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Bankruptcy and insolvency issues across the border of India

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Abstract
The rapid growth of global trade, foreign investment, and multinational corporate structures has significantly increased the importance of effective cross-border insolvency mechanisms. In an interconnected economy, corporate debtors frequently hold assets, creditors, and business operations across multiple jurisdictions. When such entities become insolvent, purely domestic insolvency laws prove insufficient to address issues of jurisdiction, recognition of foreign proceedings, coordination between courts, and enforcement of orders. The need for a predictable and cooperative international insolvency framework has therefore become essential to ensure fairness, efficiency, and value maximization.

In India, the Insolvency and Bankruptcy Code, 2016 (IBC) marked a transformative reform in domestic insolvency law. It consolidated previously fragmented statutes, introduced time-bound resolution processes, and strengthened creditor rights. While the IBC has significantly improved India's insolvency landscape internally, it does not contain a comprehensive statutory regime for cross-border insolvency. As Indian companies increasingly operate internationally and foreign investors participate in Indian markets, insolvency cases often involve overseas assets and stakeholders. In such circumstances, legal uncertainties arise regarding the recognition of foreign insolvency proceedings, cooperation between Indian and foreign courts, and protection of creditors' interests across jurisdictions. The IBC addresses cross-border insolvency only through Sections 234 and 235. Section 234 empowers the Central Government to enter into reciprocal agreements with foreign countries to enforce IBC provisions, while Section 235 allows Indian adjudicating authorities to issue letters of request to foreign courts for assistance. However, these provisions are limited in scope and largely ineffective in practice.

They depend on bilateral agreements, none of which have been meaningfully operationalized. The absence of procedural clarity and enforceable reciprocity renders these sections inadequate for addressing complex multinational insolvency cases. A significant gap in India's framework is its non-adoption of the UNCITRAL Model Law on Cross-Border Insolvency. The Model Law, adopted by numerous jurisdictions worldwide, provides a structured system for recognition of foreign proceedings, cooperation between courts, and coordination of concurrent insolvency processes. It does not harmonize substantive insolvency laws but establishes procedural mechanisms that promote efficiency and fairness in cross-border cases.

Countries such as the United States, United Kingdom, and Singapore have incorporated the Model Law into their domestic legislation. Their experience demonstrates that a codified framework enhances predictability, reduces jurisdictional conflicts, safeguards creditor interests, and strengthens investor confidence. By contrast, India's reliance on limited statutory provisions and ad hoc judicial cooperation creates uncertainty and potential delays in asset recovery and resolution.

With the increasing globalization of Indian businesses and financial markets, reform is both necessary and urgent. Incorporating a structured cross-border insolvency chapter into the IBC, aligned with international best practices, would improve judicial cooperation, protect stakeholder interests, and align India's insolvency regime with global standards. Such reform would enhance economic stability, facilitate smoother resolution of multinational insolvency cases, and reinforce India's credibility in the international investment environment.

Keywords: Cross-Border insolvency, multinational corporations, reciprocal agreements, global investment regulation, transnational asset enforcement

Introduction

The globalization of commerce has fundamentally reshaped modern business structures, creating intricate financial and legal relationships that transcend national borders. Corporations Received: 23-11-2025, Accepted: 18-01-2026, Published: 02-02-2026 frequently operate through multinational subsidiaries, cross-border financing arrangements, overseas asset holdings, and globally dispersed creditor networks. While such economic integration has accelerated growth and investment, it has also complicated the legal processes governing insolvency and debt resolution. When a financially distressed enterprise has assets and creditors in multiple jurisdictions, insolvency proceedings inevitably raise questions of recognition, coordination, and enforcement across borders. In the absence of a coherent cross-border insolvency framework, these proceedings may result in jurisdictional conflicts, duplication of actions, procedural delays, and inconsistent outcomes for stakeholders.

Traditionally, insolvency law evolved as a domestic mechanism designed to regulate debtor–creditor relations within a single sovereign territory. Courts exercised authority over assets and parties located within their jurisdiction, and cross-border complications were relatively limited. However, globalization has altered this assumption. Corporate groups now function as integrated economic units despite being legally incorporated in different countries. A collapse in one jurisdiction can trigger parallel claims and enforcement actions elsewhere,affecting employees, financial institutions, suppliers, and investors across borders. This interconnectedness necessitates legal systems capable of facilitating cooperation between courts,

preventing value-destructive parallel proceedings, and ensuring equitable treatment of creditors irrespective of nationality.

India's insolvency regime underwent a major transformation with the enactment of the Insolvency and Bankruptcy Code, 2016 (IBC). The IBC consolidated previously fragmented insolvency statutes into a unified framework and introduced a time-bound corporate insolvency resolution process. It shifted control from management to creditors, strengthened adjudicatory institutions such as the National Company Law Tribunal, and emphasized resolution and value maximization over liquidation. These reforms significantly enhanced creditor confidence and improved India's investment climate.

Despite these achievements, the IBC remains predominantly territorial in orientation. It lacks a comprehensive statutory mechanism to address insolvency cases involving foreign assets, overseas creditors, or parallel proceedings in other jurisdictions. Sections 234 and 235 of the Code provide limited authority for the Central Government to enter reciprocal agreements with foreign states and for adjudicating authorities to issue letters of request seeking assistance abroad.

However, these provisions depend on bilateral arrangements and have not been effectively operationalized. In practice, cross-border insolvency matters are managed through judicial discretion, principles of comity, or case-specific cooperation protocols. This piecemeal approach undermines predictability and increases litigation costs.

The absence of a structured recognition mechanism creates several risks. Parallel proceedings in different jurisdictions may lead to inconsistent rulings and depletion of asset value. Foreign creditors may face uncertainty regarding their participation rights in Indian proceedings, while Indian creditors may encounter enforcement barriers when assets are located overseas. Such uncertainty weakens the efficiency and creditor-centric objectives that the IBC seeks to promote domestically.

Internationally, these challenges have been addressed through harmonized procedural frameworks. A notable development is the UNCITRAL Model Law on Cross-Border Insolvency, which establishes principles for access to courts, recognition of foreign proceedings, cooperation between judicial authorities, and coordination of concurrent insolvency processes.The Model Law does not unify substantive insolvency laws but facilitates structured cooperation while preserving national sovereignty through public policy exceptions.

Jurisdictions such as the United States, United Kingdom, and Singapore have adopted the Model Law within their domestic legislation.Their experience demonstrates that codified cross-border mechanisms enhance legal certainty, reduce jurisdictional disputes, and strengthen investor confidence by ensuring coordinated administration of multinational insolvencies.

Given India's increasing integration into global financial markets, legislative reform is imperative. As Indian corporations expand internationally and foreign investment deepens, cross-border insolvency disputes are likely to become more frequent and complex. Without a comprehensive statutory framework, Indian courts will continue to rely on ad hoc solutions, leading to inconsistent outcomes. Incorporating a structured cross-border insolvency regime aligned with international best practices would enhance judicial cooperation, safeguard creditor interests, and align India's insolvency system with evolving global standards. This study therefore examines the limitations of the existing framework and evaluates the necessity of reform to ensure efficiency, predictability, and international compatibility in cross-border
insolvency resolution.

Legislative Gaps in India's Cross-Border Insolvency Framework

The principal issue examined in this study stems from the inherent limitations within India's statutory approach to cross-border insolvency under the Insolvency and Bankruptcy Code, 2016 (IBC). While the IBC has substantially modernized and streamlined domestic insolvency resolution, its cross-border provisions—specifically Sections 234 and 235—remain narrow in design and weak in operational effect. These sections contemplate cooperation with foreign jurisdictions through reciprocal arrangements and authorize Indian adjudicating authorities to seek assistance from foreign courts concerning assets situated abroad. However, they stop short of creating a detailed legal architecture for recognizing foreign insolvency proceedings, coordinating simultaneous proceedings across jurisdictions, or safeguarding the procedural participation of foreign creditors within India.A significant weakness lies in the dependency on bilateral agreements under Section 234. Cross-border insolvency matters often involve complex corporate structures operating across several jurisdictions simultaneously. In such situations, reliance on individual reciprocal treaties is impractical and insufficient. Moreover, the absence of active or comprehensive agreements under this provision renders it largely ineffective in practice. In the absence of formal cooperation mechanisms, Indian tribunals are compelled to rely on general principles such as judicial comity or case-specific coordination arrangements.

This approach produces inconsistent judicial practices and undermines the certainty and predictability that are essential to a stable insolvency framework. Similarly, Section 235, which permits Indian authorities to issue letters of request to foreign courts, lacks procedural precision. The provision does not prescribe definitive standards regarding timelines, binding effect, or the scope of assistance expected from foreign jurisdictions. Its implementation depends almost entirely on the goodwill of foreign courts and the compatibility of their domestic laws with Indian insolvency proceedings. Crucially, the Code does not establish a formal recognition mechanism through which foreign insolvency representatives may directly approach Indian tribunals. This omission creates ambiguity regarding their legal standing and procedural rights, thereby complicating the participation of foreign creditors in resolution processes.The implications of this legislative gap extend beyond doctrinal concerns and affect broader economic interests. A well-functioning insolvency system plays a pivotal role in influencing investor perception and facilitating cross-border capital flows. International investors and financial institutions seek assurance that, in cases of default, their claims can be enforced efficiently and fairly across jurisdictions. Where a country lacks a transparent and structured cross-border insolvency regime, the perceived legal risk associated with investment increases. Uncertainty regarding recognition of foreign proceedings, recovery of overseas assets, and

coordination of multinational restructurings may weaken confidence in the jurisdiction as a secure investment destination.

In contrast, jurisdictions that have implemented the UNCITRAL Model Law on Cross-Border Insolvency have established systematic procedures for recognition, cooperation, and coordination. Countries such as the United States and Singapore have incorporated statutory mechanisms that clarify the status of foreign representatives, define standards for judicial assistance, and reduce conflicts arising from concurrent proceedings. These structured approaches enhance procedural clarity and limit unnecessary litigation. Accordingly, the research problem focuses on evaluating whether Sections 234 and 235 of the IBC adequately respond to the demands of contemporary cross-border insolvency. The absence of a comprehensive and internationally harmonized mechanism generates legal ambiguity for foreign stakeholders, affects investor confidence, and hinders the efficient resolution of multinational corporate distress. Addressing these deficiencies is crucial to strengthening India's insolvency framework and aligning it with global best practices in cross-border cooperation.

The Case for a Structured and Harmonized Cross-Border Insolvency Regime

This study contends that India should introduce a carefully tailored and context-specific adaptation of the UNCITRAL Model Law on Cross-Border Insolvency to remedy the structural limitations present in its current cross-border insolvency regime under the Insolvency and Bankruptcy Code, 2016 (IBC). Although the IBC has significantly reformed and streamlined domestic insolvency processes, its cross-border provisions—particularly Sections 234 and 235—are narrow in scope and insufficient to address the complexities of multinational insolvency cases. A modified incorporation of the Model Law, complemented by institutional development and judicial training, is necessary to ensure procedural certainty, equitable treatment of stakeholders, and alignment with international standards.The Model Law offers a structured procedural system that facilitates recognition of foreign insolvency proceedings, grants foreign representatives access to domestic courts, promotes cooperation between judicial authorities, and coordinates parallel proceedings in multiple jurisdictions. Importantly, it does not mandate uniformity in substantive insolvency rules. Instead, it creates mechanisms that enable efficient cross-border coordination while preserving a nation's sovereign right to apply public policy exceptions. An adapted Indian version could retain safeguards to protect domestic economic and constitutional interests while instituting a formal process for recognizing foreign main and non-main proceedings. Such reform would replace India's current reliance on sporadic bilateral arrangements with a comprehensive and predictable statutory mechanism.

The benefits of adopting the Model Law framework are evident from jurisdictions that have implemented it. The United States incorporated the Model Law through Chapter 15 of its Bankruptcy Code, establishing transparent criteria for recognition and judicial assistance.

Similarly, Singapore integrated the framework into its Insolvency, Restructuring and Dissolution Act, thereby enhancing its reputation as a reliable forum for cross-border restructuring. These examples demonstrate how codified recognition procedures reduce jurisdictional disputes, promote judicial cooperation, and foster investor confidence. As India's economic footprint expands globally, adopting a similar approach would strengthen its credibility in managing multinational insolvency matters.Nonetheless, legislative reform alone will not suffice.

Effective implementation requires strengthening institutional capabilities. Bodies such as the National Company Law Tribunal and the National Company Law Appellate Tribunal must be supported through specialized training in international insolvency principles and comparativepractices. Insolvency professionals should also acquire expertise in cross-border asset identification, coordination of multinational claims, and communication with foreign courts.

Consistent judicial education programs would promote uniform interpretation and reduce procedural inconsistencies.Moreover, harmonization with global standards must extend beyond statutory reform. Clear regulatory guidelines for cross-border communication, development of cooperation protocols,and technological systems enabling efficient court-to-court interaction are equally important.Policy discussions within the Ministry of Corporate Affairs have already emphasized the relevance of adopting a structured cross-border insolvency mechanism. Building on these foundations, India can design a modified framework that balances international best practices with domestic priorities.

In sum, establishing a comprehensive cross-border insolvency regime is no longer a discretionary reform but an essential step in strengthening India's insolvency architecture. Without modernization, the system risks fragmentation, uncertainty, and reduced investor confidence. A context-sensitive adaptation of the Model Law, supported by institutional strengthening and judicial capacity-building, would enhance fairness, reinforce global trust, and ensure that India's insolvency framework keeps pace with the realities of transnational commerce.

Foundations of the Proposed Reform

The claim that India must adopt a structured cross-border insolvency framework is supported by constitutional, statutory, and comparative legal foundations. First, constitutional principles underscore the necessity of fairness, equality, and access to justice in insolvency proceedings. Article 14 of the Constitution of India guarantees equality before the law and equal protection of the laws, which extends to both domestic and foreign stakeholders participating in legal processes. Cross-border insolvency cases frequently involve foreign creditors, investors, and multinational entities. In the absence of a predictable and transparent framework, inconsistent recognition of foreign proceedings or unequal treatment of similarly placed creditors may raise concerns of arbitrariness. Further, Article 21, which protects the right to life and personal liberty, has been judicially interpreted to include procedural fairness and due process. A fragmented cross-border regime that results in prolonged litigation, duplication of proceedings, or denial of effective remedies undermines these constitutional values.

Ensuring a harmonized system therefore aligns insolvency law with constitutional mandates of justice and Fairness.

Second, statutory recognition under the Insolvency and Bankruptcy Code, 2016 (IBC) provides a foundational basis for reform. The IBC was enacted to consolidate and amend laws relating to reorganization and insolvency resolution in a time-bound manner to maximize asset value and promote entrepreneurship. While Sections 234 and 235 acknowledge the possibility of cross-border cooperation, they remain limited to reciprocal arrangements and letters of request. The legislative intent of promoting efficient resolution and value maximization logically extends to cases involving international elements. Strengthening the cross-border framework would therefore be consistent with the objectives and scheme of the IBC itself.

Third, international best practices demonstrate the practical advantages of harmonized cross-border insolvency regimes. The UNCITRAL Model Law on Cross-Border Insolvency has been adopted by several jurisdictions, facilitating recognition, cooperation, and coordination in multinational insolvency cases. Comparative experiences from countries such as the United States and Singapore illustrate how codified frameworks reduce jurisdictional conflicts and enhance investor confidence. These grounds collectively justify the need for reform in India's cross-border insolvency regime.

Comparative Analysis of Cross-Border Insolvency Frameworks

A comparative study of cross-border insolvency systems illustrates that clearly codified statutory frameworks play a crucial role in ensuring certainty, judicial cooperation, and protection of creditor interests in multinational insolvency matters. Countries such as the United States, the United Kingdom, and Singapore have established comprehensive legal mechanisms influenced by the UNCITRAL Model Law on Cross-Border Insolvency. Their adoption of structured procedures for recognition and cooperation has enhanced transparency and predictability in cross-jurisdictional insolvency proceedings, offering valuable insights for India. In the United States, the principles of the Model Law are embedded in Chapter 15 of the U.S. Bankruptcy Code. This chapter outlines a systematic process for the recognition of foreign main and non-main proceedings and enables foreign insolvency representatives to approach U.S. courts directly. Upon recognition of a foreign main proceeding, an automatic stay comes into effect, safeguarding the debtor's assets located within U.S. territory. The framework further obligates courts to cooperate with foreign judicial authorities, thereby limiting conflicting judgments and redundant litigation. By clearly defining the scope of relief and recognition, Chapter 15 strengthens legal certainty and encourages coordinated international restructuring efforts.The United Kingdom adopted the Model Law through the Cross-Border Insolvency Regulations 200628. These regulations allow foreign insolvency proceedings to be formally recognized and empower courts to grant suitable relief to protect assets and ensure equitable treatment of creditors. Emphasis on judicial dialogue and adherence to principles of comity enhances efficiency while preserving domestic public policy considerations. The codified nature of the regime minimizes ambiguity and procedural delays, reinforcing the UK's standing as a favorable jurisdiction for complex restructuring matters. Similarly, Singapore incorporated the Model Law through the Insolvency, Restructuring and Dissolution Act 2018, strengthening its position as a prominent insolvency hub in Asia.

The statutory framework promotes recognition of foreign proceedings, coordinated administration of cross-border cases, and effective creditor protection. Alignment with globally accepted standards has increased investor trust and streamlined multinational insolvency resolutions.By contrast, India's present approach under the Insolvency and Bankruptcy Code, 2016 remains confined to reciprocal arrangements and letters of request under Sections 234 and 23529. The absence of a formal recognition and cooperation mechanism creates ambiguity in cases involving foreign creditors or overseas assets. When compared to jurisdictions with established Model Law-based systems, India's framework lacks procedural clarity and predictability, potentially affecting investor confidence and complicating cross-border restructuring processes. Overall, the comparative analysis underscores that a harmonized and codified cross-border insolvency framework fosters legal certainty, safeguards creditor rights, and enhances economic credibility—objectives that are essential for India in an increasingly interconnected global Economy.

Structural Deficiencies in India's Cross-Border Insolvency Regime

Despite significant reforms introduced through the Insolvency and Bankruptcy Code, 2016, India's cross-border insolvency framework continues to exhibit notable structural deficiencies. First, India has not yet adopted the UNCITRAL Model Law on Cross-Border Insolvency, which has emerged as the internationally accepted standard for managing multinational insolvency proceedings.

The absence of this framework means that India lacks a structured mechanism for recognition of foreign main and non-main proceedings, access of foreign representatives to domestic courts, and coordination of concurrent proceedings. This legislative gap creates uncertainty in cases involving overseas assets or foreign creditors.Second, Section 234 of the IBC relies on reciprocal arrangements with foreign governments for cross-border cooperation. Such dependence on bilateral agreements is inherently restrictive, as multinational insolvencies often involve multiple jurisdictions rather than a single foreign state. Moreover, the absence of operational reciprocal agreements renders this provision largely ineffective in practice, limiting its utility in real-world insolvency scenarios.

Third, Indian adjudicatory bodies, including the National Company Law Tribunal (NCLT), have comparatively limited experience in handling complex multi-jurisdictional insolvency matters.

Cross-border cases require familiarity with international insolvency principles, foreign legal systems, and coordinated judicial communication—areas where consistent institutional expertise is still evolving.Fourth, there is no codified procedure for recognizing foreign insolvency proceedings within India. Without statutory recognition, foreign representatives may face procedural obstacles in asserting claims or protecting assets located in India. This undermines efficiency and increases litigation costs34.

Finally, India lacks formal mechanisms to facilitate cooperation between domestic courts, foreign courts, and insolvency professionals. The absence of clear communication protocols or cooperation guidelines may

lead to conflicting decisions and duplication of proceedings. Collectively, these gaps highlight the urgent need for a comprehensive and harmonized cross-border insolvency framework in India.

Reform Proposals for Strengthening Cross-Border Insolvency Law

To address the structural shortcomings in India's cross-border insolvency regime, a set of comprehensive reforms is necessary to align domestic law with international commercial realities.

First, India should introduce a dedicated chapter on cross-border insolvency within the Insolvency and Bankruptcy Code, 2016 by adopting a suitably modified version of the UNCITRAL Model Law on Cross-Border Insolvency. Rather than replicating the Model Law verbatim, India should tailor its provisions to accommodate domestic economic priorities and constitutional safeguards. The new chapter should clearly define the process for recognition of foreign main and non-main proceedings, outline the reliefs available upon recognition, and establish safeguards to protect public policy interests. Codifying these principles would replace uncertainty with procedural clarity and predictability.

Second, structured protocols must be developed for recognition and judicial cooperation. Clear procedural rules should govern how foreign insolvency representatives may approach Indian tribunals, the timelines for adjudication, and the standards for granting interim and final relief. Mechanisms enabling direct communication between Indian courts and foreign courts should be formalized, reducing duplication of proceedings and minimizing jurisdictional conflict. Written cooperation guidelines would promote consistency and efficiency in handling multinational cases.

Third, capacity-building is essential. Insolvency professionals, resolution professionals, and members of adjudicatory bodies require specialized training in international insolvency principles, comparative jurisprudence, and cross-border asset tracing. Regular judicial education programs and technical workshops would enhance institutional expertise and foster uniform interpretation of cross-border provisions. Developing a cadre of professionals skilled in managing multinational restructurings will strengthen India's insolvency ecosystem.

Fourth, institutional mechanisms under the Insolvency and Bankruptcy Board of India (IBBI) should be reinforced. The IBBI can issue regulatory guidelines, best-practice frameworks, and standard operating procedures for cross-border cases. It may also establish a dedicated cell or committee to monitor developments in international insolvency law and recommend periodic reforms. Such proactive oversight would ensure that India's framework remains responsive to global trends.

Finally, India should actively pursue international cooperation and reciprocal arrangements with key trading partners. Participation in global insolvency dialogues and multilateral forums would enhance mutual trust and recognition. A transparent and harmonized system would reduce perceived enforcement risks, thereby promoting foreign investment and strengthening India's credibility as a secure destination for cross-border commercial activity.

Conclusion

India's insolvency landscape has experienced a transformative shift with the enactment of the Insolvency and Bankruptcy Code, 2016, which consolidated fragmented insolvency laws into a unified and time-bound framework. The IBC has significantly improved recovery rates, strengthened creditor rights, and enhanced credit discipline within the domestic economy. It has also contributed to improving India's reputation as a jurisdiction committed to transparent and efficient insolvency resolution. However, while the domestic framework has evolved considerably, the cross-border dimension of insolvency law remains insufficiently developed.

In an era marked by globalized trade, cross-border investments, and multinational corporate structures, insolvency is rarely confined within national boundaries. Indian companies increasingly operate through foreign subsidiaries, hold overseas assets, and engage with international creditors. Similarly, foreign entities conduct business in India and invest in Indian enterprises. In such an interconnected environment, the absence of a comprehensive cross-border insolvency mechanism creates legal uncertainty. Issues relating to recognition of foreign proceedings, protection of overseas assets, coordination between courts, and equitable treatment of creditors demand a structured and predictable legal response.

At present, the limited provisions under Sections 234 and 235 of the IBC rely primarily on reciprocal arrangements and letters of request. While these provisions acknowledge the importance of international cooperation, they do not establish a detailed procedural framework for recognition or coordination. This gap can lead to delays, increased litigation costs, and inconsistent outcomes in multinational insolvency cases. More importantly, unpredictability in cross-border insolvency matters may weaken investor confidence and raise concerns about enforceability of rights in complex international transactions.

Adopting internationally recognized best practices—particularly a modified and context-sensitive version of the UNCITRAL Model Law on Cross-Border Insolvency—wouldn provide a coherent solution. Such adoption need not compromise national interests. The Model Law itself permits public policy exceptions and respects domestic sovereignty while promoting cooperation and procedural clarity. A carefully calibrated framework would ensure recognition of foreign proceedings, facilitate court-to-court communication, and promote coordinated restructuring or liquidation processes.

Beyond legislative reform, strengthening institutional capacity, enhancing judicial training, and Ultimately, modernizing India's cross-border insolvency regime is not merely a legal reform but an economic imperative. A predictable and harmonized framework would reinforce fairness, promote efficiency, and enhance India's credibility in the global financial system. By aligning issuing regulatory guidance through bodies such as the Insolvency and Bankruptcy Board of India would be crucial for effective implementation. Institutional readiness is as important as statutory reform in ensuring practical success. By aligning domestic insolvency law with international standards while safeguarding national priorities, India can position itself as a reliable and attractive destination for global investment in an increasingly interconnected commercial world.

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