EVALUATING THE DOMESTIC IMPLEMENTATION OF INTERNATIONAL MODEL LAWS: A FUNCTIONAL FRAMEWORK THROUGH INDIA'S CROSS-BORDER INSOLVENCY REFORMS

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ABSTRACT

Scholars conventionally evaluate the UNCITRAL Model Law on Cross-Border Insolvency (1997) by asking whether, and how closely, an enacting state has copied its text. Once a state's implementation *choice* becomes the object of study rather than its implementation *text*, however, that metric runs out of purchase and India's cross-border insolvency reforms make the point starkly. Tracing a twenty-five-year policy record[1] from the Eradi Committee (2000) through the Insolvency Law Committee's 2018 Draft Part Z and the Cross-Border Insolvency Rules/Regulations Committee's 2020 report, this article arrives at Section 240C of the Insolvency and Bankruptcy Code (Amendment) Act, 2026: a bare enabling clause under which the substantive framework remains to be written by subordinate legislation not yet notified. Neither "adoption" nor "rejection" of the Model Law usefully describes Section 240C; it is a different kind of legislative act altogether, one for which the existing comparative literature has no settled vocabulary. This article argues that conventional textual-comparison approaches cannot adequately evaluate enabling-legislation models of implementation, and proposes a three-part functional framework for doing so legislative choice, institutional design, and constitutional constraint. Applying Indian constitutional doctrine on the delegation of essential legislative functions, it argues that Section 240C's design places genuine constitutional weight on the content of rules that have not yet been made a risk largely absent from the comparative Model Law literature to date, and the article's central concern.

Keywords: cross-border insolvency; UNCITRAL Model Law; Insolvency and Bankruptcy Code; delegated legislation; comparative implementation; India.

[1] Debanshu Mukherjee & Aishwarya Satija, *Moving to a Statutory Framework for Cross-Border Insolvency in India: A Bridge Too Far?* pt 4.4 (INSOL India Acad. Comm., Oct. 2024), discussing successive committee recommendations from 2000 onward.

I. Introduction

The President of India assented to the Insolvency and Bankruptcy Code (Amendment) Act, 2026 (Act No. 6 of 2026) on 6 April 2026, inserting a new Section 240C into the Insolvency and Bankruptcy Code, 2016 ("IBC").[2] The section empowers the Central Government to prescribe, by rules, the manner and conditions of cross-border insolvency proceedings recognition of foreign proceedings, relief, judicial cooperation, assistance, and coordination and to adapt provisions of the IBC or the Companies Act, 2013 as required.[3] Practitioner commentary has largely read this as the moment India "aligned" its insolvency regime with the UNCITRAL Model Law on Cross-Border Insolvency (1997) ("the Model Law").[4] Yet as of the date of writing, Section 240C has not been notified into force, and the subordinate rules it contemplates which will fix the countries covered, the test for a debtor's centre of main interests ("COMI"), and the scope of the public-policy exception remain unpublished.[5]

An awkward description problem follows. India has neither failed to engage with the Model Law nor enacted a Model-Law-based regime in any operative sense; what it has enacted is a delegation of power to write one. Existing literature typically assesses a state's Model Law implementation by comparing the enacted statutory text against the Model Law's articles,[6] a method that has almost nothing to say about a case where the operative text does not yet exist. This article argues for a different, more useful question: not whether the enacted text resembles the Model Law, but what the legislature's chosen technique for implementing an international model law reveals about institutional design, and what constraints that technique meets under domestic constitutional doctrine.

[2]IBC Laws, *President Assents to Insolvency and Bankruptcy Code (Amendment) Act, 2026*, IBC Laws (Apr. 7, 2026), https://ibclaw.in/president-assents-to-insolvency-and-bankruptcy-code-amendment-act-2026/. The Amendment Act was introduced as Bill No. 107 of 2025 and passed by the Lok Sabha on March 30, 2026 and the Rajya Sabha on April 1, 2026.

[3]Id. See also LiveLaw, *Insolvency and Bankruptcy Code (Amendment) Act, 2026 Comprehensive Analysis*, LiveLaw (Apr. 2026), https://www.livelaw.in/articles/insolvency-bankruptcy-code-amendment-act2026-comprehensive-analysis-529563.

[4]E.g., *Rewriting the Rules of Distress: Part II*, Bar & Bench (2026), https://www.barandbench.com/view-point/rewriting-the-rules-of-distress-part-ii, describing § 240C as a step "in alignment with" the Model Law, while noting it is "precisely an enabling provision, and not an operative framework."

[5]LiveLaw, *Cross-Border Insolvency in India: What Rules Must Say*, LiveLaw (June 2026), https://www.livelaw.in/amp/articles/cross-border-insolvency-india-537437, reporting that the provision had not yet been notified and that the rules were still being drafted as of the article's publication.

[6]This is the method followed, for instance, by Ian F. Fletcher, Look Chan Ho & Nick Segal eds., *Cross-Border Insolvency: Comparative Dimensions* (Brit. Inst. Int'l & Comp. L. 2017), which proceeds jurisdiction-by-jurisdiction through textual comparison.

Six further parts carry the argument forward. Part II sets out the theoretical vocabulary universalism, territorialism, and modified universalism within which Model Law scholarship situates itself. Part III reconstructs India's institutional record from 2000 to 2023, correcting an assumption common in Indian secondary literature that the reform process began only in 2015. Part IV examines Section 240C and distinguishes it, as a legislative technique, from the enactment of Draft Part Z that the Insolvency Law Committee ("ILC") proposed in 2018. Part V then develops the article's central contribution: a three-part functional framework for evaluating domestic implementation of international model laws, applied here to the Indian case. Part VI turns to the constitutional constraints that framework brings into focus, under India's doctrine on the delegation of essential legislative functions, before Part VII situates India briefly against comparator jurisdictions. Part VIII addresses the limitations of the study, and Part IX concludes.

II. Theoretical Foundations: Universalism, Territorialism, and Modified Universalism

Two axes conventionally organise cross-border insolvency scholarship: whether one court or several should exercise jurisdiction over a multinational debtor's assets (unity or plurality), and what effect a proceeding in one state should have in another (universality or territoriality).[7] Across a substantial body of work, Jay Lawrence Westbrook has argued that maximising value for creditors, and treating similarly situated creditors alike, is achievable only if a debtor's insolvency is administered through a single, unified proceeding recognised elsewhere.[8] Lucian Bebchuk and Andrew Guzman reach a similar conclusion from a law-and-economics starting point, emphasising the avoidance of duplicated administrative costs and the coordinated realisation of cross-border assets.[9] The leading academic critic of this "universalist" position has been Lynn LoPucki, for whom a plurality of cooperating national proceedings is the more defensible model, precisely because a single global forum is institutionally unrealistic.[10]

Scholars generally read the Model Law itself as a compromise between these poles "modified

[7]Roy Goode, *Principles of Corporate Insolvency Law* (4th ed. 2011), as summarized in Mukherjee & Satija, supra note 1, pt. 2.1.

[8]Jay Lawrence Westbrook, *A Global Solution to Multinational Default*, 98 Mich. L. Rev. 2276 (2000); Jay Lawrence Westbrook, *Global Insolvency Proceedings for a Global Market: The Universalist System and the Choice of a Central Court*, 96 Tex. L. Rev. 1473 (2018), SSRN version at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3151805.

[9]Lucian Arye Bebchuk & Andrew T. Guzman, *An Economic Analysis of Transnational Bankruptcies*, 42 J.L. & Econ. 775 (1999).

[10]Lynn M. LoPucki, *Cooperation in International Bankruptcy: A Post-Universalist Approach*, 84 Cornell L. Rev. 696 (1999).

universalism": a single "main" proceeding is given primacy, while courts elsewhere retain discretion whether, and how far, to assist it, subject to local public-policy limits.[11] Because modified universalism operates through judicial discretion rather than automatic deference, Adrian Walters has cautioned, its practical content depends heavily on local legal culture; in states reluctant to defer to foreign courts, it may in application look little different from territorialism.[12] That observation matters for the argument developed in Part V, and is worth pressing further than Walters does. If a state's practical posture under the Model Law is substantially a function of local legal and institutional culture rather than statutory text, then the textual-comparison method common in the literature is not merely incomplete but measuring the wrong variable. A state that enacts the Model Law's text verbatim while delegating its operative content to a hostile or under-resourced judiciary may, in practice, behave more territorially than a state that enacts less text but builds stronger institutional guarantees around it. Who drafts implementing text, what is left to executive discretion, and what constitutional constraints bind that discretion, is accordingly not a secondary detail to be noted alongside the textual comparison. It is arguably the more informative variable, and one the existing literature has not systematically isolated.

A related but analytically separate literature examines, not the choice between universalism and territorialism, but the sociology of how international commercial law comes to be produced in the first place. Drawing on an empirical study of UNCITRAL's working methods spanning more than a decade, Susan Block-Lieb and Terence Halliday conclude that the process of international lawmaking materially shapes its eventual content.[13] Their book, however, is concerned with UNCITRAL's own procedures for producing the Model Law, not with the domestic procedures by which an enacting state subsequently transposes it; the "process matters" insight has not yet been extended to the domestic implementation stage, which is precisely the stage this article takes up.

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[11] Irit Mevorach, *Insolvency Within Multinational Enterprise Groups* (Oxford Univ. Press 2009), as discussed in Mukherjee & Satija, supra note 1, pt. 2.2.

[12] Adrian Walters, *Modified Universalisms & the Role of Local Legal Culture in the Making of Cross-Border Insolvency Law*, SSRN (Dec. 7, 2017), https://www.researchgate.net/publication/321634685.

[13] Susan Block-Lieb & Terence C. Halliday, *Global Lawmakers: International Organizations in the Crafting of World Markets* (Cambridge Univ. Press 2017). For a summary of the book's central argument, see also Melissa J. Durkee, *Book Review: Global Lawmakers*, Am. J. Int'l L. (2018), https://digitalcommons.law.uga.edu/fac_artchop/1306/.

III. India's Institutional Record, 2000–2023

Much Indian secondary commentary dates the beginning of India's engagement with the Model Law to the Bankruptcy Law Reforms Committee ("BLRC") in 2015.[14] In fact the record runs considerably longer, and its length matters for Part V, since the legislative choice eventually made in 2026 was not a first attempt at the question but something closer to a fifth or sixth.

Year	Body	Recommendation
2000	Justice V. Balakrishna Eradi Committee	Recommended implementing the Model Law by amending the Companies Act, 1956, in light of trade liberalisation.
2001	Advisory Group on Bankruptcy Laws	Found existing Indian law not comparable to prevailing international standards and inattentive to cross-border relations.
2005	Expert Committee on Company Law ("Irani Committee")	Recognised the need for a cross-border insolvency framework and recommended consideration of the Model Law.
2009	Committee on Financial Sector Reforms ("Rajan Committee")	Identified cross-border insolvency as a priority issue for an economy of India's scale and inbound investment profile.
2015	Bankruptcy Law Reforms Committee, Vol. I	Declined to design a cross-border regime at that stage, describing cross-border issues as "the next frontier" for a later phase of deliberation.

This timeline draws on Mukherjee and Satija's account of the committee history, cross-checked against the Bankruptcy Law Reforms Committee's own report.[15]

A. Sections 234–235 and the Jet Airways Episode

As enacted in 2016, the IBC contained two provisions on cross-border insolvency, added on the recommendation of the Joint Parliamentary Committee reviewing the Insolvency and

[14]E.g., the framing adopted in several practitioner client notes discussed in Part IV below.
[15]Mukherjee & Satija, supra note 1, pt. 4.4; Bankruptcy Law Reforms Committee, *Volume I: Rationale and Design* ch. 2 (Ministry of Fin., Nov. 2015).

Bankruptcy Bill.[16] Section 234 empowers the Central Government to enter bilateral agreements with foreign states for enforcement of the Code, while Section 235 permits the Adjudicating Authority to issue a letter of request to a court in a country with which such an agreement exists. Neither mechanism has produced a functioning network of agreements; none, in fact, has been concluded to date.

This vacuum was exposed by the insolvency of Jet Airways (India) Ltd, where parallel proceedings were underway in India and, in relation to the airline's Dutch operations, before a court in the Netherlands.[17] By an order dated 26 September 2019, the National Company Law Appellate Tribunal permitted the Dutch bankruptcy administrator to participate as an observer in meetings of the Committee of Creditors, giving legal effect to a bespoke cross-border insolvency protocol the parties had negotiated along Model Law lines, treating India as the centre of main interests and the Netherlands proceeding as non-main. Negotiated under the Tribunal's encouragement rather than compelled by any statutory recognition mechanism, because none existed, that protocol was purely a case-specific arrangement. It remains, nonetheless, the episode most frequently cited in Indian secondary literature as the practical catalyst for the reference that produced Draft Part Z.

B. The Insolvency Law Committee and Draft Part Z (2018)

Chaired by Mr Injeti Srinivas, the Insolvency Law Committee submitted its report on cross-border insolvency to the Ministry of Corporate Affairs on 16 October 2018.[18] It recommended inserting a new Part Z into the IBC a discrete, twenty-nine section chapter, based on the Model Law but carrying several India-specific modifications.[19]

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[16]Insolvency and Bankruptcy Code, 2016, §§ 234–235. See Aditi Avashia, *Cross-Border Insolvency in India*, IBC Laws, https://ibclaw.in/cross-border-insolvency-in-india-by-aditi-avashia/, noting the provisions were introduced on the Joint Parliamentary Committee's recommendation.

[17]*Jet Airways (India) Ltd. (Offshore Regional Hub/Offices, through its Administrator Mr. Rocco Mulder) v. State Bank of India & Anr.*, Company Appeal (AT) (Insolvency) No. 707 of 2019 (NCLAT Sept. 26, 2019) (order finalizing the Cross-Border Insolvency Protocol). See SCC Online Blog, *NCLAT: Joint CIRP Against Jet Airways to Continue, Dutch Trustee Allowed to Attend CoC Meetings as Observer* (Oct. 7, 2019), https://www.scconline.com/blog/post/2019/10/07/nclat-joint-cirp-against-jet-airways-to-continue-dutch-trustee-allowed-to-attend-coc-meetings-as-observer/; NLIU Centre for Business and Commercial Laws, *Dealing with Cross-Border Insolvencies: An Analysis of the Jet Airways Saga*, https://cbcl.nliu.ac.in/insolvency-law/dealing-with-cross-border-insolvencies-an-analysis-of-the-jet-airways-saga/.

[18]Insolvency Law Committee, *Report of the Insolvency Law Committee on Cross Border Insolvency* (Ministry of Corp. Affairs, Oct. 16, 2018) ("ILC Report"), https://ibbi.gov.in/uploads/resources/Report_on_Cross%20Border_Insolvency.pdf.

[19]PRS Legislative Research, *Insolvency Law Committee on Cross-Border Insolvency*, https://prsindia.org/policy/report-summaries/insolvency-law-committee-cross-border-insolvency.

Feature	UNCITRAL Model Law	Draft Part Z (ILC, 2018)
Scope	No debtor-type restriction is prescribed by the Model Law itself	Corporate debtors only, at this stage; Central Government may exempt classes of entities.
Reciprocity	Not conditioned on the foreign state's own adoption of the Model Law	Applies on a reciprocity basis that is, in relation to countries that have themselves adopted the Model Law with the Committee noting this could be diluted as domestic capacity matures.
COMI	Registered office presumed to be COMI absent proof otherwise (Art. 16)	Same presumption, rebuttable if the registered office was relocated within three months before the application; Committee proposed a hierarchy of further factors.
Public policy	Relief may be refused if manifestly contrary to public policy (Art. 6)	Same standard, with an added procedural step requiring notice to the Central Government where a public-policy issue may arise.

C. CBIRC and Two Unresolved Disagreements

On 23 January 2020 the Ministry of Corporate Affairs constituted the Cross-Border Insolvency Rules/Regulations Committee ("CBIRC"), chaired by Dr K.P. Krishnan, to design the rules and regulatory architecture required to operationalise Draft Part Z; it submitted its first report on 15 June 2020.[20] According to the most thorough secondary treatment currently available Mukherjee and Satija's October 2024 report for the INSOL India Academic Committee CBIRC did not simply endorse the ILC's Draft Part Z, but disagreed with it on at least two points of substance.[21]

On foreign representative access, the ILC had proposed that a foreign representative reach the NCLT only indirectly, through an Indian insolvency professional; CBIRC disagreed,

[20]Cross-Border Insolvency Rules/Regulations Committee, *Report on the Rules and Regulations for Cross-Border Insolvency Resolution* (Ministry of Corp. Affairs, June 15, 2020) ("CBIRC Report"), https://ibbi.gov.in/uploads/whatsnew/2021-11-23-215206-0clh9-6e353aefb83dd0138211640994127c27.pdf. The Committee's mandate was expanded on February 21, 2020 to include enterprise group insolvency, on which it submitted a second report on January 18, 2023.
[21]Mukherjee & Satija, supra note 1, pt. 4.4.2(v)–(vi).

recommending direct access on the ground that mandatory indirect access would undermine the time and cost savings the framework is meant to deliver. A second disagreement concerned the COMI test. Where the ILC had proposed a sequenced hierarchy of factors the registered-office presumption, then two “principal factors”, then a residual, subordinate-legislation list CBIRC’s report observed that comparative case law does not support treating the principal factors as prior in sequence to the residual ones. It recommended dropping the ILC’s hierarchy altogether, noting that the United States, United Kingdom and Singapore do not use a sequenced test of this kind.

Neither report resolved either disagreement. Commentators often cite the two committees together as though they produced a single coherent proposal, yet they in fact left open two design questions bearing directly on cost and predictability for foreign creditors precisely the kind of granular institutional detail that a purely textual comparison against the Model Law would fail to surface.

IV. The 2026 Amendment: An Enabling Provision, Not a Model Law Regime

As enacted, Section 240C resolves neither of the disagreements described in Part III.C, nor does it adopt Draft Part Z. What it authorises is for the Central Government to prescribe, by rules, the manner and conditions of cross-border insolvency proceedings covering recognition, relief, judicial cooperation, assistance, and coordination for specified classes of debtors and notified countries, together with power to adapt provisions of the IBC or the Companies Act, 2013 as required for that purpose.[22] For this purpose, the definition of “corporate debtor” is extended to include entities incorporated with limited liability outside India, and all rules made under the section must be laid before both Houses of Parliament before being finalised.

Three consequences follow from that text, each worth stating precisely rather than assumed. First, Section 240C neither defines COMI nor specifies a public-policy standard nor lists the countries covered, and it resolves neither the ILC–CBIRC disagreement on foreign-representative access nor the one on sequencing COMI factors; all of that is left to rules that, as of mid-2026, had not been published for comment or notified.[23] Second, laying rules before

[22]Insolvency and Bankruptcy Code (Amendment) Act, 2026, Act No. 6 of 2026, § 240C. See Corp Law Updates, *IBC Amendment Act 2026: Complete Guide*, https://www.corplawupdates.in/updates/ibc-amendment-act-2026-key-changes-creditor-initiated-irp.

[23]LiveLaw, supra note 5; see also *Reshaping India’s Insolvency Landscape: Guide to the IBC Amendment Act 2026*, IndiaLaw (May 27, 2026), https://www.indialaw.in/blog/insolvency-bankruptcy/insolvency-bankruptcy-

Parliament is a scrutiny mechanism rather than an approval mechanism: absent a specific negative-resolution procedure being invoked, Parliament may examine rules once made but does not vote to approve them in advance. Third, since the rules remain in preparation, any present claim about which countries will be notified, what the COMI test will look like, or how the public-policy exception will be drawn is necessarily a prediction, not a report of enacted law.

As a legislative technique, this distinguishes Section 240C sharply from what the ILC actually proposed in 2018. Draft Part Z was a complete, twenty-nine section statutory chapter, intended for enactment as primary legislation, with only procedural detail forms, evidence, fees left to subordinate rules.[24] Section 240C inverts that allocation entirely, since none of Draft Part Z's substantive content COMI, public policy, reciprocity, cooperation appears in the primary Act. Parliament has enacted the decision to have a framework, and named the body that will write it, without enacting the framework itself. Whether that distinction carries constitutional weight, and not merely descriptive interest, is the question Part VI takes up.

V. A Functional Framework for Evaluating Domestic Implementation

What the preceding Parts suggest is that a textual-comparison methodology asking how closely an enacted statute mirrors the Model Law's articles cannot meaningfully evaluate India's 2026 reform, since there is, at the time of writing, no enacted operative text to compare it against. This Part proposes an alternative methodology with three components, one meant to travel beyond the Indian case to the domestic implementation of international model laws generally.

A. Legislative Choice

Which legislative technique a state chooses to transpose an international model law is the first question. It might enact the model text directly with minimal modification, of the kind generally associated with Singapore's 2018 adoption of the Model Law and discussed further in Part VII;[25] it might enact a modified statutory chapter, as Draft Part Z would have been had it been enacted as drafted; or it might enact a bare enabling provision that delegates the

code-amendment-act-2026/, describing Section 240C as "subject to separate commencement notifications" with "regulatory groundwork … still being finalised."

[24] See Part III.B above; Avashia, supra note 16, describing Draft Part Z's structure across access, recognition, relief, cooperation, and public policy.

[25] See Part VII below.

substantive design to subordinate legislation, which is what Section 240C in fact does. These are not merely stylistic variants, since each allocates a different institutional actor the legislature itself, or the executive subject to varying degrees of parliamentary or judicial oversight as the body that will ultimately settle contested questions such as COMI, reciprocity, and public policy.

The distinction matters for reasons beyond taxonomy. Direct enactment binds the legislature to a text negotiated multilaterally at UNCITRAL, which limits domestic discretion but also limits domestic responsiveness: a state that later wishes to depart from the Model Law's approach to, say, the COMI presumption must amend primary legislation, a comparatively slow and visible process. A modified statutory chapter preserves that visibility while allowing local adaptation, at the cost of the legislative time and political capital a full bill requires. An enabling provision inverts both trade-offs: it is the fastest route to a headline reform, and the easiest to revise once operative experience accumulates, but it is also the technique under which the legislature retains the least direct control over the eventual content of the regime, and under which regulated parties have the least advance notice of what the law will actually require. Choosing among these techniques is therefore not a matter of drafting convenience; it is a choice about where, within the state, the power to settle contested questions of cross-border insolvency policy will ultimately sit, and how reversible that allocation will be. A comparative methodology that asks only whether the eventual text resembles the Model Law has no vocabulary for this trade-off, because the trade-off is visible only before the operative text exists precisely the stage a purely textual method is built to ignore.

B. Institutional Design

A second question is how the chosen technique structures the relationship between the expert bodies that generate policy recommendations (in India, the ILC and CBIRC), the legislature, and the executive rule-making authority. As Part III.C showed, India's expert-committee stage produced two unresolved disagreements; had India adopted a technique of the second kind enacting a modified statutory chapter Parliament itself would have had to resolve those disagreements, or at least visibly decline to do so. Under the technique India actually adopted, resolution is instead deferred to a rule-making process occurring largely outside parliamentary debate, subject only to the laying requirement. Which disagreements were resolved, by which body, and when, is therefore a testable institutional-design question rather than a question of textual similarity to the Model Law.

Institutional design matters because expert committees and legislatures do not speak with one voice, and the implementation technique a state chooses determines whose voice prevails when they disagree. Where a jurisdiction enacts a modified statutory chapter, unresolved disagreements among expert bodies must surface in the legislative process itself: either the legislature chooses between them, generating a public record of that choice, or the bill is amended to remove the point of disagreement before enactment, which is itself informative. Where a jurisdiction instead enacts a bare enabling provision, as India did, expert-committee disagreements can persist all the way through the primary legislative stage without ever being resolved, because resolving them is not what the primary Act does. The two unresolved disagreements between the ILC and CBIRC identified in Part III.C could carry straight through into the rule-making stage now beginning, unless the rule-drafting body treats resolving them as part of its mandate and nothing in Section 240C requires that it do so. This is not a risk peculiar to India: any jurisdiction that defers substantive design to subordinate rule-making inherits whatever disagreements its own expert-committee stage left open, and the institutional-design question this framework poses which body resolves them, through what process, and with what public visibility is answerable only by examining the domestic machinery of implementation, not the resulting statutory text.

C. Constitutional Constraint

A third question asks what domestic constitutional doctrine constrains the chosen technique. It is the least explored of the three in existing comparative Model Law literature, which tends to treat delegated rule-making as an implementation detail rather than a variable with independent legal consequences; Part VI develops this question for the Indian case using the doctrine on delegation of essential legislative functions.

Constitutional constraint deserves separate treatment because a state's willingness, as a matter of institutional design, to defer substantive content to subordinate rule-making does not by itself establish that such deferral is lawful. Comparative Model Law scholarship has generally treated delegated rule-making as a technical detail of implementation, worth noting but not worth testing against domestic constitutional doctrine specific to delegation. That omission is defensible only where a jurisdiction's constitutional law imposes no meaningful limit on how much substantive policy the legislature may hand to the executive; it is not defensible in jurisdictions, India among them, where courts have developed doctrine expressly designed to police the line between permissible administrative detail and impermissible abdication of legislative policy-making. In such jurisdictions, the legality of an enabling-provision technique is not merely a question of institutional design but a live question of constitutional validity capable of being litigated, and a comparative framework that omits it risks treating as settled a legal question that remains open. Part VI takes up that question for India specifically, but the broader point that constitutional constraint is a variable independent of, and not reducible to, the legislative-choice and institutional-design variables already identified is one this article intends to travel with the framework beyond the Indian case.

Applied to India, these three parts of the framework yield a coherent picture. The legislative choice was delegation rather than direct or modified enactment; the institutional design left unresolved, rather than resolved, the ILC–CBIRC disagreements identified in Part III.C, transferring their resolution to an executive rule-making process. That transfer, as Part VI now argues, is not unconstrained under Indian constitutional doctrine, because the matters left to the rules COMI, public policy, reciprocity are arguably matters of legislative policy rather than mere implementational detail.

VI. Constitutional Constraints: Essential Legislative Functions and Section 240C

Indian constitutional doctrine on the delegation of legislative power originates in the Supreme Court's seven-judge bench decision in *In re The Delhi Laws Act, 1912*, holding that Parliament may delegate ancillary and implementational matters to the executive but may not delegate the "essential legislative function" the determination of legislative policy and its enactment into a binding rule of conduct.[26] Three years later, *Harishankar Bagla v State of Madhya Pradesh* elaborated the doctrine: the Court upheld delegated rule-making under the Essential Supplies (Temporary Powers) Act, 1946 on the ground that the statute itself had articulated a sufficiently clear policy securing supplies and equitable distribution of essential commodities leaving the executive only to work out the detail of how that policy would be applied.[27] *Agricultural Market Committee v Shalimar Chemical Works Ltd* later reaffirmed the distinction, holding

[26]*In re The Delhi Laws Act, 1912*, AIR 1951 SC 332 (also reported at 1951 SCR 747). See also *Excessive Delegation of Legislative Power*, IJLMH (undated), https://ijlmh.com/wp-content/uploads/Excessive-Delegation.pdf, summarizing the holding.

[27]*Harishankar Bagla v. State of Madhya Pradesh*, AIR 1954 SC 465, [1955] 1 SCR 380. The Court described the essential legislative function as consisting in the choice of legislative policy and its formal enactment into a binding rule of conduct; delegation is permissible only in respect of the detail required to give that policy effect.

that the formulation of legislative policy is an indispensable part of the essential legislative function and cannot itself be delegated, however much of the resulting detail may be.[28]

None of these cases prohibits delegation as such; what they require is that the delegating statute supply an intelligible policy against which delegated rules can be tested for consistency, while forbidding delegation of the choice of that policy itself. The question, applied to Section 240C, becomes whether the primary Act supplies a sufficiently determinate legislative policy on the matters it leaves to rules reciprocity, the COMI test, and the scope of the public-policy exception or whether it leaves the choice of policy itself, rather than merely its administrative detail, to the executive.

A plausible reading of the text considered in Part IV is that Section 240C supplies very little intelligible policy on precisely the two questions Part III.C showed to be contested. Whether reciprocity will apply, it does not state; between the ILC's sequenced COMI hierarchy and CBIRC's preference against one, it does not choose; and how broadly or narrowly the public-policy exception will be drawn, it does not indicate. *Harishankar Bagla* treats matters of this kind as belonging to legislative policy rather than administrative detail the statute at issue there had already chosen the policy of "equitable distribution at fair prices" and left only permit-mechanics to the executive, whereas Section 240C does not choose between the competing substantive positions India's own expert committees left open. None of this means the section would necessarily be held unconstitutional if challenged, since the delegation doctrine has been read flexibly in subsequent case law, and a court might find the general objectives recited elsewhere in the Amendment Act, or in the ILC and CBIRC reports themselves, sufficient to supply the necessary policy guidance. It does mean, however, that the constitutional adequacy of Section 240C remains a live and, on the present record, unresolved question one existing commentary on the 2026 Amendment Act, so far descriptive and practitioner-oriented rather than analytical, has not yet examined.[29]

VII. A Brief Comparative Perspective

A full comparative treatment lies beyond this article's scope, but a brief snapshot can situate

[28] *Agricultural Market Committee v. Shalimar Chemical Works Ltd.*, (1997) 5 SCC 516.
[29] Cf. Part VII of Mukherjee and Satija's report and the practitioner sources cited in Part IV above, none of which raises the delegation question, since all either predate or do not engage with the constitutional dimension of Section 240C's specific drafting choice. This claim reflects the literature available as of the date of writing.

India's chosen technique against other Model Law adoptions.

Jurisdiction	**Instrument**	**Note**
United States	Chapter 15 of the Bankruptcy Code (2005)	One of the earlier adoptions, incorporated directly into primary bankruptcy legislation; extensive litigated case law exists on COMI and public policy.
United Kingdom	Cross-Border Insolvency Regulations 2006	Model Law implemented via statutory instrument under primary enabling legislation, operating alongside the retained EU framework and the common-law rule in *Gibbs*.
Singapore	Third Schedule, Insolvency, Restructuring and Dissolution Act 2018	Widely cited as adopting the Model Law with limited modification, directly in primary legislation, as part of a deliberate restructuring-hub strategy.
Australia	Cross-Border Insolvency Act 2008	Model Law scheduled directly to a short adopting Act.
India	Section 240C, IBC (Amendment) Act 2026	No Model Law text enacted in primary legislation; substantive content COMI, public policy, reciprocity delegated entirely to rules not yet notified.

On this snapshot, India is an outlier not in whether it has engaged with the Model Law but in how much of the Model Law's substantive content it has left for a second, later, executive-driven legislative stage. That may make the Indian technique more adaptable rules can be revised without a fresh Act of Parliament or less accountable, since Parliament debates a shell rather than the substance; deciding between those readings is exactly the trade-off the functional framework in Part V is designed to make explicit, and exactly the question a purely textual comparison with the Model Law would fail to surface.

Read through the functional framework rather than as a bare inventory, these five jurisdictions illustrate three distinct points on the legislative-choice axis identified in Part V.A. The United

States and Singapore represent direct enactment, undertaken as a deliberate signal to creditors and investors that the domestic regime tracks an internationally recognised text; the institutional-design consequence is that COMI and public-policy questions were substantially settled by the legislature, or in the American case subsequently by litigated case law, before the regime became operative. The United Kingdom and Australia occupy an intermediate position: both used enabling instruments to bring the Model Law into force, but unlike Section 240C annexed the Model Law's own text as the operative schedule, leaving comparatively little of the substantive design to later executive discretion. India alone combines an enabling technique with the absence of any scheduled or annexed operative text, which is what places it furthest from the other four on the institutional-design axis, and is why the constitutional-constraint question examined in Part VI largely dormant in the other four jurisdictions' implementation history becomes analytically central to the Indian case specifically.

VIII. Limitations of the Study

This study is subject to certain limitations, which bear on how its conclusions should be read. First, because the rules contemplated under Section 240C had not been notified as of the date of writing, the analysis in Parts IV through VI is confined to the legislative design of the provision rather than its eventual operation; how the rule-making process actually resolves the ILC–CBIRC disagreements identified in Part III.C remains to be seen. Second, while Part VII situates India against four comparator jurisdictions, it does not undertake an exhaustive jurisdiction-by-jurisdiction survey of all Model Law adoptions, and the functional framework proposed in Part V would benefit from testing against a wider comparative set than space here allows. Third, the constitutional analysis in Part VI is necessarily prospective: no Indian court has yet interpreted Section 240C under the doctrine on delegation of essential legislative functions, and the conclusions reached there should be read as an assessment of constitutional risk rather than a prediction of litigation outcomes.

IX. Conclusion

Asking how closely it resembles the UNCITRAL Model Law will not usefully evaluate India's 2026 cross-border insolvency reform, because the reform, as enacted, supplies no operative text against which such a comparison could be made. Section 240C is better understood as a legislative choice about who will write the substantive framework, and by what procedure, than as the framework itself. Legislative choice, institutional design, and constitutional constraint the three-part functional analysis proposed here offers a method for evaluating that kind of choice on its own terms, while Indian constitutional doctrine on essential legislative functions supplies a concrete, underused lens for assessing whether a delegation of this breadth was one Parliament was constitutionally entitled to make. Because the rules under Section 240C remain in preparation, much of this analysis is necessarily provisional, and the strongest test of the argument advanced here will come once the rules are notified and can be measured against the policy Section 240C does, or does not, actually supply. But the broader lesson does not depend on that eventual test. Where a legislature implements an international model law through enabling legislation rather than operative statutory text, the appropriate object of comparative analysis is institutional design, not textual fidelity and it is that shift in the object of inquiry, more than any prediction about India's particular rules, that this article means to leave with the field.