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Restitution of Conjugal Rights

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ABSTRACT

This article is about Restitution of Conjugal Rights to protect the institution of marriage. This legal remedy empowers a spouse to petition the court for the resumption of marital cohabitation when such cohabitation has been disrupted without legal justification. Rooted in historical perspectives on marital duties, this right has undergone evolution in tandem with shifting societal norms and legal outlooks. The legal landscape governing the restitution of conjugal rights exhibits considerable diversity across jurisdictions. Some nations have chosen to abolish this remedy, deeming it an encroachment on personal autonomy. Conversely, in regions where it endures, the legal process unfolds through a judicial decree urging the non-compliant spouse to return to cohabitation, underscoring the societal value placed on the preservation of the institution of marriage. The historical backdrop of the restitution of conjugal rights reveals its origins in traditional views of marital obligations, where spouses were duty-bound to cohabit. Over time, societal perceptions have shifted, leading to debates about the appropriateness and enforceability of such legal provisions. In jurisdictions where the restitution of conjugal rights persists, legal implications and societal expectations intertwine. The court's involvement in marital affairs raises questions about the extent to which the law should intervene in personal relationships. As some countries move away from such legal remedies, emphasizing individual freedom and personal choice, others grapple with the delicate task of preserving the institution of marriage while respecting the autonomy of individuals.

Keywords: *Restitution of Conjugal Rights, Marital Duties, Legal Implication, Family Law, Marital Rights, Judicial Separation, Hindu Marriage Act, Legal Remedy, Aggrieved Spouse.*

I. INTRODUCTION

Marriage is two opposite sex person get social approval to live together as husband and wife. It is essential to the development of society. After marriage, the spouses have perform various rights and obligations.

The restitution of conjugal rights is originated from Jewish law and it is reached other countries through British rule. It is given either to the husband or to the wife. It states that if one spouse withdrawn from the society of other, the court will give relief to the guilty spouse to live with

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aggrieved spouse.

II. HISTORICAL BACKGROUND RESTITUTION OF CONJUGAL RIGHTS

The concept of restitution of conjugal rights was originated from Jewish law. This remedy was a matrimonial remedy for aggrieved spouse, which was developed through the British rule. It was adopted into the Indian legal system neither from the Dharma Shastra nor from any personal laws but it was adopted through the English Common Law of the British Raj. It was enacted in India, first time in the year 1866 by the Privy Council. Now, The Restitution of Conjugal Rights is available in Hindu Marriage Act 1955, Special Marriage Act 1954, Parsi marriage and Divorce Act 1988, Divorce act 1869 and Muslim personal laws.

III. CONSTITUTIONAL VALIDITY OF RESTITUTION OF CONJUGAL RIGHTS

After introducing this provision in Hindu Marriage Act and Special Marriage Act, there were heated debates in the parliament and many cases were filed against this provision.

The question for Constitutional validity of Restitution of Conjugal Rights was first arose in the case of *Sareetha v. Venkata Subbaiah*. In this case, the petitioner for Restitution of Conjugal Rights was the husband and the petition was opposed by his wife who was the famous star Sareetha. The Andhra Pradesh High Court held that Section 9 providing the relief of Restitution of Conjugal Rights to the spouse was unconstitutional. This law violates Article 14 of the Constitution (Right to Equality) and Article 21 of the Constitution (Right to live with Dignity).

In *Harinder Kaur v. Harmander Singh*, the view of Andhra Pradesh High Court in *Sareetha*'s case was dissented by the Delhi High Court. In this case, the husband was the petitioner for the restitution of Conjugal Rights. His wife was opposed the petition. *Justice A.B. Rohtagi* held, "it is to take the grossest view of the remedy to say that it subjects a person by the long arm of the law to a positive sex act". According to him, Sexual intercourse is one of the element in the concept of marriage. The court do not and cannot enforce the sexual intercourse. The remedy for restitution is for Cohabitation and consortium of spouses and seeks to uphold the institution of marriage. The Constitutionality of Section 9 of Hindu Marriage Act was upheld by the Delhi High Court.

In *Saroj Rani v. Sudharshan*, the wife petitioned for restitution of conjugal rights. She was married in 1975 and had given birth to two daughters during her brief married life. She was turned out of her matrimonial house in 1977 and subsequently filed a petition to which she was granted an interim maintenance by the Court. The husband later filed a consent memo for the passing of the decree and the decree of restitution of conjugal rights was accordingly passed in

favour of the wife. One year later, the husband applied for a divorce under Section 13 (1-A) of the Hindu Marriage Act, 1955 on the ground that he and his wife had lived separately during the one year period. The question of cohabitation arose where in the spouses stayed together for a period of two days after the decree was passed.

The Supreme Court observed that We are unable to accept the position that Section 9 of the Hindu Marriage Act is violation of Article 14 and 21 of the Indian Constitution. This is because, firstly the purpose for the decree of restitution of conjugal rights is only to offer inducement for the husband or wife to live together and to settle their differences amicably. Secondly, the way of enforcement of the decree when there is wilful disobedience is to attachment of property. So, the constitutionality of Section 9 was upheld.

IV. WHY THIS LAW HAS BEEN CHALLENGED?

1) Violative of Fundamental Rights

This law has been challenged because it violates the Fundamental Rights of Right to Privacy and Right to Dignity. In *Sareetha v. Venkata Subbaiah*, the court held that Section 9 of the Hindu Marriage Act was unconstitutional as it violates the Article 14 of the Constitution which guarantees Right to Equality and Article 21 of the Constitution which guarantees Right to live with Dignity.

2) It is not consonance with other judgements

Another reason for Challenging this provision was it is not consonance with the other judgements of the Supreme Court. In *Josephine Shine v. Union of India*, the Apex Court held that marriage cannot take away the right to privacy and bodily autonomy of a married women. However, this law states otherwise. If everyone is given the right to privacy and bodily autonomy then how can a court order two adults to live together if one of them does not wish to do so.

3) Ineffectiveness of resolving Martial issues

The restitution of Conjugal Rights is not underlying problems of marriage. Forcing spouses to return to troubled relationship may not lead to the resolution of conflicts. If the court declared the conjugal rights to the parties, it will lead to harm or unhappiness to the parties and they cannot live together.

V. THE NEED FOR RESTITUTION OF CONJUGAL RIGHTS

Some people think that it is a positive relief and some people think that it is a negative relief. It is a negative relief because it is insisting the person to live together without his/her will and if

the court ordered the spouses to live together sometimes the cohabitation of the parties is not possible. It is a positive relief and this provision is necessary to protect the marriage. This provision aimed at the marriage is not dissolve in case of divorce or judicial separation. The restitution of conjugal rights is necessary for saving the marriage. In other words, it prevents from separation of married parties. The court can grant a decree for Restitution of Conjugal Rights if either parties withdrawn from the society of other and allows the married couples to live together. It is also a mechanism to encourage spouses to fulfil the martial rights and responsibilities. If the restitution of conjugal rights is not exist, it is difficult to maintain the institution of marriage.

(A) Who is entitled for restitution of conjugal rights?

To claim the restitution of conjugal rights, the marriage must be a valid marriage. If the marriage is invalid or void or voidable one, the parties cannot claim the Restitution of Conjugal Rights.

In *Ranjana kejriwal v. Vinod Kumar* Kejriwal, the husband filed a petition for Restitution of Conjugal Rights. The wife alleged that the husband was already married and had suppressed the fact from her. The Court held that the petition for restitution of conjugal rights is not maintainable since there is no legal marriage.

In *Sushila Bai v. Prem Narayan*, the husband deserted his wife and totally unresponsive to her. The court held that this behaviour was sufficient to the husband withdrawn from society of the wife. Therefore, the wife's petition for the Restitution of Conjugal Right is allowed. The defence to this principle was reasonable excuse. If the spouse withdrawn from the society of other, it is a valid reason. It is the complete defence for restitution of conjugal rights.

VI. INTERNATIONAL SCENARIO

The Restitution of conjugal Rights is observed in whole of the world. Some countries enacted this provision for preserve the institution of marriage and some other countries was abolished due to some reasons.

1. United Kingdom

According to English law, the decree for Restitution of conjugal rights was a marriage related matter over which the ecclesiastical courts had jurisdiction. It could be issued if either spouse, who withdrawn from the society of other without any good ground and if successful, the parties would have forced to stay together. It was followed for a long period of time. The law commission mission was submitted a report in Beirut in 1969 which recommended that the action be eliminated and the Matrimonial Proceedings Act 1970 abolished the Act.

2. Canada

The Restitution of Conjugal Rights in Canada is based on common English law. The family Law in this country changed over time to time and it is continuously evolving. This right is a legal law in Canada, but not in all provinces, only in few provinces. After the twentieth century, the family law standardised in Canada, the Restitution of Conjugal Rights was recognised as a valid law in whole of Canada.

3. Australia

The power of the court to grant a decree of Restitution of Conjugal Rights was abolished by the Family Law Act 1975. Under the Section 114(2) of the Family Law Act 1975, the court may require to grant the conjugal rights or matrimonial rights to the parties. However, it was last used in 1978, but it was now outdated. The Australian Law Commission was agreed the viewpoint in 2010, stated that the Restitution of Conjugal Rights was contravening the principles of Family Law and ought to be repealed.

4. Ireland

In Ireland, the restitution of Conjugal Rights was abolished by the Family Law Act, 1988 because this rights considered as unconstitutional by the courts in number of cases.

5. Scotland

In Scotland, the term used for Restitution of Conjugal Rights in Scotland was ‘adherence’ and it was abolished by the Section 2(1) of the Law Reforms Act, 1984

6. South Africa

In South Africa, the Restitution of Conjugal Rights was abolished by the Section 14 of the Divorce Act, 1979.

VII. CONCLUSION

Restitution of conjugal Rights is a remedy to the aggrieved spouse with the intention to preserve the marriage instead of Judicial separation and divorce. This rights is constitutionally valid to protect the marriage. However, many Public Interest Litigations (PILs) and petition were filed before the court for claiming this right but the court held as unconstitutional. Under the laws in India, the petitioner who claims restitution of conjugal rights can get a decree for directing the spouse to live together and also take part in sexual intercourse.

Under Section 13 (1A) (ii) of Hindu Marriage Act, after the court granting the restitution of Conjugal Rights, if the spouse unable to live together for one year, they can file a petition for

dissolve the marriage. In other words, if the spouse is not satisfied to live together for one year after marriage, they can file a petition for divorce. When we talk about gender equality in law, women are take disadvantage in India. When the wives suffer cruelty to her husband, they cannot use the restitution of conjugal rights. Marriages are not built upon the ceremony but autonomy, the married parties can agree to share each other.

The Restitution of Conjugal Right should exist to prevent the parties from breakdown the marriage. Married parties should not separate by divorce or judicial separation.

VIII. REFERENCES

- Limitations on Restitution of Conjugal Rights <https://articles.manupatra.com/article-details/LIMITATIONS-OF-RESTITUTION-OF-CONJUGAL-RIGHTS>
- CONSTITUTIONAL VALIDITY OF RESTITUTION OF CONJUGAL RIGHTS <https://lawbhoomi.com/constitutional-validity-of-restitution-of-conjugal-rights/>
- Understanding the Restitution of conjugal rights <https://blog.finology.in/Legal-news/restitution-of-conjugal-rights>
- Restitution of Conjugal Rights: A Peril to Fundamental Rights in India – JURIST <https://www.jurist.org/commentary/2023/01/khushi-gupta-and-vishakha-shakya-conjugal-rights-india-womens-rights/>
- Restitution of Conjugal Rights - An Analysis - IJCRT <https://www.ijcrt.org/papers/IJCRT1803177.pdf>
- WORKING WIVES AND REMEDY OF RESTITUTION OF CONJUGAL RIGHTS <https://ijrl.com/wp-content/uploads/2022/02/WORKING-WIVES-AND-REMEDY-OF-RESTITUTION-OF-CONJUGAL-RIGHTS.pdf>
- Restitution of Conjugal Rights: Section 9 of The Hindu Marriage Act, 1955 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3686919
