

## **Muslim Women's Right to Initiate Divorce**

### **Why in news?**

A recent judgement of a division Bench of the Kerala High Court recently clarified the Muslim women's right to initiate divorce.

### **What are the currently available options for Muslim women to divorce?**

- One of the methods is divorce by mutual consent, through the process called Mubaarat.
- Another right of a Muslim woman to divorce is by way of Khula, wherein she decides to terminate the marriage.
- This process may be called wife-initiated Talaq.
- Till now, Ulemas, particularly of the Hanafi School, have interpreted that Khula can be exercised only when the husband accedes to the wife's request.
- So, without the intervention of courts, a Muslim woman can unilaterally divorce her husband, only if, by contract, he has delegated the right to divorce to his wife.
- If he refuses, the woman has no option but to approach courts of law under the provisions set out in the Dissolution of Muslim Marriage Act of 1939.

### **What is the present case for?**

- A Division Bench of the Kerala High Court was dealing with the issue of conditions in "Khula", divorce initiated by the wife.
- The legal issue before the Court was -
  - whether a Muslim wife, on deciding to leave the marriage for reasons that she feels are appropriate, has the right to pronounce unilateral extra-judicial divorce through Khula against her husband.

### **What are the court's observations?**

- Compelling the wife to go to court for Khula undermines the right guaranteed to her in the personal law.
  - The personal law is largely based on two primary sources - the Quran and Hadith (words or actions of the Prophet).
- Interpreting applicable verses of the Quran, the court said that the right of Khula is an unconditional right of the woman.
- The court draws an analogy from the right of the husband to pronounce

unilateral Talaq, to say that both are of similar nature.

- The court added that the husband's approval as a condition in Khula is not correct.
- The judgment proceeds to clarify that the right to pronounce Khula is an "absolute right" conferred on the married Muslim woman.
- So, no specific reasons are required to invoke it, once there is a declaration from the wife for repudiation or termination of a marriage.
- The only thing the wife must do before the pronouncement of Khula is to undertake efforts of reconciliation.
- This is the same like how a man is obliged to, before pronouncing husband-initiated Talaq, as declared in the Shamim Ara Judgment of the Supreme Court (2002).

### **What are the shortcomings?**

- A reading of the judgment suggests that despite clear suggestions regarding the absoluteness of the wife's right to invoke Khula, she is still required to approach the court.
- Earlier, she could approach the court under the 1939 Act.
- But according to this judgment, this is available only for Faskh-e-Nikah, (loosely translated as annulment or dissolution of marriage by a judicial or quasi-judicial authority.)
- According to the judgment, after pronouncing Khula, the wife takes recourse under the Family Courts Act, 1984 instead of the Act of 1939.
- The court process shall be a summary proceeding to declare the right of the wife.
- If the husband wants to contest the validity of such an invocation, he shall be free to do so as per law, through a separate proceeding.
- But if we read the grounds for the dissolution of marriage in the 1939 Act, they are of mixed nature.
  - They are not exclusively for the annulment of marriage.
  - It declares that it could be used for any other ground which is recognised as valid for dissolution of marriage under Muslim law.
- This is important because, in legal parlance, the terms "annulment" and "dissolution" attract different legal consequences.
- Here, the High Court is unclear when it says that the 1939 Act will be used only for Faskh-e-Nikah.

**Source: The Indian Express**



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