# Cross-Border Insolvency Reform

**Why in News?**

The need for reform of IBC framework to strengthen cross border insolvency framework has recently been emphasized.

## What is the cross-border insolvency framework in India?

- **Cross border insolvency** – It is when an insolvent debtor has credit and/or debtors in more than one jurisdiction i.e. in different countries.
- **British era insolvency law** - To address domestic insolvencies, the Indian Insolvency Act of 1848 was introduced as the first insolvency law.
- Presidency-Towns Insolvency Act 1909 and Provincial Insolvency Act, 1920 were created which applied to Calcutta, Bombay, and Madras, and mofussil regions.
- **UNCITRAL Model Law** - Model Law on International Commercial Arbitration was adopted by the United Nations Commission on International Trade Law (UNCITRAL) in 1985.

  Committees such as the Eradi Committee (2000), Mitra Committee (2001), and Irani Committee (2005) recommended adopting the UNCITRAL Model law.

- **Liberalization era** - In the 1990s, driven by economic liberalisation and the pressures of globalisation, the need for a comprehensive insolvency law became a focus of national discussions.
- **IBC Code** – In 2016 , Insolvency and Bankruptcy Code, 2016 (IBC) was created as a consolidated framework to govern insolvency and bankruptcy proceedings for companies, partnership firms, and individuals.
- **Cross border insolvency provisions** - Section 234 of IBC allows the Indian government to enforce IBC provisions in foreign countries through reciprocal agreements.
- Section 235 outlines the procedure for seeking assistance from foreign courts through a letter of request.

## What are the needs for cross-border insolvency framework?

- **Growth in international trade and investment** – The cross-border investment saw a sharp rise in the 1970s and 1980s due to
  - Creation of the Euromarkets
  - Laxity of capital markets restrictions
  - Expansion of institutional investors such as mutual funds and pension funds.
- **Economic stability** - A robust insolvency framework can help mitigate the economic

impact of cross-border insolvencies by ensuring a smooth resolution process.

- **Attracting foreign investments** - As structured insolvency framework provide legal certainty and protection for businesses, it gives confidence to investors.
- **Facilitating corporate restructuring** – It provided structured and predictable process for dealing with insolvent entities that operate across multiple jurisdictions.

## What are the issues with the current framework?

- **Lack of Reciprocal Agreements** - India has not entered into significant bilateral agreements dedicated to the recognition and enforcement of cross-border insolvency proceedings with other countries.
- **Inactive Provisions** - Non-notification of Sections 234 and 235 related by by-laws by the central government is keeping them legally unenforceable.
- **Slow progress on amendments** – Despite recommendations by various technical and joint parliamentary committees, the reform amendment haven't been enacted.

> Insolvency Law Committee (2018) and the Cross-Border Insolvency Rules/Regulation Committee (2020) have recommended adopting the UNCITRAL Model Law on Cross-Border Insolvency.

- **Judicial scrutiny** - The need for court approvals increases judicial burden, transaction costs, and delays resolutions, reducing the debtor's asset value.
- **Limited power of NCLT** - Failure to implement Rule 11 of the NCLAT Rules, 2016, for IBC matters, prevents it from exercising jurisdiction to address cross-border insolvency issues.

## What can be done to improve the framework?

- Adopt of the Judicial Insolvency Network (JIN) Guidelines (2016) and its Modalities of Court-to-Court Communication (2018)
- Modernise judicial coordination, enhance transparency, and improve efficiency in handling cross-border insolvency matters.
- Expand the powers of the NCLT to resolve challenges and ensure effective management of cross-border insolvency cases.

## References

[The Hindu | Cross-border insolvency and legal reform]