

**Q: A man divorced his wife once during Sha`ban. She went to her brother's house. Two days later, she came to her husband's house and they made peace and agreed to resume marital life together. Out of his unawareness, he did not raise testimony for this reconciliation. His wife stayed with him as usual and they resumed their marital life as before divorce. On 12/3/1394 A.H., a dispute arose between them and he got angry at her and said, "You are divorced. You are divorced. You are divorced." He meant by the repetition of the words of divorce emphasis not the number of times of divorce. He wants to know whether it is permissible for him to return to her.**

**A:** If the reality is as he has mentioned, that is, he divorced his wife during the month of Sha`ban, then made her stay with him for two days after the divorce with the intention of returning to her in marriage, then they resumed their marital life without calling witnesses to witness his return to her, and if this divorce was not the third time, his living with her after divorce including having sexual intercourse with her while she is in the `Iddah (woman's prescribed waiting period after divorce or widowhood) will be considered a permissible return to his wife.

Because it is mentioned in (Al-Muqni`), "A return to the wife in marriage after divorce takes place by the husband's having a sexual intercourse with her with or without the intention of returning to her."

He said in (Al-Hashiyah),

"This is the view of the majority of the followers of this school. It is also the view of Sa`id ibn Al-Musayyib, Al-Hasan, Ibn Sirin, `Ata`, Tawus, Al-Zuhry, Al-Thawry, Al-Awza`y, Ibn Abu Layla, and As-hab-ul-Ra'y (scholars, especially the Hanafis, who exercised personal reasoning to reach judgments in the absence of clear texts).

He also said returning to the wife is not valid through intercourse unless there is the intention of returning to her. Al-Shaykh Taqy-ul-Din opted for this view and the same was said by Malik and Is-haq. The fact that the husband did not return to his wife in the presence of witnesses does not affect the validity of his return to her; because the view of the school is that it is not obligatory to return in the presence of witnesses.

He said in (Al-Muqni`), "Is it a condition for the return to be in the presence of witnesses?"

There are two views about this. He said in (Al-Hashiyah):

"First: it is not a condition. This is the view of the school as mentioned (in the view of Ibn Mansur) and the majority of the followers of this school. It is also the view of Malik, and Abu Hanifah. They argue that

(1) the return to the wife does not require the wife's acceptance, so it does not require the presence of witnesses just like any of the other rights of the husband.

(2) Whatever does not require the presence of the guardian does not require the presence of witnesses like sale.

The writer of the commentary said, "This is a more appropriate view, Allah Willing." Since the husband mentioned that he had divorced her on 13/3/1394 A.H., saying "You are divorced. You are divorced. You are divorced" and that he repeated the words of divorce more than once with the intention of making emphasis, it is considered a second time of divorce.

If this is not the third time of divorce, it is permissible for him to return to her in marriage as long as she is still in the `Iddah (woman's prescribed waiting period after divorce or widowhood). If he returns to her in marriage, even if through a new marriage contract, she stays with him and he only has one time of divorce remaining.

May Allah grant us success. May peace and blessings be upon our Prophet Muhammad, his family, and Companions.

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