

Historical Evolution and Modern Trend of Bankruptcy Legal System Reform

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Abstract: This paper examines the historical progression and contemporary trends of bankruptcy legal system reforms in China. Since the era of reform and opening up, with the inception and growth of the market economic system, instances of bankruptcy have risen, drawing increasing attention to the need for reform in the bankruptcy legal system. The history reveals that China's bankruptcy legal framework has evolved from its initial stages to its current detailed form. While the present bankruptcy legal system has achieved certain milestones, challenges like poor execution and an incomplete framework persist. To better support the growth of the socialist market economy, further reforms in the bankruptcy legal system are imperative to enhance its efficacy. Contemporary trends indicate that the upcoming reforms will lean towards increased market orientation, adherence to the rule of law, and internationalization. Efforts will be channeled into refining the bankruptcy legal system, fortifying the safeguarding of the legitimate rights of debtors and creditors, and fostering the robust and systematic growth of the market economy.

1. Introduction

Since the reform and opening up, China's economy has undergone rapid development, garnering global attention. Yet, with the transformation into a market economy, instances of bankruptcy have seen a rise [1]. Recognizing this, the Chinese government initiated reforms in the bankruptcy legal system [2]. In 2007, the enactment of the new Enterprise Bankruptcy Law signaled a new developmental phase in China's bankruptcy legal framework [3]. Procedures for handling bankruptcy cases have become more standardized, specialized, and market-oriented, enhancing the protection of legitimate rights for both debtors and creditors [4]. As the market economy expands and reforms deepen, the evolution of the bankruptcy legal system remains a significant focal point for China's societal development.

Reforming bankruptcy laws is a crucial theme intertwined with China's economic and societal trajectory [5]. With the growing establishment of a market economy, the necessity for such reforms becomes more evident [6]. China's bankruptcy legal system evolution has transitioned from an administrative approach during the planned economy era to a judicial one in the market economy context [7]. Despite this, challenges persist. Bankruptcy case proceedings occasionally suffer from local protectionism and judicial inequities. Moreover, there are inherent shortcomings within the

bankruptcy legal framework, such as systemic flaws and underdeveloped market mechanisms [8]. Contemporary trends suggest the bankruptcy legal reforms are progressing towards greater market orientation, rule of law, and internationalization. This paper seeks to chart the historical trajectory and current trends of bankruptcy legal reforms, hoping to offer insights for refining China's bankruptcy legal framework.

2. The germination of bankruptcy legal system reform: Spring and Autumn Period and Warring States Period

The Spring and Autumn Period and the Warring States Period is an important transition period in the history of China, and profound changes have taken place in social economy, politics and culture. During this period, the appearance of Niu Geng made productivity greatly improved, and commerce and handicraft industry developed rapidly [9]. At the same time, feudal lords fought for hegemony and wars frequently, and social unrest and bankruptcy also increased. In order to cope with the increase of bankruptcy, the rulers at that time began to take a series of measures to reform the bankruptcy legal system. Mainly in the following aspects: (1) Debt relief: At that time, the rulers took debt relief measures to reduce the burden on the people. For example, Lu implemented the system of "initial tax mu", which exempted the debt and freed the people from the bondage of usury. (2) Debt recovery: In order to safeguard their own interests, some vassal states began to take measures to recover debts. For example, Yue implemented the policy of "official mountains and seas", and recovered debts by controlling important resources such as salt and iron. (3) Bankruptcy liquidation: Bankruptcy liquidation system began to sprout in this period. Some vassal States began to set up special liquidation institutions to deal with bankruptcy liquidation.

During this period, the bankruptcy legal system began to be gradually established. Some vassal States began to formulate special laws to regulate bankruptcy, which laid the foundation for the subsequent bankruptcy legal system reform.

3. Exploration of bankruptcy legal system reform: Ming and Qing Dynasties

During the Ming and Qing Dynasties, profound changes took place in China society. Economic prosperity and commercial development have promoted the rise of cities and commercial towns, and market transactions have gradually become active. At the same time, overseas trade also developed rapidly, and China became one of the largest trading countries in the world at that time. However, this has also brought about an increase in bankruptcy. In order to cope with the increase of bankruptcy, the Ming and Qing governments adopted a series of measures to reform the bankruptcy legal system. Mainly manifested in the following aspects: (1) Setting up special bankruptcy trial institutions: During the Ming and Qing Dynasties, the government began to set up special bankruptcy trial institutions to handle bankruptcy cases. (2) Formulating bankruptcy code: During the Ming and Qing Dynasties, the government began to formulate a special bankruptcy code to regulate bankruptcy. Ming Dynasty's Daming Law stipulated the ways and procedures of handling debt disputes, and clarified the principles of bankruptcy liquidation. The Laws of the Qing Dynasty further refined the contents of the bankruptcy code, including the causes of bankruptcy, bankruptcy declaration, and the handling of creditor's rights and debts. (3) Strict debt recovery: During the Ming and Qing Dynasties, the government began to implement a strict debt recovery system. The government stipulates that the debtor must recover the debt, and defines the ways and procedures of recovery. At the same time, the government also emphasized the protection of the debtor's legitimate rights and interests, to prevent creditors from excessive recovery and causing unnecessary losses to the debtor. (4) Cracking down on malicious bankruptcy: During the Ming and Qing Dynasties, the government began to crack down on malicious bankruptcy. The government

has clearly defined the definition and punishment measures of malicious bankruptcy to prevent creditors from using bankruptcy to evade debts. At the same time, the government has also strengthened the protection of the debtor's legitimate rights and interests to prevent creditors from obtaining the debtor's property through illegal means.

The bankruptcy legal system in Ming and Qing Dynasties was further developed. It has been further improved and developed in judicial institutions, code formulation and debt recovery. At the same time, the government also began to pay attention to the protection of the debtor's legitimate rights and interests and prevent creditors from obtaining the debtor's property through illegal means. These measures have further promoted the progress and development of China's bankruptcy legal system.

4. The development of bankruptcy legal system reform: the Republic of China

During the Republic of China, profound changes took place in China society. Economic development and commercial prosperity have promoted the rise of cities and the rapid development of industry. At the same time, the political system of the government has also undergone major changes, from the original feudal autocracy to the democratic Republican system [10]. These changes provide a social background for the reform of bankruptcy legal system. The measures taken by the government of the Republic of China to reform the bankruptcy legal system are mainly manifested in the following aspects: (1) Perfecting the bankruptcy legal system: During the Republic of China, the government began to improve the bankruptcy legal system, and successively promulgated the Bankruptcy Law, the Company Law, the Negotiable Instruments Law and other laws and regulations, further standardizing the bankruptcy behavior and related legal procedures. In addition, the government has also strengthened the supervision of bankruptcy cases and improved the handling efficiency of bankruptcy cases. (2) Set up a special bankruptcy court: During the Republic of China, the government began to set up a special bankruptcy court to handle bankruptcy cases. These institutions have accumulated rich trial experience and improved the trial quality and efficiency of bankruptcy cases. (3) Implementing debt restructuring and bankruptcy restructuring: In order to save enterprises facing difficulties, the government of the Republic of China began to implement measures such as debt restructuring and bankruptcy restructuring. Through consultation with creditors, the government formulated a debt restructuring plan to help enterprises get rid of debt difficulties and regain their vitality. At the same time, the government also allows debtors to apply to the court for bankruptcy and reorganization, so as to realize the regeneration of enterprises. (4) Cracking down on malicious bankruptcy: During the Republic of China, the government continued to crack down on malicious bankruptcy. The government has strengthened the protection of the legitimate rights and interests of debtors and prevented creditors from using bankruptcy to evade debts. At the same time, the government also strengthened the crackdown on the debtor's malicious bankruptcy, and maintained the normal business order and social stability.

During the Republic of China, the bankruptcy legal system was further strengthened and improved in perfecting the legal system, setting up special judicial institutions, implementing debt restructuring and bankruptcy restructuring. At the same time, the government also attaches importance to the protection of the legitimate rights and interests of the debtor and prevents creditors from obtaining the debtor's property through illegal means. These measures have further promoted the progress and development of China's bankruptcy legal system.

5. Reflection on the reform of bankruptcy legal system: the period of planned economy

The planned economy period is an important stage in the history of China. From 1949 to 1978, a highly centralized planned economy system was implemented nationwide. During this period, the

state managed and controlled the economy in an all-round way, and all links of production, distribution and circulation were planned and arranged by the state. This economic system has led to the lack of autonomy and market competition of enterprises, and the bankruptcy phenomenon has also decreased. Although the bankruptcy phenomenon was effectively curbed during the planned economy period, there were also some problems in the bankruptcy legal system reform during this period. First of all, due to the lack of autonomy and market competition, when enterprises are in trouble, it is often difficult to carry out bankruptcy reorganization or debt restructuring independently. Secondly, the laws and regulations of this period were not perfect, and many laws on bankruptcy were limited to administrative regulations and rules, lacking legal norms. Table 1 is the division of historical evolution stages of bankruptcy legal system reform.

Table 1: Division of historical evolution stages of bankruptcy legal system reform

Stage	Time period	Characteristic
Phase 1	1949-1978	During the planned economy period, enterprises did not need to go bankrupt, and bankruptcy was rare.
Phase 2	1978-1986	In the early days of reform and opening up, the autonomy of enterprises increased, and bankruptcy began to appear.
Phase 3	1986-1994	In order to meet the needs of market economy, the bankruptcy law began to be gradually improved.
Stage 4	1994-2007	With the rapid development of market economy, the phenomenon of bankruptcy has increased and the reform of bankruptcy legal system has accelerated.
Phase 5	Since 2007	With the promulgation and implementation of the new Enterprise Bankruptcy Law, the legal reform of bankruptcy has entered a new stage.

In the planned economy period, although the bankruptcy phenomenon has been effectively curbed, this containment is achieved through a highly centralized planned economy system, rather than through the improvement of the bankruptcy legal system. Therefore, it is necessary to reflect on the legal reform of bankruptcy in this period and draw lessons from it. First of all, it should be recognized that the bankruptcy legal system is an important part of the market economy and an important means to ensure market competition and market withdrawal mechanism. In the process of perfecting the market economic system, it is necessary to attach importance to the construction of bankruptcy legal system, rather than relying solely on administrative means to curb bankruptcy. Secondly, we need to improve the bankruptcy legal system and improve the legal status of the bankruptcy legal system. When formulating relevant laws and regulations, it is necessary to fully consider the actual situation and market environment of enterprises, and provide necessary legal protection for enterprises to carry out bankruptcy reorganization or debt restructuring independently. At the same time, it is necessary to strengthen the judicial and law enforcement to ensure the effective implementation of the law. Finally, it is necessary to strengthen the social awareness and understanding of the bankruptcy legal system. In many cases, enterprises are unwilling to file for bankruptcy or creditors are unwilling to restructure their debts, which is often caused by insufficient understanding of bankruptcy legal system and market competition. Therefore, it is necessary to strengthen the publicity and education of enterprises and the public, improve their knowledge and understanding of the bankruptcy legal system, and thus better promote the development of the market economy.

6. Modern trend: bankruptcy legal system reform under globalization

Globalization is an important trend in the development of today's world, which profoundly affects many fields such as economy, politics and law in various countries. In the reform of bankruptcy legal system, the influence of globalization is also increasingly apparent. Globalization has brought closer economic exchanges between countries, and the differences in bankruptcy laws have brought great troubles to the economies of various countries. Therefore, the international community has been working hard to promote the international coordination and unification of bankruptcy law. This trend will help solve the problem of transnational bankruptcy, promote asset recovery and debt restructuring on a global scale, and make the bankruptcy law better serve the global economy. Table 2 is the key issues of the modern trend of bankruptcy legal reform.

Table 2: Modern trends and key issues of bankruptcy legal reform

Key issues	Describe
Impact of globalization	Globalization has an increasingly significant impact on the reform of bankruptcy legal system, including international coordination, cross-border bankruptcy response and transnational investment protection.
Bankruptcy prevention system	Improve the bankruptcy prevention system, including enterprise financial management, governance structure, risk early warning and so on, in order to reduce the bankruptcy risk of enterprises.
Debt restructuring and bankruptcy reorganization	Strengthen the system construction of debt restructuring and bankruptcy restructuring, improve its flexibility and effectiveness, and adapt to the actual needs of different regions and industries.
Transparency and enforceability of bankruptcy law	Improve the transparency and enforceability of the bankruptcy law, establish the authority and credibility of the law, attract foreign investors and promote economic development.

With the deepening of global economic ties, cross-border bankruptcy cases have become more and more frequent. These cases involve legal, cultural and political factors in many countries, and it is difficult to handle them. Therefore, how to deal with cross-border bankruptcy has become an important issue in the reform of bankruptcy legal system in various countries. Globalization provides more opportunities for transnational investment, but there are also potential risks. In order to protect the interests of domestic investors, some countries have begun to enact stricter bankruptcy laws to prevent assets from being illegally transferred and misappropriated. In addition, transnational investment also involves issues such as national security review, which also poses new challenges to the reform of bankruptcy legal system.

The key points of bankruptcy legal reform under globalization are: (1) Perfecting bankruptcy prevention system: bankruptcy prevention is one of the important contents of bankruptcy legal reform. Under the background of globalization, enterprises are facing a more complicated economic environment. Therefore, it is imperative to improve the bankruptcy prevention system. This includes measures such as strengthening enterprise financial management and improving enterprise governance structure to reduce the bankruptcy risk of enterprises. (2) Strengthen debt restructuring and bankruptcy restructuring: Debt restructuring and bankruptcy restructuring are important ways to solve the enterprise's dilemma. Under globalization, these measures should be more flexible and diverse to adapt to the actual situation of different countries and regions. For example, advanced international concepts and practices of debt restructuring and bankruptcy restructuring can be introduced to improve the efficiency and success rate of these measures. (3) Improving the transparency and enforceability of bankruptcy law: The transparency and enforceability of

bankruptcy law are important criteria for evaluating the quality of a country's bankruptcy legal system. Under the globalization, all countries should devote themselves to improving the transparency and enforceability of bankruptcy law in order to establish the authority and credibility of their own laws. In addition, it will also help to enhance the confidence of foreign investors in the domestic market, thus promoting economic development.

7. Conclusions

The reform of bankruptcy legal system in China has experienced an evolutionary process from scratch, from extensive to meticulous. Although the current bankruptcy legal system construction has achieved certain results, there are still some problems such as imperfect system and poor implementation effect. In order to better serve the development of socialist market economy, it is necessary to further promote the reform of bankruptcy legal system, strengthen the system construction and improve the implementation effectiveness. At the same time, globalization has brought new challenges and opportunities to the reform of bankruptcy legal system in various countries. In the process of dealing with these challenges and opportunities, countries should fully consider their own national conditions and formulate appropriate policies and measures to improve the overall level of bankruptcy legal system. In addition, countries should strengthen exchanges and cooperation to jointly promote the progress and development of the global bankruptcy legal system. The future trend of bankruptcy legal system reform will be more market-oriented, legalized and internationalized, and we will devote ourselves to perfecting the bankruptcy legal system, strengthening the protection of the legitimate rights and interests of debtors and creditors, and promoting the healthy and orderly development of the market economy.

This paper discusses the historical evolution and modern trend of the bankruptcy legal system reform in China, and summarizes the main achievements and shortcomings of the bankruptcy legal system reform. In the future, we should continue to promote the reform of the bankruptcy legal system, improve the bankruptcy legal system, strengthen the protection of the legitimate rights and interests of debtors and creditors, and promote the healthy development of the market economy. At the same time, it is necessary to strengthen academic research and empirical research to provide more scientific and powerful support for the bankruptcy legal system reform.

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