
INTEGRATING A CROSS-BORDER INSOLVENCY FRAMEWORK INTO THE INSOLVENCY AND BANKRUPTCY CODE OF 2016

BY PRAKHAR SAH¹

ABSTRACT

The research article is structured into three distinct sections to fulfill its primary objective. The initial section provides a comprehensive background to the paper, setting the stage for the subsequent discussions. Moving forward, the second section delves into a comparative analysis between the fundamental aspects outlined in the “United Nations Commission on International Trade Law” (UNCITRAL) Model Law and the pertinent provisions of the “Insolvency and Bankruptcy Code, 2016” (IBC). This comparison aims to highlight areas of convergence and divergence, laying the groundwork for further examination. In the third section, the focus shifts towards exploring the intricacies of the cross-border system within the framework of the IBC. This involves a critical assessment of challenges and opportunities, including a thorough analysis of recommendations put forth by the “Insolvency Law Committee” (ILC). This segment scrutinizes the efficacy of existing mechanisms and proposes potential avenues for improvement, particularly in fostering cooperation between local and foreign courts, as well as insolvency representatives. Final comments and recommendations conclude the study paper. For simplicity, the study's primary results are summarised into three points. First, the UNCITRAL Model Law may help structure India's cross-border bankruptcy system and encourage stakeholder collaboration. The preservation of the public policy exemption may complicate the recognition of international proceedings, notably for foreign creditors seeking relief under the planned cross-border insolvency structure. Finally, a specific section consistent with ILC guidelines might provide a complete cross-border insolvency structure under the IBC. Suggestions for improving current rules provide policymakers with useful knowledge.

¹ Author is a student at Amity Institute of Advanced Legal Studies, Amity University, Noida

I. INTRODUCTION

Cross-border bankruptcy is becoming increasingly important due to the growing scope of international commerce and business activities. The complexity of insolvency resolution is due to the divergence in insolvency laws and regulations among different jurisdictions, making it difficult for multinational entities to resolve bankruptcy issues. Each country operates under its own domestic insolvency laws, leading to legal frameworks and procedural intricacies. Creditors, especially those operating internationally, often face challenges in navigating foreign jurisdictions' insolvency processes due to lack of familiarity with local laws and procedures. The inadequacy of existing private international law regulations exacerbates the complexities of cross-border bankruptcy cases, as disputes often transcend national boundaries. The current legal framework lacks robust mechanisms for resolving cross-border insolvency disputes, leaving stakeholders vulnerable to prolonged litigation and uncertainty.²

Cross-border insolvency issues are significant due to their potential to lead to conflicts, coordination challenges, and international insolvency judgment complexities. To address these challenges, a comprehensive cross-border insolvency regime within the Insolvency and Bankruptcy Code, 2016 (IBC) is essential. This regime would streamline the resolution process for multinational insolvency cases, enhance creditor protection, and promote asset allocation in cross-border contexts. By aligning domestic legislation with international best practices and fostering cooperation, a robust cross-border insolvency framework can facilitate dispute resolution, uphold fairness and equity principles, and boost global financial system confidence.³

When a government opts for a 'territorialism' strategy, it relies primarily on its domestic legal system to handle cross-border bankruptcy issues. Singapore serves as an example of a country that adhered to this approach under its previous Companies Act. Conversely, the 'universalism' approach entails recognizing and respecting legal actions taken in the debtor's jurisdiction worldwide, particularly in countries where the debtor holds assets. This concept was notably articulated by Lord Hoffman in the landmark case of *Cambridge Gas Corp. v. Official Committee of Unsecured Creditors*, 2006. Lord Hoffman advocated for the principle

² Misra, Priya, and Adam Feibelman. "The Institutional Challenges of a Cross-Border Insolvency Regime." *Corp. & Bus. LJ* 2 (2021): 329.

³ Das, Ishita. "The Need for Implementing a Cross-Border Insolvency Regime within the Insolvency and Bankruptcy Code, 2016." *Vikalpa* 45, no. 2 (2020): 104-114.

of universalism in bankruptcy proceedings as a guiding concept for common law jurisdictions. However, subsequent judicial decisions in the United Kingdom have demonstrated a divergence from the universalism perspective. This shift in viewpoint has prompted further investigation into the application and implications of different approaches to cross-border bankruptcy proceedings.⁴

A country adopting a 'modified universalism' stance encourages other nations to initiate legal proceedings in their own courts while submitting to the authority of the country's court to ensure fair distribution of assets, particularly if the debtor's primary assets are located within its jurisdiction. This approach is aimed at centralizing corporate insolvency proceedings under a single court, ensuring consistent application of statutes and principles for asset allocation. In India, the framework for cross-border insolvency is a crucial area of inquiry. The Indian Bankruptcy Code (IBC) is a comprehensive legal framework aimed at streamlining and enhancing the efficiency of the bankruptcy resolution process in India. The IBC seeks to provide a robust and expeditious mechanism for resolving insolvency cases, repealing outdated laws and introducing amendments to other relevant laws to ensure coherence and consistency in the insolvency resolution process. The primary objective of the IBC is to modernize and overhaul the bankruptcy resolution framework in India, fostering a more efficient and time-bound process for resolving insolvency cases across various entities and individuals.⁵

*"The Customs Act, 1962, The Recovery of Debts due to Banks and Financial Institutions Act, 1993, The Finance Act, 1994, The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, The Sick Industrial Companies (Special Provisions) Repeal Act, 2003, The Payment and Settlement Systems Act, 2007, The Limited Liability Partnership Act, 2008, and The Companies Act, 2013 (IBC, Sections 245–255)."*⁶

The IBC is a comprehensive framework governing corporate insolvency matters in India, aimed at promoting entrepreneurship, facilitating credit accessibility, ensuring equitable treatment of stakeholders, and establishing the Insolvency and Bankruptcy Board of India. The IBC comprises five parts, with Part V focusing on cross-border insolvency. The historical

⁴ Mannan, Morshed. "Are Bangladesh, India and Pakistan Ready to Adopt the UNCITRAL Model Law on Cross-Border Insolvency?." *International Insolvency Review* 25, no. 3 (2016): 195-224.

⁵ McCormack, Gerard, and Wan Wai Yee. "The UNCITRAL model law on cross-border insolvency comes of age: new times or new paradigms." *Tex. Int'l LJ* 54 (2018): 273.

⁶ Kurpad, Meenakshi. "Formulating an Effective Cross-Border Insolvency Framework under the Indian Insolvency and Bankruptcy Code." *Available at SSRN 3614044* (2020).

context behind the inclusion of these rules in the IBC is crucial. In 2000, the High-Level Committee on Law recommended amendments to the Companies Act of 1956 to incorporate provisions addressing cross-border insolvency, aligning with the Model Law proposed two years prior. The Advisory Group on Bankruptcy Laws conducted a comprehensive examination of international insolvency within the Indian context, advocating for India's adoption of the model law. The Bankruptcy Law Reforms Committee (BLRC) reiterated the need for a structured approach to international insolvency in India, but emphasized the importance of conducting a more comprehensive investigation before implementing a framework based on the Model Law. The cross-border insolvency plan should not be implemented until the IBC's other sections are authorized. The International Law Council (ILC) has criticised India's international bankruptcy system, calling for a national cross-border insolvency system but agreeing with the BLRC that international standards must be examined to establish a framework like the Model Law.⁷

The ILC's second report recommended adding draft Part Z to the IBC. Corporate debtors should use the Code's cross-border framework, according to the Committee. It may feature individual bankruptcies in the future. It uses Singapore as an example. To ease the adoption of the new Part, the Committee recommends certain Code modifications, including Section 234. The ILC emphatically states that the current cross-border system is prone to delays and uncertainty. Resolving bankruptcy difficulties inside business groups may be complicated, but the structure inspired by the model legislation may handle this in the future. The Working Group on Group Insolvency provided research on group insolvencies. Cross-border group insolvencies are not covered by the Working Group. The study advises implementing it for local firms, like the ILC.⁸

Although the ILC has generated a thorough report on cross-border insolvency, it does not make any mention of additional documents suggested by the BLRC, such as the NAFTA Transnational Insolvency Project by the "American Law Institute and the Cross-Border Insolvency Concordat by the International Bar Association." Had the Committee consulted these prominent international texts before to making the recommendations, it could have put forth a more all-encompassing framework for cross-border operations. Multiple countries have officially approved and implemented the Model Law. Canada, New Zealand, the UK,

⁷ Chakrabarti, Ran. "key issue in cross-Border insolvency." *National Law School of India Review* 30, no. 2 (2018): 119-135.

⁸ Feibelman, Adam, and Priya Misra. "The Institutional Challenges of a Cross-Border Insolvency Regime." *Arizona St. Univ. Commercial and Business Law Journal* (2021).

and the USA are among the notable nations that have embraced this approach. However, Brazil, China, India, and Russia have yet to adopt the Model Law. Several countries, including Mexico, New Zealand, Mauritius, Poland, Romania, Japan, Canada, and the USA, have customized the Model Law to suit their specific needs. These adaptations tackle various issues such as implementing reciprocity requirements, exempting certain entities from the law's scope, adjusting the public policy exception, and placing limitations on the foreman's role and authority.⁹

Incorporating provisions concerning reciprocity in their national bankruptcy legislation, Romania, Mexico, and South Africa have demonstrated their commitment to managing cross-border insolvency issues. Conversely, Japan has undergone significant legal reforms, particularly concerning simultaneous legal proceedings. Notably, the BRIC nations—Brazil, Russia, India, and China—have yet to adopt the Model Law, despite their potential for foreign investment. Given this context, it is crucial for these nations to establish efficient frameworks for addressing cross-border insolvency. The BLRC and ILC reports on India's potential adoption of a cross-border insolvency framework based on the Model Law are overwhelmingly positive. Swift implementation of these recommendations would undoubtedly alleviate the challenges faced by numerous stakeholders involved in cross-border insolvency cases within the country.¹⁰

II. THE UNCITRAL MODEL LAW

A. Background

The globalization of trade and investment has led to an increase in cross-border insolvency cases, where debtors have assets or creditors in multiple jurisdictions. These cases pose significant challenges due to the differences in national insolvency laws and the potential for conflicts between jurisdictions. The UNCITRAL Model Law was developed to address these challenges and provide a harmonized legal framework for the efficient and fair administration of cross-border insolvency proceedings.

B. Key Principles and Objectives

1. Access and Recognition

⁹ McCormack, Gerard, and Wan Wai Yee. "The UNCITRAL model law on cross-border insolvency comes of age: new times or new paradigms." *Tex. Int'l LJ* 54 (2018): 273.

¹⁰ Das, Ishita. "The Need for Implementing a Cross-Border Insolvency Regime within the Insolvency and Bankruptcy Code, 2016." *Vikalpa* 45, no. 2 (2020): 104-114.

- The Model Law grants foreign representatives and creditors the right to participate in insolvency proceedings in the enacting state, promoting transparency and fairness.
- It establishes a simple and expeditious process for the recognition of foreign insolvency proceedings, both main (where the debtor has its center of main interests) and non-main proceedings.

2. Relief upon Recognition

- Once a foreign insolvency proceeding is recognized, the Model Law provides for various forms of relief, including:
 - Automatic stay or suspension of individual actions against the debtor or the debtor's assets.
 - The ability to transfer assets or information related to the debtor's assets and affairs.
 - The ability to approve or implement a reorganization plan approved in the foreign proceeding.

3. Cooperation and Coordination

- The Model Law promotes cooperation and coordination between courts and insolvency representatives in cases where multiple insolvency proceedings are pending in different countries.
- It allows for the appointment of a person or body to act as a "cross-border insolvency representative" to facilitate cooperation and coordination.
- Courts are encouraged to communicate directly with each other and to cooperate to the maximum extent possible.

4. Treatment of Foreign Creditors

- The Model Law ensures the fair and equal treatment of foreign creditors by requiring that they receive the same treatment as domestic creditors in the same circumstances.

- It establishes rules for the submission and verification of claims by foreign creditors.

C. Key Provisions and Mechanisms

1. Access of Foreign Representatives to Courts

- Foreign representatives have the right to apply directly to courts in the enacting state for recognition of foreign insolvency proceedings.
- They can also participate in local insolvency proceedings, subject to certain conditions.

2. Recognition of Foreign Insolvency Proceedings

- The Model Law provides clear criteria for the recognition of foreign main and non-main proceedings, based on the location of the debtor's center of main interests or the presence of an establishment.
- Recognition is granted through a simple and expeditious process, without reviewing the merits of the foreign proceeding.

3. Relief upon Recognition

- Upon recognition, the court may grant various forms of relief, including:
 - Staying individual actions against the debtor or the debtor's assets.
 - Entrusting the administration or realization of the debtor's assets to the foreign representative.
 - Providing for the turnover of assets to the foreign representative.
 - Granting any other appropriate relief.

4. Concurrent Proceedings and Cooperation

- The Model Law provides mechanisms for cooperation and coordination between courts and insolvency representatives in cases where multiple insolvency proceedings are pending in different countries.

- It encourages courts to communicate directly with each other and to cooperate to the maximum extent possible, while respecting the independence and sovereignty of each jurisdiction.

D. Adoption and Implementation

The UNCITRAL Model Law has been widely adopted or used as a model by many countries around the world, including the United States (Chapter 15 of the U.S. Bankruptcy Code), the United Kingdom, Japan, and several European Union member states. Its implementation has contributed to greater legal certainty, facilitated the rescue of financially troubled businesses, and promoted fair and efficient administration of cross-border insolvency proceedings.

E. V. Advantages and Impact

1. Increased Legal Certainty

- The Model Law provides a clear and predictable legal framework for cross-border insolvency cases, reducing uncertainty and potential conflicts between jurisdictions.

2. Facilitation of Reorganization and Rescue

- By providing a framework for the recognition of foreign insolvency proceedings, including those aimed at reorganization or restructuring, the Model Law facilitates the rescue and rehabilitation of financially troubled businesses.

3. Protection of Assets and Interests

- The Model Law includes provisions to protect and maximize the value of the debtor's assets, while also ensuring the fair treatment of all creditors, regardless of their nationality or location.

4. Promotion of International Cooperation

- The Model Law encourages and facilitates cooperation and coordination between courts and insolvency representatives in different countries,

promoting the efficient and fair administration of cross-border insolvency proceedings.

5. Harmonization of Laws

- The adoption of the Model Law by different countries has contributed to the harmonization of laws governing cross-border insolvency cases, reducing legal and practical obstacles.

F. VI. Challenges and Limitations

1. Partial Adoption and Divergent Interpretations

- While the Model Law has been widely adopted, some countries have implemented it with modifications or divergent interpretations, which can limit its effectiveness in achieving harmonization.

2. Jurisdictional Conflicts

- Jurisdictional conflicts and challenges in determining the debtor's center of main interests or the location of an establishment can still arise, leading to potential disputes over the recognition of foreign proceedings.

3. Differences in National Laws

- Despite the harmonization efforts, differences in national insolvency laws, legal systems, and procedural rules can still create challenges in the practical implementation and coordination of cross-border insolvency cases.

4. Practical Cooperation Challenges

- Effective cooperation and coordination between courts and insolvency representatives in different jurisdictions can face practical challenges, such as language barriers, cultural differences, and resource constraints.

Despite these challenges, the UNCITRAL Model Law on Cross-Border Insolvency remains a significant achievement in promoting a harmonized and efficient legal framework for cross-

border insolvency cases, and its continued adoption and implementation can further enhance the fair and efficient administration of these complex proceedings.¹¹

The system of recognition and categorization of international insolvency procedures is designed to be organized and transparent. This framework enhances efficiency and fosters collaboration in complex cross-border financial disputes by providing clarity and adherence to procedural norms, ultimately benefiting both international bankruptcy debtors and creditors. Furthermore, the UNCITRAL Model Law aims to facilitate international procedures aimed at managing the debtor's assets and protecting creditors. This assistance is provided through interim relief, which can be granted by the court upon request of the foreign representative. Article 19 of the Model Law underscores the importance of such relief in safeguarding creditors and debtor assets. Interim remedies may include suspending execution against the debtor's assets and entrusting their management or realization to the foreign representative or another court-appointed individual.¹²

These processes stabilise the insolvency process and reduce disruption. The foreign process's status as a main or non-main proceeding determines the significance of recognition. With automatic exemptions, the outcomes of a foreign main judicial procedure are described in Article 20. These reliefs include temporarily suspending individual creditors' legal actions against the debtor, stopping attempts to confiscate its assets, and prohibiting the debtor from transferring or burdening its assets. The Model Law outlines these guidelines to properly and methodically settle cross-border bankruptcy proceedings, taking into account all parties' interests.¹³

Despite these challenges, the Model Law represents a significant step towards establishing effective mechanisms for managing transnational insolvency proceedings. Its provisions lay the groundwork for enhancing international cooperation and coordination among courts, which is crucial for resolving the complexities inherent in cross-border insolvency cases. Therefore, while there are areas for improvement and clarification, the UNCITRAL Model

¹¹ Misra, Priya, and Adam Feibelman. "The Institutional Challenges of a Cross-Border Insolvency Regime." *Corp. & Bus. LJ* 2 (2021): 329.

¹² Singh, Sneha. "Duality of Regime to Handle Insolvency of Foreign Companies in India." *Indian JL & Just.* 10 (2019): 155.

¹³ *Ibid*

Law serves as a pivotal starting point in addressing the complexities of cross-border insolvency.¹⁴

III. CROSS-BORDER INSOLVENCY PROVISIONS UNDER THE IBC, 2016

The IBC includes two sections, parts 234 and 235, dedicated to managing cross-border insolvency matters. These sections were added following recommendations from the “Joint Parliamentary Committee on the Insolvency and Bankruptcy Code, 2016.” Section 234 enables the Indian government to establish agreements with foreign governments for enforcing the IBC's terms. It allows conditions to be set on applying the IBC to assets of corporate debtors based in foreign countries with which India has reciprocal agreements. This emphasizes the principle of reciprocity seen in other countries' insolvency systems like South Africa.¹⁵

Cross-border insolvency proceedings often involve assets located in multiple jurisdictions, posing significant challenges for insolvency professionals, liquidators, and bankruptcy trustees. To address these complexities, various legal frameworks have been established to facilitate the gathering of evidence and the identification and recovery of assets beyond a country's borders.

In the Indian context, Section 235 of the IBC provides a mechanism for insolvency professionals to request assistance from foreign governments in certain circumstances. When an insolvency professional, liquidator, or bankruptcy trustee believes that assets pertaining to the insolvency proceedings are located in a foreign country with which India has a reciprocal agreement, they can petition the NCLT, which serves as the Adjudicating Authority under the IBC.

Upon receiving such a request, the NCLT can issue a letter of request to the relevant court or competent authority in the foreign jurisdiction. This letter essentially seeks cooperation in gathering evidence or taking specific actions related to the identification, recovery, or preservation of the foreign assets in question. The process aims to facilitate the effective management of cross-border insolvency cases by enabling the retrieval of information and assets that may be critical to the resolution or liquidation process.

¹⁴ Feibelman, Adam, and Priya Misra. "The Institutional Challenges of a Cross-Border Insolvency Regime." *Arizona St. Univ. Commercial and Business Law Journal* (2021).

¹⁵ Shukla, Sudhaker, and Kokila Jayaram. "Cross border insolvency." (2021).

While the provisions of Section 235 are vital in addressing the complexities of cross-border insolvency, their implementation can be hindered by various challenges. These may include differences in legal systems, varying interpretations of reciprocal agreements, language barriers, and potential delays in the execution of requests by foreign authorities. Additionally, the success of these measures often hinges on the strength of the reciprocal agreements and the willingness of foreign jurisdictions to cooperate.

To overcome these hurdles and ensure smoother implementation, ongoing efforts are required to harmonize international insolvency laws, promote greater cooperation among jurisdictions, and establish clear protocols for the execution of letters of request. Furthermore, insolvency professionals and legal experts must stay abreast of the latest developments in cross-border insolvency practices and leverage their expertise to navigate the intricacies of these proceedings effectively.¹⁶

1. *Jet Airways v. State Bank of India*:¹⁷

- This case highlighted the complexities arising from the absence of a comprehensive cross-border insolvency framework within the IBC.
- Initially, the NCLT refused to recognize the Dutch insolvency proceedings or stay the Indian proceedings, leading to potential conflicts and duplicative efforts.
- However, the NCLAT's intervention and direction to cooperate between the Bankruptcy Administrator and Resolution Professional, guided by principles akin to the UNCITRAL Model Law, set a precedent for cross-border coordination.
- This case underscored the need for a robust cross-border insolvency regime within the IBC to facilitate seamless cooperation and avoid jurisdictional conflicts.

2. *State Bank of India v. Videocon Industries Ltd.*¹⁸:

¹⁶ Mohan, S. Chandra. "Cross-border Insolvency Problems: Is the UNCITRAL Model Law the Answer?." *International Insolvency Review* 21, no. 3 (2012): 199-223.

¹⁷ Company Appeal (AT) (Insolvency) No. 707 of 2019.

¹⁸ MA 1306/2018 in CP No. 02/2018.

- This case marked a significant milestone as the first instance of group consolidation for insolvency under the IBC, demonstrating the judiciary's willingness to adopt principles from international jurisprudence to fill legislative gaps.
- The NCLT invoked the doctrine of "substantial consolidation" to merge assets and liabilities of group companies, aiming to maximize asset value and protect creditors' interests.
- The extension of group insolvency to include foreign-based companies raised questions about the extraterritorial application of the IBC and the challenges of coordinating cross-border asset amalgamation processes.
- This case highlighted the need for legislative frameworks to govern cross-border group insolvency situations and facilitate effective coordination among jurisdictions.

3. *SBI v. SEL Mfg. Co. Ltd.*:¹⁹

- The recognition of Indian insolvency proceedings under Chapter 15 of the US Bankruptcy Code marked a significant milestone in cross-border insolvency cooperation between India and the United States.
- The US bankruptcy court recognized the Indian proceedings as a "foreign main proceeding," acknowledging India as the "center of main interests" for the debtor.
- The court ruled that recognizing the Indian proceedings did not contravene US public policy, emphasizing the importance of granting relief to the foreign representative and maximizing asset value while considering creditors' interests.
- This case demonstrated the potential for bilateral cooperation and recognition of insolvency proceedings, highlighting the need for a robust cross-border insolvency framework within the IBC to facilitate such cooperation.

¹⁹ Case number: 1:19-bk-10988

IV. INDIA'S DRAFT GUIDELINES

In 2018, the Insolvency Law Committee in India published Draft Part Z, which was influenced by the UNCITRAL Model Law. This draft consists of provisions that specifically target cross-border insolvency issues and are designed to be implemented within the framework of the IBC. This document, consisting of 29 parts, delineates many aspects of cross-border bankruptcy procedures, such as access, recognition and relief, cooperation and coordination, and the public policy exception, among others. The main components of Draft Part Z pertain to its extent and relevance. Significantly, it only targets corporate borrowers and does not include personal insolvencies or individual debtors within its scope. Furthermore, it does not include pre-packaged insolvency plans or personal guarantors. Nevertheless, the proposed legislation includes provisions that provide the Central Government the authority to exclude some categories of organisations from these requirements, if it is judged essential. Reciprocity is an essential component that has been included into Draft Part Z. The chapter's provisions are applicable only to countries that have implemented the UNCITRAL Model Law, guaranteeing a fair foundation for international collaboration in situations of insolvency. When determining a debtor's "Centre of Main Interests" (COMI), Draft Part Z proposes a presumption that COMI is located at the debtor's registered office, as long as it has not moved within three months of the start of insolvency proceedings. Nevertheless, it is the duty of the adjudicating authority to determine the genuine COMI, which is defined as the central administrative location established by the Central Government. The evaluation method must provide openness, enabling verification by other entities.²⁰

V. OPPORTUNITIES

The enactment of the IBC was undertaken to revamp India's framework for handling insolvency and bankruptcy cases. The recent World Bank study indicates that the adoption of the IBC has significantly improved India's position in terms of ease of doing business. The study commends India's new Code for its efforts to enhance the accessibility of bankruptcy procedures.

²⁰ Sharma, Sadhak. "Cross Border Insolvency Mechanism in India: The Need to Adopt UNCITRAL Model Law." *Issue 1 Int'l JL Mgmt. & Human.* 4 (2021): 376.

The inclusion of two distinct parts in The Code that particularly deal with cross-border bankruptcy was intended to eradicate any possible gaps in its coverage. These measures undeniably enhance the overall organisation and structure of the IBC's regulations. Collaborative research conducted by ASSOCHAM and EY highlights that the Code does not differentiate between domestic borrowers and foreign debtors. This suggests that both groups of creditors will be handled equitably.²¹

According to the ILC, the current structure of the IBC should provide foreign creditors access to local courts. Reconsideration may be warranted in light of India's developing bankruptcy legislation, but any cross-border system should be subject to reciprocity. The ILC's cautious stance toward integrating the cross-border insolvency system reflects its acknowledgment of India's unique circumstances regarding insolvency and bankruptcy. Despite the IBC's comprehensive coverage of domestic insolvency processes, it inadequately addresses cross-border insolvency. With only two articles dedicated to this issue, the current provisions are insufficient for effectively resolving transnational insolvency problems. This viewpoint is supported by the majority of participants' perspectives. The need for a comprehensive cross-border insolvency framework within the IBC has been highlighted by various expert committees, including the Bankruptcy Law Reforms Committee (BLRC) and the "Insolvency Law Committee" (ILC). These committees have emphasized the importance of aligning India's cross-border insolvency regime with internationally recognized principles and best practices, such as the UNCITRAL Model Law on Cross-Border Insolvency.

The IBC, in its current form, addresses cross-border insolvency matters through Sections 234 and 235, which provide a basic framework for recognizing foreign proceedings and facilitating cooperation with foreign courts and representatives. However, the limited scope of these provisions has been a subject of ongoing deliberations and discussions.

Experts in the field of cross-border insolvency have highlighted several challenges that arise from the current provisions. These challenges include the lack of clear guidelines for determining the eligibility criteria for recognizing foreign proceedings, the absence of a comprehensive mechanism for cooperation and coordination between domestic and foreign insolvency professionals, and the potential conflicts that may arise due to the application of multiple jurisdictional laws.

²¹ Arora, Dakshita. "Cross Border Insolvency in India and the Adoption of UNCITRAL Model Law: A Comprehensive Analysis." *Indian JL & Legal Rsch.* 2 (2021): 1.

To address these challenges, various stakeholders have proposed several modifications and enhancements to the existing cross-border insolvency framework within the IBC. These proposals include the adoption of a more robust recognition and enforcement regime, the establishment of bilateral or multilateral agreements with key jurisdictions to facilitate seamless cooperation, and the incorporation of specific provisions to address issues such as the treatment of foreign creditors, the preservation of assets located in multiple jurisdictions, and the resolution of conflicts arising from parallel proceedings.²²

VI. CHALLENGES

Beginning with Section 234 of the IBC, engaging in protracted bilateral negotiations with other nations would pose significant challenges for the Indian government. Such negotiations could lead to the emergence of separate cross-border bankruptcy systems in India, particularly if different nations opt for varying legislative approaches in their bilateral agreements. Moreover, when a debtor corporation holds assets in multiple foreign countries, it could potentially result in a multitude of legal complications, requiring each nation to navigate its own bilateral accords regarding insolvency procedures.

Despite the IBC allowing for a temporary suspension of legal measures against bankrupt firms in India during the resolution process, creditors or contractual parties may still pursue legal proceedings in other countries. It's noteworthy that India has not yet established any bilateral agreements, despite Section 234 of the IBC being notified.

Section 235 of the IBC encourages cooperation between domestic and international judicial systems, aligning with the principles outlined in the Model Law. However, certain drawbacks exist, such as the absence of clear regulations governing interactions between local authorities and international courts. Additionally, the lack of a system to manage concurrent proceedings and the potential delays caused by formal requests for cooperation may inconvenience creditors affected by insolvency processes.

The suggested sections from the Insolvency Law Committee (ILC) offer potential for inclusion in the IBC with minor revisions. For instance, Clause 7 of Chapter II grants creditors the right to petition foreign representatives in compliance with an authorized code of conduct, akin to Article 9 of the Model Law. However, limitations on foreign solicitors and

²² Khatavkar, Pranav. "India's Rendezvous with Cross-Border Insolvency and Its Suggested Marriage to the UNCITRAL Model Law on Cross-Border Insolvency." *Issue 3 Int'l JL Mgmt. & Human.* 4 (2021): 1209.

India's nascent cross-border bankruptcy rules necessitate divergence. The ILC proposes empowering local experts to represent clients with defined access criteria and relevant laws established by the federal government.

Chapter III of the IBC addresses the acknowledgment of processes conducted abroad, akin to Article 17 of the Model Law. However, subtleties regarding the corporate debtor's Centre of Main Interests (COMI) or establishment may lead to differing interpretations, potentially impacting the trust of international creditors.

Regarding temporary relief, addressed in Articles 17 and 18, the ILC advises caution due to past negative experiences. While Clause 18 offers discretionary remedies similar to Article 21, Clause 17 provides mandated relief akin to Article 20. The ILC recommends coordinating the provision of international assistance with Section 14 of the IBC, though further legislative elaboration is required to clarify certain aspects.

Chapter IV requires elaboration as it lacks specific clauses, while Chapter V focuses on coordination and collaboration. The ILC suggests enforcing proposed cross-border bankruptcy rules in Chapter V for clarity. However, interim relief, not present in the original text, is recommended to be left out. Refinement of the proposal is necessary for the successful implementation of cross-border bankruptcy resolution in India, yet it exhibits promise overall.

VII. CONCLUSION

The increasing globalization of business operations and the interconnectedness of international markets have heightened the need for a robust cross-border insolvency framework within India's Insolvency and Bankruptcy Code (IBC). The current provisions, Sections 234 and 235, provide a basic foundation but fall short in addressing the complexities inherent in transnational insolvency proceedings.

Expert committees, including the Bankruptcy Law Reforms Committee (BLRC) and the Insolvency Law Committee (ILC), have underscored the importance of aligning India's cross-border insolvency regime with internationally recognized principles and best practices, such as the UNCITRAL Model Law on Cross-Border Insolvency. The adoption of a comprehensive framework inspired by the Model Law could enhance legal certainty,

facilitate the reorganization and rescue of financially troubled businesses, protect the interests of creditors and stakeholders, and promote international cooperation and coordination.

However, the path forward is not without challenges. Jurisdictional conflicts, divergent interpretations of legal provisions, differences in national insolvency laws, and practical hurdles in cross-border cooperation must be addressed. Nevertheless, the potential benefits of a harmonized cross-border insolvency framework within the IBC are significant, including increased efficiency, transparency, and fairness in the resolution of transnational insolvency cases.

As India continues to strengthen its position in the global economic landscape, the urgency to implement a robust cross-border insolvency regime becomes more pronounced. By embracing international best practices and fostering collaboration with key jurisdictions, India can pave the way for a more predictable and equitable resolution of cross-border insolvency matters, enhancing its attractiveness as a destination for foreign investment and safeguarding the interests of domestic and international stakeholders alike.

Ultimately, the incorporation of a comprehensive cross-border insolvency framework within the IBC is not merely a legal imperative but a strategic necessity to navigate the complexities of the modern, interconnected business environment. By addressing this critical area, India can solidify its position as a globally competitive and investor-friendly economy, while upholding the principles of fairness, transparency, and efficient resolution of insolvency proceedings across borders.