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SPECIAL ISSUE ARTICLE

A theory of legal apparitions: regulation and escape in Indian divorces

Yugank Goyal

Associate Professor in Public Policy and Director, Centre for Knowledge Alternatives, FLAME University, Pune, India
Email: yugank.goyal@flame.edu.in

Abstract

When people do not approach a formal court of law to settle their disputes, and cannot enter into out-of-court settlements either, what do they do? I find that people install court-like processes which mimetically follow the court procedures, executing the settlement as if the decision were rendered officially. By examining such practices in the case of divorce-related disputes in India, I advance a theory of legal apparitions, a phenomenon in which cosmetic mimicry of legal processes creates a new form of extra-legal resolution. This is likely to prevail in societies where access to justice is hindered due to socio-institutional factors and customary forms of adjudication are not possible (sometimes because of state law's design). This idea can be used to explain a range of practices observed in South Asian societies, where people's imagination of, and interaction with, legal apparatuses creates new forms of institutions.

Keywords: family law; law and society; divorce; legal pluralism; India

1 Introduction

This study concerns what I will call legal apparitions. When availing judicial remedy is out of reach, a natural response is for people to resolve their disputes extra-legally. But what happens when law bars such dispute diversion? Either people do nothing, or they resolve the dispute privately in such a way that the legal process *seems* to have been followed. The legitimacy and trust in the private resolution is built through adopting a process that is cosmetically similar to that in the state law machinery. The legal aesthetic which creates a projection of law is what I call legal apparition. Because the process is performed *as if* it was taking place under the formal channels of law, the process draws legitimacy. This ensures no one brings the matter to a court of law in future, and the matter is – for all practical purposes – deemed to have been resolved.

Through the case of Indian divorce scenarios, I show how legal apparitions come into place, how are they executed and what happens when the trust breaks. Divorce laws are unique entry points into understanding the interplay of society's private, customary preferences with the standardised prescriptions in the law. More importantly, positioned at the intersection of tradition and modernity in most post-colonial nations, they advance our understanding of socio-legal frictions in post-colonial societies richly. Further, unlike a case of breach of contract, which can be resolved privately between the parties outside of any court, a divorce (under the Hindu Marriage Act (1955), for example) cannot be granted without a formal decree of the court. This compulsive invitation of the law is coupled with its inaccessibility – divorce proceedings in Indian courts can inflict significant emotional and costs to the families, not to mention the cumbersome delays and costs. This inflates the frustration association with law, and strengthens the case for alternatives in such cases.

As I show in the article, these alternatives take the form of privately orchestrated legal-looking divorce agreements conjured up by lawyers for aggrieved couples, or court-like proceeding set out

in village elected bodies (*panchayats*) that preside over and grant divorces. I dwell on these practices to advance a theory of legal apparitions. I also indicate why this term could be used to explain a range of practices where people create legal phantoms to resolve a dispute, and the appearance lends it a legitimacy in the private order so carved out. Such an ordering goes beyond the simplistic considerations of legal pluralism. While legal pluralism focuses on co-existence of various legal orders, here, I show how people invent legal processes mimicking the formal processes, to lend an air of legitimacy and genuineness. While some people like lawyers know this very well, for many others, it may be done without any explicit knowledge of law, or of a wrongdoing. This is not merely a privately resolved dispute through customary norms of the society. Rather, this is an imitation, a mimetic copy, of law's devices and legal institutions to arrive at a resolution. Societies often have their customary forms of divorces, although here I focus on those divorces that are executed informally giving an appearance of securing compliance.

I show that the growth of legal apparitions depends on the tenacity and fertility of legal consciousness. The article sheds new light, therefore, not only on socio-legal interactions but also on the nature of law, its meanings and expectations, as they exist in the minds of people. Since the site of such phenomena revolves around difficulty in accessing laws, legal apparitions become a useful metaphor to explain post-colonial anxieties with respect to their imageries of law and their accompanying responses.

The article proceeds as follows: In section 2, I discuss the relevant literature and conceptualise the idea of legal apparitions. In section 3, I undertake my study of divorce laws and the practices in India (using Census data, interviews with lawyers, case laws and even observing the online legal consultative space) and locate the presence of legal apparitions. Section 4 re-discusses the idea and the way it has escaped scholarly scrutiny. Section 5 concludes, proposing directions for future research.

2 The idea of legal apparitions

2.1 Literature review: from legal pluralism to legal consciousness

Ehlrich's (1936) idea that law is a living phenomenon that has to be located in the activity of the society rather than that of the state, has been a useful starting point for legal pluralism to take shape. Legal pluralism recognises the presence of more than one legal order in a society thereby diluting the superiority of state law (Griffiths, 1986; Teubner, 1991; Merry, 1988; Tamanaha, 1993; Twining, 2009, von Benda-Beckmann, 2002). This is important because until we suspend the distinction between laws emanating out of a state statute, and the various other, customary modes of norms and rules practiced in a society, our imagination of socio-legal co-production will be very limited. This voluminous body of research (see Tamanaha, 2008; Garth and Sterling, 1998, for an intellectual history) emphasises that customary forms of living laws are central and not peripheral to understanding law as it exists in the minds of people – and consequently as it is manifested in the actions and behaviour of members of the group (Griffiths, 1986; von Benda-Beckmann, 2002). In other words, it has encouraged us to see what people do rather than what law tells them to do. Literature demonstrates different ways in which legal actors depart from written laws and respond to situations routinely through social norms and their discretionary practice (Silbey, 2002). Law has to be looked at as a composite whole rather than two types of orders: state and non-state post-colonial societies, which were thrust with colonial legal models on the long-held inventories of a variety of customary institutions, became the natural, rugged petri dishes on which legal pluralism could be observed even more starkly (Hooker, 1975; Merry, 2004; Chandra, 2013) although the phenomenon can be seen in the developed world too (Merry, 1988).

The scholarship, however, only offers two categories of law: state and non-state. One wonders if there exists an inter-legal space entertaining another type of law. Can citizens invent law at all? Consider cases when the doors of courts and customs are both shut. What type of response will

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emerge then? This question has not merited enough attention in the literature of legal pluralism. In fact, this may depart from the idea of legal pluralism and will be particularly valuable in understanding non-compliance. Non-compliance with state law is a useful laboratory to observe the constructs of social response to a legal problem when even long-held customs are not available. How do people act when they neither want to comply with state laws nor can they follow their customs?

One way in which ordinary people go about inventing laws will depend upon their *unconscious* interpretation of legal rules that affect their daily lives, through what is called legal consciousness (Merry 1990; Ewick and Silbey, 1998; Garth and Sarat, 1998; Nielsen, 2000). It integrates people's experience with the law, and their continued reconstruction of legal understanding translates into their daily actions and decisions – a form of mobilising law (McCann, 2006). But it remains nested within western world experiences, domesticating its theoretical utility, hence the need for better formulation of the concept (Silbey, 2005). The central thrust of the research agenda of legal consciousness was to script an account of legal hegemony and explain law's contribution in reproducing inequality. But in an overzealous mission to reach that end, the scholarship missed out on what I consider a more important part of its aspiration, namely, a general understanding of how people reconstruct legal imagination in their behaviour.

How one perceives a legal authority's legitimacy is indeed important (Tyler and Darley, 1999–2000). Laws generate some frameworks, some structural categories, into which judgments and cases try to fit (Mertz, 2007). These structures are like narratives, which are located right in the centre of law, legal functionaries and its apparatuses (Twining, 2006; Ewick and Silbey, 1998; Scheffer, 2010). That is why, if people are to cultivate models of non-compliance, they will do so in the soil of the existing narratives of law. They will exert and extrapolate their legal consciousness to construct new meanings to their practice of non-compliance. One can display this construction by adopting law's artefacts, customs and rituals – the rituals of, say, deposition, oath, evidence, certificate, papers and documents. Suresh (2018) illustrates that documentary and certificatory practices in statutory law become artefacts not necessarily to find truth, but to produce it (see also Ghosh, 2019). Yngvesson's study (1989) is instructive here. She exposes how legal phrases and concepts get invented through the interaction of local actors with formal courts, where new meanings are forged and official understandings are reproduced. These procedural artefacts offer valuable tools in legal consciousness to reconstruct the meaning and practice of laws, creating valid-looking structures of non-compliance. And because everyone thinks it is a valid way of behaving, the practice becomes valid (Goyal and Westernman, 2018).

2.2 Conceptualising legal apparitions from legal consciousness

Sally Merry (1990) explains legal consciousness as the ways in which people understand and use law (p. 5) By studying the experiences of working-class communities of New England who took their domestic, private matters to courts of law, and their resultant frustration in losing control of their own matters at the altar of courtroom practices, she illustrated how law's toolbox of mediation sessions, clerks' hearings, prosecutors' conferences and range of files formed a narrativised structure of law in the minds of people. These narratives offer the mental models in which people plug in imagined versions of law and reconstruct them in their minds. As Silbey (2005) reminds us, legal consciousness concerns construction, reproduction and even amending structures of meanings of law in the minds of people.

Legal consciousness is a cognitive activity and it captures not just legal understanding but also expectations, strategies and choices that are developed by people (McCann, 2006). Perry-Hazan and Birnhack (2016) examined the decision-making process of Israeli school principals in installing CCTV systems in their schools, and realised that one of the unexpected source of principals' motivation was their imagined law – they had wrongly assumed that they were following a law (which had actually never existed). Such mimetic applications of imagined law underscore the

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importance of legal consciousness and extend the framework of legal pluralism. If laws are constructed with an imaginary society in mind, the society can also evolve with an imaginary law in its mind.

It is one thing to imagine a law and follow it, it is another to mimic it procedurally. In some sense, therefore, while Perry-Hazan and Birnhack (2016) conceptualise an *imagined law*, I go a step further and see how is it manifested in practice. There is little unpacking of this phenomenon done in literature. In fact, even in the Israeli school study, the authors concluded that there was no mimetic process or shared mental model. A closer reference is Wilf's (2011) work, which shows that myth could very well be a source of law-making and that such imaginary laws may be manifested in copy-paste adoption of official legal forms. Such mimetic borrowing of imagined law *in practice* is what becomes legal apparition. LoPucki (1996) refers to 'law in lawyers' heads' and reminds us of the mental models through which written law is simplified in community's heads. I focus on the practice that succeeds it. Also, while the literature touches related concepts in a situation where legal consciousness *occurs*, I am also interested in cases where such consciousness is exploited to construct legal apparitions.

One can expect society to resolve disputes privately if following the state law is too costly. What happens, however, when the state law expressly forbids getting into private ordering? The community – if faced with severe costs in adhering to the law and state's capacity is weak – will still resort to private resolution. But this time, mimic the resolution *as if* the state law has decreed it. It will construct its own imagination of the law, by conceiving law's expectation laid unto itself. It will invoke legal consciousness, imagine law's expressive intent and invent the law in the local setting itself. Using a shared mental model of law, the community may extrapolate the imagination of the prevailing legal institutions to arrive at a model of practices that will likely be endorsed (or approved) by the state and its enforcement apparatus. In other words, if following the state apparatus is costly, people will devise a method that *looks like* a method the state could endorse – a legal doppelgänger, in some way.

This lookalike can be created out of the legal structures as they exist in legal consciousness. These structures will be shaped by a range of courtroom practices. So, the social response in this case will resemble what courtrooms would do, if they were to do it. The mimetic resemblance will rely on various procedural ingredients expected of a formal legal proceeding, like date, hearing, official letters, collection of people, presiding officers, papers, files, orders, adversarial negotiations, certification, documents, witnesses, signatures (or thumb impressions). Suresh's (2018) ethnography of a terrorism trial in Delhi and Ghosh's (2019) unpacking of layers in a stamp paper in India bring these juridico-administrative artefacts to light, which become useful props to re-enact the scene as it would be authored by the state. The cosmetic similarity makes these parallel practices appear legitimate and sustainable. I call these parallel practices, that look like state's formal procedures, *legal apparitions*.

Such legal apparitions will be sustainable because there is only a small likelihood that the matter will ever go to a formal court. This is important because in my fieldwork, I realised that often lawyers and sometimes even the parties concerned who are executing a legal apparition, are aware of its legal invalidity. In fact, some lawyers deliberately push clients into adopting legal apparitions without the latter's knowledge (clear cases of unethical lawyering). Still, they have faith in the practice. The assurance comes from the very low likelihood of the matter reaching the formal court of law in future. By adopting a mimetic copy of law through legal artefacts, the legal apparition induces a legal heaviness in the action, which suppresses any legal scepticism in the future. The officiality adopted chimes well with the manner in which legal consciousness prevails in the community. One also needs to understand that in non-western societies, social recognition, particularly in matters of personal law, supersedes technical legal status and is often more relevant than the official paper (think about dowry, child marriage or homosexuality). If the adjudication has taken place privately with a settlement drawn out of a consensual exercise in the presence of the community, who have given their green signal to the exercise, which is also seemingly legitimate,

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few will dispute it. Thus, cinematic replay of legal process lends a certain sense of social acceptability as well as diluting the likelihood of a future dispute over the present action. This makes the process sustainable.

Legal apparitions can now be defined as follows: if access to formal a justice system is constrained and there are no other viable legal orders to seek justice from, people will create and legitimise informal, normative orders cosmetically mimicking the formal system. Therefore, any *legal-lookalike-performance* done informally because adopting formal law is costly, is legal apparition. Since a precondition for legal apparitions to emerge is difficulty in accessing the formal justice system, they can be detected easily in South Asian countries like India, where access to justice is guarded by huge barriers (Galanter and Krishnan, 2004). Indeed, there are many instances when state law assumes monopoly over legal order and one can observe legal apparitions in all kinds of cases, including a road accident being resolved through a determination of negligence, as a court would have done.[1] I focus on one such legal institution, namely marriage and divorce, and show how legal apparitions operate in the space

2.3 Divorce laws and practice

To illustrate the concept of legal apparitions, I look at divorce laws and practice in India. India offers a rich inventory of social responses to law, carved in the legal consciousness of a post-colonial society that is constantly grappling with the tensions between the formal and the informal. Family laws, particularly those on marriage and divorce, bring this tension on the surface, where formal post-colonial statutes like the Hindu Marriage Act (1955), for the first time, codified under one modern vocabulary, a centuries'-old and diverse range of decentralised customs. Alongside, a range of religious family laws for minorities which are either formal and colonially constructed or customarily entertained. For example, the Dissolution of Muslim Marriages Act was promulgated in 1939, and is still in force, and in some cases even Sharia courts adjudicate for Muslim personal laws. All of this makes family laws in a country like India a valuable repository to observe not just legal pluralism and legal consciousness in post-colonial society but also many of its extensions.

There are three reasons why marital dissolution procedures in law are useful sites for my study. Firstly, divorce laws mandate that divorce can only be granted by the state. This disables any other means of mediation or out-of-court settlement, necessitating that couples come to the altars of the judiciary, should a separation be sought. Secondly, marriages and their annulment, despite being deeply cultural experiences rooted in family traditions, have to be judged by standard benchmarks of law. This makes divorce cases fertile ground for cultivating legal consciousness. Indeed, courts and litigants often have great difficulty in granting meaning to normative concepts of marriage (Basu, 2006), even in western countries (Johnson, 2011). Thirdly, divorces are class-neutral. They do not affect a specific category of people alone, therefore, focusing on them is a neat way of capturing class-based differences.

3 The case of divorce laws and practices in India

3.1 Method

I engaged in participant observation, unstructured interviews through snowballed sampling, researching online discussion forums and examining court cases.

Most of the findings in the study were drawn through primary fieldwork at two levels. Firstly, observing the legal trajectory of three cases of contested divorce taking place in courts in Delhi,

[1]The practical guide will not be scholarly. For a fascinating account of what transpires after a typical, minor road accident in India, see the answers posted on Quora (www.quora.com) to the question, 'What is the procedure I should follow when I meet a road accident in India?' The responses will basically encourage you to resolve it right there through some payment.

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during 2016–2020. Two of these cases are resolved even as the last one continues. I adopted participant observation to attend seven proceedings in the courts (Agra District Court, Saket District Court in Delhi and Tis Hazari District Court in Delhi). I also engaged extensively with one of the partners in each of these cases – I had thirteen sessions of two hours each during the course of the case. The cases were selected through personal networks. Two of them were contested divorces and one, mutual. The partners were in the age group of 25–35, all of them working professionals, with one couple based out of the USA (their marriage was registered in India, and the divorce proceedings led them to switch jobs and relocate to India). I also interviewed one lawyer in one of these cases to understand the processes involved. This interview was done twice, for an hour each.

The second part of my fieldwork was conducting extensive, semi-structured and open-ended interviews with forty practicing lawyers. These lawyers were chosen from various districts/provinces across India. In terms of regional spread, fifteen lawyers practiced in Gujarat, ten in Delhi, four were from Uttar Pradesh and Haryana each, and two from Bihar and Bengal. Initially five respondents were selected through personal networks in each of the regions, who helped me gain access to new respondents. This snowballing sampling technique (Lofland, 1995) is particularly useful to build trust prior to the interview (which was crucial to this study) as well as to engage with respondents who have had shared experience (practice in divorce matters in this case). Snowballing, arguably, is likely to induce bias in the sample. This study, however, is not affected by the sample's bias or its size because the study is about a social phenomenon and not about lawyers or their comparative opinions. Each of these lawyers had varying levels of experience in divorce matters. It is important to note here that Indian lawyers and law firms tend to specialise differently from western countries such as the UK and USA. Lawyers largely practice on a self-employed basis. The concept of law firms and partnerships has been on the rise in the bigger cities and often largely around corporate practice; the general practice of law, whether as individualised law chambers or small partnerships, remains unspecialised. As a result, most lawyers practice practically everything from family law to corporate law (Galanter and Robinson, 2014).

The interviews I carried out were bilingual (English and Hindi). These were conducted in 2017–2020. I met eighteen out of the forty lawyers physically in their chambers, and had two–four meetings with each lawyer, lasting around an hour each. I interviewed the remaining twenty-two lawyers over telephone or zoom calls, with an average of one–two hours discussion in each case (sometimes spread over two calls).

I also explored various web-based portals on legal issues. Further, I studied several cases in Indian courts where the judges had to adjudicate on the validity of a customary divorce. Many divorces done outside the court may come to the court if there is a dispute that arises on a future date. In those cases, the court has to take cognisance of the matter and rule on the validity of the divorce which had allegedly taken place often years ago. Understanding courts' rulings (from www.manupatrafast.com) illuminated greatly the nature of these divorces.

3.2 Legal architecture

State granting of divorce is a colonial invention in India. It was done with a great deal of interest and diverse motivations, ranging from protecting women's interests to preserving marriage as an institution and reflects a continuation of colonial ideas in standardising social behaviour (Solanki, 2011; Grapevine, 2015; Sharafi, 2009, 2010; Lhost, 2019). But due to customary and religious forms of filial obligations in marriage, juridical understanding of marriage in India is rather plural in religious context (Vatuk, 2013; Lemons, 2018). Hindus, Buddhists, Jains and Sikhs rely on the Hindu Marriage Act (1955) (amended in 1976) (HMA, hereinafter). Christian and Muslim marriages are governed by their respective pre-independence Acts. There is also a Special Marriage Act (1954), which governs marital disputes and dissolution between couples subscribing

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to different faiths (if they so choose). The dissolution takes place under the same body of law as the marriage was made.

Complications arising out of multiplicity of laws remain outside the scope of this article, in which I focus on HMA alone. Section 29(2) of HMA recognises the customary forms of marriages and divorces, but it is very difficult to prove a practice is a custom, which should be ancient and continuous, and merely pleading it does not qualify it. For practical purposes, it is safe to assume that, normally, customary forms of divorce are not entertained by the courts. Section 13 makes divorce, a legal decree by the court, to be entertained only when the couple physically approaches the court. Government has set up a large number of family courts where civil judges pronounce judgments under common law (Vatuk, 2013).

The laws and courts are driven by the aim to preserve marital stability (Grover, 2011; Solanki, 2011), motivated by Victorian morality, as well as to ensure that the rights of the weaker party (generally women (Holden, 2008)) are protected. This means that securing a divorce in India is a tall order. HMA offers a list of grounds for divorce, namely, adultery, unsound mind, venereal disease, incurable leprosy, worldly renunciation, absence for seven years (and therefore presumed dead), cruelty, desertion and mutual consent.

The ground of mutual consent was added in a 1976 amendment but both parties must approach the court. The concept of unilateral no-fault divorces does not exist. Further, even in cases of mutual consent divorces, several bottlenecks are erected by the law. For instance, courts cannot entertain any plea at least until one year has elapsed since the marriage (Section 13 1-A (i, ii) of HMA). Mutual consent divorce proceedings can be initiated only after the couple has lived separately for one year (Section 13 1-A (i, ii) of HMA). Even after the first hearing, the Court mandates a minimum six-month cooling off period, as one more chance to make the marriage work (Section 13-B (2)) – this six-month requirement was so burdensome that recently the Supreme Court waived the requirement (see *Amardeep Singh* v. *Harveen Kaur* (2017)). An already emotionally-distraught couple must also go through the untrained, unempathetic counsellors in family courts, who remain bureaucratically immune to the understanding of marital matters (Duggal *et al.*, 2018). That divorce litigation is difficult and exhausting is also noted by several scholars (Rajkotia, 2017; Holden, 2008).

3.3 Locating legal apparitions in divorce cases

3.3.1 Lawyers and their clients

Indian courtrooms are sites of depravation and misery, plagued with burdensome pendency and pathological inefficiencies (Baxi, 1986; Rajagopal, 2007; Galanter, 2009; Debroy, 2008). In fact, research has shown that lawyers are important instruments that prolong divorce litigation (Rajkotia, 2017). That is why, despite its population and strong constitutional framework, India has very low rates of litigation (Galanter, 2009), where people routinely decide on matters out-of-court, and many times, the exhausted parties will pull out of an ongoing case to decide it privately (Berti, 2010). Surveys indicate that 74 percent of Indians prefer to settle matters out of court (Makkar, 2018).

The story with marital dissolutions is no different either – in fact, it is much worse, since divorces often lead to opening up of most personal spaces of people's lives in front of unknown individuals. The emotional burden, coupled with distaste for the Indian judicial system, often drives couples to consider resolving the matter outside the court. They approach lawyers asking for divorces and often repeatedly pose requests if the divorce could be granted without going to the court. This is a cognitive process, arising out of a shared mental model about law. Often, imagined law, in the minds of people, actually resides as real law (Parsons, 1998). Couples proposing to divorce outside the court may simply be guided by an imagined law that they believe is possible. This was corroborated by thirty-five of the forty lawyers I interviewed. One of them was emphatic:

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> 'Every month I have "n" number of couples entering my chambers and requesting for a divorce without a court hearing. When I tell them there needs to be a court's decree for their divorce to be valid, they routinely press for finding an alternative. All they need is some form of paper that looks like judicial record which they can show to their families.' (Interview with a lawyer in Patna, August 2020)

Many others told me about the clients conjuring up some imaginative legal documents. This again brings me back to the point of legal consciousness. Legal consciousness is a participatory and interpretive process through which actors '*construct, sustain, reproduce, or amend the circulating structures of meanings concerning the law*' (Silbey, 2005, p. 334). Couples wanting to divorce but hoping to avoid courtroom stress are routinely attempting to construct a certain meaning of the law here, by conjuring up an imaginative process which could be the law. There is a structure of law that exists in their minds, often hinged on documentary processes. Such a process fits the imagined structure, and hence emerges ideas to construct a legal apparition. One of my respondents told me:

> 'This couple began asking me various non-court remedies for the divorce. They proposed to get a notary done. Then they said, what about judicial stamp paper. When I declined, they said, may be a more expensive stamp paper will do. I shrugged. The lady then said, what if we simply register our divorce, and by virtue of that, after sometime if we separate, it will act as a valid proof of divorce. I began smiling and they thought they've got the law.' (Interview with a lawyer in Ahmedabad, September 2019)

Two-thirds of my respondents told me that they personally know lawyers who construct these legal apparitions for their clients, who seem to be even slightly eager to avoid courts. Many recognise the need of clients to 'quickly' execute a divorce and continue with their separate lives. They routinely engage with private clients, and construct for them a legal order that does not come from the court, but reflects official optics. The clients draw the legitimacy out of their own imagination of how the Indian state and courts will work. The lawyers employ juridical artefacts to build legitimacy around a practice that looks very 'legal'. They draft what they call 'divorce petitions' or 'separation agreements', usually on a stamp paper costing INR 100 (in Ahmedabad, the standard was INR 300).[2] These seem like standard form contracts, and the couples are made to sign them in the presence of witnesses, which the lawyers themselves arrange. These documents, lawyers tell them, are the divorce decrees and the couple is lawfully un-wedded now. The couple retains one copy each of the 'affidavit' or 'agreement', depending on what language lawyers had used for them. The lawyers' chambers would act as the theatre of legal performativity. One lawyer told me with a hearty laugh:

> 'Of course why wouldn't they. They need clients who can be duped. They will assess the worth of the client and charge anywhere between five and thirty thousand to draft this standard thing on a 300 rupee stamp paper, get it signed with some witness and off they go.' (Interview with a lawyer in Ahmedabad, October 2019)

The presence of customary divorce consideration in the HMA complicates this matter further, according to some lawyers. Almost half the lawyers said they would be interested to know if the client couple belongs to a particular community where a customary divorce was a possibility. Often, when lawyers belong to a community where customary divorces are common, they are

[2]Transactions which create titles or other interests (in say, property) or register a commercial documentation are subject to payment of a fiscal duty to the state in form of 'stamp duty' (Indian Stamp Act 1899). Stamp paper are papers bearing a stamp worth a certain amount on top, and on which the instrument transactions are recorded/typed.

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more inclined to take such cases should they reach the court. But as section 3.2 shows, it is very difficult to prove a custom. Two of my respondents mentioned that people living in big cities, in a so-called modern lifestyle, will not be able to use the customary divorce provision and the judges will not allow them to adopt certain customary provisions selectively:

> 'You cannot live in south Delhi, send your kids to English medium school and then claim a customary divorce just because your community comes from a tribal region in Rajasthan, where it is allowed. If you follow your community customs, it must be all the customs, not selective. But then I know, lawyers will take even these cases to earn money.' (Interview with a lawyer in Delhi and Noida, September 2020)

The most interesting thing about these conversations is not the fact that these legal apparitions exist but the unapologetic swiftness with which they came about in my conversations. The customary practice of divorces is a phenomenon that is etched in lawyers' minds comprehensively. Consider Kutch, for instance, the largest district in India in terms of area and with a significant tribal population. Not only do they invoke customary forms of divorce routinely, for many of them courts are simply inaccessible. The district has an area 45 thousand sq. km. (larger than the size of Maryland) forcing people to travel for eight–ten hours by road to reach the nearest court. But in most cases, lawyers indeed know what is going on. But they have a justification for it and are principally able to defend this practice. One lawyer for instance claimed:

> 'What would you have us do? Turn the clients back? If I don't do it, some other lawyer will. The client needs satisfaction. The court is not giving it. As officers of the court, shouldn't we? Besides, only if they or their kids bring it back, will this at all be an issue. But then, we are sitting here to deal with that too. Right now, their problem is solved, isn't it?' (Interview with a lawyer in Ahmedabad, December 2019)

These 'issues' come to light when the now (illegitimately) divorced couple goes on with their own respective lives, and remarry. Remarriages require new institutions to be established. One such case, as narrated to me, brought forward the vestiges of bureaucratic language (the case was ongoing when I interviewed). There was a woman, who had secured a divorce through a legal apparition. She got remarried and applied for her passport, with a new surname (after her remarriage). When she submitted her 'divorce agreement', made by a lawyer in Delhi, to the passport authorities, the latter declined to accept it. It was also revealed that the underwriting lawyer had not mentioned his record in the agreement, disabling ways to track him down. The previous marriage had not been terminated and, when the matter reached the 'real' court, the entire proceedings for the now-remarried couple had to be repeated.

Similarly, in *Yamnaji Jadhav* v. *Nirmala* (2002), the Supreme Court, in dealing with a case of divorce deed gotten allegedly through coercing the wife, stated '[W]e find that the courts below have erroneously proceeded on the basis that the divorce deed relied upon by the parties in question was a document which is acceptable in law.'

Many of my respondents told me about the *panchayati* divorces in rural areas. I will discuss them in detail in the next section, and show that often, divorces are handed down by the village elected councils called *Panchayats* or other *mukhiyas* (important, elderly men) in villages who draw considerable patronage and respect. Sometimes this happens in connivance with the boy's family (mainly when he belongs to an upper caste and the girl to a lower caste), or when the marriage took place without the parents' permission (mostly inter-caste marriages). The couple often visits lawyers in the cities wanting to 'mend' the forced divorce. The lawyers inform them, that the so-called divorce they had in the village has no legal sanctity. But the theatre through which the divorce was granted crystallises their legal consciousness. One lawyer in Patna mentioned:

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> 'I tell them that the "divorce" paper they are carrying has no legal value. It is a worthless paper in the eyes of the law, even with all signatures of your village leaders on it. I tell them to carry on with their lives as if nothing happened. Some of them get thrilled to know this. The others are still not convinced and I am often at a loss to persuade them. I think partly it has to do with the ostracization in the village they will face if they live together, because there, everyone believes they are separated.' (Interview with a lawyer in Delhi, December 2019)

These interviews gave me the impression *as if* the divorces we see in the courts are really the tip of the divorce iceberg. This should be an exaggeration, but the point is, the numbers are not trivial. A vast number of divorces are being done without a court decree, either under the garb of customary divorces, or through a legal apparition. Two lawyers aptly summarised it:

> 'If there is no dispute in the future, how does it matter if divorce came through court's decree or not. Court can't go into each household and resolve a fight that doesn't exist.' (Interview with a lawyer in Kutch, March 2020)

> 'Divorces are corona, we are the *desi* [local] vaccines. You can wait for *sarkari* [government] vaccine, but if ours is as effective why wait for that one?' (Interview with a lawyer in Agra, September 2020)

3.3.2 Online consultations

The internet is poised to change the contours of legal professions over time, and signs have begun emerging already (Susskind, 2013). In India too, where the view of judicial remedy remains clogged with institutional and socio-economic impediments, its high internet penetration and low cost of internet data has produced a large number of law-related, web-based portals. While some of them cater to legal education, other, more dominant, are entrepreneurial businesses that deal with either linking prospective clients with lawyers through the web, or offering online legal consulting services. Their business relies on bringing clients on their portal, connecting them with lawyers who can respond to their initial queries openly (much like Quora), and this way, enabling the connection that can lead to clients hiring one of them. Their revenues may come from advertisements, license fees and even commission charged on connections made. In a country where advertising by lawyers is prohibited by law, and where considerable information asymmetry exists between legal service provider (lawyer) and customer (client), not to mention corruption, these websites occupy prominent space. Some of these websites, like *Vidhikarya*, also mention how many free legal advices have been given by each of their lawyers, and they often run to hundreds and thousands.[3] Typically, these websites can have more than 10,000 lawyers in their network.

These websites have become an important portal of first visit. My interviews with lawyers indicated that people may not necessarily use these free online answers by lawyers as word of law, and they may indeed consult someone properly before taking a decision. Nevertheless, they go a long way in forming their legal consciousness. In fact, these portals offer a rich resource that reflects the imagery of prevailing legal consciousness. Part of my research was to examine whether the nature of advice coming out of these legal fora in family law matters also reflected legal apparitions being built. I focused on the four websites whose webpage-ranks I mentioned above and it confirmed my assumptions/findings/ suspicion?. For instance, one lawyer on one of these websites responded to a consumer query in the following fashion:

[3]See, for instance, the open legal queries pages, https://www.kaanoon.com/ or https://www.vidhikarya.com/divorce-and-separation-lawyer. The latter contains details of lawyers and the answers provided by them in (hundreds each).

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'*Since the marriage is not even 13 days old, if both the persons agree not to file cases against each other, they can enter in to an out of court settlement and submit affidavits against each other. All photographs of ceremonies to be destroyed. There should be 2 sets of identical agreements signed by 2 reliable witnesses.*

Since a marriage cannot be annulled by out of court agreements, the agreement needs to be worked around.

In order to ensure an out of court settlement and in order to save the families from the hassles of court proceedings, a good lawyer with the consent of all of the parties, will draft the agreement in such a way that it will mention of an engagement (in place of marriage held on 10th of the month) with elaborate ceremonies and subsequently the engagement has been cancelled as there were differences between the groom to be and bride to be and their family members. With the aforementioned terms, the lawyer will ensure that the signatures of bride, groom and their respective parents are affixed in his presence and also have it signed by ¾ [sic] witnesses.'[4]

The website's consultation section is often associated with disclaimers that absolve website owners from any liability on account of misleading advice. Like many sources of information in the internet, this is user-generated content, and websites refrain from taking responsibility for the advice. There is no regulation, not even self-regulation. In most cases, however, the answerer is identified. But in others, there is no such record. For instance, another query raised in a popular online legal forum, drew the following response:

'*Yes a settlement agreement signed by you and your wife shall have a legal nature if the same is drafted in a proper manner.*

You should enter into a Settlement Agreement with your wife specifying not only the fact that she agrees for a mutual divorce but also with respect to the other terms and conditions of the divorce. This should specify the distribution of assets such as stridhan etc., maintenance/ alimony payable by you post divorce that this amount would be a full and final payment and no party shall have any other rights as against the other party. And get this Agreement signed by 2 witnesses.

Now once this Agreement is executed, and the payment has been made by you, then if your wife tries to back out (which is a common tactic used by wives to harass the husbands), you can present the settlement Agreement before the Competent Court seeking divorce by mutual consent. The Indian Courts have not allowed the women to harass their husbands once such settlement agreements have been executed. You kindly try to make some part payment in pursuance to this agreement that will bind her in law.'[5]

[4]This was a lawyer from Hyderabad, responding to a query on the portal *Kaanoon*. The lawyer's meta-data in the website revealed he had answered more than 2,000 questions and done 374 consultations. The lawyer has a 5/5-star rating and his page on the website gives extensive details of his cases in last two years. See https://www.kaanoon.com/63328/out-of-court-settlement-for-mutual-divorce-unregistered-marriage (accessed 20 December 2019).

[5]This response comes out of the portal called *LawRato*. Here, the answer does not contain the identity of the answerer. In fact, the answer is followed by a disclaimer that the response has been provided by 'one of the Divorce Lawyers at' their website. The end of the page carries a big label, '50,000 people choose LawRato every day'. See https://lawrato.com/divorce-legal-advice/Is-settlement-written-on-plain-paper-and-signed-by-2-witnesses-valid-564 (accessed 20 December 2019).

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In fact, various websites have standard form templates of 'separation agreement' or 'divorce agreements' that give a semblance of an official decree.[6] It is interesting to note here that it is not that the lawyers always deceive their clients – and surely this must not be trivialised (as discussed in section 2.2) – but as my interviews revealed, often couples themselves push lawyers to find ways to settle the divorce 'outside the court'. The consciousness that anything can be 'worked around' in the Indian legal system comes about through a process of evolution in mental models of people growing up in the country. Why should they not expect a simple divorce matter to be be handled privately? Legal apparitions that lawyers create draw this legitimacy, and people are ready to fall prey to anything that 'looks like' it is officially done.

Online legal consultation is a quiet movement happening in many places around the world, even as it is gradually attracting scholarly scrutiny. It has primarily been explored in the sphere of online dispute resolution in the USA, led by online companies that have begun governing global e-commerce (Rule, 2020) or online legal mobilisation of, say, feminists and lawyers in China (Wang and Liu, 2020), or online advocacy (Gillespie, 2017). There are some efforts in the UK, where citizens advice services have opened up several web-based information systems (self-help and pop-up chat boxes) to deliver legal information (Kirwan, 2016). In many countries like India, such legal consultation does not carry any official or regulatory structure, but given the high uncertainties prevailing in the market for lawyers, these portals have become a quick, costless source of first-information about a legal issue. Trust issues will remain in online legal consultation (Cho, 2006) but it still acts as a valuable early diagnosis of the law. People with all kinds of legal queries post their problems, and lawyers quickly offer incomplete teasers to these queries. So, even though one may not trust the completeness of this advice, people can construct the details in their minds.

The last point reflects the role of legal consciousness in creating legal apparitions. If legal consciousness is strongly embedded cognitively, people may not even hire a legal professional to confirm it. Web-based portals of the type I refer to in the article illuminate these imaginations and forms of legal consciousness in a society. It is not important, then, whether the online legal consultation is of any value to the lawyer or client, or if it is a business disruption. For a law and society scholar, it is opening up a world of legal consciousness extensively.

3.3.3 Panchayati divorce

Panchayats are the elected, local self-governance councils in Indian villages to administer governance matters in the villages. Even though is an ancient and traditional local self-governance system in South Asia that has continued since colonial times (Jaffe, 2015), it was constitutionally empowered in 1992. In addition to managing rural affairs, the Panchayat also administers justice to settle local disputes as they carry huge social and political capital (Ghosh and Kumar, 2003). Evidence of how successful this massive political experiment is, is mixed, although in general the influence has been enormous (Mathew, 2000; Johnson, 2003).

In particular, Panchayats continue to remain powerful in matters related to customs and caste-based rules of marriage (Hayden, 1984; Bharadwaj, 2012; Teltumbde, 2011). Often, the caste panchayats are not statutory bodies as they draw their power and legitimacy from the social orders of the villages and not electoral process. And yet, sometimes, they command more power than

[6]For instance, an agreement sample on *iPleaders*, in a 2017 post by one of their senior editors who was a final year student in a law school, has been viewed more than 26,000 times. See https://blog.ipleaders.in/separation-agreement-husband-wife-india/ (accessed 20 December 2019). The comment section at the end of the page bears a question posted two years after the post, in which someone is asking if the agreement can be made on a judicial stamp paper, and if it needs to be notarized!

The portal *AdvocateKhoj* has a tab on top called, Law Library. This opens into Legal Tips, Agreements, Forms etc. if you go to Agreements, you can choose an area of law – say family law. There, you find a Separation Agreement, which has nowhere mentioned that it cannot act as a court's decree. See https://www.advocatekhoj.com/library/agreements/familylaw/13.php (accessed 20 December 2019).

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statutory panchayats, with their harsh punitive judgments on couples who marry against the prevailing caste-based customs often leading to clashes with the state in some parts of India (Kumar, 2012). The power that puts them on a pedestal also allows them simultaneously to draw legitimacy over their action and performance on divorce matters. It is this entitlement that puts them on a pedestal where deciding a divorce matter is very easily and comfortably assumed to be performed legally.

Panchayats (statutory or caste, both) have been known to award divorce decrees routinely, without invoking any competent court. They do so by holding a court-like proceeding in front of witnesses and villagers that lends a semblance of reality – a legal apparition indeed. Panchayats have administered dispute resolution and other matters of collective interest formally, all across India. But they do not have any jurisdiction to decide upon marital dissolution. Nonetheless, *Nyaya Panchayats* (village courts with no jurisdiction over marriage matters) have presided over divorce matters and furnished decrees which are void. In the case of *Jeet Singh* v. *State of UP* (1993), for instance, matters came to the Supreme Court of India. Jeet Singh had married two wives, and later, due to differences with his first wife Mayawati, he was granted a divorce by the local *Nyaya Panchayat* in 1966. As part of the agreement – which had no legal sanctity – a certain parcel of Jeet Singh's land was granted to Mayawati. But the province's land-holding ceiling regulations, which linked the land of the wife with that of the husband, rejected this sale deed claiming that the *Nyaya Panchayat* divorce was not valid and that Mayawati was still Jeet Singh's wife. The matter reached the Supreme Court which ruled in 1992 that such a divorce could not be recognised as judicial separation.

In another case with very similar undertones, *State of U.P.* v. *Smt. Gaya Kunwari and Ors.* (2005), the two wives of a deceased man had been separated in 1948. And later, they had been granted parcels of land of their husband (which were also being linked with the husband's land). Since their separation was not 'judicial' in nature, the Court interpreted the divorce as not having happened. Interestingly, the Court recognised the customary nature of separation, but mentioned that in case of conflict '*good sense and fairness*' should guide the understanding of the statute, to avoid '*bewildering uncertainty and practical inconvenience*'. In another highly cited case, *Sarju Prasad* v. *4th Addl. Distt. Judge* (1980), the Allahabad High Court denied any panchayat-issued judicial separation.

It must be mentioned here that customary forms of marriage and divorce are recognised under the HMA. This is also noted by scholars (Dommaraju, 2016; Nichols, 2012; Menski, 2001). That is why many cases in family courts seek to validate one or the other customary divorce decided through an informal process (Holden, 2008; Solanki, 2011). But one cannot simply plead a custom; it has to be proven, as was decided in *Jairam Somaji More* v. *Sindhubai & Ors.* (2001) where the marital dissolution in question was alleged to have been executed under the custom of the community of the couple. A custom has to have a specific character. The Act defines custom as:

> ' . . . *any rule which, having been continuously and uniformly observed for a long time, has obtained the force or law among Hindus in any local area, tribe, community, group of family, [p]rovided that the rule is certain and not unreasonable or opposed to public policy; and [p] rovided further that in the case of a rule applicable only to a family it has not been discontinued by the family.*'

This makes the burden of proving the custom rather difficult. A custom must be shown to be ancient and continuous in nature. That is how courts rule in a variety of cases, for instance, in *K. Suramma* v. *K. Rammayamma & Ors. II* (2002), which took place in the High Court of Andhra Pradesh in south India, or in *M. Chandralekha* v. *Subramani & Ors. I* (2002), which took place in the High Court of Madras. Often, even declared customary divorces are declared null. For instance, *fargatinama* (in *Gurmukh Singh Bhullar* v. *Raminder Kaur in* 2019), or *chutta chutti*

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(in *Parikshat Son Of Sri Kali Deen* v. *State Of U.P.* in 2007 and in *Rameshchandra Rampratapji Daga* v. *Rameshwari Rameshchandra Daga* in 2004, with the latter case going up to the Supreme Court) were not recognised by the court because the custom could not be proven. Notice the names *fargatinama* and *chutta chutti*, which are colloquial, vernacular terms used for customary divorces in India, and family law scholars have also made reference to these types of customary divorces (Agnes, 2011). The Court, however, is strict in its application. These customary divorces are often filed even before one year expires after marriage solemnisation – a condition expressly recorded in the law – as came to light in *Davinder Kaur* v. *Gagandeep Singh* (2019).

In some cases, however, courts have acquiesced. For instance, in *Doddi App Rao* v. *General Manager, Telecom, Rajahmundry, East Godavari Dist. And Ors. I* (2000), the petitioner belonged to a particular community in south India, called *Settiblija*, whose customary divorces were recognised by the court. In the same way, customary divorces amongst the *Jat* community in Hoshiarpur in north India were recognised by the court in *Ranbir Kaur @ Harjit Kaur* v. *Gurnam Singh, II* (1997), where it interpreted the custom from Punjab settlement manuals of the nineteenth century.

All these cases were concerned with panchayat's legal apparitions, where the divorce was pronounced by a legitimate social authority, but more importantly, in a court-like proceeding. For instance, in *S.K. Subbaraj & Ors.* v. *Indirani, I* (2002), the customary divorce which was voided by the Court, the divorce was decreed '*before the mediators*' and '*[a]s per the directions of the mediators, the deceased Govindaraj paid a sum of Rs. 7,000/- to the defendant and a divorce deed was reduced to writing and signed by Govindaraj and the defendant on 24.7.1978 at the Sub-Registrar's Office, Pandalgudi.*' Notice the presence of the state authority, namely the sub-registrar's office. Similarly, with the allegation of *panchayati* divorce in *Kuldeep Kaur* v. *Gurmeet Singh* (2019), the wife had expressed in writing her desire to divorce the petitioner-husband and a certain sum of money was given to her for maintenance. The writing constituted in their minds something official taking place (again, this was declared null by the Court). The exchange of money lent the characteristic legal flavour to the whole exercise.

There is no reason to believe that there is *always* an ill-intention on the part of panchayat in furnishing such decrees. Sometimes it may be pure ignorance or what Perry-Hazan and Birnhack (2016) call the imagined law; nevertheless, it is still the non-existent law manifested *as if the law was taking place*. The idea of a panchayat has to be viewed through its historical power and legitimacy over centuries (Jaffe, 2015), which makes these institutions path dependent. One cannot deny at the same time, that *panchayati* divorces are often in favour of the stronger party, usually the husband. For instance, in *Sukhbir Singh* v. *Mandeep Kaur* (2016), there were no records of a particular *panchayati* divorce, although the theatre was well organised, with five out of nine members of the panchayat participating and affixing their signatures. Courts have declared *panchayati* divorces null and void even as recently as 2019 (*Balbir Singh* v. *Baljinder Kaur* (2019)).

4 Discussion

Legally administered divorces do not predate marriages and separations in human societies. In fact, many staunchly Catholic countries recognised legal divorce only recently – Italy (1970), Brazil (1977), Spain (1981), Argentina (1987), Ireland (1997) and most recently, Chile, which recognised divorce for the first time only in 2004. Defying the Catholic Church, it promulgated its new Civil Marriage Law that year. What were Chileans doing before that? As it turns out, they were using legal subterfuges indeed; for instance, civil annulment (showing that the marriage did not even take place) or the husband taking off, with the wife putting ads in the newspapers evolving a legal apparatus to show the husband has left her or is dead (Rohter, 2005; Mitchell, 2004). Even the Philippines, a country with a population of around 110 million, does not recognise divorce, and with very expensive annulment proceedings, this has led to variety of problems

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exacerbating gender and mental health issues (Hundley and Santos, 2015; Abalos, 2017). With a bill pending, there is a need for deeper investigations there. Similary, Shahnaz Huda's (2011) examination of Hindu marriages in Bangladesh discovers that, in the absence of any divorce in the Hindu laws there, couples wanting to separate will do so by swearing an affidavit, or by writing an agreement to this effect (which can easily be challenged in the court) (see also, Pareira *et al.*, 2019). In fact, Mnookin and Kornhauser (1979), in their influential piece, have argued that couples going through divorce proceeding are able to negotiate their terms of settlement under the framework that the law provides.

I follow and identify such private ordering as the authors there, and show that the legal system indeed determines how the divorce will happen – except that this private ordering will happen not under but outside the 'shadow of the law', even though imitating what would go under the shadow. It is the tendency to isomorphise the institution outside the judiciary, which becomes interesting for me. And that is how I approach what I call legal apparitions. If the procedural artefacts are put in place, and the general goal of 'producing' legal truth is clearly expressed, a legal performance can be created, recreated and passed on *as if* the legal truth is indeed produced. This may be done with little or no knowledge of existing legality's sphere so long as people have some legal consciousness. When McAdams (2000) was proposing his focal point theory of expressive law, he conceptualised law to offer 'meeting points', which helps people co-ordinate. Sometimes, as I show, these co-ordinating points help erect duplicate laws outside the law. The difficulty of accessing law creates the urge to tiptoe around it, but in such a way that gives a semblance of going through it.

Note that a divorce decree from the court is valid because everyone thinks it is valid. In small-scale or close-knit societies like a tiny village, there are just a few people to draw legitimacy from. If a practice is considered to be valid by them, then, for all practical purposes in the village, the practice is valid. For a villager who has and who will spend their entire life within that village, a Panchayat can easily offer this legitimacy. If there is no future trouble with respect to maintenance and property, and if everyone in the region believes that the divorce is valid, why not exercise it right there, and obviate the need to travel to a court of law?

Most works in the literature that touch upon the ideas of mimetic borrowing of law fall short in explaining the phenomenon I have attempted to unpack here. For instance, Meyer and Rowan (1977) articulated how organisational mechanisms and practices produce templates that become powerful myths as they begin to be taken for granted. This leads to their ceremonious adoption. But these are organisational practice templates rather than socially evolved mimetic ceremonies of law. Similarly, Galanter (1998) examines the idea of 'legal legends' which are misconceptions about the contents of the law, much like folklore. Legal apparitions – even though stemming from a folklore-type legal imagination – may not be misconceptions and quite strategic actually. It appears as if, despite a considerable ideation around this concept, scholars have unknowingly overlooked it. This article gives it a distinct category.

This is not just a typical understanding of multiple legal systems coexisting – whether fused with one another or hierarchised. This is a case where a new legal order may emerge in a stifled legal space, that will mimic the formal order rather than replace it. As suggested, this is an extension of state law's imagination, rather than a manifestation of legal pluralism. Parallel legal orders co-exist here as well, but their real source may not necessarily be in a long-standing custom, but in the coercive design of the state law itself which arrests people's freedom in resolving their matters privately. When legal forum shopping (von Benda-Beckmann, 1981) is curtailed by law, actors can use the law to breed similar-looking, yet accessible, legal orders when the possibilities to negotiate are out. People begin co-ordinating around this focal point (MacAdams, 2000).

Digging deeper into the way societal imaginations alloy with statutory law in post-colonial nations will reveal countless other such legal apparitions in play. In addition to pushing forth the frontier of our understanding of legal pluralism, legal consciousness and focal point theory of expressive law, the lens of legal apparitions helps us understand a more realistic view of how people interact with the law. This also expands the view of law and society, to centralise

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how people perceive, experience and absorb law rather than law's impact on people alone. In fact, with continuous pressures, these apparitions may well be absorbed by formal legal systems; consider, for instance, that at the time of writing, in the state of Chhattisgarh, the High Court allowed a customary divorce of a couple – done on a piece of paper – which had been denied by a lower court (*Duleswar Deshmukh* v. *Kirtilata Deshmukh*, 2016).

The study at this stage is, however, silent on the normative implications of legal apparitions. Do we allow these legal apparitions to exist, or strongly suppress their expansion? I cannot say with certainty. More empirical evidence is needed to carve out a general theory that can inform policymaking. Connectedly, however, the law-making exercise could benefit by considering whether promulgation of a certain policy or legislation may encourage proliferation of legal apparitions in some communities. In the absence of cross-sectional data and long-term anthropological accounts of various cultural (or legal) encounters that may have affected or triggered legal apparitions, one may rely on analytical examination. But then this is a difficulty one comes across when studying any unwritten, uncodified or informal modes of dispute resolution anyway, since reliable data is hard to come by. What is needed is large-scale sampling or collection of a large documentation of legal apparitions observed across communities, which will enable us to build a dynamic theory that offers a more robust metrics of legal apparitions.

5 Conclusion

Is society the playground of law, or is it the other way around? Engaging with this question is essentially what this study is all about. Even though law and society scholars have recognised the fertility of the intersecting grounds of the two disciplines, and identified what happens when people cannot follow the law, a similar scrutiny remains missing for cases when such customary bypasses to law are prohibited. They do not demonstrate people's hatred of legal machinery as much as the erosion of their faith in it, their exhaustion from their servility to it and a desperate urge to break free. The script of the rule of law is like a cinematised reel, displaying motions of legal designs and when people need to make their own theatres, they borrow the framework from these reels.

As the English proverb goes, *A new broom sweeps clean but an old broom knows the corners.* People build fake copies of these new brooms using some of their knowledge about the corners they are trying to sweep clean, because the old brooms are thrown out. While legal pluralists have discovered this process of both types of brooms co-existing, I show in this article that when co-existence is not possible, people recast a counterfeit copy of the new. Therefore, I believe uncovering legal apparitions in matters that go beyond matrimonial issues, and in various other South Asian societies, may be the next worthwhile endeavour. Such studies will at least go a long way to demonstrate how laws create focal points of social co-ordination. More importantly, they will enrich traditional understanding of law in context, seen through the minds of people, who have largely remained as passive reactants in the academic laboratories of law and society scholarship.

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