



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2024 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

Case Comment: Constitutional Validity of Section 9 of Hindu Marriage Act, 1955 with Reference to the Case of Harvinder Kaur v Harmander Singh Choudhry

Varun Kumar^a

^aChanakya National Law University, Patna, India

Received 07 September 2024; *Accepted* 10 October 2024; *Published* 14 October 2024

In the Hon'ble Delhi High Court:

Name of the Case: Harvinder Kaur v Harmander Singh Choudhry

Citation: AIR 1984 Delhi 66, ILR 1984 Delhi 546, 1984 RLR 187

Year of the case: 15 November 1983

Appellant: Harvinder Kaur

Respondent: Harmander Singh Chaudhary

Judge: Hon'ble Justice AB Rohatgi.

INTRODUCTION

Significant problems about the essential elements of marriage, as defined by Hindu law, are raised by the case under review, especially in relation to the idea of restitution of conjugal rights. In this case, the husband attempted to assert his right to restitution, which often enables one party to ask the court to intervene in order to force the other party to return to the marital residence. This matter pertains to the fundamental basis of Hindu law's institution of marriage, which regards it as a social contract and a sacrament. The wife appealed to a higher court when the Additional District Judge decided in the husband's favour despite her concerns. Her appeal highlights further issues on the rights of individuals inside a marriage, the changing nature of marriage in modern culture, and how to strike a balance between one's personal autonomy and one's marital obligations, in addition to her personal plea for justice.

This appeal might significantly impact societal norms and legal precedents regarding the rights and obligations of Hindu married couples. It also poses important problems regarding individual rights and gender equality in marriage, making it a case of great social significance that may influence how India's marriage laws are interpreted in the future.

FACTS

During an appeal in the case under review, the wife's attorney questioned the legality of Section 9¹ of the Hindu Marriage Act and contested its constitutionality. The Attorney General was then briefed and presented with arguments about this constitutional matter. The ensuing study looks at the court's justification for this ruling and provides pertinent case information. Understanding the court's stance on the validity of Section 9 of the Hindu Marriage Act requires an explanation of the pre-case legal landscape. This is an overview of important court decisions and legislative changes pertaining to Indian marriage law.

¹ Hindu Marriage Act 1955, s 9

LEGAL ISSUE RAISED

1. Whether the decree for restitution of conjugal rights, granted by the Additional District Judge in favour of the husband, is legally valid and justifiable, particularly in light of the wife's opposition to the petition.
- 2.. Whether Section 9 of the Hindu Marriage Act, 1955 is in conformity with the Fundamentals Rights of the Indian Constitution.

HISTORICAL CONTEXT

Indian family law emerged from colonial legal systems that were heavily impacted by common law ideas from Britain. The codification of laws pertaining to family and marital problems in India during the British colonial era initiated the establishment of institutionalised legal frameworks for marriage and divorce. The Indian Divorce Act of 1869, which established a legal framework for the dissolution of Christian marriages on specific predetermined grounds, is among the oldest examples of this. The application of marriage law in India has evolved throughout time to take into account the country's many cultural and religious customs. Modern Indian family law was significantly shaped by the passage of the Special Marriage Act in 1954 and the Hindu Marriage Act in 1955. These statutes provided legal redress across a wide range of personal and religious circumstances and were essential in defining and regulating features such as divorce, annulment, maintenance, and alimony. While the Special Marriage Act offered a secular framework for civil and interfaith weddings, encouraging legal consistency in an otherwise heterogeneous legal context, the Hindu Marriage Act concentrated on offering legal remedies and safeguards inside Hindu marriages. When taken as a whole, these legislative initiatives show India's effort to strike a compromise between traditions and contemporary legal theory, guaranteeing a thorough framework for resolving marital conflicts.

LEGAL FRAMEWORK

In family law, the idea of marital annulment holds a unique place, enabling people to request the dissolution of a marriage in certain situations that make the union invalid or voidable from the beginning. Section 9 of the Hindu Marriage Act, 1955 offers a remedy referred to as

'Restitution of conjugal rights' in the context of Indian family law. This clause gives a spouse who has been dumped by their partner without good reason legal options. Let's say that one partner has purposefully and without good cause distanced themselves from the other's social life. In that instance, the person who feels wronged may apply to the district court to have their marital rights restored. This clause emphasises the significance of the marriage connection in Hindu law while promoting reconciliation and restoring marital cohabitation. Section 9 states that if the court determines that the petitioner's assertions are factual and there is no justification for rejecting the request, it may issue an order for the restoration of conjugal rights. The leaving spouse must provide proof to the court that they have no justification for leaving the marital residence. The court may order the restoration of conjugal rights, requiring the petitioner's estranged spouse to move back in with them, if it determines there is no legal reason to deny the application and it finds the facts to be true. The consequences of this rule on individual rights and personal liberty are a topic of discussion. The enforcement of marital rights by court orders, according to critics, may violate an individual's right to privacy, especially in situations when one spouse may be forced to resume cohabitation against their desire. On the other hand, supporters see it as a means of upholding the integrity of marriage and encouraging reconciliation, particularly in cases when miscommunications or small arguments may have caused the split.

EMERGING LEGAL ISSUE

The controversial topic of the case at hand is the recovery of conjugal rights, a legislative provision that has long generated discussion about its effects on personal freedom and married life. The husband, claiming that his wife has unjustifiably refused to live with him, is requesting a judgment of restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955. This is the central point of contention in the argument. The wife, however, has contested both the husband's assertion and Section 9's constitutionality. Her main point is that she feels the clause violates people's right to bodily autonomy and personal freedom since it forces someone to live with their spouse against their will, potentially infringing on their rights to privacy and dignity.

Therefore, the nature of marriage relationships, the extent of judicial intrusion in private matters, and the proper balance between individual rights and marital duties are all essential issues raised by this case. The ruling might have a major impact on future discussions about the boundaries of governmental power regarding private life, marriage, and individual liberty, in addition to having an impact on the people involved and family law precedents.

STATUTORY DEVELOPMENT

India's family law legislative framework has undergone significant modification throughout the years, reflecting evolving legal requirements as well as cultural values. The Hindu Marriage Act of 1955 has undergone recent amendments that include steps to streamline the annulment process and close loopholes in existing legal frameworks. A more equitable and inclusive legal system has been achieved as a consequence of court rulings and legislative initiatives that have improved the rights of women and children in familial relationships. In light of these legislative and legal changes, the case under consideration is noteworthy because it illustrates the intricate legal issues that underpin Indian family law. It highlights the necessity of maintaining individual rights and advancing justice within the family sphere by carefully balancing legal concepts, evidence standards, and procedural fairness while resolving problems within the family.

RULE OR LAWS INVOLVED

The Hindu Marriage Act's Section 9, which deals with the remedy of restitution of conjugal rights, is at the centre of the issue regarding its constitutionality. According to the learned judge's interpretation, forcing someone into a sexual relationship against their choice is a violation of their autonomy and dignity, which are protected by Article 21² of the Constitution. He calls this an oppressive, barbaric, and uncivilised solution. A different perspective, highlighting the myths regarding the restitution decree's character, is offered instead. The Act's Section 9 attempts to promote peace between divorcing couples by offering a framework for reestablishing marital cohabitation.

² Constitution of India 1950, art 21

In divorce disputes, the clause upholds the idea of justice by placing the burden of evidence on the withdrawing party to provide a justifiable justification for their conduct. The approach also emphasises the way that marriage law has evolved, incorporating aspects of both breakdown theory and fault theory. While Section 9 emphasises the need of spouses to give mutual company and companionship and operates on a fault-based basis, later sections, such as Section 13(1-A)(ii)³, accept irretrievable breakdown as grounds for divorce, in line with contemporary developments in marriage jurisprudence. The restitution remedy has its historical roots in English ecclesiastical law, where it was used to enforce matrimonial cohabitation. Legislative changes throughout the years have attempted to strike a balance between traditional beliefs and modern notions of justice and equity; this has resulted in the breakdown theory being included in Indian marriage law.

The research also highlights the legislative objective of the Hindu Marriage Act, which attempts to protect marriage's purity while offering paths to reconciliation and divorce in situations of irretrievable collapse. The range of marital conflicts is covered in Sections 9, 13(1-A)⁴, and 13(iii)⁵, with a focus on the significance of cohabitation as a pillar of marital stability. Taking these factors into account, the research argues that although the restitution remedy is warranted criticised, eliminating it would need a thorough revaluation of associated Act sections. It is understood that the judiciary has a role in interpreting and applying the laws passed by the legislature and that legislative action, not judicial action, should be used to handle any significant modifications to the law.

Cases related to the Judgement:

- T. Sareetha v T. Venkata Subbaiah⁶
- Jackson v Jackson⁷

³ Hindu Marriage Act 1955, s 13

⁴ *Ibid*

⁵ Hindu Marriage Act 1955, 13 (iii)

⁶ *T. Sareetha v T. Venkata Subbaiah* (1983) 2 CIV LJ 158

⁷ *Jackson v Jackson* (1912) ILR 34ALL203

JUDGEMENT GIVEN BY COURT

The court considered a petition filed under section 9 of the Hindu Marriage Act by the husband in the matter of Harvinder Kaur v Harminder Singh Chaudhary. The petition sought an order of restoration of conjugal rights against the wife, who was said to have left the matrimonial residence. The ruling presents a thorough examination of the information that was submitted and draws logical conclusions about the claims that the parties involved made. The wife's complaints were examined by the court, which carefully considered the facts and the reliability of the witnesses. The woman claimed that her husband had tried to take her possessions, mistreated her, and taken advantage of her financially. Nevertheless, the court dismissed most of the allegations because it believed the evidence lacked credibility and substance. Notably, the court stressed the value of understanding and collaboration between parties in settling marital conflicts, especially when it comes to matters like child support and separate residency. It emphasised that rather than making snap decisions, both couples must communicate and come to acceptable solutions. The ruling also emphasised the larger social background of marriage and the value of marriage as a holy institution that promotes friendship, mutual support, and the well-being of offspring. It recognised the difficulties in striking a balance between personal freedoms and family responsibilities, as well as the intricacies present in marital conflicts. All things considered, the court's rationale indicates a prudent approach to resolving divorce cases, placing a premium on impartiality, justice, and maintaining family unity. The court thoughtfully reviewed the available information and took into account the wider social ramifications before offering a fair and reasonable decision to settle the dispute.

ANALYSIS

Appropriateness of the Court's Decision: The court's definition of cohabitation emphasises the holistic aspect of marital unity, which goes beyond simple physical closeness and is consistent with accepted legal concepts. Fostering the goal of marital reconciliation requires this understanding.

Consistency with Existing Law: The court's rationale aligns with previous rulings, demonstrating a coherent strategy for establishing cohabitation and maintaining the marriage

law's goals. The ruling upholds consistency in the law's application to marriage conflicts.

Justification of Reasoning: The court provides sufficient justification for its understanding of cohabitation, stressing the interpersonal components of marriage as opposed to only the sexual ones. The rationale is consistent and reasonable and takes the larger picture of marital reconciliation into account.

Policy Implications: It has important policy ramifications to acknowledge cohabitation as anything more than just physical closeness. It encourages a more thorough comprehension of married relationships, supporting attempts at family unity and reconciliation. Other strategies that put relationship dynamics ahead of physical might improve the way marital law works to support happy families.

CONCLUSION

Following the *Harvinder Kaur v Harminder Singh Chaudhary* case, the wife's appeal was denied, and the trial judge's decision from April 20, 1981, was maintained by the court. According to the court, the wife's actions amounted to her quitting to cohabit and having conjugal relations with her husband without sufficient cause because she had unjustifiably withdrawn from the marriage and disturbed the matrimonial home. The wife's acts were against her marital duties and obligations, the court said in its ruling, and her justifications for leaving the marital residence were not legitimate nor convincing. The ruling upholds the court's previous conclusions that the wife's acts constituted a grave violation of the marriage covenant. In addition to upholding the first ruling, the court emphasised the significance of maintaining impartiality and justice in situations involving marital problems by rejecting the appeal. The decision demonstrates the court's dedication to upholding the institution of marriage's sanctity and integrity while making sure that neither side may arbitrarily dissolve the married couple's home without a valid reason.

In addition, the court's ruling serves as a reminder that a happy marriage requires collaboration, communication, and respect from both partners. It emphasises that there are legal obligations for both partners in a marriage and that purposeful desertion without good reason may result

in legal repercussions. The court sent a message about the value of honouring marital duties while also defending the rights of the other spouse by holding the woman responsible for her behaviour and rejecting the appeal. The legal processes concluded with the dismissal of the appeal and each party was left to bear the costs associated with those proceedings. This decision emphasises the judiciary's function in upholding people's accountability for their actions within the bounds of the law while fostering justice and stability within marriages.