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## Introduction

### *Law, Marriage, and Feminist Reform*

Courts are notoriously difficult to represent. Photography is generally forbidden, as are audio and video recordings. Most commonly, the cacophony of court corridors comes to us in stiff legal language, in the form of parsed judgments (less often in ethnographic jottings, as in this book). One way of capturing the space, I thought, would be to look at the walls of a family court in India, keeping in mind that artifacts may be placed by design or without coordination, by different people over time. Here is a verbatim rendition of what ornamented the walls of the Mumbai Family Court in 2006, in no particular order:

- No mobile phones.
- 3 monkeys. Open your Eyes—Speak Out—The ACB Listens to You. Expose Corruption. (The Anti-Corruption Bureau)
- Men who think women are playthings deserve women who think men are generous bank accounts.
- Children are LITTLE people who need BIG rights. (Dr. Klaus Klankel, governor and federal minister of foreign affairs)
- A Lean Compromise is better than a FAT lawsuit.
- It is through women that order is maintained. Then why call her inferior from whom all great ones are born? (Guru Nanak)
- Woman-Friend-Wife  
Don't walk behind me—I may not lead  
Don't walk ahead of me—I may not follow  
Just walk beside me and be my friend and partner. (Albert Camus 1913–1968)
- A child has a right to love both parents—give your child that gift.

- Oh God, why can't a woman take stock of her destiny? Why does she have to stand by the roadside, head bowed, waiting patiently for a miracle in the morrow? (Rabindranath Tagore)
- The best gift a father can give his child is to *love* their mother.

The jumble of discourses in these sayings suggests the frameworks through which law, mediation, marriage, and feminism proliferate in contemporary India. They encapsulate the four primary zones of trouble explored in this book. First, disciplinary governmentality, marked in the instruction to turn off phones and the invitation to report corruption, follows the book's preoccupation with the force of law in the postcolonial state. Here, we see the state to be benevolent and stern, righteous and lofty, mimicking family discipline even as it attempts to transform it. Second, the seductive call for alternative dispute resolution (ADR), in which the "fat lawsuit" is pejoratively contrasted with the "lean compromise," suggesting trim efficiency and shedding the burden of law. This book interrogates the trend toward use of such alternate forums and their seemingly contradictory coexistence with expanded governmentality. A third trajectory pertains to the normative ideals of marriage and family in law: gendered discourses of male productivity (men as "generous bank accounts") and female sexuality (women as "playthings") are represented as unhealthy mirror images, and the optimal childrearing unit is presented as two-parental and "loving." These ideals suggest that companionate conjugal love is the basis of the ideal family, that children have rights, and thus that family law is a progressive space of liberal modernity, a vision of gender often different in practice from that articulated by judges and counselors.

Fourth, it would appear that the space is characterized by a broad, noble feminism, articulated through the marital ideals above, as well as the incongruent poetic (male) voices of Nobel laureates Rabindranath Tagore and Albert Camus, and Sikh religious leader Guru Nanak. Nanak's equation of the feminine with order (and hence the masculine with chaos) appears to honor women; however, it casts the feminine as a haven from the world of frenetic action, as difference from the norm. In contrast, Tagore's poem *Sabala* (The strong woman), written in the voice of a rebellious feminist subject, makes a powerful argument for equity and justice as part of the human condition, providing a sharp critique of patriarchy. Camus's presence is most ironic in this cohort, given his legendary dislike of marriage.<sup>1</sup> Best of all, in the quote in question, commonly misattributed to him,<sup>2</sup> the phrase "and partner" has been added only in this version; hence the marriage-averse Camus is here

*invented* to represent marriage as a form of friendship. The lesson to be had by reading these together—that women deserve to be equals, friends, and companions—suggests marriage as a site of heteronormative harmony, in which discordant notes of power, hostility, and rebellion are muted.<sup>3</sup>

These walls serve as pedagogical frames for litigants, setting up what they might expect even before they encounter a court or a counselor. They are led to a notion of the ideal family, often at odds with the experiences of family that bring them to court, and to claims of gender equity that may not be borne out in adjudication. Most people conceive of law as a distant and formidable realm, often imagining it through popular literary or film renditions where moral order is dramatically restored and justice meted out with certitude. The discourses above advertise a new world of active negotiation, without intimating that it is one in which justice, order, and strategy are likely to be much murkier.

We will be lingering in such courts in this book, but also in other spaces where law is deployed formally or informally to work out marital trouble, including Women's Grievance Cells managed by the police to hear complaints of violence, and mediation agencies variously affiliated with the state and women's movements. Through encounters with family law, intimate violence, and mediation in contemporary India, this book will examine marriage as reflected and shaped through law and, conversely, provide an ethnographic portrait of everyday law as depicted through the governance of marriage. Accounts of marital discord serve as a diagnostic, as "trouble cases" in the classic legal anthropological sense of revealing cultural frameworks. Through them, we can contemplate the categorical trouble of marriage itself: an institution fused with "trouble and strife" by definition, persistently associated with conflict, deprivation, and exclusion.<sup>4</sup>

The legacies of global feminist legal reform, particularly the Indian women's movement of the late 1970s and 1980s, are another central node in this book. Has the heavy emphasis on law as the instrument of achieving gender equity been effective? We seek an answer in the workings of institutions that were founded as a result of local and global feminist campaigns since the UN Decade for Women (1976–85), looking for what has worked and what has emerged unexpectedly, what has caused conflicts within women's movements and what has been appropriated by other groups. The main Indian laws profiled relate to divorce and gender violence: the Family Courts Act (1984), S498A cases against domestic violence/"torture" added to the Indian Penal Code in 1985, and S376 of the Indian Penal Code against rape.

The following chapters consider how laws transform social being. If we all recognize that law provides neither stable nor predictable solutions, what do social movements, including feminist movements, gain by insistently turning to it? Litigants may find that law opens strategic spaces of negotiation, despite the practical limitations of legal remedies. New laws, created in response to political imperatives or social movements and filtered through legislatures, are applied by individuals and groups in both foreseen and unanticipated ways and are often connotatively transformed in the process. People “bargain in the shadow of the law,” shaping it to their ends and building new legal cultures. This basic tenet of legal pluralism guides my approach: I find it pointless to debate whether the laws in question are “correctly used” or “misused,” whether they are “good” or “bad” laws, whether feminist visions are adequately recognized. Rather we follow the ways they are utilized as new cultural horizons: to stretch the entitlements of marriage, calibrate the meanings of violence, or construct kinship. I focus on “the kind of society in which law operates,” as opposed to the efficacy of particular rules or concepts, an anthropological rather than a legal reform approach (Moore 1969, 253).

Mediation (and alternative dispute resolution more generally), characterized as an end to the trouble represented by law and a mode of generating plural customized solutions, features prominently in these discussions. A popular feminist resource, it seems to offer a way around the oppressiveness of trials, interminable delays, and fuzzy legal language, setting up women as empowered agents in control of their narratives and transforming legal authority. The very ubiquity of mediation is the cause for worry here. Mediation, as law’s Other, is ambivalent in the same ways as law: new spaces and new modes of speaking do not necessarily alter legal authority. Discourses of efficiency and resolution may be highlighted in mediation at the cost of working through questions of anger and power, thus becoming a form of “coercive harmony,” to use Laura Nader’s trenchant phrase (1997). As we will see, marriage mediation is particularly fraught, given the predominance of questions of power, property, and violence.

The following sections lay out the four main theoretical and thematic trajectories of the book: law as strategy and force, the possibilities and limitations of alternate dispute resolution, marriage as both privilege and deprivation, and the ambivalent effect of feminist jurisprudence in the gender-equality-friendly modern nation-state. The introduction then orients readers to the methodological framework of the book, the political and cultural loca-

tions of fieldwork, and the demographic context of Indian marriage and divorce.

## LAW AND CULTURE

Law is the clothes men wear  
 Anytime, anywhere,  
 Law is Good morning and Good night.  
 —W.H. Auden, “Law Like Love” (1941)

This volume echoes Auden’s parsing of law as encompassing shifting, contradictory areas of life: law as practice, custom, and habit (“the clothes men wear”); as orthodox and disciplinary (“Law is the Law”); as a product of political and historical specificities (“Law is only crimes / Punished by places and by times”); and even as being “like love,” incommensurable and inexplicable, something through which one knows oneself and something that inevitably is tied with loss (“Like love we often weep / Like love we seldom keep”). The venues in and around law explored in this book will demonstrate each of these levels: we will track legal realms as normative, disciplinary, affective, and political—a force and a promise, triumph, love, and loss.

However, this broad approach makes it difficult to demarcate law as a separate object of study: is it coterminous with the space of culture itself?<sup>5</sup> Law has been theorized in the most expansive of terms as a basic “property of interaction” (Reisman 1999, 2), a diagnostic of the symbolic realm as “a distinctive manner of imagining the real” (Geertz 1983, 184), or a collective social conscience to Durkheim (Calavita 2001, 98). To some law and society scholars, law maps historically contingent practices: the “product of a specific moment in the history of a society” (Demian 2003, 99); “whatever people identify and treat through their social practices as ‘law’” (Tamanaha 2000, 313); or a dynamic entity “constantly transformed given its mediation within a socio-spatial context” (Blomley 1989, 516). In these “constitutive” perspectives (Blomley, Delaney, et al. 2001, xv), law is seen to affirm other cultural realms (Calavita 2001, 90). The conceptual problem here lies in the difficulty of delimitation: if we cannot find an “outside” to law, how do we draw the lines around it? In the following chapters, legal cultures do indeed help define kinship, class, marriage, governance, and politics. But we also want to ask of them: why are these conflicts expressed through *law*? What added value does law provide?

Unlike the work of scholars who have studied legal norms through everyday social moments (Reisman 1999), this book engages with law in its formal incarnations, as a form of state power. Auden vividly captures the regulatory force of law in formal settings:

Law, says the judge as he looks down his nose,  
 Speaking clearly and most severely,  
 Law is as I've told you before,  
 Law is as you know I suppose,  
 Law is but let me explain it once more,  
 Law is The Law.

Law operates with a sense of its own power (“Law is The Law”), authorizing the salience of precedent (“as I’ve told you before”) and hegemonic consent (“as you know I suppose”). Legal personages are lofty and stern, enforcers of discipline. Derrida’s riff on the terms *law*, *justice*, and *rights* ties them profoundly to force: “There are, to be sure, laws that are not enforced, but there is no law without enforceability, and no applicability or enforceability of the law without force, whether this force be direct or indirect, physical or symbolic, exterior or interior, brutal or subtly discursive and hermeneutic, coercive or regulative” (1992, 6).

In the modern nation-state, overt force seems to have been replaced by systems of governance, called “bureaucracy” and “legality” in Weber’s account (2004, 133) and “governmentality” in Foucault’s (1991). “Government” may be conflated with the notion of a watchful state “in the imagination and everyday practices of ordinary people” (Gupta 2012, 100, 43–44, parsing Abrams), but scholars like Gupta contend that governance is diffuse rather than centrally coordinated and works by evoking protection and regulation. This book takes a similar view—that an ethnographic approach to bureaucracy reveals the state to be “disaggregated” rather than “cohesive,” to fail people in the contradictions and slippages between sectors and mechanisms (Gupta 2012, 33). The “state” and “law” in everyday contexts are experienced as “both distant and impersonal ideas as well as localized and personified institutions, . . . violent and destructive as well as benevolent and productive” (Hansen and Stepputat 2001, 4–5). In this vein, legal authorities personify abstract and yet intimate encounters with a state that is simultaneously protective and disciplinary. However, their authority is demystified and challenged when legal arbitrariness becomes evident, showing that law is also fractured, “deconstitutive” (Calavita 2001, 96).

Such fractures show that the power of law is mediated by resistance, even if power adapts to forms of resistance (Foucault 1978; Abu-Lughod 1990). As the field of critical legal studies has explored (e.g., White 1990), marginal subjects' use of legal tools can destabilize hegemonies or fail in the face of resilient norms (Lazarus-Black and Hirsch 1999, 9). People often imagine that engaging the legal realm typifies resistance, that bringing "real grievances" to light and getting better "justice" is a form of agency. But if we think of law, like other cultural realms, as a performative field in which people strategically conform to normative expectations, using law is after all a (powerful) attempt to conform to its rules, seeking an optimal outcome. Resistance may be seen as a residue, a (potentially useful) tear in such performance against the force of culture/law (Hirsch 1998, drawing on Butler).

These strategic uses of law, whether failures or successes, are demonstrated in the following chapters in the "off-label" uses of law, such as in the use of rape law to secure marriage, or domestic violence criminal prosecutions to assist in civil alimony suits. We seek to understand what determines a choice to use formal law and study the ways people can bargain *with* formal law in informal venues of legal pluralism.<sup>6</sup> Sometimes, legal cases are avoided at all costs so that questions of kinship or economics may be negotiated (Basu 1999), while elsewhere, people may turn to courts to pursue "justice" in both idealistic and situational ways (Merry 1986). Seeming manipulations to secure extralegal outcomes can thus be read as attempts to put law to complex use (Marshall and Barclay 2003). Legal realists contest this view of willy-nilly traffic, arguing that people "bargain in the shadow of the law," meaning formal law is a central determinant of decision making and not just one option (Jacob 1992, 566; Roberts 1994, 979). The counterargument to this view is that questions of social and economic capital are prime drivers of decisions, while law is but a "dim" shadow (Jacob 1992, 585, particularly relevant for divorce cases).<sup>7</sup> Importantly, law may be either used or avoided when decisions are made, in the "deliberate choice to step outside the local culture, to translate the subject matter from the language of local customs into the language of the formal legal system" (Engel 1980, 430–31).

We see in the following chapters many such examples of "legal pluralism" in the active, creative, strategic choices to move in and out of law, with mixed success depending on one's fallback position. Such systems are defined as "weak legal pluralism" when they describe the narrower strategy of simultaneously using legal and quasi-legal or informal options (as we see in chapter 7),

sometimes anointed “forum-shopping” (von Benda-Beckmann 1981). More broadly, decisions to use or avoid law, or to reshape the cultural meaning of law, exemplify “strong legal pluralism.” Lest we think of legal pluralism as a quaint traditional throwback or an awkward melding under colonial administrations, it is important to recognize it as crucial to the modern nation-state’s claim to be benevolent, democratic, participatory, and multicultural (Chowdhury 2005), a critical “way in which the state organizes its own loss of centrality” (de Sousa Santos 2006, 44; see also Sieder and McNeish 2013, 11–15). The formal legal system deliberately functions alongside (and along with) informal venues of dispute resolution, whether customary or new.

The question here, for purposes of social justice, is whether legal pluralism expands gender or class or race equity, or whether it merely provides an array of options that cement prevailing ideologies. Boaventura de Sousa Santos’s influential perspective champions plural systems as “palimpsests” that are incompletely ruptured from their past, characterized by “porosity” and “hybridity,” able to “giv[e] rise to new forms of legal meaning and action” (2006, 46). Solanki, with similar optimism, argues that possibilities reside between the simultaneous processes of “centralization” (where the state supports formal institutions and norms of equity) and “decentralization” (in the space created by fragmented official application of laws and the “diverse ways in which social actors and institutions filter into the state judicial system” [2011, 61–63]). Given the omnipresence of legal pluralism, it may be most useful to notice how “rights and claims are made and responded to within a range of cultural, social, economic and political contexts” (Sieder and McNeish 2013, 2). Considering the question of gender, for example: “What strategies do men and women use to claim and obtain resources, protection, security and voice? How are rights and obligations understood and negotiated? Under what conditions are complex legal pluralities a factor in gendered forms of exclusion? And under what conditions do they constitute a resource for women—and men—to challenge their marginalization?” (Sieder and McNeish 2013, 2). The existence of legal pluralities opens up possibilities for negotiating solutions unavailable within formal law. The shadow of law might help feminist claims-making by building “a sense of entitlement, of the right to have rights” (Cornwall and Molyneux 2006, 1188) or by launching a space of discursive debate (Kapur and Cossman 1996; Suneetha and Nagaraj 2010).

In this book, we explore some of these directions in the study of law. We follow the ways laws make marriage, kinship, and violence legible, as well as

the ordinary ways they work themselves into people's language and habitus. Yet laws often prove inadequate in translating deep-rooted problems, unable for example to transform marriage as a gendered institution of power and property. We will follow the work of agents of the state and the compliant and resistant strategies used by litigants, noticing both the force and elasticity of rules and processes and the permeability between legal and quasi-legal venues.

(ALTERNATIVE) DISPUTE REVOLUTION:  
THE OTHER OF LAW

Choose Mediation because . . .

It immediately puts you in control of both the dispute and its resolution.

The law mandates it, and the courts encourage and endorse it.

Through it you can communicate in a real sense with the other side which you may not have done before.

The process is confidential, the procedure is simple and the atmosphere is informal.

It is voluntary and you can opt out of it at any time if it does not help.

It saves precious time and energy.

It saves costs on what usually becomes a prolonged litigation.

It shows you the strengths and weaknesses of your case which helps find realistic solutions.

It focuses on long-term interests and helps you create options for settlement.

It restores broken relationships and focuses on improving the future, not dissecting the past.

You opt for more by signing a settlement that works to benefit both you and your opponent.

At the end of mediation you can actually shake hands with your opponents and wish them good health and happiness.

—Pamphlet from Samadhan, Delhi High Court Mediation and Conciliation Centre

As indicated in the previous discussion on legal pluralism, do-it-yourself law has become increasingly prized as a mode of bypassing a cumbersome state, and alternative dispute resolution (ADR) forums have mushroomed. The above bilingual, attractively illustrated pamphlet from the Delhi Mediation Centre exemplifies the conundrum posed by ADR as the optimal alternative to law. The pamphlet celebrates mediation (a form of ADR) as the smart solution to conflict, its principles oft repeated in the center's materials, from the annual calendar, to standard opening speeches by mediator-lawyers to clients, to the plaques and posters around the well-appointed new space. The

center is called *Samadhan*, meaning “solution,” thus promising an ending rather than perpetual legal process. It proudly draws upon the ultimate register of Indian respectability, Gandhi’s words on mediation: “I had learnt the true practice of law. I had learnt to find out the better side of human nature and to enter men’s hearts. . . . [A] large part of my time during my twenty years of practice as a lawyer was occupied in bringing about private compromises of hundreds of cases. I lost nothing thereby—not even money, certainly not my soul” (*Samadhan* 2011, 7). Media coverage reflects these ideologies in headlines such as “Come, Let’s Sit and Talk Things Out” and “Stuck in Court? Try Mediation” (*Samadhan* 2011, 126–27). The impression is that law is alien, distant, and expensive, an evil modern infestation, while ADR provides more democratic access and better justice.

Mediation, or “dispute” resolution, is nostalgically associated with a grounding in local culture, as opposed to the forceful homogeneity of law. Depicted as being “away from judge- (and judgment-) oriented accounts” and focused on actors’ “circumstances, goals, strategies and actions” (Comaroff and Roberts 1981, 14), it offers the possibility to more fruitfully engage with why people acted in a certain way and to construct a satisfying resolution. The systems considered in this book are not the small-scale disputing venues beloved of legal anthropologists but the hybrid institutions developed by modern nation-states as “popular justice” forums,<sup>8</sup> often depicted as veritable revolutions of participation and access. As the following chapters demonstrate, however, the problem is that mediation might work in turn through alternative repressive ideologies, posing disproportionately greater problems for marginal subjects.

Legal anthropologists who studied community forums (Bohannan 1957; Just 2000) highlighted local norms of transgression and compensation, in which the state appeared as a distant force; community sanctions twisted state categories of crime to fit their own sense of violation. ADR’s appeal similarly lies in honoring community norms over the state: Merry and Milner profiled a U.S. program that offered “subordinate groups greater access to justice or greater control over its administration,” “permeated by the values and rules of local communities” (1993, 8); Auerbach mapped “a persistent counter-tradition to legalism” through U.S. history via a variety of dispute resolution forums (1983, 4).

However, communities exercise their own forms of hegemonic regulation and can be poor venues for gender equity (Baxi 1986, 75–76). As studies of dispute resolution (many focused on marital trouble) have demonstrated, community power may even affect formal courts. In a study by Griffiths,

women in Botswana who tried new legal strategies found they were constrained by the ways “social understandings, expectations and values” of property and labor related to marriage saturated both customary and Western law settings (1997, 222, 228). Kenyan Kadhi’s courts, imagined as a religious alternative to the formal courts, allowed women to be creative protagonists but also “solidif[ied] gender differences and gender antagonisms” and could not displace the patriarchal grounding of the laws (Hirsch 1998, 243).<sup>9</sup> Erin Moore, narrating one Rajasthani woman’s struggles in a range of legal venues from communities to formal legal forums, argues that law is a limited source of gender justice when it “legitimizes ideologies and asymmetrical power relations, particularly between genders” (1999, 30).

There is danger, too, in confusing efficiency with justice.<sup>10</sup> Owen Fisk, leading the critique, points out that representing mediation as a stranger’s benign resolution of a neighborly dispute ignores potential harm and minimizes the problem. “Settlement,” he argues passionately, “is a truce more than a true reconciliation. Settlement is for me the civil analogue of plea bargaining: consent is often coerced; the bargain may be struck by someone without authority; the absence of a trial and judgment renders subsequent judicial involvement troublesome; and although dockets are trimmed, justice may not be done” (1984, 1075). The deal is typically less favorable to the party with greater economic disadvantage, exemplifying a game theory axiom; future enforcement of settlement terms is also frequently difficult (Fisk 1984, 1076, 1084). While others describe more positive results, such as “a more personal and private approach,” “high ratings of user satisfaction,” “a sense of commitment to abide by the agreement,” and “less damag[e] to relationships,” they nonetheless recognize that there are “no consistent improvements in long-term compliance, spousal cooperation and relitigation” (Pearson and Thoeness 1988, 86–88). Laura Nader has stringently critiqued ADR for being “coercive, repressive and undemocratic,” for highlighting discourses of communication, therapy, and healing and evading issues of “rights, remedies, injustice, prevention and unequal power” (1993, 5–6).

ADR’s reputation for providing a better hearing and improved legal access made it very popular with women’s movements, who depicted mediation as “a feminist alternative to the patriarchally inspired adversary system” (Nader 1993, 10). Nader describes the scenario as a perfect ideological storm in the United States: “It did not hurt that there was a close fit between the [ADR] rhetoric, the ethic of Christian harmony, the interests of corporations in cutting legal

fees, psychologists and other therapists, the women's movement, and a myriad of vested interests" (1993, 7). However, feminist scholars have pointed out that ADR poses grave problems for women and economically marginal subjects, for whom the deliberate erasure of power relations, the disavowal of angry expression, and the injunction to forget the past generate dissatisfaction and injustice. Divorce, for example, involves "parties with lengthy, intimate and problem-ridden histories and deeply established behavioral patterns," such that "mediation cannot and does not address the underlying emotional problems of families" (Pearson and Thoennes 1988, 86–88). In recent years, restorative justice (RJ) has been recommended by some feminist scholars as an improved form of ADR: rather than assuming equivalence between parties, it focuses on remedying harm to victims and on offenders accepting responsibility, as a way of shortening the adversarial process (Daly and Stubbs 2006; Koss and Achilles 2008; Koss 2010; McGlynn, Westmarland, et al. 2012). Remarkably, RJ seems to have worked well for some sexual assault and sexual abuse cases but so far has proved difficult to apply to divorce and domestic violence.

The Samadhan pamphlet encapsulates these possibilities and limitations of mediation. It highlights the "lofty goals": control, customization, frugality, time-saving, confidentiality. It posits a firm end in sight for litigation and a conflict-free future. I have talked at length with one of the prime movers of this well-funded and efficient center about their careful work, which involves mainstreaming mediation by seeking judicial referrals, ensuring the buy-in of lawyers by acknowledging their expertise and paying for their participation, and most of all, incorporating complex kin and economic obligations into clients' decisions, being careful to balance women's safety and well-being. But as we will see in the following chapters, "shaking hands with your opponents and wishing them good health and happiness" and "restoring broken relationships" are difficult standards in divorce litigation, given structures of power located within marriage. In the rush to compromise and settlement, ADR ideologies may erase anger and violence, assuming that parties in conflict operate in a universe of balanced bargaining equity, again a poor fit with marriage.

#### FRACTURING MARRIAGE

After marriage, husband and wife become two sides of a coin; they just can't face each other, but still they stay together.

—Hemant Joshi

By all means marry. If you get a good wife, you'll be happy. If you get a bad one, you'll become a philosopher.

—Socrates

I had some words with my wife, and she had some paragraphs with me.

—Anonymous

I don't worry about terrorism. I was married for two years.

—Sam Kinison

There's a way of transferring funds that is even faster than electronic banking. It's called marriage.

—James Holt McGavran

I've had bad luck with both my wives. The first one left me and the second one didn't.

—Patrick Murray

My wife and I were happy for twenty years. Then we met.

—Rodney Dangerfield

A good wife always forgives her husband when she's wrong.

—Milton Berle

Marriage is the only war where one sleeps with the enemy.

—Anonymous

A man inserted an "ad" in the classifieds: "Wife wanted." The next day he received a hundred letters. They all said the same thing: "You can have mine."

—Anonymous

Marriage is shaped not just in religious ceremonies and rituals, courts and police stations, and mediation sessions, but in conversations and jokes and rumors, through media and ephemera. The epigraph is one such instantiation, both random and densely evocative. Excerpted from one of those relentless e-mail forwards that arrive like locusts despite one's best cyber-pesticides,<sup>11</sup> it carries the signature "Bilkisu Labaran, Country Director, BBC World Service Trust Nigeria," with the exhortation to "send this to all the guys to give them a good laugh . . . and those ladies with a sense of humor" (the female audience is supposed to be flattered, since being a feminist is feared to come with a humor lobotomy). The "funny" message circulates globally as a normalized discourse about marriage and the relationship between men and women, laced with resignation, desperation, and not a little hostility. Heterosexual sociality is the only scene there is, it suggests fatalistically and with full cross-cultural conviction, and it is characterized by men losing their money, their freedom,

and all the arguments. What a buzz-kill it would be to counter with the oft-cited 1985 United Nations Human Development Report's statistic that women perform two-thirds of the world's labor hours, earn one-tenth of the world's income, and own one-hundredth of the world's property! Most interestingly for our purposes, the message poses marriage as an essential scene of conflict, of "trouble and strife"; it is akin to terrorism, a path both to bankruptcy and—remarkably—to philosophy. It posits implacable gender difference, assigning wives and husbands to unreasonable loquacity and pathetic compliance, respectively, and looks to the end of marriage/marriages with glee.

This book presents a portrait of marriage through the stress fractures of marital dissolution, where conflict and terror are often on display. But it views marriage as neither the inevitable locus of sociality, nor as marked by fixed gender difference. We follow the ways marriage institutes legitimacies and secures regimes of property and labor, as seen in legal strategies for negotiating alimony, violence, residence, or custody. Conflicts serve as a lens for putting marriage itself on trial, allowing us to examine it as a site of privilege, entitlement, and exclusion on the one hand, and of deprivation, vulnerability, and violence on the other.

Marriage tends to be represented as a transparent good, assuming at its center the universal cultural unit of the heterosexual couple. The popular paperback *A History of the Wife* suggests that "it is still 'a good thing' to have a wife and to be a wife" because "going through life as a member of a pair" means "being validated and strengthened through a long-term, loving union" (Yalom 2001, xvii), mirroring Giddens's influential theory that modernity is marked by the rise of romantic love (including within marriage) as the primary mode of personal satisfaction (1993; Cole and Thomas 2009). These perspectives erase the facts that most human cultures are nonmonogamous and marriage may not be the only basis for long-term or loving relationships. Contemporary forms of marriage might be one mode of "enhancing intimacy" and a locus of "social and political power," but the idea that marriage brings prosperity "is propaganda, not reason or social science" and hides "the gross favoritism that the government lavishes on marriage" (Bernstein 2003, 211–12).

Each culture has a "sex-gender system," to use Gayle Rubin's useful formulation (1975), in which marriage is part of a specific arrangement of labor, kinship, gender, and sexuality, producing subjectivities and socialities. Along these lines, critiquing the view that gender and kinship are stable and given categories in marriage, Borneman provocatively suggests that marriage is a

“privilege that operates through a series of foreclosures and abjections, through the creation of an ‘outside’” *because* it serves specific material and ideological purposes (1996, 225). He urges an analysis of the privileged links among marriage, gender, kinship, and erotic desire that would purposefully document “not only what asserts itself as presence and life, but also identify what is foreclosed, placed outside, or erased” (228). In parallel vein, Rubin seeks to “reimagine” marriage beyond the replication of intransigent patriarchal notions of kinship (1975).<sup>12</sup>

Contemporary movements to expand notions of conjugality and family in terms of recognition and rights, such as legalizing gay marriage, have newly animated these theoretical debates, proposing other reimaginings of the heteronormative contract. It is notable, though, that such movements do not necessarily subvert dominant configurations; as gay marriage becomes a rising ground of civil rights mobilization in the United States, it often works through forms of “homonormativity” that foreclose alternate sexualities and citizenships (Puar 2007). A more expansive vision is articulated by groups who advocate for recognition of a variety of marriage-like formations, such as Indian activists who support the broadest swath of “relationships in the nature of marriage.” These include homosexual and heterosexual practices involving short- and long-term exchanges of labor, sex, and intimacy, of which the nuclear gay and lesbian family would be one small part (Partners for Law in Development 2010). Ashley Tellis contends that Indian feminists, too, have exclusively promoted marriage as the locus of entitlements and have failed to “create spaces for women outside marriage and family, outside the heterosexual imperative”; he argues for the need to imagine “spaces outside marriage within which same-sex subjects can breathe and imagine their lives the way they want” (2014, 348, 346). This book engages such invitations to expose the sutures of gender, erotics, labor, and kinship in the contemporary nation-state’s representations of marriage.

Divorce is the literal unsuturing of the institution of marriage. As “the point at which the principles, assumptions, values, attitudes and expectations surrounding marriage, family and parenting are made explicit” (Simpson 1998, 27), it illuminates material and cultural negotiation among state, communities, and families. Rising divorce rates are most often evoked in terms of anxiety and pain (and there are plenty of examples in the following chapters to confirm the validity of such regrets). Rather than viewing it inevitably as fragmentation and loss, however, here we study it as a productive mode that “generates

continuities in the way one generation passes on its status, property, identity and accumulated wisdom and folly to the next” (Simpson 1998, 2). Importantly, divorce has been a powerful mode of escaping physical and economic violence, as well as other interpersonal constraints. It is often experienced as a mixed bag of possibilities, with depression and strain balanced against greater economic independence and less dominance, a fuller identity, and better connections.<sup>13</sup> While there are only scant commonalities in causes of dissolution (Betzig 1989; Goode 1993),<sup>14</sup> divorce rates are most strongly correlated with whether one can afford to be divorced—that is, to social, economic, and political options in a given nation-state, such as gendered labor market patterns, public assistance within or outside marriage, and practices of remarriage and kin support for the divorced.<sup>15</sup> In this book, along similar lines, divorce is seen to generate both benefit and loss, while being a powerful diagnostic of the gendered distribution of labor, property, and social support.

Almost without exception,<sup>16</sup> however, the *economic* consequences of divorce for women in the contemporary nation-state are disproportionately difficult (despite some putative *social* trade-offs). The important distinction is between nominal and substantive gender equality (Molyneux 1985), in which the formal (nominal) gender equality in divorce laws is often at odds with, and blind to, the (substantive) economic consequences of divorce. Many women litigants face a contradiction between their status as seemingly empowered subjects who invoke laws with face-value equity, and the constraints of social and economic factors related to income and residence. That is, potential dissolution exposes the fundamental economic infrastructure of marriage: “Gender-structured marriage involves women in a cycle of socially caused and distinctly asymmetric vulnerability,” meaning women “are made vulnerable by marriage itself” (Okin 1989, 138). Okin’s legal analysis echoes a staple argument of socialist feminism, that ideologies of family (or familialism) anchored in heterosexual marriage and nuclear families are the root of economic subordination. These institutions systematically foster dependency, generating “inequality and asymmetry” in the gendered division of labor in both households and evolving labor markets (Young, Wolkowitz, et al. 1981, xvii).<sup>17</sup>

Several chapters of this book deal with the state’s management of marriage, including adjudication of alimony or child support through the governance of behavior. I find it useful to see such management across state domains as “neither hegemonic nor monolithic” (Brown 1992, 29): the diffusion across disarticulated facets of the state is a form of power exercised through disparate

interpretations from officials. Such diffusion, which together promotes an ideal conjugal family modulated by class, may even be mapped as the very hallmark of modernity in state governance (Donzelot 1997): Donzelot argues that the “interests of the child” were rhetorically mobilized to transform a range of labor practices, residential spaces, social work interventions, and notions of violence. In seeming contradiction, many scholars have suggested that recent changes to marriage and divorce laws demonstrate a loosening of state control over the marriage tie, marked by an assumption of equality among spouses and greater reliance on individual property (Glendon 1980; Buchhofer and Ziegert 1981; Fineman 1991; McIntyre 1995). In Brown and Donzelot’s analyses, these are not contradictions; it is precisely consonant with the ideologies of the modern state not to appear heavy handed and to promote individual choice and well-being. The governance of family and marriage is often enforced through domains not necessarily related to divorce, such as children or population or health. It is of a piece with this indirect intervention and the illusion of choice in the private realm that systemic impoverishment related to marriage is diffusely dispersed across sites of governance.

Much of this book follows the state’s governance of marriage, presenting the economic effects of seemingly gender-neutral divorce law, discourses of benevolent protectionism that reinscribe gender roles, and administrative operations that shore up marriage as an ultimate privilege. But it also purposefully decenters the state, emphasizing litigants’ cultural negotiations, such as the use of law for contesting caste, class, religion, and kinship. A rich emergent body of ethnographic studies of marriage in India has tracked inventive practices of marriage in informal venues that manipulate categories of formal law (Holden 2008; Vatuk 2008; Grover 2010). However, before we celebrate resistance too gleefully, we might also remember that marriage law is deployed (often violently) to enforce adherence to community norms, such as to further religious majoritarianism, and caste and religious endogamy, by using kidnapping and rape laws to constrict marriage choice (Chowdhry 2007; Mody 2008). We will follow the various ways law is creatively used to shape marriage, with and against women’s agency.

## FEMINIST JURISPRUDENCE AND GOVERNANCE

Anita: Get down from your dais and go see people—see how happy the Indian wife can be with setting up her home [*Hindustani aurat ghar basaake kitni sukhi ho sakti hai*].

Sita Devi (feminist campaigner): They think slavery is happiness—what do they know of independence? [*Wo ghulamī ko sukḥ samajhī hai, wo kyā jāne azādī kaisī hotī hai?*] I will teach them freedom as I have learned from women in Europe and America.

Anita: Those women will give you a lot to learn, like changing husbands four times.

—*Mr. & Mrs. 55*, dir. Guru Dutt (1955)

Feminist intervention in questions of marriage, body, sexuality, and violence is often, as in the above accusation, equated with the destruction of family, marriage, and love, and a feminist such as Sita Devi depicted as “a dangerous complainer who exposes family problems” (Hirsch 1998, 243). As the “typical” Indian woman, represented by Anita, complains, feminists are seen as substituting the rudeness of equity and independence for the satisfaction of compulsory heterosexuality, thus precipitating social chaos. Despite such fears (or as their measure), feminist reforms have been mainstreamed into state institutions since the 1970s. “Governance feminism,” the “noticeable installation of feminists and feminist ideas in actual legal-institutional power,” is a visible global force (Halley, Kotiswaran, et al. 2006, 340). Legal interventions have transformed workplaces and doctors’ offices and sports arenas and police stations; rape is recognized as a war crime; sexual harassment constitutes employment discrimination; pregnancy cannot be cause for workplace termination; states have funded shelters and programs to combat various forms of intimate violence; and the “reasonable man” standard no longer counts as the sole criterion of considered judgment.

Since the mobilization following the UN Decade for Women (1976–85), global conversations around gender equity have included calls for improved legal access, including the creation of informal venues, as well as greater attention to violence against women and women’s economic deprivation. The violence against women movement has been described as “perhaps the greatest success story of international mobilization around a specific human rights issue” because of the rapidity with which international norms, programs, and policies have been developed (Coomaraswamy 2005, 2). It was further spurred by the decision of the Committee on the Elimination of Discrimination against Women to count violence against women as a form of gender discrimination in 1991, the UN Declaration on the Elimination of Violence against Women in 1993 (Coomaraswamy 2005), and monitoring by a Special Rapporteur on Violence against Women, its Causes and Consequences through the UN Commission of Human Rights, which in 2011 sharply put states on notice to undertake concerted efforts at local and national levels

to design programs and policies, “based on the premise that the human rights of women are universal, interdependent, and indivisible.”<sup>18</sup>

The Indian women’s movement (IWM), active since before independence, was especially influential in the 1970s and 1980s in bringing forms of gendered violence to legislative attention (Kumar 1993; Chaudhuri 2004; Khullar 2005). Subsequent IWM mobilization has included a prohibition on the results of amniocentesis tests to deter sex-selective abortions, provision of matrimonial maintenance through the Domestic Violence Act, and establishment of women’s right to ancestral family property. The family courts analyzed in this book are among the new legal institutions that emerged in the wake of the UN Decade, designed to provide better access to law and attention to gendered violence and economic entitlements of marriage. S498A of the Indian Penal Code on “domestic torture” and the reform of rape law, also subjects of this book, are other legacies of the IWM. I study the effects of these legal and policy changes, along with emergent concerns of the contemporary women’s movement, such as matrimonial property, the rising role of mediation, and the means of effectively addressing gendered violence.

This book focuses on the seeming successes of women’s movements and the afterlife of feminist-inspired institutions. Legal reform has been a critical strategy for feminist movements, involving demands for change that affect material options as well as symbolic inscriptions (Smart and Brophy 1985; Kapur and Cossman 1996; Rai 1996; Johnson 2009).<sup>19</sup> But putting a law in place does not ensure satisfactory mainstreaming of gender justice (ideally also equity of race, caste, class, sexuality, ability, nation); law should be thought of “as the first thing and not the last thing,” Spivak urges (2010)—an introductory gambit rather than a solution. Societal change and legal reform are mutually constitutive, ongoing processes of political negotiation. Legal categories created as a result of feminist demands are transformed as they pass through legislative and policy levels, further taking concrete shape in organizations and offices distant from movement rhetoric. Instead of stopping crimes or practices through law, as “governance feminism” seeks, reforms often generate new cultural repertoires (Halley, Kotiswaran, et al. 2006, 337).

Feminist reform often has a fundamentally ambivalent relationship with the state. It is favorably headlined when politically convenient, but only within particular “discursively available possibilities for representation and action” that fit state goals (Pringle and Watson 1992, 69). Moreover, apparent support for feminist issues can be channeled through patriarchal assumptions, in effect

making the state “masculinist without intentionally or overtly pursuing the ‘interests’ of men” (Brown 1992, 14). For example, state responses to curbing sexual violence often recode solutions within patriarchal structures of power, missing the complexities of feminist analyses of violence (Menon 2004, 121, 133). Normative class and race orders also structure the logic of judgments (Crenshaw 1996; Mehra 1998). Interpretations of gender and sexuality in new policies often lead to unexpected criminalization of some people while routine violators are ignored (Halley, Kotiswaran, et al. 2006, 337). Even task forces instituted to remedy gender bias end up realizing that “not all women are similarly situated, and that gaining attention from legal patriarchal power on one kind of bias may well come at the expense of another” (Resnick 1996, 979). While the state thereby appears vigilant to gender equity because it has acted, no matter how misguidedly, frustration over poor implementation of laws gets directed to the women’s movement. Indeed, the visibility of women’s movements makes it difficult to argue that their power is limited, the irony being that “the conspicuous *success* of the women’s movement in the field of legal reform [leads] to the doubts about its efficacy as strategy” (Rajan 2003, 32–33; see also Kelly 2005, 490–91). Thus feminist legal reform is best thought of as a way of making claims and space, rather than a force of change *per se*.<sup>20</sup>

Neither is gendered justice necessarily realized in institutions inspired by feminist lobbying. In evaluating Brazil’s Delegacia de Proteção à Mulher, the women’s police stations envisaged to remedy violence against women, Sarah Hautzinger concludes that “the specialized delegacias were created by feminists with strategic interests in mind, but largely carried out by policewomen enacting practical gender interests” (1997, 20). In the United States, scholars and advocates weighing the effects of domestic violence policies envisaged by feminists, such as mandatory arrest or comprehensive coordination, have concluded that these policies disempower those they were meant to help, disproportionately causing difficulties to women of color and immigrant women (Tsai 2000; Bebelar, Caplow, et al. 2003; Sack 2004). Several ethnographies of the adjudication of violence (Merry 1999; Santos 2004; Hautzinger 2007; Lazarus-Black 2007) also indicate that the institutionalization of feminist principles through a variety of actors (including women) may be accompanied by the loss of foundational critiques of gender essentialism and of substantive gender equity. Moreover, litigants themselves strategize *with* law (and change it), making legal reform projects inherently unstable.