

# **Insolvency Law in UK and USA**

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**Week 01**

**Lecture 03**

Welcome to all. As a part of the course on Insolvency and Bankruptcy Law in India, today we are going to discuss the concept of Insolvency Law in UK and USA. So before discussing the Insolvency Law in UK and USA, let us recap what we have discussed in the previous class. So in the previous class, we have discussed about insolvency law in ancient India and we have discussed the evolution of insolvency, may not be the insolvency like we are having, but the evolution of insolvency during the Satya Yuga, Treta Yuga, Dwapara Yuga and Kali Yuga. then we have discussed the insolvency provisions during the mauryas period okay so where we having runapatra, runannapa, runaleksha like that various documents are also there during the mauryas period. Then we have discussed about the lending and insolvency in the Mughal and medieval period.

We have completed the concept of insolvency regime during the ancient period. So today we are going to discuss about insolvency law in UK and US here. So after this, we are going to discuss in the next class, we are going to discuss Presidency Town Insolvency Act and Provincial Town Insolvency Act, Provincial Towns Provincials Act. Then subsequently, we are going to discuss the Companies Act and Companies Act 1956, then SICA, then various reports, then we will start the IBC in the next classes, ok.

So, let us discuss the overview of Insolvency Law in UK. So, the primary legislations dealing with insolvency in UK are Insolvency Act 1986 that is one legislation and second legislation that we are having is Companies Act 2006. then we are having Enterprises Act 2002, then we are having Corporate Insolvency and Governance Act 2020. So, if you observe company Insolvency Act 1986, okay. So, this is the Insolvency Act 1986 is the primary registration covering all the aspects relating to insolvency.

So, there is Insolvency Act 1986 covers the all the aspects relating to insolvency. Whereas if you observe Companies Act 2006, ok so companies act 2006, ok so which provides for like our Companies Act 2013, which provides for structure and directors duties. So what should be the structure of the company, how the board of directors should be appointed, who are our key managers and personnel, who are all the officers of the company, so everything relating to the structure of the company And the director's duties, everything is discussed under the Companies Act 2006. Then I can say our Companies

Act 2013 is i can say greatly influenced from the Companies Act 2006 from the UK. Then we have the Enterprises Act 2002.

Okay, so this enterprises act 2002 actually which amended the insolvency act 1986. Okay, so where which provided for the business rescue actually under the insolvency act 1986, we do not have the provisions for business rescue. Okay, but whereas under the enterprises act 2002, okay which was which is amending the insolvency act 1986 and whereby they provided for rescue mechanism also, okay. And if you observe corporate insolvency and governance act 2002, actually it is a temporary provision, temporary legislation. Okay, so temporary suspension of wrongful where under this legislation they have imposed a temporary suspension of wrongful. Trading rules okay and new moratorium provisions are also procedures are also included under the uh corporate insolvency and governance act 2020.

Okay now let us uh discuss further. okay so if you observe uk insolvency law okay so which provides a structured framework dealing with financially distressed companies balancing the creditors right with opportunities for business rescue. so if you observe clearly So, the UK legislation basically is having a structured framework and which is not only speaking about the legal framework or only legal provisions relating to winding up. okay which is also providing for financially distressed company which is also enabling the persons to go for finance how to raise the finance how to rehabilitate the company so. everything is discussed under the UK insolvency law and parallelly it is also trying to protect the rights of the creditors.

And please remember if you observe the corporate insolvency and governance act 2020 which clearly provides the provisions for procedure for administration and CVA so what is the CVA, CVA means Company's Voluntary Arrangements. It's like a resolution plan okay so companies voluntary arrangements right right Voluntarily, they are coming forward to settle the disputes and to restructure the company. So, this Corporate Insolvency and Governance Act 2020 is also providing for corporate, sorry, company's voluntary arrangements. And it is also providing for restructuring plan. And this regime emphasizes the corporate rehabilitation where it is possible.

And it is also aligned with the unilateral model law. Now let us look at the key statutes involved in the Insolvency Regime. First Legislation is Insolvency Act 1986. If you observe Insolvency Act 1986 which provides for which is a core statute for personal and corporate insolvency dealing with the personal as well as corporate insolvency. and this legislation also governs the liquidation administration and CVAs that is companies as already we have discussed ok and receivership everything is there under the insolvency act 1986.

Then we have another statute companies act 2006 ok so which provides the legal framework for companies whereby how to incorporate the company and how to run the business and how to conduct the general meetings okay and how the what are all the powers of the board of directors everything is discussed under the companies act 2006 okay then uh part 26 A so this is also part of the companies act 2006 only which is added via 2020 reforms which introduced as the restructuring plan. so previously we don't used to have the restructuring plan under the companies act 2006 but subsequently they have introduced the restructuring plan also whereby anyone can propose the restructuring plan under the Companies Act. Okay, then we are also having Enterprise Act 2002. Okay, so which is reformed administration procedures. So basically, this legislation is for reforming the administrative procedures and this legislation, actually I can say three change is there okay compared with the previous legislations whereby, under this legislation, first we will try to rescue the company.

Okay, so if rescue of the company is not possible in exceptional circumstances only, generally we should go for liquidation. Okay, so which is emphasized in the Enterprises Act 2002. So that is a key change compared with the Insolvency Act and other companies Act 2006. Okay, then which reduces administrative receivership. okay then another important legislation is corporate insolvency and governance act 2002.

Okay so under Corporate Insolvency and governance act 2002 actually it is introduced in response to the covid 19 so after the covid 19 pandemic scenario it was introduced okay then created a new moratorium okay for struggling companies and what is this moratorium we are going to discuss in detail in the subsequent lessons. Moratorium means in a simple language i can say during such period no one can file a case against a company okay so i am not talking about the criminal cases i am only talking about the civil cases okay so during the moratorium period no one can find the case against the company. and which this legislation that is corporate insolvency and governance act 2020 is also providing for formalized restructuring plans with cross class cram down. So, what is this crossclass cram down cross class cram down means suppose if, the creditors are not accepting okay some of the creditors are not accepting and few creditors are accepting okay so then your resolution plan should provide for payment to the accepting creditors. then accordingly remaining amount to the the creditors who are dissenting you have to treat accordingly okay so these things we are going to discuss in detail in the next slides also.

So these things are provided in the corporate insolvency governance act okay then this legislation also provides for temporarily suspending wrongful trading provisions during the pandemic okay so during the pandemic period so because no company is doing the business so there is always a possibility someone may file a case against the company so that's why temporarily they have suspended the provisions okay. then another important legislation is cross-border insolvency regulations 2006 so this is also called as CBIR. So

please remember the CBIR cross-border insolvency regulation is based on the UNCITRAL model law okay on the cross-border insolvency Then which allows the under this legislation they have allowed UK courts to recognize foreign insolvency proceedings. then another important legislation administration schedule B1 insolvency act 1986. okay so if you look at the schedule B1 basically the schedule B1 aimed at the corporate rescue so wherever it is possible first we should frame a resolution plan which is aiming at the corporate rescue.

So, if rescue is not possible then only you have to go for uh liquidation of the company. okay so during this process okay when it is admitted and when the rescue process is going on okay so during the period. So, under Insolvency Act 1980, Schedule B1, they have provided the protection with the moratorium from the legal action. So as already we have discussed, during this period, no one can file a case against the company. Then the administrator must act in the best interest of the creator. So, you are going to appoint the administrator like a Resolution Professional in India.

So, you are going to appoint the administrator and this administrator is expected to act in the best interest of the creditors okay. then another legislation enterprise act 2002 so which made administration the primary rescue mechanism over the administrator administrative receivership okay So, they have changed the structure how you are going to operate the rescue mechanism? Then another concept that was there under the Insolvency Act 1986 is that Company Voluntary Arrangement. So, what is this Company Voluntary Arrangement? So, Company Voluntary Arrangement which enables a binding agreement between the company and the creditor, whereby company and the creditors both the parties will enter into an agreement and this is managed by the insolvency practitioners ok. So, one of the condition is, that so if you want to have this arrangement with the company and the creditors is that so at least 75 percent of the creditors in value should give the approval. So, if creditors whose value is more than 75 percent if they are giving the approval then the scheme can go ahead otherwise you cannot continue with the scheme.

Okay, then please remember generally this company voluntary arrangement often it is used in the retail and hospitality Okay, majority of the cases in these sectors generally they have used this company voluntary arrangement Okay. Now, let us look at the liquidation. Okay, so there is winding up provisions and in UK. So, if you observe, okay, so there are two categories of liquidations are there in UK also. Subsequently, we are going to discuss here in India.

So, first one is compulsory winding, okay. So, second one is voluntary liquidation. So, compulsory liquidation and voluntary liquidation. So, compulsory liquidation is court-led liquidation. So, where it is petition under section 122 of the Insolvency Act, okay.

Once if you file a petition under section 122 of the insolvency act then court will give the order for liquidation then it is totally court monitored. okay so court is going to appoint the authorized representative, then such person is going to take care of the company and he is going to liquidate the company according to the instructions given by the court. Then the common ground for compulsory liquidation is inability to pay the debts. So that is provided under section 123. So, if any company is unable to pay the debts, so there is a ground for liquidation.

But in India, I mean, I'm talking about the IBC regime. So if you observe Indian legislation, that is Indian Companies Act 1956 even under Companies Act 1956 also one of the grounds for winding up is inability to pay. okay whereas subsequently under the IBC, we move from inability to pay to default. okay so whenever there is a default is there then that will be a ground for uh CIRP process under the IBC. okay So, that is the difference okay so even under the india also we are we were having the provisions of Inability to pay the debt under the Companies Act 1956.

Okay, so this point, you have to understand. Anyway, in the subsequent lessons again, we are going to discuss the concept of the inability to pay the debts and the default and the meaning of default in detail when we are discussing the IBC lessons. Okay Then another mode of winding up is voluntary winding up. Okay, so here in voluntary winding up again we are having two categories. ok so prima facie winding up or liquidation is of two categories one is compulsory winding up and another is voluntary winding up under the voluntary winding up again we are having creditors voluntary winding up and members voluntary winding up.

Ok so when the creditors voluntary winding up will come if the company becomes insolvent, okay whereas members voluntary winding up will come if the company is solvent. So, in case the company is solvent the members they themselves they have decided to go for liquidation of the company okay maybe by passing the resolution at the general meeting okay they may authorize the board of directors to file a petition before the court of law so where in such scenario okay that company is solvent company okay. whereas in case of creditors voluntary winding up generally the company is insolvent ok so the company is insolvent and creditors are going to appoint the liquidator and he is going to work the liquidator is going to take care of the company and he is going to work under the supervision of creditors ok and he is going to report to the creditors. whereas second mode of liquidation is members voluntary winding up so you can use you know i mean you can use maybe members voluntary winding up maybe first creditors voluntary winding up okay so here and then it's okay. okay so members voluntary winding up is also called MVS generally when the company is solvent okay when the company is solvent, the member they decided to go for winding up of the company so.

There can be so many reasons okay why they want to go for winding up of the company maybe because the company got incorporated for a particular term maybe for 5 years 10 years that 5 years 10 years is completed so in such cases you can decide to go for liquidation of the company okay. So, another reason can be the company got created for the purpose of particular a project or particular work, okay so once the project is completed okay so that company need not to continue. okay so, that's why even in such cases also you can close down the company okay. or else the company may be wound up on the occurrence of a particular event okay so in that these things must be there in the articles of association okay so on the occurrence of a particular event okay so if the company has to be closed if that event occur. okay then in such cases the board of the shareholders they will decide to go for liquidation of the company that is members voluntary liquidation.

Okay so in such cases you may authorize the board of directors then the board of directors are going to file a petition before the court of law okay so these are all the various grounds of liquidation okay so from this slide we can understand that liquidation is of two categories compulsory winding up compulsory liquidation and members voluntary liquidation. under members voluntary liquidation again we having creditors voluntary liquidation and members voluntary liquidation okay. then this is actually recently added okay part 26A of companies act 2006 okay so whereby it was introduced in 2020 to aid financially distressed but viable company so what is this why they have introduced it? So please remember part 26A is part of the companies act 2006 okay So it was introduced in 2020 whereby if any company is distressed, financially distressed, but there is a possibility if you provide or if you go for financial restructuring, maybe financial assistance, if you go for financial restructuring, then there is a possibility of reviving the company. So always the main aim of all these legislations is not to close down the company. Whenever there is a possibility, it is to revive the company.

So that's why the concept of restructuring plan was introduced in 2020 because the ideology has changed a lot. So, if you observe 1980s, 1956, so 1909, the ideology has changed a lot. So, that's why now the ideology is to revive the company. okay wherever it is viable restructure the company or else in case if these things are not possible then only you can go for liquidation of the company okay. So, anyway, so this is introduced in 2020 to aid the financially distressed company but they are viable companies okay.

Then there is a possibility you can go for cross class cram down okay so what is this cross-class cramdown so cross class cram down means even if a class of creditors dissents okay, the plan must still be approved okay so even creditors are dissenting the plan will be approved by the court. But, when they are going to approve if the court is satisfied that at least one class of creditors who would receive the payment supports it okay whoever is receiving the payment if they are supporting it and dissenting creditors are not worse off than in liquidation. So, if the company went for liquidation how much

amount the creditors are going to receive so even in the plan also the creditors should receive the same amount minimum amount okay so minimum such amount so then only you are going to approve Okay, so then only we are going to allow cross class cram door, okay. Then actually this concept is inspired from the US chapter 11, Reorganization chapter. So, from there actually we have inspired and accordingly it was inserted in the Companies Act 2006 as a part of part 26, okay.

Then under the UK, we are having the concept of insolvency professionals and agencies, okay. So, licensed insolvency practitioners will be there like in India we have insolvency professionals. So, they are also having the concept of licensed insolvency practitioners. And they are appointed to manage the insolvency process. So, whenever the company went into liquidation, so they will be appointed.

Then the insolvency service, government agencies will oversee the regulations. And they will do the investigation and they will conduct the disqualification. So, if any person is not qualified, or if any i mean the government is going to prescribe okay so who is eligible who is not eligible and they are going to oversee the regulation of these insolvency practitioners okay then primarily who is going to deal with issues. okay primarily the high court that is company's court and country court for adjudication generally they are going to deal with the cases relating to insolvency in UK. Okay let us discuss few judgments okay so in uk so that you will understand the i mean kind the impact of these judgments on the insolvency proceedings in UK.

Okay so if you observe the first judgment Euro Foods IFSC Limited. It's a landmark judgment on center of main interest there in cross border insolvency under the EC insolvency regulation okay so. please remember in this judgment through this judgment the court has clarified the COMI that is center of main interest okay under the EC insolvency regulation okay and another important outcome of this judgment is that they strengthen the protection of subsidiaries in cross group insolvencies okay so because you have to protect the subsidiary companies also when you are going for cross border insolvency cases okay so even in this judgment they have recognized these or they have identified that there is a necessity is there to protect the subsidiary companies in case of cross border okay then in another case law In the case of Lehman Brothers International Euro 2020, so in this judgment, in this case law, the court has clarified the rights of creditors in complex insolvencies and the application of Pari-Passu principle. They prefer to apply the Pari-Passu principle and they treated all the class of shareholders equally and creditors equally. then in another case law virgin active holdings limited so the first issue it is it is a case where they have first time use the cross-class cram down.

Okay so though in the case of euro foods this one they have i mean implemented but they have identified they have recognized the cross-class cram down but in the case of virgin active holdings limited first time they have used the cross-class cram down. okay so

under the restructuring plan So, this will act as a important president in the insolvency regime in UK. Then do we have cross-border insolvency provisions relating to cross-border insolvency in UK? Yes. Okay. So, UK applies the UNCITRAL model via cross-border insolvency regulations 2006.

That is also called a CBIR. Okay. Then under this legislation, through this legislation, they have recognized the, I mean, foreign judgments. Okay. So, recognition of foreign main and non-main proceedings. Then, post-Brexit, EU insolvency regulations are no longer applicable, okay? So, recognition depends on CBIR. Previously, I mean before Brexit, actually EU regulations were applicable, but right now, Brexit is there, so that's why now mainly cross-border insolvency is recognized through the CBIR model only, okay? then summary of course of the insolvency law so what is the summary? So, if you look at the UK insolvency law, basically the main aim of insolvency regime in UK is that to maximize the returns.

So, maybe to the secured creditors or unsecured creditors. So, all the legislations, whether you take it as Enterprises Act, whether you take it as Companies Act, Insolvency Act, all these legislations mainly concentrates on maximization of returns to the creditors okay then rescue wherever it is viable okay so please go for rescue okay then otherwise you can go for liquidation okay then the all these legislations uh provide fair and orderly closure of the field work. okay then ensure director's accountability and misconduct prevention. then all these legislations uh they will enable the cross-border cooperation. okay so these are all the main goals of the insolvency legal regime in UK.

Now let us look at the United States of America insolvency law. So, in united states of america okay so the insolvency law is governed by the federal laws okay so specifically if you observe US bankruptcy code. Under title 11 of this is also called as chapter 11 so title 11 of the United States code the legal framework is designed to offer debt relief to the individuals as well as business okay while ensuring the fair treatment to the creditors. okay so one of the significant difference between US and UK is that, in US they will prefer debtor control whereas in UK and India will prefer the creditor control okay so that is the basic difference between US and UK okay. So please remember the system in US they have emphasized the recognition over the liquidation so here also. As, already I told you, your UK legislations were inspired from the US legislations.

So, prima facie, this US legislation, they will give priority to the rescue mechanism. If rescue mechanism is not possible, then only they will go for liquidation of the company okay liquidation of the company is always at the end okay. So, whenever there is no possibility of the revival then only you have to go for liquidation okay so what is the primary statute dealing with the insolvency in uk the primary statute dealing with the insolvency in UK is sorry US is bankruptcy code that is also called as title 11 of the US code. Then, another important piece of legislation is Bankruptcy Reforms Act 1978, ok.

Then, this is divided into chapters 7, 11, 13, 15, ok. So, each of the chapter is addressing different procedures and entities, ok. Then, let us discuss few important provisions, ok. So, section 9 of the Act provides for the who may be debtor. then section 362 automatic stay which is more or less equivalent to the concept of moratorium. then section 503 administrative expenses okay so while going for liquidation if any administrative expenses are there how to consider them then priorities.

Then section 541 discharge updates 541 property of estate okay so this is also in the subsequent lessons under IBC you are going to discuss the concept of liquidation estate okay. So, this is also property of a state is also similar to the concept of liquidation estate. okay then section one one two one two one one two nine, that is chapter eleven of the Code. Actually they have recognized the rehabilitation and re-organization of plans so whereby they insisted that rescue mechanism. First, it has to be implemented if there is a failure then you have to go for liquidation. then chapter 15 cross-border insolvency that is also based on the model law okay.

Then let us look at the few other things, okay, so chapter 7. If you observe chapter 7, okay, which provides for the liquidation, okay, assets are sold, once the liquidation process starts, assets are sold, then they are distributed to the creditors, and business operations will cease to exist, okay. So, once the assets are sold then the business operations cannot continue, okay. then under chapter 11 of the US regulations okay so they are talking about the reorganization okay so under reorganization they are allowing the business to restructure the debts and continue the operations okay but please remember one of the unique feature of chapter 11 is that debtor will be in control. As already I have pointed out that in India creator centric that is creator will be in control once the process started whereas in US debtor will be in control once the process started okay. Still, he will be controlled he will be controlling the campaign. then chapter 15 speaks about the cross-border insolvency so please remember this is incorporates the UNCITRAL model as it is okay Let us look at the key features of US Bankruptcy Code. One of the key features is debtor in possession (DIP). In Chapter 11, the data retains the possession of the assets and liabilities unless the trustee is appointed, then Automatic stay.

Another important feature is automatic stay. Finding out bankruptcy, automatic hauls, all the collection of actions, lawsuits enforcement activities so in a simple language i can say that moratorium will be applicable, so once the moratorium is there you cannot file a case against the company okay. Then priority scheme, so it is also like uh it is like a waterfall mechanism under the IBC. okay we are going to discuss all these things waterfall mechanism in the subsequent lessons okay.

So, chapter 11 section 507 provides for the priority scheme okay first you have to pay to the secured creditors so during the liquidation okay once the liquidation is done so first

you have to pay to the secured creditors then administrative expenses then priority to the unsecured creditors, then remaining assets to the general unsecured creditors and finally to the shareholders. So, shareholders will always be at the bottom level okay. Then chapter 11 speaks about the plan of reorganization okay so the debtor proposes the repayment plan. So even after admitting then he can propose the repayment plan and this repayment plan must be confirmed by the court, unless it is confirmed by the court, you cannot enforce it okay.

Then it can include the cram down approvals also even if some of the class of creditors dissent, then as already we have discussed okay the court can continue to approve the scheme okay. then creditor's committee will be there so the committee of the unsecured creator okay can also participate in chapter 11 cases to protect their interest. Okay so even not only secure creator even unsecured creators also can participate in the committee meetings okay.

Then Fresh start principle so enables the harnessed but unfortunate debtors to start anew so this is recently introduced whereby this enables the entities to start the business okay, then reorganization versus liquidation so business are encouraged to restructure rather than close so as already we have discussed so in US even in UK also they will give priority to the legislation gives priority to restructuring than the closure. Then creditor protection. So, they include these legislations which will include protection of voting rights. OK, so who can have the access to information? Everything is provided under these legislations.

OK, then these legislations, they have also recognized the cross-border cooperation. OK, if you observe chapter 15 of the US legislations, which clearly says that the US law will recognize the foreign insolvency proceedings accordingly. If any execution petitions were filed before the federal courts, then they will be accepted.

Then important authorities, so US bankruptcy courts in US, important authorities include US bankruptcy courts. they are specialized federal courts handling the all bankruptcy matters. Then US trustee program is going to oversee the bankruptcy cases and ensures the legal compliance. So, with this we have discussed the overview of insolvency regime in UK and US.

Let us recap what we have discussed till now. So, till now in this class, we have discussed the insolvency law in UK and USA. Then in UK the primary legislations includes Insolvency Act 1986, Companies Act 2006 which is more or less similar to the Indian Companies Act. Then Corporate Insolvency and Governance Act 2020. So these four are primary legislations dealing with the insolvency in UK then restructuring plan which was introduced added to the Companies Act 2006 there is part 26 here okay. then we having Bankruptcy Code Title 11 of the US Code okay then chapter 15 is there okay so these are

all the various chapters. Then we have discussed about the corporate insolvency procedures in US.

Thank you.