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CONSTITUTIONAL VALIDITY OF RESTITUTION OF CONJUGAL RIGHTS

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ABSTRACT

This study analyses the constitutional legitimacy of a statutory provision in the Hindu Marriage Act, 1955, that enables one spouse to sue for the restitution of the other to the matrimonial home by way of a court decree. While aimed at upholding the institution of marriage and facilitating conciliation, this remedy has faced notable legal and social critique. The main issue is whether coercing a person to restart cohabiting would undermine basic rights enshrined in the Indian Constitution, including those of privacy, equality, and personal liberty.

The research delves into the historical development of this remedy, tracing its origins back to colonial legislation and examining its incorporation in Indian matrimonial law. Despite the professed objective of enhancing harmony and averting marital collapse, the operational ramifications tend to be coercion and domination. This encompasses its possible abuse in stalling divorce proceedings, harassment of the withdrawing spouse, and its adverse impact on women, particularly where abuse or lack of autonomy is involved.

The paper points to the way that this remedy intersects with and potentially undermines larger social concerns like bodily integrity, consent, and gender equality. It also deplores the ongoing application of a colonial-era notion abolished elsewhere. By examining how the provision slots into the model of a rights-based democratic society, this paper emphasizes the tension between maintaining marriage and maintaining individual dignity.

INTRODUCTION

It is imperative to comprehend the basic meaning of conjugal rights, being a legal remedy established under the institution of marriage, which provides a remedy as an order compelling the party who has left the cohabitation without a reasonable justification, giving help to the party who has been deserted in marriage. The term “*conjugal rights*” means rights arising from the marital bond encompassing many aspects, like cohabitation, emotional, physical, and even

sometimes children and elderly parents. The term “restitution” simply means fixing something or restoring something that is lost, it is pivotal in the aspect of marriage that governs many institutions like family. These institutions have several implications on to the growth of society and individuals.

EXISTING STATUTORY PROVISIONS

The legislative foundation of the remedy of restitution of conjugal rights (RCR) for Hindus lies mostly in Section 9 of the Hindu Marriage Act, 1955¹. This empowers either of the spouses to move the court when the other has refused to live with him or her without reasonable grounds. To award a decree of restitution of conjugal rights, there are certain conditions that need to be fulfilled: the marriage has to be legally valid according to Hindu law; one of the spouses has to have withdrawn from the other's society; and such withdrawal has to be without reasonable cause. The court also has to be convinced of the correctness of the facts stated in the petition and has to hold no legal reason to refuse the relief.

The expression "*one spouse must have withdrawn from the society of the other*" describes a case in which one of the two legally married partners deliberately stopped cohabiting or fulfilling marital duties against the other, without justification or law. The withdrawal is not restricted to physical estrangement but also encompasses emotional or functional exclusion from marriage duties. For a petitioner to be successful in a petition under Section 9 of the Hindu Marriage Act, the petitioner has to demonstrate that this withdrawal was with no reasonable cause and voluntarily, thus justifying them to file for the restitution of marital cohabitation.

Such withdrawal has to be without any reason, in the sense that the spouse who left or refused to cohabit anymore should not have had any justifiable or valid ground for such an action. A "*reasonable excuse*" would be a case involving cruelty, domestic violence, or some other conduct making it unsafe or inappropriate to continue residing together. If the respondent (the withdrawing spouse) proves a just cause for the separation, the court will not pass a decree for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955. Thus, the onus of proof lies with the petitioner for unjustified withdrawal, whereas the respondent can plead on the reasonable excuse ground.

Secondly, the court should be convinced of the truthfulness of the statements of the petitioner, that is, the petitioner should establish the factuality of the facts contained in the petition. The

¹ THE HINDU MARRIAGE ACT, 1955 ACT NO. 25 OF 1951

court will meticulously scrutinize the circumstances to determine whether the claim is in good faith and free from malice or coercion. Furthermore, the court must also ensure that there is no other legal impediment, such as pending divorce proceedings, an existing decree of judicial separation, or any conduct of the petitioner that would make the relief inequitable, before granting the decree of restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955

A most important procedural requirement of petition is the *onus of proof with regard to the "reasonable excuse" for the withdrawal*. After the petitioner has established successfully that the other spouse has withdrawn from their society, the burden of proof falls upon the respondent spouse to explain the withdrawal. It is not sufficient for the respondent to simply aver dissatisfaction or emotional distress; they must provide clear and convincing evidence of a reasonable ground for leaving, e.g., cruelty, ill-treatment, mental or physical abuse, or any behaviour that makes it unreasonable to continue living together. The courts have held across the board that unsubstantiated or vague allegations are inadequate to state a reasonable excuse.

Further, the court must be satisfied that the decree of restitution of conjugal rights should be granted. The court must be satisfied about the veracity of the claims made in the petition. The petitioner should establish the marriage is valid under Hindu law and that the withdrawal was without just cause. The court makes a fact-oriented investigation into the reasons for the separation and verifies that the petition is not misused to harass or dominate the other spouse. It also verifies whether there is any legal bar, for example, previous matrimonial reliefs such as divorce or judicial separation, or any behaviour of the petitioner making it unjust to grant relief.

The underlying motive behind this remedy, as stressed in legal and scholarly discussion, lies in maintaining the *sanctity of marriage*. In contrast to divorce or separation proceedings that aim to break the marital bond, restitution of conjugal rights is a positive or constructive remedy. It stems from a belief that marriage is a holy and lasting union that may not be broken recklessly. By offering a chance at reconciliation, restitution of conjugal rights fosters the potential for healing, communication, and restoration of the marriage relationship. In most instances, it becomes a formal process that gets both sides back to the bargaining table, frequently leading to counselling or mutual resolution of conflicts.

Restitution of conjugal rights also makes its contribution to furthering the general framework of family law by trying to maintain social harmony and stability. The court, by issuance of this decree, urges the spouses to choose conversation and comprehension over litigation and hostility. Especially in Indian society, where family structures tend to be interdependent and culturally important, restitution of conjugal rights serves as a legal instrument in evading the premature dismantling of marriages and keeping the family together.

QUESTION OF RESEARCH

The constitutional validity of Section 9 of the Hindu Marriage Act, 1955, has been a subject of highly disputed legal argument in India. This provision, which was originally brought in as a civil remedy to maintain matrimonial concord and promote reconciliation, grants a power of direction to the courts to require a spouse to return to cohabitation if the other is able to establish that the withdrawal was not made for a reasonable cause. Yet this ostensibly harmless legal tool has, in the course of years, provoked vigorous constitutional examination. At issue is a fundamental question.

does compelling an individual to restore a matrimonial relationship by court order violate the basic rights guaranteed by the Indian Constitution?

Pessimists of Section 9 say that it essentially infringes the right to privacy and autonomy under Article 21, as enunciated by Supreme Court of India held privacy to be a constituent element of the right to life and personal liberty.² Forcing one to cohabit with his/her estranged spouse is regarded as a state interference in the most intimate and private realms of human existence, the choice of whom to cohabit with, share physical and emotional space, and how to manage personal relationships. In addition, in that it enables a party to lawfully force the other to share a living space, critics also contend that the provision infringes on a person's autonomy over their body, time, and space.

Under Article 14, which provides for equality before the law and equal protection of the laws, Section 9 is contested as being arbitrary and discriminatory. Although on the surface it is equally applicable to both spouses, in reality, it is more disproportionately used by husbands against wives. Women's socio-economic disadvantage, absence of protective networks, and their fear of legal consequences tend to expose them to coercion under this provision more readily. Such disproportionate effects arguably make the law indirectly discriminatory,

² Justice K.S. Puttaswamy (Retd.) v. Union of India 10 SCC 1

contravening both Article 14 and Article 15, which is against discrimination on grounds of sex.

Outside the domain of constitutional theory, the practical applications of this provision are causing dire socio-legal problems. Various reports and studies have indicated the potential for Section 9 to be abused. In some cases, it has been invoked not with sincere intent to revive the marriage, but to derail divorce proceedings, to harass the withdrawing spouse, or to secure tactical advantage in matrimonial property or child custody matters. More egregiously, Section 9 has even been applied where the separation from cohabitation was brought about by domestic violence, thus putting survivors of violence in the vulnerable situation of having to legally justify their breakup or face judicial order to go back to their abuser.

In addition, an increasing body of feminist legal analysis is associating Section 9 with the larger subject of marital rape and control over one's body. Because Indian law continues not to criminalize marital rape in light of the contentious Exception 2 to Section 375 IPC, forcing a woman back to the family home by way of a restitution order can be indirectly enabling of forced sexual intercourse, in violation of her dignity and bodily integrity. The legal fiction that marriage constitutes ongoing sexual and emotional consent is in stark conflict with modern conceptions of consent and human rights. Against this background, Section 9 has generally been understood as an instrument that sanctions patriarchal dominance and undermines the protection around consent and freedom which contemporary constitutionalism is designed to achieve.

There has been inconsistency in court reasoning which will be addressed previously, between the need to secure marriage and the need to secure constitutional freedoms, revealing a deeper tension in Indian family law. Though Section 9 has usually been explained as a "positive remedy" intended to foster reconciliation, it has come to be regarded more and more as a coercive mechanism that encroaches upon individual dignity and autonomy. This disconnection between legislative purpose and socio-legal effect gives rise to concerns regarding the provision's compatibility with a rights-based democratic system. On a more abstract plane, this study also intersects with the philosophical and ethical foundations of marriage in Indian law.

Is marriage to be considered no more than a contractual agreement subject to enforcement in the same way as any other civil obligation?

Or

Is it a relationship founded on consent and ongoing willingness, which cannot, and ought not, be maintained by judicial coercion?

If so, then the case for Section 9 becomes extremely slender, particularly against the constitutional promise of liberty, equality, and fraternity.

This study attempts to question the disjuncture between the '*intended purpose*' of protecting marriage and the 'lived experience' of those subjected to restitution orders, especially women. It hopes to be part of the emerging need for gender-sensitive, rights-respecting reform of personal laws, and to challenge the legitimacy of remedies that go against the autonomy and dignity of individuals. As Indian society changes, so must its legal frameworks, to express a constitutional morality in which individual freedom and equality are placed at the center of family law.

HISTORICAL ANALYSIS

A. Tracing the English Ecclesiastical Origins

The doctrine of Restitution of Conjugal Rights found its origins in English ecclesiastical courts, which originally had jurisdiction in issues involving marriage. The courts would in such a situation intervene in cases of "subtraction," which was a term given when one spouse stayed away from their spouse without a valid reason.

Mechanisms for enforcement of Restitution of Conjugal Rights decrees in England developed over time. Before 1813, a wayward spouse risked excommunication if she disobeyed an RCR order. The Ecclesiastical Courts Act of 1813 substituted this religious sanction for a more worldly one: imprisonment for a term not exceeding six months. This coercive remedy was eventually removed by the Matrimonial Causes Act of 1884, which substituted instead a requirement that refusal to comply with an Restitution of Conjugal Rights order shall be a ground of judicial separation. Finally, the practice of Restitution of Conjugal Rights was completely repealed in England by the Matrimonial Proceedings and Property Act 1970 because it was considered "outdated" and "rarely used" at that point.

B. Introduction into Indian Matrimonial Law (Pre-1955)

The idea of Restitution of Conjugal Rights was a "legal transplant," being brought into Indian matrimonial law by the British from their English ecclesiastical legal traditions. This remedy

was hardly known to classical Hindu law, which had traditionally viewed marriage as a sacred, indissoluble tie, with the idea of divorce being almost non-existent in its classical system.

The first recorded application of RCR in India occurred in 1866, in the case of *Moonshee Buzloor Ruheem v. Shusoonissa Begum*, decided by the Privy Council.

In the late 19th century, RCR suits gained some popularity. They were often initiated by abandoned wives seeking to regain access to their marital homes or to compel their husbands to provide maintenance. On the other hand, husbands too used this remedy to compel return of their wives. Yet at the time of drafting the Hindu Marriage Act, 1955, the inclusion of RCR came up against stiff resistance. Senior members of the drafting committee, like Mr. Khardekar, strongly criticized the provision, terming it "*uncouth, barbarous and vulgar*" and even comparing it to "*legalized rape*," an early recognition of its coercive nature and contentious implications. The "legal transplant" character of Restitution of Conjugal Rights and its inbuilt incompatibility with changing Indian societal norms is a determining part of its history. The study underlines that Restitution of Conjugal Rights is a straight import from English ecclesiastical law.

This is important because the original context was a different social configuration where women used to be treated as property, or "*chattels*". The United Kingdom, the originating jurisdiction, having repealed Restitution of Conjugal Rights in 1970 as it was found to be "outdated" and "rarely used" makes a robust case for its anachronism in India. Though it faced vehement resistance in the process of preparation of the Hindu Marriage Act, 1955, when it was described as "uncouth, barbarous and vulgar" and "legalized rape", it was still enshrined. This implies superficial, not organic, incorporation into Indian law and thus an internal tension between a colonial past and the goals of a modern, rights-based constitutional democracy. The ongoing existence of RCR in India, though eliminated in the majority of other common law nations, highlights the possibility of a disjuncture between legal systems and the prevailing social realities and values of a modernizing state.

C. Section 9 of the Hindu Marriage Act, 1955:

Provisions and Purpose With India's independence, Restitution of Conjugal Rights was legally codified and invested with statutory foundation in Section 9 of the Hindu Marriage Act, 1955. The wording in Section 9 is important:

"When either the husband or the wife has, without reasonable cause, 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, being satisfied of the truth of the statements contained in such petition and that there is no legal ground why a decree of restitution of conjugal rights should not be made, may decree restitution of conjugal rights accordingly."

An explanation appended to Section 9 makes it clear that the onus of establishing a "reasonable excuse" for withdrawal is upon the party who has withdrawn from the other person's society.

Courts have offered a definition of what a "reasonable excuse" would be, such as grounds for relief in any matrimonial cause, matrimonial misconduct (even in the absence of being an immediate ground for divorce), or omission or any act by the petitioner on account of which it becomes impossible for the respondent to cohabit with them.

Concrete examples of such reasonable excuses are cruelty, impotence, dowry demands, false imputations of adultery, or a refusal to cohabit. In enforcement and outcome, the Indian system of Restitution of Conjugal Rights is different from its previous English equivalents.

Non-compliance with an Restitution of Conjugal Rights order in India does not result in imprisonment. Rather, it can be enforced against the defaulting party by attachment of their property. More importantly, if the Restitution of Conjugal Rights decree is not complied with for an uninterrupted duration of one year or longer after the issuance of such decree, it is a valid reason for divorce by either of the parties. This creates the ironic function of Restitution of Conjugal Rights as both a "preserver" of marriage and a harbinger of divorce.

Restitution of Conjugal Rights's avowed objective is categorically to "*preserve marriage*" and "*facilitate reconciliation*". This also resonates with the classical understanding of Hindu marriage as an indissoluble and sacred union. But legally, the position is clear: if a decree in an Restitution of Conjugal Rights is not complied with for one year, it becomes a legitimate basis for divorce. This constitutes an interesting and somewhat dualistic function.

Restitution of Conjugal Rights, in its purpose to rescue marriages, can also function as an effective required "*cooling-off*" phase or a judicial stepping stone to dissolution.

This would mean that the implementation of the law in practice could be far removed from its original ideal, perhaps further delaying the inevitable breakup and adding to emotional trauma for already estranged parties. It also asks an important question of the effectiveness of a remedy, which, if it fails in its primary objective, actually causes the very thing it was trying to avoid.

D. RCR Across Other Indian Personal Laws Remedy of RCR is not limited only to Hindu law.

It is extensively applicable in different personal laws dealing with different religious communities in India. Restitution of Conjugal Rights can be sought by Christians under Sections 32 and 33 of the Indian Divorce Act, 1869³, whereas Parsis have the remedy under Section 36 of the Parsi Marriage and Divorce Act, 1936. Section 22 of the Special Marriage Act, 1954, also makes provisions for Restitution of Conjugal Rights in case of persons married under the secular law. Even under Muslim law, where no express provision in the statute is made for Restitution of Conjugal Rights, the remedy is available under general Muslim personal laws. The courts can step in to direct the restitution of conjugal rights on grounds of justice, equity, and good conscience, if a spouse has withdrawn without reasonable grounds. This prevalent recourse across various personal laws indicates how all-pervasive this remedy is in the Indian legal system.

CONSTITUTIONAL SCRUTINY: JUDICIAL PRONOUNCEMENTS OF IMPORTANCE

The constitutional validity of Restitution of Conjugal Rights has been stringently tried in Indian courts, which has resulted in a multifaceted and dynamic jurisprudence. The major issues have revolved around its compatibility with basic rights, specifically the right to life, liberty, and privacy (Article 21), and the right to equality and non-discrimination (Articles 14 and 15).

The controversy regarding the effect of RCR on personal autonomy and privacy has experienced a "pendulum swing" in judicial construction.

1. T. Sareetha v. T. Venkata Subbaiah (1983): Challenge to Autonomy⁴

In a revolutionary and much-debated judgment, the Andhra Pradesh High Court, in *T. Sareetha v. T. Venkata Subbaiah*, invalidated Section 9 of the Hindu Marriage Act, 1955, on the grounds of being unconstitutional. Justice P.A. Choudary, who heard the case, ruled that Section 9 offended Article 21 of the Constitution, which enshrines the right to life, personal liberty, and privacy.

Justice Choudary's justification focussed on the fact that compelling a reluctant person to cohabit with his or her spouse was a violation of the right to privacy and bodily integrity. He

³ THE DIVORCE ACT, 1869 ACT NO. 4 OF 1869

⁴ *T. Sareetha v. T. Venkata Subbaiah*, AIR 1983 AP 356

phrased apprehensions that the decree could force a woman to have to suffer "humiliating sexual molestation" or be "compelled to give birth to children she may not wish to have.". The ruling famously referred to Section 9 as a "savage and barbarous remedy" against human dignity and practically delegated the essential decision on marital intercourse from the person to the State.

2. Harvinder Kaur v. Harmander Singh Choudhry (1984): Maintaining Marital Obligation⁵

Differing completely from the Sareetha judgment, the Delhi High Court, in *Harvinder Kaur v. Harmander Singh Choudhry*, declared Section 9 to be constitutionally valid. Justice A. Rohatgi, author of the judgment, provided a strict reading of "cohabitation," making it clear that a decree for restitution of conjugal rights "cannot enforce sexual intercourse but only cohabitation."

He believed that sexual intercourse was not a required condition for cohabitation, where he simply stated "living together as husband and wife". The main goal, in this court's view, was to promote cohabitation "in amity" and thus save the marriage. The Delhi High Court also showed strong disapproval at introducing principles of constitutional law into the "private affairs of family," comparing such an interference to "introducing a bull in a china shop" that would be bound to destroy the institution of marriage. This viewpoint emphasized a judicial reluctance at applying the same degree of constitutional scrutiny to intimate marital relations as would be offered to other areas of public life.

3. Saroj Rani v. Sudarshan Kumar Chadha (1984): The Supreme Court's Position⁶

The inconsistencies with regard to the Sareetha and *Harvinder Kaur* decisions were eventually settled by the Supreme Court of India in *Saroj Rani v. Sudarshan Kumar Chadha*. The high court unequivocally affirmed the constitutional soundness of Section 9, specifically reversing the Sareetha ruling and reaffirming the rationale given in *Harvinder Kaur*.

The Supreme Court noted that conjugal rights are not statutory constructs but are "inherent in the very institution of marriage itself," considering Section 9 to be a "codification of pre-existing law."

It reaffirmed that the reason for the RCR decree is to "preserve the marriage" and be an "aid to the prevention of break-up of marriage."

⁵ *Harvinder Kaur v. Harmander Singh Choudhry*, AIR 1984 Del 66

⁶ *Saroj Rani v. Sudarshan Kumar Chadha*, (1984) 2 SCC 403

Most importantly, the Court emphasized that enforcement of an RCR decree is restricted to "attachment of property" and is an "inducement" for reconciliation, and not physical coercion or enforcement of sex. The Court held that "sufficient safeguards" are present within the provision to avoid it turning into a "tyranny". This series of court rulings demonstrates a crucial "pendulum swing" of judicial interpretation, ending in the Supreme Court's prioritizing institutional continuity over individual rights. The Andhra Pradesh High Court decision in T. Sareetha was a militant, forward-thinking position, emphasizing individual freedom and privacy by striking down Section 9. This was immediately followed by the Delhi High Court in Harvinder Kaur, which upheld the provision by interpreting "cohabitation" in a narrow sense and rejecting privacy arguments as not being suited to family cases.

The later ruling of the Supreme Court in Saroj Rani, in affirming Harvinder Kaur's judgment and directly overturning Sareetha, established a judicial precedent in adhering to the "sanctity of marriage" as an "inherent institution" over a broader interpretation of fundamental rights of the individual within marital relationships. This series of cases underscores a sustained judicial tendency, especially at the high court level, to protect the classical institution of marriage, even at the possible cost of developing individual freedom.

These evolving perceptions of privacy and autonomy have logically set the debate regarding RCR's constitutionality ablaze. Opponents contend that compelled cohabitation, even without explicit imposition of sex, necessarily infringes on bodily autonomy as well as personal freedom, particularly in light of the ongoing lack of legislation criminalizing marital rape in India. The judgement like Harvinder Kaur and Saroj Rani, becomes a problem when examined against the Indian social realities, especially since marital rape remains uncriminalized. In a patriarchal setup where dominance within marriage has a tilted balance of power, with forced cohabitation even in the absence of expressly directing sexual acts

de facto puts the reluctant spouse (usually the wife) in serious danger of forced sexual intercourse. As such, though legally correct on paper, the "no enforcement of sexual intercourse" argument can act as a legal fiction that is unhelpful at protecting persons' bodily autonomy and dignity when faced with dominant social norms and judicial loopholes.

CONCLUSION

In essence, as much as restitution of conjugal rights remains a contentious and controversial remedy, it still plays a significant role in the matrimonial law regime. Its procedural protections, such as the onus of proof on the withdrawing spouse and judicial examination of the claims of

the petitioner, guarantee that the remedy is not misused. Essentially, restitution of conjugal rights attempts to save the marriage by promoting reconciliation and urging spouses to resume cohabitation on a basis of mutual understanding and respect.