



# **The Paradox of Autonomy: Why Intimate Relationships Still Burden the Courts and the Law**

***Dr. Hitesh N. Dave***

Advocate & Research Guide  
[hiteshdave@gmail.com](mailto:hiteshdave@gmail.com)

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## **ABSTRACT :**

In the labyrinth of legal structures and societal conventions, few subjects raise as many paradoxes as the law's treatment of human relationships. The most private sphere of life, the bond between two individuals, has become one of the most intensely regulated arenas in the modern legal landscape. Love, cohabitation, intimacy, and dissolution of relationships are all matters of personal choice, yet these choices frequently find themselves entangled in the machinery of courts, legislation, and public morality. The apparent contradiction lies in the fact that while constitutional frameworks globally, including India, uphold the sanctity of personal autonomy, the legal system continues to mediate, adjudicate, and even moralize these personal decisions.

This article explores the legal and philosophical tensions between individual autonomy in intimate relationships and the state's intervention through law. In the Indian context, the paradox becomes especially pronounced, courts are overwhelmed with matrimonial and domestic disputes that linger for years, even as modern notions of privacy, liberty, and gender equality gain legal recognition. This tension reveals the duality of the law, protective yet paternalistic, enabling yet intrusive.

**Key Words :** Love and Affection, Marriage, Live in Relationship, Abuse of Law by Woman, Divorce, Maintenance, Judicial Interference

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## **1. Introduction: The Law–Love Conundrum**

The relationship between law and personal autonomy must be viewed not merely through a legalistic lens, but as a philosophical and cultural inquiry into the boundaries between public interest and private will. Should the state arbitrate in the bedroom, the dining table, or the emotionally sacred spaces of shared life? If not, then what is the legitimate domain of law in regulating relationships, and where should it respectfully retreat?

By interrogating these questions, the article ultimately calls for a re-imagination of relationship laws, one that respects personal choice, recognizes evolving gender roles, ensures minimal intervention, and upholds dignity without reinforcing dependence. In the spirit of constitutional morality, human dignity, and social progress, this work seeks not just to criticize the present legal order, but to envision a framework that aligns law with love, autonomy with dignity, and justice with modernity.

The genesis of this inquiry lies in a simple but profound question, if human relationships are inherently personal, emotional, and subjective, what justifies their regulation under public law? Moreover, how should the law evolve when one partner, often the woman, transitions from a dependent social position to an economically and constitutionally empowered individual? Despite the constitutional promise of equality and liberty, why do Indian statutes still carry remnants of patriarchal assumptions that presume dependency, vulnerability, and subordination?

This article examines these questions by analyzing India's legal approach to marriage, cohabitation, maintenance, domestic violence, and divorce. It juxtaposes Indian law with models from countries like France, Canada, Sweden, and Japan, where the legal system either minimally intervenes in personal relationships or has evolved more gender-neutral and autonomy-based frameworks. In doing so, the article makes a doctrinal and comparative analysis, supplemented by sociological inquiry, jurisprudential developments, and mythological references that continue to shape normative expectations in society.

At its heart, this study challenges the assumption that law must play a central role in the lifecycle of intimate relationships. It questions whether legal regularization of human bonds is necessary, or even justified, in societies where individuals are constitutionally free to choose, change, or exit such bonds without coercion or oversight. Furthermore, it problematizes the institutional rigidity of courts that force private, emotional breakdowns into public adjudication, often to the detriment of mental health, privacy, and dignity.

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## **2. "Private Autonomy and the Legal Gaze: Theoretical Foundations"**

The notion of personal autonomy is foundational to any democratic society. Rooted in liberal philosophy and constitutional jurisprudence, autonomy refers to the capacity of individuals to make informed, un-coerced decisions about their lives, especially in matters most intimate to their identity, such

as choosing a partner, forming a relationship, or exiting one. Yet, even as the Indian Constitution and international legal instruments strongly safeguard this autonomy, the state continues to wield a paternalistic gaze over private relationships.

### **2.1. Autonomy and the Constitution of India**

Article 21 of the Constitution of India guarantees the right to life and personal liberty, which the Supreme Court has interpreted expansively to include the right to privacy, bodily autonomy, sexual orientation, choice of partner, and dignity in personal relationships. *Justice K.S. Puttaswamy v. Union of India* (2017) 10 SCC 1, affirmed privacy as a fundamental right.

In *Shafin Jahan v. Asokan K.M.* (2018) 16 SCC 368, once again principle of personal autonomy was upheld by iterating the right to marry a person of one's choice. In *Naveet Singh Johar v. Union of India* (2018) 10 SCC 1, decriminalized consensual homosexual relationships was discussed.

These judgments demonstrate a juridical shift from state control to individual autonomy in matters of love and intimacy.

Yet, paradoxically, the family law regime remains steeped in patriarchal protectionism, where the state prescribes who can marry, how they should live, how much maintenance is owed, and under what grounds relationships can be dissolved. The same Constitution that promises liberty also upholds a system of state-supervised relationships.

### **2.2. Classical Liberalism vs. Legal Paternalism**

From John Stuart Mill to Ronald Dworkin, liberal theorists have championed the principle of limited government interference in private affairs. Mill's "harm principle" in *On Liberty* (1859) famously argued that individuals are sovereign over their own body and mind unless their actions harm others. Accordingly, consensual relationships between adults should fall outside the purview of state control.

However, legal paternalism, the idea that the state may intervene to protect individuals from themselves, has historically justified laws around marriage, divorce, domestic violence, and spousal maintenance. These laws were built during an era when women had no legal personality, financial independence, or voice. Today, that rationale must be re-examined and reviewed by the passage of time, this is the need-of-the-hour.

### **2.3. Feminist Critiques of Family Law**

Feminist legal scholars such as Catharine MacKinnon, Carol Smart, and Flavia Agnes have critiqued how family law often perpetuates gender hierarchies. While laws like the Protection of Women from Domestic Violence Act, 2005 and Section 125 of CrPC carries necessary safeguards in earlier decades, continued emphasis on the woman as a dependent reinforces the idea that she lacks economic or emotional agency.

In the Indian context, laws are gender-sensitive but not gender-equal. A woman seeking maintenance under Section 24 of the Hindu Marriage Act is presumed to be unable to support herself, even if she's a qualified professional. Meanwhile, men have limited legal recourse in live-in relationships or abusive marriages.

This asymmetry reveals how law conflates protection with control, and in doing so, delays the development of truly autonomous relational frameworks.

### **2.4. The Moral State and Judicial Gatekeeping**

Indian courts, especially in matrimonial disputes, often function as moral adjudicators, attempting reconciliation, counselling, and even critiquing personal choices. This is evident in judgments that delay mutual consent divorce, deny annulments based on societal views of marriage, or conflate legal rights with traditional values.

For instance, in *Indra Sarma v. V.K.V. Sarma* (2013) 15 SCC 755, the Supreme Court refused to recognize a long-term live-in relationship for DV protection because it was "adulterous." Such decisions show how judicial discretion, even while well-intentioned, imposes heteronormative and moralistic filters on the autonomy of litigants.

### **2.5. Autonomy in Comparative Jurisprudence**

In countries like Canada, Germany, and Netherlands, the legal system treats adult relationships with minimal intervention, focusing only on tangible outcomes such as child custody or financial agreements. The principle is very loud and clear, the state does not arbitrate emotions.

Canada's *Divorce Act* (1985, duly amended 2021) is gender-neutral and focuses on parenting responsibilities rather than blame. France allows mutual divorce by agreement through a notary public, without judicial proceedings. Such models place trust in individual capacity over judicial control.

The tension between personal autonomy and legal control lies at the heart of modern relationship law. While constitutional ideals recognize the individual as a self-governing moral agent, legal systems—particularly in post-colonial patriarchal societies like India, continued to regulate personal choices in the name of protection, stability, or morality.

Unless the legal gaze shifts from paternalism to partnership, the project of personal autonomy will remain incomplete.

### 3. The Paradox of Autonomy: Why Intimate Relationships Still Burden the Courts and the Law

In a constitutional democracy that guarantees privacy, liberty, and equality, one might expect intimate relationships between consenting adults to remain beyond the purview of public institutions. And yet, family courts across India are overwhelmed with matrimonial, maintenance, custody, and domestic violence cases, some of which linger for a decade or more. This paradox, between the proclaimed autonomy of the individual and the institutionalization of relational conflict, highlights a deep structural contradiction within the Indian legal system.

#### 3.1. Judicial Overload in Private Matters

India's judiciary is reportedly overburdened. As of July 2024, more than 4.7 crore cases are pending across various courts, with family law disputes accounting for a significant portion of this backlog. According to data from the National Judicial Data Grid (NJDG), over 80 lakh family cases remain unresolved, ranging from petitions for divorce, alimony, child custody, to maintenance under Section 125 of the Criminal Procedure Code.

These cases are not merely statistics. They involve broken homes, psychological trauma, protracted litigation, and significant financial costs to parties already experiencing emotional distress. A divorce case under the Hindu Marriage Act, 1955, especially when contested, can run for 5 to 10 years in trial courts. In addition appeals, custody battles, or property disputes, and the burden on litigants becomes intergenerational.

Yet, the core question remains, if two adults have decided to separate, why must they navigate such an agonizing legal maze to do so?

#### 3.2. Mutual Consent Divorce: A Misnomer in Practice

The Hindu Marriage Act, 1955, under Section 13B, provides for mutual consent divorce, a seemingly progressive tool enabling separation based on mutual will of couples. However, still two paradoxes emerges. First, the law requires a 6-month cooling-off period, which, although made discretionary in *Amardeep Singh v. Harveen Kaur*, (2017) 8 SCC 746, is still routinely applied and the family courts are rigidly accepting the same, in very rare and exceptional cases. Second, mutual consent must continue through both stages of the petition, i.e. if one party withdraws at any point, the other is left with no remedy but a contested divorce, reopening the entire adversarial process, which shall prolong for years together, without taking note that there was a consent at one point of time.

Rather than respecting adult autonomy, the law insists on state-sanctioned approval even when both parties seek liberation from a relationship.

#### 3.3. When Courts Become Custodians of Morality

Indian courts, especially at the family court and district level courts where the family cases being tried, frequently conflate legality with morality. Judges often initiate conciliation efforts, deliver moral sermons, or delay decisions in the belief that reconciliation is in society's best interest. While this is rooted in the "welfare of the family" doctrine, it often results in judicial paternalism that disregards individual dignity.

As can be seen from *Savita Bhanot v. Lt. Col. V.D. Bhanot*, (2010) 7 SCC 717, the Supreme Court stated that efforts must be made to salvage marriage, but this often reinforces endurance over escape, especially for women suffering in abusive or emotionally vacant relationships.

#### 3.4. Gender, Independence, and the Persistence of "Protective" Laws

The second contradiction lies in the persistence of legal provisions premised on female dependency, even in the face of rising economic independence and constitutional gender equality.

Taking note from various statutes, like Section 125 CrPC, Maintenance to wives (even divorced) if unable to maintain themselves, then, Section 24 of the Hindu Marriage Act, Interim maintenance and litigation expenses, as also, Protection of Women from Domestic Violence Act, 2005, Residence orders, protection orders, and maintenance. These statutory dictum assumes that the man is the provider, and the woman is economically vulnerable, even though India in 2023–24 saw a record number of women in professional, business, and educational sectors. According to the report, female workforce participation in urban India rose to 37.2%, and more women than men are now enrolled in graduate and postgraduate education (AISHE Report 2023).

Yet, statutes remain frozen in the 1970s economic imagination, where the male spouse bears lifelong responsibility, and the woman must prove "inability to maintain herself."

#### 3.5. Misuse, Weaponization, and Legal Fatigue

A growing critique, though often politically sensitive, is the weaponization of protective laws or to say women centric laws, particularly under Section 498A IPC (cruelty by husband or relatives). In *Rajesh Sharma v. State of U.P.*, (2017) 10 SCC 826, the Supreme Court acknowledged misuse, directing police to avoid automatic arrests. Similarly, Section 24 HMA is sometimes used not for sustenance but as a tactical delay mechanism.

While one must not trivialize genuine claims, the problem arises from the lack of a gender-neutral, harm-based standard. Instead of focusing on actual dependency, laws operate on categorical assumptions based on sex.

### 3.6. The Systemic Costs of Legal Mediation

The insurances on state-mediated relationships imposes invisible yet immense costs. Emotional cost, litigants are compelled to narrate private stories before judges, clerks, and sometimes to the media. Financial cost, Legal fees, multiple hearings, and travel can cripple middle-class families. Psychological cost, the extended uncertainty prolongs grief, anger, and distrust. Scholars such as Prof. Amita Dhanda have termed this a “judicialization of intimacy”, where emotions are commodified into affidavits and human pain reduced to cause titles.

### 3.7. Global Models of Minimal Intervention

In many jurisdictions, the law has withdrawn from excessive intrusion into personal separations.

**Sweden:** Mutual divorce is available within 6 weeks, with no mandatory mediation.

**France:** Allows non-judicial divorce by notary when uncontested.

**Canada:** The *Spousal Support Advisory Guidelines* are gender-neutral and based on income differentials, not gender roles.

These systems treat individuals as autonomous thinkers being capable of managing their personal affairs, unlike India’s adversarial, paternalistic model.

### 3.8. Time for a Feminist Rethinking?

Modern feminism does not equate protection with dependency. Many feminists now argue for gender-neutral relationship laws, where, Maintenance is granted based on economic vulnerability, not sex. Domestic violence protection extends to men and LGBTQ individuals. Divorce procedures respect adult agency without excessive judicial scrutiny. The law must adapt to emerging relational and rational patterns, from urban cohabitation to delayed marriages to single parenting, and evolve beyond the binary of wife–husband, victim–protector.

The continued flood of relationship litigation in Indian courts, the rigidity of marriage laws, and the persistence of dependency-based protections point to a deep dissonance between constitutional autonomy and statutory paternalism. While relationships are personal, they become public liabilities the moment they rupture-forcing parties into a legal arena ill-equipped to handle human emotions and values with nuance or speed.

To align the law with liberty, India must embrace models that respect exit, decentralize adjudication, neutralize gender, and de-pathologise separation. Until then, courts will remain overburdened, not because people seek justice, but because the system refuses to let them walk away in peace.

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## 4. Statutory Framework in India : Marriage, Maintenance, and Protection

India’s legal regulation of personal relationships is shaped by a complex web of personal laws, criminal provisions, and protective legislation. While rooted in diverse religious traditions and colonial jurisprudence, these laws continue to define the status, rights, obligations, and remedies available to individuals within relationships, especially marriage and its breakdown. This section dissects the core statutes that govern marriage, divorce, maintenance, and protection from abuse, and evaluates their philosophical underpinnings, practical function, and gendered assumptions.

### 4.1. Marriage Laws: A Civil Contract or Sacred Institution?

India does not have a uniform civil code for marriage. Instead, different communities are governed by personal laws, Hindu Marriage Act, 1955 (HMA), applies to Hindus, Buddhists, Jains, Sikhs. whereas, Muslim Personal Law (Shariat) Application Act, 1937, un-codified marriage law for Muslims, Indian Christian Marriage Act, 1872, Parsi Marriage and Divorce Act, 1936, Special Marriage Act, 1954 (SMA), secular law for inter-faith and civil marriages. Despite all odds and differences, most of these laws treat marriage as a legal status granted and dissolved through state mechanisms. This status then gives rise to rights and duties, conjugal consortium, maintenance, legitimacy of children, inheritance rights, etc. Sarcastically, the Special Marriage Act, intended to facilitate secular unions, imposes more bureaucratic hurdles than personal laws, including a 30-day public notice period, often criticized for enabling harassment in inter-faith marriages.

Moreover, Indian marriage laws generally lack no-fault divorce. Instead, they require proof of, Cruelty (Section 13(1)(i-a), HMA), Desertion, adultery, conversion, or Mental disorder, venereal disease, etc. to meet with the statutory impediments. These grounds legalize the language of blames, rather than honoring mutual exit and emotional breakdown.

### 4.2. Maintenance Provisions: Economic Protection or Dependency Trap?

Indian law provides for maintenance/alimony under various provisions:

a) Section 125 of the Criminal Procedure Code (CrPC), which is gender-neutral in language, but largely used by wives, provides for maintenance to wife (divorced or otherwise), children, and parents, provided, the claimant must be unable to maintain herself/himself, as it was best interpreted in *Shah Bano v. Union of India*, AIR 1985 SC 945, as applying even to Muslim women, until reversed by legislation (Muslim Women (Protection of Rights on Divorce) Act, 1986).

b) Section 24 & 25 of the Hindu Marriage Act, 1955. Section 24 discusses Interim maintenance and litigation expenses during pendency, whereas, Section 25 meant for Permanent alimony after decree of divorce or judicial separation. Courts generally award higher alimony to women, even if they are professionally qualified, reflecting latent patriarchal assumptions of male financial responsibility. Even, various high-courts have given women centric decisions, despite inability of husband to earn or even to an extent that even if women is earning and being capable to maintain herself, but not to the standard of man, in that case, the Courts have validated the maintenance in favour of wife.

c) Section 36 & 37 of the Parsi Marriage and Divorce Act, carries the similar interim and post-divorce maintenance provisions.

d) Section 36 of the Special Marriage Act, 1954, provides for Interim maintenance to wife during divorce proceedings.

Critics argue that these provisions often operate on gender stereotypes, disregarding actual income and financial independence. There is no statutory formula or uniformity in quantum of maintenance, leading to judicial discretion and unpredictability.

#### **4.3. Protection from Domestic Abuse : A Gendered Regime**

This landmark legislation, passed in response to long-standing gender violence, extends protection to women from:

Physical, sexual, verbal, emotional, and economic abuse, In marriage or interpreting the extended interpretation in evolving the modern-marital judicial interpretation, in live-in relationships also, carries key features, like, Protection orders (restraining abusive behaviour), Residence orders (right to shared household), Monetary relief and compensation, Custody orders and ex-parte proceedings etc. Judicial interpretations, such as in *Hiral P. Harsora v. Kusum Narottamdas Harsora*, (2016) 10 SCC 165, have widened the Act's scope by allowing complaints against female relatives of the husband.

However, despite its progressive intent, the Act remains gender-specific. It offers no remedy for male or LGBTQ victims of domestic abuse. Its operation assumes the woman as a victim and the man as the abuser, which may not reflect all relational dynamics.

Moreover, while courts often direct counselling and reconciliation, critics warn that this may re-expose women to trauma, undermining the protective purpose of the statute.

#### **4.4. Dowry and Cruelty: Overlap amongst Civil and Criminal Law :**

a) Section 498A, Indian Penal Code (IPC), Penalizes cruelty by husband or his relatives toward wife. Includes mental harassment, dowry-related abuse, and grave bodily harm. Cognizable and non-bailable offence, often used alongside domestic violence proceedings.

b) Dowry Prohibition Act, 1961

Prohibits giving, taking, or demanding dowry. Dowry-related death is separately penalized under Section 304B IPC.

These provisions address deep-rooted societal evils, but they've also been the subject of debate over misuse. The Supreme Court in *Armesh Kumar v. State of Bihar*, (2014) 8 SCC 273, called for restrained arrests and preliminary investigation to prevent abuse of Section 498A.

#### **4.5. Live-in Relationships: Cautious Judicial Recognition**

India lacks a statutory regime for live-in relationships, but courts have gradually extended limited protections, in *Indra Sarma v. V.K.V. Sarma*, (2013) 15 SCC 755, the Court laid down criteria for recognizing "relationships in the nature of marriage" under the PWDVA. In *D. Velusamy v. D. Patchaiammal*, (2010) 10 SCC 469, it was held that casual relationships or those without social acceptance do not qualify. Thus, while live-in couples may be protected from abuse, they still lack, Statutory inheritance rights, Property sharing, Maintenance rights (unless proven under DV Act). This patchwork judicial framework fails to fully recognize relationship diversity and subjects couples to litigation merely to prove cohabitation.

#### **4.6. Procedural Bottlenecks and Institutional Shortcomings**

Family Courts Act, 1984 aimed to expedite family disputes through conciliation, but has often led to delays under the guise of reconciliation.

Lack of specialized conciliators, infrastructure, insufficient remuneration, personal interest of conciliators and gender sensitivity has undermined the efficacy of these courts. Many family courts still operate with a criminal trial mindset, subjecting parties to cross-examination and formalistic procedure. India's statutory framework governing intimate relationships reflects a mosaic of tradition, protectionism, and partial progress. While certain provisions protect vulnerable parties, especially women in abusive marriages, they also risk reinforcing dependency and bureaucratizing personal decisions.

What the time demands is a gender-neutral, consent-based, and rights-respecting legal architecture that honours individual choice without presuming social roles. Until then, the statutory apparatus will continue to oscillate between liberation and control, between autonomy and assumption.

## 5. “Cross-Country Models of Relationship Regulation”

As intimate relationships evolve in form and content, from traditional marriages to live-in partnerships, civil unions, and shared parenting without cohabitation, legal systems worldwide are being challenged to adapt. While India continues to grapple with an interventionist and often moralistic approach to relationship regulation, many countries have begun shifting toward consensual, autonomy-based models. These comparative legal frameworks offer valuable insights into how the law can facilitate, rather than obstruct, personal relationships.

Analysing the relationship regulation frameworks of France, Canada, Sweden, South Africa, and Japan, focusing on divorce laws, maintenance norms, live-in recognition, and gender neutrality. The goal is not to transplant foreign models onto Indian soil, but to derive principles of minimalism, equality, and respect for individual choice.

### 5.1. France: Civil Solidarity over Marital Rigidity

France has long adopted a liberal and secular stance toward personal relationships. Recognizing the need for flexibility beyond marriage, it introduced the Pacte Civil de Solidarité (PACS) in 1999, a form of civil union available to both opposite-sex and same-sex couples. Which has Key Features, like PACS grants rights similar to marriage, including tax benefits, inheritance, and social security, but with fewer legal formalities. It can be registered with a notary, without judicial intervention. Termination can be unilateral, by simple written notification, unlike divorce, which remains judicial. France also allows mutual consent divorce without a court, through notarized agreements, provided there are no disputes over children or property.

This model reflects a trust-based system, where the state facilitates, but does not police, the private decisions of adults. The French Civil Code places emphasis on mutual respect and liberty, with minimal adjudication unless necessary.

### 5.2. Canada: Gender-Neutrality and Functional Justice

Canada’s legal system combines common law principles with a progressive Charter of Rights and Freedoms (1982), which mandates equality and privacy. Relationship laws reflect this ethos. The Divorce Act, 1985 (duly amended 2021) provides for no-fault divorce based on a one-year separation, without needing to prove cruelty or adultery. Spousal support is calculated based on economic disadvantage, income differentials, and length of relationship, not gender. As far as Cohabitation, Common-law partnerships (opposite or same-sex) are recognized if couples live together for one year. Such relationships qualify for property division, support obligations, and custody rights. Importantly, gender is irrelevant in maintenance disputes. In *Moge v. Moge* [1992] 3 SCR 813, the Supreme Court of Canada held that spousal support aims to remedy disadvantage, not reinforce dependency. Canadian law thus respects personal autonomy while ensuring post-separation fairness.

### 5.3. Sweden: A Minimalist State in Personal Affairs

Sweden’s legal framework is shaped by strong social welfare, individualism, and secular liberalism. Relationships are treated as private contracts, with limited state interference. Divorce is largely administrative. If both parties agree and have no minor children, the divorce is granted immediately. If there are children, a six-month reflection period applies, which is purely procedural. In case of Cohabitation, The Cohabitees Act (2003) regulates live-in relationships, which provides for Cohabitees have rights in shared property, inheritance, and housing. There is no requirement of marriage for access to legal remedies. Sweden’s model reflects state neutrality toward relationships. Law intervenes only to enforce consent and fairness, not to enforce morality or permanence. There are no criminal penalties for adultery, no judicial sermons, and no moral hierarchy between marital and non-marital unions.

### 5.4. South Africa: Pluralism, Constitutionalism, and Living Relationships

Post-apartheid South Africa has undergone profound legal reforms rooted in its Constitution (1996), which enshrines dignity, equality, and privacy. Customary marriages, civil unions, and cohabitation are all recognized. The Civil Union Act, 2006 allows same-sex and heterosexual couples to marry or register a civil union. The Recognition of Customary Marriages Act, 1998 validates traditional and polygamous marriages with certain procedural safeguards. As far as Cohabitation, while there’s no separate statute, courts grant contractual remedies, maintenance, and inheritance rights to long-term cohabitants. The Constitutional Court in *Volks NO v. Robinson*, 2005 (5) BCLR 446 (CC), held that exclusion of cohabitants from spousal benefits under pension law was valid due to legislative gaps, but recommended reform. South Africa represents a that respects both modern and traditional unions, while seeking equality and access to justice for all.

### 5.5. Japan: Tradition Amidst Legal Modernity

Japan, while culturally conservative, has adopted practical legal solutions for personal disputes. Mutual consent divorce is common and can be processed administratively at local ward offices. No judicial proceedings are needed unless contested. Family courts only intervene in disputed cases, with an emphasis on mediation. In Live-in Relationships, case “De facto” relationships are socially recognized but lack full legal status. Japanese courts may award compensation for emotional harm upon cohabitation breakdown, especially if promises of marriage were involved. While inheritance and maintenance rights are limited outside formal marriage, Japan’s legal system acknowledges social realities, often adapting civil law remedies (e.g., unjust enrichment, contract law) to offer redress.

India's continued reliance on court-sanctioned relationships, fault-based divorces, and gendered assumptions reflects a legal architecture out of sync with constitutional values and contemporary realities.

The path forward requires more than legislative tinkering, it calls for a paradigm shift from morality to autonomy, from control to consent, and from adversarial justice to empathetic resolution.

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## 6. "The Evolution and Recognition of Live-in Relationships"

One of the most significant shifts in modern relationship dynamics, both globally and in India, has been the rise of live-in relationships. These arrangements, where two adults cohabit without formal marriage, often emerge from urbanization, shifting social norms, economic interdependence, and an increasing emphasis on personal freedom and compatibility. However, the Indian legal system, still anchored in the institution of marriage, has offered only tentative and conditional recognition to such partnerships.

### 6.1. Sociological Emergence of Live-in Partnerships in India

Urban India has witnessed a steady rise in cohabitation arrangements, particularly among young professionals, students, and previously divorced individuals. Factors influencing this include, greater financial independence among women, delayed marriages due to career and education, growing resistance to institutional forms of commitment. Social acceptance in metropolitan cultures and among progressive families

Despite this, cohabitation remains stigmatized in many parts of India, particularly in semi-urban and rural areas. Consequently, the law's response to live-in relationships remains cautious, ad hoc, and morality-infused, rather than rooted in principles of privacy and autonomy.

### 6.2. Constitutional Foundations: Right to Live with a Partner of One's Choice

The Supreme Court of India has reiterated that adults have the fundamental right to choose their partners and cohabit without societal or familial interference. In *S. Khushboo v. Kanniammal*, (2010) 5 SCC 600, the Court held that living together is a matter of right, and no criminal liability arises from such arrangements, even if they offend societal norms. Similarly, in *Nandakumar v. State of Kerala*, (2018) 16 SCC 602 A 20-year-old woman and her partner were granted the right to live together despite being under the legal age for marriage. The Court emphasized Article 21 and the right to privacy and dignity. *Lata Singh v. State of U.P.*, (2006) 5 SCC 475, held that adults in consensual relationships are entitled to protection from extrajudicial threats, including family and caste-based violence. These judgments reflect a constitutional protection of cohabitation, yet lack statutory guarantees concerning property, maintenance, custody, or inheritance.

### 6.3. Judicial Framework: The 'Relationship in the Nature of Marriage' Test

The Protection of Women from Domestic Violence Act, 2005 (PWDVA) offers limited recognition to live-in relationships by protecting women from abuse in "relationships in the nature of marriage." Courts have developed interpretative criteria to determine the validity of such relationships. In *D. Velusamy v. D. Patchaiah*, (2010) 10 SCC 469, the Supreme Court laid out factors including, Shared household and duration of cohabitation

Domestic arrangements (cooking, sharing expenses), Public perception and social acknowledgment, Sexual and emotional intimacy, Stability and exclusivity. However, the Court also held that casual, intermittent, or illicit relationships (such as extramarital affairs) would not qualify. In *Indra Sarma v. V.K.V. Sarma*, (2013) 15 SCC 755, the Court excluded relationships involving one married partner, describing them as adulterous and not worthy of legal protection under PWDVA. These judgments exhibit a moral lens in judicial reasoning, where the nature, duration, and social acceptability of the relationship determine legal status, rather than consent or autonomy alone.

### 6.4. Legal Rights: Maintenance, Property, and Custody

While the courts have extended protection from abuse, the broader legal rights of live-in partners remain unsettled. A woman in a live-in relationship may claim maintenance under Section 20(3) of the PWDVA, provided the relationship meets the 'marriage-like' test. There is no statutory right to joint or separate property unless the property is jointly registered or contractually agreed upon. The principles of equity and unjust enrichment may apply on a case-to-case basis. Live-in partners are not statutory heirs under Indian succession laws. However, courts have occasionally allowed compensation or benefits based on long-term dependence. Children born of live-in relationships are considered legitimate, as per *Tulsa v. Durghatiya*, AIR 2008 SC 1193, and both parents are liable for their support. However, guardianship and visitation rights must still be determined through litigation.

### 6.5. Social Stigma and Institutional Hostility

Despite constitutional and judicial affirmations, individuals in live-in relationships continue to face, issues like, Housing discrimination in cities, Moral policing by law enforcement, Denial of healthcare access, insurance claims, or employment benefits due to lack of "legal relationship", Threats from families, especially in inter-faith or inter-caste unions. The lack of clear statutory recognition exacerbates these challenges. Individuals must rely on judicial discretion, often after relationship breakdown or abuse, to seek legal redress.

## 6.6. The Case for Legal Clarity

India requires a comprehensive legislative framework for cohabiting couples that, Defines the rights and obligations of partners, Offers optional civil registration without marriage, Ensures property, support, and custodial rights, Respects diverse sexual orientations and family formations, Balances non-intrusion with protective remedies, Such a framework should be gender-neutral, consent-based, and aligned with constitutional values, especially Articles 14 (equality), 15 (non-discrimination), and 21 (dignity and privacy).

Live-in relationships represent an evolving social reality—one that challenges traditional binaries of married/unmarried, moral/immoral, protected/unprotected. The Indian legal system has taken modest steps toward recognizing these arrangements, but largely through judicial improvisation. Without a coherent legal regime, live-in partners remain vulnerable to exploitation, social discrimination, and legal uncertainty. The future of relational justice in India depends not on reinforcing marriage as the only legally valid union, but on respecting the multiplicity of human bonds, and creating laws that facilitate—not stigmatize—these relationships.

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## 7. “Jurisprudence: Privacy, Consent, and Constitutional Morality”

The Indian legal landscape has undergone a significant transformation in recent decades, especially in its understanding of privacy, consent, dignity, and personal liberty. Driven largely by constitutional jurisprudence and an expanding rights discourse, courts have increasingly acknowledged that relationships, whether marital or non-marital, are intimate domains of human experience, insulated from state control except where necessary to prevent harm. The Supreme Court of India has shaped the meaning of intimate autonomy through its interpretations of Article 21 (right to life and personal liberty), focusing on three key concepts, privacy, consent, and constitutional morality. It also critiques the limits of these doctrines when applied to family and relationship law.

### 7.1. Privacy: The Right to Be Let Alone

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

This landmark nine-judge bench decision recognized privacy as a fundamental right under Article 21. The Court noted, “Privacy enables individuals to preserve their beliefs, thoughts, expressions, ideas, ideologies, preferences and choices against societal demands of homogeneity.” The judgment emphasized that personal choices in relationships, sexual orientation, cohabitation, or reproduction fall squarely within the zone of privacy, and the state has no business regulating such private domains unless it meets the test of legality, necessity, and proportionality.

This constitutional framework legitimizes live-in relationships, same-sex partnerships, and consensual adult intimacy as fundamental rights, not as privileges granted through social or religious approval.

### 7.2. Consent: Autonomy as the Core of Liberty

The centrality of consent in modern constitutionalism is affirmed in several decisions.

a) *Shafin Jahan v. Asokan K.M.*, (2018) 16 SCC 368

The case involved a Hindu woman (Hadiya) who converted to Islam and married a Muslim man. Her father alleged “love jihad” and sought annulment. The Supreme Court restored Hadiya’s autonomy, observing:

“The right to marry a person of one’s choice is integral to Article 21... interference by the State in such matters has a chilling effect on personal liberty.”

The case marked a clear rejection of paternalism, whether by family, religion, or state and reaffirmed consensual adult choices as constitutionally protected.

b) *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1

Striking down Section 377 IPC (to the extent it criminalized consensual homosexual acts), the Court held:

“Autonomy of the individual is the ability to make decisions on vital matters of concern to life... The sexual autonomy of an individual is an important facet of his/her personal liberty.”

Thus, consensual relationships, irrespective of gender or marital status, are entitled to constitutional respect, even if they offend traditional morality.

### 7.3. Constitutional Morality vs. Social Morality

The concept of constitutional morality has emerged as a powerful counterweight to social conservatism and majoritarian values.

a) *Indian Young Lawyers Association v. State of Kerala (Sabarimala case)*, (2019) 11 SCC 1



The Court emphasized that the Constitution must uphold equality and dignity even if social morality resists change, “Constitutional morality requires that the norms and values of the Constitution are preserved and enforced by the State, even when they are at odds with social or religious customs.” Applied to relationships, this doctrine implies that social disapproval of live-in arrangements, inter-caste marriages, same-sex unions, or late-age separations cannot justify legal restrictions.

#### **7.4. Bridging the Gap: When Constitutional Ideals Fail in Practice**

Despite these affirmations, the translation of constitutional jurisprudence into family law remains uneven.

Courts continue to delay mutual consent divorces, even when parties assert clear autonomy.

Judges apply “welfare of the institution of marriage” as an overriding principle, even where both parties desire separation.

Section 125 CrPC and maintenance laws often assume dependency, ignoring actual economic circumstances. Live-in relationships are subject to moral scrutiny, as seen in *Indra Sarma* and *Velusamy*.

This jurisprudential schizophrenia, between progressive constitutional ideals and regressive statutory application—undermines the promise of intimate liberty.

#### **7.5. The Role of the Judiciary: Gatekeeper or Guardian?**

While the judiciary has been the primary driver of privacy and relationship autonomy, it also plays a gatekeeping role, often inadvertently reinforcing traditional values. For example, Courts routinely order “marriage counselling” or compulsory mediation in contested divorces. Judges sometimes use language of duty, sacrifice, and sanctity when ruling on divorce or maintenance. Protection petitions filed by interfaith or same-sex couples are occasionally rejected or delayed due to police or societal pressure. This creates a paradoxical courtroom experience, where the same Constitution that guarantees autonomy is mediated by judicial discretion grounded in personal or societal bias.

#### **7.6. Consent, Coercion, and the Unequal Bargain**

While celebrating consent, one must also interrogate its context. Not all “choices” are truly free. Women in abusive marriages may remain due to lack of support or fear of social stigma. Cohabiting partners may lack bargaining power due to unequal income or housing rights.

Younger individuals may be coerced into relationships by family or community pressure.

Hence, constitutional jurisprudence must be coupled with social reform, legal safeguards, and institutional support systems to make autonomy meaningful, not just theoretical.

#### **7.7. Travelling towards a Doctrine of Intimate Citizenship**

Drawing from comparative constitutional theory, one can propose a doctrine of “intimate citizenship”, where:

Individuals are recognized as moral agents, capable of defining their personal relationships.

Laws governing marriage, divorce, cohabitation, and maintenance are gender-neutral and harm-based.

State intervention is justified only to protect consent and prevent abuse, not to enforce cultural ideals.

This vision aligns with constitutional morality, transformative justice, and the lived realities of modern citizens.

India’s constitutional jurisprudence has laid a powerful foundation for intimate liberty, by affirming the sanctity of privacy, dignity, and consent. Yet, these lofty ideals are undermined by the inertia of family laws, moralistic judicial reasoning, and social conservatism.

For the promise of *Puttaswamy*, *Shafin Jahan*, and *Navtej Johar* to be realized in full, the law must evolve from merely tolerating personal choices to actively enabling them. The courts must become guardians of freedom, not custodians of tradition.

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### **8. “Mythological and Cultural Reflections on Personal Relationships”**

India’s vast mythological and cultural heritage, embedded in the *Ramayana*, *Mahabharata*, *Puranas*, and ancient texts like the *Vedas*, *Smritis*, and *Kamasutra*, offers deep insight into how personal relationships, particularly between men and women, have been imagined, regulated, and sanctified. These epics and traditions reflect a plurality of moral frameworks, sometimes advancing personal autonomy, and at other times entrenching patriarchal codes.

In understanding contemporary legal debates on marriage, divorce, cohabitation, and personal autonomy, it becomes vital to revisit these ancient narratives, not to bind law in orthodoxy, but to contextualize the evolving social consciousness of relationships in India.

### 8.1. Marriage and Dharma: The Sacrosanct Institution in the Ramayana

The *Ramayana* exalts the ideal of pativrata dharma (devotion of a wife to her husband) through the portray of Sita, whose fidelity, endurance, and silence in suffering are often glorified.

Yet the same epic also reveals the tragic cost of social morality over individual autonomy, Sita, despite proving her chastity through the *agni pariksha*, is later exiled by Rama due to public suspicion. This act is symbolic of social honour overriding personal truth, and reflects the notion that a woman's virtue is subject to external validation. Interestingly, Sita later refuses to return to Rama and instead chooses to vanish into the Earth, an act of autonomous finality. This duality, Sita as the submissive wife and then the assertive rejecter, resonates with modern debates on whether personal relationships are dictated by social expectations or individual agency.

### 8.2. Draupadi and Polyandry in the Mahabharata

The *Mahabharata* offers a more complex and layered representation of female agency and non-traditional relationships, Draupadi, the wife of the five Pandavas, challenges the monogamous ideal. She is portrayed as intellectually sharp, emotionally assertive, and fiercely resistant to humiliation (especially in the dice game episode). Her polyandrous marriage, though orchestrated by destiny and maternal command, is not condemned in the text, indicating that alternative relationship models existed and were tolerated, if not always celebrated. Further, the *Mahabharata* showcases multiple consensual unions, including Gandhari's blind loyalty, Kunti's pre-marital motherhood, and Shikhandi's gender fluidity, each complicating the modern binary of lawful/unlawful relationships.

### 8.3. Shiva-Parvati: The Archetype of Equality and Spiritual Union

In *Shaivite traditions*, the relationship between Shiva and Parvati is portrayed as egalitarian, spiritual, and dialogic, Parvati undergoes penance to unite with Shiva, but once married, engages him as an intellectual equal in philosophical discourse (*Shiva Purana*). Their union represents tapas (discipline) and kama (desire) in balance, suggesting that consent, compatibility, and mutual growth are ideal relational foundations. This model departs from rigid gender roles and offers an archetype of emotional and metaphysical partnership, echoing modern aspirations of equal companionship over subordination.

### 8.4. Radha-Krishna: Love Without Marriage

One of the most celebrated relationships in Indian mythology, Radha and Krishna, is non-marital, poetic, and spiritual, though Radha is not Krishna's wife, their bond is immortalized across art, dance, and literature. The *Bhakti* movement reimagined this relationship as transcendental devotion, placing emotional and metaphysical intimacy over social legality. Even in medieval texts, Radha defies social conventions and engages in spiritual autonomy. This enduring motif challenges the notion that marriage is the only legitimate relational framework, and affirms that intimacy, when rooted in consent and transcendence, need not be legally sanctioned to be morally meaningful.

### 8.5. The Kamasutra: Codifying Pleasure and Consent

Often misunderstood as a mere erotic manual, Vatsyayana's *Kamasutra* is actually a comprehensive text on human relationships, aesthetics, and ethics. It categorizes unions into, Marital and non-marital, Temporary and long-term, Emotional and transactional, whereas, key insights include, Recognition of cohabitation and courtesan culture as legitimate social arrangements. Emphasis on mutual consent, pleasure, and reciprocity as relational ideals. Distinction between lust and love, and between dominance and shared desire. The *Kamasutra* represents perhaps the most legally and socially tolerant ancient Indian text, offering a counter-narrative to modern legal moralism.

### 8.6. Smritis and Dharmashastras: Codifying Patriarchy

The Manusmriti, Naradasmriti, and other Dharmashastras, reflect the codification of Brahmanical patriarchy, prescribing the threefold obedience of a woman, to her father, husband, and son. Treating women as property in marriage, with no independent rights to inheritance or divorce. Outlawing widow remarriage, supporting sati (in later interpolations), and treating female sexuality as dangerous unless controlled. While these texts formed the backbone of colonial Hindu law, they stand in deep tension with constitutional values, and are rightly discarded in modern statutory reforms.

### 8.7. Cultural Narratives: Folk Traditions and Local Autonomy

Beyond Sanskritic texts, folk traditions and tribal customs across India have long recognized, Live-in relationships in North-Eastern tribes, like the *Khasi* and *Garo*, with matrilineal inheritance. Widow remarriage and polyandry among certain communities. Community-approved unions not registered with the state but sustained through local ethics and mutual accountability. These localized traditions affirm that Indian relational culture has always been pluralistic, resisting a one-size-fits-all morality.

### 8.8. Lessons for the Law: Beyond Rigid Morality

Mythology and cultural texts should not be used to enforce archaic morality, but to reclaim plural traditions of autonomy, consent, and relational diversity. Key takeaways for modern law include, marriage is not the only moral or spiritual union, as seen in Radha-Krishna or Shiva-Parvati. Women have historically exercised agency, as shown by Sita's refusal, Draupadi's protest, or Parvati's dialogue. Non-marital relationships were known and recorded, though not always approved. Hence, it is historically unjustified to claim that only marriage deserves legal and moral recognition in India. Our epics offer a richer tapestry, one that modern law can draw from, to evolve compassionate, inclusive, and autonomy-based relationship norms. Indian mythology presents a spectrum of relationships, from the dutiful to the rebellious, from the sacramental to the sensual. In them, one finds traces of consent, spiritual equality, defiance, and desire, often marginalized in modern legal codes. Recognizing this heritage can liberate law from colonial binaries and patriarchal rigidity, and foster a jurisprudence that respects the full humanity of those who love, live, and part.

## 9. "Conclusion and Policy Recommendations"

This article began with a deceptively simple observation, the relationship between two individuals, especially in an intimate, personal context, is a private matter, one that should not be over-regulated by the law unless specific legal consequences arise. Yet, in India, courts remain flooded with matrimonial litigation, including divorce, maintenance, domestic violence, and child custody matters, many of which stretch over decades. The law, designed to adjudicate relationships, has too often become a source of prolonged trauma, rather than resolution.

We have explored the legal, constitutional, sociological, and mythological dimensions of personal relationships. From outdated marriage statutes to the hesitant recognition of live-in partnerships, from gendered assumptions in maintenance law to the constitutional promise of privacy and autonomy, from Radha-Krishna's spiritual bond to modern cohabitation challenges—this journey reveals an urgent truth, the law must retreat from the moral policing of relationships and instead enable human dignity through minimal, equal, and protective intervention.

This concluding section consolidates that argument and proposes concrete reforms, both legislative and judicial, that can modernize India's approach to intimate relationships.

### 9.1. Reaffirming the Core Principle: Autonomy in Personal Relationships

Every adult has the fundamental right to, Choose their partner (regardless of religion, caste, or gender), Cohabit or marry as per their will, Separate or divorce with mutual consent, be protected from coercion, abuse, and violence. This autonomy flows from Articles 14, 15, 19, and 21 of the Constitution, and has been reinforced by decisions like *Puttaswamy*, *Navtej Johar*, *Shafin Jahan*, and *Joseph Shine*. Yet, these ideals remain inconsistently translated into statutory and procedural law.

### 9.2. Legislative Reform Proposals

#### a) Uniform Relationship Code (URC)

Introduce a gender-neutral, religion-neutral, civil code governing all adult relationships. The URC should, Recognize cohabitation, civil unions, and marriage equally under the law. Allow couples to register partnerships voluntarily without requiring religious or ceremonial rituals, Offer legal consequences like joint property rights, maintenance, and inheritance, but only if registration is opted into, Ensure easy and quick dissolution through mutual consent without judicial blame allocation. These would respect personal liberty while offering opt-in legal security for those who seek it.

#### b) Maintenance Reform Law

Current maintenance provisions are fragmented across CrPC, HMA, SMA, and PWDVA. A consolidated, Gender-Neutral Maintenance and Support Act should be enacted, based on economic dependency, not gender, with standardized formulas based on income, duration, and contribution, applicable to spouses, partners, or cohabitants in registered or qualifying relationships, enforced through summary civil proceedings, not adversarial litigation.

#### c) Live-in Relationship Recognition Act

A dedicated law can define and regulate cohabitation without marriage, Offer minimum criteria (e.g., shared residence, duration, mutual economic contribution), provide opt-in benefits like insurance, emergency medical rights, and tax filing, ensure protection from abuse, eviction, and economic exploitation, clarify child legitimacy, guardianship, and custody norms. Such a law would move beyond judicial ambiguity and align India with global trends (Canada, Sweden, France, etc.).

#### d) Reform to Divorce Laws

Abolish fault-based divorce grounds. Introduce, Unilateral no-fault divorce after 6 months' separation, Online application mechanisms with mandatory cooling-off but no court-based delay, Digital counselling (optional) only if both parties consent, simplify alimony orders with clear timelines. This would prevent emotional exhaustion, judicial backlog, and weaponized litigation.

### 9.3. Judicial Recalibration: From Custodians to Facilitators

#### a) End the “Preserve the Marriage” Presumption

Courts should not prioritize saving a marriage over resolving the dispute. Particularly where both parties seek divorce, the role of the judiciary must be to facilitate a dignified exit, not impose reconciliation.

#### b) Limit Compulsory Mediation

While mediation can help, forcing reconciliation in cases involving domestic violence, abandonment, or emotional breakdown is unethical and counterproductive.

#### c) Respect Relationship Diversity

Judges must acknowledge non-marital, non-heterosexual, and fluid relationships without moral judgment. Judicial education should include training on gender, LGBTQIA rights, cultural pluralism, and the constitutional framework of privacy and dignity.

### 9.4. Policy and Administrative Reforms

Create Relationship Registries for those opting into legal partnerships, provide legal aid and counselling for all parties in family courts, mandate fast-track disposal of family disputes (within 6 months), use technology-enabled hearings and online filing in matrimonial and cohabitation cases, public awareness campaigns on legal options for relationships to reduce misinformation and stigma.

### 9.5. Cultural Shift: From Regulation to Respect

As Indian society evolves, the law must no longer act as moral gatekeeper. Instead, it should uphold, Consent over conformity, Respect over regulation, Freedom over formality, by drawing upon our own mythological diversity, regional customs, and constitutional progressivism, India can create a legal system that celebrates human relationships in their complexity, without forcing them into rigid moulds.

### 9.6. Final Thought: Legal Minimalism in Intimate Domains

The future of relationship law lies not in expanding state control, but in embracing legal minimalism, a model where the law intervenes only to prevent harm or injustice (e.g., abuse, fraud, child neglect), offers voluntary legal consequences for those who choose to formalize their relationship, respects the private emotional life of individuals without moral or procedural intrusion. Such a framework will not only reduce litigation but also restore the dignity of separation, honour the autonomy of union, and decentralize the notion of “valid” relationships.

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