

Restitution of Conjugal Rights

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MARRIAGE ENJOINS some rights and obligations on both the spouses. These rights and obligations are equal in some respects to both the spouses but unequal in some other respects. One of these obligations is that both spouses will cohabit with each other. It implies that the parties to marriage will live together as husband and wife. It is one of the express conditions in the nuptial vow of the Hindus that each party is to become the associate of the other.¹ According to Manu, "Let mutual fidelity continue till death. Let a man and woman united by marriage, constantly beware, lest at any time disunited they violate their mutual fidelity."² And the sages denounced the desertion or neglect of either party by the other without just cause as an act punishable in this world and in the next.³

However, an agreement on the part of the husband entered into at the time of the marriage that he will not be at liberty to remove his wife from her parents' abode to his own abode has been held to be void as being contrary to Hindu law as well as to public policy.⁴ So far the duties of the husband and the wife with respect to each other's person are reciprocal. As regards rights, perfect equality in between the married couple has so far not been allowed by any system of law. If there be inequality, it has always been in favour of man. To use the language of Bentham: "In his hands the power maintains itself. Give the authority to the woman, and every moment a revolt would break out on the part of her husband".⁵ This inequality was originally very great, but the tendency of society has been to reduce it as far as possible. According to Banerjee the Hindu law "In respect of this inequality partakes to some extent, no doubt, of the character of other archaic systems, but on the whole, it is far more equitable towards the female sex than most of those systems."⁶

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1. VIII, *Asiatic Researches*, 303.

2. X *Manu*, 102-3.

3. *Colebrook's Digest*, Book IV, 57-61.

4. *Takait Mon Mohini v. Basanta*, I.L.R. 28 Cal. 751. See also *Thirumal Naidu v. Rajammal*, A.I.R. 1968 Mad. 201; *Pothuraju v. Radha* A.I.R. 1965 A.P. 407.

5. Bentham, *Theory of Legislation* 230.

6. Banerjee, *The Hindu Law of Marriage and Stridhana*, 115 (3rd ed.),

The remedy of the restitution of conjugal rights is based upon the concept of good ancient days about marriage when the wife was considered as property. Actually in Hindu law corrective measures were provided for wife's faults,⁷ but it was not peculiar to Hindu law only. On the contrary Manu's authority is, in this instance, almost balanced by a text of high authority, which says : "strike not even with a blossom a wife guilty of a hundred faults."⁸ A virtuous wife was placed at high position by all sages and it was ordained that such a wife should be revered by the husband.

The relief of restitution of conjugal rights was adopted in India from Jewish law through English common law. There was some doubt as to the nature of such remedy provided for Hindus by British Indian courts, and the ground for such doubt was the difficulty of enforcing the performance of conjugal duties in their detail, but the point was settled by the decision of the Privy Council in the case of *Moonshee Buzloor Ruheem v. Shumsoonnissa Begum*.⁹ In that case the Judicial Committee observed :

Upon authority then, as well as principle, their Lordships have no doubt that a Mussalman husband may institute a suit in the civil courts of India for a declaration of his right to the possession of his wife & for a sentence that she return to cohabitation, and that that suit must be determined according to the principles of the Mohammedan Law. The latter proposition follows not merely from the imperative words of Regulation IV of 1793, Section 15, but from the nature of the thing. For, since the rights and duties resulting from the contracts of marriage vary in different communities, so especially in India, where there is no general marriage law, they can be only ascertained by reference to particular law of contracting parties.

Though the case was one between Mohammedans the rule laid down evidently applies *mutatis mutandis* to the Hindus, and it has been so applied.¹⁰

It is submitted that under Hindu law marriage was a sacrament and "mutual understanding" was ingrained in the Hindu society by mainly religious and moral sanctions.

7. *Id.* at 119.

8. *Colebrooke's Digest*, Book III, ch. I, II note.

9. 11 M I.A. 551.

10. *Kateeram Dokanee v. Mussumat Gandhenee*, 23 W.R. 178; *Brindaban v. Chandra*, I.L.R. 12 Cal. 140. *Binda v. Kaunsilia*, I.L.R. 13 All. 126; *Dadaji Bhikaji v. Rukmabai*, I.L.R. 10 Bom. 301.

In some of the cases it was held that the decree should direct the delivery of the wife bodily into her husband's hands.¹¹ This view, perhaps was supported by the language of article 34 of the Limitation Act of 1877, which provided for the limit for the recovery of a wife. But later on, the proper form of the decree was settled, it provides "That the plaintiff is entitled to the conjugal rights, and that his lawful wife, the defendant, be ordered to return to his protection."¹² This view was based upon old traditions where mostly husband claimed this relief against the wife. Now if the husband is the petitioner (plaintiff prior to the Hindu Marriage Act, 1955^{12a}) the form of the decree is that the "Respondent (defendant wife prior to the Hindu Marriage Act) do go to the petitioner and render conjugal duties, that in case respondent does not go and render such rights, the petitioner do take the necessary process through courts to get the respondent to his house for securing conjugal rights and to live with him.^{12b} If the wife is the petitioner the form is that the respondent do take the petitioner home and receive her as his wife and render her conjugal rights. This is so because the law considers the home of the husband as the proper home of the wife also and thus there is a slight change in the form of the decree according to the petitioner being wife or husband as the case may be.

II

As regards the mode of execution of a decree in a suit for restitution of conjugal rights, there was some difference of opinion in the Indian courts. It was held by the High Court of Bengal in *Gatha Ram Mistree v. Mookita Cochin Atteah Domoonee*,¹³ that the decree in such cases could only have the effect of a declaratory decree, and was incapable of enforcement by any coercive process against the wife. Conversely, the Bombay High Court ruled that in case of disobedience, the decree could be enforced by imprisonment of the wife under section 200 of the Act VIII of 1859.¹⁴ The question had thus been settled by the Act X of 1877 since replaced by Act XIV of 1882 (section 260), which again had been replaced by Act V of 1908, the present Code of Civil Procedure.^{14a} Rules 32 and 33 of the Civil Procedure Code provide that a decree for restitution of conjugal rights may,

11. See *Hurka Shunkur v. Raejee Monohur*, I.L.R. 1 Bom. 353.

12. *Koobur Khansama v. Jan Khansama*, 8 W.R. 467; *Chotun Beebee v. Ameer Chund*, 6 W.R. 105.

12a. Hereinafter referred to as the Act.

12b. *Pedapudi Nookeratnam v. Pedapudi Venkata Suryanarayana*, A. I. R. 1949 Mad. 374.

13. 23 W.R. 179.

14. *Yamuna Bai v. Narayan Moreshyar Pendse*, (1876-77) I.L.R. 1 Bom. 164.

14a. See order xxi, rr. 32, 33 of the Civil Procedure Code, 1908.

in the discretion of the court be enforced by the imprisonment of the person and the attachment of the property of the party against whom such decree is made. Again, rule 32 of the aforesaid order was amended by section 2 of Act 29 of 1923, and thus the enforcement of decree for restitution of conjugal rights by imprisonment was done away with. Order 21, rule 32 of the Civil Procedure Code lays down :

Where the party against whom a decree...for restitution of conjugal rights...has been passed has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced in the case of a decree for restitution of conjugal rights by the attachment of his property....

Section 28 of the Hindu Marriage Act provides for the enforcement of, and appeal from, decrees and orders :

All decrees and orders made by the court in any proceeding under this Act shall be enforced in like manner as the decrees and orders of the Court made in the exercise of the original civil jurisdiction are enforced, and may be appealed from under any law for the time being in force :

Provided that there shall be no appeal on the subject of costs only.

Section 28 of the Act read with section 21 impliedly apply the provisions of the Civil Procedure Code, 1908 to the proceedings instituted under the Act, subject to the provisions of the Act and the rules made by the High Courts. Similarly, the Special Marriage Act, 1954 also provides under sections 39 and 40 for the application of the provisions of the Code of Civil Procedure in the proceedings instituted under that Act.

It is, therefore, necessary to discuss the provisions of order 21, rule 32 in the light of decided cases. As has been discussed above, the enforcement of the decrees for restitution of conjugal rights by "imprisonment" has been done away with by amending the above rule itself in 1923. There is scanty case law on this particular point. In *Pedapudi Nookaratnam v. Pedapudi Venkata Suryanarayan*¹⁵ it was held by the Madras High Court that "the provision under order 21, rule 32 is discretionary and to be judicially exercised by the courts." In the present case the appellant wife was the judgment-debtor against whom a suit was filed in the civil court for the restitution of conjugal rights by her husband and a decree was passed by the court on 12th March 1943. The husband filed an application for the execution of the said

15. *Supra* note 126 at 375.

decree in 1945 when his wife became *sui juris* (since owing to her minority two such applications were already dismissed by the executing court). The application was filed with prayer in the alternative, (1) for restitution of conjugal rights ; and (2) on the failure of the judgment-debtor to comply with the terms of the decree, to attach her movables. The trial court using its discretionary power dismissed the application on being satisfied by the grounds submitted by the wife on affidavit for disobedience of the decree. On appeal the learned subordinate judge directed execution to be proceeded by attachment of the wife's (judgment-debtor's) movables. The High Court in a second appeal held :

Where an order under Order 21 rule 32 based upon the exercise of discretion of the trial court was reversed on appeal by the appellate court, which did not purport to exercise any discretion at all,...this was a fit case where the order of the trial court should be restored.^{15a}

The second case on this point is *M. P. Shreevastava v. Veena*¹⁶ wherein also the wife was the judgment-debtor against whom the husband obtained an *ex parte* decree for restitution of conjugal rights under section 21 of the Special Marriage Act.

On having the knowledge of the decree, the wife came to her husband's house in Delhi after some time alongwith her sister and child. At that time her husband had gone out. On his return she greeted him, but he ignored the greetings and asked her to go away. He also left immediately thereafter and did not return for a couple of hours. After waiting for some time, she went back to Calcutta to her father's home. From there she sent two registered letters to her husband of which one was "refused" and the another was returned back duly marked "address not known". She presented an application under section 47 read with section 151, the Code of Civil Procedure, in the court of District Judge, Delhi, claiming that the decree for restitution of conjugal rights obtained by her husband has been satisfied and a finding be recorded to that effect. It was accepted and the order was passed accordingly which was appealed against by the husband.

Dismissing the appeal I.D. Dua, J., observed that in the case of decree for restitution of conjugal rights if the

judgment-debtor is willing to obey the decree, and the decree-holder, however, obstructing performance without just cause, then the court can record satisfaction of the decree on application of the judgment-debtor so that the decree-holder may not fraudulently and *mala fide* utilise the decree for the purpose of securing the decree of divorce^{16a}.

15a. *Id.* at 374.

16. A.I.R. 1965 Punj. 54.

16a. *Id.* at 56.

The provision of rule 32 of order 21, prescribing the mode of execution does not seem to imply any bar to the recording of satisfaction, and, therefore, the argument, that once a decree for restitution of conjugal rights is secured by the husband then even if the wife comes to live with him and does so live for a length of time, every fresh and new desertion by the wife would also be covered by the said decree, and operation against all future refusal of the wife to live with her husband, even if such refusal be fully justified, is untenable. Upholding of this argument may at times lead to unjust and oppressive consequences which cannot be imputed to the legislature. And this finding was affirmed in the latter patent appeal by D. K. Mahajan and S. K. Kapur, JJ., in *M.P. Shreevastava v. Veena*^{16b}.

It is clear from the above cases that the decrees for restitution of conjugal rights can even be made ineffective by the spouses on one or the other grounds. Such course of litigation fails to provide any relief to the parties and creates frustrations which at times lead to sad ends. This cannot be the purpose of any law, whatsoever.

III

At this stage it is better to refer the proposals of the Law Ministry and the recommendations of the Law Commission concerning the subject under discussion. One rather wonders to note that the Law Commission has also recommended the retention of this relief in its *Fifty-ninth Report* but in an amended form.¹⁷ It is good that the commission by recommending deletion of section 9(2) of the Act has at least sought to remove the difficulty, and the problem that has arisen due to the conflicting views of various High Courts. The conflicting views are mainly based upon the construction of terms and expressions 'without reasonable excuse' in section 9(1) and 'ground' in section 9(2) so also as to the burden of proof in both the cases.

Majority of the High Courts are of the view that the relief of restitution of conjugal rights can even be denied if the respondent has pleaded and proved some 'reasonable excuse' for the withdrawal from the society of the petitioner.¹⁸ In some other cases the High Courts have also expressed the view that the petitioner should prove the absence of 'reasonable excuse' or 'legal ground' for such an action of the respondent.¹⁹ But the Andhra Pradesh High Court strictly applied the test of the specific requirements laid

16b. A.I.R. 1966 Punj. 506.

17. The Law Commission, *Fifty-ninth Report*, para 4.12 (1974).

18. *Hardeep Singh v. Dalip Kaur*, A.I.R. 1970 P. & H. 284; *Anna Saheb v. Tarabai*, A.I.R. 1970 M.P. 36.

19. *Shanti Devi v. Balbir Singh*, A.I.R. 1971 Delhi 294 at 295 and the cases referred therein.

down by section 9(2) and upheld the view that the respondent could plead only the specific grounds required under this sub-section and nothing short of these grounds can provide a good defence to the respondent.²⁰ As to the question of burden of proof of 'reasonable excuse' mentioned in section 9(1) of the Act the Law Commission has recommended that it should be shifted upon to the respondent in whose knowledge the presence of such 'an excuse' is supposed to be.²¹

These recommendations would certainly put an end to the controversy discussed above. But the theory regarding burden of proof will definitely create some disadvantages for respondents (who are mostly wives in such cases). Paras Diwan has correctly deplored this conclusion of the Law Commission in his paper on "Restitution of Conjugal Rights" read at the Seminar.

The Law Commission has also recommended either complete deletion or reduction in the periodic limitations laid down for the institution of entertainment of matrimonial cases.²² The proposed reduction in the 'waiting period' for non-observance of the conjugal relations after the decree of restitution 'from two years to one year' under section 13(1A)(ii) is still a 'cause of concern' for the young affected people.²³ The argument advanced in favour of this 'waiting period' is that it offers an 'opportunity to the parties for mutual understanding' before proceeding for an end to the marriage. This writer is unable to understand the logic behind it. So much so that the Law Commission has itself realised at another stage—while discussing section 14—that such opportunity is already provided under section 23(2) of the Act²⁴ Why the same conclusion could not be arrived at by the Law Commission while considering section 13(1A)? It is difficult to understand the different conclusions for the same juristic purpose. On the contrary, such an opportunity of mutual understanding would rather have been more appropriate for the newly married couple under section 14 than for the parties who have already confronted each other at the bar and the bench. So also they have crossed one stage for reconciliation while obtaining the decree under section 9 or 10 of the Act, before proceeding under section 13(1A). It is, therefore, submitted that the 'waiting period' should be done away with

20. *Peddigari Annapurnamma v. Peddigari Appa Rao*, A.I.R. 1963 A.P. 312.

21. *Op. cit.* note 17, para 4.11.

22. S. 14 and proviso to s. 15 of the Act; see also the Law Commission, *Fifty-ninth Report* paras 2.31 and 2.32.

23. *Id.* para 2.18.

24. *Id.* Para 2.31.

from section 13(1A) also. This would certainly save the parties from wasteful 'waiting period' assumed to be necessary to see "that the parties have ceased to value each other's society, and their need for each other's company is *prima facie* at an end."²⁵

Even otherwise, the modern trend is in favour of enlarging the scope of divorce in the matrimonial laws. The proposed policy for adding 'cruelty' and 'desertion' as grounds for divorce under section 13 of the Act is the result of modern social trend.²⁶ Again, the proposed relief through 'counter claim' in any proceeding for divorce or 'judicial separation or restitution of conjugal rights' and if the respondent alleges petitioner's adultery, cruelty or desertion in defence' is also a salutary step in this direction.²⁷ These measures would certainly minimise the matrimonial cases for petty relief. An effective check will be ensured against petty actions, multiplicity of proceedings and undesirable harassment to the respondents (who are mostly wives particularly in proceedings for restitution of conjugal rights).

It is gratifying, that the Law Commission has taken a serious note of 'delay' suffered by the parties in matrimonial proceedings under the scheme of existing laws. It is correctly said: In no field, however, such a delay constitutes a greater stigma on the administration of justice than in that of matrimonial cases.²⁸

Sometimes more than ten years are taken by the courts in finalising the matrimonial disputes and that too without any relief in its true sense. What relief could be rendered to the spouses if the petition for restitution of conjugal rights was finally dismissed after wasting nearly ten years of their youthful lives?²⁹ The parties were left in the same strained situation as they were before. In other matters justice delayed may amount to denial of justice but in matrimonial cases delay in justice would, naturally, amount to a denial of happy married life to the young parties whose youthful days are wasted in slow and tardy legal proceedings.

In order to put an end to this 'delay' and expedite the proceedings, the Law Commission has recommended various procedural measures such as establishment of 'family courts',³⁰ consolidation of cases presented in diffe-

25. *Id.* para 2.18.

26. *Id.* paras 2.17, 7.16.

27. *Id.* para 2.45.

28. Inaugural Address by Justice H.R. Khanna at the Seminar on the Hindu Marriage Act and the Special Marriage Act organised by the Indian Law Institute in 1975.

29. *Shanti Devi v. Balbir Singh*, A.I.R. 1971 Delhi, 294.

30. See the Law Commission, *Fifty-fourth Report on Civil Procedure Code*, ch. 32A.

rent courts,³¹ disposal of petitions and appeals within six and three months respectively of service of notice,³² bars to appeals against certain interim orders³³ and relief through counter claim.³⁴ All these measures, if transformed into laws, would certainly bring a healthy and long desired change in the respective areas. It will also eliminate to some extent, the defects and the drawbacks of the existing laws. The proposed changes might also help in setting at rest the controversies found in the High Courts' decisions. However, the Law Commission has not given due weight to certain other issues concerning the problems such as 'matrimonial home' and 'enforceability' of decrees in their true sense. Both the issues are pertaining to the 'form' and 'execution' of decrees of restitution of 'conjugal rights'. Since no substantial change has been recommended by the Law Commission in either of the reports,³⁵ these issues will be governed by the existing provisions of law, as discussed above.³⁶

As to the question of matrimonial home it is submitted that a most unsatisfactory development of the case law regarding this particular relief has taken place in recent years, which does not suit to the present socio-economic problems at all. This relates to the employment of wives with or without the consent of the husbands. It is peculiar to note that in all such cases of married employed wives either they got into service before the marriage or they were compelled to enter into service due to economic hardships of the family. In all such cases³⁷ husbands moved the courts to enforce restitution of conjugal rights. Out of these four reported cases two³⁸ were decreed by the trial courts in favour of petitioners (husbands) and the remaining two³⁹ were dismissed. In appeals preferred by the wives lower courts' decrees were confirmed. Out of the appeals preferred by the defeated husbands, one⁴⁰ was dismissed on the "reasonable excuse" of cruelty but the other one⁴¹ was accepted by the Madhya Pradesh High Court on the ground

31. *Supra* note 17 at 8.12.

32. *Id.* para 8.16.

33. *Id.* para 8.41.

34. *Id.* para 2.45 and see above, f.n. 27 *supra*.

35. See, the Law Commission, *Fifty-fourth and Fifty-ninth Reports*.

36. See *supra* note 12 and *Pedapudi v. Pedapudi*, A.I.R. 1949 Mad. 374 as to form and for enforcement see the Law Commission, *Fifty-ninth Report*, para 8.41.

37. *Tirath Kaur v. Kirpal Singh*, A.I.R. 1964 Punj. 28; *Gaya Prasad v. Mst. Bhagwati*, A.I.R. 1966 M.P. 212; *Sadhu Singh v. Jagdish Kaur*, A.I.R. 1969 P. & H. 139 and *Smt. Surinder Kaur v. Gurdeep Singh*, A.I.R. 1973 P. & H. 134.

38. *Tirath Kaur v. Kirpal Singh*, *supra* note 37.

39. *Gaya Prasad & Sadhu Singh*, *supra* note 37.

40. *Sadhu Singh*, *supra* note 37.

41. *Gaya Prasad*, *supra* note 37.

of "Hindu social notions". Thus only in one out of four cases wife's pleas were accepted although in all these cases wives raised the similar pleas but the same were rejected on the basis of unsatisfactory evidence. Here lies the crucial point to be stressed upon, that how far the Hindu wife, will be made victim of this barbarous remedy under the guise of outdated notions of Hindu society. Is this proper for the courts to ask the employed wife to resign from her service in order to render the husband 'conjugal rights' at his residence, presumed to be the 'matrimonial home' under the old and outdated social notions? It is evident by these cases that the low income of the husband, ill treatment by parents-in-law, subordination of the husband to parents, higher education and aspirations of the wife to augment the family income in order to raise the standard of living are the various circumstances which compelled the wife to seek a job. No one can expect that a modern educated wife would submit to all these situations without any revolt. It is futile to impose such matrimonial obligations under these circumstances against the wishes of the wife.

The Law Commission in its *Fifty-ninth Report* suggests revision of sections 28 and 39 of the Hindu Marriage Act and Special Marriage Act respectively. These sections relate to 'appeals and enforcement' combinedly. For the enforcement of decrees and orders the envisaged insertion of new sections 28A and 39A almost in the similar language of existing provisions will still leave the matter to be governed under the respective provisions of the Civil Procedure Code as discussed above.⁴²

From the above discussion the following questions clearly emerge in connection with the relief of restitution of conjugal rights :

- (i) Is it necessary to retain the relief in question even in its proposed modified form in our laws?
- (ii) Whether the law as to form and enforcement of decrees is opposed to the modern social norms.

If the first question is answered in the affirmative the second question does not arise at all. Neither the Ministry of Law nor the Law Commission has considered the basic problems attached to these questions. The fundamental principle for the existence of any legal provision is that it renders some effective relief to the innocent or aggrieved party and it is more so in the matrimonial cases. It is also expected that the law should always accord with the changing social notions of a society at a given time,

42. See *supra* notes 15-16.

In the light of these observations one can safely argue against the present form of decrees for restitution of conjugal rights which is based upon the outdated social circumstances. The question of 'matrimonial home' deserves due consideration so that the wives can be saved from the undesirable situations under the heavy hand of the law.⁴³ This view can also be supported by the Preamble of the Constitution which envisages 'Equality of status' and assures the 'dignity of the individual'.

As to the question of enforcement of decrees it is submitted that out of all the matrimonial reliefs the restitution of conjugal rights is the only relief which empowers the courts to direct the unwilling, or so to say, the party at fault to do some positive action. Rest of the reliefs in matrimonial law are of declaratory nature. So the question of enforcement of decrees involves the question of one's liberty. It has already been seen above that even at the stage of execution proceedings parties are at liberty to place some reasonable excuses before the courts and the courts can refuse the enforcement of such decrees under the discretionary provision of order 21, rule 32 of the Code of Civil Procedure.⁴⁴ So also the decrees can be 'recorded as satisfied' at the instance of the respondent under section 47 of the Civil Procedure Code, if the courts are satisfied in the given circumstances.⁴⁵ This all leads to the conclusion that the decrees are rarely effected in their true sense. Even otherwise, what relief can be rendered by merely attaching the property of the 'judgment-debtor as provided for under order 21, rule 32 of the Civil Procedure Code.

We have seen above that the *dharamshastras* did not provide for such relief,⁴⁶ and the similar was the position in Muslim Law.⁴⁷ This was applied in respect of Hindus and Muslims by the courts in India during the British rule on the basis of 'general principles of law' and the 'nature of things'.⁴⁸ However, no other specific provision was made for any community in India than that in the Indian Divorce Act, 1868⁴⁹ which was based upon the views of Ecclesiastical courts in England. The conflict as to 'reasonable excuse' and 'ground' was already abandoned in the English Law in 1950.⁵⁰ It seems that section 22 of the Special Marriage Act, was accorded similarity with that of

43. See *supra* notes 37-41.

44. *Supra* note 15.

45. *Supra* note 16.

46. *Supra* notes 7-8.

47. *Supra* note 9.

48. *Supra* notes 9-10.

49. See ss. 32 and 33.

50. The Matrimonial Causes Act, 1950.

English law but the provisions under section 9(1) and 9(2) of the Hindu Marriage Act were enacted on the basis of sections 32 and 33 of the Indian Divorce Act, 1869. In view of this, one can safely conclude that this relief was introduced in the Indian matrimonial laws through the English law.

The relief was not considered by the Hindu and Muslim law givers in the old days. It is also being abolished from the matrimonial laws in all the civilised societies. One rather wonders to note that when the Law Commission has based its various recommendations on the basis of English law, then why the suit was not followed while considering the provisions pertaining to this particular relief? The so-called recommendations as to alternative relief in case of non-compliance or relief through counter claim were already made available in the English law long before.⁵¹

And at last the English law having realised the practical difficulties of enforcing the decrees for restitution of conjugal rights abolished this relief from the matrimonial laws for ever.⁵² But the Indian matrimonial laws have still to retain this 'adopted' relief⁵³ which is outdated, unsuitable and practically unenforceable in the present day pattern of society. The arguments in favour of this relief said to be based upon the theory of 'indissolubility of marriage' do not find any support in the modern age. Moreover, by enlarging the scope of divorce the Law Commission has itself favoured the modern trend of 'dissolubility' even on simple grounds.⁵⁴ Hence, the practical importance of this relief as that of enabling the innocent party to get some consequential reliefs, viz., divorce if the decree is not complied with for a period of two years (now proposed one year),⁵⁵ maintenance *lis pendence*⁵⁶ or permanent alimony after proceedings⁵⁷ has also been reduced up to some extent by making recommendations for any relief through counter claim and so on.

It would not be out of place to mention that the Law Commission has unduly thrown the burden of proof over the respondent (it is very often the wife) under section 9(1). The scope of 'reasonable excuse' for withdrawal from the society was being enlarged in favour of the respondents (wives) in many of the decisions by the courts.⁵⁸ Over and above this relief sometimes proves

51. 12 *Halsbury's Laws of England* 284 (3rd ed.); *Barber v. Barber*, (1954) 2 All E.R. 307.

52. S. 20 of the Matrimonial Proceedings and Property Act, 1970, para 4.12, *supra* note 17.

53. *Supra* note 17.

54. Paras 2.17 and 7.16, *supra* note 17.

55. S. 13 (1A) of the Act.

56. *Id.* s. 24.

57. *Id.* s. 25.

58. *Capt. Chand Narain Goutam v. Smt. Saroj Goutam*, (1974) Raj. W.L.N. 808; *Mst. Gurdev Kaur v. Sarwan Singh*, A.I.R. 1959 Punj. 162.; *Luchman v. Meena*, A.I.R. 1964 S.C. 40.

to be intolerable, inhumane and contrary to the status of an individual. The marital relations can only be guarded and secured by the 'inclinations'⁵⁹ of the spouse concerned and they cannot be enforced or imposed upon by any authority of law. For such a serious aspect of legal remedy under the matrimonial law there is an old saying that you can push someone into the water but you cannot make him to swim.

In view of the above submissions it can be said in answer to the first question that the relief of restitution of conjugal rights should be abolished from the Indian matrimonial laws so that the parties might be saved from this barbarous, time consuming and useless remedy, for ever. It will not harm the cause of marital relations in any way.

59. IX. *Manu* 12.