

LAW AREA NAME : WOMAN
SECTION NAME : HINDU MARRIAGE LAW
SUB SECTION NAME : RESTITUTION OF CONJUGAL RIGHTS

LAW IN BRIEF

When two people are married, they owe obligations to each other. They must give each other company. There must be cohabitation between them. When either of them fail to fulfill such obligations or refuse to cohabit, the other person has right to seek restitution of conjugal rights in a court of law.

LAW IN DETAIL

When either of the spouses has withdrawn from the society of the other without reasonable cause, the other person may file a suit for restitution of conjugal rights under section 9 of the Hindu Marriage Act, 1955

A petition for restitution of conjugal rights is maintainable only when there is a valid marriage. In *Ranjana kejiwal v. Vinod Kumar Kejiwal* (AIR 1997 Bom 380), 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.

Section 9 was challenged before the court as being violative of Article 21 of the Constitution of India in *T.Sareetha v. T.Venkata Subbaiah* (AIR 1983 AP 356). Justice P.A.Choudhary of the A.P.High Court held the section 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* (AIR 1984 SC 1562). 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.

PROCESS FOR SOLUTION

Complaint Under which Section ?

Section 9 of the Hindu Marriage Act, 1955

Whom to complain / where to complaint?

The civil court in whose local limits,

- The marriage was solemnized or
- The husband and wife reside together or
- The husband and wife last resided.

How to file the Case ?

The aggrieved party may apply to the district court by way of petition for restitution of conjugal rights.

The person seeking restitution must establish that:

- a) The other spouse has withdrawn from his or her society;
- b) Such withdrawal is without reasonable excuse;
- c) There is no legal ground disentitling the petitioner from the relief of restitution of conjugal rights.

The burden of proof lies on the person who has withdrawn from the society of his/her spouse to prove that he/she had reasonable cause to withdraw from the society of his/her spouse.

The person who has withdrawn from the society of his/her spouse may prove that it has become impossible to live with the spouse. 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 in *Vijay Kumar v. Suman (1996) 1 HLR 24 (P&H)*

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

What Next ?

The decree of restitution of conjugal rights will be executed as per the Civil Procedure Code. Appeal may be made to the High Court challenging the lower court order.

ALTERNATE REMEDIES

The Legal Services Authority may be approached for legal aid.

Any voluntary organization may also be approached for support.