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# Restitution of Conjugal Rights as a Matrimonial Remedy under the Personal Laws of India: A Critical Study

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DR. S. MANJULA<sup>1</sup>

## ABSTRACT

*Marriage imposes an obligation on the parties to cohabit with each other. The necessary implication of marriage is that the parties will live together. But suppose, one party refuses to live with the other, can the latter, by a legal process, compel the former to live together? The answer is "Yes" according to the various personal laws of India. The concept of restitution of conjugal rights owes its origin to the ancient days when the concept of marriage was based on proprietary rights of the husband. The wife was considered as a property of her husband and was, therefore, required to live at all times in the home provided by the husband and if she is refused to do so or ran away, she could be compelled to live with him. Originally, the decree of restitution could be enforced by the arrest of the respondent and delivery of her person to the husband. In the later law the remedy of restitution was made available to the wife also, but the execution of decree by arrest was done away with. In India, the remedy of restitution of conjugal rights is available to members of all communities, either under the personal law or under the general law. The remedy of restitution has been criticized widely as most inhuman and obnoxious. Hence, this article is critically analyzing the need for the remedy of restitution of conjugal rights in the present scenario.*

**Keywords:** *Restitution of Conjugal Rights, Matrimonial Remedy, Personal Laws, India.*

## I. INTRODUCTION

The legal remedy known as Restitution of Conjugal Rights (RCR) has a complex origin rooted in historical developments in both English law and Jewish family law. The concept of Restitution of Conjugal Rights has its roots in medieval ecclesiastical law in England. The Ecclesiastical courts, which had jurisdiction over marriage matters, were concerned with preserving the sanctity of marriage. Restitution of Conjugal Rights emerged as a remedy to compel spouses to resume cohabitation if one of them had withdrawn without reasonable cause. However, the legal compulsion associated with restitution of conjugal rights was criticized for

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<sup>1</sup> Author is a Controller of Examinations at The Tamil Nadu Dr. Ambedkar Law University, Perungudi, Chennai, India.

violating personal freedom and autonomy, especially in the context of changing societal attitudes towards gender equality. The remedy was ultimately abolished in England with the Matrimonial Proceedings and Property Act of 1970. Some scholars trace the origin of restitution of conjugal rights to Jewish family law. This perspective suggests that the notion of conjugal rights and the idea of a spouse seeking restoration of marital cohabitation were present in Jewish legal traditions.

Restitution of Conjugal Rights was introduced into India during the British colonial period. It was initially applied under the general law by the Privy Council in the case of *Moonshee Buzloor Ruheem v. Shumsoonnissa Begum*<sup>2</sup> in 1866. Subsequently, provisions for restitution of conjugal right were incorporated into Indian personal laws, including the Hindu Marriage Act, 1955, and the Indian Divorce Act, 1869. While the remedy is still recognized in India, it continues to be a subject of debate and constitutional challenges, particularly concerning its potential to infringe upon individual liberty and privacy. In essence, the origin of restitution of conjugal rights can be understood as a confluence of historical legal traditions, evolving concepts of marriage and family, and the impact of colonial influence on legal systems.

The Hindu Marriage Act, 1955 is an extensive law for Hindus which is providing so many effective provisions relating to marriage, matrimonial reliefs both permanent and temporary, jurisdiction and procedure of courts, maintenance and custody of children, etc., In matrimonial reliefs, the permanent relief is divorce whereas, the act has provided with temporary reliefs viz., Restitution of Conjugal Rights and Judicial Separation. For getting a decree of judicial separation, either party can file a petition on the same grounds which are applicable for divorce under Sec 13(1) and Sec 13(2). But for obtaining a decree of restitution of conjugal rights, they have to fulfil the requirements under Sec 9 of the Hindu Marriage Act, 1955.

In Muslim Law, the concept of restitution of conjugal rights stems from the contractual nature of marriage and the emphasis on marital harmony and spousal obligations in Islamic jurisprudence (Quran and Hadith). In Christian Law, the legal basis for restitution of conjugal rights for Christians in India lies in Sections 32 and 33 of the Indian Divorce Act, 1869. Hence, this article is critically analyzing the need for restitution of conjugal rights as a matrimonial remedy under the various personal laws of India. The legality and enforceability of restitution of conjugal rights continue to be debated in India, particularly regarding its potential infringement upon fundamental rights like the right to privacy and personal liberty. Hence, this article is critically analyzing the need for restitution of conjugal rights as a matrimonial remedy

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<sup>2</sup> 11 M.I.A. 551 (615).

under the various personal laws of India.

## **II. RESTITUTION OF CONJUGAL RIGHTS UNDER THE HINDU MARRIAGE ACT, 1955**

Section 9 of the Hindu Marriage Act explains Restitution of Conjugal Rights. As per section 9, 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.

The idea for providing for restitution by a court decree is to preserve the marriage tie as far as possible, by enabling the court to intervene and enjoin upon the withdrawing party to join the other. The conditions to be satisfied for obtaining such decree are:

- i) The other spouse has withdrawn from the society of the petitioner.
- ii) There is no reasonable excuse for such withdrawal. Should the respondent allege reasonable excuse, the burden of proof lies on him/her.
- iii) The court's satisfaction as to the truth of the statements made in the petition.
- iv) No legal grounds exist for refusing the decree.

### **(A) Constitutional Validity of Section 9 of the Hindu Marriage Act, 1955:**

It is significant to note that in 1983-84, the constitutional validity of sec.9 of the Hindu Marriage Act, 1955 became a subject matter of debate as a result of the Andhra Pradesh High Court judgment in *T. Sareetha v. T. Venkata Subbaiah*<sup>3</sup>. Choudary J. termed the provision of restitution as 'uncivilised', 'barbarous', 'engine of oppression' and assailed s.9 as being violative of Arts. 14, 19 and 21 of the Constitution of India. The reasoning was that sexual cohabitation is integral part of the decree of Restitution of Conjugal right, so the decree basically makes the choice for the other person not only to live with their 'spouse' but also have sexual intercourse with him. The decree is taking away the autonomy of a person over its own body and nothing can conceivably be more degrading to human dignity and monstrous to human spirit than to subject a person by the long rope of the law to a positive sex act. It is violative of Article 14 because though it treats a man and a woman equally but the husband and wife are not on the same footing in society so it is not justice to treat them equally.

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<sup>3</sup> AIR 1983 AP 356.

**1. Harvinder Kaur v. Harmander Singh Choudhry<sup>4</sup>:**

Delhi High Court took a very different approach on Section 9 and not only upheld the validity of it but also discussed its advantages. Court said introducing Constitutional law in family law is like ‘introducing a bull in a china shop’. The ‘Restitution’ is not only of sexual intercourse but it is for cohabitation and there is nothing barbarous or coercive about it. The court said that ‘A disproportionate emphasis on sex, almost bordering on obsession, has colored the views of the learned judge. The court cited Section 23 (2) and 23(3) which provides measures to reconcile the couple before giving a decree of divorce. Court called Section 9 as the ‘litmus test’ for divorce, if the restitution decree is disobeyed, it is ground for divorce. So section 9 provides 2 purposes, first is the attempt of reconciliation and second as a measure of divorce because the law gives the parties a ground for divorce under Section 13 (1-A) ‘if they don’t resume cohabitation for 1 year after the decree of restitution is passed by court’.

**2. Smt. Saroj Rani v. Sudarshan Kumar Chadha<sup>5</sup>:**

In this case the Supreme Court agreed with Harvinder Kaur v. Harmander Singh. Court discussed that the financial sanction by way of attachment of properties which has been provided for disobedience of the decree (under Order XXI Rule 32 of C.P.C), is only an inducement for the parties to live together in order to give them an opportunity to settle their differences amicably. Court said the right of the husband or the wife to the society of the other spouse is not merely a creature of the statute. Such a right is inherent in the very institution of marriage itself There are sufficient safeguard in s. 9 to prevent it from being a tyranny’.

**3. Smt. Milan v. Sunil<sup>6</sup>:**

In this case a decree for restitution of conjugal rights challenged by wife. Wife did not agree to live with husband and not even agree to live with her sons. It can be presumed that there is something panic which compelled her to live abandoned life. She cannot be compelled to live together against her wishes. A decree for restitution of conjugal rights to give a tool to husband to harass her through the process of Court. Therefore, decree is set aside.

**4. Mamta v. Rajesh<sup>7</sup>:**

Husband filed an application for restitution of conjugal rights on the ground that his wife left the matrimonial home without any sufficient reason and that she is compelling him to live with

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<sup>4</sup> AIR 1984 DELHI 66.

<sup>5</sup> AIR 1984 SC 1562, (1984) 4 SCC 90.

<sup>6</sup> Reported in – I.L.R. (2008) M.P. 36.

<sup>7</sup> AIR 2014 MADHYA PRADESH 158.

her at her maternal home. The wife denied such allegations and pleaded that it is the husband who deserted her and that she was subjected to cruelty for demand of dowry and also to black magic. The Trial Court passed the decree of restitution of conjugal rights. Held, wife had stayed at her matrimonial home for about 15 days and she was sent to her maternal home alone by bus. There is no attempt to bring her to her matrimonial home on the part of the husband showing the indifferent behaviour towards her. She was maltreated and harassed by him and black magic was also applied on her. Therefore, she had reasonable apprehension of being unsafe in her husband's house. Allowing the appeal, it was held that decree for restitution of conjugal rights ought not to have been passed in favour of the husband as the wife was living separately with sufficient reason.

#### 5. Recent Judgments:

*Rina Kumari vs. Dinesh Kumar Mahto*<sup>8</sup>, the Supreme Court held that a wife is entitled to maintenance even if a decree for restitution of conjugal rights has been passed against her if there's sufficient cause for her to live separately.

Family Courts have no power to grant Judicial Separation in Plea for Restitution of Conjugal Rights: Madras High Court (May 29, 2025): This judgment clarified the scope of a petition seeking restitution of conjugal rights. Madras High Court rejected a wife's plea for restitution stating that it would serve no useful purpose after 18 years of separation: This ruling emphasizes the significance of a realistic assessment of the likelihood of reconciliation when considering a restitution application.

*Dolly Rani v Manish Kumar Chanchal*<sup>9</sup>: The Supreme Court clarified that a Hindu marriage is not valid if it's not performed in accordance with applicable rites or ceremonies, even if it's registered. This has implications for cases involving restitution of conjugal rights where the validity of the marriage itself is contested.

#### **(B) Key considerations in restitution of conjugal rights cases:**

Constitutional Validity: Section 9 of the Hindu Marriage Act, which deals with restitution of conjugal rights, has been challenged several times as violating fundamental rights, particularly the right to privacy under Article 21 and the right to equality under Article 14<sup>10</sup>.

Reasonable Excuse for Withdrawal: The court will grant restitution of conjugal rights only if

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<sup>8</sup> (2025) LiveLaw (SC) 47.

<sup>9</sup> 2024 SCC ONLINE SC 754.

<sup>10</sup> The Supreme Court has, in the past, upheld the constitutionality of Section 9 in *Saroj Rani v. Sudarshan Kumar Chadha* (1984). However, the issue remains a subject of debate and is currently pending before the Supreme Court in the case of *Ojaswa Pathak v. Union of India*.

the spouse has withdrawn from society without reasonable excuse. The burden of proof to show a reasonable excuse lies with the spouse who has withdrawn.

**Not a Tool to Force Sexual Intercourse:** The courts have clarified that a decree of restitution of conjugal rights aims to encourage cohabitation and companionship, not to force sexual relations.

**Relationship with Maintenance:** A decree of restitution of conjugal rights does not automatically disentitle a wife to maintenance under the general law. The courts will examine the facts of each case to determine the wife's entitlement to maintenance.

**Grounds for Divorce:** If a decree for restitution of conjugal rights is not complied with for a year or more, it can be a ground for divorce.

### **(C) Effect of non-compliance of decree of restitution of conjugal rights:**

Order 21 Rule 32 of Code of Civil Procedure provides that if a party against whom a decree of restitution of conjugal rights is passed wilfully disobeys it then the decree may be enforced by attachment of property. If there is no resumption of cohabitation even after one year from the decree of restitution of conjugal rights then that becomes a ground of divorce under Section 13(1A)(ii) of HMA, 1955.

#### **1. Restitution of Conjugal Rights under Muslim Law:**

The Muslim law does not specifically and statutorily provide for the matrimonial relief of restitution of conjugal rights. However, 'where a wife, without lawful cause ceases to cohabit with her husband, the husband may sue the wife for restitution of conjugal rights', and similarly 'the wife has the right to demand the fulfilment by the husband of his marital duties'. Generally, however, it is the husband who brings the suit for restitution because of the dominant position of the husband, specially in regard to divorce. His right is not absolute and the wife has her defences where a husband files a suit for restitution. Cruelty is a very strong defence.

While the Dissolution of Muslim Marriage Act, 1939, addresses grounds for dissolving marriages, it remains silent on the restitution of conjugal rights. However, courts have recognized the right of both husband and wife to seek restitution through a civil suit.

**Conditions for grant:** The court will consider granting restitution if one spouse has withdrawn from cohabitation or failed in their marital duties without a reasonable excuse.

**Defences against grant:** Relief can be denied if:

- The husband is cruel towards the wife or his in-laws, making it unsafe for her to return.
- The husband has failed to fulfil marital obligations.

- The husband has not paid the wife's prompt dower.
- The husband has taken a second wife, potentially constituting cruelty to the first wife.
- The wife has a reasonable cause for withdrawal, such as threats to her life or well-being.
- The court deems it unjust or inequitable to force the wife to return.

A Muslim wife does not have an absolute right to refuse consortium to her husband if he takes a second wife, as polygamy is permitted in Muslim law. However, if the second marriage amounts to cruelty, she may have grounds to refuse.

Modern perspective: Restitution of conjugal rights is a controversial topic within Muslim law and is often debated in terms of individual autonomy, gender equality, and human rights. The absence of explicit statutory law can lead to inconsistencies in its application.

In India, the concept of restitution of conjugal rights for Muslims is primarily governed by judicial precedents and the principles of Islamic jurisprudence, as there isn't a specific statute dealing with this remedy.

Some notable cases under Muslim Law are:

*Moonshee Buzloor Ruheem vs. Shumsoonissa Begum*<sup>11</sup>: This case is a landmark in the introduction of restitution of conjugal rights into Indian law. The Privy Council held that a husband could sue for the restitution of conjugal rights if his wife ceased to cohabit with him without lawful reasons; but if there were cruelty to a degree rendering it unsafe for her to return to his dominion, or if there were a gross failure on his part to perform the obligations imposed on him by the marriage contract, the court would be justified in refusing such relief. The Court emphasized that while Muslim law primarily guided such suits, principles of equity and good conscience could be applied where specific Islamic texts were unavailable.

*Abdul Kadir vs. Salima*<sup>12</sup>: This case further clarified the application of restitution of conjugal rights in Muslim law, asserting that decisions should be based on Muslim Law (Sharia) principles rather than solely on notions of justice, equity, and good conscience.

*Itwari vs. Smt. Asghari*<sup>13</sup>: In this case, the Allahabad High Court addressed the issue of a husband seeking restitution after taking a second wife. The court highlighted that while polygamy is permitted in Muslim law, it doesn't automatically entitle the husband to restitution from the first wife. The court underscored that granting restitution is an equitable relief and the

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<sup>11</sup> 11 M.I.A. 551 (615).

<sup>12</sup> (1886) ILR 8 ALL 149.

<sup>13</sup> AIR 1960 ALL 684.

Court should consider factors like potential cruelty to the first wife due to the second marriage, before compelling her return. This case shifted the burden of proof to the husband to demonstrate that his second marriage didn't constitute cruelty and allowed the court to refuse restitution on grounds of inequity, even without explicit proof of cruelty.

*Azizurrahman vs. Hamidunnisha @ Sharifunnisha (2022)*: This recent case reaffirms the principle that while a husband's second marriage might be acknowledged, the court won't compel the first wife to cohabit if it's considered unfair or inequitable for her to share his consortium. It also emphasizes the court's discretion in refusing a restitution decree even without clear cruelty, if compelling the wife's return would be wrong.

*Aneesha vs. Navas (2023)*:

In this case, the Court held that there is no provision under Muslim law that could vest in a wife a right to restitution of conjugal rights. The reason behind this is that marriage between a husband and wife belonging to the Muslim religion and caste is a contract.

## 2. Restitution of Conjugal Rights under Christian Law:

The legal basis for restitution of conjugal rights for Christians in India lies in Sections 32 and 33 of the Indian Divorce Act, 1869.

**Section 32. Petition for restitution of conjugal rights:** When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, either wife, or husband 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.

**Section 33. Answer to Petition:** Nothing shall be pleaded in answer to a petition for restitution of conjugal rights, which would not be ground for a suit for judicial separation or for a decree for nullity of marriage.

**Explanation:**

- Either spouse can petition the District or High Court for restitution if the other has withdrawn from their society without a reasonable excuse.
- Conditions for grant: The court, upon verification of the petition's claims and finding no legal reason for rejection, may decree restitution.

**Defences against grant:**

The court cannot grant a decree if: There is cruelty by either spouse. Either or both spouses are insane. Either spouse has remarried. Nothing that would constitute grounds for a decree of nullity of marriage or a suit for judicial separation can be used as a defence.

A notable case under Christian law is Solomon Devasahayam Selvaraj vs. Chandriah Mary (1929). This case involved a Christian husband petitioning for restitution of conjugal rights. The wife contended she was treated with cruelty and suspected her husband of an illicit relationship. The court, after examining the evidence and the circumstances, dismissed the husband's petition, finding his motives suspect and the wife's refusal to live with him justifiable based on his conduct.

Similarities and differences between Muslim Law and Christian Law:

**Purpose:** The core aim in both Muslim and Christian law is to preserve the institution of marriage and encourage reconciliation when one spouse has left the other without just cause.

**Burden of Proof:** In both legal systems, the aggrieved party seeking restitution must initially prove that the other spouse has withdrawn from their society without a reasonable excuse.

**Equitable Relief:** The granting of restitution in both systems is discretionary and based on equitable considerations.

**Grounds for Refusal:** Cruelty and remarriage are valid reasons for refusing restitution under both laws.

**Difference:** A key distinction lies in the legal framework. While Christian law has specific statutory provisions (Sections 32 and 33 of the Indian Divorce Act, 1869), the concept in Muslim law is derived from personal law and is not explicitly codified. Under Muslim Law, unlike other laws, a suit in a civil court has to be filed and not a petition.

### 3. Restitution of Conjugal Rights under the Special Marriage Act, 1954:

The procedure and the grounds for applying before the court are similar to that of the Hindu Marriage Act, 1955.

**Section 22. Restitution of Conjugal Rights:** 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.

**Ojaswa Pathak and Anr. vs. Union of India (2019):** This case, challenging the constitutional validity of restitution of conjugal rights under both Hindu and Special Marriage Acts, is

currently pending before the Supreme Court.

### **III. CONCLUSION**

The legality and enforceability of restitution of conjugal rights continue to be debated in India, particularly regarding its potential infringement upon fundamental rights like the right to privacy and personal liberty. Restitution of conjugal rights, though available under both Muslim and Christian personal laws in India, has faced criticism for potentially infringing upon fundamental rights like privacy and equality. The constitutional validity of similar provisions, like Section 9 of the Hindu Marriage Act, has been challenged, and while upheld in the case of *Saroj Rani v. Sudharshan Kumar Chadha*, the ongoing debate about personal liberties remains. Even though the remedy of restitution protects the concept of marriage and the reciprocal obligations involved, the enforcement does raise concern for personal autonomy, gender equality, and human rights. It raises questions, especially when it forces one spouse back into a marital relationship against their will. This legal remedy should be used as a shield for protecting the rights of the aggrieved party and cannot be a weapon in the hands of an erring party.

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