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VALIDITY OF RESTITUTION OF CONJUGAL RIGHTS

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BBA.;LL.B.

2ND YEAR

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ABSTRACT

Family is solid pillar of a society. The members of the family must be united by love not by force. Union by love makes the family stronger to survive in the society. One should stay in family with one's full consent and willingness not by any others force, which makes the family bond weaker.

“Family should be the place where you can be your most complete self. Where you're accepted and appreciated, seen and valued, even in moments of disagreement. It should be your soft place to fall, the place where you're reminded that no matter what happens to you, in the face of your deepest challenges, you are loved.”

The members of family should be united by their own wish not by others influence. Union by force makes the relationship, between persons, bitter. Marriage is important event in the family which creates the family itself. The partners of marriage should marry each other on their own consent. They should not be forced by others or one on another. Forcing one to enter a relationship, which they don't like, due to any reasons, won't last longer.

“Getting married at the right age is not important. Getting married to the right person who will love you for ages is important.”

During these times, the cases in family courts increase mostly for divorces. There are also provisions which make the couple to reunite after a separation for better understanding. This was the opportunity given to one of the partners who wish to reunite. This paper deals and analyses about the **validity of restitution of conjugal rights**, provided by the statute, to the partners of a marriage. It deals with validity of Section 9 of Hindu Marriage Act, 1955.

Key Words: Marriage, withdrawn, restitution of conjugal rights, constitutional validity.

INTRODUCTION

Restitution of conjugal rights has been provided by the **Hindu Marriage Act, 1955** through **Section 9**. It gives a chance to one of the marriage partners, who wish to be together, to reconcile with the other through legal procedures. It available to those, whose spouse withdrawn from society, without any reasonable ground to validate the separation. The Family Court looks into the case and makes the spouse to reconcile with the other if reasonable grounds are missing.

One won't left one's spouse merely on any unreasonable or unjustified ground. When one left the other, he or she must has a reason for oneself to withdrawn from the society, marriage. Forcing

the other to reunite with one through the court procedures, judicially may be legally valid but not emotionally. The law made by the law makers must provide equal rights to all people in the country where the law is applicable. It should respect the feelings of all people who follow the law. It should not be biased. Section 9 of Hindu Marriage Act gives chance to one but forces the other to reconcile, who left with on their own consent. This provision makes the person live with one who they don't want to live with. This will affect both the persons marriage life and their family. Marriage life will smooth and happy only if both the partners to the marriage love each other and like to live together. Even if one is not willing to continue their marriage life with the other, family will not be happy. Forcing one to live with other won't make a family happy. **Mere physical union won't make a family stronger.** Union by love makes a family strong.

The section 9 of Hindu Marriage Act violates person's constitutions rights provided to them by the Constitution of India. It violates person's personal liberty provided under Article 21 of the Constitution of India. It also violates Article 14 which gives equal rights to all. It also violates the freedom of association provided through Article 19 of the Constitution of India. The law of restitution of conjugal right violates the fundamental rights of person provided to them through the Constitution of India.

This restitution of conjugal rights, therefore, affects the person emotionally as well as constitutionally. Thus, the provision is not valid by emotional and constitutional, which I would like to express through this paper. This paper explains the validity of restitution of conjugal rights in detail with the help of reference case laws.

OBJECTIVES OF PAPER:

- To know the meaning of restitution of conjugal rights
- To know the scope of Section 9 of Hindu Marriage Act, 1955
- To check the emotional validity of restitution of conjugal rights
- To check the Constitutional validity of restitution of conjugal rights
- To give suggestions over this provision

RESTITUTION OF CONJUGAL RIGHTS – MEANING

Restitution of conjugal rights means **resuming marital life** between husband and wife. The

provision is made to reconcile who were separated to get along with each other. The petition filed by any of the spouses makes the court to intervene between persons make them reconcile.

Even though restitution of conjugal rights is relief to one spouse, who got abandoned by other, it is a forceful act on the other to reconcile with one whom he or she dislike and left.

SECTION 9 OF HINDU MARRIAGE ACT

Section 9 of Hindu Marriage Act, 1955, states that

“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 petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

[Explanation.—Where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.]”

Section 9 of HMA tells us that when either of the spouses withdrawn from other without any **reasonable cause**, the party who got abandoned may **file a petition** on another to **reconcile** with him or her. The court after investigation and if satisfied, that there is no ground to deny the grant, may grant the restitution of conjugal rights to the aggrieved party. When the court says that there is no reasonable ground to withdraw from society of other, then the burden of proof lies on the respondent, who withdrawn other, to prove the reasonable cause.

Conditions for granting decree:

The conditions where the court will grant restitution of conjugal rights are,

1. Either of the party withdrawn from the society of other on reasonable cause.
2. The court is satisfied that the statements mentioned in petition are true.
3. There is no legal ground that the petition should deny.

Meaning of reasonable cause:

The term ‘reasonable cause’ used under section 9 of HMA means that,

1. Reasonable excuse which may grant the respondent marital relief.
2. The reasons which are grounds of separation but not mentioned under grounds for divorce.

3. The act or omission of petitioner which makes the other hard to live with the petitioner.

The reasonable excuses are some of the following:

- i. Cruelty
- ii. Impotency
- iii. Dowry demand
- iv. False accusations of adultery
- v. Act or omission of petitioner which makes it impossible for the other to continue living with

Here, the court intervenes in the personal life of two persons. Court should not decide whether the ground of separation is reasonable or not, even though one of the spouses approach the court for restitution of conjugal rights. The decree of reasonableness differs from one to other. The court can't force one to live with other, on the basis that the separation is not reasonable cause, in their view.

OPPOSITION TO RESTITUTION OF CONJUGAL RIGHTS

There are many people who opposed the remedy of restitution of conjugal rights, which was introduced in the case of **Moonshe Buzloor Ruheem vs. Shumsoonissa Begum**. Some of them were:

- **Khardekar**, the former Member of Parliament opposed the restitution of conjugal rights.
- **Brombley**, an author has opposed the restitution of conjugal rights in his book.

RESTITUTION OF CONJUGAL RIGHTS ON OTHER STATUES

In our country not only in HMA, there are also various acts which provide restitution of conjugal rights. There are different acts because each of the religion has their own act on marriage. The other statues are,

- Section 32 and Section 33 of the **Indian Divorce Act, 1869**
- Section 36 of the **Parsi Marriage and Divorce Act, 1936**
- Section 22 of the **Special Marriage Act, 1954**

CONSTITUTIONAL VALIDITY OF RESTITUTION OF CONJUGAL RIGHTS

I say that the restitution of conjugal rights violates the fundamental rights of human provided to them through the Constitution of India. It violates the rights given through **Article 14, article 19, Article 21** of the Constitution.

Infringement of Right to Equality (Article 14)

Article 14 of Indian Constitution state that,

“The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”.

This article under the Constitution clearly mentions that there is equal rights to each and every person in the country, no one have the right to deny or violate other’s right for any reason. The law made for any field in the country should not violate this. Any law made in the territory should abide by the Constitution. Law made in the territory should protect all people equally; there should not be any bias. Laws should protect all the people in equal manner.

In my view, the restitution of conjugal rights violates article 14, equality of people. The provision of restitution of conjugal rights affect the equality provided to the person who abandoned the other by granting decree to the petitioner. If the court grants decree to restitution of conjugal rights, it automatically affects the equality of the respondent. The respondent has the right to equality under law. He or she can’t be forced to reconcile with the one they dislike. It seems like biased towards the petitioner. The court will fail to hear the side of respondent if they didn’t find any reasonable cause of their view. The respondent has the equal right under law that he or she can leave his or her spouse if they dislike or due to any reason. The court should not compel one to resume their marital life after their separation.

In cases like *Ojaswa Pathak v. Union of India*, and *Shakila Banu v. Gulam Mustafa*, it was held that the provision for restitution of conjugal rights is violative of article 14 of the Constitution. Hence in my point of view the provision of section 9 of HMA is violative of article 14 of the Constitution.

Infringement of freedom of association (Article 19(1)(c))

Article 19(1)(c) of the Constitution of India states that,

“All citizens shall have the right—

(c) to form associations or unions”

According to this article, every citizen in the country has the right to associate with anyone they like. No one can force or compel anyone to associate with other against their will. Citizens of the country have the freedom to associate with anyone they love on their own will or wish.

In my view, the provision for restitution of conjugal rights is violative of article 19(1)(c). Every citizen has the right to associate with anyone they like; they can't be forced or compelled to associate with anyone. The court forces the respondent to live with the petitioner whom they dislike and withdrawn from their society. The court involve in the freedom of respondent by forcing them to reconcile with the one the abandoned on their own will.

In the case of **Huhhram v. Misri Bai**, the wife left her husband as a result of her father-in-law had an evil look on her and also the husband treated her badly. Even then, the Madhya Pradesh state supreme court granted a decree of restitution to the husband. It is concluded that if she was assaulted by her father-in-law as a result of her association along with her husband due to the decree, then the decree of the court would be accountable for the mishap.

Further, within the case of **Atma Ram v. Narbada Devi**, the Rajasthan state supreme court granted a decree of restitution in favour of the wife even once the husband clearly declared that he doesn't wish to measure along with her. This clearly violates the liberty of association of the husband.

Hence in my point of view the provision of **section 9 of HMA is violative of article 19(1)(c)** of the Constitution of India.

Infringement of Right to Privacy (Article 21)

Article 21 of the Indian Constitution states that,

“No person shall be deprived of his life or personal liberty except according to procedure established by law”.

According to this article, person's personal freedom is protected. No one can't interfere in the personal life of other. Every person has their own personal liberty. No one shall be deprived of

their personal freedom. Person's personal liberty should not be disturbed or violated by anyone or any law.

In my view, restitution of conjugal rights violates this article. When one on their own will leave their spouse, it is their own freedom; it should be respected. No one, even the court, has the right to interfere in their personal freedom. If the court forces the person to reconcile with other, through the decree of restitution of conjugal rights, it affects the personal freedom of that person.

In the case of *T. Sareetha v. T. VenkataSubbaiah*, where it was argued that this Section is constitutionally invalid as it violates the fundamental right to liberty guaranteed under [Article 21](#) of the [Indian Constitution](#). The High Court of Andhra Pradesh held that Section 9 of HMA is unconstitutional and void as it is violative of personal liberty which is a fundamental right guaranteed under Article 21 of the Indian Constitution. It was stated by the Court that "*If the wife is compelled to live with her husband, this will also violate her right to privacy.*" and the Court further stated that "*the remedy of restitution offends the inviolability of the body and mind and invades the marital privacy and domestic intimacies of such person.*"

In the case of *Gobind v. State of Madhya Pradesh*, in the year 1975, when the Supreme Court held that although the right to privacy can be extended to personal intimacies of home and marriage, it is a private space of the individual and law should not interfere with the same.

Hence, **section 9 of HMA is violative of article 21** of the Indian Constitution, clearly.

EMOTIONAL VALIDITY OF RESTITUTION OF CONJUGAL RIGHTS

Restitution of conjugal rights is not constitutionally invalid but also emotionally. In my point of view, the provision of restitution of conjugal rights is violative of person's emotional feelings. When the court grants a decree of restitution of conjugal rights, it seems like forcing a person to live with someone they don't like and abandoned them on their own wish due to some reasons. The provision says that the court will grant decree if there were no reasonable cause and given some reasonable causes which were reasonable from their view. The one which is reasonable for someone may not be reasonable for the other. It can be proved that their withdrawal from the society of their society is reasonable by the act. The act may miss many reasons to separate from their spouse. One can't be forced to live with other. It will not only affect the life the respondent but also the petitioner. The petitioner can't live with one who dislikes them. The one who abandon

their spouse does the act due to any reasons which may be disclosed or undisclosed to another. If they wish to live with other they will continue their marital life with them, if not they need to separate for the benefit of both the partners of marriage. If one, due to compulsion of the decree of the restitution of conjugal rights, resume his or her marital life with their spouse it won't change their mind after their reconcile. They will continue their marital life only for the sake of the decree granted by decree. They won't live happily or willingly. It will affect their emotional feelings. This may disturb them mentally which may lead to suicides or any mental defects in extreme cases. In any case or situation one should not be forced to enter their marital life. Marital life is an important part of one's life. One should enter their marital life with their full consent and wish. When both the parties to the marriage were happy on their marital life, then only it will be a good life for both in further. If not, it will affect both of their lives. Even though the object of the provision is to make the parties to the marriage reconcile and get along with each other well, it forces one of party to enter into a marital life with they didn't like.

*Hence, it is very obvious that the **section 9 of HMA violates person's personal emotions**. One's feeling should be respected. It should not be dishonored by any not even by the court. Every person's feeling should be respected; they should be forced even it is beneficial to the other.*

CONCLUSION

When a person is separated from their spouse on their own wish and will, it will be hard to unite them emotionally back. The restitution of conjugal is a remedy for one but it is forceful act for the other, which should not be done by the court. Spouses getting along with each other well are good but at the same it should be a forceful union; it should be willful union by both of them. The provision makes the one live with other whom they dislike and don't want to live together with. The provision is violative of fundamental rights of people provided to them through the Constitution of India. It also emotionally affect the party to marriage.

Hence, the provision of section 9 of Hindu Marriage Act is void, according to me.

SUGESSTIONS

In my opinion,

“A Horse can be brought to the water pond but cannot be compelled to drink”

The provision of section 9, the restitution of conjugal rights, reminds me of the above mentioned proverb. I relate the restitution of conjugal rights with this proverb. Like the proverb, one can be brought to live with other by the decree, but they can't be forced to live with them happily. Happiness of the person can't be brought by compulsion.

The restitution of conjugal rights is meaningless, as it forces someone to live with other in which they are not interested. No one should be forced to enter a marital life which they don't like which will affect the life of both the partners of the marriage. A life entered by one will not turn happy as shown in cinema. The feelings of the person should be respected. One's right should be interfered.

*I would like say that reconciliation is good but it should not be done in a forceful way. Reconciliation should happen only after the disputes, which are the reasons for separation, have settled down. A **Counseling Committee** can be formed by the government instead of the provision. **The provision should be repealed as it is a forceful way of reconciliation.** The Counseling Committee should function only for counseling and act as a medium to solve the disputes between the spouses. No other family members should involve in that process, even their parents. The committee should make the husband and wife solve their disputes on their own. Involvement of the committee should be only as a medium and in some cases as a advisor not more than that. If not it will also become a forceful way of reconciliation, which is not the purpose.*

When a person who got abandoned by other really wishes to reconcile with the other, they may approach the Counseling Committee for the support and medium. After few talks between of them, if they wish they will reconcile with each other. It will help both them to understand each other better and more. It will also increase the bond of love between the both.

“Even one minute talk of loved one can change the mind”

Talking to each other help them reconcile in a stronger way than th provision give. Solving the disputes on their own make them understand better.

Therefore, the provision of section 9 of Hindu Marriage Act and other provision in various acts related to the restitution of conjugal rights should be repealed by the judiciary.

Hence, my opinion on the restitution of conjugal rights is to repeal the provision and to set up a Counseling Committee for reconciliation of husband and wife. Reconciliation should happen in a smooth manner not in forceful way.

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