

T. SAREETHA V. T. VENKATA SUBBAIAH: A CONSTITUTIONAL CHALLENGE TO THE RESTITUTION OF CONJUGAL RIGHTS

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I. Introduction

In India, marriage has traditionally been viewed as a sacred and perpetual social bond instead of a contractual arrangement. The *Hindu Marriage Act* (HMA) itself has embodied this perception by acknowledging mutual obligations like companionship, support, and cohabitation of spouses. Section 9, which enforces restitution of conjugal rights (RCR), was enacted with the proclaimed objective of maintaining marital harmony through the return of a withdrawing spouse⁶³⁸. But in reality, this provision has been faulted for limiting "conjugal rights" to the limited concept of sexual cohabitation and allowing state interference in activities that are inherently private.

The case of *T.Sareetha v. T. Venkata Subbaiah* brought this issue into sharp focus by questioning whether compelling cohabitation by means of court directive violates the fundamental right to equality, personal liberty, and privacy under Articles 14, 19, and 21 of the Constitution of India⁶³⁹. The case was highly publicized because it entailed balancing the sanctity of marriage and marital duty with the freedom and bodily autonomy of the individual. It reshaped the lines between law and everyday life, prompting consideration of whether marriage ought to be a place of choice and mutual respect or one of law and coercion.

In the present case commentary, I am going to critically examine the decision rendered by Justice P.A. Choudary in *T.Sareetha v. T. Venkata Subbaiah* by scrutinizing the factual background, legal issues, and reasoning of the court. The commentary evaluates the constitutional details of Section 9 of the HMA, its impact on gender justice and individual liberty, and how the case reconfigured the debate on privacy and autonomy in matrimonial law. It also compares the rationale in *T. Sareetha* with subsequent judicial developments to determine whether the provision, as implemented, really protects the marriage institution or erodes individual rights.

GRASP - EDUCATE - EVOLVE

⁶³⁸ Hindu Marriage Act, 1955 § 9.

⁶³⁹ *T. Sareetha v. T. Venkata Subbaiah*, AIR 1983 AP 356; India Const. arts. 14, 19, 21.

II. Facts of the Case

The petitioner, T. Sareetha, originally stayed with her parents in Madras (now Chennai). The respondent, T. Venkata Subbaiah, lived in Cuddapah in Andhra Pradesh, possessing a house and agricultural holdings. Sareetha was sixteen years old and a high school student in 1975 when she got married to Venkata Subbaiah at Tirupati. After a few years of marriage, the couple parted ways and started staying apart, having no contact thereafter.

Subbaiah subsequently instituted a petition for restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955 in the Subordinate Judge's Court at Cuddapah. Sareetha opposed the petition on the grounds of lack of jurisdiction on the basis that according to Section 19 of the Hindu Marriage Act, 1955, only the court within whose jurisdiction the parties last cohabited could entertain the petition – which in the instant case was Madras.

The Subordinate Judge's Court, nonetheless, overruled her objection, deciding that it had jurisdiction because the parties supposedly co-lived for six months in Cuddapah prior to relocating to Madras. Incensed by this ruling, Sareetha filed a Civil Revision Petition before the Andhra Pradesh High Court, praying for review of the order of the trial court. Aside from the question of jurisdiction, she also questioned the constitutional validity of Section 9 of the Hindu Marriage Act, 1955, arguing that the provision was in contravention of her fundamental rights under Articles 14, 19, and 21 of the Indian Constitution.

III. Issues Raised

1. Jurisdictional Issue:
What constitutes the “last place of residence” of the couple under Section 19(iii) of the Hindu Marriage Act, 1955?
2. Nature and Enforcement of Conjugal Rights:
What constitutes “conjugal rights,” and to what extent can such rights be enforced through a decree of restitution

of conjugal rights under Section 9 of the Hindu Marriage Act, 1955?

3. Constitutional Validity:
Whether Section 9 of the Hindu Marriage Act, 1955 violates the fundamental rights guaranteed under Articles 14, 19, and 21 of the Constitution of India?

IV. The Judgment: Redefining Marital Remedies

In addressing the complex issues raised by the case, Justice P.A. Choudary first examined the question of jurisdiction under Section 19(iii) of the Hindu Marriage Act, 1955 (HMA 1955), focusing on the meaning of the “last place of residence.”⁶⁴⁰ The Court clarified that ‘residence’ refers to the matrimonial home – where spouses lived together for a significant period with shared intention and continuity. Considering the facts, Choudary J. concluded that the couple’s six months of cohabitation at Cuddapah immediately after marriage constituted their last joint residence, even though Sareetha later resided with her parents in Madras. Consequently, the High Court upheld the Cuddapah court’s jurisdiction to entertain the restitution of conjugal rights (RCR) petition.

Justice Choudary then examined the scope of “conjugal rights.” While recognizing that these rights encompass companionship, affection, and shared responsibilities of marital life, the judgment highlighted that, in practice, enforcement of RCR often risks reducing these rights to compelling cohabitation and, by extension, sexual intercourse against the will of a spouse.

The essence of the judgment concerned whether Section 9 of the HMA 1955 is contrary to Articles 14, 19, and 21 of the Constitution – protecting equality, freedom, and life (including privacy and autonomy of the body). Choudary J. opined that forcing a spouse by order of the court to live together is a contravention of fundamental rights, specifically the right to privacy and liberty of a person. The court took

⁶⁴⁰ Hindu Marriage Act, 1955 § 19.

recourse to settled precedents like *Govind v. State of MP* and *Kharak Singh v. State of UP*, as well as international jurisprudence like *Griswold v. Connecticut*, in order to highlight the core importance of privacy and autonomy in family life.⁶⁴¹

The Court further observed that although Section 9 in theory applies equally to both spouses, in practice it affects disproportionately women, and subjects it to concealed gender bias in application.

Finally, the Court declared Section 9 unconstitutional in its entirety, conceding that although the legislation was designed to maintain harmony between marriage partners, any form of mechanism forcing cohabitation violates individual rights and dignity. This historic judgment reinforced that legal remedies have to respect individual sovereignty and cannot be utilized for enforcing intimate relations against a spouse's will.

V. Critical Evaluation: Constitutional and Feminist Implications

The judgement in *T. Sareetha v. T. Venkata Subbaiah* was a turning point in Indian law, confronting the conflict between conjugal duties and personal freedom. Its greatest strength was in addressing the remedy of restitution of conjugal rights (RCR) not just as a procedural measure for reunification, but rather as one that involves personal liberty, privacy, and bodily integrity. By recognising that judicially enforcing cohabitation could amount to coerced sexual intercourse, Justice P.A. Choudary unveiled the hidden coercive potential of Section 9 of the Hindu Marriage Act, transforming marital rights under a constitutional prism that safeguards autonomy and dignity.

Significantly, the court was unwilling to identify "conjugal rights" with sexual rights only, instead highlighting a wider set of mutual obligations like companionship, affection, and emotional

support. This distinction enables the toleration of legitimate marital expectation without strongly rejecting forced intimacy. The judgment also openly acknowledged that, even though Section 9 is gender-neutral on paper, its application discriminates against women disproportionately, making it both a feminist and constitutional critique of patriarchal power within matrimonial law. This line of argument finds echo with feminist arguments of scholars like Leela Fernandes and Indu Bhan, who contend that Section 9 reaffirms patriarchal dominance under the rubric of safeguarding marital commitment, thus laying bare the gendered dynamics of coercion intrinsic to the institution of marriage⁶⁴².

However, the judgment is not without criticism. By successfully striking down Section 9, some alleged the court invaded legislative ground, possibly underestimating the social and reconciliatory roles of marriage. Critics believe that marriage is not just a personal contract but rather a social institution, and therefore, the emphasis of the judgment on individual freedom could have appeared too individualistic. Enforcement also remained ambiguous: the judgment gave little direction on distinguishing acceptable persuasion from unacceptable compulsion. Additionally, its effect did not last long. Higher courts in the cases of *Harvinder Kaur v. Harmander Singh* and *Saroj Rani v. Sudershan Kumar* restored Section 9, affirming the social usefulness of reconciliation.⁶⁴³ This leads to the significant question: was T. Sareetha ahead of its time in being too radical, or did subsequent courts miss the deeper constitutional dimensions of its vision?

In retrospect, Justice Choudary's reasoning appears prescient. At the time, privacy was a

⁶⁴¹ *Govind v. State of Madhya Pradesh*, 1975 Supp. SCC 1; *Kharak Singh v. State of Uttar Pradesh*, 1963 AIR 1295; *Griswold v. Connecticut*, 381 U.S. 479 (1965).

⁶⁴² Saumya Uma, *Lesser than Equal? A Feminist Analysis of Hindu Family Law in India* (Jindal Glob. L. Sch. Working Paper No. 6113, 2021), <https://pure.jgu.edu.in/id/eprint/6113/1/Lesser%20than%20equal.pdf> (last visited Oct. 17, 2025);

Indu Bhan, *Feminist Approach to Gendered Laws in India: A Critique*, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5063964 (last visited Oct. 17, 2025).

⁶⁴³ *Harvinder Kaur v. Harmander Singh Choudhry*, AIR 1984 Del 66; *Saroj Rani v. Sudarsan Kumar Chadha*, 2 SCC 90 (1984).

fragile and underdeveloped constitutional concept in India. Now, following its recognition as a fundamental right in *Justice K.S. Puttaswamy v. Union of India*, the judgment's emphasis on autonomy and dignity has gained renewed relevance.⁶⁴⁴ Contemporary scholars, including Goswami in his article “*Remembering a Revolutionary Decision*” (*Indian Constitutional Law and Philosophy*, 2016), have since recognized *T. Sareetha* as a judgment far ahead of its era – a precursor to *Puttaswamy*'s privacy reasoning and to the emerging jurisprudence on consent and bodily autonomy within marriage.⁶⁴⁵

Personally, I concur with the core thrust of *T. Sareetha*: the institution of marriage cannot override fundamental rights. Yet a more balanced approach – remodeling rather than abolishing RCR – could reconcile individual liberty with marital reconciliation. Reforms may encompass strictly non-coercive interpretation, safeguards of consent, mediation, evidentiary thresholds, and periodic review by the judiciary. These would maintain the avenue of marital reconciliation without trampling over constitutional guarantees at the core of human dignity.

VI. Rethinking Restitution of Conjugal Rights: History, Present Challenges, and Future Directions

The *T. Sareetha v. T. Venkata Subbaiah* ruling not only criticized Section 9 of the Hindu Marriage Act but also established a precedent for evaluating marital remedies on the basis of constitutional values. Historically, restitution of conjugal rights (RCR) reflected intensely patriarchal practices, locating women as the legal and societal dependents of their husbands, as well as in effect, their property. Initial articulations of RCR under colonial law enabled courts to order wives back to their husbands, entrenching a limited understanding

of marital obligations on obedience and co-residence over respect and free choice. This biased view has persisted within family law, invariably prioritising the maintenance of marriage over personal freedom, especially for women.⁶⁴⁶

In the current context, relevance and enforcement of RCR are subjected to growing constitutional examination. Contemporary jurisprudence, particularly recognition of privacy and bodily integrity in *Justice K.S. Puttaswamy v. Union of India*, has brought into focus the conflict between coercive marital cures and fundamental rights⁶⁴⁷. The constitutional soundness of RCR is presently the subject of present litigation before the Supreme Court in *Ojaswa Pathak v. Union of India*, which captures the immediacy of the issue today. Here, petitioners – Gujarat National Law University students – have challenged the provisions of the Hindu Marriage Act, the Special Marriage Act, and the corresponding provisions of the Code of Civil Procedure, stating it is a facilitator of state intrusion into the private sphere and institutionalizes gendered power. Scholars and activists more and more demand abolition or reform of RCR and instead opt for voluntary, dignity-based, mediated reconciliation over coercion.⁶⁴⁸

In the coming years, the future of RCR in India hangs in the balance with how the Supreme Court will reconcile these ideals of the constitution with changing social realities. A vision-driven judgment can lead to the abrogation or substantive overhaul of RCR provisions bringing matrimonial law in line with modern understandings of equality, autonomy, and privacy. This would also be an indication of a return to the spirit of *T. Sareetha v. T. Venkata Subbaiah*, which recognized years ago that marital happiness cannot be preserved with coercion or at the cost of personal liberty. The ultimate result of this case has the capability to

⁶⁴⁴ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

⁶⁴⁵ Anirudh Burman Goswami, *Remembering a Revolutionary Decision*, Indian Const. L. & Phil. (Sept. 23, 2016), <https://indconlawphil.wordpress.com/2016/09/23/remembering-a-revolutionary-decision/> (last visited Oct. 17, 2025).

⁶⁴⁶ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* 45–50 (1999).

⁶⁴⁷ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

⁶⁴⁸ *Ojaswa Pathak v. Union of India*, W.P.(C) No. 250/2019 (S.C.).



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revolutionize the landscape of Indian matrimonial law, reaffirming the fact that the institution of marriage needs to be based on mutual respect, free choice, and the preservation of personal dignity.

