9463 - If she asks for a divorce then gets married, does she have the right to custody of her children?

the question

I am about to get my marriage annuled by a counsil of iman primarily because i have enough islamic grounds for it and because my spouse does not want to give me talaaq or to accept khaula.The iman even mentioned to him that i am not his property to force me to live with him.I have 3 children which in the iman's opinion for the best welfare of the children it's better to be under my custody.iman'comments about my spuse's character "he can not be trusted, he uses the name of shariah for his own purposes." Because my iddah did not even started i am shy to ask this question: if i find a brother that wishes to marry me, do i loose automatically the custody or the welfare of the children is considered?
do you have any hadith towards this issue? the mother after getting married with another brother kept the custody of the children.
by the law of the land i will get the full custody ; however i fear ALLH(swt) and i do not want to go against shariah.

Detailed answer

Praise be to Allah.

Firstly:

It is better for a woman to be patient and put up with her husband, especially if they have children. No household is free from arguments. But if her husband is mistreating her very badly and she cannot bear it, then she may get divorced.

Secondly:

If a woman gets divorced by talaaq then her ‘iddah lasts for three menstrual cycles. But she is gets divorced by khula’, then her ‘iddah is just one menstrual cycle. It is haraam to propose marriage to her whilst she is still in ‘iddah.

Thirdly:

Sharee’ah states that if the spouses separate, the mother has more right to custody of the children than the father, but if she remarries she loses her right to custody. The evidence for that is the fact that the Prophet (peace and blessings of Allah be upon him) said to that woman who asked for custody of her child from her husband – after he had divorced her – “You have more right to that so long as you do not get married.”

Narrated by Abu Dawood, 2276 from the hadeeth of ‘Abd-Allah ibn ‘Amr (may Allah be pleased with him); classed as hasan by al-Albani in Saheeh Abi Dawood, 1991.

The hadeeth indicates that the woman has more right to custody of her children than her husband, unless she gets married, in which case he has more right.

Our advice to this sister is that she should think long and hard before she asks for divorce or khula’. If you are able to be patient and put up with your husband’s annoyance, and the problems between you can be resolved by mutual understanding and agreement, then this is better. But if you cannot stand to live with him, this is something that only you can decide.

If they separate and the woman has to choose between her children and another husband, then she should pray istikhaarah, seek the help of Allah and turn to Him in du’aa’ and supplication, asking Him to guide her to the right decision. This is the Islamic ruling concerning this matter.

If the law of your country states that the mother gets custody of the children even if she remarries, this is contrary to the rules of sharee’ah, and that is not permissible. Allah 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]

And Allah knows best.