



Religion-Based Personal Laws in India from a Women's Rights Perspective: Context and some Recent Publications

TANJA HERKLOTZ

tanja.herklotz@rewi.hu-berlin.de

Reviewed Works

Flavia Agnes. 2011. *Family Law Volume 1: Family Laws and Constitutional Claims*. New Delhi: Oxford University Press, 247 pp., ISBN: 9780198067900, Rs. 350.

Flavia Agnes. 2011. *Family Law Volume 2: Marriage, Divorce, and Matrimonial Litigation*. New Delhi: Oxford University Press, 508 pp., ISBN: 9780198072201, Rs. 410.

Nandini Chavan & Qutub Jehan Kidwai. 2006. *Personal Law Reforms and Gender Empowerment: A Debate on Uniform Civil Code*. New Delhi: Hope India, 380 pp., ISBN: 9788178710792, Rs. 795.

Alamgir Muhammad Serajuddin. 2011. *Muslim Family Law, Secular Courts and Muslim Women of South Asia: A Study in Judicial Activism*. Karachi: Oxford University Press, 350 pp., ISBN: 9780195479683, Rs. 995.

Gopika Solanki. 2011. *Adjudication in Religious Family Laws: Cultural Accommodation, Legal Pluralism, and Gender Equality in India*. Cambridge: Cambridge University Press, 438 pp., ISBN: 9781107610590, £29.99.

Narendra Subramanian. 2014. *Nation and Family: Personal Law, Cultural Pluralism, and Gendered Citizenship in India*. Stanford: Stanford University Press, 400 pp., ISBN: 9780804788786, \$65.



Setting the Stage

The topic of religion-based personal laws in India has been looked at from many perspectives: secularism, modernity, national unity and integration, community identity, religious freedom and the right to equality. The gender dimension has only featured recently as a topic and has mainly been discussed by feminist scholars and women's rights activists. This review essay attempts to look at the topic through a gender lens. It engages with recent literature that links the personal laws and the debate around the Uniform Civil Code (UCC) to the issue of women's rights. The books under review demonstrate the discriminatory aspects of the personal laws and point to possible solutions. They outline the interpretation of the personal laws by the Indian higher judiciary and other social actors and place the topic in the larger regional context.

Introduction and Historical Background

In the area of family law, India maintains a system of legal pluralism, usually referred to as a personal law system. According to this, the different religious communities – Hindus, Muslims, Christians, Jews and Parsis – are governed by their respective laws.¹ These consist of either codified or uncodified rules on issues regarding marriage, divorce, maintenance, adoption and inheritance. While in pre-colonial times, customs differed significantly from region to region and according to other factors such as caste and social affiliation, the distinct legal systems became more rigid under British rule. Indeed, on the one hand, the British largely avoided interfering with the personal laws of the religious communities. For instance, in contrast to the unification of penal law, a similar step for the civil law was not taken. The personal laws as such were kept, rather than eliminated, as the British hoped, by doing so, to dissipate opposition to the colonial project by yielding to religious claims (Mullally 2004: 676). But, on the other hand, the colonisers modified and unified some religion-based practices through legislation where the practices were found particularly unjust, "backward" or "barbaric" and where there was (alleged) support of the local elite or some local reformers. Furthermore, they certainly shaped the law through interpretation by British judges (Mann 2007).

Muslim personal law, for instance, underwent a significant process of reform and unification in the 1930s, with the enactment of the *Muslim Personal Law (Shariat) Application Act* in 1937 and the *Dissolution of*



Muslim Marriage Act (DMMA) in 1939 through the legislature of British India. While the former law imposed uniformity on the Muslim community by declaring that all Muslim personal matters would be governed by the Sharia, the latter provided Muslim women with a judicial right to divorce. Unlike in traditional Hindu law, marriage in Muslim law had always been regarded as a dissoluble contract. Hindu law, in contrast, viewed marriage as a sacrament, a holy and indissoluble union between the couple. It neither granted women a right to divorce nor did it grant widows and daughters an absolute right of inheritance (Agnes 2004: 71). Hence, before independence Muslim law was regarded as modern and progressive. This is important to note as the current debate which frequently depicts Muslim personal law as “backward” and discriminatory against women tends to obscure the fact that historically, Muslim law’s position on women’s rights was “far superior” to that of Brahmanical Hindu law and Christian matrimonial law (Agnes 2011: 47).

While the British had decided to maintain the personal law system in the area of family law², the replacement of the religion-based laws by a secular Uniform Civil Code was the subject of debate again during the independence movement in the early 1940s, and later in the sessions of the Constituent Assembly. Some regarded a UCC as a step towards unity among the religious communities and hence a means to strengthen a common front against British domination (Austin 2001: 17). National integrity, modernity and secularism were the arguments that dominated this debate (Baird 2005: 19-20). The terminology of gender-justice and equality was not very prominent at this time; not even among female social reformers and freedom fighters such as Hansa Mehta and Amrit Kaur (Agnes 2004: 72). In the end, the advocates of the Uniform Civil Code did not prevail with their arguments. Instead, when the constitution was drafted in the late 1940s some sort of compromise was found, postponing the enactment of the UCC. The Code was mentioned among the *Directive Principles of State Policy*, in Article 44 of the Constitution of India: “The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India”. Thus, the provision directs the state to move towards the adoption of a UCC without granting a justiciable right to such a legislative step – a solution that some regard as a move to ease the sense of anxiety among Muslims in the fledging nation-state and to secure the loyalty of Muslim leaders (Mullally 2004: 677).

While Muslim personal law was codified in the 1930s, the decade after independence saw a major codification and modification process



for Hindu law. After a long legislative tug-of-war four different laws (often collectively referred to as the *Hindu Code Bills*) were passed. The *Hindu Marriage Act*, 1955, among other things made Hindu marriages dissoluble contracts and imposed monogamy on Hindus. The *Hindu Succession Act*, 1956, improved inheritance rights for daughters and widows. The *Hindu Minority and Guardianship Act*, 1956, deemed the mother the natural guardian of the child “after” the father. Lastly, the *Hindu Adoption and Maintenance Act*, 1956, stipulated that girls could be taken in adoption (while previously only boys could be adopted) and made the consent of the wife mandatory for adoption. It also granted maintenance rights to wives and widows.³ While some regarded these laws as a first step in the direction of a UCC⁴, others, quite to the contrary, saw in them the “first departure” from the objective of Article 44 to secularise and homogenise the family laws (Agnes 2004: 94). In any case, it was during the process of drafting the *Hindu Code Bills* that the pros and cons of granting women more rights were vehemently debated.⁵

General Academic Discourse

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Most academic literature on the personal laws has not dealt specifically with the aspect of women’s discrimination, but has focused on other aspects, such as secularism or the politics of majority and minority communities (see for instance *Religion and Personal Law in Secular India: A Call to Judgment* (2001), edited by Gerald James Larson, or *Religion and Law in Independent India* (2005), by Robert D. Baird, to name but two). Handbooks and student literature on family law usually restrict themselves to a normative engagement with the provisions of the different personal law systems and case law emanating from the Indian higher judiciary. Further, a variety of publications engage in detail with the specific legal systems of the different communities: Hindu personal law (Werner Menski), Muslim personal law (Tahir Mahmood), and Christian personal law (Nandini Chatterjee).

Authors frequently place the contemporary discussion on personal laws in India in the historical context. One of the most interesting recent books following this approach is Rina Verma Williams’ work *Postcolonial Politics and personal laws* (2006). She regards the politics of the personal laws as a prime example of continuity in the politics of the colonial and postcolonial Indian state. Looking at the political rhetoric of “non-interference” in different phases from the colonial period till 2004, Williams (2006: 45) discovers a “gap between rhetoric



and action". She argues that the various governments have continuously either deployed the rhetoric of non-intervention or the argument that legislative intervention was grounded in the will of the respective religious community in order to modify personal laws in a way that suited their political agenda. In this sense, the post-independence governments followed a similar practice as the British had employed. Williams proves her argument by analysing the reforms of the Muslim personal laws in the 1930s, the Hindu Law reforms in the 1950s and the politics of the mid-1980s and opines that "the rhetoric of non-interference was used more as a tool to justify government policies, based on changing political interests, than as an actual guide to formulating policy" (Williams 2006: 88-9).

Another author who has dealt with the political dimension of law-making is Partha S. Ghosh in his work *The Politics of Personal Law in South Asia: Identity, Nationalism and the Uniform Civil Code* (2007). He understands law as a "political subject", stating: "The essence of law is politics" (Ghosh 2007: 5). Not only parliamentarians, he argues, but also judges are influenced by the socio-political factors around them. He reasons that the answer to the question whether a Uniform Civil Code is feasible in a specific country depends on the socio-political climate in the country (Ghosh 2007). More interesting than the exposure of law as politics is Ghosh's comparison of the Indian system of personal laws with the systems of neighbouring countries by placing the Indian laws in the regional context of South Asia. He compares and contrasts the Indian personal law system and its socio-political context with the systems in Bangladesh, Pakistan, Nepal, Bhutan and the Maldives. The book reaches out to both history and the future. Providing a detailed analysis of the historic facts, he tries to analyse why a UCC has not yet been implemented in India and how the discourse has differed from the debates around legal reform in the neighbouring countries. On the other hand, he rather theoretically asks whether a Uniform Civil Code is a precondition for equality and lays out proposals for reform for India and the other South Asian nations. Lastly, he makes an interesting point when stating that the "South Asian social reality is not confined to South Asia; it has migrated beyond the region, together with its settlers abroad" (Ghosh 2007: 217). This widens the discussion about personal laws and legal pluralism to the global context.



Feminist Academic Discourse

It was feminists and women's rights activists who first applied a gender lens to the personal laws rather than solely looking at issues like secularism, modernity and national integration. They pointed out that all personal laws contain aspects that are discriminatory against women. This, many argued, contradicted the right to equality, laid down in Article 14 of the Indian Constitution, which reads: "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India". Two aspects are mentioned in this context: the different treatment of the different religious communities as such (for instance, the right to practise polygamy is granted to Muslims but to no other community) and the different treatment of men and women within the same religious community (for instance, within Muslim personal law, men are allowed to have more than one wife, but women are not allowed to have more than one husband).

While public discourse mainly stressed Muslim men's rights to polygamy and to unilateral divorce by pronouncing talaq as problematic, feminist authors have tried to disrupt the notion that only Muslim personal law was discriminatory against women while the other personal laws – especially the Hindu law – were perfectly egalitarian. This notion had come up after the reform of the Hindu law in the 1950s. Hindu law after its modernisation (and with it the whole Hindu community) had come to be seen as 'progressive', while the Muslim law (and the Muslim community as such) was regarded as conservative and resistant to change (Williams 2006: 15). Feminist literature has tried to disrupt these pro-Hindu and anti-Muslim conceptions by explicitly pointing out the pitfalls of the *Hindu Code Bills*.⁶ Agnes (2011: 21) bemoans that there is a "general presumption that Hindus are governed by a secular, egalitarian, and gender-just code and that this code should now be extended to Muslims in order to liberate Muslim women". This presumption, she continues, is fostered by the Indian judiciary, which has "contributed to this myth by reiterating that Hindus have forsaken their personal laws and are governed by a common code". Feminist scholars and women's rights organisations have listed in detail the discriminatory aspects of the various personal laws (see for instance Parashar (2005) or the various newsletters from the women's group Saheli). They show, for instance, that Christian personal law makes it harder for women to seek divorce than for men. Hindu personal law links the wife's or the widow's right to maintenance to her chastity. According to Hindu, Muslim and Christian personal law,



the father is the natural guardian for a (legitimate) child. A married Hindu woman can only adopt if her husband is barred from adopting. In Hindu succession law women are still excluded from being coparceners in Mitakshra coparcenary. And in Islamic and Parsi law, female heirs get less than male heirs of the same degree.

While the overall feminist critique of the personal laws – that personal laws are gender discriminatory – has remained the same over time, the discourse on the personal laws and the suggestions that followed the critiques have witnessed an interesting shift. In the 1970s and 1980s – the high points of the Indian women’s movement – feminist and women’s rights activists mostly regarded themselves as secular. The religious personal laws were seen as the root cause of gender discrimination, and equality for women was believed to be achievable only through a secular agenda. Posters from the women’s rights movement in the 1970s and 1980s showed women as strangled by their religion and the discourse was generally framed as “religion versus women’s rights”. The common position among feminists in the 1970s and 1980s was a call for the enactment of a secular Uniform Civil Code, as envisaged in the directive principle of Article 44. This changed in the late 1980s and early 1990s when the idea of intersectionality gained a foothold. Feminist scholars today have mostly given up on the UCC as a feasible option and present a variety of suggestions to achieve gender justice. Among these are mere reforms from *within* the religious communities or the introduction of an *optional* egalitarian civil code while retaining the personal laws. Few still favour the introduction of a uniform and gender-just egalitarian code.⁷ While feminists had earlier seen a secular agenda as the way to achieve their goals, the scholarship today demonstrates awareness of the intersectionality of gender and religion and academics as well as activists would argue for strategies where gender equality can go hand-in-hand with religious practice (Jenkins 2009; Menon 2012; Sunder Rajan 2008).

It is, however, also visible that this shift led in turn to a fragmentation of the women’s movement. While “the feminist position” was somewhat more coherent on the issue of the personal laws in the 1970s and 1980s (although there have always been different strands of argumentation), since the 1990s the movement has definitely no longer spoken with a uniform voice. Big legislative changes have not been initiated, neither are they likely in the current political climate. Indeed, there was some media coverage on the Uniform Civil Code again when the BJP came to power in 2014.⁸ The party had promised



the introduction of a UCC in its election manifesto. But so far no steps have been taken in this direction.

Despite this legislative stalemate, the topic of the personal laws continues to feature as a subject in academic literature. Scholars have engaged with the issue from a legal as well as from a political or social science point of view and further from the angle of women's and gender studies. While legal text books and socio-political analyses of the topic have long exhibited a "gender blind spot", feminist literature and publications from women's and gender studies often lacked a distinct engagement with the legal discourse and frequently argued solely on a programmatic basis. In feminist literature, the personal laws tend to feature only as one issue among many. For instance, in *Indian Feminisms: Law Patriarchies and Violence in India*, by Geetanjali Gangoli (2007), in *Rights of Hindu and Muslim Women*, edited by Neera Bharihoke (2008), and in *Redefining Family Law in India*, edited by Archana Parashar and Amita Dhanda (2008), the authors deal with a vast variety of topics such as citizenship, empowerment, the situation of rural, tribal or Dalit women, women's economic rights and work participation, the right to health, women's sexuality, sexual labour, domestic violence, custodial rape – and women under personal laws and the debate around the UCC. Often it is instead the socio-economic components of the family laws and the gap between the law and lived reality that are the subject of academic discourse (see for instance Kirti Singh, *Separated and Divorced Women in India: Economic Rights and Entitlements*, 2013).

Only few works combine both a deep legal analysis with a feminist critique of the personal laws. Flavia Agnes' and Indira Jaising's publications certainly provide exceptional examples of a detailed discussion of the legal constraints, while looking through a gender lens and enriching their academic work with first-hand experiences from their work as practising lawyers and as women's rights activists. In Germany, Judith Dick has dealt with the topic of the personal laws from a legal as well as from a gender perspective (*Offizieller Rechtspluralismus im Konkurrenzverhältnis unterschiedlich geregelter Geschlechterverhältnisse: Das Recht der Khasi im System der personalen Rechte (personal laws) Indiens*, 2006). In her field study on the Khasis, she deals not so much with the religious personal laws but rather with tribal laws, examining how Indian courts handle legal pluralism when they are concerned with customary law.



The books in the following review were chosen because they deal with the personal laws at the interface between law / political science and gender studies. They are all principally written for an academic readership interested in the personal law system in the Indian context. They do not focus so much on “classical” problems such as secularism, modernity or community identity, but engage with feminist viewpoints on the issue and point to gender discrimination. The selected publications look not only at the legislator but also take the courts and other state actors into account. They deal with the interpretations of the personal laws by the Indian higher judiciary, pointing out progressive and activist interpretations as well as institutionalised biases. Furthermore, they engage with the role of religious communities and civil society in making the personal law system more gender-just. In that sense, they broaden the horizon of options to achieve social change and widen the debate on the topic.

Book Review

An extensive overview of the Indian family law is provided by Flavia Agnes in her two-volume work *Family Law*. Agnes analyses the different personal law systems, as well as the relevant case law, from a feminist perspective. While in the first volume she deals with “Family Law and Constitutional Claims”, the second volume engages with “Marriage, Divorce and Matrimonial Litigation”. What makes her books stand out from the ordinary text books on family law is that Agnes – one of India’s leading women’s rights activists and head of a women’s rights group – engages with the topic specifically through a feminist lens. Explicitly grounding her arguments within feminist legal theory and calling herself a “perspective scholar”, she challenges “the traditional notion that law is a neutral, objective, rational set of rules, unaffected in content and form by the passions and perspectives of those who possess and wield the power inherent in law and legal institutions” (Agnes 2011: xxiv). The concern of her work is “to assess how women perceive justice, how they pursue and access it” and to determine the success of their pursuit (ibid.). Agnes understands “law” not in the sense of legal positivism, but as a “social mediator of relationships between people within the broader spectrum of legal realism [...] determined by the actual practices of courts, law offices, and political stations, rather than as rules and doctrines set forth in statutes or learned treaties” (ibid.: xxi-xxii). Law is not static to her, but moves with the times as there is a “dynamic interaction between the legal order and social process” (ibid.: 107).



Volume I engages in detail with the different personal laws of the religious communities and their respective regulations on the topics of marriage and property, divorce and succession. Agnes broadens the scope, which commonly only focuses on either two (Hindu and Muslim) or four (with the addition of Christian and Parsi) personal law systems, by engaging with seven different systems: Hindu, Muslim, Christian, Parsi and Jewish law, as well as civil / secular laws and the customary (mostly tribal) laws. Her intention is explicitly to “widen the debate” which frequently constructs a dichotomy between “progressive” Hindu law and “regressive-fundamentalist” Muslim law. She also wants to disrupt the notion of customary laws as anti-women and state enactments or official laws as pro-women (Agnes 2011: 2).

In her very detailed analysis she not only describes the different laws and practices, but lists a vast number of decisions of the Indian higher judiciary, which through their interpretation of personal laws contributed to the “judge-made” law. Quoting a vast number of High Court and Supreme Court judgments, she exposes the often sexist or paternalistic remarks of Indian judges. She examines constitutional provisions such as the right to equality and critically deals with the different attempts at formulating a Uniform Civil Code which have been made especially in the 1980s. Agnes is a well-known opponent of the UCC and probably the main advocate for reforms from within the religious communities rather than imposed laws from above. In her view, the UCC “would inadvertently situate minority women in an antagonist relationship against their own communities, and hence may not receive the support of women from these communities” (Agnes 2011: xxvii). Instead, she calls feminists to take up an intersectional approach.

Volume II deals specifically with litigation in family law. Here, the division is not along the lines of the different religious communities and their laws, but along the lines of different topics: Chapter 1 is devoted to marriage and divorce, Chapter 2 engages with matrimonial rights and obligations. Agnes deals with a variety of different issues ranging from the evolution of the institution of marriage, to the various grounds for divorce, to marriage with expatriate Indians. As in Volume I, she combines the discussion of legal texts and theory with a depiction of the corresponding case law. At times she contrasts the Indian legal system to “Western” concepts such as the “breakdown theory” in matrimonial law. The third and last chapter of the book is devoted to the work of family courts from the specific perspective of gender justice. She bases her findings on a field study of family courts



and an analysis of data from court records and interviews with judges and other persons related to the judiciary. She draws a rather pessimistic conclusion here, stating that the introduction of family courts, which was intended to provide for a “less formal and technical and more women-friendly environment”, has failed to ensure gender justice (Agnes 2011b: 317).

The two volumes provide an extensive overview of the topic of Indian family law and exhibit, in a detailed and well-researched way, the discriminatory aspects of the personal laws. Agnes convincingly demonstrates that it is not only the laws and customs that are problematic, but also the often conservative, paternalistic and sometimes sexist mindset of the judges. She demonstrates this with an extensive overview of the case law. She does, however, also mention positive examples and therefore provides for a fairly balanced picture. She points out positive examples of small legislative reforms (such as in the reforms of Christian personal law) and progressive and forward-looking judgments. The fact that she draws on her own experience as a lawyer and women’s rights activist gives the reader an interesting insight into the complex system and demonstrates how law and social reality often diverge. The problems, the reader understands, do not only lie in discriminatory norms but in the lived reality of a patriarchal society.

As many cases and debates can obviously be mentioned under several topics, the pitfalls of these two volumes are that some sections are redundant and a clear structure is sometimes missing. However, this does not make the book less recommendable. Especially for those readers who are not familiar with Agnes’ work, the two volumes comprise a comprehensive overview of her positions on the various issues regarding the personal laws. For scholars who are familiar with Indian family law this work will provide a new and critical perspective, as Agnes sharply points out the pitfalls of the laws and the court decisions. The two volumes will be interesting for students of law as well as for Indian and foreign scholars who seek to better understand the complex system of Indian family law in its socio-cultural context.

Personal Law Reforms and Gender Empowerment: A Debate on Uniform Civil Code (2006) by Nandini Chavan and Qutub Jehan Kidwai is co-authored by two female scholars respectively belonging to the Hindu and the Muslim community. The book promises “to explore the possibilities of reform” in Muslim and Hindu personal law from a women’s rights perspective (Chavan & Kidwai 2006: 13). It is divided



into two sections, one dealing with Hindu law, the other dealing with Muslim law, both in the context of the debate about the Uniform Civil Code.

In the first part of the book, Chavan and Kidwai analyse the position of women under Hindu law during the ancient, medieval and colonial times and in post-independence India. Hinduism is understood as “a distinct philosophy rather than a religion” with its own “distinct set of values and culture” (Chavan & Kidwai 2006: 136). The authors attribute the fact that historically women suffered discrimination, amongst other things, to feudalism and patriarchy. They set out the different legal reforms but do not unfortunately provide an in-depth discussion on the discriminatory aspects of the laws. Rather, they limit themselves to describing the historical facts, without providing many new insights. The topic of personal laws and the UCC is then linked to the Hindutva ideology. The authors rightly point out that, with the Shah Bano controversy,⁹ the political climate became communalised and legislative reforms have since become rather difficult. They unmask the BJP’s call for a UCC as a move inspired by the wish to “Hinduisse” the country rather than to provide for gender justice and point out the dilemma for feminists after the “hijacking” of the topic by the Hindu nationalists. Up to this point, there aren’t many new insights here.

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In a chapter titled “Women’s Movement and Uniform Civil Code” Chavan and Kidwai link the topic of personal laws to the campaigning of women’s rights activists. They engage with different forms of Indian feminism and describe the shift in the women’s movement in the early nineties, concluding that the inner fragmentation of the movement is a major obstacle: “The women’s movement [...] is too divided to adopt any forceful agenda for reform of family laws” (Chavan & Kidwai 2006: 168). The chapter touches an interesting point, but could have gone much further. A discussion of the approaches, strategies and tools that the different segments of the women’s groups use in order to push for gender justice and their respective successes would have been interesting here.

The precise findings and solutions of the first book section remain a little unclear. The authors seem to hold that Hindu law contains many discriminatory aspects and that these should be wiped out through legislative reforms, without interfering in religious affairs. How precisely and by whom this should be done is not quite clear. On the one hand, they acknowledge that in the current communalised atmosphere big legislative reforms or the introduction of a Uniform Civil Code are



unlikely to be successful. On the other hand, they are of the opinion that legislative reforms in personal laws could be achieved “easily” as “personal laws as they exist today have hardly anything to do with religion, especially the Hindu personal laws have virtually no connection with religious texts” (Chavan & Kidwai 2006: 172). This undifferentiated statement makes it hard to have faith in the authors’ suggestion, as nice as it would be to simply bring religion in line with gender justice. One wonders what the reforms would look like and who would initiate them – the state government, the religious society or the women’s rights movement. A serious engagement with the suggestions that have been made – Egalitarian Civil Code, optional secular code or mere reforms from within – and the authors’ assumptions as to why these have failed would have been desirable.

Part II of the book looks at Muslim personal law and the Uniform Civil Code. It begins, like the first part, with a historical overview, covering the evolution of Islamic law during the time of the Prophet Mohammed and the evolution of Sharia Law over several centuries, up to the shaping of Muslim personal law in colonial and postcolonial India. The authors opine that the problem lies not within Islamic law as such, but within the wrong interpretations and practices. Islamic law in its original form, it is argued, provides a system of equality: “In Islam the husband and wife are equal partners in a sacred relationship of trust and confidence” (Chavan & Kidwai 2006: 210). What is problematic is that “[r]egrettably, a pretty large number of Muslims naively practise an awfully distorted version of [the Sharia]. The Personal Law [...] is the worst sufferer at the hands of the ignorant. As a result, there are many wrong notions of the Muslim personal Law prevailing around us” (ibid.: 204). The distorted image of Muslim personal law, the authors believe, was initially constructed by the British who portrayed the Muslim personal law as “inhuman and uncivilized” (ibid.: 206). The solution to this vexed situation can only lie in a reorientation of the interpretation of Muslim personal law:

It is high time that our judges and lawyers stop looking at Islamic Law through the spectacles of the colonial courts and their past and present rapporteurs. They must understand the Islamic law, its original values and prevent the widespread misuse of its lofty principles (ibid.: 221).

A more detailed description of who has the authority to claim what these “original values” of Islam are is missing. Also, the implication



that one can look at the issue in an unbiased and neutral way is rather misleading.

An interesting part of the book is the comparison of the Muslim personal law in India and in other "Muslim countries". The authors go through the different concepts of Islamic law and mention examples of how other countries have made legislative changes regarding, *inter alia*, the minimum age of marriage, the various forms of dissolution of marriage, or polygamy. The much debated triple talaq, for instance, has been abolished in some countries. Thereby the authors demonstrate that "religious law" is not as originary and unchangeable as sometimes argued. On the contrary, Muslim personal law is quite diverse from a global perspective. In this context, it would have been interesting to learn more about the positive and negative effects of the legislative changes in the countries of comparison and whether they were initiated through the state government or through the Muslim community.

The authors are of the opinion that Muslim personal law in its current form needs reform. Triple talaq, they opine, for instance, should be abolished. But in a "post-Babri Masjid demolition atmosphere" this is difficult (Chavan & Kidwai 2006: 258). Hence, an approach of "non-interference from outside" (*ibid.*: 259) is recommended; the impulses for reform should come from within the Muslim community. In this reform process the All India Muslim Personal Law Board (AIMPLB) is expected to play a major role. The AIMPLB had, for instance, drafted a model *Nikahnama* (an Islamic marriage contract, that stipulates rights and responsibilities for the bride and the groom); an action that provoked a discussion on women's rights and that the authors regard a step into the right direction. "The ulama and well known Muslim lawyers", the authors opine, "should draft a comprehensible bill in this respect, but well within Shari'ah framework, and give it to the government to enact it through Parliament" (*ibid.*: 256). However, who precisely is meant by these well-known scholars and lawyers, how it would be ensured that gender equality is taken into account in the reform process and how (Muslim) women's rights organisations could contribute to this remains unanswered.

In a nutshell, the argument of this publication seems to be that the personal laws in the current state need reform as they are discriminatory towards women. A UCC might be desirable, but difficult to achieve because of the Hindutva politics and because the personal laws have become such an important marker of identity in a communalised



atmosphere. Instead, reforms from within are suggested as more promising. These could be achieved by going back to the roots of religious laws.

The book provides a decent overview on the personal laws rather than a critical analysis. Most chapters are rather descriptive, narrating historic events and the legislative status quo without adding many new ideas to the debate. While the laws and religious practices are outlined, the authors do not examine the interpretation of the same by the Indian higher judiciary, which – as Agnes shows – has often given the laws a new meaning. The concluding sections of the different chapters are short and the reader can often only guess what the authors intend to demonstrate. While the idea of juxtaposing two perspectives on the personal laws by involving authors from two different communities in a common project is appealing, the reader gets the impression that the two texts were written independently and then simply put together. More synchronisation in the line of argumentation, some comparison of the two different legal systems or a common conclusion would have been appealing. In particular, the promising section on the personal laws and the women's rights movement could have shown how far Hindu and Muslim women were fighting on the same side and how the discourse on intersectionality influenced the women's movement. At times it remains unclear whether the authors are making an original point, or whether they are mentioning someone else's idea. The bibliography is rather short. The selection of texts for the annex of the book remains unclear. To sum up, while scholars from the field will not find many new insights or research results here, the book might serve as an introductory piece for students who have not previously worked on the personal laws. As the idea behind the book seemed like an interesting project, it could very well be taken as a starting point for further scholarship.

Alamgir Muhammad Serajuddin, in *Muslim Family Law, Secular Courts and Muslim Women of South Asia: A Study in Judicial Activism* (2011), narrows the topic of personal laws down even further and engages only with Muslim personal law. In terms of region the author opens up the area, looking not only at India, but also at Pakistan and Bangladesh. The interesting feature of this book is its focus on judicial activism, hence, the understanding of the courts as a motor of social change. The book intends to describe "the role of the South Asian courts in the interpretation and application of Muslim family law" (Serajuddin 2011: xi). The central questions in this context are whether courts only interpret and apply the law or whether they also



make law, how far courts may deviate from the interpretation given by the classical jurists, whether they should take social changes into account and whether the courts themselves – rather than the legislator – are appropriate instruments for social change? Serajuddin tackles these questions through a detailed analysis of case law, which he deems “a useful social barometer and tool of social change” (ibid.: xv). His study is not only based on the judgments but also on an analysis of the facts of the cases, the pleadings, the reasons given by the judges for their decisions, the social settings and the judgments’ effects on society. “It is only by relating the cases to the life of the parties and society,” he states, “that the study of case-law can be made interesting, meaningful and purpose-oriented” (ibid.: xv). The book is divided into six chapters. Besides the introduction and the conclusion he dedicates one chapter each to British India, post-Independence India, Pakistan and Bangladesh.

The author comprehensibly explains the concept of judicial activism which can refer to a variety of things: the dynamism of the judges, judicial creativity, a social revolution brought about by the judges or a cultural revolution brought about by the judges. In India, the term is usually associated with the court’s coming to the rescue of the “weaker sections” of society (Serajuddin 2011: 2). Serajuddin links the topic of judicial activism to Sharia law, which is straightforwardly described as discriminatory and problematic:

The classical Shari’a law of family relations is based on patriarchal family organization and male privileges, leading to legal and social discrimination against women and reducing them to an inferior status which is incompatible with present day notions of gender equality and social justice. The discrimination against Muslim women is especially pronounced in such vital matters as marriage, divorce, maintenance and inheritance (Serajuddin 2011: 6).

Serajuddin claims that the legacy that the independent subcontinent inherited from British India was problematic. As the British judges were ignorant of the laws and customs that prevailed, and unfamiliar with the institutions of the country and with the Arabic language, the law was often “misunderstood, misinterpreted or misapplied by the courts” (Serajuddin 2011: 29). The author skilfully outlines how after independence the two, and later three, different countries took very different lines when interpreting Muslim personal laws. While one might expect that, in secular India, the courts would take an activist and liberal standpoint, while in the Islamic Republic of Pakistan, courts



would be more conservative, in fact the two decades after independence show the opposite scenario. Serajuddin draws a distinction between two periods. From 1947 until 1970, Indian courts held that they were bound by the doctrine of precedent to follow the rules of interpretation as laid down in previous cases from colonial times. Pakistan's courts, on the other hand, refused to abide by these decisions and freely and independently interpreted the rules of Sharia. The result of this was that Muslim personal law remained rather rigid and conservative in India, while it became more flexible and progressive in Pakistan. This changed in the decades after 1971. Interestingly, in the 1980s Pakistan's courts abandoned their activist stance and the Indian courts took it up. The author proves his thesis by mentioning a series of High Court and Supreme Court cases. They are grouped according to the subject they deal with: maintenance, the different forms of talaq, judicial divorce under the DMMA, restitution of conjugal rights, registration of marriage and custody.

Serajuddin draws a positive conclusion from his analysis: "In an admirable display of scholarship and creativity" the South Asian judiciary has given examples of "wide, liberal and creative interpretation" of the different rules. It has shown that it is possible to adapt Muslim personal law to the needs of a modern and forward-looking society without deviating from the Islamic framework. Serajuddin strongly argues for judicial activism in cases of legislative reluctance. Although the judge's primary duty is to interpret law, they are sometimes obliged to take up the role of the legislator, "especially in those cases where the injustice and inequity of personal law on the weaker section of society, namely women, is most glaring" (ibid.: 248). India, Pakistan and Bangladesh, he opines, can share and benefit from each other's experiences if their jurisdictions collaborate.

The author points out right at the beginning that the book's aim is to "appeal to a wider audience than only law students and practitioners" (Serajuddin 2011: xiv). He certainly succeeds with this attempt, avoiding being too technical in his language without being imprecise. The topic is well-researched and an extensive bibliography is provided. The vast number of cases the author deals with makes it possible to analyse general trends within the judiciary. The selection of cases is well balanced and the author looks at both sides, contrasting controversial and problematic decisions with "illuminating and progressive" ones. The author provides a coherent description of the circumstances and the outcome of the cases. At times, however, the reader needs to draw his or her own conclusions as the text remains a little descriptive



rather than analytical. Further, it would have been interesting to read how the author explains the general trends, whether trends in the Supreme Courts differ from the ones in the different High Courts and why he thinks some courts have deviated from these trends in a particular way. Also, a more differentiated discussion of the 'positive' judgments would have been appreciated. As a matter of fact, some judgments that are well-meant tend to put women in a very weak position and actually have a very paternalistic character. Here, a reference to feminist literature, which has analysed the image of women that is depicted in courtrooms, would have been welcome. The comparison with Pakistan and Bangladesh makes the book especially interesting and places the issue in the broader South Asian context. Overall, the book is definitely worth reading for law students as well as academics and practitioners who are interested in broadening their knowledge on adjudication in Muslim personal law.

Gopika Solanki, in *Adjudication in Religious Family Laws: Cultural Accommodation, Legal Pluralism, and Gender Equality in India* (2011) engages with state-society interactions in the adjudication of religious laws. She analyses the Indian model of legal pluralism in the governance of marriage and divorce under Hindu and Muslim personal laws. Hereby her focus lies at the tension between cultural autonomy and gender equality. The author's main argument is that the Indian state has adopted what she calls a model of "shared adjudication". According to this, the state enjoys only restrained autonomy in the regulation of marriage and divorce and willingly splits its adjudicative authority with social actors and organisations. Unlike many other (feminist) authors, Solanki opines that this Indian concept of legal pluralism can facilitate diversity and ensure gender equality at the same time. It can prevent the ossification of religious identities and produce justice that is multilocational. This is quite a provocative and new way of looking at the Indian system of legal pluralism.

Solanki's study offers an "ethnographic account" of state courts and multiple other societal legal sites. These other sites could be sect councils, informal legal sites such as mosques, "doorstep courts", women's organisations and lawyers' offices. Her field of research is the city of Mumbai. For her work, she has analysed court records from the Bombay High Court and the Family Courts and conducted a vast number of interviews. Solanki develops her argument in four main sections. She begins by outlining the theoretical framework of the shared adjudication model. She then engages with trends in matrimonial disputes and points out that there are many commonalities



between judicial bargaining, interpretation and treatment of cases filed under Hindu and Muslim law. Indeed – unlike popular debate which often pits Hindu and Muslim law as opposite and dissimilar to one another – Solanki argues that Hindu and Muslim families are conceived along similar, though not identical, lines in state law and courts. Subsequently, she devotes a chapter each to Hindu and Muslim law and the interaction between state and sub-state actors in adjudication processes under the respective religious law. Concluding, she points out how the shared adjudication model may facilitate gender justice while at the same time promoting cultural diversity.

Solanki claims that the shared adjudication model is linked to two simultaneous trends: the centralisation of law (codification of customs and policy making through legal precedents) and the decentralisation of law (fragmentation of law as there is no coherence in judgments). Gender equality in this context is not necessarily brought about through more centralisation. Instead, it is advanced through the (inter)action of various players: “independent, efficient, proactive, and sympathetic judges”, “skilful lawyers”, women’s organisations and social workers. The activist judge, whom Serajuddin also identified, is here mentioned as only one among the many social actors that can produce social change. Her argument is backed up by a detailed study of different approaches to adjudication in Hindu and Muslim communities. In both religious contexts she notes a dynamic interaction between the state and sub-state actors. These sub-state actors might be individuals (such as lawyers, clergy, family members and local “strongmen”), organisations (religious organisations, political parties, sect councils or caste panchayats) or “doorstep courts” (residential committees or women’s groups). She points out especially how women’s organisations function as an informal forum of justice and expand the reach of state law (Solanki 2011, 220). Social workers, lawyers, academics and activists working with these groups mediate between family members, involve the police if necessary, provide counselling and offer legal aid, arrange for shelter for women in crisis situations, organise workshops and also function as “moral watchdogs”.

Solanki depicts that the normative world shaped by the state and that practised by societal actors coexist. These different worlds might conflict. State law might conflict with religious laws and even among the religious groups there might be different interpretations of certain legal provisions and controversy about who represents the group. This “Intragroup heterogeneity questions the rhetoric around ‘authentic



religious laws” (ibid.: 331). For Solanki this is, however, no argument for unification of the laws. Instead, she points out the advantages of the plurality. The availability of multiple legal avenues allows individuals to choose among the different forums (“forum shopping”). For instance, people would not necessarily have to go to court for a divorce, but could employ mediators, kinsmen or caste panchayats to dissolve marriages. While Solanki (ibid.: 314) emphasises that “the mere existence of multiple legal avenues” is not necessarily enough to safeguard women’s rights in law, the heterogeneous options definitely “increase the choices for litigants”. The agency of individual women is linked to their bargaining power through combining legal alternatives (ibid.: 332). Gender justice must be pushed for, from above and below. Rather than including it as a precondition, or a limit to cultural accommodation, it is up to the different societal actors (especially feminists) to use the different avenues in order to achieve equality.

While most (feminist) literature criticises the personal law system as unjust and discriminatory, Solanki certainly offers a new perspective in pointing out the positive aspects of legal pluralism. Her concept of “shared adjudication” is an interesting model and an important contribution to the scholarly discourse. Her language is clear and – though a little repetitive at times – the book is appealing and informative. As a Member of the Forum Against Oppression of Women and as a social worker at the special Cell for Women and Children in Mumbai, Solanki steps into a familiar terrain with this work. She nevertheless understands to write for an audience that hasn’t necessarily studied conceptions of Hindu or Muslim marriage law and provides a helpful glossary of terms at the beginning of the book. Her work draws on a vast amount of investigation and interviews, which depict the lives of the women in Mumbai. The stories she tells, while often set in a patriarchal context, are to some extent stories of success and agency. The picture that Solanki draws of the Indian legal system and the Mumbai Family Court is certainly a more positive one than the one that Flavia Agnes draws.

Solanki states that the system of legal pluralism allows women to choose from a wide range of possibilities and to exercise forum shopping in order to achieve their aims. This is convincing when it comes to the state institutions vis-à-vis the means of adjudication and mediation by the religious communities or other actors such as women’s rights organisations. But doesn’t the author go a little far when also taking into account local “strongmen” and private detectives who use methods that violate criminal law? Solanki claims that the use



of “physical violence, coercion, and threats as a strategy used against opponents in the litigation process has been mentioned frequently by various litigants” (Solanki 2011: 276). “The underworld, the militant wings of political parties, and offshoots of political parties”, she continues, “often get involved in ‘family matters’” (ibid.: 276-7). It is certainly interesting to know that these methods are widely used and that women (and men) see them as an option when trying to achieve their (legitimate or illegitimate) aims. But to mention these methods as part of the broad array of avenues that a litigant may choose from might be problematic. Wouldn’t this mean that every state in the world maintains a system of “legal pluralism” considering that everywhere illegal means co-exist besides the legal ones? And do these methods not make the system more unpredictable, insecure and anarchic than simply providing another option? In the end, illegal methods can be used not only *by* women, but also *against* them. Solanki herself quotes cases in which women were harassed, spied or prevented from going to court by “strongmen” hired by their husbands’ families (ibid.: 262). Doesn’t this rather reduce options instead of widening them?

Another question is how representative Mumbai is to make a general statement about India, as Solanki does with her book title. The author justifies her selection of the research site by, among other things, the fact that the Family Court in Mumbai is perceived to be one of the most efficient family courts in the country, that Mumbai was affected by communal riots, that the city is a stronghold of a Hindu fundamentalist party and an area where many women’s rights organisations have been active in legal reforms. While these facts certainly make Mumbai a very interesting research site, they do not necessarily make such a cosmopolitan city representative of India. Nevertheless, the example of Mumbai is certainly helpful for understanding general trends and systems and can surely be a starting point for further research on legal pluralism. Overall, the work is highly recommendable and will definitely be of interest to social scientists and legal scholars working on areas related to law, gender and religion in South Asia.

The most recent publication providing a comprehensive study on the personal laws is *Nation and Family: Personal Law, Cultural Pluralism, and Gendered Citizenship in India* by Narendra Subramanian (2014). As the title indicates, the author combines two aspects that have previously often been looked at as separate issues: nation-building and gender equality. Subramanian sees the personal laws as an “important arena in which official nationalism, multiculturalism, secularism and citizenship were formed and expressed in India since independence”



(Subramanian 2014: 3). The author looks at the public discourses, the legislation and the case law of India's three main personal law systems – that of the Hindus, the Muslims and the Christians – and compares the Indian experience with other countries that inherited a system with laws specific to religious or ethnic groups. His central questions are why personal laws were retained in postcolonial India, what the nature and magnitude of changes in Hindu, Muslim and Christian law were and how the nature of these changes could be explained. The book is divided into six chapters. It begins with an outline of a comparative theoretical perspective on personal laws and an extensive comparison of the topics of nationalism and family reform in several countries. It then focuses on the Indian context, looking at Hindu law on the one hand and at the personal laws of the two largest minority religions on the other.

The author divides the countries with personal laws into different groups: those that have undergone extensive modernist reforms (such as Turkey, Albania and Tunisia), those with moderate modernist reform (for instance, Libya, Egypt, Iraq, Iran, Pakistan, India, Bangladesh and Malaysia) and those with limited change (Morocco, Algeria, Lebanon and Syria). He shows that various factors influence the course of religion-based family laws. In a nutshell, he argues that the personal laws are linked to two sets of mutually interacting factors: features of state-society relations and the discourses of community that are salient among ruling elites or groups with significant influence over policy (Subramanian 2014: 45). Both the features of state-society relations (social structure, nature of state-society engagements, coalitions, reform projects) and the discourse of community (discourses about nation, cultural groups and traditions) have links to patterns of nation formation, recognition and family law. They influence the approaches of states to the personal law systems that they inherited (ibid.: 70). For instance, personal law reforms were most extensive in countries such as Turkey and Tunisia, where "the state was already somewhat autonomous of crucial institutions" and "elites prioritized increased state control over religious, ethnic, and kin institutions". On the other hand, reforms were barely attempted in countries like Lebanon, Syria or Algeria where lineage leaders had more influence and professional, commercial, and industrial elites were weaker (ibid.: 71).

Subramanian shows that in post-independence India personal laws were changed less when compared with other aspects of multiculturalism such as language policy, federalism and preferential policies.



The reforms that did occur mostly applied to the Hindu community, but not to the minority communities. While the 1950s witnessed a large scale reform of Hindu law through legislation, from the 1960s it was also the courts who changed the law through their progressive interpretation of certain provisions: "The courts played major roles in the changes in divorce, marriage, and alimony law, promoting some of the major legislative initiatives" (Subramanian 2014: 142). Both routes to reform – legislation and the judiciary – were often initiated or supported by civil society organisations and women's groups. Subramanian writes: "The growth in civil society mobilization, the increased attention of rights organizations to litigation and legal policy, and the experience of the emergency led certain judges in the higher courts to support the rights of weaker groups sporadically" (ibid.: 141).

A different picture emanates from the analysis of the personal laws of the two largest religious minorities. The laws of Muslims and Christians were not changed by policy makers soon after independence. This is remarkable, as the will for political reforms (based on group traditions and group concerns) was there among the two communities – especially among the Muslims and from the 1980s onwards also among the Christians. In fact, "support for personal-law reform was no weaker among Muslims than among Hindus" (Subramanian 2014: 262-3). Subramanian (ibid.: 263) explains the fact that Hindu law was changed extensively while Muslim law was not via the argument that "the majority of political elites took Hindu cultures to be dynamic" while "they considered Muslims to be embedded in introverted cultures incompatible with modernity and postcolonial development". Further, many policy makers regarded Christians as more interested in social reform than Muslims. This was certainly out of tune with mobilisation for personal-law reform, which was generally greater among Muslims than among Christians. However, Subramanian explains, "as Muslim mobilizers based their personal-law initiatives on religious discourses with which the political and bureaucratic elite were largely unfamiliar, these elites neither understood nor accommodated their reform aspirations" (ibid.: 264). Hence, in post-colonial India little change occurred in the area of the minority laws via legislation.

But change did appear in the judges' interpretation of Muslim and Christian law when cases were brought before the courts. Here, Muslims challenged the validity of talaq, the economic consequences of divorce, the validity of polygamy, bequests of family members and the implications of apostasy for the status of marriage (ibid.: 214-5). Christians litigated the conditions under which divorce would be



accessible and the possibilities of adoption (ibid.: 215). In many of these cases, an attempt by courts to interpret legislation to increase women's rights can be noticed. As in the section on Hindu law, Subramanian links the reforms of the minority laws to the activism of civil society and the women's movement who "promoted support for women's rights, and mobilized understandings of group tradition that provided grounds for extensive reforms" (ibid.: 279). It is "changes in patterns of mobilization, salient discourses of community, and values regarding the family", he states, that have enabled modifications in personal law policy since the 1970s (ibid.: 279).

What makes the work stand out is certainly Subramanian's approach, which connects the two topics of nation and gender equality. While previous scholarship tended to select either of these aspects, Subramanian shows how the topics are actually interlinked. The interference or non-interference of the Indian state (or other states) in personal law issues can be explained only when the discourse of nationalism is understood. Subramanian here puts the personal laws in the broader picture of academic discourse, which is enlightening. He also broadens the spectrum when putting the Indian experience not only in a historical but also in a global comparative context. The detailed description and the theorisation of why different post-colonial countries adopted different stances toward the personal laws are demanding but enriching and provide an important contribution to scholarship. The author is not satisfied with simple explanations here, but provides a complex and detailed analysis. The findings are depicted in tables and figures, which help the reader to follow the argument. Chapter Two, which compares the Indian experience with the experiences in other countries, will certainly serve as a great resource for comparative legal scholars.

While Chapters One and Two do offer many new insights to the topic, Chapters Three to Six deal with historical facts that will be known to scholars who have previously engaged with the Indian personal law system. Nevertheless, the author here skilfully draws analytical conclusions that might not have been formulated in this way before. For instance, he depicts the connection between civil society activism, judicial interpretation in case law and legislative changes very well. His work draws on a huge number of sources, ranging from parliamentary debates to case law and interviews. In some aspects, the author could have focused even more on the gender dimension and the different and often diverging opinions of feminist scholarship on the personal laws. For instance, the critique of feminist scholarship and women's



groups of the specific aspects of the personal laws and possible solutions to the pitfalls, the different strategies of activism, and the differentiation between formal and substantial equality could have been depicted in more detail. Further, the engagement with the cases could have taken into account the feminist critique not only of the outcomes of the judgments themselves but also of the language that is being used by the judges. These shortcomings, however, do not detract from the overall value of the book as a great resource which provides an extensive and ambitious analysis of the discourse on the personal laws. The monograph will be of great use to law students and legal scholars as well as to historians and political scientists.

Concluding Remarks and Future Research Agenda

The book review shows that the personal laws continue to be a much-discussed topic and that recently the gender dimension, especially, has played a role in the debate. While discrimination against women through religion-based personal laws was a matter that earlier featured only in feminist scholarship and in the publications of women's rights groups, it now appears to have entered the mainstream academic discourse. Scholars of law, political and social science look at the gender dimension and work on an increasingly interdisciplinary basis to cover the many dimensions of the personal laws.

Academics have pointed out that it is not only the Muslim personal law – as commonly perceived – that encompasses problematic provisions. The Hindu law and the other personal law systems also contain provisions that discriminate against women. Chavan and Kidwai have shown that both Hindu and Muslim law are problematic when looked at through a gender lens and both systems need reform. Solanki has demonstrated that the conception of the family in Hindu and Muslim law and adjudication does not actually differ as much as generally believed. And Agnes has depicted in great detail where all the different personal laws contain aspects that discriminate against women. Here, further scholarship could take the smaller communities into account even more. Only Agnes' volumes engage in detail with all the personal laws, including those of Parsis and Jews. Most books put their focus on Hindu and Muslim law, neglecting the smaller communities. Here, the discourse could be opened up. Even if in terms of numbers the Christian, Parsi or Jewish communities are small in India, an engagement with their legal systems could be enriching when analysing how legal pluralism functions. Further, Buddhists, Jains and Sikhs are



officially governed by the laws of the Hindu Code Bills and hence are generally not studied as independent groups. But it might be interesting to ask what it means for these communities to be governed by a law that often deviates from their own legal cultures and traditions.

While the authors agree that the personal laws are problematic from a women's rights perspective, the conclusion that they draw from this is not to call for unification from above through the national legislature. Instead, the analysis of the literature shows that scholars regard the introduction of a Uniform Civil Code in India as rather unlikely, even undesirable. They definitely no longer call for it as a means to provide for gender equality. Instead, they suggest other means to accommodate gender justice in the personal laws. The idea of intersectionality has become important. Gender justice and religious freedom are perceived as compatible (with the goodwill of the involved actors). Agnes pleads for reforms from within the religious communities, similarly to Chavan and Kidwai. Serajuddin and Subramanian regard the role of the judiciary as important. Judges may foster women's rights by progressively re-interpreting the personal laws. Lastly, Solanki argues that women in the Indian system of shared adjudication have the agency to choose among the different forums in order to seek gender justice.

Another commonality in the books is the understanding of law as politics. The authors have left behind the rigid distinction between the legislative, the executive and the judiciary and the idea of a strict separation of powers. Instead, they point to the interconnections between the three actors when it comes to social change. Courts are seen as important motors of change which sometimes function as quasi-lawmakers. This goes hand in hand with the discourse on a global judicialisation – a shift of power from parliaments to the courts and other non-elected institutions. If gender justice is not brought about by the legislature in one massive legislative reform, then it must be brought about by other means: through step-by-step reforms from within the society, through judicial activism, or through the vast array of societal legal sites such as caste and sect councils, religious institutions, "doorstep courts" and women's organisations. The women's movement plays a central role here, as Agnes, Solanki and Subramanian demonstrate.

Future research could go deeper into this field of judicial activism in the context of personal laws. While Serajuddin has pointed out where



and how courts have deviated from traditional interpretations of Muslim law, a similar study could be carried out for the other personal law systems. And other than just pointing out the trends in judicial interpretation, it would be interesting to analyse why and under which conditions the judges have deviated from older case law. Who has influenced them? Are courts actively used by civil society in order to promote social change? What constrains the judges if they do not go as far in their decisions as they theoretically could? And can social change actually be brought about as long as the institutions which interpret and execute the law are patriarchal and biased?

All the books – on a larger or a smaller scale – have referred to legal situations in countries other than India. This comparison with other, equally diverse countries, with countries that maintain a system of legal pluralism, with other former colonies, or with countries that have successfully reformed religious personal laws seems promising and could certainly be taken a step further. Subramanian has provided a detailed outline on where and under what conditions states have reformed their religion-based family laws. It would be interesting to see whether gender equality has actually been improved on the ground in these countries and how far the findings are applicable to the Indian context. Lastly, a comparison the other way round might be interesting too. In a globalised world in which migration and diversification are important topics, can Western states learn from the Indian model of legal pluralism or shared adjudication in order to foster religious tolerance and a peaceful coexistence?

Endnotes

¹ Buddhists, Jains and Sikhs are governed by the laws of the Hindus. See for instance Section 2 (a) of the *Hindu Marriage Act*.

² The Warren Hastings Plan of 1772 provided that Hindus and Muslims were to be governed by their own laws in disputes relating to inheritance, marriage, caste and other religious usages and institutions. Later, in 1781, succession and inheritance were added to this list.

³ For a detailed description of the reforms see Agnes 2011: 19.

⁴ Nehru himself thought about the Hindu Code Bills as a “method of preparing the ground” for a Uniform Civil Code (Baird 1993/2005: 22). Scholars like Derrett have regarded the laws in a similar fashion.

⁵ The introduction of the Hindu Code Bills had faced resistance especially due to the regulations regarding women's rights. Many provisions of an earlier and much more progressive draft than the one later adopted had to be taken out or amended as they were regarded as ‘anti-Hindu’ and ‘anti-Indian’. The outcome, which was in some ways a watered-down version, dissatisfied the



then law minister Ambedkar so much that it caused him to resign (see for instance Williams 2006: 104).

⁶ Their critique concerns the terminology as well as the content of the laws. The decision to include Buddhists, Jains and Sikhs in the purview of the Hindu Code Bills has been criticised as part of a terminological 'Hinduisation' against the will of minorities (Menon 2012: 23). Further, feminists point out that several customary rights of women (especially lower caste practices and practices from the South of India, like customs of matrilineal inheritance) were sacrificed in the interest of uniformity and reflect patriarchal views (Agnes 2004: 79; Menon 2012: 26).

⁷ Now sometimes titled ECC as in Egalitarian Civil Code. See for instance the Newsletter by the Delhi based women's rights organisation SAHELI from March 1997, "An Egalitarian Civil Code: Every Woman's Basic Right." Available at: <https://sites.google.com/site/saheliorgsite/communalism/personal-laws-debate/egalitarian-civil-code-every-womans-basic-right> [retrieved 10.07.2015].

⁸ See for instance The Hindu, "Uniform Civil Code: Will it Work in India?", 23 November 2014, <http://www.thehindu.com/opinion/open-page/uniform-civil-code-will-it-work-in-india/article6625409.ece> [retrieved 30.07.15]. Or Indian Express, "Govt start wider consultations on Uniform Civil Code", 12 December 2015, <http://indianexpress.com/article/india/politics/govt-to-start-wider-consultations-on-uniform-civil-code/> [retrieved 10.07.2015].

⁹ In the Shah Bano case, the Indian Supreme Court granted maintenance to a Muslim divorced wife under a secular law (Section 125 CrPC), despite the fact that traditional Muslim law does not recognise maintenance payments beyond a three months iddat period. The judgment provoked discontent and revolt among the Muslim community.

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