

Restitution of Conjugal Rights

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Introduction

The Special Marriage Act of 1954 and the Hindu Marriage Act, 1955, are where the idea of 'restitution of conjugal rights' originated in India. All matrimonial laws define marriage as a union that imposes certain marital obligations on each spouse and grants each spouse specific legal privileges. After the marriage has been solemnised, if either spouse withdraws from the other's community without a valid reason, the aggrieved party has the legal right to petition the marital court for the restoration of conjugal rights.

Section 9 of the Hindu Marriage Act, 1955

Section 9 of the Hindu Marriage Act talks about Restitution of conjugal rights. It reads:

“When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being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.”²

The Court stated in *Mrs. Manjula Zaverilal v. Zaverilal Vithal Das*³, 1973, that when the aggrieved party files a petition for the restitution of conjugal rights and establishes that the defending party has withdrawn from the aggrieved party's society, the defending party must succeed to prove that there was a reasonable cause to abandon or leave their spouse.

Section 22 of the Special Marriage Act, 1954

Section 22 of the Special Marriage Act talks about Restitution of conjugal rights. It reads:

“When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply by petition to the district court for restitution of conjugal rights, and the court, on being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.”⁴

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² Section 9, Hindu Marriage Act, 1955.

³ *Mrs. Manjula Zaverilal v. Zaverilal Vithal Das* (1974) GLR 758.

⁴ Section 22, Special Marriage Act, 1954.

Conditions of the restitution of conjugal rights provision

- The respondent's withdrawing from the petitioner's society.
- The withdrawal has no justifiable cause, explanation, or legal basis.
- There should be no other legal basis for denying the relief.
- The court should be satisfied that the assertion in the petition is true.

Who can file a petition?

When either the husband or wife withdraws from the other's society without sufficient justification, the aggrieved party may file petition in the district court for restitution of conjugal rights. The court must consider whether the petition is true and whether there are no legal reasons why the application should not be granted restitution of conjugal rights.

Why Is There Relief?

With the goal of maintaining the sanctity and legality of the institution of marriage, the government, in its wisdom, has created a statutory remedy for either spouse to regain the company of the spouse who has left the company without sufficient reason. The ultimate goal of the legislature and judiciary is to save the maximum number of marriages.

Conclusion

Restitution of conjugal rights is a remedy that seeks to preserve the marriage rather than end it, as in the case of divorce or judicial separation. It aids in the prevention of marriage breakdown and so serves to save the marriage. As a result, the restitution of conjugal rights remedy attempts to promote reconciliation between the parties and the preservation of married relationships. It seeks to keep civilization from becoming denigrated. However, the parties must decide whether to comply with the decree of return of conjugal rights and continue the matrimony or not.

For further discussion or queries on the above-mentioned issue, we can be reached at anbay.legal@gmail.com.