175467 - Ruling on signing user agreements for software and websites in which reference is made to man-made courts in the event of a dispute

the question

When we register for Facebook, the text of the user agreement includes this clause:
Disputes:
You will resolve any claim, cause of action or dispute (claim) you have with us arising out of or relating to this Statement or Facebook exclusively in the U.S. District Court for the Northern District of California or a state court located in Santa Clara County, and you agree to submit to the personal jurisdiction of such courts for the purpose of litigating all such claims. The laws of the State of California will govern this Statement, as well as any claim that might arise between you and us, without regard to conflict of law provisions.
Undoubtedly this is an agreement to go and accept the judicial authority of the state court located in Santa Clara County and refer all cases of dispute to it. Undoubtedly accepting that is accepting and approving something other than the ruling of Allah. Can registering for this kind of website be permissible?

Detailed answer

Praise be to Allah.

Allah, may He be exalted, has made it obligatory for the ruler to rule in accordance with His laws. He, may He be exalted, says (interpretation of the meaning):

“So judge between them by what Allah has revealed, and follow not their vain desires, diverging away from the truth that has come to you. To each among you, We have prescribed a law and a clear way. If Allah willed, He would have made you one nation, but that (He) may test you in what He has given you; so strive as in a race in good deeds. The return of you (all) is to Allah; then He will inform you about that in which you used to differ.

And so judge (you O Muhammad (blessings and peace of Allah be upon him)) between them by what Allah has revealed and follow not their vain desires, but beware of them lest they turn you (O Muhammad (blessings and peace of Allah be upon him)) far away from some of that which Allah has sent down to you. And if they turn away, then know that Allah's Will is to punish them for some sins of theirs. And truly, most of men are Fasiqoon (rebellious and disobedient to Allah)"

[al-Maa'idah 5:48-49].

Then Allah describes the rulings that are not in accordance with what He, may He be exalted, has prescribed as being ignorant or belonging to the Days of Ignorance, as He says (interpretation of the meaning):

"Do they then seek the judgement of (the Days of) Ignorance? And who is better in judgement than Allah for a people who have firm Faith"

[al-Maa'idah 5:50].

This highlights that the one who refers for judgement to something other than sharee'ah is ignorant and cannot distinguish between evil and good, because he does not believe with certainty that the ruling of Allah is true and just.

More serious than that is the fact that Islam makes a connection between faith and referring to Him for judgement. Allah, may He be exalted, says (interpretation of the meaning):

"But no, by your Lord, they can have no Faith, until they make you (O Muhammad (blessings and peace of Allah be upon him)) judge in all disputes between them, and find in themselves no resistance against your decisions, and accept (them) with full submission"

[an-Nisa' 4:65].

Shaykh as-Sa'di (may Allah have mercy on him) said:

Referring to the rule of sharia reflects the soundness of one's commitment to Islam; having no reservations about it reflects the soundness of one's faith; and acceptance of it reflects the

soundness of one’s ihsân. Whoever attains soundness in all these matters, his commitment to religion is sound in all aspects; whoever turns away from this ruling, not accepting it, is a disbeliever; and whoever turns away even though he accepts it in principle, comes under the same rulings as other sinners like him.

End quote from Tafseer as-Sa‘di (p. 184)

There are many verses that emphasise the necessity of referring for judgement to Allah, may He be exalted, and His laws, and describe those who refer for judgement to anything other than His rulings as possessing characteristics that put them beyond the pale of faith.

All of this refers to one who is not forced and compelled, and one for whom it is not possible to refer to shar‘i courts. In such cases it may be said that it is permissible for them to refer to something other than the rulings of Allah’s law, subject to certain conditions:

1.

He believes in his heart that the ruling of Allah is better and more appropriate than the rule of anyone else, and his heart should be at peace with the laws and rulings of Allah, may He be exalted. Allah, may He be exalted, says (interpretation of the meaning):

“Whoever disbelieved in Allah after his belief, except him who is forced thereto and whose heart is at rest with Faith but such as open their breasts to disbelief, on them is wrath from Allah, and theirs will be a great torment”

[an-Nahl 16:106].

2.

He cannot get his rights except in this manner, and it is not possible for him to refer for judgement to Islamic law because there are no Islamic courts in the first place.

3.

If a ruling in passed in his favour, he should not regard it as permissible to take anything except what is permissible for him according to Islamic law.

Shaykh ‘Abd al-‘Azeez ibn Baaz (may Allah have mercy on him) said:

From ‘Abd al-‘Azeez ibn ‘Abdullah ibn Baaz to our respected brother… I refer to your question in which you asked about the ruling on one who refers judgement to those who rule according to man-made laws, if the courts in his country all rule according to man-made laws, and he cannot get his rights except by referring to them for judgement – is he a disbeliever?

I advise you that if he is compelled to do that, he is not a disbeliever, but he does not have the right to refer to them for judgement except in cases of necessity, if it is not possible for him to get his rights except by that means. And he does not have the right to take anything other than what is permitted by sharee‘ah.

End quote from Fataawa ash-Shaykh Ibn Baaz (23/214)

The scholars of the Standing Committee were asked:

What is the ruling on referring for judgement to the American judiciary system with regard to disputes between Muslims, matters of divorce, business matters and other issues?

They replied:

It is not permissible for the Muslim to refer for judgement to courts based on man-made laws except in cases of necessity, if there are no Islamic courts. If a judgement is passed awarding him something to which he is not entitled (according to Islamic laws), it is not permissible for him to take it.

Shaykh ‘Abd al-‘Azeez ibn Baaz, Shaykh ‘Abd al-‘Azeez Aal ash-Shaykh, Shaykh Saalih al-Fawzaan, Shaykh Bakr Abu Zayd

End quote from Fataawa al-Lajnah ad-Daa’imah (23/502)

However, subscribing to Facebook and other important websites, and email services, has become a necessity of the modern age. If anyone finds a website that will meet his needs without having this condition, then he must use that website. But if his need can only be met by this website or service, then there is nothing wrong with him signing this agreement, in sha Allah, which includes the obligation to refer for judgement to courts based on man-made laws.

It should be noted that this clause exists in many programs that we use, such as Windows and Word. It should also be noted that contracts of sale and purchase, import and export, travel, and admission to other countries for medical treatment, da‘wah and visits, all can only be done after signing agreements which include a clause requiring referral for judgement to courts based on man-made laws in the event of breaching the conditions or of dispute. Saying that it is prohibited and not allowed puts a great deal of pressure on people and causes a great deal of hardship, but Allah has not laid upon us in religion any hardship.

We all know that at present there is no worldwide Islamic court to which the Muslim could refer in the event of disputes with regard to such global contracts. The one who signs this agreement is not abandoning referral for judgement to the laws of Allah, may He be exalted, because those laws are not being applied in most Muslim countries at all, so how about in non-Muslim countries? If it is permissible for the Muslim to refer for judgement to those courts in order to obtain his rights or ward off harm from himself, then it is more appropriate and will make things easier for him to say that it is permissible for him to sign this agreement without intending to approve of that clause and disapproving of it. The believer’s heart should be at ease with faith and he should intend in his heart not to agree with invalid clauses (from an Islamic perspective) in their contracts. We hope, after that, that this matter will be permissible.

And Allah knows best.