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Introduction: new directions, new voices in family law in India

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In July 2019, select family law scholars from around India and the world gathered at the National Law School of India University (NLSIU) in Bengaluru, India to participate in a conference on “New Directions, New Voices in Family Law in India” jointly sponsored by NLSIU, the University of Oxford – Faculty of Law, and Melbourne Law School. The papers and presenters were diverse and the conference conversations were enthusiastic. As a result of this conference, four quite different but interlinked papers were eventually selected for inclusion in this special issue of the Indian Law Review. These papers bring much needed attention to neglected aspects of a wide range of contemporary Indian family law issues and move us beyond seeing Indian family law as necessarily about the constitutional dimensions of personal law and the nationalistic directions that these constitutional discussions have often taken. The following four papers are to be commended for the nuance and sensitivity each brings to complicated legal and social issues relating to family.

Sangeetha Sriraam’s article takes up the issue of child adoption and intriguingly connects the latest legislative developments in this area of law – in particular, the Juvenile Justice Act 2015 – with issues of justice pertaining not only to secularism and sexuality, but also parents and children alike. The importance of Sriraam’s intervention is witnessed by her observation that five percent of India’s children are orphans, yet paltry numbers of these children are adopted annually – at least formally. This is not only a humanitarian disaster but also a legal one, as Sriraam’s emphasis on India’s international human rights obligations to children highlights. By way of solution, Sriraam recommends a middle path set of policies navigating between the twin (if opposed) harms of free market and state monopolization approaches to adoption. Indeed, such a middle ground approach (yet one still tragically flawed) is embodied in the Hindu Adoptions and Maintenance Act 1956. This Act allows a Hindu parent to execute a “private” adoption agreement for the adoption of their child by another Hindu. As Sriraam notes, this Act exists side-by-side with the Juvenile Justice Act 2015 requiring a child to be put in an institutional home before the child is made eligible for adoption. Hence, the less burdensome Hindu Act continues to be a preferred vehicle for adoption in India, above and beyond the “secular” 2015 Act. Yet this is still an unsatisfactory situation because queer Hindus evidently cannot adopt under the Hindu Act, nor can non-Hindus easily adopt under the 2015 Act. In response to these dilemmas, Sriraam makes a host of recommendations about how to improve adoption law and policy in India.

Anuja Agrawal's article offers an astute analysis of the contemporary life of the colonial era Arya Marriage Validation Act 1937, and the ways this overlooked Act has emerged as a crucial battleground for so-called "love marriages" and their legal validity. As Agrawal describes this gripping situation, state entities, non-state bodies, and individual litigants have recently made a number of intriguing but also perplexing claims about this ostensibly superseded and supposedly irrelevant Act, situating this legislation as being not simply about legalizing inter-caste Hindu marriages but potentially enabling all sorts of socially taboo pan-communal marriages of choice. In Agrawal's analysis of important if overlooked courtroom dramas, the AMVA has come to bear a strange and deeply contested potential to operate as the most "secular" of India's marital laws – indeed, more so than even the Special Marriage Act 1954 with the obstacles surrounding its operationalization. Moreover, in building her account, Agrawal brings us into close contact with the nitty-gritty of complex court cases concerning Arya Samaj marriages taking place around India and, in particular, with one case litigated for many years in the Delhi High Court. In her close reading of this case's several hearings and submissions, Agrawal also brings crucial attention to the importance of an ethnographic methodology and the many illuminations this helpful method begets for family law in the contemporary moment.

Saptarshi Mandal's article provocatively takes up the "love marriage" of B. R. Ambedkar, who was not only one of independent India's foremost jurists (and original drafter of the Constitution of India 1950) but also a celebrated leader of India's severely marginalized Dalit (low caste) community. In 1948, Ambedkar married a Brahmin woman, albeit in a civil manner, under the "secular" Special Marriage Act 1954 rather than attempting a Hindu sacramental marriage. Indeed, the latter option was not unambiguously available to inter-caste couples until 1949 and the passage of the Hindu Marriages Validity Act 1949 – an "anti-caste" Act that Ambedkar paradoxically refused to support! Mandal uses Ambedkar's noteworthy opposition to this Act as a vehicle to explore Ambedkar's keen observations about the chauvinist underpinnings of nationalist efforts to secure inter-caste solidarity within family law and across India more broadly. Mandal thus contests widespread interpretations of Ambedkar's writings about the importance of inter-caste dining and marriage and brings attention to what Mandal argues is Ambedkar's more fundamental concern with troublesome religious precepts promoting supremacist thinking within Hindusim. In this way, Mandal's contribution urges us to consider not only how tricky India's personal law terrain is but also whether marriage reform can really address fundamental social inequities.

Addressing a legal issue that has been much in the news but one rarely analysed with the complexity it deserves, Akshat Agarwal writes on the prospect of same-sex marriage's legalization in India. After the Supreme Court of India's landmark *Navtej Singh Johar* decision decriminalizing same-sex sexual behaviour, demands have been raised for not just decriminalization but also legalization – with same-sex marriage being seen as key to the latter. As Agarwal reminds us, however, any family law reform in India occurs on the complex historical terrain of India's religiously informed personal law system. Moreover, efforts to sidestep this terrain by legalizing same-sex marriage solely through the "secular" Special Marriage Act 1954 are misguided, according to Agarwal, due to the deeply interwoven texture of family law in India – where secular and religious laws often cannot be pried apart in practice – but also the deeply intersectional identities of many queer

Indians who remain resolutely both queer and religious. Hence, Agarwal argues for efforts to reform personal laws from within so that queer Hindus, Muslims, Christians, and Parsis alike are able to marry within their respective traditions. In making this recommendation, Agarwal brings India into conversation with South Africa and overlooked aspects of South Africa's legalization of same-sex relationships.

Since these articles were originally written, each has become even more timely as wildly divergent political visions in India continue to tug family law in different directions. However one understands the larger political situation, these four articles clearly demonstrate the depth and complexity of family law in contemporary India. In different ways, these articles touch on the state versus non-state character of the family, and its formation and propagation. These articles also raise important questions about the pluralism of family law actors in India, and whether family law uniformity can ever be expected or should even be desired. Further, these articles suggest the importance of multidisciplinary approaches to the study of family law, examining it in its black-letter, lived, and historical dimensions. Finally, these very fine articles suggest the strength of the next generation of India's family law scholars and the abiding need for us to continue to include new voices going in new directions across this vast and fascinating legal and social terrain.