

Issues/Discussion Forum

Supreme Court Ruling On Maintenance After Divorce Calls The Bluff of Muslim Clergy, Hindutva Activists

- Ranjit Bhushan

Zakia Soman, founder of the Bharatiya Muslim Mahila Andolan, a non-governmental women's rights organisation.(PTI file)

Under Section 125 of the CrPC, all women are entitled to alimony, so why leave out Muslim women, says Zakia Soman, founder of Bharatiya Muslim Mahila Andolan.

In a landmark decision, the Supreme Court has affirmed that a divorced Muslim woman is entitled to seek maintenance from her former husband under Section 125 of the Criminal Procedure Code (CrPC). This ruling, issued on June 10, has been lauded by prominent activist Zakia Soman, founder of the Bharatiya Muslim Mahila Andolan, a non-governmental women's rights organisation.

“I welcome the apex court ruling. It is long overdue, but finally it has come and is a significant incremental step in the right direction,” Soman said in an interview.

"Under Section 125 CrPC, all women are entitled to alimony, so why leave out Muslim women? Hindu and Christian women, who's laws are codified, can seek help, but not Muslims, which is unfortunate," she said.

According to Zakia, any discrimination against Muslim women in matters of alimony under the secular laws of the country would be regressive and against the principles of gender justice and equality.

The apex court ruled that all married and divorced women, including Muslim women illegally divorced by pronouncement of 'triple talaq', are entitled to claim maintenance from their husbands under Section 125 of the Code of Criminal Procedure (CrPC), 1973, "irrespective of her personal law".

In separate but concurring judgments, a Bench of Justices BV Nagarathna and Augustine George Masih held that the right of Muslim women to seek recourse to Section 125 will not be eclipsed by the provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986, enacted by the then Rajiv Gandhi government after the landmark and controversial Shah Bano judgement of 1985.

The Shah Bano case was a maintenance lawsuit, in which the Supreme Court delivered a judgment favouring maintenance given to an aggrieved divorced Muslim woman.

Asked how she saw the SC ruling vis a vis triple talaq, Zakia said that this was an issue that precedes the BJP government coming to power.

“The fact remains that marginalization of women has been a reality, and this SC ruling calls the bluff of the Muslim clergy and Hindutva activists. It is truly an appropriate judgment, and such protection offered by no less than the Supreme Court is a big shot in the arm,” she pointed out.

The apex court said that “the right to seek maintenance under Section 125 of CrPC, 1973, is invocable even during the sustenance of marriage and thereby is not contingent upon divorce.”

Zakia Soman, a university professor from Gujarat, has been a strong advocate for the rights of Muslim women. She has worked and written extensively on issues of peace and justice, minority and human rights.

Hailing the emerging consciousness among Muslim women, she said it is not just the individual alone but their family and the ecosystem that has become conducive to change. "Afterall, no one woman can fight the system alone. She must have the support of her family and close ones, without which any litigation or public action is simply not possible," Zakia said.

The SC ruling came on an appeal filed by Mohammad Abdul Samad, who had been ordered to pay ₹20,000 as monthly maintenance to his ex-wife by a family court in Telangana. The woman had moved the family court under Section 125 of CrPC stating that Samad had given her triple talaq. The HC, on December 13, 2023, said “that several questions are raised which need to be adjudicated” but “directed the petitioner to pay 10,000 as interim maintenance”.

Challenging this, Samad told the apex court that the HC had failed to appreciate that the provisions of 1986 Act, which is a Special Act, would prevail over the provisions of Section 125 CrPC, which is a general Act.

"As you can see, a lone woman from remote Telangana has moved the courts and won justice. This should never be underestimated," Zakia said.

(Source: Telegraph India)