



## Petition on Conjugal Rights

**For Prelims:** Conjugal Rights, Restitution, Marital Rape, Supreme Court, Acts and Laws Related to Marriage.

**For Mains:** Conjugal Rights, Restitution, Marital Rape, Acts and Laws Related to Marriage, Issues Related to Women, Gender.

### Why in News

A petition challenging the provision allowing restitution (recovery) of conjugal rights under Hindu personal laws ([Hindu Marriage act 1955](#)).has been pending in the [Supreme Court \(SC\)](#) for months without a hearing.

- The petition, titled ***Ojaswa Pathak vs Union of India***, was filed in the SC in February 2019. The [case was last heard in July 2021](#).

### Key Points

#### ▪ **Conjugal Rights:**

- Conjugal rights are **rights created by marriage**, i.e. right of the husband or the wife to the society of the other spouse.
- **The law recognises these rights**— both in personal laws dealing with marriage, divorce etc, and in criminal law requiring payment of maintenance and alimony to a spouse.
  - **Section 9 of the Hindu Marriage Act 1955** and **Section 22 of the [Special Marriage Act 1954](#)** empower a husband or a wife to move the local district court, complaining that the other partner has “withdrawn” from the marriage without a “reasonable cause”.
- The **concept of restitution of conjugal rights** is codified in Hindu personal law now, but has **colonial origins**.
- Originating **from Jewish law**, the provision for restitution of conjugal rights reached India and other common law countries through British Rule.
- The **British law treated wives as their husband's personal possession** hence they were **not** allowed to leave their husbands.
- Similar provisions exist in Muslim personal law as well as the **Divorce Act, 1869, which governs Christian family law**.
- Incidentally, in **1970, the U.K repealed the law on restitution of conjugal rights**.

#### ▪ **Challenged Provision:**

- Section 9 of the Hindu Marriage Act, 1955, which deals with restitution of conjugal rights, reads:
  - When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, **the aggrieved party may apply, by petition to the district court**.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 a petition and that **there is no legal ground why the**

**application should not be granted**, may decree restitution of conjugal rights accordingly.

▪ **Reason for Challenging the Law:**

◦ **Violation of Rights:**

- The law is being challenged now on the **main grounds that it violates the fundamental right to privacy**.
- In 2017, a [nine-judge Bench of the SC recognised the right to privacy as a fundamental right.](#)
  - The right to privacy is protected as an intrinsic part of the right to life and personal liberty under [Article 21](#) and as a part of the freedoms guaranteed by Part III of the Constitution.
- The 2017 judgement has set the stage for potential challenges to several laws such as criminalisation of [homosexuality, marital rape](#), restitution of conjugal rights, the two-finger test in rape investigations.
- The **plea argues that a court-mandated restitution of conjugal rights amounted to a “coercive act”** on the part of the state, which violates one’s sexual and decisional autonomy, and right to privacy and dignity.

◦ **Biased Against Women:**

- Although the **law is gender-neutral since it allows both wife and husband to seek restitution of conjugal rights**, the provision disproportionately affects women.
- **Women are often called back to marital homes** under the provision, and given that marital rape is not a crime, leaves them susceptible to such coerced cohabitation.
- It is also argued whether the state can have such a compelling interest in protecting the institution of marriage that it allows a legislation to enforce cohabitation of spouses.

◦ **Not in Consonance with SC Judgements:**

- In the recent judgement of [Joseph Shine v Union of India 2019](#), the SC has put great emphasis on the right to privacy and bodily autonomy of married women, stating that marriage does not take away their sexual freedom nor choice.
- If everybody is entitled to their bodily autonomy, choice, and right to privacy, **how can a court mandate two adults to cohabit if one of them does not wish to do so.**

◦ **Misuse of the Provision:**

- Another pertinent matter to take into consideration is the **misuse of this provision as a shield against divorce** proceedings and alimony payments.
- Often an aggrieved spouse files for divorce from their place of residence and their spouse retaliates by filing for a decree of restitution in their place of residence.

▪ **Previous Judgements:**

- In the 1960s, the Punjab and Haryana High Court in the Tirath Kaur case, **upheld restitution of conjugal rights**, noting that “a wife’s first duty to her husband is to submit herself obediently to his authority and to remain under his roof and protection”.
- The courts, in a series of judgments in the 1980s, **have supported the law, holding that the denial of marital and sexual life** to the husband by the wife by refusing to permanently return to him is an act of both mental and physical cruelty.
- In 1984, the SC had upheld Section 9 of the Hindu Marriage Act in the case of **Saroj Rani v Sudarshan Kumar Chadha**, holding that the provision serves a social purpose as an aid to the prevention of break-up of marriage.
- In 1983, a single-judge bench of the Andhra Pradesh High Court had for the first time struck down the provision in the case of **T Sareetha v T Venkatasubbaiah** and declared it null and void.
  - It cited the **right to privacy among other reasons**. The court also held that in “a matter so intimately concerned the wife or the husband the parties are better left alone without state interference”.
  - The court had, **most importantly, also recognised that compelling “sexual cohabitation” would be of “grave consequences for women”**.
- However, in the same year, a single-judge Bench of the Delhi High Court took a diametrically opposite view of the law. In the case of **Harvinder Kaur v Harmander**

**Singh Chaudhry**, the Delhi High Court upheld the provision.

- The Madhya Pradesh High Court in the Vibha Shrivastava case, noted:
  - This **orthodox concept of wife ( Dharmpatni, Ardhagini, Bharya or Anugamini)** and expectations from her to subject herself to husband's wishes has undergone a revolutionary change with education and high literacy in women and with **recognition of equal rights to women in the constitution and abolition of sex distinction** in all walks of life.
  - She is a **partner in marriage with equal status** and equal rights with the husband, and the marriage cannot be a tyranny.

## Way Forward

- The **debate over criminalising marital rape compels a relook at how the provisions of restitution of conjugal rights**, though gender-neutral, place an additional burden on women and poses a direct threat to their bodily autonomy, privacy and individual dignity.
- While we talk about gender equality and the gender-neutral quality of the law, **women are still at a disadvantage in Indian society** and this provision capitalises on it.
- **Dowry deaths are a plague on society** and women being emotionally and mentally manipulated and tortured for dowry are aplenty.
- It's time for the Indian judiciary and society to shift to more progressive views starting with the progressive theory of marriage. **Marriage is not built upon the ceremonies but upon the autonomy and freedom of two individuals** who agree to share them with each other.

[Source: TH](#)

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