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## Impact of Marriage obligation on working women with Special reference to Conjugal Rights

Nagarjun G T<sup>a</sup>

<sup>a</sup>Chennai Dr. Ambedkar Government Law College, Tamil Nadu, India

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*Marriage imposes certain rights and duties on the husband and wife. The Hindu Marriage Act, 1955, section 9 states that "When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being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 with 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". On the one hand, some women sacrifice their careers for the family; on the other hand, some women leave the matrimonial homes for their jobs. So, I will argue the conflict between conjugal rights and the Right to work for women.*

**Keywords:** *conjugal rights, working women, right to work.*

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### INTRODUCTION

The women's life will change after the marriage. Sometimes, women's freedom has been curtailed in the name of tradition and culture. Recently, a Malayalam movie was released under Great Indian Kitchen, directed by Joe Baby, clearly explaining how the Indian woman's life changes after marriage. Due to marriage obligations, the woman has to spend most of her

valuable time in the kitchen itself and serving the husband. She pursued her career as a dance teacher, but her husband and father refused permission by stating that the family tradition did not allow her to become a dance teacher. Finally, the woman leaves the marital home and achieves her dream. But the situation does not change in the man's house; he immediately marries another woman and the story repeats.<sup>1</sup> Similarly, in reality, many women have to take bold steps to achieve their dreams nor adjust to the situation prevailing in the matrimonial house for the sake of society or parents. In the present scenario, allegations are cooked up to create the ground and obtain the divorce decree. After knowing that the woman is not ready to live with her husband, he files a petition for the Restitution of conjugal rights to create a ground for divorce. The concept of conjugal rights was derived from English law.<sup>2</sup> Later, it was incorporated into Hindu Marriage Act. The primary purpose of the Restitution of conjugal Rights is to reconcile the relationship between husband and wife. But other provisions like Judicial separation and divorce separate the couple either temporarily or permanently.<sup>3</sup> I will argue whether the purpose of the provision has been accomplished or not and the impact of the condition on working women.

## HISTORICAL DEVELOPMENT OF CONJUGAL RIGHTS

In 430 AD, St. Augustine propounded "*The Strict Doctrine of the indissolubility of marriage*."<sup>4</sup> and it was enforced in the England Court of the Bishop in the 12th Century.<sup>5</sup> Under the doctrine of one flesh after the marriage, a women's identity merged with the husband's flesh.<sup>6</sup> These doctrines encouraged the concept of slavery in the marriage obligation, which violates the

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<sup>1</sup> The story Joe Baby, *The Great Indian Kitchen*, (2021), <[https://www.primevideo.com/detail/The-Great-IndianKitchen/0LPM9D6PWOSCEAUBEXO10YKQBB?ref=dvm\\_pds\\_gen\\_in\\_as\\_s\\_gt\\_dsaweballd|m\\_static-c\\_c511033611723](https://www.primevideo.com/detail/The-Great-IndianKitchen/0LPM9D6PWOSCEAUBEXO10YKQBB?ref=dvm_pds_gen_in_as_s_gt_dsaweballd|m_static-c_c511033611723)> accessed 02 May 2022

<sup>2</sup> 'Restitution of Conjugal Rights - Time's Up!' (*Law Bhoomi*, 15 April 2020) <<https://lawbhoomi.com/restitution-of-conjugal-rights-time-s-up/>> accessed 02 May 2022

<sup>3</sup> *Ibid*

<sup>4</sup> James E. G. de Montmorency, 'Divorce Law in England' (1926) 75 (1) *University of Pennsylvania Law Review* 36-49 <[https://scholarship.law.upenn.edu/penn\\_law\\_review/vol75/iss1/2/](https://scholarship.law.upenn.edu/penn_law_review/vol75/iss1/2/)> accessed 02 May 2022

<sup>5</sup> *Ibid*

<sup>6</sup> Saumya Uma, 'Wedlock or Wed-Lockup? A Case for Abolishing Restitution of Conjugal Rights in India' (2021) 35 (1) *International Journal of Law, Policy and the Family* <<https://academic.oup.com/lawfam/article/doi/10.1093/lawfam/ebab004/6307112>> accessed 02 May 2022

fundamental rights of women. The women were not entitled to hold the property until 1882<sup>7</sup>. Finally, the Married Women's Property Act, 1882 was enacted to abolish the injustice that occurred to the women in the property share after the marriage.<sup>8</sup> In 1813, disobedience of the Decree of Restitution of conjugal rights was punishable for up to 6 months.<sup>9</sup> Later, it was changed as disobedience of the Decree of Restitution of Conjugal Rights paved the way to get judicial separation or divorce. In India, the concept of Restitution of conjugal rights has been used for the first time in the case of *Dadaji Bhikaji v Rukhmabai*<sup>10</sup>. In this case, the Dadaji married Rukhmabai in 1875; at the time of marriage, her age was 11 years. But she refused to live with her husband. So, Dadaji filed for Restitution of conjugal rights before the Bombay High Court<sup>11</sup>. Justice Pinhey observed:

*"It seems that it would be a barbarous, a cruel, a revolting thing to do to compel a young lady, under those circumstances, to go to a man whom she dislikes in order that he may cohabit with her against her will."*

He further stated that,

*"In the view of the law which I take, I am not obliged to grant the plaintiff the relief which he seeks and to compel this young lady of twenty-two to go to the house of the plaintiff so that he may consummate the marriage arranged for them during her helpless infancy."*<sup>12</sup>

This judgment received opposed reactions from Bal Gangadhar Tilak projected,

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<sup>7</sup> *Ibid*

<sup>8</sup> *Ibid*

<sup>9</sup> *Ibid*

<sup>10</sup> *Dadaji Bhikaji v Rukhmabai* (1885) ILR 9 Bom 529

<sup>11</sup> Sudhir Chandra, 'Rukhmabai: Debate Over Woman's Right to Her Person' (*Economic and Political Weekly*, 2 November 1996)

<[https://www.epw.in/system/files/pdf/1996\\_31/44/rukhmabai\\_debate\\_over\\_womans\\_right\\_to\\_her\\_person.pdf](https://www.epw.in/system/files/pdf/1996_31/44/rukhmabai_debate_over_womans_right_to_her_person.pdf)> accessed 02 May 2022

<sup>12</sup> 'Historic Judgment on restitution of conjugal right against wife who was married when she was child' (*Law Web*, 22 November 2017) <<https://www.lawweb.in/2017/11/historic-judgment-on-restitution-of.html>> accessed 02 May 2022

"Rukhmabai's refusal to cohabit with her husband and assertion of her agency and desire as the perfect case of Hinduism and the Hindu family under threat due to spread of English education."<sup>13</sup> In 1886, the judgment was reversed by an Appellate Bench presided over by Chief Justice Sir Charles Sergeant.<sup>14</sup>

Immediately, Rukhmabai directly wrote a letter to Queen Victoria; she quoted as follows:

"At such an unusual occasion, will the mother listen to an earnest appeal from her millions of Indian daughters and grant them a few simple words of change into the books of Hindoo law."<sup>15</sup>

In response to the letter, Rukhmabai's Imprisonment was prevented by Queen Victoria through a special royal decree dissolving the marriage.<sup>16</sup> This case was much discussed about child marriage and consent to the wedding, rather than Restitution of Conjugal Rights.<sup>17</sup> She went to London in 1887 to pursue her Degree in Medicine and became the first lady doctor in India. Restitution of Conjugal Right's constitutional validity under the Hindu Marriage Act, 1955 have been challenged in *T. Sareetha v T. Venkata Subbaiah*<sup>18</sup>, The High Court of Andhra Pradesh observed that:

"A Restitution of conjugal rights decree constitutes a form of violation of an individual's Right to privacy. It denies the woman her free choice of whether, when, and how she is to become the vehicle for the procreation of another human being. A decree for the Restitution of conjugal rights deprives a woman of control over her choice as to when and by whom the various parts of her body are to be sensed." Therefore, it violates the Right to privacy and human dignity guaranteed by Article 21<sup>19</sup> of the constitution.

In *Smt. Harvinder Kaur v Harmander Singh Chaudary*,<sup>20</sup> the Delhi High Court refused to agree on the judgment of Sareetha's case. Finally, the Supreme Court overruled the *Sareetha v Venkata*

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<sup>13</sup> Saumya Uma (n 6)

<sup>14</sup> Dadaji Bhikaji (n 10)

<sup>15</sup> A. Burton, 'From Child Bride to "Hindoo Lady": Rukhmabai and Debate on Sexual Respectability in Imperial Britain' (1998) 103 (4) *The American Historical Review*, 1141

<sup>16</sup> H. Rappoport, *Queen Victoria: A Biographical Companion* (ABC-CLIO 2003) 430

<sup>17</sup> Saumya Uma (n 6)

<sup>18</sup> *T. Sareetha v T. Venkata Subbaiah* AIR 1983, AP 356

<sup>19</sup> Constitution of India, 1950, art.21

<sup>20</sup> *Smt. Harvinder Kaur v Harmander Singh Chaudary* AIR 1984, Delhi 66

*Subbaiah* judgment and upheld the *Harvinder Kaur v Harmender Singh Chaudary* in the case of *Saroj Rani v Sudarshan Kumar Chadda*,<sup>21</sup> the Supreme Court held that:

"In India, conjugal rights is not merely a creature of the statute. Such a right is inherent in the institution of marriage itself<sup>22</sup>. The term conjugal right may be viewed in its proper perspective by keeping in mind the dictionary meaning of the expression 'conjugal'. Section 9 only is a codification of pre-existing law. It serves as an aid to prevent break-up in the marriage<sup>23</sup>. The purpose of the restitution decree is to bring about cohabitation between the estranged parties hence that they can live together in the marital home in amity<sup>24</sup>. The remedy of Restitution aims cohabitation and consortium and not merely sexual intercourse".<sup>25</sup> In the traditional systems, the wife should live under the husband's roof and be obedient to her husband always existed.<sup>26</sup> However, in modern society, women have started to take on new roles and jobs in changing socio-economic, and cultural environments<sup>27</sup>. It creates conflict between her job and marital obligations.<sup>28</sup> The High Courts recognised the Right to Work of women in many judgments like *Tirath Kaur v Kripal Singh*,<sup>29</sup> *Kailashvathi v Ayodhya Prakash*,<sup>30</sup> *Shanthi Nigam v Ramesh Chandra Nigam*,<sup>31</sup> *Mitchell v Devi Bai*<sup>32</sup>, *N.R. Radha Krishna v Dhanalakshmi*<sup>33</sup> and *Swaraj Garg v K.M. Garg*<sup>34</sup>. These case laws superseded the Conjugal Rights over the Right to work of Women. But in the case of *Suman Kapur v Sudhir Kapoor*,<sup>35</sup> the Supreme Court held that "the women's focus on their careers as

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<sup>21</sup> *Saroj Rani v Sudarshan Kumar Chadda* (1984), AIR 1562

<sup>22</sup> Lalit Mohan Sharma, 'Whether the Provisions of Restitution of Conjugal Rights violates Fundamental Rights' (*Law & Legal Policies*, 19 March 2021) <<https://189mohan.wordpress.com/2021/03/19/whether-the-provisions-of-restitution-of-conjugal-rights-violates-fundamental-rights/>> accessed 02 May 2022

<sup>23</sup> Deeksha Gupta, 'Restitution of Conjugal Rights: A Pool of Controversies' (*INBA Viewpoint*, 6 March 2019) <<http://inbaviewpoint.org/restitution-of-conjugal-rights-a-pool-of-controversies/>> accessed 02 May 2022

<sup>24</sup> Sagar Agarwal, 'Matrimonial remedies or relief' (*Lawyers Law Hub*, 11 July 2021) <<https://www.lawyerslawhub.com/matrimonial-remedies-or-relief/>> accessed 02 May 2022

<sup>25</sup> *Ibid*

<sup>26</sup> Dr. S.R. Myneni, *Hindu Law* (1<sup>st</sup> edition, Asia Law House)

<sup>27</sup> *Ibid*

<sup>28</sup> *Ibid*

<sup>29</sup> *Tirath Kaur v Kripal Singh* AIR 1964, Punj. 28

<sup>30</sup> *Kailashvathi v Ayodhya Prakash* AIR 1977, HLR 175

<sup>31</sup> *Shanthi Nigam v Ramesh Chandra Nigam* AIR 1971, All. 567

<sup>32</sup> *Mitchell v Devi Bai* AIR 1977, Raj. 113

<sup>33</sup> *N.R. Radha Krishna v Dhanalakshmi* AIR 1957, Mad. 337

<sup>34</sup> *Swaraj Garg v K.M. Garg* AIR 1978, Delhi 296

<sup>35</sup> *Suman Kapur v Sudhir Kapoor* (2009), AIR 589

neglect of their household responsibility".<sup>36</sup>The Bombay High Court asked the wife to follow the Sita in Ramayan; wherever Rama moves, Sita follows him without any hesitation<sup>37</sup>. These two judgments violate Article 14<sup>38</sup> under Indian Constitution. Many Commonwealth countries like Australia, New Zealand, Canada, Scotland, South Africa, and Bangladesh abolished Conjugal Rights' Restitution.

## LATEST DEVELOPMENT ON RESTITUTION OF CONJUGAL RIGHTS

The Gujarat National Law University challenged the constitutional validity of the Restitution of Constitutional Rights through public interest litigation. In the petition, the Petitioners submit that the legislative package providing for the Restitution of Conjugal Rights is unconstitutional on the following grounds:

- i. The legal framework is violative of Articles 14 and 15(1)<sup>39</sup> of the Constitution.
- ii. The legal framework is based on English feudal law, which regarded a Woman as the chattel of his wife and is violative of Article 15(1) of the Constitution.
- iii. The legal framework is violative of the right to privacy, individual autonomy, and dignity (both men and women), guaranteed under Article 21 of the Constitution.

The High-Level Committee on Status on Women, 2015 recommended removing the provisions related to the restitution of conjugal rights from the statutes. This petition gave another opportunity to decide the constitutional validity of the Restitution of Conjugal Rights.

## CONCLUSION

The Restitution of conjugal rights purpose has been defeated. Nowadays, a husband filed a petition to escape from the liability of maintenance and create unnecessary harassment of a

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<sup>36</sup> *Ibid*

<sup>37</sup> Rosy Sequeira, 'Sita followed Ram; why can't you?' (*The Times of India*, 9 May 2012) <<https://timesofindia.indiatimes.com/city/mumbai/sita-followed-ram-why-cant-you/articleshow/13059089.cms>> accessed 02 May 2022

<sup>38</sup> Constitution of India, 1950, art.14

<sup>39</sup> Constitution of India, 1950, art.14 and art.15(1)

woman even though she is not ready to be interested in living with her husband. The Court cannot compel a couple to live together through a decree of Restitution of conjugal rights. After one year, the husband files a separate petition to get a divorce by stating that the wife is not willing to live with him. Hence, the decree of Restitution of conjugal rights becomes the ground for divorce. The Restitution of conjugal rights concept originated in England. But Restitution of conjugal rights abolished the concept in 1970 itself. The Supreme Court struck down some colonial period provisions in the cases like *Navtej Singh Johar v Union of India*<sup>40</sup> - Section 377<sup>41</sup> - Criminalization of Homosexuality - has been held unconstitutional and *Joseph Shine v Union of India*<sup>42</sup> (Section 497<sup>43</sup> - Adultery has been held as unconstitutional). Similarly, the Supreme Court should consider abolishing the practice of Restitution of conjugal rights which creates harassment on the spouse who is not willing to live with another spouse.

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<sup>40</sup> *Navtej Singh Johar v Union of India* (2018) Writ Petition (Criminal) No.76/2016

<sup>41</sup> Indian Penal Code, 1860, s 377

<sup>42</sup> *Joseph Shine v Union of India* (2018) Writ Petition (Criminal) No. 194/2017

<sup>43</sup> Indian Penal Code, 1860, s 497