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A COMPARATIVE ANALYSIS OF INDIA'S INSOLVENCY AND BANKRUPTCY CODE AND ITS IMPLICATIONS FOR SAARC COUNTRIES

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ABSTRACT

The growing globalization of business and interconnected multinational structures have made cross-border corporate insolvency a major pain point in international economic law.[1] Within the SAARC region, where capital moves rapidly across borders, a clear and harmonized insolvency framework is essential to protect creditors, preserve asset value, and promote regional economic stability. This research presents a holistic comparative analysis of India's Insolvency and Bankruptcy Code, 2016, focusing on its cross-border effectiveness and implications for SAARC countries.[2] While the IBC successfully shifted India from a debtor-in-possession to a creditor-in-control regime, its cross-border provisions (Sections 234 and 235) remain largely inoperative.[3] These sections depend on bilateral reciprocal treaties, none of which have been negotiated with any SAARC member state, creating significant legal barriers.

[1] UNCITRAL, *Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation* (2014) 21.

[2] Insolvency and Bankruptcy Code 2016.

[3] ibid, ss 234–235.

The study examines the divergent insolvency regimes across the region: Pakistan's debtor-in-continuation model under the Corporate Restructuring Companies Act, 2016 (and its 2025 reform proposals)[4], the inefficiencies in Bangladesh's Bankruptcy Act, 1997,[5] Sri Lanka's ongoing Law Commission proposals driven by sovereign debt issues,[6] and the challenges posed by Nepal's Insolvency Act, 2006 for Indian multinationals.[7] This fragmentation, combined with the lack of a unified cross-border mechanism, hinders South Asian economic integration and discourages intra-regional foreign direct investment.

The dissertation also analyses the evolution of Indian cross-border insolvency jurisprudence, contrasting innovative judicial approaches in the Jet Airways case[8] with the limitations of judicial comity evident in the BYJU's saga.[9] It critically evaluates the Insolvency and Bankruptcy Code (Amendment) Act, 2026, which introduces Section 240C and delegates rule-making power to the Central Government. However positive, this approach has been critically considered inadequate and inferior to the direct statutory inclusion of "Draft Part Z," based on the Modified Universalism principle of the UNCITRAL Model Law.

This research concludes with recommendations to build a SAARC Insolvency Protocol, create efficient and specialized Alternate Dispute Resolution (ADR) procedures through the SAARC Arbitration Council, and the prompt adoption of Draft Part Z into the IBC. South Asia may lessen judicial fragmentation, improve creditor protection, and promote sustainable economic growth by shifting from bilateral reciprocity to regional harmonization.

KEYWORDS

Insolvency, Bankruptcy, Modified Universalism, SARFAESI Act, Insolvency and Bankruptcy Code, 20216, The South Asian Association for Regional Cooperation, SAARC Arbitration Council (SARCO), South Asian Free Trade Area (SAFTA), Waterfall Mechanism, Debtor, Creditor, The United Nations Commission on International Trade Law, UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation, International Treaties, Sick Industrial Companies (Special Provisions) Act, Bilateral Treaties, Cross-Border Trade, Mutual Legal Assistance Treaties (MLATs), Corporate Insolvency Resolution Processes (CIRPs).

[4] Corporate Restructuring Companies Act 2016 (Pakistan); *see also* Securities and Exchange Commission of Pakistan, 'Consultation Paper on Proposed Amendments to the Insolvency Framework' (March 2025).
[5] Bankruptcy Act 1997 (Bangladesh); *see also* Draft Insolvency and Bankruptcy Ordinance 2025 (Bangladesh).
[6] Law Commission of Sri Lanka, 'Proposed Reforms to the Corporate Insolvency Regime in Light of the Sovereign Debt Restructuring' (Report, 2024).
[7] Insolvency Act 2063 (2006) (Nepal).
[8] *Jet Airways (India) Ltd (Offshore Regional Hub) v State Bank of India* 2019 SCC OnLine NCLAT 512.
[9] *Glas Trust Company LLC v Think & Learn Pvt Ltd (Byju's)* 2024 SCC OnLine SC 9986.

METHODOLOGY

This dissertation not only uses statutes and legislation, but utilizes doctrinal analysis, comparative legal study, landmark judgements and macroeconomic policy principles. The study relies on primarily domestic statutes of various jurisdictions i.e. all SAARC nations. It further uses international treaties, tax law principles, and empirical data to evaluate how insolvency legal frameworks function across South Asia. In doing so, this research attempts to create a nuanced repository of South Asian comparative insolvency legislative frameworks. The references in this dissertation are expounded using the Oxford Standard for Citation of Legal Authorities (OSCOLA) formatting for all citations, tables of cases, and statutory references.

The study aims to directly evaluate the principal hypothesis: India does not have a UNCITRAL-based cross-border insolvency process, which makes it harder for the SAARC bloc,[10] to work together economically. This makes foreign creditors and Indian multinational companies more likely to be hurt by broken-up, value-destroying territorial proceedings.**INTRODUCTION**

The first chapter of the dissertation sets the foundation for this dissertation by discussing the historical, economic, and theoretical bases of corporate insolvency legislation in India and the SAARC region. The analysis in the chapter begins by explaining the pre-2016 setting, when India's insolvency structure was in a nascent and fragmented stage. Statutes were not only multiple but even overlapping, from the Enterprises Act, the Sick Industrial Companies (Special Provisions) Act (SICA), to the SARFAESI Act, which together regulated distressed enterprises.[11] This multiplied conundrum led to degradation of significant value, and the eventual redundancy in litigation. The worst thing that may happen is that defaulting promoters could keep control of distressed assets for years, which would hurt the domestic credit market.

The chapter then analyses the transformative shift brought about by the Insolvency and Bankruptcy Code (IBC), 2016.[12] The IBC replaced the old debtor-in-possession model with a modern creditor-in-control regime. Its central objective encompasses time-bound resolution of distressed assets to maximise enterprise value, promote entrepreneurship, and ensure fair treatment of all stakeholders through a clear priority waterfall, serving as the benchmark against which all later cross-border developments will be assessed.

To ground the analysis academically, the following chapter draws heavily on the "Law and Finance" literature, particularly the influential work of La Porta, Lopez-de-Silanes, Shleifer, and Vishny[13]. Their research demonstrates that strong creditor protections and effective bankruptcy laws are essential for financial market development, deeper debt markets, and greater international investment. In the SAARC context, the absence of predictable cross-border insolvency mechanisms acts as a major barrier to intra-regional capital flows and

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[10] Insolvency Law Committee, *Report on Cross Border Insolvency* (Ministry of Corporate Affairs, 2018) 7 (recommending the adoption of the UNCITRAL Model Law to enhance economic integration).

[11] Companies Act 1956; Sick Industrial Companies (Special Provisions) Act 1985; Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002.

[12] *Swiss Ribbons (P) Ltd v Union of India* (2019) 4 SCC 17 (explaining the shift from the 'debtor-in-possession' to 'creditor-in-control' model).

[13] Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer and Robert W Vishny, 'Law and Finance' (1998) 106 Journal of Political Economy 1113. See also Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer and Robert W Vishny, 'Legal Determinants of External Finance' (1997) 52 Journal of Finance 1131

investment.

Building on this foundation, the chapter explores the fundamental tension in international insolvency law between “Territorialism” and “Universalism.”[14] Often called the “grab rule”, territorialism allows each country to seize and distribute only the assets located within its borders, usually favouring local creditors. This approach frequently destroys overall value by breaking up viable global businesses. In contrast, pure Universalism calls for a single insolvency proceeding in the debtor’s home jurisdiction that governs all assets and creditors worldwide.

The chapter explains how modern international commercial law was influenced by the UNCITRAL Model Law on Cross-Border Insolvency (1997) to be expanded towards a new form of compromise commonly referred to as “Modified Universalism.”[15] Under this approach, the main proceeding is conducted in the debtor’s Centre of Main Interests (COMI), while secondary (non-main) proceedings in other jurisdictions protect local interests and cooperate with the primary process. It concludes by framing the central research question that runs throughout the dissertation: H*ow does the current territorial architecture of India’s IBC hinder the adoption of Modified Universalism in the South Asian economic corridor, and what legislative and institutional reforms are needed to overcome these limitations?*

CHAPTER 1

THE RECIPROCITY MODEL AND THE UNCITRAL ALTERNATIVE

Today’s global economy is more interconnected than ever before, wherein corporate debtors rarely confine their assets, creditors, subsidiaries, operations, or supply chains within the borders of a single sovereign state. Talking about the SAARC region itself, multinational enterprises here frequently rely on complex cross-border financing arrangements, international bond issuances, and widely dispersed networks of creditors spread across multiple jurisdictions. This means that when these entities face financial hardship, purely domestic insolvency laws reveal their clear limitations. Domestic tribunals are suddenly plunged into a web of complex challenges: they need to determine jurisdictional authority, recognise foreign court orders and moratoriums, all while preserving and repatriating offshore assets, preventing forum shopping, and coordinating concurrent proceedings that may bring conflicting outcomes.

India’s Insolvency and Bankruptcy Code (IBC), 2016, was the catalyst behind transforming the domestic insolvency regime[16] by replacing the old debtor-friendly system with a modern, time-bound, creditor-in-control framework. It has resulted in better recovery rates, stronger creditor discipline, and greater confidence in the domestic credit market. Yet, when it comes to cross-border insolvency, the IBC’s architecture is limited

[14] Jay Lawrence Westbrook, ‘A Global Solution to Multinational Default’ (2000) 98 Michigan Law Review 2276.
[15] *Re HIH Casualty and General Insurance Ltd* [2008] UKHL 21 (providing a classic judicial definition of modified universalism).
[16] Insolvency and Bankruptcy Code 2016.

by its foundationally outdated territorial approach. This traditional approach[17] allows each jurisdiction to seize and distribute only those assets located within its own territory, typically prioritising local creditors. This approach leads to the fragmentation of the enterprise and undermines the ability to preserve the business as a viable global going concern.

This chapter undertakes a detailed examination of the existing cross-border provisions in the IBC — specifically, Sections 234 and 235. Both of these sections allow the Central Government to enter into bilateral reciprocal agreements and let Indian Courts issue letters of request to courts outside Indian jurisdiction. These sections, however, lack efficacy due to the lack of any such reciprocal treaties with SAARC member states. The end result is a figurative "locked door" that leaves multinational creditors and Indian entities with limited choice when it comes to international asset recovery mechanisms.

The research then goes on to compare India's territorial structure with the modern principle of "Modified Universalism", as promoted by the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross-Border Insolvency (1997). The idea behind Modified Universalism is to find a balance between efficiency and fairness by identifying a major insolvency proceeding centred around the debtor's Centre of Main Interests (COMI). It does so while curbing other non-essential proceedings in other jurisdictions to protect local interests and facilitate cooperation.

The chapter's main argument is that the establishment of a robust and enforceable cross-border insolvency protocol as an essential element of the SAARC legal cooperation framework can no longer be delayed. As intra-regional trade continues to grow at an exponential rate, such an insolvency mechanism would serve as a vital complement to existing regional investment treaties and economic cooperation agreements. It would further help reduce legal ambiguity, value destruction, and therefore promote a less volatile investment environment in South Asia.

The "Locked-Door" of Sections 234 and 235

The exact language of the two enabling clauses, Section 234 and Section 235, must be examined in order to comprehend the structural limits of India's current cross-border insolvency process[18].

Section 234 (Agreements with foreign countries) provides:

1. *The Central Government may enter into an agreement with the Government of any country outside India for enforcing the provisions of this Code.*
2. *The Central Government may, by notification in the Official Gazette, direct that the application of provisions of this Code in relation to assets or property of a corporate debtor situated at any place in a country outside India with which reciprocal arrangements have been made, shall be subject to such*

[17] Jay Lawrence Westbrook, 'A Global Solution to Multinational Default' (2000) 98 Michigan Law Review 2276, 2277.
[18] ibid, s 235.

conditions as may be specified.

Section 235 (Letter of request to a country outside India in certain cases) then establishes the procedural route for asset recovery. It states that if a resolution professional believes assets are situated in a country "with which reciprocal arrangements have been made under section 234," they may apply to the Adjudicating Authority (the NCLT) to issue a formal letter of request to a foreign court:

1. *Notwithstanding anything contained in this Code or any law for the time being in force if, in the course of insolvency resolution process, or liquidation or bankruptcy proceedings, as the case may be, under this Code, the resolution professional, liquidator or bankruptcy trustee, as the case may be, is of the opinion that assets of the corporate debtor or debtor, including a personal guarantor of a corporate debtor, are situated in a country outside India with which reciprocal arrangements have been made under section 234, he may make an application to the Adjudicating Authority that evidence or action relating to such assets is required in connection with such process or proceeding.*
2. *The Adjudicating Authority on receipt of an application under sub-section (1) and, on being satisfied that evidence or action relating to assets under sub-section (1) is required in connection with insolvency resolution process or liquidation or bankruptcy proceeding, may issue a letter of request to a court or an authority of such country competent to deal with such request.*

The fundamental legislative flaw in these sections is that they compel time-sensitive commercial recoveries to face the wrath of the cumbersome and heavily-politicised system of international diplomacy.[19] The statutory provision of "reciprocal arrangements" makes the extension of IBC's territorial reach entirely contingent on the precedent set by a prior negotiation of bilateral treaties by the executive branch.

This serves as a major blockade. At its core, the negotiation of bilateral treaties is asymmetric and time-consuming, requiring two sovereign states to align their economic policies, legal structures, and geopolitical interests. Despite the IBC having been in force for nearly a decade, the Government of India has not successfully negotiated or operationalised a single bilateral insolvency treaty with any foreign nation, let alone any SAARC member state.

The Procedural Failure of "Letters of Request"

In a scenario in which a bilateral treaty exists, Section 235 would still suffer from procedural issues. suffers from serious procedural shortcomings, as the section relies on Letters Rogatory, or "letters of request", i.e. those that are issued from domestic courts to foreign courts. Historical evidence proves that its mechanism is slow, ambiguous, without explicit standards for timelines. Corporate restructuring can face the erosion of enterprise value almost on a daily basis, which means that the sole dependence on diplomacy is counterproductive and undermines the entire goal of the IBC to provide time-sensitive value increase.

[19] Insolvency Law Committee, *Report on Cross Border Insolvency* (Ministry of Corporate Affairs, 2018)

In the end, Indian insolvency practitioners looking to recover assets in nearby jurisdictions, seeking to recover assets in neighbouring jurisdictions are basically trapped behind a locked door. Section 235 cannot function effectively without the presence of a treaty, and would inevitably lead to asset dissipation and major prejudice to creditor rights.

Judicial Comity as a Stopgap

The lack of well-functioning bilateral treaties renders Indian tribunals heavily dependent on the common law doctrine of Judicial Comity.[20] Comity refers to a nation's recognition and legitimisation of the legislative, executive, or judicial acts of another nation, out of international obligation.

This judicial framework reached its peak in the landmark *Jet Airways* litigation[21]. When parallel proceedings were opened in India and the Netherlands, the NCLAT approved a thorough Cross-Border Insolvency Protocol that recognised the foreign representative and coordinated overseas asset realisation. Other comparable approaches appeared in the *Videocon Industries* case,[22] which caused substantive consolidation of group companies.

However, case-by-case judicial precedents lead to inconsistent jurisprudence and deprives the framework of the predictability that the international capital market requires. The limitations of comity were clearly exposed in recent judicial disputes. In *Mahmood Hussain Khan v. Madam Canisia Ceizar*, the High Court acknowledged Swiss proceedings but granted only limited relief [23] due to the lack of any existing statutory framework. More prominently, in the *BYJU's* case (*Glas Trust Corporation v. BYJU Raveendran & Ors.)*, the Calcutta High Court held that Indian courts have no legal obligation to give recognition to foreign moratoriums or stay domestic suits[24]. These rulings are inherently contradictory in nature and demonstrate that temporary judicial comity cannot replace the need for a permanently-established legislative certainty required by global investors. Legal and judicial precedents are therefore inadequate, and only permanent language etched in statute can provide long-term relief.

The UNCITRAL Alternative: Principles of Modified Universalism

On one hand there is the stagnant, treaty-dependent nature of Sections 234 and 235, and on the other there's the UNCITRAL Model Law on Cross-Border Insolvency (1997) that provides a comprehensive, globally tested solution.[25] Adopted by over fifty jurisdictions, including major markets such as the United Kingdom, Singapore, and the United States, the Model Law allows nation states to build a modern, holistic and harmonious structure that fosters international cooperation between interjurisdictional courts without the need

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[20] *Hilton v Guyot* 159 US 113 (1895) (The classic definition of comity used in international law).
[21] *Jet Airways (India) Ltd (Offshore Regional Hub) v State Bank of India* 2019 SCC OnLine NCLAT 512.
[22] *State Bank of India v Videocon Industries Ltd* 2019 SCC OnLine NCLT 745.
[23] *Mahmood Hussain Khan v Madam Canisia Ceizar* [2022] 1 Bom CR 177.
[24] *Glas Trust Company LLC v Think & Learn Pvt Ltd (Byju's)* 2024 SCC OnLine SC 9986. *See also* earlier orders in *Glas Trust Company LLC v BYJU Raveendran & Ors* (2024) High Court of Calcutta.
[25] UNCITRAL, *Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation* (2014).

for diplomatic reciprocity.

The Model Law rejects the rigidity of territorialism in favour of the principle of Modified Universalism.[26] It recognises that the ideal of a unified global proceeding i.e. Universalism is impractical due to the inherently differential nature of national policies. Nevertheless, it builds concurrent proceedings for effective coordination. This dissertation organises its argument around the UNCITRAL framework, compiling Model Law articles into four foundational pillars: Access, Recognition, Relief, and Cooperation.[27]

Pillar I: Access

The Model Law articles 9 and 11 ("Arbitration agreement and interim measures by court" and "Appointment of arbitrators" respectively) provide foreign representatives with direct access to domestic courts in order to initiate proceedings or seek assistance, hence doing away with the need for diplomatic intervention or Letters Rogatory.

Pillar II: Recognition

The Model Law provides a streamlined and straightforward road for proceedings. Domestic courts classify foreign proceedings as either "Foreign Main Proceedings" (based on the debtor's COMI) or "Foreign Non-Main Proceedings" (based on the presence of an "establishment"). This objective test removes the need for political discretion.

Pillar III: Relief

By recognising a Foreign Main Proceeding, Article 20 directly imposes an automatic stay (moratorium) on an individual, domestic creditor's actions, executions, and asset transfers. This leads to the creation of "breathing space" for a global restructuring plan. Discretionary relief is also provided to Non-Main proceedings.

Pillar IV: Cooperation and Coordination

The Model Law authoritatively promotes direct communication between domestic and foreign courts and representatives, thus enabling seamless administrative processing of concurrent proceedings and equitable distribution among the global creditor body.

It is crucial to note that the UNCITRAL Model Law is deliberately neutral on reciprocity. It stands on the foundational idea that the benefits from efficient cross-border resolutions such as increased recovery rates, preserved enterprise value, and improved investor confidence, are far more important than any theoretical political costs that come along with it.

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[26] *Re HIH Casualty and General Insurance Ltd* [2008] UKHL 21.

[27] UNCITRAL Model Law (n 11) arts 9, 15, 20, 25.

Intersecting Regional Trade and Investment Frameworks in SAARC

The need for UNCITRAL-supported reforms becomes even clearer when we view it alongside SAARC's current mechanisms. The South Asian Free Trade Area (SAFTA)[28] aims to enable more efficient intra-regional trade, yet SAARC remains one of the world's least integrated and most fragmented regions. SAARC member states' intra-regional trade accounts for a meagre 5–5.8% of their total trade. Inadequate legal protections for cross-border capital only worsen this disconnect in cross-border trade in South Asia.

Since there is no unified regional investment treaty in South Asia, Bilateral Investment Treaties (BITs) become ever more crucial.[29] India's 2016 Model BIT and subsequent treaty terminations have shifted the axis towards prioritisation of host-state regulatory space. The India-Bangladesh 2009 Bilateral Investment Promotion and Protection Agreement (BIPA) narrows the definitions of *investor* and *investment*, restricts the Fair and Equitable Treatment standard, and excludes pure commercial contract claims.[30] These inadequacies have had real consequences. Following the political regime change in Bangladesh in 2024, Indian power and infrastructure corporations worth an approximate US$3 billion in foreign direct investments have suffered severe payment delays.[31] Without a reliable cross-border insolvency mechanism, Indian resolution professionals have no effective statutory route to enforce resolution plans or recover assets across the Indian border.

Insolvency Law as an Indispensable Corollary to Trade

This chapter demonstrates that the reciprocity-dependent structure of Sections 234 and 235 is fundamentally incompatible with modern transnational commerce in the SAARC region. The failure to operationalise bilateral treaties leaves multinational restructurings in a legal vacuum, forcing reliance on unpredictable judicial comity. At the same time, regional trade agreements such as SAFTA and restrictive BITs like the India-Bangladesh JIN do not provide adequate safety nets during corporate distress.

A codified cross-border insolvency regime aligned with the Modified Universalism and reciprocity-neutral principles of the UNCITRAL Model Law is therefore not merely a technical improvement to the IBC, but rather it is an indispensable corollary to effective international trade treaties. Without it, SAARC's regional economic integration will continue to stagnate.

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[28] *Agreement on South Asian Free Trade Area* (signed 6 January 2004, entered into force 1 January 2006).

[29] Ministry of Finance (Govt of India), 'Model Text for the Indian Bilateral Investment Treaty' (2016).

[30] *Joint Interpretative Notes on the Agreement between the Government of the Republic of India and the Government of the People's Republic of Bangladesh for the Promotion and Protection of Investments* (signed 4 October 2017).

[31] World Bank, *Bangladesh Development Update* (October 2025) 18.

CHAPTER 2

CORPORATE INSOLVENCY JURISPRUDENCE ACROSS SAARC

This chapter provides a detailed comparative analysis of corporate insolvency regimes across the SAARC region. The chapter uses statutory provisions, World Bank's rankings on resolving insolvency as well as other insights into legal environments to make its arguments. The examination leads to the discovery of further fragmentation.[32] Again, South Asia lacks a collaborative, unified way to address corporate issues. The frameworks vary from modern creditor-controlled systems to the age-old frameworks that promote debtor imprisonment. This legal heterogeneity is the biggest hurdle in the creation of an all-encompassing insolvency protocol in the SAARC region. Multinational corporate entities and cross-border creditors are forced to face regulatory uncertainty, unpredictable timelines and outcomes, all of which reduce the scope of intra-regional trade and investment.[33]

India's Evolving Framework

The comparative analysis of framework begins firstly with India's Insolvency and Bankruptcy Code, 2016, which serves as the regional benchmark for further analysis. Prior to the IBC, insolvency law was scattered across the provisions in the Companies Act, the Sick Industrial Companies (Special Provisions) Act (SICA), and the SARFAESI Act. This fragmentation led to immense information asymmetries and value depletion. The IBC marked a fundamental shift to a sophisticated creditor-in-control model[34] designed to tackle the banking sector's vast Non-Performing Assets (NPAs).

Despite the presence of these reforms, India's was ranked at a shocking 108 among all countries in the World Bank's 2019 Ease of Doing Business index[35]. Average resolution timeline for disputes continues to be a critical issue. The statutory target for resolution was originally set at 330 days, but actual Corporate Insolvency Resolution Processes (CIRPs) have taken more than 4.3 years to reach resolutions[36].

The "Haircut" Controversy and the 2026 Amendment Act

Another huge problem with the IBC is that financial creditors often have to agree to a big "haircut" in resolution plans. This means that in the best case scenario, they only get back a little more than the liquidation value in order to allow viable businesses to continue as going concerns. This technique has only exacerbated the issue around fair distribution of losses, especially since public sector banks are heavily exposed and their write-downs ultimately cost taxpayers money.

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[32] World Bank, *Doing Business 2019: Training for Reform* (2019) 5.

[33] Asian Development Bank, *South Asia Economic Report: Regional Integration and Growth* (2025) 112.

[34] *Swiss Ribbons (P) Ltd v Union of India* (2019) 4 SCC 17.

[35] World Bank (n 34). This dissertation includes the 2019 index since the Ease of Doing Business series was subsequently replaced by the Business Ready framework; India is expected to be assessed under the new insolvency pillar in the 2026 B-READY report.

[36] World Bank, Doing Business 2016: Measuring Regulatory Quality and Efficiency (2015), p. 67. This pre-IBC benchmark is routinely cited by the IBBI and Ministry of Corporate Affairs as the baseline against which the Code's performance is measured.

The Parliament passed the Insolvency and Bankruptcy Code (Amendment) Act, 2026 to address these specific systemic delays.[37] One major provision introduced in the Act was a strict 14-day admission window for financial creditors (using Information Utility records), along with the introduction of a new CIRP which permits dispute resolution outside of courts and helps bypass congested NCLT dockets. These reforms increase domestic efficiency, but the persistent lack of robust cross-border mechanisms still leaves domestic creditors at greater risk of exposure to foreign jurisdictions.

SAARC Country	Insolvency Legislation	Global Rank	Avg Time to Resolve
• **Maldives**	Companies Act, 1996	139	1.5 Years
• **Sri Lanka**	Companies Act No. 7 of 2007	88	1.7 Years
• **Nepal**	Insolvency Act, 2006	76	2.0 Years
• **Afghanistan**	Law of Insolvency and Bankruptcy, 2018	74	2.0 Years
• **Pakistan**	Companies Act / Restructuring Act, 2016	53	2.8 Years
• **Bangladesh**	Bankruptcy Act, 1997	152	4.0 Years
• **India**	Insolvency & Bankruptcy Code, 2016	108	4.3 Years

Table 1: Comparative Matrix of Insolvency Regimes in SAARC Nations, created from World Bank data and metrics, along with statutory guidance analysis

The Indo-Pak Contrast: Creditor-in-Control vs. Debtor-in-Continuation

Statutory Foundations

Pakistan's statutory doctrine offers a sharp contrast to India's. Pakistan's legal framework to address corporate insolvency is dominated primarily by the combination of the Companies Ordinance 1984, the Corporate Restructuring Companies Act 2016, and the Corporate Rehabilitation Act (CRA) 2018. Despite being an archaic corporate code in the overall sense, Pakistan stands at a surprising 53rd ranks with a faster resolution time of approximately 2.8 years[38].

The Debtor-in-Possession Model and 2025 Reforms

The main differentiating factor is Pakistan's "debtor-in-continuation" (or debtor-in-possession) model. While the IBC requires displacement of the board upon admission of a CIRP, Pakistan continues to permit running of the business by existing management.[39] The Securities and Exchange Commission of Pakistan licenses

[37] Insolvency and Bankruptcy Code (Amendment) Act 2026.
[38] World Bank (n 34); see also ResearchGate, 'Insolvency and Bankruptcy resolving process among South Asian Countries: A Comparative study' (2019).
[39] Companies Act 2017 (Pakistan); Corporate Rehabilitation Act 2018 (Pakistan).

specialised Corporate Restructuring Companies to play a pivotal role in acquisition and management of NPAs. In 2025, new reform proposals to the Corporate Rehabilitation Act led to further modernisation of the framework[40] by eliminating restrictive eligibility thresholds at the board-level and introducing judicial stay orders and insolvency mediation procedures.

Albeit rendered nearly impossible due to the lethal political aversion to conduct business, in case of a theoretical cross-border dispute scenario, the contrasting frameworks of both countries would certainly lead to serious friction. An Indian creditor-in-control Resolution Professional who tries to deal with a subsidiary operating under a debtor-in-possession plan in Pakistani jurisdiction, would have to face guaranteed legal uncertainty and incompatibility due to the lack of a unifying multilateral resolution framework.

Bangladesh: A System Bottleneck

Bangladesh is a complex regional market, with a global rank of 152[41] and an average resolution time of 4 years. The insolvency legislation in the country is largely obsolete, with the *de jure* framework resting upon an outdated Companies Act 1994 and the Bankruptcy Act 1997. [42] The latter is considered a 19th century legal artifact that focuses on punishment instead of corporate resolution.

In actuality, more than ninety percent of commercial banks in Bangladesh fully overlook the bankruptcy regime and proceed to pursue recovery via the Money Loan Court Act (Artha Rin Adalat Ain) of 2003.[43] This law provides for quicker debt enforcement but offers no corporate rehabilitation mechanism. This leads to an ever-increasing number of non-performing loans, especially in state-owned commercial banks.

After the political crisis of 2024 in Bangladesh and the interim government's call for reform, the country is working on passing the proposed legislation of the Insolvency and Bankruptcy Ordinance 2025 and the Bank Resolution Ordinance 2025.[44] Both these bills together aim to add a genuine corporate rescue culture to the country's legal framework and consolidate its current fragmentation. Until both bills are adopted, Indian creditors engaging in bilateral trade with Bangladesh will continue to be exposed to cross-border debt that is practically uncollectable.

Sovereign Default and Emerging Frameworks: Sri Lanka

Sri Lanka's current regime is based on the Companies Act No. 7 of 2007 [45] and the colonial-era Insolvency Ordinance 1853. While resolution timelines are relatively short (1.7 years), enforcement is weak and the law remains liquidation-focused with almost no modern rescue tools.

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[40] Securities and Exchange Commission of Pakistan, 'Consultation Paper on Proposed Amendments to the Corporate Rehabilitation Act' (2025).

[41] World Bank (n 34).

[42] Bankruptcy Act 1997 (Bangladesh).

[43] Arafat Ibnul Bashar, 'Recovery of Defaulting Bank Loans: A Critical Analysis of Legal Framework in Bangladesh' (SSRN Electronic Journal, 2024, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6313219) Accessed 1 April 2026.

[44] Ministry of Law, Justice and Parliamentary Affairs (Bangladesh), 'Draft Insolvency and Bankruptcy (Ordinance) Act 2025'.

[45] Companies Act No 7 of 2007 (Sri Lanka).

The country's 2022 sovereign default triggered a major rethink. With World Bank assistance, the Law Commission drafted the Rescue, Rehabilitation and Insolvency Bill (2024/2026).[46] The proposed legislation moves Sri Lanka away from pure liquidation toward a structured rescue culture aligned with global best practices.

Sovereign and corporate distress met midway in the *Hamilton Reserve Bank v. Democratic Socialist Republic of Sri Lanka* case in the U.S. District Court[47]. The court ordered a stay of enforcement on the grounds of comity, acknowledging the good faith precedent established by Sri Lanka in its handling of negotiations in the IMF programme. This judgement illustrates the need for certain, codified cross-border cooperation among the SAARC member states.

Restructuring in Nepal: An FMCG Case Study

The Insolvency Act 2006 of Nepal was a preliminary attempt at creating robust corporate restructuring legislation.[48] As per Section 32 of the Act, a restructuring manager can continue operations[49], borrow money, borrow funds, and adopt a judicially approved scheme. With an average resolution time of two years and a world ranking of 76, the domestic framework of Nepal is at best fifty percent efficient.

The practical implications of regional fragmentation are best depicted by taking into consideration a theoretical hypothesis involving a large Indian FMCG multinational company such as Dabur or ITC that has a major manufacturing subsidiary in Nepal. If the Indian parent company was to ever enter CIRP, the lack of a bilateral treaty or court-backed cross-border protocol would lead to two parallel and completely uncoordinated procedures. Nepalese creditors, incentivised by local law, can initiate aggressive asset-grabbing liquidation under Chapter 5 of the Nepalese Act. This scenario directly undermines the Indian Resolution Professional's ability to maximise enterprise value and highlights the urgent need for a harmonised SAARC protocol based on the UNCITRAL Model Law.

Divergent Extremes: Afghanistan, Bhutan, and the Maldives

Other member states of SAARC depict the full spectrum, giving a clearer picture of overall legislation. The Law of Insolvency and Bankruptcy 2018 in Afghanistan significantly raised its ranking to 74th[50] by prioritising secured creditors. The Bankruptcy Act 1999 Sections 146 to 148 in Bhutan, on the other hand, continues to push for archaic solutions that promote imprisonment for up to one year[51] as punishment for concealment of debt or for obtaining credit while undischarged. This imprisonment provision remains a practice that is incompatible with modern human rights standards and contemporary corporate rescue

[46] Law Commission of Sri Lanka, 'Rescue, Rehabilitation and Insolvency Bill' (Draft, 2024).
[47] *Hamilton Reserve Bank Ltd v Democratic Socialist Republic of Sri Lanka* No 22 Civ 5199 (SDNY 2023).
[48] Insolvency Act 2063 (2006) (Nepal).
[49] ibid, s 32 (Power of restructuring manager to borrow loan).
[50] Law of Insolvency and Bankruptcy 2018 (Afghanistan).
[51] Bankruptcy Act of the Kingdom of Bhutan 1999, ss 146–148.

solutions. The Maldives uses its Companies Act 1996.[52] Although it carries the SAARC region's quickest resolution timeline (a mere 1.5 years), the legal framework is outdated and inadequate when it comes to solving multi-jurisdictional corporate disputes.

The Imperative for Regional Harmonization

This research has so far shown comparative analysis that exposes deep legal asymmetries across the SAARC region. Corporate distress leads to multinational creditors navigating contradicting legal regimes, where there is India's rigid creditor mechanism, Pakistan's debtor-oriented provisional flexibility, Sri Lanka and its emerging corporate rescue environment, and Bangladesh with its archaic recovery mechanism. This multiplicity raises ambiguity, financial burden and cost of capital across the region.

Temporary judicial comity and theoretical treaties are not enough. Protecting multinational and cross-border assets requires SAARC to develop a unified insolvency program, or at the very least, India's adoption of UNCITRAL-supported cross-border legislative framework. This transformational step is the key to unlocking SAARC's true economic potential.

CHAPTER 3

COMMERCIAL ARBITRATION VERSUS COLLECTIVE INSOLVENCY

SAARC's intrinsic legal multiplicity as depicted in the prior chapters, is even more evident when commercial arbitration clauses are discussed. Cross-border contracts for trade, infrastructure expansion or for joint ventures, mostly contain arbitration agreements. Such clauses guarantee neutrality, confidentiality, and timely enforcement of awards, as per the New York Convention of 1958.[53] However, as soon as a debtor falls into financial distress and insolvency proceedings initiate, jurisdictional paradoxes entrenched in the system are exposed.

Chapter 3 explores this very concern. Arbitration is a confidential, party-led process that relies on contractual freedom and the legal principle of *pacta sunt servanda*[54]. Whereas insolvency is by nature a mandated, public statutory procedure that functions *in rem* to safeguard the debtor's estate and ensure equitable consideration of all creditors under the figurative statutory waterfall. As these two collide in the environment of transnational insolvency, the consequences determine whether recovery is possible or whether the foreign creditor will be entrapped in a protracted, multi-jurisdictional battle. The chapter aims to build an understanding of India's now-evolving position, global shifts in common-law thinking, and the unrealised potential and the untapped potential of the SAARC Arbitration Council in the resolution of these disputes.

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[52] Companies Act 1996 (Maldives).

[53] *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (New York, 10 June 1958) 330 UNTS 3 (New York Convention).

[54] For a general discussion on the sanctity of commercial contracts, see *Vienna Convention on the Law of Treaties* (1969) 1155 UNTS 331, art 26.

Section 238, In Rem Jurisdiction, and Indus Biotech

India is the SAARC region's anchoring economy, which has made its stance clear on the issue. Section 238 of IBC contains a specific non-obstante clause that the provisions of the IBC would override any inconsistent law, even the Arbitration and Conciliation Act, 1996.[55]

Conflict usually arises when a financial creditor files a CIRP application as per Section 7 or 9 of the Act, and the corporate debtor, in response, invokes Section 8 of the Act in order to refer the conflict to arbitration.[56] The Supreme Court provided a resolution for this clash in the landmark judgement of *Indus Biotech Private Limited v. Kotak India Venture (Offshore) Fund* (2021)[57].

In this case, Kotak India Venture Fund had made a subscription to receive the Optionally Convertible Redeemable Preference Shares (OCRPS) that were issued by Indus Biotech. Indus could not redeem the shares as per Kotak's terms and conditions, causing Kotak to trigger CIRP as per Section 7. Indus responded with an application under Section 8 with the argument that the conflict over the redemption should move to arbitration. NCLT had previously allowed arbitration and dismissed the petition for CIRP. This decision of the NCLT was consequently overturned by the Supreme Court, which set a strict procedural framework: Upon the admission of a CIRP by the Adjudicating Authority, the proceeding turns into an action *in rem.* This further causes the Section 14 moratorium, ceasing all pending litigation and arbitration. All Section 8 applications are thereby called off.

The Court further made it clear that in case a Section 7 application has not been admitted, the NCLT's first goal is to identify whether a default really exists. If it fails to establish a clear debt or default, the CIRP petition should be rejected and all parties should be deemed free to enter arbitration. This judgement shields the integrity of the entire insolvency process and prevents debtors from using arbitration as a tactic to cause delays in proceedings.

Arbitrability of Insolvency: The Vidya Drolia Doctrine

The decision given in the *Indus Biotech* case depends upon the larger concept of *arbitrability*, for which the Supreme Court's 2020 ruling provides a definitive framework in *Vidya Drolia and others v. Durga Trading Corporation*[58]. Although the case concerned tenancy disputes, the three-judge bench laid down a fourfold test to decide when a dispute cannot be resolved by arbitration:

1. When the cause of action relates to rights *in rem* rather than subordinate rights *in personam* arising from *in rem* rights.
2. When the dispute affects third-party rights, carries *erga omnes* effect, and requires centralised adjudication.

[55] Insolvency and Bankruptcy Code 2016, s 238; Arbitration and Conciliation Act 1996.
[56] Arbitration and Conciliation Act 1996, s 8.
[57] *Indus Biotech Private Limited v Kotak India Venture (Offshore) Fund* (2021) 6 SCC 436.
[58] *Vidya Drolia v Durga Trading Corporation* (2021) 2 SCC 1.

3. When it involves inalienable sovereign or public-interest functions of the State.
4. When the subject matter is expressly or by necessary implication made non-arbitrable by statute.

Corporate insolvency satisfies the first, second, and fourth limbs of this test. Because resolution affects a wide circle of stakeholders, such as financial and operational creditors, employees, tax authorities, and the broader economy. It demands centralised adjudication by the NCLT. A corporate debtor therefore cannot privately arbitrate its way out of the collective process overseen by the Committee of Creditors.

The Global Shift in Common Law: Deconstructing Sian v. Halimeda

The post-admission phase has been promptly settled under Indian law, but the pre-admission threshold has been ultimately shaped by changes in global common-law development. Pakistan, Bangladesh, and Sri Lanka still draw heavily from the English common-law precedents, which is why this shift brings even more relevance to the SAARC region's cross-border recovery proceedings.

The Salford Estates Paradigm

Up until 2024, the English Court of Appeal's decision in *Salford Estates (No 2) Ltd v. Altomart Ltd* was the legal precedent[59]. It basically established that if a creditor presented an almost completed petition based on a debt covered by an agreement brought about through arbitration, the court would automatically stay or dismiss the petition, without the need to confirm whether the debt was genuinely disputed on substantial grounds. The reasoning given for this was that creditors must not be allowed to overlook arbitration by the use of threat of liquidation as leverage. This pro-arbitration stance caused a major hurdle for creditors pushing debtors into insolvency where an arbitration clause existed.

The Privy Council's Departure in Sian

The British Privy Council later overturned this procedure in *Sian Participation Corp (In Liquidation) v. Halimeda International Ltd* [2024] UKPC 16.[60] This case revolved around a US$140 million loan (which eventually expanded toUS$226 million with interest) lent from Halimeda to Sian, a British Virgin Islands or BVI Business Company. The loan agreement contained a broad arbitration clause. When Sian defaulted, Halimeda sought the appointment of liquidators in the BVI. Sian opposed, citing the arbitration clause and *Salford Estates*.

The Privy Council unanimously held that *Salford Estates* had been wrongly decided. Presenting a winding-up petition does not breach the negative obligation in an arbitration agreement because the petition is not an attempt to resolve a contractual dispute; it is a collective statutory remedy triggered by the debtor's inability to pay. This new approach is straightforward: a winding-up petition should proceed unless the debtor can demonstrate that the debt is genuinely disputed on substantial grounds. Simply the existence of an arbitration

[59] *Salford Estates (No 2) Ltd v Altomart Ltd* [2014] EWCA Civ 1575.
[60] *Sian Participation Corp (In Liquidation) v Halimeda International Ltd* [2024] UKPC 16.

clause cannot be enough to stop the proceedings. The Board further emphasised that arbitration's core objectives of efficiency, party autonomy, and non-interference are not undermined if they allow a valid winding-up order.

Implications of Sian for SAARC Jurisdictions

The ruling given in the *Sian* case makes a powerful statement by protecting against exploitative delay tactics. Debtor companies could earlier halt any legitimate recovery by pushing for lengthy arbitration procedures to be held in London or Singapore, and dissipating the assets in that entire time window. Under this new standard, only genuinely and substantively disputed debts can justify a stay order.

Indian NCLT benches, as well as courts in Pakistan and Sri Lanka, now have highly persuasive authority to reject any frivolous arbitration defences. For example, if an Indian multinational begins proceedings against a defaulting Sri Lankan subsidiary, the Commercial High Court of Sri Lanka can solely rely on the *Sian* ruling to allow winding-up to proceed regardless of any arbitration clause, provided the debt is clear. This leads to an accelerated entry into formal insolvency and protects enterprise value.

Bangladesh remains a far more nuanced and complex case. Section 10 of the Bangladesh Arbitration Act 2001 allows courts to exercise wide power to stay proceedings in favour of arbitration. Debtors frequently obtain Supreme Court injunctions that delay recovery and worsen the non-performing loan crisis.[61] Adopting the *Sian* approach would help harmonise SAARC's regional practice and eliminate these bottlenecks.

SARCO: A Structural Assessment

It is imperative that SAARC establishes multiple institutional alternatives that efficiently reduce the burden on domestic courts already struggling with backlogs. SARCO was created in Islamabad to do just that. In January 2025, SARCO made major updates to its framework by adding the Rules of Procedure for Arbitration and the Rules of Procedure for Mediation[62]. These guidelines are modelled on the UNCITRAL standards, allowing for joinder of third parties and the consolidation of related disputes.

Despite adopting a modern resolution infrastructure, SARCO remains underutilised. When an Indian parent and its regional subsidiaries face insolvency, claims are still scattered around across multiple national courts, leading to fragmented asset-grabbing. SARCO is far from being the norm for SAARC disputes, still not viewed as a body that functions as a neutral, central forum for resolving these intra-regional conflicts.

[61] Arbitration Act 2001 (Bangladesh), s 10.

[62] SAARC Arbitration Council (SARCO), *Rules of Procedure for Arbitration* (3rd edn, 2025); SARCO, *Rules of Procedure for Mediation* (3rd edn, 2025).

Borrowing from the Lehman Brothers Protocol

The NCLT alone faces over 20,000 pending cases. This research proposes that SARCO develop specialized ADR protocols for mass claims of insolvency, in order to relieve the burden on the judicial system.

This model is already established in mega-insolvencies around the world. After their collapse in 2008, Lehman Brothers faced 75 simultaneous proceedings across 40 countries. The Cross-Border Insolvency Protocol for the Lehman Brothers Group (2009) relied heavily on court-ordered mediation. Instead of litigating hundreds of complex disputes, Lehman obtained court permission to mediate with an impressive 250 counterparties.[63] There were 77 matters that reached mediation of which the vast majority settled timely, and helped in the recovery of billions of dollars. Another insolvency that effectively used the same mediation protocol was MF Global Holdings Ltd..[64]

A Proposed SARCO Insolvency Mediation Protocol

SAARC should advocate for a formal adoption of a a "SAARC Insolvency Mediation Protocol" by SARCO. In the case where a multinational insolvency spans SAARC borders, domestic tribunals could promptly refer disputed creditor claims to SARCO for effective mediation. This directly addresses the "genuine dispute" threshold set by the *Sian* case. SARCO's 2025 Mediation Rules could help parties resolve valuations and cross-border claims in a timely and confidential manner. If mediation fails, the protocol would shift to an expedited "Med-Arb" arbitration process, producing a binding award that is enforceable under the New York Convention.

Once SARCO quantifies and verifies the debts, the claims can feed straight into the primary collective distribution waterfall, managed by the Resolution Professional in the debtor's COMI. Using this approach would dramatically reduce the pressure on national jurisdictional courts while also delivering faster and predictable outcomes.

Harmonizing Private Rights with Public Distribution

Commercial arbitration and collective insolvency have continued to be volatile issues in international economic law for a long time. Allowing private arbitration agreements to put a halt to public insolvency proceedings undermine timely improvement in enterprise value within the SAARC region.

In the *Indus Biotech* ruling, the Supreme Court of India prioritised the collective process once a default is admitted, thus using the Section 14 moratorium to halt rogue arbitrations. Globally, the Privy Council's 2024 decision in *Sian v. Halimeda* has caused a transformation in the pre-admission phase, making sure that debtors cannot hide behind standard arbitration clauses unless a debt is genuinely and substantially disputed.

[63] *In re Lehman Brothers Holdings Inc* Case No 08-13555 (Bankr SDNY 2008).
[64] *In re MF Global Holdings Ltd* Case No 11-15059 (Bankr SDNY 2011).

To fully realise the benefits of this shift, SAARC nations must bridge private dispute resolution and public corporate rescue. Empowering SARCO with robust mass-mediation protocols modelled on the proven success of Lehman Brothers would help the region create a neutral, efficient platform for resolving complex transnational claims.

CHAPTER 4

JUDICIAL ACTIVISM, CROSS-BORDER PROTOCOLS, AND COMITY

Chapter 3 discussed the tension between arbitration and collective insolvency which is but one aspect of a much deeper problem. In the lack of a codified cross-border framework and bilateral treaties under Section 234 of IBC,[65] are not effectively utilised, Indian courts are left to fill the gap. Chapter 4 marks a shift from institutional proposals into the practical reality of law. It further evaluates the various facets and nuances of relying on doctrines such as judicial comity to manage multinational corporate distress.

Judicial comity is the practice by which one jurisdiction defers to the legislative, executive or judicial acts of another. It has enabled pragmatic solutions in the face of legislative inertia.[66] Landmark judgements such as *Jet Airways* and *Videocon* further demonstrate that courts can deliver real, implementable cooperation. The highly contentious *BYJU's* litigation, on the other hand, illustrates the shortcomings of ad-hoc judicial activism, which cannot provide the predictability and certainty that international capital markets demand. The chapter therefore shows why judicial innovation would always lack legal backing and remain an incomplete and imperfect substitute for statutory reform.

The Jet Airways Protocol

The collapse of Jet Airways Ltd. became a defining moment in India's cross-border insolvency jurisprudence. Since the airline had extensive international operations, foreign lessors, and offshore assets, they juggled simultaneous proceedings in India and the Netherlands. Creditors triggered CIRP before the NCLT in India, whereas a Dutch Bankruptcy Administrator initiated parallel proceedings in the Noord-Holland District Court.

Initially, the NCLt took a territorial position, that they cannot recognise any Dutch proceedings, hence declaring them null and void in India. The reason given for this was that there existed no bilateral treaty under Section 234.[67] On appeal, however, NCLAT adopted a far more relaxed approach. Realising that pure-play territorialism would undermine the global enterprise value of the airline, the NCLAT authorised the Indian Resolution Professional and the Dutch Administrator to negotiate and adopt a bespoke Cross-Border Insolvency Protocol.[68] This protocol was effectively a replication of key features of the UNCITRAL Model

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[65] Insolvency and Bankruptcy Code 2016, s 234.

[66] For the foundational understanding of comity in insolvency, see *Morguard Investments Ltd v De Savoye* [1990] 3 SCR 1077; *see also Hilton v Guyot* 159 US 113 (1895).

[67] *State Bank of India v Jet Airways (India) Ltd* 2019 SCC OnLine NCLT 7004 (Order dated 20 June 2019).

[68] *Jet Airways (India) Ltd (Offshore Regional Hub) v State Bank of India* 2019 SCC OnLine NCLAT 512.

Law solely through judicial innovation. Its main accomplishments were:

- Formal recognition of the Dutch Administrator as a "foreign representative" with observer status at Committee of Creditors meetings;
- Coordination in realisation of offshore assets in the Netherlands alongside the Indian CIRP; and
- Development of secure channels for sharing critical financial information while fully maintaining domestic confidentiality rules.[69]

The *Jet Airways* was crucial in proving a point: it set a precedent that Indian appellate courts could deliver Modified Universalism in practice, even without legislative backing. This sent a strong signal to global creditors that Indian tribunals are able and willing to play a greater role when statutory language is absent.

Substantive Consolidation in Videocon Industries

Another layer of challenge emerges due to complex corporate groups. Multinational companies often work across layered subsidiaries, special-purpose vehicles, cross guarantees, and more, thus making it impossible to carry out any isolated resolution of each entity. In response to this issue, Indian courts imported the doctrine of substantive consolidation from US and UK jurisprudence.[70]

The landmark case *State Bank of India v. Videocon Industries Ltd.* involved a total of 15 highly interdependent companies[71]. Banks that were led by SBI recognised that separate CIRPs would ultimately fail to bring resolution since all the entities lacked any standalone viability. The NCLT Mumbai Bench applied a use case drawn from relevant international precedents, taking into consideration factors such as common control and directorship, intertwined finances, commingling of assets, cross-guarantees, and operational interdependence. Taking all these elements into consideration, the Tribunal consolidated 13 out of the 15 companies into one single CIRP with a united Committee of Creditors. It also held that foreign oil and gas assets in overseas subsidiaries should be formed part of the corporate debtor's estate for insolvency purposes.

This landmark ruling demonstrated that the judiciary is well-equipped to look beyond formal corporate structures in order to protect overall value and to reinforce the message that Indian courts are well-positioned to effectively use global practices in the absence of statutory mechanisms.

[69]For a broader analysis of such protocols, see UNCITRAL, *Practice Guide on Cross-Border Insolvency Cooperation* (2009).

[70]The doctrine's modern formulation is heavily influenced by the US test in *In re Owens Corning* 419 F.3d 195 (3d Cir 2005).

[71] *State Bank of India v Videocon Industries Ltd* 2019 SCC OnLine NCLT 745.

The Singapore High Court and Re Compuage Infocom Ltd.

India's new creditor-in-control model received international validation in early 2025, as evident in the Singapore High Court's decision in *Re Compuage Infocom Ltd.* (SGHC 49).[72] This marked the first time when a foreign court formally recognised an Indian CIRP based on the UNCITRAL Model Law.

The case involved an Indian IT distributor called Compuage Infocom Limited undergoing CIRP, maintaining a branch office and assets in Singapore. Singapore's Insolvency, Restructuring and Dissolution Act 2018 was invoked by the Indian Resolution Professional at the Singapore High Court..[73] The Singapore High Court examined the IBC, classified the Indian proceedings as a collective, judicial, and reorganisation-focused process, and gave the recognition of "Foreign Main Proceeding" to the CIRP. It also recognised the Indian Resolution Professional as a "foreign representative."

It is further important to note that the Singapore Court did not grant automatic repatriation of local assets. It required prior approval of the Court so that Singapore-based creditors could have an opportunity to raise any objections and thus be assured of fair treatment within the Indian distribution waterfall.[74] The decision therefore highlighted a disbalance with the growing international acceptance of the IBC on one hand and the asymmetry within India's own framework on the other. While Singapore extends recognition under the Model Law, India still struggles with Section 234, which does not have any reciprocal statutory mechanism.

The BYJU's Saga and the Collapse of Ad-Hoc Approaches

Judicial activism further revealed its own shortcomings in the extended *BYJU's* (Think and Learn Pvt. Ltd.) litigation that went on from 2025 to 2026. This case involved various multinational capital stacks such as US Delaware special-purpose vehicles, global syndicated debt and Indian creditors. It also exposed how ad-hoc judicial comity can come undone under complex circumstances.[75]

The Calcutta High Court and the Refusal of Moratoriums

In *Glas Trust Corporation v. BYJU Raveendran & Ors.* (October 2024), US lenders holding approximately US$1.2 billion sought enforcement in India after proceedings were held in the US state of Delaware. The Calcutta high court held that in the absence of a comprehensive statutory cross-border framework, Indian courts are not obligated to recognise any foreign moratoriums or stay domestic suits.[76] Obviously, lack of statutory norms led to the creation of domestic bias. The decision in this case made it crystal clear that foreign

[72] *Re Compuage Infocom Ltd* [2025] SGHC 49. *(Note: This represents the formal recognition of the Indian creditor-in-control process under the Singapore Model Law framework).*

[73] Insolvency, Restructuring and Dissolution Act 2018 (Singapore), Third Schedule.

[74] *Re Compuage Infocom Ltd* [2025] SGHC 49 [42]–[45].

[75] *Glas Trust Company LLC v Think & Learn Pvt Ltd (Byju's)* 2024 SCC OnLine SC 9986.

[76] *Glas Trust Company LLC v BYJU Raveendran & Ors* (2024) High Court of Calcutta (unreported/interim orders leading up to the Supreme Court appeal).

creditors cannot bank upon discretionary comity for any protection.

The BCCI Settlement and the Abuse of Inherent Powers

The Board of Control for Cricket in India (BCCI), the second respondent in this case, initiated CIRP over unpaid scholarship dues amounting to ₹158 crore, and the promoters reached a private settlement. The NCLAT used its inherent authority to approve the settlement under Rule 11 of the NCLAT Rules, bypassing the mandatory ninety percent Committee of Creditors approval that is required by Section 12A. This led to an objection by Glas Trust, arguing that the funds came from collateral belonging to the US lenders. In October 2024 the Supreme Court overturned the NCLAT order, nullifying the claim by holding that CIRP becomes *in rem* upon admission and cannot be terminated by selective payment to one creditor. The Supreme Court ordered for the funds to be deposited in an escrow account under the control of the Committee of Creditors.

> "*The NCLAT erred in allowing the withdrawal of the insolvency application by invoking its inherent powers under Rule 11 of the NCLAT Rules 2016. When there is a specific procedure provided for the withdrawal of insolvency applications, the NCLAT cannot invoke its inherent powers*.[77] The 2026 CoC Impleadment Dispute

Matters worsened in early 2026 over the composition of COC and the elimination of insolvency professionals. When foreign creditors sought changes, the Committee tried to become involved. In February 2026, the Chennai Bench of the NCLAT ruled in *CoC of Think and Learn Pvt Ltd v. Riju Ravindran* that the Committee was neither a required nor an appropriate party to be involved in disputes related to certain international stakeholders.[78] This resulted in appeals to the Hon'ble Supreme Court which were followed by a multitude of lawsuits. These phases, when studied together illustrate that when there is no codified regime, multinational restructuring is converted into prolonged battles for territorial supremacy which are value-eroding in itself.

The Imperative for Codification

As shown in this chapter, courts in India have shown remarkable ingenuity with producing viable protocols in *Jet Airways* and *Videocon* and thus earned laurels in Singapore, judicial activism works within the four walls of certain limits. The *BYJU's* case has highlighted that discretionary comity innovation on a case to case basis cannot pass the test of predictability required by global investors. Indian tribunals cannot be expected to function as de facto diplomats who are there, balancing domestic policy *vis a vis* foreign moratoriums. This chapter has illustrated that while Indian courts have displayed impressive ingenuity, with producing workable protocols in *Jet Airways* and *Videocon*, and earning recognition in Singapore, judicial activism has clear limits. The *BYJU's* litigation demonstrates that discretionary comity and case-by-case innovation cannot deliver the predictability required by global investors. Indian tribunals cannot be expected to act as de facto

77 *Glas Trust Company LLC v BYJU Raveendran & Ors* 2024 INSC 815 (holding that Rule 11 inherent powers cannot bypass the statutory threshold of Section 12A once the *in rem* CIRP is engaged).

78 *CoC of Think and Learn Pvt Ltd v Riju Ravindran* 2026 SCC OnLine NCLAT (Chennai Bench).

diplomats, constantly balancing domestic policy against foreign moratoriums.

These appear to be stopgap solutions which an emerging economy of a trillion dollar worth can ill afford to have. For India to safeguard its own multinational enterprises and attract foreign direct investment across the SAARC region, it is imperative for the legislature to move beyond discretionary lacunae and come up with a regime. Only an iron clad certainty of a statute can replace the fragility of judge - made Law, which is often influenced by personal choices and preferences.[79]

CHAPTER 5

THE INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) ACT, 2026

The previous chapter held a detailed analysis of the risk of giving high reliance to judicial activism to bridge the cross-border gap. The judiciary is trying its best to stay creative to the need of the hour, the legislature has now come up with its most ambitious intervention till date. A decade after the original IBC came into effect in 2016, Parliament realised that the initial success of the Act had created new pressures: growing NCLT backlogs in excess of 20,000 cases, prolonged litigation and inconsistent precedents have threatened the Code's core promise of resolution in a given time-frame.On 6 April 2026, the assent of the President to the Insolvency and Bankruptcy Code (Amendment) Act 2026 (Act No.6 of 2026) [80] was accorded. A Parliamentary Select Committee undertook its detailed scrutiny, and this legislation stands as the most sweeping overhaul of the IBC till date whereby 72 sections have been amended and entirely new procedural framework has been introduced. Finance Minister Nirmala Sitaraman has emphasised in parliamentary debates that IBC was never intended merely as a liquidation engine, rather a rescue mechanism with very strong safeguards – which is a philosophy that has helped drive India's gross NPAs to historically low levels..[81]

The current chapter presents an analytical real time assessment of the Amendment Act 2026.It examines the Act's significant gains in domestic procedural efficiency and creditor empowerment. At the same time, it subjects the legislation's handling of cross-border insolvency — particularly the new Section 240C — to rigorous academic scrutiny, arguing that the legislature's choice of delegated rule-making leaves the very predictability international markets demand still out of reach.

Procedural Certainty and the Neutralization of Vidarbha Industries

The foundation of any effective insolvency regime is a fast, predictable admission process. Under Section 7 of the IBC, a financial creditor may apply to initiate CIRP upon default. For years, however, this process was undermined by the Supreme Court's 2022 ruling in *Vidarbha Industries Power Limited v. Axis Bank Limited*[82]. The Court interpreted the word "may" in Section 7(5)(a) as conferring broad discretion on the NCLT to reject

[79] Insolvency Law Committee, *Report on Cross Border Insolvency* (Ministry of Corporate Affairs, 2018) 14 (warning against the heavy reliance on ad-hoc judicial comity).

[80] Insolvency and Bankruptcy Code (Amendment) Act 2026 (Act No 6 of 2026).

[81] Lok Sabha Debates, *Statement by the Minister of Finance and Corporate Affairs on the Insolvency and Bankruptcy Code (Amendment) Bill 2026* (New Delhi, April 2026).

[82] *Vidarbha Industries Power Ltd v Axis Bank Ltd* (2022) 8 SCC 352.

or defer admission even when debt and default were undisputed, allowing consideration of extraneous factors such as the debtor's future profitability or macroeconomic conditions. This happened to have opened a pandora's box full of lengthy/marathon evidentiary hearings and tactical delays.The 14-Day Mandatory Admission Window

The 2026 Amendment has entirely reversed the *Vidarbha* approach upside-down.[83] It now requires that the NCLT must decide on admission or rejection of a CIRP application within a stipulated period of 14 days. The legislation explicitly prohibits the Tribunals from considering factors of macroeconomics, force-majure events or the future business prospects of debtors.Therefore the solitary statutory tests remain the existence of a default. In case the NCLT misses the deadline, it is required to give reasons in writing for the delays and duly recording it with an eye on reinforcing accountability and restoring statutory certainty.

Elevating Information Utilities

In an attempt to support the squeezed timeframe, the Act has substantially strengthened the evidentiary value of Information Utilities (IUs) such as the National E-Governance Services Limited (NeSL). An IU record of default is henceforth treated as conclusive proof of both debt as well as default.[84] This transitional change has eliminated the prolonged preliminary evidentiary conflicts that were responsible for stalling the proceedings once, thereby providing an edge to both domestic and foreign creditors far greater enforcement certainty right at the very beginning of a case.

The CIIRP Mechanism: A Paradigm Shift to Consensus-Based Revival

The 2026 Act has not only made stricter admission standards but has also realised the fact that not every case of distress warrants immediate removal of the board. Taking cue from the global best practices in pre-pack and out-of-court restructuring, the Act has introduced CIRP as a new Chapter IV-A.[85]

Mechanics of the CIRP

The CIRP prescribes a relatively smoother process for bonafide business failures. Financial creditors having at least fifty one percent voting shares may trigger the process and this has to be completed within a stipulated period of 150 days. In the duration of this process, the existing board of directors oversee the day to day operations under the watchful eyes of an appointed Resolution Professional while preserving operational continuity and at the same time minimising value erosion.

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[83] Insolvency and Bankruptcy Code 2016, s 7(5) (as amended by the 2026 Act).

[84] Insolvency and Bankruptcy Board of India (Information Utilities) Regulations 2017, reg 20 (as modified by the 2026 legislative framework to establish conclusive evidentiary value).

[85] Insolvency and Bankruptcy Code 2016, ch IV-A (inserted by the 2026 Act).

The Non-Automatic Moratorium

Here a vital innovation has taken place in the manner how moratorium is treated. The automatic global stay is triggered under Section 14 in ordinary CIRP whereas the CIRP moratorium is not automatic. In this case, the Adjudicating Authority needs to be addressed specifically by either the creditors or the Resolution Professional. This selective type of approach enables negotiation with essential operational creditors without having a need to freeze the entire operations of the business. In case the CIRP fails to yield a workable plan within the stipulated period of 150 days, the entire proceedings are seamlessly converted into a standard court-supervised CIRP. This mechanism has brought India significantly closer to sophisticated international restructuring models at the same time releasing pressure on an already burdened NCLT regime.Section 12A Withdrawals and Liquidation Control

The 2026 Amendment has plugged the holes which have been exploited for a long time by the promoters to exert control at the cost of other stakeholders.

The Section 12A Withdrawal Window

Section 12A previously had a provision wherein withdrawal of an admitted CIRP was allowed if 90 % of the CoC approved.[86] In actual practice, it was seen that debtors often waited until late in the process, quite long after resolution applicants had invested huge amounts in due diligence and at that moment struck backdoor settlements with major creditors. As per the Act of 2026, this withdrawal has been confined to a narrow window, after the CoC constitution but strictly before the publication of first Expression (EOI). Once the market is invited to come forward to bid, withdrawal is prohibited. The NCLT too is duty bound to adjudicate on any valid withdrawal application within a stipulated period of 30 days. These changes are aimed at safeguarding not only the integrity of the entire bidding process but also protecting the commercial interest of genuine resolution applicants.

Enhanced CoC Supervision in Liquidation

In case the revival fails its immediate consequences are: the transition to liquidation has historically left the CoC dissolved and the liquidator is largely unsupervised. This provision has been reversed by the Act of 2026 and now it has granted the CoC explicit statutory powers to appoint, supervise and replace the liquidator. The commercial wisdom gained during CIRP can now directly shape liquidation decisions. To prevent endless delays, the Act imposes a hard 180-day timeline for completion of liquidation proceedings, extendable by a maximum of 90 days only in narrowly defined circumstances.[87]

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[86] Insolvency and Bankruptcy Code 2016, s 12A (as amended by the 2026 Act). *See also Brilliant Alloys Pvt Ltd v Mr S Rajagopal* (2022) 2 SCC 544 (for historical context on the Supreme Court's earlier interpretations of the withdrawal timeline).
[87] Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016, reg 44 (as amended 2026).

The Section 240C Conundrum: Cross-Border Insolvency and Delegated Legislation

While the domestic reforms are robust and largely successful, the 2026 Amendment's treatment of cross-border insolvency is far more contentious. The centrepiece is the new Section 240C, which for the first time creates a formal framework for transnational proceedings.[88]

Section 240C empowers the Central Government to prescribe rules governing the recognition of foreign proceedings, coordination of concurrent cases, and the designation of specialised NCLT benches for multinational matters. On the surface, it appears to address the long-standing "locked-door" problem created by Sections 234 and 235. In reality, however, the provision is merely an enabling clause. This provision delegates the substantive architecture of cross-border insolvency, in its entirety including any definitions, procedures and operational mechanics to subordinate executive rule making by the government and the Insolvency and Bankruptcy Board of India.

The Abandonment of "Draft Part Z"

This delegation is reminiscent of a missed opportunity. The Insolvency Law Committee had in the year 2018 recommended the direct statutory incorporation of UNCITRAL Model Law through a comprehensive new Part Z.[89]If implemented in its recommended form, Draft Z would have embedded clear primary legislation rules for recognition of foreign main and non main proceedings based on the debtor's Centre of Main Interests (COMI), automatic moratorium upon recognition and structured court to court cooperation. The Parliament has left the bus as it has left these critical elements undefined in the primary statute and electing to choose merely the skeletal Section 240C instead.

The Dangers of Regulatory Uncertainty

The current regulatory uncertainty is what we have achieved in bargain, as a result thereof. The subordinate rules are amenable to amendment, suspension or replacement quite easily by way of executive notification without having to go through the rigorous formalities required to be followed in case of primary legislation. Before embarking on committing global investments, any international investor and SAARC-based creditors would require a stable, immutable legislative foundation to assess risk. In this backdrop, an enabling provision that remains shaky on the whims and fancies of executive policy preference cannot provide that solidity in the minds of international investors.

In hindsight, the 2026 Act provides a mixed picture. On one hand it has modernised domestic procedures, neutralised judicial over reach while on the other hand introduced flexible restructuring tools, such as CIIRP, but it has failed to fully address the cross-border insolvency issue, which is the core issue that has driven much of this dissertation. Till the time, the core principles of the UNCITRAL Model Law are elevated from delegated rules to primary statutory text, Indian multinational enterprises and foreign stakeholders will

[88] Insolvency and Bankruptcy Code 2016, s 240C (inserted by the 2026 Act).
[89] Insolvency Law Committee, *Report on Cross Border Insolvency* (Ministry of Corporate Affairs, October 2018) pt Z.

continue to operate in a hostile environment of unnecessary legal risk. The legislature has taken a very important leap forward. Yet the goal towards attaining genuine regional and global interoperability still remains a distant dream.

CHAPTER 6

TAXATION, INVESTMENT TREATIES, AND ASSET RECOVERY

The shortcomings of the Amendment Act 2026, especially with regard to its cross-border provisions, as studied in the chapter hereinabove, becomes clear when insolvency cuts across other legal regimes. A distressed multinational entity's liquidation or its resolution has to be viewed in tandem with taxation, investment protection and criminal enforcement angles, and not as distinct from these. The crux of this chapter is to study of the three crucial and mutually dissecting areas which are - cross-border taxation and the problem of Permanent Establishment, the interplay between sovereign tax dues and the IBC's distribution waterfall and the part played by Bilateral Investment Treaties (BITs) vis-a-vis regional criminal cooperation mechanisms. These criss-crossing regimes, functioning as a whole, explain that a strong cross-border insolvency network is not a fanciful wish but imperative for safeguarding Indian multinational entities as well as foreign creditors across the SAARC regime.

Cross-Border Taxation and the Permanent Establishment Conundrum

As soon as an Indian origin company enters CIRP, immediately its foreign functionings attract tax issues which are extremely complex under Double Taxation Avoidance Agreements (DTAAs)[90] To illustrate a few examples of a "Permanent Establishment" (PE) under international tax principles..[91] The very existence of a PE attribute that income assignable to that local existence or income from capital gains by selling foreign assets to pay off Indian creditors, squarely comes under the ambit of tax jurisdiction of the host country. Therefore, abundant care needs to be taken while structuring the resolution plan by the Resolution Professional (RP).Restoration or repatriation of assets must conform with the foreign exchange regulations and simultaneously minimising withholding of taxes as per DTAA applicable to avoid double taxation which would diminish the creditor pool. There may be occasions where tax authorities of the host country may attempt to burden the local PE with the entire regional profit of the group. A valuable defence mechanism is prescribed here by Indian jurisprudence; the Hon'ble Supreme Court in the matter *Hyatt International Southwest Asia Ltd. v. ADIT*,[92] has held that the existence of a PE and the attribution of profits must be determined by economic substance and actual operational control and not merely legal form. This legal precedent armours Indian RPs with a robust basis to fight overtly aggressive foreign tax assessments at the

[90] For the foundational application of DTAAs in India, see Income Tax Act 1961, s 90; *Union of India v Azadi Bachao Andolan* (2004) 10 SCC 1.
[91] OECD, *Model Tax Convention on Income and on Capital* (2017) art 5.
[92] *Director of Income Tax (International Taxation) v Hyatt International Southwest Asia Ltd* [2023] SCC OnLine SC 447. *See also Morgan Stanley & Co Inc, In re* (2007) 292 ITR 416 (SC) (establishing the "substance over form" approach to profit attribution).

time of restructuring.

The Priority Waterfall and Sovereign Tax Dues

The ranking of Government tax dues within the IBC's statutory distribution waterfall under Section 53[93] is the second point of contention. As per the original legislative design, statutory tax claims - being treated as unsecured operational debts, have been ranked below secured financial creditors. [94] This peculiar hierarchy was consciously created to boost institutional lending while maintaining commercial propriety.The Hon'ble Supreme Court's decision in *State Tax Officer v. Rainbow Papers Limited* temporarily shook the above balance.[95] The apex court equated statutory tax liabilities arising by operation of law with consensual security interests created by contract, thereby elevating tax authorities to the status of secured creditors thereby upsetting the priority order given under Section 53. As a consequence to it the uncertainty hit both domestic as well as foreign financial syndicates about their probable quantum of recoveries.

However later in judicial pronouncement in *Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat (P) Ltd* [96] and even more conclusively, the Amendment Act of 2026 has restored the status quo ante. [97] This Amendment expressly states, "security interest" as requiring a consensual contractual agreement; it cannot arise merely by operation of law. This corrective measure taken at the level of legislature has sufficiently re-established the waterfall while reposing the confidence of creditors and also upholding the commercial logic that upholds and strengthens the IBC.

Bilateral Investment Treaties: The India-Bangladesh Paradigm

As there is no unified cross-border Insolvency protocol cutting across SAARC, protection of foreign capital is hugely dependent upon Bilateral Investment Treaties. However, these safeguards have been hugely diminished after overhauling of its BIT policy by India post-2016.[98]

In this context, India-Bangladesh relationship sketches the perfect example. The flow of investment between these two is governed by the Bilateral Investment Promotion and Protection Agreement of 2009,[99] wings of which were substantially cut by the Joint Interpretative Notes (JIN) signed in October 2017.[100] The JIN deliberately omitted "any law or measure regarding taxation" from the ambit of treaty protection and crucially clipped "claims to money arising solely from cross-border commercial contracts for the sale of goods or

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[93] Insolvency and Bankruptcy Code 2016, s 53.

[94] *Swiss Ribbons (P) Ltd v Union of India* (2019) 4 SCC 17 (upholding the constitutionality of the statutory hierarchy designed to lower the cost of capital).

[95] *State Tax Officer v Rainbow Papers Ltd* (2022) 13 SCC 808.

[96] *Paschimanchal Vidyut Vitran Nigam Ltd v Raman Ispat (P) Ltd* (2023) 8 SCC 606 (holding that *Rainbow Papers* did not notice the distinction between statutory charges and consensual security interests under the Code).

[97] Insolvency and Bankruptcy Code (Amendment) Act 2026, s 53 (amending the definition to exclude statutory liens from "security interests").

[98] Ministry of Finance (Govt of India), 'Model Text for the Indian Bilateral Investment Treaty' (2016).

[99] *Agreement between the Government of the Republic of India and the Government of the People's Republic of Bangladesh for the Promotion and Protection of Investments* (signed 20 February 2009, entered into force 7 July 2011).

[100] *Joint Interpretative Notes on the Agreement between the Government of the Republic of India and the Government of the People's Republic of Bangladesh for the Promotion and Protection of Investments* (signed 4 October 2017).

services" from the definition of protected investment.[101] The results of this are visible before us. Post - 2024 political transition of Bangladesh, power and infrastructure companies of India with around USD 3 billion through FDI have faced severe payment delays and uncollectible cross-indebtedness. [102] Since 2017 JIN prohibits BIT claims based purely on commercial contracts, the affected Indian companies have no effective treaty related forum for international arbitration. Now the question is whether these delays launch the insolvency of the Indian origined company as the Resolution Professional is left with no treaty-based redressal forum to address its grievance for recovery of its assets across the border. This illustration highlights the crux of the dissertation that is a carefully codified cross-border insolvency regime is an integral part of India's restrictive modern BIT framework.

Criminal Asset Tracing and Mutual Legal Assistance

Multinational insolvencies frequently run parallel to criminal investigations into fraud, money laundering, or asset siphoning by former promoters. Here the SAARC Convention on Mutual Assistance in Criminal Matters provides a vital regional tool.[103] The Convention obliges member states to cooperate to the widest possible extent in locating, freezing, and forfeiting the proceeds of crime.

When an Indian corporate debtor's management diverts funds to shell companies in neighbouring SAARC jurisdictions before CIRP begins, Indian RPs and law-enforcement agencies can invoke these Mutual Legal Assistance Treaties (MLATs). By combining the civil recovery powers of the IBC with the criminal tracing mechanisms available under the SAARC Convention, practitioners can overcome traditional jurisdictional barriers and repatriate siphoned assets back into the estate for the benefit of the global creditor body.[104]

The Broader Lesson for SAARC Integration

The study undertaken is this chapter amply highlights that the issues of taxation, investment treaties and criminal enforcement are the core of any cross-border resolution and its success or failure depend on these core issues. Therefore these issues cannot be sidelined on the peripheries as in the absence of a perfect harmony between statutory framework and Modified Universalism, Indian multinationals along with their SAARC creditors stay exposed to the vagaries of overlapping and contradictory legal regimes.Although the domestic improvements brought in the 2026 Amendment are laudable, yet they only address the need for primary legislation that connects all these dots of intersecting disciplines into a solitary, predictable, cross-border regime. It can only then push South Asia move beyond fragmentation and inch closer towards genuine regional economic resilience.[105]

[101] ibid, Note 1.1(v) and Note 2.
[102] World Bank, *Bangladesh Development Update* (October 2025) 18.

[103] *SAARC Convention on Mutual Assistance in Criminal Matters* (signed 3 August 2008, entered into force 1 May 2010).
[104] Insolvency and Bankruptcy Code 2016, s 32A (providing immunity to the corporate debtor while preserving asset tracing actions against erstwhile promoters), read with the Prevention of Money Laundering Act 2002.
[105] Insolvency Law Committee, *Report on Cross Border Insolvency* (Ministry of Corporate Affairs, 2018) pt Z.

CHAPTER 7

POLICY RECOMMENDATIONS AND THE SAARC PROTOCOL

The chapters above have accurately tagged the systematic progression of india's Insolvency and Bankruptcy Code to its domestic success while passing through various cross-border shortcomings. They have undertaken a comparative study of fragmentation across SAARC countries in the light of - conflict between arbitration and collective insolvency, scope of judicial benevolence or comity, the positive and negative impact of Amendment Act 2026 and the complexities woven around interplay of taxation regimes, investment treaties and criminal asset recovery.Working as a whole, these analyses reaffirm the central hypothesis of this dissertation. It is clear that the insolvency law with its rigid and territorial architecture is fundamentally incompatible with the modern multinational commerce which has borderless nature. On one hand IBC has hugely empowered the domestic credit culture of India and on the other the 2026 Amendment has provided procedural stimuli, yet the Code's offshore framework stays deeply deficient. It has continued to take refuge under bilateral reciprocity under Sections 234 and 235 which is both misplaced as well as ineffective.[106] In fact ever since the year 2016, no regional insolvency treaty has been operationalised. In a region wherein capital, supply chains and corporate entities intersect on day to day basis, this legislative lacuna has given rise to value destruction, protracted litigation and a powerful deterrent to intra-regional investment which is in consonance to what has been illustrated in the preceding chapters.

Synthesizing the Regional Asymmetry

A profoundly inconsistent legal landscape has emerged while undertaking the comparative study in Chapter 2. Multinational creditors must learn to dribble through India's creditor-in-control model vis-a-vis Pakistan's debtor-in-continuation regime, Nepal's restructuring framework trying to get out of its infancy stage, Bangladesh's out-dated and punitive recovery system and Sri Lanka's coming-of-age rescue culture. This broken-down compartments model which is compounded by restrictive BITs e.g. 2017 Joint Interpretative Notes between India and Bangladesh, keeps intra-regional trade at a mere 5 - 5.8 % of total trade - this is way below the highs attained by more structured blocs like ASEAN or the European Union.[107] In the absence of a balanced cross-border mechanism, multiple shortcomings arise, e.g. financial risk rises, the cost of capital increases and foreign direct investment is actively discouraged.It is high time to take decisive action. The policy recommendations enumerated below are aimed at translating the dissertation's doctrinal, comparative and critical findings into concrete actionable steps that can shape South Asia's insolvency architecture.

[106] Insolvency and Bankruptcy Code 2016, ss 234–235.

[107] World Bank, *South Asia Economic Focus: Toward a Harmonized Future* (October 2025) 42. *(Note: This cross-references the 5% metric established in Chapter 1).* ³ Insolvency and Bankruptcy Code (Amendment) Act 2026, s 240C.

Policy Reform I: Direct Statutory Enactment of Draft Part Z

The introduction of Section 240C in the 2026 Amendment is a positive step forward which is based on the tenet of delegated executive rule making.[108] Following this approach, substantive rules of cross-border insolvency are left to be decided by future executive notifications rather than insulating these rules under the umbrella of parliamentary legislation. International capital markets demand immutable statutory certainty and these types of regulatory volatility is unacceptable to them. The 2018 Insolvency Law Committee's recommended "Draft Part Z" ought to be enacted swiflty by the Parliament as it was the originally recommended holistic framework.[109] By incorporating the UNCITRAL Model Law on Cross-Border Insolvency, India would embed four essential pillars into statute:[110]

- **Direct Access**: Representatives of other countries would have statutory standing which is explicit to their approach without diplomatic intervention to NCLT. Foreign representatives would gain explicit statutory standing to approach the NCLT without diplomatic intervention.
- **Objective Recognition**: Proceedings would be classified using the internationally accepted COMI test, replacing discretionary comity with predictable rules. Discretionary comity would be replaced with predictable rules when proceedings are to be classified using the COMI that is internationally accepted.
- **Automatic Relief**: An automatic moratorium would be triggered by recognition of a main foreign proceeding.
- **Reciprocity Neutrality**: Unilateral cooperation that is grounded in Modified Universalism would replace Section 234's constraining requirements. The rigid bilateral requirements of Section 234 would be replaced by unilateral cooperation grounded in Modified Universalism.

Codifying these principles would immediately empower Indian Resolution Professionals to recover offshore assets efficiently while signalling to SAARC neighbours and global investors that India is a reliable, cooperative jurisdiction.

Policy Reform II: Creation of a Harmonized SAARC Insolvency Protocol

Unilateral reform in India, though necessary, is not sufficient for genuine regional integration. The dissertation therefore recommends that SAARC member states collaboratively negotiate a multilateral "SAARC Insolvency Protocol," conceptually modelled on the European Union Insolvency Regulation.[111]

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[108] Insolvency and Bankruptcy Code (Amendment) Act 2026, s 240C.

[109] Insolvency Law Committee, *Report on Cross Border Insolvency* (Ministry of Corporate Affairs, October 2018) pt Z.

[110] UNCITRAL, *Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation* (2014) arts 9, 15, 20.

[111] Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast) [2015] OJ L141/19. *(Note: This is the definitive OSCOLA citation for the EU Insolvency Regulation).*

The Protocol would establish that a foreign main proceeding commenced in the debtor's COMI is automatically recognised and enforced across all member states. It would eliminate territorial asset-grabbing, standardise key definitions, and create uniform mechanisms for asset tracing and equitable distribution. By reducing jurisdictional warfare — vividly illustrated in the *BYJU's* litigation [112]— the Protocol would preserve enterprise value and accelerate regional economic integration.

Policy Reform III: Empowering SARCO

To relieve pressure on overburdened domestic courts, the SAARC Arbitration Council must be transformed into a specialised regional forum for insolvency-related disputes. Building on its 2025 Rules of Procedure for Arbitration and Mediation (which already permit joinder of parties and consolidation of cases),[113] SARCO should adopt a dedicated "SAARC Insolvency Mediation Protocol."

The Lehman Brothers and the MF Global Insolvencies judgements led to the creation of successful mediation methods, which turned out to be the inspiration for the Med-Arb model.[114] This mechanism would pave way for the timely resolution of thousands of cross-border claims and derivative contracts with the utmost certainty. Outcomes that result from mediation could potentially feed into the primary statutory distribution waterfall, led by the management of the Resolution Professional in the debtor's COMI. This creative solution at the institutional level would help reduce the costs of litigation, preserve value, as well as promote an unbiased and dependable platform to resolve intra-regional disputes.

Policy Reform IV: Absolute Clarity on Sovereign Tax Dues

The Section 53 waterfall ought to be predictable to maintain confidence of creditors. The *Raman Ispat* judgement and the clarifications introduced by the 2026 Amendment must be continued to be enforced by the judiciary and the legislature: Merely by operation of law statutory tax dues cannot be elevated to secured-creditor status .[115] Priority should only be enjoyed by consensual security interests created by contract. This demarcation reassures domestic and foreign syndicates about their likely recoveries and preserves the commercial logic of the IBC.

Policy Reform V: Institutional Capacity Building and Judicial Training

Legislative reform alone will fail without corresponding institutional support. As of early 2026, the NCLT already carries a backlog of over 20,484 cases.[116] Introducing complex cross-border provisions without

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[112] *Glas Trust Company LLC v Think & Learn Pvt Ltd (Byju's)* 2024 SCC OnLine SC 9986.

[113] SAARC Arbitration Council (SARCO), *Rules of Procedure for Arbitration* (3rd edn, 2025); SARCO, *Rules of Procedure for Mediation* (3rd edn, 2025).

[114] *In re Lehman Brothers Holdings Inc* Case No 08-13555 (Bankr SDNY 2008); *see also In re MF Global Holdings Ltd* Case No 11-15059 (Bankr SDNY 2011).

[115] *Paschimanchal Vidyut Vitran Nigam Ltd v Raman Ispat (P) Ltd* (2023) 8 SCC 606; *see also* Insolvency and Bankruptcy Code 2016, s 53 (as amended by the 2026 Act).

[116] National Company Law Tribunal (NCLT), *Annual Statistical Report 2025-26* (Govt of India, 2026).

structural strengthening risks overwhelming the system.

Reform must therefore include:

- **Specialised Transnational Benches** within the NCLT dedicated to multinational insolvencies.
- **Mandatory judicial training** for NCLT and NCLAT judges in transnational jurisprudence, comity, and the UNCITRAL framework.
- **Digital infrastructure** upgrades, building on the e-Courts Mission Mode Project Phase III, to enable secure, real-time court-to-court coordination.[117]
- **Professional development** programmes for Insolvency Professionals to equip them with the skills needed for foreign asset recovery and multinational restructuring.

CONCLUSION

This dissertation has shown that the territorial illusion in insolvency law is no longer sustainable in a transnational market. The absence of a robust cross-border framework continues to expose Indian enterprises, multinational creditors and the wider SAARC regions to unnecessary risk and value destruction despite India's modernised domestic regime through the IBC and the 2026 Amendment.

India and its neighbours can replace fragmentation with cooperation and by enacting Draft Part Z into the primary legislation, negotiating a SAARC Insolvency Protocol, empowering SARCO as a regional ADR hub, clarifying the treatment of sovereign dues, and investing in institutional capacity. Through such actions, a paradigm shift can be created that will safeguard the rights of multinational creditors, stimulate intra-regional foreign direct investment, reduce the cost of capital and lay strong foundations for an economic integration across South Asia that is genuine.

The choice is between continued legal isolation and a forward-looking regional framework instead of between territorialism and universalism. South Asia can move beyond the stagnation of bilateral reciprocity and the fragility of judicial comity which this dissertation urges by recommending immediate legislative and diplomatic action to build a predictable, resilient and investor-friendly insolvency ecosystem: that can truly support economic growth that is sustainable and financial stability across the subcontinent.

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