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# INSOLVENCY, CRYPTO-ASSETS AND IBC: WHY INDIA NEEDS A CONTROL CENTRIC RESOLUTION FRAMEWORK

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Niyati Priyadarshini, KIIT School of Law, KIIT Deemed to be University

## ABSTRACT

Indian insolvency law assumes that control over assets can be transferred through legal authority and institutional intermediaries. The presence of crypto assets creates problems for this assumption. The Indian legal system establishes recognition of digital assets for taxation and enforcement purposes yet insolvency law lacks a framework which enables legal recognition to be transformed into actual control and asset valuation and preservation. The blog evaluates IBC asset-centric design through its examination of crypto case failures which demonstrates structural deficiencies that require insolvency governance systems to shift their focus from classification to control.

## Introduction: When Insolvency Meets Code Without Custody

The Indian insolvency law system enables financial distress resolution through three processes which give authorities complete control over operations and protect business value while distributing financial responsibilities to different stakeholders.<sup>1</sup> The presence of crypto assets hinders the achievement of all three goals. The insolvency and bankruptcy code of 2016 IBC permits crypto assets despite its design which depends on intermediary systems together with registries and physical asset control to operate. The ownership structure of crypto assets enables their existence without physical boundaries or permanent storage locations or methods to revert to previous states. Between 2021 and 2025 academic commentary together with industry analysis and enforcement actions reached one conclusion about crypto assets which demonstrates a legislative deficiency of insolvency law assesses control through a structural

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<sup>1</sup> **Insolvency and Bankruptcy Board of India**, *Transforming Insolvency Resolution in India* (IBBI, Discussion Paper), <https://ibbi.gov.in/uploads/whatsnew/9f9dc60d2f3d49b5ab5aed5dfad2ba1a.pdf>

framework.<sup>2</sup> The IBC currently functions through an asset-based system which fails to meet digital asset requirements because it needs to change into a control-based system for effective operations.

### **Crypto Assets Under Indian Law: Recognition Without Resolution**

The Indian legal system now recognizes cryptocurrencies as actual legal entities. The Finance Act 2022 introduced virtual digital assets as a new asset category which lawmakers acknowledged to have economic value.<sup>3</sup> The authorities have confiscated cryptocurrency assets according to anti-money laundering legislation. Courts now consider cryptocurrencies as assets that can be legally confiscated and transferred between parties.<sup>4</sup> Insolvency law currently struggles to match existing developments. The process of official recognition outside insolvency proceedings brings benefits but does not ensure complete access to insolvency protections.<sup>5</sup> The IBC system redistributes power over assets through its asset classification system. When parties cannot hand over their rights assets, the process of protecting them through insolvency becomes a mere theoretical concept.

### **The Hidden Assumption in the IBC: Intermediated Control**

This IBC framework establishes that assets exist through specific banking institutions. Resolution Professional (RPs) step into this institutional ecosystem and assume control. Crypto assets dismantle this assumption. Control exists through cryptographic systems rather than through institutional structures. Economic reality depends on who holds the private keys.<sup>6</sup> The court lack authority to force block-chains into reversing transactions or creating new keys or halting decentralized wallet operations. The IBC system operates through intermediary systems

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<sup>2</sup> Shivangi Sinha, *Insolvency 2.0: India's Alarm Bell to Craft a Fresh Playbook for Crypto and Beyond*, **SCC Online Blog** (Oct. 27, 2025), <https://www.sconline.com/blog/post/2025/10/27/insolvency-2-0-indias-alarm-bell-to-craft-fresh-playbook-for-crypto-and-beyond/>

<sup>3</sup> Majmudar & Partners, *Indian Tax Implications of Cryptocurrency*, Majmudar & Partners (2022), <https://www.majmudarindia.com/indian-tax-implications-cryptocurrency/>

<sup>4</sup> **Rhutika Kumari v. Zanmai Labs Pvt. Ltd.**, Madras High Court, 2023, [https://www.livelaw.in/pdf\\_upload/rhulikumari-v-zanmailabs-627620.pdf](https://www.livelaw.in/pdf_upload/rhulikumari-v-zanmailabs-627620.pdf)

<sup>5</sup> Indian Institute of Management Ahmedabad, **Working Paper No. 2025-10-01**, *Virtual Digital Assets and Insolvency* (2025), <https://www.iima.ac.in/hindi/sites/default/files/2025-10/WP%20No.2025-10-01.pdf>

<sup>6</sup> Siddharth Raja & Anshuman Sahai, *Decrypting the IBC: Virtual Currency Exchanges in Insolvency (Part I)*, **NLS Bus. L. Rev. Blog** (2021), <https://forum.nls.ac.in/nlsblr-blog-post/decrypting-ibc-virtual-currency-exchanges-in-insolvency-part-1/>

which process value transactions. The situation represents more than a technological difficulty. The problem exists as a breakdown in governance.

### **A Practical Stress Test: Control without Custody**

The promoters maintain control over the private keys which they use to access their crypto assets that are in decentralized wallets and foreign exchanges. The RP assumes legal responsibility for asset custody and control starting from the CIRP initiation. The current legal framework does not have any methods for enforcing key disclosure requirements while freezing wallet assets or confirming asset existence through live monitoring.<sup>7</sup> The situation leads to the following results: I) legal ownership is irrelevant without technical access II) moratorium protections are ineffective against on-chain transfers III) asset preservation depends on voluntary cooperation. The designed purpose of insolvency law which should stop strategic behaviour now functions as a tool for executing strategic actions.

### **Volatility and the Illusion of Commercial Wisdom**

The period from 2021 to 2025 has shown that crypto markets experience extreme price fluctuations.<sup>8</sup> Parties involved in insolvency resolution must establish constant asset values that permit creditors to make informed decisions. Crypto assets undermine this assumption. The resolution outcomes during corporate insolvency resolution process depend more on timing than on the actual success of enterprise recovery because asset prices experience sudden extreme fluctuations. Creditors may vote defensively, acquirers may speculate, and value maximization becomes secondary to risk avoidance. The situation shows a fundamental conflict because commercial wisdom requires stable valuation systems exist in order to function properly. The IBC does not provide any solutions for this particular problem.

### **Exchange Insolvencies and the Custodial Fallacy**

The process of insolvency which affects crypto exchanges creates multiple operational difficulties which require resolution. Most platforms operate on custodial models where

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<sup>7</sup> Shivam Kalia, *Analysis of the Interplay Between Insolvency and Cryptocurrency*, **The Corporate & Fin. L. Blog (TCLF)** (Aug. 30, 2021), <https://tclf.in/2021/08/30/analysis-of-the-interplay-between-insolvency-and-cryptocurrency/>

<sup>8</sup> Legal500, *Uncovering Virtual Digital Assets: Tracing Cryptoassets Under Insolvency Proceedings*, **Legal500 Thought Leadership** (2025), <https://www.legal500.com/developments/thought-leadership/uncovering-virtual-digital-assets-tracing-cryptoassets-under-insolvency-proceedings/>

customer assets are pooled but not owned by the exchange. The treatment of such assets as insolvency estate assets leads to the complete collapse of the custody-ownership distinction. The issue at hand goes beyond being a simple classification problem. The decision determines which customers will get back their assets while the rest will become unsecured creditors. The application of insolvency law through mechanical processes creates a situation where custodial failures result in shared financial losses which violates fundamental aspects of trust and bailment.<sup>9</sup> By 2025 comparative insolvency practice will begin to recognize that customer crypto needs protection from corporate insolvency estates. Indian insolvency law still needs to establish this protective measure through explicit legal writing.

### **Cross-Border Insolvency: Where Territorial Law Meets Borderless Value**

Cryptocurrencies operate at the same speed as computer code while insolvency solutions progress at the pace of judicial systems. Courts in India issue preservation and disclosure orders but their effectiveness for enforcing those orders against international exchanges and decentralized networks remains unpredictable. India's cross-border insolvency mechanisms experience this problem because they have not yet been established as operational systems.<sup>10</sup> Institutions without cooperation networks create a system where insolvency protection operates only after problems arise instead of stopping them from happening. Legal proceedings start when value starts to leave a jurisdiction, which enables the complete exit of assets. The study reveals that territorial insolvency law has a fundamental weakness because it needs a unified enforcement system to manage assets located outside its territorial boundaries.

### **Toward Insolvency 2.0: From Asset-Centric to Control-Centric Resolution**

The issue arises from how crypto assets have become new entities. The problem exists because insolvency laws maintain their foundation in established systems which determine control through legal status instead of assessing actual abilities. Reform must therefore focus on: I) the law should establish control mechanisms as official elements of asset classification. II) Procedural tools for key recovery, forensic tracing, and exchange cooperation III) clear distinction of custodial assets from insolvency estates IV) valuation frameworks that account

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<sup>9</sup> Khurana & Khurana, *Crypto Assets and the Protective Regime Associated with It in Insolvency*, Khurana & Khurana (Oct. 25, 2022), <https://www.khuranaandkhurana.com/2022/10/25/crypto-assets-and-the-protective-regime-associated-with-it-in-insolvency>

<sup>10</sup> UNCITRAL, *Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation* (1997), [https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border\\_insolvency](https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency)

for extreme volatility. The IBC philosophy needs no changes for these modifications to succeed. The IBC philosophy needs changes to handle situations in which value exists without needing intermediaries.

### **Conclusion: Crypto as the Insolvency Stress Test of the Decade**

Crypto assets have not broken insolvency law. They have shown the assumptions which exist within it. The discourse from 2021 to 2025 started with a question about crypto's inclusion under the IBC and now focuses on how insolvency law needs to change for regulating digital value systems. The current system will produce unpredictable results because it fails to protect crypto assets and it creates unfair outcomes which destroy value. Crypto insolvency exists as a primary example which shows that insolvency law needs to evolve from its current asset-based approach toward a system that uses control-based governance for digital economy regulation.