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"RESTITUTION OF CONJUGAL RIGHTS AND WOMEN'S AUTONOMY IN INDIA: A CONSTITUTIONAL AND HUMAN RIGHTS ANALYSIS"

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ABSTRACT

The remedy of Restitution of Conjugal Rights (RCR), embedded within India's personal laws, represents a contentious interSect. between matrimonial obligations and individual autonomy. This paper critically examines the constitutional validity and human rights implications of RCR provisions, particularly Sect. 9 of the Hindu Marriage Act, 1955, and analogous provisions under other personal laws, through the lens of women's autonomy. Tracing the colonial origins of this remedy from English ecclesiastical law, the paper analyses its evolution in Indian jurisprudence, from the landmark Rukhmabai case of the nineteenth century to contemporary challenges before the Supreme Court in *Ojaswa Pathak v. Union of India*. The constitutional analysis evaluates RCR against the touchstone of Articles 14, 15, and 21, engaging with fundamental rights jurisprudence on equality, privacy, and personal autonomy as articulated in *K.S. Puttaswamy v. Union of India* and *Navtej Singh Johar v. Union of India*. The paper argues that RCR provisions, by enabling judicial compulsion of cohabitation, disproportionately burden women, infringe upon their sexual and reproductive autonomy, and perpetuate marital power imbalances. Examining the interSect. with India's non-criminalization of marital rape, the paper contends that RCR fails to satisfy constitutional morality and international human rights standards under CEDAW and ICCPR. It concludes by recommending the abolition of RCR, aligning with the High-Level Committee on the Status of Women's 2015 report, and proposes alternative frameworks for addressing marital discord that respect constitutional personhood within marriage.

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1. INTRODUCTION

The institution of marriage in India embodies a profound paradox. It is simultaneously a site of profound personal intimacy and an arena of intense legal regulation. Among the most contentious expressions of this regulation is the remedy of Restitution of Conjugal Rights (RCR), a matrimonial provision that permits courts to decree that an estranged spouse return to cohabitation. Sect. 9 of the Hindu Marriage Act, 1955, the most frequently invoked RCR provision, states that when "either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply... for restitution of conjugal rights."[3] The court, if satisfied, may decree restitution accordingly, effectively ordering the unwilling spouse to resume marital cohabitation.

This seemingly neutral provision masks deep constitutional and human rights controversies. At its core, RCR raises fundamental questions about the limits of state power to regulate intimate relationships, the meaning of autonomy within marriage, and the distribution of power between spouses. For women in particular, RCR operates within a broader matrix of marital subordination, where withdrawal from the matrimonial home often represents not desertion but survival an escape from cruelty, violence, or oppression. Yet the legal framework treats such withdrawal as prima facie wrongful, placing the burden of proving "reasonable excuse" on the woman who has left.

The contemporary significance of this inquiry cannot be overstated. In 2019, students of Gujarat National Law University filed *Ojaswa Pathak v. Union of India*, a public interest litigation challenging the constitutional validity of RCR provisions under the Hindu Marriage Act, the Special Marriage Act, and the Code of Civil Procedure.[4] The petition argues that these provisions violate fundamental rights to equality and life, including the right to privacy and individual autonomy. The case, pending before the Supreme Court, represents the most significant constitutional challenge to RCR since *Saroj Rani v. Sudarshan Kumar* in 1984.[5] Simultaneously, scholarly attention to RCR has intensified, with recent academic work examining its impact on women's sexual autonomy and bodily integrity through historical, sociological, and human rights standpoints.

[3] Section 9, Hindu Marriage Act, 1955. The provision requires the court to be satisfied of the truth of the statements made in the petition and that there is no legal ground why the application should not be granted, and may then decree restitution accordingly.

[4] Ojaswa Pathak v. Union of India, Writ Petition (Civil) No. 250 of 2019, Supreme Court of India. The petition challenges Section 9 of the Hindu Marriage Act, 1955, Section 22 of the Special Marriage Act, 1954, and Order 21 Rules 32 and 33 of the Code of Civil Procedure, 1908.

[5] [1984] INSC 133; AIR 1984 SC 1562; 1985 (1) SCR 303; 1984 (4) SCC 90.

This paper undertakes a comprehensive analysis of RCR through constitutional and human rights frameworks, focusing specifically on its implications for women's autonomy. Sect. 2 traces the historical origins and evolution of RCR, examining its colonial transplantation and subsequent development in Indian jurisprudence. Sect. 3 provides a doctrinal analysis of RCR provisions across personal laws. Sect. 4 constitutes the core constitutional analysis, examining RCR against equality provisions (Articles 14 and 15) and the right to life and personal liberty (Article 21), including the right to privacy. Sect. 5 extends the analysis to international human rights law, considering India's obligations under CEDAW and the ICCPR. Sect. 6 examines the interSect. of RCR with the non-criminalization of marital rape, revealing the compounded vulnerability of married women. Sect. 7 considers contemporary challenges and reform proposals, and Sect. 8 concludes with recommendations for legal reform that would align Indian matrimonial law with constitutional morality and human rights principles.

2. Historical Evolution of Restitution of Conjugal Rights

2.1 Origins in English Ecclesiastical Law

The remedy of restitution of conjugal rights did not originate in Indian legal tradition. Its roots lie in English ecclesiastical law, where marriage was conceived within a religious framework that emphasized indissolubility and mutual obligations. Under English law, marriage was historically considered a property transaction wherein the wife was merely chattel in the husband's possession. The husband occupied the position of "Lord and Master," exercising all marital rights and serving as the predominant authority relating to those rights.

Jewish law provided an antecedent, wherein spouses were entitled to the support and comfort of their partner, and abandonment without legitimate explanation could prompt court intervention. However, the modern RCR remedy emerged from English ecclesiastical courts, which claimed jurisdiction over matrimonial matters and could order a spouse who had withdrawn from cohabitation to return. This remedy was transplanted to India through the British colonial project, which sought to impose English legal frameworks upon the subcontinent while ostensibly preserving personal laws.[6]

[6] Kanika Sharma, Laura Lammasniemi, and Tanika Sarkar, "Dadaji Bhikaji v Rukhmabai (1886) ILR 10 Bom 301: rewriting consent and conjugal relations in colonial India," *Indian Law Review*, 2021, pp. 265-287, available at: https://www.tandfonline.com/doi/full/10.1080/24730580.2021.1962083.

2.2 Transplantation to India: The Colonial Project

The introduction of RCR to India occurred through colonial judicial interpretation rather than explicit statutory enactment. The first significant articulation appeared in *Moonshee Buzloor Ruheem v. Shusoonissa Begum*, where the Calcutta High Court addressed a "restitution suit" under Muslim personal law.[7] The court grappled with whether a Muslim husband could compel his unwilling wife to cohabitate through civil court intervention. Notably, the court introduced principles of natural justice, equity, and morality, indicating that if personal law failed to provide relief for a wife facing mistreatment, the court could refuse to force her residence with her husband.

The Allahabad High Court addressed RCR in *Abdul Kadir v. Salima*, ruling that if a wife ceases cohabitation without reasonable cause, the husband may sue for restitution. This decision adopted a mixed approach, balancing equitable principles with Muslim personal law. The Gauhati High Court later held in *Nazrul Islam v. Mustt. Sajeda Begum* that RCR petitions should be addressed based on Muslim law principles rather than justice and equity, revealing the doctrinal tensions that persisted.

2.3 The Rukhmabai Case: A Foundational Contestation

No discussion of RCR's history in India can omit the seminal case of *Dadaji Bhikaji v. Rukhmabai* (the "Rukhmabai case"), which crystallized the remedy's coercive potential and its gendered implications. Rukhmabai was married at age eleven to Dadaji Bhikaji, aged nineteen, under Hindu rites. Following the marriage, she continued residing in her parental home, as both spouses were minors. Upon attaining majority and completing her education, Rukhmabai refused to join her husband, never having developed any marital relationship with him.[8]

Dadaji filed for restitution of conjugal rights. At first instance, Justice Pinhey of the Bombay High Court dismissed the suit, observing that "it would be a barbarous, a cruel, a revolting thing to do to compel a young lady under those circumstances to go to a man whom she dislikes, in order that he may cohabit with her against her will."[9] He further noted that the practice of allowing restitution suits originated in England under peculiar circumstances and was transplanted to India, having "no foundation in Hindu law."

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[7] Moonshee Buzloor Ruheem v. Shusoonissa Begum* (1867) 11 MIA 551 (Privy Council).

[8] Sharma, Lammasniemi, and Sarkar, "Dadaji Bhikaji v Rukhmabai," providing detailed background on Rukhmabai's life and the circumstances of her marriage.

[9] Dadaji Bhikaji v. Rukhmabai* (1885) ILR 9 Bom 529, 531 (Pinhey, J.), available at: https://sooperkanoon.com/case/332094/dadaji-bhikaji-vs-rukhmabai.

However, this decision was overruled on appeal by a Division Bench, which presented Rukhmabai with an impossible choice: join her husband or face six months' imprisonment. Demonstrating remarkable resistance, Rukhmabai accepted imprisonment rather than submit to a marriage she had never consented to. The matter ultimately required Queen Victoria's intervention, resulting in an out-of-court settlement requiring Rukhmabai to provide Bhikaji with a lump sum payment.

The Rukhmabai case exposed the fundamentally coercive nature of RCR. The remedy operated not to reconcile genuinely estranged spouses but to compel women's submission to marriages arranged during their minority. It revealed that beneath the neutral language of "restitution" lay state-sanctioned coercion against women's bodily autonomy and self-determination.

2.4 Codification in Post-Independence India

Following independence, India undertook codification of personal laws, incorporating RCR provisions across communities. The Hindu Marriage Act, 1955, explicitly provided for restitution of conjugal rights under Sect. 9. The Special Marriage Act, 1954, which permits civil marriages irrespective of religion, included parallel provisions under Sect. 22. The Indian Divorce Act, applicable to Christians, contained Sect. 32 enabling restitution petitions. Muslim personal law, while not statutorily codified in the same manner, recognized analogous claims through customary law and judicial interpretation.[10]

This codification embedded RCR within India's matrimonial jurisprudence, creating a uniform remedy across diverse personal laws while preserving community-specific variations. The provision appeared facially neutral, available to both husbands and wives. Yet as subsequent experience would demonstrate, formal neutrality masked substantive inequality in operation.

2.5 Early Constitutional Challenges

The constitutional validity of RCR faced early challenges. In *T. Sareetha v. Venkata Subbaiah*, the Andhra Pradesh High Court delivered a powerful judgment striking down Sect. 9 of the Hindu Marriage Act as unconstitutional.[11] Justice P.A. Choudary reasoned that RCR violated the right to privacy and human dignity guaranteed under Article 21. He observed that the provision enabled the state to compel cohabitation and sexual intercourse, thereby

[10] Sarker and Biswas, "Restitution of Conjugal Rights v. Individual Autonomy," tracing the statutory incorporation of RCR across different personal laws.
[11] AIR 1983 AP 356.

infringing the most intimate sphere of personal autonomy. The court noted that this remedy was used almost exclusively by husbands and rarely resorted to by wives, revealing its gendered operation despite facial neutrality.[12]

However, *T. Sareetha* was short-lived as binding precedent. In *Saroj Rani v. Sudarshan Kumar* (1984), the Supreme Court took a contrary view, upholding the constitutional validity of Sect. 9. The Court reasoned that RCR served the salutary purpose of preserving marriages and did not constitute forced cohabitation or involuntary sexual intercourse. The judgment adopted what contemporary scholars term "archaic reasoning," privileging the preservation of marriage as an institution over individual autonomy. It held that RCR was not coercive because disobedience resulted only in legal consequences such as attachment of property or eventual divorce, not physical compulsion.[13]

The *Saroj Rani* decision has governed RCR jurisprudence for four decades. However, its reasoning rests upon assumptions that subsequent constitutional developments have substantially undermined. The expansion of privacy jurisprudence, the recognition of intersectional discrimination, and the evolution of constitutional morality all demand reconsideration of RCR's validity.

3. Restitution of Conjugal Rights: Doctrinal Analysis

3.1 The Statutory Framework

Sect. 9 of the Hindu Marriage Act, 1955, provides the archetypal RCR provision. It requires the petitioner to establish three elements: first, that the respondent has withdrawn from the society of the petitioner; second, that such withdrawal is without reasonable excuse; and third, that there is no legal ground why the application should not be granted. The explanation to Sect. 9 places the burden of proving reasonable excuse upon the person who has withdrawn from society.[14]

Similar provisions exist under other personal laws. Sect. 22 of the Special Marriage Act, 1954, mirrors the Hindu Marriage Act provisions. Sect. 32 of the Indian Divorce Act, 1869 (as amended), provides for restitution under Christian personal law. While Muslim personal law lacks an identical statutory provision, courts have recognized restitution suits based on

[12] T. Sareetha, AIR 1983 AP 356, 362-364.
[13] Saroj Rani, AIR 1984 SC 1562, 1568-1569.
[14] Section 9, Hindu Marriage Act, 1955, explanation: "The burden of proving reasonable excuse shall be on the person who has withdrawn from the society."

Muslim law principles, though the remedy operates differently given the contractual nature of Muslim marriage and the husband's power to pronounce talaq.[15]

3.2 Legal Requirements and Procedure

To obtain an RCR decree, the petitioner must demonstrate a bona fide intention to resume cohabitation. The petition must be filed in the family court having jurisdiction over the area where the parties reside. Notably, there is no limitation period for filing RCR petitions under the Hindu Marriage Act, though undue delay may adversely affect the court's decision.[^23]

The procedural trajectory involves filing the petition, service of notice upon the respondent, filing of written response, court hearings, and final determination. Throughout this process, courts are expected to attempt reconciliation between the parties, reflecting the provision's stated objective of preserving marital harmony.

3.3 Defences Available to the Respondent

The law recognizes several defences to an RCR petition. Cruelty, whether physical or mental, constitutes a valid reasonable excuse for withdrawal. Adultery by the petitioner similarly defeats the claim. If the respondent left for valid reasons such as abuse, neglect, or dowry demands, the court will not order restitution. Some courts have recognized that irretrievable breakdown of marriage, though not a statutory defence, may justify denying restitution where cohabitation would be impractical or harmful.[16]

However, these defences operate within significant constraints. The burden of proof rests upon the respondent to establish reasonable excuse. Moreover, what constitutes "reasonable excuse" remains subject to judicial interpretation, which may reflect patriarchal assumptions about marital obligations and women's roles.

3.4 Consequences of an RCR Decree

A decree for restitution of conjugal rights carries significant legal consequences. Most immediately, it constitutes a judicial determination that the respondent has withdrawn without reasonable excuse. If the respondent disobeys the decree and fails to resume cohabitation, this non-compliance may culminate in legal consequences including attachment of property under the Civil Procedure Code. More significantly, under Sect. 13(1A)(ii) of the Hindu Marriage

[15] Sarker and Biswas, "Restitution of Conjugal Rights v. Individual Autonomy," discussing the application of RCR across different personal law systems.

[16] V. Rajesh v. S. Anupriya (2025) SCC OnLine Mad 2734, decided June 4, 2025, available at: https://www.scconline.com/blog/post/2025/06/18/madras-hc-divorce-cruelty-unsubstantiated-sexual-allegations/.

Act, wilful non-compliance with an RCR decree for one year or more constitutes a ground for divorce.[17]

Thus, RCR operates as both remedy and precursor. It offers the petitioner an opportunity to secure the respondent's return, but also creates a pathway to divorce if that return does not occur. This dual function has led scholars to observe that RCR petitions are often filed as strategic "counterblast" measures against divorce petitions or maintenance claims. A husband facing his wife's divorce petition or maintenance application may preemptively file for restitution, placing the wife in the position of either returning to a potentially abusive household or facing divorce proceedings on terms not of her choosing.

3.5 Judicial Interpretation and Application

Courts have interpreted RCR provisions with varying degrees of sensitivity to women's circumstances. Some decisions demonstrate awareness of the power dynamics underlying marital separation. For instance, in *Rina Kumari v. Dinesh Kumar Mahto* (2025), the Supreme Court held that an RCR decree does not absolve a husband from paying maintenance under Sect. 125 CrPC if the wife has valid reasons to live separately.[18] The Court recognized that a wife's refusal to comply with an RCR decree, standing alone, does not disentitle her to maintenance when the underlying marriage involved cruelty or neglect.

Other decisions reveal the persistence of patriarchal reasoning. In *Harvinder Kaur v. Harminder Singh Choudhary*, the court disregarded claims of sexual abuse and violence levelled by the wife, enforcing its own notions of what constitutes cruel treatment.[19] This decision was later affirmed by the Supreme Court, which notably stated that equating forced marital intercourse with rape is a "western construct" not to be endorsed.[^30] Such reasoning exposes the gap between formal legal protections and substantive justice for women.

The Madras High Court's recent decision in *V. Rajesh v. S. Anupriya* (2025) illustrates the complexity of RCR adjudication. There, the wife sought restitution while the husband sought divorce, alleging cruelty based on the wife's unsubstantiated sexual allegations against him and his father. The court granted divorce while preserving the wife's maintenance rights, demonstrating nuanced attention to both parties' circumstances.[20] Yet even this balanced

[17] Section 13(1A)(ii), Hindu Marriage Act, 1955

[18] Rina Kumari Rina Devi Reena v. Dinesh Kumar Mahto Dinesh Kumar Mahato (2025) SCC OnLine SC 12, available at: https://www.scobserver.in/supreme-court-observer-law-reports-scolr/rina-kumari-rina-devi-reena-v-dinesh-kumar-mahto-dinesh-kumar-mahatomaintenance-despite-restitution-of-conjugal-rights/.

[19] Harvinder Kaur v. Harmander Singh Choudhary AIR 1984 Del 66.

[20] V. Rajesh v. S. Anupriya (2025) SCC OnLine Mad 2734.

approach operates within a framework that assumes the desirability of preserving marriages through judicial compulsion.

4. Constitutional Analysis

4.1 The Architecture of Fundamental Rights

The Constitution of India, as the supreme law, renders void any law that abridges fundamental rights. Articles 14, 15, and 21 constitute the relevant analytical framework for examining RCR's constitutional validity. Article 14 guarantees equality before the law and equal protection of laws, prohibiting arbitrary discrimination. Article 15(1) specifically prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. Article 21 declares that no person shall be deprived of life or personal liberty except according to procedure established by law, a provision that has been expansively interpreted to encompass dignity, privacy, and autonomy.

The applicability of fundamental rights to personal laws has been a subject of jurisprudential debate. In *State of Bombay v. Narasu Appa Mali*, the Bombay High Court held that uncodified personal laws are not included within the expression "laws in force" under Article 13(1), thus exempting them from fundamental rights scrutiny.[21] However, this view has been substantially qualified. As Justice Chandrachud observed in the Sabarimala judgment, customs and personal laws cannot be granted constitutional immunity merely because they possess religious or associational features. To immunize them from constitutional scrutiny is to deny the primacy of the Constitution.[22]

4.2 Equality Analysis: Articles 14 and 15

RCR provisions, though facially neutral, operate in practice to disproportionately burden women. The *T. Sareetha* court correctly observed that this matrimonial remedy is used almost exclusively by husbands and rarely by wives. Empirical research confirms that the vast majority of RCR petitions are filed by men, despite formal gender neutrality. This disparate impact triggers constitutional scrutiny under the equality framework.

The Supreme Court in *Navtej Singh Johar v. Union of India* recognized the concept of indirect discrimination, holding that "facially neutral action by the State may have a disproportionate impact upon a particular class."[23] Applying this principle, RCR provisions violate Articles 14 and 15 because they perpetuate and reinforce gender-based subordination

[21] State of Bombay v. Narasu Appa Mali AIR 1952 Bom 84.
[22] Indian Young Lawyers Association v. State of Kerala (2019) 11 SCC 1
[23] Navtej Singh Johar v. Union of India (2018) 10 SCC 1, 142.

within marriage. The remedy operates within a social context where women bear primary responsibility for domestic labor, where their mobility is often restricted, where economic dependence constrains their choices, and where marital violence remains endemic. Compelling a woman's return to cohabitation under these conditions reinforces structural inequality rather than addressing it.

The "reasonable excuse" defence, ostensibly protective of women, fails to remedy this inequality. The burden of proof rests on the woman to establish why she left. Acts of cruelty, abuse, and violence typically occur within the privacy of the home, making them inherently difficult to prove. Judicial attitudes may discount women's experiences or impose unrealistic standards of what constitutes "reasonable" grounds for leaving. The result is that many women face RCR decrees despite having endured circumstances that should legally justify their departure.

Furthermore, the consequences of RCR decrees compound gender inequality. By altering the wife's life pattern irretrievably while leaving the husband's relatively undisturbed, RCR reinforces traditional gender roles. The wife who returns under compulsion assumes domestic responsibilities, may become pregnant, and bears the physical and social burdens of child-rearing. The husband's life continues largely as before. This disparate impact violates the constitutional guarantee of sex equality.

4.3 The Right to Privacy and Personal Autonomy: Article 21

The most powerful constitutional challenge to RCR arises from Article 21's guarantee of personal liberty, particularly as elaborated in the right to privacy jurisprudence. In *K.S. Puttaswamy v. Union of India* (2017), a nine-judge bench of the Supreme Court unanimously affirmed that the right to privacy is a fundamental right protected under Article 21. Privacy, the Court held, includes "the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation."[24] Justice Chandrachud's lead opinion emphasized that privacy "is the constitutional core of human dignity" and encompasses "decisional autonomy" over intimate choices.[25]

This understanding of privacy fundamentally undermines the reasoning in *Saroj Rani*. The *Puttaswamy* court rejected the notion that privacy is surrendered upon marriage. Instead, it affirmed that "the notion of privacy extends not only to those who are situated within four

[24] K.S. Puttaswamy v. Union of India (2017) 10 SCC 1, 116 (Chandrachud, J.), available at: https://translaw.clpr.org.in/case-law/justice-k-s-puttaswamy-anr-vs-union-of-india-ors-privacy/.
[25] Puttaswamy, (2017) 10 SCC 1, 126.

walls but to the lifestyle and choices which they pursue." Marriage does not dissolve the constitutional protections surrounding personhood; it simply contextualizes their exercise.

RCR provisions directly infringe decisional autonomy. By enabling courts to decree that an unwilling spouse must cohabit with the other, RCR transfers decisions about intimate association from the individual to the state. The withdrawing spouse's choice to live separately a choice at the core of personal autonomy is subjected to judicial override. As the petitioners in *Ojaswa Pathak* argue, this violates the right to privacy and individual autonomy protected under Article 21.[26]

The infringement is particularly acute with respect to sexual autonomy. Though proponents argue that RCR merely compels cohabitation, not sexual intercourse, this distinction collapses upon scrutiny. "Conjugal rights" inherently encompass the right to marital intercourse. Black's Law Dictionary defines conjugal rights as including both cohabitation and consummation or marital intercourse. Indian courts have accepted this interpretation, recognizing that sexual relations form an integral aspect of conjugal life. An RCR decree that compels a spouse to reside in the matrimonial home necessarily creates conditions where sexual relations are expected, and refusal may constitute grounds for divorce or further legal consequences.

In a legal system that does not criminalize marital rape, the implications are profound. A woman compelled by court decree to reside with her husband has no legal protection against non-consensual sexual relations within that cohabitation. The state, through its judicial machinery, has effectively enabled a context in which sexual coercion can occur without remedy. This represents a fundamental violation of bodily integrity and decisional autonomy.

4.4 Article 21 and Reproductive Autonomy

RCR's infringement of Article 21 extends to reproductive autonomy. Compelled cohabitation may result in pregnancy, and the legal framework provides inadequate protection to women in this situation. The Supreme Court has held that abortion without the husband's consent constitutes cruelty, creating a perverse incentive structure. A woman who conceives through non-consensual relations compelled by an RCR decree may find herself unable to terminate the pregnancy without facing legal consequences, while carrying an unwanted pregnancy to term imposes profound physical and emotional burdens.

[26] Ojaswa Pathak v. Union of India, Writ Petition (Civil) No. 250 of 2019, as summarized at Supreme Court Observer: https://www.scobserver.in/cases/ojaswa-pathak-union-of-india-challenge-to-restitution-of-conjugal-rights-case-background/.

This interSect. of RCR, reproductive decision-making, and marital rape exemptions creates what scholars term "gender-based violence" manifesting through both visible and invisible signs of oppression. The state, through RCR provisions, becomes complicit in a framework that subordinates women's reproductive choices to marital obligations.

4.5 The Limits of Institutional Privacy

Defenders of RCR often invoke the privacy of the marital institution to justify state non-intervention in certain contexts while paradoxically supporting intervention through RCR decrees. This selective invocation of privacy reveals conceptual confusion. Privacy protects individuals, including those within marriage, from unwarranted state intrusion. It does not protect the institution of marriage from individual assertions of autonomy.[27]

The Supreme Court recognized this distinction in *Joseph Shine v. Union of India* (2018), which struck down the adultery law as unconstitutional. The Court held that while consensual adult relationships are shielded from state interference, this does not justify state compulsion of intimate association. *Joseph Shine* affirmed that marriage cannot become a site for the subordination of individual personhood. Yet RCR does precisely that it subordinates the withdrawing spouse's autonomy to the institution of marriage and the other spouse's claim to consortium.

The Vidhi Centre for Legal Policy's analysis correctly observes that subordinating individual privacy to preserve marriage in the name of public interest is a "death knell for individual rights." Public interest cannot justify the systematic infringement of fundamental rights, particularly when the asserted interest preserving marriages is pursued through means that render marriage a site of coercion rather than consent.

4.6 The Pending Challenge: Ojaswa Pathak v. Union of India

The constitutional questions surrounding RCR are presently before the Supreme Court in *Ojaswa Pathak v. Union of India*. The petitioners, students of Gujarat National Law University, have challenged RCR provisions under the Hindu Marriage Act, Special Marriage Act, and Code of Civil Procedure as violative of Articles 14, 15, and 21.[28]

The petition advances three principal arguments. First, that RCR violates the right to privacy and individual autonomy under Article 21 by compelling cohabitation and, by extension, sexual relations. Second, that RCR violates the right to equality under Article 14 by placing

[27] Joseph Shine v. Union of India* (2019) 3 SCC 39
[28] Ojaswa Pathak v. Union of India, Writ Petition (Civil) No. 250 of 2019.

an additional burden on women, given unequal power structures in Indian families. Third, that RCR's origins in feudal English law, where women were considered chattel, render it inconsistent with constitutional morality.[29]

The Supreme Court's decision in *Ojaswa Pathak* will determine the future of RCR in India. A ruling striking down RCR would align Indian matrimonial law with constitutional developments since *Saroj Rani*, recognizing that individual autonomy cannot be sacrificed to preserve marital institutions. A ruling upholding RCR would require reconciliation with *Puttaswamy* and subsequent privacy jurisprudence, a task that may prove difficult given the expansive understanding of autonomy those decisions articulated.

5. International Human Rights Framework

5.1 CEDAW and India's International Obligations

India's international human rights obligations reinforce the constitutional case against RCR. As a State Party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), India undertakes to eliminate discrimination against women in all matters relating to marriage and family relations. Article 16 of CEDAW requires States Parties to ensure the same rights for both spouses in marriage, including the same right freely to choose a spouse and to enter into marriage only with free and full consent.[30]

RCR provisions, by enabling judicial compulsion of cohabitation, undermine the requirement of free and full consent to marital relations. Consent to marriage, once given, does not constitute perpetual consent to cohabitation regardless of circumstances. International human rights law recognizes that consent must be ongoing and may be withdrawn. CEDAW's General Recommendation No. 21 emphasizes that "a woman's right to choose a spouse and enter freely into marriage is central to her life and to her dignity and equality as a human being." This right to choose necessarily encompasses the right to withdraw from cohabitation when continuing it becomes incompatible with dignity and equality.

The CEDAW Committee has repeatedly expressed concern about laws that compel women's return to matrimonial homes or that fail to protect women from violence within marriage. In its 2014 concluding observations on India, the Committee expressed concern about the coexistence of multiple legal systems with regard to marriage and family relations, which

[29] Supreme Court Observer, "Challenge to Restitution of Conjugal Rights: Ojaswa Pathak v Union of India," updated July 8, 2025, available at: https://www.scobserver.in/cases/ojaswa-pathak-union-of-india-challenge-to-restitution-of-conjugal-rights-case-background/

[30] Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Article 16, adopted 18 December 1979, entered into force 3 September 1981.

"results in deep and persistent discrimination against women." RCR provisions, by enabling such compulsion, place India in potential violation of its CEDAW obligations.[31]

5.2 ICCPR and Bodily Autonomy

The International Covenant on Civil and Political Rights (ICCPR), to which India is also a party, guarantees the right to privacy under Article 17, prohibiting arbitrary or unlawful interference with privacy, family, or home. The Human Rights Committee's General Comment No. 16 emphasizes that this right requires the state to refrain from arbitrary interference and to establish legal frameworks protecting individuals from such interference by both state and non-state actors.[32]

RCR provisions constitute state-sanctioned interference with privacy. By authorizing courts to decree that an unwilling spouse must cohabit with the other, the state directly intrudes upon the most intimate sphere of personal life. This interference cannot be justified as necessary or proportionate to any legitimate aim. While preserving marriage may constitute a legitimate state interest, compelling cohabitation against the will of one spouse is not a proportionate means of achieving that aim, particularly given the availability of alternative approaches such as counseling, mediation, or ultimately divorce.

Article 17 of the ICCPR must be read in conjunction with Article 7, which prohibits torture or cruel, inhuman, or degrading treatment, and Article 3, which guarantees equal rights of men and women to the enjoyment of all civil rights. The Human Rights Committee has recognized that domestic violence and coercive control within marriage may violate these provisions. RCR, by compelling women's return to potentially violent situations, creates conditions in which such violations may occur.

5.3 Comparative International Practice

Comparative analysis reveals that many jurisdictions have abandoned or substantially modified RCR-like remedies. In the United Kingdom, from which India inherited this remedy, the Matrimonial Causes Act 1973 effectively abolished the decree of restitution of conjugal rights. English law recognized that compelling cohabitation was inconsistent with modern understandings of marriage as a consensual partnership. Other common law jurisdictions, including Australia and Canada, have similarly moved away from coercive remedies in favor of frameworks emphasizing consent and autonomy.

[31] CEDAW Committee, General Recommendation No. 21 on Equality in Marriage and Family Relations, 1994, 16.

[32] Human Rights Committee, General Comment No. 16 on the Right to Privacy (Article 17), 1988.

This international trend reflects broader recognition that state-compelled cohabitation cannot produce genuine reconciliation. Marital relationships depend upon willing participation; judicial decrees cannot generate the emotional commitment that sustains intimate partnerships. By retaining RCR, Indian matrimonial law remains anchored to a conception of marriage that much of the common law world has rejected as inconsistent with individual autonomy and gender equality.

5.4 The Human Rights Case for Abolition

Recent scholarship has forcefully articulated the human rights case against RCR. One study critically examines the consequences of RCR from historical, sociological, and human rights standpoints, concluding that the provision contravenes both Indian constitutional principles and international human rights instruments.[33] By mandating marital cohabitation, RCR effectively transfers critical decisions concerning women's sexual and reproductive autonomy to courts, often coercing women into non-consensual sexual relations and infringing their basic human dignity.

This human rights critique is amplified by India's failure to criminalize marital rape. In jurisdictions where marital rape is criminalized, RCR's coercive potential is at least partially mitigated by the recognition that non-consensual sex within marriage constitutes violence. In India, where marital rape remains legal, RCR operates without this countervailing protection. A woman compelled to return to her husband through an RCR decree has no legal recourse if she is subjected to non-consensual sexual relations upon return. The state has effectively used its judicial power to place her in a situation of legal vulnerability.[34]

6. The InterSect. of RCR and Marital Rape Exception

6.1 The Legal Framework

The Bharatiya Nyaya Sanhita, 2023 (BNS), which has replaced the Indian Penal Code, defines rape to include sexual intercourse without consent. However, Exception 2 to Sect. 63 provides that "sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape."[35] This exception, though the age threshold has been raised from fifteen to eighteen through subsequent amendments, continues to exempt marital rape from criminal sanction.

[33] Malik, "Balancing Tradition and Gender Justice," 471-491.
[34] NLS Forum, "Challenging the Marital-Consent Fiction: India's Fragmented Response to the Marital Rape Exception," February 23, 2026, available at: https://forum.nls.ac.in/nlsir-online-blog/challenging-the-marital-consent-fiction-indias-fragmented-response-to-the-marital-rape-exception/.
[35] Bharatiya Nyaya Sanhita, 2023, Section 63(2), Exception 2.

The constitutionality of the marital rape exception is presently challenged before the Supreme Court. Petitions argue that the exception violates Articles 14, 15, and 21 by discriminating against married women and denying them equal protection of criminal law. The government has defended the exception, arguing that criminalizing marital rape would destabilize the institution of marriage and that existing civil remedies provide adequate protection.[36]

6.2 RCR as Enabling Sexual Coercion

The interSect. of RCR with the marital rape exception creates a uniquely vulnerable position for married women. Through an RCR decree, the state compels a woman to reside with her husband. Within that compelled cohabitation, the husband may engage in sexual relations without the wife's consent, and the law provides no criminal remedy. The state has thus used its power to create conditions in which legally sanctioned sexual coercion may occur.

This is not to suggest that every RCR decree results in non-consensual sexual relations. However, the legal framework removes from women both the ability to avoid cohabitation and the ability to resist sexual relations within it. For women who have left marriages due to sexual violence or coercion, an RCR decree represents not reconciliation but renewed exposure to the very harms they sought to escape.

6.3 The Burden of Proof and Judicial Attitudes

The evidentiary burden placed on women resisting RCR petitions compounds this vulnerability. As noted, the burden of proving "reasonable excuse" rests on the withdrawing spouse. A woman who has experienced sexual violence must prove that violence to the court's satisfaction, often without contemporaneous documentation or corroborating witnesses. She must convince a judge, who may hold patriarchal assumptions about marital obligations, that her experiences justify departure from the matrimonial home.

Judicial attitudes toward marital sexual violence have historically been dismissive. The *Harvinder Kaur* line of decisions, affirmed by the Supreme Court, treated claims of sexual abuse with skepticism and suggested that forced marital intercourse is not a matter for judicial concern. While judicial attitudes have evolved, the structural obstacles facing women who seek to prove sexual coercion within marriage remain substantial.[37]

[36] RIT Foundation v. Union of India, Writ Petition (Civil) No. 284 of 2015, pending before the Supreme Court, arising from a split verdict of the Delhi High Court in May 2022.

[37] NLS Forum, "Challenging the Marital-Consent Fiction," discussing recent decisions including Gorakhnath Sharma v. State of Chhattisgarh (2025) and Manish Sahu v. State of Madhya Pradesh (2025).

6.4 Reproductive Consequences

The reproductive consequences of RCR decrees further illuminate the human rights violations at stake. A woman compelled to cohabit may become pregnant. If she seeks to terminate the pregnancy, she faces legal and practical obstacles, including the requirement of spousal consent for abortion in many medical settings. If she carries the pregnancy to term, she assumes primary responsibility for childcare, often in circumstances of economic dependence. The state, through its RCR machinery, has facilitated this outcome without providing any corresponding protection for the woman's autonomy or well-being.

6.5 Toward Coherence: The Incompatibility of RCR with Marital Rape Criminalization

Even if India were to criminalize marital rape, RCR would remain constitutionally problematic. However, the absence of such criminalization renders RCR particularly indefensible. The combination of state-compelled cohabitation and state-sanctioned sexual coercion within marriage creates a legal framework fundamentally incompatible with human dignity and equality.

International human rights law increasingly recognizes that states must protect women from violence within marriage, including sexual violence. The CEDAW Committee's General Recommendation No. 35 on gender-based violence against women emphasizes that state obligations include ensuring that all forms of gender-based violence, including marital rape, are criminalized and effectively prosecuted.[38] India's retention of both RCR and the marital rape exception places it in clear violation of these obligations.

7. Contemporary Challenges and Reform Proposals

7.1 The Strategic Use of RCR in Litigation

Contemporary litigation reveals that RCR petitions are often deployed strategically rather than reconciliatorily. As scholars have observed, these petitions frequently serve as "counterblast" measures against maintenance claims or divorce petitions. A husband facing his wife's legitimate claims for financial support or dissolution of marriage may file an RCR petition, thereby shifting the procedural posture and placing the wife on the defensive.[39]

This strategic deployment exploits the burden of proof allocation. The wife must now justify her departure from the matrimonial home, effectively defending against the implication that

[38] CEDAW Committee, General Recommendation No. 35 on Gender-Based Violence Against Women, 2017, 29.

[39] Agrawal et al., "To Restore the Comforts and Bliss of Married Life."

she is the "erring" spouse. Even if she ultimately prevails, the litigation imposes costs financial, emotional, and temporal that may discourage pursuit of legitimate claims.

7.2 Empirical Realities: What Litigants Actually Seek

Research into family court litigation reveals a disjuncture between the stated purpose of RCR and the way litigants actually employ these provisions. While courts justify RCR as necessary to prevent marital breakdown, litigants often use it for strategic advantage in ongoing matrimonial disputes. The reconciliation objective, however sincerely held by some judges, is frequently secondary to litigants' immediate goals of securing favorable positions in related proceedings.

This empirical reality undermines the policy justification for RCR. If the remedy does not in practice achieve reconciliation but instead exacerbates conflict and entrenches adversarial positions, its retention cannot be justified by reference to marriage preservation.

7.3 The High-Level Committee Recommendations

The High-Level Committee on the Status of Women in India, in its 2015 report, recommended deletion of RCR provisions from various statutes.[40] The Committee recognized that RCR is inconsistent with women's autonomy and human rights, and that its coercive nature cannot be reconciled with constitutional guarantees. This recommendation was endorsed and supported by the Law Commission of India's 2018 Consultation Paper on Reform of Family Law.

These institutional recommendations reflect growing consensus among policy experts that RCR has no place in modern matrimonial law. They provide authoritative support for legislative reform, should the Supreme Court's pending decision in *Ojaswa Pathak* not resolve the matter through constitutional adjudication.

7.4 Alternative Approaches to Marital Discord

Abolishing RCR does not mean leaving matrimonial discord without legal remedies. Alternative approaches exist that respect individual autonomy while addressing genuine concerns about abandonment and support. These include:

Strengthened maintenance frameworks: Rather than compelling cohabitation, the law could ensure that spouses who leave receive adequate financial support. Maintenance

[40] High-Level Committee on the Status of Women in India, Report, 2015, recommending deletion of RCR provisions.

provisions under Sect. 125 CrPC and personal laws could be strengthened and effectively enforced.[41]

Enhanced mediation and counseling services: Voluntary reconciliation efforts, supported by professional counseling and mediation services, could assist couples in addressing marital difficulties without coercion.

Protection orders for vulnerable spouses: For spouses who leave due to violence or abuse, protection orders under the Domestic Violence Act, 2005, provide mechanisms for ensuring safety and support without requiring return to cohabitation.[^70]

No-fault divorce provisions: Expanding access to no-fault divorce would enable spouses to dissolve marriages that have irretrievably broken down without first establishing fault or obtaining RCR decrees.

8. CONCLUSION AND RECOMMENDATIONS

The remedy of restitution of conjugal rights stands as an anomaly in India's constitutional landscape. Rooted in feudal English conceptions of marriage as property and wives as chattel, it persists despite four decades of constitutional development that has progressively expanded the horizons of privacy, autonomy, and equality. The *Puttaswamy* decision's affirmation of decisional autonomy, the *Navtej Singh Johar* recognition of intersectional discrimination, and the *Joseph Shine* rejection of marital subordination all point toward the constitutional obsolescence of RCR.

For women, RCR operates within a broader matrix of legal and social subordination. The burden of proving "reasonable excuse" falls on those who have left, often for compelling reasons of safety and dignity. The non-criminalization of marital rape removes any protection against sexual coercion within compelled cohabitation. The reproductive consequences of coerced return fall disproportionately on women's bodies and lives. Facially neutral, RCR is substantively gendered in its operation and effects.

The constitutional case against RCR is compelling. It violates Articles 14 and 15 by perpetuating gender-based discrimination and imposing disproportionate burdens on women. It violates Article 21 by infringing decisional autonomy, bodily integrity, and privacy rights that the Supreme Court has repeatedly affirmed as fundamental to human dignity. It fails the test of constitutional morality, which requires that laws respect the equal personhood of all individuals, including within marriage.

[41] Section 125, Code of Criminal Procedure, 1973, providing for maintenance of wives, children, and parents.

The international human rights case reinforces this conclusion. CEDAW requires elimination of discrimination in all matters relating to marriage and family relations. The ICCPR prohibits arbitrary interference with privacy and requires equal protection of rights. India's retention of RCR, particularly in combination with the marital rape exception, places it in violation of international obligations and out of step with comparative practice.

The pending decision in *Ojaswa Pathak v. Union of India* presents the Supreme Court with an opportunity to align matrimonial law with constitutional principles. A ruling striking down RCR would recognize that individual autonomy cannot be sacrificed to preserve marital institutions, and that the state's power over intimate relationships has constitutional limits. It would bring Indian law into conformity with the best understanding of constitutional morality and human rights.

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