



Sexual Intercourse with One's Divorced Wife without the Intention of Returning

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Introduction

Family jurisprudence constitutes a large part of Islamic jurisprudence. In different periods, jurists, by examining Qur'anic verses and traditions, have expressed various opinions on the subsidiary issues related to the aforementioned fields. The dissolution of a marriage contract is possible for two reasons, namely divorce and faskh (annulment). Annulment of marriage has specific conditions and is limited to particular cases such as *tadlīs* (deception), *ifḍā'* (Obstetric fistula), *khiṣā'* (castration), and 'anan (impotence). Divorce, too, has different classifications according to its conditions, one of which is the classification of divorce into *raj'ī* and *bā'in*. In *raj'ī* divorce, unlike *bā'in* divorce, the husband is permitted, under specific conditions and within a specified period, to return to the wife without a new marriage contract. *Rujū'* (revocation) may be verbal or actual. One of the most fundamental conditions considered valid for the realization of *rujū'* is the existence of the husband's intention to revoke, because *rujū'* belongs to the category of *inshā'* (constitutive act), and the basis of *inshā'* is intention. The principle of the validity of the intention to return for the realization of the husband's *rujū'* is, in general terms, a settled matter and is agreed upon by jurists. However, by distinguishing between the intention of the act and the intention of the title of *rujū'*, it becomes clear that this issue involves subtle considerations. At times, the husband is asleep or in a state of forgetfulness and therefore lacks volition regarding the act itself; and at times, while possessing volition regarding the act, he lacks the intention of the title of *rujū'* in relation to that act. Considering the various acts that may indicate *rujū'*, such as taking the hand, touching, kissing, or sexual intercourse (*waṭ'*), it becomes clear that the realization of *rujū'* in some of these cases is subject to consideration and discussion.

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Now, if the husband, during the 'iddah, performs acts such as removing the wife's headscarf, kissing, touching, or even sexual intercourse, which apparently indicate actual *rujū'*, but subsequently claims that he did not intend *rujū'*, the question arises: Are all these acts equally regarded as *rujū'*? Or should a distinction and difference be made between acts such as touching and kissing, on the one hand, and sexual intercourse, on the other hand? The present research seeks to examine, from a jurisprudential perspective, the realization of the husband's actual *rujū'* during the 'iddah of *raj'ī* divorce where there is no intention of the title of *rujū'*, and to answer the aforementioned questions.

Research Background

Various studies have examined *rujū'* during the 'iddah and its different aspects. These include "An Examination of Whether the Husband's Option of Revocation in *Raj'ī* Divorce Is a Right or a Ruling" by Rahimi and Soleimani (2018/1397), "The Jurisprudential-Legal Nature of Revocation in *Raj'ī* Divorce and Some of Its Effects" by Gharibpour and Velayati-Nejad (2022/1401), "The Husband's Right of Revocation in *Raj'ī* Divorce in Islam and Judicial Practice" by Yousefi Sadeghlou and Karimi (2022/1401), and "An Examination of the Indication of the Qur'anic Verses Regarding the Conditioning of the Husband's Right of Revocation in *Raj'ī* Divorce upon the Intention of Reconciliation" by Jafari and Dehghan (2018/1397).

As is evident from the titles of the aforementioned studies, these articles have discussed aspects such as whether *rujū'* is a right or a ruling, the examination of the nature of *rujū'*, and how *rujū'* occurs in Islam and judicial practice. However, the examination of the requirement of the intention of *rujū'* in actual *rujū'*, and whether *rujū'* without intention in its various instances, including touching, kissing, and sexual intercourse, while distinguishing between the absence of intention of the act and the intention of the title of *rujū'*, at the two levels of *maqām al-thubūt* and *maqām al-ithbāt*, has been?

Keywords: Intercourse, intention to return to marriage, returnable divorce, Waiting Period ('Iddah), divorced woman