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# **THE RESTITUTION OF CONJUGAL RIGHTS – RIGHT OR WRONG?**

AUTHORED BY - GINNI CHOPRA

India is a place full of diversity in various sections of society such as religion, customs, languages, people, etc. Due to diversity, it is believed that every citizen who lives in this country has different types of customs and practices during different times of their lives. As we can take the examples of rituals in marriage as in North Indian wedding the sikhs perform a ritual known as jaggio which is done the day before the marriage, at night, in this ritual all the relatives go to a home in a neighbourhood and ask for oil to be poured in the Diya of the jaggio and some Hindus the garohi has been done on the date of marriage at morning where all the family go the temple and fill the water from the temple and the bride or the groom are required to take birth by the help of that water only. In South India especially In Tamil Nadu, the 'Kashi Yatra' is a unique ritual which is done by the groom where the groom pretends to leave for a pilgrimage and is expected to return and marry the bride. In East India, the Bengali weddings feature a unique ritual the 'Saat Paak', where the bride encircles the groom seven times to signify their union between the two. There are other Indian states where there is cultural significance. For example, in Gujarati marriages, the 'Grah Shanti' puja is performed to guarantee a peaceful and happy married life. In Kerala, the purpose of the 'Muhurtham' ceremony is to ascertain the fortunate moment of marriage, emphasising the significance of astrology and kundli in marriage customs. There are some Community-Specific Practices also as in Parsi's The 'Adarni' ceremony is a pre-wedding ritual where the groom's family presents gifts to the bride's family as a token of love and in Indian Christian weddings often combine Western traditions like the exchange of rings with Indian customs such as the 'Mantra Kodi', where the groom gifts a sari to the bride. This diversity in rituals shows that in India marriage is considered an important part of life as in Hindus there are four stages of an individual's life first one is considered as Brahmacharya the student life from 0 to 25 years then grihastha or the household life from 25 to 50 years in this the marriage of an individual should be performed and also the person should have their children, then the third stage is vanaprastha or the retired life from 50 to 75 years and the last stage is sanayasa from 75 years to till death. Marriage is an institution that is present in every religion whether Hindu or Muslim or any other religion. Marriage in Hindu's is governed by the Hindu Marriage Act of 1955 and Muslim marriage is governed by the Muslim Personal law (Shariat)Application Act,1937.

Marriage in Hindus is considered a sacramental union between a man and women, manu further said that “once a man and woman are united in marriage, they must see that there are no differences between them and they remain faithful to each other in marriage” as in Hindus they consider marriage as a sacramental union that is an eternal union which cannot be dissolved in later lives also. According to manu husband and wife are united not only in this life but even after death in the other world. But there are some situations where a marriage can get dissolved according to section 13 of the Hindu marriage act 1955 which was mentioned by Narada and Parasra where a woman can abandon her husband they are

1. Where the husband is, missing for 7 years
2. When he became an ascetic
3. When he is dead
4. When he is impotent
5. When he is an outcaste

But there exist many matrimonial remedies where a marriage can be saved one of them is restitution of conjugal rights which says that when either the husband or the wife has without logical excuse, withdrawn from the society of the other, the aggregated party may apply, for restitution of conjugal rights and the courts on being satisfied by the truth made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights. In simple words, we can say that in this remedy the court orders the other party who has left the house to move back to his or her husband or wife and maintain the conjugal rights. The restitution of conjugal rights may sometimes leads to coercion against a spouse. As in this, the spouse has been forced to cohabit with another which infringes on individual’s autonomy and freedom. Marriage should be based on free and mutual consent and affection and not coercion. Compelling someone to resume again the marital duties against their free will can lead to further resentment. This remedy can be misused by the patriarchal nature of our society and can increase the cases of domestic violence against women. This can be converted as a tool for control rather than reconciliation and undermining the very foundation of a healthy marital relationship. From a human rights perspective, the concept of restitution of conjugal rights is problematic as it leads to conflict with the right to personal liberty and privacy. As in this the spouse who clearly doesn’t want to live with his/her partner is being forced to live with them. Where the court sees that the withdrawal of the person has been done because they had some reasonable ground to leave his or her spouse then the burden of proof will be on the defendant to prove that. The decree of the reinstatement of conjugal rights will be issued under Order XII Rule 31 of CPC. This remedy is mainly questioning or challenging the fundamental rights of the defendant if that person doesn’t

want to live with his or her spouse because of any reason and they should not force anyone to live with anyone if they don't want to. This question was raised in the case of T saree that v. Venkata Subbaiah (1983) Andhra Pradesh high court termed this as violative of article 21,19 and 14 called it as uncivilized barbarous and an engine of oppression. The reasoning that was given by the court, in this case, was that sexual cohabitation is an integral part of the degree of restitution of conjugal rights, so the degree chooses the other person not only to live with each other but also to have sexual intercourse with each other. The decree is taking away the freedom of a person or his or her own body and nothing is more wrong than degrading human dignity and monstrous to the human spirit than to subject a person to a sex act. It is violative of Article 14 of the constitution of India 1950 as this treats men and women equally but in society, the man is given more power and women are always degraded in certain cases so for the protection of women required steps should be taken that everything she is crossed checked that whether there was any reasonable reason on that that the women have left the house and also before any judgment, it should be checked that whether the concerned women were not pressed in her in-laws but thorough inquiry. In another case, Harvinder Kaur v. Harvandar Singh (1984) the Delhi High Court took a very different approach to section 9 of the Hindu m marriage Act and not only upheld the validity but also discussed the advantages the court said the restitution is not only of sexual intercourse but also of cohabitation and there is nothing offensive about it. The court cited sections 23(2) and 23(3) of the Hindu Marriage Act which provides measures to reconcile the couple before giving a divorce. The court said section 9 is a litmus test for divorce and if the restitution is disobeyed it will be considered as aground for divorce. So, it says that section 9 has 2 purposes whether as an attempt for reconciliation of the married couple or second as a measure for divorce. In this case also the right of the party that has left the house has been abridged if a person doesn't want to live with his or her spouse they should not be forced to do so and can take divorce. In another case Saroj Rani v. Sudarshan Kumar (1984) the Supreme Court agreed with the case of Harvinder Kaur v. Harmandar Singh the court discussed that the financial sanction by way of attachment of properties which has been provided for disobedience of the decree under order XII rule 32 of CPC is only an inducement of the parties to live together to allow them to settle differences amicably. Court said the right of the husband or the wife to the society of the other spouse is not merely the creature of a statute such a right is inherited in the very institution of marriage itself have sufficient safeguards in section 9 to prevent it from tranny.

In my opinion, whether a husband or wife has left the house for any reason they should be consulted first personally and they should try to settle the matter out of court by various means

such as mediation or arbitration etc, and even after the settlement if they still think that they can't live like this or they want separation from one another they can file a divorce case. The restitution of conjugal rights should only be used when the spouse has left the house for an illogical reason and after a thorough investigation the remedy of conjugal rights should be used by the court.

