

CLASS 02

Cracks in the Marriage

Family Law · Unit 2 of 3
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TODAY'S TWO PILLARS

A Stay or Step Back

Restitution (s.9) pulls a spouse back; Judicial Separation (s.10) lets them step back — the marriage still survives.

The reliefs short of divorce

B Three Theories

Every divorce ground in Indian law sits on one of three ideas — fault, mutual consent, or irretrievable breakdown.

The map for Class 03

ROADMAP

From Repair to Rupture

The Act offers a ladder of matrimonial reliefs — not just divorce.

FROM CLASS 01

VALID

A valid marriage exists

VOID

void vs voidable settled

TODAY'S BUILD

1

Restitution of Conjugal Rights — s.9

2

Is s.9 constitutional? Two views

3

Judicial Separation — s.10

4

Separation vs Divorce vs Nullity

5

Three theories of divorce

6

Apply it to a CLAT fact pattern

SECTION 9

Restitution of Conjugal Rights

“Where either spouse has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may petition the court for restitution of conjugal rights — an order that the parties resume living together.”

01

The Trigger

One spouse withdraws from the society of the other — physically leaves the matrimonial relationship.

02

The Test

The withdrawal must be WITHOUT reasonable excuse. A good reason (cruelty, another valid marriage) defeats the petition.

03

Burden Shifts

Once withdrawal is proved, the burden of showing reasonable excuse lies on the spouse who withdrew.

A CONSTITUTIONAL DEBATE

Is Section 9 Valid?

Two High Court / Supreme Court positions CLAT loves to test.

THE CHALLENGE

- T. Sareetha v. T. Venkata Subbaiah (AP High Court): s.9 violates privacy & dignity (Arts. 14, 21).
- Forcing cohabitation is a 'savage and barbarous remedy'.
- The State should not compel sexual cohabitation.

THE SETTLED VIEW

- Saroj Rani v. Sudarshan Kumar (Supreme Court, 1984): s.9 is constitutional.
- The remedy aims at cohabitation & consortium, not forced sex.
- It serves a social purpose — saving the marriage. This is the law today.

LANDMARK

Restitution Survives the Constitution

Saroj Rani v. Sudarshan Kumar Chadha

1984 · AIR 1984 SC 1562, Supreme Court of India

HOLDING

Section 9 is not violative of Articles 14 or 21. The remedy of restitution of conjugal rights serves a legitimate purpose — preserving the marriage and offering cohabitation and consortium — and does not amount to forced sexual cohabitation.

WHY IT MATTERS FOR CLAT

It overrules the T. Sareetha view and settles that s.9 is valid law. Note the twist: a restitution decree that stays unobeyed for one year itself becomes a GROUND for divorce (s.13(1A)).

“

A decree for restitution of conjugal rights is not a decree for specific performance of a contract; it offers an inducement to live together, not a chain.

The settled rationale after Saroj Rani (1984)

SECTION 10

Judicial Separation

“Judicial separation is a decree that relieves the parties of the duty to cohabit — but the marriage itself continues to exist. It is a pause, not an end: a breathing space that keeps the door to reconciliation open.”

01

Marriage Subsists

Parties remain husband and wife. Neither can remarry. Mutual succession rights may be affected but the bond is intact.

02

No Duty to Cohabit

The core effect: the obligation to live together is suspended by the decree.

03

A Springboard

If cohabitation does not resume for one year after the decree, it becomes a ground for divorce (s.13(1A)).

DON'T CONFUSE THESE

Four Reliefs, Four Effects

Relief	Marriage status	Can you remarry?
Restitution (s.9)	Fully intact — order to resume cohabiting	No — you are being pulled together
Judicial Separation (s.10)	Subsists; duty to cohabit suspended	No — still married
Nullity (s.11/s.12)	Void / annulled — treated as no marriage	Yes — once void or annulled
Divorce (s.13)	Dissolved by decree	Yes — after the decree (and appeal period)

THE BIG PICTURE

Three Theories of Divorce

Every ground you will meet in Class 03 traces back to one of these.

STAGE 1

Fault Theory

Divorce is a remedy for a wrong. One spouse must **PROVE** a matrimonial fault — cruelty, desertion, adultery. The basis of s.13(1).

STAGE 2

Mutual Consent

Marriage is a union of wills; if both wills agree to part, the law allows it. The basis of s.13B.

STAGE 3

Irretrievable Breakdown

If a marriage is dead in fact, fault is irrelevant. Not yet a statutory ground — but applied by the Supreme Court under Article 142.

Q1. A wife leaves the matrimonial home after the husband's family demands dowry and threatens her. The husband files for restitution of conjugal rights under s.9. Will he succeed?

(A) Yes — she withdrew from his society, so s.9 applies automatically

(B) No — her withdrawal is backed by a reasonable excuse

(C) Yes — but only if she fails to file for divorce first

(D) No — because s.9 has been struck down as unconstitutional

TRAP (D) tempts you with the T. Sareetha view — but Saroj Rani settled that s.9 is valid.

REASONING s.9 only helps an aggrieved spouse where the other withdrew WITHOUT reasonable excuse. Dowry demands and threats are a textbook reasonable excuse, so the wife's withdrawal is justified and the husband's petition fails. s.9 remains constitutional (Saroj Rani), so (D) is wrong in law.

ANSWER · (B) No — her withdrawal is supported by a reasonable excuse

LOCK THESE IN

Vocabulary for the Divorce Unit

Conjugal rights

The right of each spouse to the society and companionship of the other.

Reasonable excuse

A justification (e.g. cruelty) that defeats a restitution petition under s.9.

Judicial separation

A decree suspending the duty to cohabit while the marriage continues.

Fault theory

Divorce granted because one spouse proves a matrimonial wrong.

Irretrievable breakdown

A marriage dead beyond repair; SC may dissolve it under Art. 142.

Consortium

The companionship, support and living-together of spouses.

TAKEAWAYS

Carry These Into Class 03

01 s.9 restitution needs withdrawal **WITHOUT** reasonable excuse; the excuse defeats it.

03 Judicial separation (s.10) suspends cohabitation but the marriage survives.

05 Nullity and divorce let you remarry; restitution and separation do not.

02 Saroj Rani (1984) settles that s.9 is constitutional; T. Sareetha is the rejected view.

04 Non-resumption for 1 year after s.9 or s.10 decree becomes a divorce ground (s.13(1A)).

06 Three theories: fault (s.13(1)), mutual consent (s.13B), irretrievable breakdown (Art.142).



THANK YOU

Next — Class 03: Divorce & Beyond — Grounds, Mutual Consent, and the Wider Family-Law Map

KEEP IN TOUCH

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