

Development of Conjugal Rights of Women in Marriage with Special reference to Restitution of Conjugal Rights

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ABSTRACT

In India, the institution of marriage is considered as sacrosanct that unites two individuals as well as their families. The aim of present study is to examine development of conjugal rights of women in marriage over 18th, 19th and finally coming down to scenario in 21st century. The article would cover issues related to rights in marriage especially from point of view of women. The idea is to put forward a compilation of basic study to cover change in concerns over these past years between the relationship of a husband and wife. To see if this development resulted in positive or negative change, whether this was all together required, the practical applicability of transformation in legislations and whether they proved effective or not. From a very long time, it is seen that the condition of women in marriage is worse than men due to social structure, orthodox thinking, dogmas leaning to establish men as superior to women. After marriage both husband and wife have certain obligations towards each other and are given certain rights as well. The topic "Development of conjugal rights of women in marriage" could be researched upon from various areas including its development over the centuries covering various issues like marital rape, maintenance rights, divorce, domestic violence and many more, but this paper specifically deals with the issue of "restitution of conjugal rights" and its negative impact on condition of Indian women at large. The other related aspects are discussed in brief at some point to have an idea about the development and change in state of women over the years. The paper attempts to include the concept of conjugal rights and its implications in the form of restitution of conjugal rights. When partners who have previously joined marital relations begin to live separately, *i.e.* one partner leaves the other's community (marital home), then the idea comes into being in order to have some remedial steps for the deprived group, which serves as a kind of restoration, which in some way seeks to fulfill one of the most important purposes of these personal rules, *i.e.* to avoid the breakdown of marriage for which the other one can be compelled to live together. This is known as "restitution" of conjugal rights.

Key Words : Conjugal rights of women, Marriage, Marital relations

It is not hidden that women in marriage are considered lower than men whether it can be due to the reason that they do not earn usually or any other. This aspect can also be reflected in the historical practice of not allowing women to own property or land or even to control their own assets. For every small thing they were encouraged to depend on their husbands, this somewhere has undermined their status and made them weak. The individuality and legal existence of women was destroyed systematically or at least it was incorporated into husband

on whose mercy her whole future was contingent upon. The research article tries to examine reasons and ways in which this practice was performed in modern time; there has been shift from sacrosanct bond of marriage under Hindu law to contractual union again. The idea is to present a comprehensive research encompassing around conjugal rights in marriage with special reliance on predicament of women in general. The widespread impression is to put forward a premise that despite significant cultural variation, a common theme emerges

that patriarchal mode of living scientifically undermines women's standard of living while categorically enhancing those of men.

Meaning of Conjugal Rights and Related Legislations:

Conjugal rights relates to rights in marriage given to both husband and wife. It can be said to mean interdependence of both on each other financially, emotionally and includes right to stay together, support each other in every aspect of health, comfort and services. It also includes sexual rights or privileges implied by and involved in the marriage relationship. Both are bound by law to keep their marriage life together and are subject to enjoyment of rights and obligations. Conjugal rights provides for consortium of rights towards each other including cohabitation, company and maintenance during the marriage. In literal sense, the right means, "to stay together" and encompasses the right of aggravated spouse to obtain a matrimonial compensation guarantee under personal laws in case either partner departs from the other to regain his or her status. By filing a petition before the tribunal to re-establish coexistence, this can be done. Conjugal Rights are called this right.

Status of Women in 18th and 19th Century in UK, India and US:

The most of the law in existence today is derived from the principles of common law, which was also the case in 18th and 19th century. The trend followed in western countries was similar to what was there in India in sense that after marriage, women were considered the property of their husband and were denied crucial rights of existence resulting degrading of their individual status. There is no denying the fact that in ancient times, women have been considered men's inferiors, physically and intellectually. This can be traced from way the laws were made depriving the basic rights of property and education to them in ancient Greece and Rome. India's regressive customs and practices are also not concealed from anyone whereby there was restriction on women remarriage, Sati and even the act of wearing bangles was a sign of being in shackles. In England, women were deprived of the right to own property after marriage, which

was given to her husband. In the US, women and children were considered as the possession of men.

United Kingdom:

In the 18th century, under the English law, the laws of coverture, which means, the husband and wife were one person, bound women. This suggests that after marriage that one person is the husband who has all the rights available including the right to sue and be sued, capacity to contract. Moreover, the personal property of wife was given to the husband and husband was held liable for all the torts committed by the wife, whether before or after the marriage. The wife's legal existence was suspended during the marriage.¹The wife was not entitled to write her own will without her husband's consent and was even denied custody of children. The whole debate of providing equal rights to women revolved around their rights to hold property as separate from their husband. Judging this point by applying the theory put forward by Hobbes would help in recognizing the importance of property for which the men is ready to abandon the State of Nature. The rights are surrendered to the government to seek protection of the people's property and well being. This similar fashion was predominant even till 19th century where doctrine of coverture was used to deny the vote and public office to the women assuming that they would be represented by her husband.²After divorce, children were made the man's property and the mother could be prevented from seeing her children. Husband was permitted to seek divorce on grounds of adultery, which was not available to women if they found that their husbands had been unfaithful. Lastly, it can be said that marriage meant subordination for women in 18th and 19th century.

America :

In most nations, for most of American history, women's lives were circumscribed by common law introduced by English colonists to North America. These laws on marriage and land, or "coverture," stipulated that a married woman had no legal life apart from her husband. Apart from this, women do not have the freedom to control their own earnings and were equal to slave or a minor child. The mother could not become the guardian

1. 41 American Jurisprudence 2d, Sections 1-9, "Husband and Wife", Lawyers Cooperative Publishing, New York (1995)

2. Shanley, M. (1986). Suffrage, Protective Labor Legislation, and Married Women's Property Laws in England. Signs, 12(1), 62-77. Retrieved January 16, 2021, from <http://www.jstor.org/stable/3174357>.

of her minor children after the death of her husband. The legal existence of woman was barred in 18th and 19th century in America just like UK and there was subordination. But the situation here is different in context that they have the right of “dower” a right to property they brought into the marriages to maintain her during widowhood as well as life usage of one-third of their husband’s estate. The concept of female slavery was prominent in late eighteenth century that resulted in further exploitation of women. Adding to their mistreatment, women could not enter into contracts, plan wills, take part in legal transactions or control any wages that they earn. But one law has served to minimize some of the worse impacts of “coverture”. A married woman had the right to be maintained in a way that was compatible with the social standing of her husband. She could sue and gain support from the courts if he failed to care for her adequately. Without her permission, a husband could not sell or mortgage the realty his wife brought to their union. He could use it, but he could not transfer it because the real estate of a woman, typically inherited from her father, was meant to remain in the family and go down to her children through her. A wife also had considerable rights to the real estate that her husband brought into the marriage or later acquired. Only when she signs a document signifying her free consent, which was registered with the deed, he could sell or mortgage it. Without the consent of the wife, few mortgagers or buyers will enter into an agreement. Such system failed to provide opportunity to women to safeguard their own interests. Women were not allowed to vote similar to black men and aliens even if they pay same amount of tax as men based on the presumption that their husbands would coerce them. This caused concentration of power into the hands of men. Divorce was regarded as alien concept not allowing ending unhappy marriages during that time. Later, the shift took place in nineteenth century where courts showed their willingness to avoid these colonial precedents that favored men in custody disputes and put children in care of mother.³ These major changes took place mostly in the twentieth century. It wasn’t until the 1940s that based on the men they married; women did not have to worry about losing their citizenship.

India :

In India during eighteenth century, polygamous

marriage *i.e.* having more than one husband and wife was prevalent among warriors and royal kingdoms. Mostly it was men who kept many wives as a part of status symbol, social, moral and religious obligation. Other than this there was ambiguity on laws related to property, thus putting little emphasis on women rights. They were granted property rights only after implementation of law. The wives used to burn themselves with their dead husbands known, as “Sati” is the biggest flaw in rendering inferiority to women during that time. The practice of Purdah both in Hindu and Muslim women made solitude of women more rigorous; they did not have any social identity away from their husbands. They were not allowed to get education, were expected to follow age old customs such as polygamy, forced celibacy of women child marriage, infanticide etc. more prevalent in Hindu women at that time. The main problem was financial dependency or less of economic freedom of wives, they were not educated due to social customs and were asked to treat their husbands as God rather than equals. The ideology behind giving girl child was of financial transaction strongly supported by social and secular authorities in the nineteenth century. The laws ignored women systematically, they were second-class citizens in the matters of marriage *i.e.* divorce, property, succession and adoption. Thus, during this time, the overarching objective of female education was to ensure that Indian girls grew up to become better wives, better mothers and better housekeepers. A fine combination of a self-sacrificing Indian wife and a Victorian help maid was this modern definition of womanhood. In early twentieth century, the issue of dowry demands was highest before the enactment of Dowry Prohibition Act making the demands illegal. Many cases of dowry-related domestic abuse, suicides and murders have, however, been recorded. Numerous such cases were reported in the 1980s. It is evident that though being in same time frame, marriage related issues were different in nature in India as compared to what was happening in UK and America mainly because of cultural differences, change in ideologies and social structure.

Wives and Marital Rape:

Marital rape has been the cast form of suppression against women that hampers women social development and violates their human rights. It is important to

3. Marylyn Salmon, The legal Status of Women, 1776-1830, The Gilder Lehrman Institute of American History, accessed on 16th January 2021, <https://ap.gilderlehrman.org/essay/legal-status-women-1776%C3%A2%E2%82%AC%E2%80%9C1830>

understand that this is reinforced through past male dominance as an impact of patriarchal need to control women in India. The ancient idea was to confine women to perform household chores but due to advent of globalization lifestyle, nuclear families urged and a transition from traditional families took place. There is no place of offence of marital rape in IPC because it was drafted in 1860 during the time when women were not treated as an independent legal entity. They were considered possession of men under the influence of British rule when doctrine of coverture was predominant. The laws in India at that time were framed on the basis of Victorian patriarchal norms that did not acknowledge men and women as equals and merged identity of women into men. The objective of this paper is not to discuss the issue of marital rape in detail here but to examine reasons why it was not problematic during past centuries and how it is looked upon in different countries now. An Anglo-American concept, the Doctrine of Coverture, originated in England and was eventually used in all jurisdictions of common law. Under this theory, after the legal marriage of wives, husbands are taken over and all their rights are suspended. In the famous case of *Joseph Shine v. Union of India*⁴, Justice Indu Malhotra identified that this doctrine is against constitutional principles and violative of fundamental rights of women and though ineffective has left some traces in the form of spousal rape. Marital rape was never an issue in eighteenth and nineteenth century because women of those times never treated it like a crime due to lack of individual rights and freedom. The position of marital rape in other countries is different. For example in UK, the only important factor for sexual intercourse is consent and if it is not there, the person can be held liable. The punishment for spousal rape ranges from 4-19 years of imprisonment in case consent is absent. Similarly in the US, almost all the states have criminalized marital rape and treat it same as rape. In France, the punishment for marital rape is 15 years imprisonment, which may be increased. When finally after centuries women were granted their fair share of equal rights and respect at par with men, it is denied to them by not criminalizing marital rape. Women have always been regarded by the Patriarchal system that administers families as an unimportant property of their spouse or guardian. So rape was known as female theft and wrong against a husband or guardian. The facets of marital rape

exemption are based on the foundation of 'irrevocable implied consent' generally expected from women.

Other issues in Marriage Related to Women:

The property rights of women were not provided to them in the early nineteenth century including the right of Stridhan, division of family property, succession and inheritance etc. It was only after Hindu Succession Act 1956 came, women were treated equal to men and had the sole right or ownership of property, gifts received at the time of marriage. The 2005 Amendment in the Act gave equal right as male on the family's property after the death of the owner of that property. Then there is a maintenance right provided to women, which includes, food, clothes, shelter, health requirements etc. in case wife earns less than husband or does not earn at all. Under Hindu Marriage Act, 1955 and Hindu Adoption and Maintenance Act, 1956 a Hindu woman can claim maintenance and it is a legal obligation of husband to provide decent living to his wife and children. Women are entitled to custody of children and generally due to fear of losing custody, a wife continues living in a violent marriage. There are lots of cases where women are subject to domestic violence including physical, emotional and sexual for which, The Protection of Women from Domestic Violence Act, 2005 came into force to provide protection to women. The point is to show that India has always been a patriarchy influenced society but due to reforms and development in modern society, women have been given various rights and roles in society that were previously absent.

Restitution of Conjugal Rights- A Sin:

The notion of the restitution of conjugal rights and its integration into Indian legal jurisprudence cannot be said to be alien to Indian culture and society. The only new thing is its formal inclusion in personal laws. In India, the legal system has always had a highly paternalistic approach towards the private lives of women. The bodies and identities of women are compromised and violated under the garb of family security. While some of these strike women's weaknesses and their lives directly, others do the same in a very indirect way. This article will examine the legal life under Indian law of these terms of restitution. It also deals with the relationship of the struggles of women in the institutions of law with these

4. 2018 SCC Online SC 1676

orthodox archaic clauses. The provision related to restitution of conjugal rights is given under Hindu Marriage Act, 1955 and Special Marriage Act, 1954. This article will examine the legal life under Indian law of these terms of restitution. It also deals with the relationship of the struggles of women in the institutions of law with these orthodox archaic clauses. Under this, any spouse is entitled to receive a decree of restitution if any one of them has withdrawn from his or her society. On being satisfied of the grounds, the Court could order other party to join the company of the aggrieved party. This rule has many flaws and even after being passionately debated upon, it was retained as law till now.

The very first case on this issue was *Tirath Kaur v. Kirpal Singh*⁵ where the Court asked wife to join her husband when she took a job in another town to support her family. The Court argued, “husband was satisfied in asking the wife to live with him even if she had to give up service”. This decision was based on premise that it is the duty of wife to submit herself obediently to her husband’s authority. In the case of *Kailash Wati v. Ayodhia Parkash* (1977), the Court held that “The true position in law appears to be that any working woman entering into matrimony by necessary implication consents to the obvious and known marital duty of living with a husband as a necessary incident of marriage.” And in case the woman was in any doubt, the court reiterated that only the husband had the “right to choose and establish the matrimonial home”⁶

Critical Analysis of Section 9 of the Hindu Marriage Act, 1955:

This concept entered in India during British Raj in the name of social reforms. This matrimonial remedy under Section 9 of the Hindu Marriage Act, 1955 is available to both spouses, but a suit for restitution by the wife is rare. A survey of case law under the head ‘restitution of conjugal rights’ reveals that even though the decree of restitution of conjugal rights has been asked for by the husband against his wife, but in almost all cases it was proved that either he guilty of cruelty or brought

the petition only to escape from the liability to pay maintenance.⁷ British experts in family law have doubted the ineffectiveness and uselessness of this remedy.

The Report of High-Level Committee on the Status of Women, Ministry of Women and Child Development in 2015⁸ suggested that restitution of conjugal rights had no relevance in independent India, it is high time to avoid shackles of outdated laws that suggest wives to be inferior to husbands. The issue of questionability of legal control in private morality could be decided from what is suggested by Hart. He was not in favor of law should be active in enforcing morality rather he supported the idea that law must interfere minimal in matters of personal morality.

In the mid-1970s, a handful of cases across India were found in favor of the working wife who wanted to live apart from her husband, but this depended on her always being willing to allow her husband to exercise his marital rights if he wanted to do so. The most important case in this regard is *T Sareetha v. T Venkata Subbaiah* (1983) where Andhra Pradesh HC held that “the right to privacy belongs to an individual and is not lost by marital association”. The court noted that she was forced to have sexual relations with her husband by the enforcement of section 9 against a woman, thereby depriving her of control over her body. According to the court, this was a severe violation of the right to privacy as it transfers from the person concerned “ the choice of whether or not to have marital intercourse to the State from the concerned individual”. The intent behind this decree was:

– “A decree for restitution of conjugal rights passed by a Civil Court extends not only to the grant of relief to the decree-holder to the company of the other spouse but also embraces the right to have marital intercourse. The enforcement of such a decree is firstly the transfer of choice to the state to have or not to have marital intercourse from the concerned individual and secondly the surrender of choice of the individual to allow or not to allow one’s body to be used as a vehicle for another human being’s creation to the state. A decree enforcing restitution of conjugal right constitutes the starkest form

5. AIR 1964

6. *Kailash Wati v. Ayodhia Parkash* AIR 1977

7. Ajaya K. Vishvesha, “Restitution of conjugal rights under Muslim law - A critical appraisal” *Indian Bar Review* Vol. 14 382(1987)

8. The Report by High-Level Committee on Status of Women, Ministry of Women and Child Development 2015. Chaired by Pam Rajput.

of Government invasion of personal identity and individual's zone of intimate decisions. There can, therefore, be little doubt that such a law violates the right to privacy and human dignity guaranteed by and contained in Article 21 of our Constitution"⁹.

– “By enforcing a decree for restitution of conjugal rights the life pattern of the wife is likely to be altered irretrievably whereas the husbands can remain almost as it was before this is so because it is the wife who has to beget and bear a child. This practical but the inevitable consequence of the enforcement of this remedy cripples the wife's future plans of life and prevents her from using that self-destructive remedy. Thus the use of remedy of restitution of conjugal rights, in reality, becomes partial and one-sided and available only to the husband. The pledge of equal protection of laws is thus inherently incapable of being fulfilled by this matrimonial remedy in our Hindu society. Therefore, Section 9 violates Article 14 of our Constitution¹⁰.”

After this case, a step down was taken in the case of *Harvinder Kaur v. Harmander Singh Choudhary* (1984), where Delhi High Court again gave narrow interpretation to the definition of privacy and upheld section 9¹¹ of HMA. The words of Justice Rohatgi were “Introduction of constitutional law in the home is most inappropriate. It is like introducing a bull in a china shop. It will prove to be a ruthless destroyer of the marriage institution and all that it stands for. In the privacy of the home and the married life neither Article 21 nor Article 14 has anyplace”.

The above mentioned cases prove that it is expected from women to give up her job whenever her husband wants her to do so and due to some reason if she denied it, it would amount to withdrawal from husband's society given under Section 9 of HMA. Restitution of conjugal rights in the form of remedy is a coercive act that violates

sexual and decisional freedom and right to privacy given under Article 21 of the Constitution. It has negative effects on husband wife relationship and is mistreatment of women due to unequal power structures. After the judgment of *K.S. Puttaswamy v. Union of India*¹² it seems important to drive effectiveness and need of this archaic law in family law. This type of remedy to resolve the relation of marriage is wrong on many levels that suggests interference of Court in private relationship of two adults would make the condition worse.

A threat to privacy:

After Puttaswamy case¹³, the individual's right of privacy has been given importance and said to be essential ingredient of Article 21 of the Constitution. This right in the garb of protecting marriage clearly snatches the privacy of wife by compelling her to live with her husband even if he is abusive and use violence on her. It is necessary to see that this remedy was abolished in England from Matrimonial Proceedings Act, 1970. But India decided to retain it and if decree is passed against wife it will be enforced according to the procedures contained in Civil Procedure Code. Other than Article 21 this kind of decree also violates freedom of association under Article 19(1)(c) and freedom to reside and settle in any part of India under 19(1)(e) of the Constitution. From the above-mentioned cases it would not be wrong to say that it also violates Freedom of practice any profession under Article 19(1)(c) mainly in context of wives. Such nature of remedy could be extremely dangerous in case when husband uses violence over wife or subject her to cruelty. The provision of restitution of conjugal rights given under various personal laws has been criticized and challenged as they are only used as a vital instrument to encapsulate the forced sexual relation. Hence, it is violating “right to privacy”¹⁴. The point made

9. T Sareetha v. T Venkata Subbaiah AIR 1983 AP 356.

10. Ibid.

11. Section 9 of Hindu Marriage Act Restitution of conjugal right.- 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 of 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. [Explanation.—Where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.]

12. (2017) 10 SCC 1

13. Ibid.

14. Govind v. State of M.P, A.I.R. 1975 S.C. 1378

was that the idea of conjugal rights restitution is an act of denial of the spouse's free choice of when and how his/her body becomes the vehicle or chattel for the other spouse.

The case of *Kharak Singh v. State of U.P.*¹⁵ could be of relevance here where court held that right to privacy must include all the personal intimacies of home, family and marriage. Therefore, if the RCR decree is imposed by any court of law, it serves as a compulsion on the partner who has withdrawn from the other's community and it is a kind of psychological restriction for him/her. This is in consonance as to what was said in *Kharak Singh* where it was held that individual has a right to either remain married or not and to remain free from overreach into personal matters of a person. This is equal to unnecessary forcing any person and intruding into his/her privacy in an annoying manner.

Judging its constitutionality from point of view of Article 19, RCR cannot be treated as reasonable restriction also because courts while passing decree always fail to consider and appreciate oppressed position of women in the society. They are the only ones asked to leave their employment for the purpose to safeguard the institution of marriage. In the end, it can be satisfactorily said that RCR as a remedy stands contrary to Article 19 and 21, hence is unconstitutional. RCR is also against the principles of Article 14 (Right to equality) due to age old gender discrimination rampant in Indian society. This inequality has subdued the majority of women owing to their gender.

Taking into account the discussion, it can be said that RCR as a relief seems equal for both husband and wife but it is the women who ultimately suffers due to it due to age-old gender exploitation. Also husbands use this remedy as a weapon to delay the claim of maintenance of women and in case if husband is violent against his wife, this remedy can become threat to wife's life. Out of all the related matrimonial reliefs, this is the only remedy that empowers courts to force unwilling spouse to join company of his/her spouse and orders positive action in this regard. The controversy is mainly around the terms 'without reasonable excuse' used in section 9(1) and 'ground' used in 9(2) of HMA imposing a burden of proof on respondent (mostly wives) to prove their cause for withdrawal from society. The argument that this relief would subject parties to once again consider

their relationship and 'mutual understanding' cannot be accepted because similar kind of opportunity is already granted under Section 23(2) of the Act and this opportunity can be beneficial for the newly married couple rather than couple who has already passed the stage of conciliation and confrontation. The aspect of 'delay' in reaching to a decision in matrimonial proceedings could be disastrous and can be denial of happy married life to the young parties who remain struck in the process of fighting against each other.

Conclusion and suggestions :

To conclude, the author feels that the remedy of restitution of conjugal rights should be declared null and void on various aspects. It is against the principles of natural justice providing no grounds to support it on legal or social criteria. Since it was introduced into personal legislation, this remedy has been attracting negative criticism and some scholars have expressed their desire to abolish the remedy. The researcher concludes from the complex judgments of the Indian Courts that the definition set out in Section 9 of the Hindu Marriage Act, 1955, can not be said to preclude sexual cohabitation by carrying out this study. It is a very important element of the matrimonial relations and therefore cannot be forced upon spouse, in the aspect it would be violation of Article 14, 19 and 21 of the Constitution. Keeping this in mind, this provision of personal law is not in lines of fundamental rights, thus Section 9 of Hindu Marriage Act must be declared unconstitutional. The British give the said provision to us and even now they have abolished it. This is based on the concept of paternalism and there is no place of such provision in free India and it is high time that we did away with this.

But moving on to a more liberal approach it can also be said that the remedy can be useful to save breakdown of marriage. The argument in favor could be that while several critiques of the restitution of conjugal rights have developed, there is no convincing proof that the restitution of conjugal rights is barbaric and violates fundamental rights. Generally discrimination is based on economic factors rather than on marriage.

Suggestions:

A member of Indian Parliament once suggested that the remedy of reconciliation might substitute the remedy

15. *Kharak Singh v. State of U.P.*, A.I.R. 1963 S.C. 1295

for restitution of conjugal rights 16. In this method the court may be authorized to appoint a committee for reconciliation.

– The failure of this process should not bar the claim of maintenance by the wife and neither should amount to ground for divorce.

If this process is failed it can be assumed that it is not human or practical to suggest spouses to live together in the same house. The harsh, offensive and convincing tone of restitution in which we ask the spouse unwillingly to coexist with the other spouse can result in the relationship being broken forever. This should be substituted with reconciliation as it appears milder, appropriate and inoffensive which not only cohabits the partner, but also clears all the misunderstandings of both. The best solution could be to have a non-biased independent party. The major change can be to transfer family matters to arbitration or a more friendly body rather than Court passing remedy as a decree. This kind of process would reduce delay in time and motivates lawyer to be more helpful to provide advice to their clients. Many countries in Europe have been following arbitration in family matters, which has shown positive results. One suggestion could be to form an indirectly dependent committee that could seek advice of judiciary in case when case involves complexity. In this way minimal interference of courts can be ensured. Present patter of

restitution has been a cumbersome and time consuming process involving courts and it is best to settle family matters internally or approach friendly body.

– There can be time limit imposed within which disposal of petitions or appeals can be done to tackle the problem of delay in passing and enforcement of decree.

– To not enforce order as civil decree under Order 21 Rule 33 of the Code of Civil Procedure, 1908, it is unfair to force the unwilling spouse to cohabit or impose financial sanctions.

– An effective check can be suggested to ensure against petty actions, multiplicity of proceedings and undesirable harassment against the respondents that are mostly wives in suits of restitution of conjugal rights.

– Waiting period of one year under Section 13(1A) of the Act to be done away with as there is no logic in its continuation since it force unwilling spouses to mandatorily tolerate each other for an unnecessary period.

– The failure to oblige decree can result in attachment of property of spouse that is annoying and unjust thing to be done. Also there is hardly any chance of restoration of marriage but such relief will only lead to unjust and oppressive consequences.

– Decree should be enforced only in the form of declaratory reliefs and not as coercive process to use force against any spouse in the name of saving married life of couple.

16. Mrs Renu Chakravarty's observation on the deletion of § 9 from the Hindu Marriage Bill (as it was then). Lok Sabha Debates, pt. 2, session 9th 1955 vol. 4. p. 7625.