

Research on the Exemption System of Personal Bankruptcy Residual Debt in China from the Perspective of Socialist Culture of Rule of Law

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Abstract: With the development of commodity economy, loan consumption is becoming more and more common. Under this consumption mode, debtors are very likely to fall into the vicious circle of insolvency, which is a great obstacle to the development of individuals and society. The emergence of personal bankruptcy system has helped debtors get rid of debt difficulties and promoted a new cycle of social economy. The establishment of personal bankruptcy system is a correct way to conform to the historical trend. In the face of the vacancy of China's long-term personal bankruptcy system, this topic explores the basic way to construct the personal bankruptcy debtor's debt avoidance system in China by analyzing the obstacles to the establishment of personal bankruptcy in China, and analyzing the existing personal bankruptcy systems in the continental law system and the Anglo American law system. And based on the key historical node of the promulgation and implementation of the Personal Bankruptcy Regulations of Shenzhen Special Economic Zone, we pay attention to the real situation of the implementation of the regulations to discuss the construction of the debt avoidance system of personal bankruptcy debtors in China.

Keywords: Personal bankruptcy, Residual debt exemption, Institutional norms.

1. Individual Bankruptcy Residual Debt Exemption System

1.1. Concept of residual debt exemption system

The residual debt exemption system is the only system applicable to natural persons in the personal bankruptcy law system. It refers to the situation that the bankrupt individual still has debts that cannot be repaid after the reasonable bankruptcy procedure stipulated by the law. At this time, the remaining debts can be exempted according to the residual debt exemption system [1]. According to the law, some outstanding debts can be exempted. The exemption system includes provisions for exemption from debts that can not be paid by the honest bankrupt, as well as debts that cannot be exempted and conditions for meeting exceptions.

1.2. The value of residual debt exemption system

1.2.1. The value of safeguarding the right to personal survival and development

The humanistic care highlighted by the residual debt exemption system is mainly reflected in the protection of the basic human rights of the debtor and his family members, in which the personal rights and the right to development are the most important embodiment of the basic rights in this system. The residual debt exemption system reserves part of the debtor's property from bankruptcy liquidation, so as to maintain the basic survival of the debtor and the family members it supports and help them restart, and respect their personal interests [2].

First, as far as the right to life is concerned, the value of the residual debt exemption system lies in that the bankrupt debtor and his family members can have a basic life guarantee

after the end of the bankruptcy proceedings, so as not to be unable to continue living in despair of life.

Second, as far as the right to development is concerned, the exempt property should not only meet the basic living needs of the bankrupt debtor, but also reserve the necessary professional tools for the future development of the bankrupt, so that he can have the opportunity to obtain economic regeneration through hard work.

Third, the residual debt exemption system helps to protect the personal interests of the bankrupt and respect his personal emotional life. It is conducive to continue to maintain the emotional and spiritual life of the bankrupt debtor, greatly reducing the impact of bankruptcy on the debtor's life, which can reflect the personal bankruptcy law's concern for human nature and human rights, and highlight the progress of social civilization.

1.2.2. Value for healthy economic and social development

First, the residual debt exemption system helps maintain social stability. This system can enable the bankrupt to retain part of his property for basic life, which is not only conducive to the survival and development of himself and his family, but also conducive to maintaining social stability.

Second, the residual debt exemption system is conducive to the healthy development of the economy and society. First of all, encouraging entrepreneurship and tolerating failure are the basic concepts of the personal bankruptcy law, which, to a certain extent, is conducive to fostering entrepreneurship. The survival of the fittest is an inevitable law of market competition. Investment and risk always go hand in hand. If bankruptcy means that the bankrupt is displaced, unable to continue to live, and lose enthusiasm for life and venture investment, then the residual debt exemption system is a legal system for entrepreneurs, which will reduce the concerns of entrepreneurs and investors about failure, and help stimulate

entrepreneurial enthusiasm and cultivate entrepreneurship [3].

2. Research Status

At present, Shenzhen has implemented the Personal Bankruptcy Regulations of Shenzhen Special Economic Zone, which is a relevant measure of the personal bankruptcy system. However, there is still a lot of controversy and discussion about how to build the personal bankruptcy residual debt exemption system in China [4]. Professor Xu Yangguang elaborated the legitimacy of the residual debt exemption system in his article "On the Free Property System in Personal Bankruptcy Legislation", and this system is an indispensable key link in personal bankruptcy legislation. The residual debt exemption system has the function of protecting the debtor's right to survival and development [5]. Professor Liu Heng thought that the time for legislation of personal bankruptcy system was not yet ripe, which deviated from the basic idea of personal bankruptcy legislation. Professor Jiang Ping believes that in the main body of China's economic structure, individuals have accounted for a large proportion, and this group is facing a very serious bankruptcy problem. According to the current provisions, the civil procedure can no longer accomplish its mission well, protect the interests of creditors, and enable debtors to obtain the guarantee of regeneration. He advocates that the bankruptcy capacity of commercial natural persons should be recognized.

3. Problems in System Exploration

Combined with the analysis of the exemption property system in various pilot documents and the investigation of existing cases, the current exploration of the exemption property system in China mainly has the following problems.

First, the specific composition types and relevant expressions of exempt property vary from place to place, leading to doubts about the legal basis, fairness, objectivity and other aspects of exempt property. When dividing exempt property, most of them adopt the general and abstract expression of "property necessary for subsistence", which lacks specific guidance for practical operation. At the same time, there are different restrictions on exempt property. Some restrict some property categories, and some stipulate the upper limit standard of ceiling amount and specific items. The confusion and imperfection in the content of this system may be one of the reasons for ending the personal debt liquidation procedure in practice.

Second, in the application process of the exemption property system, the applicable standards of the courts in various regions are inconsistent, and there is no guidance and relevant experience in dealing with special types of property. Due to the lack of clear and unified applicable standards, in practice, the Shenzhen Intermediate People's Court mainly calculated the living expenses and maintenance expenses according to the minimum wage standard of the actual residence of the insured. In the living expenses, there was no distinction between housing rent and living expenses, while the Wujiang District Court made specific provisions and adjustments on living expenses and housing rent according to the actual situation.

Third, the exemption property system lacks perfect

procedural rules. Some documents do not specify the application and review procedures for exempt properties in detail, the application and formulation subjects of the list of exempt properties and the time limit requirements are different, and there is no public procedure for the list of exempt properties. This leads to different practices in different regions on whether and how exempt property should be disclosed. Many local courts did not disclose the list of the debtor's exempted property and the implementation of subsequent debt settlement for the purpose of protecting personal privacy, and some only displayed relevant information in the court's work bulletin. Not only are the ways of publicity different, but also the contents of publicity are not uniform, which has caused certain difficulties for mass supervision and empirical research.

4. Conclusions

The personal bankruptcy system is of great significance in encouraging innovation, tolerating failure, promoting the healthy development of the economy and society, and connecting with the world. In view of various influencing factors, different countries have different provisions on the bankruptcy exemption system. Therefore, when learning from the experience of other countries, China should also consider the connection and coordination with the existing legal system, and formulate the exemption property system in line with China's actual conditions. First, we should take necessity and appropriateness as the principle; Secondly, the scope of exempt property should be determined, the types of exempt property and the corresponding standards should be clarified, and the corresponding upper limit of value should be established according to the characteristics of different types of property; Finally, we should standardize the procedures, effectively link up with the existing legal system, and ensure the implementation effect of the exemption property system.

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