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Cross-Border Insolvency: An Indian Paradigm

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ABSTRACT

The world is a global village with corporation no longer bound to their "native" to do business. But risk remains an intrinsic factor of all businesses and there are several that fail, in their wake they might stop their operations but leave their debts behind. In early industrial era, such debts were dealt on a national level. However, in the era of globalization, such solutions are no longer feasible. Today, countries are struggling with balancing the interest of nations with corporations to stay ahead in the economic race. Insolvency is a sensitive matter for both the corporation and the state which has to facilitate such process but within the globalized world there is a need for globalized insolvency process. On an international level, an endeavour in the form of UNICITRAL Model Law has been made which multiple nations have accepted, other nations have made relevant changes to their domestic laws to facilitate 'cross-border' insolvency but India stays on the backfoot with such changes. While Insolvency and Bankruptcy Code, 2016 provides for provisions that may facilitate cross-border insolvency, these provisions have yet to see real application. Stakeholders and research groups have come up with solutions with Insolvency Law Committee seeking implementation of 'Draft Part Z' but all of this remains theoretical.

This paper examines the concept of 'Cross-border Insolvency' in light of governing judicial and administrative principles and draws a comparative analysis to accurately identify India's stance on the issue along with potential suggestions.

I. INTRODUCTION

Cross-border insolvency arises where a debtor's assets or creditors span multiple countries, making domestic proceedings insufficient. The core theoretical debate in cross-border insolvency law has long been between universalism and territorialism. Under universalism, a single insolvency proceeding, usually in the debtor's "home" jurisdiction, applies globally, ensuring one unified distribution system for all creditors. Territorialism, by contrast, treats each jurisdiction independently: local courts apply local law to assets and creditors within

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their borders, resulting in separate proceedings that may yield divergent outcomes.[3] Over time, hybrid approaches have emerged: for example, modified universalism[4] seeks a main proceeding abroad with recognition and limited ancillary relief in other states, balancing global coordination with local autonomy. Professor LoPucki famously critiques pure universalism as unworkable, arguing that no clear rule identifies a single "home country" for modern multinationals.[5] He instead endorses concurrent local proceedings with cooperative protocols, a position he terms "cooperative territoriality".[6]

These debates gave rise to the UNCITRAL Model Law, which embodies a modified universalist compromise, whereas many emerging proposals (including India's draft laws) lean toward formalistic reciprocity. Cross-border insolvency doctrine involves a trade-off between the two. Universalism promises efficiency and equality; creditors need not duplicate claims across jurisdictions but depend on broad comity and trust in a foreign system. Territorialism guarantees each country protects its creditors, but at the cost of fragmentation and potentially lower recovery values. In practice, nearly all systems adopt a modified universalist ethos: a main proceeding recognised widely, plus ancillary actions to gather assets abroad.

As practitioners observe, universalism "avoids the need to conduct multiple processes simultaneously," whereas territorialism "administers assets and determines creditors' rights in every jurisdiction" independently[7]. This "golden thread" of co-operation emerged in English law (e.g. McGrath & Ors v Riddell & Ors by Lord Hoffman[8]), though later decisions (e.g. Rubin and Singularis[9] in the UK), have emphasised statutory limits. In any case, the dominant trend is clear: global best practice favours a unified framework with statutory recognition of foreign main proceedings, limited local relief, and obligations of mutual assistance.

Scholars note universalism's appeal in theory but difficulty in practice, given modern

[3] Evan J Zucker and Rick Antonoff, 'UNCITRAL's Model Law on Recognition and Enforcement of Insolvency-Related Judgments - A Universalist Approach to Cross-Border Insolvency' (*INSOL International special report*, March 2019) <https://www.blankrome.com/sites/default/files/2019-03/uncitralmodellaw-antonoffzucker2019.pdf> accessed 14 June 2025.
[4] McGrath & Ors v Riddell & Ors (Conjoined Appeals) [2008] UKHL 21.
[5] Lynn M LoPucki, 'The Case for Cooperative Territoriality in International Bankruptcy' (2000) 98 Mich L Rev 2216.
[6] Shakshi Sethia and Sayantika Halder, Cross Border Insolvency in India (*SSRN*, 23 March 2024) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4770575> accessed 2 July 2025.
[7] Scott Atkins, 'The Model Law on Cross-Border Insolvency turns 25' (*Norton Rose Fulbright*, May 2022) <https://www.nortonrosefulbright.com/en-us/knowledge/publications/87d4ce21/the-model-law-on-cross-border-insolvency-turns-25> accessed 2 July 2025.
[8] Supra Note 2.
[9] Singularis Holdings Ltd v PricewaterhouseCoopers (Bermuda) [2014] UKPC 36.

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corporations' dispersed presence.[10]. Even advocates of universalist principles (e.g. Lord Hoffman) have faced criticism for relying on broad policy rather than specific rules. In contrast, territorial approaches (some form of which LoPucki and others propose) emphasise local sovereignty. Modified universalism, embedded in the UNCITRAL Model Law, has thus emerged as a prevailing philosophy: one jurisdiction declares a foreign main proceeding (often based on the debtor's "center of main interests," or COMI) and domestic courts grant automatic stays and assistance, while foreign courts may open ancillary relief focused on local assets.

Therefore, international insolvency law has achieved a delicate balance between unity and plurality, one that leans to either side depending on the needs of individual nations, but more importantly, the prevailing business practices. Universalism offers coherence but demands exceptional coordination and trust, while territorialism respects jurisdictional sovereignty but risks fragmentation.[11] Most modern regimes, inspired by UNCITRAL, pursue a middle path: they facilitate cross-border communication and recognition, aiming to maximise creditor returns globally while preserving essential local legal controls.

II. UNCITRAL MODEL LAW AND GLOBAL BEST PRACTICES IN TRANSNATIONAL INSOLVENCY

The UNCITRAL Model Law on Cross-Border Insolvency (1997) codifies the globally-endorsed framework for cooperative insolvency. Its stated purpose is to help states equip their laws with "a modern legal framework" that encourages cooperation and coordination between jurisdictions, without unifying substantive law. The Model Law focuses on four pillars: access, recognition, relief, and cooperation.[12] It grants foreign representatives and creditors access to domestic courts, establishes streamlined recognition procedures for foreign main and non-main proceedings, specifies relief measures (such as automatic stays and injunctions) to assist foreign proceedings, and expressly authorises judicial cooperation and communication.

Significantly, the Model Law does not require strict reciprocity, a non-mandatory approach that reflects a modified universalist philosophy and relies on broad co-operation rather than tit-for-tat recognition. In practice, about 60 jurisdictions (including the US, UK, Canada,

[10] Sudhaker Shukla and Kokila Jayaram, 'Cross Border Insolvency - A Case to Cross the Border Beyond the UNCITRAL, in Insolvency and Bankruptcy Regime in India - A Narrative (Insolvency and Bankruptcy Board of India, 2020) 313.

[11] Edward S. Adams & Jason K. Fincke, 'Coordinating Cross-Border Bankruptcy: How Territorialism Saves Universalism', (2008) 15 Colum.J.Eur.L. 43, 85.

[12] United Nations Commission on International Trade Law (UNCITRAL), 'UNCITRAL Model Law on Cross-Border Insolvency' (*UNCITRAL*, 30 May 1997) <https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency> accessed 4 July 2025.

Australia, Japan, China, Singapore and many EU countries) have adopted statutes based on the Model Law.[13] Under the Model Law regime, if a foreign proceeding qualifies (typically as a "main proceeding" in the debtor's COMI jurisdiction), a domestic court must recognise it and grant prescribed relief. For example, Chapter 15 of the US Bankruptcy Code is essentially the Model Law in statutory form.[14]. Chapter 15 requires recognition of foreign main proceedings when COMI is established, allows foreign representatives to operate in US courts, and grants automatic relief (stay, etc.), with only a narrow public-policy exception for refusal.

Similarly, the UK's Cross-Border Insolvency Regulations, 2006, directly enact the Model Law. English courts have applied it expansively: upon recognition of a foreign main proceeding, they extend wide stays and investigative powers akin to those for domestic administrations.

Global experience confirms the Model Law's benefits. By declaring a single main proceeding worldwide, it avoids piecemeal liquidations that dissipate value; by requiring mutual assistance, it reduces forum shopping and conflicts. It also spurs voluntary protocols and cooperative initiatives. For instance, the 2019 UNCITRAL Legislative Guide on Insolvency endorses protocols for coordination (e.g. MOUs, judicial communications).[15] Industry groups such as the International Insolvency Institute and the American Law Institute promote nonbinding "protocols" (e.g. the London Approach 2019) to align cross-border cases. At the same time, lessons from the UK (e.g. Rubin v. Eurofinance[16] cautioned against unstructured recognition) highlight that the Model Law's relief is largely procedural; it does not itself alter creditors' rights under applicable laws. Overall, though, the consensus view is that a statutory Model-Law-based system yields greater predictability, cooperation and value than reliance on ad hoc comity or territorial isolation.

Key features of the Model Law and modern best practice include:

- Automatic recognition of foreign main proceedings
- Ancillary (non-main) proceedings
- Broad judicial assistance powers

[13] United Nations Commission on International Trade Law, 'Status: UNCITRAL Model Law on Cross-Border Insolvency' (*UNCITRAL*) <https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency/status> accessed 12 June 2025.

[14] 'Chapter 15 - Bankruptcy Basics' (*United States Courts*) <https://www.uscourts.gov/court-programs/bankruptcy/bankruptcy-basics/chapter-15-bankruptcy-basics> accessed 22 June 2025.

[15] Neil Hannan, *Cross-Border Insolvency: The Enactment and Interpretation of the UNCITRAL Model Law* (Springer 2017) 1.

[16] Rubin v. Eurofinance [2012] UKSC 46.

- Direct communication
- Flexible participation

UNCITRAL's Model Law is designed as a framework offering uniform terminology and remedies. As its preamble states, it aids effective management of debtors with assets/creditors in multiple states, and addresses inadequacies of prior uncoordinated approaches. This model has been dubbed a "global best practice" for CBI, centralising the reorganisation and maximising returns. However, global uptake remains incomplete, with major economies like India, certain EU states, and others yet to implement it fully, pointing to a continuing need for reform in lagging jurisdictions. Its success relies on statutory clarity and judicial willingness to cooperate: France, the US, UK, Singapore, Australia, etc., illustrate how a cohesive framework can prevent value destruction.[17]

III. The Indian insolvency and bankruptcy code: gaps in cross-border integration

India's Insolvency and Bankruptcy Code, 2016 (hereinafter "IBC") fundamentally reformed the domestic insolvency regime in India, but its cross-border provisions are limited. The IBC introduced two enabling sections for international cases, Section 234 and Section 235, but otherwise lacks a cohesive framework. Section 234 empowers the central government to enter into bilateral treaties on cross-border insolvency and extend IBC's scope extraterritorially. Section 235 allows an Indian insolvency tribunal to send letters of request to foreign courts (in reciprocating jurisdictions) concerning the assets of a corporate debtor outside India.[18] These measures were based on a Parliamentary Joint Committee's recommendation, but remain ad hoc and largely unused.[19]

No multilateral accession or Model-Law enactment has occurred; instead, India still relies on future bilateral pacts, which are time-consuming and provide only reciprocal obligations. The IBC contains no statutory mechanism to recognise a foreign proceeding or foreign liquidator in domestic insolvency. Except for Section 60's jurisdictional rule, foreign insolvency orders have no direct effect in India.

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[17] Aedit Abdullah, 'Singapore and the Model Law' (*III Global*, 2019) <https://www.iiiglobal.org/file.cfm/46/docs/panel%203.%20abdullah%20singapore%20and%20the%20model%20law.pdf> accessed 11 July 2025.

[18] Rohit Lalwani and Aditi Tiwari, 'An Overview of Cross-Border Insolvency in India' (*Amlegals*, 18 March 2022) <https://amlegals.com/an-overview-of-cross-border-insolvency-in-india/> accessed 7 July 2025.

[19] Anshuman Gupta and Hunaynah Shaikh, 'Breaking Borders: Crafting a Robust Cross-Border Insolvency Framework for India through Global Insights' (*The Legal 500*, 21 February 2025) <https://www.legal500.com/developments/thought-leadership/breaking-borders-crafting-a-robust-cross-border-insolvencyframework-for-india-through-global-insights/> accessed 10 July 2025.

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Consequently, if an Indian debtor undergoes foreign bankruptcy, Indian courts cannot automatically stay local claims or give effect to the foreign resolution. Conversely, if an Indian company goes insolvent, foreign courts have no statutory obligation under IBC to recognise it, absent a specific treaty or local equivalent legislation. The result is a legal gap: assets abroad often escape Indian control, and foreign creditors have no formal avenue to enforce Indian insolvency orders.

The Indian insolvency regime is thus plagued by multiple shortcomings that impact global investments. The IBC does not incorporate the UNCITRAL Model Law or any standing principle of universalism.[20] The term "foreign proceeding" remains undefined, therefore foreign insolvencies must be shoehorned into existing law or dealt with via bilateral MOUs. In 2018, the Insolvency Law Committee recommended adopting a draft 'Part Z' based on the Model Law, but no such amendment has been enacted. On one hand, Section 234's bilateral approach is reactive and unimplemented; On the other, Section 235's reciprocity requirement and "letter of request" procedure offer only voluntary assistance rather than streamlined recognition. These sections explicitly invoke the Principle of Reciprocity, meaning Indian tribunals will act only if the foreign country has a similar law. In practice, this restricts cooperation to a tiny set of countries (primarily the UK/US/Commonwealth) and excludes many key trade partners.[21]

The IBC does not recognise foreign insolvency practitioners in India. For example, an Indian adjudicatory authority (NCLT) has no express power to admit a foreign liquidation order and empower a foreign liquidator to act in India.[22] Instead, foreign creditors can file claims, but only through the usual claims process after an Indian liquidation begins. Similarly, a foreign insolvency official cannot petition Indian courts under IBC; the only allowed procedure is through Section 235 letters. By default, Section 60(1) IBC gives jurisdiction to the NCLT bench where the corporate debtor's registered office is located. This has two implications: if a debtor's "centre of main interests" (COMI) is outside India, Indian courts still insist on deciding insolvency if the company has a registered office in India.

The NCLAT in Excel Metal[23] Explicitly held that a contract's exclusive foreign forum clause

[20] PRS Legislative Research, 'Insolvency Law Committee on Cross-Border Insolvency' (*PRS* India, 16 October 2018) <https://prsindia.org/policy/report-summaries/insolvency-law-committee-cross-border-insolvency> accessed 14 June 2025.

[21] Divyanshu Kumar, 'Cross Border Insolvency Regime in India: Draft Part-Z vis-à-vis the UNCITRAL Model Law', (2022) I HPNLU JLBE 104.

[22] Vishrut Kansal and Mohd Fahad Ansari, 'India's Cross-Border Insolvency Framework: Time to Honour Exclusive Jurisdiction Clauses' (*IndiaCorpLaw*, 8 April 2025) <https://indiacorplaw.in/2025/04/08/indias-cross-border-insolvency-framework-time-to-honour-exclusive-jurisdiction-clauses/> accessed 24 June 2025.

[23] Excel Metal Processors Ltd. vs. Benteler Trading International GMBH and Anr. Company Appeal (AT)

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cannot oust India's jurisdiction under Section 60. This strict territorial rule may help protect local interests, but it can frustrate genuine global reorganisations of Indian companies. In the absence of IBC provisions, India defaults to pre-existing tools. For enforcement of foreign judgments, India follows the Code of Civil Procedure, 1908 (CPC), specifically Sections 13 and 44A. Section 13 CPC allows recognition only if specific conditions are met (e.g. the foreign proceeding is not against Indian law); it excludes judgments rendered in violation of Indian law. Insolvency orders are not civil judgments, so CPC offers no special path.

Thus, any foreign insolvency order would have to fit the narrow criteria of "civil judgment" or rely on ad hoc principles of comity. No reported Indian case has systematically addressed the recognition of foreign insolvency judgments. These gaps have real consequences. In high-profile cases, foreign creditors often challenge Indian proceedings. For example, in Jet Airways v. State Bank of India[24], Dutch administrators sought to halt the Indian CIRP on the ground that Jet Airway's COMI was in the Netherlands. The NCLT Mumbai rejected this, citing jurisdiction over Jet Airways due to its registered office in India and refused to stay Indian proceedings, noting a lack of statutory basis for foreign recognition. Only on appeal did the NCLAT craft a "protocol" of cooperation between the Indian RP and the Dutch trustee.

Similarly, exclusive jurisdiction clauses have been held not to oust Indian insolvency jurisdiction, as seen in Excel Metal. On the positive side, India has recently been the subject (as debtor) of foreign recognition: e.g. a Singapore court recognised an Indian CIRP as a foreign proceeding.[25], applying Singapore's adoption of the Model Law to India's insolvency. But that recognition occurred under Singapore law; it does not itself create rights under Indian law.

India's IBC currently lacks a robust cross-border mechanism. It does not adopt the Model Law in substance, offers only bilateral letters of request, and otherwise depends on narrow common law or international comity. Indian courts must navigate a patchwork: they retain jurisdiction if any corporate link exists, yet have little power to assist foreign states. Recognising this, the IBC's review committees have stressed the need for reform.[26]

(Insolvency) No. 782 of 2019.

[24] Jet Airways (India) Limited vs State Bank Of India & Anr, Company Appeal (AT) (Insolvency) No. 707 of 2019.

[25] In Re Compuage Infocom Ltd, [2025] SGHC 49.

[26] Mamata Biswal, 'UNCITRAL Model Law on Cross Border Insolvency in the Indian Legal Landscape', in Insolvency and Bankruptcy Regime in India - A Narrative (Insolvency and Bankruptcy Board of India 2020) 339.

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IV. Comparative jurisprudence: institutional and legislative lessons for India

Learning from other jurisdictions is crucial for India's reforms. Many countries have demonstrated diverse institutional and legislative solutions to cross-border insolvency, which offer lessons for India.

A. United States

The U.S. Chapter 15 model is often cited. Enacted in 2005, Chapter 15 implements the UNCITRAL Model Law almost verbatim. It provides mandatory recognition of a foreign proceeding if COMI is shown, minimal judicial discretion (apart from fraud/public-policy grounds), and wide relief powers. Chapter 15 allows foreign trustees to appear in U.S. courts, liquidate assets, and enjoin domestic claims. It also explicitly provides for cooperation between U.S. courts and foreign courts/representatives. Importantly, the U.S. does not condition recognition on reciprocity.[27] Indian reformers can see Chapter 15 as a template: it defines key terms (foreign proceeding, foreign representative) and has a clear statutory process.

B. United Kingdom

The UK (England & Wales) implemented the Model Law via the Cross-Border Insolvency Regulations 2006 (CBIR). English courts have built an extensive body of case law. Generally, they interpret the Model Law generously: upon recognising a foreign main proceeding, a court automatically applies remedies equivalent to an administration (broad moratorium, asset vesting).[28] In Cambridge Gas[29], the UK courts even recognised a U.S. Chapter 11 plan as binding on English creditors, though this approach was curtailed by Rubin. British practice emphasises modified universalism but within statutory bounds: for example, the "Rule in Gibbs" (applying domestic law to English contracts) limits some cross-border effects.[30] Nevertheless, the UK's wholesale adoption of the Model Law and its flexible jurisprudence

[27] Ana Maria Fagetan, 'Corporate Insolvency Laws in Selected Jurisdictions: US, England, France, and Germany- A Comparative Perspective' (2025) 14(2) Laws 21 https://doi.org/10.3390/laws14020021.

[28] Mark Craggs, 'The Model Law in Great Britain: Cross-Border Insolvency Regulations 2006' (*Norton Rose Fulbright*, June 2022) <https://www.nortonrosefulbright.com/en/knowledge/publications/1d8e1fb5/the-model-law-in-great-britain-cross-border-insolvency-regulations-2006> accessed 5 July 2025.

[29] Cambridge Gas Transport Corporation v The Official Committee of Unsecured Creditors (of Navigator Holding PLC and others) [2006] UKPC 26.

[30] Philip Wells and Ella Richards, 'Navigating the Rule in Gibbs in cross-border restructurings: Alternatives to a solely English process' (Allen & Overy, 2024) < https://www.aoshearman.com/en/download/media/project/aoshearman/pdf-downloads/misc/navigating-the-rule-in-gibbs-in-cross-border-restructurings-alternatives-to-a-solely-english-process.pdf> accessed 25 June 2025.

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promote coordination. India could similarly enact a dedicated cross-border statute (rather than simply amending existing law) to signal a clarity of approach.

C. Canada and Australia

Both have adopted the Model Law; Canada by amending its Bankruptcy and Insolvency Act, and Australia by separate legislation in 2008. They generally follow the same principles: recognition of foreign main, stays on local claims, assistance through letters of request, etc. Australian courts have recognised foreign restructurings (e.g. Talisman Energy) and cooperated with U.S. and other proceedings. As in Canada, Canadian insolvency law allows foreign trustees to take charge of local assets pending recognition.[31] These systems illustrate the value of legislative modernisation: rather than relying on outdated sections of the Companies Act, they created explicit cross-border protocols. India can study their safeguards (like express public policy exceptions, pre-defined relief orders) to avoid ambiguity.

D. European Union

Within the EU, the Recast Insolvency Regulation (2015) creates a quasi-universalism for member states: an EU company's main proceeding in one member state is automatically recognised across the EU. It also provides for secondary proceedings in states where the assets are. India is not in the EU, but can note the EU's move away from reciprocal bilateralism to a unified framework, recognising that cross-border trade benefit from seamless mutual recognition.[32] The EU rules also illustrate cross-border group insolvency (intra-group coordination), a topic now on UNCITRAL's agenda. Indian legislators should watch these developments, as Indian companies increasingly form international groups.

E. Singapore and Hong Kong

These jurisdictions have embraced the Model Law to bolster their status as financial hubs. Singapore enacted cross-border rules in 2016 (IRDA) and Hong Kong in 2017. Notably, neither jurisdiction's conditions help with reciprocity; indeed, their commentary warns that such conditions are anachronistic. As observed in Singapore, an absolute reciprocity requirement may disadvantage emerging centres and hamper capital inflows.[33] For India, the message is that striving for financial integration may require unilateral outreach and

[31] Alfonso Nocilla, 'Canadian cross-border insolvency law and the triumph of "modified universalism": A retrospective' (2024) 33(3) International Insolvency Review 399.

[32] Akshaya Kamalnath, 'Cross-Border Insolvency Protocols: A Success Story?' (2013) 2(2) International Journal of Legal Studies and Research 172, 189.

[33] Adarsh Saxena & Aniruddh Gambhir, 'Recognition of Indian CIRP in Singapore: A Step Forward for Cross-Border Insolvency' (*Cyril Amarchand Mangaldas Dispute Resolution Blog*, 15 April 2025) <https://disputeresolution.cyrilamarchandblogs.com/2025/04/recognition-of-indian-cirp-in-singapore-a-step-forward-for-cross-border-insolvency/> accessed 4 July 2025.

flexibility, not rigid bilateral deals.

In addition to statutes, other mechanisms exist. In London (1995/2008/2019), international insolvency professionals have crafted non-binding Protocols that courts frequently endorse; they set out agreed procedures for parallel cases (e.g. allocation of fees, client cooperation). The UNCITRAL Judicial Insolvency Network and other bodies encourage judges to form global networks for the exchange of information. India's judiciary could consider institutionalising such dialogue, for example, via MOUs with high courts abroad or participation in international colloquia.[34]

India can learn that comprehensive legislation plus judicial pragmatism yields the best outcomes. Statutes like Chapter 15 or CBIR have the force of law and specify remedies, but courts interpret them in the spirit of cooperation. Key lessons include: define terms like "foreign main proceeding" and "foreign representative" clearly; allow foreign representatives direct access to courts; provide automatic relief (stay of assets and claims); empower courts to communicate and coordinate with foreign courts; and avoid overly narrow "public policy" or reciprocity barriers.

Finally, India should engage in ongoing legislative dialogue (e.g. through the UNCITRAL and international associations) to keep its law current. Other jurisdictions overwhelmingly show that adopting a clear statutory cross-border insolvency regime (modelled on UNCITRAL) is both feasible and beneficial. Countries like the US, UK, Canada, Singapore and Australia have rewritten their laws and built jurisprudence to handle multinational cases efficiently. India's reforms should emulate their strengths: unambiguous recognition rules, minimal reciprocity requirements, and active judicial co-operation. In contrast, reliance on antiquated provisions yields uncertainty. The comparative experience thus points firmly toward legislative adoption of Model Law principles and institutional support for international comity.

V. Recognition, reciprocity, and judicial comity in Indian cross-border practice

Recognition of foreign insolvency orders in India currently hinges on general principles, reciprocity norms, and comity. India has no dedicated statute for recognising foreign insolvency judgments; it has instead enshrined a limited reciprocity requirement and otherwise relies on the Code of Civil Procedure (CPC) and discretionary comity. Under the

[34] Aditi Rathore, 'Navigating Cross-Border Insolvency: Evaluating India's Legal Framework and the UNCITRAL Model Law (2014)' (*NLIU Law Review Blog*, Sep 2023) <https://nliulawreview.nliu.ac.in/blog/navigating-cross-border-insolvency-evaluating-indias-legal-framework-and-the-uncitral-model-law-2014/> accessed 21 June 2025.

IBC, both Sections 234 and 235 are explicitly grounded in reciprocity. Section 234's bilateral treaties would by definition be reciprocal; Section 235(3) empowers a tribunal to act only if the foreign jurisdiction reciprocates the request. This codification of mutuality is unusual: as commentators note, the UNCITRAL Model Law itself imposes no such requirement.

The Indian approach thus ties recognition to whether the counterparty country has a similar insolvency law. In practice, this severely limits recognition: as of 2024, only about 60 countries have adopted the Model Law.[35], meaning many large economies (e.g. China, some EU states) would not qualify under a strict reciprocity test. Legal analysts have warned that India's draft reciprocity might put at a competitive disadvantage by excluding companies and creditors from non-adopting jurisdictions.[36]

Because India's courts lack a statutory path to recognition, they look to the CPC for general enforcement of foreign decrees. Section 13 CPC lists conditions for conclusiveness: a foreign judgment is unenforceable if rendered by a court lacking jurisdiction under Indian law or denying Indian law. Notably, the CPC does not classify insolvency orders as simple 'civil judgments', so it remains unclear whether foreign liquidation or restructuring orders even fit that category. Moreover, Section 44A CPC, which allows execution of decrees from certain reciprocating territories, applies only to judgments and awards, not insolvency processes per se.

Thus, absent legislation, courts would have to treat foreign insolvency orders either as judgments by analogy or simply refuse them. In effect, judicial comity, the common-law principle of deference to foreign laws, is the remaining basis for aid. Indian courts often recognise and enforce foreign arbitration awards and awards from reciprocating territories.

But insolvency decrees are sui generis, as seen in the Jet Airways context, the NCLT found no obligation to respect a Dutch insolvency order, since no law compels recognition. Only through cooperation did the NCLAT facilitate a joint restructuring. Without a statutory mandate, comity is ad hoc: judges may grant relief (like asset seizure or creditor stays) if doing so is equitable, but this is unpredictable. Reciprocity, as codified, also raises interpretive challenges. The Model Law's discretionary approach, which some call "modified universalism", stresses judicial collaboration over formal mutuality. In contrast, India's draft (ILC's Part Z) initially required reciprocity but planned for gradual dilution.

[35] Supra Note 11.

[36] Shikha Sharma Jaipuriar, 'Cross-Border Insolvency in India - A New Regime in the Making' (*Manupatra*, Jan 2023) <https://articles.manupatra.com/article-details/CROSS-BORDER-INSOLVENCY-IN-INDIA-A-NEW-REGIME-IN-THE-MAKING> accessed 8 June 2025.

Scholars argue that Indian courts should instead be empowered to recognise foreign proceedings on a case-by-case basis, guided by factors of fairness and economic efficiency, not a rigid treaty checklist.[37] In practice, Indian courts have started to give way to comity in isolated instances. The recent Singapore judgment In Re Compuage[38] is instructive as the Singapore High Court recognised an Indian CIRP as a "foreign main proceeding" under its Model Law, even though India is not a Model Law signatory.

The Singapore court classified India's NCLT as a "foreign court" and the Indian Resolution Professional as a "foreign representative," thereby facilitating asset recovery in Singapore. Conversely, in India, it remains unresolved whether courts would recognise a foreign insolvency proceeding on a similar basis. The only clear statutory mandate is in Section 235's reciprocity clause, which essentially invites bilateral reciprocity agreements rather than blanket recognition. On the other side, India itself has unilaterally recognised some foreign judgments, but in insolvency matters, little authority exists.

The principle of comity does suggest India could enforce foreign insolvency orders if doing so does not violate public policy and if reciprocity is implied, but no court has spelt this out. Some experts suggest amending the CPC or IBC to clarify recognition rules. For instance, defining "insolvency order" as a type of judicial decision eligible for enforcement, or expanding Section 44A to cover specified foreign proceedings.

Another idea is a judicial approach akin to Rubin v. Eurofinance: refuse to enforce if it offends fundamental principles such as fraud, denial of due process, but otherwise allow comity to effectuate international relief. India's current stance on recognition and comity can be seen as uncertain and restrictive. The reliance on strict reciprocity and archaic judgment enforcement laws leaves cross-border cases in limbo.[39]

International practice shows that mandatory reciprocity is not required; indeed, many jurisdictions (US, UK, Singapore) recognise proceedings without any quid pro quo. Judicial comity has worked well when spelt out by statute, but in India, it lacks such clarity. Going forward, India will need to decide whether to liberalise its approach by adopting the Model Law and loosening reciprocity or remain cautious. The path of comity exists, but without legislative backing, it will yield inconsistent results.

For truly effective cross-border insolvency resolution, India must bolster its reciprocity

[37] Debaranjan Goswami & Andrew Godwin, 'India's Journey Towards Cross-Border Insolvency Law Reform' (2024) 19(2) Asian Journal of Comparative Law 197-215 doi:10.1017/asjcl.2024.12 accessed 11 July 2025.
[38] Supra Note 23.
[39] Rana Navneet Roy and Satyansh Gupta, 'Cross Border Insolvency under the Indian Insolvency and Bankruptcy Code, 2016' (2023) 26 (6) Journal of Legal, Ethical and Regulatory Issues 1.

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framework with clear law or adopt the Model Law's doctrine of judicial assistance and coordination. Recognition of foreign insolvency in India is currently governed by narrow reciprocity and general legal principles, not by a clear insolvency-specific rule. Section 235 embodies an absolute reciprocity requirement, unlike the flexibility of UNCITRAL's Model Law.[40]

In practice, this means only a few countries can cooperate formally, and otherwise, Indian courts fall back on the CPC and comity. Comparative experience suggests reciprocity should be minimised: top economies do not require it and still honour foreign proceedings. India's judiciary has begun cooperating informally (as in Jet Airways and through protocols), but lasting reform will require statutory clarification or model-law adoption to give comity teeth in insolvency cases.

VI. CONCLUDING REMARKS AND THE WAY FORWARD

India's burgeoning global commerce demands a modern cross-border insolvency framework. The foregoing analysis highlights clear areas for reform. Legislatively, the highest priority is to adopt the UNCITRAL Model Law (or equivalent) into the IBC. This could be achieved by formally enacting the proposed Draft Part Z: defining foreign main and non-main proceedings, aligning relief with the Model Law (automatic stays and asset vesting), and establishing recognition procedures. The Insolvency Law Committee's 2018 report provides a ready template: it recommended importing Model Law concepts (COMI, foreign representatives, etc.) and initially requiring reciprocity that could be relaxed with experience.[41]

Parliament should enact these amendments, ideally with direct statutory references to the Model Law articles for clarity. An amendment is needed in the IBC to treat a qualified foreign bankruptcy, liquidation or reorganisation as a "foreign proceeding," and the foreign liquidator/RP as a "foreign representative." This will allow recognition orders under Indian law without wrangling over CPC definitions. Provided that when a qualifying foreign main proceeding is proved, the NCLT must recognise it and grant automatic relief, a stay of Indian actions against the debtor and turnover of domestic assets to the foreign representative.[42] This parallels Model Law articles 17-19 and Chapter 15 provisions. Explicit permission needs to be given to Indian courts to open ancillary proceedings when foreign non-main cases, e.g. where

[40] J Swaminathan, 'Resolution of Stressed Assets and IBC – the Future Road Map' (*Bank for International Settlements - BIS*, 17 January 2024) <https://www.bis.org/review/r240117g.htm> accessed 11 July 2025.
[41] Insolvency Law Committee, Report on Cross Border Insolvency (*Ministry of Corporate Affairs, Government of India*, October 2018) 16.
[42] Rishika Rangarajan, 'Report of the Cross-Border Insolvency Committee, June 2020: A Primer' (*NLSIU Blog*, 6 January 2022) <https://www.nls.ac.in/blog/report-of-the-cross-border-insolvency-committee-june-2020-a-primer/> accessed 11 July 2025.

only foreign assets are involved, exist. This would replicate Model Law art 19 relief. India also needs to either eliminate the reciprocity clause or make it discretionary. A stepwise approach could be: initially require reciprocity (as the ILC suggested) to reassure stakeholders, but build in an automatic sunset or review so that within a few years India can join the more open club.

Introducing statutory guidance on COMI determination while drawing on international practice will boost India's economic standing. As the ILC recommended, factors such as management location, primary assets, or place of main operations could be set out in rules. This will prevent disputes like Jet Airways over where a debtor's centre lies.

An amendment is also required in the CPC (or IBC) so that foreign insolvency judgments (or related foreign awards) qualify as enforceable under a clear regime. For instance, treating foreign insolvency awards as "debt" and allowing their recognition via Section 44A-like provisions. Alternatively, add an IBC provision that domestic courts must enforce foreign insolvency-related orders, akin to Model Law art 6 exclusion grounds. The public policy exception, present both in CPC and ILC's draft, should be narrowly defined.

India can follow the U.S. approach of limiting refusal to cases of fraud or fundamental unfairness. Guidelines can be issued to NCLTs explaining that mere differences in law or a local reserved claim do not trigger public policy, thus assuring foreign creditors that recognition will not be capriciously denied.[43] Beyond legislation, institutional measures are needed. The government and regulators can take steps such as: establishing dedicated cross-border insolvency committees within the Insolvency and Bankruptcy Board (IBBI); training judges and practitioners on Model Law and comity principles; and forging bilateral or multilateral MOUs (e.g. with Singapore, UK, USA) to fast-track cooperation (even before domestic law is fully reformed).

India might also participate actively in UNCITRAL working groups on enterprise groups and insolvency judgments to shape future norms. Domestic insolvency professionals should be encouraged to develop "template" protocols for cooperation in high-profile cases, drawing on the Singapore Jet Airways protocol and the global London Approach.[44] Finally, policymakers should consider broader best practices: for example, standardising cross-border data portals to

[43] Poorva Sharma, 'Crossing Borders in Bankruptcy: India's Leap into Global Insolvency Law' (*Centre for Corporate Law – NLUO*, 21 May 2024) <https://ccl.nluo.ac.in/post/crossing-borders-in-bankruptcy-india-s-leap-into-global-insolvency-law> accessed 11 July 2025.

[44] Harshith Boddut, 'Need for International Harmonisation of Cross-Border Insolvency Laws' (*SCC Online Blog*, 19 April 2024) <https://www.scconline.com/blog/post/2024/04/19/need-for-international-harmonisation-of-cross-border-insolvency-laws/> accessed 11 July 2025.

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notify creditors in different jurisdictions, and allowing foreign creditors/voters to participate fully in Indian insolvency resolutions. India's international financial centres could be leveraged by offering explicit cross-border insolvency zones, as suggested by recent analyses. The overall aim should be to signal to investors that India has a modern insolvency regime: one that ensures efficient, fair, and coordinated outcomes even when businesses cross borders. The future of India's insolvency law hinges on embracing global norms. The draft recommendations of the Insolvency Law Committee provide a blueprint: enact Part Z of the IBC to implement Model Law principles, relax reciprocity, define COMI criteria, and explicitly allow foreign representatives in domestic proceedings. Complementary steps include refining CPC enforcement rules, issuing judicial guidelines, and engaging in international cooperation initiatives. By moving decisively in this direction, India can transform its current "gaps" into a credible, pro-investor cross-border insolvency regime that aligns with best practices worldwide.

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