

# What are Conjugal rights?

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**In news-** The Supreme Court is expected to begin hearing a fresh challenge to the provision allowing restitution of conjugal rights under Hindu personal laws.

## **About Conjugal rights-**

- Conjugal rights are rights created by marriage, i.e. **right of the husband or the wife to the society of the other spouse.**
- Conjugal Rights also mean the same when the couple is married they have certain matrimonial rights which should be performed by both the spouses.
- The law recognises these rights– **both in personal laws dealing with marriage, divorce etc, and in criminal law requiring payment of maintenance and alimony to a spouse.**
- **Conjugal Rights includes:**
  1. **Living together:** The spouses or the married couple should live together
  2. **Marital intercourse:** The spouses or the married couple have rights and duties together with each other and have physical or sexual relationships.
  3. **Comfort to each other:** The spouses should give comfort to each other like; emotional and mental comfort.
  4. **Matrimonial Obligation:** The married couple is supposed to share the responsibility of the households as well.
- **Provisions of restitution of conjugal rights like Section 9 of the Hindu Marriage Act and Section 22 of the Special Marriage Act empower a husband or a wife to move the local district court,** complaining that the other partner has “withdrawn” from the marriage without a “reasonable cause”.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 petition gives the court the authority to order the

- “withdrawn” spouse to return to the matrimonial home.
- **Order 21 Rule 32 of the Civil Procedure Code allows the court to attach the property of the “errant” spouse** if he or she does not comply with its order to return.
  - The meaning and extent of key words in the provisions like “withdrawn” or “reasonable cause” are ambiguous.
  - The law is being challenged now on the main grounds that it violates the fundamental **Right to privacy**.
  - The concern is that with marital rape not an offence, **the provisions of restitution of conjugal rights, when aimed at a woman, takes away her bodily autonomy** and forces her to stay with her husband. If a woman does not comply to return to her husband, the court could even attach her property.

### **Previous Court judgments on it-**

- In one of the early judgments in the **1960s, the Punjab and Haryana High Court in the Tirath Kaur case**, upheld restitution of conjugal rights, noting 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”.
- **In 1984, the Supreme Court had upheld Section 9 of the Hindu Marriage Act** in the case of **Saroj Rani v Sudarshan Kumar Chadha**, holding that the provision “serves a social purpose as an aid to the prevention of break-up of marriage”.
- The Madhya **Pradesh High Court in the Vibha Shrivastava case**, busted the ‘orthodox concept of the Hindu wife as Dharmpatni, Ardhangini’, and said that the wife is a partner in marriage with equal status and equal rights with the husband.
- In the well-known **case of actor Sareetha**, the **Andhra Pradesh High Court** said that, “sexual cohabitation is an inseparable ingredient of a decree for restitution of conjugal rights”.

- 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"** which gives a person complete authority to decide one's matters of personal intimacies, sanctity of family life, the home, sexual orientation, etc.
- The Supreme Court, in its recent ***Joseph Shine judgment***, concluded that the State cannot exercise authority in a person's private affairs.