

Restitution of Conjugal Rights, Jactitation of Marriage and Related Matters

In November 1983, the Commission published its Report on [Restitution of Conjugal Rights, Jactitation of Marriage and Related Matters \(LRC 6-1983\)](#) as part of its First Programme of Law Reform.

The Report recommends that proceedings for the restitution of conjugal rights should be abolished. It was the Commission's view that reconciliation and conciliation are more successfully encouraged where the procedures are voluntary rather than compulsory. The Report suggests that more support for these procedures should be made available by the State through financial subsidy of existing marriage guidance and conciliation agencies and the creation of new conciliation services.

The Commission also recommends the abolition of the remedy of jactitation. However, in view of the need to protect privacy from invasion, it goes on to recommend a new remedy giving a right of action for an injunction and, where appropriate, damages, against persons falsely claiming to be married to the plaintiff or falsely stating that another person is married to the plaintiff.

The Commission considered that the present law regarding declarations as to status contained in the *Legitimacy Declaration (Ireland) Act 1868* would benefit from restatement. Accordingly the Report recommends the enactment of new legislation enabling a person to apply to the High court for a decree declaring that his or her marriage was or is a valid marriage. It is proposed that provision should be made that the alleged other party to the marriage and the Attorney General be joined in such proceedings and the Court should also be empowered to join such other parties as it thinks fit. If any party to the proceedings alleges that the marriage is void or voidable, the proceedings for a declaration should be suspended until proceedings for nullity have been determined. The report also recommends that, while a decree made in declaration proceedings should be binding on all parties to those proceedings, it should be capable of subsequent attack on the basis that the decree had been obtained by fraud or collusion. Moreover, such a decree should not be effective in so far as it is inconsistent with a previous decree regarding the status of the petitioner in either annulment proceedings or proceedings for a declaration as to the validity of the petitioner's marriage. The legislation proposed in the Report would be similar to the *Legitimacy Declaration (Ireland) Act 1868* but would differ from the latter in ensuring that where the validity of a marriage is impugned, proceedings for annulment would take place.

Draft Legislation in Report

Draft legislative provisions are included in the Report.

Information on Implementation

Recommendations of the Commission were implemented by the *Family Law Act 1988* and *Family Law Act 1995*.