Chapter-V

CONCEPT OF DIVORCE IN QURAN AND SUNNA(T)
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CONCEPT OF DIVORCE IN QURAN AND SUNNAT

Before, discussing concept of divorce, a short reference of basic concept of marriage will be helpful in understanding the correct ideology of matrimonial relations. Love, mercy, intimacy and mutual protection and modesty are the qualities expected of an Islamic marriage.

According to Webster's dictionary, "marriage is an institution whereby men and women are joined in a special kind of social and legal dependence for the purpose of founding and maintaining a family. Marriage is also an intimate or close union."

Marriage in Islam:

Marriage is called 'Nikah' in Arabic. It is described in the Qur'an in 4:4. Hazrat Abdullallah ibn Mas'ud (companion of Prophet) narrated that Holy Prophet said:

"O young people! Whoever among you can marry, should marry, because it helps him lower his gaze and guard his modesty (i.e., his private parts from committing illegal sexual intercourse etc.), and whoever is not able to marry, should fast, as fasting diminishes his sexual desire."
—Volume 7, Book 62, Number 4

In Islam, marriage is a legal bond and social contract between a man and a woman. Unlike Christianity, old Hindu law (of prior to 1955) and other old cultures, Islam allows polygamy while others have banned.
Marriage is encouraged and all sorts of extra-marital relations are strictly forbidden and made punitive. Marital relationships between married couples are even treated as a source of rewards from God while otherwise satisfying sexual needs through illicit means has punishment. Specific occasions, notably daytime in fasting, during *Ahram of Haj* and during menstruation are times forbidden for intercourse. Anal sex with one's wife is also strictly prohibited.

Husbands are expected to treat their wives kindly during marriage and even during and after divorce. Quoting Holy Qur'an:

"... Live with them (wives) on a footing of kindness and equity. If ye take a dislike to them, it may be that ye dislike a thing, and Allah brings about through it a great deal of good." (Holy Qur'an 4:19)

The holy Prophet said:

"The most perfect believers are the best in conduct and the best of you are those who are best to their wives". (Hadith: Ibn Hanbal)

Married couples are urged in the Qur'an to deal with one another in a spirit of mutual consultation and agreement, even when contemplating divorce and the custody of children:

"... If they both decide on weaning, by mutual consent, and after due consultation, there is no blame on them ..." (Holy Qur'an 2:233)

**General Concept of Divorce:**

Divorce is the final termination of a marital union, canceling the legal duties and responsibilities of marriage and dissolving the bonds of matrimony between the parties. In most countries, divorce requires the sanction of a court or
other authority in a legal process. The legal process for divorce may also involve issues of spousal support, child custody, child support, distribution of property and division of debt etc.

**General Causes of divorce:**

The ‘causes of divorce’ is an independent topic of research. It is mainly concerning with human psychology. However, many sociological, religious, ideological, economical, physical and legal factors are concern with it. Anyhow, a general study of common causes of divorce may suffice our purpose to understand as to why people are attracted to divorce.

There are many reasons why people want a divorce. It could be easy to put a reason for the sake of supporting a divorce petition. In reality though, there may be hundreds of unique reasons why certain couples just want out. Sometimes, there is more that just one reason. Here are only some of the possible causes of divorce:

An annual study in the UK by management consultants Grant Thornton, estimates the main proximal causes of divorce based on surveys of matrimonial lawyers.

According to a study, the main causes in 2004 were:

1. Extra-marital affairs - 27%
2. Emotional/physical abuse - 17%
3. Mid-life crisis - 13%
4. Addictions, e.g. alcoholism and gambling - 6%
5. Workaholism (compulsively working hard)- 6%
   (http://en.wikipedia.org/wiki/Divorce#No-fault_divorce)
Other causes

Financial Issues:

Financial dissatisfaction is a common cause of disagreement between couples. Married couples are usually quarreling on the issue of financial responsibility, unequal financial status, undisclosed financial state, over spending and lack of financial support etc. Evidence suggests though that money is not always the sole or primary cause of divorce. Nonetheless, it is still a significant factor.

Ill-treatment or Abuse:

There are many forms of abuse, all of which are possible causes of divorce including intentional and habitual physical assault, sexual abuse, emotional abuse, degrading through harsh language, drug and alcohol abuse as well as excessive gambling that is becoming detrimental to the marriage may also be used as a form of abuse. There may be no physical or verbal abuse but the other partner would understandably have a difficult time managing finances and daily life with an addicted spouse.

Sexual Problems

Sexual role of spouses plays vital role in the marital life. Sexual dissatisfaction or disinterest may be a serious reason for divorce. Likewise, suspicion of character, adultery and other sexual misbehavior may lead to
divorce. Likewise summarily, many of the following factors directly or indirectly responsible for divorce, viz.

1. Lack of commitment to the marriage.
2. Communication breakdown between spouses.
3. Infidelity and deceit and lies.
5. Inability to manage or resolve conflict.
6. Personality or irreconcilable differences.
7. Differences in life and career goals.
9. Interference from parents, in-laws and other loved ones.
10. Lack of maturity.
11. Incompatibility.
12. Falling out of love.
13. Change in Religious beliefs.
14. Cultural and lifestyle differences.
15. Mental Instability or Mental Illness.
16. Criminal behavior and incarceration for crime
17. Immaturity of understanding each others.
18. Negative role of In-laws
19. Hollywood Myth (effect of romantic motion pictures)
20. Demand of dowry and so on.

According to a survey conducted amongst UK matrimonial lawyers by Grant Thornton's Forensic practice that extra-marital affairs are the main causes of the divorce in nearly 27% of the divorce cases in U.K and not only this but the survey also identified that family strains almost 18% and emotional/physical abuse nearly 17% are also among the leading causes.
Mid-life crisis (13%) work-holism (6%) and addictions such as alcoholism and gambling (6%) also featured strongly. The survey also highlighted that divorces as a result of family strains tend to involve the families of women (78% of cases) rather than men's (22%), whilst emotional/physical abuse, and likewise addictions, tend to be more evenly split with women suffering it 60% of time and men in 40% of cases.

**Effects of divorce:**

The divorce affects every aspect of a person's life, like,

1. Emotional effects
2. Financial effects
3. Effects on children
4. Effects on other dependents
5. Effects on Standard of living,
6. Effects on assets and liabilities, and so much more.

The emotional effects of divorce are related to a number of factors. The divorce affects physical and mental condition of the divorcing spouses to less or more degree. Sometime feelings of anger or revenge or depression may be developed due to the unintended divorces.

The effects of divorce differ by situation and personal circumstance and may be different for men and women.
Some effects of divorce can be positive also, such as ending an unhappy or even abusive relationship. Other effects of divorce can be detrimental to a person's well being.

Financial effects of divorce are sometimes remedied through court orders regarding provision for alimony or child support etc.

The impact of divorce on children is most negative and dangerous for their physical and mental growth. It seems evident that in many cases divorce dramatically changes the psychology of child. Parental conflict appears to have a pronounced effect on the coping efforts of children. The intense anxiety and anger between some parents in the early stages of divorce is real. Often times parents allow their children to get in the middle of fierce verbal fighting between them. Ill-treating the other parent in front of the child is another way of placing the child in an unfair position, which in essence is expecting the child to choose between the parents. Any form of parental conflict, no matter to what degree, lends to a difficult adjustment period for children involved.

The deterioration in parent-child relationships after divorce is another leading cause in psychological problems for children. With a divorce comes a parenting plan of some kind. A child may experience shared custody between both parents or custody by one parent with visitation by the other parent.
Likewise, the legal effects of divorce will determine the division of property, money, and debts accrued during a marital union. Non-marital or personal property is usually protected during the divorce process. The legal effects of divorce will also determine a parent’s role in the lives of their children. Decisions made about spousal and child support are also among the major effects of divorce.

Statistics of divorces in the United States:

Zuckerman (2009) cites more conflicting reports about divorce. Success in marriage has been associated with higher education and higher age. 81% of college graduates, over 26 years of age, who wed in the 1980s, were still married 20 years later. 65% of college graduates under 26 who married in the 1980s, were still married 20 years later. 49% of high school graduates under 26 years old who married in the 1980s, were still married 20 years later. Population studies have found that in 2004 and 2008, liberal-voting states have lower rates of divorce than conservative-voting states, possibly because people in liberal states tend to wait longer before getting married. In 2009, 2.9% of adults 35-39 without a college degree were divorced, compared with 1.6% with a college education.

The National Center for Health Statistics reports that from 1975 to 1988 in the US, in families with children present, wives file for divorce in approximately two-thirds of cases. In 1975, 71.4% of the cases were filed by women, and in 1988, 65% were filed by women. It is estimated that upwards
of 95% of divorces in the US are "uncontested," because the two parties are able to come to an agreement without a hearing (either with or without lawyers/mediators/collaborative counsel) about the property, children and support issues.

A study has found that White female-Black male and White female-Asian male marriages are more prone to divorce than White-White pairings. Conversely, unions between White males and non-White females (and between Hispanics and non-Hispanic persons) have similar or lower risks of divorce than White-White marriages.

Europe:

One study estimated that legal reforms accounted for about 20% of the increase in divorce rates in Europe between 1960 and 2002.

United Kingdom:

The rate of divorce in the United Kingdom has been dropping in recent years. In 2007 the divorce rate in England and Wales was recorded at 11.9 people per every 1000 (1.1%) of the married population. This is the lowest divorce rate recorded since 1981.

Henry VIII of England is known for breaking with the Roman Catholic Church partly in order to obtain a divorce.
Australia

In Australia, nearly every third marriage ends in divorce. After reaching a peak divorce rate of 2.7 per 1000 residents in 2001, the Australian rate declined to 2.3 per 1000 in 2007.

Japan

In Japan, divorces were on a generally upward trend from the 1960s until 2002 when they hit a peak of 290,000. Since then, both the number of divorces and the divorce rate have declined for six years straight. In 2008, the number of divorces totaled 251,000, and the divorce rate was 1.99 (per 1,000 population).

Asian countries:

India and Sri Lanka are the two countries that have the lowest divorce rates, around one and one and a half percent respectively. In this part of Asia divorce is still very rare, although it is more common in South East Asia. In India, for example, arranged marriage is still fairly prominent although not as common as it once was. Divorce is not deemed as acceptable as it is in other cultures and therefore many either make a concerted effort to work through relationship problems or remain in unhappy marriages.
Greco-Roman culture

The ancient Athenians liberally allowed divorce, but the person requesting divorce had to submit the request to a magistrate, and the magistrate could determine whether the reasons given were sufficient.

Divorce was rare in early Roman culture but as their empire grew in power and authority Roman civil law embraced the maxim, "matrimonia debent esse libera" ("marriages ought to be free"), and either husband or wife could renounce the marriage at will. Though civil authority rarely intervened in divorces, social and familial taboos guaranteed that divorce occurred only after serious circumspection. The Christian emperors Constantine and Theodosius restricted the grounds for divorce to grave cause, but this was relaxed by Justinian in the sixth century.

Medieval Europe

After the fall of the Roman Empire, by the ninth or tenth century, the divorce rate had been greatly reduced under the influence of the Christian Church, which considered marriage a sacrament instituted by God and Christ indissoluble by mere human action.

Secularization in Europe and United States

Marriage later came to be considered a civil contract, and on that basis civil authorities gradually asserted their power to decree a "divorce from all the bonds of marriage." Since no precedents existed defining the
circumstances under which marriage could be dissolved, civil courts heavily relied on the previous determinations of the ecclesiastic courts and freely adopted the requirements set down by those courts. As the civil courts assumed the power to dissolve marriages, courts still strictly construed the circumstances under which they would grant a divorce, and now considered divorce to be contrary to public policy. Because divorce was considered to be against the public interest, civil courts refused to grant a divorce if evidence revealed any hint of complicity between the husband and wife to divorce, or if they attempted to manufacture grounds for a divorce. Divorce was granted only because one party to the marriage had violated a sacred vow to the "innocent spouse." If both husband and wife were guilty, "neither would be allowed to escape the bonds of marriage. Eventually, the idea that a marriage could be dissolved in cases in which one of the parties violated the sacred vow gradually allowed expansion of the grounds upon which divorce could be granted from those grounds which existed at the time of the marriage to grounds which occurred after the marriage, but which exemplified violation of that vow, such as abandonment, adultery, or "extreme cruelty."

**Japan**

In the Edo Period (1603–1868), only husbands could divorce their wives by writing letters of divorce. But actually, their relatives or marriage arrangers often kept these letters and tried to restore the marriages. It was not allowed for wives to divorce their husbands. Some wives were able
to gain sanctuary in certain Shinto "divorce temples" for several years, and were able to obtain a divorce thereby. In 19th century Japan, at least one in eight marriages ended in divorce.

Religion and divorce

Islam allows divorce, and it can be initiated by either the husband or the wife. However, the initiations are subject to certain conditions and waiting periods, which are meant to force the initiating party to reconsider. Old Hindu religions do not allow divorce. Christian views of divorce vary, with Catholic teaching allowing only annulment, but most other denominations discouraging but allowing divorce. Jewish views of divorce differ, with Reform Judaism considering civil divorces adequate. Conservative and Orthodox Judaism require that the husband grant his wife a divorce in the form of a *get*.

Marriage in Israel is administered separately by each religious community (Jews, Christians, Muslims, and Druze), and there is no provision for interfaith marriages other than marrying in another country. For Jews, marriage and divorce are administered by Orthodox rabbis. Partners can file for divorce either in rabbinical court or Israeli civil court to have the household divided.
Law and divorce around the world

A general overview of divorce laws around the world will reveal that every nation except Malta, the Philippines, and the Vatican City allows some form of divorce.

Argentina

In Argentina, the legalization of divorce was the result of a struggle between different governments and conservative groups, mostly connected to the Catholic Church. The first attempt to introduce the law was in 1888, but conservative and religious groups kept blocking the bill, which never became a law. Only in 1954, President Juan Domingo Perón, who was opposed to the Church, had the law passed for the first time in the country. But Perón was forced out of the presidency one year later by a military revolt, and the government that succeeded him, abolished the law.

Finally, in 1987, President Raúl Alfonsín tried to pass the law again, under the strong opposition of a part of the Church, and the tolerance of another part, that nonetheless stated that the new right was not for Catholics, but for the rest of the Argentine society. The most intransigent sectors of the Church asked for the law not to be promulgated, after Congress passed it. They even considered excommunicating the Congress members who had voted favourably. Although this idea was eventually left aside, one bishop did excommunicate Congress members under his jurisdiction.
Brazil

Due to the influence of the Roman Catholic Church, divorce only became legal in Brazil in 1977. Since January 2007, Brazilian couples can request a divorce at a notary's office when there is a consensus, the couple has been separated for more than a year and have no underage or special-needs children. The divorcees need only to present their national IDs, marriage certificate and pay a small fee to initiate the process, which is completed in two or three weeks.

Canada

Canada did not have a federal divorce law until 1968. Before that time, the process for getting a divorce varied from province to province. In Newfoundland and Quebec, it was necessary to get a private Act of Parliament in order to end a marriage. Most other provinces incorporated the English Matrimonial Causes Act of 1857, which allowed a husband to get a divorce on the grounds of his wife's adultery and a wife to get one only if she established that her husband committed any of a list of particular sexual behaviors but not simply adultery. Some provinces had legislation allowing either spouse to get a divorce on the basis of adultery.

The federal Divorce Act of 1968 standardized the law of divorce across Canada and introduced the no-fault concept of permanent marriage breakdown as a ground for divorce as well as fault based grounds including adultery, cruelty and desertion.
In Canada, while civil and political rights are in the jurisdiction of the provinces, the Constitution of Canada specifically made marriage and divorce the realm of the federal government. Essentially this means that Canada's divorce law is uniform throughout Canada, even in Quebec, which differs from the other provinces in its use of the civil law as codified in the Civil Code of Quebec as opposed to the common law that is in force in the other provinces and generally interpreted in similar ways throughout the Anglo-Canadian provinces.

The Canada Divorce Act recognizes divorce only on the ground of breakdown of the marriage. Breakdown can only be established if one of three grounds, viz. adultery, cruelty, and being separated for one year. Most divorces proceed on the basis of the spouses being separated for one year, even if there has been cruelty or adultery. This is because proving cruelty or adultery is expensive and time consuming. The one-year period of separation starts from the time at least one spouse intends to live separate and apart from the other and acts on it. A couple does not need a court order to be separated, since there is no such thing as a "legal separation" in Canada. A couple can even be considered to be "separated" even if they are living in the same dwelling. Either spouse can apply for a divorce in the province in which either the husband or wife has lived for at least one year.

On September 13, 2004, the Ontario Court of Appeal declared a portion of the Divorce Act also unconstitutional for excluding same-sex
marriages, which at the time of the decision were recognized in three provinces and one territory. It ordered same-sex marriages read into that act, permitting the plaintiffs, a lesbian couple, to divorce.

**Alberta Divorce Law**

In Alberta, The Family Law Act gives clear guidelines to family members, lawyers and judges about the rights and responsibilities of family members. It does not cover divorce, and matters involving family property, and child protection matters. The Family Law Act replaces the Domestic Relations Act, the Maintenance Order Act, the Parentage and Maintenance Act, and parts of the Provincial Court Act and the Child, Youth and Family Enhancement Act.

The Family Law Act can be viewed and printed from the Alberta Queen’s Printer website at: www.qp.gov.ab.ca

You must go to the Court of Queens Bench if you need a declaration of parentage for all purposes, you have property you want the court to divide or protect, and you want a declaration of irreconcilability.

**Canada:**

There is no such thing a “legal separation” in Canada. Sometimes when people say they are “legally separated” what they really mean is that they have entered into a legally binding agreement, sometimes called either a “Separation Agreement”, “Divorce Agreement”, “Custody,
Access and Property Agreement”, or “Minutes of Settlement”. These types of agreements are usually prepared by lawyers, signed in front of witnesses, and legal advice is given to both parties signing the agreement. These types of agreements will, in most cases, be upheld by the courts. (Source: http://www.albertacourts.ab.ca/ProvincialCourt/FamilyJusticeServices/FamilyLawInformationCentres/CommonQuestions/tabid/139/Default.aspx)

France

The French Civil Code (modified on January 1, 2005), permits divorce for 4 different reasons; mutual consent (which comprises over 60% of all divorces); acceptance; separation of 2 years; and due to the 'fault' of one partner (accounting for most of the other 40%).

India

In Hindu religion marriage is sacrament and not a contract, hence divorce was not recognized before the codification of the Hindu Marriage Act in 1955. With the codification of this law, men and women both are equally eligible to seek divorce. Hindus, Buddhists, Sikhs, and Jains are governed by the Hindu Marriage Act, 1955, Christians are governed by The Divorce Act 1869, Parsis by the Parsi Marriage and Divorce Act, 1936, Muslims by the Muslim Personal Laws (Shariya) and Dissolution of Muslim Marriages Act, 1939 and Inter-religious marriages are governed by The Special Marriage Act, 1954.
Conditions are laid down to perform a marriage between a man and woman by these laws. Based on these a marriage is validated, if not it is termed as void marriage or voidable marriage at the option of either of the spouse. Here upon filing a petition by any one spouse before the Court of law a decree of nullity is passed declaring the marriage as null and void.

A valid marriage can be dissolved by a decree of dissolution of marriage or divorce and Hindu Marriage Act, The Divorce Act and Special Marriage Act allow such a decree only on specific grounds as provided in these Acts and the last and the best option is mutual consent where no reason has to be given. Since each case is different, court interpretations of the statutory law gets evolved and have either narrowed or widened their scope. Now a new ground of divorce i.e. ‘irritable breakdown of marriage’, is being added in Hindu Marriage Act, on the recommendation of Supreme Court and Law Commission of India.

Family Courts are established to file, hear and dispose of such cases. Indian Courts are flooded with divorce petitions and the procedure laid down is time consuming.

Ireland

The largely Catholic population of Ireland has tended to be averse to divorce. The position has changed in recent times with a sizeable increase in the number of Divorces granted by the Irish Courts. Divorce was prohibited by the 1937 Constitution. In 1986, the electorate rejected the
possibility of allowing divorce in a referendum. Subsequent to a 1995 referendum, the Fifteenth Amendment repealed the prohibition on divorce, despite Church opposition. The new regulations came into effect in 1997, making divorce possible for parties who are separated for four out of the preceding five years. Divorce will not be granted in the Republic of Ireland for any other criteria. It is more difficult to obtain a divorce in Ireland than in other jurisdictions.

A couple must be separated for four of the preceding five years before they can obtain a divorce. It is sometimes possible to be considered separated while living under the same roof. However, the Irish courts have established no clear judicial precedent on this point. The up-to-date position on legislative changes on divorce law in Ireland is highlighted on an established public resource site.

Divorces obtained outside Ireland are recognised by the State only if the couple was domiciled in that country; it is not therefore possible for a couple to travel abroad in order to obtain a divorce.

Italy

Divorce is legal in Italy since a referendum approved on May 13, 1974. Before that, it was generally believed that Italy's obligations under the Lateran Treaty, entered into in 1929, prohibited Italy from authorizing divorce, and, consequently, there was no provision for divorce in Italian law, and the difficulty of ridding oneself of an unwanted spouse in the absence of
any legal way to do so was a frequent topic of drama and humor, reaching its apotheosis in the 1961 film *Divorce, Italian Style.*

**Japan**

In Japan, there are four types of divorce: Divorce by Mutual Consent, Divorce by Family Court Mediation, Divorce by Family Court Judgment, and Divorce by District Court Judgment.

Divorce by mutual consent is a simple process of submitting a declaration to the relevant government office that says both spouses agree to divorce. This form is often called the "Green Form" due to the wide green band across the top. If both parties fail to reach agreement on conditions of a Divorce By Mutual Consent, such as child custody which must be specified on the divorce form, then they must use one of the other three types of divorce. Foreign divorces may also be registered in Japan by bringing the appropriate court documents to the local city hall along with a copy of the Family Registration of the Japanese ex-spouse. If an international divorce includes joint custody of the children, it is important to the foreign parent to register it themselves, because joint custody is not legal in Japan. The parent to register the divorce may thus be granted sole custody of the child according to Japanese law.

Divorce by Mutual Consent in Japan differs from divorce in many other countries, causing it to not be recognized by all countries. It does not require the oversight by courts intended in many countries to ensure an
equitable dissolution to both parties. Further, it is not always possible to verify the identity of the non Japanese spouse in the case of an international divorce. This is due to two facts. First, both spouses do not have to be present when submitting the divorce form to the government office. Second, a Japanese citizen must authorize the divorce form using a personal stamp (hanko), and Japan has a legal mechanism for registration of personal stamps. On the other hand, a non-Japanese citizen can authorize the divorce form with a signature. But there is no such legal registry for signatures, making forgery of the signature of a non-Japanese spouse difficult to prevent at best, and impossible to prevent without foresight. The only defense against such forgery is, before the forgery occurs, to submit another form to prevent a divorce form from being legally accepted by the government office at all. This form must be renewed every six months.

Malta

There is currently no legislation providing for divorce; only separation and annulment are available under the Civil Code and Marriage Act, respectively.

Philippines

Philippine law, in general, does not provide for divorce inside the Philippines. The only exception is with respect to Muslims. In certain circumstances Muslims are allowed to divorce. For those not of the Muslim
faith, the law only allows annulment. Article 26 of the Family Code of the Philippines does provide that

'Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall have capacity to remarry under Philippine law'.

This would seem to apply only if the spouse obtaining the foreign divorce is an alien. However, the Supreme Court of the Philippines declared in the case of RP vs. Orbecidio

[...] we are unanimous in our holding that Paragraph 2 of Article 26 of the Family Code (E.O. No. 209, as amended by E.O. No. 227), should be interpreted to allow a Filipino citizen, who has been divorced by a spouse who had acquired foreign citizenship and remarried, also to remarry.

Complications can arise, however. For example, if a legally married Filipino citizen obtains a divorce outside of the Philippines, that divorce would not be recognized inside the Philippines. If that person (now unmarried outside of the Philippines) then remarries outside of the Philippines, he or she could arguably be considered in the Philippines as having committed the crime of Bigamy under Philippine Laws]. The above complications will not arise if the legally married Filipino citizen obtains foreign citizenship first, then secures a foreign divorce decree.
Also, Article 15 of the Civil Code of the Philippines provides that

"Laws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad."

This can lead to complications regarding distribution of conjugal property, inheritance rights, etc.

Moreover, Article 26, par. 2 may have raised some problems than it solves. A number of questions can be raised with respect to the operation of this provision, to wit:

1. Is there a need for a judicial decree in Philippine courts to declare the Filipino spouse qualified to remarry? The Family Code has no explicit provision to that effect, unlike in cases of void marriages and of a remarriage in case of absence of one of the spouses amounting to presumptive death (Art. 40 and 41, Family Code) where a court decree is required.

2. Is Art. 26, par. 2 applicable to foreign divorces obtained before the effectivity of the Family Code in view of Art. 256?

3. What if the Filipino spouse does not intend to remarry, what is the status of any children they may have after the divorce decree? Does the Filipino spouse have a right to demand support from his/her former alien spouse? What is his/her status with respect to his/her former
foreign spouse? Can he/she claim share of property or income acquired by the former foreign spouse.

The process of the 'divorce" annulment is an expensive one it cost about 100,000 - 200,000 pesos or $2000 – $4,000 US dollars which is about a years wages for a typical Filipino. The process takes about 1–2 years.

One of the steps in the process is a psychological assessment for use or reason of annulment. This cost an additional 10,000-15,000 pesos or 200-300 US. Another step in the process is an interview with a court appointed social worker to eliminate possible "collusion" among the parties involved especially if there are children.

Children under the age of 7 are awarded to the mother. There are no standards in child support or support to spouse to maintain her previous standard in society.

The general assumption for this reason for annulment is that the government is influenced by the Catholic religion and continue to be advised by their leadership rather than a Democratic process. However, this conclusion is not necessarily true, and even under the administration of non-Catholic leaders, divorce continues to be a non-issue among majority of Filipinos.

It can be said, instead, that Filipinos (Catholic or not), have an aversion to divorce as they view the family to be sacrosanct and that divorce,
in their perception, is absolutely destructive of this. General Filipino perception of divorce is based on the "no-fault" divorce prevalent in some US states which, in their view, is absurd since a divorce (or a separation of partners, at the least) should only be considered if there is a breach in the marriage and not the "whimsical" drive of no-fault divorces.

There is also a lack of general clamour for divorce to be made legal and all attempts to ratify it into law have failed. Intellectuals and some social and civic groups have tried to appeal to the masses to change its perception of divorce but this has failed from time to time.

Filipino law, as stated above, do make some concession to Muslims, though.

Sweden

To divorce in Sweden the couple can file for divorce together or one party can file alone. If they have children under 16 living at home or one party does not wish to get divorced there is a required contemplation period of 6 to 12 months. During this period they stay married and the request must be confirmed after the waiting period for the divorce to go through.

United Kingdom

England and Wales
A divorce in England and Wales is only possible for marriages of more than one year and when the marriage has irretrievably broken down. Whilst it is possible to defend a divorce, the vast majority proceed on an undefended basis. A decree of divorce is initially granted 'nisi', i.e. (unless cause is later shown), before it is made 'absolute'. Relevant laws are:

1. Matrimonial Causes Act 1973, which sets out the basis for divorce (part i) and how the courts deal with financial issues, known as ancillary relief (part ii). Cruelty has been made irrelevant. See Gollins v Gollins [1964] A.C. 644
2. Family Law Act 1996
3. Children Act 1989
5. Marriage Act 1949
6. Marriage Act 1994
7. Gender Recognition Act 2004

Here is a rough outline of the undefended divorce procedure from start to finish:

1. Filing of Divorce Petition & if necessary Statement of Arrangements for the Children
2. Documents issued by Court and posted to the Respondent
3. Respondent returns Acknowledgement of Service to the Court (if he/she does not you will need to consider Bailiff Service, Deemed Service or other options)
4. Petitioner completes Affidavit in Support of Petition and Request for directions

5. A Judge will then consider all the divorce papers and if he/she is satisfied issue a Certificate of Entitlement to a Decree and Section 41 Certificate (confirming he/she is content with arrangements for any children)

6. Decree Nisi is granted

7. Six weeks later the application can be made by the Petitioner for the Decree Absolute.

From beginning to end, if everything goes smoothly and Court permitting, it takes around 6 months. If there are any outstanding financial issues between the parties, most solicitors would advise resolving these by way of a 'Clean Break' Court order prior to obtaining the Decree Absolute.

There is only one 'ground' for divorce under English law. That is that the marriage has irretrievably broken down.

There are however five 'facts' that may constitute this ground. They are:

1. Adultery
   1. often now considered the 'nice' divorce.
   2. respondents admitting to adultery will not be penalized financially or otherwise.

2. Unreasonable behavior (most common ground for divorce today.)
1. the petition must contain a series of allegations proving that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with him/her.

2. the allegations may be of a serious nature (e.g. abuse or excessive drinking) but may also be mild such as having no common interests or pursuing a separate social life; the courts won't insist on severe allegations as they adopt a realistic attitude: if one party feels so strongly that a behaviour is "unreasonable" as to issue a divorce petition, it is clear that the marriage has irretrievably broken down and it would be futile to try to prevent the divorce.

3. Two years separation (if both parties consent)
   1. both parties must consent
   2. the parties must have lived separate lives for at least two years prior to the presentation of the petition
   3. this can occur if the parties live in the same household, but the petitioner would need to make clear in the petition such matters as they ate separately, etc.

4. Two years desertion

5. Five years separation (if only one party consents)

Scotland
About one third of marriages in Scotland end in divorce, on average after about thirteen years. Actions for divorce in Scotland may be brought in either the Sheriff Court or the Court of Session. In practice, it is only actions in which unusually large sums of money are in dispute, or with an international element, that are raised in the Court of Session. If, as is usual, there are no contentious issues, it is not necessary to employ a lawyer. Divorce (Scotland) Act 1976.

The Divorce (Scotland) Act 1976 provides for separation as a "fact" of irretrievable breakdown after one year with consent or two years without consent after the amendments by the Family Law (Scotland) Act 2006. Family law issues are devolved, so are now the responsibility of the Scottish Parliament and Scottish Executive.

Financial consequences of divorce are dealt with by the Family Law (Scotland) Act 1985. This provides for a division of matrimonial property on divorce. Matrimonial property is generally all the property acquired by the spouses during the marriage but before their separation, as well as housing and furnishings acquired for use as a home before the marriage, but excludes property gifted or inherited. Either party to the marriage can apply to the court for an order under the 1985 Act. The court can make orders for the payment of a capital sum, the transfer of property, the payment of periodical sums, and other incidental orders. In making an order, the court is, under the Act, guided by the following principles:
1. The net value of the matrimonial property should be shared fairly, and the starting point is that it should be shared equally; but
2. fair account should be taken of economic advantage derived by either party from contributions by the other, and of economic disadvantage suffered by either party in the interests of the other party or of the family; and
3. The economic burden of caring for a child of the marriage under 16 years should be shared fairly between the parties (but child support is not normally awarded by the court, as this is in most cases a matter for the Child Support Agency).

The general approach of the Scottish courts is to settle financial issues by the award of a capital sum if at all possible, allowing for a 'clean break' settlement, but in some cases periodical allowances may be paid, usually for a limited period. Fault is not normally taken into account.

Decisions as to parental responsibilities, such as residence and contact orders, are dealt with under the Children (Scotland) Act 1995. The guiding principle is the best interests of the child, although the starting assumption is in practice that it is in a child's best interests to maintain contact with the non-custodial parent.

**United States**

Marital Status in the U.S.
Divorce in the United States is a matter of state rather than federal law. In recent years, however, more federal legislation has been enacted affecting the rights and responsibilities of divorcing spouses. The laws of the state(s) of residence at the time of divorce govern; all states recognize divorces granted by any other state. All states impose a minimum time of residence. Typically, a county court’s family division judges petitions for dissolution of marriages.

Prior to the latter decades of the 20th century, a spouse seeking divorce had to show cause and even then might not be able to obtain a divorce. The no-fault divorce "revolution" began in 1969 in California, and was completed in 1985. However, most states require some waiting period, typically a 1 to 2 year separation. Fault grounds, when available, are sometimes still sought. This may be done where it reduces the waiting period otherwise required, or possibly in hopes of affecting decisions related to a divorce, such as child custody, child support, or alimony. Since the mid 1990s, a few states have enacted covenant marriage laws, which allow couples to voluntarily make a divorce more difficult for themselves to obtain than in the typical no-fault divorce action.

Mediation is a growing way of resolving divorce issues. It tends to be less adversarial (particularly important for any children), more private, less expensive, and faster than traditional litigation. Similar in concept, but with more support than mediation, is collaborative divorce, where both sides
are represented by attorneys but commit to negotiating a settlement without engaging in litigation. Some believe that mediation may not be appropriate for all relationships, especially those that included physical or emotional abuse, or an imbalance of power and knowledge about the parties' finances.

States vary in their rules for division of assets. Some states are "community property" states, others are "equitable distribution" states, and others have elements of both. Most "community property" states start with the presumption that community assets will be divided equally, whereas "equitable distribution" states presume fairness may dictate more or less than half of the assets will be awarded to one spouse or the other. Commonly, assets acquired before marriage are considered individual, and assets acquired after, marital. Attempt is made to assure the welfare of any minor children generally through their dependency. Alimony, also known as 'maintenance' or 'spousal support' is still being granted in many cases, especially in longer term marriages.

A decree of divorce will generally not be granted until all questions regarding child care and custody, division of property and assets, and ongoing financial support are resolved.

(From Wikipedia, the free encyclopedia)
Divorce under Quranic Laws:

The Holy Quran, on the point of divorce, reads as under,

"Virtues women are obedient and careful during the husband's absence, because God hath of them been careful. But (as to) those for whose refractoriness you fear desenion, admonish them, but if they are obedient, seek not a way against them, verily God is high and exalted. And if you fear a breach between husband and wife, refer the matter to arbitrators one chosen from the family of each party, if they recommend reconciliation between them." (Holy Quran: 34:39)

Divorce in Islam is permissible when the object is not to trouble the wife but only in case of extreme necessity and on just grounds for separation.

It is ordered to the husband that he should not divorce his wife just because he dislikes her. The Quran instructs him to be kind to his wife even in cases of lukewarm emotions or feelings of dislike in the following words:

"Live with them (your wives) on a footing of kindness and equity. If you dislike them it may be that you dislike something in which Allah has placed a great deal of good" (Holy Quran 4:19).

The Holy Prophet also strictly discouraged and disapproved divorce except in extremely intolerable circumstances, in following terms:

"Curse of God rest on him who repudiates his wife capriciously"

also said,

"Divorce (unjust) shakes the throne of God", (indicating meaning of extreme displease of God).

He has also instructed and advised that:
"Among all the permitted acts, divorce is the most hateful to God" (Hadis :Abu Dawood)

" A believing man must not hate a believing woman. If he dislikes one of her traits he will be pleased with another" (Hadis :Muslim)

"The believers who show the most perfect faith are those who have the best character and the best of you are those who are best to their wives" (Hadis : Tirmidthi)

Stating briefly, divorce is treated as most hateful act before the almighty God amongst all permitted things. No doubt, the husband is given right of giving divorce to his wife under certain extreme circumstances but this right is never left undefined, uncontrolled and unguided. Unfortunately, now-days, wrong interpretation of the provision is being made and it is posed as absolute, unrestricted and unquestioned right of the husband, which is wrong.

Islamic Jurisprudence adopted a midway in between two extreme views about right to divorce. Divorce is neither very hard nor very liberal in Islam. Couples are instructed to pursue all possible remedies whenever their marriages are in danger. Divorce is not to be resorted except when there is no other way out. Though it is recognized but it is discouraged by all means. Islam has offered equal right of separation to the Muslim husband and wife.

The Holy Quran offers some practical advice for the spouse. For the husband whose wife is feared to be disloyal or she is doing some ill-
conduct, the Quran gives four types of advice as described in the following verses:

"As to those women on whose part you fear disloyalty and ill-conduct, admonish them, refuse to share their beds, beat them (lightly); but if they return to obedience seek not against them means of annoyance: For Allah is Most High, Great. If you fear a break between them, appoint two arbiters, one from his family and the other from hers; If they wish for peace, Allah will cause their reconciliation" (Holy Quran 4:34-35).

The first three are to be tried first. If they fail, then help of the arbitration should be sought. It must be noted that husband is not permitted to assault and ill-treat his wife. Exceptionally, very slight punishment is suggested to the rebellious wife and it is to be resorted to as third in line in hopes of correction of her wrong doings. It is a temporary measure of correction and husband is not permitted to ill-treat his wife in any way. Holy Prophet said:

"In case they are guilty of open lewdness you may leave them alone in their beds and inflict slight punishment. If they are obedient to you, do not seek against them any means of annoyance" (Hadis :Tirmidi)

Holy Prophet condemned beating to the wives. Some Muslim wives complained to him that their husbands had beaten them. Hearing that, the Prophet categorically stated that:

"Those who do so (beat their wives) are not the best among you" (Hadis :Abu Dawood).

He never reported to have beaten his any of the wife throughout his life. He has also said:
"The best of you is he who is best to his family, and I am the best among you to my family" (Hadis :Tirmidthi).

He was pleased to advise one Muslim woman, whose name was Fatimah bint Qais, not to marry a man because the man was known for beating women:

"I went to the Prophet and said: Abul Jahm and Mu'awiah have proposed to marry me. The Prophet (by way of advice) said: As to Mu'awiah he is very poor and Abul Jahm is accustomed to beating women" (Hadis :Muslim).

It is worthy to note that the above advice of Holy Prophet was in that period wherein women were ill-treated all where. Talmud sanctions wife beating as chastisement for the purpose of discipline. The husband is not restricted to the extreme cases such as those of open lewdness. He is allowed to beat his wife even if she just refuses to do her house work. He is permitted to break his wife's stubbornness by the lash or by starving her.

In Islam, wife is not expected to bear the ill-treatment of husband all the while. The relevant verses of holy Quran quoted:

"If a wife fears cruelty or desertion on her husband's part, there is no blame on them if they arrange an amicable settlement between themselves; and such settlement is best" (Quran 4:128).

In case of ill-treatment, the wife is advised to seek reconciliation with her husband (with or without family assistance) before taking final decision of permanent separation.
To sum up, Islam advised married couples to save their marriages in cases of trouble and tension. If all the measures fail, Islam allows the spouses to separate peacefully and amicably.

They are advised to appoint arbitrators as the first step to aid the parties in reconciliation. If the reconciliation step fails, both the man and woman are guaranteed the right to divorce. But the difference lies in the procedure for each one. The pronouncement of divorce by the husband may be verbal or written, but once made, there is to be a waiting period of three months (called 'Iddat') during which there can be no sexual relations, even though the husband and wife are living under the same roof.

This waiting period of iddat helps to prevent hasty terminations of marital ties due to anger and allows both parties time to reconsider as well as to see if the wife is pregnant. If the wife is pregnant, the waiting period is extended until she delivers. At any point during this time, the husband and wife are free to resume their conjugal relationship, thereby ending the danger of divorce. During this waiting period, the husband remains responsible for the maintenance of his wife.

Why men are given more right in giving divorce as compared to women is sometime discussed. It is answered in Holy Quran in the following manner:

"Men are in charge of women by [right of] what [qualities] Allaah has given one over the other and what they spend [in support] from their wealth. So righteous women are devoutly obedient, guarding in [the husband's] absence what Allaah would have them guard." [Holy Quran: 4:34]

This, however, does not mean that women are inferior to men or that they are second-class human beings.