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STATE, SOCIETY AND SELF: AUTONOMY AND RELIGION INVOLVED IN MARRIAGES IN INDIA

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ABSTRACT

The institution of marriage in India stands at a critical juncture, caught between the constitutional promise of individual liberty and the persistent influence of religious patriarchal norms codified into law. This paper examines the complex interplay between religious influence, state law, and individual autonomy within the institution of marriage in India. It posits that the current legal framework, which intertwines religious personal laws with a procedurally burdensome secular alternative, systematically undermines fundamental rights and creates significant risks for gender justice and social harmony. The analysis traces the historical entrenchment of patriarchal norms within matrimonial customs, demonstrating how these traditions have been codified into law, thereby restricting personal choice and perpetuating inequality. A central focus is the critical assessment of the secular marriage law, whose well-intentioned provisions have been subverted into a mechanism for state-sanctioned surveillance and communal interference, particularly endangering interfaith couples. The paper further explores how this flawed legal environment fosters detrimental outcomes, including the manipulation of religious conversion to circumvent legal restrictions, often to the detriment of women's rights. In conclusion, the research advocates for a decisive re-orientation towards a rights-based paradigm, arguing that genuine marital freedom requires dismantling the architecture of control and prioritizing constitutional guarantees of privacy, equality, and individual autonomy over rigid religious-social mandates.

KEYWORDS: Marriage, caste, choice, autonomy, equality, patriarchy, state, society

I. Introduction: The Crossroads of Faith and Freedom

The institution of marriage in India represents a profound constitutional paradox. While Article 21 of the Constitution guarantees the fundamental right to life and personal liberty, and the Supreme Court has unequivocally recognized privacy as an intrinsic component of this right,[649] the most intimate of personal choices—whom to marry—remains ensnared in a legal framework that systematically privileges communal identity over individual autonomy. This paper argues that India's matrimonial laws, comprising a patchwork of religious personal laws and a procedurally flawed secular alternative, create a landscape where the state effectively becomes complicit in perpetuating patriarchal control and stifling the fundamental freedom of marital choice.

The historical roots of this control run deep. Ancient Indian society, particularly following the establishment of the varna-caste system, witnessed the gradual erosion of women's agency in marital matters, with religious and philosophical treatises systematically consolidating male privilege and superiority

[649] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

within the family.[650] These historical precedents were not merely social customs but were later codified into modern legal frameworks, creating a direct lineage between ancient patriarchal norms and contemporary legal disparities.[651]This historical context is crucial for understanding why marriage in India has traditionally been viewed not merely as a contract between two individuals, but as a sacrament (samskara) essential for sustaining the social and religious order.

In modern India, this tradition manifests in the persistent dominance of arranged marriages, where family and community approval, often predicated on caste and religious endogamy, frequently supersedes individual desire.[652] The legal system accommodates this reality through a structure of separate religious personal laws governing Hindus, Muslims, Christians, and others. However, this legal pluralism creates a precarious environment for those who step outside these prescribed boundaries. The Special Marriage Act (SMA), 1954, was conceived as a secular solution, enabling couples to marry outside the purview of personal laws. Yet, the Act's procedural mandates, particularly the public notice and objection period under Section 5, transform it from a safe harbour into a mechanism of state-facilitated surveillance.[653] This provision often operates as a tool for harassment, exposing couples to familial and communal wrath[654]

The consequences of this legal conundrum are severe and multifaceted. Interfaith and inter-caste couples face a perilous dilemma: navigate the invasive and hazardous path of the SMA or opt for religious conversion, a route that can be exploited for fraudulent purposes such as polygamy, leaving spouses, particularly women, without legal recourse.[655] The rise of anti-conversion laws in several Indian states has further complicated this landscape, often specifically targeting interfaith marriages and infringing upon personal liberty.[656] Simultaneously, the emergence of modern social tools, most notably dating apps, has created a new social reality where individual choice is increasingly prioritized, thereby sharpening the conflict between evolving societal norms and anachronistic legal structures.[657]

This paper is structured to unpack this complex crisis. It begins by tracing the historical and legal genesis of patriarchal control in Indian matrimonial law. It then critically analyses the modern statutory framework, highlighting how both religious personal laws and the SMA fail to protect individual autonomy. Subsequently, it examines the contemporary challenges faced by interfaith couples and the disruptive influence of technology. Finally, the paper concludes by arguing for a decisive reorientation of the legal framework towards a rights-based paradigm, where the freedom to choose the partner is recognized as an inalienable aspect of personal liberty, protected from both religious dogma and state-sponsored coercion.

II. Research Methodology

This paper is based on a doctrinal legal research methodology. The research involves a systematic analysis of primary legal sources, including the Constitution of India, statutory law governing marriage—specifically the Hindu Marriage Act, 1955; the Special Marriage Act, 1954; the Muslim Personal Law (Shariat) Application Act, 1937; and the Indian Divorce Act, 1869—and relevant judicial pronouncements

[650] I. Lohvynenko & Y. Lohvynenko, The Impact of the Varna-Caste System on Marriage and Family Relations in India: Historical and Legal Dimension, LAW & SAFETY (2025).
[651] FLAVIA AGNES, LAW AND GENDER INEQUALITY: THE POLITICS OF WOMEN'S RIGHTS IN INDIA 45–80 (Oxford Univ. Press 1999).
[652] J. Singh & A. Pandey, Arranged Marriages and Family Dynamics of Interpersonal Relationships in India, 6 J. FOR REATTACH THERAPY & DEVELOPMENTAL DIVERSITIES 71, 74–75 (2023).
[653] Saptarshi Mandal, The Special Marriage Act, 1954: A Study in the Limits of Non-Interference, in THE EMPIRE OF DISGUST: PREJUDICE, DISCRIMINATION, AND POLICY IN INDIA AND THE US 127, 135–38 (Zoya Hasan et al. eds., Oxford Univ. Press 2015).
[654] Javed v. State (NCT of Delhi), 2019 SCC OnLine Del 7863, ¶ 12.
[655] Bhumi Sharma, Inter-Religious Marriages in India – Still an Obstacle? (SSRN, Oct. 12, 2023), https://ssrn.com/abstract=4601802.
[656] GAUTAM BHATIA, THE TRANSFORMATIVE CONSTITUTION: A RADICAL BIOGRAPHY IN NINE ACTS 287–90 (HarperCollins 2019).
[657] H. Sharma, N. Patel & R. Prajapati, The Transformation of the Institution of Marriage in India and the Role of Dating Apps, J. PSYCHOSEXUAL HEALTH (2025).

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from the Supreme Court of India and various High Courts.[658] The methodological approach is to critically examine the coherence of these legal doctrines with the fundamental rights framework, particularly Articles 14, 15, 21, and 25 of the Constitution.[659]The analysis is substantiated by references to scholarly commentary to contextualize the socio-legal impact of the doctrines under review.

III. Society and State Interference in Marital Autonomy

The constitutional right to choose one's life partner[660]exists in constant tension with powerful social enforcement mechanisms focusing on family, caste, and religion. These entities operate as the primary instruments for policing endogamy and punishing transgressions. The Supreme Court has repeatedly recognized that threats of honour-based violence constitute a grave restriction on this fundamental right. In Lata Singh v. State of U.P.,[661] the Court directed states to protect inter-caste and inter-religious couples from harassment, framing such protection as a duty under Article 21. This was expanded in Shakti Vahini v. Union of India,[662] where the Court issued comprehensive directives to prevent honour crimes, acknowledging that "the consent of the family or the community or the clan is not necessary once two adult individuals agree to enter into a wedlock."[663]

Despite these judicial pronouncements, social coercion remains pervasive and lethal. The family unit, far from being a private sanctuary, often functions as the first line of enforcement for caste and religious purity.[664] This coercion is not merely social but receives implicit sanction from a legal framework that prioritizes communal identity over the individual. The state's failure to proactively dismantle these structures of social control—and its provision of legal procedures like the SMA's public notice that arm vigilante groups—constitutes a form of complicity.[665] The judicial recognition of autonomy, therefore, exists in a vacuum, unsupported by a legal architecture designed to actively enable and protect that choice from societal reprisal.

IV. Patriarchy Embedded in Religious Personal Laws

The state's endorsement of religious personal laws institutionalizes patriarchal norms, directly contradicting constitutional mandates of equality and dignity.

A. Hindu Marriage Law

The Hindu Marriage Act, 1955 (HMA), while abolishing polygamy and introducing divorce, codified several patriarchal concepts. The remedy of restitution of conjugal rights under Section 9, compelling the cohabitation of spouses, has been critiqued as a violation of bodily integrity and privacy.[666] Although the Supreme Court upheld its constitutional validity in Saroj Rani v. Sudarshan Kumar,[667] the Andhra Pradesh High Court in T. Sareetha v. T. Venkata Subbaiah[668] had declared it void for treating the wife as a chattel. The guardianship provisions under the Hindu Minority and Guardianship Act, 1956, initially presumed the father to be the natural guardian. The Supreme Court in Githa Hariharan v. Reserve Bank of India[669] read this provision down to grant equality to the mother, but the statutory bias persisted until a 2021 amendment.[670] Further, discriminatory provisions concerning property inheritance and coparcenary rights, only partially remedied by

[658] See generally M.P. JAIN, INDIAN CONSTITUTIONAL LAW 3 (8th ed. 2018).
[659] INDIA CONST. arts. 14, 15, 21, 25.
[660] Shafin Jahan v. Asokan K.M., (2018) 16 SCC 368, 395.
[661] Lata Singh v. State of Uttar Pradesh, (2006) 5 SCC 475.
[662] Shakti Vahini v. Union of India, (2018) 7 SCC 192.
[663] Id. at 220.
[664] J. Singh & A. Pandey, Arranged Marriages and Family Dynamics of Interpersonal Relationships in India, 6 J. FOR REATTACH THERAPY & DEVELOPMENTAL DIVERSITIES 71, 76 (2023).
[665] Saptarshi Mandal, The Special Marriage Act, 1954: A Study in the Limits of Non-Interference, in THE EMPIRE OF DISGUST: PREJUDICE, DISCRIMINATION, AND POLICY IN INDIA AND THE US 127, 140 (Zoya Hasan et al. eds., Oxford Univ. Press 2015).
[666] T. Sareetha v. T. Venkata Subbaiah, AIR 1983 AP 356.
[667] Saroj Rani v. Sudarshan Kumar Chadha, (1984) 4 SCC 90.
[668] Id. at 98.
[669] Githa Hariharan v. Reserve Bank of India, (1999) 2 SCC 228.
[670] The Hindu Minority and Guardianship (Amendment) Act, 2021.

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the Hindu Succession (Amendment) Act, 2005, continue to affect marital power dynamics.[671]

B. Muslim Personal Law

Muslim personal law, largely uncodified, presents acute conflicts with gender justice. The practice of polygamy, though restricted by judicial interpretation to being "not barbaric" and subject to conditions,[672] remains legally permissible, creating stark inequality between spouses. The now-invalid practice of talaq-e-biddat (instant triple talaq) was a potent example of a unilateral, extra-judicial mechanism for divorce available only to the husband. In Shayara Bano v. Union of India,[673] the Supreme Court declared it unconstitutional, with the majority finding it violative of Article 14. The Court held that "what is bad in theology is bad in law as well,"[674] signalling a shift towards testing personal law against constitutional morality. However, other contested practices like nikah halala and polygamy remain.

C. Christian Marriage Law

Christian matrimonial law has also been a site of struggle for gender equality. The Indian Divorce Act, 1869, originally contained grossly discriminatory grounds for divorce, making it easier for husbands to obtain divorces than wives.[675] This disparity was challenged in Ammini E.J. v. Union of India,[676] where the Kerala High Court read down the provisions to ensure equality, a reform later incorporated by the Indian Divorce (Amendment) Act, 2001. The persistent need for such litigation underscores how personal laws, even among minority communities, are steeped in patriarchal assumptions that require constitutional correction.

V. The Special Marriage Act as State-Sanctioned Surveillance

The Special Marriage Act (SMA), 1954, conceived as a secular escape from personal laws, has been subverted into an instrument of surveillance. Section 5 mandates a 30-day public notice of the intended marriage, inviting "objections."[677] This provision transforms the Registrar's office into a public bulletin board, exposing couples, particularly in interfaith or inter-caste unions, to familial and communal hostility.[678] In Javed v. State (NCT of Delhi),[679] the Delhi High Court noted the "danger to the life and liberty of the applicants" due to this procedure and directed the police to provide protection, thereby acknowledging the state-created risk.

Post the seminal Justice K.S. Puttaswamy (Retd.) v. Union of India[680] ruling, which elevated privacy as a fundamental right intrinsic to dignity and autonomy, the SMA's notice provision appears constitutionally untenable. The Puttaswamy Court held that privacy includes "decisional autonomy reflected by an ability to make intimate decisions primarily consisting of one's sexual or procreative nature and decisions in respect of intimate relations."[681] Forcing couples to publicize an intimate decision central to their personal liberty, against their will and at great personal risk, constitutes a severe infringement of this right. The gendered consequences are stark, as women in such couples often face disproportionate social ostracization and violence[682].

VI. Legal Pluralism and Fraudulent Religious Conversions

The coexistence of disparate personal laws and a burdensome secular law creates perverse incentives, leading to the manipulation of religious identity. A significant body of case law deals with Hindu married men converting to Islam to solemnize a second marriage, circumventing the monogamy mandate of the

[671] B. SIVARAMAYYA, WOMEN'S RIGHTS OF INHERITANCE AND MAINTENANCE IN INDIA 45 (2004).
[672] A. Yousuf Rawther v. Sowramma, AIR 1971 Ker 261.
[673] Shayara Bano v. Union of India, (2017) 9 SCC 1.
[674] Id. at 60 (per Nariman, J.).
[675] Indian Divorce Act, 1869, § 10 (prior to amendment).
[676] Ammini E.J. v. Union of India, AIR 1995 Ker 252.
[677] Special Marriage Act, 1954, § 5.
[678] Bhumi Sharma, Inter-Religious Marriages in India – Still an Obstacle?, at 12 (SSRN, Oct. 12, 2023), https://ssrn.com/abstract=4601802.
[679] Javed v. State (NCT of Delhi), 2019 SCC OnLine Del 7863, ¶ 12.
[680] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.
[681] Id. at 349.
[682] Saptarshi Mandal, supra note 17, at 140.

HMA. In Sarla Mudgal v. Union of India,[683] the Supreme Court held that such a conversion, undertaken solely for the purpose of bigamy, did not dissolve the first Hindu marriage under the HMA, and the second marriage was void. The Court emphasized that religion cannot be used as a cover for committing an offense[684]. This was reaffirmed in Lily Thomas v. Union of India,[685]where the Court clarified that the first marriage remains valid and bigamy laws apply.

This legal morass highlights a direct conflict between fundamental rights. While Article 25 guarantees freedom of conscience and religion, it is subject to public order, morality, and health, and other fundamental rights[686]. The state's interest in preserving the rights of the first spouse (Article 21) and ensuring equality for women (Article 14) must supersede a fraudulent claim of religious conversion. The proliferation of so-called "Love Jihad" laws (anti-conversion statutes) in several states, while problematic for often targeting Muslim men and interfaith marriages, is a legislative response—however flawed and discriminatory—to this very phenomenon of strategic conversion[687]. The root cause, however, is the legal pluralism that makes such strategic behaviour a viable, if illegal, option.

VII. Digital Disruption: Dating Apps and Autonomy

The emergence of digital matchmaking via dating apps represents a significant sociological shift that sharpens the conflict between individual autonomy and patriarchal control. Empirical research indicates that these platforms facilitate connections based on individual preference, bypassing traditional familial and community intermediaries.[688] Sharma, Patel & Prajapati note that dating apps "have transformed the institution of marriage in India by prioritizing individual choice over familial and societal expectations," creating a new social reality where "personal compatibility and shared values take precedence over caste, religion, and socioeconomic status."[689]

This digitally enabled autonomy exists in a state of legal precarity. The relationships formed through these modern tools ultimately collide with the anachronistic legal frameworks governing marriage. The law fails to adapt to this new social reality, offering no safe, private, and efficient pathway for couples who meet and decide to marry outside traditional channels. The result is a widening gap between lived social experience and state law, forcing digitally-native couples into the same hazardous bureaucratic traps—the SMA's public notice or fraudulent conversion—that have long plagued interfaith and inter-caste unions.[690] The legal system's failure to evolve thus actively stifles the autonomous choices that technology enables.

VIII. Role of the Judiciary

The judiciary has emerged as a critical, though inconsistent, site for advancing marital autonomy through the application of constitutional morality. In landmark cases, the Supreme Court has positioned itself as a protector of individual liberty against majoritarian social norms. Shafin Jahan v. Asokan K.M.[691] is paradigmatic, where the Court overturned a High Court order annulling the marriage of a consenting adult woman, Hadiya. The Court powerfully reaffirmed that "the right to marry a person of one's choice is integral to Article 21," and that "intimacies of marriage lie within a core zone of privacy, which is inviolable."[692] The judgment rejected the paternalistic idea that the court or family could nullify the choice of a sui juris adult.

This approach aligns with a therapeutic jurisprudence lens, where the law should

[683] Sarla Mudgal v. Union of India, (1995) 3 SCC 635.
[684] Id. at 649.
[685] Lily Thomas v. Union of India, (2000) 6 SCC 224.
[686] INDIA CONST. art. 25, cl. 1.
[687] GAUTAM BHATIA, THE TRANSFORMATIVE CONSTITUTION: A RADICAL BIOGRAPHY IN NINE ACTS 287 (HarperCollins 2019).
[688] H. Sharma, N. Patel & R. Prajapati, The Transformation of the Institution of Marriage in India and the Role of Dating Apps, J. PSYCHOSEXUAL HEALTH (2025).
[689] Id.
[690] Bhumi Sharma, supra note 30, at 15.
[691] Shafin Jahan v. Asokan K.M., (2018) 16 SCC 368.
[692] Id. at 395.

function as a healing agent rather than a source of trauma.[693] Directions for police protection, fast-tracking of cases involving threats, and the framing of honour violence as a constitutional issue—as seen in Lata Singh and Shakti Vahini—are judicial attempts to provide therapeutic outcomes for couples under siege.[694]However, this therapeutic role is reactive and case-specific. It does not substitute for systemic legislative reform that would prevent the harm in the first place. The judiciary's most significant potential contribution would be to conclusively strike down provisions like the SMA's Section 5, which are the legal root of much of the state-facilitated harassment.

IX. Conclusion

The institution of marriage in India remains a contested domain where the self's autonomy is besieged by society's rigid mandates and the state's flawed legal instruments. This paper has argued that the current framework, comprising patriarchal personal laws and a surveillant secular alternative, functions as a mechanism of control that makes the state complicit in undermining constitutional guarantees. The analysis traversed the historical entrenchment of patriarchy, its codification in law, the hazardous procedural maze of the SMA, the fraudulent conversions it incentivizes, and the new social realities technology creates.

The solution does not simplistically lie in advocating for a Uniform Civil Code, which, in the current socio-political climate, risks imposing majoritarian norms.[695] Instead, the path forward must be a decisive reorientation towards a rights-based paradigm. Reform must begin with the judicial invalidation of the SMA's public notice provision, a clear violation of the Puttaswamy privacy jurisprudence. Concurrently, a movement towards optional, comprehensive secular laws that guarantee equality and are procedurally safe and private is essential. The objective must be to dismantle the architecture of control and affirm that the freedom to choose one's partner is an inalienable aspect of personal liberty, protected from both religious dogma and state-sponsored coercion. In the dynamic between State, Society, and Self, the law must unequivocally side with the autonomous Self.

[693] David B. Wexler, Therapeutic Jurisprudence: An Overview, 17 T.M. COOLEY L. REV. 125, 127 (2000).
[694] Shakti Vahini v. Union of India, (2018) 7 SCC 192, 223–28.
[695] FLAVIA AGNES, LAW AND GENDER INEQUALITY: THE POLITICS OF WOMEN'S RIGHTS IN INDIA 170 (Oxford Univ. Press 1999).