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A Comparative Analysis of the Principles and Rules Governing Bankruptcy Proceedings in Iranian and English Law, with Emphasis on the Effectiveness of Creditor-Protection Mechanisms

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ABSTRACT

Bankruptcy, as one of the most important institutions of commercial law, plays a fundamental role in managing merchants' financial crises and regulating legal relations between debtors and creditors. The main purpose of this institution is to establish a balance between maintaining economic order, protecting creditors' rights, and, at the same time, providing the possibility of reorganizing the debtor's financial situation. The present study, entitled "A Comparative Analysis of the Principles and Rules Governing Bankruptcy Proceedings in Iranian and English Law, with Emphasis on the Effectiveness of Creditor-Protection Mechanisms," examines and analyzes the rules and regulations governing the initiation of bankruptcy proceedings in the two legal systems of Iran and England. This research seeks, through an explanation of the theoretical and legal foundations of bankruptcy, the substantive and formal conditions for bringing an action, the jurisdiction of competent authorities, the process of judicial proceedings, and the effects of issuing a bankruptcy judgment, to assess the effectiveness of creditor-protection mechanisms in each of these two legal systems. In this regard, concepts such as merchant, cessation of payment of debts, criteria for determining financial incapacity, the role of the court and liquidators, the method of collecting and distributing assets, and the position of creditors in the liquidation process are analyzed comparatively. The findings of the study indicate that although the Iranian legal system, in the field of bankruptcy regulations, has been considerably influenced by European legal systems, some creditor-protection mechanisms in Iranian law are less efficient and less flexible than those in English law. By contrast, English law, through the use of advanced institutional structures, has envisaged a more active role for creditors, liquidators, and supervisory authorities in the bankruptcy process. Accordingly, a comparative study of these two systems can provide a basis for identifying the strengths and weaknesses of existing regulations and for proposing reforms to improve creditor-protection mechanisms in the Iranian legal system. Ultimately, this research seeks, by presenting legal analyses and practical recommendations, to take a step toward enhancing the efficiency of the bankruptcy system and ensuring more effective protection of creditors' rights under Iranian law.

Keywords: *principles and rules, bankruptcy proceedings, Iranian law, England, protection mechanisms.*



Introduction

Bankruptcy, as one of the most important institutions of commercial law, plays a fundamental role in regulating relations between a debtor who is unable to pay debts and creditors, and it is, in fact, one of the most important legal mechanisms for managing financial crises in economic systems. This legal institution is important not only from the perspective of private law and contractual relations among persons, but also from economic and social perspectives, as it has extensive effects on the economic system, transactional security, and public trust in the market. For this reason, most legal systems have attempted, through the formulation of clear and precise rules on bankruptcy, to establish an appropriate balance between creditors' rights and the debtor's interests and to prevent disruption in the economic system. Within this framework, bankruptcy proceedings, as one of the most important commercial actions, are subject to specific principles and rules whose primary purpose is to ensure justice among creditors and prevent the violation of their rights (1).

The significance of bankruptcy is not limited to relations between debtor and creditor; rather, its effects directly influence the economic stability of society. When a merchant or commercial company becomes unable to pay its debts, this situation may lead to a chain of economic problems, including reduced trust in commercial transactions, disruption in capital circulation, increased investment risk, and even macro-level economic crises. Therefore, bankruptcy regulations must be structured in such a way that, while protecting creditors' rights, they also prevent the sudden collapse of economic enterprises and, where possible, provide the grounds for restructuring and continuation of economic activity. In other words, the philosophy of bankruptcy regulations in contemporary law is not limited merely to debt settlement; rather, its aim is to manage financial crisis in a manner that both preserves creditors' rights and enables the debtor's return to the economic cycle (1).

With the expansion of international trade and the increasing complexity of economic relations in the contemporary world, bankruptcy has also acquired new dimensions. In the past, commercial activities were mostly conducted within national borders, and for this reason, domestic regulations of states were largely sufficient to address bankruptcy-related issues. However, in today's world, where many companies operate internationally and their assets and obligations are dispersed across different countries, resolving bankruptcy disputes solely by relying on domestic laws is no longer possible. Under such circumstances, the need for coordination among different legal systems and the acceptance of international standards has become increasingly important. For this reason, in recent decades, extensive efforts have been made to establish common rules in the field of international insolvency, among the most important of which is the UNCITRAL Model Law on Cross-Border Insolvency (2, 3).

In this regard, the comparative study of different legal systems can play an important role in identifying the strengths and weaknesses of each system and offering reform-oriented solutions. One of the legal systems with rich and advanced experience in the field of bankruptcy is the English legal system, which has developed on the basis of the common law tradition and has undergone extensive reforms in its bankruptcy regulations in recent decades. By contrast, the Iranian legal system, which is based on the civil law tradition, still relies to a considerable extent on the Commercial Code enacted in 1932 and requires revision and reform in certain areas. Therefore, a comparative examination of the principles and rules governing bankruptcy proceedings in Iranian and English law can provide valuable insights for improving the efficiency of the Iranian legal system.

In Iranian law, bankruptcy regulations are mainly provided in the Commercial Code enacted in 1932. Articles 412 to 575 of this Code address the conditions for the realization of bankruptcy, the manner of bringing an action, the

effects of issuing a bankruptcy judgment, and the procedure for liquidating the assets of the bankrupt merchant. According to Article 412 of the Commercial Code, the bankruptcy of a merchant or commercial company occurs as a result of cessation of payment of the funds owed by them, and the determination of this situation falls within the jurisdiction of the competent court. Therefore, the main element in the realization of bankruptcy in Iranian law is “cessation of payment of debts,” and this situation must be established through a court judgment (1, 4).

Iranian Commercial Law has also divided bankruptcy into three types: ordinary bankruptcy, bankruptcy by fault, and fraudulent bankruptcy, each of which has different legal and criminal effects. In ordinary bankruptcy, the merchant becomes unable to pay debts without bad faith and as a result of unfavorable economic conditions; whereas in bankruptcy by fault or fraud, the merchant’s improper or fraudulent conduct has contributed to the creation of the bankruptcy situation. This classification shows that the Iranian legislator has paid attention not only to the economic dimension of bankruptcy but also to its ethical and criminal dimensions (5).

Nevertheless, many jurists believe that the existing provisions of the Iranian Commercial Code are not fully compatible with the economic and commercial developments of the contemporary world. One of the most important criticisms directed at these regulations is their excessive focus on liquidation and dissolution of the economic enterprise. In other words, the bankruptcy system in Iranian law places greater emphasis on selling the debtor’s assets and distributing them among creditors, while paying less attention to the possibility of restructuring and continuation of economic activity. This is while, in many advanced legal systems, the primary objective of bankruptcy regulations is to preserve the economic enterprise and prevent the destruction of productive capacity and employment (1, 4).

Research Questions

Main Question

What are the differences and similarities between the principles and rules governing bankruptcy proceedings in Iranian and English law, and to what extent do these systems operate efficiently in protecting creditors’ rights?

Sub-Questions

1. What are the principles and rules governing the initiation and adjudication of bankruptcy proceedings in Iranian law, and what mechanisms have been provided in this system to protect creditors?
2. What are the most important principles and rules governing bankruptcy proceedings in English law, and what instruments exist in this system to guarantee and protect creditors’ rights?
3. What differences and similarities exist between creditor-protection mechanisms in bankruptcy proceedings under Iranian and English law?
4. Which institutions, principles, and protective mechanisms existing in English law can be adapted to the legal conditions of Iran and used in the Iranian legal system?

Research Hypotheses

Main Hypothesis

It appears that, while the bankruptcy system in Iranian law is more focused on liquidating the assets of the bankrupt merchant and distributing them among creditors, the English legal system, by using diverse legal mechanisms, seeks to protect creditors while also providing the possibility of restructuring and continuing the activity of the economic enterprise, thereby creating greater efficiency in the management of bankruptcy proceedings.

Sub-Hypotheses

1. In Iranian law, the principles and rules of bankruptcy proceedings are mainly based on the provisions of the Commercial Code of 1932, and creditor-protection mechanisms are mostly realized through asset liquidation and observance of the principle of equality among creditors.
2. In English law, in addition to traditional bankruptcy principles, instruments such as administration, Company Voluntary Arrangement (CVA), and other restructuring mechanisms have been provided, which can offer more effective protection of creditors' interests while preserving the economic enterprise.
3. Certain principles and institutions existing in the English bankruptcy system, particularly corporate restructuring mechanisms, efficient supervisory systems, and cross-border insolvency rules, can be used in Iranian law through appropriate legislative reforms and may increase the efficiency of the bankruptcy adjudication system and strengthen creditor protection.

Research Methodology

The data collection method in the present study is library-based and documentary. By taking notes from available domestic and foreign books and articles, studying the legal regulations of Iran and England, and using internet sources, the author has proceeded to collect and prepare the present thesis through a descriptive-analytical method and comparative content analysis.

The Concept and Nature of Bankruptcy

Bankruptcy is one of the most important institutions of commercial law and refers to the financial condition of a merchant who is unable to pay debts. This situation may arise from various factors; sometimes events beyond the merchant's control cause inability to perform financial obligations, and sometimes mismanagement or errors in the administration of commercial affairs lead to it. In any case, bankruptcy usually has significant economic and reputational effects for the merchant and may damage commercial credit. Therefore, legal systems have distinguished between cases in which bankruptcy results from factors beyond the merchant's control and cases in which it is the result of the merchant's fault or fraud (6). In its lexical meaning, bankruptcy refers to helplessness in business and trade and to a situation in which a merchant, as a result of commercial losses, loses the ability to pay debts and the debts exceed the assets (7). In Iranian legal literature, bankruptcy is also generally known through the concept of "cessation of payment of debts." In this regard, Jafari Langroudi considers bankruptcy to be a condition in which the merchant has ceased paying debts and is unable to perform commercial obligations. In other words, cessation of payment of debts does not necessarily mean complete insolvency, because the merchant may possess properties and assets that are, in total, sufficient to pay the debts, but due to lack of access to them or their lack of liquidity at the present time, the merchant is unable to pay the debts. Moreover, the realization of bankruptcy requires the issuance of a judgment by the competent court, a matter that Article 412 of the Commercial Code implicitly confirms (8). Accordingly, some jurists define bankruptcy as the merchant's inability to pay debts, resulting in the condition of "cessation." Article 412 of the Iranian Commercial Code also provides: "The bankruptcy of a merchant or commercial company occurs as a result of cessation of payment of the funds owed by them." The continuation of this article even provides that, in the event of the merchant's death, a bankruptcy judgment may be issued up to one year after death. Therefore, bankruptcy is an institution specific to merchants, whether natural persons or commercial companies (1).

Consequently, whenever a merchant lacks the ability to pay debts, the merchant is regarded as a “merchant in cessation,” and if the competent court establishes this situation, a bankruptcy judgment is issued. Therefore, it can be said that bankruptcy is a legal condition by virtue of which the inability of a natural or legal merchant to pay debts is declared by a court judgment (9). In common law, concepts related to bankruptcy are also expressed through the two terms “bankruptcy” and “insolvency.” Some jurists have distinguished between these two terms and believe that the term “bankruptcy” is more commonly used for natural persons, while “insolvency” is used for legal persons (10). Nevertheless, in the legal literature of countries such as England, the United States, and Canada, these two terms are sometimes used in closely related meanings, although legal distinctions exist between them. In general, “insolvency” refers more to the condition of financial inability or inability to pay, whereas “bankruptcy” refers to the legal process of declaring and addressing this condition. Bankruptcy regulations in common law legal systems share many similarities in their general principles, although certain differences can be observed in details (11). In its technical meaning, bankruptcy in Iranian law is a situation in which a merchant, due to inability to pay debts, is declared bankrupt by a competent court judgment, and legal and sometimes criminal effects are attached to it.

By contrast, in English law, the concept of bankruptcy is broader and includes not only natural persons but also companies and commercial institutions. In this legal system, the primary purpose of bankruptcy regulations is not merely liquidation of assets, but the preservation of asset value, restructuring of the economic enterprise, and ultimately the fair distribution of assets among creditors. Therefore, the approach of the English legal system is more economic and functional, and its punitive dimension is less prominent than in some other legal systems. Ultimately, it can be said that in both the Iranian and English legal systems, the final objective of bankruptcy regulations is to secure justice among creditors and distribute the debtor’s assets fairly; the difference is that in Iranian law there is greater emphasis on the judicial and sometimes criminal aspects of bankruptcy, whereas in English law the dominant approach is the economic management of financial crisis and the restructuring of the economic enterprise.

The History of Bankruptcy in Iran and England

Commercial law arises from the historical evolution of societies, and understanding bankruptcy regulations is not possible without examining their background. In Iran, bankruptcy regulations do not have a long history and have mainly been shaped under the influence of European law, particularly French law; whereas in England, bankruptcy has a very ancient history rooted in the common law tradition (2). In Iran, before codified legislation, no distinction existed between civil and commercial matters, and the rules of iflas, derived from Islamic jurisprudence, applied to all persons, whether merchants or non-merchants. A mufliis was a person whose assets were insufficient to pay debts or who lacked a specific property, and who, upon the existence of four conditions—proof of debt before the judge, maturity of the debt, excess of debts over assets, and creditors’ request—was prohibited from disposing of property. In Islamic jurisprudence, no criminal sanction existed for the mufliis except in the case of intentional refusal to pay debt (2). The first codified bankruptcy regulations were enacted in 1924 and 1925, modeled on French laws, and created a distinction between a merchant’s cessation of payment and bankruptcy. These regulations were deemed insufficient, and the Commercial Code of 1932, consisting of 600 articles and modeled on French law, was enacted. Subsequently, the Law on the Administration of Bankruptcy Liquidation Affairs was adopted in 1939. Despite the approval of the Bill for the Reform of the Commercial Code in 2013, changes in Iranian bankruptcy regulations have remained very limited compared with many developed countries (2). In England, bankruptcy

regulations have a very long history, with roots extending to ancient laws such as the Code of Hammurabi, the Twelve Tables of Rome, and the Talmud. In these systems, the debtor could be imprisoned, enslaved, or even killed. In 1215, the Magna Carta for the first time introduced protection of the debtor by prohibiting the arbitrary seizure of property. The Bankruptcy Act of 1542 introduced the principle of distributing loss among creditors into the legal system, although the debtor was still regarded as a criminal (12). The Act of 1571, known as the Statute of 13 Elizabeth, declared the debtor's fraudulent transactions void, and from the seventeenth century onward, the punitive view of bankruptcy gradually weakened (10).

Under the Act of 1705, the Lord Chancellor was authorized to discharge debtors from their debts in the event of full disclosure of assets, but debtors' prisons remained in place, and the inhumane conditions prevailing in them provoked extensive criticism. In the nineteenth century, with the expansion of investment and the need for joint-stock companies, broad reforms began. The Joint Stock Companies Act 1844 made it possible to form companies through registration, and the Limited Liability Act 1855 protected investors against company debts. The Bankruptcy Act 1861 allowed all persons, whether merchants or non-merchants, to use the bankruptcy process, and the 1869 Act abolished imprisonment for debt (10).

In 1914, the first comprehensive law on the bankruptcy of natural persons was enacted, and subsequent reforms in 1926 and 1986 removed the boundary between merchant and non-merchant (13). Legal persons became subject to their own bankruptcy regulations under the Companies Act 1948 and the reforms of 1967. The turning point in the modern development of bankruptcy in England was the Insolvency Act 1986, which created an integrated structure for the bankruptcy of individuals and companies and was amended in 2002 by introducing out-of-court management mechanisms. The European Union Insolvency Regulations came into force in 2002, and their 2015 reforms were also applied in almost all member states (14). In 2017, the 1986 Rules were replaced by the revised 2016 version, and during the COVID-19 period in 2020, reforms were introduced to provide greater support to enterprises at risk of insolvency (3). Overall, the development of bankruptcy in England during the twentieth century was based on three main axes: creating a fair system for prioritizing creditors, supporting enterprises that have the possibility of continuing activity, and ensuring the accountability of managers who breached their duties or caused insolvency (15).

Table 1. Definition and Types of Bankruptcy

Type / Concept of Bankruptcy	Definition and Characteristics	Legal Basis or Explanation
Definition of bankruptcy	If a merchant or commercial company ceases to pay its debts, it becomes subject to bankruptcy regulations. A bankruptcy judgment is specific to merchants and commercial companies. Non-merchants, if unable to pay debts, are considered "insolvent" rather than bankrupt. A merchant may also be a natural person or a legal person, namely a commercial company.	(16)
Ordinary bankruptcy	This is a situation in which the merchant, without committing fault or fraud, ceases payment of debts due to economic or commercial factors or market conditions. In this situation, if the merchant declares cessation and submits the required documents to the court within the prescribed period under Article 413 of the Commercial Code, the merchant is considered an ordinary bankrupt. This type of bankruptcy has no criminal effects, and the legislator grants a form of leniency to the merchant so that the reorganization of financial affairs may become possible.	(16)
Bankruptcy by fault	This occurs when the merchant's cessation of payment of debts results from the merchant's fault. The Commercial Code classifies faults into two categories: 1. cases in which, upon their establishment, the court is required to issue a judgment of bankruptcy by fault under Article 541 of the Commercial Code, such as spending substantial amounts of capital on personal expenses, undertaking risky transactions, or preferring one creditor over others after the date of cessation; and 2. cases in which the court has discretion to issue such a judgment under Article 542 of the Commercial Code, such as failure to declare cessation,	(16, 17)

	disorder in commercial books, or accepting heavy obligations without consideration. Each of these faults is regarded as an independent offense.	
Fraudulent bankruptcy	This is realized when the merchant, through fraudulent acts, intends to violate creditors' rights. In this situation, the merchant usually acquires the property of others through apparently lawful transactions, but refrains from performing obligations by acts such as concealing assets, destroying or causing the disappearance of commercial books, or conducting sham transactions. These cases are enumerated in Article 549 of the Commercial Code and have a criminal character.	(17)

Conditions for Bringing Bankruptcy Proceedings in Iran

The conditions for bringing bankruptcy proceedings in Iranian law are based on two essential requirements: being a merchant and cessation of payment of debts. In addition, the debt serving as the basis of cessation must possess specific conditions (18).

1. Being a merchant: Bankruptcy is specific to merchants, and non-merchants are subject only to "insolvency." A merchant may be a natural person or a commercial company under Article 20 of the Commercial Code. Establishing the merchant status of legal persons is easy through inquiry from the Companies Registration Office; however, in relation to natural persons, the court must examine whether the person's ordinary occupation consists of performing commercial acts (1, 18).
2. Cessation of payment of debts: Cessation is the main element of bankruptcy. The Commercial Code does not provide an explicit definition of it, and two views exist. According to the first view, mere cessation is sufficient for issuing a judgment, because the books may not be in the merchant's possession or may not be submitted. The principle of speed in commercial disputes requires the court not to enter into complex investigations (18). According to the second and more prominent view, "absolute cessation" must be established, meaning that the court must examine the merchant's books and statements of account, because there may be collusion between the merchant and some creditors. Otherwise, the merchant could present himself as having ceased payment whenever desired. A bankruptcy judgment has a declaratory character and general effect (18). Legal conclusion: establishing absolute cessation is more defensible.
3. Conditions of the debt effective in cessation: The debt on which the merchant's cessation is based must have three conditions (17). It must be certain and established: the debt must be definite; disputed or deferred debts cannot serve as the basis of cessation (18). It must be unconditional: suspended or conditional debts cannot be invoked. It must be due and demandable: the debt must be capable of being claimed at the time of bringing the action (17).
4. Main procedural points in bankruptcy proceedings: Bankruptcy proceedings are non-financial actions, and the court costs applicable to non-financial claims apply to them (19). The competent authority is the General Civil Court of the merchant's domicile or principal place of business. This action cannot be referred to arbitration.
5. Persons entitled to bring bankruptcy proceedings under Article 415 of the Commercial Code: Creditors: the number, type, and amount of debt are irrelevant. The creditor of a creditor may bring an "indirect action." Partners of a company may bring such an action only if their debt does not arise from the partnership relationship (19, 20). The debtor merchant: the merchant must act within three days from the date of cessation under Article 413. Submission of books and a statement of assets is mandatory. Failure to declare cessation may result in bankruptcy by fault. The legislator's objective is to create trust, ensure equal

- protection of creditors, and enable a composition agreement (19). Prosecutor: due to the economic significance of bankruptcy, the prosecutor may request issuance of a judgment even in ordinary cases (19).
6. Jurisdiction of courts: Subject-matter jurisdiction belongs to the General Civil Court, formerly the Court of First Instance (1). Local jurisdiction belongs to the court of the merchant's domicile or the company's principal center. In companies, the "actual center" is decisive (19).
 7. Bankruptcy judgment: The judgment must include the following matters: declaration of bankruptcy; determination of the date of cessation; appointment of a supervisory member; appointment of a liquidation manager, no later than five days after the judgment; order for sealing the assets; and the possibility of ordering detention of the merchant or company managers in the event of violation of Articles 413 and 414 (19).
 8. Announcement and enforcement of the judgment: The judgment is published through the Official Gazette and newspapers. Even before becoming final, it is provisionally enforceable, but only for the preservation of assets, not for sale and distribution (19, 21).

Regulations Governing Bankruptcy Proceedings in England

In Britain, bankruptcy management is based on three sets of regulations: Section 426 of the Insolvency Act 1986, the European Union Insolvency Regulations, and the UNCITRAL Model Law on Cross-Border Insolvency. In the event of conflict, the court decides according to the circumstances (11).

1. Conflict between Section 426 and the European Union Regulations: In the event of conflict, the European Union Regulations prevail over domestic laws (10).
2. Conflict between the European Union Regulations and the UNCITRAL Model Law: Within the territory of the European Union, the Union Regulations take precedence (3).
3. Conflict between Section 426 and the UNCITRAL Model Law: In the event of conflict, the Model Law is usually adopted as the basis for coordination in international insolvency (11).

Under English law, particularly the Insolvency Act 1986, three groups have the right to bring proceedings:

1. Creditors

The main condition is that the debt must be at least £5,000 according to newer sources, or £750 under the older statutory text, and must be unsecured.

The stages include the issuance of a statutory demand; if the debtor does not pay the debt or provide security within 21 days, the creditor may submit a petition.

The debtor's right of defense allows the debtor to object to the petition within 18 days on grounds such as a counterclaim, dispute over the existence of the debt, or possession of sufficient security.

2. Debtor

The basis is that the debtor may personally apply for bankruptcy solely by relying on the fact that they are "unable to pay their debts."

3. Supervisory Authorities

The relevant persons include the supervisor or administrator of a voluntary arrangement, in the event of failure of a previous arrangement with creditors, and the Official Receiver, who has the right to intervene and initiate the process.

Conditions and Effects of Bankruptcy in English Law: A Structured Summary

1. Substantive conditions and determination: criteria of inability

The basis is proof of “inability to pay debts” rather than absolute “cessation.”

The criteria for determination include:

The cash-flow test: inability to perform current and immediate obligations.

The balance-sheet test: the excess of debts, including contingent and future liabilities, over total assets.

The method of proof is usually through the issuance of a statutory notice and the debtor’s failure to respond within the prescribed period.

2. Formal procedures and competent authorities

Preparation of the petition: completion of forms describing assets and liabilities by the debtor, or submission of a statutory demand for debts exceeding £5,000 by the creditor.

Jurisdiction: bankruptcy district courts for natural persons and the High Court or district courts for companies, based on domicile or principal place of business.

3. Role and powers of the bankruptcy court

Supervisory role: determining the economic reality of inability, not merely its formal appearance.

Managerial role: issuing an order depriving the debtor of management, appointing a liquidator, and supervising assets.

Investigatory role: avoidance of preferential or fraudulent transactions and summoning the debtor to clarify financial matters.

Discharge role: examining the debtor’s conduct for the purpose of issuing the final order of discharge from debts.

4. Effects of issuing a bankruptcy order

Effects on assets: compulsory transfer of asset management to the liquidator or bankruptcy trustee, prohibition of any transaction by the debtor, and suspension of all individual actions by creditors against the debtor.

Effects on personality and credit: prohibition from acting as a company director, restriction on obtaining credit without disclosing bankruptcy status, deprivation of certain political qualifications, including parliamentary qualifications, and obligation to cooperate fully with the liquidator.

Immediate duties of the bankrupt: delivery of all books and documents to the liquidator within 21 days and attendance at meetings to provide financial information.

5. Bodies involved in liquidation

Liquidator/trustee: responsible for controlling property and protecting assets.

Creditors’ committee: supervises the liquidator’s performance, approves their remuneration, and approves the manner of asset management or limited continuation of trade, where necessary to generate value for creditors.

Conclusion

The legal systems of Iran and England both provide mechanisms under the title of “bankruptcy” or bankruptcy/insolvency for organizing the financial condition of persons or institutions unable to pay debts. Despite their shared general objective, namely “maintaining economic order and protecting creditors and debtors,” significant differences can be observed between these two systems in terms of philosophical foundations, adjudicatory structure, and the manner of implementing bankruptcy proceedings. A comparison of the two systems

shows that Iranian law still places greater emphasis on traditional, criminal, and restrictive dimensions, whereas England, with a functional and economic approach, regards bankruptcy as an instrument for restructuring or orderly dissolution of economic activity.

In Iranian law, the principles governing bankruptcy proceedings are based on the Commercial Code of 1932 and scattered provisions of civil and criminal procedure laws. In this system, bankruptcy proceedings concern merchants, and their fundamental principle is “establishing cessation of payment of debts.” Bankruptcy is realized when the merchant cannot perform monetary obligations at maturity; the aspects of motive or hope for business revival have no direct effect at the stage of bankruptcy declaration. The historical background of this approach goes back to a period in which bankruptcy was viewed as a form of “inability to perform obligations” and a symbol of loss of social credit. Therefore, the legislator provided severe effects such as “prohibition of intervention in property,” “deprivation of social and political rights,” and sometimes “criminal prosecution as a bankrupt by fault or fraud.”

The formal principles of bringing an action in Iran also have a purely judicial character. Declaration of bankruptcy is possible only through the competent court upon the request of the merchant or creditors, and this decision must be formally announced. The enforcement of the judgment is also carried out under the supervision of the liquidation manager and the Office for Liquidation of Bankruptcy Affairs. The principle of “preserving equality among creditors” in the distribution of assets is one of the fundamental principles of this field; no creditor should have priority over another except by virtue of a specific legal provision. Moreover, the principle of “economic public order” requires that creditors not be able to seize or recover their claims separately and individually, and that the liquidation process proceed only in a collective framework.

Despite these logical principles, the Iranian system also suffers from certain weaknesses. First, adjudication is predominantly punishment-oriented and pays less attention to the economic rescue of the merchant. Second, the traditional legal structure has assigned a limited role to the liquidation manager and placed the court at the center of the process, which sometimes prevents speed and flexibility. Furthermore, modern instruments for restructuring enterprises, such as a genuine composition agreement or debt restructuring mechanism, have been less developed. As a result, the Iranian bankruptcy system still, in many cases, remains distant from its primary objective, namely restoring economic order and providing balanced protection for both parties.

In English law, a fundamental transformation occurred in the twentieth century, particularly after the enactment of the Insolvency Act 1986. In this system, the concept of bankruptcy is not limited to individuals but also includes companies and commercial institutions; for this reason, the broader term “insolvency” is used. The principles governing bankruptcy proceedings in England are based on economic and functional foundations. The first principle is the principle of collectivity; that is, bankruptcy proceedings are considered a collective process for all creditors, and no creditor has exclusive priority unless provided by law. This principle prevents the fragmentation of claims and conflicts of interest and increases the efficiency of the liquidation process.

The second principle is fairness and observance of relative justice. In English practice, the distribution of assets among creditors must be carried out in such a way as to enable the maximum reasonable recovery, while at the same time preserving, where possible, the opportunity for the debtor’s restructuring. For this reason, concepts such as administration and company voluntary arrangement (CVA) have been created in England, which, instead of immediate liquidation, first attempt to rehabilitate the financial structure and continue commercial activity. This orientation reflects a new philosophy that emphasizes the “rescue of the enterprise” more than its “dissolution.”

The third principle is transparency and effective supervision. The insolvency practitioner must possess professional qualifications and perform their work under the supervision of official authorities such as the Insolvency Service. This structure increases trust among stakeholders and ensures impartiality in the liquidation process. Creditors' free access to information and the possibility of objecting to the liquidator's decisions are also considered principles guaranteeing fair proceedings.

Procedurally, one of the important differences between England and Iran is that bankruptcy proceedings do not necessarily have a judicial character; rather, in many cases, they are administered administratively and out of court. In other words, the court has a supervisory role, not an absolute decision-making role; as a result, the speed and efficiency of adjudication increase. Alongside this mechanism, English law gives the debtor the opportunity to benefit from "discharge of debts" so that, after a period of time, the debtor can become economically active again without the burden of past financial liabilities.

If these principles are compared with the Iranian system, it becomes clear that the English system is founded on economic function and restructuring, whereas the Iranian system is founded on judicial order and protection of creditors. In England, bankruptcy proceedings are considered an instrument for preserving asset value, maintaining employment, and preventing systemic crisis in the economy; but in Iran, in many cases, they still have more of the character of declaring commercial failure and dissolution. This difference has caused bankruptcy in England to be viewed not merely as a sign of the merchant's moral failure, but as part of the natural cycle of economic activity, while in Iran it remains accompanied by a kind of social stigma and severe restriction.

Nevertheless, it must be noted that the laws of the two countries share many basic principles. Both systems emphasize the necessity of impartiality in the distribution of assets, priority of secured rights such as mortgage and pledge, prohibition of discrimination among creditors, and genuine determination of financial inability. However, differences in mechanisms and in the philosophy of implementing these principles sometimes lead to different outcomes. For example, in Iran, the focus on the court and formal stages may cause prolongation of proceedings, whereas in England, reliance on independent professional institutions creates greater efficiency and speed.

Overall, the comparison of Iranian and English law in the field of the principles and rules of bankruptcy proceedings shows that a transformation from a punitive and formal system toward an economic and restructuring-oriented system is necessary. Iran's Commercial Code requires comprehensive revision in order to strengthen financial restructuring mechanisms, reduce unnecessary criminalization, and increase the professional role of liquidation managers. Drawing on England's experience in creating a balance among creditor protection, debtor protection, and preservation of the public interest can help the Iranian legal system move toward harmonization with modern global standards. Therefore, the general conclusion is that bankruptcy should not be merely an instrument for ending economic activity; rather, it can be regarded as an opportunity for the reconstruction of financial life and the preservation of society's economic health.

Recommendations

1. Reform the Commercial Code and enact a comprehensive bankruptcy law with an economic restructuring approach instead of a merely liquidation-oriented approach.
2. Strengthen the role of the professional liquidation manager and reduce excessive concentration on the court in order to increase the speed and efficiency of proceedings.
3. Develop restructuring instruments such as genuine composition agreements and debt restructuring mechanisms.

4. Reduce unnecessary criminalization and social restrictions for the bankrupt merchant and move toward economic rehabilitation.
5. Establish a transparent supervisory system for creditors' access to information and effective objection to the decisions of the liquidation manager.
6. Increase support for small debtors and natural persons through the expansion of restructuring mechanisms without the need for full liquidation.
7. Strengthen coordination between judicial and administrative processes in order to prevent overlap or prolongation of complex cases.
8. Revise certain provisions concerning the prioritization of creditors in order to ensure greater justice among different groups.
9. Increase professional and supervisory standards for insolvency managers in order to prevent unnecessary costs and possible abuses.
10. Develop theoretical studies and provide clearer explanations of the philosophical foundations of the bankruptcy system in order to remove existing ambiguities in its general objectives and orientations.

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Authors' Contributions

All authors equally contributed to this study.

Declaration of Interest

The authors of this article declared no conflict of interest.

Ethical Considerations

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Transparency of Data

In accordance with the principles of transparency and open research, we declare that all data and materials used in this study are available upon request.

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