Divorce and Democracy

This book captures the Indian state’s difficult dialogue with divorce, which was mediated largely through religion. By mapping the trajectories of marriage and divorce laws of Hindu, Muslim, and Christian communities in postcolonial India, it explores the dynamic interplay between law, religion, family, minority rights, and gender in Indian politics. It demonstrates that the binary frameworks of the private–public divide, individual versus group rights, and universal rights versus legal pluralism are insufficient in capturing the peculiarities of religious personal law in India.

The book historicizes the legislative and judicial response to decades of public debates and activism on the question of personal law and a uniform civil code in postcolonial India. It suggests that the sustained negotiations over family life within and across the legal landscape provoked a unique and deeply contextual evolution of both secularism and religion in India’s constitutional order. Personal law, therefore, played a key role in defining the place of religion and determining the content of secularism in India’s democracy.

Saumya Saxena is a British Academy Postdoctoral Fellow at the Faculty of History, University of Cambridge, and a Postdoctoral Associate at Jesus College, Cambridge. She is a legal historian interested in family law, religion, and gender politics in India. She writes on women’s movements, secularism, and law in late-twentieth- and twenty-first-century South Asia.
Divorce and Democracy

A History of Personal Law in Post-Independence India

Saumya Saxena
To
Professor Sir Christopher Alan Bayly

To my grandfathers
Shyam Bihari Lal Saxena and Virendra Kumar Saxena
Contents

List of Figures ix
Acknowledgements xi
List of Abbreviations xv

Introduction 1

2. Committees, Codes, and Customs: Renegotiating Personal Law, 1957–69 93
5. The Court in Context, 1992–2000s 230
6. From the Courtroom to the Courtyard: The Public Life of Personal Law, 2000–Present 278

Conclusion 321

Glossary 331
Bibliography 335
Index 366
Figures

1.1 Jawaharlal Nehru addressing the House. Dr Sachchidananda Sinha, provisional chairman, in the presidential chair. On Jawaharlal Nehru’s left is Mr H. V. R. Iyengar, secretary, Constituent Assembly Sectt. (13 December 1946) 51

1.2 ‘There is much opposition to Dr Ambedkar’s Hindu Code Bill’ (26 February 1949) 69

1.3 Ambedkar pulling a Hindu woman out of the clutches of Brahminical patriarchy (1952) 72

3.1 Indira Gandhi surrounded by Congressmen, Parliament House, New Delhi (1967) 173

5.1 Hadiya demands state relief (15 May 2018) 275
Acknowledgements

This book is drawn mostly from my doctoral thesis, completed over four years at the University of Cambridge. First and foremost, I thank my supervisor, Dr Shruti Kapila, without whose support this book would not have been possible. It is to her inexhaustible enthusiasm and keen insight into contemporary history and politics that I owe the development of some of my boldest ideas. I thank my PhD Adviser, late Professor Sir C. A. Bayly; he brightened up our lives, and to him I dedicate this book. I am extremely grateful also to Professor Tim Harper, my PhD examiner, and mentor during my postdoctoral fellowship. His continued support has been incredibly valuable.

I thank my external examiner Professor Thomas Blom Hansen whose scholarship has influenced me very significantly. Professor Faisal Devji, Professor Upendra Baxi, and Professor Marc Galanter have also had a profound impact on my research and I am indebted to them for their time and engagement with my research in personal conversations as well as in conferences and workshops.

I am indebted, in particular, to Dr Adeel Hussain, who has been repeatedly subjected to very rough drafts of my chapters; and also to Dr Leigh Denault and Dr Sunil Purushottam for their time, suggestions, and ideas. Their advice and insights were terrific. My work also benefitted from comments by and conversations with Dr Mitra Sharafi, Dr Iza Hussin, Dr Eleanor Newbigin, Professor Samita Sen, and Dr Jens Scherpe, whose expertise inspired me to explore the various alternative methodologies that could be deployed to respond to my research questions.

I am thankful to Professor Sujit Sivasundaram who has consistently supported early career researchers and I am grateful for the many opportunities he gave me to present my research. I must also acknowledge my immensely valuable conversations with Dr Shailaja Fennell.

My conversations/ramblings with Dr Alastair McClure, Dr Apurbo Podder, Dr Sagnik Dutta, Dr Aparna Chandra, Dr Parth Pratim Shil, and Dr Nicky Kindersley have had an undeniable impact on this book. I owe Barbara Row and Rachel Rowe for making my workplace, the Centre for South Asian Studies, Cambridge, lively, comforting, and inviting. I cannot thank Dr Kevin Greenbank enough for his unfailing support in all crises that I encountered in Cambridge, be it broken computers or broken confidence. Even as I slowly settle into my new office, I am reminded that no
workspace can ever be closer to home than the green couches of the Centre on which I cradled countless cups of tea.

I shared findings of my research at various conferences and profited significantly from suggestions by Dr Tanja Herklots, Siddharth D'Souza, Professor Srimati Basu, Dr Gopika Solanki, Dr Yuksel Sezgin, Dr Rohit De, Dr Kalyani Ramnath, Saptarshi Mandal, Jhuma Sen, Professor Mary Evans, and Dr Hilal Ahmed.

Many research institutions made this study possible. I am grateful to the British Academy, Corpus Christi College, Jesus College, and Faculty of History, Cambridge. I want to express my gratitude towards the staff of the Faculty of History and the Faculty of Law, Cambridge; Nehru Memorial Museum and Library, New Delhi; National Archives of India; Indian Law Institute, New Delhi; Dr Ambedkar Foundation, New Delhi; Uttar Pradesh Legislative Library. Police records, from the Criminal Investigation Department, Uttar Pradesh, proved to be the most difficult to access but were truly worth the trouble. I thank Ms Tilotama Verma for making the access possible.

While the book draws mostly from all types of archives, I must also thank all the people who have become a part of this book through their insightful interviews which were, without doubt, my favourite part about doing contemporary, postcolonial history. I especially thank Mr Arif Mohammad Khan, Ms Reshma Arif, Mr Wajahat Habibullah, Mr Salman Khurshid, Mrs Sayeeda Hamid, Mr Gopal Subramanium, late Justice Leela Seth, Professor Tahir Mahmood, and Mr Shanti Bhushan who shared with me their experiences over numerous cups of tea. I realize the pressures on their time and therefore am extremely grateful to them for giving me so much of it, and for their interest in my work. I thank, in particular, late Justice J. S. Verma. These conversations encouraged an inquiry into the relationship between the lawmakers and the users of the law, and guided me to fresh sources.

I came across many inspiring women in the course of my research; I mention just a few here. I thank Shubhangi Singh, Zakia Soman, Hasina Khan, and Ruksana Lari for letting me have a window into their worlds; I will continue to admire them. My interviews in Lucknow would not have been possible without the wonderful Mr Mumtaz Ali Khan, Mrs Noor Khan, and Mr Tariq Khan. I thank Vaseem Akhtar from Action Aid and I am forever grateful to the ever-encouraging Talha Abdul Rehman. My special thanks also to Dr Atiyyab Sultan for her unfailing support and friendship.

My little detour from academia into the policy world led me to work with the Law Commission of India from 2016 to 2018. I thank Justice B. S. Chauhan for his unwavering support and continued motivation towards fresh ideas on family law reform, despite pressures to the contrary. My research benefitted tremendously from the consultations held by the commission over two years.
I am very grateful to Qudsiya Ahmed for her support throughout the publication process and also for keeping me committed to deadlines. I thank the anonymous reviews of this book. I also thank Lucy Rhymer and Elizabeth Leake for their advice and support in this publication. I thank Ravi Atrolia for turning my multiple sketches into digitized images which eventually formed the cover of this book.

Finally, I acknowledge my family, my mother, father, and sister Dr Swati Saxena, for their love and support and, most importantly, for their patience. I thank in particular my brother-in-law, Dr Kaushal Vidyarthee, who had more faith in my research than I did. I thank my grandmother, Adarsh Saxena, who reminded me even in my most stressful stretches that there isn’t anything that her mutton curry or maal-pua cannot fix. There are many others who supported my research by simple having faith in it, my parents-in-law, friends spread across continents, and my teachers particularly from my undergraduate years. Last but not the least I thank Sourav Roy for being an ardent supporter and friend; I can hardly articulate how meaningful his companionship has been.
Abbreviations

AALI  Association for Advocacy and Legal Initiatives
AICC  All India Congress Committee
AIMIM  All India Majlis-e-Ittehadul Muslimeen
AIMMM  All India Muslim Majlis-e-Mushawarat
AIMPLB  All India Muslim Personal Law Board
AIMWPLB  All India Muslim Women’s Personal Law Board
AISPLB  All India Shia Personal Law Board
AIR  All India Reporter
AIWC  All India Women’s Conference
AWAG  Ahmedabad Women’s Action Group
AWAS  Association for Women’s Assistance and Security
BJP  Bharatiya Janata Party
BMAC  Babri Masijd Action Committee
BMMA  Bharatiya Muslim Mahila Andolan
CAD  Constituent Assembly debates
CEDAW  Convention of Elimination of All Forms of Discrimination against Women
CPI  Communist Party of India
CPI(ML)  Communist Party of India (Marxist-Leninist)
CrPC  Criminal Procedures Code
DMK  Dravida Munnetra Kazhgam
FIR  First Information Report
HUF  Hindu Undivided Family
IIWA  Iqra International Women’s Alliance
IPC  Indian Penal Code
ISIS  Islamic State of Iraq and Syria
IUML  Indian Union Muslim League
JIH  Jamaat-e-Islami Hind
LCI  Law Commission of India
LCR  Law Commission Report
MISA  Maintenance of Internal Security Act
MLA  Member of Legislative Assembly
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>MP</td>
<td>Member of Parliament</td>
</tr>
<tr>
<td>MWRN</td>
<td>Muslim Women’s Rights Network</td>
</tr>
<tr>
<td>NAI</td>
<td>National Archives of India</td>
</tr>
<tr>
<td>NCW</td>
<td>National Commission for Women</td>
</tr>
<tr>
<td>NDA</td>
<td>National Democratic Alliance</td>
</tr>
<tr>
<td>NIA</td>
<td>National Investigation Agency</td>
</tr>
<tr>
<td>NGO</td>
<td>Non-Governmental Organization</td>
</tr>
<tr>
<td>NMML</td>
<td>Nehru Memorial Museum and Library</td>
</tr>
<tr>
<td>PIL</td>
<td>Public Interest Litigation</td>
</tr>
<tr>
<td>PLD</td>
<td>Partners for Law and Development</td>
</tr>
<tr>
<td>RSS</td>
<td>Rashtriya Swayamsevak Sangh</td>
</tr>
<tr>
<td>SAL</td>
<td>Social Action Litigation</td>
</tr>
<tr>
<td>SEWA</td>
<td>Self Employed Women’s Association</td>
</tr>
<tr>
<td>SEBC</td>
<td>Socially and Educationally Backward Classes Commission</td>
</tr>
<tr>
<td>SCC</td>
<td>Supreme Court Cases</td>
</tr>
<tr>
<td>SCR</td>
<td>Supreme Court Reporter</td>
</tr>
<tr>
<td>UP</td>
<td>Uttar Pradesh</td>
</tr>
<tr>
<td>UPA</td>
<td>United Progressive Alliance</td>
</tr>
<tr>
<td>VHP</td>
<td>Vishwa Hindu Parishad</td>
</tr>
<tr>
<td>WRAG</td>
<td>Women’s Research and Action Group</td>
</tr>
<tr>
<td>WLUML</td>
<td>Women Living under Muslim Laws</td>
</tr>
</tbody>
</table>