

# **Making the Personal Civil: The Protector's Office and the Administration of Indian Personal Law in Colonial Natal, 1872 – 1907<sup>1</sup>**

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The arguments presented in this paper analyze the administrative contestations around Indian 'personal law' in the Colony of Natal from the establishment of the Coolie Commission of Inquiry in 1872 to the promulgation of the Indian Marriages Act in 1907.<sup>2</sup> To date, very little attention has focused on this area of historical inquiry into Indians in this region.<sup>3</sup> 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 in 1874 upon the recommendation of the Coolie Commission. Many of the historical and legal questions raised here arise from the

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<sup>1</sup> This paper is part of a larger MA study entitled 'Gender and the Legal Administration of Indians under Indenture in Colonial Natal, 1860-1907'. Unpublished Master's Thesis: History, University of KwaZulu-Natal, 2005.

<sup>2</sup> 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*, *Yanjavalkyasmriti*, *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 of 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.

<sup>3</sup> The most notable recent addition being Goolam Vahed's piece, 'Muslim Marriages in South Africa: The Limitations and Legacy of the Indian Relief Act of 1914', *Journal of Natal and Zulu History*, 21 (2003). The primary aim of my paper is to better understand the peculiarities of the administration of those Indians who arrived in Natal under contracts of indentured labour. Previous historical writing on this issue assumes a greater degree of continuity between the administration of indentured and passenger Indians in this Colony than I believe is actually the case. While this paper does not address the administration of passenger Indians in Natal, it does attempt to call attention to the manner in which early laws for all Indians in the Colony of Natal were made with special reference to the administrative circumstances of indentured Indians.

cases which came before this appointed government official. Central to the arguments I make is the fact that both administrative and domestic patriarchal control over women's lives and movement was a crucial part of these legal struggles. It is evident also from these arguments that administrative 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 putatively 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.

*Under the Administration of an 'Intelligent Officer'* <sup>4</sup>

The officials on Natal's Coolie Commission in 1872 claimed that many of the allegations of mistreatment and labour abuse that arose on estates in the Colony stemmed from an absence of a system of checks such as those at work in the other colonies where the indentured labour system existed.<sup>5</sup> They also believed that the recommendations that the Commission envisaged 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 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 distribution 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.<sup>6</sup> 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

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<sup>4</sup> Meer. *Documents of Indentured Labour*, 129.

<sup>5</sup> Meer. *Documents of Indentured Labour*. Report of the Coolie Commission, Document 42, pp 118-169.

<sup>6</sup> PAR II 3/2 I151/1870. Acting Coolie Agent Mason to Colonial Secretary.

concerning the five thousand-odd indentured and ex-indentured Indians in the Colony at the time.

When indenture began, the Natal administration had not given due consideration 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 arriving as part of the indenture scheme 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 was 2<sup>nd</sup> 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 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 apparently had no confidence.<sup>7</sup> 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.<sup>8</sup>

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<sup>7</sup> See Meer. *Documents of Indentured Labour*. Report of the Coolie Commission, Document 42, 118-169.

<sup>8</sup> Meer. *Documents of Indentured Labour*. Report of the Coolie Commission 1872, Document 42, p.128.

The appointment was made in 1872, two years before the resumption of indentured immigration.<sup>9</sup> 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 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.’<sup>10</sup>

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.<sup>11</sup> 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.’<sup>12</sup> 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 attempts at control and intervention of the British administrative machinery as

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<sup>9</sup> Indentured transport was temporarily put on hold in 1866 due to economic depression in the Colony. It resumed eight years later, in 1874, but only after the completion of the activities of the Coolie Commission into the condition and treatment of Indians remaining in the Colony during this time.

<sup>10</sup> Meer, *Documents of Indentured Labour*. Report of the Wragg Commission 1885-7, Document 58, p 283.

<sup>11</sup> Bernard Cohn, ‘From Indian Status to British Contract’, *The Journal of Economic History*, 21, 4 (1961) pp. 613-628.

<sup>12</sup> Meer, *Documents of Indentured Labour*. Report of the Coolie Commission 1872, Document 42, p.129.

indenture progressed, that the administration of disputes amongst Indians would have devolved to anyone other than a British civil servant.

Before the establishment of the Coolie Commission, the Coolie Agent had regularly received complaints from indentured and ex-indentured Indians. In the early 1860s the Coolie Agent of the time, Edmund Tatham, began to hear complaints that were indicators of the reconstitution of the domestic and familial lives of newly-arrived immigrant Indians in the Colony.<sup>13</sup> 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 their newly-formed associations with men and in the difficulties occasioned by the convergence (and clash) of both their waged and domestic 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 this 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 indentured 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's court', as it would become known in official discourse 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 and divorce (although this would remain a contentious point, with some holders of the office of Protector claiming the right to grant divorces and

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<sup>13</sup> PAR II 3/2 Coolie Agents Letter Books, 1860 – 1870.

others not)<sup>14</sup> 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 the Indians over whom he presided, 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.<sup>15</sup> The judicial powers of the Protector, especially in civil matters, were increasingly called upon as the numbers of Indians under indenture in Natal began to grow with the resumption of indentured immigration in 1874 after an eight-year break.

### ***The Case for Legislative Intervention: The Dissolution of Indian Marriages***

Indentured Indian women in Natal 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.<sup>16</sup> In his Report for 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.’<sup>17</sup> 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.<sup>18</sup>

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<sup>14</sup> 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.

<sup>15</sup> Meer. *Documents of Indentured Labour*. Coolie Commission Report, 121, and Indian Immigrants (Wragg) Commission Report, p.282.

<sup>16</sup> In what is essentially an overview of Indian masculinity in Natal during the period of indenture, Goolam Vahed begins to ask important questions that I have attempted to address in some detail here and more extensively in the thesis of which this paper is a part. Interestingly, what Vahed identifies, in his discussion of Indian family life, as the ‘precarious position of men’ appears to be induced by what I argue were the *contestations offered by women*. See 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 and Nafisa Essop Sheik, ‘Gender and the Legal Administration of Indians under Indenture in Colonial Natal, 1860-1907’. Unpublished Master’s Thesis: History, University of KwaZulu-Natal, 2005.

<sup>17</sup> PAR II 8/4 Protector’s Annual Reports. 1876.

<sup>18</sup> Meer. *Documents of Indentured Labour*. p. 593. See also, Joanna Liddle and Rama Joshi. *Daughters of Independence: Gender, Caste and Class in India*. London: Zed Books, 1986.

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.<sup>19</sup>

This raised more than a few difficulties for the Natal administration. Unattached women had been cast by the Coolie Commission as ‘loose’ and ‘immoral’ – the only good woman being a married one.<sup>20</sup> The idea of single women as the vectors of venereal disease and generally lax morals in the colony was gaining momentum in both official and public discourse by the end of the 1870s.<sup>21</sup>

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.<sup>22</sup> 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:

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<sup>19</sup> Meer, *Documents of Indentured Labour*, 258-298.

<sup>20</sup> Meer. *Documents of Indentured Labour*. Report of the Coolie Commission, 118-169 and Report of the Wragg Commission 1885-7. 258-298.

<sup>21</sup> 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.

<sup>22</sup> PAR NCP 2/1/1/5, Legislative Council Debates, 1883. Indian Divorce Bill.

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.<sup>23</sup>

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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? <sup>24</sup>

What 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 illustrates the manner in which attempts by indentured and 'free' Indian men to exercise control over Indian women converged with colonial administrative efforts 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.<sup>25</sup>

It is a particular point of interest in this case that obtaining a divorce would prove advantageous to many parties, 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 allow for divorce amongst Indians, they would be

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<sup>23</sup> PAR CSO 892 336/83 Thoyee Deposition 25th January, 1883

<sup>24</sup> PAR CSO 892 336/83 Acting Protector to Colonial Secretary, 25<sup>th</sup> January, 1883

<sup>25</sup> PAR CSO 892 336/83 C.Bird to Col. Sec, 4<sup>th</sup> July, 1883



defeating their own attempts at keeping women in marital unions under male control.<sup>26</sup> 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’. 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 but had not received any legislative attention before the 1880s. There still remained no codified 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.

### ***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, the judicial powers of the Protector to adjudicate in civil cases amongst Indians was recommended by the Coolie Commission and legislated for in 1872.

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<sup>26</sup> Meer, *Documents of Indentured Labour*, 258-298.

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 personal law amongst indentured Indians in Natal, the Protector came to fulfil this administrative and at times 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 Report expressed the opinion that the Protector had, in his legal interventions, overstepped his mandate. It 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.<sup>27</sup> 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, which were linked to the duties of the Protector. The issue of registration was foremost among these considerations, with the Report claiming 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

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<sup>27</sup> Meer. *Documents of Indentured Labour*. Report of the Wragg Commission, 258-298.

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 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 assertion that marriage could not be effected 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'.<sup>28</sup> Neither the attorney general nor those who had proposed the Bill and supported its passage were able to provide a definition of Indian marriage. In refusing to accept registered marriages as civil contracts, the Natal government had severely limited its own capacities to control these unions. '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 none of the administrators 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 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

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<sup>28</sup> PAR NCP 2/1/1/5 Legislative Council Debates, 1883. Indian Divorce Bill.

if the divorce had been granted when they were in India by the courts there',<sup>29</sup> the Natal government would have to refrain from legislating at all. As I mentioned earlier, divorce was not a feature of religious personal law in India. 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 Natal'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 Indians 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, without of any knowledge of Indian religious personal law and outside of the civil laws of the colony meant constituting an undesirable 'third system of law'.<sup>30</sup> 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 with regard to Indian personal law. 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 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

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<sup>29</sup> PAR NCP 2/1/1/5 Legislative Council Debates, 1883. Indian Divorce Bill. Attorney General's comments.

<sup>30</sup> PAR NCP 2/1/1/5 Legislative Council Debates, 1883. Indian Divorce Bill.

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.<sup>31</sup>

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 and despite calls for greater definition of what 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 being the 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.

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<sup>31</sup> Meer. *Documents of Indenture*. Report of the Indian Immigrants (Wragg) Commission 1885-7. Document 58, p. 258.

### *Making Personal Law for Indentured Indians in Natal*

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 delimiting 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 aspects of Indian custom in Natal and it proved to be extremely problematic as it 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 paper 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 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.<sup>32</sup> 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.<sup>33</sup> Reforming personal law in India was, on the part of the British, as much about

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<sup>32</sup> 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.

<sup>33</sup> 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*

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' so often expressed with regard to the practices of Indians in Natal, had to be confronted 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 indentured 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 authorities could not apply in Natal if Indians remained as residents.<sup>34</sup> 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.

The Natal government bound itself into myriad legal knots in order to deal with the administration of Indians in Natal. Nowhere was this clearer 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 Coates, discovered a technical anomaly in the law governing Indians in the Colony which he promptly brought to the attention of the government.<sup>35</sup>

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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).

<sup>34</sup> Nicholas Dirks. *The Hollow Crown: Ethnohistory of a Little Kingdom in South India*. Cambridge: Cambridge University Press, 1988.

<sup>35</sup> 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 close of the Commission by the promulgation of Law 12 of 1872.<sup>36</sup> 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.

### ***‘Amendment and Consolidation’: 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

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<sup>36</sup> See chapters one and two of Sheik (2005) for arguments around the creation of this register for women and its ultimate failure as an administrative intervention.



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'.<sup>37</sup>

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.<sup>38</sup> 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 in India well into the twentieth century and even post-independence – were intended to be resolved, for indentured and ex-indentured Indians in Natal at least, 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.

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

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<sup>37</sup> 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.

<sup>38</sup> See, for example, Lata Mani. *Contentious Traditions: The Debate on Sati in Colonial India*. Berkeley and Los Angeles: University of California Press. 1998; Liddle, Joanna & Joshi, Rama. *Daughters of Independence: Gender, Caste and Class in India*. London: Zed Books, 1986; Sarkar, Tanika. "Rhetoric against Age of Consent: Resisting Colonial Reason and Death of a Child Wife", *Economic & Political Weekly* September 4, 1993.

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.<sup>39</sup> 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 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.<sup>40</sup> This was an interesting provision as it appeared that the law was acting simultaneously to curb forms of traditional practice while attempting

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<sup>39</sup> Meer. *Documents of Indentured Labour*. Report of the Indian Immigrants (Wragg) Commission, 262.

<sup>40</sup> PAR NCP 5/2/18. Law 25, 1891.

to preserve Indians' marriage taboos with regard to 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 paper, 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.<sup>41</sup>

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.<sup>42</sup>

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

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<sup>41</sup> Meer. *Documents of Indentured Labour*. Population Structure in Natal, p.16.

<sup>42</sup> See for example, II 1/98 I1319/1900. Magistrate Durban, Marriage under Law No. 25, 1891

Christian ways.<sup>43</sup> '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.

### ***Polygyny and the Challenges to Law 25, 1891***

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).<sup>44</sup> More importantly, its legal robustness was about to be tested by an indentured Indian woman.

An Indian woman named Tulukanum sued for nullification of her marriage on the grounds that it was polygynous – and therefore against the law of the Colony.<sup>45</sup> It is one 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.<sup>46</sup> This particular case was reported

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<sup>43</sup> See Deborah Posel, 'State, Power and Gender: Conflict over the Registration of African Customary Marriage in South Africa c. 1910-1970', *Journal of Historical Sociology*. Vol.8, No.3. September 1995; and H.J. Simons, *African Women: Their Legal Status in South Africa*. Evanston, Illinois: Northwestern University Press, 1968.

<sup>44</sup> PAR NCP 5/2/18. Law 25, 1891.

<sup>45</sup> PAR Indian Immigration Files [II] 1/141 I452/1900, II 1/141 I447/1899, II 1/141 I309/1900 and the *Natal Advertiser*, 8<sup>th</sup> March 1900, 'Important Local Decision Affecting Indians'.

<sup>46</sup> 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.

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 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.<sup>47</sup>

It is also emblematic of the often ineffectual and ad hoc character of these colonial legal interventions as a means of controlling Indians, especially women, in Natal. Increasing government intervention attempted to rigidify 'custom' and undermine the increasing challenge 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 presented earlier, it was through Law 25 that the colonial state allowed women to initiate divorce on limited grounds. These were set out as adultery and

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<sup>47</sup> For more on the mediated access of Indians to the court system in Colonial Natal see Prinisha Badassy, *Turbans and Top-Hats: Indian Interpreters in the Colony of Natal, 1880-1910*. Unpublished Honours dissertation, University of Natal, Durban, 2002.

desertion for a period of more than one year.<sup>48</sup> The Natal administration saw this as a necessary part of ‘freeing’ women from marital ties which proved ineffective in maintaining control over them in order that they might contract other marriages.<sup>49</sup> 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 for divorce 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.

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.<sup>50</sup> 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

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<sup>48</sup> PAR NCP 5/2/18. Law 25, 1891.

<sup>49</sup> See Nafisa Essop Sheik ‘Gender and the Legal Administration of Indians under Indenture’, p. 88.

<sup>50</sup> II 1/141 I447/1899. Tulukanum No. 58021 vs Munsami No 58019 Nullity of marriage.

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.<sup>51</sup> 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.<sup>52</sup>

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.<sup>53</sup> Yet 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.<sup>54</sup> Of course, this

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<sup>51</sup> PAR NCP 5/2/18. Law 25, 1891.

<sup>52</sup> II 1/141 I285/06. Protector Indian Immigrants, Durban, 2 February, 1906

<sup>53</sup> PAR II 1/141 I285/06 Correspondence between Protector Indian Immigrants & Attorney General, Durban. February and March, 1906

<sup>54</sup> PAR II 1/141 I285/06 Attorney General's Comments.

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 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.

***'Certain Provisions Relative to Marriages of Indian Immigrants': The 1907 Indian Marriages Act***

As it had done for the past three and a half decades, 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 Indian Marriages Act retrospectively permitting the registration and declaring the validity of all polygynous unions contracted, or claimed to have been contracted, in India.<sup>55</sup> 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 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, in certain instances, to 'perform' polygynous marriages!

### *Conclusions*

As I have illustrated in this paper, 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 in Natal at the time, 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 social place of Indian women, and their status in personal law appeared 'up-for-grabs', the Natal colonial administration sought 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

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<sup>55</sup> PAR NCP 5/3/15. Act No.2, 1907, 'To Make Provisions Relative to Marriages of Indian Immigrants'.

the earliest illustration of the colonial administration's inability to deal with the complexity of the personal and social lives 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 by the Wragg Commission in 1887 in an attempt to preserve the 'autonomy' of Indian custom, but Indian women in the Colony continued to challenge the search for the stable government of Indians in Natal.

Earlier 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. By the end of the nineteenth century legislative momentum had shifted firmly toward intervention with regard to the personal laws of Indians, a considerable number of whom the administration was resigned to accepting as a permanent presence 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.