

RESTORING OR DAMAGING: A QUESTION THAT STILL AWAITS ITS ANSWER IN THE CONTEXT OF RESTITUTION OF CONJUGAL RIGHTS.**Sonia Kailash Pandey**

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ABSTRACT

The text of Hindu law recognized the principle "let mutual fidelity continue until death. "In order to ensure that various personal laws provided for their own provisions. Under the Hindu Personal Law particularly the Hindu Marriage Act, 1955 there is a positive relief provided under Section 9 of the Act in the name of Restitution of Conjugal Rights. Restitution of conjugal rights as a provision ensure that both the husband and the wife should fulfill the basic tenets of a matrimonial bond i.e., the right to have society of each other and the right to have marital intercourse. However the compulsion inherent in these tenets have presented this remedy as being barbarous and savage which constituted the grossest form of violation of any individual's right to privacy.¹ The question which was answered in 1938² has been again raised before the Supreme Court of India in February 2019.³ It was last heard in July 2021 and since then the matter is still pending. The debate has taken heat in the backdrop of debate over criminalization of marital rape and it is believed that forcing restoration of marriage would deny the sexual autonomy of women and lead to increase in marital rape. A concept that is yet to be recognized by the Supreme Court and our legislators.

INTRODUCTION

Marriage an important part of Indian culture is considered to be one of the most important Hindu samskaras or sacrament. In Rig Vedic civilization the celebration of marriage is regarded as an important institution and is considered as heavenly and sacred. The Vivaha Samskara, which had its roots in the Rig Ved Samhita and was founded on the celestial union of Surya and Soma, was viewed as a religious sacrament, a ritual blessed and approved for a greater goal, namely the development of one's divinity by adherence to dharma.⁴ Its significance lies in the fact that, it is that stage or ashrama of life in Hinduism⁵ on which the other three ashramas of life are dependant.⁶ It entails both rights and obligations. It's a union of not only two people but two different societies. The spouses share their society and live together. This concept of Hindu marriage as a sacrament is very important in Indian society because it reflects the people's traditional values and beliefs. No other relationship, no matter how close, share the same rights and obligations as that of between a husband and wife. The idea of this research paper is to understand the concept Restitution of Conjugal rights and analyze and bring forward the issues related to it. The research methodology that has been used for this paper is completely doctrinal where both primary and secondary resources has been referred and analyzed.

¹ T.Sareetha v. Venkata Subbaiah, AIR 1983 AP 356.

² Supra 1

³ <https://www.livelaw.in/top-stories/supreme-court-restitution-of-conjugal-rights-hma-special-marriage-act-cpc-208473?infinite-scroll=1> (Visited on 28.6.2023)

⁴ <https://www.jstor.org/stable/24764135?seq=3> (visited on 20.5.2023)

⁵ <https://www.learnreligions.com/stages-of-life-in-hinduism-1770068> (Visited on 20.5.2023)

⁶ <https://www.baps.org/Article/2011/The-Sixteen-Samskaras-Part-3-2256.aspx> (Visited on 19.5.2023)

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One of the primary goals of marriage is for spouses to live together, and one spouse is entitled to society, comfort, and a consortium of the other. Living together is a sign of this sharing. The core of marriage is the sharing of a common life, including all the joy and sorrow that life has to offer.⁷

The expectations of living together in a conjugal union is more in comparison to any other relationship, no matter how close it is. After a point it is generally presumed that a person has to get distant in space even from their parents or siblings due to different survival and social reasons, reasons which are basically need based sometimes intrinsically inherent or while other times created by societal pressure. Then it can be studies, career, growth etc. But despite all the evolutionary changes in the society a husband and wife are still expected to stay together as each other's rock solid support till death part them. That is the reason that marriage is not only considered to be sacred but *holy and inseparable union*.

However a Divorce decree can end a marriage” so it is no longer that inseparable and also brings forward a question more often than not that whether a marriage is a sacrament or contract”,but as long as they are in matrimonial bond, neither has the right to withdraw from the society or in simple terms life of the other spouse without any reasonable excuse. If any of the spouses do so then Law provides a positive remedy in the form of RCR⁸.

Besides that in India the remedy of restitution is available:

“To Muslims under the general law.To Christians under sections 32 and 33 of the Indian Divorce Act, 1869.To Parsi under section 36 of the Parsi Marriage and Divorce Act, 1936.

And under section 22 of the Special Marriage Act, 1954 for persons married under the Special Marriage Act”⁹

Albeit the emphasis of this research paper is to understand this remedy only from the perspective of Section 9 of HMA, 1955.

What is restitution of conjugal rights?

Simply if we break the terms into “Restitution” and “Conjugal Rights”, Restitution means- “restoration of something lost or stolen to its proper owner¹⁰, or restoring back”. “Conjugal rights means –mutual obligations and rights that are expected in general in a society. These rights include living together, marital intercourse, matrimonial comfort and obligations etc.¹¹ when we combine these two words together it means “Restoring back of these rights and privileges between those two individuals who were sharing that matrimonial bond. However the question that is pertinent is does this restoration happen in every situation i.e., can an aggrieved spouse claim the restitution whenever they want. The answer to this is “No”. Because it is only when the spouse has withdrawn unreasonably that is without any reasonable excuse that the aggrieved spouse can claim the restoring back of the conjugal rights. This remedy's primary goal is to encourage the continuation of the marriage and to repair the broken relationship between the spouses. But if the spouse has a valid reason to not be in the consortium of other spouse then this relief cannot be availed.

⁷ <https://www.ijcrt.org/papers/IJCRT1803177.pdf> (visited on 10.6.2023)

⁸ RCR- Restitution of conjugal rights –Section 9 of Hindu Marriage Act, 1955.

⁹ <https://vakilsearch.com/restitution-of-conjugal-rights> (visited on 24.6.2023)

¹⁰ Dictionary meaning

¹¹ <https://journalsofindia.com/what-are-conjugal-rights/> (visited on 26.4.2023)

Historical and Judicial antecedents:

Dharma and RCR has always have been taken together in hindu philosophy, which is one of the four essential pillars of Hinduism. Dharma refers to the duties and responsibilities of an individual towards oneself, family, society, and the divine. In the context of marriage, Dharma requires spouses to fulfill their duties towards each other, and the refusal to cohabit is seen as a breach of this duty. Hence, the remedy of Restitution of Conjugal Rights is designed to fulfill the objective that partners in marital bond should fulfill their obligations towards each other.¹².

The restitution of conjugal rights has been recognized by Indian courts since 1867, when it was decided in *Moonshee Buzloor Ruheem v. Shumssonissa Begum* that a husband may sue a wife for restitution of conjugal rights if the wife ends their cohabitation without justification. In *Maulvi Abdul Wahab v. Hingu*, the courts had already acknowledged the restoration of conjugal rights prior to this case.

In the instance of *Moonshee Buzloor Raheem*¹³, the husband did not treat her wife well. He deprived her out of her possessions and forced her to loose all her social relationships. So basically she was cut off from the society. The wife withdrew from the society of the husband. Even on request to unite back she chose to stay away. The husband requested his wife to restore back the relationship under the Specific Relief Act. The wife argued that neither the principles of justice nor Islamic law permitted him the custody of his wife. The husband argued that it is the duty of the wife to stay together with the husband even if the husband misbehaves as far as the tenets of Islamic law are concerned. It was made clear that claims for restitution must be filed in accordance with Muslim law, and that equity and good conscience are only used to complement Muslim law in cases when texts are unavailable.

The Indian Judiciary has been very instrumental in giving a wide perspective about the provision of RCR¹⁴. The Supreme Court and various High Courts have provided guidelines and clarified the scope and limitations of the provision. The judiciary has recognized the importance of restitution of conjugal rights in preventing marital breakdowns and has upheld the provision's validity.

Although this particular provision has been criticized for its violation of personal liberty and privacy. As it obliges a kind of forced cohabitation of one spouse with the other spouse even when they are not willing to. This can be seen as a violation of personal liberty. The provision also obliges a spouse to perform marital duties against their will, which can be seen as an infringement of privacy.

Moreover, the provision of restitution of conjugal rights has limited effectiveness in resolving marital conflicts. In many cases, the provision is used as a tool of harassment, and the parties are forced to cohabit against their wishes, leading to further marital problems. Further the eyebrows has also been raised for the gender bias of the provision, as it is usually the husband who seeks restitution of conjugal rights against the wife.

Despite its limitations, RCR remains a significant positive relief for spouses facing marital problems. It provides a legal framework for the reconciliation of marital relationships and encourages parties to resolve their issues amicably. The Statutory provision of restitution of conjugal rights has changed its perspective over time, and the judicial precedents have been one of the biggest contributor to it along with the awareness of the people in matrimonial bond towards their rights.

¹² Supra 1

¹³ *Moonshee Buzloor Ruheem & Another v. Shumsoonnissa Begum*; Privy Council July 4, 1867

¹⁴ RCR- Restitution of Conjugal Rights – Section 9 of Hindu Marriage Act, 1955.

Understanding Section 9, Hindu Marriage Act, 1955.

Section 9 of Hindu Marriage Act, 1955 which provides for Restitution of Conjugal rights read as follows: “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.”¹⁵

Further the provision provides an explanation which came into effect on May 27th, 1976, which reads that- “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.”¹⁶

Thus the essentials to avail the remedy of Restitution of Conjugal Rights are;

1. Spousal Relationship
2. One of the spouse has withdrawn from the society i.e., comfort, consortium of the other spouse.
3. This withdrawal is without any valid reason or reasonable excuse
4. The spouse from whose society withdrawal has taken place can file a petition in District Court for restoring back the conjugal rights
5. The District Court will satisfy itself with the veracity of the statements
6. The District Court will pass the Decree in favour of the aggrieved spouse.
7. But before the passing of decree the District Court will also ensure the absence of any legal grounds, which may prohibit passing of the decree in favour of the aggrieved spouse.

It is important to remember that there are few requirements of the remedy of conjugal rights. If the withdrawal from the consortium was caused due to justifiable reasons, the Court might not grant the remedy of this nature. The understanding of what constitutes a reasonable reason is important and has been interpreted by Courts a lot many times. However there is no complete list of what constitutes a reasonable excuse. It may change from case to case basis. However, some examples of reasonable excuses include:

1. **Illness or disability:** If one spouse is suffering from a serious illness or disability, it may be a reasonable excuse for the withdrawal from the company.
2. **Domestic violence:** If one spouse is subjected to domestic violence or cruelty by the other spouse, it may be a reasonable excuse for the withdrawal from the company.
3. **Adultery:** If one spouse has committed adultery, the other spouse can choose to withdraw from the society of other.
4. **Desertion:** If a spouse chooses to not to be in the company of other spouse and has left the company of the spouse and deserted so the other spouse has a valid ground.
5. **Refusal to stay in one abode together.**
6. **Any other grounds:** which make it difficult to stay as husband and wife.

Courts in India have provided for a deep understanding of what can be a reasonable excuse in variety of cases. Some of them are as follow:

¹⁵ Section 9 of Hindu Marriage Act, 1955.

¹⁶ *ibid*

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In the case *Smt. Sital Devi v. Bhagwan Singh 1990*, it was held by Rajasthan High Court that “if the withdrawal from the company is due to a reasonable excuse such as physical and mental cruelty, the remedy of restitution of conjugal rights cannot be granted”.

In *Sushila Bai vs Prem Narayan Rai*¹⁷, the court pointed out that “if the husband left his wife in her father’s home and did not maintain any connection with her, then it will be considered as withdrawing from the society of his wife and thus decree for restitution was allowed”.

In *Tirath Kaur vs Kirpal Singh*¹⁸, the question before the Punjab and Haryana High Court was “whether wife’s employment can be considered a ‘reasonable excuse’ to leave husband’s society and stay away from him”. The court applied the traditional approach and held that “the wife’s employment is not a reasonable excuse. The court further said that the wife’s first duty is to submit herself to her husband and remain under his roof and protection.”

In *Shanti Devi vs Ramesh Chandra AIR 1967*¹⁹, in this case the matter was decided by High Court with a progressive outlook. It held that “during the hardship of employment, if the wife withdraws from her husband’s company, then this withdrawal is considered a valid withdrawal and comes under the clout of reasonable excuse”. The proceeding for restitution was initiated by husband but the husband did not take any step for ten years for restitution. And even after passing of decree by the lower court no step was taken by the husband. Thus no decree for restitution was allowed.

Impact of the Decree of Restitution of Conjugal Rights:

Once the Court gives a decree, the judgment debtor must resume living with the decree holder. If the judgment debtor does not do so within a year, the decree holder may file for divorce on that basis.²⁰ According to Section 13(1A) sub section (ii) “Either party to a marriage, whether solemnized before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground-

(ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of [one year]²¹ or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.”

Thus no cohabitation between husband and wife despite the passing of decree of RCR can be a ground for divorce.

Constitutional validity

The question, whether the concept of restitution of conjugal rights is constitutional, and whether it violates the fundamental rights of an individual, has always remain in concern.

There has been various constitutional rights provided under the Constitution of India which has been very fundamental to the being of human existence. **Article 21** of the Constitution has been that platform in the Constitution which provides the breathing space whenever the rights are suffocated under any contingencies. Article 21²², guarantees the right to life and personal liberty. As held in the case of *Maneka Gandhi vs. Union of*

¹⁷ *Sushila Bai v. Prem Narayan Rai AIR 1986 MP 225*

¹⁸ *Tirath Kaur v. Kirpal Singh AIR 1964 Punjab 28*

¹⁹ *Shanti Devi v. Ramesh Chandra Roukar and Ors. AIR 1969 Pat*

²⁰ Section 13 (1A) of Hindu Marriage Act, 1955 w.e.f. 20.12.1964

²¹ W.e.f 27.5.1976 (earlier it was two years)

²² Article 21-Protection of Life and Personal Liberty-No person shall be deprived of his life or personal liberty except according to procedure established by law.

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India²³1978 SC, "...the expression 'personal liberty' is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of a man and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19." This has been interpreted by the Apex Court to include the right to privacy as well and very recently in *Hadiya case*²⁴, as a right to choose your life partner too beyond the binaries of religion. Thus it is about the basic existential right of an Individual to make choices related to his or her personal life, including the right to choose his or her life partner and going beyond that i.e., the right to live separately from the spouse if that's the need of the circumstances.

Despite Art.21 having such a wide amplitude the prevalence of Section 9 of Hindu Marriage Act, 1955 seems to be a paradox in certain situations. In this context, the constitutionality of restitution of conjugal rights has been challenged in various courts on the ground that it does not meet the established interpretation by the Apex Court of India on Right to Privacy. However, the courts have upheld the validity of the remedy on several occasions.

The Apex court, in *Smt.Saroj Rani v. Sudarshan Kumar Chadha*²⁵ 1984, held that "the remedy of restitution of conjugal rights does not violate the right to privacy of an individual. The court observed that the right to privacy is not absolute and has to be balanced with the interests of the society". The court further held that "the remedy is not meant to force an unwilling spouse to resume cohabitation, but is intended to give an opportunity to the parties to reconcile and save the marriage".

Similarly, in the case of *Harvinder Kaur v. Harmander Singh*²⁶ 1985, the court held that the "remedy of restitution of conjugal rights does not violate the right to life and personal liberty of an individual". The court observed that "the remedy is a positive step towards the prevention of the breakdown of marriages and is intended to promote the welfare of the society".

In contrast, In *Sareetha v. Venkata Subbaiah*²⁷, the Andhra Pradesh High Court ruled that "Section 9 of the Constitution, which provides for the relief of restitution of conjugal rights, is unconstitutional because it violates both Articles 14 and 21 of the Constitution". The wife's argument was, 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". Thus the ambit of right of privacy does include the freedom of choice, then whether it's related to her body, her mind, cohabitation, procreation or her choice of her life partner.

What is more, the Supreme Court of India in *Gobind Singh v.State of MP*²⁸ defined privacy as the intimacies of the home where law should not intrude. The house is a personal space of an individual and the same is with marriage, family, mother hood and procreation. Thus this privacy needs to be respected. The Andhra Pradesh High Court gave a more individualistic and progressive interpretation of privacy in *T. Sareetha*²⁹ while interpreting that "a person's right to privacy belongs to them and is independent of their marital status".

²³Maneka Gandhi v. Union of India ,AIR 1978 SC597

²⁴ Shafin Jahan v. Asokan K.M AND Ors. S.L.P(Crl.) No.5777 of 2017

²⁵ Smt. Saroj Rani v. Sudarshan Kumar Chadha AIR ,1984 :1562

²⁶ Harvinder Kaur v. Harmander Singh Choudhry AIR,1984, Delhi 66

²⁷ T.Sareetha v. T.Venkata Subbaiah AIR,1983 AP 356

²⁸ Gobind Singh v. State of M.P. AIR 1975 SC 1378

²⁹ Supra 18

Criticism

Despite being a positive relief in relation to matrimonial rights there are criticisms against this remedy too. For instance this provision is used as a shield for divorce, there is a constant misuse of the provision, and there is great rural and urban divide with respect to when it comes to claiming of rights by women. But besides all the other resistances against the provision the major criticism is that it leads to violation of right and particularly “*right to privacy*”. As we understand by our previous discussion that Article 21³⁰ of the Constitution is “the” fundamental right which has ensured the other rights of the individuals’ as well.

Violation of Rights

In 2017 in a landmark judgment of *Justice K.S. Puttaswamy v. Union of India*³¹, In this case a retired High Court Judge K.S. Puttaswamy challenged the constitutionality of Aadhaar in 2012 before a nine-judge Supreme Court bench because it violates the right to privacy. A nine-judge Supreme Court of India bench gave a significant ruling on August 24, 2017, upholding Article 21 of the Indian Constitution as the foundation for the right to privacy.

After this judgment further corollaries were drawn and it was realized that few of the current investigative mechanisms or legal provisions for instance; the two-finger test in rape investigations, the criminalization of homosexuality, marital rape, and restitution of conjugal rights could face challenges as a result of the judgment given in *K.S.Puttaswamy v. Union of India*.

Misuse of the Provision

The restitution of conjugal rights provision was introduced with the intention of preserving marriages and preventing them from breaking down. However, over the years, it has been seen that this provision is often misused by one spouse, usually the husband, to harass the other spouse, usually the wife. The misuse of this provision has become so common that it has been recognized as mode of harassment through legal mechanisms. The misuse of the restitution of conjugal rights provision as a tool for harassment has a severe impact on the mental and emotional health of the victim. The victim is forced to live with their abuser, even if they do not want to, and are subjected to further emotional and mental abuse. This can lead to severe issues related to mental health and well-being, and can lead someone to state of anxiety, depression and even suicidal tendencies. Moreover, the restitution of conjugal rights provision is often used to override the victim's right to make decisions about their own life. The provision treats the victim as property that can be claimed by the abuser, rather than as an individual with agency and autonomy. This goes against the principles of equality and human rights.

Misuse of this provision as a shield against divorce

In India, the restitution of conjugal rights provision, available under Section 9 of the Hindu Marriage Act, 1955, allows one spouse to file a petition in court to request the other spouse to resume marital cohabitation. However, in some cases, decree of relief of restitution of conjugal rights is used as a ground for divorce in some of the cases and the abuse of the provision has drawn attention of both the judiciary and the legislature, which is actually alarming.

According to section 13 (1A) clause (ii)³² “Either party to a marriage, whether solemnized before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties”.

³⁰Article 21 of the Constitution of India -

³¹ Justice K.S.Puttaswamy (Retd.) And Anr. v. Union of India and Others; AIR 2017 SC 4161

³²Hindu Marriage Act,1955

This provision in a way provides an opportunity for the misuse. As it creates a shield against divorce proceedings and alimony payments. Often an aggrieved spouse who is hurt or is in pain leaves the matrimonial home and come and stay at their parents residence or at some other place. Thus they file for dissolution of marriage not from their matrimonial homes but from these other places. This becomes a shield for the defending spouse against the divorce proceedings and they respond by seeking the relief of restitution of conjugal rights. Which many a times compel the aggrieved spouse to go back to that toxic environment of their matrimonial home. And it slowly and gradually damages them as well as the idea of matrimonial house. It has been witnessed that in many cases, the spouses who file a petition for restitution of conjugal rights do not actually intend to resume marital cohabitation, but instead use the provision as a pretext to file for divorce. The spouse who files the petition may have already decided to end the marriage, but filing a petition for restitution of conjugal rights enables them to take advantage of the legal system to initiate divorce proceedings.

The courts have recognized that the provision is often misused and that the decree should not be used as a ground for divorce. The courts have also recognized that the provision assumes that the marriage is a sacrament, and it is the duty of the spouses to live together, even if the relationship is abusive or unhealthy. This assumption is not in keeping with the changing social and cultural norms of modern India.

Biased Against Women: rural and urban

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 matrimonial homes under the relief provided in the provision, and more often than not are forced to perform matrimonial obligations. Further as marital rape is not a crime yet, hence it makes the women susceptible to such coerced cohabitation. Besides that if we compare the dichotomy between a rural women and an urban women in many rural areas, women are not educated or financially independent and are dependent on their husbands for their livelihood. This makes them more vulnerable to abuse and violence in their marital relationships. In order to reflect their resistance to such abuse if they somehow muster courage and decide to leave the matrimonial home then the provision of Restitution of conjugal rights can be used as a tool for harassment by the husband against the wife. The husband can file a petition in court to force the wife to return to the matrimonial home, even if the wife is being subjected to abuse and violence.

In addition, it's possible that rural women lack the money or access to legal aid to defend their legal rights. They find it challenging to protect themselves from abuse of the provision of restitution of conjugal rights. It's possible that they are unaware of their legal rights, don't have family or community support, or both. Restoring conjugal rights will have a significant impact on rural women who lack the resources to stand out for their rights. It keeps the cycle of violence and abuse against women going and robs them of their right to a life of dignity and independence. Although if one is bent upon to exploit a provision or a relationship then this rural urban divide hardly make any difference in terms of exploitation. Although statistically there may be a difference.

Right to set up matrimonial home:

With the progressive change in the society not only the Courts in India but also the common people have started understanding and believing this concept that Right to set up a matrimonial home is not only the prerogative of the husband but also of the wife. It is understood now since it takes two to build a matrimonial home so it is important that the both perform their rights and obligations as co-equals than one i.e., the wife being submissive to the other i.e., the husband. So not necessarily always the husband needs to be the in charge or in other words that it is not always necessary that a wife should always follow the husband to build a matrimonial home , but rather it can be vice versa. The same view has been reflected upon by the Supreme Court of India as well. But it was not always the same, the courts have evolved from a regressive or orthodox views to more progressive judgments. So it can be concluded that even the courts in India have evolved in their journey of restoring back the conjugal rights.

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Although the concept of matrimonial homes is not even remotely defined in general marital duties and obligation of the husband and the wife in Hindu marriage Act. Matrimonial homes means the place where both husband and wife share the comfort and consortium of each other as life partners. However, judiciary has several times observed in landmark cases like the *Kailashwati case*³³, that under old Hindu law the obligation of the wife with her husband in his home and under his roof and protection is clear and unequivocal. It is only in the case of some distinct and specified marital involvement that the wife can stay separately from the husband and claim maintenance therefore. In *Kailashwati's* case a full bench of the Punjab and Haryana High Court cited the legal proposition mentioned in Mulla's Hindu Law, 14 the edition as follows: "The husband is bound to live with his wife and maintain her. The wife is bound to live with her husband and submit to his authority. An agreement enabling the wife to avoid a marriage or to live separate from her husband if he leaves the village in which the wife, and her parents reside, or if he marries another wife, is void. Such an agreement is against public policy and contrary to the spirit of Hindu law. An agreement of this kind is no answer to a suit for restitution of conjugal rights by a husband against the wife." Thus the Court emphasized that sacred concept of marriage cannot be reduced to a "*weekend marriage*".

However, In the case of *Shanti Nigam vs. Ramesh Chandra*³⁴ 1970 Allahabad High Court, the court observed that a wife can withdraw from the society of the husband physically i.e., may live at physical distance but there might not be any intention to leave him. It is only when the wife has completely taken herself out of the society of the husband or has broken all matrimonial ties and does not provide any accessibility to the husband that it can be a ground for a decree of restitution of conjugal rights. However refusal to quit the job at the instance of the husband without denying any matrimonial rights or accessibility to the husband is not a ground for a decree of restitution of conjugal rights. The court emphasized in its ruling that the particular Court will not impose the age old norms on the wife and will understand and interpret the issue in accordance with the requirement of current age.

In the case of *Swaraj Garg v. K.M.Garg* AIR 1978 Delhi High Court, the honourable Court held "if the principle of Hindu Law was held to give the exclusive right to the husband to decide upon the place of the matrimonial home without considering the merits of the claim of the wife it would violate Article 14 of the Constitution." The Court held further- "when the husband and wife are employed at different places even before the marriage and the wife is earning more than the husband, there are sufficient reasons for the wife to stay separately and hence the petition for restitution of conjugal rights by the husband must fail. There is nothing in Hindu Law saying that the wife has no say in choosing the place of matrimonial home."

The court observed that "Even though she is better qualified than the husband to determine the location of the matrimonial house, it would be impossible to argue that there is any custom that requires an earning wife to quit her job and move in with her husband today. One cannot assert that such a custom exists. Furthermore, even if it ever existed, it might be disregarded at this point for being prankish or against the rule of law. Public policy is now widely acknowledged to be the "policy of the day," meaning that its standards shift throughout time in accordance with the prevalent ideologies and social institutions of the moment." We need to understand that Article 14 of the Constitution guarantees Equality before law and Equal protection of the law to both the husband and the wife. Thus deciding about the matrimonial home cannot be the exclusive right of the husband as it would violate Article 14 of the Constitution.

The Court in *Swaraj Garg*³⁵ case also highlighted upon a situation which can lead to a situation of irretrievable break down of marriage. For instance "...the choice of the marriage house must be made by the husband and the

³³ *Kailashwati v. Ajodhia Parkash* 1971 CLJ 109 (P&H)

³⁴ <https://www.casemine.com/judgement/in/56e0f557607dba389660144e> (visited on 28.6.2023)

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wife together based on the totality of the circumstances. Both the wife and the husband would be unable to file a lawsuit against the other for the restoration of their conjugal rights if the conditions were evenly balanced in their favour, as there would be a stale mate. Such a breakdown of marriage for which neither of them is to be blamed has been made the ground of divorce however it can be granted only by High Court and not by District Court or Family Court.

CONCLUSION

One of the fundamental purpose of marriage is that the spouses must live together and that one spouse is entitled to the society, comfort and consortium of each other. This is a unique feature of conjugal relationship as n no other relationship, however close it may be, even if they are parents or children, brothers and sisters, the right to society exise.The relationship of husband and wife may be broken by divorce. But as long as they are husband and wife, each one has a duty not to withdraw from the society of other. However this duty is not an absolute duty and if there is any justifiable or reasonable cause to withdraw from the society of the other spouse so they can very much exercise their right. With the change in the dynamics of the relationships and also the familial power dynamics there has been this earnest plea from the advocates of Right to privacy and individual or decisional rights that the Courts should refrain from imposing the restoration of conjugal rights particularly in the context of matrimonial intercourse rights as it can lead to imposing sexual relation on either of the party and particularly women. If that happens this would be completely against the spirit of equality and right to live with dignity and liberty and many more bundle of rights. The Supreme Court and Legislators are yet to take a concrete stand on this perspective which is eagerly awaited. Till then the debate related to the nature of the relief of RCR continues.