

CHOICE OF MATRIMONIAL HOME AND SHARED RESPONSIBILITY: JUDICIAL RESPONSE

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INTRODUCTION:

Choice of matrimonial home is a very important aspect of family laws which needs detailed discussion as there are various views on the point of choice of matrimonial home. Matrimonial home is a home where both husband and wife reside to carry on their matrimonial obligations. The disputes giving rise to petitions for restitution of conjugal rights often arise in cases where the wives are employed at different places or wives desire to live with the husband at the different place of his employment or the wives wish that the husbands should live in the house of their in-laws. It is, therefore, necessary to understand properly as to what is the law on choice of matrimonial home, a home where the husband and wife mutually shares their responsibilities. So we have to look into the history of restitution of conjugal rights from where the concept of matrimonial home arises. We have to look into the judicial trend regarding the choice of matrimonial home which tries to imbibe the concept of share responsibility in the Indian society. To understand this concept, from the very inception we need to discuss this concept in depth.

INSTITUTION OF MARRIAGE:

Family is the most vital unit of society and marriage is the foundation of it. Marriage means union between two individuals and according to the old Hindu concept the object of this union is mainly to procreate and continue the family for the existence of the society of mankind. Marriage, it has been said, is the usual fate of most of the adult persons. In the modern times, where both the husband and wife are working, marriage is a union to share the responsibilities between the two - Responsibility of taking care of household, children and to earn the good living hood.

Marriage is defined in the Encyclopedia of Britannica, 11th Ed., Vol. 17, p. 753, as a physical, legal and moral union between man and woman is community of life for the establishment of a family.

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In other words, it can also be said that marriage is a union between two opposite sexes. This social institution once formed the law steps in and holds the parties to various obligations and liabilities. In *Harvinder Kaur v. Harmander Singh*²⁵⁵, the learned judge of Delhi High Court, Mr. Justice A.B.Rohatagi has rightly observed, “whether it is English Law or the Indian Act, marriage is voluntarily union for life of one man and one woman to the exclusion of all others.” He also opined that marriage is “an institution in the maintenance of which the public is deeply intended for it is the foundation of the family and of society without which there would be neither civilization nor progress.”

In the ordinary sense, the term “marriage” is a social institution which may be defined as a relation of one or more men to one woman or more women that is recognized by custom or law and involves certain rights and duties both in the case of practice entering the union and in the case of children born of it.

CONSORTIUM OR CONJUGAL RIGHTS:

One of the fundamental purposes of marriage is that the spouses must live together and that one spouse is entitled to the society and comfort of the other.²⁵⁶ The meaning of the term 'conjugal rights' is vague and indefinite, it has been defined as matrimonial rights; the right which husband and wife have to each other's society, comfort and affection. Marital or conjugal rights include the enjoyment of association, sympathy, confidence, domestic enjoyment of association, sympathy, confidence, domestic happiness, the comforts of dwelling together in the same habitation, eating meals at the same table and profiting by the joint property rights as well as the intimacies of domestic relations.²⁵⁷ The obligation of the wife to live with her husband in his home and under his roof and protection is clear and unequivocal. It is only in the case of some distinct and specified marital misconduct on the part of the husband, and not otherwise, that Hindu law entitles the wife to live separately and claim maintenance therefore. This marital obligation has been further buttressed by clear statutory recognition by section 9 of the Hindu Marriage Act. This provides for an immediate remedy where either of the spouses falters in his or her obligation to provide the society and sustenance to the other.²⁵⁸

RESTITUTION OF CONJUGAL RIGHTS: Restitution of conjugal rights is one of the various reliefs available to spouses under the family law. Restitution in its etymological sense means

²⁵⁵ . AIR 1987 Del 66 (67).

²⁵⁶ B.M.Gandhi, Hindu law, page. 231.

²⁵⁷ *Kailash Wati v. Ajodhia Parkash*1971 CLJ 109 (P & H)

²⁵⁸ *Ibid.* para 27.

restoring to a party on the modifications, variations or reversal of a decree what has been lost to it in execution of the decree or in direct consequence of the decree.²⁵⁹ Origin of the word Conjugal in early 16th century. It is a Latin word 'conjugium', con means "together" + jugum means "yoke". According to Roman condition of being married. Conjugal means matrimonial or marital. The expression of conjugal rights therefore, means restoration of marital rights of a party which were lost to it. Conjugal, of relating to married state often with an implied emphasis on sexual relations between spouses. 'Conjugal Rights' means rights and privileges arising from the marriage relationship, including the mutual rights of companionship, support and sexual relations.²⁶⁰ The idea of providing restitution by a court is to preserve marriage tie as far as possible, by enabling the court to intervene and enjoin upon the withdrawing party to join the other.

HISTORY OF RESTITUTION OF CONJUGAL RIGHTS:

The history of suits for the restitution of conjugal rights in India reveals that women were ready to use British Law as a source to improve their position and assert their rights in marriage. Restitution of conjugal rights was the only relief offered by British Law to all Indian communities in cases of marital disharmony, whether they were Hindus, Parsis or from any other religious community²⁶¹.

Suits for restitution of conjugal rights were known in pre-colonial India. Scripture based Hindu law did not sanction it although customary laws did incorporate less formal ways of dealing with marital disputes²⁶². The remedy of restitution of conjugal rights was neither recognized by the Dharmashastra nor did the Muslim law made any provision for it. It came with raj. It is remarkable that this was the only matrimonial remedy which made available by the British rulers of India to all Indian communities under the general law. In England, it came from the Jewish law. The ecclesiastical courts enforced this remedy by excommunicating the guilty spouse. The Statute of George III substituted excommunication with imprisonment.²⁶³ The English remedy of the restitution of conjugal rights was first applied in India to Muslims and it was later extended to the Hindus as well. The Rajasthan high court in Chand Narain v. Smt. Saroj²⁶⁴, has comprehensively considered the remedy of restitution of conjugal rights in India

²⁵⁹ Zaffar Khan v. Board of Revenue, 1984 Supp SCC 505.

²⁶⁰ B.M. Gandhi, Hindu law 2nd Edn.

²⁶¹ Paras Diwan, Law of Marriage and Divorce, p. 283.

²⁶² <http://books.google.com.in/book?id=historyofrestitutionofconjugalrights>, visited on 22/09/2013.

²⁶³ Paras Diwan, Law of Marriage and Divorce, p. 284.

²⁶⁴ AIR 1975 Raj 88.

as applicable to Hindus and Muslims. When the Hindu Marriage Act was drafted it is reasonable to hold the language of the Section 9 was borrowed from Sections 32 & 33 of the Indian Divorce Act, 1869.²⁶⁵ Manu emphatically declared “neither by sale, nor desertion, can a wife be released from her husband.”²⁶⁶ He insisted on mutual fidelity till death. Thus according to old concept of Hindu law, the wife was required to treat her husband as god. Litigation regarding matrimonial obligations was forbidden and they could not apart from one another till death for any reason whatsoever. It will be seen that with the march of time, the divine status of husband has disappeared; from the tenor of the text of Hindu Marriage Act, equality of status seems to have been confirmed.

Like any other anachronistic remedies, the restitution of conjugal rights dates back to feudal England, where marriages was primarily a property deal, and the wife and the children were part of man’s possession as other chattels. At that time a decree could be executed by arresting the wife.²⁶⁷ The courts otherwise can’t grant specific performance of marriage, but by a decree of restitution of conjugal rights it attempted to do so. To retain this remedy, which is rightly called worse than tyranny and worse than slavery²⁶⁸ in the modern world for this little advantage is repelling. The modern English Law has fortified wife’s position by making adequate financial provisions for her and has abolished the matrimonial cause of restitution of conjugal rights.²⁶⁹

The remedy of restitution of conjugal rights is still retained by the Indian matrimonial laws. When the provision in the Special Marriage Bill and the Hindu Marriage and Divorce Bill was debated in parliament many members voiced their opposition to it. J.B. Kriplani said, “This provision was physically undesirable, morally unwarranted and aesthetically disgusting...”²⁷⁰ In *Slakila v. Gulam*²⁷¹, a case under Muslim law, Vaid.J. very pertinently observed: “...is a relic of ancient times when slavery and quasi-slavery were regarded as natural. This is particularly so after the constitution of India came into force, which guarantees personal liberty and equality of status and opportunity to men and women alike”.

LEGAL PROVISIONS REGARDING RESTITUTION OF CONJUGAL RIGHTS:

²⁶⁵ B.P. Beri, Law of Marriage and Divorce, p. 92.

²⁶⁶ CHAPTER IX, VERSE 46

²⁶⁷ Page. 318

²⁶⁸ . S.S.Moore, Parliamentary debates on Special Marriage Bill, 10th December, 1954.

²⁶⁹ Page 319.

²⁷⁰ Parliamentary Debates on Special Marriage Bill, 10th December , 1954.

²⁷¹ AIR 1971 Bom 166.

In modern India, this remedy is available under Section 9²⁷² of the Hindu Marriage Act, 1955, to the persons married under the Special Marriage Act, 1954 - Section 22²⁷³ of The Special Marriage Act, 1954 deals with the restitution of conjugal rights at the instance of the husband or wife at any time after the solemnization of marriage under the Act; to the Parsis, Section 36²⁷⁴ provides for the suit for the restitution of conjugal rights under the Parsi Marriage and Divorce Act, 1936; to the Christians, Section 32²⁷⁵ of the Indian Divorce Act, 1889 provides for the restitution of conjugal rights

The conceptualization of the provision for restitution of conjugal rights under Muslim law by Tayabji is as follows: “Where either the husband or wife has, without lawful ground withdrawn from the society of the other, or neglected to perform the obligations imposed by law or by the contract of marriage, the court may decree restitution of conjugal rights, may put either party on terms securing to the other the enjoyment of his or her rights”

Thus the Muslims equate this concept with securing to the other spouse the enjoyment of his or her legal rights. Earlier, it was also attached with the specific performance of the contract of marriage. In *Abdul Kadir v. Salima*, the Allahbad High Court²⁷⁶ decided that the concept of restitution must be decided on the principles of Muslim Law and not on the basis on justice, equity and good conscience.

²⁷² 9. Restitution of conjugal right. 1[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.]

²⁷³ 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.

[Explanation.- Where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of providing reasonable excuse shall be on the person who has withdrawn from the society.]

²⁷⁴ 36. Suit for restitution of conjugal rights. Where a husband shall have deserted or without lawful cause ceased to cohabit with his wife, or where a wife shall have deserted or without lawful cause ceased to cohabit with her husband, the party so deserted or with whom cohabitation shall have so ceased may sue for the restitution of his or her conjugal rights and the Court, if satisfied of the truth of the allegations contained in the plaint, and that there is no just ground why relief should not be granted, may proceed to decree such restitution of conjugal rights accordingly.

²⁷⁵ 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 or the High 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.

²⁷⁶ (1886) ILR 8 All 149

CHOICE OF MATRIMONIAL HOME AND JUDICIAL RESPONSE:

The basic principles on which the location of the matrimonial home is to be determined by the husband and the wife are based on common convenience and benefit of the parties.

The disputes giving rise to petitions for restitution of conjugal rights often arise in cases where the wives are employed at different places or wives desire to live with the husband at the different place of his employment or the wives wish that the husbands should live in the house of their in-laws. It is, therefore, necessary to understand properly as to what is the law on choice of matrimonial home. The idea of the matrimonial home appears to lie at the very centre of the concept of marriage in all civilized societies. It is indeed around it that generally the marriage tie revolves. The home epitomizes the finer nuances of the marital status. The bundle of indefinable right and duties which bind the husband and the wife can perhaps be best understood only in the context of their living together in the marital home.²⁷⁷ There are different views on choice of matrimonial home prevailing, which are discussed below:

- 1) Prerogative of Husband to choose Matrimonial home: First view on the choice of matrimonial home is that the right of consortium by the husband as a dominant incident of marriage from the earliest times. The American Law on the right to choose matrimonial home is stated in *Pace v. Pace*²⁷⁸:

“in this state, the husband is the head of the family, and as such has, the right to fix the matrimonial residence without the consent of the wife; and the wife is bound to follow her husband, when he changes his residence, provided the change is made by him in good faith, and not from whim or caprice, or as a punishment of the wife, or to a place where he does not intend to reside, or to a place where her health or comfort will be endangered.”

The law in England is stated in 13 Halsbury's *Laws of England*²⁷⁹, as follows: Choice of matrimonial home - It is a husband's duty to provide his wife with a home according to his circumstances. A number of cases have come up before the courts in which judges have had to consider this issue. A brief analysis of those cases is indicative of judicial attitudes and trends. In *Tirath kaur v. kirpal singh*²⁸⁰, the Punjab High Court held that where a job requires a wife to

²⁷⁷ *Kailash Wati v. Ajodhia Parkash*, 1971 CLJ 109 (P & H)

²⁷⁸ 154 Gerogia 712.

²⁷⁹ Fourth Edition (1975-76), para. 623

²⁸⁰ 1963 PLR 315.

live away from her husband and she refuses to resign, it cannot be said that she has not deserted him or has not withdrawn from his society without reasonable cause. Referring to the duties of a wife under Hindu Law as stated by Mulla,²⁸¹ the court observed:

In Mulla's Hindu Law, it is stated in paragraph 555 that a wife's first duty is to submit her obediently to his authority, and to remain under his roof and protection. She is not, therefore, entitled to separate residence or maintenance, unless she proves that, by reason of his misconduct or by his refusal to maintain her in his own place of residence or other justifying cause, she is compelled to live apart from him. Likewise, in *Kailashwati v. Ayodhia Prasad*²⁸², the full bench held that the husband must actually establish a matrimonial home wherein he can maintain his wife in dignified comfort in accordance with the means and standards of living of the parties and it must be crystal clear that the husband whilst claiming the society of his wife in the marital home should be acting in good faith and not merely to spite his wife. It also has been said that two broad factors must always be kept in the background. Firstly, that almost as a matter of unanimity all civilised marriage law impose upon the husband a burden to maintain not only the wife but also the children from the wedlock, whilst there is no such corresponding obligation on the wife to maintain either the husband or the family despite the fact that she may independently be in comfortable financial circumstances. Closely connected to this legal liability is the factor that the husband usually, if not invariable, is the wage earner of the family and is thus compelled to live near his place of work. It stands to reason, therefore, that the right of choosing a home wherefrom he can effectively discharge his legal duty of being the bread winner of the family should fall upon him.

- 2) Both Husband and Wife have say in choosing Matrimonial Home: The basic principles on which the location of the matrimonial home is to be determined by the husband and the wife are based on common convenience and benefit of the parties.

In *Swaraj Garg v. K.M.Garg*²⁸³, Delhi High Court discussed the issue of choosing matrimonial home at length. It has been observed that the uncodified part of the Hindu law is based partly on the Dharma Shastras and partly on custom. According to Prof. J. Duncan M. Derrett, "the Dharma Shashtra authorities did not lay down law, they taught righteousness to a population eager to acquire it, and it was this that they taught whether or not any ruler acted as their

²⁸¹ Mulla's Principles of Hindu Law, 1974, pp. 597-598.

²⁸² 1971 CLJ 109 (P&H)

²⁸³ 1978 HLR 332.

mouthpiece or coadjutor” (“*The Death of a Marriage Law*” (1978) pages 49-50). The Dharma Shastras, therefore, reflected the law as it ought to be. While this may have largely coincided with the law as it was, the coincidence was not complete. If the Dharma Shastras preached that the wife should always submit to the husband whatever the financial circumstances of each of them, this was only the ideal aimed at by the authors of the Dharma Shastras. In so far as the right to set up the matrimonial home as being given to the husband alone at all times in preference to the wife is based on custom, this reflected the conditions of the age in which the custom was practiced. The process by which a custom becomes law is well known. The custom must be ancient, certain and enforceable. The last requirement is expressed by saying that it must be supported by the *opinio necessitatis*. The Indian decisions cited at the foot of paragraph 442 of Mulla’s *Hindu Law* are of the 1898 and 1901. Whatever may be the conditions in that distant past more than three quarters of a century later the conditions are greatly altered? It would be difficult to say now that there is any custom which obliges an earning wife to resign her job and join her husband even though on merits it is she who is better placed to choose the place of the matrimonial home rather than the husband. What happens to the custom when it becomes law? C. K. Allen gives a two-fold answer to this question. Firstly, just as a proposition of law may be rejected either because it is an incorrect formulation, or because, though correct, it is not applicable to the instant case, a custom may be rejected because either it is not applicable to the parties or it is held to be *malus usus*. Both these reasons are applicable to show that no enforceable custom exists as law to require the wife to abandon all her rights in favor of the husband in this respect. Secondly, just as a proposition of law may be adopted as being both a correct formulation and applicable to the case in hand, a custom may be held to be law for these reasons. No such custom, much less law, can be said to exist. Further, even if it ever existed, it may now be rejected as being mischievous or contrary to the general policy of the law. It is now generally recognised, especially since the decision in *T. Nordenfelt v. Maxim-Nordenfelt G. & A. Co.* [(1894) AC 535] that public policy is “the policy of the day”- i.e. that its standards change from age to age in accordance with the prevailing notions and social institutions of the time (see also *Fender v. Mildmay*, (1938 AC 1). (K. C. Allen, *Law in the Making*, 7th Edn., pp. 152 to 156). Page 481).

At the present day numerous women have taken up jobs to help their families and also to be useful members of the society. It may be that the wife is financially and in other respects better situated to choose the place of the matrimonial home than the husband. The existence of such circumstances in a particular case would make the law stated in paragraph 442 of Mulla’s *Hindu Law* inapplicable to such a case. It would appear, therefore, that the said statement of

law deserves to be reconsidered. It may be brought in line with the modern conditions as has been done in Halsbury and Rayden referred to above. Alternatively, an exception to paragraph 442 deserves to be added to apply to working wives who are better situated than their husbands to choose the place of the matrimonial home. It would appear that there is no warrant in Hindu law to regard the Hindu wife as having no say in choosing the place of matrimonial home.

- 3) Priority should be given to wife in choosing Matrimonial Home: At present day, numerous women have taken up jobs to help their families and also to be useful members of the society. It may be that the wife is financially and in other respects better situated to choose the place of the matrimonial home than the husband.

Women professionals in India are facing a range of problems. Women have extensive workload with dual responsibility of profession and household and they have to balance household demands with those of their profession. Development policies and programs of the country tend not to view women as integral to the economic development process. This is reflected in the higher investments in women's reproductive rather than their productive roles, mainly in population programs. The Allahabad High Court in a detailed judgment delivered by S.N.Katju J., in *Shanti Nigam v. R.C. Nigam*,²⁸⁴ the court observed:

“A woman because of the limitations imposed on her by her sex needs the protection of a father, husband or son in life. But the concepts of protection of the husband and unbroken residence in his house cannot be interpreted in the context of present day conditions and needs of society.” Now-a-days various crimes are committed against women while going to or returning from the jobs. To provide them safety, it is necessary that matrimonial home must be of wife's convenience, where she can approach easily as husbands can take up jobs at faraway places; they can up and down daily or on weekdays.

In *Gurinder Singh v. Bhupinder kaur*²⁸⁵, Punjab and Haryana High Court observed that If a wife is working at a place which is far away, from the place of residence of her husband, and she is unable to come to the place of her husband daily, it cannot be said that she deserted the husband. This shows that the now-a-days trend is tilted more towards wife in choosing the place of Matrimonial home.

²⁸⁴ 91971) AILLJ 67,p. 78.

²⁸⁵ AIR2008 NOC 1110 P&H.

A woman has many social challenges today. A woman is dynamic in many roles she plays. A woman has to balance her family, relationships, work and interests – all of these and more on the road to success. Children need special care. Even though, father is considered to be a natural guardian of a boy or of an unmarried girl, but mother has been given special preferential custodial rights till the child reaches the age of 5 years²⁸⁶. The welfare of the child is to be paramount consideration in assigning this preferential right to the mothers.

Now-a-days violence against women is on rise. To improve the general status of women through education, effective legislative measures providing training and employment opportunities will reduce violence against women. To combat the present scenario it is important to give the wife, a right in choosing the matrimonial home. For a relationship to succeed teamwork is required and both persons need to deny many of their personal wishes. Self-sacrifice must replace selfishness.

WHETHER THE CONCEPT OF RESTITUTION OF CONJUGAL RIGHTS OR MATRIMONIAL HOME IS CONSTITUTIONAL?

It is significant to note that in 1983-84, the constitutional validity of Section 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. Seertha v. T. Venkatta Subbaiah*²⁸⁷, Choudary J. termed the provision of restitution as ‘uncivilised’, ‘barbarous’, ‘engine of oppression’ and assailed Section 9 as being violative of Articles 14, 19 and 21 of the Constitution of India. ‘Sexual cohabitation is an inseparable ingredient of a decree of a restitution of conjugal rights’, the court observed.²⁸⁸ This would result in transferring the choice of whether to have or not such relations to the state and not to the individual concerned. As a natural corollary, according to the court, it also meant the surrender of the choice ‘to allow or not to allow one’s body to be used as a vehicle for another human being’s creation’²⁸⁹. On the touchstone of Article 14, which guarantees equal protection of law, the remedy of restitution fails, according to the court.²⁹⁰ The only advantage of a restitution decree is that it provides a ground for divorce at a larger stage,²⁹¹ but the price for this, according to the court, is very high, viz., human dignity. In view of all the above

²⁸⁶ Section 6(9), Hindu Minority and Guardianship Act, 1956.

²⁸⁷ AIR 1983 AP 356.

²⁸⁸ Ibid, page 364.

²⁸⁹ Ibid. page 365.

²⁹⁰ Ibid. page 368.

²⁹¹ Section 13(1A)(ii), The Hindu Marriage Act, 1955.

arguments, Section 9 was termed as 'savage', 'barbarous', and 'uncivilized' and declared null and void.

The Delhi High Court in *Harvinder Kaur v. Harmander Singh*,²⁹² through Avadesh Behari J. not only upheld the validity of Section 9 but also discussed its advantages. He denounced the introduction of constitutional law in family as 'introducing a bull in a china shop'.²⁹³ The court discussed the meaning and idea of cohabitation and consortium, and the purpose behind the restitution decree in great detail, and came to the conclusion that restitution aims at cohabitation and consortium and not merely sexual intercourse, and that there is nothing barbarous or conceive about it. 'A disproportionate emphasis on sex, almost bordering on obsession, has colored the views of the learned judge [referring to T.Sareetha]' the court observed.²⁹⁴

The debate on the constitutional validity of Section 9 was settled by the Supreme Court judgment in *Saroj Rani v. Sudershan Kumar*²⁹⁵. According to Sabyaschi Mukherji, J., "the object of the restitution of conjugal rights is to bring about cohabitation between the estranged parties, i.e., so that they can live together in the matrimonial home in amity". One wishes the decree of Restitution could do it. He adds, "The remedy of restitution aims at cohabitation and consortium and not merely sexual intercourse".²⁹⁶ Agreeing with the Delhi High Court judgment, Supreme Court has held that '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 safeguards in Section 9 to prevent it from being a tyranny'.²⁹⁷

SHOULD THIS PROVISION BE RETAINED IN FAMILY LAW?

While the issue of constitutional validity of a restitution decree is no longer in suspense, one needs to reflect on the efficacy of such of such decrees. A mere paper decree cannot compel parties to live together in conjugal relationship. The real purpose of a restitution decree seems to be to use it as a spring-board for obtaining a divorce. Since the ground for divorce under Section 13(1A) (ii), viz. non compliance of restitution decree for one year, is available to both the judgment debtor and the decree holder, it gives an additional and easier ground for divorce,

²⁹² AIR 1984 Del 66.

²⁹³ Ibid. page 75.

²⁹⁴ Ibid. page 78.

²⁹⁵ AIR 1984 SC 1562.

²⁹⁶ Paras Diwan, *Modern Hindu Law*, p. 162.

²⁹⁷ AIR 1984 SC 1562 at p. 1568.

especially in situations where one party is recalcitrant and does not want a divorce and the process of proving matrimonial fault by the petitioner is long, difficult and cumbersome. However, if this is the only purpose it serves, and so it seems, one wonder whether it is expedient to retain it at all. When the courts are already overloaded with cases, can our system afford to burden then further with colorable legislation? Besides, is it not making a mockery of the judicial process as well as the legislative provision? Would it not be more logical and decent to provide an honest and simple ground for divorce rather than retain a provision which abets and assists parties to obtain divorce circuitously via a non-complied decree of restitution?

SUBMISSIONS OR SUGGESTIONS:

It is hereby suggested that remedy of restitution of conjugal rights should be abolished altogether from Indian Laws and a provision on the line of Section 27 of the Matrimonial Causes Act, 1973 should be enacted in the matrimonial statutes of all communities. Section 27 of the Matrimonial Causes Act, 1973 provides that a spouse can claim maintenance on the ground of willful refusal to maintain him on the part of the other spouse without filing a petition in any matrimonial cause. This provision should be substituted by laying down that if parties are living separate from each other either under a decree of Judicial separation or under a separation agreement or otherwise for a period of one, then either party should be allowed to seek divorce.

Women's are the wealth of the country and they have contributed in almost every field and made country feel proud at every occasion. They are in front, leading the country, making mile stones and source of inspiration for many. At present women's are contributing and participating in every sphere, politics, business, education, science and technology, media, sports, art and culture etc.

However this is the one face of coin and on the other side of coin is the hard truth of the Indian society. There is systematic discrimination and neglect from early childhood of women's in India, which could be in terms of inadequate nutrition, denial or limited access to education, health and property rights, child labor and domestic violence. The fear of sexual violence has been a powerful factor in restricting women's behavior and sense of freedom. The struggle against violence is actually the struggle against the unequal distribution of power both physical

and economic between the sexes. It is important to address the root cause for the subordinate status of women in the Indian society.²⁹⁸

Most importantly, there should be introduction of sharing of responsibility among men and women. Third school regarding the choice of matrimonial home reflects the concept of share responsibility to some extent. So it is, hereby, suggested that the judiciary should give a wide meaning to the new evolving terms which should be a part of our daily life, so that we can give a stress free and social equality²⁹⁹ in the true sense to the women.



²⁹⁸ http://www.aiou.edu.pk/gmj/Womens_issues_in_india.asp accessed on 5/10/2013.

²⁹⁹ Social inequality occurs when resources in a given society are distributed unevenly, typically through norms of allocation.