23269 - Does touching with desire count as taking back a divorced wife?

the question

For about 2 years now my husband and I have been having extreme marry difficulties, the problems have gotten soo bad that it has ended up in 2 divorces, the first divorce he took me back (having intercourse with me), the second divorce he just touched me (without having intercourse),but the touch was in a romatic way. He claims that I am still divorced, because he says that he has to have actual intercourse with me, I have passed one period, so he says that I have 2 more left and my iddah is over, is he right? or did he take me back even though he did not have intercourse with me he just touched me?.

Detailed answer

Praise be to Allah.

Firstly:

Taking back the wife during the ‘iddah period is a right which sharee’ah gives to the husband. If he wants, he may take her back and if he wants, he may leave his wife until the ‘iddah period is over. Allaah says (interpretation of the meaning):

“And their husbands have the better right to take them back in that period, if they wish for reconciliation”

[al-Baqarah 2:228]

So Allaah has given the husbands of divorced women the right to take them back during this period [i.e., the ‘iddah] if they intend reconciliation thereby.

This taking back may be achieved in two ways: by word or by deed.

Taking the wife back by word means saying, for example, “I take back my wife” or “I am keeping

my wife," etc., or saying to her: "I take you back," or "I am keeping you," etc.

Taking back is achieved by means of these phrases, according to the consensus of the fuqaha'.

Writing may take the place of speaking, and a gesture may take its place on the part of one who is unable to speak these words, such as one who is mute.

Taking the wife back by deed means intercourse, so long as that is with the intention of reconciliation.

Shaykh 'Abd al-Rahmaan al-Sa'di said:

If the husband had divorced her with a revocable talaaq, then if the 'iddah is over she is not permissible for him unless a new marriage contract is done, fulfilling all necessary conditions. If the 'iddah is not yet over, and if the intention behind intercourse is reconciliation, then this is taking her back and intercourse is permissible. If there is no intention of reconciliation then according to the madhhab this means that he has taken her back, but according to the correct view this does not mean that he has taken her back, therefore intercourse is haraam.

Al-Irshaad ila Ma'rifat al-Ahkaam.

Based on this, then your husband's merely touching you is not regarded as him taking you back.

See also the answer to question no. 11798.

This is the view of the majority of scholars (including Imam Maalik, al-Shaafa'i and Ahmad), that taking back the wife is not achieved by merely touching with desire. But Imam Maalik said: Taking back is achieved by touching with desire if the intention is to take the wife back. So long as your husband says that he that he did not intend to take you back, then he did not take you back by doing that.

See al-Mughni, 7/404; al-Mawsoo'ah al-Fiqhiyyah, 13/187.

Secondly:

With regard to the ‘iddah of a woman divorced by a revocable talaaq, it is three menstrual cycles for women who menstruate, so there are two cycles left for you as your husband said, then your ‘iddah will be over. If he took you back during this time then this divorce is counted as one of the three talaaqs, and he has to bring people to witness that he is taking you back. So he has one talaaq left, and if he does not take you back during the ‘iddah period then you are divorced from him, and it is not permissible for him to go back to you except with a new marriage contract and a new ‘iddah, and the marriage cannot be completed except with your consent and the agreement of your wali (guardian).

And Allaah knows best.