



## Restitution of Conjugal Rights: a Legitimate Claim or Pseudo Defence

### KEYWORDS

matrimonial relation, conjugal, reasonable

### Hiranmaya Nanda

Research Scholar, SOA National Institute of Law, SOA University, Kalinga Nagar, Bhubaneshwar, 751003, Odisha

**ABSTRACT** *This article is an attempt to reflect the prime objective of restitution of conjugal rights enshrined under different personal laws. According to the Hindu Marriage Act marriage is a civil contract and a religious ceremony where variety of rights and obligations enjoyed and performed by the parties to the marriage, cohabitation being one of them. If there is no reasonable ground for living apart, the court orders for cohabitation and enforces the Contract there is nothing wrong as the parties had voluntarily stipulated this at the time of entering into the marriage relationship but where there is a reasonable ground for living apart and to avoid in providing maintenance, restitution of conjugal rights petition is filed before the court. So the question is whether it is a legitimate claim or pseudo defence.*

### INTRODUCTION

After the solemnisation of marriage both husband and wife are legally bound by the law to maintain their conjugal life together. Conjugal Life denotes conjoint enjoyment of rights and conjoint obligation of duties by both husband and wife. 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. This can be done by filing a petition in court seeking for resumption of cohabitation. This right is known as Restitution of Conjugal rights. Under the different personal laws the restitution of conjugal rights are embodied in order to protect the interest of the aggrieved party. Section 9 of the Hindu Marriage Act, 1955 says when either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other; the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being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. Explanation- Where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society. But this right has time and again been challenged and questioned by the society that whether Restitution of conjugal rights is a statutory legitimate right or it is a defence. A suit for restitution of conjugal rights is often filed in case of one spouse who feels that the other has left him or her without any reasonable cause and that the only remedy she or he wants is for the spouse to come back into the matrimonial home. This has been questioned by various scholars in our country on the ground that the provision has been used to forcefully keep their partners together when the couple was unwilling to stay together which may be due to incompatibility or unwillingness. Again restitution of conjugal rights is being used as a plan by the husband to refuse maintenance to their wives. If, the husband throws the wife out of the house either for dowry or does anything in connection of demand of dowry and the moment the wife files a suit for maintenance, the husband files a petition for restitution of conjugal rights which creates an opportunity not to provide maintenance to his wife. The statement given in the court is that he was

willing to take his wife but the wife is unwilling to resume cohabitation and therefore, he is not responsible for providing her maintenance. The defences available against restitution of conjugal rights are where there is a reasonable cause for a person to withdraw from her/his spouse, then a decree for restitution of conjugal rights can be denied by the court. What is a reasonable cause is up to the court to decide depending on the nature and circumstances of facts and allegations made in that case.

### JUDICIAL INTERPRETATION ON RESTITUTION OF CONJUGAL RIGHTS

In *Ranjana kejrival v. Vinod Kumar Kejrival*<sup>1</sup>, the petitioner wife alleged that the husband was already married and had suppressed the fact from her. The Court held that the petition for restitution of conjugal rights is not maintainable since there is no legal marriage. The burden of providing reasonable proof depends on the person who has withdrawn from the society that he / she has withdrawn from the society with a reasonable cause. In a case where wife deserted the husband and has withdrawn from the society and the wife did not even respond to the legal notices sent by the husband urging her to return home. After failing to get a response the husband filed a petition in a family court demanding restitution of conjugal rights. However, the wife then filed a counter petition seeking maintenance. The Bombay High Court observed that a wife who deserts her husband without any just or sufficient cause is not entitled to maintenance. Section 9 of the Hindu Marriage Act, 1955 was challenged before the court as being violative of Article 21 of the Constitution of India. In *T. Sareetha v. T. Venkata Subbaiah*<sup>2</sup> Justice P.A. Choudhary of the Andhra Pradesh High Court held the Section 9 of the act ultra vires since it offended Articles 14 and 21 of the Constitution. However, it was overruled by the Supreme Court in *Saroj Rani v. Sudarshan Kumar Chadha*<sup>3</sup> the court observed that, the object of the section is to bring about cohabitation between estranged parties so that they can live together. That in the privacy of home and married life neither Article 21 nor Article 14 has any place.

The wife can also prove the justification for having withdrawn from the society where Persistent demand for dowry or causing physical and mental torture was held to be a reasonable cause for the wife to withdraw from the society

of the husband<sup>4</sup>The court will satisfy itself about the truth of the statements made in the petition and also that there is no legal ground available for not granting the decree of restitution of conjugal rights. The decree is then granted accordingly.

The court has held in various cases that the following situations will amount to a reasonable excuse to act as a defence under Section 9 of the Hindu Marriage Act, 1955,

- That there is a ground for relief in any matrimonial cause.
- That matrimonial misconduct not amounting to a ground of a matrimonial cause
- That such an act, omission or conduct which makes it impossible for the respondent to live with the petitioner.

The fundamental principle of matrimonial law that one spouse is at liberty to the society and comfort of the other spouse, forms the foundation of the right to bring a suit for the restitution of conjugal rights. The court can grant a decree for restitution in the cases where either spouse has abandoned or withdrawn from the society of the other. When the question arises whether there has been reasonable excuse for the withdrawal of the respondent from the society of the aggrieved party, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society. But this burden is only secondary in nature. The primary aim of showing proof or onus rests with the petitioner. Once the petitioner has proved his/her case, the burden of proof then shifts to the other party to prove the defence of a 'reasonable excuse or cause'.

#### **RESTITUTION OF CONJUGAL RIGHTS UNDER DIFFERENT PERSONAL LAWS Dissolution of Muslim Marriage Act, 1939**

Muslims either husband or wife can ask for restitution of conjugal rights under section 2 of The Dissolution of Muslim Marriage Act, 1939. When either husband or wife ceases to cohabit with the spouse without just and reasonable cause then either could seek a right to restitution of conjugal rights. This is a relief under common law. If the marriage is void (Batil) or irregular (fasid) under the provisions of the Muslim Law a decree for restitution of conjugal rights will not be granted as provided under The Dissolution of Muslim Marriage Act, 1939. Some of the grounds on which the wife can resist a suit for restitution of conjugal rights:

- That the marriage is irregular
- That there is cruelty by the husband i.e., real violence endangering her health, safety or causing real apprehension of such danger
- That there is a false charge of adultery by the husband
- That there is a gross failure in performing matrimonial duties
- That there is non-discharge of dower's/Mehr's liability

#### **The Divorce Act, 1869**

The Christians, either husband or wife, can ask for restitution of conjugal rights under Section 32 of the Divorce Act, 1869. Either husband or wife has withdrawn without reasonable excuse from the society of the other. The aggrieved party files a petition in the District Court under section 32 for restitution of conjugal rights and the court on being satisfied of the truth of the statements made in the petition, can grant the decree for restitution of conjugal rights accordingly.

#### **The Parsis Marriage and Divorce Act, 1936**

The Parsis either husband or wife can ask for restitution of conjugal rights under Section 36 of the Parsis Marriage and Divorce Act, 1936. When a wife or husband has deserted or without lawful cause ceased to cohabit with his each other. The party so deserted or with whom cohabitation has so cease may sue for restitution of her/his conjugal rights in the court. After filing a suit for restitution of conjugal rights in the court and if the court is satisfied of the truth of the allegations contained in the application and where there is no just ground why relief should not be granted the court may grant a decree for restitution of conjugal rights accordingly.

#### **The Special Marriage Act, 1954**

A marriage between any two person women or men whose religion are different or are from the same religion can ask for restitution of conjugal rights under section 22 of the Special Marriage Act. When a husband or a wife has withdrawn from the society of the other without any reasonable excuse. The aggrieved party files a petition in the District Court for restitution of conjugal rights. The court on being satisfied of the truth of the statements made in the petition, can grant the decree for restitution of conjugal rights. When a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.

#### **CONCLUSION**

However, if the decree of restitution of conjugal right or right to stay together is not obeyed for a period of more than one year, subsequent to the date of the decree, it becomes a good ground for divorce as stipulates under Sec 13 (1A) (ii) of the Hindu Marriage Act, 1955. There is a string of cases to this point. In fact, Justice Rotagi in *Harvinder Kaur v Harminder Singh*<sup>5</sup> recognised that "the legislature has created restitution of conjugal rights as an additional ground for divorce". But where there is a reasonable ground exist that either of the spouses cannot be expected to live together then unless to take the privilege of restitution of conjugal rights other alternative relief may be resorted.