

## The study of ratification vote and religious apostle at the family dispute (divorce) of the religious minority by the Iran's courts

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**Abstract:** The study of the allegation at the family's dispute of the religious minority such as as" divorce "about family's affairs is most fundamental basis of the family at every society. And its relations are the personal and emotional human relationship that survey in this article. Divorces at the Zoroaster and Christian customs are outcast and forbidding. Except in the special situation is possible by according to the personal status. But in the Jewish custom divorce is easy and only its requirement is to agreement of two sides and get (letters of divorce) by the husband to woman. based on the performed research on the mentioned religious minority in the referring to the Iran's courts, ought to issue the order at the allegation of the personal status based on their religion, then reach to the religious apostle that sometimes ignored by the courts because issued order was in the opposite of the rule of the religious minority, religious apostle of the minority avoid from ratification. This lack of the unity in the affairs leads to the confusion of the people and opening of the most of the dossiers. It is worthwhile that in the certified judicial and legal commission of the councils as a emendation of the bills of support of the family determine that" judicial courts delete from entering to the family dispute at the field of the religious minority and based on it, thereafter Iran's courts oblige to the ratification vote of religious apostle of the religious minority ". This emendation at the date of the 1391/12/9 approve at the guardian council and notify at the date of 1391/12/19| (notification's number 7726312).between known formalized minority at the country, They have different branches .that Iran's law consider the all religious minority not their nationality. But pact at the performing of the law of the personal status of religious minority is to the extent that does not contradict with the general order and good moral.

[Jamal Rezaei, Ali Jahankhah, Mehrnaz Zamami Amlashi. **The study of ratification vote and religious apostle at the family dispute (divorce) of the religious minority by the Iran's courts.** *N Y Sci J* 2013;6(10):42-47]. (ISSN: 1554-0200). <http://www.sciencepub.net/newyork>. 8

**Keywords:** Ratification vote, personal status, religious minority, committal rule.

### Introduction

Progress in the technology and developing international relationship, force the world countries with the compiling the new laws to attempt in description of the personal status, its verification statistics and determination of the dominant laws in each verification and take the necessary steps.

In these fields we can consider Reflecting of this attempt at the judicial process of some countries. In addition to it, those countries with attending to the international conferences and attach to the convections, organize the laws related to the personal status of the minority inter the boundary. Islamic faith consider the religious people who have strange command from Islamic orders and until have not performed action against the Islamic system and their laws and "Mosleme habits" are not against general order of the Islamic society are in the support of the Islamic legislator and have known right of piety to their faith and doing the religious custom according to the "Mosleme habits".

During the performed investigation, although some of the scientist consider the compiling the books, articles and thesis at the believing to the personal status of the religious minority but seems that in the field of the newest emendation in the law of the support of family that approved at the 1389 did not presented consolidate literature.

Subjects in which investigated at this research, are surveying law of the ratification vote of the religious apostle at the family's dispute of the religious minority and consider the personal status, In despite to various ideas about Islam, at the legal system of the worlds, personal status of the divorce is one of the dominant verification by regarding to close relationship, family, religious, believe and national foundation that have special sensitivity.

At the Islamic society, non-Muslim can enjoin with special condition to the Muslim nation as a formally and during bilateral treaty with united muslim form the single nation. This kind of the dependency perform as a bilateral contracted name

“Jaziye “mentioned that, today, issue of the “Zame “ treaty and its contract between Islamic government and followers of “Zame “ rejected , maybe to be permitted in the future. Recently, and followers of the “Zame” live in the country without any contract and convention (Amid Zankani, 1991).

In the surveying of the ratification the vote of religious apostle at family’s dispute (divorce) consider the religious minority by the Iran’s governor to the resource in the regarding to the documents of personal status of the religious minority.

Racialist or lawful resource at the personal status of the religious minority is following:

#### 1) Quran’s verse:

Holy God at eh holy Quran say to the dear prophet that “how Jewish come to you for judge between them, While, Pentateuch is close to them, and God’s orders bring in the Pentateuch, avoid it and don’t belief to it’(Verse of 43 of the Maede’sure).

City Jewish in their disputable issue such as murder come to the prophet with this intention that escape from Pentateuch order and after judging the prophet when see it against their tendency don’t accept it, then Quran say to prophet, entrust their issue and affairs to themselves(Tabatanayee, 1995). We concluded from this matters that Quran followers should act according to their methods and by using verses of the holy Quean said that prophet was “Mokheir” to control or attend the allegation of the Quran’s followers :

Then if followers of the Quran come to you, order or judge between them and or avoid from them(Sure Maede 42).

#### 2) Cited narrations of the “Freghin” (shiee - Sunni):

Aba- basir cited from Imam Bagher that said “when followers of the Pentateuch and Bible come to the court, Islamic governor can judge between them and they can contest(Tosi,1995).

Alameh Hely in the Ghavaed AL-Ahkam say that when referring “Zameh followers “to the courts, governor is “Mokheir “between accept of judge and on it. Whether they follow the same faith or follow separated faith (that this assertion isn’t without fault). But when struggle create that one is Muslim and other is ” Zemy or Mostaman “, it is necessary for the Islamic order to accept judge in this dispute or struggle(Heli,1999).

#### A) Abu- Hannifin’s assertion:

court’s judge is “ Mokheir “ about accepting the allegation of the “Zameh followers“ and in the verse 42, of the Maedeh’s sure is famous to the “Ta’khir” verse resort to the prophet’s verse:

Entrust the Quran’s followers to the governor and even refer to your order, act as an Islamic rule.

#### B) Ibn- Abass ‘s Assertion :

Islamic governor should not accept the allegation of the non- Muslims. And in the “Takheer”verse by resorting to related verse” abrogated in Malek and Hassan and Shabi ’s assertion in non –abrogation of “Takheer” verse, because Islamic retribution orders exert against Quran’s followers but in the personal status judge between them based on satisfaction each other according to the Islamic order, otherwise refer to the governor of themselves.

#### C) Other Sunni followers ‘s assertion:

By the priority of the Islamic law should exert in the entire allegation and there is no exception(Maraghi,2006).

Assertion to “Takheer”verse in the Islamic courts at the accepting the allegation of the Quran’s followers enjoy the more stability and using the verses, narration, assertions of the scientist and “Akhlas” for this reason that “Takheer” at the legal and retribution allegation was identical. Therefore, none of them are oblige to the apostleing and attending to the issue. And then there is not difference between legal and retribution allegation. Of course, second orders based on the keeping the orders of the Islamic society about its requirement on performing the Islamic determining law are another disputation.

#### 3) Committal rule:

“Ehale” allegation is related to the personal status of the non- Muslim about their law that has ritualistic support and short background. Committal rule is one of the documentation and evidence of this issue. And important reason at the words of the innocent people and the rituality’s expression are related to the respecting to laws of the personal status of minority and Islamic religion of the non –Shi’a.

#### Documentation of the committal rule:

Some of the researchers consider the committal rule as a consensus. But these consensuses by the stability of the rules were not effective result as an independent reason. Because other causes and reasons may be consensus of these affair that aren’t assertion of the detector of the innocent person’s vote. Main reason is the narration’s committal rules that pay attention to it at two next parts.

#### A) Special narrations:

Meaning of the special narration is that narrations such as marriage, divorce, inheritor that their “Mostafad” and reference are the necessity of the religion’s follower or the non -shyie customs for performing the religion orders or their customs. Narrations that rise in these parts are associated to the

issues creating and questioning between Shyie – Sunni.

Ideas of the some lowers are that these narrations are not related to the special discussion and can “Tasary” those in the all parts and in related to the other faiths. Some of the narrations are as a bellow:

**-narrations in the divorce:**

Ali Ibn Hamze cited from Imam Kazem that Hazrat in answering to the man asked: if cans marriage with the Muslim woman who divorced according to the ‘Akhal’s tradition after the ending “Ede”. He said:

Namely, you act according to your beliefs and marriage with their divorced and there is no problem in it.

Means that Sunni permitted the three divorces in one council, While this divorce is null by the Shia’s ideas, Imam say in this hadis that because they know the divorce right act, you confirm it and can marriage with woman that they divorced by this way, although these act is null by the Shia’s ideas, but in their religion , this divorce is correct and they responsible to it, you know the order as a correct act(Tosi,1998).

**-narration in the marriage:**

Jafar Ibn Mohammad Abdolah AL-Alavi by the his father ask about the triad divorced of the Sunni from the Imam Reza: if marriage with the shia’s man with this woman is permitted? Imam said:

If you, shia flow the divorce in the place, cannot marriage with your divorced, but if Sunni flow this divorce, you can marriage with their divorced because you don’t consider three divorce at one place or council but they permitted this act(Aameli.2003).

**B) Common or general narrations:**

Meaning of the general narration is Hadis that doesn’t enter in the special discussion and these subjects generally are necessity of the non- shia religion’s followers at the performing laws related to the personal status equate with him/herself religion or custom.

**Cited narration from Imam Jafar Sadegh:**

At the “Vasayel Al- shia” book about “Majos inheritance” (Zoroaster, this Hadis cited from Imam Jafar Sadegh:

In fact, every group or nation that select faith, should behave bases on it. Emphasize of this hadis is on the common people or public. And doubt does not exist in these cases that can wholly discussion toward non shia Islamic religions and religious minority in using it(Aameli,1995). Legal resource in consideration of the personal status of the religious minority:

1) **Internal resource:**

From various internal resource of this subject can express the constitution, common laws, custom and habit, treaties of the principle of the international laws and finally doctrine.

A) Constitution (first resource): at the principles 14, 13,12,11,41 and 34 raised subjects that are related to the personal status directly or indirectly. -Permitted Single principle of consideration Iranian’s non- shia personal status at the courts “Mosavab”1312/4/31

**Band 1) legal basics of the single principle**

(Context of the single principle process ‘s numbers of the 37 date of 1363/9/19 astronomy of the high court of cassation, approve by the bellow description:

“by considering to the 13 principles of the constitution of the Islamic republic in Iran that by the permitted law’s single principle of consideration Iranian’s nin-shyie personality status in the ‘Mosavabe’ courts on the Mordad 1312 about personal status and law of the inheritance and will of the Iranian’s non-shyie that their religion formalized, necessity of the consideration to the rule and common ‘Moslemeh habits” in their religions at the courts except cases performing the law related to the common principles is expressed , then, courts in the attending to the mentioned affairs and even in the attending to the ratification’s request in the will are responsible of the considering the rule and “Moslemeh habit” in their religion except in the cases that is related to the laws of the common principle and should issue their orders based on it . This vote equate with principle 43 of courts in the same cases are necessary for citizen.

Laws “consideration to the “Matrohe “ allegation related to the personal status and religious teaching of the Iranian, Jewish and Christian” at the performing principle 8 of genealogy of the 110 of the constitution at the session of the Thursday , 3 tir 1372 and two conventions of recognition consulted principle approved by the description above single principles. President of the convention’s recognition consulted system –Akbar Hashemi Rafsanjany).\*\*

Referred principle determine in proportion to the personal status and inheritance and will laws of the non- shia Iranian that their religion formalized, courts should consider the rules and common “Moslemeh habits” in their religions except that cases in which laws are related to the common rules by the following:

- In the issue related to the marriage and divorce of the habits and common “Moslemeh rules” in the religion that husband follow it.

- In the issue related to the inheritance, will, habits and common “Moslemeh rules” at the religion of the dead person

- In the issues related to the son ship, habits, and common “Moslemeh rules” at the religion in which “Pedar khandeh and mother khandeh follow it(Almasi,2002).

#### **B) Common law:**

Meaning is laws of the country that disputed issues at the courts of those country rose. Such as laws that are resource of the personal international laws by the following:

1) Principle 6, 7 civil law is related to the performing the law and stranger’s personal status.

2) Principles of 970,963,967 of the civil laws are related to the determination of the dominant laws in issue of the personal status.

3) Laws related to the entering and residing of the foreign citizen in the Iran. “Mosavabe” Ordibehesht 1310 and related procedure and alternative laws.

#### **C) Ideas of the guardian council:**

By regarding to the constitution, guardian council is the formal and legal apostle of the comparison of the laws of country with permitted principle and constitution. In several cases, council’s “Mosavabat” based on the ideas of the guardian council changed and emended. In addition, according to the genealogy 4 of constitution, ritualistic of the guardian council oblige to the collation all laws with the lawful principle. And these responsibilities cover common laws before constitution.

#### **D) Judicial procedure:**

voting of the courts are from personal resource of the international laws because disputed cases refer to the courts and certain ideas are something that performed and in the cases courts have the same ideas, or high court of the cassation with controlling the court and the duties in the creating the unity, express ideas. With repeating the court’s decisions form the judicial procedure. And generally is the resource for personal international laws. Meanwhile, judicial procedure at the personal international laws in this case has not developed.

in some countries, such as German, France, Italy, role of the judicial procedure at this case developed and fostered that become the committal rule and if the courts doesn’t consider it, its order violate at the high court of the cassation.

#### **F) Generosity and habits:**

generosity and habits are accepted common act between people that are constant result of the special act and its repeating the time become necessity without lawmaker interfere in the formation of it. Therefore, this habit realized by two criteria: one is that act exists with wittingly and constantly leaving of work and other is that intentional

consciences know it necessity(Ebrahimi,1997).

#### **G: ideas and beliefs of the law’s ulema:**

Writing of the scientists, ideas of law’s the Ulema or Doctrine is the other unidirectional resource of the personal international laws and have dramatic role on the progress in this method. Because on one side, judge may be consider the ideas, writing and theories of other law’s ulema or Doctrine at the interpretation of the laws and apply it on the settlement of the referred struggle and allegation from obtained result of these interpretations, on the other side, law’s the Ulema with studying and surveying, free comparison and changes, analyzing their effect on the result of deducing and extracting the rule of law’s development and formation of the judicial procedure(Same, page 66).

#### **2) Foreign resource:**

##### **Chapter human rights principle 27:**

all peoples are equal against the law and without prejudice have right of “Besavyie” support, in this case, law should prevent every prejudice and guarantee the effective and equality support of all people against prejudice especially prejudice from race, color, sex, language, religion, political belief and other ideas with social or main origin, wealth, attribute, or every other situation”.

##### **Principle 27:**

“In the countries with the race, religious or language minority cannot baffle the people who are belonging to the related minority from this right that with other special groups from their special culture become “Motmane” and go toward their faith and act based on it or speaks with their language”.

Memberships of Iran in the charter of the united state, international treaty in the civil and political law of the international convection of prevention and punishment of Geneva, convection of non – prejudice in the teaching ... lead to the commitment about necessity of these convections for our country.

#### **- Legal and judicial efficacy of the Islamic republic in Iran about the allegation of religious minority:**

meaning that judicial efficacy of religious minority are courts recognition that have ability of the attending and controlling the subject of their dispute(Almasi, 2002).when right of the religious minority from the their citizen violate,(pretender and defendant ate both Quran’s followers )are free in the choosing the courts and there is no necessity in the expressing disputation at the Islamic courts, only can refer to the judge and Islamic courts. They are free to choose the their special religious courts for complaining and gaining their rights or refer to their another trustful and valid professional person with the same religion or faith, even can refer to the



Islamic proper courts (Fahimi, 1994).

**1) Survey the legal efficacy:** Meaning of the legal efficacy, is legal recognition that should command or govern between the opposite laws in the special subjects (Almasi, 2002) after accepting the allegation of the Quran's followers in the courts, how do judge command in the courts? Islamic courts order based on the Islamic laws at the disputation of the religious minority, After God give responsibility to the prophet in the accepting and rejecting allegation of the Muslims, said in the controlling the allegation that:

"If accept judging between them, order between them with justice, in fact, God like the "Moghsetin(Verse42 of the Maedeh sure ).Clearly complete meaning of the "Ghest" and justice summary in the Islam's school.

**3) emendation of the laws of the support of family's right in the ratification of the vote of the religious apostle of minority by the o Iran's Islamic courts:**

It is worthwhile to say that documentation record based on the demanding of the religious minority for controlling allegation based on the personal status from the prior years of the Islamic revolution in the documents that is available in the Islamic consulted party (Document of the library of the council's Islamic consultation). after Islamic revolution since laws of the Islamic republic in Iran covered with Islamic ritualistic laws, this important factor considered by the governor, in the principle of the 12 and 13 constitution of the Islamic republic in Iran, by introduction of the country's formal minority, approve that: followers of these religions are free in doing their customs and in the personal status of the religious teaching can act based on their custom or procedure. Today, because of lacking unity in the Islamic courts and religious centers of the religious minority by demanding minority's deputy, religious apostle and legislator at the Islamic consulted council at the 1389 approve the emendation in the laws of support of family in the " clear floor of the council "(Expression of the Aramane legislator. In interview with authority, 2016).that complete test bring in the media: "judicial courts remove from entering to the family's dispute at the field of the religious minority and Iran's courts are responsible to the verification vote of the religious apostle". By the certified judicial and legal commission that approve in the council, thereafter, Iran's courts oblige to the verification vote of the religious apostle of the religious minority .Farhad Tajry, speaker of the "judicial and legal commission in the council, know this plan in the form of the bill's emendation in the support of family. And said: thereafter, all Iran's religious minority can use the vote and ideas of the religious

apostle and religious minority at the courts related to the family's dispute after verification of the country's courts and this subject has ability of performing in the country's courts. He continues that in the past judicial courts has ability for entering to the family's dispute of religious minority. And thereafter, by the final approve of the council in the Iran's courts are oblige for the verification of the vote of the apostle of the regional minority (Site: majlis .ir). This emendation approved at the date 2012 in the guardian council and notified at the date of the 2012 (notification's number7726312).of course, performing this law with documenting to the principle 97 as possible does not contradict with the general order and good or favorite moral.

**Conclusion:**

1) According to thirteen principle of constitution about followers of the three formal faith related to the personal status namely, marriage, divorce, inheritance, and will, apply the laws associated to the their faith, when refer to the Iran's courts, that judge solve their problem and dispute by the religious certain rule.

2) in addition to the thirteen principle of constitution, single principle of the laws are consideration the non- shyie Iranian's personal status "Mosavab " of the 1933 , its context in the unity vote by the number 37 at the date of 1983, judge in the general astronomy of the high court of cassation and re-approve at the "Mosavabe 's three 1993 at the convention's recognition consulted system as a" laws attending to the "Matrohe" related to the personal status and religious teaching between Zoroaster, Jewish and Christian" for the related goal or work .

3) If action in devotion to the mentioned religion was not crime, retribution laws of the punishment about them don't perform. For example, punishment of the drinking wine is thirty whip .according to the note174 , non- Muslim punish in the time of pretending to the crime, otherwise doesn't punish. In the case of the reception with the non- shia Iranian's personal status with the general laws that bring in the principle 97, seems that some laws were in contradiction of general order and avoid from performing them in the Iran's courts .namely, every action in which is correct according to the laws of minority by existence corruption seems likely to be in contradiction to the general order. For example, at the Jewish's laws, if one of the couples wanted to go to the Palestinian and his partner doesn't go with him/her, it create the divorce's right (Band 5 caused of the divorce (jewosh's personal status).seems that because dominant government in the Palestinian land does not formalize by the Islamic republic of Iran, accepting the divorce's right for the man in this case, because of the contradiction with laws of the general

order, in our courts did not heard. Or in the Jewish custom when wife committed the adultery (in each four tribe of the Christian custom). it is permitted but sometimes rejecting the divorce create the dangerous result for the Iranian and Christian woman .seems that Iran's courts, in the time is suitable, can by resorting to the above sentence, flow the divorce.

4) At the past years according to the sentence 3 of the emendation of the law related to the divorce "Mosavabeh" at the 1998 years convention's recognition consulted system, referring to the courts and issuing the incompatibility and "Marayee" of right's man and woman is necessary for doing and was from main and forced laws and formality of attending and they act according to the related sentence in the court. (in each four tribe of the Christian custom). From 2000 by the "Mosavabeh" of the legal and judicial commission of the council, thereafter, judicial courts remove from entering to the family's dispute at the field of the religion minority and Iran's courts oblige to the verification of the Vote of the religious apostle, these emendation approve at the date of 2002 in the guardian council and notify at the date of 2002 (note of the sentence 4 support of the family's right –notify's number 7726312)( Set of formal newspapers1999).

#### **Suggestion:**

1) By attending to the ordering of verse:

In the other aspect, because of the spreading issue voting at the courts, accessing scientist to the dossier even by using computer is very difficult, Suggested that expert courts for attending to the allegation of these groups created to removing the problems.

2) In the time of referring of scientist to the convention of the country's councils, and their libraries. Some of the religious and legal books are related to the research with original or English language and are not translated. By regarding to the Islamic principle of Iran consider the law of the non-shia Iran's personal status, they should account the set of their laws help the researchers and courts in the accessing to the resource and laws.

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12. Document of the library of the council's Islamic consultation.
13. Expression of the Aramane legislator. In interview with authority. 2016.
14. Site:www. majlis .ir
15. Band 5 caused of the divorce (jewosh's personal status).
16. in each four tribe of the Christian custom.
17. Set of formal newspapers1999.

#### **Set of the laws:**

- center of the research of counsil's Islamic consultastion. (rc.majlis.ir)
- The digital library of Noor (<http://noorlib.ir>)
- Internet library of Feghahat (<http://lib.ishia.ir>)
- Center of the scientific information of the university Jihad (<http://www.sid .ir>)
- Book's house ([www.ketab.ir](http://www.ketab.ir)).

9/25/2013