

Divorce's Grounds in the Iranian and Canadian Legal Systems

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Abstract

In Canada's current divorce regime, a court will only entertain a divorce petition if the marriage has legally "broken down." The statute recognizes just three legal presumptions of breakdown that permit either spouse to file for divorce. The most significant and commonly invoked of these is that the parties have lived "separate and apart," either physically or emotionally, for at least one year. These grounds reflect circumstances in which the collective judgment of reasonable people would no longer support the continuation of the marital relationship, thus rendering a divorce application by either spouse objectively justifiable. This paper examines these Canadian grounds as the basis for a comparative analysis of Iran's divorce framework. Under Iranian law, the continuity of the marital bond is treated as intrinsic to the contract of marriage, yet the statute does not expressly recognize "breakdown of the marriage" or dissolution of spousal relations as standalone grounds for divorce. As a result, Iranian spouses often resort to bargaining over the terms of separation—leveraging ancillary claims for alimony (nafaqah), dower (mahr), or non-cohabitation (nushuz)—to compel the other party to pursue divorce. Several systemic issues reinforce the need for reform: the wife's lack of direct access to divorce even amid prolonged physical separation, and the extension of proceedings owing to the entanglement of core divorce petitions with side-claims intended to pressure the opposing spouse. A comparative study demonstrates that Iran could benefit from adopting a statutory presumption of marital breakdown—akin to Canada's one-year separation rule—by defining such a presumption clearly in legislation. Implementing this reform, alongside strengthened judicial procedures, would likely reduce acrimonious litigation, provide more equitable access to divorce, and uphold both individual dignity and fairness within family law.

Keywords: Canadian divorce law; equal access to divorce; judicial divorce; legal separation; legal transplantation; marriage breakdown.

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