

Enlightenment on the Construction of a Personal Bankruptcy System with Chinese Characteristics

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Abstract: Against the backdrop of China's profound market economy transformation, excessive indebtedness and judicial enforcement dilemmas have emerged as prominent issues constraining economic development. Notably, rooted in traditional Chinese governance wisdom, folk debt resolution practices—through mechanisms such as debt relief, integrity-based penalties, and essential livelihood safeguards—have formed a uniquely Eastern approach to debt resolution. Building on the pioneering exploration of the Shenzhen Special Economic Zone's Individual Bankruptcy Regulations, the organic integration of traditional governance wisdom with modern rule-of-law principles can establish a personal bankruptcy system with Chinese characteristics that balances fairness and efficiency while protecting rights.

Keywords: Bankruptcy “customary law”; Personal bankruptcy discharge; Integrity system

Online publication: June 13, 2025

1. Necessity analysis for constructing a personal bankruptcy discharge system

1.1. Excessive indebtedness and judicial enforcement dilemmas

China's Civil Code categorizes natural persons, legal persons, and unincorporated organizations as the three major types of civil subjects. However, the current Enterprise Bankruptcy Law primarily applies to corporate legal persons. As China enters the deep-water zone of reform and opening up, the complexity and risks of individual economic activities continue to rise. The lack of a personal bankruptcy system leaves many natural persons unable to seek debt restructuring or liquidation through bankruptcy procedures, unlike enterprises. Some “honest but unfortunate” debtors lose access to refinancing and entrepreneurial opportunities, thereby stifling social investment vitality.

Creditors often rely solely on litigation to recover debts, which not only increases their legal burdens but also leads to excessive consumption and waste of judicial resources. Even when creditors prevail in court, the assets of the judgment debtor are often insufficient to fully repay the debts, resulting in frequent enforcement deadlocks.

1.2. The absence of a “bankruptcy discharge” system

Allowing personal bankruptcy entails two key rights for individuals facing financial distress: first, protection of certain assets from creditor enforcement, and second, bankruptcy discharge—also termed a “fresh start”—whereby old debts are forgiven through bankruptcy proceedings, freeing future income from creditor claims ^[1].

Under China’s current laws, creditors cannot enforce personal sanctions against debtors and must wait for debtors to acquire new assets for enforcement. Private retribution by creditors is prohibited and may constitute violations of personal rights or even criminal offenses such as unlawful detention. Additionally, per the Supreme People’s Court’s 2020 Provisions on Seizure, Detention, and Freezing of Property in Civil Enforcement, essential living necessities for debtors and dependents must be preserved.

However, regarding bankruptcy discharge, Article 233 of the Civil Procedure Law adopts a “continued enforcement” rule: “If the judgment debtor remains unable to repay the debt, they shall continue fulfilling their obligations. Creditors may request enforcement by the court upon discovering new assets of the debtor.” Thus, China lacks legislation permitting the discharge of old debts and granting debtors full control over future income, making this a focal point for exploring personal bankruptcy system construction.

2. Obstacles to constructing a bankruptcy discharge system—Lack of a market economy integrity system

Since the reform and opening-up, China has rapidly transitioned from a traditional natural/planned economy to a market economy within decades. Without the long-term accumulation of market economy “ethics”, the weak personal credit awareness remains unresolved, and the personal credit system remains underdeveloped ^[2]. Driven by market economy forces, the traditional virtue of “integrity as the foundation” in village-based societies has eroded.

The original intent of bankruptcy discharge is to protect “honest but unfortunate” debtors while ensuring fair compensation for most creditors. However, alongside “misfortune”, “integrity” is equally critical.

From a comparative perspective, most Western countries established comprehensive personal credit systems in the early 20th century, coinciding with the adoption of bankruptcy discharge, following prolonged capital accumulation, bourgeois revolutions, and Enlightenment-era ideological liberation ^[3]. In contrast, if China hastily adopts personal bankruptcy discharge without a clear timeline for establishing a personal credit system, it risks enabling opportunists and harming creditor interests. Thus, leveraging indigenous resources to dismantle barriers and construct a personal bankruptcy discharge system with Chinese characteristics is an urgent priority.

3. Examples of folk “bankruptcy” customary law

To prevent the dishonest behavior of debtors, the customary law of “bankruptcy” in the folk has been matched with a series of subsequent responsibilities to deter malicious debt evaders. On the surface, this seems to harm the interests of creditors in obtaining full repayment, but in fact, it is a certain degree of protection for the interests of creditors. Because when the debtor is unable to repay the debt, even partial repayment of the debt is better than overpressuring the debtor, which leads the creditor to choose to abandon the proper management of the remaining property, resulting in the squandering or loss of the property for other reasons, and thus the situation of “breaking the pot and smashing the bowl”, thereby completely depriving the creditor of the hope of repayment ^[4]. Below, three examples of folk bankruptcy customs are enumerated.

3.1. The “large slice of meat” ceremony

The “large slice of meat” ceremony is primarily practiced in northeastern China. When a debtor is unable to repay their debts, they inform a respected elder in the village to mediate and organize the ceremony. Apart from their residence, the debtor must sell all household assets except those essential for survival, convert the proceeds into pigs, and divide the pigs into portions corresponding to the number and claims of creditors. A respected figure then gathers the creditors, publicly declares the debtor’s inability to repay, and after the “large slice of meat” is consumed, the debts are forgiven, and promissory notes or contracts are destroyed.

3.2. The “large slice of meat” practice

In Qinghai, there exists a practice known as the “Wulan Daomo” debt repayment banquet. “Wulan” refers to interest or debt, while “Daomo” originally denotes a celebration or feast, but here it excludes celebratory connotations, combining to mean a banquet for settling debts ^[5]. If the debtor is found to have concealed or transferred assets after the bankruptcy, creditors may reclaim their claims, effectively preventing malicious debt evasion. The debtor notifies creditors orally or in writing before hosting the banquet, explains their financial situation under oath, and, if lacking credibility, invites a respected village elder to witness.

3.3. The “prosperity pledge”

In regions like Hebei and Anhui, there exists a custom called the “Prosperity Pledge as a Debt Suspension Agreement.” Typically, from the day the insolvent debtor signs the pledge, creditors return promissory notes or bills and cease calculating interest, allowing repayment only after the debtor regains prosperity. This practice, akin to debt deferral, embodies forgiveness and trust, granting time for the debtor to “rise again.” It resembles bankruptcy reorganization procedures and aligns with Article 46 of China’s current Enterprise Bankruptcy Law, which halts interest accrual upon bankruptcy application acceptance.

4. Insights from Folk “bankruptcy” customary law and the Shenzhen individual bankruptcy regulations for building a Chinese-style personal bankruptcy system

4.1. The dishonesty penalty and restraint mechanism

Folk “bankruptcy” customary law does not unconditionally tolerate debt discharge. Instead, many provisions impose restrictions on bankrupt individuals. For instance, in the debt repayment banquet, debtors must swear to the truth of their financial status, often with a respected third party vouching for its accuracy and ensuring fair procedures. Falsehoods tarnish the third party’s reputation more severely than the debtor’s, leaving lasting stains on their personal and family records. Such customs rely on social scrutiny and reputational pressure to underwrite creditor actions.

The Shenzhen Individual Bankruptcy Regulations mandate that debtors submit income, social security, and asset details when applying for bankruptcy. Article 103 allows creditors to petition courts to revoke debt discharge if fraud is detected. These provisions mirror folk customs by penalizing dishonesty and deterring malicious evasion ^[6].

4.2. The property exemption system

4.2.1. Retention of essential assets

The “large slice of meat” ceremony reserves livelihood assets; debt repayment banquets may return some property;

some regions spare debtors' homes. Such exemptions ensure basic survival, allowing societal "necrotic cells" to regenerate.

4.2.2. Creditor concessions and partial discharge

To balance interests, ceremonies like the debt repayment banquet and "large slice of meat" fairly distribute available assets after confirming the debtor's inability and lack of evasion intent, forgiving unpayable debts. This limited discharge protects creditors by preventing excessive pressure that might trigger asset mismanagement or waste, instead recycling resources efficiently.

4.2.3. The "bankruptcy discharge" concept and credit system development

Folk "bankruptcy" customary law thrives as "soft law" rooted in China's acquaintance ethics, enabling fairness, honesty, and limited liability. As market economies shift China from "relationship-based credit" to "contract-based credit", traditional credit systems struggle to adapt ^[7].

5. Conclusion

Against traditional unlimited liability models, personal bankruptcy introduces a humane, market-rational debt resolution paradigm. Unlike exhaustive creditor claims, it frees "honest but unfortunate" debtors to restart their lives while letting creditors efficiently settle claims without futile efforts ^[8].

China's folk debt practices, blending "reason, sentiment, and law", offer vital localization bridges. These rural society mechanisms buffer the transition to modern credit systems. The Shenzhen Regulations pilot provides a blueprint, curbing systemic risks while incentivizing revival, fueling innovation, and harmonizing individual and societal interests.

The reason why the folk "bankruptcy" customary law, this "soft law", can be well implemented is that it is deeply rooted in the "acquaintance" ethics of the Chinese local environment. On this basis, values such as fairness, honesty, and liability limitation can be spread and practiced. Under the tide of the market economy, the transformation and transition of the social structure have made it difficult for China's traditional credit system to adapt to the modern market economy in a short time. Against the backdrop of the traditional debt collection model adhering to the principle of unlimited liability, the "debt discharge" system has created a new debt disposal model that combines humanistic care and market rationality. Compared with the "draining the pond to catch all the fish" style of creditor's rights pursuit, debtors can be relieved from their "honest but unfortunate" predicament and start a normal life and work again; creditors can more fully and effectively realize and settle their creditor's rights under the personal bankruptcy system of debtors, without wasting too much time and energy on debtors who are actually insolvent.

Regarding the future income of debtors, the wisdom of "integration of emotion, reason, and law" contained in the folk debt handling practices in China provides an important local connection point for the modern personal bankruptcy system. These debt settlement mechanisms that originated in rural society essentially constitute a buffer zone for the transformation from the traditional acquaintance society to the modern credit society. Currently, apart from the pilot in the Shenzhen Special Economic Zone, in March 2025, Xiamen became the second city to prepare to implement the personal bankruptcy regulations. For this reason, it is possible to organize experts, scholars and representatives from different regions or with deep knowledge of different folk customs to exchange

and discuss, sharing the development, characteristics, social functions and practical application of different personal bankruptcy customs, and striving to explore the integration points between folk customs and the current relevant systems. However, it is still necessary to clearly recognize that the construction of the “debt discharge” system cannot be rushed. The long-term and fundamental solution still lies in waiting for the improvement of the credit system and the elimination of the wrong culture and concepts in the personal bankruptcy view.

Acknowledgments

In the process of writing this thesis, the author sincerely thanks all the predecessors who have written articles for providing valuable references and inspiration. The author also thanks the relatives and friends for their support and encouragement in the creation.

Disclosure statement

The author declares no conflict of interest.

References

- [1] Xu DF, 2011, On the Personal Bankruptcy Discharge System. *Peking University Law Journal*, 2011(4): 742–757.
- [2] Chen XH, 2021, The Bankruptcy Legal System in Modern China and Its Fate. *Tribune of Political Science and Law*, 2021(2): 66.
- [3] Weber M, 2004, *Confucianism and Taoism*. The Commercial Press, Beijing.
- [4] Nie J, 2020, Research on the Value of Folk Customs of Bankruptcy Repayment in the Perspective of Social Governance. *Hebei Law Science*, 2020(9): 213.
- [5] Dan LR, 2014, The Natural Person Bankruptcy System in Ancient Roman Law and the Tibetan “Potlatch” Custom—With Implications for the Construction of China’s Personal Bankruptcy System. *Chinese and Western Legal Traditions*, 2014(2): 190–211.
- [6] Li ZX, 2024, The Institutional Function of Personal Bankruptcy Discharge. *Journal of Central China Normal University (Humanities and Social Sciences Edition)*, 2024(1): 23–33.
- [7] Li PL, 2024, *The End of Villages: The Story of Yangcheng Village*. Life Bookstore Publishing Co., Ltd., Shanghai.
- [8] Wang XX, 2024, Conceptual Transformation and Institutional Support in Personal Bankruptcy Legislation. *China Journal of Applied Jurisprudence*, 2024(1): 71–81.

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