187342 - None of the woman’s financial rights over her husband are waived as a result of his financial hardship or bankruptcy

the question

After my divorce and alimony battle with the Supreme Court of Canada, I was awarded the court costs as I won the case. But despite the court order, my ex-husband has not paid me anything and he has declared bankruptcy. My question is: is he still in debt to me before Allah, may He be glorified and exalted? Does he still owe me other money that has accumulated?.

Detailed answer

Praise be to Allah.

Firstly:

In the answer to question 127179 we stated that the fuqaha of the Muslims are unanimously agreed that being Muslim is an essential condition of the judge who judges cases among the Muslims, because serving as a judge is a kind of wilayah (authority), and there is no wilayah for a kafir over a Muslim.

We also stated that a concession is granted allowing one to refer to the court that is based on the man-made law of the land, when doing so becomes a means of getting one’s rights or warding off wrongdoing in a land that is not ruled by sharee‘ah, on condition that those who have knowledge of sharee‘ah be consulted to determine the shar‘i ruling that is applicable to a given case, and that the demand be limited only to seeking what sharee‘ah allows and trying to implement it.

But if the court that is based on kafir, man-made laws has issued a verdict in favour of one of the two disputing parties over the other, awarding him more than he is entitled to (according to sharee‘ah), it is not permissible for him to take more than he is entitled to, and he has to return the rest to the rightful owner.

If the court has awarded him his rights, then he may take it; if it has awarded him less than his due, then he has the right to ask for the rest of what he is entitled to, and it remains a debt owed by his opponent; the ruling of the court does not absolve him of that debt.

Something similar may be said concerning other rights, if you are still entitled to some rights from him, such as maintenance, clothing, money that he borrowed from you, and so on. None of these can be waived if he declares bankruptcy or if the court does not instruct him to give them; rather he still owes them to you and whenever he can afford to, he must fulfil the duties that he owes.

If the law of that land waives debts for the bankrupt person if he declares his bankruptcy, then it is a law that is contrary to sharee'ah and it does not carry any weight.

Based on that, you should examine the ruling of this Canadian court; if it is in accordance with the ruling of Allah, then it may be followed and implemented. But if it is contrary to that, it should be rejected and should not be implemented, and you should refer to the nearest Islamic centre to your place of residence in that country, to find out about that and act accordingly.

Secondly:

It is clear from the above that the money that has been awarded by the court is permissible for you to take if it is what you are entitled to as determined by the Islamic judge (qadi). If it is more than that, you do not have the right to take more than the amount determined by sharee'ah; if there is anything more than that, it is not permissible to you to take it.

But if it is less than what you are entitled to, you have the right to take it, and the rest remains a debt that he owes and it is not waived; whenever he can afford it, he should pay it off.

If he is really poor and in financial difficulty, then you have to wait until he is able to pay it off.

But he has resorted to declaring bankruptcy, as people often do in the West, this does not mean that your shar'i rights are waived for him; rather it remains a debt that he owes. If he is not really in financial difficulty, then you can try to ask for it, put pressure on him, and complain about him, until you get what you are entitled to from him.

If he really is in financial difficulty, then you have to give him time until he can afford to pay off his debt.

Please see also the answer to question no. 145437 .

And Allah knows best.