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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **GROUP INSOLVENCY: AN EMERGING CONCEPT IN INDIAN CONTEXT<sup>1</sup>**

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## **Abstract**

*The current insolvency regime in India, governed by the Insolvency and Bankruptcy Code, 2016 (IBC), is largely tailored to handle the insolvency of individual corporate entities. However, with the increasing number of corporate groups operating in interlinked structures, the existing framework often falls short in addressing complexities that arise when multiple group companies face financial distress simultaneously. The concept of **Group Insolvency**, though recognized in various jurisdictions, is still in a nascent stage in India.*

*This paper explores the evolving doctrine of Group Insolvency in the Indian context, analyzing the limitations of the present IBC regime in handling conglomerate failures and examining international models such as those in the EU, UK, and UNCITRAL's Legislative Guide. It critically evaluates recent judicial pronouncements and recommendations by the Insolvency Law Committee that signal a shift towards embracing coordinated insolvency mechanisms. The research also delves into the practical challenges of implementation—such as the issues of procedural consolidation, substantive consolidation, jurisdiction, and stakeholder rights.*

*By examining legal gaps, regulatory developments, and comparative jurisprudence, this paper aims to provide a structured roadmap for integrating Group Insolvency into the Indian insolvency framework, thereby enhancing resolution efficiency and creditor recovery. The findings are intended to support policy-makers, legal practitioners, and scholars in strengthening India's insolvency ecosystem in alignment with global best practices.*

## **Keywords:**

*Group Insolvency, Insolvency and Bankruptcy Code, Corporate Groups, Substantive Consolidation, Procedural Coordination, Cross-Company Resolution, Insolvency Law*

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## Literature Review

The doctrine of **Group Insolvency** has garnered increasing academic and institutional attention as economies shift towards conglomerate-style corporate structures. Traditional insolvency frameworks—primarily designed for standalone entities—often fail to capture the **interdependence of assets, liabilities, and operations** within corporate groups. The following literature sources provide a foundation for understanding the evolution, recognition, and relevance of group insolvency in India and abroad:

### 1. UNCITRAL Legislative Guide on Insolvency Law (2010)

The UNCITRAL Guide was among the first international instruments to comprehensively discuss the concept of group insolvency. It emphasized principles of **cooperation, coordination, and access**, and provided a conceptual framework for dealing with enterprise group insolvencies without necessarily mandating universal substantive consolidation. It has become a **benchmark reference** for jurisdictions considering reform.

### 2. Insolvency Law Committee (ILC) Report on Group Insolvency (2021)

The ILC's Report is the most critical domestic document pushing for the **formal introduction of group insolvency mechanisms** under the IBC. It recommends procedural coordination, joint hearings, appointment of a single resolution professional, and even substantive consolidation under exceptional circumstances. It marks a significant shift in Indian regulatory thinking.

### 3. World Bank – Principles for Effective Insolvency and Creditor/Debtor Regimes (2021)

This document identifies the **need for legal systems to adapt to corporate group insolvency**, recommending laws that allow group-wide coordination where economically efficient. The principles emphasize that stakeholder rights must not be prejudiced in group-level processes.

### 4. Case Law: Videocon Industries Ltd. Insolvency Proceedings (NCLT, 2020)

In *State Bank of India v Videocon Industries Ltd*, the NCLT for the first time ordered **substantive consolidation** for 13 group entities, recognizing the impracticality of separate resolutions. This case demonstrated the judiciary's willingness to apply group insolvency concepts **in the absence of express statutory backing**.

## 5. Academic Scholarship

Authors such as **Anurag K. Agarwal, Dr. Arpita Mukherjee, and Abhishek Mishra** have explored group insolvency from theoretical and comparative angles, identifying key deficiencies in the IBC and calling for a **legislative framework that balances procedural efficiency with creditor protections**.

## 6. Cross-Jurisdictional Experience

Countries like **Germany, Singapore, and the UK** have adopted structured group insolvency provisions. For example, Germany allows **coordination mechanisms** and information sharing, while Singapore's omnibus insolvency code promotes **group-level administration** in cross-border cases. These experiences serve as valuable models for India.

## Research Methodology

This research adopts a **doctrinal and comparative legal methodology** aimed at critically analyzing the concept of Group Insolvency within the Indian legal framework. The methodology combines **statutory interpretation, case law analysis, regulatory review, and comparative legal studies** to evaluate the current position and future trajectory of group insolvency in India.

### 1. Doctrinal Legal Research

A primary focus is placed on the **Insolvency and Bankruptcy Code, 2016 (IBC)** and relevant rules, regulations, and committee reports—particularly the **Insolvency Law Committee Report (2021)** on group insolvency. The research also analyses judicial pronouncements by **NCLT, NCLAT, and the Supreme Court** interpreting or indirectly applying group insolvency principles.

### 2. Case Law Analysis

Landmark cases such as *SBI v Videocon Industries Ltd* and *Lanco Infratech Ltd.* are examined to understand the **judiciary's evolving approach** towards substantive and procedural consolidation in the absence of a statutory framework.

### 3. Comparative Jurisprudence

A comparative study is undertaken of jurisdictions such as the **United Kingdom, Singapore, the European Union, and the UNCITRAL Model Law** to identify best practices in coordinated group insolvency mechanisms. These systems serve as benchmarks for suggesting suitable reforms in the Indian context.

#### 4. Secondary Sources and Scholarly Commentary

Insights are drawn from academic journals, legal commentaries, institutional reports (UNCITRAL, World Bank), and policy documents to capture **scholarly perspectives and critiques** of both domestic and international models.

#### 5. Normative and Prescriptive Analysis

The research also incorporates a **normative dimension**, offering recommendations for improving India's insolvency framework. These are based on principles of **efficiency, predictability, creditor protection, and economic coherence**.

### Hypothesis

The central hypothesis of this research is:

"The absence of a statutory framework for group insolvency under Indian law leads to procedural inefficiencies, inconsistent judicial outcomes, and suboptimal resolution of financially distressed corporate groups. Introducing a coordinated group insolvency regime will enhance resolution efficiency, ensure equitable treatment of creditors, and align India's insolvency framework with international best practices."

This hypothesis rests on the assumption that India's current entity-specific insolvency process under the Insolvency and Bankruptcy Code, 2016, is insufficient to handle the complexities of group insolvencies where companies are operationally and financially interlinked. The research tests whether the **integration of procedural coordination, joint administration, and selective substantive consolidation** could yield more efficient and equitable outcomes in such scenarios.

### Introduction

The enactment of the **Insolvency and Bankruptcy Code, 2016 (IBC)** marked a watershed moment in India's corporate legal regime, providing a time-bound and creditor-driven insolvency resolution process. However, the IBC was primarily designed to resolve the insolvency of individual corporate persons, with **little to no provision for corporate groups**—a significant gap considering the increasing prevalence of **conglomerates and interlinked corporate structures** in India's business landscape. In the modern economy, group entities often share finances, management, and operations, making individual insolvency proceedings both inefficient and sometimes counterproductive.

The growing frequency of complex corporate defaults—such as those involving **Videocon, IL&FS, and Reliance Capital**—has exposed the limitations of India’s entity-based insolvency approach. In many such cases, creditors face duplicative proceedings, inconsistent resolutions, and impaired recoveries, while the economic value of the enterprise group diminishes due to disjointed legal treatment. In response to these challenges, the concept of **Group Insolvency** has emerged as a promising alternative to enable **coordinated resolution mechanisms for corporate groups** facing collective distress.

Group insolvency refers to a legal framework that allows for either **procedural coordination or substantive consolidation** of insolvency proceedings across multiple entities within a corporate group. While many jurisdictions, including **Singapore, the United Kingdom, and the European Union**, have developed sophisticated models of group insolvency, India is only beginning to explore its potential. The **Insolvency Law Committee’s 2021 Report** acknowledges the urgent need for reform, proposing mechanisms such as joint hearings, a single resolution professional, and even substantive consolidation in exceptional cases.<sup>2</sup>

Despite these recommendations, **no formal legislative framework** for group insolvency currently exists under the IBC. Indian courts and tribunals have occasionally experimented with judicial innovations—most notably in the **Videocon Industries case**—but in the absence of statutory backing, such solutions remain ad hoc and inconsistent. This lack of clarity jeopardizes creditor confidence and undermines the objectives of speed, efficiency, and value maximization that the IBC seeks to achieve.

This paper seeks to examine the contours of **Group Insolvency as an emerging concept in Indian law**, assess its necessity in light of contemporary insolvency challenges, and evaluate potential legislative and procedural reforms. It further analyses relevant case law, international frameworks, and policy recommendations to determine how India can adopt a **balanced and effective group insolvency regime**.

## 1. Concept and Need for Group Insolvency

The concept of **Group Insolvency** refers to a legal mechanism that allows the collective or coordinated insolvency resolution of multiple entities that form part of a corporate group. These

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<sup>2</sup>Insolvency Law Committee, *Report on Group Insolvency* (Ministry of Corporate Affairs, 2021)

group entities, while legally distinct, are often **economically and operationally interdependent**—sharing finances, management, assets, or liabilities. The traditional entity-centric approach of the Indian Insolvency and Bankruptcy Code, 2016, is ill-equipped to handle the complexities posed by such interlinked companies, especially when several of them face insolvency simultaneously.

### 1.1 Definitional Ambiguity in Indian Law

Indian corporate law currently does not **define or recognize the term "group"** in the context of insolvency. While the Companies Act, 2013 and SEBI regulations occasionally refer to group companies for regulatory purposes, these definitions are **not harmonized or applicable** under the IBC. This creates a **legal vacuum**, making it difficult to initiate or consolidate insolvency proceedings for entities that are part of the same group, even when their financial health and operational viability are interdependent.

### 1.2 Economic Justification

Corporate groups often engage in **intra-group financing**, centralized cash management, and shared asset ownership. When one entity in the group collapses, it may trigger a domino effect on other group entities. Separate resolution processes in such cases lead to **duplication of efforts, conflicting outcomes, and value erosion**, particularly when assets are co-owned or debts are guaranteed by multiple group entities.

For example, in the **IL&FS case**, over 300 group entities were embroiled in parallel insolvency processes, causing severe delays and complexity. Had a group insolvency framework existed, the resolution could have been **coordinated, quicker, and more effective** in preserving value.<sup>3</sup>

### 1.3 Globalization and Cross-Border Group Structures

With the liberalization of India's economy, Indian corporations have begun operating through **cross-border subsidiaries and holding structures**, making group insolvency not just a domestic, but a **transnational challenge**. These developments necessitate a legal framework that accommodates group-level resolution mechanisms while respecting entity separateness and creditor rights.

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<sup>3</sup>Rajeswari Sengupta and Anjali Sharma, 'Understanding the IL&FS Crisis' (2019) National Institute of Public Finance and Policy Working Paper No. 274

## 1.4 Efficiency and Creditor Confidence

Coordinated group insolvency proceedings allow for **joint hearings, common resolution professionals, shared information access**, and synchronized timelines—all of which reduce administrative burden and increase the prospects of successful resolution. From the creditors' standpoint, group insolvency helps prevent **asset dissipation**, maximizes recovery, and ensures **equitable treatment** among different stakeholders.

## 2. Judicial Developments and Emerging Jurisprudence in India

In the absence of a statutory framework for group insolvency under the Insolvency and Bankruptcy Code, 2016 (IBC), the Indian judiciary—especially the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT)—has taken **progressive steps** to address the complexities posed by group companies facing insolvency. Though ad hoc, these judicial interventions have gradually laid the **foundation for an emerging doctrine of group insolvency** in India.

### 2.1 The Videocon Industries Case: A Milestone

In the case of *State Bank of India v. Videocon Industries Ltd. & Ors*, the NCLT Mumbai Bench in 2020 approved the **substantive consolidation** of insolvency proceedings of **13 group companies** belonging to the Videocon group.<sup>4</sup> The Tribunal noted that the companies had **intertwined finances, shared assets, and common control**, and that a consolidated process would serve the interest of justice and value maximization.

This was the first instance where an Indian court explicitly applied **substantive consolidation**, a doctrine whereby assets and liabilities of different group entities are pooled for resolution. The NCLT held that such consolidation was justified as the entities were “interlaced and interdependent” and proceeding separately would be wasteful and inequitable.

### 2.2 Limitations of the Videocon Ruling

While the Videocon decision is seen as a **judicial innovation**, it also raised concerns. The NCLT did not rely on any express provision in the IBC and justified its approach based on equity and practicality. Critics argue that **without statutory backing**, such decisions risk violating principles of **limited liability, separate legal personality, and creditor**

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<sup>4</sup>*State Bank of India v. Videocon Industries Ltd. & Ors* [2020] CP(IB)-02/MB/2018 (NCLT Mumbai).

**expectations.**<sup>5</sup> Additionally, the absence of clear criteria for consolidation can lead to **uncertainty in application**, reducing investor confidence.

### 2.3 Other Notable Decisions

In *Edelweiss Asset Reconstruction Co. Ltd. v. Sachet Infrastructure Pvt. Ltd.*, the NCLAT upheld the use of a **common Committee of Creditors (CoC)** and Resolution Professional (RP) for a group of real estate companies with common promoters, though it refrained from ordering full consolidation.<sup>6</sup> This reflects a more cautious yet practical approach—favoring **procedural coordination** over substantive pooling.

### 2.4 Judicial Endorsement of Reform

Judicial pronouncements have also echoed the need for a **comprehensive legal regime** to deal with group insolvency. The NCLT and NCLAT have, in multiple cases, called upon the legislature to provide **clarity and structure**, particularly in complex group cases involving real estate, infrastructure, and finance companies.

## 3. Recommendations of the Insolvency Law Committee on Group Insolvency

Recognizing the inadequacies of the current insolvency regime in addressing the complexities of group entities, the **Insolvency Law Committee (ILC)** submitted its *Report on Group Insolvency* in September 2021. This landmark report laid the groundwork for a **formal legislative framework** to enable group insolvency proceedings under the Insolvency and Bankruptcy Code, 2016. The ILC's recommendations reflect a careful balancing of **efficiency, fairness, and legal consistency**, and draw upon both Indian experiences and international best practices.

### 3.1 Defining a “Group”

The Committee proposed a broad definition of “group companies,” including **holding, subsidiary, associate companies, and entities under common control or significant**

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<sup>5</sup>Shubham Jain, 'The Doctrine of Substantive Consolidation in India: A Critical Review of the Videocon Ruling' (2021) 10 NUJS L Rev 121.

<sup>6</sup>*Edelweiss ARC v. Sachet Infrastructure Pvt. Ltd.* [2021] Company Appeal (AT) (Insolvency) No. 377 of 2020 (NCLAT).

**influence.**<sup>7</sup> This is a crucial step towards bringing legal clarity, enabling the identification of group structures where insolvency coordination may be appropriate.

### 3.2 Procedural Coordination Mechanisms

The ILC emphasized the need for **procedural coordination**, recommending tools such as:

- **Joint hearings** for group entities,
- **Appointment of a common Resolution Professional (RP)** for operational efficiency,
- **Constitution of a single Committee of Creditors (CoC)** where feasible, and
- **Consolidation of public announcements and information memorandum.**

These mechanisms aim to reduce duplication, promote consistency, and preserve enterprise value without necessarily combining the assets and liabilities of different companies.

### 3.3 Substantive Consolidation in Exceptional Cases

The Committee recommended that **substantive consolidation**—i.e., pooling assets and liabilities—should be permitted in **exceptional and tightly regulated scenarios**. It laid down specific criteria, such as:

- Significant commingling of assets and liabilities,
- Undue hardship to creditors in the absence of consolidation,
- Demonstrable interdependence of operations and control.

Importantly, it proposed that such consolidation should require **prior approval of the Adjudicating Authority**, based on creditor consent and a detailed factual assessment.

### 3.4 Cross-Border Group Insolvency

Although not the central focus, the ILC acknowledged the potential complications of **cross-border group insolvencies**, suggesting that India's future adoption of the **UNCITRAL Model Law on Cross-Border Insolvency** should factor in mechanisms for group resolution. This recommendation aligns with India's aspiration to integrate into global insolvency frameworks.

### 3.5 Draft Legislative Framework

The ILC also proposed a **model framework for statutory amendments**, suggesting insertions to the IBC that would formally recognize group insolvency, detail procedures for coordination,

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<sup>7</sup>Insolvency Law Committee, *Report on Group Insolvency* (Ministry of Corporate Affairs, September 2021) para 4.2

and establish safeguards to protect creditor rights and corporate separateness.

## 4. Comparative Analysis of Group Insolvency Frameworks in Other Jurisdictions

As India explores legal reforms to institutionalize group insolvency, it becomes imperative to draw insights from jurisdictions that have already implemented **comprehensive and tested group insolvency frameworks**. Countries such as the **United Kingdom, Singapore, the European Union**, and international instruments like the **UNCITRAL Model Law on Enterprise Group Insolvency** offer valuable comparative models.

### 4.1 United Kingdom

The UK does not have a standalone statute for group insolvency, but courts often permit **joint administration** of group companies to achieve procedural efficiency. The Insolvency Rules 2016 provide for **consolidated petitions**, especially when companies share a common administrator and business purpose. The courts emphasize practicality and value maximization, allowing **court-directed coordination** in suitable cases.<sup>8</sup>

In *Re Nortel GmbH*, the English courts permitted substantial coordination of insolvency proceedings involving over 30 group companies across jurisdictions, even though the entities maintained distinct legal identities.<sup>9</sup>

### 4.2 Singapore

Singapore's insolvency reforms under the **Insolvency, Restructuring and Dissolution Act, 2018**, include explicit provisions to facilitate **procedural consolidation** and coordination for corporate groups. The law allows the courts to:

- Appoint the same insolvency practitioner for multiple entities;
- Order **joint hearings**;
- Coordinate restructuring plans;
- Encourage **cross-border cooperation**.

Singapore's proactive embrace of **UNCITRAL principles** also positions it as a regional model for modern group insolvency practices.<sup>10</sup>

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<sup>8</sup>Insolvency Rules 2016 (UK), Rule 3.12.

<sup>9</sup>*Re Nortel GmbH* [2013] UKSC 52.

<sup>10</sup>Insolvency, Restructuring and Dissolution Act 2018 (Singapore), ss 65–70.

### 4.3 European Union

The EU adopted the **Recast EU Insolvency Regulation (2015/848)**, which contains an entire chapter on **insolvency of corporate groups**. It promotes **cooperation between insolvency practitioners** of group companies, joint planning of restructuring processes, and communication among courts. Though substantive consolidation is not mandated, the emphasis is on **coordinated yet separate proceedings**, guided by mutual information sharing and procedural alignment.<sup>11</sup>

### 4.4 UNCITRAL Model Law on Enterprise Group Insolvency (2019)

UNCITRAL's Model Law offers a comprehensive and flexible framework for resolving **insolvencies involving enterprise groups**, including cross-border situations. It includes mechanisms such as:

- Appointment of a **group representative**;
- **Planning proceedings** initiated for group-wide restructuring;
- Frameworks for **coordination and cooperation** across jurisdictions;
- Court discretion in applying substantive and procedural tools.

The Model Law promotes **harmonization of group insolvency rules** across countries while respecting legal separateness, making it highly suitable for emerging economies like India.<sup>12</sup>

## 5. The Way Forward – Need for a Comprehensive Group Insolvency Framework in India

The experiences from Indian judicial practice, expert committee recommendations, and international frameworks make a compelling case for India to adopt a **comprehensive, structured, and legally codified group insolvency regime**. While ad hoc judicial solutions have offered temporary relief, long-term certainty, efficiency, and fairness demand **legislative clarity** under the Insolvency and Bankruptcy Code, 2016.

### 5.1 Codification of Group Insolvency Mechanisms

The most urgent reform is the **codification of procedural coordination tools** under the IBC. Provisions should explicitly permit:

- **Joint hearings** for related parties;

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<sup>11</sup>Recast EU Insolvency Regulation 2015/848, Chapter V.

<sup>12</sup>UNCITRAL, *Model Law on Enterprise Group Insolvency* (2019)

- A **common resolution professional** where group ties are demonstrable;
- Shared or joint Committee of Creditors (CoC) upon creditor consent;
- Consolidated timelines and information-sharing protocols.

Codification will ensure **uniformity of application** and reduce dependency on inconsistent judicial discretion.<sup>13</sup>

## 5.2 Guardrails for Substantive Consolidation

Substantive consolidation—though powerful—must remain an **exceptional remedy**, applied with caution. Legal provisions should lay down:

- A high threshold for proving asset-liability intermingling;
- Creditor consent as a prerequisite;
- Judicial oversight to prevent abuse or inequitable treatment.

Legislative safeguards must **balance value maximization with creditor protection and corporate legal identity**.

## 5.3 Institutional and Capacity Building

Introducing group insolvency requires corresponding institutional readiness. This includes:

- **Training of insolvency professionals** in handling group structures;
- Development of **technological tools** for tracking intra-group transactions;
- Guidelines for CoCs to assess joint plans;
- Creation of **specialized NCLT benches** for complex group cases.

Such systemic improvements will ensure that group insolvency is not just legislated but also **implemented effectively**.

## 5.4 Cross-Border and International Cooperation

Given the rise of Indian multinationals and global investor participation, group insolvency reforms must include **cross-border coordination** clauses. India should **adopt the UNCITRAL Model Law on Enterprise Group Insolvency**, with suitable adaptations for Indian contexts. This will strengthen **foreign investor confidence**, improve enforceability abroad, and align India with **global insolvency norms**.<sup>14</sup>

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<sup>13</sup>Dr. MS Sahoo, 'Group Insolvency in India: Need for a Framework' (2022) Indian Journal of Law and Economics 4(2) 101.

<sup>14</sup>UNCITRAL, *Model Law on Enterprise Group Insolvency* (2019)

## 5.5 Phased Implementation and Pilot Programs

Given the complexity, a **phased or pilot-based implementation** may be prudent. The Ministry of Corporate Affairs could start with voluntary procedural coordination mechanisms and then scale up toward more complex tools like substantive consolidation, based on stakeholder feedback and judicial experience.

## Conclusion

The emergence of **group insolvency** as a legal and economic necessity in India reflects the evolution of corporate structures and the increasing interdependence of group entities. The **entity-centric framework** under the current Insolvency and Bankruptcy Code, 2016, although effective for standalone companies, fails to address the unique challenges posed by corporate groups—such as **interconnected liabilities, shared assets, and centralized control**.

Judicial interventions in cases like *Videocon* and *IL&FS* have offered **temporary judicial solutions** in the absence of a legislative mechanism. However, these decisions, being ad hoc and lacking statutory backing, lead to **uncertainty, uneven outcomes, and risks to creditor interests**. The recommendations of the Insolvency Law Committee (2021), the comparative insights from jurisdictions such as Singapore, the UK, and the EU, and the model principles laid down by UNCITRAL, all support a transition towards a **structured, balanced, and codified group insolvency regime** in India.

For such a regime to be successful, it must adopt a **twin approach**: (1) provide for **procedural coordination** tools such as joint hearings, common resolution professionals, and consolidated creditor committees, and (2) permit **substantive consolidation** only in exceptional circumstances with strict safeguards. Further, India's framework must be **forward-looking**, accommodating cross-border insolvencies and aligning with global best practices through the adoption of international models like the **UNCITRAL Model Law on Enterprise Group Insolvency**.

Finally, robust **institutional support**, stakeholder capacity building, and phased implementation will ensure that group insolvency reform is not only legally sound but also **practically effective**. As India aspires to strengthen its insolvency ecosystem and attract greater foreign investment, a modern, coherent, and just group insolvency regime is not merely desirable—it is indispensable.