bringing out this report.

I am confident that this Research Report will be useful to understand evolving Laws of Insolvency in the world.

Dr. Ashok Kumar Mishra,
Chairman, IIIPI-Governing Board

Date : 19th September 2025
Place: New Delhi

Acknowledgement

I would like to take this opportunity to express my humble gratitude to the supervisors and mentors of the research report titled " *Efficacy of Insolvency Laws in India v. Other Countries*". I am grateful to the Research Committee, Indian Institute of Insolvency Professionals of ICAI (IIIPI), New Delhi, CA Mr. Rahul Madan, Managing Director, IIIPI of ICAI and Ms. Sakshi Aggarwal, Research Officer, IIIPI for giving me the opportunity to work on this topic.

I am also grateful to the Chief Guide Dr. Navrang Saini, Former Chairperson, Insolvency and Bankruptcy Board of India and Domain Expert CA Surendra Raj Gang, Insolvency Professional for helping me to develop a formulated approach to the research and providing their valuable inputs.

In the end, I would like to extend my sincere gratitude to my research team Ms. Jayati Jaya, Research Assistant who worked meticulously in completing this research. I am also grateful to my family for encouraging and motivating me to complete the research project.

Researcher

Dr. Ankeeta Gupta

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I. Executive Summary

In the current project the researcher is looking at evaluating the insolvency regimes across the globe, drawing comparisons and lessons from good practices which can consequently be implemented in the Indian Insolvency Law regime. Thus the researcher in the current paper is attempting to analyse the good practices from the world over that may be implemented in the Indian insolvency regime in order to improve the global insolvency law linkages and bring Indian Law in harmony with them. An analysis of the global insolvency regimes indicates that countries and institutions all around the world are strengthening their insolvency systems in order to provide easy exit mechanisms to corporates allowing for better and more efficient ways of resource utilisation and mobilisation.

The current research is based on the idea that India needs to work and improve its domestic law by bringing it harmony with internationally accepted best practices. For this purpose the researcher has conducted an in-depth analysis of the best legal practices that exist in all the countries across the world. As per the United Nations there exist 196 countries in the world, of these 156 countries have insolvency law/provisions as per claims on their Ministry of Justice Website/ governmental websites.

A detailed research has indicated the following:

- Nearly 88 countries in the world have specific statutes regulating insolvencies in their regimes.
- Nearly 23 countries have no insolvency laws or laws that cannot be found with due diligence, this also includes the statutes of countries for whom official English translations could not be found.
- For Nearly 17 countries there was no information pertaining to insolvency in any manner according to due diligence of the researcher.

- Atleast 10 countries are still following insolvency laws which were drafted prior to 1970.
- Atleast 10 countries have their laws drafted post 2020 and are in the implementation stage.
- Atleast 48 countries have their laws in a code of civil or commercial laws and company law.

There are very few countries which have detailed and effective legislations dedicated solely to the insolvency and bankruptcy regimes. While the research was conducted evaluating the laws of all the 156 countries, due to paucity of space the researcher has only discussed a total of 15 jurisdictions based on the size of the economies have been discussed in the following report. The scope of this was limited to conducting an overall research providing a panoramic view of the insolvency regimes across the globe while also providing an indepth analysis of the success of the Insolvency and Bankruptcy Code, 2016 as implemented by India. Thus the report is broadly divided into three parts with one section dealing with insolvency regime in India alongwith an analysis of success of its implementation in India, while part two deals with birds eye view of insolvency laws in 15 different jurisdictions. The third part is dedicated to suggestions that can be implemented and adopted in the Indian legal landscape from best practices available in the insolvency world globally.

Suggestions

The researcher while conducting the research has come across a myriad forms of laws, rules and regulations pertaining to Insolvency laws in various jurisdictions across the globe. An analysis of these indicated some good practices worthy of emulation within the Indian legal structures without altering the fundamental structure of the Indian Insolvency Law. The following suggestions have emerged from the research:

1. **Insolvency register**: An insolvency registry allowing for information about insolvent corporate debtors to be available for a fee and after due verification. It will be a ledger account allowing records of insolvency debtors to be available for the potential investors. Currently in India all the orders of the NCLT admitting

insolvency proceedings are sent to the regulator i.e. Insolvency and Bankruptcy Board of India, however there is no ledger book in a tabular format which can provide a panoramic view of corporate debtors. This has begun in some semblance through the Information Utilities and the IBBI newsletters, yet we need to improve the structure of data keeping in insolvency structures as information asymmetry within the corporate economy does not bode well for successful running of the economy.

2. **Automated Information Bureau:** An automated information system linked to the tribunal/ organization admitting or taking cognizance of the insolvency. This system will immediately on receipt of admission notice about a corporate debtor will intimate the stakeholders in the corporate economy of the insolvency of the corporate debtor and also initiate the moratorium without the necessity of the formal communication of the order from the adjudicatory mechanism. The automated connected machinery will alert the stakeholders of the announcement by the Tribunal without there being a necessity of communication thereof. This is to address the scenarios where the stakeholders have in the past requested extensions as they were not made aware of the order which resulted in incorrect and or delayed responses causing unnecessary delays in the CIRP processes.
3. Insolvency Agreements: In various countries agreements for settling disputes between debtors and creditors have been accepted at different stages of the dispute allowing for speedier resolution of credit disputes. Whether the agreement is created at the beginning of the dispute, before admission of the dispute or middle of the dispute it is envisioned that as long as the dispute is resolved with economic assets being brought back to efficient utilization, it shall be acceptable.
4. **Definition of all types of creditors:** Within the waterfall mechanism the broad definitions of creditors pose a difficulty with respect to classes of creditors and their rights to get dues realized. Most mature jurisdictions across the world have adopted definitions which bring clarity in terms of rights of creditors. In India it will be prudent to include the definition of secured creditors (clarifying priorities within different categories of secured creditors holding different rights) and all

other creditors in the definition so that a harmony in the definition and rights as given in waterfall mechanism can be brought about.

5. **Enforcement of Ethics for stakeholders:** the most important stakeholders in the insolvency law in India are creditors and debtors whose rights are enforced and protected by the Committee of Creditors and Insolvency Professionals. While they are bound by a set of rules and regulations, these are very few. It is thus suggested that the code of ethics for both the insolvency professionals as well as committee of creditors be enforced which can then be used to make sure that the entire insolvency process is ethically and legally sound.
6. **Cross border insolvency implementation**: The Brazilian Law in a unique universalism allows for the courts of debtor's parent country to declare bankruptcy, issue decrees and approve restructuring plans. This extra-territorial operation of the insolvency laws can help harmonize and integrate the national insolvency laws into a global law adopted by all states allowing for greater efficiency in realization of debts.
7. **Adoption of technology in judicial systems:** Brazil's National Judicial Council has adopted the complete digitization of insolvency processes which has in effect allowed for faster, efficient, transparent and effective insolvency law implementation. It is suggested that such digitization should be envisioned throughout the world in order to create a robust data management system while reducing time lines and time wastage due to compulsory physical presence requirements.
8. **Adoption of the JIN guidelines for communication and cooperation of the courts:** The Judicial Insolvency Network has been created by Judges from across the world who understand the importance of coordinated efforts in insolvency process to allow for movement of the economic assets. The fact that the assets based in one jurisdiction can be accounted for during the insolvency proceedings in the another state help the administrators make a fair assessment of the assets of the debtor. A continuous court communication and cooperation also ensures that the debtors are unable to undertake avoidance measures using forum shopping or information asymmetry. The process thus also helps in ascertaining the claim of all the creditors

of the debtor and the final share that they are likely to get in the final distribution of the insolvency proceedings.

9. **Reasonable timelines:** A comparison of laws from other countries indicates that in general countries with specific timelines either in law or in practice have been able to create a shorter and efficient insolvency process with the process getting completed in a time bound manner. It is thus suggested that in no circumstance the Indian law should be allowed to continue to increase the time lines either by way of an amendment in the statute or by way of legal practice.

Conclusion

The genesis of the project was to make a comparison of the Insolvency Laws across the world in order to suggest improvements to the existing Insolvency and Bankruptcy Code, 2016 of India. Thus the project was to evaluate the laws in the 196 countries of the world. It was found that only 156 countries had insolvency laws of which many were obsolete or belonged to an era 50 years or earlier. In the final project an analysis of 15 countries have been mentioned in detail.

However, it can be concluded that India has by far adopted the best practices from successful and mature jurisdictions from the world thereby allowing its credit economy and stakeholders the option to exploit them in their favour and also allow for an opportunity to create a scenario where variance in territorial laws would have limited effect on cross-border investments and trade engagements. These suggestions given above need to be evaluated on the precipice of the available infrastructure both technological and logistical as well as maturity of the economy. These suggestions while extremely powerful will require a complete overhauling of the existing systems which may take some time and should, therefore, be undertaken in a piecemeal fashion in order to garner greater acceptability from the masses.

However, it can also be stated affirmatively that once these changes have been carried out in the insolvency regime in India, the Indian Law will be the most powerful, reliable, robust and efficient legal system protecting the rights of the stakeholders.

Project Report

Efficacy of Insolvency Law in India Vs other countries

II. Introduction

Insolvency regime in India underwent a monumental change in the year 2016 with the introduction of the Insolvency and Bankruptcy Code, 2016. The new law allowed for growth and development of the credit economy with a renewed sense of trust amongst the creditors in terms of their right to timely realisation of debts. There has been a marked improvement in the temperament and conduct of the debtors in terms of responsible borrowing and timely repayment of dues. This behavioural change amongst the stakeholders has greatly enhanced the functioning of the credit economy with the World Bank acknowledging India's efforts and ranking us at 63 in 2022.

It is worthwhile to note that India's journey has just begun and there are very many issues that need resolution before India can consider itself a mature jurisdiction in terms Insolvency and Bankruptcy Law. The world is moving towards becoming a global economy with companies spreading their areas of operations across borders contributing to economic development and sustained growth and development in different countries. Corporatization of the global economy is the most effective method for securing economic growth and sustainability amongst nations specially the developing and least developed nations in the form of job creation, impetus to entrepreneurship, equitable utilization of resources, building resilient economic infrastructure and promoting innovative industrialization. It is imperative to note that investments and flow of credit in all their myriad forms are the lifeblood of sustained corporate growth, productivity and development, essential for sustained job creation and economic peace within the nations.

However, globalization of the corporate economy has come with its own set of challenges primarily in the form of unfavorable municipal and local laws pertaining to investment, credit delivery, insolvency and bankruptcy. Ineffective insolvency and bankruptcy laws lead to limited exit options for the corporate debtor as well as creditors and the investors, impacting realization of dues by the creditors as well as

the investors leading to extreme trust deficit in foreign jurisdictions. In a regulatory regime where the creditors and investors are deprived of their dues and returns on investment the creditors tend to withdraw from the credit market thus hampering its growth and development. It is pertinent to note that lack of credit delivery sentiment within the economy ultimately resonates with the rate of credit realization, unless the latter is certain the former cannot flourish. It is thus the case of the researcher that for the world to become a global corporate economy a certain uniformity in laws and rule must exist which may eventually be also adopted in the Indian Law for easing pressures dealt with by Indian corporates in foreign jurisdictions and vice-versa.

In the current paper the researcher is thus looking at evaluating the insolvency regimes across the globe, drawing comparisons and lessons from good practices which can consequently be implemented in the Indian Insolvency Law regime. Thus the researcher in the current paper is attempting to analyse the good practices from the world over that may be implemented in the Indian insolvency regime in order to improve the global insolvency law linkages and bring Indian Law in harmony with them. An analysis of the global insolvency regimes indicates that countries and institutions all around the world are strengthening their insolvency systems in order to provide easy exit mechanisms to corporates allowing for better and more efficient ways of resource utilisation and mobilisation.

III. Literature Review

The former governor of the Bank of England, Sir Mervyn King, famously commented that "*global banks are international in life but national in death.*"[1] Multinational companies having spread their operations across the world while riding on the expansionist wave of global trade and globalization.[2] This surge of foreign collaboration and cooperation has also resulted in the increased instances of disputes emanating out business failures not always malafide, yet causing enough stir and trouble in multiple jurisdictions.

[1] Vanja Ginic, Nortel Allocation Proceedings: Making the Case for Arbitration in Cross Border Insolvency, https://www.insolvency.ca/en/whatwedo/resources/Nortel-TheCaseforArbitrationinCrossBorderInsolvencybyVanjaGinic.pdf; Also See: "Too Much of a Good Thing" The Economist, (13 October 2013), online: http://www.economist.com/news/specialreport/21587378-2008-global-financial-integration-has-gone-reverse-too-much-good-thing.

[2] Adler, Barry E. ''A Re-examination of Near Bankruptcy Investment Incentives.'' University of Chicago Law Review 62 (1995): 575–606

Micula et al. v. Romania, S PNB Banka and others v. Latvia[3], Assets of Unionmatex Industrieanlagen GmbH v. Turkmenistan[4], bear a living testimony to the fact that failure of commercial entities is as routine an event as their setting up and it is upto the States to develop favorable laws allowing for an easy exit plan in case of insolvency or bankruptcy of the said economic entity.[5] It is to be noted that the laws pertaining to insolvency and bankruptcy have failed to develop at the desired pace at which global financial cooperation has developed leading to various loopholes amenable to misuse by unscrupulous members of the corporate economy. The international insolvency law or the cross-border insolvency law is primarily governed by laws of the country having stronger negotiating skills or enjoying a comparative power over the other. As on date the insolvency laws across the world are national in nature with very few or no provisions benefiting the foreign investor.

The cross border insolvencies are more often than not dealt with by application of model laws or jurisdictional theories[6] applicable on a case to case basis. International Commercial Cooperation has always been considered a specialized field enough for most international bodies as well as nation states leaving it to the corporates to settle the dispute that may arise and thus we find that the prevalence of contractual obligations[7] pertaining to the resolution of disputes in case of cross-border insolvency amongst these entities has been very high. It is pertinent to note that Hague Convention[8], the European Union regime[9] for enforcement of judgments in civil and

[3] DANILO RUGGERO DI BELLA, Bankrupt Claimants in Investment Arbitration: Who's in Charge?, Columbia Journal of Transnational Law, Jan 5, 2022 available at https://www.jtl.columbia.edu/bulletin-blog/bankrupt-claimants-in-investment-arbitration-whos-in-charge

[4] http://icsiddev.prod.acquia-sites.com/cases/case-database/case-detail?CaseNo=ARB/18/35

[5] Baird, Douglas G. ''The Uneasy Case for Corporate Reorganizations.'' Journal of Legal Studies 15 (1986): 127–47

[6] Lynn M. LoPucki, Cooperation in International Bankruptcy: A Post-Universalist Approach , 84 Cornell L. Rev. 696 (1999) Available at: http://scholarship.law.cornell.edu/clr/vol84/iss3/2

[7] All the International Investment Treaties, commercial agreements, conventions signally cooperation and coordination amongst nations have very skilfully allowed insolvency and bankruptcy measures to remain with the States according to their respective agreements.(More discussion in forthcoming sections)

[8] Hague Convention on the Recognition and Enforcement of Foreign Judgments of 2 July 2019 (https://www.hcch.net/en/instruments/conventions/full-text/?cid=137) (see Art. 2(1)(e)); Bankruptcy matters were also excluded from the Hague Convention of 1 February 1971 on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters and from the Convention of 30 June 2005 on Choice of Court Agreements

[9] EU regime for enforcement of judgments in civil and commercial matters (Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on the jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [2012] OJ L 351/1).

commercial matters have made no mention of application or execution of the insolvency and bankruptcy laws.

Over the years the States have often found themselves faced with 'choice of law'[10] question in applying strict territorial rule or adopting universal legal principles governing commercial disputes with some help being accorded by the Model Laws on Cross- Border Insolvency Laws by United Nations Commission on International Trade Law.

1. Universalism: The theory of envisions a predictable transnational insolvency procedure whereby the on declaration of bankruptcy of a corporate debtor the courts in one jurisdiction transfer all the assets to the jurisdiction of the corporate debtor so as to provide a singular insolvency system allowing for a pro-rata distribution[11] of assets amongst all the creditors irrespective of the national rules of the countries from where the proceedings may have moved.[12] This is a far simpler process as collection and collation of claims happens in the parent jurisdiction of the corporate debtor. This allows the corporate debtor and the stakeholders to consider the various possibilities aside of the liquidation viz: reorganization and restructuring, since it is well known fact that a going/ continuing economic enterprise is far more valuable than a liquidated company. The stakeholders are also estopped from initiating any parallel proceedings in other courts thus ensuring one systematic and coordinated insolvency proceeding which in turn will help preserve and maximize the value of the assets of the corporate debtor and protect it from unnecessary dilution or destruction.[13] However, the concern surrounding the universal approach is the favoritism[14] or bias which the judicial institution may develop against a lesser developed judicial system or economy primarily using the principle of comity[15] as was witnessed in the matter

[10] Farber, Daniel A., and Frickey, Philip P. ''The Jurisprudence of Public Choice.'' Texas Law Review 65 (1987): 873–1019.
[11] The emphasis on pro-rate distribution arises primarily on account of the fact that there are far too many creditors and funds available with the corporate debtor are limited.
[12] Nielsen, Anne; Sigal, Mike; and Wagner, Karen. ''The Cross-Border Insolvency Concordat: Principles to Facilitate the Resolution of International Insolvencies.'' American Bankruptcy Law Journal 70 (1996): 533–62.
[13] The Universal theory entails single pecking order/ ranking of claims for the creditors and the stakeholders.
[14] Jay L. Westbrook, Theory and Practice in Global Insolvencies: Choice of Law and Choice of Forum, 65 Am. Bankr. L. J. 457, 466 (1991)
[15] Murky Comity by Jay Lawrence Westbroke, 2019.

of In re Culmer[16], Hilton v. Guyot[17], and In re Papeleras Reunidas, S.A.[18], where the US courts allowed movement of the insolvency proceedings back to their respective jurisdictions only on the condition that American creditor's interest would fully protected.[19]

2. Territoriality: The Principle of Territoriality mandates that the adjudication pertaining to assets of the company undergoing liquidation must take place in the territory in which they are located.[20] Territoriality emphasizes the use and application of the municipal or the national law as against the foreign law applicable to the corporate debtor in its home country. While this theory helps protect the interest of the local creditors, investors and other stakeholders it results in significant loss of foreign revenue and alteration of the investment patterns the host country would have been delivered with by other foreign affiliates. It results in what is commonly known as the grab rule[21] without working the proportions and distributing assets on a pro-rata basis. While countries may argue in favor of it on grounds of public policy, rights of citizens as well as growth on domestic economy it makes the country an unfavorable destination for the foreign investor in terms of protection of its capital, resources and assets leading to an extreme trust deficit internationally.[22]

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[16] 25 B.R. 621 (Bankr. S.D.N.Y. 1982)
[17] 159 U.S. 113 (1895)
[18] 92 B.R. 584 (Bankr. E.D.N.Y. 1988)
[19] While allowing movement of the proceedings the American Courts made the following observations: *"Comity,' in the legal sense is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it is the recognition that one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws."* Also see: In re Toga, 2 28 B.R. 165 (Bankr. E.D. Mich. 1983)
[20] LUCIAN ARYE BEBCHUK and ANDREW T. GUZMAN, AN ECONOMIC ANALYSIS OF TRANSNATIONAL BANKRUPTCIES, The Journal of Law & Economics , Vol. 42, No. 2 (October 1999), pp. 775-808 available at https://www.jstor.org/stable/pdf/10.1086/467442.pdf?refreqid=excelsior%3Ab299e2ddba97ad9019c4f46158dc841b&ab_segments=&origin=
[21] *''[G]rab rule proceedings yield inequitable results. Creditors appearing before the courts that have grabbed the most assets fare better than creditors generally.''* Todd Kraft & Allison Aranson, Transnational Bankruptcies: Section 304 and Beyond, 1993 Colum. Bus. L. Rev. 329–64 (1993); Lucian A. Bebchuk, The Effects of Chapter 11 and Debt Renegotiation on Ex Ante Corporate Decisions (Discussion Paper Ser. No. 104, Harvard Law School Program in Law and Economics 1994); Lucian A. Bebchuk & Randall C. Picker, Bankruptcy Rules, Managerial Entrenchment, and Firm-Specific Human Capital (John M. Olin Program in Law and Economics Working Paper No. 16, 2d ser., 1992); Douglas G. Baird, The Uneasy Case for Corporate Reorganizations, 15 J. Legal Stud. 127 (1986).
[22] Lucian Bebchuk in the same article offers a further explanation against territorial law in the following words, *"Rules designed to protect the interests of local creditors in the adjudication of bankruptcies may have harmful results on the allocation of capital across countries by causing suboptimal investment by multinational*

3. Modified Universalism: The theories of Universalism and Territorialism appear at the extreme end of the spectrum governing insolvency rules which tend to make regulation of insolvency proceedings rigid. Thus, a new theory, "Modified Universalism" has been envisioned which is nearer to the center attempts to establish an efficient system based on fairness and recognition of rights of all the stakeholders.[23] This theory also primarily attempts to reduce the costs and efforts of majority of stakeholder and is thus dependent on the principle of Country of Main Interest (COMI)[24] wherein the corporate debtor's effective business operations and location of assets decide the place of insolvency. This theory is not dependent on residency of the corporate debtor but on the functionality and working thereof. Many countries have adopted this theory as allows flexibility to all the stakeholders to decide where the insolvency proceedings should be initiated.

   Modified Universalism assumes significance in as it attempts to read rule of private international law into pubic law by promoting global collective process for an optimal transnational insolvency regime focusing on maximizing asset value and protecting the interests of all the stakeholders.
4. UNCITRAL Code: With growing disquietedness surrounding the choice of law and forum of law for cross-border insolvency disputes the UNCITRAL made an attempt to develop the Model Code for cross border insolvencies, making it an exhaustive Code with a discussion on almost all insolvency related matters. As a model law it allows the states to make their own modifications suiting their local commercial and economic needs as well as for compatibility with pre-existing state laws. It is however to be noted that in the garb of allowing flexibility the Model Law has strayed from its original path of providing a singular unified law capable of application in all the States. The modifications so permitted have allowed numerous different interpretations by various courts, thereby going back to territoriality and uniquely

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firms. Because territorial rules make the outcome of a bankruptcy (from the point of view of a creditor) depend on the distribution of debt and assets across countries, the interest rate demanded by creditors in exchange for loans will depend on that distribution".

[23] JOSÉ M. GARRIDO, No Two Snowflakes the Same: The Distributional Question in International Bankruptcies, Insolvency and Creditor Rights Initiative, The World Bank, https://web.worldbank.org/archive/website01586/WEB/IMAGES/INTERNAT.PDF

[24] Jay L. Westbrook, A Global Solution to Multinational Default, 98 MICH. L. REV. 2276 (2000). Available at: https://repository.law.umich.edu/mlr/vol98/iss7/5

worded State specific laws. Some of the controversial issues pertain to definition of establishment, reciprocity, creditor rights, enforcement of the foreign awards and judgements etc. In order to clarify the issue of award enforceability UNCITRAL developed the Model Law on Implementation of foreign judgments with the sole intention of allowing a space and modicum of enforcement of foreign insolvency awards and judgments.

As mentioned above, in the event of limited or lack of favorable legal systems supporting the foreign corporations, the investors and the debtors as the case may be are likely to impact the host country's economy negatively. The absence of adequate safeguards essentially stalls growth prospects impacting future investments and foreign collaborations. These are fundamentally likely to alter the credit availability and credit delivery mechanisms supporting the industry. With countries now forging closer ties and the world becoming a global village, collaborations in terms of making suggestions to designated authorities safeguarding interests of stakeholders within the globalized economy is the need of the hour.

IV. Hypothesis

The world is moving at becoming an integrated corporate economy with linkages available in all the countries. In this light it is incumbent for India to assess the practicality of harmonising global insolvency laws in its legal framework so as to establish a favourable and state of the art insolvency law framework capable of attracting foreign investment.

V. Research Methodology

The Research Methodology relied upon is Explorative, Doctrinal, Comparative and Analytical.

Explorative Research

The researcher will carry out an explorative study to study the insolvency laws in other countries and assess their working vis-a-vis the Indian Law in terms of both positive as well as negative terms.

While the study was conducted a doctrinal analysis it was found that an empirical analysis of the statutes of all the countries yielded maximum results.

The current research is based on the idea that India needs to work and improve its domestic law by bringing in harmony with internationally accepted best practices. For this purpose the researcher has conducted an in-depth analysis of the best legal practices that exist in all the countries across the world. As per the United Nations there exist 196 countries in the world, of these 156 countries have insolvency law/provisions as per claims on their Ministry of Justice Website/ governmental websites.

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- For Nearly 17 countries there was no information pertaining to insolvency in any manner according to due diligence of the researcher.
- Atleast 10 countries are still following insolvency laws which were drafted prior to 1970.
- Atleast 10 countries have their laws drafted post 2020 and are in the implementation stage.
- Atleast 48 countries have their laws in a code of civil or commercial laws and company law.

Limitations

[25] A detailed list of the countries has been annexed as annexure A1.

Due to limitations of space the researcher has had to limit the scope of analysis of laws in the report to 15 countries. These 15 countries have been chosen on account of the size of the countries in terms of GDP. Even though the above analysis was carried for the purposes of this report the research details of the biggest fifteen countries by GDP have been discussed in detail in this report. As per the world bank[26] the biggest 15 countries included.

S. No.	Country	GDP
1.	United States	25,462,700
2.	China	17,963,171
3.	Japan	4,231,141
4.	Germany	4,072,192
5.	India	3,385,090
6.	United Kingdom	3,070,668
7.	France	2,782,905
8.	Russian Federation	2,240,422
9.	Canada	2,139,840
10.	Italy	2,010,432
11.	Brazil	1,920,096
12.	Australia	1,675,419
13.	Korea, Rep.	1,665,246
14.	Mexico	1,414,187
15.	Spain	1,397,509

VI. Insolvency Law in India

India has followed a chequered path in implementing the laws pertaining to liquidation, insolvencies and bankruptcies. India till the enactment of the Insolvency and Bankruptcy Code, 2016 followed a multi-layered and a complex legislative process involving multiple laws and multiple adjudicatory fora. In line with the vision of India's Prime Minister Mr,

[26] World Bank GDP Data for 2022 chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://databankfiles.worldbank.org/public/ddpext_download/GDP.pdf

Narendra Modi, various initiatives have been undertaken so as to improve the international image of India's corporate economy by introducing ground-breaking legislation that will go a long way in paving the path for economic growth and development in the country.27 Since 2014 India has witnessed a marked improvement within the corporate sector in terms of legal, procedural and ritualistic practices. With the election of the new government in 2014 significant positive changes have been carried out so as to improve the entire financial and corporate ecosystem, including introduction of a Goods and Service Tax Act, 2017 the amended Arbitration and Conciliation Act, 1996 Labour reforms and, most importantly, introduction of the Insolvency and Bankruptcy Code, 2016. This is by far the most important single piece of legislation that was lacking from India's statute books, considering the very large number of non-performing assets (NPAs) that the Indian banking system was saddled with at that point of time.

The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'the Code') provides a consolidated mechanism for resolving corporate insolvency, insolvencies in partnership firms and personal insolvencies[28] in India. It seeks to induce efficiency within the insolvency and bankruptcy law regime by separating the commercial and judicial aspects of the insolvency and bankruptcy process. The Code stands on four pillars: Insolvency and Bankruptcy Board of India (IBBI, the regulator), the National Company Law Tribunal and the National Company Law Appellate Tribunal (the unified adjudicatory authority), Insolvency Professionals and Information Utilities. The Code has revamped the earlier mechanism of debt resolution to be more efficient and effective. It has greatly strengthened the legal infrastructure pertaining to the liquidation, rehabilitation and revival of failing commercial entities, which promises to improve India's ranking and make it a favourable destination for foreign investments and collaborations. In a significant move, the Code marks a departure from the earlier approach of 'debtor in possession' to 'creditor in control' while allowing certain features of 'debtor in possession' approach through pre-package mechanism for small entities.

The Code will play a vital role in strengthening the country's credit ecosystem.

Some of the laws that have over the years covered the subject are Sick Industrial Companies (Special Provisions) Act, 1985, the Recovery of Debt Due to Banks and Financial Institutions Act, 1993, the Securitisation and Reconstruction of Financial

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27 Ankeeta Gupta, "Insolvency and Bankruptcy Code, 2016: A Paradigm shift within Insolvency Laws in India" 36(2) *The Copenhagen Journal Of Asian Studies* (76) 2018

28 The scope of this project is limited to corporate insolvencies.

Assets and Enforcement of Security Interest Act, 2002, Companies Act, 1956 and the Companies Act, 2013. These statutes created multitude of procedures, adjudicatory bodies and authorities responsible for decision making often creating chaos, confusion and legal loopholes leading to stagnation and delay of legal proceedings. The multiple foras thus created include Board of Industrial and Financial Reconstruction (BIFR), Debt Recovery Tribunal (DRT) and National Company Law Tribunal (NCLT) and their respective Appellate Tribunals. On the other hand liquidation of companies was handled by the High Courts while individual bankruptcy and insolvency was dealt with under the Presidency Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920[29]. (provisions relating to individual insolvency is yet to be notified)

Assessing the Impact of Insolvency and Bankruptcy Code, 2016

The Code was enacted with the objective of amending the laws relating to reorganisation or corporate persons, individuals etc. in a time bound manner for maximisation of the value of assets. It was also envisioned that avenues for credit availability and entrepreneurship should improve while balancing the interest of all the stakeholders and governmental agencies and establishing a single regulator, the Insolvency and Bankruptcy Board of India.

In this research paper, the researcher is attempting to discuss the impact that the Code has had on the corporate economy in general and the credit delivery and credit resolution mechanism in particular in India. It is thus imperative that the evaluation of the scheme be measured against comparable musters so as to lead to tangible results signifying success or failure of the Code. Thus the following heads have been identified:

1. The time taken for completion of insolvency/ bankruptcy proceedings.

Over the years under the regime of Sick Industrial Companies (Special Provisions) Act, 1985, the Recovery of Debt Due to Banks and Financial Institutions Act, 1993, the

[29] V.S Wahi, Treatise on Insolvency and Bankruptcy Code, 27 (Bharat Law House Pvt. Ltd. 4th Edition, 2022)

Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Companies Act, 1956 and the Companies Act, 2013, India was notorious for spending too much time on insolvency cases so much so that India landed at 143rd position on the erstwhile Ease of Doing Business report published by the World Bank.[30] As on date India under the auspices of the new Code is spending an average time 437 days in resolving the insolvency matter filed before the National Company Law Tribunal., while in the earlier regime the average time taken for resolution of debts was nearly 11.3 years.[31] Assessing the time taken for resolution of debts becomes important as it is a sign of major victory over the earlier legal mechanisms. A timely resolution also indicates that the financial, legal and time resources are not unnecessarily occupied in futile legal processes leading to zero or no results. It is clear that the law makers have managed to not only identify the loopholes but also plug the loopholes in the new law paving the way for a successful legal regime conducting and regulating the insolvency and bankruptcy processes in India.

2. Improved Efficiency in Disposal of cases:

In the year 2022 a detailed analysis was carried out by the Parliamentary Standing Committee for evaluating the success and effectiveness of the IBC. Thus, various details were combed out which are unavailable under normal circumstances. Thus, the importance of the data in terms of number of applications relate to the year 2022. It was reported that between 2016 to 2022 nearly 23,417 CIRP applications with a reported underlying default of 7.3 lakh crore were disposed of by the adjudicating authority. A further analysis of the latest data from IBBI for 2024 reveals that a total of 7567 cases have been filed with the National Company Law Tribunal, out of these 947 cases resulted in development of resolution plans realizing a total value of 3.36 lakh crore for creditors to settle their dues. The creditors have realized 161.76% of the liquidation value and 84.98% of the fair value, with the hair cut average plummeting to a mere 15%. It is worthwhile to note that nearly 30% of the cases belonged to erstwhile BIFR or defunct companies having no scope of

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30 The World Bank stopped printing the Ease of Doing Business Report in 2021 due to internal investigations as per a website notification.

31 Government of India, Parliamentary Standing Committee, "32nd Report Implementation of the Insolvency and Bankruptcy Code: Pitfalls and Solutions" (August 2021) available at https://ibbi.gov.in/uploads/whatsnew/fc8fd95f0816acc5b6ab9e64c0a892ac.pdf

resurrection under erstwhile legal regime. 1070 cases were withdrawn under the terms of section 12 A of the Code.[32] A total of 2476 cases were ordered for liquidation of which final report in 960 cases were submitted. Thus the last 6 years of which 2 years were engaged by COVID-19 pandemic, have witnessed a very successful implementation of the Code which has allowed timely resolution of debts of faltering companies giving them opportunities of either a resurrection or diversion to funds for other businesses in a legally acceptable manner.

3. Behavioral Change amongst the Debtors:

Perhaps the most significant impact of the Code has been on bringing about a financial discipline in the corporate debtors, who were previously unbothered about repaying of their loans since they never lost control over their companies, however with the new law changing the conception from debtor in possession to creditor in possession the fear of loss of company is real as was witnessed in the matter of Essar Steel[33] in which the Ruia Family lost their company during the insolvency proceedings. There have thus been reports that the in a sudden spate to repay the loans, 80,000 crore worth of debts were repaid by debtors that had been written off by the banks. Thus the change of attitude is certainly a welcome step and huge success attributable to the implementation of the Code.

4. Reduction in Non- Performance Loans

In the Chapter on assessment of the impact of IBC on corporate economy, data indicates that the banks have reported a reduction in the NPA in comparison to the earlier figures. With the behavioral change in the attitude of the corporate debtors, the banks and financial institutions have been witnessing a concerned effort by the former to reduce instances of default. The Financial Stability Report[34] has reported that banks have collectively reported a reduction in the instances of non-performing assets.[35]

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32 Insolvency and Bankruptcy Board of India, "24th IBBI Quarterly Newsletter" (Jan–Mar 2024)

33 *Committee of Creditors of Essar Steel India Limited* v *Satish Kumar Gupta and Ors*, (2020) 8 SCC 531

34 Government of India, Reserve Bank of India, "Financial Stability Report", (2019)

35 Please Refer to Chapter On Impact of Insolvency And Bankruptcy Code, 2016.

5. Credit Availability Mechanism

Credit availability essentially implies the savings made by households with formal channels of finance which can be used for more productive purposes within the corporate economy and at the same-time also help the savers earn an interest income on the said savings.[36] Availability of Credit is extremely important for development of any country's corporate economy as availability of credit helps support the corporate economy and fund the investments therein. Availability of credit within the economy also helps household tide over a difficult times viz: during COVID-19 lockdown, many people had to fall back on their savings and availability of credit from banks and financial institutions to get through the period of financial distress.

6. Credit Delivery mechanism:

Credit Delivery forms the foundational aspect in a corporate economy. With reduction in the NPAs and return of the confidence of the Banks the Reserve Bank of India is contemplating easing norms of loan supply which were issued in 2018 in the wake of mounting NPAs in banks. The statement by James McAndrews[37] is very profound as it helps us understand the foundational percept of the credit delivery that a financial institution will only supply credit in an economy where debt realization is possible as these are the public funds which essentially need to be repaid.[38] However, if the sentiment in the economy indicates lack of discipline in terms repayment of loans and debt realization the banks and financial institutions shall become extremely reluctant in advancing credit. Thus delivery of credit would get affected impacting growth of industries in the economy.

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[36] James MacLachlan, "The Impact of Bankruptcy on Secured Transactions", 60(5) *Columbia Law Review*, 593 (1960); James Monroe, Bankruptcy a Commercial Regulation, 15 *Harvard Law Review*, 829(1902)

[37] James Mcandrews, *Credit Growth And Economic Activity After The Great Recession*, At The Economic Press Briefing On Student Loans, Federal Reserve Bank Of New York, New York City, 16 February 2015 Available At https://www.bis.org/review/r150417b.pdf Last Visited On 20th January, 2023, Remarks By Mr James Mcandrews, Executive Vice President And Director Of Research of The Federal Reserve Bank Of New York

[38] James Mcandrews In His Speech stated that, *"The Legacy Of Those Losses Has Likely Limited The Banking Sector's Ability To Extend New Loans During This Expansion, As Banks Acted In A Highly Precautionary Way To Accrue Capital That Had Been Depleted As Well As To Add To Their Previous Capital Levels."* James Mcandrews, *Credit Growth And Economic Activity After The Great Recession*, , At The Economic Press Briefing On Student Loans, Federal Reserve Bank Of New York, New York City, 16 February 2015 Available At https://www.bis.org/review/r150417b.pdf Last Visited On 20th January, 2023

7. Credit Resolution Mechanism:

Resolution of credit related debt dispute is discussed under the heading credit resolution mechanism. Under the erstwhile legal regime Debt Recovery Tribunals, High Courts and Boards for Industrial and Financial Reconstruction were the primary modicums for debt related dispute resolution. The biggest success of the Code has been reduction of disputes vis-à-vis the credit, loan and debt numbers which is allowing for a speedy resolution of cases filed with the Tribunal. This can be attributed to introduction of the Information Utilities in India which have been introduced to streamline the record keeping for financial services in general and loan records in particular. The fact that the creditors can sit at the decision making table together and work out their differences towards the common goal of reorganizing the corporate Debtor is indicative of a mature corporate and banking sector established by a mature law-the Insolvency and Bankruptcy Code, 2016.

Thus, in view of the researcher the success and the impact that the Code has had can be ascertained by evaluating these small tangible figures leading to an impression that the Code has had positive impact and that the stakeholders are accepting the new law.

VII. Country wise analysis of Insolvency Laws

The researcher has made an attempt to analyse the insolvency regime in 196 countries of the world. However due to paucity of space details of 15 countries with highest GDP have been discussed in this report. These countries pre-dominantly are, the United States of America, the United Kingdom, Peoples' Republic of China, France, Germany, Italy, Japan etc. While United States is the most mature jurisdiction in terms of applicability of the insolvency laws, United Kingdom has influenced the drafting of the Indian insolvency law in India and China is the practical manifestation of the British insolvency law with more experience to its name than India. The table with the list of countries has been extracted below:

S. No.	Country	GDP
1.	United States	25,462,700
2.	China	17,963,171
3.	Japan	4,231,141
4.	Germany	4,072,192
5.	India♣	3,385,090
6.	United Kingdom	3,070,668
7.	France	2,782,905
8.	Russian Federation*	2,240,422
9.	Canada	2,139,840
10.	Italy	2,010,432
11.	Brazil	1,920,096
12.	Australia	1,675,419
13.	Korea, Rep.	1,665,246
14.	Mexico	1,414,187
15.	Spain	1,397,509

* True official translation was not found by the researcher even after due diligence.

♣ India has been discussed earlier.

1. United States of America

In the United States of America the insolvency and bankruptcy law is covered in Bankruptcy Code which includes the Bankruptcy Reforms Act, 1978 with amendments in 2005 under the Bankruptcy Abuse and Consumer Protection Act, 2005. The Bankruptcy Code is contained in 9 chapters under which the bankruptcy in the US is regulated.[39] Section 1,3 and 5 provide structural components that generally apply to all the bankruptcy cases while chapters 7,9,11,12,13 and 15 lay down procedure for specific type of bankruptcies as follows:

[39] Charles J. Tabb, What's Wrong with Section 11?,71 *Syracuse L.aw Review*. 557 (2021).

1. trustee-administered liquidation (Chapters 7);
2. municipality bankruptcy (Chapters 9);
3. debtor-in-possession (DIP) managed reorganisation or liquidation (Chapters 11);
4. family farmer and fisherman bankruptcies (Chapters 12);
5. individual bankruptcies (Chapters 13);7 and
6. cross-border cases (Chapters 15)

As per the United States Statistics [40] nearly 433,000 fresh cases were filed in 2023, 455,000 were resolved and a backlog of 655,000 cases is still pending.

The United states by far has the best performing insolvency system as it is ensuring an exit option to a large number of companies. As per statistics shared by world bank in 2019 when India was taking 1.6 years to resolve an insolvency matter, the United States of America was taking 1 year[41] to resolve the matters.[42]

This data however is missing a very important aspect in terms of volumes of cases resolved. In 2019 India barely had 2000 cases that needed resolution while the United States had 774,940 fresh filings and a pendency of 999,860 cases. The sheer volume cases indicates that the administrative machinery is more effective in the United States which is able to cope with the humungous caseload. Ordinarily the matters are tried to be dealt with administratively rather than going to the judge albeit within same structure. In Indian context if an additional layer of vetting is added at the NCLT much like registrar in courts of law, the insolvency/ resolution process my get expedited. There are a total of 345 bankruptcy judges in the 90 bankruptcy districts that exist in the United States. This is in addition to the administrative offices created for resolving the insolvency processes.

[40] chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.uscourts.gov/file/76764/download
[41] Time taken for insolvency resolution. Data from World Bank https://data.worldbank.org/indicator/IC.ISV.DURS
[42] This has been done to bench mark time the aspect for a uniform comparison between the states.

The importance given to the bankruptcy laws in the US is manifested in the fact that the bankruptcy judgeships are decided by the Congress[43]. In India the National Company Law Tribunal is dealing with all the company law matters as well as insolvency matters. This system may be required to undergo a change in favour of a dedicated machinery and enhanced administrative support for insolvency courts. This has in the past proved to be detrimental[44], it is suggested that the number of benches on the NLCT may be increased to accommodate the growing number of cases and routine administrative powers be delegated to the Committee of Creditors and Resolution Professionals/Liquidator with close supervision.

2. <u>China</u>

In China the Enterprise Act, 2006 replaced the 1986 statute. The objectives of the law included regulation of the procedure for enterprise bankruptcy, fairly setting claims and debts, safeguarding the lawful rights and interests of creditors and debtors and maintaining the order of the socialist market economy.[45] The Chinese Law essentially draws a balance between the rights of creditors as well as debtors by allowing for proceedings in the place of registration of the debtor[46] with the processes to be followed favouring the creditors. The Chinese Insolvency law procedure is very similar to the Indian Law, with IBC incorporating various procedural good practices therein.

However, Chinese law on Insolvency is very progressive and has various unique features that have not been adopted in the Indian Law. The initial provisions of the statute detail the manner in which foreign assets of the debtors shall be dealt with. The provisions clearly indicate that the principle of mutual reciprocity shall be followed strictly ensuring that at no stage can Chinese Sovereignty and security be compromised. The second unique feature about the Chinese law is in terms of rights

[43] The Status of Bankruptcy Judgeships: Judicial Business 2021. https://www.uscourts.gov/statistics-reports/status-bankruptcy-judgeships-judicial-business-2021#:~:text=As%20of%20September%2030%2C%202021,number%20as%20one%20year%20earlier.
[44] Sick Industrial Companies Act, 1984 and SARFAESI bear testimony to the fact that specialized institutions may not be successful.
[45] Enterprise Bankruptcy Law of the People's Republic of China, 2006 A 1
[46] Enterprise Bankruptcy Law of the People's Republic of China, 2006 A 3

accorded to the employees of the corporate debtors and a corresponding duty on the business managers[47] whose actions can then be investigated if complaints are filed against them.

The Chinese law makers have initiated the concept of bankruptcy trials research base[48] where research dedicated to all provisions of the insolvency law is being undertaken in order to amend the laws, rules and regulations pertaining to insolvency and bankruptcy provisions. This feature of having a dedicated centre for insolvency research is what India needs to emulate to keep up with changing matrix of corporate economy. The number of cases in 2023 were 15000 while in 2013 there were mere 1000 cases.[49] Yet the average time taken for resolution has not increased beyond 1.5 years. This also indicates that the Chinese administration has made sure that increasing numbers are getting accommodated with increasing number of courts and decision making authorities. It is thus suggested that India incorporates the provisions pertaining to debtor's foreign assets, rights of employees, obligations of promoters and directors and research initiative within the legislative milieu of IBC.

3. Japan

In Japan the law relating to insolvency has been included in Civil Rehabilitation law of 2000 and Corporate Reorganization law 1952 amended in 2003, the chapter on Special Liquidation in the Companies Act reformed in the year 2006 and Act on Recognition of and Assistance for Foreign Insolvency Proceeding of 2000. In Japan nearly 85 % of the cases in Bankruptcy end up going in liquidation and thus according to the World Bank in 2019 the average time taken for resolution was 6 months[50] while statutorily time provided is 5 months. As per the ministry of justice nearly 2000 cases get added to the insolvency cases which are resolved within six months. In terms of comparison with Indian Law, the researcher finds that liquidation of a company should be the exception and not the norm. The only take away from the Japanese law

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[47] Enterprise Bankruptcy Law of the People's Republic of China, 2006 A 3
[48] SPC unveils bankruptcy trials research base in Nanjing, The Supreme People's Court, of the Republic of China, 5th August, 2022. https://english.court.gov.cn/2022-08/05/c_798003.htm
[49] Statistics from The Supreme People's Court, of the Republic of China for 2021, http://gongbao.court.gov.cn/Details/a6c42e26948d3545aea5419fa2beaa.html
[50] World Bank Data on Japan: Time taken for resolution of insolvency, https://data.worldbank.org/indicator/IC.ISV.DURS

on bankruptcy is the manner in which the debtor' s foreign assets and a foreigner's domestic assets are treated in the law. That may be helpful for drafting the law pertaining to the cross-border insolvency in India.

4. <u>Germany</u>

The insolvency law in Germany is regulated by the German Code of 1999 and the Act on the Stabilization and Restructuring Framework for Businesses of 2021.[51] The German Law on insolvency much like the Indian Law is a combination of substantive law as well as procedural practices allowing for exhaustive insolvency proceedings.

The German Law follows the principle of collective creditor satisfaction which means that all the creditors will in principle receive satisfaction in proportion to their claims. The law also promotes the Principle of equal treatment to creditors which essentially implies creditor's autonomy and Principle of Autonomy which implies that liquidation and resolution can continue in the same proceedings with final call between the two taken collectively by the creditors. The defining and unique feature of the German law is the power given to the debtor to seek for reorganization before the need for filing for Insolvency arises. These proceedings shall be held publicly allowing for public participation and be completed by faster mechanisms. The Indian Law principally follows the insolvency jurisprudence with some change in the procedural methods so adopted. In 2022 a total of 14, 590 insolvency cases were registered in Germany, the resolution of which on an average is known to be 1.2 years. This essentially follows the same argument that the Indian Cases in comparison are too less to be measured on the mantle of average timelines.

5. <u>France:</u>

The Insolvency law has partially been included in the Book VI of French Commercial Code and European Union Regulations. The law allows for creditor satisfaction but provides key support to shareholders of the corporate debtor. 13000 fresh cases were

[51] European Justice: Insolvency Law-Germany, https://e-justice.europa.eu/447/EN/insolvencybankruptcy?GERMANY&member=1#:~:text=The%20law%20governing%20insolvency%20and,procedural%2C%20but%20also%20substantive%20provisions.

registered in 2023[52]. The average of resolution of cases stayed at 2 years. It is the policy adopted after the completion of Insolvency Proceedings that is worthwhile to note when discussing the French Law. The French Policy offers a very unique feature in terms of supporting reorganized firms with credit ratings and availability of credit from banks and financial institutions. The law provides that after a period of two years agreement for safeguard plan or receivership plan the banks would remove the credit flag from the past history of the reorganized entity. The fact of insolvency and bankruptcy proceedings pertaining to the corporate debtor is a matter of public record. Once the flags are publicly removed by the same entity that had imposed the flags, tends to build greater acceptability for the banks to continue extending credit.[53] This policy of the French legal regime has a very positive impact on revival and sustenance of the companies. A further impetus to allow guarantor's support in the future the policy of "post-Money" privilege has also been adopted. This way the guarantors are given the right of preferential ranking in the future in case the venture fails. These two policies have not been found anywhere else in the world and indicate the need for post insolvency regime policies and rights.

6. **United Kingdom:**

In United Kingdom the Insolvency Act of 1984 and the subsequent Enterprise Act 2002 and 2020 Corporate Insolvency and Governance Act. The law in UK has been pre-curser for major insolvency laws in the world. India has already been following UK 's best practices for insolvency law in India. However, the code of ethics that UK follows for the stakeholders needs to be adopted in the Indian Milieu. As per the Statistics given in the United Kingdom in a mere span of 3 months in 2023 there were 6,208 registered company insolvencies, of which 4,965 were creditors' voluntary liquidations (CVLs), 735 were compulsory liquidations, 466 were administrations, 41 were company voluntary arrangements (CVAs) and one receivership appointment. However, the time for resolution of debts remained at 1 year.

[52] Statistics from Bank of France: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.banque-france.fr/system/files/2023-11/EN_SI_defaillances_202310_EN.pdf

[53] Chloé Zapha, Access to Bank Credit after Emerging from Corporate Bankruptcy, Working Paper, Bank of France, 928 of 2023. file:///C:/Users/user/Downloads/WP928_0.pdf

7. **Poland:**

In Poland apart from the EU Regulation, the Bankruptcy Law of 2003 and the Restructuring Law of 2015 govern the functioning of the Insolvency law. In Principle the law is creditor centric but allows the debtor to settle the matter with creditors outside the court if 15% creditors agree after fulfilling the criteria pertaining under the Composition Account. The data for Poland is available from 2021 onwards, thus for this period we do have the average time taken for the concerned duration. The bankruptcy proceedings are only available for the individuals commercial or otherwise including professionals. A unique feature about the polish insolvency law is the morality payment as well as creation of the National Debtor Register. The law permits proceedings before beginning of the insolvency proceedings or after the insolvency proceedings. In India with pre-packaged insolvency being in the offing for MSMEs the composition approval[54] proceedings may be adopted.

8. **Spain:**

Insolvency proceedings in Spain apply to both civil debtors and traders, including both natural or legal persons. The regulations governing this are laid down in the Insolvency Law, approved by means of Royal Legislative Decree 1/2020 of 5 May 2020. In Principle, Spain follows the EU regulations. However, a distinguishing feature of the Spanish insolvency law is the dissemination of insolvency information through electronic media. This method has allowed the Spanish authorities to incorporate principle of information symmetry. Since this system is new we need to assess its viability before suggesting it for Indian mechanism. It however seems a well-planned structure that can be emulated. In 2023, 6000 cases[55] were filed, average settlement period being 1.5 years[56].

9. **Ireland:**

[54] Composition approval proceedings enable the debtor to enter into a composition by collecting the votes of the creditors on his own without the involvement of the court. Such proceedings may be opened if disputed claims entitling creditors to vote on a composition account for no more than 15% of all claims entitling creditors to vote on a composition. European E-Justice Portal https://e-justice.europa.eu/447/EN/insolvencybankruptcy?POLAND&member=1

[55] https://www.statista.com/statistics/775301/bankrupt-debtors-in-spain/

[56] https://data.worldbank.org/indicator/IC.ISV.DURS

The primary legislation governing the law of corporate insolvency is contained in the Personal Insolvency Act, 2012[57], the Companies Acts, 1963 to 2006 and, in the case of receivership, the Conveyancing and Law of Property Act, 1881.[58] The principal mechanisms for dealing with insolvent companies are as Liquidation, Examinership and Receivership. As per statistics nearly liquidation is the preferred mode for resolution of corporate debts. Most of the procedures are dealt with administratively with fund being created from which over a period of time the creditors are allowed to realize their dues. Typically, the time period for the same ranges from 2 to 5 years. Creating a debt recovery fund and allowing the creditors an opportunity to get money from a corpus where funds have been invested is a unique method of credit realization. The time period for administrative order typically take 6 months to 1 year[59]. India may strive to follow the system of an active debt fund allowing for better availability of funds at the time of debt realization.

10. **Italy:**

A new law called the Business Crisis and Insolvency Code has been introduced in 2019[60] and it aims to reduce the average 7 years for debt resolution to a lower more efficient time line. There exists an Italian Business Register which contains information of all companies including their legal status and any involvement with the insolvency processes. As per the law a Bankruptcy Judge is appointed for all matters pertaining to insolvency and an official receiver is appointed to manage the assets of the debtor as well as manage the entire corporate insolvency proceedings. The official receiver is subject to the control of the Bankruptcy Judge as well as the Committee of Creditors. A unique feature about the Italian Insolvency Law is the Bankruptcy Agreement between the debtor as well as the creditors under supervision of the Bankruptcy Judge with the intention of not only closing the insolvency proceedings but also conceptualizing a reorganization plan without there a being need for continuing the

[57] The Personal Insolvency Act, 2012 https://www.irishstatutebook.ie/eli/2012/act/44/section/1/enacted/en/html#sec1
[58]Summary of Insolvency Principles in Ireland, European Union, https://e-justice.europa.eu/447/EN/insolvencybankruptcy?IRELAND&member=1
[59] Time taken for resolution of debts. World Bank. https://data.worldbank.org/indicator/IC.ISV.DURS
[60] Crisis and Insolvency Code, 2019, Legislative Decree no. 14/2019, (law of Insolvency in Italy) https://e-justice.europa.eu/447/EN/insolvencybankruptcy?ITALY&member=1

liquidation process albeit subject to underlying conditions.[61] This system allows for a rare opportunity to a debtor to settle debts and continue as a going concern even after the insolvency proceedings have been initiated by the creditors. The new Italian Law has also made provisions for the pre-insolvency agreement[62] which allows the debtor and the creditors to have an agreement before filing of insolvency proceedings for working out an arrangement for settling of dues or restructuring of debts if the debtor realizes that the company will not be able to honor its debts. This proposal or the agreement[63] is then to be presented to the bankruptcy judge who will authorize the request. Once the authorization has been made the Judge will appoint a Commissioner who will make sure that the terms and conditions laid down in the said agreement have been met and complied with. The new Italian law has also introduced the concept of a blank petition which allows the corporate debtor to file an adjustment plan with the creditors within a period of 60 to 120 days. This adjustment plan essentially allows the debtor to reach an agreement with the creditors and may be in the form of a debt restructuring agreement. It is worthwhile to note that the Italian legislature has attempted to overhaul the regime. A unique feature of the Italian Law pertaining to the bankruptcy regime has been interference of the Ministry of Economic Development in cases involving large corporates which have moved towards bankruptcy. It is astounding to note that the law allows for provisions for allowing rescuing of these firms by the Government. This in view of the researcher is a very un-safe provision as it puts immense pressure on the exchequer in terms of monetary commitments not to mention the bureaucratization of the economic assets.

11. **Brazil:**

The law pertaining to insolvency and bankruptcy in Brazil is Law No. 11,101 of February 2005 which Regulates Judicial, Extrajudicial Recovery and Bankruptcy of Businessmen and Business Companies and Brazilian Judicial Recovery and Bankruptcy Law.[64] The law has undergone significant changes since 2016 and in 2021

[61] Section 124, Bankruptcy Decree
[62] Also referred to as the Pre-packaged Insolvency Arrangements
[63] Section 161 of the Bankruptcy Decree
[64] The Brazilian Insolvency Law, Law No. 11,101 of February 2005 which Regulates Judicial, Extrajudicial Recovery and Bankruptcy of Businessmen and Business Companies is available at https://legislacao.presidencia.gov.br/atos/?tipo=LEI&numero=11101&ano=2005&ato=9c0ATWE5EMRpWTfd1

post the pandemic when technological innovations for simplifying processes were added to the statute. The Brazilian Law is unique as to allows the debtor's courts having extra-territorial connections with debtor in Brazil to make laws, issue decrees and make resolution plans. Brazil is the only country in the world where by statute the right to impose national/municipal laws have been waived by a sovereign nation. This allows the parent states of the debtors to take into account all of the assets of the debtor before passing orders under insolvency procedures. This unique feature is a step in the direction of harmonizing the insolvency regimes across the globe. The striking feature about the Brazilian Insolvency Law is that it does not envision a Judicial administrator to work alone. It accepts that the administrator with the responsibilities of managing the debtor as well the insolvency process will require assistance and thus the bankruptcy judge has been empowered to fix the remuneration for the assistants that the judicial administrator is likely to require. The Judicial Administrator is a similar to the Insolvency Professional in India, an independent lawyer, economist, management expert who can manage a corporation during the time that the insolvency proceedings are being carried out. It is worthwhile to note that the timelines provided within the Brazilian Law are almost similar to the Indian Law implying a validation for the Indian legislature in terms of the law making pertaining to the Insolvency and Bankruptcy Code, 2016. Post 2020 Brazil seems to have taken the post-pandemic lessons most seriously in terms of insolvency procedures. The National Council of Justice implemented laws in 2020 allowing for complete digitization of the insolvency proceedings. This allowed for uninterrupted judicial work for insolvency judges, professionals as well as the stakeholders even during the implementation of the social distancing norms. The digitization allowed for quicker application movements ensuring creditors got their money and in cases of genuine hardships the debtors were allowed time extensions and application withdrawals. The digitization also allowed for public record of insolvencies to be created which helped improve the efficiency and transparency of the systems. The digitization process has continued even after the pandemic and has resulted in faster resolution of bankruptcies ensuring better utilization of resources. Brazil in terms of its laws allowing extra-territorial application of the laws and complete digitization has

found favour with majority countries as a hub for economic growth and development. The latest implementation of the JIN protocols[65] by Brazil have further strengthened its position as the supporter of harmonized Insolvency Regimes in the World.[66]

12. <u>Australia:</u>

In Australia the insolvency law continues to be majorly covered in the Corporation Act of 2001 even after the passage of the Insolvency Law Reforms Act, 2016. While detailed provisions have been mandated with respect to the personal insolvency very less has been stated with respect to the corporate insolvency. The law looks at premature closure of firms and disregard the possibility of debt restructuring, thus there are detailed provisions of registration, appointment and regulation for the liquidators in the Australian law. As per the Australian Financial Security Authority[67] the time taken for insolvency proceedings is 3 years. This is official estimate. However there have been unconfirmed estimates which indicate that the insolvency processes tend to continue for more than 6 years some time taking nearly a decade.[68] Even so this indicates that lack of proper developed legal system will result in delayed process and resolution of debts.

13. <u>Republic of Korea:</u>

The law titled Debtor Rehabilitation and Bankruptcy Act makes a heavy tilt towards protection of Debtors in a bankruptcy scenario. The petition for rehabilitation can only go to the court where the debtor's place of business exits, the committee of creditors cannot be more than ten members and there exists no specific timelines within which the legal processes are to be completed.[69] Korea is the perfect example for implementation of the principles which support the creditor even though the law may state otherwise. As per a report of the International Monetary Fund[70], the creditors are

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[65] The JIN Protocol adoption by Brazil: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.iiiglobal.org/file.cfm/46/docs/panel%203.%20costa%20jin%20guidelines.pdf

[66] https://www.jin-global.org/index.html

[67] https://www.afsa.gov.au/i-cant-pay-my-debts/bankruptcy/consequences-bankruptcy#:~:text=the%20Commonwealth%20courts.-,Bankruptcy%20normally%20lasts%20for%203%20years%20and%201%20day%20from,of%20affairs%20that%20we%20accept.

[68] There are no official records confirming the time lags. These have been provided in various writings by the various authors.

[69] Debtor Rehabilitation and Bankruptcy Act,(As amended in 2017) https://elaw.klri.re.kr/eng_mobile/viewer.do?hseq=46315&type=new&key=

[70] file:///C:/Users/user/Downloads/1KOREA2020003.pdf

protected within the legal regime to the extent that the insolvency proceedings can be completed within a span on 119 days on an average. It is thus correct to infer that the laws making and law implementation are equally important meaning thereby that a good law may be sabotaged by non-implementation and a seemingly weak law may become effective with good practices and better implementation.

14. Mexico

The insolvency law in Mexico is regulated by the Insolvency Act of 2000 amended in 2007 and 2014. This law repealed the Law of Bankruptcies and Suspension of Payment Act, 1943. The Insolvency Law in Mexico follows a two stage process wherein in stage 1 the company is sought to be resurrected and in stage 2 if stage 1 fails the company moves to liquidation. The Preamble of the statute states that the state should attempt to revive the companies, preserve them and ensure adequate protection for the creditors. The law follows debtor in control approach while also appointing a visitor, conciliator or receiver to protect the interest of the creditors. Thus it is the conciliator who draws up a resolution plan which needs to be approved by both the debtors and the creditors. The entire process of resolution is required to be completed within a maximum of 365 days, however the general time for resolution of insolvency matters is nearly 1.8 years. The Mexico federal court is the single authority in Mexico that is authorized to adjudicate on matters pertaining to insolvency. Mexico with all of its political situation has managed to work the insolvency regime with utmost discipline and seriousness even after following a debtor in possession model. This is highly commendable.

Thus given above is the analysis of insolvency laws of some countries in the world. A tabular chart with special features about insolvency laws in different countries is given below.

Comparison of the insolvency laws in the following countries on the following grounds

Set A deals with the following countries
1. India, 2. United Kingdom, 3. United States, 4. China, 5. Japan

Basis of Distinction	India	United Kingdom	United States	China	Japan
Name of the Law	Insolvency and Bankruptcy Code	Insolvency Act	Bankruptcy Reform Act,	Enterprise Bankruptcy Act	Civil Rehabilitation law of 2000, Corporate Reorganization Law 1952 amended in 2003 and Special Liquidation in the Companies Act, 2006
Year of Notification	2016	1986 With amendments on account of the Enterprise Act, 2006 in 2006	1978 with amendments in 2005 after enactment of Bankruptcy Abuse and Consumer Protection Act	2006- 2007	1952, 2003 and 2006
Preamble	Value and asset maximisation, promotion of resolution rather than liquidation	Consolidation of laws for the for insolvency as well winding up of companies	Value and asset maximisation, promotion of resolution rather than liquidation	Fairly setting the rights of the creditors and debtors, safeguarding the lawful rights and interests of the stakeholders.	Two different statues deal with liquidation and restructuring. The idea is to decide before initiation of the process. This also works for in court process and out of court process.
Power of Creditor	Creditor in Possession	Debtor in Possession	Debtor in Possession	Creditor in Possession	Debtor in Possession For corporate restructuring of public companies a trustee is appointed.
Application by	Corporate Debtor and/ or financial creditors	Either the creditor or the debtor	Corporate Debtor and/ or financial creditors	Either by debtor or creditor	Either by debtor or creditor

Automatic Moratorium	Yes till order of resolution/ liquidation	Yes for 20 days	Yes. Till completion of proceedings	Yes	No. There may be restraining order by the court but the secured creditors are allowed to enforce their contract
Assigned Person	Insolvency Professional	Insolvency Professional, Administrator, Monitor etc.	US trustee	Administrator	Supervisor for the debtor Trustee is appointed for bog corporations
Committee of Creditors	Yes	Yes	Yes	Yes	Majority of rehabilitation claims holders either in number or by value.
Constitution of Committee of Creditors	Primarily financial creditors	Primarily unsecured creditors.	Primarily unsecured creditors. Consists of the 7 largest unsecured creditors	Primarily creditors	In case of liquidation only with the purpose of turning all of existing assets of the company to cash value.
Timelines	180 extendable to 270 extendable to 330 days	In the administration process 8 weeks from the date of beginning of administration and acceptance of the proposal by creditors within 10 weeks from the date of beginning of the administration process.	120 days to 18 months	Strict timelines in terms of appointment of administrator etc have been provided. The time is three months. For liquidation time period is six months.	5 months as per law. However, it various according to the discretion exercised by the court.
Method of Information	Information Memorandum	None	Disclosure Document	Yes	Debtor makes the plan and shares with creditors and executes it.

Condition based Resolution Plan	Yes	Yes	Yes	Yes	Not necessarily. The law is silent but some cases have mentioned conditions imposed by debtors.
Penalty for flouting timelines	The corporate debtor automatically goes for liquidation	No	In the period of exclusivity only the corporate debtor can file resolution plan, once flouted committee of creditors etc. and competing interests can also file resolution plan	Yes	Law is silent on the subject.
Avoidance transactions	Any favourable transfer of funds during last 2 years or 1 year as the case may be can be avoided and asset brought back to the corporate debtor for distribution.	Any favourable transfer going back upto 2 years in some cases and 12 months in some cases may be avoided	The avoidable transactions are to be avoided for a period of 90 days in some cases and 1 year in others.	The avoidable transactions are to be avoided for a period of 1 year.	Insolvency Trustee can look at transactions 6 months and earlier and has a right to void the transaction.
Resolution Plan	Must detail each class of creditors and how each class shall be dealt with	Details about the resolution	Must detail each class of creditors and how each class shall be dealt with	Yes	The debtor and his team are responsible for it
Approval of Resolution plan	66% majority of committee of creditors	Majority of creditors	$3/4^{th}$ creditors and atleast 1 non-insider claims holder with impaired claim	Yes	Majority of creditors who are present at the meeting.

Court conformation	Yes	Yes, Intimation to the Registrar of companies as well.	Yes	Yes	Yes
Pre-packaged insolvency	Yes (different from others)	Yes (different from others)	Yes (different from others)	Yes	Allowed but after permission of supervisor/ trustee/ court.

Set B deals with the countries:

6. Germany, 7. France, 8. Poland, 9. Spain, 10. Ireland

Basis of Distinction	**Germany**	**France**	**Poland**	**Spain**	**Ireland**
Name of the Law	German Code and Stabilization and Restructuring Framework for Businesses	Book VI French Commercial Code	Bankruptcy Law, 2003, EU Regulations, Restructuring Law	Insolvency law	Companies Act
Year of Notification	1999 and 2021	2008	2003 and 2015	2020	2014
Preamble	Uniform framework for the insolvency law and ensuring unity of rights protection for all stakeholders	Continuation of company, preservation of employees and protection of creditors	Create framework for reorganisation, promote entrepreneurship and protect creditor's interests	Protecting debtor and creditors	Protection of debtor and employees and creditors
Power of Creditor	Debtor in possession	Debtor in possession	Debtor in possession	Debtor in possession	Debtor in possession
Application by	Creditors and directors of the company	Creditor, Prosecutor and debtor(by compulsion)	Debtor or creditor Entrepreneurs including customers	Debtor/ creditor	Debtor and creditor
Automatic Moratorium	Yes	Yes	Yes	Yes 3 months	100 days
Assigned Person	Restructuring Practitioner	Court appointed negotiator	Court appointed trustees/ court supervisor	Insolvency practitioner	Examiner
Committee of Creditors	Yes	Yes	Yes	Yes	Yes

Constitution of Committee of Creditors	Referred to as the Creditor's advisory committee	Only in cases where a number of classes of creditors exist	It exercises control over the court appointed supervisor There also exists the Creditor's Board and the Creditor's council	All classes of creditor	All classes of creditor
Timelines	Maximum 8 months for resolution of debts	12- 18 months	4 months are granted for approval of the resolution plan	Not specified	1 year
Method of Information	By the company	By debtor	By court appointed supervisor	By debtor	By debtors
Condition based Resolution Plan	Not necessary	Yes	No clarity	Yes	Yes
Penalty for flouting timelines	Criminal sanctions for flouting various timelines exist	Conversion of resolution proceedings to liquidation proceedings	The process of restructuring would be stopped in case the timelines are flouted	No	Yes
Avoidance transactions	Preferential transactions from before last 3 months may be reopened and declared void.	May be declared void and some may automatically be considered void. The claw back period is 6 to 18 months	The look back transactions is 1 year for transactions to be declared void if deemed preferential	May be avoided.2 years is look back period	The look back transactions is six months for transactions to be declared void if deemed preferential
Resolution Plan	Made by debtor	Yes prepared by debtor	Prepared by the court appointed supervisor	Made by restructuring expert	Yes
Approval of Resolution plan	Of court and creditors	Approved by creditor	Requires permission of the creditors' council and the creditor's board	35% of creditor need to approve	75% of creditors need to approve
Court conformation	The Administer court and not the insolvency court	Court appointed under the statute	Only by authorised commercial court in the district of entity	Commercial court	Commercial court
Pre-packaged insolvency	Not permitted by law. However contractual obligations may be considered	Permitted by court	Permitted	Permitted by court	Permitted by law

Set C deals with the countries:

11. Italy, 12. Brazil, 13. Australia, 14. Korea, 15. Mexico

Basis of Distinction	**Italy**	**Brazil**	**Australia**	**Korea**	**Mexico**
Name of the Law	**Business Crisis and Insolvency Code has been introduced in**	Brazilian Judicial Recovery and Bankruptcy Law	Corporation Act and Insolvency Act	Debtor Rehabilitation and Bankruptcy Act Corporate Restructuring Promotion Act	Insolvency Law, 2000
Year of Notification	**2019**	2005, 2016 and 2021	2001 and 2016	2018	2000, last amended in 2014
Preamble	**Single procedure with special judges and intention of resolution and protection of employees**	Protection of debtors and creditors and entrepreneurs and maximisation of value of estate	Debt restructuring and early resolution	Consolidation of laws, protection of debtors and creditors	Preservation of companies in the face of temporary fund problems, protecting interest of creditors
Power of Creditor	Debtor in possession	Debtor in possession	Debtor in possession	Debtor in possession	Debtor in possession and appointment of a trustee
Application by	Creditors and/ or debtors/ public prosecutor	Creditors and/ or debtors	Debtor and creditor	Debtor, creditor or shareholder	Debtor, creditor and office of attorney general
Automatic Moratorium	**Yes 1 – 2 years**	Yes 180 days	Yes	Yes	No. only if specifically demanded by either the creditor or debtor
Assigned Person	**Receiver and delegated judge**	Judicial Administrator	Administrator	Receiver and examiner/ Insolvency practitioners	Insolvency Experts (visitor, conciliator, receiver)
Committee of Creditors	**Yes**	General Meeting of Creditors	Yes	Law unclear	Informal committees formed by creditors themselves
Constitution of Committee of Creditors	**Incharge of receiver**	Informal structure	For specific class of creditors	Law unclear	Informal committees formed by creditors themselves
Timelines	**6-18 months**	Avg time taken in 780 days	3 to 9 months	Set by court or liquidator	365 days after all the extensions
Method of Information	**Debtor**	By debtor	By judicial administrator	By insolvency professional	By the conciliator
Condition based Resolution Plan	**Yes**	Yes	Yes	Yes	No

Penalty for flouting timelines	**Yes**	No	No	Yes	General criminal sanctions for violating the insolvency law
Avoidance transactions	Look back period of 6 months to 1 year is used to evaluate the transactions	Look back period of 90 days is used to evaluate the transactions	Look back period of 6 months is used to evaluate the transactions	Yes	May be avoided. The look back period is 270 days prior to filing of the claims
Resolution Plan	**Competing plans**	Submitted by debtor	Made by creditors	Yes by examiner	Made by the conciliator
Approval of Resolution plan	**Competing plans to be chosen by majority**	If creditors reject the plan then creditors get to submit a plan	Approved by 75% of all creditors	By interested parties	By debtor and atleast 50% creditors
Court conformation	**Court under the law**	Bankruptcy Court	Court	Court	Mexico Federal Court
Pre-packaged insolvency	Law unclear on the subject	Not valid unless permitted by the court	Law unclear on the subject	Permitted	Permitted by the law

After having studied in detail the insolvency laws of some of the countries it is pertinent to study certain unique features about international insolvency regimes which can be adopted in the Indian regime. These have been discussed below:

VIII. Suggestions

The researcher while conducting the research has come across a myriad forms of laws, rules and regulations pertaining to Insolvency laws in various jurisdictions across the globe. An analysis of these indicated some good practices worthy of emulation within the Indian legal structures without altering the fundamental structure of the Indian Insolvency Law.

An analysis of the rules and laws as applicable in these countries it indicates a broad acceptance of the role of creditor as driver of economic growth and a pillar of strength of the corporate economy. It is worthwhile to note that even though the nomenclature remains the same in many cases, the description and interpretation varies widely. It has also been observed that India has borrowed not just from the UK Law as has been widely publicised, India has adopted the procedures in vogue in China as a

combination law. The Indian legislatures mindful of drafting a new legislation kept in mind the examples from the US, where even though the law differs fundamentally in terms in debtor in possession vis-a-vis the creditors in possession recognition of critical creditors, support of operational creditors etc. has been incorporated in the Indian law. The most iconic and fundamental variation however arises in the definition of Committee of creditors and the methodology of resolution process within the respective laws.

Keeping in mind the requirement for harmonisation of the laws it is worthwhile to note that that Insolvency Laws in Countries which are part of European Union are regulated by REGULATION (EU) 2015/848 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 2015[71] in addition to the state laws that may have existed prior to coming of the said regulations. The Regulations thus allow for co-existence of the state as well EU regulations till such time that the fundamental percepts of EU pertaining to security, freedom and justice and efficient administration of cross-border insolvencies is upheld.

The analysis thus leads us to identification of the following best practices which are in no way exhaustive but provide a stepping stone for the continuing further research on the subject. Given below are some of the best practices that are being followed the world over which if incorporated in the Indian legislative practice would create an unshakable and robust legal system.

1. **Insolvency register**: An insolvency registry allowing for information about insolvent corporate debtors to be available for a fee and after due verification. It will be a ledger account allowing records of insolvency debtors to be available for the potential investors. Currently in India all the orders of the NCLT admitting insolvency proceedings are sent to the regulator i.e. Insolvency and Bankruptcy Board of India, however there is no ledger book in a tabular format which can provide a panoramic view of corporate debtors. This has begun in some semblance through the Information Utilities and the IBBI newsletters, yet we need

[71] European Union, EU Regulation on Insolvency Laws 2015 available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015R0848

to improve the structure of data keeping in insolvency structures as information asymmetry within the corporate economy does not bode well for successful running of the economy.

2. **Automated Information Bureau:** An automated information system linked to the tribunal/ organization admitting or taking cognizance of the insolvency. This system will immediately on receipt of admission notice about a corporate debtor will intimate the stakeholders in the corporate economy of the insolvency of the corporate debtor and also initiate the moratorium without the necessity of the formal communication of the order from the adjudicatory mechanism. The automated connected machinery will alert the stakeholders of the announcement by the Tribunal without there being a necessity of communication thereof. This is to address the scenarios where the stakeholders have in the past requested extensions as they were not made aware of the order which resulted in incorrect and or delayed responses causing unnecessary delays in the CIRP processes.
3. **Insolvency Agreements:** In various countries agreements for settling disputes between debtors and creditors have been accepted at different stages of the dispute allowing for speedier resolution of credit disputes. Whether the agreement is created at the beginning of the dispute, before admission of the dispute or middle of the dispute it is envisioned that as long as the dispute is resolved with economic assets being brought back to efficient utilization, it shall be acceptable.
4. **Definition of all types of creditors:** Within the waterfall mechanism the broad definitions of creditors pose a difficulty with respect to classes of creditors and their rights to get dues realized. Most mature jurisdictions across the world have adopted definitions which bring clarity in terms of rights of creditors. In India it will be prudent to include the definition of secured creditors (clarifying priorities within different categories of secured creditors holding different rights) and all other creditors in the definition so that a harmony in the definition and rights as given in waterfall mechanism can be brought about.
5. **Enforcement of Ethics for stakeholders:** the most important stakeholders in the insolvency law in India are creditors and debtors whose rights are enforced and

protected by the Committee of Creditors and Insolvency Professionals. While they are bound by a set of rules and regulations, these are very few. It is thus suggested that the code of ethics for both the insolvency professionals as well as committee of creditors be enforced which can then be used to make sure that the entire insolvency process is ethically and legally sound.

6. **Cross border insolvency implementation**: The Brazilian Law in a unique universalism allows for the courts of debtor's parent country to declare bankruptcy, issue decrees and approve restructuring plans. This extra-territorial operation of the insolvency laws can help harmonize and integrate the national insolvency laws into a global law adopted by all states allowing for greater efficiency in realization of debts.
7. **Adoption of technology in judicial systems:** Brazil's National Judicial Council has adopted the complete digitization of insolvency processes which has in effect allowed for faster, efficient, transparent and effective insolvency law implementation. It is suggested that such digitization should be envisioned throughout the world in order to create a robust data management system while reducing time lines and time wastage due to compulsory physical presence requirements.
8. **Adoption of the JIN guidelines for communication and cooperation of the courts:** The Judicial Insolvency Network has been created by Judges from across the world who understand the importance of coordinated efforts in insolvency process to allow for movement of the economic assets. The fact that the assets based in one jurisdiction can be accounted for during the insolvency proceedings in the another state help the administrators make a fair assessment of the assets of the debtor. A continuous court communication and cooperation also ensures that the debtors are unable to undertake avoidance measures using forum shopping or information asymmetry. The process thus also helps in ascertaining the claim of all the creditors of the debtor and the final share that they are likely to get in the final distribution of the insolvency proceedings.
9. **Reasonable timelines:** A comparison of laws from other countries indicates that in general countries with specific timelines either in law or in practice have been

able to create a shorter and efficient insolvency process with the process getting completed in a time bound manner. It is thus suggested that in no circumstance the Indian law should be allowed to continue to increase the time lines either by way of an amendment in the statute or by way of legal practice.

IX. Conclusion

The genesis of the project was to make a comparison of the Insolvency Laws across the world in order to suggest improvements to the existing Insolvency and Bankruptcy Code, 2016 of India. Thus the project was to evaluate the laws in the 196 countries of the world. It was found that only 156 countries had insolvency laws of which many were obsolete or belonged to an era 50 years or earlier. In the final project an analysis of 15 countries have been mentioned in detail.

However, it can be concluded that India has by far adopted the best practices from successful and mature jurisdictions from the world thereby allowing its credit economy and stakeholders the option to exploit them in their favour and also allow for an opportunity to create a scenario where variance in territorial laws would have limited effect on cross-border investments and trade engagements. These suggestions given above need to be evaluated on the precipice of the available infrastructure both technological and logistical as well as maturity of the economy. These suggestions while extremely powerful will require a complete overhauling of the existing systems which may take some time and should, therefore, be undertaken in a piecemeal fashion in order to garner greater acceptability from the masses.

However, it can also be stated affirmatively that once these changes have been carried out in the insolvency regime in India, the Indian Law will be the most powerful, reliable, robust and efficient legal system protecting the rights of the stakeholders.

X. Annexure.

Annexure: List of Countries

	List of countries in the World As per the United Nations and Status of Insolvency Laws	Existence of Insolvency Laws	Name of the Law
1	Afghanistan	Yes	Commercial Code and Insolvency Law 2018 (2019)
2	Albania	Yes	Law No. 110/2016 on Bankruptcy
3	Algeria	None found	framework for insolvency seems to exist. But no details are available
4	Andorra	Yes	Insolvency Decree/ companies act, Banking recovery act
5	Angola	Yes	Covered under the Code of Civil Procedure
6	Antigua and Barbuda	Yes	Companies Act, 1995, Debtor Act, 1888, Bankruptcy Act, 1893
7	Argentina	Yes	Bankruptcy Law, 1995
8	Armenia	Yes	On Bankruptcy, 2006
9	Australia	Yes	Corporations Act 2001
10	Austria	Yes	Insolvency Act, CPC and Restructuring Act(Based on EU Restructuring Directive)
11	Azerbaijan	Yes	On Insolvency and Bankruptcy , 1997 and On Banks of 2004
12	Bahamas	Yes	The Companies (Winding Up Amendment) Act, 2011; (ii) The International Business Companies (Winding Up Amendment) Act, 2011;
13	Bahrain	Yes	Reorganization and Bankruptcy Law

14	Bangladesh	Yes	Bankruptcy act 1997
15	Barbados	Yes	Bankruptcy and Insolvency Act
16	Belarus	Yes	Law of the Republic of Belarus No. 104-3 of 4 January 2014.
17	Belgium	Yes	Economic Law Code (Insolvency Law)
18	Belize	Yes	Bankruptcy Act, Chapter 244, 2011
19	Benin	Yes	OHADA Law on Insolvency
20	Bhutan	Yes	Bankruptcy Act Of The Kingdom Of Bhutan, 1999
21	Bolivia (Plurinational State of)	None found	
22	Bosnia and Herzegovina	Yes	Law on Bankruptcy Proceedings applicable to the FBiH
23	Botswana	Yes	Companies Act, Insolvency Act
24	Brazil	Yes	Insolvency Law
25	Brunei Darussalam	Yes	Insolvency Order
26	Bulgaria	Yes	Commercial Law
27	Burkina Faso	Yes	OHADA Law on Insolvency
28	Burundi	None found	
29	Côte d'Ivoire	Yes	Uniform Act of OHADA
30	Cabo Verde	None found	
31	Cambodia	Yes	Insolvency law
32	Cameroon	Yes	OHADA law on insolvency
33	Canada	Yes	Bankruptcy and Insolvency Act
34	Central African Republic	Yes	OHADA's Uniform Insolvency Act,
35	Chad	Yes	OHADA's Uniform Insolvency Act,
36	Chile	Yes	Restructuring and Liquidation of Companies and Individuals

37	China	Yes	Enterprise Act 2006
38	Colombia	Yes	Pdf not found
39	Comoros	Yes	OHADA's Uniform Insolvency Act,
40	Congo (Congo-Brazzaville)	Yes	OHADA's Uniform Insolvency Act,
41	Costa Rica	None found	
42	Croatia	Yes	The Bankruptcy Act, 2015 Text not found
43	Cuba	Not Functional	On account of Debt Crisis
44	Cyprus	Yes	Company Law
45	Czechia (Czech Republic)	None found	
46	Democratic People's Republic of Korea	None found	
47	Democratic Republic of the Congo	None found	
48	Denmark	Yes	Act on Restructuring and Resolution of Certain Financial Enterprises
49	Djibouti	Not Functional	
50	Dominica	Yes	Bankruptcy Act
51	Dominican Republic	None found	
52	Ecuador	Yes	Pdf/translation not found
53	Egypt	Yes	Law regulating the Restructuring, Preventive Composition and Bankruptcy
54	El Salvador	Yes	Pdf/translation not found
55	Equatorial Guinea	Yes	OHADA's Uniform Insolvency Act
56	Eritrea	Not Functional	
57	Estonia	Yes	Bankruptcy Act of 2003
58	Eswatini (fmr. "Swaziland")	Yes	Insolvency Act, 1955
59	Ethiopia	Yes	Commercial Code, 1960
60	Fiji	Yes	Bankruptcy Act
61	Finland	Yes	Bankruptcy Act, 2004
62	France	Yes	
63	Gabon	Yes	OHADA's Uniform Insolvency Act

64	Gambia (The Republic of)	Yes	Financial Institutions Act, 2003
65	Georgia	Yes	Law of Georgia on Enforcement Proceedings
66	Germany	Yes	1994, last amended in 2021
67	Ghana	Yes	Corporate Insolvency And Restructuring Act, 2020
68	Greece	Yes	Law for the Settlement of Debts and Provision of a Second Chance
69	Grenada	Yes	Companies act 1994
70	Guatemala	Yes	Insolvency Act, 2022
71	Guinea	Yes	OHADA's Uniform Insolvency Act
72	Guinea-Bissau	Yes	OHADA's Uniform Insolvency Act
73	Guyana	Yes	Insolvency Act
74	Haiti	None found	
75	Holy See	observer	
76	Honduras	Yes	Commercial Code, 1950
77	Hungary	Yes	Act of 1991
78	Iceland	None found	
79	India	Yes	Insolvency and Bankruptcy Code, 2016
80	Indonesia	Yes	Bankruptcy and Suspension of Payment
81	Iran (Islamic Republic of)	None found	
82	Iraq	None found	
83	Ireland	Yes	Office of Insolvency Service
84	Israel	Yes	Document not found
85	Italy	Yes	Statute of 2022
86	Jamaica	Yes	insolvency Act
87	Japan	Yes	Civil Rehabilitation law 2000 and Corporate Reorganisation law 1952 amended in 2003, Companies Act Special Liquidation Chapter reformed in chapter 2006 and Act on Recognition of and Assistance for Foreign Insolvency Proceeding
88	Jordan	Yes	Insolvency law of 2018

89	Kazakhstan	Yes	Rehabilitation and Bankruptcy of 2015
90	Kenya	Yes	insolvency act 2015
91	Kiribati	Yes	Company insolvency act
92	Kuwait	Yes	New Insolvency Law, 2020
93	Kyrgyzstan	None found	
94	Lao People's Democratic Republic	None found	
95	Latvia	Yes	Insolvency Law 2021
96	Lebanon	Not Functional	
97	Lesotho	Yes	Companies Act
98	Liberia	Yes	Pdf /translation not found
99	Libya	Yes	Pdf /translation not found
100	Liechtenstein	Yes	Pdf /translation not found
101	Lithuania	Yes	The Republic Of Lithuania Insolvency Of Legal Entities The Law 2019
102	Luxembourg	Yes	Pdf /translation not found
103	Madagascar	Yes	2003-04 Pdf /translation not found
104	Malawi	Yes	Insolvency Act 2016-17
105	Malaysia	Yes	Insolvency Act 1967
106	Maldives	None found	
107	Mali	Yes	OHADA's Uniform Insolvency Act
108	Malta	Yes	Pdf /translation not found
109	Marshall Islands	Yes	No national law found. But implementation of the UNCITRAL Model law into country's law as a separate statute has been found
110	Mauritania	None found	
111	Mauritius	Yes	Insolvency act 2009
112	Mexico	Yes	Pdf /translation not found
113	Micronesia (Federated States of)	Yes	2004
114	Moldova	Yes	1996
115	Monaco	None found	
116	Mongolia	Yes	Law of Mongolia on Bankruptcy, 1997 (reforms were made in 2017

			with help of IFC. Details not found)
117	Montenegro	Yes	Law of Bankruptcy, 2011
118	Morocco	None found	
119	Mozambique	Yes	Mozambican Insolvency Law (Decree law No 1/2013)
120	Myanmar (formerly Burma)	Yes	Insolvency Law 2020
121	Namibia	Yes	Insolvency Act of 1936 with Regulations of 1962
122	Nauru	Yes	Insolvency Act 1912
123	Nepal	Yes	Insolvency Act, 2006
124	Netherlands	Yes	Dutch bankruptcy Act, 2012; EU Restructuring Directive, 2019
125	New Zealand	Yes	Insolvency Act, 2006
126	Nicaragua	Yes	Civil laws
127	Niger	Yes	Bankruptcy Act, 1990 amended in 1992
128	Nigeria	Yes	Bankruptcy Act, 1992
129	North Macedonia	Yes	Small Business Act, 2006
130	Norway	Yes	Norwegian Bankruptcy Act, 1984
131	Oman	Yes	2019 Bankruptcy Law
132	Pakistan	Yes	Corporate Rehabilitation Act, 2018
133	Palau	Yes	Small Business Reorganisation Act, 2019
134	Palestine State	observer	
135	Panama	Yes	Reorganisation and Liquidation Act, 2016
136	Papua New Guinea	Yes	Insolvency Act, 1951
137	Paraguay	Yes	Bankruptcy Law, 1969
138	Peru	Yes	Authenticated version not found
139	Philippines	Yes	Financial Rehabilitation and Insolvency Act of 2010
140	Poland	Yes	Bankruptcy Act, 2003
141	Portugal	Yes	Insolvency Act of 2021
142	Qatar	Yes	2021
143	Republic of Korea	Yes	2005

145	Romania	Yes	Act of 1995
146	Russian Federation	Yes	Act of 1993
147	Rwanda	Yes	Law Relating to Insolvency 2021
148	Saint Kitts and Nevis	Yes	Bankruptcy Act, 2002
149	Saint Lucia	None found	
150	Saint Vincent and the Grenadines	None found	
151	Samoa	Yes	Bankruptcy act 1908
152	San Marino	Authentic version not found	
153	Sao Tome and Principe	None found	
154	Saudi Arabia	Yes	Saudi Arabian Insolvency Law, 2018
155	Senegal	Yes	OHADA law on insolvency
156	Serbia	Yes	Serbian Insolvency Act, 2009
157	Seychelles	Yes	2013
158	Sierra Leone	Yes	2009
159	Singapore	Yes	Insolvency, Restructuring and Dissolution Act, 2018
160	Slovakia	Yes	Slovak Insolvency Act, 2022
161	Slovenia	Yes	Insolvency Act, 2019
162	Solomon Islands	Yes	Act of 1914
163	Somalia	None found	
164	South Africa	Yes	1936
165	South Sudan	None found	
166	Spain	Yes	Spanish Bankruptcy Act, 2003
167	Sri Lanka	Yes	Temporarily suspended
168	Sudan	None found	
169	Suriname	None found	
170	Sweden	Yes	EU regulations/ Nordic convention
171	Switzerland	Yes	Swiss Debt Enforcement and Bankruptcy Law
172	Syria Arab Republic	Yes	OHADA Law

173	Tajikistan	Yes	The Law of The Republic Of Tajikistan "On Bankruptcy", 2003
174	Thailand	Yes	Bankruptcy Act
175	Timor-Leste	Yes	2022(Proposal in Place)
176	Togo	Yes	OHADA law on insolvency
177	Tonga	Yes	Companies Act 1995
178	Trinidad and Tobago	Yes	The Bankruptcy And Insolvency Act, 2007
179	Tunisia	None found	
180	Turkey	Yes	Enforcement and Bankruptcy Code 2004
181	Turkmenistan	None found	
182	Tuvalu	Yes	Companies (winding up) Act 1991
183	Uganda	Yes	2011
184	Ukraine	Yes	The Code of Ukraine on Insolvency Proceedings 2019
185	United Arab Emirates	Yes	Insolvency Law 19 of 2019
186	United Kingdom of Great Britain and Northern Ireland	Yes	Companies Act, 2006 Insolvency Act, 1986 UK Corporate Insolvency and Governance Act, 2020
187	United Republic of Tanzania	Yes	1930 (latest act not found)
188	United States of America	Yes	Chapter 11
189	Uruguay	None found	
190	Uzbekistan	Yes	Pdf not found
191	Vanuatu	Yes	Companies (Insolvency And Receivership), 2013
192	Venezuela Bolivarian Republic of	None found	
193	Vietnam	Yes	Law on Bankruptcy No 51/2014/QH13 implemented 2015
194	Yemen	None found	
195	Zambia	Yes	The Corporate Insolvency Act, 2017

196	Zimbabwe	Yes	Insolvency act