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The Creditor's Bargain In Indian Insolvency Law: A Study Of Efficiency, Fairness And Reform

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Abstract

India has changed its approach to insolvency and corporate debt settlement with the implementation of the Insolvency and Bankruptcy Code, 2016 (IBC). Its core tenet is the Creditor's Bargain Theory (CBT), a theoretical framework that sees bankruptcy law as a way to duplicate what reasonable creditors would collectively decide upon beforehand if such an arrangement were feasible. With its focus on time-bound resolution, value maximization, and creditor-driven procedures, the Code represents a significant departure from the debtor-centric paradigm that defined pre-IBC regimes.

This paper attempts to trace the legislative alignment between the theoretical foundations of the IBC and the principles of CBT, assess how well the Code achieves the objectives of collective creditor maximization, and pinpoint the difficulties that arise when trying to strike a balance between creditor control and treating all stakeholders fairly.

In the end, this paper contends that although the IBC's design operationalizes the Creditor's Bargain Theory to a great extent, its actual application highlights conflicts between justice and efficiency, debtor rehabilitation and creditor primacy, and business profit and court supervision.

Keywords*: Creditor's Bargain Theory(CBT), Insolvency and Bankruptcy Code,2016 (IBC), Collective Creditor Action, Value Maximization and Efficiency, Creditor-in-control Model, Stakeholder –centric Insolvency Framework.*

Introduction

The development of insolvency law is a reflection of the intricate relationship that exists between social welfare, legal theory, and economic policy. Prior to 2016, *the Companies Act of 1956*, *the Sick Industrial Companies (Special Provisions) Act of 1985 (SICA)*, and *the Recovery of Debts Due to Banks and Financial Institutions Act of 1993 (RDDBFI)* were among the various laws that divided insolvency processes in India. This resulted in a delayed, ineffective, and debtor-friendly system that was unable to successfully rehabilitate struggling businesses or encourage credit discipline.

With the passage of the Insolvency and Bankruptcy Code, 2016,[1] a clear step toward a time-bound and creditor-centric bankruptcy framework was taken. In order to provide a single, all-encompassing framework, the IBC aimed to alter and combine the laws pertaining to businesses, partnerships, and individuals' insolvency and bankruptcy. The structure of the Code puts creditors at the center of the settlement process, especially financial creditors.

This creditor-focused design is consistent with the Creditor's Bargain Theory (CBT), which was developed in the 1980s by academics like *Douglas Baird and Thomas H. Jackson*.[2] According to the argument, insolvency laws ought to replicate what creditors would have agreed upon ex ante, if there had been no issues with coordination. The main goal of insolvency law, according to Jackson (1986), is to optimize the total worth of the debtor's estate and avoid the ineffective *"race to the courthouse"* that happens when different creditors try to assert their claims independently.

According to the CBT framework, insolvency legislation serves as a collective debt-collection mechanism that aims to maintain the enterprise's total worth while improving efficiency and equity among creditors. The IBC's emphasis on group decision-making via the Committee of Creditors (CoC), which has the business judgment to accept or disapprove a resolution plan, is explained by this viewpoint.[3]

The core principles of the IBC are similar to those of the Creditor's Bargain Theory in that they place more emphasis on value maximization, group efforts, and creditor empowerment than on individual recovery initiatives. The limited involvement of operational creditors, judicial interference in business choices, and striking a balance between social justice and economic efficiency are some of the issues that the Code's practical implementation also highlights.[4]

Examining how much the IBC reflects the Creditor's Bargain Theory and whether its application is in

[1] *The Insolvency and Bankruptcy Code,* No.31 of 2016, INDIA CODE(2016).
[2] Douglas G. Baird & Thomas H. Jackson, *Corporate Reorganizations and the Treatment of Diverse Ownership Interests: A Comment on Adequate Protection of Secured Creditors in Bankruptcy,* 51 U. CHI. L. REV. 97 (1984).
[3] See generally Rishabh Garg, *Creditor Control and the Insolvency and Bankruptcy Code, 2016: An Analysis Through the Lens of the Creditor's Bargain Theory,* 61 ECON. & POL. WKLY. 42 (2020).
[4] See also Umakanth Varottil, *The Evolution of Corporate Insolvency Law in India: The Journey So Far and the Road Ahead,* 10 NUS L. WORKING PAPER SERIES 5 (2019).

line with the theoretical goals envisioned by bankruptcy law academics are the goals of this article.

1. LITERATURE REVIEW

One of the key pillars of contemporary insolvency research is the Creditor's Bargain Theory (CBT), which was initially introduced by Thomas H. Jackson in 1982. Jackson proposed a common pool approach to bankruptcy law that emphasizes efficiency, predictability, and value maximization, replicating what reasonable creditors would collectively agree upon ex ante. This thesis established the foundation for comprehending insolvency as a safeguard against a damaging race to individual enforcement that lowers the value of assets as a whole. Douglas G. Baird (1987) developed this idea further, emphasizing the value of collaboration among creditors and group efforts in attaining the best results during times of financial hardship.

Later academics, like Elizabeth Warren (1987),[5] criticized CBT's limited economic focus and contended that distributive justice and social policy factors, such as employee welfare and community effect, should also be addressed by insolvency legislation. The argument between the equity-driven and efficiency-driven models of insolvency is still crucial in today's conversation. Sahoo (2018)[6] and Sarkar (2020)[7] looked at how the Insolvency and Bankruptcy Code, 2016 (IBC) was implemented in India and found that the creditor-in-control structure of the IBC mainly reflects the concepts of cognitive behavioral therapy. They point out that rather than enforcing the law piecemeal, the IBC aims to optimize value and maintain organizational continuity through collaborative settlement.

The successful operationalization of creditor-oriented concepts is demonstrated by empirical studies conducted by the World Bank (2020) and the Insolvency and Bankruptcy Board of India (IBBI), which show decreased resolution times and increased recovery rates following IBC. Scholars like Chakrabarti and Mehta (2021), however, stress the necessity of striking a balance between the needs of operational creditors, homeowners, and employees, as well as creditor primacy. Therefore, a hybrid insolvency model—one that incorporates social and stakeholder factors into India's developing insolvency framework while maintaining the effectiveness of the Creditor's Bargain Theory—is supported by the growing agreement in recent literature.

2. OBJECTIVES OF THE STUDY

This study paper's goals are as follows:

- To comprehend the theoretical underpinnings of the Creditor's Bargain Theory (CBT): Analysis of its history, guiding ideas, and influence on contemporary insolvency legislation is necessary.

[5] Elizabeth Warren, *Bankruptcy Policy,* 54 U. CHI. L. REV. 775 (1987).
[6] M.S. Sahoo, *Evolution of the Insolvency and Bankruptcy Code, 2016: The Road So Far,* INSOLVENCY AND BANKRUPTCY BOARD OF INDIA WORKING PAPER (2018).
[7] Saptarshi Sarkar, *Creditor Primacy and the Insolvency and Bankruptcy Code, 2016: An Analysis Through the Lens of the Creditor's Bargain Theory,* 55 ECON. & POL. WKLY. 45 (2020).

- To evaluate the applicability of CBT to the Indian Insolvency and Bankruptcy Code, 2016: Determine if the IBC's procedural and substantive provisions take into account the theory's core presumptions.
- In order to assess the legislative purpose of the IBC's creditor-centric design: Examine why the Committee of Creditors (CoC) should have control over the insolvency process.
- To evaluate how the Supreme Court and the National Company Law Appellate Tribunal (NCLAT) have interpreted creditor control under the IBC, review significant rulings that support or contradict the creditor's bargain principle.
- To examine how efficiency and equity are balanced under the IBC: Examine whether the interests of operational creditors, staff, or other stakeholders are jeopardized by creditor primacy.
- In order to offer comparative perspectives: Analyze how creditor-oriented bankruptcy arrangements operate in countries such as the UK and the US (under Chapter 11), and consider what lessons India might learn from them.
- The following actions are suggested to improve the application of CBT principles: Make reform recommendations to guarantee equitable treatment, strengthen creditor coordination, and boost the effectiveness of settlement procedures.

3. LEGISLATIVE BACKGROUND

3.1 Pre – IBC Scenario:

India had a fragmented and inefficient insolvency system prior to the IBC's passage. The several laws that creditors had to comply with each addressed distinct facets of insolvency and recovery. Among the crucial laws were:

- Companies were able to wind up under the **Companies Acts of 1956 and 2013**,[8] but the procedure was laborious and time-consuming.
- The purpose of the ill Industrial firms **(Special Provisions) Act, 1985 (SICA)[9]** was to revitalize ill industrial firms by means of the Board for Industrial and Financial Reconstruction (BIFR). Nevertheless, it was ineffectual due to delays and debtor abuse.
- **The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDDBFI)[10]** created Debt Recovery Tribunals (DRTs) to expedite bank debt recovery; however, it only addressed the recovery of individual creditors and not the resolution of collective insolvency.

[8] *The Companies Act*, No. 1 of 1956, INDIA CODE (1956); *The Companies Act,* No. 18 of 2013, INDIA CODE (2013).
[9] *The Sick Industrial Companies (Special Provisions) Act,* No. 1 of 1986, INDIA CODE (1986).
[10] *The Recovery of Debts Due to Banks and Financial Institutions Act,* No. 51 of 1993, INDIA CODE (1993).

- **The SARFAESI Act of 2002,**[11] which deals with the securitization, reconstruction, and enforcement of security interests in financial assets: lacked a comprehensive structure for restructuring or liquidation, but it did permit secured creditors to pursue their security interests without the involvement of the court.

Poor collection rates, protracted delays, and a lack of cooperation among creditors were the results of this disjointed system. With an average recovery rate of 26 cents on the dollar and a process time of more than four years, India came in at number 136 in the World Bank's 2016 Doing Business Report[12] on Resolving Insolvency.

3.2 Enactment of the Insolvency and Bankruptcy Code, 2016

The purpose of the 2016 Insolvency and Bankruptcy Code was to combine the previous framework into a single, all-inclusive law. Dr. T. K. Viswanathan, the chair of the Bankruptcy Law Reforms Committee (BLRC), made recommendations that served as the basis for its introduction. The preservation of economic value, debtor protection, and creditor rights must all be balanced under an efficient insolvency process, the BLRC stressed.[13]

The IBC's Statement of Objects and Reasons unmistakably embodies the Creditor's Bargain theory. It acknowledges that rather than being "debtor-in-possession," insolvency resolution need to be "creditor-in-control." To prevent value erosion and cut down on judicial delays, the Code established a time-bound procedure (180–330 days) for resolving corporate insolvency.

Important structural elements that show CBT alignment are as follows:

- **Section 14 moratorium:** Guarantees group proceedings by preventing individual creditor actions.
- Financial creditors are empowered to determine the corporate debtor's fate by the **Committee of Creditors (Section 21)**.
- **Approval of Resolution Plans (Sections 30–31)**: CoC rulings grounded in business common sense are legally binding, preventing judicial intervention.
- Protecting secured creditors, the **Priority Waterfall (Section 53)** allocates liquidation funds in accordance with predetermined priorities.

3.3 Judicial Endorsement of the Creditor's Bargain Model

The IBC's creditor-centric structure has been continuously maintained by Indian courts.

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[11] *The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act,* No. 54 of 2002, INDIA CODE (2002).
[12] WORLD BANK, *Doing Business 2016: Measuring Regulatory Quality and Efficiency* 190–91 (2016).
[13] BANKRUPTCY LAW REFORMS COMMITTEE (BLRC), *The Report of the Bankruptcy Law Reforms Committee, Volume I: Rationale and Design* (Nov. 2015).

- In 2019's 12 SCC 150, **K. Sashidhar v. Indian Overseas Bank**[14]: The Supreme Court ruled that the CoC's business sense is crucial and cannot be replaced by judicial interpretation, mirroring the independence creditors would have in a collective bargain.
- **Satish Kumar Gupta v. Committee of Creditors of Essar Steel India Ltd.,**[15] (2020) 8 SCC 531: With the exception of the need for fair and equal treatment, the Court maintained that the CoC had complete authority in determining distribution under a settlement plan.
- **Swiss Ribbons Pvt. Ltd. V. Union of India**,[16] 2019 4 SCC 17: The Court accepted the architecture of the Code as favoring the collective interest of creditors over individual recovery and affirmed the constitutionality of the IBC.

With these rulings, the Supreme Court has reaffirmed the fundamental tenet of the Creditor's Bargain Theory, which holds that the main purpose of insolvency law is to mimic an effective process of collective bargaining among creditors.

4. METHODOLOGY

4.1 Research Design:

The research methodology used in this work is doctrinal and analytical, with an emphasis on interpreting statutory texts, court rulings, and academic commentary. The doctrinal approach is suitable since the goal is to examine the structure of the IBC from the perspective of a theoretical framework known as the Creditor's Bargain Theory.

4.2 Nature of Study

The study is descriptive in nature and qualitative, drawing on secondary data sources including:

- Statutory documents (IBC, 2016)
- BLRC (2015) reports from committees
- Judicial precedents
- Books and scholarly publications on insolvency theory
- Study comparisons in bankruptcy law

4.3 Scope and Limitations

The study excludes individual and partnership insolvency and is restricted to corporate insolvency (CIRP) under the IBC. The study focuses on the dynamics between creditors and debtors in the Indian context, with sporadic comparisons to global models like the U.S. Bankruptcy Code and the U.K. Insolvency Act, 1986.

[14] K. Sashidhar v. Indian Overseas Bank, (2019) 12 S.C.C. 150 (India).
[15] Comm. of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2020) 8 S.C.C. 531 (India).
[16] Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 S.C.C. 17 (India).

4.4 Research Questions

The main inquiries that drive this research are:

- Are the structure and application of the IBC, 2016 consistent with the Creditor's Bargaining Theory?
- How has the Code's concept of creditor primacy been interpreted by the courts?
- How do operational creditors and other stakeholders feel about a creditor-centric model?
- What guidance on striking a balance between justice and creditor control can India learn from other jurisdictions?

4.5 Analytical Framework

The analytical framework of the paper is based on three dimensions:

- Examining how statutory laws represent the CBT paradigm is known as doctrinal analysis.
- Comparative Analysis: Assessing comparable frameworks in the United States and the United Kingdom.
- Normative Analysis: Determining if creditor primacy accomplishes the desired level of fairness and efficiency.

5. USE OF SOURCES

The core research in bankruptcy law and economics, which was mostly created in the United States in the late 20th century, is the basis for the Creditor's Bargain Theory (CBT). In order to examine the Indian setting, this article heavily draws from theoretical literature, statutory documents, and judicial interpretations.

5.1 Primary Sources

- The primary piece of legislation under consideration is the **Insolvency and Bankruptcy Code, 2016 (IBC).** The creditor's bargain model has been used to analyze provisions pertaining to the Committee of Creditors (CoC), moratorium, resolution plan, liquidation priority, and Corporate Insolvency Resolution Process (CIRP).
- **Legal precedents:** The Supreme Court of India and the National Company Law Appellate Tribunal (NCLAT) have issued landmark decisions that offer interpretive guidance on creditor control and business savvy. Examples of these cases include *Swiss Ribbons Pvt. Ltd. v. Union of India, K. Sashidhar v. Indian Overseas Bank, and Essar Steel India Ltd. v. Satish Kumar Gupta.*

- **Committee Reports:** Legislative intent and reform directions are clarified in the Bankruptcy Law Reforms Committee Report (2015) and the Insolvency Law Committee Reports (2018–2020).

5.2 Secondary Sources

- **Scholarly Writings:** The theoretical foundation of the Creditor's Bargain Theory is provided by works by Douglas G. Baird ("Loss Distribution, Forum Shopping, and Bankruptcy: A Reply to Warren," 54 U. Chi. L. Rev. 815, 1987) and Thomas H. Jackson ("The Logic and Limits of Bankruptcy Law," 1986).
- Contextualizing the discussion within **Indian jurisprudence** has been made possible by the writings and commentary on creditor rights under the IBC by Anant Merathia, Dr. M.S. Sahoo, and Ravi Shankar Jha.
- **Comparative Statutes:** To find similarities and differences in how creditors' involvement and control are handled, the U.S. Bankruptcy Code (Chapter 11) and the U.K. Insolvency Act, 1986 are examined.
- **Empirical Reports:** Information on recovery rates, resolution schedules, and the effectiveness of the bankruptcy process following the installation of the bankruptcy and Bankruptcy Board of India (IBBI), Reserve Bank of India (RBI), and World Bank's Doing Business Index is available in reports from these organizations.

6. CONCEPTUAL FRAMEWORK OF THE CREDITOR'S BARGAIN THEORY

The Creditor's Bargain Theory was created by academics such as Douglas Baird and Thomas H. Jackson as an economic examination of bankruptcy law. Insolvency law, according to the notion, was created to address the collective action issue that occurs when several creditors try to collect money from a single debtor.

Without insolvency law, Jackson claims, individual creditors would compete to take possession of assets first in a "grab race," destroying the value of the business. By imposing collective discipline and optimizing total recoveries, insolvency law functions as an ex-ante contract among creditors.[17]

The hypothesis makes the following assumptions:

- As logical economic agents, creditors aim to optimize recovery.
- To avoid ineffective liquidation, a group process would be agreed upon ex ante by all creditors.

[17] Thomas H. Jackson, Bankruptcy, *Non-Bankruptcy Entitlements, and the Creditors' Bargain*, 91 YALE L.J. 857 (1982).

- Replicating what these sensible creditors would have decided upon in a world of perfect coordination is the function of bankruptcy law.

CBT essentially validates the priority of creditors in bankruptcy proceedings by claiming that creditor control guarantees effective results and maximizes total value, even though individual creditors may receive less in some circumstances.

According to this perspective, insolvency law is seen as a procedural tool to preserve market efficiency rather than a redistributive or social justice tool. It arranges already-existing rights in a collective, orderly manner rather than establishing new, substantive rights.[18] In order to maximize the value of the common pool, the moratorium placed during insolvency proceedings is a temporary limitation on individual enforcement rights. This is a legal representation of the communal agreement.

As the main risk bearers, creditors are in the best position to make financially sensible decisions about restructuring or liquidation, according to the Creditor's Bargain Theory, which also defends the priority of creditors and the creditor-in-control paradigm. Insolvency law guarantees that decisions are based on logical economic grounds rather than managerial, political, or emotional bias by giving creditors collective control.[19]

Though the theory places a strong emphasis on economic efficiency, some flaws have been noted by academics. The CBT, according to critics like Elizabeth Warren[20], ignores the wider social and distributive effects of insolvency, especially on workers, small suppliers, and communities that depend on the debtor's operations. Stakeholder-oriented insolvency theories, which support a more inclusive strategy that strikes a balance between the interests of creditors and the general benefit of society, have emerged as a result of this criticism.

The Creditor's Bargain Theory is still a cornerstone of insolvency regime design around the world, including India's Insolvency and Bankruptcy Code, 2016 (IBC), in spite of these criticisms. By instituting a structured distribution hierarchy under Section 53, enforcing an automatic moratorium under Section 14, and giving priority to collective creditor decision-making through the Committee of Creditors (CoC), the IBC exemplifies these ideals. By converting theoretical efficiency into institutional reality, the IBC essentially operationalizes the Creditor's Bargain and makes sure that insolvency is a tool of group rationality rather than personal disorder.[21]

7. CREDITOR'S BARGAIN THEORY IN THE INDIAN CONTEXT

The IBC, 2016 converts these ideas into a set of laws that are specific to the institutional and economic

[18] *Id.* at 860–63.
[19] Douglas G. Baird, *Loss Distribution, Forum Shopping, and Bankruptcy: A Reply to Warren,* 54 U. CHI. L. REV. 815 (1987).
[20] Elizabeth Warren, *Bankruptcy Policy,* 54 U. CHI. L. REV. 775, 778–82 (1987).
[21] *The Insolvency and Bankruptcy Code,* No. 31 of 2016, §§ 14, 21, 30–31, 53, INDIA CODE (2016).

realities of India. The Code's compatibility with the Creditor's Bargain Theory is demonstrated by a number of important aspects.

- **Group Initiative via the Moratorium**

After CIRP starts, Section 14 of the IBC places a stop to all lawsuits, enforcement proceedings, and foreclosures against the corporate debtor. The CBT tenet that no creditor should interfere with a group's ability to resolve a dispute is directly applied here.

The moratorium guarantees that "the company's assets are preserved as a going concern for the benefit of all creditors," as the Supreme Court stated in Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407.[22]

- **As an example of collective bargaining, the Committee of Creditors (CoC)**

The CoC is the collective voice of financial creditors, established under Section 21. Approval of the resolution plan is one of the important decisions it controls (Section 30(4)).

In order to ensure efficiency and predictability, the CoC's role is similar to what creditors would agree upon ex ante: a venue where majority decisions are made.

The integrity of creditor autonomy was upheld when the Supreme Court stressed in *K. Sashidhar v. Indian Overseas Bank* that judicial authorities cannot impede the CoC's business acumen.[23]

- **Value Maximization Principle: Resolution vs. Liquidation**

According to CBT, creditors would rather maximize total value than pursue piecemeal liquidation recoveries for individual recoveries. The Resolution Professional is required under Sections 20 and 25 of the IBC to maintain the corporate debtor as a going concern, and the resolution plan must maximize value.

The Supreme Court acknowledged "value maximization" as the primary goal of the Code in *Swiss Ribbons Pvt. Ltd. v. Union of India,*[24] which closely aligned with the efficiency justification of CBT.

- **Proceeds Distribution: Predictable Priority Order**

The IBC's Section 53 creates a waterfall system for allocating liquidation funds. Senior secured creditors receive payment first, followed by unsecured and operational creditors. This method is ex-ante predictable and mirrors what logical creditors would have decided.

The Supreme Court reinforced creditor autonomy in the 2020 Essar Steel case[25] by upholding the

[22] Innoventive Indus. Ltd. v. ICICI Bank, (2018) 1 S.C.C. 407 (India).
[23] K. Sashidhar v. Indian Overseas Bank, (2019) 12 S.C.C. 150 (India).
[24] Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 S.C.C. 17 (India)
[25] Comm. of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2020) 8 S.C.C. 531 (India).

CoC's power in allocating funds under resolution plans, so long as fairness is preserved.

8. EFFICIENCY AND FAIRNESS: THE DUAL DIMENSIONS

The IBC incorporates fairness criteria to guarantee that the rights of operational and minority creditors are not overlooked, even though the Creditor's Bargain Theory places a strong emphasis on efficiency and creditor control.

The Efficiency Aspect -

- A process that is time-bound (180–330 days) lessens value loss.
- In order to prevent judicial decision-making delays, creditors choose the optimal restructuring plan.
- encourages investor confidence and credit discipline.

The Dimension of Fairness -

- Operational creditors are guaranteed at least what they would receive in liquidation under Section 30(2)(b).
- Plans for settlement are guaranteed to be free from discrimination through judicial review.
- By allowing CIRP to be withdrawn upon settlement, Section 12A was introduced, maintaining equity for all parties.

The difficulty is striking a balance between equality and efficiency, which is a major point of contention in the current discussion of creditor-driven insolvency systems.[26]

9. COMPARATIVE PERSPECTIVE

1. United States (Chapter 11 Model)

The U.S. Bankruptcy Code (Chapter 11) uses a debtor-in-possession model, in which creditor committees supervise the reorganization process while management maintains control. Although less creditor-dominant, Chapter 11 adheres to the value maximizing and communal resolution tenets of CBT.[27]

The *debtor-in-possession* approach is not without its detractors, though. According to academics like Douglas Baird, letting management continue to have authority could prolong inefficiency, particularly if the management's earlier choices caused the company to go bankrupt.[28] Conflicts of interest, delays, and creditor-harming tactics may result from this. As a result, Chapter 11 differs in how control is distributed, prioritizing debtor rehabilitation and economic continuity above rigid creditor primacy, even if it still represents the social spirit of the Creditor's Bargain

[26] *The Insolvency and Bankruptcy Code*, No. 31 of 2016, § 21, INDIA CODE (2016).
[27] *Bankruptcy Reform Act of 1978,* 11 U.S.C. §§ 1101–1174 (2018).
[28] Douglas G. Baird, *The Uneasy Case for Corporate Reorganizations,* 15 J. LEGAL STUD. 127, 130–35 (1986).

Theory.

On the other hand, a creditor-in-control paradigm was purposefully embraced by the Indian Insolvency and Bankruptcy Code (IBC), 2016. The management of the bankrupt company is immediately replaced when insolvency begins, and authority is transferred to an impartial Resolution Professional (RP) who is overseen by the Committee of Creditors (CoC). This structure is more in line with the Creditor's Bargain Theory's emphasis on economic efficiency and represents a conscious policy change from the pre-IBC debtor-friendly regime. The Jackson and Baird-envisioned collective decision-making process is institutionalized when the CoC, acting on behalf of financial creditors, decides jointly whether to adopt a resolution plan or move on with liquidation.[29]

India's IBC places a higher priority on creditor efficiency and collective reason than the U.S. model does on debtor autonomy. The primary goal of insolvency law, as defined by the Creditor's Bargain Theory, is to prevent the destructive scramble for assets and maintain the enterprise's total worth. This is what both systems seek to achieve. Thus, the U.S. Chapter 11 model and the Indian IBC represent two differing interpretations of the same theoretical foundation: one promoting rehabilitation through debtor involvement, and the other ensuring discipline through creditor control.[30]

In contrast, the IBC emphasizes creditor primacy and restricts debtor participation, adhering to a creditor-in-control approach.

2. The UK

CBT is also evident in the Enterprise Act of 2002[31] and the Insolvency Act of 1986[32] in the United Kingdom, especially in the administration procedures that give priority to the interests of all creditors. The administrator works to save viable businesses while acting in the best interests of all creditors.

After an administrator is appointed, the directors of the company relinquish management of the business to the administrator, who serves as a fiduciary for all of the creditors, not just one group. According to Schedule B1 of the Insolvency Act of 1986, the administrator's statutory goals are to:

- save the business as a viable enterprise;

[29] See also Douglas G. Baird & Thomas H. Jackson, *Corporate Reorganizations and the Treatment of Diverse Ownership Interests: A Comment on Adequate Protection of Secured Creditors in Bankruptcy*, 51 U. CHI. L. REV. 97 (1984).
[30] *The Insolvency and Bankruptcy Code,* No. 31 of 2016, §§ 16–25, INDIA CODE (2016).
[31] *The Enterprise Act*, 2002, c. 40 (U.K.).
[32] *The Insolvency Act,* 1986, c. 45, Sch. B1 (U.K.).

- attain a better outcome for all creditors than would be possible with liquidation; and
- If neither of the aforementioned goals can be met, realize property in order to distribute to secured or favored creditors.[33]

These goals are in line with the Creditor's Bargain Theory's collective value-maximizing tenet. By banning individual creditor actions and facilitating structured, effective settlement, the legislation guarantees that insolvency processes are managed collectively.

In contrast to India's IBC, the UK framework takes a moderate stance. Compared to the IBC model, the procedure is less dominated by financial creditors, even though the administrator operates in the best interests of all creditors. In order to maintain the process's procedural fairness and economic efficiency, it instead integrates judicial monitoring with administrative neutrality.[34] Through a more balanced institutional framework, the IBC's efficiency goals are echoed by the prohibition on creditor actions during administration and the focus on maintaining going-concern value.

Furthermore, a growing understanding that insolvency law must strike a balance between efficiency and social responsibility is reflected in the UK system's recognition of employee rights, pension obligations, and environmental issues within insolvency processes.[35] The theoretical foundations of the Creditor's Bargain Theory are strengthened by this more comprehensive stakeholder-oriented approach, which also addresses the distributive justice issues raised by the theory.

Although both systems served as inspiration for India's IBC, it is more creditor-empowered and closely adheres to CBT's theoretical presumptions.[36]

10. CASE STUDIES AND JUDICIAL ILLUSTRATIONS

10.1 In 2020, Essar Steel India Ltd. v. Satish Kumar Gupta (8 SCC 531).

One of India's biggest insolvencies, worth ₹49,000 crore, was at issue in this historic case. Equitable treatment does not imply equal treatment for all creditors, the Supreme Court explained, upholding the importance of the CoC's business acumen.

The Court's ruling that "the CoC's decision must be based on feasibility and viability, and judicial intervention must be minimal" closely mirrored CBT's focus on ex-ante rationality and creditor

[33] See also Vanessa Finch, *Corporate Insolvency Law: Perspectives and Principles* 221–25 (Cambridge Univ. Press 2009).
[34] See Andrew Keay, *The Reform of United Kingdom's Corporate Rescue Regime: The Enterprise Act 2002*, 6 EUR. BUS. ORG. L. REV. 27, 30–33 (2005).
[35] See generally John Armour, *The Law and Economics of Corporate Insolvency: A Review, in The Oxford Handbook of Law and Economics* 456–60 (Francesco Parisi ed., 2017).
[36] See also Sarah Paterson, *Rethinking Corporate Bankruptcy Theory in the Twenty-First Century,* 36 OXFORD J. LEGAL STUD. 697, 705–09 (2016).

autonomy.

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

The Supreme Court upheld the IBC's constitutional basis, acknowledging that financial creditors are more qualified than operational creditors to evaluate a company's sustainability. This is in line with CBT's premise that sensible creditors ought to make decisions on insolvency.

10.3 Jaypee Infratech Ltd. CIRP

In this instance, insolvency proceedings had an impact on thousands of homebuyers. In 2018, the IBC was changed by the legislature to permit homebuyers to be represented by the CoC as financial creditors.

This amendment broadens fairness within a creditor-controlled model by extending the definition of "creditor" to encompass previously unrepresented interests, illustrating an evolution of the Creditor's Bargain.[37]

11. CRITICAL EVALUATION

Although the IBC and CBT share many design similarities, there are a number of conceptual and practical issues with its use.

11.1 The Predominance of Creditors

Only financial creditors make up the CoC; operational creditors are hardly represented. Although this exclusion is technically permitted under CBT, it creates equity difficulties and calls into question Article 14's guarantee of equality under the constitution.

11.2 Overreach by the Judiciary

Despite the idea of judicial restraint, courts have occasionally become involved in business matters, which has caused delays. The efficiency objectives at the heart of the IBC and CBT are compromised by this.

11.3 Asymmetry in Information

In fact, the fundamental tenet of cognitive behavioral therapy—that creditors have complete information—frequently falls short. Suboptimal results result from many financial creditors' inability to assess intricate business remedies.

11.4 Delays cause value destruction.

[37] Jaypee Infratech Ltd., In re, Company Appeal (AT) (Insolvency) No. 26 of 2018 (NCLAT).

(IBBI Quarterly Report, 2024) The average CIRP duration is more than 400 days, even with legislative timelines. This runs counter to the theory's justification for efficiency.[38]

11.5 Stakeholder inclusivity is necessary.

Stakeholder theory, which argues that suppliers, workers, and the community all have valid interests, is becoming more and more important in modern insolvency philosophy. To account for wider socioeconomic factors, the IBC's rigid adherence to creditor primacy could need to be adjusted.[39]

12. THEORETICAL ALTERNATIVES TO THE CREDITOR'S BARGAIN THEORY

12.1 The Communitarian Theory

This argument, put forth by academics such as Elizabeth Warren, contends that bankruptcy legislation ought to safeguard all parties involved, not only creditors. It supports community welfare, employee protection, and fairness—aspects that are sometimes overlooked in a system that is only driven by creditors.[40]

12.2 Theory of Team Production

According to this notion, the company is a group of stakeholders who work together to increase enterprise value. Therefore, power and rewards should be shared by all stakeholders, not just creditors, under insolvency legislation.[41]

These alternative models draw attention to the shortcomings of CBT's exclusive emphasis on creditor efficiency and contend that social justice and fairness must be incorporated into insolvency law.

13. REFORM RECOMMENDATIONS

The following changes are proposed to improve the IBC's conformity to the Creditor's Bargain Theory and equitable justice principles:

13.1 Boost Accountability and Transparency in the CoC:

- Require that vote justifications and evaluation standards be disclosed in full.
- Boost supervision procedures to make sure choices maximize group worth rather than individual interests.
- Provide the IBBI with recurring audits or review processes for significant CIRPs.

[38] Insolvency and Bankruptcy Board of India (IBBI), *Quarterly Newsletter*, Vol. 18, Jan.–Mar. 2024, at 6.
[39] R. Edward Freeman, *Strategic Management: A Stakeholder Approach* 25–26 (Cambridge Univ. Press 2010)
[40] Elizabeth Warren, *Bankruptcy and the Economic Crisis*, 82 Minn. L. Rev. 1573, 1580–82 (1998).
[41] Lynn A. Stout, *The Shareholder Value Myth: How Putting Shareholders First Harms Investors, Corporations, and the Public* 42–44 (Berrett-Koehler Publishers 2012).

13.2 Operational creditors should be granted limited participation rights.

- Limited consultative or participating rights in resolution talks may be extended to operational creditors without reducing CoC authority.
- Their specialized knowledge of the sector can sustain efficiency while enhancing the quality of decision-making.

13.3 Build Up Institutional Strength:

- Elevate the requirements for insolvency experts' education and certification.
- For the purpose of reducing the backlog of cases in court, create specialized insolvency benches with technical and financial knowledge.
- Boost technology for creditor coordination and case management.

13.4 Verify Timeline Adherence:

- CIRP's 330-day outer limit is strictly enforced, unless there are exceptional circumstances.
- Punish parties who engage in pointless lawsuits or delay strategies.
- To speed up resolution, encourage pre-packaged insolvency procedures.

13.5 Bring Stakeholder Welfare Principles into Play:

- Small creditors and employees should be seen as essential stakeholders.
- Promote resolution strategies that uphold community and employment interests in line with the newly popular "team production" paradigm of corporate insolvency.

13.6 Optimize the Waterfall for Liquidation:

- Significant differences between secured and unsecured creditors can be lessened by taking into account a little redistribution in liquidation priorities.
- Such changes could guarantee that equity enhances rather than detracts from efficiency.[42]

14. FUTURE OUTLOOK: TOWARD A BALANCED INSOLVENCY FRAMEWORK

The capacity to achieve a careful balance between social responsibility and economic rationality will determine the future course of India's insolvency framework under the Insolvency and Bankruptcy Code, 2016 (IBC). Although efficiency and collective creditor action are well-founded in the Creditor's Bargain Theory, 21st-century insolvency law must go beyond economic optimization to take social justice, employment protection, and fair stakeholder treatment into consideration.

A more stakeholder-oriented approach is being adopted by contemporary insolvency regimes worldwide, acknowledging that a company's failure impacts not just its creditors but also its workers, clients,

[42] Insolvency and Bankruptcy Board of India (IBBI), *Code of Conduct for Insolvency Professionals,* IBBI/IPA/2020/01, §§ 2–4 (2020).

suppliers, and local communities. This trend is progressively being reflected in India's insolvency system. The recognition of Micro, Small, and Medium Enterprises (MSMEs) under pre-packaged insolvency resolution (2021)[43], the inclusion of homebuyers as financial creditors (2018 Amendment), and the ongoing judicial affirmation of procedural fairness are just a few examples of legislative amendments over the years that show a deliberate policy shift towards a more inclusive and socially sensitive insolvency framework.[44]

This well-rounded strategy has been greatly influenced by the Indian judiciary. Courts have maintained the Committee of Creditors' (CoC) business acumen through innovative rulings, all the while making sure that the procedure is open, impartial, and in line with natural justice principles.[45] This judicial wisdom reflects a sophisticated recognition that, although while creditor priority is necessary for maintaining financial stability, it shouldn't be sacrificed for equity or indifference to those who are most at risk.

The IBC has to adjust quickly as the size and complexity of India's corporate and financial environment continue to grow. Future reforms have to concentrate on enhancing institutional capabilities, reducing resolution delays, and guaranteeing smaller businesses have improved access to insolvency procedures. Furthermore, the next stage of development may involve incorporating environmental, social, and governance (ESG) factors into insolvency decision-making in order to match sustainable development objectives with economic recovery.

The ability of the IBC to continue being adaptable, responsive, and equitable will ultimately determine its long-term viability. A well-developed insolvency system must protect jobs, maintain company value, and boost public trust in the rule of law in addition to maximizing creditor recovery.[46] Therefore, creating a balanced insolvency framework that balances market efficiency with fairness principles is crucial to the future and will guarantee that the Code continues to effectively serve societal and commercial objectives.

CONCLUSION

A strong theoretical foundation for the creation of contemporary insolvency legislation is offered by the Creditor's Bargain Theory. The 2016 Insolvency and Bankruptcy Code essentially puts its tenets into practice by encouraging group creditor activity, maximizing value, and limiting judicial intervention.

The IBC mimics the collective agreement that reasonable creditors would have made in the absence of

[43] Ministry of Corporate Affairs, Government of India, *The Insolvency and Bankruptcy Code (Pre-Packaged Insolvency Resolution for MSMEs) Regulations,* 2021, §§ 2–5 (2021).
[44] Ministry of Corporate Affairs, Government of India, *The Insolvency and Bankruptcy Code (Amendment) Act,* 2018, §§ 5, 9 (2018).
[45] World Bank, *Doing Business 2020: Resolving Insolvency* 12–14 (2020).
[46] United Nations Environment Programme, *Integrating Environmental, Social and Governance (ESG) Considerations into Insolvency Practice* (2022).

legal pressure by giving the Committee of Creditors authority, enforcing a moratorium, and creating a structured priority regime.

The Indian example also shows that, even if creditor primacy is effective in theory, it needs to be balanced with inclusivity and equity. A change to a hybrid paradigm that combines efficiency and equity is signaled by the growing recognition of operational creditors, homebuyers, and employees.

However, in a dynamic economy, no theoretical model can stay the same. How well legislators, practitioners, and courts continue to balance creditor efficiency with inclusive justice will determine the direction of insolvency law in India in the future. Therefore, the idea that insolvency law is about more than just allocating losses; it's also about reestablishing economic equilibrium, protecting productive assets, and guaranteeing equity for all parties involved must serve as the foundation for the development of the IBC.

In summary, the IBC has progressively embraced the larger human and social aspects of business crisis while bringing India closer to the principles outlined by the Creditor's Bargain Theory: an effective, predictable, and collective bankruptcy process. Whether India can establish a strong credit market and a durable and equitable economic system will depend on how well it continues to be improved.