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Restitution of Conjugal Rights in Hindu Law

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ABSTRACT

This research paper delves into the legal concept of Restitution of Conjugal Rights in Hindu law, particularly focusing on its historical evolution, legal provisions, constitutional validity, and relevance in contemporary society. The paper examines landmark cases that have shaped Restitution of Conjugal Rights jurisprudence, highlighting the delicate balance between preserving the institution of marriage and safeguarding individual autonomy. It also explores recent legal developments and reforms within Hindu family law, acknowledging the changing dynamics of marital relationships. Ultimately, this research emphasizes the need for a prudent and balanced implementation of the Restitution of Conjugal Rights, ensuring that it effectively and fairly achieves its intended objectives within contemporary Hindu legal contexts. To conclude, this study underscores the significance of judiciously applying the Restitution of Conjugal Rights to ensure that it serves its intended purpose effectively and equitably in modern Hindu law.

Keywords: Restitution of Conjugal Rights, Hindu law, Hindu Marriage Act 1955, Constitutional validity, Personal autonomy, Customary laws.

I. INTRODUCTION

The idea of "Restitution of Conjugal Rights," as outlined in Section 9² of the Hindu Marriage Act of 1955³, was originally borrowed from English Law. A closer examination of Indian judicial rulings related to the restitution of conjugal rights reveals that some aspects of English Law principles were once criticized as overly severe, as pointed out by Lord Herschell⁴. However, substantial modifications have been introduced in English law since then. The term "Conjugal Rights" pertains to the rights of spouses to live together within a marriage. Consequently, the concept of Restitution of Conjugal Rights raises the question of whether it is constitutionally acceptable to compel a party to reside with their spouse if they have withdrawn

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² When either the husband or wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

³ Act No. 24 of 1955.

⁴ Russell v. Russell, (1897) AC 395, p 455.

from their company. The Supreme Court of India has determined that Section 9 of the Hindu Marriage Act does not violate Articles 14 and 21 of the Constitution⁵. In the case of *T. Sareetha v. T. Venkata Subbaiah*⁶, Justice Choudhary argued that Section 9 encroached upon constitutional rights related to human dignity and privacy. In contrast, Justice Avadh Bihari Rohatgi held a different viewpoint in the case of *Harvinder Kaur v. Harmander Singh*⁷. Ultimately, the Supreme Court aligned with Justice Rohatgi's perspective. In summary, the concept of Restitution of Conjugal Rights in the Hindu Marriage Act was borrowed from English Law but has undergone significant evolution. Section 9 of the Hindu Marriage Act, 1955, defines the concept of restitution of conjugal rights, which offers relief to a married individual in cases where one spouse withdraws from the company of the other without just and reasonable cause. Withdrawal from the company of the other party or spouse signifies a withdrawal from the conjugal relationship. To seek the remedy of restitution of conjugal rights, certain fundamental conditions must be satisfied by the aggrieved party. These conditions are:

- One spouse must have voluntarily withdrawn from the companionship of the other spouse.
- The withdrawal must lack any reasonable justification or valid cause.
- The aggrieved spouse must commence legal proceedings by filing a petition for Restitution of Conjugal Rights.
- The court must be convinced of the validity of the petitioner's allegations and declarations.

Once these basic elements have been met, the court will take cognizance of the matter.

II. HISTORY OF RESTITUTION OF CONJUGAL RIGHTS

The historical concept of Restitution of Conjugal Rights in Hindu law can be traced back to ancient Hindu traditions and religious customs. In ancient Hindu society, marriage was regarded as a sacred union filled with moral and religious duties. Spouses were expected to live together, maintain harmonious relationships, and fulfill their roles within the family and society. The concept of Restitution of Conjugal Rights emerged as a means to enforce these marital obligations, rooted in the belief that unjustified desertion constituted a breach of one's dharma or duty.

⁵ *Saroj Rani v. Sudarshan Kumar*, AIR 1984 SC 1562; overruling *T. Sareetha v. T. Venkata Subbaiah*, AIR 1983 AP

⁶ AIR 1983 AP 356.

⁷ AIR 1984 SC 1562.

Restitution of Conjugal Rights was profoundly influenced by the concept of "dharma," which stressed individuals' responsibilities, including those within the institution of marriage. Hindu texts such as the Manusmriti and Dharmashastras provided guidelines that reinforced the idea that spouses should cohabit as part of their dharma.

In ancient times, Restitution of Conjugal Rights was not a formally recognized legal remedy but rather a customary practice deeply ingrained in society. Marital disputes were often resolved through community involvement and the mediation of elders, with an emphasis on reconciling couples and restoring their marital life. This practice reflects the significance of marital sanctity in ancient India.

During the colonial era in India, British authorities sought to codify various aspects of Hindu law, including matters related to marriage and family. The Hindu Marriage Act of 1955 played a pivotal role in this transformation, formally introducing Restitution of Conjugal Rights as a legal remedy within Hindu law. This legislation established a structured legal framework for spouses to seek the restitution of conjugal rights through the courts. This marked a significant departure from the customary and religious aspects of Restitution of Conjugal Rights toward a more formalized legal process. It also reflected changing societal norms and the influence of British legal principles on Indian family law.

III. RELEVANT PROVISIONS WITHIN THE HINDU MARRIAGE ACT OF 1955

The Hindu Marriage Act of 1955 contains important sections related to the concept of restitution of conjugal rights, primarily outlined in Sections 9 and 13.

Section 9 of the Hindu Marriage Act, 1955, is the primary provision dealing with Restitution of Conjugal Rights. It allows either spouse to initiate legal proceedings to seek the restitution of conjugal rights if they believe their partner has unreasonably left the marital home without a valid reason.

Section 13 of The Hindu Marriage Act, 1955, lists various grounds on which either spouse can file for divorce. These grounds include acts such as adultery, cruelty, continuous desertion for a minimum of two years, conversion to another religion, mental disorders, or severe and incurable forms of leprosy. Notably, desertion, which refers to the continuous abandonment of one spouse by the other without a valid justification, is particularly relevant to the concept of restitution of conjugal rights. If desertion continues for a specified duration, it can serve as a valid ground for divorce under Section 13(1)(ib) of the Act.

The primary aim of Restitution of Conjugal Rights within Hindu law is to promote the

reconciliation of estranged spouses. When one spouse believes that the other has unreasonably left the marital home, they can initiate a legal petition for restitution of conjugal rights in court, essentially requesting their partner's return and the resumption of cohabitation. This implies that one spouse has deserted the other without a valid cause.

The legal process involves filing a petition in the appropriate court, outlining the relevant facts and grounds for seeking restitution of conjugal rights. Subsequently, the court issues a summons to the other spouse, who is obligated to respond to the petition. Throughout the legal proceedings, the court may, at its discretion, attempt to facilitate reconciliation through counselling or mediation. If these efforts prove unsuccessful and the court finds no legal basis for separation, it can issue a decree mandating the restitution of conjugal rights. This decree legally compels the respondent to return to the marital home and resume cohabitation with the petitioner.

It's important to note that in contemporary times, Restitution of Conjugal Rights is viewed with skepticism, as it may be seen as outdated and potentially infringing on individual autonomy within a marriage. In practice, other provisions of the Hindu Marriage Act, such as divorce based on cruelty or desertion, are often preferred to address marital disputes, and Restitution of Conjugal Rights is rarely utilized.

(A) Arguments against retaining the provisions for restitution of conjugal rights

1. Lack of Efficacy: Court intervention to compel spouses to live together may not heal the emotional bond that is at the core of marriage. Courts directing individuals to cohabit does not effectively repair the emotional connection between them, making it an ineffective tool for reconciliation.

2. Misuse: The remedy is often misused for ulterior motives. Spouses may intentionally not comply with the restitution decree to expedite divorce proceedings. Additionally, some individuals use it as a defense against maintenance claims, which can lead to unfair outcomes.

3. There are constitutional challenges to Section 9 of the Hindu Marriage Act, 1955, on the grounds that it violates fundamental rights:

- **Article 21 (Right to Privacy and Human Dignity):** Compelling sexual cohabitation against one's will infringes upon the right to privacy and human dignity safeguarded by Article 21.
- **Article 19 (Freedom of Expression):** Forced cohabitation can encroach upon an individual's freedom of expression, as articulated in Article 19.

- Article 14 (Right to Equality): Treating individuals equally, without considering their unique circumstances, may not align with principles of justice or constitutional fairness under Article 14.

These contentions suggest that the provision for restitution of conjugal rights may not be a suitable or just legal remedy in certain situations.

(B) Arguments in support of retaining the provision for restitution of conjugal rights

1. **Constitutional Validity:** The Delhi High Court's decision in the case of *Harvinder Kaur v. Harmandar Singh*⁸ upheld the constitutionality of Section 9 of the Hindu Marriage Act, 1955. The argument was that this legal remedy does not compel individuals to engage in sexual acts against their will through legal coercion.
2. **Equal Accessibility:** This legal recourse is accessible to both spouses and is designed to preserve marriages and mend the relationship between partners.
3. **No Enforcement of Sexual Acts:** Importantly, the provision does not mandate or enforce any sexual act, thus avoiding any infringement of constitutional provisions.
4. **Preservation of Companionship:** The Supreme Court's ruling in *Saroj Rani v. Sudarshan Kumar Chadha*⁹ stressed the inherent right of a husband or wife to the companionship of their spouse within the institution of marriage. Section 9 incorporates safeguards to prevent misuse and offers both spouses an opportunity to amicably resolve their differences and continue living together.

In essence, these arguments maintain that the provision for restitution of conjugal rights functions as a valuable mechanism for the preservation of marriages, provides estranged couples with a chance to reconcile, and upholds constitutional validity by not coercing sexual acts.

IV. THE CONSTITUTIONALITY AND SIGNIFICANCE OF PROVISION

The concept of introducing restitution was to safeguard the sanctity of marriage, preventing it from being easily dissolved due to temporary disputes or minor issues that couples might face. Its purpose was to ensure that a spouse who felt wronged didn't lose out on the joys of marriage solely because of their partner's unreasonable behaviour. The objective was to help couples find a way to reconcile and resolve their differences. Marriage is not just the union of two individuals; it also signifies the merging of two families. It's a deep, emotional, and meaningful

⁸ AIR 1984 Del. 66

⁹ AIR 1984 SC 1562.

connection that has held significant importance throughout history. Consequently, the judiciary took on the responsibility of preventing marriages from ending abruptly over trivial reasons, thereby preserving the institution of marriage. However, over time, the foundation of marital bonds has shifted. Joint family structures have become less common, and nuclear families are now more prevalent. Various laws, have reshaped our perception of marriage in Hindu Law. These changes have made marriage more contractual and less focused on its sacred aspects. Additionally, the restitution remedy has flaws that reduce its effectiveness, leading to doubts about its usefulness. Some have even raised questions about its constitutionality.

V. RECENT DEVELOPMENTS AND REFORMS

In recent years, there have been limited amendments and changes in Restitution of Conjugal Rights provisions under Hindu law. While some minor amendments have been introduced in certain jurisdictions, the core concept of Restitution of Conjugal Rights remains intact. These changes typically aim to clarify the grounds for seeking Restitution of Conjugal Rights, promote counselling and mediation, and prevent its misuse. However, they often fall short of addressing fundamental critiques, such as its potential infringement on personal autonomy within marriage. Legislative efforts within Hindu law have primarily focused on broader family law reforms to address modern marital issues. These efforts recognize the evolving nature of marital relationships and have introduced provisions related to divorce, property rights, alimony, and child custody. These changes aim to provide a more comprehensive framework for resolving disputes and seeking marital dissolution while safeguarding individual rights and autonomy.

The implications of these recent legal developments in Hindu law highlight a recognition that traditional Restitution of Conjugal Rights may not adequately address modern marital issues. The concept of Restitution of Conjugal Rights is now considered a less preferred legal remedy. There is a growing focus on preserving the institution of marriage while giving paramount importance to the well-being and personal freedom of individuals within these relationships. This evolving perspective acknowledges the significance of marital harmony without compromising the fundamental rights and autonomy of individuals within marriages. This balance reflects the evolving nature of Hindu family law to respect both tradition and contemporary values, offering spouses a range of options to address marital disputes in a manner that aligns with their personal autonomy and needs.

VI. RESTITUTION OF CONJUGAL RIGHTS IN VARIOUS CUSTOMARY LAWS IN INDIA

When one spouse feels aggrieved due to an unreasonable separation from their partner, they can

seek legal remedy under Section 9 of the Hindu Marriage Act, 1955. This provision allows either spouse to approach the district court and request the restoration of conjugal rights. The court may grant this request if it finds the claims valid and sees no legal grounds for denial. For example, in the *Gurdev Kaur vs. Sarwan Singh*¹⁰ case, conjugal rights were reinstated due to a reasonable cause¹¹.

Similar legal concepts exist in other customary laws. Under Muslim law, if a spouse unreasonably withdraws from marital life or neglects their obligations, the court can decree the restitution of conjugal rights as per the Muslim Personal Law (Shariat) Application Act, 1937. Parsi Law permits divorce if there has been no cohabitation for a specified period after a decree of judicial separation or restitution of conjugal rights. Christian men and women can file suits for restitution of conjugal rights under the Indian Divorce Act, 1869. Additionally, the Special Marriage Act¹² allows an aggrieved spouse to apply for the restitution of conjugal rights in cases of unreasonable separation, with the burden of proving a reasonable excuse for the separation resting on the initiating party.

In summary, restitution of conjugal rights is a legal recourse available to married individuals in India when one spouse unreasonably withdraws from the marital relationship. Its application varies depending on personal laws and statutes, with the court considering factors such as reasonable cause and adherence to religious principles or principles of justice and equity.

VII. LANDMARK CASES OF THE RESTITUTION OF CONJUGAL RIGHTS

There are several landmark cases related to Restitution of Conjugal Rights in Hindu law, and one of the notable cases is:

1. *Harvinder Kaur v. Harmandar Singh* (1984)¹³: This case holds significance as it addressed the constitutional validity of Section 9 of the Hindu Marriage Act, 1955, which deals with the provision for Restitution of Conjugal Rights. In this legal case, the Delhi High Court upheld the constitutional validity of Section 9 of the Hindu Marriage Act. The judgment, delivered by Justice A.B. Rohatgi, clarified that interpreting Restitution of Conjugal Rights as a means of coercing individuals into unwanted sexual acts was an extreme interpretation. The court emphasized that this provision is accessible to both spouses and primarily aims to preserve marriages, mend disrupted households, and facilitate the reestablishment of the intimate

¹⁰ AIR 1959 P & H 162.

¹¹ Swarup Aditya: Constitutional Validity of Restitution of Conjugal Rights: Scope and Relevance, April 2008, Nalsar University of Law, Hyderabad, available at <http://works.bepress.com/adityaswarup/8/>.

¹² Section 22 of the Special Marriage Act, 1954..

¹³ *Harvinder Kaur v. Harmandar Singh*, (1984) 1 DMC 99 (Del HC)

relationship between estranged spouses. Crucially, the court affirmed that Restitution of Conjugal Rights does not compel any sexual act, ensuring it remains in compliance with constitutional provisions. This landmark judgment played a pivotal role in establishing the legal and constitutional legitimacy of Restitution of Conjugal Rights as a legal recourse for estranged spouses in India. It underscored that when used appropriately and with due consideration for individual rights, Restitution of Conjugal Rights can serve as a valid means to encourage marital reconciliation without infringing upon constitutional rights.

2. Saroj Rani v. Sudarshan Kumar Chadha (1984)¹⁴: Saroj Rani v. Sudarshan Kumar Chadha (1984) stands as a landmark case in Indian family law, addressing the issue of Restitution of Conjugal Rights and its constitutional validity. In this pivotal case, the Supreme Court of India affirmed the constitutional validity of Section 9 of the Hindu Marriage Act, 1955, which deals with Restitution of Conjugal Rights. The case revolved around a husband seeking a decree for Restitution of Conjugal Rights against his wife, who had been living separately. The wife challenged the constitutional validity of Section 9, asserting that it violated her fundamental rights. In its judgment, the Supreme Court emphasized that the right of a husband or wife to the companionship of their spouse is an inherent aspect of the institution of marriage itself. The Court ruled that Section 9 includes sufficient safeguards to prevent it from being used as a tool of oppression. This legal remedy offers both spouses an opportunity to amicably resolve their differences and continue living together. Additionally, the Court stressed that obtaining a decree for Restitution of Conjugal Rights involves considerations of justice, fairness, and the specific circumstances of the case. This judgment reaffirmed the significance of preserving the sanctity of marriage and providing a legal avenue for estranged spouses to reconcile. Overall, Saroj Rani v. Sudarshan Kumar Chadha is of great significance for upholding the constitutional validity of Restitution of Conjugal Rights in Hindu law and providing clarity regarding its role in preserving the institution of marriage in India

3. Vijaykumar Ramchandra Bhate vs. Neela Vijaykumar Bhate (2003)¹⁵: The case of Vijaykumar Ramchandra Bhate vs. Neela Vijaykumar Bhate (2003) is a significant landmark in Indian family law, particularly concerning the application of Restitution of Conjugal Rights. In this case, a husband sought a decree for Restitution of Conjugal Rights against his wife, who was living separately. Initially, the trial court granted the decree, but the wife appealed to the High Court, leading to the decree's reversal. The husband then appealed to the Supreme Court. In its judgment, the Supreme Court provided crucial clarifications regarding Restitution of

¹⁴ Saroj Rani v. Sudarshan Kumar Chadha, 1984 AIR 1562, 1985 SCR (1) 303 3

¹⁵ Vijaykumar Ramchandra Bhate v. Neela Vijaykumar Bhate, 2003 AIR 3186, 2003 SCR (10) 778

Conjugal Rights cases. It emphasized that courts should not mechanically grant such decrees but should carefully assess the unique circumstances and behaviour of the parties involved. The Court stressed that this legal remedy should not be used for harassment or coercion but to facilitate reconciliation between spouses. Moreover, the judgment highlighted that if the respondent refuses to return and cohabit, it may be grounds for divorce after a certain period, indicating irreparable marriage breakdown. Essentially, the case clarified that Restitution of Conjugal Rights should be applied judiciously, considering principles of justice and fairness, while promoting reconciliation and preventing misuse to oppress an unwilling spouse.

These landmark cases have played a crucial role in shaping the legal principles surrounding Restitution of Conjugal Rights in Hindu law. They ensure that this legal remedy is not misused and uphold the principles of justice, fairness, and the sanctity of marriage in India.

VIII. CONCLUSION

In conclusion, Restitution of Conjugal Rights in Hindu law aims to preserve marriages by encouraging estranged spouses to reconcile and cohabit. While it is viewed as a means to uphold the sanctity of marriage, it has faced constitutional challenges for potentially infringing on individual rights. Recent legal developments reflect an evolving perspective that emphasizes the importance of safeguarding personal autonomy within marital relationships. Restitution of Conjugal Rights remains a legal recourse but must be applied judiciously, considering fairness and unique circumstances. Its relevance in modern Hindu law lies in striking a balance between preserving marriage and respecting individual freedoms, ensuring it serves its intended purpose effectively and equitably.

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