314574 - The right to custody when the spouses are still married; does the mother have the right to travel with her children?

the question

I am married and living in Saudi, but my husband wants to send me to my family in Palestine, ostensibly for the purpose of a family visit. This is because of some problems between my husband's family and my family, but his intention is to send me for the purpose of putting pressure on my family to fulfil his demands and also to keep me away from my children, as a means of putting further pressure on me and on my family too. He has clearly admitted this. What is the solution to this matter? Is it permissible for me to demand that my children should come with me, seeking the help of the police, before I travel and leave Saudi, because of what he has admitted? As I mentioned at the beginning, I am going to travel to my family, and I am married and am not divorced.

Detailed answer

Praise be to Allah.

Firstly:

Custody means taking care of the child, raising him and looking after his affairs. When the parents are still married, custody belongs to both of them. Ad-Dardir said in *ash-Sharh al-Kabir* (2/526): If the husband is still alive and she is still married to him, then it (custody) belongs to both of them. End quote.

In *al-Mawsu'ah al-Fiqhiyyah* (17/301), it says: The custody of the child belongs to both parents if they are still married. End quote.

In that case, the father does not have the right to separate the children from their mother's care for a long time that is longer than the period for which a mother may customarily be away from

her children without any legitimate shar‘i reason for doing that.

Secondly:

The place of custody is the house in which the father of the child in question lives.

The wife (the mother) does not have the right to travel with her children, even if they are small, except with the permission of their father, whether she is travelling to move away permanently, or for some temporary reason such as visiting and the like.

It says *al-Mawsu‘ah al-Fiqhiyyah* (17/308): The place of custody is the house where the father of the child in question lives; this applies if one who is taking care of him is his mother and is still married to his father, or is observing ‘iddah following a revocable or irrevocable divorce. That is because the wife is obliged to follow her husband and to live with him wherever he lives, and the woman who is observing ‘iddah must remain in the marital home until the end of her ‘iddah, whether she has a child or not, because Allah, may He be exalted, says (interpretation of the meaning):

{Do not turn them out of their [husbands'] houses, nor should they [themselves] leave [during that period] unless they are committing a clear immorality} [at-Talaq 65:1].

The husband does not have the right to turn his wife out of the marital home without a legitimate shar‘i reason that makes it permissible for him to do that, because shelter is one of the rights that the wife has over her husband, and he has no right to withhold that from her or to cause her trouble for no legitimate reason. She also has no right to leave the marital home without the permission of her husband.

Allah, may He be exalted, says (interpretation of the meaning):

{O Prophet, when you [Muslims] divorce women, divorce them for [the commencement of] their waiting period and keep count of the waiting period, and fear Allah, your Lord. Do not turn them out of their [husbands'] houses, nor should they [themselves] leave [during that period] unless they are committing a clear immorality. And those are the limits [set by] Allah. And whoever

transgresses the limits of Allah has certainly wronged himself. You know not; perhaps Allah will bring about after that a [different] matter} [at-Talaq 65:1].

If in the case of a woman who is revocably divorced it is haram for the husband to turn her out of his house, and it is haram for her to leave the marital home for no legitimate shar'i reason that would make it permissible for her to do that, then it is more appropriate that this should apply in the case of a wife who is still married (and is not divorced). This is quite clear, in sha Allah. The husband has no right to prevent his wife from living in her house that he provided for her when there is no good reason for doing that, and she also has no right to leave him and leave his house.

Based on that, it is forbidden for the husband to turn her out of her house or to send her to her family with the aim of causing harm to her. Whoever causes harm to someone else, Allah will cause harm to him.

He has no right to use his wife to put pressure on her family concerning a problem between him and them, or between the two families. This is furthest removed from kind treatment and noble character.

Thirdly:

If the children are small and it becomes clear that the husband wants to harm his wife by insisting that she travel without them, especially if she does not want to travel in the first place, then she may try to get some trustworthy and righteous people among their acquaintances to mediate, and she may try to talk to her husband, advising him to keep his household, his wife and his children away from getting involved in disputes as much as possible, and he should be above using his wife as a means to put pressure on her family or holding her accountable for the mistakes of others or the mistakes of her family, because Allah, may He be exalted, says (interpretation of the meaning):

{And every soul earns not [blame] except against itself, and no bearer of burdens will bear the burden of another} [al-An'am 6:164].

If that is not possible, and she cannot put up with the harm that is being done to her, then she may refer the matter to the shar'i court to decide about it.

And Allah knows best.