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WHY INDIA'S INSOLVENCY LAW MUST CATCH UP WITH THE DIGITAL ECONOMY

~ Shrushti Vishal Dumbre

"A company can lose its factory and still be rescued. A digital company that loses its code, its data and the trust of its users has already been liquidated; the law has simply not noticed yet."

ABSTRACT

*The **Insolvency and Bankruptcy Code, 2016** was built on a promise: that a financially distressed company is worth more rescued than dismembered, and that its value should be maximised for the benefit of all stakeholders. That promise was written for an economy of factories, inventory and machinery. It is now being applied to an economy whose most valuable companies own almost nothing physical. Their worth lives in software, algorithms, artificial-intelligence models and, above all, in vast databases of personal information.*

*This paper argues that the Code's value-maximisation mandate is increasingly strained by asset classes it was never designed to apprehend, and that the strain is sharpest where insolvency law meets data-protection law. When a digital business fails, its customer database is at once its most saleable asset and a collection of individual rights protected by the Constitution and, since 2023, by statute. The Code tells a resolution professional to maximise value; the **Digital Personal Data Protection Act, 2023** tells the same person that personal data may be processed only with consent and only for limited purposes. Neither statute was drafted with the other in mind.*

Using a doctrinal and comparative method, the paper examines how the United States, the United Kingdom, the European Union and Singapore have begun to reconcile these pressures, and it proposes a reform framework for India: clearer treatment of digital assets in valuation, specialised technical expertise for resolution professionals, a

statutory bridge between the Code and the DPDP Act, and safeguards for cross-border and going-concern preservation. The central claim is simple. Insolvency law cannot maximise value it cannot see, and it must not maximise value at the cost of rights it is bound to respect.

KEYWORDS

Insolvency and Bankruptcy Code; digital assets; intangible asset valuation; Digital Personal Data Protection Act; data protection; corporate insolvency resolution process; resolution professional; customer data; going concern; cross-border insolvency; privacy; asset maximization.

INTRODUCTION

Consider a food-delivery platform collapse. It owns no restaurants and cooks no food. Its offices are leased, its servers are rented from a cloud provider on another continent, and its delivery fleet belongs to gig workers who are paid by the order. On the balance sheet, under "plant and machinery", there is almost nothing. Yet the day before it failed the company was valued at hundreds of crores. That value did not vanish overnight. It was always somewhere else: in the software that matches an order to a rider in seconds, in the recommendation algorithm that decides what a hungry user sees first, and in the personal details of millions of customers: their addresses, their payment methods, their ordering habits at eleven o'clock at night.

When that company enters insolvency, an uncomfortable question arrives with it. What, exactly, is being rescued? *The Insolvency and Bankruptcy Code, 2016* ("the Code" or "IBC") was one of India's most important commercial reforms, replacing a slow, fragmented and creditor-hostile regime with a time-bound process aimed at rescuing viable businesses and maximizing the value of those that cannot be saved.¹ The Supreme Court has repeatedly described the Code as legislation meant to revive the corporate debtor rather than to bury it, and has placed the maximization of the debtor's value at the center of the statutory scheme.² But maximization assumes that value can be found, measured and preserved. For a digital business, each of those assumptions is fragile.

The difficulty is not merely one of arithmetic. A customer database is both an asset and an aggregation of personal rights. Since the recognition of privacy as a fundamental right and the

¹ Insolvency and Bankruptcy Code, 2016 (Act No. 31 of 2016).

² *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 SCC 17; *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 SCC 531.

enactment of the *Digital Personal Data Protection Act, 2023* ("**DPDP Act**"), the personal data on a failed company's servers cannot simply be treated as stock-in-trade to be sold to the highest bidder. Insolvency law now shares the table with privacy law, and the two do not yet speak the same language.

This paper advances a single thesis: the IBC's value-maximization mandate is increasingly defeated by two features of the digital economy - the invisibility of intangible value and the legal personality of personal data and India can correct course by learning, selectively, from jurisdictions that started asking these questions earlier.

RESEARCH PROBLEM

The core problem is a mismatch between a statute designed for tangible enterprise and an economy built on intangible value. Three research questions follow.

1. Does the Code, as presently drafted and applied, allow the value of digital assets to be adequately identified and preserved during insolvency?
2. Can personal data held by a corporate debtor be valued and transferred consistently with the DPDP Act and the constitutional right to privacy?
3. What institutional and legislative reforms would allow Indian insolvency law to serve the digital economy without sacrificing individual rights?

METHODOLOGY

The research is doctrinal, comparative and policy-oriented. The doctrinal component analyses the Code, the regulations made under it, the **DPDP Act** and the leading judgments of the Supreme Court. The comparative component examines the treatment of digital assets and personal data in the insolvency and data-protection regimes of the United States, the United Kingdom, the European Union and Singapore, chosen because each has confronted these questions in a mature market and produced transferable ideas rather than perfect answers. The policy component draws on official reports and market data to assess the practicality of reform in the Indian context.

SCOPE & LIMITATIONS

The paper concerns corporate insolvency under the Code; it does not address personal or partnership insolvency, nor the specialized regime for financial service providers. Two limitations should be stated plainly. The research is doctrinal and offers no original empirical valuation of digital assets. And the comparative material is drawn from jurisdictions that differ

from India in scale, legal culture and market depth, so their lessons are treated as prompts for design rather than templates to be copied.

THE STATE OF THE DEBATE

The Code's value-maximization objective is, by now, well theorized. The Supreme Court has settled its centrality, and a substantial literature examines the creditor-in-control model, the primacy of the committee of creditors and the balance the Code strikes between competing stakeholders.³ That body of work, however, largely assumes assets of a conventional kind. A newer and fast-growing Indian literature has begun to identify the specific tension between the Code's asset-maximization drive and the **DPDP Act's** rights-based restraints, mapping the conflict over customer data with real care.⁴ Its principal limitation is that it remains largely diagnostic: it establishes that a conflict exists without designing the institutional interface that would resolve it.

The comparative literature is more mature but has not been synthesized for the Indian process. Foreign scholarship and practice have worked through the sale of personally identifiable information in bankruptcy and the recognition of digital assets as property, producing concrete devices; the consumer privacy ombudsman, conditioned data sales, statutory recognition of digital property which Indian writing tends to note in passing rather than adapt.⁵ This paper addresses that gap. It moves from identifying the conflict to proposing a workable bridge between the two statutes, drawing on comparative practice while remaining anchored in the architecture of the Code.

1. THE CODE'S VALUE-MAXIMISATION MANDATE & THE PROBLEM OF INVISIBLE VALUE

1.1 THE MANDATE & THE GOING-CONCERN PREMISE

The Code's architecture rests on a simple economic intuition: a business kept alive is usually worth more than the sum of the assets sold off when it dies. The corporate insolvency resolution process ("CIRP") the Code's rescue procedure is therefore, built to preserve the corporate debtor as a going concern while creditors decide its future. In *Swiss*

³ *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 SCC 17; *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 SCC 531.

⁴ See, e.g., Prince Kumar, "The Digital Dilemma in Distress: Reconciling Data Valuation and Asset Maximisation under India's IBC with the Privacy Imperatives of the DPDP Act" (IBC Laws, 2024); GNLU Centre for Business and Public Policy, "Digital Assets in Distress: Reconciling India's IBC with the DPDP Act" (2024).

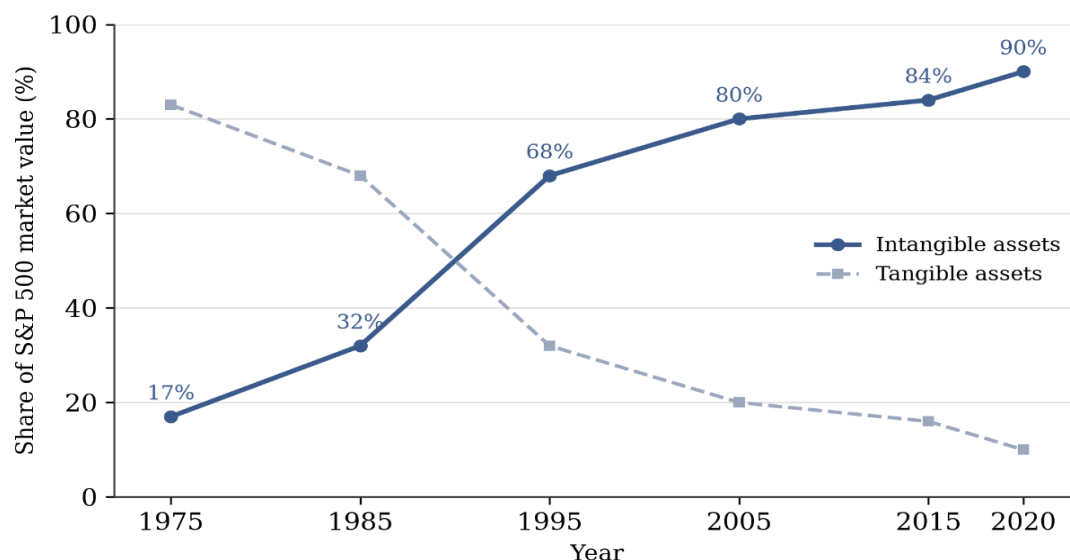
⁵ Law Commission, *Digital Assets: Final Report* (Law Com No 412, 2023); 11 U.S.C. ss. 332, 363(b)(1).

Ribbons, the Supreme Court characterized the Code as a beneficial legislation that seeks to put the corporate debtor back on its feet, and in *Essar Steel* it reaffirmed that maximization of the value of the debtor's assets is a paramount object of the statutory scheme.⁶ The resolution professional is placed at the center of this effort, charged with taking control and custody of the assets of the corporate debtor and running it as a going concern during the process.⁷

The premise works well when value is visible and durable. A steel plant retains much of its worth even if production halts for a few months; its furnaces and land do not evaporate. The premise begins to fail when value is invisible and perishable, when it depends on continuous operation, constant updating and the daily choice of users to return.

1.2 THE RISE OF INVISIBLE VALUE

The shift from tangible to intangible value is not a matter of impression; it is one of the best-documented trends in modern corporate finance. Studies of the S&P 500 index show that in 1975 roughly 83% of the market value of America's largest companies was made up of tangible assets, and only 17% intangible. By 2020 that ratio had almost exactly reversed: intangible assets such as brands, software, data, intellectual property and goodwill were accounted for around 90% of market value.⁸



⁶ *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 SCC 17, paras 11-12, 28; *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 SCC 531, paras 83-85.

⁷ *Insolvency and Bankruptcy Code*, 2016, ss. 18, 20, 25.

⁸ *Ocean Tomo, Intangible Asset Market Value Study* (2020). The reported intangible share rose from 17% (1975) to 32% (1985), 68% (1995), 80% (2005), 84% (2015) and approximately 90% (2020).

Figure 1: The reversal of tangible and intangible value in the S&P 500, 1975-2020.⁹

India is travelling the same road. The **Ministry of Electronics and Information Technology** estimates that the digital economy already accounted for about 11.74 % of national income in 2022-23 and is on course to contribute close to a fifth of the economy before the end of the decade; a share that will soon exceed either agriculture or manufacturing.¹⁰ The country hosts one of the world's largest start-up ecosystems, and for its fintech firms, software companies, gaming platforms and marketplaces, the entries under "plant and machinery" are the least interesting numbers on the page. The value is in the code, the data and the network of users. An insolvency law that can only see the balance sheet is, increasingly, looking in the wrong place.

1.3 WHERE THE STATUTE FALLS SHORT

The Code does not ignore intangibles altogether. Its definition of a debtor's property is broad, and intellectual property, licenses and contractual rights all fall within the resolution professional's remit. The difficulty is not one of exclusion but of treatment. The statutory machinery taking custody of assets, running the business, valuing it and inviting resolution plans assumes that assets can be possessed, secured and preserved by relatively conventional means.¹¹ A server can be seized; the license to the software running on it may lapse the moment fees go unpaid. A database can be copied; its lawful use may be tightly constrained. The Code's silence is not about whether digital assets have value, but about how that peculiar, perishable and legally encumbered value is to be preserved. It is that silence, rather than any express exclusion, that the digital economy exposes.

2. VALUING THE INTANGIBLE: ALGORITHMS, SOFTWARE, DATA AND AI

2.1 WHY TRADITIONAL VALUATION FAILS

Every time a streaming service suggests a film or a marketplace recommends a product, an algorithm is at work, a set of instructions telling a computer how to solve a problem. Now imagine valuing that algorithm during insolvency. Conventional valuation leans on three approaches: what an asset cost to create, what it would fetch in the market, and what income it will generate. Each falter for digital assets. The cost approach captures what

⁹ Data: Ocean Tomo, Intangible Asset Market Value Study (2020).

¹⁰ Ministry of Electronics and Information Technology, Estimation and Measurement of India's Digital Economy (Govt. of India, Jan. 2025).

¹¹ Insolvency and Bankruptcy Code, 2016, ss. 18, 25, 35 (liquidator's power to sell the assets of the corporate debtor).

was spent building a recommendation engine, but not what makes it valuable, which is its accuracy today. The market approach needs comparable sales, and there is rarely a liquid market for a bespoke algorithm or a proprietary AI model. The income approach depends on forecasting revenue from an asset whose performance may collapse the moment the team that maintains it disperses. If the algorithm is undervalued, creditors are shortchanged; if it is overvalued, buyers walk away and the resolution fails. Either way, the object of maximizing value is quietly defeated.

2.2 DATA AS AN ASSET & THE CIRP VALUATION PROCESS

Under the CIRP, the resolution professional must appoint registered valuers to determine the fair value and the liquidation value of the corporate debtor's assets, so that the committee of creditors can judge whether a resolution plan is worth accepting.¹² Registered valuers are accredited by asset class, but the asset classes were conceived for land, plant and securities, not for training datasets or customer graphs. There is, at present, no standardized methodology in India for valuing a customer database, and the absence is consequential: a data asset that is central to a company's worth may be recorded at a nominal figure simply because no accepted technique exists to price it. The result is not merely inaccuracy but a systematic tendency to undervalue precisely the assets that carry the most value, exactly the opposite of what the Code demands.

2.3 AI MODELS, SOFTWARE DEPENDENCIES & GOING-CONCERN FRAGILITY

Digital value is not only hard to measure; it is unusually fragile. A factory that stops for three months can be restarted. A digital platform that loses its users may never recover them, because network value depends on the very activity that failure interrupts. Three dependencies make the point. First, software must be continuously maintained, patched, updated and kept compatible or it decays; a resolution professional who cannot pay or retain engineers may watch an asset degrade in real time. Second, most modern platforms rest on third-party services such as cloud hosting, payment gateways, application programming interfaces whose contracts often permit termination on insolvency, so that a rescue can be frozen by a counterparty exercising a clause. Third, an AI model is only as good as the data pipeline that feeds it and the people who tune it; both may disappear

¹² Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, regs. 27, 35 (appointment of registered valuers; determination of fair value and liquidation value).

during distress. Preserving such a business as a going concern is therefore a race against time, and the Code's timelines, generous for a manufacturer, can be unforgiving for a platform.

3. THE PRIVACY FAULT LINE: PERSONAL DATA AS ASSET AND AS RIGHT

3.1 *PUTTASWAMY*, THE DPDP ACT & THE NEW BASELINE

A customer database is not simply a spreadsheet of value. It contains names, addresses, phone numbers, financial details and the accumulated traces of people's lives, shared on the understanding that they would be used for a defined purpose and not auctioned if the company later failed. Two developments have turned that expectation into law. In *Justice K.S. Puttaswamy v. Union of India*, a nine-judge bench of the Supreme Court held that the right to privacy is a fundamental right protected by the Constitution.¹³ The **DPDP Act** then translated that principle into operational obligations: personal data may be processed only for a lawful purpose and, in most cases, only with the free, informed and specific consent of the individual; the individual must be given notice of the purpose; and the data fiduciary must erase personal data once consent is withdrawn or the purpose is served.¹⁴ Protecting personal data is no longer a matter of good corporate manners; it is a legal duty that does not switch off when a company enters insolvency.

3.2 THE COLLISION

Here the two statutes meet head-on. The Code directs the resolution professional to maximize value, and **section 238** gives the Code overriding effect over other laws inconsistent with it.¹⁵ The DPDP Act directs the same person, now wearing the hat of a data fiduciary, to process personal data only within the bounds of consent and purpose. A straightforward sale of a customer database to the highest bidder may maximize value and, at the same time, breach every one of those limits: the buyer may intend a purpose the customers never agreed to, consent obtained by the failed company may not extend to a new controller, and the duty to erase may be triggered just as the asset is being marketed.

It would be too quick to say that **section 238** simply resolves the conflict in the Code's favor. An overriding clause displaces inconsistent laws; it does not authorize the

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

¹⁴ Digital Personal Data Protection Act, 2023, ss. 4-6 (grounds for processing, notice and consent) and s. 8 (obligations of the data fiduciary, including erasure).

¹⁵ Insolvency and Bankruptcy Code, 2016, s. 238 (provisions of the Code to override other laws).

extinguishment of a fundamental right, and the right to privacy recognized in Puttaswamy is not the kind of obligation that a non-obstante clause can wave away. The better view is that the two statutes must be read to stand together wherever possible, with value maximized inside the boundaries that data protection sets and not outside them.

3.3 CAN CONSENT SURVIVE INSOLVENCY?

The unavoidable question is whether consent given to a company survives the transfer of that company's business to someone else. If a user agreed that Platform A could use her data to run a food-delivery service, has she agreed that Platform B, the successful resolution applicant, may use the same data for the same service? Sometimes the answer is a sensible yes; where the business continues in substantially the same form for the same purpose, insisting on fresh consent from every user could destroy the going concern the Code is trying to save. Sometimes it is plainly no; where the buyer's purposes differ, or the data is stripped out and sold on its own. Indian law does not yet mark the line between the two, and that uncertainty is itself a cost, deterring bidders who cannot price the risk and endangering rights-holders who cannot see how their data will be used.

4. COMPARATIVE PERSPECTIVES

No country has solved these problems; several have started addressing them earlier and more openly than India. Four jurisdictions are instructive.

4.1 THE UNITED STATES: DATA SALES UNDER SUPERVISION

American bankruptcy courts have handled digital assets for years, expanding the notion of the debtor's estate to include intangibles such as software, trademarks, domain names and data - and relying heavily on expert valuation rather than assuming that value must be physical to be real. More importantly for privacy, US law confronted the sale of customer data directly. When the online toy retailer Toysmart tried to sell its customer list in breach of its own privacy promise, the Federal Trade Commission intervened, and the resulting settlement allowed a sale only under strict conditions that the data be sold as part of the whole business, to a buyer in the same line of business, bound by the original privacy policy.¹⁶ Fifteen years later, when RadioShack proposed to sell the records of some 117 million consumers, the same template returned: the data of inactive customers was excluded, individuals were given an opportunity to opt out, and the buyer accepted the

¹⁶ In re Toysmart.com, LLC; see Federal Trade Commission, FTC v. Toysmart.com, LLC, Stipulated Consent Agreement (2000).

seller's privacy commitments.¹⁷ Underlying both cases is a structural device worth noticing: where a sale would transfer personally identifiable information inconsistent with a privacy policy, the Bankruptcy Code requires the appointment of a consumer privacy ombudsman to advise the court before it approves the sale.¹⁸ Value is still pursued, but under supervision.

4.2 THE UNITED KINGDOM: RECOGNIZING DIGITAL PROPERTY

English law has moved decisively to recognize that things existing only in digital form can be owned. In *AA v. Persons Unknown*, the High Court held that cryptocurrency is property capable of being the subject of a proprietary claim, a conclusion of obvious significance for insolvency, since only things recognized as property can be organized and distributed for creditors.¹⁹ The **Law Commission of England and Wales** then examined the question systematically, concluding that certain digital assets deserve recognition as a distinct, third category of personal property, and Parliament has since confirmed the direction of travel.²⁰ The lesson for India is foundational: an asset that the law does not recognize as property is an asset an insolvency regime cannot properly preserve.

4.3 THE EUROPEAN UNION: PRIVACY THAT DOES NOT SWITCH OFF

The European Union approaches the problem from the rights end. Under the **General Data Protection Regulation (GDPR)**, personal data remains protected even when a company is in financial distress, and a transfer of a customer database from an insolvent seller to a buyer is itself an act of processing that must satisfy the Regulation's principles of lawfulness, purpose limitation and transparency.²¹ A change in the ownership of a business changes the controller of the data, and the new controller cannot rely on a consent that was never given to it. The European position teaches that insolvency law cannot operate in isolation: it must work alongside data-protection, intellectual-property and cybersecurity law, because the questions raised by digital businesses are too interconnected for any single statute.

4.4 SINGAPORE: SPEED AS A VALUE-PRESERVING STRATEGY

Singapore has made itself one of Asia's leading restructuring hubs by modernising its insolvency framework rather than waiting for it to age. Its consolidated *Insolvency*,

¹⁷ Federal Trade Commission, Letter to RadioShack's Consumer Privacy Ombudsman (18 May 2015).

¹⁸ 11 U.S.C. ss. 332, 363(b)(1) and 101(41A) (consumer privacy ombudsman; sale of personally identifiable information).

¹⁹ *AA v. Persons Unknown* [2019] EWHC 3556 (Comm).

²⁰ Law Commission, Digital Assets: Final Report (Law Com No 412, 2023); Property (Digital Assets etc) Act 2025.

²¹ Regulation (EU) 2016/679 (General Data Protection Regulation), arts. 5-6.

Restructuring and Dissolution Act 2018 and its receptive courts favor the preservation of technology-driven enterprises as going concerns, reflecting a commercial truth the digital economy makes urgent: a platform's value can evaporate faster than a factory's, so the legal system must be able to act quickly enough to preserve it.²² For India, whose CIRP timelines are frequently overshot, speed is not a procedural nicety but a substantive means of protecting digital value.

WHAT THE COMPARISON YIELDS

The four jurisdictions converge on a set of design ideas, summarised in Table 1: recognise digital things as property; value them with genuine expertise; supervise the sale of personal data rather than forbidding or ignoring it; and move fast enough to save assets that perish quickly. None of these ideas requires India to abandon the Code's basic bargain. They ask only that the bargain be updated for the assets that now dominate the economy.

Table 1: Comparative treatment of digital assets and personal data in insolvency.

Jurisdiction	Status of digital assets	Personal data in insolvency	Key instrument
United States	Intangibles firmly within the bankruptcy estate; expert valuation	Sales of customer data supervised; consumer privacy ombudsman	11 U.S.C. ss. 332, 363; <i>Toysmart</i> ; <i>RadioShack</i>
United Kingdom	Digital assets recognised as property (a third category)	Governed by <i>UK GDPR</i> and <i>Data Protection Act 2018</i>	<i>AA v. Persons Unknown</i> ; <i>Law Com No 412</i> ; <i>Property Act 2025</i>
European Union	Data as protected right, not merely an asset	Transfer is processing; new controller needs its own basis	<i>GDPR</i> , arts. 5-6
Singapore	Going-concern preservation of tech firms favored	Under <i>Personal Data Protection Act 2012</i>	<i>Insolvency, Restructuring and Dissolution Act 2018</i>
India	Broad property definition, no specific digital regime	DPDP Act applies, but no insolvency interface	<i>IBC, 2016</i> ; <i>DPDP Act, 2023</i>

5. THE INDIAN GAP: FOUR UNANSWERED QUESTIONS

None of these questions seemed urgent when the Code came into force in 2016. They are

²² *Insolvency, Restructuring and Dissolution Act 2018* (No. 40 of 2018) (Singapore).

no longer theoretical, yet Indian law still offers little guidance on four of them.

- 1) **Valuation:** How is an AI model, a proprietary algorithm or a customer database to be valued when no accredited methodology exists, and who is competent to do it?
- 2) **Data transfer:** can personal data be included in a resolution plan or a liquidation sale without breaching the *DPDP Act*, and on what conditions?
- 3) **Cross-border reach:** what happens when the corporate debtor's most important servers, data and cloud contracts sit outside India, beyond the direct reach of the adjudicating authority, at a time when the Code's cross-border provisions remain only partly operational?
- 4) **Continuity:** how is a resolution professional to preserve software that needs constant updates, and services that depend on third parties entitled to walk away on insolvency?

Each gap translates directly into lost value or infringed rights, and each is now being tested in the market rather than in the abstract.

6. A FRAMEWORK FOR REFORM

6.1 RECOGNISE DIGITAL ASSETS IN VALUATION

The first step is to give digital assets clearer treatment within the valuation process. The *Insolvency and Bankruptcy Board of India* should develop, or formally recognise, valuation standards for principal classes of digital asset such software and source code, datasets, intellectual property and AI models so that valuers work from a common and defensible methodology rather than improvising. Valuation standards designed for factories and equipment should not be forced onto assets whose worth lies in code and information.

6.2 GIVE RESOLUTION PROFESSIONALS TECHNICAL EXPERTISE

A resolution professional handling a technology company routinely retains financial and legal advisers; the same professional should have ready access to genuine technical expertise, engineers and data specialists able to assess, maintain and preserve software, pipelines and models during the process. A dedicated panel of accredited technical experts, on which resolution professionals could draw, would prevent the silent decay of assets that occurs when no one competent is keeping the system alive.

6.3 BUILD A STATUTORY BRIDGE BETWEEN THE CODE & THE DPDP ACT

The most important reform is to connect the two statutes deliberately rather than leaving them to collide. A data-in-insolvency protocol by amendment to the Code, by regulation, or by joint guidance from the Board and the Data Protection Board should specify when personal data may be included in a resolution plan or sale, and on what conditions: continuity of purpose, the buyer's acceptance of the original privacy commitments, an opportunity for individuals to opt out, and the exclusion of data no longer lawfully held. India could borrow the American device of an independent voice for data subjects, appointing a data-protection adviser; an Indian analogue of the consumer privacy ombudsman in cases involving large volumes of personal data, to advise the committee of creditors and the adjudicating authority before a data-bearing plan is approved. The object is not to place data beyond reach but to allow its value to be realised within the boundaries the *Constitution* and the **DPDP Act** set.

6.4 SAFEGUARD CROSS-BORDER & GOING-CONCERN PRESERVATION

India should bring into force a comprehensive cross-border insolvency framework so that data and infrastructure held abroad can be reached through recognised cooperation rather than left stranded. In parallel, the going-concern toolkit needs a digital upgrade: protection against the automatic termination of essential technology contracts on insolvency, so that a cloud provider or payment gateway cannot unilaterally freeze a rescue and timelines applied with an awareness that digital value perishes faster than physical value.

6.5 PHASED IMPLEMENTATION

These reforms need not arrive at once. Valuation standards and a panel of technical experts can be introduced by the Board within the existing framework and relatively quickly. The statutory bridge to the **DPDP Act** and a cross-border regime require legislative change and should be piloted and consulted upon before nationwide effect. What matters is that the direction is set now, while the number of digital insolvencies is still small enough to learn from.

CONCLUSION

The deepest lesson of the digital age is that value has become invisible. It lives in code, in data, in digital relationships and in ideas that have no physical form but enormous economic weight. An insolvency law that cannot recognise where value lives cannot fulfil its promise to maximise it and an insolvency law that recognises value only as something to be sold, ignoring that a

customer database is also a bundle of rights, will maximise the wrong thing at the expense of the people the law is meant to serve.

History suggests that the law eventually adjusts to innovation, but that it usually arrives a little late. India has a rare chance to arrive on time. Its digital economy is large and growing, its data-protection statute is new, and the number of digital insolvencies is still small. As businesses move from factory floors to cloud servers and from assembly lines to artificial intelligence, insolvency law must make the same journey. The real challenge is no longer only how to rescue a failing company. It is learning what, exactly, needs to be rescued and making sure that, in the rescue, nothing that belongs to the people is quietly sold along the way.

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