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## The Restitution of Conjugal Rights

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*The concept of Restitution of Conjugal Rights refers to a legal remedy available in certain jurisdictions, which allows one spouse to petition a court to order the other spouse to resume marital cohabitation. The legal doctrine is based on the premise that marriage is a sacred institution and that the husband and wife have a duty to cohabit with each other. If one spouse voluntarily withdraws from cohabitation without any reasonable cause, the other spouse may file a petition seeking the restitution of conjugal rights. The remedy is usually available to both husbands and wives, although the specific procedures and requirements may vary depending on the jurisdiction. The remedy of Restitution of Conjugal Rights is controversial, with critics arguing that it violates individual freedom and autonomy, while supporters argue that it can help to preserve the sanctity of marriage and prevent divorce. Overall, the legal and social implications of the remedy remain a topic of ongoing debate and discussion.*

**Keywords:** *conjugal rights, hindu law, marriage.*

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### WHAT IS THE RESTITUTION OF CONJUGAL RIGHTS?

The phrase describes a fundamental map where the two parties' conjugal (marriage) rights are restored to their previous status. Reimbursement of marital rights is permissible under Section 9 if the spouse or wife 'can apply from the company of others by petition of the injured party to the court for the reimbursement of marital rights and the court if the truth of the statements

fulfills in one Such petition and that there is no legal land because the application cannot be granted.' Cohabiting is the name of the company in this instance (Cohabiting).<sup>1</sup>

The one who has cut themselves off from the spouse's social group is the one who must offer the appropriate resignation excuses. Each spouse is entitled to the other's love, encouragement, and sympathy. If one of your spouses doesn't have a strong reason or explanation for your wish to divorce the other spouse, the court should avoid calling on your conjugal as a last resort. In the personal laws of Hindus, Christians, and PARSI, the payment of conjugation rights is regulated by statute. The proper expression of regret for the other's retirement from the company would be<sup>2</sup>:

- If the respondent has a justification for any decline in the marriage, either legally or otherwise.
- When the petitioner has committed marital misconduct that is significant enough but not extreme enough for the nation to think about dissolving the marriage.
- If the petitioner has engaged in certain activities, failures, or bad behavior, the respondent cannot depend on the petitioner to support them. There is a matron auxiliary that is accessible to both partners.

## **DEVELOPMENT & EVOLUTION OF RESTITUTION OF CONJUGAL RIGHTS**

As Paras Diwan pointed out, the process for restoring marital rights is not recognized by either Islamic law or the Dharma shastra. Raj is here. The earliest laws governing marital rights originated in feudal England when marriage was viewed as a real estate transaction and the woman as movable property by the men. The concept of marital repair was established in India through the cases of *Moonshee Buzloor Ruheem and Shumsoonissa Begum*<sup>3</sup>, where such actions were evaluated for their practical applicability. Sections 32 and 33 of the Divorce Act of 1869<sup>4</sup> permit divorce for Christians; section 9 of the Hindu Marriage Act 1955<sup>5</sup> permits it for Hindus;

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<sup>1</sup> Das MN, *Marriage and Divorce* (6th edn, Eastern Law House 2002) 91

<sup>2</sup> *Ibid*

<sup>3</sup> *Moonshee Buzloor Ruheem & Anr v State* (1867) 1 MIA 551

<sup>4</sup> Divorce Act 1869

<sup>5</sup> Hindu Marriage Act 1955

common law permits it for Muslims; section 36 of the Parsi Marriage Act and Divorce Act of 1936 permits it for Parsis; and section 22 of the Special Marriages Act of 1954 permits it for those wed under the Special Marriages Act<sup>6</sup>.

## **JUDICIAL ANALYSIS: STRIKING A BALANCE BETWEEN INDIVIDUAL RIGHTS AND MORALITY**

The legality and application of the restitution of marital rights have been hotly contested in three decisions by the Honveste courts: *T. Sareetha v T. Venkata Subbaiah*<sup>7</sup>, *Harmander Kaur v Harmandre Singh Choudhry*<sup>8</sup>, and *Sudharshan Kumar v Saroj Rani*<sup>9</sup>. A civil court decided on the return of obligations, which included both the right to engage in romantic relationships with the other party and a remedy that was detrimental to the other spouse's social standing. The first choice in putting this edict into action is whether or not to engage in any of the relevant interactions, and on the flip side, it is up to the individual whether or not to act as another person's creation. The inviolability of the subject's body and spirit is unquestionably compromised by a forced decree of restoration of marital rights, which also offends the subject's integrity and intrudes on their private conjugal life and inner intimacy. No one can be forced into a positive sexual act they don't want to have since doing so would be more monstrously degrading to their dignity than having to succumb to the long arm of the law. positive sexual act. The Andhra Pradesh High Court's Bank of the Unique Judge concluded as a consequence that the decision to reinstate marital rights is the gravest infringement on both the right to privacy and the right to human dignity. Constitutional Amendment 21<sup>10</sup>. The Delhi High Court, on the other hand, adopted a different approach regarding the legitimacy of the restoration of marital rights, putting a strong focus on morality and the necessity of preserving marriage as a social institution.

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<sup>6</sup> Cretney S, '4 Other Legal Consequences of Marriage: Conjugal Rights and Remedies' [2005] Family Law in the Twentieth Century 142

<sup>7</sup> *T Sareetha v T Venkata Subbaiah* AIR 1983 AP 356

<sup>8</sup> *Harmander Kaur v Harmandre Singh Choudhry* ILR 1984 Delhi 546

<sup>9</sup> *Sudharshan Kumar v Saroj Rani* 1984 AIR 1562

<sup>10</sup> Diwan Paras, *Family Law* (Allahabad Law Agency 1998) 113

According to the Court, Section 9's<sup>11</sup> primary goal is to keep the marriage together. It's a wonderful thing that the wife and husband are no longer wed and are living different lives. The Tribunal wants to request this division. The only component of a marital dispute that has to be looked at is whether the interviewee has a good reason for not being married to the petitioner. The court additionally stated that only cohabitation may be imposed and that restitution of rights may only be required if the subject of the sex investigation continues to engage in it. Raising the intensity of a marriage is not permitted. This was carried out to support the court's mediation promotion. The Court was instructed to use all reasonable means to assist the parties in mediating their disagreement. The goal of the law is to support marriages that haven't been artificially terminated. The Court also stated that the legislative program has a function and a role to play, giving the parties time to think. The legislature decided to abolish the remedy rather than enable the courts to do so because section 9 was unconstitutional. After all, it had been determined to be entirely valid<sup>12</sup>.

To reconcile the conflicting views of the two HCs, the Honorable SC also brought up the question of the legitimacy of the ROCR in *Sudarshan Kumar v Saroj Rani*<sup>13</sup>. The court found that the right of the husband or wife to the other spouse's company, or the 4,444 marital rights, is not just a result of the law in that particular case. It also clarifies the Section in which the court can only order if there are no good grounds for delaying a decision on the change of marital rights to support the spouse because such a right is inherent in the institution of marriage itself, or spouses cohabiting so that they can settle disputes amicably. It benefits society by preventing marriage breakdown. It cannot be seen in the same manner as the Educated Single Judge of the Andhra Pradesh High Court did if the decision restoring marriage rights in the abovementioned statute is understood from its point of view and if its method of enforcement in the case of disobedience is respected. Hence, the argument that section 9 of the cited statute contradicts either Article 14 or Article 21 of the Constitution cannot be accepted. Thus, ask the relevant inquiry. In *Mita Gupta v Prabir Kumar Gupta*<sup>14</sup>, the Calcutta High Court stated that disobeying

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<sup>11</sup> Hindu Marriage Act 1955, s 9

<sup>12</sup> Diwan Paras, *The Law of Marriage and Divorce* (4th edn, Allahabad Law Agency 2002) 285

<sup>13</sup> *Sudarshan Kumar v Saroj Rani* 1984 AIR 1562

<sup>14</sup> *Mita Gupta v Prabir Kumar Gupta* AIR 1989 Cal 248

a judgment restoring marital rights does not automatically prevent the spouse from requesting a divorce order under Section 13 (1A) (ii)<sup>15</sup> of The Hindu Marriage Act. This statement relates to the procedural element of the ROCR. As a reason, the Marriage Act does not necessitate compliance with an ROCR ordinance. *SBI Home Finance Ltd. and Ors. v Booz Allen and Hamilton Inc*<sup>16</sup>, SC Honour The range of issues that could be settled peacefully between the parties concerned was constrained by the fact that marital problems, such as divorce, legal separation, and the restoration of spousal rights, were unresolvable conflicts. Given the recent trend in court decisions, SC Hon'ble aims to give individual liberties like privacy precedence over common norms like morality.

### **CHAPTER-3 ANALYSIS OF INDIAN LEGAL PROVISIONS WITH JUDICIAL PRONOUNCEMENT**

The restoration of spousal rights is covered under Section 22<sup>17</sup> of the Special Marriage Law of 1954 and Section 9<sup>18</sup> of the Hindu Marriage Act of 1955, respectively. The details are these: When one of the spouses isolates themselves from the other party, the harmed party may petition the district court for the restoration of marital rights and to urge the court to award satisfaction of faithfulness. The rights of the spouse may change if an order is issued.

Explanation: Regardless of whether there was a legitimate reason for quitting the company, the person who withdrew from it is responsible for proving the reason for doing so. A common remedy for marital status is to establish a new marital right. Restoration of marital rights is a powerful remedy that forces the couple to stay together. Tayabji asserts that the reinstatement of marital rights would take the following form in Islamic law: 'The court may decide to restore marital rights or may impose restrictions on either side that preserve the rights of the other party where one spouse withdraws from the other's social connections without justification or breaches their legal or commercial duties.' Muslims take this concept to entail preserving the

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<sup>15</sup> Hindu Marriage Act 1955, s 13(IA) (ii)

<sup>16</sup> *SBI Home Finance Ltd & Ors v Booz Allen & Hamilton Inc* AIR 2011 SC 2507

<sup>17</sup> Special Marriage Act 1954, s 22

<sup>18</sup> Hindu Marriage Act 1955, s 9

other spouse's legal rights. He was also involved in the prenuptial agreement's precise execution before that.'

In the case of *Abdul Kadir v Salima*<sup>19</sup>, the Allahabad High Court ruled that the issue of compensation should be decided under Islamic law rather than on the grounds of justice, fairness, and morality. The spousal indemnification provision must meet the following conditions under any personal law:

- The remedy cannot be rejected for any other reason under the law.
- The defendant quits the applicant's company.
- Withdrawal is made without justification, an acceptable explanation, or a valid reason.

The petition's assertions must be proven accurate to convince the court. The fundamental tenet of marriage law, which provides that each spouse is free from society and the comfort of the other, is the basis for the ability to initiate a lawsuit to reinstate marital rights. The court must make a reinstatement decision if one of the partners has given up on or stopped participating in the other's social life. When it is questioned whether the defendant had a good reason for quitting the aggrieved party's business, it is the departing party's responsibility to provide a reasonable cause. This concept is just truly incidental, though. It is the applicant's responsibility to substantiate the primary cause. Once the plaintiff has proven their case, it is the opposing party's responsibility to prove that they have "reason or good cause" to defend themselves. In this sense, the terms "company" and "withdrawal" relate to the ending of both the partnership and the habitation. The responder must freely take the action.<sup>20</sup>

## COMPARATIVE ANALYSIS OF PERSONAL LAW

The wife is entitled to compensation for her marital rights if the husband flees her or violates the marriage contract without justification. Even a revision of the marital rights may be

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<sup>19</sup> *Abdul Kadir v Salima* (1886) 8 All 149

<sup>20</sup> Ayushi Singh, 'Restitution of Conjugal Rights: Section 9 of The Hindu Marriage Act, 1955' (SSRN, 1 November 2019) <<https://ssrn.com/abstract=3686919>> accessed 09 February 2023

requested by the spouse. Nonetheless, the following factors may cause a court to reject a plea to restore marital rights<sup>21</sup>.

- The husband's or in-laws' cruelty.
- The husband's neglect of marriage-related obligations
- The husband's tardy dowry payment.

The deserted party or the cohabiting spouse may continue to live together to regain their lost marital rights in situations when a husband or wife has abandoned his wife or has stopped cohabiting without a good reason. If the court is persuaded that this is the situation and that no more action is required, it may proceed as necessary with the decree of this restitution of marital rights. If one spouse isolates themselves from the other without a valid reason, the other spouse may initiate a lawsuit to defend their marital rights under Section 9 of The Hindu Marriage Act of 1955.

A Christian husband or wife may also ask for the restoration of marital rights under Sections 32 and 33 of the Divorce Act of India, 1869. Although Islamic law requires an application, the clause is essentially identical to current Hindu law. No, a petition is required like with other laws. The approval of a petition to assert the rights of the spouse requires a valid marriage. The idea of sexism was not included in the Hindu Marriage Act of 1955, as stated in section 9. People are not divided into gender categories under Section 9, and everyone has been treated equally in this regard.

The judgment in *Hyde v Hyde and Woodman* said that 'marriage is supposed to be something more than a contract, religious or legal - an institution.' This statement clarified the status of participants in a Christian marriage. It creates reciprocal rights and obligations, much like other contracts, but it also indicates status. The roles or status of husband and wife are acknowledged across all of Christianity, and the laws of all Christian nations attach several legal events to this position during a person's lifespan. parties and specifically mention the status of the

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<sup>21</sup> Niyati Mohanty, 'Comparative Analysis of Laws on Restitution of Conjugal Rights in India and Pakistan' (SSRN, 25 November 2020) <https://ssrn.com/abstract=3814292>> accessed 09 February 2023

descendants. If a woman refuses to live with him without a good reason, a man may ask for the restitution of his wife's marital rights, and a woman may ask for the husband to perform his marital obligations. Yet, the court has ruled with the female when the Quran instructs a husband to retain or remove his wife with compassion since Muslim men frequently have the upper hand in marital conflicts, as well as demanded comprehensive support for each allegation, as was necessary for the divorce. Islamic law states that a Muslim husband may talaq his wife at any time to dispute her assertion.<sup>22</sup>

It is defined that if the defendant quits the firm, the claimant's claim is without good reason, and this is a defense to the claim, under the Hindu Marriage Act of 1955 and the Divorce Act of India of 1869, respectively. Concerning Islamic law, Tyabji used the phrase without a legal basis. The words without justification and without lawful justification must suggest the same thing, it is agreed. According to the Hindu Marriage Act of 1955, any situation that results in an annulment, dissolution of marriage, or judicial separation is exempt from a request to restore marital privileges. As a result, nothing may be utilized as a defense against a claim for marital rights made by a Christian under section 33 of the Indian Divorce Act, 1869 and nothing may serve as the basis for a finding of judicial separation or an invalid marriage. Requests to re-establish marital rights in Islamic law, which maintains that marriage is forbidden and unlawful, are protected by other sections of the Islamic Marriage Dissolution Act 1939 and the freedom to choose puberty. The petition may also be denied if the husband is castrated by his community.

Section 5(iii) of the Hindu Marriages Act 1955 states that a marriage performed after the legal age restriction has passed is neither void nor reversible, and a marriage decree cannot be revoked as a result of a breach. Both the bride and the groom must be at least 21 years old, according to clause 60 (1) of the Indian Christian Marriage Act of 1872. A marriage cannot be deemed invalid or void because of insufficient age. Hence, a plea to reinstate marital rights cannot be denied; marriage continues to be a legal union. The demand for the restoration of marital rights has been dropped, even though the marriage was ended in line with Muslim law

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<sup>22</sup> 'Changing Concept of Cruelty in Respect of the Restitution of Conjugal Rights in Mahomedan Law' (*Family Law* 1961) <<http://www.jstor.org/stable/43949705>> accessed 19 February 2023



and Section 2(vii) of the 1939 Muslim Marriage Dissolution Act so that the child might exercise the right to puberty<sup>23</sup>.

For Hindus and Christians, possessing a cow suffices as an excuse for a wife to avoid her husband's company, which she may view as a kind of defense against him. Contrarily, Islamic law permits controlled polygamy. Because of this, a Muslim wife cannot turn down her husband's proposal of marriage because he weds a second woman. The first wife's rejection of the husband's second marriage, meanwhile, could in some cases be acceptable because it was cruel to her. In *Itwari v Asghari*, a restitution lawsuit brought by a Muslim husband against his first wife, the court concluded that the husband could not force his wife to live with him and might deny reimbursement if the court found it to be fair and justified. Therefore, it would be unfair to implement the directive. Indian courts now routinely annul the bigamous marriage. Several Supreme Courts declined to reinstate marital privileges because they believed the husband had mistreated the couple in this case.

Cruelty may be both mental and physical, not only physical. The Hindu Marriage Act 1955, Section 13(1) 1a) allows for the use of cruelty as a defense against the return of marital rights. The Hindu, 1955, the law of Christian Indian marriage 1872 or the Indian Divorce Act 186, did not define 'cruelty' or list the behaviors that comprise it. As a result, both under Hindu law and Christian law, the courts have broad authority and discretion to determine what constitutes cruelty. Although all forms of cruelty, including physical and legal ones, are covered in the definition of cruelty in Islamic law, see Section 2(viii) of the dissolution of the legislation on Muslim Marriage Act 1939. If it is established that one of the situations of cruelty described in this section happened, the spouse may not be granted the remedy of restitution of marital rights. Only the Mohammedan law makes use of the term dowry. Under some conditions, a Muslim wife who lives apart from her husband due to a lack of financial support may not be required to perform conjugal responsibilities. If the husband had requested his compensation for marital rights before consummation, the procedure will be been dismissed since non-payment of DOT

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<sup>23</sup> Gangadevi M, 'Restitution Of Conjugal Rights: Constitutional Perspective' (*Jstor*, 2003) <<http://www.jstor.org/stable/43951874>> accessed 19 February 2023

is a complete defense under the Convention. A choice on the repayment of marital rights in the rapid dowry payment must be made if the garment is supplied after the wedding<sup>24</sup>.

To repay their dowry obligation or to impose additional restrictions deemed fair, reasonable, and necessary in each case, the courts may issue a conditional decree. A husband's demand for repayment of his marital rights against his estranged wife is not unqualified. The saying you can ride a horse through water, but you can't make it drink is well-known. Indian individual law's restoration clauses appear to follow a similar structure. The court may order the guilty spouse to live with the affected spouse to restore their marital rights. As was made evident in prior chapters, the regulation of marital rights is a component of an individual's rights, therefore it is impacted by ideas like religion, tradition, and custom. The fact is that restoration of marital rights is an alternative to divorce or marriage that is intended to preserve the marriage rather than end it. It is important to emphasize that a key component of the therapy is separation. By aiding in the avoidance of divorce, it helps to save the marriage. Marital rights have been reinstated to promote party reconciliation and keep the marriage together. He tries to ward off detractors by defending society.

## CHAPTER-5 CONCLUSION

Since then, the law has been altered to criminalize adultery and to recognize each individual's right to privacy and dignity. The right to privacy is protected by the Constitution even when a family is present. The right to privacy, individual liberty, and dignity, all guaranteed by the Constitution, are all violated by any language that prevents someone from having sex or even just cohabiting. The law that modifies marital rights is also out of date with contemporary society, which has established the private interests of a person's sexual autonomy, dignity, and happiness. As she must return to her marital residences and commitments, women suffer far more problems as a result of restitution decisions than men do<sup>25</sup>.

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<sup>24</sup> *Ibid*

<sup>25</sup> Balasubrahmanyam V, 'Conjugal Rights vs Personal Liberty' (*Andhra High Court Judgment*, 1983)  
<<http://www.jstor.org/stable/4372307>> accessed 19 February 2023

## CHAPTER-6 SUGGESTION/RECOMMENDATION

To protect the holy bond between a husband and his wife and keep one from forgoing the other's company and delight is the main objective of providing the therapy of the return. It is without a doubt the sole viable remedy in the framework of the Hindu Marriage Act 1955, which seeks to protect the institution of marriage. The relief of the restoration of conjugated rights has drawn criticism for being harsh, barbarous, and a breach of both the right to privacy and the free exercise of one's own will. The current situation's diminishing importance is what is highlighted. The fact that this technique, which India adopted from England, has been outlawed is remarkable. GDP has brought a lawsuit before the Supreme Court against Section 9 of the Hindu Marriage Act 1955 since the courts have mandated that divorcing spouses cohabit<sup>26</sup>.

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<sup>26</sup> Mayne, *Hindu law and Usage* (Bharat Law House 2003) 211