

167252 - Her husband does not pray and he refuses to divorce her until she gives him the child

the question

My Sister married her husband almost 5 years, and got one 3 years old daughter. Her husband also born muslim, but he doesn't follow the Islam rule. He not pray and fasting. She gave him time and try to told him with this issue. For the working also he was not working hard, just follow his feeling only. Sometimes he couldn't earn even cent for family. He is a lazy person. He depend much on my family especially my income, because we stayed together in one house. And now she escape away from her husband over 1 year already, and she asked the husband to divorce her, but he refused unless she gave the daughter to him. But as I told you above, he not a good man, and drink alcohol some more. This excused just he not want to divorce my sister only. Now my sister working in oversea and the daughter she brought back to keep with my mother to take care, until he know that the daughter with my mother he never come to visit his daughter. In this case I want to ask you how to divorce with him, because he not agree to divorce my sister. When I asked the Islamic teacher in my village, he said cannot divorce him unless he agree to divorce my sister himself and try to teach him to practise and follow the Islam. But we try our best for over than 3 years to encourage him to pray and to fast, but he not follow. So pls help us what can we do?.

Detailed answer

If the husband does not pray then it is not permissible for your sister to stay with him, because the one who does not pray is a kaafir according to the sounder of the two scholarly opinions. See the answer to question no. [5208](#) and [6257](#)

If he did not pray during the marriage, then the marriage is not valid but the child is to be attributed to him because she was born as the result of a marriage which both partners thought was valid.

If he stopped praying after getting married and continued not praying until her 'iddah ended, then the marriage is annulled. But if he repents and starts to pray, she can go back to him on the basis of a new marriage contract if she agrees to.

Some of the scholars say: if he repents and starts to pray, he may go back to her even if that is after the 'iddah has ended, so long as she has not got married to another husband.

From this you will know that according to sharee'ah there is no need for a divorce (talaaq) from him, but because she is regarded as his wife in official papers and that has an impact on inheritance between them and preventing her from marrying someone else, she has to try to get the divorce even if she has to give him money so that he will divorce her.

With regard to the child, the mother is entitled to custody.

The husband should be advised to repent to Allah, may He be exalted, and to pray. He should be told that his wife is not permissible for him until he starts to pray. If he repents, praise be to Allah, but if he remains as he is then your sister should try to get a divorce and she can refer the matter to the court and ask for divorce because he is not spending on her and because of the harm caused.

We ask Allah to grant her a way out.

And Allah knows best.