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# **INTERPRETING STATUTE THROUGH THE LENS OF GOLDEN TRIANGLE: A CONSTITUTIONAL CHALLENGE TO RESTITUTION OF CONJUGAL RIGHTS; WITH RESPECT TO HINDU LAW**

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## **ABSTRACT**

The matrimonial remedy of Restoration of Conjugal Rights, enshrined in section 9 of Hindu Marriage Act, 1955<sup>1</sup>, allows a spouse to seek a court decree to compel the other spouse, who has withdrawn from the marital society without reasonable cause, to cohabit. This provision has faced significant constitutional scrutiny, with challenges asserting that it violets the “Golden Triangle” of Indian Constitution article 14,19 and 21 which collectively guarantees the right to privacy, freedom and life. This paper exams the challenges and projects the hypothesis that the remedy of Restitution of Conjugal Rights does not, in fact, violet the Golden Triangle. By analysing the true essence and purpose of Restitution of Conjugal Right, its historical context, and the balance interpretation provided by the Indian judiciary, this paper argues that Restitution of Conjugal Rights serves as a crucial, constitutionally valid tool for preserving the institution of marriage. The analysis will first define conjugal rights and trace their common law and Hindu customary underpinnings. It will then explain the Golden Triangle Doctrine before applying it to the Restitution of Conjugal Rights, concluding that the remedy, as appeared by the Supreme Court, is a reasonable and non-arbitrary measure aimed at reconciliation, not coercion.

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<sup>1</sup> Hindu Marriage Act, 1955, § 9, No. 25, Acts of Parliament, 1955 (India).

## THE CONJUGAL RIGHTS AND ITS ESSENCE

The concept of restitution of conjugal rights forms the base of the matrimonial relationships, representing the spouse's mutual rights and obligations that they owe to each other. Non compliance of these obligations by the either of the spouse can be ask of remedy under the Restitution of conjugal rights, which is the legal mechanism to uphold their rights when they are breached.

### A. Definition of conjugal Rights

There has been so statute which has defined what is the part of conjugal rights. Therefore, its meaning fished from different law dictionaries and commentaries. Conjugal Rights refers to the mutual rights and privileges between two individuals arising from the state of being married. These rights include mutual rights of companionship, support, comfort, sexual relations, affection, joint property rights and the like. Loss of conjugal rights will also amount to loss of consortium.<sup>2</sup> Conjugal Right is Matrimonial rights; the right which husband and wife have to each other's society, comfort, and affection.<sup>3</sup> The rights and privileges (as to love, affection, sexual relations, companionship, comfort, and services) implied by and involved in the marriage relationship the sexual rights or privileges implied by and involved in the marriage relationship: the right of sexual intercourse between spouses.<sup>4</sup>

In general, Conjugal Rights incudes

- i. Cohabitation
- ii. Sexual intercourse

It is important to understand the essence of the RCR is not merely to enforce sexual intercourse, but restore "cohabitation and consortium" in its widest sense- by including companionship, affection and mutual support. This remedy is codified under Section 9 of Hindu Marriage Act,

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<sup>2</sup> [https://www.law.cornell.edu/wex/conjugal\\_rights](https://www.law.cornell.edu/wex/conjugal_rights)

<sup>3</sup> REVISED FOURTH EDITION BY THE PUBLISHER'S EDITORIAL STAFF ST. PAUL, MINN. WEST PUBLISHING CO. 1968

<sup>4</sup> <https://www.merriam-webster.com/dictionary/conjugal%20rights>

1955<sup>5</sup>.

### B. Common Law Aspect

The remedy of Restitution of Conjugal Rights is not indigenous to Indian law but was inherited from English common law. Its Origins lies in the ecclesiastical Courts of England. In the system, desertion was not a ground for divorce; instead, a deserted spouse could petition for a degree of restitution. Finality failure to comply was punished with excommunication, communication which was later replaced with imprisonment. In England, women are seen as the property of their husbands or as a chattel of the husband.

This remedy was introduced in the Indian legal system during the British rule, notably through the Privy Council. While the United Kingdom and several other common law jurisdictions have since abolished a remedy, viewing it as outdated this was a legislative policy choice. India, in its own wisdom has retained it adapting its purpose to suite the social context with marriage is viewed as a fundamental social institution.<sup>6</sup>

### C. Hindu Custom Aspect

All though the formal legal remedy of Restitution of Conjugal Rights was not present in ancient Dharmshastra, its underlying principles - the sanctity and in dissolvability of the marital bond - is deeply rooted in Hindu customs. In Hindustan, marriage is a sacrament (samskara), an eternal and unbreakable union intended for the performance of religious duties (Dharma) together.<sup>78</sup>

Scriptures emphasize the duty of the spouse to go habit and support each other. The wife is considered the *ardhangini*, or one half of the husband, signifying that a man is incomplete until he married. The Vedas ordian the dharman must be practiced by a man and a wife together.<sup>9</sup> Manu declared the mutual fidelity until death is the highest Dharma for husband and wife.<sup>10 11</sup>

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<sup>5</sup> Hindu Marriage Act, 1955, § 9, No. 25, Acts of Parliament, 1955 (India).

<sup>6</sup> <https://thelawwaywithlawyers.com/constitutional-validity-of-restitution-of-conjugal-rights/?hl=en-GB>

<sup>7</sup> <https://lawjurist.com/index.php/2025/09/28/restitution-of-conjugal-rights-a-constitutional-dillema-andthe-gendered-shadows-of-inequality/?hl=en-GB>

<sup>8</sup> <https://thelawwaywithlawyers.com/constitutional-validity-of-restitution-of-conjugal-rights/?hl=en-GB>

<sup>9</sup> <https://pmc.ncbi.nlm.nih.gov/articles/PMC3705690/?hl=en-GB>

<sup>10</sup> <https://hinduism.stackexchange.com/questions/23203/dharmic-role-of-wife-in-marriage?hl=en-GB>

<sup>11</sup> [https://www.srimatham.com/uploads/5/5/4/9/5549439/the\\_hindu\\_sacrament\\_of\\_marriage.pdf?hl=en-GB](https://www.srimatham.com/uploads/5/5/4/9/5549439/the_hindu_sacrament_of_marriage.pdf?hl=en-GB)

## Constitutionality challenges to Restitution

The question is, whether personal laws can be excluded from the purview of Article 13 of the Constitution.<sup>12</sup> In the case of *State of Bombay v. Narasu Appa Mali* it was held that personal laws cannot be excluded and must pass the test of fundamental rights.<sup>13</sup>

### Violation of freedom of association Article 19(1) (c)

The court will compel the spouse by passing a decree under section 9 of the Act, to go back and associate/ cohabit with the other spouse against their will. In the case of *Huhhram v. Mirsri Bai*<sup>14</sup>, the wife in this case pleaded that her in laws weren't treating her well and also her husband was joining them. Never the less the court ordered for restitution in favour of the husband. In *Atma Ram v. Narbada Devi*<sup>15</sup>, in this case the husband clearly states that he no longer wants to stay with his wife, but the decree of restitution of conjugal rights was passed in favour of the wife. This is the clear example of violation of his/ her rights by forcing a spouse to associate against their will.

### Violation of freedom to settle in any part of India Article 19(1) (e) and freedom of practice any profession Article 19(1)(g)

When there is development in the society and women are also part of bread earners in the family, which means they are moving place to place if their job demands so to earn the livelihood for their families. In the case of *Harvinder Kaur*<sup>16</sup> it was held that, "introduction of constitutional law in the house is most inappropriate, ie is like introducing a bull in a China shop"<sup>17</sup>. In *Tirath Kaur v. Kartar Singh*, the court held that a wife refusing to resign her job to live with her husband had withdrawn from his society without reasonable cause. The court cited Mukka's principle of Hindu law, stating, "wife's first duty to her authority, is to submit herself obediently to his authority, and to remain under his roof and protection."<sup>18</sup> In the case of *Deepa Suyal v. Dinesh Suyal*, wife was in CRPF refused to resign her job, this was held to

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<sup>12</sup> M. Gangadevi, Restitution of Conjugal Rights: Constitutional Perspective, 45 J. INDIAN L. INST. 453 (2003).

<sup>13</sup> State of Bombay v. Narasu Appa Mali, AIR 1952 Bom 84.

<sup>14</sup> AIR 1979 MP. 144.

<sup>15</sup> AIR 1980 Raj. 35.

<sup>16</sup> AIR 1984 Del. 66.

<sup>17</sup> M. Gangadevi, Restitution of Conjugal Rights: Constitutional Perspective, 45 J. INDIAN L. INST. 453 (2003).

<sup>18</sup> AIR 1964 Punj. 28.

be unjustified, “entitling the husband to decree for restitution of conjugal rights”.<sup>19</sup>

### **Violation of Right to life and personal liberty Article 21**

Article 21 of the Indian constitution deals with the “*Protection of Life and Personnel Liberty*”. Wherein, this article states that, “*No person shall be deprived of his life or personal liberty except according to procedure established by law*”.

Justice P.A. Choudhary of Andhra Pradesh High Court said in one office cases that, section 9 was unconstitutional because it violates Article 21 of Constitution. The judge declared the forcing restitution of conjugal rights constitutes the grossest form of violence of an individual's privacy and human dignity. Further described the remedy of restitution of conjugal rights as a ‘barbarous’ and imported remedy. He noted that it was imported from British law where it has been already abolished.<sup>20</sup>

***Ojaswa Pathak v. Union of India***, this case still pending before supreme court, wherein the case argues that in light of the strengthened right to privacy and the personal autonomy (which is, the bodily autonomy). Then it argues that the Saroj rani judgement is no longer holds good in dealing with this issue. In the Saroj Rani case, the supreme court has upheld the constitutional validity of the Restitution of the Conjugal rights.

### **Does Restitution of Conjugal Rights violate Golden Triangle**

There are many discussions that took place with respect to restitution of conjugal rights in court of law. This law can be seen a positive law, as to say by aiming to reconciliation rather than repudiate the marriage.

The conjugal rights are the part and product of the British colonial rule in India. But we can see the essence of the conjugal rights in the Indian historical and cultural aspect as well. The important aspect that we must emphasise is that the way the restitution of conjugal rights was interpreted in England is totally different from how it is seen in India. In England, women are seen as the property of their husbands or as a chattel of the husband. Hence that interpretation

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<sup>19</sup> AIR 1993 All. 244.

<sup>20</sup> Conjugal Rights vs Personal Liberty; Economic and political Weekly, July 16, 1983, Vol. 18, No. 29, pp.1263-1264.

was considered as unconstitutional and therefore it was abolished.

But on the other hand, it's different in India, marriage creates a tender but complex interrelationship between spouses. This relationship leads to plethora of rights and liabilities emanates. These rights and obligations, when combined, are known as conjugal rights and are considered as the essence of the marital union. According to hindu philosophy, marriage objectives 1. Dharma (justice) 2. Praja (procreation) and 3. Rati (pleasure or sex). A successful married life requires two prerequisites: virtue and love.<sup>21</sup> Unfortunately, it was never seen/interpreted in this direction in the earlier years of our independence.

This can be seen in cases like *A.K. Gopalan v. State of Madras*<sup>22</sup>, the Supreme Court viewed fundamental rights as separate, isolated buckets. A law that touched upon personal liberty under Article 21 was only checked to see if a "procedure established by law" was followed. Whether that procedure was fair, just, or reasonable was considered irrelevant. Under this rigid interpretation, RCR would have easily survived, as it is, without a doubt, established by law, but couldn't have answered all the questions because of the narrow approach. Subsequently in the case of *Maneka Gandhi v. Union of India*<sup>23</sup> the jurisprudential doctrine of "Golden Triangle" that refers to the interconnection between Article 14, 19 and 21 of the Indian Constitution was established by the Supreme Court while interpreting the intricacies of fundamental rights.

The primary argument against Restitution of Conjugal Rights was that it violates right to bodily autonomy and privacy by compelling an unwilling spouse to live with the other. This view was famously articulated in the case of *T.Sareetha v. T. Venkata Subbaiah*<sup>24</sup> which was rejected by the Supreme court, in the case of *Saroj Rani v. S.K. Chadha*. The Supreme Court upheld the view of the Delhi High Court (in *Harvinder Kaur*<sup>25</sup>). It held that "in the privacy of home and married life neither article 21 nor article 14 has any place".<sup>26</sup>

The Supreme Court's decision was clear: the right to a spouse's company is not just a legal right but is "inherent in the very institution of marriage itself". Section 9, in this view, was merely a

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<sup>21</sup> M. Gangadevi, Restitution of Conjugal Rights: Constitutional Perspective, 45 J. INDIAN L. INST. 453 (2003).

<sup>22</sup> AIR 1950 SC 27

<sup>23</sup> AIR 1978 SC 597

<sup>24</sup> AIR 1983 AP 356

<sup>25</sup> AIR 1984 Del. 66.

<sup>26</sup> AIR 1984 SC 1562

codification of this pre-existing social norm. The Court emphasized that the remedy serves a vital "social purpose as an aid to the prevention of break-up of marriage" by providing an opportunity for reconciliation. It is the inducement for spouse to live together and resolve their matter amicably. The coercive element was downplayed, with the Court noting that the only penalty for disobedience is the attachment of property, not imprisonment.<sup>27</sup> By prioritizing the sanctity of the institution over the autonomy of the individual, the Court effectively silenced the powerful privacy concerns raised in *T.Sareetha v. T. Venkata Subbaiah*.<sup>28</sup> The court is not forcing the spouse who has withdrawn from the other spouse's society, to go and have an intimate relationship. The withdrawn party has the right to get divorce from the petitioner if the marriage was working out. Hence without any reasonable cause the withdrawal from the other spouse's society can be questioned.

One of the important aspects that which was questioned was the violation of Article 14 and 19 by not allowing the wife to go out to earn. The court was of the view that, wife going out of the matrimonial house for job to help the family was not considered as reasonable cause mentioned under section 9 of the Hindu Marriage Act 1955<sup>29</sup>, hence they were asked to return to the matrimonial home quitting the job, this view was later corrected by the other courts in the upcoming time. These development in the judicial trend can be seen,

In the case of *Annpurnamma vs. Apparao* the Andhra Pradesh High Court held that, "reasonable excuse" a respondent can plead under subsection (1) is confined to specific grounds of judicial separation, nullity or divorce mentioned under subsection.<sup>30</sup> In *Shakuntalabai vs. Baburao* took broader view held that, reasonable excuse in subsection (1) means something more than the ground specified in subsection (2). Restitution could be refused if the petitioner's character and antecedents made it inhuman to grant the degree even if they conduct did not amount to the specific matrimonial offences.<sup>31</sup> In *Putul Devi vs. Gopi Mandal* the Patna High Court stated that, while the defence is emitted to the ground in subsection (2), the petitioner must still first prove that the other party withdrew without reasonable excuse. If a husband's conduct fully justifies the wife separating from him is petition for restitution will fail.<sup>32</sup> In the case of *Umesh Kumar vs. Shashi Kumari* provided a key clarification. It held that if a wife left for her job

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<sup>27</sup> AIR 1984 SC 1562

<sup>28</sup> AIR 1983 AP 356

<sup>29</sup> Hindu Marriage Act, 1955

<sup>30</sup> AIR 1963 Mys. 3.

<sup>31</sup> AIR 1963 M.P. 10.

<sup>32</sup> AIR 1963 Pat. 93.

"without any intention to bring cohabitation permanently to an end", it could not be considered desertion part of her part.<sup>33</sup> In the case of *R. Prakash v. Sneh Lata* the court not only rejected the husband's petition but found that his "conduct and behaviour .....was indicative of his indefinable difference towards her and the child" and that it was he, rather than the wife, who was guilty of cruelty.<sup>34</sup>

By this we can conclude that the violation of Article 14 and 19 was the result of the narrow interpretation of the word "reasonable cause" by the judiciary and not the section itself.

## Conclusion

Sometimes even if the laws are neutral, the society will be biased in interpreting them, in those circumstances the statutes can't be blamed as unconstitutional. The remedy of Restitution of Conjugal Rights, when interpreted in its proper perspective, is not an archaic tool of operation but a constitutionally sound mechanism for preserving the Institution of marriage. The hypothesis that Restitution of Conjugal Rights does not violate the Golden Triangle, is strongly supported by the jurisprudence of Supreme Court of India.

The Court has rightly concluded that the purpose of Restitution of Conjugal Rights is not to enforce sexual relations but to encourage cohabitation and provide a "cooling-off" period for estranged couples, thereby serving a significant social purpose. Its provisions are gender-neutral, and the subsequent right to divorce based on non-compliance is available equally to both spouses, satisfying the test of Article 14. The inherent safeguards within the law, such as the requirement of "reasonable excuse" and the exercise of judicial discretion, ensure that the remedy does not unreasonably restrict the freedoms guaranteed under Article 19. Rather than being a violation of fundamental rights, Restitution of Conjugal Rights is a positive remedy that upholds the duties inherent in the sacred and social institution of marriage, offering a final opportunity for reconciliation before the irrevocable step of dissolution. It represents a balanced legal approach that respects both the sanctity of marriage and the rights of the individuals within it.

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<sup>33</sup> AIR 1987 Del. 235.

<sup>34</sup> AIR 2001 Raj. 269.