
RESTITUTION OF CONJUGAL RIGHTS

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In Indian family law, a deserted spouse may get a court order requiring their partner to return to marital cohabitation under the legacy remedy known as restitution of conjugal rights (RCR)¹. This remedy is codified in Section 9 of the Hindu Marriage Act, 1955, and Islamic, Parsi, and Christian personal laws all contain comparable provisions (e.g. Parsi Marriage Act, 1936 s.36; Indian Divorce Act, 1869 ss.32–33; Special Marriage Act, 1954 s.22)². RCR prioritizes maintaining a marriage over ending it, in contrast to divorce or separation. Supporters see it as a way to preserve marital harmony, while critics see it as an outdated state interference into the marital bedroom. RCR is quite problematic because of the conflicting values of individual autonomy and privacy versus marital solidarity³. The paper in question investigates whether RCR can withstand the rigors of contemporary constitutional ethics. We discuss whether forced cohabitation permissible under the Indian Constitution in a time when everyone has the fundamental right to equality, autonomy, and dignity? Or has RCR devolved into a "anachronistic relic" that infringes on gender justice and privacy?

HISTORICAL AND LEGAL BACKGROUND

The RCR remedy has strong colonial origins. Its roots are in medieval English ecclesiastical law, which allowed a divorced couple to ask church courts to allow them to live together again. The British introduced this idea to India⁴. RCR was outlawed in England by the Law Reforms (Miscellaneous Provisions) Act, 1947, which declared it to be "very barbarous"⁵. In independent India, the treatment was kept in place, though. Section 9 of the Hindu Marriage Act of 1955 states that the aggrieved party may file for RCR if one spouse leaves the other's

¹ Priyanshi Dixit, Protecting Privacy: A Case Against State Interference Through Restitution of Conjugal Rights, CNLU L. & Policy Blog (May 18, 2022), <https://ccgnludelhi.wordpress.com/2022/05/18/protecting-privacy-a-case-against-state-interference-through-restitution-of-conjugal-rights/> (last visited Oct. 12, 2025).

² Parsi Marriage and Divorce Act, 1936, § 36 (India); Indian Divorce Act, 1869, §§ 32–33 (India); Special Marriage Act, 1954, § 22 (India).

³ Anukriti Khandelwal, Restitution of Conjugal Rights: An Anathema to Human Rights, Oxford Pol. Rev. (Oct. 14, 2020), <https://oxfordpoliticalreview.com/2020/10/14/restitution-of-conjugal-rights-an-anathema-to-human-rights/> (last visited Oct. 12, 2025).

⁴ Moonshee Buzloor Ruheem v. Shumsoonnissa Begum, (1867) 11 Moo. I.A. 551 (P.C.).

⁵ Dr. Manju Arora, Restitutio Law: A Dead Letter, Delhi J. Contemp. L. 1, 3–4 (2018), <https://djcl.lc2.du.ac.in/DJCL4/1.%20Dr.%20Manju.pdf> (last visited Oct. 12, 2025).

society "without reasonable excuse"⁶. Similar measures were passed in the Special Marriage Act.

Under Section 9, the process is as follows: the destitute spouse submits a petition in the district court, and the court "may decree restitution of conjugal rights" if the petition is successful. Usually, the partners are instructed to live together in their married house. Orderly enforcement is limited: courts can execute a decree like any other civil order (e.g., by attaching property under the Code of Civil Procedure, Order XXI, Rule 32)⁷, but non-compliance carries no criminal consequence. On its face, the law is gender-neutral and stipulates that there must be no "reasonable excuse" for the desertion. In actuality, this process gives the resentful spouse typically the husband a legally supported claim over the wife's home and marital status.

JUDICIAL APPROACH AND CONSTITUTIONAL DEBATES

A. Early Judicial Endorsement

In 1983 the Andhra Pradesh High Court became the first court to invalidate Section 9⁸. After carefully examining RCR's medieval heritage, Justice Choudhary came to the conclusion that it was a "savage, uncivilized, and barbarous" holdover from colonial law. The court determined that by granting a destitute husband a legal right "not only to the company of the wife but also to have sexual intercourse with her," Section 9 infringed upon Articles 14 and 21 (equality and personal liberty). According to the court, this violates human autonomy by forcing one's body to become "a vehicle for procreation." When Choudhary J. noted that RCR essentially transfers "the choice of whether or not to have marital intercourse to the State from the concerned individual," he was committing "the grossest form of violation of human liberty." In *Sareetha case*, Section 9 was struck down as violative of the right to privacy and dignity, and the petition denied.

The Delhi High Court adopted a different stance a few months later. It maintained Section 9 as a constructive tool for peacemaking⁹. The "dual objective" of the remedy, according to Justice Rohtagi, is to "restore amity in marital life through a legally enforced rapprochement." He maintained that it was unfair to interpret RCR as requiring a "positive sex act." It did not violate

⁶ Hindu Marriage Act, 1955, § 9, No. 25, Acts of Parliament, 1955 (India).

⁷ Code of Civil Procedure, 1908, Order XXI, Rule 32, No. 5, Acts of Parliament, 1908 (India).

⁸ T. Sareetha v. Venkata Subbaiah, AIR 1983 AP 356 (India).

⁹ Harvinder Kaur v. Harmander Singh Choudhry, AIR 1984 Del 66 (India).

equality because both couples could apply the remedy. Restitution was solely intended to bring estranged couples back together; divorce was previously allowed on that basis if cohabitation failed for a year (HMA §13(1A)). Therefore, he concluded that there was no constitutional flaw because RCR "serves a social purpose" of maintaining marriage and did not violate Articles 14 or 21.

The Delhi court objected, calling the idea of "introducing constitutional law in the sphere of marriage" "a bull in a china shop." Many people at the time agreed with Justice Rohtagi's limited concept of privacy, which focused on sexual activity rather than cohabitation.

These conflicting high court decisions fell for final resolution in the Supreme Court's *judgement*¹⁰. Section 9 was affirmed by a three-judge panel. Marriage, according to Justice Mukherjee, is "a socially sanctioned practice" that inherently entails the rights of cohabitation and consortium. He concurred that the goal of RCR was to avoid unnecessary family dissolution and that it was based on social norms rather than only legislation. The Delhi High Court's opinion that RCR's "leading idea" is to maintain marriage through reconciliation was expressly upheld by the Court. With a focus on practical safeguards (such the one-year grace period before divorce under §13(1A)), the Court maintained that if Section 9 were null and void, its companion §§13(1A)(ii) would do the same, a decision that should only be made by Parliament. In the end, the Court determined that although RCR is "outmoded," it is nonetheless constitutional.

The legislature, not the courts, should remove Section 9, the majority cautioned. The social-purpose argument was thus upheld by the highest court, which viewed RCR as an outdated but constitutionally sound attempt to keep spouses together rather than as forced tyranny.

B. Modern Constitutional Concerns

The discussion surrounding the Sareetha-Saroj Rani case preceded Indian law's current understanding of privacy. In *K.S. Puttaswamy v. Union of India* (2017)¹¹ Individual autonomy, bodily integrity, and decisional liberty are all included in the fundamental right to privacy, according to a unanimous ruling by the Supreme Court. The idea that "individuals have a right to privacy which grants them complete sovereignty over their body" has been supported by the

¹⁰ Saroj Rani v. Sudarshan Kumar Chadha, (1984) 4 SCC 90 (India).

¹¹ K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1 (India).

highest court under Puttaswamy. Forcing someone to live with a partner against their will means the state is controlling their personal choices and where they live, which raises new questions about forced cohabitation.

RCR is particularly problematic from a gender-justice standpoint¹². Commentators point out that women are disproportionately burdened by the Sareetha case remedy. In India, husbands are exempt from prosecution for having non-consensual sex with their wives, and marital rape is not legally recognized. As a result, an RCR decision essentially forces a wife to confront a husband who has the legal authority to coerce her into intimacy¹³. In the Sareetha case, courts cautioned that requiring cohabitation is the "grossest form" of invasion of bodily liberty, even in the absence of an explicit direction for sexual relations. A divorced-in-law who has had RCR is subject to an unplanned year of forced exposure to marital rape risk, which undermines her right to control over her own body, according to critics.

The right to privacy under Article 21 includes "personal intimacies of home, family, and marriage." Many observers believe that RCR does not pass any proportionality test¹⁴. The RCR has not been reviewed by Indian courts even after Puttaswamy¹⁵. On paper, the edict is still in effect, but in reality, it has not been enforced very much; it primarily consists of judicial encouragement or "psychological coercion" rather than physical force. Because of this, academics are now wondering if it still serves any valid governmental interest. The fundamental ideals of equality, dignity, and freedom from coerced intimacy must now be balanced against the claimed interest in maintaining marriages (Article 14, 15). One may wonder if RCR is still necessary in contemporary India if a court order just results in a disgruntled spouse or a subsequent divorce petition.

FEMINIST AND HUMAN RIGHTS PERSPECTIVES

RCR has long been criticized by feminists as a patriarchal artifact that perpetuates male supremacy¹⁶. The remedy's roots in English feudalism, which treated women like property, run

¹² Bajpai, A. (2020) "Restitution of Conjugal Rights and the Constitution: Gender, Privacy, and Dignity in India," National Law School Journal, 32(1), pp. 101–130.

¹³ Menon, N. (2019) *Seeing Like a Feminist*, Zubaan Books, pp. 78–83.

¹⁴ Chandrachud, D.Y. (2017) concurring opinion in K.S. Puttaswamy, (2017) 10 SCC 1.

¹⁵ Dhanda, A. (2021) "Reconsidering Section 9: Autonomy, Consent and the Constitutional Order," *Indian Law Review*, 5(2), pp. 173–199.

¹⁶ Agnes, F. (1999) *Law and Gender Inequality: The Politics of Women's Rights in India*. New Delhi: Oxford University Press.

counter to contemporary standards of gender equality. Restitution ignores the reasons why women leave and presumes that desertion is bad and subject to compulsion. Section 9 is "arbitrary" and harsh to wives since, as the Sareetha court noted, traditional Hindu law never required a wife to live with another woman.

Despite Section 9's nominal gender neutrality, law reformers point out that in reality, males might utilize it as a means of dragging uncooperative women home. It is frequently impractical to require a decree-holder to be unavailable for a year prior to filing for divorce (HMA section 13(1A)(ii)); as a result, RCR becomes a trap that forces women into hazardous or unpleasant marriages rather than releasing them.

The gender bias of RCR has also been criticized in reports by the Indian Law Commission. Although RCR was covered in the 71st Report¹⁷ as part of the "sanctity of marriage" requirements, subsequent commissions suggested more comprehensive reforms¹⁸ to support equal divorce rights (such as introducing irretrievable breakdown) as opposed to requiring cohabitation. Under international human rights law, India's obligations reinforce this critique. Any personal law that forces a woman to return to her husband against her will is in violation of Article 16 of the UN Women's Rights Convention¹⁹, which provides equal rights in marriage. Scholars have pointed out that RCR is incompatible with CEDAW responsibilities. Feminist views have been heard in many common-law nations; the UK did away with RCR in 1970, and other nations substituted non-coercive conciliation programs.

COMPARATIVE JURISPRUDENCE

Voluntary reconciliation has taken the place of restitution of conjugal rights (RCR) in several nations. RCR was outlawed in the UK in 1970²⁰, while countries like Australia, South Africa, and Ireland choose counselling or mediation. RCR was never adopted in Canada²¹. Instead, using force, these changes prioritize voluntary reconciliation. India should also improve non-

¹⁷ Law Commission of India. (1978) 71st Report on the Hindu Marriage Act, 1955 – Irretrievable Breakdown of Marriage as a Ground of Divorce. New Delhi: Government of India.

¹⁸ Law Commission of India. (2009) 230th Report on Reforms in Family Law. New Delhi: Government of India.

¹⁹ United Nations. (1979) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Article 16.

²⁰ Matrimonial Proceedings and Property Act 1970, c. 45 (UK).

²¹ Bala, N. (2013) "Family Law Reform in Canada." *International Journal of Law, Policy and the Family*, 27(1), pp. 1–25.

coercive measures²², such as increasing family counselling under Section 23(2) HMA, in line with international trends that place a higher value on marital autonomy and dignity.

CRITICAL APPRAISAL AND EMERGING TRENDS

Although Indian courts have not recently re-examined the fundamental legitimacy of the RCR, broader constitutional trends raise questions about its future. Following Puttaswamy, forced cohabitation seems to be more and more incompatible with the Court's understanding of bodily autonomy. The legalizing of adultery in *Joseph Shine v. Union of India*²³ and the focus on privacy and dignity in *Navtej Johar v. Union of India*²⁴ further point to a rising judicial awareness of autonomy, even inside marriage.

In *Johar*, the Court discussed the idea that constitutional morality prevails over majoritarian morality. This idea is relevant in this case since a law that forces spouses to live together may uphold "societal morality" (preserving marriage) yet go against the morality of individual rights as guaranteed by the constitution.

Courts haven't taken many concrete actions. In *Ojaswa Pathak v. Union of India*, a writ suit contesting the validity of the RCR, was admitted by the Supreme Court in 2019, however the court has not yet made a decision²⁵. High courts after Puttaswamy nevertheless adhere to *Saroj Rani*'s stare decisis, however judges occasionally make remarks about RCR's obsolescence.

A glaring contradiction is pointed out by critics: *Saroj Rani*'s marital-preservation strategy and *Sareetha*'s wide privacy approach cannot be reconciled under a single philosophy. Legal ambiguity results from Section 9's continued existence on the books but infrequent application, raising questions about whether it is a dormant legislation or a dead letter.

In the meantime, despite the Law Commission's recommendations, Parliament has done nothing. In order to avoid the need for RCR, the 71st and 217th Reports²⁶ recommended liberalizing divorce laws (such as irretrievable breakdown reasons). Even though RCR is "outdated," Justice Mukherjee himself stated bluntly that the legislature must repeal it. The

²² Law Commission of India. (2021) Consultation Paper on Reform of Family Laws. New Delhi: Ministry of Law and Justice.

²³ *Joseph Shine v. Union of India*, (2018) 2 SCC 189 (India).

²⁴ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India).

²⁵ *Ojaswa Pathak v. Union of India*, WP (C) 250/2019 (India).

²⁶ Law Commission of India, 217th Report, "Irretrievable Breakdown of Marriage - Another Ground for Divorce" (2009).

only way RCR survives the current parliamentary impasse is by default.

The justification for requiring cohabitation is weakening as social norms change, such as more female employment and greater acceptance of marital choice. If RCR is not changed, it may be viewed by courts in the future as an unconstitutional violation of people's rights. The emphasis on individual dignity indicates that the constitutional legitimacy of RCR will likely continue to erode²⁷.

WAY FORWARD AND CONCLUSION

The way forward lies in abolishing or reforming Section 9 of the Hindu Marriage Act and similar provisions across personal laws. Restitution of conjugal rights should be replaced with non-coercive reconciliation mechanisms such as mandatory pre-litigation counselling and mediation under Section 23(2) HMA²⁸. Future reforms must ensure gender neutrality, uphold privacy and autonomy, and prohibit forced cohabitation. Strengthening mutual consent divorce and no-fault reconciliation models will better promote marital harmony consistent with constitutional values of dignity, equality, and individual freedom.

²⁷ Aadrika Goel & Prakriti Goenka, Restitution of Conjugal Rights—Safeguarding Marriage or Legitimizing Marital Rape, CNLU Law Review, (2025).

²⁸ Hindu Marriage Act, No. 25 of 1955, § 23(2), Acts of Parliament, 1955 (India).