



A comparative study of divorce laws in Islamic jurisprudence and Iranian law

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ABSTRACT

In this paper, it was tried that by comparative study of divorce in religious jurisprudence and civil laws of Iran, different dimensions such as definition, properties, causes and conditions of divorce to be considered. According to the article 1133 of Iran's civil law and following the Imamate jurisprudence, the right of divorce is with husband and his will; and the wife in the event of proving special cases can request for divorce and also according to the article 1139 of civil law, the way of divorcing the wife in temporary marriage, expiry of the concubine time or waiver of it are done on behalf of husband. Civil law in special cases permitted to the wife to request for divorce from court. These causes have been taken from Islamic jurisprudence: Lack of execution of obligatory laws (article 1129 of civil law), dysfunction in social intercourse (clause 2 of article 1130), being affected by contagious and refractory diseases (clause 2 of article 1130), absence more than four years (article 1029 of civil law). In the Imamate jurisprudence and civil law, "divorce due to the wife generosity in waiver of her marriage portion to the husband) and divorce due to the aversion of parties from each other" have been discussed which are as a kind of divorce with mutual agreement of parties. Also, in civil law, divorce with consent of parties has been known with two mentioned titles namely due to the generosity of wife and aversion of parties from each other which follow the Islamic jurisprudence. The research results indicate that there is accordance between the religious jurisprudence and civil laws of Iran about some dimensions and conditions of divorce and in some cases, there is difference.

Keyword:

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