

Terms and causes of divorce in the legal system of Iran and Turkey

*Esmat Makhlesabadi Farahani, Alireza Forozandehpour**

Department of private law, Shahr-e-Qods branch, Islamic Azad University, Tehran, Iran.

ARTICLE INFO

Article history:

Received 03 Jul 2015

Received in revised form 08 Aug 2015

Accepted 25 Aug 2015

Keywords:

Divorce,

Terms,

Marriage causes,

General causes

ABSTRACT

Objective: In legal systems, the efforts have been focused on protecting marriage for purpose of sustaining family institute. **Methodology:** However, in cases that there is no way for escaping from divorce, formation of divorce in legal system needs some terms and causes to be specified in Statutes of the relevant system. The present study is aimed in assessing terms and causes of divorce in the mentioned legal systems of Iran and Turkey. Terms and causes of divorce are different in the mentioned legal systems due to the different political system governance in these countries. **Results:** It could be found from studies in this field that in Iran's legal system, terms and causes of divorce have been regulated in benefit of men due to their wide authorities and powers in this field. However, the Iranian Legislator has taken some measures to limit the authorities. **Conclusion:** However, in legal system of Turkey, terms and causes of divorce are same for men and women and observe rights of both of them due to being derived from European regulations.

1. Introduction

Terms and causes of divorce in legal system of Iran and Turkey are originated in two different approaches. Nature of divorce can be affected by perception of legislators of both countries, along with their governance approaches. Iran's legal system is derived from Islamic Holy Law, in which Islam can be observed clearly. However, in Turkey, secular perspective has changed the attitude and they have derived terms and causes of divorce mostly from roots of Roman and German Legal Systems and from Swiss (Aghajanian, 1986). Old law of Turkey has accepted divorce system and has considered preference of divorce on behalf of wife based on some terms and causes. Causes of divorce on behalf of wife and husband are slightly different, which would be investigated completely at the present study. Divorce method since 1 century ago in Iran has been same method that has been common in the age of legislation; meaning that imposing divorce has been by husband and without reference to the court. However, since 1 century ago, interference of judicial courts in all divorces is essential (Müftüler-Bac, 1999). Civil Code approval of 1934 has given absolute power of divorce to man in article 1133. In article 1130 of same Code, the cases that woman could request for divorce from the court has been specified and in article 1119, possibility to get divorce by woman has been predicted through condition of agency in divorce. Approval of new and predictable regulations and novel actions in regard with divorce in Family Protection Law and other statutes has limited the arbitrary authority of man and has attempted to prevent negative and terrible outcomes of this issue and has emphasized sustaining foundation of family more and more (Beckstrom, 1973). In this regard, terms and causes of divorce in Iran's legal system have some cases that would be investigated along with terms and causes of divorce in legal system of Turkey.

2. Materials and methods

2.1 Terms and conditions of accuracy of marriage contract in Iran and Turkey legal systems

Here, terms of divorce would be investigated in two legal systems of Iran and Turkey.

2.1.1 Basic conditions of accuracy of divorce in Iran Law

* Corresponding author: A.Forozandehpour@gmail.com
DOI: <https://doi.org/10.24200/jsshr.vol3iss03pp32-37>

In Iran's legal system, divorce is unilateral contract that is taken by man and predicted basic conditions of contracts are binding in unilateral contracts too. In addition, in Civil Code, absolution of divorce has been added to general regulations of contracts (Htun and Weldon, 2011). Terms of accuracy of divorce can be divided to two groups. A group is associated with basic elements of unilateral contract such as intention and consent and qualification and the other group is associated with formalities for its occurrence such as using special terms in presence of two just men.

Existence of innate or real intention of divorce is one of the intentional actions and its influence is depended on will of the husband. Hence, if a person has not the intention to leave his wife but says some words in sleep or anesthesia and drunkenness in this field or says special words with jock, divorce would not happen (Civil Code/1136). In addition, if intention of husband is another issue and says the term divorce wrongly to express his intention or a man with two wives, who gets divorce from one of them wrongly instead of the other one, the action would be neutralized, since this action has not be relied on innate will. For accuracy of divorce, existence of intention is not sufficient and the divorcer should be satisfied and make decision in an environment free from fear and threat. According to article 1136 of Civil Code, "The divorcer must be of legal, must be in possession of his faculties, must intend the act and must be free in his action" (Keddie, 2007). Particularly, divorce is a formal legal action and at the time of doing the formalities and expressing divorce sentence, absolute intention and will should be provided and witnesses should listen such intention. In other words, occurrence of divorce is not only depended on announcement of will, so that it could be mentioned that the next satisfaction can complete it, absolute consent while divorce and hearing of witnesses is condition for accuracy of divorce. However, in case that court forces husband for divorce following request of wife, divorce would not be reluctant. However, it seems that according to article 190 of Civil Code, taking article 209 can be an exception on article 190 and any exception in scope of basic regulations would be flowing and the exception has not be taken by itself and has not the capability for execution. Consequently, it could be mentioned that Civil Code that has been derived from Imami Jurisprudence is opposed to the effect of hearing resulted from reluctance in divorce.

The second predicted term in article 1136 of Civil Code for the divorcer is mind. Hence, permanent insane without the condition can divorce his wife. However, article 1137 of said code has stated that: "the guardian of a permanently mad person can divorce the wife of the latter if the interests of the person under his custody allow him to do so". According to explicit text of article 1119 of Civil Code, the wife has the power, which she can also transfer to a third party by power of agency to obtain a divorce herself. The power of agency to obtain a divorce for wife before the said code has been approved in article 4 of Law on Marriage approval of 1931 with the next terms and only note of this article has been omitted in Civil Code. According to explicit text of both articles, the power of agency to obtain divorce has been accepted for wife (Jones, 1981).

2.1.2 Conditions of divorces wife in purity (during her monthly period or during the convalescent period) in Iran's legal system

Articles 1140 to 1162 of Civil Code have determined required terms of wife, which can be generally summarized in purity of wife and physical separation of couples. According to article 1140 of Civil Code, It is not proper to divorce a wife during her monthly period or during the convalescent period after childbirth. Convalescent period is a period, which is while pregnancy and after that maximally to 10 days after childbirth. Civil Code has considered 3 exceptions for this issue in said article as follows: unless when the wife is pregnant or when the divorce occurs before matrimonial relations with her, or when the husband is absent so that he cannot obtain information concerning her monthly period. In regard with the second exception, it should be mentioned that when before intercourse of couples, the divorce issue is expressed, the legislator makes divorce easier and won't consider purity of wife, since marriage has not been sustained yet and no child has been created. In regard with third exception, it has been mentioned that when the husband is absent so that he cannot obtain information concerning her monthly period; otherwise, purity of wife can't be condition and cause for divorce (Mir-Hosseini, 2006). Through studying Civil Code, it could be found that divorce is true in condition of purity other than the said periods. The issue can be confirmed by article 1141 of Civil Code. According to article 1141: It is not proper to divorce a wife between two monthly periods during which intercourse has taken place unless the wife is pregnant or is incapable of conception. Therefore, if husband has had intercourse with his wife after purification, he can't divorce the wife; unless he waits for next monthly period of wife and then take action for divorce. However, the condition is not binding in regard with two cases: in the case of postmenopausal women and pregnant women, in which divorce is proper even during the said periods.

2.1.3 Formalities of divorce from court order to enforcement of actual form of divorce

Divorce is a formal action and for purpose of enforcing actual form of divorce due to the relevant regulations of divorce, the permission of court should be taken. In process of development of divorce, some formalities are required, without which the divorce would not be happen. It means that the person demanded for divorce can determine the formalities after reference to the court and proving one of the causes of divorce. In regard with sanctions, it should be mentioned that due to the existing regulations and especially Iran's Family Protection Law approval of 2012, when wife wants to get divorce sue to the regulations of Civil Code and religious terms, she should refer to the court and prove one of the causes for divorce and after confirmation of the court, the order of divorce would be issued. According to note 2 of Divorce Act, certificate of mental health of couples should be presented to the court if their mental status is suspicious. In divorce, special terms of divorce should be used. According to article 1134 of Civil Code, the divorce must be performed in the actual form of utterance and in the presence of at least two just men who must hear the actual form of divorce. What is actual form of divorce? An Arabic term should be applied in this form such as you are divorced – he is divorced – this is divorced (Darvishpour, 2002; Akbari, 2008; Kucukcan, 2003). Taking witness for divorce is also one of the sentences in this field. According to article 1134 of Civil Code, the divorce must be performed in the actual form of utterance and in the presence of at least two just men who must hear the actual form of divorce.

2.2 Conditions of divorce in legal system of Turkey

In Turkey Law, divorce has been changed a lot over the decade because of social and political changes, especially along with change in religious and Islamic system in Turk society and government. In fact, the system has been changed into secularism and western system. In early 1923, Commission of Civil Code was established and after wide activities, a bylaw was provided and presented to the Parliament in field of Family Rights. The bylaw is known as No.1339 and Family Protection Law (Tremayne, 2006). The other bylaw was legal bylaw No.1340 approval of 1924 of Family Rights. In the new bylaw, as a result of disease each one of the couples, the right to divorce would be given to each one of the couples and absence of each of them can be

considered as causes of divorce for the other one. Misconduct, multiplicity of marriage and remarriage are innovations of the bylaw. Disagreement has been also investigated in the bylaw with realization of two conditions. In Turkish Civil Code, divorce has not been considered just in authorities of husband and couples can request for divorce in terms of occurrence of legal cases. Divorce would be impossible without petition. In following cases, each party can take measure to submit divorce petition to the court: committing adultery (article 162 of Turkish Civil Code); Degrading crime, or the embarrassment of the other party (article 163 of Turkish Civil Code); leaving spouse (article 164) and insane (article 165). Hence, firstly, wife or husband can ask for divorce in case of occurrence of each of the mentioned conditions and the divorce petition is not specified to husband, but also wife has also this right. Secondly, divorce would be conducted following order of the court.

3. Discussion and results

3.1 Causes of divorce in Iran and Turkey's legal systems

The aim by causes of divorce is things that are permission of divorce and one can take action for divorce using them.

3.1.1 Causes of divorce in Iran's legal system

In Civil Code of Iran, following according to Imami Jurisprudence, divorce, based on its causes, can be happen as follows: firstly, a man can divorce his wife whenever he wishes to do so through referring to court (article 1133 of Civil Code) (revised Civil Code of 2002). Secondly, wife can ask for divorce in specific cases according to articles 1029, 1129 and 1130 of Civil Code. Thirdly, couples can make agreement on divorce under specific conditions (articles 1145 and 1146 of Civil Code). This kind of divorce is named Khul' or Mobarat.

3.1.2 Authority and right to divorce against man as a principle in Iran law

According to verses and narratives, Imami jurists believe that right to divorce is specified to man. This issue has been limited to several conditions such as qualification of husband such as maturity, authority or manner of implementing the actual form of divorce or relevant conditions of wife such as not to be in monthly period or the convalescent period. Because of abuse of divorce authority by some men, Family Protection Law has cancelled article 1133 of Civil Code absolutely and has removed absolute authority of man and has limited divorce of man to specific cases. However, legal bylaw of establishment of Specific Civil Courts approval of 1979 and with return to Civil Code its recovered the mentioned article again (article 2, note 3). Amend the Civil Marriage Act approval of 199, similar to Family Protection Law, announced that issuance of certificate for agreement on divorce was necessary. According to the mentioned regulations and limitation of authority of man for divorce, article 1133 of Civil Code was revised by Nov 10th of 2002 as follows: "A man can divorce his wife with observance of conditions of this Code and with reference to the court". It seems that article 1133 of Civil Code has not brought new regulation, since authority of man for divorce and necessity of referring to the court and also right of wife to divorce based on the said articles has been predicted in previous regulations. However, if today husband wants to divorce his wife, he should refer to the court and the court would take measure to make compromise between them and if no compromise is created, certificate of lack of compromise would be presented to the husband. The Divorce Office would take measure to implement divorce after receiving certificate of lack of compromise.

3.1.3 Divorce based on request of wife and its exceptional nature

In some cases, law has given right to demand for divorce (articles 1130, 1129 and 1029 of Civil Code). In all of the said cases, divorce comes out of its actual form and its offer without acceptance can give it in hands of wife. It means that the articles can give the right to divorce and offering divorce to wife exceptionally. Wife can ask for divorce according to these legal articles. The thing that has been by these articles on exceptions of divorce by wife is as follows: absence of husband, husband's failure to pay alimony and Refusing to give alimony.

Hence, some solutions have been predicted in jurisprudence and Civil Code, whereby women can refer to the judge and get divorce. Some of the articles have been mentioned explicitly in Civil Code and all of them have juridical source and backup. Some others have been considered by the judge generally and have many examples, which can be specified by the court and if they are proved, the judge can get divorce of wife. There are some cases that have been mentioned in Civil Code explicitly such as avoidance and failure of husband to pay alimony and his uninformed absence. In fact, the assumption is that nature of these articles is so bad and unbearable that has no need for judgment of judge and makes marital life unbearable. The cases are caused of divorce under title of hardship and in judiciary, magistrate has key role in determining it. Although some examples of hardship may include special causes such as disobedience that has a specific article in Civil Code and such as refusing to pay alimony, the wife can ask for divorce under the title of hardship and not disobedience. This is because; in many cases husband refuses to pay alimony and wife is not under hardship because of financial independence. Hence, in these cases, wife can get divorce based on specific causes.

3.1.4 Uncontested divorce in Iran law

In Imami Jurisprudence and Civil Code, uncontested divorce has not been predicted, since divorce is resulted from will of husband and his authority and consent or lack of consent of wife can't affect the issue.

In Imami Jurisprudence, divorce would be happen based on agreement and consent of two parties in two cases as follows: through Khul' divorce and Mobarat and through agency. Khul' and Mobarat divorces: in terms of religion and jurisprudence, Khul' divorce is destroying marriage through giving a property on behalf of wife to husband in case of existence of reluctance of wife from husband. If the reluctance is bilateral, meaning that wife and husband hate each other, the divorce is named Mobarat. In this kind of divorce, in addition to general conditions and terms presented for accuracy of divorce, two elements of reluctance and paying ransom is essential. Ransom should be a property such as dowry and something can be paid as ransom that can be considered as dowry too. It should be mentioned that in mobarat divorce, the reluctance is bilateral; although in Khul', reluctance is only for the wife. In

mobarat divorce, the ransom should not be more than dowry; although in Khul', there is not such condition and there is no certain size and amount for it. However, it should be to an extent that husband can give consent for divorce of wife. Implementation of Mobarat divorce should be ended to sentence of divorce; although there is no agreement on Khul'.

Divorce through agency: in this kind of divorce, couples agree with each other to make wife her own agency in divorce and the husband gives such right to his wife. For example, in marriage contracts, a series of conditions are considered that husband gives agency to his wife and gives her authority to get divorce in case that he refuses to act based on his commitments. However, Civil Code has used famous promise to accept agency permission. This issue has been explained in article 1119. Therefore, wife has right to be agency in substitution; meaning that she can give her case to another party to get her divorce. However, cases mentioned in article 1119 are template and have no monopoly and couples can present other stipulations in the contract. The reason that agency is considered in stipulations of marriage contract is that agency is a permitted contract and hence, the husband can dismiss his wife from getting divorce whenever he wants. However, if the agency is changed into marriage stipulation, necessity of contract can prevent man to void agency of woman and in other words, the mentioned condition would become binding based on the contract and the principal can't dismiss the agent. According to article 679 of Civil Code, the principal can, whenever he desires, dismiss the agent, unless a condition has been made in the course of an irrevocable contract as to the agency of the attorney or the impossibility of his dismissal. Condition of agency is not limited to marriage contract and even after marriage, while concluding another binding contract like selling contract; divorce agency can be also considered. However, in religion and regulations, right to divorce has given to man.

3.2 Causes of divorce in Turkish legal system

Causes of divorce in this section would be investigated in two categories of relative and absolute groups.

3.2.1 Relative terms and causes of divorce in Turkish law

Relative causes of divorce in Turkish legal system would be investigated in two categories based on commitment of crime and its special examples.

3.2.2 Relative causes of divorce based on committing crime

The first case is adultery. Civil Code has counted adultery of husband or wife as one of the causes of divorce and hence, the right to divorce has given to both wife and husband in the said law based on committing adultery. To discuss on adultery, the relationship should be realized. Here, the legislator has applied the term "adultery" and the term has its actual concept. It means that in framework of marital life, common actions of adultery such as speaking, lettering, internet chat and chat through mobile message and even physical relationship without adultery are not considered in this definition and intention of the legislator.

Proving this issue is realized through this issue that adultery can be proved with any kind of reason. Supreme Court has presented different verdicts and has presented some cases as adultery as follows. A woman, who has been hospitalized in private room of hospital and has a photo with the man, with whom she has had relationship; a person, who has been in a closed room with his lover or has gone to deserted places with car and such cases can be causes for adultery according to Civil Code. Bad will and misbehavior can be also private causes for divorce in article 162 of Turkish Civil Code. Originally, the mentioned cause is not a unit cause, but also it includes two separate causes. The first one: bad will is an action taken by one of the couples on another one and in regard with his/her physical integrity. For example, beginning to kill spouse or encouraging him/her for suicide and similar actions can be considered in scope of bad will. Bad will can be considered among causes of divorce and as a result of proving this issue; there would be no need for investigating possibility of continuing marital life of couples by the judge. The second case: misbehavior is associated with some actions against the spouse, annoyance and actions that endanger his/her mental and physical health, lock out the other one and maintaining him/her hungry and beating, imposing uncommon sexual relationship and similar issues are in fact heavy and incompetent actions. Source of this issue has been presented in article 138 of Swiss Civil Code. Third case: the cause has been regulated in article 163 of Turkish Civil Code and is one of the private causes formed of two terms of crime and disrespect. According to the article, if the degrading crime is committed, each couple has the right to present lawsuit against the other one. Here, the legislator has applied the word "Onursuz" that means brassily. In Penal Code, there is no crime under the title of brassily crime or similar thing. However, its examples have been presented in feedback with limited procedure. This can be the effect of ignorance of ethical system and actions against it in wide range and specifying them can cause shame. Hence, if in process of crime commitment, an action has been taken against ethical system and social norms dominated on the environment, the crime can be considered as a subgroup of degrading or brassily crimes. Accordingly, it should be mentioned that if the dominant environment on the criminal is common for the crime and couples live in such place, such crime can't be considered as one cause for divorce. For example, both of them are thief or live in an environment polluted to crimes and are aware of nature of criminal actions and degradation actions.

3.2.3 Relative causes of divorce based on specific examples

Among specific causes that have been referred by Turkish Civil Code, common home (article 164- article 140 of Swiss Civil Code) is subject of article 164 of Turkish Civil Code and mental health (article 165- article 141 of Swiss Civil Code) is subject of article 165 of Turkish Civil Code. In this regard, it should be mentioned that article 164 of Civil Code specifies a time and limit, which no notification can be issued on divorce until the certain time. Whereby the article, one of the couples leaves marital life to escaping from doing tasks and responsibilities resulted from marital relationship or refuse to return to the marital life with no good reason and this issue lasts at least 3 months, the other party can present his claim for divorce. If the party that has the right to divorce has referred to the court, the judge warns to the party that he/she should return to home within 1 month and the notification would be published as announcement if necessary. Hence, leaving spouse and marital life can be one of the causes for divorce. Therefore, if wife or husband leaves the home for at least 3 months with the aim of escaping from doing marital commitments, the other party can take measure to present divorce petition to the court. The court can also give a 1-month deadline to the other party to come back home. The notification can be submitted in form of announcement.

In the other party refuses to come back, the court issues needed order for divorce (article 132 of Civil Code). The intention for escaping from marital responsibilities can be one of the items referred in Turkish Civil Code. Separate living and leaving should be continued at least to 3 months. Notification for the party who has left marital life should be conducted before presentation of lawsuit to the court. If after 1 month after issuance of the notification couples refer to their marital life and continue their life and new events are also created at this time, the party who has asked for the notification can ask for divorce under the title of leaving or impossibility of continuing marital life. If one of these rights is used, there would be no barrier to use rights. If the notified party has been relied on reasonable issues to leave marital life, required conditions for leaving would not be realized for divorce (Second Legal Branch of Supreme Court of Turkey, 15/12/1977- 1093/1291, Journal of verdicts of court, No.10, p.1372.). Turkish Civil Code has considered mental disease under specific conditions as one of the causes for divorce. Hence, madness and insanity can be one of the true causes of divorce, so that according to article 133 of Turkish Civil Code, if madness is continued for 3 consequent years and the status is unbearable for marital life, the other party can present the claim for divorce. In Iran's Civil Code, madness and insanity is one of the cancellation cases (article 1121 of Iran's Civil Code).

3.2.4 General terms and causes of divorce in Turkish legal system

Civil Code in article 166 has referred to a general cause for divorce and has called it inadaptable and in doctrine it has been called as severe dispute. The article that has been changed in 4/5/1988 and due to the law No.3444 has accepted lack of accepting formation of marital life once again under the title of three general terms of Shake the unity of life, understanding of couples and the impossibility of formation of marriage. The first cause for divorce has been regulated in paragraph 1 of article 166: if marital life is shaken unexpectedly from the stem, each one of the couples can claim for divorce. According to paragraph 2 of the said article, under specific conditions, if the culprit has been plaintiff, the defendant has the right to have objection to the presented lawsuit. Hence, if the right to objection is abused and continuing marital life is not important for the defendant and children and there is no benefit in this action, the judge can issue divorce order. In this article, shake of unity of life is same severe dispute between couples that can make marital life unbearable. The dispute between couples should be to an extent that it can prove that the marital life is unbearable and the situation should be created for one of them. Naturally, in limit of the authorities, characteristics of couples, their behavior, education, culture and social class and their growing conditions would be considered by judge. Condition for presenting lawsuit has not been limited to lack of fault of one of the couples.

Turkish Civil Code had not considered principle of will of parties for divorce and had not mentioned it as a cause for divorce; although due to the change in article 134 of old Civil Code done based on act No.3444, the cause has been also added to other causes for divorce. To issue sentence for uncontested divorce, some conditions and terms are predicted as follows: the first one is that at least 1 year should be passed from marriage. Second, reference of couples of uncontested divorce to the court should be following acceptance of claim by the defendant. Third, it has been confirmed in regard with the referred conditions that judge should hear claims of couples. Finally, the last condition can be advising financial outcomes of uncontested divorce for couples and situation of children by judge. Agreement of parties not only on divorce, but also in regard with financial outcomes and situation of children should be considered and the agreement would be announced to judge for the assessments (second branch of legal unit of Supreme Court 21/11/1994 – 12840-12452, Journal of verdicts of the court, 1995, No.3). If the mentioned terms above are realized, the judge can take measure to present divorce order; otherwise, for example if parties have not been successful on one item, judge can issue divorce order.

3.2.5 Lawsuit for separation without divorce in Turkish legal system

Establishment of separation law is basically derived from Catholic Church Law. Catholic Church Law has not accepted divorce, although it has accepted separation and the legal establishment has been considered on this basis that Turkish Civil Code has been derived from Swiss Civil Code. According to article 135 of Turkish Civil Code, the person who has the right to present divorce case can ask for divorce or separation. Hence, if one of the discusses causes and terms are realized, couples can ask for separation or divorce optionally. Divorce and separation are same in view of terms and causes. With the similarity of causes and terms, they are different in terms of outcomes. Although divorce ends marital relationship absolutely, marital life would be ended only in determined deadline in separation. Wife has right to determine her separate accommodation during this period. Determining separation duration is in legal limit and under order of judge. As separation can't end marital relationship and marital life, no change would be created in personal status of couples during this time (<http://www.hurriyet.com.tr/yazahrlar>). Wife, who has gained the right to use family name of her husband as a result of marriage, can use this right during separation too and the tasks and obligation created by marriage, especially honesty and trustworthy and managing family by husband would be continued. Children born during this time have proper parentage due to continuing marital relationship and if one of the couples is dead in this time, the other one would be his/her heir. During this time, delivery of children for maintenance to one of the couples and regulating relationship of children and its quality with the other one and determining amount of alimony would be absolutely under supervision and decision making of judge. Separation can usually be ended with peace and agreement and there reference to marital life or can be ended with presenting lawsuit of divorce (article 139 of Civil Code). According to law, both parties have the right to present divorce lawsuit.

4. Conclusion

Divorce institute has specific position in all legal systems for the legislator because of goals of legislator for protecting family. Accordingly, in statutes, it has been attempted not to allow divorce to be performed easily and the most efforts would be conducted and the court can do its best for continuing marital life. However, in some cases that continuing marital life is impossible and there is no way to escape from divorce, manner of distributing authorities would be presented in scope of authorities and implementing divorce. Both couples should have authority equally or they should be qualified for the authorities adequately and in adapted way.

In Iran's legal system, as juridical sources establish the system, right to divorce has been considered for man; although legislator has limited the authority of men in many cases to adjust the authority that can cause abuse of men. In this regard, the legislator has given the right to wife to apply for divorce in

legally accepted cases and uncontested divorce (Khul' and Mobarat) has been also accepted. Accordingly, terms and causes of divorce in this legal system should be investigated according to this point. However, in Turkish legal system, according to the governance of secular government and deriving laws and regulations and especially Civil Code of the country, it has been attempted to observe equality of rights of wife and husband in this scope. In this regard, both man and woman can use these rights and apply for divorce under regulations of this country. These terms and causes that can be divided to two groups of relative and absolute causes have been explained and investigated in details in this study. Therefore, the important and basic issue in regard with analysis of terms and causes of divorce in Iran and Turkish legal systems is considering political governances centralized in these countries.

REFERENCES

- Aghajanian, A. 1986. Some notes on divorce in Iran. *Journal of Marriage and the Family*, 749-755.
- Akbari, W. 2008. The Changing Family Patterns among immigrants: An evaluation of the causes of divorces/separation among Iranian families in Sweden.
- Beckstrom, J. H. 1973. Transplantation of legal systems: An early report on the reception of western laws in Ethiopia. *Am. J. Comp. L.*, 21, 557.
- Darvishpour, M. 2002. Immigrant women challenge the role of men: How the changing power relationship within Iranian families in Sweden intensifies family conflicts after immigration. *Journal of comparative family studies*, 271-296.
- Htun, M., & Weldon, S. L. 2011. State power, religion, and women's rights: A comparative analysis of family law. *Indiana Journal of Global Legal Studies*, 181, 145-165.
- Jones, G. W. 1981. Malay marriage and divorce in Peninsular Malaysia: Three decades of change. *Population and Development Review*, 255-278.
- Kandiyoti, D. 1989. Women and Islam: What are the missing terms. *Women Living Under Muslim Laws*, 5-9.
- Keddie, N. R. 2007. Iranian women's status and struggles since 1979. *Journal of International Affairs*, 17-33.
- Kucukcan, T. 2003. State, Islam, and religious liberty in modern Turkey: Reconfiguration of religion in the public sphere. *BYU L. Rev.*, 475.
- Mir-Hosseini, Z. 2006. Muslim women's quest for equality: Between Islamic law and feminism. *Critical inquiry*, 324, 629-645.
- Müftüler-Bac, M. 1999. Turkish women's predicament. In *Women's studies international forum* (Vol. 22, No. 3, pp. 303-315). Pergamon.
- Tremayne, S. 2006. Modernity and early marriage in Iran: a view from within. *Journal of Middle East Women's Studies*, 21, 65-94.

How to Cite this Article:

Mokhlesabadi Farahani E., Forozandehpour A., Terms and causes of divorce in the legal system of Iran and Turkey, *Uct Journal of Social Sciences and Humanities Research* 03 (2015) 32-37.