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**An Article on**

BANKRUPTCY-CONSEQUENCES-RIGHTS AND LIABILITIES UNDER LAW.

BY

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**What is Bankruptcy?**

Bankruptcy allows individuals, couples, and businesses that cannot meet their financial obligations to be excused from repaying some or all of their debt. Bankruptcy has been in existence since ancient times. In the United States, the rules and procedures for filing bankruptcy are governed by federal law. States are prohibited from legislating in this area of the law.

In INDIA

The **Insolvency and Bankruptcy Code, 2016** (**IBC**) is the bankruptcy law of India which seeks to consolidate the existing framework by creating a single law for insolvency and bankruptcy. The Insolvency and Bankruptcy Code, 2015 was introduced in Parliament in December 2015. It was passed by Lok Sabha on 5 May 2016. The Code received the assent of the President of India on 28 May 2016. Certain provisions of the Act has come into force from 5 August and 19 August 2016.

**Insolvency Resolution** : The Code outlines separate insolvency resolution processes for individuals, companies and partnership firms. The process may be initiated by either the debtor or the creditors. A maximum time limit, for completion of the insolvency resolution process, has been set for corporates and individuals. For companies, the process will have to be completed in 180 days, which may be extended by 90 days, if a majority of the creditors agree. For start ups (other than partnership firms), small companies and other companies (with asset less than Rs. 1 crore ), resolution process would be completed within 90 days of initiation of request which may be extended by 45 days. [[6]](https://en.wikipedia.org/wiki/Insolvency_and_Bankruptcy_Code#cite_note-6)

**Insolvency regulator**: The Code establishes the Debt Recovery Tribunal, to oversee the insolvency proceedings in the country and regulate the entities registered under it. The Board will have 10 members, including representatives from the Ministries of Finance and Law, and the

**Insolvency professionals**: The insolvency process will be managed by licensed professionals. These professionals will also control the assets of the debtor during the insolvency process.[[5]](https://en.wikipedia.org/wiki/Insolvency_and_Bankruptcy_Code#cite_note-:0-5)

**Bankruptcy and Insolvency Adjudicator**: The Code proposes two separate tribunals to oversee the process of insolvency resolution, for individuals and companies: (i) the National Company Law Tribunal for individuals and the establishments; and (ii) the Debt Recovery Tribunal for individuals and partnerships.

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## Procedure

A plea for insolvency is submitted to the adjudicating authority (NCLT in case of corporate debtors) by financial or operation creditors. The max time allowed to either accept or reject the plea is 14 days. If the plea is accepted, the tribunal has to appoint an Insolvency Resolution Profession (IRP) to draft a resolution plan within 180 days (extendable by 90 days). For the said period, the board of directors of the company stands suspended, and the promoters do not have a say in the management of the company. The IRP, if required, can seek the support of the company’s management for day-to-day operations.

When your liabilities exceed assets, you can apply to the court for protection

While India has taken steps towards bringing in a Bankruptcy Law for corporates, there are ways in which individuals can get similar protection when they are genuinely in debt and in no position to repay their creditors. Understanding bankruptcy By filing for bankruptcy, you are announcing that you are in no position to pay off your debts and are an insolvent individual. To safeguard yourself from attacks physically sometimes.

Generally speaking, there are two types of bankruptcy. In a liquidation bankruptcy, debtors must surrender their property, which is sold, and the proceeds distributed to creditors. In return, all debts are permanently discharged. In a reorganization bankruptcy, debtors are allowed to keep their property. But the debtors must agree to an installment plan to repay creditors a portion of the amount they owe.

Filing for bankruptcy involves submitting a petition and fee to the bankruptcy court. The fee is close to $300 for most personal bankruptcies. The petition will contain sworn statements by the debtors concerning the amount of money they owe, their income and expenses, as well as a complete list of all of their assets. After filing, a court hearing is held to review the information in the petition.

Chapter 7 bankruptcies are by far the most common. These are liquidation bankruptcies in which the debtors must turn over all “non-exempt” property to a supervising officer known as the bankruptcy trustee. Property is exempt if it falls within specific categories of assets that debtors are allowed to keep, such as a certain amount of clothing, household items, tools for work, and in some instances, vehicles and the family home.   
 The Chapter 7 trustee will take the debtor’s non-exempt property (if there is any), and sell it. The money will be paid to the debtor’s creditors. This may result in creditors receiving a small fraction of their claims. The balance of the debtor’s loans and obligations are forgiven and can never be collected. Creditors who attempt to collect debts that have been discharged face severe penalties under federal law.   
 **Keep Your Property**   
 The fact that a liquidation bankruptcy wipes out debt completely is obviously attractive to anyone who cannot afford to pay their bills. But what about people who have non-exempt property that they do not want to give up? Chapter 13 is a reorganization bankruptcy. It allows debtors to keep their property by agreeing to make monthly payments toward their debt over the course of three to five years.

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 Chapter 13 bankruptcies offer a number of benefits besides allowing debtors to keep their property. For example, certain types of secured debt, like a car loan, can be restructured by reducing principal to the market value of the collateral, and lowering payments by extending the repayment period to 60 months. Other obligations, like mortgages, student loans, and tax liabilities can be modified as well. Creditors are given no choice in the matter.   
 Bankruptcy is not available to everyone. Those who have had their debts discharged in a Chapter 7 within the past eight years cannot re-file. For Chapter 13, the waiting period is six years. Too much disposable income is also a problem. Congress has established a “means test” for this purpose. Debtors who make enough money to repay their creditors will be barred from filing a liquidation bankruptcy, though reorganization may be an option.   
 Businesses that have become insolvent but want to stay in business may be able to file a Chapter 11 bankruptcy. Like a personal reorganization, Chapter 11 allows businesses to obtain protection from their creditors while they put together a repayment plan. Liabilities can be reduced and restructured to give the business another chance at achieving profitability.

Whether a debtor is considering filing under Chapter 7, 11, or 13, they must comply with a vast number of federal laws and regulations. An error at any step of the process can result in the court refusing to discharge the debtor’s liabilities. When the bankruptcy process ends this way, the consequences are disastrous. With so much at stake, hiring a licensed bankruptcy attorney at the outset is wise investment.

## Know Your Rights!

* [Common Questions About Bankruptcy](https://www.hg.org/article.asp?id=31006)

Bankruptcy is a legal proceeding that helps some people who cannot pay their bills get a fresh financial start by temporarily, or permanently, preventing creditors from collecting debts from you.

* [Different Types of Bankruptcies in America and the Bankruptcy Abuse Prevention and Consumer Protection Act](https://www.hg.org/article.asp?id=31276)

The law provides a mechanism for getting out of control debts back under control, either by restructuring debt or wiping out certain types of obligations. This is bankruptcy.

* [Stuck With Unaffordable Student Loans, Now What?](https://www.hg.org/article.asp?id=31304)

Every year, millions of students are convinced to take on student loans with promises of huge salaries upon graduation, but often the reality is a bit different and these same students are left with an enormous debt and little or no means of repayment.

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* [What Kinds of Debts are Discharged in Bankruptcy?](https://www.hg.org/article.asp?id=30957)

While most debts can be wiped out in Chapter 7 bankruptcy, some cannot. Understanding which debts can and cannot be discharged in bankruptcy can be an important consideration in deciding whether to file for bankruptcy.

**In several other countries, there is a system to benefit struggling businesses. Many also feel that there should a system for bankruptcy resolution to protect individuals as well.**

**As for India, this new legislation may help resolve the nation’s bad debt problem which hampers bank lending. It should also encourage foreign investment and well as promote entrepreneurship, as businesses and entrepreneurs can exit businesses faster and with fewer legal hassles. These may also result in an improvement in India’s international ranking is ease of doing business.**

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