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UNDERSTANDING THE CONSTITUTIONAL LIMITATIONS OF SECTION 9 OF THE HINDU MARRIAGE ACT, 1955

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ABSTRACT

The concept of restitution of conjugal rights, as outlined in Section 9 of the Hindu Marriage Act, 1955, serves to uphold the sanctity of marriage by allowing a spouse to petition for the return of the other who has withdrawn from cohabitation without reasonable cause. However, this provision has been subject to significant scrutiny due to its inherent limitations and potential conflicts with constitutional rights.

One major limitation arises from the requirement that the aggrieved party must prove the absence of a reasonable excuse for withdrawal. This places an undue burden on individuals who may have left due to valid concerns such as cruelty or abuse, thereby potentially forcing them back into harmful situations. Furthermore, judicial interpretations have highlighted inconsistencies in how courts balance marital obligations with personal freedoms, often leading to outcomes that may infringe upon an individual's right to privacy and dignity. This research paper explores these limitations, particularly focusing on the implications for individual autonomy, personal safety, and the evolving understanding of marital relationships in contemporary society. This research aims to provide a comprehensive understanding of the limitations of restitution of conjugal rights within the framework of Indian law and its implications for modern marital dynamics.

Keywords: Restitution, Conjugal Rights, Reasonable cause, Marital relationships, Cruelty.

INTRODUCTION:

Section 9 of the Hindu Marriage Act, of 1955, which deals with the Restitution of Conjugal Rights, has been the subject of considerable debate, particularly concerning its constitutionality. Under this provision, if either the husband or wife withdraws from society without reasonable cause, the aggrieved spouse can approach the court to seek restitution of conjugal rights, compelling the estranged partner to return.

India's personal laws contain several provisions that emphasize the significance of conjugal rights within marriage. At its core, conjugal rights refer to the right of spouses to cohabit and maintain a physical relationship with each other. The underlying objective of this section is

to preserve the sanctity of marriage and promote reconciliation between the couple. However, this provision has also raised significant legal and ethical concerns, especially when examined in light of fundamental rights guaranteed under the Indian Constitution, such as the right to privacy, personal liberty, and individual autonomy.

Critics have argued that Section 9 conflicts with Articles 14, 19, and 21 of the Constitution, which guarantee equality before the law, the right to freedom of expression, and the right to life and personal liberty, respectively. They contend that forcing an individual to cohabit with their spouse infringes upon their personal autonomy and bodily integrity, thus violating their right to privacy, which the Supreme Court recognised as a fundamental right in *Justice K.S.*

Puttaswamy vs. Union of India (2017). Moreover, the remedy of restitution of conjugal rights can be perceived as a coercive tool, disproportionately impacting women, who are often placed in vulnerable positions within marriages.

The constitutional validity of Section 9 was upheld in the 1984 judgment of *Sareetha v. T. Venkata Subbaiah* by the Andhra Pradesh High Court, which declared it unconstitutional for violating the right to privacy and dignity. However, in *Harvinder Kaur v. Harmander Singh Choudhry*, the Supreme Court took an opposing view, asserting that the section was a means to protect marriage. This ongoing conflict between personal rights and the institution of marriage continues to spark debate on whether Section 9 aligns with the progressive values enshrined in the Constitution.

India's personal laws contain several provisions that emphasize the significance of conjugal rights within marriage. At its core, conjugal rights refer to the right of spouses to cohabit and maintain a physical relationship with each other. Its main essence is for the preservation of a marital relationship.

LEGAL BACKGROUND:

Several landmark cases in this area shed light on the origin and development of the concept of restitution of conjugal rights. This principle, which traces back to feudal English law, was brought to India during the colonial era. Notably, neither the Dharmashastras nor Islamic law contains provisions to preserve marriage through such measures. The concept made its first appearance in Indian legal history with the case of *Moonshee Buzloor Ruheem v. Shumsoonissa Begum*.⁹²⁰ It was later incorporated into India's personal laws to compel a spouse guilty of desertion to return and live with the aggrieved partner.

While the provision was originally intended to safeguard the interests of both parties in a

marriage, it has faced considerable criticism. The case of *T. Sareetha v. T. Venkatasubbaiah*⁹²¹ marked the first time the constitutional validity of Section 9 of the Hindu Marriage Act⁹²² was brought into question. In this case, the petitioner argued that the section violated both Article 14 and Article 21 of the Indian Constitution. The honourable court held that this provision was oppressive and particularly harmful to women, as it could lead to forced cohabitation. It stated that this would deprive women of control over their bodies and undermine their sexual autonomy. As a result, the court found that a woman's rights under Article 21 of the Constitution would be severely compromised. Hence in 1983, this said provision was declared unconstitutional for the first time.

However, the Hon'ble Delhi High Court held a different opinion. When the debate about the constitutional validity of Section 9 was raised, the court said that there were several misconceptions which were associated with the provision thereby questioning its validity. The court held that this provision was placed to ensure that neither the husband nor the wife could withdraw from society without any reasonable cause, the true intention behind this provision was to protect the matrimonial relationship. The court held that Section 9 does not violate Article 14 and Article 21, it was created as an additional ground for seeking divorce.

All these debates were put to an end by the Supreme Court in its judgement of the *Saroj Rani v. Sudarshan Kumar Chadha*⁹²³ case. The Supreme Court agreed with the opinion of the Delhi High Court overruled the Andhra Pradesh High Court and held that the provision in served a social purpose in preventing the break up of a marriage and acts as a remember, although the provision may seem archaic it acts as a ground for divorce in case that is which concerned parties deny such a restitution

⁹²¹ *T. Sareetha v. T. Venkatasubbaiah*, MANU/AP/0161/1983

⁹²² The Hindu Marriage Act, 1955, § 9, No. 25, Acts of Parliament, 1955 (India).

⁹²³ *Saroj Rani v. Sudarshan Kumar Chadha*, 1984 AIR 1562.

⁹²⁰ *Moonshee Buzloor Ruheem v. Shumsoonissa Begum*, MANU/PR/0018/1867

decree. Additionally, it was upon the legislature to abolish Section 9 from being a remedy or not, and hence the section remained constitutionally valid.

UNDERSTANDING SECTION 9 OF THE HINDU MARRIAGE ACT:

The restitution of conjugal rights is a type of relief that is provided for the spouse in distress in an institution of marriage under the law.

The language of Section 9 of the Hindu Marriage Act, is such: '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 the restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly'

In the context of Section 9 of the act, the burden of proof plays a crucial role. When one of the parties files a petition for restitution, they initially have the burden of proof to prove that the other party has withdrawn from society without any reasonable cause. However, once the initial burden of proof is met, the onus shifts to the respondent to prove that their withdrawal was justified with a reasonable excuse.

A reasonable excuse can cover a wide range of situations, but the court has not established a concrete definition. However, the excuse must be fair and justified under the circumstances. Suppose the withdrawing party can provide concrete evidence against the petitioner and prove they had a just and reasonable excuse to withdraw from society. In that case, the court may refuse to pass the decree of restitution. This provision is designed to safeguard individuals from being forced back into a potentially harmful or abusive environment. For example, if a spouse has endured physical or emotional abuse, leaving the marriage could be viewed as a crucial step for their safety, rather than an act of desertion. The legal framework of

the provision is such that although the court recognises that it is essential to prevent the institution of marriage as it entails certain obligations to be fulfilled, these obligations do not however override personal safety and dignity. The courts have thus been tasked to carefully evaluate the pieces of evidence provided by both parties- and if the party can prove that the withdrawal was reasonable and was due to a reasonable cause such as harassment or cruelty, then the court will typically deny the petition for restitution of conjugal rights.

A careful analysis of Section 9 shows that the remedy of restitution of conjugal rights is available for Hindus, provided the following requirements are met:

- (i) The respondent has withdrawn from the petitioner's society
- (ii) the withdrawal must be "without any reasonable cause"
- (iii) the court is satisfied with the truth of the statement made by the petitioner, and lastly
- (iv) There is no legal ground that the relief should not be granted.

WITHDRAWAL FROM SOCIETY:

The term "society" can be understood in different ways, but within the context of marriage, it refers to the union and companionship between spouses. Since the statute does not offer a clear definition, judicial interpretation is required to clarify its meaning in marital relationships. Thus, withdrawal from society does not merely mean withdrawing from the company of the other party, but from the conjugal relationship itself. The right to restitution of conjugal rights assumes the existence of a valid marriage. Once the marriage is proven to be legally valid, the petition remains valid, even if the parties have never cohabited.

REASONABLE EXCUSE:

The term "reasonable excuse" is neither explicitly defined nor limited by any specific

legislative provision. However, the responsibility to prove the existence of a “reasonable excuse” falls on the respondent. The Allahabad High Court’s ruling in *Jagdish Lal v. Shyama Madan*⁹²⁴ remains a significant reference in interpreting the scope of this term. The court stated that what constitutes a reasonable excuse cannot be reduced to a rigid formula, as it will vary depending on the circumstances and must be assessed individually in each case, considering its unique facts.

The court further clarified that a reasonable excuse should not be equated with a “legal ground.” Even if the conditions for judicial separation, nullity, or divorce are not met, a decree for restitution of conjugal rights cannot be granted if there is a reasonable excuse for either spouse to withdraw from the other’s company.

Therefore, determining whether an excuse is reasonable depends entirely on the specific facts and circumstances of each case, and no definitive formula can be applied. What may seem like a reasonable excuse in some situations may not hold in others. To better understand this complexity, it is important to explore examples that highlight the range of potential issues involved.

THE QUESTION OF ITS CONSTITUTIONAL VALIDITY:

The constitutionality of the provision for restitution of conjugal rights has been frequently challenged. It is important to assess how the legal understanding of privacy has evolved in this context and its influence on landmark cases such as *T. Sareetha* and *Saroj Rani* concerning the restitution of conjugal rights. In *Sareetha v. Venkata Subbaiah*, the Andhra Pradesh High Court declared Section 9, which grants the remedy of restitution of conjugal rights (RCR), unconstitutional, as it infringes upon Articles 14 and 21 of the Constitution, specifically violating the right to

privacy and the right to personal liberty (right to equality).

The husband filed a petition for RCR, and his famous movie star wife (*Sareetha*) opposed the claim. According to the wife’s argument, a woman has a “right of free choice as to whether, where, and how her body is to be used for procreation of children, as well as the choice of when and by whom the various parts of her body are to be sensed” under the terms of the right to privacy. She has the right to privacy, including the freedom to choose. She claimed that Article 21 guaranteed this as part of her “liberty.” The State violates this basic right guaranteed by Article 21 by recognising the remedy of restitution of conjugal rights under Section 9 of the Hindu Marriage Act. Furthermore, by making this remedy available to both married men and married women, it breaches Article 14 by treating individuals who are fundamentally unequal as equals.

In *Gobind Singh v. State of MP*, the Supreme Court of India defined privacy as something that “preserves the intimate intimacies of the home, the family, marriage, motherhood, procreation, and child-rearing.” According to this understanding of the “right to privacy,” the home is a private zone that the law should not infringe upon. The Andhra Pradesh High Court interpreted privacy in *T. Sareetha* in a more individualistic and progressive manner. It was determined that a person’s right to privacy is personal and independent of marital status. As a result, delegating the decision to participate in marital intercourse to the state violates the woman’s right to privacy and physical autonomy.

In contrast, the courts in *Harvinder Kaur* and *Saroj Rani* chose to return to the narrow view of the right to privacy supported by the Supreme Court in *Gobind Singh*.

⁹²⁴ *Jagdish Lal v. Shyama Madan* (AIR 1966 All 150)

SCOPE AND LIMITATIONS:1. DOES RESTITUTION OF CONJUGAL RIGHTS VIOLATE THE RIGHT TO PRIVACY?

In various judgements throughout the years, courts have interpreted whether the right to privacy encompasses a person's autonomy over their own body. Courts have had conflicting views on the issue. One of the first cases in which this issue was addressed by a court was *Gobind v. State of Madhya Pradesh*⁹²⁵ in 1975 when the Supreme Court ruled that, while the right to privacy can be extended to personal intimacies of home and marriage, it is an individual's private space and the law should not interfere with it.

However, *T. Sareetha v. T. Venkatasubbaiah* laid down a rather progressive judgement, where the court was of the opinion that Section 9 was a serious breach of the right of privacy of the spouses. This judgement was a step towards making certain amendments in the feudal provision which was said to be violative of fundamental rights. The Delhi High Court, in *Harvinder Kaur v. Harmander Singh Chaudhary*,⁹²⁶ took a different approach. The Court concurred with the Supreme Court's decision in *Gobind v. State of Madhya Pradesh*. Section 9 was maintained by the Court as a measure protecting the sanctity of marriage. It distinguished sexual relations from the notion of consortium or cohabitation in marriages. Section 9 only requires spouses to cohabit; it does not mandate sexual interactions in marriage. Thus, this decision limited the extent of the right to privacy by stating that courts cannot enforce this basic right in people's private spaces.

Although the judge correctly identified the underlying aim behind Section 9, he stated incorrectly that this clause has no bearing on individuals' right to privacy. In a country where marital rape is still not considered a crime, forcing a spouse to cohabit puts them and their fundamental rights in danger. The Court was

correct in declaring that the aforementioned rule does not need sexual contact; yet, the lack of law to ban marital rape provides a gap that can be exploited by getting an order of restitution of conjugal rights. The seminal case of *K.S. Puttaswamy v. Union of India*¹³ established convincingly that a person's right to privacy includes the ability to exercise autonomy over their own body.⁹²⁷

2. DOES RESTITUTION OF CONJUGAL RIGHTS VIOLATE THE RIGHT TO EQUALITY?

A significant development in the area of restitution of conjugal rights occurred in the case of *Ojaswa Pathak v. Union of India*. In this case, the petitioners raised a critical issue regarding the impact of this provision on constitutional rights, specifically the rights to sexual and reproductive autonomy, health, and equality. They questioned the constitutionality of Section 9 of the Hindu Marriage Act, Section 22 of the Special Marriage Act, of 1954, and Order 21, Rules 32 and 33 of the Code of Civil Procedure, 1908. The petitioners sought a socio-legal analysis of these provisions to determine whether they aligned with the Constitution's guarantees.

It was argued that although the legal provisions allow both men and women to seek restitution, and are gender neutral, the Indian societal structure is such that it has evolved to the advantage of the men. As a result, putting the woman in an unfair position, which may also turn out to be harmful for her safety. In *Shakila Banu v. Gulam Mustafa*⁹²⁸, the Supreme Court rightly observed that the concept of restitution of conjugal rights originated in ancient times when women were viewed as property or mere possessions, and systems like slavery or quasi-slavery were not deemed illegal. This principle, rooted in feudal English law, has no place in a modern constitutional framework that upholds personal liberties and guarantees equal rights to both men and women. The Constitution also

⁹²⁵ *Gobind v. State of Madhya Pradesh*, MANU/SC/0119/1975

⁹²⁶ *Harvinder Kaur v. Harmander Singh Choudhry*, MANU/DE/0234/1983

⁹²⁷ TSCLD Restitution of Conjugal Rights and its constitutional validity, Kavya Bajaj <https://www.tsclcd.com/restitution-of-conjugal-rights-and-its-constitutional-validity> (last visited: 21st October 2024.)

⁹²⁸ *Shakila Banu v. Gulam Mustafa*, MANU/MH/0029/1971

empowers the state to create special provisions to safeguard and protect these rights. Consequently, the provisions allowing for the restitution of conjugal rights are seen as violating Articles 14 and 15(1) of the Constitution.

From a socio-legal perspective, it is crucial to recognize the ongoing disparity in the social and financial status of women compared to men. In this context, laws that allow men to take advantage of a woman's financial dependence, lack of awareness, or other vulnerabilities can be problematic. In many cases, forced cohabitation resulting from such provisions leads to unwanted pregnancies, sexual exploitation, and both physical and mental abuse inflicted by the husband and his family. Therefore, the remedy of restitution of conjugal rights undermines the right to equality, which encompasses not only equality in law but also equality in thought, action, and self-determination. Forcing someone to live with another against their will violates these fundamental rights, making this provision incompatible with the Constitution.

NEED FOR REFORMS:

Although this provision is technically gender-neutral, it is important to acknowledge that women in India continue to face societal discrimination, and this provision often exploits that reality. Many women are subjected to emotional and mental abuse, including mistreatment related to dowry, and dowry-related deaths remain a troubling issue in society. For women who have left their husbands' homes, a decree for the restitution of conjugal rights can feel like a noose around their necks, forcing them back into a harmful environment. How can our courts, which are meant to uphold justice, equality, and conscience, compel a woman who is already on the brink of collapse to return to the very place of her suffering?

This stance requires reconsideration in light of recent progressive rulings by the Supreme

Court. In *Navtej Singh Johar v. Union of India*⁹²⁹, the Court affirmed that Article 21 of the Indian Constitution safeguards an individual's absolute autonomy in making intimate decisions about their personal life. Similarly, in *K.S. Puttaswamy v. Union of India*⁹³⁰, the Court emphasized that the "right to privacy" must be viewed through a personalized lens, ensuring full autonomy over one's own body. The Court further clarified that the right to privacy is essential to exercising any other fundamental rights outlined in Part III of the Constitution.

In *Navtej Singh Johar's* case, the Court also highlighted the inseparable link between "choice and dignity," noting that it is impossible to fully realize human dignity if the freedom to make personal choices is restricted. It is time for the judiciary and Indian society to adopt a more progressive outlook on marriage. In light of the cases of *Puttaswamy* and *Joseph Shine's* judgments, which firmly established the right to privacy as a fundamental right under Article 21, the provision for Restitution of Conjugal Rights (RCR) should be declared unconstitutional.

CONCLUSION:

The decree of restitution of conjugal rights, though originally intended to preserve marriages, falls short of guaranteeing a healthy relationship between spouses. While the provision aims to promote reconciliation and prevent the breakdown of marriages, it has lost its relevance in today's evolving social context. The reality is that compelling two individuals to live together does not ensure a harmonious relationship, and often, the underlying issues remain unresolved. Although the provision was designed to prevent the degradation of societal values by keeping marriages intact, it has, in many cases, led to abuse and redundancy. Furthermore, the provision can be misused, as its intent can be overshadowed by ulterior motives when one party files for restitution.

⁹²⁹ Jurist News: Restitution of Conjugal Rights: A peril to Fundamental Rights in India, Khushi Gupta and Vishaka Shakya
<https://www.jurist.org/commentary/2023/01/khushi-gupta-and-vishaka-shakya-conjugal-rights-india-womens-rights/> (last visited: 20th October 2024)

⁹³⁰ *K.S. Puttaswamy v. Union of India*, MANU/SC/1044/2017



As societal norms and the concept of marriage evolve, so too must the laws that govern them. The provision for restitution of conjugal rights, despite its noble intentions, now clashes with the constitutional rights enshrined in Articles 19 and 21, including personal liberty and privacy. The judiciary must adopt a more progressive approach to marriage, one that respects individual autonomy and mutual consent. Rather than forcing spouses to comply with restitution decrees, a more modern solution would be to establish committees for reconciliation, allowing both parties to make informed, voluntary decisions regarding the future of their marriage. Ultimately, the success of a marriage lies in mutual understanding and respect, not in legal compulsion. The law must evolve to reflect these values, prioritizing dignity, choice, and individual rights.

