

A Wife's Right To Maintenance

The Subanu Case

WHEN, on April 3, 1987, supreme court justices A.P. Sen and S. Natarajan awarded maintenance of Rs 300 a month to Begum Subanu and Rs 200 a month to her six year old daughter, Shameena, with retrospective effect from October 1984, many newspapers, reporting the case, gave the mistaken impression that this case amounted to an infringement of the Muslim Women's Act, 1986. This was because the maintenance order was passed under section 125, Criminal Procedure Code, which was under dispute in the Shahbano case.

In fact, as advocate Geeta Luthra pointed out when we talked to her, the Act deals only with divorced women, not with wives. It is indisputable that a Muslim wife is entitled to maintenance by her husband. The point under dispute in this case was entirely different from that in the Shahbano case. Here, the question was whether Subanu had reasonable cause to live away from her husband. Subanu aged, about 25, had originally filed a petition for maintenance in September 1981 in the court of the judicial magistrate, Kasaragod, Kerala, and had been fighting her battle since then, with the support of her parents.

Subanu was married to A.M. Abdul Gafoor, an employee of Lamina Suspension Products, Mangalore, in 1980. They lived together at Mangalore up to March 1981, when she was taken to her parents' house at Kasaragod. Her daughter was born in May. Abdul Gafoor did not contribute anything to the delivery or maintenance of the child, and did not

even visit Subanu or enquire after her health. Nor did he come to fetch her, as required by custom.

In July 1981, Subanu's father took her to Mangalore but Abdul Gafoor threw her out of the house. Subanu also alleged that her parents-in-law used to treat her with cruelty and beat her up, and that her husband had taken away all her jewellery and had



Geeta Luthra

extorted Rs 4,000 from her father. Therefore, she was not willing to stay in a joint family but wanted to live separately with her husband.

Abdul Gafoor denied most of the charges and said that Subanu had refused to return to him and was living away for no reasonable cause, therefore he was not obliged to maintain her. The judicial magistrate accepted this argument and dismissed Subanu's petition in April 1983.

Subanu filed an appeal in the sessions court at Tellicherry. In

October 1984, Abdul Gafoor married Sahida Begum. When Subanu's case came up for hearing, he argued that he could not wait indefinitely for her, and since she had not accepted his offer to take her back, his remarriage did not constitute any grounds for her to live separately and demand maintenance.

Subanu, on the other hand, argued that his having remarried proved that his offer was not genuine and his second marriage was additional reason for her being entitled to live separately and get maintenance. However, the sessions court also dismissed her petition. But it granted maintenance of Rs 100 a month to Shameena. The Kerala high court dismissed her appeal in 1985.

Finally, Subanu's father, who is a wood carver, came all the way to Delhi to approach the supreme court. Geeta Luthra and Pinky Anand, advocates, drafted the petition and it was argued in court by Geeta Luthra. They emphasised that Gafoor had been guilty of wilful neglect and indifference towards his wife and child. They pointed out that maintenance granted to Shameena was grossly inadequate since Abdul Gafoor had an income of about Rs 1,500 a month.

The supreme court, while finding in favour of Subanu, referred to several earlier cases to establish that a man's remarrying or living with another woman is sufficient ground for his first wife to refuse to live with him and to be entitled to maintenance. Gafoor had not even offered to set up a separate house for Subanu.

In the case of Chand Begum versus Hyderbaig, 1972, it was held that

a man cannot compel his first wife to share a home with his second wife. Unless he offers to set up a separate residence for the first wife, any offer to take her back cannot be considered sincere. Such an insincere offer does not negate the wife's right to live separately and be maintained by her husband.

As the judgment pointed out in

some detail, there have been a number of earlier judgments pertaining to Muslim women which have upheld the principle that when a man remarries or starts living with another woman, his first wife is entitled to separate residence and maintenance. In the case of non Muslims, a man's beginning to live with another woman

would similarly entitle his wife to live separately and claim maintenance. Incidentally, the law in certain Islamic countries also provides the first wife the right to live and be maintained separately if the husband remarries. The judgment in this particular case was important insofar as it spelt out the principle clearly.

Yashoda's Fight For Her Cattle

The story of Yashoda's fight against the landlord of Yacharam village, in Andhra Pradesh, has become a kind of folk legend. The villagers narrate it to outsiders with great pride.

Yashoda's husband, Malla Reddy, was a bonded labourer. He is slightly retarded or an "innocent" as she puts it in Telugu. The burden of supporting the family of three daughters fell on Yashoda, who works as a labourer. Yashoda's brothers help her when they can. Her parents managed to buy her some poultry and a few cows to help her supplement her income. Apart from the constant worry of feeding the family, Yashoda had also to ensure that Malla went to work on time, and had to repay any loans he took.

One day, the landlord under whom Malla worked, came to know that Malla was taking interest in a newly formed labourers' organisation, the Vyavasaya Coolie Sangam, which was fighting to wipe out bondedness and to get a reasonable wage for labourers. As a punishment, the landlord confiscated Yashoda's cattle. This is a normal practice in villages which cows trespass into landlords' fields. They are released only when their owners pay a fine.

Yashoda was distraught as she could not afford to pay the fine. After much hesitation, she approached the Sangam. The Sangam advised that she file a case of theft against the landlord

and she courageously went ahead and did so.

The landlord claimed that Malla had sold the cattle to him. He also sent word to Yashoda that he would release the cattle if she apologised to him. Yashoda happens to be distantly related to the landlord, but she decided to fight him.

The landlord used his influence to put off police action for three days. But on the insistence of the Sangam, the police finally seized the cattle and registered a case against him. The Sangam then filed a writ petition in the high court.

In the meantime, Yashoda had to go to the police station daily to feed and milk the cattle, as the police had lodged the cows there but made no provision to feed them. The cows were not released for grazing or exercise. The recollection of their suffering brings tears to Yashoda's eyes.

Yashoda is a Reddy while the vast majority of bonded labourers in the area are Harijans. At first, the Harijans had reservations about fighting the battle of a Reddy woman. However, their common enemies united them, and they adopted Yashoda as their own. They organised demonstrations and meetings in the village. Yashoda also publicly confronted the landlord whenever she saw him, in the village, and even in court. A month later, the high court gave Yashoda custody of



Yashoda

the cows. After this Yashoda decided to move to Yacharam, a village about one km away. She took a house in the Harijan quarters there, because she felt more secure among them.

Today, she has a steady job as a farm hand, earning Rs 7 a day. Her older daughter too has found a job but her husband is incorrigible. The day before I met her, she had refused to give him food. She had told him that there was nothing for him in the house unless he earned for himself.

The humorous side of the story: after Yashoda was awarded custody of the cows, the Sangam activists decided to take the cows in a victory procession through the village. But the moment the cows who had been tethered for a month, were untied, they tore away in joy to celebrate their freedom in their own way and returned only at dusk.

—RAkhileshwari