FROM FRAGMENTATION TO FRAMEWORK: EVALUATING THE IBC'S INTEGRATION OF INDIA'S INSOLVENCY AND FINANCIAL LAWS

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ABSTRACT

The advent of the Insolvency and Bankruptcy Code, 2016 (IBC), has brought together India's segregated insolvency and financial regulatory system. Pre-IBC, there were several statutes, including the Recovery of Debts Due to Banks and Financial Institutions ` Act 1993 (DRT Act), the Companies Act 1956 and 2013, the SARFAESI Act, and the SICA Act (Sick Industrial Companies Act 1985). The pre-IBC regime was characterised by inefficiencies and uncertainties for creditors and investors, including developments in overlapping jurisdictions, delays, and poor recovery rates. This research paper evaluates whether the IBC is successfully harmonising these laws, resolving jurisdictional problems, and improving outcomes for stakeholders. It compares the collective, time-bound insolvency process under the IBC, with its single-window mechanism through the National Company Law Tribunal (NCLT), against the historically disparate and creditor-centric pre-IBC processes to examine the influence of the IBC on creditor recovery, investor protection, and resolution efficiency through a comparative assessment with UNCITRAL principles intending to contrast the same with cross-border insolvency. This research paper intends to find that the IBC has considerably simplified insolvency resolution, allowing for improved creditor recoveries despite some overlapping jurisdictions and regulatory uncertainties. It also intends to consider differences in the systematic solidness of the structures created under the Copyright and Bankruptcy Code 2016 and the UNCITRAL structure for cross-border insolvency. The paper offers some recommendations for further legal and institutional reforms to promote greater clarity and effectiveness of India's insolvency framework.

Keywords: Insolvency and Bankruptcy Code (IBC), Pre-IBC Regime, Creditor Recovery, Resolution Efficiency, UNCITRAL Model Law, Cross-Border Insolvency.

INTRODUCTION:

The Insolvency and Bankruptcy Code, 2016, was introduced to the sphere of the Indian insolvency space, overlooking a bunch of conjoined and fragmented statutes with the object of solidifying the insolvency stance and jettisoning the various lacunae in the pre-existing system. Even during the tenure of its nascent operating stage spanning merely less than a decade, reports reflect a total of 8,175 Corporate Insolvency Resolution Process (CIRP) cases being admitted under the Insolvency and Bankruptcy Code, 2016, as of December 31, 2024[1]. Out of these, 1,119 cases met CIRP closures through resolution plans, thereby facilitating the revival of distressed companies pressing on the legal principles of 'going concern' for companies[2]. A number of 1,236 cases were closed on account of review, appeal, or settlement, while 1,130 cases were withdrawn under Section 12A of the Code[3]. A significant number of 2,707 cases proceeded to liquidation, within which 1,274 were fully liquidated. whereas 1,983 liquidation proceedings remain sub judice before the National Company Law Tribunal (NCLT), Debt Recovery Tribunal and both their respective appellate bodies[4]. A Glance at Crisil Ratings, July 2025 press release reflects India's successful resolution of over 26 lakh crore rupees of distressed debt, both directly through about 12 lakh crore rupees via formal CIRP cases and indirectly through roughly ₹ 14 lakh crore settled before tribunal admission since the IBC's enactment in 2016. This research paper aims to deal with the ripple effects of the Insolvency and Bankruptcy Code 2016 on the insolvency landscape in India, codifying and harmonising the pre-existing laws and its journey in mitigating the jurisdictional overlaps, low recovery rates, and investor protection, and additionally an overview of the international comparison of the framework in relation to the UNCITRAL Model Law on CrossBorder Insolvency.

STATEMENT OF PROBLEM :

Has the Insolvency and Bankruptcy Code, 2016, effectively streamlined India's fragmented preIBC insolvency and financial regulatory framework in terms of efficiency, coherence, and stakeholder impact and eradicated the lacunae of these pre-existing statutes like *Companies Act? SARFAESI Act, SICA, DRT Act,* and resolved jurisdictional conflicts and improved outcomes for creditors and investors? Additionally, what remains the fundamental difference

[1] Insolvency & Bankr. Bd. of India, *Quarterly Newsletter*, Vol. 30, Oct.–Dec. 2024, at 7, https://ibbi.gov.in/uploads/publication/dec-2024-quarterly-newsletter.pdf
[2] Id.
[3] Id.
[4] Id.

between the framework between the Insolvency and Bankruptcy Code 2016 and the UNCITRAL Model of Cross-Border Insolvency, and what can be additionally incorporated by India to ensure an effective insolvency structure ensuring equity and creditors' confidence?

RESEARCH QUESTIONS:

1) Has the Insolvency and Bankruptcy Code found a solution to issues like overlapping jurisdictions, low recovery amounts, and delays in processing, as well as uncertainty for creditors and investors under the Pre-IBC regime with existing statutes and rules such as the CompaniesAct, SARFAESI Act, SICA, DRT Act and Banking Laws?

2) Does IBC adequately mitigate the jurisdictional conflicts from the Board for Financial Reconstruction (BIFR), High Courts, Debt Recovery tribunals, and other forums from PreIBC, and do overlaps and procedural delays still persist?

3) What are the distinguishing factors between the Insolvency and Bankruptcy Code, 2016, and the UNCITRAL Model Law on Cross-Border Insolvency, and what lessons can India draw from jurisdictions that have adopted the Model Law?

AIMS AND OBJECTIVES:

1. To examine how India's bankruptcy rules have changed over time, leading to the Insolvency and Bankruptcy Code, 2016.

2. To evaluate how the IBC affects investor protection, recovery rates, and jurisdictional overlap resolution established under pre-existing statutes like *the CompaniesAct, SARFAESI Act, SICA, DRT Act.*

3. To contrast the UNCITRAL Model Law on Cross-Border Insolvency with the IBC's fundamental established structure to highlight intrinsic difference between both.

4. To assess India's current procedures and difficulties in handling cases of cross-border insolvency.

5. To make suggestions based on global best practices for bolstering India's cross-border insolvency framework.

RESEARCH METHODOLOGY:

An entirely doctrinal methodology will be employed in this study. Here, the research titled "From Fragmentation to Framework: Assessing the Integration of India's Insolvency and Financial Laws in the IBC" mainly intends to draw upon existing doctrinal sources of law. As judicial sources are broad, this research primarily focuses on doctrinal sources, and the study will employ reframing and comparitive analysis of doctrinal sources. The study will include various primary sources such as the Insolvency and Bankruptcy Code (IBC), Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, CompaniesAct (1956), CompaniesAct (2013), Sick Industrial Companies Act (1985)(SICA), and additionally, the study will review secondary sources defined in the form of books, case laws, journal articles and research papers and other items which are also pertinent to the subject matter of this research, and for this purpose, this researcher will compare primary and secondary materials widely, allowing for better nuancesd research as to the archaic laws and statutory provisions.

LITERATURE REVIEW:

This study investigates the evolution of India's bankruptcy laws and the development of the Insolvency and Bankruptcy Code (IBC) adopted in 2016 through an analysis of various secondary sources, research papers, judicial rulings, and legal documents. This study assesses what impact the IBC has had on investor protection, recovery rates, and the resolution of jurisdictional overlaps between pre-IBC laws (Companies Act, Sarfaesi Act, Sick Industrial Companies Act, DRT Act, banking law, and SEBI rules). The main framework of the IBC is compared to the UNCITRAL model law on cross-border insolvency to find structural similarities and differences. This paper will also discuss the current hurdles facing India and how India goes about addressing cross-border bankruptcy issues. The report reveals some flaws in the current system and provides recommendations to improve India's cross-border bankruptcy regime, based on a range of legal commentary, case law, and international best practices. In highlighting areas that need further reform and more academic research, the report represents a comprehensive understanding of India's bankruptcy context.[5]

The article, "Evolution of Insolvency and Bankruptcy Laws in India," authored by Hritika

[5] Hritika Sharma, *Evolution of Insolvency and Bankruptcy Laws in India*, IBC Law (Aug. 31, 2025), https://ibclaw.in/evolution-of-insolvency-and-bankruptcy-laws-in-india/.

Sharma on ibclaw.in, provides a doctrinal analysis of Indian insolvency law and maps its trajectory from the Presidency Towns Insolvency Act from the 19th century through a litany of legislative actions, including but not limited to the Companies Act, 1956; SICA (1985); DRT Act (1993); and SARFAESI Act (2002), eventually culminating in the introduction of the Insolvency and Bankruptcy Code (IBC) in 2016. In conjunction with this piece was another article published by Prakhar Dubey on ibclaw.in, which was critical in nature and pointed out the inefficiencies and proprietary delays of the previous legislative scheme of insolvency laws, which was a consideration of the need to address as the law was fragmented and disparate, leading to the need for one unified legal framework pursuant to the IBC. Both authors emphasized the IBC was the catalyst to incept the possibility for a consolidated insolvency resolution for an individual, a partnership, or a corporation; the IBC allowed a debtor and creditor to reconcile interest in one piece of legislation with the establishment of various adjudicatory tribunals such as NCLT, NCLAT, and DRT. The analysis consisted of a doctrinal review supported by legislative reform, case law and insolvency statistics. The studies did not reach the point of evaluating the limiting of the long-term practical measurable challenges hindering practical implementation or ultimately evaluating the wider socio-economic impact as a result of such reforms.[67]

Arya and Rao's empirical and doctrinal assessment frames the Insolvency and Bankruptcy Code (IBC) within the ambit of India's larger post-liberalization reform agenda to create a better business environment. Using the World Bank's "Doing Business" indicators, alongside landmark judicial decisions such as Swiss Ribbons, Arya and Rao's set of tools highlights that, finally, there is progress towards better investor and recovery rates for creditors and, most importantly, at long last, essential judicial safeguards to prevent a denial of natural justice. Sharma's doctrinal analysis offers a historical study of Indian insolvency laws from the 19th-century Presidency Towns Insolvency Act, the Companies Act 1956, SICA (1985), the DRT Act (1993), SARFAESI (2002), and, at long last, an overall framework, the IBC. Dubey adds to this missive by pointing out the problems of delay and inefficiencies in previous regimes that emphasized the need for a single insolvency system. Both studies highlight that the IBC's core innovation is that it is the only act to bring insolvency resolution for individuals, partnerships, or corporates under one code; strike a delicate balance between the rights of

[6] Prakhar Dubey, *Tracing the Legal Odyssey of India's Debt Recovery Laws*, IBC Law (Aug. 31, 2025), https://ibclaw.in/tracing-the-legal-odyssey-of-indias-debt-recovery-laws/.
[7] Id.

creditors and the rights of debtors; and create specialised tribunals such as NCLT, NCLAT, and DRT. Both are scholarly discussions informed by doctrinal reviews, case law, legislative changes, and data, and both reach the conclusion that the IBC is a strong regulatory change; both articles suggest that the IBC remains a "work in progress" with challenges remaining with the practice of the IBC, judgements by judges interpreting the law, and the necessity of timely ID resolution of insolvency issues. Previous regimes failed to provide timely, fair, or done solutions, offering substance to the cognitive radicalism and necessity of change articulated in the IBC.[8][9][10]

Roy and Gupta's and Shukla and Jayaram's "Cross-Border Insolvency Issues in India" doctrinal and policy commentary outlined why India struggles with cross-border insolvency laws. They both note the constrained legal framework for cross-border insolvency in India. The constrained legal framework is a reliance on bilateral treaties beyond the two provisions of the Insolvency and Bankruptcy Code (IBC), Sections 234 and 235. As well, there are no statutory forms of engagement with the UNCITRAL Model Law and limited use of mutual recognition principles. In simpler terms, the authors emphasise the constraints of the existing statutory regime for creditor negotiations across borders. They use extensive case studies to provide context, report understanding of the existing research, and check their findings regarding examples from the Jet Airways insolvency process. The judicial system adopted, through innovative use of a new "protocol" mechanism, best practice methods of international exchange in bankruptcy/protocols, including principles and affinities within or drawn from the UNCITRAL process. While not enacted through statutory provisions, key concepts include definitions of cross-border insolvency, protocols, comity, and Model Law, alongside the struggle for harmonisation of laws and the sovereignty of law. The commentary brought the analysis to the conclusion that the cross-border insolvency provisions within the IBC are inadequate but recommended the adoption of the UNCITRAL Model Law with some reciprocal adaptations to allow for India's commercial realities and judicial interpretations. That said, the authors do not discuss impediments to implementing the UNCITRAL 'Model Law' or the wider

[8] Id.
[9] Id.
[10] Tushti Arya & Priyank Rao, IBC: Past, Present and Future of the 2016 Code, 6 Int'l J.L. Mgmt. & Human. 154 (2023).

economic consequences of adopting a new statute.[11][12]

"Contemporary Challenges and Reforms in India's Insolvency Framework", examined by several authors, captures some persistent domain challenges, such as the challenges facing MSMEs and group insolvencies, along with the fact that the framework is less effective due to the systemic vulnerabilities exacerbated by the COVID-19 pandemic. Each of the papers, while examining different issues or legal theories, emphasises the confusion created by overlapping regimes, such as the BUDS Act, 2019, and the SARFAESI Act, and consequently highlights the need for further legal harmonisation of the respective laws and procedural clarity. Prominent recommendations from expert committees, especially the Cross Border Insolvency Rules/Regulation Committee (CBIRC) and the Bankruptcy Law Reforms Committee, were emphasised, including adopting prepack insolvent procedures specifically for MSMEs, improving creditor recovery capacity, improving information utilities, and harmonising intersecting laws. Further, they suggested expanding cross-border insolvency protocols cautiously, suggesting bilateral agreements instead of working towards a universalist application until an integrated legislative framework can be established. However, the work typically ends without considering understanding the practicalities of the reform agenda or the implications for the long-term effectiveness of insolvency resolution and stakeholder confidence going forward.[13][14]

"Thematic Groupings and Consensus in India's Insolvency Landscape" draws on a rich array of legal scholarship and case law analyses to highlight themes of shared perspectives. There is widespread recognition of the "Need for Complete, Modern Legislation" because the outmoded and disjointed legacy frameworks that muddied pre-IBC insolvency processes resulted in unacceptable levels of inefficiency and the necessity to enact the IBC and iteratively reform it.

Secondly, "Judicial Dynamism" is a central theme, with courts focusing on interpretation and reestablishment of both procedural and substantive aspects of insolvency law. The reasons for

[11] Rana Navneet Roy & Satyansh Gupta, *Cross Border Insolvency under the Indian Insolvency and Bankruptcy Code, 2016*, 26 J. Legal, Ethical & Regul. Issues 1 (2023).
[12] *Sudhaker Shukla & Kokila Jayaram, Cross Border Insolvency – A Case to Cross the Border Beyond the UNCITRAL, India L.J. (2023).*
[13] Sudhaker Shukla & Kokila Jayaram, Cross Border Insolvency – A Case to Cross the Border Beyond the UNCITRAL, India L.J. (2023).
[14] Cross-Border Insolvency Rules/Regulation Committee (CBIRC), Second Report on Cross-Border Insolvency, Ministry of Corporate Affairs, Government of India (Jan. 18, 2023).

this are most pronounced in cross-border insolvency cases where statutory provisions are yet to be settled. Finally, the groupings highlight ongoing "Gaps and Future Directions", providing a spotlight for issues that are borderline esoteric, such as cross-border insolvency, resolutions specific to MSMEs, the issue of group insolvency, and the interaction with other regulations such as SARFAESI and BUDS. There are features of these issues where the courts may innovate further and implement additional legislative measures to effect modernisation. In general, the literature does not address the longer-term practical and economic significance of these emerging legal developments.[15][16]

The examined literature coalesces around the IBC as a transformative, if not always consistent, framework that has considerably enhanced India's insolvency structure and debt recovery processes. Ongoing questions relate to the role of the judiciary in determining outcomes, harmonisation of cross-border processes, and resolving areas of overlap between sectoral and interregulatory regimes. The next phase of reform will likely be around international harmonisation (potentially developing the UNCITRAL Model Law with modifications), streamlining the MSME processes, process efficiency for tribunals and utility of information. Further empirical assessment, legislative reform, and practical adjustment to both domestic and global commerce continue to be called for by the literature.[17][18]

Evolution of Insolvency and Bankruptcy Code 2016:

The insolvency and bankruptcy landscape in India was dominated by a variety of statutes governing corporate insolvency, individual insolvency and financial creditor recovery. Overlooking the aforementioned subjects were sectoral statutes with no uniform framework, resulting in multiple overlaying procedures, low recovery rates for creditors and delayed resolution of delayed assets.

In 1909 *the Presidency Town Insolvency Act* was implemented in India, governing the area of individual insolvency in the presidency towns of Calcutta, Bombay and Madras[19]. The District

[15] Sudhaker Shukla & Kokila Jayaram, Cross Border Insolvency – A Case to Cross the Border Beyond the UNCITRAL, India L.J. (2023).
[16] Cross-Border Insolvency Rules/Regulation Committee (CBIRC), Second Report on Cross-Border Insolvency, Ministry of Corporate Affairs, Government of India (Jan. 18, 2023).
[17] Sudhaker Shukla & Kokila Jayaram, Cross Border Insolvency – A Case to Cross the Border Beyond the UNCITRAL, India L.J. (2023).
[18] Cross-Border Insolvency Rules/Regulation Committee (CBIRC), Second Report on Cross-Border Insolvency, Ministry of Corporate Affairs, Government of India (Jan. 18, 2023).
[19] Presidency-Towns Insolvency Act, No. 3 of 1909, India Code (1909)

Court or High Courts dealt with the initiation of insolvency against the debtor wherein Sec. 58 of the Act dictated a court-appointed 'official assignee' who took charge of the debtor's assets and sold off the said assets to pay off the creditors. The method of resolution was court-driven via the official assignee who took charge of the debtor's assets and distributed them through an established priority of creditors. The entire resolution process was characterised by no structured timeline for the resolution process, making it slow and cumbersome. The requirement of the hour remained a wider reach of the statute for increased scope of the statute.

The abovementioned statute was followed by *the Provincial Insolvency Act 1920* . It dealt with the subject of individual insolvency over a broader jurisdiction governing cases outside the presidential towns[20] and overlooking cases in the provincial areas. It was a slight broad implementation of the same statute governing individual insolvency. It still lacked a broad interpretation of 'Insolvency' as a whole and it still did not address the subject of Corporate insolvency.

The first statute that was brought to govern the subject of corporate insolvency was the *Company's Act 1956*. The Act dealt with corporate insolvency by providing provisions for the winding up of the company. Sections 433 to 449 dealt with the subject of court-appointed insolvency, where an 'official liquidator' is appointed by the court where the company is unable to pay its dues to creditors. The Liquidator proceeds to take control of the Debtor's assets and are sold off to meet the claims of the creditors. There was also the provision of Voluntary Winding up by Members or Creditors provided under Sections 484 to 500 of the Act. The Shareholders could initiate insolvency proceedings while the company was solvent and it could also be initiated by Creditors when the company could not pay back their dues. The Payment were creditors were based on priority basis , Secured Creditors were given the highest priority seconded by Workmen Dues and Preferential Creditors like Taxes and Government dues followed by Unsecured creditors and Shareholders[21]. There was no framework provided in this statute for restructuring or revival of the company, it only focussed on liquidation of Companies.

In 1985, the Sick Industrial Companies (Special provisions) Act (SICA) was brought into the Insolvency arena with a purpose of reviving sick industrial companies[22] before they became

[20] Provincial Insolvency Act, No. 5 of 1920, India Code (1920).
[21] Id. § 529A (as amended by Companies (Amendment) Act, 1985).
[22] Sick Industrial Companies (Special Provisions) Act, No. 1 of 1986, India Code (1986).

insolvent. The statute aimed at reviving and saving companies undergoing financial distress and established an Adjudicating authority named Board for Industrial and Financial Reconstruction for monitoring and restructuring[23]. Even with revolutionary thought the persisting problem of slow process and low success rates continued to trouble applicants throughout India.

In 1993 came Recovery of Debts due to banks and Financial Institutions Act (RDDBFI) with an intention to create Debt Recovery tribunals for recovery of Bank loans[24]. This statute focussed majorly on Banks and Financial Institutions to avail a faster recovery remedy. This statute, even though aimed to release the pressure of pending cases on Higher Courts by establishing a tribunal to hear cases of the same nature, still suffered from long timelines and a glaring flaw. The flaw being that this statute included only 'Financial Creditors' as creditors making the ambit and scope very narrow[25].

In the year of 2002 the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act was implemented to allow secured creditors to recover debts from defaulting borrowers without court intervention by seizing and selling borrowers assets.[26] This statute allowed Banks to take possession of assets and sell them to recover due from the company. This Statute also focused on Secured creditors and then scope still remained narrow.

In 2013 , The Companies Act 2013 came into the picture carrying major changes from its 1956 predecessor statute. This statute included corporate insolvency provisions and replaced the Companies Act 1956. This included the provisions of winding up of the company and also included ideas of revival mechanisms[27] but the Insolvency landscape was still riddled with issues of fragmentation, no time bound resolution process, unequal representation of all category of Creditors and low rates of Creditor recovery.

[23] Report of the High Level Committee on Law Relating to Insolvency and Winding Up of Companies (Eradi Committee Report) ¶¶ 3.4–3.7 (2000).
[24] Recovery of Debts Due to Banks and Financial Institutions Act, No. 51 of 1993, India Code (1993).
[25] Reserve Bank of India, *Report of the Working Group on Resolution Regime for Financial Institutions* 25–26 (2014).
[26] Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, No. 54 of 2002, India Code (2002).
[27] Companies Act, No. 18 of 2013, India Code (2013).

In the year 2016 The Insolvency and bankruptcy Code, 2016 was introduced which marked a paradigm shift in India's Insolvency and Bankruptcy Framework[28]. It introduced a single, time bound framework which focussed on a creditor-driven approach and a going concern concept. For the revival of corporate entities, the IBC Code had provisions of the Corporate Insolvency Resolution Process (CIRP) which is heard by the National Company Law Tribunal (NCLT) an aimed for the resolution process within 180 to 270 days with provisions for extension[29]. The introduction of this Code meant a standalone Code addressing matters of both corporate and Individual Insolvency in a time bound manner, under a single window mechanism[30], ensuring creditor control and the integration of the fragmented framework that used to persist in Indian Insolvency laws.

A Comparative Analysis between Pre-IBC and Post IBC Insolvency Frameworks:

Among the pre-existing law regimes, *Sick Industrial Companies Act,1985* (SICA) laid a legal framework wherein Board for Industrial and Financial Reconstruction (BIFR) laid an automatic moratorium on being approached by the 'Sick Companies' making Creditor recovery a slow and tiresome ordeal[31]. The operating tenure of SICA was marked by slow creditor recoveries, low resolution rates, lengthy BIFR proceedings and overlap with Company Law and DRT proceedings wherein there was clash between Creditors and Shareholders[32]. The introduction of Insolvency and Bankruptcy Code 2016 in the insolvency space ensured a time bound resolution process (CIRP) with strict 180 to 330 days limits[33]. It went on to abolish BIFR as an adjudicating authority and repealed the Sick Industrial Companies Act,1985[34]. It barred the debtors from abusing and exploiting the 'sickness' protection to delay creditors infinitely. The system of Moratorium still continues to exist, however under the present IBC regime, it is subject to checks and balances from National Company Law Tribunal and tied to resolution timelines[35].

[28] Insolvency and Bankruptcy Code, No. 31 of 2016, India Code (2016).
[29] Insolvency and Bankruptcy Code, No. 31 of 2016, § 12.
[30] Insolvency and Bankruptcy Board of India, *Quarterly Newsletter*, Vol. 30, Oct.–Dec. 2024, at 5, https://ibbi.gov.in/uploads/publication/dec-2024-quarterly-newsletter.pdf.
[31] Law Commission of India, *Report No. 188: Proposals for Amendments to the Provisions of the SICA, 1985* (2003).
[32] Report of the Expert Committee on Company Law (J.J. Irani Committee Report) ¶¶ 3.8–3.12 (2005).
[33] Insolvency and Bankruptcy Code, No. 31 of 2016, § 12, India Code (2016).
[34] Insolvency and Bankruptcy Code, No. 31 of 2016, Sch. VIII, repealing Sick Industrial Companies (Special Provisions) Act, 1985.
[35] Innoventive Indus. Ltd. v. ICICI Bank, (2018) 1 SCC 407 (India).

The Recovery of Debts Due to Banks and Financial Institutions Act,1933 or *DRT Act* was riddled with issue of "Multiple Forum Shopping"[36]. Debt Recovery Tribunals (DRTs) dealt with Secured Debt recovery from banks and financial institutions and often heard recovery matters while Winding up and Restructuring matters were allotted to High Courts of respective states and Board for Industrial and Financial Reconstruction[37] under this act. The recovery process was protracted and was in a state of disarray with every creditor pursuing their own discourse leading to further asset depletion with seeing little to no repayments as results. IBC Code, 2016 eradicated these issues by bringing Creditors of all types (secured, unsecured, operational) under one forum/Adjudicating body i.e NCLT(National Company Law Tribunal)[38]. The Insolvency and Bankruptcy code also prioritised collective resolution of claims over fragmented enforcement of laws. It left adjudication of Individual Insolvency matters to Debt Recovery Tribunals, but allotted matters of Corporate insolvency to be heard exclusively by NCLT.[39]

The *SARFAESI Act,2002* was characterised by major parallel proceedings problems where jurisdiction of SARFAESI Act clashed with BIFR references and High Court's jurisdiction of Winding up cases[40].It enabled banks to seize assets, often leaving Unsecured creditors with no remedies which lead to disputes in Debt Recovery tribunals and High Courts. The Insolvency and

Bankruptcy Code barred SARFAESI Act's jurisdiction with the introduction of Moratorium under Sec. 14 of the Code on the commencement of the Corporate Insolvency Resolution process[41]. Secured Creditors were brought under the ambit of the Committee of Creditors which ensure collective control unlike the situation where they could enforce security without Court's Intervention under *SARFAESI Act, 2002*[42]. It ensured Under Section 53 - 'Waterfall mechanism' was established where focus was on integrated priority instead of unilateral enforcement[43].

[36] Recovery of Debts Due to Banks and Financial Institutions Act, No. 51 of 1993, India Code (1993).
[37] Reserve Bank of India, *Report of the Working Group on Resolution Regime for Financial Institutions* 27–28 (2014).
[38] Insolvency and Bankruptcy Code, No. 31 of 2016, § 60, India Code (2016).
[39] Id.
[40] Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, No. 54 of 2002, India Code (2002).
[41] Insolvency and Bankruptcy Code, No. 31 of 2016, § 14, India Code (2016).
[42] Swiss Ribbons Pvt. Ltd. v. Union of India, (2019) 4 SCC 17 (India).
[43] Insolvency and Bankruptcy Code, No. 31 of 2016, § 53, India Code (2016).

Under the framework laid down by the *The Companies Act 1956 and 2013*, High Courts was the adjudicating body over Winding up of Company matters with heavy overlapping jurisdiction cases with BIFR (Board for Industrial and Financial Reconstruction) in case of Sickness cases and Debt Recovery tribunals when it came to recovery[44]. The recovery rates were low and the system was mainly Debtor-driven, liquidation was common with no focus on reconstruction[45]. On introduction of the Insolvency and Bankruptcy Code 2016 the focus of the framework was changed from Debtor-driven to Creditor-driven with the introduction of the Committee of Creditors and appointment of Resolution Professionals[46]. It transferred the jurisdiction of hearing Insolvency matters directly to the National Company Law Tribunal and shifted the focus from Liquidation to resolution[47]. The Code also solved the issues of fragmented recoveries under various statutes and various adjudicating bodies under each respective statute into a collective resolution via CIRP (Corporate insolvency Resolution process) revolutionizing the Insolvency Landscape in India[48]. **Cross Border Insolvency - Meaning and Scope :**

A Cross Border insolvency is defined as a situation wherein an insolvent debtor has creditors and debtors in more than one jurisdiction i.e. in many different countries.A cross Border insolvency case is one where either the debtor has assets over multiple jurisdictions or where the creditor is not from the place where the insolvency case is taking place. Hence the subject of Cross Border Insolvency addresses the issues of Jurisdiction in an Insolvency proceeding.

Historical Need for Cross-Border Insolvency Frameworks:

The growth of global trade through rapid globalisation and the rapid growth of multinational corporations during the late 20th century all contributed to more cross-border insolvencies. The global connection requires a unified way of handling the difficulties of multiple jurisdictions on insolvency proceedings. With no internationally recognised framework and no clear and predictable legal treatment of cross-border insolvencies, issues emerged where cross-border insolvencies were treated and managed inconsistently, in fact often contradictorily, impairing

[44] Companies Act, No. 1 of 1956; Companies Act, No. 18 of 2013, India Code (2013).
[45] Report of the High Level Committee on Law Relating to Insolvency and Winding Up of Companies (Eradi Committee Report) ¶¶ 5.1–5.3 (2000).
[46] Insolvency and Bankruptcy Code, No. 31 of 2016, §§ 21–22, India Code (2016).
[47] Id. § 60.
[48] Insolvency and Bankruptcy Board of India, *Quarterly Newsletter*, Vol. 30, Oct.–Dec. 2024, at 5, https://ibbi.gov.in/uploads/publication/dec-2024-quarterly-newsletter.pdf

access to reasonable alternatives to resolution and protection of creditor rights.

Cross Border insolvency - The Global stance:

The UNCITRAL Model Law on Cross Border Insolvency was introduced by the United Nations Commission on International Trade Law (UNCITRAL) in the year 1997 to address insolvency cases involving multiple jurisdictions. The Model law focuses on cooperation between domestic courts and foreign insolvency representatives ensuring efficient administration of cross border insolvency Cases. The Model laws aim at fulfilling the objectives by coordinating concurrent proceedings and it also has provision for relief to foreign representatives. By providing a predictable legal framework, it helps in reducing conflicts, avoiding asset dissipation, and promoting international trade and investment.

Cross Border Insolvency Framework in India :

The Statute dealing with insolvency law currently in India is the insolvency and bankruptcy Code 2016. The Insolvency & Bankruptcy Code 2016 has provisions of Section 234 and 235 of the Code that deal with cross border insolvency in India. Section 234 of the Code empowers the Central Government to enter into bilateral agreements with other countries to resolve situations pertaining to cross border insolvency. Section 235 of the code empowers the adjudicating authority under the Code to issue a letter of request to a court in a country in which an agreement under Section 234 has been entered into, to deal with assets situated in that country in a specified manner.

The Indian Civil Procedure Code of 1908 is followed in conjunction with English common law rules in order for foreign procedures to be recognized. Indian courts have the authority to implement orders issued by non-Indian courts in "reciprocating territories" under Section 44A of the Code of Civil Procedure of 19082. If a nation was proclaimed a reciprocating territory by the Indian government and published in the Official Gazette, it would be treated as the same. Making sure the judgment or decree is final, rendered on the basis of the case, and issued by a superior court with the necessary jurisdiction is the fundamental rule that is adhered to while implementing a foreign judgment or decision in India.

UNCITRAL Model on Cross Border Insolvency Laws and IBC Code, 2016 - a Comparative Analysis:

The UNCITRAL Model Law on Cross-Border Insolvency has provided an internationally recognized legal framework to facilitate and encourage global cooperation in the insolvency process[49]. Article 15 created a simplified framework for recognizing foreign proceedings; foreign representatives can apply directly to a court in the enacting state, avoiding cumbersome and complex processes of legalisation in each jurisdiction. Upon recognition, Article 19 describes the relief that may be granted[50], for example stay on individual action, or suspension of the debtor's right to dispose of assets, helping to ensure orderly administration of cross-border insolvencies. In addition, Article 25 to27[51] facilitate, and enhance cooperation and coordination between courts and foreign representatives, promoting direct communication and enhancing coordination between the main and non-main proceedings.

The UNCITRAL Model Law on Cross-Border Insolvency, currently adopted by 47 jurisdictions, serves as a leading international standard encouraging cooperation, recognition, and coordination between courts and insolvency professionals across countries which operate without the need for bilateral treaties[52].The IBC Code,2016, while it currently lacks a dedicated cross border Insolvency framework,has provisions of Sections 234 and 235 which speaks about bilateral agreements and letter of Request to Foreign Courts, but the same is rarely implemented in real life scenarios. In reality India follows a system of Ad-Hoc Judicial Cooperation as established in *Jet Airways Protocol Case* between India and Netherlands or an improvisation on a case to case basis[53]. IBC Code 2016, substantive in nature focuses on Creditor' rights, priority in payment in case of liquidation contrasting UNCITRAL models's focus on procedural aspects like Cooperation and Coordinations within different Jurisdictions. Under the IBC Code,2016 foreign representatives normally have no standing before the NCLT whereas Under the UNCITRAL model, foreign representatives get access to domestic courts. It also facilitates court to court communication and coordination of Insolvency Personnel. While the Model Law addresses procedural aspects, it leaves unresolved issues such as conflicts of law and uneven judicial interpretations. Globally, protocols and bilateral agreements have proven useful in complex insolvencies, as demonstrated in the Jet Airways case, relying heavily on cross-

[49] UNCITRAL Model Law on Cross-Border Insolvency arts. 15, 19, 25–27 (1997), U.N. Comm'n on Int'l Trade Law, available at https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency
[50] Id. art. 19.
[51] Id. arts. 25–27.
[52] See Cross-border Insolvency, *Wikipedia* (last updated last week) (listing ~46–47 implementing jurisdictions in 2025), available at https://en.wikipedia.org/wiki/Cross-border_insolvency
[53] See The Jet Airways' Cross Border Insolvency Protocol: A Success Story, Centre for Commercial Law in Asia (Jan. 26, 2021).

jurisdictional cooperation. Considering India's expanding international trade and investment, experts recommend going beyond the Model Law to adopt frameworks guided by Financial Stability Board principles, providing customized solutions that safeguard creditor interests, optimize asset recovery, and facilitate orderly resolution of cross-border insolvencies.

Why India has been Hesistant?

Thus far, concern over judicial sovereignty, reciprocity, and protecting domestic creditors has lead India to resist adopting the UNCITRAL Model Law on Cross-Border Insolvency. Policy-makers fear that allowing foreign representatives direct access to Indian tribunals would lead to a loss of sovereign control over insolvency proceedings and displace smaller Indian creditors. Additionally, the insolvency framework is still evolving in India and with the NCLT/NCLAT being overburdened with cases and limited capacity, managing large-scale cross-border cases are impractical at this stage. Rather than to adopt a universalist, and open framework, India would prefer to continue bilateral arrangements under Sections 234–235 of the IBC, and instances of adhoc judicial cooperation like the Jet Airways case.

Assessing India's Cross-Border Insolvency Procedures and Challenges:

India's Insolvency and Bankruptcy Code (IBC), which was introduced in the legislative landscape in 2016, contains cross-border insolvency provisions under Sections 234 and 235, neither of which currently have any enabling notification so completely non-functional. The IBC provisions allow the central government to enter into reciprocal agreements with foreign states (section 234) regarding enforcement of IBC provisions, as well as allowing Indian adjudicating authorities' ability to issue letters of request to foreign courts for assistance in relation to insolvencies, via section 235. As a result of India's failure to develop a comprehensive cross-border insolvency regime, the Court, and insolvency practitioners have encountered a range of problems created by the absence of a formal framework. The courts in India routinely rely on Section 13 of the Code of Civil Procedure 1908, which is inherently limited and unable to operate in complex cases involving overlapping proceedings, for the recognition and enforcement of foreign judgments, while there is no central conduit. As a result, inconsistencies in recognizing and treating insolvencies crossing through competing jurisdictions has led to differing treatment of crossborder insolvencies and therefore made it overly burdensome for the resolution of IN based crossborder insolvencies.

Author's Recommendations:

On extensive research on the subject the Authors of this paper believe several measures can be taken to enhance India's cross-border insolvency framework. First, using the UNCITRAL Model Law on Cross-Border Insolvency will eliminate disparate activities in cross-border insolvency practice and provide one uniform standard for countries to follow in promoting cooperation, recognition, and coordination among courts and insolvency practitioners across various jurisdictions. Significant efficiencies can also be achieved when having more formalized court-tocourt protocols to work together on cross-border insolvency cases, to enhance efficiencies by sharing information, coordinating to 'not act at cross-purposes with conflicting orders', and minimize delay. Then we need to implement Sections 234 and 235 of the IBC. Under these provisions, India will negotiate bilateral and multilateral agreements with appropriate trading partners to provide certainty and expectations of recognition and enforcement of insolvency proceedings. Creating training and capacity-building opportunities for judges and insolvency practitioners to further develop their understanding of the legal problems attending cross-border cases will help to establish comfort with international systems. Finally, programs which build awareness of cross-border insolvency and techniques for using them by creditors, debtors, and all legal actors would help facilitate participation and sync with global practices of the cross-border judicial and legal system, and reduce obfuscation, and clean up the system and build credibility and reliability.

Conclusion:

The Insolvency and Bankruptcy Code 2016 has altered the insolvency environment in India by introducing time-bound resolutions and improved confidence for creditors. Since its inception, the Code has resolved more than 7,000 cases releasing claims of nearly ₹9 lakh crore which signifies effectiveness. More positively, recovery rates have significantly improved for creditors, recovering on average over 32% of their claims, compared to barely 23% under previous regimes. The IBC Code 2016 effectively addresses the issues of jurisdictional overlaps, low recovery rates and uncertainty for creditors which were major issues affecting India before its implementation. However, despite these advances, the framework is incomplete in its treatment of cross-border issues. The absence of any notified provisions in Part Z as well as procedures to allow for preliminary approaches, like Section 13 of the Code of Civil Procedure, highlights a transitional stage where the courts interpretation is constantly

supplanting what was probably legislatively intended. Although Indian courts have shown a practical approach to weigh local interests against international comity obligations, the absence of a proprietary framework entirely dealing with cross-border insolvency in an equivalent manner to the UNCITRAL Model Law creates an uncertainty for the debtors and creditors. Moving forward, the proper implementation of crossborder insolvency provisions and clarity on the treatment of exclusive jurisdiction clauses will each be paramount towards solidifying India's use by practitioners as a stable and predictable insolvency regime. It always comes down to enhancing institutional capacity and aligning insolvency law with the best practices globally, this final dimension will be crucial to whether the code is actually able to realise its full potential in fostering Economic growth and investor confidence.