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GLOBAL ECONOMIC INTERDEPENDENCE: EVALUATING THE UNCITRAL MODEL LAW AND ADAPTIVE FRAMEWORKS FOR CROSS-BORDER BANKRUPTCY

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ABSTRACT

The ongoing spread of globalization leads to a heightened interconnection among economies on a global scale. This increased interconnection raises concerns about the possible dissemination of economic crises, reminiscent of the catastrophic consequences of the 2008 financial disaster. This realization highlights the insufficiency of exclusively depending on national strategies to tackle problems involving global participants. As a result, there is an increasing acknowledgment of the need for strong and efficient institutional systems that can effectively and quickly handle international bankruptcy issues. The UNCITRAL Model Law (Model Law) is a crucial development that provides a set of standards that may be customized to suit the individual circumstances of each country, while still applying to all nations. Nevertheless, although being praised as an exemplar of global collaboration, the adoption of the Model Law has been less rapid than expected. However, the intricacies of worldwide economic integration and the discrepancies in the level of advancement of financial and legal systems in various jurisdictions pose substantial obstacles. It is evident that a universal approach, such as the one provided by the Model Law, may not be adequate. However, what is urgently required is a sophisticated and flexible framework that can effectively address the varied requirements and situations of states across the globe.

Keywords: *Cross border, Insolvency, and UNCITRAL Model Law*

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I. Introduction

Globalization is typically described as the act of globalizing, principally motivated by the beneficial changes in production possibilities that arise from the growth of a more integrated global economy. This phenomenon is characterized by the progress of unrestricted trade, seamless movement of money, utilization of cost-efficient international labor markets, and the decrease of information disparities. Amartya Sen emphasized the significance of a broad worldwide framework and contended that depicting globalization exclusively as an economic issue demonstrates a limited viewpoint. He argued that globalization is a complex notion, where economic globalization is but one aspect of it. Globalization refers to the increased connectivity and integration of cultures, civilizations, governments, and economies worldwide.'[1] The period preceding 2020 and the current pandemic has caused us to reconsider our beliefs. Discussions and debates are currently taking place about the notions that 'globalization has reached its maximum point' or 'globalization is no longer relevant'[2] are being deliberated and debated.

The lockdown imposed because of the pandemic has completely halted economic activities. The estimated global growth[3] for 2020 is -4.9%, which is 6.5 percentage points lower than the growth predicted before the COVID-19 pandemic in January 2020. Projections indicate that foreign direct investment (FDI)[4] will decline by around 40 percent in 2020, followed by a further fall of 5-10 percent in 2021. However, there is expected to be a gradual recovery in 2022. Projections indicate that global trade flows will decrease by 12.9% (optimistic scenario) to 31.9% (pessimistic scenario) in 2020, followed by a moderate recovery in 2021. The prevailing uncertainties and pessimistic prospects have prompted a resurgence of skepticism, dismissing the concept of globalization. The epidemic is expected to have enduring detrimental effects on businesses. Amidst the ongoing epidemic, the likelihood of default, as determined by market forces, has risen[5] in both G-20 and developing market nations. Bankruptcies are becoming prevalent as companies deplete their cash reserves.

1 W Gaertner and PK Pattanaik, *An Interview with Amartya Sen* (1988) 5 Social Choice and Welfare 69 http://dx.doi.org/10.1007/bf00435498

2 K.N.C.,*Globalisation Is Dead and We Need to Invent a New World Order*, The Economist, https://www.economist.com/open-future/2019/06/28/globalisation-is-dead-and-we-need-to-invent-a-new-world-order" (last visited June 28, 2019)

3 *World Economic Prospects Monthly* (2020) 44 Economic Outlook

4 *UNCTAD: World Investment Report* (2022) 59 Africa Research Bulletin

5 Updated Common Evaluation Framework for IMF Capacity Development And Guidance Note (2020) 20 Policy Papers http://dx.doi.org/10.5089/9781513557533.007

The collapse of a prominent multinational corporation can have far-reaching consequences in the industry it operates in, as well as in the nations where it has significant operations and potentially the entire worldwide market network.

Except for the recent deceleration in global development and trade that began in 2019, the world merchandise trade achieved a remarkable milestone in 2018. reaching a record-breaking USD 19.67 trillion. In 2008, India ranked 17th among the top traders in goods and services. By 2018, it had climbed to the 11th position. In 2018, "there were cross-border mergers and acquisitions for USD 816 billion and FDI greenfield projects worth USD 999 billion announced globally. In 2017, around 164 million individuals were employed in foreign nations". As of mid-2019, the number of Indians working overseas was 5.2 million. India's current level of integration with the globe surpasses previous measures, and the power of globalization remains as compelling today as it was in 1991. Implementing a robust bankruptcy law that can effectively address cross-border matters would offer essential reassurance in a situation when numerous multinational corporations are compelled to undergo insolvency resolution procedures.

The current global health crisis has raised numerous complex inquiries regarding the effectiveness of bankruptcy regulations in managing international bankruptcies and has called for a thorough and all-encompassing reaction. The selection of a framework, however, is contingent upon factors such as the extent of a country's involvement with the global economy, the current level of development of its insolvency system, the overall maturity of its legal systems, and other relevant considerations. "The primary objective of the Insolvency and Bankruptcy Code, 2016 (Code) was to tackle cross-border insolvency cases by empowering the Central Government to establish agreements or reciprocal arrangements with other nations to enforce the terms of the Code".[6] Furthermore, the Code allows the Adjudicating body (AA) to write a letter of request to a Court or competent body in these countries to obtain evidence or take action related to proceedings under the Code. In its October 2018 report on cross-border insolvency, the Insolvency Law Committee advised the Government to adopt the Model Law.[7]

6 Bloomsbury Professional India, Bloomsbury's Manual of the Insolvency and Bankruptcy Code, 2016 with Rules and Regulations, 9e (Bloomsbury Publishing 2022) http://books.google.ie/books?id=d5RZEAAAQBAJ&pg=RA1-PA171&dq=Section+234,+IBC,+2016&hl=&cd=1&source=gbs_api

7 Report of Insolvency Law Committee on Cross Border Insolvency, (last visited October 2018).

Considering this situation, this article examines the initiatives taken by different regions to tackle the issue of insolvency that spans across borders. Furthermore, "it examines the UNCITRAL framework and then assesses the available options for India to progress. After this first phase, the subsequent section outlines the development of cross-border insolvency measures, including the Model Law". Section III evaluates the necessity of a cross-border insolvency system in India, whereas Section IV evaluates the possible solutions. The evaluation prioritizes bilateral agreements over a comprehensive framework, and we propose that these agreements should include options beyond the Model Law.

II. Evolution of Cross-Border Insolvency Regimes

2.1 Regional efforts since the 19th century

The first endeavor to tackle the global dimensions of insolvency occurred in "Latin America during the South American Congress on Private International Law in 1888-1889. The Montevideo Treaty of 1889 established guidelines for the process of liquidation, introduced the notion of consolidating legal proceedings and granted authority to the State in which the debtor's commercial domicile is located. The treaty, which was subsequently revised in 1940, established a clear definition for the phrase 'commercial domicile' and set forth instructions for implementing the suspension of payments and other related legal procedures".[8] The Bustamante Code, which was adopted by 15 Latin American countries during the Havana Conference in 1928, was developed despite the presence of the Treaty. This initiative presented the notions of cohesiveness and comprehensiveness for specific nations, signifying the beginning of endeavors to tackle insolvency issues across economically interconnected countries with shared legal customs. Although these measures were widely applicable, they often gave priority to creditors from the local area.[9]

In 1933, "the Nordic States of Denmark, Finland, Iceland, Norway, and Sweden established a convention to address bankruptcy. This convention was subsequently modified in 1977 and 1982. This convention facilitated the merging of assets into a

8 S Chandra Mohan, *Cross-border Insolvency Problems: Is the UNCITRAL Model Law the Answer*? (2012) 21 International Insolvency Review 199 http://dx.doi.org/10.1002/iir.1203

9 United Nations Commission On International Trade Law, UNCITRAL Model Law on Cross-Border Insolvency, with Guide to Enactment (1999) http://books.google.ie/books?id=knJ-vwEACAAJ&dq=Cunningham,+D.+and+T.+Werlen+(1996),+%E2%80%9CCross-+border+insolvencies+in+search+of+a+global+remedy%E2%80%9D,+International+Financial+Law+Review,+London,+15:12:51-+54&hl=&cd=1&source=gbs_api

unified estate and their allocation per the legislation of the State where the bankruptcy proceedings were commenced, based on the bankrupt's place of residence or registered office". This clause enabled the acknowledgment of bankruptcy procedures in several jurisdictions, offered legal assistance, and sanctioned judicial decisions. The inception of bankruptcy legislation in Europe may be traced back to 1894 when it was first addressed during the Hague Conference. In 1928, a resolution was made to convert the multilateral convention into a prototype bilateral treaty, but its acceptance remained restricted. The European Convention on Certain International Aspects of Bankruptcy, which was completed by the Council of Europe in 1990, established protocols for primary and secondary bankruptcy proceedings.

EU Regulation 1346 was promulgated in May 2002 but "subsequently annulled in May 2015 by Regulation (EU) 2015/848. Furthermore, a 'Recommendation of 12.3.2014 on a New Approach to Business Failure and Insolvency' was released. Regulation 1346 sought to develop standardized principles for resolving insolvencies that occur in various nations. Its focus was on coordinating the current insolvency procedures in member states, rather than implementing new universal standards. Regulation 848 and the Recommendation offer a novel strategy for dealing with cross-border insolvencies". The aim is to foster the establishment of a uniform legal framework for corporate restructurings across the EU, while concurrently striving to construct a harmonized and standardized legal, economic, and financial environment between the European Union and the United States.[10] The most recent EU Regulation lacks sufficient collaboration with non-EU nations regarding bankruptcy affairs.

III. UNCITRAL Model Law on Cross-Border Insolvency

During the Congress on International Trade Law in May 1992 in New York, various countries suggested that the UNCITRAL[11] (Commission) should explore the possibility of addressing the international dimensions of bankruptcy. The work that began in 1992 eventually resulted in the adoption of the Model Law on Cross-Border Insolvency on May 30, 1997.[12] The Commission's Working Group on Insolvency

10 Rizwaan Jameel Mokal, *Corporate Insolvency Law* (Oxford University Press on Demand 2005) http://books.google.ie/books?id=gXOBQgAACAAJ&dq=Manganelli,+Paolo+(2016),+%E2%80%9CThe+Modernization+of+European+Insolvency+Law:+An+Ongoing+Process%E2%80%9D,+11J.+Bus.+%26+Tech.+L.+153,&hl=&cd=2&source=gbs_api"

11 Harold Burman and Jay Lawrence Westbrook, United Nations Commission on International Trade Law: Model Law on Cross-Border Insolvency (1997) 36 International Legal Materials 1386 http://dx.doi.org/10.1017/s0020782900013474"

12 Reinhard Bork, *The European Insolvency Regulation and the UNCITRAL Model Law on Cross-Border*

Law is now addressing the challenges related to cross-border insolvencies of multinational firms.

The Model Law[13] offers legislative direction for states, setting it apart from other multinational agreements. The primary objective of this initiative is to aid governments in updating their bankruptcy legislation by providing a contemporary, cohesive, and equitable structure to efficiently manage cross-border insolvency cases. The main objective is to encourage cooperation and coordination among countries, rather than seeking consolidation, while simultaneously acknowledging and respecting the variations in national laws. The Model Law is based on four fundamental principles: Access, Recognition, Cooperation, and Coordination. This clause confers onto international specialists and creditors the entitlement to directly interact with domestic courts and actively partake in domestic insolvency procedures against a debtor. This clause simplifies the acknowledgment of foreign legal processes and enables courts to provide suitable solutions. It establishes a structure for collaboration between experts in bankruptcy and courts from several nations, as well as for harmonizing the management of simultaneous legal actions in multiple jurisdictions. The instrument is extensive as it enhances current bilateral arrangements and permits adjustments to accommodate the requirements of each jurisdiction. The Model Law offers a comprehensive framework that allows various jurisdictions to establish precise details while circumventing any suggested technique for reconciling variations in methods among the countries that have implemented it. The policy has been adopted "by 47 out of 50 jurisdictions in the United States, with a wide variety of countries accepting the Model Law. This category comprises advanced economies such as the United Kingdom, United States, Canada, Australia, New Zealand, Japan, and Singapore, as well as smaller emerging nations like Chad, Chile, Congo, Togo, Myanmar, and Uganda. Significantly, the BRIC economies (except South Africa), the entirety of the ASEAN area (except Singapore and Malaysia), and the entirety of the European Union (excluding the UK) have yet to adopt the Model Law". The exclusion of certain economically advanced jurisdictions from the proposed international solution by the UNCITRAL Model Laws undermines its efficacy.

Insolvency (2017) 26 INTERNATIONAL INSOLVENCY REVIEW 246 http://dx.doi.org/10.1002/iir.1282"

13 RW Harmer, *Documentation B. Uncitral Model Law on Cross-border Insolvency* (1997) 6 INTERNATIONAL INSOLVENCY REVIEW 145 http://dx.doi.org/10.1002/iir.3940060206"

IV. Cross-Border Insolvency Law in India

The Eradi Committee Report, published in May 2000,[14] acknowledged the significant impact of globalization and economic liberalization on trade. It emphasized the growing importance of addressing cross-border insolvency issues and proposed the implementation of the Model Law in India by amending Part VII of the Companies Act, 1956. "In the subsequent year, the Mitra Committee, also known as the Advisory Group on Bankruptcy Law[15] (Mitra Committee) declared that the existing Indian law does not meet the international legal standards and therefore stands separate and independent, without considering any cross-border relationships. Both committees proposed the implementation of the Model Law and the restructuring of the domestic insolvency and bankruptcy legislation." Although numerous investigations have recognized the necessity of cross-border insolvency legislation and have recommended the implementation of the Model legislation for over twenty years, this objective has not yet been achieved. This necessitates addressing the inquiry: Is such a law necessary? India's economic integration with the global community has been steadily growing over the past thirty years, particularly with the expansion of financial markets.[16]

The annual survey conducted by the Reserve Bank of India revealed that in March 2018, a total of 20,732 enterprises had foreign direct investment (FDI) or outward direct investment (ODI) recorded in their financial statements. "The combined value of FDI, including both inflows and outflows, amounted to Rs. 33,526 billion.[17] Indian corporations persist in expanding their operations and doing business activities in foreign countries. Approximately 70% of these financial transactions occurred in six specific countries: Mauritius, USA, UK, Singapore, Netherlands, and Switzerland".

While foreign commercial borrowings have seen a rise in recent years, the banking

14 Report of the Justice Eradi Committee on Law Relating to Insolvency of Companies, Company Law Cases, 2000, Vol XII, Pp. 1297 – 1334.

15 Standing Committee on International Financial Standards and Codes: Report of the Advisory Group on Bankruptcy Laws (2001), Reserve Bank of India, May.

16 "The Degree of Openness of the Economy, Measured by the Ratio of Exports and Imports of Goods and Services to GDP, Has Risen from 20 per Cent in the First Half of the 1990s to 44 per Cent in the Latest Five-Year Period from 2014-19. Dimensions of India's External Sector Resilience, Keynote Address by Shri Shaktikanta Das, Governor, Reserve Bank of India."

17 "Annual Census of Foreign Liabilities and Assets of Indian Direct Investment Companies, 2017-18, Reserve Bank of India. The Census Reports on Indian Direct Investment Companies That Have Cross Border Liabilities and Assets Arising on Account of FDI in India and/or Overseas Direct Investment."

channel continues to be the primary method for cross-border capital movements with India. "The global cross-border bank claims had significant growth, increasing by 9 percent compared to the previous year, and reaching a total of USD 31 trillion by the end of September 2019.[18] Indian banks held an equity of USD 8.9 billion, accounting for a mere 0.15 percent of the overall global bank equity. The aggregate number of foreign claims held by Indian banks is USD 212.8 billion, which represents 0.37 percent of the total foreign claims. The largest counterparty, amounting to USD 33.5 billion, consists of non-bank private sector claims. Additional possible exposures consist of derivatives contracts totaling USD 58.9 billion, guarantees granted amounting to USD 30.0 billion, and credit commitments totaling USD 2 billion. According to the Bank of International Settlement's analysis, in India, the business sector has been the primary receiver of debt flows, but bank flows experienced a significant surge after 2010.[19]

India's proportion in global merchandise exports has increased from 0.5% in 1990 to 1.7% in 2018. In the fiscal year 2018-19[20], the top 10 trading partners accounted for 49.6 percent of India's total trade in goods. India experiences trade deficits with eight of these nations and maintains a trade surplus with only two of its top ten trading partners, specifically the USA and UAE. India's exports of services have shown significant growth during the last twenty years. In the fiscal year 2018-19, India's trade deficit was somewhat offset by net services exports amounting to USD 81.9 billion, which accounted for 45 percent of the deficit. Up to 80 percent of worldwide trade is facilitated by various types of loans, guarantees, or insurance. The role of bank-intermediated cross-border trade credit accounts for around 33% of the worldwide goods trade credit." [21] In India, importers primarily rely on buyers' trade credit to fulfill their financial requirements. This credit is influenced by various factors, including the demand for imports (such as the amount of imports) and the availability and willingness of banks to provide credit.[22] Domestic banks play a significant role in facilitating a substantial portion of cross-border trade credit obtained by importers in India, while international banks maintain a considerable

18 "Statistical Release: BIS International Banking Statistics at End-September 2019, 22 January 2020."

19 BIS Working Papers No 760, '*Gross Capital Flows by Banks, Corporates and Sovereigns*'."

20 Export Import Data Bank, Department of Commerce, Government of India.

21 Claudio Borio, Harold James and Hyun Song Shin, "The International Monetary and Financial System: A Capital Account Historical Perspective (2014) 2014 Federal Reserve Bank of Dallas, Globalization and Monetary Policy Institute Working Papers http://dx.doi.org/10.24149/gwp204"

22 Reserve Bank of India, Working Paper Series (2019), '*Cross-Border Trade Credit: A Post-Crisis Empirical Analysis for India*'."

market share. Domestic banks primarily serve the trade finance requirements of importers from the MSME sector, while foreign banks with extensive global operations cater to the needs of large corporates. Domestic banks that have a significant presence abroad through bank branches, overseas subsidiaries, and representative offices have a greater proportion of total trade credit approvals.

Given the causes, it is evident that as India experiences further growth, Indian enterprises will extend their activities to other nations. Additionally, with the growing interconnections in the financial industry, funding requirements will also be fulfilled through global resources. As international trade expands, domestic enterprises will become integrated into global value chains, thereby exposing themselves to external forces. The Indian financial market is undergoing continuous development and will experience growing interconnectivity with international markets. Additionally, Indian banks, while solidifying their position within the country, will seek to expand their operations beyond national borders. Businesses will increasingly adopt cross-border contacts, encompassing various relationships such as shareholder-management, creditor-debtor, supplier-buyer, value chain partners, distributors, and more. Failures and insolvencies involving aspects that extend across national borders will be unavoidable. India needs a government that is globally recognized and capable of effectively managing the challenges that may arise with countries that hold significant economic relevance for the nation.

V. Efficiency Impacts of Insolvency Law

There is no evidence from economic theory or empirical data to support the assertion that a particular bankruptcy system contributes more to economic growth than any other bankruptcy system. The differences in bankruptcy regulations among industrialized countries can be ascribed to the nuanced distinctions in the legal and political systems of these nations. It is possible that several bankruptcy regimes meet the key requirements of efficiency [23]and, thus, make an equal contribution to economic progress. In this article, we will assume that various bankruptcy regimes have the greatest possible impact on economic growth. None of the individuals Pareto trumps the others.[24] This means there are multiple Pareto optima.[25] Alternatively,

23 Oliver Hart, "Different Approaches to Bankruptcy (September 1, 2000) https://doi.org/10.3386/w7921"

24 Joseph M Grcic, "John Rawls' Theory of Social Justice (1984) 7 Teaching Philosophy 157 http://dx.doi.org/10.5840/teachphil19847232"

25 A set of rules is Pareto optimal "if, and only if, it is impossible to change the rules to raise the

states could refuse to enforce international insolvency rules on assets inside their jurisdiction due to concerns regarding their perceived inefficacy.

However, to promote economic growth, bankruptcy law should strive to optimize the value of financially troubled enterprises by transferring their assets to their most beneficial purpose. To accomplish this objective, bankruptcy legislation must be effective both before and after the declaration of bankruptcy. A vast body of economic literature exists that examines the pre- and post-effectiveness of various bankruptcy systems.

Efficient bankruptcy legislation is characterized by its ability to effectively motivate management, shareholders, and creditors to maximize the value of businesses before they declare bankruptcy.[26] Firstly, it is necessary to motivate management and shareholders to effectively oversee the organization to prevent financial trouble. This might be accomplished by imposing penalties on them under unfavorable circumstances. Managers may face punishment through their replacement in bankruptcy proceedings by court-appointed bankruptcy officials. Shareholders may face penalties through the rigorous enforcement of the absolute priority rule, resulting in the complete elimination of their claims during bankruptcy proceedings. These penalties oblige management and shareholders to assume responsibility for the settlement of the company's debts.[27] Nevertheless, the act of replacing managers during bankruptcy proceedings and eliminating shareholders' entitlements may incentivize them to engage in exceedingly hazardous investment ventures as a means of evading bankruptcy.[28] Allocating a certain amount of the bankruptcy's value to management and shareholders can help mitigate the motivation to take excessive risks.[29] Furthermore, by rigorously following the absolute priority rule, which enforces the rights established by creditors in bankruptcy, the borrowing costs for firms can be reduced. By disallowing the reevaluation of demands for shareholders

expectations of at least one individual without at the same time lowering the expectations of at least one other individual". cf Rawls (n 20) 61.

26 Brian Barry, *John Rawls and the Search for Stability A Theory of Justice. John Rawls Political Liberalism. John Rawls* (1995) 105 ETHICS 874 http://dx.doi.org/10.1086/293756"

27 Patrick Bolton and David S Scharfstein, *Optimal Debt Structure and the Number of Creditors* (1996) 104 JOURNAL OF POLITICAL ECONOMY 1 http://dx.doi.org/10.1086/262015"

28 Sheridan Titman, *The Effect of Capital Structure on a Firm's Liquidation Decision* (1984) 13 JOURNAL OF FINANCIAL ECONOMICS 137 http://dx.doi.org/10.1016/0304-405x(84)90035-7"

29 Elazar Berkovitch, Ronen Israel and Jaime F Zender, "The Design of Bankruptcy Law: A Case for Management Bias in Bankruptcy Reorganizations (1998) 33 The Journal of Financial and Quantitative Analysis 441 http://dx.doi.org/10.2307/2331127"

and creditors during bankruptcy processes, it guarantees that creditors obtain an equitable and gratifying reimbursement on their claims, thus motivating them to extend loans at reduced interest rates. Nevertheless, upholding the maintenance of negotiated creditor rights may diminish creditors' motivations to oversee the firm's activities. Hence, breaching the absolute priority rule may be essential to enhance creditors' incentive to monitor the company.[30]

Maximizing the value of a bankrupt individual's assets during deployment is one matter, whereas the distribution of this value is a separate issue. The process of bargaining between creditors and shareholders involves the reworking of their original agreements with the debtor to determine their respective portions of the bankrupt estate. The negotiation between creditors and shareholders regarding the allocation of the bankrupt estate is a form of distributive bargaining, distinct from negotiating over externalities, sometimes known as 'Coasean bargaining'.[31]

Renegotiation in bankruptcy[32] permits creditors and stockholders to depart from the strict adherence to the absolute priority rule. The absolute priority rule mandates that the allocation of the insolvent estate among creditors and shareholders must respect the respective hierarchies of creditors and shareholders. Consequently, claim holders with a superior priority must be fully compensated before claim holders with an inferior priority receive any allocation. Chapter 11 of the US Bankruptcy Code is a prime illustration of a bankruptcy law that provides creditors and shareholders with the opportunity to restructure their claims during bankruptcy proceedings.[33] In addition, various bankruptcy statutes provide mechanisms that enable certain

30 Francesca Cornelli & Leonardo Felli, *Efficiency of Bankruptcy Procedures* (1994) http://books.google.ie/books?id=2vbrpYzlM6IC&q=Francesca+Cornelli+and+Leonardo+Felli,+%E2%80%98EX-ante+Efficiency+of+Bankruptcy+Procedures%E2%80%99+(1997)+41+European+Economic+Review+475.&dq=Francesca+Cornelli+and+Leonardo+Felli,+%E2%80%98EX-ante+Efficiency+of+Bankruptcy+Procedures%E2%80%99+(1997)+41+European+Economic+Review+475.&hl=&cd=2&source=gbs_api"

31 DE Campbell, *Equilibrium and Efficiency with Property Rights and Local Consumption Externalities* (1989) 6 Social Choice and Welfare 189 http://dx.doi.org/10.1007/bf00295859"

32 "Note that a characteristic of "renegotiation in bankruptcy is that most claimholders can bind a dissenting minority. In workouts outside of bankruptcy, only claim holders that accept a restructuring of their claims are bound by a workout".

33 "Sections 1121 through 1129 of the US Bankruptcy Code deal with the reorganization plan. "The reorganization plan sets out, among others, the distribution to different classes of claim holders. The formulation of a reorganization plan is the result of negotiations between creditors, shareholders, and the debtor. If the reorganization plan is accepted by the different classes under the plan and confirmed by the bankruptcy court, then all creditors and shareholders are bound by the plan" (see s 1141 of the Code).

forms of renegotiation, but with variations in the degree of renegotiation permitted among different legal jurisdictions.[34]

Although renegotiation is available, it is possible that creditors and shareholders may not be able to come to a consensus over the allocation of the insolvent estate. The allocation of the insolvent estate is a cause of ambiguity in bankruptcy proceedings. Even if there are no transaction expenses, it may still be impossible to resolve disagreements between creditors and stockholders on the distribution of the bankrupt estate.[35] If creditors and shareholders are unable to agree, the settlement of a debtor's bankruptcy becomes impossible to achieve. Bankruptcy law encompasses regulations that address the distributional disagreement that arises during bankruptcy processes.[36] If claim holders are unable to properly renegotiate their claims, the absolute priority rule will be reintroduced. As a result, creditors and shareholders return to their previous positions of relative priority, as specified by contractual agreements or statutory requirements that are automatically enforceable. While it is generally accurate that most bankruptcy laws include the absolute priority rule, the preferences given to different creditors and owners vary between legal countries. Multiple legal jurisdictions, such as states, make specific choices regarding the allocation of assets within their bankruptcy laws. Indeed, each bankruptcy statute sets a hierarchy of priorities that include claims with superior precedence over unsecured claims. The priority claims can be categorized as either contractual priority rights, such as security interests in property, or statutory priority positions assigned to certain claims by legislation, such as priority for employee salary claims. Generally, priority creditors have a greater ranking than unsecured creditors, whereas unsecured creditors have a higher ranking than shareholders. Claimants belonging to the same class are regarded as having equal standing. If the assets now available are not enough to fully reimburse the claimants

34 Company Voluntary Arrangement (CVAs) Explained | HARPER JAMES (Harper James, September 27, 2023) https://harperjames.co.uk/article/understanding-company-voluntary-arrangements/

35 Bob Wessels & Gert-Jan Boon, CROSS-BORDER INSOLVENCY LAW (Kluwer Law International BV 2015) http://books.google.ie/books?id=qIuWDwAAQBAJ&printsec=frontcover&dq=Paul+A+Samuelson,+%E2%80%9C%E2%80%98The+Monopolistic+Competition+Revolution%E2%80%99+in+Robert+C+Merton+(ed),+The+Collected+Scientific+Papers+of+Paul+A+Samuelson+Vol+3+(MIT+Press+1972)+35%3B+Ken+Martin+Binmore,+J+Osborne+and+Ariel+Rubinstein,+%E2%80%98Noncooperative+Models+of+Bargaining%E2%80%99+in+RJ+Aumann+and+S+Hart+(eds),+Handbook+of+Game+Theory+with+Economic+Applications+Vol+1%E2%80%9D+(Elsevier+Science+Publishers+1992)+183.&hl=&cd=1&source=gbs_api

36 In the terminology of Rawls (n 20) 242–51, "commercial law is a 'background institution for distributive justice'. Markets function properly if, and only if, a suitable set of background institutions is already in place."

of a certain class, each member of the class will receive a share of the distribution that is proportionate to their claims. Most legal regimes adhere to the fundamental concepts of precedence.

Nevertheless, there are two notable differences across bankruptcy laws concerning the regulations governing distribution. Firstly, they vary in terms of the priority rights linked to claims. Certain jurisdictions may confer exclusive legislative priority privileges that are not accessible in other locations. Furthermore, in situations where legal authorities establish equivalent precedence rights, such as precedence rights for property security interests, employee remuneration claims, and tax claims, the scope of these rights and the precise sequence in which precedence claims will be compensated may differ depending on the legal jurisdiction. For example, in one legal jurisdiction, a priority right for employee pay claims may extend to include pension claims, whereas in another jurisdiction, it may not encompass such claims. Concerning priority, in one jurisdiction, employee pay claims are subordinate to security interests in property, whereas, in another jurisdiction, they have precedence over security interests in property. Furthermore, broader perspectives on the allocation of resources frequently serve as the basis for opting for bankruptcy legislation that is more favorable towards debtors or creditors. Bankruptcy laws that favor debtors prioritize the potential for restructuring companies while giving less importance to safeguarding the rights that creditors had agreed upon beforehand. A bankruptcy regime that supports debtors may be preferred due to its potential to safeguard employment, protect the businesses of suppliers reliant on the insolvent firm, and yield positive outcomes for the broader community surrounding the failed organization.[37] Conversely, a bankruptcy system that prioritizes the interests of creditors and upholds their pre-agreed rights may be preferred by a society that places a higher importance on enforcing contractual obligations. Bankruptcy law can be utilized to achieve (re)distributive policy objectives. Distributive considerations, whether they involve redistribution of resources or not, can significantly influence a society's decision regarding a specific bankruptcy system.

While it is commonly believed that alternative insolvency laws can achieve Pareto optimality, it is important to note that they may have a distinct impact on the allocation of the debtor's assets. The term 'some authority' refers to the governing

37 For a defence of Chapter 11, "the reorganization chapter of the US Bankruptcy Code, based on such wider policy views on distribution see Elizabeth Warren, 'Bankruptcy Policy' (1987) 54 U Chi L Rev 775; Elizabeth Warren, 'Bankruptcy Policymaking in an Imperfect World'" (1993) 92 Mich L Rev 336.

bodies of a state, such as the government, courts, and legislatures[38] determine which distributional bankruptcy rules are appropriate for the society it governs.[39] The selection of this authority for a certain set of distributional norms cannot be justified based on Paretian welfare economics. This decision is made based on distributional assessments that are separate from the well-being of people.[40] Due to varying distributional value judgments among governments, legislatures, and courts, different societies opt for distinct bankruptcy rules that align with their societal needs.[41]

Since a state's bankruptcy legislation reflects its value judgments regarding the distribution of resources, it prioritizes its bankruptcy law over that of any other state.[42] When foreign bankruptcy law is applied to assets inside a state's jurisdiction, the state incurs significant expenses by giving up the desired distributional outcomes of its bankruptcy law. It is important to acknowledge that this expense is incurred even in a scenario where transaction fees are absent. The significance that a state places on its insolvency law cannot be equated with the significance that other states place on that same insolvency law. From a welfare economic standpoint, it is not feasible to objectively assess such values.[43]

38 We assume that the choice for "certain rules of distribution is the outcome of a democratic process. In such a process different group of constituents will seek to exert influence on the distributional choices made by 'the authority'. How the distributional preferences of different states have been shaped, and the role interest groups may have played in such a process", is beyond the scope of this article.

39 Ian Malcolm & David Little, ETHICS, ECONOMICS, AND POLITICS (2003) http://books.google.ie/books?id=2X-LPwAACAAJ&dq=IMD+Little,+Ethics,+Economics+and+Politics:+Principles+of+Public+Policy+(OUP+2002)+14,+16,+27.&hl=&cd=1&source=gbs_api

40 Bob Wessels & Gert-Jan Boon, CROSS-BORDER INSOLVENCY LAW (Kluwer Law International BV 2015) http://books.google.ie/books?id=qIuWDwAAQBAJ&printsec=frontcover&dq=See+generally+Harold+M+Hochman,+%E2%80%9C%E2%80%98Individual+Preferences+and+Distributional+Adjustments%E2%80%99+(New+York+University+Press+1972)+62+American+Economic+Review+353%3B+Lionel+Robbins,+An+Paper+On+the+Nature+%26+Significance+of+Economic+Science%E2%80%9D+(first+published+1932,+3rd+edn+1984)+XXiv%3B+Rawls+(n+20)+61%E2%80%9362%3B+Little,++Ethics+(n+37)+22.&hl=&cd=3&source=gbs_api"

41 John Pottow, *Greed and Pride in International Bankruptcy: The Problems and Proposed Solutions to 'Local Interests* [2005] SSRN ELECTRONIC JOURNAL http://dx.doi.org/10.2139/ssrn.711125"

42 Jodie Adams Kirshner, INTERNATIONAL BANKRUPTCY (University of Chicago Press 2018) http://books.google.ie/books?id=9J1WDwAAQBAJ&pg=PA191&dq=Pottow+(n+39)+1915&hl=&cd=2&source=gbs_api"

43 Mr Mutee-ul-Rehman & Amartya Sen, THE IDEA OF JUSTICE. London: Penguin Books Ltd. 2009. 468 Pages. Hardback. £ 25.00. (2009) 48 The Pakistan Development Review 173 http://dx.doi.org/10.30541/v48i2pp.173-175"

Considering that a state prioritizes its insolvency law, it naturally favors an approach to cross-border insolvency law that applies its insolvency law to the greatest extent possible. In an ideal scenario, if a state had the power to enforce its preferred method of handling insolvency cases across borders, that state's insolvency legislation would apply outside its territory, while other states' insolvency legislation would only apply within their territories. The inclination of states towards the distributional consequences of their insolvency law elucidates their inherent resistance to universalism.

A state prioritizes the use of its insolvency legislation, regardless of whether it guarantees that all its people involved in bankruptcy cases will always be in a more advantageous position compared to the insolvency law of other states. A state's domestic bankruptcy legislation does not necessarily provide preferential treatment to its people compared to any other bankruptcy legislation. Due to the unique distributional choices embedded in each insolvency law, there are winners and losers associated with each law. In a particular insolvency case, resident X of state A can benefit more from the application of State B's insolvency legislation, whereas resident Y of State A would benefit more from the application of State A's insolvency law. For instance, let's examine individuals X and Y who reside in state A and own claims in a financially insolvent company. This company is based in state A but also conducts significant business operations in state B. Claimholder X is a provider of products that has established a provision that allows them to retain ownership of the goods they have supplied to the firm. Claimholder Y is an equity holder of the company. The insolvency law in state A does not acknowledge retention-of-title clauses and assigns the supplier, who has maintained ownership of the delivered goods, as an unsecured creditor. On the other hand, the insolvency law in state B acknowledges retention-of-title clauses and permits the supplier to reclaim the goods. In state A, the insolvency legislation permits the debtor and its claim holders to reach an agreement about the distribution of assets that goes against the absolute priority rule. However, in state B, the insolvency law does not allow for any deviation from this norm. Claim holder X is concerned with the implementation of the insolvency law of state B in this bankruptcy case, whereas claim holder Y is concerned with the implementation of the insolvency law of state A. Furthermore, due to the varying roles individuals play in different insolvency cases, an individual may prefer the application of their own state's insolvency law in one case and the application of a different state's insolvency law in another situation. For example, in this situation, the individual known as claim holder Y is a shareholder. However,

in another scenario, the same individual may be a creditor who has included a retention-of-title condition.

Currently, when it comes to distributing assets within their jurisdiction, most states do not differentiate between their people and citizens from other states, while implementing their own rules and regulations for distribution.[44] Typically, states provide equal treatment to foreign creditors and domestic creditors in identical circumstances.[45] States prioritize and distribute resources based on their preferences, which may differ from those of other states. Consequently, they have no incentive to treat foreign creditors differently. It is reasonable to assert that this assumption is valid for most priorities. Take, for example, the importance given to security interests in property, employee salary claims, or the preferences given to creditors who trade with or lend money to the debtor in a bankruptcy situation. There is no justification for not giving comparable advantages to foreign creditors in similar situations, especially if these priorities align with the state's distributional preferences. In the realm of insolvency law, both domestic and international creditors are subject to the application of these priorities by nations.[46] Likewise, domestic, and foreign creditors

44 Lucian Arye Bebchuk and Andrew T Guzman, *An Economic Analysis of Transnational Bankruptcies* (1999) 42 THE JOURNAL OF LAW AND ECONOMICS 775 http://dx.doi.org/10.1086/467442"_

45 André Berends, "Book ReviewsBook ReviewsBerendsAndréMinistry of Justice, The Netherlands122000473381390FletcherI.F., Insolvency in Private International Law: National and International Approaches, Clarendon Press, Oxford 1999, 465 Pp. ISBN 019-825864-XCopyright © T.M.C. Asser Press 20002000T.M.C. Asser PresspdfS0165070X00001066a.pdfdispartBook Reviews1.See, for Instance, T.M. Bos, Grensoverschrijdend Faillissementsrecht in Europees Perspectief Diss. Vrije Universiteit Amsterdam (2000) (with Summary in English: 'Cross-Border Bankruptcies in European Perspective').2.Philip St. SmartJ., Cross-Border Insolvency, 2nd Edn. (London, Butterworths 1998).3.For Instance, at a Colloquium, Organised by Insol and UNCITRAL, Held in Toronto in 1995, an Expert Committee's Report Was Distributed (Not Published), in Which Six Categories of States Were Distinguished. Category 1 Contained the Most Open States, Category 6 the States That Were the Most Closed. The Netherlands and Japan Were the Only Two States in Category 64.One Should Bear in Mind That the Term 'Bankruptcy' under English Law Only Refers to an Insolvency Proceeding for Natural Persons5.See CooperN. and JarvisR., Recognition and Enforcement of Cross-Border Insolvency (Chichester, John Wiley and Sons Ltd. 1996), in Which the Laws on This Point of 36 Countries Are Described.6.The Word 'Anglo-Centric' Is Used by Fletcher Himself (p. 108), in a Rather Pejorative Way7.Initiative of the Federal Republic of Germany and the Republic of Finland with a View to the Adoption of a Council Regulation on Insolvency Proceedings, Submitted to the Council on 26 May 1999, Official Journal C 221, 3 August 1999, Pp. 8 et Seq.8.Council Regulation (EC) No. 1346/2000 of 29 May 2000 on Insolvency Proceedings (2000) 47 Netherlands International Law Review 381 http://dx.doi.org/10.1017/s0165070x00001066"

46 Except for tax claims: "most states do not accord to foreign tax authorities the same priority as to their own tax authorities. They may even refuse to recognize foreign tax claims. See Jay Lawrence Westbrook, 'Universal Priorities' (1998) 33 Tex Intl LJ 27, 36; Bang-Pedersen (n 16) 433; Westbrook, 'Breaking Away'" (n43) 620.

are equally affected by a state's distributive policies embedded in its bankruptcy law.

VI. Regulations in Cross Border Insolvency

Protocols are formal agreements or arrangements created in insolvency cases to tackle various issues that emerge in international situations. The concept was initially employed in 1991 during the bankruptcy proceedings of Maxwell Communication Corporation plc to facilitate the coordination of processes between the UK and the USA. This was achieved through the appointment of an Examiner to assist in the coordination efforts. Subsequently, US Courts have regularly implemented procedures in cases involving insolvency that span across other countries. Protocols have played a vital role in complicated cross-border insolvency cases, such as the Lehman Brothers case in 2009. This case involved 2,985 legal entities spread across more than 50 nations. Moreover, they have been successfully employed in complex situations involving individuals such as Bernard Madoff, Nortel Networks, Singer International, and Owens Corning.

The Model Law's Article 27(d) allows courts to "approve or execute agreements respecting the coordination of proceedings" as a means of interparty cooperation. This also includes the application of protocols. A set of options is provided by protocols, which view bankruptcy as primarily a private dispute between parties and are tailored to address case-specific needs. They try to harmonize case management even before a dispute emerges, rather than determining in advance the substance of legal concerns.[47] Typically, they establish a framework for interaction, information sharing, asset protection, claims reconciliation, and handling inter-company claims.[48] The essential flexibility for changes to satisfy new requirements that may arise during a proceeding is provided by protocols. The protocol's application in the Everfresh scenario resulted in an estimated 40% increase in overall value.[49] Concern over the

47 Christian Campbell, "*Comparative Law Yearbook of International Business Volume 43* (Kluwer Law International BV 2021) http://books.google.ie/books?id=yO9ZEAAAQBAJ&pg=PT35&dq=Zumbro+H.+Paul.,+(2010),+%E2%80%9CCross-border+insolvencies+and+International+protocols+%E2%80%93+an+imperfect+but+effective+tool%E2%80%9D,+Business+Law+International+Vol.+11,+No+2,+May.&hl=&cd=1&source=gbs_api"

48 Marie-Louise Nauta and Frederiek Bulten, Introduction to Spanish Cross-border Insolvency Law—an Adequate Connection with Existing International Insolvency Legislation (2009) 18 International Insolvency Review 59 http://dx.doi.org/10.1002/iir.168"

49 UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation (United Nations Publications 2010) http://books.google.ie/books?id=zflqzQEACAAJ&dq=UNCITRAL+Practice+Guide+on+Cross-Border+Insolvency+Cooperation,+p.+28.&hl=&cd=1&source=gbs_api"

usefulness of protocols has been raised about collaboration between common law and civil law nations[50] where the approach to insolvency and the court's authority to make and enforce such agreements/protocols differ significantly. Also, it has been noted that elaborate processes may be needed due to the higher number of regions and the multi-layered corporate structure of major multinational corporations. Along with the significant expense and time needed to successfully finalize discussions, the conformity of protocols with national insolvency laws has also been brought up.

Hence, protocols are viewed as a flawed but helpful method for promoting cooperation in international insolvency procedures. The EU has thought out specific guidelines[51] for its member states on how to frame and handle these protocols. They are more complex than bilateral agreements and are case-specific. Negotiating an agreement for every case could be detrimental to the process itself, let alone the time needed for such understanding, given the complexity of cross-border insolvency cases.

VII. Jet Airways (India) Limited Case

The State Bank of India's application under section 7 of the Code was admitted, and on June 20, 2019, the corporate insolvency resolution process for Jet Airlines (India) Limited got underway. An Asset Preservation Team was formed by the resolution professional.

It was then discovered that the Netherlands, the company's headquarters for Europe, had earlier chosen a bankruptcy trustee and begun insolvency proceedings. Two European creditors made claims of outstanding debts of Rs. 280 crores as the basis for starting the procedure, and an order was made to seize the company's planes that were parked at Amsterdam's Schiphol airport. The NCLAT granted the Dutch administrator's request for recognition of the Netherlands procedure, The administrator was permitted to join the committee of creditors (CoC) and participate in its meetings, but without having the ability to cast a vote. The Appellate Court

50 Jodie Adams Kirshner, International Bankruptcy (University of Chicago Press 2018) http://books.google.ie/books?id=9J1WDwAAQBAJ&pg=PA185&dq=Evan+D.+Flaschen,+Anthony+J.+Smits+and+Leo+Plank+(2001),+%22Foreign+representatives+in+US+Chapter+11+cases:+Filling+the+void+in+the+law+of+multinational+insolvencies%22,+17+Conn.+J.+Int%27l.3.&hl= &cd=1&source=gbs_api"

51 Csongor István Nagy, *The Application Ratione Temporis of The Insolvency Regulation In New Member States* (2013) 62 International and Comparative Law Quarterly 941 http://dx.doi.org/10.1017/s0020589313000328"

ordered the RP and CoC to "take into consideration the prospect of cooperating with the Dutch Trustee to have a joint corporate insolvency resolution process of the company[52]" and "to reach an arrangement/agreement with the Dutch Trustee to extend such cooperation to each other, further allowing the CoC to guide the RP to enable him to prepare an agreement in reaching the terms of the arrangement of cooperation with the Dutch Trustee in the best interest of the company."[53]

The parties agreed on the terms and conditions of the "Cross Border Insolvency Protocol," which also included a clear goal and purpose, open lines of communication and information, the RP, and the Trustee's rights to appear and attend in courts in both jurisdictions, cooperation in the preservation of assets, the gathering and review of claims and costs, and COMITY (center of main interest). The Netherlands Trustee and the RP compiled claims under their respective jurisdictions by this Protocol and evaluated one another's verification procedures for claim admission/ disputes based on the sample provided. Claims have been acknowledged by both nations' courts.

The Protocol appears to be effective, as evidenced by the fact that the resolution process has moved forward since then. "But it's still unclear whether the Protocol will be adaptable enough to let parties from other jurisdictions participate in the process, what level of cooperation the other nations will offer as part of such a Protocol, and how well such a Protocol will work to resolve the issue with the impaired airline. Concerning civil and commercial disputes, India has ratified the Mutual Legal Assistance Treaty with six nations, as well as a Memorandum of Understanding with seven[54] additional nations[55] for cooperation in the areas of law and justice, information sharing, and legal assistance, in addition to the extradition treaties and agreements.[56] In addition to having investment chapters[57] in its free trade agreements and partnerships that guarantee the protection of investments made in

52 NCLAT order dated July 12, 2019, and August 21, 2019, in the Jet Airways (India) Limited case.

53 NCLAT order dated September 4, 2019, in the Jet Airways (India) Limited case.

54 "Canada-United States: Treaty on Mutual Legal Assistance in Criminal Matters" (1985) 24 International Legal Materials 1092 http://dx.doi.org/10.1017/s0020782900029879

55 Bahrain, France, Russia, Azerbaijan, UAE, Mongolia.

56 Turkey, China, Russia, Qatar, Morocco, UK, Uzbekistan.

57 "India scrapped more than 80 "bilateral investment treaties in 2015 and new treaties are being signed afresh with a host of countries. Arrangements in Bangladesh, Belarus, Colombia, Taipei, Congo, Bulgaria, Romania, the Czech Republic, and Brazil are in force. Negotiations are underway with Iran, Switzerland, Morocco, Kuwait, Ukraine, UAE, Hongkong, and Israel among others. https://dea.gov.in/bipa"

each other's countries' territory, India has inked bilateral investment treaties with some other nations. These instruments are on a reciprocating basis and are designed specifically for the task. According to the Code, the Government has the power to create bilateral agreements. If India decides to follow this option, it would be necessary for them to enter discussions with a minimum of 15 countries." This is due to the significant movement of money, trade links, and economic expansions that occur inside India's borders. Nevertheless, these agreements are impeded by protracted talks, often requiring several years to be successfully concluded. Reaching agreement on the complex and ever-changing topic of cross-border bankruptcy may be difficult, requiring ongoing evaluation. Creating a thorough and flexible document that can be customized to suit certain reciprocating jurisdictions is much more challenging. The purpose of these agreements is to facilitate the coordination of distinct bankruptcy proceedings involving the same debtor across different countries. A cost-benefit analysis is used to evaluate the appropriateness of each adoption option for India. Adopting any alternative involves costs for creating new laws, obtaining permission from parliament, and spreading information, among other things. However, it also brings advantages for everyone involved, such as the ability to make changes to legislation more easily, expand the reach of jurisdiction, and simplify the implementation process.

The existing procedures within the CPC for international judicial and legal cooperation do not need the implementation of new laws or permissions. However, they do not possess the necessary flexibility to improve insolvency processes. Although open to delegates from all jurisdictions, these entities depend on the already burdened Indian court and are restricted by current structural constraints. To tackle these problems, it is necessary to rely on foreign knowledge since there is a shortage of specialized legal assistance inside the country.

Implementing the Model Law would require making changes to the Code and obtaining legislative endorsement for all applicable regulations. To ensure effective implementation, it is necessary to revise these rules and provide comprehensive education to all stakeholders. Although providing extensive protections and necessary flexibility for amendments, worldwide history suggests that such changes generally weaken the law's universalist goals and long-term influence. The advantages and disadvantages of the variations previously used by countries in implementing the Model Law continue to be a topic of dispute. The Model Law provides extensive technical and interpretive advice for courts and stakeholders, which is not available in any other examined alternative. However, the legislation

has been ratified by just 47 jurisdictions, eliminating those states that are critical to India's present and prospective future relationships.

Internationally, complex cross-border insolvencies have been successfully handled using procedures in cross-border insolvency. To make this instrument the preferred choice, it would be necessary to modify the Code and create regulations appropriately. Additionally, stakeholder education and outreach would need to be conducted. Although judges and stakeholders have the option to customize terms and conditions, it is crucial to rely on global experience. The successful implementation of a protocol depends on the willingness of private, governmental, and judicial bodies to interact. If any one party is unwilling to participate, it may completely disrupt the process. In addition, the duration needed for the verification of these procedures may impede prompt remedies, since the legal system lacks measures to handle individual problems on time.

Customized bilateral agreements designed for insolvency may simplify cross-border insolvency procedures without requiring modifications to the Code. Creating a flexible bilateral agreement model that can meet the specific requirements of partner states in negotiations requires significant dedication and work. India might refer to existing bilateral investment treaties as a source of advice in this matter. It is crucial to establish essential principles based on the Model Law and the Code, emphasizing countries that have strong connections with India. Although there are limits to this method in terms of international experience, it is important to closely examine Nordic nations and EU Regulations.

VIII. Conclusion

While universalism is often praised in legal discussions, its actual implementation in cross-border bankruptcy law is not common. The UNCITRAL Model Law on Cross-Border Insolvency and the EC Insolvency Regulation demonstrate substantial progress in promoting international collaboration in this area. However, they also highlight the continued presence of nationalistic tendencies among states. This study presents a distinct justification for emphasizing the territorial approach in international bankruptcy law. When creating cross-border bankruptcy frameworks, nations must carefully consider the advantages of promoting international economic activity while also weighing the potential drawbacks of adopting less favorable substantive insolvency rules. The balance is greatly impacted by external forces, particularly the economic interdependencies of nations. A state may become

economically dependent on another state, referred to as the "dominant state," and so choose to align itself with the dominant state's geographical authority to maximize economic benefits from cross-border operations.

Changes in global bankruptcy legislation are greatly influenced by these economic interconnections, which might result in the harmonization of different substantive bankruptcy systems. Nevertheless, the varied interests of dominant countries that regulate regional economies sometimes impede the alignment of bankruptcy rules until there is global economic cooperation. Every suggested approach has unique benefits and limitations. Although the Model Law has substantial support, there are worries over its limited implementation and the omission of important institutions such as banks, despite the increasing global financial interconnectedness. Therefore, the Model Law by itself may not fully meet India's requirements for resolving cross-border bankruptcy. The recommendations issued by the Financial Stability Board, which are based on the Model Law, provide a viable approach to improve cross-border resolution, particularly for banks and financial institutions. Although it is not within the scope of this study to provide a detailed plan for India, using the FSB's framework may help overcome the constraints of the Model Law while still upholding its core values.

In the context of the continuing epidemic, a customized approach that considers economic interests unique to each nation might serve as a prominent and noteworthy example in the changing global landscape of globalization. To clarify, the establishment of consistent and comprehensive insolvency laws does not automatically come before the implementation of efficient cross-border insolvency regulations. Success depends on the government's ability to handle the intricate aspects of territorial authority and adopt cross-border insolvency laws to address legal disputes that arise from international insolvencies.



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