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# Case Comment: T. Sareetha v. T. Venkata Subbaiah

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## ABSTRACT

*The decision taken by the Andhra Pradesh High Court in the case of T. Sareetha v. T. Venkata Subbaiah has become increasingly relevant in light of the current debate on the criminalisation of the offence of marital rape. This paper analyses the facts, arguments and judgement in the case. Further, it introduces the angle of marital rape, which the Court made a reference to in the judgement by relating the misuse of the doctrine of restitution of conjugal rights to the enforcement of non-consensual intercourse by husbands on their wives. It also examines the recent developments in the same field and thereby emphasises both the details of the T. Sareetha judgement as well as its place in the larger picture of women's fundamental rights and the challenges they face from the patriarchal social institutions and the legal framework.*

## I. INTRODUCTION

This is a landmark case<sup>2</sup> in which the Andhra Pradesh High Court examined a substantial question of law. The petition was filed by renowned actress T. Sareetha against an order of the Sub-Court of Cuddapah. In the petition, she questioned the jurisdiction of said Sub-Court to try the plea for Restitution of Conjugal Rights filed by her husband, T. Venkata Subbaiah. Further, she challenged the Constitutional validity of Section 9 of the Hindu Marriage Act, 1955 (hereafter referred to as HMA), and it was declared void in light of Part III of the Constitution. It is one of the first judgements that viewed the Constitution as a transformative document and explored the complex issues of

gendered power relations and women's bodily autonomy. Through this judgement, Justice Choudary gave a socially contextualised ruling instead of just operating within the technicalities of the law. Therefore, despite being almost four decades old, this case is still relevant, especially in the wake of the debate on the criminalisation of marital rape.

## II. FACTUAL MATRIX

The petitioner initially lived with her parents in Madras (now Chennai, hereafter referred to as Madras). The respondent was originally from Cuddapah in Andhra Pradesh and owned a house and agricultural land in the same place. The petitioner was a sixteen-year-old high school

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<sup>2</sup> T. Sareetha v. T. Venkata Subbaiah, (1983) SC OnLine AP 90.

student when she married the respondent in Tirupathi in 1975. Shortly after the wedding, the couple were separated and began to live apart. After this, the petitioner and the respondent never met each other.

### **III. PROCEDURAL HISTORY**

- Venkata Subbaiah filed a plea for Restitution of Conjugal Rights with Sareetha, under Section 9 of the HMA in the Sub-Court of Cuddapah.

- Sareetha claimed that the Cuddapah Court had no jurisdiction to entertain the plea as the last place of residence of the couple as required under Section 19 of the HMA was Madras.

- The Cuddapah Sub-Court overruled Sareetha's objection and held that it had jurisdiction, as the alleged six-month stay of the couple in Cuddapah prior to living in Madras would be the last place of residence.

- Sareetha filed a Civil Revision Petition in the Andhra Pradesh High Court (HC) against the Sub-Court order. Herein, T. Sareetha is the petitioner, and T. Venkata Subbaiah is the respondent. Additionally, she filed a plea questioning the constitutional validity of Section 9 of the HMA with respect to Articles 14, 19, and 21 of the Constitution.

### **IV. POINTS OF CONSIDERATION AND ISSUES RAISED**

The contentious issues raised in front of the High Court Judge are as follows:

- What constitutes the last place of residence of a married couple under the

definition given in Section 19(iii) of the Hindu Marriage Act?

- What are the constituents of Conjugal Rights, and what can thus be enforced by a decree of Restitution of Conjugal Rights passed under Section 9 of the HMA?

- Does Section 9 of the HMA stand in contravention to Articles 14, 19, and 21 in Part III of the Constitution of India?

### **V. ARGUMENTS OF THE PARTIES**

The original suit was filed by the current respondent against the current petitioner. The decision, in that case, was sought to be revised by the petitioner in the current suit. The arguments of the respondent are listed first.

#### **Respondent**

With respect to the jurisdiction, the same arguments have been made both in the High Court and the Sub-Court. The respondent claims that he married the petitioner in Tirupathi, and immediately afterwards, the couple lived in Cuddapah for six months. Thereafter, they stayed in Madras for an unspecified period. Here, the petitioner's attempts to enter the film industry caused disagreements among the couple, due to which the respondent left, and the petitioner remained in Madras. The two never met each other afterwards. He argues that the stay in Madras should not be regarded and that Cuddapah should be considered as the last place of residence under the HMA.

Based on the above arguments, the respondent contends that the Cuddapah Sub-Court has jurisdiction to hear the case. Further, since he pleads under Section 9 of the HMA for a decree

for Restitution of Conjugal Rights, naturally, he also claims that the petitioner has withdrawn from his society without reasonable excuse.

### **Petitioner**

#### *Jurisdictional Objections*

The petitioner claims that since the respondent himself had admitted that the last place the couple stayed in before they began living separately is Madras, the Cuddapah court lacks jurisdiction under Section 19 of the HMA.

#### *Substantive Claim of Constitutional Validity*

Most importantly, the petitioner raises a question of the Constitutional validity of Section 9 of the HMA. She claims that Section 9 is in contravention to Part III of the Constitution, particularly Articles 14, 19, and 21 and that Restitution of Conjugal Rights violates the right to life, personal liberty, human dignity and decency. Hence, she contends that Section 9 is liable to be abrogated.

## **VI. RULINGS AND RATIONALE**

The judgement was delivered in two parts, with the first part ruling on the jurisdiction and the second part ruling with regard to the constitutional validity of Section 9 of the HMA.

### **Jurisdiction**

In this part, the Court considered two questions, of which the first considered whether or not the parties had lived in Cuddapah at all. Secondly, if they did, it remained to be determined whether the subsequent stay in Madras would supersede Cuddapah as the last place of residence under

Section 19. The learned judge observed that the petitioner did not make any arguments accepting or denying the stay in Cuddapah. Therefore, the Court held that the six-month stay in Cuddapah occurred. In response to the second question, the judge examined Section 19(iii) of the HMA and stated that the place of residence according to the Section can only be one that has been chosen by the couple as a permanent dwelling for their matrimonial purposes. Additionally, the Court stated that determining the last residence involves factors like “time, intention and continuity”,<sup>3</sup> which can only be decided based on the individual facts of each case. Therefore, a temporary visit such as the one in Madras cannot replace the matrimonial home in Cuddapah. Thus, the Court held that the last place of residence of the couple according to Section 19(iii) was Cuddapah, and hence the Cuddapah Sub-Court had the jurisdiction to try the petition.

### **Constitutional Validity of Section 9 of the Hindu Marriage Act**

#### *Bodily Autonomy and Consent*

Firstly, the Court observed that sexual cohabitation is an integral ingredient of Restitution of Conjugal Rights. Therefore, the Court determined Section 9 of the HMA and Order 21, Rule 33 and 34 of the Civil Procedure Code could serve to enforce marital intercourse on an unwilling person. These provisions thus transfer the decision to have or not have intercourse from the private individual to the State. Thus, a decree of Restitution of Conjugal Rights “offends the inviolability of the body and

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<sup>3</sup> Regina v. Barnet London Borough Council, (1981) 2 WLR 86.

the mind” and the “integrity of a person”, and it “invades the material privacy and domestic intimacies”<sup>4</sup> that a person should have individual control over. Additionally, the Court also observed that these provisions diminish the value of consent by using the judicial process to coerce an individual to engage in sexual cohabitation. The Court acknowledged that this would have worse consequences for a woman as pregnancy could result from non-consensual intercourse. In this way, this Section encroaches on the individual’s dignity, which is an integral part of Article 21 of the Constitution. The Court then gave the example of *Anna Saheb v. Tarabai*,<sup>5</sup> where a decree of restitution was passed in favour of the husband even after the wife repeatedly expressed her dislike of him and reluctance to live with him. The cumulative effect of all these would be the misuse of state force to coerce a woman into forced sex and pregnancy.

#### *Privacy and State Interference*

The Court relied on several case laws to arrive at the meaning of privacy. First, it referred to *Kharak Singh v. State of UP*<sup>6</sup> and *Gobind v. the State of MP*<sup>7</sup> and stated that the right to privacy forms an important part of Article 21 and that this privacy extends to family, marriage, motherhood, procreation and child-rearing. Thus, the Court arrived on the maxim that integrity of the body and marital privacy are key parts of this right to privacy. Further, it relied on

*Eisenstadt v. Baird*<sup>8</sup> and stated that the essence of the right to privacy is to be free of government intrusions in matters of sexual and reproductive autonomy and that this right is available to both husband and wife as individuals. Lastly, the learned judge relied on *Meyer v. Nebraska*<sup>9</sup> and *Griswold v. Connecticut*<sup>10</sup> to establish the paramountcy of bodily autonomy. Since pregnancy alters the life of the woman significantly, her right to decide prevails over state interference. Based on these, the Court concluded that Section 9 constitutes a grave violation of Article 21 and that there can be no countervailing state interests that justify this invasion of privacy.

#### *Equality and Procedural Protection*

The Court declared that it was holding Section 9 void by taking a broad view of Article 21, as opposed to previous Supreme Court judgements that took a closed view and reduced Article 21 to mere procedural protection. Such a narrow view would only require a legal procedure to be established to take away the right to life and personal liberty, and the fact that the apparent conditions of Article 21 were satisfied would make such invasion unobjectionable. In contrast, the Court held that such legal procedure should also be “right, just and fair, and not arbitrary, fanciful or oppressive”<sup>11</sup>. Accordingly, the Court held that Section 9 of the HMA cannot be viewed as just or fair because even though it is equal on paper, it is unequal in practice. This is because

<sup>4</sup> Supra note 1.

<sup>5</sup> AIR 1970 M.P. 36.

<sup>6</sup> (1964) 1 SCR 332.

<sup>7</sup> (1975) 3 SCR 946.

<sup>8</sup> 405 U.S. 438 (1972).

<sup>9</sup> 67 L. Ed. 1042 (1923).

<sup>10</sup> 14 L. Ed. 2d. 510 (1965).

<sup>11</sup> *Mithu v. State of Punjab* AIR 1983 SC 473; *Sunil Batra v. Delhi Administration* AIR 1978 SC 1675.

the requirements of equality under Article 14 of the Constitution are not satisfied as in our social reality, Section 9 is used predominantly by husbands and rarely by wives. The consequences of this remedy are disproportionately high on the wives due to social and physiological reasons. In summary, the Court ruled that the remedy of Restitution of Conjugal Rights is “partial,” “one-sided”, and works as an “engine of oppression”.<sup>12</sup> Thus, Section 9 of the HMA is void as it offends both Article 14 and 21 of the Constitution.

### VII. RATIO DECIDENDI

- Section 9 of the HMA is void and unconstitutional as it violates the right to privacy and human dignity guaranteed by Article 21 of the Constitution.

- Section 9 violates Article 14 by treating those who are inherently unequal as equals, thus perpetuating inequality and oppression.

- Section 19 of the HMA only refers to the matrimonial home chosen by both husband and wife.

### VIII. KEY TAKEAWAYS

- Restitution of Conjugal Rights may enforce intercourse on an unwilling party which is a grave violation of human dignity and is a misuse of legal procedure to coerce cohabitation.

- Individual bodily autonomy is paramount over invasive state interests.

- Section 9 of the HMA promotes no public good and is inherently oppressive and discriminatory.

### IX. THE MARITAL RAPE ANGLE

This judgement can be considered a landmark not only in the field of family law but also in criminal law, particularly the offence of marital rape. After several years of debate and activism, marital rape is still not recognised as a criminal offence in India. In fact, Section 375 of the Indian Penal Code expressly excludes it from the ambit of rape through its exception clause, which states that sexual intercourse by a man with his own wife is never to be considered rape as long as the wife is above 15 years of age. The statute, thus, does not place any importance on the consent of the wife. Through the judgement of *T. Sareetha*, it can be seen that the doctrine of Restitution of Conjugal Rights can be misused to force sex on the respondent spouse, and in a largely patriarchal and male-dominated society, it disproportionately victimises women. Such a situation provides impunity to those men who enforce restitution of their conjugal rights, coerce their wives to cohabit with them, and further commit marital rape on them.

The Kerala High Court, in a recent historical judgement,<sup>13</sup> declared that marital rape, while not being a statutorily punishable offence on its own, can be considered as a form of cruelty and further viewed as a ground for the Court to grant a divorce to the aggrieved party. The facts in this case also involved a husband seeking to enforce restitution of conjugal rights on his wife, whom he had previously sexually abused and raped. This decision is a massive step in the direction of the criminalisation of marital rape and must be

High Court.

<sup>12</sup> Supra note 1.

<sup>13</sup> *X v. X*, (2021) Mat. Appeal No. 151 of 2015, Kerala

used as a building block in the argument against the concept of restitution of conjugal rights. Further, in the case of *Independent Thought v. Union of India*<sup>14</sup>, the Supreme Court declared that sexual intercourse forced by a man on his minor wife would be recognised as a criminal offence. This has raised the age ceiling for the criminalisation of marital rape to women aged below 18 years. The same considerations can now apply to rape committed on adult wives as well. As held in the *Puttaswamy*<sup>15</sup> judgement, privacy is a fundamental right, and bodily autonomy, being a vital part of privacy, must not be put in jeopardy through the institution of marriage.

## X. RECENT DEVELOPMENTS-ANALYSIS

Shortly after *T. Sareetha* was decided, the High Court of Delhi gave a contradictory judgement in *Harvinder Kaur v. Harmander Singh*<sup>16</sup>. Herein the Court held that the judgement in *T. Sareetha* was based on a misconception of Section 9 of the HMA. This Court held that a decree could not enforce marital intercourse and only enforces cohabitation. Additionally, this Court observed that the *T. Sareetha* judgement had failed to identify that Section 9 was a meritorious legal pathway to obtain a divorce under Section 13 of the HMA. This reasoning was upheld in the subsequent case of *Saroj Rani v. SK Chadha*<sup>17</sup>, where the Court held that Section 9 fulfilled a social purpose by preventing the break-up of the marriage or otherwise providing a method to

settle the matter amicably. However, the judgement in *T. Sareetha* had, in fact, considered these and held that the purpose of Section 9 as a way to amicable divorce could not justify the subordination of the right to privacy. Further, the Court in *T. Sareetha* had also observed that state force was a highly inappropriate way to preserve a marriage. Respectfully, the two subsequent judgements may be taking the same narrow view of legal procedure that was criticised in *T. Sareetha*. Recently, *Ojaswa Pathak v. Union of India*<sup>18</sup> was a petition that challenged the validity of Section 9 based on several arguments from the *T. Sareetha* case. It acknowledged that women are the worst affected by the Section and that the Restitution of Conjugal rights is an archaic and oppressive procedure that reinforces the commodification of women.

## XI. CONCLUSION

The decision in *T. Sareetha* was one of the first judgements to view the Constitution as a transformative document. It took a stand for the bodily autonomy of women, which was inviolable even by marriage and her husband. It was made clear that a wife is not a subordinate party in a marriage and her consent and rights have equal value as that of her husband. Based on this emancipated and progressive logic, Section 9 of the HMA was declared liable to be struck down as unconstitutional. Further, when acknowledged as an enabler of marital rape, this Section becomes even more dangerous to the

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<sup>14</sup> *Independent Thought v Union of India*, (2017) 10 SCC 800.

<sup>15</sup> *KS Puttaswamy v Union of India* AIR 2017 SC 4161.

<sup>16</sup> AIR 1983 Delhi 66.

<sup>17</sup> (1984) 4 SCC 90.

<sup>18</sup> WP(C) 250/2019 (Pending).

fundamental rights of married women across the country. While it has been overturned by subsequent judgements, thereby restoring the status of Restitution of Conjugal Rights, the *T. Sareetha* judgement remains a beacon of hope for the proponents of the belief that marriage must no longer serve as a license to enforce cohabitation and intercourse and that fundamental rights are paramount, even against deeply entrenched institutions like marriage.

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