Criticism and Evaluation of the Bankruptcy Principles in the Essay of the Commercial Law

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Abstract: Sometimes, it is discernible that merchants and commercial corporations execute a kind of transactions "after the issuance of bankruptcy verdict" that leads to the damage and loss of the creditor and overmastering of his rights. For the purpose of the probable forging of the merchant and the loss of the creditors, the commercial law invalidates or deems some dealings of the bankrupt merchant - even before the issuance of bankruptcy verdict. The regulation of diplomatic transactions can be used for the other cases in bankruptcy law and execution of the verdict of foreign courts in Iran. Therefore, it can be said that studying and perusing of these kinds of dealings are very noteworthy. In this study we aim to review the law articles of Iran's commercial law in the viewpoint of bankruptcy.

Key words: Bankruptcy, Commercial Law, Criticism.

INTRODUCTION

It is possible that the merchant becomes unable in discharge of his dues and execution of his financial commitments in his dealings because of the loss or the occurrence of different events (Ramezani, 2011). In ancient times, opposing with this people has been different according to the particular laws and criteria. In addition, it has been improper, in comparison with the contemporaneous juridical regulation, even in some cases, the creditor was entitled to enslave the debtor as a slave or sell him for his due, kill him or cut some parts of his body (Allahverdian, 1993). By the growth of human societies, the dominated regulations on the privacy of the creditor and debtor changed and the support and protection of the debtor was accepted (Eskini, 2008). In the subsequent steps of this development, discharging of the rights and dues of the creditors from the properties of the debtor with good will and protection of him against the interested ones was executed as a rule. Gradually, some rules were regulated and executed about bankruptcy. According to this rule, the creditors are entitled to discharge their dues by selling of the properties of the debtor, in case of the insufficiency of the assets of the debtor for payment of the financial commitments.

According to the insolvency law, enacted in 1310, the bankrupt is the one whose properties and assets are not sufficient for the payment of his debts or the costs of hearing and judgment. According to this law, authorized in 1313, the lawsuit of the insolvent cannot be accepted from the people and the insolvency law is binding merely for the people who are not merchant (Hesam, 2010).

Insolvency is the equivalent of bankruptcy in commercial law. The only difference is that, in commercial law, the creditors of the bankrupt merchant are entitled to discharging of dues from the assets and properties of the debtors. In other case, in commercial law, all creditors of the bankrupt merchant are protected by law for receipting their dues and this is done for trust making that is essential for development of commercial activities. Meanwhile, some penalties have been ordained for fake and intentional bankruptcy but this matter has not been anticipated about insolvency (Langaroodi, 2007).

2. The Description of Bankruptcy:

Bankruptcy is the state of a merchant or commercial corporation that has become unable of disbursing of his debts and execution of his commitments. In vulgar literature, this people are called bankrupt, insolvent or destitute. In juridical writing (literature), it is the circumstance of a merchant who is disable of paying out of debts and actualizing of his commercial commitments. This “suspension of payment” (non-payment) is called “insolvency” or “bankruptcy”. In the other case, inability of the merchant in payment of his dues is called bankruptcy or suspension (Eskini, 2009).

2.1. Competent Courthouse for the Issuance of Decree:

According to the article 415, the bankruptcy of the merchant is announced by the decree of Bedayat courthouse. Bedayat courthouse is an ancient name that later changed into township courthouse and then to primary juridical tribunal. Now, it is the general competent courthouse (Zera’at, 1998).

According to the matter that the issuance of bankruptcy verdict and stoppage of payment is a legal affair, so it must be executed according to the civil investigation. The doubt in this matter is whether penal courthouse that investigates the crime of fake bankruptcy can judge before the issuance of legal verdict of stoppage of non-
payment and bankruptcy or it must stop on the investigation of the issuance of civil verdict. There are some discrepancies in this matter. Some believe that it is better that the investigator court condition it to the approval of bankruptcy in civil procedures. From the aspect of legal procedures, investigation of the stoppage of non-payment of the merchant is not necessary legally. In addition, the country has permitted penal courthouse in this matter, in persistence vote of no 1349/2/26-205(Hojate, 1384). The decree of no 3867 dated 1338/7/14 of the second branch of Supreme Court stipulates that: “it is not implicated that article 236 of general punishment law (article 670 of Islamic punishment law) believes in the prior conviction of the accused in juridical references and the issuance of the decree on the conviction of the accused in juridical courthouse is not necessary (Matin, 1961).

2.2. Assessment of the Bankruptcy Law of Iran:

As per article 141 of essay of reformation, some part of the duties of the corporation in the case of bankruptcy have been expressed in the following way:

If half of the capital of the corporation annihilates because of imposed lesions, the directorate has to invite the extraordinary general assemblies of bondholders to arbitrate about decomposition or survival of the corporation. If the aforementioned assembly doesn’t vote the decomposition of the corporation, it has to decrease the capital of the corporation into the existent sum of the capital in the meeting according to the execution of the rules of article six of this law. If the directorate does not invite the extraordinary general assemblies of the bondholders or the invited assemblies can not be constituted according to the lawful regulations, every interested one can appeal the decomposition of the corporation of the competent courthouse (Hajiha, 2009).

Although, the matter of bankruptcy has not been determined clearly, but in the article 143 of the same law, which will be mentioned in the following, bankruptcy has been stipulated.

As per article 141 of essay of reformation, some part of the duties of the corporation in the case of bankruptcy have been expressed in the following way:

If the corporation become bankrupt or it turns out that the assets of the corporation is not sufficient for the payment of dues in the moment of the decomposition of the corporation, the competent courthouse is entitled to convict each of administrators or the exec whose infringements led to the bankruptcy of the corporation or insufficiency of the assets of the corporation in a way , to the payment of the part that is not possible to be paid via the assets of the corporation individually or comprising . According to this article, complaint of the faulty ones in the bankruptcy of the corporation is linked to the disability in payment of dues and this criterion has been determined implicitly. In addition, in the effective article 412, nothing is hinted to the payment of dues. Some parts of the above article have been mentioned in below (SorudeTehrani, 2012):

Bankruptcy of the merchant or the commercial corporation is the result of the suspension of payment of his charged dues (non-payment). In the draft of the essay of reformation of the commercial law that is going to be approved, according to the article 835 of organization assessment in the name of reconstruction organization, the criteria of the continuity of the activity is according to the regulation of reconstruction. On the other hand, in the effective law, the criterion of bankruptcy is inability in payment of the dues.

Article 835 is detailed in the following (SorudeTehrani, 2012):

The merchant, who is unable of payment of his dues, but, according to the discretion of reconstruction organization, can continue his business, is subject to reconstruction. The ones who are subject to this article are entitled to submit their request of examination and consideration to the reconstruction organization during thirty days from the beginning of the date of suspension of payment of charged dues (non-payment).

One of the facilities of the new law for genuine and juridical people who are on the verge of bankruptcy, is creating of a middle phase called reconstruction for securing of the rights of the creditors and surveillance of the financial and executive activity of the corporation or the merchant for assistance and inhibition of bankruptcy is definitive. It is a significant point which has been noticed in the new law and would have economical and positive effects.
In any case, announcement or request of bankruptcy is the responsibility of the corporation or the creditors. The article 415 of the effective commercial law hints to this matter too:
The bankruptcy of the merchant can be announced in the following cases by the verdict of Bedayat courthouse:
A) According to the enouncement of the merchant
B) According to the claim of one or some creditors
C) According to the claim of the attorney general of Bedayat

Also, in the essay of reformation of the commercial law (article 837), according to the request of the epenthetic parties and people in the effective law, the council of assessment decides about the inability of merchant in payment of the dues, non-payment and its date and also incurrence of reconstruction and bankruptcy.

The note 1 of the aforesaid article about the clause B is about some cases such as the demands of the laborer, the social security, the leased, and the fiscal which are emergent of the commercial businesses that are dormant in the effective rule. In note 2 of the aforesaid article, the criteria of the approval of the inability of the merchant in payment of the dues, suspension of payment (non-payment) and its date, etc are based on the approbation of the executive bylaw of this law on the behalf of the ministries. Codification of executive bylaws is effective for clarifying and determining of the criteria of bankruptcy that was referred to by law in general.

In spite of the plans and projects that have been provided specially in the headquarters of discharging, the qualitative level of the bankruptcy law has not been developed so far. Of course, it doesn’t mean that the defined rules have lost their topicality and can be forgiven and not be referred.

As it was hinted, the specifications of the mentioned laws are in the following manner:
1. The existence of only one maxim, called bankruptcy or suspension of payment (non-payment) that means the reconstruction of the assets, selling and distribution of them among the creditors. In spite of this, it is possible that bankruptcy be ended by regulation of leniency contract.
2. Three - days delay for announcing of the suspension of payment (non-payment)of the debtor
3. Ability of nullity of the significant activities of the suspension of payment (non-payment) or suspicious terms
4. The beginning of bankruptcy from the beginning of date of the suspension of payment (non-payment)
5. Forecasting of the important punishments of the debtors
6. Considering of one special execution of commandments called discharging office of bankruptcy for big cities.

In other places, according to the general regulations, the manager of discharging and the supervisor do these acts.

As it was seen, the commercial bankruptcy can have different reasons. In the developing countries, this matter is noticed and supervised through lawful systems but in the countries with less economical and commercial stability, bankruptcy is more probable, especially if the law supports the interested ones of the bankruptcy less than usual. Therefore, it is necessary to choose a method for evaluation of the financial situation of the corporations but reliance on a model of forecasting of bankruptcy cannot lead to the correct decision of the interested parties. The reason is that none of the methods of the evaluation of the performance provide a complete model, so professional adjudication of the decision maker is needed too, in spite of an anticipated model.

3. Criticism on Bankruptcy Law:

Here, we evaluate and criticize the subject of bankruptcy at this essay, through the two parts of phasic and concrete:
1) Proper compartmentalization is significant in a logical legislation because it facilitates the teaching of law and makes appropriate the reintegration of juridical and advocatory activities practically. Unfortunately, the previously mentioned essay expresses the reconstruction and bankruptcy matters just in three general and brief chapters. This leads to two significant discrepancies in this essay. The first objection is that no duty and task has not been allocated to many important matters in this law. the examples of this matter are the ways of decadence of bankruptcy, the bankruptcy of the corporations and juridical people, restoration of reputation of the bankrupt merchant, the proceeding of the courthouse after the issuance of the verdict of bankruptcy, the competency of commercial courthouse and exact determination of the consequences of bankruptcy for the bankrupt, creditors, continuous contracts of the bankrupt.

The second objection is that the dispersion of material has made some tasks and activities unrecognizable contextually, for example, finding of all duties of the manager of discharging of dues or the consequences of bankruptcy cumulatively in law is very burdensome and laborious at the effective time!

In spite of this, the effective essay cannot be reckoned as a kind of development in comparison to the commercial law enacted in 1311, from the aspect of the general plan of law and withdraws. On the other hand, from the point of view of modern legislation, it is not comparable with the laws of other countries such as commercial law of Egypt (enacted in 1998 natal).

Legislation logic behooves that firstly, the principles of bankruptcy must be expressed generally and highhanded, then the arguments of reconstruction must be expressed in necessity because the order of
commandments are not logical before explanation of the conditions and the quality of issuance of the verdict in bankruptcy. Many debatable subjects have been brought in the effective essay in the part of reconstruction. Of course, we will say in continue that we don’t need an organization called reconstruction.

Avoidance of phasic law such as the regulation of the organization and the regulation of procedures is the task that must be noticed in concrete legislation. On the other hand, if the expression of the abovementioned rules in the collection of concrete legislation becomes necessary, it is better that the previously mentioned materials are expressed individually and without intermingling with concrete affairs.

On the other hand, the discharging office doesn’t exist all over the country in the present time, so it is better that the laws of discharging organization be brought generally with renunciation of this matter that the one who is responsible of discharging is genuine or the discharging office. In this case, the related tasks and duties can be managed when the discharging office does not do this.

The reconstruction organization is one of the modern organizations which is related to bankruptcy that has been noticed in the countries such as France and its philosophy is prohibition of the announcement of the bankruptcy of the merchant as far as possible. Therefore, it seems that the anticipation of this organization is not only necessary but also troublesome. Firstly, the above organization is the continue of the organization of preventive leniency contract which is the nascent of historical essentiality and the losses of the rules of bankruptcy in the west juridical system but the bankruptcy rules which are risen of religious jurisprudence of Imam doesn’t have the aforesaid objections. Therefore, anticipation of such organization is not necessary because we have necessary levers for restriction of the circle of bankruptcy pronouncement and its time.

Secondly: the order of the consequences of bankruptcy or similarly reconstruction in which the bankruptcy of the merchant has not been announced is incompatible with our juridical principles and religious jurisprudence of Imam and causes the breach of the merchants or creditors.

Thirdly, the aforesaid establishment – in the quality which has been anticipated in the essay of the ministry of commerce – is not only remunerative in some cases, but also leads to the accretion of bureaucracy. Therefore, anticipation of the contract in which the merchant can agree with his creditors about his payment of his dues (without ceremonies and according to the principle of the willingness of the contracts) and execute it under the juridical surveillance is much more useful, regardless to the matter that this activity has religious jurisprudence basis too.

2) It seems that the juridical principles and rule of religious jurisprudence of Imam have not been observed in determination of the subject of bankruptcy because the shortcoming of the properties of the debtor to his dues – in case of the request of the creditors- is the warrant of the announcement of bankruptcy. However, in the essay of the ministry of commerce -according to the clause 2 of article 837- only inability in payment of the dues of commercial activities is the warrant of the issuance of the verdict of bankruptcy or is subject to construction. On the other hand, contrary to the predication of article 835, the note 2 of article 837 has enacted that the criteria of approval of inability in payment of the dues are determined according to the bylaw. In this case, it seems that assigning “inability in payment” as the subject of bankruptcy is an onward step, according to the effective law, but criteria of determination of it to the bylaw is not compatible with legislative regulations, therefore the law must presents criteria for approval of inability. For example, non-payment can be a strong criterion for the approval of the inability of the merchants unless its contrary becomes evident. The point of note 1 , article 837 seems criticizable because in his points of view, demands of social security and taxes of business activity is the cause of the announcement of bankruptcy because this is contrary to the systemic and dogmatic politics of government about support of merchants and businessmen. So, in several laws, these dues have been excluded of the rival dues of the warrant of issuance of verdict of bankruptcy, for example, in the new law of Egypt.

3) According to the regulations, only the creditors can request the announcement of the bankruptcy of the person and the person, himself, cannot request his bankruptcy according to the belief of the famous jurisprudents of Imam. According to the congregation of jurisprudents of Imam, announcement or request of bankruptcy is not allowed by the judge or Ag, so the clause 1 and 3 of article 837 must be corrected advisably.

For example , the commercial law can charge the merchant or Ag in the announcement of bankruptcy , in this case , the creditors can request the bankruptcy - if they want- and in this case, Ag can prevent illegal seizure of the merchant from his properties and assets.

4) The other important point is that in the effective essay, no duty has been determined for the condition of inability of payment. The reason is that the pronouncement of absolute bankruptcy (means the person who does not have financial dues) is not possible, this person is insolvent, and essentiality of reprieving him is one of the certainties of Islamic religious jurisprudence. So article 969 seems criticizable.

5) It is better that the rules of bankruptcy include all people such as the ones who are not merchants, especially; it is advisable about juridical people who are not merchants. In the countries such as France, this type includes the rules of bankruptcy.

6) About the consequences of bankruptcy, modified matters and arguments have not been expressed in the effective essay and the related matters have been brought dispersely. In this case, article 942 of this essay which knows the inhibition of interference even about the properties that are gained in the terms of bankruptcy
is different with the famous belief in religious jurisprudence of Imam which knows bankruptcy just about the properties of the moment. On the other hand, consecration of claims against the bankrupt or consecration of claims of the bankrupt against others is not necessary in religious jurisprudence and it must be done according to the general principles.

7) About the guarantee of execution of infringement of the merchant from the inhibition of interference in the time of bankruptcy, there are many argument in religious jurisprudence and also in law which seems that article 858 has not been able to be a comprehensive abstract of the aforesaid matters, especially according to this matter that determination of guarantee of execution of “ability of annulment” is cot compatible with our juridical principles for these kinds of transactions. In the considered matters, there are three or four views about guarantee of execution of infringement from the inhibition of interference in the case that the subject of dealing is the selfsame of the properties of the bankrupt, and none of them can be justifiable with the “ability of annulment”. (Absolute annulment, comparative (relational) annulment, absence of authority, inability in referencing).

8) About the lawsuit of the subject of the articles of 863-871 of the essay, it seems that the legislatives have not paid any attention to the related matters because in jurisprudence, this matter has been evaluated with the title of “royalty and exclusive right”. One of the examples of “royalty and exclusive right” which has penetrated in our law is “option of insolvency” – which is the subject of article 380 which can be executed in all interchanging barters in which one of the exchanges be “fixed and certain substance”. Therefore, the arguments that are different with jurisprudence must be evaluated and corrected.

9) The other important point is the subject of the selected and prominent dues that articles 928, 989 of the essay molested it. The selectivity and prominence of the dues needs some reasons, so it seems that these matters are not coordinated with jurisprudence regulations because the prominent and selective dues of insolvency have been determined in jurisprudence.

According to the abovementioned points, it seems that assay for correct expurgation of that essay and attuning of it with the jurisprudential regulations and juridical principles is unavoidable and approval of it in the present matter cannot be the ablative of the problems that are related to bankruptcy.

Now, we can ask what the competent courthouse for examination of the query of the creditors against the previously mentioned branch is. Whether the bankruptcy verdict that has been issued of a courthouse has juridical consequences to the movable and immovable properties of the bankrupt outside of the political boundary of that country?

Also, if the claim of bankruptcy is expressed in the courthouses of different countries and be considered and different verdict be issued, which verdict is binding and must be done?

In the law of Iran, there are not much clear texts and letters for ablation of the problems of commercial and international bankruptcy and the juridical procedures has not tried for ablation of the said problem -according to the general principles of private international law. Here, we will argue about the views of ulema of jurisprudence to become more familiar with performable solutions in the bankruptcy system.

4. The Views of the Ulema of Jurisprudence:

The basis of this argument is bankruptcy that includes the procedures and difference of the verdicts of the courthouses. Some of the ulemas of jurisprudence have accepted the system of unification and publicity of bankruptcy (first axiom). On the contrary, some believe in the locality and multiplicity of bankruptcy (second axiom) and finally, some of the jurisprudents have proffered the intrim solution of the two-said theory (third axiom).

4.1. First Axiom – Theory of Unity and Generality of Bankruptcy:

The adherents of this theory believe that the claim of bankruptcy of the person must be evaluated and perused in the courthouse of one of countries such as the courthouse of the domicile of the bankrupt and the effect of the issued verdict be performed in the countries that the properties of the bankrupt can be found there. Nevertheless, the foreign courthouse of the execution of the previously mentioned verdict is entitled to evaluate its legality before issuance of the warrant of the execution of the verdict. This theory is based on the aim of bankruptcy and its technique is criticizable. The reason is that, here, the aim of announcement of bankruptcy which is creating equality among bankrupt and the creditor is not realizable. Attaining of the aforesaid aim is possible when all the evidences are accessible for the courthouse of investigator country but practically, it seems difficult to collect necessary evidences for investigation of the problem.

On the other hand, helping of the creditor merchant is not possible through the leniency contract because of the dispersal of the creditors unless the aforesaid contract be authorized and validated in the authentic countries.

From the aspect of the technique of bankruptcy, it can be said that this matter through which the properties of the bankrupt are accessible to the juridical reference- although the collection of this properties has independent juridical personality- can not provide the unity of bankruptcy because in this case, “the collection of the positive and negative properties of the bankrupt merchant” in the other countries must be identified like the
welfare and benevolent juridical people. Following of this theory leads to the acceptance of bankruptcy outside of the political boundaries of the country. Legal procedure of France, in the verdict dated 17th of January of 1956 of the Supreme Court, has accepted the jurisprudence person of “the properties of the bankrupt” but the law no 67-563 dated in 13th of July of 1967 doesn’t have any view in this matter. In spite of this, the courthouses follow the procedure of Supreme Court. In other cases, “the properties of the bankrupt” includes a single possession and has the right of the production of litigation and the discharging manager is charged on executing of his duties on the behalf of the defined jurisprudent person and according to article 17 of the said law (1956), the creditors have the right of mortgage to the immovable properties of the bankrupt. This right of mortgage must be registered in each kind of the property of the bankrupt separately. Of course, such right is valid against the third people.

It is considered that the theory of unity and generality of bankruptcy provides more facility for hearing of bankruptcy from the aspect of the unity of discharging manager, unity of properties and unity of binding law. In spite of this, some of the lawyers don’t accept the juridical consequences of the bankruptcy law issued in their country and know the national law more powerful and rudimental. According to this kind of thinking, the plan of European convention that is going to be prepared with the acceptance of the theory of unity and generality of bankruptcy, has been objected by the supporters of the national law and this problem has impeded the signing of the aforesaid plan. In addition, European convention of Brussels dated in 27th of September of 1968 about the competency and execution of the issued verdicts about bankruptcy is not executable.

4.2. Second Axiom: the Theory of the Locality and Multiplicity of Bankruptcy:

According to the theory of locality of bankruptcy, procedures include the property that exists in the political boundary of that country. Therefore, it is possible that different bankruptcy verdicts be issued from different countries in which the affairs of the bankrupt are going to be executed.

This theory has some advantages for the creditors because the creditor does not have to depart for outside of the country for demanding of his right. In addition, he would be immune of the danger of suspicious bargainers. Suspicious terms are the duration between the date of non-payment of dues and before the issuance of bankrupt verdict.

Commercial law, in Iran, enacted in 1311 in the article 423 has anticipated the suspicious terms (in which the dealings of the merchant annuls and are ineffective) in the following way:

“When the merchant do the following dealings after the non-payment, they would be annulled and ineffective:
1. Each kind of compromise for assistance or donation and in general, every redeployment without recompense –whether it is about movable or immovable
2. Payment of every debt, in any way
3. Each kind of dealing which stipulate the movable or immovable properties of the merchant and damage the creditors”

Article 424 of commercial law generalize the condition of the suspicious terms to the dealings which occurs before stoppage of payment (non-payment) and says: “when it is proved to the people who have been the negotiator of the merchant or their legal deputy – as the result of production of the lawsuit of a creditor or discharging manager- that the abeyant merchant has bargained before the day of his abeyance and stoppage for escaping of payment of dues or damaging of the creditors which have been compromising of a loss more than the fourth worth of the cost of the dealing, this dealing is revocable unless the negotiator accepts the difference of the cost before the issuance of the revocation verdict…..”

In addition, the last part of this article implies that producing of lawsuit of revocation of the bargain can be discussed in the courthouse during two years from the date of its occurrence. Observably, if the system of locality of bankruptcy be accepted, in the case of the bargain of people with one branch of a corporation in a different country, in the case of bankruptcy, it is possible that the said branch becomes included in the creditors group and withdraws from the effective properties of that branch which is part of the properties of the mother (original) corporation proportionally and get informed of the dealings of the suspended time.

If the bankruptcy be accepted according to the system of unity and totality, the said creditors must depart to another country and proceed for demanding of their rights. In this case, it is possible that they may be abused because of the ignorance of the regulations of the country in which the judgment of the bankruptcy is done or expiration of legal usance. On the other hand, the government does not identify the law of the other country that are in direct relation with support of the credits of commercial corporations because this is related to their public discipline directly. In other cases, when a commercial corporation becomes bankrupt, its properties and assets must be sold and the proceeds must be divided among the creditors. It is clear that assistance of judicial offices and using of governmental powers are necessary for doing this activity.
5. Acceptable System in the Law of Iran:

By studying of the doctrines of the juridical procedures in different countries, which was referred to some parts of it, it must be seen which courthouse is competent for investigation and hearing of the claims of bankruptcy? (First axiom) also how do the differences of the law of Iran in the definition of the merchant and stoppage of payment of dues (non-payment) with the other countries discussed? Finally, is it possible to solve the present problems with diplomatic transactions? (Second axiom)

5.1. First Axiom- Competent Courthouse:

The competent courthouse has not determined a country for investigation of the claim of bankruptcy of commercial law of Iran, so we will investigate the public and general regulations about the competency of the courthouses.

Article 35 appoints that: “the claim of bankruptcy of commercial law whose main capital is Iran, must be produced in the main capital of the corporation”

It seems that the last article is compatible with the theories of unity and publicity and locality of the bankruptcy regulation because both theories have accepted the competency of the court in this matter.

There are different interpretations about the main capital of the corporation: whether the main capital is the main institution or the place of the versification of the contract or the place where the bank accounts of the corporation has been opened or the place where the official and accounting institutions of the corporation have been focused there.

The main capital of the corporation is determined in the memorandums by the founders of the corporation but sometimes, they select the main capital of the corporation factitiously and the main capital has been determined in another place. In this case, it is logical that the interested ones be entitled to demand the determination of the real centre of the corporation from the competent courthouse. Article 590 of the commercial law of Iran believes that the domicile of the juridical person is the place where the office of the juridical person has been placed there.

Now, we must see which courthouse would be competent for investigation of the claim of bankruptcy if the foreign country does not have main centre in Iran? In this case, article 35 of the said law is silent, but it is possible to use article 38 for investigation of the claimed lawsuits against the branch of the foreign corporation by following of the theory of locality of the laws of bankruptcy and development of the competency of Iranian courthouses.

Article 43 has determined the competent courthouse for the merchant (genuine person) who is resident in a foreign country and says that: “when the non-payment merchant doesn’t have any domicile in Iran, the lawsuit of non-payment is produced in the courthouse that commercial institution has branch therein or agent for the dealings in that district it has had heretofore.”

Therefore, if the domicile of the merchant is outside of Iran, the claimer can submit the suit of his bankruptcy to the branch or the agent of the firm in Iran.

In addition, the courthouses can promote their competency with the detailed interpretation of the previously mentioned articles. In the other case, if the merchant or the commercial corporation has not any domicile or central place or main institute, the said courthouse can know themselves competent for investigation of the bankruptcy lawsuit and issuance of the verdict. Therefore, adoption of the said method is justifiable with the system of locality of the regulation of bankruptcy.

5.2. The Second Axiom: Difference of the Laws:

Article 412 appoints that: “the bankruptcy of the merchant or the commercial corporations can be the product of stoppage of the payment of the charged dues (non-payment).”

The definition and description of each of the aforesaid concepts is different according to the regulations of different countries.

According to article 1 of commercial law of Iran, “the merchant is the one who chooses his usual work as commercial transactions”.

According to article 2 of the aforesaid law, if one does one of the stipulated activities of the last law as his usual work, he can be reckoned as merchant. Iranian legislative knows most activities of the commercial corporation as commercial according to their shapes and conditions.

6. Conclusion:

Usually, the bankruptcy law is regulated for protection of the security of commercial dealings, proper distribution of the properties and assets of the bankrupt among the creditors and finally reforming of the condition of the bankrupt.

Realizing of the aforesaid aims is possible in the inner law but internationally, acceptance of each of theories makes some problems individually and promotion of the competency of the courthouse of Iran is logical for investigation of the bankruptcy lawsuits of merchants and is according to the common law of
international commerce but in this theory, equality of the creditors in different countries is not observed. Therefore, as it was said, nowadays, countries try to relate the emergent problems of the differences of the bankruptcy laws, especially execution of foreign verdicts in his own country.

Reformation of the commercial law of Iran and reconsideration and revising of it and providing legal texts about the competent and local courthouse for investigation of bankruptcy and discharging of the properties of the bankrupt and also regulation of leniency transaction and advisability, regulation of diplomatic transactions with negotiator countries will help to the stability and security of commercial exchanges of Iran with foreign countries.

Basically, “the right of bankruptcy” is a kind of topic in which attention to the economical infrastructure and a social case is deniable in decision making and founding of a proper system for it. The reduction and abating of the role of the board of creditors and attention to the juridical inauguration which is the significant aim of the regulation of 1967 onward of French have been noticed in this commercial essay.

Usually, the bankruptcy law is regulated for protection of the security of commercial dealings, proper distribution of the properties and assets of the bankrupt among the creditors and finally reformation of the condition of the bankrupt.

Realizing of the aforesaid aims is possible in the inner law, in the theory of unity, the properties and assets of the merchant are distributed fairly among the creditors but the interested ones, especially the minor creditors must probably fathom a long and costly way. It is obvious that this lead to improper conclusion about the absence of security and validity of the dealings and transactions because the ones who regulate transactions with the merchant, notice the properties and assets of the institute, branch or the agency of the place of regulation of the transaction and are less informant about the assets and properties of the merchant. Promotion of the competency of Iranian courts for investigation of the bankruptcy lawsuit of merchants and foreign corporations is logical and in common in the international commerce. Therefore, in conclusion, as it was said, nowadays, countries try to relate the emergent problems of the differences of the bankruptcy law, especially execution of foreign verdicts in his own country.

Reforming of the commercial law of Iran and reconsideration and revising of it and providing legal texts about the competent and local courthouse for investigation of bankruptcy and discharging of the properties of the bankrupt and also regulation of leniency transaction and advisability, regulation of diplomatic transactions with negotiator countries will help to the stability and security of commercial exchanges of Iran with foreign countries.

Unfortunately, because of the ancientness of the commercial law and expiration of at least three fourth the age, it is not exaggeration to say that the explained laws and regulations have become desuetude in juridical system of Iran. Rarely, the bankruptcy verdict is issued because of the inefficiency of these regulations and rarely, we see the discharging system of the affairs of bankruptcy. On the same basis, the legislators of the new essay were opposed heavy and important duty in this realm. In this way, we can see useful innovations in this field that one of them is separation of the phase of announcement of stoppage of the merchant (non-payment) and the phase of announcement of his bankruptcy. Although, the approval and announcement of the stoppage (non-payment) of a merchant is prior to the phase of announcement of bankruptcy, there is not any accompaniment between them. According to the article 887, the mere criteria of non-payment of an effective due and individual can approve his stoppage of payment (non-payment). Therefore, the question is what kinds of affairs may lead to the announcement of the bankruptcy of the merchant in the new essay.

Articles 884, 885 are not coordinated with each other because of the effect of the anticipated one-year usance. Secondly, it can not be observed any provision and condition in the essay that makes clear the entity and religious source whose stoppage of execution and performance of it can lead to the bankruptcy of the merchant. In addition, it is better that the condition of the subsection businesspersons become clear whether they are liable of bankruptcy or not.

It is suggested that in future, in addition of anticipation and accretion of the antitype of bereavement of the commercial law for the merchant and the bankrupt commercial corporation, it will become more homolateral with the regulations and instruction which re supervisor of the international bankruptcy. Nowadays, the tendency is that the domain of the commercial law be excluded from the limitation of professional people in the name of merchant or commercial corporation and generalizes it to the common people or non-commercial corporations. By attention to this change, the private life of the people is linked with commerce and gradually the commerce law loses its professional topicality and changed into the rights of deeds or commercial dealings.

According to these developments, the reformation (the first part, article 412 of commercial law of Iran) is suggested in the following details:

“The bankruptcy of the merchant, commercial corporation, each juridical person with special and private right, even the non-merchant or any other non-merchant whose subject of their activities are commercial, economical or yielding can be the product of incapability of payment of the charged dues.

“Note - each juridical and non-merchant person with special and private right and the non-merchant and genuine are determined according to the bylaws of justice ministry.”
Reformation and correction of the aforesaid article will coordinate the bankruptcy law of Iran – in this part-with the regulations of most countries of world – which was hinted to some parts of it. In addition, the concept of stoppage of payment of dues (non-payment) is a severe and blatant concept. Apparently, he knows the non-payment of the united dues sufficient for the realization of bankruptcy, while it is possible that the merchant or the commercial corporation has been stopped of payment of his dues temporarily and because of the accidental problems or it is possible that the said people show themselves validate apparently. For solving of this problem, in the suggested article, the inability in payment has been replaced with stoppage of payment of dues. However, the regulation of diplomatic transactions can be used for loving of the other cases of difference in bankruptcy law and execution of the verdict of foreign courts in Iran.

REFERENCES