

CONJUGAL RIGHTS

A plea was filed before apex court to re-examine the provision allowing restitution of conjugal rights under Hindu personal laws.

About:

- **Section 9 of the Hindu Marriage Act, 1955** deals with restitution of conjugal rights.
- According to the provision, if either husband or wife withdrawn from marriage (or society of the other), the aggrieved party may approach district court for resolution of conjugal rights.
- If the court is satisfied with the truth of the statements made in such petition, it can reconstitute conjugal rights of aggrieved partner.
- **For Example:** If one of the spouses refuses cohabitation (to live together) without any reasonable ground, the court may order cohabitation and punish on non-compliance.

Current Provisions: On denial of cohabitation, punishments and repealing rights

- If a spouse refuses cohabitation, the other spouse can seek a decree for cohabitation from the family court.
- On non-compliance of court's order the property of the spouse can be attached.
- The decision of the family court can be appealed before a High Court and the Supreme Court.

What are conjugal rights and constitutional and provisions associated with it?

- Conjugal rights are those rights which are created by marriage, i.e. right of the husband or the wife to the society of the other spouse.
- The law recognizes these rights both in personal laws dealing with marriage, divorce etc, and in criminal law requiring payment of maintenance and alimony to a spouse.
- **Different laws governing different religions in India:** These laws are governed by Hindu Marriage Act for Hindus, Muslim personal laws for Muslims and Christian family laws for Christians.
- It recognizes one aspect of conjugal rights i.e. right to consortium and protects it by allowing a spouse to move court to enforce the right.
- **Similar provisions in other personal laws:** Similar provisions exist in Muslim personal law as well as the Divorce Act, 1869 which governs Christian family law.

Limitations: Why has it been challenged before court?

- **Overriding other laws:** Misuse of the provisions of section 9

of the Hindu Marriage Act is frequent as it overrides divorce laws in the country.

- ♦ **For example:** When a spouse files for divorce unilaterally, the other spouse files for restitution of conjugal rights in accordance with act if he/she does not agree with other.
- ♦ This causes intervention by the state (or court) under the provisions of Hindu Marriage Act for conciliation between the spouses one of them does not want.
- **Infringement of 'Right to Privacy':** The law is violative of the fundamental right to privacy. Court-mandated restitution of conjugal rights is coercion on the part of the state as it violates one's sexual and decisional autonomy.

Significance: Why should old laws be done away?

- **Counters forceful cohabitation:** The plea aimed to counter forceful cohabitation in certain cases.
- **'The Right to Privacy'** is now a fundamental right which is enjoyed by an 'individual' not by a 'couple'. Forceful cohabitation infringes this right.
- Another pertinent matter to take into consideration is the **misuse of this provision** as a shield against divorce proceedings and alimony payments.
- **Not Gender Neutral:** The laws fail to be testified on grounds of gender neutrality as it advocates wife to return to his marital home for cohabitation before divorce.

JUDGMENTS RELATED TO SECTION 9 OF HINDU MARRIAGE ACT

- **T Sareetha v T Venkatasubbaiah, 1983:** A single-judge bench of the Andhra Pradesh High Court has struck down the provision in this case for the first time.
- The Court cited the right to privacy as one of the reasons for this decision.
- **Saroj Rani v Sudarshan Kumar Chadha, 1984:** In this case Supreme Court had upheld Section 9 of the Hindu Marriage Act.
- It further cited that the provision "serves a social purpose as an aid to the prevention of break-up of marriage".

Way Forward:

- Hence it is responsibility of judiciary and legislature to inculcate the changes in constitution as per requirements of modern society.