CROSS-BORDER INSOLVENCY IN INDIA: NEED FOR LEGISLATIVE REFORM

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ABSTRACT

Cross-border insolvency, the legal framework for handling insolvency cases involving multiple jurisdictions, has become increasingly important in today's globalized economy. With rising international trade and foreign investment, Indian companies are more frequently entangled in transnational insolvency proceedings. However, India's current legal system lacks a comprehensive and standalone legal framework to efficiently address such cases. This article critically examines the existing legal mechanisms available under Indian law, particularly the Insolvency and Bankruptcy Code, 2016 (IBC), and highlights their limitations in dealing with cross-border insolvency scenarios.

The article traces the evolution of cross-border insolvency law globally, with particular emphasis on the UNCITRAL Model Law on Cross-Border Insolvency, which serves as a benchmark for many countries. While the IBC does make references to crossborder issues, its provisions are skeletal and remain largely unimplemented. This inadequacy creates uncertainty for foreign creditors and undermines India's attractiveness as a secure investment destination. The article underscores the urgency of adopting a robust and clear legislative framework aligned with international best practices to ensure effective cooperation, recognition, and coordination among courts and insolvency professionals across jurisdictions.

By analyzing the challenges posed by the current legal vacuum and evaluating comparative models from jurisdictions like the United States and the United Kingdom, the article presents a strong case for immediate legislative reform in India. The Ministry of Corporate Affairs' 2021 proposal to adopt the UNCITRAL Model Law is critically examined, and specific recommendations are offered to tailor it to India's legal and economic environment. The article concludes that a well-structured cross-border insolvency law is not just a legal necessity but an economic imperative to strengthen India's position in the global financial system.

Keywords: Cross-Border Insolvency, Insolvency and Bankruptcy Code (IBC), UNCITRAL Model Law, Legislative Reform, International Cooperation.

Introduction

Cross-border insolvency refers to a legal situation where the insolvent debtor has assets, liabilities, or operations that span across national boundaries. These cases typically involve complex legal issues such as determining the appropriate jurisdiction for initiating insolvency proceedings, recognition and enforcement of foreign insolvency judgments, coordination among courts of different countries, and safeguarding the interests of both domestic and foreign creditors. As globalization intensifies, businesses increasingly maintain financial relationships, operations, and assets in multiple jurisdictions, making cross-border insolvency an inevitable feature of modern commercial life.[1]

In India, the Insolvency and Bankruptcy Code (IBC), 2016 has successfully overhauled the domestic framework for resolving corporate insolvency and liquidation, significantly improving the time-bound recovery of debts and strengthening creditor rights. However, the Code remains largely inward-looking, offering limited guidance or mechanisms to handle cases involving foreign creditors or foreign insolvency proceedings. The existing provisions; Sections 234 and 235 of the IBC; merely allow for bilateral agreements and issuance of letters of request to foreign courts. These sections are procedural placeholders and have not been operationalized effectively due to the absence of bilateral treaties with other countries.[2]

This legislative vacuum becomes particularly problematic when Indian companies have substantial overseas operations or when foreign creditors seek to enforce their claims against assets located in India. The lack of a clear, predictable, and reciprocal legal framework for handling such matters often results in legal uncertainty, delays, and inconsistent judicial outcomes. For example, in cases like Jet Airways (India) Ltd., the Indian judiciary had to rely on ad hoc principles to coordinate with foreign insolvency proceedings, highlighting the inadequacy of the existing framework.

[1] Zhang, Z. (2022). Globalized cross-border insolvency law: The roles played by China. *European Business Organization Law Review, 23*(4), 735–780.
[2] Godwin, A., Garg, R., & Goswami, D. (2023). Cross-border insolvency law in India: Are the principles of comity of courts and inherent common law jurisdiction relevant? *International Insolvency Review, 32*(2), 228–252.

Moreover, India's growing integration into the global economy, its ambition to become a hub for international finance, and its increasing appeal to foreign investors all necessitate the adoption of a comprehensive cross-border insolvency regime. Such a framework must facilitate cooperation and coordination between Indian courts and foreign jurisdictions, ensure transparency in multinational insolvency proceedings, and provide certainty to stakeholders on how their rights will be treated across borders.[3]

Therefore, the absence of a well-structured cross-border insolvency law not only weakens India's legal infrastructure but also undermines investor confidence. In an era where capital and commerce move freely across borders, legal regimes must evolve to support this economic reality. For India, this means moving beyond its current patchwork approach and embracing internationally accepted principles such as those embedded in the UNCITRAL Model Law on Cross-Border Insolvency to create a robust, efficient, and modern legal framework.[4]

Cross-border insolvency refers to situations where the insolvent debtor has assets or creditors located in more than one country. In such cases, questions of jurisdiction, recognition of foreign proceedings, and cooperation between domestic and foreign courts become crucial. While the IBC has reformed India’s domestic insolvency landscape, it does not adequately address cross-border elements. With increasing foreign direct investment and Indian businesses operating globally, there is a growing need for a robust cross-border insolvency framework.[5]

Conceptual Framework of Cross-Border Insolvency

Cross-border insolvency deals with the financial distress of entities that have assets, creditors, or operations in more than one country. The legal treatment of such cases has evolved around two primary theories: the territorial approach and the Universalist approach.

Under the territorial approach, also referred to as *pure territorialism*, each sovereign nation asserts exclusive jurisdiction over the assets located within its territory. This approach emphasizes the independence of domestic courts and laws in handling insolvency matters. It

[3] Legal Services India. (n.d.). Navigating cross-border insolvency: A critical analysis of India's framework and its impact on foreign investment. Retrieved May 11, 2025

[4] Chakrabarti, R. (2018). KEY ISSUES IN CROSS-BORDER INSOLVENCY. *National Law School of India Review*, *30*(2), 119–135. https://www.jstor.org/stable/26743940

[5] World Bank. 2020. Public Expenditure and Financial Accountability Assessment: Federal Democratic Republic of Ethiopia (Southern Nations, Nationalities and Peoples Region). © World Bank. http://hdl.handle.net/10986/34054 License: CC BY 3.0 IGO.

leads to the initiation of multiple insolvency proceedings in different jurisdictions, each restricted to the assets and creditors within its borders. While this respects national sovereignty, it often results in fragmented, inefficient proceedings, inconsistent outcomes, and inequitable treatment of creditors.

Conversely, the Universalist approach, or *pure universalism*, posits that a single, centralized insolvency proceeding should govern the debtor's worldwide assets and liabilities, regardless of where they are located. This theory promotes global coordination, equitable distribution among creditors, and reduced costs through streamlined procedures. However, it presupposes a high degree of international legal harmonization and mutual trust among jurisdictions, which is often lacking.

Recognizing the practical limitations of both extremes, the international community has gravitated toward a middle path known as modified universalism. This hybrid model incorporates the efficiency and coordination of universalism while allowing national courts the discretion to protect local interests when necessary. It encourages international cooperation and recognition of foreign insolvency proceedings, provided they do not contravene domestic public policy.[6]

The UNCITRAL Model Law on Cross-Border Insolvency (1997) embodies the principle of modified universalism. It provides a framework for cooperation between domestic and foreign courts, facilitates the recognition of foreign insolvency representatives, and ensures access to local courts by foreign stakeholders.[7] Importantly, it also grants local courts the discretion to refuse recognition or assistance if such actions are manifestly contrary to the public policy of the enacting state. As a result, the Model Law achieves a pragmatic balance promoting cross-border coordination while safeguarding national interests.

Many jurisdictions, including the United States, the United Kingdom, Australia, and Singapore, have adopted the UNCITRAL Model Law, reflecting a growing consensus around modified universalism. India, though yet to enact legislation based on the Model Law, has recognized

[6] Godwin, A., Garg, R., & Goswami, D. (2023). India's journey towards cross-border insolvency law reform. *Asian Journal of Comparative Law*, 18(1), 1–28.
[7] United Nations Commission on International Trade Law. (1997). *UNCITRAL Model Law on Cross-Border Insolvency*. Retrieved from https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency

the need for a coherent cross-border insolvency regime and has proposed reforms aligned with this global trend.[8]

Cross-border insolvency is based on core legal theories: the territorial approach, where each country handles the insolvency of assets within its borders, and the Universalist approach, where one primary insolvency proceeding governs all matters globally. The modern trend, endorsed by the UNCITRAL Model Law on Cross-Border Insolvency (1997), supports modified universalism, which balances universal cooperation with local judicial discretion.

Existing Legal Framework in India

While India has acknowledged the importance of addressing cross-border insolvency, its current legal framework under the Insolvency and Bankruptcy Code, 2016 (IBC) remains inadequate to deal effectively with the complexities involved. At present, Sections 234 and 235 of the IBC provide only a skeletal and rudimentary mechanism for handling cross-border insolvency matters.

Section 234 empowers the Central Government to enter into bilateral agreements with foreign countries to facilitate cooperation in the areas of insolvency and bankruptcy. This provision recognizes the need for intergovernmental arrangements to ensure mutual assistance and recognition of insolvency proceedings across borders.[9] Section 235, on the other hand, allows the Adjudicating Authority (National Company Law Tribunal) to issue a letter of request to a foreign court or authority seeking aid in relation to the assets or proceedings of a debtor situated in that foreign jurisdiction. This procedural tool could, in theory, serve to bridge the jurisdictional gap between Indian and foreign insolvency courts.

However, despite the presence of these provisions, they have not yet been operationalized in practice, primarily due to the absence of any executed bilateral agreements under Section 234. Consequently, Section 235 also remains ineffective, as the power to seek assistance from foreign courts presupposes the existence of a reciprocal framework of cooperation. This situation was highlighted in the Insolvency Law Committee Report (2018), which criticized the

[8] United Nations Commission on International Trade Law. (1997). *UNCITRAL Model Law on Cross-Border Insolvency*. Retrieved from https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency

[9] SCC Online Blog. (2024, April 19). Need for international harmonisation of cross-border insolvency laws: Challenges and prospects. *SCC Times*. https://www.scconline.com/blog/post/2024/04/19/need-for-internationalharmonisation-of-cross-border-insolvency-laws/

current framework as being too narrow, reactive, and incapable of handling complex multinational insolvency cases.

In essence, while Sections 234 and 235 demonstrate India's legislative intent to address cross-border insolvency, their practical utility remains limited without supporting international agreements. This gap has underscored the urgent need for a comprehensive legislative framework, such as one based on the UNCITRAL Model Law on Cross-Border

Insolvency, to replace this skeletal structure with a robust and operational mechanism.[10]

Sections 234 and 235 of the IBC provide a skeletal mechanism for cross-border insolvency. Section 234 allows the Indian government to enter into bilateral agreements with other countries for cooperation in insolvency matters, while Section 235 allows for sending letters of request to foreign courts. However, **no such agreements have been executed** so far, rendering these provisions ineffective (Insolvency Law Committee Report, 2018).

Judicial Trends and Landmark Cases

India’s judicial approach to cross-border insolvency has gradually evolved in the absence of a comprehensive statutory framework. Courts have adopted a pragmatic, case-by-case methodology, guided by principles such as comity of nations, public policy, and the need for international judicial cooperation. A landmark example is the *Jet Airways (India) Ltd.*[11] case, where parallel insolvency proceedings were initiated in both India and the Netherlands. In a significant ruling, the National Company Law Appellate Tribunal (NCLAT) permitted cooperation between the Indian resolution professional and the Dutch trustee, allowing coordinated hearings thus applying the principle of modified universalism in practice for the first time in India[12]. This case illustrated the judiciary’s willingness to engage in cross-border cooperation even without a formal legislative framework.

In *Macquarie Bank Limited v. Shilpi Cable Technologies Ltd.*[13], although not strictly a cross-border insolvency case, the Supreme Court adopted a liberal interpretation of the IBC to uphold

[10] Godwin, A., Garg, R., & Goswami, D. (2023). India's journey towards cross-border insolvency law reform. *Asian Journal of Comparative Law, 18*(1), 1–28.
[11] SCC Online. (2019, October 7). NCLAT: Joint CIRP against Jet Airways to continue; Dutch Trustee allowed to attend CoC meetings as observer.
[12] *ibid*
[13] (2018) 2 SCC 674

the rights of foreign operational creditors, signalling the Code's openness to international claimants. Indian courts have also shown restraint in recognizing foreign proceedings, especially where they conflict with domestic public policy or could harm Indian stakeholders. Conversely, foreign courts, such as the UK High Court in *State Bank of India v. Kingfisher Airlines Ltd.*[14], have recognized Indian insolvency proceedings, thereby promoting reciprocity and international cooperation. In the absence of specific legislation, Indian courts have relied on common law doctrines such as the comity of courts and equitable treatment of creditors to guide their decisions.

Overall, judicial trends in India reflect a cautious yet progressive move towards modified universalism, reinforcing the need for a codified cross-border insolvency framework aligned with global standards like the UNCITRAL Model Law.

Comparative Legal Analysis

Several jurisdictions across the world have adopted the UNCITRAL Model Law on CrossBorder Insolvency to facilitate international cooperation, improve legal certainty for crossborder debtors and creditors, and provide an efficient framework for the recognition of foreign insolvency proceedings. The United States incorporated the Model Law through Chapter 15 of the U.S. Bankruptcy Code, enacted under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. Chapter 15 enables the recognition of "foreign main

proceedings" and "foreign non-main proceedings," offering foreign insolvency representatives direct access to U.S. bankruptcy courts[15]. It also ensures automatic relief in cases where the foreign proceeding is recognized as a main proceeding, including a stay on creditor actions and the protection of assets.

Similarly, the United Kingdom implemented the Model Law through the CrossBorder Insolvency Regulations 2006, which allow foreign representatives to apply to UK courts for recognition and relief. UK courts have actively engaged in cross-border cooperation, particularly in cases involving multinational corporate groups. Singapore, a major financial hub in Asia, has also adopted the Model Law via the Companies (Amendment) Act 2017,

[14] [2025] EWHC 1005 (Ch)
[15] United Nations Commission on International Trade Law (UNCITRAL). (n.d.). *Status: UNCITRAL Model Law on Cross-Border Insolvency* (1997). Retrieved from https://uncitral.un.org/en/texts/insolvency/modellaw/crossborder_insolvency/status

integrating cross-border insolvency provisions into its domestic legal framework. Singapore's approach emphasizes judicial cooperation, fair treatment of foreign creditors, and efficient resolution of international insolvency cases. In all these jurisdictions, the Model Law provides a standardized mechanism for identifying and recognizing foreign proceedings, defines the roles and powers of foreign representatives, and promotes communication and cooperation between domestic and foreign courts. These reforms reflect a broader international consensus in favour of modified universalism, where domestic courts retain discretion while actively supporting a unified global insolvency process[16].

Policy Developments in India

In 2018, the Insolvency Law Committee (ILC), constituted by the Ministry of Corporate Affairs, undertook a comprehensive review of India's cross-border insolvency framework and strongly recommended the adoption of the UNCITRAL Model Law on Cross-Border

Insolvency, with appropriate modifications to suit India's legal and economic context. The ILC recognized the growing number of Indian companies with foreign assets and international creditors, necessitating a robust and harmonized framework to deal with crossborder insolvency proceedings[17]. In its report, the Committee proposed the inclusion of precise definitions for crucial terms such as "foreign main proceeding", "foreign non-main proceeding", and "foreign representative," to ensure clarity and consistency in the application of the law. It further recommended establishing clear criteria for the recognition of foreign proceedings, such as determining the debtor's centre of main interests (COMI) and evaluating the nature and location of the foreign proceeding.

Importantly, the Committee proposed incorporating a "public policy exception," allowing Indian courts to refuse recognition or assistance if doing so would be manifestly contrary to the public interest or national legal principles.

Another key recommendation was the inclusion of a reciprocity clause, meaning India would recognize foreign insolvency proceedings only if the other jurisdiction also recognized Indian proceedings. This provision was suggested to safeguard Indian interests and ensure mutual

[16] *Singapore enacts legislation implementing UNCITRAL Model Law on Cross-Border Insolvency.* United Nations. Retrieved from https://unis.unvienna.org/unis/en/pressrels/2017/unisl243.html
[17] Insolvency Law Committee. (2018, October 16). *Report of the Insolvency Law Committee on Cross-Border Insolvency*. Ministry of Corporate Affairs, Government of India.

legal respect. The ILC also stressed the need for protective measures for domestic creditors, such as ensuring equitable treatment and safeguarding their priority in asset distribution, especially where foreign jurisdictions might not offer similar protections.

However, despite these well-reasoned recommendations, India has not yet enacted a comprehensive cross-border insolvency regime based on the Model Law. Several factors have contributed to this delay. One primary concern is the possibility of jurisdictional conflicts arising when Indian courts are asked to defer to or coordinate with foreign tribunals, which could potentially lead to inconsistencies with domestic laws or challenges in enforcing foreign court orders.[18] Another apprehension is foreign interference in domestic insolvency matters, particularly where foreign representatives might attempt to exercise control over Indian assets or proceedings[19]. Additionally, the successful implementation of such a framework requires significant capacity building, including training of judges, insolvency professionals, and legal practitioners in international insolvency norms and procedures. The lack of sufficient institutional readiness has been a further deterrent. Moreover, given the relative newness of the Insolvency and Bankruptcy Code, 2016 itself, policymakers may have opted to prioritize stabilizing the domestic insolvency ecosystem before expanding into the complex realm of cross-border cases.

In conclusion, while the 2018 ILC report laid a solid foundation for the adoption of a modern and internationally harmonized cross-border insolvency regime, India's progress in this direction has been cautious and measured. The delay reflects a balancing act between embracing global best practices and protecting national interests, underscoring the need for a phased and well-prepared legislative approach.

Need for Legislative Reform: Key Issues

India's existing framework for cross-border insolvency remains fragmented and ineffective, posing several critical challenges. One of the most pressing issues is the lack of enforceability; in the absence of bilateral treaties or a model-law-based mechanism like the UNCITRAL Model Law, foreign creditors face significant hurdles in enforcing their claims in Indian courts. There is no formal procedure for the recognition of foreign insolvency proceedings, leaving

[18] Das, I. (2020). The need for implementing a cross-border insolvency regime within the Insolvency and Bankruptcy Code, 2016. *Journal of Indian Law and Society, 11*(2), 1–20.
[19] *ibid*.

foreign stakeholders with limited remedies and procedural uncertainty. Conversely, there is no system of reciprocal recognition, meaning that insolvency orders issued by Indian courts are often not acknowledged or enforced in foreign jurisdictions. This undermines efforts to recover assets located abroad, complicating the resolution of multinational insolvency cases.

Furthermore, due to the absence of a codified legal structure, Indian courts are forced to improvise on a case-by-case basis, leading to judicial inconsistency and unpredictability. Different benches may apply divergent standards of comity or cooperation, resulting in uneven outcomes[20]. This ad hoc approach erodes confidence in the system, particularly among foreign investors and multinational creditors. As a result, India's insolvency regime may be perceived as legally uncertain and commercially risky, especially in scenarios involving cross-border dimensions. The absence of a predictable and harmonized legal framework deters foreign direct investment and global financing, as investors may hesitate to engage with Indian entities fearing prolonged and unpredictable insolvency proceedings with transnational implications. Addressing these challenges through a well-defined, internationally aligned cross-border insolvency regime is essential to strengthening India's position as a reliable destination for global capital.

Recommendations

To modernize and strengthen India's insolvency framework amid increasing global economic integration, a multi-pronged reform strategy is imperative. One of the foundational steps involves the adoption of a modified version of the UNCITRAL Model Law on Cross-Border Insolvency, which has been successfully implemented in several leading jurisdictions like the United States, the United Kingdom, and Singapore. This model law offers a harmonized and flexible framework for recognizing foreign insolvency proceedings and coordinating transnational insolvency cases. For India, this can be achieved through either a comprehensive amendment to the Insolvency and Bankruptcy Code (IBC), 2016 or by introducing a separate chapter dedicated to cross-border insolvency. A codified legal framework will bring clarity, reduce judicial uncertainty, and provide uniform procedures for foreign representatives and

[20] Dhar, P., & Saikia, B. (2023). Cross-border insolvency regime in India: An overview and study under UNCITRAL Model Law. *International Journal of Advanced Legal Research*, 4(3)

creditors dealing with Indian assets and proceedings[21].

A crucial aspect of this framework must be the precise definition of key legal concepts, such as "foreign main proceedings," "foreign non-main proceedings," and "foreign representatives," to ensure legal certainty and avoid inconsistent interpretation. The criteria for recognition should be clearly delineated, guided by internationally accepted norms such as the Centre of Main Interests (COMI). The COMI principle allows courts to determine the appropriate jurisdiction for initiating insolvency proceedings based on where the debtor primarily conducts its business. Incorporating this test into Indian law would enhance transparency and prevent forum shopping.

Furthermore, the proposed framework must include provisions for formal judicial cooperation mechanisms between Indian courts and foreign tribunals. These mechanisms should facilitate coordinated action in cross-border cases, including information sharing, joint hearings, and mutual recognition of orders. This would help avoid duplicative proceedings, minimize value erosion of distressed assets, and ensure that insolvency resolutions are more efficient and equitable across jurisdictions. Establishing such structured cooperation would also mark a significant shift from the current ad hoc, judge-driven approach that lacks predictability and standardization.

Beyond legislative reforms, capacity building is a vital pillar of effective implementation. The Indian government, in collaboration with institutions like the Insolvency and Bankruptcy Board of India (IBBI) and the National Company Law Tribunal (NCLT), must initiate systematic training programs for insolvency professionals, resolution professionals, judicial officers, and regulatory authorities. This training should cover global best practices, the legal and procedural nuances of the UNCITRAL Model Law, and comparative jurisprudence from countries with well-established cross-border insolvency regimes. Such efforts would ensure that key stakeholders are equipped to handle complex international cases with legal sophistication and practical competence[22].

[21] Khatavkar, P. (2021). India's rendezvous with cross-border insolvency and its suggested marriage to the UNCITRAL Model Law on Cross-Border Insolvency. *International Journal of Law Management & Humanities*, 4(3), 1209–1222.

[22] Insolvency and Bankruptcy Board of India. (2021, October 29). IBBI organises a Training of the Trainers (ToT) programme, for Insolvency Professionals. Retrieved from https://www.reedlaw.in/post/ibbi-organises-atraining-of-the-trainers-tot-programme-for-insolvency-professionals

Importantly, while moving toward greater international alignment, India must also retain a degree of judicial discretion and national autonomy. The legal framework should allow Indian courts to exercise case-specific discretion especially in situations where recognition of a foreign proceeding might conflict with India's public policy objectives, national interest, or the protection of local creditors[23]. This balanced approach, referred to as modified universalism, enables courts to support international cooperation without compromising the sovereignty of the Indian legal system.

In conclusion, the adoption of a well-calibrated, internationally harmonized, and institutionally supported cross-border insolvency regime will be a landmark reform in India's commercial legal landscape. It will not only bring India in line with global best practices but also enhance legal certainty, promote timely asset resolution, and build trust among international investors and creditors. In doing so, India will solidify its reputation as a jurisdiction that supports predictable and efficient insolvency outcomes in the global economy.

[23] Dhar, P., & Saikia, B. (2023). Cross-border insolvency regime in India: An overview and study under UNCITRAL Model Law. *International Journal of Advanced Legal Research*, 4(3).

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