



The Indian Journal for Research in Law and Management

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Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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THE CONSTITUTIONALITY OF SECTION 9 OF THE HINDU MARRIAGE ACT

(Vrinda Yadav)

“We do not create marriage from scratch. Instead, in the elegant language of the marriage ceremony, we enter into the holy estate of matrimony.”

I. INTRODUCTION

Traditions, marriage and family are the 3 biggest pillars of the Indian society. Marriages in India is seen as the union of not just 2 individuals but as the union of 2 families, of customs and cultures. It plays a very important role in building the social fabric of the society and family clans. In the Hindu religion, marriages are seen as the sacred duty of the 2 individuals towards each other and towards the families of the couple. The institute of marriage is a complex structure which has impacts on the different spheres of the life of the individuals and so protecting the sanctity of the marriage are the primary concern of the family courts and the laws followed in the country, and thus the section 9 of the Hindu marriage act¹ was introduced in the statute.

II. WHAT IS RCR

The section 9 of the Hindu marriages act is concerned with the restitution of conjugal rights. When two people enter into a marriage there are certain right that they need to fulfill towards each other, these are the basic rights of the couple in a marriage, such as living together, attending events together as a couple and remain in each other's company. When one of the parties of the marriage abandons these rights and leaves the company of the other without any reasoning, the aggrieved party can approach the court to re-enforce the rights abandoned by the other part. In other words

¹ The Hindu Marriage Act, 1955; S9

after the marriage has been solemnized if either of the spouses withdraws from the company of the other without any possible and reasonable reason the other spouse has a legal right to approach the family court under section 9 of the Hindu marriage act and reconstitute the conjugal rights. For them to do so there are certain criteria that are to be fully filled and only then the rights can be reconstituted. These include, the parties of the marriage are legally married to each other, that one of the parties has excluded themselves from the company of the other. That there was no logical reason behind the doing, this needs to be proved to the satisfaction of the court of law. Only on the full fulfillment of these conditions can the court grant a decree of RCR. If there was a valid reason for the party to walk away from the company of the other then RCR is not granted. This remedy was initially used in England and was later used by India's Privy Council in a case known as *Moonshee Buzloor v. Shumsoonnissa Begum*². However, this matrimonial remedy of reinstatement of conjugal rights was repealed in England in 1970.

III. Validity of the law

Section 9 or the concept of granting the decree of RCR by the courts has been in question multiple times as it violates the fundamental rights of the individuals, to be specific rights under article 14, 19 and 21 as the person is forced to live with the other spouse because of judicial orders and sanctions and not by will. Due to this the provision has been in question multiple times. Regarding the constitutionality of the RCR different high courts and supreme courts have given vast opinions. In the case of *State of Bombay v. Narasu Appa Mali*³, the Bombay High Court heard the first constitutional challenge to the Hindu Marriage Act, 1955. The Hindu male challenged the monogamy requirement. A suit was brought in the Bombay High Court contesting the monogamy imposed by the Bombay Hindu Marriage Act of 1946. A Hindu husband argued that the legislation governing monogamy violates his personal freedom and prevents the practice of religion. He contended that the rule is discriminatory against Hindu males, while Muslim men can practice polygamy. The High Court ruled that personal laws are not considered "laws in force" under Article 13 of the constitution, and hence are not unconstitutional even if they violate equality provisions. constitution because fundamental rights cannot be applied to personal legislation.

² *Moonshee Buzloor Ruheem v. Shumsoonnissa Begum*, (1867) 11 M.I.A. 551

³ *The State Of Bombay vs Narasu Appa Mali*, AIR1952 BOM84

It should be mentioned that some argued that restitution of conjugal rights obviously breaches the wife's right to privacy. Although the Supreme Court, in *Kharak Singh vs. State of UP*⁴, concluded that the right to privacy "is an essential ingredient of personal liberty." In *Gobind v. State of Madhya Pradesh*⁵, the court had to address the problem made in the *Kharak Singh* case. In this decision, the Supreme Court concluded that, among other rights, the right to privacy is a component of the right to liberty.

In our democracy, every person has a basic freedom to associate with anybody as he or she wishes. The matrimonial remedy of restitution of conjugal rights violates freedom since it forces a wife to associate with her husband against her desire. In *Huhhram vs Misri Bai*⁶, the court ordered reparation against the wife's will. Despite the fact that the woman had explicitly said that she did not want to live with her husband, the court ruled in his favor. In *Atma Ram. v. Narbada Dev*⁷, the wife won the case.

We live in a culture where people have total freedom to select their job. During the restitution of conjugal rights, a person may be forced to reside with their partner against their will or interest. As a result, the freedom to live and practise any profession of one's choosing appears to have been infringed. Several times in the past, courts attempted to provide a remedy. In the case of *Harvinder kaur v. State*, the Supreme Court stated that "introducing constitutional law in the home is most inappropriate; it is like introducing a bill in a China shop."

IV. CONCLUSION

In conclusion, while Section 9 of the Hindu Marriage Act seeks to protect the sanctity of marriage by protecting conjugal rights, it presents serious constitutional problems, notably for individual liberties and privacy. The courts have disagreed on its legality, with several judgements emphasising the conflict between personal liberty and marital duties. One reform to Section 9 may be to include a required mediation procedure prior to court proceedings, allowing spouses to overcome their issues willingly. This will help strike a balance between safeguarding marital purity

⁴ *Kharak Singh vs The State Of U. P. & Others*, 1963 AIR 1295

⁵ *Govind vs State Of Madhya Pradesh & Anr*, 1975 AIR 1378

⁶ *Huhhram Vs Misri Bai*, AIR 1979 MP 144

⁷ *Atma Ram. v. Narbada Dev*, AIR 1980 RAJ 35

and recognising individual rights, ensuring that the legislation advances in line with current cultural ideals and human rights standards.