112013 - Father’s right to see and visit his son if the child is in the custody of his divorced mother

the question

My husband left me and our baby son because he said he came to this country to work not for family life.(basically, ive used u and have no need for u anymore). for 4 yrs he never once tried to see his son, at one point my son had a meningitis scare and i called him, he said he was coming but never did. i forced him to pay for our son through the csa as he was refusing too. in the 5th year, he divorced me ,went back home and got married to his first cousin.he is now back in the uk and wife is still back home. he got hold of my number about 6months ago and started harrassing me and talking to me like he was still my husband, he started following me around, saying he still wanted me back etc! i could not believe,that this man i thought was a good muslim was talking like this, he left us, he divorced me ,he got married again and yet somehow he said it was all my fault (even his 2nd marriage is my fault apparently), anyway,cut a long story short, because i spurned his advances and contacted the police to stop him,he is now dragging me through the courts for access to our son,out of feeling rejected. i know he is not interested in our son and is only doing this cos i spurned his advances, im really scared about going court ,as i will have to pay etc and i have a solicitor but i am so frightened about all this. my question is,wat does islam say about what he is doing,am i wrong in stopping him seeing his son,even though he beat the hell out his baby son and me,when we were married and for 5yrs (my son is 5yrs now marshallah) has shown no interest in his son? i dont know what to do,i dont want to do anything wrong islamically but want to do what is right for my son at the same time ,which is, no contact with his father ,as he is violent and has shown no interset in him ever and now is using him as a weapon to get to me. even though he has done all this,do i islamically have a right to try and stop him getting access,he is not morally or islamically even a good role model for his son.

Detailed answer

Praise be to Allah.

Undoubtedly what you mention about this man indicates that he does not represent a good example to his son of good character and religious commitment, and he is not qualified to have custody of the child and raise him. But this does not mean that he does not have the right to see him and check on him from time to time. Similarly, the son's duty to honour him and treat him kindly is not waived.

The fact that the father is falling short and negligent, or he is an unjust wrongdoer, does not mean that the son should forsake him and ignore him, or that we should encourage him to do that, because the father's rights are great, as are the mother's rights.

The fuqaha' stated that it is the father's right to see his child if the child is in the mother's custody, and that he should not be prevented from visiting him. But they differed as to the time frame within which he should visit him. The Hanbalis referred the matter to custom (al-'urf), such as visiting him once a week. The fuqaha' pointed out that after divorce, the husband becomes a stranger or non-mahram to his ex-wife, so attention must be paid to that. If he visits the child in his mother's house, he should not stay for too long, and it is essential that he should not be alone with his ex-wife. She may prevent him from entering her house, but she should bring the child out to see him.

If the child falls sick, the father should not be prevented from visiting him. Thus each person should be given their due rights.

Al-Mawsoo'ah al-Fiqhiyyah (17/317); al-Mughni (8/193).

You should try to understand this matter, and not strive to separate the boy from his father, or fill the boy with resentment and hatred. In addition to being haraam, this is also harmful to the child's psychology, character and behaviour.

If you are afraid that the child may be influenced by some of his father's bad attitudes, this may be remedied by raising him well and directing him properly, without speaking ill of the father or distorting his image in the child's mind.

The point is that it is not permissible for you to deprive the father of seeing his son and vice versa, rather you must allow him to see him and visit him, either in your house, if you have a mahram with whom you will feel safe if he enters your house, or outside the house. You can agree on a suitable time frame, such as every week, every two weeks and so on. You should also strive to raise your child well and bring him up with good morals, so that he will have a good attitude towards his father and others. Avoid turning the child against his father or making him hate him, because that is haraam, as it is a call to sever ties of kinship. Allaah says (interpretation of the meaning):

“Would you then, if you were given the authority, do mischief in the land, and sever your ties of kinship?

23. Such are they whom Allaah has cursed, so that He has made them deaf and blinded their sight”

[Muhammad 47:22, 23]

And the Prophet (peace and blessings of Allaah be upon him) said: “No one who severs ties of kinship will enter Paradise.” Narrated by Muslim (4637).

It says in Fataawa al-Lajnah al-Daa’imah (21/205):

If the wife leaves the marital home or the couple becomes separated by divorce, for example, and they have a child or children, it is not permissible according to Islamic sharee’ah for one of them to prevent the other from seeing or visiting their child. If the child is in the mother’s custody, for example, it is not permissible for her to prevent his father from seeing him and visiting him, because Allaah has enjoined upholding ties of kinship, as He says (interpretation of the meaning):

“Worship Allaah and join none with Him (in worship); and do good to parents, kinsfolk…”

[al-Nisa’ 4:36]

According to the hadeeth: “If anyone separates a mother and her child, Allaah will separate him

and his loved ones on the Day of Resurrection.”

End quote. The hadeeth was narrated by al-Tirmidhi (1204) and classed as saheeh by al-Albaani in Saheeh al-Tirmidhi.

Now that you know the shar’i ruling on this issue, beware of resorting to the courts of man-made law to deny the father his right to see and visit his son, although you do have the right to go to court to prevent him from wronging and harming you, or taking your son away from you.

We ask Allaah to help you to raise him well and to help you to do which is good, right and proper.

And Allaah knows best.