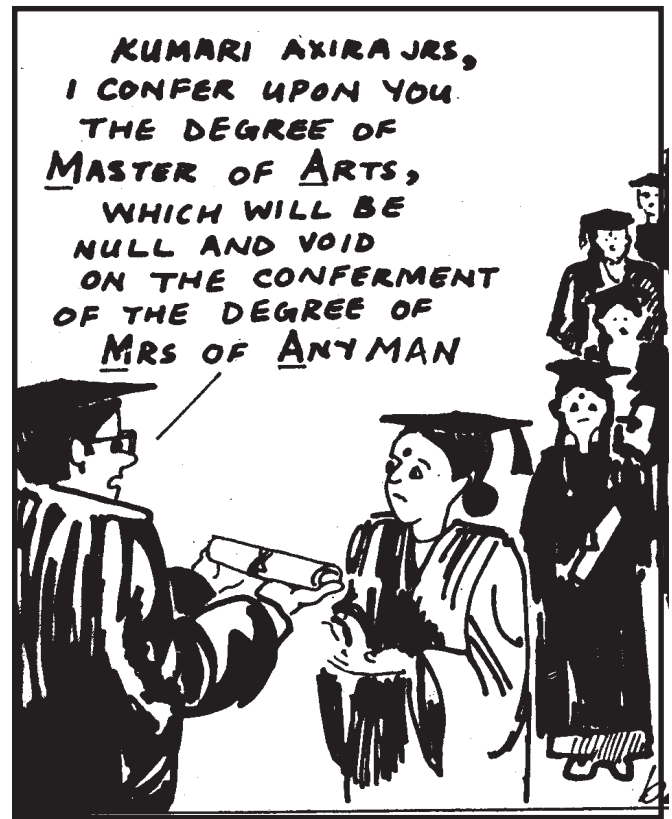


Married or Bonded ?

IN this column, we reproduce legal cases concerning women. This is to educate ourselves not only about legal provisions as they exist, but also about how in reality law operates. We invite readers to send in their comments, suggestions, and also the citations and details of any cases they may have in mind.

We present in this issue two cases in which a wife working apart from her husband, was sued by him for restitution of conjugal rights, that is, he demanded that she should give up her job and perform only the job of being his wife and full-time housekeeper. The overwhelming majority of such cases in Indian High Courts have been decided in favour of the husband, even when the wife was more highly educated and was doing a valuable service to society, as in *Gaya Prasad vs. Bhagwati*, Madhya Pradesh, 1966, where the husband was a cobbler and the wife a *gramsevik*. The few cases decided in favour of the wife were on the ground that the husband was not earning enough to support her, as in *Radhakrishnan vs. Dhanalakshmi*, Madras 1975, where the husband had deliberately got himself transferred away from the wife and then sued her. The questions that arise however, are : Has a woman no right to work, if her husband can support her?

Has she, as an individual, no right to self-fulfilment and self-expression through work, just because her husband can provide her with food and shelter ? Must she give up her job



-Bharti

outside to slave in her husband's house?

Is Our Right to Work Unreasonable ?

Kailashwati vs Adjodhia Prakash, Punjab Law Reports, Page 216.

Full Bench decision, 1977. Justice S.S. Sandeawalia.

Why Kailashwati was Sued. Kailashwati married Ajodhia Prakash in 1964. At that time, both of them were employed as village teachers – Kailashwati at her parental village Bilga and Ajodhia at village Kot Ise Khan. After marriage, Kailashwati was transferred to the station of her husband's posting. They

WHAT THE LAW SAYS

THE CONSTITUTION OF INDIA

Article 14 : The State shall not deny to any person equality before the Law or the equal protection of laws within the territory of India.

Article 15 : The state shall not discriminate against any citizen or grounds only of religion, race, caste, sex, place of birth of any of them.

HINDU MARRIAGE ACT, 1955

Section 9 : When either husband or wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply by petition to the District Court for restitution of conjugal rights and the Court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

Explanation : Where a question arises, whether there has been reasonable excuse for withdrawing from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.

lived together for nine months. Kailashwati was then transferred back to Bilga and lived there with her parents against the wishes of Ajodhia. He therefore filed an application for the restitution of conjugal rights in November 1971.

What was said against Kailashwati. The husband said that the wife had without his permission left his home for a period of six years. He claimed to be a position to support his wife in “dignified comfort” at his place of posting, with his salary and income from agricultural land. Therefore he insisted that she should return to the conjugal home.

Kailashwati’s Self Defence. Kailashwati said that at the time of marriage, her husband had, with his eyes open, accepted her as a working wife. Her employment prevented her from living in his village. She had a right to live in the place where she was posted.

Also, she had never refused to perform her marital obligations or to stay with her husband as and when possible under the circumstances. She had spent vacations with him.

Her statement in court : “The petitioner (Ajodhia) insists that I should leave the job. I am not prepared to leave the service and reside with him on that condition...”

The Judgment. The High Court granted Ajodhia Prakash a decree for the restitution of conjugal rights against his wife.

In coming to this decision, the learned judges referred to “general principles,” to ancient Hindu law and to earlier similar cases :

Wife’s Body and Labour – Husband’s Property?

“In all “civilized” societies, the husband has a quasi-proprietary” right over his wife. The wife can ‘live away from the home’ only if he consents to this. Even if he knew that she was working at the time of marriage, this does not destroy his right to insist that she stay with him.”

Further, even if the husband asks his wife to take up a job, he can later order her to leave the job and return to the “matrimonial home” as this is his “legal right”. It is her duty to “follow the husband if he changes his place of residence.”

Who decides the “Matrimonial Home”?

In an earlier case, the wife had asked her husband to come and live with her as she had a steady job while he was a cobbler, usually unemployed and dependent on his parents. The court had declared that this was not reasonable excuse for the wife to stay away, as “In the Hindu society, the wife’s first duty to her husband is to submit herself obediently to his authority and to remain under his roof and protection.”

In the present case, the judges came up with the irrelevant argument that since the Hindu wife has the right to maintenance and the husband has a legal duty to maintain her and the children, he also has a legal right to decide where the matrimonial home should be. It would be “unreasonable” that the husband should have to support the wife at a place of her

choice. But in this case the wife was not claiming her right to maintenance; she was claiming her right to maintain herself. Does the husband have the right to decide where she shall maintain herself ?

The court referred to Mulla’s *Principles of Hindu Law* : “the wife is bound to live with her husband and submit herself to his authority. An agreement (between husband and wife), enabling the wife to live separate from her husband if he marries another wife, is void. Such an agreement is against public policy and contrary to the spirit of Hindu Law.”

The Hindu Marriage Act had altered this “Hindu Law” and said that the wife must be proved to have left the husband “without reasonable cause”.

The Court therefore decided that the mere holding of an “ordinary job elsewhere” is not “reasonable cause”. May one ask how Ajodhia’s job was more ‘extraordinary’ than Kailashwati’s, since both were teachers ?

Thus, a woman’s right to work was declared “unreasonable”.

Swaraj Garg vs. K.M. Garg, Punjab High Court, 1978. Justices V.S. Deshpande and H.L. Anand

The parties were married in 1964 at Sunam. The wife was a teacher there and is now a headmistress. The husband was unemployed. In 1966, he got a job at Delhi. The wife continued to live at Sunam though she visited the husband at Delhi. The husband filed a petition for restitution of conjugal rights.

The Judgment. The husband was refused a decree for restitution of conjugal rights on the grounds that the wife had a reasonable excuse for not resigning her job and coming to live with him: “It is not always the wife who must resign her job however better it might be than the job of her husband and must come to live with her husband even though he may not be able to maintain himself and his wife at the appropriate standard of living.”

The judges went on to say that today many women take up jobs to help their families and also to be useful members of society. The wife may be financially and in other respects better situated to choose the place of matrimonial home than the husband. In this case, they had never agreed on any place for the matrimonial home.

Article 14 of the Constitution guarantees equality before the law and equal protection of the law to husband and wife. “Any law which would give the husband the exclusive right to decide the place of the matrimonial home, without considering the merits of the claim of the wife, would be contrary to Article 14 and therefore unconstitutional.

The custom of the husband’s right to set up the matrimonial home, as laid down by Mulla, reflected conditions of an ancient past. The conditions are now greatly altered.”

Even though this case was decided in favour of the wife,

the reason for the decision were inadequate. The woman's *right* to work was nowhere mentioned. The implication was that if the husband can maintain her at an appropriate standard of living, there would be no "need" for her to work.

Stress was also laid on the fact that a woman may earn to support her family, and may even earn more than her husband. While this is true, why should the court have found it necessary to, as it were, apologize for its decision, by giving plausible reasons why a woman may wish to keep her job after marriage? Has the wife who earns less than her husband does, no right to work? Though most women do work to help the family, there may also be women who work for their own satisfaction and security, or who wish to be economically independent. To say that women may take employment to "be useful members of society" is even stranger. Are women who run the house and bring up children, not useful members of society? Society in its present form is built on the unpaid labour of millions of such women.

The reference to Article 14 of the Constitution was a very meaningful one. But gain, to say that the wife may be "financially or in other respects, better situated to choose the matrimonial home than the husband" implies that only an earning woman and one earning more than her husband has a right to decide where she lives.

The decision was hedged around with too many qualifications, too many "may be's" and "would appear to be's". The court did not unequivocally assert that the wife's right to work is equal to the husband's right, under *all* circumstances and conditions.

Though the particular case was so decided on the basis of the "merits of the claim of the wife", the question was left open and how it is answered would depend in each case on what kind of job she had and the husband had, whether they had agreed on a place for matrimonial home and such other factors, not on the fact that the woman has a right to keep her job, no matter how much or how little she may be earning.

The Legal Position

No High Court is bound by the earlier decisions of other High Courts. In the latter case, the Punjab High Court dismissed the earlier decision by saying that the circumstances of that case were "peculiar". So Garg vs Garg and Ajodhia Prakash vs Kailashwati remain as two contrary precedents. Different High Courts have differently interpreted what would constitute "reasonable cause" for a wife to live away from her husband.

Also the reasons given in this decision, like all others in similar cases, violate Article 15 of the Constitution which guarantees no discrimination on the basis of sex. The judges assumed that the husband has an *unconditional* right to work while the wife can work *only under special circumstances* – if the husband agrees to it, or is unable to support her.

Discrimination Begins at Home

This is only one manifestation of the wife's position of inequality and dependence vis-à-vis her husband. The girl is supposed to lose her identity and merge into the husband's family. "Husband and wife are one and that one is the husband" is an ancient common law principle. The court said in its judgment in Ajodhia Prakash vs Kailashwati. "To my mind, the true position in law appears to be that any working woman entering into matrimony consents to the obvious and known marital duty of living with a husband as a necessary incident of marriage." The male bias of the judges is quite clear from this statement. In the wife to live with her husband on his terms only?

In a situation of declining employment of women (During the decade 1961-71, the number of men workers increased by 15.2% while that of women declined by 41.4%) these decisions snatching away a wife's right to employment, are an attempt to push women back into the roles of dependent, submissive wives and mothers. The working wife taking decisions of her own, is a challenge to the power of the male head of the family.

Today, when more and more young women are being harassed, tortured and burnt to death by their husbands and in-laws. Because their dowry is not considered adequate, this question of a wife's right to employment, becomes more urgent. The wife is expected to be only a reproducer, bringing forth sons who will inherit their father's name and property. Her labour in housework and childcare is not socially recognized or valued. As long as women do not have economic independence, they are powerless to resist or even to protest when maltreated. They are forced to bear all the cruelty and even death because they have nowhere else to go.

The existence of the economically independent woman who can defend her own interests is seen as a threat to the male-dominated, patriarchal family. As the court judgment said : "... to lay it down as a proposition of law that the wife is entitled to live separately for reasons of employment would perhaps be cutting at the root of the concept of marriage..." (Kailashwati vs Ajodhia Prakash).

However, how many working women actually have control over their income? How many can afford to fight a case if they are maltreated? How many meekly give up valuable jobs and follow their husbands on transfer?

The learned judge whom we have so often quoted, ended on this note : "The time perhaps has come when the appellant must make her choice between her job and her husband."

It is indeed time for us as women to decide whether we want 'protectors' who are 'jailers'. It is time for us to refuse to submit to the dictates of institutions – family, legal framework – which are all weighted against us as women, and which systematically train us to be dependent and servile.