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Cross-Border Insolvency in India: Challenges and the Road to Harmonisation

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India's growing overseas activities and evolving economic landscape have exposed significant vulnerabilities in the country's ability to manage cross-border insolvency cases. The Insolvency and Bankruptcy Code (IBC) provides a sound foundation for bankruptcy procedures that occur locally, but its regulations on foreign cases, essentially Sections 234 and 235[1], are weak and largely inactive. Substantial judicial challenges arise from this limitation, including the inability to recover or distribute assets across multiple nations, difficulties communicating with foreign courts, and uncertainty about identifying and enforcing foreign bankruptcy orders. By filling significant lacunas, the Model Law's standard set of procedures for cooperation and recognition would enhance protection for creditors and enable the speedy determination of multi-jurisdictional bankruptcy proceedings. However, issues with sovereignty, domestic policy goals, and the need to strike a balance between local interests and the demands of global trade pose obstacles to harmonisation. This research paper critically reviews the proposed legislative changes, analyses key court decisions, and explores India's existing legal framework. The findings identify how important effective cross-border insolvency practices are to ensuring fair treatment, protecting the interests of creditors, and maintaining India's attraction to foreign investors. The study concludes by contending that in the process of making India a reliable place for foreign trade and investment, it is necessary to implement rapid and comprehensive legal reforms with inspiration from worldwide best practices.

Keywords: *insolvency, bankruptcy, cross-border insolvency, foreign investment, global business.*

[1] Insolvency and Bankruptcy Code 2016, ss 234-235

INTRODUCTION

Cross-Border Insolvency & Bankruptcy is the term applied when insolvency by a debtor impacts assets, creditors, or operations that extend across multiple nations. As a result of increased globalisation of trade and investment, Indian enterprises often have international operations, thus raising challenging legal questions when insolvency occurs. This legislative lacuna impacts creditor confidence and asset recovery, makes settlement more complex, and indirectly impacts India's business environment overseas. For managing the above complexity, an evident and concrete legal regime capable of addressing jurisdictional difficulties, perceiving foreign procedures, and synchronising jurisdictions is required.

India's cross-border insolvency framework is characterised by widespread legal loopholes that make it challenging for the nation to effectively manage insolvency issues between actors in different jurisdictions[2]. While forward-thinking, provisions of the Insolvency and Bankruptcy Code are still far from being translated into effective instruments of international co-operation. The current legislation under the Insolvency and Bankruptcy Code, though new, has not yet been effectively converted into instruments of cross-border co-operation. Hence, cross-border insolvency & bankruptcy proceedings cannot be readily identified and enforced under Indian law, which taints legal certainty and makes resolution mechanisms more intricate. Correcting these legal flaws through careful legislative reconstruction and adherence to globally recognised best practices, such as the UNCITRAL Model Law, will be necessary for a robust and confident insolvency regime[3].

Aside from complicating the settlement process, this legal inconsistency also affects creditor confidence and recoveries on assets, both of which have a tangential bearing on India's international business environment. It underscores the extent to which legislative alignments are required in an attempt to establish an appropriately balanced system that guarantees certainty of jurisdiction, foreign insolvency orders of enforcement, and instruments of international co-operation. With these reforms, India will be able to position itself as a

[2] Leon Trakman and Robert Walters, 'Jurisdictions Approach towards Cross-Border Insolvency Part 2' in Leon Trakman and Robert Walters, *Contemporary Issues in Finance and Insolvency Law* (Routledge 2022)
[3] United Nations Commission on International Trade Law, *UNCITRAL Legislative Guide on Insolvency Law for Micro- and Small Enterprises* (2021)

credible, investor-friendly jurisdiction with the ability to handle increasingly complex international insolvency issues.

RESEARCH OBJECTIVES

1. To enumerate and assess the key legal issues triggered by India's absence of a comprehensive cross-border insolvency regime.
2. To evaluate the inadequacies of India's existing bankruptcy law in terms of creditor protection and cross-border insolvency cooperation, and specifically the Insolvency and Bankruptcy Code 2016.
3. To make a comparison of India's cross-border insolvency framework with globally accepted norms, particularly the UNCITRAL Model Law and regimes developed by leading nations like the United States, the United Kingdom, and Singapore.
4. To examine Indian court practice and challenges faced in actual cross-border insolvency situations, highlighting procedural uncertainty and statutory vacuums.
5. To consider the relevance and potential impact of proposed legislation, including the Draft 'Part Z' to the IBC, which could enhance the legal capacity of India in managing international insolvency.

RESEARCH METHODOLOGY

This is a doctrinal work based on a critical analysis of the current law, judicial dicta, and academic literature. It is principally focused on the Insolvency and Bankruptcy Code, 2016 (IBC) and its cross-border dimensions. It is based on:

Statutory Analysis: It includes the reading of proposed amendments and bills like 'Part Z' and examination of national laws like Sections 234 and 235 of the IBC.

Comparative Legal Analysis: Looking at the degree to which model jurisdictions such as the US, UK, EU, and Singapore have applied and followed the UNCITRAL Model Law regime and comparing and evaluating the structure, law, and court approach to cross-border insolvency law in these nations.

Case Law Analysis: A thorough analysis of Indian and foreign court judgments in key insolvency cases like Jet Airways, Videocon Limited, and significant international cases, with examples of the implementation of Model Law provisions.

Analytical Synthesis: Drawing case law information, comparative analysis, and law review conclusions together into rational reform recommendations based on India's unique socio-legal context and the requirements of the world economy.

LITERATURE REVIEW

Regulatory Framework: The Indian Insolvency & Bankruptcy Code 2016 and the UNCITRAL Model Law on Cross-Border Insolvency[4] have been examined under this category. Both of these regulatory regimes have dealt with the Cross-Border Insolvency Process. A strong and versatile legislative framework for harmonising the cross-border insolvency process is addressed by the UNCITRAL Model Law on Cross-Border Insolvency. For ensuring fair, effective, and certain results in intricate cross-border cases, it sets out clear procedures for foreign representatives and creditors to access local courts, aids in the recognition of foreign proceedings (distinction between main and non-main), provides a range of relief measures, and requires close co-ordination and co-operation between courts and insolvency administrators. On the other hand, Sections 234 and 235[5] address the process of cross-border insolvency in the country. The principal mechanisms for dealing with cross-border insolvency in India are sections 234 and 235, which authorise adjudicating authorities to seek assistance of foreign courts in the process of proceedings and authorise the central government to execute reciprocal agreements with foreign governments to assist in matters of insolvency. But as these provisions are subject to the existence of bilateral treaties, they are much restricted in their efficacy, tending to an underused and disjointed scheme lacking the efficacy and unity of a globally harmonised model like the UNCITRAL Model Law, which in turn results in serious lacunae in the administration of cross-border insolvency cases within the current Indian legal framework.

Research Paper & Articles: Here, we have analysed the research papers and articles that have addressed the Cross-Border Insolvency Process. The said research paper and articles have assisted in comprehending and thoroughly analysing India's commercial environment, characterised by growing global operations, and have left intrinsic voids in the nation's capacity to efficiently tackle cross-border insolvency cases.

[4] UNCITRAL Model Law on Cross-Border Insolvency 1997
[5] Insolvency and Bankruptcy Code 2016, ss 234-235

The research article, entitled **Cross-border Corporate Insolvency Law in India: Dealing with Insolvency in Multinational Group Companies—Determining Jurisdiction for Group Insolvencies by Priya Misra**[6], delves into the intricacies of dealing with the insolvency of multinational group companies while highlighting the prominent issue of the determination of jurisdiction. The research points out that a significant challenge for ailing MNEs is the conflict between the basic company law principle of 'separate legal personality' and the unusual requirement to treat the group companies as one entity while handling bankruptcy. This only becomes more complex and leads to a large number of domestic and foreign creditors when the parent firm or group companies are based outside India.

The article, **Cross-border Insolvency in India**[7], deals with cross-border insolvency in India. Given the complex issue of rising inevitability posed by globalised economies, there is a need for a sound legal framework, the article recounts. It points to the challenge faced by Indian courts in managing foreign assets and creditors' disputes, for instance, the complexities of jurisdiction and conflict of laws. As per the passage, India needs to enact the UNCITRAL Model Law on Cross-Border Insolvency in accordance with international best practices and ensure a fair and timely procedure of resolution. Through enhanced coordination and cooperation among states, the model law would protect the rights of foreign creditors and encourage world investment and trade.

The research paper, **CROSS BORDER INSOLVENCY REGIME IN INDIA: DRAFT PART-Z VIS-À-VIS THE UNCITRAL MODEL LAW** by **Divyanshu Kumar**[8]**,** draws attention to India's cross-border insolvency regime, comparing the UNCITRAL Model Law to the Draft Part-Z legislation specifically. The writer, Divyanshu Kumar, examines how India is attempting to transcend its existing weak provisions to develop a robust framework for dealing with insolvencies over assets and liabilities in various countries. Principal concepts such as reciprocity, relief mechanisms, and the Centre of Main Interest (COMI) are explained

[6] Priya Misra, 'Cross-Border Corporate Insolvency Law in India: Dealing with Insolvency in Multinational Group Companies Determining Jurisdiction for Group Insolvencies' (2020) 45(2) Vikalpa: The Journal for Decision Makers <https://doi.org/10.1177/0256090920946267> accessed 05 September 2025

[7] Shakshi Sethia and Sayantika Halder, 'Cross Border Insolvency in India' (2024) SSRN <http://dx.doi.org/10.2139/ssrn.4770575> accessed 05 September 2025

[8] Divyanshu Kumar, 'Cross Border Insolvency Regime in India: Draft Paper-Z vis-à-vis the UNCITRAL Model Law' (2022) 1 Journal of Law, Business & Economics <https://www.hpnlu.ac.in/PDF/91fc2473-f106-48e8-bd4f-a3d0efeae78e.pdf> accessed 05 September 2025

in detail, and how they were applied in India's proposed law and differed from the UNCITRAL Model Law.

The **article**, **India's Journey towards Cross-Border Insolvency Law Reform** by **Debaranjan Goswami** and **Andrew Godwin**[9], is a comparison of India's draft legislation, 'Part Z,' with the UNCITRAL Model Law on Cross-Border Insolvency for the purpose of determining the nation's ongoing development in developing a cross-border insolvency law. The authors discuss how India's proposed policy diverges from the Model Law and identify the primary reasons for said differences. These aspects comprise the structure of India's legal bodies, particularly the limited jurisdiction of the National Company Law Tribunals (NCLTs), the reciprocity requirement, and restrictions on international agents' direct access. While the language changes appear minor, the paper opines that, despite the overall goal of attracting foreign direct investment, India's past commitment to territorialism and current judicial processes may lead to significant differences in the practical enforcement and implications of the new regime.

Reference Cases: We have used the leading judgments on the Cross-Border Insolvency Process in this section, both from India and abroad. We have now learned from the analysis of the judgments that the Cross-Border Insolvency Process has taken more time than anticipated to finalise due to the anomalies of the authorities and the complex, streamlined process. Furthermore, the analysis of the judgments has established that most courts do not have jurisdiction to hear the case. Consequently, a joint corporate insolvency process must be followed in conformity with Indian law, and vice versa.

The Judgment, in the case of *Jet Airways (India) Ltd.*[10], formulated a 'Cross Border Insolvency Protocol' following a resolution of the challenge of the simultaneous insolvency proceedings of Jet Airways in the Netherlands and India. The presence of the Dutch Trustee in the Indian Committee of Creditors (CoC) was a contentious issue, wherein the CoC initially protested it. Overruling the views of the CoC, the National Company Law Appellate Tribunal (NCLAT) directed the Dutch Trustee, who was held to be comparable to the Indian

[9] Debaranjan Goswami and Andrew Godwin, 'India's Journey towards Cross-Border Insolvency Law Reform' (2024) 19(2) Asian Journal of Comparative Law <https://doi.org/10.1017/asjcl.2024.12> accessed 05 September 2025

[10] *Jet Airways (India) Limited (Offshore Regional Hub) v State Bank of India & Anr* (2019) Company Appeal (AT) (Insolvency) No 707/2019

Resolution Professional, to be permitted to participate in CoC meetings as an observer but not as an election candidate. This decision enforces the independent jurisdiction of both courts while emphasising the vital need for international cooperation and coordination in cross-border insolvencies to safeguard and maximise asset value for all concerned.

The decision, in the case of *Maxwell Judgment*[11], explains in vivid detail the complex international insolvency, pervasive financial fraud that funded his multinational enterprise, and the subsequent spectacular failure. One of the highlights of the case was the unprecedented parallel filing of primary bankruptcy actions in the US and the UK, requiring the establishment of the historic 'Maxwell Protocol' to facilitate judicial cooperation. Despite setbacks, including a significant choice-of-law dispute regarding pre-bankruptcy payments, the Maxwell cases eventually provided valuable lessons and directly influenced the implementation of Chapter 15 of the U S Bankruptcy Code[12], stimulating a more unified approach to international bankruptcies.

CURRENT LEGAL FRAMEWORK OF INDIAN CROSS-BORDER INSOLVENCY

Indian cross-border insolvency legislation remains nascent and is primarily derived from the Insolvency and Bankruptcy Code 2016. Sections 234 and 235 provide certain powers for engaging in foreign insolvency cooperation. Essentially, Section 234[13] provides the basis for bilateral treaties by empowering the Central Government to sign reciprocal agreements regarding the enforcement of IBC provisions in foreign jurisdictions. Indian courts may seek the aid of foreign courts in the administration of assets outside India pursuant to Section 235[14]. However, to date, there are no clear reciprocal agreements or working guidelines for these statutory provisions. Lacking a formal system for recognition and enforcement of foreign insolvency orders, their ambit has been more a matter of aspiration than reality.

Besides the act, the regulation is also grounded in detailed guidelines and circulars released by the Insolvency and Bankruptcy Board of India (IBBI), which oversees information utilities, resolution professionals, and overall insolvency regulation. While IBBI regulations ensure effective domestic handling of bankruptcy cases, they largely sidestep the intricacies of cross-

[11] *R v Maxwell* [2010] UKSC 48
[12] 'Chapter 15 - Bankruptcy Basics' (*United States Courts*) <https://www.uscourts.gov/court-programs/bankruptcy/bankruptcy-basics/chapter-15-bankruptcy-basics> accessed 05 September 2025
[13] Insolvency and Bankruptcy Code 2016, s 234
[14] Insolvency and Bankruptcy Code 2016, s 235

border issues, leaving practitioners with no clear procedural guidelines on the recovery of assets or international creditor claims[15]. Judicial interpretation has partially filled some of these gaps; Indian courts have made important decisions as an attempt to cope with the absence of total legislation. In spite of highlighting the need for co-operation, the courts have often not acted in the face of legislative inaction. This is best evident in cases like Jet Airways, where the court acknowledged the problem but was bound by legislative quiescence.

Consequently, cross-border insolvency in India is today regulated by a legal vacuum that is unstable and dependent upon the discretion of courts. For global companies, overseas lenders, and Indian business houses with assets spread across the world, this brings about great uncertainty and extra costs. Rapid realisation of value is hindered by unpredictable instructions, time-consuming procedures, and limited access for international agents. The demand for a more robust legal and functional framework for cross-border insolvency in India is increasing as cross-border commerce grows, and this disjointed system becomes increasingly inappropriate for the demands of modern commerce.

Provisions: The most notable aspect of Sections 234 and 235 is their express acknowledgement of the need for international cooperation in insolvency, which was lacking in most of the earlier Indian legislations. But since India has yet to sign reciprocal agreements with major trading and investment centres, neither section has generated any working rules or treaties that are enforceable in practice. Practically speaking, this means that there is not much assurance that a foreign court will comply with a letter of request from an Indian tribunal, especially without harmonised legal standards or the background of mutual legal assistance.

Regulatory Framework: The operational complexity of cross-border claims, exchange of currency, and electronic communication necessary in international litigation is not covered by the IBBI's regulatory policies,[16] which also focus on strengthening the liability of insolvency practitioners and stakeholder committees. Delays, asset erosion, and vexed

[15] Ani Sairufah and Azhari Yahya, 'The Application of Cross-Border Insolvency Bankruptcy in the Execution of Debtor's Assets in Indonesia: A Comprehensive Analysis' (2023) 3(2) Student Journal of International Law <https://doi.org/10.24815/sjil.v3i2.26943> accessed 05 September 2025

[16] Cross Border Insolvency Rules/ Regulations Committee (CBIRC), *Report on the rules and regulations for cross-border insolvency resolution* (2020)

creditor claims arise from Indian bankruptcy professionals' failure to efficiently handle assets or align action abroad.

Judicial Interpretation: Though adaptable, judicial interpretation is bound by the language of statutes. The lack of statutory recognition clauses leads to uncertain consequences despite the occasional efforts of Indian courts to apply principles of comity or take cues from experiences in international arbitration enforcement. For instance, the limitations in the statute denied standing to a foreign administrator in Jet Airways' insolvency. Such issues have also been witnessed in Videocon, where legal uncertainty had compounded the complexity of cross-border group insolvency. The need for clear, legally enforceable norms that conform to international standards and best practices is ultimately accentuated by this patchwork, which reflects a large gap between legislative intention and ground realities.

COMPARATIVE INTERNATIONAL FRAMEWORK:

Through the passing of strong and useful models, the global world has tackled cross-border insolvency; the UNCITRAL Model Law on Cross-Border Insolvency, 1997, is the benchmark in the industry. The United States, the United Kingdom, Singapore, Australia, and others have all successfully adopted the UNCITRAL Model Law, which is a harmonised model. Determining the debtor's 'Centre of Main Interests' (COMI) is its theoretical cornerstone, marking the primary jurisdiction to open a main case and enabling early recognition by courts in other member states.[17] This setting significantly minimises fragmentation of assets, forum shopping, and conflicts of jurisdiction.

The UNCITRAL Model Law gives foreign claimants non-discriminatory access by putting convenient access to domestic courts within reach of foreign insolvency representatives.[18] Asset pool protection, orderly presentation of claims, and automatic application of a moratorium on recognition of foreign main process are attributes. For judicial cooperation

[17] Alexander J Belohlavek, 'Center of Main Interest (COMI) and Jurisdiction of National Courts in Insolvency Matters (Insolvency Status)' (2008) 50(2) International Journal of Law and Management <https://doi.org/10.1108/17542430810862333> accessed 05 September 2025

[18] Reinhard Bork and Michael Veder, 'Cooperation and direct communication between a court of this State and foreign courts or foreign representatives' in Reinhard Bork and Michael Veder (eds), *The UNCITRAL Model Laws on Cross-Border Insolvency and on the Recognition and Enforcement of Insolvency-Related Judgments* (Edward Elgar Publishing 2025)

for value maximisation and legal certainty, legislation enables courts to communicate, collaborate on evidence, and conduct joint hearings.

Above all, the Model Law achieves a balance of the interests of the sovereign and international harmonisation by giving nations the freedom to deny recognition in the event of being contrary to public policy. As a result of such characteristics, nations that have adopted the Model Law have benefited from better recovery rates, definite outcomes, transparent proceedings, and better confidence in foreign investors. Such experiences starkly contrast the existing Indian ad-hoc approach and give a clear proven template for India to adopt best global practices and lower litigation costs while safeguarding stakeholder interests in cross-border insolvency cases.[19]

UNCITRAL Model: The UNCITRAL Model Law is famous for being clear and flexible. The law's provisions are aimed at the production of procedural justice, recognition, and cooperation instead of codifying the substantive insolvency procedure.[20] Its model is 'modified universalism,' where the focal insolvency takes place in one country and other countries offer support as secondary courts. This framework is specially written to avoid the entanglement of multiple court orders and concurrent proceedings, which may rapidly depreciate assets in cases of cross-border insolvency.

Early recognition of a foreign act where specific objective criteria, such as evidence of COMI and appropriate appointment of a foreign representative, are met is crucial to the functioning of the Model Law. Domestic courts are allowed to deny assistance in exceptional situations, such as when public policy or national law could be harmed, although they must assist (such as stays, disclosure of information, or claims handling) in recognition.

The success rests on the adoption of the UNCITRAL Model Law by large economies. To safeguard their sovereign interests, countries such as the US, UK, and Singapore have made further local accommodations. As evidenced by successful cross-border restructurings in some jurisdictions, the net effect is reduced asset flight, faster creditor recovery, and less

[19] Jolanda Girzl, 'How can alternative mechanisms for dispute resolution contribute to judicial cooperation and what is needed to ensure effective enforcement in cross-border cases?' in Burkhard Hess and Xandra E Kramer (eds), *From common rules to best practices in European Civil Procedure* (vol 8, Hart Publishing 2017)
[20] UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments with Guide to Enactment 2018

litigation across jurisdictions. Embracing such a framework ensures India's credibility globally and functional effectiveness.

Effective Implementation in the USA, UK, and Singapore: The Model Law became effective in the US through Chapter 15 of the Bankruptcy Code[21]. Through the automatic stay provision, US courts promptly recognise international main and non-main insolvency proceedings and immediately grant protection to assets in all parts of the globe. Significant due process rights enable foreign representatives to contribute significantly to local procedures. Chapter 15 is important because it has public policy exclusions and enforcement limitations that safeguard vital US interests without cutting off international cooperation.

The UK Cross-Border Insolvency Regulations 2006[22] adopted the Model Law. With provisions of direct access for international insolvency practitioners, seamless integration with EU and non-EU nations, and concurrent administration of group insolvent businesses, the UK courts have applied these laws in multiple ways. To solve cross-jurisdictional issues in real time, judicial cross-pollination and willingness to borrow procedures (as evident in the Maxwell case and ad hoc practice with Commonwealth nations) characterise the UK model.

As a later adopter, Singapore's law of insolvency was enhanced by the Insolvency, Restructuring and Dissolution Act 2018[23]. Singapore courts are famous for their speed and cross-border complexity; foreign administrators can be located within days, protection of assets is provided expediently, and electronic infrastructure ensures papers and claims from everywhere in the world are dealt with rapidly.

Among Asia's leaders in cross-border insolvency management, Singapore stands out for its adoption of judicial communication, including joint sittings, real-time case management meetings, and electronic submission systems. All three jurisdictions demonstrate that speed, justice, and optimal value for parties to international cases are consistently realised when an effective, comprehensive statute is supplemented by an energetic judiciary and investment

[21] Chapter 15 - Bankruptcy Basics (n 12)
[22] The Cross-Border Insolvency Regulations 2006 (UK)
[23] Insolvency, Restructuring and Dissolution Act 2018 (Singapore)

in technology. India's challenge is how to place such success stories in context and bring them into practical procedures best suited to its own commercial and legal culture.

KEY CHALLENGES IN CROSS-BORDER INSOLVENCY

The Indian cross-border insolvency framework continues to suffer from an assortment of problems despite new reforms and creative judicial practice[24]. Preeminent among them are serious economic-commercial risks, implementation obstacles in routine application, procedural unpredictability, and legal unpredictability. Creditors are exposed to value erosion of assets and adverse claims because of the absence of well-defined rules for the recognition of international proceedings, foreign claim admissions, and foreign representative participation rights[25]. Foreign lenders and investors become more uncertain about it, making the process of recovering distressed assets more costly and complicated. Lack of success by Indian multinationals in walking through foreign courts with confidence damages their international reputation and poses challenges to restructuring or reorganising the group[26].

Lacking consistency in digital infrastructure, inadequate training of insolvency professionals, and inadequate institutional capacity further undermine global cooperation. Frequently, the courts themselves do not possess the technological tools needed to safely exchange documents with other courts, conduct virtual hearings, or verify claims from foreign lands. In reality, additional administrative and legal barriers, such as unclear deadlines, non-uniform documents, and currency conversion issues, can discourage foreign creditors from participating.

There are profound business and economic consequences. To preserve going concern value, optimise recovery for creditors, and protect jobs and investments, the resolution of multinational corporate failures, which are increasingly occurring, necessitates swift,

[24] Meenakshi Kurpad, 'Formulating an Effective Cross-Border Insolvency Framework under the Indian Insolvency and Bankruptcy Code' 2020 (SSRN) <http://dx.doi.org/10.2139/ssrn.3614044> accessed 05 September 2025

[25] Carlos Esplugues, 'The International Legal Framework for Foreign Investment' in Carlos Esplugues, *Foreign Investment, Strategic Assets and National Security* (Intersentia 2018)

[26] Aparna Vajpayee, 'A Comparative Study of Organizational Culture in Indian Multinationals and Foreign Multinationals of India' (2017) 5(1) International Journal of Indian Psychology <https://ijip.in/articles/a-comparative-study-of-organizational-culture-in-indian-multinationals-and-foreign-multinationals-of-india/> accessed 05 September 2025

cooperative action between jurisdictions. Both Indian businesses with international involvement and international creditors with Indian interests are threatened by India's slow and often piecemeal processes, lowering India's global economic competitiveness and financial standing[27].

Legal & Procedural Challenges:

Absence of law or legally enforceable procedural norms regulating acceptance and enforcement of foreign insolvency judgments remains the root barrier. Each case becomes an exercise in judicial imagination without a statute, making it impossible to predict. The standards for recognising foreign representatives, COMI determination, and the status of foreign court orders or moratoria in Indian proceedings are all full of uncertainty.

Lack of clear filing requirements, deficiency in the availability of standardised forms for foreign creditors to file their claims, and the lack of a prescribed system of secure transmission of court documents and supporting documents all serve to lead to procedural delays[28]. Indian legal culture's historical territorial bias makes it much harder for foreign creditors and representatives to be easily accepted. When courts do pioneer in their approach, as in Jet Airways, the outcome is case-specific modifications instead of a widely applicable legal doctrine[29].

Practical Implementation Issues:

Practically, cross-border engagement is not easy because of the unavailability of virtual platforms to make international filings and submit documents. Indian insolvency professionals might not possess the tools or get the requisite training to efficiently work with foreign practitioners, and they are often unaware of best practices internationally. The

[27] Umar Farooq et al., 'Exploring Gender Disparities in Financial Inclusion in India: Evidence from the Global Financial Inclusion Index' (2025) The Indian Economic Journal <https://doi.org/10.1177/00194662251332876> accessed 05 September 2025

[28] Dhananjay Kumar, 'Indian Insolvency Regime without Cross-border Recognition– A Task Half Done?' (*Cyril Amarchand Mangaldas*, 16 May 2017) <https://corporate.cyrilamarchandblogs.com/2017/05/indian-insolvency-regime-without-cross-border-recognition-task-half-done/> accessed 05 September 2025

[29] *Jet Airways (India) Limited (Offshore Regional Hub) v State Bank of India & Anr* (2019) Company Appeal (AT) (Insolvency) No 707/2019

problems are compounded by the absence of real-time monitoring of cases, the problem of tracing assets, and language barriers[30].

Other challenges are the lack of capability to deal with complex transnational financial information, communication barriers among local and international courts, and challenges in serving process on foreign creditors in an effective manner. Because of inadequate technology investment, hearings involving global parties have to be arranged manually, which creates delays and missed opportunities to recover or keep sensitive or mobile assets timely. Consequently, compared to best-in-class jurisdictions where cross-border claims are handled and settled electronically within days or weeks, Indian insolvency is often viewed by global creditors and administrators as a challenging, time-consuming, and uncertain regime[31].

Economic & Commercial Challenges:

Lack of adequate cross-border insolvency legislation has severe economic impacts. Prolonged proceedings and dilatory asset realisation can lead to substantial value erosion, especially in the case of consumable or movable assets. Inconsistent judgments, parallel proceedings, or cross-border leakages of assets can lead to reduced recovery or outright write-offs of local as well as foreign creditors. The inability of Indian multinationals to deal with foreign courts with confidence damages their global reputation and complicates group reorganisation or restructuring.

Indian cross-border insolvency weaknesses can deter foreign capital inflows or result in increased cross-border financing risk premiums because overseas investors will focus more on ease of doing business[32].

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[30] Devendra Mehta, 'View: Delay in implementing cross border insolvency law is detrimental to Indian creditors' *The Economic Times* (06 September 2022) <https://economictimes.indiatimes.com/news/company/corporate-trends/view-delay-in-implementing-cross-border-insolvency-law-is-detrimental-to-india-creditors/articleshow/94029391.cms?from=mdr> accessed 05 September 2025

[31] Ishita Das, 'The Need for Implementing a Cross-Border Insolvency Regime within the Insolvency and Bankruptcy Code, 2016' (2020) 45(2) Vikalpa: The Journal for Decision Makers <https://doi.org/10.1177/0256090920946519> accessed 05 September 2025

[32] Neil Francis Hannan, 'Comparative Analysis of the Enactment and Interpretation of Chapter IV of the Model Law on Cross-Border Insolvency—Operation with Foreign Courts and Foreign Representatives' in Neil Francis Hannan (ed), *Cross-Border Insolvency: The Enactment and Interpretation of the UNCITRAL Model Law* (Springer 2017)

In actuality, cross-border turnarounds are extremely challenging for large Indian companies that have international assets or borrowings, which leads to fragmented liquidations and disappointing outcomes. Besides being required by statute, assisting cross-border insolvency regimes is economically and strategically essential for India to help it become a leading global investment hub.

GAP ANALYSIS

Two broad types of gaps - legislative and institutional that continue to hinder effective harmonisation and integration with international best practice are revealed by an in-depth examination of India's cross-border insolvency landscape. Sections 234 and 235[33] demonstrate an understanding of international concerns; a gap created by the absence of enabling regulations, helpful guidelines, and mutual legal agreements exists. Due to this, Indian courts and practitioners often 'reinvent the wheel' for each case, which leads to variable results, unnecessary delays, and a loss of confidence on the part of creditors and investors.

Legislative Gap: The absence of an explicit chapter in the IBC dealing with cross-border insolvency and specifically making it conform to the UNCITRAL Model Law[34] is the primary legal lacuna. The absence of regulations defining recognition of international procedures, definite criteria for evaluating COMI, foreign claim admission plans, and foreign agents' obligations is one major limitation. Although group insolvency procedures are important to manage problems in complex, multistate companies, they are not recognised by law in most jurisdictions. The ultimate result is a climate that is rampant with uncertainty, susceptible to value leakage and forum-shopping, and utterly unable to manage the complexity of doing business globally. In addition, judicial freedom of interpretation under the IBC stimulates creative thinking of the judges, but also risks inconsistency and ambiguity since each court effectively devises sui generis solutions where there is no enforceable statute or precedents[35]. Consequently, there is a pressing demand for strong, unequivocal laws to satisfy foreign investors' expectations as well as achieve legal certainty.

[33] Insolvency and Bankruptcy Code 2016, ss 234-235
[34] UNCITRAL Model Law on Cross-Border Insolvency 1997
[35] Goswami (n 9)

Institutional Gaps: Despite the introduction of legal reform, ingrained institutional defects will have to be addressed for the cross-border insolvency process of India to succeed. Indian tribunals and courts generally do not possess the administrative or technological means needed to deal with complex cross-border operations, and they have minimal experience in dealing with international insolvency matters[36]. There are a few specialised benches or cross-border panels that are trained in foreign legal frameworks, electronic exchanges, or international procedural habits. While the number of insolvency professionals (IPs) is on the rise, they are still not equipped with global exposure and specialised training to deal with overseas advisers or courts on par. Technology is still behind when it comes to virtual hearings, global transmission of documents, and secure online portals for case files. Moreover, weak bilateral or multilateral working groups in government ministries and regulatory agencies limit proactive action within harmonised policies. Without a massive investment in infrastructure, human capital, and institutional memory, such institutional barriers create a fertile ground for legislative loopholes to flourish, even making the best-worded legislation ineffective. Long-term capacity-building, strategic long-term investment in resources, and a cultural shift for the judiciary and administrative authorities towards an international mindset will be needed for forward momentum.

IMPLEMENTATION STRATEGY & ROADMAP

The establishment of a strong, integrated cross-border insolvency system in India needs a credible, step-by-step approach from diagnosis to resolution[37]. Rollout of the process should reconcile investment in long-term capacity with urgency to achieve quick outcomes. Experiences across the globe illustrate that process, procedural, and capacity reforms are not mutually exclusive from a single piece of legislation. Process needs to be top-down with the state and judiciary taking the lead, as well as bottom-up through expertise, knowledge, regulated industries, and digital entrepreneurs. Inserting Draft Part-Z or a similar chapter on cross-border insolvency into the IBC to enable recognition procedures, relief, and rights of foreign representatives is priority number one in the immediate future.

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[36] Kurpad (n 24)

[37] Ravi Madupalli and Dr/ Ch. Lakshmana Rao, 'The IBC Amendments to Usher in the Cross-Border Insolvency Resolution' (2019) 23(1) International Journal of Psychosocial Rehabilitation <https://doi.org/10.61841/rqfx5e74> accessed 05 September 2025

Short-Term Actions: Inserting Draft Part-Z or a similar chapter on cross-border insolvency into the IBC to enable recognition procedures, relief, and rights of foreign representatives is priority number one in the immediate future. Aside from this, temporary rules or guidelines must be published stating what insolvency professionals and courts can do in the short term before full operationalisation. Rapid, nimble e-services for simple case management, such as web-based creditor sessions, safe document exchange platforms, and cross-border claim e-filing, must also be invested in immediately. Institutionalisation of familiarity can be launched through judicial and intellectual property workshop sessions organised in cooperation with Model Law jurisdictions or international specialists. Further, as a precursor to countrywide implementation, pilot fast-track schemes may be initiated in India's commercial hubs to test procedural improvement and provide space for course correction and refinement to India's specific environment.

Medium-Term Measures/Reforms: To complement short-term actions, medium-term reforms must tackle the development of a national accreditation framework for mediators and cross-border insolvency specialists, harmonisation of periodic norms in managing foreign courts, and enhancing digital infrastructure[38]. India must specifically negotiate the mutual acceptance and enforcement of insolvency orders in bilateral or multilateral Memorandums of Understanding (MoU) with key trading partners such as the US, UK, Singapore, the EU, and Middle Eastern economies. Group insolvency frameworks have to be put in place so that large Indian conglomerates or business groups will be able to deal with distress in an integrated fashion, without fragmentation and unnecessary litigation. Regular training programs, exchange visits, and joint judicial seminars will ensure operational competence and mutual understanding with foreign partners. In order to facilitate cross-border real-time monitoring and intervention, efficient regulatory reporting and data-sharing processes, for example, access to overseas insolvency registers and tracking of digital assets, need to be established.

Long-Term Vision: India's long-term vision should be to lead the region and the globe in the management of cross-border insolvency[39]. Creating a learning culture, benchmarking against international best practice, and creating an environment in which judges, practitioners,

[38] Hannan (n 32)
[39] Sethia (n 7)

regulators, and politicians can freely converse beyond national boundaries are all required in order to accomplish this. A national insolvency excellence centre that has a focus on research, data analysis, technological innovation, and ongoing professional training in international insolvency practice should be sponsored. To attract elaborate cross-border cases, talent in law, and overseas investment, India should position itself as a model jurisdiction for Asia's multinational restructurings.[40] In order to maintain India's nimbleness and responsiveness in a fast-changing business environment, the system needs to have a system of routine legislative review that is based on practical feedback from cases and evolving international norms. Better creditor outcomes, timely and fair resolution of international disputes, and increased international confidence in India's judicial system will ultimately be employed to measure success.[41]

STAKEHOLDER PERSPECTIVES

Without giving due consideration to the perspectives of all stakeholders, no reform effort can be regarded as being credible or sustainable. Due to its direct bearing on a large number of complex stakeholders such as companies, banks, regulators, practitioners, staff, and most critically, overseas investors, the subject matter of cross-border insolvency is extremely sensitive. While deep involvement enhances legitimacy and practical effectiveness, disregard for their concerns risks practical uselessness and capture by regulators.

Industry View: Executives are aggravated by the slowing down of operations, sceptical recognition and enforcement of foreign judgments, debilitation in foreign asset access, and the bureaucratic slowdown that accompanies having to contend with fractured rules and procedures. They discourage foreign investment, increase the cost of borrowing for Indian businesses, and may risk making a viable turnaround into a catastrophe of asset loss. Since precedents of successful US or Singapore cross-border reorganisations are precluded by the present Indian law, most industry players have actually advocated for changes that are compliant with the Model Law.[42] Everyone agrees that digital presence infrastructure, courtroom flexibility, and speed are as important as the legislation itself. In order to ensure

[40] Misra (n 6)
[41] DP Sengupta, 'Judicial Systems and International Tax Disputes: The View from India' in Pasquale Pistone and Jan JP de Goede (eds), *Flexible Multi-Tier Dispute Resolution in International Tax Disputes* (IBFD 2021)
[42] Jingchen Xu, 'Cross-Border Insolvency: Theoretical Divergence and Its Status Quo' in Jingchen Xu (ed), *Maritime Cross-Border Insolvency under the UNCITRAL Model Law Regime* (Bloomsbury Publishing 2020)

that any globalisation of the law does not undermine national policy interests or sovereignty, companies concurrently seek to protect Indian assets.

Regulatory Perspectives: Regulators such as the judiciary, RBI, and IBBI believe reform is needed for macroeconomic stability and harmonisation of the law. Pending resolution of cross-border claims can harm diplomatic relations if poorly handled, compromise the stability of the financial system, and inhibit foreign commercial borrowing. Regulators caution that embracing openness must be followed by stern due diligence; bilateral agreements need to be robust enough to act as a buffer against willful abuse by debtors or shell companies that forum shop.[43] The second regulatory issue is transition: the Indian system would be overwhelmed by new Model Law rules if they were not phased in and backed by underlying capacity-building. This would impact courts, practitioners, and creditors. Regulators believe that a system in accordance with the Model Law will ultimately make India an attractive destination to invest, especially if joined with firm institutional transformation and regional guidance. They always stress phased implementation, strong international engagement, and outcome-based tracking.

RECOMMENDATIONS

India needs to adopt a comprehensive and radical revamp of its cross-border insolvency framework. Legally embracing an integrated Model Law-conforming amendment (like Draft Part-Z) with publicly transparent public policy exceptions, and open recognition, relief, group insolvency, and foreign representative rights is the first step towards safeguarding national interests. Apart from investment in ICT infrastructure that enables secure document transfer, hassle-free e-filing, and virtual hearings, there should be a robust capacity-building program for judges, insolvency practitioners, and regulatory officers with the best global practices. Standards will be enhanced structurally and fragmentation averted by establishing model cross-border case management procedures, regular stakeholder meetings, and a new certification regime for cross-border insolvency practitioners.

To ensure international enforcement and recognition, India needs to seek bilateral and multilateral agreements. It needs to focus not merely on its leading trading partners and

[43] Chongxu Shan, 'Safeguarding Human Rights against Multinational Enterprises' Abuse: The Necessity of Mandatory Due Diligence Regulations' (2023) 16 Highlights in Business, Economics and Management 305 <https://doi.org/10.54097/hbem.v16i.10581> accessed 05 September 2025

capital markets, but also on its regional neighbours, where Indian businesses have growing interests.[44] A law with periodic sunset and review provisions will facilitate ongoing improvement and prevent outdated or inefficient practices from becoming entrenched. Moreover, the state needs to implement incentives for business involvement and experiment with new systems such as pre-pack insolvency arrangements and digital asset tracking.[45]

In summary, successful action founded on true evidence, international best practices, and continuing stakeholder feedback will be called upon to succeed in the legislative, executive, judicial, and educational spheres. The payback is substantial: a dynamic, stable, and anticipated framework for cross-border insolvency that fosters faster, more balanced resolutions, enhances economic stability, and positions India as a world-class destination for global investment and trade in an era of rapid globalisation.

ECONOMIC IMPACT & BENEFITS

India's reputation and economy would be revolutionised by a modernised cross-border insolvency process that is modernized. Costs of transactions and legal uncertainty are likely to reduce investor confidence, foreign direct investment, and the availability of cross-border loans. Rather than piecemeal liquidation, debtors can maximise value retained through coordinated recovery of assets and group restructuring facilitated by effective and predictable processes. Reduced litigation, accelerated claims determination, and reduced write-off rates would all benefit creditors. With decreasing systemic resolution risk, the macroeconomic impact would include better sovereign credit ratings and a more stable banking system.

The cost and administrative burden of digital transformation, ensuring a smooth legislative transition, bargains of successful international treaties, and safeguarding against any abuse (such as asset flight or forum shopping) are all concerns yet to be addressed.[46] With these

[44] Christoph Herrmann, 'Bilateral and Regional Trade Agreements as a Challenge to the Multilateral Trading System' (2014) EUI LAW Working Paper No 2008/9 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1119273> accessed 05 September 2025

[45] Miguel García-Posada, 'Analysis of Insolvency Proceedings in Spain against the Backdrop of the COVID-19 Crisis: Insolvency Proceedings, Pre-Insolvency Arrangements and the Insolvency Moratorium' (2020) Banco de Espana Occasional Paper No 2029 <https://ssrn.com/abstract=3729965> accessed 05 September 2025

[46] Fagbenle Emmanuel et al., 'Reducing Administrative Burden in Primary Care through Intelligent Workflow Automation: A Case for Scalable Digital Transformation' (2024) 1(7) International Journal of Science, Architecture, Technology and Environment 164 <https://ijsate.com/wp-content/uploads/2025/08/V1I7P12_IJSATE0324087.pdf> accessed 05 September 2025

concerns in mind, direct cooperation between the government, judiciary, and business will be needed from time to time, as will ongoing policy rebalancing, transparent impact assessments, and active feedback mechanisms. Ultimately, the benefits of the reform will far outweigh the costs and enable India's insolvency regime to facilitate financial stability and economic development instead of hindering it.

ANALYSIS AND CONCLUSION

By successfully integrating doctrinal analysis, judicial experience, international comparison, and legislative possibilities, the research paper presents a comprehensive and amazingly elaborate examination of India's regime of cross-border insolvency. The central point of the article, and the one that we have best comprehended, is that India stands at a juncture in its history, and the conventional, domestically oriented regime of insolvency is unable to respond to the needs of a more globalised economy and the internationalisation of business and credit.

Judging from the article and bolstered by corporate case law of Jet Airways and Maxwell, the existing Indian legal framework is not capable of sustaining global best practices. Sections 234 and 235 authorise co-operation with other states; however, these provisions are de facto ineffective without official reciprocal agreements and extensive procedural guidelines. While Indian courts have shown remarkable judicial ingenuity in developing case-by-case procedures to deal with cross-border insolvencies, this is not a viable long-term solution. At least in more complex or contentious insolvencies, judicial ad hocism is intrinsically fragile, indeterminate, and reliant on cooperation and goodwill that cannot always be expected to prevail.[47] The argument is forcefully presented that the sole realistic means of ensuring uniform, reliable recognition of foreign procedures, effective enforcement of cross-border insolvency orders, and equitable treatment of all creditors irrespective of jurisdiction is codified, all-inclusive legislation.

Substantial and impressive international precedent is given by the article's masterful incorporation of the Maxwell Communication case. It is an illustration of how complex

[47] Leila Hosseini et al., 'When is More Merrier? A Cloud-Based Architecture to Procure Impressions from Multiple Ad-Exchanges' (2022) SSRN <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3365376> accessed 05 September 2025

transnational insolvencies call for harmonised judicial and administrative remedies that balance international cooperation and national sovereignty. The Maxwell Protocol illustrated how legal systems of numerous jurisdictions could coordinate creditor involvement, sort out choice of law disputes, and cooperatively maximise estate value. The objectives of India's legislative reform efforts are defined in this case: a clear mechanism for recognition, organised protocols, and procedural synchronisation that are strong enough to operate even in cross-border insolvencies with complex legal and business arrangements.

The paper presents a significant gap that India must fill by comparing its regime with those of the US, UK, EU, and Singapore. With codified acknowledgement of international processes, automatic moratoriums, and procedural safeguards for foreign representatives, these jurisdictions have adopted the UNCITRAL Model Law in some form, creating effective, fair, and transparent insolvency resolution. While India's Draft Part-Z envisions such an intention, it has not yet evolved from a plan to a reality of operation. India continues to labour to make judicial training, technical upgradation, and treaty-making to serve its cross-border insolvency objectives, unlike better-grounded regimes with firmer institutional foundations.

It is clear from the above sources that future insolvency legislation in India must be bold, comprehensive, and as focused on implementation as on law drafting. Developing expert benches with cross-border skills, investing in digital infrastructure for open case management across borders, and giving judges and insolvency professionals complete training to familiarise them with global insolvency standards and technologies are all essential, as is passing Draft Part-Z at the earliest and in depth. To ensure mutual recognition and enforcement, India has to pursue bilateral and multilateral agreements aggressively. This would encourage international goodwill and legal certainty, which will enhance investor confidence. To manage the complexity of more common global company arrangements, the law should also deal with enterprise group insolvency.

We have given a positive but realistic scenario, drawing from the research paper and the current state of legislation. India is likely to pass and begin applying a more robust cross-border insolvency law in the coming years that is closer to the UNCITRAL Model Law and international best practices. Its success hinges on sustained stakeholder engagement, institutional reforms now underway, and sufficient finance for infrastructure and capacity building. If these challenges are addressed, India has the potential to become a pioneer in

regional insolvency law, which would enhance domestic financial stability as well as global economic integration.

In conclusion, the research paper is a scholarly, incisive explanation and a deliberate call to action. It highlights the significance of international insolvency law in modern business justice and economic development. The acquired knowledge from legislative efforts, similar regimes, and judicial decisions clarifies the complexity of the problem and the feasibility of proposed solutions. In order to go beyond cosmetic reforms, India must establish a comprehensive, operational, and internationally acceptable insolvency process. Through this, India will establish itself as a trustworthy, efficient, and respectable stage for the settlement of bankruptcy problems in a worldwide market.