



CRITICAL ANALYSIS OF THE DECREE OF RESTITUTION OF CONJUGAL RIGHTS AS A MATRIMONIAL RELIEF IN NIGERIA

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ABSTRACT

Restitution of Conjugal Rights (RCR) is one of the matrimonial reliefs available under Nigerian law, aimed at compelling a spouse who has abandoned the matrimonial home without just cause to resume cohabitation. Rooted in English ecclesiastical law and aimed at preserving marital harmony, the RCR remedy was inherited through colonial influence and codified in Nigeria's Matrimonial Causes Act, 1970. However, the relevance and practicality of RCR in modern Nigeria has been heavily and widely criticized for its incompatibility with contemporary legal standards, human rights principles and practical enforceability. The remedy raises serious constitutional concerns, particularly regarding the right to personal liberty and freedom of association guaranteed under the 1999 Constitution. Judicial enforcement of RCR is often impractical, as compelling a spouse to resume cohabitation can violate fundamental human rights. It is the aim of this article using the doctrinal research methodology to provide a critical analysis of RCR as a matrimonial relief in Nigeria. It is the finding of this paper that there are challenges associated with enforcing such an order, particularly regarding personal liberty, gender bias, and ethical concerns. By comparing Nigeria's legal position with other jurisdictions such as the United Kingdom (which abolished RCR) and India (where it remains contentious), the article argues for the need for reform or abolition of this remedy to align with modern human rights standards and societal realities. Finally, the article concludes by offering practical recommendations to abolition or substantially reform RCR in Nigeria's matrimonial law.

Keywords: Restitution of Conjugal Rights, cohabitation, matrimonial relief, judicial enforcement, alternative dispute resolution.

INTRODUCTION

Marriage is accepted universally as a social institution from which societies are found. It is the bedrock of every society. Marriage which is pivotal for the growth of society could be termed an alliance between two or more persons that establishes legal rights and duties between those involved in it under specific legal regimes or customs. Marriage is a formal institution that is reorganized by the society.¹ Marriage as an institution gives rise to a relationship between two

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¹Amobi v Nzegwu & Ors (2013) LPELR,21863.



fortunate partners, the Husband and the Wife. This relationship also gives birth to different sets of rights and obligations. One of such rights and obligations (consortium) which underscores the reservation of marital unity is Conjugal Rights and this can be deemed the essence of marital union.

Feuds, even in marriages, do arise and when they occur, there exist remedies to surmount them. Matrimonial reliefs are remedies available to parties in a marriage when the union faces serious challenges.² These remedies include dissolution of marriage, judicial separation, nullity of marriage and restitution of conjugal rights.³ It is a generally accepted norm that each spouse should act as a support to the other in good or bad times, should be together to comfort and to love one another. With respect to performing conjugal rights, if any of the partners leaves the other without any reasonable or sufficient cause, there is a violation of conjugal rights; then the aggrieved party can knock on the doors of the court to seek justice for the return of their partner's companionship. Restitution of Conjugal Right is the matrimonial remedy available in that circumstance.

The concept of restitution of conjugal rights (RCR) has been subject to significant criticism, particularly regarding its relevance, enforceability and compatibility with constitutional rights in modern Nigeria. The aim of this article is to critically examine the legal framework, judicial interpretation and constitutional implications of a decree of RCR as a matrimonial relief in Nigeria.

CONCEPTUAL OVERVIEW

Restitution: Restitution connotes an act of restoring or reinstating meaning restoring something to its rightful state or original state.

Conjugal: Conjugal originates from the Latin word conjux meaning “husband, wife”. Conjugal relates to marriage or to married persons and their relationship; particularly their sexual relationship.

Conjugal right: The term conjugal right in the literal sense means the right to stay together. Conjugal rights are the rights and privileges (as to love, affection, sexual relations, companionship,

² Matrimonial Causes Act, Cap M7, Laws of the Federation of Nigeria, 2004 (MCA1970).

³ **W Blackstone**, *Commentaries on the Laws of England*, Vol. 1 (1765).433.



comfort and services) implied by and involved in the marriage relationship.⁴ Both parties are to fulfill these for one another. Conjugal right refers to the entitlement of couples to enjoy the companionship of one another and indulge in sexual relations in the marriage. The marital connection is grounded in principles where the both spouses are mutually obliged to cohabit both physically and emotionally known as consensual consortium.⁵

Restitution of Conjugal Right: The restitution of conjugal right pertains to marriage or the relationship of married individuals. This right is defined as a privilege or sexual entitlement afforded to those in a marriage, signifying the right to engage in sexual activity between the spouses.⁶ It is a legal remedy where a court orders a spouse to resume marital obligations, thereby forcing parties to reconcile. Restitution of conjugal rights is the relief available for a spouse who has been abandoned without just cause by the other spouse. It is aimed at reinstating conjugal rights between couples in order to uphold the sanctity of marriage. It acknowledges the fundamental duty of spouses to provide and maintain companionship and intimacy within the marital bond.

THE LEGAL FRAMEWORK OF RESTITUTION OF CONJUGAL RIGHTS IN NIGERIA

The primary legal regime governing restitution of conjugal rights in Nigeria is the MCA, 1970. Restitution of conjugal rights is a remedy, a matrimonial relief, available under Nigerian matrimonial law for a spouse who has been abandoned without just cause.⁷ The MCA 1970, section 47 provides thus:

A petition under this Act by a party to a marriage for a decree of restitution of conjugal rights may be based on the ground that the parties to the marriage, whether or not they have at any time cohabited, are not cohabiting and that, without just cause or excuse, the party against whom the decree is sought refuses to cohabit with, and render conjugal rights to the petitioner.

⁴Merriam-Webster <<http://www.merriam-webster.com/dictionary/conjugal%20rights>> accessed 27th April, 2024.

⁵ M. Durge, 'Restitution of Conjugal Rights' <<https://www.academia.edu/31028094>> accessed 16th June, 2024.

⁶ M. Izunwa, 'Right to Marry and Revisionists Advocacy' (2012) *AUJIL* 125.

⁷ Ibid.



This is to say that if a spouse withdraws from cohabitation or has never cohabited without reasonable cause, the aggrieved spouse may petition the court for an order for restitution of conjugal rights. If the court finds in favor of the petitioner, the respondent is ordered to resume cohabitation within a specified period.⁸ It is a remedy available to a spouse who is able to satisfy the Court that the other spouse has refused to cohabit with him or render conjugal rights to him or her as the case may be without any just cause or excuse. The remedy is aimed primarily at preserving the marriage and the decree⁹ enjoins only resumption of cohabitation, but does not compel the parties to have sexual intercourse.¹⁰ If the respondent already lives with the petitioner but denies the petitioner sexual intercourse, the decree of restitution of conjugal rights cannot be granted by the court.

Historically, RCR originated from English ecclesiastical law and was incorporated into Nigerian law by virtue of colonial influence.¹¹ The remedy is predicated on the preservation of marital union and the enforcement of marital obligations such as cohabitation, companionship and consortium.¹² An application for this remedy is by way of a Petition for Restitution of Conjugal Rights by an aggrieved spouse and shall be in accordance with form 7 in the First Schedule of the Matrimonial Causes Rules.¹³ By Order V Rule 25,¹⁴ the petition must state:

1. The date on which the petitioner and the Respondent last cohabited, and the circumstances in which cohabitation ceased or last ceased, as the case may be.
2. It should also state the manner in which the written request for cohabitation was made to the Respondent in accordance with section 49(b) of the Act.¹⁵ In the situation where no written request was made, the petitioner shall provide particulars of the special circumstances that are alleged to justify the making of the Decree notwithstanding that

⁸MCA 1970, s47.

⁹ Ibid.

¹⁰ **Itse Sagay**, *Nigerian Family Law, Principles, Cases, Statute & Commentaries* (Malthouse Press Ltd 1999) 121.

¹¹G. Ezejiofor, *Family Law in Nigeria*, (2nd ed, Macmillan, 1997) 120-125.

¹²Ibid.

¹³MCR, 1983.

¹⁴Ibid.

¹⁵(n3).



such request was not made.¹⁶

3. The Petitioner shall also state that the Respondent still refuses, at the date of the filing of the petition, to cohabit with and render conjugal rights to the petitioner.
4. In addition, the petition should also state that the petitioner sincerely desires conjugal rights to be rendered by the respondent and is willing to render conjugal rights to the Respondents.¹⁷

It should be noted that before a Court can grant an order for restitution of conjugal rights, it has to be satisfied that the petitioner deserves the conjugal rights to be rendered by the respondent and that is willing to render conjugal rights to the respondents. The sincerity of the petitioner's intention to restore conjugal relationship is a crucial element in determining the relief by the court. In *Uloko v Uloko and Ors*,¹⁸ the petitioner and respondent were married under the Marriage Act, 1914.¹⁹ Thereafter, the respondent left the matrimonial home and cohabited with the second respondent. In a petition for the decree of restitution of conjugal rights, the petitioner alleged that the respondent refused to cohabit with her and that she was eager and willing to resume cohabitation with her husband. She further contended that she had pleaded with the respondent and meaningful Nigerians had made fruitless efforts to persuade the respondent to resume cohabitation. Counsel for the respondent contended, *inter alia*, that there is no evidence of any written request from the petitioner to the respondent pursuant to the Matrimonial Causes Act,²⁰ section 49 that she wanted him to resume cohabitation. Hwande, J while acknowledging the absence of a written request, granted the decree on basis of the exception in section 49(b) that 'there are special circumstances which justify the making of the decree notwithstanding that such a request was not made.' He found justification for his conclusion in the fact that the respondent disregarded the advice of well-meaning people who intervened at the request of the plaintiff to resume normal marital relationship with the plaintiff. Moreover, the respondent in spite of the

¹⁶E. I Nwogugu, *Family Law in Nigeria*, (3rdedn., 2014 HEBN Publishers PLC Ibadan) 247- 247.

¹⁷(n11).

¹⁸Unreported Suit No MAC/118/2005 of the High Court, Benue State, Makurdi Division.

¹⁹MA 2014 Cap M6, Laws of the Federation of Nigeria, 2004.

²⁰(n3).



reconciliation meeting held at his ancestral home, failed to resume cohabitation with the petitioner because of his mistress.

In the case between *Eyofor v Eyofor*²¹ the respondent petitioned for a decree of restitution of conjugal rights and ancillary reliefs including maintenance. The appellant cross-petitioned for divorce on the ground that the marriage has broken down irretrievably. The trial judge dismissed the cross-petition and granted the prayer for restitution of conjugal rights. On appeal, the Court of Appeal overturned the decision of the trial court and held that the Matrimonial Causes Act 1970,²² section 49 laid down the statutory condition precedent to the grant of decree of restitution of the conjugal rights and the existence of the condition is therefore mandatory. That the trial judge did not find the preconditions were fulfilled before he granted a decree to the respondent, his action was in error of the law and the Appeal was allowed.

When assessing whether the respondent has a valid reason for withdrawing from the petitioner, the onus of proof lies on the respondent to establish valid reason for withdrawal. Therefore, for the petitioner to succeed in an action for restitution of conjugal rights, the petition must show the following:

- (a) He or she must sincerely desire conjugal rights to be rendered to him or her by the respondent and that, himself or herself is desirous of rendering conjugal rights to the respondents.²³
- (b) That a written request for cohabitation, expressed in a conciliatory language was made to the respondent before the institution of the proceedings or that there are special circumstances which justify the making of the decree notwithstanding that such a request was not made.²⁴ Obviously, such a special circumstance would arise where instead of writing; the petitioner went physically to plead with the respondent to return to him or send a delegation of respected person to plead for him.

In the case of *Ayankojo v Ayanjoko*,²⁵ the parties were married on 18 March, 1971. On 29

²¹Unreported, Suit No. FCA/B/42/78 Court of Appeal, Benin City Judicial Division. May 17 1979.

²² (n3).

²³ (n3) s 49(a).

²⁴ (n3) s 49(b).

²⁵ Unreported Suit o. HOV/472



March, 1971, that is, 11 days after the marriage, the respondent left the matrimonial home to return to her father's house. The petitioner claimed that her father had come to take her away and that in spite of separate visits by himself and other emissaries from his church to plead with the respondent's father to return her to him; the respondent did not return. He thereupon brought his petition for restitution of conjugal rights.

The wife cross-petitioned for divorce on the ground that her husband had behaved in such a way that she could not reasonably be expected to live with him. In support of this ground, she claimed that a few days after the marriage, the petitioner accused her of having stolen three shillings and their marriage certificate. She claimed that he had repeated these allegations to third parties, to her acute embarrassment and humiliation. She denied that her father was responsible for her leaving her husband. She had left him voluntarily for the reasons she had given. Regarding the petitioners plea for a decree of restitution of conjugal rights, the court considered whether the petitioners had satisfied the requirement in the Matrimonial Causes Decree (now "Act"),²⁶section 49 that a petitioner for restitution of conjugal rights should *inter alia* have made a written request for cohabitation couched in conciliatory language to the respondent.

The court had to consider whether behavior complained of by the respondent in the cross-petition had been established, and even if proven, whether this case constituted an exception to the bar against dissolution of a marriage that was less than two years old. Odumosu L stated:

From the above I hold the view that the petitioner has failed to show that he made genuine efforts to persuade his wife to return to him. In fact all the alleged efforts were directed to the father and I have earlier found as a fact that it was not the respondent's father who took her away from the matrimonial home. Be that as it may I hold the view that effort at persuading the wife to return to the matrimonial home should have been directed at the wife; I have found no satisfactory evidence of this. Finally in considering whether or not a decree should be made, evidence of complaints made by the wife in a cross-petition for divorce is relevant, and I shall have occasion to deal with these later in this judgment.

Finally section 49 of the Matrimonial Causes Decree 1970 reads: The Court shall not make a decree of restitution of conjugal rights unless it is satisfied

(a) that the petitioner sincerely desires conjugal rights to be rendered by the respondent and is willing to render conjugal rights to the respondent and

²⁶ (n3).



- (b) That a written request for cohabitation, expressed in a conciliatory language was made to the respondent before the institution of the proceedings or that there are special circumstances which justify the making of the decree notwithstanding that such a request was not made. I am unable to find out the evidence before me that the petitioner sincerely desires conjugal rights to be rendered by the respondent, not is there evidence, apart from mere assertions that the petitioner is willing to render conjugal rights to the respondent. There was no written request for cohabitation, expressed in conciliatory language to the respondent, before the institution of proceedings, and I can find no special circumstances to justify the making of the decree.

The court found lack of sincerity in the petitioner's request for resumption of cohabitation and consortium in the case of *Ogunmode v Ogunmode*²⁷ as the petitioner had written a letter to the respondent seeking cohabitation just one day after her initial petition for dissolution of marriage was dismissed. The court saw this as indicative of insincerity.

A decree for the restitution of conjugal rights cannot be enforced by attachments nor can failure to comply with a decree for the restitution of conjugal rights be considered contempt of court. However, a continual refusal to comply with a decree for the restitution of conjugal rights for one year is one of the facts in support of the ground for dissolution of marriage under the MCA 1970, section 15 (2)(g).

JUDICIAL INTERPRETATION AND CASE LAW

Nigerian courts have interpreted and applied the remedy in several cases, focusing on the primary aim of the relief which is preservation of marriage and reconciliation between estranged couple and whether the withdrawal from cohabitation was without reasonable cause.

The court emphasized in the case of *Oduko v Oduko*²⁸ that the primary aim of the relief of restitution of conjugal rights is to preserve the sanctity of marriage and possible reconciliation between spouses. The court held that the party who seeks for restitution of conjugal rights must do so in good faith and also demonstrate a genuine desire to reconcile with their partner. In *Ojo v Ojo*,²⁹ it was held that the success of a claim for the restitution of conjugal rights is dependent

²⁷ (1962) FSC 337.

²⁸ (1986) 1 NWLR (Pt. 19) 123.

²⁹ (1994) 6 NWLR (Pt. 353) 506.



on the Petitioner's willingness and ability to fulfill their marital obligations. If the Respondent can satisfy the court with cogent reasons for refusing to cohabit with the Petitioner, such as evidence of cruelty or adultery, the court may reject the petition for restitution of conjugal rights.

Also, the Supreme Court in *Oyeloje v Oyeloje*,³⁰ affirmed the principle that a court could order restitution of conjugal rights as a means of preserving marriage and promoting reconciliation between spouses. The Court of Appeal in the case of *Ogunbiyi v Ogunbiyi*,³¹ held that the refusal of a husband to allow his wife to cohabit with him constituted a breach of conjugal rights, entitling the wife to seek restitution through the courts. In *Omotunde v Omotunde*,³² the court emphasized that the petitioner must establish a prima facie case of abandonment before the burden shifts to the respondent to prove a justifiable cause for the withdrawal.

It was recognized by the Court of Appeal in *Olarenwaju v Olarenwaju*³³ that the enforcement of conjugal rights must be balanced with considerations of individual autonomy and dignity. In *Okonkwo v Okonkwo*,³⁴ the court further clarified that the order for restitution must not be seen as a tool of oppression but rather as a means of preserving the sanctity of marriage. However, critics argue that judicial enforcement of such an order is practically difficult and often futile.³⁵

DEFENSE TO PETITION FOR A DECREE OF RESTITUTION OF CONJUGAL RIGHTS

Under the Matrimonial Causes Act, 1970,³⁶ there are no specific defenses provided therein against a petition seeking a decree for Restitution for Conjugal Rights. However, the existence of a just cause or excuse for refusing to resume cohabitation forms core elements in the petition for a decree

³⁰(1987)4 NWLR (Pt. 67) 759.

³¹(2001)FWLR (Pt. 66) 1741.

³²(1983)2 NWLR (Pt. 54) 537.

³³ (2005) FWLR (Pt.270) 41.

³⁴(1991)1 SCNLR 109.

³⁵A. Oba, 'Restitution of Conjugal Rights in Nigeria: A Critical Review' [2015] (4)(1) *Nigerian Law Journal*, 67-75.

³⁶ (n3).



of restitution of conjugal rights. Consequently, where the respondent has a good cause for refusing cohabitation, a court will not make a decree. A good cause may include absence on duty or business or the commission of matrimonial misconduct by the petitioner.³⁷ An agreement for separation whether entered into before or after the commencement of the Matrimonial Causes Act³⁸ does not constitute a defense to proceedings for a decree of Restitution of Conjugal Rights.³⁹

ENFORCEMENT OF A DECREE OF RESTITUTION OF CONJUGAL RIGHTS

Section 51 of the Act⁴⁰ provides: 'A decree of restitution of conjugal rights cannot be enforced by attachment'. The purport of this section is that, a petitioner who successfully obtains a decree of restitution of conjugal rights cannot enforce same by way of attaching the property(s) of the respondent. With respect, it thus appears that the provision relating to the restitution of conjugal rights is superfluous since it cannot be enforced by way of attachment which is one of the ways of enforcing judgment in our Judgment Enforcement Procedure Rules.

CRITICAL ISSUES AND CHALLENGES OF RESTITUTION OF CONJUGAL RIGHTS

Though a legal remedy, RCR is not bereft of several issues and challenges in Nigeria. It has been found to be antiquated and clashed with contemporary views on marriage and personal autonomy. These include:

1. Constitutional Concerns

Restitution of conjugal rights raises critical constitutional questions, particularly concerning the right to personal liberty and freedom of association guaranteed under the 1999 Constitution of Nigeria (as amended), sections 35 and 40.⁴¹ These sections underscore the importance of individual autonomy and freedom from coercion even within marital relationships, which have implications for enforcement of conjugal rights. Forcing a spouse to cohabit against their will may amount to a violation of these fundamental rights. It can be argued that enforcement of

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ (n3).

⁴¹ CFRN 1999 (as amended) Cap C23 LFN 2004.



restitution of conjugal rights can be perceived as a form of coerced intimacy which leads to concerns about marital rape. The Supreme Court in *Adeleke v. Adeleke*⁴² acknowledged that the enforcement of RCR must not infringe on the constitutional rights of the parties involved. Legal scholars have argued that the remedy is anachronistic and inconsistent with contemporary human rights standards.⁴³

RCR may be misused to violate the right in life, right to personal safety and privacy of an unwilling spouse, in extreme cases spousal murder. Although it has been argued that RCR helps to preserve the marriage, its disadvantage outweighs the advantage as it poses danger to continue to force a spouse to enjoy conjugal rights with an unwilling partner. This can lead to physical violence and abuse. The negative outcome of RCR in such circumstances will be a breach of the constitutional rights of the unwilling partner. It is argued that RCR appears to be inconsistent with the constitution as it infringes upon the fundamental rights of the spouse.

2. Practicality and Enforceability

Another significant issue is the practical enforceability of an order for restitution. There is a lack of follow-up measures to ensure that there is compliance with the terms of the decree. Unlike monetary judgments or orders for property transfer, an order for RCR requires compliance based on personal will.⁴⁴ The coercive nature of enforcement of an order for RCR through contempt proceedings raises ethical concerns.⁴⁵

3. Gender Bias and Social Implications

Critics have also highlighted the gendered nature of RCR, noting that it disproportionately affects women.⁴⁶ In a patriarchal society like Nigeria, women are more likely to be subjected to coercive enforcement, thereby perpetuating gender inequalities within marriage.⁴⁷ The rise and

⁴²(2010) 12 NWLR (Pt. 1223) 547.

⁴³T Akinola, 'Constitutional Implications of Restitution of Conjugal Rights in Nigeria' [2016](3)(2) *Human Rights Law Review*, 45-50.

⁴⁴*Ibid.*

⁴⁵*Ibid.*

⁴⁶O Ogbu, *Human Rights Law and Practice in Nigeria* (3rd ed. Snaap Press, 2012) 215-220.

⁴⁷*Ibid.*



awareness on women's rights and gender-based violence have brought about greater scrutiny and need for equitable approaches when resolving marital disputes.

COMPARATIVE ANALYSIS

In jurisdictions such as the United Kingdom, Ireland, Australia, South Africa and India, the remedy of restitution of conjugal rights has undergone significant scrutiny and reform.

The United Kingdom and Ireland

Historically, there were rights to seek for a decree for restitution of conjugal rights. However, the United Kingdom abolished the remedy of restitution of conjugal rights in 1970, recognizing its incompatibility with modern matrimonial law and human rights.⁴⁸

Similarly in Ireland, the right of a spouse to legal action for Restitution of Conjugal Rights has equally been abolished by virtue of the Ireland Family Law Act.⁴⁹

Australia, South Africa and Canada

In **Australia**, by virtue of the Family Law Act,⁵⁰ section 8 (2) and in **South Africa** by virtue of the Divorce Act 1970,⁵¹ section 14, the laws relating to Restitution of Conjugal Rights have been abolished. The reason for abolishing the restitution of conjugal rights lies in recognition of the right of individuals to make autonomous decisions about their relationships and living arrangements, being incompatible with constitutional framework. Forcing people to return to a marital relationship against their will is coercive and dangerous. This is recognition and promotion of individual autonomy and personal agency within marriages.

The position in **Canada** appears to be slightly different in that, while the Family Law Act (Alberta),⁵² section 103 which is a Federal Law has abolished the concept of restitution of conjugal rights, some provinces have not fully ratified the abolition.

⁴⁸Matrimonial Proceedings and Property Act 1970 (United Kingdom), s20.

⁴⁹1988.

⁵⁰Act No. 53, 1975.

⁵¹Act No. 70, 1979.

⁵²2005.



India

India, on the other hand, is one country that has continued to uphold and retain RCR, but it has been challenged in several cases on constitutional grounds. Hindu Marriage Act 1955,⁵³ the Indian Divorce Act 1969,⁵⁴ the Parsi Marriage and Divorce Act 1969⁵⁵ and Special Marriage Act 1954⁵⁶ govern the relief in India.

In India, the Hindu Marriage Act,⁵⁷ section 9 is akin to the provision of our own Matrimonial Causes Act⁵⁸ which enables a petitioner to apply to the District Court for an order for Restitution of Conjugal Rights against a respondent who without just cause abandoned his or her matrimonial obligations. The Hindu Marriage Act,⁵⁹ section 9 provides:

When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

The purport of the above provision is that, under the Hindu Marriage Act,⁶⁰ when a spouse is guilty of staying away without any reasonable cause or a just cause and if the suit of Restitution of Conjugal Rights succeeds, then the couple would be required to stay together. This remedy was implemented by the Privy Council in India for the first time in the case of *Moonshee Bazloor v Shamsoonaisa Begun*.⁶¹

Earlier, the court in India held the provision of the Hindu Marriage Act,⁶² section 9 to be

⁵³Indian Marriage Act, s9.

⁵⁴Indian Divorce Act, s32 and s33.

⁵⁵Parsi Marriage and Divorce Act 1969, s36.

⁵⁶Special Marriage Act 1954, s22.

⁵⁷(n42).

⁵⁸(n3) s 47.

⁵⁹(n42).

⁶⁰(n42).

⁶¹1866-67 (11) MIA 551 <<http://www.legalserviceindia.com/articles/abol.htm>> accessed 9th September, 2024.

⁶²(n42).



unconstitutional on the ground that it violates the privacy of the wife by compelling her to live with her husband against her wish in the case of *T. Saritha Vengata Subbish v. State*⁶³ However, in the later cases of *Havinder Kaur v. Haminder Singh*⁶⁴ and *Saroj Rani Vs. S.K. Chadha*⁶⁵ the court went back to its original approach and held that the Hindu Marriage Act,⁶⁶ section 9 is completely valid. In the light of the challenges mentioned above and the trend in other countries, the Nigerian legal system must decide whether to follow the path of abolition or to retain the remedy with necessary reforms.

CONCLUSION AND RECOMMENDATIONS

In conclusion, while the preservation of marriage is a laudable goal, it must not be pursued at the expense of personal liberty and human dignity. **‘A horse can be brought to the water pond but cannot be compelled to drink’** is apt here because when spouses are separated from another emotionally, then it becomes really difficult to unite them. Though RCR is a remedy that can be sought to restore conjugal rights and save the marriage, it cannot guarantee effectiveness in making the couples be what they ought to be. Hence, the whole essence of the remedy is just to restore conjugal rights without the necessity of the parties resuming normal sexual intercourse; the whole essence appears superfluous.

The time has come for Nigeria to reassess the relevance of restitution of conjugal rights as a matrimonial relief in its legal system. Restitution of conjugal rights, while historically significant, appears increasingly out of place in modern Nigerian society and global best practices. Its continued existence poses constitutional challenges, practical difficulties and potential for abuse.

To ensure that matrimonial law aligns with contemporary realities and human rights standards, it is recommended that:

1. The Matrimonial Causes Act, 1970 should be amended to abolish or substantially

⁶³AIR, 1984 Delhi 66 <<http://www.legalserviceindia.com/articles/abol.htm>> accessed 9th September, 2024.

⁶⁴AIR 1894 SC 1562 <<http://www.legalserviceindia.com/articles/abol.htm>> accessed 9th September, 2024.

⁶⁵ AIR 1894 SC 1562 <<http://www.legalserviceindia.com/articles/abol.htm>> accessed 9th September, 2024.

⁶⁶ (n42).



reform the remedy.

2. Greater emphasis be placed on alternative dispute resolution mechanisms to address marital disputes.
3. Judicial officers receive training on human rights standards to ensure that matrimonial reliefs do not infringe on fundamental rights.
4. The parties should have access to free legal counselling to enable them deal with the challenges of RCR and other related marital issues.