

Examining The Role Of Insolvency Professionals: A Comparative Study Between India, Usa, And Uk

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Abstract

This paper presents a comparative study examining the role of insolvency professionals across three distinct jurisdictions: India, the USA, and the UK. Insolvency professionals play a critical role in managing distressed businesses and facilitating insolvency proceedings in these countries. By analyzing their functions, responsibilities, regulatory frameworks, and effectiveness, this paper aims to provide valuable insights into the similarities and differences in the roles of insolvency professionals across these jurisdictions. Drawing upon existing literature, regulatory documents, and case studies, the paper sheds light on the challenges and opportunities faced by insolvency professionals in each context, offering insight for strengthening their role and effectiveness in managing insolvency cases. Through this comparative analysis, and take-aways from USA and UK insolvency laws, the policymakers, practitioners, and academia in India, can gain a deeper understanding of the evolving landscape of insolvency professionals' dilemma, implementation challenges and in turn advocate regulatory reforms to improve insolvency professionals' frameworks in India.

Keywords: Bankruptcy; Insolvency Professionals, India; USA; UK; rights and rules.

1. Introduction

Due to the diversity of legal systems and economic frameworks, insolvency rules differ greatly among nations. By balancing the interests of creditors and debtors, these laws often seek to establish a framework for handling financially distressed organizations. Restructuring, liquidation, and debt recovery procedures are frequently important elements. Prioritizing business rescue is one thing in certain regimes, but creditor protection is another. ¹Organizations on a worldwide scale that strive to standardize bankruptcy rules include the United Nations Commission on International Trade Law (UNCITRAL). In order to support economic stability across all economies in the world, recent movements have centered on advancing efficiency, transparency, and the turnaround of fiscally flawed companies.

The Indian historical Insolvency and Bankruptcy Code, 2016, which was envisioned as the country's response to the US Bankruptcy Act of 1978, has had a tortuous and protracted legal journey. It goes without saying that its main purpose was to give the owners of failing enterprises a simple way out when things got hard at work for a variety of reasons. Assisting banks in recovering (with haircuts, of course) their exposure to failing enterprises was one of IBC's other key responsibilities. As of December 31, 2021, banks had 9.6% of their loans classified as non-performing assets and 2% as stressed assets on their books. It was expected

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that the IBC would improve the banks' financial standing. As per the ministry of finance, "Report on scheduled commercial banks, published on 27 Dec 23", the NPAs has been reduced from Rs. 9,33,779 crores in March 2019 to Rs. 5,71,515 crores in March 2023². But as time went on, the IBC's shortcomings became obvious. Promoters extended their hold and delayed the legal procedure by taking advantage of holes in the Code. It goes without saying that **insolvency professionals in India** are essential to the entire resolution process carried out under the Insolvency & Bankruptcy Code. In addition to taking part in the CIRP/liquidation process, they also carry out responsibilities as administrators, supervisors, or nominees in bankruptcy proceedings under the Insolvency & Bankruptcy Code 2016; however, they encounter many obstacles in carrying out their duties mandated in the code.

Similar to this, the insolvency rules of the **United States and the United Kingdom** guarantee that the interests of creditors and debtors will be balanced while promoting a vibrant economic climate. For people and companies in financial difficulties, the **USA's Bankruptcy Code** offers a thorough structure with multiple chapters to handle a range of circumstances. Similar procedures, such as administration and liquidation procedures, are integrated into the **UK's Insolvency Act** with the goal of resolving distress and maximizing returns to creditors. The work of an insolvency professional is essential to the efficient operation of insolvency legislation in the United States and the United Kingdom. Experts in insolvency, sometimes referred to as "**Bankruptcy Trustees**," are crucial to the administration of bankruptcy in the United States. On the other hand, "**Licensed Insolvency Practitioners**" (IPs) in the UK oversee the insolvency process, aiming to achieve the best outcome while balancing the interests of all parties involved. Controlling insolvency procedures, looking into the company's problems, and, when feasible, suggesting restructuring solutions are the responsibilities of insolvency professionals. All things considered, insolvency experts in both nations act as absolute prerequisite 'mediators' to guarantee the impartiality and competence of bankruptcy procedures.

2. **Objective of The Paper:** The objective of this paper is to examine the role of insolvency professionals in the insolvency laws of developed countries such as the UK and the USA, with the aim of revealing valuable insights that could be suggested for implementation in the insolvency processes under the Insolvency and Bankruptcy Code (IBC) in India.

3. **Global Perspectives on IBC and the Involvement of Insolvency Professionals.**

Based on a World Bank analysis of research on insolvency resolution worldwide, including the laws and procedures pertaining to it, it has been determined that insolvency reforms that promoted debt restructuring and reorganization decreased the number of small and medium-sized business failures as well as the liquidation of profitable companies. The aforementioned study, which used '**Italy**' as an example, also made it quite evident that the changes that expedited the liquidation process not only reduced the cost of financing for businesses but also loosened credit restrictions. Research from the *ibid* has also demonstrated that bankruptcy reform can help an economy emerge from a recession more quickly.

The corporate resolution and restructuring processes originated in the **United States under Chapter 11** of the Bankruptcy Code. Understandably, it is regarded as being very business-friendly, particularly in light of its 'Automatic Stay' provisions and clarity on the role of insolvency specialists in different types of insolvencies. In actuality, it's thought that US bankruptcy regulations assist businesses in staying open as long as possible throughout the process. However, most people agree that the bankruptcy regulations in the **United Kingdom**

² Report by department of financial Services, Ministry of Finance Year Ender 2023: Published on PIB dated 27 dec,2023.

are creditor-friendly. The efficiency of insolvency laws in any nation is largely dependent on the bankruptcy procedures that incorporate the needs of all parties involved. The usage of bankruptcy processes can differ even in economies with equivalent bankruptcy rules due to variations in the effectiveness of debt enforcement. Creditors and debtors are likely to engage in informal negotiations outside of court, if the insolvency professionals, regulator, and courts cannot be used effectively in a case of default by the corporate entity. This often increases uncertainty in the resolution process and would be expectedly biased in favor of the relatively "stronger party," discouraging new ventures and startups. In **'Brazil'**, variations in the judicial enforcement of the same bankruptcy law have influenced the impact of financial reforms on firm access to finance and investment.

In **India**, the implementation of the Insolvency and Bankruptcy Code (IBC) faces several challenges at the grassroots level, like Non-Cooperation by the management, maintaining on going status of the units, valuation of Corporate Debtor's assets, widespread lack of understanding by participants e.g. banks and other stakeholders, risk of security to life and family of IPs, shortage of finance/under financing, non-Compliance with the statutory provisions by CD before the insolvency proceedings, fraudulent or malicious initiation of proceedings, lack of market for stressed assets, timeline under the code and many others. Despite this, Insolvency Professionals, under the vigilant supervision of the regulator IBBI (Insolvency and Bankruptcy Board of India) and other stakeholders, are collaboratively addressing and rectifying the enforcement gaps.

4. Specialized Expertise: Bankruptcy Practitioners (Insolvency Professionals)

Due to the specialized nature of insolvency and bankruptcy processes, it is essential for Insolvency Professionals and other stakeholders to possess specific domain expertise. Therefore, professionals in this field should undergo specialization. The examination and registration system must adapt to accommodate such specialization, ensuring that individuals selected possess the most suitable skills for handling processes under the Code. In **'India'**, aspiring Insolvency Professionals are required to successfully complete the IBBI's 'Limited Insolvency Examination' to register. This examination evaluates a professional's understanding of the challenges faced by distressed companies, with a particular emphasis on a comprehensive understanding of the Insolvency and Bankruptcy Code (IBC). Currently, individuals with a decade of professional experience or graduates boasting 15 years of managerial experience must successfully complete an exam. Following the exam, they are required to join as professional members with an 'Insolvency Professional Agency' (IPA) within a year, undertake a pre-registration educational course facilitated by the IPA, and subsequently submit an application to the IBBI for registration as an Insolvency Professional. On the other hand, those lacking the specified professional or managerial experience must fulfill the requirements of the Graduate Insolvency Program offered by the IBBI, pass the Limited Insolvency Examination, become professional members with an IPA within a year of exam success, complete a pre-registration educational course through the IPA, and then apply to the IBBI for registration as an IP. Notably, this unified registration process as an IP eliminates the need for distinct examinations or licenses/certificates to handle various types of insolvencies, a departure from certain countries like the **UK**, where separate licenses are mandated for personal and corporate insolvencies, each with its own evaluation criteria. To become an IP in the United Kingdom, one must pass the 'Joint Insolvency Examination Board (JIEB) exams', which consist of three exam papers. Similarly, in the **United States**, also to become an insolvency professional typically involves meeting certain educational and professional requirements, as well as obtaining relevant certifications or licenses.

The examinations in **UK** take place once a year and run for about three and a half hours each whereas exams in **India** are based on objective questions that prioritize the evaluation of theoretical knowledge alone; in contrast, exams in **UK** and **USA** are open-book and involve case analysis. The examination of candidates' situational awareness in real-world scenarios is negatively impacted by India's case studies' low weight.

4.1. Role of Insolvency Professionals in UK Insolvency Laws.

In UK, Insolvency is a regulated profession under the Insolvency Act 1986³. Regarding formal insolvency procedures for individuals and other businesses, only a licensed insolvency practitioner may be appointed. Professionals in insolvency are authorized to provide advice and schedule appointments for all official insolvency procedures. The recognized professional body, similar as the Insolvency & Bankruptcy Board in India, supervises and inspects insolvency practitioners. A license to become an insolvency professional can only be granted upon passing the exams and meeting the licensing body's standards for insolvency experience. The Association of Chartered Certified Accountants, Insolvency Practitioners Association, Institute of Chartered Accountants in England & Wales, Institute of Chartered Accountants in Ireland, Institute of Chartered Accountants of Scotland, Law Society of Scotland, and Solicitors Regulation Authority are just a few of the reputable professional organizations that issue licenses. **We can say that the process used in India is similar to that used in the UK with regard to insolvency practitioners passing exams and being supervised by regulatory bodies.**

In the United Kingdom, amendments to the insolvency act were introduced during the Covid-19 period, with significant changes taking effect on 26 June 2020 through the **Corporate Insolvency and Governance Act, 2020**. This legislation introduced a novel aspect, the role of a '**Monitor**,' similar to an Insolvency Resolution Professional/ Restructuring Professional, responsible for overseeing corporate moratoriums. The newly established moratorium, outlined in the amended Part A1 of 1986, operates as a 'Debtor in possession process,' managed by a licensed insolvency practitioner acting as a monitor. Notably, while directors retain control over business operations, the Monitor, mandated by the new Act, must be a licensed insolvency practitioner. The Insolvency Service provides guidelines outlining their role and responsibilities⁴. As per its statutory mandate, the Monitor's principal duty was to terminate the moratorium in the event that the company's rescue appears improbable or if the company in bankruptcy is not fulfilling its obligation to pay mandatory dues during the process. It is important to note that the monitor serves as a court officer and is responsible for acting honorably and honestly. The government has assigned Monitor the duty of ensuring that only businesses with a reasonable possibility of success are granted access to the moratorium and that the company is not merely abusing the process to postpone entering a formal insolvency proceeding. The monitor is responsible for protecting the integrity of the moratorium procedure and making sure the interests of the creditors are protected. The director doing business has the right to provide the Monitor with all information. The Monitor may file a notice in court to end the moratorium if the director refuses to provide the requested information. Effective May 1, 2020, the monitor must also abide by the Code of Ethics and ethical regulatory norms. According to clause A40, two or more people may also function jointly as Monitors. Section A11 provides provisions for extensions up to 40 working days without the consent of creditors and up to several extensions beyond 40 days with the consent of creditors, provided that the total extension does not exceed one year from commencement.

³ https://en.wikipedia.org/wiki/Insolvency_practitioner

⁴ <https://www.gov.uk/government/news/major-changes-to-insolvency-law-come-into-force>

4.2. Role of Insolvency Professionals in USA Insolvency Laws.

The **'trustee'** handles the duties of insolvency professionals under the USA insolvency regime unlike in India, however, the appointment of a trustee is not required in every case involving the insolvency process. In general, a person can serve as a trustee if they are both capable of receiving the property and of acquiring or holding title to it for their own benefit. Furthermore, the trustee must be able to manage the trust, which means that children and people with mental disabilities cannot serve as trustees. The US Insolvency Code's **'Chapter 3'** lists the **eligibility and qualifications of trustees** in Sections 321 and 322, respectively. However, neither **India nor the UK** list any particular "qualifying exams" as prerequisites for holding the position of trustee. According to section 307 of the US Code, the U.S. trustee is a government person appointed for a specific term who is tasked with overseeing the administration of 'chapter 11' proceedings and keeping tabs on their progress. The oversight of the **'debtor-in-possession'** business operations and the filing of operating reports and fees falls under the purview of the U.S. trustee. The Administrator offices in the six court districts of **Alabama and North Carolina** are another agency that handles bankruptcy matters. They manage the administration of bankruptcy proceedings, keep an oversight panel of private trustees, and keep an eye on the acts and dealings of bankruptcy parties. In order to educate different stakeholders, bankruptcy administrators additionally authorize and keep up a list of credit counseling services and debtor education providers that are permitted to operate in their districts.

The appointment of a trustee may be ordered by the court at any point following the start of the action but before to the confirmation of a plan, upon request from a party in interest or the United States trustee, following notice and a hearing, mainly in situations where the debtor's affairs are being grossly mismanaged by the current management due to fraud, dishonesty, incompetence, or other issues. This could be used either before or after the case starts. Section 323 of the US Code outlines the role and authority of the trustee, stating that they will act as the estate's representative and have the legal right to file and receive lawsuits.

5. Key Aspects of Insolvency Legislation in the United States and the Responsibilities/ Role of Trustees.

The United States Code's implementation procedures are governed by **'nine parts'** in the Bankruptcy Rules & Forms and **'fifteen chapters'** in the codified insolvency law. The court and the parties will interpret, implement, and use these guidelines to ensure that every case and procedure is decided in a fair, timely, and economical manner. In the US, the most common types of bankruptcy are:

- Trustee-administered liquidation (Chapter 7);
- Municipality bankruptcy (Chapter 9);
- Debtor-in-possession (DIP) managed reorganization or liquidation (Chapter 11);
- Family farmer and fisherman bankruptcies (Chapter 12);
- Individual bankruptcies (Chapter 13); and
- Cross-border cases (Chapter 15).

Title 11 (Chapter 11) of the United States Code (the Bankruptcy Code) now outlines the pre-eminent US bankruptcy framework. Businesses file the great majority of Chapter 11 cases. The debtor develops a plan of reorganization to pay off all or a portion of its debts, frequently with

the assistance of creditors. The filing of a petition with the **bankruptcy court** that handles the debtor's primary place of business or domicile starts the chapter 11 case. A **voluntary petition** is one that is submitted by the debtor; an **involuntary petition** is one that is submitted by creditors who satisfy specific criteria. Reorganizing a business which could be a corporation, sole proprietorship, or partnership usually involves using Chapter 11. A proposed plan of reorganization is put to a vote by concerned creditors, and if it receives the necessary votes and complies with legal requirements, the plan may be confirmed by the court.

Other than the value of their investment in the company's shares, investors' personal assets are not at danger in a corporation's chapter 11 bankruptcy case (the corporation is the debtor). On the other hand, a '**sole proprietorship**' (owner as debtor) lacks a distinctive identity from its owner or owners. As a result, in a bankruptcy proceeding involving a sole proprietorship, the owners-debtors' personal and commercial assets are included. A partnership is an entity that operates independently of its participants, just like a corporation. However, in a '**partnership bankruptcy**' case (a partnership acting as a debtor), the partners themselves can be compelled to file for bankruptcy protection, or their personal assets might occasionally be utilized to settle debts owed to creditors.

According to Section 1107 of the Bankruptcy Code, the debtor-in-possession is required to carry out all trustee responsibilities, with the exception of conducting investigations, and is placed in the role of a fiduciary, with all the rights and powers of a chapter 11 trustee. The 'Bankruptcy Code and Federal Rules of Bankruptcy Procedure' outline these responsibilities, which also include accounting for assets, reviewing and disputing claims, and submitting informational reports as requested by the court, the U.S. trustee, or the bankruptcy administrator. Many other rights and responsibilities of a trustee are also available to the debtor in possession, such as the ability to hire accountants, attorneys, appraisers, auctioneers, and other professionals to help the debtor with its bankruptcy case, provided that the court gives its approval. Filing tax returns and reports that are required by law or that the court orders after verification like a final accounting are among the other duties. The U.S. trustee bears the responsibility of overseeing the debtor-in-possession's adherence to the reporting obligations.

US bankruptcy law⁵ allows for the appointment of a trustee under specific conditions, it offers a significant safeguard against the misuse of the debtor-in-possession regime. Under Section 1104(a) of the Bankruptcy Code, a trustee may be appointed to assume control of the debtor company's management, if the current management has engaged in fraud, dishonesty, incompetence, or gross mismanagement of the company's affairs, either prior to or following the start of the Chapter 11 case. In addition, a trustee will be chosen if it is required to protect the interests of the estate, any equity shareholders, and creditors of the debtor company. Under certain circumstances, the US Bankruptcy Code permits the "**cram down**" of disputing creditors.

5.1. Chapter 12 Reorganization Procedures for Family farm and fishermen. Chapter 12 of the United States Code permits a family farmer or fisherman who meets the eligibility requirements to file for bankruptcy or reorganize their business. Regarding certain clauses, they can work with the creditor to settle all or some of the company's debts, following which they can carry on with business as usual. As per Section 586(b) of the 28 US Code, the United States Trustee appoints a "**standing trustee**" who typically acts as the trustee of the debtor's business until the debtor's settlement obligations to creditors are fulfilled in accordance with the plan approved by the U.S. Bankruptcy Court with jurisdiction over the filed case.

⁵ US Bankruptcy Code - Overview, History and Chapters of Title
 ...<https://corporatefinanceinstitute.com> › knowledge › other

5.2. Chapter 13, “Wage-Earner re-organization Proceedings.

The Chapter 13 process, sometimes known as wage-earner bankruptcy, is a tactic used by certain customers to reorganize their financial situations. The repayment plan under this bankruptcy is designed to be finished within a set amount of time, say three or five years. In order to qualify for Chapter 13 benefits, an individual must meet specific income requirements on a regular basis and not have debt that exceeds the restrictions specified by the Bankruptcy Code. As per Section 586(b) of the 28 US Code, the United States Trustee appoints a "**standing trustee**" who typically acts as the trustee of the debtor's business until the debtor's settlement obligations to creditors are fulfilled in accordance with the plan approved by the U.S. Bankruptcy Court with jurisdiction over the filed case.

5.3. Liquidation Under Chapter 7.

The United States' bankruptcy law offers two different procedures for plenary corporate bankruptcies: Chapter 7 trustee-controlled liquidations and Chapter 11 DIP-controlled reorganizations or structured liquidations. With the exception of those debts that the Bankruptcy Code forbids from being discharged, an eligible debtor may get a "discharge" from their obligations under Chapter 7. The United States trustee shall designate one impartial party who is a member of the panel of private trustees established under section 586(a)(1) of title 28 or who is serving as trustee in the case immediately prior to the order for relief under this chapter to serve as **Interim Trustee** in the case as soon as possible following the order for relief under this chapter. The United States trustee may act as an interim trustee in a case if none of the panel members are willing to do so. The services of an interim trustee end when a trustee chosen or appointed under section 702 of this title to act as trustee in the case meets the requirements of section 322 of this title.

5.4. The Duties of Trustee in Liquidation Proceedings in US Code. According to Chapter 7, the trustee has a duty to, among other things, collect and reduce to money the estate's property while keeping the parties' best interests in mind, be accountable for all property received, look into the debtor's financial affairs, review claim proofs and reject erroneous ones, and provide any information about the estate and its administration that a party in interest requests and if the debtor's business is permitted to operate, submit to the court all periodic reports and summaries of that business's operations, including a statement of receipts and disbursements, as well as any other information that the court or the United States trustee may require. Additionally, submit a final report and file a final account of the estate's administration to both the court and the United States trustee.

6. Differences in Creditor Rights and Fee to Insolvency Professionals for Various Services under the Insolvency Laws.

When comparing the treatment of creditor's rights under the IB Code India to other developed bankruptcy economies such as the US and UK, there are several variances. A few variations are as follows: - How financial creditors are treated in relation to operational creditors. Under the US Code, voting rights are used to determine whether a creditor is a financial creditor or an operation creditor. Furthermore, when it comes to receiving payments, secured creditors are given preference over unsecured creditors. In the UK, the situation is comparable. In India, however, the rules of the IB Code treat Financial Creditors and Operational Creditors as two entirely distinct classes. The Supreme Court made a clear distinction between operational and financial creditors with regard to their rights under the IB Code, as demonstrated in the case of "**Switzerland Ribbon.**" This type of discrepancy between FC and OC is likely to result in a less-than-ideal resolution process by a financial creditors committee headed by the Committee of Creditors in the case of relatively high operational creditor coverage. In addition, IBC

expressly specifies the order for repayment to FCs and OCs in terms of the water fall mechanism under section 53A of the IB Code in the event of liquidation proceeds. There is no stated rule regarding the distribution order of priority in situations involving the corporate insolvency resolution process (CIRP). **In order to provide clarification and prevent legal disputes resulting from varying interpretations, the IBC in India need modification.**

6.1. The Inter-se rights of creditors with differential security Ranking.

The US common law and insolvency laws recognize distinct security positions, and it goes without saying that higher-ranked debt is paid off before less-secured debt. The situation is the same in the UK. Nevertheless, notwithstanding the UNCITRAL guide's recommendations and the bankruptcy Law Committee's report acknowledging the inter-se rights in a bankruptcy scenario, there is no such distinction in the case of India with the IB Code. Due to the IB Code's silence about inter-se rights in both instances under resolution and liquidation, courts have had to interpret it in various ways. the latest ruling by the Supreme Court in the "Jyoti Structures" case. In this instance, the Hon'ble Supreme Court denied DBS Bank's request to be granted priority over subordinate debt while considering the bank's application for dispersal based on its initial asset charge against Ruchi Soya. Recognizing creditors' inter-se rights and **amending the IB Code are necessary for a healthier and more successful credit culture India.**

6.2. Treatment of home buyer as a Financial Creditors.

There is no such distinct class of creditors in the US and UK as "home buyers" or any other type of creditors, unlike in India. Nevertheless, there were changes made to the IB Code in 2018, changing the definition of "financial debt" to include "**Allottee of houses**" under the purview of financial creditors and allowing at least 10% or 100% of home buyers to file for bankruptcy against the builder or developer.⁶ Furthermore, a necessary amendment has been incorporated into the IBC regulations so that the representative of home buyers can form part of the CoC. This eliminates the operational difficulty of consensus building that arises from many home buyers as creditors the voting threshold for resolution in cases where CoC consists of a large proportion of home buyers and entailing difficulty during voting. **But the insolvency rules of the US and the UK don't contain any such clauses.**

6.3. Treatment of OCs / FCs dues to related parties.

Payment of obligations to connected or related parties and other creditors is unaffected by US bankruptcy laws. The voting rights of the connected parties are the same as those of the unconnected creditors. Similar provisions exist in UK insolvency rules, granting related or connected parties the same voting rights as other creditors. In the case of a company voluntary administration (CVA), consent is required from at least half of the connected creditors. **Regarding the situation in India**, it is important to note that it is unclear whether a linked or related party creditor should be granted or denied the ability to vote in the Court of Creditors (CoC) and how the resolution/liquidation profits should be distributed among related parties.

6.4. Lack of clarity over treatment of creditor's dues in surety's books once guarantee is invoked.

According to the US IB code, in the event of an overdue debt default, creditors may file for bankruptcy on behalf of both the debtor and the surety. Surety's liability coexists and is not eliminated by the debtor's settlement or liquidation on its own. The creditors may potentially file for parallel insolvency proceedings against the surety and the debtor. If, following the settlement or liquidation, any sum not fully recovered is left, the creditor in the UK may take

⁶ Insolvency and Bankruptcy Code (Second Amendment Act), 2018, available at: <http://ibbi.gov.in/webadmin/pdf/legalframework/2018>. (Visted on 20 Jan 2024).

legal action against the Surety. Furthermore, until the guarantee is triggered, the surety cannot bring claims against the debtor. Nevertheless, in the instance of India, following modifications, bankruptcy procedures can now be brought in tandem against the corporate debtor and guarantor, following a ruling by the Supreme Court.

7. International Practice Regarding fee payable to IPs in contrast to India.

From a global standpoint, distinct protocols and guidelines regarding the fees to be paid to Insolvency Professionals (IPs), also known by various names like Trustees, Administrators, and Liquidators, are observed. In **Canada**, the creditors typically vote on an ordinary resolution during their meeting to determine the trustee's (an insolvency professional) fee. Nevertheless, in cases where the trustee's remuneration is not set by the creditors, Canadian insolvency laws have established a maximum of 7.5 percent of the residual proceeds from the debtor's property realization following the payment of secured creditors' claims. It goes without saying that the court, upon application, has unrestricted authority to alter the Fee/Remunerations under section 39 of the Canadian Bankruptcy and Insolvency Act, 1985. Regarding the **USA**, the court has the discretion to grant payment to an insolvency professional (trustee) in situations where Chapter 11 or 7 insolvency or liquidation proceedings are ongoing. However, a cap has been placed on the compensation based on the amount that the insolvency professional distributes to different stakeholders on a rotating basis. Additionally, "quarterly fees" were stipulated in Section 6 of the U.S. Code. These fees accumulate over the course of the Chapter 11 bankruptcy case or until it concludes with the filing of a new chapter. Quarterly fees are computed based on the payments disbursed, which include regular operating costs related to the debtor.

In the case of UK, the "Insolvency (England and Wales) Rules 2016" are the primary documents governing the Fee/Remuneration payable to Bankruptcy (Insolvency Professionals/Trustees)." The Fee/Remuneration is determined by taking into account a number of factors, including the time required to handle the case at hand, a fixed amount in the event that the administrator is set free with its amount duly justified to creditors, and a percentage of the total value of the property the administrator must deal with or the assets that are realized or distributed. Upon a court application, all costs and fees/remuneration are open to challenge on grounds of excessiveness or injustice. The court also has the authority to alter the computation technique, lower the fee, and make adjustments to previously granted set-free amounts. Additionally, there are policies and processes in place that allow the Administrator, Liquidator, or Trustee to request a raise in compensation.

In India there were no statutory provisions till September, 2022 with respect to amount/percentage of remuneration/ fee to be paid to IRP/RP in the Corporate Insolvency Resolution Process (CIRP) of a Corporate Debtor (CD). Notwithstanding the expenses on account of the remuneration/ fee to IRP/RP had priority in payment as CIRP cost in the Corporate Insolvency Resolution Process. When it comes to liquidation, provisions are already in place under section 53, which grants the insolvency professional appointed as a liquidator the right to charge a fee based on the value of the liquidation assets. This fee must be paid out of the liquidation estate's proceeds using the water fall mechanism. There are several issues and arguments before the adjudicating authorities at the moment pertaining to non-payment of fees to IRP/RP for the duration of CIRP. In many cases like "M/s Rachna Sarees Vs. Charming Apparels Pvt. Ltd," M/s Jindal Saxena Financial Services Pvt. Ltd. Vs. M/s. Mayfair Capital Pvt. Ltd.; ICICI Bank Ltd. Vs. Gitanjali Gems Ltd.; M/s. Ayam Weldmesh Pvt. Ltd. Vs. M/s. Nice Projects Ltd.; and M/s. Eonn Plast Pvt. Ltd. Vs. M/s. HS Power Projects Pvt. Ltd.," In response to the IBBI's petition, the AA instructed the Committee of Creditors (CoC) to fulfill the obligations of faith and trust outlined in the Code. In addition, the IBBI established Expert Committees with three members two market experts and one IBBI officer to guarantee that the Adjudicating Authority's directives are followed in all matters that are brought to them.

It appeared necessary to examine whether it was necessary to specify fees for IRP/RP during CIRP, similar to that of liquidator in the Liquidation Regulations, as well as the cases where the CoC does not ratify/fix their fee and, if so, the parameters to fix such fees, given that the IBBI was plagued by recurring issues, including the failure to pay adequate fees to IP/RP or the raising of extraordinary bills by IPs/RPs.

Modifications to the CIRP Regulations were adopted on September 13, 2022, taking inspiration from the above-mentioned foreign practices as well as popular practices among insolvency professionals. According to the aforementioned regulation 34B (price to be paid to interim resolution professional and resolution professional), which has been included to the CIRP Regulations' Chapter IX (Insolvency Resolution Process Cost) along with a matching Schedule II. First, the amended regulations stipulate that any IRP or RP appointed on or after October 1, 2022, will receive a monthly minimum fee based on the amount of admitted claims, with the fee payable being directly proportionate to the claim amount. Secondly, the amended regulations give the CoC or Applicant the option to fix a higher fee based on the size, scale/sector, level, and complexity of operating economic activity of the corporate debtor's business operations. Thirdly, it offered a performance-linked reward that would be paid to a resolution specialist following the adjudicating authority's approval of the resolution plan. The following improvements would encourage prompt resolution in addition to being advantageous to all parties involved. It will separate the position of a resolution professional as an "individual appointee" of the corporate debtor from that of a professional/support service provider and standardize the charge paid to the RPs for the CIRP cost⁷.

Conclusion.

Traditionally, the goal of insolvency laws and role of Insolvency Professionals has been the immediate liquidation of bankrupt businesses in order to distribute any liquidation proceeds to creditors. Modern insolvency regimes, however, are centered on giving reorganization options to economically sustainable businesses that have short-term financial difficulties in order to keep their operations running. Globally, insolvency frameworks have been adjusted to facilitate the quick liquidation of non-viable business entities while simultaneously reorganizing the operations of viable business entities. Looking around the world, a number of nations, including **France** and other developing or underdeveloped nations like **Slovenia and Thailand**, have also enacted insolvency reforms, bringing them closer to globally acknowledged best practices for court procedures and restructuring, making them a more popular and viable option for businesses experiencing financial distress.⁸

The bankruptcy frameworks created in various countries differ with regard to the international adoption of insolvency proceedings. As an illustration, the **UK and India** adhere to the "**creditor in control**" approach under the Code, whereas the **USA** uses the "**debtor in possession**" model. As a result, 'insolvency practitioners' in those countries and in India have different duties, responsibilities, and compensation. The USA's insolvency laws are regarded as being incredibly business-friendly, which makes sense given its automatic stay provisions and clarity regarding the role that insolvency experts play in different types of insolvencies. In fact, it's stated that US bankruptcy regulations assist businesses in continuing as much as possible throughout the process. The trustee's ability to look into the affairs of different types of insolvencies gives him the capability to complete restructuring and liquidation as quickly as

⁷ <https://www.mondaq.com/india/insolvencybankruptcy/1231942/ibbis-attempt-to-formalise-the-fee-structure-for-resolution-professionals> (Visted on 10 Feb 2024)

⁸ <https://documents1.worldbank.org/curated/en/912041468178733220/pdf/907590VIEWPOIN003430Debt0Resolution.pdf>

possible. However, the bankruptcy laws of the United Kingdom are largely seen as being in the best interests of creditors. In UK, after passing the exams focused on practical experience, unlike India wherein more focus is on theoretical concepts, an insolvency professional license is granted. Under the "Corporate Insolvency and Governance Act, 2020," insolvency professionals similar to IRP/RP in India have been given the new responsibility of "Monitor," which is to supervise the corporate moratorium and to ensure that only businesses with a reasonable possibility of success are granted access to the moratorium and that the company is not only utilizing the process to postpone starting a formal insolvency case.

Navigating the complex terrain of bankruptcy and insolvency processes presents a number of obstacles for insolvency experts in the **United States and the United Kingdom as in the cases of India**. The complex interweb of federal and state regulations in the USA adds another level of complexity, frequently necessitating that experts traverse numerous jurisdictions and conform to a variety of regulatory systems. Insolvency Professionals faces constant challenge because of the dynamic nature of insolvency laws and court interpretations all over the world. The procedure is made more difficult by the onerous administrative requirements and the obligation to weigh the interests of multiple parties, including shareholders, creditors, and debtors.

In a similar vein, insolvency practitioners in the **UK** face difficulties brought on by the ever-changing legal landscape. A high degree of flexibility is required because to the frequent changes made to insolvency rules and regulations, which creates a situation where knowing the most recent advancements is essential. Furthermore, a careful balancing act is required due to the demand to maximize returns for creditors while guaranteeing equitable treatment for debtors.

The COVID-19 pandemic has presented both jurisdictions with hitherto unseen difficulties, including a surge in instances involving insolvency and the requirement for creative measures to deal with the financial impact all over the world. Overall, the complicated and demanding nature of the Insolvency profession is shown by the diverse nature of bankruptcy processes in the UK and the USA, which surely need the specialists in the form of Insolvency Professional to skilfully negotiate both legal and economic complications. In India, while discharging its duties under IB Code, the Insolvency Professionals faces multiple implementation challenges. Needless to say, **Integrating the best practices from the insolvency laws of the USA and UK into the Indian insolvency framework, specifically addressing the authority, functions, duties, compensation, and obligations of Insolvency Professionals throughout the insolvency process and liquidations, would greatly enhance the implementation of the Indian Insolvency & Bankruptcy Code. The dynamic features of the IBC, with prompt adjustments as necessary, hold the potential to position the Indian insolvency law as a benchmark for other nations.**