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Ananya Jain

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UNDERSTANDING RESTITUTION OF CONJUGAL RIGHTS- A CRITICAL ANALYSIS

Ananya Jain¹

ABSTRACT

Marriage is regarded as a sacred and the most valuable bond in the Indian Society. Marriage constitutes a family which forms the smallest and the primary unit of the society. Restitution of Conjugal Rights is a legal provision that is formed in a similar line of vision. It is a provision that promotes “staying together” of spouses and hence, the family. If a spouse, without any reasonable reason deserts another spouse and their matrimonial duties, then the aggrieved spouse can file for restitution of conjugal rights. This article attempts to understand and critically analyse the provision of restitution of conjugal rights, in the present-day society. Further, the author discusses the role of the judiciary in the development of the provision of restitution of conjugal rights. In the present-day society, the issues arising from restitution of conjugal rights have been highlighted in the article including the issues related to the plight of women in the society and the pressure asserted from the society in terms of practicing matrimonial duties.

KEYWORDS

Restitution of Conjugal Rights, Women, Society, Marriage, Spouse

INTRODUCTION

Marriage is considered to be a sacred bond between two individuals. The Indian Society always held marriage at a high regard. The laws that are constituted are also in line with the thinking and common notion of the society regarding marriage. Therefore, the provision of restitution of

¹ Law Student, 3rd Year, Christ (Deemed to be University), Delhi NCR.

conjugal rights has been established in secular and personal family laws. Restitution of conjugal rights constitute a matrimonial remedy that is available to the spouses in a marriage. This remedy has been provided to hold a marriage and a family together and not to let it fall apart. Conjugal rights refer to the staying together of a married couple. This legally holds the sanctity of a marriage in place. There have been cases where the judiciary has termed the provision as unconstitutional. On the other hand, there have been many cases where the judiciary has termed restitution of conjugal rights as constitutional and upheld their notion.

The origins of restitution of conjugal rights can be traced back to the Jewish law. In India, this provision has been introduced by the British through the Privy Council in 1886. It was embedded in different legislations of family through judicial interpretations and legislative actions. This provision has been embedded in the society from ancient times. Marriage has always been associated with cohabitation of both the spouses under a single roof. The society did not approve of spouses living apart from each other, even mutually. Such practice of living separately was frowned upon by the society. The notion of divorce was also not considered to be ethical and was majorly looked down upon. This created pressure in the society for women. Restitution of Conjugal rights gave power to the spouses to legally bound each other to live together.²

UNDERSTANDING RESTITUTION OF CONJUGAL RIGHTS

Restitution of Conjugal rights is a matrimonial remedy provided to the citizens, in those instances where one spouse deserts another spouse and their matrimonial duties, without any reasonable reason. It ensures

² Manan Katyal, *Constitutionality of Restitution of Conjugal Rights under Hindu Marriage Act, 1955*, IPLEADERS, (Oct 28, 2021 4:18 P.M.), <https://blog.ipleaders.in/constitutionality-of-restitution-of-conjugal-rights-under-hindu-marriage-act-1955/>.

safety of marriage and acts as a tool to bind the marriage between two individuals together. Restitution of Conjugal rights have been provided in all secular and personal family laws. It is given under Section 9 of the Hindu Marriage Act, 1955³. It is also given under Section 22 of the Special Marriage Act. ⁴Apart from them, the provision of restitution of conjugal rights is an integral part of Muslim law, Parsi law and Christian family laws. It is essential for the spouse to be living separately and the separation shall have no reasonable reason. Furthermore, the aggrieved spouse from this separation shall file for restitution of conjugal rights. ⁵The aggrieved spouse has to file for restitution of conjugal rights in the district court against the spouse who has deserted their matrimonial duties. The court upon adjudicating whether there is truth in the statements, may provide for restitution of conjugal rights. The burden of proof rests upon that spouse who has withdrawn and deserted their matrimonial duties. ⁶

RESTITUTION OF CONJUGAL RIGHTS- A JUDICIAL ASPECT

The judiciary overtime has had many interpretations of the clause of restitution of conjugal rights. Some instances showed dissent of the judiciary towards the provision while some instances favoured the provision. The judiciary has given new prospective time again upon the provision of restitution of conjugal rights. In the case of *Huhhram Vs Misri Bai*⁷, the court upheld the provision of restitution of conjugal rights which led to the wife of the spouse to be forced to live with him. Meanwhile, in the case of *Atma Ram. v. Narbada Dev*⁸, the court favoured the wife and held that the restitution of conjugal right was not to be applied in that case. In the case of *T Sareetha v T*

³ Hindu Marriage Act, 1955, No. 25, Acts of Parliament, India (1949).

⁴ Special Marriage Act, 1954, No. 43, Acts of Parliament, India (1949).

⁵ Restitution Of Conjugal Rights (ROCR), INDIAN LEGAL SOLUTION (Oct 29 2021 12: 08 A.M.), <https://indianlegalsolution.com/restitution-of-conjugal-rights-rocr/>.

⁶ *Id.*

⁷ *Huhhram v. Misri Bai*, AIR 1979 MP 144

⁸ *Atma Ram. v. Narbada Dev*, AIR 1980 RAJ 35

*Venkatasubbaiah*⁹, restitution of conjugal right was brought under Section 9 of Hindu Marriage Act. The Hon'ble Court in this case, held that the provision of restitution of conjugal rights as unconstitutional as it violated a person's privacy and forced a person, against their will, into cohabitation with another individual. In case of *Harvinder Kaur v. Harjinder Singh*¹⁰, the provision of restitution of conjugal right was upheld and it was held that the provision is valid.¹¹

RESTITUTION OF CONJUGAL RIGHTS- A CRITICAL ANALYSIS

While the provision of restitution of conjugal rights was introduced to protect the sacrament of marriage and to support the notion of cohabitation and support, provision of restitution of conjugal right has been seen in a darker light in the present times. The origins of the provision of restitution of conjugal rights can be traced back to the law brought by the British in India. The British later themselves abolished this provision in 1970, in their respective country. ¹²Restitution of conjugal rights have been widely criticised for being tyrannous in nature, as it violates a person's right to privacy and the right to choose. A person is forced to share their personal space with another individual and are forced to perform matrimonial duties which are exceptionally personal to an individual. This provision of law is discriminatory against women as women are put in unsecure and vulnerable situations due this provision. The tag of divorce is still very taboo in the society and to escape such a tag, women get separated from their spouses in order to safeguard themselves from cruelty. But due to the provision of restitution of conjugal rights, women are forced to live amidst abuse and cruelty. This is how women are forcibly subjected to marital rape,

⁹ *T. Saritha Vengata Subbiah v. State*, AIR 1983 AP 356.

¹⁰ *Harvinder Kaur v. State* (SCC) AIR 1984 Delhi 66.

¹¹ *Id.*

¹² PTI, SC terms 'important' pleas seeking striking down of provisions on conjugal rights, THE HINDU (Oct 28 2021 8:23 P.M.), <https://www.thehindu.com/news/national/sc-terms-important-pleas-seeking-striking-down-of-provisions-on-conjugal-rights/article35210962.ece>.

domestic violence and mental abuse.¹³ In many instances, women are forced to leave their profession, as it involves residing away from their spouse. Due to restitution of conjugal rights, they have to come back to the residential place of her husband and hence, this leads to women having to leave their economic and financial freedom, which attracts adverse consequences.¹⁴

Among these difficulties, it is hard to perceive the provision of restitution of conjugal rights as a measure that uplift women in the society. There is a dire need to bring change in the society with respect to the provision of conjugal rights. There is also a dire need to establish provisions that protect the dignity of women and safeguard the rights of women. The law-making bodies have to make way for a futuristic approach for the provision of restitution of conjugal rights. Appointment of marriage counselors can help the spouses to clear their thoughts about the relationship. Marriage counselors can help them to voice their concerns and would bring clarity in the relationship between the spouses. This would also facilitate reconciliation between the spouses

CONCLUSION

Marriage is a sacred bond that is highly placed in the society. This notion has prevailed since ages and therefore laws and cultures have been formulated upon the same. Divorces and separations have been looked down upon and have been termed as taboo in the society. In a society that eyes marriage as a sacred and a valuable bond, restitution of conjugal rights provides a stepping stone to the notion. This provision prevents separation of spouses and binds the relationship together. It gives legal right to both the spouses to file a suit against each another,

¹³ *Challenge to Restitution of Conjugal Rights*, DRISHTI IAS, (Oct 28 2021 9:41 P.M.), <https://www.drishtiias.com/daily-updates/daily-news-analysis/challenge-to-restitution-of-conjugal-rights>.

¹⁴ Anubhav Pandey, *Restitution of Conjugal Rights Under the Hindu Marriage Act*, IPLEADERS, (Oct 29 2021, 10:34 P.M.), <https://blog.ipleaders.in/restitution-of-conjugal-rights-under-the-hindu-marriage-act/>.

if one spouse deserts their matrimonial duties without any reasonable reason. This provision has been termed as beneficial for maintenance of marriage but it has met with criticism in recent times, with the provision being termed as arbitrary in nature. The provision fails to meet the demand of the suppressed women of this society who are burdened with the societal expectations of marriage. They resort to separation which is also bounded with the limitation of restitution of conjugal rights. This forcibly makes a woman share her personal space with another individual, without her will. In many instances, this has led to adverse situations like mental trauma, domestic violence, cruelty and many more. There can be other alternatives that can be adopted to save the sanctity of a marriage. These can be marriage counselling, that would be beneficial for the parties to reconcile and bind the marriage together again. There are other matrimonial remedies available to spouses and individuals having conflicts.