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# Corporate Insolvency in Transition: Reconciling Rescue Objectives with Creditor Protection and Regulatory Change

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**Abstract:** This article critically reconceptualises corporate insolvency law by examining the evolving interplay between rescue culture, creditor rights, and regulatory transformation. Traditionally rooted in liquidation-oriented frameworks, insolvency regimes have progressively shifted toward a rescue paradigm aimed at preserving economically viable firms. However, this transition raises fundamental questions regarding the balance of power between debtors and creditors, particularly in jurisdictions where creditor-centric mechanisms dominate restructuring processes. The study analyses whether the proclaimed "rescue culture" genuinely facilitates corporate rehabilitation or merely operates within a creditor-driven architecture that prioritises recovery over revival. Adopting a doctrinal and analytical approach, the article evaluates key legislative and institutional reforms that have reshaped insolvency governance, with particular attention to the implications of regulatory transformation in modern economies. It argues that while contemporary frameworks promote efficiency, transparency, and time-bound resolution, they often marginalise broader stakeholder interests, including employees and minority claimants. The paper further contends that the dominance of financial creditors risks undermining the normative objectives of insolvency law as a tool for economic stabilization and business continuity. The article concludes by proposing a recalibrated framework that integrates rescue-oriented principles with equitable creditor protections, advocating for a balanced and context-sensitive insolvency regime.

**Keywords:** Rescue Culture; Creditor Rights; Regulatory Transformation; Corporate Restructuring

## 1. Introduction

The traditional concept of corporate insolvency law as the way to deal with business failure has been through liquidation and the enforcement of debts in an orderly way. In its classical version, insolvency was the process of collective recovery where the assets of a troubled firm would be marshalled and shared to the creditors according to a legal priority list.[1] Although effective in achieving procedural certainty, this model was not much concerned with the overall economic effects of liquidation such as the loss of going-concern value, employment displacement and systemic instability.

[1] Roy Goode, *Principles of Corporate Insolvency Law* (5th edn., Sweet & Maxwell 2018).

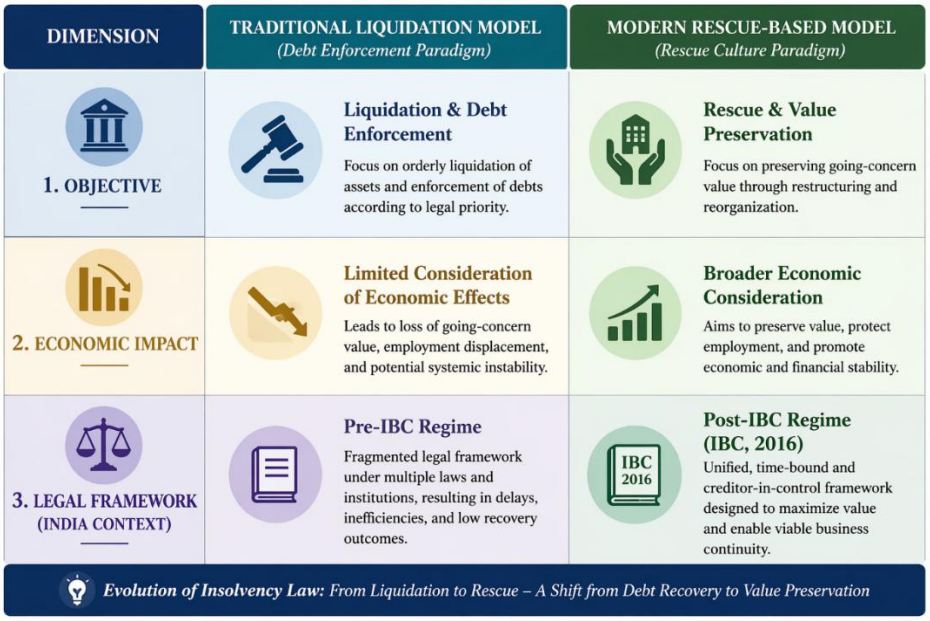


***Figure 1 Evolution of Insolvency Law: From Liquidation to Rescue - A Shift from Debt Recovery to Value Preservation.***

To address these issues, modern insolvency regimes have increasingly moved to a rescue-based paradigm. This shift indicates the development of what is often referred to as a rescue culture where the ultimate goal of insolvency law is not just the liquidation of insolvent businesses but the salvaging of financially viable businesses, by restructuring and reorganizing.[2]

In the Indian insolvency framework, this transformation is depicted in such a striking way. Before the Insolvency and Bankruptcy Code, 2016, the legal framework of corporate distress was disjointed through various laws and institutional procedures which created high delays, inefficiencies and low recovery results.[3]

With the introduction of the Insolvency and Bankruptcy Code, a major change in regulation occurred with the establishment of a process of resolution primarily led by creditors, strict time schedules, and institutional measures aimed at value maximization and increased efficiency.[4] At least on the level of legislative design, the Code itself is a manifestation of the principles of rescue culture, focusing more on the ability to resolve rather than liquidate and on the ability to revive a struggling but viable enterprise. But this seeming movement towards rescue begs a greater conceptual question about how modern insolvency systems actually work. Although the framework formally supports the idea of corporate rehabilitation, its application is strongly designed around the control by creditors, especially through the centralized position of financial creditors in the decision-making process.

This structural order establishes a natural conflict between the normative ideal of the rescue culture and the practicalities of creditor control. They can be started under the insolvency procedure with the view of maintaining enterprise value although in most cases it is dictated by creditor-related factors of recovery and risk reduction.[5]

[2] Vanessa Finch, 'Corporate Rescue: A Game of Three Halves' (2012) 32 *Legal Studies* 302
[3] Ministry of Law, Justice and Company Affairs, Government of India, *Report of the High Level Committee on Law Relating to Insolvency and Winding Up of Companies* (2000).
[4] Ministry of Finance, Government of India, *The Report of the Bankruptcy Law Reforms Committee, Volume I: Rationale and Design* (2015).
[5] *K. Sashidhar v. Indian Overseas Bank*, (2019) 12 SCC 150.

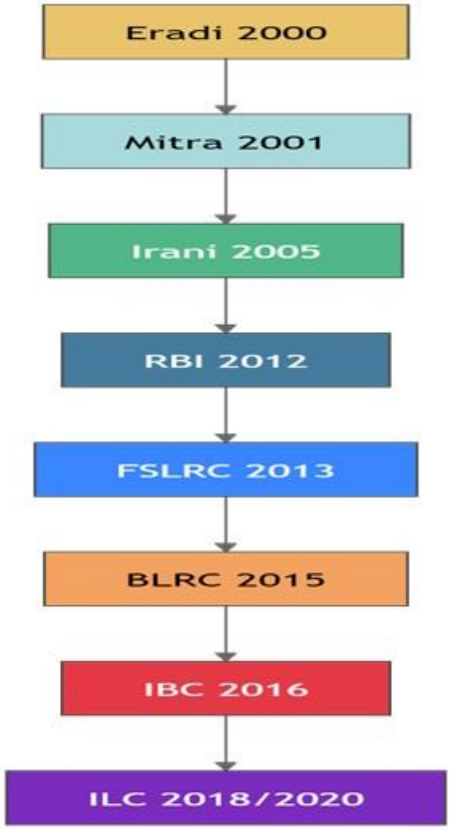


Figure 2 Timeline of the Evolution of Corporate Insolvency Reform in India

It is against this background that the current article aims to critically reconceptualise the law of corporate insolvency by exploring the changing relationship between the rescue culture, rights of creditors and regulatory change. It challenges the view that the modern focus on rescue is a substantive change in the aims of the insolvency law or it is still limited by the institutional design based on the creditor. The paper also examines how this tension would affect the interests of the broader stakeholders such as employees and minority claimants whose interests are usually subordinated in the current structures.

The thesis put forward in this paper is that even though current insolvency regimes have achieved great success in enhancing both procedural efficiency and transparency, they have not deployed the normative potential of the rescue culture to the fullest.

The following discussion has been designed to discuss them in a systematic way. The following part provides a review of the current academic literature on the topic of rescue culture, creditor control, and insolvency reform, and a sketch of the research methodology. The paper then looks at the development of the insolvency law, structural dynamics of creditor control and the effects of regulatory transformation. It concludes by suggesting a normative framework that would seek to set right the objectives of rescue and recovery that are conflicting in current insolvency law.

## 2. Literature Review

A clear trend in the modern law of corporate insolvency is the replacement of the perception of insolvency as a means of collecting terminal debts with a perception of an ever more complicated system of restructuring, governance and economic integration.

An early and seminal academic literature considers the emergence of rescue culture as a characteristic of contemporary corporate insolvency law. This line of literature posits that over the last few decades, insolvency regimes have shifted more and more towards models that are not liquidation-based in favor of models that are aimed at saving viable firms by restructuring and rehabilitating them. Examples of this include the work of Finch and Milman, who place the current insolvency law in a wider conceptual shift where going-concern preservation, maximizing value and institutional coordination are accorded more significance than mere distribution of assets.[6] In the same vein, the theoretical work of Mokal criticizes these conceptualizations of narrow conceptualizations of contractualism of insolvency by highlighting the necessity of seeing the law of insolvency as a collective and normatively organized response to the financial distress of corporations and as not a personal agreement between creditors.[7] The UNCITRAL Legislative Guide to Insolvency Law, at the international level, further supports the significance of restructuring mechanisms, thus making rescue a more acceptable and attractive legislative goal in the modern design of insolvencies.[8]

This scholarship is important in that it provides the normative underpinning that rescue-oriented insolvency regimes are constructed on. It shows that the rescue is not only based on debtor protection, but also to more systemic issues like to save enterprise value, minimize inefficient liquidation, and to curb the systemic costs of business failure.

A second line of scholarship is concerned with the rights of creditors, primacy of creditors, and control architecture in insolvency regimes. In this case, the literature is much more skeptical about the assertions according to which the internal logic of insolvency law has been changed by the impact of the so-called rescue culture. Comparative analysis of corporate rescue by McCormack is used to draw attention to the fact that rescue practices have still been entrenched in creditor-based institutional environment, in which the discourse of rehabilitation continues to be complemented with high levels of control rights in the hands of lenders and financial claimants.[9] Ramsay also focuses on the role of market-based imperatives and professional judgment in insolvency administration, implying that the running of the insolvency law is usually informed by commercial values and interests as opposed to distributive or social interests and values.[10]

The more recent scholarship on corporate restructuring and creditor protection supports this critical view. The edited volume on corporate restructuring by Omar and Gant places the current rescue regimes in the context of wider comparative arguments in governance, institutional design and restructuring strategy and demonstrates how rescue regimes tend to swing between inclusion-based rehabilitation and creditor-focused resolution.[11]

**Table 1: Main Scholarly Strands in the Literature on Corporate Insolvency Law**

| Scholarly Strand | Core Focus | Key Insight for the Present Study |
|---|---|---|
| Rescue Culture | Shift from liquidation to restructuring | Rescue is framed as preservation of viable enterprise and value |

[6] Vanessa Finch and David Milman, *Corporate Insolvency Law: Perspectives and Principles* (3rd edn., Cambridge University Press 2017).
[7] Riz Mokal, *Corporate Insolvency Law: Theory and Application* (Oxford University Press 2005).
[8] UNCITRAL, *Legislative Guide on Insolvency Law* (United Nations 2005).
[9] Gerard McCormack, 'Control and Corporate Rescue – An Anglo-American Evaluation' (2007) 56 *International and Comparative Law Quarterly* 515.
[10] Iain Ramsay, 'Market Imperatives, Professional Discretion and the Role of Insolvency Practitioners' (1994) 15 *Oxford Journal of Legal Studies* 399.
[11] Paul J Omar and Jennifer L L Gant (eds), *Research Handbook on Corporate Restructuring* (Edward Elgar Publishing 2021).

| Scholarly Strand | Core Focus | Key Insight for the Present Study |
|---|---|---|
| Creditor Primacy | Control rights of financial creditors | Rescue may operate within a creditor-dominated structure |
| Regulatory Transformation | Reform, efficiency, and institutional modernization | Procedural modernization does not automatically ensure normative balance |

A third line of scholarship concerns regulatory change, i.e., how the insolvency law has been transformed by means of legislative modernization, institutional redesign and harmonization across borders. This literature is of particular relevance to the current study since the title and abstract of the article does not consider the aspect of insolvency reform as a simple change in legislation, but as a broader re-organization of insolvency governance. The IMF policy framework of the orderly and efficient insolvency procedures highlights predictability, timeliness and institutional competence as critical characteristics of a contemporary insolvency regime.[12] The efficiency, transparency and procedural discipline as a marker of legal design is also similarly anticipated in the principles of the World Bank regarding effective insolvency and creditor/debtor regimes.[13] The concept that insolvency law is becoming judged not just by coherence to doctrine, but by quantifiable performance metrics such as speed, recovery, and resilience of a system, has been strengthened by more recent comparative scholarship, such as OECD analysis.[14]

Newer and more recent work has also started to broaden the insolvency discourse by connecting insolvency law to broader issues of sustainability, transnational restructuring and the shift of economic regulation.

This shift to reconceptualization can also be seen as part of the restructuring of work on cross-border restructuring law by Bazinas, who demonstrates how restructuring structures are being reimagined through economic and transnational interpretations.[15] These publications are not a direct duplication of the concerns of the current article, yet they are noteworthy as they affirm the current reorientation of the insolvency law to a deeper intellectual and regulatory levels.

This unresolved tension is of particular significance in the framework of the modern insolvency regimes that pose as efficient, transparent, and resolution-driven yet can be marginalizing the interests of the broader stakeholders.

[12] International Monetary Fund, *Orderly and Effective Insolvency Procedures: Key Issues* (IMF 1999).
[13] World Bank, *Principles for Effective Insolvency and Creditor/Debtor Regimes* (World Bank 2015).
[14] OECD, *Insolvency Frameworks and Outcomes* (OECD Publishing 2017).
[15] Bob Wessels, *International Insolvency Law* (Kluwer Law International, 2015).

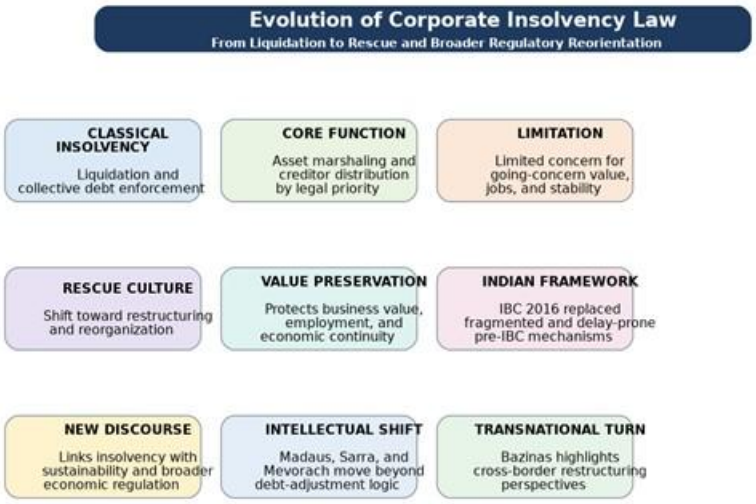


Figure 3 Evolution of Corporate Insolvency Law: From Liquidation to Rescue and Broader Regulatory Reorientation

This gap is filled by the current research, which takes these strands of literature into one analytical frame. It does not oppose rescue culture as a legal goal, or the need to protect creditors in insolvency regimes. Instead, it looks at whether the balance between the two imperatives has been made in the present way as to weaken the larger rehabilitative role of the insolvency law. In this regard, this article adds to the literature by submitting that regulatory change has led to a more efficient and institutionally coherent, but not more normatively balanced, insolvency law. The section below thus outlines the research design that will take place to examine this tension doctrinally, analytically, and critically.

**3. Research Methodology**

This study uses a qualitative research design that is both doctrinal and analytical in nature to analyze the emergent relationship between the rescue culture, creditor rights and regulatory change in the law relating to corporate insolvency. Justification of the methodology is the nature of the research problem itself. The article does not attempt to conduct empirical measurements of insolvency outcomes via statistical methods, as well as using interview, survey, and field-based data. Instead, it answers a more specifically legal and normative question: is the modern restructuring framework truly reflective of a rescue-oriented philosophy or remains in a more heavily creditor-focused institutional framework? In this respect, the approach is not aimed at describing the law, but critically evaluating its conceptual, internal and normative aspects.

On the doctrinal level, the study is premised on the intensive study of the primary sources of law, such as statutory frameworks, judicial decisions, and committee reports, which have guided the course of insolvency reform. The Insolvency and Bankruptcy Code, 2016 is the focal point of the statutory foundations of the study, as it is a formal law on the basis of which the contemporary model of rescue has been institutionalized in India.[16] The Companies Act, 2013 also is a source of the analysis to the degree to which the company law still offers the overarching corporate governance and structural framework in which the insolvency works.[17] Besides domestic law, the study also uses international normative tools like the UNCITRAL Model Law on Cross-Border Insolvency, although not to fully compare law, but to contextualize regulatory change in the context of larger trends in the world of

[16] *The Insolvency and Bankruptcy Code, 2016* (Act 31 of 2016).
[17] *The Companies Act, 2013* (Act 18 of 2013).

insolvency governance.[18]

Judicial analysis augments the doctrinal inquiry, as the practical interpretation of rescue, creditor control and regulatory design is frequently explained by case law. Court cases are particularly appropriate in insolvency law since they demonstrate the interpretation of statutory goals and power allocation in practice. The jurisprudence of the commercial wisdom of the committee of creditors, the boundaries of judicial intervention, and the aims of resolution in particular, offers invaluable understanding of whether rescue mechanisms are being put in place in a substantively balanced fashion.[19] Case law in this article is not just merely illustrative, but it is a tool of interpretation of the functioning of the legal framework outside the text.

Another aspect of the research design is its historical and reform-based aspect. Given the central focus of the article on regulatory transformation, it, by necessity, looks into the reform pathway which culminated and resulted in the implementation of the Insolvency and Bankruptcy Code. The significance of reports like the one on the rehabilitation of ailing industrial firms, the overall reform of the financial sector and the subsequent review of insolvency law, in particular, is that they provide insight into the policy premises behind the legislative change and can be used to understand how the reversal of the liquidation into rescue was conceptualized and rationalized.[20] These sources play a vital role in the argument of the article that the modern insolvency law should be interpreted as a result of the changing regulatory imagination but not the result of the one statutory intervention.

The study is also normative and analytical in terms of its methodology. It is analytical in the sense that it measures the structural relationship of the rescue discourse to the creditor dominance by considering the inner logic of insolvency governance. It is normative in the sense that it enquires whether the current law regime sufficiently serves the wider objectives of the insolvency law, such as business continuity, fairness and value preservation that is sensitive to stakeholders. This normative aspect is crucial in particular, since the article fails to consider efficiency, timeliness, and recovery as a self-sufficing indicator of legal success. Rather, it approaches this assumption because the legitimacy of a contemporary insolvency system depends not just on the effectiveness of the procedures but also on how well it delivers substantive effect to the rehabilitative principles of the rescue culture.

**4. Evolution of Insolvency Law: From Liquidation to Rescue**

One of the most radical changes that have occurred in the contemporary commercial law is the fact that the law of corporate insolvency has been transformed to focus more on the rescue approach rather than on the approach of liquidation. The conventional notion of insolvency law was the idea that dissolved the financially troubled organizations in an orderly manner, with the major emphasis on assets realisation and allocation among creditors. In that classical model, corporate failure was assumed to be fatal, and the legal procedure was designed to recover maximally by imposing collective enforcement and distribution by priority.[21] Although such a model guaranteed procedural order and creditor protection, it did not give much consideration to the maintenance of the enterprise value or the overall economic impacts of corporate failure.

This liquidation-oriented knowledge was heavily strained as the contemporary corporate forms grew more intricate and intertwined financially. It has become clear that going-concern value is frequently destroyed by liquidation, employment interfered with, and lower long run returns are generated than by a well planned restructuring process. Consequently, insolvency law started to be rethought not only as a final debt-collections system, but as a system that could differentiate between non viable firms that were to be left out of the market and

[18] UNCITRAL, *Model Law on Cross-Border Insolvency* (United Nations 1997).
[19] *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 SCC 531.
[20] Ministry of Corporate Affairs, Government of India, *Report of the Insolvency Law Committee* (2018).
[21] Riz Mokal, *Corporate Insolvency Law: Theory and Application*, supra note 7.

viable firms that could be saved by intervening in time.[22] The shift to rescue was not, however, just procedural; it signified a more fundamental change in the purposes of insolvency law, of closure to continuity, of dissolution to reorganization.

This change in India was formed over time by the reforms that were aimed at countering the shortcomings of the previous disjointed regime. The pre-Insolvency and Bankruptcy Code, 2016 legal framework was marred by multiple forums, slow adjudication, and poor institutional coordination and little success at turning around troubled companies. Attempts to overcome these deficiencies were manifested in policy and committee reports which saw the necessity to abandon a purely liquidation-focused model. Specifically, reform efforts with regard to the rehabilitation of ailing industrial firms recognized that the legislation must enable the rehabilitation in cases where the economic feasibility could be maintained.[23] These developments heralded the onset of a shift towards rescue, though the institutional framework that would support this was yet to develop.

This direction of reform was subsequently supported by more general shifts in financial and corporate regulatory ideology. The increased interest in legal coherence and institutional efficiency and commercially responsive governance stimulated the perception that insolvency law ought to be incorporated into a more contemporary system of economic regulation.[24] Within this new paradigm, insolvency was more and more perceived as a component of a greater system of market discipline and value preservation, and not just as the distribution of residual assets through a post-default mechanism. However, even with this conceptual roll, the pre-IBC structure continued to be structurally weak, and the rescuing hope was frequently frustrated by inefficient procedures and the time lag in their execution.

With the passing of the Insolvency and Bankruptcy Code, 2016, a dramatic shift took place. The Code brought a clear break to the haphazard regime that existed before, by integrating the law in relation to insolvency and providing a time-limited resolution procedure. The statutory framework gives preference to resolution rather than liquidation and focuses on maximizing of value, reorganization and continuation of the corporate debtor as a going concern.[25] Formally, then, the Code represents the language and form of rescue culture. It is an indication of a shift in understanding that insolvency leads to dissolution and instead institutionalizes the presence of viable enterprises that can be saved in a structured way.

Nonetheless, the liquidation-rescue transition is not absolute. The modern insolvency regime architecture has concentrated a lot of power into the hands of the financial creditors, especially the committee of creditors and the judicial acceptance of commercial wisdom on the part of the creditors.[26] This implies that as the law has effectively acquired the tongue of rescue, the actual rescue aspect of the law is still heavily impregnated with the concept of recovery-oriented decision-making. The change, however, can rather be seen as not being a wholesale substitution of liquidation logic, but a layered change in which rescue has now surfaced within a system in which it remains that the strong creditor control is maintained.

Based on this evolutionary explanation, the following section will further build on this evolutionary narrative by looking at the main tension of the article, which is much more about whether the present-day insolvency framework, even with its rescuing architecture, is ultimately defined by the rights of creditors and the power of creditors.

[22] Ministry of Finance, Government of India, The Report of the Bankruptcy Law Reforms Committee, Volume I: Rationale and Design, supra note 4.
[23] Ministry of Finance, Government of India, *Report on Rehabilitation of Sick Industrial Companies* (2001).
[24] The Insolvency and Bankruptcy Code, 2016, supra note 16.
[25] *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, supra note 19*
[26] Ministry of Corporate Affairs, Government of India, *Report of the Insolvency Law Committee* (2020).

**5. Creditor Rights vs Rescue Culture**

Creditor rights have a valid and essential position in insolvency law on a normative level. Any insolvency regime that does not safeguard the expectations of creditors will threaten to impair commercial certainty, alter lending incentives and create a lack of confidence in the legal system which regulates business distress. Creditors, especially financial creditors, are at a great economic risk and thus have a great case in decision making on matters of resolution, restructuring and liquidation. This stance can also be supported by the fact that contractarian explanations of insolvency law conceptualize insolvency as a collective mechanism which reflects the bargain that creditors would hypothetically arrive at to prevent inefficient individual enforcing.[27] In that light, the reinforcement of creditor rights in the contemporary insolvency regimes can be perceived not as an anomaly, but rather as a calculated legal reaction to the shortcomings of the previous debtor-protective, or institutionally fragmented, models.[28]

The tension is not just theoretical. It is indicative of a larger structural contradiction of contemporary insolvency law. On the one hand, the rescue culture suggests that the insolvency law ought to be relocated out of the target-oriented debt-enforcement reasoning and be addressed in the context of the survival of viable enterprise. Creditor-focused systems of governance, on the other hand, still consider insolvency as a location where financial discipline, repayment priority and commercial judgment still take a leading role. This paradox indicates that rescue culture might be functioning on a legal framework the orientation of which has not been completely changed. The legislation can be language of restructuring, yet the system of institutional distribution of power can reproduce a recovery-driven system.

The implications of this structural contradiction on the concept of rescue as such are significant. When rescue is considered as a success where liquidation is avoided, then the concept becomes too formal and loses much of its normative power. A business can exist legalistically but have a disastrously weak business model, stakeholder relations or productive succession. On the contrary, when rescue is conceived as needing a significant rehabilitation of the business then the law has to be considered not merely in terms of its ability to solve insolvency effectively, but also in terms of its ability to conserve the circumstances of actual commercial renewal. It is the difference between the two understandings that the current article revolves around. And it is this disjuncture between formal resolution and substantive rescue that shows the ongoing power of creditor primacy.

This tension can be seen in the Indian insolvency reform itself. Previous reform thinking on company law and business restructuring appreciated that the treatment of corporate distress could not be limited to terminal closure or delayed liquidation.[29] It recognized the necessity of a more commercially responsive model that could deal with viability, governance and restructuring in a holistic fashion.[30] Similarly, sector reform, with reference to rehabilitation of smaller distressed firms, made it clear that the maintenance of economically functional business units was more important than the treatment of distress as the equivalent of eventual exit.[31] These reform impulses suggest that rescue has traditionally been linked with wider economic and institutional issues. But the convergence of insolvency law into a time-limited, creditor-dominated procedure has implied that such broader issues are refracted through the prism of financial creditor control.

[27] Riz Mokal, 'The Authentic Consent Model: Contractarianism, Creditors' Bargain, and Corporate Insolvency Law' (2001) 21 *Legal Studies* 400.
[28] Ministry of Corporate Affairs, Government of India, *Report of the Expert Committee on Company Law* (2005).
[29] *Ibid.*
[30] Reserve Bank of India, *Report of the Working Group on Rehabilitation of Sick SMEs* (RBI 2012).
[31] *Ibid.*

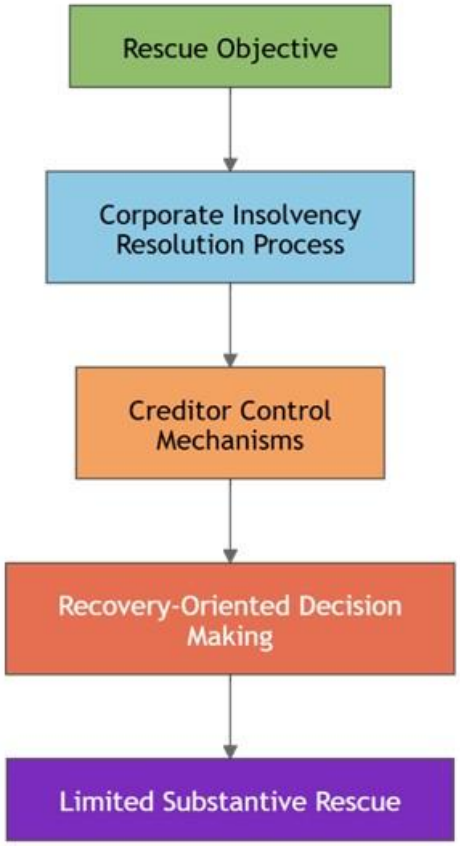


Figure 4. Structural Tension Between Rescue Culture and Creditor Dominance

The same dynamic is further pointed out in judicial interpretation. In appreciating the intent of the Insolvency and Bankruptcy Code, the Supreme Court has highlighted the need to solve, rejuvenate and carry on the corporate debtor as a going concern.[32] Such recognition is very important since it goes to confirm that rescue is not foreign to the law, but it is implicated in the purpose of the statutory insolvency law. Simultaneously, though, the practical application of the framework still serves to privilege creditor choice in deciding whether or how resolution should be effected. The outcome is a model where the rescue process is legally recognized, but institutionalized through actors who do not have necessarily coextensive incentives with the overall societal and economic goals with which rehabilitation is linked.

Corporate insolvency law can be procedurally contemporary yet normatively skewed in such a structure. Productivity is enhanced, schedules are adjudicated and formal rates of resolution can be elevated, but the profound aim of insolvency law as a process of corporate rehabilitation through balanced means has not been fully fulfilled.

To have a more conceptually consistent conception of insolvency law, a distinction between creditor participation and creditor supremacy would then be necessary. The latter is required to fulfill the legitimacy, predictability, and commercial realism, the latter could lead to the subordination of rescue to the logic of repayment. This difference is critical since the effectiveness of rescue-based regime cannot be determined merely through the effectiveness

[32] *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 SCC 17.

of creditors to recover more effectively than in the antecedent regimes. It must also be evaluated on the basis of whether the law establishes a framework through which viable firms can be rehabilitated in a way that takes into consideration the best interest of wider stakeholders and maintains the larger economic value of enterprise continuity.

In the following part, then, the contribution of this tension to being strengthened, sometimes lost, in the broader chain of regulation transformation by which the law of insolvency has been modernized, rationalized and assessed is considered.

**6. Regulatory Transformation and Its Limits**

The change in the liquidation to rescue, and the consequent increase in creditor-focused resolution is not explicable without the broader context of regulatory transformation which has transformed modern insolvency law. Reform in insolvency today has not simply changed substantive rules; but has restructured the institutional logic by which corporate distress is managed. By this, regulatory transformation means a more general movement towards codification, procedural rationalization, professionalization, and performance-oriented governance. The contemporary regime of insolvency can thus be viewed not merely as a juridical reaction to the collapse of business enterprises, but rather as a component of a broader regulatory initiative, designed to promote efficiency, predictability and commercial discipline.[33]

In this new paradigm, the insolvency law is being measured more in terms of speed of resolution, recovery rates, certainty in the process and coordination by institutions. These indicators have assumed centre stage in terms of measuring reform success and this has been so in jurisdictions that are aimed at modernizing their business environment and enhancing investor confidence.[34] Such regulatory imagination: an effective system of insolvency is likely to lessen uncertainty, to save value, and to promote the stability of the credit markets. In this sense, insolvency law becomes a tool of economic regulation, not only intended to respond to corporate distress on an individual basis, but also to achieve the general credibility of the market structure.

This change has certainly brought about significant benefits. The shift to a more consolidated and time-constrained insolvency regime has helped to deal with most of the institutional inefficiencies of older fragmented systems. Increased procedural transparency, the existence of specialized adjudicatory institutions, and timetables have rendered the insolvency law more consistent and operationally efficient. Furthermore, the regulatory focus on resolution instead of delay has helped to strengthen the notion that insolvency needs to be treated as an issue of organized intervention, instead of gradual degradation. The developments are a great improvement to the previous models whereby legal fragmentation and institutional weakness tended to erode creditor recovery as well as the potentiality of corporate rehabilitation.

Nonetheless, regulatory change has important conceptual constraints, as well. A model structured largely in terms of efficiency and institutional performance as a measure can mask more fundamental normative issues relating to the real functions of insolvency law. Success in a procedure does not necessarily imply success in a substantive fairness and modernization of an institution does not necessarily imply that rescue is being achieved in any meaningful sense. The growing propensity to assess insolvency regimes by managerial and performance-related standards, can in fact, reduce the scope of legal inquiry by emphasizing that which can be measured over that which is normatively significant.

**Table 2. Traditional Insolvency Framework and Modern Regulatory Transformation**

[33] Ross P Buckley, 'Reconceptualizing the Regulation of Global Finance' (2016) 36(2) *Oxford Journal of Legal Studies* 242.
[34] World Bank, *Doing Business 2020: Comparing Business Regulation in 190 Economies* (World Bank 2020).

| Aspect | Traditional Framework | Modern Insolvency Framework |
|---|---|---|
| Structural Design | Fragmented and forum-based | Consolidated and code-based |
| Institutional Character | Delayed and dispersed | Time-bound and professionally administered |
| Primary Orientation | Liquidation and debt enforcement | Resolution, value maximization, and restructuring |
| Performance Measure | Procedural completion | Speed, recovery, and institutional efficiency |
| Normative Limitation | Weak rescue capacity | Rescue recognized, but constrained by creditor dominance |

This weakness is most noticeable when the language of modernization is viewed to suggest that the normative issues of insolvency law are already available. A state can be procedurally credible and still be structurally unbalanced. It can solve cases faster and still favor financially superior players. It can lead to market discipline and provide insufficient protection to the stakeholders whose interests are not institutionally decisive. Regulatory change in these situations enhances the management of insolvency without necessarily redefining the power allocation in insolvency. The outcome is an institutionally impressive yet normatively unfinished form of reform.

The boundaries of regulatory change also visible in how modern-day legal regimes are progressively borrowing ideas of wider areas of governance and regulation. New work in the field not directly dealing with insolvency doctrine reveals how contemporary legal regimes are commonly re-conceptualized by assuming new forms of governance, particularly those that focus on managerial control, institutional responsiveness, and adaptive regulation.[35] Even though such developments can make the legal system more responsive, they can also cause people to lose focus on structural inequalities that exist in the very legal process. This is to say that the law in the insolvency context may seem progressive as it is procedurally modern but the underlying tension between the rescue and creditor dominance is not fully covered.

The current article thus addresses the problem of regulatory transformation as an actual accomplishment as well as a location of high apprehension. It is an accomplishment as it has taken insolvency law out of the inefficiencies of the older systems which were viewed as disjointed and offered a more consistent framework to deal with corporate distress. However, it is also an area of concern since the modernisation of the insolvency governance may give an illusion of balance without necessarily addressing the substantive imbalance between rescue-based goals and the control that is focused on creditors. Whether regulatory reform has taken place is not the main issue but whether that reform has changed the normative identity of the insolvency law under it as fundamentally as it has changed its institutional design.

Based on this, the importance of regulatory change is not just in its change, but also in what has not been changed. Although contemporary insolvency regimes are quicker, more organized, and more professionally managed than their counterparts, they could still be driven by a logic that enshrines recovery over rehabilitation. This implies that not only can the existing regime be assessed as a success of legal modernization, but also as a framework where internal tensions are not dealt with. The next section thus summarizes the main findings of the article and

[35] *Supra Note 33.*

draws up the main implications of this tension to the future of corporate insolvency law.

**7. Findings and Critical Analysis**

The discussion conducted in this paper confirms that the modern law of corporate insolvency has gone through a major, yet not an absolute change. The replacement of liquidation by resolution is a fact on the plane of statutory design, judicial rhetoric and reform discourse, but the replacement has not completely eclipsed the structural centrality of creditor control. What is achieved is a contemporary insolvency system that formally supports the culture of rescue, but which in practice operates in a recovery-based institutional logic. In that regard, the current paper determines that development of the insolvency law is not a completed transition, but a continuous and unfinished process of reconstituting regulations.[36]

The initial conclusion of the article is that the culture of rescue has been integrated into formal architecture of insolvency law, but not achieved substantially. The current insolvency regimes do not follow the pattern that the failure of a corporation is to be followed by liquidation. Instead, they acknowledge that they can save viable businesses with organized resolution. However, the very presence of a rescue-based process does not guarantee the meaningful rehabilitation. As a matter of fact, it is the legal form of the resolution which is commonly kept alive, rather than the more complete economic and institutional content of rescue. This is a very important distinction. A framework can be not liquidated and yet fail to bring the business back in any real sense.

The second and more conclusive observation is that creditor rights remain to be the determinant of the practical orientation of the insolvency process in a stronger manner than the rescue-oriented goals. The existing framework provides financial creditors with a dominant position in the resolution of distress and this has the consequence of aligning the results more closely with logic of repayment, commercial risk evaluation and recovery of value. This does not imply that creditor involvement is unwarranted, quite the contrary, creditor confidence cannot be eliminated in any viable insolvency regime. The issue is that the involvement of creditors is now creditor supremacy so that the future of the troubled organization is evaluated mainly on financial exposure, instead of a larger perspective of rehabilitation, continuity and distributive fairness.

The third result is that regulatory change has been more apparent in the procedural modernization than in normative recalibration. Modern insolvency law is admittedly more systematic, consistent and temporal in nature compared to the disjointed frameworks that it has replaced. This is a true legal and institutional success. Nevertheless, the article concludes that modernization has primarily contributed to the improvement of administration of insolvency as opposed to the total re-defining of its normative purpose. The system is more efficient and efficiency cannot be equated to balance. Even a framework in which the law has been developed in a sophisticated manner can still be normatively narrow in view as long as it still favors recovery in its effective organizing principle as opposed to revival.

The fourth observation is that the existing insolvency regime has a formal imbalance of discourse between formal rescue and functional creditor dominance. This is the critical conclusion of the article. The rescuing culture, the rights of creditors, and regulatory reform do not work as mutually harmonized part of the consistent legal order. Instead, they are in suspense. Rescue provides the legitimizing language of the modern regime, creditor rights form the operative core of the modern regime, and regulatory transformation provides it with procedural sophistication and institutional credibility. The challenge is that these three components do not necessarily move in the same way. In the case where rescue is normatively invoked but institutionally constrained, the outcome is a framework which seems rehabilitative in appearance and selectively recovery-based in substance.

[36] Ministry of Corporate Affairs, Government of India, *Report of the Insolvency Law Committee on Cross Border Insolvency* (2018).

**Table 3. Core Findings of the Study**

| Dimension | Finding | Critical Implication |
|---|---|---|
| Rescue Culture | Formally embedded in insolvency design | Substantive rehabilitation remains limited |
| Creditor Rights | Structurally dominant in decision-making | Recovery logic outweighs revival logic |
| Regulatory Transformation | Strong procedural modernization | Normative rebalancing remains incomplete |
| Overall System | Hybrid rather than fully transformed | Rescue, creditor control, and reform remain in tension |

When combined these results will establish a bigger analytical conclusion. The modern insolvency system cannot be characterized as either a creditor-enforcement regime or an entirely implemented rescue regime. It can be more appropriately thought of as a transitional system, a system that has outgrown its formal liquidation but has not yet quite reorganized the distribution of power and purpose in the insolvency law. The article thus opposes the two extremes: it opposes the opinion that the culture of rescue is just a form of symbolism, but it also opposes the belief that the contemporary framework has already managed to attain a stable compromise between rehabilitation and creditor protection.

This synthesis lends direct support to the main argument of the article, which is that the reconceptualisation of corporate insolvency law cannot be complete where rescue culture is exercised in a framework where the rights of creditors have a decisive operational primacy and regulatory change is quantified primarily in terms of the performance of procedures. A truly balanced insolvency model would entail effective institutions, credible creditor involvement, and something more substantive than that: a commitment to enterprise survival that is stakeholder-sensitive, normatively oriented in its objectives of business continuity. The latter segment thus transitions the diagnosis to prescription by establishing a re-calibrated framework of aligning rescue, creditor protection, and regulatory legitimacy in a more consistent fashion.

**8. Recommendations and Conclusion**

The discussion evolved in this article shows that the modern system of corporate insolvency law represents a significant yet partial change. The shift in the liquidation into rescue has changed the formal vocabulary of the law, institutional framework, and the legislative focus of insolvency governance. This shift has not however completely overturned the structural primacy of creditor decision-making. Modern insolvency regime is thus not one that can be viewed as an entirely accomplished rescue system. Instead, it is a hybrid form whereby the status of the rescue culture is formally established, the centrality of the rights of creditors is operationally central, and the procedural efficiency has been improved by the regulatory transformation without having entirely to address underlying normative conflicts.

Considering this, the initial suggestion which is promoted in this article is that the purposes of insolvency law need to be more clearly defined and more coherent. A rescue-based structure cannot be judged only based on the capability of escaping liquidation or providing a quicker solution. It must also be measured by whether it establishes significant circumstances of the survival of viable businesses, the survival of productive economic life and the reasonable accommodation of competing stakeholder interests. The legal formulation of rescue should thus go beyond a more procedural interpretation to adopt a more substantive rehabilitation explanation.

Second, creditor participation must be maintained, but moderation of creditor supremacy. It is undisputed that

financial creditors are at the heart of any successful insolvency regime and their trust is essential to the operation of credit markets. But a framework in which near-exclusive decision-making power is vested in creditor hands will run the risk of defining rescue to suit recovery needs in the best way possible. A less lopsided regime would maintain the commercial realism of the creditor participation but at the same time see to it that the larger goals of enterprise continuity and fair resolution are not reduced to a mere secondary consideration to the logic of repayment.

Third, reformative assessment of insolvency must include normative standards and performance of procedures. The modern insolvency legislation is usually evaluated in terms of timelines, recovery rates, and efficiency of administration. Though these are valuable signs of institutional effectiveness, they themselves are not quite enough measures of legal success. A truly adult insolvency system should also be evaluated on its fairness, balance, inclusiveness of the stakeholders, and how much it substantively implements the ideal of rescue. In the absence of such a re-evaluative focus, regulatory change can still result in procedurally advanced systems that have not yet been normatively advanced.

Fourth, more focus should be on the role of non-dominant stakeholders in the insolvency framework. The concept of rescue culture cannot be credible in the sense that it will not be concerned about the interests of those who have a strong stake in the insolvency process but one whose impact on the results is minimal. A context sensitive regime would not abolish commercial hierarchy, but it would take note of the fact that insolvency law does not merely have a coordinated enforcement of financial claims as a more restricted economic and institutional role. Enhancing the normative location of such stakeholders would help in achieving a more balanced and valid restructuring framework.

These suggestions lead to a more general reconceptualisation of the law of corporate insolvency. The key issue is not whether insolvency law need to secure creditors or rescue; both should be done. The actual question is in the way these goals are prioritized, balanced and institutionalized. A new insolvency regime must not impose a two-sided decision of efficiency versus fairness, recovery versus rehabilitation. Rather, it must attempt to incorporate these issues into a more integrated legal regime that appreciates insolvency as an economic governance, distributive implication, and preservation of enterprises.

The article thus finds that the culture of rescue must continue to be one of the key aspirations of modern insolvency law, but must be backed by legal frameworks that are able to provide rescue in a real substantive sense. The prospect of rescue will not be entirely achieved as long as the rights of creditors have the overarching decisive operational primacy, and the measure of regulatory transformation is the success of procedural success. It does not mean that a more balanced insolvency framework will need to discard protection of creditors but should be incorporated into wider framework of normative commitment to business continuity, fair participation, and context sensitive legal design.

Finally, the redefinition of the corporate insolvency law should be undertaken with the knowledge that insolvency is not technically a financial solution. It is a legal reaction to corporate distress, which creates confidence in the market, reallocates economic risk, and defines the destiny of productive enterprise, as well as the normative priorities of the legal system itself. These functions can only be performed more efficiently by a rescue oriented insolvency regime that goes beyond the formal restructuring and adopts a more balanced relationship between the rescue culture, creditor rights, and regulatory legitimacy.