

Conjugal rights: Hindu Marriage Act provision struck down

From Our Correspondent

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Mr. Justice P. A. Choudary of the Andhra Pradesh High Court today struck down Section 9 of the Hindu Marriage Act as unconstitutional and violative of the right to privacy and human dignity, guaranteed by and contained in Article 21 of the Constitution.

Under the relevant Section of the Act, when either the wife or the husband has, without reasonable excuse, withdrawn from the other's society, the aggrieved party may apply to the court for restitution of conjugal rights. The Civil Procedure Code prescribes the modes for executing a decree to this purpose.

The judge was dealing with the case of the film actress, Mrs. Sareetha. She was married in 1975 and thereafter her husband, Mr. Venkata Subbiah and she could not live together. As a result, Mr. Venkata Subbiah filed a petition for restitution of conjugal rights.

Violation of right: In the High Court, Mrs. Sareetha said the provision was unconstitutional as it offended the guarantee to life, personal liberty, human dignity and decency.

The judge pointed out that the guaranteed fundamental right under the Constitution, to life and personal liberty against the State's action,

included "the right to privacy" and "human dignity."

He observed that a decree for restitution of conjugal rights constituted the grossest form of violation of an individual's right to privacy.

Invasion of privacy: "There can be no doubt that a decree for restitution of conjugal rights thus enforced offends the inviolability of the body and the mind subjected to the decree. It offends the integrity of such a person and invades the marital privacy and domestic intimacies of such a person", Mr. Justice Choudary observed.

The judge further added, "the victim is stripped of control over various parts of her body, subjected to humiliating sexual molestation accompanied by a forcible loss of the precious right to decide when, if at all, her body should be allowed to be used, to give birth to another human being." He held that "the decree of restitution of conjugal rights makes the unwilling victim's body a soulless and joyless vehicle for bringing into existence another human being."

The judge allowed the revision petition filed by Mrs. Sareetha and prohibited the Subordinate Judge, Cuddapah, from trying the proceedings initiated by her husband. He pointed out that the remedy of restitution of conjugal rights was a savage and barbarous remedy.