
CODE OVER CAPITAL: REIMAGINING DATA AS AN ASSET UNDER INDIA'S INSOLVENCY LAW

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ABSTRACT

In the modern digital economy, data is no longer a peripheral by-product of online activity but a core commercial asset that drives revenue, innovation, and enterprise valuation. From user analytics and behavioural insights to AI training datasets and proprietary algorithms, data forms the backbone of contemporary business models. Yet, India's insolvency regime, governed by the Insolvency and Bankruptcy Code, 2016, does not formally recognise data as a distinct or monetisable asset class. This omission creates a legal vacuum, particularly evident in recent tech insolvencies such as GoMechanic and the financial restructuring efforts surrounding Byju's, where high-value data assets were neither properly valued nor protected during insolvency proceedings.

This paper examines the systemic risks posed by this gap, ranging from under-recovery by creditors to privacy violations and argues for urgent legislative and procedural reform. Drawing on comparative insights from the United States and the United Kingdom, and examining the implications of India's Digital Personal Data Protection Act, 2023, it proposes a structured approach to recognising, preserving, and responsibly monetising data in the resolution and liquidation processes under Indian law. By reimagining the IBC to include digitally stored commercial data, the paper aims to align insolvency practice with the realities of a data-centric economy.

Keywords: Insolvency And Bankruptcy Code, Data as an Asset, Digital Economy, Tech Insolvencies, Intangible Assets, Digital Personal Data Protection Act.

I. Introduction

The foundations of business value have shifted significantly. Where companies once relied on physical infrastructure and manufacturing capital, they now depend on the data they collect, generate, and control. In industries such as advertising, e-commerce, education, and mobility services, data has emerged as a central driver of how firms compete, innovate, and scale. Platforms like Twitter and TikTok use behavioural data to personalise user experiences and increase engagement, turning user interactions into targeted advertisements. EdTech companies such as Byju's rely on student performance, engagement patterns, and feedback loops to improve learning outcomes and grow their user base.¹

Despite this transformation, India's insolvency framework does not reflect the growing importance of data. The Insolvency and Bankruptcy Code, 2016 (IBC), remains focused on tangible and financial assets.² It does not expressly acknowledge data as a distinct or valuable asset class. In practice, data is often grouped with goodwill or other intangibles, if it is considered at all. This lack of clarity poses practical challenges for resolution professionals, creditors, and regulators. It also raises concerns around data privacy, continuity of services, and the loss of commercially valuable information during insolvency.

The issue becomes even more concerning when it involves technology startups or platform-based businesses. GoMechanic, for example, built a large part of its valuation on predictive analytics and customer insights but received little attention for how that data would be handled after its collapse.³ Byju's has similarly come under scrutiny, not only for its financial challenges but also for the uncertainty regarding how student data will be safeguarded in the event of restructuring or insolvency.⁴

Other jurisdictions are moving ahead in this area. In the United States, bankruptcy courts have recognised customer databases and user information as assets that may be transferred during insolvency proceedings. These transactions are often overseen by the Federal Trade

¹ Forbes India Staff, *Byju's App Self-Learns Patterns as Students Spend More Time on It*, *Forbes India* (Oct. 12, 2020), <https://www.forbesindia.com/article/one-ceo-club/byjus-app-selflearns-patterns-as-students-spend-more-time-on-it/62601/1>.

² Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India).

³ Nikhil Patwardhan & Debangana Ghosh, *GoMechanic fraud: How chasing growth at all costs brought down a rising startup*, (2023), <https://www.moneycontrol.com/news/business/startup/fraud-rocks-gomechanic-how-chasing-growth-at-all-costs-brought-down-one-of-india-incs-rising-startups-9890781.html>.

⁴ Indranil Sarkar & Arpan Chaturvedi, *Once India's biggest startup, Byju's faces insolvency proceedings*, (2024), <https://www.reuters.com/technology/indias-companies-tribunal-admits-byjus-insolvency-process-2024-07-16/>.

Commission to ensure compliance with privacy regulations.⁵ In the United Kingdom, structured databases are treated as intellectual property and are protected and transferrable under insolvency law.⁶ India, by comparison, lacks any formal legal or regulatory framework for the treatment of data assets during insolvency. The Insolvency and Bankruptcy Board of India (IBBI) has not issued any guidance on this matter.

Recognising data as a critical business asset is no longer a choice but a legal and economic necessity. As value creation shifts from physical capital to information-driven models, India's insolvency regime must evolve to remain relevant. Incorporating data into the asset pool during both resolution and liquidation is essential to protecting stakeholder interests and ensuring fair value recovery. Achieving this will require targeted legislative amendments, training for professionals handling insolvency, and clear procedures for identifying and managing digital assets. Without such reforms, India risks undervaluing its most innovative sectors and leaving critical resources unaccounted for during insolvency proceedings.

II. Understanding Data as an Asset

The foundations of business value have shifted. Where companies once depended on physical infrastructure and manufacturing capital, they now rely mostly on the data they collect, organize, and control. Data has emerged as a core driver of competitive advantage across industries like advertising, e-commerce, education, and mobility. Platforms such as Twitter and TikTok turn user behavior into personalized content and ad revenue. Likewise, EdTech firms like Byju's use student interaction patterns, quiz results, and app usage to refine content and broaden their reach.

Despite this shift, Indian insolvency law has not kept pace. The Insolvency and Bankruptcy Code, 2016 does not clearly classify data as an asset and offers no guidance on handling digital assets during resolution or liquidation.⁷ As a result, data often forms part of vague categories like goodwill or intangible assets, creating confusion for resolution professionals, creditors, and regulators. This ambiguity can disrupt service continuity and open the door to privacy violations.

⁵ Federal Trade Commission, *FTC Seeks Protection for Personal Customer Information in Borders Bankruptcy Proceeding*, <https://www.ftc.gov/news-events/news/press-releases/2011/09/ftc-seeks-protection-personal-customer-information-borders-bankruptcy-proceeding>.

⁶ Copyright and Rights in Databases Regulations 1997, SI 1997/3032 (UK). The Copyright and Rights in Databases Regulations, (1997).

⁷ See *supra* note 2.

This issue becomes particularly urgent for tech-driven companies. During GoMechanic's insolvency process, despite its rich user database and service analytics, there was no clear plan to preserve or monetize that data.⁸ Byju's has faced similar scrutiny, with stakeholders raising concerns about service disruptions, asset freezes, and a lack of clarity on how information platforms will be managed if the company enters restructuring or liquidation.⁹

Globally, courts are starting to recognize digital assets in insolvency. In the United States, bankruptcy courts have permitted the sale of customer data with strict privacy safeguards.¹⁰ In the United Kingdom, structured databases are recognized as intellectual property and form part of the insolvency estate.¹¹

Academic research in India highlights the issue further. A study of a debt-laden Indian EPC firm found that intellectual property, human capital, and intangible assets were crucial in determining true enterprise value despite minimal physical assets.¹² Another analysis of intellectual property valuation under IBC noted that proper recognition of intangible assets significantly enhances recovery outcomes.¹³

India lacks any equivalent regulatory or judicial guidance on data as an insolvency asset. Unless the law evolves, significant commercial value rooted in digital assets will remain unrecognized. Reform is essential to align the insolvency framework with the realities of the digital economy and to support innovation-led industries.

III. The Blind Spot in Indian Insolvency Law

In today's digital economy, where data often forms the core of a business's value, the silence of Indian insolvency law on this issue is striking. The Insolvency and Bankruptcy Code, 2016, which was enacted to create a time-bound and efficient mechanism for corporate resolution and liquidation, does not formally recognise data or other intangible digital assets as part of the debtor's estate.¹⁴ This legal gap is particularly visible in Sections 18 and 36 of the Code.

⁸ See supra note 3.

⁹ Byju's insolvency case fans fears of employees, REUTERS, <https://economictimes.indiatimes.com/tech/technology/byjus-insolvency-case-fans-fears-of-employees/articleshow/112705336.cms>.

¹⁰ *In re Toysmart.com, LLC*, No. 00-13995-CJK (Bankr. D. Mass. 2000).

¹¹ See supra note 6.

¹² Sarojkant Singh, *Valuation of a Financially Stressed EPC Company with Intangible Assets and Negligible Physical Assets - Case Study of an EPC Company in NCLT Proceedings*, EUR. ECON. LETT. (2024).

¹³ Angel Shaji & M. L. Shilpa, *A critical analysis onto the conundrum of valuation of IP assets as part of liquidation process under IBC, 2016*, 7 MULTIDISCIPL. SCI. J. (2025).

¹⁴ See supra note 2.

Section 18 outlines the duties of an Interim Resolution Professional (IRP), including the responsibility to take control and custody of all assets belonging to the corporate debtor.¹⁵ However, “assets” is typically interpreted narrowly, referring only to tangible and financial items such as land, buildings, securities, bank balances, and receivables. There is no specific mention of datasets, customer records, behavioural analytics, or software-integrated systems the very lifeblood of digital-first companies. Section 36, which governs the liquidation estate, likewise relies on conventional definitions of property and makes no express reference to intangible digital assets such as databases, algorithms, or data lakes.¹⁶

This absence of clarity creates real uncertainty. Resolution professionals may not know whether they can identify, preserve, or transfer valuable datasets. Creditors stand to lose out on important sources of recovery when digital assets are overlooked, misclassified as generic “intangibles,” or left unsecured. In many cases, such digital resources remain unvalued and unexplored, even though they often lie at the very heart of a business.

Indian courts have stepped around this issue to some extent. In *SBI v. Jet Airways (India) Ltd.*, the NCLT and later the Supreme Court focused on aircraft, office premises, and financial dues, with no inquiry into the valuable customer or operational data that Jet accumulated.¹⁷ Despite their commercial significance, data assets received no formal mention in judgments or resolution plans. Meanwhile, in *State Bank of India v. Jet Airways*, the NCLT granted the resolution plan while addressing moratorium effects but again made no consideration for digital datasets.¹⁸

Other jurisdictions have handled this better. U.S. bankruptcy courts have treated customer lists, user accounts, and marketing databases as proper transferrable assets. The Federal Trade Commission has further stepped in to ensure data privacy during these transfers.¹⁹ In the U.K., structured databases qualify as intellectual property under the Copyright and Rights in Databases Regulations 1997, ensuring proper attention in insolvency processes.²⁰

The stakes are even more critical for startups and tech-led companies. Their value lies not in real estate or machinery but in the datasets they collect and analyse. If the insolvency

¹⁵ INSOLVENCY & BANKRUPTCY CODE, 2016, *supra* note 2, § 18.

¹⁶ INSOLVENCY & BANKRUPTCY CODE, 2016, *supra* note 2, § 36.

¹⁷ *SBI v. Jet Airways (India) Ltd.*, 2019 SCC OnLine NCLT 23875..SCC Online NCLT, *SBI v. Jet Airways (India) Ltd.*, 23875 2019.

¹⁸ *Id.*

¹⁹ See *supra* note 5.

²⁰ See *supra* note 6.

framework continues to recognise only traditional assets, such businesses cannot receive fair and complete evaluation. This could reduce investor interest in India's digital economy.²¹

This is more than a technical oversight. It reflects a deep rift between the law and the evolving nature of 21st-century businesses. To remain future-ready and equitable, the IBC must expand its scope to include digital data. Only then can it unlock the true value of modern enterprises and ensure that innovation-driven sectors have confidence in the recovery process.

IV. Judicial and Regulatory Silence

Despite the growing importance of data in the modern economy, Indian insolvency jurisprudence remains largely silent on how such digital assets should be treated during resolution and liquidation. While courts and tribunals have occasionally acknowledged the relevance of intangible assets, particularly intellectual property, they have yet to engage with data as a distinct and monetisable category meaningfully. This absence creates a critical gap in India's evolving insolvency landscape.

Consider the Jet Airways resolution. The proceedings focused largely on traditional value indicators such as aircraft, brand equity, and landing rights. However, the airline also held years of customer data, including frequent flyer profiles, purchase patterns, and operational analytics. These datasets, if preserved and evaluated appropriately, could have materially enhanced the value of the resolution plan.²² Yet there is no record of any formal recognition of this data in the plan approved by the Committee of Creditors or within the National Company Law Tribunal (NCLT) orders.²³ The omission points to a missed opportunity in incorporating digital value into insolvency outcomes.

A similar oversight can be observed in the insolvency proceedings of Videocon Industries. The company operated in data-rich sectors such as consumer electronics and telecommunications. It likely held substantial customer databases, product usage data, and supplier information. Nevertheless, neither the resolution application nor the liquidation reports meaningfully

²¹ Chandra Shekhar, *International Journal of Research Publication and Reviews Bailing Businesses , Boosting Banks : The Evolution of Insolvency and Bankruptcy Law in India*, 4908 (2025).

²² Agrud Partners, *AIRLINE INSOLVENCY IN INDIA: LEGAL GAPS IN LESSORS' RIGHTS AND PASSENGER DATA PROTECTION*, LEGAL 500, [https://www.legal500.com/developments/thought-leadership/airline-insolvency-in-india-legal-gaps-in-lessors-rights-and-passenger-data-protection/#:~:text=The IBC applies to corporate,Convention \(\"CTC\"\)](https://www.legal500.com/developments/thought-leadership/airline-insolvency-in-india-legal-gaps-in-lessors-rights-and-passenger-data-protection/#:~:text=The IBC applies to corporate,Convention (\).

²³ PTI, *Jet Airways insolvency resolution journey*, <https://economictimes.indiatimes.com/industry/transportation/airlines/-aviation/jet-airways-insolvency-resolution-journey/articleshow/83745153.cms?from=mdr>.

addressed the treatment, valuation, or transfer of such data.²⁴ The NCLT did not raise questions regarding data assets, and the Resolution Professional's reports were silent on any protocols for securing or monetising these digital resources.

Contributing to this gap is the regulatory inaction by the Insolvency and Bankruptcy Board of India (IBBI). While the Board has issued guidance on the valuation of physical assets and intellectual property rights, it has not provided any substantive direction on how data should be identified, safeguarded, or monetised during the Corporate Insolvency Resolution Process (CIRP)²⁵. This regulatory silence is particularly problematic in cases like GoMechanic or Byju's, where a significant portion of enterprise value is tied to behavioural data, user preferences, and predictive analytics. Without guidance, resolution professionals often operate with uncertainty, limiting their ability to realise the full value of these businesses.

The consequences of this vacuum are tangible. In the absence of clear instructions, Resolution Professionals may choose to ignore data altogether to avoid violating privacy laws or handling consent-related complications. As a result, datasets that could generate substantial value either deteriorate or are discarded entirely. This not only diminishes recovery potential for creditors but also discourages innovation in how insolvency resolutions are structured. Prospective buyers may lose interest when critical data assets are neither clearly classified nor legally transferrable. Moreover, improperly managed data raises the risk of loss, theft, or misuse, leading to further legal liabilities.²⁶

Legal scholars and practitioners have consistently raised concerns about this oversight. Many argue that in the age of the platform economy, data cannot be treated as an incidental asset. It must be recognised as a core commercial resource that deserves the same legal protections and commercial considerations as physical infrastructure or financial claims.²⁷

Until courts and regulators explicitly recognise data as a recoverable and tradable asset within

²⁴ Nishanthini Ravichandra Rao & Jayendra Kasture, *Sectoral insights into corporate insolvency: a comprehensive analysis of Corporate Insolvency Resolution Process (CIRP) outcomes in India*, INTERNATIONAL JOURNAL OF LAW AND MANAGEMENT (2024), <https://doi.org/10.1108/IJLMA-08-2024-0291>.

²⁵ THE RESOLUTION PROFESSIONAL PREPARING FOR NEW AGE IBC, 05 INDIAN INST. INSOLV. PROF. ICAI (2025).

²⁶ PTI, *Insolvency Cases: After Missed Timelines in 2021, Process Likely to Speed up with improved infrastructure*, <https://economictimes.indiatimes.com/news/economy/policy/insolvency-cases-after-missed-timelines-in-2021-process-likely-to-speed-up-with-improved-infrastructure/articleshow/88609929.cms?from=mdr>.

²⁷ Varun Chikhale, *Grounded Resolutions: Lessons from Jet Airways and SBI vs. Jalan-Fritsch on the IBC's Turbulent Path*, <https://ibclaw.blog/grounded-resolutions-lessons-from-jet-airways-and-sbi-vs-jalan-fritsch-on-the-ibcs-turbulent-path-by-varun-chikhale/>.

the insolvency framework, India's corporate rescue ecosystem will remain incomplete. The cost of this omission is not hypothetical. It is reflected in reduced recoveries, lost investor confidence, and a legal regime that falls short of meeting the demands of a data-driven economy.

V. A New Approach: Recognising Data under IBC

To bridge the growing gap between insolvency law and our data-driven economy, India must formally recognise data as an asset class under the Insolvency and Bankruptcy Code, 2016. That starts with updating Sections 18 and 36, the provisions that define assets within the control of a Resolution Professional and those included in the liquidation estate. As things stand, both sections list only physical property and financial instruments, without any clear mention of datasets, digital records, or algorithm-derived insights.²⁸ Adding language such as “digitally stored commercial data” or “intangible data assets” would create legal certainty and make our laws more aligned with global business norms.

However, amending the law is only the first step. Resolution Professionals today are trained to handle land, buildings, cash, and securities, but are not equipped to deal with valuable datasets. Preserving transaction histories from fintech platforms and user engagement logs from educational apps calls for a different skill set. These data types can deliver revenue long after the insolvency process begins, but only if they are handled carefully and strategically.²⁹

We also need targeted protocols based on industry. For healthcare, patient records involve high confidentiality and strict privacy rules. Logistics platforms, on the other hand, generate aggregated route and delivery data that can be commercialised once anonymised properly. So issuing sector-specific rules through regulators in coordination with the Insolvency and Bankruptcy Board of India will help make sure data and its handling, valuation, and safe transfer is done right.³⁰

Then there is the Digital Personal Data Protection Act, 2023. It sets rules for consent, minimal data use, and purpose limitation. Resolution Professionals acting as temporary guardians of personal data must follow these rules. Selling or transferring data without proper consent could lead to strong penalties or legal action from individuals whose data is involved.³¹ This makes

²⁸ INSOLVENCY & BANKRUPTCY CODE, 2016. See *supra* note 2, §§ 18, 36.

²⁹ Adam Rajuroy, *Valuation Methods for Digital Data Assets* (2025).

³⁰ Velicheti Sri Harshith, Manaswini Duggineni & R S B Siva Harshit, *CLASSIFICATION OF DIGITAL ASSETS UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016*, VI 2080 (2016).

³¹ Digital Personal Data Protection Act, 2023, §§ 8–10, No. 22, Acts of Parliament, 2023 (India).

it imperative that IBBI coordinates its insolvency guidelines with the data protection law to avoid conflicts and to protect both business interests and individual rights.

On a practical level, every Corporate Insolvency Resolution Process should begin with a mapping of the company's data value chain. This would involve a team of data protection officers, digital forensics experts, and legal advisors who classify data into personal, anonymised, and analytical categories. Sensitive personal data would be anonymised where needed, and consent captured properly. Such a multidisciplinary, rights-compliant path safeguards asset value and limits legal exposure.³²

Finally, recognising data as a critical asset is about fairness to creditors. If a firm's strength lies in an AI algorithm trained on proprietary user data or in predictive analytics, but those assets go unvalued, creditors are the losers. Updating the IBC to treat data like any other asset will help unlock real value in insolvency cases, build investor confidence, and bring Indian insolvency law into step with modern economic reality.

VI. Conclusion

In today's economy, value is increasingly generated not through factories and machinery but through data, user behaviour, and digital footprints. However, India's insolvency regime has yet to reflect this transformation. The Insolvency and Bankruptcy Code, 2016, does not classify or regulate data as an asset, leaving a critical gap in both resolution and liquidation processes.

This paper has highlighted how Sections 18 and 36 of the IBC overlook a category of assets that is central to modern business models. It has shown that resolution professionals often lack the legal and institutional support needed to preserve, value, or transfer data. As a result, critical opportunities are lost in technology-driven insolvencies such as those of Jet Airways and GoMechanic. The continued silence from regulators like the Insolvency and Bankruptcy Board of India, along with the absence of judicial guidance, compounds this issue by leaving data in a legal grey area.³³

To address these gaps, the paper proposes reforms that are both practical and necessary. Recognising "digitally stored commercial data" under the IBC would enable a more accurate assessment of enterprise value and improve creditor recoveries. Training resolution

³² Atul Grover, *Data Driven IBC*, 46 (2023).data

³³ How Jet Airways, DHFL insolvency cases highlight gaps in IBC - Industry News | The Financial Express, <https://www.financialexpress.com/business/industry-how-jet-airways-dhfl-insolvency-cases-highlight-gaps-in-ibc-1805091/> (last visited Jul 13, 2025).

professionals in the management of digital assets, along with developing sector-specific protocols, would strengthen the operational effectiveness of insolvency proceedings. Aligning these changes with the Digital Personal Data Protection Act, 2023, would ensure that commercial interests are balanced with legal obligations and privacy safeguards.³⁴

India now stands at a decisive moment. As digital-first companies become more dominant across sectors, the failure to treat data as a core recoverable asset undermines not just insolvency outcomes but also investor confidence and broader economic resilience. Reforming the IBC to recognise and regulate data is no longer just a legal necessity; it is an essential step towards building a future-ready insolvency framework that serves the interests of all stakeholders.

³⁴ See *supra* note 22.