

A Study on Restitution of Conjugal Rights and it's Usage to Avoid from Divorce

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Abstract: *In this article we will study about restitution of conjugal rights. Conjugal Rights refers to those rights which are accrued upon the persons by status of being married. There has been a constant debate relating to the constitutionality of restitution of conjugal rights. This decree ensures that the person can force his partner to live with him or her against that partner's will. Concept of Restitution of Conjugal Rights is a consequence of a legal and a Valid marriage. So, what do we mean by Conjugal Rights? Conjugal Rights refers to the rights of the parties of a marriage to stay together. Thus, the concept of Restitution of Conjugal Rights raises the question that if one of the parties withdraws from the society of the other party, then the act of compelling that party to live with the other party is constitutional or unconstitutional? The courts have answered it in number of cases, it was first declared as unconstitutional in case of T Sareetha Vs T Subbahiha but now in the cases of Harvinder Kaur Vs Harminder Singh and Saroj Rani Vs Sudarshan Kumar Chadha, the court has taken a u turn and has declared it as constitutional and a positive relief.*

Keywords: Conjugal rights, Marriage, Divorce, family, society

I. INTRODUCTION

Thus, this act of forcing the person to live with the person against the will was challenged in the court of law. It was first observed in the case of T. Sareetha Vs T Subbahiha, in which the court held that the decree was unconstitutional as it is violative of certain rights of the person guaranteed under the Indian constitution, and it was immoral to force any person to live with a person against will. It was after some time that the High Court of Delhi in case of Harjinder Singh Vs Harvinder Kaur held that the decree was constitutional as it is a positive relief which aims to protect the marriage rather than end it on a small matter. This view of the High court was supported by the Supreme Court in the case of Saroj Rani vs Sudarshan Kumar Chadha, and it also declared the decree as constitutional and overruling judgement of the lower court given in the case of T. Sareetha Vs T. Subbahiha. In this article we will also study about decree for restitution of conjugal rights from an international perspective and also try to analyse the same from judicial as well as societal point of view to finally decide whether the same is still relevant in today's time or not.

The remedy of Restitution of Conjugal Rights is a new for the Indian matrimonial jurisprudence that finds its origin in the Jewish laws. The remedy was unknown to Hindu law till the British introduced it. In fact it is the only matrimonial remedy which was made available under the British rule to all communities in India under the general law. After independence this remedy found place in the Hindu Marriage Act, 1955.

The petition challenged the validity of Section 9 of the Hindu Marriage Act of 1955, Section 22 of the Special Marriage Act of 1954 and Order 21, Rules 32 and 33 of the Code of Civil Procedure, 1908. These provisions provide the statutory scheme for the restitution of conjugal rights, which involves restoration of all the "rights and privileges arising from marriage... including the mutual relationship of companionship, support and sexual relations". Under the existing laws in India, the spouse seeking restitution of conjugal rights can get a decree directing his other spouse to cohabit and take part in sexual intercourse. He can also seek coercive measures in the form of attachment of property in case the spouse wilfully disobeys the decree of restitution. Any provision that forces an individual to have sexual relations or



even cohabit a home without her will is violative of the right to privacy, individual autonomy and dignity that are guaranteed by the constitution, it said. The law was also inconsistent with the changing times where the private interest of sexual autonomy, dignity and happiness of an individual is put before concerns such as societal morality or family life. Thus, there exists no compelling interest for the state to interfere in such matters.

The concept of decree of Restitution of Conjugal Rights is an issue which has been observed in whole of the world. In the following paragraphs we will study countries like U.K. **UK:** In English law there was a common belief that the decree for restitution of conjugal rights was the only matrimonial matter over which the ecclesiastical courts had jurisdiction. It was that it could be issued against the person, either the husband or wife who withdraws from the society of other without any good ground and if successful the parties would be forced to stay together. It was followed for a long period of time. In 1969 a report was published by the law commission which recommended the abolition of the action and as a result it was abolished by the Matrimonial Proceedings Act, 1970.

LEGAL PROVISIONS IN INDIA RELATING TO RESTITUTION OF CONJUGAL RIGHTS

In India different personal laws prescribe different provisions relating to restitution of conjugal rights, the basic being that when either the husband or the wife withdraws from the society of other than the other person may move to the court for decree of restitution of conjugal rights. Some of the provisions are:

1. S.9 of HMA, 1955
2. S.22 Of Special Marriage Act, 1954
3. S. 32 Indian Divorce Act, 1869
4. S.36, Parsi Marriage and Divorce Act, 1936.

OBJECTIVES:

- To determine the solution to solve marital issues.
- To determine whether lack of love and respect between the married individuals is a major reason for the increased rate of divorce.
- To determine if Independent women are the reason for increased divorce rate.
- To determine if thoughts of divorce becoming common is a major reason for increased divorce rates.
- To determine if Exposure to western world has an impact over the increasing divorce rates.
- To determine the relevance of restitution of conjugal rights as a matrimonial remedy.

II. REVIEW OF LITERATURE

The author in this article contended that can a husband force his wife to give up her employment and stay with him or can she stay where she is gainfully employed. The court has decided number of cases. The court adopted at first a conservative approach and in cases like *Tirath Kaur Vs Kripal Singh* and *Surinder Kaur Vs Gurdeep Singh*, the court held that if a wife takes a job away from matrimonial home without his consent, then she is said to withdraw from the husband society **Mukherjee (2019)** the court in the case of *Kailashwati Vs Ayodhya Pradesh*, held that the taking up of job by wife in another village and only visiting on weekends was held to be not valid and it was held that it was withdrawal from society by the wife and thus a decree of restitution of conjugal rights was passed in favour of the husband. It was after some years that the courts started to take a progressive route and it was in the case of *Swaraj Garg Vs K.M. Garg* that the court held that taking up of a job by wife away from matrimonial home was valid **Nagaraj (2017)**. The facts of the case were that the wife got the job as a headmistress in a school and husband got a job in Delhi but did not had his own home. The wife visited him for sometime but then stopped after some time and husband filed for the decree but the courts held that it is not always wife who needs to resign from her jobs and if she is in better condition then compared to husband then the husband be forced to resign and move in with the wife. Thus, a change was observed for the first time in the point of view of the courts valid **shikha (2016)**. The need for Restitution of Conjugal Rights is an issue which has come into contention year after year. Some people consider it as a negative relief while on the other hand it is considered as a positive relief by some people as well. It is a sort of both according to us



as, it being negative relief due to the forcing of a person to stay with the person without will, while on other hand it is considered as a positive relief as it is a tool which is used to protect marriages which in countries like India is considered more sacramental than a contract or any other thing *S.n., N., and Sen (2016)* . Marriage is seen as an eternal, unbreakable and indissoluble union which is formed in heaven and can't be broken by the humans. It is considered as a way to bring people withdrawing from the society of his or her partner back to their senses and come back home and perform their marital obligations. Thus, it is quite clear that there is a need of ROCR until the point of time that there is another law formed which could preserve the marriages e of the persons more efficiently and in a more positive manner *Fiorini, Hoekman, and Malgouyres, (2016)* . It is important to understand the need of Restitution of Conjugal Rights from a moral perspective as well. Looking at it, it may seem as violative of certain rights guaranteed by the Indian Constitution like Article 19(1) (c), I.e. Freedom of Association; Article 19(1) (g), I.e. Freedom to reside and settle in any part of India, and Article 19(1) (g) which guarantees right to profession, but on the contrary as we have studied above that marriage is considered as an important part in humans life and it is important to save it rather than being over conscious of the rights of the people sometimes some kind of persuasion or force is necessary to do something good fir the whole society even if it means looking bad or evil in the eyes of people of the world *Sharma et al. (2014)* .The interpretative aspect and constitutionality of Restitution of Conjugal Rights has been discussed at large in three cases by the hon'ble courts namely, T. Sareetha vs. T. Venkata Subbaiah, Harvinder Kaur vs. Harmander Singh Choudhry and Sudharshan Kumar v Saroj Rani. In T. Sareetha vs. T. Venkata Subbaiah¹, it was observed that a decree for restitution of conjugal rights passed by a civil court extends not only to the grant of relief to the decree-holder to the company of the other spouse, but also embraces the right to have marital intercourse with the other party. The consequences of the enforcement of such a decree are firstly to transfer the choice to have or not to have marital intercourse to the State from the concerned individual and secondly, to surrender the choice of the individual to allow or not to allow one's body to be used as a vehicle for another human being's creation to the State *India (2015)*. There can be no doubt that a decree of restitution of conjugal rights thus enforced offends the inviolability of the body and the mind subjected, to the decree and offends the integrity of such a person and invades the marital privacy and domestic intimacies of such a person. No positive act of sex can be forced upon the unwilling persons, because nothing can conceivably be more degrading to human dignity and monstrous to human spirit than to subject a person by the long arm of the law to a positive sex act. Therefore, the single judge bench of the hon'ble Andhra Pradesh HC ruled that a decree for restitution of conjugal rights constitutes the grossest from of violation of an individual's right to privacy and human dignity thus should be struck down as it violates Article 21 of the Constitution *Bas (2014)*).However, the Delhi HC at the same time had a different opinion regarding the constitutionality of Restitution of Conjugal Rights giving more emphasis to morality and the importance of marriage as a social institution which needs to be protected. Therefore, in Harvinder Kaur vs. Harmander Singh Choudhry² the court observed that the leading idea of section 9 is to preserve the marriage. The outstanding fact is that the husband and wife are living apart and leading their own separate lives. The court seeks to enquire into this separation. The inquiry into the affairs of the matrimonial life is to be confined to this one fact "Is there a just cause for the respondent to live apart and separate from the petitioning spouse?" Further delving into their matrimonial life is not necessary *Sajal (2014)*.The court also observed that it cannot enforce sexual intercourse, but only cohabitation, and restitution of conjugal rights can't be ordered where the respondent refuses sexual intercourse but continues to cohabit with the petitioner. Section 9 in a sense is an extension of sub-sections (2) and (3) of section 23 of the Act which encourage reconciliation by the court. The court is enjoined to make every endeavour to bring about a reconciliation between the parties. The policy of the Act is to assist in the maintenance of marriages other than those reduced to a mere shell *Dr. N. Sri Vidya, Dr. Rita Basu,V. N. Sreedhar (2014)*. The court further observed that in the legislative scheme it has a purpose to serve and a role to play, it allows the parties a cooling-off period. Therefore, it was ruled that it is for the Legislature to abolish the remedy of restitution and not for the courts to strike down section 9 on the ground that it is unconstitutional and section 9 was held perfectly valid. Furthermore, to resolve the conflicting views of two HCs, the hon'ble SC finally took the matter of constitutionality of ROCR in Sudharshan Kumar v Saroj Rani . The court in this case observed that 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 *Nandita (2014)*. Such a right is inherent in the very institution of marriage itself and further explaining the relevant section held that hat



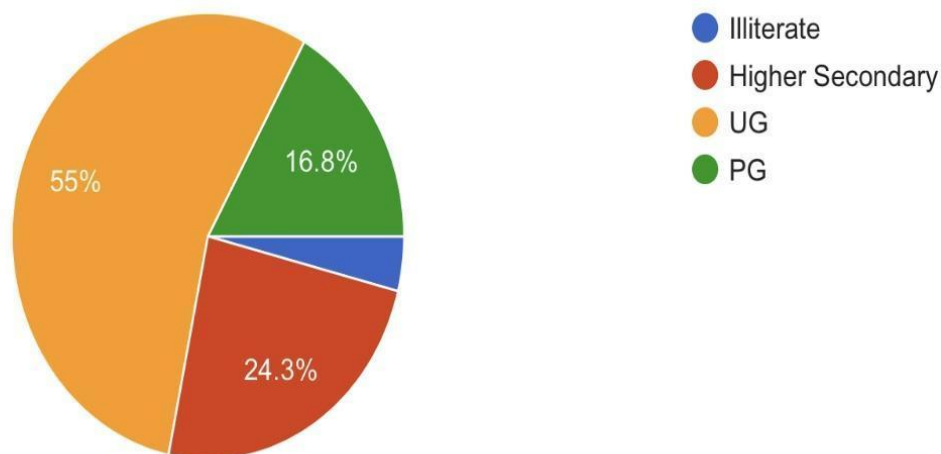
the court can only decree if there is no just reason for not passing decree for restitution of conjugal rights to offer inducement for the husband or wife to live together in order to give them an opportunity to settle up the matter amicably. It serves a social purpose as an aid to the prevention of break-up of marriage. It cannot be viewed in the manner the learned single judge of Andhra Pradesh High Court has viewed it and therefore it is unable to accept the position that Section 9 of the said Act is 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 its execution in cases of disobedience is kept in vie. Thus, resting the issue at hand **Bhat (2014)** . The hon'ble SC in *Booz Allen and Hamilton Inc. vs. SBI Home Finance Ltd. and Ors* . also observed that matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights are non-arbitrable disputes, thus reducing the scope to decide such issues amicably between the parties concerned. As regards to the recent trend of judicial decisions, the hon'ble SC is moving towards giving more importance to individual rights such as privacy over societal concepts such as morality **Aggarwal (2012)** .Further, in *Justice K.S. Puttaswamy and Ors. vs. Union of India (UOI) and Ors.* the court ruled that the right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone". It is an individual's choice as to who enters his house, how he lives and in what relationship. The privacy of the home must protect the family, marriage, procreation and sexual orientation which are all important aspects of dignity **Frances Ngozi Obafemi (2012)**. Thus, again emphasising on the fact that individual choices must prevail over societal pressures. Therefore, the judiciary is again reaching to the point in *KS Puttuswamy* from where it began in *T Sareetha* case where it was ruled that a decree of ROCR is violation of right to privacy, but at that time the same was not interpreted as a fundamental right within the ambit of Article 21. Hindu Law has been wedded to notion that on marriage husband and wife become one. Marriage as an important institution has been accepted in the personal laws of all the religions. The particular fall out of the common law doctrine of unity of personality was that one spouse could not sue the other **Kathuria, Raj, and Sen, n.d. (2011)**.The passage of time, complexity increased with areas of divorce, judicial separation and conjugal rights came up in personal law and it became necessary to codify the laws relating to marriage in India. The result was that the only remedy that a deserted spouse had against the other was the petition for restitution of conjugal rights. The remedy of restitution of conjugal rights is a positive remedy that requires both parties to the marriage to live together and cohabit **Agarwal (2009)** .Marriage under all matrimonial laws imposing certain marital duties and gives to each of them certain legal rights. The necessary implication of marriage is that parties will live together. Each spouse is entitled to comfort of the other. After the solemnization of marriage both husband and wife are legally bound by the law to maintain their conjugal life together. If either of the spouse depart from the other then the aggrieved spouse may acquire a statutory matrimonial relief guaranteed under the codified personal law to restore their status of the other subject to validation of certain facts **Li, Long, and Liu (2005)** . This can be done by filing a petition in court seeking for resumption of cohabitation. This right is known as Restitution of Conjugal rights. Burden of Proof mainly refers to two things in context of this; Initial burden is on the petitioner to prove that respondent has withdrawn from the society without any reasonable excuse; If the petitioner is able to discharge its burden, then it shifts on to the respondent to prove that withdrawal was for a reasonable excuse **Kalirajan and Bhide (2004)**)

III. METHODS AND MATERIALS

Since the research is to study the work life balance of working people in Chennai through structured questionnaires, the suitable search is descriptive research. The required information for the research is collected through questionnaires from 200 respondents. Both primary data and secondary data have been used for the study. The method of sampling technique used to collect primary data is convenient sampling. The collected data have been analysed by using the SPSS software package. The important statistical measurements used for the analysis are percentage analysis, ANOVA, chi-square and correlation.

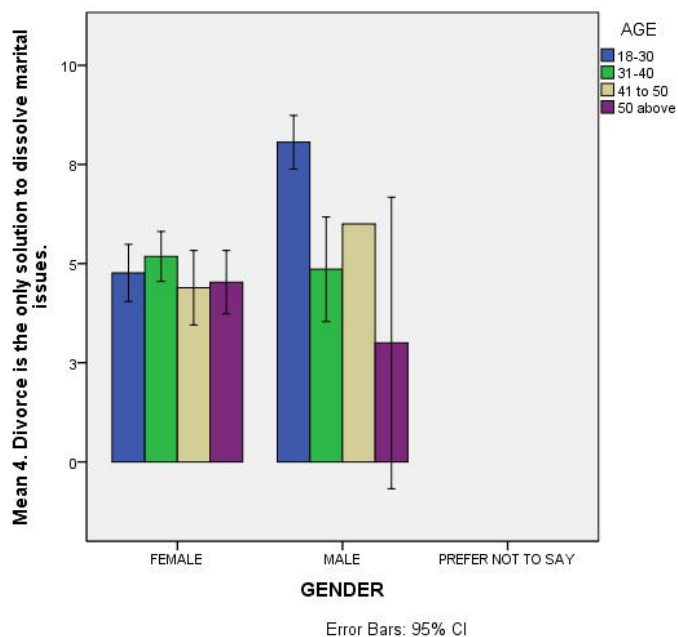


IV. ANALYSIS



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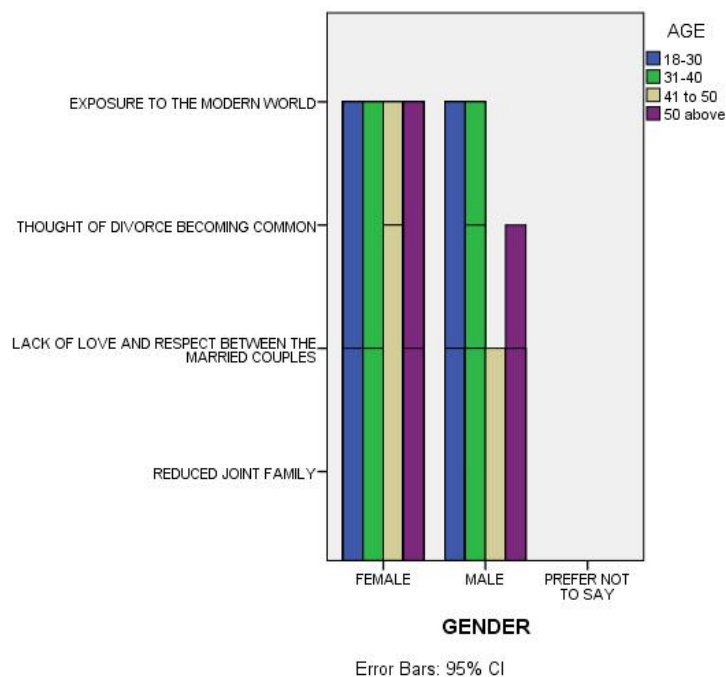
In fig 1, the pie chart shows between knowledge of different study sector students knowledge about restitution of conjugal rights



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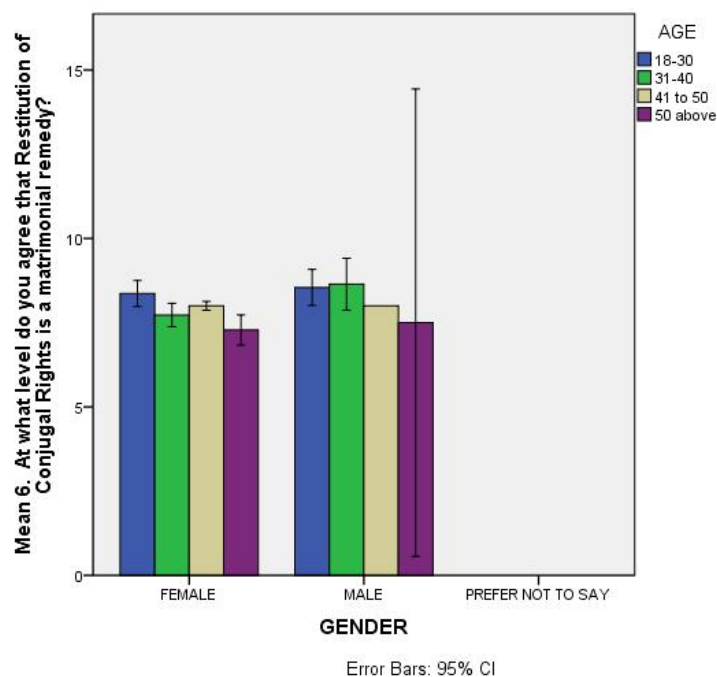
The Fig :2 shows the gender distribution and the age distribution and their opinion on divorce.





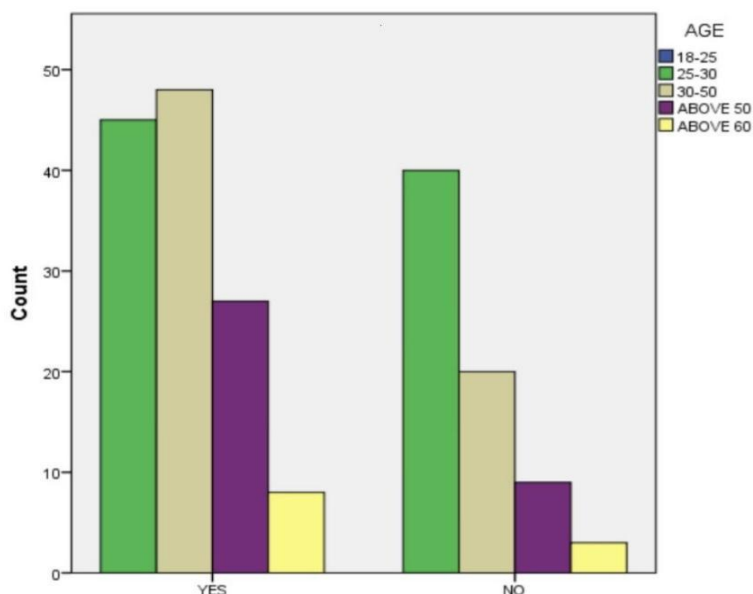
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The Fig : 3 shows the gender distribution and the age distribution and their opinion on effective ways to reduce illegal retrenchment.

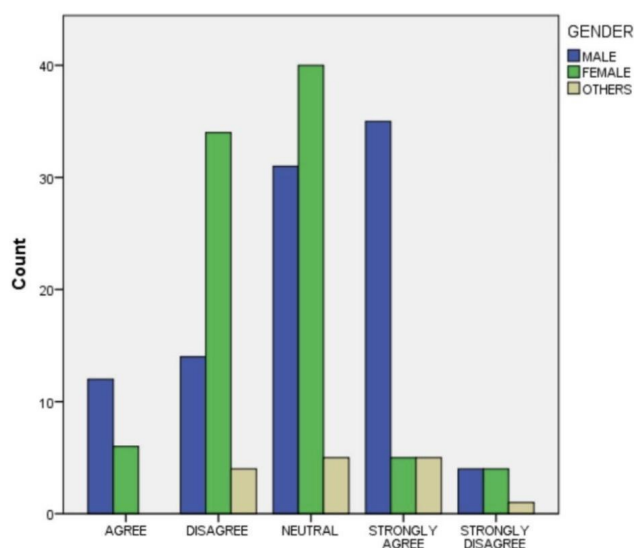


LEGEND

The Fig : 4 shows the gender distribution and the age distribution and their opinion on effective ways to reduce illegal retrenchment.



LEGEND: In fig 5 shows the gap between people of different age groups who believe or not believe tha conjugal rights are beneficiary to avoid dverce or not



LEGEND:

In fig 6 ,this graph between people of different gender who tell that restitution of conjugal rights is violative of right to privacy or right to choice.



V. RESULT

The graph shows that 31.03% most of the people in the age of below 20 say dissolving the marriage without coercion is the condition for divorce by mutual consent (**Figure 1**). This figure shows that 31.03% most of the unemployed peoples say no for the witness is required for mutual divorce (**figure 2**). This figure shows 41.38% most of the undergraduate peoples say one of the party is suffering from mental illness is eligible reason for applying divorce (**figure 3**). This figure shows that 31.03% most of the unmarried peoples are neutral for a divorce by mutual consent (dissolving the marriage for willingness) (**figure 4**). This figure shows 31.03% most of the unmarried peoples are agree for the divorce by mutual consent (unable to cohabitation) (**figure 5**). This shows 41.38% most of the unmarried peoples agree for the divorce by mutual (Mis reputation by partner) (**figure 6**).

VI. DISCUSSION

This is because many womens in this generation's claim divorce as just a easy thing but those days a marital relationship is considered sacred. henceforth women who couldnt adapt to the environment of relationship they are separated themselves from the husbands society without his consent thus claim that it is violative of fundamental right. From the in survey it is found that men from the age group of above 50 do give a 2% support to illegal retrenchment. It could be due to the factor of unawareness of laws in the other generation. many people wants to claim divorce without having the knowledge of this restitution of conjugal rights. mainly illiterate people must be given knowledge of family marital studies. From the in survey it is found that men from the age group of above 50 do give a 2% support to illegal retrenchment. It could be due to the factor of unawareness of laws in the other generation. This is because people of age group between 30-50 are the age to set into marital relationship. They understand very well about the restitution of rights. and the other age groups are mostly older age peoples who have lived their lives or either persons who have not entered the marital phase.

LIMITATIONS:

The limitation of the study in the selection of sample frames. The sample frame was not with any age limits that was shared through the Internet and it can be said so true if they have answered it whole mindedly. They might not have provided accurate answers. Survey questions options may lead to clear data because certain answer options may be interpreted differently by the respondents.

VI. CONCLUSION

It can be stated that the concept of Restitution of Conjugal Rights is based on good faith and intention to save a marriage from breaking down, with preserving the sanctity of marriage being its utmost priority. But at the same time, it does hinder upon the right of an individual to be left alone as it may sometimes coerce an unwilling individual to cohabit with his or her partner and thus may intrude upon his/her privacy. Therefore, it brings out a delicate situation which needs to be looked upon by the courts carefully and a balance should be maintained between the two as following a strict approach on either side may prove to be fatal for both an individual or the society as a whole. Thus, to decide whether ROCR is still relevant or not, the courts should use their wise discretion and at the same time ensure utmost care and not indulge in judicial adventurism while it plays an active role in the society.

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