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Introduction

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Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

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Description

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BEYOND THE ALTAR OF SOCIAL MORALITY: PERSONAL AUTONOMY, LIVE-IN RELATIONSHIPS, AND THE UNFINISHED BATTLE AGAINST HONOUR-BASED VIOLENCE IN INDIA

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Abstract

The Indian Supreme Court has over the years built up a robust jurisprudence of personal autonomy, holding that the adult freedom to love, live with and marry of one's own choice is a part of the right to life and liberty under Article 21 of the Constitution. This paper examines that jurisprudence in the backdrop of the persistent social reality of honour killings, khap panchayat diktats, and moral policing that the law has so far failed to eliminate. It argues that India's constitutional courts have done the maximum that adjudication can do, declare a right, condemn its violation, and direct the executive to act. What they cannot do is legislate. Despite the 242nd Law Commission Report of 2012 and several judicial recommendations, India still does not have a standalone law that criminalises honour-based violence, and courts are forced to infuse an emerging constitutional value into a penal code that was never conceived to acknowledge this.. The paper concludes that the persistence of honour violence is not a failure of constitutional doctrine but a failure of legislative will and social transformation, and that closing this gap requires devolved protective mechanisms, victim-specific legislation, and sustained social change, not merely further judicial pronouncement.

I. Introduction

Every year many young Indians are killed simply because they committed the wrong offence of loving the wrong person. The 'wrong person' may belong to a different caste, a different religion, the same gotra, or simply the one whom the family or community disapproves of. The National Crime Records Bureau data reveals that honour killings are the tip of the iceberg in the ongoing practice of cleansing of dishonour through extreme physical violence in the name of community

family caste, or religion. Some of these figures are balancing suicide accident simple disappearance, etc. This paper starts with one straightforward yet disquieting observation: the highest Indian courts have, over the past twenty years, made their stance increasingly clear and strong about an individual's freedom to choose their partner. Though the very violence that this legal reasoning was supposed to eliminate has hardly been reduced. The discrepancy between what the constitution says and what the social norms allow is the focus of this research. It raises three questions. First, what is Indian constitutional doctrine's notion of partner choice? Second, if this doctrine is consistent and morally clear, why has it not led to a decrease in honour-based violence? Third, what would actually close that gap: more judicial intervention, or something that even the judiciary cannot provide?

The article refers to the Supreme Court's interpretation of the Constitution as regards privacy, dignity, and choice; to those extra-constitutional bodies like khap panchayats that continue to exist; to the legislative history of an honour-killing bill that has never been passed at the national level; and to the Supreme Court's decision in June 2026 in *Gajula Thirupathi v Telangana State Level Police Recruitment Board* case, which even brought the idea of personal autonomy to a quite unforeseen area: public employment¹.

II. The Constitutional Architecture of Choice

A. The Foundational Cases

A. The Foundational Cases This contemporary legal principle finds its roots for *Lata Singh v State of Uttar Pradesh*, where the Supreme Court had to rule on a woman who got married outside of her caste and then the brothers of the woman went to the police and lodged complaints against the husband's family. The brothers are the ones who first initiated the case, and their criminal complaints being in retaliation indicate that they intended to seek retribution through the law by accusing the husband's family.² Not only did the Court quash the proceedings but it also described honour killings in unusually direct language as barbaric and shameful acts. Also, it affirmed that consenting adults have an unqualified right to marry or live together as they choose, free from

¹ *Gajula Thirupathi v Telangana State Level Police Recruitment Board*, Supreme Court of India (June 2026) (unreported). [VERIFY: exact civil appeal/SLP number before citing in submission.]

² *Lata Singh v State of Uttar Pradesh* (2006) 5 SCC 475.

familial or community interference.³

Four years later, for *S Khushboo v Kanniammal*, the Court was dealing with the actress's making a statement that premarital sex is not morally wrong by itself which led to criminal complaints being filed against her.⁴ The Court throwing out the complaints stated that it is not a crime to have premarital sex and importantly live-intimate relationships are a part of the right to life protection under Article 21.⁵ This was among the first few occasions when the judiciary openly recognized that it was the Constitution and not the social morality that should be used as a measure for determining the legitimacy of private relationships. The judgment of Justice K S Puttaswamy v Union of India, which recognized privacy as a fundamental right, laid a strong doctrinal foundation by equating privacy to life and personal liberty and including decisions about intimate associations as a central aspect of that privacy.⁶ The next year, *Shafin Jahan v Asokan K M* - the case connected to the 'Hadiya case', where the marriage of a young woman with a man of a different faith was declared null by a High Court on her father's habeas corpus petition - the Supreme Court decided that the right to marry a person of one's choice is a major part of Article 21, and the High Court was very wrong in considering the woman as incapable of making her own choice.⁷

In the same year, *Navtej Singh Johar v Union of India* invalidated the punishments for consensual same-sex relationships by the abolition of section 377 of the Indian Penal Code, as the Court stated that constitutional morality should not be sacrificed for social morality.⁸ *Joseph Shine v Union of India*, decided shortly after, struck down the offence of adultery, with the Court again emphasising that sexual autonomy is intrinsic to dignity.⁹

B. Shakti Vahini and the Direct Confrontation with Khap Panchayats

The direct involvement of the doctrine in organized violence based on honor could be seen in the case of *Shakti Vahini vs. Union of India*. This case was brought before the court by an NGO due to the reported practices of khap panchayats, which were informal village/caste councils prevalent in the states of Haryana, Western Uttar Pradesh, Punjab, and Rajasthan. They were

³ ibid 484 (Markandey Katju J).

⁴ *S Khushboo v Kanniammal* (2010) 5 SCC 600.

⁵ ibid 614.

⁶ *Justice K S Puttaswamy v Union of India* (2017) 10 SCC 1.

⁷ *Shafin Jahan v Asokan K M* (2018) 16 SCC 368, 384.

⁸ *Navtej Singh Johar v Union of India* (2018) 10 SCC 1, 102 (Misra CJ).

⁹ *Joseph Shine v Union of India* (2018) 2 SCC 189.

issuing directives to kill couples marrying outside their gotra or caste.¹⁰

The Supreme Court ruled that the personal choice of a person in regards to love and marriage is an inseparable component of dignity guaranteed by Articles 19 and 21, and that no gathering, by whatever name or power it calls itself, has the legal right to hinder, punish or intimidate two grown-ups because of their personal choice.¹¹ By referring to the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, the Court considered that honour killings belonged to an array of honour crimes.¹² It was further decided that all such torture or cruelty which results in attacks on personal autonomy with respect to the freedom to choose one's spouse and marry is unlawful and cannot be allowed to exist, not even for a second.

Crucially, in the case of *Shakti Vahini*, the Court did not restrict itself merely to recognizing a right but took preventive, restorative and retributive action by directing the State Governments to identify those districts where honor killing had always been prevalent, establishing special units for such couples threatened with murder and protecting their right to life from being violated.¹³ The Court also recommended that Parliament enact a dedicated law on the subject — a recommendation that, as discussed in Part IV, remains unimplemented eight years later.

C. The 2026 Extension: *Gajula Thirupathi* and Autonomy Beyond the Home

However, the latest application and perhaps the one with the greatest social impact occurred in June 2026 in the case of *Gajula Thirupathi v Telangana State Level Police Recruitment Board*. This case pertained to an applicant who had been selected as Stipendiary Cadet Trainee Police Constable, whose selection was cancelled when the recruiting authorities found out that he was a party to a criminal case that was filed against him due to his consensual sexual intercourse which later turned into an allegation of rape because of the false promise to marry¹⁴.

The Bench, consisting of Justice Manmohan and Justice Manoj Mishra, has observed that the consensual sexual relation between two unmarried persons cannot, in itself, form any ground to

¹⁰ *Shakti Vahini v Union of India* (2018) 7 SCC 192.

¹¹ *ibid* 199–201.

¹² Council of Europe, Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul, 11 May 2011) CETS 210, art 3(a), as referenced in *Shakti Vahini* (n 11).=

¹³ *ibid* 205–209.

¹⁴ *Gajula Thirupathi v Telangana State Level Police Recruitment Board*, Supreme Court of India (June 2026) (unreported). [VERIFY: exact appeal number and law report citation before final submission.]

say that the candidate has bad moral character and thus directed the Board to reappoint him.¹⁵ The Court noted that there is no prohibition under any Indian law against two adults who wish to choose a relationship of their choice. Moreover, where two adults had been engaged in a relationship over some time, a presumption of consent operates in favor of those adults, which means that there has to be an assumption of agency on the part of those individuals rather than suspicion of the relationship.

There are three key aspects of this decision. The first is that this case is the movement of the autonomy principle from private domestic or marital affairs to public administrative law because the State cannot import social morality in determining the objectivity of a person as being suitable for public employment. Secondly, it affirms that there is a clear distinction in Indian constitutional law between constitutional and social morality, a distinction which has been present since *Navtej Singh Johar* and earlier since the judgment of *Naz Foundation v Government of NCT of Delhi*.¹⁶ Thirdly, even though Gajula Thirupathi's petitioner is a man, the judgment has a gender sub-text because it is mostly women who are viewed to be of 'character' due to their past consensual relations. This can either occur during matrimonial cases, custody matters, or employment checks, like in the said case.

III. The Persistent Social Reality: Khap Panchayats, Honour Killings, and Moral Policing

A. The Structure and Logic of Khap Panchayats

Khap Panchayats have been traditional groups that are unregulated and not based on the constitution and generally include senior members belonging to the caste or clan. The khap panchayats served the purpose of solving the disputes such as those related to the water disputes and small property disputes in the absence of a well-organized formal judicial system. With time, some khaps began exercising self-proclaimed powers in relation to the issue of marriage, particularly the prohibition on marriage with the same gotra or same village considered equivalent to marriage among siblings despite any degree of genetic distance.¹⁷

The research which came before the Supreme Court during the *Shakti Vahini* case was based

¹⁵ *ibid* (Manmohan and Manoj Mishra JJ).

¹⁶ *Naz Foundation v Government of NCT of Delhi* 160 (2009) DLT 277.

¹⁷ See generally *Shakti Vahini* (n 11) 196–198, summarising the factual record placed before the Court.

on a survey conducted in the region of Haryana and western Uttar Pradesh. It is reported that only a very small proportion of the reported incidents of honor crimes were those of relationships between individuals from the same gotra or village.¹⁸ The large number of cases actually concerned themselves with inter-caste or interreligious marriage, thus implying that the rule of gotras serves more as an excuse rather than a real reason behind such acts of violence.

B. Judicial Recognition Without Legislative Follow-Through

The stance that the courts have adopted regarding khap panchayats has always been crystal clear from the year 2006 onwards. Nevertheless, the continued existence of such institutions proves the limitations of judicial power in such matters. The courts can declare khap dictates to be illegal and even get prosecutions going against individuals who make or enforce them.¹⁹ But what the judiciary cannot do is undermine the social and economic basis that allows khap panchayats their sustained power, namely their deep rooting into the rural political scene, the readiness of certain political leaders to endorse khap panchayats as legitimate organizations in society, and the sheer fact that the police themselves belong to those very same communities to whom they should say no.

It creates an almost predictable scenario, one repeatedly noted in various decisions of High Courts: a couple threatened by something comes to the police for protection, and the police, contrary to all Supreme Court instructions in Shakti Vahini case, do nothing, leaving the couple to go to High Court for protection that they have already been granted by the Supreme Court.²⁰

C. Moral Policing Beyond Khaps: A Broader Social Pattern

This practice of honour violence and morality policing is not limited to khaps in India, nor is it restricted to only the logic of caste. It takes place through moral policing of couples in cities, the use of laws relating to rape and POCSO for criminalizing consensual relationships where the family seeks to take revenge on a daughter for the wrong choice of husband, and the fact that the relationship history of a woman before marriage becomes important in terms of her honesty or

¹⁸ Shakti Vahini (n 11) 197, summarising findings placed before the Court by the National Commission for Women. [VERIFY: precise percentage figure against the primary NCW report before citing in submission.]

¹⁹ Lata Singh (n 3); Shakti Vahini (n 11).

²⁰ See e.g. a 2026 ruling of the Allahabad High Court granting protection to a live-in couple following police inaction on a prior complaint. [VERIFY: exact case name, citation, and bench before citing in submission — full details not independently confirmed.]

marriageability, as was clearly debunked in Gajula Thirupathi by the Supreme Court of India. Some survey evidence captures the intergenerational nature of the conflict, with younger, urban Indians having much greater acceptance of live-in relationships than the average person²¹, a measurable shift in attitudes that the law is, in some respects, still catching up to.

IV. The Legislative Gap: A Right Without a Statute

A. The 242nd Law Commission Report

The Law Commission of India drafted the Prevention of Interference with the Freedom of Matrimonial Alliances (in the Name of Honour and Tradition) Bill in its 242nd Report of 2012. The bill sought to consider khap panchayats and other such organizations as illegal associations when they were involved in activities that led to harassment, ostracism, discrimination or instigation to violence; laid down minimum punishment for such activities and made suggestions for amending sections of the Indian Penal Code, the Indian Evidence Act, 1872, and the Special Marriage Act, 1954, including the abolition of the thirty day prior public notice required under the latter act which served as a warning mechanism to hostile families about an upcoming inter-caste or inter-religious marriage²². Furthermore, the Bill suggested placing the burden of proof on those accused of organizing such violence through membership of such assemblies, which is certainly an important deviation from the usual presumption of innocence and, in the opinion of some people, a constitutionally dubious one, since the closed and consensual nature of the decision-making process within the khaps makes it almost impossible to meet the usual requirements of evidence. The Bill received criticism from different sides and was never tabled in Parliament.

B. Shakti Vahini's Recommendation and Its Aftermath

When the Supreme Court delivered its verdict on Shakti Vahini in 2018, it did not merely pronounce khap intervention unconstitutional but clearly indicated that a special law be enacted by the legislature for the prevention of honour crimes. The Union government in its affidavit before the Supreme Court stated that since the subject of khap panchayat interference was covered under

²¹ [VERIFY: precise survey source, sample, and percentages before citing in submission — exact figures not independently confirmed for this draft.]

²² *ibid* paras 2.1–2.4 and draft Bill, cl 7.

the Concurrent List of the Seventh Schedule of the Constitution, both the legislature at the national level as well as the states could intervene. Only one major legislative action in this respect from the state legislature is the Rajasthan Prohibition of Interference with the Freedom of Matrimonial Alliances (in the Name of Honour and Tradition) Bill 2019, which provides a life term or death sentence for honor killing and makes it a crime to intimidate and threaten liberty and harassment because of the individual's choice of their spouse.²³ As per the year 2026, this is the only law in India wherein the practice of honor killing is explicitly named as an offence, while in all other regions of India, the prosecuting parties have to depend on the general laws provided in the Indian Penal Code, such as murder under section 300, criminal conspiracy under section 120-B, and common intention under section 34 and 36. These laws were not formulated keeping in view the social conditions prevailing in cases of honor killings..

C. Why the Gap Persists

This enduring legislative void under three successive governments and through fourteen years after the 242nd report can hardly be accounted for by the issue of drafting difficulties alone; for, competent draft bills on the subject have been available since 2011 in one guise or another. A far more convincing reason would be the electoral significance of khap and caste councils' electorates in the states where honour killings take place in greater numbers, and the political risk involved in any government's perception of appearing to be legislating against institutions which many politicians have themselves compared to Resident Welfare Associations and non-governmental organizations. The outcome is an unusual legal framework in which the Supreme Court has constructed, on a case-by-case basis, a particularly strong constitutionally guaranteed freedom to marry without familial and community interference.

V. Analysis: What Adjudication Can and Cannot Do

The pattern that emerges from Parts II to IV can be extrapolated into a broader theory regarding the limitations of constitutional adjudication as an instrument of social change. It is true that courts excel at proclaiming rights, establishing principles, and nullifying laws which contravene the Constitution, as seen in the case of Navtej Singh Johar, where section 377 was read down, and

²³ Rajasthan Prohibition of Interference with the Freedom of Matrimonial Alliances (in the Name of Honour and Tradition) Bill 2019, ss 3–4.

Joseph Shine, where adultery was held to be unconstitutional.²⁴ The pattern that emerges from Parts II to IV can be extrapolated into a broader theory regarding the limitations of constitutional adjudication as an instrument of social change. It is true that courts excel at proclaiming rights, establishing principles, and nullifying laws which contravene the Constitution, as seen in the case of Navtej Singh Johar, where section 377 was read down, and Joseph Shine, where adultery was held to be unconstitutional. The pattern that emerges from Parts II to IV can be extrapolated into a broader theory regarding the limitations of constitutional adjudication as an instrument of social change. It is true that courts excel at proclaiming rights, establishing principles, and nullifying laws which contravene the Constitution, as seen in the case of Navtej Singh Johar, where section 377 was read down, and Joseph Shine, where adultery was held to be unconstitutional.

The example set by Gajula Thirupathi demonstrates this limitation of the doctrine, although the doctrine goes beyond what it used to be before. This decision helps protect one police recruit from one form of administrative consequence resulting from one particular kind of relation. However, it certainly will not change the social reality of the fact, demonstrated by the mere act of considering premarital relations as grounds for disqualification in recruiting police officers, that such relations of an individual can become the target of government attention.

The following three conclusions can be made from all of the above information. Firstly, the existence of such concrete instructions from the Shakti Vahini NGO and the lack of any response on the part of the local police imply that additional statements from the Supreme Court are unlikely to change anything; what is needed here is a structural change that will enable more effective reception, processing and resolution of complaints about threats faced by the couples concerned, ideally without going through the stage of local police discretion in the cases where there are clear grounds for a threat. Secondly, the lack of an honour killing law at the federal level implies that the prosecutions are based on generic criminal law, which does not reflect the collective, premeditated and public nature of honor-based violence. Third, Lastly, generational surveys showing much greater acceptance of live-in relationships and inter-community partnerships among young Indians living in cities indicate social change as a factor that, in the long run, could be much more effective in reducing the prevalence of honor violence than any one single piece of legislation, without underestimating the importance of legislative reforms, of course

²⁴ Navtej Singh Johar (n 9); Joseph Shine (n 10).

VI. Conclusion

The constitutional law of India has followed a definite path, moving towards confidence and certainty in each step, which begins with Lata Singh's rejection of honour killings as barbaric, followed by Khushboo's defence of cohabitation, Puttaswamy's recognition of privacy, Shafin Jahan's defence of choice in marriage, Shakti Vahini's bold challenge to khap panchayats, and finally, Gajula Thirupathi's assertion of autonomy to public sector employment. In each case, the Court has reiterated the same moral idea that "constitutional morality and nothing else" is the only yardstick by which an individual can be judged when it comes to choosing who he or she wants to love or marry.

But this very consistency only underscores the extent to which the law alone is insufficient in solving this issue. Honour killings continue not because there is any confusion on the part of the law on whether such crimes are legal or illegal because the law has been crystal clear on this matter since at least 2006. This happens because the institutions that should protect against honour killing, detect honour killings, and punish those who carry out honour killings find themselves in the midst of the social structures that have created these crimes. Solving this problem will need what the judiciary has asked for and never gotten – a national legislation recognizing honour-based violence as a unique offence, protection mechanism not subject to the discretion of local police and further generational changes that have begun to be evident in the differing mindsets of urban India's young people.