

Insolvency and Bankruptcy Law in India

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Week 01

Lecture 02

Welcome to all.

As a part of the course on Insolvency and Bankruptcy Law in India, today we are going to discuss about the Introduction and History of Insolvency Law. So in the last class, we have discussed about the objectives of insolvency law, why we need to have the insolvency law and need for insolvency law. what is the necessity to have the insolvency law and when we are having the insolvency law, how it helps the economy as a whole at the macro level. Then we have discussed about how insolvency law facilitate the reinvestment of funds. So, when you are able to recover the funds at the earliest, that is creditor is able to recover the funds at the earliest, then he can go for reinvestment in other place.

So, today we are going to discuss history of insolvency law, mainly we will concentrate on ancient Indian history of insolvency law. so please remember insolvency and bankruptcy they are two related but they are distinct concept. okay so why because insolvency is a state of financial distress. okay when you are unable to pay the debt then that is called as insolvency when it is admitted to the admitted before the court of law and if it is declared then you are considered bankruptcy.

okay so insolvency is a scenario or situation and if it is officially declared then you are called as bankrupt. okay so that is the difference between insolvency and bankruptcy Let us discuss about ancient, the history of insolvency in the ancient period. So, if you observe the Dharma Shastras, okay, first we will read the Dharma Shashtra, first we will try to understand Dharma Shastras, then we will discuss about various, in various yugas, how the insolvency was treated, then subsequently we will discuss about the Mauryan period, then we will discuss about Islamic period, then subsequently we will end up with the British period. Okay, so this is how we are going to discuss today. Okay, so if you observe the dharma shastras, they emphasize debt repayment as a sacred duty.

Okay, so if you observe, there's a famous saying. Runanubandha rupena pashu patni suta aalaya. So, according to Hindu philosophy, there are various janmas. So maybe in the form of human being, maybe in the form of animal, whereas there are various janmas are there. Okay, so you are going to take birth again and again.

So when you are having any debt, that is Runa, when you are having any debt. okay, you are supposed to clear it until and unless you are clearing the debt. okay so you are going to take the birth maybe in the form of human being maybe in the form of animal in any form, okay. so Runanubandha rupena pashu patni suta aalaya, that means whoever is there okay so surrounding you maybe wife children or maybe your home maybe temple whatever it is okay so all these things are based on when you are having or when you are liable when you are having when you owe something to opposite person okay then only there will be a relationship between you and opposite person. okay so till you clear the debt or till you clear the runa okay so you are going to have the janmas again and again okay.

So that is the importance given to the concept of debt or runa okay so in the ancient philosophy okay so. it said that failure led to loss of reputation and servitude across lifetimes until the debt was discharged okay. So when you fail to pay the debt okay so it is going to affect the reputation of a person and you are going to have the lifetimes. So, again and again you are going to take the birth to clear the debt. So, that was the concept of Runa under the Dharma Shastras.

Now, Kusuddin. So, he is also called as Runadatta. so he is also called as creditor. In our language kusudin offer charge with high interest rate raising concerns so even in the olden times also we used to have the rules and regulations how runa data or as we can say the vishya's community okay. So in indian philosophy there is a caste system is there based on the profession okay so based on the profession the caste system was there.

So kusudin or Vaishya community is considered to be doing the business okay so they are expected to charge a reasonable interest rate they cannot charge higher interest rate. okay so we are having certain rules and regulations are there in the Dharma Shastras okay now let us look at other concepts okay "vyavaharik" so what is this "vyavaharik" okay, so vyavaharik is a person who is appointed by the king. okay so who is this vyavaharik,? vyavaharik investigated borrowers assets and liabilities and presented the case to the king for resolution. so there was a concept of vyavharik. so what is this maybe you can correlate the with the concept of resolution professional in the present times okay so.

In the present times under the ibc okay the resolution professional is going to take care of the assets and liabilities of the creditor. okay so asset and liabilities of the corporate debtor. so then he is going to manage the entire uh corporate debt and he is going to

replace the board of directors of the company. okay so in the same manner the vyavaharik once he once he is appointed by the king he is going to replace the and he is going to manage the assets and liabilities of the borrower. okay so we can correlate the concept of with the resolution professional.

Okay so here Vyavharik is appointed by the king whereas resolution professional is appointed by the adjudicating authority. so even in the ancient period also we are having the concept of may not be in the name of resolution professional but there is a concept similar to the concept of resolution professional okay. now let us discuss about the developments of insolvency and bankruptcy law in different yugas. okay so even in different yugas also we are having the concept of bankruptcy. okay so in hindu literature the first yuga is satya yuga.

Okay so satya yoga is considered to be a golden age why because the people lived a simple life and they were content with what they are having. Okay, so whatever they are having, they are happy. Okay, they don't want uh they don't want to accumulate the wealth okay so they don't want to possess the possess any wealth which is beyond their needs okay so. whatever i require so to that extent i'm supposed to have okay i'm not supposed to have more than whatever is required okay So that's why when there is no concept of acquiring more and more wealth, there is no possibility of having the insolvency also. And please remember, even if you observe the Satya Yuga, in the Satya Yuga, majorly the system was based on the barter system whereby we used to exchange the goods.

Okay so suppose there used to be various artisans okay various Kulas used to be there in a one village and each and every village is self-sufficient so each and every person used to manufacture something and he us ed to give to other person . in the same manner he used to give he used to take the goods from other people okay so based on the batter system the goods and services were exchanged between the persons okay so there is no concept of insolvency during the Satya Yuga. And when you come to the Treta Yuga, so Treta Yuga is a period where it includes instances of financial difficulties. Suppose if you take the example of King Harishchandra. So if you observe the history of King Harishchandra, where if as he do not have sufficient money to pay.

Okay, so when Vishwamitra asked him to give the funds for the conducting the Rajasuya Yagna okay, he don't have sufficient funds and he owed okay because he promised to pay the amount so that's why he owed the money. then subsequently he sacrificed his personal life and also he sold his son wife everyone and subsequently he worked in a Cremation house. Okay cremation place. Okay, so in the Kashi Look at that.

Okay. So here if you observe there is a concept called as Vyavaharika. Okay, so the term Vyavaharika in the ancient period and the term under the Muslim law that is under

NAZIR okay so Vyavahari and NAZIR okay so we can correlate. okay so NAZIR means any person who is managing the assets of insolvent individuals okay so even we are having may not be in the same manner like resolution professional but we are having the instance of having resolution professional. okay that is nazir who is considered to be trustee. even if you observe the present legislation also the resolution professional is considered to be having the position of trustee and he is in a fiduciary relationship okay Then Qazi, so there is another call as Qazi ok, so Islamic judge.

So, who is this Islamic judge ok, so Qazi who ensure that fair asset distribution among the creditors ok. Right now we are having the adjudicating authority ok once the resolution professional prepares the list then subsequently when you are distributing the assets ok, it is the responsibility of adjudicating authority to ensure that they are distributed among the creditors ok equitably okay so in the same manner even in the islamic system uh Islamic judge who is called as qazi so even it is the responsibility of qazi to ensure that the assets are distributed among the creditors equitably. okay then lending and insolvency in mughal and medieval period. In continuation so financial instruments and judicial oversight during the sultanate period there is a concept i mean hundis there is a concept of call as hundis what is this hundis? Hundis is more or less similar to the concept of bills of exchange. okay So these hundis are used for the credit and payment and similar to modern checks okay right now we are having the concept of cheques where you can draw the cheque and you can give the cheque to any other person then any person can realize the cheque ok.

In the same manner, hundis also can be given by any person where if he is having an arrangement with the village head then village head person then he can give the hundi. then any person who is submitting the hundi so he is entitled to receive the amount okay so. it is more or less similar to the concept of bills of exchange okay so even in hundis also various categories are there like darshani hundi so which is payable on site okay. darshani hundi means which is payable on site. So like that we are having the concept of hundis and other things.

Then Qazi ul hazat, so what is this qazi ul hazat? Chief Qazi, so arbitrated debt settlements supervised fair liquidation so like it's like a appellate tribunal right now okay. so they used for credit and payments and arbitrated debt settlement supervised fair liquidation and it is a responsibility of Chief Qazi to ensure that the settlement amounts are I mean amount is settled properly as per the law Islamic law and . we can compare it is comparable with the Modern Insolvency and Bankruptcy Code and Resolution Professional, ok. So, Qazi, Al-Hazqt and this qazi. Then, so now let us, so till here we have discussed the ancient period, how insolvency law was there.

There is Treta Yuga, Treta Yuga, Satya Yuga, Treta Yuga, Dwapara Yuga and Kal Yuga we have discussed, ok. Then subsequent to that we have discussed the Mauryan period,

then Mughals period. Then subsequent to that, ok, we have in British Code. Now, whatever we are reading the insolvency law, there is modern insolvency law, they were introduced during the British period. So, what is the basic objective during British, basic objective of introducing insolvency law during the British period? The basic objective to introduce the insolvency law during the British period is that to regulate the trade related questions or operations in the presidency town, because in the presidency towns directly Britishers used to have the control.

So, they wanted to have the control over the trading activities. So, that is why they have introduced legislation ok. So, first legislation on the subject matter is Indian Insolvency Act 1848 ok. So, it was for the first time they have introduced ok. but they are not covering all the provinces.

So, that is why they have introduced another legislation because they are having two categories of towns ok. One is presidency town and provincial towns. What is this presidency towns? Presidency towns means the cities which are directly under the control of Britishers. Provincial towns means these are all provinces ok. So, provinces means other king they are under the control of other king.

But who is subject to or who is under the control of the Britishers, ok. So, that is why subsequently they have introduced the Presidency Town Insolvency Act 1909 for the Presidency Towns and Provincial Town Insolvency Act 1920 for the provinces, ok. In the coming lessons, after discussing the insolvency regime in UK and USA, so we are going to discuss the, in one lesson we are going to discuss a brief overview of Presidency Town Insolvency Act and Provincial Town Insolvency Act. briefly we are going to discuss in the subsequent lessons okay so that is how the law relating to insolvency was developed s even during the ancient period also may not be in the same terminology but we are having the law relating to insolvency even in the ancient period also okay. let us discuss what let us recap what we have discussed today so today we have discussed about insolvency law in ancient india how it was there okay then how it was evolved it evolved during the satya yuga treta yuga dwapar yuga and kali yuga.

Okay. so one of the fundamental principle under the dharma shastra is that "Runanubandha rupena pashu patni suta aalaya". okay so So, when you are having any debt, so you are expected to clear. So, you are expected to, I mean all the relations whatever you are having, so they are all because of the debt. So, till the debt is clear, you are going to have such relations. Once the debt is cleared, then automatically you are going to get the incarnation.

So, there is a basic ideology of Hindu philosophy. So, all these things we have discussed in today's lesson. Then subsequently we have discussed insolvency provisions during the Maurya's period and I can say during the Maurya's period if you read the Kautilya's

Arthashastra. So, it is a one of the beautiful text where which provided in detail about the economics, politics, the administration, how to administer the kingdom. So, each and everything was in detail they have discussed ok.

Then we have discussed about the lending and insolvency in Mughal and medieval period. So, like we have discussed about the Qazi and Qazi Al-Hazat. So, all these things we have discussed. So, with this we have completed the ancient history of insolvency law in India. So, in the next class we are going to discuss the insolvency regime in UK and US.

Subsequent to that we will start the insolvency regime in India during the Britishers period that is presidency town insolvency act and provincial town insolvency act.

Thank you.