

Two GNLU Students challenge the constitutional validity of provisions relating to restitution of conjugal rights: SC refers the petition to a three-judge Bench

Gandhinagar, March 06, 2019: Hearing the petition filed by two students of the Gujarat National Law University, **Ojaswa Pathak** and **Mayank Gupta**, a Division Bench of the Supreme Court of India today referred a challenge to the constitutional validity of the provisions relating to restitution of conjugal rights to a larger Bench.

The petition assails the 1984 judgment of the Supreme Court in the case of *Saroj Rani v. Sudarshan Kumar Chadha* that upheld **Section 9** of the Hindu Marriage Act, which provides for restitution of conjugal Rights. The challenge is on the ground that the provisions are in violation of the right to privacy and protection from discrimination (Art. 21, 14 and 15(1) of the Constitution).

The first hearing of the petition was conducted on March 05 and the bench comprising of the Chief Justice of India **Ranjan Gogoi** and Justice **Sanjiv Khanna** ordered the matter to be heard by a three-judge bench next week. The petitioners were represented by Senior Advocate Sanjay Hegde. A copy of the Supreme Court order is attached.

Section 9 of the Hindu Marriage Act provides:

“When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.”

A similar provision can be found in Section 22 of the Special Marriage Act.

The petitioners have sought for Section 9 of the Hindu Marriage Act and **Section 22** of the Special Marriage Act to be struck down. Additionally, the enforcement of restitution of conjugal rights as provided for under **Order XXI Rule 32 and 33** of the Code of Civil Procedure is also sought to be struck down.



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These provisions are being challenged in light of the Supreme Court's recent judgments on the [right to privacy](#), [adultery](#), and [decriminalisation of Section 377](#).

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