43476 - He is having a problem with his second wife and he fears for his daughter

the question

I would appreciate if you could guide me and let me know about below mentioned queries as per Islamic Ruling and Values, those are as follows: A. If a wife (my 2nd wife) fabricate false documents and files cases one after an other about dowry, maintenance etc and abuse her husband behind his back while living with her mother. What are the Islamic ruling on this. (I have tried to reconcile with her but no avail and this will be her 3rd divorce but she doesn't feel ashamed. She just want money.) B. She file a divorce case in the court. Should it be considered a Khula. if not then why not. C. Who should have the custody of a child. I don't want to say bad things about her just describing few facts. As her life style is not caring and good enough to raise a child. Her formal and informal education is low level. So in future her style will influence the child's characters. On top of that by phone she told me that she will make my child a bad person. To save that child who should have the custody. Even-though, if she works and makes some money but money is not a life, life means values, such as living with high social, moral and religious values. From above mentioned values side, she is not very strong. D. When she works, her mother can take care of our child. Her mother's is an illiterate person and she, (I overheard) her mother use bad words for our child. How can she educate her etc. As per Islamic law, is it right to let some else in a family to take care of the child instead of her father. Who is more educated and have high standard for religious and other values. More respectable in the society. I believe I can make my child a good citizen with high social, moral and religious values.

Detailed answer

Praise be to Allah.

The basic principle concerning divorce is that it is makrooh (disliked), as is indicated by the verse

in which Allah says (interpretation of the meaning):

“Those who take an oath not to have sexual relation with their wives must wait for four months, then if they return (change their idea in this period), verily, Allah is Oft-Forgiving, Most Merciful.

227. And if they decide upon divorce, then Allah is All-Hearer, All-Knower”

[al-Baqarah 2:226]

In relation to changing their minds He said “Oft-Forgiving, Most Merciful” and in relation to divorce He said “All-Hearer, All-Knower”. This indicates a kind of warning, which in turn indicates that divorce is disliked by Allah (makrooh).

But there may be some cases in which divorce is inevitable, and even essential. In the case which you mention, divorce may be the appropriate solution, because it is unthinkable that a wife would treat her husband in such a bad way as you describe in your question. A woman could say or do something to offend her husband, but to be constantly ungrateful is very strange.

But before divorce, you have to try to reconcile first, and put up with the woman. If she has some bad characteristics, you will also find some good qualities, so you can put up with the bad characteristics because of the good ones.

See question no. 20044 .

If you can get some relatives involved to solve the problem, then do so, as an act of mercy to this poor girl who will suffer – no matter what the situation – from the bitterness of separation and the break-up of the family.

If divorce is the final solution, and you have exhausted all possible solutions, then pray istikhaarah (asking for guidance) and consult others, and put your trust in Allah.

With regard to the matters that she has referred to the court, this may be a request to the qaadi (judge) to compel the husband to divorce her by talaaq or it may be khula’, depending on the situation. If she is going to give the husband some money or return the mahr to him in return for

getting a divorce, then this is khula'; if she is not going to pay anything then this is talaaq, if it takes place.

With regard to custody, the basic principle is that the mother has more right to custody, so long as there is no impediment to that. If there is any impediment, such as the mother marrying someone who is a stranger (non-mahram) to the child, or the mother's character or attitude is bad, then custody passes to the mother's mother according to the majority. If the mother's mother is the same (i.e., of bad character etc) then custody passes to the father. Shaykh al-Islam Ibn Taymiyah was of the view that in the case of a dispute between the mother's mother and the father, custody should be given to the father, because he is closer to the child. This view was also favoured by Shaykh Ibn 'Uthaymeen in his commentary on the chapter on custody in Zaad al-Mustaqni'. We have already discussed this in detail in question no. 5234, 9463, 8189, and 21516.

And Allah knows best.