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Recent Legal Discourse On Restitution Of Conjugal Rights: From Duty To Choice

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Abstract:

This paper deals with the evolving legal discourse surrounding the provision for restitution of conjugal rights in India. Historically rooted in patriarchal notions of marital duty and societal expectations, this legal remedy aimed to enforce cohabitation between spouses. However, recent judicial pronouncements and a growing emphasis on fundamental rights, particularly the right to privacy and personal liberty, have instigated a significant shift in its interpretation. This paper analyzes this transformation, tracing the journey from a duty-centric approach to one that increasingly prioritizes individual choice and autonomy within the marital sphere. By examining key legal precedents and constitutional challenges, it argues that the modern legal discourse on restitution of conjugal rights reflects a nuanced understanding of marriage as a partnership based on mutual consent and free will, rather than an obligation enforceable by the state.

Keywords: *Restitution of Conjugal Rights, Marital Duty, Individual Choice, Fundamental Rights, Right to Privacy, Personal Liberty, Indian Family Law, Judicial Discourse.*

1. Introduction

The concept of restitution of conjugal rights,¹ enshrined in various personal laws in India, including the Hindu Marriage Act, 1955, the Special Marriage Act, 1954, and the Divorce Act, 1869² (for Christians), has long been a subject of legal and social debate.³ Traditionally, this provision allowed a deserted spouse to petition the court for an order directing the other spouse to return and cohabit.⁴ Its underlying rationale was the preservation of the marital unit and the enforcement of marital obligations considered essential for

¹ Section 9 of the Hindu Marriage Act, 1955

² Understanding Mutual Divorce and Child Custody: A Comprehensive Guide ;Also available on <https://amlegal.in/mutual-divorce-child-custody/>

³ Limitations Of Restitution Of Conjugal Rights by Ruchitha Devu and Ananya Mohapatra; Available on <https://articles.manupatra.com/article-details/LIMITATIONS-OF-RESTITUTION-OF-CONJUGAL-RIGHTS>

⁴ Restitution of Conjugal Rights v. Individual Autonomy: Looking Through the Constitutional Lens in India by Shuvro Prosun Sarker and Mitu Biswas; Available on <https://www.cambridge.org/core/journals/international-journal-of-legal-information/article/abs/restitution-of-conjugal-rights-v-individual-autonomy-looking-through-the-constitutional-lens-in-india/96B99A32BD94A571142D3A9485B7A000>

societal stability. However, with the evolving understanding of individual liberties and the sanctity of personal relationships, the legal perspective on restitution of conjugal rights has undergone a significant transformation.⁵ This paper argues that the dominant legal discourse is gradually shifting away from viewing cohabitation as a state-enforceable marital 'duty' towards recognizing it as a matter of individual 'choice' and mutual consent. This shift is primarily driven by constitutional principles guaranteeing fundamental rights and a more progressive interpretation of marital relationships.

2. Research Objectives

1. To trace the historical evolution of the doctrine of restitution of conjugal rights in Indian law, highlighting its origins and the traditional rationale based on marital duty.
2. To analyze the shift in legal discourse concerning restitution of conjugal rights, examining the increasing emphasis on individual choice, autonomy, and fundamental rights in recent judicial pronouncements.
3. To identify and examine key judicial pronouncements that reflects a move away from the strict enforcement of marital duty towards recognizing marital agency and individual liberties in the context of restitution of conjugal rights.
4. To explore the interplay between the provision for restitution of conjugal rights and fundamental rights guaranteed by the Indian Constitution, particularly the rights to privacy and personal liberty.
5. To assess the implications of this evolving legal discourse on the future interpretation and application of the provision for restitution of conjugal rights in India.
6. To briefly consider international perspectives on the remedy of restitution of conjugal rights and their relevance to the ongoing discourse in India.

3. Research Hypotheses

1. Recent legal discourse in India demonstrates a significant shift in the interpretation of restitution of conjugal rights, moving away from a primary focus on enforcing marital duty towards a greater emphasis on individual choice and autonomy within the marital relationship.
2. Indian courts are increasingly demonstrating reluctance to grant or strictly enforce decrees for restitution of conjugal rights, particularly in cases involving allegations of coercion, breakdown of marriage, or potential violations of fundamental rights.
3. The traditional concept of an enforceable 'marital duty' to cohabit is being progressively eroded in the legal discourse surrounding restitution of conjugal rights, giving way to a greater recognition of the voluntary nature of marital cohabitation.

⁵ The Current Legal Standing of Restitution of Conjugal Rights under the Hindu Marriage Act by Subhash Ahlawat ; Available on <https://subhashahlawat.com/blog/the-current-legal-standing-of-restitution-of-conjugal-rights#:~:text=Recent%20developments%20in%20the%20judiciary,for%20legal%20frameworks%20that%20respect>

4. Research Methodology

This research paper employs a doctrinal legal research methodology, primarily focusing on the analysis of primary and secondary legal sources to understand the evolution of legal discourse surrounding the restitution of conjugal rights in India.

5. Historical Roots and the Doctrine of Marital Duty

The provision for restitution of conjugal rights has its roots in English ecclesiastical law, where marriage was considered a sacrament with inherent duties and obligations.⁶ Upon its introduction into Indian legal frameworks during the colonial era, it carried similar connotations of marital obligation and the state's interest in upholding the sanctity of marriage.⁷ Early interpretations of this provision often emphasized the 'duty' of spouses to live together and fulfill their marital obligations.⁸ The focus was primarily on whether a spouse had 'withdrawn from the society of the other without reasonable excuse.' If the court found no such reasonable excuse, it could pass a decree for restitution of conjugal rights, essentially compelling the deserting spouse to return.⁹ This approach implicitly viewed marriage as a union where certain duties, including cohabitation, were enforceable by law.

6. The Erosion of the 'Duty' Paradigm: The Rise of Individual Choice¹⁰

The latter half of the 20th century witnessed a gradual shift in the legal understanding of marriage and individual rights in India. The increasing emphasis on fundamental rights enshrined in the Constitution, particularly the right to equality (Article 14), the right to life and personal liberty (Article 21), and the right to privacy (which has been progressively recognized as an integral part of Article 21), began to influence the interpretation of family laws. This shift challenged the traditional view of marriage as a rigid structure of enforceable duties and paved the way for a greater appreciation of individual autonomy and choice within marital relationships.¹¹

The landmark judgment in *K.S. Puttaswamy (Retd.) vs. Union of India*¹² unequivocally recognized the right to privacy as a fundamental right, encompassing decisional autonomy in personal matters, including intimate relationships and family life. This recognition has profound implications for the interpretation of restitution of conjugal rights, as it raises questions about the state's power to compel individuals to cohabit if they choose not to.¹³

⁶ Restitution of Conjugal Rights: A Pernicious Legal Transplant by Kanika Sharma ; Available on <https://lawandhistoryreview.org/article/kanika-sharma-restitution-of-conjugal-rights-a-pernicious-legal-transplant/>

⁷ Constitutional Validity Of Restitution Of Conjugal Rights by Nandini KT; The Lawway With Lawyers Journal Volume:-7 Issue No:- 7 , Februry 15, 2024, ISSN (ONLINE):- 2584-1106

⁸ Restitution of Conjugal Rights v. Individual Autonomy: Looking Through the Constitutional Lens in India Published online by Cambridge University Press: 02 January 2025 by Shuvro Prosun Sarker and Mitu Biswas

⁹ https://en.wikipedia.org/wiki/Restitution_of_conjugal_rights#:~:text=After%20such%20a%20decree%20was,so%20was%20punished%20with%20excommunication.

¹⁰ "Ab Nizda aur Vayaktigat Aazadi ko Tarzih" by Dr. Sudhir Kumar; Editorial in Dainik Tribune, Chandigarh; May 20, 2025

¹¹ Restitution of Conjugal Rights by Haribaskar B., International Journal of Law Management and Humanities, Volume 6, Issue 6, Page 1398 - 1404

¹² *K.S. Puttaswamy (Retd.) vs. Union of India*, (2017) 10 SCC 1.

¹³ Restitution Of Conjugal Rights by Aditya Porwal; Also available on <https://vaquill.com/blog/restitution-of-conjugal-rights/>

7. Key Judicial Pronouncements Reflecting the Shift

Several judicial pronouncements in recent years reflect this evolving perspective. While the provision for restitution of conjugal rights remains on the statute books, courts have become increasingly cautious in granting decrees, particularly when there are allegations of coercion, harassment, or a breakdown of the marital relationship. The focus has shifted from merely ascertaining whether there was a 'reasonable excuse' for withdrawal to examining the broader context of the relationship and the potential impact of a decree on the fundamental rights of the individuals involved.¹⁴

For instance, courts have shown reluctance to enforce restitution of conjugal rights when the marriage has irretrievably broken down, even if neither party has obtained a formal decree of divorce. This recognition of 'irretrievable breakdown of marriage' as a ground for not enforcing cohabitation signifies a move away from the strict enforcement of marital duty towards acknowledging the reality of fractured relationships where compelling cohabitation would be futile and potentially harmful.

In *Ojaswa Pathak v. Union of India* (2019 onwards), this is the most significant recent development. The Supreme Court agreeing to re-examine the constitutional validity of RCR under various personal laws is a game-changer. Discuss the arguments raised in this PIL.

Furthermore, the judiciary has been increasingly sensitive to the gendered nature of this provision and its potential for misuse, particularly against women. Concerns have been raised about using restitution of conjugal rights as a tool to prevent a wife from pursuing legal remedies for matrimonial offenses or to force her to return to a potentially abusive or unhappy marital home. This awareness reflects a growing understanding that enforcing a 'duty' to cohabit can, in certain circumstances, violate an individual's fundamental rights to dignity, safety, and personal liberty.¹⁵

8. The Interplay with Fundamental Rights and Constitutional Challenges

The constitutional validity of the provision for restitution of conjugal rights has been challenged on several grounds, primarily arguing that it violates fundamental rights. The argument against its constitutional validity often centers on the following points¹⁶:

Violation of Right to Privacy:

Compelling two individuals to live together against their will infringes upon their right to privacy, which includes the right to decide with whom to live and the nature of their intimate relationships.

Violation of Right to Personal Liberty:

A decree for restitution of conjugal rights can be seen as an infringement upon an individual's personal liberty, as it restricts their freedom of movement and their right to choose where to reside.¹⁷

¹⁴ Reasonable Excuse Prevails in Restitution of Conjugal Rights: *Mango v. Prem Chand*; Also available on <https://www.casemine.com/commentary/in/reasonable-excuse-prevails-in-restitution-of-conjugal-rights:-mango-v.-prem-chand/view>

¹⁵ Restitution Of Conjugal Rights by Aditya Porwal; Also available on <https://vaquill.com/blog/restitution-of-conjugal-rights/>

¹⁶ Challenge to Restitution of Conjugal Rights; Available on <https://www.scobserver.in/cases/ojaswa-pathak-union-of-india-challenge-to-restitution-of-conjugal-rights-case-background/#:~:text=under%20Article%2021%3F-,Do%20the%20provisions%20for%20restitution%20of%20conjugal%20rights%20violate%20the,an%20additional%20burden%20on%20women%3F>

Violation of Right against Self-Incrimination (in certain contexts):

In cases involving allegations of matrimonial offenses, a decree for restitution could potentially compel a spouse to provide information or be in a situation that could be self-incriminatory in future legal proceedings.

While the Supreme Court in *Saroj Rani vs. Sudarshan Kumar Chopra*¹⁸ upheld the constitutional validity of Section 9 of the Hindu Marriage Act, it did so by interpreting the provision in a manner that mitigated concerns about its coercive nature. The Court held that a decree for restitution of conjugal rights is not executed by physical compulsion but rather by attaching the property of the disobedient spouse. However, this interpretation does not fully address the underlying issue of whether the state should have the power to mandate cohabitation in the first place.

Recent legal discourse suggests a revisiting of this issue, with a greater emphasis on the individual's right to choose their marital life. The focus is shifting from the state's interest in preserving the institution of marriage at all costs to a more individual-centric approach that respects personal autonomy and dignity.¹⁹

9. International Perspectives

Examining the legal landscape in other jurisdictions reveals a global trend towards recognizing individual autonomy in marital relationships. Many countries (United Kingdom, Ireland, Australia and South Africa) have either abolished the remedy of restitution of conjugal rights or significantly curtailed its application, viewing it as anachronistic and incompatible with modern notions of individual liberty and the voluntary nature of marital relationships.²⁰

In the United Kingdom, for instance, the remedy was abolished by the Matrimonial Proceedings and Property Act 1970, following a recognition that forcing cohabitation was anachronistic and ineffective in genuine reconciliation. Similarly, Ireland abolished the action through the Family Law Act 1988, and Australia did so with the Family Law Act 1975, reflecting a commitment to modern family law principles centered on consent and individual liberty. South Africa, through its Divorce Act of 1979, also removed this remedy, prioritizing genuine marital breakdown over state-enforced cohabitation. This widespread abandonment stems from a shared understanding that compelling individuals to live together against their will infringes upon fundamental human rights such as personal liberty, privacy, and bodily autonomy, and is ultimately incompatible with the voluntary and consensual nature of modern marital relationships.²¹ This international perspective further strengthens the argument for a shift in the Indian legal discourse towards prioritizing choice over duty in matters of cohabitation.

¹⁷ Constitutional Validity Of Restitution Of Conjugal Rights by Nandini KT; The Lawway With Lawyers Journal Volume:-7 Issue No:- 7 , Februry 15, 2024, ISSN (ONLINE):- 2584-1106

¹⁸ *Saroj Rani vs. Sudarshan Kumar Chopra*, AIR 1984 SC 1562.

¹⁹ The Current Legal Standing of Restitution of Conjugal Rights under the Hindu Marriage Act by Subhash Ahlawat ;Available on <https://subhashahlawat.com/blog/the-current-legal-standing-of-restitution-of-conjugal-rights#:~:text=Recent%20developments%20in%20the%20judiciary,for%20legal%20frameworks%20that%20respect>

²⁰ <https://www.legislation.gov.uk/ukpga/1970/45>

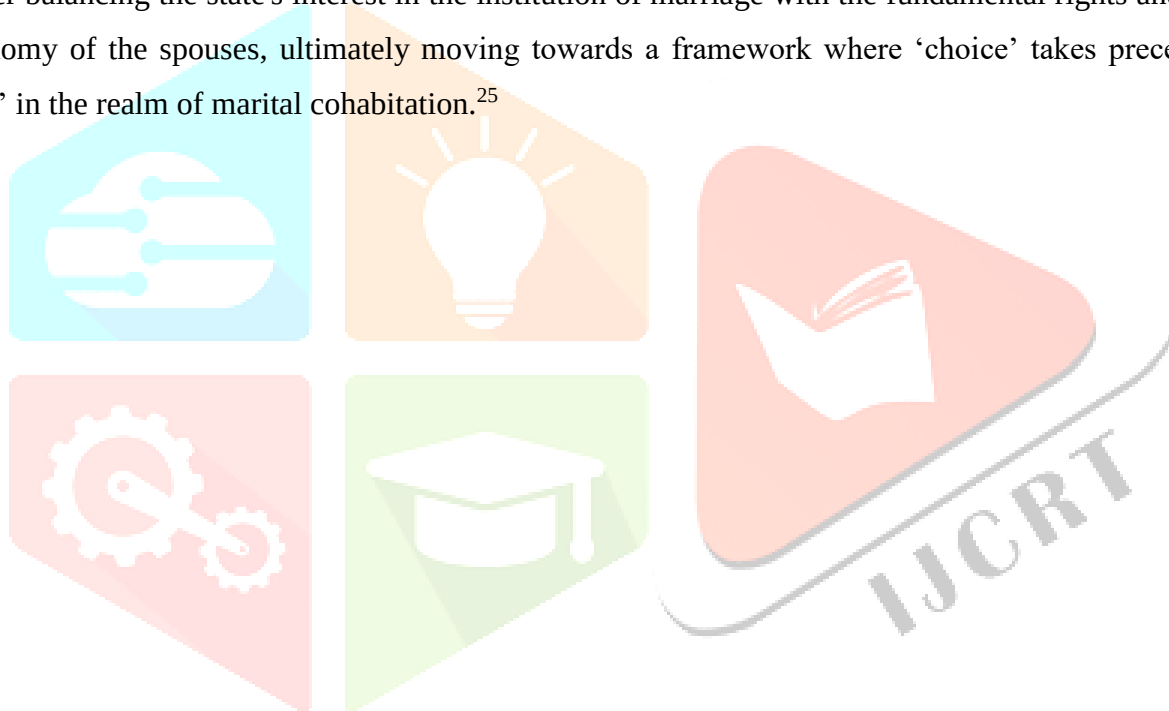
²¹

[https://en.wikipedia.org/wiki/Restitution_of_conjugal_rights#:~:text=In%20South%20Africa%2C%20the%20legal,of%201979\)%2C%20Section%2014.](https://en.wikipedia.org/wiki/Restitution_of_conjugal_rights#:~:text=In%20South%20Africa%2C%20the%20legal,of%201979)%2C%20Section%2014.)

10. Conclusion: Towards a Choice-Based Paradigm

The legal discourse on restitution of conjugal rights in India is undergoing a significant transformation.²² While the provision remains a part of the legal framework, its interpretation and application are increasingly influenced by constitutional principles that emphasize individual choice and autonomy.²³ The journey from a duty-centric approach, where the state could enforce cohabitation as a marital obligation, towards a choice-based paradigm, where the decision to live together is viewed as a matter of personal volition, is evident in recent judicial pronouncements and ongoing legal debates.²⁴

This shift reflects a more mature and rights-based understanding of marriage as a partnership founded on mutual consent and free will. While the law may still aim to encourage reconciliation and preserve marital bonds, it is increasingly recognizing the limitations of compelling individuals to live together against their wishes. The future of the legal discourse on restitution of conjugal rights likely lies in further balancing the state's interest in the institution of marriage with the fundamental rights and individual autonomy of the spouses, ultimately moving towards a framework where 'choice' takes precedence over 'duty' in the realm of marital cohabitation.²⁵



²²Constitutional Validity of Section 9 of the Hindu Marriage Act (HMA); Also available on <https://lawcrust.com/section-9-hma-validity/>

²³ <https://www.defactojudiciary.in/notes/restitution-of-conjugal-rights-under-hindu-law>

²⁴ “*Ab Nizda aur Vayaktigat Aazadi ko Tarzih*” by Dr. Sudhir Kumar; Editorial in Dainik Tribune, Chandigarh; May 20, 2025

²⁵ *Ibid.*