

IN THE SUPREME COURT OF PAKISTAN
(ORIGINAL JURISDICTION)

PRESENT

Mr. Justice Nazim Hussain Siddiqui, C.J.
Mr. Justice Javed Iqbal
Mr. Justice Tassadduq Hussain Jillani

CONSTITUTION PETITIONS No.23 OF 1999 & 21 OF 2004
CMA NO. 1466/2001

Ch. Muhammad Siddique and 2 others PETITIONERS

VERSUS

Government of Pakistan through Secretary, Ministry of Law and
Justice Division, Islamabad and 2 others

.... RESPONDENTS
(Const.P.No.23/99)

Government of Punjab through Secretary, Law, Justice &
Parliamentary Department, Lahore & another

.... RESPONDENTS
(Const.P.No.21/2004)

For the petitioners:	Mr. Maqbool Elahi Malik, Sr.ASC Mr. Khalil Ahmed ASC Mr. M.A. Zaidi, AOR Sh. Masood Akhtar, AOR (absent)
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For the respondents: (Const.P.23/99)	Raja Muhammad Irshad Deputy Attorney General Ch. Akhtar Ali, AOR.
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For the respondents: (Const.P.21/04)	Syed Shabbar Raza Rizvi Advocate General Punjab Ms Afshan Ghazanfar Assistant Advocate General
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Dr. Qazi Khalid Ali
Additional Advocate General Sindh

Mr. Jehanzeb Rahim
Advocate General NWFP

Raja Abdul Ghafoor, AOR/ASC on
behalf of Advocate General,
Balochistan

Applicant: Mr. Muhammad Hanif Abbasi
(CMA 1466/2001) (in person)

Dates of hearing: 23 & 24.9.2004

JUDGMENT

NAZIM HUSSAIN SIDDIQUI, C.J. – The above petitions have been filed under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973.

2. In Petition No. 23/1999, petitioners have challenged the *vires* of the Marriage Functions (Prohibition of Ostentatious Displays and Wasteful Expenses) Ordinance, 2000 (Ordinance No. II of 2000), hereinafter referred to as the Ordinance No. II of 2000, whereby restriction on wasteful expenses on the occasion of marriage ceremonies has been imposed.

3. In Petition No. 21/2004, petitioners have challenged the *vires* of the Punjab Marriage Functions (Prohibition of Ostentatious Displays and Wasteful Expenses) Act, 2003 (Act No. V of 2003), hereinafter referred to as the Act No. V of 2003, limiting the number of invitees to 300 and placing restriction of one dish food only thereunder.

4. Mr. Muhammad Hanif Abbasi through C.M.A. No. 1466/2001 in Petition No. 23/1999 prayed to be added as a party. The same is allowed and he is added as a respondent in Petition No. 23/1999.

5. Prior to the Ordinance No. II of 2000, the Marriage (Prohibition of Wasteful Expenses) Ordinance, 1997 (Ordinance No.XLVIII/1997) was promulgated by the Federal Government whereby restriction on wasteful expenses on the occasion of marriage ceremonies was imposed for a period of two years. Later on this Ordinance was enacted by the Parliament as the Marriages (Prohibition of Wasteful Expenses) Act, 1997 (Act No. XXI of 1997), which expired on 15.3.1999 in terms of section 1 (3) *ibid.* On 17.4.1999, the Marriage Functions (Ostentatious Displays) Ordinance, 1999 (Ordinance No. III of 1999) was promulgated and the restriction on wasteful expenses was re-imposed for a period of two years. Petitioners challenged the *vires* of the Ordinance No. III of 1999 by filing Constitution Petition No. 23/1999 in this Court. Since the Ordinance No. III of 1999 was not laid before the National Assembly as envisaged by Article 89 of the Constitution, it stood repealed on expiry of four months. On 13.1.2000 the Ordinance No. II of 2000 was promulgated, which holds the field and is applicable throughout Pakistan. Accordingly, petitioners filed an amended petition in this behalf.

6. Sections 4 and 5 of the Ordinance No. II of 2000 are subject matter of Petition No. 23/1999, which are produced below for ready reference: -

“Section 4: **Restriction on Wasteful Expenses.** – (1) No person celebrating his or the marriage of any other person shall serve or allow any one to serve meals or other edibles to persons participating in the marriage in a club,

hotel, restaurant, wedding hall, community centre or any other place except hot and cold soft drinks.

(2) Nothing contained in sub-section (1) shall apply to the eating of meals within the house by the members of the family celebrating the marriage or the house guests.

Section 5: **Application of the Ordinance to hotels, restaurants, etc.** – No person owning or running a hotel, restaurant, wedding hall, community centre or club being the site of marriage ceremony or any caterer shall serve or allow anyone to serve any meals or edibles to the persons participating in the marriage ceremony other than hot and cold soft drinks.”

(underlined for emphasis)

7. On 14.2.2003, the Punjab Marriage Functions (Prohibition of Ostentatious Displays and Wasteful Expenses) Act, 2003 was passed by the Provincial Assembly and its sections 4 and 5, which have been challenged in Petition No. 21/2004, are as follows: -

“4. **Restriction on wasteful expenses.** – (1)
No person celebrating his marriage or the marriage of any other person shall serve or allow anyone to serve meals or other edibles to the person in connection with a marriage in a club, hotel, restaurant, wedding hall, community centre, community park or any other place, except soup or, hot or cold soft drinks:

Provided that one dish may be served at the Walima ceremony to a maximum number of three hundred invitees, including hosts, attending the ceremony: (*underlined for emphasis*)

Provided further that in case the number of invitees, including hosts, attending the Walima ceremony exceeds three hundred, no meal shall be served except soup or, hot or cold soft drinks.

(2) Nothing contained in subsection (1) shall apply to the eating of meals within the house by the members of family celebrating the marriage, and the house guests.

“5. Application of the Act to hotels, restaurants, etc. – No person owning or running a hotel, restaurant, wedding hall, community centre, or club being the site of marriage ceremony or any caterer shall serve or allow anyone to serve any means or edibles to the persons participating in the marriage ceremony except as provided in section 4.”

8. It is asserted by Mr.Maqbool Elahi Malik, ASC that petitioners are law abiding citizens and believe in supremacy of the Injunctions of Islam. He contended that the Ordinance No. II of 2000 as well as the Act No. V of 2003 are beyond the legislative competency of the respective legislatures as they are against an express *Sunnah* of the Holy Prophet (may peace be upon him). He argued that the celebration of *Walima* being *Sunnah* of the Holy Prophet (may peace be upon him) is

obligatory in nature and no restriction could be imposed thereon. According to him, the money spent on such function does not fall within the scope of “*Asraaf*”. He submitted that right from the beginning all the laws on the subject including the Ordinance No. II of 2000 were never implemented, as such, there was no need to make such laws. It is urged that *Walima* according to some *Ahadith* continued for 7 days and the perusal of yet other *Ahadith* reveals that while celebrating *Walima*, there shall be an element of festivity, good meals and exchange of gifts, etc. He contended that restricting the meals to one dish and limiting the number of invitees to 300 under the Act No. V of 2003 are against *Sunnah* of the Holy Prophet as he had never, directly or indirectly, imposed any condition on its celebration. It is also contended that these laws directly affect the business of marriage halls, caterers, tent service, light decoration, cooks, waiters and indirectly affect the business of power looms, tent makers, screen printers, chair makers, steel crockery, pipe, carpet, *Daris*, etc. and are hit by Articles 18 and 25 of the Constitution. He referred, *inter alia*, to the following *Ahadith*: -

“The Holy Prophet (PBUH) said: “Give a wedding banquet, even though with one sheep.” (Al-Bokhari & Muslim with reference to *Mishkat Hadith* 3 : 56).

“The Holy Prophet (PBUH) offered a wedding banquet on the occasion of his marriage with *Zainab* and offered a good meal to the Muslims”.

(Narrated by *Anas: Sahih Al-Bokhari – Hadith : 84*).

“The Holy Prophet (PBUH) said, “set the captives free, accept the invitation (to a wedding banquet), and visit the patients.” (Narrated by *Abu Musa – Hadith : 103*)”

9. Raja Muhammad Irshad, learned Deputy Attorney General while controverting the above pleas, contended that a law on the subject has been enacted to curb/discourage wasteful expenses and that what in fact is prohibited is the wasteful expenses as these types of expenditure are widening economic disparity. According to him, *Walima* is only “*Mubah*”, i.e. a permitted act and not obligatory. He submitted that this is also the opinion of the Islamic Ideological Council. He maintains that such wasteful expenses create frustration and disappointment among the masses as more than 90 per cent of the population of the country cannot afford huge expenses in this regard with the result that the poor parents of girls are exposed to financial disasters. Further, many social vices are cropping up due to the financial problems resulting from lavish expenditures on the occasion of marriage. In support of his contentions, he cited various *Ahadith*.

10. Syed Shabbar Raza Rizvi, learned Advocate General Punjab submitted that the provincial legislation on the subject (Act No. V of 2003) is not in conflict with the Ordinance No. II of 2000. It is in the nature of slight improvement, in that, one dish meals have been allowed to be served to a limited number of

guests in line with the *Ahadith* of the Holy Prophet according to which *Walima* meals were served to the invitees in groups of 10. He submitted that the provincial law also envisages total prohibition on serving of meals at the public places. He candidly stated that in case of repugnancy, the federal law will prevail and the provincial law to the extent of repugnancy, be void in terms of Article 143 of the Constitution. He, however, contended that the federal law did not fix the number of guests, therefore, there was no inconsistency.

11. The learned Advocate General submitted that Constitution petition No. 23 was filed in 1999, which was heard and decided on 9.11.2002, but there is no judgment on the record of the case. He also submitted that the *vires* of the legislation made by the Federal Government on the subject in 1997 came up for consideration before the Lahore High Court in *Iftikhar v. Province of Punjab* (1998 CLC 1508) but the writ petition was dismissed as not maintainable. The judgment of the High Court attained finality as no appeal was filed against it. The present petitions were filed under Article 184(3) of the Constitution, which can only be entertained if a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II is involved. No member of the public challenged this law, which means that no one is aggrieved. It is only few contractors who have come to this Court. These petitions, therefore, are not entertainable. He

submitted that the Government can be directed to ensure implementation of the law.

12. Dr. Qazi Khalid Ali, Additional Advocate General, Sindh and Raja Abdul Ghafoor, learned ASC/AOR appearing on behalf of the Advocate General Balochistan have adopted the arguments of the Advocate General Punjab.

13. Mr. Jehanzeb Rahim, learned Advocate General, NWFP submitted that in view of the *Ahadith* quoted by learned Deputy Attorney General and learned Advocate General, Punjab, there is a consensus that while celebrating *Nikah*/marriage, avoidance of “*Asraaf*” and “*Tabzeer*” should be the principal guiding factors. He further submitted that the Ordinance has been challenged on two scores, viz. (a) it is against the Holy *Quran* and the *Sunnah* of the Holy Prophet and (b) it militates against Articles 18 and 25 of the Constitution. He submitted that under Article 227 read with Article 203D of the Constitution, the jurisdiction to declare any law against the Injunctions of Islam is vested in the Federal Shariat Court and the judgment of that Court is binding on the High Courts while this Court sits in appeal against the judgment of the Federal Shariat Court. He further submitted that the Council of Islamic Ideology examined this law and opined that the restrictions contained in it are in accordance with the Holy *Quran* and *Sunnah*. He also submitted that the case law laid down by this Court consistently postulates that the Courts while interpreting provisions of any law must lean in favour of its constitutionality. He contended that this

Court does not have the power under Article 184(3) of the Constitution to strike down a law on the ground that it is against the Injunctions of Islam. He contended that Article 25 is not attracted as the petitioners have not shown that some of the marriage halls are permitted to serve meals but others are not so permitted. To the contrary, the restriction applies to all the marriage halls and hotels alike. Further, the restriction is within the parameters of Article 18, which permits the State to make law aimed at regulating trade, etc. The restriction has been imposed in the public interest and is not unreasonable.

14. Mr. Muhammad Hanif Abbasi, applicant in CMA No.1466/2001, submitted that for a long time he remained associated with the business of marriage hall and after having realized that it was absolutely against *Shari'ah*, he gave up the said business and that on the basis of his personal experience, he has no hesitation to say that at public places in line with the spirit of the Ordinance No. II of 2000, such functions be prohibited and the Ordinance No. II of 2000 be implemented in letter and spirit. He submitted that the impugned legislation is in consonance with the Injunctions of *Shari'ah* and by their implementation, no *Shari'ah* law is violated.

15. Both learned Advocate General Punjab and Advocate General NWFP challenged the maintainability of these petitions on the ground that original jurisdiction of this Court under Article 184(3) of the Constitution could not be invoked. Under what circumstances, said Article can be invoked, recently we

have laid down law on this subject in the case reported as Mian Muhammad Shahbaz Sharif v. Federation of Pakistan (PLD 2004 SC 583) and the relevant discussion is in paras 16, 17, 18 and 19 of the judgment, which are as follows: -

“16. Clause (3) of Article 184 and sub-clause (c) of clause (1) of Article 199 of the Constitution are for the enforcement of any of the fundamental rights conferred by Chapter 1 of Part II. For their proper appreciation, they are reproduced below: -

“Article 184(3): Without prejudice to the provisions of Article 199, the Supreme Court shall, if it considers that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II is involved, have the power to make an order of the nature mentioned in the said Article.”

“Article 199(1): Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law, - - -

(c) on the application of any aggrieved person, make an order giving such directions to any person or authority, including any Government exercising any power or performing any function in, or in relation to, any territory within the jurisdiction of that Court as may be appropriate for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II.”

17. Articles 199 and 184(3) regulate the jurisdiction of the Superior Courts and do not oust it. Perusal of clause (3) of Article 184 unequivocally postulates that two conditions are precedent for invoking said clause. Firstly, the petition must clearly demonstrate that the

grievance relates to violation of fundamental rights. Secondly, the violation is of nature of public importance, which has been interpreted to mean any invasion of individual freedom, liberty, fundamental rights, including effectiveness and safeguard for their implementation. Therefore, having regard to the connotation of the words “*public importance*”, the facts and circumstances of each case would have to be scrutinized on its own merits.

18. With the assistance of learned counsel for the parties, we have surveyed the relevant case law. In Manzoor Elahi’s case, (PLD 1975 SC 66), Benazir Bhutto’s case (PLD 1988 SC 416), Mian Muhammad Nawaz Sharif’s case (PLD 1993 SC 473), Wasey Zafar’s case (PLD 1994 SC 621), I.A. Sharwani’s case (1991 SCMR 1041) and the Employees of Pakistan Law Commission’s v. Ministry of Works (1994 SCMR 1548), questions of general public importance, which affected the people at large, were involved. In Asad Ali’s case (PLD 1998 SC 161), the Supreme Court entertained petition directly for the reason that the issue affected the judicial system of the country. The finding and conclusion of the Supreme Court in Syed Zulfiqar Mehdi v. Pakistan International Airlines Corporation (1998 SCMR 793) have never been deviated from. It is advantageous to quote the relevant observation occurring at page 801 of the report, which reads as under: -

“The issues arising in a case, cannot be considered as a question of public importance, if the decision of the issues affects only the rights of an individual or a group of individuals.

The issue in order to assume the character of public importance must be such that its decision affects the rights and liberties of people at large. The adjective 'public' necessarily implies a thing belonging to people at large, the nation, the State or a community as a whole. Therefore, if a controversy is raised in which only a particular group of people is interested and the body of the people as a whole or the entire community has no interest, it cannot be treated as a case of public importance."

19. Same view has recently been taken in Watan Party's case (PLD 2003 SC 74). It was a 5 – member Bench judgment to which one of us (Nazim Hussain Siddiqui, now Chief Justice) was a party, wherein reliance was placed on Manzoor Elahi's case and the above view was endorsed. For facility of reference, the relevant observations in the latter case are reproduced below: -

"Now, what is meant by a question of public importance. The term 'public' is invariably employed in contradistinction to the terms private or individual, and connotes, as an adjective, something pertaining to, or belonging to the people, relating to a nation, State or community..."

"The learned Attorney-General is clearly right in saying that a case does not involve a question of public importance merely because it concerns the arrest and detention of an important person like a Member of Parliament. In order to acquire public importance, the case must obviously raise a question, which is of interest to, or affects the whole body of people or an entire community."

Although the Supreme Court thereafter in a number of cases, such as Amanullah Khan v. Chairman, Medical Research Council (1995 SCMR 202) and Mrs. Shahida Zahir Abbasi v. President of Pakistan (PLD 1996 SC 632) has taken a different view, yet the cases under Article 184(3) have been brought within the parameters of the observations referred to above.”

Petitioners have alleged violation of fundamental rights guaranteed under Articles 18 and 25 of the Constitution. The questions raised in these petitions are of great public importance, which involve interpretation of various provisions of the Constitution. The decision of this Court, one way or the other, will directly affect the entire population of the country. We, therefore, hold that the petitions are maintainable.

16. On the second day of hearing of these matters, *viz.* 24.9.2004, Mr. Maqbool Elahi Malik, learned counsel for the petitioners made a request to withdraw both these petitions, which was vehemently opposed by learned Deputy Attorney General on the ground that the petitioners themselves are convinced after hearing arguments on 23.9.2004 that their petitions could not succeed, as such as a last resort, they wanted to save the Act No. V of 2003 promulgated by the Punjab Provincial Assembly. Request of learned counsel could not be allowed as questions of great public importance have been raised in these petitions, which require authoritative pronouncement by this Court. Furthermore, question of inconsistency of a provincial

law (the Act No. V of 2003) with a federal law (the Ordinance No. II of 2000), in view of Article 143 of the Constitution, has surfaced, which is to be gone into.

17. The thrust of the arguments of learned counsel for the petitioners was that holding of *Walima* being *Sunnah* of the Holy Prophet (may peace be upon him) is obligatory in nature. Since the impugned legislation has been passed against the *Sunnah* of the Holy Prophet (may peace be upon him), the same is liable to be struck down.

18. Perusal of various *Ahadith* quoted by the learned counsel appearing in these petitions and many such others unambiguously reveals that *Walima* is a feast arranged on the occasion of marriage. It comes from the root (التَّيَام) meaning *to join together*. This is so called as it is held on the occasion of joining of wife and husband together. Majority of the jurists hold that it is a *Sunnah* while a few hold that it is *Mustahab* (commendable) and a few others are of the view that it is *Wajeb* (compulsory). The feast invariably is given by the husband.

19. *Anas bin Malik* reported that ‘*Abd al-Rehman b. ‘Auf* came to the Apostle of Allah (may peace be upon him) and he had yellow stains on him. The Apostle of Allah (may peace be upon him) asked him what that was. He said, he had married an *Ansari* woman. The Apostle of Allah (may peace be upon him) asked: “How much have you paid as *mahr* to her? He said: “Gold equal to the date seed. Thereafter the Apostle of Allah (may peace be upon him) said: Perform *Walima* even if it be of one sheep.

Yahya b. Sa'id reported that the Apostle of Allah (may peace be upon him) used to perform *Walima* and there would be neither bread nor meat. *Ibn Shihab* reported *al-A'raj* to have said that *Abu Huraira* narrated that that *Walima* was the worst of meals to which the rich are invited and the poor are ignored. *Anas b. Malik* reported: A tailor prepared some food and invited the Apostle of Allah (may peace be upon him). *Anas* said: I too went with the Apostle of Allah (may peace be upon him) to participate in the food. The tailor put before him barley bread and pumpkin curry. *Anas* said: I saw the Apostle of Allah (may peace be upon him) seeking out from the dish pieces of pumpkin and eating them. From that day pumpkin had become my favourite. *Anas* also reported: On the occasion of wedding feast of Prophet with *Safiya*, there was no bread or meat, and dates, dried curd and clarified butter were offered. *Safiya* daughter of *Shaiba* said the Prophet held a wedding-feast for one of his wives with two *mudds* [1 Mudd = $\frac{3}{4}$ of a kilogram] of barley. *Abu Mas'ud al-Ansari* said: One of the *Ansar* whose *Kunya* was *Abu Shu'aib* had a servant who sold meat. He said, "Prepare for me food, which will be enough for five; perhaps I shall invite the Prophet along with four others." He prepared a small meal for him, and then he went and invited him. A man followed them, and the Prophet said, "A man has followed us, *Abu Shu'aib*, so if you wish you may let him join us, but if you wish you may leave him outside." He replied, "No, I shall let him join us." *Anas* said the Prophet held a wedding-feast for *Safiya* with meal and dates.

20. It may be observed that *Walima* is an invitation to meals given by the bridegroom intended basically to make the factum of marriage known to the people of the locality lest there is any doubt about the new relationship between a man and a woman. The *Walima* given by the Holy Prophet (PBUH) on the eve of his marriage with *Zainab* referred to above consisted of one sheep and it was taken by the people as a big feast. On the eve of his marriages with *Safiya* and *Umm-e-Salama*, the Holy Prophet (PBUH) had offered a small quantity (two seers) of *jau*, *halais* – a sweat made of cheese, butter and sugar, or dates. On one such occasion the Holy Prophet (PBUH) had asked *Anas* to go into the street and call the people to the meals in the house of the Prophet. The following principles are deducible from the above discussion: -

- *Walima* invitation is a pre-Islamic concept liked and adopted by the Holy Prophet (PBUH);
- Only such items be given in *Walima* as the person celebrating *Walima* can afford from his own resources;
- The invitation of *Walima* should be offered to all and sundry in the vicinity and should not be confined to relatives, friends, influentials, etc.

21. The *Walima* and other marriage functions prevalent in our society had been made a source of ostentatious display of wealth inasmuch as the wealthy people spent huge moneys on the occasion of *Baraat*, *Walima* and other functions. This has taken the form of *Asraaf* (extravagance), which is strictly prohibited in the Holy Quran. The Holy Quran says: -

وَلَا تُسْرِفُوا إِنَّهُ لَا يُحِبُّ الْمُسْرِفِينَ. (الأنعام: 141)

ترجمہ: اور اسراف نہ کرو، بلاشبہ اللہ مسرفین کو پسند نہیں کرتا۔

وَكُلُوا وَشَرِبُوا وَلَا تُسْرِفُوا إِنَّهُ لَا يُحِبُّ الْمُسْرِفِينَ.

(الاعراف: 31)

ترجمہ: اور کھاؤ اور پیو اور اسراف نہ کرو، بلاشبہ اللہ مسرفین کو پسند نہیں کرتا۔

وَاهْلِكْنَا الْمُسْرِفِينَ. (الأنعام: 9)

ترجمہ: اور ہم نے اسراف کرنے والوں کو ہلاک کر دیا۔

22. We have also gone through the research note placed on record, which was submitted before the Islamic Ideological Council in respect of *Walima*. It concludes that such functions shall be free from “*Asraaf*” and “*Tabzēer*” and such functions shall also be free from such actions and deeds, which are prohibited in Islam and may lead towards un-Islamic actions and deeds. No doubt, *Walima* is a *Sunnah*, but always it shall be within limits as narrated in various *Ahadith* quoted above. Extravagance i.e. ostentatious and wasteful expenditures on the occasion of *Walima* are always discouraged right from the very beginning. By enormous expenditure of above nature, social vices are created leaving behind horrifying consequences. These evils have generated social inequalities in the society.

23. It is significant to note that right from 1953 till 1978 various legislative instruments were promulgated in order to overcome these problems. Some of them are: -

- 1) Economy of Food (Control) Order, 1953;
- 2) Meals in Establishments Control Order, 1953;
- 3) Foodstuffs (Regulation of Consumption) Order, 1958;
- 4) West Pakistan Economy of Food Order, 1958;

- 5) West Pakistan Economy of Food Order, 1966;
- 6) Punjab Economy of Food Order, 1972 and
- 7) Punjab Economy of Food Order, 1975.

The Order of 1953 provided that on the occasion of marriage, death or any other ceremony or function, no person acting as host shall distribute, serve or offer or cause to be distributed, served or offered any edible to more than 25 persons at one meal. Likewise, other Orders from serial No. 2 to 7 were promulgated for exercising economy relating to food. The Ordinance No. II of 2000 is in continuation thereof.

24. The statement of objects and purposes of the impugned legislation as mentioned in the Preamble to the Ordinance No. II of 2000 reads as under: -

“Whereas it is expedient to provide for the prohibition of ostentatious displays and wasteful expenses on marriages and ceremonies related thereto.”

As far as ostentatious displays are concerned, the Ordinance provides prohibition on decoration of the venue of marriage with lights or illumination, etc. The provision in the Ordinance governing this aspect of the matter is found in section 3 thereof, which reads as under: -

“Section 3. **Prohibition of ostentatious celebrations.** – (1) Subject to sub-section (2), no person celebrating his marriage or the marriage of any other person shall –

- (a) decorate or cause to be decorated any house or building including any space appertaining thereto, street,

- road or other place, whether owned by him or otherwise, with lights or illumination;
- (b) explode or allow anyone to explode cracker or other explosive device including firing by firearm; or
- (c) display or allow any one to display fireworks.

(2) Nothing contained in sub-section (1) shall prohibit the use of such lights as are ordinarily necessary to lit the house or any other place being the site of marriage.”

25. Sections 4 and 5 of the Ordinance No. II of 2000 provide for hot and/or cold soft drinks. Learned counsel for the petitioners vehemently argued that the Ordinance No. II of 2000 has imposed a ban on holding of *Walima*. It is not correct. This law never prohibited holding of *Walima*. People are at liberty to celebrate marriage and *Walima*. What is prohibited is extravagance and ostentatious display of wealth. This is quite in line with the teachings of Islam. Islam lays great emphasis on simple way of life. It is the duty of the State to take steps to encourage the celebration of marriage ceremonies in simple and informal ways, such as performance of *Nikah* in the mosque of the locality so that the element of inconvenience/harm is eliminated from the society.

26. In our view, the Ordinance No. II of 2000 has been framed with the noble object of prohibiting extravagance and ostentatious displays on the marriage functions. It is an important step to prepare the society as a whole for a change in its behaviour towards this issue and thereby curb the tendency

of wasteful expenses so as to relieve the poorer segments of the society of the undue burden of exorbitant expenditures incurred on these occasions.

27. The exploitative customs observed on the eve of marriage ceremonies in our country and the social evils emanating therefrom have not only added to the miseries of the poor but have put at stake their very existence too. It is customary in our society that ostentatious display of *Jahez* and other dowry articles takes place in front of all the guests with a view to making it known to them as to what is being given to the bride by her parents and the parents of the bridegroom. Dowries are given and now also openly demanded. The lower middle and poor classes of society are being crushed under the evils of extravagance and ostentatious displays of wealth. It is unacceptable as it is against all norms and values known to a civil society. It must stop. The functions celebrated on the eve of marriage such as *Mayun*, *Mehndi/Rasm-e-hina*, *Baraat*, etc. and even the custom of giving large dowries all are of Hindu origin and have nothing to do with the Islamic concept of marriage. The Muslims of the subcontinent had offered great sacrifices for the establishment of an independent State wherein they could lead their lives in accordance with the teachings of Islam as laid down in the Holy *Quran* and the *Sunnah* of the Holy Prophet (may peace be upon him). The Constitution of Pakistan contains sufficient provisions whereby the State is obliged to take steps to

eradicate social evils. The issue in hand needs to be seen in this larger context.

28. Item 5 in the Concurrent Legislative List, Fourth Schedule to the Constitution, speaks about 'marriage and divorce, infants and minors; adoption'. *Walima* emanates from marriage and the Federal Government is competent to enact law on said subject. Indeed, the Federal Government has already enacted law in the shape of Ordinance No. II of 2000, which is valid and in force. The Government of the Punjab was not legally competent to enact the Act No. V of 2003. On this point, Article 143 is clear and it reads as under: -

"143. If any provision of an Act of a Provincial Assembly is repugnant to any provision of an Act of Majlis-e-Shoora (Parliament), which Majlis-e-Shoora (Parliament) is competent to enact, or to any provision of any existing law with respect to any of the matters enumerated in the Concurrent Legislative List, then the Act of Majlis-e-Shoora (Parliament), whether passed before or after the Act of the Provincial Assembly, or, as the case may be, the existing law, shall prevail and the Act of the Provincial Assembly shall, to the extent of the repugnancy, be void."

Perusal of above Article clearly shows that the Act No. V of 2003 enacted by the Punjab Provincial Assembly is inconsistent with the Ordinance No. II of 2000 promulgated by the Federal Government, as such is void. The Ordinance No. II of 2000 holds the field as it was neither withdrawn nor amended nor struck

down by this Court, as such the Punjab Provincial Assembly enacted the Act No. V of 2003 in violation of the spirit of the Constitution. Besides, two materially different laws on the same subject – one passed by the Federal Legislature and the other by a Provincial Legislature, are against the spirit of federation. Since Federal law has supremacy under Article 143 of the Constitution, as such the law enacted by the Provincial Assembly, viz., the Act No. V of 2003 being *ultra vires* is struck down.

29. In the light of the above discussion, we decide as under: -

- Constitution Petitions Nos. 23/1999 and 21/2004 are dismissed;
- C.M.A. No. 1466/2001 in Constitution Petition No. 23/1999 is disposed of in above terms;
- The Act No. V of 2003 passed by the Provincial Assembly of the Punjab is struck down;
- The Ordinance No. II of 2000 holds the field and is applicable throughout Pakistan and the guests be served in terms of sections 4 and 5 *ibid* quoted above.

CHIEF JUSTICE

JUDGE

JUDGE

ANNOUNCED AT ISLAMABAD
This the, 5th day of November, 2004

CHIEF JUSTICE