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Cross-Border Insolvency under the 2016 Insolvency and Bankruptcy Code: Necessity and Roadmap for Comprehensive Reform

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Abstract: Cross-border insolvency remains one of the most significant yet unresolved challenges within India's insolvency framework. Despite increasing globalization and India's expanding integration into the global economy, the country still lacks a comprehensive statutory framework to deal with insolvency cases involving debtors, creditors, and assets across multiple jurisdictions. Currently, India depends mainly on ad hoc measures — most notably the cross-border insolvency protocol approved by the National Company Law Appellate Tribunal (NCLAT) in the 2019 Jet Airways case. While such protocols provide temporary, case-specific relief, they are often time-consuming, costly, and fail to ensure predictability or uniformity. To address the lacunae in the 2016 Insolvency and Bankruptcy Code (IBC), and to regulate cross-border insolvency in India, the Insolvency and Bankruptcy Code (Amendment) Bill (2025) has been introduced in the *Lok Sabha* (the lower house of Parliament). However, instead of laying down substantive regulatory provisions, the proposed amendment merely delegates the power to the Central Government to frame rules at a later stage, thus leaving this critical gap unresolved. The study addresses these shortcomings by tracing the evolution of cross-border insolvency frameworks and critically examining India's legislative and judicial approaches both before and after the enactment of the IBC. Through this analysis, the paper identifies the major challenges that hinder India's adoption of an

effective framework, including the limitations of "soft law," inconsistent international practices, the lack of regional cooperation, and sovereignty concerns. The findings of this article recommend that India adopt a uniform, predictable, and enforceable framework for cross-border insolvency, drawing on the principles of the UNCITRAL Model Law on Cross-Border Insolvency (1997) with necessary modifications to address public-policy concerns. The establishment of such a framework would help mitigate transaction costs, reduce the burden on the judiciary, and at the same time foster greater certainty, procedural efficiency, and confidence among stakeholders. In conclusion, the paper maintains that establishing a stable cross-border insolvency regime is essential for strengthening India's insolvency framework and positioning the country as a credible player in the global financial system.

Keywords: Bankruptcy; IBC; India; UNCITRAL; model law; cross-border insolvency

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Contents

I. Introduction

Globalization integrates economies and stimulates international trade. International trade, in turn, serves as a cause and consequence of globalisation. Globalisation and international trade, though distinct concepts, are two sides of the same coin: on the one hand, globalisation facilitates trade; on the other, increased trade further strengthens globalisation. As Nobel Prize winner Amartya Sen rightly stated, *"Globalisation is a historical process that has offered an abundance of opportunities and rewards in the past and continues to do so today"* (Sen, 2002). However, while globalization and international trade provide multinational corporations with opportunities for growth and expansion, they also expose them to the risk of cross-border insolvencies (Westbrook, 1993).

Cross-border insolvency, also known as transnational insolvency or international insolvency, has become an inevitable phase in the modern business cycle, often arising when multinational corporations burdened with outstanding debts face financial downfall. The term lacks a universally accepted definition, but in practice, it is deemed to occur when a financially distressed corporate debtor, possessing assets, operations, and creditors across multiple jurisdictions is unable to honour its debt obligations. This can be illustrated through a hypothetical example. *XYZ Corporation*, incorporated in India, owns substantial assets in both India and Russia. To finance its operations, the company secures loans from creditors based in these two jurisdictions. If *XYZ Corporation* fails to fulfil its repayment obligations and becomes insolvent, creditors in both India and Russia may initiate insolvency proceedings at the same time within their respective jurisdictions. A situation of this nature, where assets and creditors are located in multiple jurisdictions, exemplifies the concept of cross-border insolvency and highlights major challenges associated with it, such as divergences in domestic insolvency laws, obstacles in inter-jurisdictional judicial communication, recognition of foreign proceedings and judgments, and the need to safeguard the interests of domestic and foreign creditors. In response to these challenges, the international community has consistently pursued both practical and theoretical measures to evolve workable frameworks governing cross-border insolvency.

II. Evolution of Cross-Border Insolvency Frameworks

II.1. Traditional Approaches

The earliest recorded instances of cross-border insolvency dates back to the medieval period involving Italian banks and merchants (Punta, 2018). In 1290, the "*Riccardi of Lucca*" that managed the royal payments of King Edward I, collapsed due to a liquidity shortage triggered by the Anglo-French War of 1294 (Dougherty, 2009). Similarly, in 1302, *Ammanati Bank of Pistoia* collapsed after the closure of its Rome branch. Its debtors were spread across multiple jurisdictions, including Spain, England, Portugal, Germany, and France, and pursued recovery proceedings. Although the use of *letters rogatory* enabled the bank to secure partial recovery, domestic Italian insolvency laws proved inadequate in addressing the cross-border character of such claims (Graham, 2009, p. 147). These instances illustrate an early form of the *territorialist approach*, where states sought to limit insolvency strictly within their national legal systems, largely ignoring foreign claims and the international aspects of financial distress (Adams and Finche, 2008).

II.2. Modern Approaches

Efforts to regulate cross-border insolvency initially began at the domestic level, but challenges posed by "conflicts of law" and "choice of the forum" soon exposed its limitations. It prompted the international community to explore solutions through private international law. The first concrete steps in this direction were the *Treaties of Montevideo* (1889) and the *Bustamante Code* (1928) that represented the earliest attempts to unify private international law and, within that framework, sought to structure and harmonize certain aspects of insolvency and bankruptcy involving international elements (Lorenzen, 1930, p. 499). Influenced by the movement to unify private international law, efforts moved towards creating a uniform commercial code and unification of bankruptcy regimes (Mason, 20012, p. 125).

II.2.1. Regional and International Initiatives

Regional initiatives acted as a catalyst, as regions with strong cultural, economic, and trade ties had the capacity to undertake regional unification. For instance, the Nordic Convention on Bankruptcy (1933), as signed between the Nordic Countries — Denmark, Finland, Iceland, Sweden, and Norway — focused on the recognition and enforcement of bankruptcy decisions. The European Union advanced similar efforts through the EEC Commission Draft (1980) and the European Convention on International Aspects of Bankruptcy (1990). Both failed to take effect but prepared the ground for the European Union Convention on Insolvency Proceedings (1995) that came into operation on 31 May 2000 and created a unified framework for regulating cross-border insolvency within the EU (Burton, 1999, p. 207).

The effectiveness of regional frameworks prompted the international community to pursue cross-border insolvency regulation at international level. Bankruptcy jurists began to criticize the *territorialist approach* and proposed its extreme opposite approach — *universalism*. The *universalism* approach proposes a single forum applying single insolvency law to regulate the cross-border insolvency of multinational corporate debtors (LoPucki, 2005, p. 143). This approach, however, was criticized for being overly idealistic and impractical. It soon became evident that it was too early and premature to regulate cross-border insolvency through *hard law instruments* such as treaties and conventions. Consequently, the international community shifted its focus to *soft law instruments* such as model laws and guidelines, which provided a more flexible path for addressing cross-border insolvencies. This flexible framework, combining elements of both territorialism and universalism, evolved into what is now known as the *modified universalism* approach (Mevorach, 2018). Several international organizations and institutions began to follow this approach by introducing coordinated and practical frameworks for regulating cross-border insolvencies: The International Bar Association (IBA) drafted "The 1996 Cross-Border Insolvency Concordat," the United Nations Commission on International Trade Law (UNCITRAL) introduced "The 1997 Model Law on Cross-Border

Insolvency," and the American Law Institute (ALI) developed "The 2000 Transnational Insolvency Project for NAFTA Countries" (Barrett, 1996).

II.2.2. Comity and Protocols

During the late 20th century, in the absence of a uniform international regime the increasing incidence of cross-border insolvency was addressed largely through "*the comity of courts*" and the "*cross-border insolvency protocols*." *Hilton v. Guyot* was one of the earliest cases wherein Justice Gray explained the principle of comity:

"Comity, in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. It is the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws."[1]

However, this principle gained significant attention in the insolvency proceedings of Maxwell Communication Corporation plc that ultimately concluded through the adoption of a "cross-border insolvency protocol" (Pottow, 2007, p. 221). The material facts underlying the case can be summarized in the following manner: Maxwell Communication Corporation had previously made transfers to Barclays Bank plc, National Westminster Bank plc, and Société Générale under credit arrangements negotiated in England. The bankruptcy of Maxwell Communication Corporation plc, initiated administration proceedings in England and Chapter 11 bankruptcy proceedings in the United States. Its administrators challenged the pre-petition transfers in the U.S. Bankruptcy Court as preferential payments under Sections 547 and 502(d) of the U.S. Bankruptcy Code, raising the issue whether U.S. avoidance provisions could apply to foreign transactions in coordinated proceedings. The U.S. Bankruptcy Court held that the avoidance provisions of the Bankruptcy Code, namely Sections 502(d) and 547,

[1] Hilton v. Guyot (Supreme Court of the United States 1895).

were inapplicable to the pre-petition transfers in question, relying on the principle of *comity*, which required deference to English insolvency law in light of England's predominant interest and the cooperative nature of the parallel proceedings.

Ultimately, after a series of orders and decisions, U.S. Bankruptcy Judge Judith K. Brozman and her U.K. counterpart, Lord Hoffmann, approved a protocol that resulted in a Joint Plan of Reorganization under U.S. law and a Scheme of Arrangement under U.K. law (Westbrook, 1996). In this regard, Judge Brozman observed:

"The joint administrators in England and the examiner in New York, subject to the jurisdiction of both courts, have conducted the administration of Maxwell Communication Corporation plc with unprecedented cooperation, pursuant to a document known as the 'Protocol'."[2]

The Maxwell Communication Corporation case marked the beginning of a new era, as it prompted courts to recognize protocols as a potential means of addressing cross-border insolvencies; this approach was subsequently affirmed by the bankruptcy courts in cases such as Olympia & York, Everfresh Beverages, Commodore Business Machines, Nakash, Solv-Ex, AIOC, and Lehman Brothers (Flaschen and Silverman, 1998). Protocols were tailor-made cooperation agreements between parties duly approved by the concerned court. While functioning as a practical tool for managing cross-border insolvencies, they nonetheless reveal significant limitations. Their case-specific nature demands extensive judicial time and resources. Moreover, the lack of uniformity often leads to inconsistencies in application across jurisdictions, creating uncertainty for the parties. Therefore, although protocols have been successful in addressing cross-border insolvencies, they continue to remain an *ad hoc* mechanism for their resolution.

III. UNCITRAL Model Law on Cross-Border Insolvency (1997)

In 1966, the United Nations constituted the United Nations Commission on International Trade Law (UNCITRAL) to foster modernization and harmonization in the sphere of international trade

[2] Maxwell Communication Corporation, 170 B.R. 800 (Bankr. S.D.N.Y. 1994).

and investment laws. Pursuant to its mandate to address insolvency with a cross-border dimension, UNCITRAL adopted the Model Law on Cross-Border Insolvency in 1997.[3] The preamble of the Model Law clearly articulates its purpose in the following words:

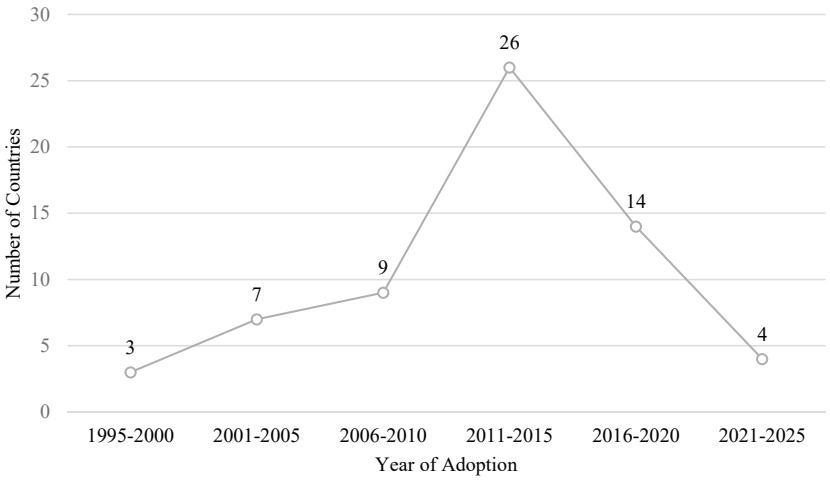
"The purpose of this Law is to provide effective mechanisms for dealing with cases of cross-border insolvency so as to promote the objectives of: (a) Cooperation between the courts and other competent authorities of this State and foreign States involved in cases of cross-border insolvency; (b) Greater legal certainty for trade and investment; (c) Fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested persons, including the debtor; (d) Protection and maximization of the value of the debtor's assets; And (e) Facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment."

The objectives of the UNCITRAL Model Law are implemented through four core principles: access, recognition, relief, and cooperation and coordination. The articulation of these principles is evident in its systematic arrangement into five chapters comprising thirty-two articles. Chapter I outlines the general introductory provisions (Art. 1–8); Chapter II contains provisions enabling foreign representatives and creditors to access domestic courts (Art. 9–14); Chapter III governs recognition of foreign proceedings and relief (Art. 15–24); Chapter IV prescribes mechanism for cooperation with foreign courts and foreign representatives (Art. 25–27); and Chapter V deals with concurrent proceedings (Art. 28–32). The purpose of the Model Law is not substantive harmonization of national insolvency laws but the promotion of procedural uniformity. This procedural harmonization is moderated by the safeguard contained in Art. 6, which authorizes states to carve out exceptions from the provisions of the Model Law when their domestic public policy is at stake.

UNCITRAL has consistently endeavoured to promote the adoption of the Model Law by overcoming impediments to its implementation. In

[3] UNCITRAL Model Law on Cross-Border Insolvency. (1997). Available at: https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/1997-model-law-insol-2013-guide-enactment-e.pdf [Accessed 25.11.2025].

doing so, it has extended support to all three branches of government — the judiciary, the executive and the legislature — both during enactment and in the subsequent interpretation of the law. To further facilitate its implementation, UNCITRAL has also prepared important supporting documents. First, the 2009 UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation was formulated to provide judges and insolvency practitioners with structured guidance on the practical mechanisms for cooperation and communication in cross-border insolvency proceedings. Second, the 2013 UNCITRAL Guide to Enactment and Interpretation of the UNCITRAL Model Law on Cross-Border Insolvency was drafted to supply background information, explanatory commentary, and details of the Commission's deliberations and decisions during the preparatory work. Third, the 2013 UNCITRAL Model Law on Cross-Border Insolvency: The Judicial Perspective (revised 2022) was prepared to assist judges in addressing questions that may arise under the Model Law. Finally, the 2021 Digest of Case Law on the UNCITRAL Model Law on Cross-Border Insolvency was published to provide a comprehensive compilation of case law, organized by article, to facilitate consistent interpretation and implementation of the Model Law.



Adoption of UNCITRAL Model Law on Cross-Border Insolvency, 1997

The adoption of the 1997 UNCITRAL Model Law on Cross-Border Insolvency has progressed in distinct phases. The first wave of adoption occurred in 2000, when Japan, South Africa, and Mexico became the earliest jurisdictions to incorporate the Model Law. This was followed in the subsequent years by its adoption in Canada (2005), United States (2005), New Zealand (2006), and Australia (2008). The most substantial phase took place during 2011–2015, when 26 jurisdictions, the majority of which were least developed or developing economies, implemented the framework. The following years, however, witnessed a marked slowdown, with only four jurisdictions — Angola (2021), Costa Rica (2021), Rwanda (2021), and Saudi Arabia (2022) — adopting the Model Law between 2021 and 2025. Despite this progress, several jurisdictions, including Russia, India, China, and Germany, have not yet embraced it. At present, legislation based on or influenced by the Model Law has been adopted in 60 States across 63 jurisdictions. Although the pace of adoption has slowed in recent years, India, Malaysia, and many other jurisdictions are actively considering its incorporation, reaffirming the Model Law's enduring relevance and its potential for broader implementation in the future.

IV. Cross-Border Insolvency Regulation in India: Pre-2016 and Post-2016 Initiatives

The principle of *Vasudhaiva Kutumbakam* which means *"unification of the world as one family"* stimulated globalization in ancient India. However, aggrieved by the struggle for freedom, the independent India refrained from participating in the modern waves of globalization. The socialist leaders aimed at self-reliance and self-sufficiency. Ultimately, in 1991, the government introduced liberalization, privatization and globalization (LPG). After 25 years of economic reforms, India took a significant step with the enactment of the Insolvency and Bankruptcy Code in 2016.

These reforms enhanced India's economic agility and deepened its international ties. Amid these advancements, however, the rise of globalization brought the complex challenge of cross-border insolvency, which calls for deeper exploration. Critics lauded the Indian insolvency

reform for its regulation of domestic insolvencies, but noted that it lacked a procedural framework for handling international insolvencies. Just as reversing a car can sometimes be necessary to steer it in the right direction, understanding the current landscape of cross-border insolvency requires a retrospective glance. Before delving into the intricacies of the existing cross border insolvency system, it is essential to examine the position of Cross-Border Insolvency (CBI) prior to the IBC's implementation.

IV.1. Pre-2016 Era

Before the enactment of the Insolvency and Bankruptcy Code (IBC) in 2016, India had no unified statute for governing corporate and individual insolvency. Individual insolvencies were governed by two archaic laws: the 1909 Presidency Towns Insolvency Act and the 1920 Provincial Insolvency Act. Corporate insolvencies, on the other hand, were governed by several discrete statutes, including the Companies Act of 1956, the Sick Industrial Companies (Special Provisions) Act of 1985, the Recovery of Debts Due to Banks and Financial Institutions Act of 1993, and the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act of 2002 (Das, 2020, p. 104). Additionally, there was no specific mechanism to regulate cross-border insolvency or to protect the rights of foreign creditors. The landmark case of *Rajah of Vizianagaram v. Official Receiver* in 1962 finally recognized the rights of foreign creditors.[4] Despite this recognition, India continued to struggle with regulating international insolvency cases. Until the late 20th century, these cases were handled based on the principle of *lex fori* rather than *lex situs* (Sikri, 2009, p. 467). However, in the early 21st century, there was a significant push to reform commercial laws with a particular focus on enhancing regulations around cross-border insolvencies. In response, key government agencies, such as the Ministry of Corporate Affairs and the Reserve Bank of India established several committees to address these issues and update the legal framework.

[4] Rajah of Vizianagaram v. Official Receiver 500 (Supreme Court of India, 1962).

1. Report of High-Level Committee on Law Relating to Insolvency and Winding-up of Companies (2000)

In 2000, the Indian Government established the High-Level Committee on the Law Relating to Insolvency and Winding up of Companies presided over by Justice V. Balakrishna Eradi. In Chapter 6 of the Committee's report, the Committee recommended that India adopt the 1997 UNCITRAL Model Law on Cross-Border Insolvency, which the World Bank and the International Monetary Fund (IMF) have repeatedly promoted.[5] After examining the cross-border insolvency laws of the United States (The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), 11 U.S.C. s 1501-32), the United Kingdom (The Insolvency Act 1986), Singapore (The Companies Act (Cap. 50, 2006 Rev Ed) s 377(3)(c)), and Malaysia (The Companies Act of 2016), the committee suggested using the UK Insolvency Act of 1989 as a foundation for drafting India's cross-border insolvency legislation. However, at that time, the United Kingdom employed multiple approaches to cross-border insolvency, and the UK Insolvency Act 1986 did not align with India's domestic needs. Consequently, the Eradi Committee's recommendations on cross-border insolvency (CBI) could not be implemented.

2. Report of the Advisory Group on Bankruptcy Laws, Reserve Bank of India (2001)

Following this endeavour, in 2001, the Reserve Bank of India established the Advisory Group on Bankruptcy laws chaired by Dr. N.L. Mitra with an aim of reforming India's bankruptcy laws.[6] The Mitra Committee made a brief recommendation in its report for India to adopt the 1997 UNCITRAL Model Law on Cross Border Insolvency.

[5] Report of High-Level Committee on Law Relating to Insolvency and Winding up of Companies (2000). Ministry of Corporate Affairs. Government of India. Available at: https://www.mca.gov.in/mca/html/mcav2_en/home/dataandreports/reports/library/library.html [Accessed 25.11.2025].

[6] Report of the Advisory Group on Bankruptcy Laws (2001). Reserve Bank of India. Available at: https://rbi.org.in/scripts/PublicationReportDetails.aspx?ID=225 [Accessed 25.11.2025].

3. Report of Expert Committee on Company Law (2005)

In 2004, the Ministry of Corporate Affairs set up the Expert Committee on Company Law under the chairmanship of J.J. Irani.[7] This Committee, like its predecessors, advocated the adoption of the 1997 UNCITRAL Model Law on Cross-Border Insolvency.

4. Report of Bankruptcy Law Reform Committee (2015)

In 2015, the Government of India established the Bankruptcy Law Reform Committee, with Dr. T.K. Vishwanathan as its Chairman.[8] The committee was tasked with proposing one of the most significant economic reforms: drafting a comprehensive law on insolvency and bankruptcy for India. The Viswanathan Committee initially refrained from addressing cross-border insolvency in the drafting of the IBC Bill, recognizing it as a complicated and extensive area of study. However, the Committee mentioned international instruments that could serve as references in drafting cross-border insolvency legislation.

5. Report of the Joint Parliamentary Committee on Insolvency and Bankruptcy Code, Sixteenth Lok Sabha (2015)

In 2015, the IBC Bill, crafted by the Bankruptcy Law Reform Committee, was presented to the Joint Parliamentary Committee for review.[9] During its review, the Joint Parliamentary Committee raised concerns about the absence of a cross border insolvency mechanism. To address this gap and ensure basic governance of cross-border insolvency, the Department of Economic Affairs recommended including provisions based on "reciprocity" within the IBC Bill (2015). These

[7] Report of Expert Committee on Company Law (2005). Ministry of Corporate Affairs. Government of India. Available at: https://www.mca.gov.in/mca/html/mcav2_en/home/dataandreports/reports/library/library.html [Accessed 25.11.2025].

[8] The Report of the Bankruptcy Law Reforms Committee Volume I: Rationale and Design (2015). Available at: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ibbi.gov.in/BLRCReportVol1_04112015.pdf [Accessed 25.11.2025].

[9] Report of the Joint Committee on the Insolvency and Bankruptcy Code, Sixteenth Loksabha (2015). Available at: https://ibbi.gov.in/uploads/resources/16_Joint_Committee_on_Insolvency_and_Bankruptcy_Code_2015_1.pdf [Accessed 25.11.2025].

recommendations were duly considered, and Clauses 233A and 233B were added in the IBC Bill (2015). As a result, Sections 234 and 235 were introduced in the 2016 IBC for regulating cross-border insolvency.

IV.2. Post-2016 era

The 2016 Insolvency and Bankruptcy Code (IBC) revolutionized India's approach by introducing an effective framework for regulating domestic insolvencies. This landmark legislation led to the repeal of many outdated laws and to amendments of others. The following Acts were repealed: the 1909 Presidency Towns Insolvency Act, and the 1920 Provincial Insolvency Act. The following enactments were amended to varying degrees: the Indian Partnership Act of 1932; the Central Excise Act of 1944; the Income Tax Act of 1961; the Customs Act, 1962; the Recovery of Debts Due to Banks and Financial Institutions Act, 1993; the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act of 2002; the Sick Industrial Companies (Special Provisions) Repeal Act of 2003; the Payment and Settlement Systems Act of 2007; the Limited Liability Partnership Act of 2008; and the Companies Act of 2013 (Das, 2020, p. 104). Although the IBC does not directly address cross-border insolvency, it incorporates enabling provisions in Part V, Sections 234 and 235, which provide the necessary foundation for addressing international insolvency issues.

1. Section 234 and 235 of Insolvency and Bankruptcy Code (2016)

Section 234 empowers the Indian Government to engage into agreements with foreign governments to facilitate the implementation of the IBC (2016) in cross border insolvency cases. Section 235 further allows the resolution professionals, liquidators or bankruptcy trustees to seek assistance from Indian adjudicating authority to obtain information or take actions concerning assets in countries with which India has bilateral agreements. When necessary for resolving insolvency, liquidation, or bankruptcy proceedings, the adjudicating authority may issue a formal letter of request to the pertinent foreign court or authority,

soliciting the procurement of evidence or the execution of specific actions. The goal of these agreements is to extend the reach of the IBC to corporate debtors' assets located outside India. However, despite the cooperation envisaged by Section 234, the Indian government has no reciprocal agreements with other countries, rendering Sections 234 and 235 effectively a dead letter.

2. Insolvency Law Committee Report (2018)

In order to address cross-border insolvency issues in India, the Ministry of Corporate Affairs constituted the Insolvency Law Committee chaired by Shri Injeti Srinivas. In its 2018 Report, the Committee proposed incorporating a new chapter into the Insolvency and Bankruptcy Code as draft "Part Z" which included 5 chapters, 31 provisions, and a Schedule specifically dedicated to cross-border insolvency.

It was the first time when a draft part was created for regulating cross-border insolvency law largely influenced from the 1997 UNCITRAL Model Law on Cross Border Insolvency. The Committee, in its reports, recommended adoption of the majority of the Model Law's provisions; however, the report did not confine its scope to the Model Law. It also conducted a comprehensive review of international best practices — drawn from regional instruments and State practice — which brought greater certainty to the regulation of cross-border insolvency. For instance, the committee examined multiple legal frameworks, including the European Union Convention on Insolvency Proceedings, the Cross Border Insolvency Regulations of 2006 (UK), the Companies Act of 2006 (Singapore), Chapter 15 of the US Bankruptcy Code, and the Cross Border Insolvency Act of 2000 (South Africa). One of the Committee's key recommendations was to incorporate legislative reciprocity — a principle not found in the Model Law but adopted in jurisdictions such as Mexico, South Africa, and Romania. Additionally, the Committee recommended adopting the Judicial Insolvency Network (JIN) Guidelines to enhance communication and cooperation between courts dealing with cross-border insolvency issues, reflecting practices observed in Singapore, the UK (England and Wales), and the USA. The Committee also suggested retaining the term *"manifestly"* within the public policy exception, as

seen in Art. 6 of the UNCITRAL Model Law, Section 1506 of Chapter 15 (US), Art. 6 of Schedule 1 of the Cross Border Insolvency Regulation of 2006 (UK), and Section 6 of the Cross Border Insolvency Act of 2000 (South Africa). This approach differs from Singapore's Companies Act of 2006, which omits the term *"manifestly."* By choosing to retain the term, the Committee aims to ensure that foreign insolvency decisions will only be rejected when they are clearly and significantly contrary to India's public policy (Jayshree and Biswal, 2024, p. 108).

3. The Jet Airways Case

As India worked to strengthen its cross-border insolvency regime, it encountered one of the most significant cross-border insolvency cases — the Jet Airways case. Owing to enormous debt, Jet Airways halted operations on 17 April 2019, prompting creditors from both India and the Netherlands to initiate insolvency proceedings. The National Company Law Tribunal (NCLT) in India initially did not recognize the Dutch proceedings due to the absence of a reciprocal agreement as required under Section 234 of the 2016 IBC. However, on appeal, the NCLAT did not regard Section 234 as an impediment rather allowed the Dutch administrators to collaborate with Indian insolvency professionals and creditors.[10] The NCLAT then approved a *protocol* outlining the cooperation terms (Misra and Feibelman, 2021, p. 329). Interestingly, even though neither the Netherlands nor India has formally adopted the UNCITRAL Model Law, the protocol drew heavily from its core principles. The Jet Airways case, along with other cases highlighted the pressing need for comprehensive cross-border insolvency legislation in India.

4. Cross-Border Insolvency Rules/Regulations Committee Report (2020)

On 23 January 2020, the Ministry of Corporate Affairs formed another committee, chaired by Dr. K.P. Krishnan, to provide a regulatory framework for the enforcement of Part Z (Srivats, 2020). In June 2020, *the Cross Border Insolvency Rules/Regulations Committee (CBIRC)*

[10] Jet Airways (India) Limited vs State Bank of India & Anr, 707 (National Company Law Appellate Tribunal 2019).

submitted its recommendations to enhance India's cross-border insolvency regulatory framework. These recommendations proposed updates to the draft of Part Z and amendments to the 2013 Companies Act, the 2016 IBC, and the Limited Liability Partnership Act (2008). The Committee reviewed the application of the MLCBI in fifteen countries, extracting key elements to shape India's law.[11]

Central to the Committee's recommendations were the foundational model law principles of access, recognition, relief, coordination, and cooperation, which are crucial for shaping India's cross-border insolvency framework. Drawing inspiration from the judicial standards of the United States and the United Kingdom, the Committee also proposed a "code of conduct" for foreign representatives involved in cross-border insolvency cases. Furthermore, to establish effective guidelines for cooperation and communication, the CBIRC extensively referred to various international frameworks, including the JIN Guidelines (2016), the EU Guidelines (2014), NAFTA Guidelines (2000), and the Global Principles for Cooperation in International Insolvency Cases (2012) formulated by the joint efforts of the American Law Institute (ALI) and International Insolvency Institute (III). After evaluating these diverse frameworks, the Committee recommended developing a hybrid model tailored to India's needs.

In detailing relief mechanisms available in cross-border insolvency cases, the Committee clearly distinguished between interim and discretionary relief. The CBIRC agreed with the Insolvency Law Committee's perspective and suggested incorporating discretionary reliefs while leaving the decision to incorporate interim relief to the central government's discretion. Additionally, the CBIRC recommended continuing the practice of developing protocols, citing UNCITRAL's Practical Guide on Cross-Border Insolvency Cooperation, which observed a 40 % increase in recovery value following the establishment of amicable protocols. To further enhance effectiveness in handling cross-border insolvency cases, the Committee proposed capacity-

[11] Report on the Rules and Regulations for Cross-Border Insolvency (2020). Ministry of Corporate Affairs, Government of India. Available at: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://ibbi.gov.in/uploads/whatsnew/2021-11-23-215206-0clh9-6e353aefb83dd01382116409941 27c27.pdf [Accessed 25.11.2025].

building programs for both the regulatory authority, the Insolvency and Bankruptcy Board of India (IBBI), and the adjudicating authority, the National Company Law Tribunal (NCLT). These programs aim to equip these authorities with the necessary skills and knowledge for managing cross-border insolvency cases, thereby ensuring a flawless implementation of the proposed framework. By assimilating these recommendations, the Committee endeavoured to establish a formidable regime for cross-border insolvency in India. This initiative sought to rectify the deficiencies exposed by high-profile cases such as *the Jet Airways Case* and to ensure a more efficacious and collaborative international insolvency process in India.

5. Parliamentary Standing Committee on Finance (2021) — Thirty-Second Report: "Implementation of the IBC — Pitfalls and Solutions"

In 2021, the Parliamentary Standing Committee on Finance released its thirty-second report "Implementation of IBC — Pitfalls and Solutions," which examined barriers in the Insolvency and Bankruptcy Code (IBC) and addressed cross-border insolvency concerns. In its review, the Committee considered the recommendations of the ILC and CBIRC reports and concurred with their findings. It highlighted the need for adopting a cross-border insolvency framework immediately.[12] Acting on this recommendation, the Ministry of Corporate Affairs (MCA) on 24 November 2021 invited public comments on the proposed framework, marking an important step toward its eventual adoption.

6. Parliamentary Standing Committee on Finance (2024) — Sixty-Seventh Report on "Action Taken by the Government on the Observation/Recommendation Contained in Thirty-Second Report"

In February 2024, the Parliamentary Standing Committee on Finance published its sixty-seventh report "Action Taken by the

[12] Thirty Second Report on "Implementation of Insolvency and Bankruptcy Code — Pitfalls and Solutions" (2021). Seventeenth Lok Sabha. Committee on Finance. Available at: https://eparlib.sansad.in/handle/123456789/811572?view_type=search [Accessed 25.11.2025].

Government on the Observation/Recommendation Contained in Thirty-Second Report." This report assessed the steps taken by the government in response to earlier recommendations and highlighted that the MCA is still examining the implementation of cross-border insolvency framework under the code[13].

7. The Insolvency and Bankruptcy Code (Amendment) Bill (2025) (as introduced in Lok Sabha)

The Insolvency and Bankruptcy Code (Amendment) Bill (2025) was introduced in the Lok Sabha, the Lower House of Parliament, with the objective of amending various provisions of the 2016 Insolvency and Bankruptcy Code. Among its key proposals, Clause 67 of the Bill introduces a new provision, namely Section 240C, into Part V of the Code. This section titled "Power to make rules for cross-border insolvency" empowers the Central Government to frame comprehensive rules for the regulation and administration of cross-border insolvency proceedings, thereby addressing the complexities arising from insolvency cases involving foreign jurisdictions.[14] The text of the newly proposed Section 240C is provided below as follows:

"240C. (1) Notwithstanding anything to the contrary contained in this Code and the Companies Act, 2013, the Central Government may prescribe the manner and conditions for administering and conducting cross-border insolvency proceedings under the Code, for such class or classes of debtors and corporate debtors as may be notified by the Central Government.

(2) The rules made under this section may provide that any of the provisions of this Code or the Companies Act, 2013 shall apply with such exceptions, modifications and adaptations, as may be required to

[13] Sixty Seventh Report on "Action taken by the Government on the Observations/ Recommendations contained in Thirty-Second Report (17th Lok Sabha) on the subject "Implementation of Insolvency and Bankruptcy Code — Pitfalls and Solutions." Seventeenth Lok Sabha. Available at: https://eparlib.sansad.in/handle/123456789/2975951?view_type=search [Accessed 25.11.2025].

[14] Insolvency and Bankruptcy Code (Amendment) Bill (2025). Available at: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://prsindia.org/files/bills_acts/bills_parliament/2025/The_Insolvency_and_Bankruptcy_Code_(Amendment)_Bill, 2025.pdf [Accessed 25.11.2025].

administer and implement the provisions of this section and rules made thereunder, including designating one or more Benches for dealing with proceedings under this section.

(3) *A d*raft of every rule proposed under this section shall be laid before each House of Parliament in such manner as provided under Sub-sections (4) to (6) of Section 59A, which shall, mutatis mutandis apply, to the rules made under this section."

The 2016 Insolvency and Bankruptcy Code introduced the concept of "cross-border insolvency" for the first time and authorized the Central Government to regulate it by issuing rules. Section 240C of the Code empowers the Central Government to make rules for conducting cross-border insolvency proceedings applicable to specified classes of debtors or companies as notified. The rules may also provide that provisions of the Insolvency and Bankruptcy Code or the 2013 Companies Act shall apply, subject to such modifications or exceptions as may be necessary to address the requirements of cross-border case. In addition, the Government may designate particular benches of tribunals to handle these proceedings. Before coming into force, a draft of such rules must, however, be laid before both Houses of Parliament in accordance with the prescribed procedure.

V. Challenges and Proposed Solutions

The development of a cross-border insolvency framework faces significant challenges in several jurisdictions, including India. A key difficulty arises from the very nature of the Model Law on Cross-Border Insolvency (MLCBI), which is classified as "soft law." While this categorization is intended to promote flexibility, it has paradoxically weakened uniform adoption across jurisdictions. Adding to this complexity, the broad variations in exemptions granted by different countries create further obstacles in international insolvency proceedings. This problem is particularly evident with respect to utility companies. In certain jurisdictions, such entities are accorded exemptions or preferential treatment due to their critical role in providing essential services, whereas other jurisdictions afford no such protections. As a result, the treatment of utility companies during insolvency proceedings varies widely, gener-

ating uncertainty for stakeholders and disrupting the smooth resolution of cross-border cases. Such inconsistency undermines international co-operation and diminishes both predictability and fairness in insolvency outcomes.

Secondly, the absence of regional cooperation significantly worsens these challenges. Regions such as North America and Europe have succeeded in adopting regional regulations that harmonize insolvency proceedings and streamline dispute resolution. By contrast, South Asia continues to face geopolitical tensions, which make any prospect of a regional cross-border insolvency arrangement highly unlikely.

Thirdly, the strong emphasis on national sovereignty further complicates efforts to establish reciprocity-based agreements. The strained relationship between jurisdictions illustrates how competing national interests may obstruct meaningful collaboration. This resistance to cooperation not only delays the creation of a regional framework but also reinforces legal fragmentation. Consequently, stakeholders are left to navigate a complex web of inconsistent regulations, a situation that threatens the stability of financial systems within the region and undermines broader goals of global economic integration.

Fourthly, despite global efforts to promote the MLCBI, its universal adoption continues to face significant obstacles. Many jurisdictions have refrained from fully embracing it, relying instead on protocols or reciprocal arrangements. In India, the absence of a statutory framework and reciprocity agreements has compelled tribunals to adopt case-specific protocols for addressing cross-border insolvency matters. Although such protocols can provide workable solutions in individual cases, they also generate substantial challenges. The formulation and approval of these protocols impose a considerable burden on the judiciary, rendering the process slow and cumbersome. Moreover, the need for a tailored approach in each case results in prolonged delays and considerably higher transaction costs across jurisdictions.

In light of these challenges, proactive measures are essential to accelerate the development of a robust cross-border insolvency framework. Widespread adoption of the UNCITRAL Model Law on Cross-Border Insolvency (MLCBI) — as evidenced by the effectiveness of Chapter 15 of the U.S. Bankruptcy Code and comparable regimes —

would be a key step. By promptly enacting laws, countries can position themselves as preferred jurisdictions for corporate debtors and creditors. Adopting the MLCBI without insisting on reciprocity clauses would promote greater harmonization of cross-border insolvency laws globally.

Encouraging regional cooperation where feasible is also critical. In regions where geopolitical tensions are prevalent, building cooperative frameworks can help overcome these divisions. This would facilitate smoother insolvency proceedings across borders and foster international cooperation.

Additionally, promoting awareness about the MLCBI among countries that have not yet embraced it is crucial. This can be achieved through international advocacy, educational initiatives, and technical assistance, ensuring that countries understand the benefits of a unified approach to cross-border insolvency. By implementing these solutions, we can address the complexities and inconsistencies currently hindering the formulation of a robust cross-border insolvency regime.

VI. Conclusion

The global investment climate, shaped by growing economic volatility and geopolitical uncertainty, has led to a surge in cross-border insolvencies. India's efforts to address these issues through Sections 234 and 235 of the 2016 IBC have highlighted the inadequacies of the current reciprocal provisions, underscoring the urgent need for reform. Despite India's longstanding membership in UNCITRAL and its role as a founding member, the country has not yet implemented the MLCBI. In India the lower House of Parliament, i.e., *Lok Sabha*, has introduced the 2025 Insolvency and Bankruptcy Code (Amendment) Bill. The proposed amendment bill marks the first legislative attempt to formally introduce the concept of cross-border insolvency into the Insolvency and Bankruptcy Code; however, it remains fraught with significant limitations. Rather than establishing a ready regulatory framework, Section 240C merely empowers the Central Government to formulate rules in the future, which must in turn undergo the parliamentary approval process. This renders the creation of an effective framework

more protracted and uncertain. Moreover, the Amendment does not clarify whether India intends to incorporate or adopt the UNCITRAL Model Law on Cross-Border Insolvency, which is the widely accepted international standard in this area. Such clarity will only emerge once the Central Government frames the rules under this provision. Thus, while the Amendment represents a step forward in formal recognition of cross-border insolvency within the Indian insolvency regime, it does little to resolve the pressing need for a clear, predictable, and enforceable mechanism. Ultimately, until a stable regulatory mechanism is established, India will continue to regulate cross-border insolvency through the cross-border insolvency protocol, as used by the NCLAT in the *Jet Airways case*. While these protocols provide temporary relief and case-specific solutions, their tailor-made nature, dependence on court approval, and associated costs, render them time-consuming and inefficient. A uniform mechanism would therefore be essential to bring certainty, efficiency, and credibility to India's cross-border insolvency regime.

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