



# Challenge to Restitution of Conjugal Rights

## Why in News

The [Supreme Court \(SC\)](#) is going to hear a fresh challenge to the provision allowing restitution (recovery) of **conjugal rights** under **Hindu personal laws** ([Hindu Marriage act 1955](#)).

## 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** recognises one aspect of conjugal rights — the right to consortium and protects it by allowing a spouse to move court to enforce the right.
- 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  - Incidentally, in **1970, the U.K repealed** the law on restitution of conjugal rights.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  - When either the **husband or the wife has, without reasonable excuse, withdrawn from the society of the other**, the aggrieved party may apply, by petition to the district court.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 2019, 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 2019 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.
    - How can courts preach autonomy of the body and then turn around and decree otherwise.
- **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 **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.**

## Way Forward

- 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.**
- When these wives, tired and broken by cruelty, leave the husband's house, **a decree of restitution of conjugal rights is a noose around their necks.**
- 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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