

IN THE HIGH COURT OF DELHI AT NEW DELHI
(EXTRAPDINARY WRIT JURISDICTION)
WRIT PETITION (CIVIL) NO. 3/6(J) OF 2017
(IN THE MATTER OF A PUBLIC INTEREST LITIGATION)

IN THE MATTER OF:

SANJJIIV KKUMAAR

...PETITIONER

VERSUS

UNION OF INDIA

...RESPONDENT

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PETITIONER SON: MR. SANJJIIV KKUMAAR

FLAT NO - 522, TOWER-J, PLOT NO-GH04,
NOIDA, 201301, UTTAR PRADESH,
Mob: 9013465694, Email: sanjjiiv@republicindia.org

DATED: 07_08_2017
PLACE: NEW DELHI

IN THE HIGH COURT OF DELHI AT NEW DELHI
(EXTRAORDINARY WRIT JURISDICTION)
WRIT PETITION (CIVIL) NO. 8160 OF 2017
(IN THE MATTER OF A PUBLIC INTEREST LITIGATION)

IN THE MATTER OF:

SANJJIIV KKUMAAR

...PETITIONER

VERSUS

UNION OF INDIA

...RESPONDENT

NOTICE OF MOTION

Sir,

The enclosed petition is being filed on behalf of the Petitioner, and is likely to be listed on 08/09/2017 or any date thereafter. Please take notice accordingly.

Sanjjiiv Kkumaar
PETITIONERS IN PERSON: MR. SANJJIIV KKUMAAR

FLAT NO - 522, TOWER-J, PLOT NO-GH04,
NOIDA, 201301, UTTAR PRADESH
Mob: 9013465694, Email: sanjjiiv@republicindia.org

DATED: 07/09/2017
PLACE: NEW DELHI

[Signature]
Service Accepted by U.O.I.
Respondent No. 1, only,
On 7/9/17 at 11:30 AM
Union of India
448, Litigation (HC) Section

IN THE HIGH COURT OF DELHI AT NEW DELHI
(EXTRAORDINARY WRIT JURISDICTION)
WRIT PETITION (CIVIL) NO. OF 2017
(IN THE MATTER OF A PUBLIC INTEREST LITIGATION)

IN THE MATTER OF:

SANJJIIV KKUMAAR

...PETITIONER

VERSUS

UNIONOFINDIA

...RESPONDENT

URGENT APPLICATION

To,
The Hon'ble Registrar
Delhi High Court
New Delhi

Respected Sir/Madam,

Kindly treat the accompanying PIL as urgent one under the High Court Rules and Orders.

The grounds of urgency is that in light of 9 Bench Constitutional Bench Ruling in Writ Petition (Civil) No 494 of 2012, making Right of Privacy a Fundamental Right, has in effect, Rendered Section 9 of the Hindu Marriage Act 1955, titled Restitution of conjugal rights[whole act]; Section 22 in The Special Marriage Act, 1954 titled Restitution of conjugal rights[whole act]; Order 21 Rule 32, -Code of Civil Procedure titled Decree for specific performance for restitution of conjugal rights, or for an injunction, 1908[specific to restitution of conjugal rights clause]; Order 21 Rule 33 CPC 1908; Section 13(1)(ia)[If the Cruelty is denial of sex], along with Section 13(1A)(i) and Section 13(1A)(ii) in The Hindu Marriage Act, 1955[to the extent of the contravention of Specific Clauses] Void and Unconstitutional, as per Article 13(2) of Indian Constitution.

Therefore, urgent and immediate intervention of the Hon'ble Court is sought in the petition. Hence petitioner is praying for urgent directions and the petition may kindly be listed for hearing on _____.09.2017

Sanjjiiv Kkumaar

PETITIONERS IN PERSON: MR. SANJJIIV KKUMAAR

FLAT NO - 522, TOWER-J, PLOT NO-GH04,



NOIDA, 201301, UTTAR PRADESH

Mob: 9013465694, Email: sanjjiiv@republicindia.org

DATED: 07/09/2017
PLACE: NEW DELHI

Bill No. 07-Sep-17/42
Date 07-Sep-17 Time 11:41:36
Name SANJIV KKUMAR
Case No. NA
Pages 32
Total Amount 19.20

** -- THANK YOU -- **

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GOVERNMENT OF NCT OF DELHI e-Court Fee	
DATE & TIME :	07-SEP-2017 10:56:54
NAMES OF THE ACC/ REGISTERED USER :	SHCIL
LOCATION :	DELHI HIGH COURT
e-COURT RECEIPT NO :	DLCT074711756K465
e-COURT FEE AMOUNT :	₹ 100 (Rupees One Hundred Only)
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IN THE HIGH COURT OF DELHI AT NEW DLEHI
(EXTRAORDINARY WRIT JURISDICTION)
WRIT PETITION (CIVIL) NO. 8160 OF 2017
(IN THE MATTER OF A PUBLIC INTEREST LITIGATION)

IN THE MATTER OF:

SANJJIIV KKUMAAR

...PETITIONER

VERSUS

UNION OF INDIA

...RESPONDENT

MEMO OF PARTIES

SANJJIIV KKUMAAR
FLAT NO - 522, TOWER-J,
PLOT NO-GH04,
NOIDA, 201301,
UTTAR PRADESH

...PETITIONER

VERSUS

UNION OF INDIA,
MINISTRY OF LAW & JUSTICE
THROUGH ITS SECRETARY
SHASHTRI BHAWAN,
NEW DELHI -110001

...RESPONDENT

Sanjjiiv Khumaar

PETITIONERS IN PERSON: MR. SANJJIIV KKUMAAR

FLAT NO - 522, TOWER-J, PLOT NO-GH04,
NOIDA, 201301, UTTAR PRADESH

Mob: 9013465694, Email: sanjjiiv@republicindia.org

DATED: *07/09/2017*
PLACE: NEW DELHI

SYNOPSIS

1. The instant Writ Petition seeks as writ/direction from this Hon'ble Court to Render Section 9 of the Hindu Marriage Act 1955, titled Restitution of conjugal rights[whole act]; Section 22 in The Special Marriage Act, 1954 titled Restitution of conjugal rights[whole act]; Order 21 Rule 32- Code of Civil Procedure titled Decree for specific performance for restitution of conjugal rights, or for an injunction, 1908[specific to restitution of conjugal rights clause]; Order 21 Rule 33 CPC 1908; Section 13(1)(ia)[If the Cruelty is denial of sex], along with Section 13(1A)(i) and Section 13(1A)(ii) in The Hindu Marriage Act, 1955[to the extent of the contravention of Specific Clauses] Void and Unconstitutional as per Article 13(2) of Indian Constitution in the light of 9 Bench Constitutional Bench Ruling in Writ Petition (Civil) No 494 of 2012, making Right of Privacy(hereinafter "Privacy Ruling"), a Fundamental Right.

2. That, Privacy Ruling, has made Right to Privacy intrinsic to life and liberty under Article 21 of Constitution of India. Hon'ble Apex Court ruled that:

"The right of privacy is a fundamental right. It is a right which protects the inner sphere of the individual from interference from both State, and non-State actors and allows the individuals to make autonomous life choices"[para 77 of Privacy Ruling]

"The privacy of the home must protect the family, marriage, procreation and sexual orientation which are all important aspects of dignity"[para 78 of Privacy Ruling]

"The right of privacy is a fundamental right. It is a right which protects the inner sphere of the individual from interference from both State, and non-State actors and allows the individuals to make autonomous life choices"[para 77 of Privacy Ruling]

"Privacy has both positive and negative content. The negative

content restrains the state from committing an intrusion upon the life and personal liberty of a citizen. Its positive content imposes an obligation on the **state to take all necessary measures to protect the privacy of the individual**” “[page 264 of Privacy Ruling]

The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods [page 71 of Privacy Ruling]

3. That, however one may be put it, the meaning of “Conjugal” is always sexual relationship between two married people.

According to Merriam Webster, Collins, Cambridge Dictionary meaning of “Conjugal” is “connected with marriage or the relationship between two married people, especially their sexual relationship”.

Cohabitation dictionary meaning is “to live together in an intimate relationship”.

According to Merriam Webster Dictionary meaning of “Conjugal Rights” is “the sexual rights or privileges implied by and involved in the marriage relationship: the right of sexual intercourse between husband and wife”

4. That, reading all the Privacy Ruling observations, conclusions and ruling itself, it's crystal clear that state cannot force a wife(female) or husband(male) when to consent for sex/intercourse/cohabitation and women's right to Procreate. State can neither force any party(Wife/Husband) for restitution of conjugal rights effecting ordering an unwilling partner(Women or Men consent in now under Right to Privacy a Fundamental right)) for intercourse/sex/ cohabitation nor state can order for divorce decree if there is no cohabitation or separation(state cannot decide how many days or 1 year etc...its' no go zone for state now) and the Hon'ble Supreme Court ruling of No Sex is

Cruelty in Vidhya Viswanathan vs. Kartik Balakrishnan AIR 2015 SC 285 where Apex Court has held that “not allowing a spouse for long time to have sexual intercourse by his or her partner, without sufficient reason, itself amounted to mental cruelty to such spouse” and ground for divorce is Unconstitutional and Void Now.

5. The state cannot ask why a Man or Women are not having sexual relation or since how long they haven't cohabitated or ask/enquire about their consent or their view on same. This makes the abovementioned Acts/Order/Decree based on how long a husband and wife haven't cohabitated or forcing them to have intercourse/sex (restitution of conjugal rights) Unconstitutional and Void.
6. Hence, in light of Privacy ruling, Section 9 of HMA and Section 22 in The Special Marriage Act “Restitution of Conjugal Rights”, there Execution through Order 21 Rule 32 of CPC, and Section 13(1)(ia)[If the Cruelty is denial of sex], along with Section 13(1A)(i) and Section 13(1A)(ii) in The Hindu Marriage Act, 1955[to the extent of the contravention of Specific Clauses] Void and Unconstitutional as per Article 13(2) of Indian Constitution.
7. That, first time there was talk of unconstitutionality of Section 9 of Hindu Marriage Act in T. Sareetha vs Venkatasubbaiah A.I.R.198 case. Hon'ble Andhra Pradesh High Court, in a “T. Sareetha vs Venkatasubbaiah A.I.R.1983, struck down Section 9 of HMA section as unconstitutional, on the basis that “it amounted to State interference with a woman's private decision whether or not to engage in sexual intercourse, and whether or not to carry a child”.
8. A few months later, the Hon'ble Delhi High Court in “Harvinder Kaur vs Harmander Singh Choudhry on 15 November, 1983” decision disagreed.
9. **One year later, the Hon'ble Supreme Court in Smt. Saroj Rani vs Sudarshan Kumar Chadha on 8 August, 1984 1984 AIR 1562**

APPROVED the Delhi High Court decision in “Harvinder Kaur vs Harmander Singh Choudhry on 15 November, 1983” and **OVER-RULED** the “T. Sareetha vs Venkatasubbaiah A.I.R.198” Andhra Pradesh High Court decision of making Section 9 of Hindu Marriage Act Unconstitutional and Void.

10. In light of Hon’ble Supreme Court Privacy Ruling and making Right of Privacy a Fundamental Right , Hon’ble Andhra High Court ruling in T. Sareetha vs Venkatasubbaiah A.I.R.198, of making Section 9 of Hindu Marriage Act Unconstitutional as it “amounted to State interference with a woman’s private decision whether or not to engage in sexual intercourse, and whether or not to carry a child” **IS AUTOMATICALLY RESTORED AND IS IN EFFECT** and both Hon’ble Delhi High Court Ruling in Smt. Harvinder kaur v. Harmander Singh Choudhry, A.I.R. 1984 Delhi and Hon’ble Supreme Court’s earlier decision in Smt. Saroj Rani vs Sudarshan Kumar Chadha on 8 August, 1984 1984 AIR 1562 is **NOW UNCONSTITUTIONAL AND VOID.**

11. Hence, in light of Privacy Ruling, which upheld the reasoning of Making Section 9 of Hindu Marriage Act 1955 making it Unconstitutional in T. Sareetha vs Venkatasubbaiah A.I.R.198 case, apart from many other conclusions arrived vis-à-vis Privacy Rights pertaining to Women and Men, petitioner has approached this Hon’ble Court for above mentioned relief for every citizens of India.

IN THE HIGH COURT OF DELHI AT NEW DLEHI
(EXTRAODINARY WRIT JURISDICTION)
WRIT PETITION (CIVIL) NO. 8160 OF 2017
(IN THE MATTER OF A PUBLIC INTEREST LITIGATION)

IN THE MATTER OF:

SANJJIIV KKUMAAR ...PETITIONER

VERSUS

UNION OF INDIA ...RESPONDENT

**PUBLIC INTEREST LITIGATION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA READ WITH SECTION 151 C.P.C. FOR
ISSUANCE OF A WRIT OF MANDAMUS OR ANY OTHER APPROPRIATE
WRIT, ORDER OR DIRECTIONS**

To

THE HON'BLE CHIEF JUSTICE AND HER OTHER
COMPANION JUSTICES OF THE HON'BLE DELHI HIGH COURT
NEW DELHI

THE HUMBLE PETITION OF THE
PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHEWETH:

1. That, That the Petitioners have no personal interest in the litigation and the petition is not guided by self-gain or the gain of any other person/institution/body and there is no motive other than public interest in filing the writ petition.
2. That, the facts in the writ petition are obtained from newspaper reports, Right of Privacy Judgment of Hon'ble Apex Court, various Hon'ble High Courts and Supreme Courts Judgements from Indian Kanoon , SCC Online and other sites, followed up by painstaking research to correlate and

assimilate data. After the research, petitioner has reached the conclusion that Right to Privacy now being a Fundamental Right has changed the contour of the some existing Acts and Rules/CPC and made them Unconstitutional and Void. Hence this writ petition

3. That the Writ Petition has been filed for all citizens of India, whose cases running in different courts all over India and are affected by Right to Privacy judgment and thus are liable to be affected by the outcome of this writ petition. It is humbly submitted that these persons, not being privy to all the facts and lacking the skill, resource and expertise to do so follow them up, are incapable of accessing the Courts themselves.
4. That, outcome of this writ will affect the Department of Justice, Govt of India and for the very reason, petitioner has made the Govt of India respondent. Also courts all over the India will be affected by this writ petition. Petitioner don't think and don't have any knowledge that any other party will be affected by the order sought in this writ petition
5. That, petitioner is highly respected and qualified professional having done his B.Tech(Computer Science), M.Tech(Computer Science & Engineering) from a world renowned university Jawaharlal Nehru University, New Delhi, PMI, USA, SCSP. After being in the IT Professional Field , petitioner is now Entrepreneur and devote most part of his time for publich cause mainly in Justice and Equality For All, Human Rights , Social Reforms, Gender Equality through Gender neutrality etc. Petitioner is committed to public cause. The petitioner has the eman to pay the cost, if any imposed by this Hon'ble Court.
6. That, the instant Writ Petition seeks as writ/direction from this Hon'ble Court to Render Section 9 of the Hindu Marriage Act 1955, titled Restitution of conjugal rights[whole act]; Section 22 in The Special Marriage Act, 1954 titled Restitution of conjugal rights[whole act]; Order 21 Rule 32-Code of Civil Procedure titled Decree for specific performance for restitution of

conjugal rights, or for an injunction, 1908[specific to restitution of conjugal rights clause]; Order 21 Rule 33 CPC 1908; Section 13(1)(a)[If the Cruelty is denial of sex], along with Section 13(1A)(i) and Section 13(1A)(ii) in The Hindu Marriage Act, 1955[to the extent of the contravention of Specific Clauses] Void and Unconstitutional as per Article 13(2) of Indian Constitution in the light of 9 Bench Constitutional Bench Ruling in Writ Petition (Civil) No 494 of 2012, making Right of Privacy(hereinafter “Privacy Ruling”), a Fundamental Right.

CAUSE OF ACTION GIVING RISE TO THIS WRIT

7. That, Hon’ble Supreme Court of India, in its 9 Bench Constitutional Bench Ruling in Writ Petition (Civil) No 494 of 2012, has ruled that Right of Privacy(hereinafter “Privacy Ruling”), is now a Fundamental Right.

That, Privacy Ruling, has made Right to Privacy intrinsic to life and liberty under Article 21 of Constitution of India. Hon’ble Apex Court ruled that:

“The right of privacy is a fundamental right. It is a right which protects the inner sphere of the individual from interference from both State, and non-State actors and allows the individuals to make autonomous life choices”[para 77 of Privacy Ruling]

“The privacy of the home must protect the family, marriage, procreation and sexual orientation which are all important aspects of dignity”[para 78 of Privacy Ruling]

“The right of privacy is a fundamental right. It is a right which protects the inner sphere of the individual from interference from both State, and non-State actors and allows the individuals to make autonomous life choices”[para 77 of Privacy Ruling]

“Privacy has both positive and negative content. The negative content restrains the state from committing an intrusion upon the life and

personal liberty of a citizen. Its positive content imposes an obligation on the state to take all necessary measures to protect the privacy of the individual” “[page 264 of Privacy Ruling]

The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods [page 71 of Privacy Ruling]

“The intersection between one’s mental integrity and privacy entitles the individual to freedom of thought, the freedom to believe in what is right, and the freedom of self-determination. When these guarantees intersect with gender, they create a private space which protects all those elements which are crucial to gender identity.”

The freedoms under Article 19 can be fulfilled where the individual is entitled to decide upon his or her preferences. Read in conjunction with Article 21, liberty enables the individual to have a choice of preferences on various facets of life including what and how one will eat, the way one will dress, the faith one will espouse and a myriad other matters on which autonomy and self-determination require a choice to be made within the privacy of the mind.

Privacy, in its simplest sense, allows each human being to be left alone in a core which is inviolable. English Common Law maxim which asserts that every man’s house is his castle.

8. That, Right to Privacy now being a Fundamental Right has changed the contour of the some existing Acts and Rules/CPC and made them Unconstitutional and Void. Hence the cause of the action for the present writ.

GROUND IN SUPPORT OF THE PRAYER

9. That, however one may put it, the meaning of “Conjugal” is always sexual relationship between two married people.

According to Merriam Webster, Collins, Cambridge Dictionary meaning of “Conjugal” is “connected with marriage or the relationship between two married people, especially their sexual relationship”.

Cohabitation dictionary meaning is “to live together in an intimate relationship”.

According to Merriam Webster Dictionary meaning of “Conjugal Rights” is “the sexual rights or privileges implied by and involved in the marriage relationship: the right of sexual intercourse between husband and wife”

10. That, reading all the Privacy Ruling observations, conclusions and ruling itself, it's crystal clear that state cannot force a wife(female) or husband(male) when to consent for sex/intercourse/cohabitation and women's right to Procreate. State can neither force any party(Wife/Husband) for restitution of conjugal rights effecting ordering an unwilling partner(Women or Men consent in now under Right to Privacy a Fundamental right)) for intercourse/sex/ cohabitation nor state can order for divorce decree if there is no cohabitation or separation(state cannot decide how many days or 1 year etc...its' no go zone for state now) and the Hon'ble Supreme Court ruling of No Sex is Cruelty in Vidhya Viswanathan vs. Kartik Balakrishnan AIR 2015 SC 285 where Apex Court has held that “not allowing a spouse for long time to have sexual intercourse by his or her partner, without sufficient reason, itself amounted to mental cruelty to such spouse” and ground for divorce is Unconstitutional and Void Now.

11. That, the state cannot ask why a Man or Women are not having sexual relation or since how long they haven't cohabitated or ask/enquire about their consent or their view on same. This makes the abovementioned Acts/Order/Decree based on how long a husband and wife haven't

cohabitated or forcing them to have intercourse/sex (restitution of conjugal rights) Unconstitutional and Void.

12. That, in light of Privacy ruling, Section 9 of HMA and Section 22 in The Special Marriage Act “Restitution of Conjugal Rights”, there Execution through Order 21 Rule 32 of CPC[specific clause pertaining to restitution of conjugal rights]; Order 21 Rule 33 of CPC; and Section 13(1)(ia)[If the Cruelty is denial of sex], along with Section 13(1A)(i) and Section 13(1A)(ii) in The Hindu Marriage Act, 1955[to the extent of the contravention of Specific Clauses] Void and Unconstitutional as per Article 13(2) of Indian Constitution.
13. That, first time there was talk of unconstitutionality of Section 9 of Hindu Marriage Act in T. Sareetha vs Venkatasubbaiah A.I.R.198 case. Hon’ble Andhra Pradesh High Court, in a “T. Sareetha vs Venkatasubbaiah A.I.R.1983, struck down Section 9 of HMA section as unconstitutional, on the basis that “it amounted to State interference with a woman’s private decision whether or not to engage in sexual intercourse, and whether or not to carry a child”.
14. A few months later, the Hon’ble Delhi High Court in “Harvinder Kaur vs Harmander Singh Choudhry on 15 November, 1983” decision disagreed.
15. One year later, the Hon’ble Supreme Court in Smt. Saroj Rani vs Sudarshan Kumar Chadha on 8 August, 1984 1984 AIR 1562 APPROVED the Delhi High Court decision in “Harvinder Kaur vs Harmander Singh Choudhry on 15 November, 1983” and OVER-RULED the “T. Sareetha vs Venkatasubbaiah A.I.R.198” Andhra Pradesh High Court decision of making Section 9 of Hindu Marriage Act Unconstitutional and Void.
16. That, Excerpt from Hon’ble Apex Court Judgment:

ACT:

Constitution of India 1950, Articles 13,14 and 21.

Remedy of restitution of conjugal rights-Section 9, Hindu Marriage Act 1955-Whether violates human dignity, right to privacy and personal liberty- And whether valid and constitutional.

Hindu Marriage Act 1955, Sections 9, 13 and 23(1) (a).

Petition by wife for restitution of conjugal rights-Husband consenting to the passing of a decree-Decree passed-Husband after one year filing petition under section 13 for divorce-Husband whether entitled to a decree of divorce.

Code of Civil Procedure 1908, Order 21, Rule 32-Decree for restitution of conjugal rights-Execution of.

HELD: **(1)** In India conjugal rights i.e. right of the husband or the wife to the society of the other spouse is not merely creature of the statute. Such a right is inherent in the very institution of marriage itself. There are sufficient safeguards in Section 9 of the Hindu Marriage Act to prevent it from being a tyranny. [314 D-E]

2. Section 9 is only a codification of pre-existing law. Rule 2 of Order 21 of the Code of Civil Procedure deals with decree for specific performance for restitution of conjugal rights or for an injunction. [314 H]

3. Section 9 of the Act is not violative of Article 14 or Article 21 of the Constitution if the purpose of the decree for restitution of conjugal rights in the said Act is understood in its proper perspective and if the method of execution in cases of disobedience is kept in view. [315 G]

T. Sareetha v. Venkata Subbaiah, A.I.R.1983 Andhra Pradesh page 356, over-ruled.

Smt. Harvinder kaur v. Harmander Singh Choudhry, A.I.R. 1984 Delhi, page 66, approved.

17. In light of Hon'ble Supreme Court Privacy Ruling and making Right of Privacy a Fundamental Right , Hon'ble Andhra High Court ruling in T. Sareetha vs Venkatasubbaiah A.I.R.198, of making Section 9 of Hindu

Marriage Act Unconstitutional as it “amounted to State interference with a woman’s private decision whether or not to engage in sexual intercourse, and whether or not to carry a child” IS AUTOMATICALLY RESTORED AND IS IN EFFECT and both Hon’ble Delhi High Court Ruling in Smt. Harvinder kaur v. Harmander Singh Choudhry, A.I.R. 1984 Delhi and Hon’ble Supreme Court’s earlier decision in Smt. Saroj Rani vs Sudarshan Kumar Chadha on 8 August, 1984 1984 AIR 1562 is NOW UNCONSTITUTIONAL AND VOID.

AVERMENTS

18. That, Fundamental Rights are the basic rights of the people and the charter of rights contained in Part III of Constitution of India. The Fundamental Rights are defined as basic human freedoms that every Indian citizen has the right to enjoy for a proper and harmonious development of personality. These rights universally apply to all citizens, irrespective of race, place of birth, religion, caste or gender. Aliens (persons who are not citizens) are also considered in matters like equality before law.

19. That, Article 13 of the Constitution of India say that:

Article 13 in The Constitution Of India 1949:

13. Laws inconsistent with or in derogation of the fundamental rights

(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void

20. That, the right to privacy has also been held to be a fundamental right. Earlier it was treated like common law rights and they were curtailed by the statute, the statute will prevail over the common law rights. Now it is a

fundamental right, the statute cannot be made by the Parliament or legislature.

21. That, in light of Privacy Ruling, which upheld the reasoning of Making Section 9 of Hindu Marriage Act 1955 making it Unconstitutional in T. Sareetha vs Venkatasubbaiah A.I.R.198 case, apart from many other conclusions arrived vis-à-vis Privacy Rights pertaining to Women and Men, petitioner has approached this Hon'ble Court for mentioned relief prayed in prayer for every citizens of India.
22. That, petitioner has not filed any such petition previously in this Hon'ble Court, any other High Court or Supreme Court of India

PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:

1. Issue an appropriate Writ, Order or Direction to declare Section 9 of the Hindu Marriage Act 1955, titled Restitution of conjugal rights[whole act]; Section 22 in The Special Marriage Act, 1954 titled Restitution of conjugal rights[whole act]; Order 21 Rule 32-Code of Civil Procedure titled Decree for specific performance for restitution of conjugal rights, or for an injunction, 1908[specific to restitution of conjugal rights clause]; Order 21 Rule 33 CPC 1908; Section 13(1)(ia)[If the Cruelty is denial of sex], along with Section 13(1A)(i) and Section 13(1A)(ii) in The Hindu Marriage Act, 1955[to the extent of the contravention of Specific Clauses], Null, Void and Unconstitutional, as per Article 13(2) of Indian Constitution as it violates heart soul and core of Right to Privacy Fundamental Right.

- 2 Pass any other or further orders, as this Hon'ble Court may deem fit and proper in the circumstances of the case.

FOR WHICH ACT OF KINDNESS, THE PETITIONER SHALL AS IN DUTY BOUND, EVER PRAY.

PETITIONERS IN PERSON: MR. SANJJIIV KKUMAAR

FLAT NO - 522, TOWER-J, PLOT NO-GH04,

NOIDA, 201301, UTTAR PRADESH

Mo: 9013465694, Email: sanjjiiv@republicindia.org

DATED: 07/09/2017

PLACE: NEW DELHI

IN THE HIGH COURT OF DELHI AT NEW DLEHI
(EXTRAODINARY WRIT JURISDICTION)
CM APPL. NO. 33527 OF 2017
(IN THE MATTER OF A PUBLIC INTEREST LITIGATION)

IN THE MATTER OF:

SANJJIIV KKUMAAR ...PETITIONER

VERSUS

UNION OF INDIA ...RESPONDENT

**APPLICATION UNDER SECTION 151 CODE OF CIVIL PROCEDURE, 1908
FOR STAY ORDER**

To

THE HON'BLE CHIEF JUSTICE AND HIS OTHER
COMPANION JUSTICES OF THE HON'BLE DELHI HIGH COURT
NEW DELHI

THE HUMBLE PETITION OF THE
PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. The Petitioners have filed the above writ petition in public interest.
2. The Petitioner has stated the relevant facts elaborately in the Writ Petition.
For the sake of brevity, the same are not repeated in the present application.
The Petitioner however crave leave to refer to and rely on the same at the time of the hearing of the present application as if the same formed part of the present application.
3. That, in light of 9 Bench Constitutional Bench Ruling in Writ Petition (Civil) No 494 of 2012, making Right of Privacy a Fundamental Right, has in effect, Rendered Section 9 of the Hindu Marriage Act 1955, titled Restitution of

conjugal rights[whole act]; Section 22 in The Special Marriage Act, 1954 titled Restitution of conjugal rights[whole act]; Order 21 Rule 32-Code of Civil Procedure titled Decree for specific performance for restitution of conjugal rights, or for an injunction, 1908[specific to restitution of conjugal rights clause]; Order 21 Rule 33 CPC 1908; Section 13(1)(ia)[If the Cruelty is denial of sex], along with Section 13(1A)(i) and Section 13(1A)(ii) in The Hindu Marriage Act, 1955[to the extent of the contravention of Specific Clauses] Void and Unconstitutional, as per Article 13(2) of Indian Constitution

4. That, but for the intervention of this Hon'ble Court there is a serious possibility that there will be filings, notices, hearings, orders, decrees, , injunctions, execution of decrees, divorces on unconstitutional clauses etc. This will call great hardships on peoples, litigants, lawyers, Hon'ble courts and every people associated. Also there will be wastage of money and also precious time of Hon'ble courts. People all over India will suffer, both in Urban and Rural areas. To prevent the miscarriage of justice and to meet the ends of justice a stay order is needed. No injury will be caused to anyone if the stay is ordered.

PRAYER

It is, therefore, most respectfully prayed that pending final orders this Hon'ble Court may graciously be pleased to:

1. Pass an order, restraining courts all over India to put stay on Section 9 of the Hindu Marriage Act 1955, titled Restitution of conjugal rights[whole act]; Section 22 in The Special Marriage Act, 1954 titled Restitution of conjugal rights[whole act]; Order 21 Rule 32-Code of Civil Procedure titled Decree for specific performance for restitution of conjugal rights, or for an injunction, 1908[specific to restitution of

conjugal rights clause]; Order 21 Rule 33 CPC 1908; Section 13(1)(ia)[If the Cruelty is denial of sex], along with Section 13(1A)(i) and Section 13(1A)(ii) in The Hindu Marriage Act, 1955[to the extent of the contravention of Specific Clauses], so that Filings, Notices, Hearings, Orders, Decrees, Execution of Decrees, Decree of divorce on the specific clauses, may be put on hold.

2. Pass any other or further orders, as this Hon'ble Court may deem fit and proper in the circumstances of the case.

FOR WHICH ACT OF KINDNESS, THE PETITIONER SHALL AS IN DUTY BOUND, EVER PRAY.

PETITIONERS IN PERSON: MR. SANJJIIV KKUMAAR

FLAT NO - 522, TOWER-J, PLOT NO-GH04,

NOIDA, 201301, UTTAR PRADESH

Mo: 9013465694, Email: sanjjiiv@republicindia.org

DATED:

PLACE: NEW DELHI

IN THE HIGH COURT OF DELHI AT NEW DLEHI
(EXTRAODINARY WRIT JURISDICTION)
CM APPL. NO. 33527 OF 2017
(IN THE MATTER OF A PUBLIC INTEREST LITIGATION)

IN THE MATTER OF:

SANJJIIV KKUMAAR

...PETITIONER

VERSUS

UNION OF INDIA

...RESPONDENT

AFFIDAVIT

I, Sanjjiiv Kkumaar, aged about 42 years, s/o Dr Ram Ashraya & Mrs Manju, resident of Flat No – 522, Tower-J, Plot No GH04, Noida, 201301, UP, do hereby solemnly affirm and declare as under:

1. That I am Petitioner in the above matter, and am fully acquainted with the facts of the instant case and fully competent to swear thereto.
2. I have filed the present petition as a Public Interest Litigation.
3. I have gone through the Delhi High Court (Public Interest Litigation) Rules 2010 and do hereby affirm that the present Public Interest Litigation is in conformity thereof.
4. I have no personal interest in the litigation and neither myself nor anybody in whom I am interested would in any manner benefit from the relief sought in the present litigation save as a member of the General Public. This Petition is not guided by self-gain or the gain of any person, institution, body and there is no motive other than of public interest in filing this petition.
5. I have done whatsoever inquiry/investigation which was in my power to do, to collect all data /material which was available and which was relevant for the

court to entertain the present petition. I further confirm that I have not concealed in the present petition any data/material/information which may have enabled this court to form an opinion whether to entertain the petition or not and/or whether to grant any relief or not.

DEPONENT

VERIFICATION: Verified at Delhi on this _____ day of _____ 2017 that the facts stated in paras 1 to 5 hereinabove are true to my personal knowledge, no part of this Affidavit is false and nothing material is concealed therefrom.

DEPONENT

IN THE HIGH COURT OF DELHI AT NEW DLEHI
(EXTRAODINARY WRIT JURISDICTION)
WRIT PETITION (CIVIL) NO. 8160 OF 2017
(IN THE MATTER OF A PUBLIC INTEREST LITIGATION)

IN THE MATTER OF:

SANJJIIV KKUMAAR

...PETITIONER

VERSUS

UNION OF INDIA

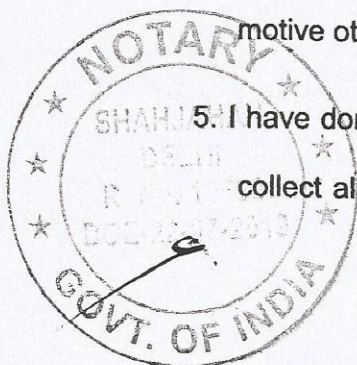
...RESPONDENT

AFFIDAVIT

I, Sanjjiiv Kkumaar, aged about 42 years, s/o Dr Ram Ashraya & Mrs Manju, resident of Flat No – 522, Tower-J, Plot No GH04, Noida, 201301, UP, do hereby solemnly affirm and declare as under:

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5. I have done whatsoever inquiry/investigation which was in my power to do, to collect all data /material which was available and which was relevant for the



court to entertain the present petition. I further confirm that I have not concealed in the present petition any data/material/information which may have enabled this court to form an opinion whether to entertain the petition or not and/or whether to grant any relief or not.

07 SEP 2017

Sanjiv Kkumaar
DEPONENT

VERIFICATION: Verified at Delhi on this 07 day of SEP 2017 that the facts stated in paras 1 to 5 herein above are true to my personal knowledge, no part of this Affidavit is false and nothing material is concealed therefrom.

07 SEP 2017

Sanjiv Kkumaar
DEPONENT

[Signature]
Identifying the deponent/executorant
who has signed in my presence

ATTESTED
[Signature]
NOTARY, DELHI

CERTIFIED THAT THE DEPONENT
Shri/Smt./K...
S/o W/o D/o...
Identified by *Sanjiv Kkumaar*
has solemnly *Sanjiv Kkumaar*
on...
that the contents of... which
have been read to me and
true and correct to his knowledge
2135
Notary Public

