

## **Section 9 – RESTITUTION OF CONJUGAL RIGHTS**

- Marriage entitles husband and wife to have society of each other. It is the fundamental rule of the matrimonial law.
- Expression 'conjugal rights' connotes
  - a) Right of marital intercourse; and
  - b) Right of couple to have each other's society
- Section 9 provides the relief of restitution of conjugal rights. It is in the nature of positive relief and it recognizes the conjugal relationship of husband and wife.
- **Essential Element of Section 9:**
  1. Either party (husband or wife) has withdrawn from the society of other;
  2. Such withdrawal is without a reasonable excuse;
  3. Court is satisfied of the truth of the statements made in the petition;
  4. There is no other legal impediment in granting relief.
- When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the District Court, for restitution of conjugal rights and the Court, on being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 expression 'withdrawal from society' may involve a mental separation besides physical separation. It is withdrawal from totality of relationship.
- **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excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.

- The Decree for Restitution of Conjugal Rights will be issued **under Order XXI Rule 32** of C.P.C Four Conditions for this Decree have to be fulfilled:
  - 1. The other spouse has withdrawn from the society of the petitioner.**
    - ✓ Withdrawing from society of other means without any reason terminating an existing relationship with the intention of forsaking the other and permanently or indefinitely abandoning such relationship.
    - ✓ Even if husband and wife are living apart but maintain a regular social and conjugal (relationship relating to marriage) relationship it would not constitute 'withdrawing from society of other'
  - 2. There is no reasonable excuse for such withdrawal.** Should the respondent allege reasonable excuse, the burden of proof lies on him/her.
    - ✓ The wife working and not resigning her job to live with the husband a reasonable excuse as long as she maintains a regular and frequent social and conjugal relationship.
  - 3. The court's satisfaction as to the truth of the statements made in the petition.**
  - 4. No legal grounds exist for refusing the decree.**

#### **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 willfully 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.**

## Constitutional Validity of Section 9

- **T- Sareetha v. Venkatta Subbaiah (1983)**

- ✓ Andhra Pradesh High Court termed this section as violative of Article 21, 19 and 14, called it 'uncivilised;', 'barbarous' and 'an engine of oppression'
- ✓ 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.

- **HarvinderKaur v. Harmander Singh (1984)**

- ✓ 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'

- **Saroj Rani v. Sudershan Kumar (1984)**

- ✓ In this case the Supreme Court agreed with HarvinderKaur 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'