CONTENTS

Acknowledgement i – iii
Dedication iv
Table of Cases v – viii

CHAPTER 1 : INTRODUCTION 1 – 69
1.1 Pre-Islamic Arabian Society 1
1.2 Muslim’s Prophet 4
1.3 What is Islam? 8
1.4 Who is Muslim? 11
   (i) Muslim by Birth 12
   (ii) Muslim by Conversion 13
1.5 Schools of Muslim Law 15
1.6 Table Showing the Muslim Sects, Sub-Sects and Different Schools of Law 15
1.7 The Shi’s and the Sunnis 15
1.8 Differences between Shi’a and Sunni Schools 18
1.9 Points of difference between the Sunni and Shi’a Schools 19
1.10 The Sunni Schools and Sub-school 20
   (i) The Hanifi School 21
   (ii) The Maliki School 22
   (iii) The Shafei School 22
   (iv) The Hanbali School 23
1.11 The Shia Schools and Sub-School 25
   (i) The Ithna Asharia School 27
   (ii) The Zyadis (Zaidis) School 28
1.12 The Motazila School

1.13 Muslim population in the world
   (i) Countries with the Largest Muslim Populations (2009)
   (ii) Population of Indian Muslim
   (iii) Population of Iranian Muslim

1.14 Table Showing the Prophet Muhammad (PBUH & HF)

1.15 Table Showing the source of the Sunni Muslim Law

1.16 Sources of Sunni Muslim Law

1.17 Primary Sources of Sunni School
   (i) The Quran
   (ii) The Sunna (Tradition or Ahadis)
   (iii) Ijma
   (iv) Qiyas

1.18 The Secondary Source of Sunni
   (i) Istihasan
   (ii) Istislah
   (iii) Istidlal
   (iv) Fatawas
   (v) Legislation

1.19 Custom as a source of law

1.20 The Sources of Shia Law

1.21 The Primary Sources of Shia Law
   (i) Qur’an
   (ii) The Sunna/ Tradition
   (iii) Ijma
   (iv) Reason (Aql)
1.22 The Secondary source of Shi’a in Iranian laws
1.23 Islamic Jurisprudence
1.24 Muslim Shari’ah/Shariat Law (The Canon Law)
1.25 Division of Fiqh
   (i) Distinction between Shariat and Fiqh
1.26 The position of women in pre-Islamic Arabia
1.27 Lexical Meaning of Talaq (Divorce)
1.28 Pre-Islamic background of divorce (Talaq)
1.29 Divorce after the advent of Islam
1.30 Why Divorce . . .?
1.31 What does Islam say about divorce (Talaq)?
1.32 The Islamic Shari’ah does not Approve of Divorce
1.33 Indian Muslim Personal (Family) law /Shariat Law
1.34 The Shariat Act, 1937
1.35 The Dissolution of Muslim Marriages Act, VIII of 1939
1.36 Grounds of Dissolution recognised by Mohammedan Law
1.37 Objective of study
1.38 Research Hypotheses
1.39 Methodology of Research
1.40 Scope of the study
CHAPTER 2 : DISSOLUTION OF MARRIAGE UNDER IRANIAN LAW

2.1 Introduction 70
2.2 Importance of Marriage in Islam 72
2.3 What does Islam say about divorce? 75
2.4 Iranian Official Religion and Other Religion in Iran 75
2.5 The Judicial System in Iran 78
2.6 Shi’a Law in Iran 80
2.7 The Iranian Civil Code 81
2.8 Table Showing Dissolution of Marriage under Iranian Law 82
2.9 Dissolution of Marriage in Iranian Laws 83
   (i) Cancellation (Fashk) of Marriage in Iranian Law 83
      (a) Causes of Cancellation (Fashk) of Marriage in Iranian Law 84
         (1) Defect 85
         (2) Breaching Conditions Regarding Qualification 92
      (b) The Urgency of Cancellation Right 94
      (c) Similarities between Cancellation (Fashk) of Marriage and Divorce 96
      (d) Differences between Cancellation (Fashk) of marriage and Divorce 96
   (ii) Section 2 – Divorce 99
      (a) Definition of divorce in Iranian laws 99
(b) Components of Divorce 101
(c) Divorce in Writing 103
(d) Witnesses in Divorce 103
(e) Necessity of the certificate of incompatibility by the court 104
(f) Arbitration in Divorce in Iranian Law and it's Conditions 105
(g) Conditions for Correctness of Divorce 107
(h) Formal Conditions of Divorce 108
(i) Causes of Divorce in Iranian Laws 109
(j) According to conditions stipulated a separate binding marriage contract 114
(k) Judicial Divorce 118
(l) Delegated Talaq 120
(m) The Family Protection Act of 1967 121
(n) The Family Protection Act of 1975 122

2.10 Types of divorce 124
(i) Irrevocable Divorce 125
(a) Divorce before intercourse 126
(b) Divorce of a menopause 128
(c) Khul’a and Mubarat Divorce 129
   (1) Khul’a Divorce 129
   (2) Mubarat Divorce 133
(d) Third Divorce 134
   (1) Third (triple) Divorce in Shi’a Law 135
(2) Triple Divorce at the time of the Prophet and the First Caliph
(3) Procedure of Triple Divorce in Iranian Laws
(4) Doctrine of Halalah or Mohalleh
(5) Triple divorce in Holy Quran
(e) Forcing the husband to divorce
(f) Divorce of a woman by herself on the basis of power of attorney

(ii) Revocable Divorce
(a) Affects and Consequence of Revocable and Irrevocable divorce
(b) Condition/Circumstances of Revocable of Divorce
(c) Wife’s period of Waiting (Iddah)

(iii) Indirect Divorce
(a) ‘Ila’
(1) Religious Authority
(2) Procedure of ‘Ila’
(3) ‘Ila’ in ‘Shi’a Law
(4) ‘Ila’ in Iranian Law
(b) Zihar
(1) ‘Zihar’ In the Holy Quran
(2) Penalty of ‘Zihar’ in Holy Quran
CHAPTER 3 : DISSOLUTION OF MARRIAGE UNDER INDIAN MUSLIM LAW

3.1 Introduction 158
   (i) Background of Pre-Islamic Divorce 158
   (ii) Divorce After the advent of Islam 160
   (iii) Divorce in Islam 161
   (iv) Modes of Dissolution of Marriage 163

3.2 Classification of Dissolution of Marriage 164
   (i) By the Death of Husband or Wife 165
   (ii) By the Act of Parties 166

3.3 Divorce by the Husband 166

3.4 Talaq 166
   (i) Conditions for a Valid Talaq 167
      (a) Capacity 167
      (b) Free Consent 169
      (c) Formalities 171
      (d) Express Words 172
   (ii) Kinds of Talaq 176
      (a) Talaq-ul-Sunnat (Revocable Talaq) 177
         (1) Talaq Ahsan (Most Proper) 177
         (2) Talaq Hasan (Proper) 180
      (b) Talaq-ul-Bidaat (Irrevocable) 181

(3) 'Zihar' in Iranian law 153
(c) 'Lian' 153
(1) Religious Sanction 154
(2) Procedure of Lian 155
3.5 Ila Divorce by Act of the Husband 182
3.6 Zihar Divorce by Act of the Husband 188
3.7 Divorce by the Wife 194
   (i) Talaq-e-Tafweez (Delegated Divorce) 195
3.8 Divorce by Mutual Consent 197
   (i) Khula 197
   (ii) Mubarat 201
3.9 Judicial Divorce 203
   (i) Lian 205
   (ii) Faskh 217
3.10 The Dissolution of Muslim the Marriage Act 1939 217
3.11 The Grounds of Dissolution of Muslim Marriage under the Act, 1939 219

CHAPTER 4 : PROCEDURES TO TAKE DIVORCE IN INDIA AND IRAN 223 – 239
4.1 Procedure and Formalities of Taking divorce/Talaq in Indian Muslim law 223
4.2 Formalities of Divorce in Shi’a Muslim laws 224
4.3 Procedure and Formalities for Taking of Divorce in Iranian Laws 226
4.4 Components of Divorce in Iranian Laws 236
4.5 Conditions for Correctness of Divorce in Iranian Laws 237
4.6 Formal Conditions of Divorce in Iranian laws 238
CHAPTER 5: CONSEQUENCES OF DISSOLUTION OF MARRIAGE IN IRAN AND INDIA

5.1 Legal Consequences of Divorce 240

5.2 Waiting period (Iddat, Iddeh) 243
   (i) Periods of Iddat in Indian Muslim Laws 246
   (ii) The waiting period (iddah) in Iranian Laws 248

5.3 Parentage and Legitimacy of children in Indian Laws 251

5.4 Presumption of Legitimacy under Indian Muslim Law 253

5.5 Paternity (Nasab) and Legitimacy in Iranian Muslim Laws 258

5.6 Legitimacy of child 259

5.7 Dower 262
   (i) Kinds of Dower in Indian Laws 273
      (a) Specified Dower 276
         (1) Prompt Dower 277
         (2) Deferred Dower 279
      (b) Proper (Customary/Unspecified) Dower 282
   (ii) Dower in Iranian Laws 292

5.8 Maintenance 301
   (i) Maintenance in Indian Muslim Laws 301
   (ii) Maintenance (Nafaqah) in Iranian Laws 322

CHAPTER 6: DIFFERENCE BETWEEN IRANIAN AND INDIAN MUSLIM LAW ON DISSOLUTION OF MARRIAGE 329 – 412

6.1 Introduction 329
(i) Beliefs of Shia and Sunni Muslims 329

(ii) The Similarities between Shi’a and Sunni Muslims in belief’s principles 330

(iii) The Similarities between Shi’a and Sunni Muslims in jurisprudence laws and divisions 331

(iv) The Separation of Shi’a and Sunni 332

(v) Points of difference between the Sunni and Shi’a schools 334

6.2 Difference source of Muslim laws between Shi’a and Sunni 335

(i) The primary sources in Sunni Schools 335

(ii) The primary sources in Shi’a School 335

6.3 Dissolution of Marriage under Muslim Law 339

6.4 Dissolution of marriage in Indian Sunni Muslim law 339

6.5 Divorce by Husband 340

6.6 The Similarities and Differences between Iranian and Indian Muslim law in the Procedure and Formalities of Taking divorce/Talaq 346

6.7 The Similarity and Difference between Shi’a and Sunnis’ View in Kinds of Talaq 351

6.8 Divorce by wife 359

6.9 Causes of Cancellation (Faskh) of Marriage in Iranian Law 369

6.10 Divorce by Mutual Consent 377

6.11 Indirect Divorce 384

(i) Ila 384

(ii) Zihar 388
6.12 The Similarities between Shi’ā and Sunnis’ View in the Legal Consequences of Divorce

6.13 The Similarities and Differences between Iranian and Indian Muslim’s View in the re-marriage of divorced couple

6.14 Waiting period (Iddat, Iddeh)

6.15 The Parentage and Legitimacy of children in Muslim Laws

6.16 Dower

6.17 Maintenance

CHAPTER 7 : CONCLUSION AND SUGGESTIONS

7.1 Muslim and It’s Sects

7.2 Dissolution of Marriage in Iranian (Shi’a) and Indian (Sunni) Muslim Laws
   (i) Causes of Cancellation (Faskh) of Marriage in Iranian Law
   (ii) Breaching Conditions Regarding Qualification

7.3 Divorce in Iranian (Shi’a) and Indian (Sunni) Muslim Laws
   (i) Capacity for divorce
   (ii) Essential of Intention for Divorce
   (iii) The Presence and Notice of Wife at the Time of Divorce
   (iv) Conditional and Contingent Talaq
   (v) Writing Divorce
   (vi) Procedure and Formalities of Taking divorce/Talaq

7.4 Revocable divorce (Talaq-ul-Sunnat)
7.5 IRREVOCABLE/ TRIPLE DIVORCE (TALAQ-UL-BIDAAT) 427

7.6 DIVORCE BY WIFE IN IRANIAN AND INDIAN MUSLIM LAW 430
   (i) Husband's disappearance in Iranian and Indian Muslim Law 431
   (ii) Want of maintenance in Iranian and Indian Muslim law 431
   (iii) Imprisonment in Iranian and Indian Muslim law 432
   (iv) Non-performance of marital obligations in Iranian and Indian Muslim law 433
   (v) Impotency in Iranian and Indian Muslim law 434
   (vi) Other diseases in Iranian and Indian Muslim law 435
   (vii) Cruelty in Iranian and Indian Muslim law 437

7.7 OTHER GROUNDS FOR DISSOLUTION OF MARRIAGE IN IRANIAN LAWS 437

7.8 COMPONENTS OF DIVORCE IN IRANIAN AND INDIAN MUSLIM LAWS 438

7.9 DIVORCE BY MUTUAL CONSENT 439

7.10 INDIRECT DIVORCE 442
   (i) The Difference between Shi'a and Sunnis' View in Procedure of Ila 443
   (ii) The Difference View in the Ila'sEffectiveness and Qazi's (Qadi's) decree 444
   (iii) The Difference View in Compulsion or intoxication in Ila 445
   (iv) The Similarity View in Zihar 445
   (v) The Difference between Shi'a and Sunnis' View in Zihar 446
(vi) Lian

7.11 Legal Consequences of Divorce

(i) The Muslim’s View in the remarriage of divorced couple

7.12 Waiting period (Iddat, Iddeh)

(i) The Difference between Shi’a and Sunni’s View in the Commencement of Iddat

7.13 The Parentage and Legitimacy of children in Muslim Laws

(i) The Difference between Shi’a and Sunni’s View in Maternity

(ii) The Similarity between Shi’a and Sunni’s View in Paternity

(iii) The Difference View in the Concept of Legitimacy

7.14 Dower

(i) Fixation of Dower (Mahr) in Iranian and Indian Muslim Laws

7.15 Maintenance

7.16 Conclusion

BIBLIOGRAPHY 465 – 477

ANNEXURE I – V 478 - 494