CONSTRUCTING A MODERN CROSS-BORDER INSOLVENCY REGIME IN INDIA: INTERNATIONAL COMPARATIVE LESSONS IN THE WAKE OF THE 2026 IBC AMENDMENT

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ABSTRACT

The rise of multinational corporations and transnational assets has increased the significance of efficient procedures for cross-border insolvency. India's earlier mechanism under Sections 234 and 235 of the Insolvency and Bankruptcy Code, 2016, lacked a comprehensive system for recognition and coordination of foreign proceedings. In light of the Insolvency and Bankruptcy Code (Amendment) Act, 2026, this paper examines India's evolving cross-border insolvency regime through a comparative analysis of various jurisdictions. The paper argues that India ought to implement a modified and hybrid approach based on the UNCITRAL Model Law while preserving domestic safeguards relating to public policy and sovereignty

Keywords: Cross-Border Insolvency, UNCITRAL Model Law, Insolvency and Bankruptcy Code, Modified Universalism, COMI, Judicial Cooperation, Foreign Proceedings.

1. INTRODUCTION

The swift expansion of trade worldwide and the emergence of multinational corporate structures have greatly raised the relevance of cross-border insolvency in the modern economic framework. As corporations increasingly operate through creditors, assets, subsidiaries, and business operations spread across multiple nationalities, insolvency proceedings are no longer confined to a single domestic legal system and instead require coordination between several national courts & legal regimes. In the absence of effective mechanisms for recognition of foreign proceedings and judicial cooperation, cross-border insolvency often results in parallel proceedings, delays, uncertainty, forum shopping, & unequal handling of creditors.

Although the IBC transformed India's domestic insolvency framework, its cross-border insolvency mechanism remained limited to S. 234 & 235, which relied upon reciprocal bilateral arrangements and lacked a comprehensive system for recognition and coordination.

The Amendment Act, 2026, therefore, marks a significant legislative development by empowering the Central Government to frame rules governing cross-border insolvency proceedings in India. In this background, the present paper examines whether India's evolving framework is capable of effectively addressing the complexities associated with modern transnational insolvency disputes and whether international models can be suitably adapted to Indian conditions without compromising domestic interests.

The paper further analyses comparative approaches adopted in various jurisdictions in order to evaluate whether India should adopt a modified universalist framework or develop a distinct hybrid model balancing international cooperation with sovereignty, public policy, and protection of domestic creditors. The study is primarily doctrinal and comparative in nature and is based upon the analysis of statutes, judicial decisions, international instruments, committee reports, and comparative foreign practices relating to cross-border insolvency law.

2. CONCEPTUAL AND THEORETICAL FOUNDATIONS OF CROSS-BORDER INSOLVENCY

2.1. Meaning of Cross-Border Insolvency

Insolvency is a financial situation in which a person or business cannot afford to pay back their debts when they become owed. It occurs when there is not enough cash flow to cover financial obligations or when liabilities surpass assets.[1]

Cross-Border insolvency is also sometimes known as international insolvency, which refers to a circumstance where insolvency is not limited to one jurisdiction but involves multiple jurisdictions. In such cases, assets & liabilities regarding the corporate debtor's commercial activities are vested in multiple jurisdictions across different national boundaries.[2]

Domestic laws aren't particularly designed to handle the intricacy that *cross-border insolvency* entails. Things become complicated when several jurisdictions are involved, every one of which has a distinct legal framework and set of priorities.[3] Domestic frameworks don't often take into consideration conflicts of law, overlapping claims, or the requirement for coordination between several authorities because they are created to handle insolvency inside a single nation. Cross-border cases therefore require an additional set of considerations.[4]

The *first question* that arises is *jurisdiction*, or where and by whom the insolvency proceedings should actually start. When the borrower's activities, & creditors are dispersed over several nations, this question becomes very challenging. Selecting the appropriate forum is essential. It determines not only which court is in charge but also how the assets of the debtor, which are dispersed across multiple nations, are managed and regulated.[5]

Choosing the legal system that will oversee the insolvency processes is the next problem. Multiple legal systems may conceivably be applicable in cross-border circumstances, which inevitably leads to ambiguity and conflict. Certain jurisdictions establish explicit guidelines to determine the relevant law, while many jurisdictions, courts rely on private international law. Unless a party expressly disputes its

[1] Cambridge Dictionary, "Insolvency", available at: Cambridge Dictionary (last visited on May 7, 2026).
[2] R. Lalwani & A. Tiwari, "An Overview of Cross-Border Insolvency in India", Lexology (Mar. 18, 2022), (last visited on May 7, 2026).
[3] Arjya B. Majumdar, "The UNCITRAL Model Law on Cross-Border Insolvency" (2009) 2(1) *India Law Journal* 3, available at: https://ssrn.com/abstract=2256144 (last visited April 25, 2026).
[4] Rachel Morrison, "Avoiding Inherent Uncertainties in Cross-Border Insolvency: Is the UNCITRAL Model Law the Answer?" (1999) 15 *Queensland University of Technology Law Journal* 103.
[5] Ran Chakrabarti, "Key Issues in Cross-Border Insolvency" (2018) 30 *National Law School of India Review* 119, 123.

applicability, the forum's law usually ends up controlling the proceedings.

A third critical problem relates to "*recognition and enforcement of foreign insolvency proceedings"* & judicial orders. It's quite common for proceedings to commence in one jurisdiction, whereas the debtor's assets and stakeholders are located elsewhere, making it necessary to assess whether and how far those foreign decisions will be accepted and enforced in other countries.

2.2. Theoretical Approaches

Four main theories, each of which aims to address the administration of insolvency processes involving several jurisdictions, largely form the theoretical foundation of cross-border insolvency.

2.2.1. Universalism: The idea that a single, centralized forum should handle bankruptcy proceedings against a debtor, with such procedures having a worldwide impact on the debtor's assets and interests, is the foundation of the philosophy of universalism in international insolvency. In essence, this approach advocates that all assets, irrespective of their location, should be brought within the control of one insolvency proceeding conducted in the debtor's "*home state.*"[6] Universalists generally assume that the relevant legislation to such proceedings would be one of the forums exercising jurisdiction, thereby ensuring uniformity in the administration of the insolvency process.[7]

2.2.2. Territorialism: Territorialism as a philosophy of cross-border insolvency adopts a rigidly limited perspective. It maintains that insolvency procedures started in a certain jurisdiction should only address the assets and creditors located there, without having an impact outside of that area. Based on this, unique legal actions may be taken against the identical debtor in various nations, with each court handling assets situated inside its own boundaries.[8] This strategy is fundamentally based on the notion of state sovereignty. Instead of an international

[6] The meaning of *'home state'* herein may be different in various states, and may mean the place of incorporation, the principal place of business, or the centre of main interests of the debtor.

[7] Rosalind Mason, "Cross-Border Insolvency Law: Where Private International Law and Insolvency Law Meet" in Paul J. Omar (ed.), *International Insolvency Law: Themes and Perspectives* (Ashgate, 2008) 46.

[8] Morshed Mannan, "Are Bangladesh, India and Pakistan Ready to Adopt the UNCITRAL Model Law on Cross-Border Insolvency" (2016) 25 *International Insolvency Review* 195, 207.

approach to insolvency administration, it favors a domestic, jurisdiction-specific model.

2.2.3. Modified Universalism: While maintaining the core ideas of universalism, modified universalism adds some flexibility. It begins with the assumption that the assets of the debtor should be handled globally through a single bankruptcy process, preferably in the residence of the debtor home state.[9] However, it refrains from demanding universal automatic recognition. In contrast to absolute universalism, this concept permits courts in other jurisdictions to choose whether or not to acknowledge and support the foreign process.

2.2.4. Co-operative Territorialism: One way to conceptualize "*cooperative territorialism*" is as a more sophisticated form of *territorialism* that maintains its territorial essence while emphasizing international cooperation. This method treats the debtor's assets as a distinct estate and administers them in accordance with each state's domestic insolvency rules. Multiple proceedings operate concurrently across various jurisdictions rather than a single, dominant proceeding as envisioned by universalist frameworks.[10] However, this extra layer of cooperation is what distinguishes cooperative territorialism from its more stringent version. The concept encourages courts and authorities to collaborate, coordinating their operations wherever feasible rather than functioning in total isolation, even in the case of separate procedures.

2.3. UNCITRAL Model Law on Cross-Border Insolvency

UNCITRAL Model Law on cross-border insolvency, 1997 is designed to better handle cross-border bankruptcy proceedings involving debtors who are experiencing severe financial hardship, the Model Law is intended to help States provide their insolvency regulations with a contemporary legal framework.[11]

[9] Rosalind Mason, "Cross-Border Insolvency Law: Where Private International Law and Insolvency Law Meet", *supra* note 10, 51.
[10] Irit Mevorach, *Insolvency within Multinational Enterprise Groups*, *supra* note 22, 73.
[11] United Nations Commission on International Trade Law (UNCITRAL), "UNCITRAL Model Law on Cross-Border Insolvency (1997)", available at: UNCITRAL (last visited on May 7, 2026).

Key elements of the Model Law:

1. It covers circumstances with a cross-border component, such as when creditors from several nations are involved in the same insolvency procedures or when foreign courts or insolvency agents seek assistance.

2. It helps guarantee that important terminology like "*foreign-proceedings*," "*foreign-main-proceedings*," and "*foreign-representatives*" are defined similarly and clearly across jurisdictions.

3. It recognizes the importance of international commitments and states unequivocally that a State's treaty obligations will take precedence in the event of a contradiction.

4. It allows states to choose and designate the court or authority that will handle with cross-border insolvency cases within their own legal system.

5. It facilitates international collaboration & synchronization between various legal systems by allowing representatives of insolvency will act in foreign jurisdictions.

6. It contains a public policy safeguard that permits courts to refuse aid when doing so would go against the core values of the state.

7. It guarantees the system's flexibility and ability to adjust to the demands of various legal regimes by enabling courts to provide extra support.

8. In order to promote uniform application across jurisdictions and strengthen a good-faith attitude in its execution, it emphasizes that the provisions should be construed in light of the law's international origin.

Principle of Model Law:

1. Access: This principle guarantees the ability of international creditors and representatives to approach domestic courts and take part in insolvency processes.

2. Recognition: The Model Law's recognition principle guarantees that local courts legally recognize foreign insolvency procedures. It establishes a legal foundation

for assessing the standing and consequences of such actions in a different jurisdiction.

3. Relief: The protection and aid that courts may provide in cross-border insolvency circumstances is covered by the "*UNCITRAL Model Law on Cross-Border Insolvency's"* relief principle. Whether prior to or after the acknowledgement of international proceedings, it guarantees that appropriate measures are available to protect the rights of both the debtor & creditors.

4. Cooperation & Coordination: This principle aims to guarantee efficient communication between authorities & courts across different countries. It is intended to encourage interjurisdictional cooperation, communication, and support so that these issues can be resolved more effectively and systematically.

3. INDIA'S CROSS-BORDER INSOLVENCY FRAMEWORK

The insolvency regime in India saw a significant change with the implementation of the IBC. This consolidated legislation into a single, time-bound framework focused on maximizing value. However, while the Code overhauled domestic processes, it doesn't fully address cross-border insolvency.

3.1. Enforcement of foreign judgments:

Under Indian civil law, the "*principle of comity*" allows limited recognition & enforcement of foreign rulings, primarily governed by the CPC, 1908. *Sections 13 and 44A* of the CPC form the legal basis for such enforcement. *Section 44A* permits the enforcement of judgments from courts in reciprocating territories, as authorized by the Indian government, treating them as equivalent to judgments of Indian district courts. However, this is pursuant to the guidelines specified in S. 13, which denies enforcement where the judgment is not given on merits, lacks jurisdiction, violates natural justice, is obtained by fraud, or is contrary to Indian law.

These laws are inadequate, although they provide a framework. Due to the mechanism's restriction to "reciprocating territories," rulings from any other location necessitate completely new litigation, which is an expensive and time-consuming process.

3.2. Cross-Border Insolvency before IBC

Cross-border insolvency in India had its origins in early court practice. Re P. MacFadyen & Co. Ltd. is a notable example, in which insolvency proceedings were conducted concurrently in India and England. In that instance, an agreement between insolvency representatives to coordinate their work, exchange information, and divide assets fairly among creditors was accepted by both nation's courts. It was an obvious, early example of collaboration motivated more by practical need than by legal requirement.

Both Indian and foreign (unregistered) corporations were subject to winding-up provisions under the corporations Act, 1956. However, these actions had no extraterritorial reach and were primarily restricted to assets situated within India. Foreign creditors were allowed to participate and were treated equally with domestic creditors, as affirmed in *Rajah of Vizianagaram v. Official receiver*. At the same time, foreign insolvency proceedings did not automatically extend to Indian assets, often requiring separate proceedings in India. This resulted in multiple parallel proceedings across jurisdictions.

In terms of corporate rescue, statutes like the Sick Industrial Companies (Special Provisions) Act, 1985 applied only to domestic industrial companies and had no cross-border applicability. Courts also clarified that foreign companies could not seek relief under such laws. Although cross-border mergers and foreign creditor participation were permitted by restructuring mechanisms like as plans of arrangement in accordance with the Companies Act, 2013, insolvency was not a consideration in their creation.

3.3. Cross- Border Insolvency under IBC

India's approach was entirely redesigned by the IBC, which introduced a systematic, time-bound process for business resolution and liquidation. The National Company Law Tribunal (NCLT) and its appellate equivalent (NCLAT) oversee these proceedings, and the Insolvency and Bankruptcy Board of India (IBBI) is in charge of insolvency experts. The entire process is driven by creditors and starts with restructuring the company to save it; if that doesn't work, liquidation comes next.

Despite the fact that commercial transactions are becoming more worldwide, the Joint Committee on the Insolvency and Bankruptcy Code, 2016 acknowledged that the Code does not adequately address cross-border insolvency. They pointed out that if this component is omitted, the framework as a whole is left unfinished. Only two specific provisions, Sections 234 and 235 were introduced in the Code in an attempt to close that gap. These provisions essentially let the NCLT to send request letters to foreign courts and give the government permission to negotiate bilateral agreements with other countries.

In order to implement the IBC's provisions overseas, Section 234 grants the CG has the authority to enter into bilateral agreements with foreign nations. In essence, the existence of a reciprocal agreement with that particular nation determines the extent of the IBC's influence outside of India. In contrast to a universal approach, this ties cross-border insolvency to a treaty-based one.

This framework is completed by Section 235, which permits the NCLT to send a "letter of request" to a authority or foreign court as long as a bilateral agreement is already in existence. When the assets owned by the corporate debtor are no in India, this provision enables insolvency experts to find, seize, or sell them.

Currently, a foreign company's Indian activities and assets are handled separately if it is undergoing insolvency procedures elsewhere. They are not drawn into the foreign process by default. Instead, in order to deal with the Indian branch or its local assets, you must initiate completely new actions before the NCLT.

3.4. Insolvency and Bankruptcy Code (Amendment) Act, 2026

The Insolvency and Bankruptcy Code (Amendment) Act, 2026 (No. 6 of 2026), which was ratified on April 6, 2026, is a big legislative advancement in India's handling of cross-border insolvency. The change, which was first proposed as Bill No. 107-F of 2025, adds Section 240C, which addresses the "Power to make rules for cross-border insolvency."

First, the Central Government is granted broad authority by Section 240C(1) to specify the terms and procedures for managing and carrying out procedures for cross-border insolvency under the code. Any contradictory sections of the Companies Act of 2013 and the Insolvency and Bankruptcy Code of 2016 are superseded by the provision's non-obstante clause. This power has a wide scope of applications, such as establishing guidelines for the recognition of foreign proceedings, granting relief, and establishing routes for cooperation, support, and coordination between foreign & domestic agencies. In order to enable a progressive and controlled implementation of the framework, it also gives the government the power to notify certain classes of debtors or corporate debtors, as well as designated nations or territories, to which such cross-border rules will apply.

Second, Section 240C(2) allows the Central Government to add the necessary exclusions, changes, and adaptations to the Code and the Companies Act, 2013, allowing for flexibility in the application of current clauses of statutes. When it comes to international insolvency, where strict utilization of domestic laws may not sufficiently address the difficulties arising from multi-jurisdictional processes, this flexibility is crucial. In order to improve institutional capacity and efficiency, the provision also permits the appointment of one or more specialized benches to handle such situations.

Thirdly, every proposed regulation established under Section 240C(3) must be presented before both Houses of Parliament in compliance with the process outlined in Section 59A of the Code, thereby providing a measure of parliamentary supervision. This provision aims to achieve equilibrium between parliamentary oversight & accountability and the executive branch's extensive rule-making authority.

Furthermore, individuals incorporated abroad with limited liability of India are included in the meaning of "corporate debtor" as stated in the explanation to Section 240C. This clarification is important because it closes a major vacuum in the previous system by explicitly bringing foreign firms under the Indian cross-border insolvency framework.

Essentially, the 2026 Amendment Act's adoption of Section 240C creates an enabling framework that allows for the creation of an extensive substantive framework for cross-border insolvency through subordinate law. Although this strategy provides flexibility and room for conformity with global best practices, its efficacy will rely on the Central Government's prompt development of precise, thorough, and practical regulations.

4. COMPARATIVE ANALYSIS: INTERNATIONAL LESSONS FOR INDIA

4.1. Legal Framework in the U.S.A

The U.S. adopted the model in 2005 by passing the *Bankruptcy Abuse Prevention and Consumer Act ("BAPCA"), 2005,* it incorporated the model law into the Bankruptcy Code as Chapter 15. The U.S. framework is often regarded as a modified or calibrated adoption because, while it substantially incorporates the principles and structure of the Model Law, it also includes certain domestic adaptations and safeguards.[12]

Chapter 15 treats cross-border insolvency as a unified and cooperative process in which proceedings in one jurisdiction may assist proceedings in another jurisdiction. It operates through both "*inbound*" and "*outbound requests*"; inbound requests arise when a foreign representative seeks assistance from a U.S. Bankruptcy Court, whereas outbound requests involve U.S. courts seeking cooperation from foreign courts in insolvency matters.

Under this framework, a foreign representative may initiate recognition proceedings by filing a petition before the U.S. Bankruptcy Court along with documents authenticating the foreign proceeding and the authority of the representative. Upon recognition, the court classifies the foreign proceeding as either a "*main proceeding*," where the debtor has its centre of main interests (COMI), or a "*non-main proceeding*," where the debtor merely maintains an establishment carrying out non-transitory economic activity.

COMI is typically found in the jurisdiction where the debtor possesses its registered office, principal place of business, or the main hub for its personnel and operations. However, courts acknowledge that the registered office has an advantage of presumption which is rebuttable, especially in cases where the corporation operates as

[12] https://scholarship.richmond.edu/cgi/viewcontent.cgi?article=1110&context=jolpi

a "letterbox" firm with minimal or no real business activity in that jurisdiction.

Chapter 15 further ensures equality between domestic and foreign creditors by granting foreign creditors the same rights to participate in insolvency proceedings, and it has been specifically stated that they are not being given less priority because they are situated in a different jurisdiction.[13]

However, recognition may be denied where the debtor's connection with the foreign jurisdiction is insufficient or where such recognition would be manifestly contrary to the public policy of the United States, thereby incorporating a narrowly construed public policy exception as a safeguard against outcomes inconsistent with fundamental domestic legal principles.

4.2. Legal Framework in the U.K.

The United Kingdom has created a sophisticated and well-established structure that combines international mechanisms with domestic legislation to resolve cross-border insolvency. Through the "*Cross-Border Insolvency Regulations, 2006*", the "*United Kingdom adopted the UNCITRAL Model Law on Cross-Border Insolvency*", bringing its legal system into compliance with globally recognized norms of cooperation and coordination in insolvency issues.

Three main elements make up the UK's regulatory framework: *Section 426 of the Insolvency Act, 1986*, *the Cross-Border Insolvency Regulations 2006*, and *the EC Regulation on Insolvency Proceedings*, which was superseded in full form after Brexit. When combined, these clauses offer a thorough process for handling bankruptcy situations involving several different jurisdictions.

A major factor in promoting judicial cooperation between the UK and some designated nations, such as Australia, is Section 426 of the Insolvency Act, 1986. This clause permits foreign courts to submit a formal "letter of request" to UK courts for help. UK courts are often disposed to comply unless there are compelling reasons to refuse, even if the authority to provide such help is discretionary. This demonstrates a pro-

[13] Asia Ifill, "Comparing Cross-Border Insolvency in the United States and India", *International and Comparative Law Review*, available at: University of Miami School of Law (last visited on May 7, 2026).

cooperation strategy meant to guarantee the successful settlement of international bankruptcy cases.

The Model Law framework is integrated into the *"Cross-Border Insolvency Regulations, 2006"*, which offer collaboration between courts, recognition of international actions, and access for foreign representatives. The UK uses the Center of Main Interests (COMI) concept to differentiate between "main" & "non-main" proceedings, just like other Model Law jurisdictions. A main proceeding is meant to have a broad reach, encompassing all of the debtor's assets regardless of their location, and is often started in the jurisdiction where the COMI of the debtor is situated.

Secondary or territorial procedures may be started if the debtor has a "*establishment*" in a jurisdiction other than their COMI. These proceedings are called "secondary proceedings" if they are started after the main proceedings, and "*territorial proceedings*" if they are started before the main proceedings. These procedures preserve coordination with the main insolvency process while guaranteeing the defense of local interests.[14]

Furthermore, UK courts have a long history of judicial cooperation and have been aggressive in reaching out to overseas courts and insolvency agents. The UK is now among the top jurisdictions in managing complicated cross-border insolvency matters thanks to this collaborative approach and a flexible and clear legislative framework.

All things considered, the UK's framework is a balanced approach that combines domestic legal principles with international best practices, providing jurisdictions like India with helpful insights for creating an efficient and successful cross-border bankruptcy regime.

4.3. Legal Framework in Singapore

Singapore's approach to cross-border insolvency has changed significantly, progressively moving from a typically territorial system to a more universalist and globally coordinated framework. In the past, Singapore's insolvency laws were mainly designed to safeguard domestic interests. They permitted international businesses to

[14] England v. Smith, [2001] Ch. 419; HIH Casualty & General Insurance Ltd. In Re, [2008] 1 WLR 852.

be wound up locally in specific circumstances, such as when they were unable to pay their obligations or ceased operations. Additionally, this method allowed parallel procedures even in cases where the country of incorporation had already started insolvency proceedings.

Singaporean courts have always demonstrated a significant readiness to work with foreign insolvency representatives, despite their jurisdictional origins. Cases like "*China Union Lines Ltd. v. American Marine Underwriters Inc.*" and "*Tohru Motobayashi v. Official Receiver*", in that the courts acknowledged and accommodated the power of foreign liquidators even in the absence of concurrent domestic proceedings, demonstrate this judicial attitude. Despite the shortcomings of the statutory framework at the time, these rulings demonstrate the judiciary's proactive involvement in promoting cross-border coordination.

Further insights into Singapore's changing cooperative attitude can be gained from later cases like *Beluga Chartering and RBG Resources Plc. v. Banque Cantonale Vaudoise*. The understanding of *Section 377(3)(c)* in the Beluga Chartering strengthened the idea of international collaboration by emphasizing that judicial aid to foreign procedures should typically be viewed as mandatory rather than merely optional. In a similar vein, the court in RBG Resources eliminated any discriminatory distinction between domestic & foreign creditors by clarifying that the phrase "local creditors" includes debts incurred within Singapore, regardless of the creditor's nationality.

Foreign representatives may request recognition of foreign bankruptcy proceedings from the Singapore High Court under the existing structure. The recognition procedure is mostly procedural and quite efficient. Recognition is typically granted once an application is filed in the required format and accompanied by supporting documentation, such as evidence of the start of foreign proceedings and disclosure of any ongoing processes. This method allows quicker collaboration across jurisdictions and lowers procedural obstacles.

The emphasis on nondiscrimination among creditors is another significant aspect of Singapore's system. In order to maintain fairness and equity in the allocation of insolvency, courts have continuously made sure that creditors are handled equally independent of nationality. Simultaneously, the framework facilitates successful handling of complicated cross-border insolvency issues by promoting active collaboration and communication between courts & insolvency practitioners across jurisdictions.

All things considered, Singapore's framework for cross-border insolvency is practical and forward-thinking. Singapore has become a prominent jurisdiction in cross-border insolvency by fusing judicial innovation with legislative change and international alignment, providing valuable lessons for nations like India.

4.4. Legal Framework in Australia

By adopting the UNCITRAL Model Law in 2008, Australia created a systematic and globally compatible framework for cross-border insolvency. In lieu to improve coordination in transnational insolvency matters, a modified universalist strategy was used and put into effect through the "Cross-Border Insolvency Act, 2008". The Model Law's adoption shows Australia's dedication to bringing its insolvency system into line with international norms and promoting international collaboration.

The Australian framework's acknowledgment of foreign insolvency procedures is a crucial element. If they meet certain qualifications, foreign representatives may request recognition from Australian courts. To guarantee that recognition is given in an open and uniform way, the legislation lays out precise eligibility requirements and procedural protections. This increases confidence among parties participating in cross-border insolvency situations & improves legal clarity.

The safeguarding of the interests of the creditors is another important aspect of the framework. It complies with international standards of justice and nondiscrimination by ensuring the fair treatment of both domestic & foreign creditors. By doing this, the Australian system aims to ensure a fair distribution among everyone who is involved while optimizing the value of the assets of the debtors.

The Australian system's high emphasis on collaboration and coordination is another significant feature. In order to enable the efficient resolution of cross-border matters, courts and insolvency practitioners are encouraged to interact with their international counterparts. In order to boost the overall efficacy of the insolvency process, this involves exchanging information, organizing concurrent proceedings, and minimizing duplication of effort.

The collapse of HIH Insurance in 2001, one of Australia's biggest corporate failures, provides insight into the practical efficacy of this system. Coordination between Australian and foreign courts was necessary because the lawsuit involved assets and creditors from several jurisdictions. The international pooling of assets was made possible by the Australian courts' recognition of overseas proceedings and facilitation of collaboration with foreign representatives. This strategy created a significant precedent for international cooperation in insolvency issues and enhanced recovery outcomes for creditors.

All things considered, Australia's cross-border bankruptcy system is a well-rounded strategy that blends international collaboration, creditor protection, and procedural clarity. Jurisdictions like India can learn valuable lessons from its experience in creating an efficient and internationally compatible insolvency structure.

5. RECOMMENDATIONS AND REFORM PROPOSAL

The Central Government now has the authority to create the required regulations governing cross-border insolvency in India, thanks to the 2026 amendment. The operational structure and specific regulations under this change have not yet been announced or put into effect, nevertheless. Now that the rule-making process is about to start, the author aims to make some recommendations based on the earlier examination of judicial discrepancies, statutory gaps, and comparable international practices. These recommendations are meant to help create a strong, logical, and globally consistent set of regulations.

A structural approach to cross-border bankruptcy that is essentially anchored in two consecutive stages, recognition followed by coordination, is shown by a comparative study of important jurisdictions, including the United States, the United Kingdom, Singapore, & Australia. Effective judicial collaboration between domestic & foreign courts is facilitated if foreign proceedings in the United States are first recognized as either "main" or "non-main".

5.1. Adoption of the Hybrid Indian Model

India should take on a hybrid model, which balances the principles of modified universalism with the need to safeguard domestic legal and economic interests. Absolute universalism may not be appropriate in light of India's sovereign concerns and the nascent nature of its insolvency infrastructure, but a rigidly territorial approach would defeat the purpose of achieving effective transnational resolution of insolvency. Thus, the proposed framework should provide for acknowledgment of international proceedings & judicial cooperation while at the same time maintaining the authority of Indian courts to protect domestic creditors, public interest, and regulatory objectives. Such a calibrated model would allow India to gain the benefits of international coordination without undermining its constitutional and economic realities.

5.2. Modified Adoption on UNCITRAL Model Law

India should adopt the UNCITRAL Model Law on Cross-Border Insolvency in a modified and calibrated manner rather than incorporating it in its absolute form. Although the Model Law provides a globally accepted framework, its wholesale adoption may not adequately address India's domestic economic realities, judicial structure, and sovereign concerns.

Therefore, while the core principles of the Model Law, such as acknowledgment of foreign proceedings, access, and judicial cooperation, should be incorporated, certain provisions must be suitably adapted to protect domestic creditors, public interest, and regulatory priorities. India should retain judicial discretion in providing relief, narrowly interpret recognition of foreign proceedings where domestic interests are adversely affected, and preserve a carefully structured public policy exception. Such a modified adoption would enable India to harmonize with international insolvency standards while simultaneously ensuring that the framework remains compatible with the country's constitutional principles, institutional capacity, and economic interests.

5.3. Definition of COMI

The legislation ought to offer a clear & objective definition of the '*Centre of Main Interests*' (COMI) to avoid jurisdictional confusion and forum shopping. The identification of COMI cannot be done purely based on the place of incorporation of the corporate debtor but must take into consideration elements like the location of the principal management, primary business activities, major assets, creditors, and jurisdiction where commercial decisions are regularly taken. The registered office can be introduced as a rebuttable presumption for the COMI unless evidence suggests otherwise. Clear statutory guidance on COMI would enhance predictability, consistency, and judicial efficiency in recognition proceedings.

5.4. Scope of Public Policy Exception

It must be narrowly construed to be a protective safeguard & not a device for denying recognition of foreign proceedings as a matter of routine. The exception is be invoked by courts in various jurisdictions only where recognition would be manifestly in opposition to the basic legal principles or constitutional values of the forum state, something India may look to. The legislation should expressly clarify that minor procedural differences or variations in foreign insolvency laws should not be sufficient grounds for denial of recognition.

5.5. Specialized Institutional Framework

Institutional capacity and judicial expertise are critical to the success of any cross-border insolvency regime. Therefore, India should establish dedicated insolvency benches within the NCLT & NCLAT to exclusively handle situations of international insolvency. Specialized training should be imparted to judicial officers, insolvency professionals and regulatory authorities on international insolvency principles, judicial communication protocols and comparative practices. Further, by establishing structured guidelines for communication between courts and digital mechanisms for coordination, efficient cooperation between Indian and foreign courts could be achieved.

5.6. Framework for Group Insolvency

The current regime does not sufficiently cater to the requirements of multinational corporate groups functioning through a network of interconnected subsidiaries across the globe. Thus, the government should create a separate framework for cross-border group insolvency to allow for coordinated administration of related entities while preserving the separate legal personality of each corporate debtor. The framework may include procedural coordination, joint hearings, exchange of information, and, where appropriate, the appointment of common insolvency representatives. Such measures would reduce conflicting judgments, preserve the value of businesses, and make multinational restructurings more efficient.

5.7. Rights of the foreign creditors & classification

They should have equal procedural rights to initiate, participate, and receive notice of insolvency proceedings in India, subject to reasonable domestic safeguards. This framework should explicitly prohibit discrimination based solely on the *nationality* or *place of incorporation* of the creditor. Concurrently, the legislation should provide a clear definition of the classification and priority of foreign claims so as to avoid ambiguity when assets are being distributed. Transparency in dealing with foreign creditors would improve India's credibility as a predictable insolvency jurisdiction and bring the framework in line with internationally accepted standards.

5.8. Procedure to be followed

A thorough procedural framework ought to be established. The documentation needed to file recognition petitions, the deadlines for judicial decision-making, the interim reliefs available while recognition is pending, and the legal ramifications of recognition of main and non-main processes should all be spelled out in detail in the statute. Mechanisms for direct contact and collaboration between Indian courts and international courts or insolvency agents should also be included in the system. The framework's practical efficacy would be enhanced, and uncertainty would be decreased by establishing a methodical and time-bound procedure.

5.9. Time-Bound recognition mechanism

The legislation should introduce a strict and time-bound mechanism for recognition of foreign proceedings to prevent unnecessary delays and dissipation of assets. Since cross-border insolvency matters often involve rapidly depreciating assets and urgent restructuring requirements, prolonged judicial uncertainty may adversely affect creditors and the value of the corporate debtor. Therefore, a fixed timeline should be prescribed for admission, hearing, and disposal of recognition applications, along with provisions for urgent interim relief in exceptional circumstances. Such a mechanism would strengthen commercial certainty conform India's framework to global best practices.

5.10. Development of Cross-Border Judicial Communication Guidelines:

India should formulate formal judicial communication guidelines to regulate direct interaction with Indian courts & foreign courts in cross-border insolvency matters. Such guidelines may draw inspiration from internationally accepted frameworks. Structured communication mechanisms would improve transparency, reduce conflicting orders, and facilitate coordinated decision-making in multinational insolvency proceedings. Additionally, maintaining records of judicial communications would ensure procedural fairness and accountability.

5.11. Reciprocal Cooperation Agreements with Key Trading Nations:

India should actively negotiate reciprocal cooperation arrangements and bilateral understandings with major trading and investment partner countries. Although the UNCITRAL Model Law promotes general cooperation, specific bilateral arrangements may further streamline recognition procedures, enforcement mechanisms, and the exchange of information in insolvency matters. Such agreements would strengthen mutual trust between jurisdictions and enhance the practical effectiveness of India’s cross-border insolvency regime.

5.12. Other Jurisdiction response

India’s cross-border insolvency framework should not only facilitate acknowledgment of international proceedings but must also incorporate adequate safeguards in situations where foreign courts fail to cooperate or where the interests of domestic stakeholders are prejudiced. Since international insolvency cooperation operates on the principles of reciprocity, mutual trust, and coordinated judicial conduct, Indian courts should retain the authority to review the conduct and effectiveness of recognized foreign proceedings.

In cases where a foreign court refuses cooperation, acts inconsistently with the principles of fairness, or adversely affects the rights of domestic creditors, Indian tribunals should be empowered to suspend, modify, or even revoke recognition previously granted to such foreign proceedings. Furthermore, the framework should permit Indian courts to initiate parallel or independent domestic insolvency proceedings where necessary to protect local creditors, preserve assets situated within India, and safeguard public interest. Such a mechanism would ensure that international cooperation does not operate to the detriment of India's sovereign interests or domestic stakeholders, while simultaneously encouraging foreign jurisdictions to engage in fair and reciprocal cooperation.

6. CONCLUSION

The swift expansion of multinational corporations and the globalization of trade activity have increased the importance of cross-border insolvency in the modern economic framework. Current insolvency laws are often inadequate to address the complexities arising from multinational businesses operating across different jurisdictions with dispersed assets, creditors, and operations. Although IBC transformed India's domestic insolvency regime, its cross-border insolvency mechanism remained restricted and dependent upon reciprocal bilateral arrangements under Sections 234 and 235. The Insolvency and Bankruptcy Code (Amendment) Act, 2026, therefore, marks a significant legislative development by empowering the Central Government to formulate a dedicated framework governing cross-border insolvency proceedings in India.

Comparative analysis undertaken in this paper demonstrates that several jurisdictions a have adopted internationally coordinated insolvency mechanisms while simultaneously preserving domestic safeguards and public policy concerns. The paper contends that India ought to not adopt the UNCITRAL Model Law in its absolute form, but instead develop a balanced hybrid framework based on modified universalism. Such a framework should facilitate coordination and recognition of foreign proceedings while preserving the authority of Indian courts to protect domestic creditors, public interest, and sovereign concerns. Ultimately, a coherent and internationally compatible cross-border insolvency regime would strengthen India's insolvency architecture and enhance its position as a globally integrated commercial jurisdiction.