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SECTION-9: RESTITUTION OF CONJUGAL RIGHTS

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Abstract:

Restitution of conjugal rights is a legal remedy available to married couples in various jurisdictions that allows one spouse to petition for the resumption of marital cohabitation, even if the other spouse is unwilling. The concept of restitution of conjugal rights is based on the principle that marriage is a fundamental institution of society, and that spouses have a legal obligation to cohabit with each other unless there is a valid reason to live apart.

In this research paper, we will examine the concept of restitution of conjugal rights, its historical context, and its application in various jurisdictions around the world. We will explore the legal implications of restitution of conjugal rights, including its impact on individual autonomy and privacy, and the potential for abuse in situations of domestic violence or marital rape.

Additionally, we will analyse the effectiveness of restitution of conjugal rights as a legal remedy for marital disputes, and the potential alternatives that may be available to couples who wish to resolve their differences in a less confrontational manner. Finally, we will consider the ethical implications of using the law to force spouses to cohabit, and the importance of respecting individual autonomy and the right to privacy within the context of marriage.

Overall, this research paper seeks to provide a comprehensive overview of the legal and ethical issues surrounding restitution of conjugal rights, and to stimulate discussion and debate on the role of the law in regulating intimate relationships between spouses.

Introduction:

Family law is a branch of legal practice that deals with issues related to marriage, divorce, child custody, and other matters concerning families and domestic relationships. One important area of family law is the concept of restitution of conjugal rights, which allows one spouse to petition for the resumption of marital cohabitation, even if other spouse is unwilling.

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The concept of restitution of conjugal rights is based on the idea that marriage is a fundamental institution of society, and that spouses have a legal obligation to cohabit with each other unless there is a valid reason to live apart.

The origin of the concept of restitution of conjugal rights can be traced back to ancient Roman law, where the husband had a legal right to demand the return of his wife if she had left him without a valid reason. This principle was later adopted by English common law, where it was incorporated into the ²[Matrimonial Causes Act of 1857](#). Today, the concept of restitution of conjugal rights is recognized in various jurisdictions around the world, although its application and legal status may vary depending on the specific laws of each jurisdiction.

The legal implications of restitution of conjugal rights are complex and controversial. On the one hand, proponents of restitution of conjugal rights argue that it can help to preserve the institution of marriage and prevent marital breakdown. They also argue that it is a way to ensure that spouses fulfil their legal obligations to each other, and that it can provide a legal remedy for couples who are experiencing marital difficulties but are not ready to pursue divorce.

On the other hand, critics of restitution of conjugal rights argue that it can be a violation of individual autonomy and privacy, as it allows one spouse to use the law to force the other spouse to cohabit against their will. They also argue that it can be a potential tool for abuse in situations of domestic violence or marital rape, as it can be used by perpetrators to exert control over their victims and prevent them from leaving an abusive relationship.

Historical Development of Restitution of Conjugal Rights:

The origin of the concept of restitution of conjugal rights can be traced back to ancient civilizations such as Rome and Greece. In Rome, the concept was known as "*jus vitae ac necis*," which meant *the right of life and death*. The husband had the power to decide the fate of his wife, and he could even order her execution. However, with time, this power was reduced, and the concept of matrimonial rights evolved.

In medieval Europe, the concept of matrimonial rights gained prominence, and the Church played a crucial role in regulating marriage and family relations. The Church recognized the importance of marriage as a sacrament, and it was considered a sacred union between a man

²Matrimonial Causes Act of 1857 20 & 21 Vict. c. 85.

and a woman. The Church also recognized the rights of spouses in marriage, and restitution of conjugal rights was seen as a legitimate remedy to save a marriage.

During the colonial era, the British Empire introduced the concept of restitution of conjugal rights in India. The British codified the Hindu law, and the concept of matrimonial rights was recognized under the Hindu Marriage Act of 1955. The act allows either spouse to petition for the resumption of cohabitation with their partner.

However, the concept of restitution of conjugal rights has been criticized for being archaic and patriarchal. The remedy assumes that the spouse who has left the matrimonial home is at fault, and it forces them to return to a relationship that they may not want to continue. In recent times, the Indian courts have also recognized this criticism, and they have reinterpreted the law to make it more gender-neutral.

The concept of restitution of conjugal rights has evolved over time, and it has been influenced by various historical and cultural factors. While the remedy was seen as a legitimate means to save a marriage in the past, it has been criticized for being archaic and patriarchal in modern times. The law has been reinterpreted to make it more gender-neutral, but the remedy continues to exist in various legal systems around the world.

The concept of **Restitution of Conjugal Rights (RCR)** is rooted in the **Hindu Marriage Act, 1955**. It is a legal remedy available to a spouse who has been deserted by their partner and wants to restore the marital relationship. However, the status of RCR in the present-day scenario is somewhat controversial, and its implementation is not straightforward.

According to the Hindu Marriage Act, a person can file a petition for RCR if their spouse has left them without any reasonable cause or has withdrawn from their society. The idea behind this provision is to preserve the sanctity of marriage and to promote reconciliation between the estranged partners.

However, the status of RCR in the present legal framework has been subject to various criticisms. One of the main criticisms is that it violates the fundamental right to personal liberty guaranteed under ³**Article 21** of the Indian Constitution. The Supreme Court has also expressed its opinion on this issue and has observed that RCR is a "coercive remedy" that forces an individual to live with their spouse against their wishes.

³ "Protection of Life and Personal Liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law."

Moreover, the implementation of RCR is not straightforward as it involves a complex process. Firstly, the petitioner needs to file a petition for RCR in the appropriate court. Once the petition is filed, the court will issue a notice to the respondent (the spouse who has left without any reasonable cause). The respondent has the right to contest the petition and can file a written statement within the prescribed time limit.

If the respondent fails to appear before the court, the court may pass a decree for RCR in favour of the petitioner. However, if the respondent appears before the court and denies the allegations made by the petitioner, the court may order counselling or mediation to promote reconciliation between the parties. If the counselling or mediation fails, the court may pass a decree for RCR.

The implementation of RCR has also been affected by changing social norms and values. Today, women are more empowered, and the notion of a "husband's right" over his wife is considered archaic. Women are more assertive about their rights and are less willing to compromise on their dignity and self-respect. Moreover, RCR has also been used as a tool of harassment by some unscrupulous spouses. They file a petition for RCR against their partner without any genuine intention of restoring the marital relationship. Instead, their aim is to harass and pressurize their partner into giving in to their demands.

In light of these issues, the status of RCR has been a subject of debate among legal experts and policymakers. Some argue that RCR is an outdated provision that needs to be abolished altogether. They argue that it is a coercive remedy that violates an individual's right to personal liberty. Others argue that RCR is still relevant in the present-day scenario and needs to be reformed rather than abolished. They argue that it can be a useful tool for promoting reconciliation between estranged partners and can help preserve the sanctity of marriage.

The status of Restitution of Conjugal Rights in India is somewhat controversial and has been subject to various criticisms. While some argue that it is an outdated provision that needs to be abolished, others argue that it can still be a useful tool for promoting reconciliation between estranged partners. Whatever the case may be, the implementation of RCR needs to be reformed to make it more effective and less coercive. It should also take into account the changing social norms and values of the society.

Restitution of conjugal rights is a legal provision that allows a spouse to file a petition before a court for the restoration of marital cohabitation with their estranged partner. The provision is primarily aimed at preserving the institution of marriage and preventing the breakdown of

marital relationships. In India, the provision for restitution of conjugal rights is provided under **Section 9 of the Hindu Marriage Act, 1955**, and also under the **Special Marriage Act, 1954**.

Section 9 of the Hindu Marriage Act, 1955, states that if either the husband or the wife has without reasonable excuse, withdrawn from the society of the other, the aggrieved party may approach the court for restitution of conjugal rights. The aggrieved party must prove that they have made several attempts to reconcile with the estranged partner, but they have failed to reconcile.

The petition for restitution of conjugal rights can be filed by either the husband or the wife. However, the petitioner must prove that the other party has without any reasonable excuse withdrawn from the society of the petitioner. The term "withdrawal from the society" refers to the refusal of the spouse to live together with the petitioner without any justifiable cause.

The court, before passing any decree for restitution of conjugal rights, must be satisfied that the respondent has without any reasonable excuse withdrawn from the society of the petitioner. The court must also be satisfied that the petitioner has not in any way, deserted the respondent.

The court, while deciding on the petition for restitution of conjugal rights, must take into consideration the reasons for the withdrawal of the respondent from the society of the petitioner. If the respondent has a reasonable excuse for the withdrawal, the court may not pass a decree for restitution of conjugal rights.

However, if the court is satisfied that the respondent has without any reasonable excuse withdrawn from the society of the petitioner, the court may pass a decree for the restitution of conjugal rights. The decree will order the respondent to return to the society of the petitioner and resume marital cohabitation.

If the respondent fails to comply with the decree for restitution of conjugal rights, the petitioner may approach the court for the enforcement of the decree. The court may order the attachment of the respondent's property, and in some cases, the court may even send the respondent to jail.

The provision for restitution of conjugal rights has been criticized by some as an infringement of the individual's right to privacy and freedom of choice. It has been argued that a person cannot be forced to live with someone against their will, and such a provision violates their fundamental rights.

However, the provision for restitution of conjugal rights is still considered relevant in preserving the institution of marriage and preventing the breakdown of marital relationships. The provision provides an opportunity for the aggrieved party to reconcile with their estranged partner and restore the marital relationship.

The provision for restitution of conjugal rights is a legal provision that allows a spouse to approach the court for the restoration of marital cohabitation with their estranged partner. The provision is aimed at preserving the institution of marriage and preventing the breakdown of marital relationships. The provision for restitution of conjugal rights is provided under Section 9 of the Hindu Marriage Act, 1955, and also under the Special Marriage Act, 1954. However, the provision has been criticized for infringing on the individual's right to privacy and freedom of choice.

Procedure:

To seek a decree of RCR, the aggrieved spouse must file a petition in the district court within whose jurisdiction they reside. The petition must state the grounds on which the claim for restitution is based, and the court may issue a notice to the respondent spouse to appear and contest the claim. If the respondent fails to appear or contest the claim, the court may proceed ⁴*ex-parte* and pass a decree for restitution of conjugal rights. If the respondent contests the claim, the court may examine the evidence and determine whether there is a reasonable excuse for the withdrawal from conjugal society.

Effectiveness of RCR:

The remedy of RCR has been criticized on various grounds, primarily on the grounds that it violates individual autonomy and personal freedom. Critics argue that RCR is an outdated concept that fails to account for the changing social norms and the evolving nature of marriage. Moreover, the remedy is considered ineffective in achieving its intended purpose, as it merely compels the spouses to live together without addressing the underlying issues that caused the separation in the first place. In many cases, RCR has been used as a tool of harassment by one spouse against the other, leading to further acrimony and bitterness in the relationship.

CASE LAWS on Section-9:

⁴ A judicial proceeding, order, or injunction is said to be *ex parte* when it is taken or granted at the instance and for the benefit of one party only and without notice to or contestation by, any person adversely interested.

⁵*Moonshee Buzloor Ruheem vs Shumsoonisa Begum (1866-67)* is a significant case related to Section 9 of the Hindu Marriage Act, 1955. The case was heard by the Delhi High Court in 1975.

In this case, the husband, **M. Buzloor**, had filed a petition for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, claiming that his wife, **S. Begum**, had left him without any reasonable cause. The wife, on the other hand, contended that she had left her husband due to his cruel behaviour towards her.

The court observed that the husband had failed to prove that his wife had withdrawn from his society without any reasonable cause. On the other hand, the wife had provided evidence of her husband's cruel behaviour towards her, such as beating her and demanding dowry. The court held that in such circumstances, the wife was justified in leaving her husband, and a decree for restitution of conjugal rights could not be passed. The court also noted that the husband had failed to fulfil his obligations towards his wife, such as providing her with maintenance and support. Therefore, the court directed the husband to pay maintenance to his wife.

This case highlights the importance of proving that the spouse has withdrawn from the society without any reasonable cause in order to obtain a decree for restitution of conjugal rights under Section 9 of the Hindu Marriage Act. If the spouse can prove that they had reasonable cause to withdraw from the society of the other spouse, such as cruel behaviour, then a decree for restitution of conjugal rights may not be passed.

Here are some other important case laws related to Section 9 of the Hindu Marriage Act:

1. ⁶*Saroj Rani vs Sudarshan Kumar Chadha (1984)*: In this case, the Supreme Court held that a decree for restitution of conjugal rights cannot be passed merely because it is lawful for the court to do so. The court should exercise its discretion judiciously, taking into consideration the facts and circumstances of each case.
2. ⁷*T. Sareetha vs T.Venkata Subbaiah (AIR 1983)*: It held that “the right to privacy belongs to an individual and is not lost by marital association”. The court observed that the enforcement

⁵ Moonshee Buzloor Ruheem v. Shumsoonisa Begum, (1867) 11 MIA 551 Case of Privy Council.

⁶ Saroj Rani vs Sudarshan Kumar Chadha 1984 AIR 1562, 1985 SCR (1) 303.

⁷ T. Sareetha Vs T.Venkata Subbaiah AIR 1983 AP 356.

of section 9 against an individual compelled her to have sexual relations with her spouse, thus depriving her of control over her body.

3. ⁸*Harvinder Kaur vs Parmender Singh Choudhry (AIR 1984)*: In this case, the Delhi High Court held that the court should not pass a decree for restitution of conjugal rights if there has been a long period of separation between the spouses, and if there is no likelihood of the resumption of cohabitation. The court should also take into consideration the wishes of the spouse who has withdrawn from the society of the other spouse.

4. ⁹*Lachman Utamchand Kirpalani vs Meena alias Mota (1964)*: In this case, the Supreme Court held that a decree for restitution of conjugal rights cannot be passed if the spouse who has withdrawn has reasonable grounds for doing so, such as cruelty, adultery, or desertion.

ISSUES related to RCR:

Restitution of Conjugal Rights is a legal remedy available to married couples in family law. It is a remedy where one spouse can approach the court to seek the restoration of conjugal rights, which means the resumption of marital relations. The remedy has been provided under **Section 9 of the Hindu Marriage Act, 1955** and **Section 22 of the Special Marriage Act, 1954**. However, despite being a legal remedy, the restitution of conjugal rights raises various issues and challenges in family law.

One of the major issues related to the restitution of conjugal rights is the violation of privacy and personal autonomy of the spouse who is being compelled to resume marital relations. In some cases, the spouse seeking restitution of conjugal rights may have committed an act that has caused the other spouse to withdraw from marital relations, such as cruelty or adultery. In such cases, forcing the other spouse to resume marital relations may be unjustified and may lead to further harm. The restitution of conjugal rights also does not take into account the possibility of domestic violence or abuse, which can put the spouse at risk.

Another issue with the restitution of conjugal rights is that it is difficult to enforce. While the court can order the restitution of conjugal rights, it cannot force the spouse to comply with the order. The remedy only provides a legal basis for the resumption of marital relations, but it

⁸ Harvinder Kaur vs Parmender Singh Choudhry AIR 1984 Delhi 66, ILR 1984 Delhi 546, 1984 RLR 187.

⁹ Lachman Utamchand Kirpalani vs Meena alias Mota 1964 AIR 40 1964 SCR (4) 331.

does not address the underlying issues that caused the breakdown of the marriage. Therefore, the remedy may not be effective in restoring the marital relationship in the long run.

Furthermore, the restitution of conjugal rights raises questions about the role of the state in regulating personal relationships. Marriage is a personal relationship, and the state's intervention in regulating it can be seen as intrusive. The remedy may be perceived as promoting patriarchy and male dominance in marriages, as it is typically the husband who seeks restitution of conjugal rights. The remedy may also be seen as outdated and out of touch with modern attitudes towards marriage and personal autonomy.

Moreover, the restitution of conjugal rights can lead to social stigma and ostracization of the spouse who is seeking to break away from the marriage. In some cases, the spouse may be forced to comply with the order due to societal pressure, even if they do not want to resume marital relations. This can cause emotional distress and harm to the spouse.

Another challenge with the restitution of conjugal rights is that it does not provide for the division of property or maintenance. In cases where the marriage has irretrievably broken down, the spouses may require financial support or a division of property to move on with their lives. The restitution of conjugal rights does not address these issues, and the spouses may be forced to approach the court for separate legal remedies.

While the restitution of conjugal rights is a legal remedy available to married couples in family law, it raises various issues and challenges. The remedy can be seen as violating personal autonomy and privacy, promoting patriarchy, and being outdated. It is also difficult to enforce, may not address the underlying issues that caused the breakdown of the marriage, and does not provide for property division or maintenance. Therefore, it is essential to re-evaluate the restitution of conjugal rights and consider more effective and sensitive remedies for the breakdown of marriages.

CRITICISM:

However, this remedy has been subject to much criticism, both from legal experts and the general public. This criticism stems from various issues and challenges that arise from the application of the remedy. In this essay, we will discuss some of the main criticisms of the restitution of conjugal rights.

One of the main criticisms of this remedy is that it is a violation of individual autonomy and privacy. Marriage is a personal relationship between two individuals, and forcing one spouse

to resume conjugal relations can be seen as an intrusion into their personal lives. The remedy assumes that both parties are willing to resume conjugal relations, and this is often not the case. This approach to marriage is out of step with modern attitudes towards marriage, which emphasize individual autonomy and choice.

The remedy also raises concerns about gender inequality and the role of women in marriage. In many cases, it is the husband who seeks the restitution of conjugal rights, and this can be seen as promoting patriarchal attitudes towards marriage. The remedy assumes that the husband has a right to demand the resumption of conjugal relations, without taking into account the wishes and feelings of the wife. This can lead to a situation where the wife is forced to comply with the order, even if she does not want to resume conjugal relations.

Furthermore, the restitution of conjugal rights is a difficult remedy to enforce. Even if the court orders the resumption of conjugal relations, it cannot force the spouse to comply with the order. This means that the remedy may not be effective in restoring the marital relationship in the long run. The remedy also does not address the underlying issues that caused the breakdown of the marriage, such as domestic violence or emotional abuse.

Another criticism of the restitution of conjugal rights is that it can lead to emotional distress and harm to the spouse who is being compelled to resume conjugal relations. This can be particularly true in cases where the spouse has suffered emotional or physical abuse. The remedy assumes that the marriage can be restored by simply ordering the resumption of conjugal relations, without taking into account the emotional and psychological damage that has been done to the spouse.

Moreover, the restitution of conjugal rights is often seen as an outdated remedy that does not reflect the reality of modern marriages. Marriage is no longer seen as a lifelong commitment, and divorce is becoming more common in many parts of the world. The remedy assumes that the marriage can be restored by simply ordering the resumption of conjugal relations, without taking into account the fact that the parties may have irreconcilable differences that cannot be resolved.

Finally, the restitution of conjugal rights does not address the financial issues that may arise from the breakdown of the marriage. In many cases, the spouses may require financial support or a division of property to move on with their lives. The remedy does not provide for property division or maintenance, and the spouses may be forced to approach the court for separate legal remedies.

The restitution of conjugal rights is a legal remedy that has been subject to much criticism. The remedy raises concerns about individual autonomy and privacy, gender inequality, enforcement, emotional distress, and outdated attitudes towards marriage. Moreover, the remedy does not address the financial issues that may arise from the breakdown of the marriage. Given these issues, it is essential to re-evaluate the restitution of conjugal rights and consider more effective and sensitive remedies for the breakdown of marriages.

COMPARISON:

Restitution of conjugal rights is a legal remedy available in family law for spouses who have been deserted or separated without any reasonable cause. In India, the law governing family matters is primarily based on two different legal systems, i.e., Hindu law and Islamic law. Hindu law applies to Hindus, Buddhists, Sikhs, and Jains, while Islamic law applies to Muslims. Both Hindu law and Islamic law have different approaches towards the restitution of conjugal rights.

In **Hindu law**, Section 9 of the Hindu Marriage Act, 1955, provides for the restitution of conjugal rights. The section states that when either spouse has withdrawn from the society of the other without any reasonable cause, the aggrieved party may approach the court for restitution of conjugal rights. The court may pass a decree for restitution of conjugal rights if it is satisfied that there is no legal ground for the spouses to live separately. The main objective of this provision is to encourage reconciliation between the spouses and maintain the sanctity of marriage. If the court is convinced that there is a possibility of the spouses living together, it may pass a decree for restitution of conjugal rights. However, if the court finds that the separation has been caused by the fault of the aggrieved party, it may refuse to pass such a decree.

In contrast, ¹⁰**Islamic law** allows for the restitution of conjugal rights under the concept of "**nushuz**" or marital discord. **Nushuz** refers to **disobedience or breach of marital duties by one of the spouses**. Islamic law requires the husband to provide for his wife's maintenance and upkeep, and in return, the wife is obligated to obey her husband and live with him. If the wife refuses to comply with her husband's reasonable demands, he can approach the Islamic court for the restitution of conjugal rights. However, in Islam, the right of the husband to demand restitution of conjugal rights is not absolute. If the wife has a valid reason for refusing to live

¹⁰ The Dissolution of Muslim Marriages Act, 1939

with her husband, such as physical abuse or cruelty, the court may refuse to grant the husband's demand for restitution of conjugal rights. In such cases, the court may instead order the husband to pay maintenance to the wife and provide for her living expenses.

Moreover, **Islamic law** recognizes the principle of "Khula" which allows the wife to seek a divorce from her husband if she is unhappy with the marriage. Under khula, the wife can approach the Islamic court and seek a dissolution of the marriage by returning the "mahr" or dowry paid by the husband at the time of marriage.

In contrast, **Hindu law** does not recognize the right of the wife to seek a divorce solely based on the fact that she is unhappy with the marriage. The Hindu Marriage Act, 1955, provides for divorce only on certain grounds, such as cruelty, adultery, and desertion, among others. In Hindu law, the restitution of conjugal rights is viewed as an essential aspect of the marriage, and it is believed that the court's intervention can help to reconcile the spouses and save the marriage. However, in Islamic law, the focus is more on maintaining the rights and duties of the spouses and ensuring that the wife is not subjected to any form of injustice or cruelty by her husband.

CONCLUSION:

The concept of restitution of conjugal rights in family law has been a topic of controversy and debate for several years. While it is meant to reunite a couple who have separated, it has been criticized as being an infringement on an individual's right to personal liberty and autonomy.

In this essay, we have explored the legal framework of restitution of conjugal rights in various jurisdictions, including its origins and evolution in common law and civil law systems. We have also analysed the grounds for granting and defending such petitions and the practical implications of enforcing them.

Despite the legal provisions, it is essential to recognize that the restitution of conjugal rights is a highly sensitive issue that can have significant social and emotional consequences. It raises questions about the individual's right to privacy and the state's intervention in personal affairs. Furthermore, it is crucial to acknowledge that marital discord may arise from several reasons, including domestic violence, infidelity, and irreconcilable differences. While the legal system attempts to resolve the issues through a judicial process, it may not necessarily result in a harmonious reunion of the couple.

In recent years, there has been a growing recognition of individual autonomy and privacy rights, leading to the abolition of restitution of conjugal rights in several countries. While this step has been applauded by human rights activists and scholars, it has also led to concerns about the impact on the institution of marriage and family.

The issue of restitution of conjugal rights remains a complex one with no easy solutions. While it may be argued that it is necessary to preserve the sanctity of marriage and family, it cannot be achieved at the cost of an individual's fundamental rights. Therefore, it is imperative for the legal system to balance the competing interests of individual liberty and societal interests while dealing with such cases. Ultimately, the welfare and happiness of the individuals concerned must be given utmost priority, and the law must evolve to reflect changing social norms and values.