INSOLVENCY BEYOND PRIVATE LAW: RECASTING THE INSOLVENCY AND BANKRUPTCY CODE, 2016 AS A CONSTITUTIONAL INSTRUMENT

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The conventional characterisation of the Insolvency and Bankruptcy Code, 2016,[1] as a purely economic or private law mechanism – designed to maximise value, ensure creditor coordination, and facilitate efficient exit – obscures a deeper structural transformation it effects within the Indian legal order. At its core, insolvency under the Code is not merely a forum for debt resolution; it is a site where pre-existing legal entitlements are forcibly reordered through a legislatively sanctioned process of collective discipline. This reordering is neither incidental nor purely procedural. It represents a conscious departure from the fragmented, enforcement-driven paradigm that traditionally governed creditor remedies, replacing it with a centralised regime that subordinates individual claims – irrespective of their origin – to the logic of resolution and finality. In doing so, the Code performs a function that is more accurately understood in constitutional rather than purely commercial terms.

This reconceptualisation becomes evident when one examines the nature of the transformations the Code authorises. Outside insolvency, legal entitlements – whether arising from contract, statute, or sovereign authority – carry with them the full spectrum of enforcement rights recognised by the legal system. The initiation of insolvency proceedings disrupts this baseline by imposing a moratorium that suspends not only private enforcement but also, crucially, the exercise of statutory and coercive powers by the State. The effect is not merely to pause enforcement, but to subject all claims to a common institutional process in which their fate is collectively determined. The Code thus displaces the ordinary hierarchy of remedies with a new ordering principle:[2] that no claimant, including the State, may unilaterally enforce its rights outside the insolvency framework.

[1] Insolvency and Bankruptcy Code 2016 (India).
[2] IBC, s 14.

The significance of this shift lies in its normative implications. By compelling all creditors into a single process and binding them to the outcome of a resolution plan, the Code effectively asserts that the legitimacy of claims in insolvency is not derived from their source, but from their integration into a collective mechanism. This move destabilises traditional distinctions between public and private claims. In particular, it calls into question the assumption that sovereign claims – especially tax dues – occupy a qualitatively superior position by virtue of their public character. Instead, the Code treats such claims as amenable to compromise, reduction, or even extinguishment, provided that they are addressed within the resolution process.

Judicial interpretation has, at critical junctures, reinforced this structural reordering. In Committee of Creditors of *Essar Steel India Ltd v. Satish Kumar Gupta*,[3] the Supreme Court emphasised the primacy of the commercial wisdom of the committee of creditors and the binding nature of the resolution plan on all stakeholders, including statutory authorities. This position was further consolidated in *Ghanashyam Mishra and Sons Pvt Ltd v. Edelweiss Asset Reconstruction Co Ltd*,[4] where the Court unequivocally held that once a resolution plan is approved, all claims not forming part of it stand extinguished, and no person – including governmental authorities – can initiate or continue proceedings in respect of such claims. These pronouncements are often read as pragmatic endorsements of insolvency finality. However, their deeper significance lies in the Court's implicit acceptance of a far more radical proposition: that statutory and sovereign claims can be subordinated to, and reshaped by, a collective insolvency process without violating the legal order.

This raises an important analytical question that moves beyond doctrinal reconciliation into the terrain of constitutional theory. If the Code can bind and extinguish claims that originate in the sovereign power to tax, then insolvency cannot be understood as operating solely within the domain of private law. Rather, it emerges as a mechanism through which Parliament redefines the conditions under which even State power may be exercised in the context of financial distress. The moratorium and the binding effect of resolution plans do not merely regulate the timing of enforcement; they impose substantive constraints on the manner in which legal rights – including those backed by coercive State authority – can be realised.

[3] *Committee of Creditors of Essar Steel India Limited v Satish Kumar Gupta* (2020) 8 SCC 531 (SC).
[4] *Ghanashyam Mishra and Sons Private Limited v Edelweiss Asset Reconstruction Company Limited* (2021) 9 SCC 657 (SC).

Seen in this light, insolvency under the Code functions as a form of constitutional discipline. It subjects all actors, including the State, to a regime that prioritises collective resolution over unilateral enforcement, and finality over the persistence of individual claims. This is not to suggest that the Code explicitly articulates a constitutional hierarchy. Rather, it operates implicitly to reorder entitlements in a manner that has constitutional consequences. By enabling the compromise of claims that would otherwise be enforced through sovereign authority, the Code tests the limits of Parliament's ability to restructure legal relationships in pursuit of economic objectives.

This reconceptualisation also clarifies the stakes of the tension that underlies the treatment of tax claims in insolvency. If insolvency is merely a procedural mechanism, then the subordination of tax claims can be justified as a matter of legislative policy. However, if insolvency operates as a constitutional instrument that disciplines the exercise of State power, then the extinguishment of such claims raises a more fundamental question: whether the State, in its capacity as a creditor, can be fully assimilated into a framework that denies it the very enforcement prerogatives that define its sovereign character. The answer to this question depends, in turn, on how one conceptualises the nature of tax claims – a question that requires a closer examination of their constitutional foundations.

It is this inquiry that the subsequent analysis undertakes. Having established that the Code reorders legal entitlements in a manner that transcends private law, the next step is to interrogate the character of tax claims themselves: whether they are merely statutory liabilities capable of being compromised like any other debt, or whether they embody a dimension of sovereignty that resists such subordination. The resolution of this issue is central to determining the constitutional legitimacy of the Code's treatment of State claims, and to understanding whether insolvency can truly function as a site of constitutional discipline over the sovereign.

The Constitutional Character of Tax Claims: Sovereign Prerogative or Statutory Debt?

Any attempt to evaluate whether tax claims may be legitimately compromised or extinguished within insolvency must begin with a careful disaggregation of what is often treated as a monolithic category: the "sovereign claim." The intuitive impulse to accord tax dues a privileged status rests on the undeniable proposition that the power to tax is a core attribute of State sovereignty. Yet, this intuition obscures a critical analytical distinction – between the constitutional power to impose taxes and the legal character of the resulting tax claim once liability crystallises. It is precisely this distinction that determines whether tax dues can be assimilated into the collective framework of the Insolvency and Bankruptcy Code, 2016 or whether they resist such subordination.

The constitutional foundation of taxation in India is anchored in Article 265,[5] which mandates that no tax shall be levied or collected except by authority of law. This provision performs a dual function: it affirms the State's exclusive competence to impose taxes, while simultaneously subjecting that power to legislative control. Crucially, Article 265 does not itself create tax liabilities;[6] it merely conditions their existence on statutory enactment. The implication is that while the *power* to tax is constitutional, the *claim* to a specific sum arises only through legislation that defines the taxable event, quantifies liability, and prescribes modes of recovery. Once this statutory machinery is triggered, the State's position, at least formally, resembles that of any other creditor asserting a legally recognised claim.

Judicial reasoning has, albeit implicitly, reinforced this separation. In *CIT v. Bhikaji Dadabhai & Co.*,[7] the Supreme Court underscored that tax liability is a creature of statute, arising only upon the fulfilment of conditions prescribed by law. Similarly, in Govind Saran Ganga Saran v. Commissioner of Sales Tax, the Court articulated that a valid tax requires the presence of clearly defined components – taxable event, person liable, rate, and measure – each grounded in statutory specification. These formulations are not merely technical; they reveal that the enforceability of tax claims depends entirely on legislative design, not on an inherent constitutional entitlement to a quantified sum. In this sense, once crystallised, a tax claim is not qualitatively different from other statutory debts, even though its origin lies in sovereign authority.

However, this formal equivalence is complicated by the distinctive enforcement architecture that accompanies tax claims. Unlike private creditors, the State is equipped with coercive mechanisms – attachment, recovery proceedings, penalties – that operate outside ordinary adjudicatory processes. These powers are not incidental; they reflect the public character of taxation and the State's interest in ensuring revenue certainty. It is this enforcement dimension that sustains the perception of tax claims as occupying a superior normative position. The question, therefore, is not merely whether tax liabilities are statutory in origin, but whether the

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[5] Constitution of India, art 265.

[6] Ibid.

[7] *Commissioner of Income Tax v Bhikaji Dadabhai & Co* [1961] AIR 1265 (SC).

enforcement prerogatives attached to them imbue such claims with a constitutional status that resists subordination.

This tension becomes particularly acute in insolvency, where the Insolvency and Bankruptcy Code, 2016 seeks to neutralise precisely those unilateral enforcement capacities that distinguish sovereign creditors from private ones. By imposing a moratorium and mandating that all claims be channelled through a collective process, the Code effectively strips tax authorities of their ability to act on the coercive powers that ordinarily define their position. If tax claims are indeed constitutionally privileged, such a suspension could be viewed as an impermissible encroachment upon sovereign functions. Conversely, if these claims are understood as statutory debts accompanied by contingent enforcement mechanisms, their subordination within insolvency appears both doctrinally and constitutionally defensible.

Judicial developments in the insolvency context have tended to favour the latter characterisation, though without explicitly resolving the underlying constitutional question. In *Ghanashyam Mishra and Sons Pvt Ltd v. Edelweiss Asset Reconstruction Co Ltd*,[8] the Supreme Court affirmed that statutory dues, including tax claims, stand extinguished if not incorporated within an approved resolution plan, thereby binding governmental authorities to the outcome of the insolvency process. This reasoning implicitly treats tax claims as capable of being fully absorbed into the IBC framework. Yet, the Court stops short of articulating whether such extinguishment is justified because tax claims lack constitutional protection, or because the objectives of insolvency law override even constitutionally grounded interests. The absence of this clarification leaves open a doctrinal ambiguity that continues to manifest in the behaviour of tax authorities, who often assert enforcement powers notwithstanding their formal status as operational creditors.

The persistence of this ambiguity suggests that the constitutional character of tax claims cannot be resolved by a simple classification exercise. Instead, it requires a more nuanced understanding of the relationship between sovereignty and statutory rights. While the power to tax is undoubtedly sovereign, its exercise is mediated through legislation that translates abstract authority into concrete liabilities. Once this translation occurs, the resulting claim is governed by the same legal system that regulates other forms of debt, including mechanisms that may limit or extinguish it in pursuit of broader policy objectives. Insolvency represents one such

[8] Ibid.

mechanism, where Parliament has chosen to prioritise collective resolution over individual enforcement, even at the cost of compromising State revenue.

This does not imply that tax claims are devoid of public significance. Rather, it indicates that their public character does not automatically confer immunity from statutory restructuring.[9] The critical question, therefore, is not whether tax claims originate in sovereignty, but whether that origin justifies their insulation from a legislatively designed process that seeks to reorder all claims in the interest of economic stability. By framing the issue in this manner, the focus shifts from an abstract assertion of sovereign privilege to a concrete evaluation of how far Parliament can go in subjecting State claims to collective discipline.

It is this unresolved tension – between the constitutional pedigree of the power to tax and the statutory nature of the resulting claim – that lies at the heart of the conflict between tax enforcement and insolvency finality. Having established that tax claims do not unambiguously occupy a constitutionally privileged position, the analysis must now turn to how the insolvency framework operationalises their subordination, and whether this subordination is consistently realised in practice.

The IBC Framework: Constructing "Claim Finality" Against the State

If the constitutional character of tax claims remains indeterminate – oscillating between sovereign prerogative and statutory liability – the operative question shifts to how the Insolvency and Bankruptcy Code, 2016 structurally responds to this ambiguity. The Code does not directly resolve the status of such claims in constitutional terms; instead, it constructs an institutional framework that renders the question functionally irrelevant by subjecting all claims, irrespective of their origin, to a regime of collective determination and binding finality. It is within this architecture that the idea of "claim finality" emerges – not merely as a procedural endpoint, but as a systemic necessity that disciplines even those claims backed by sovereign authority.

The foundation of this framework lies in the moratorium, which operates not simply as a temporary suspension of proceedings but as a radical interruption of the enforcement paradigm that ordinarily governs creditor behaviour.[10] By prohibiting the institution or continuation of

[9] Risham Garg, Insolvency and Bankruptcy Code: A Commentary (2nd edn, Taxmann 2021) 45.
[10] Pratik Datta, 'The Constitutional Foundations of the Insolvency and Bankruptcy Code' (2018) 31(1) NLSI Rev

suits and proceedings, as well as any form of coercive recovery, the moratorium collapses the distinction between private creditors and the State at the level of enforcement. What is significant here is not only that tax authorities are restrained from acting, but that their statutory powers – ordinarily exercised unilaterally and backed by coercive machinery – are rendered inoperative within the insolvency process. The State is thus compelled to participate not as an enforcing authority, but as a claimant whose interests must be articulated within the collective mechanism.

This transition from enforcement to participation is deepened by the Code's insistence on the consolidation and verification of claims. The insolvency process transforms dispersed and independently enforceable rights into entries within a common pool, subject to scrutiny and potential modification.[11] In this sense, the Code does not merely recognise claims; it reconstructs them. The quantification, classification, and eventual treatment of each claim become contingent on the logic of resolution rather than on the original terms of the underlying obligation. For tax claims, this entails a significant shift: liabilities that would otherwise be determined and enforced through specialised statutory regimes are reconstituted within a framework that prioritises collective value maximisation over individual recovery.

The culmination of this process is the approval of a resolution plan, which the Code accords binding force across all stakeholders. The significance of this binding effect extends beyond its immediate practical consequences. It represents a legislative assertion that the outcome of the insolvency process is not merely one among several competing determinations of liability, but the definitive settlement of all claims against the debtor. In Committee of *Creditors of Essar Steel India Ltd v. Satish Kumar Gupta*,[12] the Supreme Court emphasised that the commercial wisdom of the committee of creditors, once translated into an approved resolution plan, is to be respected as final, subject only to limited judicial review. This emphasis on finality is not accidental; it reflects the recognition that without a conclusive settlement of claims, the very objective of insolvency – revival of the corporate debtor as a going concern – would be undermined.

The principle of finality assumes its most consequential form in its application to statutory and governmental claims. In *Ghanashyam Mishra and Sons Pvt Ltd v. Edelweiss Asset*

1, 14.
[11] Thomas H Jackson, The Logic and Limits of Bankruptcy Law (Harvard University Press 1986).
[12] Ibid.

Reconstruction Co Ltd,[13] the Court held that once a resolution plan is approved, all claims not forming part of it stand extinguished, and no person, including the Central or State Government, can initiate or continue proceedings in respect of such claims. This pronouncement is often cited for its practical clarity, but its deeper import lies in the Court's endorsement of a regime where even sovereign claims are subsumed within, and conclusively determined by, the insolvency process. The extinguishment of such claims is not treated as an exception requiring special justification; rather, it is presented as an integral feature of the Code's design.

What emerges from this framework is a redefinition of the relationship between rights and remedies. Under ordinary legal conditions, the existence of a right is closely tied to the availability of its enforcement. The Code disrupts this linkage by severing the continuity between claim and enforcement, and by conditioning the survival of claims on their incorporation into the resolution plan. In doing so, it creates a hierarchy in which process-based finality supersedes source-based entitlement. The legitimacy of a claim no longer depends on whether it originates in contract, statute, or sovereignty, but on whether it has been duly considered and accommodated within the insolvency process.

This reconfiguration is particularly significant in the context of tax claims, which traditionally derive much of their force from the State's ability to enforce them independently. By neutralising this enforcement autonomy and subjecting tax authorities to the same procedural discipline as other creditors, the Code effectively transforms the State from a sovereign enforcer into a participant in a collective decision-making process. The implication is that the State's interest in revenue collection must be balanced against, and may ultimately be subordinated to, the broader objective of insolvency resolution.

However, the construction of claim finality within the Code is not merely about subordination; it is about closure. The insolvency process is designed to produce a clean slate, enabling the successful resolution applicant to take over the corporate debtor without the burden of undisclosed or residual liabilities. This objective would be unattainable if certain categories of claims – particularly those backed by sovereign authority – were permitted to survive outside the resolution plan. The insistence on extinguishment is thus not an incidental feature, but a

[13] Ibid.

structural requirement that ensures the integrity and viability of the resolution process.

Yet, this very insistence exposes the fragility of the framework. The effectiveness of claim finality depends on the willingness of all stakeholders, including the State, to accept the authority of the insolvency process as conclusive. Where tax authorities continue to assert independent enforcement powers, the coherence of the system is called into question. The Code's architecture assumes a complete transition from unilateral enforcement to collective determination; any deviation from this assumption reintroduces the very fragmentation that the insolvency regime seeks to eliminate.

In this sense, the IBC's construction of claim finality can be understood as an attempt to impose a uniform discipline across a heterogeneous set of claims, including those rooted in sovereign authority. It does so not by resolving the constitutional status of such claims in the abstract, but by embedding them within a process that leaves no room for parallel assertion. Whether this embedding is fully effective – or whether it is undermined by the persistence of enforcement autonomy – remains a question that must be examined by turning to the doctrinal fault lines that emerge in practice.

The Doctrinal Fault Line: Extinguishment vs Enforcement Autonomy

The coherence of the insolvency framework under the Insolvency and Bankruptcy Code, 2016 rests on the premise that once claims are collectivised and subjected to a resolution plan, they are conclusively determined and, to the extent not recognised, extinguished. Yet, the practical operation of the regime reveals a persistent doctrinal fault line: while courts have increasingly affirmed the principle of extinguishment, tax authorities continue to assert forms of enforcement autonomy that sit uneasily with the logic of insolvency finality. This tension is not merely a matter of institutional resistance; it exposes a deeper conceptual inconsistency within the legal treatment of sovereign claims.

At one level, the jurisprudence appears settled. The Supreme Court in *Ghanashyam Mishra Case* unequivocally held that all claims not forming part of an approved resolution plan stand extinguished, and that no proceedings can thereafter be initiated or continued in respect of such claims by any authority, including the State. This formulation, read together with the emphasis on finality in Committee of Creditors of Essar Steel India Ltd v. Satish Kumar Gupta, suggests a comprehensive subordination of all claims to the outcome of the insolvency process. If taken at face value, it leaves little room for the survival of independent enforcement powers once the resolution plan has attained finality.

However, this formal position does not fully capture the operational reality. Tax authorities frequently act on the implicit assumption that while their claims may be subject to quantification or reduction within insolvency, their statutory powers of enforcement remain intact unless explicitly curtailed. This manifests in the continuation or initiation of recovery proceedings, the attachment of assets, or the assertion of dues outside the framework of the resolution plan. Such actions are often justified on the basis that the statutory machinery governing tax collection operates independently of insolvency law, and that the extinguishment of claims does not necessarily entail the extinguishment of enforcement powers.

It is here that the critical analytical distinction emerges: the difference between the recognition of a claim within insolvency and the retention of enforcement autonomy outside it. The insolvency framework, as judicially interpreted, addresses the former by subsuming all liabilities into a collective process and determining their fate through the resolution plan. What remains under-theorised is whether this subsumption also neutralises the latter – namely, the State's ability to act through its coercive apparatus independently of the insolvency outcome. The persistence of enforcement actions suggests that, in practice, these two dimensions are being treated as separable, even though the logic of the Code requires their integration.

This separation produces a form of doctrinal incoherence. If a claim is truly extinguished – meaning that it no longer exists as a legally enforceable obligation – then any attempt to recover it through statutory means must necessarily fail. Conversely, if enforcement powers continue to be exercised, it implies that the underlying claim retains some residual legal vitality, notwithstanding its exclusion from the resolution plan. The system thus oscillates between two incompatible positions: one that affirms the finality of insolvency outcomes, and another that implicitly preserves the enforceability of sovereign claims beyond that finality.

The roots of this inconsistency lie in the incomplete assimilation of public law enforcement into the insolvency framework. While the Code successfully collectivises claims at the level of recognition and distribution, it does not explicitly dismantle the statutory infrastructures through which tax authorities ordinarily operate. As a result, these authorities continue to perceive themselves not merely as creditors participating in a collective process, but as sovereign actors endowed with independent powers that survive the insolvency regime. This perception is reinforced by the broader legal context in which tax statutes are often construed as self-contained codes with overriding effect, thereby encouraging an interpretive stance that resists subordination.

Judicial responses to this tension have been uneven. While the Supreme Court has articulated a clear commitment to finality, lower fora have occasionally grappled with the practical implications of subordinating statutory powers to insolvency outcomes. The absence of a consistently articulated doctrine that explicitly addresses the fate of enforcement powers has allowed this ambiguity to persist. In effect, the law recognises the extinguishment of claims but has not fully internalised the corollary that such extinguishment must extend to all modes of their enforcement.

This gap between principle and practice has significant consequences for the integrity of the insolvency regime. The possibility that tax authorities may act outside the resolution framework undermines the certainty that the Code seeks to provide to resolution applicants, who rely on the assurance that the approved plan represents a complete and final settlement of all liabilities. It also reintroduces the fragmentation that insolvency is designed to eliminate, allowing certain creditors to operate outside the collective discipline imposed on others.

More fundamentally, the persistence of enforcement autonomy reflects an unresolved constitutional question: whether the State, even when participating as a creditor, can be fully divested of the coercive powers that define its sovereign character.[14] The insolvency framework, in its current form, appears to assume an affirmative answer, treating the State as indistinguishable from other creditors once proceedings are initiated. The conduct of tax authorities, however, suggests a competing conception in which sovereignty carries with it a residual authority that cannot be entirely subsumed within a private law process.

The doctrinal fault line between extinguishment and enforcement autonomy thus reveals the limits of the current legal framework. It demonstrates that the success of the insolvency regime depends not only on the formal recognition of claim finality, but on the effective integration of all forms of enforcement within that finality. Without such integration, the distinction between participation and exception remains blurred, allowing sovereign creditors to occupy a position

[14] Chintan Chandrachud, 'The Corporate Insolvency Resolution Process and the State as a Creditor' (2022) 34(2) SACLJ 485, 492.

that is formally subordinate but functionally privileged.

Resolving this tension requires more than reiterating the binding nature of resolution plans; it demands a principled articulation of how and why enforcement powers must yield to the logic of insolvency. Until such a doctrine is clearly established, the insolvency process will continue to operate under the shadow of a duality that compromises its foundational commitment to collective resolution and definitive closure.

Constitutional Tension: Can Sovereign Claims Be Forcibly Compromised?

The constitutional permissibility of compromising or extinguishing sovereign tax claims within insolvency turns on a tension that is often acknowledged but rarely theorised: while the State's power to tax is an essential attribute of sovereignty, the legal system simultaneously permits that the fruits of this power – concrete tax claims – may be restructured, reduced, or even nullified through a legislatively designed collective process under the Insolvency and Bankruptcy Code, 2016. The apparent paradox arises from an unexamined slippage between the *source* of the power and the *status* of the claim. It is this slippage that renders the constitutional question both complex and unavoidable.

At one level, it may be argued that any regime which allows the State's fiscal claims to be compulsorily compromised undermines fiscal sovereignty. Taxation is not merely a revenue-generating function; it is constitutive of the State's capacity to govern, redistribute, and sustain public institutions. To permit such claims to be extinguished through a process driven by creditor consensus appears, at least superficially, to invert the traditional hierarchy in which public claims are accorded primacy over private entitlements. This concern is sharpened by the fact that insolvency proceedings are not adjudicatory in the classical sense; they are resolution-oriented, with outcomes shaped by commercial considerations rather than by a determination of legal rights in their strictest form. From this perspective, the subordination of tax claims could be seen as allowing private actors to indirectly determine the extent to which the State may realise its sovereign dues.

However, this line of reasoning assumes that sovereign power necessarily translates into an immutable entitlement to recover specific sums, an assumption that is difficult to sustain within the constitutional framework. The Constitution, while recognising the State's authority to impose taxes, does not elevate individual tax claims to a status beyond legislative modulation.

Article 265 ensures that taxation must be authorised by law, but it does not guarantee that once a liability arises, it must be enforced in its entirety irrespective of subsequent legislative developments. The implication is that tax claims, once crystallised, remain subject to the broader regulatory authority of Parliament, including its power to design mechanisms that restructure or extinguish such claims in pursuit of legitimate policy objectives.

It is within this space that the insolvency framework operates. The Insolvency and Bankruptcy Code, 2016 does not directly abrogate the State's power to tax; rather, it intervenes at a later stage, governing the manner in which competing claims against an insolvent entity are resolved. In doing so, it introduces a regime in which the enforcement of all claims – including those of the State – is subordinated to a collective process aimed at maximising value and ensuring the revival of the corporate debtor. The compromise of tax claims is thus not an isolated legislative act targeting sovereign prerogatives, but a consequence of a broader restructuring of debtor-creditor relations that applies uniformly across categories of claims.

Judicial pronouncements have, in effect, endorsed this understanding, though often without explicitly articulating its constitutional underpinnings. In *Ghanashyam Mishra and Sons Pvt Ltd v. Edelweiss Asset Reconstruction Co Ltd*,[15] the Supreme Court affirmed that statutory dues, including those owed to governmental authorities, stand extinguished if not incorporated within an approved resolution plan. The Court's reasoning emphasised the necessity of finality and the objective of providing a "clean slate" to the resolution applicant. While the judgment is framed in terms of statutory interpretation, its implications are constitutional: it accepts that Parliament can validly enact a regime where even sovereign claims are conclusively determined – and potentially nullified – through a collective insolvency process.

Yet, the acceptance of such a regime does not fully resolve the underlying tension. The persistence of enforcement attempts by tax authorities, even after the approval of resolution plans, suggests that the subordination of sovereign claims is not perceived as complete. This resistance reflects an implicit constitutional anxiety: that treating the State as indistinguishable from other creditors may erode the distinctive public character of its claims. The legal system thus appears to oscillate between two conceptions of the State's role in insolvency – one in which it participates as an ordinary creditor subject to collective discipline, and another in

[15] Ibid.

which it retains a residual authority that resists full assimilation.

Resolving this oscillation requires a more precise articulation of the limits of legislative power in this domain.[16] The critical question is not whether sovereign claims can be compromised, but under what conditions such compromise remains constitutionally legitimate. A principled answer must begin by reaffirming the distinction between the power to tax and the claim to recover tax. While the former is constitutionally entrenched and cannot be abrogated except through constitutional means, the latter is contingent, mediated through statute, and therefore amenable to legislative restructuring. Insolvency law operates within this latter domain, addressing the distribution of realised or realisable value among competing claimants, rather than altering the State's underlying authority to impose taxes in the future.

At the same time, constitutional legitimacy requires that the subordination of tax claims not be arbitrary or disproportionate. The insolvency framework must be justified by a coherent objective – such as value maximisation and economic stability – and must apply in a manner that is consistent and non-discriminatory across similarly situated claims. The Insolvency and Bankruptcy Code, 2016, with its emphasis on collective resolution and binding finality, can be seen as satisfying these criteria, insofar as it subjects all creditors, including the State, to a uniform process. The compromise of tax claims, in this light, is not an erosion of sovereignty, but an instance of the State subjecting itself to a legislatively defined discipline in order to achieve broader systemic goals.

The constitutional tension thus resolves not by denying the sovereign character of taxation, but by situating tax claims within a hierarchy of legal norms in which collective insolvency outcomes are accorded primacy in cases of financial distress. The State does not forfeit its sovereignty; rather, it exercises it through Parliament to create a regime that temporarily restrains its own enforcement capacities in the interest of a larger economic objective. The challenge, however, lies in ensuring that this self-imposed restraint is both complete and credible. As long as enforcement autonomy continues to be asserted outside the insolvency framework, the constitutional settlement remains unstable, leaving unresolved the fundamental question of whether sovereign claims can truly be subjected to the discipline of insolvency law.

[16] Arjya B Majumdar, 'The Constitutional Logic of the Insolvency and Bankruptcy Code' (2023) 35(1) NLSI Rev 56, 72.

Reconciling Public Law and Insolvency: Towards a Doctrine of Constitutional Subordination

The persistence of tension between insolvency finality and sovereign enforcement reveals that the existing legal framework has not yet fully internalised a coherent theory governing the State's role within collective insolvency. While the Insolvency and Bankruptcy Code, 2016 formally assimilates tax authorities into the category of creditors whose claims may be compromised or extinguished, the continued assertion of independent enforcement powers demonstrates that this assimilation remains incomplete at a doctrinal level. What is therefore required is not merely a reiteration of statutory supremacy, but the articulation of a principled framework that explains *why* and *to what extent* public law powers must yield within insolvency. It is in this context that the idea of a doctrine of constitutional subordination becomes analytically necessary.

Such a doctrine must begin by rejecting the binary that has implicitly structured the debate thus far – namely, that the State either participates in insolvency as an ordinary creditor or retains an irreducible sphere of sovereign autonomy that places it outside the discipline of the process. Both positions are normatively unsatisfactory. The former risks ignoring the public character of tax claims, while the latter undermines the very premise of collective resolution by allowing a category of claims to escape its binding force. A more defensible approach lies in recognising that the State's participation in insolvency is neither purely private nor wholly sovereign, but conditioned by the constitutional allocation of powers and the legislative choices that give effect to them.

The conceptual pivot for such a reconciliation lies in distinguishing between the existence of public law powers and the conditions of their exercise. The State undoubtedly retains the constitutional authority to impose and collect taxes; this authority is not extinguished by the initiation of insolvency proceedings. However, the exercise of that authority is subject to statutory frameworks that regulate how and when it may be deployed. The Insolvency and Bankruptcy Code, 2016 represents one such framework, which, in situations of financial distress, recalibrates the permissible modes of enforcement by subordinating them to a collective process. In this sense, insolvency does not negate sovereignty; it channels it through a regime that imposes discipline on its exercise.

The notion of constitutional subordination thus operates not as a denial of State power, but as a rule of priority between competing legal regimes.[17] When insolvency proceedings are triggered, the Code establishes a temporary but comprehensive ordering in which all claims – regardless of their origin – must be addressed within a unified process. The moratorium and the binding effect of resolution plans are the institutional expressions of this ordering. They signal that, for the duration and purposes of insolvency, the State's enforcement prerogatives are not abolished, but held in abeyance and ultimately resolved through the mechanism of collective determination. This subordination is constitutional in character because it derives from Parliament's authority to structure legal relationships in pursuit of legitimate economic objectives, and because it applies uniformly rather than selectively.

Judicial developments provide an implicit foundation for this doctrine, even if they have not articulated it in these terms. In *Ghanashyam Mishra and Sons Pvt Ltd v. Edelweiss Asset Reconstruction Co Ltd*,[18] the Supreme Court affirmed that once a resolution plan is approved, all claims not included therein stand extinguished and cannot be enforced by any authority, including the State. This position presupposes that the State's statutory powers of recovery are fully subsumed within the insolvency process, and that their independent exercise would be incompatible with the finality that the Code seeks to achieve. Similarly, the emphasis on the primacy of the resolution plan in Committee of Creditors of Essar Steel India Ltd v. Satish Kumar Gupta reinforces the idea that the outcome of insolvency proceedings constitutes a definitive settlement that binds all stakeholders without exception.

Yet, the absence of an explicit doctrinal articulation has allowed space for interpretive resistance. Tax authorities often proceed on the assumption that their enforcement powers survive unless expressly curtailed, thereby treating insolvency as a procedural interlude rather than a substantive reordering of rights. The doctrine of constitutional subordination directly addresses this assumption by clarifying that the binding nature of insolvency outcomes necessarily extends to all modes of enforcement. To recognise the extinguishment of a claim while preserving the power to enforce it would be to collapse the distinction between participation and exception, effectively allowing the State to circumvent the collective process that it is constitutionally required to respect.

[17] Suhrith Parthasarathy, 'The Insolvency and Bankruptcy Code and the Limits of State Power' (2022) 14(2) NUJS L Rev 215, 231.
[18] Ibid.

The normative justification for such subordination lies in the objectives that the insolvency regime seeks to achieve. The emphasis on value maximisation, revival of the corporate debtor, and certainty for resolution applicants cannot be realised in a system where certain creditors retain the ability to act outside the collective framework. The subordination of public law enforcement to insolvency finality is therefore not an incidental consequence, but a structural necessity. It ensures that the process remains coherent, that outcomes are reliable, and that the distribution of value is governed by a uniform set of rules rather than by the relative strength of individual enforcement mechanisms.

At the same time, the doctrine must delineate its own limits to avoid overreach. Constitutional subordination cannot extend to the obliteration of the State's capacity to tax or to regulate future conduct; it operates only in relation to existing claims against an insolvent entity and only within the temporal and functional boundaries of the insolvency process. Once the process concludes, the State's ordinary powers revive in relation to future liabilities, preserving the continuity of fiscal sovereignty. This temporal containment ensures that the doctrine remains consistent with the broader constitutional framework, which permits legislative regulation of rights without authorising their wholesale abrogation.

What emerges, then, is a model in which insolvency functions as a constitutionally sanctioned space of reordered priorities. Within this space, the State participates not as an unrestrained sovereign, but as a constitutionally disciplined creditor whose powers are exercised through, and limited by, the collective mechanism established by law. The articulation of such a doctrine resolves the doctrinal fault line between extinguishment and enforcement autonomy by making clear that the latter cannot survive the former. It also provides a principled basis for reconciling public law and insolvency, transforming what has thus far been an uneasy coexistence into a coherent legal relationship grounded in constitutional logic.

The Nature of Tax Claims: Between Sovereign Power and Statutory Debt

The characterisation of tax claims lies at the heart of the broader inquiry into whether they can be legitimately subjected to compromise or extinguishment within insolvency. At first glance, tax liabilities appear to carry an inherent superiority over other forms of debt, grounded in the State's sovereign authority to levy and collect revenue. This intuition, however, rests on an unexamined conflation between the constitutional source of taxing power and the legal nature of the claim that emerges from its exercise. Disentangling this conflation is essential, for it is only by doing so that one can determine whether tax claims possess a normative status that resists their assimilation into the collective framework of insolvency.

The constitutional scheme makes clear that taxation is not an unbounded sovereign prerogative but a power mediated entirely through law. Article 265 establishes that no tax may be levied or collected except by authority of law,[19] thereby converting what might otherwise be conceived as an inherent attribute of sovereignty into a legally structured competence. The significance of this provision lies not merely in its formal requirement of legislative sanction, but in the conceptual separation it creates between the power to impose taxes and the claim to recover specific amounts. The former exists at the level of constitutional design; the latter arises only upon the operation of statutory provisions that define the taxable event, identify the liable person, and quantify the obligation.

Judicial formulations have consistently reinforced this distinction. In *Govind Saran Ganga Saran v. Commissioner of Sales Tax*,[20] the Supreme Court articulated that a valid tax must rest on clearly defined components – taxable event, person liable, rate, and measure – all of which derive from statutory prescription. Similarly, in *CIT v. Bhikaji Dadabhai & Co*,[21] the Court emphasised that tax liability is not an abstract entitlement of the State but a consequence of legislative enactment. These formulations underscore that once a tax claim crystallises, it does so not as a direct emanation of sovereignty, but as a statutory liability embedded within a broader legal system.

Yet, the persistence of the perception that tax claims are qualitatively distinct from other debts cannot be dismissed as mere doctrinal confusion. It is sustained by the distinctive enforcement architecture that accompanies taxation. Unlike private creditors, the State is equipped with coercive mechanisms – summary recovery, attachment, penalties – that operate with minimal judicial intermediation. These powers do not alter the origin of the claim, but they significantly affect its practical character, creating an impression of priority and inevitability that is absent in ordinary debtor-creditor relations. The apparent superiority of tax claims thus derives less from their constitutional status and more from the institutional advantages conferred by enforcement design.

[19] Art 265, Constitution of India.
[20] *Govind Saran Ganga Saran v. Commissioner of Sales Tax* (1985) 155 ITR 144 (SC).
[21] Ibid.

This distinction becomes critical when tax claims are situated within insolvency. If such claims are treated as direct expressions of sovereignty, their compromise or extinguishment would appear constitutionally suspect. However, if they are understood as statutory liabilities accompanied by contingent enforcement mechanisms, their subjection to a collective process becomes both intelligible and justifiable. The Insolvency and Bankruptcy Code, 2016 implicitly adopts the latter view by classifying tax authorities as operational creditors and by subjecting their claims to the same processes of verification, modification, and potential extinguishment as other debts. This classification is not merely administrative; it reflects a deeper normative commitment to the idea that the origin of a claim does not determine its treatment within insolvency.

The conceptual instability arises because this commitment is not uniformly internalised. While the statutory framework and judicial pronouncements point toward the assimilation of tax claims into the category of ordinary debts, the continued reliance on enforcement-based reasoning suggests that their sovereign origins continue to exert an influence. The result is a dual characterisation in which tax claims are, at once, treated as statutory debts for the purposes of insolvency and as sovereign entitlements for the purposes of enforcement. This duality is not sustainable in the long run, for it undermines the coherence of both tax law and insolvency law.

Resolving this tension requires a clear conceptual position: that the constitutional protection attaches to the power to tax, not to the claim arising from its exercise. Once this distinction is accepted, the treatment of tax claims within insolvency can be understood as an instance of legislative regulation rather than constitutional encroachment. The State does not lose its authority to tax; it merely accepts that, in situations of insolvency, its claims must be resolved within a framework that prioritises collective outcomes over unilateral enforcement. This understanding sets the stage for examining why, despite this doctrinal clarity, the practice of tax enforcement continues to resist full integration into the insolvency regime.

The Doctrinal Fault Line: Extinguishment of Tax Claims vs Persistence of Sovereign Enforcement

The persistence of tension between insolvency finality and tax enforcement finds its most acute expression in the doctrinal divide between the extinguishment of claims and the survival of enforcement powers. The Insolvency and Bankruptcy Code, 2016, as interpreted by the judiciary, appears to adopt a clear position on the former: once a resolution plan is approved, all claims not incorporated within it stand conclusively determined and, to the extent excluded, extinguished. In *Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India & Ors.*,[22] the Supreme Court affirmed that such extinguishment binds all stakeholders, including governmental authorities, thereby precluding any subsequent assertion of those claims.

However, the clarity of this principle is disrupted by the continued assertion of enforcement powers by tax authorities, which operate on an implicit assumption that extinguishment of liability does not necessarily entail the extinction of the State's coercive apparatus. This assumption reveals a fundamental conceptual misalignment. In ordinary legal reasoning, enforcement is derivative of the existence of a claim; once the claim ceases to exist, the basis for enforcement collapses. The persistence of enforcement actions in the face of extinguished claims therefore suggests that tax authorities are not merely enforcing liabilities, but asserting a residual sovereignty that is perceived to survive the insolvency process.

This divergence can be traced to the structural features of tax law, where enforcement mechanisms are designed to operate with a degree of autonomy from adjudicatory processes. The State's ability to attach assets, initiate recovery proceedings, and impose penalties creates a framework in which enforcement appears as an independent axis of power, rather than as a consequence of an underlying claim. When this framework is transposed into the insolvency context without modification, it generates a situation in which the State continues to act as if its enforcement powers exist outside the collective discipline imposed by the Code.

The resulting doctrinal fault line is not merely technical; it strikes at the integrity of the insolvency regime. The principle of claim finality is central to the Code's objective of providing a "clean slate" to the resolution applicant. This objective cannot be realised if certain creditors retain the ability to reassert claims through alternative mechanisms after the conclusion of the process. The persistence of tax enforcement thus reintroduces the very fragmentation that insolvency seeks to eliminate, allowing the State to occupy a position that is formally subordinate but functionally privileged.

Judicial pronouncements have, in principle, rejected such fragmentation. The emphasis on the binding nature of resolution plans in Committee of Creditors of Essar Steel India Ltd v. Satish

[22] *Swiss Ribbons Pvt. Ltd & Anr v. Union of India & Ors* (2019) 4 SCC 17.

Kumar Gupta and the categorical language of extinguishment in Ghanashyam Mishra and Sons Pvt Ltd v. Edelweiss Asset Reconstruction Co Ltd reflect a clear commitment to the idea that insolvency outcomes must be comprehensive and conclusive. Yet, the absence of an explicit articulation regarding the fate of enforcement powers has allowed a gap to persist between principle and practice. This gap is sustained by the reluctance to fully accept that the subordination of claims necessarily entails the subordination of the mechanisms through which those claims are realised.

The deeper issue, therefore, is not whether tax claims can be extinguished, but whether the State can be required to relinquish its enforcement autonomy in deference to a collective process. The insolvency framework implicitly answers this question in the affirmative, treating the State as a participant whose rights are defined by the process rather than as an external actor capable of bypassing it. The continued assertion of enforcement powers represents a competing conception in which sovereignty is understood as carrying an irreducible core of authority that cannot be fully subsumed within insolvency.

This unresolved tension produces a regime characterised by formal coherence and practical instability. On paper, tax claims are assimilated into the insolvency framework and subjected to its discipline; in practice, they retain a residual capacity to disrupt that discipline through enforcement. Bridging this divide requires more than reiterating the principle of extinguishment. It demands a doctrinal clarification that enforcement powers are not independent of claims, but are contingent upon them, and therefore must necessarily fall when the claims themselves are extinguished.

Only by collapsing this artificial separation can the insolvency regime achieve the finality it promises. Until then, the State will continue to operate in a dual capacity – bound by the outcomes of insolvency in theory, yet capable of circumventing them in practice – thereby preserving a form of fiscal exceptionalism that sits uneasily with the constitutional and statutory logic of the Code.

Towards a Doctrine of Fiscal Subordination: Reimagining the State's Role in Insolvency

The persistence of inconsistency between the formal subordination of tax claims and the continued assertion of sovereign enforcement reveals that the existing framework lacks a unifying principle capable of coherently locating the State within insolvency. The Insolvency and Bankruptcy Code, 2016 proceeds on the assumption that all claims can be collectivised and resolved within a single process, yet it does not explicitly theorise the position of the State as a claimant whose powers originate in public law. What is therefore required is a doctrinal reconstruction that moves beyond the language of "operational creditor" and instead articulates a principled basis for the State's participation in insolvency. This reconstruction may be described as a doctrine of fiscal subordination.

Fiscal subordination does not deny the State's sovereign authority to tax; rather, it redefines the conditions under which that authority may be exercised in the context of insolvency. The core proposition is that while the power to impose and assess taxes remains constitutionally intact, the recovery of those taxes – once crystallised into claims against an insolvent debtor – is subject to the collective discipline imposed by insolvency law. In other words, the State does not forfeit sovereignty; it subordinates the exercise of its fiscal power to a legislatively structured process designed to balance competing claims in situations of financial distress.

This doctrinal move finds implicit support in judicial interpretation, even if it has not been expressly articulated in these terms. In *Ghanashyam Mishra and Sons Pvt Ltd v. Edelweiss Asset Reconstruction Co Ltd*,[23] the Supreme Court affirmed that statutory dues, including those owed to governmental authorities, stand extinguished if not included in an approved resolution plan. The Court's reasoning, grounded in the necessity of providing a "clean slate" to the resolution applicant, presupposes that the State's fiscal claims can be conclusively determined – and potentially nullified – within the insolvency process. Similarly, in *Committee of Creditors of Essar Steel India Ltd v. Satish Kumar Gupta*,[24] the emphasis on the primacy of the resolution plan and the limited scope of judicial review reinforces the idea that all stakeholders, including the State, are bound by the collective outcome.

At the same time, the decision in State Tax Officer v. Rainbow Papers Ltd complicates the narrative by recognising that certain statutory dues may carry attributes akin to secured interests under specific legislative frameworks. While the judgment has been subject to considerable debate, its significance lies in highlighting that the treatment of tax claims cannot be divorced from the statutory contexts in which they arise. Fiscal subordination must therefore operate not as a rigid rule of absolute equality, but as a principle that integrates tax claims into insolvency

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[23] Ibid.
[24] Ibid.

while respecting explicitly created statutory priorities where they exist. The key, however, is that such priorities must be internal to the insolvency framework, not exercised through external enforcement.

The doctrine of fiscal subordination thus rests on three interrelated pillars. First, it affirms that the State, when asserting tax claims against an insolvent debtor, participates as a creditor whose rights are mediated by the insolvency process. This participation is not voluntary; it is a consequence of Parliament's decision to create a comprehensive regime for resolving financial distress. Second, it requires that all modes of enforcement ordinarily available to the State – attachment, recovery proceedings, penalties – are subsumed within this process, and cannot be exercised independently once insolvency is triggered. Third, it recognises that the finality of the resolution plan extends to all aspects of the claim, including its enforceability, thereby ensuring that no residual liabilities survive outside the collective framework.

What distinguishes fiscal subordination from a simple assertion of statutory supremacy is its grounding in constitutional logic. The doctrine is premised on the idea that sovereignty is not an absolute, unstructured power, but one that is exercised through and constrained by law. When Parliament enacts a regime such as the Insolvency and Bankruptcy Code, 2016, it is not diminishing the State's authority; it is determining the manner in which that authority is to be exercised in a specific context. The State, in this sense, binds itself through legislation, accepting that in cases of insolvency, its fiscal interests must be balanced against the systemic need for resolution and economic stability.

This reconceptualisation also resolves the apparent anomaly of allowing private creditors, through the committee of creditors, to influence outcomes that affect public revenue. Under the doctrine of fiscal subordination, such influence is not a delegation of sovereign power, but a feature of a legislatively designed mechanism in which all claims are assessed in relation to the available value of the debtor's assets. The State does not cede its authority; it participates in a process that it has itself authorised through law. The legitimacy of this arrangement derives from its general applicability and from the fact that it operates within a framework defined by Parliament, rather than through ad hoc negotiations.

Importantly, fiscal subordination does not entail the erasure of the public character of tax claims. It acknowledges that such claims serve broader societal purposes and may, in appropriate cases, warrant differentiated treatment within the insolvency framework. However, any such differentiation must be explicitly provided for within the statutory scheme, rather than inferred from the existence of sovereign power. This ensures that the balance between public and private interests is struck transparently and predictably, rather than through the residual assertion of enforcement autonomy.

By reimagining the State's role in this manner, the doctrine of fiscal subordination addresses the core inconsistency identified earlier: the coexistence of formal claim extinguishment with practical enforcement persistence. It makes clear that the subordination of tax claims is not merely a matter of classification, but extends to the entire apparatus through which those claims are realised. In doing so, it aligns the treatment of tax claims with the foundational objectives of insolvency law – certainty, finality, and collective resolution.

Ultimately, the value of this doctrine lies in its ability to transform an uneasy coexistence between public law and insolvency into a coherent and principled relationship. It provides a framework within which the State's fiscal interests are neither ignored nor allowed to dominate, but are integrated into a system that seeks to reconcile competing claims in a manner consistent with both constitutional structure and economic necessity.

Comparative Insight: Do Other Jurisdictions Privilege Tax Claims?

The question whether sovereign tax claims ought to enjoy a privileged position in insolvency is not unique to India; however, what distinguishes the Indian position is not the existence of this question, but the absence of a coherent and consistent answer to it. A comparative engagement reveals that other jurisdictions have confronted the same tension between fiscal sovereignty and insolvency finality, but have resolved it through clearer normative choices – either by expressly privileging tax claims within a structured hierarchy or by definitively subordinating them to the logic of collective resolution. The Indian framework, by contrast, oscillates between these models, formally embracing subordination while functionally accommodating exception.

In the United States, the treatment of tax claims under the U.S. Bankruptcy Code reflects a calibrated balance rather than an unresolved tension. Tax claims are accorded a defined priority status under the statutory distribution scheme, recognising their public character without allowing them to operate outside the insolvency framework.[25] More importantly, the Internal

[25] Charles J Tabb, The Law of Bankruptcy (5th edn, West Academic Publishing 2020) 782.

Revenue Service is bound by the outcomes of bankruptcy proceedings, including confirmed plans that may restructure or compromise tax liabilities.[26] While certain categories of taxes may be treated as non-dischargeable, this is not an assertion of enforcement autonomy but a legislatively specified exception within the system itself. The key feature of the American model is thus not the absolute subordination or elevation of tax claims, but the internalisation of their treatment within the architecture of insolvency law. The State does not stand outside the process; its rights and limitations are defined by it.

A similar structural clarity is observable in the United Kingdom, though it has evolved through distinct policy choices. Historically, the "Crown preference" accorded priority to certain tax claims, reflecting a longstanding recognition of the State's fiscal interests. However, this preference was abolished and later partially restored in a more limited form, demonstrating a conscious legislative engagement with the appropriate status of tax claims in insolvency. Under the Insolvency Act 1986,[27] as amended, certain taxes such as VAT and PAYE now enjoy secondary preferential status, placing them above ordinary unsecured creditors but below secured claims. Crucially, even where priority is granted, it operates strictly within the distribution framework and does not translate into an independent right of enforcement outside insolvency proceedings. The British approach thus exemplifies a model in which fiscal claims may be normatively privileged, but only through explicit statutory design rather than through residual sovereign assertion.

These comparative models highlight a central point of divergence with the Indian position. Both the United States and the United Kingdom recognise the distinct nature of tax claims, yet they resolve this recognition through clear legislative structuring that integrates such claims into the insolvency process. Whether through priority classification or limited exceptions to discharge, the treatment of tax claims is made transparent, predictable, and internally coherent. There is no ambiguity about the State's role: it is either a preferential creditor within the system or a claimant subject to defined statutory carve-outs, but it is never an actor capable of bypassing the process altogether.

In contrast, the Insolvency and Bankruptcy Code, 2016 adopts, at least textually and judicially, a model closer to subordination. Tax claims are generally treated as operational debts, lacking

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[26] Ibid.

[27] Insolvency Act (United Kingdom)1986.

any explicit priority beyond what is accorded within the statutory waterfall.[28] Judicial pronouncements, particularly in *Ghanashyam Mishra and Sons Pvt Ltd v. Edelweiss Asset Reconstruction Co Ltd*,[29] affirm that such claims may be extinguished if not incorporated within an approved resolution plan. This would suggest a system that has decisively rejected fiscal preference in favour of insolvency finality. Yet, the continued assertion of enforcement powers by tax authorities indicates that this rejection is incomplete in practice. Unlike the US and UK models, where the limits of State action are clearly internalised within insolvency law, the Indian system permits a residual ambiguity that allows sovereign claims to re-emerge outside the collective framework.

The comparative insight, therefore, is not merely that other jurisdictions treat tax claims differently, but that they do so with a degree of doctrinal coherence that the Indian framework presently lacks. Where priority is granted, it is explicit and bounded; where subordination is adopted, it is comprehensive and enforced. India, by attempting to formally subordinate tax claims without fully dismantling the enforcement structures that sustain their exceptionalism, creates a hybrid regime in which the State is both inside and outside the insolvency process. This hybridity undermines the certainty and finality that are central to the effectiveness of insolvency law.

What emerges from this comparison is the need for a clearer normative commitment. If tax claims are to be subordinated, as the current statutory and judicial framework suggests, then such subordination must extend not only to their classification within the waterfall but also to the extinguishment of their enforcement mechanisms. Alternatively, if the public character of tax claims justifies preferential treatment, this must be explicitly recognised through statutory design rather than implicitly asserted through administrative practice. The comparative experience demonstrates that both models are viable; what is untenable is the coexistence of formal subordination and functional exceptionalism.

In this light, the Indian position appears less as a deliberate choice and more as an incomplete transition. The movement towards treating tax claims as ordinary debts within insolvency has not been matched by a corresponding reconfiguration of the State's enforcement posture. The result is a system that aspires to the finality and coherence of mature insolvency regimes but

[28] IBC, s 53.
[29] Ibid.

remains encumbered by unresolved assumptions about the inviolability of sovereign claims. The comparative analysis thus reinforces the central argument of this study: that the legitimacy and effectiveness of insolvency law depend on its ability to consistently discipline all claims, including those of the State, within a unified constitutional and statutory framework.

Reformulating the Boundary: Limiting State Power Within Insolvency

If the preceding analysis demonstrates anything with clarity, it is that the tension between insolvency finality and sovereign enforcement does not arise from an absence of statutory direction, but from the absence of a clearly internalised boundary that governs the State's conduct within insolvency. The Insolvency and Bankruptcy Code, 2016 already contains the structural elements necessary to subordinate all claims to a collective process; what remains underdeveloped is a principled articulation of the limits of State power once that process is set in motion. Reformulating this boundary, therefore, is not a matter of expanding the Code's reach, but of clarifying and enforcing the discipline it already seeks to impose.

The first and most immediate implication of such a reformulation is the need to treat the moratorium and the binding effect of the resolution plan not as procedural devices, but as substantive constraints on the exercise of sovereign power. The moratorium must be understood as effecting a complete suspension of all coercive mechanisms available to the State in relation to the debtor, not merely as a temporary pause in proceedings. Similarly, the approval of a resolution plan must be taken to conclusively determine not only the quantum of claims but also the permissibility of any future enforcement action. In *Ghanashyam Mishra and Sons Pvt Ltd v. Edelweiss Asset Reconstruction Co Ltd*,[30] the Supreme Court's affirmation that all claims not incorporated in the plan stand extinguished provides the doctrinal foundation for such an interpretation; what is required is the extension of this principle to its logical endpoint, where extinguishment necessarily entails the nullification of all corresponding enforcement powers.

This reconceptualisation directly addresses the doctrinal fault line identified earlier. The persistence of enforcement autonomy is sustained by an implicit assumption that the State's statutory powers operate independently of the insolvency framework unless expressly curtailed. Reformulating the boundary requires reversing this presumption. Once insolvency

[30] Ibid.

proceedings are initiated, the default position must be that all enforcement powers are subsumed within the Code, and that their exercise outside the process is impermissible unless specifically authorised. This shift is not merely interpretive; it reflects a deeper commitment to the idea that insolvency constitutes a closed system of claim resolution, within which all rights must be asserted and determined.

A second dimension of this boundary concerns the relationship between statutory tax regimes and insolvency law. Much of the friction arises from the tendency to treat tax statutes as self-contained codes possessing an overriding character. While such an approach may be justified in ordinary circumstances, it becomes untenable in the context of insolvency, where the legislative intent is to create a unified forum for the resolution of all claims. The non obstante clause within the Insolvency and Bankruptcy Code, 2016 must therefore be given full effect, not merely in cases of direct conflict, but as a principle that integrates disparate statutory regimes into a coherent hierarchy during insolvency. This does not entail the repeal or dilution of tax laws; rather, it requires recognising that their operation is temporarily conditioned by the insolvency process.

The reformulation must also address the temporal dimension of State power. A significant source of uncertainty lies in the possibility that tax authorities may revive or reassert claims after the conclusion of insolvency proceedings, thereby undermining the finality of the resolution plan.[31] To prevent this, the boundary must be drawn in a manner that clearly distinguishes between pre-insolvency liabilities, which are subject to complete resolution and potential extinguishment, and post-resolution obligations, which remain fully enforceable. This distinction preserves the State's fiscal authority going forward, while ensuring that the insolvency process delivers the "clean slate" that it promises. Without such clarity, the spectre of residual liability continues to distort valuation and deter participation in the resolution process.

Equally important is the need to align administrative practice with doctrinal clarity. The persistence of enforcement actions by tax authorities is not solely a product of legal ambiguity; it is also a function of institutional inertia and the absence of coordinated governance between insolvency and tax administrations. Reformulating the boundary thus requires the development

[31] Aswath Rau and Pranay Sahay, 'The Clean Slate Doctrine: Finality and the Temporal Limits of State Claims' (2022) 15(1) NUJS L Rev 45, 58.

of mechanisms that ensure real-time integration of claims, data sharing, and procedural alignment between these systems. While such measures may appear operational, they are in fact integral to the normative project of insolvency, as they determine whether the State's conduct reflects the discipline that the law seeks to impose.

At a more fundamental level, limiting State power within insolvency requires a shift in how the State conceptualises its own role. The State must transition from viewing itself as an exceptional creditor, endowed with residual authority, to recognising that its participation in insolvency is governed by the same principles of collective resolution and finality that bind all other stakeholders. This does not diminish the public importance of tax claims; rather, it situates them within a framework that balances fiscal interests with the systemic need for certainty and economic rehabilitation. The legitimacy of this framework, as argued earlier, derives from Parliament's authority to structure legal relationships in pursuit of broader economic objectives, and from the uniform application of its rules.

The proposed boundary, therefore, is not an artificial constraint imposed on sovereign power, but a constitutionally grounded discipline that ensures the coherence of the insolvency regime. It reconciles the State's dual identity – as sovereign and as creditor – by recognising that, in the specific context of insolvency, the latter role must prevail for the system to function effectively. The State does not lose its sovereignty; it exercises it through a legislative choice to subject its own claims to a collective process that serves a larger economic purpose.

Ultimately, the success of the Insolvency and Bankruptcy Code, 2016 depends on the credibility of its promise of finality. As long as the boundary between insolvency discipline and sovereign enforcement remains porous, this promise remains contingent and incomplete. Reformulating that boundary – by clearly subordinating enforcement powers, integrating statutory regimes, and ensuring institutional alignment – is therefore essential not only for resolving doctrinal inconsistencies, but for realising the Code's foundational objective of delivering a definitive and comprehensive resolution of all claims.

Conclusion

The analysis undertaken across this article has sought to move the discourse on insolvency and tax claims beyond the familiar terrain of statutory conflict and priority disputes, and into the deeper question of constitutional ordering. The central argument has been that the Insolvency and Bankruptcy Code, 2016 does not merely coordinate creditor interests; it reconstitutes them within a framework that imposes collective discipline even upon claims rooted in sovereign authority. In doing so, it transforms insolvency from a procedural mechanism into a site where the limits of State power, at least in its creditor capacity, are tested and redefined.

At the heart of this transformation lies a critical conceptual clarification: while the power to tax is constitutionally entrenched, the claim to recover a quantified tax liability is a statutory construct, and therefore amenable to legislative restructuring. This distinction enables the Code to operate without directly undermining fiscal sovereignty, even as it permits the compromise or extinguishment of tax dues. Yet, as the analysis has shown, the Indian legal framework has not fully internalised the implications of this position. The persistence of enforcement actions by tax authorities, notwithstanding the formal binding effect of resolution plans, reveals an unresolved tension between the logic of insolvency finality and the instinct of sovereign exceptionalism.

This tension manifests most sharply in the doctrinal divide between extinguishment and enforcement autonomy. While judicial pronouncements, particularly in Ghanashyam Mishra and Sons Pvt Ltd v. Edelweiss Asset Reconstruction Co Ltd, affirm that claims not incorporated within a resolution plan stand extinguished, the continued assertion of statutory recovery powers suggests that extinguishment has not been fully translated into a corresponding limitation on enforcement. The result is a system in which tax authorities are formally subordinated within the insolvency framework, but functionally capable of reasserting their claims outside it. This duality undermines the coherence of the Code and destabilises its promise of a definitive resolution.

The article has argued that this inconsistency cannot be resolved through incremental clarification alone; it requires a principled doctrinal shift. By conceptualising insolvency as a form of constitutional discipline, it becomes possible to articulate a framework in which the State participates not as an exceptional sovereign, but as a creditor whose powers are conditioned by the collective process established by law. The proposed doctrine of constitutional subordination captures this idea by distinguishing between the existence of sovereign power and the conditions of its exercise. Within insolvency, the latter must yield to the imperatives of finality, certainty, and value maximisation, which are themselves grounded in legitimate legislative objectives.

Comparative experience reinforces this conclusion. Jurisdictions such as the United States and the United Kingdom have confronted similar tensions, but have resolved them through clear and internally coherent statutory design. Whether by explicitly prioritising certain tax claims or by fully integrating them into the insolvency process, these systems avoid the ambiguity that characterises the Indian approach. The lesson is not that one model is inherently superior, but that coherence – rather than hybridity – is essential for the effective functioning of insolvency law.

Reformulating the boundary between State power and insolvency discipline is therefore imperative. This requires recognising that the moratorium and the binding effect of resolution plans operate as substantive constraints on all forms of enforcement, including those grounded in public law. It also demands a shift in institutional practice, ensuring that tax authorities internalise their role within the insolvency framework and refrain from actions that undermine its finality. Without such alignment, the Code's aspiration to provide a "clean slate" will remain contingent, and the incentives that underpin successful resolution will be compromised.

Ultimately, the legitimacy of the Insolvency and Bankruptcy Code, 2016 in extinguishing sovereign tax claims does not depend on denying the importance of fiscal sovereignty, but on recognising the context in which such claims arise. Insolvency represents a moment of systemic breakdown in which the ordinary logic of enforcement gives way to the necessity of collective resolution. In this context, the State's decision – through Parliament – to subject its own claims to a process of compromise is not an abdication of sovereignty, but an exercise of it in pursuit of broader economic stability.

The unresolved challenge, however, lies in ensuring that this constitutional settlement is both complete and credible. As long as sovereign claims retain a shadow existence through residual enforcement powers, insolvency will remain an incomplete discipline, and the State will continue to occupy an ambiguous position within it. The task, therefore, is not merely to affirm that tax claims can be extinguished, but to ensure that they are, in fact, fully absorbed into the logic of insolvency. Only then can the Code realise its promise as a system of definitive resolution – one that binds not only private creditors, but the sovereign itself.