

Researching and Analyzing the Debt Exemption in the Law's of Iran, England and America

Nastaran Sharifan

Department of law, Varamin-Pishva branch, Islamic Azad University, Varamin, Pishva, Iran

Abstract In this article, attempt has been made to explain debt exemption in three legal systems of Iranian, England and America. To do so, a brief description of the historical debt exemption has been also given in the Iranian legal system. Furthermore, a point of criticism has been made about the weak point of rules governing debt exemption and finally a solution has been given to remove the weak point and to prevent the violation of the people's rights.

Keywords Debt Exemption, Law, Bankruptcy

1. Introduction

In the general form of aim presenting this article is researching of weak point and the strength of law's of debt exemption and determining the solution for this weak point toward the usual people of the Societies as general and the businessman as the Specifically. The judgment debtor is deemed to pay off his debt to the creditor in no time; otherwise, he shall be compelled by force to do so. Civil code and regulations undertake various means to guarantee retrieval of creditor's rights. For instance, incarceration and selling real and personal properties of debtor are different measures taken by court. Furthermore, debt exemptions are not subject to bidding. The Basic Principle of the Literal Meaning and Canonical Background is described in Section II. In Section III, Basics and Backgrounds of Bankruptcy Exemptions in Canon and Islamic Law are discussed. Section IV contains Debt Exemptions in Iran's Law. Bankruptcy Exemptions of non-incarcerator properties is described in Section V. Controversy of Bankruptcy Exemptions in Commercial Code, Civil Procedure Code and Execution of Civil Codes and Adaptive Law are discussed in Section VI and Section VII Respectively. Finally, the conclusions are summarized in Section VIII.

2. Literal Meaning and Canonical Background

2.1. Literal Meaning

“Those properties of debtor which following the implementations of court verdict are exempted and shall not be sold or incarcerated. Residence is subject to exemption (article 630, old trial basics and article 47, bylaw of official documents execution). (1)

2.2. Canonical Background

Islamic jurisconsults determine debt exemptions as those properties which are not demandable from the judgment debtor. An instance of such theories is *Allame Helli's* attitude in *Tabserat-o-ilmotaalemin fi ahkame din* in the second problem of legal-incompetency problems;

Compelling the judgment debtor to trade and business shall not be approved even if he is presumed to do so and the house in which he resides and the servant working for him shall not be sold for paying off his debt.

Shahid Sani in *Rozat-o- al-bahia fi sharhe allamea dameshqie* states the prerequisites of legal-incompetency and comments afterwards;

Residence, servant, and fancy dresses of debtor shall not be sold to pay off his debt. Commentator “*Rah*” declares: the judgment debtor is entitled to live in a house and wear fancy dresses which are within his class and dignity which means these properties shall not be sold. Therefore, if it serves a person right to reside in a four room house or to have two evening jackets, and on the other hand, he has two or one six room house and four evening jackets, the amount exceeding his class and dignity will be executed upon and sold so as to pay off his debts:

Providing that the debtor is deemed to need numerous houses, servants, and fancy dresses, these properties shall not be sold and this is an exceptional case. If quality or quantity of one of these items reaches beyond his class, it is

* Corresponding author:
sharifan.nastaran@hotmail.com (Nastaran Sharifan)
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incumbent upon him to sell the exceeding amount and pay off his debt.

3. Basics and Backgrounds of Bankruptcy Exemptions in Canon and Islamic Law

Majority of *Imamie* jurisconsults have considered residence, quadruped, clothes of debtor and his family, his and his family's life expenses (in a period ranging from incarceration of his properties until the last day of selling them) subject to exemption. Regarding clothes, *Imamie* jurisconsults have exempted both summer and winter clothes and even have exempted evening jackets besides casual clothes. Generally, the criterion against which they take measure is the common need of debtor to these items.

4. Debt Exemptions in Iran's Law

Debt exemptions include those properties of judgment debtor which shall not be sold or incarcerated and they are determined in law system of all countries around the world. There is a critical question as to what will happen if the judgment debtor deceases prior to the implementation of verdict? As mentioned in article 526 of civil procedure code; bankruptcy exemptions are valid as long as the judgment debtor is alive and once he deceased, they won't be in force. These exemptions are executed upon the judgment debtor that's why they shall not be executed following his death. Following the decease of the judgment debtor, in the first place, a portion of his property shall be allocated to his undertaking ceremony since from the civil code point of view; the undertaking expenses are prior to his debts. It is only afterwards that his debts will be paid off in order.

5. Bankruptcy Exemptions of Non-incarcerator Properties

Whoever goes to law seeks to retrieve his rights since generally the judgment debtor doesn't tend to be executed upon. That's why the creditor by non-peaceful means and coercion forces the debtor to pay off his debts. However, the legislator as far as possible gets along with the judgment debtor and sets out exemption for a number of his assets. These properties have been stipulated restrictively in the law. All cases in which the court verdict is put in to effect so as to retrieve the creditor's right will not include the exempted items. According to article 524 of civil procedure code, the exempted items are as follow;

- a. The common and customary homestead required by judgment debtor and his dependants.
- b. a transport vehicle required by and within the class of judgment debtor
- c. Necessary house furniture for judgment debtor and his dependants.

d. Foodstuff as much as the judgment debtor and his dependants need for a usual period of time.

e. Books and tools of scientific research for scholars

f. Tools of trade of businessmen, craftsmen, farmers, etc which are sources of livelihood for them and their dependants.

There is an issue due to the restrictive essence of bankruptcy exemptions. Generally, being restrictive means that the exempted articles be pre defined and specified. This issue is taken for granted and the concept "within the class of judgment debtor" which appears in all clauses along with exemptions is in conflict with restrictive nature of that clause. In such legislation, the range of judge's decisions is so broadened that causes controversy and as a result, contradictory verdicts are put forth. The dignity and class of judgment debtor is interpreted differently by different judges. However, in other countries such as America and England, there is not such concept. Since, for example, in their legislation, residence and motor vehicle have specified and definite value for all people so that it enables the judge to decide based on what is set by codes. Different instances of resulted problems in Iran's courts are due to not specifying the amount of bankruptcy exemptions but assigning responsibility to the judge to decide based on the class and dignity of judgment debtor. One judge is of the opinion that the debtor is entitled to use public transport instead of personal car and the other one decides that he shall have a rather expensive vehicle instead of a cheaper one. Had the freedom of choice of the judge been defined, following an appraisal, he could define a suitable vehicle deserving the debtor and larger portion of debt could be paid off.

6. Controversy of Bankruptcy Exemptions in Commercial Code, Civil Procedure Code and Execution of Civil Codes

In this section, it is aimed to investigate and compare article 444 of commercial code, article 524 of civil procedure code and finally, article 65 of execution of civil codes, all of which are in conflict in one clause and that's due to residence. Residence has not been predicted as a bankruptcy exemption in commercial code and execution of civil codes. However, civil procedure code has set out exemption for it. How shall this problem be settled down? Civil procedure code which is a recent and generic code, sets out exemption for residence and accordingly it shall not be incarcerated but article 444 of commercial code excludes residence in the inventory of exemptions. It can be concluded that commercial code is specific and old versus civil procedure code which is new and generic. Consequently, a new generic code can't abolish an old specific one. Thus, traders and businessmen consider residence as exemption. On the other hand, due to the fact that in commercial code, residence is excluded of bankruptcy exemptions whereas civil procedure code is applied for

businessmen, residence shall not be subject to exemption and it could be incarcerated.

→ Bankruptcy exemptions in official documents code: (refer to article 69 of civil code, bylaw of execution of official documents passed in 1976)

→ High juridical council has set telephone and motor vehicle under the bankruptcy exemptions. In 1980 this issue raised, telephone and motor vehicle were excluded of bankruptcy exemptions and it was passed that the judgment debtor is entitled to reside in a suitable house within his class and his own house be incarcerated. Whether a residence is suitable for him or not depends on the opinion of registration centers' heads and registration supervisory board of province is responsible for revising that. In 1997, it was passed that half of a suitable residence can be incarcerated for women's dower.

7. Adaptive Law

This section scrutinizes the bankruptcy exemptions' codes in other countries and comparing with those of Iran, seeks to determine the differences, similarities, weak points and strong points.

7.1. Bankruptcy Exemption in United States

In the United States, a list of federal exemptions is set out in the federal Bankruptcy Code. (2) Individual states, however, can "opt out" and preclude their residents from using the federal exemptions. Bankrupt individuals can elect to apply either state or federal exemptions if their state of residence has not opted out of the federal regime.

Federal exemptions include:

Homestead

Debtors tend to apply the homestead exemption to the interest they have in their houses. Homestead exemptions can also be applied to condos, and mobile homes. If the debtor has equity in the property, the homestead exemption prevents the trustee from trying to use any anticipated proceeds from the sale of the property to pay creditors. The federal and state homestead exemption amounts vary. Check the homestead exemption within the state where the bankruptcy case is filed to make sure the exemption is being used in the most advantageous way.

Household Goods

Debtors are allowed to keep their furniture. As of 2010, the federal law states that \$11,525 worth of household goods is exempt. Household goods include furniture, clothes, books, and appliances, among other things. Items within the home which are used for personal use by the debtor and other family members are usually applicable under this exemption. The state exemption limit may be quite lower than the federal exemption limit because the average income and cost of living within each state vary. Some states can have a lower exemption limit, and it is suitable for most of its citizens.

A motor vehicle to a maximum of \$2,775;

The bankruptcy court knows how important a vehicle is as a means of transportation for most people. A motor vehicle exemption allows each

Alimony, child support payments;

Pensions and retirement benefits;

Health aids;

Jewelry not exceeding \$1,150;

Lost earnings payments;

Personal injury compensation payments to a maximum of \$17,425;

Wrongful death payments;

Crime victims' compensation payments;

Public assistance;

Social security;

Unemployment compensation;

Veterans' benefits;

Trade tools – books and equipment to a maximum value of \$1,750;

\$925 of any property (if the debtor does not use all of the homestead exemption this can increase to \$9,650); and various other exemptions relating to insurance policies. (3)

Each state has its own exemptions, some of which are more generous than those of others or the federal exemptions. Six states, (4) notably Florida and Texas, have an unlimited homestead exemption that allows bankrupt debtors to shelter the total value of their homes from creditors.

Other states have more limited homestead exemptions, although some are quite generous – indeed, for the most part, far more generous than the equity exemptions found in Canada.

The U.S. regime, which is a patchwork of exemptions that vary widely from state to state, has been criticized on a number of fronts. Debtors are subject to vastly different treatment depending on their state of residence. These wide variations increase opportunities for forum shopping and pre-bankruptcy asset conversion; in the opinion of many, they challenge the integrity of the bankruptcy system. Consequently, there have been calls to eliminate the ability of states to opt out of the federal exemptions regime, thereby ensuring that debtors (and hence creditors) throughout the United States will be subject to the same treatment when a personal bankruptcy occurs.

7.2. Bankruptcy Exemptions in U.K

Exemptions were established by common law centuries ago in England. They were granted to a debtor by the grace and favor of the state, on the grounds of public policy and for generous and humane purposes. A debtor was allowed to keep his clothing, bedding, and tools of his trade, free of creditor claims, up to a certain dollar value. The thinking was that this was better for society than to allow creditors to strip debtors bare of all earthly essentials and dignity

B. England and Wales

England has two broad categories of exemptions, one relating to property required to earn a living and the other

relating to household possessions necessary to meet basic needs.

These are:

Tools, books, vehicles and other items of equipment necessary for the bankrupt's personal use in his or her employment, business or vocation, and clothing, bedding, furniture, household equipment and provisions necessary for satisfying the basic domestic needs of the bankrupt and his or her family. (5)

This regime, which contains no limits on the value of exempt property, is highly flexible. The trustee in bankruptcy establishes the value of the bankrupt's exempt property based on individual and family situations. (6)

8. Conclusions

As explained above, there are slight discrepancies between the codes of Iran, England, and America. Generally, in Iran's law, the bankruptcy exemptions are stipulated in some general clauses whereas other countries such as England and America have stipulated them restrictively not generally. One of the advantages of this kind of legislation is restricting the options of judge. For instance, in Iran's law, pension, medicinal needs for special diseases, etc have been summarized into "common necessary needs of judgment debtor" and it is upon the judge to decide what is necessary and common for the debtor. That much freedom for judge is not advisable since judge is also to err as other humans do. It is further suggested that provisions of bankruptcy exemptions be restrictively not generally defined in the law so as to avoid contradictory and different verdicts. Another problem is due to residence. A reasonable house within the class of the judgment debtor can be problem making if such an accommodation costs 100 currency units but his debt is 60 currency units. If the judgment debtor doesn't sell his house to buy a smaller one or rent a place so as to pay off his debt, the creditor will be deprived of his right, won't he? Especially, if those 60 units of currency be all the creditors owned and losing that will get him into trouble. It is advisable to define a reasonable amount of money for buying or renting a suitable house for the judgment debtor than defining a suitable house for him. Or relative to the total debt of the judgment debtor, a portion is defined for buying or mortgaging a house. However, it needs complex and correct computations for each amount of debt and it shall be stipulate clearly in the law so that neither the debtor nor the creditor be deprived of their rights.

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