

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 8 | Issue 4

2025

© 2025 International Journal of Law Management & Humanities

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for free and open access by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact support@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Cross-Border Insolvency and Restructuring: Need for Adoption of the UNCITRAL Model Law in India

UJALA KUMARI¹ AND SHUBHJEET SINGH²

ABSTRACT

India has consistently been at the forefront of implementing economic reforms aimed at deeper integration with the global market. A key driver of this strategy has been the government's ongoing efforts to enhance the ease of doing business and create a more conducive climate for investment. Among the various reform areas, arbitration and insolvency law have seen some of the most important developments in recent years.

One of the most notable milestones was the enactment of the Insolvency and Bankruptcy Code (IBC), 2016, coupled with the introduction of a streamlined fast-track Corporate Insolvency Resolution Process (CIRP)—both designed to expedite resolution and maximize recoveries for creditors.

However, while domestic insolvency frameworks have strengthened considerably, the area of cross-border insolvency remains nascent and in urgent need of attention. This paper examines India's existing legal position on cross-border insolvency, identifies its weaknesses, and analyzes the recommendations of the Insolvency Law Committee (ILC) in its formal reports. It further explores how the internationally recognized UNCITRAL Model Law on Cross-Border Insolvency could be adapted—with India-specific modifications—to fit the country's legal structure and economic realities. Incorporating such a framework could not only strengthen investor confidence but also provide assurance to both foreign creditors operating in India and Indian businesses with overseas interests.

Keywords: *UNCITRAL Model Law, recognition of foreign proceedings, Centre of Main Interest (COMI), public policy exceptions, creditors' committee, CIRP, group insolvency, concurrent insolvency proceedings.*

I. INTRODUCTION

In today's interconnected world, businesses—from global giants to fast-growing startups—are increasingly expanding beyond their home countries. As these companies invest, acquire

¹ Author is a Student at Law Collage Dehradun, Uttranchal University, India.

² Author is a Student at Law Collage Dehradun, Uttranchal University, India.

assets, and take on debts across different regions, they encounter a maze of legal systems.

³While such cross-border ventures have helped boost India's economy by attracting international investment and fueling growth, they also bring about complex challenges, especially during insolvency situations.

The introduction of India's Insolvency and Bankruptcy Code (IBC) in 2016 marked a transformative change in domestic insolvency procedures, streamlining processes and aiming for higher creditor recoveries. ⁴However, when it comes to insolvency involving multiple countries, the IBC falls short. Key sections meant to foster international cooperation—Sections 234⁵ and 235⁶—remain largely inactive and inadequate for navigating the intricacies of multinational insolvency.

Due to the lack of a thorough legal framework, Indian courts have had to improvise. For example, in the Jet Airways case, the National Company Law Appellate Tribunal (NCLAT) worked in tandem with Dutch insolvency proceedings, crafting a court-approved protocol even though the law didn't offer clear guidelines. These decisions show the judiciary's resourcefulness but also reveal an urgent need for more robust and predictable legal tools.

Acknowledging these gaps, the Insolvency Law Committee has put forward that India should adopt the UNCITRAL Model Law on Cross-Border Insolvency, modified to fit the country's context. This internationally recognized framework would provide structured procedures for acknowledging and managing cross-border insolvency cases, enhancing legal clarity and reassuring foreign investors.⁷

Adopting such a comprehensive regime is essential for India, as it would streamline complex multinational insolvency resolutions and align the country with global best practices, ultimately strengthening confidence among international stakeholders.

II. UNDERSTANDING CROSS-BORDER INSOLVENCY

Cross-border insolvency comes into play when a company's debts or assets are spread across more than one country. This often happens when a business is headquartered in one nation but owns property, has creditors, or owes money in another, or when some of its creditors are based overseas. As Professor Ian Fletcher, a noted insolvency law expert, explains, cross-border insolvency refers to situations where no single country's insolvency laws can entirely

³ Insolvency and Bankruptcy Code, No. 31 of 2016, Acts of Parliament, 2016 (India).

⁴ UNCITRAL, Model Law on Cross-Border Insolvency, U.N. Comm'n on Int'l Trade Law (1997).

⁵ Insolvency and Bankruptcy Code § 234, No. 31 of 2016, Acts of Parliament, 2016 (India).

⁶ Insolvency and Bankruptcy Code § 235, No. 31 of 2016, Acts of Parliament, 2016 (India).

⁷ UNCITRAL, Model Law on Cross-Border Insolvency, U.N. Comm'n on Int'l Trade Law (1997).

apply because multiple jurisdictions are involved. In simple terms, it tackles insolvency cases that operate beyond the reach of a single nation's legal framework.

Unlike insolvency handled within one country—where a single set of laws controls the entire process—cross-border cases are far more complicated. Multiple countries' legal systems become relevant, which can lead to disputes and uncertainty, particularly for creditors located abroad. When a debtor's assets or lenders are spread across different legal territories, cooperation between those jurisdictions becomes essential. Without formal agreements or global arrangements, foreign creditors may face discrimination or exclusion during the process.

This reality makes it clear that there is a pressing need for an internationally accepted system—one that allows countries to recognize and collaborate during insolvency proceedings. Such a framework would help bring uniformity to claims handling, ensure fair treatment to all parties involved, and speed up dispute resolution across borders.

III. CURRENT STATUS OF CROSS-BORDER INSOLVENCY IN INDIA

In today's interconnected marketplace, having a clear and functional cross-border insolvency framework is more important than ever. Many companies operate across countries, meaning insolvency issues often stretch beyond one jurisdiction. While India has taken notable steps in domestic insolvency reform through the Insolvency and Bankruptcy Code (IBC) of 2016, it still does not have a complete legal system to address cross-border cases efficiently.⁸

The IBC currently contains only two sections that touch on cross-border matters—Sections 234 and 235. Section 234 allows the Indian government to form bilateral agreements with other nations for managing such cases, while Section 235 permits Indian courts to request assistance from foreign courts when dealing with assets situated abroad. However, both sections are yet to be implemented, which leaves them ineffective in real-world scenarios.

This gap became evident in high-profile cases such as Byju's, where dealing with overseas assets and protecting the interests of international creditors proved highly challenging.⁹ Such examples highlight the urgency for a predictable and transparent legal framework that safeguards the rights of both domestic and foreign stakeholders.

To address this, the Ministry of Corporate Affairs (MCA) began public consultations in November 2021 on whether India should adapt the UNCITRAL Model Law on Cross-Border

⁸ UNCITRAL, Model Law on Cross-Border Insolvency, U.N. Comm'n on Int'l Trade Law, Annex I, U.N. Doc. A/52/17 (1997).

⁹ Council Regulation (EC) 1346/2000 of 29 May 2000 on Insolvency Proceedings, 2000 O.J. (L 160) 1.

Insolvency—a system recognized globally for its effectiveness. The goal is to customize it to India’s specific needs while keeping its main principles of cooperation, coordination, and judicial efficiency intact.

Right now, in the absence of a dedicated law, enforcement of foreign insolvency orders in India depends on Section 4 of the Civil Procedure Code, 1908.¹⁰ However, this provision is narrowly focused and does not formally acknowledge important insolvency actions like reorganizations, administration, or interim measures. As a result, many foreign rulings and restructuring arrangements cannot be enforced in India, causing legal fragmentation and uncertainty.

Legal experts and policymakers increasingly agree that India must establish a formal cross-border insolvency framework—preferably based on the UNCITRAL Model Law with suitable modifications. Such legislation would boost investor confidence, bring India in line with global best practices, and strengthen its position as a reliable hub for international trade and investment.

IV. BUILDING INDIA’S CROSS-BORDER INSOLVENCY FRAMEWORK: GLOBAL INSPIRATIONS AND NATIONAL INITIATIVES

Recognizing the shortcomings in how India handles insolvency cases with international dimensions, the Insolvency Law Committee (ILC) delivered a pivotal report in October 2018. This document urgently advocated for the development of a comprehensive legal structure devoted specifically to cross-border insolvency. At its core was the recommendation to adopt the UNCITRAL Model Law on Cross-Border Insolvency—a globally esteemed blueprint designed to foster international cooperation in such matters. The committee stressed that this framework should be integrated into a separate, clearly defined chapter within the Insolvency and Bankruptcy Code (IBC), ensuring consistency and clarity in future cross-border cases. Moreover, the ILC highlighted the need for clear protocols enabling Indian insolvency professionals to collaborate seamlessly with their foreign counterparts and judicial authorities, facilitating smoother multi-jurisdictional proceedings.¹¹

To give practical effect to these proposals, the Cross-Border Insolvency Rules and Regulations Committee (CBIRC) was tasked with outlining the procedures to operationalize this system. Unlike the ILC, which focused on broad strategy, the CBIRC dealt with the nuts

¹⁰ Insolvency and Bankruptcy Code § 234, No. 31 of 2016, Acts of Parliament, 2016 (India).

¹¹ UNCITRAL, Model Law on Cross-Border Insolvency, U.N. Comm’n on Int’l Trade Law, Annex I, U.N. Doc. A/52/17 (1997).

and bolts of implementation. Notably, it recommended allowing foreign representatives to participate directly in Indian insolvency actions. The committee also emphasized the creation of inter-country protocols to enhance communication and coordination between courts handling interconnected cases. Recognizing the complexity of such matters, the CBIRC underscored the need to build institutional skills within Indian bodies like the National Company Law Tribunal (NCLT) and the Insolvency and Bankruptcy Board of India (IBBI), recommending intensive training to better prepare them for intricate international disputes.

Understanding how countries approach cross-border insolvency is rooted in key legal philosophies. The territorial model strictly applies a nation's own insolvency laws to domestic assets and creditors, prioritizing control and certainty within national borders but often leading to piecemeal, inconsistent results when foreign interests are involved. By contrast, the universalist approach centralizes proceedings in the country where the debtor primarily operates (the "centre of main interests" or COMI), with those verdicts and actions respected worldwide—thus delivering uniformity and predictability. The UNCITRAL Model Law broadly embodies this universalist spirit.¹² There is also a hybrid approach, designed to blend international cooperation with the sovereignty of national legal systems, balancing local autonomy with global harmonization.

Internationally, the UNCITRAL Model Law—formulated in 1997 under the United Nations Commission on International Trade Law—has set a global standard for dealing with insolvency issues that cross borders. Its design rests on four guiding principles: providing access for foreign representatives to engage with local courts; facilitating recognition of foreign insolvency processes; offering various judicial remedies to aid effective resolution; and actively encouraging cooperation between courts and professionals in different countries. These principles have been adopted by over 46 jurisdictions—including economic powerhouses like the USA, UK, Australia, Canada, and Japan—demonstrating its wide acceptance and effectiveness.

Another major international framework is the European Union's regulation on insolvency (EC Regulation 2000), in force since May 2002. This regulation ensures a harmonized, efficient system within EU member states, using the COMI principle to identify where main insolvency proceedings should occur. Once proceedings are started in one member country, they are recognized automatically across the entire EU, reducing delays and legal ambiguities. It also encourages active cooperation among courts and insolvency professionals from

¹² Council Regulation (EC) 1346/2000 of 29 May 2000 on Insolvency Proceedings, 2000 O.J. (L 160) 1.

different member states, simplifying resolution for businesses operating across the continent.

These global advancements reflect a broader trend towards coordinated, practical legal solutions for resolving cross-border insolvency. For India, aligning its system with these international norms—particularly the UNCITRAL Model Law—would not only modernize its insolvency regime but also build greater trust among global investors and businesses. Enhanced collaboration and streamlined processes would ensure fair outcomes for both local and foreign creditors, smooth enforcement of foreign decisions, and significantly boost India's standing in the international economic arena.

Currently, while India's IBC of 2016 establishes the basic framework for insolvency proceedings, its cross-border provisions remain limited. Sections 234 and 235 permit bilateral agreements with other countries and allow Indian courts to work with foreign ones, yet fall short of providing a comprehensive legal structure. This limitation led to the establishment of the ILC, whose influential October 2018 report called for adapting the UNCITRAL Model Law to India's unique needs—a move projected to bolster investor trust and create a predictable, orderly mechanism for resolving cross-border insolvency disputes.

V. JUDICIAL RESPONSES TO CROSS-BORDER INSOLVENCY IN INDIA: MAJOR CASES AND INTERPRETATIONS

Even though India lacks a comprehensive statutory structure for handling cross-border insolvency, its courts have actively addressed the challenges stemming from disputes that span multiple countries. Rather than standing by, the judiciary—especially the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT)—has shaped practical, case-specific solutions. These judicial bodies have applied principles from international best practices, like recognizing foreign insolvency proceedings and permitting parallel administration, despite limitations in the current legislation. Their dynamic approach has highlighted not only gaps in the existing system but also the need for a formal cross-border regime.

A standout example is the *Jet Airways (India) Ltd. v. State Bank of India* case¹³. Here, insolvency proceedings took place simultaneously in India and the Netherlands. When the Dutch administrator requested acceptance and support from Indian authorities, the NCLAT responded by treating the Dutch process as a parallel case. It held that the Indian process would be seen as the "main proceeding" because Jet Airways' headquarters, management, and most creditors were in India—determining India as the centre of main interests (COMI). The

¹³ *Jet Airways (India) Ltd. v. State Bank of India & Anr.*, 2020 SCC OnLine NCLAT 1198 (India).

tribunal formalized this arrangement through a cross-border cooperation protocol, letting the Dutch administrator actively join Indian creditor meetings. This landmark decision, although not explicitly based on the UNCITRAL Model Law, emulated its spirit and principles, signaling the urgent necessity for legislative reform in India.

Another noteworthy case is *Videocon Industries Ltd*¹⁴, in which the NCLT broke away from the traditional, entity-focused approach and allowed for group insolvency. Instead of treating each separate company in the corporate group as a distinct legal unit, the tribunal consolidated the resolution process for thirteen connected companies. Factors like shared management, interlinked finances, and overlapping assets convinced the court that considering each entity independently would lead to inefficiency and distortion. The decision even included the review of assets spread across various countries, embracing a more pragmatic, group-centered solution to insolvency—especially for conglomerates with global operations.

In *Ruchi Soya Industries Ltd. v. Union of India*,¹⁵ the Supreme Court deepened the legal debate by stressing the need to harmonize insolvency protections for creditors regardless of their location. The Court highlighted that in a world of global business, inconsistent legal approaches risk unfairness and inefficiency for both Indian and international creditors, and urged for synchronized procedures between national jurisdictions.

The case of *State Bank of India & Others v. Kingfisher Airlines*¹⁶ brought forth the difficulties Indian courts face when trying to recover overseas assets under Indian insolvency law. Without bilateral agreements or frameworks for mutual legal recognition, the ability to reclaim foreign assets remained restricted, exposing the inadequacies of India's current system in cross-border disputes.

Taken together, these decisions showcase the Indian judiciary's resourcefulness and adaptability in the absence of a formal regime. However, reliance on ad hoc judicial discretion may result in inconsistent outcomes and legal uncertainty. Problems like protecting assets in other countries, communicating effectively with foreign insolvency administrators, and enforcing Indian rulings abroad remain unresolved due to the lack of a codified structure.

The *Jet Airways* and *Videocon* cases, in particular, are important signals to lawmakers. As Indian companies expand globally, complex insolvency cases involving multiple jurisdictions will become increasingly common. Without clear legislation, India risks being unprepared to manage these situations. Implementing a harmonized regime, ideally modeled after the

¹⁴ *Videocon Indus. Ltd. v. Union of India*, (2020) 247 DLT 1 (India).

¹⁵ *Ruchi Soya Indus. Ltd. v. Union of India*, 2021 SCC OnLine SC 567 (India).

¹⁶ *State Bank of India & Others v. Kingfisher Airlines*, AIR 2017 SC 750 (India).

UNCITRAL Model Law, would allow India to collaborate efficiently with foreign authorities, treat all creditors fairly, and ensure that cross-border insolvency disputes are managed smoothly and predictably.

VI. EMBRACING THE UNCITRAL MODEL LAW FOR CROSS-BORDER INSOLVENCY

The UNCITRAL Model Law on Cross-Border Insolvency has become the international benchmark for managing insolvency cases that cross national lines. Adopted by more than forty countries, its appeal lies in promoting global cooperation and procedural coordination, without forcing countries to uniform their underlying insolvency laws. This flexibility makes the Model Law highly adaptable to diverse legal systems.¹⁷

It is built on four pillars: granting overseas insolvency professionals and creditors access to domestic courts in foreign-related cases; recognizing foreign proceedings and providing clear remedies; fostering collaboration between courts and insolvency practitioners in different countries; and ensuring organized, coordinated handling of insolvency matters that affect multiple jurisdictions.

Various Indian committees, like the Eradi Committee and the N.L. Mitra Committee, had previously suggested adopting such a model. While those past recommendations weren't acted upon, more recent efforts—including a detailed draft proposal from the Insolvency Law Committee known as Draft Part Z¹⁸—have reignited discussions. This draft, presented in the committee's report, intends to tailor the Model Law's principles for India and is set to be analyzed in detail in the following section, including its potential impact on India's cross-border insolvency framework.

VII. DRAFT PART Z AND THE PATH FORWARD

In its latest report, the Insolvency Law Committee (ILC) has suggested a new dedicated chapter—titled *Draft Part Z*—to specifically deal with cross-border insolvency matters. Drawing significantly from the UNCITRAL Model Law on Cross-Border Insolvency, the proposal aims to bring India's insolvency regime in line with globally accepted practices.

The draft identifies several key objectives:

- Clearly establishing the legal rights and standing of foreign creditors and insolvency practitioners;

¹⁷ UNCITRAL, Model Law on Cross-Border Insolvency, Annex I, U.N. Doc. A/52/17 (1997).

¹⁸ Ministry of Corporate Affairs, Draft Part Z – Cross-Border Insolvency, in *Report of the Insolvency Law Committee* Annex II (Oct. 2018) (India).

- Creating a formal process for recognizing foreign insolvency proceedings;
- Promoting reciprocal cooperation agreements between India and other jurisdictions;
- Strengthening the powers and duties of insolvency professionals and liquidators;
- Facilitating direct communication and collaboration with foreign courts;
- Outlining procedures for handling insolvency cases that occur simultaneously in multiple jurisdictions.

One of the most notable provisions grants foreign representatives and creditors the same legal recognition as their Indian counterparts. They would be allowed to directly petition Indian adjudicating authorities for recognition of insolvency proceedings initiated abroad. As per Section 12(2) of the draft, applicants must produce valid supporting documentation, after which the NCLT may classify the foreign process as either a *main* or *non-main* proceeding—based on where the debtor’s *Centre of Main Interest* (COMI) lies. If recognized as a main proceeding, the tribunal could issue a moratorium to suspend any ongoing legal actions. For non-main cases, the tribunal retains flexibility to safeguard Indian assets and creditor rights through other measures.

The draft also implements the principle of reciprocity. If an insolvency professional locates a debtor’s assets abroad, Indian courts will request cooperation from that country only if India has a reciprocal arrangement with it. This is designed to ensure mutual legal assistance and respect between participating jurisdictions.

Another innovation is Section 22, which permits insolvency professionals to communicate directly with foreign courts and authorities—subject to oversight from Indian adjudicating bodies. The central government would be responsible for setting out the official channels and methods for such international engagement.

When it comes to cases running parallel in multiple jurisdictions, the draft allows both Indian and foreign insolvency processes to proceed at the same time, provided they relate to the same debtor, the foreign proceeding has been formally recognized in India, and the debtor owns assets within Indian territory.

VIII. CHALLENGES IN IMPLEMENTING THE MODEL LAW VIA DRAFT PART Z

Although Draft Part Z is an important move toward modernizing India’s insolvency laws in line with international practice, it faces some practical hurdles that will need resolution before full implementation.

A major challenge is the definition of COMI, which determines where the debtor's main insolvency case should be heard. The UNCITRAL Model Law does not lay down a precise definition, leaving room for differing interpretations. In the Indian draft, COMI is presumed to be at the company's registered office unless proven otherwise, but the NCLT would still have discretion to assess it based on the facts of each case. While flexibility is useful, it may also cause variations in interpretation.

A second issue is the narrow definition of "establishment" under Article 2(f) of the Model Law, which is limited to physical operations involving human resources and tangible goods. This restriction excludes many modern businesses—particularly e-commerce companies—that have no physical premises yet conduct significant commercial activity in multiple countries. While the ILC has acknowledged this limitation, it prefers to wait for more legal precedents before amending the definition. However, lessons from countries like the USA, where "establishment" includes any place of non-transitory business activity, suggest that India should widen its scope to cover digital operations. Such a change would protect Indian creditors' rights against online businesses operating across borders, even if India isn't the debtor's COMI.

A third concern is the interpretation of "public policy." In India, this term is often applied broadly, allowing authorities to refuse recognition of foreign proceedings if they are deemed *manifestly contrary* to national interests. This vagueness could lead to subjective or inconsistent decisions.¹⁹ Although the Supreme Court has narrowed its scope in arbitration to core legal principles, justice, morality, and essential national interests, the same clarity is lacking in insolvency matters. Without proper limitations, public policy could be used to sidestep recognition of legitimate foreign cases, undermining the purpose of cross-border cooperation.

In short, for the Model Law to work effectively in India, clearer rules are needed on COMI determination, the scope of establishment, and the criteria for applying the public policy exception.

IX. SUGGESTED IMPROVEMENTS TO THE DRAFT

While Draft Part Z is a sophisticated starting point, some refinements could make it more practical and inclusive.

¹⁹ Insolvency Law Committee, *Report on Cross-Border Insolvency*, chs. 2–4 (2018) (India)

1. Broader COMI Criteria – Instead of relying primarily on the location of the registered office, India could adopt the *command-and-control* test favored in global jurisprudence. This would assess where the company’s key decisions are made, where creditors can easily verify its operations, the location of major assets, and where most creditors are based—providing a more accurate picture of operational reality.
2. Inclusion of Digital Businesses – The definition of establishment should explicitly cover e-commerce entities and other businesses without a physical presence but with substantial economic activity in India or connected jurisdictions. This will give domestic creditors a legal route to pursue claims against such companies.
3. Clearer Public Policy Guidelines – The government should publish uniform criteria defining what constitutes something *manifestly contrary* to Indian public policy, ensuring consistent application and reducing arbitrary refusals of recognition.
4. Adoption of JIN Guidelines – Incorporating the Judicial Insolvency Network protocols would improve cooperation and communication between courts handling parallel insolvency proceedings in different countries, reducing delays and costs.

X. CONCLUSION

The Insolvency Law Committee has twice called for the creation of a cross-border insolvency regime in India, with the 2018 Draft Part Z being modeled significantly on the UNCITRAL framework. This marks a shift from India’s historically territorial approach toward a more universalist mindset, consistent with global economic realities.

With Indian businesses increasingly operating across multiple continents, a dedicated chapter on cross-border insolvency within the IBC would make the legislation far more comprehensive. Past NCLT and NCLAT cases have already exposed gaps in the current system and underscored the necessity of legislative reform.

Once enacted, this framework will likely instill greater confidence in creditors—both domestic and foreign—by assuring them of an effective recovery mechanism. Predictability in insolvency proceedings will improve the ease of doing business, attract global investment, and enhance India’s reputation as a trustworthy jurisdiction for cross-border commercial operations.

Key Findings and Objectives

1. Analysing the relevance and applicability of the UNCITRAL Model Law on Cross-Border Insolvency for India

Given the rapidly growing global footprint of Indian businesses and the involvement of foreign creditors in domestic insolvency cases, the UNCITRAL Model Law holds significant importance for India. Rather than unifying the substantive insolvency laws of different nations, it offers a flexible procedural framework that prioritizes cooperation and coordination between jurisdictions. The proposed *Draft Part Z* by the Insolvency Law Committee closely mirrors the principles of the Model Law while permitting India-specific adjustments—such as giving courts discretion in determining the Centre of Main Interest (COMI) and interpreting public policy.

2. Evaluating the core provisions, strengths, and limitations of Draft Part Z

Draft Part Z includes forward-looking measures such as formal recognition of foreign insolvency proceedings, rights for international representatives, provision of moratoriums, and mechanisms for reciprocal cross-border cooperation. However, there are areas that could create ambiguities—most notably, a lack of precise guidance on COMI determination, an overly narrow definition of “establishment” that misses modern business models like e-commerce, and a wide, undefined “public policy” exception. Unless these are addressed in legislation, application could vary from case to case, risking inconsistency.

3. Understanding the judicial approach to cross-border insolvency in the absence of formal legislation—and how it can guide future lawmaking

Before any formal framework was in place, Indian courts have been resourceful in tackling cross-border insolvency issues. Landmark cases such as *Jet Airways* and *Videocon* show that tribunals have built cooperative mechanisms and even coordinated with foreign courts to manage parallel proceedings. These examples prove not only India’s readiness for legislated mechanisms but also the urgent need for a codified framework that reduces uncertainty and fosters investor confidence.

Research Questions and Findings

Q1. How well does the UNCITRAL Model Law fit with India’s legal and economic landscape?

The Model Law aligns well with India’s insolvency goals because of its adaptability. That said, certain refinements are needed for Indian use—such as clearer COMI rules, extending the definition of “establishment” to capture e-commerce and digital businesses, and narrowing the scope of the public policy exception. Draft Part Z achieves a careful balance between enabling international cooperation and preserving domestic judicial discretion, making it a workable model for India.

Q2. What practical and conceptual barriers could India face when implementing Draft Part Z?

Key challenges include:

- No universally accepted definition of COMI, which could lead to varied interpretations by the NCLT.
- Exclusion of online and digital enterprises under the current definition of “establishment.”
- A broad and vague “public policy” clause that could potentially be misused to block recognition of legitimate foreign proceedings.

Addressing these issues will be critical to ensuring consistent and fair outcomes that match global best practices.

Q3. How can judicial innovations in Indian case law influence the legislative adoption of cross-border insolvency rules?

Instances like *Jet Airways*, where Indian and Dutch insolvency administrators worked together under a court-approved protocol, demonstrate how judicial creativity can facilitate effective cross-border coordination even without a statutory regime. These experiences provide a ready-made foundation for embedding similar cooperation mechanisms into Draft Part Z—allowing future cross-border insolvency resolutions to be systematic, transparent, and legally robust.
