

Book Review

Review of *Divorcing Traditions: Islamic Marriage Law and The Making of Indian Secularism* by Katherine Lemons

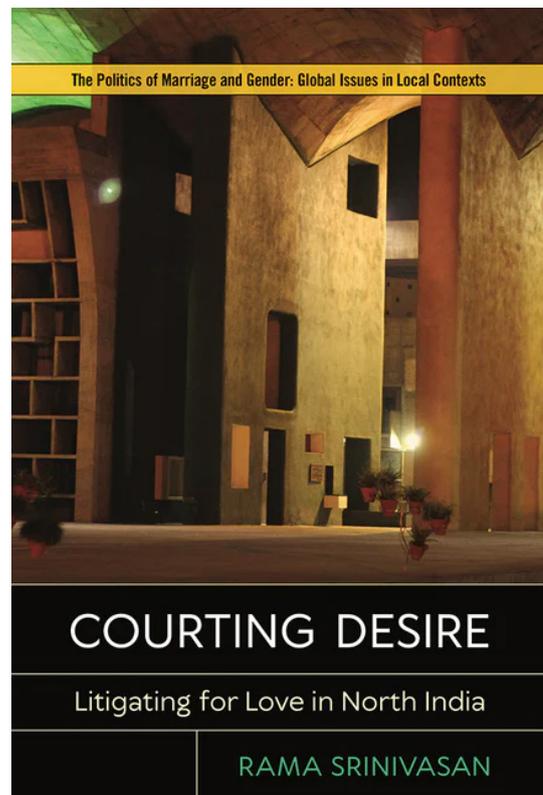
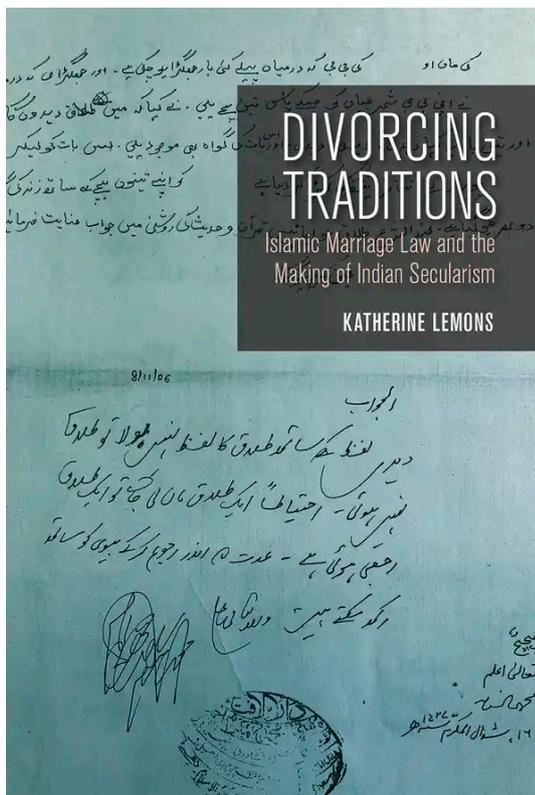
Ithaca and London: Cornell University Press, 2019. 246 pages. ISBN 9781501734779

Review of *Courting Desire: Litigating for Love in North India* by Rama Srinivasan

New Brunswick: Rutgers University Press, 2020. 216 pages. ISBN 9781978803534

Reviewed by Anna Romanowicz

DOI: <https://doi.org/10.2218/himalaya.2022.7228>



Recommended Citation

Romanowicz, A. (2022). Reviews of *Divorcing Traditions: Islamic Marriage Law and the Making of Indian Secularism* by Katherine Lemons and *Courting Desire: Litigating for Love in North India* by Rama Srinivasan. *HIMALAYA* 41(1): 152-155.



This work is licensed under a [Creative Commons Attribution-Noncommercial-No Derivative Works 4.0 License](https://creativecommons.org/licenses/by-nc-nd/4.0/).

Katherine Lemons' *Divorcing Traditions: Islamic Marriage Law and the Making of Indian Secularism* (2019) and Rama Srinivasan's *Courting Desire: Litigating for Love in North India* (2020) are examples of how legal anthropology might extend beyond its immediate area of interest to tackle questions of wider appeal. That is to say, the authors not only present a meticulous analysis of legal cases, but they also explain the social world through these cases. Lemons and Srinivasan have conducted extensive ethnographic research immersing themselves in uneasy situations. Whereas Srinivasan is explicit about her hardship related to fieldwork in Haryana where "violence in society and the wariness it produced was always a lurking presence in the background" (p. 6), one can presume that Lemons' encounters with the stories of violence, abuse, abandonment, maintenance, and property disputes among Delhi Muslims was emotionally demanding as well.

"Lemons and Srinivasan analyze different sides of the same coin—accordingly, reading them together was an enlightening experience".

- Anna Romanowicz on *Divorcing Traditions* and *Courting Desire*

Except for their subdiscipline, geographical location (north India), and similarity in ethnographic methods, the two books seem not to have much else in common. Katherine Lemons studies four types of nonstate legal forums (two Shari'a courts, a women's council, a *fatwa*-giving office, and a Sufi healing practice) to observe ways of dealing with marital problems and divorce proceedings within Muslim personal laws and Islamic traditions. On a theoretical level, Lemons is mostly interested in analyzing Indian secularism and legal pluralism. Rama Srinivasan has conducted her fieldwork in rural Haryana and the city of Chandigarh. She explores notions of love, choice, and consent through court marriages, while her main focus is on her research participants' relations to the state and the role of the state in legitimizing marriages. Thus, ostensibly the authors' deliberations pertain to different issues.

But, in fact, Lemons and Srinivasan analyze different sides of the same coin—accordingly, reading them together was an enlightening experience. I found two overarching themes in their books with which I would like to engage specifically. First, the authors' analyses pertain

to various institutions of legal pluralism in India (although the term 'legal pluralism' is much more robustly discussed by Lemons). Whereas Srinivasan explicitly adds to existing scholarship on the state, Lemons contributes to academic literature on secularization. Both affirm that the widely accepted view of separation between state-as-public-sphere and family-as-private-sphere is a myth. Second, the authors problematize and contextualize agency within the widely taken for granted Indian patriarchal system.

Katherine Lemons shows that the division of religious law and state law needs to be neither detrimental nor opposed to the Indian state's interests. In this understanding, it would seem that religious law is outside of the scope of state regulations and its existence and practices are, in fact, against the state's goal of regulating internal matters of its citizens. However, Lemons

claims that "divorce, in and between state and non-state institutions, is both critical to the regulation of families and a site of pronounced anxiety for the state" (p. 20). Her research shows that in dealing with divorce and marital problems, nonstate

institutions intersect and are entangled with the state. Consequently, the state does not turn a blind eye to issues related to 'religious' divorce, especially to property and maintenance issues, but tactically regulates some of them, while leaving others unregulated. Furthermore, upholding the myth of separation between Muslim personal law and state law has been an effective way to govern and discipline Muslim minorities as the Other.

Rama Srinivasan adds to this conundrum with her analysis of protection petitions by couples married without the consent of family or with the covert consent of family. By granting protection to such couples, courts indirectly grant legitimacy to their unions. That is, even if judges claim that their ruling neither affirms nor invalidates the union itself, in the eyes of the public, a couple is deemed legitimately married owing to the protection granted to them as a result of their application for legal remedy. In other words, the state seems to have its powers grounded in the fact that people look upon it in their search for legitimizing their ways of life. Problematizing the scholarly consensus on bureaucracy as a means of state control, Srinivasan claims that "in

some cases bureaucratic control could actually increase the chances of entering relationships based on consent” (p. 15).

Secularization is typically seen as a project carried out by the state. Srinivasan shows certain paradoxes which put light on its nature. According to her, people of Haryana are usually perceived by the media and wider public as ‘traditional’. But she also notices that in approaching courts, those people claim their rights as citizens who are conscious of their rights, thereby inscribing themselves in an ideal of *secular* citizens, navigating state law to achieve their aims. The process which could be viewed as unequivocally secular, is made ambivalent when Srinivasan claims that it is based in her research participants “faith in the magical powers of the state” (p. 8) and even that in approaching the courts, people sometimes seek guidance for whether they live ‘legitimate’ lives. The latter resembles Lemons’ examples in which *fatwa* are used as guidance on the moral way of life. The difference is that in Srinivasan’s case, legitimization is derived from the state law, whereas in Lemons’ study it comes from Islamic tradition.

Following Talal Asad, Lemons understands secularism as “a process of reconfiguring various domains of life and regulating religion accordingly” (p. 23). Once again, she affirms the artifice of state/religion separation as she shows that nonstate legal forums—which take religious law as their *modus-operandi*—nevertheless “engage in practices of secularism” (p. 26) as state actors do. Paradoxically, then, religious law and the practices within it are not contradictory to, but a part of secularization. Secularization is seen as negotiating boundaries between religion and state, whereas interventions of the state in demarcating these boundaries make them even feebler. Lemons’ meticulously researched and carefully presented arguments about Indian secularism hand over a difficult puzzle to anthropologists of secularism. If both religious and state institutions engage in practices of secularism, are there any practices of non-secularism? How to define them and where does one locate them? In which ways can we talk about resistance to processes of secularization? Then again, in a normative sense, if “communal violence is a symptom not of [secularism’s] failure but of its success” (p. 28), what implications does this have for anti-violence and anti-communal politics in India?

Both Lemons and Srinivasan agree on the reality of patriarchy in India. For example, Lemons describes practices in which proving that a woman fulfilled her presumed duties of a ‘good wife’ and ‘good daughter in law’ has a bearing on divorce adjudication and solving marital problems. Marriage is seen as a basic way to assure financial support for women (while men are perceived as breadwinners), thus divorce puts women in an unstable economic situation. Similarly, Srinivasan shows that in court proceedings, it is most often women whose consent and motivations are probed, and it is again women who are frequently considered by judges as requiring protection by male members of their families. Importantly, the authors dispel certain stereotypes about gender roles and rights in Indian society, as well as problematize issues of women’s and men’s agency in marriages and divorces. Their research participants are not helpless wanderers in state and non-state institutions. On the contrary, they actively choose from a broad range of social and legal tools to solve their problems and attain their own goals. Lemons’ respondents prefer to deal with marital problems within the confines of family or non-state institutions, whereas in Srinivasan’s understanding the court is a place and practice to which couples with little or no family support resort to.

Lemons claims that contrary to prevalent views, divorce is not always shattering to women, but is a complex experience that is “sometimes [...] a relief, sometimes a source of frustration, sometimes a mark of injustice. Sometimes it [is] all of these at once. But in most cases, it [is] also an opening..., a source of possibility” (p. 34). Interestingly, Lemons describes a case of *triple talaq*, a practice which involves unliteral and instant divorce by a man uttering the word ‘*talaq*’ three times. The author illustrates how one of her informants provoked her husband to repeat ‘*talaq*’ and, by doing so, creatively contributed to the outcome of the situation. In practice, therefore, *triple talaq* is a form of divorce that is indirectly available to women as well. Likewise, Srinivasan shows that even if judges in state courts often treat women litigants in a patriarchal manner—as persons needing special care—nevertheless in their rulings they do not only allow the women to fulfill their wishes and aspirations by “crafting desired life situations” (p. 19), but also permit them to exercise their choice. In a sense, they enjoy the same rights

as men do in court proceedings, all the while patriarchal notions of men as breadwinner is being upheld. Thus, court marriage does not automatically put women in vulnerable position, but rather is “a rite of passage [which] bestows adulthood and rights [on them]” (p. 114).

Despite a number of interesting points, certain pertinent issues are omitted in the works of both Lemons and Srinivasan. On the one hand, Lemons weaves her case studies of state law together with insights stemming from careful analysis of colonial law. She is also not oblivious to economic issues within divorce. However, even if she guides the reader on how divorces and adjudication in non-state forums are related to contemporary state politics, she does not explain how they are related to processes of political economy. Lemons also engages in comparisons with other cultural contexts, nevertheless, more examples binding her case with other personal laws in India would be interesting to explore. On the other hand, Srinivasan briefly sketches the influence of the Green Revolution on the social and economic standing of various communities in Haryana, but it is not made explicit how this relates to the main thesis of her book. Even as it seems aspects of political economy are an important part of her study, she does not sufficiently draw out the implications of her analysis into the current period.

Finally, one cannot help but notice differences in the structure of the books and the nature of their analyses. While Srinivasan makes her own positionality a starting point of deliberations, Lemons remains rather cryptic in this regard. Given that her research was both demanding and comprehensive, I would certainly not mind reading an appendix in which she describes her experiences in the field. Nevertheless, it

must be noted that Lemons is painstakingly scrupulous in making her case, and her project is very well-thought-out. She makes sure that her arguments are clear and illustrated with the examples from the field. By contrast, Srinivasan sometimes lacks consistency in her argumentation. For example, she adheres to the view of India as a patriarchal state, but often she takes it for granted rather than being diligent in proving this point. Similarly, on a theoretical level she at times leaves the reader wondering what stance she subscribes to and how the different points she makes are connected to each other. These irregularities leave the reader some room for interpretation, but nevertheless they also make her book more suitable to the readers already familiar with the Indian context. By contrast, Lemons work has an appeal not only for scholars and students who take a particular interest in the topics she describes, but also for those who are interested in learning how to conduct a meticulous analysis.

Anna Romanowicz is Assistant Professor at Jagiellonian University in Krakow, Visiting Researcher at South Asian University in Delhi, and Chair of the 2023 ICAS Dissertation Prize. Anna currently works on intimate relationships among the Indian middle class. She is the author of Unintended Revolution: Middle Class, Development and Non-Governmental Organizations (2017, Jagiellonian University Press).