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## Research Article

## Whether Restitution of Conjugal Rights Can Directly Sanction Non-Consensual Intercourse

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### Abstract

The remedy of Restitution of Conjugal Rights (RCR) has long remained one of the most debated aspects of family law, particularly in the context of constitutional rights, gender justice and marital autonomy. While the primary objective of an RCR decree is to facilitate the resumption of cohabitation between spouses, an important legal and ethical question arises: Can a decree for Restitution of Conjugal Rights directly or indirectly sanction non-consensual sexual intercourse within marriage? This paper critically examines the legal implications of RCR under Indian family laws in light of constitutional guarantees of dignity, privacy, bodily autonomy, and personal liberty under Articles 14, 19, and 21 of the Constitution of India. It further analyses judicial interpretations, including the conflicting decisions in *T. Sareetha v. T. Venkata Subbaiah* and *Saroj Rani v. Sudarshan Kumar Chadha*, alongside the transformative constitutional jurisprudence developed in *Justice K.S. Puttaswamy v. Union of India* and *Joseph Shine v. Union of India*. The study also evaluates international human rights standards, comparative legal perspectives, and the continuing debate surrounding the marital rape exception in India. Adopting a doctrinal and analytical research methodology, the paper argues that although an RCR decree does not expressly authorize sexual intercourse without consent, it may create legal, social, and psychological pressures that undermine genuine consent within marriage. Therefore, the paper concludes that any interpretation of RCR must be harmonized with constitutional principles of bodily integrity, decisional autonomy, and human dignity to ensure that marriage does not become a justification for violating an individual's sexual autonomy.

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## 1. INTRODUCTION

Marriage has traditionally been regarded as a social, religious, and legal institution that establishes reciprocal rights and obligations between spouses. Among the remedies available under Indian matrimonial laws, the remedy of Restitution of Conjugal Rights (RCR) occupies a distinctive position. Governed by Section 9 of the Hindu Marriage Act, 1955, Section 22 of the Special Marriage Act, 1954, and analogous provisions under other personal laws, RCR enables a spouse to seek a judicial decree directing the other spouse to resume cohabitation when he or she has withdrawn from the society of the other without reasonable cause. Historically, the remedy originated in English ecclesiastical law and was introduced into the Indian legal system during the colonial period with the objective of preserving the institution of marriage.

Although the purpose of Restitution of Conjugal Rights is ostensibly to promote marital harmony and facilitate reconciliation, its constitutional validity and practical implications have been the subject of sustained legal and academic debate. Critics contend that the remedy reflects a patriarchal conception of marriage by enabling judicial intervention into the private sphere of family life. More importantly, it raises serious concerns regarding the protection of individual autonomy, bodily integrity, privacy, and decisional freedom guaranteed under the Constitution of India. The controversy has become particularly significant in light of evolving constitutional jurisprudence recognizing dignity and personal liberty as foundational constitutional values.

One of the most contentious questions arising from the enforcement of an RCR decree is whether it directly or indirectly legitimizes non-consensual sexual intercourse within marriage. While an RCR decree does not expressly compel spouses to engage in sexual relations, cohabitation has traditionally been understood to include marital consortium, which encompasses companionship, emotional support, and sexual relations. Consequently, the decree may generate legal, social, and psychological pressures that influence a spouse's ability to freely refuse sexual intimacy. This concern assumes greater importance in India, where the legal recognition of marital rape remains limited due to the continuing operation of the marital rape exception under the criminal law, thereby intensifying the debate on the relationship between marital obligations and individual consent.

The constitutional discourse surrounding RCR has evolved significantly through judicial decisions. In *T. Sareetha v. T. Venkata Subbaiah* (1983), the Andhra Pradesh High Court declared Section 9 of the Hindu Marriage Act unconstitutional, holding that it violated the rights to privacy, bodily autonomy, and human dignity by compelling marital cohabitation. However, the Delhi High Court adopted a contrary approach in *Harvinder Kaur v. Harmander Singh* (1984), emphasizing judicial restraint in matters concerning family relationships. Subsequently, the Supreme Court in *Saroj Rani v. Sudarshan Kumar Chadha* (1984) upheld the constitutional validity of Section 9, describing the remedy as an instrument for preserving marriage rather than enforcing sexual relations.

Nevertheless, subsequent constitutional developments, particularly *Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017) recognizing the fundamental right to privacy, and *Joseph Shine v. Union of India* (2018) affirming dignity, equality, and decisional autonomy within marriage, have reopened scholarly discussions regarding the continued constitutional legitimacy and practical consequences of RCR.

International human rights law also emphasizes that marriage cannot extinguish an individual's right to bodily autonomy and free consent. Instruments such as the Universal Declaration of Human Rights (1948), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the International Covenant on Civil and Political Rights (ICCPR) recognize equality, dignity, and freedom from coercion as essential components of marital relationships. Comparative legal developments in jurisdictions such as the United Kingdom, South Africa, Canada, and Australia demonstrate an increasing judicial and legislative commitment to recognizing sexual autonomy within marriage and rejecting doctrines that presume irrevocable consent to sexual intercourse upon marriage.

Against this legal and constitutional backdrop, the present study critically examines whether the remedy of Restitution of Conjugal Rights can directly or indirectly sanction non-consensual intercourse. The research adopts a doctrinal and analytical methodology to evaluate statutory provisions, judicial precedents, constitutional principles, and international human rights standards. It argues that although an RCR decree does not legally authorize forced sexual intercourse, its enforcement may operate in ways that undermine voluntary consent by placing coercive pressure upon spouses to resume marital cohabitation. The paper therefore seeks to determine whether the continued existence of the remedy can be reconciled with contemporary constitutional values of equality, privacy, dignity, bodily autonomy, and informed consent, and whether legislative or judicial reform is necessary to harmonize matrimonial law with modern human rights jurisprudence.

### Literature Review

The issue of Restitution of Conjugal Rights (RCR) and its relationship with non-consensual intercourse has attracted considerable attention from legal scholars, constitutional experts, feminist theorists, and judicial commentators. Existing literature primarily examines the constitutional validity of RCR, its historical evolution, its compatibility with fundamental rights, and its impact on bodily autonomy and marital consent. The following review summarizes significant scholarly contributions relevant to the present study.

### 1. Paras Diwan (2018) – Modern Hindu Law

Paras Diwan explains that the remedy of Restitution of Conjugal Rights was introduced to preserve the institution of marriage by encouraging spouses to resume cohabitation. However, he observes that in modern constitutional democracies, compulsory cohabitation may conflict with the individual's right to privacy and personal liberty. The author emphasizes that the practical effectiveness of RCR remains

doubtful because courts cannot physically enforce marital relations.

## 2. Mulla (2021) – Principles of Hindu Law

Mulla examines the statutory framework governing Restitution of Conjugal Rights under Section 9 of the Hindu Marriage Act, 1955. The work discusses the essential conditions for granting an RCR decree and the recognized legal defenses. It concludes that although the decree is intended to restore matrimonial harmony, it cannot legally compel sexual intercourse or violate constitutional protections guaranteed under Article 21.

## 3. Flavia Agnes (2011) – Family Law and Constitutional Claims

Flavia Agnes critically analyses family law from a feminist constitutional perspective. She argues that the remedy of RCR reflects patriarchal assumptions embedded within matrimonial law and disproportionately affects women. According to Agnes, judicial enforcement of marital cohabitation may indirectly weaken women's sexual autonomy and decision-making power, particularly in societies characterized by unequal gender relations.

## 4. Lotika Sarkar (1984) – Constitutional Perspective on Restitution of Conjugal Rights

Lotika Sarkar questions the constitutional legitimacy of RCR by arguing that judicial orders compelling spouses to return to matrimonial homes interfere with bodily integrity and personal autonomy. She maintains that marital obligations cannot override constitutional guarantees of dignity, privacy, and individual freedom. Her work significantly contributed to the academic debate following *T. Sareetha v. T. Venkata Subbaiah*.

## 5. Upendra Baxi (1986) – Human Rights and Family Law

Upendra Baxi evaluates matrimonial remedies through the lens of constitutional morality and human rights jurisprudence. He argues that family law should evolve consistently with democratic constitutional values rather than preserve outdated patriarchal norms. According to Baxi, any legal mechanism affecting bodily autonomy must satisfy constitutional standards of fairness, proportionality, and dignity.

## 6. Justice K.S. Puttaswamy v. Union of India (2017): Scholarly Analyses

Several constitutional scholars interpreting the *Puttaswamy* judgment emphasize that recognition of the fundamental right to privacy substantially alters the legal discourse surrounding RCR. They argue that decisional autonomy, bodily integrity, and sexual privacy are now firmly protected under Article 21, thereby requiring a fresh constitutional examination of Section 9 of the Hindu Marriage Act.

## 7. Gautam Bhatia (2019) – The Transformative Constitution

Gautam Bhatia discusses the transformative nature of constitutional rights and argues that personal relationships

cannot remain immune from constitutional scrutiny. He maintains that constitutional values such as dignity, equality, and autonomy must govern intimate relationships, including marriage. His analysis indirectly supports reconsideration of remedies like RCR that may affect individual choice within marriage.

## 8. Martha C. Nussbaum (2000) – Women and Human Development

Nussbaum's capabilities approach emphasizes bodily integrity as a fundamental human capability essential for individual freedom and dignity. Although her work does not specifically discuss RCR, it provides a valuable theoretical framework for evaluating whether legal mechanisms that indirectly influence sexual consent are compatible with human rights principles.

## 9. CEDAW Committee – General Recommendation No. 35 (2017)

The Committee on the Elimination of Discrimination against Women recognizes that States have an obligation to protect women from all forms of gender-based violence, including violence occurring within marriage. The Committee stresses that marriage cannot be treated as permanent consent to sexual relations and that domestic legal systems should safeguard women's bodily autonomy and reproductive freedom.

## 10. International Commission of Jurists (ICJ) – Women's Access to Justice Reports

The ICJ highlights that matrimonial laws must respect individual autonomy and equality before the law. Its reports criticize legal provisions that indirectly compel cohabitation or reinforce unequal gender roles. The Commission recommends that family law should prioritize voluntary consent and human dignity over compulsory marital obligations.

## 11. Law Commission of India – Consultation Papers on Family Law and Marital Rape

Various Law Commission discussions acknowledge the growing constitutional importance of privacy, dignity, and equality in matrimonial relationships. Although comprehensive reform regarding marital rape remains pending, the consultations recognize that legal doctrines based on implied marital consent require reconsideration in light of evolving constitutional jurisprudence and international human rights standards.

## 12. Research Gap

The existing literature extensively examines the constitutional validity of Restitution of Conjugal Rights, marital privacy, and gender justice. However, very few studies specifically analyze whether an RCR decree can directly or indirectly sanction non-consensual intercourse by creating legal, psychological, or social pressure upon spouses. Most Scholars discusses RCR and marital rape as separate issues rather than exploring their intersection through the constitutional principles of consent, bodily autonomy, dignity, and decisional freedom. The present

study seeks to bridge this gap by critically examining whether the enforcement of RCR can undermine meaningful consent within marriage while evaluating the issue in the light of contemporary constitutional jurisprudence and international human rights standards.

## 2. RESEARCH METHODOLOGY

The present study adopts a doctrinal and analytical research methodology to examine whether the remedy of Restitution of Conjugal Rights (RCR) can directly or indirectly sanction non-consensual intercourse within marriage. Since the research primarily concerns legal principles, constitutional interpretation, and judicial developments, it is based entirely on qualitative legal research using secondary sources. The study critically analyzes the statutory framework governing RCR under the Hindu Marriage Act, 1955, the Special Marriage Act, 1954, relevant constitutional provisions, and significant judicial pronouncements of the Supreme Court and various High Courts. Particular emphasis is placed on the interpretation of Articles 14, 19, and 21 of the Constitution of India, which guarantee equality, freedom, privacy, dignity, and personal liberty. Landmark decisions such as *T. Sareetha v. T. Venkata Subbaiah*, *Harvinder Kaur v. Harmander Singh*, *Saroj Rani v. Sudarshan Kumar Chadha*, *Justice K.S. Puttaswamy (Retd.) v. Union of India*, and *Joseph Shine v. Union of India* have been critically examined to understand the evolving constitutional discourse surrounding marital autonomy and consent.

The research relies on both primary and secondary sources. Primary sources include constitutional provisions, statutory enactments, judicial decisions, and relevant legal principles, while secondary sources consist of books, scholarly articles, law journals, commentaries, Law Commission Reports, research papers, and international human rights instruments such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Comparative references to legal developments in jurisdictions including the United Kingdom, Canada, Australia, and South Africa have also been utilized to understand global approaches toward marital consent and sexual autonomy.

The collected materials have been analyzed through doctrinal, constitutional, comparative, and human rights approaches in order to evaluate whether the enforcement of an RCR decree is consistent with contemporary constitutional values and international legal standards. The scope of the research is confined to the legal and constitutional implications of Restitution of Conjugal Rights and does not include empirical methods such as surveys or interviews. The study seeks to bridge the existing research gap by specifically examining the relationship between RCR and non-consensual intercourse within marriage, with particular focus on the principles of bodily autonomy, free consent, dignity, privacy, and gender justice. The ultimate objective is to assess whether the continued existence of the remedy can be harmonized with constitutional morality and modern human rights jurisprudence,

while also suggesting appropriate legal reforms wherever necessary.

## CONCEPTUAL AND LEGAL FRAMEWORK

The concept of Restitution of Conjugal Rights (RCR) is founded on the principle that marriage creates reciprocal rights and obligations between spouses, including the duty to cohabit and provide mutual companionship. The remedy enables an aggrieved spouse to seek a judicial decree directing the other spouse to resume cohabitation if he or she has withdrawn from the society of the other without reasonable excuse. Historically, the doctrine originated in English ecclesiastical law and was incorporated into Indian matrimonial law during the colonial period with the objective of preserving the institution of marriage and promoting reconciliation between spouses rather than dissolving the marital relationship. In India, the remedy is primarily governed by Section 9 of the Hindu Marriage Act, 1955, Section 22 of the Special Marriage Act, 1954, and corresponding provisions under other personal laws. Although the decree cannot be enforced through physical compulsion, non-compliance may have legal consequences, including its relevance in subsequent matrimonial proceedings.

The legal framework governing Restitution of Conjugal Rights has been subjected to extensive constitutional scrutiny because of its potential impact on individual autonomy, privacy, dignity, and bodily integrity. The constitutional validity of Section 9 of the Hindu Marriage Act has generated conflicting judicial opinions. In *T. Sareetha v. T. Venkata Subbaiah* (1983), the Andhra Pradesh High Court declared the provision unconstitutional on the ground that it violated the right to privacy, bodily autonomy, and personal liberty guaranteed under Article 21 of the Constitution. However, in *Harvinder Kaur v. Harmander Singh* (1984), the Delhi High Court upheld the provision by emphasizing the importance of preserving matrimonial relationships and limiting judicial interference in family life. The controversy was ultimately addressed by the Supreme Court in *Saroj Rani v. Sudarshan Kumar Chadha* (1984), which upheld the constitutional validity of Section 9, holding that the remedy was intended to facilitate reconciliation and did not authorize compulsory sexual intercourse.

The constitutional landscape has, however, evolved significantly after the Supreme Court's decisions in *Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017) and *Joseph Shine v. Union of India* (2018), which recognized privacy, dignity, decisional autonomy, and individual choice as integral components of Article 21. These judgments have renewed the debate regarding the compatibility of Restitution of Conjugal Rights with modern constitutional values. The recognition of bodily autonomy and sexual privacy has strengthened the argument that marriage cannot extinguish an individual's right to refuse intimacy or surrender control over one's own body. Consequently, the enforcement of an RCR decree must be interpreted in a manner consistent with constitutional morality and fundamental rights.

A central concept examined in this study is non-consensual intercourse, which refers to sexual intercourse occurring

without the free, voluntary, and informed consent of one of the parties. Contemporary constitutional jurisprudence recognizes consent as an expression of individual autonomy, dignity, and bodily integrity rather than a mere marital obligation. Although an RCR decree does not expressly compel spouses to engage in sexual relations, it may create legal, social, economic, or psychological pressures that influence a spouse's freedom to refuse sexual intimacy. This indirect coercion raises important constitutional concerns regarding the authenticity of consent within marriage, particularly in the context of the continuing debate on the marital rape exception in Indian criminal law.

The legal framework must also be understood in light of international human rights principles. Instruments such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) recognize equality, dignity, bodily autonomy, and freedom from coercion as fundamental human rights applicable within marriage. Comparative legal developments in countries such as the United Kingdom, Canada, Australia, and South Africa further demonstrate a growing recognition that marital status cannot constitute irrevocable consent to sexual relations. Accordingly, the conceptual and legal framework of the present study integrates statutory provisions, constitutional principles, judicial precedents, and international human rights standards to critically evaluate whether the remedy of Restitution of Conjugal Rights can directly or indirectly sanction non-consensual intercourse within marriage.

## CONSTITUTIONAL AND HUMAN RIGHTS PERSPECTIVES

The constitutional validity of Restitution of Conjugal Rights (RCR) has been one of the most debated issues in Indian family law because it directly intersects with the fundamental rights of equality, dignity, privacy, bodily autonomy, and personal liberty. Although the remedy is intended to preserve the institution of marriage by encouraging spouses to resume cohabitation, its enforcement raises significant constitutional concerns where marital obligations conflict with individual consent and autonomy. The Constitution of India guarantees that every individual, irrespective of marital status, enjoys equal protection of the law and the right to live with dignity. Consequently, any legal remedy that has the potential to interfere with personal choice or bodily integrity must withstand constitutional scrutiny under Articles 14, 19, and 21.

Article 14, which guarantees equality before the law and equal protection of the laws, requires that matrimonial remedies operate without discrimination or arbitrary state interference. Critics argue that Restitution of Conjugal Rights may disproportionately affect women because social, economic, and cultural inequalities often make it more difficult for them to resist judicial or familial pressure to resume cohabitation. From this perspective, the remedy may perpetuate structural gender inequality by reinforcing traditional notions of marital

obedience rather than recognizing spouses as equal constitutional citizens.

Similarly, Article 19 protects individual freedom and personal choice, while Article 21 guarantees the right to life and personal liberty, which has been expansively interpreted by the Supreme Court to include privacy, dignity, bodily integrity, decisional autonomy, and sexual autonomy. The landmark judgment in Justice K.S. Puttaswamy (Retd.) v. Union of India (2017) recognized privacy as a fundamental right and affirmed that every individual possesses autonomy over intimate personal decisions. Subsequently, in Joseph Shine v. Union of India (2018), the Supreme Court emphasized that marriage does not extinguish the constitutional identity of either spouse and that dignity, equality, and individual choice continue to operate within matrimonial relationships. These constitutional developments have significantly strengthened arguments that marital status cannot justify interference with bodily autonomy or imply perpetual consent to sexual relations.

Judicial opinions on the constitutionality of Restitution of Conjugal Rights have, however, remained divided. In *T. Sareetha v. T. Venkata Subbaiah* (1983), the Andhra Pradesh High Court held that Section 9 of the Hindu Marriage Act violated the constitutional rights to privacy and bodily autonomy because compelling cohabitation intruded into the most intimate sphere of human life. In contrast, the Delhi High Court in *Harvinder Kaur v. Harmander Singh* (1984) upheld the provision by observing that courts should not excessively constitutionalize family relationships. The Supreme Court subsequently upheld the constitutional validity of Section 9 in *Saroj Rani v. Sudarshan Kumar Chadha* (1984), reasoning that the remedy merely sought to facilitate reconciliation and did not authorize compulsory sexual intercourse. Nevertheless, the reasoning in *Saroj Rani* has increasingly been questioned in light of subsequent constitutional jurisprudence recognizing privacy and decisional autonomy as integral aspects of Article 21.

From a human rights perspective, the protection of bodily autonomy and free consent constitutes a universally recognized principle. The Universal Declaration of Human Rights (UDHR) affirms that all human beings are born free and equal in dignity and rights, while the International Covenant on Civil and Political Rights (ICCPR) guarantees personal liberty, privacy, and protection against arbitrary interference in private life. Likewise, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) obligates States to eliminate discrimination against women in all aspects of marriage and family relations and emphasizes that consent must remain free, voluntary, and informed throughout the marital relationship. International human rights bodies have consistently rejected the notion that marriage implies irrevocable consent to sexual intercourse or extinguishes an individual's right to bodily integrity.

Comparative legal developments further reinforce this human rights approach. Several jurisdictions, including the United Kingdom, Canada, Australia, and South Africa, have either abolished the remedy of Restitution of Conjugal Rights or

significantly reduced its legal relevance while simultaneously recognizing marital rape as a criminal offence. These legal reforms reflect the growing international consensus that marriage cannot be treated as a basis for limiting constitutional rights or human dignity. Modern family law increasingly prioritizes voluntary companionship, mutual respect, and informed consent over compulsory cohabitation enforced through judicial mechanisms.

In this constitutional and human rights framework, the central question is not whether an RCR decree expressly authorizes non-consensual intercourse—it clearly does not—but whether the legal, social, and psychological pressure created by such a decree may undermine the genuineness of marital consent. Contemporary constitutional morality requires that every legal institution, including marriage, operate consistently with the principles of equality, dignity, autonomy, and bodily integrity. Therefore, the continuing relevance of Restitution of Conjugal Rights must be evaluated not merely as a matrimonial remedy but as a constitutional issue affecting fundamental rights and human dignity in a democratic society.

#### Judicial Analysis

The judicial interpretation of Restitution of Conjugal Rights (RCR) has evolved through a series of significant decisions that reflect the tension between preserving the institution of marriage and protecting the constitutional rights of individual spouses. Indian courts have consistently acknowledged that the primary objective of an RCR decree is to facilitate reconciliation and restore matrimonial cohabitation rather than to compel sexual relations. However, judicial opinions have differed considerably on whether the remedy is compatible with the constitutional guarantees of privacy, dignity, bodily autonomy, and personal liberty. This divergence has made RCR one of the most contested remedies in Indian family law, particularly in the context of marital consent and non-consensual intercourse.

The constitutional debate began with the landmark judgment of the Andhra Pradesh High Court in *T. Sareetha v. T. Venkata Subbaiah* (1983), where Justice P.A. Choudary declared Section 9 of the Hindu Marriage Act, 1955 unconstitutional. The Court held that compelling a spouse to resume cohabitation through judicial intervention amounted to an infringement of the right to privacy, bodily integrity, and personal autonomy protected under Article 21 of the Constitution. According to the Court, a decree for Restitution of Conjugal Rights intrudes into the intimate sphere of marital life and indirectly exposes an unwilling spouse to the possibility of non-consensual sexual relations. The judgment emphasized that the State cannot compel individuals to share their bodies or personal lives merely because they are legally married.

A contrary approach was adopted by the Delhi High Court in *Harvinder Kaur v. Harmander Singh* (1984). Justice Avadh Behari Rohtagi upheld the constitutional validity of Section 9 by observing that family law should not be subjected to excessive constitutional intervention. The Court reasoned that marriage is a social institution founded upon mutual rights and obligations and that the remedy of Restitution of Conjugal

Rights merely seeks to preserve matrimonial harmony by encouraging spouses to live together. It rejected the contention that the decree directly interferes with privacy or authorizes compulsory sexual intercourse, emphasizing that the law neither permits nor enforces physical coercion.

The constitutional conflict was ultimately addressed by the Supreme Court in *Saroj Rani v. Sudarshan Kumar Chadha* (1984), which upheld the validity of Section 9 of the Hindu Marriage Act. The Supreme Court observed that the purpose of the provision is to facilitate reconciliation between spouses and prevent the unnecessary breakdown of marriage. It clarified that an RCR decree cannot be executed through physical force and therefore does not directly compel sexual intercourse. The Court concluded that the remedy serves a legitimate social purpose by encouraging the restoration of matrimonial relationships. Nevertheless, the judgment has been criticized by later scholars for giving insufficient consideration to issues of bodily autonomy, privacy, and genuine consent within marriage.

The constitutional landscape underwent a significant transformation with the Supreme Court's decision in *Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017), which recognized the right to privacy as a fundamental right under Article 21. The Court held that privacy encompasses bodily integrity, decisional autonomy, and the freedom to make intimate personal choices without unwarranted State interference. Although the judgment did not directly address Restitution of Conjugal Rights, its reasoning has profound implications for the constitutional validity of any legal remedy that affects personal relationships and bodily autonomy. Constitutional scholars argue that the principles laid down in *Puttaswamy* require a fresh examination of Section 9 in light of contemporary constitutional values.

Further constitutional development occurred in *Joseph Shine v. Union of India* (2018), wherein the Supreme Court struck down the offence of adultery under Section 497 of the Indian Penal Code. The Court emphasized that marriage does not extinguish the constitutional identity or autonomy of either spouse and that dignity, equality, and individual choice remain protected within marital relationships. The judgment rejected patriarchal assumptions underlying matrimonial law and reaffirmed that spouses are equal partners rather than subjects of mutual control. Although the case did not directly concern Restitution of Conjugal Rights, its recognition of decisional autonomy significantly strengthens the argument that marital status cannot justify any indirect erosion of free and voluntary consent.

The judicial discourse concerning marital consent has also been influenced by decisions addressing reproductive autonomy and personal liberty. In *Suchita Srivastava v. Chandigarh Administration* (2009), the Supreme Court recognized reproductive choice as an integral component of personal liberty under Article 21 and emphasized that bodily integrity is central to constitutional protection. Similarly, in *Navtej Singh Johar v. Union of India* (2018), the Court reaffirmed that constitutional morality, dignity, and individual autonomy must prevail over social morality in matters concerning intimate

personal relationships. These decisions collectively reinforce the principle that consent within intimate relationships must remain free, informed, and voluntary.

A careful analysis of these judicial precedents demonstrates that no Indian court has held that a decree for Restitution of Conjugal Rights directly authorizes non-consensual intercourse. However, the constitutional concern lies in the indirect consequences of such a decree. Although physical force cannot be employed to enforce an RCR decree, judicial orders requiring cohabitation may create legal, social, economic, and psychological pressure upon an unwilling spouse, thereby weakening the voluntariness of marital consent. This concern has acquired greater significance after the recognition of privacy, dignity, and bodily autonomy as fundamental rights under Article 21. Consequently, while the Supreme Court continues to recognize the legal validity of Restitution of Conjugal Rights, subsequent constitutional jurisprudence invites a critical reassessment of whether the remedy remains compatible with contemporary constitutional morality and human rights principles. The evolving judicial trend increasingly favors an interpretation of matrimonial law that prioritizes individual autonomy, equality, and informed consent over compulsory cohabitation, thereby ensuring that marriage cannot become a legal justification for undermining bodily integrity or non-consensual sexual relations.

### COMPARATIVE LEGAL ANALYSIS

A comparative analysis of matrimonial laws across different jurisdictions demonstrates a significant shift from traditional concepts of marital obligations toward the protection of individual autonomy, bodily integrity, and free consent. While the remedy of Restitution of Conjugal Rights (RCR) continues to exist under Indian matrimonial law, many democratic jurisdictions have either abolished the remedy altogether or rendered it legally obsolete, recognizing that compulsory cohabitation is incompatible with contemporary constitutional values and international human rights standards. The comparative experience of these jurisdictions provides valuable insights into whether a legal remedy aimed at restoring marital cohabitation can coexist with the principles of equality, dignity, and sexual autonomy.

The United Kingdom, from which the doctrine of Restitution of Conjugal Rights originally emerged through English ecclesiastical law, no longer recognizes the remedy. The Matrimonial Proceedings and Property Act, 1970, effectively abolished decrees for Restitution of Conjugal Rights in England and Wales. The legislature acknowledged that courts should not interfere in the intimate personal relationships of spouses by compelling cohabitation. Furthermore, the landmark decision in *R v. R* (1991) abolished the common law doctrine of marital rape immunity, affirming that marriage does not imply irrevocable consent to sexual intercourse. The House of Lords held that every spouse retains an independent right to refuse sexual relations, thereby recognizing bodily autonomy and consent as continuing rights within marriage.

In Canada, family law strongly emphasizes equality, dignity, and personal autonomy rather than judicial enforcement of matrimonial cohabitation. Canadian courts do not grant decrees compelling spouses to resume marital life, and the criminal law recognizes that marriage does not constitute permanent consent to sexual activity. Since the repeal of the marital rape exemption in 1983, Canadian jurisprudence has consistently maintained that consent must be voluntary, informed, and ongoing, irrespective of the marital relationship. This approach reflects the constitutional values embodied in the Canadian Charter of Rights and Freedoms, particularly the guarantees of liberty, security of the person, and equality.

Similarly, Australia has abolished the remedy of Restitution of Conjugal Rights through the Family Law Act, 1975, which introduced a no-fault divorce system based on the irretrievable breakdown of marriage. Australian family law no longer recognizes compulsory cohabitation as a legitimate judicial objective. In addition, marital rape has been criminalized throughout Australia, reinforcing the principle that spouses retain complete sexual autonomy after marriage. The Australian legal framework therefore prioritizes mutual consent and individual dignity over the preservation of marriage through judicial coercion.

The constitutional jurisprudence of South Africa provides another important comparative perspective. The Constitution of South Africa, 1996, expressly guarantees equality, dignity, privacy, and freedom from violence. South African courts have consistently interpreted these rights to protect bodily integrity within marital relationships. The country recognizes marital rape as a criminal offence and rejects legal doctrines that undermine individual autonomy. Matrimonial law in South Africa is therefore guided by constitutional values rather than traditional assumptions regarding marital obligations, ensuring that every spouse retains the right to make independent decisions concerning intimate personal relationships.

The United States also reflects a gradual evolution toward recognizing constitutional protections within marriage. Although family law varies among states, the remedy of Restitution of Conjugal Rights has largely disappeared from modern American jurisprudence. Judicial emphasis has shifted toward privacy, liberty, and individual autonomy following constitutional decisions recognizing personal freedom in intimate relationships. Marital rape has been criminalized in all fifty states, although procedural variations continue to exist. The prevailing legal position rejects the historical assumption that marriage creates perpetual consent to sexual intercourse.

Compared with these jurisdictions, India continues to retain the remedy of Restitution of Conjugal Rights under Section 9 of the Hindu Marriage Act, 1955, and corresponding provisions under other matrimonial statutes. Although the Supreme Court in *Saroj Rani v. Sudarshan Kumar Chadha* upheld its constitutional validity, the subsequent expansion of privacy and dignity jurisprudence through Justice K.S. Puttaswamy (2017) and Joseph Shine (2018) has brought Indian law closer to international constitutional trends emphasizing bodily autonomy and decisional freedom. Nevertheless, unlike several

comparative jurisdictions, India continues to debate the legal status of marital rape and the compatibility of RCR with constitutional guarantees of equality and personal liberty. The comparative legal experience clearly indicates a global movement away from judicial enforcement of marital cohabitation and toward the recognition of free, voluntary, and continuing consent within marriage. Jurisdictions that have abolished Restitution of Conjugal Rights generally regard intimate relationships as matters of personal choice rather than legal compulsion. Their legal systems recognize that preserving marriage cannot justify compromising bodily integrity or constitutional rights. This comparative analysis suggests that while the objective of promoting reconciliation between spouses is legitimate, it must be pursued through voluntary mediation, counseling, and consensual dispute resolution rather than judicial remedies capable of creating direct or indirect pressure upon an unwilling spouse. Consequently, comparative jurisprudence strengthens the argument that matrimonial law should evolve consistently with constitutional morality, gender equality, and internationally recognized human rights standards protecting dignity, autonomy, and meaningful consent.

### 3. CRITICAL DISCUSSION

The remedy of Restitution of Conjugal Rights (RCR) occupies a unique yet controversial position in Indian family law. While its legislative objective is to preserve the institution of marriage by encouraging reconciliation between spouses, its continued relevance must be examined in the context of modern constitutional values and human rights principles. The central issue is not whether an RCR decree expressly authorizes non-consensual intercourse—it does not—but whether the legal, social, and psychological consequences of such a decree may indirectly undermine the free and voluntary consent of a spouse. This distinction is crucial because contemporary constitutional jurisprudence recognizes that genuine consent must be free from coercion, pressure, or undue influence.

Supporters of Restitution of Conjugal Rights argue that the remedy serves an important social purpose by providing spouses with an opportunity to restore matrimonial relationships before resorting to divorce. They contend that marriage is not merely a contractual arrangement but a social institution involving reciprocal rights and responsibilities. According to this view, the decree neither compels physical cohabitation nor authorizes forced sexual relations; rather, it encourages reconciliation through judicial intervention. The Supreme Court in *Saroj Rani v. Sudarshan Kumar Chadha* (1984) adopted this reasoning by observing that the object of Section 9 of the Hindu Marriage Act is to preserve marriage and facilitate reunion rather than to enforce sexual intercourse. However, this justification has been increasingly questioned in light of constitutional developments recognizing privacy, dignity, and bodily autonomy as fundamental rights. Critics argue that although an RCR decree cannot be executed through physical force, it may nevertheless create substantial legal, emotional, economic, and societal pressure on an unwilling spouse to resume marital cohabitation. In many instances,

refusal to comply with such a decree may adversely affect subsequent matrimonial proceedings, including claims relating to divorce, maintenance, or other matrimonial reliefs. Consequently, the decree may indirectly influence an individual's ability to freely refuse sexual intimacy, particularly in a society where social expectations often associate marital cohabitation with sexual obligations.

The constitutional concern becomes even more significant when viewed alongside the continuing debate regarding the marital rape exception in Indian criminal law. Although Indian law increasingly recognizes dignity, privacy, and decisional autonomy under Article 21, the absence of complete legal recognition of marital rape creates a normative inconsistency within the legal system. If marriage does not extinguish constitutional rights, then legal remedies encouraging compulsory cohabitation must also be evaluated against the constitutional requirement of free and informed consent. In this context, the observations of the Andhra Pradesh High Court in *T. Sareetha v. T. Venkata Subbaiah* (1983) continue to retain considerable academic significance, particularly its emphasis on bodily integrity and personal autonomy.

The transformative constitutional jurisprudence developed in *Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017) and *Joseph Shine v. Union of India* (2018) has fundamentally altered the legal understanding of marriage. These decisions affirm that spouses do not lose their individual constitutional identity upon marriage and that dignity, privacy, equality, and decisional autonomy remain enforceable within intimate relationships. Consequently, the traditional assumptions underlying Restitution of Conjugal Rights must be reconsidered in light of these constitutional principles. A legal remedy that indirectly pressures a spouse to resume intimate relations may no longer satisfy the standards of constitutional morality, proportionality, and respect for individual autonomy.

International human rights standards further strengthen this constitutional critique. Instruments such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) consistently recognize bodily integrity, equality, and freedom from coercion as essential human rights applicable within marriage. Comparative legal developments in jurisdictions such as the United Kingdom, Canada, Australia, and South Africa demonstrate a clear movement away from judicial enforcement of marital cohabitation and toward voluntary companionship based on mutual respect and continuing consent. These developments indicate that preserving marriage should not come at the expense of individual dignity or constitutional freedoms.

From a constitutional perspective, the legitimacy of Restitution of Conjugal Rights ultimately depends on whether it can operate without compromising personal autonomy. While the objective of preserving marriage is socially desirable, constitutional democracies require that such objectives be pursued through means that fully respect the rights of both spouses. Voluntary mediation, family counseling, and

alternative dispute resolution mechanisms provide less restrictive and more rights-compatible methods of promoting reconciliation than judicial decrees directing spouses to resume cohabitation. Such approaches recognize that a successful marriage is founded upon mutual affection, trust, and continuing consent rather than legal compulsion.

Therefore, the critical analysis suggests that although Restitution of Conjugal Rights does not directly sanction non-consensual intercourse in law, its practical operation may create circumstances that weaken the voluntariness of marital consent. In the era of constitutional morality, privacy, and gender equality, matrimonial remedies must be interpreted and, where necessary, reformed to ensure complete compatibility with the principles of dignity, bodily autonomy, equality, and free consent. The future of Indian family law should therefore emphasize consensual marital relationships supported by constitutional values rather than compulsory cohabitation rooted in historical legal traditions.

#### 4. FINDINGS

The present study reveals that Restitution of Conjugal Rights (RCR) remains one of the most controversial remedies in Indian matrimonial law due to its intersection with constitutional rights, gender justice, and individual autonomy. Although the statutory objective of the remedy is to preserve marriage by encouraging spouses to resume cohabitation, its practical implications raise significant constitutional and human rights concerns. The analysis of statutory provisions, judicial precedents, constitutional principles, and comparative legal frameworks leads to the following findings.

First, the study finds that an RCR decree does not legally or expressly authorize non-consensual sexual intercourse. Neither Section 9 of the Hindu Marriage Act, 1955, nor any judicial precedent empowers courts to compel spouses to engage in sexual relations. Indian courts, particularly the Supreme Court in *Saroj Rani v. Sudarshan Kumar Chadha*, have consistently maintained that the remedy is intended only to facilitate reconciliation and cannot be executed through physical force.

Secondly, despite the absence of direct legal compulsion, the research finds that an RCR decree may indirectly create legal, psychological, social, and economic pressure upon an unwilling spouse. Judicial orders requiring spouses to resume cohabitation may influence subsequent matrimonial proceedings relating to divorce, maintenance, or other matrimonial reliefs. Such indirect pressure may weaken the voluntariness of consent, particularly where social and cultural expectations continue to associate marriage with obligatory sexual relations.

Thirdly, the study finds that the constitutional validity of Restitution of Conjugal Rights has become increasingly debatable after the recognition of privacy, dignity, bodily autonomy, and decisional freedom as integral components of Article 21 of the Constitution. Landmark judgments such as *Justice K.S. Puttaswamy (Retd.) v. Union of India* and *Joseph Shine v. Union of India* have significantly expanded the scope of constitutional protections available within marriage. These

developments require a fresh constitutional evaluation of Section 9 of the Hindu Marriage Act in light of evolving principles of constitutional morality.

Fourthly, the research finds that Indian judicial opinion has remained divided regarding the constitutional legitimacy of RCR. While the Andhra Pradesh High Court in *T. Sareetha v. T. Venkata Subbaiah* viewed the remedy as violating privacy and bodily autonomy, the Delhi High Court in *Harvinder Kaur v. Harmander Singh* and the Supreme Court in *Saroj Rani* upheld its validity. The divergence reflects the continuing tension between preserving the institution of marriage and protecting individual constitutional rights.

Fifthly, the comparative legal analysis demonstrates that many democratic jurisdictions, including the United Kingdom, Canada, Australia, and South Africa, have either abolished or rendered Restitution of Conjugal Rights legally obsolete while simultaneously recognizing marital rape as a criminal offence. These jurisdictions prioritize voluntary marital relationships, bodily integrity, and continuing consent over judicial enforcement of cohabitation. The comparative experience indicates a global legal trend toward strengthening constitutional protections within marriage.

Finally, the study finds that the existing Indian legal framework requires reconsideration in light of contemporary constitutional jurisprudence and international human rights standards. Although the objective of promoting reconciliation between spouses remains legitimate, compulsory legal remedies affecting intimate personal relationships must be balanced against the constitutional guarantees of equality, dignity, privacy, and bodily autonomy. The research therefore concludes that matrimonial law should increasingly emphasize voluntary reconciliation, counseling, mediation, and informed consent rather than judicial mechanisms capable of creating indirect coercion. Such an approach would better harmonize Indian family law with constitutional morality and internationally recognized human rights principles.

#### Recommendations

In light of the findings of this study, several legal and policy recommendations are proposed to ensure that the remedy of Restitution of Conjugal Rights (RCR) is harmonized with constitutional principles of equality, dignity, privacy, bodily autonomy, and free consent.

First, the legislature should undertake a comprehensive review of Section 9 of the Hindu Marriage Act, 1955, and corresponding provisions under other personal laws to assess their compatibility with contemporary constitutional jurisprudence. Any matrimonial remedy affecting intimate personal relationships must be interpreted and implemented consistently with the guarantees contained in Articles 14, 19, and 21 of the Constitution of India.

Secondly, courts should adopt a rights-oriented interpretation of Restitution of Conjugal Rights by making it clear that an RCR decree cannot, under any circumstances, be construed as creating an obligation to engage in sexual relations. Judicial decisions should expressly recognize that cohabitation does not

diminish an individual's continuing right to bodily autonomy, privacy, or the freedom to refuse sexual intimacy.

Thirdly, greater emphasis should be placed on mediation, reconciliation, family counseling, and alternative dispute resolution (ADR) rather than judicial decrees compelling spouses to resume cohabitation. Voluntary reconciliation based on mutual respect and informed consent is more consistent with constitutional morality than legal mechanisms that may indirectly exert pressure upon an unwilling spouse.

Fourthly, the legislature should consider framing statutory safeguards to ensure that non-compliance with an RCR decree does not automatically result in adverse legal consequences that undermine individual autonomy. Courts should carefully evaluate whether a spouse's refusal to cohabit is based on legitimate concerns relating to dignity, personal safety, mental well-being, domestic violence, or bodily autonomy before drawing adverse inferences in matrimonial proceedings.

Fifthly, judicial officers, family court judges, mediators, and legal practitioners should receive specialized training on constitutional rights, gender sensitivity, human dignity, and the concept of free and informed consent within marriage. Such capacity-building measures would promote rights-based adjudication and reduce the risk of decisions influenced by outdated patriarchal assumptions regarding marital obligations.

Sixthly, Parliament may consider undertaking a broader review of the legal framework governing marital consent and the marital rape exception, so that Indian matrimonial and criminal laws evolve consistently with constitutional principles and international human rights standards. While this issue extends beyond the scope of Restitution of Conjugal Rights, it is closely connected to the broader constitutional commitment to dignity, equality, and bodily integrity.

Seventhly, legal awareness programmes should be conducted to educate spouses regarding their constitutional rights and responsibilities within marriage. Public legal education can help promote the understanding that marriage is founded upon mutual respect, equality, communication, and continuing consent, rather than compulsory obedience or coercive legal obligations.

Finally, future research should adopt empirical and interdisciplinary approaches by examining the practical operation of Restitution of Conjugal Rights through field studies, judicial data, interviews with litigants, lawyers, mediators, and judges, and comparative socio-legal research. Such studies would provide valuable evidence regarding the actual impact of RCR on marital relationships, individual autonomy, and access to justice.

In conclusion, while the objective of preserving marriage remains socially significant, constitutional democracy requires that matrimonial laws evolve in accordance with the principles of constitutional morality, gender justice, human dignity, bodily autonomy, and free consent. A balanced legal framework that encourages voluntary reconciliation without compromising fundamental rights would better serve both the institution of marriage and the constitutional values of the Republic of India.

## 5. CONCLUSION

The present study critically examined whether the remedy of Restitution of Conjugal Rights (RCR) can directly sanction non-consensual intercourse within marriage from constitutional, legal, and human rights perspectives. The analysis of statutory provisions, judicial precedents, constitutional jurisprudence, comparative legal developments, and international human rights standards demonstrates that an RCR decree does not expressly or legally authorize non-consensual sexual intercourse. Indian courts, particularly the Supreme Court in *Saroj Rani v. Sudarshan Kumar Chadha*, have consistently maintained that the object of the remedy is to facilitate reconciliation and preserve matrimonial relationships rather than compel sexual relations through judicial force.

However, the study also establishes that the absence of direct legal authorization does not eliminate the possibility of indirect coercion. An RCR decree may create legal, social, economic, or psychological pressures that influence an unwilling spouse to resume cohabitation, thereby affecting the genuineness of free and voluntary consent. In a constitutional democracy where dignity, privacy, bodily autonomy, and decisional freedom are recognized as fundamental rights, even indirect interference with personal autonomy warrants careful constitutional scrutiny. The recognition of the right to privacy in *Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017) and the affirmation of equality and autonomy within marriage in *Joseph Shine v. Union of India* (2018) have significantly transformed the constitutional understanding of marital relationships. These decisions reaffirm that marriage does not extinguish the constitutional identity or fundamental rights of either spouse.

The comparative legal analysis further reveals a global movement toward protecting individual autonomy and continuing consent within marriage. Several jurisdictions, including the United Kingdom, Canada, Australia, and South Africa, have abolished or rendered Restitution of Conjugal Rights legally obsolete while simultaneously recognizing marital rape as a criminal offence. These legal developments reflect an emerging international consensus that marriage cannot be treated as irrevocable consent to sexual relations and that bodily integrity remains protected regardless of marital status. International human rights instruments, particularly the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), similarly emphasize dignity, equality, freedom from coercion, and respect for individual autonomy.

The study concludes that the continuing constitutional validity of Restitution of Conjugal Rights must be evaluated in light of constitutional morality, which requires every legal institution to operate consistently with the principles of equality, liberty, dignity, privacy, and bodily autonomy. While preserving marriage remains a legitimate legislative objective, such preservation cannot be achieved through legal mechanisms that may compromise the voluntary nature of marital consent. Reconciliation within marriage should arise from mutual trust,

affection, communication, and free choice rather than judicial directives capable of creating coercive consequences. Accordingly, the research concludes that Restitution of Conjugal Rights does not directly sanction non-consensual intercourse as a matter of law; however, its practical operation may indirectly undermine meaningful consent by exerting legal and social pressure upon unwilling spouses. Therefore, the remedy requires continuous constitutional reassessment in the light of evolving jurisprudence and international human rights standards. A rights-based approach that prioritizes mediation, counseling, voluntary reconciliation, and respect for bodily autonomy would better harmonize Indian matrimonial law with the constitutional vision of justice, equality, and human dignity. Ultimately, the future development of family law in India should ensure that the institution of marriage is preserved not through legal compulsion, but through the constitutional values of mutual respect, equality, autonomy, and free consent.

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