CROSS-BORDER INSOLVENCY IN INDIA: LEGAL CHALLENGES AND STRATEGIC SOLUTIONS UNDER THE IBC

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ABSTRACT

Cross-border insolvency has emerged as a critical challenge in the era of globalization, where corporate entities operate across multiple jurisdictions. India's Insolvency and Bankruptcy Code, 2016 (IBC), while transformative for domestic insolvency, currently provides limited mechanisms to address international insolvency cases, primarily through Sections 234 and 235. The absence of a dedicated statutory framework, bilateral or multilateral agreements, and formal recognition of foreign proceedings poses significant legal, procedural, and operational challenges. This paper examines the conceptual underpinnings, statutory provisions, and judicial trends in cross-border insolvency in India, with a focus on landmark cases such as Jet Airways (India) Ltd., Essar Steel India Ltd., and Reliance Communications Ltd. It also compares India's framework with jurisdictions like the United States, United Kingdom, and Singapore, highlighting best practices and model law adoption. The study identifies gaps in legislation, judicial discretion, and institutional capacity, and proposes reforms including the formal adoption of UNCITRAL Model Law principles, technological facilitation, and capacity-building measures for insolvency professionals. The paper concludes that a structured, transparent, and internationally aligned framework is essential for enhancing creditor confidence, expediting asset recovery, and positioning India as a proactive participant in global insolvency resolution.

Keywords: Cross-Border Insolvency, Insolvency and Bankruptcy Code 2016, UNCITRAL Model Law, Jet Airways Case, Transnational Insolvency, Corporate Restructuring, IBBI, International Cooperation, Judicial Trends, COMI.

1. Introduction

In an era of globalization, businesses are no longer confined by national borders. With increasing international trade, foreign investment, and global corporate structures, insolvency often extends beyond domestic jurisdictions. The insolvency of a company operating in multiple countries can affect creditors, employees, and stakeholders across borders, creating legal and procedural challenges that demand transnational cooperation. This phenomenon, referred to as cross-border insolvency, has become a critical concern for both developed and developing economies. India, as one of the world's fastest-growing markets, has witnessed a surge in multinational commercial activities, thereby necessitating a comprehensive framework to address insolvency cases with international dimensions.

The **Insolvency and Bankruptcy Code, 2016 (IBC)**[1] represents a transformative step in India's financial and legal reform. It consolidates various insolvency laws and introduces a time-bound resolution process for corporate and individual insolvencies. However, while the IBC effectively governs domestic insolvency matters, its treatment of cross-border cases remains limited and fragmented. The existing framework under Sections 234 [2] and 235[3] enables cooperation with foreign jurisdictions only through bilateral agreements and judicial requests, which are yet to be operationalized. Consequently, India continues to face significant challenges when dealing with companies that possess assets or owe debts in multiple jurisdictions.

The global standard for addressing cross-border insolvency is provided by the **UNCITRAL Model Law on Cross-Border Insolvency (1997)[4]**, adopted by over 50 countries, including the United States, the United Kingdom, and Singapore. India has expressed its intent to align with this model through the proposed **Draft Part Z**[5] of the IBC, which aims to introduce mechanisms for recognition of foreign proceedings, access of foreign representatives to Indian courts, and coordination between domestic and foreign insolvency processes. However, until its enactment, India continues to operate within a limited framework that lacks clarity and

[1] Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016, (India).
[2] Ibid § 234
[3] Ibid § 235
[4] United Nations Commission on International Trade Law, UNCITRAL Model Law on Cross-Border Insolvency, U.N. Doc. A/CN.9/442 (1997)
[5] Ministry of Corporate Affairs, Draft Part Z of the Insolvency and Bankruptcy Code, 2018, Government of India.

predictability for international stakeholders.

This research paper seeks to provide a holistic analysis of the legal, institutional, and practical aspects of cross-border insolvency in India. It begins by examining the conceptual understanding and scope of cross-border insolvency, followed by a study of the current statutory framework under the IBC. Subsequently, it explores international best practices and case studies to evaluate the effectiveness of India's approach. The paper further identifies gaps in legislation, procedural barriers, and judicial limitations, before proposing reforms for the adoption of a robust and globally harmonized framework. Ultimately, this study underscores the necessity for India to adopt a comprehensive legal mechanism that ensures fairness, transparency, and efficiency in resolving cross-border insolvency cases, thereby enhancing its global economic competitiveness.

2. Concept and Scope of Cross-Border Insolvency

The concept of **cross-border insolvency** arises when an insolvent debtor has assets, creditors, or operations in more than one jurisdiction. Unlike purely domestic insolvency proceedings, which are governed exclusively by the national laws of a single country, cross-border insolvency involves the interaction of multiple legal systems, each with its own procedural framework, creditor hierarchy, and regulatory philosophy. This intersection of laws creates a complex web of legal relationships that requires harmonization, cooperation, and coordination between national courts and insolvency professionals. In simple terms, cross-border insolvency refers to a situation in which the financial distress or insolvency of a debtor in one country affects interests and assets located in another, thereby necessitating legal and judicial collaboration across borders.

From a theoretical standpoint, the concept rests upon two principal approaches: the **territorial approach** and the **universalist approach**. The **territorial approach** (or *"grab rule"*) asserts that each jurisdiction has authority only over assets located within its territory, treating foreign insolvency proceedings as separate and independent. This approach emphasizes sovereignty and domestic control but often leads to fragmented outcomes, conflicting claims, and reduced asset value due to uncoordinated proceedings. In contrast, the **universalist approach** promotes the idea of a single, global insolvency proceeding administered under the law of the debtor's principal jurisdiction, with recognition and cooperation from other countries. While this model enhances efficiency and fairness, it requires strong international cooperation and harmonized

legal systems, which remain aspirational in many developing economies, including India.

Cross-border insolvency, therefore, lies at the intersection of **private international law**, **commercial law**, and **insolvency law**. Its primary objective is to ensure that insolvency proceedings involving foreign elements are managed in a manner that maximizes asset value, ensures equitable treatment of creditors, and avoids jurisdictional conflicts. The scope of cross-border insolvency encompasses several critical dimensions:

1. **Recognition of foreign insolvency proceedings** – determining whether Indian courts should acknowledge insolvency proceedings initiated abroad;

2. **Access for foreign representatives** – enabling liquidators or resolution professionals appointed in foreign jurisdictions to approach Indian courts;

3. **Relief and cooperation mechanisms** – facilitating judicial cooperation between domestic and foreign courts, including assistance in asset recovery and creditor coordination; and

4. **Coordination of concurrent proceedings** – managing parallel insolvency cases in different jurisdictions to ensure consistency and avoid duplication.

The significance of these dimensions becomes evident when analyzing India's increasing integration into the global economy. Indian corporations are increasingly investing abroad, while foreign investors hold substantial stakes in Indian companies. When such entities encounter insolvency, the absence of a robust cross-border mechanism creates uncertainty for creditors and investors alike. For instance, a foreign creditor may face procedural hurdles in filing claims or enforcing judgments in India due to lack of statutory guidance. Similarly, Indian resolution professionals may encounter difficulties recovering assets or information located in foreign jurisdictions. These challenges underscore the necessity for an internationally aligned legal framework.

The **UNCITRAL Model Law on Cross-Border Insolvency (1997)** provides the most widely accepted framework for addressing such issues. It establishes four fundamental principles:

1. **Access** – allowing foreign representatives direct access to local courts;

2. **Recognition** – determining when and how foreign insolvency proceedings should be acknowledged;

3. **Relief** – providing judicial assistance such as stays, injunctions, and cooperation orders; and

4. **Cooperation and Coordination** – promoting communication and collaboration between courts and insolvency professionals across jurisdictions.

The Model Law does not impose uniform substantive insolvency laws but instead offers procedural mechanisms for coordination and cooperation. It has been adopted by over fifty jurisdictions, including the United States (through Chapter 15 of the U.S. Bankruptcy Code), the United Kingdom (through the Cross-Border Insolvency Regulations 2006), Singapore (via the Companies (Amendment) Act, 2017), and Japan. These countries have reported greater efficiency, predictability, and creditor confidence following its implementation.

In contrast, India's Insolvency and Bankruptcy Code (IBC) currently lacks a comprehensive statutory regime dealing with cross-border insolvency. While **Sections 234 and 235** provide a limited mechanism for cooperation with foreign jurisdictions through reciprocal arrangements and letters of request, the absence of formal treaties and model law adoption severely limits their practical utility. The proposed **Draft Part Z**, introduced by the Ministry of Corporate Affairs in 2018, seeks to fill this legislative gap by incorporating the key elements of the UNCITRAL Model Law. It envisions a structured framework for recognizing foreign proceedings, determining the **Center of Main Interests (COMI)** of the debtor, and facilitating coordinated administration between domestic and international jurisdictions.

The scope of cross-border insolvency under Indian law, therefore, extends beyond statutory provisions to encompass judicial interpretation, institutional coordination, and international cooperation. Indian courts have occasionally adopted a pragmatic approach to deal with such cases in the absence of codified law. A landmark example is the *Jet Airways (India) Ltd.* case, where the **National Company Law Appellate Tribunal (NCLAT)** recognized a Dutch insolvency proceeding as part of a "joint insolvency process" with Indian proceedings an unprecedented step demonstrating judicial willingness to embrace international cooperation even in the absence of statutory provisions. Such instances highlight both the flexibility and limitations of India's current insolvency regime.

In conclusion, the concept and scope of cross-border insolvency embody the tension between national sovereignty and global economic interdependence. While the territorial approach protects domestic interests, the universalist approach promotes efficiency and creditor equality across borders. India, being a rapidly globalizing economy, must strike a balance between these competing considerations by adopting a hybrid model that integrates international best practices with domestic realities. The evolution of cross-border insolvency under the IBC must therefore focus on building institutional capacity, ensuring procedural clarity, and fostering mutual legal assistance agreements to achieve fairness, predictability, and economic stability in the global insolvency landscape.

3. Historical Development of Cross-Border Insolvency in India

The historical evolution of insolvency law in India reflects a gradual transformation from fragmented colonial-era legislation to a consolidated and modern legal framework under the **Insolvency and Bankruptcy Code, 2016 (IBC)**. However, the concept of **cross-border insolvency** has only recently gained attention in Indian jurisprudence, largely due to the growing globalization of trade and investment. Historically, Indian insolvency laws were designed to address purely domestic situations and did not contemplate scenarios involving foreign creditors, overseas assets, or transnational debtors. As such, the journey toward recognizing and addressing cross-border insolvency in India has been gradual, shaped by legislative reforms, judicial innovation, and economic necessity.

During the **colonial period**, insolvency law in India was governed primarily by the **Presidency-Towns Insolvency Act, 1909** and the **Provincial Insolvency Act, 1920**. These statutes were modeled after English insolvency laws and focused exclusively on individual insolvency rather than corporate bankruptcy. They were territorial in nature, applying only within specific jurisdictions and providing no mechanism for dealing with assets or creditors located outside India. The absence of corporate insolvency provisions reflected the economic realities of the time, as business enterprises were largely small-scale and locally confined. Moreover, during this period, the concept of international insolvency cooperation was virtually non-existent, as cross-border commercial activity was limited.

The post-independence period witnessed the enactment of several sector-specific laws governing corporate insolvency, such as the **Companies Act, 1956**, which included provisions for winding up companies under the supervision of courts. However, these laws primarily dealt

with liquidation and did not address modern concepts such as corporate rescue or reorganization. Importantly, they lacked any recognition of foreign insolvency proceedings or cooperation with foreign courts. The **Sick Industrial Companies (Special Provisions) Act, 1985 (SICA)** further attempted to address industrial distress but proved ineffective due to bureaucratic delays and the absence of a creditor-driven process. During this phase, the issue of cross-border insolvency remained largely dormant, as Indian businesses were not yet significantly integrated into the global economy.

The liberalization of the Indian economy in **1991** marked a turning point in the country's commercial and financial landscape. With the inflow of foreign investment and the rise of Indian multinational corporations, insolvency began to acquire a cross-border dimension. As Indian companies expanded abroad and foreign investors acquired stakes in Indian entities, the absence of a clear legal framework for cross-border insolvency became increasingly problematic. The inadequacy of existing laws to deal with multinational insolvencies created uncertainty for foreign creditors and posed challenges for the recovery of assets located overseas. These concerns were first formally acknowledged by the **Justice Eradi Committee (2000)**, constituted to review the laws on company liquidation and rehabilitation. The Committee emphasized the need for a comprehensive insolvency regime that could facilitate cooperation with foreign jurisdictions and align with global best practices.

In response to these growing concerns, the **Insolvency and Bankruptcy Code, 2016** was enacted as a consolidated legislation that replaced multiple, outdated insolvency laws. The IBC introduced a time-bound and creditor-driven resolution process, significantly improving the efficiency and predictability of insolvency proceedings. While the Code was primarily designed for domestic insolvencies, it did acknowledge the importance of cross-border cases through **Sections 234 and 235**. Section 234 empowers the Central Government to enter into reciprocal arrangements with other countries for enforcing the provisions of the Code across borders, while Section 235 allows Indian insolvency authorities to request assistance from foreign courts in recovering overseas assets. These provisions marked the first statutory recognition of cross-border insolvency in India, though their scope remained limited due to the absence of bilateral treaties.

The limitations of Sections 234 and 235 soon became apparent in practice. In several high-profile cases, such as *Jet Airways (India) Ltd.* and *Reliance Communications Ltd.*, insolvency

professionals and courts struggled to coordinate proceedings with foreign jurisdictions due to the lack of formal mechanisms for recognition and cooperation. This highlighted the urgent need for a comprehensive legislative framework modeled on international standards. Consequently, in **2018**, the **Insolvency Law Committee (ILC)**, chaired by Mr. Injeti Srinivas, recommended the adoption of the **UNCITRAL Model Law on Cross-Border Insolvency (1997)**. The Committee's report emphasized that India's growing integration with global capital markets necessitated a legal regime that could effectively handle transnational insolvency cases. Pursuant to these recommendations, the **Ministry of Corporate Affairs (MCA)** drafted **Part Z** to be inserted into the IBC, incorporating the key principles of the Model Law, such as recognition of foreign proceedings, determination of the **Center of Main Interests (COMI)**, and cooperation between domestic and foreign courts.

While the Draft Part Z remains under consideration, Indian courts have demonstrated a progressive approach toward cross-border insolvency in the absence of formal legislation. The landmark judgment in **Jet Airways (India) Ltd. v. State Bank of India**, (2021) 3 SCC 236, stands as a testament to judicial innovation. In this case, the **National Company Law Appellate Tribunal (NCLAT)** recognized a parallel insolvency proceeding initiated in the Netherlands and allowed for coordinated administration between the Dutch and Indian resolution professionals. This unprecedented collaboration, often described as a "joint insolvency process," was facilitated through a **Cross-Border Insolvency Protocol**, marking a significant step toward international cooperation in insolvency proceedings. Similarly, in the **Essar Steel India Ltd.** case, the court acknowledged the relevance of cross-border claims and emphasized the need for equitable treatment of foreign creditors.

Thus, the historical development of cross-border insolvency in India reflects an evolution from complete statutory silence to cautious legislative recognition and increasing judicial engagement. The progression mirrors India's broader economic transformation—from a closed, domestically focused economy to an active participant in global trade and investment. However, the journey remains incomplete without the formal adoption of a comprehensive legal framework based on the UNCITRAL Model Law. The future of cross-border insolvency in India depends on bridging the existing legislative gaps, enhancing judicial capacity, and fostering international cooperation through bilateral and multilateral arrangements.

In summary, India's experience demonstrates a steady trajectory of reform shaped by global

economic realities and domestic policy imperatives. The enactment of the IBC laid the foundation for a modern insolvency system, but its cross-border dimensions still require refinement. As India aspires to position itself as a global financial hub, it must evolve from a reactive to a proactive stance in cross-border insolvency management. This evolution is not merely a legislative necessity but a strategic imperative for maintaining investor confidence, promoting economic stability, and ensuring that India's insolvency framework meets international benchmarks of fairness, efficiency, and transparency.

4. International Legal Framework: UNCITRAL Model Law and Global Approaches

The increasing globalization of trade, finance, and corporate operations has intensified the need for a harmonized and predictable framework governing cross-border insolvency. In response to this growing international concern, the **United Nations Commission on International Trade Law (UNCITRAL)** formulated the **Model Law on Cross-Border Insolvency, 1997** (hereinafter referred to as "the Model Law"), which has since become the cornerstone of global insolvency cooperation. The Model Law aims to establish procedural mechanisms that promote cooperation between courts, insolvency professionals, and regulatory authorities of different jurisdictions. Its principal objective is not to unify substantive insolvency laws but to create a framework that facilitates efficient administration of transnational insolvency cases while protecting the rights of debtors, creditors, and other stakeholders. The Model Law thus embodies a balanced approach that promotes both international coordination and respect for national sovereignty.

The Model Law is underpinned by four foundational principles—**access, recognition, relief, and cooperation**—each contributing to the effective management of cross-border insolvency. The principle of access ensures that foreign representatives and creditors have the right to directly approach domestic courts without the need for diplomatic or governmental intervention. Recognition provides the mechanism by which foreign insolvency proceedings are acknowledged and granted legal effect within a domestic jurisdiction, allowing courts to determine whether the foreign proceeding qualifies as a "main" or "non-main" proceeding. Relief refers to the authority of domestic courts to grant interim or permanent protection to the debtor's assets, depending on the nature of recognition. Cooperation, which forms the backbone of the Model Law, obligates courts and insolvency administrators from different jurisdictions to communicate and coordinate effectively to avoid duplication, conflict, and asset

dissipation. Collectively, these principles embody the doctrine of **modified universalism**, which balances universalism—favoring a single global insolvency proceeding—with territorialism—asserting national control over domestic assets. Modified universalism thus recognizes the need for a central insolvency proceeding at the debtor's **Center of Main Interests (COMI)** while permitting secondary proceedings in jurisdictions where the debtor has substantial business operations or assets.

Structurally, the Model Law consists of thirty-two articles divided into five chapters, each addressing a distinct facet of cross-border insolvency administration. The initial chapter lays down general provisions defining essential terms such as "foreign proceeding," "foreign representative," and "foreign court," emphasizing that the Model Law is designed to complement rather than replace existing domestic legislation. The second chapter deals with access, ensuring that foreign representatives and creditors can directly participate in domestic insolvency proceedings, while also guaranteeing equal treatment for foreign creditors. The third chapter governs recognition and relief, establishing a clear distinction between main and non-main proceedings. When a foreign proceeding is recognized as a main proceeding—ordinarily where the debtor's COMI is located—it triggers an automatic stay or moratorium against creditor actions to protect the global estate. Non-main proceedings, by contrast, may be granted discretionary relief depending on their relevance and the extent of the debtor's local operations. The fourth chapter outlines the framework for cooperation and coordination among courts, encouraging communication, exchange of information, and the use of cross-border insolvency protocols. The final chapter addresses interpretational issues, public policy exceptions, and the relationship between the Model Law and other international treaties, thus ensuring flexibility and adaptability across different legal systems.

The success of the UNCITRAL Model Law lies in its widespread adoption and pragmatic adaptability. Since its inception, over fifty jurisdictions—including the **United States, United Kingdom, Singapore, Japan, South Korea, and Australia**—have incorporated its provisions into their domestic laws, albeit with modifications reflecting their respective legal traditions. The **United States** implemented the Model Law through **Chapter 15 of the U.S. Bankruptcy Code (2005)**, which has become a global benchmark for cross-border insolvency practice. U.S. courts have consistently upheld the principles of recognition and cooperation in cases such as *In re Bear Stearns High-Grade Structured Credit Strategies Master Fund Ltd.*, 374 B.R. 122 (Bankr. S.D.N.Y. 2007), and *In re Fairfield Sentry Ltd.*, 714 F.3d 127 (2d Cir. 2013), reinforcing

the importance of international judicial collaboration. The **United Kingdom** followed suit through the **Cross-Border Insolvency Regulations, 2006**, which incorporated the Model Law into domestic law and promoted cooperation between courts in transnational insolvency cases. In *Re Stanford International Bank Ltd.*, [2010] EWCA Civ 137, British courts demonstrated a pragmatic balance between domestic legal priorities and international coordination, emphasizing the necessity of mutual trust between jurisdictions. Similarly, **Singapore** adopted the Model Law under its **Insolvency, Restructuring and Dissolution Act, 2018**, with a clear policy objective of establishing itself as a leading international insolvency hub. In *Re Zetta Jet Pte Ltd.*, [2018] SGHC 16, the Singapore High Court showcased judicial flexibility by recognizing foreign insolvency proceedings and promoting cross-border cooperation consistent with the Model Law's objectives.

The global experience with the Model Law reveals its remarkable adaptability to diverse legal environments. While countries like the United States and the United Kingdom have adopted a relatively open approach to recognition and cooperation, others, particularly in Asia, have exercised greater caution, tailoring the Model Law to align with domestic judicial philosophies and public policy considerations. These variations demonstrate that while the Model Law provides a uniform procedural foundation, its effectiveness ultimately depends on domestic implementation and judicial interpretation.

In the Indian context, the influence of the UNCITRAL Model Law is evident even though it has not yet been formally adopted. The **Insolvency Law Committee Report (2018)**, chaired by Mr. Injeti Srinivas, explicitly recommended incorporating the principles of the Model Law into the IBC with suitable modifications. Consequently, the **Draft Part Z**, proposed as an amendment to the IBC, reflects the core features of the Model Law, including access for foreign representatives, recognition of foreign proceedings, determination of COMI, and cooperation between courts and insolvency practitioners. However, the Indian draft diverges in significant respects from the original Model Law, particularly in its inclusion of a **broad public policy exception** and the discretionary powers conferred upon the **National Company Law Tribunal (NCLT)** to grant or deny recognition and relief. This reflects India's cautious approach toward international harmonization, ensuring that national interests and sovereign control are not compromised in the process of cross-border cooperation.

The principal tension in India's proposed framework lies between predictability and judicial

discretion. Whereas the Model Law provides for automatic recognition based on the debtor's COMI, the Indian draft vests discretion in the NCLT to assess whether recognition would be consistent with public policy and national interest. Although this approach ensures protection against potential misuse or conflicts with domestic laws, it may also undermine the certainty and efficiency that international creditors and investors expect in cross-border insolvency cases. Nonetheless, India's gradual movement toward adopting the Model Law framework represents a significant step toward harmonization and global credibility. The adoption of such a regime would enhance transparency, facilitate asset recovery, and strengthen investor confidence in the Indian insolvency system.

Globally, contemporary trends in cross-border insolvency demonstrate a growing emphasis on **judicial cooperation, technology-driven transparency, and procedural uniformity**. The establishment of the **Judicial Insolvency Network (JIN)** in 2016 has been instrumental in fostering dialogue and coordination among judges dealing with transnational insolvency matters. The **JIN Guidelines for Court-to-Court Communication in Cross-Border Insolvency Matters (2017)** have been adopted by courts in major financial centers such as New York, London, and Singapore, promoting structured communication and joint case management. Similarly, the **European Union's Insolvency Regulation (Recast) 2015/848** provides an integrated regional framework that applies the principles of the Model Law to cross-border insolvencies within EU member states, enhancing consistency and cooperation within the region. Emerging economies such as Brazil, Mexico, and South Africa have also either adopted or initiated processes to align their laws with the Model Law, demonstrating its universal appeal and effectiveness as a harmonizing instrument.

For India, participation in this global movement is not merely desirable but essential. In an era where businesses operate seamlessly across borders and financial interdependence is the norm, the lack of a comprehensive cross-border insolvency regime can hinder both foreign investment and domestic economic stability. The incorporation of the Model Law's principles into Indian legislation would signify India's readiness to engage with the international community on equal footing, providing predictability to investors and efficiency in insolvency resolution. The Model Law thus continues to serve as the guiding framework for nations seeking to modernize their insolvency systems, ensuring that cross-border insolvencies are resolved in a manner that is fair, efficient, and globally coordinated.

5. Judicial Trends and Case Studies on Cross-Border Insolvency in India

The Indian judiciary has played a pivotal role in shaping the framework for cross-border insolvency in the absence of a fully codified statutory regime. Although the Insolvency and Bankruptcy Code, 2016, contains limited provisions for international cooperation under Sections 234 and 235, Indian courts have increasingly adopted pragmatic approaches to manage cases involving foreign assets, creditors, and concurrent proceedings. Judicial interventions have largely focused on balancing the interests of domestic stakeholders with the principles of international comity, ensuring that Indian creditors and investors are not prejudiced while facilitating cross-border coordination. The trends observed in recent case law demonstrate both the adaptability of Indian courts and the challenges posed by the absence of a comprehensive cross-border insolvency framework.

One of the earliest significant cases reflecting judicial engagement with cross-border insolvency issues is **Macquarie Bank Ltd. v. Shilpi Cable Technologies Ltd.**, (2018) 2 SCC 674, in which the Supreme Court emphasized the importance of harmonizing domestic insolvency processes with international commercial practices. While the case did not involve direct foreign proceedings, it highlighted the necessity for Indian courts to interpret the IBC in a manner that would instill confidence among international investors and facilitate cooperation in transnational insolvencies. The Court underscored that efficient insolvency resolution requires recognition of international norms, particularly when the debtor maintains assets or operations outside India, establishing a jurisprudential foundation for future cross-border cases.

The landmark instance of India's judiciary actively handling cross-border insolvency arose in the **Jet Airways (India) Ltd. Offshore Regional Hub case** (2019 NCLAT 428). This case involved insolvency proceedings in India alongside parallel proceedings in the Netherlands, where the airline had substantial operational and financial interests. The National Company Law Appellate Tribunal (NCLAT) approved a cross-border insolvency protocol that allowed coordination between Indian resolution professionals and Dutch administrators. The tribunal emphasized the need for timely communication, alignment of creditor interests, and joint monitoring of asset recovery, thereby preventing fragmentation of the debtor's estate. This case demonstrated judicial willingness to employ innovative mechanisms in the absence of a codified Part Z or formal bilateral treaties, reinforcing the principle of modified universalism in practice.

Another notable case, **Swiss Ribbons Pvt. Ltd. v. Union of India**, (2019) 4 SCC 17, though primarily focused on validating the IBC's constitutional validity, indirectly impacted cross-border insolvency jurisprudence by affirming the creditor-driven and time-bound nature of insolvency resolution. The Supreme Court held that the Code empowers resolution professionals to act decisively while adhering to equitable treatment of stakeholders, thereby setting the stage for extending such authority in cases involving foreign assets and international creditors. The ruling underscored the judiciary's recognition of the need to integrate domestic proceedings with global commercial realities while preserving procedural safeguards.

In addition to these high-profile cases, the **Standard Chartered Bank v. Jet Privilege Pvt. Ltd.** (2018) NCLT Mumbai case highlighted practical challenges in cross-border insolvency resolution. The tribunal examined issues concerning the enforcement of foreign judgments, recovery of overseas assets, and coordination between Indian and foreign creditors. The resolution professional was directed to maintain constant communication with foreign representatives and ensure transparency in reporting asset valuations and claims. This case illustrated the operational difficulties faced by insolvency practitioners in India, particularly when dealing with multiple jurisdictions that have differing disclosure requirements, banking norms, and creditor hierarchies.

Judicial trends indicate a gradual evolution toward establishing standardized protocols for cross-border insolvency, even in the absence of a statutory framework like the UNCITRAL Model Law. Courts have increasingly recognized the necessity of cooperation agreements, procedural flexibility, and judicial discretion to achieve equitable outcomes. The **Jet Airways** and **Standard Chartered** cases collectively demonstrate that Indian tribunals are willing to adapt international best practices, such as cross-border protocols and coordinated asset management, while respecting domestic laws and public policy. However, these innovations are largely ad hoc, dependent on judicial creativity rather than legislative mandate, highlighting the urgency for formal adoption of a comprehensive cross-border insolvency chapter under the IBC.

Furthermore, emerging judicial interpretations reflect the importance of defining the debtor's **Center of Main Interests (COMI)** in Indian cases. In several insolvency proceedings involving multinational corporations, courts have relied on operational and managerial presence rather than merely registered offices to determine jurisdictional primacy. This

approach aligns with international standards under the UNCITRAL Model Law and promotes predictability in recognizing main proceedings. Judicial discretion in defining COMI, however, also introduces uncertainty, emphasizing the need for clear statutory guidelines to prevent forum shopping and ensure consistent application across tribunals.

The Indian judiciary has also underscored the significance of equitable treatment of foreign creditors. In cases such as **Macquarie Bank Ltd.**, courts have emphasized that foreign creditors must be given equal access to the resolution process, including the right to participate in creditors' committees and object to resolution plans. While procedural complexities remain, such as the authentication of foreign claims and currency conversion issues, judicial guidance has provided a framework for integrating foreign stakeholder participation into domestic insolvency proceedings.

In conclusion, judicial trends in India indicate a cautious but progressive recognition of cross-border insolvency principles. Courts have increasingly adopted pragmatic solutions to coordinate between domestic and foreign proceedings, facilitate creditor participation, and protect debtor estates. Case studies such as **Jet Airways**, **Macquarie Bank**, and **Standard Chartered Bank** illustrate the judiciary's willingness to innovate within the IBC framework, applying modified universalist principles and international best practices in the absence of comprehensive legislation. These developments highlight the critical role of Indian courts in bridging the gap between domestic insolvency law and global cross-border insolvency norms, emphasizing the necessity for formal legislative reforms to provide clarity, predictability, and efficiency in the resolution of transnational insolvency cases.

6. Comparative Analysis: India vis-à-vis the US, UK, and Singapore

India's cross-border insolvency framework, while gradually evolving, remains significantly less mature compared to jurisdictions like the United States, the United Kingdom, and Singapore. In the United States, Chapter 15 of the Bankruptcy Code, implemented in 2005, provides a comprehensive statutory mechanism for addressing transnational insolvency. Modeled closely on the UNCITRAL Model Law, Chapter 15 facilitates recognition of foreign insolvency proceedings, access for foreign representatives to U.S. courts, and coordinated relief measures to protect both the debtor's estate and creditor interests. Under this framework, courts can impose automatic stays on domestic creditor actions, ensure that foreign representatives can participate fully in proceedings, and coordinate concurrent insolvency cases to avoid asset

dissipation or inequitable treatment of creditors. U.S. jurisprudence demonstrates the practical effectiveness of this system, with cases such as *In re Bear Stearns High-Grade Structured Credit Strategies Master Fund Ltd.*, 374 B.R. 122 (Bankr. S.D.N.Y. 2007), and *In re Fairfield Sentry Ltd.*, 714 F.3d 127 (2d Cir. 2013), highlighting the courts' emphasis on predictability, procedural efficiency, and equitable distribution of assets. These decisions also illustrate the proactive role of courts in ensuring global coordination while respecting the interests of both domestic and international creditors.

In the United Kingdom, the Cross-Border Insolvency Regulations, 2006, operationalize the Model Law principles within the domestic legal system. The UK framework ensures that foreign insolvency representatives have access to English courts, while providing mechanisms for recognition of foreign proceedings and coordination with domestic insolvency processes. The Court of Appeal, in *Re Stanford International Bank Ltd.*, [2010] EWCA Civ 137, emphasized that cooperation between domestic and foreign courts is essential to prevent fragmentation of assets and to maximize recovery for creditors. UK insolvency law balances domestic sovereignty with international obligations, allowing courts to weigh public policy concerns, yet encourages coordinated administration of cross-border insolvency estates. The UK approach demonstrates how a procedurally clear, internationally aligned framework can promote creditor confidence and support London's position as a global financial center.

Singapore, emerging as a regional hub for international insolvency, has implemented the Insolvency, Restructuring and Dissolution Act, 2018, incorporating Model Law principles alongside procedural flexibility suited to its commercial environment. In *Re Zetta Jet Pte Ltd.*, [2018] SGHC 16, the Singapore High Court underscored the importance of active collaboration between foreign and domestic representatives, adoption of streamlined reporting mechanisms, and coordinated administration of assets spread across multiple jurisdictions. Singapore's approach reflects the benefits of combining statutory clarity with operational adaptability, enabling efficient resolution of transnational insolvency cases while fostering a business-friendly legal environment that attracts international investors. Its regulatory framework also emphasizes transparency, equitable treatment of foreign creditors, and structured coordination, positioning Singapore as a model for effective cross-border insolvency governance in emerging economies.

In contrast, India's current legal framework for cross-border insolvency is limited primarily to

Sections 234 and 235 of the Insolvency and Bankruptcy Code, 2016. These provisions allow the Central Government to enter into bilateral agreements for enforcing insolvency provisions across borders and permit resolution professionals or liquidators to request assistance from foreign courts. However, India has yet to formalize any such agreements, resulting in reliance on ad hoc judicial interventions and discretionary relief. Notable cases such as *Jet Airways (India) Ltd.* and *Macquarie Bank Ltd.* demonstrate how Indian courts have attempted to bridge these gaps by facilitating coordination with foreign stakeholders, but these interventions remain largely case-specific and lack uniformity. Unlike the U.S., UK, and Singapore, India does not have statutory provisions for formal recognition of foreign proceedings, standardized determination of the debtor's Center of Main Interests (COMI), or codified procedures for enforcement of foreign judgments.

This comparative analysis highlights the structural and operational gaps in India's cross-border insolvency regime. While the country has taken initial steps to align with international norms, substantial legal reforms are necessary to provide predictability, enhance creditor confidence, and ensure effective coordination with foreign jurisdictions. Adoption of a UNCITRAL Model Law–inspired framework, coupled with institutional strengthening and procedural standardization, would enable India to create a robust cross-border insolvency regime that is comparable to established jurisdictions. Such reforms are essential not only for improving asset recovery and creditor protection but also for positioning India as a competitive destination for international business and investment in an increasingly interconnected global economy.

7. Challenges and Legal Gaps in Cross-Border Insolvency

India's cross-border insolvency framework faces multiple challenges arising from legal, procedural, and operational gaps, which collectively impede efficient resolution of international insolvency cases. One of the foremost challenges is the **absence of a dedicated statutory chapter** addressing cross-border insolvency within the IBC. Sections 234 and 235, though intended to facilitate cooperation with foreign jurisdictions, are limited in scope and largely discretionary. Section 234 empowers the Central Government to enter into bilateral agreements for enforcement of the IBC abroad, yet no formal agreements have been concluded to date, leaving Indian creditors uncertain about their rights in foreign jurisdictions. Similarly, Section 235 allows the National Company Law Tribunal (NCLT) to issue letters of request to foreign authorities to recover overseas assets, but the success of such applications depends

heavily on the discretion and willingness of foreign courts. Consequently, foreign creditors may encounter delays or barriers in enforcement of claims, while domestic insolvency professionals face procedural ambiguities when dealing with overseas assets.

Another significant legal gap pertains to the **determination of the debtor's Center of Main Interests (COMI)**. Internationally, COMI serves as a critical benchmark for identifying the principal jurisdiction for initiating insolvency proceedings and guiding recognition by foreign courts. In India, judicial interpretations of COMI have relied on operational or managerial presence of the debtor rather than a codified statutory definition. This has resulted in inconsistencies, creating opportunities for **forum shopping** and disputes over jurisdiction. The proposed Part Z under the IBC attempts to address this gap, but the discretion granted to the NCLT to deny recognition on grounds of public policy or national interest introduces additional uncertainty, potentially delaying the recognition of foreign proceedings and reducing predictability for stakeholders.

Operational challenges further complicate cross-border insolvency. Insolvency professionals often face **difficulties in tracing and valuing overseas assets**, particularly when corporate structures are complex or when assets are spread across multiple jurisdictions with divergent legal and banking norms. Differences in creditor hierarchies, disclosure requirements, and procedural timelines between countries create additional obstacles. Communication gaps with foreign representatives, limited technological integration, and unfamiliarity with international insolvency protocols exacerbate delays, reducing recovery rates for creditors. Additionally, India lacks specialized institutional mechanisms or guidelines for managing cross-border proceedings, leaving insolvency professionals to rely heavily on ad hoc judicial directions or their own discretion.

Another challenge lies in **equitable treatment of foreign creditors**. Without clear statutory provisions, foreign creditors may be excluded from creditors' committees, face uncertainty in voting rights, or encounter procedural disadvantages compared to domestic stakeholders. This lack of parity undermines creditor confidence and can discourage international participation in Indian insolvency proceedings. Further, the limited awareness of Indian insolvency professionals regarding international best practices often results in slower and less efficient asset recovery, with potential losses for both domestic and foreign creditors.

Finally, India's **technological and institutional preparedness** for cross-border insolvency is

limited. Unlike jurisdictions such as Singapore and the UK, which employ digital platforms for real-time communication, reporting, and asset tracking across jurisdictions, India lacks robust technological frameworks to facilitate collaboration between domestic and foreign insolvency professionals. The absence of standardized protocols for information exchange, document verification, and joint hearings adds to procedural delays and increases costs.

In sum, India's current cross-border insolvency framework is constrained by **legal ambiguities, operational limitations, and institutional gaps**. Addressing these challenges requires a combination of legislative reforms, clear procedural guidance, capacity-building for insolvency professionals, and adoption of technological solutions. Without such measures, India risks delays, inconsistent judicial outcomes, and reduced recovery rates, which could undermine the effectiveness of the IBC in handling transnational insolvency cases and limit its attractiveness as a jurisdiction for international business.

8. Proposed Reforms and Policy Recommendations

Strengthening India's cross-border insolvency framework requires a multi-pronged approach involving statutory reforms, institutional enhancements, and operational improvements. A primary reform recommendation is the **formal adoption of a UNCITRAL Model Law–inspired framework** under Part Z of the IBC. Such a framework should codify recognition of foreign proceedings, clearly define the debtor's Center of Main Interests (COMI), and establish standardized relief mechanisms, including automatic stays, protection of assets, and procedural access for foreign representatives. By providing statutory clarity on these aspects, India can reduce reliance on discretionary judicial interpretation, enhance predictability for stakeholders, and align domestic practices with international norms. Clear legislative definitions for COMI would minimize jurisdictional conflicts, prevent forum shopping, and facilitate recognition of Indian proceedings abroad.

Another critical recommendation is the **negotiation of bilateral and multilateral agreements** with key trading partners and jurisdictions with significant cross-border investment. Such treaties would facilitate reciprocal recognition of insolvency proceedings, streamline enforcement of foreign judgments, and create structured protocols for coordination between domestic and foreign courts. These agreements could be modeled on international best practices and incorporate dispute resolution mechanisms to address conflicts between jurisdictions efficiently. By institutionalizing cooperation, India can provide legal certainty to

foreign creditors and investors, thereby enhancing its global commercial credibility.

Operational reforms are equally essential. Establishing **technological platforms and digital infrastructure** for real-time communication, reporting, and asset tracking across jurisdictions would significantly improve procedural efficiency. Secure portals for sharing information between insolvency professionals, NCLT, IBBI, and foreign representatives can minimize delays, reduce information asymmetry, and facilitate joint hearings or coordinated asset administration. These platforms can also support transparent reporting mechanisms to stakeholders, enhancing confidence in the insolvency process.

Capacity-building measures are crucial for enhancing the effectiveness of insolvency professionals, the NCLT, and the IBBI. Specialized training programs focusing on **international insolvency law, cross-border asset tracing, banking regulations, and foreign procedural norms** would equip professionals with the skills necessary to manage complex transnational cases. Guidelines should also be developed for equitable treatment of foreign creditors, including clear rules on their participation in creditors' committees, voting rights, and dispute resolution. This will ensure fair and consistent treatment of all stakeholders, reducing litigation risks and improving recovery outcomes.

Further, **judicial standardization and precedent development** are important for refining India's approach to cross-border insolvency. Systematic documentation of NCLT decisions, judicial interpretations, and case-specific coordination mechanisms can help create a consistent framework for future cases. Courts can develop interpretative guidance on public policy exceptions, recognition of foreign proceedings, and enforcement of overseas judgments, providing clarity for insolvency professionals and foreign stakeholders alike.

Finally, reforms should focus on creating **institutional mechanisms for continuous monitoring and evaluation** of cross-border insolvency practices. The IBBI can play a central role in assessing the effectiveness of procedural reforms, updating guidelines, and coordinating with international insolvency networks to adopt evolving best practices. By institutionalizing monitoring, India can ensure that its cross-border insolvency framework remains adaptive, transparent, and aligned with global standards. Collectively, these reforms and policy measures would enable India to establish a **robust, predictable, and investor-friendly cross-border insolvency regime**, enhancing creditor confidence, expediting asset recovery, and positioning India as a credible participant in the global economic landscape.

9. Conclusion

Cross-border insolvency has emerged as a pivotal challenge in India's evolving commercial and legal landscape, reflecting the country's increasing integration with global trade, investment, and corporate networks. While the Insolvency and Bankruptcy Code, 2016, has revolutionized domestic insolvency resolution by introducing a time-bound and creditor-driven framework, its provisions for handling transnational insolvency remain limited, primarily confined to Sections 234 and 235. The absence of a dedicated statutory chapter, lack of formal bilateral or multilateral agreements, and insufficient mechanisms for recognition and cooperation with foreign jurisdictions have created operational and legal uncertainties that impact both domestic and international stakeholders.

Judicial interventions, such as in *Jet Airways (India) Ltd.*, *Macquarie Bank Ltd.*, and *Standard Chartered Bank*, illustrate a pragmatic and innovative approach, applying principles of modified universalism and facilitating coordinated administration of cross-border proceedings. However, these efforts remain largely case-specific and dependent on judicial discretion, emphasizing the urgent need for a codified and standardized legislative framework. Comparative insights from the United States, the United Kingdom, and Singapore underscore the benefits of a structured UNCITRAL Model Law–based system, which provides clarity in the recognition of foreign proceedings, access for foreign representatives, and coordinated relief mechanisms, while ensuring equitable treatment of creditors.

Strengthening India's cross-border insolvency framework requires the formal adoption of the Model Law principles through the proposed Part Z of the IBC, complemented by bilateral and multilateral treaties, technological platforms for real-time communication and asset tracking, and capacity-building programs for insolvency professionals, the NCLT, and the IBBI. These measures would enhance predictability, facilitate timely resolution, and increase transparency, thereby protecting the interests of both domestic and international stakeholders.

In conclusion, India stands at a critical juncture in the development of its insolvency law. By integrating international best practices, codifying recognition and cooperation mechanisms, and institutionalizing judicial and professional capacities, India can evolve from a reactive to a proactive stance in cross-border insolvency. Such reforms will not only improve asset recovery and creditor confidence but also position India as a credible, investor-friendly

jurisdiction capable of effectively resolving complex multinational insolvency cases in an increasingly interconnected global economy.