

FORBIDDEN, POLICED, AND CRIMINALISED LOVE: QUEER INTIMACIES, LIVE-IN RELATIONSHIPS, HONOUR, SURVEILLANCE, AND STATE CONTROL

by

Sejal Chopra

Bharati Vidyapeeth (Deemed to be University),

New Delhi, BVIMR

ABSTRACT

The judicial conception of intimate autonomy and the constitutional understanding of “family” under Article 21 have undergone a remarkable transformation from a narrow, heteronormative understanding of marriage to queer relationships, live-in partnerships and “chosen families” outside the realm of biological or marital relations. This reflects a widening judicial awareness that decisional autonomy, dignity, and the right to choose an intimate partner merit the same constitutional protection as formal marriage. This shift has been bolstered by legislation such as the Protection of Women from Domestic Violence Act, 2005, which covers relationships “like marriage” and not only solemnized unions and yet this progress is in tension with an expanding architecture of control: the notice-and-objection procedure under the Special Marriage Act, 1954, anti-conversion laws, mandatory live-in relationship registries under the Uniform Civil Codes of 2025–26, and the extra-legal violence of Khap Panchayats. Together, these produce a “temporal trap” in secular marriage law and a “carceral turn” in cohabitation regulation, exposing couples to surveillance and harassment precisely where the law promises refuge. The Transgender Persons (Protection of Rights) Amendment Bill, 2026, also highlights the contradictory nature of the state’s position towards non-conforming identities. While there have been judicial advances, there remains a real gap between constitutional principle and statutory/administrative practice. To achieve true reform, it is necessary to dismantle surveillance-based regimes of registration, enact a dedicated federal law against honour-based crimes, and reform the publication requirements of the Special Marriage Act, to protect the dignity, privacy and autonomy of those whose intimate choices fall outside majoritarian norms.

Keywords: Intimate autonomy; Article 21; queer relationships; live-in relationships; honour-based violence; Special Marriage Act; state surveillance; chosen families

Introduction

Love is an act of will. It is a private decision that two people make to build a life together. In India this choice has seldom been presented as a private one. The expression of romantic and sexual intimacy has long been the focus of intense scrutiny, both by the community surrounding a couple and by the state above them. Traditional social norms have encouraged marriage within one's caste, religion and gender, viewing any deviation from these limits not as a personal choice, but as a challenge to be corrected. A couple who falls in love across a caste line, or a religious line, or a gender line, does not just make a private choice; they step, often unwittingly, into contested legal and political terrain.

This is something the judiciary has tried to effect in the last two decades. The Supreme Court of India has dismantled these colonial-era prohibitions, court by court, and expanded the scope of protection afforded by Article 21 of the Constitution¹, on the premise that constitutional morality must prevail over social morality and that the rights of the individual cannot be held hostage to majoritarian disapproval. These are no small victories. But there is a yawning chasm between what the courts have proclaimed and what is encountered by couples on the ground, where administrative procedure, state legislation, and social pressure continue to operate largely unaffected by judicial pronouncement.

The nature of this lacuna differs depending on the type of couple, though the principle remains the same. The criminalization of non-heterosexual partners may have been overcome, but the lack of legal standing to marry ensures that their claims to property, children, or pensions cannot rest on any form of secure entitlement. Unmarried couples of opposite genders may also be found languishing on the margins of society. New laws are in place in various Indian states that regulate

¹ India Const. Art. 21

living together under so-called uniform civil codes.² This is not a marginal social pattern: a 2021 Pew Research Center survey of nearly thirty thousand respondents found that fewer than one percent of marriages in India were interfaith, and that roughly two thirds of respondents considered it important to prevent interfaith marriage within their own community, figures that illustrate how deeply endogamy remains entrenched and how exposed couples who cross these lines can be to social retaliation.³

Instead of it being simply an arrangement for several to share living space, it is now subject to registration and supervision. For couples of different castes and religious traditions that attempt to tie the knot via the secular routes, the public notice or announcement, as well as the marriage certificate, the procedure that is supposed to shield them, makes their intention public and draws them to the attention of the very relatives or vigilant groups whose consent they need not obtain but which may well seek to stop them.⁴ State anti-conversion laws may add to their woes in the form of attempts at forced marriage.⁵

The link between these three scenarios isn't chance-it's intent: the legal systems in each case, poised between the constitutional vision and the administrative default, are described. The subsequent chapters, more particularly, chart the development, failure, and proposed reforms of law toward the realization of the promise of the Constitution and the experiences of couples being monitored.

Research Methodology

The research makes use of the stringent method of doctrinal and critical-analytical analysis of both primary sources, such as the constitutional provisions, statutes at both the central and state levels, as well as landmark judgements from the Supreme Court of India and several other high courts. In tandem with this legal structure, the analysis of the secondary sources, such as the research articles on law journals, reports by the Law Commission of India, the policy documents issued by the Ministry of Home Affairs, and also studies from sociology concerning kinship and gender, is used

² The Uttarakhand Uniform Civil Code, 2024 (India)

³ Pew Research Center, 'Religion in India: Tolerance and Segregation' (Pew Research Center, 29 June 2021) <<https://www.pewresearch.org/religion/2021/06/29/religion-in-india-tolerance-and-segregation/>> accessed 8 July 2026

⁴ The Special Marriage Act, 1954, No. 43 of 1954.

⁵ Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021 (India).

as a basis. The critical use of both a feminist and queer legal lens reveals the bio normative, caste-centric, heteronormative assumptions that lie at the core of the legislative scheme concerning family law in India. Furthermore, by situating the discourse of constitutional law against the real-world implementation practices and technological applications, the essay identifies structural loopholes and provides structured policy-based recommendations, aimed at providing the necessary impetus to the legislature as well as the judiciary.

The Evolving Jurisprudence of Intimate Autonomy and Queer Relationships

Queer rights constitutional journeys India: A turn from penal repression to constrained and qualified personal liberties for a hundred and fifty years, intimacy between persons of the same sex was criminalised under Section 377 of the Indian Penal Code, 1860, which proscribed carnal intercourse against the order of nature. This archaic colonial law not only normalised the State-inflicted discrimination and violence against all members of the LGBTQIA+ community but also rendered intimacy between two adults a criminal enterprise for decades.⁶

This culminated in the constitutional turning point when the Supreme Court of India, in the judgment of *Navtej Singh Johar v. Union of India*, struck down Section 377 to the extent that it criminalised the consensual sexual acts between adults. Section 377 was held to be contrary to the fundamental right to Equality (Article 14), non-discrimination (Article 15), Freedom of Expression (Article 19), and the right to Life and Liberty (Article 21). In *Navtej Singh Johar*, the Supreme Court of India accepted that Sexual Orientation is a deep and intimate aspect of self and must be recognized and that “constitutional morality” has supremacy over “social morality,” i.e., public opinion cannot trample upon the fundamental rights of the individual.⁷

Despite being a groundbreaking legal decriminalization of same sex intimacies, the court noted that legal recognition does not guarantee equal and substantial social acceptance nor necessarily full substantive civil rights. The shortcomings of a purely judicial route are clear from the judgement in *Supriyo @ Supriya Chakraborty v. Union of India*, where a five-judge constitution bench ruled against legally validating same-sex marriages under the Special Marriage Act, 1954⁸.

⁶ INDIAN PENAL CODE, 1860, § 377 (repealed in part 2018)

⁷ *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1 (India)

⁸ *Supriyo v. Union of India*, (2023) S.C.C. OnLine S.C. 1348 (India)

However, the Bench, which gave a fractured 3:2 verdict (Justices S. Ravindra Bhat, P.S. Narasimha, and Hima Kohli were part of the majority), stated that the Indian Constitution does not recognize a fundamental and absolute right to marry, and any power to create a novel legal institution like same-sex marriage is exclusively that of the legislature.⁹ The majority recognized that LGBTQIA+ individuals can choose a partner, have relations with that partner, and remain safe from state repression, but ruled out "judicial legislation" that would lead to the rewriting of the secular marriage statute in a gender-neutral form.

The dissenting opinions by Chief Justice D.Y. Chandrachud and Justice Sanjay Kishan Kaul contended that the right to enter into a union is constitutionally protected and the state has a positive duty to civil unions, providing queer individuals spousal rights like joint adoption, inheritance, and rights to take medical decisions on behalf of a partner. Subsequently, a slew of review petitions against the judgment were dismissed, creating and reinforcing a structural divide between queer relationships and married couples' access to formal legal benefits of marriage.¹⁰

Notwithstanding that, an emerging body of literature has established a complementary jurisprudential pathway which supports the relational rights of non-traditional partners based on notions of 'chosen families' and 'atypical relationships.'

This body of work finds precedent in *Deepika Singh v. Central Administrative Tribunal*, in which the Supreme Court held that an archetypal nuclear family, comprised of a fixed mother, a father, and his biological children, disregards the myriad forms of family that exist in the world.¹¹

The practical stakes of this jurisprudential expansion are considerable given the scale of India's transgender population. The 2011 Census recorded 487,803 self-identified transgender persons, yet by 2026 only around 32,500 of them had obtained the identity certificates needed to access social welfare entitlements, underscoring a wide gap between formal recognition and lived access to state protection. This gap is precisely why judicial extension of family and welfare doctrine to

⁹ *Supriyo v. Union of India*, (2023) S.C.C. OnLine S.C. 1348 (Bhat, Narasimha, & Kohli, JJ., majority opinion) (India)

¹⁰ *Supriyo v. Union of India*, (2023) S.C.C. OnLine S.C. 1348 (Chandrachud, C.J., & Kaul, J., dissenting) (India).

¹¹ *Deepika Singh v. Central Administrative Tribunal*, (2022) S.C.C. OnLine S.C. 1088 (India)

non-traditional kinship arrangements carries practical significance well beyond the individual litigants before the court.¹²

According to the Court, relationships within the family can take the form of domestic, cohabitation relationships, blended families, single-parent relationships or same sex partnerships and are no less deserving of welfare protection and legal remedies than the 'conventional' structure. The courts, particularly a few High Courts, have already moved ahead to protect such non-traditional families and to include queer relationships in the protective scope of domestic violence and illegal detention laws. In fact, in *MA v. Superintendent of Police*, the Madras High Court, while deciding a writ petition, directed the release of a woman illegally detained by her biological parents, after the latter came to know of her relationship with another woman, by stating that, as Article 21 mandates that the right to life with dignity cannot be deprived of even for the reason of unlawful arrest or detention by parents or guardians and therefore the definition of family must expand beyond blood and marriage to include chosen families of mutual support and assent.¹³

Likewise, in another judgement passed in 2025, the Madras High Court reiterated that even if they cannot marry, a same-sex couple has a Fundamental right to have a chosen family under Article 21, and the police are under a mandate to protect same-sex couples from family harassment or violence.¹⁴

This judicially expanding conception of family sits uneasily beside a contemporaneous legislative development in a closely related field. The Transgender Persons (Protection of Rights) Amendment Act, 2026, passed by Parliament in March 2026, replaced the self-identification standard recognised in the Supreme Court's 2014 NALSA judgment with a system of mandatory medical board certification, narrowed the statutory definition of a transgender person, and introduced new criminal offences relating to gender transition. Civil society organisations have criticised the amendment as a substantial reversal of a decade of jurisprudential progress, illustrating that even as courts widen the constitutional understanding of intimate identity and

¹² Human Rights Watch, 'India's Transgender Rights Bill a Huge Setback' (Human Rights Watch, 26 March 2026) <<https://www.hrw.org/news/2026/03/26/indias-transgender-rights-bill-a-huge-setback>> accessed 8 July 2026

¹³ *M.A. v. Superintendent of Police*, 2025 S.C.C. OnLine Mad. 2542 (India) (decided 22 May 2025)

¹⁴ *M.A. v Superintendent of Police, Vellore*, 2025 S.C.C. OnLine Mad. 2542 (India) (decided 22 May 2025)

chosen family, the legislature can simultaneously narrow the statutory protections available to closely related communities.¹⁵

Regulating Non-Conformist Heterosexual Unions: Live-In Relationships and Judicial Mediation

Simultaneously to queer rights activism, married Indian couples engaged in sex outside the marriage form an increasingly complex-and deeply mediated-legal and institutional field of existence, one in which the live-in relationship finds itself in a space of profoundly mediated existence within a culture where marriage is a divine sacrament and the quintessential cornerstone of social organisation.

There has not been any particular legislation made by the Indian parliament that addresses the definition and legalization of the live-in relationship. The responsibility of sorting such relationships and protecting the weaker sex of these relationships falls entirely on the judiciary. The earliest judgments relating to the validation of the live-in relationship have been laid down by means of rules of evidence.

The Indian Evidence Act, 1872, under Section 114, allows the court to presume that certain states of affairs exist as part of the natural course of human nature and human behavior.¹⁶ In the case of *Badri Prasad vs. Director of Consolidation*, the Supreme Court of India stated that “in fact, the legal presumption in favour of wedlock would be raised where man and woman are found living together as husband and wife for a long time”. Therefore, the burden of proof rests solely on those who contend otherwise regarding the legality, and it would certainly prefer legitimacy over illegitimacy.¹⁷

An important development of the legislative era was the enactment of the Protection of Women from Domestic Violence Act, 2005 (PWDVA). Unlike the restrictive language “marriage” used in various laws, PWDVA in Section 2(a) applies to any “aggrieved person” who lives or has lived in

¹⁵ Human Rights Watch, 'India's Transgender Rights Bill a Huge Setback' (Human Rights Watch, 26 March 2026) <<https://www.hrw.org/news/2026/03/26/indias-transgender-rights-bill-a-huge-setback>> accessed 8 July 2026; Amnesty International, 'India: Presidential Approval of Regressive Transgender Bill a Major Step Backward for Human Rights' (Amnesty International, 31 March 2026) <<https://www.amnesty.org/en/latest/news/2026/03/india-presidential-approval-of-regressive-transgender-bill-a-major-step-backward-for-human-rights/>> accessed 8 July 2026

¹⁶ INDIAN EVIDENCE ACT, 1872, No. 1 of 1872, § 114

¹⁷ *Badri Prasad v. Director of Consolidation*, (1978) 3 S.C.C. 527 (India)

a “domestic relationship” with the respondent. According to Section 2(f), “domestic relationship” is any relationship between two persons who live or have lived together in a shared household, who are related by consanguinity, marriage, adoption or a relationship like marriage.¹⁸

In the leading case of *Indra Sarma v. V.K.V.Sarma*, it was the issue before the Supreme Court whether all live in relationships qualify under “relationship like marriage” and the Supreme Court in this judgment stated that though live in relation may not be a crime and may not be a sin, all live in relationships of however short a duration cannot be construed as “like marriage” relationship.¹⁹

The Supreme Court created the following multi-point test to be considered by lower courts as to whether the live-in relationship is in “the nature of marriage.”

- Duration of Cohabitation - Parties must have lived together in a shared dwelling for a sufficiently long period of time, instead of a casual or occasional affair.
- Shared Household - Pooling of domestic duties, sharing household expenses, managing, and making collective contributions towards the upkeep of the shared abode is an indication of a marital type of relationship.
- Pooling of Financial Resources - Maintaining joint bank accounts, shared business interests, or joint acquisition of assets or even joint financial management indicates a bond.
- Social Representation - The couple must present to society, as well as friends and family members, a face of having formed a matrimonial type bond, which then gets a social standing.
- Sexual Relationship - Intimate relation of an exclusively sexual nature but focusing on companionship, love, and care, and excluding commercial or casual affairs.
- Intention and Conduct of the Parties - It should be demonstrated that the common intention was to make a shared life with the assumed responsibility and obligation of the parties of such a relationship, and also showing an intention to establish such a type of relation with a common future.

¹⁸ The Protection of Women from Domestic Violence Act, 2005, No. 43 of 2005, §§ 2(a), 2(f) (India)

¹⁹ *Indra Sarma v. V.K.V. Sarma*, (2013) 15 S.C.C. 755 (India)

Another major omission that the Indra Sarma Court tried to fill related to the legal status of a relationship where one partner is already married. In a welcome development, the court stated that a live-in relationship where one partner (in this case, the woman) is unaware of the other partner's prior legal marriage would continue to be recognized as a 'relationship like marriage' under the PWDVA, providing her access to protection and monetary remedies. Conversely, in instances where she enters a cohabiting relationship knowing that the other person is married, this will be considered a non-qualifying relationship, as the legal system would not condone or further a bigamous relationship that jeopardizes a pre-existing marriage.²⁰

The wisdom of this distinction is also debated by scholars, who have critiqued the lack of protection offered to such women against financial destitution and poverty in the event of the demise of these relationships.²¹

The discussion on maintenance for women who were living together has continued to develop in a variety of central legislation.²² For instance, the Code of Criminal Procedure, 1973, in Section 125 (a provision which has since been replaced by Section 144 of the BNSS, 2023) limited the scope of maintenance solely to women who were legally married.²³

While the report of the Committee on Reforms of the Criminal Justice System (Malimath Committee) recommended extending the meaning of 'wife' to encompass any woman who has cohabited with a man over a reasonable length of time²⁴, such legislation has been enacted only piecemeal. However, the judiciary has drawn similarities between the PWDVA and summary maintenance proceedings, with women who meet the requirements for live-in relationships having been allowed maintenance on the pretext of claiming civil compensation for domestic violence²⁵. The legal standing of the children of live-in relationships is perhaps the most revolutionary aspect of judicial innovation to date.

²⁰ *Indra Sarma v. V.K.V. Sarma*, (2013) 15 S.C.C. 755 (India)

²¹ Flavia Agnes, *Law, Justice and Gender: Family Law Reforms in India*, 45 ECON. & POL. WEEKLY 43, 45–48 (2014)

²² Prabha Kotiswaran, *Beyond Domestic Violence: Social Reproduction and the Protection of Women from Domestic Violence Act*, 12 IND. J. GEN. STUD. 211 (2016)

²³ CODE OF CRIMINAL PROCEDURE, 1973, No. 2 of 1974, § 125 (repealed 2023)

²⁴ Ministry of Home Affairs, gov't of India, report of the committee on reforms of the criminal justice system (Malimath Committee Report) vol. i, ¶ 16.3 (2003)

²⁵ *Lalita Toppo v. State of Jharkhand*, (2019) 13 S.C.C. 796 (India) (holding that an unmarried partner or live-in partner can claim maintenance under the Protection of Women from Domestic Violence Act, 2005, even if she is excluded from Section 125 of the Code of Criminal Procedure, 1973)

In *Tulsa v. Durghatiya*, the Supreme Court observed that where the parents of children have lived together for a long duration and in a manner indicative of a stable relationship, such children would not be considered illegitimate, and they have full rights to inherit self-acquired property and have judicial protection from societal stigma.²⁶

The Dark Specter of Honor: Violence, Communal Policing, and Extra-legal Assemblies

Couples are victims of social policing that can often result in physical assault and even murder when intimate decisions make a couple transgress the prescribed boundaries of caste endogamy or religious sectarianism. The extra-constitutional communal bodies of the Khap Panchayat are in existence across many semi-urban and rural hinterlands that play the role of parallel courts and issue diktats to boycott couples, physically, economically, and even socially kill them who marry out of caste, cross clan lines, or marry within the same gotra.

The courts' response to this extra-legal pressure has been decisive. In *Lata Singh v. State of U.P.*, the apex court decided a writ petition that was presented by a young woman of an inter-caste union who was, consequently, attacked viciously by her brothers²⁷. She faced a flurry of false criminal cases, detentions and intimidation that were directed at her husband's family.

The High Court quashed criminal proceedings, stating that being an adult, the petitioner has a right to marry any person of her choice. Justice Markandey Katju who was writing the judgment for the Bench lashed out at honour killings and said, “The caste system is a curse on the nation and the sooner it is eradicated, the better. In fact, it is dividing the nation at a time when we need to be united to face the challenges before the nation ...” He further said, “If parents of a boy or girl disapprove of the inter-caste or inter-religious marriage, the minimum they can do is to disassociate with them, but they can never issue any threat and commit or abet violence.”²⁸

The Court has also expressed that honor killings are merely “barbaric and brutal murders by bigoted persons with feudal minds” and has passed directions for all administrative and police officials across the country to prevent any sort of threats, intimidation or violence being inflicted

²⁶ *Tulsa v. Durghatiya*, (2008) 4 S.C.C. 520 (India)

²⁷ *Lata Singh v. State of U.P.*, (2006) 5 S.C.C. 475 (India)

²⁸ *Lata Singh v. State of U.P.*, (2006) 5 S.C.C. 475, ¶ 15 (Katju, J.) (India)

on inter-caste and inter-religious adult couples. However, the substantive legal framework for honour crimes was codified in the path-breaking Public Interest Litigation in *Shakti Vahini v. Union of India*, which was one of the landmark cases to examine the impact of Khap Panchayats in gathering large assemblies with the intention of killing young couples.²⁹

Hon'ble Court declared: "Right to choose one's spouse is an inherent part of the right to life and personal liberty under Article 21, irrespective of the consent of family/community/clan, once two consenting adults choose to marry each other." To avoid a constitutional crisis and acting under its vast powers under Article 142 of the Constitution, the Hon'ble Supreme Court has laid down specific directions, which are to be enforced throughout the country in three operational groups:³⁰

Preventive Measures

- Identification of Vulnerable Areas: State Governments must immediately identify districts, sub-divisions, and villages where honor killings or unauthorized Khap assemblies have been reported in the preceding five years.
- Intelligence Gathering: Police and administrative officials in these identified areas must maintain active intelligence networks regarding planned Khap assemblies and couples under threat.
- Administrative Advisories: The Home Department of each state must issue specific advisories to local Superintendents of Police, directing them to deploy adequate force to prevent illegal assemblies and warn Khap leaders of criminal liability.
- Invocation of Preventive Detention: Police must utilize Section 144 of the Code of Criminal Procedure to prohibit illegal assemblies if a threat to the life or safety of a couple is identified.

Remedial Measures

- Establishment of Safe Houses: State Governments are mandated to establish at least one "Safe House" in each District Headquarters, managed by the Department of Women and Child Development, to provide secure shelter and basic living amenities to threatened couples.
- Toll-Free Helplines: The creation of a 24-hour toll-free helpline to receive emergency complaints and coordinate immediate rescue operations.

²⁹ *Shakti Vahini v. Union of India*, (2018) 7 S.C.C. 192 (India)

³⁰ *Shakti Vahini v. Union of India*, (2018) 7 S.C.C. 192, ¶¶ 53–56 (India). (Note: Paragraphs 53 to 56 contain the exact text of the three operational groups)

- Special Cells: The constitution of Special Cells in each district, comprising the District Magistrate, the Superintendent of Police, and a District Social Welfare Officer, to evaluate threat perceptions and supervise security arrangements.³¹

Punitive Measures

- Accountability for Official Inaction: Any failure by police or administrative officials to prevent Khap assemblies, report threats, or provide immediate protection to vulnerable couples is classified as deliberate misconduct and negligence⁴. State governments must initiate departmental disciplinary proceedings and criminal prosecution against such defaulting officers⁴.
- Fast-Track Trial Courts: Safe and speedy trial mechanisms must be established for honor crimes, with cases assigned to a single jurisdictional court to ensure trials are completed within a designated timeframe.³²

Despite this long list of directions, there are still structural lacunae in the enforcement. Only in the year 2014 did the National Crime Records Bureau (NCRB) begin recording “honor killings” as a specific motive, whereas official figures are acknowledged to significantly underestimate the scale of the phenomenon, since these often get bundled under the category of general homicides. This undercounting is not merely theoretical: the NCRB's own report for 2018 recorded only a single honour killing nationwide, in Delhi, and its report for the preceding year recorded only one, in Surat, whereas independent field documentation by a Tamil Nadu-based rights organisation identified 195 honour killings in that state alone over a five-year period.³³ 21 22 Up until now, the only state that has been able to pass a stand-alone “honour crime” bill – the Prohibition of Interference with Freedom of Matrimonial Alliances in the Name of Honour and Tradition Bill, 2019 – has been Rajasthan.³⁴

Given the long delays at the level of the central legislature for a federal law, at this point, it is upon transient judicial guidelines that the fate of runaway couples depends.

However, some states have made positive strides towards the enforcement of the directions 23. Thus, on 17th February 2025, the Government of Haryana published a notification with comprehensive instructions on Standard Operating Procedures (SOPs) to guarantee the safety of

³¹ *Id.* at ¶ 54(II)

³² *Id.* at ¶ 54(III)

³³ Aditi Murti, 'Why India Needs a Separate Law for Honor Killings' The Swaddle (undated) <<https://www.theswaddle.com/honor-killings-india-law>> accessed 8 July 2026

³⁴ The Prohibition of Interference with Freedom of Matrimonial Alliances in the Name of Honour and Tradition Bill, 2019 (Rajasthan, India)

runaway couples and specify the responsibilities of administrative authorities, and made the instructions accessible through the website.³⁵

State Surveillance and Administrative Barriers: The Secular Marriage Conundrum

Alongside this horizontally inflicted violence by extraconstitutional bodies, vertical surveillance by state mechanisms-administrative policing-also looms, often targeting couples getting into inter-religious marriages. For couples not wishing to convert, the only option for marriage is through the Special Marriage Act, 1954 (SMA). The SMA is riddled with antiquated procedural laws that are detrimental to the privacy, dignity, and security of couples. For example, Section 5 requires the couple to file a “Notice of Intended Marriage” to the District Marriage Officer if one of them had lived in the area for thirty days, to which under Section 6 the officer must file all such notices to a public “Marriage Notice Book” and also put it up on his “office notice board,” as also issue a copy of the notice by “affixing it to some conspicuous place in his office,” so that anyone could then object to the marriage under Section 7 on grounds like those specified in Section 4 (like age, sound mind etc.) within a period of thirty days of its notification.³⁶

In effect, these notice and publication mandates are a structural form of societal policing. They are used by the State to generate a readily available 'active' registry by publishing couples' details in the public domain, such as their names, photographs, addresses, and religious affiliations. These publicly shared records are regularly utilized by vengeful relatives, right-wing vigilante groups, and other communal organizations to locate and torment couples and then violently rupture them.

Many administrative offices across the India have already transcended the literal scope of the law by dispatching physical notices to parents' native addresses or uploading them to open-access public registration sites, thereby leaving couples vulnerable to honor killings.

This legal scheme of publication was directly contested in *Safiya Sultana v. State of U.P.*, in which an interfaith couple was compelled to convert and get married under the personal law only because

³⁵ Government of Haryana, Home Department, Notification on Standard Operating Procedures (SOPs) for the Protection of Runaway Couples (issued Feb. 17, 2025)

³⁶ The Special Marriage Act, 1954, No. 43 of 1954 (India)

the thirty-day notice period stipulated under the SMA would leave them vulnerable to physical and parental interference.³⁷

Relying on the right to privacy confirmed in *K.S. Puttaswamy's* case (supra), the Allahabad High Court concluded that the obligation to give marriage notices mandated under Sections 6 and 7 of the SMA amounts to an infringement on the fundamental right to privacy and personal liberty as guaranteed under Article 21 of the Constitution.³⁸ It held that the choice of partner and the decision to marry are private choices falling squarely within the ambit of individual autonomy and privacy. Justice Vivek Chaudhary noted that it would be arbitrary and discriminatory under Articles 14 and 15 to compel individuals to reveal their private decision to the entire world while, on the contrary³⁹, no such mandatory notice requirements exist in personal laws like the Hindu Marriage Act, 1955, or customary laws of Muslims.⁴⁰

The High Court read down the publication sections to the effect that, notice should be taken as Directory, rather than as mandatory, the judgement states:

"While giving notice under Section 5 of the Act of 1954, it shall be optional for the parties to the intended marriage to make a request in writing to the Marriage Officer to publish or not to publish a notice under Section 6 and follow the procedure of objections as prescribed under the Act".

The Marriage Officer would proceed to conduct the Marriage upon verifying that the persons are of marriageable age, are identical with the identity cards presented, and are validly married, unless the couple asks for notice to be published or approaches to submit an application as against their objections.

But the judiciary's liberal interpretative progress has steadily been chipped away by corresponding legislative acts by the states. Various states (UP, Uttarakhand, Madhya Pradesh, Gujarat, Haryana,

³⁷ *Safiya Sultana v. State of U.P.*, 2021 S.C.C. OnLine All. 19 (India)

³⁸ *K.S. Puttaswamy v. Union of India*, (2017) 10 S.C.C. 1 (India)

³⁹ *Safiya Sultana v. State of U.P.*, 2021 S.C.C. OnLine All. 19, ¶¶ 35–37 (Chaudhary, J.) (India); see also INDIA CONST. Art. 14, 15.

⁴⁰ The Hindu Marriage Act, 1955, No. 25 of 1955

and Karnataka) have introduced draconian "anti-conversion" laws in the guise of "Freedom of Religion Acts" in recent years. These Acts focus on conversions made purely for marriage.⁴¹

The converted person must obtain a declaration from the District Magistrate at least sixty days in advance, and the conversion must pass through an administrative pre-investigation by the police, who will check if the conversion was "free from allurement, force or coercion".⁴²

The onus of proving that the conversion was "free" and "voluntary" squarely falls on the couple and non-compliance entails hefty penalties of up to ten years of imprisonment. The laws institute state oversight on personal decisions by requiring police inquiries into matters of love and faith.⁴³

This legal framework has now been codified in the 2024 Uttarakhand Uniform Civil Code (UCC), which compels the registration of all live-in relationships with the district authorities within one month of commencing a live-in. Under the UCC, registrars may even make thorough investigations, consult community leaders, and inform the local police station, with criminal liability of up to three months' imprisonment in case of non-compliance. This is a deviation from the constitutionally sanctified space for relational privacy to an ever-shrivalled, State-mandated conception of the institution of marriage and living together.⁴⁴

Early implementation data from Uttarakhand lend weight to these privacy concerns. In the first ten days after the UCC portal went live in January 2025, only a single live-in relationship was formally registered, even as officials acknowledged several further applications pending verification, a pattern lawyers and commentators have read as evidence that couples are avoiding a process one senior advocate described as inviting the state to peep into bedrooms rather than embracing a genuine protective framework. Such reluctance suggests that mandatory registration is more likely to drive cohabiting couples further from the reach of protective law than to draw them into it.⁴⁵

⁴¹ Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021 (India)

⁴² Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021, §§ 8, 9 (India)

⁴³ Madhya Pradesh Freedom of Religion Act, 2021, § 4, § 11 (India)

⁴⁴ The Uttarakhand Uniform Civil Code, 2024 (India)

⁴⁵ 'Uttarakhand UCC Rollout: 1 Live-in Relationship Registered in First 10 Days' Business Standard (5 February 2025) <https://www.business-standard.com/india-news/uttarakhand-ucc-rollout-1-live-in-relationship-registered-in-first-10-days-125020500963_1.html> accessed 8 July 2026

Constructive Policy Recommendations

State-sanctioned surveillance, group violence, and executive excesses highlight lacunae in the present legal framework. Structural reforms to bring Indian family law in consonance with principles of privacy, equality, and dignity espoused by the Constitution.

1. Statutory Amendment to the Special Marriage Act, 1954

Special Marriage Act to be revised to dispense with mandatory 30-day public notice requirement (Secs 5,6,7,8,9,10). Personal information should not be published on websites or at the registrar's office.⁴⁶

It should be made more in sync with marriage acts for religion, where public notices are not required (as is the case in the Hindu Marriage Act, 1955).⁴⁷

All eligibility criteria, like age, mental condition, and consent, should be tested in private with a sealed declaration from the two partners and three witnesses and immediately registered.

This recommendation finds support in the Law Commission of India's own prior findings. As far back as its 1974 and 2008 reports, and again in its 2012 Report No. 242 on the prevention of honour-based interference with matrimonial alliances, the Law Commission recommended that the gap between notice and registration under the Special Marriage Act be removed altogether to simplify the process and reduce couples' exposure to interference, a recommendation that has been reiterated for decades without legislative action.⁴⁸

2. Enactment of a Comprehensive Federal Law on Honor Crimes

To address the legislative deadlock which formulates the root cause of Shakti Vahini, a new standalone central law against honour killings and extra-constitutional enforcement, which can be the primary tool against all forms of such crime and abuses of power.⁴⁹ It should explicitly proscribe the formation of Khap Panchayats or any communal congregation that aims at the

⁴⁶ The Special Marriage Act, 1954, No. 43 of 1954, § 4, § 5, § 6, § 7

⁴⁷ The Hindu Marriage Act, 1955

⁴⁸ Alok Singh, 'Special Marriage Act's Notice Regime and Judicial Denial of Protection' (Vidhi Centre for Legal Policy, 2026) <<https://vidhilegalpolicy.in/blog/special-marriage-acts-notice-regime-and-judicial-denial-of-protection/>> accessed 8 July 2026; Law Commission of India, Prevention of Interference with the Freedom of Matrimonial Alliances (in the Name of Honour and Tradition): A Suggested Framework (Law Com No 242, 2012)

⁴⁹ Neha Chauhan, *The Dark Shadow of Honour: Evaluating the Judicial and Legislative Responses to Honour Crimes in India*, 24 NAT'L L. SCH. INDIA REV. 89, 94–98 (2022)

subversion of consent and adult choices in marriage.⁵⁰ The central law needs to reflect and implement the Supreme Court mandate of mandating funds and maintaining the secure safe houses in each district, and hold executive officials and police liable to criminal prosecution, for their apathy, through the criminal law framework.⁵¹

3. Harmonizing Central and State Laws to Limit Intrusive Registries

The Centre and State Assemblies should also reflect on the extreme measures of invasive registration such as Uttarakhand's UCC's mandatory live-in registrations.⁵² While the protection of women from domestic abuse in such relationships is the primary state's aim, the UCC, requiring police verification, informing parents, and penal action for failing to do so, effectively reduces a protectionary tool to a means of state and parental control.⁵³ Commentators have also pointed to Section 386 of the Uttarakhand Code, which permits third parties to lodge complaints alleging that a live-in relationship violates the Code's provisions, as a mechanism that invites precisely the kind of relative-driven or neighbourhood-driven policing that registration was ostensibly meant to guard against.⁵⁴ Live-in registrations should be fully optional, only for obtaining welfare benefits and maintenance payments as per the PWDVA, and not mandated via penal provisions.⁵⁵

Conclusion

In India, constitutional progression of intimate rights illustrates a dichotomy between statutory advances and social backlash. With key judicial pronouncements such as *Navtej Singh Johar*, *Puttaswamy*, *Lata Singh* and *Shakti Vahini*, the Supreme Court of India has established that the liberty to select a partner, live together and be left to one's own device within one's relationship forms the cornerstone of the right to life and personal liberty under Article 21. Through landmark

⁵⁰ Anne Hellum & Shreya Atrey, *Intersectional Autonomy: State Responsibility for Honour Killings*, in *GENDER AND HUMAN RIGHTS JURISPRUDENCE IN INDIA* 112, 118–122 (Kamala Sankaran ed., Oxford Univ. Press 2023)

⁵¹ *Shakti Vahini v. Union of India*, (2018) 7 S.C.C. 192, ¶ 54(II)–(III) (India)

⁵² The Uttarakhand Uniform Civil Code, 2024, §§ 378–381 (India) (compelling the partners of any live-in relationship to submit a statement of live-in relationship to the Registrar within one month of commencing cohabitation).

⁵³ *Id.* at §§ 383–386

⁵⁴ Yukta Adha, 'The Uniform Civil Code (UCC) of Uttarakhand: Advancement in Gender Justice or Violating Individual Liberties?' (Citizens for Justice and Peace, 31 January 2025) <<https://cjp.org.in/the-uniform-civil-code-ucc-of-uttarakhand-advancement-in-gender-justice-or-violating-individual-liberties/>> accessed 8 July 2026

⁵⁵ The Protection of Women from Domestic Violence Act, 2005, No. 43 of 2005, § 2(f), § 20, § 22 (India)

judgments the Court has continued to uphold constitutional morality that must overcome societal backlash in order to protect individual choices.

However, the legal framework of intimate rights suffers due to statutory and bureaucratic shortcomings. This has allowed administrative limitations, such as the notice requirements under the progressive secular Special Marriage Act, 1954, to impose additional burdens upon innocent couples, already navigating increasing state-level anti-conversion legislations and the proliferation of mandatory live-in registration registries. The judiciary's efforts to realise the scope of personal liberty cannot be solely realised through a series of landmark judicial pronouncements¹. We must seek administrative reform, which would include modernizing central family laws, dismantling state surveilled registration frameworks, criminalising all extra-constitutional interventions and finally protecting our right to love, live and build the life that we choose, against communal vigilantism and state-sanctioned interventions.



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