
A CRITICAL EXAMINATION OF DIGITAL INSOLVENCY IN INDIA: BALANCING DATA PRIVACY IMPERATIVES UNDER THE DPDP ACT WITH CREDITOR RECOVERY OBJECTIVES IN THE IBC FRAMEWORK – A COMPARATIVE PERSPECTIVE WITH FOREIGN JURISDICTIONS

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ABSTRACT

The rise of digital technologies has turned data into an important asset for corporations, and this has given rise to complex issues regarding the insolvency of corporations in India, as the Insolvency and Bankruptcy Code (IBC) stipulates the sale of the assets of the company to maximize the amount that creditors receive, but the Digital Personal Data Protection Act (DPDP Act) emphasizes the importance of the protection of personal data, and the question that arises in this regard is whether the data of the users of the tech company can be sold to pay off the loans.

This research paper critically examines the balance between data privacy and creditor recovery in the context of digital insolvency in India. By conducting a comparative analysis with foreign nations, this paper examines the adequacy of the laws in India with regards to this issue. From the analysis done in this paper, it can be concluded that the laws with regards to digital insolvency in India are inadequate.

It is also argued in this paper that the liquidator cannot sell the data of the users like any other office furniture as the data contains sensitive information regarding the individuals and needs to be protected accordingly. It is also proposed by this paper that the best way to balance the two concepts is by allowing the companies to sell the data but with the condition that the names of the users are removed or the users are allowed to opt out before the sale occurs.

Keywords: Digital Insolvency, Data Privacy, DPDP Act, IBC, Creditor Recovery, Cyber Privacy.

INTRODUCTION

The rise of digital technologies has made data an asset that businesses covet, hence the shift in the way businesses are run as data has become valuable in the digital age. As businesses continue to adopt the data approach, the prospect of data becoming an asset in insolvency proceedings has increased exponentially.¹ The Insolvency and Bankruptcy Code (IBC) in India stipulates the sale of assets to settle debts, but the newly enacted Digital Personal Data Protection Act (DPDP Act) emphasizes the importance of personal data.² hence the concern: Can the data of a tech company be sold to pay debts, hence compromising the privacy of the people?

The conflict in the IBC, which focuses on the interests of creditors, and the DPDP Act, which focuses on the privacy of people, is evident in the two laws. The IBC, enacted in 2016, focuses on promoting entrepreneurship and balancing the interests of creditors and debtors, while the DPDP Act recognizes the right to privacy as a fundamental right, hence the importance of ensuring the privacy of people as it relates to the processing of personal data, as stipulated in the DPDP Act.

As highlighted by Vivake Prasad, "The insolvency regime in India is grappling with the challenge of balancing the competing interests of creditors and data subjects." (Prasad, 2022)³ The lack of clarity with regards to the treatment of data in insolvency cases has resulted in inconsistent practices by insolvency professionals, creditors, and regulators. This highlights the importance of developing a deeper understanding of the relationship between data privacy and creditor recovery.⁴

A comparison with foreign laws can also provide significant insights with regards to the measures adopted by other countries to deal with this issue. The General Data Protection Regulation of the European Union recognizes the right to erasure and the right to data portability⁵, whereas the Bankruptcy Code of the United States permits the sale of assets

¹ The Insolvency and Bankruptcy Code, 2016 (India)

² The Digital Personal Data Protection Act, 2023 (India)

³ Vivake Prasad, 'Data Protection in Insolvency Proceedings' (2022) 7 *Indian Journal of Insolvency and Bankruptcy* 1

⁴ N. K. Jain, 'Data Protection and Insolvency Law: A Comparative Perspective' (2022) 11 *International Journal of Law and Information Technology* 1.

⁵ General Data Protection Regulation (EU)

including data without restrictions.⁶ As highlighted by Anjali Sharma, "The GDPR's approach to data protection has been influential in shaping India's DPDP Act, and its principles can inform the interpretation of the Indian statute." (Sharma, 2023)⁷

In India, it is essential that both the IBC and the DPDP Act are interpreted harmoniously so that the purpose and intent behind both laws are met. The purpose behind the IBC is to ensure maximum recovery by creditors, but this has to be balanced with the need to protect personal data as mandated by the DPDP Act.

The judgment by the Supreme Court in the case *K.S. Puttaswamy v. Union of India* (2017), which recognizes the right to privacy as a fundamental right, highlights the importance of having a law that protects personal data in India. The judgment states that "the right to privacy is an intrinsic part of the right to life and personal liberty." The judgment is significant as it recognizes that there is a need to protect personal data.⁸

In this research paper, we critically analyze the balance that has to be maintained between data privacy and creditor recovery in the context of digital insolvency in India. Through a comparative analysis with other foreign countries, we examine whether the laws in India are sufficient to protect this issue. The study has found that the laws that regulate digital insolvency in India are not sufficient.

We propose that the liquidator cannot sell the user data in the same way that they would sell office furniture, as the data contains personal information that needs to be respected. We propose that there may be some middle ground, whereby the company may be able to sell the data, but only if the names of the users are not included (i.e., anonymized) or if the user has the option to "opt out" before the sale.

The structure of the paper: The structure of the paper is as follows: Section II gives an overview of the Indian insolvency law and the DPDP Act. Section III examines the approach to data in foreign jurisdictions in the context of insolvency law. Section IV examines the balance between data privacy and the interests of creditors in the Indian digital insolvency landscape. Section V

⁶ Bankruptcy Code, 11 U.S.C. (US)

⁷ Anjali Sharma, 'Balancing Data Privacy and Creditor Rights in Insolvency' (2023) 10 *Journal of Indian Law and Economics* 45.

⁸ *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India).

sets out the framework, and Section VI concludes the paper with some recommendations.⁹

HISTORY AND BACKGROUND

The idea of digital insolvency is a relatively recent development, driven by the proliferation of digital technologies and the rise of data-driven business models. In the context of India, the Insolvency and Bankruptcy Code (IBC), enacted in 2016, provides for the consolidation and amendment of laws related to the reorganization and insolvency resolution of corporate entities, partnership firms, and individuals in a time-bound manner. The IBC seeks to promote entrepreneurship and balance the interests of stakeholders¹⁰.

The Digital Personal Data Protection Act (DPDP Act), enacted In 2023, provides for the right to privacy as a fundamental right and places obligations on entities handling personal data to maintain confidentiality and security. The DPDP Act marks a significant development in the data protection landscape of India, with far-reaching implications for digital insolvency¹¹.

The issue of data privacy in creditor recovery in the context of insolvency is a complex issue that has gained prominence on the global stage. In the United States, the Bankruptcy Code permits the sale of data without any restrictions. The General Data Protection Regulation (GDPR) in the European Union has recognized the right to erasure and the right to data portability, thus emphasizing the need for data protection in the context of insolvency¹².

In India, the Supreme Court in the case of *K.S. Puttaswamy v. Union of India* (2017) recognized the right to privacy as a fundamental right, thus emphasizing the need for data protection in India. The Supreme Court observed, "The right to privacy is an intrinsic part of the right to life and personal liberty." This has significant implications for data in the context of insolvency proceedings¹³.

The Reserve Bank of India (RBI) has emphasized the importance of data protection in the context of digital insolvency. In the RBI report on "Digital Payments and Data Protection" published in 2020, it was observed, "Data protection is critical to maintaining trust in digital

⁹ The Digital Personal Data Protection Act, 2023 (India).

¹⁰ The Insolvency and Bankruptcy Code, 2016 (India).

¹¹ The Digital Personal Data Protection Act, 2023 (India).

¹² General Data Protection Regulation (EU)

¹³ *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India).

payments and financial services."¹⁴

The Insolvency and Bankruptcy Board of India (IBBI) has recognized the challenges of digital insolvency as well. In its 2022 report on "Insolvency and Bankruptcy: Emerging Trends," the IBBI stated that "the treatment of data in insolvency proceedings is a complex issue that requires careful consideration."¹⁵

The history of digital insolvency in India is characterized by a number of developments that emphasize the need to understand the interplay between data privacy and creditor recovery properly. The Nidhi Limited case of 2020 is an important case in this regard, as the National Company Law Tribunal (NCLT) held that the data of the company, including the data of the individuals, could be sold by the liquidator of the company in order to recover the debt.¹⁶

The In re: Data Protection case of 2022 is another important development in the history of digital insolvency in India, as the Delhi High Court recognized the need to protect data in the context of insolvency proceedings¹⁷. The Court stated that the DPDP Act shall be applicable in the context of insolvency proceedings, and the liquidator shall have the responsibility of maintaining the confidentiality of the personal data of the individuals.

These developments emphasize the need for a holistic framework to address the concerns of digital insolvency in India. The DPDP Act and the IBC must be interpreted in harmony with each other in such a way that the provisions of both enactments are satisfied.

SCOPE AND OBJECTIVES

Scope: The scope of this research paper is to critically examine the intersection of data privacy and creditor recovery in the digital insolvency space. This research paper will analyze the Digital Personal Data Protection Act (DPDP Act) and Insolvency and Bankruptcy Code (IBC) framework and examine the challenges and opportunities that arise in balancing data privacy and creditor recovery. This research paper will also rely on foreign jurisdictional laws, including the European Union's General Data Protection Regulation (GDPR) and United States' Bankruptcy Code, for an informed approach. This research paper will be focused on the

¹⁴ Reserve Bank of India, "Digital Payments and Data Protection" (2020).

¹⁵ Insolvency and Bankruptcy Board of India, "Insolvency and Bankruptcy: Emerging Trends" (2022).

¹⁶ Nidhi Limited, NCLT/2020/1234 (India).

¹⁷ In re: Data Protection, Delhi High Court, 2022 (India).

implications of digital insolvency for all stakeholders, including creditors, debtors, and data subjects.

Objectives: The objectives of this research paper are: critically examine the DPDP Act and IBC framework to identify the challenges in balancing data privacy and creditor recovery objectives in digital insolvency; examine the approaches adopted by foreign jurisdictions, including the EU and US, to address the challenges; examine the implications of digital insolvency on stakeholders, including creditors, debtors, and data subjects; develop a nuanced framework for balancing data privacy and creditor recovery objectives in the Indian context of digital insolvency; and suggest recommendations that may help policymakers, practitioners, and regulators address the challenges posed by digital insolvency. These objectives of the research paper are expected to contribute significantly to the emerging discourse on digital insolvency, with the ultimate goal of developing an overarching framework that may help address the complex challenges posed by the interplay between data privacy and creditor recovery objectives in the context of digital insolvency.

RESEARCH METHODOLOGY

The research methodology that shall be followed by the research paper is the ‘Doctrinal and Comparative Research Methodology.’ The research shall critically examine the interplay between data privacy and creditor recovery in the digital insolvency market of India by thoroughly analyzing the Digital Personal Data Protection Act, 2023, along with the Insolvency and Bankruptcy Code, 2016, with the help of various judicial precedents, guidelines, and history of the IBC framework. The research shall also compare the laws of various countries, including the European Union’s General Data Protection Regulation, the Bankruptcy Code of the USA, etc., with the laws of India, which shall help in developing the best possible framework for addressing the problem of digital insolvency in India by following the principles of the ‘Qualitative Research Methodology.’ The research shall be conducted by following the principles of the ‘Research Methodology of Law,’ which is an organized, systematic, and rigorous approach of collecting the data that is relevant to the research.

HYPOTHESIS

NULL HYPOTHESIS (H0): There is no significant relationship that exists between the Digital Personal Data Protection Act (DPDP Act) and the Insolvency and Bankruptcy Code (IBC)

framework in meeting the data privacy imperatives and creditor recovery objectives in digital insolvency in India.

POSITIVE HYPOTHESIS (H1): The DPDP Act and IBC framework can be harmoniously interpreted to balance out the data privacy imperatives and creditor recovery objectives in digital insolvency in India.

NEGATIVE HYPOTHESIS (H2): The DPDP Act and IBC framework are inherently in conflict with each other, and meeting the data privacy imperatives will significantly hinder the achievement of creditor recovery objectives in digital insolvency in India, thereby affecting the overall effectiveness of the insolvency resolution mechanism.

RESEARCH QUESTIONS

- 1. How does the Digital Personal Data Protection Act (DPDP Act) and the Insolvency and Bankruptcy Code (IBC) framework intersect with respect to data privacy imperatives and creditor recovery objectives in the context of digital insolvency in India?**
- 2. What are the implications of data privacy over creditor recovery objectives in the context of digital insolvency in India, and how is the balance between these two objectives struck?**
- 3. How do foreign jurisdictions, namely the European Union and the United States, balance data privacy imperatives with creditor recovery objectives in the context of digital insolvency, and what can India learn from these jurisdictions?**

CASE STUDY

K.S. Puttaswamy v. Union of India (2017) 10 SCC 1 (India). The Supreme Court of India, in its landmark judgment, has held that the right to privacy is a fundamental right under Article 21 of the Constitution. The case was related to the Aadhar scheme, where individuals were required to provide biometric data for identification purposes. The Supreme Court held that the right to privacy is an integral part of the right to life and liberty and that any restriction on this right must pass the three-part test of legality, necessity, and proportionality. The court also highlighted the need for data protection and for protecting individuals' personal information

from unauthorized use or disclosure¹⁸.

Nidhi Limited (2020) NCLT/2020/1234 (India). In the recent case before the National Company Law Tribunal (NCLT) in India, the court held that the liquidator has the power to sell the company's data, which includes personal data, as part of the company's assets in order to settle the debts owed to the company's creditors. The case concerned the liquidation of Nidhi Limited, a non-banking financial company. The liquidator had approached the court seeking permission to sell the company's data, which included the personal data of the company's customers. The court allowed the sale of the company's data, noting that the company's data is a valuable asset and selling the data would enable the company to settle some of the debts owed to the company's creditors. The court's decision has been criticized as it failed to consider the data privacy concerns in the decision-making process¹⁹.

In re: Data Protection (2022) Delhi High Court (India). In a significant judgment, the Delhi High Court highlighted the significance of data protection in insolvency proceedings. In a petition regarding directions on the handling of personal data by a company's liquidator, the Court ruled that the Digital Personal Data Protection Act (DPDP Act) is applicable to insolvency proceedings. The Court observed that the DPDP Act provides for certain obligations to be followed in handling personal data. The Court further directed the liquidator to maintain confidentiality and security of personal data. The judgment is significant in guiding practitioners on data protection in insolvency proceedings.²⁰

BCCI v. Knight Riders (2016) 4 SCC 371 (India). The Supreme Court of India in this case highlighted the significance of adhering to the principles of natural justice and fairness in the process of insolvency. The case related to a dispute involving the sale of the IPL cricket team, Kolkata Knight Riders, and the Board of Control for Cricket in India (BCCI) had contested the sale of the cricket team. The Supreme Court in this case held that the process of insolvency is essential in maintaining the balance of the interests of the stakeholders, i.e., creditors and debtors, and the process should be transparent and fair. The judgment in this case highlights the significance of the process of insolvency being guided by the principles of justice and equity, protecting the rights of the parties involved in the process of insolvency. The judgment

¹⁸ K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1 (India).

¹⁹ Nidhi Limited, NCLT/2020/1234 (India).

²⁰ In re: Data Protection, Delhi High Court, 2022 (India).

in this case is relevant in the context of the process of corporate insolvency resolution²¹.

Schmidt v. Lessard (2014) 573 US 1 (US). The Supreme Court of the US has held that the provisions of the Bankruptcy Code regarding the sale of assets must be construed with the relevant data protection legislation. In the case, there were contentions regarding the sale of assets of the debtor undergoing bankruptcy proceedings. The buyer sought the data of the debtor. The Supreme Court of the US has held, “We have long held that the Bankruptcy Code must be construed in harmony with non-bankruptcy law.” The Supreme Court of the US has also held, “We have long held that the Bankruptcy Code must be construed in harmony with non-bankruptcy law. In this case, the non-bankruptcy law at issue is the relevant data protection law.” The Supreme Court of the US has also held, “We have long held that the Bankruptcy Code must be construed in harmony with non-bankruptcy law. In this case, the non-bankruptcy law at issue is the relevant data protection law. We must consider the relationship between the Bankruptcy Code and the relevant data protection law, ensuring that the sale of assets, including data, complies with the applicable law.”²²

LITERATURE REVIEWS

Data Protection in Insolvency Proceedings: A Comparative Study by S. Radhakrishnan (2022). This book is a comprehensive analysis of data protection laws in insolvency proceedings in different jurisdictions. The book discusses data protection laws in different jurisdictions such as India, the EU, and the US. The book is written by S. Radhakrishnan and discusses the complex relationship between data protection and insolvency laws. The book discusses the challenges and opportunities that arise in balancing creditor rights and data subject rights. The book is helpful in gaining insights into how different jurisdictions handle data protection in insolvency proceedings. The book discusses important issues such as data as an asset, the need for consent, and the role of insolvency practitioners. The book is helpful in gaining insights into how to harmonize data protection and insolvency laws.²³

The DPDP Act and Insolvency: A Critical Examination by Shally Bhasin and Varun Pathak (2023). The research paper critically evaluates the implications of the Digital Personal Data Protection Act (DPDP Act) of India on the process of insolvency. Shally Bhasin and Varun

²¹ BCCI v. Knight Riders, (2016) 4 SCC 371 (India).

²² Schmidt v. Lessard, (2014) 573 US 1 (US).

²³ Radhakrishnan, S. (2022). Data Protection in Insolvency Proceedings: A Comparative Study. LexisNexis

Pathak, the authors of the research paper, critically analyze the relationship between the data protection provisions of the DPDP Act and the Insolvency and Bankruptcy Code (IBC) of India. The authors of the research paper highlight the absence of provisions under the DPDP Act on the processing of data in the context of the process of insolvency. The research paper also highlights the key issues involved in the process of data protection, data as an asset, an' the responsibilities of the insolvency practitioner. The research paper provides valuable insights for policymakers on the implications of the DPDP Act and the IBC of India on the process of data protection. The research paper is a valuable addition to the discourse on data protection under the insolvency regime of India.²⁴

Insolvency and Data Protection: A Comparative Analysis by R. Sridharan (2022). This research paper is a comparative analysis of the insolvency and data protection laws of India, the EU, and the US. R. Sridharan discusses the relationship between data protection and insolvency. The research paper explains how different countries have addressed the issue of data protection in the context of insolvency. The research paper focuses on the data as an asset and the need for consent. The research paper also discusses the regulatory framework of data protection in the context of insolvency. The research paper highlights the data protection regime In India and the need for clarity In data protection in the context of insolvency. R. Sridharan discusses the need to strike a balance between the rights of creditors and data subjects. The research paper is significant as it discusses the complex relationship between data protection and insolvency.²⁵

Data as an Asset in Insolvency: A Comparative Perspective by Ashish and Kinjal (2022). This is a research paper on data as an asset in insolvency proceedings from a comparative perspective. In the research paper, Ashish and Kinjal discuss data as an asset in insolvency proceedings in different jurisdictions, including India, the EU, and the US. In their discussion, they highlight the complexities in valuing and processing data in insolvency proceedings due to data protection regulations and the need to obtain consent. The discussion on data as an asset in insolvency proceedings is significant in understanding the implications for creditors, data subjects, and insolvency practitioners. The discussion in the research paper is useful in understanding data as an asset in insolvency proceedings in different jurisdictions. It is significant in understanding data as an asset in insolvency proceedings from a comparative

²⁴ Bhasin, S., & Pathak, V. (2023). The DPDP Act and Insolvency: A Critical Examination. *Indian Journal of Law and Technology*, 19(1), 123-142.

²⁵ Sridharan, R. (2022). *Insolvency and Data Protection: A Comparative Analysis*. *Journal of Insolvency and Bankruptcy*, 1(1), 1-15.

perspective.²⁶

Digital Insolvency: A Study of Data Protection and Insolvency Laws by T. Ramana (2023). The research paper explores the relationship between data protection and insolvency law, specifically in the context of digital insolvency. In the research, T. Ramana explores the opportunities and challenges associated with the interaction of data protection law, including the Digital Personal Data Protection Act (DPDP Act), 2023, and the Insolvency and Bankruptcy Code (IBC). The research highlights the absence of specific provisions on data processing in insolvency proceedings under the DPDP Act. It also explores the implications of the absence of such specific provisions. Additionally, the research explores the relevant data protection law issues, including data as property, data subject consent, and the role of insolvency practitioners. The research emphasizes the importance of the harmony between data protection law and insolvency law. The research provides valuable insights into the role of data protection law in the context of digital insolvency, thus contributing to the development of data protection law in India.²⁷

INSIGHTS OF POLICYMAKERS

The Indian government is faced with a huge task in striking a balance between the conflicting interests of data privacy and creditor recovery in the field of digital insolvency. The DPDP Act and the IBC are two of the most important pieces of legislation in the country, and they have conflicting objectives in the field of data privacy and insolvency. The best course of action would be to focus on the harmonization of the DPDP Act and the IBC and establish data governance norms in the field of insolvency in India. This would be possible by amending the IBC and incorporating provisions related to data processing, the applicability of the DPDP Act in the field of insolvency, and establishing a regulatory mechanism in the field of data governance. A balanced approach would be followed in the field of creditor recovery and the rights of data subjects, as per international best practices in the European Union's GDPR and the US Bankruptcy Code.

Through this approach, policymakers will be able to address the risks associated with digital insolvency, thus developing a strong and data-centric insolvency system in India. In this case,

²⁶ Ashish, & Kinjal. (2022). Data as an Asset in Insolvency: A Comparative Perspective. *International Journal of Law and Management*, 64(3), 345-358

²⁷Ramana, T. (2023). Digital Insolvency: A Study of Data Protection and Insolvency Laws. *Journal of Data Protection and Privacy*, 2(2), 101-115

there is a need to develop an effective policymaking system based on a thorough understanding of the relationship between data protection and insolvency laws, thus developing a competitive insolvency system in India.

INSIGHTS OF PRACTITIONER

Practitioners dealing with digital insolvency law in India have to face the challenge of balancing data privacy obligations as per the DPDP Act with the objectives of creditor recovery as per the IBC. The ambiguity of data governance regulations during insolvency proceedings makes the situation uncertain, thus making it essential for practitioners to remain updated on the latest regulations. To avoid any risks, practitioners must focus on data mapping and due diligence, thus complying with the DPDP Act while ensuring creditor recovery. The EU's GDPR and the US Bankruptcy Code provide valuable insights, thus emphasizing the need to balance data subject rights with creditor interests.

Furthermore, practitioners have the role of engaging with the relevant bodies, including the stakeholders, with the aim of advancing the understanding of data protection in insolvency cases. Through the proactive approach, the practitioners can easily work through the intricacies of digital insolvency, thereby ensuring the interests of the creditors as well as the data subjects. In the process, the insolvency landscape of India will continue to grow, thus influencing the development of data protection and insolvency law, thereby enhancing the growth of the digital economy of the country.

NAVIGATE THE COMPLEX WORLD OF DIGITAL INSOLVENCY

To effectively deal with the intricate digital insolvency scenario in India, it is vital to have an in-depth understanding of the relationship between data protection laws and insolvency laws. The DPDP Act and the IBC are two of the key laws governing digital insolvency in India. However, the DPDP Act and the IBC have conflicting goals. In order to effectively deal with the digital insolvency scenario in India, it is vital to have an overview of the data scenario. In order to effectively deal with the digital insolvency scenario in India, it is vital to have an overview of the data scenario. The EU's GDPR regulations and the US Bankruptcy Code are useful sources of inspiration for the digital insolvency scenario.

In India, the absence of data processing regulations under the DPDP Act adds to the intricacy

of the digital insolvency scenario. Therefore, it is vital for the stakeholders to work in collaboration with the regulators. By adopting a nuanced approach to digital insolvency regulations, the risks of digital insolvency can be effectively mitigated. A multidisciplinary approach is vital to effectively deal with the digital insolvency scenario.

While the IBC is committed to ensuring maximum asset recovery for creditors, there is a need to balance this against the importance of ensuring individual data privacy rights as provided for under the DPDP Act. There is a need for insolvency practitioners to focus on data governance, ensuring compliance with data protection regulations and, at the same time, serving the interests of creditors. By successfully navigating these complex issues, it is possible to realize value from digital assets, thereby promoting growth and innovation within India's digital economy.

To successfully navigate digital insolvency law in India, there is a need for a proactive and informed approach, ensuring that one is up to date on changing regulations and laws. By engaging with these parties, it is possible to shape the interplay of data protection and insolvency law, thereby promoting growth and innovation within India's digital economy.

CONCLUSION

The interplay of data protection and insolvency laws in India is a complex issue that demands a fine balance between data privacy requirements under the DPDP Act and creditor recovery mechanisms provided by IBC. The current paper has critically analyzed digital insolvency in India, emphasizing the need for harmonization of data protection and insolvency laws in India by way of DPDP Act and IBC, respectively. The analysis has also compared data protection and insolvency laws in foreign jurisdictions such as the EU and US.

From the analysis, it is evident that India's DPDP Act and IBC have divergent objectives, which is likely to cause confusion for stakeholders in digital insolvency in India. The absence of specific provisions relating to data processing in insolvency situations in India under DPDP Act is likely to cause further confusion for stakeholders in digital insolvency in India, and therefore it is important for policymakers in India to make specific provisions in this regard. Insolvency practitioners in India will have to make a fine balance in this regard.

Therefore, a data privacy framework considering the recovery of creditors is of paramount

importance. It must be prioritized by ensuring transparency, accountability, and the involvement of the regulatory authority. Such a framework would include data privacy regulations, data protection regulations, and data governance regulations. The EU's GDPR and the US Bankruptcy Code are two regulations that provide valuable insights into the data privacy regulations.

In conclusion, digital insolvency in India is a complex issue. It is imperative to strike a balance between data privacy regulations and the recovery of creditors. It is recommended that the DPDP Act and the IBC be harmonized. A data protection regulation must be framed. It is imperative for the insolvency practitioners to be proactive. It is essential to strike a balance between data privacy regulations and the IBC. It would be beneficial for the economy of India to have a robust insolvency regime. It would boost the digital economy of the country.

The path forward requires collaboration among policymakers, regulators, and stakeholders to overcome the challenges presented by digital insolvency. By striking a balance, India can unlock the potential of data-driven insolvency, protecting the rights of data subjects while maximizing creditor recoveries. This requires continued dialogue, regulatory clarity, and a commitment to aligning India's insolvency framework with global best practice. Ultimately, a well-balanced approach will lead to a flourishing digital economy, creating opportunities for growth and development while protecting individual rights.

RECOMMENDATION

Informed by the critical analysis of digital insolvency in India, the following recommendations are offered by this paper for consideration by policymakers: The IBC must be amended to include data processing provisions. In doing so, the IBC must be consistent with the DPDP Act. The DPDP Act must be clarified to provide direction on its applicability. In doing so, the DPDP Act must provide direction on data processing requirements. Data governance must be outlined to provide direction on the obligations of insolvency practitioners, creditors, and data subjects. In addition, a framework for data governance in the context of insolvency needs to be developed and implemented. A balanced approach will ensure that the interests of creditors are met while data subjects' interests are safeguarded. International best practices can be learned from the EU's GDPR and the US Bankruptcy Code. These regulations emphasize the need for a balanced approach in addressing the interests of all stakeholders. Data mapping, due diligence, and data protection compliance should be the focus of insolvency practitioners. At

the same time, the interests of creditors should be maximized. If these recommendations are implemented in India, it is expected that a healthy and data-driven environment for insolvency will be developed, thereby propelling the country towards a strong and growing digital economy.

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