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THEME:

**DIVORCE UNDER THE LAWS OF KOSOVO**

**AND UNDER ISLAMIC LAW**

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CONTENT

**Chapter I**.....

A review on divorce.....

Content.....

Introduction.....

Creation of divorce institutions.....

Development of divorce through centuries .....

Divorce today.....

**Chapter II** .....

Divorce under the law in Kosovo .....

Notion-meaning of divorce.....

The existence of a valid marriage .....

Divorce is for living spouses.....

Divorce is done for specified reasons by law .....

Divorce is done by litigation.....

Reasons of divorce.....

General reasons of divorce.....

Particular reasons of divorce.....

Ways of divorce .....

Divorce with agreement.....

Divorce lawsuits-elements of divorce lawsuits.....

Procedure of divorce .....

The principle of equality of the couple during the divorce proceedings .....

The principle of special protection of some persons .....

The principle of dis positivity .....

The principle of excluding the public .....	
Court case.....	
The initiation of divorce.....	
Phase of the divorce procedure .....	
Trying to reconcile the couple .....	
Appointment of temporary measures.....	
Presentation of evidences.....	
Judgment.....	
Means of attack.....	
The consequences of divorce under secular law.....	
Legal consequences of the dissolution of marriage by divorce .....	
Legal consequences toward the couple.....	
Legal consequences towards children.....	
<b>Chapter III</b> .....	
Divorce under Islamic law (heriatit) .....	
Notion of divorce .....	
Provisions and the legal basis for divorce.....	
Wisdom of divorce .....	
Islamic law and divorce .....	
General principles of divorce under the Islamic law .....	
Divorce is forbidden without reason.....	
Bad manners of the husband.....	
The judge between the couple.....	
Efforts for continuation of the married life.....	
Care and respect after divorce.....	

The reasons of divorce by wife.....

Divorce due to defects .....

Divorce due to lack of the husband.....

Divorce due to non-compensation-expense .....

Divorce due to any damage.....

Types of divorce .....

Divorce with the right of return - provisional divorce.....

The status of the divorce with the right to return in Islamic jurisprudence .....

The final irrevocable divorce .....

Small share double revocable divorce (bainbejnunesugra) .....

Status of the divorce with small share (bainbejnunesugra) .....

Large share or triple irrevocable divorce (bain oath jnune Kubra).....

Status of divorce with great share (bainbejnune Kubra).....

Ways-forms of divorce .....

Divorce through direct-clear expression.....

Divorce through the transverse-expression allegorical.....

Other forms that signal the divorce.....

Divorce as a joke .....

Violent divorce.....

Divorce of the drunk individual .....

Divorce of the crazy individual .....

Divorce of the distressed individual .....

The difference between divorce and separation.....

Court case.....

Role of women in divorce.....

The consequences of divorce under the Islamic law .....

Iddeti or waiting period.....

Maintenance in waiting period.....

**Chapter IV** .....

Differences and similarities of divorce between the right in Kosovo and that Sheriath (Islamic) ...

Similarities .....

Differences .....

A short conclusion .....

Conclusion .....

Literature.....



## INTRODUCTION

The marriage is the first step or the initial step to build a society. This society can't be strong if the foundations aren't strong, therefore Islam has given special importance to marital right, calling it "strong connection" and set some foundations that ensure its viability and sustainability, it has left the issue of marriage absolutely free, a choice of the couple without any imposition, a willingly relationship of the couple.

The family has a great importance in society. It is the smallest social community in which people are born, grow, develop and get the first education. But although it is the smallest community, it has a very important role in society, because the community is the organization which consists of the family and its members. As a result of starting a family is the marriage between a couple and the birth of children. It happens that this marriage doesn't last very long for many reasons, so it happens the divorce. There are different rules of divorce, depending on which rights we rely (in this case the right of Kosovo and Islamic right) under the law that from the various rights how they explain it.

The theme "Divorce under the law of Kosovo and according to the Islamic law" is quite wide and was elaborated by many authors, from the aspect of the secular and Shariat right but considering with interest a comparative overview of this subject, I think I can make a little contribution in this field of study.

Between the couple there must be peace, love and compassion. God in the Holy Qur'an says: "And the facts (of his majesty) is for your own good, he created from among yourselves the (women), that you may find repose in them, and he created between you love and mercy. In this there are arguments for people who think. However it happens between the couple that the harmony, comfort, love and spiritual serenity are not dominant, then if the understanding, love and mercy between the couple loses, the Islamic right permits divorce as a healthier way. This is done in order to prevent partners from living a gloomy life with intermittent problems. The basis for the review of the rules of divorce under secular law in Kosovo is family law of Kosovo, which was approved by the Assembly, and entered into force on 16 February 2006. While regarding the review of the rules of divorce in terms of Shariat right, based on the Holy Qur'an, the Prophet's tradition and in the books of Muslim jurists, mainly of the Hanafi law school.

I have divided this theme in four chapters:

In the first chapter, we have explained briefly the divorce on the historic aspect such as the divorce of Greeks, Romans, Jewish, Christians and Arabs before the coming of Muhammad a.s

In the second chapter under the secular law is reflected the divorce in Kosovo as the notion-meaning of divorce, reasons of divorce, the way of divorce, the divorce proceedings, the competence of the court and the consequences of divorce.

In the third chapter under the Islamic law (shariat) is reflected the divorce, including the notion of divorce, Islamic law and divorce reasons of divorce by wife, types of divorce ways of divorce, the role of women, the consequences of divorce etc.

While in the fourth chapter and the last one we have explained the functioning of the courts of the shariat in the former Yugoslavia during the period between the two World Wars, with emphasis in Kosovo, bringing several models of divorce and marriage that are recorded during that time and are now stored in the archive of Kosovo.



## CONCLUSION

Divorce is a legal and social problem and is mainly caused when between the partners are broken the feelings, intimacy, communication and when the good relationship no longer exists, including a general stress all members. Divorce is a more stressful situation for all members of the families that experience it and is presented as a major change in a person's life, which needs time to recover and adapt.

A family that is going through such a process is obviously involved in a variety of emotional disorders. The divorce process can increase within the family members strong feelings as: anger, anxiety, depression, loneliness, disturbance and lack of courage which is visible in the personality of individuals.

Divorce is the ultimate tool for ending the marriage. But when there is no other way then it should be taken this difficult step, but always hoping that will be the most favorable one.

The phenomenon of divorce has become one of the most studied topics recently on social sciences and especially in the science of psychology and sociology, because divorce is a fundamental right of the human.

Today, most of the countries allow divorce, except one or two states, which allow it only in exceptional cases, such as the Philippines and Malta. While in other countries such a thing is approved in legal terms.

The transition period, but other reasons have affected the number of divorces in Kosovo to grow rapidly. Research undertaken by many organizations demonstrate that the divorce is growing in our country, even by statistics, divorces according to the place and age of the woman in 2008 in total were: age 20 years 25 cases, age 20-24 years, 204 cases age 25-29 years 270 cases, aged 30-34 years 177 cases, aged 35-39 years, 139 cases, aged 40-44 years 111 cases, aged 45-49 years 51 cases, aged 50-54 years 28 cases, age 55-59 years 14 cases, aged 60-64 years 5 cases and finally age 65 on 2 cases, a total of 1026 cases (for more details see: Statistical Office of Kosovo). So, in these data it is clear that things do not look good, it is seen a continuous increase of this phenomenon as a result of many internal and external factors.

The law of Kosovo and Sheriat as well have put terms and conditions that should be ignored during the divorce. Simultaneously this paper is a kind of comparison between Kosovo's secular law and Islamic Sheriat for the treatment of divorce. Here, dilemmas are removed about what position has the Islamic law given to the woman and in particular how it has handled the divorce and what rights does women have in divorce, or is only the competence of the man.

Surely this issue is quite extensive and is developed by many authors, from the aspect of secular right and also from the aspect of Sheriat right, but considering the need for a comparative explanation of this subject, I have thought I might make a small contribution in the field of

comparative study. Issues that are realized by the act of marriage between a couple are calmness, love and mercy. God in the Qur'an says: "And the facts (of his majesty ) are for your own good, he created from among yourselves (the women), that you may find repose in them, and he created between you love and mercy. In this there are arguments for people who think. However it happens between the couple that the harmony, comfort, love and spiritual serenity are not dominant, then if the understanding, love and mercy between the couple loses, the Islamic right permits divorce as a healthier way. This is done in order to prevent partners from living a gloomy life with intermittent problems. The basis for the review of the rules of divorce under secular law in Kosovo is the family law of Kosovo, while regarding the review of the rules of divorce in terms of Sheriat right, based on the Holy Qur'an, the Prophet's tradition and in the books of Muslim jurists, mainly of the Hanafi law school.