INTERNATIONAL JOURNAL OF HUMAN RIGHTS LAW REVIEW

An International Open Access Double Blind Peer Reviewed, Referred Journal

Volume 4 | Issue 3 | 2025 Art. 67

Cross-Border Insolvency: The Need for a Comprehensive Framework in India

Basil Raju

LLM Student,

Amity Law School, Amity University, Bengaluru

Jyotirmoy Banerjee

Assistant Professor,

Amity Law School, Amity University, Bengaluru

Recommended Citation

Basil Raju and Jyotirmoy Banerjee, *Cross-Border Insolvency: The Need for a Comprehensive Framework in India*, 4 IJHRLR 941-952 (2025).

Available at www.humanrightlawreview.in/archives/.

Cross-Border Insolvency: The Need for a Comprehensive Framework in India

Basil Raju
LLM Student,
Amity Law School, Amity University, Bengaluru

Jyotirmoy Banerjee
Assistant Professor,
Amity Law School, Amity University, Bengaluru

Manuscript Received	Manuscript Accepted	Manuscript Published
05 June 2025	07 June 2025	09 June 2025

ABSTRACT

Cross-border insolvency has emerged as a critical issue in today's interconnected global economy, where businesses often have operations, assets, and creditors spread across multiple jurisdictions. In India, the current insolvency framework, primarily governed by the Insolvency and Bankruptcy Code (IBC) of 2016, lacks a robust, comprehensive mechanism for addressing cross-border insolvency cases. This gap has become more evident as Indian businesses expand globally and foreign companies increase their investments in the Indian market. The absence of a well-defined cross-border insolvency regime not only complicates asset recovery for creditors but also undermines the predictability and efficiency of the insolvency process. This paper explores the urgent need for India to adopt a comprehensive cross-border insolvency framework that aligns with international best practices, such as the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross-Border Insolvency. It examines the challenges faced by Indian courts in handling multinational insolvency cases, including issues of jurisdiction, recognition of foreign proceedings, and coordination with overseas courts. The study also highlights the benefits of a standardized framework, including improved creditor confidence, enhanced foreign investment, and greater legal certainty. By adopting a globally recognized framework, India can strengthen its insolvency regime, making it more resilient and attractive to global investors. The paper concludes by offering recommendations for the effective implementation of a cross-border insolvency framework *in India, emphasizing the importance of international cooperation, judicial training, and legislative clarity to ensure the fair and efficient resolution of multinational insolvency cases.*

KEYWORDS

Cross-Border Insolvency, Insolvency and Bankruptcy Code, UNCITRAL Model Law, International Cooperation, Legal Framework, Business Resilience.

1. INTRODUCTION

Cross-border insolvency has become an increasingly critical aspect of global commerce, reflecting the interconnected nature of modern economies. As businesses expand their operations across borders, the likelihood of financial distress involving multiple jurisdictions has grown significantly. Cross-border insolvency refers to situations where a debtor's assets, creditors, or operations are spread across more than one country, creating complex legal challenges for both creditors and debtors. These challenges include the coordination of legal proceedings, recognition of foreign judgments, asset recovery, and the fair distribution of debtor assets among creditors in different jurisdictions. Without a comprehensive framework, these cases can lead to prolonged litigation, increased costs, and diminished asset recoveries, undermining the overall stability of the financial system.

India, as one of the world's fastest-growing economies, faces a pressing need for a robust cross-border insolvency framework. The current insolvency regime in India, governed primarily by the Insolvency and Bankruptcy Code (IBC) of 2016, lacks specific provisions to effectively address cross-border cases. This limitation has become more apparent as Indian companies increasingly engage in international trade and foreign entities invest in the Indian market. Without a clear and predictable mechanism for handling cross-border insolvency, India risks losing its attractiveness as a business destination, potentially deterring foreign investment and complicating the resolution of financial distress[1].

The United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross-Border Insolvency, adopted by

[1] *India Stays Worlds Fastest Growing Economy At Over 6% Growth As Imf Slashes Forecast For 127 Countries*, Zee News, https://zeenews.india.com/economy/india-stays-worlds-fastest-growing-economy-at-over-6-growth-as-imf-slashes-forecast-for-127-countries-2889805.html (last visited May 14, 2025).

over 50 countries, offers a proven framework for addressing these challenges. It provides a structured approach for recognizing foreign insolvency proceedings, coordinating cross-border cases, and ensuring fair treatment of creditors, regardless of their geographic location[2]. Despite its global acceptance, India has yet to formally adopt this model, leaving significant gaps in its insolvency framework. The lack of a comprehensive cross-border insolvency system not only creates legal uncertainties but also exposes Indian businesses to heightened financial risks in international markets.

This chapter aims to critically examine the need for a comprehensive cross-border insolvency framework in India. It explores the limitations of the existing legal framework, analyzes the benefits of adopting the UNCITRAL Model Law, and provides recommendations for strengthening India's approach to cross-border insolvency. By addressing these gaps, India can enhance its legal infrastructure, improve creditor confidence, and foster a more resilient business environment, ultimately supporting its long-term economic growth and integration into the global economy.

2. CURRENT LEGAL FRAMEWORK IN INDIA

India's current legal framework for insolvency is primarily governed by the Insolvency and Bankruptcy Code (IBC) of 2016, which represents a significant reform in the country's approach to corporate insolvency and bankruptcy. The IBC was introduced to streamline the resolution of distressed assets, improve creditor recoveries, and promote the timely resolution of insolvency cases. It provides a unified legal framework for the insolvency and bankruptcy of companies, partnerships, and individuals, replacing a fragmented set of outdated laws. The code emphasizes maximizing the value of debtor assets, promoting entrepreneurship, and ensuring a fair distribution of recoveries among creditors[3].

However, the IBC lacks a comprehensive mechanism for addressing cross-border insolvency. While Sections 234 and 235 of the code provide a basic framework for cooperation with foreign courts, they are limited in scope and effectiveness. Section 234 allows the Indian government to enter into bilateral agreements

[2] *UNCITRAL Model Law on Cross-Border Insolvency (1997) | United Nations Commission On International Trade Law*, https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency (last visited May 14, 2025).
[3] *India, Cross-Border Insolvency and Legal Reform*, Vajiram & Ravi, https://vajiramandravi.com/ (last visited May 14, 2025).

with other countries for cross-border insolvency matters, while Section 235 permits Indian courts to seek assistance from foreign courts. However, these provisions are rarely invoked, largely due to the absence of detailed procedures and clear guidelines for their implementation[4].

This limited framework creates significant challenges for Indian companies with international operations and foreign creditors seeking to recover assets from Indian debtors. It also hinders India's ability to align with global insolvency standards, such as the UNCITRAL Model Law on Cross-Border Insolvency, which has been adopted by over 50 countries. Without a structured approach to cross-border insolvency, Indian courts face considerable uncertainty when handling multinational insolvency cases, leading to delays, increased costs, and potential asset value erosion[5]. Given the rapid globalization of the Indian economy, there is a growing consensus among legal experts and industry stakeholders that India must adopt a more comprehensive cross-border insolvency framework to enhance legal certainty, improve creditor confidence, and strengthen its financial system.

3. INTERNATIONAL BEST PRACTICES AND THE UNCITRAL MODEL LAW

The United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross-Border Insolvency, adopted in 1997, provides a globally accepted framework for managing cross-border insolvency cases. It has been implemented by over 50 countries, including major economies like the United States, the United Kingdom, Singapore, and Australia, significantly enhancing their ability to address complex, multinational insolvencies[6]. The Model Law is built on four core principles that address the primary challenges of cross-border insolvency.

First, it grants Access to foreign insolvency representatives, allowing them direct access to domestic courts to seek legal protection and participate in local proceedings without excessive procedural barriers. Second, it ensures Recognition of foreign insolvency proceedings, distinguishing between "main" and "non-

---

[4] *Cross Border Insolvency And Bankruptcy & Corporate Restructuring*, (Feb. 6, 2025), https://www.livelaw.in/law-firms/law-firm-articles-/cross-border-insolvency-and-bankruptcy-corporate-restructuring-ibc-uncitral-model-law-cirp-283128.

[5] *India's Tryst with Cross-Border Insolvency Law: How Series of Judicial Pronouncements Pave the Way?*, SCC Times (Apr. 16, 2021), https://www.scconline.com/blog/post/2021/04/16/cross-border-insolvency-law/.

[6] Rachit Garg, *All about UNCITRAL Model Laws*, iPleaders (Jul. 21, 2024), https://blog.ipleaders.in/all-about-uncitral-model-laws/.

main" cases based on the debtor's principal business location, thereby ensuring appropriate judicial support. Third, it provides Relief, enabling domestic courts to grant necessary measures to support foreign proceedings, such as asset preservation orders, automatic stays, and creditor protection. Finally, it emphasizes Cooperation between domestic and foreign courts, insolvency practitioners, and regulatory authorities to streamline case management and reduce legal uncertainties[7].

Adopting the Model Law would allow India to align its insolvency framework with international best practices, improve predictability in cross-border cases, and enhance investor confidence, thereby strengthening its position as a globally competitive business destination.

4. BENEFITS OF A COMPREHENSIVE FRAMEWORK

A comprehensive cross-border insolvency framework offers numerous benefits, enhancing the efficiency and predictability of insolvency proceedings while supporting economic growth. Legal Clarity and Certainty are among the most significant advantages, as a structured framework provides clear guidelines for courts, insolvency professionals, and creditors, reducing ambiguities that often lead to costly and prolonged litigation[8]. This clarity is particularly crucial in cross-border cases, where conflicting legal interpretations can complicate proceedings. Additionally, such a framework promotes International Cooperation, facilitating seamless collaboration between Indian and foreign courts. This cooperation is essential for managing assets spread across jurisdictions, as it enables coordinated decision-making, reduces conflicts, and supports faster case resolution. Effective cooperation also builds trust among international creditors, enhancing their willingness to engage in cross-border transactions. Another critical benefit is Asset Maximization, as coordinated cross-border proceedings help preserve the value of the debtor's assets, ensuring that creditors receive the highest possible recoveries. By minimizing delays and preventing the dissipation of assets, these frameworks protect the financial interests of all stakeholders[9].

---

[7] *Cross-Border Insolvency: Legal Framework, Challenges & Solutions*, (Mar. 5, 2025), https://www.maheshwariandco.com/blog/cross-border-insolvency-framework-consequences/.

[8] *Understanding the Significance of Clarity in Legal Practice - Laws Learned*, (Jul. 19, 2024), https://lawslearned.com/understanding-the-significance-of-clarity/.

[9] Emmanuel Brunet-Jailly, *Cross-Border Cooperation: A Global Overview*, 47 Alternatives: Global, Local, Political 3 (2022), https://journals.sagepub.com/doi/10.1177/03043754211073463.

Furthermore, a predictable and transparent insolvency regime significantly boosts Investor Confidence, providing foreign investors with the assurance that their rights will be protected and their investments will be treated fairly. This stability encourages greater foreign direct investment, supporting broader economic growth[10]. Finally, adopting a comprehensive cross-border insolvency framework promotes Global Integration, aligning India's insolvency laws with international standards like the UNCITRAL Model Law. This alignment not only strengthens India's position in global financial and legal markets but also enhances its reputation as a business-friendly destination, attracting more international trade and investment. A robust cross-border insolvency framework provides critical advantages, including legal clarity, international cooperation, asset maximization, investor confidence, and global economic integration, making it an essential component of a modern, globally competitive insolvency regime.

5. CHALLENGES IN IMPLEMENTATION

Despite the clear advantages, implementing a comprehensive cross-border insolvency framework in India presents several challenges that must be carefully addressed. One significant concern is Sovereignty, as allowing foreign court decisions to influence domestic insolvency proceedings can raise issues related to national jurisdiction and control. Many countries are cautious about ceding judicial authority to foreign courts, fearing it may compromise their ability to protect local interests and maintain regulatory oversight. This concern is particularly relevant in India, where the judiciary plays a critical role in safeguarding national interests[11].

Judicial Capacity is a major hurdle. Effective implementation of the UNCITRAL Model Law on Cross-Border Insolvency requires a well-trained judiciary and experienced insolvency professionals capable of navigating complex, multinational cases. This may necessitate substantial investments in training, infrastructure, and procedural reforms to

[10] *A Comprehensive Analysis of India's Insolvency and Bankruptcy Laws | Legal Service India - Law Articles - Legal Resources*, http://www.legalserviceindia.com/legal/article-13123-a-comprehensive-analysis-of-india-s-insolvency-and-bankruptcy-laws.html (last visited May 14, 2025).

[11] Oishika Banerji, *Implication of Foreign Court Insolvency Proceedings in India*, iPleaders (Aug. 16, 2021), https://blog.ipleaders.in/implication-foreign-court-insolvency-proceedings-india/.

ensure that Indian courts can efficiently handle cross-border disputes[12].

Legislative Hurdles also pose a challenge, as incorporating the Model Law into India's existing insolvency framework requires significant legal reforms. The legislative process can be time-consuming and subject to political and bureaucratic delays, potentially slowing the adoption of critical reforms[13].

Finally, even with the Model Law in place, India may still need to negotiate Bilateral Agreements with key trading partners to address specific operational issues, such as asset recovery, creditor rights, and jurisdictional conflicts. These agreements are essential for ensuring effective cross-border cooperation and protecting the interests of Indian businesses in international markets.

6. PROPOSED MEASURES FOR IMPLEMENTING A COMPREHENSIVE CROSS-BORDER INSOLVENCY FRAMEWORK IN INDIA

To effectively implement a comprehensive cross-border insolvency framework in India and overcome the associated challenges, several strategic measures are required. Adoption of the Model Law is the first critical step. India should formally adopt the UNCITRAL Model Law on Cross-Border Insolvency, with necessary modifications to align it with the country's unique legal and economic context. This could include safeguards to protect domestic interests while providing foreign creditors and insolvency practitioners with a predictable legal environment. This approach would ensure that India's insolvency regime is both globally competitive and sensitive to national priorities[14].

Capacity Building is also essential for the successful implementation of this framework. This involves substantial investment in training programs for judges, insolvency professionals, regulators, and legal practitioners. These programs should focus on the practical aspects of cross-border insolvency,

[12] Sneha Mahawar, *Cross Border Insolvency: An Analysis*, iPleaders (Nov. 2, 2021), https://blog.ipleaders.in/cross-border-insolvency-analysis/.
[13] Morshed Mannan, *The Prospects and Challenges of Adopting the UNCITRAL Model Law on Cross-Border Insolvency in South Asia (Bangladesh, India and Pakistan)*, https://www.academia.edu/15842562/The_Prospects_and_Challenges_of_Adopting_the_UNCITRAL_Model_Law_on_Cross_Border_Insolvency_in_South_Asia_Bangladesh_India_and_Pakistan_ (last visited May 14, 2025).
[14] *CROSS BORDER INSOLVENCY IN INDIA AND THE NEED TO ADOPT UNCITRAL MODEL LAW» Lawful Legal*, (Jan. 14, 2024), https://lawfullegal.in/cross-border-insolvency-in-india-and-the-need-to-adopt-uncitral-model-law/.

including case management, recognition of foreign proceedings, and cooperation with foreign courts. Building this expertise will reduce the risk of procedural delays and improve the overall efficiency of the insolvency process.

Stakeholder Consultation is another critical component. Effective cross-border insolvency regulation requires input from a wide range of stakeholders, including legal experts, industry representatives, financial institutions, and international bodies. This collaborative approach will help ensure that the framework is practical, widely accepted, and aligned with global best practices. Regular consultations can also provide valuable insights into the specific challenges faced by Indian businesses in cross-border contexts, leading to more effective policy design[15].

Phased Implementation is recommended to reduce the risk of systemic disruptions. India could start by applying the framework to cases involving significant international exposure or large multinational corporations, gradually expanding its scope based on initial feedback and observed outcomes. This phased approach allows for adjustments and refinements based on practical experience, reducing the likelihood of unintended consequences.

Finally, the development of Judicial Protocols for cooperation between Indian and foreign courts is essential. Clear protocols can streamline communication, reduce conflicts, and improve the consistency of judicial decisions in cross-border cases. These protocols should address critical issues such as jurisdictional conflicts, recognition of foreign judgments, and coordination of concurrent proceedings, ensuring that cross-border insolvency cases are handled efficiently and fairly[16].

7. STRENGTHENING INDIA'S POSITION IN THE GLOBAL INSOLVENCY LANDSCAPE

Adopting a comprehensive cross-border insolvency framework is essential for India's long-term economic growth and global competitiveness. By aligning its insolvency laws with international best practices, India can strengthen its financial infrastructure and enhance its position in the global business ecosystem. This alignment not only improves the efficiency of insolvency

[15] Bhumika Indulia, *Need for International Harmonisation of Cross-Border Insolvency Laws: Challenges and Prospects*, SCC Times (Apr. 19, 2024), https://www.scconline.com/blog/post/2024/04/19/need-for-international-harmonisation-of-cross-border-insolvency-laws/.

[16] V. Jayshree & Mamata Biswal, *India, Cross-Border Insolvency and Legal Reform*, The Hindu, Jan. 3, 2025, https://www.thehindu.com/opinion/op-ed/india-cross-border-insolvency-and-legal-reform/article69058679.ece.

proceedings but also builds investor confidence, attracting more foreign direct investment. A robust cross-border framework provides the predictability and transparency needed for multinational businesses to operate securely within India's legal environment. It also enables better protection for creditors, ensuring that their rights are respected across jurisdictions.

Additionally, such a framework supports faster asset recovery and reduces the risk of financial loss for investors, making India a more attractive destination for global capital. Ultimately, this approach can significantly boost India's economic resilience, reduce the cost of financial distress, and promote more sustainable economic growth[17]. By taking this step, India can position itself as a leader in cross-border insolvency management, supporting its ambitions to become a global economic powerhouse.

8. THE PATH TO A MODERN, GLOBALLY INTEGRATED INSOLVENCY REGIME

Creating a globally integrated insolvency regime is not just about adopting international standards but also about adapting them to the unique needs of the Indian market. This requires a careful balance between protecting national interests and providing fair treatment to foreign creditors. It involves investing in judicial training, developing efficient dispute resolution mechanisms, and establishing clear protocols for cooperation with foreign courts[18].

Furthermore, a phased approach to implementation, coupled with regular stakeholder consultations, can ensure a smooth transition to a more globally aligned insolvency framework. This approach reduces the risk of economic disruption while providing the flexibility needed to address emerging challenges in international finance. By taking these steps, India can create a modern, resilient insolvency framework that supports innovation, protects investors, and strengthens its position in the global economy. This comprehensive strategy will not only improve the efficiency of cross-border insolvency resolutions but also

---

[17] *Asset Recovery: Asset Recovery: Reclaiming Value from Non Performing Investments*, FasterCapital, https://fastercapital.com/content/Asset-Recovery--Asset-Recovery--Reclaiming-Value-from-Non-Performing-Investments.html (last visited May 14, 2025).

[18] Aditi Rathore, *Navigating Cross-Border Insolvency: Evaluating India's Legal Framework and the Uncitral Model Law 2014*, NLIU Law Review (Sep. 25, 2024), https://nliulawreview.nliu.ac.in/blog/navigating-cross-border-insolvency-evaluating-indias-legal-framework-and-the-uncitral-model-law-2014/.

contribute to a more stable and predictable business environment, fostering long-term economic growth.

9. FOSTERING LONG-TERM FINANCIAL STABILITY AND INVESTOR CONFIDENCE

A comprehensive cross-border insolvency framework is not just a regulatory requirement but a critical component of long-term financial stability. It provides businesses, investors, and creditors with the certainty and predictability needed to navigate complex international financial transactions. By adopting globally recognized principles like those in the UNCITRAL Model Law, India can enhance its legal infrastructure, reduce financial risks, and promote sustainable economic growth. This approach fosters investor confidence by ensuring that their interests are protected in cross-border disputes, encouraging greater foreign direct investment.

Additionally, a robust insolvency framework reduces the likelihood of financial contagion, supports the stability of financial institutions, and enhances overall economic resilience. As India continues to expand its global economic footprint, a strong, well-integrated insolvency regime will be essential for maintaining its competitive edge in international markets.

10. CONCLUSION

In today's interconnected global economy, cross-border insolvency has become a critical aspect of financial stability and business sustainability. As companies expand their operations internationally, the need for a comprehensive framework to address the complexities of multinational insolvency has grown significantly. For India, adopting a structured cross-border insolvency framework is no longer merely an option but a necessity to remain competitive in the global marketplace. The current legal landscape, governed primarily by the Insolvency and Bankruptcy Code (IBC) of 2016, lacks the depth and clarity needed to effectively manage cross-border insolvency cases. This gap poses significant challenges for businesses, creditors, and the judiciary, creating legal uncertainties and reducing investor confidence.

The adoption of the UNCITRAL Model Law on Cross-Border Insolvency represents a critical step toward aligning India's insolvency regime with international best practices. This globally recognized framework provides a structured approach to handling cross-border cases, including principles of access, recognition, relief, and cooperation, which are essential for efficient cross-border insolvency management. By incorporating the Model Law, India can significantly enhance its legal infrastructure, reduce ambiguities, and provide a predictable and transparent insolvency regime that fosters greater investor confidence and financial stability.

However, the path to implementing such a framework is not without challenges. Issues related to sovereignty, judicial capacity, legislative hurdles, and the need for bilateral agreements must be carefully addressed. Allowing foreign court decisions to influence domestic proceedings raises concerns about national sovereignty and jurisdictional control, requiring careful consideration in the drafting of the new legal framework. Additionally, Indian courts and insolvency professionals will require significant training to effectively implement the Model Law, ensuring that they are equipped to handle the complexities of cross-border cases.

Furthermore, the legislative process for adopting the Model Law can be time-consuming and politically challenging. It requires careful planning, stakeholder consultation, and phased implementation to ensure that the framework is practical, effective, and widely accepted. This phased approach can help mitigate potential disruptions and allow for gradual adjustment based on real-world experience. Developing judicial protocols for cooperation between Indian and foreign courts will also be crucial, providing a clear roadmap for managing cross-border disputes and minimizing conflicts.

A comprehensive cross-border insolvency framework is essential for India's economic resilience and global competitiveness. By adopting the UNCITRAL Model Law with appropriate modifications, investing in capacity building, and engaging in stakeholder consultations, India can create a robust insolvency regime that supports long-term economic growth. This approach will not only enhance India's standing in global financial markets but also provide businesses with the confidence to invest, innovate, and expand internationally. Ultimately, a strong cross-border insolvency framework will contribute to a more stable, predictable, and investor-friendly economic environment, ensuring that India remains a key player in the global economy.