

Case Comment: Saroj Rani v Sudarshan Kumar Chadha AIR 1984 SC 1562

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Abstract: This paper gives a case commentary on Saroj Rani v Sudarshan Kumar Chadha case on co-habitation and further draws upon the relevance of this case in current times.

Keywords: Co-Habitation

1. Introduction

Marriage under all matrimonial laws is said to be a sanctimonious union of two parties which confers marital duties and provides them with legal rights as well. Marriage is said to be an essential part of Indian Society and so, if any spouse deserts their other half without any proper excuse, it allows for state interference. As per section 9 of The Hindu Marriage Act, 1955 [1], when either the husband or wife, without any justifiable excuse, withdraws from the society of the other, the party so affected can apply to the court for restitution of conjugal rights and if all the statements so provided are true, then the decree for restitution of conjugal rights shall be granted. However, in recent times, there have been arguments that through section 9, the state orders and compels the other person to stay with their spouse. This, in itself, violates the fundamental rights of the people concerned, and invades their right to privacy and a right to live with human dignity. The question of the constitutional validity of Section 9, along with the aim and objective of the court for framing this section has been discussed in this case comment.

2. Facts

The appellant and respondent got married on January 1975 and had a daughter after a year. On October 1977, the wife filed a suit under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights and alleged maltreatment towards her by the husband and his in-laws. The husband disputed the claim of maltreatment however, gave his consent, to allow the decree for restitution to be passed. During the period of cohabitation, the wife was taken to the house after one month of the decree being passed and after staying for two days, she was turned out of the house. Furthermore, after a year had passed, the husband filed for divorce under Section 13 (1-A) of the Hindu Marriage Act, 1955 [2] by arguing that he and his wife, had been living separately for one year and that there was no actual cohabitation as per the decree for restitution of conjugal rights which was passed by the court.

After considering the facts of the case, the district court held that since the decree for restitution of conjugal rights was passed upon the consent of both the parties, the husband then, should not be entitled to file for divorce. The husband

further appealed to the High Court which held that a decree passed upon the consent of both the parties was not a collusive decree that would debar the restitution of conjugal rights for the petitioner. The High Court also held that as per Section 23 of The Hindu Marriage Act, 1955 [3] if the court had tried to make amends between the parties and if reconciliation had been ordered, then the husband was entitled to get a decree. Hence, the appeal was allowed and the husband was granted the right to a divorce.

3. Background

This case comes under the pretext of questioning the validity of Section 9 of The Hindu Marriage Act. Initially, the Andhra Pradesh High Court [4] had held the section being unconstitutional, before the Delhi High Court [5] held it to be within the ambit of the constitution. This case has been important within the Indian gamut of *staredecisis*, with regards to what remedy to be provided under restitution of conjugal rights and if section 9 is violative of articles 14 and 21.

4. Issues

- 1) If the Husband was entitled to the decree for the right to divorce.
- 2) Whether Section 9 of the Hindu Marriage Act is based on fair, constitutional rights or not.

Arguments Presented by the Parties

Contentions by the Appellant

- It was argued that the husband had misled the wife and the court by agreeing to fulfil the decree of restitution of conjugal rights which he knew he would not honour since he refused to cohabit with the wife, as he intended to divorce her. Thus, as per section 23 (1) (a) of The Hindu Marriage Act, 1955 the “wrong” done by the husband is a valid ground for the husband not being entitled to get a decree of divorce.
- The Husband must not be allowed to take any advantage through the decree of restitution of conjugal rights that was passed, as he refused to cohabit.
- The decree for restitution of conjugal rights is unconstitutional and violative of Articles 14, 21 of the

Constitution. This has further been laid down in the case of T. Sareetha v. T. Venkata Subbaiah [6]

Contentions by the Respondent

- Section 9 of The Hindu Marriage Act, 1955 is based on constitutional grounds as per Smt. Harvinder Kaur v. Harmandir Singh Choudhry [7]

5. Analysis

Constitutional Validity under Art.14

Article 14 of the Indian Constitution holds [8] that no person shall be treated unfairly before the law and that every person shall be protected equally by the law within the territory of India. However, in current times, the Indian Society is one defamed with the tag of gender discrimination. There have been frequent instances where women have been subdued to violence and prejudice because of their gender. Further, as per Justice Gupte in T. Sareetha v. T. Venkata Subbaiah [9], “a suit for restitution by the wife is rare in Indian Society.” The court after analysing held that Gupte’s statement was in context with the old provisions of the Hindu Marriage Act and through act 44 of 1964, either party (the wife or the husband) are now given an equal chance to file a petition under Section 9 and Section 13 (a).

The court further held that under the Hindu Marriage Act, there is no advent of gender discrimination and there is no categorisation of sexes as per section 9 as well. The main aim of this decree is to bring harmony and peace between the couple. The purpose of this section is cohabitation, which implies living together as husband and wife. Hence, the court held that Section 9 is not violative of Article 14 of the Constitution as this section does not give way for any prejudices among the sexes

Constitutional Validity under Art.21

Article 21 stipulates [10] that the right to life and personal liberty shall not be, through legislations and actions of the state, be taken away of any person. Article 21 ensures that every person has a fundamental right to life and personal liberty. This article has been conferred a paramount standing by the Supreme Court as well. [11] It is argued that Section 9 of The Hindu Marriage Act, 1955 violates this section as by providing the restitution of conjugal rights, it restricts the spouse their free will to choose. Justice Choudhary of the Andhra Pradesh High Court, in the case of T. Sareetha [12] had also commented on Section 9 and called it a “savage and barbarous remedy violating the right to privacy and human dignity guaranteed by article 21 of the constitution.” Furthermore, he also commented that section 9 imposes forceful “sexual cohabitation” between unwilling parties and that interference of the state in the private matters of the matrimonial home created problems for the “sexual autonomy” of the individual. However, The Court emphasized that marriage as an institution has been essential to Indian Society and it must be protected. It held that restitution of conjugal rights is not an unruly provision in nature and the courts cannot force it upon the parties. This provision can be used as recourse to settle matrimonial

issues peacefully. If the spouse does not wish to live with the other, then they can resort to other legal recourses like divorce and judicial separation. Leaving a partner without a justifiable excuse cannot be held to be legally valid as they are against the principles of justice, equity and good conscience. The court held that Section 9 of The Hindu Marriage Act, 1955 is not violative of Article 21.

Is the Husband taking advantage of any of his ‘wrongs’?

The court had held that as per the facts, it could be ascertained that there was no collusion between the parties. As per the court, the wife made certain accusations against the husband, he denied those accusations and then further stated that he was willing to fix their relationship and take her back. As per that statement, a decree was passed and thus, it cannot be called collusive.

Furthermore, during their pleadings, the parties had not mentioned to the court of this fact. They had also not brought forth this contention to the lower courts. As a result, the facts that the wife put forth in the trial court were contradicting with the facts presented before the Supreme Court. The court also stated that if the husband had intended to set up a trap with the aim of rejecting to cohabit with her in order to obtain a decree for divorce, it would go against the defence presented by the wife. Also, in order to take any benefit out of his wrongs, there was an absence of any factual application and no adequate legislations were presented to tackle this issue. Thus, as per Section 23 (1) (a) of The Hindu Marriage Act, 1955, the husband was not taking advantage of his wrongs.

Does the sanctity of a marriage place more importance than the rights of the individual?

The court in this case struck down the Andhra Pradesh High Court judgment, which deemed section 9 to be unconstitutional. However, what I felt the courts failed to see while further re-establishing the purpose and aim of this section is that compelling a person live with their spouses, when they do not want to, fails to comply with their right to privacy. Fundamental right to privacy exists at home, in marital relationships as well. Furthermore, taking into consideration that Marital Rape in India is not a crime through exception 2 carved in Section 375 of the IPC [13], it is of the essence to notice that compelling a woman to live with her husband takes away her right to sexual autonomy and deprives her of her fundamental rights enshrined in Article 21 of The Constitution which gives every person a right to life and personal liberty [14]. The cases for restitution of conjugal rights leave some areas for the husbands to restore their conjugal rights by claiming the defence that having forced sex with their wife is not something bad and considering the evolution of marriages the conjugal Right to sex is a part of all forms of marriage. However, what we all fail to see is that this right is not a limited one, but is dependent upon the consent of both parties. This defence can further lead to fights and tensions in the matrimonial home. [15]

In a current writ petition filed by RIT Foundation, All India Women's Democratic Association and two more individuals, which is being heard by the Delhi High Court, Advocate Karuna Nundy claimed that Exception 2 of Section 375 fails to recognize the right of the married woman to say NO to sexual intercourse with her husband, which restrains her right to freedom of sexual expression and behaviour. It was also further alleged that the apparent object and aim of marital rape with regards to marriage and maintaining its sanctity through restitution of conjugal rights must not take over a woman's right to privacy and other rights guaranteed to every person under Article 21 of The Constitution. [16]

While the case of Saroj Rani v Sudarshan Kumar Chadha [17] does tell us that the main aim for restitution of conjugal rights is to create a medium for maintaining stability in the marriage and not be a recourse to bind the person and restrain their rights, the case of K. S. Puttaswamy v. Union of India [18] has now established right to privacy as a fundamental right, which could further stir up more problems as it allows a person complete control to decide personal matters of family, marriage, sexual orientation and others. This paradoxical position further complicates matters as it makes us question if State Intervention in matters of the home is an invasion of the individuals personal rights.

A ray of Hope?

In cases of Marital Rape, the husbands take the defence for constituting a decree for restitution of conjugal rights by stating that Marital Rape is not a criminalized act and that the institution of marriage in itself, allows them for forced sex with their wife. However, there is a ray of hope for claiming for divorce under this ambit, by filing for cruelty. The Kerala High Court, in a case where a plea was filed by a doctor against a family court judgment for divorce on the ground of cruelty, had held that while marital rape is not recognized under penal law, it can still be constituted as grounds for divorce under a form of cruelty. It also justified that any violation or disrespect of one's bodily integrity would further lead to a violation of one's individual autonomy. [19]

6. Conclusion

This case comment has shown that Restitution of Conjugal Rights, from the eyes of the law, is a medium through which the deserting partner is made to compensate for their unjustifiable withdrawal and is a consortium of maintaining harmony in the marriage. However, what might seem reasonable to one partner could be perceived differently by the law and could lead to drastic consequences. Although, the aim of this section was to save the marriage and maintain harmony, in current times, it has lost its relevance and as social scenarios change over time and cases of violence and abuse keep increasing, this section does not create the adequate effect it initially sought to have and ends up doing more harm than good.

References

- [1] The Hindu Marriage Act, 1955, §9, No. 25 of 1955, 1955 (India).
- [2] The Hindu Marriage Act, 1955, §13(1-A), No. 25 of 1955, 1955 (India).
- [3] The Hindu Marriage Act, 1955, §23, No. 25 of 1955, 1955 (India).
- [4] T. Sareetha v. T. Venkata Subbaiah AIR 1983 AP 356.
- [5] Smt. Harvinder Kaur v. Harmander Singh Choudhry AIR 1984 Delhi 66.
- [6] T. Sareetha v. T. Venkata Subbaiah AIR 1983 AP 356.
- [7] Smt. Harvinder Kaur v. Harmandir Singh Choudhry AIR 1984 Delhi 66.
- [8] INDIA CONST. art 14.
- [9] *Supra*, note 6.
- [10] INDIA CONST. art 21.
- [11] Maneka Gandhi v. Union of India AIR 1978 SC 597.
- [12] *Supra*, note 6.
- [13] The Indian Penal Code, 1860. § 375, exception 2. Act No. 45 of 1860. 1860 (India).
- [14] INDIA CONST. art 21.
- [15] Florence Ruzive, *The Restitution of Conjugal Rights: A Hallway to Marital Restoration or A Pathway for Divorce?*, IJALR, (January 12, 2021), <https://www.ijalr.in/2021/01/the-restitution-of-conjugal-rightsa.html>.
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- [18] K.S.Puttaswamy V. Union of India (2017) 10 SCC 1.
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