



ARTICLE

Restitution or Repression? A Feminist Critique on Marital Enforcement Laws.

Adv. Shreya Garg*

Abstract

The Doctrine of Restitution of Conjugal Rights (RCR), which is enshrined under Section 9 of the Hindu Marriage Act, 1955 (HMA), empowers the court to order a spouse to return to the company of the other spouse. This is done ostensibly to preserve the sanctity of marriage and the stability of the family unit, but it has now become a source of controversy. Still, it functions as a coercive means that undermines individual autonomy, disproportionately impacting women who want to seek separation due to abuse, neglect, or personal choice. By compounding cohabitation, RCR risks legitimizing marital rape, emotional coercion, and psychological harm, which convert the family from ideally a site of love and consent to a site of repression. This paper critically examines RCR through a family and feminist perspective, arguing that it erodes the ethical foundations of marriage as a consensual partnership. The objective of this paper is to trace the colonial origins of the doctrine, evaluate its impact on marriage and family dynamics, analyze its compatibility with the constitutional principle such as principle of dignity, privacy, and equality, and to also to consider comparative experiences such as the abolition of RCR in the UK. The rationale behind choosing this topic lies in the contradiction between family law, which focus on preserving the sanctity of marriage at any cost and constitutional law, which emphasize on individual's freedom and autonomy. This paper tries to answer the research question that does RCR truly protect family harmony or does it destabilize it by prioritizing an institution over the well-being of an individual? It examines the important case laws and places them in the context of modern constitutional jurisprudence on dignity, privacy, and equality under articles 14, 19, and 21 of the Constitution. It therefore finally recommends abolishing RCR and urges family law reforms to reflect consent, equality, and dignity.

Keywords - Restitution of conjugal rights, marital rape, dignity, family harmony, coercion.

I. INTRODUCTION

Marriage and family are celebrated in India as foundational institutions of society, which are rooted in ideas of companionship, trust and social stability. Under Indian family law, these are not seen just as voluntary partnerships but as an obligation that has to be enforced, sometimes by means of coercive or state intervention. A classic example is the remedy of Restitution of Conjugal Rights (RCR), which has now found a place through codification in sec. 9 of the Hindu Marriage Act, 1955. This practice or remedy allows one spouse to seek a court order to compel the other spouse to resume cohabitation if they have withdrawn from the society of the other without a reasonable excuse. At first glance, the remedy RCR appears as a mechanism to reconcile estranged partners, but in practice, RCR produces the opposite effect in families, such as compelling unwilling spouses, mostly the wives, to return to their marital home to resume cohabitation, which they might have left due to cruelty, neglect, or incompatibility. Families maintained through coercion run the risk of becoming sites of violence and repression rather than harmony.

* Advocate, Delhi High Court

The rationale behind choosing this topic lies in the contradiction between family law, which focus on preserving the sanctity of marriage at any cost and constitutional law, which emphasize on individual's freedom and autonomy. This paper tries to answer the research question that does RCR truly protect family harmony or does it destabilize it by prioritizing an institution over the well-being of an individual? When answering this question, the paper also addresses the question of how the colonial origin of RCR influenced its implementation in India, the effects of its implementation on family relationships and women agency, and the question whether its perpetuation can be reconciled with the constitutional promise of equality, privacy, and liberty. The paper also reflects on how the Indian courts have construed Section 9 and how such interpretations are in comparison with the jurisdiction in the UK, which has removed the remedy considering it as contradictory to the contemporary ideals of marriage.

The approach taken in this paper is mainly doctrinal and analytical, based on statutory interpretation, close reading of case law, and engagement with feminist legal theory. The paper has limited its study to Section 9 of the Hindu Marriage Act, 1955, and how it has been taken up by the courts. For this the paper examines ten major cases that mark the turning point in the evolution of the RCR jurisprudence including *Moonshee Buzloor Ruheem v. Shumsoonnissa Begum* (1867), *Dadaji Bhikaji v. Rukhmabai* (1885), *T. Sareetha v. Venkata Subbaiah v. Venkata Subbaiah* (1983), *Harvinder Kaur v. Harmander Singh Choudhry*, (1984). *Saroj Rani v. Sudarshan Kumar Chadha* (1984) and some of the milestones of constitutional case law, including *Maneka Gandhi v. Union of India* (1978), *Francis Coralie Mullin v. Administrator, Union Territory of Delhi* (1981), *Justice K.S. Puttaswamy v. Union of India* (2017), *Navtej Singh Johar v. Union of India* (2018). The cases were chosen on the basis of their doctrinal significance and the manner in which they demonstrate changes in the legal logic of dignity, privacy and autonomy in intimate relationships.

This paper also weighs in line with such path-breaking judgments establishing that intimate relationships should essentially be based on choices whereby modern constitutional law prescribes primacy to autonomy and dignity within family life and how the provision of RCR defeats voluntariness and consensuality by compelling spouses to stay with each other. This paper argues that this compelled cohabitation harms family harmony, justifies repression, and erodes the ethical basis of marriage as a partnership between equals.

II. HISTORY AND DOCTRINAL FOUNDATION

The RCR remedy in India is not a part of its native legal tradition. Instead, it was influenced by or derived from English common law and later became part of Indian matrimonial law. Under English law, the remedy of RCR acts as a civil action available for a spouse to compel the other spouse, primarily the wife, to return to cohabitation, which treats marriage as a legally enforceable duty rather than a voluntary partnership, and the wife is viewed as a chattel to her husband.³⁹⁷ This concept originated in patriarchal norms and was later imposed during the colonial period on Indian society. The controversy of RCR came out very explicitly in the case of *Rukhmabai* (1885). *Rukhmabai* married as a child but later refused to live with her much older husband. In 1884, *Dadaji* instituted a suit for RCR. Justice *Pinhey* of the Bombay High Court

³⁹⁷ Kanika Sharma, *Restitution of Conjugal Rights: A Pernicious Legal Transplant*, LAW & HISTORY REVIEW, (Aug. 23, 2025, 6:16 PM), <https://lawandhistoryreview.org/article/kanika-sharma-restitution-of-conjugal-rights-a-pernicious-legal-transplant/>.

dismissed the petition and held that Rukhmabai was married before she could consent to such marriage and cannot therefore be compelled to live with her husband eleven years later without having cohabited in all this time. Later, Dadaji filed an appeal to the division bench of the Bombay High Court, where the court gave an order to return to her matrimonial home or to face six months' imprisonment. Rukhmani chose imprisonment over complying with the decree, which order sparked a nationwide debate on women's rights, autonomy, and the legitimacy of enforcing conjugal duties through law.³⁹⁸ The leading landmark Indian case on RCR was *Moonshee Buzloor Ruheem & ors. v. Shumsoonnissa Begum (1867)*,³⁹⁹ in which the Privy Council observed that the husband has a right to seek restitution, thereby laying down an example for the maxim that marital cohabitation is a legal duty enforceable by the state. This marks the beginning of the Western legal marital remedy to be incorporated in India. Following Independence, the framers of Indian family law retained this provision of RCR in a codified statute. Sec 9 of the Hindu Marriage Act, 1955, explicitly provides this remedy whereby the court can order restitution of conjugal rights if one party withdraws from the society of the other without any reasonable cause. While framers intended for it as a means to protect the family and marriage as an institution from breaking down, what the provision embodies is a conception of family in which individual autonomy is subordinated to institutional preservation.⁴⁰⁰

Legal scholars have observed that this remedy reflects marriage as a sacrament and as a duty bound towards the other spouse.⁴⁰¹ Dr. Poonam Pradhan Saxena points out that when the Hindu Marriage Act codified restitution of conjugal rights, it reinforced the idea of the family as the bedrock of society and treated marital duties as obligations to be legally enforced.⁴⁰² England, by contrast, abolished the remedy through the Matrimonial Proceedings and Property Act of 1970 after recognizing that forced cohabitation sat uneasily with the modern understanding of marriage as a relationship based on free will.⁴⁰³ India, however, continues to hold on to this provision under Section 9 of the Hindu Marriage Act, 1977.⁴⁰⁴ Its survival, despite growing constitutional and feminist challenges, shows how Indian family law often protects the institution of marriage even at the expense of individual autonomy.⁴⁰⁵

III. IMPACT ON MARRIAGE AS AN INSTITUTION

At the basic level, marriage is an affair that is supposed to be anchored by consent and choice. According to Alison Diduck, the decree of restitution, on the other hand, treats the concept of marriage on a different plane. It allows one spouse to be forced back into the other's company, not because they wish to, but because the law insists on it. Marriage is ideally seen as a voluntary partnership based on mutual consent and trust, but through the RCR it shifts into a legal obligation imposed by the state. Indian courts have often spoken of this as protecting the sanctity of marriage. But once consent is taken out, what remains is not sanctity at all, it is compulsion.

³⁹⁸ Dadaji Bhikaji v. Rukhmabai, MANU/MH/0047/1885 (India).

³⁹⁹ Moonshee Buzloor Ruheem v. Shumsoonnissa Begum, MANU/PR/00018/1867 (India).

⁴⁰⁰ Gandhi, B. M., Family Law (18th ed., Eastern Book Co. 2022).

⁴⁰¹ Keerthi Gandreti, Restitution of Conjugal Rights: Retain or Remove, 2(1) JUS CORPUS LAW JOURNAL 442 (Sept.-Nov. 2021).

⁴⁰² POONAM PRADHAN SAXENA, FAMILY LAW LECTURES: FAMILY LAW I 212-218 (1st ed. 2011).

⁴⁰³ Matrimonial Proceedings and Property Act, 1970, § 20 (UK).

⁴⁰⁴ Hindu Marriage Act, 1955, § 9, No. 25, Acts of Parliament, 1955 (India).

⁴⁰⁵ Raj Kumari Agarwala, Restitution of Conjugal Rights under Hindu Law: A Plea for the Abolition of the Remedy, 12 J. IND. L. INST. 257 (1970).

In *Harvinder Kaur v. Harmander Singh Choudhry* (1984), the Delhi High Court upheld the constitutional validity of Sec 9 of the Hindu Marriage Act, 1955, which characterizes marriage as a social institution in which rights must be balanced against the family unity.⁴⁰⁶ But in *T. Sareetha v. Venkata Subbaiah* (1983), the Andhra Pradesh High Court provided a contrasting opinion related to the RCR, where it was held that it is unconstitutional and warned that it effectively legitimizes “marital rape” by compelling spouses to submit to conjugal relations without free consent.⁴⁰⁷ These conflicting decisions reveal the central tension of whether marriage is a voluntary intimacy or a legally enforced duty.

The Supreme Court in *Saroj Rani v. Sudarshan Kumar Chadha* (1984) upheld the validity of RCR, which endorses its role in reconciling estranged spouses.⁴⁰⁸ Although most academics suggest that such ruling instilled a patriarchal view of marriage, the legal system involving the marital relationships favors the connection between these two different people and negates the personal self-will and dignity. To approach marriage as indissoluble, RCR encourages the belief that marriage must be compulsively maintained, despite having lost intimacy. Therefore, this doctrine transforms the family into a site of repression, particularly for women who seek separation to escape violence or neglect.⁴⁰⁹

This way, RCR suppresses the foundation of marriage based on mutual cohabitation, and turns it into a forced duty which deprives people of their free will and their dignity. Alison Diduck criticizes the remedy of RCR as the disregard of the autonomy of women, as RCR is a duty of marriage,⁴¹⁰ whereas Kalpana Kannabiran linked RCR with the constitutional issues of privacy and freedom of decision-making,⁴¹¹ especially since the Supreme Court recognized privacy as a fundamental right in the case of *Puttaswamy v. Union of India* (2017). The continued presence of RCR indicates that law presupposes a marriage that is not a consenting relationship freely dissolvable through agreement, but a contractual affair where the need to be enforced by the state takes place in the form of a patriarchal relationship.

The UK has abolished the remedy of RCR through the Matrimonial Proceedings and Property Act, 1970; despite this, India continues to uphold it as a legal remedy, which showcases this as a conflict between the institution of marriage and individual well-being. The UK recognizes that forced cohabitation was inconsistent with the modern idea of marriage as a consensual cohabitation of two adult persons.⁴¹² As a result, the relief of RCR fundamentally alters the very structure of what a marriage is, moving it toward a compulsory requirement to live together rather than having a mutually agreed-upon relationship. This can be used to make marriage a patriarchal, duty-bound, and indissoluble union, and this does not fit well with the contemporary principles of equality and dignity in the marriage and family relationship.

IV. IMPACT ON FAMILY DYNAMICS

⁴⁰⁶ supra note 7.

⁴⁰⁷ supra note 6.

⁴⁰⁸ supra note 8.

⁴⁰⁹ Sukhbir Kaur, Restitution of Conjugal Rights: An Analysis, 2 INT’ J. ADV. RESEARCH IN MANAGEMENT AND SOCIAL SCIENCE, 199 – 203 (Nov. 2013).

⁴¹⁰ ALISON DIDUCK & KATHERINE O’DONOVAN, eds., FEMINIST PERSPECTIVE ON FAMILY LAW 144-47 (Routledge-Cavendish 2007).

⁴¹¹ KALPANA KANNABIRAN & SWETHAA S. BALLAKRISHNEN, GENDER REGIMES AND THE POLITICS OF PRIVACY: A FEMINIST RE-READING OF PUTTASWAMY V. UNION OF INDIA 8-10, (Zubaan Academic 2021).

⁴¹² supra note 3.

The family is often seen as an important aspect of society, which is built on care, mutual respect, and emotional security. While the legal remedy of RCR is often used to protect the family as a unit, it often has the opposite effect in practice. The remedy frequently compels the spouse, mainly the woman, to return to her matrimonial home, but does not consider whether the environment where she is returning is safe for her or not. because the environment there may be hostile, neglectful, or abusive. Furthermore, the National Family Health Survey (NFHS-5) reports that almost one-third of married women report experiencing spousal or domestic violence; a court decree of RCR compels her to re-enter a violent environment, from which it can be seen that the court is prioritizing the institution of marriage over personal safety.⁴¹³ This coercion often deepens the cycle of domestic violence within the household instead of promoting genuine reconciliation.⁴¹⁴

The adverse impact of RCR is also focused on children and increases the harmful gender roles. The family is typically romanticized as a secure and supportive place to raise children, where consistency and love help them grow in terms of heart and soul. But enforcement of RCR under Section 9 of the Hindu Marriage Act 1955 generally disturbs this environment of relations in the family. Forcing a reluctant spouse to live with his or her partner not only causes tension between the couple but also subjects children to discord and instability in their homes, putting them at risk of getting hurt.⁴¹⁵ When a woman leaves her matrimonial home due to violence, emotional neglect, or incompatibility, the degree of RCR creates a worse scenario or space for her to live within the same household.⁴¹⁶ Children who grew up in such an environment in the household are direct witnesses to hostility and, in many cases, physical, emotional, and psychological violence.⁴¹⁷ Research has shown that children in abusive or coercive family environments experience higher levels of anxiety, depression, and long-term trauma, which affect their personal life as in education, forming social relationships, etc.⁴¹⁸

The RCR also reinforces traditional gender roles within families by compelling a woman to return to her matrimonial home and perform domestic duties against her will. Hence, the legislation encourages the notion that caring and emotional work is the foremost duty of a woman, irrespective of her professional and personal ideals or security.⁴¹⁹ This not only hinders women's personal goals, such as careers and independence, but also affects the balance of equality, which is needed for healthy family relationships. Feminist scholars argue that this approach of RCR misunderstands what “family harmony” truly means. They believe that real harmony within a family comes from mutual respect and partnership, but not due to forced compliance with conjugal rights. When the ultimate goal of the law is to protect the family dynamics, it favors its appearance and not the internal conflicts and resentments. This view is

⁴¹³ supra note 5.

⁴¹⁴ Sneha Singh & Rashmi Singh Rana, Restitution of Conjugal Rights, Marriage Conflicts and Patch UP: An Overview, 9(3) INT’ J. RES & ANALYTICAL REVIEW 539 (Aug. 17, 2022).

⁴¹⁵ RAJKOTIA, MALVIKA, INTIMACY UNDONE: MARRIAGE, DIVORCE, AND FAMILY LAW IN INDIA (OXFORD UNIV. PRESS 2017).

⁴¹⁶ Dr. Karuna Devi Machann, Restitution of Conjugal Rights in Indian Matrimonial Law: A Critical Analysis of Women’s Rights, Constitutional Challenges, and Reform Prospects in a Changing Society, 12 J. EMER. TECH. & INNO. RES. 169 (2025).

⁴¹⁷ SYLVIA VATUK, MARRIAGE AND ITS DISCONTENTS: WOMEN, ISLAM, AND THE LAW IN INDIA 78-80 (Univ. of Chicago Press 2017).

⁴¹⁸ The Silence Victims: Children, FREEVA (Aug. 22, 2025, 11:35 AM), <https://freeva.org.uk/the-silent-victims-children>.

⁴¹⁹ Kusum, Wife’s Right to Employment versus Husband’s Conjugal Rights, 19 JOURNAL OF THE INDIAN LAW INSTITUTION 77 (1977).

supported by the experiences of other countries, such as Scotland⁴²⁰, Ireland⁴²¹, Australia⁴²², South Africa⁴²³, etc., that have abolished RCR, where they have recognized that forced cohabitation harms rather than protects a family's well-being.

V. FEMINIST CRITIQUE: GENDERED IMPLICATIONS FOR WOMEN'S AUTONOMY

RCR has been one of the most disputable matrimonial remedies in Indian family law, particularly from the perspective of feminists. Section 9 of the Hindu Marriage Act, 1955, is formulated in gender neutral terms but in practice, it is widely used by husbands to force wives to come back, upholding the patriarchal norms⁴²⁴. For example, in the case of *T. Sareetha v. Venkata Subbaiah* (1983), the court noted that this kind of enforcement is disproportionately used to infringe the privacy and autonomy of women. The cure of an RCR obligates cohabitation not as a reconciliation practice but as the legal obligation enforced by the state and therefore treats marriage as an obligatory, patriarchal, and un-divorceable rather than voluntary, egalitarian, and consensual union. Early critique, such as Raj Kumari Agarwala's (1970)⁴²⁵, argues that the RCR has no place in the modern legal system, as it allows the court to compel one spouse to obey the other within the matrimonial home. Later, authors like Kusum (1977) highlight the conflict between women's right to employment and the husband's right to conjugal rights, where it shows how RCR restricts women's economic independence by subordinating their aspirations to the husband's demand for cohabitation.⁴²⁶ Consistently, Sushma Singh underlines that RCR supports the conservative gender roles and patriarchal perception of Hindu marriage, where women are demonstrated as wives whose primary mission is to meet the demands of marriage and not to live as self-contained people.⁴²⁷

Several works of contemporary feminist scholars criticize RCR even more, including, but not limited to, the research of Karin Carmit Yefet and Kanika Sharma, who argue that the RCR hurts gender equality and is a patriarchal colonial relic. Yefet argues that the legal remedy of RCR is incompatible with the modern constitutional principles of autonomy, dignity, privacy, the right of reproduction, etc., as it normalizes marital coercion.⁴²⁸ Kanika describes RCR as a "pernicious colonial transplant" that gives the state authority to intervene in women's private lives and upholds patriarchal family values.⁴²⁹ According to these scholars, the remedy of RCR is posed as a method of reconciliation, but in reality, it is a form of coercion that could push women back into dangerous and violent homes.⁴³⁰

⁴²⁰ LAW COMMISSION, H.C. PAPER NO. 369: PROPOSAL FOR THE ABOLITION OF THE MATRIMONIAL REMEDY OF RESTITUTION OF CONJUGAL RIGHTS (1969).

⁴²¹ Family Law Act, 1988, § 1, No. 31, Act of Parliament, 1988 (Ire.).

⁴²² Family Law Act, 1975, § 8(2), No. 53, Acts of Parliament, 1975 (Aus.).

⁴²³ Divorce Act, 1975, §14, No. 70, Acts of Parliament, 1975 (S. Afr.).

⁴²⁴ I FLAVIA AGNES, FAMILY LAW (Oxford University Press, 2011).

⁴²⁵ Raj Kumari Agarwala, Restitution of Conjugal Rights under Hindu Law: A Plea for the Abolition of the Remedy, 12 JOURNAL OF THE INDIAN LAW INSTITUTE 257, 262-63 (1970).

⁴²⁶ *supra* note 26.

⁴²⁷ Deeksha & Dr. Sushma Singh, Family Law: Restitution of Conjugal rights as a Matrimonial Remedy a critical study, in FAMILY LAW AND THE RECENT TRENDS (Prof.(Dr.) Komal Vig et. al., eds. 2023).

⁴²⁸ Karin C. Yefet, Divorce as a Substantive Gender-Equality Right, 22 U. PA. J. CONST. L. 455 (2020).

⁴²⁹ Kanika Sharma, Restitution of Conjugal Rights: A Pernicious Legal Transplant, LAW & HISTORY REVIEW, (Aug. 23, 2025, 6:16 PM), <https://lawandhistoryreview.org/article/kanika-sharma-restitution-of-conjugal-rights-a-pernicious-legal-transplant/>.

⁴³⁰ *supra* note 23.

In addition to snatching the right of a woman to live in cohabitation of her choice, RCR has far-reaching impacts on the right of reproductive autonomy as well as the integrity of the body that a woman has. Feminist scholars contend that a woman who is being coerced back into her matrimonial home is left with no little choice but to submit to sexual intercourse, which basically makes marital rape a legitimate one.⁴³¹ Such a pattern of coercion transforms the body of the woman into an instrument to satisfy the sexual whims of her husband, which is very much contrary to the basic right of the woman to decide how and whether she has to use her own body and reproduce herself.⁴³² By compelling cohabitation, it directly subordinates a woman's personal autonomy and bodily integrity to her husband's marital claims, which reinforces her status as property of her husband rather than an equal partner in a matrimonial relationship.⁴³³ Scholars also highlight that this remedy is nothing but a direct abuse of the principle of equality under the Constitution because it subjects women to a form of legal control that has no modern equivalent for men; therefore, its very existence is a form of institutionalized gender discrimination.

Renowned feminist legal scholar Flavia Agnes argues that RCR is an “outdated colonial provision” that has no place in a modern democratic society. She contends that a court cannot and should not enforce something as personal as cohabitation and views such a decree as an intrusion on a person's private life.⁴³⁴ The remedy of RCR has a core function is to treat a woman's body and labor as a resource to be managed and restored to the marital home by a court's order. This approach undermines the women's constitutional rights, such as the right to privacy, dignity, and liberty, which protect an individual's right to make choices about their own life and body. Legal scholars Kalpana Kannabiran and Swethaa Ballakrishnen⁴³⁵ have connected RCR with a constitutional debate on privacy, particularly in the wake of the Supreme Court's ruling in the Puttaswamy case.⁴³⁶ Further scholars, such as Srimati Basu,⁴³⁷ have noted that family courts often prioritize preserving marital harmony at the expense of an individual's well-being. This institutional bias perpetuates a patriarchal system that sacrifices women's dignity, personhood, and freedom for the preservation of the marriage institution. The arguments of Alison Diduck also critique how the family law remedies compel women to collapse their personal choices into their “duties of marriage. They argue that this makes RCR a regressive law that criminalizes a woman's right to say “no” within her own marriage.⁴³⁸

VI. CONSTITUTIONAL CHALLENGES AND CONTEMPORARY JURISPRUDENCE IN INDIA

⁴³¹ Ashish Rajan & Kishan Kumar, *Restitution of Conjugal Rights: Its Constitutionality with Respect to Marital Privacy*, 4 INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES 704 (2021).

⁴³² *Suchita Srivastava v. Chandigarh Administration*, 2009 INSC 1086 (India).

⁴³³ INDIAN CONSTI. arts 14 & 21.

⁴³⁴ 1 FLAVIA AGNES, *FAMILY LAW* (Oxford University Press, 2011).

⁴³⁵ *supra* note 19.

⁴³⁶ *Justice K.S. Puttaswamy Retd. and Anr. v. Union of India*, (2017) 10 SCC 1, (2017) SC 420 (India).

⁴³⁷ *supra* note 5.

⁴³⁸ *supra* note 18.

The constitutional validity of the remedy of RCR under Section 9 of the Hindu Marriage Act, 1955, has long been questioned. While the courts have upheld its constitutionality, the development of concepts like privacy, dignity, and gender equality suggests that RCR is fundamentally incompatible with a rights-based framework. The Andhra Pradesh High Court in *T. Sareetha v. Venkata Subbaiah* (1983) was the first case to strike down Sec 9 of the Hindu Marriage Act, 1955, as unconstitutional. Justice Choudhary has opined that compelling spouses to cohabit with one another is a violation of the right to privacy, which is against Article 21 of the Indian Constitution and also other rights as mentioned in the article, such as bodily integrity and human dignity.⁴³⁹ By contrast, the Delhi High Court in *Harvinder Kaur v. Harmander Singh Choudhary* (1984) upheld the remedy of RCR and provided the reason that the marriage is a social institution where individuals' rights must give way to family harmony.⁴⁴⁰ The Supreme Court in *Saroj Rani v. Sudharshan Kumar Chadha* (1984) settled the dispute of RCR and portrayed it as a reconciling tool within marriage.⁴⁴¹ The situation, however, has changed through developments in jurisprudence. Even before the Sareetha case, the Supreme Court in *Francis Coralie Mullin v. Administrator, Union Territory Delhi* (1981), broadened the definition of the right to live under Article 21 of the Indian Constitution and included the right to live with human dignity.⁴⁴² If dignity is essential to live a life, then forcing a spouse to live together without her consent seems incompatible with this right. Furthermore, the court in *Maneka Gandhi v. Union of India* (1978) had already established a principle that any law that limits personal liberty must be “just, fair, and reasonable,” a criterion that RCR fails to fulfill.⁴⁴³

In *Suchita Srivastava v. Chandigarh Administration* (2009), the court determined that reproductive autonomy is a necessary component of Article 21, the usage of which is a clear barrier to the remedy of RCR in requiring such marriage intercourse to be mandatory, which breaches the bodily autonomy of the full-fledged wife.⁴⁴⁴ Besides this, in *Independent Thought v. Union of India* (2017), the Supreme Court narrowed down the exemption of marital rape in marriages between the ages of 15 and 18 years and said that the marital wife and husband cannot be presumed to have consented.⁴⁴⁵ The *Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017)⁴⁴⁶ judgement establishes that privacy is a fundamental right of every human being, which places the remedy of RCR under severe scrutiny because it involves state interference within personal choices such as who to live with and how to manage a marital relationship. In *Navtej Singh Johar v. Union of India* (2018), the Supreme Court affirmed that sexual autonomy and decisional freedom cannot be dissociated from human dignity,⁴⁴⁷ whereas the principle of autonomy in intimate relationships is highly contradictory to this principle. Along the same lines, the recent case of *Joseph Shine v. Union of India* (2019) overruled the adultery law due to the violation of women's autonomy and equality, which also meant the further undermining of patriarchal legislation as the RCR.⁴⁴⁸ As such, these combined judgments cause serious suspicion

⁴³⁹ T. Sareetha v. T. Venkata Subbaiah, AIR 1983 SC 356 (India).

⁴⁴⁰ Harvinder Kaur v. Harmander Singh Choudhry, AIR 1984 Delhi 66, ILR 1984 Delhi 546, [1984] RLR 187 (India).

⁴⁴¹ Saroj Rani v. Sudarshan Kumar, 1984 AIR 1562, 1985 SCR (1) 303 (India).

⁴⁴² Francis Coralie Mullin v. Administrator, Union Territory of Delhi, 1981 INSC 11 (India).

⁴⁴³ Maneka Gandhi v. Union of India, 1978 INSC 16 (India).

⁴⁴⁴ Suchita Srivastava v. Chandigarh Administration, 2009 INSC 1086 (India).

⁴⁴⁵ Independent Thought v. Union of India, 2017 INSC 1030 (India).

⁴⁴⁶ Justice K.S. Puttaswamy Retd. v. Union of India, (2017) 10 SCC 1, (2017) SC 420 (India).

⁴⁴⁷ Navtej Singh Johar v. Union of India, 2018 INSC 790 (India).

⁴⁴⁸ Joseph Shine v. Union of India, (2019) 3 SCC 39 (India).

of the integrity of RCR, given that it permits the establishment of co-living notwithstanding a spouse's wants and the legitimization of forced intimacy.⁴⁴⁹

In *Shayara Bano v. Union of India (2017)*, the Supreme Court declared instant triple talaq to be invalid or unconstitutional, as it is said to be arbitrary and discriminatory towards a woman.⁴⁵⁰ Apply the same doctrine in the case of RCR, in which a state forces her to go against her wishes back to her marital home in a manner that also contravenes her fundamental principles. Similarly, in *Sunil Batra v. Delhi Administration (1978)*,⁴⁵¹ the Supreme Court established that no law can permit treatment that degrades human dignity. Although this was a prison law case, its principle is relevant in family law because a forced cohabitation by spouses against their will is a type of “civil imprisonment” within their own home. These judgments collectively indicate that while the Saroj Rani case once upheld the constitutional validity of the remedy of RCR, the progression of the constitutional law from Maneka Gandhi to Puttaswamy makes it unconstitutional in many ways. A new constitutional challenge today would be to find that the remedy of RCR is inconsistent with Articles 14, 19, and 21 of the Indian Constitution, as it solidifies patriarchal norms and violates decision-making authority and privacy, as well as diminishes women’s autonomy.⁴⁵²

VII. CONCLUSION AND RECOMMENDATION

The remedy of RCR under Sec 9 of the Hindu Marriage Act, 1955, is a colonial-era law but continues till now, though it has lost its relevance in modern constitutional and family law. Although initially, it was supposed to uphold the sanctity of marriage, instead, it is eroding the fabric of marriage itself and substituting consent with coercion. Such a family, which is established under coercive cohabitation, can never be harmonious; on the contrary, it becomes the source of repression that violates the autonomy and dignity of a woman and the integrity of her own body as well. The continuous use of RCR reflects that the court continues to prioritize the sanctity of marriage as an indissoluble social institution over the well-being of the individuals within it, especially for women and children.

By looking at these reasons, Parliament should take action and must abolish this remedy of RCR under Sec 9 of the Hindu Marriage Act, 1955. In the UK, the Matrimonial Proceedings Property Act 1970 was passed, abolishing RCR on the basis that forced cohabitation cannot reasonably be reconciled with the contemporary ideals of consent and dignity in marriage. India has to remodel its family laws by putting them in accordance with the constitutional provisions of equality, privacy, and freedom. The family court should have the option of using a voluntary manner of reconciliation through a mediation and conciliation process that involves the autonomy of both spouses. The continuous existence of RCR raised a question of whether the state should have the authority to intervene in such intimate aspects of married life. In Justice K.S. Puttaswamy (Retd.) v. Union of India (2017), the Supreme Court held that privacy, dignity, and the freedom to make one’s own decision are all essential parts of Article 21 of the Indian Constitution. A remedy like

⁴⁴⁹ Priyanshi Dixit, Protecting Privacy: A Case Against State Interference Through Restitution of Conjugal Rights, CCGN LUD (May 18, 2022), <https://ccgnludelhi.wordpress.com/2022/05/18/protecting-privacy-a-case-against-state-interference-through-restitution-of-conjugal-rights/>.

⁴⁵⁰ *Shayara Bano v. Union of India*, 2017 INSC 785 (India).

⁴⁵¹ *Sunil Batra v. Delhi Administration*, 1978 INSC 147 (India).

⁴⁵² *supra* note 31.

RCR, which permits the court to enforce coercive cohabitation, is in direct conflict with these constitutional rights.

Furthermore, in practical situations, the remedy of RCR is not reconciliation but coercion. Women were forced to go back to their marital homes, where they often face violence, marital rape, and emotional abuse. Children in these homes grow up seeing conflicts and hostility and tend to have psychological health problems, such as anxiety and depression. In this context, getting rid of remedies like RCR will not ruin the family institution but would free it from a coercive legal framework. True family stability can only happen when both spouses stay in the marriage of their own will, out of love and affection, and according to their mutual love and not by coercion or by any court order. Repealing Sec 9 of the Hindu Marriage Act, 1955, would send a strong message that the Indian family law supports equality, autonomy, and dignity, which brings it in line with current trends and constitutional morality. Therefore, in conclusion, the remedy of RCR is from a time when women were seen as dependent and marriage was a patriarchal duty. But in the 20th century, such a provision could not be defended. India must take a step to abolish this so-called remedy of RCR within its legal framework and replace coercion with consent, and allow marriage and family life to thrive on its legitimate foundation, i.e., voluntary partnership.