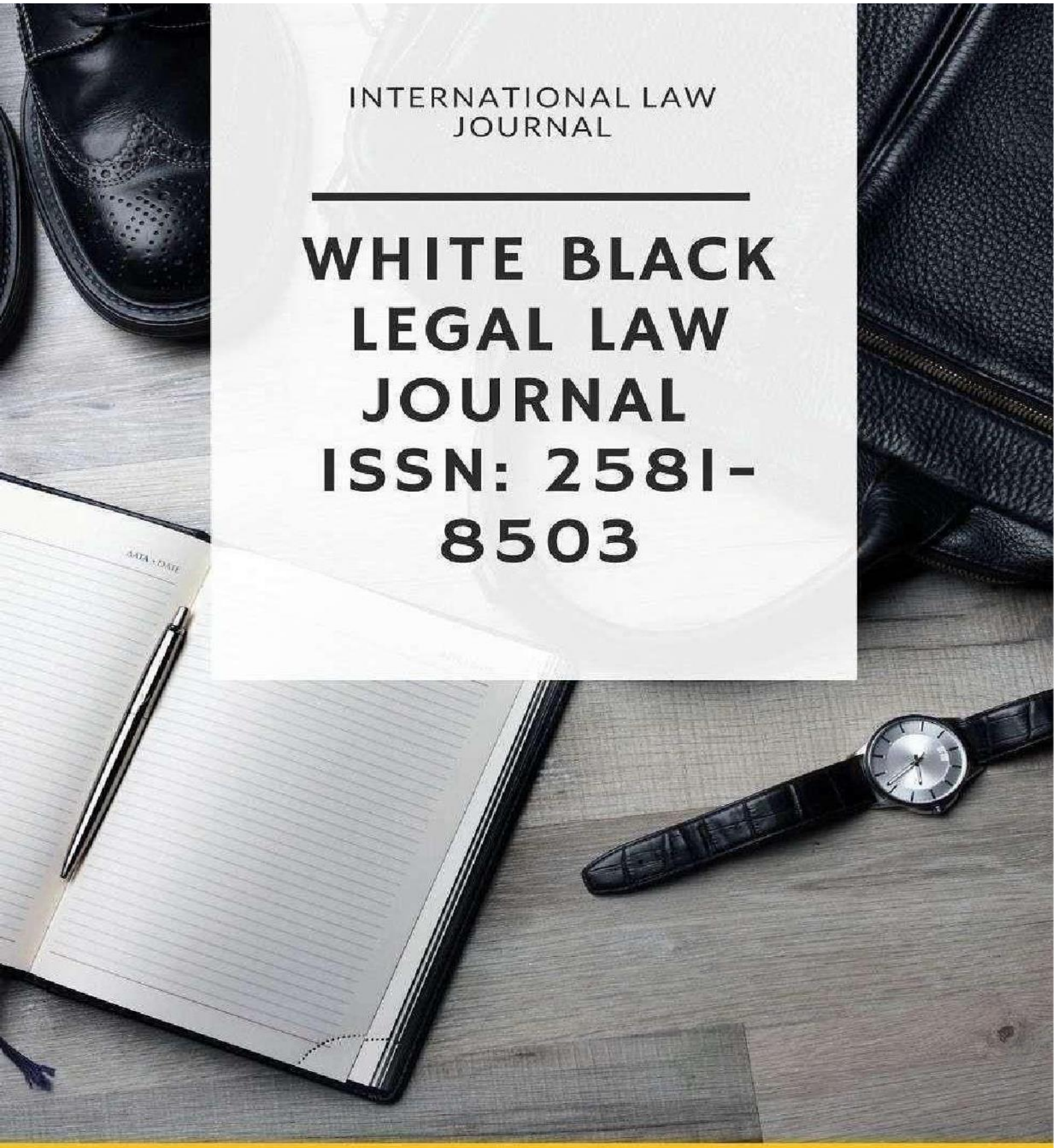


INTERNATIONAL LAW JOURNAL

WHITE BLACK LEGAL LAW JOURNAL

ISSN: 2581-8503

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, translated, or distributed in any form or by any means—whether electronic, mechanical, photocopying, recording, scanning, or otherwise—without the prior written permission of the Editor-in-Chief of *White Black Legal – The Law Journal*.

All copyrights in the articles published in this journal vest with *White Black Legal – The Law Journal*, unless otherwise expressly stated. Authors are solely responsible for the originality, authenticity, accuracy, and legality of the content submitted and published.

The views, opinions, interpretations, and conclusions expressed in the articles are exclusively those of the respective authors. They do not represent or reflect the views of the Editorial Board, Editors, Reviewers, Advisors, Publisher, or Management of *White Black Legal*.

While reasonable efforts are made to ensure academic quality and accuracy through editorial and peer-review processes, *White Black Legal* makes no representations or warranties, express or implied, regarding the completeness, accuracy, reliability, or suitability of the content published. The journal shall not be liable for any errors, omissions, inaccuracies, or consequences arising from the use, interpretation, or reliance upon the information contained in this publication.

The content published in this journal is intended solely for academic and informational purposes and shall not be construed as legal advice, professional advice, or legal opinion. *White Black Legal* expressly disclaims all liability for any loss, damage, claim, or legal consequence arising directly or indirectly from the use of any material published herein.

ABOUT WHITE BLACK LEGAL

White Black Legal – The Law Journal is an open-access, peer-reviewed, and refereed legal journal established to provide a scholarly platform for the examination and discussion of contemporary legal issues. The journal is dedicated to encouraging rigorous legal research, critical analysis, and informed academic discourse across diverse fields of law.

The journal invites contributions from law students, researchers, academicians, legal practitioners, and policy scholars. By facilitating engagement between emerging scholars and experienced legal professionals, *White Black Legal* seeks to bridge theoretical legal research with practical, institutional, and societal perspectives.

In a rapidly evolving social, economic, and technological environment, the journal endeavours to examine the changing role of law and its impact on governance, justice systems, and society. *White Black Legal* remains committed to academic integrity, ethical research practices, and the dissemination of accessible legal scholarship to a global readership.

WHITE BLACK LEGAL

AIM & SCOPE

The aim of *White Black Legal – The Law Journal* is to promote excellence in legal research and to provide a credible academic forum for the analysis, discussion, and advancement of contemporary legal issues. The journal encourages original, analytical, and well-researched contributions that add substantive value to legal scholarship.

The journal publishes scholarly works examining doctrinal, theoretical, empirical, and interdisciplinary perspectives of law. Submissions are welcomed from academicians, legal professionals, researchers, scholars, and students who demonstrate intellectual rigour, analytical clarity, and relevance to current legal and policy developments.

The scope of the journal includes, but is not limited to:

- Constitutional and Administrative Law
- Criminal Law and Criminal Justice
- Corporate, Commercial, and Business Laws
- Intellectual Property and Technology Law
- International Law and Human Rights
- Environmental and Sustainable Development Law
- Cyber Law, Artificial Intelligence, and Emerging Technologies
- Family Law, Labour Law, and Social Justice Studies

The journal accepts original research articles, case comments, legislative and policy analyses, book reviews, and interdisciplinary studies addressing legal issues at national and international levels. All submissions are subject to a rigorous double-blind peer-review process to ensure academic quality, originality, and relevance.

Through its publications, *White Black Legal – The Law Journal* seeks to foster critical legal thinking and contribute to the development of law as an instrument of justice, governance, and social progress, while expressly disclaiming responsibility for the application or misuse of published content.

BEYOND RITUAL FORMALISM: CUSTOMARY PRACTICES, PROOF OF SOLEMNIZATION AND THE VALIDITY OF HINDU MARRIAGES WITHOUT SAPTAPADI

AUTHORED BY - SAKSHAM TYAGI
CO-AUTHOR - ASST. PROF. MRS. RITU MALIK
CHANDIGARH UNIVERSITY

Abstract

When a marriage is challenged years after the wedding, the person who suffers most is rarely the one who challenges it. This paper asks how Indian courts should decide whether a Hindu marriage was validly solemnized when the seven steps (Saptapadi) are disputed or absent. I argue that Section 7 of the Hindu Marriage Act, 1955 makes Saptapadi conditionally essential, that the real burden in these cases is proving custom, and that courts have not developed a consistent method for doing so. I propose a three-question approach: whose custom applies, whether its essential rites were substantially performed, and what the parties' conduct shows. The paper also considers who bears the human cost of rigid formalism, and how courts can protect genuine spouses and children without opening the door to false claims.

Keywords: *Hindu Marriage Act 1955; Section 7; Saptapadi; solemnization; custom; substantial compliance; presumption of marriage.*

1. Why This Question Matters

Consider a hypothetical. Meena marries Ramesh in her village. There are garlands, a thali, relatives, a feast, and a photograph that still hangs in the family home. Nobody takes seven steps around a fire, because that is not how marriages are done in her community. Twenty years and two children later, Ramesh leaves, remarries, and says in court that no valid marriage ever took place.

What should the law say to Meena? If the answer depends on whether a ritual from another tradition occurred, the law has failed her. If the answer depends on whether her own community's rites were followed and proved, it can do justice. The difference between those

two answers is the subject of this paper.

Marriage validity decides maintenance, inheritance, the legitimacy of children, pensions and, in some cases, criminal liability for bigamy. Section 7 of the Hindu Marriage Act, 1955 (HMA) requires a Hindu marriage to be solemnized, but it does not define the word or prescribe one ritual.[1] It points instead to the customs of the parties. I want to show that this was a deliberate and sensible choice, and that courts serve the Act best when they respect it.

2. The Law in Brief

Section 7(1) allows a Hindu marriage to be solemnized in accordance with the customary rites and ceremonies of either party.[2] Section 7(2) adds that where those rites include Saptapadi, the marriage is complete and binding on the seventh step.[3] The word 'where' is crucial. It makes the seven steps relevant when the parties' custom contains them, and silent when it does not.

Section 3(a) defines custom as a rule followed continuously and uniformly for a long time and accepted as binding in a locality, tribe, community, group or family. It must be certain, reasonable and not contrary to public policy.[4] Section 8 permits registration, and the register is evidence of the marriage, but Section 8(5) says that failure to register does not affect validity.[5] Section 16 protects the legitimacy of children of void and voidable marriages.[6] Bigamy is punished through Section 17 and the penal law, now Section 82 of the Bharatiya Nyaya Sanhita, 2023.[7]

3. How Courts Have Treated Proof of Solemnization

The leading decision is Bhaurao Shankar Lokhande v State of Maharashtra.[8] The Supreme Court said that solemnizing a marriage means celebrating it with proper ceremonies in due form, and that in a bigamy case the essential ceremonies must be proved. Kanwal Ram v Himachal Pradesh Administration went on to hold that an accused person's admission that a marriage took place does not prove that the required ceremonies were performed.[9] In Surjit Kaur v Garja Singh, the Court found no valid marriage where the essential ceremonies of the

[1]Hindu Marriage Act 1955 (HMA), s 7.
[2]HMA (n 1) s 7(1).
[3]HMA (n 1) s 7(2).
[4]HMA (n 1) s 3(a).
[5]HMA (n 1) s 8, in particular s 8(5).
[6]HMA (n 1) s 16.
[7]HMA (n 1) s 17; Bharatiya Nyaya Sanhita 2023, s 82.
[8]Bhaurao Shankar Lokhande v State of Maharashtra AIR 1965 SC 1564.
[9]Kanwal Ram v Himachal Pradesh Administration AIR 1966 SC 614.

community had been omitted, despite cohabitation.[10]

These cases are often cited for the idea that rituals are indispensable. I read them differently. Each asks what the parties' own form of marriage required, and each places the burden of proof on the person asserting that the ceremonies took place. Their concern is evidence, not a fixed list of rites. The leading criminal cases also arise where liberty is at stake, which explains the strictness. They do not necessarily set the standard for civil disputes about status or maintenance.

4. Saptapadi as a Conditional Requirement

In classical Hindu law, especially for the twice-born, the sacred fire and the seven steps were treated as essential, and the marriage became irrevocable at the seventh step.[11] Courts still apply this view where the parties' custom includes it. But the HMA extended to Hindus of every community and region, and it adopted custom as the common standard. A statute that wanted a single ritual would have said so, as Section 5 does for its conditions.[12]

Tamil Nadu made the point explicit by adding Section 7A in 1967, validating marriages solemnized by a declaration, an exchange of garlands or rings, or the tying of a thali before friends or relatives.[13] In S Nagalingam v Sivagami, the Supreme Court dealt with a marriage under such customs and accepted that Saptapadi is not indispensable where the community's rites do not include it.[14] The words 'either party' in Section 7(1) reinforce this: a couple from different backgrounds may marry under the rites of one of them. Demanding Saptapadi from everyone would erase that choice.[15]

5. The Hidden Burden: Proving Custom

If Saptapadi is not always required, why does it dominate litigation? My answer is that it is easy to prove and easy for a judge to recognise. A local custom is different. The party relying on it must plead it and show that it satisfies Section 3(a): continuity, certainty, reasonableness and binding force.[16] Evidence usually comes from community members, the officiant, invitations, photographs, family records and earlier occasions on which the custom was

[10]Surjit Kaur v Garja Singh (1994) 2 SCC 112.
[11]Mulla, Principles of Hindu Law (LexisNexis) [edition and pinpoint to be added].
[12]HMA (n 1) s 5.
[13]Hindu Marriage (Madras Amendment) Act 1967, inserting s 7A into the HMA (n 1).
[14]S Nagalingam v Sivagami (2001) 7 SCC 487.
[15]HMA (n 1) s 7(1).
[16]HMA (n 1) s 3(a).

followed or judicially accepted.

This burden is heavy and unevenly distributed. Families with documents, photographs and educated witnesses can meet it. Families in poor, rural or tribal settings, where marriages are rarely recorded, often cannot. A rule that is neutral on paper can therefore operate unequally in practice. I suggest that courts treat consistent community testimony as adequate, and that they do not default to Saptapadi merely because it is the best-known rite.

6. Certificates and the Dolly Rani Decision

Registration helps prove a marriage, but it does not create one.[17] In Dolly Rani v Manish Kumar Chanchal, the Supreme Court considered a couple who held marriage certificates though no ceremony had taken place. The Court held that a certificate cannot confer marital status without a valid solemnization under Section 7, and described Hindu marriage as a sacrament, not a social event or a formality for obtaining documents.[18]

The ruling is right on its facts. Certificates must not be used to manufacture a marriage. But its language about the importance of rites should not be stretched into a rule that every marriage needs the seven steps. The couple in that case had performed no ceremony at all. The decision is best read as protecting the substance of marriage, which is consistent with Section 7 and with the earlier cases.

7. A Proposed Three-Question Approach

Courts need a method that is principled and workable. Drawing together the statute and the case law, I propose asking three questions in order.

Question	What the court asks	Why it matters
1. Whose custom?	Which community's rites, or which party's rites, govern this marriage under Section 7(1)?	Prevents a single ritual from being imposed on everyone
2. Were the essential rites substantially performed?	Does the proved custom include Saptapadi or other rites, and were its essential elements observed?	Focuses on substance and avoids technical failure over minor deviations
3. What does	Did the parties live as spouses,	Supplies evidence where

[17]HMA (n 1) s 8(5).

[18]Dolly Rani v Manish Kumar Chanchal (Supreme Court of India, 19 April 2024) [citation to be added after checking the reported judgment].

conduct show?	present themselves as married.	ceremonies are hard to prove after many years

The first question identifies the governing standard. The second applies it, and here I favour a doctrine of substantial compliance: a court should not invalidate a marriage because of an immaterial variation in a rite if the essential elements of the community's custom were observed. The third question treats conduct as evidence. Long cohabitation as spouses supports a presumption of marriage, as recognised in Gokal Chand v Parvin Kumari, Badri Prasad v Deputy Director of Consolidation and Tulsa v Durghatiya.[19] Conduct cannot create a marriage that never occurred, and I do not suggest otherwise. It can, however, tip the balance when proof of the ceremony is incomplete.

The standard should also vary with the context. In a bigamy prosecution, where liberty is at stake, strict proof is appropriate. In maintenance claims, courts have taken a less rigorous approach, as in Dwarika Prasad Satpathy v Bidyut Prava Dixit, and that approach reflects the protective purpose of the remedy.[20]

8. Who Pays the Price of Formalism?

The cost of rigid formalism is not borne equally.

- Women, who often depend on the marriage for housing, maintenance and social standing, and who are the ones told that they were never wives.
- Children, whose legitimacy and inheritance rights may be questioned, even though Section 16 offers partial protection.[21]
- Widows, who may be denied family pension, property or insurance benefits because the marriage cannot be proved to the satisfaction of an institution.
- Communities with oral or non-Brahmanical traditions, whose rites are less familiar to courts and less likely to be documented.

A humane approach must also be fair to the other side. Some claims of marriage are false, and some certificates are fabricated. A person wrongly accused of bigamy deserves strict proof. My proposal does not weaken proof. It asks courts to ask the right question and to apply a standard suited to the stakes.

[19]Gokal Chand v Parvin Kumari AIR 1952 SC 231; Badri Prasad v Deputy Director of Consolidation (1978) 3 SCC 527; Tulsa v Durghatiya (2008) 4 SCC 520.
[20]Dwarika Prasad Satpathy v Bidyut Prava Dixit (1999) 7 SCC 675.
[21]HMA (n 1) s 16.

9. The Constitutional Dimension

Three constitutional ideas support this approach. Article 14 forbids arbitrary standards, and requiring one ritual of every community would treat different customs unequally. Article 21 protects dignity, and I would argue that it includes the security of one's family status, so denying a marriage on a technical ground raises a liberty concern. Articles 25 and 26 protect religious practice, while Article 25(2)(b) permits social reform legislation. The HMA respects community custom while imposing reforms such as monogamy, and courts should keep that balance.[22]

10. Suggestions

Courts should state plainly that Saptapadi is conditionally essential and should identify the governing custom before asking whether it occurred. They should adopt a doctrine of substantial compliance for immaterial variations. Judicial guidelines on proving custom, including acceptable forms of evidence, would reduce uncertainty. Registration should be made simpler and its evidentiary value clarified, with safeguards against registration without ceremony. Parliament may consider clarifying Section 7 so that alternative forms of solemnization accepted by communities are expressly recognised, subject to safeguards for consent and age.

11. Conclusion

Meena's story is hypothetical, but the question it raises is real. A marriage law that is faithful to the communities it governs cannot treat one ritual as the only proof of marriage. Section 7 asks courts to look at custom, and the case law asks them to look at proof. When courts do both, they can distinguish genuine marriages from false claims and protect people who relied on a marriage in good faith. Moving beyond ritual formalism does not diminish the sanctity of marriage. It recognises that sanctity takes more than one form in India, and that the law should be able to see all of them.

[22]Constitution of India 1950, arts 14, 21, 25, 26 and 25(2)(b).

References

Statutes

Hindu Marriage Act 1955, ss 3, 5, 7, 8, 16, 17.

Bharatiya Nyaya Sanhita 2023, s 82.

Constitution of India 1950, arts 14, 21, 25, 26.

Hindu Marriage (Madras Amendment) Act 1967 (s 7A).

Cases

Bhaurao Shankar Lokhande v State of Maharashtra AIR 1965 SC 1564.

Kanwal Ram v Himachal Pradesh Administration AIR 1966 SC 614.

Surjit Kaur v Garja Singh (1994) 2 SCC 112.

S Nagalingam v Sivagami (2001) 7 SCC 487.

Dolly Rani v Manish Kumar Chanchal (Supreme Court, 19 April 2024).

Gokal Chand v Parvin Kumari AIR 1952 SC 231.

Badri Prasad v Deputy Director of Consolidation (1978) 3 SCC 527.

Tulsa v Durghatiya (2008) 4 SCC 520.

Dwarika Prasad Satpathy v Bidyut Prava Dixit (1999) 7 SCC 675.

Books

Mulla, Principles of Hindu Law (LexisNexis).

Paras Diwan, Modern Hindu Law (Allahabad Law Agency).

Flavia Agnes, Family Law Volume I: Family Law and Constitutional Claims (OUP).

Werner Menski, Hindu Law: Beyond Tradition and Modernity (OUP).

WHITE BLACK LEGAL