



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Act 1954](#)** empower a husband or a wife to move the local district court, complaining that the other partner has “withdrawn” from the marriage without a “reasonable cause”.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 - Incidentally, in **1970, the U.K repealed the law on restitution of conjugal rights**.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 - When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, **the aggrieved party may apply, by petition to the district court.**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, Ardhangini, 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.

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