International Research Journal of Multidisciplinary Scope (IRJMS), 2026;7(3):1696-1718

Review Article | ISSN (O): 2582-631X DOI: 10.47857/irjms.2026.v07i03.012698

The Indian Approach to Cross-border Insolvency Under the IBC: A Critical Legal Analysis

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Abstract

The developing insolvency regime in India with the foundation of the Insolvency and Bankruptcy Code (IBC), 2016, has had an enormous impact on the domestic corporate rescue and liquidation procedures. Nonetheless, it is still in the developmental stage of its cross-border insolvency (CBI) strategy. As the economy becomes increasingly globalized, corporate entities are often subject to a situation of complicated insolvency, complete with foreign creditors, assets and proceedings. The paper is a critical analysis of the current legal provisions on CBI in India, particularly of Section 234 and 235 of the IBC which are based on bilateral agreements and letters of request, thereby restricting its practical application. With this background, this paper evaluates the proposed adoption of the UNCITRAL Model Law (UML) on CBI in India and how the proposed adoption will assist in aligning the domestic law with the global best practices. It also investigates the trend of the judiciary in its interpretation and the loopholes that are still present. Among the key challenges identified in the study include institutional coordination, jurisdiction and lack of a full statutory framework. This paper posits that India needs to implement more organized and internationally oriented insolvency regime to make the system efficient, predictable and to make investors confident. It ends with the suggestions of the legislative reform pointing to the necessity of the formal inclusion of the Model Law (ML) and enhancement of the mechanisms of cooperation across the borders.

Keywords: Corporate Insolvency Resolution Process, Cross-border Insolvency, Insolvency and Bankruptcy Code 2016, International Insolvency Law, UNCITRAL Model Law.

Introduction

The high rate of globalization has altered the framework and operation of contemporary business in essence. Corporations now have operations in diverse jurisdiction, old assets in various countries and interact with creditors and stakeholders spread in various parts of the world. This inter-related business environment has contributed to an inescapable increase in multifaceted insolvency matters that cut across borders. The conventional systems of insolvency, which were mainly aimed at serving the needs of domestic financial distress, usually fail to assist when it comes to multinational enterprises (1).

CBI occurs when a debtor is in more than one jurisdiction or has a debt or assets, or even a business operation. In these situations, one country can initiate insolvency proceedings, which can have legal, financial and operational consequences in another country. The absence of an integrated global insolvency regime poses a variety of challenges that confront the problem of conflicting jurisdiction and courts and unpredictability of foreign proceedings recognition (2). It has also been facilitated by the fact that there is an increasing need for a coherent legal mechanism to address CBI due to the use of multinational corporate groups, foreign direct investment and global credit markets. Insolvency is no longer a local problem, but it is a transnational legal problem that needs to be solved with harmonized legal frameworks. Countries in the international system are increasingly becoming conscious of the fact that effective resolution of cross-border insolvency is vital in the establishment of financial security, protection of the interests of creditors and fiscal advancement (3).

Theory and Law of CBI

Cross-border insolvency is not merely a procedural matter but a legal one which

(Received 02nd May 2026; Accepted 15th July 2026; Published 27th July 2026)

incorporates a few jurisdictions, conflict of laws and cross-border cooperation. It generally takes place in three main ways,

(a) a foreign creditor wants to be involved in domestic insolvency,
(b) a debtor has assets in two or more countries and
(c) parallel insolvency is initiated in two or more jurisdictions.

This is because it has legal complexity owing to the various insolvency laws in different countries. Every jurisdiction can have its regulations on priority of claims, foreign judgment recognition and management of the debtor's assets. The outcome of such a divergence is typically inconsistency, forum shopping and inefficient allocation of assets. One such example is that one nation may have more emphasis on secured creditors, the other on fairness to all stakeholders thus leading to potential transborder conflicts (4).

In a move to evade such dilemmas, the international law systems have been established to improve cooperation and coordination of national courts. The most remarkable of them is the UML on CBI that provides a standardized approach to recognition of foreign insolvency proceedings (FIP), access by foreign representatives to domestic courts and co-ordination of parallel proceedings. The Model Law is not a binding treaty but has been adopted by various jurisdictions such as the US, UK and Singapore, thus making the insolvency regime much more predictable and efficient (5).

The Indian context currently has few provisions in CBI under the IBC 2016, namely, under the Sections 234 and 235. These provisions enable the Central Government to enter into bilateral agreements with other countries and allow Indian courts to issue letters of request to foreign courts. Nonetheless, the lack of a broad and statutory framework restricts their practical implementation, thus necessitating immediate reforms (6).

Relevant Literature and Scholarly Discussions on Cross-border Insolvency

Global Academic perspectives on Cross-Border Insolvency

In today's globalized world of businesses, trade and investment, cross-border insolvency has become one of the most widely discussed fields in international commercial law. In the academic /literature, there has always been a recognition of the shortcomings of domestic insolvency procedures in dealing with financial failures of MNEs. Early scholars in the past study noted that the "old" regimes of insolvency were created to deal with domestic insolvency and were therefore not well-suited to dealing with situations involving assets, creditors and proceedings that are located across jurisdictions. With the growing volume of international business transactions, conflicts about jurisdiction, recognition of foreign judgments and the enforcement of insolvency orders and the distribution of assets increased (7).

Previous research has identified several persistent problems that have been identified in cross-border insolvency proceedings. These include multiple jurisdictions, which may be by different courts, different treatment of creditors, duplication of proceedings and higher administrative costs. The fragmentation of the insolvency process often leads to reduced value of the debtor's assets due to multiple jurisdictions of competing claims. Earlier scholarship has therefore emphasized the importance of coordinated management of multinational insolvencies to maximize asset value, preserve business continuity and achieve more effective outcomes for creditors (8).

Furthermore, research has highlighted that globalization has brought about a change in the insolvency from a domestic legal problem to an international regulatory problem. It has been argued that effective successful cross-border insolvency regimes are vital to foreign financial markets stability. However, the lack of coordinated insolvency procedures may lead to a loss of creditor confidence and hinder foreign investment (9).

The recent research has also looked at the economic aspects of insolvency law. Efficient insolvency systems have related to economic growth and credit availability and foreign investment has become more closely linked in recent years. Predictable insolvency procedures are well-established as a factor that fosters financial stability and promotes trade with foreign parties by the World Bank and international financial institutions. This has led to a shift in academic discourse from legal issues alone to include economic, institutional and policy aspects.

While there is widespread consensus that international cooperation is necessary, there is not agreement on the best way to create such cooperation. The controversy that ensued has resulted in the creation of a few competing theoretical models, the most notable being universalism and territorialism and modified universalism. The debate on insolvency reform in the modern era is still influenced by these contending theories.

UNCITRAL Model Law: Scholarly Support and Criticism

Adopted in 1997, the UNCITRAL Model Law on Cross-Border Insolvency is the most influential international initiative towards harmonizing insolvency cooperation between states. Model Law has been implemented in over 50 jurisdictions and is considered as the fundamental of the contemporary cross-border insolvency practice (9).

Previous research has expressed substantial support for the Model Law, describing it as pragmatic compromise different theories of insolvency regulation. It does not seek to create a single global insolvency code but rather gives us a structure that allows us to work together, while maintaining national sovereignty. One of the major reasons for its success is certainly this versatility (9).

Past research has argued that the UNCITRAL Model Law on Cross-Border Insolvency has significantly improved the level of legal certainty in this area, by defining uniform rules for foreign proceedings to be recognized and for the giving of mutual assistance between courts. Studies have further suggested that the Model Law increases efficiency in the transactions and decreases the likelihood of conflicts between domestic and foreign insolvency courts (10).

Some of the other scholars have stressed the utility aspects of the Model Law. These features include direct access to domestic courts for foreign representatives and the automatic granting of relief in recognition of foreign main proceedings and cooperation between courts and insolvency practitioners. Such mechanisms will help to shorten the delays and increase the efficiency of managing multinational insolvencies (9).

However, there is still some criticism within academia of the Model Law. Critics say that it is too vague and open to interpretation and therefore may yield inconsistent results in different jurisdictions. The notion of the Centre of Main Interests (COMI) is a key element of the Model Law and has sparked many debates. There is no uniformity in the approach taken by the various courts to deciding COMI, which creates uncertainty and possibilities for forum shopping. Studies have observed that courts in different jurisdictions have adopted divergent approaches to determining COMI, creating legal uncertainty and increasing the potential for forum shopping. These concerns have led some commentators to question whether the current framework provides sufficient predictability and consistency in cross-border insolvency administration (9).

Another criticism is related to the public policy exception. According to scholars, the exception is of importance because it gives domestic courts the power to deny recognition of an overseas proceeding if it would go against the fundamental national policies. The public policy exception must be invoked when it is required to defend sovereignty, but it can also become overused, with negative repercussions for international cooperation and the lack of predictability (10).

In addition, some commentators have said that the Model Law doesn't properly address conflicts that can occur due to different substantive insolvency laws. Cooperation in proceedings is enhanced but differences in priorities of creditors and in restructuring structures and regulatory goals persist. The Model Law, therefore, is seen by many to be a relevant but less than satisfactory answer to the problems of cross-border insolvency.

Universalism, Territorialism and Modified Universalism: Competing Theoretical Approaches

The concept of cross-border insolvency law can be seen basically in relation to the debate between universalism and territorialism. These theories are radically divergent ideas about the distribution of power in multi-national insolvency and the allocation of decision-making power within it.

The concept of universalism is to have one global insolvency procedure in the debtor's main jurisdiction. This is where one court has jurisdiction over all the assets and liabilities, no matter where they are found. Those who believe in universalism say that it brings efficiency, consistency and fairness to the system, which would otherwise have duplicative proceedings and would treat all creditors equally (10).

Universalists argue for a single insolvency regime for MNE, as they see the MNE as an economic whole and thus should be treated as such. They argue that the split proceedings lead to greater administrative costs, less recoveries and strategic playing by creditors. From this perspective, a centralized proceeding is the one that maximizes asset value and will help to achieve a successful restructuring (9).

The view of territorialism is the opposite. Territorialists believe that assets within the borders of states should be solely under their jurisdiction that is within the state's territory. They highlight national sovereignty, protection and autonomy of creditors and regulatory autonomy at local level. Studies supporting territorialism have argued that significant differences among national legal systems make the implementation of a truly global insolvency regime difficult to achieve in practice. It has further been suggested that excessive reliance on a Universalist framework may produce inequitable outcomes and fail to adequately protect legitimate domestic interests (10).

Territorialist's scholars claim that domestic courts have better value to serve local stakeholders and uphold national public policies. They warn of the danger that a lack of accountability will be created if too much weight is given to foreign proceedings and legitimate domestic interests will be compromised (10).

Both views have their own drawbacks and have been endorsed by many modern scholars in favor of a modified universalism. This theory aims to reconcile cooperation between the nations and autonomy within each nation. As a rule, courts accept and assist in foreign proceedings, while at the same time having the power to safeguard local interests if needed (7).

The concept of modified universalism today has emerged as the prevailing academic approach and is the conceptual foundation of the UNCITRAL Model Law. It acknowledges a realistic view that there can be no universalism without territorialism and territorialism without economic efficiency. This new universalism has had a definite impact on judicial practice in countries like the United Kingdom, Singapore, Australia and the United States.

Cooperation between Judges and Cross-border Insolvency Procedures

International cooperation has emerged as a central topic of the cross-border insolvency field of scholarship. There are often multiple courts, multiple insolvency practitioners and multiple regulatory authorities involved in modern insolvency cases and which need to be coordinated across. The literature of the academy has acknowledged the need for effective cooperation to maintain asset values and for efficient administration (11).

The cross-border insolvency procedures are new tools that have been developed to promote cooperation. These protocols create sharing of information, coordinated decision-making and/or joint hearings between courts. Such protocols have been well received by scholars for minimizing duplication of procedures and increasing uniformity (11). There are a few landmark insolvency cases which are often referred to for academic analysis. The failures of Nortel Networks, Lehman Brothers and Maxwell Communications highlighted the problems and advantages of trans-border judicial cooperation. Coordination of judicial responses were found to have a positive impact on increasing efficiency and decreasing conflict among stakeholders in these cases.

But there have also been concerns about judicial cooperation. Others have suggested that there can be transparency and accountability concerns with informal communication between courts. Others worry that too much discretion by the judges will prejudice procedural fairness. In view of this, many academics have called for legislation that makes it more precise what the scope and limits of judicial cooperation are (9).

The UNCITRAL Judicial Insolvency Network Guidelines are an important step in this respect. These guidelines not only promote collaborative interactions between courts but also maintain the independence of the judges and ensure that procedures are followed. The cross-border insolvency initiatives are broadly accepted by academia as a necessary part of an efficient cross-border insolvency mechanism.

Indian Academic Literature and Reform Debates

The concept of cross-border insolvency has grown in extent in India since the advent of the Insolvency and Bankruptcy Code, 2016. While most scholars believe that IBC brought a revolution in the process of domestic insolvency resolution, it has been a less developed process in terms of cross-border provisions (12).

The debates of academics have been largely directed at Sections 234 and 235 of the IBC. There is a debate about the use of bilateral agreements and letters of request and whether this approach is still in line with the current commercial climate that has led to a shift in emphasis on territoriality. A lack of recognition tools for foreign proceedings is among the big problems identified (12).

The existing system in India instills uncertainty in foreign investments and multinational companies. Disorganized working relationships could deter foreign investment and make international restructuring more difficult, they say. The notion of the cross-border insolvency in a global economy has been discussed by several Indian researchers, who point to a growing significance of cross-border insolvency (13).

The Insolvency Law Committee's recommendations have been much supported by scholars. Most of the scholars are in favor of the proposed adoption of the UNCITRAL Model Law, which they deem to be the most pragmatic answer to the problems of insolvency in cross-border scenario in India. But there is debate on the following implementation issues (12).

There's one big issue that has people split on the issue of reciprocity requirements. Reciprocity has been defended by some scholars as a way of safeguarding the national interests and guarantees cooperation. Others have suggested that reciprocity might be an unhelpful limitation on recognition and lessen the efficacy of the proposed scheme (10).

There has been much debate over the extent of the public policy exception, too. There is a consensus among scholars that there is a need for protection of domestic interests but they express caution with giving too much discretion to the courts. Exceptions to the general policy may have a negative impact on predictability and on the acceptance of international cooperation (10).

The overall picture in the literature is that India needs a comprehensive framework in insolvency with a global convergence. Most modern scholarship is in favor of a somewhat modified Universalist view, based on the Model Law drafted by UNCITRAL, plus well-thought-out protections for domestic interests. This is considered as crucial for bringing India's insolvency regime in sync with the international best practices and improving India's competitiveness in the international investment landscape (9).

The law of cross-border insolvency is highly affected by two conflicting schools of thought: universalism and territoriality. These theories give the conceptual basis of the manner of how insolvency proceedings ought to be carried out in a global context. The universalistic approach promotes one, central IP that regulates all the assets and liabilities of the debtor on a global basis. According to this model, the Centre of the main interests (COMI) of the debtor becomes the primary jurisdiction and its judgments are accepted and enforced in the other jurisdictions. Spectrum enhances efficiency, minimization of duplication of proceedings and equity in distribution of assets. It also promotes predictability and minimizes the chances of conflicting judgments (14).

The territorial approach, on the contrary, underlines the sovereignty of individual states and permits each jurisdiction to manage the assets within its territory on its own. With this model, several parallel procedures can be held in various countries, with each being subject to the local laws. As much as territoriality aims at respecting national sovereignty, it tends to cause fragmentation, high costs and varied results (3).

In practice, a modified Universalist approach, aimed at finding a compromise between international coordination and national law, is used by most countries. Such a hybrid solution was adopted by the UML which combines the recognition of FIP and the right to local courts to safeguard local interests. The existing framework used in India however is more territorial in nature because it does not have any automatic recognition mechanisms or is based on bilateral agreements (7).

Indian Judicial Developments and Trends

Judicial innovation and flexibility of interpretation have helped Indian courts to complexities of CBI. The most notable case in this regard is that Jet Airways (India) Ltd. v. State Bank of India the parallel insolvency was instituted in both India and Netherlands. The National Company Law Tribunal (NCLT) took a pragmatic stance by ensuring that the Indian resolution professional and the Dutch administrator worked together, thus it was a move towards modified universalism. The case also underscored the eagerness of the Indian judiciary to address international principles of insolvency even though there was no formal law. It also highlighted the significance of judicial cooperation and communication in solving cross-border disputes. Nevertheless, these case-specific solutions cannot replace a large-scale legislative framework (13).

According to recent developments in policy, there is increasingly a realization of this gap. The Insolvency Law Committee (ILC) has proposed the adoption of the UML with some amendments to fit in the Indian economic and legal environment. The latest framework is proposed to bring in the ideas of recognition of FIP, accessibility of foreign representatives and coordination amongst the domestic and foreign courts (15).

Requirement of a Future Ready and Harmonized Insolvency System

The growing nature of international business demands a strong and unified strategy towards cross-border insolvency. The stakes are especially high in the case of India since this country is increasingly integrated into the global economy and its economic goal is to be a great investment destination. A good cross-border insolvency regime is necessary to increase investor confidence, minimize systemic risks and promptly resolve distressed assets. The existing system within the IBC, though transformative in the local scene, is still weak in cross-border issues. The dependency on bilateral agreements is lengthy and narrow-minded. In addition, lack of clear regulations on the recognition and enforcement of FIP brings about uncertainty and disappointment in foreign investment (16).

By following a globally recognized model like the UNCITRAL Model Law, India would not only be brought to the global best practices, but it also would offer an organised method of cooperation and coordination. It will allow Indian courts to successfully address multinational cases of insolvency and treat all interested parties fairly (9).

Legal Framework as Provided Under IBC, 2016

The adoption of IBC, 2016 (IBC) was a turning point in the economic and legal life of India. Before its inception, the insolvency regime of India was divided into various acts, including Companies Act (CA), 1956, Sick Industrial Companies Special Provisions) (SICS) Act, 1985 and the Recovery of Debts Due to Banks and Financial Institutions Act (RDDBFI), 1993. These laws were frequently criticized as ineffective, taking long to adjudicate and poor coordination among adjudicating authorities. The IBC was able to conform and harmonize these fragmented legal systems into a single code that would guarantee a time-limited resolution of insolvency (15).

The Code also aims to facilitate entrepreneurship and access to credit and ease of doing business via a predictable and efficient insolvency regime. The other important aspect of the IBC is that it does not focus on liquidation but resolution. The Code focuses on recovery of the corporate debtor by way of restructuring plans, thus saving economic value and jobs. This is in accordance with global best practices and it is an indication of a transition to rehabilitative insolvency regimes as opposed to punitive ones. Nevertheless, the domestic system is strong, but the cross-border aspect is poorly developed, which is a severe issue in the presence of the globalization of business processes (3).

Table 1: Legal Framework Within the IBC, 2016

Component	Function
CIRP	Time-bound insolvency resolution
NCLT/NCLAT	Adjudicating authorities
IBBI	Regulatory oversight
CoC	Decision-making body
Moratorium	Protection of debtor's assets

Note: CIRP= Corporate Insolvency Resolution Process, NCLT/NCLAT= National Company Law Tribunal / national Company Law Appellate Tribunal, IBBI= Insolvency and Bankruptcy Board of India, CoC= Certificate of Compliance.

The main institutional and procedural elements of the Insolvency and Bankruptcy Code (IBC), 2016) are shown in Table 1 together with their corresponding roles in the process of resolving insolvency. While the NCLT/NCLAT, IBBI and Committee of Creditors (CoC) offer adjudication, regulatory oversight and decision-making assistance, the Corporate Insolvency Resolution

Process (CIRP) guarantees that insolvency cases are settled within the allotted period. Additionally, by temporarily limiting legal measures and recovery procedures against the debtor, the moratorium safeguards the debtor's assets throughout the settlement period.

Institutional Organization and Adjudicatory Process

The IBC has a thorough institutional structure to ease insolvency resolution. The adjudicating authorities, regulatory bodies, as well as insolvency professionals are at the heart of this framework and overseeing the successful implementation of the Code. NCLT is the main adjudicating body of case which relates to corporate insolvency with the appeal before NCLAT and the Supreme Court (SC) of India. The tribunals are critical in admitting insolvency applications, authorizing resolution plans and managing liquidation processes. Their professional jurisdiction is conducive to rapidity in handling the insolvency cases even though some of the problems such as backlog and delays in the process still exist (6). Insolvency and Bankruptcy Board of India (IBBI) is the regulator governing insolvency professionals, information utilities and agency of insolvency professionals. It develops regulations, oversees their adherence and promotes transparency and accountability in the insolvency system.

The IBC is highly dependent on insolvency professionals (IPs). They have the responsibility of overseeing affairs of the corporate debtor in the IP, holding meetings of the Committee of Creditors (CoC) and helping in the preparation and execution of resolution plans. (5).

Despite this institutionalized system of cross-border coordination of insolvency, there is a major gap in specialized mechanisms. The current statutory provisions used in adjudicating cases by Indian adjudicating authorities do not specifically cover the aspect of foreign proceedings, thus the tendency to make use of judicial discretion and ad hoc solutions (4).

Role of NCLT and NCLAT in Respect of Cross-border Insolvency and its Institutional Competency

The National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) are main adjudicating bodies under the Insolvency and Bankruptcy Code, 2016. The bodies have contributed to enhancing the process of domestic insolvency resolution but their ability to handle cross-border insolvency disputes is a developing concern (12).

The NCLT has the jurisdiction to admit applications, approve resolution plans, supervise liquidation proceedings, as well as to resolve disputes in relation to IBC. Its decisions are subject to appellate review by the NCLAT which helps to keep insolvency jurisprudence uniform and consistent. These institutions are the first point of contact for the interpretation of the statutory provisions, for the identification of foreign elements in cross-border insolvency proceedings and for judicial cooperation in the context of cross-border insolvencies (13).

The multi-national insolvency disputes. The Tribunal successfully implemented the principles of The Jet Airways insolvency proceedings showed the willingness of NCLT to take up a new way of resolving comity and adapted universalism which rests on the cooperation between the two insolvency administrators from the Indian and the Dutch countries, without having in place a comprehensive statutory framework. The case underscored the judiciary's ability to assist in international cooperation, where needed (13).

A number of institutional barriers, however, still exist. The NCLT benches are still under immense load, causing delays in the proceedings which can impact on the resolution of cross-border issues in a timely fashion. Moreover, the courts do not have dedicated courts for international insolvency disputes, which hampers the expertise in this specialist field of law. These cases tend to be ones of multi-jurisdictional nature that involve issues of foreign proceedings, international asset recovery, recognition principles and conflict of laws, all of which call for expertise in the judicial system (12).

The draft UNCITRAL Model Law would considerably increase the work of the NCLT and NCLAT. Such institutions would have to identify the Centre of Main Interests (COMI), recognize foreign main and non-main proceedings, liaise with foreign courts and deal with matters of public policy and reciprocity. To put a modern cross-border insolvency framework effectively, it will therefore be necessary to build the capacities of institutions, train the judges and establish specialized procedural guidelines (9).

Corporate Insolvency Resolution Process (CIRP): Structure and Functioning

The IBC is comprised of the CIRP. It offers a time-limited process of dealing with insolvency of corporate organizations. Financial creditors, operational creditors, or the corporate debtor can initiate the process when a default occurs. When an application is accepted by the NCLT, a moratorium is declared which means that no legal action can be taken against the corporate debtor. This will provide a peaceful time frame where assets of the debtor are retained and a solution plan may be developed (17).

The CoC, mainly the financial creditors, has an enormous influence on the insolvency process. It assesses and approves the resolution of plans on their viability and feasibility. A resolution plan should be voted out by not less than 66 percent of the CoC and only then is it presented to the NCLT where it must be finally approved. The CIRP will take 180 days to fill out, with a maximum extension of 90 days. But there are delays that occur because there is litigation, complication of cases and lack of institutional capacity (18).

The CIRP framework as it stands is extensive in dealing with domestic insolvency, but it is not very comprehensive in situations where the creditor or property is outside India or in cases of foreign creditors. The challenge of recognition of foreign claims and cooperation with foreign courts and enforcement of Indian orders offshore are issues that are not well addressed in the current framework (19).

CBI Provisions under IBC

The IBC has a few guidelines which deal with cross-border insolvency, which are mainly encompassed in the Sections 234 and 235. These sections are the first step towards addressing transnational insolvency within India, but in a limited way. Section 234 gives the power to enter into bilateral agreements with other nations in implementing provisions of the IBC. It is permissible to have mutual arrangements so that insolvency in one jurisdiction could be recognized and enforced in another. But this provision will only be effective when such agreements exist, which are at present limited (20).

This process is supposed to assist the collaboration between Indian and foreign courts. Yet, it is not so clear in terms of procedural matters and fails to ensure that foreign jurisdictions comply. These clauses are indicative of a territorial approach to cross-border insolvencies since they do not offer automatic recognition to the foreign proceedings or even allowing the foreign representatives to proceed directly to the Indian courts. They are therefore of little practical use and have been infrequently applied in practice (19). The insufficiency of these provisions has led to reform, especially by adopting the UML on CBI. This framework would provide a better structure and predictability in approach to the resolution of transnational insolvency issues (21).

Problems and the Need of Reform of the Legal System

Despite its transformative effect, the IBC has several challenges, which impede its performance especially in cross-border insolvency. Lack of a well-developed legal framework to address international insolvency cases is among the major concerns. The current provisions are not adequate to deal with the intricacies of multinational corporate structures and international financial transactions. The other significant issue is that the resolution processes are slow. Despite the rigid schedules recommended by the IBC, the judiciary can be held up by backlogs and inefficiencies in the processes, resulting in a lengthy process (13).

There has also been debate on the dominance of financial creditors in the decision-making process. Creditor control makes it efficient, but the interests of the operational creditors and other stakeholders are sometimes sidelined. Striking such a balance is one of the main issues of the insolvency framework. When dealing with CBI, lack of a system of recognition and enforcement of foreign judgments poses a source of uncertainty and restricts the usefulness of IBC. The Indian courts are usually forced to apply the principles of comity and judicial discretion thus yielding varying results (13).

The Drawbacks of Sections 234 and 235: A Critical Analysis

IBC, 2016 is a new milestone in the Indian insolvency regime; nonetheless, its CBI provisions, which are represented in Section 234 and 235, are still underdeveloped. These were put in place as tentative tools to promote international collaboration in the question of insolvency. However, under the new circumstances of an increasingly globalized business world, where the corporate entities are cross-border and have trans-national assets, the sections do not offer a comprehensive and effective legal framework (22). The fundamental weakness is that they are narrow and depend on external arrangements, which weakens the efficiency, predictability and enforceability of insolvency proceedings that involve foreign elements. The Indian approach is rather reactive and fragmented; in comparison to modern insolvency systems with systematic mechanisms of recognition and coordination, it is still in its infancy. This part critically analyses the structural, procedural and practical weaknesses of Section 234 and 235 and emphasizes that a reform is necessary (23).

Why Bilateral Agreements and Letters Rogatory have Failed in Practice: A Critical Assessment

The current regime of cross-border insolvency in India is being followed by Sections 234 and 235 of the Insolvency and Bankruptcy Code, 2016 and it has not been that effective in practice. The biggest drawback of Section 234 is the fact that it is dependent on bilateral agreements. These negotiations can be a lengthy process and may be politically sensitive, due to the differences in insolvency laws, creditor's protection and national interest in establishing these types of agreements (12).

Additionally, the setup of the bilateral arrangements is often not sufficient to deal with the complex cross-border disputes typically encountered in modern multinational insolvencies. Lacking a network of reciprocal agreements, the provision is not of much use in practice. A further restriction is the lack of uniformity of bilateralism. Agreements may have different criteria for recognition, as well as for enforcement, which leads to uncertainty and inconsistent results. This is a serious issue of legal uncertainty, legal predictability and efficient administration of insolvency proceedings (13).

Likewise, Section 235 of the Act, which allows NCLT to send letters of request to foreign courts, has many practical limitations. Letters rogatory are non-binding and are based on the willingness of foreign courts to cooperate. This means that they might not be able to receive the assistance they need, it might be changed, or it might be denied, which can significantly diminish their value in maintaining assets and advancing creditor interests. In addition, lack of specific procedural information on how such requests are issued and carried out adds to the uncertainty and delays (13). In the case of Jet Airways, the situation was a classic example of how these provisions were inadequate in the context of a case that involved simultaneous proceedings in the Indian courts and in the courts of the Netherlands, thus necessitating judicial innovation and cooperation that went beyond the statutory provisions. It is not that there was any clarity in the legislation but that in that instance the principles of comity and ad hoc arrangements did succeed in coordinating effectively (5).

Additionally, the territorial nature of Sections 234 and 235 and the lack of direct access for foreign insolvency representatives, hinders international cooperation. Such shortcomings give rise to legal uncertainty, higher transaction costs and potentially negatively impact investor confidence. The modest effectiveness of such measures thus calls for a holistic and comprehensive cross-border insolvency model law inspired by the UNCITRAL Model Law (5).

Dependence on Bilateral Agreements: A Structural Constraint

Section 234 gives the Government the authority to sign bilateral agreements with other republics to enforce the IBC. Although this provision seems to enable international cooperation, its usefulness is grossly limited by its reliance on mutual agreements. First, it is intrinsically time consuming and politically dependent to negotiate and sign bilateral agreements. Both agreements need some diplomatic involvement, legal comprehension and convergence of national interests that are not necessarily always possible. Consequently, now, India does not have a wide network of such agreements, which makes Section 234 mostly ineffective in practice. Second, bilateral agreements are narrow in nature. They only apply to the countries where such agreements are applicable and there exists a considerable loophole in situations where jurisdictions are not covered. In an international economy where insolvency cases are frequently located in several jurisdictions at the same time, the use of bilateral arrangements is not very practical and is not enough. Third, there might be inconsistencies in application due to the lack of standardized provision in various agreements. The terms, procedures and limitations in each bilateral agreement can be unique and cause uncertainty among stakeholders and difficulty in the insolvency process (10).

International mechanisms like the UML on CBI, in contrast, present a framework of uniform and widely accepted rules, allowing countries to implement standardized rules in recognition and cooperation. This bilateralism dependence of the Indians, therefore, puts it at a disadvantage in the international insolvency scene (24).

Procedural Uncertainties and constraints of Letters of Request

Section 235 of the IBC permits the adjudging body to send a letter of request to an overseas court or authority requesting help in the insolvency process. Although this mechanism is aimed at ensuring cross-border cooperation, it is characterized by great procedural ambiguities and practical constraints. Among the main issues, the ambiguity of the procedural framework of such requests should be mentioned. The Code is silent on the format, content and evidentiary standards applicable to letters of request and does not offer any guidance as to how foreign courts should act. This uncertainty will give rise to delays or refusal in execution (5).

Also, the success of a letter of request depends on the goodwill of the foreign jurisdiction to cooperate with. Foreign courts have no obligation to abide by such requests in the absence of a binding international obligation or bilateral agreement. This unenforceability weakens the usefulness of Section 235 to resolve cross-border insolvencies. The other weakness is that foreign insolvency representatives (FIR) have no direct access to Indian courts. In contrast to jurisdictions where the UNCITRAL Model Law has been used, where foreign parties are able to directly request recognition and relief, the Indian system demands indirect communication via judicial means. This creates an extra complexity and postpones the process of resolution (24).

The inefficiencies in the procedures of the application of Section 235 underline the necessity of more organized and enforceable system of cooperation between nation's cross-border, which would offer proper guidelines and mutual recognition of insolvency proceedings (21).

Lack of Recognition and Coordination Mechanisms

The biggest weakness of Sections 234 and 235 is that there are no provisions on recognition of FIP. The concept of recognition is the key to CBI because it enables local courts to recognise and enforce proceedings in a different jurisdiction. The current framework does not provide a statutory mechanism to identify the foreign main or non-main proceedings; neither is there a statutory provision of relief to foreign representatives. This poses a big challenge when it comes to multinational corporate entities, whereby parallel actions can be brought up in various jurisdictions (9).

The lack of coordination mechanisms further exacerbates the problem. Without proper guidelines on how the different jurisdictions should cooperate between courts, insolvency professionals and creditors, there is a danger of contradicting judgments, redundancy of actions and the inefficiency of distributing assets. This makes it not only more expensive but also negates the goal of maximizing values. The example of Jet Airways (India) Ltd. vs. State Bank of India depicts such difficulties. The paralleled insolvency in India and the Netherlands necessitated judicial creativity in this instance to coordinate the process. Although the National Company Law Tribunal was pragmatic, lack of a statutory framework led to ad hoc solutions, a factor that pointed to the shortcomings of the current provisions (6).

These issues would be resolved through a comprehensive recognition and coordination mechanism as envisaged by the UML and the need to offer a clear legal foundation to facilitate cooperation and consistency in CBI (25).

Conflicts of Jurisdiction and the Threat of Forum Shopping

Section 234 and 235 are territorial, making them a source of jurisdictional conflicts and promoting forum shopping. Without a single framework, creditors and debtors might strive to commence actions in those jurisdictions, which best suit their interests, resulting in strategic manipulation of the insolvency procedure (15).

The very notion of forum shopping is obstructive to the ideals of equity and openness, given that by using legal system disparities, parties can leverage against each other. It also causes proceedings of fragmentation, where two or more courts claim jurisdiction over the same debtor and the result is conflicting orders and delays. Also, the ambiguity on how the Centre of main interests (COMI) should be determined aggravates the problem of jurisdiction. The absence of a uniform standard to determine the jurisdiction can result in the discrepancy of practices and a lack of predictability and uncertainty on the part of the courts. These dilemmas highlight the need to have a single legal system, which defines clearly the jurisdictional rules and provides a limit to the extent of forum shopping. Adoption of internationally recognized principles would foster uniformity and equal treatment of all stakeholders (9).

Reform is Needed: To a Comprehensive Cross-border Insolvency Regime

These drawbacks of the Sections 234 and 235 are the reasons why there is a dire necessity to reform the Indian cross-border insolvency regime. Though they are moving in the right direction by providing solutions to transnational insolvency issues, they will not be effective in addressing the challenge of a globalized economy. The adoption of the UML on CBI providing a flexible and holistic approach to deal with international insolvency cases is one of the most important reforms. The ML helps to recognize foreign proceedings, to give access to foreign representatives and to coordinate the courts, therefore, to overcome the deficiencies of the existing system (16).

Along with legislative changes, institutional capacity needs to be enhanced and judicial cooperation should be encouraged. Effectiveness of the insolvency regime could be improved by training judges and insolvency professionals on international insolvency practices, setting up communication protocols between courts and developing standardized procedures. Moreover, India must take a middle path that will safeguard national interests but adapt world best practices (13).

For an emerging market like India, transitioning to the Model Law via frameworks like Draft Part Z serves as a powerful macroeconomic signal. From a "Law and Finance" perspective, harmonized international laws function through an internal and external economic channel:

Judicial Approach and Emerging Trends in India

Judicial interpretation has had a major influence in the development of the cross-border insolvency regime in India and not the clarity of the legislation. Although the IBC, 2016 has transmuted the domestic insolvency resolution, the scarcity of provisions on cross-border insolvency has forced the Indian courts and tribunals to develop innovative strategies. Without a complete statutory framework, the judiciary, especially the NCLT and the NCLAT, has been active in filling any gaps in the law by interpreting purposely and depending on the finest practices of the world (5).

This judicial innovation indicates a new trend of a more cooperative and globally oriented regime of insolvency. Courts have increasingly relied on principles including comity of courts, cooperation and value maximization to deal with transnational insolvency problems. Nevertheless, these changes are still highly case-specific and have no uniformity, which promotes the necessity of legislative intervention (26).

Adoption of the Principle of Comity and Judicial Cooperation

The increasing usage of the principle of comity of courts is one of the most remarkable tendencies in the Indian CBI jurisprudence. Comity is the acknowledgment and respect given by one jurisdiction to the laws and judicial rulings of another due to convenient mutuality and inter-international peace. The Indian courts have come to recognize the value of comity when handling cross-border insolvency cases in a growing number. This practice has enabled collaboration between domestic and foreign courts, thus coordination of multinational insolvency cases. Trying to reduce the number of conflicts and increase efficiency, Indian tribunals have tried to acknowledge foreign proceedings and indulge in judicial dialogue (6).

The use of comity is especially noticeable when parallel proceedings are involved in several jurisdictions. There is a tendency among the courts to liaise with foreign insolvency administrators and to exchange information to achieve consistent results. This tendency with international insolvency practices is symptomatic of a shift towards a modified universalism (3).

The community, however, is not sufficient. It is a discretionary principle but not a binding rule and its use is dependent upon the goodwill of courts to work together. Comity, without a statutory basis, does not assure uniform results and emphasizes the necessity of an official legal framework (13).

The Influential Cases and Their Implications on the Law

A series of landmark decisions have influenced the development of Indian jurisprudence on CBI by demonstrating the changing attitude of the judiciary. Jet Airways is one of them and it is a milestone. Here, parallel insolvency was started in India and Netherlands. The NCLT took a practical approach and gave the go-ahead to the collaboration flanked by the Indian resolution professional and the Dutch administrator. To enable the two jurisdictions to coordinate, a CBI protocol was formulated. This is the first case in India when courts officially acknowledged the necessity of cross-border cooperation and took a systematic approach towards its realization (13).

The Jet Airways case has many implications. It showed the judicial readiness to accept international best practices and emphasized the practicability of coordinated insolvency processes. It also highlighted the shortcomings of the current legal system in the sense that the resolution was made with judicial creativity as opposed to the law (14).

The other trend is that value maximization and safeguarding of stakeholder interests are given importance by the judiciary. The courts have always put a higher value on the results that maintain the economic worth of the corporate debtor and fair allocation of assets among the creditors. This strategy is consistent with the goals of the IBC and supports the need to have effective insolvency resolution (5).

Empirical Illustrations of Cross-border Insolvency Involving Indian Companies

The recent insolvency proceedings by Indian companies highlight the increasing importance of cross-border insolvency problems and the requirement for a robust legal framework. An example of this is the insolvency resolution over Jet Airways in India and the Netherlands. The coordination between the Indian Resolution Professional and the Dutch Bankruptcy Administrator resulted in a cross-border insolvency protocol being developed for the case. The proceedings emphasized the opportunities for collaboration across borders as well as the need to improve the existing statutory framework of the IBC (5).

A recent case of insolvency comes from the Videocon Group, which included foreign assets and international creditors. The case highlights the difficulties in identification and conservation of assets outside India as well as in administration. The case highlights the practical difficulties in identification, conservation and administration of assets outside India. Similar problems have also arisen in cross-border corporate financing contexts in insolvency proceedings of multinational corporate groups (10).

The role of foreign creditors in the Indian insolvency proceedings is another manifestation of the international nature of insolvency proceedings. With the growing globalisation of India's economy, the foreign involvement in insolvency proceedings is also on the rise, including foreign investments, lenders and contractual obligations. In cases where there is no formal system of recognition of foreign proceedings and cooperation between foreign courts, delays, uncertainty and costs may increase (12).

The examples make it clear that cross-border insolvency is not a hypothetical issue but a reality concern of Indian businesses. The difficulties faced in recent litigations expose the gaps in Sections 234 and 235 of the IBC and underscore the need to have a structured approach with the UNCITRAL Model Law. Such reform would allow for greater coordination between jurisdictions, provide greater legal certainty and increase efficiency of multi-jurisdictional insolvency proceedings.

Development of Modified Universalism in Indian Jurisprudence

The judicial practice in India is increasingly complemented by the principles of modified universalism that aims at balancing the global coordination with the domestic legal priorities. In this practice, the courts acknowledge foreign insolvency proceedings and collaborate with foreign jurisdictions but reserve the right to safeguard the local interests. This model has been increasingly embraced in Indian tribunals especially when it comes to cases that involve multinational corporate entities. To minimise duplication and conflict, courts have sought to establish a common insolvency process, by facilitating communication and coordination between jurisdictions (11).

This change to modified universalism is reflected in how Indian courts are beginning to open to foreign proceedings and internationalism to use in insolvency. Nonetheless, such a strategy is still rather unwritten and uncodified. Its use is constrained by the lack of clear statutory guidelines that leave stakeholders with uncertainties. A formal regime of implementing modified universalism in India would be the incorporation of the UML on CBI. It would facilitate organized acceptance of FIP and provide a system of cooperation and coordination (11).

Judicial Implementation Problems and Institutional Constraints

Although such a progressive approach to judicial practice is evident, the successful application of the principles of CBI in India is hampered by several challenges. The most significant problem is the statutory ambiguity, where the courts must use discretionary principles and ad hoc resolution. This leads to unequal results and predictability is low (27).

There are also institutional constraints which are a challenge. The NCLT and NCLAT experience big caseloads and thus delays in insolvency cases. The lack of resources and specialization in international IL only makes the situation worse. The lack of formal means of communication and collaboration across courts is another issue. The Indian courts do not have any standardised procedures about how to deal with foreign courts and insolvency practitioners as opposed to jurisdictions that have embraced the more formalised systems. This restricts cross-border coordination and it enhances the risk of conflicting decisions (6).

Also, foreign judgments enforcement is a complicated matter. In the time-off of a proper legal framework, Indian courts must make recourse to general principles of the law of international commercial relations, which is perhaps inadequate to address the issues particular to insolvency (4).

New Policy Directions and the Future

Policymakers in India have begun to act towards reform in recognition of the weaknesses of the existing framework. The IL Committee has suggested the use of the UML with appropriate alterations to take into consideration the domestic issues. This is an indication of increased recognition of the necessity of an inclusive and internationally harmonized insolvency regime (5). There are also emerging trends of judicial receptivity to international collaboration and harmonization. Moving towards a more integrated approach, global best practices are increasingly referred to by courts and there is an interest in foreign jurisprudence. The future of CBI in India will remain reliant on the achievement of a combination of the legislative change and judicial innovation. The transnational insolvency requires a strong statutory framework that is conducted by effective institutions and trained professionals to help deal with the intricacies of the issue (26).

UNCITRAL Model Law and Reform Proposals in India

In a world where international trade has become global, insolvency regimes need to transform both domestically and internationally, to be able to cope with the transnational financial crisis. The existing regime in India on the IBC, 2016 has made insolvency resolution in the country very robust, but it does not provide a comprehensive cross-border insolvency regime. These shortcomings of Section 234 and 235 which are based on bilateral agreements and letters of request have revealed the inefficiency of the Indian Policy on the issue of multinational corporate insolvency (26).

Table 2: UML and India Proposals of Reforms

Feature	Benefit
Access	Foreigners have access to courts
Recognition	Legal validity of foreign proceedings
Cooperation	Court-to-court coordination
Coordination	Eschews conflicting proceedings
Flexibility	Adaptable to domestic laws

The UNCITRAL Model Law (UML) and the suggested changes in India for managing cross-border insolvency cases are highlighted in Table 2. To prevent inconsistent rulings, these measures allow foreign parties' access to courts, guarantee recognition of foreign insolvency processes and encourage collaboration and coordination between domestic and foreign courts. Additionally, the framework provides flexibility, enabling nations to maintain efficient international insolvency procedures while adapting the Model Law's requirements to their own legal systems.

Following this realization, policy makers and jurists of law have been urging more to adopt the UML on CBI. The Model Law was created by the UNCITRAL to offer a standardized structure to allow jurisdictions to cooperate with each other, to allow FIP to be recognized and to encourage the effective administration of international insolvency proceedings. The shift towards the embrace of this framework in India is part of a wider initiative of following the global best practices and making India more appealing as an investment destination.

Recognition of Foreign Main and Non-main Proceedings Under the UNCITRAL Model Law

The recognition of foreign insolvency proceedings is one of the most important aspects of the UNCITRAL Model Law on Cross-Border Insolvency. The Model Law introduces the concept of foreign main proceedings (and foreign non-main proceedings), which thereby sets out a procedure to determine the legal effects of foreign insolvency proceedings (9).

A foreign main proceeding is an insolvency proceeding which is being conducted in the jurisdiction where the debtor has his Centre of Main Interests (COMI). The COMI is normally assumed to be at the debtor's registered office, subject to the proviso that if there is evidence suggesting otherwise, then that will be the point at which the debtor's principal administration is being carried out. An automatic stay of creditors' actions, asset transfers are suspended and the debtor's estate is protected are some of the significant legal consequences for recognition of a foreign main proceeding. These measures are designed to avoid the dissipation of assets and to help in the administration of these assets across jurisdictions (9).

A foreign non-main proceeding on the other hand is initiated in a jurisdiction in which the debtor has an establishment, but not his COMI. Such proceedings don't necessarily result in broad relief. Rather, courts can award discretionary support, if it is needed, to preserve the local assets and creditors. This distinction will allow the principal insolvency proceedings to be kept in a single jurisdiction, while also making room for legitimate rights in other jurisdictions (9).

The recognition mechanism facilitates legal certainty, helps to avoid conflicts between courts and avoid the danger of having two parallel insolvency proceedings. It also embodies the concept of “modified universalism” which calls for international cooperation with a recognition of the sovereignty of domestic courts to protect local interests (5).

The concepts are a major change in the current scenario with reference to Sections 234 and 235 of the Insolvency and Bankruptcy Code, 2016, for India. There is no statutory mechanism in place for recognition of foreign insolvency proceedings or establishing the status of foreign representatives. In Indian courts, therefore, the principles of comity and judicial discretion are essential to resolve cross-border insolvency cases (5).

The adoption of the UNCITRAL Model Law would allow for Indian courts and the National Company Law Tribunal (NCLT) to recognize foreign main proceedings and foreign non-main proceedings as a matter of form and law, thereby creating a smoother way to cooperate with foreign courts and for cross-border insolvencies to be more efficient and effective. Meanwhile, protection of public policy and domestic creditors would enable India to protect its national interests as well as bring its insolvency regime in line with international norms (5).

Major Characteristics and Principles of the UML

The UML is constructed on four pillars which include access, recognition, cooperation and coordination. All these principles are aimed at establishing a predictable and efficient legal framework in the management of CBI (2).

Access enables foreign creditors and insolvency representatives to access domestic courts. This gets rid of the obstacles in the procedure and makes the foreign stakeholders to be able to participate in the insolvency procedures effectively. It is a great breakthrough to the old systems where diplomatic or judicial mediators are necessary (12).

One of the key characteristics of the Model Law is recognition. National courts are also allowed to treat foreign insolvency procedures as foreign main proceedings or foreign non-main proceedings, depending on the COMI of the debtor. Recognition initiates certain legal effects, including moratoriums and protection of assets, thus creating uniformity among jurisdictions. Cooperation requires collaboration communication among the courts and insolvency professionals in various jurisdictions. This involves information sharing, coordination of activities and sharing of insolvency processes to eliminate conflicts and duplication (26).

Coordination is a concept that deals with multiple simultaneous proceedings. The Model Law offers a means to bring such proceedings into harmony, making sure that they do not contradict each other. This reduces inefficiencies and enhances value maximization (3). Notably, the Model Law is rather flexible and non-binding, which enables countries to adapt the provisions to their national legal and economic environments. This flexibility has helped it gain popularity in various jurisdictions including the US (Chapter 15 of the Bankruptcy Code), the UK, Singapore and Australia (1).

Reform Proposals of India: Preparation to Adopt the ML

India's journey towards adopting the UML has been marked by progressive policy initiatives and expert recommendations. In its reports, the ILC has been a strong supporter of including the Model Law in the IBC with appropriate amendments.

The framework proposed aims at bringing about the provisions of recognition of foreign proceedings, availability of the foreign representatives and co-operation among the Indian and foreign courts. It also seeks to set clear standards of the determination of the COMI which is essential in determining the predominant jurisdiction in international insolvency. One of the key features of India's proposed reforms is the emphasis on safeguarding domestic interests. Although the ILC has accepted the Model Law, it has suggested some deviations to meet the issues regarding the public policy, protection of domestic creditors and regulatory supervision. As an example, Indian courts can still reserve the right to deny the recognition of FIP that are against national interests or against the common good (12).

The other important feature of the reform proposals is the incorporation of cross-border insolvency features in the present institutional environment of the IBC. The adjudicating body would be the NCLT to recognize foreign proceedings and cooperate with foreign courts. The offered introduction of the ML is the shift in the paradigm of a territorial approach to a transformed Universalist paradigm. It is an indication of how India is determined to make its insolvency regime modern and globally oriented (6).

Comparative Insights: Lessons and Global Practices in India

The experience of the countries that have implemented the UML can be helpful to India. The Model Law has been successfully implemented in jurisdictions like the US, the UK and Singapore and has proven to be effective in regulating cross-border insolvency. The Model Law is included in Chapter 15 of the BC in the United States and has played a significant role in helping to recognize foreign proceedings and coordinate between courts. It has increased legal certainty and minimized the chances of conflicting decisions (4). On the same note, the UK has followed suit and embraced the ML through the Cross-Border Insolvency Regulations that have ensured a smooth collaboration with other jurisdictions of other countries. Singapore, being a financial Centre, is not left behind as it has adopted the Model Law to enhance its status as an international restructuring Centre. These jurisdictions emphasize the significance of a clear legal framework, institutional ability and judicial expertise in making cross-border insolvency regimes successful. They also emphasize the advantages of going to the standardized solution, such as the rise in investor confidence, the effective settlement of insolvency cases and the inclusion into the world financial system (24).

To India, such comparative experiences would provide a guideline on how to make the Model Law work. Nevertheless, it must modify these practices to its own legal, economic and institutional environment (26).

Impact of the UNCITRAL Model Law on Investor Confidence: Evidence from International Practice

An important argument in favour of the introduction of the UNCITRAL Model Law on Cross-Border Insolvency is the ability of the Model Law to improve investor confidence by increasing legal certainty and predictability of the treatment of distressed multinational companies. A wide range of academic research and international policy reportage has demonstrated that investors will be more inclined to invest in jurisdictions with efficient and transparent insolvency regimes (9).

Effective insolvency systems have been cited numerous times by the World Bank and the International Monetary Fund as good indicators of a favorable investment climate. A transparent insolvency mechanism decreases the transaction costs, enables access to credit and enhances creditors' recovery rates. The cost of investing is also lowered because investors know their claims will be easily enforced even in foreign situations (10).

The findings of the jurisdictions which have adopted the UNCITRAL Model Law further confirm this. Since the Model Law came into effect, there have been improvements in cross-border insolvency cooperation among countries and in legal certainty, in countries like Australia, the United Kingdom, the United States and Singapore. Foreign proceedings and coordinated case management by courts have been recognised and have minimised conflicts over jurisdiction and increased the efficiency of asset recovery. This has led to increased international confidence and trust in lenders, institutional investors and multinational companies that operate in different countries (5).

Academic commentators also have suggested that the Model Law would help to create the stability of the commercial environment and reduce uncertainty in cross-border insolvencies. Harmonized insolvency rules help to reduce legal complexity, increase predictability and attract international investment. Early research also observes that good cross-border insolvency mechanisms facilitate financial stability and boost confidence in international credit markets (10).

Adoption of the Model Law is likely to enhance legal certainty of foreign investors for India. It is important to introduce a modern cross-border insolvency regime to demonstrate commitment to the internationally accepted principles of commercial law. A modern cross-border insolvency regime will make a statement about adherence to accepted commercial law principles as the Indian economy becomes more integrated with the international markets. A cross-border investor's confidence in an investment is influenced by a variety of factors, some relating to the economy and others to the regulatory framework, but a predictable and efficient insolvency regime is among the significant considerations in cross-border investment decisions (5).

Emerging International Trends and Standards in Cross-border Insolvency Cooperation

The UNCITRAL Model Law is the most influential instrument in the field of cross-border insolvency, but several other international developments have greatly influenced cross-border insolvency cooperation. This is particularly the case about the European Union Insolvency Regulation, which provides directives on jurisdiction, recognition and coordination between the member nations of the EU. The Regulation focuses on the principle of the Centre of Main Interests (COMI) and provides for the automatic recognition of the insolvency procedures in Europe (9).

One of the other significant developments is the growing adoption of Cross-Border Insolvency Protocols (CBIP). These protocols offer feasible solutions to the problems of cooperation between courts, insolvency representatives and stakeholders in multinationals insolvency proceedings. They facilitate communication and joint hearings and effective resolution of asset issues in multiple jurisdictions (11).

The Judicial Insolvency Network (JIN) Guidelines are also an important international project. These principles promote court systems' involvement with each other in cross-border insolvency cases, with the maintenance of court independence and fairness. These principles have been adopted or endorsed by several jurisdictions, such as Singapore and United Kingdom (28).

Further, the principles and best practices of insolvency and creditor rights have been developed by international organizations like the World Bank. The standards promote transparency, predictability, creditor protection and efficient resolution processes. All these advances reflect a worldwide pattern of increased judicial cooperation, harmonization of insolvency laws and cooperative supervision of transnational insolvencies. The lessons learnt from these practices from around the world could also be useful to India in the context of the design of its insolvency regime in India (10).

Challenges and Concerns in Implementing the ML in India

Although the UML has its tremendous advantages, it has several challenges, which will have to be approached carefully. The protection of domestic creditors is one of the major issues. It is feared that acknowledgement of foreign proceedings can be detrimental to local stakeholders, especially in scenarios where foreign laws give precedence to other classes of creditors (5).

The issue of determining COMI is another challenge that is usually complex and controversial. The main jurisdiction can be determined only after a thorough evaluation of multiple aspects, such as the management, assets and operations location of a debtor. Lack of consistency in interpretation of COMI can result in forum shopping and jurisdictional conflicts. Another important factor is institutional capacity. The Model Law requires the experience of trained judges, insolvency practitioners and regulators on international insolvency law to help in successful enforcement. The process of institutional infrastructure and capacity-building will be important towards smooth implementation (24).

The problems of national interest and public policy are to be considered as well. India should make sure that the implementation of the ML should not reduce its regulatory freedom or economic interests. This needs moderate intervention, a combination of international norms and local protection (1).

Reciprocity Requirement: Should India Adopt a Reciprocity-based Framework?

Amongst the most discussed issues in the proposed introduction of UNCITRAL Model Law on Cross-Border Insolvency to India is the reciprocity requirement. Reciprocity would mean that Indian courts would recognize and facilitate foreign insolvency proceedings when the foreign courts provide similar recognition and facilitation to Indian insolvency proceedings. The Insolvency Law Committee (ILC) proposed a reciprocity-based model to promote cooperation as well as safeguard the legal and economic interests of India (5).

Reciprocity advocates claim that it is fair and it avoids unilateral recognition of foreign proceedings. It makes sure that all Indian creditors and insolvency representatives are treated equally in foreign jurisdictions. Reciprocity can also help in promoting the foreign states to implement cooperative insolvency mechanisms with India, which would boost judicial cooperation between the two countries (5).

Some critics, however, argue that a strict reciprocity clause could have a negative impact on the effectiveness of the Model Law. The UNCITRAL framework offers one of the key benefits of enabling quick recognition and inter-jurisdictional cooperation. Restricting the recognition of jurisdiction to such cases would leave out several countries that do not have an equivalent cross-border insolvency regime, which would limit the breadth and effectiveness of cross-border insolvency administration. It also could raise doubts for foreign investors and creditors looking for respite in India (9).

Experience from around the world indicates that many States that have introduced the UNCITRAL Model Law have not imposed any strict reciprocity requirements. Rather, they focus on cooperation and recognition in terms of the aims of efficient insolvency and value maximization. This will make the insolvency system more predictable and build trust in it (9).

A compromise seems more desirable for India. Instead of a strict reciprocity requirement, the legislation allows for recognition of foreign proceedings while maintaining various public policy, national interest and domestic creditor protection concerns. With such a system, international cooperation would be made easy and India would retain its regulatory independence. Therefore, a well-designed reciprocity system would be helpful for balancing standards for global insolvency and domestic economic and legal issues (10).

Recent Reform Initiatives and Judicial Developments (2025-2026)

The policy discussions, recommendations of expert committees and judicial developments in India regarding cross-border insolvency have been evolving continuously. One of the major steps is the recommendations of the Insolvency Law Committee (ILC) which encouraged the adoption of the UNCITRAL Model Law on Cross-Border Insolvency with modifications appropriate for the Indian scenario. The Committee reiterated that with India's increasing integration in the global markets, there is a need to have a modern framework that will streamline multinational insolvency proceedings (29).

The ILC recommended that the provisions on recognition of foreign proceedings, access of foreign representatives, cooperation between domestic and foreign courts and coordination of concurrent proceedings be added. It also suggested measures about public policy and safeguarding of domestic interests. These recommendations have been a continuing influence on the debates on insolvency reform and continue to form a key part of the proposed cross-border insolvency framework in India (29).

The recent changes in the policy have also brought in focus issues of reciprocity, Centre of Main Interests (COMI) and extent of discretion of Courts in granting recognition of foreign proceedings. Policymakers have been looking to reconcile these two concepts, international cooperation and protection of domestic creditors and regulatory autonomy (29).

The impact of Jet Airways Insolvency proceedings remains strong on the judiciary side. The case is a significant example of judicial assistance between India and an overseas court and has been referred to as a success story and a failure of the present framework. In recent times, the Indian tribunals have also adhered to the principles of comity, cooperation and value maximization in resolving disputes involving foreign elements (13).

Based on developments until 2025-2026, there seems to be a shift in awareness that the current regime under Sections 234 and 235 is inadequate to deal with the modern-day cross-border insolvency issues. There is a growing body of academic opinion, policy documents and judicial observation that a comprehensive legislative framework is in keeping with international good practice. Overall, these initiatives underscore the dynamic nature of cross-border insolvency reform in Indian insolvency law (13).

Public Policy Exception vs. Limits of Judicial Discretion

The public policy exception in Art. 6 of the UNCITRAL Model Law on Cross-Border Insolvency allows courts to refuse to recognize foreign insolvency proceedings when the recognition would be manifestly contrary to the public policy of the state where the proceedings are taking place. This measure is an important safeguard, striking a balance between international cooperation and respect for national sovereignty, constitutional values and the rule of law (30).

In countries like Singapore, United Kingdom and United States, courts apply the public policy exception sparingly and only in exceptional cases of fraud, unfairness and substantial and serious interference with the basic rights. A restrictive approach can serve to maintain the goals of the Model Law, which are: predictability and international cooperation (21).

However, the public policy exception might gain more importance in India because of the past practice of the judiciary in relation to foreign judgments and arbitral awards. The address could argue that this would serve the interests of domestic creditors and the regulatory community, but more discretion could create problems for the Model Law. A wide or ambiguous definition can lead to uncertainty, litigation and deter foreign investment (21).

Thus, in the event India ratifies the UNCITRAL Model Law, it is important that there is clarity in the law on the scope of the public policy exception. Such restriction would strike balance between international cooperation and safeguarding of domestic interests in the most exceptional cases of fraud, violation of natural justice and threat to fundamental public interests.

The Four Pillars of the UNCITRAL Model Law on Cross-border Insolvency

The four pillars of the UNCITRAL Model Law on Cross-Border Insolvency are access, recognition, cooperation and coordination. These principles provide a coherent approach to handling multinationals' insolvency proceedings, considering the interests of international cooperation and domestic law (9).

Access allows foreign insolvency representatives and creditors to go directly to the domestic courts instead of going through the diplomacy or separate legal proceedings. This will allow for prompt participation in insolvency proceedings and enhance the effectiveness of the procedures (31).

Recognition enables foreign insolvency proceedings to be recognised as foreign main proceedings or foreign non-main proceedings. Recognizing may offer legal clarity and could result in a waiver of creditors, asset protection and/or the suspension of creditor demands. It also minimises the likelihood of conflicting decisions between jurisdictions (31).

This demands that courts and insolvency professionals in different jurisdictions communicate and aid support each other in insolvency proceedings, as well as competent authorities to do so as part of their functions. This cooperation helps to ensure transparency, maintain asset value and to settle cross-border quarrels effectively (31).

Coordination is meant to resolve cases in which there already may be parallel insolvency proceedings in several jurisdictions. The Model Law promotes coordinated action, the sharing of information and the harmonisation of decisions to prevent duplication and inconsistent rulings and waste. This is especially significant where a multinational corporate group is involved (31).

Together, these four pillars constitute the pillars of the UNCITRAL Model Law and embody the principle of modified universalism. They support the efficiency, predictability, creditor protection and efficient oversight of cross-border insolvency proceedings. These mechanisms would greatly enhance the capability of India in handling multinational insolvency disputes and ensure that the insolvency regime in India is in line with internationally accepted best practices (31).

The Way Forward: A Compromise between International Standards and National Realities

The implementation of the UML is an important move in the direction of the modernization of the Indian cross-border insolvency regime. However, it is only going to be successful with the assistance of its cautious implementation and incessant improvement. India should be picky in striking a balance between international harmonization and domestic consideration. These include the protection of local creditors, the establishment of clear guidelines in the determination of the amount of credit and the transparency in recognition and co-operation procedures (14).

Judge/insolvency practitioner training programs will be essential in enhancing the effectiveness of the new framework or structure. Even the development of standardized protocols that will be implemented in communication and cooperation with the courts will enhance cross-border coordination. Moreover, India needs to become more energetic in the international arenas and jurisdictions to share best practices and collaborate. This will help it advertise itself as a reputable and efficient insolvency jurisdiction (21).

Reforms and Challenges

The paradigmatic Indian insolvency regime that has been created in the IBC, 2016 has been instrumental in addressing domestic financial distress. However, the provided framework remains flawed in the context of globalization and transnational types of corporations. The issues of CBI are associated with a peculiar legal, institutional and economic challenge that needs a consistent and prospective approach. The fact that India has already done much to its endeavor to establish multinational insolvency cases has still been a setback to effective settlement of such cases. This section critically assesses the key issues, reforms to be made and a roadmap of the future (1).

Key Issues in the CBI Regime in India

The ineffectiveness of the current legal framework can be identified as one of the biggest problems. The Sections 234 and 235 on which IBC relies on due to their reliance on bilateral agreements and letters of request restrict its applicability in solving complicated cross-border insolvency situations. Without the automatic recognition system, in most cases, Indian courts find it difficult to process foreign proceedings and this causes delays and uncertainty. Lack of uniformity and predictability is another important concern. Many cross-border insolvency cases have a combination of different jurisdictions with various legal systems and this has led to conflicts of laws and conflicting results. This fragmentation vitiates value maximization and makes the cost of insolvency proceedings more expensive (5).

These are further worsened by institutional constraints. The NCLT and NCLAT are overworked and this slows down the process of resolution. Moreover, the lack of knowledge of international insolvency law by the judges and insolvency professionals impedes efficient management of cross-border cases. Another problem is jurisdictional conflicts and forum shopping. Without proper guidelines on how to ascertain jurisdiction, litigants can simply open cases in jurisdictions that are favorable to them resulting in the duplication of cases and conflicting decisions. Not only does this make resolution slow, but it also destroys the confidence of the stakeholders (6).

Lastly, the absence of efficient courts and insolvency practitioners' cooperation and communication mechanisms between jurisdictions is a significant barrier. In the absence of formal procedures, coordination becomes informal and haphazard (13).

Reform of the Law: The Way Towards a Complete Body of Legislation

These issues are challenging to cope with without a thorough change in legislation. The largest leap in this direction is the suggestion to adopt the UML on Cross-Border Insolvency. The inclusion of the Model Law in IBC would offer a regulated framework of recognition of foreign proceedings, accessibility to foreign representatives and coordination among the courts. Implementation of the Model Law would represent a transition towards a modified Universalist approach, rather than a territorial one and allow India to follow best practices on the international scale. It would also bring in greater legal certainty and predictability which will make India a better place to invest (25). Nevertheless, the reform in legislation should be adapted to the unique situation in India. To prevent the negative impact of foreign proceedings on the national interests, safeguards should be included to safeguard domestic creditors and ensure that recognition of FIP does not negatively impact national interests. There should be clear provisions on how the COMI can be determined to reduce the problem of jurisdiction. Besides the adoption of the Model Law, there is a need to revise the current provisions of the IBC to fill the gaps in the procedures and enhance efficiency. This involves simplifying the Corporate Insolvency Resolution Process (CIRP), minimizing the delays and enhancing enforcement procedures (24).

Strengthening and Capacity Building Institutions

It cannot be done through legal reform without strong institutional backing. Enhancement of the capability of adjudicating authorities, regulatory bodies and insolvency professionals is vital to the successful introduction of cross-border insolvency mechanisms. There are complex international insolvency cases that require the NCLT and NCLAT to be equipped with sufficient resources and specialized training to address those cases. It would be more efficient and effective to set up special benches or special divisions to deal with cross-border insolvency (19).

Involving insolvency professionals, who are also essential in the handling of insolvency proceedings, should also be included in the capacity building. International best practices, cross-border coordination and comparative insolvency law training programs would enhance their efficiency. The IBBI must take the initiative of creating guidelines and protocols for cross-border cooperation. This comprises setting standard operating procedures in communication between courts and insolvency professionals across the jurisdictions (18).

Improving Judicial Cooperation and International Co-ordination

Solving problems of insolvency across borders is a challenging task that demands very good international coordination and judicial cooperation. Indian courts need to embrace well-organized measures of communicating with foreign courts such as measures of sharing information, joint hearings and synchronized decision-making. The case of Jet Airways. Shows that judicial cooperation in addressing cross-border cases of insolvency is possible. Nonetheless, these initiatives need to be formalized by formal structures and not ad hoc (6). India, too, ought to be proactive in engaging with international organizations and forums to foster cooperation and best practice exchange. Being a member of the global insolvency networks would support the ability of India to address the transnational insolvency cases and improve its presence in the international legal arena. The adoption of the ML should be complemented by bilateral and multilateral agreements that could offer more channels of cooperation and enforcement. Nevertheless, these arrangements should be made consistent with a wider statutory framework to make them consistent and efficient (5).

Striking a Balance Between Globalization and National Interests

Although it is necessary to comply with the international standards, India should make sure that its framework of insolvency should represent the domestic interests and priorities. This involves safeguarding the rights of domestic creditors, regulation and ensuring that foreign proceedings do not prejudice against public policy (11).

The principle of modified fields provides a golden meaning between global coordination and domestic autonomy. The Indian courts need to be left with the freedom to deny recognition to foreign proceedings that are not in line with the public policy or against the national interests Moreover, the reforms are supposed to deal with socio-economic factors such as the effects of insolvency on workers, minor creditors and the local communities. Sustainable insolvency reform requires a holistic approach, incorporating economic, legal and social aspects (3).

The future of CBI in India is in the implementation of an integrated, consistent and progressive approach. This needs to be a mix of legislative change, institutional reinforcement and international collaboration. Implementation of UNCITRAL Model Law, with necessary adjustments to it, should be given priority to provide a strong law. At the same time, institutional capacity, streamlining processes and encouraging judicial expertise need to be improved. It is also possible that technological innovation can be used to enhance efficiency. Case management, sharing of information and communication between stakeholders can be encouraged by the digital platforms that will enable quicker and transparent insolvency proceedings. Moreover, the insolvency framework must be continuously monitored and evaluated to make sure that it works. Regular reviews and consultation of stakeholders would assist in finding gaps and effecting the required reforms (3).

Conclusion

It is not surprising that the CBI dimension of contemporary commercial law exists because of the realities of an ever more interconnected global economy. The Indian insolvency system, based on the IBC, 2016, has certainly revolutionized the domestic market by providing a timed, creditor based and efficiency-focused approach to financial distress resolution. Nevertheless, as this paper has shown, the Code is still developmentally immature and not well-equipped to deal with the dynamics of transnational corporate interactions.

The current provisions in Sections 234 and 235 demonstrate structural and procedural constraints especially that they rely on bilateral agreements and have no enforceable means of recognition and cooperation. Judicial responses, however innovative and progressive have been largely ad hoc responses to legislative gaps and not the creation of a consistent legal framework. There are landmark developments, such as the changing dependence on principles like comity and modified universalism, which identify a positive change in judicial thought but also put emphasis on the pressing necessity of codified solutions.

The introduction of the UML on CBI, in this case, can be viewed as a required and possibly a strategic change. Its focus on access, recognition, cooperation and coordination offers an all-inclusive base on balancing the insolvency regime in India with the international standard. Concurrently, any reform should be well-coordinated to protect home interests, treat the stakeholders fairly and have autonomy in regulation.

Finally, the success of the Indian CBI system will not only rely on legislative reforms but also on institutional capability, judicial know-how, as well as on international collaboration. An even-handed and long-term strategy, combining international best practice with national interests, will play a crucial role in creating a robust and predictable insolvency regime. This kind of a structure will help in increasing investor confidence, resolving multinational insolvency cases effectively and making India have a stronger presence in the world economic system.

Abbreviations

CBI: Cross-border insolvency, CIRP: Corporate Insolvency Resolution Process, CoC: Committee of Creditors, FIP: Foreign Insolvency Proceedings, FIR: Foreign Insolvency Representatives, IBBI: Insolvency and Bankruptcy Board of India, IBC: Insolvency and Bankruptcy Code, ILC: Insolvency Law Committee, IPs: Insolvency professionals.

Acknowledgement

The authors express their sincere appreciation to the School of Law, Vel Tech Rangarajan Dr Sagunthala R&D Institute of Science and Technology for their cooperation and support in the conduct of this study.

Author Contributions

All authors contribute equally to the research, design the study, analyze data and approve the final manuscript. All the authors reviewed and approved the final version of the manuscript and took full responsibility for the integrity and accuracy of the work.

Conflict of Interest

The authors declare that there are no conflicts of interest regarding the publication of this paper.

Data Availability

The datasets generated and analyzed during the current study are available from the corresponding author upon reasonable request.

Declaration of Artificial Intelligence (AI) Assistance

During the preparation of this work the authors used Gemini to assist with language editing, clarity of expression, literature search, reference list formatting and organization of the manuscript. After using this tool/service, the authors reviewed and edited the content as needed and take full responsibility for the content of the published article. All conceptualization, analysis, interpretation and writing were developed independently by the authors.

Ethics Approval

Not Applicable.

Funding

This research received no external funding.

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How to Cite: Sudhan HHK, Rao BS, Udayakumar S, Ramesh M, Giftson DBP. The Indian Approach to Cross-border Insolvency Under the IBC: A Critical Legal Analysis. Int Res J Multidiscip Scope. 2026;7(3):1696-1718. DOI: 10.47857/irjms.2026.v07i03.012698