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## **Introduction**

Welcome to the Indian Journal of Legal Affairs and Research (IJLAR), a distinguished platform dedicated to the dissemination of comprehensive legal scholarship and academic research. Our mission is to foster an environment where legal professionals, academics, and students can collaborate and contribute to the evolving discourse in the field of law. We strive to publish high-quality, peer-reviewed articles that provide insightful analysis, innovative perspectives, and practical solutions to contemporary legal challenges. The IJAR is committed to advancing legal knowledge and practice by bridging the gap between theory and practice.

## Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

## **Description**

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

# **FROM CONSENT TO COMPULSION: RETHINKING RESTITUTION OF CONJUGAL RIGHTS IN MODERN CONSTITUTIONAL INDIA**

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## **1. Abstract**

Marriage in India today is facing a clear conflict between traditional religious values and the modern rights guaranteed by the Constitution. One major example of this conflict is Section 9 of the Hindu Marriage Act, 1955, which deals with the concept of Restitution of Conjugal Rights (RCR). In simple terms, this provision allows a court to direct a spouse to return to the marital home, even if they are unwilling to do so. Although this law was earlier justified to preserve marriages, this paper argues that it is an outdated concept inherited from British rule and does not fit within a modern democratic society that respects individual freedom.

This research paper examines whether the law of Restitution of Conjugal Rights is constitutionally valid. The analysis mainly focuses on two important Fundamental Rights: Article 14, which ensures equality before the law, and Article 21, which protects the right to life and personal liberty. To understand the origin of this law, the paper traces its roots back to the Ecclesiastical Courts of England, showing that it is not originally part of Indian legal tradition.

The paper also critically analyzes the Supreme Court judgment in *Saroj Rani v. Sudarshan Kumar Chadha* and questions its relevance in the present time, especially after the landmark Right to Privacy judgment in *Justice K.S. Puttaswamy v. Union of India*. It argues that the concept of RCR treats individuals—particularly women—as if they are property that can be forced to return to their spouse. This goes against the idea of bodily autonomy and personal dignity.

In practice, the law is often misused as a tool to harass a spouse rather than to genuinely restore marital relationships. Many scholars and courts have pointed out that forcing cohabitation through legal means can lead to emotional pressure and may indirectly violate personal liberty.

In conclusion, this paper strongly argues that Section 9 should be repealed, as it is not in line with modern constitutional values and human rights standards. Reforming such laws is necessary to

ensure that family law in India reflects the principles of dignity, equality, and personal freedom.

## **2. Introduction**

In the Indian social system, marriage is generally not treated as a simple agreement between two individuals. Instead, it is considered a sacred bond that carries emotional, cultural, and religious importance, and is often expected to last for a lifetime. Because of this belief, marriage is seen as a key pillar of society. To maintain and protect this institution, the legal system in India has created certain remedies, one of which is known as Restitution of Conjugal Rights (RCR).<sup>1</sup>

At a basic level, this legal remedy deals with a common situation: what should be done if one spouse leaves the marital home without any proper justification. Instead of treating this as a purely personal matter, the law provides a formal mechanism to address such disputes.<sup>2</sup>

According to Section 9 of the Hindu Marriage Act, 1955, the spouse who has been deserted can approach the District Court for relief. If the court finds that the other spouse withdrew from the relationship without a reasonable excuse, it may pass a decree directing that spouse to return and resume cohabitation. Furthermore, if this order is not followed for a continuous period of one year, it becomes a legal ground for seeking divorce under the Act.<sup>3</sup>

However, when this concept is examined from a modern perspective—especially by law students and scholars today—it appears to conflict with contemporary ideas of personal freedom. The Constitution of India guarantees the right to personal liberty under Article 21. In this context, an important question arises: can the State, through judicial orders, compel an adult individual to live with another person against their wishes? This creates a deeper constitutional concern about whether the protection of marriage as an institution should take priority over individual autonomy and freedom.<sup>4</sup>

This paper attempts to address these concerns by examining the conflict between the State's role in preserving family structures and the individual's fundamental rights, particularly the rights to privacy, dignity, and personal choice. By studying the historical background of the law, relevant judicial decisions, and its impact in real-life situations, the paper argues that even if the law was originally intended to protect marriages, its present-day application raises serious constitutional and social issues.<sup>5</sup>

### 3. Historical Origins

To properly understand the origin of this law, it is important to look at its historical background. There is a common belief that Restitution of Conjugal Rights (RCR) is based on Indian traditions or derived from ancient Hindu texts like the Dharmashastras. However, this assumption is incorrect. In reality, this concept is not indigenous to India; it was introduced during the colonial period and has its roots in English law.<sup>6</sup>

The origin of this remedy can be traced to the Ecclesiastical Courts of medieval England, which were church-controlled courts dealing with marriage and family matters. At that time, marriage was considered a sacred and permanent union, and the idea of divorce was not recognized in the modern sense. The Church strongly followed the belief that a marriage, once formed, could not be broken by human intervention.<sup>7</sup>

However, in practice, conflicts between spouses still occurred, and couples often separated. Since divorce was not an available option, the Church developed the concept of restitution of conjugal rights. Through this remedy, the courts could order a spouse to return and live with their partner. The purpose was not only to preserve the marriage but also to prevent what the Church considered the moral wrongdoing of separation. If a spouse refused to obey such an order, they could face serious consequences such as excommunication or even imprisonment.<sup>8</sup>

This concept was later introduced into India during British rule. In the case of *Moonshee Buzloor Ruheem v. Shumsoonnissa Begum* (1867), the Privy Council recognized and applied the principle of restitution of conjugal rights within the Indian legal system. This decision imposed English legal ideas on Indian society, without adequately considering the distinct nature of Hindu and Islamic marital traditions.<sup>9</sup>

An important point to note is the contrast between India and England in their treatment of this law. While India formally incorporated this provision into the Hindu Marriage Act in 1955, the United Kingdom abolished it in 1970 through the Matrimonial Proceedings and Property Act. The Law Commission in England described the remedy as outdated, unnecessary, and ineffective. Despite this, the provision continues to exist in Indian law even today, raising serious questions about its relevance in a modern legal system.<sup>10</sup>

## 4. The Legal Framework: Analyzing Section 9

Section 9 of the Hindu Marriage Act, 1955 is the legal provision that formally recognizes the remedy of Restitution of Conjugal Rights in India. However, before examining its constitutional validity, it is important to understand how this provision operates in practice. This section provides a legal framework through which a spouse can seek the intervention of the court when the other partner withdraws from the marital relationship.<sup>11</sup>

The provision states that if either the husband or the wife leaves the company of the other without a reasonable excuse, the aggrieved party can file a petition before the District Court. If the court is satisfied that the statements made in the petition are true and there is no legal reason to deny relief, it may pass a decree ordering the spouse to return and resume cohabitation. In simple terms, the law empowers the court to direct a spouse to live with their partner again.<sup>12</sup>

### 4.1. The Burden of Proof

In such cases, the burden of proof is divided between both parties. Initially, the petitioner—the spouse who approaches the court—must establish that the other partner has withdrawn from their “society.” In legal language, this refers to more than just physical absence; it includes the refusal to live together and maintain normal marital relations. Once this fact is proven, the responsibility shifts to the respondent—the spouse who left—to justify their actions.<sup>13</sup>

### 4.2. Reasonable Excuse

At this stage, the respondent must show that they had a “reasonable excuse” for leaving the matrimonial home. However, the law does not clearly define what qualifies as a reasonable excuse, which creates uncertainty in its application. Over time, courts have interpreted this to include serious situations such as physical cruelty, mental harassment, or the existence of another relationship.<sup>14</sup>

The difficulty arises because minor disagreements or general dissatisfaction in the marriage are usually not accepted as valid reasons. For example, issues like personality clashes or differences in lifestyle are often dismissed as insufficient grounds. This means that if a spouse, particularly a wife, leaves the matrimonial home for reasons such as personal unhappiness or career choices, the court may not recognize these as reasonable excuses. As a result, the law may compel individuals

to return to a situation they willingly chose to leave, raising important concerns about personal freedom and autonomy.<sup>15</sup>

#### **4.3. Enforcement of Decree**

Once a court passes a decree for Restitution of Conjugal Rights, an important question arises regarding its enforcement. In practical terms, it is not possible to compel emotional attachment or willingness between spouses. Historically, courts had the authority to enforce such decrees through harsh methods, including arrest and forced return, but such practices are no longer followed in modern legal systems.<sup>16</sup>

Under the present legal framework, enforcement is governed by Order 21 Rule 32 of the Code of Civil Procedure, 1908. According to this provision, the court cannot order the arrest or physical detention of a spouse for failing to comply with a decree for restitution. Instead, the law provides an alternative method of enforcement through financial measures.<sup>17</sup>

Specifically, the court may order the attachment of the property of the defaulting spouse. This means that if a person refuses to obey the decree and does not return to the matrimonial home, their property—such as bank accounts or other assets—can be seized or restricted by the court. The purpose of this measure is to pressure the individual into complying with the order.<sup>18</sup>

However, this method of enforcement raises serious concerns. Although it does not involve direct physical force, it still places significant pressure on an individual by targeting their financial security. In effect, it can be seen as a form of indirect coercion, where a person is compelled to act against their will due to the fear of economic consequences. This has led to strong criticism that such enforcement mechanisms are inconsistent with the principles of personal liberty and individual autonomy guaranteed under the Constitution.<sup>19</sup>

### **5. The Constitutional Challenge: Article 21 and the Right to Dignity**

The most significant constitutional challenge to Section 9 of the Hindu Marriage Act is based on Article 21 of the Constitution of India. This Article guarantees the right to life and personal liberty. Over time, the Supreme Court has expanded the meaning of “life” beyond mere physical existence. It now includes the right to live with dignity, privacy, and the freedom to make personal choices. Therefore, any law that interferes with these aspects must be carefully examined for its

constitutional validity.<sup>20</sup>

### **5.1. Argument of Bodily Autonomy**

One of the strongest criticisms of Restitution of Conjugal Rights is based on the concept of bodily autonomy. Marriage, by its nature, involves emotional and physical intimacy. When a court orders two individuals to resume cohabitation, it indirectly pressures them to restore their personal relationship as well.

If a person—most often the wife—has chosen to leave the matrimonial home, it reflects a withdrawal of consent to continue that shared life. By legally compelling her to return, the State may be seen as interfering with her personal decision and autonomy. Some critics argue that such a situation creates conditions where an individual's control over their own body and choices is weakened. In extreme interpretations, this has even been described as a form of indirect legal approval of non-consensual marital relations, raising serious ethical and constitutional concerns.<sup>21</sup>

### **5.2. The “Sareetha” case**

A major development in this debate came in *T. Sareetha v. T. Venkatasubbaiah* (1983), where the Andhra Pradesh High Court declared Section 9 unconstitutional. Justice P.A. Choudary strongly argued that the State should not interfere in the private sphere of marriage to such an extent. According to the judgment, forcing a spouse to return to the matrimonial home takes away their control over their own body and personal life decisions.<sup>22</sup>

The Court further observed that such compulsion could have serious consequences, including forcing an individual into situations like unwanted cohabitation or even pregnancy. The judgment described the provision as outdated and incompatible with modern constitutional values. Importantly, it recognized that the right to privacy includes the freedom to choose how and with whom one lives.

## **6. The Constitutional Challenge: Article 14 and Substantive Equality**

Another important constitutional challenge to Section 9 of the Hindu Marriage Act arises under Article 14, which guarantees equality before the law and equal protection of laws. At first glance, this provision appears neutral and fair, as it gives both husband and wife an equal right to approach

the court. However, a deeper analysis shows that equality in law is not limited to equal wording; it also requires fairness in real-life outcomes.<sup>23</sup>

### **6.1. Formal Equality v. Substantive Equality**

On a surface level, Section 9 reflects what is known as “formal equality.” This means that the law treats both parties— husband and wife—the same by allowing either of them to file a petition. However, the Constitution promotes a broader concept known as “substantive equality,” which focuses on the actual effects of the law in society. It requires courts to examine whether a law, even if neutral in language, creates unequal results in practice.<sup>24</sup>

In the Indian social context, men and women often do not have equal social and economic power. Several factors contribute to this imbalance. For instance, the matrimonial home is usually considered the husband’s residence, which places women in a dependent position. Additionally, many women rely financially on their spouses, limiting their ability to live independently. Social attitudes also play a significant role, as separated or divorced women often face greater stigma compared to men.<sup>25</sup>

Because of these realities, the application of Section 9 tends to affect women more severely. In many cases, a woman may leave the matrimonial home due to an unhealthy or uncomfortable environment that may not immediately qualify as legal cruelty. In response, the husband may file a petition for restitution of conjugal rights. If the woman chooses not to return, she may risk losing her claim to maintenance or financial support. This creates pressure on her to comply, even against her wishes.<sup>26</sup>

As a result, a provision that appears neutral in theory can operate unequally in practice. It may be used as a tool to control or pressure women, rather than genuinely restore marital harmony. This gap between legal wording and social reality raises serious concerns under Article 14, as it fails to achieve true equality and instead reinforces existing inequalities.

## **7. The Judicial Battle: The 1980s Trilogy**

The constitutional validity of Section 9 of the Hindu Marriage Act became a major legal issue during the 1980s. This period witnessed a series of important court decisions, often referred to as a “trilogy,” which highlighted the deep differences in judicial thinking on this subject. For law

students, this phase is particularly important because it shows how courts struggled to balance individual rights with the institution of marriage.<sup>27</sup>

### **7.1. The Andhra Pradesh View (1983)**

The first major development came with the decision in *T. Sareetha v. T. Venkatasubbaiah* (1983), where the Andhra Pradesh High Court declared Section 9 unconstitutional. This judgment was widely regarded as a progressive step toward protecting individual freedom.

The Court emphasized that the importance of marriage as an institution cannot override the dignity and autonomy of an individual. It held that forcing a person to return to a marital relationship against their will violates their fundamental rights, especially the right to privacy and personal liberty under Article 21.<sup>28</sup>

### **7.2. The Delhi High Court Rebuttal (1984)**

Soon after, a contrasting view was presented by the Delhi High Court in *Harvinder Kaur v. Harmander Singh* (1984). In this case, the Court upheld the constitutional validity of Section 9 and strongly disagreed with the reasoning in the *Sareetha* judgment.<sup>29</sup>

Justice Avadh Behari Rohatgi argued that introducing constitutional principles into the private sphere of marriage could disturb the delicate nature of family relationships. He expressed concern that applying strict fundamental rights standards within a marriage might weaken the institution of the family.

The Court viewed restitution of conjugal rights not as a form of forced intimacy, but as a mechanism to encourage cohabitation and reconciliation between spouses. According to this perspective, the provision was intended to give couples an opportunity to resolve their differences and restore their relationship, rather than to impose any form of coercion.<sup>30</sup>

### **7.3. The Supreme Court Verdict (1984)**

The conflicting views of the High Courts were eventually resolved by the Supreme Court in *Saroj Rani v. Sudarshan Kumar Chadha* (1984). This case became the final authority on the constitutional validity of Section 9 of the Hindu Marriage Act. The Supreme Court chose to agree with the reasoning given by the Delhi High Court and upheld the provision as constitutionally

valid.<sup>31</sup>

The Court supported Section 9 on several grounds. First, it observed that the primary objective of the Hindu Marriage Act is to preserve the institution of marriage. According to the Court, the law is designed not just to regulate marriage but also to prevent unnecessary breakdown of family relationships.<sup>32</sup>

Second, the Court stated that Section 9 serves an important social function by attempting to maintain marital unity and stability. It viewed the provision as a method to discourage separation and promote reconciliation between spouses.

Third, the Court held that the right to privacy, though important, is not absolute and can be subject to reasonable restrictions in certain circumstances. In this context, it found that Section 9 does not violate privacy in a manner that would make it unconstitutional.<sup>33</sup>

Finally, the Court clarified that a decree for restitution of conjugal rights does not involve any physical force or compulsion. It described the remedy as a way of encouraging spouses to reunite, rather than forcing them into an unwanted relationship. The intention, according to the Court, is to provide an opportunity for reconciliation rather than coercion.<sup>34</sup>

Since this judgment, Section 9 has remained legally valid and continues to be part of Indian matrimonial law. However, many legal scholars have criticized the decision for not fully addressing issues related to personal dignity and individual autonomy. It is often argued that the judgment does not sufficiently engage with the deeper constitutional values that have evolved over time, particularly in relation to privacy and human dignity.<sup>35</sup>

#### **7.4. The Right to Privacy Judgment (2017)**

A major turning point came with the landmark judgment in *Justice K.S. Puttaswamy v. Union of India* (2017), where a nine-judge bench of the Supreme Court unanimously recognized the right to privacy as a fundamental right under Article 21 of the Constitution. This decision greatly expanded the scope of personal liberty and had far-reaching implications for family law.<sup>36</sup>

The Court explained privacy in multiple dimensions, two of which are especially relevant in the context of Restitution of Conjugal Rights. First is **spatial privacy**, which protects the private space of an individual, including the home, from unnecessary State interference. Second is **decisional privacy**, which gives individuals the freedom to make personal choices, particularly in matters relating to relationships, marriage, and intimate life.<sup>37</sup>

Importantly, the *Puttaswamy* judgment also referred to earlier decisions, including *Saroj Rani*. While it did not formally overrule the case, the observations made by the judges indicated a clear shift in constitutional thinking. The Court rejected the idea that fundamental rights do not apply within the private sphere of the family. Instead, it emphasized that constitutional values must extend to all areas of life, including personal and family relationships.<sup>38</sup>

This reasoning has serious implications for Section 9. If privacy includes the right to make intimate personal decisions, then it logically follows that an individual should have the freedom to decide whether or not to live with their spouse. Therefore, compelling a person to return to a matrimonial home may conflict with the modern understanding of privacy and personal liberty under Article 21.<sup>39</sup>

#### **7.5. Decriminalization of Adultery (2018)**

Another important development that affects the validity of Section 9 is the Supreme Court's decision in *Joseph Shine v. Union of India* (2018), where Section 497 of the Indian Penal Code—dealing with adultery—was declared unconstitutional. This judgment marked a major shift in how the law views marriage, individual autonomy, and gender equality.<sup>40</sup>

The Court clearly rejected the old idea that a husband has control or authority over his wife. It emphasized that a woman is an independent individual with her own rights and cannot be treated as the property of her spouse. The judgment strongly highlighted the importance of dignity, equality, and personal choice within a marriage.<sup>41</sup>

A key part of the decision was its recognition of sexual autonomy. The Court stated that marriage does not take away an individual's right to make personal decisions about their own body. In simple terms, the right to consent—or to refuse—continues even after marriage. This principle strengthens the idea that personal liberty cannot be limited merely because of a marital relationship.<sup>42</sup>

When this reasoning is compared with Section 9 of the Hindu Marriage Act, a clear conflict emerges. Section 9 is based on the assumption that spouses have a legal duty to live together and maintain marital relations. However, the principles laid down in *Joseph Shine* suggest that no individual can be compelled to act against their will in matters involving personal and intimate choices.<sup>43</sup>

This creates a strong constitutional tension. On one hand, modern judgments recognize

individuals—especially women— as equal citizens with full autonomy over their bodies and decisions. On the other hand, Section 9 continues to operate in a way that may indirectly pressure a spouse to return to a relationship they have chosen to leave. Because of this contradiction, many scholars argue that the values expressed in *Joseph Shine* are difficult to reconcile with the continued existence of Restitution of Conjugal Rights.<sup>44</sup>

## 8. The Practical Reality: How the Law is Actually Used

When we move beyond textbooks and examine how Section 9 operates in real courtrooms, a very different picture emerges. In theory, the provision is meant to preserve marriage and promote reconciliation. However, in practice, it is rarely used with that genuine intention. Many family law practitioners observe that petitions for Restitution of Conjugal Rights are often filed not to restore relationships, but as part of a larger legal strategy during marital disputes.<sup>45</sup>

In many cases, when a marriage breaks down, it leads to multiple legal proceedings. Typically, the wife may file for maintenance under Section 125 of the Code of Criminal Procedure or seek protection under laws dealing with domestic violence. In response, the husband may file a petition under Section 9 of the Hindu Marriage Act.<sup>46</sup>

This action is often taken as a defensive legal strategy. If the husband succeeds in obtaining a decree for restitution, he can use it to argue in maintenance proceedings that he is willing to continue the marriage, but the wife is refusing without valid reason. Based on this argument, he may attempt to reduce or avoid his obligation to provide financial support.

Studies and legal commentary suggest that this has become one of the most common uses of Section 9. Instead of strengthening marital relationships, the provision is sometimes used to weaken a spouse's claim to maintenance, raising concerns about its misuse.<sup>47</sup>

Another way in which Section 9 is used in practice is as an indirect method to obtain divorce. Under Section 13(1A) of the Hindu Marriage Act, if a decree for restitution of conjugal rights is passed and the spouses do not resume cohabitation for a period of one year, either party can seek divorce on that basis.<sup>48</sup>

In such situations, a spouse—often the husband—may file for restitution not with the intention of reconciliation, but with the expectation that the other party will not return. After the required period of one year passes without compliance, this non-cohabitation becomes a legal ground for

divorce.

This approach turns Section 9 into a procedural tool rather than a genuine remedy for restoring marriage. It allows a party to achieve separation indirectly, even when stronger grounds such as cruelty or adultery may not be easily established. Such use of the provision raises important questions about its purpose and effectiveness within modern matrimonial law.<sup>49</sup>

## 9. A Look at Other Democracies

A comparative perspective helps in understanding how unusual India's position is on the issue of Restitution of Conjugal Rights. When we examine other democratic countries, it becomes clear that most have already moved away from this concept, considering it outdated and incompatible with modern ideas of personal freedom and equality.<sup>50</sup>

In the United Kingdom, which originally introduced this concept during the colonial period, the remedy was abolished through the Matrimonial Proceedings and Property Act, 1970. The Law Commission of England criticized it as an outdated provision that no longer served any useful purpose in contemporary society.<sup>51</sup>

Similarly, Australia eliminated the concept of restitution of conjugal rights with the enactment of the Family Law Act, 1975, which focused more on individual rights and the practical realities of marital breakdown. South Africa followed this approach and abolished the remedy in 1979 as part of broader family law reforms.<sup>52</sup>

Ireland, despite having strong religious influences on its legal system, also chose to abolish this remedy in 1988. This shows that even societies with traditional views on marriage have recognized the need to prioritize individual autonomy and dignity over forced marital cohabitation.<sup>53</sup>

In contrast, India continues to retain this provision in its legal system. This places it among a small group of jurisdictions that still follow an outdated approach. The continued existence of Section 9 raises concerns about whether Indian law still reflects older notions of control within marriage, rather than recognizing it as a relationship based on equality, consent, and mutual respect.<sup>54</sup>

## 10. Recommendations and the Way Forward

Based on the analysis carried out in this paper, certain reforms are necessary to address the issues associated with Section 9 of the Hindu Marriage Act. These recommendations aim to align family

law with modern constitutional values such as dignity, equality, and personal liberty.<sup>55</sup>

The most direct solution is the complete removal of the provision relating to Restitution of Conjugal Rights from the statute. There have already been strong recommendations in this regard from authoritative bodies. The High-Level Committee on the Status of Women (2015) and the Law Commission of India (2018) have both suggested that this provision no longer serves any meaningful purpose in contemporary society. Its continued existence creates more legal and social complications than benefits.<sup>56</sup>

Instead of using legal force to compel spouses to live together, the focus should shift toward encouraging voluntary reconciliation. Courts should prioritize methods such as mediation and counseling, where both parties can openly communicate their concerns. The role of the legal system should be to facilitate understanding and resolution, rather than to impose decisions that affect personal relationships.<sup>57</sup>

Until any legislative change takes place, it is important for courts to apply Section 9 with caution. Judges must ensure that decrees for restitution are not misused to deny maintenance, especially in cases where one spouse may have genuine reasons for living separately. Refusal to comply with such a decree should not automatically result in the loss of financial support, particularly where issues like safety, dignity, or personal well-being are involved.<sup>58</sup>

## 11. Conclusion

The debate surrounding Restitution of Conjugal Rights highlights the conflict between legal principles and real-life human experiences. When the Supreme Court upheld Section 9 in *Saroj Rani v. Sudarshan Kumar Chadha* (1984), the focus was on preserving the institution of marriage. However, constitutional understanding and societal values have developed significantly since then, especially in relation to individual rights and personal freedom.<sup>59</sup>

Today, it is widely accepted that marriage cannot be viewed as an institution that exists independently of the individuals within it. A marital relationship is built on the free will, dignity, and mutual respect of both partners. Therefore, any law that forces individuals to continue such a relationship against their wishes raises serious concerns. The role of the State should not extend to compelling cohabitation, as this reduces a deeply personal relationship to a legal obligation.

From a constitutional perspective, Section 9 appears to be inconsistent with key fundamental

rights. Under Article 14, although the provision seems neutral in its wording, its actual impact is unequal, often affecting women more adversely due to existing social and economic inequalities. This creates a gap between formal equality and real equality.

Similarly, under Article 21, the provision raises concerns regarding privacy, dignity, and bodily autonomy. Modern constitutional jurisprudence, particularly after *Justice K.S. Puttaswamy v. Union of India* (2017), clearly recognizes the right of individuals to make personal choices about their lives and relationships. In this context, treating a spouse as someone who can be legally compelled to return to a relationship goes against the principles of autonomy and consent.<sup>60</sup>

In conclusion, Section 9 no longer aligns with the progressive values of the Indian Constitution. It reflects an outdated approach that prioritizes the form of marriage over the rights of individuals. There is a strong need for either judicial reconsideration or legislative reform to remove this provision from the legal framework. A healthy marriage should be based on consent, understanding, and equality—not on legal compulsion or coercive mechanisms.

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<sup>9</sup>*Moonshee Buzloor Ruheem v. Shumsoonnissa Begum*, (1867) 11 MIA 551 (Privy Council).

<sup>10</sup>Matrimonial Proceedings and Property Act, 1970 (UK); Law Commission of England, *Report on Family Law* (1969).

- <sup>11</sup> Hindu Marriage Act, 1955, § 9; Paras Diwan, *Modern Hindu Law* (21st ed., LexisNexis 2018).
- <sup>12</sup> Hindu Marriage Act, 1955, § 9 (statutory provision).
- <sup>13</sup> *Bipinchandra Jaisinghbhai Shah v. Prabhavati*, AIR 1957 SC 176; Mulla, *Principles of Hindu Law* (22nd ed.).
- <sup>14</sup> *Saroj Rani v. Sudarshan Kumar Chadha*, (1984) 4 SCC 90; Indian matrimonial jurisprudence on cruelty.
- <sup>15</sup> Flavia Agnes, *Family Law and Constitutional Claims* (Oxford University Press, 2011); Law Commission of India, Consultation Paper on Family Law Reform (2018).
- <sup>16</sup> Paras Diwan, *Modern Hindu Law* (21st ed., LexisNexis 2018); historical practices of matrimonial remedies.
- <sup>17</sup> Code of Civil Procedure, 1908, Order XXI Rule 32.
- <sup>18</sup> Mulla, *The Code of Civil Procedure* (18th ed., LexisNexis 2016).
- <sup>19</sup> Flavia Agnes, *Family Law and Constitutional Claims* (Oxford University Press, 2011); Gautam Bhatia, *The Transformative Constitution* (HarperCollins, 2019).
- <sup>20</sup> Constitution of India, art. 21; *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248; *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.
- <sup>21</sup> Flavia Agnes, *Family Law and Constitutional Claims* (Oxford University Press, 2011); discussions on bodily autonomy in matrimonial law.
- <sup>22</sup> *T. Sareetha v. T. Venkatasubbaiah*, AIR 1983 AP 356.
- <sup>23</sup> Constitution of India, art. 14; *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 SCC 3.
- <sup>24</sup> *Air India v. Nergesh Meerza*, (1981) 4 SCC 335; concept of substantive equality in constitutional law.
- <sup>25</sup> Flavia Agnes, *Family Law and Constitutional Claims* (Oxford University Press, 2011); gender realities in Indian society.
- <sup>26</sup> Law Commission of India, Consultation Paper on Reform of Family Law (2018); judicial trends in maintenance and RCR cases.
- <sup>27</sup> Paras Diwan, *Modern Hindu Law* (21st ed., LexisNexis 2018); overview of matrimonial jurisprudence in India.
- <sup>28</sup> *T. Sareetha v. T. Venkatasubbaiah*, AIR 1983 AP 356.
- <sup>29</sup> *Harvinder Kaur v. Harmander Singh*, AIR 1984 Del 66.
- <sup>30</sup> *Ibid.*; judicial reasoning on reconciliation and family structure.
- <sup>31</sup> *Saroj Rani v. Sudarshan Kumar Chadha*, (1984) 4 SCC 90.
- <sup>32</sup> *Ibid.*; interpretation of the objectives of the Hindu Marriage Act, 1955.
- <sup>33</sup> *Ibid.*; discussion on privacy and constitutional limitations.
- <sup>34</sup> *Ibid.*; reasoning on reconciliation and absence of physical coercion.
- <sup>35</sup> Gautam Bhatia, *The Transformative Constitution* (HarperCollins, 2019); Flavia Agnes, *Family Law and Constitutional Claims* (Oxford University Press, 2011).
- <sup>36</sup> *Justice K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.
- <sup>37</sup> *Ibid.*; recognition of spatial and decisional privacy under Article 21.
- <sup>38</sup> *Ibid.*; discussion on applicability of fundamental rights within family structures.
- <sup>39</sup> Gautam Bhatia, *The Transformative Constitution* (HarperCollins, 2019); contemporary analysis of privacy and autonomy.
- <sup>40</sup> *Joseph Shine v. Union of India*, (2019) 3 SCC 39.
- <sup>41</sup> *Ibid.*; rejection of patriarchal notions in adultery law.
- <sup>42</sup> *Ibid.*; recognition of sexual autonomy and individual dignity.
- <sup>43</sup> Hindu Marriage Act, 1955, § 9; comparison with modern constitutional principles.
- <sup>44</sup> Gautam Bhatia, *The Transformative Constitution* (HarperCollins, 2019); Flavia Agnes, *Family Law and Constitutional Claims* (Oxford University Press, 2011).
- <sup>45</sup> Flavia Agnes, *Family Law and Constitutional Claims* (Oxford University Press, 2011); practical insights on matrimonial litigation.
- <sup>46</sup> Code of Criminal Procedure, 1973, § 125; Protection of Women from Domestic Violence Act, 2005; Hindu Marriage Act, 1955, § 9.
- <sup>47</sup> Law Commission of India, Consultation Paper on Reform of Family Law (2018); misuse of matrimonial remedies.
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- <sup>52</sup> Family Law Act, 1975 (Australia); South African family law reforms (1979).
- <sup>53</sup> Irish family law reforms, 1988; evolution of matrimonial remedies in Ireland.

<sup>54</sup> Gautam Bhatia, *The Transformative Constitution* (HarperCollins, 2019); critique of outdated legal provisions.

<sup>55</sup> Gautam Bhatia, *The Transformative Constitution* (HarperCollins, 2019); principles of constitutional morality.

<sup>56</sup> High-Level Committee on the Status of Women in India, Report (2015); Law Commission of India, Consultation Paper on Family Law Reform (2018).

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<sup>59</sup> *Saroj Rani v. Sudarshan Kumar Chadha*, (1984) 4 SCC 90.

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