

## RESTITUTION OF CONJUGAL RIGHTS: BOON OR BANE

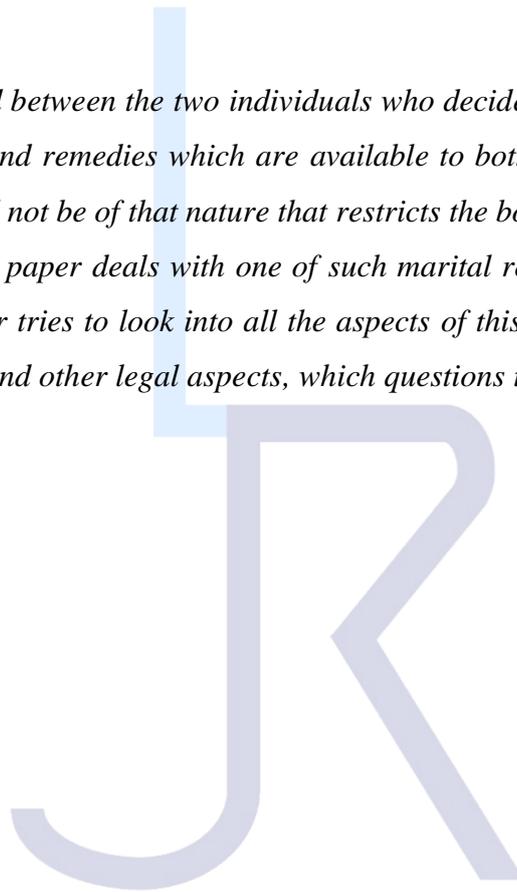
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### ABSTRACT

*Marriage is a special bond between the two individuals who decide to live their life together. There are various rights and remedies which are available to both of them. However, these rights and liabilities should not be of that nature that restricts the bodily autonomy of either of the spouses. This research paper deals with one of such marital remedies, i.e., restitution of conjugal rights. This paper tries to look into all the aspects of this remedy, such as rights of women, constitutionality, and other legal aspects, which questions this remedy as to the law.*



LRJ- ALLYING LAW WITH SOCIETY

## **INTRODUCTION**

Marriage is the universally accepted concept of cohabitation of two people together. People all around the world introduce themselves to this institution but with different customs and traditions. No other social institution got so much importance and recognition than the institution of marriage. In some parts of the globe, marriage is a contract between two people to live together and share some duties and liabilities however, in countries like India, especially for Hindus, marriages are not a contract rather a religious sacrament where two individuals are expected to live together and respect each other and their respective families. Marriage in Hindus is considered one of sixteen sanskar as that a Hindu is supposed to perform, which means that he/she should get married at a particular age and fulfil their religious duties and for procreation.

Marriage imposes certain rights, liabilities, and duties on both spouses for the stability of marriage. These duties are recognized by both law and morality or religious aspects. One of them is conjugal rights, i.e., if one of the spouses has withdrawn from the other's society without any reasonable justification, then the other spouse has the right to file a suit in the court asking for the restitution of conjugal rights. However, this is just one side of the story. The other side, i.e., the negative side, is that many learned jurists and advocates have debated this particular right on the grounds of morality. Many people have misused this law just to fulfil their desires. The law does not support or reflect any immorality type; however, the practical scenario is a bit different. Imagine a couple with disputes, anger issues, misunderstandings, lack of respect towards each other, for how long the law can hold them together. Marriage is not about living under the same roof and living together no matter what happens or how they treat one another but a social institution where two people willingly stay together with mutual respect. However, this particular statute compels the other spouse to live with the petitioner; can their disputes or issues be solved by just passing a decree of restitution? The human mind is not a machine with buttons that, if the court presses one, it will work accordingly; it has its boundary. The law is positive, but its aspect in real life must be taken into consideration.

In many cases earlier, it has been seen that the wife becomes the actual victim. She does not have control over her own body, i.e., she is just like a cow that has left her master's home, and when the court grants a decree of restitution, she is compelled to stay with him. The practical aspect of this law must be taken into consideration.

## **OBJECTIVE**

1. To understand the concept of marriages in India
2. To study about restitution of conjugal rights
3. To highlight the legal and practical aspect of restitution of conjugal rights
4. To study the impact of the same on a woman
5. To discuss different opinions on the restitution of conjugal rights
6. To suggest a few that can be taken into consideration while talking about this law.

## **RESEARCH METHODOLOGY**

This research project is descriptive and doctrinal. Accumulation of information on this topic includes wide use of secondary sources like books, journals, e-articles, newspapers, etc.

## **MARRIAGE A SOCIAL INSTITUTION**

The term marriage cannot have a specific and universally accepted definition as different people have different definitions of marriage, and they interpret it in their way. Apart from all this, marriage carries a sanctity and importance in human civilizations since time immemorial. The nature of marriage changes with the change in religion and custom, and so does the definition.

Marriage for a Hindu is a holy union of two individuals or a religious duty that every Hindu is supposed to comply with, and it is not a civil contract. According to Hindu ideology, marriage has three main objectives 1. Dharma(justice) 2. Praja(procreation) and 3. Rati (sexual pleasures). However, a Muslim individual's marriage is done as per the provisions of the Quran, which says that marriage is a contract objective of which is to legalize the children and promote procreation. The monogamy concept is there in Hindu marriage, but not such compulsion is there in Muslim marriages. For other religions, the nature and concept of marriage may be different.

Marriage is an alliance between two people, generally, a man and a woman, which is recognized by law and more a social phenomenon. In a civilized society, marriage is approved and regulated by society's norms and customs, which no person is supposed to break. Stability is the sine-quo-none of every marriage, which means any marriage which is not workable or stable is not a good marriage; here come the social norms which are binding on the spouses not to dissolve their marriages and be compatible with each other. It is expected that the couple would continue the monogamous and permanent relationship. In case of M.P. Shrivastava V. Veena, Mr. I.D. Dua J observed the significance of marriage and family in society,

"The institution of marriage is the foundation of our society, and both public and the state are interested in its stability. Once the marital status of the parties is proved, then the interest of the society, as well as that of the state, requires that, so far as possible, such status should have some permanency in its character, for this depends on the structure of our society on which in turn would depend good citizenship. Tolerant behaviour among the family members is thus the basic foundation on which happy family life can be founded, and the parties must adopt an attitude of giving and take and of mutual adjustment. Neither a woman is to be treated as a slave, nor is the husband to be deprived of a home and a housewife. They both owe a social duty towards each other and towards their offspring, which nature and God have entrusted to their care to be brought up with their- co-operative joint efforts. Unfortunately, the basic requirement of indispensable tolerance and mutual understanding in matrimonial life is not sufficiently realized by many spouses in modern times. Normally constituted spouses properly educated with healthy mental outlook are expected neither to make a mountain out of molehills nor to magnify small differences and bickering."<sup>1</sup>

The above observation supports the point that legal sanctions cannot obtain stability in marriage but through mutual fidelity and understanding between the spouses.

In India, the Right to life includes the right to marry the person of one's choice under Article 21 of the constitution, which takes about the right to life and personal liberty. Since marriage is an integral part of one's life, this is included in the right to life and the liberty to marry someone of one's choice is also there.

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<sup>1</sup> M.P. Shrivastava V. Veena AIR 1965 Pun. 54 at 58

However, this liberty also has some boundaries to maintain law and order in the nation and to deal with the issues related to marriage India have multiple personal laws. These statutes have provisions that are made as per the respective customs and religious practices. For instance, Hindu Marriage Act, 1955 deals with the marriage and divorce aspects related to Hindus, Sikhs, Jains, and Buddhists. Muslim, Christian, Parsi, and Jew people have their own respective personal laws. Special Marriage Act, 1954 is also there for individuals who want to get into an inter-religious marriage.

These are some statutes that are codified to deal with marriages and divorce laws in India.

## **RESTITUTION OF CONJUGAL RIGHTS**

Marriage is the union of two separate individuals who get certain legal and marital rights and duties towards each other. One of the necessities of marriage is that spouses should stay and live together, i.e., they have a conjugal right to enjoy each other's consortium. However, if any of the spouses desert the other spouse without any legal or reasonable excuse, the other spouse can file a suit against the defaulter, and the court can compel him/her to cohabit with the petitioner. This is called restitution of conjugal rights.

The provision of restitution of conjugal is present in,

- i. Section 9 of Hindu Marriage Act, 1955
- ii. Section 22 of Special Marriage Act, 1954
- iii. Section 32 and 33 of the Indian Divorce Act, 1869
- iv. Section 36 of Parsi Marriage and Divorce Act, 1936
- v. Under general law for Muslims

Before looking at the provision, we would look at the background of the same.

Restitution of conjugal rights is a provision that is not mentioned, specified, or supported by any of the Dharam Shastra or any religious text, it traces its origin in England, where marriage is a contract and the wife is considered as a property of her husband like other chattels. It was entirely unknown for Hindu practices before the arrival of the British Raj. The Britishers

introduce this particular remedy in India, and after independence, it took place in various personal laws.

## **DEFINITION**

Restitution of conjugal rights is made up of two words basically which are;

- i. Restitution- which means to restore something
- ii. Conjugal Rights- the rights of a married couple or rights of husband and wife

The literal meaning of the word Cohabitation is living together under the same roof. This would be a very narrow interpretation of Cohabitation. The husband and wife need not physically share the same house or roof to come under this tab but to remain in harmony wherever they live. Since if we calculate cohabitation just on the ground of living under the same roof, many people will hold out of this category, such as people with jobs where multiple transfers take place like travelling agents, navy officers, army officers etc. This would not amount to cessation from the society of the other. Here society also has different meanings, and it means similar to cohabitation, i.e., when one spouse voluntarily gives up the company of the other, he is withdrawing from the other's society.

As per Section 9 of the Hindu Marriage Act 1955 and Section 22 of Special Marriage Act 1954, the conditions of restitution of conjugal rights are as following;

1. There must be a valid marriage between the individuals which means the marriage should be legally binding.
2. One of the spouses (either husband or wife) must have deserted the other or have left the petitioner spouse's society.
3. The spouse had withdrawn from the other's society without any reasonable excuse, or there is no legal ground or the withdrawal. The reasonable excuse must be understood in an ordinary sense and would vary from case to case. It may be any act or omission in a marital relationship that makes it almost impossible for the spouse to live with the other.
4. The petition is to be filed at the district court.
5. The court is satisfied that the petitioner is correct and the respondent has left his/her company without legal justification.

When all these grounds are satisfied, the court can grant a decree of restitution of conjugal rights favouring the petitioner and compel the respondent to cohabit with the other. However, when the question arises, a reasonable excuse behind withdrawal from the society petitioner's society burden of proof is on the respondent.

All the above grounds are the necessary conditions to claim restitution of conjugal rights. The decree of restitution of conjugal rights' main objective is to bring back cohabitation between spouses and ask them to live in peace and harmony.

### **Respondent has withdrawn from the society of petitioner without any reasonable ground**

In *Sushila Bai v. Prem Narayan*<sup>2</sup>, the wife filed a petition under Section 9 of the Hindu Marriage Act, claiming that her husband has left her at her paternal home and is completely unresponsive towards her. The husband contended that he lives in another city and cannot take her there because of a lack of resources and space, which was proved wrong in the court. Court held that this ice-cold behaviour of the husband is not acceptable and shows that he has withdrawn from her society without any reasonable excuse, and hence she is entitled to restitution of conjugal rights.

*Anna Saheb vs Tarabai*, honourable court, in this case, held that, if the husband is not guilty of misconduct, a petition cannot be dismissed merely because the wife does not like her husband or does not want to live with him, because he is too poor or is otherwise not fit to be a proper life companion for her. Once a marriage has been solemnized, the husband is entitled to his wife's society, and he cannot be denied such society merely because she does not like him and for reasons of her own does not feel happy with him.<sup>3</sup>

### **No restitution as no valid marriage**

In *Ranjana Kejriwal vs Vinod Kumar Kejriwal*<sup>4</sup>, the wife filed a suit against her husband under Section 9 of the Hindu Marriage Act, where she claims that her husband has already been married and the divorce petition of the first wife is still pending, and he suppressed her to marry

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<sup>2</sup>Smt. Sushila Bai vs Prem Narayan Rai, AIR 1986 MP 225

<sup>3</sup>Anna Saheb vs Tarabai, AIR 1970 MP 36

<sup>4</sup>Smt. Ranjana Vinod Kumar Kejriwal vs Shri Vinod Kumar Kejriwal, AIR 1997 Bom 300

him. The court held that the petition is illegal and non-maintainable since her marriage is not valid in the first place, and no restitution of conjugal rights can be given.

This was the positive aspect of this provision, but things in the practical world are different.

## **CONSTITUTIONAL VALIDITY OF RESTITUTION OF CONJUGAL RIGHTS**

This provision has been a matter of debate since it has been included in various personal laws. The major point of discussion was related to the constitutional validity of the same. In various cases, it was held that the said provision is violative of;

- i. **Article 14** – Although the provision itself does not discriminate between husband and wife, as they both can file a petition for the restitution of conjugal rights, the socio-legal aspect or the practical aspect of our society cannot be neglected. The women in our country have had a lesser say or right in marriages than males because of patriarchy wife is mostly socially and economically dependent on the male members. The wife is considered as a chattel of her husband like his other properties. In one of the cases, Bombay High Court once said that ‘woman should be like Sita and must follow her husband everywhere. Thus, in the majority of the cases, the wife is put into an unfavourable state.
- ii. **Article 21**- In certain landmark cases court has questioned this provision on the grounds of the Right to privacy. In *T. Sareetha v. T. Venkata Subbaiah*<sup>5</sup>, the wife was a famous South India actress who was allegedly married to Venkata Subbaiah, and soon after marriage, they started living separately for 5 years after that husband filed the petition under Section 9 of the Hindu Marriage Act. He wanted her to quit the industry and stay with him. Andhra Pradesh High Court, in this case, strongly opposed Section 9 and said that “this section is the grossest violation of the right to privacy under article 21 and is an uncivilized, barbarous, and an engine of oppression”. Court held that it denies a woman her free choice as an unwilling woman is compelled to indulge into sexual intercourse with her husband, which violated her bodily autonomy.

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<sup>5</sup>T. Sareetha vs T. Venkata Subbaiah, AIR 1983 AP 356

After one year, this decision was opposed in *Harvinder Kaur vs Harmandir Singh*<sup>6</sup>, Delhi High Court held that “the purpose behind the decree of restitution of conjugal rights is cohabitation consortium and not only marital intercourse, so there is nothing barbarous or coercive about it”. Hence it is not violative of Article 21. This was further upheld in *Saroj Rani vs Sudarshan's case*<sup>7</sup>, where the Supreme Court held that when the court held a decree of restitution of conjugal rights, it serves a social purpose and gives a chance to the couple not to break the wedlock and live with amity. Hence it is not violative of Articles 14 and 21 of the constitution.

- iii. **Article 19 (1) (c)** - The restitution of conjugal rights violates freedom of association since the unwilling spouse is compelled to stay with the other spouse. For instance, in *Huhhram v. Mishri Bai*<sup>8</sup>, the husband filed the case under this provision, and the wife contended that she left the house because her father-in-law had an evil eye on her. Still, the court granted the decree of restitution of conjugal rights, which shows that if anything wrongful happens with her would be because of the decree of the court.
- iv. **Article 19(1) (e) and 19(1) (g)** – In case *Tirath Kaur vs Kripal Singh*<sup>9</sup>, the wife was residing away from her husband as she was practising her job, the husband or the petitioner asked her to come back, but she denied, he filed a petition in court. The court granted him the decree under Section 9 of the Hindu Marriage Act. This shows that the spouse was compelled to leave her job, which is a violation of the said article. The decision laid down that a wife cannot profess a job until and unless her husband agrees to that, and she must have to give it up when her husband asks her to do so because the primary duty of a wife is to stay with her husband; otherwise, the non-obedience would be considered as withdrawal from the society of husband.
- However, later Allahabad High Court held that the mere reason that the wife is not ready to leave her job could not be a valid ground for passing a decree of restitution of conjugal rights.

*Nobody should be given an upper hand in the matrimonial relationship.*

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<sup>6</sup>*Harvinder Kaur vs Harmander Singh Choudhry*, AIR 1984 Delhi 66

<sup>7</sup>*Smt. Saroj Rani vs Sudarshan Kumar Chadha*, 1984 AIR 1562

<sup>8</sup>*Sukram vs Smt. Mishri Bai*, AIR 1979 MP 144

<sup>9</sup>*Smt. Tirath Kaur v. Kirpal Singh*, AIR 1964 Punjab 28

To conclude, it can be said that restitution of conjugal rights is a violative principle against the fundamental rights its mere positive language of the law cannot make it an acceptable one.

## **WHEN RESTITUTION OF CONJUGAL RIGHTS CANNOT BE GIVEN**

There are situations where the withdrawal from the society of others is justified, i.e., the circumstances when restitution of conjugal rights cannot be given, and further cohabitation of spouses is not possible.

### **1. When the spouse remarries**

Hindu law, as well as all other personal laws except Mohammedan Law, prohibits bigamy and biandry. When any of the spouses remarries when the first marriage is still not dissolved, then he/she is not entitled to file a petition for restitution of conjugal rights. If based on spouse remarrying, the first wife/husband has the reasonable excuse to withdraw from the other spouse's society. However, the aggrieved spouse has the right to file for restitution of conjugal rights.

Also, under Mohammedan law, if the husband denies maintenance to the first spouse after marrying the other person, then the first wife has a reasonable cause.

### **2. When the husband is indulged in cruelty**

It would be reasonable for the wife to withdraw from her husband's society if his conduct is inappropriate or he is performing cruelty on her. The same was held in *Moonshi Buzloor Ruheem v. Shamsonnissa Begum*, where the court said that "If there be cruelty to a degree rendering it unsafe for the wife to return to her husband's dominion, the Court will refuse to send her back to his house; so also if there be a gross failure by the Husband of the performance of obligations which the marriage contract imposes on him for the benefit of the wife, it affords sufficient ground for refusing him relief in such a suit."<sup>10</sup>

### **3. When a wife has taken the job away from husband's home**

As discussed earlier, the husband cannot ask for restitution of conjugal rights because the wife is working and is not cohabiting with him. However, here also the wife's conduct must be taken into consideration that whether she is completely unresponsive

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<sup>10</sup>*Moonshi Buzloor Ruheem v. Shamsonnissa Begum*, 11 MIA 551

towards him or whether she has herself denied to cohabit with him anymore. Other than this, it cannot be said that she has withdrawn from her husband's society.

### **PRE-NUPTIAL AGREEMENTS**

These agreements are made by the spouses and are monetary and are made before the marriage takes place. Agreements before marriage for living separately after marriage or are void and do not stand as a valid defence in any case. Pre-nuptial agreements are not valid in India and do not stand on any legal ground. In the case of marriages between two Hindus, it is even considered immoral to enter into any such agreements which and hence it is also against the public policy as they do not find social acceptance. The same was held in Krishna Aiyar vs Balammal<sup>11</sup>, where there was an agreement between husband and wife to live separately from each other. The court held in this case that, as per Hindu ideology, these types of agreements are against the public policy and are not enforceable as well.

Under Muslim law, marriage is itself a contract, but these contracts or nikah-nama should also not be against the public policy, for instance, in the case of Hamidunnessa Biwi v. Zohiruddin Sheikh<sup>12</sup>, the husband's guardian had agreed with the wife's family that he would stay with her parental house since there is a part of dower due on his part. He filed for restitution of conjugal rights. Court held that pre-nuptial agreements like this are not maintainable as it is against the couple's rights after marriage in Mohammedan law.

### **CONSEQUENCE OF NON-COMPLIANCE WITH THE DECREE**

Restitution of conjugal rights is a middle path and a matrimonial remedy that tries to bring back the estranged spouses into the marital world and live with amity, and it also gives the couple a chance to avoid divorce. However, even after passing the decree of restitution of conjugal rights, one cannot force the other spouse to live with them, and for this, no contempt of court can be there. After one year from the passing of such a decree, this becomes a ground for divorce for each of the parties. In Sudha Gupta vs Har Prasad Gupta, the husband filed a case for restitution of conjugal rights in the Family Court, and the wife, on coming to know this

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<sup>11</sup>Krishna Aiyar vs Balammal, (1911) ILR 34 Mad 398

<sup>12</sup>Hamidunnessa Biwi v. Zohiruddin Sheikh,(1890) ILR 17 Cal 670

filed a petition that she does not want to forcefully cohabit with her as she found her husband as physically impotent and she does not want any physical relationship with him. The court, in this case, held that ‘The purpose behind filing of a petition under Section 9 of the Hindu Marriage Act for seeking a decree for restitution of conjugal rights or filing the execution appears to be not to force the wife to resume cohabitation but to be achieved under Section 13(1A) (ii) of Hindu Marriage Act, 1955 which enables a party to seek divorce if a decree for restitution of conjugal rights is disobeyed’.<sup>13</sup>

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## **SUGGESTIONS**

There are two major questions regarding restitution of conjugal rights which are as follows;

1. Is restitution of conjugal rights a valid law, and should it stand as it is?
2. Can there be any amendment that can make it more acceptable?

Many learned lawyers and judges are of distinct view on both the questions, which is evident in various cases and judgments. However, if we take the affirmative answer to the above question, certain changes can be done.

## **AFFIRMATIVE**

Restitution of conjugal rights is a debated provision, and every court of law has a different opinion about its validity and constitutionality. Therefore, there should be a specified court where the parties can approach, and its decision should be held final, for this, an amendment should be made under the section, and the clause for court with the jurisdiction must be mentioned.

The term reasonable excuse used in Section 9 of the Hindu Marriage Act must be interpreted strictly to avoid any sort of injustice to the parties. There can be some amendment in the provision, and some additional conditions like cruelty, dowry, etc., must be added to avoid subjectivity in giving the judgment. Since different courts are divided on this opinion, and this creates confusion regarding the term reasonable excuse. The burden of proof is on the respondent that he/she has left the society of petitioner due to a valid reason, but most of the

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<sup>13</sup> Sudha Gupta vs Har Prasad Gupta MAT.APP.(F.C.), 64 of 2015

times, the wife who has left her in-law's house due to their misconduct has to prove that, and if she is unable to prove, so the decree is passed against her. The actual burden in these cases should be on the petitioner to show that he has not committed any misbehaviour against her. Thus, mere the fact that she is not able to prove cruelty should not entitle husband his claim.

### **DISSENTING**

Apart from all this, restitution of conjugal rights finds its roots in feudal England, where marriage is like a business deal between two people, and when one breaches the contract, the other would sue him or her to ask for performance of the contract. This concept is of those times when people considered slavery and quasi-slavery as natural. The man in such contracts considers their wives as chattel, and this is morally wrong. However, in India, we do not have such a marriage concept; we do not treat marriages as a civil contract.

Courts have held it under the tab of matrimonial remedy; the question is how the legal proceedings and interference of court can help two ruffled hearts, bypassing a decree? The practical answer to this should be no. The couple who has already taken such a big step to stay away from the society of the other might now be able to obey the decree of a court. The reason behind the separation can be wide, and not all of them can be reasonable in the eyes of the law. This provision directly violates an individual's personal liberty and choice, which should be the root of any law in India. This type of matrimonial remedy is doing no good to the couples but is just an extra step before filing the divorce suit. This remedy was also strongly opposed by Sir J. Hennen in *Russell v. Russell*, 'I have not 11 once known a restitution petition to be genuine, that these were merely a convenient device either to enforce a money demand or to obtain a divorce.<sup>14</sup>' Even the Law Commission of India in its 2018's report noted that "The Report by High-Level Committee on Status of Women, Ministry of Women and Child Development in 2015 had also recommended that restitution of conjugal rights had no relevance in independent India and the existing matrimonial laws already protects conjugal relations, as denial of consummation is recognized as a ground for divorce. Under the leadership of Pam Rajput, the report highlighted the fact that this provision was only being used to defeat maintenance claims filed by wives and served little purpose otherwise. The Commission echoes the Committee's recommendation in this regard and suggests the deletion

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<sup>14</sup> *Russell v. Russell*, (1897) AC 395

of section 9 from the Act, 1955, section 22 of the SMA, 1954, and section 32 of Indian Divorce Act, 1869<sup>15</sup>”.

Further, recently a petition is filed before the Supreme Court by two law students named Ojaswa Pathak and Mayank Gupta in 2019 against the constitutionality of restitution of conjugal rights. They have challenged the validity of Section 9 of the Hindu Marriage Act, 1955, Section 22 of the Special Marriage Act, 1954 & Order 21, Rules 32 & 33 of the Code of Civil Procedure, 1908. They stated that “The Constitution guarantees every individual the right to be left alone - even within the framework of a family. Any provision which forces an individual to have sexual relations or even cohabit a home without her will is violative of the right to privacy, individual autonomy & dignity that the Constitution guarantees<sup>16</sup>”. Initiatives like these make the government and court think about the same, and the Supreme Court of India has asked the Ministry of Law and Justice to look into the petition. However, the results are still pending.

Hence the legality of the whole provision of restitution of conjugal rights should be taken into consideration before the legislature and honourable court of law.

## **CONCLUSION**

Marriage is a bond between two individuals who promise to stay together throughout their life. This bond gives rise to different rights and duties towards each other, which are known as ‘conjugal rights’, which simply means the Right to stay together. It is a general principle and presumption that the couple promises to each other that they would be together in times of adversity and maintain the consortium of marriage. However, due to certain reasons, when issues arise between the couple and one spouse leaves the other spouse, this leads to violation of conjugal rights. The only remedy given under personal laws in India is the restitution of conjugal rights. Under this, when one spouse leaves another spouse's society without any valid reason, the petitioner can file a suit under the restitution of conjugal rights. When the court is

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<sup>15</sup>Law commission of India.nic.in. 2018. Consultation Paper on Reforms of Family Law, 39, [online] Available at: <<https://lawcommissionofindia.nic.in/reports/CPonReformFamilyLaw.pdf>> [Accessed 22 March 2021].

<sup>16</sup> |, A., 2020. *SC seeks AG's assistance on plea against constitutional validity of restitution of conjugal rights*. [online] ANI News. Available at: <<https://www.aninews.in/news/na>> [Accessed 1 April 2021].

satisfied that the respondent has left the petitioner without any reasonable excuse, it can pass a decree of restitution of conjugal rights as it can ask the respondent to come back to the petitioner. However, this provision has been a matter of debate because of the constitutional aspect of the same. Some courts consider it as valid law, but others find it violative of Article 14, 19, and 21 of the Indian Constitution; since it violates the equality and personal liberty of the individual, it should be on the option of every person whom he/she wants to live with. The court cannot compel any person to live with his/her spouse if he/she does not want to. Therefore non-compliance with the decree does not amount to contempt of court.

Any legal proceeding or any decree of court can join two hearts that are already torn apart may be due to any reason that may be reasonable or unreasonable in the eyes of the law's eyes. Restitution of conjugal rights is that matrimonial remedy that tries or forces to save the wedlock, but it cannot guarantee it in a practical sense. Hence this provision needs proper discussion on the grounds of legality and morality.

*“A Horse can be brought to the water pond but cannot be compelled to drink.”*

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