

A whether the woman
intruding into her



**ASSIGN
BUSTER**

A Muslim wife, who lives separately due to her husband's second marriage, is entitled to claim maintenance allowance under the provisions of Criminal Procedure Code, 1973. But at the same time a Muslim husband has legal right to contract a second marriage.

As such, if a wife lives separately only on the ground of husband's second marriage; the husband too is entitled to file a suit for restitution of conjugal rights under his personal law. Apparently, there appears to be a conflict between the Muslim personal law and the provisions of the Criminal Procedure Code on the point of wife's claim of maintenance whose husband has contracted a second marriage. In *Begum Subanu alias Saira Banu v. A. M. Abdul Gafoor* the Supreme Court held that irrespective of a Muslim husband's right to contract a second marriage, his first wife would be entitled to claim maintenance.

In this case, the husband married a second wife whereupon the first wife left the house and lived separately. Living separately, she claimed maintenance under Section 125 of the Criminal Procedure Code, 1973. Elaborating the provisions of the Explanation to Section 125(3) of the Criminal Procedure Code, the Supreme Court held that from the point of view of a neglected wife, for whose benefit the Explanation has been provided, it will make no difference whether the woman intruding into her husband's matrimonial life is another wife permitted under (personal) law to be married and not a mistress. The court observed that the ' Explanation has to be construed from the point of view of the injury to matrimonial rights of the wife and not with respect to the husband's right to marry again.