

The Revocable Divorced Woman and the Issue of Leaving the Home; In Light of the Exegesis of the First Verse of Surah *al-Ṭalāq* and an Examination of its Jurisprudential and Legal Dimensions

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Abstract

The issue of a revocable divorced woman leaving the home has always been a challenging topic in the field of Islamic jurisprudence and family law. The present study, with an analytical and comparative approach, delves into the jurisprudential and legal dimensions of this issue, focusing on the Quranic text of Surah al-Ṭalāq. The aforementioned verse, which emphasizes the residence of the divorced woman in her husband's home until the end of the waiting period ('Iddah), is the main focus of the analysis. Using content analysis, the opinions of various jurists and commentators regarding the divorced woman's leaving the home have been compared and evaluated, and its compatibility with the principles governing family laws has been considered. The findings indicated that jurists and commentators have diverse opinions regarding the permissibility or non-permissibility of a divorced woman leaving the home: "A group that considers the divorced woman's leaving the home absolutely forbidden and another group that considers leaving with the husband's permission permissible." The reasons of the

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proponents of both views have been comprehensively examined. The interpretative analysis of the first verse of Surah al-Ṭalāq shows that this verse aims to provide peace and comfort for the divorced woman, and therefore, some restrictions have been considered for her leaving the home.

Keywords: Revocable Divorce, *Iddah* (Waiting Period), The First Verse of Surah *al-Ṭalāq*, The Revocable Divorced Woman Leaving the Home, Verses of Legal Commandments (*Āyāt al-Aḥkām*).

Introduction

The subject of a revocable divorced woman leaving the home, as an important issue in Fiqh and family law, has always been a focus of attention. Divorce, a fundamental event in married life, raises numerous questions, including the legal status of the woman during the *'Iddah* period, especially regarding leaving the home. Clarifying the rights of a revocable divorced woman requires distinguishing between two related rights: "The right to residence and the right to leave."

The right to residence means the woman's right to reside in the marital home to ensure security and peace during the *'Iddah* period. The right to leave gives the woman the option of choosing a place of residence, subject to regulations. These two rights have a close relationship and legal limitations. The first verse of Surah *al-Ṭalāq*, one of the key verses related to a divorced woman outlines a framework for divorce with five important rulings and emphasizes the woman's right to residence until the end of the *'Iddah*.

Despite social and legal developments, the residency of a woman observing *'Iddah* in the marital home has decreased, and the discussion regarding the woman observing *'Iddah* leaving the home has gained importance. Analyzing this issue from a jurisprudential and legal perspective is essential for a better understanding of women's rights in Islam and civil laws, and it possesses a profound philosophy of respecting women and the family. In the verse [Quran], exceptions are mentioned for a woman's departure under specific circumstances, and the duration of the *'Iddah* also varies.

Previous research has examined various legal and jurisprudential dimensions of the issue of residency for a revocable divorced woman observing *'Iddah*. For example, Ahmadvand and Ayni (Qanunyar, 2021 AD/1400 SH) in the article "Mutual Rights of Spouses During the *'Iddah* of Revocable Divorce" have examined the mutual rights of spouses during the *'Iddah* and emphasized the wife's right to maintenance and residency, but have mostly sufficed with describing the rights and obligations and paid less attention to their religious and jurisprudential reasons. Rahimi and Soleymani, in the article

"Examining Whether the Husband's Right of Recantation in Revocable Divorce is a Right or a Rule" (Islamic law and Jurisprudence; 2017 AD/1397 SH), have examined the nature of the husband's right of recantation as an inalienable religious rule. Jafari and Dehghan (Jurisprudential Research; 2023 AD/1402 SH) in the article "Critique and Examination of the Consequences of the Two Theories of Real Conjugal and Constructive Conjugal in Revocable Divorce," by examining the verses of the Quran, have proposed the condition of the intention of reconciliation for the husband's recantation. Razi and Rameshi in the article "A Jurisprudential-Legal Examination of the Necessity of Spouses Residing in the Marital Home" (Family Law and Jurisprudence; 2017 AD/1397 SH) have also addressed the legal obligation of spouses residing in the marital home and its contradiction with societal norms. These studies have mainly focused on the overall dimensions of women's rights during the *'Iddah*.

The main objective of this research is to comparatively examine the jurisprudential and legal viewpoints regarding the right of a revocable divorced woman observing *'Iddah* to leave the home, with emphasis on the first verse of Surah al-Ṭalāq. The main question is to what extent are the existing laws and *Fatwās* (religious edicts) regarding the departure of a revocable divorced woman observing *'Iddah* aligned with the jurisprudential and legal concepts of this issue and the social changes in the family?

The importance of the research lies in several aspects: precisely determining the rights and duties of a woman in *'Iddah*, especially regarding leaving the home, helps clarify the boundaries of a woman's freedom and independence. The differing views regarding the permissibility or non-permissibility of a woman observing *'Iddah* leaving the home necessitate a comprehensive examination of the issue. Given social developments and changes in family structure, it is necessary to adapt jurisprudence to the requirements of the time and provide appropriate solutions. This research attempts to contribute to this important matter by comparatively examining the different viewpoints.

The present study, employing a descriptive-analytical method with an analytical and comparative approach, examines the diverse perspectives of jurists and commentators regarding the permissibility or prohibition of a woman undergoing revocable divorce leaving her home. Through analysis of the Quranic text and comparison with jurisprudential-legal foundations, it clarifies various dimensions of the subject, providing a better understanding of women's rights during the waiting period (*Iddah*).

The present research, focusing on the first verse of Surah *al-Ṭalāq*, precisely investigates the exit of a revocable divorced woman from her home. Using an analytical and comparative approach, it presents a more comprehensive picture of the legal status of women during this period. By emphasizing the exegesis of the verse, the diverse views of jurists and commentators are explained, and an attempt is made to achieve a deeper understanding by aligning them with jurisprudential and legal foundations. This research, emphasizing the jurisprudential and legal dimensions of the exit of a revocable divorced woman and integrating the principles and arguments of jurists with laws, seeks a deeper analysis of this issue. The innovation of this research lies in emphasizing the direct connection between the first verse of Surah *al-Ṭalāq* and the exit of a revocable divorced woman, along with a more precise analysis of it. The research attempts to reach a comprehensive and reasoned interpretation of this issue by carefully examining the verse and applying it to laws and judicial practices. After conceptualizing key terms, the legal nature of the exit of a revocable divorced woman is examined as a right or obligation. The views of jurists, commentators, and legal scholars are presented with an analysis of the evidence provided. Finally, the jurisprudential effects of this issue on women's lives are examined, and suggestions are offered for improving laws, providing greater support for their rights, and promoting social awareness.

1. Concepts

In examining the rights of a revocable divorced woman, understanding the concepts of revocable divorce (*Ṭalāq Raj'ī*) and

the *'Iddah* is essential:

1.1. Revocable Divorce (*Ṭalāq Raj'ī*)

It is a type of divorce in which the husband has the possibility of reconciliation during the waiting period (Hashemi Shahroudi, 2003 AD/1382 SH: 5, 205). In other words, the man can return his wife to the marriage without a new contract. This divorce is the opposite of an irrevocable divorce (*Ṭalāq Bā'in*), in which there is no right of reconciliation (Meshkini Ardabili, 2013 AD/1434 AH: 357).

From a jurisprudential perspective, the husband's right of reconciliation is a relative continuation of the marital relationship. Some marital provisions, such as the inheritance of the spouses if death occurs during the waiting period, the wife's obedience after reconciliation, and the prohibition of the husband marrying the wife's sister, remain in effect. Sexual intercourse without the intention of reconciliation during the waiting period is religiously forbidden (cf. Hashemi Shahroudi, 2003 AD/1382 SH: 5, 205-206).

Iranian Civil Code, in Article 1143, divides divorce into revocable (*Raj'ī*) and irrevocable (*Bā'in*), and in Articles 1148 and 1149, refers to the right of revocation in revocable divorce. These articles specify the legal framework and grant the husband the power to retract the divorce. A comparative analysis of these articles with jurisprudential sources and judicial opinions, especially regarding the wife's exiting the marital home during the *'Iddah*, is necessary.

1.2. *'Iddah* (Waiting Period)

This is a period after divorce, the death of the husband, or under specific circumstances, during which the woman is prohibited from remarrying (Najafi, 1983 AD/1404 AH: 32, 211). The purpose is to preserve lineage and prevent social problems. *'Iddah* has various types and durations. The *'Iddah* of a divorced woman is three periods of purity from menstruation (cf. Shahīd Thānī and Muḥaqqiq Ḥillī, 1992 AD/1413 AH: 9, 213; Ṭūsī, 1986 AD/1407 AH: 8, 116); its basis is verse 228 of Surah al-Baqarah (cf. Shahīd Thānī and Muḥaqqiq Ḥillī, 1992 AD/1413 AH: 9, 213; Ṭūsī, 1986 AD/1407 AH: 8, 116). The

duration of *'Iddah* in revocable divorce is usually three menstrual cycles, but in case of pregnancy, it continues until delivery (Muḥaqqiq Ḥillī, 1987 AD/1408 AH: 3, 26; Najafi, 1983 AD/1404 AH: 32, 252); this rule is mentioned in the Quran (al-Ṭalāq: 4). Women who are menopausal or do not menstruate observe an *'Iddah* of three lunar months (Muḥaqqiq Ḥillī, 1987 AD/1408 AH: 3, 24; Najafi, 1983 AD/1404 AH: 32, 230).

The jurisprudential rules related to *'Iddah* include the prohibition of a woman marrying during the *'Iddah* (Khomeini, 2001 AD/1422 AH: 370), even unknowingly, which leads to permanent prohibition. Proposal to a woman during the *'Iddah* of a revocable divorce is not permissible, but it is permitted indirectly in an irrevocable divorce. The wife's maintenance during the *'Iddah* of a revocable divorce is the responsibility of the husband, but in an irrevocable divorce, only if she is pregnant. The husband does not have the right to evict the wife from the marital home during the *'Iddah* of a revocable divorce (cf. Khomeini and other authorities, 2003 AD/1424 AH: 2, 256, 470, and 530). Adultery with a woman during the *'Iddah* of a revocable divorce is forbidden and results in permanent prohibition (Khomeini, 2001 AD/1422 AH: 3, 299 and 300; Bahjat, 2007 AD/1428 AH: 382).

The *'Iddah* laws in Articles 1150 to 1158 of the Iranian Civil Code are based on Imami jurisprudence. After the dissolution of a marriage, a woman must wait a certain period before she can remarry (Shams, 2014 AD/1394 SH: 260). Other legal systems also have similar regulations to prevent problems arising from premature remarriage, such as prolonged divorce proceedings and the prohibition of remarriage for a specified period after the divorce decree (Rostami Tabrizi, 2009 AD/1388 SH: 215).

2. Examining the Nature of the Prohibition of a Revocable Divorced Woman from Leaving the Home

The discussion surrounding the nature of the prohibition of a revocable divorced woman from leaving the home is one of the complex and noteworthy topics in Islamic jurisprudence. The verse "And do not turn them out," in Surah *al-Ṭalāq*, forms the basis and

central focus of this discussion. Throughout history, jurists and commentators have presented various opinions regarding the interpretation and understanding of this verse:

Viewpoint 1: "Some believe that this verse generally states that a revocable divorced woman does not have the right to leave the house, and this right is a divine right. Based on the general meaning of the verse and the absence of any condition for leaving, they consider the prohibition of leaving as an obligatory religious injunction established due to certain expediencies, such as preserving the woman's dignity and preventing discord. In other words, they believe that this ruling is a religious obligation, and regardless of whether the husband gives permission or not, the woman is obligated to observe it." (Mufīd, 1992 AD/1413 AH: 48; Tūsī, 1967 AD/1387 AH: 5, 253; Shahīd Thānī, 1992 AD/1413 AH: 9, 315; al-Musawi al-Khomeini and other authorities, 2003 AD/1424 AH: 2, 530; cf. issue 2523; Fatwas of eminent authorities such as Imam Khomeini, Golpayegani, Safi, Nouri, Khoei, Tabrizi, and Makarem)

Some believe that the right of residence for the wife, as one of the fundamental rights of a woman in the family, has a nature that goes beyond private rights and is considered a public and divine right. In other words, this right is guaranteed by Sharia and cannot be waived or ignored, unlike the right to maintenance (*Nafaqa*), which the wife can forgo.

Based on this view, the condition of the wife not residing in the marital home during divorce is void and has no legal effect because it contradicts the nature of the right of residence. Regarding this view, it must be said that although the words of the jurists follow the verse of the Quran, it also faces challenges. Firstly, interpreters have long disagreed on the precise meaning of this verse. Some have mentioned the prohibition of leaving without any conditions, simply passing over the discussion (Ibn Qutaybah, A, 1990 AD/1411 AH: 403; Amīn, n.d.:13, 358; Jurjānī, n.d.: 2, 643; Ṭabāṭabā'ī, 2010 AD/1390 SH: 19, 312; Tūsī, n.d.: 10, 31; Fakhr Rāzī, 1999 AD/1420 AH: 30, 558; Muqātil bin Sulaymān, 2002 AD/1423 AH: 4, 363), while others have addressed this issue with specific conditions, such as the husband's

permission. For example, *Dahhāk* says: "A woman does not have the right to leave without her husband's permission." (Quoted from Tabarī, 1991 AD/1412 AH: 28, 86) But 'Aṭā has a different opinion and says: "If the husband allows the wife to spend her *'Iddah* in a house other than the husband's house, for example, in her family's house, he will share in the sin with her." (Tabarī, 1991 AD/1412 AH: 28, 85) Also, Ayatollah Javadi Amoli, stating that "The wife does not have the right [to leave], and the husband also does not have the right to give permission," emphasizes the nature of the rule being the prohibition of a revocable divorced woman from leaving the house and presents this as a fundamental difference between a revocable divorced woman and a wife (a woman who is not yet divorced) (Javadi Amoli's Interpretation Lesson, 7/10/97). Given these disagreements, one cannot simply rely on the generality of the verse and consider the nature of the prohibition of leaving as merely a rule. Rather, with more careful examination, the suitability of this rule with other Sharia rules and social interests must be assessed. It is possible that some consider this verse to indicate the wife's right of residence in the husband's house and the lack of right to leave without his permission.

Regarding the concluding part of the verse where God states, "Perhaps Allah will bring about after that a matter," some believe this phrase signifies the Sacred Lawgiver's approach to preserving certain marital rights for a revocable divorced woman during the *'Iddah*, thereby providing an opportunity for reconciliation between the spouses. In other words, the continuation of some marital rights during this period increases the likelihood of the couple returning to married life. However, this interpretation does not necessarily imply that these stipulations are binding laws (*Hukm*). Even if these stipulations are considered a right for the woman, factors such as the woman's unwillingness to leave the marital home or the husband's preventing her from leaving may lead to her continued residence in the shared home, thereby creating a basis for reconciliation. Therefore, the use of the word "Perhaps" (*La'alla*) in the mentioned verse does not mean that every stipulation the Lawgiver establishes is necessarily for a

specific purpose, such as increasing the likelihood of reconciliation between the spouses. This phrase simply indicates the possibility of changes occurring in the future, which may occur for various reasons, and it cannot be the sole sufficient reason for proving the legal binding nature of a matter (cf. Shubayrī, 2018 AD/1397 SH).

Second View: "Others believe that the purpose of the verse is to preserve the mutual rights of the spouses after a revocable divorce and does not necessarily indicate the existence of a general and divine law. In other words, this restriction is more of a right-based issue than a legally binding one. Therefore, neither the husband has the right to evict his wife from the house, nor does the wife have the right to leave the house without her husband's permission."

The argument of this view is based on the premise that during marriage, the wife has the right to reside in the marital home, and the wife has the right to leave the house with the husband's permission. Based on this argument, it is naturally expected that this situation will continue during the *'Iddah*, unless there is another reason to change this ruling. In other words, the principle is the continuation of the existing situation, and if a new ruling is intended, a specific reason must be provided for it (Subhani Tabrizi, 1993 AD/1414 AH: 327).

This argument is based on the principle of the continuity of rulings. In other words, in the absence of a specific reason to change a ruling, that ruling remains in effect. To clarify the matter, we can refer to the example of transactions involving a minor and a foolish adult. Just as the prohibition of a minor's transaction continues until they reach adulthood, unless there is another reason for its permissibility, the prohibition on the revocable divorced woman leaving the house also remains in effect until the end of the *'Iddah*, unless proven otherwise.

However, it may be argued that specific rulings have been considered for a revocable divorced woman that differs from those during marriage; but to prove this claim, specific reasons are needed. In the absence of such reasons, it can be concluded that the ruling prohibiting exit also applies to a revocable divorced woman, just as it does during marriage.

The argument based on preventing a revocable divorced woman from leaving the house is based on deduction from jurisprudential reasons and cannot be considered *Istiṣhāb* in the precise sense. *Istiṣhāb* is applicable in cases where a ruling existed in the past; however, in the present case, we are seeking to discover a new ruling that has not been established for the different situation of a revocable divorced woman. Considering that a revocable divorced woman has a different status than a permanent wife, one cannot simply consider her ruling to be the same as that of a wife. The question arises whether the ruling prohibiting exit for a revocable divorced woman is a new ruling or whether it has been extended to her due to the similarity of some of her characteristics to those of a wife.

Some jurists believe that in such cases, if there is no explicit text (*Naṣṣ*) available, it can be inferred that the ruling for a revocable divorced woman is the same as the ruling for a wife (Subhani Tabrizi, 1993 AD/1414 AH: 327). However, the narration of *Ḥalabī* also indicates that the exit of a divorced woman with the permission of her husband is permissible. This narration shows that the issue of a woman leaving the house depends more on the agreement of the spouses than on a definitive ruling.

Given the principle of *Barā'ah* (presumption of innocence/exemption), one cannot simply rule that it is obligatory to prevent a revocable divorced woman from leaving the house. Therefore, it can be concluded that the issue of a woman leaving the house depends more on the choice and agreement of the parties than on a definitive divine ruling (Khānsārī, Shahīd Awwal, and Shahīd Thānī, 1944 AD/1364 AH: 404).

To further strengthen this view, one can also use the noble verse: "House them where you live, according to your means, and do not harass them to make life difficult for them." (al-Ṭalāq: 6) The reason for this argument is that God, in this verse, forbids harming the wife because it constricts her living conditions. From this statement, it can be understood that the reason for the instruction to house the wife and the prohibition against expelling her is to prevent her from being harmed and tormented. Another possibility is that God has simply

forbidden harming the wife and that it has no connection to the issue of housing, but this possibility is not consistent with the appearance of the verse and its relationship to the subject of housing. The initial part of this verse specifies the husband's duty to house the wife in his home and introduces him as responsible for choosing the wife's place of residence. The latter part of the verse, with the argument presented, establishes the wife's right to reside in the husband's house. Accordingly, if the husband and wife agree that the wife should reside during her *'Iddah* in a place other than the husband's house, for example, the house of one of the wife's relatives or a place that the husband has rented or purchased for her, there is no problem with that. This is because, in this case, it cannot be said that the husband has evicted the wife from his house or made things difficult for her, to the point of violating the wife's right to reside in the husband's house. It also cannot be said that the wife left the house without the husband's permission, to the point of undermining the husband's authority over determining the wife's place of residence (cf. Seyfi, n.d.: 3, 458-460).

Based on the investigations conducted, it can be concluded that the ruling on the residence of a revocable divorced woman in the marital home has a composite nature. On the one hand, this residence is considered a right for the woman, which allows her to benefit from the support of her husband during the *'Iddah* period. On the other hand, this residence is also considered a religious obligation on the woman, which helps to preserve the family unit and prevent social problems. This composite approach, which is also emphasized by the author of *al-Muhadhdhab*, makes it possible to reconcile the different views of jurists in this regard (Sabzewari, 1992 AD/1413 AH: 26, 169).

However, the ruling on the wife observing the *'Iddah* after a revocable divorce residing in the marital home does not constitute an absolute prohibition on leaving the house. These two concepts are distinct in terms of their jurisprudential foundations and legal consequences. Emphasizing the right of residence aims to protect the woman's position and her peace of mind during the *'Iddah*, not to negate customary and necessary comings and goings. The prohibition

on leaving is regarding transferring the main residence and permanently residing outside the husband's home, not routine trips for daily needs, medical treatment, or visiting relatives. By "Residence," we mean a broad interpretation of the home and a restriction of leaving to abandoning the main place of residence. A wife's temporary and customary departure, without the intention of changing her place of residence and while observing the proper decorum of the *'Iddah*, does not contradict the ruling on residence.

3. Analysis of Jurists' Views on the Permissibility or Impermissibility of a Wife Observing *'Iddah* After a Revocable Divorce Leaving the House

Regarding the permissibility or impermissibility of a wife observing *'Iddah* leaving the house, there are two main views:

1) Absolute Prohibition of Leaving: "A group of jurists believe that a wife observing *'Iddah* leaving the house is absolutely forbidden, even with her husband's permission." This view can be found in the works of jurists such as Shaykh Mufīd (Mufīd, 1992 AD/1413 AH: 48) and Shaykh Ṭūsī (Ṭūsī, 1967 AD/1387 AH: 5, 253), Ibn Sallār (Sallār Diylamī, 1993 AD/1414 AH: 164) (and also cf. Khomeini et al., 2003 AD/1424 AH: 2, 530, see issue 2523; fatwas of eminent religious authorities Imam Khomeini, Golpayegani, Safī, Nouri, Khoei, Tabrizi, and Makarem). Supporters of this view, like the late *Shahīd Thānī* in *Masālik* (Shahīd Thānī, 1992 AD/1413 AH: 9, 315), rely on the general application of verses and narrations that, in their opinion, express a complete prohibition on a woman leaving during the *'Iddah*. They also emphasize interests such as preserving the woman's dignity and preventing temptation (*Fitna*).

2) Permission for the Wife to Leave with the Husband's Permission: "Another group of jurists believes that it is permissible for a woman observing *'Iddah* (waiting period) to leave with her husband's permission. This view has been expressed by jurists such as *Faḍl ibn Shādhān* (Quoted from Najafī, 1983 AD/1404 AH: 32, 332), *Abul Ṣalāḥ* (Ḥalabī, 2009 AD/1430 AH: 312), Ibn Zuhra (Ibn Zuhra, 1996 AD/1417 AH: 385), and Aṣḥāḥ al-Shi'a (Bayhaqī Nīshābūrī

Kīdarī, 1995 AD/1416 AH: 467)." (Also cf. Khomeini et al., 2003 AD/1424 AH: 2, 530, see question 2523; Fatwas of esteemed religious authorities Araki, Fazel, Sistani, Zanjani). *Faḍl ibn Shādhān* explicitly states that there is no problem if a woman obtains permission from her husband and leaves. *Kulaynī* has also narrated this statement and has not mentioned any refutation of it (Kulaynī, 2008 AD/1429 AH: 6, 95). Furthermore, he has narrated the authentic hadith of *Ḥalabī*, which explicitly states that a woman can leave with the permission of her husband (Also: Ḥurr 'Āmilī, 1988 AD/1409 AH: 22, 198). The apparent meaning of this statement is that *Kulaynī* also believes that it is permissible to leave with the husband's permission. Supporters of this view rely on narrations that explicitly refer to the permissibility of a woman leaving with her husband's permission. They believe that an absolute prohibition on leaving is not applicable, considering the social conditions of that time and the current conditions (ibid.).

Regarding the opinions presented, the first point to consider is that, firstly, until Allamah *Ḥillī* (Allama Ḥillī, n.d.: 4, 178), there is no scholar who explicitly states that leaving is not permissible even with permission, and they bring their statements without any conditions. This is while a number of previous scholars, including the *Faḍl ibn Shādhān*, explicitly state that it is permissible with permission (Quoted from Najafī, 1983 AD/1404 AH: 32, 332).

Secondly, it is not very clear what is meant in expressions where jurists have left things absolute. One piece of evidence for this is that the late Shaykh *Ṭūsī* has three types of expressions. One of the proofs for this is that the late Shaykh *Ṭūsī* has different views in his various statements regarding the exit of a revocable divorced woman from the house. In some cases, he explicitly refers to the condition of the husband's permission for the woman to leave, while in other cases, he does not mention such a condition.

To clarify further, Shaykh *Ṭūsī*'s statements can be divided into three categories:

1) *Mabsūṭ* and *Khilāf*: "With general statements that do not consider the husband's permission a condition for the exit of a revocable divorced woman." (Ṭūsī, 1967 AD/1387 AH: 5, 253)

2) *Nihāyah*: "Which considers the husband's permission a condition for recommended (Mustahab) Hajj?" (Tūsī, 1979 AD/1400 AH: 535)

3) *Istibṣār*: "Which explicitly considers the husband's permission a condition and brings supporting narrations." (Tūsī, 1957 AD/1387 AH: 3, 333) In summary, it can be concluded that Shaykh Tūsī did not consider recommended Hajj an exception; rather, he considers the husband's permission a general condition for the exit of a revocable divorced woman, and recommended Hajj is also included in this rule. In his view, the general rule is the impermissibility of a revocable divorced woman leaving without her husband's permission, except in specific cases with other reasons.

In any case, absolute prohibition of exit has been argued for based on the following reasons:

First Argument: "Based on the apparent meaning of the verses of the Quran, narrations, and the fatwas of jurists in this regard, and also according to *Zamakhsharī* in the book "*al-Kashshāf*," the combination of two prohibitions (preventing exit) is to show that the husband should not allow the wife to leave, and his permission has no effect." (Zamakhsharī, 2006 AD/1427 AH: 4, 119)

Second Argument: "In a letter that Ṣaffār wrote to Imam *Ḥasan 'Askarī*, he asked if a woman who has been divorced by her husband and is not receiving maintenance for the waiting period (*'Iddah*), and is in need, can leave the house for work or another necessity and stay out overnight. The Imam replied that there is no problem with it." (Ibn Bābawayh, 1992 AD/1413 AH: 3, 499; Ḥurr 'Āmilī, 1988 AD/1409 AH: 22, 278) Therefore, this permission is only given in emergency situations, and the result is that, in general, leaving without necessity is not permissible. These two arguments are used together to prove the view that preventing a revocable divorced woman from leaving the house, even with her husband's permission, is not permissible.

To respond to the first argument, it should be noted that the apparent meaning of the texts (verses and narrations) indicates the obligation of a woman to reside in her husband's house due to the obligation of maintenance and obedience to the husband (Najafī, 1983 AD/1404 AH: 16, 522; Rouhani, 2014 AD/1435 AH: 34, 302). The

phrase "And do not leave" (*Wa lā Yakhrujna*), although absolute, refers to the impermissibility of a divorced woman leaving without her husband's permission. If the husband gives permission, there is no prohibition, because the goal is to maintain the status of the divorced woman similar to a non-divorced woman in the matter of leaving the house (Irvani, 2007 AD/1386 SH: 1, 404). The *Ṣaḥīḥa* of *Ḥalabī* also indicates the permissibility of a woman leaving with her husband's permission and prohibits leaving without permission until the end of the waiting period (Ḥurr 'Āmilī, 1988 AD/1409 AH: 22, 198; Ṭūsī, 1986 AD/1407 AH: 8, 116). The narration of Imam *Ṣādiq* (AS) regarding a divorced woman performing Hajj with her husband's consent (Ḥurr 'Āmilī, 1988 AD/1409 AH: 22, 219; Ṭūsī, 1986 AD/1407 AH: 8, 131) also emphasizes the importance of the husband's rights. This condition shows that the permissibility of a divorced woman leaving is contingent upon the husband's permission, and without it, it is not permissible.

The author of *Jawāhir al-Kalām*, relying on this narration and other evidence, considers the condition of the husband's consent for Hajj to be a general rule and extends it to all cases of a woman leaving during the revocable waiting period (cf. Najafī, 1983 AD/1404 AH: 32, 332). He believes that the narration includes the prohibition of a revocable divorced woman leaving without her husband's permission even for performing *Hajj*.

Regarding *Ṣaffār's* letter, there is no explicit indication of prohibiting departure, and if it does imply such a prohibition, it can be limited to specific circumstances (Rouhani, 2014 AD/1435 AH: 34, 302). A quote from *Faḍl ibn Shādhān* also supports the permissibility of departure with the husband's permission; prohibited departure is departure against the husband's wishes, and departure with permission is not considered departure from the husband's home (Quoted from Najafī, 1983 AD/1404 AH: 32, 331-332). Therefore, the view of permissibility of departure with the husband's permission is stronger, and general expressions prohibiting departure do not mean absolute prohibition, especially considering the acceptance of the permissibility of departure for voluntary *Hajj* with the husband's permission by some

jurists.

Ayatollah Sobhani, relying on rational judgment, considers it unlikely that the ruling for a woman in *'Iddah* would be stricter than for a married woman (Sobhani Tabrizi, 1993 AD/1414 AH: 327). He considers the Quranic verse and the generality of narrations to be limited to situations where the husband does not grant permission, and considers the *Ṣaḥīḥa* of *Ḥalabī* to support this rational ruling. He believes that the *Ḥalabī* narration does not establish a new ruling and can be used to specify the verse. Ultimately, he concludes that the departure of a revocable divorced woman with the intention of returning home is permissible, even without the husband's permission (Sobhani Tabrizi, 1993 AD/1414 AH: 328).

4. Legal Analysis of the Woman Issue in *'Iddah* Leaving the Home

In this research, focusing on the first verse of Surah *al-Ṭalāq*, the conformity of judicial opinions related to the departure of a revocable divorced woman from the home with the jurisprudential concepts of this verse has been examined. A comparative analysis of judicial opinions and jurisprudential concepts reveals the extent to which judicial opinions follow jurisprudential concepts and their strengths and weaknesses in this area. The Iranian legislator has always paid special attention to the issue of a revocable divorced woman's residence in the marital home as one of the essential conditions for the realization of revocable divorce.

Note 4 of the Law Amending Regulations on Divorce, approved in 1992 AD/1371 SH, clearly states that a revocable divorced woman is obliged to reside in the marital home until the end of the *'Iddah* period, and providing written certification of this residence is a condition for registering the revocable divorce. This obligation not only emphasizes the preservation of the family foundation and the possibility of the husband's return but also, in a way, guarantees the woman's right to receive alimony.

With the enactment of the Family Protection Law in 2011 AD/1391 SH, changes were introduced to this obligation (regarding

the woman's residence). Article 38 of this law, while upholding the principle of the wife's residence in the marital home, also anticipates an exception. One such exception is the wife's consent to the registration of divorce. This legal change demonstrates the legislator's attention to the wife's opinion regarding her residential situation after divorce, as well as an effort to reduce legal formalities. However, this legal change raises several noteworthy points:

A) This legal change could affect judicial procedure in dealing with a divorced woman's request to leave the marital home. In other words, judges may, by invoking this legal article, grant her request to leave more readily in cases where the woman has expressed her consent to the registration of divorce.

B) The manner in which judges interpret and implement this legal article may vary, and these differences could affect the alignment of judicial decisions with the jurisprudential concepts derived from the Holy Quranic verse.

C) The legislator has not specified the issuing authority for the required certificate and in cases where the woman has obtained independent housing by court order or is considered recalcitrant (*Nāshizeh*), the obligation to reside in the marital home and present the aforementioned certificate is waived.

One of the significant ambiguities in this area is the situation of a woman who does not intend to register a divorce but, for reasons such as domestic violence, unsuitable living conditions, or other personal reasons, wishes to leave the marital home. In this case, is the woman permitted to leave the home, and what consequences might she face? The law is silent on this matter and does not provide a clear answer. On the other hand, the Civil Code grants the husband the authority to determine the place of residence. This means that the wife is obliged to reside in the home designated by her husband, unless the authority to determine the place of residence has been delegated to her. This rule is based on the principle of the husband's headship of the family in Iranian civil law.

Judicial opinions are also derived from this law and are themselves subject to ambiguities. For example, in case file number

1.400409200010384E+17, dated 31/2/1401, Mr. A. A. has filed for divorce due to incompatibility with his wife, Mrs. Z. A. After reviewing the case and failing to reconcile the couple, the court issued a certificate of irreconcilability. This divorce is revocable, and the husband is obligated to pay the dowry, outstanding alimony, and alimony for the *'Iddah* to his wife. As stated in the judgment, in a revocable divorce, the registration of the divorce is contingent upon presenting a written certificate from at least two witnesses confirming the wife's residence in the marital home until the end of the *'Iddah*, unless the wife consents to the registration.

According to Iranian Civil Law, in a revocable divorce, the wife is obligated to reside in the marital home until the end of the *'Iddah*, unless she declares her written consent for the divorce to be registered. This obligation is intended to preserve the family foundation and allow for the husband's right of revocation (*Rujū'*). Furthermore, the definitive registration of a revocable divorce requires the submission of a written certificate from two witnesses confirming the wife's residence in the marital home until the end of the *'Iddah*. However, if the wife leaves the marital home, important questions arise regarding her legal status, especially concerning her right to alimony.

According to Article 1109 of the Civil Code, a revocable divorced woman is entitled to alimony unless she is in a state of disobedience (*Nushūz*). However, the law does not explicitly address the situation of a woman who has left the marital home. This ambiguity can lead to legal disputes and the filing of numerous lawsuits in the courts.

For example, in judgment number 9409970222600462, dated 30/1/1394, this case pertains to a divorce lawsuit in which the couple decided to separate due to irreconcilable differences. After reviewing the matter, the court issued a judgment for a revocable divorce.

A noteworthy point in this verdict is the condition set by the court for the payment of alimony during the *'Iddah* to the wife. According to this condition, the wife can only claim alimony for the *'Iddah* period if she does not reside in the marital home with the husband. This indicates that the court has not attributed any effect to the wife's departure from the home, and based on the legal article and issued

rulings, no attention has been paid to this issue and its effects on the wife's situation.

Therefore, the laws regarding the residence of a revocable divorced woman in the marital home contain contradictions and ambiguities that can lead to problems between the couple and the judicial authorities. On one hand, the legislator has mandated residence, and on the other hand, has also foreseen the possibility of exceptions and the wife's consent. These contradictions indicate the need to review and amend existing laws. Accepting revocable divorce as a tool to strengthen the family provides an opportunity to assess the couple's ability to continue married life. However, insufficient attention to the provisions related to revocable divorce, especially in the area of residence, may conflict with the goal of preserving the family unit.

In evaluating the legal approach of Iran towards the issue of the wife's departure during the revocable *'Iddah*, considering the jurisprudential and interpretative foundations; it can be acknowledged that Iranian law regarding the wife's departure during the revocable *'Iddah* has had different approaches influenced by Imami jurisprudence. Note 4 of the Divorce Law of 1992 AD/1371 SH, emphasizing the certificate of residence, was consistent with the absolute prohibition of departure; in contrast, Article 38 of the Family Law of 2012 AD/1391 SH, with the exception of the wife's consent, tends towards permitting departure with the husband's permission and is influenced by the rights-based and expediency-based foundations of jurisprudential interpretations. However, the application of Iranian law with the subtleties of jurisprudence is not complete, and in explaining the limits of departure and the guarantee of enforcement of residence, there are strengths and weaknesses.

The legislative developments regarding the residence of a wife observing revocable *'Iddah* indicate a gradual movement by the legislator from restriction to facilitation. The Divorce Law of 1992 AD/1371 SH, with its emphasis on the certificate of residence, reflected the support of the family and the sanctity of the *'Iddah*. However, the Family Law of 2012 AD/1391 SH, by removing the

requirement of a certificate of residence conditioned on the wife's consent, demonstrates a change in position resulting from socio-cultural changes and attention to the will of women. Reflecting on social realities and aiming to facilitate divorce and empower women's will, the legislator has adopted a more flexible approach. This approach seeks to balance the interests of both spouses and the rights of women within the framework of Islamic law and custom.

5. Jurisprudential Effects of Leaving the House

Regarding the jurisprudential effects of a woman leaving the house, two categories of effects can be identified: "Obligatory (*Taklifi*) effects and declaratory (*Wad'i*) effects."

A) Obligatory Effects of a Woman Leaving the House

This subject depends on whether we consider leaving the house permissible in all circumstances, or impermissible without permission, or adopts the view of Ayatollah Subhani, who considers leaving the house permissible even without permission, provided there is an intention to return. If a woman's leaving the house is absolutely forbidden, then any departure without the husband's permission will have obligatory effects. If leaving is forbidden without the husband's permission, but permissible with permission, only departure without permission will have an obligatory effect. However, if we believe that even departure without the husband's permission is not forbidden if there is an intention to return, then the obligatory effects of leaving will be much more limited.

B) Declaratory Effects of a Woman Leaving the House

The declaratory effect of this issue concerns the woman being considered "*Nāshizah*" (disobedient) during the *Iddah* of a revocable divorce. Of course, if the woman is "*Nāshizah*" at the time of the divorce, she will not be entitled to maintenance (*Nafaqa*). However, the discussion arises when the woman is divorced without being "*Nāshizah*." In this case, whether she leaves the house affects whether her maintenance is established or forfeited, depending on which view we adopt. For example, if a woman leaves the house without her

husband's permission during the *'Iddah* period, she is considered "*Nāshizah*," and her maintenance is forfeited (Subhani Tabrizi, 1993 AD/1414 AH: 333).

Conclusion

The present study, focusing on the analysis of the first verse of Surat *al-Ṭalāq*, explores the jurisprudential and legal dimensions of the issue of a divorced woman undergoing a revocable *'Iddah* leaving the marital home. The aforementioned Quranic text, as the cornerstone of the arguments, is at the center of the research, and its interpretation is thoroughly examined as the key to understanding the issue. The findings support the claim that the issue under discussion has long been a point of intersection for different viewpoints in the field of Islamic thought and has never subsided from the level of scholarly and jurisprudential debates.

A comprehensive analysis of the interpretive perspectives on the esteemed verse revealed that eminent commentators have leaned towards various approaches in interpreting the phrase "And they should not leave" and elucidating its implications concerning the issue of the revocable divorced woman leaving the marital home. Some, relying on a literal interpretation and adhering to the absolute prohibition, have insisted on the obligatory prohibition of leaving under any circumstances. This interpretive trend often invokes the expediency of "Protecting the dignity of women" and "Preventing discord," considering the restriction on leaving to be a devotional and immutable decree. In contrast, another group of commentators, adopting a more purpose-oriented approach to interpreting the verse, has emphasized the right of residence and the rationale behind the legislation of the ruling (securing the interests of both spouses and strengthening the family foundation), interpreting the restriction on leaving as only applying to cases that disrupt these purposes. This interpretation paves the way for the jurisprudential deduction of the permissibility of leaving with the husband's permission, and it appears more aligned with the requirements of the present era and the necessity for flexibility in rulings.

In the realm of jurisprudential deductions, the present research also demonstrated that Imami jurists have presented diverse opinions on the issue of the permissibility or impermissibility of a revocable divorced woman leaving the marital home. Some jurists, consistent with the literal interpretation of the verse, have emphasized the absolute prohibition of leaving, even with the husband's permission, considering it a divine and immutable decree. In contrast, the majority of jurists, accepting the permissibility of leaving with the husband's permission, have adopted a more moderate and flexible approach. This view is more consistent with the jurisprudential principles of optionality and the removal of hardship, and it allows for adaptation to changing social and economic conditions. A third view is also presented among jurists, which emphasizes the permissibility of leaving in necessary and customary cases, even without the husband's permission. This view can be justified by considering the wife's interest and the principle of presumption of innocence, and it seeks to combine the arguments of both sides in a way.

In analyzing the legal issue within the Iranian legal system, the present research demonstrates that the Iranian legislator has not adopted a uniform approach throughout the history of legislation. Influenced by various intellectual and social currents, they have taken differing stances. The Law Amending Regulations on Divorce of 1992 AD/1371 SH, by mandating residence in the marital home and emphasizing proof of residence, largely reflected the jurisprudential view of absolute prohibition of leaving. Conversely, the Law on Family Protection of 2012 AD/1391 SH, by providing exceptions and considering the wife's consent, has moved towards the view of permitting departure with the husband's permission, somewhat diminishing the rigor of the previous ruling. Nevertheless, existing laws still suffer from ambiguities and require further amendments to address shortcomings and align more closely with jurisprudential principles and the requirements of the present era.

In final summation, the present research, combining interpretive foundations, jurisprudential deductions, and legal exigencies, concludes that the approach of "Permitting a revocable divorced wife

to leave the home with the husband's permission, conditional upon adherence to Sharia and ethical guidelines and ensuring the family's interests," holds greater validity. This approach, while preserving jurisprudential principles and foundations, provides the necessary flexibility to adapt to changing social conditions and resolve practical problems.

Based on the findings of this research and examination of the various dimensions of the issue, it is recommended that the following measures be taken to improve the legal status of divorced women observing *'Iddah* and create a greater balance between the rights of spouses: Firstly, amending the Civil Code to define more precisely the conditions for a divorced woman observing *'Iddah* to leave the home and determine the scope of the judge's authority in this regard is necessary. Therefore, it is suggested that Article 1109 of the Civil Code regarding the alimony of a revocable divorced woman be reviewed to more accurately specify the woman's rights during the *'Iddah* period. Additionally, adding an article to the Law on Family Protection granting a divorced woman observing *'Iddah* the right to leave the home under specific conditions could be an important step towards ensuring the safety and psychological well-being of women. Furthermore, drafting a comprehensive bylaw for handling lawsuits related to spousal disputes during the *'Iddah* period could help reduce the length of proceedings and increase the parties' confidence in the judicial process.

Secondly, to improve the legal status of married women, in addition to reforming laws, strengthening the role of social institutions is also necessary. Establishing family counseling centers in courts and other relevant institutions can help couples resolve their disputes. Furthermore, training judges, lawyers, and legal experts in the field of women's and family rights will help increase their awareness of related issues and make fairer decisions. Moreover, by supporting non-governmental organizations active in the field of women, it is possible to expand counseling and support services for women in difficult situations. Finally, given the complexities of the issue and the existence of different viewpoints, further research in the field of

women's and family rights is essential. This research can help to more accurately identify problems and challenges and provide evidence-based solutions.

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