Ep.87 China's Enterprise Bankruptcy Law and UNCITRAL Working Group V

Intro Music: INSOL international, in conjunction with the Early Researcher Academics Committee, presents INSOL Talks.

Charles Mak (CM) (00.23): Hello, everyone, and welcome back to a new episode of INSOL Talks. I'm Dr Charles Mak. I am the member of the INSOL Early Researchers Academics Committee and a lecturer in law at University of Bristol Law School. It's a true honour to have with us today a leading voice in insolvency law and corporate governance. Dr Neeti Shikha is an international legal academics with expertise in insolvency law and corporate governance. She holds a PhD from National University of Jodhpur and LLM from University College London, and is a fellow of Higher Education Academy. Neeti has held academic posts in India and Singapore and served as a visiting fellow at Singapore Management University. She was the founding head of the centre for Insolvency and Bankruptcy at the Indian Institute of Corporate Affairs, Government of India, where she led pioneering research on insolvency reform.

Her work has influenced Indian policy and has been cited by the World Bank. She has published six books and her research appears in leading international journals. Neeti is a member of the Academic Steering Committee and serves on the editorial board of the *International Insolvency Review*. She also contributes regularly to leading financial publications. Her research interests, including personal insolvency, bank insolvency, corporate governance, director education and the role of AI and technology in legal education. Her work is strongly interdisciplinary, bridging law, economics, regulations and pedagogy.

Currently, she is a senior lecturer and programme leader for the online LLM at UWE, Bristol, where she advanced scholarship and teaching in global insolvency governance and digitally enhanced legal education. So Neeti, thank you so much for being here, and perhaps we could start with your research on law, behaviour and personal insolvency. Your work with Emily Reeves asks how behavioural economics might improve personal insolvency policy. What first led you to the questions? And what do you think conventional insolvency policy tends to misunderstand about how people actually make financial decisions.

Neeti Shikha (NS) (02.42): Thank you Charles. It's truly a pleasure having this podcast recorded with you. And in fact, very timely because our paper is being published with IIR, and it's a good starting point to talk about the paper. My interest actually began much before this paper. It came from reading outside law, and at a very basic level, law and policy are trying to shape behaviour. We identify social or economic problem, decide what outcome we want, and then design rules or institutions to try to achieve that outcome.

But the question I became increasingly interested was, when we design policy, what assumptions are we making about the person who is supposed to respond to it? And much traditional economic and legal thinking starts with the idea that every person is a rational actor. In very simple terms, we assume that if you give somebody relevant information, explain them cost and benefit. They will assess those options and choose what is best for them. But Charles, interestingly, human beings do not always behave like that. You know, I've followed Richard Thaler's work for many years, particularly his book *Misbehaving*. And what I found fascinating was that he was essentially documenting all these situations where real people did not behave in a neat way economic models would expect them to behave. And he gives a lovely example in

Misbehaving, where he describes putting up a bowl of cashews out before dinner, and everyone kept eating them, even though they knew they were ruining their appetite. So he removed the bowl and everyone was actually relieved.

Now, traditional economics would suggest that taking away choice should not make people better off. So if you do not want the cashews, just not eat them. But real people sometimes know that they need help resisting the temptation. And that very simple example captures what behavioural economics does. It begins with how people actually behave rather than how perfectly rational actors is expected to behave. You know, we are people, we procrastinate. People get influenced by how choices is presented to them. They may value something differently just because they don't really own it. They may know perfectly well what is better for them in the long run, and still choose to do something else today.

And then you have work of Kahneman and Tversky, and they took this work further through their work on judgment under uncertainty, showing how mental shortcuts, framing and context can systemically shape decisions. And that made me ask a very simple question in insolvency context, Charles, which was if people do not always behave like the rational actors our legal models often assume, then what happens when those people are making decisions under financial distress? Because you can see we have created a remedy. Information is on the government website and therefore person has access to it.

But the real question is, do they? Do they know that it exists? Can they understand those informations? Can they distinguish it from several other remedies? Can they arrange an appointment? Can they gather all information they need while worrying about rent, children, work, collection letters? And that that is the distance between formally offering help to someone and then that person actually being able to use it. And that is where I started connecting these ideas with personal insolvency. And Emily and I began asking this question, if we accept that financial distress affects people, how they think and act. Are insolvency institutions actually designed around this reality? And a conventional legal analysis may ask, you know, what are the remedies available? What are eligibility conditions? What rights do creditors have? And all these questions remain essential.

But behavioural economics adds another layer to the question what happens between law creating the remedy and human being actually being able to use it? And there's an example of money and pension services support, where it supported eight organizations in redesigning their communication and intervention, used shorter, more frequent messages, made important information more salient, reducing complexity of appointment preparation and encouraged commitment. And the missed appointments fell by almost 24%. At one provider, similar reminder techniques increase the return of required information by 34%. And that is fascinating because the legal entitlement did not change. The debtor advisor did not change. The debt itself remained unchanged, but a simple communication change increased participation. And that is the reason why I think behavioural economics is so, so valuable for policy makers. You know, sometimes what looks like a failure of individual may be actually a failure of the architecture surrounding that individual.

CM (08.54): That was fascinating, Neeti. So that brings us to a broader questions about how relationship between law and economics. Insolvency law is traditionally understood as a mechanism for resolving financial distress and distributing losses. But it also engages with broader economic questions concerning incentives, efficiency, risk allocations and market

behaviour. How can you economic principles help us to rethink the objectives and design of insolvency law?

NS (09.27): Thank you for that question. And before I actually start answering that question, let me address it at a broader level, because behavioural economics is not something which has been invented for insolvency, but governments have been using behavioural insights in taxation, pensions, public health, transport, consumer protection and criminal justice system. And I'm reminded of a very, you know, simple example, Charles. Take, for example, road safety. A speed feedback sign does not physically prevent one from speeding. It gives an immediate salient feedback that this is your speed and some signs add positive or negative visual cues. Now, evidence shows that dynamic speed feedback signs can actually reduce speeds around the location where they installed. Although the, the effect of that may be weakened once the sign is passed.

Another example I'm reminded of is in criminal justice system, where in New York City, researchers redesigned court summons so that important information was more prominent and added text message reminders, you know, followed. And failure to appear fell by between 13% to 21%. Now, that is extremely interesting because conventional interpretation might have been that these people are irresponsible, increase the punishment. But the behavioural interpretation first asked the question, that did they even understand where they had to go, when they had to go, and what would happen if they did not go? Now, that is a broader lesson that I think, which is relevant for insolvency.

Sometimes compliance is not simply a question of willingness. It is also a question of attention, comprehension and institutional design. Now law and economics has already profoundly shaped insolvency scholarship. You know, Baird and Jackson, for example, have helped us think about insolvency as a collective action problem, involving incentives, coordination and value maximization.

Now our paper starts from the tradition, but asks whether some of these assumptions become more difficult when debtor is an individual rather than a corporation. You know, Charles, an individual in serious financial distress is not simply a balance sheet. They are making decisions under uncertainty, scarcity, fear, sometimes shame, and often significant information imbalance. Now, this is where the scholarship, such as that of Lammers and others have contributed, by examining the complexity of personal insolvency decision making. Choosing formal insolvency procedure requires somebody to understand multiple alternatives, procedural requirements, consequences extending over several years into the future.

I must admit that this has not been free from criticism and, you know, scholars like David Skeel have cautioned against assuming behavioural economics, automatically giving regulators the correct answer. But my thesis is that regulators can also make mistakes, and behavioural findings in one environment cannot simply be transplanted into the other. So I do agree with that caution. But what I argue is that people are biased. Therefore, the government should make the decision is not right. So differently put, if predictable features of human behaviour are affecting whether law achieves its stated objective, then policymakers cannot pretend that those features don't exist.

Now let us think about objective of insolvency. Right. One is dealing with indebtedness in a sustainable manner. The other is rehabilitation and fresh start. And the third could be responsible behaviour by participants in the system, whether it's debtors, directors or creditors or advisors.

Now, what behavioural science helps us is asking whether the design of the system reinforces or undermines the system objective.

Now, if we take example of stigma, if the objective of personal insolvency is to eventually rehabilitate somebody. But the way we publish communication and communicate the insolvency marks them indefinitely as financial failure. Now, these two policy objectives may be pulling against each other. If we want directors to behave differently after corporate failure. Disqualification alone tells them what they cannot do. But then education can ask a different question. What would enable a director to recognize, you know, warning signs and make better decision next time?

So to summarize for me, behavioural economics gives insolvency another lens through which we can ask, what behaviours are we trying to change? What behaviours are rules trying to produce? And are these two things same? So in the end, the objective of the law is not only that people follow the law, but also to make a behaviour change within actors and stakeholders. And that is, you know, in behavioural economics helps us achieve that objective.

CM (15.37): Thank you so much Neeti. So let us turn to how people actually make decisions when facing financial difficulties. A central point in your work is that financial distress changes the way people make decisions. How do cognitive load, present bias, optimism bias, and status quo bias affect decisions about debt advice and insolvency?

NS (16.01): Charles, let me try to unfold this question and try to remove the terminology first and explain in a very simple parlance. Now, cognitive overload means that your brain has limited processing capacity, and if ten urgent problems are competing for your attention, you cannot give each of these the same quality of thought that you could give it in isolation. Now imagine somebody behind credit card payment and has received a council tax letter, is also worried about the rental payments and has children to collect from school, and is uncertain whether their income will cover the month. And then we send the person a twenty page explainer, four different insolvency procedures and say, well, make an optimal choice.

Now information exists, but that does not necessarily mean that it can be processed effectively at that moment, because there is a cognitive overload. You know, your brain can only process a limited amount of information. Now then there is a present bias, which means today, what makes us feel disproportionately important compared to something that may happen in months or years. And we all experience this. You know, you may know that saving, say, for instance, 100 quid is better for you today in long term, but spending it today produces an immediate benefit. Now in debt situation that becomes more consequential. A solution that's promised, for example, your calls will stop today and you can make one manageable monthly payment that may look very attractive than a technically better solution whose benefits are less immediate?

And then there's optimism bias. It's the tendency to believe that things may turn out to be better then what, you know, evidence objectively suggests. You know, debtor may think, I only need to manage another three months of payment, my income will improve and I'll get more work and everything will be fine. And sometimes they may be right. But there are also times where optimism postpones a necessary intervention. And then there's a status quo bias, which is basically inertia. Now, none of these ideas mean that debtor behaves irrationally. People in financial difficulty frequently, entirely, may make rational decisions between very bad alternatives. But there is a very strong evidence in literature that shows that scarcity itself can affect cognitive resources available for decision making. And this is the starting premise for my research that because of this cognitive overload, if a person is not the same rational actor, the rational actor

model may not apply to the person. Then how do we design an insolvency framework, putting him at the centre point of decision making as to which of the remedies he should follow when the person is under that cognitive load.

CM(19.29): Thank you so much. So, so which leads us to a practical example of how these behavioural factors might influence financial decisions. Behavioural economics suggests that financial decisions are influenced not only by information available, but also by how choices are presented. So how might a cognitive bias framing effect and choice architecture influence an individual's decisions to enter in into an individual voluntary arrangement? And what lessons does this offer for the regulation of that advice?

NS (20.04): Charles. I would start with the problem itself. You know, an individual voluntary arrangement or IVA is an essentially a legally binding arrangement between insolvent individual and the creditor. And usually individual makes agreed payments over a number of years. If the arrangement completes successfully qualifying remaining debt are dealt with according to the arrangement. Now, IVA could be very useful for right person. The problem is when the wrong person is placed into the right legal product.

Now, Insolvency Services commissioned research into 310 randomly selected IVA's that had been registered and terminated between 2021 to 2023. It found evidence of poor practice in 60% of those 310 terminated cases. Now, that is not that 60% of all IVA's, and I think that distinction is important. But the concern included inaccurate income expenditure assessment alternatives being incorrectly dismissed, and failure to ensure that people understood what they were agreeing to. So when we when we have to ask, why does unsuitable take up happen, there may be a supply side problem and you have identified incentives in the beginning of this conversation. It could be incentives and conflicts in the way products are being marketed or recommended.

But there also is a behavioural dimension. And one of those reasons could be anchoring. Now, Charles anchoring simply means that the first number option or piece of information that you encounter can become your reference point for everything that you consider afterwards. You know, there's a wonderful example. You know, you imagine a shirt that costs £60. And now imagine the same shirt is displayed as it was £100 and now at £60. Now the final price is identical, but then £100 has changed your reference point. And these classic experiments was done by Tversky and Kahneman that demonstrated that even irrelevant numbers could influence later the numerical estimates. And there have been later experiments done by other scholars that showed that arbitrary numerical anchors could affect how people are willing to pay for consumer products.

Now, if we apply this study to debt situation, if the first thing somebody sees online is, you know, write off debt, one affordable monthly payment, then that becomes the frame within which every later option is being considered. Now the duration, possibility of failure, fee impact on assets and possibility of that another remedy may become more appropriate. And that becomes a psychological and can become psychologically secondary. So that does not absolve the provider. But if the provider knows that presentation affects choices, then regulatory responsibility is to give fair and suitable advice. So I would want somebody to be able to see realistic alternatives side by side. You know why this option might be better for me. How long will it last? How will it cost? And these kind of questions. A debtor then has to sort of, you know, think through. So in short, the way the options are presented to debtor can become an anchoring

factor. Then we need to rethink about how we present that options to the debtor, if that makes sense.

CM (24.17): Yeah, indeed. Yeah. Thank you so much. So moving on. Moving from the problem to the possible solutions. I would like to explore one of your proposed reforms. One of the most is distinctive proposals in your work is creditor initiated auto-enrolment into breathing space in defined circumstances. How would that model work and why might changing the default be more effective than expecting an already distressed debtor to open?

NS (24.46): That's a very good question. And in fact, before I come to that question, let me suggest something and let me discuss something which is very important, which is breathing space. I think breathing space is behaviourally very interesting and sometimes most valuable intervention is not another choice, but it's just the time. Because if someone knows that there's no immediate enforcement pressure, it may create enough psychological and practical space for them to engage with advice and compare solutions.

Now, under the current scheme in England and Wales, an eligible person can receive temporary protection for up to sixty days while obtaining debt advice and making a plan. And enforcement on debt is restricted. Creditor contact about those debts is restricted and interest and charges are generally paused for those days. Now a behavioural question then arises is that can temporary legal protection also create decision space? And that I think Charles has to be empirically tested. But what we are suggesting is that a referral to advice is not same thing as automatically putting them into a statutory breathing space. And here I would like to draw a distinction between what we propose.

My preferred model would be that creditor becomes part of this pathway into independent advice. Now, at the moment, the system still depends heavily on the debtor, recognising that they need assistance, knowing where to go and successfully reaching out to the authorised advisers. But in my opinion, creditors often see the stress earlier. It could be in terms of missed payments or agreed payment plan arrangement, not keeping up. Or sometimes, you know, the customer can actually tell them that, hey, I can't afford this. So instead of that information simply triggering the next stage of collection, it could trigger a different pathway in my submission.

So a creditor might say, you know, we can see that these payments are becoming difficult. Free independent debt advice is available. You will not be charged for the referral. You know, with your agreement, we can arrange for advisor to contact you and also to give the comfort to the debtor that advisor is not them. And that advisor can assess the circumstances and explain the options, including whether breathing space is appropriate. And this draws from my earlier submission that if debtor has to make that decision in breathing space, and if it can only reduce the cognitive overload that debtor is suffering from but cannot totally take away. And if a creditor is in a position to see that stress coming early and creditor giving that kind of comfort to the debtor, that there is an advice available. And that advisor is of course not them, but some independent person. I think that will reduce the friction between recognizing problem and reaching for help.

CM (28.23): Of course, this intervention also raised important questions about how individual choice. Default can improve take up, but they also raise questions about how autonomy and paternalism. How should policymakers decide when the behavioural intervention is helping people make a better choice, rather than steering them too far?

NS (28.46): That's a very good question, but I think the hardest question, because it is something that policymakers also struggle as to how much help to give. And that is also because there's no completely neutral choice architecture. Now, even doing nothing, Charles, is a choice architecture where you put a telephone number on a particular page, you know that matters Which option you mentioned first on the solution, that matters. Whether the form says apply for help or does it, or whether it says tell us you do not want help, that also matters.

So the question is not whether policy makers influence behaviour because any which way, they will do so. Now the question is whether the influence support people's capacity to make decision or substitute policy makers decision as their own decision, now making it easier to arrange independent debt advice appointment. It supports autonomy in my in my opinion, now quietly steering somebody towards a particular debt advice, debt product is different than giving that person the options.

And one way could be, an opt out. You know, one of the submissions that we argue in our paper is an opt out mechanism where everybody is automatically enrolled in that, that self-help, so to call. And in case they don't want the default, there's a default mechanism to enrol everybody for the help. And in case they don't want, they can opt out. And there are multiple evidences from policy where automatic sign in or easy opt out has helped people with achieving the desired goal of the policy itself.

CM (30.52): That's really good. That's really fascinating. Another aspect of your research that I find particularly interesting is the role of stigma that you also mentioned earlier today, but your work also treats stigma as part of the policy problem rather than simply a social consequences of insolvency. How the stigma affects the choices that debtors make, and what can law and public institutions do to change that?

NS (31.20): Yeah. I mean, stigma, I think Charles is particularly important because it operates even before somebody has entered into insolvency procedure. If you ask someone for help, it feels like it's a moral failing on their part. And sometimes people delay reaching out for help because, you know, they see it as a moral failing. And then the delay has incremental effect on the debt payment. So a problem that might have been manageable, say six months before the insolvency begins becomes much harder. Or rather say stress begins becomes much harder once the arrears and enforcement costs get accumulated.

Now we have empirical evidence outside insolvency. There is a study by Ofgem and Citizen Advice. They interviewed consumers who had experienced energy debt, and some participants said that stigma made it harder to contact their suppliers because they felt other people were more deserving of help. And participants responded much more positively when they felt listened to and their individual circumstances were understood. So when we are designing the regulations, language is not merely cosmetic. It really impacts how people approach the solution. And what we can do to remove stigma is we can use communication nudge, and it could be extremely simple, like imagine a debt letter and there's a version one that places "You owe £2,400" in a very large print on the top and then three pages later in small type font saying if you have difficulty, debt advice may be available.

Now imagine the same letter if it says, "if this amount is difficult for you to pay to pay, feel free to reach out to help or contact us on a given number". Now see Charles here, the debt has not changed. The creditors rights have not changed, but the behavioural message has changed. The message "you have failed" is now transported into "there's a problem and there is an action you

can take". Now, if we want people to have a fresh start, we need to make sure that stigma is, I mean, we don't design a system that, you know, directly or indirectly, it creates a stigma.

There has been studies in certain jurisdictions where they talk about how long do you keep the registers for public scrutiny? For instance, a person has failed and there's a public register where you can do a background check about the person. And the longer it stays in public space, the longer the stigma anchors onto the person. So yeah, in my opinion, we need to design policies that can help reducing the stigma that can actually give people a fresh start.

CM (34.39): So building on that, I would like to discuss the role of financial coaching in supporting debtors. You proposed integrating financial coaching into breathing space, but how would you, how would behavioural financial coaching differ from conventional debt advice? And what would a useful program actually look like in practice?

NS (35.00): Just in my opinion, coaching is different from debt advice. I would really separate the two. Coaching is very clearly different from professional debt advice, where somebody is helping them to understand their financial circumstances and the legal options that a debtor navigates through. And coaching is more about turning decisions into actions. Now imagine an advisor has explained everything perfectly and the person leaves appointment knowing what they need to do. But you know, when they go home to exactly the same life that made everything difficult before the appointment, they still have to find documents called creditors, you know, complete multiple forms, change payment arrangements. They may get overwhelmed.

Now, where the coaching can help is instead of saying, you know, organise your finances, it can say before Thursday, find the most recent bank statement, put it next to the letter from your energy supplier, and so on and so forth. Now, it may sound very trivial, Charles, but these kind of small actions can really help debtor take off the load of their mind. And behavioural science tells us that making action specific, small, time bound can make follow through, much like I mean more likely. And there is sometimes described as implementation planning, which can also be gained from financial coaching.

For example, a debtor may ask, what am I going to do? When I'm going to do it? What might stop me from doing it? And here the financial coaching can sort of help them in a very light touch manner. So financial coaching is not about finding a legal remedy for the debtor, But giving them the literacy and the help in maybe in a very small manner, but helps them take the cognitive overload of their mind, off their mind, and help implementing whichever plan they have chosen.

Now, there's one caveat I would give there that while we do recommend financial coaching, I'm not sure if it could be, it should be compulsory because I think humans by nature are, we do not like force, right? So it should be on a voluntary basis. And, you know, my manuscript explores these stronger forms of integration, including mandatory coaching. But now that I reflect back, I would say that a more defensible behavioural approach is optional and evidence led. And we don't have a data right now to really show, but if somebody who is already overwhelmed, you know, competing multiple mandatory modules before receiving legal protection. You know, probably we are creating another barrier for them and that would defeat the purpose. So financial coaching is important, but should it be mandatory? I'm not sure. Maybe what we should do is to aid the debtor to to seek financial coaching, show them the pros and cons, maybe through small deeds, but, uh, a mandatory coaching may create another barrier for them.

CM (38.37): It also raises interesting questions about how, about whether education can change behaviour. Education is often viewed as a means of improving financial and corporate decision

making, whether through financial literacy initiatives or education requirements for disqualified directors. Can education alone influenced behaviour, or must it be accompanied by changes in institutional incentives and regulatory design?

NS (39.06): That is one of the questions that we have in depth discussed in our paper that I co-authored with Rebecca Parry on *Directors Education*. And we also tangentially touch into this paper. In my opinion, education plays a very important role in bringing a behaviour change. And you know, Charles, my starting premise of any legal problem that we see is that are we getting the desired behaviour change? Because, you know, most often policies are designed in a way that it addresses the symptoms, but not the disease itself.

And take, for example, if we create a regime for directors' disqualification. Now disqualification does help clean the system, getting the rogue directors out of the system. But at the same time, not all directors are rogue directors. There could be some innocent, negligent, or ill-informed or less informed directors, you know. And given in today's time when there's so much of information asymmetry where access to advice is expensive, the system should not create a barrier for directors of small and medium enterprise companies as compared to big companies and MNCs where, you know, they access to advice and education is higher.

So to sum up the first point that education is important. People can make informed decisions through education. But at the same time, the system which is designed right now is not so much on informing people to make a behaviour change, but education in the limited way that we have in the system today is not giving the information to people to bring out the behaviour change so the law does not reach a desired purpose.

Now, for instance, disqualification can tell a person that you cannot act as director for this particular period. But does it tell them that, okay, this is the decision that you made wrong? Here was the warning sign that you missed and this is what the duty would have changed. And does it really prepare them to behave better next time? So my submission is that while we have that system of disqualifying directors, while we have the system of penalizing the wrongdoers, we need to clump that with education, so that the behavioural behaviour of these actors changed for future purposes. And we cannot assume that imposing legal consequence automatically will bring the behaviour change. and most often it in fact does not.

Now, one question is that how do you design that education? That is also important. My opinion is that we have also argued in our paper that it has to be voluntary and it has to be, we have to take cues from adult learning, where a scenario based learning, reflection on what cause failure, practical decision making, rather than simply giving them a list, list of courses to do. It has to be attuned to the problem that occurred, and it has to be contextualized for the person to ensure that they do not repeat that same mistake. So a well in functioning insolvency system, in my opinion, should be capable of doing both things. You know, be tough on abuse and allowing genuine failures to become source of learning than permanent stigma.

CM (42.54): Thank you so much. So let us now turn to another important issue, which is relationship between transparency and rehabilitation your proposal also address the public record of personal insolvency. How should we balance transparency and legitimate creditor interests against privacy, stigma and the goal of financial rehabilitation?

NS (43.17): That's a very good question. And in fact, I have been asked multiple times by my peers and colleagues that how do you find a fine balance? I don't think that the answer is to eliminate public records, because transparency has its legitimate function and creditors need

information. Courts and regulators need records. But potential counterparties may sometimes have a legitimate reason to know that a person has been subject to a current insolvency procedure. But the real question is, you know, how do we balance and how do we bring proportionality into the system? So the question that I would ask, and I would like the regulators to ask is what information needs to be public? I mean, does all information needs to be public or there are only certain parts of information that needs to be public. And for whom the information needs to be public and how long that information needs to be public. So in essence, what is the purpose of information that you are putting on public record?

In England and Wales, record on individual insolvency register are generally removed within three months after insolvency cases ended. But a bankruptcy notice in the gazette forms part of public permanent official record. And the gazette, however, asks search engines to stop indexing personal insolvency notices after one year and three months. So a permanent archival record is one thing. A person's historical insolvency appearing immediately after whenever somebody casually searches their name is another thing.

So the question here is, Charles, that whether we can distinguish between legitimate access and frictionless public exposure and perhaps information remains available to people with a legitimate need. Perhaps searchability is limited after specific period or categorizing the information to be treated differently. Now, these are the design questions and we should test the underlying assumptions. If the purpose of disclosure is to reduce information asymmetry, then the question that I would ask is how much disclosure achieves that objective and at what point does additional publicity stop improving market information and begins undermining fresh starts? So these are the questions.

Honestly, I don't have an exact answer to your question, but these are the questions that I think needs more empirical attention. And you know, there should be some data studies to be done around this to find the right answer to how long the information must exist in public, what all information must exist in public, and most importantly, what is the purpose of those informations to exist in public?

CM (43.27): Yeah. So we have discussed several possible reforms. So I would like to bring these ideas together. If policymakers accept your behavioural diagnosis of personal insolvency, what would you prioritize first? Which reform would make the greatest practical difference for debtors while remaining workable for creditors, advisors and regulators.

NS (46.49): It's very difficult to pin down to one reform, but I think I would begin early in debt journey. And if there's one reform that needs to be prioritized, is it should be help given to debtors early in their journey before the stress arises. And we tend to intervene once the problem has already legally been visible. You know, a default has happened, enforcement has begun, IVA has failed. There's a bankruptcy petition or a threat of it, and that becomes very overbearing for a debtor.

Now, behavioural economics asks whether there are moments much before the point at which these small interventions could have been designed to change the trajectory. So my priority, therefore, would be a credible, regulated, frictionless pathway from sign of financial difficulty to free independent debt advice. But at the same time, Charles, I don't suggest that it has to be another website, nor there should be multiple leaflets to be picked up by this, the debtors to read. But an actual pathway design. And if a creditor identifies sustained payment difficulty and the person, the person must receive a clear offer of help, an unbiased, objective help to assess the independent pathway to the solution.

So I'm not sure what the success would look like, but I feel and I strongly believe that there's ample evidence in behavioural science that suggests that if an early intervention is designed for people. It will help them towards, I would say restoration if that's the word I could use here. And, um, I think what we need to do is we need to reduce the information barriers. We need to reduce the procrastination that a debtor does and reduce the risk of commercial advice being a first option encountered, you know, because there's a fear of anchoring. So what we need to do is have a professional assessment and early intervention coaching, if that matters for a debtor, so that he avoids getting into a further trap of insolvency.

CM (49.29): Thank you so much. So taking a broader perspective, I would also be interested in your thoughts on the future role of insolvency law. Insolvency is increasingly connected with wider questions of corporate governance, financial stability and the distribution of economic and social risks. Should insolvency law continue to be viewed primarily as a mechanism for dealing with financial failure, or should we understand it as part of the broader framework for governing economic relationships and institutional accountability?

NS (50.01): Thank you, Charles, firstly for this question. And in fact, this is the larger question that I keep asking myself as a researcher. And, you know, traditionally we tend to see insolvency law as something that activates after financial failure. But increasingly I see insolvency as a part of much larger decision architecture. It affects behaviour before distress, during distress and after the failure. So before insolvency, rules affecting lending, borrowing and director risk taking all has to be taken into consideration. You know, during financial distress, they influence whether somebody seeks advice or delays it or restructures or enters into formal process.

And insolvency law is not simply a mechanism of dividing assets once something has gone wrong. And in my opinion, it's a form of governance and regulatory design. And once we see insolvency in that way, from the lens of economics, psychology and behavioural science, it becomes much more relevant. So, Charles, you know, the question I think, is not simply to ask what are the rules of insolvency? What does it say? But we should start asking questions like, you know, what behaviour is the rule producing? Is it producing the right behaviour? Is it making people behave differently?

So it's, I would really hope that there is more interdisciplinary research from the lens of, you know, society, sociology, behavioural economics and governance so that the purpose of insolvency law is not becoming very myopic in isolated. And I'd rather say it does not become limited to the, uh, the normative rules, but rather brings a desired behaviour change. I mean, at a meta level, the basic premise is that people should not get into financial distress people or corporations, they should avoid financial distress. They should be able to avoid insolvency. And if at all, it gets into insolvency, this process of coming out of that is smoother for individuals. It is free of stigma, giving them a fresh start.

CM (52.29): Thank you so much. So before we finish Neeti, I would like to leave our listeners with one final thought. So if listeners remember one idea from these conversations. What would you like to be?

NS (52.39): Thank you Charles. It was really enjoyable, enjoyable talking to you about my work. And if there is one last thought that I would like the listeners to ponder about is that we are humans. Yes, we are rational actors, but we also tend to make decisions differently when there's a cognitive overload, when there's financial distress. And that is something that design of law or well, you know, when we design policy, it has to be understood. You know, we have to keep human at the centre of policy design, and we have to keep asking us the question that what we

are creating as a remedy. Is it something that a debtor will use it? Is it something that will reach its intended consequence, and it is important to ensure that any policy that is designed, it does not address merely the symptoms of a disease, but rather disease itself. And going back to the previous question, when we look at insolvency, we have to see from the lens, from the multiple lens of governance, societal and not merely as a normative set of rules to help people in division of assets. So the last thought is that law deals with real people, and these people behave differently in different circumstances. So there has to be small changes in perspective to ensure that can produce a profound change in policy.

CM (54.28): Neeti, thank you so much. It has been incredibly insightful conversations. I've learned so much from our conversation today. Thank you so much for your time and for this enlightening discussion. So to our listeners, thank you so much for joining us on INSOL Talks Podcast. I'm Charles Mak, and we will see you next time. Thank you.

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