

PETITION ON CONJUGAL RIGHTS PENDING FOR MONTHS IN SC

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

A petition questioning a law that forces a woman to return to her husband and denies her sexual autonomy has been pending in the Supreme Court for months without a hearing.

Restitution of conjugal rights, considered a medieval ecclesiastical law from England codified in several statutes, including the Hindu Marriage Act and Special Marriage Act, owes its survival largely to the fact that marital rape is not recognised as crime.

The petition, titled *Ojaswa Pathak versus Union of India*, was last heard on July 8, 2021. Justice Rohinton Nariman, who had led the Bench, has since retired.

The furious debate to criminalise marital rape compels a thought on how restitution of conjugal rights, though gender-neutral, places an additional burden on women by forcing her to stay with her husband and threatens their bodily autonomy, privacy and individual dignity. If a woman does not comply to return to her husband, the court could even attach her property.

Provisions of restitution of conjugal rights empower a husband or a wife to move the local district court, complaining that the other partner has “withdrawn” from the marriage without a “reasonable cause”.

The provisions violate a woman’s freedoms of association, to reside anywhere in the country and practice a profession.

That is, if a woman stays away from her husband for her job, would it mean that she has “withdrawn” from the marriage. Besides, “reasonable cause” is subjective.

The courts have dealt with conjugal rights in a chequered manner.

The Punjab and Haryana High Court in *Tirath Kaur* case, held that “a wife’s first duty to her husband is to submit herself obediently to his authority and to remain under his roof and protection”.

The Supreme Court, in *Saroja Rani* case, held that the “right of the husband or wife to one another’s society is inherent in the very institution of marriage”.

New lease

The fight against marital rape and restitution of conjugal rights has gained a new lease of life with the Supreme Court’s nine-judge Bench upholding privacy as a “constitutionally protected right”.

The top court, in its recent *Joseph Shine* judgment, concluded that the State cannot interfere in a person’s private affairs and “privacy is an inalienable right, closely associated with the innate dignity of an individual, and the right to autonomy and self-determination to take decisions”. The time is ripe for the top court to pick up from where it left off.

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