

LABOURING UNDER THE LAW:
GENDER AND THE LEGAL
ADMINISTRATION OF INDIAN
IMMIGRANTS UNDER
INDENTURE IN COLONIAL
NATAL, 1860-1907



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ABSTRACT

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and the Legal Administration of
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This study is a gendered historical analysis of the legal administration of Indian Immigrants in British Colonial Natal in the late nineteenth and early twentieth centuries. By focusing primarily on the attempts of the Natal Government to intervene in the personal law of especially indentured and ex-indentured Indians, this thesis presents an analysis of the role that gender played in the conceptualization and promulgation of the indentured labour scheme in Natal, and in the subsequent regulation of the lives of Indian immigrants in the Colony. It traces the developments in the administration of Indian women, especially, from the beginning of the indenture system in colonial Natal until the passage of the Indian Marriages Bill of 1907 and attempts to contextualize arguments around these themes within broader colonial discourses and debates, as well as to examine the particularity of such administrative attempts in the Natal context. This study observes the changing nature of 'custom' amongst Indian immigrants and the often simultaneous and contradictory attempts of the Natal colonial administration to at first support, and later, to intervene in what constituted

the realm of the customary. Through an analysis of legal administration at different levels of government, this analysis considers the interactions of gender and utilitarian legal discourse under colonialism and, in particular, the complex role of Indian personal law and the ordinary civil laws of the Colony of Natal in both restricting and facilitating the mobility of Indian women brought to Natal under the auspices of the indentured labour system.

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Introduction

Gender, Law and the Administration of Indians in Natal, 1860-1907

This thesis is an historical and philosophical investigation of the ways in which women migrating from India, to enter into contracts of indenture in colonial Natal, entered into legal discourses and struggles. In some cases women were regarded as citizens, in others as subjects, in this process. The study examines these struggles and legal discourses around two pivotal themes: the first being the labour practices codified in laws governing Indians; and the second the conflicting, often contradictory and shifting, legal discourses and codes around their marriages.¹ It attempts to reveal that women were active, albeit vulnerable, participants in these struggles and processes. This thesis demonstrates that a study of women under indenture from 1860 to the early 1900s offers an analytical window into a global discussion of what underpins women's experiences of marriage, servitude, labour exploitation, migration and the complex authorizing role of the law without losing sight of the particular context of nineteenth century British colonialism in Natal. By demonstrating that such an analysis is possible, this study hopes to show how the writing of the history of Natal's Indians can be framed more widely.

¹ Throughout this thesis, I have used the term 'Indian' to refer to people immigrating to Natal from India as well as those who descended from indigenous Indians in Natal. It is this link to India that results in the upper case being used. The word 'African' is similarly used and formatted. The terms 'black' and 'white' are, however, in the lower case except where they are quoted directly from primary source materials or used at the beginning of a sentence.

The number of historical works that attempt to make connections and comparisons across boundaries of race and culture in Natal is meager at best, the most notable attempts being recent histories of healing by Julie Parle and Karen Flint, which analyze different cultural paradigms of healing that existed among Indians, Africans and whites in the region in the nineteenth and early twentieth centuries.² While this particular study is neither a social history nor a comparative one, it is intended to lay some of the foundations for greater comparative histories of the people in this region during the nineteenth and early twentieth centuries.

As an history of the interactions of gender and law in the colonial administration of Indians in this region it adds an extra dimension to an existing, and expanding, historiography of gender and law in Natal and in other societies in Southern Africa.³ The literature on Natal's Indians specifically, in the nineteenth century, is small but growing. Collections of primary documentation and data on indenture such as *Documents of Indentured Labour* by Y.S Meer and Surendra Bhana and Brijlal Pachai's *Documentary History of Indian South Africans* continue to inform the empirical basis of historical studies of indentured and free Indians in Natal in the nineteenth and early twentieth centuries.⁴ Surendra Bhana

² J. Parle, *States of Mind: Mental Illness and the Quest for Mental Health in Natal and Zululand, 1868-1918*. PhD Thesis, University of KwaZulu-Natal, Durban: 2004 and K. Flint, *Negotiating a Hybrid Medical Culture: African Healers in Southeastern Africa from the 1820s to the 1940s*. PhD Thesis, University of California, Los Angeles: 2001.

³ H.J Simons, *African Women: Their Legal Status in South Africa*. Northwestern University Press: Evanston, 1968, J. Guy, 'Accommodation of Patriarchy' Unpublished paper. *Colloquium, Masculinities in Southern Africa*, University of Natal, Durban, 1997. Kristin Mann and Rishard Roberts, eds. *Law in Colonial Africa*, Portsmouth: Heineman, 1991.

⁴ Y.S Meer (ed.) *Documents of Indentured Labour: Natal, 1851-1917*. Durban: Institute for Black Research, 1980 and Surendra Bhana and Bridglal Pachai (eds.) *A Documentary History of Indian South Africans, 1860-1982*, David Phillip: Cape Town, 1984.

and Joy Brain's *Setting Down Roots* is a useful beginning to understanding the attempts of Indians to settle permanently in the Colony and Uma Dhupelia-Mesthrie's *From Canefields to Freedom* chronicles these attempts even further.⁵ Goolam Vahed has, in recent years, contributed much to the historical understanding of Indian cultural production in the region in the early twentieth century especially.⁶ New work by young historians such as Prinisha Badassy, who has undertaken studies of Indian court interpreters in Natal in the nineteenth and early twentieth centuries as well as a detailed analysis of the crimes of Indian domestic servants in Natal against their masters and mistresses, hold promise for the expansion of the historiography of Indians in Natal.⁷ There is however a dearth of detailed social and cultural histories of the early years of Indian residence in Natal and the social history of Indians in Natal is little understood. It is in the context of this limited historiography that this study is written.

⁵ Surendra Bhana & Joy Brain, *Setting Down Roots: Indian migrants in South Africa, 1860-1911*. Johannesburg: University of the Witwatersrand Press, 1990. Uma Dhupelia-Mesthrie, *From Cane Fields to Freedom: a Chronicle of Indian South African Life*. Cape Town: Kwela Books, 2000.

⁶ Goolam Vahed 'Muslim Marriages in South Africa: The Limitations and Legacy of the Indian Relief Act of 1914' in *Journal of Natal and Zulu History*, 21: 2003; Goolam Vahed 'Constructions of Community and Identity among Indians in Colonial Natal, 1860-1910: The Role of the Muharram Festival' in *Journal of African History* Volume 43, 1, 2002; Goolam Vahed "Giving till it hurts': Durban's Indians and the First World War' in *Journal of Natal and Zulu History*, 19, 2001; Goolam Vahed 'The Making of Indianess: Indian Politics in South Africa during the 1930s and 1940s' in *Journal of Natal and Zulu History*, 7, 1997. Goolam Vahed 'Uprooting, Rerooting: Culture, Religion, and Community among Indentured Muslim Migrants in Colonial Natal, 1860-1911' in *South African Historical Journal*, 45, November 2001.

⁷ See Prinisha Badassy, *Turbans and Top-Hats: Indian Interpreters in the Colony of Natal, 1880-1910*. Unpublished Honours dissertation, University of Natal, Durban, 2002 and Prinisha Badassy. "...and my blood became hot" *Crimes of Passion, Crimes of Reason: An Analysis of the Crimes Against Masters and Mistresses by their Indian Domestic Servants, Natal, 1880-1920*. Unpublished Masters Dissertation, University of KwaZulu-Natal, Howard College, 2005.

The foremost piece of historical writing on Indian women in Natal is Jo Beall's Marxist analysis of the status of women under the productive relations of indenture.⁸ Beall's argument highlights Indian women's 'ultra-exploitability' in relation to the 'exploitability' of indentured Indian men. The analysis produced here is one that builds on and departs from these arguments. In this study I attempt to conduct a historico-philosophical analysis of gender discourses in the Colony of Natal, which were influenced by nineteenth century gender discourses in metropolitan England, through a careful consideration of interactions amongst female and male indentured workers and the employers and officials that administered their presence in the Colony. In Beall's analysis women are particularly exploited and exploitable under the indentured labour system by virtue of being the 'weaker sex', vulnerable to overwork and physical abuse by male capitalists and Indian men. The history of women under indenture is, in Beall's argument, about the oppressiveness of emerging capitalism in relation to male and female workers whose labour was being extracted for pecuniary profit. The arguments that I present in this thesis do not completely repudiate this foundational text, but attempt to contextualize Indian women's experiences within the broader context of the creation of the indentured labour system and the chimerical hegemony of nineteenth century colonial legal discourse.

Apart from Beall's work, there appears to be little else written about gender under indenture in the Natal context. As this study was being completed, a new piece by Goolam Vahed appeared in an edited collection of essays on

⁸ Jo Beall, 'Women under Indentured Labour in Colonial Natal, 1860-1911' in Cheryl Walker (ed.) *Women and Gender in Southern Africa to 1945*. Cape Town: David Philip, 1990, pp.146-167.

masculinities in Africa.⁹ It is essentially an overview of Indian masculinity in Natal during the period of indenture in which Vahed begins to ask only some of the questions that I have attempted to raise in considerably greater detail here. Interestingly, what Vahed identifies, in his discussion of Indian family life, as the 'precarious position of men' appears to be induced by what I have attempted to address here as the *contestations offered by women*.¹⁰ Chapter two of this thesis, specifically, repudiates some of his assertions about Indian marriage customs in particular.¹¹

In some ways, this study is offered as a gendered history of law, challenging the ostensibly gender-neutral histories of legislative interventions during nineteenth century British colonialism. It places gender at the centre of a system of colonial government and regulation and, as such, seeks to open up a way to draw comparisons between the relative situations of Indian, African and white women in Natal and Indian women on the subcontinent. Such an analysis must take cognisance of the existing historiography of gender, not only in Southern Africa but also in Southeast Asia, in order to draw out the complexity of issues of women and gender in the region known only after 1910 as South Africa, and more specifically to the British Colony of Natal in the late nineteenth and early twentieth centuries.¹²

⁹ Goolam Vahed, 'Indentured Masculinity in Colonial Natal, 1860-1910', Robert Morrell & Lahoucine Ouzgane (eds) *African Masculinities: Men in Africa from the Late Nineteenth Century to the Present*. Pietermaritzburg: UKZN Press, 2005. 239-256.

¹⁰ G. Vahed, 'Indentured Masculinity in Colonial Natal'. 248.

¹¹ See chapter two, p. 79-80.

¹² Lata Mani. *Contentious Traditions: The Debate on Sati in Colonial India*. Berkeley and Los Angeles: University of California Press. 1998; Joanna Liddle and Rama Joshi, *Daughters of Independence: Gender, Caste and Class in India*. London: Zed Books, 1986; Tanika Sarkar. 'Rhetoric against Age of Consent: Resisting Colonial Reason and Death of a Child Wife', *Economic & Political Weekly*.

Cheryl Walker acknowledges the capacity of women in all Southern African contexts to act as agents in shaping their circumstances (within larger historically-specific social contexts of patriarchy and gender-oppression).¹³ The book *Women and Gender in Southern Africa to 1945* represents the foremost attempt to develop the historiography around interacting systems of indigenous and settler patriarchies in Southern Africa. While there are obvious limitations to reducing what Belinda Bozzoli has proposed as a 'patchwork quilt of patriarchies' to these two dominant patriarchal systems, it is instructive in suggesting paths of analysis into historical issues of women and gender in this region.¹⁴ Jeff Guy's seminal work on African production, reproduction and social relations in the region's precapitalist societies, as well as his article on the complex interactions of Zulu and colonial patriarchies in the context of the colonial administration of Africans in Natal the nineteenth century is similarly enlightening.¹⁵

September 4, 1993. Gayatri Chakravorty Spivak. 'Can the Subaltern Speak?' in Cary Nelson and Lawrence Grossberg, (eds.) *Marxism & The Interpretation of Culture*. London: Macmillan, 1988. pp. 271-313. Partha Chatterjee. *The Nation and It's Fragments: Colonial and Postcolonial Histories*. Princeton, New Jersey: Princeton University Press, 1993. Frederick Cooper and Ann Stoler. 'Tensions of Empire: Colonial Control & Visions of Rule', *American Ethnologist*, 16, 4, (1989); A.L Shadbolt, *Daughters of the British Empire: A Study of Five British Women in Colonial Natal*. Unpublished Masters thesis, University of Natal, Durban, 1998 and A.L Shadbolt, *Victorians in Natal: A Study of Colonial life in Natal constructed through the letters and diary of three generations of a British Settler Family*. Unpublished Honours Thesis, University of Natal, 1996.

¹³ Cheryl Walker 'Women and Gender in southern Africa to 1945: An overview' in Cheryl Walker (ed) *Women and Gender in Southern Africa to 1945*. Cape Town: David Philip, 1990, 29-32.

¹⁴ Belinda Bozzoli, 'Marxism, Feminism and South African Studies' in *Journal of Southern African Studies*, 9 (2): 139.

¹⁵ Jeff Guy, 'Accommodation of Patriarchy'. Also Jeff Guy 'Gender Oppression in Southern Africa's precapitalist societies' in Cheryl Walker (ed) *Women and Gender in Southern Africa to 1945*. Cape Town: David Philip, 1990.

An analysis that seeks to raise questions of gender in relation to Indian immigrants to South Africa necessarily encounters a third system of patriarchy; one that can be described as neither 'settler' nor 'indigenous'. The residency status of Indians was contested for the duration of indenture, but even at its most permanent, Indians could hardly be described as settlers. Through its detailed discussions on colonial interventions in the personal lives of Indians this thesis observes the eventual dominance of a settler patriarchy – but this argument is vastly complicated by the description and analysis of the administrative machinations of the colonial state in Natal in response to the struggles and resistances of Indians, and Indian women in particular.

This project takes as its pivot the manner in which the spaces of domestic and public life came to be differentiated in the understandings of those who administered the lives of immigrant workers in various colonies of the British Empire in the nineteenth century. The public-private distinction is one that cannot be avoided in dealing with issues of increasingly public contestation over the gendered division of labour and the often conflicted domestic space that would come to be designated as 'private' in the nineteenth century. The discursive and practical distinctions that the colonial state made between productive wage labour and domestic reproductive labour, along ideas of the difference between men's and women's work, hinged on this differentiation of public and private spaces. The further discussion of personal law and colonial legislative attempts is facilitated by an understanding of this emerging public-

private dichotomy and the increased intervention of the British colonial state in the realm of the 'private'.¹⁶

Female Indian immigrants to Natal came to be a thorn in the side of an administration badly in need of labour, and struggling to create and maintain the legitimacy of the relatively new post-slavery system of indentured labour. They were required by law to be brought over to Natal yet, crucially, they could not be obligated to provide wage labour in the same way that men had to fulfill contracts of indenture. Rather, they were brought to Natal between 1860 and 1911 and taken to other colonies under indenture to perform an ideological function in support of a new 'free' system of labour. In theory, their role was to fit the emerging nineteenth century metropolitan conception of womanhood. Social stability, by the creation and maintenance of Indian family life, was to be attained through the immigration of women. But women in Natal were not a neat ideological fit. This study attempts an analysis into why and how this might have been the case.

In trying to understand this, it is necessary to place the situation of indenture in Natal within the larger British imperial project.¹⁷ The rise of utilitarianism in the late eighteenth and early nineteenth centuries significantly influenced debates around law, subjecthood and citizenship, in British colonies.

¹⁶ Mani. *Contentious Traditions*, Liddle and Joshi. *Daughters of Independence*, Sarkar. 'Rhetoric against Age of Consent', Spivak. 'Can the Subaltern Speak?' Chatterjee. *The Nation and It's Fragments*, Sandra Freitag, *Collective Action & Community: Public Arenas & the Emergence of Communalism in North India*. New Delhi: Oxford University Press, 1990. Amir Ali, "Evolution of the Public Sphere in India". *Economic & Political Weekly*, June 30, 2001.

¹⁷ For an excellent overview of the beginnings of indenture in the British Empire see Madhavi Kale, *Fragments of Empire: Capital, Slavery & Indentured Labor in the British Caribbean*. Philadelphia: University of Pennsylvania Press, 1998.

British thinkers such as John Stuart Mill made arguments connecting British rule, citizenship and the subjection of women in England, India and the British Empire more broadly. Metropolitan contestation around marriage, property, women's work and the franchise all influenced the views of British colonial lawmakers in the eighteenth and nineteenth centuries, and an understanding of how the changing meanings attached to womanhood influenced legal debates around gender in the colonies is essential to an investigation of the kind that I have attempted to undertake here.

It is clear in the case of indentured Indian women in Natal, that the law was the primary ideological discourse through which these women were able to exercise some degree of control over their situation. As I have attempted to demonstrate it was the dearth of decisive and comprehensive legislation vis-à-vis Indian personal law which allowed them to negotiate space for themselves¹⁸ in a way that may not have been possible for both African women subject to Native Law in the Colony, and white settler women constrained by increasing concerns over race and sexuality in late nineteenth century Natal.¹⁹

Furthermore, it was only around the beginning of the twentieth century that Indian nationalist discourses that mobilized around the issue of indenture began to emerge prominently in the Colony. Anti-colonial nationalist struggles

¹⁸ The reference to the 'space' that I argue Indian women managed to make for themselves does not refer to any achievement of unqualified autonomy. Instead, it is meant to convey the idea that Indian women discovered small pockets of opportunity to negotiate their responses to broader discourses and resist them, however limited the effects might have been at the time. This argument is crucial to a thesis that sets out to discuss and analyze these moments of 'rupture' that Indian women managed to cause and the discursive and practical problems this posed for the colonial administration.

¹⁹ Jeremy Martens, 'Settler Homes, Manhood and 'Houseboys': An Analysis of Natal's Rape Scare of 1886' *Journal of Southern African Studies*, Vol. 28, No. 2, 2002. pp. 379-400. See also Prinisha Badassy. *Crimes of Passion, Crimes of Reason*.

had been waging on the Indian subcontinent when indentured women began to leave India in the middle of the nineteenth century. These struggles appropriated gender in their discourses and personal law became a highly public, politicized area of intervention and contestation. With regard to Indian personal law, Natal was a legal blank slate onto which the colonial administration had hoped to graft religious personal law as it had been codified in India. This intention did not consider the contingencies that would arise out of the reconstitution of social life by Indian immigrants to the Colony.

This discussion of the mechanisms and substance of the particular legal administration of Indians is attempted through what is at times a detailed empirical analysis employing colonial archival documentation, mainly documents generated by the Office of the Protector of Indian Immigrants. It is through the critical reading and presentation of these archival sources that this analysis exposes the particular features of the administration of indentured Indians in nineteenth century Natal. Crucially, however, it seeks to situate these particular features of British colonial administration within broader historical and legal debates of the late nineteenth and early twentieth centuries.

This thesis takes these broad imperial debates as the starting point of its analysis. As such, the opening chapter of the thesis attempts to contextualize indenture and emerging discourses of gender and labour in colonial Natal within wider developments in metropolitan Britain and the nineteenth century British Empire. This contextualization is essential to a study that attempts to make some comparative historical connections. While this thesis deals primarily with Indian women in Natal, the larger theoretical issues presented in this study are intended

to form argumentative strands that link the changing position of indentured women in Natal to African and settler women in the Colony as well as women in Europe, Indian women in India and indentured women in other colonies.

Specifically, Chapter One sets out to delineate the basis of the main arguments which inform the thesis as a whole by historicizing the legal underpinnings of indentured transport to Natal and the intended place of Indian women in the new labour scheme. It goes further to draw out early discourses around Indian women which arose in Natal in the first phase of indenture that lasted between 1860 and 1866 (when indenture was halted for economic reasons) and which were articulated by the Coolie Commission enquiry into indenture in 1872. The earliest articulation of concern over Indian women in Natal, and a predictive glimpse into the manner in which the colonial state would attempt to govern Indians, was through the creation of a register for Indian women arriving in Natal under indenture. The emphatic concern over the female quota, the registration of marriages, and the need to register Indian women separately from men (although in relation to them) was an early indication that the personal and social lives of Indians would be an area of rising concern in the administration of the presence of Indians in the Colony.

The Register of women was meant to record not just the personal particulars of Indian immigrant women such as their age, caste and village of origin in India, but more importantly for the purposes of the colonial administration, it recorded each woman's marital status. The Natal Government hoped that the Register would serve both a regulatory and moral purpose amongst Indians, keeping a reliable record of their place in the Colony in relation

to men. This attempt at registration positioned women as the site of moral control over Indians generally. It is precisely for this reason that the register turned out to be anything but reliable as the movements of Indian women between and amongst men and places of employment in Natal challenged the understandings that employers and colonial officials had of women's place in the indenture scheme and raised questions over their legal status. The implementation and subsequent abandonment of this early attempt to keep an official record of Indian women, and thereby regulate Indian social and moral life in the Colony, was illustrative of the Natal government's administrative attempts with regard to indentured Indians more generally.²⁰

The failure of this early attempt at administration resulted from the presumption that women, like men, would be constrained in their movements by the terms of their labour contracts. However, the surprising mobility of women was the stimulus to the first contestations around women's labour and the place of Indian women in the indenture scheme. Employers and officials had guessed correctly that indentured Indian women were intended to provide what Luise White has, in a different context, termed 'the comforts of home.'²¹ Their responsibility for the reproduction of Indian social life was never in any doubt as this was the reason that a Register of women (as opposed to one for men) had been created in the first place. The question of women's wage labour, however, was much-contested as Indian women refused contract obligations and had to be forced to perform indentured work. It was in the qualified acceptance of these

²⁰ Pietermaritzburg Archives Repository (PAR) Attorney General's Office (AGO) 1/8/15 I 228/96. Necessity to alter the law relating to the registration of marriages of Indian Immigrants

²¹ Luise White, *The Comforts of Home: Prostitution in Colonial Nairobi*. Chicago: University of Chicago Press, 1991.

roles that Indian women began to confound the understandings and disrupt the regulatory intentions of the colonial state.

A memorandum circulated by the Colonial Office to indenture colonies in 1870 offered a resolution to the contesting claims of employers, colonial officials and Indian men about the labour of Indian women.²² Imbued with the gender ideology of later nineteenth century England, it was explicit in its statement that women could not be forced to perform wage labour of any kind. The labour contracts that Indian women signed to come to Natal under conditions of indenture were thus deemed unenforceable by metropolitan discursive constructions of womanhood. This intervention by the Colonial Office reinforced the domestic space, and the relations that constituted it, as the sphere in which women were primarily implicated. This radical break in the conceptualization of women's work between slavery and indenture helped to focus the administration attempts of the Natal government on the area of the personal lives of Indians, especially the relations between men and women in the form of marriage.

In chapter two I attempt to concentrate these broader debates by picking up on personal law as the particular area of focus for the regulation of Indian immigrants in Natal. The Natal administration was determined to regulate Indians through the rule of law, although they determined that this could only be done in a limited capacity as long as the colonial state in Natal intended that Indians were eventually going to be returned to India. Efforts to create and

²² PAR AGO I/9/1 1A/1870. Granville, Downing Street to the Lieutenant Governor of Natal 15th February, 1870

maintain stability were envisioned through the creation, in 1872, of the Office of the Protector of Indian Immigrants and the concession of a juridical mandate to the holder of the office, enabling him to arbitrate in civil matters amongst Indians. As the chapter outlines in considerable detail, the Office of the Protector came to be imbued with the paternalism of the individual personalities responsible for the Office. Most notable amongst these was Louis Mason. The Protector's mandate often brought him into conflict with employers of Indian labour, the most notable such instance being the long-running tensions between Mason and the Reynolds' Brothers Sugar Estate in Umzinto on the South Coast of Natal.²³ Of the men who held the office of Protector of Indian Immigrants, including Major General B.P Lloyd, S. Graves and J. A Polkinghorne, Mason served for the longest period – more than two decades as Protector, as well as a short period as Acting Protector and three years as Assistant Protector to Graves. He had also previously acted in the capacity of Coolie Agent before the constitution of the Protector's office. It was during this earlier period that the Coolie Commission acknowledged that Indians in the Colony saw the Coolie Agent as their 'Protector', a term that was used to rename the Office in 1872.²⁴ The nomenclature came to personify Mason's attitude toward the Indians over whom he presided. So close was the link between Mason's personality and the Office that he held that Indians would refer to the Protector's Court as 'Mason's Court'. In one notable instance, an Indian worker threatened to take his abusive master to 'Mason's Court'.²⁵

²³ P. R. Warhurst, 'Obstructing the Protector', *Journal of Natal and Zulu History*, vol.7, 1984, pp.31-40.

²⁴ Meer, *Documents of Indentured Labour*. Coolie Commission Report 1872, Letter from H. Shepstone, p. 147.

²⁵ Meer, *Documents of Indentured Labour*. Coolie Commission Report 1872, Appendix of Evidence Taken, p. 130-146.

As I demonstrate through the use of civil cases amongst Indians in this chapter and the next as well as from the testimony of Indians contained in the Protector's files, British law in the Colony also offered avenues for women to assert themselves in the face of discourses that implicated them in 'traditional' practices by claiming their acquiescence to culture.²⁶ The relatively under-utilized Protector's files are a potentially rich source of information on the administration of Indians in Natal. This study, though not a social history, hopes to shed more light on the nature and potential uses of the unpublished primary documentary sources contained in the Protector's files especially. I also make extensive reference to the files of other offices of the colonial bureaucracy such as the Colonial Secretary's Office, as well as the published records of the Natal Colonial Government.

In analyzing the legal administration of Indians, it is perhaps also relevant to consider the change in legal and social context between India and Natal, in order to more fully interrogate gender under indenture. Local officials directly involved in the administration of Indians, such as the Protector, came into conflict with legislators in the Colony over questions of what constituted Indian 'custom' and 'tradition' in Natal. The policy of British non-intervention in personal law in India was premised on a pre-existing religious/cultural identity – and exemplified British ideas of an a priori tradition, one that was static and

²⁶ PAR Colonial Secretary's Office (CSO) 1/141 I452/1900. Marriages of Indian Immigrants contracted in India. PAR Indian Immigration Files (II) 1/141 I447/1899. Tulukanum No. 58021 vs Munsami No 58019, Nullity of marriage.

unchanging. This policy was, of course, to be inconsistently applied in the Indian context.²⁷

The British view of marriage as a Christian covenant between one man and one woman-enshrined in Hardwicke's Marriage Act of 1753-was not always shared by their colonial subjects.²⁸ The Act was not operable in the colonies although colonial officials and missionaries tried hard to promote the Western view of marriage as an exclusive, sanctified, heterosexual union in colonial settings, subjects of empire often embraced practices of marriage that were more convenient arrangements, although these were most often dubbed immoral by the British.²⁹ Practices of marriage amongst Indians in Natal would similarly defy categorization by colonial officials.

It was only by the beginning of the twentieth century that the instability of Indian personal life, with a dearth of rules regulating marriage, divorce and the like would force officials and employers, many of whom were themselves involved in the legal administration of the Colony to contemplate and effect comprehensive laws affecting marriage and divorce amongst Indians. The second chapter of this thesis thus reveals the immense legal and ideological difficulties that administrators confronted in contemplating legal intervention in the lives of Indians. The failed attempt to pass a Divorce Bill for Indians in 1883, and the subsequent Wragg Commission Inquiry into Indians in Natal between

²⁷ For more on the inconsistencies of the British colonial administration of 'tradition' in India, see for example, Liddle and Joshi, *Daughters of Independence*.

²⁸ David Lemmings 'Marriage and the Law in the 18th Century: Hardwicke's Marriage Act of 1873', *The Historical Journal*, Vol.39, No.2, (June 1996), 339-360.

²⁹ See Barbara Watson Andaya, 'From Temporary Wife to Prostitute: Sexuality and Economic Change in Early Modern Southeast Asia', *Journal of Women's History*, 9, 4 (1998), pp. 11-34.

1885-1887 are the lenses through which this study attempts to analyse these legal and practical difficulties. The space between the perception of the character of Indian 'custom' by colonial officials in Natal, and colonial officials on the Indian subcontinent, as well as the uncertainty about the immigration status of Indians, effectively halted decisive legislation around Indian personal law in Natal for the first four decades of indenture. It was in this legal fissure that Indian women took the opportunity to assert themselves, complicating the legal administrative mechanisms of the Natal colonial state. Natal's indentured Indians were re-making the 'customary' realm by violating what the colonial state saw as traditional Indian marriage taboos by entering into inter-caste and inter-religious marriages and raising a multiplicity of new ideas of what form 'tradition' and 'custom' would take amongst Natal's Indians.

By the 1880's the state had begun to consider these new practices to be the site of moral permissiveness. The ensuing effort to intervene in these practices resulted essentially in the Natal administration codifying aspects of Indian religious personal law to personify the late nineteenth century spirit of Christian moral discourse in marriage and related issues such as divorce, while simultaneously attempting to preserve aspects of 'tradition' that suited the state's administrative ends. The most telling example of such a course was the state's refusal to raise the age of consent for Indians to any higher than 13 years for girls and 16 years for boys. Ensuring early marriage amongst even Christian Indians was intended to ensure that the much-maligned single Indian woman was less and less a feature of the local Indian immigrant population. The final chapter of this study describes, and attempts to analyse, these eventual decisive legislative interventions of the Natal Government in the wake of the Wragg Commission. It

is here that I argue that such intervention came only after the initial reluctance of the state to intervene in Indian personal law made the administration of Indians, especially indentured Indians, impracticable. It outlines the basis for the creation of a new, modified body of customary law for Indians imbued with an implicitly Christian morality and demonstrates how this would prove to be inadequate in dealing with the new and complex social realities of Indian immigrants who were reconstituting and redefining family life and renegotiating the realm of the 'traditional' in nineteenth century Natal.

The closing decade of the nineteenth century with which this chapter deals, is characterised by the granting of Responsible Government to Natal and the resultant proliferation of racially discriminatory legislation against indentured, ex-indentured and Passenger Indians in the Colony. Despite the general oppressiveness of these new laws, the failure to force the majority of Indians out of the Colony by the early 1900s meant that the Government would have to deal decisively with the almost 100, 000 remaining Indians in Natal.³⁰ This final chapter culminates in a discussion of the final attempts of the colonial state to legislate for Indian personal law as it examines the promulgation of the 1907 Indian Marriages Act and the persisting tensions between British colonial law and Indian customary law enshrined in its provisions.

This Act was the official legal stance on Indian personal law for the best part of a century. Contestations over the realm of custom and tradition were, however, far from over as Indian nationalist discourse gained prominence within Natal in the early decades of the twentieth century. Nationalist agitation would

³⁰ Meer, *Documents of Indentured Labour*, Population Structure in Natal, p. 16.

contribute significantly to the ending of indentured transport to Natal in 1911. Crucially, it would also contribute to the increasing rigidity of Indian class and cultural understandings in this region. In the following decades the conservatism of Indian nationalist discourses would converge with earlier colonial discourses to produce increasingly higher class constructions of personal and family life amongst Indians, flattening out the sense of contestation and struggle that was, for half a century, the defining feature of Indian indenture and post-indenture life in Natal.

Chapter One

'To Amend the Law with Regard to Female Immigrants': Regulating the Presence of Indentured Indian Women in Natal, 1860 – 1872¹

Introduction

The creation of the indentured labour system was expected to be a watershed in the progression of British capitalism. With the end of the trans-Atlantic slave trade, British capitalists, especially those in the Caribbean and other sugar-producing colonies were in dire need of cheap labour. These labour needs of the British Empire would be met by the transportation of labourers from India on three to five year indenture contracts. Women were central to the creation of this new system of 'free' labour. The earliest indenture discourses in which women were implicated were indicative of the difficulties and contradictions that would dog this ostensibly 'free' system of labour until its end. The period covered by this chapter deals with the early discourses and contestations around the reason for women's presence in the indenture system; the numbers in which they were to be transported to the colonies that would adopt indenture; and, once they had arrived, around their domestic reproductive and paid labour.

¹ Pietermaritzburg Archives Repository [hereafter PAR], Attorney General's Office [hereafter AGO] I/9/1 1A/1870 From Granville, Downing Street to the Lieutenant Governor of Natal 15th February, 1870.

Indian women coming to Natal under indenture in the late nineteenth and early twentieth centuries would find themselves implicated in discourses that highlighted the immense ideological and practical difficulties associated with indenture more generally. As a system of labour, indenture would struggle to shrug off comparisons made by abolitionists and political reformers with slavery in the treatment of its workers. With the ending of the British trans-Atlantic slave trade and the still-vocal opposition to unfree labour in Britain, British administrative officials in all parts of the Empire and employers of indentured labour would have to, in the space of a few decades, accommodate a complete shift in the paradigm of labour. Workers were no longer property, but human beings in their own right, and this would entail reciprocal rights and obligations. Indentured Indian women would be central to this new predicament – disputes over their bodies, their domestic reproductive and waged labour, and their relationship to male workers would distil these broader debates on the indentured labour system in the context of later nineteenth century Natal.

In this chapter, I attempt to contextualize gender and the roles of women within different spaces of empire. The constructions of slave women and white women in England provide essential theoretical background for a discussion of the place of women in a new system of labour that was to be viewed in relation to both the antecedent system of slavery, as well as gender relations in the metropole. The discussion then proceeds to trace the origins of the indenture system and the specific concern over Indian indentured women in Natal. To this extent, it makes use of the proceedings of the Coolie Commission inquiry into the conditions of indentured labour in the Colony in 1872, thereby analyzing the earliest discourses in which indentured Indian women were implicated. The first official indication of concern over the presence of indentured women, as well as

demographic gender disparities and the resulting sexual mores amongst Indians in Natal can be found in the evidence and the findings of this Commission. The publication of the Commission's report in 1872 revealed the officially- perceived need for regulating personal relationships between Indian men and women. Later chapters will discuss the manner in which these discourses proliferated and the interventions that it gave rise to on the part of the Natal colonial state.

Gender and Labour under Slavery

Under the system of Atlantic slavery women were exploited both as blacks and as women; in the first instance for their supposed skills and physical strength in the production of agricultural crops, and in the second as they performed a physical reproductive function essential to the reproduction of slave labour on plantations.² Jacqueline Jones describes the overlapping of these two forms of social domination in 'the crudely opportunistic approach' of slave masters' treatment of slave women. She describes how the particular experiences of slave women testified to the convergence of the 'peculiar configuration of enforced labour and sexual relations under slavery.'³ It was here, she claims, that traditional white understandings of womanhood combined with capitalist considerations in the subjection of women.

White women's duties in the slave-holding South were conventionally 'womanly' – relegated to household management and other tasks 'fitting their sex'. Slave men fulfilled roles similar to southern farmers – mostly outdoor tasks

² Jacqueline Jones. *Labor of Love, Labor of Sorrow: Black Women, Work and the Family from Slavery to the Present*. New York: Vintage, 1985.

³ Jones. *Labor of Love, Labor of Sorrow*, 12.

including sowing, weeding and harvesting as well as plantation maintenance work. Men's work was thus clearly delineated from women's – specifically white women's – work. The treatment of slave women then revealed *both* their 'blackness' and their 'womanness'. In Jones' analysis slave owners were caught between

Notions of women *qua* "equal" black workers and women *qua* unequal reproducers; hence a slave owner just as "naturally" put his bondswomen to work chopping cotton as washing, ironing or cooking. Furthermore, in seeking to maximize the productivity of his entire labor force while reserving certain tasks for women exclusively, the master demonstrated how patriarchal and capitalist assumptions concerning women's work could reinforce each other.⁴

Slave women also performed domestic duties in their own homes – and scholars have made the argument that women's claiming the space to work at home during slavery was an attempt to sustain the family life that was most often denied or destroyed by the slave system.⁵ Jones further points out that in defiance of the planters' tendency to ignore gender differences in making assignments in the fields, slaves often adhered to a strict gendered division of labour within their own households. As a direct consequence, the family became a part of the fight against labour oppression during slavery as black women's domestic household and childcare duties deprived white masters of control of their labour in all its forms – as field workers, domestic servants and as reproducers of labour power.⁶

⁴ Jones. *Labor of Love, Labor of Sorrow*, 12.

⁵ See Jones. *Labor of Love, Labor of Sorrow* and Deborah White. *Aren't I a Woman? Female Slaves in the Plantation South*. New York: Norton, 1985.

⁶ Jones. *Labor of Love, Labor of Sorrow*, 12-13.

Gender and Women's Work in England

The transformations of women's work and motherhood in England especially from the mid-nineteenth century, particularly the gendered division of labour and the ideologies of female sexuality, respectability, motherhood and domesticity which arose from it, would crucially come to inform the standard against which the family and social lives of other labouring populations in the realm of British administration would be measured. If the British Empire was to acknowledge the humanity of the people that it put to labour in the service of imperial capitalism then imperial commitment to the freedom and humanity of labouring subjects of empire would, in the wake of the abolition of slavery, be measured by ideological standards of family and social life.

By the middle of the nineteenth century in England, the family and the home had come to epitomize the central area of women's responsibilities despite the fact that in some areas of waged employment, such as the Lancashire textile mills, women's wages were equal to those of men.⁷ Most accounts of women's lives in the nineteenth century convey a powerful ideology of domesticity.⁸ Even as women began to enter the waged labour force in greater numbers by the late nineteenth and early twentieth centuries, working class families were expected to

⁷ It is of course also true that women's wages did not necessarily reflect their *earnings*, as it was in the early 19th century that English women began their fight to keep control of their own wages (and their property more generally). See for example: Jane Lewis. 'Introduction: Reconstructing Women's Experience of Home and Family', *Labour & Love: Women's Experience of Home and Family 1850-1940*, Oxford: Basil Blackwell, 1986, 1-27.

⁸ See for example: Sara Delamont & Lorna Duffin. *Nineteenth Century Women: her cultural and physical world*, London: Croom Helm, 1978; Joan Burstyn. *Victorian Education and the Ideal of Womanhood*, London: Croom Helm, 1980; Joseph Banks. *Prosperity & Parenthood: A Study of Family Planning among the Victorian Middle Classes*, Routledge & Kegan Paul, 1954; Deborah Gorham. *The Victorian Girl & the Feminine Ideal*, London: Croom Helm, 1982.

adhere to the bourgeois family model of breadwinning husband and domestically-inclined wife.⁹ The identification of married middle-class women with home and family persisted into the early twentieth century.¹⁰ As Anna Davin illustrates in the context of nineteenth century British imperial domination, 'women's place' was inextricably bound with motherhood, domesticity and the reproduction of families.¹¹

New forms of labour, such as indentured labour, emerged in the wake of slavery and were closely bound to ideas of 'proper' sex and gender relations. Acknowledging the mutual humanity of 'free' workers meant acknowledging their sexual, social and familial rights, measured against the 'common' standard of metropolitan gender relations. As the Attorney General of Natal, Henry Bale, told the Colonial Secretary in a debate over the registration of Indian marriages in 1902, 'these people [could] not be treated like a herd of cattle or like the convicts of old who were compelled to mate'.¹² The implied transition from a culture of extreme labour and sexual exploitation (which was of course 'hidden' or at least not publicly acknowledged) under slavery to a labour regime that was more 'humane' was far more fraught with difficulties and contradictions than the categories of 'unfree' and 'free' labour adequately describe.

⁹ Jane Lewis. *The Politics of Motherhood: Child and Maternal Welfare in England 1900-1939*. London: Croom Helm, 1980. Joseph Banks. *Prosperity and Parenthood*, Deborah Gorham. *The Victorian Girl & the Feminine Ideal*.

⁹ Jane Lewis. *The Politics of Motherhood*; Anna Davin. 'Imperialism and Motherhood', *History Workshop Journal*, 5, 1978, 9-65; Peter Stearns. 'Working Class Women in Britain, 1890-1914', in Martha Vicinus (ed.) *Suffer and be Still*. Bloomington: Indiana University Press, 1973, 100-120.

¹⁰ Jane Lewis. 'Reconstructing Women's Experience'.

¹¹ Davin. 'Imperialism and Motherhood.'

¹² PAR Indian Immigration Files [hereafter II] 1/98 I 1319/1900. Magistrate Durban, Marriage under law No 25, 1891.

Women and the Creation of the Indenture System

Capitalists who had owned and relied on slave labour and who became involved in the creation of the indentured labour system in the late 1830s personified these massive contradictions both in rhetoric and practice. Men such as John Gladstone, British capitalist and father of Liberal Prime Minister William Gladstone, envisioned a labour force of men and women, both of whom would work on the estates and plantations that recruited indentured labour. In March 1837, Gladstone requested the recruitment of one hundred and fifty indentured labourers on behalf of himself and a few business associates from the Calcutta shipping agency Gillianders, Arbuthnot & Co. He asked that if women were amenable to field work then as many as two women for every three men, or even 'an equal proportion', should be recruited. He was certain, however, that if women did not agree to work 'then the proportion sent to the Isle of France (Mauritius), of one female to nine or ten men, for cooking or washing [would be] enough.'¹³

Many of the arguments against the institution of slavery had condemned the effects that the system of unfree labour had on family life. Anti-slavery campaigns were often family-centric, highlighting the sanctity of the family and the moral and physical violence that slavery did to family units and to colonial culture more generally.¹⁴ Criticisms included the break-up of marriages and

¹³ Madhavi Kale. *Fragments of Empire: Capital, Slavery, and Indian Indentured Labor Migration in the British Caribbean*. Philadelphia: University of Pennsylvania Press, 1998, 157.

¹⁴ William Green. 'Emancipation to Indenture: A Question of Imperial Morality', *The Journal of British Studies*, 22: 2, Spring 1983, 98-121.

households in many African societies from which slaves were taken; the high male to female ratio on plantations which resulted in short-term unions; 'independent women' (a term freighted with meaning at the time, but not necessarily one that might be used today); and children born out of wedlock and without the support and authority of fathers.¹⁵ Abolitionists also pointed to the absence of protection against the breaking up of slave families by slave-sales and as Donald Matthews points out, slavery was, in the arguments of most abolitionists, a 'legalized system of licentiousness'.¹⁶ John Gladstone proposed to the British Parliament that both male and female indentured labourers be imported from Bengal in an attempt at overturning the unequal sex-ratio that had been a feature of Atlantic slavery.¹⁷ Implicit in his argument was that indenture could be distinguished from slavery, and attain some measure of moral legitimacy, if labourers were accompanied by their wives and families and could be seen to secure some measure of social stability.

The pre-condition of the transport of men and women under the indentured labour system was unable to prevent the ensuing disparity in the sex-ratio on estates in all of the colonies where indentured labour was contracted, and placed increasing pressure on employers of labour and colonial administrators in these colonies to actively recruit women. Early on in the indenture system, the issue of the sex-ratio – and the shortage of women more generally – was a crucial argument in the politics of anti-slavery groups and

¹⁵ John Stuart MacDonald and Leatrice D. MacDonald. 'Transformation of African and Indian Family Traditions in the Southern Caribbean' *Comparative Studies in Society and History*, 15: 2, March, 1973, 171-198.

¹⁶ Donald Matthews. 'Abolitionists on Slavery: The Critique behind the Social Movement', *The Journal of Southern History*, 33: 2, May, 1967, 163-182.

¹⁷ Kale. *Fragments of Empire*, 14-37.

Indian nationalists.¹⁸ Both groups argued that the continuation of a slavery-style demographic arrangement meant that the supposed recognition of the humanity of former slaves, and now indentured workers by a system of paid labour that no longer regarded them as property but as people, was a compromised principle. As long as labourers were constrained in their social reproduction (especially given that any offspring produced by women under indenture would not necessarily contribute positively to the labour supply as was the case in most slave contexts) they could not be deemed to be any freer than they might have been under slavery. The continuing legitimacy of this new 'free' labour system therefore depended largely on increasing numbers of women being indentured.

The historiography of indenture in Natal still has some considerable way to go in order to provide a fuller analysis of the familial and social reconstruction amongst indentured and ex-indentured Indian immigrants in the Colony in the nineteenth and earlier twentieth centuries. Jo Beall has notably attempted to study gender under indenture through the lens of a Marxist social analysis¹⁹, but in the significant absence of empirically detailed social histories of indentured Indians in Natal, one of the tasks that this study takes on is that of analyzing and expanding on some of the more general arguments of people such as Hugh Tinker and Marina Carter, both of whom debate the extent to which moral legitimacy may actually have been achieved by the indenture system in the broader context of the British Empire.²⁰ The broader nineteenth century imperial

¹⁸ Matthews. 'Abolitionists on Slavery'.

¹⁹ Jo Beall. 'Women under indentured labour in colonial Natal, 1860-1911' in Cherryl Walker (ed.) *Women and Gender in Southern Africa to 1945*. Cape Town: David Philip, 1990.

²⁰ Hugh Tinker. *A New System of Slavery: The Export of Indian Labour Overseas, 1830-1920*. London: Oxford University Press, 1974 and Marina Carter. *Voices from Indenture: Experiences of Indian Migrants in the British Empire*. London: Leicester University Press, 1996.

debates presented here thus preface the consideration of these questions specifically in the Natal context and inform the arguments that I attempt to tackle in the broader thesis.

Early Laws of Indenture

Indenture in colonial Natal was legislated for in 1859 as a new system of labour, answering the call of nascent capitalist interests in the Colony. Law No. 13 of 1859 was the first law passed regulating the introduction of Indian indentured workers into Natal.²¹ Law No. 14 followed immediately afterward and this law (which would come to be known, among officials in the Colony, as the "Indian Act") set out, in some detail, the legal aspects of dealing with large numbers of human beings whose labour was to be contracted while they were at the same time - and unlike under slavery - regarded as rights-bearing human beings.²² The third section of the law sought to depart from older forms of bonded servitude in that it ordered that under no conditions whatsoever were families to be separated. In the words of the Act, no 'bond and wife, nor any parent and child' could be allotted to different employers.²³

Indians arriving in Natal by ship from India were kept at the Immigration Depot at the Point in Durban before being assigned to employers. The problem that arose from the provision that families would be assigned together was that men who arrived with their wife, or wives, and children were often held for

²¹ Y.S Meer, *Documents of Indentured Labour, Natal 1851-1917*. Durban: Institute for Black Research, 1981, 39-40.

²² Meer, *Documents of Indentured Labour*, 41-46.

²³ Meer, *Documents of Indentured Labour*, 42.

months, as employers were less keen to employ men with families than single men, or men with a single wife. For instance, the very first families that arrived aboard the *Truro* in 1860 were not assigned for over three months due to the difficulty of finding employers for whole families.²⁴ Initially, immigration agents had charged employers of indentured labourers a separate rate of seven pounds each for all adults – including women. This fee was used to pay off the public debt incurred to meet the costs of recruitment and shipping of workers. Since potential employers preferred employing male workers rather than women at this rate, this had immediate implications for the supply of females and the maintenance of a sex quota as set by the Indian government. If the cost of women was deterring employers from accepting them, as employers in the Colony clearly valued the labour of men more highly, then the quota would become no more than a sham.

Thus, the calculation of rates was changed four ships later, when the 'price' of females was reduced.²⁵ Crucially, employers in Natal would not pay the colonial administration for female labourers in the same way that they did for men. The cost of employing women (besides rations and wages) was, according to the Protector of Indian Immigrants, included in the cost of employing men in the Colony.²⁶ As the Protector, Louis Mason, later wrote to the Colonial

²⁴ Meer. *Documents of Indentured Labour*, 6.

²⁵ Meer. *Documents of Indentured Labour*, 7.

²⁶ The Office of the Protector of Indian Immigrants was constituted out of the office of the Coolie Agent upon the recommendations of the Coolie Commission in 1874. The establishment of the Office of the Protector and the terms of his mandate are discussed in greater detail in chapter two.

Secretary: 'The cost of the introduction of females is included in that of the males. Employers therefore pay nothing whatever directly for these women.'²⁷

Law 15 of 1859 required that the Indian Emigration Agents forward the names of all male indentured emigrants sent at the request of employers in Natal. Only men were envisioned and requisitioned as *workers*. Many employers in Natal expected that women accompanying men, as part of the set quota, could have their labour exploited in a similar way although it would become clearer later on that this was not the primary purpose of their being shipped out to Natal. These first three laws anticipated a quota of women that was still under negotiation between the Natal and Indian administrations.

Many contradictions attended the issue of sex quotas: on the one hand, unattached males in colonial territories outside of India posed a number of difficulties, but the Indian Government could also not be seen as sanctioning the transfer of especially single Indian women to 'alien lands.'²⁸ When 'free' from parental or spousal authority, Indian women immigrants were demonized in India as the agents of corruption. *Conjugally* disposed, however, Indian women were pursued as 'the most effective barriers to moral corruption, and carriers of the seeds of morality, stability and culture.'²⁹ This view was, of course, not only applicable to Indian women in the nineteenth century. Historians writing about eighteenth and nineteenth century Britain and the imperial world have discussed, at length, similar discourses implicating single white women in

²⁷ PAR II 1/58 I1256/90 Protector of Immigrants, Mason to Col Sec, 18/11/1890.

²⁸ Rhoda Reddock. *Women, Labour and Politics in Trinidad and Tobago: A History*, London: Zed Books, 1994, 28.

²⁹ Reddock. *Women, Labour and Politics*, 28.

Britain and settler women in the colonies. In their discussions of gender and sexuality in empire scholars such as Ann Laura Stoler, Margaret Strobel and others have illustrated that the designated role of white women in imperialism was limited to re-creating British domestic life in the colonies; and that settler and indigenous sexualities played a significant part in delineating the position of women as subordinate to men in colonial endeavours.³⁰

The legal sex ratios established by the Indian government for indentured transport to Natal were seldom realized nor could they arguably have been strictly enforced.³¹ The issue of the sex quota would remain important throughout the period of indenture in all of the participating colonies. A highly-skewed sex ratio was predicated on the assumption that men made better plantation labourers than women. The underlying presumption of course – something that would become clearer to metropolitan and Indian observers the longer the indenture system endured – was that women were brought to Natal less for the purposes of procuring labour for the Colony than for the sexual 'rights' of men.

³⁰ Ann Stoler. *Carnal Knowledge and Imperial Power: Race and the Intimate in Colonial Rule*. Berkeley: University of California Press, 2002; Margaret Strobel. 'Gender, Race, and Empire in Nineteenth- and Twentieth-Century Africa and Asia,' in Renate Bridenthal, Susan Mosher Stuard, and Merry E. Wiesner (eds.) *Becoming Visible: Women in European History*. New York: Houghton Mifflin Company, 1998; Phillipa Levine. 'Introduction: Why Gender and Empire?' in Phillipa Levine (ed.) *Gender and Empire*, Oxford: Oxford University Press, 2004. See also Ann Shadbolt. *Daughters of the British Empire: A Study of Five British Women in Colonial Natal*. Unpublished Masters Thesis, University of Natal, Durban, 1998 and Ann Shadbolt. *Victorians in Natal: A Study of Colonial life in Natal constructed through the letters and diary of three generations of a British Settler Family*, Unpublished Honours dissertation, University of Natal, Durban, 1996.

³¹ The sex quota was a feature of immigration to all colonies under the indenture system and quotas for individual colonies were determined by the Government of India. See Meer, *Documents of Indentured Labour*, Document 21, 51.

Ratios and Recruitment: A Perpetual Shortage of Women

In Natal, debates over the importation of women simmered for the duration of the fifty-one years that indentured immigration existed in the colony. The Indian Government had set sex quotas for individual colonies to which indentured labour was to be sent and the quota decided for Natal was four women for every ten men shipped to the Colony in the first year of immigration, rising by just over three percent a year to fifty percent of women by 1863. It was thus intended that as early as 1863 half of all indentured Indians arriving in Natal would be women.³²

As the indenture system came into being, however, these ideals were never quite realized. Indian men and women were shipped in disproportionate numbers and the immigration of women became a sticking point in the making of, and discussions around, the indenture system in Natal in the nineteenth century. The premise of not breaking workers' kindred ties was undermined at once, given the relative reluctance of Indian men, especially on grounds of caste, to immigrate with their wives.³³ Those who did were in the minority. The overwhelming majority of female workers recruited in India were single women.³⁴ As I discuss later on in this thesis, the 'moral' dilemma seen to be

³² Meer, *Documents of Indentured Labour*. Document, 21: 'Proceedings of the Madras Government', 51.

³³ Pietermaritzburg Archives Repository [PAR] Colonial Secretary's Office [CSO] 1760 1904/3996. See also Jo Beall. 'Women under Indenture in Natal' in Surendra Bhana (ed.), *Essays on Indentured Indians in Natal*. Leeds: Peepal Tree Press, 1991.

³⁴ Nafisa Essop Sheik, 'A Beastly Nuisance': *An Exploratory Paper on Attempts to Control Venereal Disease among Indian Immigrants in Natal 1874-1891*, Unpublished Honours Essay, University of Natal, Durban, 2003. See also Reports of the Coolie Commission (1872) and Indian Immigrant

posed by single women and attempts by recruiters and emigration and immigration agents to render indentured immigrant women 'married' to men aboard ship led to a number of difficulties over the issue of Indian marriages in the colony.

When John Gladstone proposed that at least half the Bengali men he imported to British Guiana be married and that their wives 'be disposed' to work in the fields, he could not have anticipated the problems this would pose to recruiting and emigration authorities or the complications that female labour would lend to the tenuous legitimacy of indenture as a new, 'free' labour system. The female to male ratio set by the Indian Government would turn out to be impracticable for various reasons. Emigration agents in Calcutta and Madras, the two main ports of embarkation to Natal, constantly complained to the Indian Immigration Trust Board of Natal (established in 1874) of the difficulty of recruiting women in fulfillment of the sex-ratio.³⁵ It was most often the case that ships sailed from Indian ports without the required numbers of women, with the understanding that the shortfall would have to be made up in subsequent shipments.³⁶

Emigration recruiters in Madras and Calcutta complained at length about these difficulties, including the fact that, given women's role in field labour in

(Wragg) Commission (1887) in Meer, *Documents of Indentured Labour*. 118-169 and 246-633 respectively.

³⁵ Government Notice No. 28, 1874 in Meer, *Documents of Indentured Labour*, 176.

³⁶ PAR CSO 1760 1904/3996. Secretary I.I.T Board, Durban 6/5/04: Suggests that the restriction as regards women accompanying male Adult Emigrants for India might be modified.

India and the caste of women who were most ready to emigrate, it was only during periods of famine that a supply of 'reliable' female labour could be procured for Natal.³⁷ More often than not, as the Deputy Protector Charles Manning pointed out in his evidence to the Wragg Commission in 1885/6, the proportion had to be made up by 'touting the cities just before the ship leaves India'.³⁸ As a result there were frequent complaints about the 'character' of single women recruited for indenture. Colonial officials and employers at the 1872 Coolie Commission hearings observed that within a short time after the arrival of the first indentured workers, a general concern arose in the colony about the shortage of Indian women, especially married or marriageable women, and the 'immorality' that was believed to result from this.

Sex Quotas: 'The necessity for introducing more women' ³⁹

The advent of the 1872 Coolie Commission helped to officially identify and articulate the problems associated with indentured women, and its recommendations cast indentured and ex-indentured ('free') Indian women in particular roles. The Commission's report reflected colonial officials' and employers' visions of the role and place of women in the indentured labour scheme and the centrality of women to the continuing legitimacy of that scheme. By 1872 there were just over 6 000 Indians in the Colony, less than a third of

³⁷ PAR CSO 1760 1904/3996. Correspondence among the Colonial Office, Natal Government, Indian Government and Government Emigration Agents for Natal, 1904.

³⁸ Meer. *Documents of Indentured Labour*. Indian Immigrants Commission Evidence - Examination of Mr. C. Manning, 340.

³⁹ Meer. *Documents of Indentured Labour*. Report of the Coolie Commission, Document 42, 118-169.

whom were women.⁴⁰ With the halting of indenture in 1866, all Indians in the Colony by 1872 were 'free' of their five-year indenture contracts and could contract their services under the Master's and Servants laws. According to the Coolie Commission, there remained a solitary Indian under an indenture contract in Natal.⁴¹ As the resumption of indenture was being contemplated, however, much of the evidence that came before the Coolie Commission related to the situation of indenture as it existed in the 1860s. By the mid-1880s, however, the numbers of Indians in the Colony had swelled to more than 20 000, the majority of whom were under indenture.

In India, Indian indentured migration was popularly cast as sexually corrupting for women (especially when considering the highly-skewed ratios of places like Mauritius where only 205 women were sent with more than 19 000 men in the early years of the scheme in that colony).⁴² As indenture continued into the twentieth century, Indian nationalists foregrounded this argument in calling for the end of indentured labour transportation. In any event, the end of slavery had marked the beginning of an imperial project for 'social and moral uplift' and women were central to this drama. As Rhoda Reddock has outlined, the recruitment of women, especially the 'right type of women' was a major concern. Potential employers were interested only in 'able-bodied' (implicitly male) workers, and women were seen as financial liabilities due to the very

⁴⁰ Meer. *Documents of Indentured Labour*. Population structure in Natal, 16, and Coolie Commission, 118-169.

⁴¹ Meer. *Documents of Indentured Labour*. Report of the Coolie Commission, Document 42, 118-169.

⁴² Kale. *Fragments of Empire*, 162.

function for which they were sought to legitimate this new system of 'free' labour – the bearing and rearing of children and the reproduction of families.⁴³

The Coolie Commission was constituted in 1872 during a break in indentured transport due to the straightened economic circumstances of much of Natal in the 1860s.⁴⁴ Natal was emerging from economic depression in the early 1870s and employers in the Colony – especially those in the agricultural sector – were beginning to look forward to a renewed supply of indentured labour, especially as African labour was being drawn to the diamond fields because of higher wages and the fact that the work was more socially acceptable than that of agricultural labour.⁴⁵ In order to obtain the sanction of the Indian government for the resumption of indenture, the Natal government tasked the Commission with investigating allegations about the poor treatment of workers under which indenture in Natal which had been made by workers returning to India in 1870.

Amongst other things, evidence given before the Commission reflected an increasing concern with the problems associated with the unequal sex ratio amongst Indians in the Colony and indicated that employers and officials were of the opinion that an increase in the number of women would lend greater stability to Indians' attempts at social formation.⁴⁶ Many bemoaned the 'immorality' that stemmed from the minimum quota requirement as well as the

⁴³ Reddock. *Women, Labour & Politics*.

⁴⁴ The broader context of the depression in Natal – and in Pietermaritzburg more specifically – in the 1860s and its impact on economic and social life is dealt with in much detail in Julie Parle. *The Impact of the Depression upon Pietermaritzburg during the 1860s*. Unpublished Masters thesis, University of Natal, Pietermaritzburg, 1988.

⁴⁵ Parle. *The Impact of the Depression*, 196.

⁴⁶ Meer. *Documents of Indentured Labour*. Report of the Coolie Commission, Document 42, 118-169.

importation of single women.⁴⁷ Claims were rife that single women prostituted themselves among estates, although the evidence appears to indicate a consensus on the part of witnesses that the situation could hardly be avoided given the gender disparities of the time. While scholars such as Rhoda Reddock have argued that a low number of women in relation to men might have put these women in a position of strength and able to bargain for better conditions, the reality was very different with abuse, disease and social stigma characterizing the condition of the small number of Indian women under indenture in Natal in the 1860s and 1870s.⁴⁸ The report of the Commission aptly reflected this preoccupation with the quota as the cause – and once raised to an ‘adequate’ proportion – the *solution* to the moral ills (described as sexual promiscuity amongst women and suicide, murder and assault on the part of men) suffered by Indians.

The Commission drew the attention of the administration to the ‘great importance of introducing a larger proportion of females with any fresh importations of natives from India’. Employers, colonial officials and ‘free’ Indians who testified before the Commission expressed a general concern in the Colony about the shortage of especially married or marriageable women, and the ‘immorality’ that was believed to result from this. The Commission took up the matter in its report and impressed upon the administration of the colony the need for a greater proportion of women with subsequent shipments of workers

⁴⁷ Meer. *Documents of Indentured Labour*. Report of the Coolie Commission, Appendix of Evidence taken, 130-146.

⁴⁸ Reddock. *Women, Labour & Politics* and Patricia Mohammed ‘Writing Gender into History: The Negotiation of Gender Relations among Indian Men and Women in Post-Indenture Trinidad Society, 1917-1947’ in Verene Shepherd, Bridget Brereton and Barbara (eds.) *Engendering History: Caribbean Women in Historical Perspective*, 20-47.

from India. While the Commissioners acknowledged 'the difficulties with which the subject is surrounded', they argued that 'the evils arising out of the scarcity of women [is] so serious (including prostitution, assault and murder) and the complaint so prominent' that it required urgent government attention.⁴⁹ As I illustrate in greater detail later on in this thesis, this favourable attitude to the introduction of more Indian women would shift after the first few decades of indenture as employers and colonial officials encountered increasing difficulties in administering the presence of women in the Colony.

Moreover, legislation, labour contracts and other legal instruments regulating Indian indentured immigrants were devised solely with the object of dealing with male labourers. The existing historiography on indenture in Natal has not fully appreciated the significance of this, with the result that considerations of gender have been subsumed into broad, general narratives of labour.⁵⁰ The rhetoric of women and the legitimacy of the new system of 'free' labour was just that. The colonial administration in the various colonies never did anticipate, nor did they make legal provision for, the reality of Indian women's presence in the colonies. While the argument for the presence of women in the system would necessarily have entailed some consideration of a social function that women were expected to perform, it is not clear that the men who had conceived of the indenture system had conceptualized the more complicated social function of women beyond sex and house-work. John Scoble, Secretary of the Anti-Slavery Society of Great Britain, and a journalist and writer

⁴⁹ Meer. *Documents of Indentured Labour*. Report of the Coolie Commission, Document 42, 118-169.

⁵⁰ See in particular Jo Beall. 'Women under Indenture in Natal' in Surendra Bhana (ed.), *Essays on Indentured Indians in Natal*. Leeds: Peepal Tree Press, 1991 and Jo Beall. 'Women under indentured labour in colonial Natal, 1860-1911' in Cherryl Walker (ed) *Women and Gender in Southern Africa to 1945*. Cape Town: David Philip, 1990.

in the mid-1800s, made the point that a clearer interest in the social and familial life of indentured workers would have entailed a commitment on the part of the British colonial administration to ideas of marriage and family support (ostensibly in the form of legal regulations) from the outset.⁵¹

Writers such as Scoble wrote profusely about the roles of men and women in their critiques of the indentured labour system.⁵² Whatever the limits of his argument, Scoble iterated that the indentured system wanted labourers and not immigrants, and that a few women to a hundred men would often suffice in the minds of those who set up the scheme, as women were necessary mainly for domestic matters such as cooking and cleaning. Scoble went further to contend that in the interests of 'providing for the culture of the colonies out of the natural increase of the labouring population,' the colonies would have prized marriage amongst other domestic comforts. Marriage was similarly acknowledged by imperial officials as a commitment to the familial and social reproduction of indentured workers.⁵³ While the general desirability of marriage amongst Indians was expressed by colonists in Natal, actually attempting to deal legally and administratively with marriage as a matter of Indian 'custom' would, as I demonstrate in subsequent chapters, prove to be immensely difficult.

For people such as Scoble, women did not feature as labourers in their own right, but as women (wives in Scoble's view) who would attend the myriad needs of labouring men, thus reproducing labour on a daily basis, and as

⁵¹ Kale. *Fragments of Empire*, 161-164.

⁵² Cited in Kale. *Fragments of Empire*, 161-164.

⁵³ Meer, *Documents of Indentured Labour*, 592-610.

mothers who attend to producing and raising future generations of labouring men and wives. For planters and other employers of indentured labour like John Gladstone, women were largely instrumental to procuring a new system of cheap labour that could only be legitimated through their presence. Here too, they were not seen as a source of labour in their own right, but as accompaniments to men whose needs they would tend – whether married or not. As Scoble pointed out, the reproduction of successive labouring generations was not high on the agenda of labour contractors as a constant supply of workers (or a system that was more a reflection of constant *migrant* labour) was preferred to a temporary period of emigration (and reproduction of a labour force). Thus, in the discourses of those who sought to procure labour after the end of slavery, and those who were critical of the similarities of indenture and slavery, women still figured only incidentally in the plans of employers and recruiters, and not as individual subjects or historical agents.

In the case of Natal, two laws were passed in preparation for the arrival of newly indentured workers. Both dealt with the manner in which contracts would be administered and the practical logistical aspects of the transport of indentured workers to the Colony. Neither was particularly interested in aspects of the personal or family lives of workers. Scholars such as Tinker have hinted at the fact that it was here that the contradictions of indenture as a system of 'free' labour begin to emerge.⁵⁴ Importantly, it was also here, in a space in which the legal regulation of and intervention in the lives of Indian women was – for a long time – minimal, that Indian women could find opportunities to negotiate better emotional and economic resources for themselves.

⁵⁴ See Tinker, *A New System of Slavery* and Carter, *Voices from Indenture*.

Registering Women: Vagrants, Prostitutes and Immoral Women

Towards the end of the initial contract periods of the first batches of indentured workers in the mid-1860s, indigent, vagrant Indian women were to become a growing problem for the Colonial administration and the Coolie Agent in particular. With the expiration of indenture contracts and the reluctance of employers to re-indenture women who were not compelled to work, single women who became 'free' after indenture often found themselves in desperate straits. While they were, in theory, free to contract their labour under the Masters and Servants laws of the Colony, it was more often than not the case that these women found it impossible to secure employment for themselves. In a few instances Indian women were able to secure work as domestic servants, but by and large this was a male occupation in late nineteenth century Natal.⁵⁵

The result was that despite the expressed shortage of Indian women in Natal, Indian women out of indenture contracts and outside of the control of male authority (single women) began to be perceived in official discourse as posing a threat to the established social and 'moral' order of the colony. The 1860s saw a number of attempts by the Coolie Agent to send destitute women to the Coolie Barracks (later to be known as the Immigration Depot) to await

⁵⁵ See Prinisha Badassy. "...and my blood became hot" *Crimes of Passion, Crimes of Reason: An Analysis of the Crimes Against Masters and Mistresses by their Indian Domestic Servants, Natal, 1880-1920*. Unpublished Masters Dissertation, University of KwaZulu-Natal, Howard College, 2005. See also Jeremy Martens, *So Destructive of Domestic Security and Comfort': Settler Domesticity, Race and the Regulation of African Behaviour in the Colony of Natal, 1843-1893*, PhD Thesis, Queens University, Kingston, 2001.

deportation to India.⁵⁶ The main problem was that the first labourers would only be returned to India in 1870, ten years after they had arrived in the Colony and the period after which they were entitled to free return passage to India. In accordance with the agreement entered into with the Indian Government, the women could not be returned to India before this time and those who were 'committed' to the Barracks were at the goodwill of the Natal Government. Attempts to return women were thus short-lived as the costs were high and it defeated the ends for which women were being brought to the Colony in the first instance. Given the existing shortage of women in the Colony, officials would suggest that these women be sent to estates where there were men 'who would have them'.⁵⁷

By 1872, the Coolie Commission would hear mounting evidence of 'unattached' women or 'concubines' being responsible for widespread 'immorality' amongst Indians. The Report contained a section devoted to the question of women, with one of the two main provisions laid out being the need to register and regulate women separately from men. It recommended that a 'careful register' be made of Indian women in the Colony, distinguishing married women from 'concubines' – a provision that would, in practice, be difficult to carry out. This was effected in law with the passage of Section 13 of Law 12 of 1872 which required the Protector to prepare and file a register of all Indian women then in Natal, entering in it whether the women were married, single or living in 'concubinage'. While a record was kept of all the women

⁵⁶ PAR II 3/2 I18/1871. Acting Coolie Agent to Colonial Secretary, January 19, 1871.

⁵⁷ PAR I198/1863. Tatham to Arthur Walker Esqr. Pmb, 11 March 1863

arriving in the colony under indenture, administrators would express the difficulties of keeping track of their movements once they were in the Colony, and of determining whether or not they were married or in concubinage.⁵⁸ As I illustrate later on in this thesis, the difficulty of registering women's status was compounded by the near impossibility of defining and registering Indian marriages for the better part of the first thirty years of indenture. It is perhaps worth mentioning also, that the official desire to record and regulate the presence of women in the colony at this time was particular to Indian indentured women. Similar concerns would arise around African women by the early twentieth century as they began entering cities in greater numbers in search of work.⁵⁹

Women, especially single women, were theoretically constrained in their movements by the need for passes in moving between estates. However, the prevailing sexual double standard and the inherent understanding that women existed in the scheme in order to service the sexual needs of men meant that the movement of these women, while keenly observed, and complained of, by employers, officials and Indian men, was permitted with relative ease.⁶⁰ Many of the women who arrived single and were assigned to estates with men later left these men to whom they claimed they were not, in fact, married. The result was a number of women (officials appeared to be unable to count them all reliably, apart from expressing that there were 'many' of them) who were single and mobile, in that they moved amongst estates (and amongst men), in search of

⁵⁸ Meer, *Documents of Indentured Labour*, Wragg Commission Report, 246-633. Minutes of Evidence.

⁵⁹ Karen Jochelson, *The Colour of Disease: Syphilis and Racism in South Africa, 1880-1950*. Oxford: St. Antony's College, 2001.

⁶⁰ See Meer. *Documents of Indentured Labour*. Report of the Coolie Commission, 130-146.

relative economic and emotional security for themselves, and sometimes for their children.

The second piece of indenture legislation passed in Natal, law 14 of 1859 had also included the regulation of the residence and movement of immigrant workers – allowing that such worker be asked to produce, at any time, a certificate of residence, or discharge or written ticket of leave signed by his master. Implicit in the Act was the assumption that 'workers' included all Indians who signed indenture contracts, both male and female. These provisions were no doubt related to the more general British vagrancy laws of the time and hinted at the desired social control of racial and class movement in the Colony that was to become a feature of later attempts at segregation.⁶¹ Employers and enforcing officials in Natal would infer, from the beginning of indenture that women were to be regulated by the same means. The implicit regulation of women by these laws would add to the continuing confusion amongst employers and colonial officials over the *de facto* status of the labour contracts of women, as their mobility – both by themselves and with other men – often called the terms of these contracts into question.

'Contrary to Humanity'? : Disputing the Labour of Indian Women

The problem of Indian women's mobility was linked to the way in which women were conceived as part of the indenture scheme – the fact that they were

⁶¹ Interestingly, as Jeremy Martens observes, the first law explicitly governing 'vagrants' was passed in Natal in 1869 and was modelled on British vagrancy laws. It was also the first piece of colonial legislation to use the term 'coloured'. For more on this see Jeremy Martens 'Polygamy, Sexual Danger, and the Creation of Vagrancy Legislation in Colonial Natal' in *The Journal of Imperial and Commonwealth History*, 31: 3, 2003, 24-45. My thanks to Prinisha Badassy for drawing my attention to this fact.

not seen as 'workers' in the same way as men by the terms of Law 14 of 1859. As women did not automatically fall under the strict rubric of a labour contract, their movements were increasingly difficult to control and regulate. Employers frequently complained of the 'long absences' of many women who were supposedly under contract to them. While some employers made an attempt to recoup the time lost by absences – during which time the women in question were described as visiting nearby estates (for 'immoral purposes') or 'taking up with' men employed in other places – by extending indenture contracts, others were keen to divest themselves of the 'responsibility' of keeping these women in their employ. Employers thus wanted the pecuniary benefits of having women's work for them, but they were also unwilling to deal with the reality of mobile, wage-earning indentured women.

Labour contracts, it would turn out, were expected to be rather flexible in the case of women. There were numerous complaints by employers regarding women's refusal to work. Officials dealing with the constant stream of complaints about the labour of women had their problems compounded by a memorandum circulated to all indenture colonies in February 1870. The Downing Street circular advised the Lieutenant Governor of Natal of a law which had been passed in Trinidad and that the Colonial Office suggested was an important legal precedent for other 'Cooly-importing Colonies'. The object of the law was

on the one hand, to relieve Women from the obligation, which has been found to bear hard upon husbands and wives, to make up after their period of indenture for time lost through pregnancy and other unavoidable causes, and, on the other hand, to compensate the Employer for the labour so lost by the reduction of the indenture fee for Women by 50 per cent...fine has been provided as the prior alternative of

imprisonment for unlawful absence of Women from work. This has been done because it has been felt to be *contrary to humanity* to compel Women to go to Gaol for absenting themselves from work, for the purpose of attending their infant children.⁶²

The memorandum was explicit in its request that similar legislation be considered by the Natal government. Until this time, indentured women were compelled to make up time lost due to illness (including pregnancy). It is no doubt the case that changing ideas of womanhood in England were influential in the development of such laws. Changing ideological discourses around women, motherhood and the family and late nineteenth century amendments to English family law began to filter into colonial legislation.⁶³

As a result of this, complaints began to be dealt with differently from the beginning of the 1870s. One example of this was when, on the 24th February 1875, the Resident Magistrate of Pinetown imprisoned thirteen Indian women with hard labour for refusing to work, prompting an immediate flurry of correspondence between the Acting Protector at the time and the Colonial Secretary. Within a day, the Colonial Secretary had declared the sentence illegal and ordered the release of the women.⁶⁴

In attempting to gauge the worth and significance of women's labour there is a danger of accepting the views of employers especially at face value.

⁶² PAR AGO I/9/1 1A/1870 Granville, Downing Street to the Lieutenant Governor of Natal 15th February, 1870. Emphasis added.

⁶³ See for example Jane Lewis (ed.) *Labour and Love: Women's Experience of Home and Family 1850-1940*. New York: Basil Blackwell, 1986 and Phillipa Levine (ed.) *Gender and Empire*, Oxford: Oxford University Press, 2004.

⁶⁴ PAR CSO 509 681/1875. Telegraph from Protector (Mitchell) to Colonial Secretary & Telegraph to Resident Magistrate Pinetown 24/2/1875.

While there is no question that female labourers were not what planters and the colonial state envisaged when the indenture system was established, there is considerable evidence to suggest that for all the complaints about their 'laziness', women's labour was extracted for both 'heavy' and 'light' work and was particularly important at key moments of production cycles such as during the harvesting process. Their labour was also particularly prized on tea estates, where employers suggested that women were more suitable than men as tea pickers due to their small, nimble fingers.⁶⁵ It was particularly at these moments that women chose to withhold their labour. This was a situation that made life difficult for employers of female Indian labour as the terms on which the Government of India had allowed the indenture labour migration to Natal to go ahead did not allow for the forced labour of women, nor did it permit punitive action against women who refused to fulfil the terms of their contracts. Of course the prevailing irony in colonial legal discourse was that women, as legal minors in the mid- to late-nineteenth century, could not be bound by contracts that they may have signed themselves!

The Coolie Agent, and after the 1872 Report, the Protector of Immigrants, would hear numerous complaints around the issues of women's work, wages and rations. Employers and Indian women and men often contested the terms of women's labour contracts, with employers more often than not attempting to extract the greatest possible amount of field labour from women who often refused to work or 'feigned' illness. It is from these disputes that the truth about women's place in the labour scheme becomes clearer.

⁶⁵ Meer, *Documents of Indentured Labour*, Indian Immigration [Clayton] Commission Report 1909, 634-648.

The colonial bureaucracy quickly became aware of the problems associated with the contracts entered into by female labourers. The Colonial Secretary circulated a memorandum acknowledging the questions around women's work and confirming the flexibility of women's indenture contracts:

It seems quite clear...that female Indian immigrants cannot be compelled to work against their will, but that when they do work they are entitled to half wages. Of course it is optional with the employer to employ these or not.⁶⁶

The last sentence is misleading, in that employers less often 'chose' to employ women than they had women allocated to them as partners to the men whom they employed. Indian women were rarely employed in their own capacity even though they were made to sign indenture contracts upon their arrival in the Colony.⁶⁷ Many arrived with husbands from India and were 'given' to employers along with the male labourer. Most often single women were 'accepted' by employers along with a group of males whose labour had been contracted, by virtue of being 'attached' to a man in the group. Women they had to be given food rations whether or not they were married and even if they did not perform wage labour on estates.

The mandatory provision of food rations to women would also become an issue in debates about the free movement of women. The Protector heard numerous complaints from women complaining of the withholding of rations by

⁶⁶ PAR CSO 510 735/1875 Acting Protector to Colonial Secretary, Feb 27, 1875 and 736/1875, Memorandum: Contract of Service of Indian Immigrants.

⁶⁷ See Prinisha Badassy, *Crimes of Passion, Crimes of Reason*.

employers. As the Acting Protector stated in his correspondence with the Colonial Secretary:

Employers state that they are not bound to supply food unless the women work, and urge that if they have to do so it will have the effect of causing a lot of ill women on the estates to turn into common prostitutes.⁶⁸

The idea that receiving food rations without doing paid work was assisting immorality by turning women into prostitutes was one that did not consider the domestic reproductive labour performed on a daily basis by the women. While officials – like the Assistant Protector, who made regular visits to estates – appear to have given some thought to the role of women in providing ‘domestic comforts’, employers were less generous in their assessment of the worth of women’s labour. The Assistant Protector, who made regular visits to estates, later used sex differences to justify his support of women’s exemption from ‘any occupation unsuited to their sex’, explaining that the physical labour demanded by some employers was ‘decidedly harmful’. Instead, he advocated that greater opportunity be afforded to women ‘...to attend to their household duties...The health of estates depends on the number of females free to attend to their husbands comforts – at least to a large extent...’⁶⁹

Despite such complaints, adherence to the rule that women who worked had to be paid at least half wages in addition to full rations also varied amongst employers, with some employers paying the women they employed only around

⁶⁸ PAR CSO 510 735/1875 Correspondence between Acting Protector and Colonial Secretary, February 1875.

⁶⁹ PAR II 1/160 I1428/1908 Circular From Protector of Indian Immigrants to Estates Concerning How Estates Employ Female Indentured Indians as Labourers.

5s, which was less than half the minimum 12s wage set out for men. In a few cases, women commanded wages of up to 12s by themselves.⁷⁰

A Problem of Morality: Situating Marriage in the Indenture System

Contestation around women's work was not only a feature of labour relations on estates, but also a highly emotionally charged currency in intimate relationships. The struggle for access to women, and especially their domestic reproductive labour led to assault (of women and rival men), suicide and even murder amongst Indians in Natal – something that came to constitute a 'moral crisis' for colonial officials.

For instance, in investigating a case of suicide in 1864, Tatham explained that the victim, an Indian man named Mukhendey, had been taunted by the "married people" on the estate on which he worked and that they had wanted him to stop visiting their quarters. Single men, like Mukhendey, often found themselves in the difficult position of being unable to compete for access to women who were claimed as 'married' to other men on the estate. The incidences of murder, suicide and assault among indentured and ex-indentured Indians (an important theme picked up later in this study as legislators and administrators attempted interventions in the lives of Indians in Natal in the 1880s and 1890s) began to increase as the 1860s wore on and people began to complete their initial periods of indenture.⁷¹

⁷⁰ Meer. *Documents of Indentured Labour*. Coolie Commission Report, 1872. 118-169.

⁷¹ PAR CSO 1791 4871/1905. Original Correspondence.

Marriage was implicitly viewed by officials as a way of ensuring that women were under the control of male authority. The Coolie Commissioners as well as the employers who testified were of the opinion that unattached women were a moral problem. A sexual double standard meant that these women were implicated in prostitution and the spread of venereal diseases while officials and employers in the Colony appeared to be in agreement that a greater number of women were necessary to meet the sexual and domestic needs of the men already in Natal. While some expressed the hope – however naïve – of men and women settling down to build families if the quota could be met and surpassed, most were explicit in their views that the sexual needs of Indian men needed to be fulfilled if ‘immorality’ was to be prevented/eradicated. The hypocrisy, of course, was that women were identified as both cause and solution to the problem of immorality that the commission identified.

The ‘moral condition’ of immigrants was thus a source of great concern for officials in all the colonies that recruited/exploited Indian indentured labour. The commission appointed to investigate the conditions of Indian labourers in British Guiana in 1871 was, in a similar manner to Natal’s Coolie Commission of 1872, concerned with the question of ‘morality’. The Trinidad commission highlighted the relatively high incidences of wife-murder and other crimes like assault, which they claimed was exaggerated by the ‘great inequality of the sexes’.⁷² Wife-murder, the murder of rival suitors by men and assault were common crimes that began to appear frequently in official discourses about Indian morality and social stability in Natal.

⁷² By 1871, the Indian indentured population in British Guiana was almost 40 000, with only 10 000 women. Meer, *Documents of Indentured Labour*, 598-610.

Rhoda Reddock and Patricia Mohammed have suggested that with the unequal sex ratio that characterized indentured labour migration, the scarcity of women could give them more control over their own labour and sexuality than they could hope to have when sex ratios were more even.⁷³ They argue, in the case of colonial Trinidad, that the labour and culture of indentured workers appeared devalued and emasculated by indenture and isolation on plantations, juridical marginalization and colonial policy. For example, as was the case in Natal, they point out that colonial law recognized only Christian marriages, or those registered by an authorized civil servant like the Protector of Immigrants. Reddock argues that no marriages were registered in Trinidad before 1887, and even after that few unions between Indian men and women conformed to colonial legal standards. She contends that this contributed to the perception of Indian immigrants as promiscuous and immoral.

Marriages solemnized by Hindu and Muslim clergy were not legally recognized in Trinidad until 1936 and 1945 respectively, although Indians themselves campaigned for recognition from the late 1870s. Both Reddock and Mohammed argue that, in campaigning to get those marriages performed according to Indians' religious rites recognized by the colonial state, Indian men were reclaiming the patriarchal authority they had lost in the course of emigration and indentured labour. But as Madhavi Kale contends, insofar as these studies assume for Indian indentured women the pre-migration conditions of domestic-patriarchal and rural-agrarian bondage, they reproduce and

⁷³ See Rhoda Reddock 'Freedom Denied: Indian Women and Indentureship in Trinidad and Tobago, 1845-1917,' in *Economic and Political Weekly*, 20: 3, WS-81 and Patricia Mohammed. 'Writing Gender into History'

reinforce assumptions about the static quality of Indian culture and Indian people introduced and elaborated since the mid-nineteenth century.⁷⁴

The indentured labour contract and the contract of marriage that indentured women and men entered into in the Colony were closely bound together. Employers often complained to the Protector about the propensity of women to simply refuse to work once they became 'attached to men'. There are a number of cases in which the status of women's labour contracts was contested on the basis of newly contracted unions. In theory, an indentured immigrant entering into legal marriage with another on a different estate did not alter the labour contracts of either party. In practice, however, employers often expressed a willingness to release women from contracts (which did not compel women to estate labour at all!) in order that they might be married and 'become dependent on somebody else'.⁷⁵ In a great many cases where employers refused permission to transfer women who wished to marry or 'take up' with men on other estates, women would 'become difficult', refusing to work as they might previously have done and demonstrating 'insolence' in order that employers would concede to their wish for a transfer. In one case, a woman described by her employer as 'decent' and 'a good worker' resorted to exposing herself to other workers and to her master's children, with the result that the employer hastily agreed to her transfer.⁷⁶

⁷⁴ Kale. *Fragments of Empire*, 142.

⁷⁵ PAR II 1/127 1974/1904. Correspondence among Cuthbert Phipson, A.R Holme and the Protector, April 1904.

⁷⁶ PAR II 1/69 1881/93. A.T Button to Protector, November, 1893.

In many instances women claim to have been told, by emigration agents and recruiters in India, that married women were preferred emigrants. Some women also complained that they were duped into relationships with men who told them that the Emigration Agency had 'allotted' them to the men as wives.⁷⁷ This no doubt accounted for a significant number of the marriages registered at the Immigration Depot at the Point upon disembarking in the Colony.⁷⁸ Marriages between arriving men and women were recorded and registered before their allotment to estates to ensure that families did not become separated, although these 'families' in the case of many Indians were men and women who had been acquainted for only a short time, and who had arrived in Natal to similar personal and social uncertainty.

Employers concerned about the 'morality' of Indians on their estates would very often send couples – men and women described as 'friendly toward each other' or living together in some form of domestic arrangement – to register their 'marriage' with the Protector, whether or not the Indians themselves considered themselves married.⁷⁹ The Protector often found, upon enquiry at registration, that the man had a wife in India and the women had 'taken up' with him. Considering the insecurity and danger of the situations in which the majority of indentured women found themselves, marriage became a keenly contested legal and moral issue during indenture.

⁷⁷ PAR II 1/162 I2154/1908 Sonarie Deposition 17th September, 1908.

⁷⁸ The Protector's annual marriage returns often reflected a comparatively high number of marriages registered upon disembarkation. Along with unions that new arrivals stated they had entered into during the voyage, this process of registration also included marriages that had been entered into as civil contracts in India as well as those solemnized by Hindu and Muslim religious authorities on the subcontinent.

⁷⁹ See for example CSO 1538 8033/1897 Magistrate of Lions River to Honourable Attorney General, 6th November, 1897.

Conclusions

The perpetuation of the indentured labour system depended on women. Their presence in the system as wives to men, rather than as workers themselves, was intended to help legitimate indenture in comparison to slavery. However, this could only be maintained if men and women could build stable family relationships and be allowed unhindered social and cultural reproduction. This manifestation of the colonial administration's acceptance of the humanity of its labouring subjects was the ideal, but this ideal would come to be threatened by the contestations beginning to arise around marriage from the end of the first decade of indenture. It is in the wake of this early 'crisis of morality' that the colonial state contemplated further interventions in the administration of indentured and ex-indentured Indian immigrants. And it is to this that this thesis turns its attention in the next chapter.

Chapter Two

Making the Personal Civil: The Protector's Office and the Administration of Indian Personal Law in Colonial Natal, 1872 – 1887¹

Introduction

The arguments presented in this chapter derive from an interpretation of the contestations around Indian 'personal law' in the Colony of Natal, especially from the 1870s. The administration of customary law amongst Indians in Natal in the latter part of the nineteenth century pivoted around the office of the Protector of Indian Immigrants – a bureaucratic office constituted upon the recommendation of the 1872 Coolie Commission. Many of the historical and legal questions raised in this chapter arose from the cases which came before this appointed government official. Important to the arguments I make is the fact that the control over women's lives and movement was a crucial part of the struggles of law outlined here. It is evident also, in my arguments, that administrative

¹ The contemporary legal meaning of personal law is 'the system of law which applies to a person and his (sic) transactions determined by the law of his (sic) tribe, religious group, caste, or other personal factor, as distinct from the territorial law of the country to which he belongs, in which he finds himself, or in which the transaction takes place.' See D.M Walker, *Oxford Companion to Law*. Oxford: Oxford University Press, 1980. Historically, however, the creation and definition of Personal Law was more complicated. Under the British administration of India (East India Company) and sovereignty (British Charter for India), the Westminster and Common Law models were introduced. However, the imported Rule of Law was rendered almost unworkable by the existence in India of a great diversity of customs, cultural traditions, regional legal systems, group identities and community memberships. Initially colonialists tended to ignore traditional cultural practices, ritual legalism, textual records of moral thinking (*Arthashastras*, *Dharmashastras*, *Yanjavaikyasmriti*, *nibandhas*, *Manusmirti*, and so on). By the late 1700s, the British administration would attempt to accommodate aspects of the personal - or an artificially separated private area morality from the public civil and criminal codes - under the newly-evolved jurisdiction of Personal Law. See <http://www.law.emory.edu/IFL/cases/India.htm> for more on this.

decisions about the lives of Indians were aimed primarily at the areas which constituted the realm of personal law or the personal aspects of customary law – a private area of morality that encompassed the personal and intimate lives of Indians, particularly the areas of marriage and divorce, and it was one in which women in particular were implicated.

Many scholars have described British administrative interventions in the personal law and lives of its Indian subjects at length, concluding more often than not that British action was contradictory and inconsistent.² The arena of personal law was the foremost battleground on which battles of colonial politics and anti-colonial nationalism were fought in the late-nineteenth and early twentieth centuries. Almost invariably, women became the signifiers of these struggles, as symbols of contested tradition. For all the apparent concern with women, these debates rarely offered women a voice as subjects themselves, nor did they admit women's possession of any power of agency.³ Rather, they stressed the weakness and ignorance of women. As Lata Mani argues, this was because the real point of contest in these debates was not women at all, but the status of Hindu tradition and the legitimacy of colonial power.⁴ Thus, in India, women came to represent tradition in the arguments conducted among colonialists, Hindu liberals, reformers, conservatives and ultimately, nationalists.

² For example: Lata Mani. *Contentious Traditions: The Debate on Sati in Colonial India*. Berkeley and Los Angeles: University of California Press. 1998; Joanna Liddle and Rama Joshi. *Daughters of Independence: Gender, Caste and Class in India*. London: Zed Books, 1986; Tanika Sarkar. 'Rhetoric against Age of Consent: Resisting Colonial Reason and Death of a Child Wife', *Economic & Political Weekly*, September 4, 1993.

³ Gayatri Chakravorty Spivak. 'Can the Subaltern Speak?' in *Marxism & The Interpretation of Culture*. Cary Nelson and Lawrence Grossberg. (eds.) London: Macmillan, 1988. pp. 271-313.

⁴ Lata Mani. *Contentious Traditions: The Debate on Sati in Colonial India*. Berkeley and Los Angeles: University of California Press. 1998; Partha Chatterjee. *The Nation and its Fragments: Colonial and Postcolonial Histories*. Princeton, New Jersey: Princeton University Press, 1993.

The presumption of a body of unchanging ritual, custom and belief carried around by all Indians regardless, even, of their context were challenged in the colonial outposts to which Indian labourers were sent under indenture. State intervention in personal law on the subcontinent usually led to the consolidation and conservation of husbandly power. In the case of Natal, however, legislative vacillation in the area of personal law for the first four decades of indenture, presented women with opportunities to resist practices regarded as 'traditionally Indian.' It was outside of the context of Indian political struggles, and in a new context of legal uncertainty that women were afforded more space to take advantage of access to the law.⁵

Historians have argued that colonial states were racked by divisions and conflicts within their own ranks, borne of 'competing visions...of colonialism and conflicting concepts of morality and progress', and that such tensions were especially dramatized in efforts to bring sexuality and marriage within the ambit of the colonial state.⁶ In various colonial settings, the quest for a stable and legitimate combination of 'tradition' and 'civilisation', set up as a competing dichotomy, was precarious and complex. This was especially complicated in later nineteenth century Natal, where Indian indentured immigrants found themselves in a legislative vacuum. In new and changing social circumstances, 'tradition' was being re-formed and there was no legally constituted customary authority to validate these changes. The Natal government appeared certain of a few things, foremost amongst this was the fact that Indians did not fall under the

⁵ See Lucy Carroll. 'Law, Custom and Statutory Social Reform: The Hindu Widow's Remarriage Act of 1856' in J. Krishnamurty, (ed.) *Women in Colonial India*. Delhi, 1998.

⁶ Frederick Cooper and Ann Stoler. 'Tensions of Empire: Colonial Control and Visions of Rule', *American Ethnologist*, 16, 4, (1989). p. 609.

ordinary civil laws of the Colony. In Natal, as in India, they would not be citizens, but subjects of the British empire with their own discrete 'custom' (and increasingly changing manifestations of it) through which they would have to be administered.

In this chapter I attempt to draw out some of the aforementioned complexities in the legal administration of Indians in the Colony in an effort to analyse them both in the broader historical context of nineteenth century British colonialism, and more specifically in the legal administrative context of Natal at this time. The constitution of the Protector's Office and the ongoing uncertainty over the residency status of Indians are the primary issues informing a consideration of contestations of civil and customary law in Natal between the end of the Coolie Commission in 1872 and the Wragg Commission in 1887.

Permanent Law for Temporary Residents?

What is particularly striking about the attitude of the Natal Government with regard to Indian personal law is the disinclination to intervene in any meaningful way in the constitution of the area of customary law known as personal law. The colonial state in Natal was reluctant, for the better part of four decades, to set legal precedents in Indian civil cases. The law was the primary vehicle of British colonial intervention in the lives of its subjects. The discussions over the administration of Indian personal law in Natal were very much concerned with the legal status of Indians as subjects of empire. As Indians, immigrants to Natal had in theory a body of codified custom that was administered by the British imperial government through traditional authorities

on the subcontinent. The Natal Government intended that Indians be governed by this parallel system of civil law consistent with laws that the British had begun to codify in the 1770s as constituting a body of 'personal law' in India. In Natal this would, in theory, have been similar to the system of Native Law by which Africans were governed. However, in reality there was the significant absence of customary authorities who could dispense justice and arbitrate in civil matters amongst Indians, unlike the chiefly powers amongst Africans which the British administration appropriated in order to intervene in 'Native Affairs'.⁷ Representative customary authorities would however be unnecessary if Indians were eventually going to be returned to the subcontinent.

Crucial to a discussion of Indian personal law in Natal is the colonial state's view that indentured Indian labourers were temporary migrants and would not form a permanent community in Natal, but return to India upon completion of their contracts of re-indenture.⁸ The incentive of free return passage was expected to be taken up by the majority of those who arrived here under the indenture system. The Natal administration had briefly entertained the idea of a permanently settled Indian community in the Colony at the beginning of indenture, when it included a concession of Crown land to time-expired Indians. The Acting Coolie Agent at the time, Louis Mason, repeatedly mentioned to the Colonial Secretary that many Indians were keen to remain in

⁷ See Mahmood Mamdani. *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*. Princeton NJ: Princeton University Press, 1996 and Norman Etherington 'The Shepstone System' in the Colony of Natal and Beyond the Borders' in Andrew Duminy and Bill Guest (eds.) *Natal and Zululand from Earliest Times to 1910*. Pietermaritzburg: University of Natal Press, 1989.

⁸ Pietermaritzburg Archives Repository [PAR] Natal Colonial Publications [NCP] 2/1/1/5 Legislative Council Debates, 1883. Indian Divorce Bill.

the Colony if this concession would be made.⁹ The Indian Government had consented to the scheme with the implicit understanding that when workers had completed of their 'industrial residence' (contracts of indenture) in Natal, they would be afforded the opportunity to set up permanent homes if they desired.¹⁰ It became clear by the 1870s, however, that the Natal Government had little intention of honouring this implicit agreement. The administration's intention (although they had no official plan in this regard and any attempt to make one would be vetoed by the Government of India) was that Indians would eventually be returned to the subcontinent.¹¹

In 1860, the indenture contract was for a period of only three years, with an option to re-indenture for a further two-year period. As the indenture scheme was put on hold in 1866 due to the economic depression, by the end of 1871 there were no Indians employed under indenture in the Colony. By 1872 all Indians in Natal fell under the Master's and Servants laws and could sell their labour to whomever they wished on terms other than those of indenture. After a period of ten-years in the Colony, these 'free' Indians were entitled to a free return passage to India. Section 51 of the 1870 Coolie Consolidation law allowed for the concession of crown land to the equivalent value, in lieu of passage money. But by the time the first shiploads of Indians were returned to India in 1871/2, the concession still had no more than *de jure* approval. As Joy Brain has shown, this land concession was never really realized in practice, with only fifty-two people

⁹ PAR Indian Immigration Files [II] 3/2 I34/1870. Coolie Agent Letter Books.

¹⁰ The inability of the Natal administration, and later the South African Government, to provide this assurance would be decisive in bringing an end to indenture labour migration in 1911.

¹¹ PAR NCP 2/1/1/5 Legislative Council Debates, 1883. Indian Divorce Bill. Evidence of the Attorney-General and Members of the Executive Council.

being granted crown land before the concession was cancelled and not included in new indenture conditions after 1874.¹² The land concession is an important consideration both in an analysis of the official discourses around Indian indentured workers and also in a study that seeks to analyse legal maneuverings that were dependent upon the residency status of Indians in the Colony of Natal. The issue of whether or not Indians would be permanent residents in Natal was uncertain for the entire duration of indenture, and it was the official reason that indentured transport to Natal ended in 1911.¹³

*Under the Administration of an 'Intelligent Officer'*¹⁴

It became clear to the Coolie Commissioners in 1872 that many of the allegations of mistreatment and labour abuse that arose stemmed from an absence of a system of checks such as those at work in the other colonies where the indentured labour system existed.¹⁵ They also believed that the recommendations they were making regarding the registration of women, births, deaths and marriages would only be practicable if they could be carried out by a responsible officer. While other colonies such as those of British Guiana had a civil servant in the office of a 'Protector of Immigrants' to oversee the

¹² Joy Brain 'Natal's Indians, 1860-1910' in Andrew Duminy and Bill Guest (eds.) *Natal and Zululand from Earliest Times to 1910: A New History*. Pietermaritzburg: University of Natal Press, 1989. See also Pietermaritzburg Archives Repository (PAR) Indian Immigration Files (II) 1/168 1785/1909 for a list of the original grantees. A statement that Free Indians were not entitled to crown land in lieu of free passage can be found in the Legislative Council, Votes and Proceedings, Volume 34, 1883.

¹³ Meer, *Documents of Indentured Labour*, Clayton Commission Report, 634-648.

¹⁴ Meer. *Documents of Indentured Labour*, 129.

¹⁵ Meer. *Documents of Indentured Labour*. Report of the Coolie Commission, Document 42, pp 118-169.

administrative matters and day-to-day complaints of immigrant Indians, the only similar post which existed in Natal was that of the Coolie Agent. This post had been instituted at the beginning of indenture in 1860 in order to administer the arrival and movement of labour in the Colony, hence the name 'Coolie Agent'. In 1870, Acting Coolie Agent Louis Mason had requested the appointment of additional administrators to assist him with his duties.¹⁶ In the wake of the Coolie Commission's recommendations two years later, the Natal government would extend his judicial powers and charge him with the administration of civil matters concerning the five thousand-odd Indians in the colony.

Due consideration had not been given to the scope of the task of administering indentured workers – for the Protector was not only responsible for administering the labour needs of the Colony, but for administering the daily lives of Indians who remained in Natal both during and after the terms of their contracts had expired. As the crucial interface between Indians and the government that had been responsible for their passage to Natal, he had an unenviable task. Until the 1872 Commission, the Acting Coolie Agent at the time, H.C Shepstone, was also responsible for European Immigration, Excise Warehouse Keeper, Registrar of Meteorological Observations, Births and Deaths and 2nd Clerk of the Magistrate's Office, Durban. This multitude of responsibilities meant that the duties of 'inspection and report' of Indians on estates in the Colony were largely foregone until the Coolie Commission recommended a separate office for the Coolie Agent, who they suggested be renamed the 'Protector of Indian Immigrants'. The Commission drew attention

¹⁶ PAR II 3/2 I151/1870. Acting Coolie Agent Mason to Colonial Secretary.

to the statements of former Coolie Agent H.C Shepstone, who had said, that Indians regarded him as their protector. Shepstone bemoaned his lack of power to address their complaints, being only able to refer them to magistrates in the Colony in whom Indians had apparently no confidence.¹⁷ It was in the light of this that the Coolie Commission recommended that:

[T]o secure the perfect and effectual supervision of Indian immigrants which is contemplated by the law and without which it is most undesirable on all considerations of humanity to leave them, an active and efficient officer should be appointed to the post, whose whole time and energies might be devoted to the duties of the office.¹⁸

The appointment was made in 1872, two years before the resumption of indentured immigration. Importantly, when these recommendations were made the man who was to be the first 'Protector', Major General B.P Lloyd, was himself a commissioner presiding over the Coolie Commission. Lloyd was, in the words of the 1885 Wragg Commissioners 'a specialist', who had had considerable experience in India and was able to converse with Indians without the aid of interpreters. At the time he took office in 1872 the total Indian population was estimated at 5 393. Later, in 1885, the Wragg Commission commented on the unfulfilled expectation of the 1872 Coolie Commission that all subsequent Protectors be similarly qualified. The Coolie Commission, it said, had considered 'that extensive judicial powers could be entrusted, with safety, to such persons.'¹⁹

¹⁷ See Meer. *Documents of Indentured Labour*. Report of the Coolie Commission, Document 42, 118-169.

¹⁸ Meer. *Documents of Indentured Labour*. Report of the Coolie Commission 1872, Document 42, p.128.

¹⁹ Meer, *Documents of Indentured Labour*. Report of the Wragg Commission 1885-7, Document 58, p 283.

As scholars such as Bernard Cohn have shown, British officials in India, claiming knowledge of 'ancient custom' often called upon ideas of indigenous custom in the resolution and arbitration of disputes.²⁰ The *panchayat* (*punchagut*) was one of these. As a forum for the resolution of disputes in rural North India, it was appropriated for use in legal disputes when the British administration began to turn land relations into those of legal contract obligations. The Coolie Commission in Natal appeared to have some limited idea of what this may have entailed in India – and suggested that given its 'ancient usage in India' it might be adopted in Natal 'with great advantage' if it were under the supervision of an 'active and efficient officer... [with] some experience in India or amongst Coolies, and...some knowledge of Indian languages.'²¹ Whether the proposal would have involved the participation of Indians in the deliberations is not clear, and in any event such a course is not evident in the official correspondence around the subject of dispute resolution amongst Indians. Indeed, it is extremely unlikely given the increased control and intervention of the British administrative machinery as indenture progressed, that the administration of disputes among Indians would have devolved to anyone other than a British civil servant.

Before the advent of the Coolie Commission, the Coolie Agent had regularly received complaints from Indians. In the early 1860s, the Coolie Agent of the time - Edmund Tatham - began to hear complaints that were arguably strong social indicators of the newly-forming communities of Indians in the

²⁰ Bernard Cohn, 'From Indian Status to British Contract', *The Journal of Economic History*, 21, 4 (1961) pp. 613-628.

²¹ Meer. *Documents of Indentured Labour*. Report of the Coolie Commission 1872, Document 42, p.129.

Colony.²² In the earlier part of the 1860s, most of the complaints appeared to be directly related to questions of work contracts, wages and rations. But as Indians spent more time in the Colony, the complaints that came to predominate were those concerned with their personal, domestic and social lives.

Early on in indenture, women especially sought the Coolie Agent's intervention in disputes that began to arise out of the newly-formed associations with men and in the difficulties occasioned by the convergence (and clash) of their productive waged labour and domestic reproductive labour. These complaints proliferated and by the time of the first commission of inquiry into the condition of Indians in Natal in 1872, they were sufficiently widespread to be included in the eventual report of the Coolie Commission.

It was the further recommendation of the Commission that the Protector be empowered to arbitrate in 'petty disputes, in cases in which both parties are Coolies'. This recommendation resulted in the concession of a judicial mandate by law 12 of 1872 to the individual in charge of supervising Indians. The customary authority in the case of Indians was thus an appointed British official. In addition to the now mandatory registration of new arrivals to the Colony; of births, deaths and marriages and the recording and investigation of complaints, the Protector, as he would become known from 1874, would – between 1874 and the publication of the Wragg Commission Report in 1887 – be the sole court for the resolution of all civil cases amongst indentured and formerly-indentured Indians in Natal. The 'petty disputes' which he would hear included all forms of dispute around personal law including, amongst other things, marriage, adultery

²² PAR II 3/2 Coolie Agents Letter Books, 1860 – 1870.

and divorce (although this would remain a contentious point, with some holders of the office of Protector claiming the right to grant divorces and others not)²³ and cases of assault and desertion which arose from these complaints. The judicial powers that he possessed were wide-ranging and included the ability to mete out punishment to Indians in the form of both gaol-time and corporal punishment, as well as the ability, concurrent with those of the Resident Magistrates of the colony, to punish employers for abuse.²⁴ The judicial powers of the Protector, especially in civil matters, were increasingly called upon as the numbers of Indians in Natal began to grow with the resumption of indentured immigration in 1874 after an eight-year break.

'I have come to complain...'

Access to the law, via the Protector's Court, enabled women to seek legal recourse.²⁵ Moreover, access to the Protector's Court for civil claims offered some redress, however limited, to women for such affronts as desertion or assault by men. The realm of personal law was one in which women were primarily implicated and it was these cases that featured most prominently in the civil cases brought before the Special Court administered by the Protector from 1874. Through interpreters assigned to this court, Indian women laid numerous complaints of assault, rape, desertion and abduction, as well as claims for the registration and dissolution of marriages. It is from the records of the Protector of

²³ Meer. *Documents of Indentured Labour*. Report of the Indian Immigrants (Wragg) Commission 1885-7, p.282 and PAR NCP 2/1/1/5 Legislative Council Debates, 1883. Indian Divorce Bill.

²⁴ Meer. *Documents of Indentured Labour*. Coolie Commission Report, 121, and Indian Immigrants (Wragg) Commission Report, p.282.

²⁵ Kathleen Wilson 'Empire, Gender, and Modernity in the Eighteenth Century' in Philippa Levine (ed.) *Gender & Empire*. Oxford: Oxford University Press, 2004.

Indian Immigrants, therefore, that the grievances of Indian women can be most directly accessed. In the years between the setting up of the court in 1874 and its dissolution by the Wragg Commission in the late 1880s, the Protector's Court came to personify the paternalism of law in colonial endeavours. This was not just the general paternalism of a utilitarian legal system through which justice might be accessed by successive levels of courts and judges, but a specific kind of paternalism that arose from a singularly unique office. The Protector's Office was the only court for Indians – there was no appeals process and no further judicial review to which civil cases could be subjected. The Protector was, therefore, held to be the final arbitrator in all matters dealing with the personal lives of Indians.

Official discussions over Indian religious personal law flourished by the end of the 1870s (well after the Coolie Commission had first expressed a concern over women) as the instability of the social lives of Indian immigrants became increasingly manifest in complaints to the Protector over marriage, divorce, abduction, desertion, contracts of betrothal and assault, amongst other things. The administrators of Indians in Natal discovered that personal law was a far more ambiguous tool than they had imagined. The earliest intervention they made requiring the registration of marriages was an ill-conceived attempt to promote social stability that would prove only how difficult it would be to administer Indian personal law outside of the Indian context. The ideas about Indian women that were widely held by colonists were inadequate in the context of newly forming communities of Indians in Natal. Natal was, of course, not the only colony to experience such legislative dilemmas. Correspondence between the Governments of India and Trinidad bear testimony to the difficulties of

decisions around intervention in the personal law of indentured Indian immigrants in British Guiana.²⁶

By the end of the 1870s the concern with the quota requirement had begun to turn into a fully-fledged concern about women's mobility and customary relations between men and women. The law requiring the registration of Indian marriages in 1872 indicated the beginnings of growing official and unofficial preoccupation with the mobility of Indian women. The patent failure of this attempt at legislation as well as the growing number of Indians in the Colony meant that the administrative capacity of the Protector's office was taxed to its limits in order to administer customary relations and intervene in disputes over personal law.

From the end of 1872, the Protector's Court functioned as a space for the resolution of disputes between Indians, and with the appointment of Louis Mason to the Office in 1882, it came to reflect particular expression of the more sympathetic features of the utilitarianism of legal discourse. Not only did the mandate of the Protector's Office bring this British civil servant into direct conflict with employers of Indian labour in the Colony, but the extent of his interventions and interpretations of sections of the laws concerning the personal laws of Indians went far beyond the expectations of the Natal administration. As I illustrate later on in this chapter, it was clearly not the intention of the government that the Protector's legal administration of Indians would accommodate ruptures in their religious personal law, nor was it their intention that Indian personal law converge in any way with the ordinary civil laws of the

²⁶ Meer, *Documents of Indentured Labour*, pp. 594-610.

Colony which regulated the lives of colonial Natal's white citizenry. Such considerations were similarly epitomized in the administration of Africans in Natal through the separate 'Native Code'.

Personal Law: Solving the Crisis of 'Uncontrolled Women'

Personal law and the contestations that it causes to arise most often bring into sharp relief historical distinctions and conflicts between the constitution of the public and private spheres of life. The early concerns expressed by the Coolie Commission resulted in the first steps toward an attempt to 'build' family life through the registration of informal unions amongst Indian men and women as marriages, thereby beginning to address the constructions of single women as 'uncontrolled' and 'immoral'.

This testimony of a free Indian before the Coolie Commission typified the early legal situation of Indian immigrants in Natal. What constituted 'traditional' marriage for Indians was already under debate by the first Commission of Inquiry into Indians in the Colony as the exigencies of the social context of later nineteenth century Natal, and the actions of indentured and ex-indentured Indian men and women, taxed the understandings that government functionaries had of Indian 'custom', and in particular, personal law.

As to marriages, among the Coolies we first imported, too many males were single, and the scarcity of females caused many debauches, and in many cases they committed suicide; therefore I consider to stop this, when they agree to marry, the agreement should be drawn by the Coolie agent, in the Coolie office. After they agree to marry, if either party refuses to marry, the Coolie

agent should punish the guilty person. If a woman commits adultery, she should be punished by cutting off her hair, and ten days' imprisonment, and cautioned that if she goes to another man, she must pay the first husband ten pounds. The adulterer should be fined five pounds, and be imprisoned for twenty days and get twelve lashes. The wife should be imprisoned until she repaid the money, or went back to her husband.²⁷

Struggles over how to define Indian custom in Natal, in particular the struggle over the registration of customary marriages included, in fundamental ways, debates about the meaning of patriarchy and the manner of the state's powers as its custodian. The indecision and legislative vacillation on the part of the Natal administration were, at least in part, a reflection of the contradictory implications of competing versions of law.

While rarely being discursive protagonists themselves, women were the foremost subjects of debates around personal law, as these debates frequently centre around the space marked as 'private', and as being part of the realm of individual and family autonomy.²⁸ The issue of Indian personal law in Natal

²⁷ Meer. *Documents of Indentured Labour*. Appendix to Report of Coolie Commission, 138-9. Evidence of Rangasammy, Free Indian, to the Coolie Commission, Verulam, June 23rd, 1872. The punishment of cutting off women's hair was suggested by a few Indian men who claimed that this was, in fact, a 'customary' form of punishment.

²⁸ Lata Mani. *Contentious Traditions: The Debate on Sati in Colonial India*. Berkeley and Los Angeles: University of California Press, 1988; Mrinalini Sinha. *Colonial Masculinity: The 'Manly Englishman' and the 'Effeminate Bengali' in the Late Nineteenth Century*. Manchester and New York: Manchester University Press, 1995; Gayatri Spivak. 'Can the Subaltern Speak?' in Cary Nelson and Lawrence Grossberg (eds.). *Marxism and the Interpretation of Culture*. London: Macmillan, 1988. Amir Ali. 'Evolution of the Public Sphere in India'. *Economic & Political Weekly*. June 30, 2001; Joanna Liddle and Rama Joshi. *Daughters of Independence: Gender, Caste and Class in India*. London: Zed Books, 1986; Nivedita Menon. 'Modern Discourse of Human Rights' *Economic & Political Weekly*. January, 2000; Nivedita Menon. 'State, Community and the Debate on the Uniform Civil Code in India' in Mahmood Mamdani (ed.) *Beyond Rights Talk & Culture Talk*. Cape Town: David Philip Publishers, 2000; Bhattacharya, Nandini. 'Behind the veil: the many masks of subaltern sexuality,' *Women's Studies International Forum*. v. 19 (May/June '96) pp. 277-92; P. Chatterjee, 'The nationalist resolution of the women question' in K. Sangri & S. Vaid (eds.), *Recasting Women: Essays in Colonial History*, P. Chatterjee,

began to be addressed in 1872, upon the recommendation of the Coolie Commission. The first attempt to regulate personal law was also an attempt to regulate the perceived social dangers (both public and private) and instability posed by 'uncontrolled' women. The registration of Indian marriages thus became a legal requirement in Natal in 1872. Law 12 of 1872, later known as the Indian Act, required Indians to register existing and new marriages with the Protector. This piece of legislation marked the beginning of attempts by the state to assure stability and respond to calls of morality through the development of forms of legislation governing areas of personal law amongst Indian immigrants. In the minds of administrators, however, the answers to the problem of 'uncontrolled women' would be to subject her to the control of a patriarch. Marriage especially, was offered as a means of curbing women's mobility and achieving greater social stability. The Colonial Government was unequivocal in its view that marriage was the desired state of being for indentured Indian immigrants in Natal, especially for women.²⁹

'Immoral' Customs: The Problem of Indian Marriage Practices in Natal

Polygynous marriage was identified early on as an obstacle in the administration of Indian personal law in the colony. The British Colonial Government did not raise polygyny as a legal issue in the social and cultural context of India.³⁰ It was widely practiced by Indian men in India and Natal

²⁹ 'Colonialism, Nationalism, and Colonized Women: the Contest in India', *American Ethnologist*, 16, 4 (Nov. 1989)

²⁹ Meer, *Documents of Indentured Labour*, Coolie Commission and Wragg Commission. 118-169 and 243-633 respectively.

³⁰ The use of the word 'polygyny' is preferable to 'polygamy' in the context of both Indian and African marriages as it refers specifically to the practice of having more than one *wife* at a time.

legislators were determined that such a practice had no place in the Colony.³¹ The Natal Government had effectively outlawed the practice for all people who fell under the civil laws of the Colony with the first marriage ordinance passed in 1846.³² This piece of legislation dealt specifically and exclusively with marriage in the newly annexed territory of Natal. It was an extraordinary piece of legislation that, by its provisions, repealed previous 'laws, customs or usages' which may have been considered 'repugnant to or inconsistent with' the idea of Christian marriage (monogamous, heterosexual and permanent unions) that the Ordinance envisioned as the legal norm not just in the colony but for a number of 'colonies, plantations and possessions' of the British Empire. It is not particularly surprising that it was in the nineteenth century that the British colonial state in Natal would feel the 'excesses' of Indian (and, it may be added, indigenous) custom in relation to women who were subjects of empire. As I have illustrated in the previous chapter, the rise of the monogamous, middle-class family and domestically-inclined wife in England would strongly influence the ideologies of British colonial rule, specifically the highly-gendered effects of law in the lives of its subjects.

African men in Natal were practicing polygynists long before the arrival of Indians and, like Indians, as non-citizens they were not subject to the civil laws of the Colony. The Marriage Law of 1869 was a measure that attempted to deal with polygyny amongst Africans as the regulations taxed every marriage

In neither the Indian nor the African contexts that I discuss in this paper was 'polyandry' (having more than one husband) a legal possibility. The word 'polygamy' is one that encompasses both practices and is therefore misleading for the purposes of argument.

³¹ PAR NCP 2/1/1/5 Legislative Council Debates, 1883. Indian Divorce Bill.

³² PAR NCP 5/5/4, Ordinance 17, 1846.

contracted by Africans, restricted the practice of *lobola* and required that brides publicly express their assent to the marriage.³³ The Secretary of Native Affairs, Theophilus Shepstone, expressed that the 1869 law could 'only favour the operation of natural causes to achieve the extinction of polygamy.'³⁴ Jeremy Martens quotes Lieutenant Governor Keate in illustration of the Natal administration's approach to dealing with polygyny amongst Africans. Keate argued that instead of tackling polygyny directly the legislative course adopted was prudent, as 'all that could be done by Legislative interference [is] to help on and remove obstructions to the natural causes which are leading, however slowly, to that result.'³⁵ He also claimed that the marriage tax would encourage 'labour habits among the male portion of the native community upon which more than anything else the practice of polygamy depends.'³⁶ Africans were thus expected to be 'weaned' off polygynous practices, and this process was intended to be tied to changes in the sexual division of labour brought about by colonial interventions.

The introduction of Indian indentured immigrants complicated the Natal administration's strategy around polygyny. A crucial issue of the administration of Indians in Natal, one that has largely gone unacknowledged in the existing

³³ David Welsh, *The Roots of Segregation: Native Policy in Colonial Natal, 1845-1910*. Cape Town: Oxford University Press, 1971, pp. 67-96.

³⁴ PAR SNA 1/7/8 pp.18-23. T. Shepstone, 'Memorandum: Registration of Native Marriages', 22 March 1869, p.23 cited in Jeremy Martens, 'The Impact of Theories of Civilization and Savagery on Native Policy in Colonial Natal', African Studies Association of Australasia and the Pacific 2003 Conference Proceedings, p 6. Available at: www.ssn.flinders.edu.au/global/afsaap/conferences/2003proceedings/martens.PDF. Accessed on 18th March, 2005.

³⁵ Keate cited in Martens, *Theories of Civilization* p.6.

³⁶ Keate cited in Martens, *Theories of Civilization* p.6.

historiography of Indians in the region, is that there was no parallel system of law, like Native Law, governing Indians. Further, they did not fall under the 'ordinary' civil laws of the Colony. Administrators such as the Attorney General would infer that polygyny was prohibited by the 'morality' of the Colony, and as such polygynous Indian marriages would not be recognized.³⁷ For the better part of thirty years, however, there was no legislation forbidding the practice amongst Indians.

The Protector was confronted with numerous cases of men attempting to register multiple marriages and was advised by the Attorney General to refuse registration to all but the first marriage. The biggest loophole in the law was that it did not make provision for polygynous marriages that had been contracted in India (where these marriages were validated by British authority) and that disputes often arose which could not be dealt with in the absence of legislation dealing with the legal status of these relationships.³⁸ The problems are apparent in one particularly heated exchange when the Attorney General for the Colony remonstrated with the Protector for registering both wives of a newly arrived male immigrant. The Protector argued that

it would be a distinct breach of faith to bring these people here and then on arrival cast adrift one of the wives because of the interpretation of a section of the law which has never been tested by the Supreme Court of the law. Polygamous marriages are valid in India and when we recruit Indians for labour in Natal we are bound by simple justice to admit them with the same privileges as are accorded them in India in this connection. In view however of

³⁷ PAR II 1/141 I285/06. Correspondence between Attorney General and the Protector.

³⁸ PAR NCP 7/2/2/6 Report of the Protector of Immigrants, 1889.

your opinion in this matter it appears to me that it would be more advisable and to the point to cause the Agents of India to be instructed not to recruit men with more than one wife. This would obviate any necessity for further action.³⁹

As I have already noted, unlike Africans in the Colony who were subject to Native Law, Indians were not governed by a separate legal code. However, the application of Indian personal law as it existed in India proved impracticable in a colony where the settler population, including British officials, saw Indian personal law as 'repugnant' and contrary to their 'moral sense'.⁴⁰ The rejection of Indian custom as 'repugnant' in Natal, coupled with the reluctance to legislate due to the attempts by the Natal government to repatriate Indians after their 'temporary sojourn in the Colony', meant that legal uncertainty around issues of Indian customary law persisted into the twentieth century.⁴¹

The law around polygyny was not fully resolved and the question of polygyny and the validity of marriages would become even more prominent when women took up legal claims. The continuation of polygynous practices presented even bigger problems for an administration that appeared preoccupied with enforcing a particular patriarchal status quo in the name of 'civilization'. Polygynous marriages were, officially, unrecognized in Natal. For a long time Indians who had contracted polygynous marriages in India or on board ships on their way to the Colony would have any marriage subsequent to the first one rendered illegal, at least in theory, upon entry into Natal. This was

³⁹ PAR II 1/141 I285/06. Correspondence between the Attorney General and the Protector.

⁴⁰ PAR NCP 2/1/1/5 Legislative Council debates, 1883. Indian Divorce Bill.

⁴¹ PAR NCP, 2/1/1/5 Legislative Council Debates, 1883. Indian Divorce Bill.

hugely problematic for the officials who were tasked with administering the day-to-day lives of Indian people. Disputes that arose over marriage, including those concerning property which may have been part of bridewealth payments, could not be resolved if the state did not recognize the legality of these marriages. As registration laws were formulated and registration of Indian marriages carried out in Natal, the Protector and other functionaries in his department only offered official sanction to monogamous unions. The result was that women who were second, and even third wives, often lived with men to whom they may have been customarily wedded by ritual ceremony, but their marriages were not recognized in the official discourse of the colony.

The age of consent also presented administrative difficulties for officials. Marriages could not be registered if the woman was below thirteen years of age, and the colonial state did not give official sanction to practices of betrothal (where a young girl is promised to a suitor) which often also involved the transfer of property from the prospective groom.⁴² Officials referred to this as the 'selling' of daughters by their parents and openly condemned the practice as barbaric.⁴³

For all the obvious continuity in religious personal law that colonial officials assumed, it was the changes wrought by the new social and economic context of Natal that provided the greatest challenges for the Natal government. For officials concerned with the administration of a growing number of Indians in the Colony, the destabilization of marriage was a growing concern. As would

⁴² PAR NCP, 2/1/1/5 Legislative Council Debates, 1883. Indian Divorce Bill.

⁴³ PAR NCP, 2/1/1/5 Legislative Council Debates, 1883. Indian Divorce Bill.

be the case with African marriages in the early part of the twentieth century, state officials identified the erosion of 'tradition' in unattached and increasingly mobile women. It is no mere coincidence that concern around single 'undesirable' Indian women as the vectors of venereal disease began to gain prominence in official discourse by the end of the 1870s, at the same time that officials were expressing concern over the state of Indian marriages.⁴⁴

Cases brought to the attention of the Protector exemplified these ruptures in supposedly static Indian 'tradition' and 'custom'. The complaints of men who claimed to have had promises of marriage (betrothal) reneged on by potential wives or in-laws were especially common.⁴⁵ The loss to these men, in both property and dignity was a huge affront to the idea of marriage. It is significant to note here that the predominance of immigrants from South India among indentured workers meant that it was most often bridewealth payments, as opposed to dowry, that dominated property transactions on the occasion of customary marriages.⁴⁶ In his essay on Indian masculinity, Goolam Vahed assumes that dowry payments were transformed into bridewealth transactions due to the gender imbalance that weighed against men.⁴⁷ While this inversion may (with greater substantiation) be proven for North Indian immigrants,

⁴⁴ Nafisa Essop Sheik, 'A Beastly Nuisance': An Exploratory Paper on Attempts to Control Venereal Disease among Indian Immigrants in Natal 1874-1891', Unpublished Honours Essay, University of Natal, Durban, 2003.

⁴⁵ PAR NCP 2/2/2/19. Legislative Council Debate, Indian Marriages Bill, May 8, 1906.

⁴⁶ P.N Mari Bhat & Shiva S. Halli, 'Demography of Brideprice and Dowry: Causes and Consequences of the Indian Marriage Squeeze', *Population Studies*, vol.53, no. 2, July 1999, 129-148.

⁴⁷ G. Vahed, 'Indentured Masculinity in Colonial Natal, 1860-1910', Robert Morrell & Lahoucine Ouzgane (eds) *African Masculinities: Men in Africa from the Late Nineteenth Century to the Present*. Pietermaritzburg: UKZN Press, 2005. p. 249.

especially those who came as passenger Indians, it is almost certainly not the case for the vast majority of South Indians who arrived in Natal as indentured workers and who had favoured bridewealth customs on the occasion of marriage in parts of South India.⁴⁸

It was therefore the case that women whose marriages were unrecognized and who left their husbands when they became dissatisfied, or who refused to marry them when the time came for the ceremony, left men with no legal recourse for the recovery of either their brides or their property.⁴⁹ Of course there was no recognized customary authority to which men could appeal – and, as the colonial state began to discover early on, the parents of young girls often turned this into a profitable scam. Especially outside of the context of India (and however much colonial officials desired its prohibitive effects) ‘tradition’ was becoming, in the eyes of state officials, the reason for moral laxity instead of a means of preventing it. These new contestations arising out of Indian marriage practices in Natal became the biggest obstacle to the acceptance of Indian ‘customary law’ as a practicable system of legal administration for Indians in Natal.

Validating Indian Marriages: ‘A Matter Almost of Impossibility’⁵⁰

In addition to the recommendation that a register of women be kept, the Coolie Commission Report of 1872 had also suggested the need for ‘legislation

⁴⁸ Bhat & Halli, ‘Demography of Brideprice and Dowry’.

⁴⁹ PAR NCP 2/2/2/19. Legislative Council Debate, Indian Marriages Bill, May 8, 1906.

⁵⁰ PAR NCP 7/2/2/9 Report of the Protector of Immigrants, 1892-1893.

regarding Coolie marriages, and the settlement of disputes arising out of the seduction of married women.' Registration of marriages, the report claimed, would ensure the possibility for redress in the case of disputes and was expected to function as a check on 'immorality', as well as further removing the difficulties of 'proving the validity of Coolie marriages' which had prevented magistrates from 'taking cognizance' of marriages and Indians from 'obtaining redress' in them.⁵¹ They had hoped that requiring the registration of Indian marriages would be as much intervention in Indian personal law as would be necessary but were proved wrong early on. This was the bureaucratic ideal. The reality was to be very different.

Between 1873 and 1886, 4 981 marriages were registered.⁵² Twenty-seven of these were bigamous marriages conducted in India and (in what was to be a fiercely-contested legal move) registered by the Protector upon disembarkation. In total then, 9989 people would be have been registered as married by 1886 out of the 34 809 arrivals and just over 1 500 person net increase in the population (after consideration of birth and death rates for Indians) of the colony between 1860 and 1886. In practice, less than a third of the total 'adult' population was 'married' in the legal sense of the word. Registering marriages was a legal concept imbued with utilitarian ideology and culturally foreign to Indians who had only recently arrived from the subcontinent where their marriages were not subject to registration in the same way that they were in Natal.

⁵¹ Meer, *Documents of Indentured Labour*, 118-169.

⁵² PAR II/35, 30 June 1886, Protector of Indian Immigrants to Justice Wragg.

Both Indian men and women had difficulties adjusting to the different status of their marriages between India and Natal. Implicit in many of the legal difficulties that arose was the fact that most were unaware for a long time that polygynous marriages were contrary to the law of the Colony. This was amply illustrated in correspondence amongst officials about Indians requesting registration for polygynous marriages.⁵³ Administrators considered the uptake of registration to be too slow, with the result that the government published notices urging registration and threatening the imposition of fines where registration was not done within 30 days of the marriage being contracted. The notices were translated into a series of different Indian languages and circulated by government messengers to the various estates on which Indians were employed. They were read out by employers, sirdars and interpreters in the hope that it would convince Indians to register their unions.⁵⁴ Nevertheless, for a long time, registration of marriages by Indians was a hugely contested point of law in the colony.

It is clear from letters amongst officials, employers and from the testimony of Indians themselves that many Indians did not regard registration as constituting a binding union. It was far more common that men would register marriage with one woman but remain living with another under customary rites, and when a dispute arose among the parties would claim the second woman as his wife, as was the case with a woman who arrived in Natal from India expecting her marriage to her husband, who had contracted another marriage in

⁵³ PAR II 1/127 I 1219/04 Hunammah (Indentured Indian Woman) N.G.R to Protector, 19/5/1904.

⁵⁴ Meer. *Documents of Indentured Labour*. Wragg Commission Report, 243-633.

Natal, to be upheld.⁵⁵ There was no clear indication in the law of what constituted marriage amongst Indians in Natal, and this uncertainty was the cause of much vexed correspondence between the Protector and other officials such as the Attorney-General of the Colony. Inter-caste marriage (including what may better have been described as inter-religious marriage) was a cause of concern, as was the aforementioned system of betrothal, which would come to be known as 'pre-marriage'. The fact that the great majority of Indians indenturing in the colony were of lower castes meant that the Brahmins (priests) responsible for performing Hindu marriage ceremonies were rarely to be found. The lack of consistency, both in religious ritual and official understandings of Indian marriages, meant that registration would, in theory, be the only feasible manner of proving spousal rights and obligations. This would not, however, mean that it would be a practicable one. A central tension still remained: if the registration of Indian marriages was simply evidence of a marriage as the law stated, and did not constitute the marriage contract, then what did?

Law 12 did not resolve the uncertainty surrounding Indian marriages. The first problem was that it contemplated a ceremony antecedent to registration though it did not specify what that ceremony should be. The Deputy Protector Manning reported in 1883 that while many Indians considered themselves married "though there was no civil marriage, no ceremony, no nuptial feast, and no registration", Law 12 prohibited him from registering their marriages.⁵⁶ He wrote to the Protector, Louis Mason in January 1884:

⁵⁵ PAR II 1/141 I285/06 Protector Indian Immigrants to Attorney General, Durban 2 February, 1906.

⁵⁶ Meer, Documents of Indentured Labour, Wragg Commission Report, 243-633. *Annual Report of the Deputy Protector*, 9 June 1883.

I am of the opinion that the fact of registration should be considered to constitute the marriage, and that the only proof of it in future will be the production of a copy of the register. From the accident of being employed at the same place, people of different castes such as Mussulmans and Hindoos become attached to each other and perhaps have children. They then wish to acknowledge their union and legitimise their children *but the marriage of such different castes being contrary to their traditions* it would be very difficult except as a civil contract.⁵⁷

It is unsurprising then that registration was one aspect of personal law which caused a good deal of litigation, with cases frequently having to be decided by the Protector. The Office of the Protector was increasingly sought out by Indians who soon became acutely aware of the protections afforded to them under the law.⁵⁸ Women especially, took advantage of access to the Protector's Court to resist marriage and its accompanying 'traditional' practices. As the Acting Protector, Major S. Graves complained in his annual report for 1877:

...the Protector is compelled to register all marriages which may be reported, Indian Immigrants being also required, under a penalty of 5 Pds., to report their marriages to him within one month of their occurrence...The result is that, with the custom common amongst these people of contracting their daughters in marriage at a very early age, when the time comes for the ratification of the contract the girl as often as not refuses to live with her husband, *and in the absence of the strong public opinion, so to speak, which would act upon her were she in India, obtains her own way.* The Protector is appealed

⁵⁷ PAR, II 1/18, 784/84, 1 January 1884. Emphasis added.

⁵⁸ Meer, *Documents of Indentured Labour*, Coolie Commission Report, 146.

to...but he has no power, even were it desirable, to compel the girl against her inclinations.⁵⁹

Colonial officials soon observed the differences in women's participation in ritual and custom between India and Natal. The traditional role of women, as British colonialists had come to understand it in India was being reconfigured in mid-nineteenth century Natal. The absence of customary authority to enforce 'traditional' practices was particularly notable in Natal. Crucially also, the difference in social context between the subcontinent and Natal meant that women – many of whom had arrived single, some due to reasons of caste prejudice and other well-documented cases of 'shame' – were free of many of the strictures placed upon them by extended family, religious institutions and the nascent nationalist discourse in India. The force of 'public opinion' to which the Major Graves alluded in 1877, is no doubt reference to the strong contestations around issues of personal law that British administrators encountered in India. Outside of the Indian national context of struggle for 'tradition', and outside of the civil laws of the Colony of Natal, women were beginning to claim space to resist 'customary' practices on their own terms with Indian men.

The Case for Legislative Intervention: The Dissolution of Indian Marriages

It was the case in Natal that Indian women often sought legal protection from abusive husbands, sometimes going as far as to request the dissolution of marriages which had been registered by the Protector as valid. In his Report for

⁵⁹ Meer. *Documents of Indentured Labour*. Report, for 1877, of Major Graves, Acting Protector of Immigrants, p. 592. Emphasis added.

the year 1876, the Protector of Immigrants, noting his inability to provide relief for Indians seeking divorce, remarked: 'I am frequently besought by the women to grant them divorces, but never by men.'⁶⁰ The Protector was, however, not explicitly empowered to grant divorces, and divorce was not a feature of religious personal law in India, where it was prohibited amongst Hindus and severely restricted amongst Muslims, especially women.

The Attorney General remarked, in 1880 that:

The laws do not appear to call for any amendments, except the ordinance regarding that most important question, the Law of Marriage and Divorce, and which should not be lost sight of, as I cannot help being of the opinion that the rigidity of the law in this respect is responsible for many of the crimes which would not be committed were the Protector empowered to grant divorces.

The prospect of the dissolution of marriages often arose out of the civil cases brought before the Protector. H.C Shepstone, who was the Protector in the mid-1870s, did in fact grant five divorces during his tenure, inferring from his stated 1872 mandate that he could – although this was something that the Wragg Commissioners later took a dim view of in their 1887 report.⁶¹

This raised more than a few difficulties for the Natal administration. As already noted, unattached women had been cast by the Coolie Commission as 'loose' and 'immoral' – the only good woman being a married one.⁶² The idea of

⁶⁰ PAR II 8/4 Protector's Annual Reports. 1876.

⁶¹ Meer, *Documents of Indentured Labour*, 258-298.

⁶² Meer. *Documents of Indentured Labour*. Report of the Coolie Commission, 118-169 and Report of the Wragg Commission 1885-7. 258-298.

single women as the vectors of venereal disease and generally lax morals in the colony was gaining momentum in official discourse by the end of the 1870s.⁶³

The fact that Indians *could only obtain divorces from the Supreme Court of the Colony* was a point of concern for the Protector of Immigrants in Natal who had to deal daily with the problem of the dearth of laws of divorce for Indians, and the physical abuse (including, as legislators noted, assault and murder) and desertion that often resulted.⁶⁴ An 1883 case that came before the Protector precipitated his appeal to the Colony's legislators for new legislation empowering the Protector to grant divorces. Typical of the types of cases which the Protector dealt with daily, this case exemplified the nature of requests for divorce on the part of Indian women:

I am a free Indian woman and reside on Mr Jee's land near Verulam. I was married to Rungiah a free Indian, about seven years ago. I married him and was registered married in the Protectors Office July 1877. About 9 months ago he Rungiah left me, leaving me with my father Nirsimilo 5529 who now states that he can scarcely afford to keep me. My husband Rungiah had a wife previous to him marrying me, and had two girls and 1 boy. He subsequently seduced his eldest daughter and had connection with her, she went and complained to the Res. Magistrate at Verulam and when he Rungiah got to hear of this he left and ran away. I believe he has left the colony, and I now seek for a divorce.⁶⁵

⁶³ Nafisa Essop Sheik, 'A Beastly Nuisance': An Exploratory Paper on Attempts to Control Venereal Disease among Indian Immigrants in Natal 1874-1891', Unpublished Honours Essay, University of Natal, Durban, 2003.

⁶⁴ PAR NCP 2/1/1/5, Legislative Council Debates, 1883. Indian Divorce Bill.

⁶⁵ PAR CSO 892 336/83 Thoyee Deposition 25th January, 1883

Thoyee appears to be a very respectable woman. Since her husband ran away and is supposed to have left the colony she has been living on her parents. The father appeared here today and says he is unable to keep her any longer. Can anything be done towards obtaining a divorce for her? ⁶⁶

The stark reality which may be glimpsed from the statements of Thoyee and the Protector, was that Indian women in Natal were caught between what may be described as layers of patriarchy. At no point could either Indian men (especially as the fathers of women) or colonial officials accept the idea that Indian women might remain outside of male spousal or parental control. This is perhaps an appropriate illustration of the manner in which Indian patriarchal expression converged with colonial patriarchy in the context of late nineteenth century Natal.

The appearance of Thoyee and her father at the Protector's office stimulated renewed correspondence on the matter of divorce between the Protector, The attorney general and the Colonial Secretary. The Protector passed on suggestions for the proposed law to the Colonial Secretary's office and was informed, in July 1883 that a draft bill had been approved and would come before the legislative council for debate.⁶⁷

It is a particular point of interest in this case that obtaining a divorce would prove advantageous to many interests, not least of all colonial administrators who acknowledged that desertion was a problem. Divorce may have set women 'free' of marriage, but in cases such as this, if the Colony did not

⁶⁶ PAR CSO 892 336/83 Acting Protector to Colonial Secretary, 25th January, 1883

⁶⁷ PAR CSO 892 336/83 C.Bird to Col. Sec, 4th July, 1883

allow for divorce amongst Indians, they would be defeating their own attempts at keeping women in marital unions under male control.⁶⁸ The concern of officials was predicated on the understanding that if the situation was not addressed then women like Thoyee would likely end up destitute and 'vagrant'. As illustrated in the previous chapter, vagrant women were perceived to be a 'moral' and economic problem for the colony and preventing women like Thoyee from contracting another marriage would likely exacerbate the situation. It was with these objects in mind that the Attorney-General for the Colony moved a bill "to make Provision for the Trial of Matrimonial Suits in cases of Indian Immigrants in Natal".

The only previous piece of legislation dealing with the issue of marriage was the 1872 law that required the registration of marriages. Dowry and bridewealth, the age of consent, seduction, bigamy, adultery, divorce and other issues were prominent complaints to the Protector of Indian Immigrants but had not received any legislative attention before the 1880s. There still remained no definite corpus of customary law for Indians in Natal. Further reasons for this may be discerned from debates in the Legislative Council of the colony and the report of the Wragg Commission (1885-1887). These two forums provide clues for the understanding of the Natal government's stance on Indian personal law in the colony.

⁶⁸ Meer, *Documents of Indentured Labour*, 258-298.

The Wragg Commission and the Indian Divorce Bill, 1883-1887

This Commission saw earnest discussions around the issue of Indian personal law. The longest chapter of the Commission's report was devoted to marriage and divorce, in addition to a further chapter on the powers of the Protector as the administrator of Indians in the Colony. The publication of the report of the Wragg Commission in 1887, two years after the appointment of the Commission, had far-reaching implications for the administration of Indian personal law in Natal. Viewed together, the aforementioned sections of the report are of singular interest to the analysis of Indian personal law in the colony. As noted earlier on in this chapter, the judicial powers of the Protector to adjudicate in civil cases amongst Indians was recommended by the Coolie Commission and legislated for in 1872. Fifteen years later, the Wragg Commission revisited the issue of the Protector's powers in regard to the administration of Indian personal law in Natal with some circumspection.

In the absence of Indian customary authorities charged with the administration, either directly or indirectly, of Indian personal law in Natal, the Protector came to fulfil this administrative and interventionist role. While his primary tasks included the registration of marriages, births and deaths amongst Indians and the management of Master and Servant relations, between 1873 and 1887 the Office of the Protector of Indian Immigrants arbitrated in civil cases – ranging from disputes around marriage and registration, desertion, assault and the transfer of property. The Wragg Commission was of the opinion that the Protector had, in his legal interventions, overstepped his mandate. They opined

that what had been intended by the Coolie Commission was a concession of powers of arbitration in 'petty disputes in the area of civil law', and not precedent-setting legal decisions affecting the status of Indian personal law in the colony.⁶⁹ This charge was significant for many reasons, not least of which was the fact that there had been little higher-administrative intervention in the work of the Protector from the time that the judicial capacity was conceded and the apparent about-turn by the Natal Government appeared to be a somewhat belated intervention.

With regard to Indian marriage and divorce, the Wragg Commissioners felt the necessity to re-state the intention of the sections of earlier laws dealing with this, such as the 1872 marriage registration law, that were linked to the duties of the Protector. The issue of registration was foremost among these considerations, with the Report expressing that registration of Indian marriages by the Protector was simply intended as *prima facie* evidence of the existence of a marriage contract and did not constitute the contract itself. The registration of marriages presupposed a ceremony antecedent to registration. This had been under discussion in the Legislative Council for some time – with legislators being unable to reach a consensus on the matter when considering the Indian Divorce Bill just four years earlier. While legislators themselves disagreed strongly with each other on what constituted marriage amongst Indians in 1883, the Protector was expected to have a somewhat more coherent and consistent manner of dealing with the registration of marriage and its attendant problems. This he ably did, but to the obvious dissatisfaction of the Colony's legislators who, by the time of the Wragg Commission report in 1887, had apparently managed to come

⁶⁹ Meer, *Documents of Indentured Labour*. Report of the Wragg Commission, 258-298.

to some sort of consensus. The result was that the Wragg Commission suggested that the extensive juridical mandate of the Protector be severely curtailed.

The Commission was explicit in its opinion that the Supreme Court would be the only competent legal authority for the appeal of cases of Indian personal law. The report's simultaneous refusal to effect marriage as a civil contract between Indian men and women is perhaps better understood in terms of the Legislative Council debate over the 1883 Divorce Bill for Indians in Natal. A bill providing for divorce amongst Indians was tabled by the attorney general for the first time in 1883. It was withdrawn at the second reading after objections by members of the Legislative Council who, while acknowledging the 'great necessity' for the law, claimed that the legislation was too complex and that they could not, in all good conscience, legislate for divorce when 'there [is] no definition of what constitutes marriage between Indians in this country'.⁷⁰ The issue at hand was that Indian marriage could not be defined by the Attorney General who had proposed the Bill and those in support of its passage. In refusing to accept registered marriages as civil contracts, the Natal government had severely limited its own capacities to control these unions. The inability of the state, in the absence of indigenous Indian customary authorities, to control Indian marriage customs especially, meant the loosening hold of Indian men over Indian women in Natal. 'Contracts' of marriage amongst Indians did not fall under the civil laws of Natal and were unenforceable if they were not registered. Since registration was not the actual marriage contract, and no one could actually define the contract of marriage amongst Indians beyond the idea that it involved some unspecified kind of ceremony, there was no more clarity on the issue than

⁷⁰ PAR NCP 2/1/1/5 Legislative Council Debates, 1883. Indian Divorce Bill.

before. The need for a divorce law for Indians in the contingent circumstances of Natal was clear, but how this could be effected without redefining Indian personal law was not.

If the Colony was going to uphold Indian religious personal law so that 'when they (Indians) go back to their home judgment may have exactly the same force there as if the divorce had been granted when they were in India by the courts there',⁷¹ they would have to refrain from legislating at all. As I have mentioned earlier, divorce was not a feature of religious personal law in India. Although according to the Protector, Indians had already breached custom by inter-caste and inter-religious marriage so it was evident to administrators that custom was already being re-worked by Indians themselves. In the deliberations of the colony's lawmakers it appeared that Indian customary rites around marriage varied between religious and language groups (complicating things further when ceremonies were performed across religious and language lines) and that ceremonies often took place in stages, costs large sums of money and involved the transmission of some form of material wealth either in the form of dowry or bridewealth. The eventual suggestion by Liege Hulett (who himself employed large numbers of indentured workers on his sugar estates in addition to his membership of the Colony's law-making council, exemplifying the political reach of many employers of Indian in the Colony) that registration be held as the civil contract of marriage was vetoed even though the member for Klip River, Mr. J.C Walton, reasoned that attempting to legislate, outside of any knowledge of Indian religious personal law and outside of the civil laws of the

⁷¹ PAR NCP 2/1/1/5 Legislative Council Debates, 1883. Indian Divorce Bill. Attorney General's comments.

colony meant constituting an undesirable 'third system of law'.⁷² The Colony's legislators eventually settled uneasily on a non-interventionist stance, withdrawing the Bill at its second reading.

The failure of the 1883 Divorce Bill and publication of the Wragg Commission's recommendations four years later exemplified the Colony's new legislative consensus. The Wragg Commission's recall of the specific powers of the Protector to arbitrate and administer justice in cases of dispute over issues of Indian personal law must necessarily be viewed together with the Report's decision on Indian marriages and divorces. The proliferation of cases appearing before the Protector not only defied the capacities of his Office, but also challenged the picture of the creation of stable personal social relations amongst Indian immigrants. It was the commissioners' view that many of the cases were, in fact, 'frivolous' and that the proliferation of cases had resulted mainly through the 'cheap' and 'accessible' channel of the Special Court of the Protector. Making justice more expensive and less accessible would, according to the Commissioners, result in only genuine concerns reaching the Resident Magistrates of the Colony and, in extreme cases, the Supreme Court of Law.⁷³

What the Wragg Commission did, crucially, was remove the capacity of the Protector of Indian Immigrants to define, by the creation of legal precedent, what constituted custom. The expressed provision that registration did *not* constitute a contract of marriage (despite the Protector's assumption that it did

⁷² PAR NCP 2/1/1/5 Legislative Council Debates, 1883. Indian Divorce Bill.

⁷³ Meer. *Documents of Indenture*. Report of the Indian Immigrants (Wragg) Commission 1885-7. Document 58, p. 258.

and despite calls for greater definition of what it was that actually constituted Indian marriage in Natal) meant that the Protector simply collected evidence of already existing customary marriages by registration, although it remained unclear what form these customary contracts took. Further, removing whatever power the Protector had inferred about his ability to dissolve marriages meant that the religious personal law of Indians was upheld. Allowing the dissolution of customary marriages would be a decisive legal intervention in the personal laws of both Hindus and Muslims – the former forbidding the practice and the latter severely restricting it. The different holders of the office of Protector applied differing interpretations to the Indian marriage contract and the inconsistencies in practices of registration and dissolution of marriages did not assist the administrative intentions of the Natal colonial state. While it was clearly the administration's intention to keep Indian marriage in the realm of the 'customary', the fact that Protectors like H.C Shepstone granted divorces meant that registered marriages were, in fact, being interpreted as civil contracts which *could* be dissolved, rather than Indian customary ones which could not. The seeming technicality of having registration represent *prima facie* proof of a marriage instead of the being actual contract had serious implications for the status of Indian personal law in Natal. If Indians were being governed by the civil laws of the Colony, then there would be implications for their rights and status, no longer simply as imperial subjects, but as citizens of the Colony of Natal. The Wragg Commission Report was explicit in ensuring that this could not be the case.

Conclusions

As I have illustrated in this chapter, the actions of the Protector in supporting calls for divorce and annulment on behalf of women not only ran contrary to the legal status quo for Indian customary law, but also upset the regulatory intentions of a colonial administration that was adamant about the general undesirability of single women and the need to control women's mobility in the colony. In a time when the place of Indian women in personal law appeared 'up-for-grabs', the Natal colonial administration attempted to promote a particular sexual, gender and legal status quo by removing the capacity of the Protector to intervene in the personal law of Indians. For the better part of the nineteenth century, the law would resolve neither the moral or administrative problems that had been the focus of legislative attempts. The legal and practical problems associated with the registration of marriages in Natal were the earliest illustration of the colonial administration's inability to deal with the complexity of the social realities of Indians in the colony.

The publication of the Wragg Commission's Report decreed that Indians were to be governed by an ever-ambiguous 'personal law', which was to remain separate, at all costs, from the ordinary civil laws which governed white citizens in the Colony of Natal. The attempts of both the Legislative Council and the Wragg Commission to put off decisive interventions in Indian personal law, the latter by making simple justice more expensive and less accessible to Indians, would not hold together for long. The Protector may have been rendered legally incapable of intervention in Indian personal law in an attempt to preserve the 'autonomy' of Indian custom, but as I illustrate in next chapter, it was Indian

women in the Colony who posed the greatest challenge to the search for the stable government of Indians in Natal.

Chapter Three

'Between our Customs and Those of another People': Making Personal Law for Indians in Natal, 1887- 1907¹

Introduction

The Natal government intervened directly in Indian personal law in 1891. Prior to this no attempt had been made to lay down, in the written laws of the Colony, any specific rules limiting Indian customary practices in Natal. The 1872 immigration law which required the registration of marriages was the only law that said anything at all about an aspect of Indian custom in Natal and, as I have argued at length earlier on in this study, it proved to be extremely problematic as did not define, or give any consideration to what did – or did not – legally constitute 'custom' amongst Indians in Natal. The 1891 intervention was the outcome of three decades of legislative vacillation on the part of the Natal colonial state and appeared to be a concession that intervention was necessary for the administrative machinery of the state to continue fulfilling its function of regulating and governing Indians with any degree of efficacy. It was clear by the 1890s that the Natal government had legislated in the belief and hope that the law would provide the answers to the 'problem' of dealing with Indian immigrants. As this chapter shows, this faith in legislative action as a means of ensuring more effective regulation of Indians in Natal would only grow as the nineteenth century turned into the twentieth, with the passage of more legal

¹ Pietermaritzburg Archives Repository [hereafter PAR], Natal Colonial Publications [hereafter NCP] 2/2/1/13 Legislative Council Debates, Comments of Joseph Baines, May 1906.

measures to administer and restrict the continuing presence of Indians in Natal. However, faith in the rule of law was not necessarily mirrored by its efficacy or any greater degree of consistency in understanding the legality or otherwise of the personal practices of Indians in the Colony.

Attempts at reforming Hindu custom in India had begun to gain momentum in the late nineteenth century as debates around religious, especially Hindu, personal law began to become increasingly prominent.² Contestations about the female age of consent for marriage, widow remarriage, sati and other issues of religious personal law gained prominence in India at this time, especially as reformers and nationalists began to butt heads on questions of what constituted the public and private spheres of life in Indian politics.³ Reforming personal law in India was, on the part of the British, as much about Britain's civilizing mission in India and defining the limits of the 'customary', as it was about the economic benefits of imperial rule.

The difference in the context of the Colony of Natal was that by acknowledging that all Indians in the Colony could not be repatriated to India, the Natal government was forced to deal with the 'custom' of Indians in relation to the dominant corpus of law in Natal – the civil law regulating white settlers. The moral 'repugnance', referred to in the previous chapter, and so often expressed with regard to the practices of Indians in Natal, had to be confronted

² Charles H. Heimsath 'The Origin and Enactment of the Indian Age of Consent Bill, 1891' *The Journal of Asian Studies*, Vol 21, No 4 (Aug, 1962), 491-504.

³ Sandra Freitag *Collective Action & Community: Public Arenas & the Emergence of Communalism in North India*. New Delhi: Oxford University Press, 1990; Lata Mani. *Contentious Traditions: The Debate on Sati in Colonial India*. Berkeley, 1988; Tanika Sarkar. "Rhetoric against Age of Consent: Resisting Colonial Reason and Death of a Child Wife", *Economic & Political Weekly* (September 4, 1993).

head-on with the realization that Indians would be a permanent part of Natal's population. Unlike British administrators in India and the colonial government's interactions with Africans in Natal, the Natal government was not bound to engage with Indians as an indigenous community mediated by forms of customary authority. The body of legal precedent that had come to be applied by the British in India and which was being continually subject to codification by the British government of India in consultation with upper-caste Hindu authority, could not apply in Natal if Indians remained as residents.⁴ There were no written laws for Indians in Natal except those that the government passed and, in a new space where tradition was being redefined and reconstituted, the absence of significant customary authorities to enforce custom meant that the colonial state would take responsibility for this role as well.

One of the central arguments of this thesis is that the Natal government bound itself into myriad legal knots in order to deal with the administration of Indians in Natal. Nowhere was this more true than in the attempt to govern the lives and presence of Indians in Natal by using their religious personal laws. This would prove to be an ill-advised and complicated method of administration, yet it persisted. This is perhaps best demonstrated by the fact that early in 1896 an attorney and notary, P.S Coakes, discovered a technical anomaly in the law governing Indians in the Colony which he promptly brought to the attention of the government.⁵

⁴ Nicholas Dirks. *The Hollow Crown: Ethnohistory of a Little Kingdom in South India*. Cambridge: Cambridge University Press, 1988.

⁵ PAR Attorney General's Office [AGO] 1/8/52 774/1896 Necessity to alter the law relating to the registration of marriages of Indian Immigrants.

The register of women that the Protector had been instructed to compile by the Coolie Commission was enforced at the end of the Commission by Law 12 of 1872.⁶ This law allowed for the registration of all Indian immigrant women already in the Colony, but did not anticipate the resumption of indenture two years later in 1874 and did not make provision for the continuation of this system of registering Indian women. The register was nonetheless dutifully compiled by the Protector (but without legal sanction) for a further sixteen years until it was abandoned as 'useless' in 1890. In the interim period, Law 25 of 1891 had decreed that all marriages registered by the Protector under the section of the 1872 law that provided for the registration of the marital status of women were, in fact, valid marriages. The problem, it turned out, was that the actual registration of women carried out by the Protector was, strictly speaking, not legal in the first instance! The result was that an amendment had to be passed retrospectively by the Legislature in 1896 validating the *marriages* registered by the Protector between the resumption of indenture in 1874 and the abandoning of registration in 1890, without at the same time legalizing the by-then-defunct *registration process*.

What this conveys so strongly is the continuing feebleness of the law in dealing with the reality of the lives of Indians in the Colony. The colonial state's fixation on Indian personal law generally (and the status of Indian marriages particularly) as a mechanism of control over women, and thereby over Indian family and social life, meant that contestations resulting from legal technicalities and persisting uncertainty dominated the state's attempts to regulate the presence of Indians in the Colony into the twentieth century.

⁶ See chapters one and two of this thesis for arguments around the creation of this register for women and its ultimate failure as an administrative intervention.

A New Law for Indians: Law 25, 1891

An illustration of this point was the passage of Law 25 of 1891. It addressed a range of personal law issues, but was not passed as an explicit attempt at intervening in the personal law of Indians. Despite its extensive provisions in the realm of Indian personal law, the Colony's legislators still saw the need to subsume Indian personal law under the general rubric of a Law 'to amend and consolidate the Laws relating to the introduction of Indian Immigrants into the Colony of Natal, and to the regulation and Government of such Indian Immigrants'.⁷

It is notable that the Act in question dealt with issues of Indian religious personal law which were as yet unsettled legal contestations in India. Many long and painful battles over issues of religious personal law such as Sati (widow immolation), widow remarriage, and the age of consent, still lay ahead on the subcontinent. These uncertainties may have persisted in India where the state was not required to deal with a growing community of people whose 'custom' was morally 'repugnant' to the prevailing body of law and 'legal common sense' and where contestations in personal law did not come into conflict with the imperatives of a colonial settler government.

These questions of personal law - which would persist on the subcontinent well into the twentieth century and even into post-independence

⁷ PAR Natal Colonial Publications [NCP] 5/2/18. Law 25, 1891, To Amend and Consolidate the Laws relating to the introduction of Indian Immigrants into the Colony of Natal, and to the regulation and government of such Indian Immigrants.

India – were intended to be resolved for Indians in Natal in this single, comprehensive piece of legislation that dealt with such crucial and contentious issues as marriage contracts, divorce and nullification of marriages, the Indian age of consent, remarriage, adultery, seduction and abduction. There has yet to emerge a study of the social history of Indians in Natal which considers these ruptures in the personal lives of early Indian immigrants which made their administration so difficult for the Natal colonial government. This study is a concerted attempt to lay the broader historical and legal philosophical groundwork for possible future work in this important and fascinating area of the personal and social lives of Indian immigrants to Natal in the nineteenth century.

In attempting to address the evidence of these ruptures in the personal law of Indians, Law 25 of 1891 was, necessarily, an exhaustive piece of legislation. It followed the recommendations of the Wragg Commission Report of 1887 that laws be made to deal specifically with these issues. While the Wragg Commissioners had taken away from the Protector the legal powers to dissolve marriages, they were only too aware of the complications caused by the inability of Indians, especially women, to access divorce in the Colony. The Commission advised that the Resident Magistrates of the Colony be empowered to grant divorces on the limited grounds of desertion for more than a year, or adultery.⁸ Similarly, the Wragg Commission recommended that legal provision be explicitly made to allow for remarriage upon death or divorce as this was not provided for by the religious personal law of Indians, especially Hindus. In Natal, however, the question of widow remarriage did not gain prominence in

⁸ Meer. *Documents of Indentured Labour*. Report of the Indian Immigrants (Wragg) Commission, 262.

official discourse as that aspect of Hindu personal law seemed to fall out of practice in the context of the skewed gender demographic amongst Indians in late nineteenth and early twentieth century Natal. Women were in short supply in Natal, so while the prohibition of widow remarriage was offered as a central tenet of Hindu personal law in India, it was never a prominent issue in personal law debates in Natal. It is also crucial to understand this in the context of the arguments I have already presented on the issue of the state's early attempts to intervene in divorce amongst Indians and the general keenness of the Natal government to curb the presence of 'unattached' women in the Colony. The prohibition of widow remarriage was thus never contemplated in the law.

Law 25 of 1891 created, in effect, a new, separate body of custom for Indians although it made attempts to retain vestiges of Indian personal law where it considered that the administrative imperatives of the colonial state outweighed any moral aversion to the provisions enshrined in the new laws. A striking example of this was that in setting out the age of consent for Indians, the Act allowed for Christian Indians to be married at a younger age than their white counterparts and it amended the Christian Marriage Ordinance of 1846 in this respect. In another instance the Act limited the provision of marriage by permitting the nullification of marriages through the setting of 'prohibited degrees of marriage'. This allowed for the nullification of Indian marriages on the grounds of religious prohibitions of consanguinity or affinity as sanctioned by the religions of the parties involved.⁹ This was an interesting provision as it appeared that the law was acting simultaneously to curb forms of traditional practice while attempting to preserve Indians' marriage taboos with regard to

⁹ PAR NCP 5/2/18. Law 25, 1891.

kinship arrangements. This appears to bear out the argument that the Natal government had effected their new interventionist stance in Indian personal law only insofar as its practices were obstructing the effective administration and government of Indians in Natal. The problems, detailed earlier on in this thesis, which arose out of the efforts to preserve Indian personal law by non-intervention, were becoming increasingly widespread as the population of Indians in the Colony continued to grow. Intervention seemed inevitable, in the context of regulating the lives of what, by 1891, were 41, 142 Indians.¹⁰

Perhaps the most striking provision of the Act, and the biggest departure from the long-held legal stance of non-intervention, was the provision for the registration of Indian marriages. Foremost was the fact that it did what the Wragg Commission had tried most stringently to hold out against: it made the act of registration of Indian marriages in Natal constitute the contract of marriage without consideration for antecedent or subsequent ceremony. What it did then, was make Indian marriages that were registered into ordinary civil contracts. The next logical step therefore, was to prohibit polygyny. Marriage registration was enforced by the new Act as a Christian contract, explicitly prohibiting polygynous marriage. Its purpose was also explicitly moral. The Colony's legislators conveyed the prohibition of polygynous marriage in especially strong moral terms. The constitution of the registration as Christian also allowed for the validation of the marriages of Christian Indians under Christian rites in the cases where the proposed spouse was not Christian.¹¹

¹⁰ Meer. *Documents of Indentured Labour*. Population Structure in Natal, p.16.

¹¹ See for example, II 1/98 I1319/1900. Magistrate Durban, Marriage under Law No. 25, 1891

Law 25 of 1891 epitomized the colonial state's attitude toward the government of Indian immigrants in Natal. It simultaneously recognized and acknowledged custom and intervened in it by defining its limits in the Colony. In a similar vein to the Natal administration's attempts to control African marriages with the creation of an African marriage register in 1869, the inducement to register Indian marriages was both an attempt to restore the integrity of 'custom' by preventing the newly-observed abuses being perpetrated in its name, while simultaneously reconstituting custom in more Christian ways. Indian custom, like African custom was to be accommodated, but (however contradictory this may have been) within the legal administrative framework of Christian patriarchal principles. Once registered, these marriages could only be dissolved by magistrate's courts in the Colony. The motive for such decisive intervention was primarily a strategic one. The colonial state had, early on, made the decision to regulate the lives of its Indian immigrant subjects in Natal through their personal laws. A law such as this laid the groundwork for more effective intervention by the courts, and other legally constituted offices such as that of the Protector, in disputes surrounding marriage, divorce, inheritance and other issues relating specifically to Indian personal law.

Tulukanum vs. Munusami: An Indian Woman takes on the State

The 1891 attempt to address Indian personal law was an important piece of legislation considering that non-intervention would have favoured religious personal law as was the case in India, thereby restricting the ability of women to seek divorce (in the case of Muslim marriages) or preventing them from doing so

altogether (as in Hindu personal law).¹² More importantly, its legal robustness was about to be tested by an indentured Indian woman.

In the midst of this legal ambiguity around Indian personal law in the Colony, women began to take the opportunity of asserting themselves. One such example is the much-publicized case of Tulukanum, an Indian woman who sued for nullification of her marriage on the grounds that it was polygynous – and therefore against the law of the Colony.¹³ It is an illustration of the advantage that some women took of the early uncertain status of Indian personal and customary law in Natal, and is analogous to the argument that African women were similarly quick to turn to the law courts.¹⁴ This particular case was reported at length in most of the local newspapers and merited a detailed analysis in the Protector's annual report for 1899.

The case of Tulukanum, brought against her husband Munusami, was a particularly remarkable one as she had arrived from Madras together with her husband and their child, as well as with his second wife – a child bride of ten called Thoyi. Their marriage was recorded at the emigration depot in Madras and her name was listed – incorrectly as the case was – *after* that of Thoyi, the child bride to whom her husband was married. She appealed, under the laws of Natal, for nullification of the marriage and custody of their three children, two of whom she had borne with her husband whilst in the Colony. The Magistrate

¹² PAR NCP 5/2/18. Law 25, 1891.

¹³ PAR Indian Immigration Files [II] 1/141 I452/1900, II 1/141 I447/1899, II 1/141 I309/1900 and the *Natal Advertiser*, 8th March 1900, 'Important Local Decision Affecting Indians'.

¹⁴ A.R. Booth, "'European Courts Protect Women and Witches': Colonial Law Courts as Redistributors of Power in Swaziland, 1920-1950', *Journal of Southern African Studies*, 18, 2 (June 1992), pp. 253-275.

ruled in favour of Tulukanum, stating that the registration of the marriage by the Protector after their arrival in Natal, contravened the laws prohibiting bigamy in the Colony. Tulukanum, *recorded* as the second wife, was therefore entitled to an annulment (even though she was actually the first wife of Munusami!). Tulukanum's actions were without precedent in Natal. Neither party in the case owned property, making it unlikely that Tulukanum would have benefited materially from nullification of her marriage while retaining custody of her children. It is, nonetheless, a notable example of women's acknowledgement of their legal rights of access to courts (although this was most often mediated through interpreters, the Protector's office and other legal representatives) and the willingness of those who could, to use it in the social and political context of Natal.¹⁵

It is also emblematic of the feebleness of colonial legal interventions as a means of controlling Indians, especially women, in Natal. Increasing government intervention attempted to rigidify 'custom' and undermine the increasing resistance of Indian women in Natal to 'tradition' in the form of religious personal law. Law 25 of 1891 was the first legislative attempt to respond to the 'crisis of morality' presented by single, mobile Indian women. Following the arguments about divorce which I have presented earlier in this thesis, it was through Law 25 that the colonial state allowed women to initiate divorce on limited grounds. These were set out as adultery and desertion for a period of more than one year.¹⁶ As discussed in the previous chapter, the administration saw this as a necessary part of 'freeing' women from marital ties which proved

¹⁵ See Prinisha Badassy, *Turbans and Top-Hats: Indian Interpreters in the Colony of Natal, 1880-1910*. Unpublished Honours dissertation, University of Natal, Durban, 2002.

¹⁶ PAR NCP 5/2/18. Law 25, 1891.

ineffective in maintaining control over them in order that they might contract other marriages.¹⁷ The law had not, however, worked out a way to provide further inducement for women to actually contract a subsequent marriage. Tulukanum's case is particularly interesting in that she could not sue for divorce as her case did not meet the limited grounds set out by Law 25 but instead used the common law of the Colony – more specifically the fact that registered marriages fell under the civil laws of Natal and could therefore not be polygynous – to turn the intentions of this legislation on its head.

It was the intention of the legislators of Natal that the administration would exercise greater control over Indian marriages if it disregarded religious and other ritual ceremony and simply constituted the contract of marriage by registration. Tulukanum proved that loopholes still existed in the law, as the registration of polygynous marriages by the Protector in the face of still-continuing legal debate and uncertainty provided her with the opportunity to annul her marriage. What the colonial state would take from this was that there could be no half measures in their legislative interventions in Indian religious personal law. The Protector could no longer register polygynous marriages as, under the 1891 Law, the act of registration now constituted the contract without consideration of a marriage ceremony of any kind. Under Law 25, 1891 to register marriages which may have been contracted in India actually meant *reconstituting* them under the law in Natal. Polygynous marriages had no legal validity under Natal law and could not therefore be registered by the Protector.

¹⁷ Chapter 2, 88.

The state was flummoxed by the Magistrate's decision in the case and petitioned practitioners of law in the Colony for their opinion on the matter.¹⁸ None of the attorneys canvassed by the state had any doubt as to the legal correctness of the Magistrate's decision, leaving the Natal government with a legal mountain to climb and very little time in which to do it. The recall of the Protector's judicial powers of arbitration in civil cases between Indians and the conveying of these powers to the Colony's magistrates instead, meant that appeal against the decisions of magistrates could only be made to the Supreme Court of Natal and had to be lodged within twenty days of the magistrate's decision.¹⁹ The problem, of course, was that Munusami did not possess the financial means to institute such an appeal although it was imperative for the colonial state – and for the protection of the patriarchal power in which the state was deeply invested – that he did in fact appeal. Unfortunately for them, however, the lack of bureaucratic efficacy (between the magistrate's decision, canvassing the opinions of various legal minds and eventual official authorization for state concession of financial assistance to Munusami) resulted in more than twenty days elapsing, making further legal recourse for Munusami impossible.²⁰

The 1891 legislation to 'provide relief' for the Indian population in general, given the instability of Indian domestic life in the Colony at the time, is likely to have offered some considerable relief to Indian women who had the possibility of legal recourse where it was denied in India (where separation from

¹⁸ II 1/141 I447/1899. Tulukanum No. 58021 vs Munsami No 58019 Nullity of marriage.

¹⁹ PAR NCP 5/2/18. Law 25, 1891.

²⁰ II 1/141 I285/06. Protector Indian Immigrants, Durban, 2 February, 1906

her husband would likely have resulted in severe ostracisation, and in some cases even death).²¹ So while they may not have enjoyed equality within marriage, women had the opportunity to – and some instances did – creatively wield the colonial legal system in Natal to get away from neglectful or abusive husbands and to extricate themselves from traditional practices that they may have been unable to defy in India. The vast literature on personal law in India is potentially illuminating for the kind of gendered legal analysis of indenture which I attempt here and it is regrettable that previous attempts have not been made to compare developments in the personal laws of Indians in Natal with those occurring almost simultaneously in the administration of Indians through British indirect rule on the Indian subcontinent.²²

The case brought by the woman Tulukanum for the nullification of her marriage was to be the first of many complications – most especially with regard to polygynous marriages – over the new provision in Law 25, 1891 that the registration of marriage by the Protector constituted the contract of marriage in the Colony. A few years later, in 1906, a woman by the name of Adary Venkiah arrived as an indentured immigrant in Natal. She claimed to have arrived in the Colony in search of her husband who had left India previously to work in Natal. The Protector discovered that the man in question, one Adary Ramasamy, had in the meantime contracted a legal marriage in Natal to another woman.²³ Yet

²¹ Joanna Liddle and Rama Joshi. *Daughters of Independence: Gender, Caste and Class in India*. London: Zed Books, 1986.

²² Lata Mani. *Contentious Traditions: The Debate on Sati in Colonial India* Berkeley and Los Angeles: University of California Press. 1998; Gayatri Chakravorty Spivak. 'Can the Subaltern Speak?' in *Marxism & The Interpretation of Culture*. Cary Nelson and Lawrence Grossberg. (eds.) London: Macmillan, 1988; Joanna Liddle and Rama Joshi. *Daughters of Independence: Gender, Caste and Class in India*. London: Zed Books, 1986

²³ PAR II 1/141 I285/06 Correspondence between Protector Indian Immigrants & Attorney General, Durban. February and March, 1906

another problem of polygynous marriage confronted the Protector, James Polkinghorne. This latest case stimulated a heated debate between the Protector and the Attorney General on the matter.

The Protector was of the opinion that the marriage contracted in the Colony would have to be nullified in order that the first marriage, contracted in India, could be given legal validity, as the case of Tulukanum had demonstrated that the Protector could, under no circumstances register polygynous Indian marriages in Natal.²⁴ Of course, this presented even greater problems for the colonial state. As Indian polygamous marriages only allowed for multiple wives, it followed then that it would be women who could more readily benefit, in terms of mobility, from the legal rejection of polygynous marriage arrangements. The case of Adary Venkiah served to reinforce this idea a few years later. If her marriage to her husband could not be validated, she would be yet another single Indian woman in the Colony, deserving of the same moral disapproval that the colonial state reserved for unattached woman. The same, of course, would be true for the other women whom her husband had married if that marriage had to be nullified in order for Venkiah's to be validated.

Tulukanum vs Munusami exposed a legal loophole in the first instance: as the Protector's registration was the contract of marriage without regard for antecedent or subsequent ritual or ceremony, he could not, without further legal sanction, register the polygynous marriages of arriving Indians. Marriage was now a civil agreement contracted by a government official who operated under the strictures of the civil laws of the Colony of Natal – laws that prohibited

²⁴ PAR II 1/141 I285/06 Attorney General's Comments.

anything other than monogamous unions. It effectively turned Indian marriages, which had previously been in the realm of Indian religious personal law, into secular civil contracts (imbued with Christian ideology). As subsequent contestation began to surface around existing polygynous marriages in the wake of Law 25 of 1891, the problem now arose that this ostensibly secular legal space would have to actually accommodate aspects of Indian religious personal law, but without undoing the secular civil contract. The situation was nothing short of a legal nightmare for the Natal government.

True to form, the colonial state attempted to close this loophole with another legal amendment. Principal Under Secretary for the Colony of Natal, John Bird, recommended approving an amendment to Law 25 of 1891 that would ameliorate the bind in which colonial officials found themselves. The prohibition of all polygynous marriages had clearly proven to be an ill-conceived legal strategy on the part of the colonial state and the cases of both Tulukanum and Venkiah demonstrated this most strikingly. The result was that the following year, in 1907, a provision would be included in the 1907 Indian Marriages Act retrospectively permitting the registration and declaring the validity of all polygynous unions contracted, or claimed to have been contracted, in India.²⁵ As a direct result of Venkiah's case, it also set out that polygynous unions would be upheld by the Colony even if the marriage in India was a monogamous one and a man contracted a subsequent union in Natal without the knowledge of his first wife. This attempt to close a gaping hole in the administration of Indian women in Natal via Indian personal law would mean the compromise of the principle of monogamy in Natal that colonists had strongly defended, in favour of a limited

²⁵ PAR NCP 5/3/15. Act No.2, 1907, 'To Make Provisions Relative to Marriages of Indian Immigrants'.

concession to the personal laws of Indians. The enduring irony, given that registration by the Protector constituted the contract of marriage under Law 25 of 1891, would be that the Protector was, by the 1907 amendment, specifically empowered to 'perform' polygynous marriages!

***'We Do Not Want Them Yet We Allow Them to Come': From Transitory Migrants to Permanent Residents*²⁶**

By the 1890s the Natal administration had, in its dealings with the British government of India, gauged that its attempts to assure the return of Natal's passenger, indentured and ex-indentured Indians to India were coming to nothing. Debates in the Colony's Legislative Council over changes to the Indian immigration laws contemplated increasingly restrictive legislation as schemes to repatriate Indians looked less likely to be accepted by the Indian Government by the 1890s. The parliamentary debates of the 1890s reflect the intentions of the Natal government to repatriate Indians. Members even went so far as to propose a scheme whereby Indians who arrived to indenture in Natal could be returned to the subcontinent during their indenture under an agreement to complete their terms of service in India.²⁷ Other Members were certain that the Indian Government would not sanction such a course of action and instead suggested measures that would curb the presence of Indians in Natal. These pieces of legislation, well documented in studies of the history of Natal, included laws aimed primarily at Indians who had come to Natal as 'passenger Indians', entrepreneurs and tradesmen, who had begun to pose an economic threat to

²⁶ PAR NCP 2/1/1/12 Legislative Council Debate, June 5, 1890. Indian Immigration: Comments of J.F King, Member for Durban.

²⁷ PAR NCP 2/2/1/2 Legislative Council Debate, June 1895.

white settlers in the Colony in the late nineteenth century.²⁸ Such legislation included restrictions on trade licences, liquor laws and disingenuous quarantine restrictions, amongst others.²⁹ Perhaps the most invidious piece of legislation was the 1895 Immigration Amendment Act which instituted a tax on ex-indentured Indians remaining in the Colony.

Observing the rise in the Indian population in the Colony through both indentured and passenger immigration, the Natal government decided to adopt a legislative attempt in order to drive 'the lower class of Indian' out of the Colony. The Natal administration knew through their ongoing negotiations and correspondence that the Indian government would not sanction the repatriation of ex-indentured workers to India, especially those Indians who may have completed their periods of service and chose to remain in Natal. Natal had, importantly, been granted the status of Responsible Government in 1893 – this allowed the Colony to implement legislative measures which did not require the Royal Assent. Historians of Natal have noted the increasingly racist and stringent immigration laws that began to be passed by the Natal legislature upon the concession of Responsible Government. Prior to this overtly racist legislation, which may not have been assented to by Britain, was not a prominent feature of Natal's legislative actions.³⁰

²⁸ Meer. *Documents of Indentured Labour*. Report of the Indian Immigrants (Wragg) Commission 1885-7 and Report of the Indian Immigration (Clayton) Commission 1909, 243-633 & 634-648.

²⁹ Surendra Bhana and Bridglal Pachai (eds.) *A Documentary History of Indian South Africans, 1860-1982*, David Phillip: Cape Town, 1984. Surendra Bhana and Joy Brain. *Setting Down Roots: Indian Migrants in South Africa, 1860-1911*. Johannesburg: University of Witwatersrand Press, 1990.

³⁰ Nafisa Essop Sheik *"This Most Perilous and Epidemical Disease": Plague Precautions and Public Politics in Natal, 1896-1903*. Unpublished Honours Dissertation, University of KwaZulu-Natal, Durban, 2003.

The 1895 Indian Immigration Amendment Act reduced indenture from ten to five years before free return passage to India could be claimed. Indians wishing to re-indenture were free to do so, but those who did not enter into labour contracts in the Colony, but instead attempted to make a living on their own, would have to pay a tax of three pounds a year for every statutory adult for a license to remain in Natal – this included male children over the age of 16 years and female children over the age of 12. Needless to say, very few Indians who came to Natal under indenture could afford the tax. But the tax would not become an issue for Indians until the beginning of the twentieth century as it applied only to Indians indenturing after the introduction of the Act in 1896, making the first taxes payable in 1901.

Effects of the Three Pound Tax

The Clayton Commission reflected on the three pound tax in its Report of 1909, confirming that between 1901 and 1903, officials were at a loss to deal with defaulters, where they could be tracked down, as the Natal government had undertaken with the Indian Government that non-payment of the tax would not be treated as a criminal offence but as 'small debt' that would be subject to civil process.³¹ By 1903, the colonial state had abandoned remaining pretence and began harsh enforcement of the tax with the result that hundreds of Indians, men and women, were imprisoned.³² The abiding problem for the state was that not all Indians coming out of indenture could be kept track of as discharge

³¹ Meer. *Documents of Indentured Labour*. Report of the Indian Immigration (Clayton) Commission, 1909, p.648.

³² Meer. *Documents of Indentured Labour*. India Petition 1909, Appendix 2 of Clayton Commission Report, p.647.

certificates were issued by employers who sent time-expired Indians on their way, with the result that there were likely many hundreds more who had not paid but remained unaccounted for.³³

As the Clayton Report acknowledged, the three pound tax had the desired effect of 'inducing Indians to return to India' with only 442 of the 7735 men and women who indentured in 1903 remaining 'free' in the Colony after the expiration of their indenture contracts in 1908.³⁴ The remainder either re-indentured or returned to India. However, it was the Indians who had completed their contracts between 1901 and 1903 and who could not be accounted for, as well as Indians already in the Colony prior to the promulgation of the 1895 Act (who numbered some 40 000) and who were thus not subject to the tax, that continued to pose a problem for the state. When the 1895 law was being debated in the Colony's Legislative Council, the simultaneous promulgation of a new vagrancy law for Natal was strongly suggested, which one member claimed was essential to deal with the resulting effects of the tax if the situation of the majority of poor Indians was taken into account. While no such measure was undertaken, these words proved prophetic as colonial officials observed the increase in vagrancy, especially amongst Indian women, in the early 1900s.³⁵ Many of these women were described by district magistrates as destitute or indigent and could not afford the tax. Once again, the colonial state in Natal had succeeded in defeating its own ends. The focus of a multiplicity of legislative attempts aimed at constraining the mobility of women and subjecting them to patriarchal power

³³ Meer. *Documents of Indentured Labour*, Clayton Commission Report, p.641.

³⁴ Meer. *Documents of Indentured Labour*, Clayton Commission Report, Historical Introduction, p.638.

³⁵ Meer. *Documents of Indentured Labour*. Clayton Commission Report, p.640.

was being undermined by a law that demanded a tax which most often had to be paid by the husband, father or male guardian of Indian women in Natal. Where families were growing, this would likely have presented untold hardship. It is perhaps noteworthy that witnesses who gave evidence before the Clayton Commission claimed that those who did not want to return to India but did not possess the means to pay the tax 'sold' their wives and daughters to other men.³⁶ This particular effect of the tax raises an interesting comparison between the three pound tax for Indian and the African hut tax. A side-effect of the three-pound tax was that, similar to the hut tax on Africans, it was proving to be an effective way of hampering polygynous arrangements if men had to pay taxes for the women to whom they may have been married.

The disruptions that this new tax imposed on newly-forming Indian family life in Natal have not, however, been studied in any detail. It is not difficult, however, to see the potential problems that this would pose for poor Indian women and men who had emerged from the yoke of indenture and begun to eke out an existence for themselves and their growing families. The effects of the tax on those emerging from indenture after 1903 can only be surmised in this study. It is, however, interesting that it is precisely around this time that betrothal promises amongst Indians, which often involved the transfer of money and jewellery, began to hold the attention of the state.

By 1904, the cracks in the administration of Indians were once again beginning to show. The attempts of the Natal Government to repatriate Indians were gathering even greater momentum as they set out to petition the Indian

³⁶ Meer. *Documents of Indentured Labour*. Clayton Commission Report, Digest of Evidence. 634-648.

government regarding the required quota of indentured women to Natal. The need for labour in Natal continued to grow, especially heavy labour of the sort required by the expanding Natal Government Railways. The increasing labour needs of the Colony, together with the growing refusal of the Natal Government to accept Indians as a permanent resident population led to an attempt by the colonial state to argue against the female quota requirement for indentured transport. The 1895 Act that had instituted the three pound tax had also effectively reduced the mandatory period of indenture by granting free return passage to Indians after a single five-year term of indenture instead of the previous ten year period which had included re-indenture.³⁷ The Natal Government used this fact in 1904 to argue for the reduction of the female quota, and its possible elimination:

Natal now contains a very large number of Indian women and the period of indenture having been reduced from 10 years to five years there does not seem to be the same reason in existence for keeping the percentage of Indian women in every shipment of immigrants as high as 40%. A more cogent reason which may be adduced, however, for the reduction of the percentage to, at most, 33% is the fact that the recruitment of women is becoming each year increasingly difficult and when (as happens at nearly every shipment) the full 40% of females is not obtained, a large number of desirable immigrants are prevented from coming to the Colony.³⁸

With the reasons for the female quota (which were discussed at length in the first chapter of this study) in mind, it is easy to see that the Natal Government was reneging on their agreement with the Indian Government. It is clear that Natal was no longer committed to the permanent residence and

³⁷ Meer. *Documents of Indentured Labour*. Clayton Commission Report, 634-648. PAR NCP 5/3/2. Act No.17, 1895, 'To Amend the Indian Immigration Law, 1891'.

³⁸ PAR CSO 1760 1904/3996. Secretary I.I.T Board, Durban 6/5/04.

familial and social reproduction of Indian immigrant workers to Natal. In any event, the request to re-visit the issue of the female quota was turned down by the Indian government.³⁹

The Need for Law: Indian Marriage and Moral Crisis at the turn of the Twentieth Century

Meanwhile, official discussion around Indian marriages, never quite silent, proliferated once again at the beginning of the 1900s. The conclusion of the aforementioned cases of Tulukanum vs. Munusami in 1900, Adary Venkiah in 1904, as well as another prominent suit brought against an Indian man for the crime of assault in 1905– in an increasing docket of similar charges in the beginning years of the twentieth century – stimulated renewed debate on the issue of Indian marriages.⁴⁰

The 1905 case, 'Rex vs. Ramsamy and six others for assault', brought to its height already emerging concerns around crimes amongst Indians connected to practices of marriage. Apart from the issue of polygynous marriage which I have outlined earlier on in this chapter, another related issue which had officials in the Colony alarmed, for different reasons, was that of the breaking of marriage promises which appeared to result in crimes of abduction, rape, assault and murder amongst Indians. In Rex vs. Ramsamy, seven Indian men were charged with assaulting another Indian. The dispute had arisen over a young woman who, promised by her parents in marriage to Ramsamy, had instead eloped with

³⁹ PAR CSO 1760 1904/3996. Secretary I.L.T Board, Durban 6/5/04.

⁴⁰ See NCP 2/2/1/13 Indian Marriage Bill Debate & Mercury, February 9, 1905.

another lover. The lover was found and beaten by Ramsamy and his friends.⁴¹ Similar cases were observed in districts around Natal, and the issue appeared prominently in a new bill introduced into the legislature in 1906 to regulate marriage amongst Indians. As the Minister of Agriculture remarked in the debate over the proposed legislative measure:

[I]t is a matter of most serious concern that such a measure should be passed. Not only is it a matter in which fraud is perpetrated between the bridegroom and the parents-in-law, but it is a matter which leads to frequent murders and most murderous assaults. It is only a few months ago that a case occurred in this very City in which a man had married a girl by the ordinary Indian rites, the marriage had not been registered, the husband found that his wife had been given to another man, and he immediately murdered the wife...it is most imperative that this measure should become law, because of the prevalence of crime owing to the present position of affairs. A man who has paid for his wife (as Indians do pay, in presents and so forth) has no remedy under the present law. He cannot sue because it his position that he should have registered the marriage. If he has not done that, and the parents object to it, and won't allow the girl to register the marriage, he has no remedy in law at all...I am convinced it is one of the most important measures as regards the Indian population that have been brought in for many years.⁴²

The scale of the importance of a marriage law for Indians may be measured by the flurry of official correspondence in the Colony around the question of further legislative intervention.

⁴¹ PAR Colonial Secretary's Office [CSO] 1791 4871/1905 Original Correspondence. Natal Mercury, 9th February, 1905. Indians and Child Marriage.

⁴² PAR NCP 2/2/19. Legislative Council Debate, Indian Marriages Bill, May 8, 1906.

'Endeavoring to bring about a social reformation': Law, Betrothal & Age of Consent ⁴³

A letter had appeared in the *Natal Mercury* in February 1905 berating the colonial state in Natal for allowing the persistence of practices such as child marriage which the writer claimed led to serious crimes like assault and murder. Signed by a 'Colonial Indian', it stimulated frenetic discussion amongst colonial officials about the custom of betrothal and child marriage amongst Indians in the Colony. The letter (evidently written by a Colonial-born Christian Indian man) denounced the practice in the strongest terms, laying the responsibility for its perpetuation with both Indians and European legislators in Natal:

Indian child marriage proves a most lucrative business for the legal fraternity of this Colony, for it lays the foundation for many a lawsuit, such as breach of promise, abduction, elopement and often the capital crime of murder. True, the principle has been in practice in India from time immemorial; but, looking at it from a Colonial, social, moral, and civilized standpoint, it is hardly a matter to be tolerated by citizens of an enlightened country such as ours...At the age of 13, which the European authors of the Indian immigration laws (by which the people are governed) define as a marriageable age for Indian girls, she is expected to fulfill the sacred duties of a wife to a man 33 years of age. Her consent to marriage is certainly never sought...In isolated cases the girl may throw off the parental yoke, and refuse to go with the man. Now for the legal fraternity: There naturally follows a lawsuit for breach of promise, demanding the return of moneys [sic] advanced to her parents, presents...If the man is strong-willed, he takes possession of his own by force. Then the parents of the girl bring an action for abduction on the one side; the husband a counter-claim for the return of presents on the other side...which may mean another lawsuit...And if against her will the girl is made to go with the man, she awaits her opportunity, and elopes with

⁴³ PAR CSO 1791 4871/1905 Original Correspondence. *Natal Mercury*, 9th February, 1905. Indians and Child Marriage.

the first available lover. Blame can hardly be attached to the husband for displaying his pugilistic powers...he calls together his friends and...the lover is brutally beaten...then follows (a charge) for assault to do grievous bodily harm...But what is the root of all this litigation?-child marriage among Indians...I have never been favourably disposed towards class legislation, but, as the scandal requires immediate attention, I, as a Colonial-born Indian certainly think that this being a responsible colony the Government should lose no time in instituting an inquiry and...introduce a bill altering the marriageable ages of Indian boys and girls...and strictly forbid child marriage.⁴⁴

The Protector responded to the article by forwarding copies of it to the magistrates in the Colony and questioning them regarding the prevalence of child marriage and the lawsuits arising from it. Only some of the magistrates claimed to have adjudicated such cases, although the vast majority was of the opinion that new legislative action was necessary. The Magistrate for Inanda was unequivocal in his support for new legislation.

I tried two cases in which suitors sued for the recovery of money paid on account of girls who were minors, having been promised them in Marriage by the parents, my Judgments in each case being for the plaintiff, had a splendid effect, and brought about the registration of many Marriages that would otherwise not have been registered. In fact, I understand that one or two summonses were withdrawn and the Marriages registered. I am of the opinion that Legislation is necessary to stop the evil, which is very prevalent.⁴⁵

The magistrate for Klip River indicated that he was 'informed that it is the intention of the better class Hindus to suppress the custom of infant marriages'.⁴⁶

⁴⁴ PAR CSO 1791 4871/1905 Original Correspondence. Natal Mercury, 9th February, 1905. Indians and Child Marriage.

⁴⁵ PAR CSO 1791 4871/1905 Reply to circular 338/05 of Protector of Immigrants from Magistrate, Inanda Division. 2nd May 1905.

⁴⁶ PAR CSO 1791 4871/1905 Reply to circular 338/05 of Protector of Immigrants from Magistrate, Klip River Division. 13th April 1905.

'The perpetuation of this horrid custom in a civilized community like Natal is abhorrent to our Christian instincts and morally as well as socially not to be tolerated.'⁴⁷

It appears that the term 'age of consent' referred not to the age at which girl in question might consent to be married, but the age at which her father, or legal guardian could consent to marriage on her behalf. The issue of the age of consent amongst Indians in Natal had been raised for the first time in the 1860s. The Natal administration, concerned about the age at which women could be registered as married, canvassed the opinions of lawmakers in other colonies to which indentured labourers were sent. The age of consent ranged from 12 years of age in some colonies to 15 in others.⁴⁸ In the early 1870s, the Natal government set the age of consent in the Colony at 13 years for the purposes of marriage registration, while acknowledging that practices such as betrothal and child marriage were common amongst Indians in Natal. Charles Heimsath has argued, in the case of India, that child marriages and early betrothals or promises of marriage can be accounted for by competition for particular 'suitable' marriage partners.⁴⁹ This argument may be followed in the context of Natal where ideal marriage partners, chosen by caste, village and language amongst other considerations would likely have been especially difficult to find given the new demographic situation. Of course, in Natal the situation was further compounded by the preponderance of bridewealth transactions upon marriage which I have highlighted earlier in chapter two, and which made marriage an

⁴⁷ PAR CSO 1791 4871/1905 Magistrate, Greytown to Attorney General, Natal. 10th February, 1905.

⁴⁸ Meer, *Documents of Indentured Labour*, 598-610.

⁴⁹ Heimsath 'The Origin and Enactment of the Indian Age of Consent Bill, 1891'.

expensive affair for men and a potentially lucrative one for the parents of young girls. It is unsurprising then that the matter of the age of consent of Indian girls was raised repeatedly by colonial officials at all levels of government. The implementation of the 1891 Act decisively intervening in the realm of personal law had opened up the possibilities for further intervention.

Rights In Women: Bridewealth, Kinship and Indian Marriage in Natal

The following memo was circulated amongst members of the colonial bureaucracy in 1905 and raises a multiplicity of interesting issues for analysis:

The parents of the girl insist not only on the youth's parents bearing all the expenses of the wedding and of the jewels, but they also exact payment of a sum of money in return for their daughter, the amount of which laid down by caste custom. This method is the commonest of all; for to marry and to buy a wife are synonymous expressions in India. Most parents make a regular traffic of their daughters. The wife is never given up to her husband until he has paid the whole of the sum agreed upon. This custom is an endless source of quarrels and disputes. If a poor man, after the marriage has taken place, cannot pay the stipulated amount, his father-in-law sues him for it, and takes his daughter away hoping that the desire to have her back again will induce the man to find the money.⁵⁰

In this extract, state officials appear to be fixated with one particular aspect of the custom of marriage amongst Indians. As Gayle Rubin, following some of the arguments of Claude Levi-Strauss on kinship, illustrates in her outstanding exegesis on the political economy of sex, the exchange of women (or 'the traffic in women' as she prefers to call it) between and amongst men forms the locus of

⁵⁰ PAR CSO 1791 4871/1905 'Extract from "Hindu Manners & Customs & Ceremonies" by the able J.A. Dubois'.

women's oppression. If the exchange of women is seen as a fundamental principle of kinship and social organization, the subordination of women can be seen as a product of the relationships by which sex and gender are organized and produced.⁵¹ Women's subordination was then a feature of both British colonial social organization and the re-forming kinship groups and lineage networks of Indians in Natal. Marriage, as the exchange of women between men – fathers and husbands – was an important part of both cultural and material systems in the nineteenth century.

Indian immigrants in Natal were beginning the reconstitution of culture at a basic level – and the intervention of the British colonial state in these relations occurred at the point of disjuncture in the understandings of property. Levi-Strauss has offered the argument that gift exchange on the occasion of the exchange of women in marriage (in this instance bridewealth) is a key transaction in the constitution of culture, and hence social organization.⁵² Rubin situates this in the context of kinship:

A kinship system is an imposition of social ends upon a part of the natural world. It is therefore "production" in the most general sense of the term: a molding, a transforming of objects (in this case people) to and by a subjective purpose...It has its own relations of production, distribution and exchange, which include certain "property" forms in people. These forms are not exclusive, private property rights, but rather different sorts of rights that various people have in other people. Marriage transactions-the gifts and material which circulate in the

⁵¹ Gayle Rubin, 'The Traffic in Women: Notes on the Political Economy of Sex', ed. R. Reiter *Towards an Anthropology of Women*. New York: Monthly Review Press, 1975. For more on this in the Southern African context, see Jeff Guy 'Gender Oppression in southern Africa's pre-capitalist societies' in Cheryl Walker (ed) *Women and Gender in Southern Africa to 1945*. Cape Town: David Philip, 1990.

⁵² Claude Levi-Strauss, *The Elementary Structures of Kinship*. Boston: Beacon Press, 1969.

ceremonies marking a marriage-are rich sources of data for determining who has rights in whom. It is not difficult to deduce from such transactions that in most cases women's rights are considerably more residual than those of men.⁵³

The material transactions upon – and often before – the transfer of women in marriage arrangements amongst Natal's Indian immigrants in the late nineteenth century came to be separated from much of the ritual ceremony which accompanied these customary 'gift exchanges' or material transactions. The reasons for this have been alluded to elsewhere – the absence of traditional customary authorities in the form of religious holy men was a significant factor. Importantly also, the constant stream of single immigrant men frequently meant the absence of the family of the prospective bridegroom to initiate transactions of marriage. It is a telling feature of the colonial documentary record that the material part of the marriage transaction could be better described by officials than the religious or ritual ceremonies that were purported to accompany it and the character of which nobody amongst colonial officials appeared to be certain. Colonial officials were unable to describe Indian marriage ceremonies – or even to tell the difference between Hindu and Muslim marriages (in a context of much inter-religious and inter-caste marriage!) beyond the idea that in some cases the marriages were often long affairs that might last a few days and involve various 'stages' and in others there appeared to be no ceremony at all. In a context of poverty and deprivation it is unsurprising that it was the material transactions that raised the most contestation amongst Indians and held the attention of government officials.

⁵³ Rubin, 'The Traffic in Women', pp. 176-177.

What may have been complex kinship arrangements in India were thus being redefined in a context where an immigrant labouring class were renegotiating 'tradition' constrained by demography and the absence of properly-constituted religious and customary authorities. And as the materiality of marriages came to take precedence in reality and in the imaginations of government functionaries in the social and economic context of indenture and post-indenture life in Natal, it was at this point that state intervention was directed. Whatever the transfer of bridewealth meant for Indians in Natal, for the Natal Government money and gifts were private property and if the contracts of which they were a part infringed on the private property rights of Indian men, then property rights had to be defended. This is one level of analysis of the state's intervention in marriage transactions amongst Indians. Another might consider the fact that defending the property of Indian men upon the promise of marriage by allowing for the recovery of their property as well as providing legal penalty for either the bride or her parents (if she is under age) in the form of imprisonment and hard labour meant that the rights *in* women that Indian men secured by the paying of bridewealth to the families of young girls were being simultaneously defended by the state.

Either way, in order to defend private property or the rights of Indian men over Indian women, the registration of marriages had to be more stringently enforced. The issue of marriage registration once again took centre-stage as the dominant provision of a new law that was to deal with these problems.

The 1907 Indian Marriages Act

The passage of Act 2 of 1907, 'To make certain provisions relative to Marriages of Indian immigrants' was primarily an attempt to address this issue. It was the first time that a piece of interventionist legislation was explicitly named. This proposed Indian Marriages Bill came before the Legislative Council in May 1906. The debate was a heated one and centered on the practice of 'promised marriages'. This law had to maintain a delicate balance between the imperatives of the expressed desire for legally-enforced moral reform and the continuing need of the colonial state to maintain control and regulate the lives and movement of Indian women.

The heavy penalty for the non-registration of Indian marriages suggests that registration was deemed the site of control of these 'traditional unions' which for a long time seemed to defy the attempts of the state to define and regulate. The fine for non-registration within the stipulated period of one month was quadrupled from five pounds to twenty pounds. While members of the Legislative Council, such as Joseph Baynes, protested vehemently against the scale of the fine, others such as the Prime Minister argued that it was necessary if the Law was to fulfill its main intention of deterring non-registration.

Raising the age of consent may have been expressed by magistrates in the Colony as an issue requiring urgent attention by the state, but such a course would arguably have complicated matters further for the colonial state. The age of consent (13 for Indian girls and 16 for Indian boys) was the age set for the valid registration of Indian marriages. If the age of consent was raised then

Indians would have to wait even longer to register their marriages and registration was the focus as the state sought to ameliorate the loss that men especially were incurring in property and dignity. Forbidding betrothal, however, was a different issue. 'Carnal knowledge' of girls under 14 years of age was already a crime under the laws of Natal.⁵⁴ While magistrates and the Protector argued that prohibiting early promises of marriage was necessary, the colonial state would once again be defeating its own ends if it did not allow for the early negotiation of the transfer of women from one situation of patriarchal control to another. Parents were thus allowed to continue to make promises of betrothal to potential suitors, but were now under the threat of greater legal penalty to follow through with it.

Conclusions

By the end of the nineteenth century legislative momentum had shifted firmly toward intervention in the personal laws of Indians, a considerable number of whom the administration was resigned to accepting as a permanent presence in the Colony. During the period discussed in this chapter (between 1887 and 1907) legal interventions had to be made to deal with the administration of the growing number of Indians in Natal who were unlikely to return to the subcontinent. The attempts to remove Indians from the Colony and the persisting political uncertainty around their residency status came into direct conflict with attempts to actually regulate and govern their presence in Natal. The 1895 tax may have been an attempt to force Indians out of Natal, but its stringent provisions and limited scope also confounded and complicated other

⁵⁴ PAR NCP 5/3/7. Law No. 37, 1899. "Act For the Better Protection of Women and Children".

legislative attempts to deal with the administration of Indian personal law in the Colony.

This period of legal intervention in the personal lives of Indians in Natal culminated with the passage of the 1907 Indian Marriages Act. It is perhaps fitting that the provisions of this Act epitomized the tensions between Indian custom and British legal morality which had had to be negotiated throughout the latter part of the nineteenth century and which remained unresolved, sitting uncomfortably alongside each other into the twentieth.

Conclusion

This thesis has attempted to make a small, but significant, contribution to the historiography of Indians in Natal in the nineteenth and twentieth centuries. By placing historical contestation over gendered aspects of the legal administration of Indians in the broader context of British colonialism, it has tried to open up the existing historiography to new avenues of research and inquiry.

In its discussion of the status of women and gender under slavery and in nineteenth century Britain, the opening chapter provided the theoretical tools for an analysis of gender and law in this region within the context of the new, post-slavery system of indentured labour. This broad framework is necessary for understanding the subsequent discussions of the arrival of Indian indentured workers, the place of women in this system of labour, and the administration of Indian men and women by British colonial officials in Natal. The early laws of indenture and the implicitly and explicitly gendered focus of the government regulation of Indians have been drawn out in the articulation of early attempts at registering women and regulating marriage. It is in its gendered analysis, in particular, that the observations made and insights offered in this thesis have attempted to make an important historiographical contribution to the literature on not only women in Natal, but also to the historiography of the relationships between colony and metropole and also between colonies that were part of the same empire.

Chapter two turned these broader areas of focus into a particular discussion of the administration of Indians through the analysis of the reports of two commissions of inquiry. The Coolie Commission of 1872 and the Wragg Commission of 1885-1887 are the beginning and end points of a detailed history of the ensuing administrative uncertainty around Indians in Natal, and the legal and administrative struggles in which the Natal administration found itself mired during this period. It demonstrates that the decision to govern Indians by their personal laws was bound up in considerations of labour and gender in the nineteenth century, as well as the persisting uncertainty of the residency status of Indian labour 'migrants' to the Colony, noting consistently the centrality of women to such debates about citizenship, legal rights and residency. These arguments, employing empirical evidence in the form of Commission reports, Legislative Council debates and colonial files from different levels of government administration, are tentative at times, being made, as they are, in the context of a limited historiography. It is precisely for this reason that this study is important, as it demonstrates the possibilities for integrating this history into a more complex and nuanced history of customary practices such as marriage and its treatment in the different systems of authority in this region.

The thread of legal uncertainty raised in this discussion, stimulated and compounded by the new and emerging practices of 'custom' amongst Indians in Natal, have been merged into a final chapter in which the specific contestations of Indian women and the decisive legal action of the state have been foregrounded. It is in the presentation of these specific cases of law that the resistances to 'tradition' and the changes in custom, which this study tries so hard to articulate, may be most clearly seen. The new legal loopholes and

stipulations which are the result of the earlier discussions of colonial legal administration, meant that this was a new opportunity for Indian women to assert themselves and one they took to with relative alacrity. The analytical comparisons made at various points in the discussion between Indian women brought to Natal under indenture, Indian women on the Indian subcontinent and African women in Natal has been a further attempt to draw out theoretical connections which may be more fully pursued in other studies.

As a discussion of the history of law in this region, the thesis ends by illustrating the continuing tension between customary practices and colonial law in the Colony of Natal in the early twentieth century, as the territories that surrounded the Colony were beginning their integration into the Union of South Africa. From this point onward, one may only surmise the manner of the progression of some of the historical questions of law and custom which I have raised for discussion here. Indentured transport to Natal was effectively ended at the behest of the Indian government in 1911. The official reason given for this was the Union government's inability to confirm the permanent residency status of any subsequent Indian migrants to Natal.¹ The Natal government had long begun to prepare for the eventual end to indentured labour with the establishment of the Clayton Commission in 1909 to inquire into alternative sources of labour for the region.

Political agitation around the treatment of Indians in Natal, influenced by a growing Indian nationalism, began to increase in the early twentieth century. As Gandhian political contestation in South Africa gained momentum, some

¹ Meer, *Documents of Indentured Labour*, Clayton Commission Report, 634-648.

ameliorating effects were achieved. The Indian Relief Act of 1914 – the provisions of which repealed the three pound tax on Indians and eventually offered some limited legitimacy to Indian marriages – is perhaps the most prominent amongst them.² This Act would be the final word on Indian personal law in South Africa for the remainder of the twentieth century.

While numerous studies of this era of Gandhi's politics have been written, none have considered the effects of Gandhi's political discourse on the increasingly rigidity of Indian family and social construction in the twentieth century. The rapid and radical changes in Indian life between the late nineteenth century and the mid-twentieth are of potentially great historical interest and debate. This may be achieved through a better, more nuanced, understanding of the historical basis from which new, hegemonic discourses of Indian tradition and custom were constructed. There are a number of historical questions which still remain to be answered and it is the hope that this study of gender and law in the history of Natal's Indians has gone some little way in advancing this line of enquiry.

² For more detail on the history and provisions of this law, see Goolam Vahed, 'Muslim Marriages in South Africa: The Limitations and Legacy of the Indian Relief Act of 1914' in *Journal of Natal and Zulu History*, 21, 2003.

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