Liquidation and Reorganization: Analysing the Corporate Rehabilitation Act, 2018

Muhammad Fahad Ashfaq*

Abstract

This paper argues that an insolvency regime meeting the standards set by the World Bank is vital for economic growth and attracting foreign investment in Pakistan, aiming to provide an in-depth analysis of the Pakistani insolvency regime by using the benchmarks of corporate insolvency law set by the World Bank. The United Kingdom's legislation has been selected for this paper based on several salient features. Although the current insolvency law of Pakistan, which is the Corporate Rehabilitation Act, 2018, is based on the American Model, English law is still used as a residual law in Pakistan. Secondly, the widespread acceptance of English law in various jurisdictions like Canada and Australia makes it a suitable subject of study for rules and policies pertaining to insolvency. Lastly, a long history of bankruptcy laws in the United Kingdom, since the promulgation of the Bankruptcy Act (Statute of Henry VIII) in 1542, coupled with various amendments, reflects the importance of developing and altering the law with the advancements in time and economy. In light of such advancements, the aim is to analyse whether Pakistani insolvency law supports modern businesses and, if not, what legal reforms are required to achieve this goal while not ignoring the local realities.

Introduction

An effective insolvency regime creates a balance between two competing interests, namely, whether a company can best be saved by restructuring it or declaring it insolvent to hand it over to a liquidator. In the realm of the corporate world, the existence of financially distressed companies is not unusual. However, the absence of an effective and stringent insolvency regime which aims to avert the failure of such companies can adversely affect any country's economy. Insolvency reforms are paramount for economies in transition, such as Pakistan, where they play an

* Muhammad Fahad Ashfaq is a recent graduate of the Shaikh Ahmad Hassan School of Law, Lahore University of Management Sciences. Ashfaq's interests lie in commercial law and public policy.

important role in addressing the problems of insolvent state-owned enterprises. Considering this importance, Pakistan promulgated the Companies Ordinance 1984, which enshrined the insolvency law within the framework of the corporate legal regime. However, the vague and ill-defined provisions of the Ordinance led to widespread dissatisfaction, particularly amongst legal practitioners and corporate stakeholders, who found the framework inadequate for effective corporate reorganization. To attempt to close the legal gap, Pakistan underwent legislative reforms and created the Corporate Rehabilitation Act, 2004 (the 'CRA 2004')

This Act was modelled after Chapter 11 of the United States Bankruptcy Code ('The US Code'). On one hand, it was strongly resisted by financial institutions and commercial banking establishments for over a decade. On the other hand, the pressure to incorporate the American Model appeared to come from industrialists.[1] Enshrining a pro-debtor regime and without adapting to local ownership patterns, judicial capacity, and enforcement limitations, the Act risked enabling abuse rather than promoting rehabilitation. Considering these shortcomings, the Securities and Exchange Commission of Pakistan ('SECP') took the initiative to propose a new rehabilitation law that did not prioritise the company over interested parties but rather maintained a balance between the debtor and creditor relationship. This law came to be known as the Corporate Rehabilitation Act, 2018 (the 'CRA 2018'). The purpose of this paper is not to reject this Act; rather, it attempts to find and analyse its weaknesses and argue for a shift towards a better regime in consonance with the standards set out by the World Bank. Therefore, although the CRA 2018 marks a shift in the direction of corporate rescue and reorganization culture in Pakistan, the same is ill-suited for the industries in Pakistan, as it does not meet the aims of the Corporate Insolvency Law as provided by the World Bank, and needs further restructuring in light of the United Kingdom's insolvency law.

Core Features of the CRA 2018 and the US Code

Resembling the procedure under the US Code, the CRA 2018 provides a court-driven model for rehabilitating financially distressed companies. Under this Act, a company with financial debts of Rs. 100 million or more can apply for its

[1] Nasir Jamal, 'Waiting For Corporate Rehabilitation Law' *Dawn* (Islamabad, 28 September 2015) <http://www.dawn.connews/1209442> accessed 23 December 2024.

rehabilitation before courts. The original jurisdiction under this Act lies with the High Courts.[2] A debtor can file a petition to commence a case once a rehabilitation plan has been formed.[3] The High Court, after hearing the petition, can appoint a panel of insolvency experts to act as mediators between the creditor and the debtor to achieve the acceptance of the rehabilitation plan.[4] The Act also provides for a moratorium or stay of proceedings against the debtor.[5] If a developed Rehabilitation Plan is accepted by two-thirds of the creditors, it is confirmed. The power to confirm the rehabilitation plan rests with the High Court.[6] This confirmed rehabilitation plan can be rescinded at the discretion of the High Court in the circumstances of fraud.[7]

Chapter 11 of the US Code also provides the voluntary reorganization process for failing companies. Reorganization allows a debtor company to obtain stays on its obligations and 'invites the intervention of Bankruptcy Courts to act as mediators as the debtor company renegotiates its liabilities while also attempting to restructure its capital to make the company financially viable again.'[8] The reorganization plan enshrined in the American Model is essentially pro-debtor, creating entitlements over the secured interests of the creditors, suspending personal guarantees, and creating the right to write off unsustainable debt.[9] Therefore, although applying for rehabilitation under Chapter 11 places the company under the supervision of the United States Trustee, Chapter 11 leaves little room for creditors to negotiate settlements in the case of big state-owned companies. In fact, the Rehabilitation Plan can be implemented by courts, even if not agreed to by the majority of the creditors.

However, this does not mean that creditors have no protection at all in the American Model. An important restriction placed by the Code on the shareholders' ability to affect the Rehabilitation Plan is that courts can intervene in shareholders'

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[2] Corporate Rehabilitation Act 2018, s 3.
[3] Ibid s 8.
[4] Ibid s 10.
[5] Ibid s 12.
[6] Ibid s 15.
[7] Ibid s 16.
[8] Lynn M. LoPucki and William C. Whitford, 'Corporate Governance in the Bankruptcy Reorganization of Large, Publicly Held Companies' (1993) 141 UPLR 669.
[9] Salman Ijaz, 'Corporate Reorganizations: Debating the Adoption of Pakistan's Draft Corporate Rehabilitation Act 2004' LLJ 4 (2017) 209.

meetings if their actions are found to be abusive—for example, if they undermine the interests of creditors or jeopardise the company's financial recovery for personal gain.[10] The automatic stay on the proceedings and the inability of creditors to recover their debt after the application under Chapter 11 are the biggest obstacles in the interests of the creditors. To overcome this, the creditors have the right to appear before courts to lift the stay; however, the acceptance of the plan is clearly at the discretion of the Bankruptcy Court. It is important to mention that numerous institutions play a critical role in the viability of Chapter 11. One such institution are the Bankruptcy Courts, 'which possess a high level of judicial sophistication to operate successfully within the complex statutory scheme laid out by the Bankruptcy Code.'[11] Nonetheless, there are certain shortcomings in the process as well. For instance, while Chapter 11 of the US Code provides for an active role of Bankruptcy Courts in overseeing reorganization plans, excessive judicial intervention/activism may hinder timely resolutions by entangling commercial decisions in prolonged legal scrutiny. Although court oversight is essential for fairness and legality, the risk lies in courts overstepping into managerial or restructuring decisions best left to business experts, potentially delaying or distorting outcomes. Secondly and lastly, the hectic process with constant judicial intervention takes four to five years for proceedings to conclude.

Analysis of CRA 2018

The creation of the CRA 2018 is the first time that Pakistan has come up with specific legislation for the rehabilitation and reorganization of financially distressed companies. Therefore, the CRA 2018 tries to cover an inherent gap in our corporate insolvency law. Considering the American Model a great model of rehabilitation, our legislature promulgated the insolvency law along the same lines. However, before implementing any foreign regime, it is necessary to consider the socio-legal and economic conditions of the country. If both do not align, either the foreign law must be prohibited, or it should be moulded enough to take into account the local realities of the society.

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[10] Mark E. Budnitz, 'Chapter 11 Business Reorganizations and Shareholder Meetings: Will the Meeting Please Come to Order, Or Should the Meeting Be Canceled Altogether?' (1990) 58 GWLR 1214.

[11] Ruth Lane Neyens, 'Principles of Corporate Restructuring and Asset Resolution' (2002) 8 LBRA 371–394.

Firstly, in assessing the viability of importing the provisions of the US Code in Pakistan, it is necessary to appraise 'whether the institutional configurations, ownership and control patterns, and the incentives of stakeholders are similar in both jurisdictions.'[12] In Pakistan, most big companies are family-owned corporations with accumulated shareholding and fusion of control and ownership.[13] Therefore, where the family members are the owners and managers of the family firms, no question of personal guarantees arises. Before extending credit in favour of the companies, the creditors demand personal guarantees from the managers of the company, but in Pakistan, since the family members are also the shareholders of the company, the demand for personal guarantees becomes redundant.

Secondly, as noted in the previous section, the proceedings under Chapter 11 are cumbersome, and Pakistan lacks state capacity and institutional complementarity to carry out such proceedings. There are specialized Bankruptcy Courts in the United States that deal with matters related to insolvency. However, under Section 3 of the CRA 2018 the responsibility is handed over to the High Courts of Pakistan. It means the judges, who might not have a comprehensive knowledge of insolvency proceedings, will adjudicate upon the matters of rehabilitation, which will ultimately delay the finality of the proceedings. In contrast to Pakistan, a country like the United States usually takes four to five years for proceedings to conclude. However, considering the delay tactics in Pakistan, it will take a lot more time here.

Thirdly, the provisions of the CRA 2018 do not extend to or take into account smaller companies. For a company to be considered financially sick under the Act, its outstanding or unpaid debts must amount to a minimum of Rs. 100 million. Otherwise, it cannot file a petition in the High Court. In the Companies Act, 2017 (the '2017 Act'), companies are divided into three categories. In the 2017 Act, a small-sized company is a company that has a paid-up capital of Rs. 10 million.[14] However, no such criterion is defined for the companies in the CRA

[12] Ijaz (n 9) 213.
[13] Ali Cheema, Faisal Bari, and Osama Siddique, 'Corporate Governance in Pakistan: Ownership, Control and the Law' in Sobhan Farooq and Wendy Werner (eds), *Comparative Analysis of Corporate Governance in South Asia* (Bangladesh Enterprise Institute 2003).
[14] The Companies Act 2017, sch III.

2018. Therefore, if a company starts its business with only Rs. 1 million, it will not be possible for it to raise its capital to a maximum of Rs. 100 million and apply for rehabilitation. Other jurisdictions, like the United States and the United Kingdom, cater to the needs of small and medium-sized industries and have special provisions for their rehabilitation. A developing country like Pakistan must not treat businesses of different sizes in a similar way and promulgate a regime enabling small industries to thrive.

Fourthly, the CRA 2018 does not provide any provisions for an initial inquiry of the company filing a petition for rehabilitation regarding its financial condition. Since the Act requires no prior investigation, the company having enough assets may raise its loan to Rs. 100 million to file a petition in the High Court and, later on, avail a moratorium just to delay the payments of creditors, thus defrauding them. This problem can be overcome with a specific provision of initial inquiry that will be initiated once the debtor company has filed a petition for rehabilitation. With such an investigation, fraudulent cases can be sorted out at the initial stages, saving the High Court's time and protecting the creditors' interests. A feared lacuna is that there will be no effective implementation of this provision because of the lack of state capability and checks and balances, i.e., who and under whose supervision the initial inquiries will be made.

Lastly, there are many other shortcomings in the Act; there is no mechanism for the timely detection of financially sick companies, which will endanger the interest of creditors; no fixed term of a moratorium; no requirement of adequate disclosure; and no imposition of penalties. Non-imposition of penalties is not that much of an issue as any Bank, as a creditor, needs money from the debtor. Therefore, by imposing penalties, it will likely become more difficult for a bank to get its credit back. Nonetheless, all these lacunae will be discussed in detail in the upcoming sections analysing the CRA 2018 in-depth by comparing it with the standards set by the World Bank and the United Kingdom's insolvency law.

Analysis of CRA 2018 on the Basis of the World Bank Principles

The World Bank provides various principles of corporate insolvency that are important in evaluating domestic insolvency laws. These principles are mostly carved out of the practices employed in developed countries. Therefore, 'there is a wide divergence of national insolvency law systems, but there exist common and uniform aspects of best practices within these systems, and these different systems have therefore been utilized to develop a global standard of best practices to benchmark the development of effective domestic insolvency regimes.'[15] This section seeks to contrast the principles of the CRA 2018 with the international benchmarks provided by the World Bank.

I. Striking a Balance between Liquidation and Reorganization

One of the aims of any insolvency law should be to strike a balance between liquidation and reorganization. The existence of companies, being a vehicle for commercial development, is a basic need of an economy. In a society where businesses are usually funded through credit, an effective mechanism is required to support them. Therefore, adequate relevant legislation is necessary to protect the interests of companies and their creditors. In Pakistan, the CRA 2018 primarily deals with the reorganization of a company and enshrines only two provisions regarding the winding up of a company. Section 18 of the Act enshrines that an application filed by the debtor for its rehabilitation can be converted into winding-up proceedings either because of the failure to achieve the acceptance of rehabilitation in twelve months from the appointment of an administrator or because there is some sort of fraud in the petition filed by the debtor. Besides these two grounds, the CRA 2018 does not provide any other basis for the winding up of the company.

The grounds on which the rehabilitation proceedings will be converted into winding-up proceedings are very vague. Firstly, since the whole process is court-driven, the language and the use of the word 'may' in Section 18 suggest that the transition from one proceeding to another will be at the discretion of the High Court, and the same is not mandatory for it. Secondly, since it is almost impossible to prove fraud in contractual matters, it is highly unlikely that the criterion enshrined in Section 18 will be fulfilled, thus rendering the conversion of rehabilitation proceedings to winding-up impossible. Hence, it can be concluded that the CRA 2018 fails to strike a balance between liquidation and reorganization and does not allow an easy conversion of proceedings from one to another.

[15] Terence C. Halliday and Bruce G. Carruthers, *Bankrupt: Global Law Making and Systematic Financial Crisis* (SUP 2009) 18.

Moreover, it must be noted that there can be several reasons for the company's failure and, ultimately, insolvency. It is not always the fault of the company's management, but certain circumstances, like changes in market dynamics, can arise over which the company has no control. For instance, a company can fail due to its product losing its value because of a new invention by a competitor. Therefore, 'such realities require a law that facilitates rescue when the business is viable and liquidation when it is not and transitions from one proceeding to another.'[16] However, the history of insolvency laws in Pakistan reflects that Pakistan has been unable to strike a balance between liquidation and reorganization of companies. The Companies Ordinance 1984 dealt primarily with the liquidation and winding up of companies. It contained 149 sections related to liquidation, while rehabilitation provisions amounted to only six.[17] Later on, the CRA 2004 appeared to be inconsistent with the expressed policy goals of rescuing and liquidating a company. Now, we have the CRA 2018, enshrining only two provisions of liquidation out of 49 sections related to rehabilitation. Therefore, it can be argued that our legislature has failed to strike a balance between the two competing interests.

Lastly, according to the criteria set by the CRA 2018, only companies with debt of Rs. 100 million or more are eligible to apply for rehabilitation. No such mechanism is provided for small companies, hindering their chances to thrive. In such a situation, the CRA 2018 has failed to strike a balance between liquidation and reorganization and to fulfil its primary responsibility of rehabilitation by not offering any support to small industries.

II. Maximization of Value of Assets

Another aim of the World Bank's insolvency principles is that an insolvency framework should maximise the value of a company's assets and recoveries by the creditors. To evaluate whether the CRA 2018 maximizes the value of assets for the

[16] Fancy Chepkemoi Too, 'A Comparative Analysis of Corporate Insolvency Laws: Which is the best option for Kenya?' (2015) NTUP 116–117.

[17] World Bank, 'Pakistan: Strengthening the Insolvency Regime' (June 2011) <https://documents1.worldbank.org/curated/en/362211468145473381/pdf/684690ESW0WHIT0he0Insolvency0Regime.pdf> accessed 20 December 2024.

benefit of the creditors, it is necessary to analyse certain provisions of the CRA 2018.

Firstly, under Section 12 of the CRA 2018, on application by the debtor company, the High Court can pass an order of stay (moratorium) for the preservation of the assets of the debtor, shareholders, directors, and guarantors against the recovery of claims by the creditors. The stay will be lifted on the confirmation of the rehabilitation plan under Section 14 or the dismissal of the case under Section 17 of the Act. In both Sections, no definite time limit is given for the High Court to lift the stay. The stay on the debtor's assets means the assets will not be sold, transferred, repossessed, or mortgaged for that time. Due to this, the creditors cannot recover their money for that time. This provision can be misused by the debtor to delay the proceedings to keep its assets intact so that the creditors remain devoid of their due amount. Therefore, this provision does not align with the World Bank's principle of maximizing the firm's assets and recovery by the creditors.

Similarly, rather than facilitating debt recovery, Section 4 of the CRA 2018 has made it more difficult. After confirming the Rehabilitation Plan under Section 14 of the CRA 2018, the aggrieved party can file an appeal in the High Court against the order made by the Judge in original civil jurisdiction. Therefore, this mechanism of appeal can delay the finalization of the rehabilitation. Thus, it can become an incentive for the debtor to file an appeal to further defeat the recovery proceedings by the creditors.

III. Recognise Existing Creditors' Rights

The standards set by the World Bank suggest more than the recognition and ranking of the creditors by adding a requirement of a predictable and established process. In the insolvency waterfall, the different creditors will have priority, starting from fixed charge holders to the debts owed to directors of the insolvent company. In between come liquidation expenses, preferential claims of employees, floating charges, unsecured creditors, and contractually deferred debts. Section 20 of the CRA 2018 does safeguard the interests of the creditors by appointing the administrator over the assets of the debtor company. However, the Claims and Interest Provision (Section 31) of the CRA 2018 does not categorically state all existing creditors' rights by specifically mentioning them. That being said, the insolvency waterfall is not clearly defined in the Act; therefore, the creditors do not know if they will be getting anything in return. This is one of the biggest drawbacks due to which foreign direct investors hesitate to invest in Pakistan, as there is always a risk of not getting credit back. Therefore, as far as gauging the predictability and consistent application of the CRA 2018 is concerned, the analysis of delay in proceedings in the above segments and the unclear wording of Section 31 reflect that there are no such clearly established rules for ranking priority claims of different creditors.

IV. Prevent the Improper Use of the Insolvency System

The World Bank's principles for effective insolvency emphasise preventing the improper use of the insolvency system, promoting market discipline, and ensuring the stability of financial systems. This involves establishing clear rules, incentives, and procedures to prevent misuse and ensure fair treatment of all stakeholders. The analysis of the last three principles shows that the CRA 2018 does not ensure a transparent and predictable insolvency law and prevent its improper use. Neither does it strike a balance between restructuring and liquidation of a company, maximizing its assets, or protecting the rights of the existing creditors. Although Section 26 of the CRA 2018 has mandated the creation of the Creditor and Shareholder Committee, the pro-debtor regime remains intact, especially in the case of voluntary filing under Section 6 of CRA 2018, in which the debtor has been given an exclusive right to file a reorganization plan.

Studies conducted by the World Bank have concluded that the State should have a minimal role in the resolution of corporate reorganization and asset management of the companies. The principles proposed by one of those studies include the restriction of the State's role in facilitation and coordination, creating stringent enforcement mechanisms, and giving way to informal corporate workouts. However, contrary to these principles, the whole insolvency system under CRA 2018 is dependent on the courts in Pakistan. For instance, under Section 14 of the CRA 2018, even if the creditors, with a majority of two-thirds, have accepted the rehabilitation plan, the final discretion lies with the High Court as to accept it or not.

Lastly, as already discussed, most of the big industries are family corporations with a strong fusion of control. That is why there is 'a substantially higher risk of pro-shareholder expropriation at the expense of creditors and the company through proceedings under the CRA.'[18] While courts may still maintain discretion to block the shareholder meetings in cases of abuse, there is no predictability, even in the United States, concerning the type of actions the courts will block or allow, thus giving management strongly aligned with the shareholders ample room to manoeuvre.

CRA 2018 in Comparison with the United Kingdom's Insolvency Law

After an in-depth analysis of CRA 2018 in comparison to the World Bank principles, this section analyses Pakistan's rehabilitation regime in comparison to one of the Commonwealth countries. The Commonwealth state chosen for this paper is the United Kingdom due to certain reasons. Firstly, Pakistan is a post-colonial country in which common law still prevails as a residual law. The procedure of insolvency enshrined in the 2017 Act is also based on the United Kingdom's insolvency regime. Secondly, most jurisdictions worldwide have adopted the United Kingdom's insolvency regime, including but not limited to Canada, Australia, and India. Thirdly and lastly, the United Kingdom's insolvency regime is the product of the evolution of law in various centuries, i.e., it has constantly evolved with changes in time. The latest amendment in the United Kingdom's insolvency regime was in COVID-19, which shows that the law was immediately moulded according to the changing times and the needs of society.

At this time, there are two different statutes in Pakistan that regulate the liquidation and rehabilitation of companies separately. One of them, the CRA 2018, is based on the American model, and the other, the 2017 Act, follows the United Kingdom model, while neither of them takes into account the local context. Perhaps the problem might not have arisen with the simultaneous implementation of both statutes, but certain provisions of both laws are contradictory to each other. For instance, the mediation mechanism for solving creditors' and debtors' problems is available in both statutes. Under Section 10 of the CRA 2018, the High Court appoints the mediator who will turn to it after mediation between the parties, and

[18] Ijaz (n 9) 214.

who will ultimately pronounce the decision. Moreover, there is no time limit in the CRA 2018 for the process of mediation to be completed. On the other hand, under Section 276 of the 2017 Act, the SECP or the Appellate Bench appoints a mediator and approves his mediation. The mediator must complete the process in 90 days.

The whole situation makes the implementation of statutes redundant. In such a disorganised system, it is unclear in which situation the courts will refer to which statute. To overcome this problem, the United Kingdom, by consolidating the Insolvency Act, 1985 and the Companies Act, 1985, came up with a single statute, i.e., the Insolvency Act, 1986, enshrining the provisions of liquidation and reorganization. Therefore, to avoid ambiguity, a single law should be enacted in Pakistan, discarding the provisions in contravention of each other.

There are three types of winding up under the 2017 Act: (i) winding up by the court; (ii) voluntary winding up; and (iii) winding up subject to the supervision of the court. Section 301 of the 2017 Act provides a vast list of circumstances (clauses a-m) under which the court can order the winding up of the company. Whereas, in Section 122 of the Insolvency Act, 1986, only a few circumstances are listed in which the court has the power to wind up the company. Thus, the highly court-driven process enshrined in the 2017 Act does not strike a balance between liquidation and reorganization of the company, and instead favours winding up. Moreover, the Administrator, under Section 291 of the 2017 Act, is given stringent powers of management of affairs of the company, with the directors ceasing to perform their functions. On the other hand, Section 4 of the Insolvency Act, 1986 confers the major control of the company to the Administrator but does not snatch all the powers of the company's directors, carrying out the company's daily functions. This provision strikes a balance between the interests of creditors and debtors and does not exploit one by favouring the other. The three purposes of the administration defined in the Insolvency Act, 1986 are defined as '(a) rescuing the company as a going concern, (b) achieving a better result for creditors as a whole than would be possible in an immediate liquidation, and (c) realising the property to make distributions to one or more secured or preferential creditors.'[19]

[19] Insolvency Act 1986, sch B1 [3].

Like CRA 2018, another big loophole of the 2017 Act is that it does not provide the hierarchy of the creditors' waterfall. It is left to the discretion of the courts to decide the hierarchy as to which creditor will be given preference over the other. Although it is understood that secured creditors will come first compared to unsecured ones, there is no defined structure in the Act. Due to the absence of a defined structure, the courts are unable to figure out whose claim to prefer in the list of creditors.

On the other hand, Section 175 of the Insolvency Act, 1986 provides a structured hierarchy of the creditors' repayments in the case of insolvency. Therefore, this Act prevents arbitrariness in the proceedings because the hierarchy is already defined, and the courts do not have the discretion to define their preferences on their own.

In comparison to Pakistan, India, in 2016, adopted a single statute enshrining the provisions for both the reorganization and liquidation of a company. The Indian Model is based on the United Kingdom's Insolvency Act, 1986, but it promulgated the Act while acknowledging the local limitations, complex social practices, and completely different norms of society. For instance, while imitating the English insolvency law, we also gave jurisdiction to the High Courts to adjudicate upon insolvency matters. However, if the limitation of lack of insolvency knowledge possessed by judges had been considered, a separate tribunal would have been established in which the judges would be insolvency experts. India kept this constraint in mind and established a separate 'Debts Recovery Appellate Tribunal' to entertain matters under the Indian Insolvency and Bankruptcy Code 2016.

This paper, by analysing both statutes in detail and in comparison to the World Bank principles and the United Kingdom's Insolvency Act, 1986, concludes that these Acts do not provide an effective insolvency regime catering to the modern needs of the day, thus requiring crucial amendments in light of the local realities of the country. The last section of the paper provides some recommendations that can be considered to address some of the major problems in our insolvency regime.

Recommendations

First, the CRA 2018 establishes a pro-debtor regime and enshrines a highly court-driven process. In contrast, an informal mechanism should also be available to companies and their creditors so that they can reach a mutual decision in case of insolvency. For instance, rehabilitation might not be a viable option when it comes to the rehabilitation or liquidation of a big enterprise. The reason is that a big company will have many creditors having conflicts of interest. Every creditor has to be on board for restructuring and approving schemes of arrangements. Therefore, in such a situation, liquidation will be a viable option. On the other hand, reorganization will be a feasible solution for small companies, having a few creditors who, by mutually deciding with the shareholders of the company, can go for restructuring. However, besides promoting informal resolutions, legal backing in the form of a particular statute, like the CRA 2018, is necessary because it is not only the creditors and debtor companies whose interests are at stake, but there are certain other stakeholders, such as customers, who should be protected by law in case of wrongdoing.

Second, Section 36 of the CRA 2018 provides that this Act will not operate in derogation to any other law. However, the 2017 Act exists, which also contains the procedure for the winding-up of the company. Moreover, it is important to note that the procedure for winding up, as defined in the 2017 Act, is different from that of the CRA 2018. This means that the presence of each of the statutes will become redundant because both cannot be implemented simultaneously. Therefore, it would be feasible to amalgamate the provisions of both legislations and enshrine them in a single statute. Otherwise, parallel statutes being implemented once will lead to confusion.

Third, under the CRA 2018, the High Courts have the jurisdiction to adjudicate insolvency matters. As noted earlier, in addition to the plethora of cases already pending before the High Courts, the lack of expertise and knowledge of the existing judges in the field of insolvency will not result in the effective adjudication of insolvency proceedings. Therefore, separate and independent Bankruptcy Courts should be formed under the CRA 2018 as enshrined in Chapter 11 of the US Code. Even in the United States, despite the presence of special courts, the proceedings take almost four to five years to conclude. One can imagine, considering the Pakistani justice system, how much time the High Courts will take to conclude insolvency matters.

Fourth, an amendment should be made to Section 6(c) of the CRA 2018, and companies' categories (small, medium, and large) should be protected under this statute. Currently, big companies with a debt of 100 million can file a petition for rehabilitation. The insolvency laws of developed countries like the United Kingdom and the United States support small industries' ability to thrive. Therefore, the CRA 2018 should devise a new criterion and house all the small, medium, and large-sized companies.

Lastly, the CRA 2018 should provide a fixed duration of the moratorium. Currently, since there is no fixed duration of stay on the proceedings under this Act, the same favour likely given to the debtor can be abused to gain an advantage over its creditors. Besides the two grounds provided in the Act, the High Court itself can lift the stay upon the confirmation of the plan of rehabilitation. Nonetheless, the time limit is not given in the Act, during which the High Court must confirm the plan, which can again give undue favour to the debtors. Therefore, to protect the creditors' interests and fulfil the principles of justice, a time limit must be provided in the CRA 2018 or the Limitation Act, 1908.

Conclusion

In conclusion, Pakistan's current insolvency regime is not creditor-friendly as it unduly favours the debtors. This regime suffers from inherent problems of not being well-equipped for business organizations and being unable to fulfil the aims set by the World Bank. Restructuring efforts in Pakistan should be based upon the international best practices, like those established by the United Kingdom, while being cognizant of Pakistan's local legal structures, institutional capacity, and socio-economic realities, and not by forfeiting these norms. Lastly, along with the changes in legislation, political will and commitment are necessary in implementing the reforms brought by the legislature. Being a developing country, Pakistan suffers from an inadequate rule of law, financial and political instability, and judicial corruption. Thus, all of these factors hinder the attraction of investment in the country. However, once we have an effective insolvency law in place, Pakistan will become a suitable place for both local and foreign investors that will, ultimately, boost the economy and address challenges like poverty and unemployment in the country.