CHAPTER IX
CONCLUSIONS AND SUGGESTIONS

PART I

The institution of marriage is of great importance in every civilized society. The institution is both accepted and respected. No institution has been found to be more enduring than the institution of marriage. Though, marriage is a private union between a male and a female, yet it has social dimensions also. It is the basic foundation of family as well as society. Whatever may be the form of marriage, the emphasis is always on stability of marital ties. Stability of marriage is the sine qua non of every civilized society. A social duty is imposed on the spouses to strive for compatibility. Sick marital relations pose problems not merely for the spouses, but they have wider implications. We can’t expect peace and harmony in that society where there are dissatisfied spouses who make homes and families. It is the institution, in the maintenance of which public is interested being foundation of family and society, without which we can not expect civilization or progress in our society. It gives rise to a number of legal incidences which are of great importance to the spouses and their offsprings. To regulate this social institution a number of legislations have been passed. A number of matrimonial remedies have also been provided under different matrimonial laws. The remedies may be of positive or negative nature. However, the remedies are meant for the help of aggrieved spouses. The old concepts of marriage have changed and it has ceased to be an indissoluble union under Hindu and Christian laws. Divorce has ceased to be a taboo and it is allowed under all personal laws.
However, divorce or judicial separation is granted by courts only when the parties can't pull on together. Divorce is a necessity, where the marriage has broken down and there is no use of retaining an empty shell. The indissolubility of marriage is also no guarantee for its stability. Stability of marriage does not simply mean enduring relationship but essentially imply the continuance of a happy, congenial, cordial and harmonious relationship between couples.

Thus, the courts adopt a very cautious approach while granting matrimonial remedies of divorce or judicial separation. A statutory duty has also been imposed on the courts to strive for reconciliation of the spouses.

The matrimonial remedy for restitution of conjugal rights also aims at stability of marital ties. The remedy is available to both the spouses under different personal laws. The remedy is meant for restoration of conjugal rights, if one spouse has withdrawn from the society of the other without a reasonable cause or excuse. However, the meaning of the term 'conjugal rights' is very wide, vague and indefinite. Conjugal rights denotes more than the right of sexual intercourse and the remedy aims at 'cohabitation' and 'consortium' and not merely at sexual intercourse between the spouses. However, this remedy did not form a part of the old Hindu and Muslim Laws. The remedy was incorporated in Indian Laws during the period of British Administration. The decision of the Privy Council in *Moonshee Buzloor Ruhim v. Shamshoonissa Begum*¹ case, cleared all doubts about its application under Muslim law. The principle laid down in this case began to be applied

¹. (1867) XI MIA p. 551.
by *mutatis mutandis* to the Hindus since the later part of nineteenth century. The remedy was made available to the Christians under Section 32 of the Indian Divorce Act, 1869. The Parsi Marriage and Divorce Act, 1936, incorporates the remedy under Section 36 of the Act. After independence, the Hindu Marriage Act, 1955, was passed which incorporates the remedy in codified form under Section 9 of the Act. The remedy is available to the Muslims under the general law and it is judge made. However, it is a peculiar feature, that the remedy has been abolished in England from where it was adopted in India.

The functional aspect of a matrimonial remedy is also to be kept in mind to judge its efficacy in a society. Part III of the Constitution has abolished inequalities between man and woman in many matters. Special provisions have also been made to ameliorate the status and position of women in the society. But eighty percent of our population still lives in villages where women are still placed in a disadvantageous position and enjoy a lower status.

The ignorance, poverty, backwardness and other social evils are rampant in society. After independence a number of welfare legislations have been passed to upgrade their status. But they still suffer from numerous anomalies, disparities and inequalities under different laws. Thus, the passing of legislations is not sufficient to emancipate the women from their degraded position. There is correlation between status of women and matrimonial remedies. The availability of a remedy is not just sufficient for its use by the weaker section of the society. It is to be remembered that law is what law does. Life in the touchstone of law, not
printed articles in the paramount charters. Eradication of
discrimination can't be by law alone. The change of treatment
of women by men within families cannot be brought about by
legislations only. The problems of women which are primarily
on account of social prejudices, conventional and traditional
approach inherent in the system, can be solved by creating
right public opinion, Further, as rightly pointed out by the
committee on status of women.

"Disabilities and inequalities imposed on women have to
be seen in the total context of a society, where large
sections of the population male and female, adults and
children suffer under the oppression of an exploitative
system. It is not possible to remove these inequalities for
women only. Any policy or movement for the emancipation and
development of women has to form a part of a total movement
for removal of inequalities and oppressive social
institutions, if the benefits and privileges won by such
action are to be shared by the entire women".

Unless and until the women are properly educated, the
matrimonial remedies of divorce, judicial separation,
restitution of conjugal rights etc. are of little use for
them. There is every possibility of the misuse of various
remedies against women in the male-dominated society.

As already indicated, the remedy is available to the
Hindus under Section 9 of the Hindu Marriage Act, 1955.
Existence of a valid subsisting marriage is a condition
precedent to claim the remedy. However, it is a discretionary
remedy and can't be claimed as a matter of right. The
requirements given under section must be satisfied before
granting the remedy. The problem concerning locus of 'Matrimonial Home' is very complicated under Hindu law. In view of changed circumstances and wider concept of 'cohabitation', the husband has no absolute right to determine the locus of 'Matrimonial Home' under English Law. It has been laid down by Lord Denning, L.J. in Dunn v. Dunn\(^2\), that like other matters of common concern in this matter also, the wife has a right to be heard. The decision where the home should be is a decision which affect both the parties and their children, so each is entitled to have an equal voice, neither has a casting vote.

But some of our High Courts are still adhering to the traditional concepts and recognize the absolute right of the husband to determine locus of Matrimonial Home. This right is used by the husbands to compel the wives to resign their jobs when both are in job and posted at different places. The Punjab and Maryana High Court in Tirath kaur v. Kirpal Singh\(^3\), Surender v. Gurdeep\(^4\) and Kailashwati v. Ayodhia Parkash\(^5\), etc. took a very narrow view of word 'Cohabitation'. It was held by the court that under Hindu Law the obligations of the wife to live with her husband in his home and under his roof and protection is clear and unequivocal. Justice Sandhawalia, who scanned the whole English Law, in Kailash wati v. Ayodhia Parkash\(^6\), gives a contrary observation to that expressed by

\(^3\) AIR 1964 Pun. 28.
\(^4\) AIR 1975 P & H. 134.
\(^5\) AIR 1977 PLR 216.
\(^6\) Ibid.
Lord Denning in Dunn v. Dunn\(^7\) case.

Sandhawalia J., lays down that a husband has a casting vote to determine the locus of Matrimonial Home. If a wife, when posted away from Matrimonial Home refuses to resign the job at the instance of her husband, this amounts to withdrawal from society without a reasonable cause.

The Madhya Pradesh High Court in Gaya Prasad v. Bhagwati\(^8\), and the Andhra Pradesh High Court in Pothu Raju v. Radha\(^9\) adopted the reasoning of the Punjab and Haryana High Court and recognized the absolute right of the husband to determine locus of Matrimonial Home.

However, the traditional concept has not been recognized in the decisions of some other High Courts. The Allahabad,\(^10\) Madras\(^11\), Gujrat\(^12\), and Delhi\(^13\) High Courts do not recognize the absolute right of a husband to determine locus of 'Matrimonial Home'. These High courts have given a new dimension to the concepts of Matrimonial Home and 'cohabitation'. It has been held that mere physical separation can never constitute living apart, even if long constituted. The decision as to Matrimonial Home is to be taken on the

\(^7\) Supra Note 2.

\(^8\) AIR 1966 M.P. 212.

\(^9\) AIR 1965 A.P. 407.


\(^12\) Pravinaben v. S.T. Arya, AIR 1975 Guj. 69.

balance of circumstances.

Under Hindu Law cruelty, desertion, impotency, imputation of unchastity, reprehensible conduct, failure to discharge marital duties etc have been recognized as reasonable excuses to disentitle the petitioner to claim the remedy. Further, the court sees to it that there is no legal ground or bar to grant the relief to the petitioner. If there is unnecessary and unexplained day, the remedy may not be granted by the court.

There is co-relation between section 9 and Section 13 I A which incorporates the Breakdown grounds of divorce under the Hindu Marriage Act. If after passing of a decree for restitution of conjugal rights, there is no cohabitation between the spouses for a period of one year or more, either spouse is entitled to seek divorce under Section 13 I A (ii). This provisions is being misused by the dominant spouses to prepare ground for divorce. Simple non compliance of the decree for restitution does not amount to 'wrong' with in the meaning of section 23 (1) (a) of the Hindu Marriage Act. It has been laid down by S.C. in Dharmendra v. Usha that in order to be 'wrong', the conduct must be something more than a mere disinclination to agree to an offer of re-union, it must be an act of positive misconduct on the part of the spouse. The judicial trends of petitions by husband reveal that the petitions are generally not bonafide and are filed to secure resignation of wives from jobs or to defeat maintenance claim

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of wives\textsuperscript{15}, or to prepare ground for divorce\textsuperscript{16} or to create marital dead lock etc. Thus, the remedy is generally misused by the husbands to harass the wives. There is long list of such cases to support the contention.

On the other hand, the petitions by wife are genuine and filed with bonafide hope of resumption of cohabitation with the husbands.\textsuperscript{17} The judicial trends of cases show no insincerity or ulterior motives on the part of fair sex. The majority of women are still suffering from many disabilities and enjoy a lower status. They have no time and money to approach the courts even in cases of genuine difficulty. If a wife obtains a decree for restitution, the husband may not comply it to prepare the ground for divorce. The wife is always put in a tight corner whether she is the decree holder or judgment debtor. Thus, the study of judicial trends and aftereffects of the remedy reveal that the remedy is not serving any useful purpose. There is no rationale of retaining it under the Hindu Law.

Under Muslim Law, the remedy is judge made and is available under general Law. However, the right to seek remedy is not absolute. Under Muslim Law a husband has absolute

\begin{enumerate}
\item Smt. Venkattamma v. Vekat Swammy Reddy; AIR 1960 Pun. 422
\item Kamlai Bai v. Rathnevelu Mudaliar; AIR 1965 Mad. 88; Surjit Kaur v. Jit Singh, AIR 1986 MLJ 415; Tarsem Lal v. Surendra Rani; 1983 MLJ (P & H) 402.
\end{enumerate}
powers to divorce his wife. He can exercise these powers unilaterally without assigning any reason. These powers are generally misused by husbands to harass their wives, compelling them to lead a life full of miseries, frustration and isolation. If a wife goes to court to claim the remedy for restitution of conjugal rights, her claim can be easily frustrated by her husband by pronouncing Talak on her. Under Muslim Law, the remedy is used only by the husbands. No reported case, to have been instituted by a wife to claim the remedy, is traceable. Reasonable excuses of cruelty, non-payment of dower, non existence of marriage, repudiation of marriage etc. are generally pleaded by wives in suits for restitution of conjugal rights.

The Islamic religious philosophy confers a respectable status on women. The absolute exercise of powers by a husband to divorce his wife is not allowed. The Islamic principles also do not permit a limping marriage or a forced union. The primary source of Islamic do not recognize intervention of state in private affairs of the spouses. Thus, the remedy can not stand the test of Islamic jurisprudence. The judicial trends of cases reveal that the courts have roughly granted relief only in twenty percent of cases instituted by husband. The suits are generally filed to harass wives to compel them to seek divorce or to defeat their maintenance claims. Thus, we do not find any rationale for the remedy under Muslim Law.

To Christians remedy is available under section 32 of the Indian Divorce Act, 1869. The sacramental character of a Christian marriage and their religious philosophy formed its

18. For Reference of cases see, Supra Chapter VI (Part I)
basis. The essential requirements to seek the remedy are the same as given in the Hindu Marriage Act. Cruelty, adultery, desertion, lack of jurisdiction etc. are pleaded as reasonable excuses in petitions for restitution of conjugal rights. The judicial trends of the cases shows that majority of the case are filed by the husbands and roughly in ninety percent of cases, the relief is not being granted. Thus, the petitions by husbands are generally not bonafide. The main purpose is only the harassment of wives. Only in Saldanha v. Saldanha\(^{19}\) case, the decree in favour of wife was passed. Thus, the fruits of the remedy are generally not reaped by wife and they are unnecessarily being dragged into litigation.

The Indian Divorce Act, 1869, incorporates the philosophy of English Law. The English law has been modified according to the changing needs of society and the remedy has been abolished from English Law. But Christians in India are still being governed by century old legislation. The remedy is not serving any useful purpose under Christian Law.

The remedy is available to Parsis under Section 36 of the Parsi Marriage and Divorce Act, 1936. The religious doctrine of Parsis formed its basis under Parsi law. However, the judicial trends indicate that no reported case is traceable under the existing Act. Parsis have realized the inefficacy of the remedy. Thus, they are not coming to the courts to seek decree for restitution of conjugal rights. It has proved to be a dead letter of law under Parsi Law and we do not find any rationale to retain it under Parsi Law.

\(^{19}\) AIR 1930 Bom. 105.
A hot debate has been initiated in the judicial circles regarding the constitution validity of restitutions provisions. The Andhra Pradesh High Court in T. Sareetha v. Vekata Subbiah, declared section 9 of the Hindu Marriage Act as ultravirus the constitution. The remedy has been declared as uncivilized, barbarous, engine of oppression and starkest form of governmental invasion in the private affairs of parties. Thus, the remedy is violative of Articles 14, 19, and 21 of the constitution.

However in Harvander Kaur v. Harminder Singh, the Delhi High court has upheld the validity of Section 9 of the Hindu Marriage Act. It was held that the remedy only aims at resumption of cohabitation and denounced the introduction of constitutional law in family law as it will prove to be a ruthless destroyer of marriage institution.

The Supreme Court in Saroj Rani v. Sudershan Kumar, has endorsed the views of Delhi High Court. However, if we examine the after effects of the decree, it is found that a husband is least affected, whereas, a wife may be subjected to positive sexual intercourse by its compliance. It can change the future course of her life if she becomes pregnant and turned out by her husband. Thus, it is violative of Article 14 of the constitution. Further, the scope of Personal Liberty has also been expanded under Article 21 of the Constitution. It also includes the right to privacy. The right to Privacy is an important individual right which is not lost by marriage.

22. AIR 1984 SC 1562.
compulsive element of the decree makes it violative of right to privacy as well as some fundamental freedoms guaranteed under Article 19 of the constitution. The decisions of Supreme Court in Saroj Rani v. Sudershlan Kumar,23 has left many questions of controversy unanswered. The Supreme Court did not follow the proper procedure in upholding the validity of restitutions provisions.

The remedy has various social and legal implications. The legal implications are of such a grave nature which can’t be anticipated by innocent spouses. The decree is being used to pave path for divorce, to create marital dead lock, to harass the wife, to defeat the maintenance claims of wives etc. The legal and social implications are against the interest of wife. The judicial trends under various personal laws indicate that instead of reconciliation, the remedy is being misused for other ulterior purposes. The women, because of their lower social and economic status, are always at the victims end. In such circumstances there is no use of retaining the 'Adopted Relief'. Thus, is suggested that the provisions for the remedy be abolished from different personal laws. The following are the supportive reasons to arrive at the conclusion:

1. Though the remedy is positive in nature, yet it has negative effects in actual practice. Human beings are not machines but emotional beings. If it is true of the horse that it may be taken to the water but cannot be made to drink it, it is true in case of human being also. The spouses are bound by emotions and feelings. Mutual trust,

23. Ibid.
faith, sympathy and confidence form the very basis of a marriage. The misgivings of the spouses cannot be removed just by the decree of restitution granted by the court. The decree of the court is not sufficient to heal the ruffled feelings of the spouses. Thus, it does not serve any useful purpose.

2. Though with the passage of time joint family system is being replaced, yet it has a strong base in Hindus and Muslims. The joint family has its advantages as well as disadvantages. If there is a dispute between the two spouses, they are not at liberty to dissolve their marital ties. The members of the community, family and other near and dear make serious endeavour to reconcile the spouses to avoid hasty dissolution of marriage. Eighty percent of our population lives in the villages, where marriage is still a Sanskar or a religious duty and their respective demands from other spouses are unambitious and very few. Prof. Derrett’s argument, that in India where spouses separate at times due to misunderstanding, failure of mutual communication or the intrigues of relatives, the remedy of restitution is still of considerable value, is mere a wishful thinking. The spouses are generally unaware of western notion of ‘mutual incompatibility’, nor they have digested the concept of marriage being a pure civil contract. Mutual misunderstanding do not find a fertile ground when the joint family system is strong. The spouses approach the courts only when their differences have crossed the normal limits and all channels of reconciliations are exhausted. The decree does not have a soothing effect in cases extreme bitterness.
3. Our courts are still following the adversary procedure in matrimonial controversies. Allegations and counter allegations are levelled by spouses to substantiate their points during proceedings. The relationships are further complicated during proceedings where the lawyers also play their roles. Though a duty has been imposed on courts to endeavour for reconciliation, yet the courts have no sufficient time or machinery to make such endeavour. So, there are no chances of resumption of cohabitation due to clash of egos even after decree of the court. Thus, time and money is wasted in a futile exercise.

4. The enforcement measure for the decree of restitution of conjugal rights is ineffective. There is no compulsory measure to force the parties to come together, even after passing of a decree of the court. However, the re-union of minds can't be achieved even with compulsion. Further, it is not compulsory for a decree holder to take steps for its compliance. The decree cannot be executed by the arrest of the judgment debtor. But under Rule 32, Order 21, Code of Civil Procedure, financial coercion can be exercised for its enforcement, that is to say, the decree can be executed by the attachment of the property of the judgment debtor. If the judgment debtor has no property, nothing can be done by the court to coerce him/her to comply the decree. Thus, the decree of the court is without any teeth, where the decree holder and the judgment debtor are at liberty to ignore it without taking any steps for conciliation. There is no use of obtaining such a decree which can't be executed with out co-operation from spouses. It is naive optimism to presume that the decree in itself shall change the
attitude of adamant respondent. Thus, this decree of the court does not serve any fruitful purpose in matrimonial disharmony.

5. Inspite of inherent incapacity to effect reconciliation, the remedy is most popular in practice. It is used to achieve other goals than reconciliation. A prayer for restitution is overtly a prayer for resumption of conjugal relations, but the relief is capable of manipulation and to be used for the covert and sinister objects of getting rid of the spouse, divorce against whom otherwise is not possible. If there is no resumption of cohabitation between the spouses for a period of one year or more after passing of decree, either of the spouse is entitled to seek divorce under Section 13 1(A) (ii) of the Hindu Marriage Act, 1955. A similar provision has been inserted under Section 32A of the Parsi Marriage and Divorce Act, 1936. The judicial trends of petitions by husbands indicates that the decree is being misused to pave path for divorce under Hindu Law. Mere non-compliance of the decree does not mean wrong within the meaning of Section 23(1) (a) of the Hindu Marriage Act. Thus, there is no use of retaining the remedy which is capable of being misused for the purpose of divorce particularly by husband.

6. Further, the judicial trends under Hindu and Muslim Laws reveal that the petitioner-husband neither desires nor expect a reconciliation with the respondent. His objective being either to foil the maintenance claim of the wife or to create other complications. There is catena of cases where the sole purpose for seeking this remedy has been to avoid the liability of maintenance. There is a consistent pattern of conduct on the part of
the petitioner in such cases, i.e. the husband never bothered to restore the severed relations with his wife for a long time but as soon as the wife started maintenance proceedings or actually obtained a maintenance order, he files the petition for restitution of conjugal rights. In majority of cases the petitions are started merely to frustrate the wife's claim for various matrimonial remedies to which she is entitled. Thus, the remedy is being misused against wife and it is certainly not a step for reconciliation.

7. Under the Hindu Law the remedy is also being misused to compel the wife to resign job if husband and wife are posted at different places. The refusal of the wife to resign her job at the instance of husband has been treated by some courts as withdrawal from society without a reasonable cause. The wife is put in a tight corner. Either she has to resign the job or be prepared for divorce. Such situation does not suit the present socio-economic problems at all.

No one can expect that a wife in modern time would submit to all these situations without any revolt. It is futile to impose such matrimonial obligations against the wishes of a wife. The fundamental principle for the existence of any legal provision is that it should render some effective relief to the innocent or aggrieved party and it is more so in the matrimonial cases. However, the decree for restitution is being used to coerce the wife to resign her job. Thus, the present form of decree is based on outdated social circumstances. Thus, there is no use of retaining it in modern time.

8. The decree for restitution may create marital deadlock. If the husband is the decree holder, he can prevent his
wife from complying it and if he is the judgment debtor, he may not comply it. Thus, the husband can coolly sit on the decree. Thus, a limping marriage may continue adversely affecting the interests of wife. Under the Indian Divorce Act, 1869, non-compliance of the decree for restitution never matures into a ground for divorce. Creation of marital deadlock is the most obnoxious implication of the remedy, which generally mars the future of wife.

9. Though the remedy is available to both the spouses, yet it is sparingly used by wife. The wife always still suffers from many disabilities and is placed in disadvantageous position. She is hesitant to approach the court for seeking matrimonial remedies in cases of genuine hardship also. The husband being in dominant position, resort to use it for spurious litigation. Under Muslim Law, the husband enjoys absolute powers of divorce. If a wife goes to court to seek this remedy, the claim can be frustrated by pronouncing Talak on her. Further, the aftereffects of the remedy are against the interest of wife. The judicial trends show—that the remedy is not frequently used by the wife. Thus, the remedy is violative of Article 14 of the constitutions as there is inequality of treatment.

10. The right to privacy has been recognized as an important right inclusive within the scope of personal liberty under the Indian constitutions. The right to privacy is not lost by marriage. But by enforcement of the decree, one spouse is compelled to provide conjugal company to the other spouse. This involves the starkest form of government invasion in the personal affairs of the individuals, thus violating right to privacy and human
The remedy, being violative of Article 21 of the Constitution, does not deserve any place in the Acts or statute books.

11. The remedy is also violative of Freedoms of association, to reside and settle in any part of India and to practice any profession, guaranteed under Article 19(1) of the constitution as the wife is not allowed to take a job independently against the wishes of her husband. Further, it is also violative of right against exploitation provided under Article 23 of the Constitution. By compliance of the decree, the wife may also be compelled to undertake household obligations of family. This is a kind of forced labour. Thus, there is no use of retaining it when it affects the fundamental freedoms of the individual. In the modern time wife can not be treated as a chattel and forced to remain tied to the husband's house job.

12. The remedy has grave social implications against women. As the remedy is being misused for divorce, no woman wants to bear the badge of a divorcee. A divorced woman is rendered homeless and shelterless after divorce. She is likely to become a victim of social censure. She finds difficulty in future adjustment of life. Thus, a wife is compelled to lead disgraceful and miserable life. The efficacy of a remedy is the criteria for its retention. The remedy, working against women's interest, does not serve any useful purpose.

13. A lot of time is 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 is granted after wasting many years of youth life? The parties are 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, thus impairing not only the Matrimonial Home but also the mental state of mind of the parties.

14. The remedy did not form a part of old Hindu, Muslim, Christian and Parsi Laws. The remedy was adopted from English law during the period of British Administration. Keeping in view its non-use, it has been abolished in England by the Matrimonial Proceedings and Property Act, 1970. It has been abolished from the matrimonial laws in all the civilized societies. But the Indian matrimonial laws have still retained this adopted relief which is outdated, unsuitable and practically unenforceable in the present day pattern of society.

15. The sacramental character of Hindu and Christian Marriages formed the basis of the remedy under concerned laws. The religious philosophy of Parsis formed its basis under Parsi law. However, the Islamic religious philosophy does not recognize the intervention of state in private affairs of the spouses. The Islamic religious philosophy is also against the forceful union of spouses. However, the old notions of indissolubility of marriage have changed with the passage of time. The marriage has been ceased to be a sacramental affair under Hindu and Christian laws. When the notions, characters and religious philosophies forming its basis have undergone changes, there is no use of retaining the archaic remedy in its present form.
16. The conjugal rights are delicate and of intimate individual nature depending more on psychic aspect than on physical conditions of the spouses. Thus, it is impossible to restore the rights which are by its nature incapable of being restored through state action. It is also contrary to public policy to compel one person to submit to the order of another. All civilised systems recognize that contracts involving personal service can't be enforced. To the same effect is the observation of Fry L.J. in Defransesco v. Burum that the courts do not recognize with favour the specific performance of service contracts as there is always a danger of such service contracts to be turned into contracts of slavery. A fortiori contract involving obligations inherent in the concept of conjugal rights can't be enforced without impinging domain of individual life. The underlying principles of the Indian specific Relief Act, 1963, given in Section 14 (1) and Section 20(2) also conflict with the concept of restitution of conjugal rights. Thus, the remedy which is devoid of specific performance does not deserve retention under any law.

17. Emotional stability of a society depends on the stability of marital ties. The institution of marriage is public as well as private in nature. The sphere of marital relations can be brought under the control of Law. However, the matrimonial laws can be justified till they do not overstep proper limits. The law must regulate the conduct of the spouse but it should not unnecessarily interfere in intimate affairs. Law may control

25. (1890) 45 Ch. D. 430.
matrimonial relations to the extent that sex may not become licentious in order to promote stability of families and marital ties. But if the conduct of the spouses is not becoming licentious legal control should be avoided. Refusal to cohabit is bad policy, but is not a licentious conduct, therefore, legal control should not be permitted. Thus, the decree for restitution which compels the spouse to cohabit can't stand the test of time and law. The marital relations can only be guarded and secured by the inclinations of the spouses concerned. They cannot be enforced or imposed upon by any authority of law. For such a serious aspect of legal remedy under matrimonial law there is an old saying that "you can push someone into the water, but you cannot make him to swim." The remedy may be useful for the elite and educated class living in big cities, but it is of little use for the poor, uneducated and ignorant people living in the villages. It operates as an engine of oppression then for gender justice and gender equality, for which the Indian Constitution stands.

Thus, in view of these reasons, it is suggested that the remedy for restitution must be abolished.

PART II

The remedy for restitution of conjugal rights in not serving any meaningful purpose as matrimonial breaches can not be patched up just by passing of the decree. It requires

The remedy for restitution may be termed as remedy for reconciliation. The decree of restitution sounds harsh and is capable of further irritating and provoking the deserting spouse. If the remedy is for reconciliations and not for restitution the entire tone of the petition changes, becoming more amicable. In a restitution suit the court adjudges and pinpoint the party in the wrong, in reconciliation proceeding courts shall not have to determine 'who is at fault', as the process will be for reconciliation and not for finding the validity of either party's claim. Although the matrimonial court is not a criminal court but the mere approach by the other spouse to the court has culminated into divesting results. The court may be authorised to appoint a committee for reconciliation consisting of the judge himself, the spouses and some relative of the spouses. The committee should not find fault of the spouses but find means of reconciliation. The help of any specialized agency may also be sought in this regard. Failure of reconciliation proceeding should not bar the claim for maintenance and it should not be treated as a ground for divorce.

2. The adversary procedure followed by our courts in matrimonial matters does not serve any purpose of reconciliation. Litigation in respect of any matters concerning the family should not be viewed in terms of failure or success of legal action but as a social therapeutic problem. Thus, a less formal, more active, investigating and inquisitional procedure be followed in
family matters. Such a procedure would imply not a litigation in which parties and their counsels are engaged in winning or losing legal battle.

3. Though, the Family Courts Act, 1984, has been passed, yet family courts have not yet been established in most of the states. Thus, family court must be established as soon as possible. Family courts with a special structural basis will be very helpful in quick disposal of cases relating to matrimonial matters. Such a court will provide remedies and complete answers to all the problems of 'Law Delays' which is out breaking the peace and patience of the disputants in the modern society. In the absence of such courts speedy justice can't be secured for the disputes relating to and arising out of the family relations. The present system of civil courts, along with long procedural process to decide cases, do not serve very useful purpose in family matters. The procedure prescribed in the Family Courts Act, 1984, is less formal and no party to the proceedings is entitled as a matter of right to be represented by a legal practitioner. The help of social welfare agencies, family counsellors and officers can also be sought to effect reconciliation between the spouses. A family court presided over by a person with legal background, assisted by other welfare agencies can constitute the nucleus for a therapeutic approach and consequently bring about the desired pleasant and palatable results. The following recommendation of Canadian Law Commission should also be given due consideration in the he working of family courts:

(a) The rule should be worded simply and should indicate
clearly the whole range of procedures from the commencement of an action to its conclusion, including the means of enforcing a judgment.

(b) Procedures should be flexible and must the nature of the diverse problems covered by family law.

(c) The rules should, where possible, provide standard forms for use in the various types of proceedings and these forms should be easily acceptable to the circumstances of each case.

(d) Pleadings and procedures should stay away from the traditional adversary or fault oriented approach.

(e) Pre-trial processes should be included, designed to provide dignified means for the parties to reconcile their differences or to reach amicable settlements without the need for trials.

(f) Efforts should be made to ensure that the child's rights are adequately protected.

(g) Issues should be determined without any pre-judicial delays, so that the cases are not unnecessarily delayed.

4. In case a decree for restitution of conjugal rights is granted by court, it must appoint a commission to endeavour for reconciliation. The court must supervise the efforts made by this commission during this one year. The report of the commission must serve as a piece of evidence during further proceedings. The courts should also ensure while granting the remedy that the parties to the dispute may not misuse it and would make all possible efforts to settle their differences. In case of violation of this, the guilty party should not be provided any relief by the court.

5. It should be mandatory for the trial court to mention in its judgment the efforts made by it for effecting
reconciliation in any restitution suit. If the reconciliation efforts had not been successful, the reasons for failures should be mentioned by the court such provisions would enhance chances of reconciliation and the practicability of the legal provisions would be possible.

6. If the court at any stage of proceedings finds that a third party is instigating any spouse to thwart reconciliations, it should have jurisdiction to make him liable for the Tortious Act in the same proceedings. As a suit for causing injury to matrimonial rights is not generally filed in India, it would be more proper to empower the courts to award compensation in the same proceedings to the spouse who has suffered due to such instigation of the third party. The provisions will help in avoiding unnecessary interference of the family members etc.

7. The concept of Matrimonial home should be developed on modern lines. A wife has right to be heard in the matters relating to the Locus of Matrimonial Home. If the wife is posted at a different place, before granting remedy at the instance of the husband, the financial position of the spouses must be kept into consideration to avoid unnecessary harassment and such cases should be decided on merits and not on gender consideration.

8. The decree for reconciliation should not be passed if there are least chances of reconciliation. The decree would be misused for other spurious purposes. Thus, a cautious approach is needed in such family cases.

9. If there is unnecessary and unexplained delay in filing a petition for restitution of conjugal rights and it is followed by wife's application for maintenance, the
remedy should not be granted by the court to deny subsistence allowance to a wife. If these suggestions are kept in mind, the remedy may cease to be an engine of oppression in its present form and may help in the empowerment of women.

10. The remedy for Restitution of Conjugal Rights is not serving any useful purpose under different personal laws. The defences pleaded by the respondent in a suit for the remedy are more or less the same under different personal laws. Thus, it is suggested that there must be Uniform Civil Code throughout the whole of India, governing all the religious communities. The defects of various personal laws may be removed in the proposed code.

According to Mahatma Gandhi family disputes and differences are to be settled generally according to Law of Love. Further an ideal marriage is one where:

Each sucked into each
On the new stream rolls,
Whatever rocks obstruct.