CORPORATE INSOLVENCY AND CROSS-BORDER CLAIMS: IS THE IBC FUTURE-READY?

Jay Pradeep Gavade & Ajit Singh Bajiya, B.A.LL.B., Manikchand Pahade Law College, Chhatrapati Sambhajinagar (Aurangabad), Maharashtra, India

ABSTRACT

The Insolvency and Bankruptcy Code, 2016 (IBC) marked a paradigm shift in India's insolvency regime, aiming for time-bound resolution and maximisation of asset value. However, in an increasingly globalised economy, the complexities of cross-border insolvency have become more pronounced. The question arises: *Is the IBC future-ready to handle such transnational challenges?* This abstract explores the limitations of the existing legal architecture and examines the need for India to adopt a more robust and universally accepted model, such as the UNCITRAL Model Law on Cross-Border Insolvency.

With the rise of multinational corporations and cross-border investments, insolvency proceedings often span multiple jurisdictions, creating legal and procedural conflicts. The lack of a comprehensive cross-border framework under the IBC can lead to delayed recoveries, forum shopping, and erosion of creditor confidence. The abstract analyses Recent developments, including the recommendation of a separate chapter on cross-border insolvency by the Insolvency Law Committee and the Ministry of Corporate Affairs' 2018 draft proposal to adopt the UNCITRAL Model Law, reflect a growing recognition of the need for reform.

This abstract argues that for India to maintain investor confidence and ensure seamless resolution in a globalised financial ecosystem, the IBC must evolve to embrace internationally harmonised principles while safeguarding domestic interests. Thus, it calls for urgent legislative and institutional preparedness to make the IBC truly future-ready for cross-border insolvency challenges.

Keywords: Insolvency and Bankruptcy, Ministry of Corporate Affairs, Corporate Insolvency, Cross-Border Insolvency

I. INTRODUCTION

In an increasingly globalised economy, where corporate structures are no longer confined within national borders, the insolvency of multinational corporations often triggers legal complexities that transcend territorial jurisdictions. India's rapidly expanding economy and deepening integration with global trade and capital markets have brought to the fore the pressing need to address cross-border insolvency issues effectively. This is particularly crucial in the backdrop of companies having assets, operations, creditors, and liabilities spread across multiple countries. The Indian legal framework must be well-equipped to respond to the unique challenges arising from such transnational insolvency scenarios.

The Insolvency and Bankruptcy Code, 2016 (IBC) was a transformative piece of legislation introduced with the primary objective of consolidating and amending the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms, and individuals in a time-bound manner. It brought significant structural reform to India's financial and legal ecosystem by introducing a creditor-in-control model, establishing the National Company Law Tribunal (NCLT) and its appellate forum (NCLAT), and promoting efficiency in the insolvency process. However, the Code as originally enacted did not contain a comprehensive mechanism to deal with cross-border insolvency, even though it acknowledged the need for international cooperation in insolvency proceedings through Sections 234 and 235.

These sections, however, are procedural in nature and largely inoperative in practice. Section 234 enables the Central Government to enter into bilateral treaties with other countries for enforcing provisions of the IBC, while Section 235 allows Indian insolvency courts to issue letters of request to foreign courts in jurisdictions with which such treaties exist. To date, no bilateral agreements have been concluded, rendering these provisions practically ineffective. As a result, Indian tribunals have been compelled to rely on ad hoc judicial innovations and principles of comity of courts to manage cross-border claims, such as in the landmark case of Jet Airways (India) Ltd. v. State Bank of India (Netherlands). This judicial ingenuity, though commendable, cannot substitute for a robust statutory framework that ensures predictability, uniformity, and legal certainty.

Globally, countries such as the United States, United Kingdom, Singapore, and South Africa have adopted the UNCITRAL Model Law on Cross-Border Insolvency, 1997, which provides a harmonised legal regime for cooperation between domestic and foreign courts, access to

foreign insolvency professionals, and recognition of foreign insolvency proceedings. The Model Law embodies the principles of universalism, which seek to administer a debtor's estate in a unified global proceeding, as opposed to territorialism, which limits the scope of insolvency to assets located within national boundaries. India's legal framework, in contrast, remains largely territorial in nature, and the absence of statutory recognition for foreign insolvency proceedings continues to be a serious impediment to effective cross-border insolvency resolution.

The Indian government has recognised this lacuna, and in 2020, the Insolvency Law Committee (ILC) submitted a report recommending the adoption of the UNCITRAL Model Law with India-specific modifications, such as public policy exceptions, reciprocity clauses, and carve-outs for domestic institutional considerations. The proposal was widely welcomed by industry experts and academics alike, signalling a significant step toward making the IBC "future-ready." However, despite this policy intent, the actual implementation of the proposed cross-border framework remains pending, and stakeholders continue to navigate international insolvencies through fragmented and inconsistent legal mechanisms.

Given this context, the present research seeks to evaluate the readiness of the IBC in dealing with cross-border insolvency claims. The objective is not only to identify the existing gaps in the legal and procedural architecture but also to analyse how India can align itself with international best practices without compromising its unique socio-economic and legal realities. The research delves into the nature and complexities of cross-border insolvency, the current legal position under the IBC, judicial responses to such issues, and the global frameworks in operation. Through comparative legal analysis and critical doctrinal review, the study aims to offer actionable policy recommendations that could strengthen India's legal preparedness in this domain.

Some of the core questions that this research will attempt to address include:

1. What is the scope and nature of cross-border insolvency, and why is it relevant in the Indian context?

2. Do the existing provisions under the IBC suffice in resolving cross-border claims?

3. What are the strengths and limitations of the proposed adoption of the UNCITRAL

Model Law in India?

4. How have Indian courts handled cross-border insolvency in the absence of statutory guidance?

5. What lessons can India draw from comparative jurisdictions that have adopted comprehensive cross-border insolvency regimes?

6. To what extent is India's legal, institutional, and regulatory infrastructure prepared for the transition to a global insolvency framework?

In answering these questions, the research will also reflect on the broader themes of sovereignty, international cooperation, economic efficiency, and legal harmonisation. A robust cross-border insolvency mechanism is not merely a legal imperative but also a strategic economic necessity in an era of growing global investment and international business activity. Investors, creditors, and corporate entities expect predictability and clarity in insolvency regimes, especially in cross-border contexts. Any uncertainty in the treatment of foreign creditors, recognition of foreign proceedings, or access of foreign insolvency representatives to Indian forums could seriously dent India's image as a creditor-friendly and investment-friendly jurisdiction.

Moreover, given the complex corporate ownership structures of many multinational companies, especially in sectors such as aviation, telecommunications, infrastructure, and banking, it is essential that the insolvency framework evolve to reflect the economic realities of global business operations. A siloed and domestically oriented approach to insolvency cannot provide comprehensive remedies when companies collapse across multiple jurisdictions. This creates a legal vacuum where assets may be stranded, claims may remain unrecognised, and stakeholders may suffer prolonged uncertainty and financial loss.

In conclusion, while the IBC has undeniably reformed India's domestic insolvency landscape, its incomplete treatment of cross-border insolvency remains a serious limitation that could undermine its long-term efficacy and international credibility. The idea of a "future-ready" IBC must necessarily include a coherent, comprehensive, and efficient legal framework to manage cross-border claims. This research aims to contribute to that vision by offering a doctrinal, comparative, and policy-oriented analysis of the issues involved and charting a path forward

for India's insolvency jurisprudence in the global era.

II. CONCEPTUAL FRAMEWORK

In order to fully understand the challenges and limitations posed by cross-border insolvency within the Indian legal context, it is imperative to lay down the conceptual underpinnings of the subject. This section outlines the meaning, significance, and theoretical models of cross-border insolvency, while also identifying the legal doctrines that shape its resolution across jurisdictions. The conceptual framework serves as the foundation for analysing the sufficiency of the Indian legal regime and exploring the relevance of adopting international best practices.

1. Meaning of Cross-Border Insolvency

Cross-border insolvency refers to situations where the insolvency of a debtor typically a corporate entity **involves assets, creditors, or legal proceedings in more than one country**. It arises in a variety of factual scenarios, including but not limited to:

- A debtor incorporated in one jurisdiction but owning assets in another.
- Creditors situated in different countries.
- Foreign branches, subsidiaries, or joint ventures of the insolvent entity.
- Parallel insolvency proceedings in multiple jurisdictions.

The term thus encompasses both **outbound and inbound scenarios**:

- **Inbound cross-border insolvency**: Where a foreign entity has assets or creditors in India, and insolvency proceedings are initiated in India.
- **Outbound cross-border insolvency**: Where an Indian Company has assets or creditors abroad, and the Indian proceedings require recognition or assistance from foreign courts.

2. Importance and Relevance

The need for a clear and effective cross-border insolvency framework is more relevant today

than ever due to the following factors:

- **Globalization of trade and investment**: Companies operate through global supply chains and have complex asset holdings in various jurisdictions.
- **Capital mobility**: Foreign institutional investors and global banks often finance Indian corporations.
- **International disputes**: Disputes concerning jurisdiction, applicable law, and recognition of foreign proceedings are increasing.
- **Protection of stakeholders**: An efficient system ensures equitable treatment of all stakeholders, domestic and foreign.

Without a unified legal approach, cross-border insolvency can lead to:

- Fragmentation of proceedings.
- Conflicting judgments.
- Asset dissipation.
- Legal uncertainty and reduced investor confidence.

3. Legal Models of Cross-Border Insolvency

Legal systems around the world generally follow one of the following two main approaches to cross-border insolvency

A. Territorialism (Pure Territorial Approach)

- Under this model, **each country treats insolvency within its borders independently**, regardless of foreign proceedings.
- Only assets within the country's territory are administered under its law.
- It reflects a **sovereignty-centric view** of insolvency.

- Criticised for encouraging forum shopping, multiplicity of proceedings, and lack of coordination.
- Still relevant in jurisdictions wary of external interference in domestic courts

B. Universalism (Pure Universal Approach)

- Seeks a **single insolvency proceeding in the home jurisdiction** of the debtor, with worldwide recognition.
- All foreign courts cooperate to assist the main proceeding.
- Promotes judicial cooperation, efficiency, and maximises asset realisation.
- Rarely implemented in pure form due to sovereignty concerns and differences in domestic laws.

C. Modified Universalism (Hybrid Approach)

- This is the **practical middle path**, followed in many jurisdictions including under the **UNCITRAL Model Law on Cross-Border Insolvency**.
- Encourages cooperation and recognition across borders, while allowing domestic courts to retain certain discretion.
- Emphasises:
    - Access for foreign insolvency professionals to local courts.
    - Recognition of foreign main and non-main proceedings.
    - Coordination of concurrent proceedings.
    - Public policy safeguards and reciprocity.

India currently has no comprehensive law following any of these models and, in practice, follows a **limited and ad hoc territorial approach**, leading to uncertainty and judicial discretion.

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

The **United Nations Commission on International Trade Law (UNCITRAL)** adopted the Model Law as a global standard to promote uniformity and cooperation in cross-border insolvency cases. Its **four core principles** are:

1. **Access** Foreign insolvency representatives can approach local courts directly.

2. **Recognition** Courts recognise foreign proceedings as "foreign main" or "foreign non-main" based on the debtor's centre of main interests (COMI).

3. **Relief** Local courts can grant automatic or discretionary relief to support foreign proceedings (e.g., moratoriums, asset freezes).

4. **Cooperation and Coordination** Courts and insolvency professionals are required to cooperate in good faith across borders to manage concurrent proceedings.

More than 50 jurisdictions including the US, UK, Singapore, Canada, and Australia have adopted the Model Law in various forms.

5. Key Doctrines and Principles in Cross-Border Insolvency

- **Comity of Nations**: Legal reciprocity where courts in one country respect the judicial decisions and processes of another, unless contrary to public policy.

- **Centre of Main Interests (COMI)**: Used to determine the proper jurisdiction for the "foreign main proceeding." It is often presumed to be the registered office of the debtor, unless proven otherwise.

- **Public Policy Exception**: Even when a foreign proceeding is recognised, enforcement can be refused if it violates the forum country's public policy.

- **Forum Shopping**: A potential abuse wherein companies choose a jurisdiction that offers favourable outcomes rather than where their economic centre is located.

6. Indian Legal Position in Light of Conceptual Models

India's **IBC contains no substantive framework** for cross-border insolvency beyond Sections 234–235, which:

- Are **dependent on bilateral treaties** (none signed so far).
- Lack procedural clarity on recognition and cooperation.
- Do not reflect the principles of modified universalism.

Indian courts have **attempted to bridge the gap** through:

- Recognition of foreign proceedings on comity grounds (e.g., *Jet Airways* case).
- Coordination with foreign courts on a case-by-case basis. However, the absence of statutory direction leads to **uncertainty and inconsistent outcomes**.

The conceptual framework of cross-border insolvency involves a careful balancing of **domestic sovereignty**, **international cooperation**, and **stakeholder protection**. As corporate operations transcend borders, the need for harmonised and predictable legal rules has become paramount. India's current IBC framework lacks alignment with global standards like the **UNCITRAL Model Law**, and as such, there is a growing consensus for legislative reform.

This framework sets the stage for a deeper inquiry into whether India's insolvency regime is **equipped for the challenges of the global economy**, and if not, what reforms are necessary to make the IBC truly **future-ready**.

III. CURRENT LEGAL POSITION IN INDIA

India's domestic insolvency landscape witnessed a landmark shift with the enactment of the Insolvency and Bankruptcy Code (IBC), 2016, which aimed to consolidate and amend the laws relating to insolvency of corporate persons, partnership firms, and individuals in a time-bound manner. However, despite being hailed as a comprehensive and progressive legislation, the IBC does not provide an adequate or effective framework to deal with the complexities of cross-border insolvency. The current legal position reflects a nascent and underdeveloped approach, heavily reliant on judicial discretion, international comity, and piecemeal statutory

provisions, without a consistent or harmonised mechanism for recognition and cooperation in cross-border cases.

1. Existing Provisions in the IBC on Cross-Border Insolvency

The only explicit statutory provisions in the IBC that touch upon cross-border insolvency are Sections 234 and 235, housed under Part XI (Miscellaneous) of the Code:

- Section 234 - Agreements with Foreign Countries

Empowers the Central Government to enter into bilateral agreements with other countries for enforcing the provisions of the IBC. Such agreements would enable mutual cooperation between Indian courts and foreign courts in the matter of cross-border insolvency. However, the provision is merely enabling and contingent upon the existence of such treaties.

Status: No such bilateral agreement has been signed as of date. This makes the provision practically ineffective, since Indian courts lack the statutory authority to deal with foreign jurisdictions in the absence of treaties.

- Section 235 – Letter of Request to a Foreign Court

Allows the Adjudicating Authority (NCLT) to issue a letter of request to a court or authority in a foreign country for information or evidence or action in relation to assets situated abroad. This power is again conditional on the existence of a reciprocal agreement between India and that foreign state under Section 234.

Status: Due to the non-existence of treaties, this provision has never been operationalized. Indian tribunals are therefore left without a formal channel to seek assistance from or provide support to foreign courts.

2. Practical Gaps and Legal Vacuum

While the inclusion of Sections 234 and 235 signals legislative intent to engage with cross-border insolvency issues, their utility has remained theoretical and symbolic, rather than practical and enforceable. Key issues include:

- No recognition mechanism for foreign insolvency proceedings.

- No statutory access for foreign insolvency professionals to Indian courts.
- No framework for coordination in concurrent insolvency proceedings.
- No automatic stay or moratorium on domestic proceedings in response to a foreign process.
- No legislative clarity on treatment of foreign creditors or distribution of overseas assets.

Thus, in the absence of a functioning statutory framework, Indian courts have relied on common law principles and international comity, making outcomes heavily fact-specific and inconsistent.

However, despite the comprehensive proposal, no legislative bill has yet been introduced to codify these recommendations into the IBC.

The current legal position of cross-border insolvency under Indian law is fragmented, underdeveloped, and operationally limited. Sections 234 and 235 remain ineffective in the absence of bilateral treaties, while judicial approaches though progressive are ad hoc, inconsistent, and lack statutory backing. Indian courts have shown willingness to adopt modified universalism, but without a comprehensive framework like the UNCITRAL Model Law, the IBC cannot be deemed "future-ready."

The lack of clarity, predictability, and legal infrastructure hampers India's ability to handle cross-border corporate insolvency in a time-efficient and creditor-friendly manner, especially in cases involving foreign creditors or overseas assets. The need of the hour is a statutory regime that balances international cooperation with domestic sovereignty, thereby making the IBC truly effective in the global economic landscape.

IV. INTERNATIONAL APPROACHES AND BEST PRACTICES

The global nature of commerce and finance demands legal regimes that transcend borders, particularly in the area of corporate insolvency. As multinational enterprises increasingly operate across jurisdictions, legal frameworks must facilitate cooperation, asset preservation, and equitable treatment of stakeholders worldwide. Numerous jurisdictions have acknowledged this necessity and adopted coherent cross-border insolvency frameworks, often

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

This section explores key international approaches, highlights best practices, and analyses how India can draw upon global experiences to reform and future-proof its insolvency regime.

3. UNCITRAL Model Law on Cross-Border Insolvency, 1997

The UNCITRAL Model Law is the most widely accepted international legal instrument for cross-border insolvency. It provides a procedural framework for cooperation between courts and insolvency practitioners in different jurisdictions, ensuring predictability and legal certainty.

- Key Features:

a) Recognition of Foreign Proceedings: Differentiates between 'foreign main' and 'foreign non-main' proceedings based on the debtor's Centre of Main Interests (COMI).

b) Access for Foreign Representatives: Enables foreign insolvency practitioners to apply directly to domestic courts.

c) Relief Measures: Grants local courts the power to issue automatic or discretionary relief (such as moratoriums or stay orders).

d) Cooperation and Coordination: Encourages communication and cooperation between courts and insolvency representatives.

e) Public Policy Exception: Allows refusal of recognition if it is manifestly contrary to the domestic public policy.

- Adoption:

As of now, over 50 jurisdictions have adopted the Model Law in some form, including: United States, United Kingdom, Singapore, Australia, South Korea, Japan, Canada, Mauritius These countries serve as useful models for India to examine for contextual adaptation.

4. United States – Chapter 15 of the U.S. Bankruptcy Code

The United States adopted the UNCITRAL Model Law through Chapter 15 of its Bankruptcy

Code (enacted in 2005).

Key Features: Recognises foreign main and non-main proceedings, Provides automatic stay and relief upon recognition, Allows foreign representatives to commence or participate in U.S. proceedings, Focuses on coordination and cooperation with foreign court, Includes a public policy exception to refuse recognition.

- Best Practice Element:

a) The broad scope of judicial discretion and flexibility in interpreting COMI.

b) Strong cooperation mechanisms and extensive case law development.

- Case Example: In In re SPhinX, Ltd. (351 B.R. 103), U.S. courts set important precedent on determining COMI and the nature of foreign proceedings.

5. United Kingdom – Cross-Border Insolvency Regulations, 2006

Before Brexit, the UK implemented the UNCITRAL Model Law via the Cross-Border Insolvency Regulations, 2006 (CBIR), supplementing EU Insolvency Regulations. Post-Brexit, CBIR remains in force.

- Key Features:

a) Clear guidance on recognition and relief.

b) Emphasises judicial cooperation and communication.

c) Courts use common law principles to fill statutory gaps.

- Best Practice Element:

a) Efficient coordination with EU member states (pre-Brexit) and adaptation post-Brexit.

b) Extensive guidelines for judicial conduct and cooperation.

- Case Example: In Re HIH Casualty and General Insurance Ltd. [2008] UKHL 21, UK courts promoted a principle of universalism, favouring foreign main proceedings.

6. Singapore – Adoption through the Companies (Amendment) Act, 2017

Singapore adopted the UNCITRAL Model Law in 2017 and also aligned its domestic insolvency laws with international best practices.

Key Features:

a) Explicit incorporation of Model Law in the Insolvency, Restructuring and Dissolution Act (IRDA), 2018.

b) Emphasises rescue and restructuring of companies rather than liquidation.

c) Encourages cross-border judicial protocols and cooperation.

- Best Practice Element:

a) Singapore courts have actively developed protocols for judicial cooperation, such as in Re Zetta Jet Pte Ltd. (2019 SGHC 53).

b) Use of Model Protocols and Guidelines to harmonise concurrent proceedings.

Singapore is emerging as a regional hub for insolvency and debt restructuring due to its progressive and business-friendly laws.

7. Australia – Cross-Border Insolvency Act, 2008

Australia adopted the Model Law through the Cross-Border Insolvency Act, 2008, which amended its Corporations Act to reflect international cooperation standards.

- Key Features:

a) Recognition of foreign proceedings.

- Relief upon recognition.

a) Mandatory cooperation between Australian courts and foreign representatives.

- Best Practice Element:

a) Detailed procedural clarity.

Adoption of judicial guidelines from UNCITRAL and the Judicial Insolvency Network (JIN).

The global best practices in cross-border insolvency demonstrate the urgency and viability of adopting a structured, predictable, and cooperation-oriented legal framework. Jurisdictions like the US, UK, Singapore, and Australia show how the UNCITRAL Model Law can be successfully localised to suit national needs, while ensuring alignment with global standards.

India's lack of a statutory regime leaves it isolated and unprepared in cross-border scenarios, especially as Indian corporations become globally integrated. To future-proof the IBC and make it compatible with global trends, it is imperative that India not only adopts the Model Law with contextual modifications, but also builds the necessary institutional, procedural, and diplomatic mechanisms for seamless implementation.

V. CHALLENGES IN THE INDIAN CONTEXT

While the Insolvency and Bankruptcy Code, 2016 (IBC) has revolutionized the domestic insolvency landscape, its readiness to handle cross-border claims remains seriously limited. The lack of a coherent statutory regime, absence of institutional infrastructure, and practical hurdles have created a chasm between India's global commercial presence and its legal preparedness. The challenges in the Indian context are multi-dimensional—legal, procedural, institutional, diplomatic, and commercial—and need to be addressed holistically before India can claim to be "future-ready."

1. Lack of a Dedicated Legal Framework

- At the core lies the absence of a comprehensive cross-border insolvency framework in the IBC: Sections 234 and 235 (discussed earlier) are enabling provisions, not operational mechanisms.

- India has not signed any bilateral treaties for cross-border insolvency cooperation.

- There is no system for recognising foreign proceedings, foreign representatives, or cross-border moratoriums.

- Inconsistent judicial reliance on international comity has led to ad hoc outcomes, undermining legal certainty.

- Implication:

- Foreign creditors and insolvency professionals remain in legal limbo, while Indian companies with overseas assets face procedural blocks in resolution.

2. Fragmented Judicial Interpretation and Lack of Precedents

- Given the legislative vacuum, Indian courts have stepped in to offer interim solutions. However There is no consistent jurisprudence.

- Courts have not developed binding guidelines or protocols. Relief is often granted on the principle of comity, which is non-binding and vulnerable to public policy objections. In Jet Airways v. SBI (Netherlands), the NCLAT innovatively created a Joint CIRP, but such cooperation was highly case-specific and lacks a replicable structure.

- Implication:

- This uncertainty discourages foreign stakeholders from participating and undermines investor confidence in India's insolvency regime.

3. Unclear Jurisdictional Standards (COMI & Forum Shopping)

- In the absence of clear rules for determining the Centre of Main Interests (COMI) or priority of proceedings:

- Foreign debtors may attempt forum shopping, initiating proceedings in jurisdictions favourable to their interests.

- Indian courts are not bound to give recognition to foreign jurisdictions unless treaties exist.

- There is no guidance on how Indian courts should assess jurisdictional claims when multiple countries are involved.

- Implication:

- This leads to conflict of laws, delays in resolution, and inefficient asset recovery.

- Non-Recognition of Foreign Creditors & Claims

- While the IBC provides for the inclusion of foreign creditors, there is ambiguity in treatment.

- Procedural requirements (such as documentation, certifications, etc.) are sometimes unrealistically stringent.

- Absence of clear guidance on how to evaluate or prioritise foreign claims makes enforcement difficult.

- Implication:

- This limits India's ability to attract cross-border financing and makes it harder to harmonise claims in multinational insolvency scenarios.

4. No Automatic Stay on Parallel Proceedings

- Unlike jurisdictions that adopt the UNCITRAL Model Law, India does not provide for:

- Automatic stay on domestic proceedings when a foreign main proceeding is initiated.

- Consolidation or coordination of multiple proceedings.

- Implication:

- This leads to a race to courts, with different jurisdictions issuing conflicting orders on the same debtor or asset.

5. Institutional Inadequacies

The effective implementation of a cross-border insolvency regime requires:

- Well-trained judges with an understanding of international insolvency law.

- Capacity building in institutions like NCLT, NCLAT, and Insolvency and Bankruptcy Board of India (IBBI).

- Technology and language tools for engaging with foreign stakeholders.

- Establishment of a central nodal agency for managing foreign correspondence and protocols.

- Current Status:

- India lacks all of the above in the context of cross-border insolvency.

- Related Challenge:

- There is also no institutional protocol for cross-border judicial cooperation, unlike the Judicial Insolvency Network (JIN) guidelines adopted in countries like Singapore and the US.

VI. RECENT DEVELOPMENTS AND PROPOSED REFORMS

In recognition of the increasingly globalised nature of commerce and finance, India has initiated several deliberations and proposals to bring its insolvency regime in alignment with international standards. While progress has been cautious and incremental, there is a growing consensus among policymakers, legal experts, and industry stakeholders that India must adopt a comprehensive cross-border insolvency framework to ensure legal predictability, creditor confidence, and economic stability.

This section explores key recent developments, recommendations of expert committees, and proposed reforms, along with a critical evaluation of their potential impact.

1. 2018 MCA Draft on Cross-Border Insolvency

In June 2018, the Ministry of Corporate Affairs (MCA) released a draft proposal for the inclusion of a cross-border insolvency framework in the IBC, largely based on the UNCITRAL Model Law.

Introduction of four foundational principles: access, recognition, cooperation, and

coordination. Empowerment of foreign representatives to approach Indian courts. Classification of foreign proceedings into main and non-main categories based on COMI. Provision for automatic or discretionary relief depending on recognition status. Public policy exception to safeguard Indian interests.

The draft did not address reciprocity raising questions about whether recognition would be limited to countries offering reciprocal treatment. Lacked provisions for group insolvency, which is common in multinational corporate structures. Did not propose a notification mechanism to designate eligible jurisdictions. The draft has not yet been tabled in Parliament, and no timeline for legislative action has been announced.

2. 2020 Insolvency Law Committee (ILC) Recommendations

The Insolvency Law Committee (ILC), in its report dated October 2020, endorsed the adoption of the UNCITRAL Model Law, with minor modifications suited to Indian conditions. Adoption of a reciprocity clause, limiting access to countries offering similar relief to Indian representatives. Empowering the Adjudicating Authority (NCLT) to recognize foreign proceedings and grant relief. Clarification of the Centre of Main Interests (COMI) concept. Inclusion of a public policy safeguard to protect sovereignty and national interests. A separate Chapter in the IBC to deal exclusively with cross-border issues.

The Committee viewed the adoption of the Model Law not as a departure, but as a logical extension of India's evolving insolvency regime.

3. Judicial Innovations (2019–2023)

Even in the absence of formal law, Indian courts have begun to create precedents in cross-border insolvency cases. Notably Jet Airways (India) Ltd. v. State Bank of India (2019) NCLAT coordinated a joint insolvency resolution process with a Dutch administrator. Recognised foreign administrator's status as equivalent to a domestic resolution professional (RP). Marked the first case of cross-border judicial cooperation. Videocon Industries Ltd. (2020) addressed multiple subsidiaries with cross-border claims. Raised concerns about lack of group insolvency framework in Indian law. These cases show judicial willingness to fill the legal void, but the absence of clear procedural rules limits wider applicability.

4. Proposed Inclusion of Cross-Border Framework in the IBC

The Government of India, through the Ministry of Finance and MCA, has indicated intent to table amendments to the IBC introducing a formal cross-border insolvency framework. Possible Features (based on public statements and internal reports) Integration of the UNCITRAL Model Law with Indian procedural nuances. Establishment of a reciprocity-based recognition system. Inclusion of rules for cooperation, communication, and coordination with foreign courts. Provisions for group insolvency and multi-jurisdictional COMI tests. While no formal bill has been tabled, there is speculation that the 2025 Budget session may include legislative proposals to this effect.

The ongoing discussions, committee recommendations, and judicial interventions clearly show that India is preparing the groundwork for cross-border insolvency reform. However, the transition from intent to implementation requires legislative clarity, political will, and institutional readiness.

Given the increasing global presence of Indian corporates and the inflow of international creditors and investors, it is imperative that India formalise these reforms without further delay, ensuring that the IBC is truly future-ready in an interconnected world.

VII. CRITICAL ANALYSIS

The Insolvency and Bankruptcy Code, 2016 (IBC) has earned global recognition for transforming India's insolvency resolution ecosystem. However, when assessed through the lens of cross-border insolvency and multinational debt resolution, the Code reveals substantial gaps. This section critically examines the IBC's readiness to manage such scenarios by evaluating its doctrinal limitations, practical lacunae, comparative shortfalls, and the implications of inaction on India's economic and legal credibility.

1. Doctrinal Incompleteness of the IBC

The IBC was crafted primarily for domestic insolvency scenarios, with a unitary and territorial orientation. Although Sections 234 and 235 provide enabling provisions for cross-border cooperation, they are procedural placeholders rather than substantive legal mechanisms. The Code lacks essential components such as Recognition of foreign proceedings (automatic or discretionary), Appointment of foreign representatives, Clear rules for coordination between

domestic and foreign courts and treatment of concurrent proceedings across jurisdictions.

This absence places India at a disadvantage compared to countries that have adopted the UNCITRAL Model Law, such as the UK, Singapore, and the US, where creditors and courts can rely on predictable mechanisms and reciprocal enforcement.

2. **Overdependence on Judicial Discretion**

Indian courts, especially the NCLT and NCLAT, have shown admirable creativity in dealing with cross-border cases in the absence of legislative clarity. However, this reliance on judicial discretion comes with drawbacks it leads to legal uncertainty, as decisions are often non-replicable. Outcomes vary depending on the bench's interpretation and appetite for international cooperation. There is no binding or systematic framework guiding courts on questions like- What qualifies as a "foreign main proceeding"? How should concurrent proceedings be stayed or merged? What weight should be given to foreign court orders?

The Jet Airways-Dutch administrator case, while progressive, was an exceptional arrangement, not supported by any statutory protocol. This unpredictability undermines creditor confidence, particularly for foreign investors.

3. **Failure to Leverage Global Norms and Best Practices**

India's prolonged delay in adopting the UNCITRAL Model Law on Cross-Border Insolvency is a missed opportunity. Most economies with international commercial relevance have either fully adopted the Model Law or developed equivalent frameworks. India continues to treat foreign insolvency proceedings on an ad hoc and non-reciprocal basis. There is a lack of diplomatic initiative to enter into even bilateral insolvency cooperation treaties. The country's refusal to notify any reciprocal jurisdictions under Section 234 renders the enabling provisions effectively dormant. This inertia isolates India from the global insolvency community and hampers Indian companies with international assets from effectively resolving cross-border disputes.

4. **Institutional Deficiencies and Procedural Hurdles**

The IBC ecosystem comprising the NCLT, insolvency professionals (IPs), and the Insolvency and Bankruptcy Board of India (IBBI) is still evolving. NCLT benches are already

overburdened, and may lack the capacity to handle complex multi-jurisdictional coordination. IP regulations do not offer guidance on managing foreign assets, Valuation of international liabilities, interfacing with foreign courts or administrators. India lacks an equivalent of the Judicial Insolvency Network (JIN) cooperation guidelines. These limitations make foreign participation bureaucratically cumbersome and financially inefficient, diminishing India's attractiveness as a debtor jurisdiction or a creditor enforcement forum.

5. The Reciprocity Dilemma

The reciprocity clause proposed in the 2020 ILC Report, while aiming to protect India's sovereign legal interests, may backfire. It restricts recognition of foreign proceedings to only those jurisdictions that reciprocate Indian proceedings, excluding several major economies. The Model Law does not mandate reciprocity its adoption promotes universalism rather than legal nationalism.

A strict reciprocity test may make India's framework non-compliant with global insolvency norms, and may prompt retaliatory non-recognition of Indian proceedings abroad.

6. Ambiguity in the Treatment of Foreign Creditors

Despite the Supreme Court's progressive ruling in Macquarie Bank Ltd. v. Shilpi Cables, foreign creditors still face unclear procedural requirements, especially on documentation and authentication. No dedicated guidance on participation rights, priority, or security enforcement. Risk of being unintentionally excluded due to procedural technicalities or jurisdictional misinterpretations.

The IBC fails to establish a level playing field for domestic and foreign stakeholder an essential tenet of any cross-border regime.

7. Absence of Group Insolvency Framework

Modern multinational businesses operate through interconnected corporate structures. Insolvency of a parent company often affects dozens of subsidiaries across jurisdictions. The IBC does not provide any framework for Procedural consolidation of group proceedings, Substantive coordination of claims and recoveries, Recognition of group COMI. Jurisdictions like the EU, UK, and Singapore have tailored solutions for group insolvency and allow cross-

border coordination among administrators. Without such mechanisms, India risks fragmented recoveries, increased litigation, and diminished creditor satisfaction.

8. Public Policy Exception: A Double-Edged Sword

The public policy safeguard, while necessary, is vaguely defined and risks being overused to deny recognition of foreign proceedings. Indian courts have not clearly delineated the boundaries of "public policy." Foreign judgments or reorganisation plans could be rejected merely for technical non-conformities with Indian law, even if not unjust or illegal. A broadly interpreted public policy clause could undermine the very purpose of cross-border insolvency law global cooperation.

9. Economic Impact of Delayed Reform

India's failure to enact a robust cross-border insolvency regime has tangible economic consequences Discourages foreign institutional investment in Indian distressed assets. Limits the ability of Indian companies to raise international debt. Delays or obstructs asset recovery in foreign jurisdictions. Increases the cost of capital due to higher legal and enforcement risk. India ranks poorly in the "Resolving Insolvency" component of the World Bank's Ease of Doing Business Index primarily due to these limitations.

10. Prospective Readiness vs. Practical Reality

While India has taken important first steps such as drafting the 2018 MCA proposal, training insolvency professionals, and engaging with UNCITRAL these steps remain largely prospective and theoretical. No legislative action has followed. No real cross-border success story has emerged beyond Jet Airways. Stakeholders lack certainty, and courts lack codified tools. Until the proposed reforms are enacted and institutionalised, the IBC remains structurally ill-equipped for cross-border corporate insolvency.

The IBC is a progressive and ambitious piece of legislation, but its cross-border readiness is aspirational rather than actual. Without urgent reform, India's insolvency system risks becoming domestically strong but globally isolated. A forward-looking legal system must not only aim to resolve disputes within borders but must also be able to cooperate across them. The time has come to translate consultation into codification, and potential into performance.

VIII. RECOMMENDATIONS

To ensure that the Indian insolvency regime is truly "future-ready" in the context of cross-border claims, it is imperative that legal reforms are both timely and transformative. The following recommendations, offered in a structured and practical manner, aim to build a robust, internationally aligned, and procedurally sound cross-border insolvency framework within the broader architecture of the IBC.

1. Adopt the UNCITRAL Model Law with Contextual Adaptations

The foremost recommendation is the formal adoption of the UNCITRAL Model Law on Cross-Border Insolvency through an amendment to the IBC. However, this adoption should be accompanied by tailored modifications to suit Indian legal and economic realities. These could include a limited reciprocity requirement to safeguard sovereignty, clearly defined "public policy" exceptions, and procedural flexibility in recognising foreign representatives and proceedings. The Model Law's global acceptance ensures predictability and harmonisation, which will substantially enhance India's credibility in international financial and commercial circles.

2. Establish a Statutory Framework for Group Insolvency

India must urgently introduce a statutory framework for group insolvency to handle the resolution of multinational corporate conglomerates. Such a framework should provide for procedural consolidation, coordinated resolution strategies, and a clear mechanism for intra-group claims and liabilities. This reform is essential to prevent duplicative litigation, maximise asset value, and protect the interests of creditors when entities from the same corporate group operate in multiple jurisdictions.

3. Create Designated NCLT Benches for Cross-Border Insolvency

Given the complex nature of cross-border proceedings, India should establish specialised benches within the NCLT with exclusive jurisdiction over international insolvency matters. These benches must be staffed with judges trained in international commercial law and supported by technical experts. Concentrating expertise in dedicated forums will improve the quality, consistency, and efficiency of judicial decision-making in such cases.

4. Enhance Institutional Capacity and Professional Training

The implementation of any cross-border framework will be ineffective without capacity building within key institutions like the IBBI, NCLT, and the insolvency profession. Insolvency professionals should be trained in handling foreign asset recovery, cooperation with overseas courts, and coordination with international creditors and administrators. The IBBI should formulate detailed guidelines and handbooks for practitioners, addressing procedural and ethical aspects of cross-border insolvency cases.

5. Enter into Bilateral and Multilateral Insolvency Cooperation Agreements

Alongside domestic legal reforms, India should actively pursue bilateral treaties and multilateral arrangements for mutual recognition and cooperation in insolvency matters. Strategic agreements with jurisdictions that host major Indian corporate assets (such as the US, UK, Singapore, and the UAE) would facilitate enforcement and coordination. Moreover, participation in global forums like the Judicial Insolvency Network (JIN) will enable India to align with international best practices and benefit from cross-border protocols already in use elsewhere.

6. Digitise and Internationalise Procedural Infrastructure

The infrastructure of Indian insolvency resolution must be upgraded to support electronic filings, virtual hearings, and real-time communication with foreign courts. The introduction of secure digital portals for cross-border filings, multilingual documentation, and blockchain-based claim verification could significantly reduce procedural delays. This would also enable smoother coordination with international stakeholders, enhancing transparency and trust.

7. Clarify and Codify the Public Policy Exception

While it is necessary to retain a public policy safeguard to prevent abuse and protect sovereignty, the government must issue clear guidelines or illustrative thresholds on when such an exception can be invoked. Without such clarity, courts may interpret the clause too broadly, defeating the core objective of cross-border cooperation. A narrow and well-defined public policy test, similar to what is seen in arbitration jurisprudence, will help balance national interest with international obligations.

8. Recognise and Empower Foreign Creditors Equally

To promote fairness and neutrality, the IBC should incorporate explicit provisions to guarantee non-discriminatory treatment of foreign creditors. Their claims must be recognised on par with domestic creditors, subject only to procedural compliance. Simplified filing procedures, English-language document acceptability, and digital claim verification should be made available to facilitate smooth participation. This will promote India as a reliable destination for international investment and commercial engagement.

9. Encourage Data Sharing and Transparency

Cross-border insolvency is fundamentally dependent on trust and transparency between jurisdictions. The IBBI should create a dedicated cross-border insolvency registry, detailing ongoing cases, foreign administrator details, key orders, and creditor notifications. Such transparency would allow for better stakeholder participation, improve judicial coordination, and encourage foreign representatives to engage with Indian courts with confidence.

10. Legislate with Urgency and Political Will

Lastly, and most critically, reform must not remain a theoretical discussion. Despite multiple committee reports, drafts, and public consultations, the actual legislative action has been slow and fragmented. The Central Government must prioritise this reform through either a standalone chapter on cross-border insolvency in the IBC or a separate legislation so that Indian law keeps pace with the increasing volume and complexity of cross-border commercial transactions.

If India aspires to become a global hub for restructuring and insolvency resolution, its legal architecture must rise to the challenge of cross-border coordination. The recommendations above are not merely aspirational; they are a practical roadmap to ensure that India's insolvency regime is modern, responsive, and globally harmonised. Enacting these reforms will enable India to handle complex multinational insolvencies with legal clarity, procedural fairness, and economic efficiency ultimately safeguarding stakeholder interests and strengthening investor confidence.

IX. CONCLUSION

The Insolvency and Bankruptcy Code, 2016, represents a landmark reform in India's corporate insolvency framework. Its comprehensive approach has significantly improved the speed, efficiency, and transparency of domestic insolvency resolution. However, the Code's current design and implementation reveal critical shortcomings when it comes to managing the complexities of cross-border insolvency cases. With increasing globalisation of commerce and finance, corporate insolvencies often span multiple jurisdictions, requiring seamless coordination between domestic and foreign legal systems. On this front, the IBC is yet to evolve into a future-ready statute that can effectively address the challenges posed by multinational creditors, diverse jurisdictions, and concurrent insolvency proceedings.

India's current legal regime lacks a clear, comprehensive, and harmonised framework for cross-border insolvency. The limited provisions under the IBC for cooperation with foreign courts are largely procedural and do not meet the substantive requirements necessary for the recognition and coordination of foreign insolvency proceedings. This gap creates legal uncertainty and procedural inefficiency, thereby undermining the confidence of foreign investors and creditors in the Indian insolvency system. Moreover, the absence of a statutory framework for group insolvency and the unclear treatment of foreign creditors further diminish the Code's effectiveness in cross-border scenarios.

Internationally, many jurisdictions have successfully adopted the UNCITRAL Model Law or developed similar frameworks that provide clarity, predictability, and cooperation mechanisms. India's reluctance to embrace these globally recognised standards places it at a competitive disadvantage. The current overreliance on judicial discretion, coupled with institutional limitations and the lack of a systematic approach, exposes Indian insolvency resolution to risks of inconsistency and delay. These deficiencies not only affect commercial outcomes but also have broader economic implications, including reduced foreign investment and higher costs of capital for Indian companies.

To address these challenges, comprehensive reforms are urgently needed. Adoption of the UNCITRAL Model Law, tailored to India's context, establishment of specialised NCLT benches, enhanced capacity building, and proactive international cooperation will be pivotal. Clarifying procedural norms, defining the scope of public policy exceptions, and ensuring equitable treatment of foreign creditors are equally important. These steps will bring India's

insolvency framework in line with global best practices and reinforce its position as a reliable and investor-friendly jurisdiction.

In conclusion, while the IBC has made remarkable strides in domestic insolvency resolution, its cross-border insolvency capabilities remain nascent and underdeveloped. Without decisive legislative action and institutional strengthening, India risks falling behind in the increasingly interconnected world of international insolvency. The time is ripe for India to embrace reforms that will make the IBC truly future-ready, capable of resolving complex multinational insolvencies with legal certainty, fairness, and efficiency ultimately fostering a robust, transparent, and globally integrated insolvency ecosystem.

REFERENCES

1. Insolvency and Bankruptcy Code, No. 31 of 2016, § 234, India Code (2016).

2. Companies Act, No. 18 of 2013, India Code (2013).

3. UNCITRAL, Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency, U.N. Sales No. E.99.V.3 (1997).

4. Insolvency Law Committee, Ministry of Corp. Affs., Government of India, Report on Cross-Border Insolvency (2018), https://ibbi.gov.in/uploads/resources/crossborder.pdf.

5. Insolvency & Bankr. Bd. of India (IBBI), Discussion Paper on Cross-Border Insolvency (2020),https://ibbi.gov.in/uploads/whatsnew/2020-06-20-171308-npxi 394264839ae897ee6525c0ec91d16943.pdf.

6. Reserve Bank of India, Statement on Developmental and Regulatory Policies (2021), https://rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=51320.

7. Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 S.C.C. 17 (India).

8. Essar Steel India Ltd. v. Satish Kumar Gupta, (2019) 8 S.C.C. 531 (India).

9. Vishal Steel Indus. Ltd. v. State of Haryana, (2020) SCC OnLine NCLAT 253 (India).

10. Bimetal Bearings Ltd. v. Union of India, (2018) SCC OnLine SC 1300 (India).

11. M. Ramachandran, Corporate Insolvency Law in India (LexisNexis 2021).

12. Sumeet Kachwaha, Insolvency and Bankruptcy Code – Cross Border Insolvency (EBC 2022).

13. Michael Schillig, Principles of International Insolvency (Oxford Univ. Press 2019).

14. Ingo Saenger, Cross-Border Insolvency Law (Kluwer Law Int'l 2018).

15. Jay Lawrence Westbrook, The New International Insolvency Law: UNCITRAL's Model Law, 70 Am. Bankr. L.J. 391 (1996).

16. R. Goel, Cross-Border Insolvency under the Indian Insolvency and Bankruptcy Code: The Road Ahead, 5 Indian J. Corp. L. 20 (2020)

17. India's Insolvency Code: Challenges and Future Prospects, Econ. Times (Apr. 6, 2023), https://economictimes.indiatimes.com/industry/banking/finance/india-insolvency-code-challenges-future-prospects.

18. Cross-Border Insolvency: India's Way Forward, Bus. Standard (Aug. 12, 2024), https://www.business-standard.com.

19. Judicial Insolvency Network (JIN), https://judicialnetwork.org/.

20. Insolvency & Bankruptcy Board of India, https://ibbi.gov.in/.