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CROSS-BORDER INSOLVENCY IN INDIA: THE CASE FOR ADOPTING THE UNCITRAL MODEL LAW

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Abstract

Globalization has transformed corporate activity by enabling businesses to operate across multiple jurisdictions. While this expansion promotes economic growth and international trade, it also complicates insolvency proceedings when multinational corporations face financial distress. Cross-border insolvency involves situations where the debtor has assets, creditors, or business operations in more than one country. In such cases, domestic insolvency laws alone are insufficient to ensure efficient resolution. India's insolvency regime, primarily governed by the Insolvency and Bankruptcy Code, 2016 (IBC), represents a significant reform in corporate insolvency law. However, the IBC currently lacks a comprehensive and operational framework to address cross-border insolvency disputes. This paper examines the legal and institutional challenges posed by cross-border insolvency in India and argues for the adoption of the UNCITRAL Model Law on Cross-Border Insolvency. Using a doctrinal research methodology, the study analyzes statutory provisions, judicial decisions, international best practices, and comparative frameworks from jurisdictions that have implemented the Model Law. The research demonstrates that adopting the Model Law would enhance cooperation between courts, improve asset recovery, ensure equitable treatment of creditors, and strengthen investor confidence in India's insolvency regime. The paper concludes that legislative adoption of the Model Law is essential for aligning India's insolvency framework with global standards and effectively addressing the realities of multinational corporate failures.

Keywords: Cross-border insolvency, corporate restructuring, international insolvency law, multinational corporations, creditor protection, insolvency reform, corporate governance.

1. Introduction

The expansion of global commerce has led to the emergence of multinational corporations whose assets, creditors, and operations span multiple jurisdictions. When such corporations encounter financial distress, insolvency proceedings become complex due to conflicts between different national legal systems. This phenomenon, commonly known as cross-border

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insolvency, presents significant legal and practical challenges in coordinating insolvency proceedings across countries. Traditionally, insolvency law has been territorial in nature. Each country administers insolvency proceedings within its jurisdiction and prioritizes domestic interests. However, territorial approaches are often ineffective when dealing with multinational corporate entities. Assets may be located in multiple jurisdictions, creditors may reside in different countries, and legal proceedings may run simultaneously in various courts. Without coordination, such fragmentation can result in inconsistent judgments, duplication of proceedings, and inefficient asset distribution. India's corporate insolvency framework underwent a major transformation with the introduction of the Insolvency and Bankruptcy Code, 2016 (IBC). The Code consolidated several fragmented insolvency laws and established a time-bound process for corporate insolvency resolution. It also introduced institutional mechanisms such as insolvency professionals, information utilities, and adjudicating authorities to streamline the resolution process. Despite these reforms, the IBC does not provide a comprehensive framework for addressing cross-border insolvency. Sections 234 and 235 of the Code contain limited provisions that allow the Central Government to enter into bilateral agreements with foreign countries and enable Indian courts to request assistance from foreign courts. However, these provisions are largely procedural and lack detailed mechanisms for cooperation, recognition of foreign proceedings, and protection of international creditors. As Indian corporations increasingly expand their global footprint and foreign investors participate in Indian markets, the absence of an effective cross-border insolvency framework becomes more evident. In several high-profile insolvency cases involving multinational corporations, courts have struggled to coordinate proceedings across jurisdictions. This highlights the need for a structured and internationally accepted legal framework. The UNCITRAL Model Law on Cross-Border Insolvency, adopted in 1997, has emerged as the most widely accepted international framework for addressing cross-border insolvency issues. More than fifty jurisdictions, including major economies such as the United States, the United Kingdom, and Singapore, have incorporated the Model Law into their domestic legislation. The Model Law provides standardized mechanisms for recognition of foreign insolvency proceedings, cooperation between courts, and coordination of concurrent proceedings. This paper critically examines the limitations of the current Indian insolvency framework in addressing cross-border insolvency and explores the potential benefits of adopting the UNCITRAL Model Law. Through doctrinal analysis and comparative study, the research seeks to demonstrate that incorporating the Model Law into India's insolvency regime would significantly improve efficiency, predictability, and fairness in multinational insolvency cases.

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2. Research Objectives

The primary objectives of this research are:

1. To examine the concept and legal challenges associated with cross-border insolvency.
2. To analyze the current legal framework governing cross-border insolvency in India.
3. To study the structure and principles of the UNCITRAL Model Law on Cross-Border Insolvency.
4. To compare India's existing framework with jurisdictions that have adopted the Model Law.
5. To evaluate the necessity and feasibility of adopting the Model Law in India.

3. Research Methodology

This study adopts a **doctrinal research methodology**, which focuses on the analysis of legal texts, statutes, judicial decisions, and academic commentary. The research relies on primary sources such as legislative provisions, case law, and international legal instruments. Secondary sources include scholarly articles, books, law commission reports, and policy papers related to insolvency law. The doctrinal approach allows for a systematic interpretation of legal principles and an evaluation of how existing laws address cross-border insolvency issues. Comparative analysis is also employed to study the implementation of the UNCITRAL Model Law in other jurisdictions. This comparison provides insights into best practices and potential implications for India.

4. Literature Review

Scholars have widely acknowledged that cross-border insolvency presents unique challenges that cannot be effectively addressed by purely domestic legal frameworks. Several researchers argue that globalization necessitates a cooperative approach to insolvency administration across jurisdictions. Jay Lawrence Westbrook, a leading scholar in international insolvency law, emphasizes that multinational insolvency requires coordination between courts to prevent the dismemberment of debtor assets and to maximize value for creditors. According to Westbrook, the adoption of harmonized legal frameworks such as the UNCITRAL Model Law facilitates cooperation and reduces legal uncertainty. Similarly, Ian Fletcher has argued that territorial insolvency regimes often lead to inefficiencies because each jurisdiction attempts to administer assets within its territory without considering the global interests of creditors. Fletcher advocates a modified universalist approach in which a primary insolvency proceeding

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is recognized internationally while allowing local courts to protect domestic interests. In the Indian context, scholars have examined the limitations of the IBC in addressing cross-border insolvency. Some commentators note that the absence of clear mechanisms for recognizing foreign insolvency proceedings creates uncertainty for multinational corporations and foreign creditors. Others highlight the need for India to align its insolvency framework with international standards to attract foreign investment. Policy bodies and committees in India have also examined the issue. Expert committees have recommended the adoption of the UNCITRAL Model Law with certain modifications to suit domestic requirements. These recommendations reflect a growing consensus that India must modernize its cross-border insolvency framework.

5. Cross-Border Insolvency Framework in India

The legal framework governing corporate insolvency in India is primarily contained in the Insolvency and Bankruptcy Code, 2016, which was enacted with the objective of consolidating and modernizing the country's fragmented insolvency laws. Prior to the introduction of this legislation, insolvency and bankruptcy matters were governed by multiple statutes that often overlapped and created procedural inefficiencies. The enactment of the Code marked a significant reform in India's financial and corporate regulatory landscape by establishing a unified, creditor-driven process aimed at resolving insolvency in a time-bound manner. The Code introduced mechanisms such as the Corporate Insolvency Resolution Process (CIRP), the appointment of insolvency professionals, and the creation of adjudicating authorities like the National Company Law Tribunal to oversee insolvency proceedings. While these developments strengthened the domestic insolvency regime, the Code provides only a limited framework for addressing cross-border insolvency situations. Cross-border insolvency typically arises when a corporate debtor has assets, creditors, or operational interests located in more than one country. In an increasingly globalized economy, such situations are becoming more frequent, particularly for multinational corporations and companies engaged in international trade. Recognizing the possibility of such circumstances, the Insolvency and Bankruptcy Code includes certain provisions that facilitate cooperation with foreign jurisdictions. Sections 234 and 235 of the Code constitute the statutory foundation for cross-border insolvency cooperation within the Indian legal framework. Section 234 authorizes the Central Government to enter into bilateral agreements with other countries for the purpose of enforcing the provisions of the Code. Through such agreements, India may seek assistance from foreign jurisdictions in matters related to insolvency resolution, asset recovery, and

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enforcement of insolvency orders. Section 235 further empowers the adjudicating authority to issue letters of request to courts or competent authorities in foreign jurisdictions when assistance is required in relation to assets located outside India. In theory, these provisions acknowledge the need for international collaboration in handling insolvency cases that involve multiple jurisdictions. However, despite their recognition of cross-border concerns, these provisions suffer from several structural limitations. One major limitation is the heavy reliance on bilateral agreements between India and other countries. Negotiating and implementing such agreements can be a lengthy and complex process, particularly when dealing with multiple jurisdictions that may have different legal traditions and insolvency practices. As a result, the effectiveness of this mechanism depends significantly on the willingness of foreign governments to enter into reciprocal arrangements with India. Another limitation lies in the absence of a clear legal procedure for recognizing foreign insolvency proceedings within Indian courts. In many cross-border insolvency cases, a foreign insolvency representative may need to approach domestic courts to protect assets or participate in ongoing proceedings. Since the Code does not provide explicit guidelines for recognition of foreign proceedings, courts may face uncertainty in determining the extent to which such proceedings should be acknowledged or enforced. A further challenge concerns the lack of detailed rules for coordinating concurrent insolvency proceedings taking place in multiple jurisdictions. In situations where separate proceedings are initiated in different countries, the absence of coordination mechanisms can result in conflicting judicial orders, duplication of efforts, and inefficient management of the debtor's assets. Such fragmentation may ultimately reduce the value of the insolvency estate and negatively affect creditor recovery. These limitations illustrate that, while the Indian insolvency framework has made significant progress in addressing domestic insolvency matters, it remains relatively underdeveloped in dealing with the complexities of multinational corporate insolvency. Consequently, there is a growing recognition among policymakers and legal scholars that India requires a more comprehensive cross-border insolvency framework aligned with international standards.

6. The UNCITRAL Model Law on Cross-Border Insolvency

The development of international commerce and the expansion of multinational corporations have significantly increased the number of insolvency cases involving multiple jurisdictions. In response to these challenges, the United Nations Commission on International Trade Law adopted the UNCITRAL Model Law on Cross-Border Insolvency in 1997. The Model Law was designed to provide a coherent and flexible legal framework that enables courts and

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insolvency administrators from different countries to cooperate effectively when dealing with multinational corporate insolvency cases. Rather than replacing domestic insolvency laws, the Model Law operates as a procedural framework that can be incorporated into national legislation while allowing states to preserve their own substantive insolvency policies. The primary objective of the Model Law is to promote greater legal certainty and cooperation in cross-border insolvency proceedings. By establishing standardized procedures for recognition and coordination, the framework seeks to reduce conflicts between national courts and ensure that insolvency proceedings are conducted in a manner that maximizes the value of the debtor's assets while protecting the interests of creditors. Many countries have adopted this framework because it provides practical solutions to problems that arise when a debtor has assets and liabilities spread across several jurisdictions. One of the most important features of the Model Law is its emphasis on judicial cooperation and communication between courts in different countries. Traditional insolvency regimes often operated under a territorial approach in which each jurisdiction independently administered the assets located within its borders. Such an approach frequently resulted in fragmented proceedings and inconsistent decisions. The Model Law addresses this issue by encouraging a coordinated system in which courts recognize foreign proceedings and work together to administer the debtor's estate efficiently. The Model Law is generally understood to be built upon four foundational principles: access, recognition, relief, and cooperation. These principles collectively form the operational framework for handling cross-border insolvency disputes. The first principle is **access**. Under the Model Law, foreign insolvency representatives are granted direct access to the courts of another jurisdiction. This means that an administrator or liquidator appointed in one country can approach the courts of another country to seek assistance in protecting or recovering assets located there. This provision is particularly important because, without such access, foreign representatives would face procedural barriers when attempting to safeguard the debtor's estate. By allowing direct access, the Model Law facilitates efficient management of insolvency proceedings and prevents the dissipation of assets across jurisdictions. The second principle is **recognition** of foreign insolvency proceedings. Once a foreign representative approaches a domestic court, the court may formally recognize the foreign proceeding. The Model Law distinguishes between two categories of recognition: "foreign main proceedings" and "foreign non-main proceedings." A foreign main proceeding is one that takes place in the jurisdiction where the debtor has its "centre of main interests" (COMI), which is generally understood to be the place where the debtor conducts the administration of its interests on a regular basis. Recognition of a foreign main proceeding typically results in broader legal consequences, such as the

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automatic suspension of individual creditor actions against the debtor's assets. On the other hand, a foreign non-main proceeding is recognized when the debtor has an establishment or business presence in another jurisdiction. This distinction ensures that insolvency proceedings are primarily conducted in the jurisdiction most closely connected to the debtor's business activities. The third principle concerns **relief** that may be granted after recognition of a foreign proceeding. Once a domestic court recognizes a foreign insolvency proceeding, it may grant various forms of judicial assistance aimed at preserving the debtor's assets and ensuring orderly administration of the insolvency process. Such relief may include imposing a moratorium on creditor actions, preventing the transfer or disposal of assets, or authorizing the foreign representative to manage the debtor's property located in the recognizing jurisdiction. These measures are designed to maintain the value of the debtor's estate and prevent individual creditors from taking actions that could disrupt the collective insolvency process. The fourth principle is **cooperation and coordination** between courts and insolvency professionals. The Model Law encourages courts to communicate directly with foreign courts and to coordinate their actions in order to ensure efficient resolution of insolvency proceedings. Cooperation may include sharing information, coordinating the administration of assets, and developing protocols for managing concurrent proceedings in multiple jurisdictions. This collaborative approach helps reduce conflicts between legal systems and promotes a unified strategy for resolving complex insolvency cases. Another important aspect of the Model Law is its flexibility. While it provides a standardized framework for cross-border cooperation, it allows countries to adapt its provisions to suit their domestic legal systems. This adaptability has enabled a wide range of jurisdictions with different legal traditions to successfully implement the Model Law. As a result, the framework has become one of the most widely accepted international instruments in the field of insolvency law. In addition to promoting cooperation between courts, the Model Law also enhances the protection of creditor interests. By ensuring that insolvency proceedings are coordinated across jurisdictions, the framework reduces the likelihood of inconsistent decisions and prevents creditors from exploiting legal gaps between national systems. This ultimately leads to more predictable outcomes and greater confidence among international investors and financial institutions. Overall, the UNCITRAL Model Law represents a significant advancement in the development of international insolvency law. Its emphasis on recognition, cooperation, and procedural coordination addresses many of the difficulties that arise in multinational insolvency cases. As cross-border business activities continue to expand, the importance of such a harmonized legal framework becomes increasingly evident for countries seeking to integrate effectively into the global economic

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system.

7. Comparative Analysis with Other Jurisdictions

Several jurisdictions have successfully adopted the Model Law and integrated it into their domestic insolvency frameworks. The United States incorporated the Model Law through Chapter 15 of the Bankruptcy Code. Chapter 15 provides procedures for recognizing foreign insolvency proceedings and facilitates cooperation between U.S. courts and foreign courts. The framework has significantly improved the handling of multinational insolvency cases. Similarly, the United Kingdom adopted the Model Law through the Cross-Border Insolvency Regulations. These regulations allow UK courts to recognize foreign insolvency proceedings and coordinate with foreign courts to ensure efficient administration of assets. Singapore has also implemented the Model Law as part of its broader efforts to become an international restructuring hub. The adoption of the Model Law has strengthened Singapore's position as a preferred jurisdiction for complex insolvency cases. These examples demonstrate that the Model Law provides a flexible yet effective framework that can be adapted to different legal systems.

8. Challenges in Implementing Cross-Border Insolvency in India

Despite the advantages of adopting the Model Law, certain challenges may arise in the Indian context. One challenge relates to concerns about protecting domestic creditors. Policymakers may fear that recognizing foreign insolvency proceedings could disadvantage local creditors or reduce control over domestic assets. Another challenge involves institutional capacity. Effective implementation of cross-border insolvency requires well-trained judges, insolvency professionals, and regulators capable of coordinating with foreign counterparts. Jurisdictional conflicts may also arise when courts in different countries assert authority over the same debtor. Clear guidelines are necessary to determine the primary forum for insolvency proceedings. Finally, legislative reform requires political consensus and careful drafting to ensure compatibility with existing provisions of the Insolvency and Bankruptcy Code.

9. Recommendations

To address these challenges and strengthen India's insolvency framework, several policy measures are recommended. First, India should adopt the UNCITRAL Model Law with suitable modifications to protect domestic interests. The Model Law can be incorporated into

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the IBC as a separate chapter dealing specifically with cross-border insolvency. Second, specialized training programs should be developed for judges, insolvency professionals, and regulators to enhance their understanding of international insolvency practices. Third, guidelines should be established to determine the center of main interests of the debtor, which is crucial for identifying the primary jurisdiction for insolvency proceedings. Fourth, India should promote judicial cooperation with foreign courts through protocols and communication channels. Finally, policymakers should ensure that domestic creditors receive adequate protection while maintaining the efficiency and fairness of international insolvency proceedings.

10. Conclusion

The increasing globalization of business activities has made cross-border insolvency an inevitable reality. Multinational corporations often operate across multiple jurisdictions, making traditional territorial insolvency regimes inadequate for resolving complex financial distress. India's Insolvency and Bankruptcy Code, 2016 plays a major role by representing a significant step forward in reforming the country's insolvency law. However, the Code lacks a comprehensive framework for addressing cross-border insolvency issues. The existing provisions rely heavily on bilateral agreements and do not provide clear mechanisms for recognition, cooperation, or coordination of international insolvency proceedings. The UNCITRAL Model Law on Cross-Border Insolvency offers a widely accepted solution to these challenges. By facilitating access, recognition, relief, and cooperation, the Model Law promotes efficient administration of multinational insolvency cases. Adopting the Model Law would align India's insolvency framework with international standards, enhance investor confidence, and improve the recovery prospects of creditors. While certain challenges may arise in implementing the framework, these can be addressed through careful legislative design and institutional capacity building. In conclusion, the adoption of the UNCITRAL Model Law represents an important step toward modernizing India's insolvency regime and ensuring that it remains responsive to the demands of an increasingly interconnected global economy.

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