93208 - She is using man-made laws to prevent her husband from marrying again

the question

A Muslim woman who wears hejab was divorced by her husband in Switzerland. Right after this she asked a Swiss court for separation. She takes more than half of the husband’s monthly salary. This woman does not work and she has the custody of her 4 years old daughter. According to Swiss law, this is not considered divorce. As for them divorce does not take place unless both husband and wife agree to it, or after two years of separation. More than one year passed and this woman takes more than her right, and does not agree to divorce in order to prevent her husband (who divorced her) from marrying another.
1- Is it correct to turn to the law of Switzerland instead of the Islamic law, and justify this by saying that we should abide by the law of where we live?
2- The father spends on his daughter, has he to spend on his ex-wife, knowing that she finished her ‘iddah more than one year ago? When should he stop spending on her?
3- What is the ruling on this woman who used the law of Switzerland to stop her husband from marrying another, although he divorced her more than one year ago?.

Detailed answer

Praise be to Allah.

It is not permissible to refer for judgment to anything but the sharee’ah of Allaah, because Allaah says (interpretation of the meaning):

“But no, by your Lord, they can have no Faith, until they make you (O Muhammad صلى الله عليه وسلم) judge in all disputes between them, and find in themselves no resistance against your decisions, and accept (them) with full submission”

[al-Nisa’ 4:65].

Ibn Katheer (may Allaah have mercy on him) said: Allaah swears by His Divine Self that no one truly believes unless he makes the Messenger (peace and blessings of Allaah be upon him) judge in all his affairs. What he rules is the truth which must be followed both inwardly and outwardly. Hence He says “and find in themselves no resistance against your decisions, and accept (them) with full submission” i.e., if they refer to you for judgement and obey you inwardly so that they find in themselves no resistance against your ruling, and they follow it outwardly and inwardly, then submit to that fully with no objection, resistance or argument, as it says in the hadeeth: “By the One in Whose hand is my soul, none of you (truly) believes until his desire is in accordance with what I have brought.” End quote.

Tafseer Ibn Katheer (1/532).

Ibn ‘Uthaymeen (may Allaah have mercy on him) said: This oath begins with the words Fa laa (But no) which is used for emphasis, then Allaah swears by the most specific type of Lordship – which is the Lordship of Allaah to His Messenger – that the one who does not do the following things has no faith:

1 – Referring for judgement to the Messenger (peace and blessings of Allaah be upon him), because He says “until they make you (O Muhammad صلى الله عليه وسلم) judge”. The one who seeks judgement from anyone other than Allaah and His Messenger is not a believer, and is either a kaafir who is beyond the pale of Islam or a kaafir in the sense of lesser kufr.

2 – Contentment with and acceptance of his ruling, so that they do not find in themselves any resistance against what he has decreed, rather they accept it and are content with what the Prophet (peace and blessings of Allaah be upon him) has decreed.

3 – That they accept with full submission, i.e., submit totally.

Beware, O Muslim, of cancelling out your faith. End quote.

See: Sharh al-Waasitiyyah by Ibn ‘Uthaymeen, p. 181/182.

What this sister – in whom it seems that there is a great deal of good, based on what it says about

her in the question, such as that she wears hijab – should do is refer for judgement to someone who can judge between her and her ex-husband on the basis of the laws of Allaah. We have described how that may be done in the country in which they live in the answer to question no. 4044; there is sufficient information there, in sha Allaah.

We advise her to try again to set things straight and try to re-marry her husband, as that is in the interests of their daughter.

As for the answer to the questions that are mentioned:

1.

Divorce occurs when the husband utters the word of divorce and it does not need a ruling from a shar'i judge let alone a ruling from one who does not rule in accordance with that which Allaah has revealed.

2.

It is not permissible to turn to man-made laws in order to prevent a man from doing that which Allaah has permitted; that is a transgression against him and is wronging him. This sister should fear Allaah and remember that wrongdoing will be darkness on the Day of Resurrection.

3.

After the end of the 'iddah, the divorced woman is not entitled to any maintenance or accommodation. Ibn Qudaamah said in al-Mughni (7/145): Accommodation and maintenance are only due to a woman from her husband in the case of a revocable divorce. End quote.

4.

If it is known that she is not entitled to any maintenance or accommodation, then what she is taking from the man on the orders of the court, which is not given by him willingly, is haraam, because Allaah says (interpretation of the meaning):

“O you who believe! Eat not up your property among yourselves unjustly except it be a trade amongst you, by mutual consent”

[al-Nisa’ 4:29].

And because the Prophet (peace and blessings of Allaah be upon him) said: “Every Muslim is sacred to his fellow-Muslim, his blood, his wealth and his honour.” Narrated by Muslim.

Based on that, she should return it to him or ask him to let her off.

5.

Custody of the daughter before she reaches the age of seven years is her mother’s right, so long as she is Muslim and trustworthy, and has not remarried. Imam Ibn Qudaamah (may Allaah have mercy on him) said in al-Mughni (8/190): If the couple separate, and they have a child who is still a minor or disabled, his mother has the most right to custody of him if she fulfils all the conditions, whether the child is male or female. This is the view of Yahya al-Ansaari, al-Zuhri, al-Thawri, Maalik, al-Shaafa’i, Abu Thawr, Ishaaq and ashaab al-ra’y, and we do not know of anyone who disagreed with them. End quote.

6.

Maintenance of the daughter is a shar’i obligation on her father, even if she is in her mother’s custody, because of the report narrated by al-Bukhaari and Muslim from ‘Aa’ishah, that Hind bint ‘Utbah said: O Messenger of Allaah, Abu Sufyaan is a miserly man who does not give me enough for myself and my child, except for that which I take without his knowledge. He said: “Take that which will suffice for you and your child, on a reasonable basis.” This indicates that the maintenance of the children is their father’s duty, and that the maintenance should be based on what is sufficient, and she has no right to take more than what is sufficient.

And Allaah knows best.