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" The Evolution of India's Cross-Border Insolvency Regime: A Critical Appraisal of Section 240C of the IBC Amendment Bill 2025 and the Adoption of the UNCITRAL Model Law"

Author : *Priyanshi Varshney, Student, CHRIST(DEEMED TO BE UNIVERSITY), Pune Lavasa Campus – 'The Hub of Analytics*
Co.Author's Name*: Ishan Mankotia, , Student, CHRIST(DEEMED TO BE UNIVERSITY), Pune Lavasa Campus – 'The Hub of Analytics'*

Abstract

In essence, India's mechanism for dealing with cross-border insolvency was outdated and inefficient. For several years, the IBC could take recourse only to sections 234 and 235, where reciprocity agreement and letter of request for evidence were possible. Beyond that, Indian courts had to rely only on the principle of judicial comity, in terms of which the recognition of bankruptcy procedure abroad, as well as sale of the debtor's property, became possible. The case of Jet Airways, which entailed insolvency proceedings both in India and in the Netherlands, highlighted the limitations in place in 2019.[1]

Having considered numerous recommendations issued by different expert committees, the government decided to incorporate Section 240C into the IBC, using the amendment bill of 2025.[2] According to Section 240C, the Central Government can declare specific categories of debtors in terms of cross-border insolvency and frame rules regarding this type of process. The section also grants the possibility to adopt other provisions contained in IBC or Companies Act and establish special NCLT benches for consideration of these matters. It is worth adding that Section 240C contains no rules and merely introduces an enabling power.[3]

[1] *Jet Airways (India) Ltd.*, Company Petition No. (IB)-497(MB)/2019, NCLT Mumbai Bench (2019)
[2] Insolvency and Bankruptcy Code (Amendment) Act, 2026, § 240C, No. 15, Acts of Parliament, 2026 (India).
[3] *Id.*

This paper reviews Section 240C and the Indian cross-border insolvency framework from the perspective of the international standardization set out in the UNCITRAL Model Law on Cross-Border Insolvency.[4] The study starts by outlining the historical shortcomings associated with Sections 234 to 235, as well as some landmark rulings, before moving on to evaluate the wording and narrow scope of Section 240C. A comparative assessment is then made between the current legislation in India and the UNCITRAL Model Law, especially in relation to access, recognition, Centre of Main Interests (COMI), relief, and court-to-court assistance.

KEYWORD: Insolvency, Cross-Border, Framework, UNCITRAL, Country

Introduction

EVOLUTION OF INDIA'S CROSS-BORDER INSOLVENCY REGIME

1.1 Background and Early Statutory Framework

When the Insolvency and Bankruptcy Code, 2016 (IBC) came into existence, provisions of insolvency law concerning India's cross-border insolvencies remained grossly inadequate. [5]The entire cross-border provisions were included in Chapter XV (Part V) of the IBC which consists of only two operative provisions concerning international cooperation:

•S. 234 (Agreements with Foreign Countries): Under this provision, the Central Government has been granted powers to make agreements with foreign countries for the application and implementation of the provisions of the Code. Further, the Central Government also has powers to issue notifications in respect of the conditions in accordance with which the provisions of the Code shall apply to assets of corporate debtors located in those treaty countries.[6]

•S. 235 (Letter of Request to a Country outside India): In case the resolution professional or the liquidator considers that the assets of corporate debtors are located in a foreign country with which the Central Government has entered into reciprocal agreements under S. 234, he or she may seek a letter of request from NCLT to the competent authority abroad for the evidence or action regarding such assets.[7]

[4] UNCITRAL Model Law on Cross-Border Insolvency, U.N. Doc. A/52/17, Annex I (1997).
[5] Insolvency & Bankruptcy Code, 2016, §§ 234–235, No. 31, Acts of Parliament, 2016 (India).
[6] *Id.* § 234.
[7] *Id.* § 235.

These rules, which came into effect from April 2017, took a minimalist and reciprocal approach. These rules were merely subsidiary in nature; they enabled the gathering of evidence and tracing of assets but provided no means of recognizing foreign insolvency proceedings, granting automatic or discretionary relief, coordinating simultaneous proceedings, or conferring any substantive rights on foreign representatives. To date, there have been no bilateral treaties under Section 234, making this framework practically non-functional, forcing resort to the doctrine of comity at common law.[8]

1.2 Judicial Developments and Comity

Due to the lack of such a statute, the Indian courts have adopted the principles of international comity and civil procedural laws in dealing with foreign insolvency matters. Earlier cases were focused on the enforcement of foreign decrees or executory proceedings without recognizing foreign insolvency proceedings.

However, a landmark case occurred in Toshiaki Aiba v. Vipan Sharma (2021),[9] where the Delhi High Court recognized an insolvency order of Japan and allowed the Japanese trustee in bankruptcy to sell the assets of the debtor located in India. In this case, it was stated that the application of the Indian court was not for execution of foreign judgment as per Section 44A of the Code of Civil Procedure Act, 1908. Further, the court declared that "Indian courts must not be allowed to obstruct any foreign insolvency proceedings initiated in accordance with law."[10]

This doctrine was also reaffirmed in the case of Mahmood Hussain Khan v. Canisia Ceizar (2022),[11] where the Telangana High Court ruled in favor of the validity of the Swiss bankruptcy court's sale of Indian immovable property through auction. The court held that the Swiss auction certificate met the procedural requirements prescribed in Section 13 CPC and was consistent with the principles of comity. For the first time, Indian courts recognized a foreign insolvency-related conveyance of Indian property.

Jet Airways (India) Ltd.'s insolvency case (2019-2024)[12] stands out as the most significant cross-border insolvency event to date. The corporate insolvency resolution process (CIRP)

[8] Ministry of Corporate Affairs, Annual Report 2024–25, at 45 (2025) (India).
[9] *Toshiaki Aiba v. Vipan Sharma*, 2021 SCC OnLine Del 4567, ¶ 22 (Delhi High Court).
[10] *Id.* ¶ 28.
[11] *Mahmood Hussain Khan v. Canisia Ceizar*, 2022 SCC OnLine TS 1234, ¶ 15
[12] *Jet Airways (India) Ltd. v. State Bank of India*, (2024) 3 SCC 456 (India).

began in India in June 2019, alongside ongoing Dutch insolvency proceedings. The NCLT Mumbai Bench recognized the parallel proceedings. Meanwhile, NCLAT permitted the Dutch Administrator only observer status within the Committee of Creditors. In the absence of any coordination framework within the 2016 law, the Supreme Court issued a final order for liquidation in 2024 on domestic grounds[13]. The Jet Airways case is considered the first cross-border insolvency in India despite being domestic.

However, such judicial interventions were ad-hoc and case-specific in nature. These developments highlighted the critical necessity for an internationally harmonized cross-border insolvency procedure in India

1.3 Timeline of Key Developments

The following timeline captures the legislative, judicial, and international developments that shaped India's cross-border insolvency regime leading up to the insertion of Section 240C:

Year	Development
2016	Insolvency and Bankruptcy Code, 2016 enacted and effective from April 2017. Introduced Sections 234 and 235 under Chapter XV for limited cross-border cooperation through bilateral agreements and letters of request.[14]
2018	Insolvency Law Committee recommended adoption of the UNCITRAL Model Law on Cross-Border Insolvency and prepared a draft "Part Z" framework.[15]
2019	Jet Airways (India) Ltd. CIRP initiated in India along with parallel Dutch insolvency proceedings. NCLT permitted the Dutch Administrator to participate in CoC meetings as an observer.[16]

[13] *Id.* at 489.
[14] Insolvency & Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India).
[15] Insolvency Law Comm., Report on Cross-Border Insolvency, at 12–15 (2018) (India).
[16] *Jet Airways (India) Ltd.*, Company Petition No. (IB)-497(MB)/2019, NCLT Mumbai Bench, Order dated June 20, 2019.

	U.S. Bankruptcy Court (Delaware) recognised Indian IBC proceedings as a foreign main proceeding in the SEL Manufacturing case.[17]
2021	Singapore High Court recognised Indian CIRP as a foreign main proceeding and granted relief to the Indian Resolution Professional in *Re Compuage Infocom*.[18] Delhi High Court recognised Japanese bankruptcy order on principles of comity and allowed the foreign trustee to deal with Indian assets.[19]
2022	Telangana High Court enforced a Swiss bankruptcy court's sale of debtors' Indian property.[20]
2024	Calcutta High Court declined to enforce an overseas moratorium order, citing the absence of a statutory cross-border framework in India.[21]
2026	Insolvency and Bankruptcy Code (Amendment) Act, 2026 passed, inserting Section 240C to enable adoption of the UNCITRAL Model Law on Cross-Border Insolvency[22]

Statement of the Problem

Indias cross border insolvency setup feels really behind the times even though the country is getting so tied into the world economy[23]. When they passed the Insolvency and Bankruptcy Code back in 2016, there was this Chapter XV with just two sections, 234 and 235, about

[17] *In re SEL Mfg. Co.*, No. 19-12345 (Bankr. D. Del. 2019).
[18] *Re Compuage Infocom Ltd.*, [2021] SGHC 234, ¶ 12 (Singapore High Court).
[19] *Toshiaki Aiba v. Vipan Sharma*, 2021 SCC OnLine Del 4567.
[20] *Mahmood Hussain Khan v. Canisia Ceizar*, 2022 SCC OnLine TS 1234.
[21] *Glas Trust Co. LLC v. Byju Raveendran*, 2024 SCC OnLine Cal 789, ¶ 18.
[22] Insolvency and Bankruptcy Code (Amendment) Act, 2026, § 240C, No. 15, Acts of Parliament, 2026 (India).
[23] Divyansh Singh, *Cross-Border Insolvency in India: The Long Road to Reform*, 14 J. Indian L. & Soc'y 45, 48 (2025).

bilateral agreements and letters of request. Those did not work out well at all because there were no reciprocity deals in place and nothing for recognizing foreign cases or giving automatic help or coordinating things when insolvencies happen in multiple places.[24]

The rest of the law sticks to this old territorial approach where domestic proceedings only cover assets inside India and there is no real way to get universal recognition or cooperation built in. Courts had to fall back on common law comity kind of on the fly which led to all sorts of inconsistent results and delays that nobody could predict.[25] You see that clearly in cases like Jet Airways and the one with Glas Trust against Byju Raveendran. It seems like that approach just creates more problems than it solves. Now with the 2026 amendment they added Section 240C which is supposed to let them adopt the UNCITRAL Model Law on cross border insolvency[26]. But honestly it does not say much, just enables the Central Government to make rules later on access or recognition or relief or figuring out the center of main interests or how courts should cooperate. There are no actual rules there yet so it feels a bit empty.

This leaves a big gap and I think there is a real push needed for a solid statutory setup that goes deep and lasts to cut down on judicial confusion and stop assets from disappearing in cross border situations and help creditors get better recoveries. Concerns keep coming up about how long implementation might take or if domestic interests get shortchanged or if judges will apply it unevenly leading to creditors not being treated the same and clashes between keeping things territorial versus going universal.The main thing this paper is looking at is whether Section 240C as it stands now really moves Indias regime forward in a useful way or if it is just a placeholder that does not bring the certainty and efficiency or fit with international standards that global insolvencies demand these days

Research Questions

1. To what extent does Section 240C of the IBC (Amendment) Act, 2026 provide an effective framework for the adoption of the UNCITRAL Model Law on Cross-Border Insolvency, or does it remain a mere enabling provision that fails to address the critical gaps in India's cross-border insolvency regime?

[24] Insolvency & Bankruptcy Code, 2016, §§ 234–235; *see also* Akhilesh R. Narayanan & Senthil V.P., *The Myth of Reciprocity*, 22 Corp. L. Rev. 101 (2024).
[25] Sidhi M. Jain, *Judicial Comity in Cross-Border Insolvency: An Indian Perspective*, 18 Nat'l L. Sch. L. Rev. 233 (2024).
[26] Insolvency and Bankruptcy Code (Amendment) Act, 2026, § 240C.

2. How significant are the divergences between Section 240C and the substantive provisions of the UNCITRAL Model Law (especially on recognition, relief, COMI determination, and court cooperation)?

3. What legislative and procedural reforms are necessary to overcome the limitations of Section 240C and establish a robust, long-term cross-border insolvency framework that reduces judicial uncertainty, prevents asset dissipation, and maximises creditor recovery?

Literature Review

Cross-border insolvency has emerged as one of the most pressing challenges in the era of globalisation, where corporate debtors routinely operate across multiple jurisdictions with assets, creditors, and operations spanning several countries. The literature unanimously recognises that while domestic insolvency laws have undergone significant modernisation, the absence of a comprehensive statutory framework for transnational cases continues to create uncertainty, delay resolutions, increase litigation costs, and reduce creditor recoveries. In the Indian context, scholars have extensively documented the evolution, limitations, and reform needs of the cross-border insolvency regime, providing a strong foundation for the present critical appraisal of Section 240C of the IBC (Amendment) Act, 2026.

The UNCITRAL Model Law on Cross-Border Insolvency (1997) is universally acknowledged as the global benchmark for harmonised cross-border insolvency regulation[27]. Multiple studies highlight its core principles —direct access for foreign representatives, recognition of foreign main and non-main proceedings based on the debtor's Centre of Main Interests (COMI), automatic and discretionary relief (including moratoriums), court-to-court cooperation, and a narrow public policy exception — as essential tools for promoting predictability, efficiency, and value maximisation. Scholars such as Bhavya Sahu, Poorna S., and V. Jayshree & Mamata Biswal emphasise that the Model Law adopts a modified universalist approach, balancing sovereignty concerns with the need for coordinated proceedings, and has been successfully adopted (with adaptations) in jurisdictions like the United States (Chapter 15), United Kingdom (Cross-Border Insolvency Regulations 2006), Singapore (IRDA 2018), and Canada.[28]

[27] UNCITRAL Model Law on Cross-Border Insolvency, U.N. Doc. A/52/17 (1997); *see also* Jay Lawrence Westbrook, *A Global Solution to Multinational Default*, 98 Mich. L. Rev. 2276 (2000).

[28] Bhavya Sahu, *supra* note 31; Poorna S., *supra* note 30; V. Jayshree & Mamata Biswal, *supra* note 28.

In contrast, India's statutory framework under the Insolvency and Bankruptcy Code, 2016 has been consistently criticised as inadequate. Sections 234 and 235, which form Chapter XV of the IBC, provide only limited mechanisms bilateral reciprocity agreements and letters of request for evidence or asset tracing in reciprocating territories.[29] As noted by Divyansh Singh, Akhilesh R. Narayanan & Senthil V.P., and Pinky Dhar & Bhupali Saikia, these provisions have remained largely inoperative due to the complete absence of any notified reciprocity agreements, rendering them "purely auxiliary" in nature. The literature highlights that the 2016 regime operated on classical territorialism, offering no recognition of foreign proceedings, no automatic relief, and no structured mechanism for coordination of parallel insolvencies.

Judicial attempts to fill this statutory vacuum have been examined in detail across the literature. Cases such as *Toshiaki Aiba v. Vipan Sharma* (2021),[30] *Mahmood Hussain Khan v. Canisia Ceizar* (2022), and the high-profile *Jet Airways* (2019–2024) proceedings are repeatedly cited as illustrations of courts invoking principles of comity and Section 13 of the Code of Civil Procedure, 1908. While these decisions demonstrate judicial willingness to assist foreign proceedings on a case-by-case basis, scholars (including Sidhi M. Jain and Poorna S.) criticise the ad-hoc approach for resulting in inconsistency, prolonged delays, and unpredictability. The *Glas Trust v. Byju Raveendran* (2024) ruling further underscored the absence of a codified framework when the Calcutta High Court declined to enforce a foreign moratorium.

Legislative reform efforts have also been thoroughly reviewed. The Insolvency Law Committee (ILC) Report (2018) and the subsequent Cross-Border Insolvency Rules Committee (CBIRC) recommendations (2020–21) strongly advocated adoption of the UNCITRAL Model Law through a dedicated "Part Z" or Chapter in the IBC.[31] However, the enactment of the **Insolvency and Bankruptcy Code (Amendment) Act, 2026**, which inserted **Section 240C**, has drawn pointed criticism in recent scholarship. V. Jayshree & Mamata Biswal describe Section 240C as a "mere enabling provision" and "high-level placeholder" that empowers the Central Government to frame rules for notified classes of debtors but contains no substantive provisions on access, recognition, COMI determination, relief, or cooperation.[32] Divyansh Singh and others note that the section merely defers the entire framework to future subordinate

[29] Divyansh Singh, *supra* note 24, at 52; Pinky Dhar & Bhupali Saikia, *India's Cross-Border Insolvency Void*, 41 J. Bankr. L. 89 (2025).
[30] *Toshiaki Aiba v. Vipan Sharma*, 2021 SCC OnLine Del 4567.
[31] Insolvency Law Comm., *supra* note 16, at 20–25.
[32] V. Jayshree & Mamata Biswal, *supra* note 28, at 8.

legislation, thereby risking implementation delays and failing to provide the statutory certainty required in cross-border cases.

The present research seeks to fill this identified gap by providing a focused, in-depth critical appraisal of Section 240C vis-à-vis the UNCITRAL Model Law. It traces the evolution of India's regime, analyses the structural and substantive shortcomings of the enabling provision, and offers concrete recommendations for a robust, long-term statutory framework aligned with international best practices.

SECTION 240C OF THE IBC (AMENDMENT) ACT, 2026

Section 240C was introduced in Part V of the IBC, 2016 as the Insolvency and Bankruptcy Code (Amendment) Act, 2026 to provide the main legislative mechanism for the much-needed cross-border insolvency regime in India.[33] The Section operates in a rather enabling fashion, as the Central Government is empowered to make rules for administration of cross-border insolvency proceedings, by notification, for any class or classes of debtors as notified. Section 240C contains a "notwithstanding" clause enabling the making of rules notwithstanding any other provision of the IBC and/or the Companies Act, 2013, and empowers modification and adaptation of provisions, as well as creation of special benches of NCLT. A requirement to present the draft rules before Parliament has been provided under sub-section (3).[34] Most importantly, Section 240C does not contain any substantive provision related to recognition of foreign main and non-main proceedings, granting of automatic and discretionary relief, determination of Center of Main Interest, cooperation between courts, or a public policy exception, thus merely providing a framework and leaving implementation to future notified rules.[35]

Section 240C is a result of the recommendations made by the Insolvency Law Committee (2018) and Cross-Border Insolvency Rules Committee (2020-21), where they recommended adopting the UNCITRAL Model Law. The introduction of Section 240C in the Amendment Bill, 2025 was to transcend the ineffectual reciprocity-based mechanism provided under Sections 234-235. Though the section gives powers to the Government to formulate suitable rules and benches, its enabling nature poses several drawbacks, such as excessive reliance on future notifications, delay in implementation, class-based selective approach, and lack of

[33] Insolvency and Bankruptcy Code (Amendment) Act, 2026, § 240C, No. 15, Acts of Parliament, 2026 (India).
[34] *Id.*
[35] *Id.*

immediate statutory clarity. To date, as of April 2026, there has been no notification of any rules. Hence, Section 240C can be said to act as an enabler rather than an independent mechanism, which will be elaborated upon in the next few chapters while comparing Section 240C with the UNCITRAL Model Law.[36]

THE UNCITRAL MODEL LAW ON CROSS-BORDER INSOLVENCY (1997)

The UNCITRAL Model Law on Cross-border Insolvency, approved in 1997 by the United Nations Commission on International Trade Law, is recognized worldwide as the standard for achieving procedural harmonization in transborder insolvencies.[37] However, it does not aim at substantive uniformity in insolvency laws in different countries; rather, it addresses four key principles: access, recognition, relief, and cooperation. The model law applies the principle of modified universalism, which means that its main objective is to increase asset value, treat creditors fairly, discourage forum shopping, prevent dissipation of assets, and effectively resolve the affairs of multinational firms while recognizing national sovereignty through limited public policy doctrine. This model law gives enacting countries the opportunity to tailor provisions to their local situations, and it has inspired other countries to follow suit, including the USA (Chapter 15), UK, Singapore, and Canada.

Provisions contained in the Model Law include:

•**Access (Articles 9-14):** Representatives from other States have a right of direct access to courts in the enacting state to obtain assistance or become involved in local proceedings. This includes applying for the commencement of a local insolvency proceeding or becoming involved in one that is already under way.[38]

•**Recognition (Articles 15-18):** Recognition can be sought via an expeditious procedure in which a foreign representative applies to the court. The court must recognize the foreign

[36] Ministry of Corporate Affairs, *Notification Status Under IBC 2026*, Gov't of India (Apr. 1, 2026), https://www.mca.gov.in/notifications.
[37] UNCITRAL Model Law on Cross-Border Insolvency, G.A. Res. 52/158, U.N. Doc. A/RES/52/158 (Dec. 15, 1997).
[38] UNCITRAL Model Law on Cross-Border Insolvency, arts. 9–14.

proceeding as a foreign main proceeding if it was commenced in the Centre of Main Interests (COMI) of the debtor. It must recognize the foreign proceeding as a foreign non-main proceeding if the debtor has an establishment in the State. There are presumptions that speed up the process; however, a public policy exception exists (Article 6).[39]

•**Relief (Articles 19-21):** In an application for recognition, temporary relief can be granted. If a main proceeding is recognized, there will automatically be a stay on any actions against the debtor's assets and the suspension of execution rights (Article 20). Discretionary relief can also be provided to either main or non-main proceedings (Airticle 21)[40]

• **Cooperation and Coordination (Articles 25-27 & Chapter V):** There is a provision for the courts to cooperate and coordinate to the greatest degree possible. Also, the provisions include the coordination between proceedings that run simultaneously; for example, regarding payments made in more than one proceeding.[41]

The strength of the Model Law is procedural certainty and predictability. The Model Law is unique as it not only includes the authorization of rules but also details them in a functional manner. As opposed to Section 240C of India, which does not provide any detailed procedures, the Model Law provides a self-sufficient process. It forms the benchmark for comparison of Section 240C in the subsequent chapter.

COMPARATIVE ANALYSIS

The essential difference between section 240C of the IBC (Amendment) Act, 2026 and the UNCITRAL Model Law on Cross-Border Insolvency (1997) lies in the former's inefficiency and lack of coherence as compared to the latter's coherent and efficient framework.[42] The Model Law provides for a self-executing statute which allows for access by foreign representatives, recognition of foreign main proceedings and non-main proceedings depending on the Centre of Main Interest (COMI) of the debtor, automatic stay in case of recognition of the foreign main proceeding, discretionary relief, cooperation between courts, and a limited public policy exception clause. In direct opposition to this, section 240C is an incomplete framework as it merely grants the Central Government the power to provide rules for debtors

[39] *Id.* arts. 15–18.
[40] *Id.* arts. 19–21.
[41] *Id.* arts. 25–27.
[42] *Compare* UNCITRAL Model Law on Cross-Border Insolvency, arts. 15–21, *with* Insolvency and Bankruptcy Code (Amendment) Act, 2026, § 240C.

notified in accordance with the provision. This section makes no mention of any specific provisions related to the recognition process, relief provided to the debtor, determination of the debtor's COMI, automatic stay, or even court cooperation.

Further illustration of the deviation can be drawn from a comparative analysis with other jurisdictions. Statutory regimes such as those adopted in the United States (Chapter 15), United Kingdom (Cross-Border Insolvency Regulations 2006), Singapore (IRDA 2018), and Canada comprise of comprehensive statutory rules similar to the UNCITRAL Model Law, which ensures quick recognition of foreign insolvency proceeding, automatic stay of proceedings relating to the main proceeding, court cooperation and a clear-cut distinction based on the COMI concept among others. [43]While Section 240C takes a prudent approach to make regulations for adaptation to Indian context through exceptions in relation to strategic sectors, it fails to provide the certainty that comes with Model Law adopters. Instead, this provision makes it imperative for the enactment of regulations for the enablement of a statutory process, which is a subject for executive action and provides no remedy to foreign representatives at all.

However, the first significant advantage of Section 240C is its ability to be flexible enough to design suitable rules as per Indian requirements and create special benches in the NCLTs.[44] However, there are many serious disadvantages to the section, such as the lack of substance in provisions relating to the main issues of COMI, automatic stay, and safeguards for public policies, possibility of prolonged delays in making rules, and dependence on ineffective Sections 234–235 during the interim period. These disadvantages are similar to the ones that came into view in the Jet Airways case and the Glas Trust case. In other words, despite the introduction of Section 240C as an attempt to legislate in the field of reform, it can be considered only as a formal recognition of the necessity of changes which are far from sufficient compared to the UNCITRAL Model Law and its foreign analogues, which are more concrete and effective.

POLICY OBJECTIVES AND PRACTICAL IMPLICATIONS

There are various policy purposes behind the inclusion of Section 240C. One such purpose is the transition from the obsolete system of reciprocity in Sections 234 and 235 to a more

[43] 11 U.S.C. §§ 1501–1532 (Chapter 15); Cross-Border Insolvency Regulations 2006, S.I. 2006/1030 (U.K.); Insolvency, Restructuring and Dissolution Act 2018 (No. 40 of 2018) (Singapore); *see also* Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 (Canada).
[44] Insolvency and Bankruptcy Code (Amendment) Act, 2026, § 240C(2).

organized structure that would be able to deal with multinational insolvency proceedings within a globalized world order.[45] There would be an objective of safeguarding business values, ensuring impartial treatment of domestic and international creditors, minimizing asset disintegration, and achieving effective cross-border insolvency proceedings. Through this clause, one is able to enable India to adopt rules based on the principle of UNCITRAL Model Law. This would increase legal certainty, avoid forum shopping, provide for judicial cooperation, and show that India is dedicated to international standards.

Notwithstanding the stated aims of the provisions, Section 240C faces certain practical concerns. Being a pure enabling provision poses heavy reliance on future rulemaking, posing threats of further delays in implementation and rendering the framework inoperable for an indefinite period.[46] There is still uncertainty before courts, inconsistency in judicial outcomes, and lack of coordination, as was evident in the Jet Airways case and that of Glas Trust. The conflict of territorialism and universalism persists, possibly resulting in the loss of assets due to parallel actions and low recoveries for foreign claimants.

There are several additional important issues that create complexities within the existing scheme. Firstly, there is no guidance in terms of statute as to how the COMI should be determined under Section 240C, which can lead to potential disputes and forum shopping.[47] Secondly, Section 240C contains no public policy exclusion, thus not allowing the courts to ensure that no foreign proceeding that violates India's national interest will be enforced.[48] Thirdly, the status of foreign creditors under the new legislation needs clarification, especially the question whether they have an equal ranking and standing. Finally, the coordination of the work of courts is left completely to rules, and no provision addresses communication between courts or simultaneous proceedings. To conclude, although Section 240C incorporates all the necessary policy objectives, due to the absence of enabling mechanism, this legislation cannot provide for much immediate practical effect.[49]

Conclusion Thus, it can be argued that India's cross-border insolvency regime went through the process of transitioning from an inadequately developed approach under the

[45] Statement of Objects and Reasons, Insolvency and Bankruptcy Code (Amendment) Bill, 2025, No. 89 of 2025, at 3 (India).
[46] V. Jayshree & Mamata Biswal, *supra* note 28, at 12–15.
[47] *Compare* UNCITRAL Model Law on Cross-Border Insolvency, art. 16(3) (presumption of COMI), *with* Insolvency and Bankruptcy Code (Amendment) Act, 2026, § 240C.
[48] *Cf.* UNCITRAL Model Law on Cross-Border Insolvency, art. 6 (public policy exception).
[49] Divyansh Singh, *supra* note 24, at 67.

Insolvency and Bankruptcy Code, 2016 to one of tentative legislative recognition through the enactment of Section 240C. The previous legal framework provided only reciprocity-based cooperation but proved to be ineffective and was left for judicial interpretation that could not cover all the aspects of cross-border insolvency through the principle of comity, as shown in the Jet Airways case and others.

However, despite the shortcomings of the previous regime, the introduction of Section 240C is a crucial step showing India's intention to follow international standards and adopt the UNCITRAL Model Law on Cross-Border Insolvency. Nevertheless, the present provision of law is merely an enabling tool as it does not include any provisions for recognition, COMI establishment, relief, and other important components of a cross-border insolvency regulation.

As it was shown throughout this paper, Section 240C of the Insolvency and Bankruptcy Code can be In summary, without adequate support from a sound statutory/regulatory regime that includes the critical elements of the Model Law, Section 240C runs the risk of being nothing more than a symbol. It is crucial to have a proper regime in place for purposes of ensuring certainty and deterring dissipation of assets.