

## **MOOT PROPOSITION**

1. Kalka Devi got married to Suresh Prasad on 10-01-2019 as per Hindu rites and rituals under the Hindu Marriage Act, 1955. The husband and his family members started torturing Kalka Devi both, physically and mentally. On account of this, Kalka Devi was forced to leave her matrimonial home within a year of her marriage.
2. Kalka Devi filed a Petition u/s. 125 of the Code of Criminal procedure, 1973 seeking maintenance before the Family Court, New Delhi. A complaint case was also filed against the husband and his family members under section 498A of the Indian Penal Code, 1860 and Section 3 and 4 of the Dowry Prohibition Act, 1961.
3. Thereafter, Suresh Prasad filed a petition seeking restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955 before the Family Court, Court, New Delhi.
4. The Family Court, on 20-07-2021, issued summon to Kalka Devi seeking her presence in the proceedings before the Court.
5. During the pendency of the suit before the Family Court, New Delhi for restitution of conjugal rights Kalka Devi filed a Writ Petition against the Union of India under Article 32 of the Constitution of India before the Hon'ble Supreme Court of India inter alia challenging the constitutional validity of following provisions: A. Section 9 and Section 13 (1-A) (ii) of the Hindu Marriage Act, 1955; and B. Order XXI Rule 32 and Order XXI Rule 33 of the Code of Civil Procedure, 1908 (to the extent applicable to a decree of restitution of conjugal rights); and C. Explanation 2 of Section 375 of India Penal Code, 1860 on the ground that it infringes the fundamental rights under Article 14, 19 (1) (a), 19 (1)(d), 21 of the Constitution of India.
6. **The Hon'ble Supreme Court of India has decided to hear the Counsel appearing for Kalka Devi and Union of India in the matter on 4-04-2022 and 5-04-2022 with the following issues:**
  - A. Whether instant matter is maintainable before the Hon'ble Court?
  - B. Whether Section 9, 13 (1-A) (ii) of the Hindu Marriage Act, 1955 and Order XXI Rule 32 and 33 of the Code of Civil Procedure, 1908 is ex facie arbitrary and violates the fundamental rights under Article 14, 19 (1) (d) and 21 of the Constitution of India?

- C. Whether a decree of restitution of conjugal rights violates the right of privacy, right of mental and physical health and right of dignity of a woman under Article 21 of the Constitution of India?
- D. Whether an act of the State can compel or induce a woman to surrender her fundamental right of sexual and decisional autonomy which is intrinsic in the right to privacy and personal liberty under Article 21 of the Constitution of India?
- E. Whether a decree for restitution of conjugal rights forbids a person to exercise her right to decide whether to have sexual intercourse with his/her partner/spouse thus violating her right to bodily integrity and spatial and behavioral privacy?
- F. Whether exception 2 of Section 375 of the Indian Penal Code legalizes marital rape and violates the fundamental rights of married women under Article 14, Article 19 and Article 21 of the Constitution of India?