Examining the Legal and Procedural Challenges of Bankruptcy Litigation in Iran in Light of Modern Standards of English Insolvency Law

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Abstract

Bankruptcy is a complex and multifaceted phenomenon situated at the core of commercial law, carrying extensive economic, social, and legal consequences. The efficiency of a bankruptcy system largely depends on the transparency of its regulations, the effectiveness of judicial procedures, and its degree of alignment with modern standards of commercial law. In the Iranian legal system, bankruptcy regulations are primarily based on the Commercial Code enacted in 1932, and despite the practical significance of this institution, it faces numerous legal and procedural challenges in practice at the stages of filing a claim, judicial adjudication, and enforcement of bankruptcy judgments. The present study adopts an analytical–comparative approach to examine the legal structure of bankruptcy litigation in Iran and to analyze the most significant ambiguities and deficiencies in its legal provisions and judicial practices. In this regard, concepts such as merchant status, cessation of debt payments, the conditions and requirements for filing a bankruptcy claim, the jurisdiction of adjudicating authorities, litigation procedures, and the consequences of issuing a bankruptcy judgment are examined. Furthermore, this study considers the legal system of England as one of the advanced systems in the field of insolvency law, possessing modern standards in the management of financial distress. The regulations of this country, particularly within the framework of the Insolvency Act 1986 and its subsequent amendments, are examined in terms of the efficiency of adjudication mechanisms, protection of creditors, facilitation of economic restructuring, and transparency of judicial procedures, serving as a benchmark for evaluating the Iranian legal system. Ultimately, through a comparative analysis of the existing challenges in bankruptcy litigation in Iran and their comparison with modern standards of English insolvency law, this study seeks to identify legal and procedural gaps and to propose recommendations for the reform and enhancement of bankruptcy-related regulations and judicial processes within the Iranian legal system.

Keywords: legal challenges, procedural challenges, bankruptcy litigation, Iran, modern standards, insolvency law, England

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1. Introduction

Bankruptcy is a complex and multifaceted phenomenon located at the heart of the system of commercial law and entails extensive economic, social, and legal consequences. This institution, which emerged during the expansion of trade and the development of economic relations, provides a legal framework for balancing the conflicting interests of creditors and commercial debtors. The principal objective of the legislature in establishing bankruptcy rules is not only to protect creditors' rights through the equitable distribution of the bankrupt merchant's assets, but also, in some cases, to create an opportunity for the merchant's economic revival through restructuring processes and financial reorganization. The significance of bankruptcy in the contemporary world has become increasingly evident in light of economic globalization and the growing volume of commercial transactions. A merchant's disruption in the payment of debts may generate a chain of difficulties for other economic actors and may even endanger the overall stability of the economic system. Therefore, precise knowledge of the principles and rules governing bankruptcy litigation is essential not only for jurists and judges, but also for economic actors, corporate managers, and even society at large. In this regard, the comparative study of different legal systems in the field of bankruptcy is of special importance. Each legal system, according to its own history, culture, and economic and social structure, has adopted distinctive approaches and solutions for dealing with bankruptcy. Comparing these approaches can help identify the strengths and weaknesses of each system, draw upon successful experiences, and ultimately improve legislation and judicial practice. Iranian and English law, as two influential legal systems in the international arena, each possess distinctive backgrounds and characteristics in the field of commercial law and, consequently, bankruptcy. The Iranian legal system, which has deep roots in Imamiyyah jurisprudence and has also benefited from the legal achievements of Western systems, has established specific legal frameworks for the bankruptcy of merchants. England, on the other hand, as the birthplace of common law and one of the main centers of international trade, has a long and distinguished history in the formulation and development of bankruptcy rules. The importance of this study can be explained along several axes: first, providing a comprehensive and systematic picture of bankruptcy rules in Iranian law, which is constantly needed given the complexity of this field; second, introducing and analyzing the English legal system in the field of bankruptcy, which may serve as a model for possible reforms in Iranian law; and third, conducting a precise comparative analysis between the two systems, which can identify the strengths and weaknesses of each and extract practical solutions for improving the Iranian legal system. In Iranian law, the primary basis of bankruptcy actions remains the Commercial Code enacted in 1932. In Articles 412 onward, this Code defines the state of bankruptcy and specifies the conditions for bringing a claim and the effects thereof. Accordingly, a merchant is deemed bankrupt when he has ceased paying his debts and such cessation is established by the court (Setoudeh Tehrani, 2020). The Iranian system classifies bankruptcy into three types: ordinary bankruptcy, bankruptcy by fault, and fraudulent bankruptcy, each of which entails different criminal and civil effects. Within this structure, the issuance of a bankruptcy judgment is mainly declaratory, and its effects, such as the attachment of assets and the deprivation of the merchant's authority to administer his property, arise automatically (Katouzian, 2017). Nevertheless, the fundamental defect in the Iranian system is that the Commercial Code focuses mainly on dissolution and liquidation and does not provide modern instruments for restructuring and continuing the activity of an economic enterprise. Moreover, there is also a significant gap in the field of international bankruptcy, although provisions influenced by the UNCITRAL Model Law have been included in the new Commercial Code Bill (Anvaripour, 2023). By contrast, the English legal system, which operates on the basis of common law, has provided broader mechanisms for managing bankruptcy and insolvency claims. The principal statute in this field is the Insolvency Act 1986, which was enacted following the Cork Committee Report and comprehensively regulates the status of individuals and companies unable to pay their debts (Goode, 2016). In this system, a distinction is made between the bankruptcy of individuals and corporate insolvency, and instruments such as Company Voluntary Arrangement (CVA), administration, and liquidation have been provided for dealing with corporate financial distress (Keay, 2018). Subsequent reforms, such as the Enterprise Act 2002, also replaced the culture of rapid liquidation with a "rescue" culture and sought to create a balance between creditor protection and the possibility of corporate restructuring (Keay, 2018). During the COVID-19 crisis, the Corporate Insolvency and Governance Act 2020 was also enacted by granting moratoria and special protections to companies (Keay, 2018). In addition, England, by adopting the Cross-Border Insolvency Regulations 2006 based on the UNCITRAL Model Law, has provided a suitable legal framework for resolving international insolvency disputes (Lightman & Moss, 2017).

Bankruptcy litigation, both in Iran and in England, falls within the scope of principles and rules that guarantee justice between creditors and the bankrupt debtor. The first principle is the principle of equality among creditors, meaning that after the issuance of a bankruptcy judgment, all creditors must benefit from the assets of the merchant or company fairly and proportionately to the amount of their claims, and no creditor should be preferred over another unless the law expressly grants such priority (Skini, 2019). This principle prevents discrimination and potential abuse and contributes to public confidence in the financial system.

Another principle is the principle of cessation and deprivation of the bankrupt merchant's authority to administer his property. Under this rule, from the moment the bankruptcy judgment is issued, the merchant no longer has the right to interfere in the administration of his property, and this duty is assigned to the liquidator or the liquidation office (Setoudeh Tehrani, 2020). The objective of this principle is to prevent dissipation of assets and guarantee creditors' rights. In the English system as well, upon the commencement of insolvency proceedings, managerial authority is transferred to a court-appointed administrator or a person trusted by the creditors (Keay, 2018).

The principle of transparency and judicial supervision is also among the fundamental principles of bankruptcy litigation. In Iran, all major decisions of the liquidator are made under court supervision, and creditors have the possibility of objection (Katouzian, 2017). In England, specialized insolvency courts, by supervising the restructuring or liquidation process, ensure that stakeholders' rights are not violated (Goode, 2016).

At the international level, the principle of cooperation and mutual recognition is also one of the essential rules of bankruptcy proceedings. Iran has not yet fully accepted this principle, and in practice, transnational bankruptcy claims face difficulties; however, England has incorporated this principle into its system by adopting the Cross-Border Insolvency Regulations 2006 based on the Model Law (Lightman & Moss, 2017). This rule allows bankruptcy judgments issued in other countries to be recognized and enforced in England under certain conditions. A comparison of these two legal systems indicates that, while Iranian law remains based on a traditional liquidation-oriented model and is limited to the national territory, English law, through continuous reforms and the acceptance of international rules, has presented a more advanced and efficient model in the field of insolvency. The main question, therefore, is how the experience of English law can be used to reform Iranian legislation. Undoubtedly, drawing upon institutions such as CVA and moratorium, establishing specialized bankruptcy courts, and fully adopting the UNCITRAL Model Law can constitute practical solutions for improving the Iranian legal system. This statement of the problem demonstrates the importance of the present comparative study, whose objective is not merely to describe differences, but to propose a reform model for the Iranian legal system in dealing with bankruptcy claims.

2. 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, examining the statutory regulations of Iran and England, and consulting internet sources, the author has compiled the present dissertation through a descriptive-analytical method and comparative content analysis.

3. Literature Review and Related Background

Regarding bankruptcy litigation in Iranian and English law, studies have been conducted by legal researchers and authors, some of which are as follows:

1. In a study entitled "Rules Governing the Bankruptcy of Commercial Companies from the Perspective of Labor Protection," conducted in 2020, the authors used a descriptive-analytical approach to examine the regulations governing the bankruptcy of commercial companies in Iran, the protections afforded to labor, the existing protective instruments, and their degree of effectiveness. The results of this study show that, compared with the legal systems of some other countries such as France and the United Kingdom, Iranian law has weaker regulations concerning the prevention of bankruptcy in commercial companies and the preservation of employees' job positions, while the mechanisms supporting employee claims, such as treating employees' claims as preferential, are ineffective and inefficient (Villiers, 2018).

2. In a study conducted in 2009 entitled "Temporary Administration of Bankrupt Commercial Units in English and Iranian Law," the authors examined one of the alternatives to liquidation, namely "administration," which is used only for companies through the appointment of an administrator by the court or out of court. The results of this study show that this institution, which entered English law in 1985 and gradually acquired a more important position, especially after the enactment of the Enterprise Act 2002, became the most important mechanism for restructuring commercial companies and is one of the best solutions for protecting the rights of unsecured creditors. Although in Iranian law "temporary administration," with a concept and regulations somewhat different from those existing in the English legal system, can be observed in some statutes, it has not been considered a complete substitute for liquidation (Lightman & Moss, 2017).
3. In a study conducted in 2022 entitled "The Feasibility of Granting Legal Personality to the Bankrupt Estate: A Study in Iranian and American Law," the author addressed the legal justification of the relationship between the merchant and creditors with respect to assets, as well as the legal status of debts and claims. According to the author's analysis, one of the most important theories considered in American law in this regard is the theory of granting legal personality to the bankrupt estate, including assets, debts, and claims, at the time of the issuance of the bankruptcy judgment. Under this theory, it becomes possible to justify the "rule prohibiting interference," the legal position of the liquidator, the possibility of the bankrupt merchant continuing trade after the issuance of the bankruptcy judgment without conflicting with creditors' rights, and the discharge of debts exceeding the assets. The results of this study and the examination of the rules governing bankruptcy in Iranian and American law indicate that although some Iranian legal rules can be justified on the basis of this theory, they have not been accepted by the Iranian legislature (Goode et al., 2015).
4. In a study entitled "A Comparative Study of the Procedural Law Governing Bankruptcy in Iranian and English Law," Bazarpach (2021) explained the manner of bringing bankruptcy proceedings in these two legal systems. Examination of the rules governing the adjudication of bankruptcy claims in Iran shows that, in Iranian law, bringing an action in the field of bankruptcy of individual merchants and companies is not limited to their creditors; rather, the bankrupt person himself may also request the issuance of a bankruptcy judgment. By contrast, in English law, companies that have ceased payment are not declared bankrupt, and the equivalent procedure for them is liquidation and dissolution. Moreover, bankruptcy regulations in Iranian law are specific to merchants, whereas in English law, these regulations also apply to non-merchants and civil companies. In addition, in England, the judicial authority, including the public prosecutor, may itself request a bankruptcy judgment against a merchant from the competent court (Bazarpach, 2021).
5. In a study conducted in 2022 entitled "The Conditions and Effects of the Issuance of a Bankruptcy Judgment in the Commercial Laws of Iran, England, and the United States with a View to the New Commercial Code Bill," the authors examined the dimensions of the bankruptcy judgment in Iranian law in light of the new Commercial Code Bill and conducted a comparative study with English and American law. The results of this study show that in the 50 states of the United States, which are federally administered, bankruptcy laws differ due to the use of the conflict-of-laws system, and because of its federal structure, this system is regarded as one of the leading systems concerning conflict-of-laws rules in this field. Under common law in England, companies that have ceased payment are not declared bankrupt, and the equivalent method for them is liquidation and dissolution. Furthermore, bankruptcy regulations in English common law, unlike Iranian law, are not limited only to merchants, but also include non-merchants and civil companies (Goode et al., 2015).
6. In an article entitled "The Substantive Law Governing Bankruptcy," published in 2016, the authors examined substantive conflict-of-laws rules, including the distinction between merchants and non-merchants, the determination of cessation of payment and bankruptcy, and similar issues. The authors' objective in this study, given legislative silence, the existence of conflict-of-laws rules in international treaties, and the use of legal doctrine, was to propose a conflict-of-laws rule that would both conform to the Iranian legal system and be presentable and acceptable in the international arena (Omar, 2016).
7. In a study entitled "The Special Legal Regime of Bank Bankruptcy: Rationale and Legal Framework," conducted in 2020, the authors examined the gaps in general bankruptcy laws when facing banking crises and preserving financial

stability. In this study, the author examined the design of a special legal regime for bank bankruptcy, diversification of bank resolution instruments, and strengthening of supervisory mechanisms, and argued that the legal system governing bank bankruptcy must address bankruptcy prevention, banking supervision, restructuring, resolution of banks exposed to crisis, liquidation of bankrupt banks, and the issue of cessation of payment by multinational banks (McCormack, 2014).

4. Definition and Types of Bankruptcy

If payment of a debt by a merchant or commercial company is interrupted, the situation falls under bankruptcy. Bankruptcy has several types, which will be discussed below. A bankruptcy judgment is specific to a merchant or commercial company that has ceased paying its debts. Non-merchants who, due to insufficiency of assets or lack of access to their property, are unable to pay their debts are considered insolvent. Merchants are also divided into two categories: natural persons and legal persons.

Bankruptcy is divided into three categories: ordinary bankruptcy, fraudulent bankruptcy, and bankruptcy by fault (Akbarian, 2017).

4.1. Ordinary Bankruptcy

Ordinary bankruptcy is the condition of a merchant whose debt payments are interrupted without fault on his part. Trade, in addition to the merchant's experience, skill, and capital, is affected by various factors, including governmental policies, commercial competitors, and their actions and capacities. Considering these factors, a merchant may face failure despite using all his effort, knowledge, and commercial facilities, and such failure may lead to cessation of payment and bankruptcy. If the debtor merchant or commercial company declares cessation of payment of its debts and submits the required documents to the competent court within the period prescribed in Article 413 of the Commercial Code, it is considered an ordinary bankrupt. Ordinary bankruptcy has no criminal effects, because where a person becomes bankrupt without fault or fraud, he should be granted leniency (Akbarian, 2017). Leniency gives the merchant a second opportunity to organize his affairs. As a result of this legal leniency, not only may his situation be restored, but creditors may also recover all or part of their claims. In cases of fault or fraud, however, such leniency can no longer be granted to the merchant.

4.2. Bankruptcy by Fault

For a merchant's bankruptcy to be recognized as bankruptcy by fault, it must be accompanied by fault. However, not every fault can justify the issuance of a judgment of bankruptcy by fault. The faults provided by law may be divided into two categories according to whether the court has discretion or is required to issue a judgment of bankruptcy by fault (Akbarian, 2017).

The first category includes faults which, if established, require the court to issue a judgment of bankruptcy by fault. These faults are set out in Article 541 of the Commercial Code and include cases in which the merchant spends substantial amounts of his capital on personal and family expenses or highly risky transactions, resorts to extraordinary methods and loss-making transactions to obtain funds in order to delay bankruptcy, or, by violating the principle of equality among creditors, prefers one creditor over others after the date of cessation of payment and pays his claim. Although such payment is invalid under the law, from the legislature's perspective, creating priority by the merchant for one creditor is a form of collusion aimed at prejudicing the rights of other creditors.

The second category includes faults which, if established, give the court discretion to issue a judgment of bankruptcy by fault. These faults are enumerated in Article 542 of the Commercial Code and relate to circumstances in which the merchant, despite cessation of payment, refrains from declaring it in accordance with Article 413 of the Commercial Code, or negligently violates the obligation to maintain statutory books.

This is because the absence of books, or their defectiveness and disorder, may create or reinforce suspicion that the merchant has taken actions in favor of some creditors and to the detriment of others. Finally, despite having sufficient assets, he undertakes extraordinary obligations in favor of others without receiving consideration. Each of these faults is considered an

independent offense; therefore, if the merchant is acquitted of the charge relating to one of them, he may be tried and convicted of bankruptcy by fault on the basis of another fault (Rahmani, 2019).

4.3. Fraudulent Bankruptcy

Fraudulent bankruptcy occurs where the merchant, by undertaking certain fraudulent acts expressly stated in the Commercial Code, seeks to appropriate the property of others. In cases of fraudulent bankruptcy, the bankrupt merchant usually obtains the property of others through lawful transactions and by undertaking to pay consideration, but then refrains from performing his obligations through certain fraudulent acts. These fraudulent acts, which are undertaken with the aim of presenting the merchant's bankruptcy as ordinary, convey to creditors the message that, due to an unforeseeable commercial failure, the bankrupt merchant's assets have been lost and that, as long as this situation continues, he is unable to perform his obligations. Accordingly, creditors must either wait for an indefinite period or waive all or part of their claims. The fraudulent acts to which the bankrupt merchant may resort are enumerated in Article 549 of the Commercial Code and, in summary, include the disappearance of commercial books, concealment of part of his assets, and fictitious transactions (Rahmani, 2019).

5. The Concept of State-Owned Companies in Iranian Law

Any commercial company created through investment by state-owned companies is deemed a state-owned company so long as more than 21 percent of its shares belong to state-owned companies. The note to the same article provides: "Companies that are or will be created through mudarabah, muzara'ah, and similar arrangements for the purpose of employing deposits of persons held by banks, credit institutions, and insurance companies shall not be considered state-owned companies for the purposes of this law." As is known, apart from Article 4 of the Public Accounts Act enacted in 1987, none of the existing regulations has attempted to define state-owned companies in detail. Paragraph C of Article 1 of the Civil Service Act provides a definition in this regard, and Article 4 of the former Public Accounts Act also defined a state-owned company in the same manner, namely as a specific organizational unit created by law, more than 50 percent of whose capital or shares belongs to the state (Kashfi Ashtiani & Niknejad, 2021).

Therefore, there is no doubt that a company is state-owned when it has been created pursuant to law and, in some manner, more than 50 percent of its capital or shares belongs to the state. However, by enacting Article 4 of the Public Accounts Act of 1987, the legislature intended to classify many nationalized and confiscated companies as state-owned as well, but unfortunately did not use sufficiently precise language, thereby creating ambiguities. For example, it is unclear what is meant by the phrase "recognized as a state-owned company"; because if a company has been nationalized by law or confiscated in favor of the state by court order, it is considered state-owned only if more than 21 percent of its shares belongs to the state. The connection of this phrase with "more than 50 percent of its capital belongs to the state" has created further ambiguity. For example, if a company has been nationalized or confiscated by law or by a competent court, is it possible that less than 50 percent of that company's capital belongs to the state? Is the condition that more than 50 percent of the company's capital belong to the state cumulative with the other conditions of the article, including confiscation? (Kashfi Ashtiani & Niknejad, 2021).

As may be inferred from contextual indications, the former provisions of the Public Accounts Act and the Civil Service Act may be used to resolve this ambiguity. The interpretation of the article is as mentioned above, and it would be appropriate for the Islamic Consultative Assembly to interpret Article 4 of the Public Accounts Act and determine the status of many companies, because at present there is disagreement concerning companies under the supervision of the National Iranian Industries Organization or companies affiliated with foundations and banks. For example, the Urban Land Organization considers some companies state-owned and extends its regulations to them, whereas the Legal Office of the Ministry of Justice, in its advisory opinion, did not consider such companies subject to Article 10 of the Urban Land Act; however, in the continuation of its advisory opinion, it did not determine any enforcement guarantee for the organization's refusal to classify some companies as state-owned (Kashfi Ashtiani & Niknejad, 2021). The note to Article 4 of the Public Accounts Act also refers to companies that are or will be created through mudarabah, muzara'ah, and similar arrangements for the purpose of

employing persons' deposits held by banks, credit institutions, and insurance companies, and under this note none of these companies is considered state-owned.

6. The Concept of State-Owned Companies in English Law

In English law, the entirety of state-owned companies is not under the exclusive ownership of the British state; consequently, determining the level of state ownership in the definition is difficult. A formal state corporation established under statutory rules is a company created by statute through an Act of Parliament that results in the creation of a state-owned company or the conversion of a company into a state-owned company (Kashfi Ashtiani & Niknejad, 2021).

In English law, all companies, whether commercial or state-owned, that are widely used in commercial activity are referred to as companies and are subject to company law, the most important of which was the Companies Act 1985. Registered companies, whether commercial or state-owned, which are treated as commercial companies, are formed for a specific purpose, either limited or unlimited, in compliance with registration requirements. These companies have legal personality independent from their members and, like natural persons, may hold various rights and duties (Morse, 2017).

7. Legal Principles of Bankruptcy in Iranian Law

The development of the economic system must take place proportionately with the development of other necessary systems, particularly the legal system; this is something that has not occurred in Iran. While the legal system should develop alongside economic progress and, by carefully examining complex commercial relations, perform its important role, the Iranian legal system has lagged behind developments in trade and its relations. The purpose of trade, whether through companies or other commercial units, is to obtain profit. Accordingly, an investor who provides capital in the formation of a company, or a person who establishes a commercial unit with his own capital, seeks to gain profit. Although the ultimate objective in the aforementioned commercial activities is profit-making, their establishment entails effects that are not merely economic: employment opportunities are created, social capital increases, the level of social welfare improves, and so forth. In fact, such activities generate moral, economic, and political values for society (Kaviani, 2016).

Thus, alongside the objective of obtaining profit, various social values are also realized. Identifying and explaining the theoretical foundations and objectives of bankruptcy law, and classifying those objectives according to a logical order, are highly important in interpreting bankruptcy regulations and court judgments. Understanding the principal objective and prioritizing the goals of bankruptcy law are essential for all decision-makers, researchers, courts, students, and lawyers. The importance of the issue becomes greater because the legislature, in Chapter Eleven of the Commercial Code on bankruptcy, under Article 413 of the Commercial Code, has considered the necessity of the timely and prompt declaration of cessation of payment by the merchant and commercial company and has prescribed a three-day period for it. The objective of bankruptcy law may be examined from different perspectives. In the economic dimension, the aim of bankruptcy law is wealth maximization, which appears in the form of maximizing the value of existing assets and preserving the economic enterprise. In the social dimension, the objective of bankruptcy law is the optimal distribution of assets. Two approaches are raised in this dimension: according to the first approach, distribution must conform to the agreement existing before the commencement of bankruptcy proceedings; according to the second approach, the optimal distribution is that which benefits the weaker party in the bankruptcy crisis (Kaviani, 2016).

The economic view considers the objective of bankruptcy law to be the maximization of the value of existing resources and supports creditors, whereas the traditional or social justice view supports the interests of different groups, such as company workers and consumers. The criticism directed at the traditional view is that bankruptcy law is distinct from other legal fields such as labor law, tort liability, and consumer law; therefore, compensation for workers, shareholders, and consumers should be sought through those fields, while bankruptcy law is specific to the rights of merchants, including natural persons and commercial companies. If the traditional view is accepted, the boundary between bankruptcy law and other legal fields will be ignored. This criticism of the traditional view of bankruptcy law may be rejected on the ground that the ultimate purpose of law is justice and modern law examines issues from multiple perspectives. Therefore, the intersection of bankruptcy law with labor law, tort liability, and consumer law is unproblematic in modern law. Some scholars regard the objectives of bankruptcy

law as preserving the efficiency of economic institutions, fairly and equitably distributing assets among creditors, preventing disputes among creditors, and considering the public interest (Kaviani & Javid, 2019).

8. Regulations and Laws Relating to Bankruptcy in Iranian Law

Bankruptcy regulations in Iran, in addition to the principal statutory provisions in the Commercial Code, are scattered across numerous special and miscellaneous laws, each addressing particular aspects of creditors' rights, preferential debts, or methods of liquidation in specialized areas. These laws have been formulated to create order in payment priorities and to coordinate executive institutions and judicial authorities at the time of a merchant's cessation of payment, and they will be examined precisely below.

In this section, the regulations and laws on bankruptcy in Iranian law are examined:

8.1. Article 58 of the Law on the Administration of Bankruptcy Liquidation

Preferential creditors in Article 58 of the Law on the Administration of Bankruptcy Liquidation are divided into four classes, each class having priority over the subsequent class:

First class:

This class includes three groups:

Group A: Domestic servants of the merchant, for one year of wages prior to cessation of payment. This group is the first category of creditors with preferential rights. Only the expenses of the liquidation administration, specifically expenses relating to cessation of payment and liquidation under Article 46 of the Law on the Administration of Bankruptcy Liquidation, are deducted from the proceeds of the merchant's estate before the claims of this group. Bankruptcy expenses were determined in Decree No. 703, enacted in April/May 1940, and its supplementary note, enacted in November/December 1942. It is evident that the preferential wages of Group A are limited to one year before the merchant's cessation of payment. This group joins the general body of creditors for the remainder of its wages (Damarchili, 2019).

Group B: Servants of the bankrupt establishment, for six months of wages prior to cessation of payment. This refers to employees who have worked continuously for the commercial institution. This action of the legislature in preferring workers over other creditors is in line with solutions commonly adopted in advanced countries concerning workers' rights and is rooted in the social revolution of the recent century (Skini, 2016).

Group C:

Workers who receive daily or weekly wages, for three months of wages prior to cessation of payment. This group joins the general creditors for the remainder of its wages.

Second class:

All persons whose property was under the administration of the bankrupt by virtue of guardianship or custodianship, to the extent that the bankrupt became indebted by reason of guardianship or custodianship, fall within this class. Such claims have priority only if cessation of payment was declared during the period of guardianship or custodianship, or within one year after its expiration. Here, the assumption is that the bankrupt was the guardian or custodian of one of the creditors. If the creditor's property exists in the merchant's possession, it may be reclaimed; but if it does not exist, or if the bankrupt is indebted by reason of guardianship or custodianship, namely the administration of the property of a minor or incapacitated creditor, the creditor is placed in this class.

This is subject to the condition that the merchant's cessation of payment was declared during the period of guardianship or custodianship, and if guardianship or custodianship has ended, no more than one year has elapsed since its termination. In order to protect incapacitated persons and minors, who as a rule are not capable of defending and preserving their own rights, the legislature has placed this group of creditors in the second class (Skini, 2016).

Third class:

Physicians, pharmacists, and persons whose claims were used for the treatment of the debtor and his family within one year prior to cessation of payment fall within this class. Placing this type of claim among such preferential claims is intended to

allow physicians and pharmacists to treat the debtor and his family with greater peace of mind. The term "family" refers to the merchant's wife and children and those whom the debtor is legally obliged to support (Skini, 2016).

Regarding this group, it should be noted that the claim in question is a claim against a bankrupt natural person and cannot be extended to the managers of a legal person. French law does not grant such a privilege to physicians and pharmacists (Skini, 2016).

Fourth class:

This class is divided into two groups:

Group A: The wife, pursuant to Article 1206 of the Civil Code. Under the latter article: "The wife may, in all cases, bring an action for her past maintenance, and her claim in respect of such maintenance is a preferential claim; in the event of the husband's insolvency or bankruptcy, the wife shall have priority over the general creditors, whereas relatives may claim maintenance only for the future." Therefore, if the wife's maintenance relates to the period before the issuance of the bankruptcy judgment, it is among the bankrupt's preferential debts. If it relates to the period after that, the wife is considered among the general creditors, unless the liquidation administration has paid her maintenance as part of the debtor's family expenses. The final part of Article 1206 of the Civil Code states that relatives, meaning the children and persons whom the merchant is legally obliged to support, may claim maintenance only for the future. The meaning of this statement is not that they enjoy priority in claiming future maintenance; rather, the priority established for Group A of the fourth class is specific only to the bankrupt's wife, not to his other relatives, who may claim maintenance as general creditors (Emami, 2019).

Group B: The wife, for her dower up to the amount of 10,000 rials, provided that the marriage took place at least five years before cessation of payment. The remainder of the dower is considered among other debts.

In various laws, the legislature has granted priority to some creditors over others without specifying whether their priority also applies where the debtor has become bankrupt. In other words, can the priority provided in those laws also be applied when the debtor has become bankrupt?

8.2. Article 24 of the Labor Law

Article 24 of the former Labor Law and Note 1 to Article 13 of the current Labor Law both emphasize one fundamental principle: the preferential nature of workers' claims. This means that workers' wages and benefits, even in the event of the employer's bankruptcy or dissolution, enjoy higher priority than other debts and liabilities. Through this approach, the legislature has sought to provide special protection to the working class and to ensure that their labor and rights receive priority in payment.

Priority over other debts: Article 24 of the former Labor Law expressly provided that workers' wages must be secured and paid "before other debts, even tax debts." This means that even the employer's tax liabilities had lower priority than workers' claims. This prioritization reflects the high importance of workers' rights in the economic and social system.

Emphasis in the current law: Note 1 to Article 13 of the current Labor Law also preserves this meaning and expresses it in the form of "workers' claims are among preferential debts." This note also specifies the enforcement mechanism for this priority in circumstances where the employer hires labor through contractors. Under this note, if the contractor is indebted to its workers, the principal employer is obliged to pay this debt from the contractor's receivables, including the performance bond. This provision strengthens the employer's responsibility toward workers who are not directly employed by it but work on its project.

Purpose of worker protection: The main purpose of this prioritization is to prevent the violation of workers' rights in the employer's economic crisis, such as bankruptcy, closure, or inability to pay debts. This greatly contributes to the stability of labor relations and the preservation of workers' human dignity.

Overall, these legal provisions demonstrate the commitment of the Iranian legal system to protecting workers' rights as one of the main pillars of production and the economy, and recognize the prioritization of their claims as part of maintaining social and economic justice.

8.3. Article 41 of the Monetary and Banking Law of the Country

Article 41 of the Monetary and Banking Law of the Country, enacted on September 9, 1972, provides a special priority for the repayment of certain types of deposits over other obligations of a bank in the event of its cessation of payment or bankruptcy. Under this article, savings deposits and similar deposits, up to the amount of 50,000 rials, have "first-degree" priority for repayment. This means that in the process of liquidating the assets of a bankrupt bank, these deposits must be addressed first. Thereafter, current account deposits and fixed deposits, also up to the amount of 50,000 rials, are placed in the "second-degree" priority. The priority of these deposits takes precedence even over all other obligations of the bank and other rights that are normally considered preferential. This mechanism was designed to protect small depositors and preserve public confidence in the banking system, since such persons are usually exposed to the greatest risk when a bank becomes bankrupt. This article reflects the legislature's attempt to create a safety net for depositors in the face of banking crises, and the prioritization of small deposits is aimed at protecting more vulnerable social groups and preventing the accumulation of large banking debts owed to larger institutions. It should be noted that the amount of 50,000 rials was determined according to the value of money at the time the law was enacted and may not be a significant amount under current economic conditions; however, the protective principle on which this article is based has continued to receive attention in subsequent legislation.

8.4. Article 30 of the Income Tax Act

Under Article 30 of the Income Tax Act of 1956, when collecting taxes and related penalties from the income and property of taxpayers or their guarantors, the Ministry of Finance had priority over other creditors.

Article 30 of the Income Tax Act enacted in 1956 expressly establishes the priority right of the former Ministry of Finance to collect taxes and related penalties from the income and property of taxpayers and their guarantors over other creditors. This means that where the assets of the taxpayer or his guarantor are insufficient to cover all debts, the Tax Affairs Organization, as the successor to the Ministry of Finance, is placed in priority for receiving its claim. This prioritization of the state was intended to guarantee the collection of public revenues and finance the national budget, since tax is one of the main sources of state financing. Comparing this article with similar provisions in later laws, such as Article 153 of the Income Tax Act enacted in 1966, is important because Article 153 established limitations on the state's priority by mentioning specific exceptions, such as the rights of secured creditors and the claims of workers and employees, which are not expressly found in the text of Article 30 of the 1956 Act. This difference may indicate the legislature's different approaches in different historical periods to balancing the public interests of the state and private rights. It should be noted, however, that both of the aforementioned laws have now been repealed and replaced by the Direct Taxes Act enacted in 1987 and its subsequent amendments. Nevertheless, analysis of these provisions remains useful and illuminating for understanding the development of tax law and the concept of priority in the Iranian legal system.

8.5. Article 153 of the Income Tax Act

Article 153 of the Income Tax Act enacted in 1966 regarded the Ministry of Finance as having priority over other creditors for the collection of taxes, penalties, and late-payment losses owed by taxpayers and persons responsible for tax payment, with the exception of holders of rights over secured property and claims of workers and employees arising from service (Javanshir Bahmanabad, 2019).

Article 153 of the Income Tax Act enacted in 1966 articulates a fundamental rule in Iranian tax law under which the state, in order to guarantee the collection of public rights and finance the budget, enjoys the privilege of "priority right" over other creditors of the tax debtor. This means that if the taxpayer's assets are insufficient to pay all debts, the Tax Affairs Organization is placed ahead of ordinary creditors in the order of receiving its claim. Nevertheless, in order to create a balance between the public interests of the state and the private or protective rights of persons, the legislature has established two very important exceptions to this rule: first, holders of rights over secured property, who, because of the real and security nature of the right of collateral, have priority over tax claims so that the credit security of commercial and banking transactions is not disrupted; second, the claims of workers and employees arising from service, which, because of their protective nature and the need to secure the livelihood of this class against the debtor employer, are also placed ahead of the state's tax claims. In the legal

analysis of this article, it may be understood that the legislature has intelligently created a hierarchy among three categories of conflicting interests. In this structure, first, transaction security through the preservation of collateral rights and labor protection as the pillar of production are placed at the top; second, the public power of the state to collect taxes is placed in the next priority; and finally, ordinary creditors are placed in the last rank for receiving their claims. Despite the age of its source statute, enacted in 1966, this article reflects the general principles governing liquidation and bankruptcy that continue, with modifications, in the current provisions of the Direct Taxes Act and the Commercial Code, because its governing approach is consistent with the policy of giving priority to preferential claims over ordinary claims and shows that tax, although a preferential right, is never an absolute right and retreats before rights arising from secured contracts and labor rights so that social and economic order is not destabilized.

9. Effects and Limitations of Bankruptcy Law in the Iranian Legal System

The bankrupt person is not only prohibited from disposing of his property, but is also deprived of exercising all his financial rights. Therefore, he has no right to bring financial claims against another person, nor may another person bring a financial claim against him directly (Emami, 2019).

Claims that were pending against the bankrupt merchant or that are subsequently brought must be directed against the liquidator, and these claims are of two types: either they relate to property and financial rights, whether the bankrupt merchant was the defendant or the plaintiff or subsequently becomes a party to the claim. The duty to pursue or bring the claim rests with the liquidator. With respect to non-financial rights, a distinction must be made. If non-financial rights lead to financial consequences in such a way as to affect creditors' rights and claims, the bankrupt merchant is again prohibited from intervening. For example, if an action concerning marriage or lineage is brought against him and the result affects the merchant's financial status, the liquidator will intervene. However, in claims such as guardianship or custodianship that have a purely non-financial character, the bankrupt person is not prohibited from bringing or defending the claim. Therefore, the general criterion is whether the claim affects the financial position of the bankrupt merchant. Nevertheless, the law permits the bankrupt merchant himself, at the court's discretion, to enter the proceedings as a third party, because the merchant's participation and explanations may be effective in resolving the matter at issue. This same meaning is stated in Article 420 of the former law as follows (Emami, 2019): whenever the court deems it appropriate, it may permit the bankrupt merchant to intervene as a third party in the pending action. In any event, in all claims, the liquidator has the right to intervene, whether as plaintiff, defendant, or third party.

9.1. Effects of the Prohibition of Interference

The rule prohibiting interference in Article 418 of the Commercial Code entails numerous effects and consequences, including the following:

1. From the date of issuance of the bankruptcy judgment, the bankrupt merchant has no right to conclude any contract affecting the rights of the body of creditors. For example, the merchant cannot create a security interest over any of his property in favor of a creditor. In such a case, the contract is ineffective against the body of the merchant's creditors, and the secured property must be placed at the disposal of the liquidator (Kaviani, 2016).
2. From the date of issuance of the bankruptcy judgment, any payment to creditors or other persons is prohibited, and the liquidator may claim the amount paid from the recipient. This rule creates no difficulty if the payment was made in cash, and it is sufficient for the date of payment to be determined. However, the question arises as to how to proceed if the payment was made by cheque. In Iranian law, after issuance of the bankruptcy judgment, the holder has no right to collect the cheque, whether it was issued before or after the bankruptcy judgment. The reason for this rule is that in Iranian law, by issuing or endorsing a cheque, its underlying funds are not transferred to the holder. Therefore, the holder of the cheque will be treated like other creditors (Anvaripour, 2023).
3. If one of the merchant's creditors becomes mutually indebted to the bankrupt after the issuance of the bankruptcy judgment, set-off does not occur, and the merchant's debtor must pay the amount of his debt to the liquidator and join the general body of creditors to receive his own claim from the merchant. This rule is certainly consistent with the spirit of the Commercial Code's bankruptcy provisions, because these provisions were enacted to establish equality

among the merchant's creditors. Accepting set-off in such a situation would prejudice other creditors and must therefore be rejected.

9.2. Prohibition of the Arrest of the Bankrupt Person for Failure to Pay Damages to the Private Claimant

Before the Law on the Arrest of Debtors for Breach of Obligations and Commitments enacted in 1973, the private complainant had the right, under Article 1 appended to the Code of Criminal Procedure enacted in 1998, to claim private damages from the convicted person; ten days after the date of the claim, if the convicted person did not identify any property or if access to his property was not possible, he would be detained at the request of the private claimant for one day per 50 rials of damages. In all cases, the period of detention was not to exceed five years (Anvaripour, 2023).

Under that law, the question arose whether, given that under Article 418 of the Commercial Code the bankrupt merchant is prohibited from interfering in all his property from the date of the judgment, he could be arrested for damages owed to the private claimant. In Judgment No. 290 dated December 8, 1971, the General Board of the Supreme Court declared: "Since the merchant is prohibited, from the date of issuance of the bankruptcy judgment, from interfering in all his property pursuant to Article 418 of the Commercial Code, and since the private claimant, even if he has access to property, has no right to interfere because the bankrupt's estate is subject to the rights of all creditors and must refer to the liquidation administration to satisfy his rights, the case falls outside the scope of Article 1 appended to the Code of Criminal Procedure, and the bankrupt cannot be detained on that basis" (Katebi, 2019).

Accordingly, the single article of the Law Prohibiting the Arrest of Persons enacted in 1973, except in the case of monetary fines, prohibited detention of persons for failure to pay debts and judgments and for breach of other financial obligations and commitments. Therefore, arresting the bankrupt person for failure to pay damages to the private claimant has no basis, because the aforementioned law repealed Article 1 of the Law on the Enforcement of Financial Convictions enacted in 1972 with respect to the payment of monetary fines or damages arising from the offense inflicted on the private claimant. Moreover, Article 139 of the Islamic Penal Code enacted in 1983 concerns the court's authority to detain the convicted person for failure to return the property itself, its value, or its substitute under the conditions provided in that article (Kaviani, 2016).

9.3. Sanction for Breach of the Prohibition of Interference

If the merchant's transaction after issuance of the bankruptcy judgment is one of the transactions listed in Article 423 of the Commercial Code, namely "the merchant's transactions after cessation of payment," his act will be void and ineffective; because when the transactions listed in Article 423 of the Commercial Code are declared void from the date of cessation of payment, such transactions after issuance of the bankruptcy judgment are a fortiori void and ineffective.

Question: Can transactions outside the types mentioned in the above article be declared void? The answer is that such transactions, provided they are financial and concluded after the issuance of the bankruptcy judgment, are void, even though the merchant is not regarded as legally incapacitated. In fact, the rule prohibiting interference is a mandatory rule and has the character of public order; therefore, acts contrary to it are void under Article 975 of the Civil Code. For this reason, a third party who has contracted with the bankrupt merchant has no right, even after the termination of bankruptcy and payment of creditors' rights, to compel the merchant to perform his obligations (Katebi, 2019).

9.4. Conditions for Issuing a Bankruptcy Judgment for State-Owned Companies in English Law

The Insolvency Act 1985 followed some of the views and ideas of the Cork Committee and abandoned the two-stage method of judicial proceedings and court orders, namely the receiving order and the bankruptcy order, under which a debtor was declared bankrupt pursuant to the Bankruptcy Act 1914. Now, instead, there is only a single court order by which the state-owned company is declared bankrupt following the filing of a petition for such an order (Lightman & Moss, 2017).

When a state-owned company is unable to meet its debts, its petition may be submitted to the court only on the basis that, under Section 272(1) of the Insolvency Act 1986, it is unable to pay its debts and has ceased payment. It should be noted that the consequences of filing a bankruptcy petition by the bankrupt company are the same as the filing of a bankruptcy petition by a creditor. Once the bankruptcy order is issued, under Rule 6.033(2)(b) of the Insolvency Rules 1986, the immediate duty

of the bankrupt company is to refer to the official receiver. A number of measures provided in the Insolvency Act 1986 are taken to preserve the bankrupt estate, including restrictions on the transfer of property by the bankrupt and the suspension of claims, defenses, and remedies against the bankrupt. The liquidator assumes control over the bankrupt's property until a trustee in bankruptcy is appointed by the creditors (Kashfi Ashtiani & Niknejad, 2021).

The bankrupt state-owned company must, within 21 days after issuance of the bankruptcy order, disclose all its transactions, assets, affairs, creditors' names, debts, and obligations to the official receiver under Section 288(1) of the Insolvency Act 1986 and deliver all its property, books, documents, and records. If the bankrupt company fails without reasonable excuse to disclose its affairs, in addition to any penalty, it will be convicted of contempt of court and disruption of court order under Section 288(4) (Lightman & Moss, 2017).

However, because the issuance of a bankruptcy judgment for state-owned companies in England is not subject to special regulations and laws, this issue often gives rise to conflicts and ambiguities. Since insolvency regulations in Europe are directly applicable, this has limited the jurisdiction of English courts in relation to the payment of companies' debts, particularly state-owned companies, in order to prevent bankruptcy. These regulations apply only to bankrupt companies whose center of main interests is in the European Union. If the debtor company is outside the European Union, the powers of English courts do not follow European legal rules and are unrestricted. As far as the completion of proceedings is concerned, the main judicial organ is a section of bankruptcy law. This part of the court, with special jurisdiction, will deal with state-owned and private affiliated companies investing outside England (Kashfi Ashtiani & Niknejad, 2021).

Section 221(5) of English insolvency regulations allows the court to issue an order on various grounds, including inability to repay debts. When a general order is enforced in English courts, this gives the matter global reflection and effect. However, English courts may assist foreign courts in considering any repayment of debts by state-owned companies as assistance for participation in the place of establishment of that country. This issue will limit British powers to collecting company assets, making preferential payments to creditors, and then sending any remaining assets for the principal settlement (Kashfi Ashtiani & Niknejad, 2021).

It should be kept in mind as a general principle that English courts and the English Parliament should not consider themselves entitled to deliberate on their powers regarding matters that naturally and properly fall within the jurisdiction of courts of other countries. There is judicial concern that Section 221 may interfere with the authority of independent foreign powers over matters within their own territory. One issue that gives rise to conflict and overlap of court jurisdiction is that the judgment issued by domestic courts concerning the bankruptcy of state-owned companies may differ from the judgment issued by foreign courts in this regard. That is, the conditions and rules governing state bankruptcy within England may differ from the conditions and rules governing the bankruptcy of state-owned companies operating outside England, and this leads to a conflict of court jurisdiction. It appears that many provisions of English insolvency law have an unlimited territorial scope and apply if a contract satisfies the statutory requirement (Kashfi Ashtiani & Niknejad, 2021).

Consequently, it is evident that the rules apply regardless of the location of ownership, nationality, or residence of the other party, and regardless of the law governing the transactions. Some have commented in this regard:

The English Parliament may have intended to declare to the court that it should intervene and issue an order consistent with the laws and regulations of the British state. Confiscating the property of a bankrupt state-owned company in favor of creditors cannot be an appropriate judgment; in such a situation, the court may oblige the state to repay all or part of the state-owned company's debt in favor of creditors. One of the conditions that causes concern for courts regarding the bankruptcy of state-owned companies in England is the distribution of the assets of domestic state-owned companies among creditors (Lightman & Moss, 2017).

Distribution of the state-owned company's assets among creditors will lead to the dissolution of that company. Dissolution of a state-owned company not only harms the company, but also imposes loss on the state, because under the rules on the bankruptcy of state-owned companies in England, the creditor may take ownership of the company instead of receiving its claim. Consequently, the deprivation of state-owned companies' privileges and their transfer to private persons may create a crisis in England. Another ambiguity and problem concerning the bankruptcy of state-owned companies in England relates to the merger of state-owned companies. Sections 26 and 27 of the Companies Act 2006 are devoted to the merger of commercial

companies in the specific sense. Therefore, according to the sections of the above law, if a state-owned company in England declares its bankruptcy (Kashfi Ashtiani & Niknejad, 2021).

The proposing company, under Section 28 of the above law, may merge the bankrupt company into itself if it can purchase 90 percent of the bankrupt company's shares. In fact, the bankrupt company is dissolved. Unfortunately, the Companies Act 2006 has not been able to make proper decisions regarding corporate bankruptcy, particularly the bankruptcy of state-owned companies. Since the merger of companies leads to their dissolution, reliance on government bills and parliamentary debates concerning the non-dissolution of state-owned companies cannot alone be effective. On the one hand, the relevant laws and the breadth of these laws in the field of corporate bankruptcy lead to the dissolution of state-owned companies in England; on the other hand, the views of jurists and parliamentary debates in England suggest that repayment of the debts of bankrupt state-owned companies should prevent their dissolution. These contradictions cause courts to be unable to properly issue judgments concerning the bankruptcy of state-owned companies (McCormack, 2014).

9.5. Access to Company Assets

In practice, the simplest way to create an appropriate connection is the existence of assets belonging to English state-owned companies that can be easily distributed among creditors. In Re Compania Merabello San Nicholas SA, a link was established between the company's assets and creditors' shares, and the court was able, with the assistance of the British government, to pay creditors' shares from the assets of that company. As may be observed, the availability of assets is a precondition for creating a strong order. In this particular situation, the condition of assets in light of the bankruptcy of state-owned companies is only a weak factor for non-dissolution of the company. Nevertheless, it is clear that the availability of assets cannot have much effect in preventing the dissolution of the bankrupt company. The absolute need for asset availability is discretionary and may lead to a court decision to transfer assets rapidly to creditors before dissolution of the company (Kashfi Ashtiani & Niknejad, 2021).

9.6. Cooperation with Foreign Companies and Obtaining Administrative Orders

The general view regarding entry into the regulatory framework of the European Union was that only companies formed and registered under company law could be subject to insolvency regulations. Another view also existed, according to which the limitation created might harm registered foreign companies that could fall under the Insolvency Act 1986. In this regard, a statutory amendment concerning the insolvency regulations of domestically registered companies could, as far as possible, remove the defects of the Insolvency Act 1986 and include companies operating abroad. Such a statutory amendment could be regarded as an irrational severance of the link with liquidation jurisdiction. More seriously and practically, it could be viewed as creating an obstacle to organizational restructuring and undermining employment and business (Kashfi Ashtiani & Niknejad, 2021).

The administration process is specifically designed to rescue a company's business as a going concern and to achieve a better return for the company's creditors. Administration is specifically regarded as a revival instrument and as a means of producing more beneficial returns than liquidation. If liquidation is available on a particular basis for registered foreign companies, then the state must dissolve the company on similar grounds. Essentially, there are three arguments related to the exercise of statutory jurisdiction in relation to registered foreign companies. The first argument is practical: an order issued abroad may not be recognized, especially where the company continues trade and transportation in other countries. The second argument concerns the inconsistency involved in terminating the life of a company that owes its existence to the laws of another country. The third argument concerns perceived interference with the independent authority of another country to deal with matters and legal persons within its own territory (Kashfi Ashtiani & Niknejad, 2021).

These factors appear to be strongly opposed to administration orders, because the process itself does not necessarily involve terminating the existence of the foreign company. The main objective of the administration process is to give the company new commercial life rather than end its existence, although in particular cases achieving the rescue objective may require cooperation by governmental authorities in the country concerned (Kashfi Ashtiani & Niknejad, 2021).

10. Substantive Rules Governing Bankruptcy in the English Legal System

The English legal system, by enacting various laws and regulations, has adopted solutions to achieve coordination and appropriate treatment of the phenomenon of international bankruptcy. The laws of this country have adopted the provisions of the UNCITRAL Model Law on cross-border insolvency as their standard. The United Kingdom has enacted the implementation of the Model Law provisions in its insolvency law and incorporated the content of the Model Law into its legislation (Omar, 2016). At present, as a result of the application of recent insolvency regulations, there are now three categories of rules for managing insolvencies in the United Kingdom. These three categories are Section 426 of the Insolvency Act 1986, the European Union regulations on cross-border insolvency proceedings, and the UNCITRAL Model Law on Cross-Border Insolvency enacted in 1997. Naturally, conflicts arise among these laws in practice, and resolving such conflicts, according to the circumstances, is the responsibility of the court (Omar, 2016).

Three situations are conceivable regarding conflict among these laws, as follows:

10.1. Conflict Between Section 426 of the Insolvency Act 1986 and the European Union Insolvency Regulation

The question that arises here is what solution exists if there is a conflict between Section 426 of the Insolvency Act 1986 and the European Union Insolvency Regulation. The answer to this question is provided by Article 10 of the European Union Insolvency Regulation. This article expressly confirms the superiority of European Union regulations over the domestic laws of member states and obliges member states to use all their powers to ensure the full performance of the obligations they have undertaken under that treaty and, in practice, to observe the principle of implementation in favor of the European Union. However, these regulations do not expressly state that Section 426 is entirely repealed with respect to countries that are also subject to the European Union Insolvency Regulation. Therefore, both Section 426 and the European Union Insolvency Regulation may be applied complementarily and without conflict. Obviously, where there is an explicit conflict between Section 426 and the Union Insolvency Regulation in such a way that they cannot be reconciled, the Union regulations will prevail (Omar, 2016).

However, one of the problems concerning treaties to which the United Kingdom was a party and which existed at the time the insolvency regulations entered into force is what should be done in the event of conflict between the Union regulations and the provisions of those treaties. To remove ambiguity, the Council of Europe publicly declared that the adoption of the Insolvency Regulation was not intended to prevent member states from entering into agreements with other countries concerning the same subject matter as the Insolvency Regulation. However, the conclusion of bilateral or multilateral agreements should not negatively affect the operation of the European Union Insolvency Regulation, and in the event of conflict, the principle of the supremacy of Union regulations must be considered. Professor Virgos believes that this statement was issued to prevent any misunderstanding concerning the priority of the European Union Insolvency Regulation (Virgos & Garcimartin, 2018).

In this regard, he notes that member states must avoid entering into treaties that may endanger the integrity of the European Union Insolvency Regulation. In his view, for countries that have entered into such treaties, this may create conflict, and judges must decisively refrain from applying rules inconsistent with the European Union Insolvency Regulation. Nevertheless, the premise of the European Union Insolvency Regulation is that it applies only within the territory of the European Union and governs only where the debtor's center of main interests is within the European Union (Omar, 2016).

10.2. Conflict Between the European Union Insolvency Regulation and the UNCITRAL Model Law

In countries to which both the European Union Insolvency Regulation and the UNCITRAL Model Law apply, the European text prevails within the territory of the European Union for the same reasons already explained. Another question that may be raised is whether, if the European Union Regulation provides a view different from that of the Model Law, the Union text or the Model Law should prevail. Professor Virgos believes that the Model Law represents pure international standards in insolvency matters (Virgos & Garcimartin, 2018).

In his view, although this text is clearly not an international treaty, it is a text that takes effect through domestic law; therefore, the possibility of inconsistency and conflict between the submitted texts is limited. Moreover, comparison of the two texts shows that the Model Law has been largely influenced by the Union Regulation, and this indicates that the two categories of rules will not be substantially incompatible. This is also the view emphasized by the Guide to Enactment annexed to the Model Law. Nevertheless, differences between the texts are inevitable. For example, conflict of laws may arise in the rules concerning the cooperation model in Article 31 of the European Insolvency Regulation and Part 4 of the Model Law (Omar, 2016).

Ultimately, it appears that the principle of the supremacy of Union regulations should be taken into account in answering the above question. The explanation is that the relationship of the Model Law with the law of each country falls into one of two categories: either the country has not adopted the Model Law as the basis for legislation, in which case no obligation is created for that country; or it has adopted the Model Law as the basis for enacting domestic rules, in which case the Model Law has, at most, the same validity as that country's domestic law. Clearly, even in the latter case, given the principle of supremacy of Union regulations over domestic laws, priority must be given to Union regulations over the Model Law (Omar, 2016).

10.3. Conflict Between Section 426 of the Insolvency Act 1986 and the UNCITRAL Model Law

Given that the Model Law has a global mission, all countries listed under Section 426 may adopt it. The Guide to Enactment states that the Model Law is designed to be used as an integral part of the insolvency law of any country that adopts its provisions. In interpreting the provisions of the Model Law, the attention of British courts to the international origins and purpose of this text when using it can effectively help avoid conflict between the Model Law and Section 426. Nevertheless, a conflict-of-laws rule has been incorporated into the statutory provisions, which not only states that British insolvency law has been modified to the extent necessary to implement the Model Law, but also provides that any conflict between domestic law and the Model Law must be resolved in favor of the Model Law (Omar, 2016).

This reflects a conscious effort to ensure that the Model Law and domestic rules such as Section 426 are used in the most effective manner possible. Indeed, the Model Law is intended to be facilitative in this field. Accordingly, structurally, a legislative text was prepared by UNCITRAL and recommended to United Nations member states for adoption in their domestic legal systems. A member state may amend or omit some of its provisions, although UNCITRAL recommends that member states make as few changes as possible in order to create a higher degree of harmonization (Omar, 2016).

11. Conclusion

The legal systems of Iran and England have both provided mechanisms under the title of "bankruptcy" or bankruptcy/insolvency to organize the financial status of persons or institutions unable to pay their debts. Despite their shared general objective, namely preserving economic order and protecting creditors and debtors, there are significant differences between the two systems in terms of philosophical foundations, procedural structure, and methods of implementing bankruptcy actions. Comparison of the two systems shows that Iranian law still emphasizes traditional, criminal, and restrictive aspects, whereas England, through a functional and economic approach, treats insolvency as an instrument for restructuring or orderly dissolution of economic activity.

In Iranian law, the principles governing bankruptcy actions are based on the Commercial Code of 1932 and scattered provisions of civil and criminal procedure laws. In this system, bankruptcy litigation concerns merchants, and its fundamental principle is the establishment of cessation of payment. Bankruptcy is realized when the merchant is unable to perform his monetary obligations at maturity. Factors such as motive or prospects for business revival do not directly affect the stage of declaring bankruptcy. The historical background of this approach goes back to a period when bankruptcy was considered a form of inability to perform obligations and a symbol of loss of social credit. Therefore, the legislature provided severe effects such as prohibition of interference in property, deprivation of social and political rights, and sometimes criminal prosecution as a bankrupt by fault or fraud.

The formal principles for 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 officially

declared. Enforcement of the judgment is also carried out under the supervision of the liquidator and the Bankruptcy Liquidation Office. The principle of preserving equality among creditors in the distribution of assets is one of the fundamental principles in this field; no creditor should be preferred over another except by virtue of a specific statutory text. Moreover, the principle of economic public order requires that creditors be unable to proceed personally with attachment or separate satisfaction and that the liquidation process proceed only collectively.

Despite these logical principles, the Iranian system also suffers from weaknesses. First, proceedings are predominantly punitive in orientation and pay less attention to the economic rescue of the merchant. Second, the traditional legal structure gives the liquidator a limited role and places 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 mechanisms, have been less developed. As a result, the Iranian bankruptcy system in many cases remains distant from its original objective, namely restoring economic order and providing balanced protection to both parties.

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

The second principle is fairness and the observance of relative justice. In English practice, distribution of assets among creditors must be carried out in a manner that enables maximum reasonable recovery while also preserving the opportunity for debtor restructuring where possible. For this reason, concepts such as administration and company voluntary arrangement (CVA) have been created in England, which, instead of immediate liquidation, initially seek to revive the financial structure and continue commercial activity. This tendency reflects a new philosophy that emphasizes rescuing the enterprise more than dissolving it.

The third principle is transparency and effective supervision. The insolvency practitioner must have professional qualifications and carry out his work under the supervision of official bodies such as the Insolvency Service. This structure increases trust among stakeholders and guarantees neutrality during liquidation. Creditors' free access to information and the possibility of objecting to the liquidator's decisions are also considered principles ensuring fair proceedings.

Procedurally, one of the important differences between England and Iran is that insolvency proceedings are not necessarily judicial in nature; rather, in many cases they are administered administratively and outside the court. In other words, the court has a supervisory role rather than being the absolute decision-maker; as a result, the speed and efficiency of proceedings increase. Alongside this mechanism, English law gives the debtor the opportunity to benefit from discharge of debts so that, after a period, he can re-enter the economy without the burden of past liabilities.

If these principles are compared with the Iranian system, it can be observed that the English system is based on economic function and restructuring, whereas the Iranian system is based on judicial order and the protection of creditors. In England, insolvency proceedings are regarded as an instrument for preserving asset value, maintaining employment, and preventing systemic economic crises; in Iran, however, they still often have the character of declaring commercial failure and dissolution. This difference has caused insolvency in England not to be viewed as a moral failure of the merchant, but as part of the natural cycle of economic activity, whereas in Iran it remains accompanied by a kind of social stigma and severe restriction.

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

Overall, the comparison of Iranian and English law regarding the principles and rules of bankruptcy litigation shows that transformation from a punitive and formal system to an economic and restructuring-oriented system is necessary. Iran's Commercial Code requires comprehensive revision to strengthen financial restructuring mechanisms, reduce unnecessary

criminalization, and increase the professional role of liquidators. Drawing on England's experience in creating a balance among creditor protection, debtor preservation, and the protection 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 merely be an instrument for ending economic activity; rather, it can be regarded as an opportunity for reconstructing financial life and preserving the economic health of society.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

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Conflict of Interest

The authors report no conflict of interest.

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