INTRODUCTION

The present case was the first-of-its-kind judgment under Section 9 of the Hindu Marriage Act. The High Court of Andhra Pradesh ruled in 1983 that Section 9, which seeks to reclaim marital rights, is unconstitutional. It was so because it infringed on the fundamental rights of the constitution. In this case, the lordship decided that the relevant section breaches the right to privacy entrenched in Articles 21 and 14 of the Indian constitution. The court determined that forcing an unwilling individual to live with his or her spouse infringes the Right to Privacy and bodily integrity. In cases like T. Sareetha, it's important to remember that, in a patriarchal society, the woman typically suffers more than the husband. In India, after marriage, the wife moves out of her house and into her husband's, leaving her individuality behind.

1 Hindu Marriage Act 1955, s 9
2 Constitution of India 1950, art 21
3 Right to Privacy enshrined under Article 21 of the Indian Constitution determines to protect the privacy of individuals in all phases of life
4 T Sareetha v T Venkata Subbaiah AIR 1983 AP 356
This comment contends that Section 9 of HMA\[^5\] should be held constitutionally invalid. For this purpose, the note first explains the concept of *Restitution of Conjugal Rights*, then the facts and holding of the present case. After this, the decision is analyzed in detail, followed by a conclusion.

**MEANING OF SECTION 9: RESTITUTION OF CONJUGAL RIGHTS (RCR)**

British common law adopted the remedy of restitution of conjugal rights in India in the 19th century. When either husband or wife withdraws from the other's society, the aggrieved party may file a petition under S. 9 of HMA compelling the other person to live with him or her. This section has been taken as a weighty consideration for the various challenges such as the criminalization of homosexuality, marital rape, etc. The legality of the said provision has been questioned since 1885 in *Bhikaji v Rukhumabai*\[^6\] when Justice Pinhey refused to grant the petition for restitution since the marriage was not between two consenting adults and the provision had no origins in Hindu law. When the court determines that a person's own behavior precludes them from seeking this remedy in the society of their spouse or that a fact demonstrates that they are taking advantage of their wrongdoing, the petition will be dismissed under Section 23\[^7\] of HMA.

**FACTUAL BACKGROUND**

It would be expedient to briefly deal with the facts of the case before moving into the analysis. On December 13th, 1975, Sareetha, a well-known actress, allegedly married Venkata Subbaiah in Tirupathi. They were separated from each other immediately after that and lived apart for more than five years. Venkata petitioned in the Cuddapah Sub-court for RCR under Section 9 of the Hindu Marriage Act, 1955 (hereafter "the Act").\[^8\] Sareetha claimed that the Cuddapah Sub-Court had no jurisdiction over the case because the wedding took place in Tirupathi, and the couple last lived together in Madras. Venkata said that the couple lived together in Cuddapah for six months before moving to Madras and staying with Sareetha's parents for a

---

\[^5\] Hindu Marriage Act 1955, s 9  
\[^6\] *Bhikaji v Rukhumabai* ILR 9 Bom 529 (1885)  
\[^7\] Hindu Marriage Act 1955, s 23  
\[^8\] Hindu Marriage Act 1955, s 9
while. Sareetha filed a Civil Revision Petition against the Sub-judgment Court after the Sub-Court disregarded her preliminary objection. The main questions are whether Section 9 of HMA is constitutionally valid or not, and second, what was their last resided place.

ANALYSIS

The Supreme Court ruled in 1983 that because the right to privacy did not guarantee an individual's autonomy over her own body, the restitution of conjugal rights under Section 9 of the Hindu Marriage Act could not be declared unconstitutional. However, in light of subsequent legal developments, it appears that the problem has to be reconsidered. The case *T.Sareetha v T. Venkata Subbaih* generated a synonymous debate about the validity of S. 9 of HMA. With respect to this question, the court's decision was two-fold; firstly, it termed this matrimonial remedy as savage and barbarous, violating the right to privacy and human dignity as enshrined by the constitution of India in Article 21. Secondly, it is regarded as a violation of Article 14 because it fails the *minimum rationality test* and *traditional classification*. Though the law is *ex-facie* gender-neutral, given that it allows both husband and wife to seek restitution of conjugal rights, the provision inexplicably affects women. People often say the law is equal since either spouse can sue. The fact, however, is that enforcing equality between those not equal only perpetuates that inequality. This is largely used by men either to harass or to avoid payment of maintenance. When the issue of the constitutionality of Section 9 was brought in *Harmander Kaur v Harvinder Singh Choudhary*, the court took the opposite stance, holding that Section 9 does not violate any fundamental rights but instead serves to establish consortium and fulfill the basic purpose of marriage, namely, that husband and wife should live together and fulfill their marriage vows. In *Saroj Rani v Sudarshan Kumar Chadha*, the Supreme Court accepted the High Court's decision. What is the meaning of ‘social life’ when a person has to live with coercive acts and the government intrusion into the bedroom of the

---

9 *T Sareetha v T Venkata Subbaih* AIR 1983 AP 356
11 *T Sareetha v T Venkata Subbaih* AIR 1983 AP 356
12 *Harmander Kaur v Harvinder Singh Choudhary* AIR 1984 Del 66
13 *Saroj Rani v Sudarshan Kumar Chadha* AIR 1984 Del 66
marital home? Therefore, when courts talk about ‘equality’, they should interpret it in the way of ‘free-will’, ‘free-choice’ of both the spouses.

Having said that, the court took a distinct approach to privacy, holding that "the right to privacy belongs to an individual...and is not lost by marital association." The court found that enforcing Section 9 against a person forced her to have sexual relations with her spouse, robbing her autonomy over her body. Here, the judge’s decision is significant because this is a violation of the right to privacy since it "transfers from the concerned individual to the State the decision of whether or not to have marital intercourse."

In 2017, the Supreme Court ruled in K.S. Puttuswamy v Union of India that individuals have a right to privacy that gives them complete control over their bodies. As a result, the court has embraced Justice Choudhary's individualistic understanding of privacy. The High Court said that the section in question was intended for ‘consortium’ rather than ‘cohabitation.’ The High Court ruled that sexual relations are not the ultimate purpose of marriage, and that restitution of conjugal rights merely obligates the partners to live in the same household, not to have sexual relations. Even if a person is forced to live in the same house, this in no way protects the sanctity of or preserves the marriage. In fact, such a marriage is more likely to break, given that one person is living with someone she/he does not want to. Furthermore, how Justice Chowdary positively liberated women by his other comments on issues such as "forced sex is a loss of joy" and his critical assessment, calling it barbaric and legally imposed indignity. This statement is a tacit admission of the existence of marital rape, which the law has yet to recognise and which forces a woman to live with her husband and takes away her right to choose whether or not to have sexual intercourse with him because her husband can forcibly have sexual intercourse with her without legal sanction. Even if section 9 does not make sexual intercourse compulsory, forcing a woman to stay in the matrimonial house puts

---

14 T Sareetha v T Venkata Subbaih AIR 1983 AP 356
15 Ibid
16 KS Puttuswamy v Union of India AIR 2017 SC 4161
17 ‘Consortium’ has been defined as “companionship, love, affection, comfort, mutual services, sexual intercourse”
her in danger of marital rape, depriving her of sovereignty over her own body and infringing on her right to privacy.

By allowing Section 9 but declaring it outdated, the Court merely achieved a pyrrhic victory. Only after two breakthroughs can this jurisprudence be said to have made significant progress. First, if the grounds for divorce from now on include an irretrievable breakdown of the marriage. Second, if courts thoroughly examine family laws against the backdrop of fundamental constitutional protections. In the landmark Mudaliar v Swaminath Thirukoil case, a three-judge bench held that "the fundamental principles of the constitution pervade equality" and that "any rule imposing subsidiary status on women is abhorrent to equality."18 As a result, the primacy of equality and constitutional protections was re-established by the court.

WAY TO DETERMINE THE LAST ‘RESIDENCE’

As far as the second issue is concerned, the court held that their last residence is at Cuddapah and not at Madras, as contended by the petitioner. This issue concerned the interpretation of the word ‘resided’ in Section 19 (iii) of HMA19. The court was of the firm view that the word ‘residence’ implied their permanent place of dwelling and not that place where they resided for short sojourns. However, it was not specified for how much time both had lived in Madras. Though both had lived for six months in Cuddapah, the time in Madras was not explicitly specified. Therefore, the court must have taken this into consideration. Though it is clear, if we delve into the exact time and the meeting of minds before moving to Madras (whether they have agreed to stay in Madras permanently or not), then the decision must have been different. For the first time, the differences between the public and private domains and the importance of looking at law on paper and its impact on society were brought up. One substantial authority used by the court R. Barnet London Borough Council to substantiate that ‘ordinary residence’ would imply a number of factors such as time and intention. Hence, before deciding the question of residence, the court must look into all the requisite factors.

18 Mudaliar v Swaminath Thirukoil (1996) 8 SCC 525
19 Hindu Marriage Act 1955, s 19
CONCLUSION

The judgement given in this case is a way of relief for women because the ramifications of this act are frequently more severe for women. She cannot be forced to go through the terrible process of giving birth if she does not wish to do so. It is impossible to justify government intervention in a couple's marital life. In the Indian context, the courts have a tendency to examine the idea of restitution through the lens of the "lord and master notion," as Flavia Agnes puts it. A review of judicial patterns demonstrates that the court has continued to undercut a woman's freedom to work despite her husband's desires, based on a flawed concept of marital rights. The multiple court rulings to allow the husband to choose the marriage residence demonstrate this clear inequity. The case of *Kailashwati v Ajodhia Prakash* is a good example.

Thus, from the *T. Sareetha* case, it was well substantiated that the *constitutional doctrine of privacy* is not only life-giving but also life-saving. The restitution part is inappropriate for modern gender-conscious culture and goes against natural law principles. It falls short of the standard of justice and fairness. While some may claim that this part intends to preserve the marital bond, we should consider if it is worth surrendering our fundamental rights for a marriage that is not worth surviving. This case remains an important authority in the family law discussions as it is one of the rare cases in the constitutional history of India in which a court considered the constitution as a transformative document and not as a static document. Since the Supreme Court has upheld the constitutionality of Section 9, *lex loci* stills remain the same as it was in pre-1983. But if we consider the newly emerging legal concepts like marital rape this case becomes exceptionally relevant.

20 *Kailashwati v Ajodhia Prakash* 1977 PLR 216