

CASE NO.:
Writ Petition (civil) 499 of 1997

PETITIONER:

IN RE: ENFORCEMENT AND IMPLEMENTATION OF DOWRY PROHIBITION ACT, 1961

RESPONDENT:

DATE OF JUDGMENT: 02/05/2005

BENCH:

C.J.I R.C. LAHOTI, G.P. MATHUR & P.K. BALASUBRAMANYAN

JUDGMENT:

J U D G M E N T

P.K. BALASUBRAMANYAN, J.

The expression 'dowry' in ancient times applied to that which a wife brought her husband in marriage, goods given in marriage or the marriage portion. May be, it was conceived of as a nest-egg or security for the wife in her matrimonial home, especially since, most of the systems regarded a married woman as an addition to her husband's family. But in course of time, it assumed a different shape and degenerated into a subject of barter, acceptance of the woman as a wife depending on what her parents would pay as dowry, varying with the qualification and the status of the bridegroom's family. As felicitously put by Krishnaswami Aiyar, C.J. on behalf of the Full Bench in Sundaram Iyer v. Thandaveswara Iyer, 1946 Tra L.R. 224,

"But an abuse of the situation soon came into view when the bridegroom came to be marketed as a commodity for the value of his accomplishments and future promises and the high standards of the scriptural marriage which was a sacrament came to be contaminated by sordid considerations of immediate monetary gains at the sacrifice of the abiding purposes of the marriage union."

The position cannot be said to have improved since then.

2. Possibly, a social revolution is needed to put an end to the menace. Refusal by the bride's father to pay dowry, refusal of the girls to get married if dowry is insisted upon and the attaching of a social stigma to those who demand dowry, can alone ultimately put an end to this system or at least reduce its prevalence. Obviously, the enactment of a law prohibiting this evil should go a long way in tackling the menace. The Parliament in its wisdom enacted the Dowry Prohibition Act, 1961 (Act No.28 of 1961). The objects and reasons were set out as follows :-

"The object of this Bill is to prohibit the evil practice of giving and taking of dowry. This question has been engaging the attention of the Government for some time past, and one of the methods by which this problem, which is essentially a social one, was sought to be tackled was by the conferment of improved property rights on women by the Hindu Succession Act, 1956. It is, however, felt that a law which makes the practice punishable and at the same time ensures that any dowry, if given does ensure for the benefit of the wife will go a long way to educating public opinion and to the eradication of this evil. There has also been a persistent demand for such a

law both in and outside Parliament. Hence, the present Bill. It, however, takes care to exclude presents in the form of clothes, ornaments, etc., which are customary at marriages, provided the value thereof does not exceed Rs.2,000. Such a provision appears to be necessary to make the law workable."

3. The Act came into force on 1.7.1961. But it was found that even an enacted law did not help in eradicating or at least lessening the menace. This Court had occasion to say in *Shri Bhagwant Singh v. Commissioner of Police, Delhi*, AIR 1983 SC 826, that :

"The greed for dowry, and indeed the dowry system as an institution, calls for the severest condemnation. It is evident that legislative measures such as the Dowry Prohibition Act have not met with the success for which they were designed."

This led to the Criminal Law (Second Amendment) Act bringing in stringent criminal provisions to combat the menace and to some amendments in the Dowry Prohibition Act itself giving it more teeth. The objects and reasons for the amendment by Act 63 of 1984, were set down as follows:-

"The evil of dowry system has been a matter of serious concern to every one in view of its ever-increasing and disturbing proportions. The legislation on the subject enacted by Parliament, i.e., the Dowry Prohibition Act, 1961 and the far-reaching amendments which have been made to the Act by a number of States during the seventies have not succeeded in containing the evil. As pointed out by the Committee on the Status of Women in India, the educated youth is grossly insensitive to the evil of dowry and unashamedly contributes to its perpetuation. Government has been making various efforts to deal with the problem. In addition to issuing instructions to the State Governments and Union Territory administrations with regard to the making of thorough and compulsory investigations into cases of dowry deaths and stepping up anti-dowry publicity. Government referred the whole matter for consideration by a Joint Committee of both the House of Parliament. The Committee went into the whole matter in great depth and its proceedings have helped in no small measure in focusing the attention of the public and rousing the consciousness of the public against this evil."

4. There was a further amendment to the Act by Act 43 of 1986 making the provisions more stringent and enhancing the punishment for taking or abetting the taking of dowry. In spite of all this, it was seen that the enforcement of the provisions of the Act was thoroughly unsatisfactory and this is reflected by the filing of this Writ Petition in this Court, in public interest.

5. This Writ Petition was filed on 31.7.1997. The main prayers were for the issue of writs of mandamus directing the Central Government to frame rules under Section 9 of the Act, directing the State Governments to frame rules under Section 10 of the Act and providing for additional functions to be performed by the concerned officers under Section 8B of the Act, for appointment of Dowry Prohibition Officers by States as required under Section 8B; to furnish details regarding the working of Dowry Prohibition Officers wherever they have been appointed; for setting up of Advisory Boards as mandated by Section 8B of the Act and to furnish details of the composition of the Boards and their working, if the Boards have already been established in any particular State and for other incidental reliefs to make the working of the Act more effective. The prayers are really attuned to bringing about an atmosphere for more effective and rigorous implementation of the Act and for taking steps to spread the message of the Act among the people so as to educate them on the evils of dowry and the remedies available in cases where demands for dowry are made.

6. In this Writ Petition, various interim directions were issued. It is not

necessary to quote or refer to the individual orders passed or the individual directions issued. In view of the directions thus issued, almost all the States have framed rules under the Act. Most of them have adopted the model rules and it is said that only the States of Andhra Pradesh and Orissa have not adopted the model rules. The Dowry Prohibition Officers have been appointed by almost all the States, except it is urged, by the States of Jharkhand and Uttaranchal. The State of Jharkhand has filed an affidavit pointing out that the Superintendents of Police of the District Headquarters have been notified as District Dowry Prohibition Officers of the concerned district and directed to perform their duties under the Act. Thus the present plea of the States is that they have implemented the various directions of this Court and steps have been taken to effectively implement the provisions of the Act. According to the States and the Union of India, all that have to be done by way of legislation and subordinate legislation have been done and the Advisory Boards as contemplated by Section 8B of the Act have also been constituted.

7. According to the Union of India and the States, though all that is needed by way of legislation has been done, the purpose of the law has not been fully achieved and the blame for this could not be put on the administration alone. They submitted in one voice, as suggested by the first Prime Minister of India in this context that:

"Legislation cannot by itself normally solve deep-rooted social problems. One has to approach them in other ways too, but legislation is necessary and essential, so that it may give that push and have that educative factor as well as the legal sanctions behind it which help public opinion to be given a certain shape."

8. In the context of the developments that have taken place, it is submitted by the amicus curiae appointed by this Court that no serious effort has been made to implement the provisions of the Act and the Rules and unless directions are issued by this Court it is highly unlikely that the provisions of the Act and the Rules will be effectively implemented. It is, therefore, submitted that this Court may direct the Central Government and the State Governments to give wide publicity to the relevant provisions of the Dowry Prohibition Act, 1961 and Rules 2 and 3 of the Dowry Prohibition (Maintenance of Lists of presents to the Bride and Bridegroom) Rules, 1985 by appropriate means including educating the student community about the relevant provisions and the mandatory requirements of the Act and the Rules. It is further submitted that the State Governments may be directed to appoint sufficient number of Dowry Prohibition Officers with independent charge in each district of the concerned State, commensurate with the population of the District and to ensure that only dedicated and sincere officers are so appointed. It is submitted that directions may be issued to the Dowry Prohibition Officers to take immediate steps for strict enforcement and implementation of the provisions of Section 3, 4, 4A and 6 of the Dowry Prohibition Act, 1961 and Rules 2 and 3 of the Dowry Prohibition (Maintenance of Lists of presents to the Bride and Bridegroom) Rules, 1985.

9. Learned counsel also submits that the Central and State Governments may be directed to file Compliance Reports in this Court. One of the serious aspects pointed out is that the Central Government has not yet framed the Rules under Section 9(2)(b) of the Dowry Prohibition Act, 1961 and a direction may be issued to the Central Government to frame the necessary rules. It is also submitted that a direction may be issued to the Government to consider bringing in a legislation irrespective of caste or creed making it compulsory to register marriages and furnish the list of gifts as contemplated by the Act and the Rules. Learned counsel also submits that regarding seekers of Government employment information may be sought for from them whether one had taken any dowry at the time of his marriage and

whether he had filed a declaration as contemplated by the Act, and if he has taken dowry, whether he has transferred it to its wife or her heirs as required by Section 6 of the Act. Such declarations should be sought for even from those who are already employed. Learned amicus curiae submits that unless time bound directions are issued by this Court, the implementation of the Act and the Rules and the consequent rooting out of the evil, will remain as tardy as it has been for more than 43 years. The Legislation will remain a mirage. Learned counsel appearing for the Union of India and the States submit that neither the Union nor the States want the evil of dowry to continue and they assure the Court that every step will be taken by the Governments for implementation of the Act and the Rules and further steps will be devised for making the Act more effective and the Dowry Prohibition Officers more active with a view to eradicate the evil. We must say that this argument on behalf of the respondents could not be accepted at face value, in view of the fact that even today, none of the respondents is in a position to tell us that the evil has been eradicated or brought down in any part of the country. It is also seen that directions have to be issued even to frame rules and even today rules as contemplated by Section 9(2)(b) of the Act have not been framed. We are, therefore, satisfied that the mere recording of the assurances of the Union of India and of the State Governments would not be adequate in the circumstances. We have already noticed that this Writ Petition was filed on 31.7.1997 and in spite of the pendency of this Writ Petition in this Court for the last seven years, the implementation of the Act and the Rules framed thereunder has not become as effective as one would have wished and it has not been taken up with the zeal that is expected from the Government while enforcing a legislation like the one in question brought about with the object of eradicating a social evil. It is not as if the menace posed by dowry has in any way lessened. One can take judicial notice of the fact that cases of dowry harassment are splashed in newspapers almost every day. Therefore, it is clear that implementation of the Act and the Rules has not been as effective as it should be.

10. When there is failure on the part of the Executive to strictly implement a law like the one in question, enacted to tackle a social problem which has assumed menacing proportions, the Court has a duty to step in with a mandamus to direct its implementation rigorously and effectively. In that context, we find that it is necessary to step in and issue some more directions to the respondents in addition to incorporating the directions already issued by this Court by way of interim measure as part of this final judgment.

11. Therefore, in addition to directing the respondents to implement all the interim directions which were issued in this case thus far, we further direct the Union of India and the States to take more effective steps to implement the provisions of the Dowry Prohibition Act, 1961 with particular reference to Sections 3 and 4 thereof and the various rules framed thereunder. In that process, they are also directed to activate the Dowry Prohibition Officers. We also direct the Central Government to frame rules under Section 9(2)(b) of the Act if it has not already been framed. We direct the respondents to take steps to ensure that submitting of the list as contemplated by the Act and the Rules is strictly implemented. We direct the Union of India and the State Governments to consider whether appropriate rules cannot be framed for compelling males, seeking govt. employment, to furnish information on whether they had taken dowry and if taken, whether the same has been made over to the wife as contemplated by Section 6 of the Act, calling for such information also from those already in employment. Since, it is also necessary to arouse the conscience of the people against the demand and acceptance of dowry, we also direct the Union of India and the State Governments to take steps for the effective stepping up of Anti Dowry Literacy among the people through Lok Adalats, Radio Broadcasts, Television, and Newspapers. These directions will be implemented and continue to be implemented rigorously by the respondents.

12. The conscience of the society needs to be fully awakened to the evils of the dowry system so that the demand for dowry itself should lead to loss

of face in the society for those who demand it. We have no doubt that our young and enlightened women would rise to the occasion to fight the evil which tends to make them articles of commerce. We also hope that our educated young males would refuse to be sold in the marriage market and come forward to choose their partners in life in a fair manner.

13. The establishment of a committed and sincere machinery to implement the Act and the Rules can hasten the eradication of the evil. The Union of India and the State Governments are directed to devise means to create honest, efficient and committed machinery for the purpose of implementation of the Dowry Prohibition Act, 1961 and the various Rules framed thereunder.

14. The Writ Petition is allowed in the above manner.

