

UPSC PREPARATION

Conjugal Rights

SC looks again at conjugal rights, recalling the Rukhmabai case fought from 1884 to 1887.

Conjugal Rights

- Conjugal rights mean the right to stay together. It is the right of the wife or the husband to the society of the other spouse.
- It recognises the following rights
 - Personal laws dealing with divorce, marriage etc and
 - criminal laws that requires payment of maintenance and alimony to a spouse.
- Section 9 of the Hindu Marriage Act, 1955, deals with restitution of conjugal rights

Section 9 of the Hindu Marriage Act

- By petition to the District Court, the aggrieved party may apply for the restitution of conjugal rights.
- It provides an opportunity to an aggrieved party to apply for maintenance under Section 25 of the Hindu Marriage Act, 1955.
- If a wife does not want a judicial separation or disruption of marriage. She can get maintenance from her husband without filing a suit for the same.
- It provides a ground for divorce under Section 13(1A) of the Hindu Marriage Act, 1955 on a condition that there has been no restitution of conjugal rights between them for a period of one year or more after the passing of a decree for restitution of conjugal rights.

Why is the law challenged?

- The main grounds of the challenge is that it is violative of the fundamental right to privacy.
- It violates one's decisional and sexual autonomy and right to privacy and dignity.
- Some legal experts had pointed out that the landmark verdict in the privacy case has set the stage for challenges to many laws such as marital rape, criminalisation of homosexuality and restitution of conjugal rights.

What has the court said on the law earlier?

- In Saroj Rani v Sudarshan Kumar Chadha (1984) case, SC held that the provision "serves a social purpose as an aid to the prevention of break-up of marriage".
- In T Sareetha v T Venkatasubbaiah(1983) case, the Andhra Pradesh High Court had struck down the provision and declared it null and void.
- In the same year, In Harvinder Kaur vs Harmander Singh Chaudhry case, the Delhi High Court upheld the provision.

About Rukhmabai case:

- Long back the concept of restitution of conjugal rights faced its first legal test in 1885 in the case of Dadaji Bhikaji vs Rukhmabai.
- Rukhmabai was married to Dadaji Bhikaji at the age of 11. However, she stayed at the house of her widowed mother after her marriage.
- Rukhmabai's step-father supported her when she refused to stay with Bhikaji and his family at his house. This has led to Dadaji Bhikaji vs Rukhmabai case in 1885.
- Bhikaji asked for "restitution of conjugal rights". Justice Pinhey gave judgement in favour of Rukhmabai and said, "Rukhmabai was a young woman and was married off in helpless infancy and therefore cannot be forced".
- After many criticised the judgement as diminishing Hindu customs, the case came up for retrial.
- There were debates around internal reforms vs external reforms, Hindu vs English law and respecting ancient customs and traditions
- The final judgement in 1887 had asked Rukhmabai to live with her husband or face imprisonment for six months instead.
- Finally, Queen Victoria settled the matter by overruling the court order and dissolved her marriage.
- Later, to pursue further studies, she went to England and studied at the London School of Medicine.
- She is best known for being one of the first practising women doctors in colonial India
- She wrote many influencing letters under the pseudonym A Hindu Lady.
- Many studied her case and many discussions from a feminist perspective in England began.
- It influenced the Age of Consent Act, 1891 which abolished child marriages thereafter.

Some gender related laws in colonial India

- Bengal Sati Regulation Act, 1829 made the practice of Sati illegal in all of British India.
- Hindu Widow's Remarriage Act, 1856 legalised the remarriage of Hindu widows in all the regions which came under the jurisdiction of the East India Company.
- Female Infanticide Prevention Act, 1870 was a legislative act passed in British India, to prevent murder of female infants.
- Age of Consent Act, 1891 was a legislation enacted in British India on 19 March 1891 which raised the age of consent for sexual intercourse for all girls, married or unmarried, from ten to twelve years in all jurisdictions, its violation subject to criminal prosecution as rape.
- Child Marriage Restraint Act, 1929 fixed the marriageable age for girls at 14 years and 18 years for boys. It is popularly known as the Sharda Act after its sponsor, Harbilas Sarada.

Frequently Asked Questions

What does conjugal mean in law?

Conjugal Rights refer to the privileges and mutual rights between two individuals arising from marriage. These rights include mutual rights of support, companionship, affection, sexual relations, joint property rights etc.

Can court force wife to stay with husband?

Supreme Court said that Courts cannot force a husband to "keep his wife". In a case SC said that the parties are free to reach a mutual settlement for rehabilitation. It also stated that amount may be withdrawn by wife unconditionally so that she can meet the immediate requirements for herself and child.

