

## PRIVACY AS A FUNDAMENTAL RIGHT: CONJUGAL RIGHTS VIOLATING PERSONAL AUTONOMY IN INDIA

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### ABSTRACT

Marriage is an important and sacred institution, especially in a culturally and religiously diverse country like India. It has always been stated that after marriage, husband and wife become one not for just this but for many upcoming lives as well in Hindu Law. Marriage imposes certain marital duties under all matrimonial laws and gives certain legal rights as well. But due to modernization and an open-minded society, this right that forces the partner to live with the other is raising questions. How can courts, which promise to protect the three pillars that are justice, equality, and conscience, decide a ruling for a person who is already on the verge of breakdown to return to the place of their abuse. In today's world full of competition- career, and comfort are given more importance than forced conjugal associations.

Restitution of conjugal rights also intervenes in the private lives of people as it pushes married couples to stay under one shelter even after they have emotionally detached. Privacy is not only about data and information protection but the right to privacy is an intrinsic part of the right to life and personal liberty under the Constitution of India, 1950. Fundamental rights are available to everyone be the citizen is married or not, so, forcing people to stay together who do not share a liking infringes on their fundamental life. Hence, this research paper delves into the intricate relationship between conjugal rights and individual autonomy within the context of privacy in India. While these provisions were conceived with the intention of fostering healthy relationships, the research highlights how they can inadvertently intrude into the private sphere of individuals.

**KEYWORDS** – *Conjugal Rights, Individual Autonomy, Privacy Rights, Constitutional Jurisprudence, Right to Privacy*

### INTRODUCTION

The concepts of progressive marriage are still trying to find their place in a world where the relationship between society and law is a hare and tortoise race. While the view of women as chattel is gradually changing, remedies such as restitution of conjugal rights continue to exist as proprietary rights<sup>609</sup>. In the evolving landscape of constitutional jurisprudence, the recognition of privacy as a fundamental right has emerged as a foundation for safeguarding individual liberties. The jurisprudential journey reached a

milestone in 2017 when the Supreme Court of India, in the landmark judgment of Justice K.S. Puttaswamy (Retd.) v. Union of India<sup>610</sup>, declared the right to privacy as an intrinsic part of the right to life and personal liberty under Article 21<sup>611</sup> of the Constitution of India, 1950<sup>612</sup>. This significant pronouncement marked a paradigm shift in understanding the boundaries of individual autonomy, raising critical questions about the interplay between personal privacy and various facets of life, including intimate

<sup>609</sup> Restitution of Conjugal Rights: A Peril to Fundamental Rights in India, By- Khushi Gupta and Vishakha Shakya, Khushi Gupta and Vishakha Shakya, January 24, 2023

<sup>610</sup> Justice K.S. Puttaswamy (Retd.) & Anr. vs. Union of India & Ors, (2017) 10 SCC 1, AIR 2017 SC 4161

<sup>611</sup> Article 21, Constitution of India 1950

<sup>612</sup> The Constitution of India, 26 January 1950

relationships. One such facet that has come under scrutiny is the interface between privacy rights and conjugal relationships. While conjugal rights are traditionally acknowledged and protected, the subtle inquiry into how these rights may, at times, infringe upon an individual's personal autonomy remains an understudied dimension within the Indian legal context.

Section 9<sup>613</sup> of the Hindu Marriage Act 1955<sup>614</sup>, Section 22<sup>615</sup> of the Special Marriage Act 1954<sup>616</sup>, Section 36<sup>617</sup> of the Parsi Marriage and Divorce Act 1936<sup>618</sup>, Section 13<sup>619</sup> of the Matrimonial Causes Act 1965<sup>620</sup>, and Section 32<sup>621</sup> of the Divorce Act 1869<sup>622</sup> all contain provisions relating to the restitution of conjugal rights. It states that- *"if either of the two parties to a marriage withdraws from the other's society, the aggrieved party is free to file a petition in the court for the restitution of conjugal rights"*<sup>623</sup>.

### BACKGROUND OF CONJUGAL RIGHTS

The legal concept of restitution of conjugal rights finds its historical roots in Jewish laws and was introduced to India during the British colonial period. It is absent in both Dharmashastra and Muslim law. Originating in feudal England, where marriage was viewed as a transaction and wives were considered possessions, the restitution of conjugal rights reflects an evolution in legal thought and societal norms. The formal introduction of this concept in the Indian legal landscape occurred notably in the case of *Moonshee Buzloor Ruheem v. Shumsoonissa Begum*<sup>624</sup>, where such actions were construed as considerations for specific performance, shaping the trajectory of conjugal rights restitution in the Indian legal

framework. Even before this case, the courts recognized the restitution of conjugal rights in *Maulvi Abdul Wahab v Hingu*<sup>625</sup>.

This only legal remedy for the deserted spouse applies exclusively to valid marriages. It provides a mechanism for seeking redress when one party breaches the conjugal obligations inherent in marriage. In the case of *Ranjana Kejriwal v. Vinod Kumar Kejriwal*<sup>626</sup>, the court elucidated the limitations of the restitution of conjugal rights. Here the petitioner's wife alleged that her husband had concealed an existing marriage. The court, emphasizing the absence of a valid marriage due to the husband's suppression of facts, ruled that the petition for restitution of conjugal rights was not maintainable. This case underscores that the right to seek restitution is contingent on the validity of the marriage itself. Enforcement mechanisms of conjugal rights may include the attachment of property as well in some cases, and non-compliance with the order can result in punitive measures such as contempt of court.

The history of restitution of conjugal rights shows changes in how society views marriage and spousal rights. It started as a property-focused idea in feudal England but has evolved into a legal solution in modern India. This remedy helps deal with violations of marital duties, but it only applies when the marriage is valid. In cases where important information is hidden or misrepresented, courts carefully examine the situation.

### REASONABLE EXCUSE IN CASES FOR RESTITUTION OF CONJUGAL RIGHTS

There may be instances where seeking such a decree may not be justified, and the court may consider reasonable excuses as a defence. It's essential to note that the court, guided by principles of justice, equity, and good conscience, has discretion in determining the validity of these excuses. If the court is convinced of the petitioner's veracity and finds no irregularities, then only the court may issue a

<sup>613</sup> Hindu Marriage Act 1955, Section 9

<sup>614</sup> Act ID- 195525

<sup>615</sup> Special Marriage Act 1954, Section 22

<sup>616</sup> Act ID- 195443

<sup>617</sup> Parsi Marriage and Divorce Act, Section 36

<sup>618</sup> Act ID- 193603

<sup>619</sup> Matrimonial Causes Act 1965, Section 13

<sup>620</sup> Act Number- (NO. 99, 1965)

<sup>621</sup> Divorce Act 1869, Section 32

<sup>622</sup> Act ID: 186904

<sup>623</sup> Hindu Marriage Act 1955, Section 9

<sup>624</sup> *Moonshee Buzloor Ruheem v. Shumsoonissa Behum*, (1867) 1 MIA 551

<sup>625</sup> *Maulvi Abdul Wahab v Hingu*

<sup>626</sup> AIR 1997 Bom 300, 1998 (1) Bom CR 268, II (1997) DMC 523

decree restoring the conjugal rights of the partner. Below are some examples of reasonable excuses that may be considered by the court:

- I. Cruelty by the Petitioner:  
If the Petitioner has treated the other party with cruelty, the court may recognize this as a reasonable excuse. Cruelty can encompass physical, mental, or emotional harm inflicted on the spouse seeking restitution.
- II. Conversion to Other Religions:  
If the petitioner has undergone a conversion to another religion, and this conversion has led to irreconcilable differences in marital beliefs and practices, it may be considered a reasonable excuse for the withdrawal from conjugal relations.
- III. Incurable Form of Leprosy:  
If the petitioner is suffering from an incurable form of leprosy, it can be considered a valid reason for the withdrawal from conjugal relations. The physical and emotional challenges posed by such a medical condition may justify the separation.
- IV. Unsound Mind of the Petitioner:  
The mental health of the petitioner is crucial. If the petitioner has been declared of unsound mind, it may serve as a reasonable excuse for the withdrawal from conjugal rights, taking into account the well-being and safety of both parties.
- V. Suffering from Venereal Disease:  
The petitioner suffering from a venereal disease may be seen as a valid reason for separation. The risk of transmitting the disease to the other party and potential health concerns could justify the withdrawal from conjugal rights.
- VI. Entry into a Religious Order:  
If the petitioner has entered a religious order or has taken monastic vows, it signifies a significant change in lifestyle and priorities. The court may recognize this as a reasonable excuse for not complying with the decree of restitution.

## CONSTITUTIONAL RECOGNITION OF PRIVACY

The constitutional recognition of privacy in India is anchored in the landmark case of Justice K.S. Puttaswamy (Retd.) v. Union of India<sup>627</sup>. This decision articulated the right to privacy as a fundamental right within Article 21<sup>628</sup>, emphasizing its integral connection to the right to life and personal liberty. Legal scholars, including Subrata Roy Chowdhury and Usha Ramanathan, have meticulously examined the doctrinal underpinnings of this recognition. They have explored how the judiciary, through a series of decisions, transitioned from a limited interpretation of Article 21<sup>629</sup> to a more expansive understanding that encapsulates the right to privacy. The Nine Judge Bench in this case unanimously reaffirmed the right to privacy as a fundamental right under the Constitution of India. The Court held that the right to privacy was integral to freedoms guaranteed across fundamental rights, and was an intrinsic aspect of dignity, autonomy, and liberty<sup>630</sup>.

While the intention behind recognizing conjugal rights is to foster a healthy and intimate relationship between spouses, there are chances in today's world that it can lead to an intrusion into the private sphere of individuals. In the context of conjugal rights, privacy concerns arise when external entities, such as the state or legal institutions, attempt to regulate or enforce the intimate aspects of a married couple's relationship. This intrusion may involve legal interventions or judgments that dictate when, where, or how spouses should engage in marital relations. Such interference raises questions about the boundaries between personal autonomy and societal expectations, potentially infringing upon the right to privacy that individuals hold within their marriages.

<sup>627</sup> Justice K.S. Puttaswamy (Retd.) & Anr. vs. Union of India & Ors, (2017) 10 SCC 1, AIR 2017 SC 4161

<sup>628</sup> Article 21 Constitution of India, 1950

<sup>629</sup> Ibid.

<sup>630</sup> Privacy Law Library

In the case *Navtej Singh Johar v. Union of India*<sup>631</sup>, the Hon'ble Supreme Court held as well that Article 21<sup>632</sup> of the Indian Constitution<sup>633</sup> must be recognized to protect each person's absolute autonomy over intimate decisions pertaining to their personal lives. Furthermore, the enforcement of conjugal rights may inadvertently contribute to the perpetuation of traditional gender roles, as it often assumes a particular normative standard for marital intimacy. This can impact individuals who do not conform to these expectations, leading to a violation of their right to define the terms of their private relationships.

### OUTDATED NATURE OF CONJUGAL RIGHTS

Initially, marriage was often characterized by hierarchical structures, gender-specific roles, and a legal framework that emphasized the union's societal and procreative functions. The institution was deeply embedded in cultural and religious practices, reflecting the values of the time. Traditionally, conjugal rights were often defined by legal, social, and religious norms that assigned specific duties and obligations to each spouse. These roles were often based on stereotypical assumptions about gender, reinforcing patriarchal structures within the marital relationship. Women, in particular, were expected to fulfill domestic and caregiving roles, while men were often assigned the responsibility of providing for the family<sup>634</sup>. Questions raised due to these is that *"How can courts, which promise to protect the three pillars that are justice, equality, and conscience, decide a ruling for a person who is already on the verge of breakdown to return to the place of their abuse?"*<sup>635</sup>

The legal framework enshrined these expectations, creating a set of conjugal rights and duties that perpetuated unequal power

dynamics. But now, the scenario has changed as the following-

#### I. Changing Dynamics of Marriage:

In the contemporary era, marriage has evolved beyond these traditional roles. Changing societal attitudes towards gender roles and the recognition of diverse family structures have challenged the historical underpinnings of conjugal rights. The notion that specific rights and responsibilities should be assigned based on gender is increasingly viewed as outdated and incompatible with the principles of equality and individual autonomy. The rise of dual-income households, shared parenting responsibilities, and a more equitable distribution of domestic duties have reshaped the dynamics of modern marriages<sup>636</sup>.

In the case, *Smt. Kailash Wati v. Ayodhia Prakash (1977)*<sup>637</sup>, conjugal rights were divided into in three parts for wives-

- *"If the wife is already working before and at the time of marriage, then it does not give the husband a right not to share his matrimonial home with her."*<sup>638</sup>
- *If the husband himself encourages the wife to take up employment after marriage then the husband cannot give up his right to live with his wife."*<sup>639</sup>
- *But if the wife takes up employment against the wishes of her husband then it is the case of unreasonable withdrawal."*<sup>640</sup>

The court furnished that employment is no reasonable ground for withdrawal and such unreasonable withdrawal cannot be an excuse to live individually, away from the matrimonial home and that the appellant should choose between her job and husband.

#### II. Critique of Gender Bias:

The traditional allocation of rights often placed a disproportionate burden on women, limiting their freedom and autonomy within the marital relationship. For instance, conjugal rights might

<sup>631</sup> *Navtej Singh Johar and Ors. vs. Union of India*, AIR 2018 SC 4321, (2018) 10 SCC 1

<sup>632</sup> Article 21 Constitution of India, 1950

<sup>633</sup> *The Constitution of India [India]*, 26 January 1950

<sup>634</sup> Study.com- Gender Roles in Society | Definition & Examples

<sup>635</sup> *Restitution of Conjugal Rights: A Peril to Fundamental Rights in India*, By- Khushi Gupta and Vishakha Shakya, Khushi Gupta and Vishakha Shakya, January 24, 2023

<sup>636</sup> *Vidyanju.in- Define marriage: Critically discuss the changing dynamics in marriage*, By- Akhil Singh, 26<sup>th</sup> August 2023

<sup>637</sup> *Kailashwati v Ayodhia Parkash*, (1977) 79 PLR 216

<sup>638</sup> *Ibid.*

<sup>639</sup> *Ibid.*

<sup>640</sup> *Ibid.*

encompass expectations related to marital intimacy, reproduction, and caregiving, with potential repercussions for individuals, particularly women, who deviate from these expectations. The rigid adherence to such rights, rooted in historical norms, has been criticized for perpetuating gender inequalities and constraining the agency of individuals within the marriage<sup>641</sup>. In the case, *R. Natarajan v. Sujatha Vasudevan C. M. A.*<sup>642</sup>, the court held that a wife's decision to leave her husband's society, because she finds it difficult to live with his parents, does not constitute a reasonable reason to do so.

### III. Evolving Notions of Autonomy:

Contemporary perspectives on autonomy emphasize individual agency and the right to make choices that align with personal values and aspirations. Conjugal rights, historically designed to regulate intimate aspects of married life, may be perceived as infringing upon this autonomy<sup>643</sup>. As societies increasingly embrace diverse expressions of individuality and personal relationships, the rigid enforcement of conjugal rights may clash with the evolving understanding of autonomy within marriages. This is particularly relevant in the context of personal choices related to family planning, career pursuits, and lifestyle decisions.

### IV. Legal Reforms and Challenges:

The outdated nature of conjugal rights becomes more apparent when contrasted with progressive legal reforms in various jurisdictions. Countries that have embraced legal changes to recognize equality within marriage are challenging traditional conjugal norms. However, implementing such reforms poses challenges, including resistance from traditionalist viewpoints, cultural norms, and the need for comprehensive legal frameworks that protect individual rights while respecting the sanctity of personal relationships. In the case of

*Tirath Kaur v. Kirpal Singh*<sup>644</sup>, the wife was staying away from her husband in order to practice her job. However, due to certain conflicts, the husband asked his wife to leave her job and on denial, he filed a petition for restitution of conjugal rights. The court granted him the decree thus, forcing the wife to live with her spouse.

### SUGGESTIONS

To address the challenges posed by the concept of conjugal rights in modern society, several key suggestions can be considered. Firstly, new interpretations or amendments are needed for this concept to fit and perfectly apply in today's society keeping into consideration the aspect of privacy as well. Then, promoting education and awareness programs to inform individuals about their rights, responsibilities, and legal options within marriages is crucial as well. Additionally, advocating for legal reforms that align with contemporary values, such as gender equality and individual autonomy, is essential. Introducing flexibility in legal procedures related to conjugal rights, along with promoting mediation and counselling services for couples facing difficulties, can help resolve conflicts effectively. It's also important to revise legal definitions related to conjugal rights to be more inclusive of diverse family structures and cultural perspectives. Emphasizing the importance of personal autonomy within marriages and establishing clear guidelines on the boundaries of conjugal rights are essential for protecting individuals' privacy and autonomy. Finally, fostering open public dialogue and community support programs can help reduce stigma around seeking help for marital issues and promote healthy relationships within society.

### CONCLUSION

"A Horse can be brought to the water pond but cannot be compelled to drink". The above-mentioned proverb is very famous, and the

<sup>641</sup> Vidyanju.in- Define marriage: Critically discuss the changing dynamics in marriage, By- Akhil Singh, 26<sup>th</sup> August 2023

<sup>642</sup> *R. Natarajan v. Sujatha Vasudevan C. M. A.*, Citation- C.M.A. Nos. 3769 and 1775 of 2010 and M.P. Nos. 1 and 2 of 2011 in C.M.A. No. 1775 of 2010

<sup>643</sup> Marg Erp- The Restitution of Conjugal Rights: Understanding the Controversial Legal Concept, Published on- May 26, 2023

<sup>644</sup> *Smt. Tirath Kaur W/O Kirpal Singh v. Kirpal Singh S/O Ram Singh*- High Court of Punjab and Haryana

concept of restitution seems to be akin to the theory of conjugal rights. When a person is separated emotionally from another, then it becomes really difficult to unite them. Even if forced to stay together by the court, they won't be happy. Thus, restitution of conjugal rights is such a matrimonial remedy, that will force the person to save the marriage, but it cannot guarantee its effectiveness.

In conclusion, the discourse surrounding conjugal rights and their impact on personal autonomy within the context of privacy reflects a dynamic tension between traditional norms and evolving societal values. As marriage transforms with changing gender dynamics, shared responsibilities, and diverse family structures, the rigid enforcement of conjugal rights seems increasingly anachronistic. The evolving understanding of marriage necessitates a critical reevaluation of these rights to ensure that legal frameworks reflect the principles of equality, respect for diversity, and the evolving nature of personal relationships in the 21st century.

