The Talaq-e-Hasan Mode of Divorce

Why in news?

A public interest litigation (PIL) seeking to invalidate Talaq-e-Hasan, the prescribed Islamic way of divorce, has been filed in the Supreme Court.

What is the PIL about?

- The petitioner Benazir Hina has been unilaterally divorced through the Talaq-e-Hasan mode by her husband Yousuf.
- Ms. Hina also prayed that Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937 that permits Muslims to practise unilateral divorce be declared void.
- The Shariat Act allows all Muslims to be governed by their own personal laws that are in consonance with their Islamic practices therefore, allowing the practice of extra-judicial divorce legally.
- The petioner also claimed that Talaq-e-Hasan is violative violative of Articles 14, 15, 21 and 25 of the Constitution.
- The PIL also seeks guidelines on a gender and religion neutral procedure and grounds for divorce.

Earlier, the Court had invalidated instant triple talaq in Shayara Bano vs the Union of India and others in 2017 that led to the enactment of the Muslim Women (Protection of Rights on Marriage) Act 2019.

How is Talaq-e-Hasan different from instant triple talaq?

- **Instant triple talaq (Talaq-e-biddat)-** In instant triple talaq a man pronounces multiple divorce in one go.
- It has no scope for reconciliation between the couple, and often ends a marriage instantly.
- It is not mentioned anywhere in the Quran which prescribes a code of divorce largely through Surah Baqarah, verses 226 to 237 and the opening six verses of Surah Talaq.
- Instant triple talaq has been banned in many Muslim countries, including Egypt, Syria, Jordan, Kuwait, Iraq and Malaysia.
- **Talaq-e-Hasan-** Talaq-e-Hasan is pronounced with a gap of at least one month or one menstrual cycle.
- Only a single revocable divorce takes place through the first pronouncement of Talaq-e-Hasan and the couples are supposed to live together after this pronouncement and have the option of rapprochement.
- At the end of this month, the husband has to pronounce divorce for the second time which is revocable, and the couple may resume their conjugal relationship anytime they so desire.
- If the third pronouncement is made after at least one menstrual cycle, then irrevocable divorce takes place.

- No divorce can be administered when the woman is undergoing her menstrual cycle or pregnancy.
- Unlike instant triple talaq, the Quran clearly mentions the process of Talaq-e-Hasan.
- Ms. Hina argues that her divorce is invalid as she received her divorce notices when she was undergoing her menses.

Are there any other options for divorce?

- **Talaq-e-Ahsan-** Under this form, a single pronouncement is made following which a woman has to go through iddat or a waiting period of three months.
- During this period the divorce can be cancelled and the failure to annul divorce during this period results in divorce.
- Both Talaq-e-Hasan and Talaq-e-Ahsan enjoy legal validity in almost all Muslim countries.
- **Khula**- In Khula, a woman gives something to the man in return for annulling the marriage.
- In 2021, the Kerala High Court held this form of divorce valid overruling the *K.C. Moyin vs Nafeesa and Others* (1972) that barred Muslim women from dissolving their marriage through non-judicial modes.

For men the procedure given by Quran to divorce is Talaq-e-Hasan; for women the procedure to give divorce is called khula.

References

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