

4044 - Referring for judgement to a kaafir judge or an imaam who, although wise, is not a scholar

the question

In the city where we live in the West, there is no Islamic court or Islamic centre to which we can refer for judgement or for help to resolve conflicts. We have an Islamic Da'wah centre but there is no director or anyone we can refer to resolve conflicts. Can a wife's agreement before a kaafir judge to give up custody of her children be regarded as binding? Can a kaafir judge's verdict that a father has to spend on his children if they are with the mother be regarded as binding?

Detailed answer

We put this question to Shaykh Muhammad ibn Saalih al-'Uthaymeen, may Allaah preserve him, who answered as follows:

Firstly – may Allaah bless you – if the people at the Da'wah centre agree that matters may be referred to them, then this is OK. This is a duty upon them, because we should refer things to Muslims for judgements.

But with regard to the issue of giving up custody – if the mother gives up custody – this does not need the ruling of a judge. If she states that, this is sufficient for it to become binding.

As for spending on the children, so long as they are going to go back to their father when the mother gives up her right to custody, he is going to spend on them anyway.

Question:

If the kaafir judge rules that the father has to spend on them whilst they are with their mother, is this considered to be binding?

Answer:

Even if the judge does not state that the father has to spend on them, it is still his obligation according to sharee'ah.

Question:

But the amount?

Answer:

The amount is to be determined by 'Urf (local custom).

Question:

So if the amount stipulated by the kaafir judge is in accordance with 'Urf, is it binding on him?

Answer:

It is binding on him not because it is the ruling of the judge but because it is 'Urf.

Question:

If the husband and wife agree to refer to a Muslim for judgement, is his ruling binding on them? In the West, the imaam may be a person who is not religious, so can they refer to him for judgement?

Answer:

If there is no one else available, then it is OK, but the fuqaha' have stated the condition that he should be fit to judge, meaning that he should have knowledge of sharee'ah, but if there is no one else, let them fear Allaah as much as they can.

Question:

There may be no one there at all who knows about passing judgement, but if there is a wise Muslim man?

Answer:

If they ask him to judge between them on the basis that he is going to bring about a reconciliation, this is OK.

Question:

But if we say that it is only for reconciliation, his words will not be binding?

Answer:

No, but if he passes a judgement and they agree to it, then it will become binding. Every reconciliation that the two parties agree to is binding because of the hadeeth:

“Reconciliation is permissible among Muslims”. And Allaah knows best.