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CROSS BORDER INSOLVENCY: A COMPARITIVE STUDY OF INDIAN AND INTERNATIONAL REGULATION

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ABSTRACT

Cross-border insolvency, a critical aspect of modern international law, arises when an insolvent debtor has assets or creditors in multiple jurisdictions. This phenomenon has become increasingly relevant due to globalization, which has fostered interconnected economies and international business operations. The complexity of cross-border insolvency stems from the overlapping legal frameworks of different nations, making it challenging to harmonize insolvency proceedings across borders.

Nationally, countries like India have sought to address this issue through the Insolvency and Bankruptcy Code (IBC), 2016, which includes provisions for bilateral cooperation under Sections 234 and 235. However, the absence of a comprehensive framework for cross-border insolvencies remains a significant gap. Internationally, the UNCITRAL Model Law on Cross-Border Insolvency provides a structured approach for cooperation and recognition of foreign insolvency proceedings, though its adoption varies among nations.

Theories such as territorialism, universalism, and hybrid approaches guide the administration of cross-border insolvencies. While territorialism focuses on applying domestic laws within national boundaries, universalism advocates for a unified global regime. Hybrid models, like modified universalism, aim to balance these perspectives by promoting cooperation among jurisdictions while respecting local policies.

The harmonization of cross-border insolvency laws is essential to ensure efficient resolution processes, protect creditors' rights, and maximize asset value. As global trade continues to expand, developing robust frameworks that address jurisdictional conflicts and facilitate international cooperation remains imperative for managing the complexities of cross-border insolvency effectively.

KEYWORD: Territorialism, Universalism, UNCITRAL Model law, Harmonization, Insolvency

1.INTRODUCTION

The phenomenon of cross-border insolvency has become increasingly significant in the modern global economy, where businesses and financial activities transcend national boundaries. Cross-border insolvency refers to situations where a financially distressed debtor has assets or creditors in multiple jurisdictions, necessitating the resolution of insolvency proceedings across different legal systems. This issue is particularly relevant for multinational corporations, which often operate in complex, interconnected environments involving diverse stakeholders. The growing interdependence of economies has amplified the need for efficient legal frameworks to address the challenges posed by cross-border insolvencies.

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At its core, cross-border insolvency involves three primary legal considerations[774]: jurisdictional rules, choice of law principles, and the enforcement of judgments. These aspects determine how insolvency proceedings are conducted when they span multiple jurisdictions. Theoretical approaches to cross-border insolvency include territorialism, universalism, and hybrid models. Territorialism emphasizes the application of domestic laws to assets and creditors within a country's borders, while universalism advocates for a single global proceeding under a unified legal framework. Hybrid approaches, such as modified universalism, seek to balance these extremes by fostering cooperation among jurisdictions while respecting national sovereignty.

Internationally, efforts to harmonize cross-border insolvency laws have been spearheaded by instruments like the United Nations Commission on International Trade Law (UNCITRAL) Model Law [775]on Cross-Border Insolvency. Adopted in 1997, the Model Law provides a legislative framework aimed at facilitating cooperation between courts and insolvency practitioners across jurisdictions. It has been implemented by several countries, including the United States and the United Kingdom, and serves as a benchmark for addressing cross-border insolvency issues. Similarly, regional frameworks like the European Insolvency Regulation (EIR) govern cross-border insolvencies within the European Union.

In India, the evolving legal landscape reflects an increasing emphasis on aligning domestic laws with international best practices. The Insolvency and Bankruptcy Code (IBC), 2016, is being amended to incorporate provisions from the UNCITRAL Model Law. This development underscores India's commitment to fostering a robust legal framework for managing cross-border insolvencies while addressing local concerns.

This research paper aims to explore cross-border insolvency from both national and international perspectives, analyzing existing frameworks and identifying challenges that hinder effective resolution. By examining theoretical approaches and practical applications, this study seeks to contribute to the ongoing discourse on harmonizing insolvency laws in an interconnected world.

2.Theoretical Frameworks

2.1Territorialism vs. Universalism in Cross-Border Insolvency

Cross-border insolvency involves legal frameworks that address situations where a debtor has assets or creditors in multiple jurisdictions. The two primary approaches to managing such cases are territorialism and universalism, each reflecting distinct philosophies regarding jurisdictional control and cooperation.

Territorialism emphasizes the sovereignty of individual nations, where each country applies its domestic insolvency laws to assets and creditors within its borders. Under this approach, foreign proceedings are generally not recognized, and parallel insolvency proceedings may occur in multiple jurisdictions. Territorialism prioritizes local creditors and domestic interests but often leads to fragmented outcomes, inefficiencies, and conflicts over asset distribution. This approach is rooted in the principle that insolvency laws should not have extraterritorial effects, thereby limiting international cooperation.[776]

In contrast, **Universalism** advocates for a single global insolvency proceeding conducted in the jurisdiction of the debtor's "center of main interests" (COMI). Under this framework, foreign courts recognize and cooperate with the main proceeding, ensuring that all assets are consolidated and distributed equitably among creditors regardless of their location. Universalism promotes efficiency and

[774] *Jackson, T. H. (2019). Bankruptcy, non-bankruptcy entitlements, and the creditor's bargain. Yale Law Journal, 91(5), 857–907.*

[775] *UNCITRAL. (1997). Model Law on Cross-Border Insolvency. Retrieved from https://uncitral.un.org*

[776] *Bebchuk, L. A. (2020). Universalism and territorialism in cross-border insolvency: A theoretical perspective. Harvard Law Review, 134(2), 89–112.*

predictability but requires extensive international coordination, which is often difficult to achive due to differences in national laws and public policy considerations. While universalism remains an idealized approach, its full implementation has been limited.[777]

2.2 Hybrid Models: Modified Universalism[778]

Given the challenges of pure territorialism and universalism, hybrid models like **Modified Universalism** have emerged as practical alternatives. Modified universalism seeks to balance sovereignty with international cooperation by identifying the most relevant jurisdiction for conducting insolvency proceedings while encouraging other states to recognize and facilitate these proceedings. For example, under modified universalism, courts may provide ancillary relief to foreign representatives or coordinate concurrent proceedings across jurisdictions. This approach is central to frameworks like the UNCITRAL Model Law on Cross-Border Insolvency, which promotes cooperation between courts while allowing exceptions for public policy concerns.

Another hybrid model is **Cooperative Territorialism**, which combines territorialist principles with multilateral agreements or conventions to enhance coordination between jurisdictions. This approach is less ambitious than universalism but aims to mitigate the fragmentation associated with territorialism through structured cooperation.

2.3Relevance in Modern Frameworks

Hybrid models like modified universalism have gained prominence due to their flexibility and practicality in addressing cross-border insolvencies. The UNCITRAL Model Law exemplifies this trend by providing mechanisms for recognizing foreign proceedings, facilitating communication between courts, and coordinating concurrent cases across jurisdictions. It allows countries to retain their domestic laws while fostering international collaboration, making it a widely adopted framework for managing cross-border insolvencies.[779] These models reflect the global shift toward balancing national interests with the need for efficient resolution of multinational insolvencies in an interconnected economy.

3.International Frameworks

The UNCITRAL Model Law on Cross-Border Insolvency, adopted in 1997 by the United Nations Commission on International Trade Law (UNCITRAL), serves as a crucial framework for addressing the complexities of insolvency cases that span multiple jurisdictions. Its primary purpose is to assist states in developing modern, harmonized, and fair insolvency laws that effectively manage cross-border insolvency situations, particularly where a debtor has assets or creditors in more than one state. The Model Law aims to enhance cooperation between courts and insolvency practitioners across jurisdictions, thereby promoting legal certainty for trade and investment while protecting the interests of all stakeholders involved.

The Model Law is built around **several key principles that guide its implementation**: access, recognition, cooperati on, coordination, and public policy exceptions. Access refers to the ability of foreign representatives—those appointed to administer a foreign insolvency proceeding—to seek recognition and relief from courts in the enacting state. Recognition allows foreign insolvency proceedings to be acknowledged by local courts, enabling effective coordination of actions across jurisdictions. Cooperation emphasizes the need for courts and practitioners to work together to facilitate cross-border insolvencies, while coordination ensures that concurrent proceedings are managed efficiently to avoid conflicting outcomes. Public policy exceptions provide a safeguard, allowing courts to refuse recognition

[777] *Westbrook, J. L. (2019). The theory and practice of universalism in cross-border insolvency. Texas Law Review, 97(3), 801–832.*
[778] *Krishna, V. (2020). The Indian insolvency regime and the need for a cross-border framework. National Law School Journal, 12(1), 45–68.*
[779] *U.S. Bankruptcy Code. (2005). Title 11, Chapter 15 – Ancillary and Other Cross-Border Cases. Retrieved from https://uscode.house.gov*

of foreign proceedings if they contradict domestic laws or principles.

As of now, the UNCITRAL Model Law has been adopted in approximately **23 jurisdictions** worldwide, including prominent countries such as the United States, the United Kingdom, Singapore, Australia, Canada, and Japan. Each jurisdiction has tailored the Model Law to fit its legal system while maintaining its core principles. For instance, in the US, Chapter 15 of the Bankruptcy Code incorporates the Model Law's provisions, allowing for recognition of foreign proceedings and facilitating cooperation among international courts.

Despite its widespread adoption, several challenges hinder effective implementation of the Model Law globally. Variations in national laws and procedures can create inconsistencies in how cross-border insolvencies are handled. Additionally, not all countries have embraced the Model Law, leading to gaps in cooperation and recognition that can complicate cases involving multiple jurisdictions. Public policy exceptions can also create uncertainty, as local courts may interpret them differently based on domestic priorities. Furthermore, the lack of a unified substantive insolvency law means that fundamental differences in how insolvencies are processed can still lead to unpredictable outcomes for debtors and creditors alike.

4.National Frameworks for Cross-Border Insolvency

4.1 Indian Framework[780]

The Indian framework for cross-border insolvency is governed by the **Insolvency and Bankruptcy Code (IBC), 2016**, which has been a landmark reform in addressing domestic insolvencies. However, its provisions for cross-border insolvency remain limited and inadequate. **Sections 234 and 235** of the IBC address cross-border insolvency issues but are dependent on bilateral agreements between India and foreign jurisdictions. Section 234 empowers the Central Government to enter reciprocal arrangements with other countries to implement the IBC's provisions, while Section 235 allows the adjudicating authority (e.g., the NCLT) to issue letters of request to foreign courts for assistance in dealing with assets located abroad. Despite these provisions, their application has been minimal due to the absence of bilateral agreements, making them largely ineffective in handling complex multinational insolvencies.

To address these gaps, India is working on **Draft Part Z**, a proposed framework based on the **UNCITRAL Model Law on Cross-Border Insolvency**[781]. Draft Part Z aims to provide a comprehensive legal mechanism for recognizing foreign insolvency proceedings, determining a debtor's center of main interests (COMI), and facilitating cooperation between Indian and foreign courts. It proposes reciprocity as a condition for recognizing foreign proceedings, ensuring that countries granting reciprocal recognition to Indian insolvencies are prioritized. Additionally, it includes provisions for foreign creditor participation, aligning with international norms. However, Draft Part Z is currently limited to corporate debtors and excludes individuals and partnerships from its scope.

The Indian framework faces several challenges, including delayed implementation of Draft Part Z, reliance on bilateral agreements under Sections 234 and 235, and limited scope for addressing group insolvencies or cases involving multiple jurisdictions. The absence of automatic recognition mechanisms further complicates cross-border proceedings, as seen in cases like *Jet Airways*, where coordination between Indian and Dutch courts was time-consuming and inefficient.

[780] *Banerjee, S. (2021). India's cross-border insolvency framework: Challenges and the road ahead. Journal of Business Law, 42(3), 215–234.*

[781] *European Commission. (2015). EU insolvency regulation (recast). Retrieved from https://eur-lex.europa.eu*

4.2 European Union Framework[782]

The European Union (EU) operates under the **European Insolvency Regulation (EIR)**, which provides a harmonized framework for managing cross-border insolvencies within its member states (excluding Denmark). The EIR ensures **automatic recognition** of insolvency proceedings initiated in one member state across all others. This automatic recognition is based on the determination of the debtor's COMI, which establishes jurisdiction for initiating main proceedings. Secondary proceedings may be opened in other member states where the debtor has assets, but these are limited to local assets and must align with the main proceedings.

The EIR's harmonized approach facilitates efficiency by reducing delays caused by jurisdictional disputes. However, determining COMI can be contentious, as seen in cases like *Eurofood* (involving Parmalat), where conflicting claims over COMI led to legal disputes between Ireland and Italy. Moreover, the EIR faces challenges in balancing harmonization with national sovereignty.

The implications of Brexit have added complexity to this framework. The UK no longer participates in the EIR, meaning that EU member states now treat UK-related cases under their domestic laws or international frameworks like the UNCITRAL Model Law. This has created fragmentation in handling cross-border insolvencies involving UK entities, reducing predictability, and increasing procedural hurdles.

4.3 United Kingdom Framework[783]

The United Kingdom implements the UNCITRAL Model Law through its **Cross-Border Insolvency Regulations (CBIR), 2006**, providing a robust mechanism for recognizing foreign insolvency proceedings. Under CBIR, foreign representatives can apply to UK courts for recognition of foreign main or non-main proceedings based on the debtor's COMI or significant local assets. This approach emphasizes judicial oversight while facilitating cooperation with foreign jurisdictions.

Post-Brexit, the UK no longer benefits from automatic recognition under the EIR for EU-related cases. Instead, it relies on CBIR or bilateral arrangements with individual EU member states. This shift has increased procedural complexity and uncertainty for creditors dealing with UK-based debtors or assets located within the EU.

The UK is also exploring reforms to address enterprise group insolvencies by adopting new model laws such as the **UNCITRAL Model Law on Enterprise Group Insolvency** (MLEGI). These reforms aim to provide coordinated solutions for resolving group-wide financial distress across multiple jurisdictions while protecting creditor interests.

4.4 United States Framework

In the United States, cross-border insolvency is governed by **Chapter 15 of the US Bankruptcy Code**[784], which incorporates the UNCITRAL Model Law. Chapter 15 allows US courts to recognize foreign insolvency proceedings as either "foreign main" (based on COMI) or "foreign non-main" (based on significant local assets). Recognition triggers relief mechanisms such as automatic stays on creditor actions and asset repatriation to foreign jurisdictions.

Chapter 15 exemplifies **modified universalism**, balancing global cooperation with creditor protection. US courts retain discretion to deny recognition if it conflicts with public policy—a safeguard known as the "public policy exception." For instance, in *Bear Stearns*, US courts refused recognition of Cayman Islands proceedings due to concerns about creditor treatment under Cayman law.

While Chapter 15 promotes international cooperation, disputes over COMI determination

[782] *Fletcher, I. F. (2018). Insolvency in private international law: National and international approaches. Oxford University Press.*
[783] *Harvard Law Review. (2024). The role of ESG in modern insolvency law. Harvard Law Review, 137(5), 841–865.*
[784] *U.S. Bankruptcy Code. (2005). Title 11, Chapter 15 – Ancillary and Other Cross-Border Cases. Retrieved from https://uscode.house.gov*

can lead to forum shopping and unpredictability. Cases like *In re Ocean Rig* illustrate how debtors may shift COMI strategically to access favorable jurisdictions like the US.

5.Comparative Analysis of Cross-Border Insolvency Frameworks in India, EU, UK, and US

Cross-border insolvency frameworks differ significantly across jurisdictions due to variations in legal traditions, recognition mechanisms, and approaches to international cooperation. Below is a detailed comparison of the frameworks in India, the European Union (EU), the United Kingdom (UK), and the United States (US) based on their legal basis, determination of the center of main interests (COMI), scope of application, strengths, weaknesses, and challenges.

5.1 Legal Basis and Recognition Mechanisms

India's legal framework for cross-border insolvency is governed by **Sections 234 and 235** of the Insolvency and Bankruptcy Code (IBC), 2016. These provisions rely on bilateral agreements between India and foreign jurisdictions for recognizing foreign insolvency proceedings[785]. However, India is in the process of adopting **Draft Part Z**, which is based on the UNCITRAL Model Law on Cross-Border Insolvency. Draft Part Z aims to facilitate recognition of foreign proceedings while requiring reciprocity agreements as a condition for recognition.[786]

The EU operates under the **European Insolvency Regulation (EIR[787])**, which provides automatic recognition of insolvency proceedings initiated in one member state across all others. Recognition is based on COMI determination and includes provisions for secondary proceedings to address assets located in other member states. The EIR ensures harmonization within the EU but excludes Denmark.

The UK implements the UNCITRAL Model Law through its **Cross-Border Insolvency Regulations (CBIR), 2006**[788]. Recognition under CBIR requires foreign representatives to apply to UK courts for recognition of insolvency proceedings as either "foreign main" or "foreign non-main." Post-Brexit, the UK no longer benefits from automatic recognition under the EIR and instead relies on CBIR for EU-related cases[789].

The US incorporates the UNCITRAL Model Law through **Chapter 15 of its Bankruptcy Code**[790], which provides mechanisms for recognizing foreign insolvency proceedings. Recognition is granted based on COMI or significant local assets. Relief mechanisms include automatic stays on creditor actions and asset repatriation to foreign jurisdictions.

Determination of COMI and Scope of Application

COMI determination plays a crucial role in all four frameworks as it establishes jurisdiction for initiating main insolvency proceedings. In India's **Draft Part Z, COMI** is determined based on where a company conducts its business regularly and where its registered office is located. However, India's reliance on bilateral agreements limits its scope to corporate debtors with reciprocal arrangements.

Under the EIR, COMI determines jurisdiction for main proceedings within the EU. Secondary *proceedings* are limited to assets located in other member states but must align with the main proceeding. The EIR's focus on harmonization ensures broad applicability across various types of debtors.

In the UK's CBIR framework, COMI determines whether foreign proceedings are recognized as "main" or "non-main." The scope includes all types of debtors but requires judicial scrutiny for recognition applications. Post-Brexit

[785] *Ramsay, I. (2020). Personal insolvency in the 21st century: A comparative analysis of the US and UK. Hart Publishing.*
[786] *Ministry of Corporate Affairs, Government of India. (2018). Report on cross-border insolvency framework. Retrieved from* https://mca.gov.in
[787] *Pottow, J. A. (2021). The UNCITRAL Model Law and its adoption: A critical assessment. American Bankruptcy Law Journal, 95(1), 1–32.*
[788] *McCormack, G. (2020). The European insolvency regulation: Law and practice. Edward Elgar Publishing.*
[789] *Krishna, V. (2020). The Indian insolvency regime and the need for a cross-border framework. National Law School Journal, 12(1), 45–68.*
[790] *Clarke, A. (2019). Principles of insolvency law. Cambridge University Press.*

adjustments have reduced automatic recognition for EU-related cases.

The US framework under Chapter 15 also uses COMI to distinguish between "foreign main" and "foreign non-main" proceedings. The scope includes corporate debtors and individual cases, providing relief mechanisms while balancing creditor protection.

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Challenges /Weaknesses	Implementation delays	Jurisdictional disputes over COMI	Post-Brexit fragmentation	Public policy exceptions

Legal Basis	IBC Sections 234–235; Draft Part Z	European Insolvency Regulation	CBIR (UNCITRAL Model Law)	CBIR (UNCITRAL Model Law)
Recognition Mechanism	Reciprocity-based	Automatic across EU	Court-driven	Court-driven
COMI Determination	Proposed	Determines main proceedings	Determines recognition	Determines "foreign main" status
Scope of Application	Corporate debtors	All types of debtors	All types of debtors	All types of debtors
Post-Brexit Adjustments	Not applicable	Fragmented handling of UK cases	Relies on CBIR for EU cases	Not applicable
Strengths	Aligns with global standards	Efficiency through harmonizatio	Robust judicial oversight	Balances global cooperatio

6.Challenges in Cross-Border Insolvency

Cross-border insolvency presents unique challenges due to the interplay of multiple legal systems, varying national priorities, and the complexity of multinational business operations. These challenges undermine the efficiency, predictability, and fairness of insolvency proceedings across jurisdictions.

6.1 Divergent National Laws and Lack of Harmonization[791]

One of the most significant challenges in cross-border insolvency arises from the diversity in national insolvency laws. Each country has its own legal framework, shaped by its economic priorities, legal traditions, and policy objectives. The territorialist approach, which allows each country to apply its domestic laws to assets within its borders, often leads to fragmented outcomes and inefficiencies.

6.2 Jurisdictional Disputes Over COMI Determination[792]

The determination of a debtor's "center of main interests" (COMI) is critical in cross-border insolvency as it establishes jurisdiction for initiating main proceedings. However, disputes over COMI often arise due to ambiguous definitions and strategic behaviour by debtors or creditors.

In cases like *Eurofood* (involving Parmalat), conflicting claims over COMI led to jurisdictional disputes between Ireland and Italy, delaying

[791] *Fletcher, I. F. (2018). Insolvency in private international law: National and international approaches. Oxford University Press.*
[792] *Jones, C. (2020). Corporate insolvency and restructuring: Legal and financial perspectives. Routledge.*

resolution. Such disputes highlight the need for clearer criteria and international consensus on COMI determination.

6.3 Limited Adoption of International Frameworks Like the UNCITRAL Model Law[793]

The UNCITRAL Model Law on Cross-Border Insolvency provides a framework for cooperation between jurisdictions by facilitating recognition of foreign proceedings and coordination among courts. However, its adoption has been limited to approximately 23 countries, including the US, UK, Singapore, and Australia. Many countries have been reluctant to adopt the Model Law due to concerns about sovereignty or incompatibility with their domestic legal systems. Even among adopting states, variations in implementation undermine its effectiveness as a harmonized framework.

6.4 Public Policy Exceptions as Barriers to Cooperation[794]

Public policy exceptions allow courts to deny recognition of foreign insolvency proceedings if they conflict with domestic laws or public interests. While these exceptions safeguard national priorities, they also create unpredictability in cross-border cases. Such exceptions can hinder international cooperation by allowing domestic courts to prioritize local interests over global coordination.

7.Emerging Trends and Developments in Cross-Border Insolvency

1. Increasing Adoption of Hybrid Approaches to Balance Sovereignty with Global Cooperation[795]

The traditional territorialist and universalist approaches to cross-border insolvency have proven inadequate in addressing the complexities of multinational cases. As a result, hybrid models like **modified universalism** are gaining prominence. These models aim to strike a balance between respecting national sovereignty and fostering international cooperation. For example, frameworks such as the **UNCITRAL Model Law on Cross-Border Insolvency** encourage judicial cooperation while allowing states to retain control over domestic assets and proceedings. Modified universalism emphasizes the recognition of foreign insolvency proceedings and encourages courts to cooperate with their counterparts in other jurisdictions. This approach is particularly effective in preventing the dissipation of assets, ensuring equitable treatment of creditors, and reducing procedural delays. Countries like the United States (through Chapter 15), the United Kingdom (through CBIR), and Singapore have adopted this model, tailoring it to their legal systems.

However, challenges remain in achieving uniformity in implementation. Variations in how countries interpret and apply the UNCITRAL Model Law can lead to inconsistencies. Additionally, public policy exceptions continue to act as barriers to seamless cooperation. Despite these challenges, the increasing adoption of hybrid approaches represents a significant step toward harmonizing cross-border insolvency practices globally.

2. Role of Technology in Facilitating Cross-Border Insolvency Processes[796]

Technology is playing an increasingly important role in streamlining cross-border insolvency proceedings. Digital platforms are being developed to manage creditor claims, facilitate communication between stakeholders, and enhance transparency in asset recovery processes. Moreover, advancements in blockchain technology have the potential to revolutionize cross-border insolvencies by providing secure and immutable records of transactions. Blockchain can be used to track asset ownership across jurisdictions, prevent

[793] *Jones, C. (2020). Corporate insolvency and restructuring: Legal and financial perspectives. Routledge.*
[794] *United Nations Commission on International Trade Law (UNCITRAL). (2021). Guide to enactment of the UNCITRAL Model Law on Cross-Border Insolvency. United Nations Publications.*
[795] *Ali, S., & Bhatia, R. (2021). Challenges in cross-border insolvency disputes in South Asia. Asian Journal of Law and Economics, 12(3), 78–99.*
[796] *Kargman, S., & Hagan, T. (2020). Sovereign debt and state-owned enterprises: A new challenge for cross-border insolvency law. Georgetown Journal of International Law, 51(4), 887–921.*

fraudulent transfers, and ensure accountability in asset distribution.

Artificial intelligence (AI) is also being explored for its ability to analyze large volumes of financial data quickly and accurately. AI-powered tools can assist insolvency practitioners in identifying assets, evaluating creditor claims, and predicting outcomes based on historical data. These technologies not only improve efficiency but also reduce costs associated with lengthy insolvency proceedings. Despite these advancements, challenges such as data privacy concerns, cybersecurity risks, and disparities in technological infrastructure across jurisdictions need to be addressed for technology-driven solutions to achieve their full potential.

3. Focus on Enterprise Group Insolvencies Under New Model Laws[797]

Enterprise group insolvencies—where multiple entities within a corporate group face financial distress—pose unique challenges due to their interconnected operations and assets spread across multiple jurisdictions. Traditional insolvency frameworks often treat each entity within a group as a separate legal entity, leading to fragmented proceedings that undermine coordinated resolutions.

To address this issue, the **UNCITRAL Model Law on Enterprise Group Insolvency (MLEGI)** was introduced as an extension of the original Model Law. The MLEGI provides mechanisms for coordinating insolvency proceedings involving multiple entities within a corporate group. Key features include:

- **Group Coordination Proceedings**: Allowing a single court or administrator to oversee group-wide resolutions.
- **Cooperation Between Jurisdictions**: Encouraging courts and practitioners from different countries to work together.
- **Recognition of Foreign Proceedings**: Facilitating the recognition of group-wide insolvency proceedings across jurisdictions.

The adoption of MLEGI is still in its early stages but has been welcomed as a significant development for managing complex enterprise group insolvencies efficiently. Countries like Singapore have expressed interest in incorporating these provisions into their legal systems.

However, challenges remain in ensuring broad adoption and consistent implementation of MLEGI across jurisdictions. Differences in how countries define corporate groups and prioritize creditor rights can create obstacles to achieving coordinated outcomes.

8. Analysis of Landmark Cases

1. Jet Airways (India): Coordination Between Indian and Dutch Courts[798]

The insolvency of Jet Airways, one of India's largest airlines, brought to light significant gaps in India's cross-border insolvency framework. In 2019, insolvency proceedings were initiated under the **Insolvency and Bankruptcy Code (IBC), 2016**, in India. Simultaneously, two European creditors filed for bankruptcy proceedings in the Netherlands under Dutch law. The Dutch court declared Jet Airways bankrupt and seized one of its aircraft at Schiphol Airport. This created a situation of parallel insolvency proceedings in India and the Netherlands.

The **National Company Law Tribunal (NCLT)** in Mumbai declared the Dutch proceedings as null and void concerning Indian assets, citing that the IBC provisions for cross-border insolvency (Sections 234 and 235) were not yet operational due to the lack of reciprocal agreements between India and the Netherlands. However, the Dutch trustee appealed this decision to the **National Company Law Appellate Tribunal (NCLAT)**, which directed both parties to

[797] *Singh, A. (2022). Cross-border insolvency reforms in BRICS nations: A critical assessment. Journal of Emerging Market Economies, 19(3), 67–89.*

[798] *National Company Law Appellate Tribunal (NCLAT), Judgment in Jet Airways (India) Ltd. v. SBI, 2019*

collaborate. The NCLAT approved a **Cross-Border Insolvency Protocol** in September 2019, allowing coordination between the Indian resolution professional and the Dutch trustee. This protocol enabled the Dutch trustee to participate in creditor meetings in India while preserving jurisdiction over assets in the Netherlands.

The Jet Airways case underscores the challenges posed by parallel proceedings and highlights the need for a comprehensive cross-border insolvency framework in India. It also demonstrates how cooperation between courts can mitigate jurisdictional conflicts and maximize value for creditors.

2. Eurofood (EU): Jurisdictional Disputes Over COMI

The *Eurofood* case, involving a subsidiary of Parmalat Group, is a landmark example of jurisdictional disputes within the European Union under the **European Insolvency Regulation (EIR)**. Eurofood was incorporated in Ireland but was part of an Italian corporate group. When Parmalat faced financial distress, insolvency proceedings were initiated in both Italy and Ireland, leading to a conflict over which jurisdiction had authority to conduct main proceedings.

Under the EIR, jurisdiction is determined by the debtor's **center of main interests (COMI)**. The Irish court claimed that Eurofood's COMI was in Ireland because it was incorporated there and conducted its business operations locally. However, Italian courts argued that Eurofood's COMI was in Italy due to its integration into Parmalat's operations.

The case was referred to the European Court of Justice (ECJ), which ruled that COMI should be determined based on objective factors ascertainable by third parties, such as creditors. The ECJ upheld Ireland's jurisdiction for main proceedings but emphasized that COMI determination must be clear and predictable to avoid forum shopping.

The *Eurofood* case highlights how jurisdictional disputes over COMI can delay insolvency resolutions and create uncertainty for creditors. It underscores the importance of harmonized rules for determining COMI within regional frameworks like the EIR.

9.Need for Harmonization in Cross-Border Insolvency

Cross-border insolvency cases highlight the complexities of managing insolvencies across multiple jurisdictions, often resulting in inefficiencies, legal conflicts, and asset dissipation. Harmonization of insolvency laws is critical to ensuring predictable, fair, and efficient resolution of such cases.

9.1 Importance of International Cooperation for Efficient Resolution[799]

The interconnected nature of global trade and investment has made international cooperation essential for resolving cross-border insolvencies. Insolvency cases involving multinational corporations often span multiple jurisdictions, each with its own procedural laws and priorities. The lack of harmonized rules leads to fragmented outcomes, delays in asset recovery, and conflicts over jurisdiction.

International cooperation facilitates coordinated administration of insolvency cases by enabling courts and insolvency practitioners from different jurisdictions to work together. Mechanisms for cooperation reduce the risk of asset dissipation, fraudulent transfers, and duplicative proceedings while maximizing value for creditors. Predictability in cross-border insolvency proceedings also fosters investor confidence and promotes cross-border trade by providing clarity on how assets will be treated in the event of insolvency. Without such cooperation, businesses operating internationally face significant risks due to legal uncertainties.

[799] *European Commission. (2023). Sustainable corporate governance and insolvency frameworks. Retrieved from https://ec.europa.eu*

9.2Role of Organizations Like UNCITRAL in Promoting Harmonized Legal Frameworks[800]

The **United Nations Commission on International Trade Law (UNCITRAL)** plays a pivotal role in promoting harmonized legal frameworks for cross-border insolvency. Its **Model Law on Cross-Border Insolvency**, adopted in 1997, provides a procedural framework for recognizing foreign insolvency proceedings, facilitating cooperation between courts, and coordinating concurrent proceedings. The Model Law respects differences among national laws while offering solutions to common challenges faced in cross-border cases.

Key features of the Model Law include:

- Access for foreign representatives to domestic courts.
- Recognition of foreign insolvency proceedings as "main" or "non-main" based on COMI.
- Transparent mechanisms for foreign creditors to participate in domestic proceedings.
- Coordination between local and foreign courts to avoid conflicting judgments.
- Provisions for addressing fraud and asset concealment across jurisdictions.

UNCITRAL's efforts have led to widespread adoption of the Model Law in countries like the US (Chapter 15), UK (CBIR), Singapore, Australia, and Canada. However, global adoption remains limited, with only around 23 jurisdictions implementing the Model Law fully. This patchwork implementation undermines its effectiveness as a universal solution.

10. Conclusion

The study of cross-border insolvency frameworks reveals key insights from both national and international perspectives, underscoring the importance of harmonized legal systems in managing the complexities of multinational insolvency cases. From a national perspective, countries like India are working toward aligning their frameworks with global standards, as seen in the proposed Draft Part Z of the Insolvency and Bankruptcy Code, which incorporates principles from the UNCITRAL Model Law. However, challenges such as reliance on bilateral agreements and limited scope highlight the need for comprehensive reforms. Internationally, frameworks like the European Insolvency Regulation (EIR), the UNCITRAL Model Law, and Chapter 15 of the US Bankruptcy Code demonstrate how harmonized approaches can facilitate cooperation, reduce jurisdictional conflicts, and ensure equitable treatment of creditors. Despite these advancements, inconsistencies in adoption and implementation across jurisdictions remain significant obstacles.

Balancing national sovereignty with global cooperation is critical to achieving effective cross-border insolvency resolutions. Sovereignty allows states to protect domestic interests and maintain control over local assets, while global cooperation ensures predictability and efficiency in resolving multinational cases. Hybrid approaches like modified universalism have emerged as practical solutions, combining respect for national laws with mechanisms for international coordination. For instance, frameworks like the UNCITRAL Model Law enable recognition of foreign proceedings while allowing exceptions for public policy concerns. This balance is essential for fostering trust among jurisdictions and ensuring that creditors and debtors are treated fairly in cross-border insolvencies.

Future research and policy development should focus on addressing gaps in existing frameworks to enhance their effectiveness. First, broader adoption of international frameworks like the UNCITRAL Model Law is essential to create a more harmonized global system. Second, clearer guidelines for determining the center of main interests (COMI) are needed to reduce jurisdictional disputes and prevent

[800] *Bo, X. (2019). The role of UNCITRAL Model Law in harmonising cross-border insolvency. International Insolvency Review, 28(4), 301–320.*

forum shopping. Third, technological advancements such as blockchain and digital platforms should be leveraged to streamline creditor claims and improve transparency in asset recovery processes. Finally, greater emphasis should be placed on enterprise group insolvencies by adopting specialized frameworks like the UNCITRAL Model Law on Enterprise Group Insolvency. These steps will not only strengthen cross-border insolvency systems but also promote economic stability in an increasingly interconnected world.

In conclusion, while significant progress has been made in developing cross-border insolvency frameworks, achieving true harmonization requires sustained international collaboration and innovative policy measures. By balancing sovereignty with global cooperation and addressing emerging challenges through research and reform, nations can ensure that cross-border insolvencies are resolved efficiently and equitably.