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Moments of decolonisation in Indian women's navigations of interpersonal conflict

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Abstract

In India decoloniality in law has been a movement of decolonising the state law. Stepping away from the perception of decolonialising as a legislative project, this paper argues for decoloniality of law to be explored as a thought process, that lies embedded with state-society relations in postcolonial India. Against the canvas of the vividly plural legal landscape, this contribution explores how individuals juxtapose legal institutions and legal orders in different permutations and combinations in pursuit of their ideas of justice and order, unravelling a decoloniality of thought and process that rests within the unique contexts of every conflict. Drawing on ethnographic fieldwork in the city of Mumbai, women's experiences with conflict remain at the centre of this paper to help explore the notion of decoloniality in law.

Key words

Legal pluralism; women's agency; interpersonal conflict

Resumen

En la India, la descolonialidad del derecho ha sido un movimiento de descolonización del derecho estatal. Alejándose de la percepción de la descolonialización como un proyecto legislativo, este artículo defiende que la descolonialidad del derecho debe explorarse como un proceso de pensamiento que está

This paper is based on data and insights that were gathered as part of my post-doctoral project which was supported by the Centre for Policy Studies in IIT Bombay. The Mumbai police facilitated a smooth and unhindered access allowing me to engage in in-depth observations and interviews in the spaces of the police stations and I remain thankful for their constant support and encouragement of project. The paper would not have been complete without the mentoring of Prof Parthasarathy and the generous re-readings of its various drafts by the editors of this special issue. I extend my thanks also to the helpful comments of the anonymous reviewers.
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integrado en las relaciones entre el Estado y la sociedad en la India poscolonial. Sobre el lienzo de un paisaje jurídico vívidamente plural, el artículo se adentra en cómo los individuos yuxtaponen las instituciones jurídicas y los ordenamientos jurídicos en diferentes permutaciones y combinaciones en la búsqueda de sus ideas de justicia y orden, desentrañando una decolonialidad de pensamiento y proceso que descansa dentro de los contextos únicos de cada conflicto. A partir de un trabajo de campo etnográfico en la ciudad de Mumbai, las experiencias de las mujeres con los conflictos siguen siendo el centro de este documento para ayudar a explorar la noción de descolonialidad en el derecho.

Palabras clave

Pluralismo jurídico; agencia de las mujeres; conflicto interpersonal

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1. Introduction

The decolonial turn in the humanities uncovers alternative epistemologies that push scholars to recognise the need to decentre and pluralise knowledge formations, thus acknowledging and highlighting the different ways of comprehending and experiencing the world (Gallien 2020). When I think about the decolonial approach – in the context of law – as a proposal to rethink, reexperience and reimagine the world through knowledge universes that have been discarded by colonial modernity – the most prominent manifestation of this in India (and likely in the wider Global South) is the manner in which individuals engage with state law.

Within the recent chapter of decoloniality that has grasped the humanities, decolonisation of law is at the forefront also in India. As some would (correctly) fear, it could and does at times in this context have nationalist undertones that romanticize traditions or promote a return to ancient practices.[1] In India for instance, a concerted effort of liberating the Indian legal system from what are explained as "colonial vestiges" accounts for such decolonisation. This has meant the criticism of laws that have remained unchanged since pre-independence (Misra *et al.* 2018, Fernandes 2021),[2] the introduction of new legal codes that are better aligned with "Indian culture" (Malik 2023), as well the use of specific forms of language to reinforce the "Indianness" of such legislations (Tundawala 2012). This trend however could very well be attributed to a simplistic de-construction of the verb "to decolonialise", read to literally mean "undoing" something like removing the institutional structures – including state laws – that had been introduced by the colonial rulers or in collaboration with them immediately after India's independence. However, such approaches miss the very complexity embedded within – simply put – the impact of such colonial and post-colonial structures; living with legal pluralism being one of the most prominent examples.[3]

India, like in several other post-colonial nations – carries forth a legacy of state laws, legal practice and methods of legal thinking that were founded by the British. However, the phenomenon of legal pluralism (Moore 1973, Griffiths 1986), also characteristic of many post-colonial nations, results in state law being only one of the legal orders that governs and regulates people's everyday life.[4] That legal pluralism exists is a reality,

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[1] Such concerns are particularly relevant in the context of recent discourses on decoloniality in India. See for instance Deepak's work (2021) which uses "decoloniality… as a tactic of majoritarian ethnic violent politics to appear as a specific victim of the colonial past" (Sen 2023).

[2] It is mostly family related and criminal laws that have attracted the maximum attention in this context.

[3] This is not to say that legal pluralism in *only* a post-colonial occurrence in India. I align with the line of thought that legal pluralism – in its strong version – has always existed in India society (as in other parts of the world) because people at all times in any society continuously find themselves at the intersection of multiple governing authorities that neither necessarily and nor always include the state (Derrett 1968, Menski 2010).

[4] In India people are governed by multiple legal orders, which although arising from different sources, also find recognition under the various state laws because of a personal law system. Personal laws are state enforced religious laws (Sezgin 2013). It is a structure whereby the state legal system recognises that Muslims, Hindus, Christians, Parsis, Jews, Sikhs and Jains in India can choose to be governed by the laws and rules of their respective religions in matters relating to marriage, divorce, inheritance and adoption. This structure of governance was institutionalised during the colonial period in the form of Anglo-Hindu and Anglo-Mohameddan laws; and later found recognition within the Indian legal system through a series

often reluctantly accepted by legal scholars. But as to *how* people function within this plural landscape of legal orders, juxtaposing the various legal orders in different permutations and combinations in pursuit of their ideas of justice and order marks, what I call, moments of decolonisation of law.

Decolonisation in the form of "moments",[5] as this paper shows, is set within the very manner in which people think through and manage their disputes, deciding how to engage with state law, which remains embedded within an architecture of colonial buildings and minds (Basu 2015, Kumar 2017, Khorakiwala 2020). This decolonisation from below that clearly deserves more academic attention remains at the centre of this contribution.

In order to highlight these moments of decolonisation, I focus on decision making by women in situations of interpersonal conflict. In India, the space of the family remains simultaneously governed and regulated by state law (through secular legislations as well as state enforced religious laws), religious laws and societal or community rules. Adjudication of family related disputes is thus facilitated by inter-legal processes (Solanki 2011, Kokal 2021, Ghosh and Chakrabarti 2021, Dutta 2022) The emphasis on women's experiences in negotiating family related disputes remains crucial, because control over female bodies is a significant element in the politics of identity, be that of the nation, religion or caste (Shachar 2001, Subramanian 2014). For this contribution, I build on data that I collected as part of a broader research project on the relationship between informal policies of governance and justice explored through an ethnographic enquiry into the everyday working of police stations in the city of Mumbai in India. The present paper draws on fieldwork conducted in Chavan Nagar police station in central Mumbai. Within its jurisdiction, this police station has a composition of mixed socio-economic zones ranging from middle class developments to slum settlements. The data was collected over a period of eighteen months between 2019 and 2021 using semi-structured qualitative interviews that often took the form of long conversations. Interviews were complemented with long periods of observation in the space of the police stations and multiple instances of shadowing police officers of various ranks in different locations across the area under the supervision of the particular police station. Marathi and Hindi were the two primary languages of interaction and the quotes incorporated into the narration of the case studies have been translated into English by me.

Working at the intersection of law and anthropology, my access into the space of dispute processing has straddled between being "curiously welcomed" and "cautiously

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of state laws such as the Hindu Marriage Act 1955, Hindu Succession Act 1956, Muslim Personal Law (Shariat Application) Act 1937; Dissolution of Muslim Marriages Act 1937, Muslim Women (Protection of Divorce) Act 1985, Indian Divorce Act 1869, Parsi Marriage and Divorce Act 1936. Some of these laws go so far as to codify religious laws and some only clarify state recognition of the uncodified religious laws. The Indian state simultaneously also provides people the option to be governed by secular laws like the Special Marriage Act, 1954 and the Indian Succession Act 1925. For a detailed discussion on the personal law system in India, see Mansfield (2005), Solanki (2011), Subramanian (2013), Kokal (2016), Ghosh and Chakrabarti (2021).

[5] The term "moment" is important because it emphasises that this process may be scattered and sometimes spontaneous as against being a planned and large homogenous shift in thought or development as it is often imagined.

navigated". My knowledge of legal codes and familiarity with spaces such as courtrooms and police stations, as a result of my disciplinary training in law, led me to sometimes being strategically coopted by my interlocutors into the very spaces and processes I was observing. This, I must admit was particularly advantageous in certain moments when it unveiled a series of conversations that would have otherwise been privy to the ears of police officers alone. Simultaneously, such a position opened pathways of trust with actors other than those in the police, providing deep insights into the trials and tribulations of dispute processing for the parties involved. At the same time, my presence was quite often and sophisticatedly sidetracked and resisted as a result of these knowledge realms; interestingly however on the pretext of "gender" that delineated "certain spaces only for men (and others for women)". This of course could happen quite naturally since I was on many occasions the only or one of the two women in the on the "policing side" of the police station.

The paper begins with a discussion about the relationship between a postcolonial state and society in India and women's sexuality. This section sets the specific context of this contribution towards the discussion on decoloniality. Following this, a second section presents a selection of case studies that showcase how women – as sexually marginalised subjects of both state and society – navigate interpersonal conflict and balance the impacts of a plural legal landscape to ultimately assert their autonomy, while simultaneously provoking the Indian state to partner and engage with different legal orders. What results, as is explored in the concluding section, are how these instances of state-society interaction create their very own moments of decolonisation within the state apparatus.

I argue here that these processes, deserve attention not just within a feminist discourse of bodily autonomy and themes of agency, but also as evidence of decolonisation of law from below lending the concept the much-needed nuanced perspective that at the same time exposes its messiness.

2. The postcolonial state and society and women's sexuality

This paper focuses on the experiences of Indian women because my ethnographic fieldwork revealed that moments of decolonisation can be very much decerned in women's methods of tackling interpersonal conflict. This can be very much attributed to their particular position vis-à-vis the Indian state on the one hand and in society on the other. Women constitute a section of Indian society that is at the oppressed end of the power structures of both a very masculine state and a patriarchal society (Basu 2012, Jauregui 2015). As Gupta (1991) explains, female sexuality has been a matter of concern in all patriarchal societies, primarily because of the connection between sexuality and reproductivity; the control and development of the latter often being the focus of nationalist, racial and caste purity agendas.

> Women are cast in a particular mould both to symbolise the identity of the community or race and embody its definition in relation to other communities or races. (Gupta 1991, 46)

In India, particular to mention is the notion of motherhood attached to women, which emphasised her role not only as a reproducer of family, but is also symbolically aligned with the "mother goddesses who became symbols of the struggles for liberation"

(Khanna and Price 1994, 31).[6] The women's question, therefore, held a prime place during the colonial period as well as immediately after independence in debates of nationalism. In the post-colonial era, control of women's sexuality continues to hold traction at levels of governance as well as social control, more specifically to avert the negative consequences of "promiscuity, prostitution and over population" (Khanna and Price 1994, 31–32).

However, women are not simply dormant recipients within these coercive structures. Education and employment provides women with exposure, confidence and opportunities to resist or transgress dominant orders reinforcing themselves as active agents (Solanki 2011, Gupta 2014, Kokal 2020, Dutta 2023). Acts of elopements and conversions, also described in a later section of this paper, indicating love and romance and drawing attention to women's sexual needs, desires and wants have been analysed as one way in which Indian women have been challenging oppressive social codes (Gupta 2002, 219). For the same reason, they are not looked upon favourably either by social groups of caste and religious communities or by state institutions that also comprise of individuals embedded within these social structures simultaneously with being public servants (Grover 2009, Mody 2013).[7] While different canvases of intersectionality place every woman in a unique experience with dispute processing, countering the patriarchy embedded in different structures of regulation and governance – be they indigenous, colonial or post-colonial – is common to all these experiences. It is along this thread of commonality that this paper develops.

3. Women and conflict

The multiple legal orders that govern people's everyday life in India, can be broadly divided to emerge from four sources: the state, society, culture specific values/ individual belief systems, and international principles (Cohn 1965, Galanter 1981, Menski 2001, Dirks 2001, Nandy 2009). These orders can also be understood as individual, local, national or regional and global, whether framed as international or macrocosmic. The latter distinctions make it simpler for understanding the plurality of religious legal orders in themselves. For instance, the recognition of people being governed by their personal laws (religious laws) in matters relating marriage, divorce, inheritance, adoption and guardianship, results in the shared regulation of certain aspects of the state, religious and societal legal orders. The personal law system in Indian law continues from the colonial period that retained for its Indian subjects, governance by custom in certain aspects of their lives. The post-colonial Indian state has over the years taken slow, but steady, steps to codify parts of these religious laws and customs (Subramanian 2014). The goal of a Uniform Civil Code remains enshrined in a section of the Indian Constitution, often becoming ground for heated political and legal debates (Chakrabarti 2015, Herklotz 2017a, Baxi 2022). When placed in a disputing situation, an individual becomes an active decision maker, who is at the core of processing the

[6] See also the works of Tagore (2005) and an enquiry by Hildebrand (2016) into the history of the Rani of Jhansi regiment in Subhash Chandra Bose's army.

[7] There are several incidences manifesting in the form of public statements from politicians, religious heads, lawyers and judges that reflect patriarchal mindsets. Analysing the public sentiment post the Nirbhaya rape case in December 2012, Rai (2019) details for instance reflections of disapproval for the way women may dress or move out of the household sphere at late hours.

respective dispute. Individuals draw on and combine elements, values and actors from these different legal orders to fly their own kites (Menski 2014), which marks what I analyse as "moments of decolonisation".

This section presents two examples. The first is of a Muslim woman seeking divorce and the second is of a Hindu woman in an inter-caste marriage. Both women are making choices that place them in precarity vis-à-vis their families and communities. Both women are navigating the social fields of the state and their communities, the normative orders of which evidently govern their decision-making processes. Balancing their aspirations and desires without uprooting themselves from their communities is not just a practical necessity, but often also a choice (Kokal 2020), in the sense of a desire. In this exercise of agency, we discover alternative discourses about law, conflict resolution and justice that bring together the indigenous, colonial and post-colonial knowledge worlds of law and normativity.

3.1. The dilemma of divorce: Saba's story

The first case study belongs to Saba, a young Muslim girl who sought a divorce from her husband of three months. She was completing her 12th grade; she had explained while introducing herself to the police officer at the Chavan Nagar police station in Mumbai. She had come to the police station with her mother.[8] The station house was relatively quiet that afternoon and the station house officer Police Sub Inspector (PSI) Tange was finishing her tea, when Saba and her mother were escorted by a male head police constable (*hawaldār*) from the police patrol vehicle into the station house. Every police station in Mumbai has a "station house" which refers to the room where prospective complainants first enter in the police station. It is the "public face" of the police station (in contrast to the officers' rooms, administrative spaces and police inspectors' cabins that are not always or easily accessible to everyone). In many police stations in Mumbai the calendar places a different officer oversees the working of the station house every day.

On that day Saba and her mother had approached a *hawaldār*, patrolling on a neighbourhood road, to seek advice about how they could get Saba's husband to sign the *ṭalāqnāmā*, an Islamic document, they had procured with the help of a lawyer. The *hawaldār* admitted having very little knowledge about Muslim law and had therefore brought her to the PSI Tange, a female PSI, who was on duty that day, "for advice". Saba said she had been married to a boy of her choice – a love marriage. Saba's mother described the marriage as "someone with whom Saba had run away" (*bhāg ke shādi ki*). Saba explained that her husband had abandoned her after three months of their *nikah* (*choḍ diyā*), the Islamic ceremony of marriage, recognised also by Indian state law (De 2013, Sezgin 2013) under a complex personal law system. Hesitant to continue residing alone, Saba had recently returned to her maternal home and had been living with her parents. The PSI heard Saba's story and firstly informed her that Muslim divorce by way of triple *ṭalāq* was an offence.[9] The triple *ṭalāq* is a form of Islamic divorce, practiced by

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[8] Interview Feb 02, 2021, Chavan Nagar police station. All names of people and their locations, as well as names of police stations, used in this paper have been anonymised for retaining confidentiality.

[9] In 2017, the Supreme Court of India declared the Islamic divorce form of talaq-e-biddat or triple talaq as unconstitutional. This divorce practice involves the husband pronouncing the word '*ṭalāq*' (divorce) three

some denominations of Muslim groups in India[10] and was also recognised by the Indian state under the Muslim Personal Law (Shariat Application) Act 1937 until 2017. In response to the PSI's remark, Saba produced the *ṭalāqnāmā* that she had with her and explained that what she had was a *khulnāmā* (deed of Islamic divorce) drafted by her lawyer. *Khul* is one form of divorce under the Hanafi school of Islamic law,[11] wherein the wife makes an offer of some form of material consideration to the husband for releasing her from the marriage.[12] If the husband is agreeable and accepts the offer, he pronounces *ṭalāq* and the marriage ends irrevocably (Vatuk 2019). "He is refusing to sign this," she said. Saba did not have a copy of her *nikāhnāmā* (Islamic marriage deed), which her husband had kept with him. "He says he will not sign this *khulnāmā* and will keep me stuck like this," she continued. The PSI's knowledge of Muslim law or "practices" as she referred to them were based on her two years of being posted in Muslim localities in Mumbai. Given her knowledge that I had been a student of law, the PSI unhesitatingly sought information from me about how *khul* functions and what her options for separation under Muslim law could be. A *khul* is deemed to be impossible without the consent of the husband. However, I discussed with PSI Tange that Saba could procure a *faskh*, another form of Islamic divorce where a Muslim judge – in this case the imam – could terminate the marriage on certain grounds (Ghosh and Chakrabarti 2021, p. 2). Following our brief discussion, the PSI suggested that Saba ask the local Imam to contact her husband who could convince him to appear before the Imam, rather than chasing him herself. She then added further: "And maybe the Imam can give you the divorce without your husband's signature, if he doesn't come after being called?" I later found out that while the PSI remained unsure about whether the Imam could actually terminate a marriage without the husband's consent, she took her chance of recommending this based on her knowledge of ex-parte (one sided) decrees in courts. In many cases, after several attempts by the court to summon the contesting party, when the contesting party does not appear, Indian courts are likely to pass what is called an "ex-parte decree", which is an order in favour of the petitioner when the defendant fails to appear before the court despite repeated summons. Our own discussion, I realised

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times at once, after which the divorce is perceived to become immediately effective and irrevocable. Following the 2017 decision of the Supreme Court, in 2019 the Indian legislature passed the Muslim Women's (Protection on Marriage) Act which criminalised the pronunciation of the triple talaq. For more details about this debate and legislation see Herklotz (2017b), Mandal (2018), Agnes (2018), Kokal (2022).

[10] Whether, to what extent and in what form triple talaq continues to be practiced in India remains hotly debated. For more details see Mustafa (2017) and Agnes (2018).

[11] There are four schools of Islamic law: Hanafi, Maliki, Shafi and Hanbali. In the case of Sunni Muslims, the majority of Sunni Muslims in India follow the Hanafi school and therefore even courts use the interpretations of this school to decide disputes relating to Sunni Muslims, unless the parties in the case specifically declare that they belong to another school. These different schools have developed on the basis of different schools' interpretations of *Qiyas* – one of the four authorities of Islamic law for Sunni Muslims in India. *Qiyas* is an analogical deduction of what is right and just in accordance with principles laid down by god. *Qiyas* developed as the Islamic state expanded and thus encountered societies and situations beyond the scope of the Quran. *Qiyas* were then used to deduce new beliefs and practices on the basis of analogy with past practices and beliefs (Fyzee 1974, Editors of Encyclopedia Britannica 1998).

[12] Indian Muslims are governed in matters of marriage and divorce by their personal law, part of which is codified under legislations such as the Muslim Personal Law (Shariat) Application Act 1937, the Dissolution of Muslim Marriages Act 1939, the Muslim Women (Protection of Rights on Divorce) Act 1986 and Muslim Women's (Protection on Marriage) Act 2019. For the larger part, however, Muslim personal law remains uncodified and is recognised as is by Indian state law.

retrospectively, had only provided some form of reassurance to what the PSI had wanted to recommend.

In light of this advice, Saba and her mother considered meeting the *Imam* directly with such a request. When I asked Saba why she wanted a signed document, that is, as to why a formal deed of *ṭalāq* was important to her, she explained that she wanted to be divorced from her husband because he had not treated her properly (*theek se nahi rakhta tha*). Most forms of Islamic divorce entail just pronouncement of divorce by the husband. There are only few forms of Islamic divorce that could be initiated by the wife but these are not so widely practiced (Vatuk 2019). Therefore, written proof of such a type of divorce amounts to some form of public affirmation of the marriage having ended. Before leaving the police station, Saba's mother added one last question: "He is *still* her husband. What if he assaults her in the middle of the road?" PSI Tange responded promptly telling Saba's mother that she should dial the police emergency contact in such a situation. I had not understood the relevance of the last question from Saba's mother until the PSI explained it to me as she shared her interpretation of Saba's visit. "The assault that she mentioned must have actually happened or may be a threat from the husband, which is why they reached out to the police in the first place," she remarked, smiling, indicating that it was because Saba's situation had reached a point of perceived crisis that caused them to approach the state. Her observation does not come as a surprise, for research in the space of marriage, divorce and inheritance in India shows that for private family matters most Indians prefer to consult their family members and elders from their caste or religious communities (Solanki 2011, Vatuk 2019, Kokal 2020, chap. 3) and do not always involve state agents. However, spaces of the state such as courtrooms and police stations and state law itself remain strategic bargaining tools in the negotiation of family disputes, particularly when there is a perceived threat to social reputation or the security of one's body or property (Derrett 1978, Mukopadhyay 1998).

Saba wanted to ensure that her separation from the very man she had eloped with was accepted by her family and community. Her decision to marry because of love and then to initiate a divorce, which is commonly perceived to be the unilateral right of Muslim man were out-of-the-ordinary choices that she had made. Although supported by Islamic law, Saba's conversation with the PSI indicated that divorcing by way of *khul* or *faskh* had not been common in her kinship network. Therefore, discussing it with knowledgeable elders in the community may not have been a (sensible) possibility, which is why she turned to the next most reliable source of information about laws – the state. In Saba's case accessing the state materialised in the form of approaching the *hawaldār* and then the police station. Saba wanted to make sure she went the full length to establish the legitimacy of her separation before her community of Muslim relatives and neighbours. Reinforcing its legitimacy in her community had many implications, including safeguarding her family's social reputation (*izzat*) and her potential remarriage, which would probably, this time be liaised through community networks (Solanki 2011, Kokal 2021). Therefore, while the divorce was her choice, and such exercise of agency by a woman was not socially approved, she was simultaneously tasked with tempering the consequences of her decision for herself and her family. Saba's behaviour in the situation of conflict clearly responds to more than one legal order. Her decision to formalise the *talāq* is embedded within her sense of belongingness to local community, which was raising questions about why Saba continued to live with

her mother despite being married. This brings into play the dimension of societal rules. The absence of a formal divorce also restrained her from a second marriage under Muslim law, which if committed amounts to *zina* – a blasphemous act under Islamic law. And it cannot be entirely ruled out that even as a practicing Muslim, if not pious, at the individual-personal level Saba may have felt accountable to her belief systems, which also compelled formalisation of the divorce. She reached out to the state legal order in response to an imagined or actual incident of assault by her husband which could be or has been a violation of her physical safety. In India the normative order of human rights, which includes women's right to be protected from violence, is encompassed within state law. Saba's effort to seek state intervention, in however subtle a form, through the police shows that she acknowledged the shadow of governance by state and international laws, on her own life as well. So here we have a typical scenario, where multiple legal orders are being activated together on a particular conflict situation and navigating them is solely Saba's priority. Moments of decolonisation appear at every turn where Saba uses one legal order to reinforce a decision she made under an entirely different legal order. In this endeavour, Saba even invoked the state legal system to actively engage with the regulatory norms of the religious and social systems – also another moment of decolonisation. PSI Tange, in this case, first made the enquiry about whether the type of divorce Saba sought was legally valid. She then proceeded to advise Saba to take up the matter with the local religious head, which composes an alternative (and non-state) dispute resolution mechanism (Ghosh and Chakrabarti 2021). And thereafter, she proceeded to remind her to reach out to the police in case she was (felt) threatened with physical harm, thus, pushing us to imagine the sovereignties of these various legal orders as one continuous whole. This ubiquitous phenomenon of legal pluralism, when closely observed in action, points towards decolonial texts of knowledge that manifest prominently as experiential.

3.2. The cast(e) of love: Meenal's story

The second case study explores how a young Hindu woman navigated an inter-caste marriage with a Dalit man, who was Buddhist by religion.[13] The word "dalit", which means "crushed underfoot" or "broken into pieces", is the contemporary version of the word "untouchable" (Ghose 2003, Guru 2018).[14]

Meenal and Mahesh were newlywed through a customary marriage ceremony, only a few hours, before they visited the Chavan Nagar police station to present documents and photographs of their marriage for the records of the police. As I had observed over several months of fieldwork couples who eloped to engage in "love marriages" informed the local police station – usually in whose jurisdiction they conducted the marriage ceremony – about the fact of their marriage. Although an informal practice and not

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[13] Case observed in Chavan Nagar police station on March 31, 2021. All names of people and their locations, as well as names of police stations, used in this paper have been anonymised for retaining confidentiality.

[14] The composition of this group who are described as or refer to themselves as "Dalit" remains complex and challenged – both academically and politically. Additionally, this footnote would remain incomplete without stating that the author acknowledges and is aware that the scholarship on caste and the term 'Dalit' is very wide and nuanced (Valmiki 2008, Waghmore 2013, Teltumbde 2020). In view of the focus of this paper however, the author, has chosen to limit this discussion only so much as to provide a context to how the case study unfolded in the manner that it did.

necessitated by state law, this was nevertheless very common. Research suggests that men and women often find ways to negotiate socially codified sexual relations (Gupta 2011) including eliciting state support through performative processes involving stamp papers and signatures. Affidavits indicating that they were of marriageable age and that they entered this union of their own free will along with photographs of the marriage ceremony and photo identity documents were submitted to the police station. In all the instances of such love marriages whose reporting I witnessed at various police stations during my fieldwork of 18 months, it was the case that such reporting was necessitated by the couple's knowledge that their marriage or union was unacceptable to either or both of their families. While reasons for such opposition to the union varied from case to case, objections because of a religious, caste or even sub-caste difference between the families, were common to almost all the cases I observed. In the case of Meenal and Mahesh, the prime strand of argument against their union that came to the fore during the discussions that followed at Chavan Nagar Police station were that of the marriage being inter-caste. The disputing scenario that I draw from began with the normalcy of everyday procedures in the police station. Over the course of an entire afternoon, it however assumed a fairly theatrical form and fervent tenor once Meenal's family arrived. Participant observation produces insights about not just what is said, but also about what remains unsaid or communicated through actions and body language (Shah 2017). The translation of such observations which often remains a rather personal experience for the researcher often necessitates the use of "thick, interpretative description, which based on its familiarity with language and culture, provides information about the contextuality of phenomena" (Hirschauer 2007, 424).

From the narratives I gathered that Meenal belonged to a "Hindu caste family", which was basically meant to emphasise – in the given context – that she was not a Dalit. She was 32 years old, held a post graduate degree and had a stable income-earning job. Mahesh was a "Baudh" (colloquial reference to someone who was a Buddhist), a term that Meenal's father repeatedly used to refer to Mahesh's Dalit status.[15] Mahesh was a police constable, a coveted job for many, as it secured him the stability of a government job and the many social security benefits that came with it. Mahesh and Meenal were married by way of Buddhist and customary rituals practiced by Mahesh's community. The papers submitted by the couple to the police station included an affidavit by Meenal where she had declared that she had converted to Buddhism "of her own accord and free will" in order to be married to Mahesh. Conversions are both a matter of ritualistic

[15] Following the legacy of Dr. B.R. Ambedkar there were mass conversions of Dalit communities to Buddhism particularly in 1956 (and also later) thus proclaiming to have left the Hindu religious fold entirely. However, this was not universal and while not all Dalits converted, there were many who converted to Islam and Christianity as well (Pandey 2006). Additionally, for Ambedkarites the caste system is a product of Hinduism. And freedom from it can only be achieved through conversion to another religion, Buddhism (following Ambedkar's example himself) being the most popular choice. However, 'conversion is a process and not an event' (Husain 2023) and therefore conversion to another religion did not mean an immediate severance from the Hindu pantheon. As this example shows inter-caste marriages could also be inter-religious. In the present case though the opposition, however, remains mainly related to the inter-caste nature (and consequential cultural differences between Meenal and Mahesh) of the marriage and grudges stem less from the inter-religiosity of the union. Gupta (2002, 2014) shows that opposition to inter-caste and inter-religious marriages remain opposed with equal strength, particularly by the woman's family. Inter-religious marriages, particularly between Hindu and Muslims, remain strongly opposed in India (Gupta 2009).

requirements and identity politics no less (Gupta 2002). When Meenal and Mahesh came to the Chavan Nagar police station, Mahesh was quickly recognised by some of the police constables at Chavan Nagar who had been his batchmates. They congratulated him and Meenal and quickly escorted them to the police officers' room for waiting, until Meenal's family was informed. Mahesh's family were apparently already aware of their marriage. The couple looked tensed and everyone in the station house expected a dramatic performance, often described as a "*tamasha*" in the context of conflict (Kokal 2018), to follow. In about twenty minutes after a call was made by the lady PSI Suryavanshi to Meenal's brother; Meenal's father, brother and brother-in-law arrived at the police station. Meenal's father was clearly distraught and very enraged. When the couple arrived at the station room holding hands, Meenal looked down towards the floor and her father rushed towards Mahesh angrily. He was a frail man. Meenal's brother and brother-in-law stopped him. As he proceeded to vent his feelings, tears streamed down both Meenal's and her father's eyes. "We brought you up so well, we educated you. What did you not have at home?" he questioned Meenal who did not meet his eye and continued to stare at the floor below, even as her fingers clasped Mahesh's. Meenal's father turned to PSI Suryavanshi and said, "This boy is not from our caste. I had told him to stay away". In the background, Meenal's brother took up the family grudge with Mahesh. He held a tough masculine stance and spoke roughly with the authority of a family patriarch to Mahesh, threatening him that he would "handle him later". However, since they were present in a police station, he held himself in control. Meenal's father, as I learnt later, had also been a police constable and was now retired. Meenal's brother-in-law who seemed to be mediating the situation sensed that the situation was getting heated and began steering Meenal's brother and father out of the station house. At the last moment, Meenal's father again rushed back angrily to the couple. Addressing Meenal he said loudly, "You are dead for our family, and we are dead for you. If you ever come to our house, I will show how bad I can be!" The station house was quiet and the group of police constables, PSI Suryavanshi and I looked on. No one intervened, no one said a word. As Meenal's family left the station house, Meenal and Mahesh turned the other way and headed towards the other side of the police station. Given the tense episode that had just transpired, this police station's protocol required that they remain at the police station until the surroundings were safe for them to exit. Meenal's brother-in-law briefly returned to the station house and spoke to PSI Suryavanshi requesting her to speak to Meenal to mend the situation with her family as quickly as possible. He seemed to be worried about this becoming a shock like-situation for Meenal's father which could impact his health. "If we say *jaat* (caste) it sounds offensive. But it is not about caste (*jaat*, *"jaat" naste)* it is about a difference in upbringing. And she will not understand this now," he explained. PSI Suryavanshi nodded in response.

Meenal and Mahesh had become friends and later lovers while living in the same police quarters. The fact that they were dating was known to Meenal's family who had already expressed their disapproval because of their caste difference. One is unable to say whether Meenal's father would have had the same reaction had she married a boy belonging to a caste higher than theirs.[16] There is literature to suggest that had this been

[16] The opposition to inter-caste marriages, particularly with Dalits, has been argued to have its roots in Hindu scriptures such as the Manusmriti. The level of opposition may differ depending on whether the marriage is of the Anuloma (between a high-caste man and low-caste woman) or Pratiloma (between a high caste

the case the couple would have faced less opposition from Meenal's family (Rege 2013). But this cannot be entirely generalised because the social approval/disapproval of love marriages is a complex process often intensely linked matter of honour (*izzat*) (Virdi 2013, Kokal 2020), caste related being only one of them. State law does not prevent inter-caste or inter-religious marriages. In fact, in many Indian states, inter-caste marriages are promoted by the state government offering financial incentives. However, socially inter-caste unions are still looked upon unfavourably especially by the communities of the partner belonging to the higher caste in the marriage. The persistent foregrounding of pain and political correctness marginalizes women's sexual pleasures and desires that are perceived to be at the core of marriages by women's personal choice (Gupta 2002, 195). After the situation dispersed, a small conversation in soft tones occurred in the station house. "Of course, he (referring to Meenal's father) would be angry. It is understandably a shock for him. Even my own father would have been very angry," said PSI Suryavanshi in response to the discussion about the incident that transpired between the other police constables in the room. No one readily spoke about the issue of caste, probably because one partner was in the police like them, and "officially" the state is meant to have a neutral stance towards caste (Balagangadhara and De Roover 2007). But everyone sympathized with Meenal's father because of the way in which the news had been broken to him, especially the suddenness of it. At the same time, it is important to contextualise such discussions also in light of the fact that state actors are socialised in the same fabric of caste, religion and gender related identity consciousness as broader society (Jauregui 2016).

Meenal and Mahesh were married by way of customary rituals that found their source partly in a religious (Buddhist rituals) and partly in the societal legal orders (submission of affidavits and identification documents to the police station). The decision to marry inter-caste was a social fact not undone by Meenal's conversion to Buddhism and it violated the social norms that probably actively regulated her life otherwise. As I mentioned earlier, inter-caste marriages are not just supported but also actively promoted by state law.[17] In this context, state law is socially perceived in direct opposition to societal and even religious laws in some cases (Kokal 2020) for the different values that underscore them (Chiba 1986). Meenal reached out to state law to grant her the security she imagined she needed against the possibly violent repercussions of her actions; thereby simultaneously asserting her own position. Given the rough demeanour of her brother which was aggravated by the delicate condition of her father, she probably wanted to ensure the safety of herself and Mahesh which was likely to have been threatened by her decision to marry inter-caste. Therefore, the objective of informing the police station of their marriage was not just in pursuit of a semi-formal practice, but also to deter any harmful consequences; thus coopting the state to "subvert the tyrannies of respectabilities and standardisation" (Gupta 2002, 195). Despite the moralities embedded in the everyday working of the police, the police station by virtue of being a state institution, first and foremost, offers its loyalties to the reinforcement of state laws

woman and low caste man) type, as each type is perceived to have different consequences in terms of the offspring's caste (and thus, social) status (Rege 2013, Ambedkar 2019).

[17] For instance, The Inter Caste Marriage Scheme is a scheme promoted by the government of Maharashtra that assures a financial assistance of Rs. 3,00,000 to couples marrying inter-caste. See https://sarkariyojnaa.org/inter-caste-marriage-scheme-maharashtra/ for more details.

and the values that underscore them (Eckert 2005, 2009). This, therefore, made the police station a safe space and a sort of neutral forum for Meenal and Mahesh's first meeting with Meenal's family after their marriage. In the course of time, as Meenal's brother-in-law's remarks suggested, after the initial shock wore off Meenal may have decided to negotiate the situation with her father in another space. But these negotiations or discussions would now forever be in the shadow of the state law that Meenal had actively sought out. A moment of decolonisation is created through Meenal's methods of appropriating the state apparatus to connect with her family which establishes how Meenal managed to assert her own choices without withdrawing entirely from the sphere of her own community; while simultaneously being tied into a new religious community by virtue of her Buddhist marriage. The conversations between the police officials about the trajectory of Meenal and Mahesh's union that followed the meeting of Meenal and her family reveal that despite being seemingly opposite, this institutional space encompassed a sensitivity to both state and societal legal orders, revealing yet another moment of decolonisation that was incidental to the occurrence of this conflict processing.

In the above case studies, both Saba and Meenal's individual experiences reveal how their assertion of female sexuality placed them at precarity vis-à-vis the patriarchal structures of the state and society (Khanna and Price 1994). At the same time, both women are joined by the simultaneous experience of regulation of their everyday life by multiple legal orders, within which the layers of the community (within which also the family is embedded) and state are at the forefront. Legal pluralism as a post-colonial phenomenon and a heuristic tool has been explained extensively (Moore 1973, Griffiths 2006, Tamanaha 2008). Legal anthropologists and socio-legal scholars have shown the functioning of legal pluralism through processes and contexts (Merry 1984, Rautenbach 2010, Solanki 2011, Basu 2012). Menski's (2006) kite model, however, theorises the experience of legal pluralism and is particularly relevant for understanding "the practitioners perspective" or the experience of those who are acting within pluri-legal contexts. The moments of decoloniality that I identify within the decision-making processes of Saba and Meenal are discoverable only through a deconstruction of their experiences with such decision making, aka "kite flying". The kite model is helpful for two reasons. The first is because it places the individual and their agency at the centre of all analysis, fracturing any claims of universality. This aligns directly with Said's conception of decoloniality as a movement for the production of knowledge that counters "any idea of "other" as passive and docile and which challenges the assumptive conceptual framework underpinning such depictions" (Bhambra 2014, 116). Secondly, this theory is helpful because of its very representation as a kite, an object which requires all of its four corners to remain connected so that it can remain balanced and soaring in the sky. Legal orders emerging from four broad spheres or sources govern people's everyday life in India: the state, society, culture-specific values/ individual belief systems, and international principles. All of these legal orders function in their own right and at the same time share their authority with the state by virtue of the personal law system (Solanki 2011, Sezgin 2013). A peculiar juxtaposition of these four sources results in the formation of a kite, which makes for the basis of Menski's theory. Such a conception compels the imagination of different legal orders remaining connected despite their differences and if we look closely at the decision-making processes of Saba

and Meenal, it is within this interconnectness of the different legal orders that their experiences which generate these moments of decoloniality arise. To ensure that their decisions are sustainable, meaningful, and realistic, Saba and Meenal are seen to consider (and probably evaluate) the impact and consequences of their decision in the context of all four sources of laws, thus resulting in keeping the different legal orders connected and engaged with one another as well. Moments of decolonisation lie embedded within this navigation of conflicts by Saba and Meenal where they ensure to not be bound entirely by the post-colonial state legal system nor a solely indigenous legal order. Their efforts in pursuit of processing their own conflicts also revealed strategies of conflict processing by the state that actively pieced together elements of different legal orders sometimes to make their intervention more meaningful and sometimes to make sense of their own responses to a conflict. This, consequently, challenges any simplistic conceptualisations of the state as a monolithic entity.

4. Moments of decolonisation

This contribution attempts to drive the point that "decoloniality of law" rests in the "decoloniality of thought" amongst those who use these laws, whether as individual citizens or as law-related office holders. It, therefore, as the above examples reveal, represents a form of knowledge and being that is set in the present, a space that encompasses combinations of indigenous and contemporary knowledge forms shaped to suit diverse imaginations of justice. These moments of decolonisation are important because they reveal ingenuity. Resisting regulatory frameworks that compelled them to make a choice between the values cherished by the self and those safeguarded in the normativities of a caste or religious community and/or the state (Shachar 2001), individuals like Saba, Meenal, PSI Tange and PSI Suryavanshi, strategise in ways that breakdown these binaries; thus opening up the potential and possibilities of interconnectedness between these different legal orders. The kite, likewise, becomes a productive way to imagine this connectedness as the image also displays the necessity for a plurality of legal orders. Strategising, thus becomes kite flying; an activity that cannot be uniformly done, is led by individual choice, but must nevertheless be concerned with external conditions such as weather, wind directions and other kites! This echoes Gallien's articulation that:

> … decolonialism relinquishes Western epistemology and aligns itself with other modes of thinking belonging to groups which have been undermined, repressed, discriminated against, or massacred under colonial, imperial, neo-liberal, patriarchal, and/or secular rule. Decolonial thinking proposes to re-experience, re-imagine, and re-think the world based on different epistemic foundations and ontologies. In other words, if postcolonial critique produced studies about the systemic subjugation of subalternized people, decolonial studies focus on the production of alternative discourses with and from a subaltern perspective. (2020, 33)

The emphasis on strategies that are imminently based on (and thus reveal) this interconnectedness, as moments of decolonisation, is in response to the dichotomy perpetuated by modern and supposedly liberal conceptions of law, which is very much connected to the colonialism that perpetuated a way of knowing that world "through hierarchical dichotomies and categorial logics" (Bhambra 2014, 118). The concepts of legality and illegality based on state law are the only forms of existence before modern

law and they effectively eliminate or invisibilise other realities and ways of knowing and social experiences that do not fit within these frameworks (Santos 2007, 45–50). All regulatory mechanism, be they state laws, social norms or religious laws, are ultimately tools of power that in their individual capacities often render the vulnerable even more powerless. An observation of how individuals from vulnerable sections of society – in this case women – use laws to tackle conflict and resist subversive conceptions of order reveal conceptualisations of justice that break past traditional dichotomies creating an "ecology of knowledge" that is based on the idea that "knowledge is interknowledge" (Santos 2007, 66). Although both postcolonialism and decoloniality emerged as epistemologies of knowledge production against the canvas of political developments contesting colonial world orders (Bhambra 2014), I argue that knowledge production only with the aim to offset colonial ways of knowing the world may in the present day be limiting as well laced with precarious political consequences in certain geographies of the world. Decolonisation in the context of law in India has for far too long been touted as a project of the state and has thus found alignment with propaganda politics.[18] Reorienting this perception is imminent but is a process that can only begin when it is acknowledged in its scattered and heterogenous form – possibly as "moments of decolonisation" – from the bottom-up.

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[18] The term "decolonisation" has been coopted by right wing Hindu nationalists to aggressively push their ideological and political agendas. A brief but articulate overview of this connect is provided by Dhingra (2023).

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