

Conjugal Right And Right To Privacy

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Abstract

A ruling that reestablishes the marital bond between a couple who has been legally separated is known as the “restitution of conjugal rights”. The primary purpose of the decree is to protect the conjugal rights of the couple; nonetheless, this provision compels an individual to cohabit with other people, regardless of whether or not they like to do so. Does this decision go against the principles of the “right to privacy” that each spouse is guaranteed by the constitution? Regarding this matter, the SC stated that the main purpose is the couple's ability to continue living together. In spite of this fact, the SC of India failed to recognise that it was interfering with the personal liberty of a person and taking away his or her “right to privacy”. This occurred despite the fact that morality and good conscience, sexual autonomy, and the dignity of a person are all extremely important factors to consider.

Keywords

Conjugal, restitution, right, right to privacy, dignity

Introduction

Marriage is a spiritual and powerful union between two people and two families. Marriage unites two sets of parents and kids. When a marriage isn't working, one partner may feel uncomfortable living with the other.

The “restitution of conjugal rights”, on the other hand, grants one spouse the authority to invite the other to resume cohabitating with them after a separation or divorce. In spite of the fact that this right appears to be legitimate when viewed from the perspective that it is a solution or an opportunity to preserve the relationship and the family, the same does not appear to be the case when viewed from the perspective that it compels one to remain with a person with whom he

or she does not wish to remain. As a result, this right has always been a very contentious issue, and there have been doubts raised about the constitutionality of it, specifically surrounding the subject of whether or not it infringes on the “right to privacy” that is provided by the Constitution. “Does this right violate the ‘right to privacy’ of a spouse by requiring that person to live with the other spouse, so ripping the right over the person's own body?” The article deals with the right to privacy as a violation in conjugal right cases.

Historical Background

The concept of restoring lost conjugal rights can be found in the Jewish legal tradition. This decree is not referenced anywhere in the Shariah or the Dharmashashtra. This law was adopted in India during the period of British Rule, and it is the sole matrimonial remedy that was made under the general law of the British. In the court case known as “*Moonshee Buzloor Ruheem v. Shumsoonissa Begum*”, the idea of “restitution of conjugal rights” was presented for first time.¹

In addition, the woman was treated no differently than any other piece of property during that time, and the marriage itself was seen as little more than a commercial transaction. Later on, the English Society became completely opposed to this practice, which demonstrates that it is a very harsh law that has been abused by the British people. As a result, the Law Reforms (Miscellaneous Provisions Act) of 1947 brought about its abolition in England.²

Legislative framework

The idea that a husband and wife should maintain a close physical, emotional, and mental connection throughout their marriage, also known as the comfort consortium, is the foundation of the marital tie. The recovery of conjugal rights is addressed in Sec. 9 of the HMA, which was passed in 1955 in the country of India. In the past, there was no provision for restitution of marital rights under Islamic law; nevertheless, Islam later adopted aspects of the English legal system in the wake of the British Raj, and these provisions are now included in Islamic law. The “restitution of conjugal rights” is made available u/s 32 and 33 of “Indian Divorce Act, 1929” for the Christians. It is also made available to Parsis u/s 36 of the “Parsi Marriage and Divorce Act, 1936. Additionally, it is made available under Sec. 22 of the Special Marriage

Act, 1954 for the individuals who married under this provision”. [Note: “Sec. 32 and 33 of the Indian Divorce Act were repealed in 1954.”]

To file a petition u/s 9 of the HMA, 1955,

1. “Either one of the spouses should withdraw from the society of the other without a reasonable excuse.
2. The statement of the petitioner should be the truth.
3. There shouldn’t be any legal ground that will dismiss the petition.”

Judicial Precedents

The restitution of marital rights is currently being included into personal laws, which raises the question of what will take place in the event that personal law infringes against basic rights. Is it possible that Article 13 could be interpreted so that it does not apply to personal law? In “*State of Bombay v. Narasu Appa Mali*”³ it is clearly stated, “the personal laws must include the purview of Article 13 and, therefore, to be a valid law, it has to pass the test of fundamentals rights.”

In “*Maneka Gandhi vs. Union of India*”⁴, it is said that “*the decree on the ‘restitution of conjugal rights’ is lawful and it is not compelling the unwilling wife to live with her husband. Then the Sec. 9 of the HMA does not violate Article 21 of the Constitution.*”

In Pakistan, “Sec. 5 of the West Pakistan Family Courts Act, 1964”⁵, deals with the “Restitution of Conjugal rights”. According to the laws of Pakistan, “the court has no power to pressurize the wife to go to her husband’s house in the execution of a degree of Conjugal right that was obtained by the husband. But the court has the power to attach the property of the wife, it was not against the injunctions of Islam but it is prejudicial to the wife's right.”⁶

Is there a possibility that this marital remedy infringes upon one's “right to privacy”?

Even if the “right to privacy” isn't specifically called out as one of the essential rights in the Indian constitution, it is nonetheless considered to be a component of personal liberty. The “European Convention on Human Rights”, which was held in 1953, makes a point of expressly recognising this idea. This right is not an unqualified one. Our bodies, our feelings, our thoughts, our possessions, and anything else that is an integral part of who we are, are all protected by our “right to privacy”.

In 1983, the *Andhra Pradesh HC*⁷ declared that Sec. 9 of the HMA, which provided for the “restitution of conjugal rights”, was in violation of the state's constitutional provisions and therefore null and void. The bench held, “forced a person to live with his/her spouse violated the ‘right to privacy’ in the Indian Constitution.” This judgment was later overruled by Delhi HC in the case of “*Harmander Kaur v. Harvinder Singh Choudhry*”,⁸ and the SC later upheld the verdict of the Delhi HC in the case of “*Saroj Rani v. Sudarshan Kumar Chadha*.”⁹ The most important question that “has been at the center of this discussion is whether or not the ‘right to privacy’ extends to the sphere of the home and the marital relationship.”

In “*Gobind v State of MP*”¹⁰, the SC held, “the “right to privacy” protects ‘the personal intimacies of the home, the family, marriage, motherhood, procreation and child rearing.’ This definition seems to treat the home as a private space where the law could not interfere.”

In “*K.S. Puttuswamy v Union of India*”¹¹, the SC held, “individuals have a “right to privacy” which grants them complete autonomy over their body.”

The Andhra Pradesh HC¹² had noted, “the enforcement of a decree of Sec. 9 compels a person to have sexual intercourse with her spouse, thus depriving her of control over her own body”, but Delhi HC opposing this view noted, “the impugned Sec. aimed at ‘consortium’ and not at ‘cohabitation’. ‘Consortium’ has been defined as ‘companionship, love, affection, comfort, mutual services, sexual intercourse’.” The Delhi HC noted, “sexual relations are not the ultimate goal of a marriage and that “restitution of conjugal rights” aims only at compelling the

parties to a marriage to live in the same household and does not compel them to have sexual intercourse.”

A woman's ability to conceive children is limited when she lives with her husband. Therefore, even if Sec. 9 of the HMA does not mandate that “partners engage in sexual activity, forcing a woman to stay with her husband in the matrimonial home puts her at risk of marital rape, deprives her of autonomy over her own body, and therefore violates her right to privacy. This is the case even if Sec. 9 of the HMA does not mandate that partners engage in sexual activity.” In “*Joseph Shine v. Union of India*”,¹³ the SC noted, “the “right to privacy” depends on the exercise of autonomy by individuals. If an individual is disabled from exercising his/her the “right to privacy” then the court must take steps to ensure that the person’s right is realised in its fullest sense.” The Court noted, “an individual’s right to privacy cannot be infringed by regarding familial structures as private space.”

After these judgments were handed down, a petition was presented to the SC in which the constitutional legitimacy of “Sec. 9 of the HMA and Sec. 22 of the SMA” were questioned.¹⁴ The petitioner argued, “granting a decree for restitution of conjugal right is a "coercive act" on the part of the state because it forces a spouse to live with another spouse against his or her will. This argument was made in response to the state's decision to grant a petition for restitution of conjugal right. In addition, the conduct is illegal since it violates an individual's right to sexual autonomy, as well as their ‘right to privacy’ and the right to live a decent life, all of which are guaranteed by Article 21 of the Constitution.”

The petitioner contended, “despite the fact that these Sections provide a right to both the husband and the wife to approach the court, however, these Sections are discriminatory against women, and women are treated as 'chattel' by these laws. This argument was made in light of the fact that these Sections provide a right to both the husband and the wife to approach the court.”

Conclusion

The sole objective of the reestablishment of “conjugal rights” is to facilitate the reconciliation of married couples who have been estranged for no apparent cause. There must be some

disagreement between them because it is impossible for one person to cut themselves off from another without there being a good basis for doing so. A decision of “restitution of conjugal rights” that forces a person to live against their will in order to reunite them cannot succeed in doing so because the feelings and emotions involved in a marriage are too strong. If the nation from which we adopted this law has since done away with this directive, it begs the question why we continue to follow it. Despite the fact that the edict does not appear to favour either gender, it throws an undue burden on a woman's ability to maintain her privacy. The trend in today's society is for individuals to place a greater emphasis on protecting their personal space; consequently, the legal system ought to adapt to reflect this shift. As a result, the court ought not to become involved in issues concerning conjugal rights.

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