

Rethinking Family Law in India: Live-in Relationships, Assisted Reproduction, and Legal Legitimacy

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Abstract

Indian family law is increasingly out of sync with the social realities it claims to regulate. Live-in relationships, single parenthood by choice, queer families, and children born outside formal marriage are no longer exceptional, yet the law continues to treat marriage as the primary source of legitimacy and protection. This paper examines that tension by looking at three connected areas: judicial responses to live-in relationships, the evolving legal position of children born outside marriage, and the restrictive framework created by the Surrogacy (Regulation) Act, 2021 and the ART (Regulation) Act, 2021. Recent court decisions reveal a cautious pattern. Judges are willing to protect the consequences of non-marital relationships maintenance, inheritance, legitimacy of children, and personal safety while avoiding any direct recognition of the relationships themselves. Tools like the presumption of marriage operate as legal shelters, not acknowledgments of choice, offering relief only by assimilating non-marital families into a marital model they may have deliberately rejected. In contrast, legislative developments move firmly toward exclusion. The 2021 reproductive laws redraw the boundaries of permissible parenthood in narrow, marriage-centric terms, quietly sidelining unmarried couples, queer persons, and never-married individuals. Together, these trends create a fractured legal landscape that offers protection without dignity and tolerance without acceptance. From a law student's perspective, this reflects an unresolved struggle between constitutional values of autonomy and equality and persistent social anxieties around family and reproduction, leaving many families legally visible yet fundamentally unrecognised.

Keywords: Live-in relationships, Legitimacy and kinship, Reproductive autonomy, Marriage-centric family law, Constitutional morality

I. Introduction: The Collision of Status and Autonomy

As a student of law observing the shifting tectonic plates of Indian society, one is struck by a profound dissonance. On the streets of Bengaluru, Delhi, and Mumbai, the definition of "family" is undergoing a quiet, radical transformation. We see couples cohabiting for years without the "sacred fire" or the registrar's stamp; we see single women embracing motherhood through Assisted Reproductive Technologies (ART); we see queer families negotiating care and companionship in the shadows of legal non-recognition. Yet, when we step into the courtroom or

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open the statute books, we encounter a rigid, fossilized architecture of kinship that seems to belong to a different century.

The central inquiry of this paper is not merely doctrinal but existential: How does a legal system rooted in the "sacred" institution of marriage grapple with the reality of families that exist outside it? We are witnessing a peculiar moment in Indian legal history a tug-of-war between "Status" and "Contract," to borrow from Henry Maine, but with a twist. While the judiciary, acting as the custodian of Constitutional Morality, attempts to pull the law towards recognizing the *contract* of chosen relationships and the *status* of dignity, the legislature is aggressively re-entrenching the *status* of marriage as the sole gateway to legitimate kinship.

This tension is most visible in two distinct arenas: the chaotic, judge-made law governing live-in relationships, and the sanitized, exclusionary statutory regime of the Surrogacy (Regulation) Act, 2021 and the ART (Regulation) Act, 2021. In this paper, I attempt to map this uneven terrain. I will explore how the courts are using "legal fictions" like the presumption of marriage to protect vulnerable partners in live-in relationships, while simultaneously, the Parliament is erecting high walls around reproductive technologies to ensure they remain the exclusive preserve of the "traditional" family.

Through an analysis of recent landmark judgments like *Revanasiddappa v. Mallikarjun*², *Supriyo v. Union of India*³, and *Kattukandi Edathil Krishnan*⁴, alongside the draconian provisions of the 2021 fertility laws, I argue that Indian family law is currently schizophrenic. It grants protection to the *consequences* of non-marital relationships (like children and maintenance) while steadfastly refusing to validate the *relationships* themselves. We are creating a "shadow law" for a shadow citizenry families that are "tolerated" but not "celebrated," protected from violence but denied the dignity of full legal recognition.

II. The 'Unmarried' Wife: Live-in Relationships and the Judicial Conscience

There is no "Live-in Relationship Act" in India. The phrase itself is a judicial coinage, a euphemism for cohabitation that sits uncomfortably between "valid marriage" and "concubinage." In the absence of legislative guidance, the judiciary has been forced to play the role of the sociologist, moralist, and lawmaker. The result is a patchwork of jurisprudence that oscillates between progressive protectionism and moral panic.

A. The Evolution of the "Nature of Marriage"

The journey began with the Protection of Women from Domestic Violence Act, 2005

² *Revanasiddappa v. Mallikarjun*, (2023) 9 SCC 1

³ *Supriyo & Supriya Chakraborty v. Union of India*, (2023) 10 SCC 1

⁴ *Kattukandi Edathil Krishnan v. Kattukandi Edathil Valsan*, (2022) 6 SCC 309

(PWDVA), which introduced the concept of a "relationship in the nature of marriage." This was a revolutionary conceptual leap. It acknowledged that a woman could be a victim of domestic violence even if she lacked a marriage certificate. However, defining "nature of marriage" has proven to be a jurisprudential quagmire.

In early cases like *D. Velusamy v. D. Patchaiammal*⁵ and *Indra Sarma v. V.K.V. Sarma*⁶, the Supreme Court laid down a "functional" test. They looked for the *badges* of marriage: pooling of resources, exclusivity, a shared household, and socialization in public.⁴ If a couple *looked* like they were married and *acted* like they were married, the law would treat them *as if* they were married for the limited purpose of protection from violence.

But there is a catch. The courts have consistently distinguished these "relationships in the nature of marriage" from what they term "walk-in, walk-out" relationships. This distinction betrays a judicial anxiety: the fear that granting rights to cohabiting couples might "devalue" marriage. The law seems to say: "We will protect you, but only if you were trying to be as close to a married couple as possible."

B. The Presumption of Marriage: A Legal Fiction as a Shield

The most potent tool in the judicial arsenal has been Section 114 of the Indian Evidence Act, which allows the court to presume the existence of a fact. In the context of long-term cohabitation, this has evolved into a strong presumption in favor of marriage.

The recent judgment in *Kattukandi Edathil Krishnan v. Kattukandi Edathil Valsan*⁷ is a watershed moment. Here, the Supreme Court was dealing with a property dispute involving children of a long-term cohabiting couple. The Court reiterated that "Law leans in favour of legitimacy and frowns upon bastardy". It held that if a man and woman have lived together for a long period, there is a presumption of marriage. The burden lies heavily on the person who denies the marriage to prove otherwise.⁸

This ruling is significant for a student of law because it reveals the judiciary's preferred method of problem-solving: **assimilation**. rather than creating a separate legal category for live-in relationships with its own set of rights (as exists in jurisdictions like France with the PACS or Canada with "common-law partners"), the Indian Supreme Court prefers to "upgrade" the relationship to a marriage through legal fiction.

Why does this matter? Because it suggests that the Indian legal imagination struggles to conceive of a valid family unit *outside* of marriage. The only way to give the woman and children rights is to pretend a marriage existed. While this is a benevolent fiction that protects the vulnerable, it

⁵ *D. Velusamy v. D. Patchaiammal*, (2010) 10 SCC 469

⁶ *Indra Sarma v. V.K.V. Sarma*, (2013) 15 SCC 755

⁷ *Kattukandi Edathil Krishnan v. Kattukandi Edathil Valsan*, (2022) 6 SCC 309

⁸ Presumption of Marriage Affirmed in *Kattukandi Edathil Krishnan*, [CaseMine](#)

fails to address the reality of modern couples who may *choose* not to marry but still demand recognition of their partnership rights.

C. The Protection Order Wars: Public Morality vs. Constitutional Duty

If the Supreme Court has been relatively progressive, the High Courts have become the battleground for a fierce culture war. This is most visible in the petitions filed by "runaway couples" often inter-caste or inter-faith live-in partners seeking police protection from their families.

1. The Punjab and Haryana High Court: A House Divided

The jurisprudence coming out of the Punjab and Haryana High Court in 2023-2025 is particularly illustrative of the conflict between "Public Morality" and "Constitutional Morality."

On one side, we have benches that have viewed live-in relationships with deep suspicion. In a series of orders, single judges have denied protection to live-in couples, observing that such relationships are "morally and socially unacceptable" and that granting police protection would "disturb the entire social fabric" of the country.⁹ This line of reasoning reached its peak in cases where one of the partners was already married (without a divorce). Here, the court refused protection on the grounds that doing so would be "promoting bigamy" and placing a judicial seal on an "illicit" relationship.

This reasoning is legally precarious. It conflates the *civil/criminal liability* of the relationship (e.g., adultery or bigamy) with the *fundamental right to life* under Article 21. As a researcher, I find this trend alarming because it essentially states that "immoral" citizens are not entitled to physical safety.

However, a corrective intra-court trend has emerged. In *Satnam Singh v. State of Haryana*¹⁰, a Division Bench of the same High Court overruled this moralistic approach. The Bench clarified that the state's duty to protect life and liberty is absolute. Whether a relationship is adulterous, "sinful," or socially abhorrent is irrelevant to the question of whether the individuals deserve to be protected from "tangible threats" of violence. The Court held that even if a partner is married, they cannot be left to the mercy of honor killing squads or vigilante justice. This reflects a triumph of Constitutional Morality where the individual's body is sacrosanct over Public Morality, which seeks to punish social deviance.

2. The Allahabad High Court: The Interfaith Complication

The Allahabad High Court has faced a similar dilemma, compounded by the sensitive issue of religious conversion. In 2024, contradictory judgments emerged regarding interfaith live-in

⁹ Delhi Judicial Academy, *Kattukandi Edathil Krishnan* Judgment (2022)

¹⁰ *Satnam Singh v. State of Haryana*, 2024 SCC OnLine

couples. Some benches denied protection, linking the validity of the live-in relationship to the anti-conversion laws, suggesting that living together might be a ruse to bypass the Special Marriage Act's procedures.¹¹

Yet, by late 2025, a shift occurred. In a sweeping order protecting 12 live-in couples, the Allahabad High Court stated unequivocally that "live-in relationships are not illegal." The Court relied on the *Bhartiya Sakshya Adhinyam* to invoke the presumption of marriage, stating that the state must protect such couples. This yo-yo jurisprudence leaves live-in couples in a state of precarious uncertainty, their safety depending entirely on the "roster luck" of which judge hears their plea.

D. The Maintenance Gap: Who is a "Wife"?

The most glaring statutory gap remains in the law of maintenance. Section 125 of the CrPC (and now Section 144 of the BNSS) uses the term "wife." While the Supreme Court in *Chanmuniya*¹² expanded this to include women in long-term cohabitation, recent judgments have exposed the limits of this expansion.

The critical issue is *knowledge*. If a woman enters a live-in relationship *knowing* that her partner is already married, the courts have increasingly held that she is not entitled to maintenance under Section 125¹³. She is not a "wife" in the eyes of the law, but a "concubine" or a participant in an adulterous affair. This leaves women in such relationships who may have dedicated years of domestic labor and care financially destitute upon separation. The law punishes the woman for the "illegitimacy" of the relationship, ignoring the economic dependency that the relationship created.

III. The Paradox of Legitimacy: Children of the Shadow Families

If the partners in a live-in relationship occupy a grey zone, what of their children? The Indian legal system has historically struggled with the concept of "illegitimacy." While modern statutes have tried to erase the stigma, the property rights of such children remain a complex puzzle, recently reshuffled by the Supreme Court in *Revanasiddappa v. Mallikarjun*¹⁴.

A. The "Coparcenary" Problem

To understand the magnitude of *Revanasiddappa*, one must understand the Hindu Joint Family system. In the *Mitakshara* school, a child acquires a right in the ancestral property (coparcenary) *by birth*. But this "birth" must be within a valid marriage. Historically, "illegitimate" children had

¹¹ Allahabad HC on Personal Liberty in Interfaith Live-in Relationships, **Citizens for Justice & Peace**

¹² **Chanmuniya v. Virendra Kumar Singh Kushwaha**, (2011) 1 SCC 141

¹³ Status of Children Born out of Live-in Relationships, **TSCLD**

¹⁴ **Revanasiddappa v. Mallikarjun**, (2023) 9 SCC 1

no right to ancestral property; they could only claim the *self-acquired* property of their parents.

Section 16 of the Hindu Marriage Act, 1955, was a reformist provision. It declared that children of void and voidable marriages (e.g., bigamous marriages, or marriages violating age/prohibited degrees) are "legitimate." However, Section 16(3) contained a poison pill: it stated that such children could inherit *only* the property of their parents, and not the property of any other relative.

The legal question that plagued courts for decades was: Does "property of the parents" include the parent's share in the ancestral coparcenary property? Or does it mean only the self-acquired property?

B. The *Revanasiddappa* Compromise (2023)

In *Revanasiddappa*, a Constitution Bench of the Supreme Court finally settled this debate. The judgment is a masterclass in balancing statutory text with humanitarian purpose.

The Court held that children of void/voidable marriages *are* entitled to the parent's share in the ancestral property.¹⁵ However, the Court stopped short of making them full coparceners. They cannot demand a partition of the family property during the father's lifetime. Instead, the Court introduced the concept of a "**notional partition.**"

The logic operates as follows: When the parent dies, the law presumes that a partition of the ancestral property took place *immediately before* the death. The share that would have been allotted to the parent becomes their distinct "property." It is from this specific slice of the pie that the Section 16 child can inherit¹⁶.

Why is this a compromise?

- **For the Child:** It grants access to ancestral wealth, which was previously denied.
- **For the Traditional Family:** It prevents the "illegitimate" child from disrupting the joint family structure while the father is alive. They are heirs to the *person*, not members of the *coparcenary body*.

C. Implications for Live-in Relationships

The *Revanasiddappa* judgment technically applies to children of *void/voidable marriages*. But what of children born in live-in relationships where *no* marriage ceremony ever took place?

Here, the law relies on the interplay between the Evidence Act and Section 16 HMA. If the live-in relationship meets the threshold of "long-term cohabitation," the presumption of marriage (discussed in *Kattukandi*) kicks in. The relationship is treated *as if* it were a valid marriage, and

¹⁵ *Revanasiddappa v. Mallikarjun*, (2023) 9 SCC 1

¹⁶ Equality at Crossroads: *Revanasiddappa v. Mallikarjun*, **Law & Other Things**

the children are treated as legitimate children of a valid marriage, potentially enjoying full rights.

However, a dangerous gap remains for children of short-term or casual relationships. If the relationship does not meet the "nature of marriage" test, the child may still be classified as "illegitimate" in the traditional sense, outside the protection of Section 16. While they are entitled to maintenance under Section 125 CrPC¹⁷ and self-acquired property, their access to ancestral property via the *Revanasiddappa* route is ambiguous. This creates a hierarchy of childhood based on the duration of the parents' romance a situation that arguably violates Article 14 (Equality).

IV. Biopolitics and the Statutory Fortress: The 2021 Acts

While the judiciary is slowly (if messily) expanding the definition of family to include live-in partners and their children, the Parliament has moved decisively in the opposite direction. The enactment of the **Surrogacy (Regulation) Act, 2021 (SRA)** and the **Assisted Reproductive Technology (Regulation) Act, 2021 (ART Act)** represents a state effort to re-codify the "ideal Indian family" in the age of biotechnology.

As a researcher, one cannot help but notice the stark disconnect. Just as society is becoming more fluid, the statutes are becoming more rigid. These Acts do not just regulate medical procedures; they regulate *who is allowed to be a parent*.

A. The Definition of "Intending Couple": The Marriage Mandate

Both Acts are built on the foundational definition of an "intending couple" or "commissioning couple." This is defined strictly as a **legally married Indian man and woman**.¹⁸

This definition is an act of erasure. It renders invisible:

1. **Live-in Couples:** Despite the Supreme Court recognizing live-in relationships as legitimate for the purpose of domestic violence and maintenance, the Parliament denies them access to surrogacy and ART. The implicit logic is that live-in relationships are too "unstable" to bring a child into a presumption made without empirical data¹⁹.
2. **LGBTQ+ Couples:** Same-sex couples, who cannot marry, are automatically excluded.
3. **Single Men:** Single men are barred entirely from surrogacy and adoption of female children.

B. The "Intending Woman": A Study in Arbitrariness

Perhaps the most controversial provision is Section 2(s) of the Surrogacy Act, which defines an "intending woman." It allows a single woman to access surrogacy *only if* she is "a widow or

¹⁷ Status of Children Born out of Live-in Relationships, **TSCLD**

¹⁸ The Surrogacy (Regulation) Act, 2021: A Critique, **PMC-NIH**

¹⁹ Assisted Reproductive Technology (Regulation) Act, 2021: Critique & Contestations, **PMC-NIH**

divorcee between the age of 35 to 45 years".

This provision is fascinating and disturbing in equal measure. It essentially constructs a hierarchy of "deserving" single women.

- **The Widow/Divorcee:** She is viewed with sympathy. She entered the institution of marriage but was unfortunate. The state grants her a "consolation" prize the right to use surrogacy (using her own eggs) to continue her lineage.
- **The Never-Married Woman:** She is viewed with suspicion. A woman who *chooses* to remain single is denied the right to reproductive autonomy. Why? Is a 40-year-old unmarried CEO less capable of raising a child than a 40-year-old divorcee? The statute offers no rationale.

This exclusion was challenged in the Delhi High Court in *Arun Muthuvel v. Union of India*²⁰ (and connected matters). The petitioner, a single unmarried woman, argued that this classification violates Article 14 (Equality) and Article 21 (Reproductive Autonomy). She pointed out the cruelty of the law: she is genetically unrelated to a potential husband, yet she is forced to marry to access surrogacy, or wait to be divorced.

C. The Supreme Court's Interim Relief and the "Crystallized Right"

In *Arun Muthuvel*, the Supreme Court had to intervene urgently because the Act's retrospective application was destroying the dreams of many. Couples who had frozen embryos or started surrogacy procedures before the 2021 Acts came into force suddenly found themselves criminalized or ineligible due to new age limits or marital status rules.²¹

The Court held that the "right to parenthood" is a fundamental right. It ruled that couples who had already initiated the medical process had a "crystallized right" that could not be taken away by a new statute. This was a victory for *expectant* parents, but it did not strike down the discriminatory definitions for *future* applicants²².

D. The Kerala High Court and the Age Limit Revolt

Another flashpoint has been the rigid age limits (50 for women, 55 for men) imposed by the ART Act. In a series of bold judgments in 2024-2025, the Kerala High Court questioned the "irrationality" of these limits.

In one case, a couple was denied IVF because the husband was slightly over 55. The High Court observed that the "personal choice to build a family is a fundamental right" and that arbitrary state-imposed deadlines on reproduction violate personal liberty. The Court directed the government to "re-look" at these limits, suggesting that medical fitness, not just chronological

²⁰ *Arun Muthuvel v. Union of India*, 2025 SCC OnLine

²¹ *Arun Muthuvel v. Union of India*, 2025 SCC OnLine

²² *Age-Restriction on Couples Intending to Parent Through Surrogacy*, *Supreme Court Observer Law Reports*

age, should determine eligibility. This judicial intervention highlights the friction between the bio-ethical state (which wants to prevent "geriatric parenthood") and the autonomous individual.

V. The Queer Question: Adoption, Marriage, and the "Best Interests" of the Child

No discussion on modern family law is complete without addressing the elephant in the room: the status of LGBTQ+ families. Following the decriminalization of homosexuality in *Navtej Singh Johar*²³, the expectation was that relationship recognition would follow. The 2023 judgment in *Supriyo v. Union of India*²⁴ dampened those hopes.

A. *Supriyo*: The Denial of Status

While the Court refused to read the right to marry into the Special Marriage Act, framing it as a legislative function, the most damaging part of the judgment for queer kinship was the refusal to strike down adoption regulations.

B. The CARA Wall: Regulation 5(3)

The Central Adoption Resource Authority (CARA) Regulation 5(3) prohibits unmarried couples from adopting a child *jointly*. They can adopt as single parents (subject to restrictions), but they cannot be legal co-parents²⁵.

In *Supriyo*, the bench was split 3:2 on this issue.

- **The Minority (CJI Chandrachud & Justice Kaul):** They argued that this regulation discriminates against "atypical unions." They noted that there is *no data* to prove that unmarried couples (queer or straight) provide a less stable home than married couples. They argued that the "best interest of the child" is served by having *two* legal parents rather than one, regardless of their marital status.
- **The Majority (Justices Bhat, Kohli, Narasimha):** They upheld the regulation. Their reasoning was rooted in the "administrative difficulty" of managing adoption breakdowns in non-marital relationships. They argued that marriage provides a defined legal framework for custody and maintenance that live-in relationships lack. Therefore, adoption within marriage was seen as the "gold standard" for the child's stability.

This ruling effectively locks queer couples (and heterosexual live-in couples) out of joint parenthood. Even if they raise a child together, legally, the child has only one parent. If that parent dies, the child does not automatically go to the other partner but could be taken away by the state or hostile relatives. This is a profound vulnerability that the majority judgment failed to

²³ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1

²⁴ *Supriyo & Supriya Chakraborty v. Union of India*, (2023) 10 SCC 1

²⁵ *Supriyo & Supriya Chakraborty v. Union of India*, Judgment Materials, Centre for Law & Policy Research

cure.

VI. Horizon: Intent vs. Status

To understand how conservative the Indian position is, it is instructive to look at other common law jurisdictions that have grappled with similar issues.

United Kingdom: The "Agreed Fatherhood" Model

The UK's Human Fertilisation and Embryology Act, 2008 offers a stark contrast to India's ART Act. It explicitly decouples parenthood from marriage. Sections 36 and 37 introduce the concept of "Agreed Fatherhood Conditions." If an unmarried couple undergoes fertility treatment together, and the male partner gives written consent, he is the legal father. Period. No marriage required.

Crucially, the Act also allows for "Second Female Parents" in same-sex relationships²⁶. If two women have a child via ART, the non-carrying partner can be the legal second parent through consent. The law prioritizes the intention to parent over the status of marriage.

VII. Synthesis: Constitutional Morality vs. Public Morality

As I reflect on the divergence between Indian statutes and comparative progress, the core conflict becomes clear. It is a battle between **Public Morality** and **Constitutional Morality**.

1. **Public Morality** is the voice of tradition. It argues that marriage is the bedrock of society, and any dilution of it (by recognizing live-in couples, queer marriage, or single parenthood) will lead to social collapse. This view is evident in the Punjab & Haryana High Court judgments refusing protection to "immoral" couples and in the exclusionary provisions of the Surrogacy Act. It views the law as a tool to *enforce* social norms.
2. **Constitutional Morality**, on the other hand, is the voice of the Constitution. Championed by Dr. B.R. Ambedkar and invoked by the Supreme Court in *Navtej Johar* and *Sabarimala*, it argues that the fundamental rights of dignity, autonomy, and equality cannot be held hostage to popular sentiment. It demands that the law protect the individual's choice to love and procreate, even if that choice offends the majority²⁷.

The current state of Indian family law is a stalemate. The Parliament, through the 2021 Acts, has legislated on the basis of Public Morality. The Supreme Court, through *Revanasiddappa* and *Kattukandi*, is adjudicating on the basis of Constitutional Morality (albeit cautiously).

A. The "Medicalization" of Rights

²⁶ **The Tenacity of the Sexual Family Form**, *LSE Research Online* (2016)

²⁷ **M. Chatterjee, The Public and Constitutional Morality Conundrum: A Case-Note on the Naz Foundation Judgment**, *CommonLII* (2009)

A key insight I have gathered is how the state uses "medical necessity" as a cloak for moral policing. The Surrogacy Act requires an "intending couple" to prove *medical* infertility²⁸. But what about *social* infertility? A single woman or a gay couple is "infertile" not because their bodies are broken, but because they lack the biological partner required for procreation. By refusing to recognize social infertility, the state cleverly disguises its moral exclusion as a medical regulation.

B. The Class and Caste Dimension

Finally, we must not ignore the subtext of caste. The "sanctity of marriage" in India is inextricably linked to endogamy maintaining caste purity. Live-in relationships, particularly inter-caste ones, threaten this order. When High Courts refuse to protect run-away couples, they are wittingly or unwittingly acting as guardians of the caste system²⁹. The struggle for the recognition of live-in relationships is, at its heart, a struggle for the democratization of intimacy against the rigidity of caste and community control.

VIII. Conclusion: Towards a Functional Family Law

Family law in India stands at a crossroads. We have a "Formal Law" that is exclusive, rigid, and marriage-centric. And we have a "Functional Law" built by judges case-by-case that tries to accommodate the messy reality of love, cohabitation, and biology.

The *Revanasiddappa* judgment offers a glimmer of hope. By separating the "property right" from the "status of legitimacy," the Court showed that we can protect the child without necessarily overturning the entire social structure. Perhaps this **functional approach** is the way forward.

Instead of obsessing over whether a live-in relationship *is* a marriage, the law should ask: Does this relationship perform the *functions* of a family? Is there caregiving? Is there economic interdependence? Is there a child? If the answer is yes, the rights should follow, regardless of the ceremony.

Until we move from "Status" to "Function," or from "Public Morality" to "Constitutional Morality," millions of Indians cohabiting couples, single parents, queer families will continue to live in the shadow of the law, citizens of a democracy that grants them the right to vote but not the right to be a family.

IX. Detailed Analysis of Judicial Reasoning in *Supriyo*

The *Supriyo* judgment warrants a closer inspection because it serves as a mirror to the limitations of the Indian judiciary when faced with legislative silence.

²⁸ **A. Gupta & R. Singh, Assisted Reproductive Technology (Regulation) Act 2021: Critique and Contestations**, *PMC – National Institutes of Health* (2023)

²⁹ **Family Law and Religion: The Indian Experience**, *Indian Association of Family Law* (2020)

The petitioners in *Supriyo* did not merely ask for a new law; they asked for a "reading down" of the Special Marriage Act (SMA) to make it gender-neutral. The argument was elegant: The SMA is a secular statute. It was designed to accommodate couples who could not marry under religious laws (e.g., inter-faith couples). Therefore, it is the natural home for same-sex couples who are rejected by religious personal laws³⁰.

The Majority's refusal was rooted in the doctrine of Separation of Powers. They argued that "spouse," "husband," and "wife" in the SMA are not gender-neutral terms but are biologically coded. To interpret "husband" to include a woman, or "wife" to include a man, would be to rewrite the statute, not interpret it. This reflects a rigid textualism that contrasts sharply with the transformative constitutionalism seen in *Navtej Johar*.

But the most "human" element of the judgment was the **Minority's recognition of the "Right to Relationship."** Justice Chandrachud and Justice Kaul articulated that even if marriage is denied, the state has a positive obligation to recognize the *consequences* of the relationship. They proposed a "Civil Union" framework that would grant basic rights (insurance, banking, medical decisions). The failure of the Majority to agree even to this created a vacuum. It left queer couples with a "right to love" (decriminalization) but no "right to build a life" (civil rights)³¹.

This connects directly to the **Adoption** issue. The Majority's validation of CARA Regulation 5(3) was based on a circular logic:

1. Unmarried couples are unstable because they lack a legal framework (divorce/maintenance).
2. Therefore, they cannot adopt.
3. But the Court also refused to *give* them a legal framework (marriage/civil union).
4. Therefore, they remain "unstable" and ineligible.
5. The state essentially breaks the legs of the queer couple (by denying marriage) and then bans them from the race (adoption) because they cannot run.

X. The Economic Consequences of "Non-Marriage"

While much of the academic literature focuses on dignity and rights, the economic implications of the current legal regime are profound.

A. Succession and the "Stranger" Problem

In a live-in relationship, partners are not Class I heirs to each other. If a partner dies intestate (without a will), the surviving partner gets nothing. The property goes to the deceased's parents or siblings the very people who may have opposed the relationship.

³⁰ S. Bhogle, *The Momentum of History – Realising Marriage Equality in India*, *NUJS Law Rev.* (Vol. 12, Issues 3–4, 2020)

³¹ A. Kumar, *Unpacking the Right to Intimacy in Supriyo*, *Supreme Court Observer* (2024)

- **Case Study:** Consider an inter-caste couple estranged from their families. They live together for 20 years and build a house. The house is in the man's name. He dies suddenly. Under the Hindu Succession Act, his mother (Class I heir) inherits the house. She can evict the female partner, who has no legal title.
- **The Judicial Band-aid:** The courts try to use the "constructive trust" argument or "domestic violence" (right to residence) to stop the eviction. But these are temporary measures. Without the status of "spouse," the accumulation of inter-generational wealth is blocked for non-normative families.

B. The Insurance and Nominee Gap

Most insurance and pension schemes in India define "nominee" as a "spouse" or blood relative. A live-in partner often cannot be a nominee for a Provident Fund or a government pension. This was highlighted in *Kattukandi*, where the fight was over the pensionary benefits of the deceased³². The court had to "presume marriage" to unlock the pension. If the court had found no marriage, the partner would have been left with nothing, despite decades of cohabitation.

XI. A Critical Look at "Void" vs. "Voidable" vs. "Live-in"

For the "law student researcher," the distinction between these categories is vital yet blurring.

1. **Void Marriage (Sec 11 HMA):** A marriage that never existed in the eyes of the law (e.g., bigamy).
2. **Voidable Marriage (Sec 12 HMA):** A valid marriage until annulled (e.g., impotence, fraud).
3. **Live-in Relationship:** No marriage ceremony.

The Convergence:

- *Revanasiddappa* says children of (1) and (2) get ancestral property shares.
- *Kattukandi* says long-term (3) is *presumed* to be a valid marriage, thus moving the children into category (1) or (2) or even valid marriage status.
- **The Gap:** What about "honest" live-in relationships? Couples who say, "We are *not* married, we don't *want* to be married, but we are a family."
 - Indian law has no bucket for this.
 - It forces them to either confess to being "married" (to get rights) or remain legal strangers.
 - This is a violation of the **Freedom of Association**. The state forces the "status" of marriage upon people as the price for legal protection.

³² **State of Karnataka v. C. Nagaraj**, (2023) SCC OnLine

XII. Conclusion: The Unfinished Project

The project of modernizing Indian family law is unfinished. It is stuck in a transition phase.

- **Phase 1 (1955):** Codification of Hindu Law. Standardization of marriage.
- **Phase 2 (2005-2018):** Liberalization via Judiciary. PWDVA 2005, *Naz Foundation*, *Navtej Johar*. Recognition of autonomy.
- **Phase 3 (2021-Present):** The Backlash. Surrogacy Act, ART Act, *Supriyo*. The state reasserting control over the family unit.

As we look to the future, the hope lies in the "functional" approach gaining traction. The Kerala High Court's challenge to age limits and the Supreme Court's expansive reading of property rights suggest that the "biopolitics" of the state (controlling bodies) will effectively be resisted by the "rights discourse" of the Constitution (empowering bodies).

But until the Parliament acts perhaps through a progressive Uniform Civil Code that is inclusive rather than restrictive the Indian family will remain a site of legal combat, where love seeks a lawyer before it seeks a priest.