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Insolvency Laws and International Trade: A Perspective

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Abstract: There remains vast heterogeneity in the route to tackle insolvency across nations. This can be typically achieved by effective legal mechanisms such as insolvency laws. Insolvency laws have some common linkages with a country's financial development and economic growth. Such laws have a critical function of redeployment of nations' resources by efficiently liquidating unviable firms while reorganising viable entities. However, while much literature has discussed the objectives and benefits of insolvency laws from a financial development perspective, relatively less is discussed about the linkages of insolvency laws with international Trade. This paper examines how insolvency laws are important for international trade while examining their relevant aspects that have a bearing on the debate. By integrating the economic, law & finance, and institutional rationales of insolvency laws, this study brings out their linkages to international trade while stressing that both domestic and cross-border dimensions need to be viewed together while assessing their influence as sound institutions for international trade. The paper provides a discussion on the subject while also covering key developments in the adoption of harmonised cross-border insolvency laws. It will also cover the domain in the context of India and the Global South.

Keywords: Insolvency, Bankruptcy, Creditor Rights, International Trade, Trade Laws, IBC

Introduction

Insolvency laws[1] are a significant determinant of positive social and economic outcomes. The seminal law & finance papers (La Porta *et al*. 1997, 1998; hereafter referred to as LLSV) showed the importance of insolvency laws and creditor rights to a country's financial development. Insolvency laws are forms of institutions (Rajan and Zingales 1995), and the link between institutions and economic growth has been researched for long (Xu, 2011). However, research on the empirical linkages of insolvency laws to financial development gathered steam after the seminal papers of LLSV.

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Internationally, countries differ in their Insolvency laws (Cornelli and Felli 1997; Rajan and Zingales 1995), which take shape in many forms (for instance, debtor /creditor oriented; see Acharya and Subramanian 2009). Many international organisations, such as the United Nations Commission on International Trade Law (UNCITRAL)[2] and the World Bank, have attempted to frame unified frameworks for insolvency laws or compare legal frameworks between countries(The World Bank 2021; UNCITRAL, 2004). Such institutions have also developed indices to track the performance of insolvency laws. For instance, the World Bank Doing Business Project (World Bank 2020) has ranked countries worldwide in terms of the strength of legal rights and resolving insolvency framework. These measures have been used widely in the bankruptcy, creditor rights, and the law & finance literature.

International Trade has long been considered a driver of economic growth (World Trade Organisation [WTO] 2023). Due to globalisation and trade, companies are more integrated than before in terms of transnational operations (Alves and Ferreirinha, 2023) and supply chains (Shukla and Jayaram, 2020). However, while the world has become increasingly globalised, many bottlenecks remain important, including the resolution of cross-border insolvency of multinational trading entities with geographically diverse operations and supply chains (Locatelli 2008). "Cross-border insolvency signifies circumstances in which an insolvent debtor has assets and/or creditors in more than one country" (Economic Survey, Government of India, 2022). Insolvency of a corporate debtor in one country with assets/creditors/operations in another country can result in significant complex issues due to countries with differing legal institutions. Hence, the lack of comprehensive insolvency laws for cross-border insolvency can impact international trade (UNCITRAL, 1997).

While much literature exists on the impact of insolvency laws on outcomes such as financial development and credit markets (law & finance stream), relatively less is discussed on the linkages of Insolvency laws and international trade. However, there has been longstanding debate on the adoption of harmonised cross-border insolvency laws, their implications, and issues relevant to entities with cross-border presence.

Literature on cross-border insolvency laws and their role in resolving insolvency spread across nations is presently active. However, despite a Model Law developed by the UNCITRAL way back in 1997 to deal with cross-border insolvency (hereafter referred to as the 'Model Law'), limited nations have adopted the same (discussed subsequently). Against this backdrop, this paper seeks to provide an overview of the linkages between insolvency laws and international trade while providing a discussion thread on the present status of cross-border insolvency laws (including in the context of India). The paper also seeks to explore whether there is potential for south-south cooperation on the subject. Accordingly, this study asks the following RQs: (1) What are the linkages of insolvency laws with International Trade? (2) What is the importance of cross-border insolvency laws to international trade? (3) What are the key issues and challenges facing the adoption of cross-border insolvency laws? (4) what is the status of the adoption of cross-border insolvency laws? and (5) what can be a prescription for South-South cooperation in the domain.

By examining the objectives of insolvency laws and distinct dimensions of international trade (in the context of Insolvency), the paper emphasises that insolvency laws are relevant to international trade through internal (domestic) and external (cross-border) channels. By integrating the economic objectives, law & finance perspective, and institutional effects of insolvency laws, one can depict the linkages in three ways. First, from a domestic jurisdiction and economic rationale perspective, efficient insolvency regimes facilitate the reorganisation of viable entities (domestic) while ensuring liquidation of unviable ones (White 1989). This facilitates the overall health of trading as well as non-trading firms in an economy by freeing up resources locked in otherwise unviable firms. Second, from a law & finance perspective, insolvency laws facilitate domestic credit markets by improving credit supply, lowering the cost of capital, and improving ex-ante effects, thereby benefiting firms (through improved credit channels), including those engaged in international trade. Finally, from an institutional effect perspective (viewing insolvency laws as institutions), the adoption of harmonised insolvency laws can facilitate the resolution of cross-border insolvencies (in a timely and

cost-efficient manner) spread across nations with differing insolvency regimes (thereby bringing about improved creditor protection, reduced uncertainty, and lower transaction costs) resulting in a beneficial impact on the flow of investments and international trade. International trade has certain distinct dimensions, such as (the geographical spread of trading entities) which make cross-border insolvency laws relevant. While the first two demands the efficiency of insolvency laws at the domestic level, the third requires the adoption of harmonised insolvency laws by countries, such as the UNCITRAL Model Law. Figure 1 summarises the channels of the effect of insolvency laws in the context of international trade, forming the basis of this paper's analysis.

The paper also emphasises that insolvency laws can be made to benefit international trade through the twin effects of improving the effectiveness (and efficiency) of domestic bankruptcy regimes while adopting harmonised international cross-border insolvency laws (to deal with the distinct dimensions of cross-border trade). In the context of international trade, both these aspects constitute healthy insolvency regimes and must be viewed in tandem. Literature has noted the benefits

Figure 1: How do Insolvency Laws Impact Trade?

Internal channel (domestic laws) → effective insolvency laws within nations → benefit firms, (including those engaged in trade) *through redeployment of resources, improved access to finance/lower cost of financing, protection of value, higher probability of reorganisation, improved ex-ante effects*, gains from *financial development* → International Trade

External channel (cross-border laws) → Adoption of harmonised cross-border insolvency laws → *facilitates rehabilitation of entities with cross-border presence, reduces legal uncertainty, improves transparency, improves ease of doing business (in time bound and efficient manner), lowers transaction costs, improves comparative advantage* → International Trade.

Sound Insolvency Laws in the context of international trade (domestic + external channels)

Source: Author.

of economic institutions, such as property rights, quality of regulations, rule of law, and enforcement, in reducing transaction costs, thereby improving a nation's comparative advantage (WTO, 2013).[3] Insolvency laws can also be construed as forms of institutions(Rajan and Zingales 1995). Institutions are often shape (and are shaped) by international trade (WTO, 2013). However, not all institutions are alike, and insolvency laws have their own dynamics. Therefore, they need a specialised focus. From a policy perspective, it is thus imperative for nations to focus on both improving the effectiveness of their domestic insolvency laws and adopting harmonised cross-border insolvency laws for facilitating international trade.

Having said that, the process of achieving an effective domestic framework is, however, evolutionary, with countries having to undertake several reforms to the law (based on experiences) before stabilising their effects. For instance, India's experience in implementing insolvency reforms in 2016 (Insolvency & Bankruptcy Code, 2016 or "IBC") is a prime example, and the law has seen several amendments to date to improve its functioning. Any insolvency law takes decades to settle. Therefore, parallel to the stabilisation of insolvency laws, much benefits will flow to countries in the context of international trade if, while adopting globally recognised principles of insolvency, they also integrate cross-border insolvency law into their insolvency frameworks. While extensive debate exists on effective principles of insolvency regimes (such as that laid down by the World Bank. 2021), the immediate focus in the mainstream debate has been on the adoption of the UNCITRAL Model Law, which has been long contemplated by India (see Bankruptcy Law Reform Committee [BLRC] 2015) and other countries. While UNCITRAL introduced the Model Law in 1997, its adoption remains low, with wide variation in its implementations (despite the passage of over two decades). Hence, this study, also discusses the Model Law (recognised as crucial from a cross-border perspective), including some issues holding back its adoption. It also focuses on the potential for cooperation with Global South (GS) countries in adopting the Model Law from learnings and normative perspective.

This paper contributes in the following ways: It views the linkages of insolvency laws and international trade holistically and emphasises channels of linkages (economic, law & finance, and institutional). Much of the research has, to date, focused more on the roles of institutions (such as the rule of law/property rights), ignoring domestic insolvency laws (as forms of institutions) per se on international trade. Research has consistently noted the lack of consensus on what constitutes institutions (Kaplan and Pathania 2010). Further, research that has focused on insolvency law has concentrated more on the debate through the lens of cross-border insolvency laws rather than viewing the same more holistically. While no doubt the adoption of UNCITRAL framework is of vital importance, the same needs to be seen in conjunction with the strengthening of domestic insolvency laws for a more holistic view of insolvency laws as sound institutions from the perspective of international trade. Then, in line with the reasoning that both matter from a policy perspective, and considering strengthening domestic insolvency frameworks take time following a natural evolutionary trajectory, this study focuses on some key issues and challenges in implementation of the Model Law. It recapitulates the distinct dimensions of international trade that make cross-border insolvency laws relevant to the debate.

While there have been increasing standalone regulatory and peer-reviewed publications on the subject, given the topic is contemporary (for instance, see Coordes 2023; Das 2020; Mohan 2012; Shukla and Jayaram 2020), this study discusses the same more in the context of the argument of what constitutes sound insolvency laws from an international trade perspective. The study also provides an integrated perspective by summarising the key developments in the domain with issues/challenges (including alternate perspectives) while also discussing the status of international adoption of the Model Law and India's position on the subject.

The paper then identifies and suggests a few areas of cooperation between India and the GS relating to the adoption of the Model Law. While many nations have yet to adopt the Model Law (including India), many GS countries (especially in Africa) have adopted the Model Law

(Biswal, 2020). There exists scope for sharing experiences and concerns between India (which has yet to adopt the model law) and GS countries from a cooperation perspective.

Finally, the paper suggests future research streams analysing the influence of economic institutions also integrate insolvency laws (and their distinctive influence) with other factors /determinants influencing international trade. Overall, this paper provides an overview of how insolvency laws are linked to international trade, what constitutes sound insolvency laws from a trade perspective, what are some issues and status of adoption of cross-border laws, and what can be some potential areas of cooperation with GS.

The remainder of this paper is organised as follows: First, It examines the inherent benefits of insolvency laws to international trade and highlight their linkages. Then, it examines the distinct dimensions of international trade and the importance of harmonised cross-border regimes. This is followed by an overview of the UNCITRAL Model Law, the status of adoption in various countries (including India), and some issues/challenges. It then discusses some potential alternatives suggested in the literature to the Model Law. Next, it provides suggestions for some potential avenues for south-south cooperation. Finally, the study summarises and concludes.

Insolvency Laws and Their Inherent Benefits to International Trade

Insolvency laws are recognised as critical to a nation's financial development (LLSV).[4] They are defined as a collective legal mechanism to settle creditor claims either through reorganisation or liquidation (White, 1989). White identified the primary economic rationale of bankruptcy as a screening mechanism by reorganising viable firms and eliminating (liquidation) inefficient or unviable firms, thereby freeing up resources to be better utilised in other activities. Aghion, Hart, & Moore (1994) and (Hart 2000) detailed that the primary goals of insolvency laws are the achievement of desirable ex-post outcomes (value maximisation and distribution), the introduction of *ex-ante* incentives (to

avoid bankruptcy), preservation of absolute priority rights (of secured creditors) and placing decision making in the hands of claimants (rather than executive or judiciary).

The objectives of bankruptcy law have been built around these basic principles since and have often been articulated differently by scholars,institutions and nations. The UNCITRAL, for instance, lists the objectives of insolvency law to be the provision of certainty, transparency & predictability, maximisation of value of assets, striking a balance between liquidation & reorganisation, recognition of creditor rights, ensuring equitable treatment and the establishment of a framework for cross-border insolvency. The BLRC (2015), while framing India's insolvency reform (IBC) articulated the objective of the bankruptcy code to be resolutions, maximisation of value of the corporate debtor, promotion of entrepreneurship, credit markets and balancing stakeholder interest. However, much heterogeneity exists in insolvency laws (and the articulation of objectives) across nations. Internationally, insolvency laws differ among nations, and there is no "one size fits all approach" (Hart 2000).

However, notwithstanding which form of insolvency frameworks nations adopt, there is a general consensus that effective insolvency laws lead to several economic and financial benefits. For instance, the law and finance research stream has long empirically researched the positive impact of the legal environment on credit markets and financial development. Improved creditor rights decrease the risk of expropriation by insiders of firms and improve lenders' *ex-ante* incentive to lend (LLSV 1997). Not only financial development but also insolvency laws are crucial for limiting financial crises and orderly workout from excessive indebtedness. Insolvency laws ensure that the resources of troubled enterprises are reemployed in the system in the most efficient form or closed at the earliest, which is crucial for the economic performance of society (The World Bank 2021). Insolvency systems promote reorganisation over liquidation, which is held to be more effective in creditor recoveries. Insolvency laws have been researched to be important

to a host of other favourable outcomes such as banking development (Levine 1998), reduction of default risk (Gopalakrishnan and Mohapatra 2020), promotion of Investments (World Bank 2020), job preservation (Armour *et al*. 2015), capital formation, entrepreneurship (BLRC, 2015), SME lending (Haselmann and Wachtel 2010) and International Trade (UNCITRAL 1997).

Insolvency laws may also be construed as forms of institutions. While there is no uniform definition of institutions (Kaplan and Pathania 2010; Nunn and Trefler 2014), they have been defined to include "social norms, ordinary laws, regulations, political constitutions and international treaties within which policies are determined, and economic exchanges are structured" (WTO, 2013; p. 12). Institutions (classified as political /economic) have been recognised as one of the key determinants of international trade (WTO, 2013) and, ultimately, of economic growth (Fernández and Tamayo, 2015). Not only to trade, but sound institutions are also said to influence trade policies such as tariffs and preferential trade agreements (WTO, 2013).

While there is limited research on the effect of insolvency laws on international trade (for instance, Locatelli 2008), several studies have examined the role of institutions on international trade.[5] The domain, however, lacks consensus on what constitutes institutions (and good institutions), lacks a theoretical framework (Ranjan and Lee 2007), and warrants further research (Álvarez *et al*. 2018). The WTO report highlights that economic institutions impact international trade through the channel of improved certainty and transparency, which reduces transaction costs, which has also been echoed by other scholars as well(for a review on the subject, see Belloc 2006). Institutions and other factors relevant to international trade (such as technology and investments) have also been articulated to improve a nation's comparative advantage (WTO, 2013). Table 1 highlights a few studies examining institutional effects in this context.

Table 1: Some Evidence of the Impact of Economic Institutions on International Trade

Study	Economic Institutions covered	Impact on International Trade
(Anderson and Marcouiller 2002)	Contract enforcement (legal systems) and corruption	Strong institutions improve trade. Weaker institutions hamper trade through increased transaction costs.
(Berkowitz, Moenius, and Pistor 2004)	Legal Institutions (domestic and international)	Positive impact, especially for complex goods. Through direct and indirect channels (lower transaction costs, perceptions/ signaling).
(Rose 2005)	International Institutions (OECD membership, Accessions to GATT/WTO)	Positive impact
(Grossman and Helpman 2005)	Contracting environment	Important for the extent of international outsourcing.
Belloc (2006)	Domestic institutions (relied on the definition of North, 1990)	Reviewed the domain. Noted lack of theoretical frameworks on the effect of competitive advantage on trade dynamics. Stressed on a greater understanding of how institutional architectures impact trade.

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(Levchenko 2007)	Contract enforcement, property rights.	Institutional differences impact trade flows when they are a source of comparative advantage, with gains more in developed countries than developing countries.
(Nunn 2007)	Contract enforcement	Enforcement rights improve a nation's comparative advantage by facilitating the 'production of goods for which relationship-specific investments are most important.'
(Ranjan and Lee 2007)	Contract Enforcement	Weak contract enforcement negatively impacts trade volumes.
(Méon and Sekkat 2008)	World Bank Governance Indicators developed by Kaufmann *et al*. (2009) comprising corruption, government effectiveness, political stability, rule of law, regulatory quality and voice /accountability	Institutions matter more for the export of manufactured goods.
(Ferguson and Formai 2011)	legel Institutions (rule of law)	Institutions remain a source of comparative advantage to nations. The study linked institutional quality, organisation choice, and production of complex goods.

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(Manova 2013)	Financial Institutions	Weak financial institutions negatively impact trade
(World Trade Organisation (WTO) 2013)	Institutions (political and economic)	Institutions matter for international trade (transaction costs/comparative advantage), and trade matters for institutions.
(Feenstra *et al*. 2013)	Contract enforcement and judicial systems	Institutions matter for export patterns
(Nunn and Trefler 2014)	Reviewed various institutions, noting no uniform definition.	Reviewed the domain of impact of domestic institutions on international trade as a source of comparative advantage. Found institutions matter even after factoring in traditional determinants. Also noted the reverse casualty impact of trade on institutions.
(Antràs and Foley 2015)	Contract Enforcement	Institutional environment matters for trade finance

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(Álvarez *et al*. 2018)	World Bank Governance Indicators developed by Kaufmann *et al*. (2009)	Institution (including institutional distance) matters for bilateral trade, specifically regulatory quality, government effectiveness, and the rule of law. Institutions can compensate in developing countries.
(Park 2021)	Formal and informal institutions.	Examined the interrelationship of formal and informal institutions in the context of international trade. Found formal institutions improve with quality of informal institutions in open economies.

Source: Author collation from relevant literature.

Owing to the several benefits of insolvency law to a nation's development and the linkages of institutions to international trade, the debate has become relevant. *Thus, the channels of the effect of insolvency laws and international trade can be construed as three-fold (economic, law & finance, and Institutional)*. Insolvency laws facilitate the redeployment of locked resources in nations by saving viable entities and liquidating unviable ones(White 1989). Insolvency laws promote financial development, expanding credit and lowering financing costs (Bose, Filomeni, and Mallick 2021; LLSV, 1997) while ensuring the timely reorganisation of viable entities. This directly impacts the nation's health and expansion activities of actors such as firms (engaged in trading or non-trading activities). Finally, the institutional effect shows that sound

institutions improve certainty transparency and reduce transaction costs while also improving a nation's comparative advantage (WTO, 2013). This indirectly benefits international trade and foreign investment in a country. The linkages have earlier been shown in Figure 1.

The importance of insolvency laws to nations' development is well recognised and demonstrated, with over 40 countries having reformed their insolvency framework since 2006 (World Bank 2020). There has, however, been an accelerated trend of reforms, especially post-COVID-19,[6] primarily oriented towards introducing hybrid workouts, specialised procedures for MSMEs, and promoting out-of-court restructuring, amongst others (Gurrea-Martínez 2021). However, as discussed earlier in this paper, the adoption of harmonised cross-border insolvency laws remains slower than expected.

Distinct Dimensions of Insolvency in International Trade: The Need for Harmonised Regimes

Insolvency laws are important to international Trade (UNCITRAL), which has increased significantly over the last three decades (WTO, 2013). International trade has long been debated as crucial to a nation's economic growth, security, poverty reduction, inclusiveness and environmental sustainability (WTO, 2023). International trade remains a critical component of the global economy, although facing slower growth after the global financial crisis and COVID-19 pandemic (WTO, 2023). As per recent trade data from UNCTAD (2024), global trade dipped by 3 per cent to $31 trillion in 2023 due to lower demand in developed economies and weaker trade in East Asia and Latin America. Further, as per the report, the negative growth was more pronounced in developing countries (especially in the south-south corridor). However, notwithstanding the degrowth, international trade remains sizeable, and there has been increased interdependence between nations (Locatelli 2008).

There are some critical factors crucial for efficient global trade. Demography, investment, technology, energy, natural resources, transportation costs, and institutions are said to be some fundamental

economic factors that explain "why countries trade" (WTO, 2013). Other drivers include unhindered access to goods, security, economic homogeneity, and certainty (WTO, 2023). Also crucial is the financial health of trading companies and the associated uncertainty that may arise during adverse situations such as insolvency. Insolvency can strike domestic corporations with a presence across multiple jurisdictions, especially those engaged in trade. Insolvency can thus have significant implications on companies' survival and operations in multiple countries. This has acute repercussions due to frequent episodes of financial crisis, especially in developing countries (Locatelli 2008).

However, insolvency in the context of global operations is complex. Globalisation, while supporting economic growth, also enhances the problems posed by insolvency (Saksena 2022). As noted by Alves and Ferreirinha (2023), "*the phenomenal growth of international trade and investments has increased the incidence of corporate entities having businesses, assets, debtors, and creditors in more than one country*" (p. 176). Assets and liabilities across countries and jurisdictions make cross-border insolvency a problem. Further, several permutations can exist in cross-border cases. Das (2020), for instance, highlights the possible complications of insolvency in a cross-border scenario: (1) Foreign creditors laying claim in different jurisdictions from where the insolvency has been initiated, (2) parallel insolvency proceedings of the same entity /group across multiple jurisdictions, and (3) insolvent entity may have assets across many countries with differing jurisdictions, rendering dealing with the assets a complex problem. Hence, owing to the complexity of the geographical spread of multinational enterprises engaged in trade, insolvency becomes complex. Literature has thus often focused on the need for a unified insolvency regime (cross-border insolvency laws) to handle insolvency cases spread across geographical borders.

Additionally, cross-border insolvency requires close international cooperation between various courts, legal systems, and administrators (Biswal 2020). Insolvency in one jurisdiction without coordination and legal access to other jurisdictions can lead to significant issues in

resolving insolvency with crucial implications on the preservation of debtors' value, considered one of the core objectives of insolvency law (Hart 2000). It is, hence, imperative from a business continuation and trade perspective to understand the dimensions and complications of companies with cross-border operations who may be declared insolvent and resort to bankruptcy proceedings.

Further, the heterogeneity of insolvency laws across nations adds to the complexity and challenges of resolving insolvency for companies with global operations and international trade (Das 2020). Different countries have different legal mechanisms to deal with insolvency. The resolution of insolvency in the context of international operations remains complex due to the cross-border operations of companies in multiple countries/ jurisdictions, which differ in terms of their legal systems and insolvency regimes (characteristics. enforcement, and efficiency). Companies also often have a network of subsidiaries spanning geographical locations, and while domestic laws may kick in at the time of insolvency, foreign creditors may exist who may be unaware of domestic laws. Further, due to differences in laws, there can exist situations of lack of recognition of foreign judgments in many countries (Locatelli 2008).

Hence, much of the recent focus on the linkages of insolvency and international trade has been on the need to adopt a harmonised cross-border insolvency regime. Cross-border insolvency laws have become important due to insolvency volumes and legal complexities (Alves and Ferreirinha, 2023). The lack of harmonised mechanisms to deal with cross-border issues can create uncertainty, and restrict the free movement of investments between nations (Locatelli 2008). Entering into bilateral agreements with every nation is not considered a very efficient way of dealing with cross-border disputes (Das, 2020); Shukla and Jayaram, 2020). "Having an insolvency law that can deal effectively with cross border issues would provide necessary comfort, in a worst-case scenario where many multinational enterprises are forced into insolvency resolution proceedings" (Shukla and Jayaram 2020). Furthermore, cross-border insolvency can have many scenarios (Cross Border Insolvency

Rules/Regulations Committee [CBIRC], Ministry of Corporate Affairs 2020). Hence, cross-border insolvency laws become relevant to the debate because of the specific nature of the issue of differing insolvency regimes, global operations, and linkages to international trade. This is especially relevant after periodic bouts of financial crisis

The benefits of adopting a harmonised cross-border law have been perceived as manifold. Nageswaran and Arora (2022) noted, "Growing international trade is increasing the integration of businesses. As the world has become more financially interconnected, the need for comprehensive procedures for cross-border matters becomes imperative" (p. 9). Nations with sound insolvency mechanisms to deal with cross-border issues will be able to attract more investments (ILC, Government of India; 2018a) and provide comfort to global financial partners when engaging in trade with them. Cross-border insolvency laws provide a certain degree of legal certainty for trade and investments, thereby lowering transaction costs (Locatelli 2008; Mittal 2021). Apart from facilitating trade, sound international laws can also promote investments /economic cooperation (Masoud, 2013), maximise debtors' value (Locatelli 2008), and lower the 'cost of international financing'(Shukla and Jayaram 2020). Efficient and speedy mechanisms to deal with insolvency can facilitate reorganisations of insolvent entities in a timebound and cost-efficient manner (Mohan 2012) and are hence considered gold standards of insolvency regimes.

Uncitral Framework for Harmonising Cross-Border Insolvency

Hence, the need to adopt harmonised cross-border insolvency regulations is relevant in the context of international trade and a contemporary issue. Recognising the need to have an international harmonised cross-border insolvency framework, as far back as 1997, the UNCITRAL developed the Model Law) to deal with the insolvency of the corporate debtors across multiple jurisdictions. The UNCITRAL is a body under the UN General Assembly where issues relating to international trade law are discussed (Adelus, 2019). The main objective of the Model Law is "to

assist states in equipping their insolvency laws with modern harmonised and fair frameworks to address more effectively the instances of cross-border insolvency" (Shukla and Jayaram, 2020).

As noted by the CBIRC (2020), many permutations and combinations of cross-border insolvency situations may exist. For instance, domestic companies may have assets, liabilities, or both in foreign countries. Further domestic insolvencies can occur on a standalone basis or concurrent with foreign country insolvencies in the debtor's home country or concurrent with foreign country insolvency in other insolvency jurisdictions. Similarly, foreign insolvencies may involve proceedings in their home country, in India, other jurisdictions, or concurrent proceedings. However, across these many scenarios of cross-border insolvency, the Model Law addresses the following common issues (see UNCITRAL, 1997):

4.1: Access: seeks to facilitate foreign creditors and /IPs /representatives' access to domestic courts where insolvency proceedings are underway (key issues: rights of access, regulation, participation, proceedings, and notices)

4.2: Recognition of foreign proceedings of a debtor and provision of relief thereof (key issues: application, Centre of Main Interest (COMI), decision of recognition, types of relief and avoidance transactions)

4.3: Cooperation: between domestic, foreign courts and insolvency professionals across jurisdictions (key issues: cooperation between cross-border stakeholders)

4.4:Coordination: court coordination for two or more concurrent cross-border insolvency cases (key issues: coordination, payment, presumption of insolvency)

The Model Law thus focuses on facilitating access (for foreign creditors, representatives & IPs) to domestic courts, facilitating recognition of foreign judgments (and provision of appropriate reliefs thereof), providing mechanisms for cooperation among stakeholders, and coordination between courts for concurrent proceedings. It mainly

seeks to facilitate the participation of foreign creditors in domestic proceedings, participation across nations, and representation of foreign creditors in domestic proceedings while facilitating equality of treatment with domestic creditors (Alves and Ferreirinha, 2023). The benefits of the Model Law have been articulated as reducing the time taken in coordination, improving creditor recoveries, and facilitating reorganisations of insolvent entities 'in the interest of all jurisdictions involved' (Locatelli 2008). Its main benefits have been articulated by the ILC (Government of India, 2018a) as flexibility, protection of domestic interests, priority to domestic proceedings, and cooperation /coordination.

However, in the current form, the Model Law is legislative guidance non-binding in nature and does not intend to bring uniformity of insolvency laws in member countries but seeks to facilitate coordination and efficiency in cross-border insolvency proceedings (Alves and Ferreirinha 2023; Shukla and Jayaram, 2020). While recommended, countries may or may not choose to adopt the Model Law with or without any modifications (Alves and Ferreirinha, 2023). However, this advantage of allowing nations to modify the basic legal framework to suit their national interest and diversity has also been an obstacle in the implementation /adoption of the Model Law in several countries, as will be discussed next in this paper.

Current Status of Adoption and Issues

The importance of having sound cross-border laws has since been recognised by many countries, including India,[7] which have adopted or are contemplating the adoption of the UNCITRAL Model Law with some modifications. However, despite the Model Law being in place since 1997 and globally recognised as an "accepted legal framework to deal with cross-border insolvency"(see ILC, Government of India 2018a), adoption by countries has been very slow (Shukla and Jayaram, 2020). As per the UNCITRAL, over 60 countries (across 63 jurisdictions) have adopted the Model Law.[8] Table 2 lists countries that have adopted the Model Law to date.

Table 2: List of Countries that have Adopted the UNCITRAL Model Law

Sl. No	Country	Continent	Global South/ North	Year of Adoption
1	Albania	Europe	GS	2016
2	Angola	Africa	GS	2021
3	Australia	Oceania	GN	2008
4	Bahrain	Asia	GS	2018
5	Benin	Africa	GS	2015
6	Brazil	South America	GS	2020
7	Burkina Faso	Africa	GS	2015
8	Cameroon	Africa	GS	2015
9	Canada	North America	GN	2005
10	Central African Republic	Africa	GS	2015
11	Chad	Africa	GS	2015
12	Chile	South America	GS	2013
13	Colombia	South America	GS	2006
14	Comoros	Africa	GS	2015
15	Congo	Africa	GS	2015
16	Costa Rica	North America	GS	2021
17	Cote d Ivoire	Africa	GS	2015
18	Congo (Democratic Republic)	Africa	GS	2015
19	Dominican Republic	North America	GS	2015
20	Equatorial Guinea	Africa	GS	2015
21	Gabon	Africa	GS	2015
22	Ghana	Africa	GS	2020
23	Greece	Europe	GN	2010
24	Guinea	Africa	GS	2015
25	Guinea-Bissau	Africa	GS	2015
26	Israel	Asia	GN	2018
27	Jamaica	North America	GS	2016
28	Japan	Asia	GN	2000

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29	Jordon	Asia	GS	2018
30	Kenya	Africa	GS	2015
31	Malawi	Africa	GS	2015
32	Mali	Africa	GS	2015
33	Marshall Islands	Oceania	GS	2018
34	Mauritius	Africa	GS	2009
35	Mexico	North America	GS	2000
36	Montenegro	Europe	GS	2002
37	Morocco	Africa	GS	2018
38	Myanmar	Asia	GS	2020
39	New Zealand	Oceania	GN	2006
40	Niger	Africa	GS	2015
41	Panama	North America	GS	2016
42	Philippines	Asia	GS	2010
43	Poland	Europe	GN	2003
44	Republic of Korea	Asia	GN	2006
45	Romania	Europe	GN	2002
46	Rwanda	Africa	GS	2021
47	Saudi Arabia	Asia	GS	2022
48	Senegal	Africa	GS	2015
49	Serbia	Europe	GS	2004
50	Seychelles	Africa	GS	2013
51	Singapore	Asia	GN	2017
52	Slovenia	Europe	GN	2000
53	South Africa	Africa	GS	2000
54	Togo	Africa	GS	2015
55	Uganda	Africa	GS	2011
56	Abu Dhabi Global Markets (UAE)	Asia	GS	2015
57	Dubai International Financial Centre	Asia	GS	2019
	UK and Northern Ireland	Europe	GN	
58	--Great Britain	Europe	GN	2006

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59	---British Virgin Islands	Europe	GN	2003
60	----Gibraltar	Europe	GN	2014
61	USA	North America	GN	2005
62	Vanuatu	Oceania	GS	2013
63	Zimbabwe	Africa	GS	2018

Source: UNCITRAL except for classification of countries as Global South, (partly based on the author's research judgement, countries that participated in the 2023 Voice of Global South Summit in India, and G77 member list).

As noted by Shukla and Jayaram (2020): "An interesting mix of countries have adopted the Model Law. It includes advanced economies like the UK, USA, Canada, Australia, New Zealand, Japan, and Singapore and small developing economies like Chad, Chile, Congo, Togo, Myanmar, Uganda, etc. Several economically advanced jurisdictions have refrained from joining the multilateral solution offered by the UNCITRAL Model Laws, and their absence undermines the utility of the Model Law… Further, even countries which have adopted the Model Law have done so with tailor-made changes to foster their economic interests, which may be difficult to comply with at the bilateral level" (p.310).

However, several countries (including India) have also yet to adopt the Model Law. Despite its existence since the late 1990s, the law has suffered in its implementation (Adelus 2019). One of the primary reasons attributed to the reluctance of nations to adopt the model law includes changes made to the basic structure of the model law to suit national interests (Coordes, 2023; Mohan, 2012). The Model Law is non-binding, resulting in countries having the freedom to incorporate the salient features within their legal framework, which often defeats the objective of harmonisation (Coordes, 2023). As a result, several countries have changed the basic framework of the Model Law in line with their national interests, priorities & culture (Masoud 2013) while adapting the same across many provisions (including reciprocity, recognition, public policy exceptions,[9] conflicts, granting of reliefs, and exclusions of specified entities). Many countries have adopted the Model Law with modifications to public policy, exemption of diverse enterprises, and introduction of reciprocity arrangements (Das, 2020).

The other reasons attributed to the less-than-anticipated adoption of the Model Law globally include varying perceptions of its importance (Coordes, 2023), lack of domestic legal infrastructure (Coordes, 2023), lack of adoption by many advanced nations (Shukla and Jayaram 2020), sovereignty & security issues (Alves and Ferreirinha 2023), restricting access for foreign representatives (Mohan 2012), differing national priorities (Alves and Ferreirinha 2023) and pre-existence of national laws/convention/treaties to deal with cross-border issues which may not be easy to abandon (Alves and Ferreirinha 2023; Mohan 2012). Further inability to disentangle complex corporate structure and tracking assets, ranking of claims (Mohan 2012), inadequate provisions to deal with conflict of law, international arbitration /contractual issues, and differences in interpretation of provisions are some other issues perceived with the Model law (Shukla and Jayaram 2020). These scholars have also observed a lack of consensus on the implications of varied financial instruments used by MNCs and their subsidiaries, which do not deal with the model law (Shukla and Jayaram, 2020).

However, there have been exceptions, and some countries (such as Kenya) have adopted the model law without reciprocity arrangement (Masoud 2013), attributed to the growing awareness and recognition of its importance. Further adoption of model law by several African countries brings out increased awareness of the benefits of cross-border insolvency law arrangements for international trade, the flow of investments, and economic cooperation (Masoud 2013). Some scholars have suggested that it will be useful to study why several African countries have adopted the model law or what makes their legal environment more amenable to adopting the model law(Biswal 2020).

India's Position on Cross-Border Insolvency

India has yet to adopt the Model Law. The need for sound cross-border insolvency laws was well recognised by the BLRC (2015) while drafting the IBC. Others have also recognised the importance of having a cross-border insolvency framework (ILC, 2018a; Economic Survey, 2022). The advantages of adopting the Model Law have been noted as providing

flexibility to adopting nations to maintain domestic interests, providing priority to domestic proceedings and mechanisms for cooperation (BLRC 2015; ILC, 2018a).

The BLRC noted the criticality of adopting the model law for foreign investments and signaling India's financial sector reforms to global investors. However, only two sections in IBC were added at the time (IBC, ss 234;235), which essentially allowed India to enter into bilateral agreements on a case-to-case basis to implement the code where the assets of the creditor are situated in other countries. Alternatively, the law allows the NCLT to issue specific requests to other countries (letter of request) for cooperation on cross-border IBC matters. However, it has been recognised that the existing provisions are inadequate (ILC, 2018a). The presence of only limited provisions to deal with cross-border insolvency has been felt to be inadequate by many scholars (Das, 2020), leading to "delays and uncertainty" (ILC, 2018a). As noted by the Economic Survey (2022), while India can recognise the claims of foreign creditors in IBC, there is presently no mechanism in India to recognise foreign judgments.

While the ILC laid down broad principles that need to be followed for insolvency, the CBIRC (2020) was established to operationalise the broad contours of adoption of the model law as laid down by the ILC. They noted that in the context, various situations may arise, such as an Indian company having foreign assets/liabilities or a foreign company having Indian assets and liabilities, and these situations must be specifically dealt with. Several permutations and combinations can add to the complexity within these broad contours. The CBIRC laid down several typologies in their report. For instance, Indian companies may face domestic insolvency, foreign insolvency, or concurrent proceedings. Similarly, foreign companies may face insolvency in their country, Indian insolvency, foreign insolvency, or concurrent proceedings. However, the CBIRC specially excluded assets owned by JVs/Associates, which must be dealt with by local insolvency laws, and enterprise group level insolvency must also be considered separately. A brief evolution of India's position on cross-border insolvency law is summarised in Table 3.

Table 3: India's Consideration of Cross-Border Insolvency: Key Milestones

Year	Committee	Recommendation
2000	Eradi Committee	Recommended adoption of the model law (Biswal 2020)
2001	Mitra Committee	Recommended adoption of the model law(Biswal 2020)
2015	BLRC	Underscored the need for a sound cross-border insolvency framework to be taken up subsequently
2016	IBC (2016)	Incorporated two provisions to deal with cross-border insolvency matters
2018	Insolvency Law Committee (ILC), Ministry of Corporate Affairs, Government of India 2018a	Report on Cross-border Insolvency
2018	Insolvency Law Committee (ILC), Ministry of Corporate Affairs, Government of India 2018b	Recommended implementation of the UNCITRAL Model Law with certain carve-outs and need for government regulations on aspects of the model law.
2020	Cross Border Insolvency Rules/Regulations Committee (CBIRC), Ministry of Corporate Affairs 2020	Recommend rules and regulations required to operationalise the ILC report on cross-border insolvency and examine UNCITRAL model law on group insolvency.
2021	Cross Border Insolvency Rules/Regulations Committee (CBIRC), Ministry of Corporate Affairs 2021	Report (second part) for operationalising group insolvency norms. Recommended domestic group insolvency norms in the first phase (and not cross-border norms insolvency as laid down by UNCITRAL since these need to be adopted in tandem with the Model Law on cross-border insolvency).
2022	Economic Survey	Underscored need for a cross-border framework

Source: Author compiled.

India is contemplating implementing the UNCITRAL Model Law with some modifications.[10] India's position on the Model Law on some of the elements is briefly summarised in Table 4 below.

Table 4. India's Position on Some Key Aspects of Model Law (summary not exhaustive)[11]

Key Elements	Model Law position (Summary)	Evolving thought
Access	Foreign *IPs, Creditors*, and other interested persons are allowed access to domestic courts to facilitate the initiation and participation in insolvency proceedings.	ILC recommended excluding other interested persons and suggested that participation should only be limited to foreign creditors. As regards the access of foreign IPs, the committee recommended Central Government (CG) frame guidelines. CBIRC, however, recommended that foreign representatives be given access, subject to suitable authorisation and oversight by IBBI.
Recognition and Relief	Recognition of foreign proceedings and grant of reliefs by domestic courts.	ILC recommended recognition either as 'foreign main proceedings' or a foreign non-main proceeding depending on the COMI, and relief (such as automatic stay) may be granted accordingly (Coordes 2023). ILC also recommended that the CG lay down criteria. No interim relief is recommended, but only on recognition.
Cooperation	Coordination between IPs and Courts (domestic, foreign, and inter-se).	ILC recommended the adoption of model law provisions apart from cooperation between domestic AA and foreign courts. The same may be based on guidelines framed by CG since the infrastructure is still evolving.

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Coordination	Framework for coordinating concurrent insolvency proceedings (foreign and domestic) in different countries through court cooperation.	ILC has recommended model law provisions that foreign insolvency proceedings may be a base for initiating domestic insolvency proceedings, provided they are recognised.
Others		
Applicability	Entities to whom the law is applicable	ILC recommended extension initially to corporate debtors while suggesting expansion of the scope of the definition of CDs to include foreign companies and exclusions (such as financial service providers and critical infrastructure providers as may be notified by the CG). The CBIRC has recommended the exclusion of only FSPs
Reciprocity	Refers to reciprocity for grant of recognition of judgments. No stipulation in model law.	ILC has recommended adoption based on initial reciprocity, which may be lifted subsequently based on experiences and evolution. ILC clarified this will not affect the claim filings by foreign creditors
COMI	Criteria for establishing COMI	ILC broadly recommended retention of the definition in Model law without a look-back period of 3 months.
Public Policy Exceptions	Refers to exceptions where countries may make exceptions if 'manifestly' contrary to public policy.	ILC recommends retaining the model law provisions to restrict exceptions to a minimum while allowing the government to respond.

Source: Author's compilation with reference to literature, ILC and CBRIC reports.

While many committees have underscored the importance of adopting the model law, some scholars have voiced the same may not yield the desired results until some major countries (such as Russia, France, Germany) and with whom India shares economic ties/interests are yet to adopt the model law (see Shukla and Jayaram 2020). Further, certain other challenges have been foreseen by scholars in the implementation of the model law, including inspection and valuation of assets, verification of claims by foreign creditors, and the interpretation of what constitutes public policy while granting exemptions(Biswal 2020). Other concerns include a lack of clarity on tackling countries that have not adopted the model law, dealing with pending arbitrations, coverage of individual insolvency, and contractual issues (Biswal 2020). Further, the model law has been criticised for its tilt towards developed countries.

Some Alternates Perspectives to Model Law

There have been some voices in literature that have recommended looking beyond the Model law. Some scholars have noted international treaties, local rules /policies/guidelines, and protocols can be tailor-made to address issues in individual cases (Coordes, 2023; Mohan, 2012). These scholars have argued that some of these frameworks may be as effective as the model law, which can then be implemented to complement existing systems. Further, it has been voiced that the model law should be adopted with additional steps (such as improving the efficiency of local insolvency laws) to support cross-border insolvency coordination, adopting group insolvency frameworks, recognition of foreign judgments by Indian courts and improving mediation and dealing with conflicts of law) without which will render the law ineffective (Coordes, 2023; Locatelli, 2008). Further, others have said while India may adopt the law, it cannot be at the cost of 'overriding Indian jurisdictions.'[12] Others (Shukla and Jayaram, 2020) called for alternate solutions, given that model law is inadequate in its implementation.

Prescription for South-South Cooperation

Of the countries that have adopted the model law, a significant number are GS and African countries (see Table 2). Biswal (2020) suggested that

it would be interesting to study why African countries have found the adoption of a model law to be more conducive to their policies. While the need for harmonisation is also not new, its adoption by countries has been thin, and even in those countries where it has been adopted, there has been in wide variation to the original form. However, several countries have yet to adopt the Model Law (including India, China, Russia, France, and others). While the importance of harmonised insolvency laws is well recognised, this paper suggests scope for engagement with Global South countries to share experiences, issues, and other perspectives they have faced in the context of adopting the UNCITRAL model law. While several committees have been formed in India that have recommended the adoption of the Model Law (See Table 3) with certain changes, there exists substantial scope for cross-border engagement with developing countries to ensure their interests remain aligned while implementing and negotiating the Model Law with UNCITRAL. Hence, this paper suggests: (a) sharing of experiences of implementation of the model law, (b) sharing of perspectives on issues with the adoption of the model law, (c) sharing of alternate mechanisms for dealing with cross-border insolvency (over and above model law), (d) Identifying other areas of cooperation within the domain.

Conclusion

Insolvency is inexplicably linked to international trade. Insolvency laws influence international trade through the economic, law & finance, and institutional channels. International trade can benefit from sound insolvency laws. Due to distinct dimensions of international trade, sound insolvency laws in their context include both effective domestic insolvency regimes and the adoption of cross-border insolvency laws (both need to be seen in tandem). Globalised operations and supply chains have resulted in companies engaged in international trade having assets/liabilities across geographies, which complicates the insolvency landscape and has implications across geographies. This often necessitates the adoption of harmonised cross-border insolvency laws (UNCITRAL model law) into the domestic insolvency framework, providing uniform applicable mechanisms of access, cooperation,

coordination, and recognition/relief. The adoption of cross-border insolvency regimes (including cross-border group insolvency norms, which are increasingly recognised as inseparable from cross-border insolvency) is an infrastructural requirement to facilitate global trade. However, while there remains an active debate, the adoption of the same remains pending across several nations (including India).

This study thus reiterates the need for an integrated perspective in analysing the effects of insolvency laws on international trade and, in terms of policy, focusing on sound insolvency laws (to comprise both the efficiency of local bankruptcy regimes and the adoption of cross-border laws). However, much of the debate in literature and the linkage of insolvency laws to trade has been only through the lens of cross-border insolvency laws. Further, the institutional literature, which has dealt with the linkages of economic institutions and international trades (see WTO, 2013), has primarily focused on institutions such as contract enforcement and the rule of law while not integrating the discussion thread of insolvency laws in the analytical framework. Further, the domain lacks a uniform definition of institutions (Nunn and Trefler 2014), and there remains a lack of theoretical understanding of how institutions impact international trade (Belloc 2006), requiring further research. However, as seen in this paper, insolvency laws impact many aspects of nations, such as financial development, which together integrate to play a positive role in the health of stakeholders and international trade. In the context of international trade, both need to be seen in tandem. Future research needs to integrate insolvency laws as forms of institutions (while recognising their distinct status) while analysing factors influencing international trade. Examining the role of specific institutions, such as insolvency laws, rather than examining several varieties of laws/rules under a broad head of institutions may be required to ascertain their differential impact.

While this paper recognises that domestic insolvency laws in nations usually follow an evolutionary process and take some years to achieve desired goals (effectiveness and efficiency), parallel adoption of cross-border laws remains critical to driving international trade both from transaction costs and a signalling perspective. However,

strengthening domestic insolvency infrastructure will also facilitate the smooth integration of cross-border laws (Coordes, 2023). The UNCITRAL sought to provide a model law that countries may adopt to tackle cross-border insolvency. Legal mechanisms for effective dealing with cross-border insolvency issues are vital not only for the financial stability of companies with cross-border operations but also to provide a certain degree of legal predictability /certainty to insolvency business and trade. Hence, working towards cross-border insolvency laws benefits not only insolvent companies, their creditors, and stakeholders but also facilitates the larger goals of trade, economic and financial development of countries. However, as reviewed in this paper and well recognised, the adoption of model law has been low. Scholars have voiced several concerns about the model law, including a lack of harmonisation in spirit, with each country modifying the original clauses of the model law (for instance, including clauses such as reciprocity). In its present form and implementation, the model law is becoming much less of a harmonised solution as envisaged.

The verdict is yet to be reached on whether the UNCITRAL model law is the optimum solution. However, it remains the only globally recognised legislative guidance aimed at harmonising cross-border insolvency laws. Further, of the total limited countries that have adopted the model law, several GS countries have adopted the same. Hence, GS countries and India have the potential to dialogue on experiences, learnings, and issues while implementing the model law. Pending the adoption of the model law, policy may integrate the other alternatives, such as integrating insolvency laws in bilateral treaties to safeguard nations' interests. Further, India has also seen accelerated thrust on executing Free Trade Agreements (FTAs) and Comprehensive Economic Cooperation/Partnership Agreements with nations in recent years. Integration of cross-border insolvency law provisions as an alternative or compliment, may be considered into such agreements (pending formal adoption of the Model Law).[13] While international trade is forecasted to face several headwinds, such as geopolitical tensions and economic uncertainty in 2024 (WTO, 2023), renewed policy impetus on

domestic and cross-border laws through the strengthening of insolvency frameworks (and the adoption of model laws) with parallel research focus on the identification of precise channels of impact of institutions such as insolvency laws on international trade, will only improve the base for international trade to remain healthy in the near term.

Endnotes

1 In this study, the terms insolvency and bankruptcy are used interchangeably in the context of reference to laws. However, in technical terms, they are different. Bankruptcy may be looked at as a formal method to resolve insolvency (Platt and Platt 2006). There may be other mechanisms as well (for instance, foreclosure (Djankov et al. 2008). However, many papers use insolvency and bankruptcy interchangeably in the limited context of the respective argument of their paper.

2 "Subsidiary body created by the UN General Assembly under Article 22 of the UN Charter"(Adelus 2019).

3 Although there exists growing literature examining impact of institutions (including economic) on international trade and other outcomes, the field is limited due to lack of consensus on what constitutes institutions (for a review see, Nunn and Trefler 2014).

4 Also popularly known as the law & finance stream.

5 There have been other passing references of bankruptcy laws as institutions in context of international trade (see Nunn and Trefler 2014).

6 (Gurrea-Martínez 2021).

7 Ministry of Finance, Government of India, 'Economic Survey 2021-2022' <https://www.indiabudget.gov.in/economicsurvey/ebook_es2022/index.html#p=184>.

8 https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency/status

9 Biswal (2020) identified public policy exceptions as one of the important barriers preventing the issues of adoption of model law by countries.

10 Ministry of Finance, Government of I\ndia, 'Economic Survey 2021-2022' <https://www.indiabudget.gov.in/economicsurvey/ebook_es2022/index.html#p=184>.

11 Detailed analysis of each provision of the Model Law is outside the scope of this paper and an overview of key provisions have been provided.

12 https://www.thehindubusinessline.com/economy/cross-border-insolvency-framework-must-respect-global-laws-without-overriding-indian-jurisdiction-says-former-nclat-chief-mukhopadhaya/article68062158.ece

[13] Baxi, A. (2024, October 25). Navigating cross-border insolvency. The Hindu. https://www.thehindu.com/opinion/op-ed/navigating-cross-border insolvency/article68678051.ece

References

Acharya, Viral V., and Krishnamurthy V. Subramanian. 2009. "Bankruptcy Codes and Innovation." *Review of Financial Studies* 22(12):4949–88. doi: 10.1093/rfs/hhp019.

Adelus, Edouard. 2019. "Global Law-Making in Insolvency Law: The Role for the United Nations Commission for International Trade Law." *Uniform Law Review* 24(1):175–213. doi: 10.1093/ulr/unz005.

Aghion, Philippe, Oliver Hart, and John Moore. 1994. "Improving Bankruptcy Procedures." *Washington Law University Quarterly* 849–72.

Álvarez, Inmaculada C., Javier Barbero, Andrés Rodríguez-Pose, and José L. Zofío. 2018. "Does Institutional Quality Matter for Trade? Institutional Conditions in a Sectoral Trade Framework." *World Development* 103:72–87. doi: 10.1016/j.worlddev.2017.10.010.

Alves, Clara de Sousa, and Pedro Ferreirinha. 2023. "Bank Insolvencies and the UNCITRAL Model Law." in *Bank Insolvency Law in Developing Economices.* Routledge.

Anderson, James E., and Douglas Marcouiller. 2002. "Insecurity and the Pattern of Trade: *An Empirical Investigation." Review of Economics and Statistics* 84(2):342–52. doi: 10.1162/003465302317411587.

Antràs, Pol, and C. Fritz Foley. 2015. "Poultry in Motion: A Study of International Trade Finance Practices." *Journal of Political Economy* 123(4):853–901. doi: 10.1086/681592.

Armour, John, Antonia Menezes, Mahesh Uttamchandani, and Kristin Van Zwieten. 2015. "How Do Creditor Rights Matter for Debt Finance? A Review of Empirical Evidence." in *Research Handbook on Secured Financing in Commercial Transactions*, edited by F. Dahan. Edward Elgar Publishing.

Bankruptcy Law Reform Committee (BLRC). 2015. The Report of the Bankruptcy Law Reform Committee: Rationale and Design (November 2015). 1.

Belloc, Marianna. 2006. "Institutions and International Trade: A Reconsideration of Comparative Advantage." *Journal of Economic Surveys* 20(1):3–26. doi: 10.1111/j.0950-0804.2006.00274.x.

Berkowitz, Daniel, Johannes Moenius, and Katharina Pistor. 2004. "Legal Institutions and International Trade Flows." *Michigan Journal of International Law*.

Biswal, Mamta. 2020. "UNCITRAL Model Law on Cross Border Insolvency in the Indian Legal Landscape." in *Insolvency and Bankruptcy Regime in India: A Narrative*. Vol. Biswal. Insolvency & Bankruptcy Board of India (IBBI).

Bose, Udichibarna, Stefano Filomeni, and Sushanta Mallick. 2021. “Does Bankruptcy Law Improve the Fate of Distressed Firms? The Role of Credit Channels.” *Journal of Corporate Finance* 68:101836. doi: 10.1016/j.jcorpfin.2020.101836.

Coordes, Laura N. 2023. “Thinking Beyond Borders: Cross-Border Insolvency in IBC 2.0.” in *IBC, Evolution, Learnings and Innovation 2023*. Insolvency & Bankruptcy Board of India (IBBI).

Cornelli, Francesca, and Leonardo Felli. 1997. “Ex-Ante Efficiency of Bankruptcy Procedures.” *European Economic Review* 41(3–5):475–85. doi: 10.1016/S0014-2921(97)00009-3.

Cross Border Insolvency Rules/Regulations Committee (CBIRC),inistry of Corporate Affairs. 2021. REPORT OF CBIRC-II ON GROUP INSOLVENCY.

Cross Border Insolvency Rules/Regulations Committee (CBIRC),inistry of Corporate Affairs, K. P. 2020. Cross Border Insolvency Rules/Regulations Committee (CBIRC),. Cross Border Insolvency Rules/Regulations Committee (CBIRC), Ministry of Corporate Affairs.

Das, Ishita. 2020. “The Need for Implementing a Cross-Border Insolvency Regime within the Insolvency and Bankruptcy Code, 2016.” Vikalpa: *The Journal for Decision Makers* 45(2):104–14. doi: 10.1177/0256090920946519.

Djankov, Simeon, Oliver Hart, Caralee McLiesh, and Andrei Shleifer. 2008. “Debt Enforcement around the World.” *Journal of Political Economy* 116(6):1105–49. doi: 10.1086/595015.

Feenstra, Robert C., Chang Hong, Hong Ma, and Barbara J. Spencer. 2013. “Contractual versus Non-Contractual Trade: The Role of Institutions in China.” *Journal of Economic Behavior & Organisation* 94:281–94. doi: 10.1016/j.jebo.2013.08.009.

Ferguson, Shon M., and Sara Format. 2011. “Institution-Driven Comparative Advantage, Complex Goods and Organisational Choice.” *SSRN Electronic Journal*. doi: 10.2139/ssrn.1772502.

Fernández, Andrés, and César E. Tamayo. 2015. “FROM INSTITUTIONS TO FINANCIAL DEVELOPMENT AND GROWTH: WHAT ARE THE LINKS?” *Journal of Economic Surveys* 31(1):17–57. doi: 10.1111/joes.12132.

Gopalakrishnan, Balagopal, and Sanket Mohapatra. 2020. “Insolvency Regimes and Firms’ Default Risk under Economic Uncertainty and Shocks.” Economic Modelling 91:180–97. doi: 10.1016/j.econmod.2020.06.005.

Grossman, Gene M., and Elhanan Helpman. 2005. “Outsourcing in a Global Economy.” *Review of Economic Studies* 72(1):135–59. doi: 10.1111/0034-6527.00327.

Gurrea-Martínez, Aurelio. 2020. “Insolvency Law in Emerging Markets.” *SSRN Electronic Journal.* doi: 10.2139/ssrn.3606395.

Gurrea-Martínez, Aurelio. 2021. “The Future of Insolvency Law in a Post-Pandemic World.” *SSRN Electronic Journal.* doi: 10.2139/ssrn.3916244.

Hart, Oliver. 2000. “Different Approaches to Bankruptcy.” National Bureau of Economic Research (Working Paper 7921).

Haselmann, Rainer, and Paul Wachtel. 2010. “Institutions and Bank Behavior: Legal Environment, Legal Perception, and the Composition of Bank Lending.” *Journal of Money, Credit and Banking* 42(5):965–84. doi: 10.1111/j.1538-4616.2010.00316.x.

Insolvency and Bankruptcy Code (IBC). (2016, May 28). *The insolvency and bankruptcy code, 2016*. https://ibbi.gov.in/legal-framework/act

Insolvency Law Committee (ILC)Ministry of Corporate Affairs, Government of India. 2018a. Report of Insolvency Law Committee on Cross Border Insolvency.

Insolvency Law Committee (ILC)Ministry of Corporate Affairs, Government of India. 2018b. Report of Insolvency Law Committee on Cross Border Insolvency.

Kaplan, David S., and Vikram Pathania. 2010. “What Influences Firms’ Perceptions?” *Journal of Comparative Economics* 38(4):419–31. doi: 10.1016/j.jce.2010.04.001.

La Porta, Rafael, Florencio Lopez-De-Silanes, Andrei Shleifer, and Robert W. Vishny. 1997. “Legal Determinants of External Finance.” *The Journal of Finance* 52(3):1131–50. doi: 10.1111/j.1540-6261.1997.tb02727.x.

La Porta, Rafael, Florencio Lopez-de-Silanes, Andrei Shleifer, and Robert W. Vishny. 1998. “Law and Finance.” *Journal of Political Economy* 106(6):1113–55. doi: 10.1086/250042.

Levchenko, Andrei A. 2007. “Institutional Quality and International Trade.” *The Review of Economic Studies* 74(3):791–819. doi: 10.1111/j.1467-937X.2007.00435.x.

Levine, Ross. 1998. “The Legal Environment, Banks, and Long-Run Economic Growth.” *Journal of Money, Credit and Banking* 30(3):596. doi: 10.2307/2601259.

Locatelli, Fernando. 2008. “International Trade and Insolvency Law: Is the UNCITRAL Model Law on Cross-Border Insolvency an Answer for Brazil? (An Economic Analysis of Its Benifits on International Trade).” *Law and Business Review of the Americas* 14.

Manova, Kalina. 2013. “Credit Constraints, Heterogeneous Firms, and International Trade.” *The Review of Economic Studies* 80(2):711–44. doi: 10.1093/restud/rds036.

Masoud, Benhajj Shaaban. 2013. “Towards Adoption of the United Nations Commission on International Trade Law Model Law on Cross-border Insolvency in Kenya.” *International Insolvency Review* 22(3):211–22. doi: 10.1002/iir.1213.

Méon, Pierre-Guillaume, and Khalid Sekkat. 2008. “Institutional Quality and Trade: Which Institutions? Which Trade?” Economic Inquiry 46(2):227–40. doi: 10.1111/j.1465-7295.2007.00064.x.

Ministry of Finance, Government of India. 2022. *Economic Survey 2021-22*.

Ministry of Finance, Government of India. n.d. *Economic Survey 2021-2022*. Delhi.

Mittal, Ravi. 2021. “Cross-Border Insolvency Resolution.” IBBI.

Mohan, S. Chandra. 2012. “Cross-border Insolvency Problems: Is the UNCITRAL Model Law the Answer?” *International Insolvency Review* 21(3):199–223. doi: 10.1002/iir.1203.

Nageswaran, V. Anantha, and Aakansha Arora. 2022. “Insolvency and Bankruptcy Code: A Path Well Travelled.” in IBC, Ideas, Impressions and Implementation (2022). Insolvency & Bankruptcy Board of India (IBBI).

North, Douglass C. 1990. *Institutions, Institutional Change and Economic Performance*. 1st ed. Cambridge University Press.

Nunn, N. 2007. “Relationship-Specificity, Incomplete Contracts, and the Pattern of Trade.” *The Quarterly Journal of Economics* 122(2):569–600. doi: 10.1162/qjec.122.2.569.

Nunn, Nathan, and Daniel Trefler. 2014. “Domestic Institutions as a Source of Comparative Advantage.” Pp. 263–315 in *Handbook of International Economics*. Vol. 4. Elsevier.

Park, Se Mi. 2021. “The Interrelation between Formal and Informal Institutions through International Trade.” *Review of International Economics* 29(5):1358–81. doi: 10.1111/roie.12546.

Platt, Harlan D., and Marjorie B. Platt. 2006. “Understanding Differences Between Financial Distress and Bankruptcy.” doi: 10.22004/AG.ECON.50146.

Poria, Shailesh, Dhruvee Patel, and Shubhangi Khandelwal. 2024. “Navigating Cross Border Insolvency in India : An Analysis of Legal Precedents.” BW Legal World, February 19.

Rajan, Raghuram G., and Luigi Zingales. 1995. “What Do We Know about Capital Structure? Some Evidence from International Data.” *The Journal of Finance* 50(5):1421–60. doi: 10.1111/j.1540-6261.1995.tb05184.x.

Ranjan, Priya, and Jae Young Lee. 2007. “CONTRACT ENFORCEMENT AND INTERNATIONAL TRADE.” *Economics & Politics* 19(2):191–218. doi: 10.1111/j.1468-0343.2007.00308.x.

Rose, Andrew. 2005. “Which International Institutions Promote International Trade?” *Review of International Economics* 13(4):682–98. doi: 10.1111/j.1467-9396.2005.00531.x.

Saksena, Shashank. 2022. “Implementation Issues in Cross Border Insolvency Framework in India.” in IBC Idea, Impressions and Implementation. Insolvency & Bankruptcy Board of India (IBBI).

Shukla, Sudhaker, and Kokila Jayaram. 2020. “Cross Border Insolvency: A Case to Cross the Border Beyond the UNCITRAL.” in *Insolvency and Bankruptcy Regime in India: A Narrative. Insolvency & Bankruptcy Board of India* (IBBI).

The World Bank. 2021. Principles for Effective Insolvency and Creditor/Debtor Regimes. Washington DC: The World Bank.

UNCITRAL. 1997. UNCITRAL Model Law on Cross-Border Insolvency (1997).

UNCTAD. 2024. “Global Trade Update (March 2024).”

United Nations Commission on International Trade Law (UNCITRAL). 2004. UNCITRAL Legislative Guide on Insolvency Law. Paris.

White, Michelle J. 1989. “The Corporate Bankruptcy Decision.” *Journal of Economic Perspectives* 3(2):129–51.

World Bank. 2020. Doing Business Report 2020 (Comparing Business Regulation in 190 Economies). Washington DC.

World Trade Organisation (WTO). 2013. *World Trade Report* 2013 Factors Shaping the Future of World Trade.

World Trade Organisation (WTO). 2023. *World Trade Report* 2023 — Re-Globalisation for a Secure, Inclusive and Sustainable Future.

Xu, Guangdong. 2011. “The Role of Law in Economic Growth: A Literature Review.” *Journal of Economic Surveys* 25(5):833–71. doi: 10.1111/j.1467-6419.2011.00691.x.

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