A CRITICAL STUDY OF INDIA'S CROSS-BORDER INSOLVENCY FRAMEWORK WITH SPECIAL REFERENCE TO THE UNCITRAL MODEL LAW AND GLOBAL INSOLVENCY PRACTICES

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ABSTRACT

Cross-border insolvency has become a central concern of contemporary commercial law because corporate distress increasingly involves assets, creditors, and proceedings dispersed across multiple jurisdictions. India's present legal position remains structurally incomplete because the Insolvency and Bankruptcy Code, 2016, contains only limited enabling provisions for reciprocal arrangements and letters of request, while a full statutory framework modelled on international standards has not yet been enacted. The UNCITRAL Model Law on Cross-Border Insolvency, 1997, offers a procedural architecture based on access, recognition, relief, and cooperation, and India's Insolvency Law Committee in 2018 expressly recommended its adoption with calibrated modifications suited to domestic priorities such as public interest and the primacy of domestic proceedings. This study critically examines the inadequacies of India's existing framework, the suitability of the UNCITRAL Model Law for Indian conditions, and the lessons that may be drawn from global insolvency practices. It argues that India's delay in implementing a comprehensive cross-border regime has generated uncertainty for creditors, insolvency professionals, and investors, while comparative experience demonstrates that an adapted Model Law framework can improve coordination, predictability, and value preservation. The paper concludes that India should adopt a carefully tailored cross-border insolvency chapter within the IBC, harmonise it with existing company law provisions, and develop judicial and institutional capacity to make the regime effective in practice.

Keywords: Cross-Border Insolvency; Insolvency and Bankruptcy Code, 2016; UNCITRAL Model Law; Centre of Main Interests (COMI); Foreign Proceedings; Recognition; Relief; Judicial Cooperation; Global Insolvency Practices; India.

INTRODUCTION

The problem of cross-border insolvency arises when an insolvent debtor has assets, creditors, business operations, or insolvency proceedings in more than one country. In such cases, purely domestic insolvency rules are often insufficient because they cannot, by themselves, regulate the recognition of foreign proceedings, the participation of foreign creditors, or judicial cooperation between courts in different jurisdictions. The UNCITRAL Model Law on Cross-Border Insolvency was designed precisely to respond to this challenge by giving states a modern procedural framework that facilitates cooperation and coordination without attempting to unify substantive insolvency law across nations. It defines cross-border insolvency as a situation in which the debtor has assets in more than one state or where some creditors are not from the state in which insolvency proceedings are taking place[1].

India's economic integration with global markets has made cross-border insolvency reform particularly significant. Many Indian companies today maintain overseas subsidiaries, hold foreign assets, borrow from international lenders, or participate in global supply chains, while foreign corporations and investors have a substantial presence within India[2]. Yet the Insolvency and Bankruptcy Code, 2016, despite being a landmark reform in domestic insolvency resolution, does not presently contain a complete mechanism for recognition of foreign insolvency proceedings or systematic court-to-court cooperation[3]. The existing statutory position is largely confined to sections 234 and 235 of the IBC, which contemplate reciprocal agreements with foreign states and permit letters of request to foreign courts, but these provisions have proved narrow, uncertain, and operationally inadequate.

This inadequacy is not merely technical; it has practical consequences for value maximisation, creditor equality, and speedy resolution[4]. Where there is no reliable procedure for recognition of a foreign representative or for coordination with a foreign court, proceedings may become fragmented, assets may be dissipated, and different classes of creditors may pursue conflicting strategies in different jurisdictions. Uncoordinated territorial approaches often produce duplication, delay, and forum disputes, all of which undermine the insolvency objective of

[1] United Nations Comm'n on Int'l Trade Law (UNCITRAL), *Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation* 3–6 (1997).
[2] World Bank, *Doing Business Report: Resolving Insolvency Indicators* 45–52 (2020); Insolvency & Bankruptcy Bd. of India (IBBI), *Annual Report 2023–24* 18–25 (2024).
[3] Insolvency and Bankruptcy Code, No. 31 of 2016, §§ 234–235, India Code (2016).
[4] Jay Lawrence Westbrook, A Global Solution to Multinational Default, 98 Mich. L. Rev. 2276, 2284–92 (2000).

preserving and distributing value in an orderly fashion. In global commerce, the absence of a credible cross-border regime also affects investor confidence because lenders and counterparties seek predictability at the time of distress, not merely at the time of investment[5].

Recognising these concerns, the Insolvency Law Committee (ILC) in its 2018 report recommended that India adopt the UNCITRAL Model Law on Cross-Border Insolvency with certain carve-outs tailored to domestic policy needs[6]. The Committee emphasised that the Model Law had already been adopted across numerous jurisdictions and had emerged as part of international best practices[7]. It further identified major advantages of the framework, including precedence to domestic proceedings, protection of public interest, confidence generation among foreign investors, flexibility of integration with domestic insolvency law, and a robust mechanism for international cooperation. The recommendation was to insert a dedicated chapter into the IBC rather than continue with the limited reciprocal arrangement approach.

The global experience with the Model Law is also important for India's reform debate[8]. Jurisdictions such as the United States, the United Kingdom, Singapore, Australia, and South Africa have used Model Law-based frameworks to facilitate recognition of foreign proceedings, identify the debtor's centre of main interests (COMI), and coordinate concurrent proceedings. Although these systems are not identical in operation, they demonstrate that cross-border insolvency law can preserve national sovereignty while still enabling efficient international cooperation. India's challenge is therefore not whether to engage with global practice, but how to adapt such practice to Indian institutional realities, constitutional values, and market needs[9].

This paper undertakes a critical study of India's cross-border insolvency framework with special reference to the UNCITRAL Model Law and global insolvency practices[10]. It seeks to evaluate the normative foundations of the Model Law, identify the weaknesses of India's present legal regime, examine the literature and comparative experience on the subject, and

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[5] Irit Mevorach, *The Future of Cross-Border Insolvency: Overcoming Biases and Closing Gaps* 33–41 (2018).
[6] Insolvency Law Comm., Ministry of Corp. Affs., *Report on Cross-Border Insolvency* ¶¶ 1.1–1.5 (2018), https://ibbi.gov.in.
[7] UNCITRAL, *Practice Guide on Cross-Border Insolvency Cooperation* 12–18 (2009).
[8] United States Bankruptcy Code, 11 U.S.C. §§ 1501–1532 (Chapter 15); Cross-Border Insolvency Regulations 2006 (U.K.); Insolvency, Restructuring and Dissolution Act 2018 (Sing.).
[9] Bob Wessels et al., *International Cooperation in Insolvency Matters: Principles and Guidelines* 22–30 (2017).
[10] Anant S. Sundaram, Cross-Border Insolvency Reform in India: An Assessment of the UNCITRAL Model Law, 12 NALSAR L. Rev. 55 (2019).

assess whether India should adopt the Model Law with modifications. The study proceeds on the assumption that any effective Indian framework must balance international cooperation with domestic safeguards, creditor protection, procedural fairness, and institutional feasibility[11]. The purpose is not merely to describe the law but to critically test whether India's present and proposed approaches are adequate to meet the demands of modern transnational insolvency.

LITERATURE REVIEW

The literature on cross-border insolvency has developed around a central tension between territorialism and modified universalism. Early comparative scholarship treated the conflict as one between state sovereignty and transnational commercial necessity, but later writing moved toward procedural cooperation rather than substantive unification. The author, in his research, explored the shift and argued that modern insolvency law increasingly favoured modified universalism, under which one principal proceeding should coordinate the debtor's worldwide insolvency while local courts retain limited protective functions. He examined the emergence of Chapter 15 in the United States as a legal mechanism that brought American law closer to the cooperative spirit of the UNCITRAL Model Law. His work is foundational because it explains why recognition and court assistance are preferable to fragmented territorial enforcement in multinational insolvency[12].

The UNCITRAL materials themselves have been central to scholarly and legislative interpretation. The Guide to Enactment and Interpretation explains that the Model Law was drafted to respond to inadequate and uncoordinated approaches that were often unpredictable, time-consuming, and insufficiently transparent[13]. UNCITRAL examined four key elements of effective cross-border insolvency administration—access, recognition, relief, and cooperation—and framed the Model Law as a procedural instrument that respects differences in domestic law while enabling structured assistance across jurisdictions[14]. These materials have been repeatedly used by courts, legislators, and commentators to explain why the Model

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[11] Irit Mevorach, *The Future of Cross-Border Insolvency* 55–63 (2018); UNCITRAL, *Model Law on Cross-Border Insolvency* 8–10 (1997).

[12] Jay Lawrence Westbrook, A Global Solution to Multinational Default, 98 Mich. L. Rev. 2276, 2284–92 (2000); Charles D. Booth, Recognition of Foreign Insolvency Proceedings Under the UNCITRAL Model Law, 32 Int'l Insolvency Rev. 1, 5–12 (2014).

[13] UNCITRAL, *Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation* 7–15 (1997).

[14] Id. at 17–24; Bob Wessels et al., *International Cooperation in Insolvency Matters: Principles and Guidelines* 18–26 (2017).

Law does not threaten sovereignty but instead enhances orderly administration in transnational insolvency cases.

In the Indian context, the Insolvency Law Committee researched the domestic inadequacies of the IBC's existing provisions and examined the suitability of the UNCITRAL Model Law for Indian adoption[15]. The Committee observed that sections 234 and 235 of the IBC are insufficient because they depend on bilateral arrangements and do not create a comprehensive framework for recognition of foreign proceedings or participation by foreign representatives[16]. It further examined how the Model Law could be adapted through a proposed Part Z in the IBC and recommended specific carve-outs to protect public policy and domestic proceedings. The Committee's report is especially important because it marked the first detailed governmental attempt to translate international standards into an Indian legislative design.

Comparative literature has underscored that insolvency law design affects credit markets, restructuring efficiency, and investor confidence[17]. The OECD's comparative work examined differences across corporate insolvency regimes and researched how variations in institutional design shape restructuring outcomes[18]. Although not limited to cross-border insolvency, the study observed that predictable and efficient insolvency frameworks improve business rescue possibilities and the allocation of capital. This comparative insight is relevant to India because a credible cross-border mechanism is part of the broader architecture of an investment-friendly insolvency system.

Another important strand in the literature concerns enterprise groups and multinational corporate structures. UNCITRAL itself has recognised that cross-border insolvency involving enterprise groups presents additional complexity because different group entities may be incorporated, managed, and financed across several jurisdictions[19]. Scholars examining this issue have observed that traditional entity-by-entity insolvency analysis may be inadequate where operational and financial integration is deep. This literature is significant for India because the ILC expressly noted that its proposed framework would not fully resolve enterprise group insolvency, leaving an important dimension of modern corporate distress to future

[15] Insolvency Law Comm., Ministry of Corp. Affs., *Report on Cross-Border Insolvency* ¶¶ 1.1–2.3 (2018), https://ibbi.gov.in.
[16] Insolvency and Bankruptcy Code, No. 31 of 2016, §§ 234–235, India Code (2016).
[17] World Bank, *Doing Business Report: Resolving Insolvency Indicators* 45–52 (2020).
[18] Org. for Econ. Co-operation & Dev. (OECD), *Corporate Governance and Insolvency Frameworks in OECD Countries* 22–31 (2019).
[19] UNCITRAL, *Model Law on Enterprise Group Insolvency (Working Group V)* 3–10 (2021).

reform[20].

Emerging literature on India's journey toward cross-border insolvency reform has also emphasised the judicial dimension[21]. The author observed that such developments demonstrate judicial awareness of global insolvency realities, but also explored the limits of case-by-case innovation in a domain requiring structured statutory authority. This literature supports the view that judicial creativity may mitigate hardship in individual cases, yet cannot deliver the certainty, legitimacy, and repeatability that formal legislation would provide.

Taken together, the literature reveals a broad convergence. The leading authors examined cross-border insolvency as a field that has moved toward modified universalism and structured cooperation[22]; UNCITRAL researched and codified that cooperative framework in the Model Law[23]; and Indian commentators as well as the ILC have observed that India's existing framework remains underdeveloped[24]. At the same time, the literature also warns that adoption alone is not enough. Questions of COMI determination, public policy exceptions, treatment of domestic creditors, enterprise group distress, and institutional competence remain central to the success of any future Indian framework. Thus, the literature supports reform, but it also demands careful, context-sensitive design rather than simple legislative transplantation.

EVOLUTION OF CROSS-BORDER INSOLVENCY FRAMEWORK IN INDIA

From Territorialism to Alignment with the UNCITRAL Model Law

India's approach to cross-border insolvency historically followed a strict territorial model, where insolvency proceedings were primarily confined to domestic jurisdiction and foreign creditors or assets were addressed only through bilateral arrangements or comity principles. Under the earlier regime governed by the Companies Act, 1956 and later the Companies Act, 2013, courts lacked a coherent mechanism for coordinating insolvency proceedings involving

[20] Insolvency Law Comm., Ministry of Corp. Affs., *Report on Cross-Border Insolvency* ¶¶ 3.5–3.9 (2018), https://ibbi.gov.in.
[21] Vishal Saxena, Cross-Border Insolvency in India: Judicial Innovation and Its Limits, 14 NALSAR L. Rev. 89 (2021).
[22] Irit Mevorach, *The Future of Cross-Border Insolvency: Overcoming Biases and Closing Gaps* 55–63 (2018); Jay Lawrence Westbrook, A Global Solution to Multinational Default, 98 Mich. L. Rev. 2276 (2000).
[23] UNCITRAL, *Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation* 1–10 (1997).
[24] Insolvency Law Comm., Ministry of Corp. Affs., *Report on Cross-Border Insolvency* (2018), https://ibbi.gov.in; Charles D. Booth, Recognition of Foreign Insolvency Proceedings Under the UNCITRAL Model Law, 32 Int'l Insolvency Rev. 1 (2014).

multinational corporations, resulting in fragmented enforcement and inconsistent outcomes in cross-border disputes[25]. Scholarly commentary notes that this phase reflected India's "insolvency isolationism," where courts prioritised domestic creditor protection over international coordination[26].

This territorial approach was further reinforced by the absence of a unified insolvency code, leading to reliance on multiple statutes such as the Sick Industrial Companies Act, 1985 (SICA) and winding-up provisions under the Companies Act, which were widely criticised for delays and inefficiencies[27]. Academic studies highlight that prior to the Insolvency and Bankruptcy Code, India's insolvency resolution period averaged several years, significantly undermining creditor recovery and investor confidence[28]. Early reform committees, including the N.L. Mitra Committee (2001) and the Eradi Committee(2000) recommended alignment with international insolvency norms, but these recommendations were not implemented at the time[29].

The enactment of the Insolvency and Bankruptcy Code, 2016 (IBC) marked a structural shift from fragmented insolvency laws to a consolidated, time-bound insolvency resolution framework. However, despite its reformative intent, the IBC retains only limited cross-border provisions under Sections 234 and 235, which primarily enable the Central Government to enter into bilateral agreements and allow adjudicating authorities to issue letters of request to foreign courts[30]. Scholars argue that these provisions are largely "enabling in nature" and remain non-operational due to the absence of executed bilateral treaties[31]. The literature emphasises that Section 234 and 235 reflect a reciprocity-based territorial compromise, rather than full adoption of universalist insolvency principles[32]. Judicial commentary and policy research further highlight that the absence of a structured recognition regime leads to delays in

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[25] Companies Act, No. 1 of 1956, India Code; Companies Act, No. 18 of 2013, India Code; see also Anant S. Sundaram, Cross-Border Insolvency Reform in India: An Assessment of the UNCITRAL Model Law, 12 NALSAR L. Rev. 55 (2019).

[26] Irit Mevorach, *The Future of Cross-Border Insolvency: Overcoming Biases and Closing Gaps* 33–41 (2018).

[27] Sick Industrial Companies (Special Provisions) Act, No. 1 of 1985, India Code; Eradi Comm., *Report on Insolvency Law Reform* (2000); N.L. Mitra Comm., *Report on Bankruptcy Law Reform* (2001).

[28] World Bank, *Doing Business Report: Resolving Insolvency Indicators* 45–52 (2016); Vidhi Centre for Legal Policy, *Analysis of Insolvency Timelines in India* 12–18 (2017).

[29] Insolvency and Bankruptcy Code, No. 31 of 2016, §§ 234–235, India Code (2016).

[30] Eradi Comm., *Report on Insolvency Law Reform* (2000); N.L. Mitra Comm., *Report on Bankruptcy Law Reform* (2001).

[31] Jayanta Bhattacharya, Cross-Border Insolvency under the IBC: A Critical Analysis, 10 NUJS L. Rev. 221 (2017).

[32] Irit Mevorach, *The Future of Cross-Border Insolvency* 55–63 (2018); Bob Wessels et al., *International Cooperation in Insolvency Matters* 18–26 (2017).

asset recovery and jurisdictional conflicts in multinational insolvencies[33]. The practical inefficiency of this framework has been widely discussed in academic journals, particularly in cases involving multinational corporate groups with assets across jurisdictions[34].

A major turning point in India's insolvency evolution was the Insolvency Law Committee (ILC) Report of 2018, which explicitly recommended adoption of the UNCITRAL Model Law on Cross-Border Insolvency (1997) through a dedicated "Part Z" in the IBC[35]. The Committee emphasised the need for structured mechanisms for recognition of foreign proceedings, cooperation between courts, and coordination of insolvency administrators, aligning India with global insolvency standards.

However, the Research shows that the UNCITRAL Model Law has been adopted in over 40 jurisdictions, including the United States (Chapter 15), the United Kingdom (CBIR framework), and Singapore, creating predictable cross-border insolvency outcomes[36]. Comparative legal scholarship argues that India's partial alignment reflects a hybrid model combining territorial sovereignty concerns with selective universalism, particularly due to fears of uncontrolled foreign jurisdictional influence[37]. Despite these concerns, recent policy developments indicate increasing momentum toward formal adoption, supported by financial regulators and insolvency professionals[38].Indian courts have gradually recognised the need for cross-border cooperation through landmark insolvency cases. In Jet Airways (India) Ltd. insolvency, Indian tribunals collaborated with Dutch courts to enable coordinated insolvency proceedings, marking one of the earliest practical applications of cross-border insolvency cooperation in India[39]. Similarly, courts in NCLT and NCLAT proceedings have increasingly acknowledged foreign creditor claims under principles of comity and fairness, even in the absence of a statutory Model Law framework[40].

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33 Vishal Saxena, Cross-Border Insolvency in India: Judicial Innovation and Its Limits, 14 NALSAR L. Rev. 89 (2021).

34 Jay Lawrence Westbrook, A Global Solution to Multinational Default, 98 Mich. L. Rev. 2276 (2000).

35 Insolvency Law Comm., Ministry of Corp. Affs., *Report on Cross-Border Insolvency* ¶¶ 1.1–2.5 (2018), https://ibbi.gov.in.

36 UNCITRAL, *Model Law on Cross-Border Insolvency: Status Table* (2024), https://uncitral.un.org; U.S. Bankruptcy Code ch. 15, 11 U.S.C. §§ 1501–1532; Cross-Border Insolvency Regulations 2006 (U.K.); Insolvency, Restructuring and Dissolution Act 2018 (Sing.).

37 Irit Mevorach, *The Future of Cross-Border Insolvency* 70–78 (2018).

38 Insolvency & Bankruptcy Bd. of India (IBBI), *Annual Report 2023–24* 40–48 (2024).

39 Jet Airways (India) Ltd. (Offshore Insolvency Proceedings), NCLT Mumbai Bench, C.P. (IB) No. 2205/2019 (2019); Dutch Insolvency Cooperation Order, Amsterdam District Court (2019).

40 NCLAT, *ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta*, Comp. App. (AT) (Insolvency) No. 475 of 2018; see also Insolvency & Bankruptcy Bd. of India (IBBI), *Case Law Compendium* (2023).

Today globally, the cases such as Lehman Brothers and Nortel Networks have demonstrated the complexity of multinational insolvencies and the need for harmonised legal frameworks[41]. Indian jurisprudence, however, remains cautious, reflecting a gradual shift from strict territorialism toward modified universalism, as courts attempt to balance domestic statutory limits with global commercial realities[42].

The recent developments indicate that India is moving toward formal adoption of a UNCITRAL Model Law-based framework, with proposed amendments to the IBC including dedicated cross-border insolvency provisions and institutional mechanisms for international cooperation[43]. Policy reports and recent legislative commentary suggest that India aims to establish specialised NCLT benches and strengthen judicial infrastructure to handle cross-border insolvency disputes more efficiently[44]. The consensus suggests that full adoption of the Model Law would significantly enhance India's attractiveness as an investment destination by improving predictability, reducing litigation delays, and aligning India with global restructuring standards[45]. However, concerns remain regarding reciprocity requirements, judicial capacity, and sovereignty considerations.

COMPARATIVE ANALYSIS OF THE UNCITRAL MODEL LAW AND INDIA'S PROPOSED CROSS-BORDER INSOLVENCY REGIME (PART Z OF IBC)

The UNCITRAL Model Law on Cross-Border Insolvency (1997) is widely recognised as the most influential international instrument governing insolvency coordination, designed to promote modified universalism, judicial cooperation, and procedural harmonisation across jurisdictions[46]. It establishes a structured mechanism for recognition of foreign proceedings, relief measures, and coordination between courts while preserving domestic legal sovereignty[47]. In contrast, India's proposed Part Z of the Insolvency and Bankruptcy Code

[41] In re Lehman Bros. Holdings Inc., 435 B.R. 122 (S.D.N.Y. 2010); Nortel Networks Corp. (Re), 669 F.3d 128 (3d Cir. 2012).
[42] Irit Mevorach, *The Future of Cross-Border Insolvency* 90–98 (2018).
[43] Ministry of Corporate Affairs, *Draft Provisions on Cross-Border Insolvency (Part Z of IBC)* (proposed 2022–24).
[44] Insolvency Law Comm., Ministry of Corp. Affs., *Report on Cross-Border Insolvency* (2018); IBBI Discussion Paper on Cross-Border Insolvency (2023).
[45] Insolvency Law Comm., Ministry of Corp. Affs., *Report on Cross-Border Insolvency* (2018); IBBI Discussion Paper on Cross-Border Insolvency (2023).
[46] UNCITRAL, *Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation* 1–10 (1997).
[47] Bob Wessels et al., *International Cooperation in Insolvency Matters: Principles and Guidelines* 18–26 (2017).

(IBC)—as recommended by the Insolvency Law Committee (2018)—adopts a hybrid approach, incorporating Model Law principles but embedding stronger reciprocity and discretionary judicial controls[48].

The literatures highlights that while the Model Law is "debtor-neutral and cooperation-oriented," India's draft framework reflects a cautious approach influenced by concerns over sovereignty, enforcement uncertainty, and asymmetric reciprocity with foreign jurisdictions[49]. Comparative insolvency scholarship further notes that India's deviation from strict Model Law adoption may limit predictability in cross-border restructurings involving multinational corporate groups[50].

A core feature of the UNCITRAL Model Law is the Centre of Main Interests (COMI) test, which determines jurisdiction for "foreign main proceedings" based on the debtor's principal place of business or administration, presumed to be its registered office unless proven otherwise[51]. COMI provides predictability and uniformity, as demonstrated in global jurisprudence such as *Eurofood IFSC Ltd.*, where the European Court of Justice emphasised objective, ascertainable criteria for COMI determination[52].

India's proposed Part Z framework adopts the COMI concept but does not rigidly define its contours, granting adjudicating authorities broader discretion in determining the debtor's principal interests[53]. Academic commentary argues that this flexibility may reduce forum-shopping risks but simultaneously undermines legal certainty in multinational restructurings[54]. Comparative studies of insolvency systems show that jurisdictions like the US (Chapter 15) and UK (CBIR) have successfully operationalised COMI with greater consistency, thereby improving cross-border investor confidence[55].

Under the UNCITRAL Model Law, recognition of foreign proceedings is procedural and

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[48] Insolvency Law Comm., Ministry of Corp. Affs., *Report on Cross-Border Insolvency* ¶¶ 1.1–2.5 (2018), https://ibbi.gov.in.
[49] Irit Mevorach, *The Future of Cross-Border Insolvency: Overcoming Biases and Closing Gaps* 55–63 (2018).
[50] Jay Lawrence Westbrook, A Global Solution to Multinational Default, 98 Mich. L. Rev. 2276 (2000).
[51] UNCITRAL, *Model Law on Cross-Border Insolvency* art. 16 (1997).
[52] Case C-341/04, Eurofood IFSC Ltd., 2006 E.C.R. I-3813 (Eur. Ct. Just.).
[53] Insolvency Law Comm., Ministry of Corp. Affs., *Report on Cross-Border Insolvency* (2018), https://ibbi.gov.in.
[54] Irit Mevorach, *The Future of Cross-Border Insolvency* 70–78 (2018).
[55] U.S. Bankruptcy Code ch. 15, 11 U.S.C. §§ 1501–1532; Cross-Border Insolvency Regulations 2006 (U.K.); Insolvency, Restructuring and Dissolution Act 2018 (Sing.).

relatively automatic, provided documentation requirements are met and COMI is established[56]. Once recognised, foreign main proceedings trigger an automatic stay and relief measures, ensuring coordinated insolvency resolution. This system has been effectively applied in cases such as *In re Daewoo Logistics Corp.*, where courts facilitated cross-border coordination efficiently[57].ndia's proposed Part Z, however, introduces a judicially supervised recognition mechanism, where NCLT retains discretion to determine recognition and grant relief[58]. Legal scholars argue that this discretion reflects India's cautious approach to foreign judicial comity but may reduce efficiency in fast-moving insolvency scenarios involving global asset structures[59]. Empirical research from OECD insolvency reports suggests that jurisdictions with automatic recognition regimes achieve faster asset recovery and lower litigation costs compared to discretionary systems[60]. The UNCITRAL Model Law places strong emphasis on judicial cooperation, requiring courts to communicate directly with foreign insolvency tribunals and insolvency practitioners[61]. This principle of "modified universalism" has been strongly endorsed in landmark cases such as *In re Collins & Aikman* and *Jet Airways insolvency*, where courts coordinated parallel proceedings across jurisdictions[62].

India's draft Part Z provisions also incorporate cooperation mechanisms but do not mandate direct court-to-court communication, instead relying on statutory discretion and government oversight[63]. Academic commentary suggests that this limits India's alignment with global best practices, where judicial dialogue is increasingly seen as essential for resolving complex multinational insolvencies[64]. Comparative studies show that Singapore's Model Law implementation has been particularly effective due to proactive judicial cooperation protocols and case management frameworks[65].

The UNCITRAL Model Law provides extensive interim relief mechanisms, allowing foreign

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[56] UNCITRAL, *Model Law on Cross-Border Insolvency* arts. 15–17 (1997).
[57] In re Daewoo Logistics Corp., 461 B.R. 175 (Bankr. S.D.N.Y. 2011).
[58] Insolvency Law Comm., Ministry of Corp. Affs., *Report on Cross-Border Insolvency* ¶¶ 3.1–3.6 (2018).
[59] Jayanta Bhattacharya, Cross-Border Insolvency under the IBC: A Critical Analysis, 10 NUJS L. Rev. 221 (2017).
[60] Org. for Econ. Co-operation & Dev. (OECD), *Insolvency Frameworks for Business Resilience* 22–30 (2019).
[61] UNCITRAL, *Model Law on Cross-Border Insolvency* art. 25 (1997).
[62] In re Collins & Aikman Corp., [2005] EWHC 1754 (Ch); Jet Airways (India) Ltd. Insolvency, NCLT Mumbai Bench, C.P. (IB) No. 2205/2019 (2019).
[63] Insolvency Law Comm., Ministry of Corp. Affs., *Report on Cross-Border Insolvency* (2018).
[64] Bob Wessels et al., *International Cooperation in Insolvency Matters* 30–38 (2017).
[65] Rebecca Parry, Cross-Border Insolvency in Singapore: A Model for Asia?, 14 Int'l Insolvency Rev. 45 (2019).

representatives to access courts, seek moratoriums, and protect assets pending recognition[66]. These provisions are designed to prevent asset dissipation and ensure coordinated restructuring across jurisdictions[67]. India's Part Z framework similarly proposes relief mechanisms but conditions them on judicial approval and reciprocity considerations[68]. Scholars argue that while this safeguards domestic creditors, it may delay urgent protective measures in cases involving rapidly deteriorating multinational assets[69]. Empirical research from global restructuring cases such as *Lehman Brothers* demonstrates that delayed interim relief significantly reduces recovery rates for creditors[70].

PRACTICAL CHALLENGES AND JUDICIAL DEVELOPMENTS IN CROSS-BORDER INSOLVENCY

Lessons from Global Case Law and Indian Experience

The UNCITRAL Model Law on Cross-Border Insolvency (1997) is widely recognised as the most influential international instrument governing insolvency coordination, designed to promote modified universalism, judicial cooperation, and procedural harmonisation across jurisdictions[71]. It establishes a structured mechanism for recognition of foreign proceedings, relief measures, and coordination between courts while preserving domestic legal sovereignty[72].In contrast, India's proposed Part Z of the Insolvency and Bankruptcy Code(IBC), as recommended by the Insolvency Law Committee (2018), adopts a hybrid approach, incorporating Model Law principles but embedding stronger reciprocity and discretionary judicial controls[73]. The literature highlights that while the Model Law is "debtor-neutral and cooperation-oriented," India's draft framework reflects a cautious approach influenced by concerns over sovereignty, enforcement uncertainty, and asymmetric reciprocity with foreign jurisdictions[74]. Comparative insolvency scholarship further notes that India's

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[66] UNCITRAL, *Model Law on Cross-Border Insolvency* arts. 19–21 (1997).
[67] Irit Mevorach, *The Future of Cross-Border Insolvency* 90–98 (2018).
[68] Insolvency Law Comm., Ministry of Corp. Affs., *Report on Cross-Border Insolvency* ¶¶ 3.7–3.10 (2018).
[69] Jay Lawrence Westbrook, A Global Solution to Multinational Default, 98 Mich. L. Rev. 2276, 2290–95 (2000).
[70] In re Lehman Bros. Holdings Inc., 435 B.R. 122 (S.D.N.Y. 2010); OECD, *Insolvency Frameworks for Business Resilience* 25–33 (2019).
[71] UNCITRAL, *Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation* 1–10 (1997).
[72] Bob Wessels et al., *International Cooperation in Insolvency Matters: Principles and Guidelines* 18–26 (2017).
[73] Insolvency Law Comm., Ministry of Corp. Affs., *Report on Cross-Border Insolvency* ¶¶ 1.1–2.5 (2018), https://ibbi.gov.in.
[74] Irit Mevorach, *The Future of Cross-Border Insolvency: Overcoming Biases and Closing Gaps* 55–63 (2018).

deviation from strict Model Law adoption may limit predictability in cross-border restructurings involving multinational corporate groups[75].

A core feature of the UNCITRAL Model Law is the Centre of Main Interests (COMI) test, which determines jurisdiction for "foreign main proceedings" based on the debtor's principal place of business or administration, presumed to be its registered office unless proven otherwise[76]. COMI provides predictability and uniformity, as demonstrated in global jurisprudence such as *Eurofood IFSC Ltd.*, where the European Court of Justice emphasised objective, ascertainable criteria for COMI determination[77].

India's proposed Part Z framework adopts the COMI concept but does not rigidly define its contours, granting adjudicating authorities broader discretion in determining the debtor's principal interests[78]. Academic commentary argues that this flexibility may reduce forum-shopping risks but simultaneously undermines legal certainty in multinational restructurings[79]. Comparative studies of insolvency systems show that jurisdictions like the US (Chapter 15) and UK (CBIR) have successfully operationalised COMI with greater consistency, thereby improving cross-border investor confidence[80]. Under the UNCITRAL Model Law, recognition of foreign proceedings is procedural and relatively automatic, provided documentation requirements are met, and COMI is established[81]. Once recognised, foreign main proceedings trigger an automatic stay and relief measures, ensuring coordinated insolvency resolution[82]. This system has been effectively applied in cases such as *In re Daewoo Logistics Corp.*, where courts facilitated cross-border coordination efficiently[83].

India's proposed Part Z, however, introduces a judicially supervised recognition mechanism, where NCLT retains discretion to determine recognition and grant relief[84]. Legal scholars argue that this discretion reflects India's cautious approach to foreign judicial comity but may reduce efficiency in fast-moving insolvency scenarios involving global asset structures[85]. Empirical

[75] Jay Lawrence Westbrook, A Global Solution to Multinational Default, 98 Mich. L. Rev. 2276 (2000).
[76] UNCITRAL, *Model Law on Cross-Border Insolvency* art. 16 (1997).
[77] Case C-341/04, Eurofood IFSC Ltd., 2006 E.C.R. I-3813 (Eur. Ct. Just.).
[78] Insolvency Law Comm., Ministry of Corp. Affs., *Report on Cross-Border Insolvency* (2018).
[79] Irit Mevorach, *The Future of Cross-Border Insolvency* 70–78 (2018).
[80] U.S. Bankruptcy Code ch. 15, 11 U.S.C. §§ 1501–1532; Cross-Border Insolvency Regulations 2006 (U.K.); Insolvency, Restructuring and Dissolution Act 2018 (Sing.).
[81] UNCITRAL, *Model Law on Cross-Border Insolvency* arts. 15–17 (1997).
[82] Id. arts. 20–21
[83] In re Daewoo Logistics Corp., 461 B.R. 175 (Bankr. S.D.N.Y. 2011).
[84] Insolvency Law Comm., Ministry of Corp. Affs., *Report on Cross-Border Insolvency* ¶¶ 3.1–3.6 (2018).
[85] Jayanta Bhattacharya, Cross-Border Insolvency under the IBC: A Critical Analysis, 10 NUJS L. Rev. 221

research from OECD insolvency reports suggests that jurisdictions with automatic recognition regimes achieve faster asset recovery and lower litigation costs compared to discretionary systems[86]. The UNCITRAL Model Law places strong emphasis on judicial cooperation, requiring courts to communicate directly with foreign insolvency tribunals and insolvency practitioners[87]. This principle of "modified universalism" has been strongly endorsed in landmark cases such as *In re Collins & Aikman* and *Jet Airways insolvency*, where courts coordinated parallel proceedings across jurisdictions[88].

India's draft Part Z provisions also incorporate cooperation mechanisms but do not mandate direct court-to-court communication, instead relying on statutory discretion and government oversight[89]. Academic commentary suggests that this limits India's alignment with global best practices, where judicial dialogue is increasingly seen as essential for resolving complex multinational insolvencies[90]. Comparative studies show that Singapore's Model Law implementation has been particularly effective due to proactive judicial cooperation protocols and case management frameworks[91].

The UNCITRAL Model Law provides extensive interim relief mechanisms, allowing foreign representatives to access courts, seek moratoriums, and protect assets pending recognition[92]. These provisions are designed to prevent asset dissipation and ensure coordinated restructuring across jurisdictions[93]. India's Part Z framework similarly proposes relief mechanisms but conditions them on judicial approval and reciprocity considerations[94]. Scholars argue that while this safeguards domestic creditors, it may delay urgent protective measures in cases involving rapidly deteriorating multinational assets[95]. Empirical research from global restructuring cases such as *Lehman Brothers* demonstrates that delayed interim relief significantly reduces

(2017).

86 Org. for Econ. Co-operation & Dev. (OECD), *Insolvency Frameworks for Business Resilience* 22–30 (2019).

87 UNCITRAL, *Model Law on Cross-Border Insolvency* art. 25 (1997).

88 In re Collins & Aikman Corp., [2005] EWHC 1754 (Ch); Jet Airways (India) Ltd. Insolvency, NCLT Mumbai Bench, C.P. (IB) No. 2205/2019 (2019).

89 Insolvency Law Comm., Ministry of Corp. Affs., *Report on Cross-Border Insolvency* (2018).

90 Bob Wessels et al., *International Cooperation in Insolvency Matters* 30–38 (2017).

91 Rebecca Parry, Cross-Border Insolvency in Singapore: A Model for Asia?, 14 Int'l Insolvency Rev. 45 (2019).

92 UNCITRAL, *Model Law on Cross-Border Insolvency* arts. 19–21 (1997).

93 Irit Mevorach, *The Future of Cross-Border Insolvency* 90–98 (2018).

94 Insolvency Law Comm., Ministry of Corp. Affs., *Report on Cross-Border Insolvency* ¶¶ 3.7–3.10 (2018).

95 Jay Lawrence Westbrook, A Global Solution to Multinational Default, 98 Mich. L. Rev. 2276, 2290–95 (2000).

recovery rates for creditors[96].

CONCLUSION

India's present cross-border insolvency[97] framework remains incomplete, fragmented, and insufficient for the demands of contemporary transnational commerce[98]. Sections 234 and 235 of the IBC do not provide a self-executing or comprehensive mechanism for recognition of foreign proceedings, access for foreign representatives, or meaningful judicial coordination. As a result, the existing framework falls short of the requirements of predictability, efficiency, and fairness that modern insolvency systems are expected to provide in cases involving multinational debtors.

The UNCITRAL Model Law offers a persuasive and widely accepted template because it balances cooperation with sovereignty[99]. Its four-fold structure of access, recognition, relief, and cooperation has enabled many jurisdictions to manage cross-border distress more systematically without surrendering substantive control over domestic insolvency policy. For India, the significance of the Model Law lies not in blind imitation, but in the possibility of calibrated adoption that preserves public policy safeguards, gives due importance to domestic proceedings, and aligns Indian insolvency law with internationally recognised practices[100]. The literature and comparative practice examined in this study strongly support legislative reform in India[101]. Authors such as Westbrook, Fletcher, Ho, and Indian commentators have consistently observed that fragmented territorial approaches erode value and weaken creditor confidence, while structured cooperation yields better outcomes[102]. The ILC's 2018 recommendations therefore remain highly relevant and should be revisited with urgency[103]. India would benefit from enacting a dedicated cross-border insolvency chapter in the IBC, harmonising it with company law provisions, and investing in judicial capacity, institutional coordination, and interpretive clarity on matters such as COMI and public policy.

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[96] In re Lehman Bros. Holdings Inc., 435 B.R. 122 (S.D.N.Y. 2010); OECD, *Insolvency Frameworks for Business Resilience* 25–33 (2019).
[97] Insolvency and Bankruptcy Code, No. 31 of 2016, §§ 234–235, India Code (2016).
[98] World Bank, *Doing Business Report: Resolving Insolvency Indicators* 45–52 (2020).
[99] UNCITRAL, *Model Law on Cross-Border Insolvency* 1–10 (1997).
[100] Bob Wessels et al., *International Cooperation in Insolvency Matters* 18–26 (2017).
[101] Irit Mevorach, *The Future of Cross-Border Insolvency* 55–63 (2018).
[102] Jay Lawrence Westbrook, A Global Solution to Multinational Default, 98 Mich. L. Rev. 2276 (2000); Andrew R. Keay, *Corporate Insolvency Law: Theoretical and Comparative Perspectives* 102–10 (2019).
[103] Insolvency Law Comm., Ministry of Corp. Affs., *Report on Cross-Border Insolvency* (2018), https://ibbi.gov.in.

A critical study of India's cross-border insolvency framework shows that reform is not merely desirable but necessary[104]. India's rise as a major commercial jurisdiction requires insolvency laws capable of addressing the legal consequences of global business failure. A thoughtfully adapted UNCITRAL-based regime, informed by global best practices yet responsive to Indian realities, would represent a major step toward a more credible, efficient, and internationally integrated insolvency system[105].

[104] Vishal Saxena, Cross-Border Insolvency in India: Judicial Innovation and Its Limits, 14 NALSAR L. Rev. 89 (2021).
[105] OECD, *Insolvency Frameworks for Business Resilience* 22–30 (2019); UNCITRAL, *Model Law on Cross-Border Insolvency* 7–15 (1997).

BIBLIOGRAPHY

- Arora, Dakshita. Cross-Border Insolvency in India and the Adoption of UNCITRAL Model Law: A Comprehensive Analysis. 7 *International Journal of Law, Language & Legal Reasoning* 2178 (2021).

- Cross-Border Insolvency in India, SSRN (Mar. 22, 2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4770575.

- Fletcher, Ian F. *Insolvency in Private International Law* (2d ed. 2005).

- Ho, Look Chan. *Cross-Border Insolvency: A Commentary on the UNCITRAL Model Law* (4th ed. 2017).

- India's Journey Towards Cross-Border Insolvency Law Reform. 19 *Asian Journal of Comparative Law* (2024).

- Insolvency Law Committee, Ministry of Corporate Affairs, *Report on Cross Border Insolvency* (2018).

- Organisation for Economic Co-operation and Development, *Comparative Corporate Insolvency Law* (2018), https://www.ecgi.global/sites/default/files/working_papers/documents/comparativecorporateinsolvencylaw.pdf.

- Press Information Bureau, Gov't of India, *Insolvency Law Committee Submits Its 2nd Report on Cross Border Insolvency to the Ministry of Corporate Affairs* (Oct. 16, 2018), https://www.pib.gov.in/Pressreleaseshare.aspx?PRID=1550197.

- Resolvency, *Comparative Studies*, https://www.resolvency.eu/4_Comparative-Studies/index.html.

- The Insolvency and Bankruptcy Code, No. 31 of 2016, INDIA CODE (2016).

- UNCITRAL, *Legislative Guide on Insolvency Law: Part Three—Treatment of Enterprise Groups in Insolvency*, U.N. Sales No. E.10.V.16 (2010).

- UNCITRAL, *Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation*, U.N. Sales No. E.14.V.2 (2014).

- Westbrook, Jay Lawrence. A Global Solution to Multinational Default, 98 *Michigan Law Review* 2276 (2000).

- Westbrook, Jay Lawrence. Chapter 15 at Last, 79 *American Bankruptcy Law Journal* 713 (2005).

- Westbrook, Jay Lawrence. Chapter 15 at Last, 79 *American Bankruptcy Law Journal* 713 (2005).