

LAW CAPSULE

For Law Competitive Exams



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Restitution of Conjugal Rights and Judicial Separation

Restitution of Conjugal Rights

Conditions for restitution of conjugal rights are as follows: -

- Either party
- Without reasonable excuse (burden of proof on person withdrawing)
- Withdrawn from society of the other
- Petition – District Court
- Decree restitution

Landmark Judgments and *Ratio decidendi* / principle established are given below:

Sl. No.	Landmark Judgments	<i>Ratio decidendi</i> / principle established
1.	<i>Saroj Rani v. Sudarshan Kumar</i> AIR 1984 SC 1562	If a consent decree for restitution of conjugal rights under section 9 of the HMA is passed, it will not be a nullity. If it is not challenged in appeal or by way of the remedy available under the law and becomes final, it cannot be ignored and can form the basis of divorce proceedings under section 13(1A).
2.	<i>Swaraj Garg v. K.M.Garg</i> , 1978 Delhi 296	Any law which would give an exclusive right to the husband to decide upon the place of matrimonial home without considering the merits of the claim of the wife would be contrary to Article 14 and unconstitutional for that reason.
3.	<i>Kailash Wati v. Ayodhya Prakash</i> , 1977 (79) PLR 216	Wife is under an obligation to live with her husband in his home and under his roof except in case of distinct and specific misconduct on the part of husband. The marital obligation has been further buttressed by clear statutory recognition of section 9.

Judicial Separation

The main ingredients of Judicial Separation are:

- Either party to marriage
- Petition – decree for judicial separation
- Ground - section 13(1) [Wife - section 13(2)]
- Judicial separation – no obligation to co-habit
- Court has discretion to rescind the decree of Judicial separation

Divorce

Under Indian Law, the Grounds of Divorce recognized are:

- Voluntary sexual intercourse with any other person (includes adultery)
- Cruelty
- Desertion – next 2 years before presentation of petition
- Conversion
- Post Marital disability
- Virulent and incurable disease – leprosy
- Veneral disease- Communicable form
- Renounced world- religious order
- Not heard of for seven years

In addition to the above, section 13(1A) also provides for conditions of Divorce:-

- No resumption of cohabitation – one year upwards after decree of judicial separation
- No restitution of conjugal rights – one year or upwards

Section 13(2) provides for the Grounds available to a Wife:

- Other wife living