

## A Significant Decision

### —Supreme Court Defines Stridhan

ON March 12, 1985, supreme court judges S. Murtaza Fazal Ali and Sabyasachi Mukherjee, by a majority decision, delivered a judgment which has great positive significance for women who wish to reclaim their dowry after separation from their husbands.

Pratibha Rani, now aged 36 and a mother of two children, was married in 1972 to Suraj Kumar, a businessman. Her parents spent Rs 60,000 on the dowry, which included a lot of jewellery, clothes, furniture and utensils. Yet she was repeatedly harassed for more dowry, was maltreated, and thrown out of the house on several occasions. In 1980, Suraj Kumar beat her severely, breaking her two front teeth and abandoned her on the street, without allowing her to take any of her personal belongings.

Ever since, she has been staying with her parents. She filed and won a suit for maintenance but Suraj Kumar refused to return her dowry articles.

She then filed a criminal complaint in the magistrate's court, accusing Suraj Kumar of criminal breach of trust, insofar as the articles given to her at the time of marriage were her *stridhan* and were misappropriated by him. Suraj approached the high court to quash this complaint. In May 1982, the high court quashed the complaint, on the ground that the *stridhan* property of a woman becomes the joint property of her and her husband as soon as she enters her matrimonial home, and that breach of trust can only occur when one individual entrusts another with individually owned property, but not in the case of jointly owned property.

Justice Fazal Ali, in a learned and closely argued analysis, shows that earlier high court judgments which ruled that a married woman can, on the one hand, own individual property but, on the other, all her property becomes joint property as soon as she enters the matrimonial home, are self contradictory. He cites authorities such as Manu to show that in classical Hindu law, the married woman has absolute ownership rights over all gifts given to her at marriage, and that this *stridhan* can be used by her husband only in times of crisis but has to be repaid to her.

He points out that while a young bride is not in a position to keep her *stridhan* under lock and key in her in laws' home, the joint use of this property is in itself a form of trust, which is breached if the husband appropriates to his own use her belongings including clothing and jewellery. Differing with the high court view that a criminal suit against a husband by a wife will disturb the peace and harmony of the matrimonial home, justice Fazal Ali observes: "Criminal law and matrimonial home are not strangers. Crimes committed in matrimonial home are as much punishable as anywhere else."

Criticising the high court's unjust overlooking of the facts of the case and its virtual denial of the married woman's right to hold property as an individual, he says: "...what the high court has said—is neither in consonance with logic and reason nor with the express provisions of the Penal Code and seems to us to be inspired by spirit of male chauvinism so as to exclude the husband



from criminal liability merely because his wife has refused to live in her matrimonial home."

However, the third judge on the bench, A. Varadarajan, gave a dissenting minority judgment, saying that unless a woman enters into a written contract with her husband entrusting her property to him, all property is presumed to be joint property, and "entertaining complaints of the irate wife or husband would have disastrous effects and consequences on the peace and harmony which ought to prevail in matrimonial homes."

As a result of the majority decision, Suraj Kumar will now stand trial in the lowest court, so that relief to Pratibha Rani will not be immediate. But the decision is significant in that many other women who face this problem will now be able to institute criminal proceedings against husbands who refuse to return their wives' belongings. The definition of such belongings as *stridhan* is also positive since women will not be forced to ask for return of dowry under the Dowry Prohibition Act, according to which the givers of dowry and takers of dowry are equally punishable.