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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