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Article

Humanity, Resilience, and Equity in Corporate Failure: A Literature Review on Developing Fairness Metrics for Inclusive Insolvency Systems

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Abstract: Corporate insolvency regimes have long been designed around efficiency, creditor recovery, and procedural certainty, frequently marginalizing the human, social, and distributive consequences of corporate failure. This qualitative literature review seeks to reconceptualize insolvency as a multidimensional institutional process by integrating the principles of humanity, resilience, and equity, with the objective of developing fairness metrics for more inclusive insolvency systems. Drawing on interdisciplinary scholarship from insolvency law, corporate governance, economic sociology, and normative political theory, this study systematically synthesizes peer-reviewed literature published between 2000 and 2024 using a structured qualitative thematic analysis.

The review identifies three interrelated dimensions shaping inclusive insolvency outcomes. First, humanity-oriented approaches emphasize stakeholder vulnerability, dignity preservation, and procedural justice, particularly for employees, involuntary creditors, small suppliers, and local communities affected by corporate collapse. Second, resilience-based perspectives frame insolvency not merely as an endpoint of failure but as an adaptive governance mechanism that enables organizational recovery, institutional learning, and broader systemic stability. Third, equity-focused frameworks highlight the importance of proportional and context sensitive loss allocation, stakeholder participation, and intertemporal fairness in distributing the economic and social costs of insolvency.

By integrating these dimensions, the study develops a conceptual framework of fairness metrics that extends beyond traditional efficiency driven indicators, offering normative and analytical tools for evaluating insolvency systems in a more holistic manner. The findings contribute to insolvency scholarship by bridging fragmented theoretical strands and advancing a human-centered and resilience-oriented understanding of corporate failure. The review further suggests that insolvency regimes embedding humanity, resilience, and equity are more likely to enhance institutional legitimacy, stakeholder trust, and long-term economic sustainability, thereby providing a robust foundation for future empirical research and policy reform.

Keywords: corporate insolvency; fairness metrics; stakeholder vulnerability; institutional resilience; distributive equity

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1. Introduction

Corporate insolvency law occupies a critical junction between markets, law, and society, yet its dominant theoretical foundations have historically privileged efficiency, contractual entitlements, and creditor wealth maximization over broader human and social considerations (Goode, 2005; Omar, 2004). From early legal codifications such as the Code of Hammurabi, which already linked debt relief to social order, to modern insolvency regimes shaped by capitalist market logics, responses to financial distress have consistently reflected prevailing assumptions about value, responsibility, and justice (Britannica, n.d.; Graeber, 2011). In contemporary economies characterized by rising wealth inequality, corporate concentration, and systemic vulnerability, these assumptions are increasingly contested (Pfeffer & Waitkus, 2021; Reich, 2015; Sandel, 2012). This literature review situates corporate failure not merely as an economic malfunction but as a profoundly human event that redistributes power, risk, and resilience across unevenly positioned stakeholders.

Traditional insolvency theory has been anchored in a creditor-centric paradigm that prioritizes the maximization of returns to those with enforceable legal and contractual claims (Goode, 1997; Baird & Rasmussen, 2010). While this approach offers clarity and predictability, it largely ignores the distributive consequences of insolvency for involuntary, non adjusting, and undiversified stakeholders such as employees, tort claimants, communities, and the environment (Sarra, 2008; Keay & de Prez, 2001). These actors often lack meaningful bargaining power, cannot diversify their exposure, and have little capacity to exit their relationship with the distressed firm, rendering them disproportionately fragile in moments of corporate failure (Gant, 2025). As a result, the ostensibly neutral application of insolvency rules frequently reproduces structural inequities rather than mitigating them.

The growing "rescue culture" in insolvency law has begun to acknowledge that corporate distress generates social externalities that extend well beyond creditor losses (Finch, 2008; Ghio et al., 2021). Harmonization efforts within the European Union, particularly in the wake of the COVID-19 pandemic, reflect an emerging recognition that insolvency frameworks must balance efficiency with stakeholder protection, sustainability, and social stability (Boon, 2018; Gurrea-Martínez, 2020). Nonetheless, these reforms remain constrained by theoretical models that inadequately conceptualize fairness and largely fail to account for differential stakeholder vulnerability (Linna, 2020; Mulevičienė, 2020). The absence of operational fairness metrics capable of capturing power asymmetries, exposure, and resilience represents a significant gap in both insolvency scholarship and practice.

This gap is particularly salient in light of broader debates on inequality and corporate purpose. Sociological and economic research demonstrates that wealth and risk are increasingly concentrated among elites, while adverse shocks are disproportionately borne by workers and communities with limited institutional protection (Keister, 2014; Vaughan & Kerr, 2024). Political and moral theorists similarly question whether market based institutions adequately serve collective human interests or merely entrench advantage for the few (Rawls, 1999; Posner, 2010). Within corporate governance discourse, scholars argue that firms derive legitimacy from an implicit social contract that entails responsibilities toward stakeholders affected by corporate activity, including during insolvency (Bishop, 2008; Hsieh et al., 2018). Insolvency law, as the mechanism that allocates loss when firms fail, is thus a crucial site for reassessing the ethical foundations of capitalism itself.

Against this backdrop, feminist jurisprudence and particularly Martha Fineman's Vulnerability Theory offers a powerful framework for rethinking fairness in corporate failure. Fineman reconceptualizes vulnerability as a universal and constant feature of the human condition, while recognizing that social, legal, and economic institutions distribute resilience unevenly (Fineman, 2008, 2017, 2022). Rather than focusing solely on formal equality or anti discrimination, Vulnerability Theory demands attention to how institutional arrangements amplify or mitigate human fragility. Applied to insolvency, this perspective shifts the analytical focus from abstract entitlements to lived experiences of exposure, dependence, and harm (Gant, 2023). Efforts to build resilience need to consider the diversity of perspectives regarding how individuals, organizations, or communities understand and respond to situations and events (Harahap, S., et al, 2022).

Recent insolvency scholarship increasingly draws on Vulnerability Theory to highlight how employees, tort victims, and environmental stakeholders are systematically disadvantaged by existing frameworks (Gant, 2022; Vaccari & Van Ho, 2023). Employees, for example, invest firm-specific human capital that cannot be redeployed without loss, yet their claims are often subordinated or capped in insolvency proceedings (Blair, 1999; Mucciarelli, 2017). Tort creditors face delayed, uncertain recoveries and are frequently excluded from restructuring negotiations despite suffering irreversible harm (Buccola & Macey, 2021; Simon, 2022). Environmental liabilities present even starker challenges, as insolvency can externalise clean-up costs onto the public, undermining the "polluter pays" principle and intergenerational equity (Brown, 2018; Ehmke & Vaccari, 2023).

These dynamics underscore the inadequacy of fairness assessments that rely solely on procedural participation or equal treatment among similarly situated creditors. As Gant (2025) argues, fairness in insolvency must be reframed to account for stakeholders' relative power, choice, exposure, and fragility. Vulnerability Theory provides the conceptual tools to undertake this reframing by linking fairness to resilience building institutional responses rather than static distributions of legal rights (Fineman, 2020). Adopting aforward thinking strategy that ensures both the company's financial success and its ability to thrive amidst challenges, changes, and uncertainties is a cornerstone of sustainable leadership for business resilience (Sugiharti, T., 2023). However, while the theory offers normative guidance, it does not yet supply concrete metrics for evaluating fairness within insolvency systems.

The central contribution of this literature review lies in synthesising interdisciplinary scholarship to explore how fairness metrics might be developed that operationalise vulnerability, resilience, and equity in insolvency contexts. By integrating insights from insolvency law, stakeholder theory, political philosophy, environmental law, and feminist jurisprudence, this review seeks to move beyond abstract critique toward practical frameworks capable of informing legal design and reform (Freeman, 1984; Goodpaster, 1991). The ultimate challenge is to determine how stakeholder resilience can be assessed in a manner that is both theoretically coherent and administratively feasible, without undermining the predictability essential to insolvency regimes.

In doing so, this review positions corporate insolvency as a test case for broader questions about humanity and institutional design. If insolvency systems continue to prioritize efficiency at the expense of equity, they risk perpetuating social harm and eroding trust in market institutions. Conversely, by embedding vulnerability sensitive fairness metrics into insolvency law, it may be possible to reconcile economic coordination with human dignity, sustainability, and social justice. Vulnerability Theory thus serves not as an endpoint but as a starting point for reimagining inclusive insolvency systems capable of responding to the realities of corporate failure in the twenty first century.

2. Literature Review

Insolvency Law as a Social Institution: Historical and Normative Foundations. Insolvency law has never been a purely technical mechanism for resolving debt but has historically functioned as a social institution mediating moral responsibility, economic order, and human vulnerability, as evidenced by early legal codifications such as the Code of Hammurabi, which explicitly linked debt enforcement to social stability and communal justice (Britannica, n.d.). Historical scholarship on Ancient Rome similarly demonstrates that debt and insolvency were embedded within hierarchical social relations, exposing debtors and dependent groups to severe personal and economic consequences rather than neutral contractual adjustment (Graeber, 2011). These historical accounts underscore that insolvency has always been a site of distributive choice rather than legal inevitability (Omar, 2004).

The transition to industrial capitalism transformed insolvency law into an instrument supporting capital accumulation and market expansion, privileging creditor certainty and property rights over social considerations (Harris, 2000; Rich & Wilson, 1977). Adam Smith's articulation of market efficiency and wealth generation provided philosophical justification for prioritizing contractual freedom, even as the social costs of market failures were increasingly externalized (Smith, 2008). Contemporary political economists argue that this historical trajectory has embedded structural inequities into modern legal institutions, including insolvency frameworks (Reich, 2015; Posner, 2010; Sandel, 2012).

Creditor Primacy and the Efficiency Paradigm. Modern insolvency theory has been dominated by creditor wealth maximization and efficiency based rationales, conceptualizing insolvency as a collective enforcement mechanism designed to minimize transaction costs and preserve asset value (Goode, 1997, 2005). Legal economic scholars have reinforced this paradigm by framing deviations from creditor primacy as distortive and welfare reducing (Baird & Rasmussen, 2010). However, empirical and doctrinal research demonstrates that this framework systematically marginalizes stakeholders lacking bargaining power, such as employees, tort creditors, and local communities (Gross, 1994; Sarra, 2008).

The rise of corporate rescue rhetoric has not displaced creditor dominance in practice, as control rights in restructuring processes remain heavily skewed toward secured financial creditors (Finch, 2008). European harmonization initiatives similarly emphasize predictability and market confidence, with stakeholder participation remaining largely aspirational rather than operational (Boon, 2018; Ghio et al., 2021). These findings suggest that efficiency driven insolvency systems inadequately account for the distributive consequences of corporate failure.

Wealth Inequality, Market Power, and Structural Exposure. Sociological research highlights that insolvency outcomes cannot be separated from broader patterns of wealth inequality and market concentration. Cross national analyses demonstrate that wealth inequality is institutionally produced and reinforced through legal and policy frameworks, including insolvency regimes (Pfeffer & Waitkus, 2021). Empirical studies show that economic shocks disproportionately affect those outside the wealth elite, amplifying social vulnerability during corporate failure (Keister, 2014).

Market monopolization further intensifies these effects by enabling dominant firms to externalize risk while retaining control over value distribution (Haucap & Heimeshoff, 2013). Policy research emphasizes that prevailing narratives often obscure the role of legal institutions in sustaining inequality (Vaughan & Kerr, 2024). From a normative perspective, Rawlsian justice theory challenges insolvency systems that fail to prioritize the least advantaged stakeholders affected by corporate distress (Rawls, 1999).

Corporate Purpose, Governance, and Social Responsibility in Distress. The literature on corporate purpose increasingly conceptualizes corporations as social institutions with obligations extending beyond shareholders, particularly during insolvency (Bishop, 2008; Hsieh et al., 2018). Historical analyses of transnational corporations reveal that corporate privileges have long been accompanied by implicit social responsibilities, even if unevenly enforced (McLean, 2003).

Empirical governance studies demonstrate a strong correlation between weak governance structures and heightened insolvency risk, particularly in financial institutions (Parkinson, 2018; Ali et al., 2021). Crisis-driven reforms during the COVID-19 pandemic illustrate that insolvency law can be recalibrated to prioritize employment protection and economic stability when normative priorities shift (Gurrea-Martínez, 2020). However, scholars note that such reforms remain fragmented and lack a coherent fairness framework capable of guiding long-term institutional design (Tomasic, 2009).

Vulnerability Theory and the Reframing of Fairness. Feminist legal scholarship, particularly Martha Fineman's Vulnerability Theory, offers a foundational reconceptualization of fairness by recognizing vulnerability as a universal human condition unevenly mediated by institutions (Fineman, 2005, 2008). Fineman argues that formal equality fails to address structural disparities in resilience, necessitating institutional responsibility for mitigating harm (Fineman, 2017, 2020). Her later work explicitly links rights to resilience building obligations rather than static entitlement allocation (Fineman, 2022).

Jennifer Gant extends Vulnerability Theory into insolvency scholarship, demonstrating how power, choice, exposure, and fragility systematically disadvantage involuntary stakeholders during corporate failure (Gant, 2025). Earlier doctrinal analyses reveal that insolvency mechanisms such as floating charges exacerbate moral hazard and deepen inequities for vulnerable creditors (Gant, 2022). These findings collectively establish vulnerability as a critical analytical lens for assessing fairness in insolvency systems (Gant, 2023).

Employees, Labour, and Non-Diversifiable Human Risk. Labour focused scholarship emphasizes that employees bear unique, non diversifiable risks in insolvency due to their investment of firm-specific human capital (Blair, 1999). Classical political economy critiques highlight that treating labour as a commodity obscures the human costs of economic restructuring (Marx, 1963; Dragstedt, 1976). Legal historians further demonstrate that the principle "labour is not a commodity" reflects long standing resistance to market absolutism (Evju, 2013). Human capital can also function as a moderator for innovation performance to achieve Corporate Sustainable Longevity (Irawan et al., 2021)

Comparative legal studies show that employee priority regimes significantly affect social outcomes following insolvency, with stronger protections associated with reduced inequality (Mucciarelli, 2017). Gant's forthcoming work argues that vulnerability based fairness metrics could justify enhanced employee participation without undermining insolvency efficiency (Gant, forthcoming). These findings reinforce the inadequacy of creditor centric models in addressing human vulnerability.

Environmental Stakeholders and Intergenerational Equity. Environmental liabilities present acute challenges for insolvency law, as corporate failure often enables firms to externalize clean up costs, undermining the "polluter pays" principle (Keay & de Prez, 2001; Department of the Environment, 1983). Empirical studies document persistent doctrinal uncertainty regarding environmental claims, resulting in inconsistent protection for environmental stakeholders (Brown, 2018; Mamutse, 2016).

Recent scholarship highlights renewed efforts to reinforce environmental accountability in insolvency, including insurance based solutions and statutory reform proposals (Ehmke & Vaccari, 2023; Mohan & Prasad, 2023). Comparative sustainability research emphasizes that insolvency systems failing to internalise environmental harm undermine long term economic resilience (Linna, 2019; Linna, 2020; Aziz et al., 2021). The "insolvent polluter still pays" debate illustrates the growing recognition of intergenerational equity concerns within insolvency scholarship (Schytzer et al., 2024). The operational resilience influences corporate sustainable longevity directly and indirectly through innovation performance (Thoha et al., 2021).

Tort Creditors, Mass Harm, and Procedural Injustice. Mass tort insolvencies expose the limitations of existing insolvency frameworks in delivering substantive justice to involuntary creditors (Roe, 1984). Empirical analyses reveal that procedural complexity, claim timing, and bargaining asymmetries systematically disadvantage tort victims (Kornhauser & Revesz, 1994; McKenzie, 2012).

Recent critiques highlight strategic exploitation of bankruptcy procedures by corporate actors, eroding value and undermining legitimacy (Simon, 2022; Parikh, 2022; Wu, 2024). Buccola and Macey (2021) demonstrate that claim durability directly affects recovery outcomes, reinforcing calls for systemic reform. Subrogation doctrines further complicate equitable distribution, often privileging insurers over injured parties (Sykes, 2001).

Synthesis and Identified Research Gap. Across disciplines, the literature converges on a central conclusion: existing insolvency systems lack coherent fairness metrics capable of accounting for differential vulnerability, power, and resilience. While stakeholder theory provides normative guidance on corporate responsibility (Freeman, 1984; Friedman & Miles, 2002; Goodpaster, 1991), it offers limited operational tools for insolvency contexts (Freeman et al., 2018).

Vulnerability Theory offers a promising foundation for developing such metrics, yet empirical work translating its principles into practical insolvency design remains underdeveloped (Gant, 2025). This literature review identifies a critical gap in the development of systematic fairness measures capable of integrating humanity, resilience, and equity into insolvency law. Addressing this gap is essential for advancing inclusive insolvency systems that reconcile economic coordination with social justice in an era of deepening inequality.

3. Methods

This study adopts a qualitative literature review methodology, which is particularly suited for synthesizing theoretical perspectives, empirical findings, and conceptual debates surrounding complex socio legal phenomena such as fairness, vulnerability, and equity in corporate insolvency systems. Unlike quantitative meta analyses that aggregate numerical data, qualitative literature reviews emphasize interpretative synthesis, enabling researchers to identify conceptual frameworks, theoretical tensions, and gaps in the literature (Grant & Booth, 2009; Snyder, 2019). In the context of insolvency research, where normative constructs such as resilience and humanity intersect with legal doctrine and stakeholder interests, a qualitative approach enables the exploration of underlying meanings, institutional logics, and normative commitments embedded in existing scholarship (Gough, Oliver, & Thomas, 2017).

The methodological orientation of this review is grounded in critical interpretivism, which recognizes that knowledge is socially constructed and contingent on historical, institutional, and ideological contexts (Denzin & Lincoln, 2018). This orientation aligns with the research objective of exploring not merely what insolvency law does, but how it shapes and reflects normative commitments to equity and human experience. Critical interpretivist reviews foreground actors' voices, institutional settings, and power relations, making them especially appropriate for studies that interrogate structural inequality and stakeholder vulnerability (Fineman, 2008; Gant, 2025).

The literature review targets scholarship that intersects three major thematic dimensions: (1) conceptualizations of fairness and equity in legal and economic systems, (2) stakeholder vulnerability and resilience in corporate failure contexts, and (3) normative and doctrinal developments in insolvency law. Inclusion criteria were established to ensure relevance, rigour, and recency, as advocated by Webster and Watson (2002). Specifically, the review includes: Peer reviewed journal articles, book chapters, and monographs published within the last three decades to capture both foundational thought and contemporary evolution in insolvency theory and critical legal studies (Fineman, 2008; Pfeffer & Waitkus, 2021). Works that directly address fairness, vulnerability, human rights, or equity in corporate failure, including feminist jurisprudential perspectives, stakeholder theory, and socio-legal analyses (Gant, 2025; Vaccari & Van Ho, 2023). Scholarship that examines institutional and doctrinal structures of insolvency law, especially regarding stakeholder participation, distributional outcomes, and normative justifications (Goode, 2005; Linna, 2019). Sources that did not substantively engage with these themes, or that were purely descriptive without normative or analytical depth, were excluded. This fidelity to thematic relevance enhances analytical clarity and ensures that the review synthesizes literature that directly informs the development of fairness metrics.

A systematic search strategy was employed, incorporating multiple academic databases recognized for legal and social science scholarship. Keyword combinations were iteratively developed to capture the intersection of legal, socio economic, and ethical dimensions of insolvency, such as: "corporate insolvency and fairness," "vulnerability theory and law," "stakeholder resilience and bankruptcy," "humanity and insolvency systems," and "equity metrics and corporate failure." Boolean operators and subject filters were used to refine results and minimize retrieval of unrelated literature (Gough et al., 2017).

The systematic component of the search was complemented by citation tracking and reference snowballing, whereby major works identified in the review (e.g., Fineman, 2008; Gant, 2025) guided the identification of seminal and recent scholarship not initially captured through keyword searches (Greenhalgh et al., 2018). This iterative process ensured comprehensive coverage of relevant theoretical and empirical contributions.

Following retrieval, articles were screened for relevance at two levels: (1) title and abstract review, and (2) full text assessment, applying the inclusion criteria above (Snyder, 2019). Key elements were extracted from each source, including author objectives, conceptual frameworks, methodological approaches, stakeholder categories analyzed, and implications for fairness or equity in insolvency law.

The extracted data were then analyzed through thematic synthesis, a qualitative analytic technique that enables the integration of conceptually similar findings across diverse studies (Thomas & Harden, 2008). The process involved inductive coding of textual data for emergent themes, such as normative foundations of fairness, institutional power asymmetries, stakeholder vulnerability profiles, and resilience frameworks followed by aggregation into higher order analytical categories that align with the research objectives (Braun & Clarke, 2006). Through this thematic synthesis, the review identifies not only the state of current knowledge but also normative tensions and research gaps that inform the development of fairness metrics.

Although qualitative reviews do not employ statistical measures of study quality, they do assess conceptual rigour, theoretical coherence, and scholarly influence to ensure the credibility of synthesized themes (Jesson, Matheson, & Lacey, 2011). Influential works were prioritized based on citation impact, engagement in subsequent literature, and their contribution to core concepts such as vulnerability (Fineman, 2008), stakeholder equity (Freeman et al., 2018), and insolvency reform debates (Goode, 2005; Vaccari & Van Ho, 2023). This evaluative dimension strengthens the interpretive validity of findings and situates them within the broader academic conversation.

Given the socio legal and normative character of the research questions, reflexivity was central to the methodology. The researcher remained continuously aware of potential biases in disciplinary orientations (e.g., law vs. economics) and made deliberate efforts to integrate diverse perspectives, including feminist jurisprudence, stakeholder theory, and legal doctrine (Denzin & Lincoln, 2018; Fineman, 2008). Ethical transparency was maintained through explicit articulation of inclusion criteria, analytical steps, and the interpretative lens applied to the literature.

4. Results

This qualitative literature review synthesizes existing scholarship to identify core themes related to humanity, resilience, and equity in corporate insolvency, supporting the development of fairness metrics for inclusive insolvency systems. The synthesis reveals four major thematic dimensions: Conceptual Foundations of Fairness in Insolvency, Stakeholder Vulnerability and Power Asymmetry, Institutional Responses and Resilience Factors, and Emerging Fairness Metrics and Gaps in Practice.

Conceptual Foundations of Fairness in Insolvency Systems. A dominant theme in the literature is the recognition that traditional insolvency frameworks, rooted in creditor primacy and contractual entitlements, are insufficient for ensuring equitable outcomes for all stakeholders affected by corporate failure. Goode's foundational legal analysis highlights that insolvency law historically emphasises orderly creditor repayment and capital market stability rather than distributive justice (Goode, 2005). Scholars argue that this focus stems from legal economic assumptions prioritizing efficiency over humanity (Baird & Rasmussen, 2010).

Rawls' theory of justice further provides a normative basis for fairness that prioritizes the worst off, challenging the creditor centric paradigm by asserting that justice should be measured by the improvement of conditions for the least advantaged (Rawls, 1999). This normative perspective is extended by feminist legal theory, particularly Martha Fineman's Vulnerability Theory, which reconceptualizes resilience as a central justice criterion and emphasizes institutional responsibility to mitigate human fragility (Fineman, 2008, 2022). According to Fineman, institutional arrangements must account for universal vulnerability while recognizing differential capacities for resilience shaped by social structures.

Empirical sociological research complements these theoretical insights by documenting how inequality in societal power relations affects outcomes in financial crises. Wealth inequality studies demonstrate that systemic disparities are reproduced through legal and economic institutions that shape both market behaviour and legal priorities, including insolvency systems (Pfeffer & Waitkus, 2021). These conceptual contributions collectively establish that fairness in insolvency must transcend technical rules and embrace justice frameworks attentive to human experience and systemic inequality.

Stakeholder Vulnerability and Power Asymmetry in Corporate Failure. A major finding across the literature is the pervasive asymmetry of power and exposure among stakeholders in corporate insolvency. Traditional insolvency law disproportionately privileges secured financial creditors, leaving involuntary creditors such as employees, tort claimants, and environmental victims with limited voice and low recoveries (Finch, 2008; Sarra, 2008). Gant's empirical and doctrinal work illustrates how these power imbalances translate into differential harms, with particular emphasis on power, choice, exposure, and fragility as constitutive elements of stakeholder vulnerability (Gant, 2025).

Employees are highlighted as prototypical vulnerable stakeholders. Blair's research on firm specific human capital shows that involuntary job loss and diminished future earnings represent non diversifiable risks that standard insolvency procedures fail to mitigate (Blair, 1999). Comparative studies demonstrate that jurisdictions with stronger employee priority rules exhibit better social outcomes, indicating the need for tailored fairness metrics that account for human capital loss (Mucciarelli, 2017).

Similarly, environmental creditors and local communities affected by corporate pollution face chronic disadvantage in insolvency contexts. Case law and statutory analyses reveal that environmental liabilities are frequently subordinated or extinguished, undermining the "polluter pays" principle and imposing long-term public burdens (Keay & de Prez, 2001; Brown, 2018). These patterns highlight how existing legal structures can compound vulnerability for non economic stakeholders.

Mass tort litigation further exemplifies asymmetrical exposure. Roe's historical analysis and later empirical critiques show that procedural delays and bargaining asymmetries systematically disadvantage tort claimants relative to financial creditors, often resulting in undercompensated harms (Roe, 1984; Buccola & Macey, 2021). These findings underscore that insolvency fairness must incorporate assessments of stakeholder power and exposure beyond mere legal rank or contractual status.

Institutional Responses and Resilience Factors. The literature identifies institutional responses that can either exacerbate or mitigate stakeholder vulnerability. A prominent theme is the emergence of rescue culture and legal reforms aimed at preserving corporate value and employment, particularly in European jurisdictions. Linna's sustainability oriented analyses show that insolvency laws increasingly incorporate business sustainability concerns, indicating a shift toward resilience-enhancing frameworks (Linna, 2019, 2020). These reforms include pre-insolvency restructuring tools that aim to rescue viable firms and retain jobs, thus reducing the social costs of failure.

Similarly, harmonization efforts within the EU highlight stakeholder engagement and balanced governance as integral to robust insolvency systems (Ghio, Mazzola, & Zampone, 2021). However, Gant and Vaccari's work cautions that such measures remain inconsistent and often subordinate to market efficiency priorities, leaving systemic inequities unaddressed (Gant, 2023; Vaccari & Van Ho, 2023).

Empirical studies on corporate governance also demonstrate that proactive institutional practices such as early warning mechanisms, transparent stakeholder consultation, and employee representation correlate with more equitable insolvency outcomes (Parkinson, 2018; Ali et al., 2021). These resilience factors suggest that fairness metrics should incorporate governance quality and institutional responsiveness, not merely distributional outcomes.

Emerging Fairness Metrics and Practical Gaps. Despite theoretical advances, the literature reveals a significant gap between conceptual frameworks and operational fairness metrics. Fineman's Vulnerability Theory provides normative criteria for assessing resilience but lacks concrete measures for application in insolvency systems (Fineman, 2022). Gant (2025) argues for the development of metrics that evaluate stakeholder power, choice, exposure, and fragility, but notes that existing legal reforms rarely implement such measures systematically.

Stakeholder theory offers additional insight, positing that corporate responsibility extends beyond shareholders to include all affected parties (Freeman et al., 2018). However, empirical research indicates that even stakeholder inclusive governance models often fail to generate measurable protections during insolvency due to legal constraints and entrenched creditor priorities (Friedman & Miles, 2002; Freeman et al., 2018).

Calls for sustainability driven insolvency frameworks point toward measurable indicators related to employment retention, environmental liability coverage, and community impact assessments (Aziz et al., 2021; Linna, 2019). Yet, the practical implementation of these indicators is sparse, and their integration into legal regimes remains largely theoretical. This gap underscores the need for multidimensional fairness metrics that can systematically assess and compare outcomes across stakeholder groups, institutional contexts, and legal frameworks.

The review synthesizes literature indicating that: Fairness in insolvency must be reconceptualized beyond creditor primacy to include human centered criteria such as vulnerability and resilience. Stakeholder power imbalances systematically disadvantage non contractual claimants, requiring metrics that capture exposure and lack of choice. Institutional reforms and governance practices can enhance resilience but are currently inconsistent and underdeveloped. Operational fairness metrics are still emerging, with substantial gaps between normative aspiration and practical application. Together, these findings support the conclusion that developing inclusive insolvency fairness metrics requires bridging normative theory (e.g., vulnerability and justice) with measurable indicators that account for human, social, and environmental impacts of corporate failure.

5. Discussion

The synthesis of literature on humanity, resilience, and equity in corporate failure demonstrates that insolvency frameworks remain structurally biased toward financial efficiency and creditor hierarchies, often at the expense of vulnerable stakeholders. This pattern is consistent with Goode's foundational observation that insolvency law has historically prioritized orderly creditor repayment over broader social justice imperatives (Goode, 2005). However, emerging scholarship reveals a growing recognition that legal frameworks must integrate normative criteria that foreground human vulnerability, distributive justice, and stakeholder resilience if equity is to be meaningfully realized in corporate insolvency (Fineman, 2022; Gant, 2025). This discussion critically examines the synthesized findings in light of eight key studies, assessing the implications for theory, practice, and future metric development.

A recurring theme across the reviewed literature is the inadequacy of traditional creditor primacy models in delivering equitable outcomes for all stakeholders. Baird and Rasmussen's (2010) argument that insolvency's efficiency orientation marginalizes non contractual claimants is borne out in empirical observations across jurisdictions. Finch (2008) similarly critiques the creditor-centric rescue culture, demonstrating that rescue mechanisms frequently reinforce existing power imbalances rather than ameliorate them. These insights align with the present review's finding that secured financial creditors disproportionately shape restructuring outcomes while employees, environmental claimants, and tort victims are relegated to peripheral roles (Blair, 1999; Brown, 2018). Such comparative analysis underscores that the formal neutrality of legal entitlements often masks substantive inequity in outcomes.

In contrast to purely doctrinal critiques, Pfeffer and Waitkus (2021) provide a sociological lens by documenting how wealth inequality is embedded within institutional structures, including legal systems. Their macro level analysis complements legal scholarship by situating insolvency within broader socio-economic hierarchies that systematically disadvantage less powerful groups. Similarly, Vaughan and Kerr (2024) extend this critique by examining how legal institutions reproduce inequality through procedural design and normative assumptions. Together, these studies reinforce the argument that developing fairness metrics entails addressing both institutional design and structural inequality, not merely redistributing entitlements within existing legal frameworks.

The application of feminist jurisprudence, particularly Fineman's Vulnerability Theory, offers a critical normative foundation for rethinking fairness in insolvency systems. Fineman (2008, 2017, 2022) reconceptualizes vulnerability as universal yet unevenly distributed due to social structures, thus shifting attention from formal equality to resilience building institutional responses. The present review resonates with Gant's (2025) extension of Vulnerability Theory into insolvency law, where stakeholder power, choice, exposure, and fragility are identified as core determinants of inequitable outcomes. This normative reframing is supported by Ghio, Mazzola, and Zampone (2021), who argue that insolvency harmonization efforts must integrate stakeholder considerations, not merely efficiency imperatives, to foster equitable restructuring cultures in the European context.

Comparative analyses of employee outcomes further illustrate the practical consequences of vulnerability agnostic insolvency systems. Mucciarelli's (2017) empirical study of employee priority regimes across France, Germany, and the UK reveals that stronger statutory protections correlate with higher post insolvency labour market outcomes, indicating that legal design significantly influences resilience for workforce stakeholders. This finding bolsters the review's conclusion that fairness metrics must account for human capital loss and non diversifiable risk exposure, a dimension that creditor centric models obscure. Blair (1999) similarly emphasizes that firm specific human capital is a unique form of risk that standard insolvency procedures fail to address, further justifying calls for metrics that quantify stakeholder vulnerability beyond contractual status.

Environmental stakeholders constitute another group systematically disadvantaged by insolvency law, as evidenced in multiple prior studies. Keay and de Prez (2001) and Brown (2018) document how environmental liabilities are often subordinated or extinguished in insolvency, contravening the polluter pays principle and imposing long term societal costs. Ehmke and Vaccari (2023) explore insurance based approaches to environmental liability, yet underscore the fragmented and inconsistent application of these mechanisms across jurisdictions. This body of work illustrates that environmental harm, unlike financial claims, is not easily quantified within current legal priority schemes, thus revealing a blind spot in existing fairness assessments. The present review's call for multidimensional metrics resonates with Schytzer, Welsh, and Aulich's (2024) emphasis on intergenerational justice, which requires insolvency frameworks to internalize long term environmental externalities rather than defer them to future taxpayers.

Mass tort creditors also exemplify the limitations of existing insolvency processes in safeguarding equity. Roe's (1984) historical analysis of mass tort bankruptcies unveils how procedural design and strategic litigation behaviours can sideline injured parties, a problem compounded by claim durability issues highlighted by Buccola and Macey (2021). These structural disadvantages reflect not only the prioritization of financial claims but also procedural barriers that disadvantage claimants lacking market power. Parikh's (2022) critique of bankruptcy manipulation further demonstrates that sophisticated actors can exploit legal frameworks to the detriment of weaker stakeholders, underlining the need for fairness metrics that can detect and correct such systemic distortions.

Stakeholder theory offers additional insights into the normative underpinnings of fairness in corporate failure. Freeman et al. (2018) broaden the stakeholder concept by emphasizing mutual interdependence and ethical responsibilities across organizational contexts. However, Friedman and Miles (2002) caution that stakeholder inclusivity must be operationalized through governance mechanisms capable of balancing competing interests in practice. The present review's findings suggest that insolvency regimes currently lack the institutional mechanisms to translate stakeholder inclusivity into measurable outcomes, reinforcing the need for empirical metrics that capture participation, influence, and outcome equity across stakeholder groups.

Notwithstanding these theoretical and empirical advances, the literature reveals persistent gaps in metric development. Fineman's Vulnerability Theory provides robust normative criteria but stops short of proposing operational indicators for legal practice (Fineman, 2022). Similarly, Gant's (2025) conceptual framework for assessing power, choice, exposure, and fragility offers a promising foundation but lacks empirical validation and widely accepted measurement tools. The work of Linna (2019; 2020) on sustainability oriented insolvency reforms points toward measurable indicators related to business continuity and social impact but does not integrate them into comprehensive fairness metrics. Aziz et al. (2021) attempt to link environmental performance with insolvency risk, suggesting potential quantitative dimensions for fairness metrics, yet their approach remains at an early stage of integration with legal design.

These gaps highlight a broader methodological challenge: the difficulty of reconciling normative aspirations with operational feasibility. While stakeholder inclusive, sustainability oriented, and vulnerability sensitive frameworks are theoretically compelling, translating them into legal standards and enforcement mechanisms remains underexplored. This challenge echoes Snyder's (2019) observation that literature reviews in socio legal fields often identify conceptual frameworks without advancing concrete measurement tools. The present review confirms this pattern, revealing that while the literature is rich in normative critique and stakeholder analysis, it is sparse in validated metric constructs that can be applied by policymakers or courts.

Despite these limitations, the convergence of multiple research strands suggests pragmatic pathways for metric development. First, the resilience dimension central to both Fineman's Vulnerability Theory and empirical findings on stakeholder outcomes can be operationalized through indicators such as employment retention rates, loss severity indices, environmental liability coverage ratios, and stakeholder participation scores. Metrics like these align with Mucciarelli's (2017) and Linna's (2019) empirical assessments of outcomes across jurisdictions and may be further refined through quantitative and mixed methods research.

Second, power asymmetry can be assessed through measures of stakeholder influence in decision making processes, such as voting rights in restructurings, representation on negotiation committees, and statutory priority positions. These indicators resonate with Freeman et al.'s (2018) stakeholder governance emphasis and provide an empirically observable dimension of fairness. Third, exposure and fragility central to Gant's (2025) framework can be quantified by examining dependency ratios, diversification limitations, and risk absorption capacities across stakeholder groups. Such metrics could be informed by sociological data on wealth inequality (Pfeffer & Waitkus, 2021) and legal data on claim recoveries.

Taken together, these emergent metric domains point to a multidimensional fairness assessment model that integrates legal entitlements, socio economic realities, procedural participation, and outcome equity. Developing and validating such metrics will require interdisciplinary collaboration among legal scholars, economists, sociologists, and policymakers, reflecting the multifaceted nature of corporate failure and recovery.

The literature consistently indicates that insolvency systems grounded in creditor primacy fail to capture the human costs of corporate failure and perpetuate inequities for stakeholders with limited power or choice. Comparative analysis across doctrinal critiques, sociological studies, and stakeholder governance research underscores the necessity of developing operational fairness metrics that incorporate vulnerability, resilience, and equity. While normative frameworks such as vulnerability theory provide important conceptual foundations, advancing inclusive insolvency systems will depend on translating these insights into empirically grounded measurement tools capable of guiding legal reform and evaluating systemic performance.

6. Conclusions

This qualitative literature review advances the understanding of corporate insolvency by reframing failure not merely as a financial or legal endpoint but as a multidimensional social process embedded in human vulnerability, institutional resilience, and distributive equity. Synthesizing interdisciplinary scholarship across insolvency law, corporate governance, economic sociology, and ethical theory, this study demonstrates that prevailing insolvency frameworks remain predominantly efficiency oriented and creditor-centric, often marginalizing human, social, and long term systemic considerations (Fineman, 2008; Mokal, 2022; Linna, 2019).

The findings reveal that humanity oriented insolvency systems recognize the structural vulnerability of employees, small creditors, and local communities, emphasizing dignity preservation, procedural fairness, and social continuity during corporate failure (Fineman, 2017; Westbrook, 2020). Literature consistently indicates that insolvency regimes lacking explicit human centered safeguards tend to exacerbate inequality and social precarity, particularly in crisis contexts such as mass layoffs or systemic economic shocks (Blair & Stout, 2001; Armour et al., 2020).

From a resilience perspective, the review shows that insolvency is increasingly conceptualized as an institutional learning mechanism rather than a terminal sanction, where adaptive restructuring, early intervention, and going-concern preservation enhance long term economic stability (McCormack, 2017; Jackson & Skeel, 2021). Resilient systems integrate flexibility, stakeholder coordination, and dynamic valuation mechanisms, allowing firms and ecosystems to recover rather than collapse under rigid liquidation driven models (Ayotte & Skeel, 2013; Linna, 2021).

Most critically, this study contributes to the literature by proposing fairness metrics as a conceptual bridge between humanity, resilience, and equity. The review identifies recurring evaluative dimensions, such as stakeholder inclusiveness, proportional loss allocation, procedural transparency, temporal fairness, and distributive outcomes as implicit yet fragmented across existing scholarship (Mokal, 2016; Baird & Rasmussen, 2010). By systematizing these dimensions, this research lays the groundwork for normatively grounded and operationalizable fairness indicators capable of assessing insolvency regimes beyond narrow recovery rates or procedural speed.

Comparative insights from prior studies further indicate that jurisdictions embedding equity-oriented principles, such as stakeholder balancing, rescue prioritization, and social cost internalization tend to exhibit greater legitimacy and systemic trust, even when short-term financial recoveries are modest (Eidenmüller, 2019; Gurrea-Martínez, 2020). This supports the argument that inclusive insolvency systems are not antithetical to efficiency, but rather enhance institutional credibility and long-term market participation.

Overall, this literature review contributes theoretically by integrating vulnerability theory, resilience economics, and fairness jurisprudence into insolvency scholarship, and conceptually by articulating a structured fairness metrics framework. These contributions provide a foundation for future empirical validation and policy oriented reform aimed at aligning insolvency systems with broader societal values of inclusion, sustainability, and justice.

7. Limitation

Despite its contributions, this study is subject to several limitations inherent to qualitative literature review methodologies. First, the analysis relies on secondary sources, which constrains the ability to empirically test the proposed fairness metrics or directly observe stakeholder experiences during insolvency proceedings (Tranfield et al., 2003). While the synthesis captures theoretical convergence and divergence across disciplines, it cannot substitute for primary qualitative or quantitative validation.

Second, although the review incorporates comparative and international scholarship, the literature remains disproportionately centered on advanced economies with mature insolvency regimes, particularly the United States, the United Kingdom, and the European Union (Armour et al., 2017; Jackson & Skeel, 2021). This limits the generalizability of findings to emerging and developing economies, where informal institutions, enforcement gaps, and socio-cultural norms may significantly alter insolvency dynamics.

Third, the proposed fairness metrics are conceptual rather than operational, reflecting the normative orientation of the reviewed literature. While this conceptualization is a necessary first step, future research must translate these dimensions into measurable indicators and test their applicability across legal systems, industries, and crisis contexts (Mokal, 2016; Linna, 2020).

Fourth, the interdisciplinary breadth of the review, while a strength also introduces analytical trade offs, as legal, economic, and ethical frameworks sometimes employ divergent assumptions and evaluative criteria. Integrating these perspectives risks abstraction and requires careful methodological triangulation in subsequent empirical work (Bengtsson, 2016).

Future research should therefore pursue mixed-methods approaches, combining doctrinal analysis, stakeholder interviews, case studies, and cross country quantitative comparisons to empirically validate fairness metrics and assess their impact on insolvency outcomes. Additionally, exploring insolvency through lenses of gender, labor precarity, and environmental sustainability would further enrich the inclusivity agenda highlighted in this review.

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