

## **Labouring under the Law: Exploring the Agency of Indian Women under Indenture in Colonial Natal, 1860 – 1911<sup>1</sup>**

Magistrate Pinetown has sentenced thirteen Indian women to two weeks prison with hard labour for refusing to work. Magistrate had no power as they are not bound to work against their will. These women...have children. Get governor to cancel sentence by telegram that they may be released.

Protector of Indian Immigrants to Colonial Secretary, 24 February 1875

Sentence of two weeks imprisonment against thirteen women Indians for refusing to work is illegal and will be cancelled. Release at once.

Colonial Secretary to Magistrate, Pinetown, 24 February 1875<sup>2</sup>

### *Indentured Indian Women in Natal*

This paper is intended as the beginnings of an introduction to a Master's thesis that will look at discourses around Indian women and gender under indenture in Colonial Natal from 1860 to 1911. I attempt to highlight what I consider to be the main aspects of my arguments about Indian immigrant women who came to Natal under the indentured labour system. The primary intention of the arguments that are presented here is to grapple with the agency of indentured Indian women. There is a distinct set of ideas in this paper about the manner in which the decisions and actions of women who immigrated to Natal as indentured workers confounded a colonial administration that held particular ideas of gender and the expected roles of men and women – both of English men and women in Victorian England, and of Indians they had come to 'know' through the colonial encounter on the subcontinent. As such, it departs from the argument proposed by many scholars of Indian women's history – both on the subcontinent and in the Indian diaspora – that the weight of subalternity shouldered by the Indian woman was

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<sup>1</sup> This is a work in progress so please do not cite. I would like to thank Julie Parle, Catherine Burns and Stephen Sparks for reading and commenting on earlier versions of this paper, and to Prinisha Badassy for a spirited fight over 'free' Indians!

<sup>2</sup> Pietermaritzburg Archives Repository (PAR) Colonial Secretary's Office (CSO) 509 681/1875. Telegraph from Protector (Mitchell) to Colonial Secretary & Telegraph to Resident Magistrate Pinetown 24/2/1875.

compounded by her position as both the racial and gendered Other and that as a result, 'there [is] no reprieve from the structures of domination'.<sup>3</sup>

There are layers of discourse around Indian women and their labour in the Colony that have not been explored. The thicket of discourses that the sexual, social and administrative interactions amongst men and women produced around women's labour and the place of Indian women in the Colony belies the straightforwardness of an argument such as the one made by Jo Beall in her article on indentured Indian women in Natal.<sup>4</sup> Women came to be constituted as subjects in these discourses not simply by virtue of their sex, but more importantly by the historically specific social meanings attached to the idea of their 'womanhood'. With the advent of indenture in the mid-nineteenth century at the end of the Atlantic Ocean slave trade, the British Empire sought moral legitimacy for this new system of waged labour which purported to acknowledge the humanity of its subjects. The manner in which the social reproductive role of women was viewed under this system would mean that females who indentured in Natal were uniquely placed in relation to both their slave counterparts, and women who remained on the Indian subcontinent. Not only were they subjects in the law under indenture, but in Natal they were – for a time at least – outside of the struggles between colonial and Indian men which inscribed their subordination to 'tradition' on the Indian subcontinent.<sup>5</sup>

In Natal, women's productive (waged) and reproductive (mainly unpaid domestic labour including the production and preparation of food, care of children and the sick and the like) labour – an arguably tenuous but necessary dichotomy in the context of indentured

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<sup>3</sup> Shanthini Pillai, 'In Gendered Chambers: The Figure of the Indian Immigrant Women of Colonial Malaya' *Hecate*, May 2004. pp.141-159.

<sup>4</sup> Jo Beall, 'Women under Indentured Labour in colonial Natal, 1860-1911', *Women and Gender in Southern Africa to 1945*, ed. Cheryl Walker. Cape Town: David Philip, 1990. pp.146-167.

<sup>5</sup> The effects of these struggles on women are detailed by numerous scholars of Indian history, most notably in the Subaltern Studies school. See for example, Bhattacharya, Nandini. "Behind the veil: the many masks of subaltern sexuality," *Women's Studies International Forum*. v. 19 (May/June '96) pp. 277-92, Spivak, Gayatri Chakravorty. "Can the Subaltern Speak?" In *Marxism & The Interpretation of Culture*. Cary Nelson and Lawrence Grossberg, eds. London: Macmillan, 1988. pp. 271-313, Lata Mani. *Contentious Traditions: The Debate on Sati in Colonial India*. Berkeley and Los Angeles: University of California Press. 1998., P. Chatterjee, 'The nationalist resolution of the women question' in K. Sangri & S. Vaid (eds.), *Recasting Women: Essays in Colonial History*, P. Chatterjee, 'Colonialism, Nationalism, and Colonialized Women: the Contest in India', *American Ethnologist*, 16, 4 (Nov. 1989)

female labour – was the discursive axis around which debates about the presence of Indian women turned. It becomes clear from the documentary evidence of the colonial state that colonial officials and Indian men were, to different degrees, the main proponents of views about women and their productive and reproductive labour. While the ‘voice/s’ of women is/are not immediately apparent, it is by analyzing the discourses within which indentured Indian women were imbricated, that one might attempt to get at the many ways in which they existed within them; the ways in which resistance and accommodation took place, and sometimes even how these discourses may have been manipulated and moulded by their subjects.

Colonial patriarchal discourses were themselves negotiated and reformed in the various British colonies as colonial officials and indigenous patriarchs encountered each other.<sup>6</sup> It was also the case that colonial administrators shared many patriarchal understandings and socially constructed ideas of gender with newly-arrived Indian men in Natal, but it is a point of my argument that these ideas often became the discursive threads that Indian women seized upon to create spaces of autonomy and opportunities for resources - however small these may have been - for themselves, and sometimes for their children. The ways in which Indian women in this region interpreted, acted and resisted the circumstances and various discourses of gender and colonial law which they encountered, and in which they were implicated, were neither uniform nor unambiguous. Any study that seeks to explore the possibilities that existed for them to exert some measure of control over their own bodies, lives and destinies must acknowledge this. However, it is my argument that despite the patriarchal ‘collusions’ between colonialists and Indian men to which Jo Beall refers – and sometimes even because of it – women, although ultimately subordinate, were able to negotiate spaces for themselves and secure important economic and emotional resources.<sup>7</sup>

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<sup>6</sup> Jeff Guy, *Accommodation of Patriarchy*. Unpublished paper: Colloquium, Masculinities in Southern Africa, University of Natal, Durban, 1997.

<sup>7</sup> Beall, ‘Women under Indenture’, p. 166.

### *From Slavery to Indenture – The Importance of Women*

The British cross-ocean slave trade had come to an end by the 1830s and the ensuing labour shortage left British capitalists in particular, searching desperately for a reservoir of cheap and plentiful labour for plantations in the Caribbean. John Gladstone – plantation owner in British Guiana and father of British Tory Prime Minister William Gladstone – attempted to set up an indentured labour system in 1836 that would compensate for the loss of labour incurred by the abolition of slavery.<sup>8</sup> This new system, however, had to be clearly distinguished from slavery in order for it to be accepted by a British Parliament that was under immense pressure from abolitionist groups and social reformers to reject all forms of slavery.<sup>9</sup> The fact that the indenture involved wage labour would not be enough, given that this new system had to concede and uphold the fundamental humanity of the labourers who contracted under it. Property had to become human – workers were now rights endowed human beings who deserved the opportunity to live and engage freely in social reproduction.<sup>10</sup>

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.<sup>11</sup> Criticisms included the breakup of marriages and households in many African societies from which slaves were taken, the high male: female ratio on plantations which resulted in short-term unions, independent women and children out of wedlock without the support and authority of fathers.<sup>12</sup> Abolitionists also pointed to the absence of protection against the

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<sup>8</sup> S.G. Checkland, 'John Gladstone as Trader and Planter', *The Economic History Review*, New Series, Vol.7, No. 2, 1954. pp.216-229.

<sup>9</sup> Madhavi Kale, *Fragments of Empire: Capital, Slavery, & Indian Indentured Labor in the British Caribbean*, Philadelphia: University of Pennsylvania Press, 1998.

<sup>10</sup> Kale, *Fragments of Empire*; David Northrup, *Indentured Labor in the Age of Imperialism, 1834-1922*. New York: Cambridge University Press, 1995.

<sup>11</sup> William Green, 'Emancipation to Indenture: A Question of Imperial Morality', *The Journal of British Studies*, Vol. 22, No. 2, Spring 1983. pp. 98-121.

<sup>12</sup> John Stuart MacDonald and Leatrice D. MacDonald, 'Transformation of African and Indian Family Traditions in the Southern Caribbean' *Comparative Studies in Society and History*, vol. 15 no.2 (March, 1973) pp. 171-198.

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”.<sup>13</sup>

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.<sup>14</sup> Indenture could be distinguished from slavery, and attain some measure of moral legitimacy, if labourers were accompanied by their wives and families and were able to secure some measure of social stability.

This pre-condition 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. 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 Indian nationalists.<sup>15</sup> 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.

### ***Ratios and Recruitment: A Perpetual Shortage of Women***

In Natal, debates over the importation of women would simmer for the duration that the system existed in the Colony. The Indian government had set a quota of four women for

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<sup>13</sup> Donald Matthews, ‘Abolitionists on Slavery: The Critique behind the Social Movement’, *The Journal of Southern History*, Vol. 33, No. 2, May, 1967. pp. 163-182.

<sup>14</sup> Kale, *Fragments of Empire*, pp. 14-37.

<sup>15</sup> Matthews, ‘Abolitionists on Slavery’.

every ten men shipped to the Colony in the first year of immigration, with the quota rising to fifty percent of women by 1863.<sup>16</sup> 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 would become 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.<sup>17</sup> Those who did were in the minority. The overwhelming majority of female workers recruited in India were single women.<sup>18</sup> Both married and single men indentured, but it was sometimes the case that married men came over by themselves, leaving their wife/wives and families behind.

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 (IITB) of the difficulty of recruiting women in fulfillment of the sex-ratio. 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. 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.

Emigration recruiters in Madras and Calcutta complained at length about these difficulties, including the fact that given women's role in field labour in India and the caste of women who were most ready to emigrate, it was only during periods of famine

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<sup>16</sup> Y.S Meer, *Documents of Indentured Labour, Natal 1851-1917*. Durban, Institute for Black Research, 1981. Document, 21, 'Proceedings of the Madras Government', p. 51.

<sup>17</sup> PAR CSO 1760 1904/3996. See also Beall, *Women Under Indenture*'.

<sup>18</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, 2003. See also Reports of the Coolie Commission (1872) and Indian Immigrant (Wragg) Commission (1887) in Meer, pp. 118-169 and 246-633 respectively.

that a supply of 'reliable' female labour could be procured for Natal.<sup>19</sup> 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'.<sup>20</sup> As a result there were frequent complaints about the 'character' of single women recruited for indenture.

There was a general concern in the Colony about the shortage of Indian women, especially married or marriageable women, and the 'immorality' that was believed to result from this. The 1872 Coolie Commission took up the matter in their report and impressed upon the administration of the Colony the need for a greater proportion of women with subsequent shipments of workers 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 was so serious (including prostitution, assault and murder) and the complaint was so prominent that it required urgent government attention.<sup>21</sup>

### *The Question of Women's Labour*

Crucially, employers in Natal did 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 (a post set up after numerous complaints of abuses by employers of indentured labour), included in the cost of employing men in the Colony. As the Protector, Louis Mason, wrote to the Colonial Secretary in 1890:

The cost of the introduction of females is included in that of the males.  
Employers therefore pay nothing whatever directly for these women.<sup>22</sup>

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<sup>19</sup> PAR CSO 1760 104/3996. Correspondence among the Colonial Office, Natal Government, Indian Government and Government Emigration Agents for Natal, 1904.

<sup>20</sup> Meer, Y. *Documents of Indentured Labour*. Indian Immigrants Commission Evidence - Examination of Mr. C. Manning. p. 340.

<sup>21</sup> Meer, Y. *Documents of Indentured Labour*. Report of the Coolie Commission, pp. 118-169.

<sup>22</sup> PAR Indian Immigration Files (II) 1/58 I1256/90 Protector of Immigrants, Mason to Col Sec, 18/11/1890.

Labour contracts, it would turn out, were expected to be rather flexible in the case of women. Women had to be given food rations whether or not they performed labour on estates. If they did work, they were given half the wages of men as stipulated in their contracts. There were numerous complaints by employers regarding women's refusal to work. The result of one such complaint is evident in the opening quote of this paper 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.<sup>23</sup>

The proliferation of complaints around women's field labour led the Colonial Secretary of Natal to inquire about the work that women were assigned in other colonies. The administrators of indentured labour in Jamaica, Demerara in British Guiana, Mauritius, Trinidad and Fiji all concurred with the opinion of the Medical Officers in Natal whom the Colonial Secretary had consulted. They argued that despite the fact that many women helped their husbands in the fields, most forms of field labour were particularly 'unsuited' to women's physique and that in all the colonies women were not compelled to work. The Attorney General of British Guiana went so far as to say that

With respect to the general treatment of women, I may point out that the tendency in this Colony is to keep in view the fact that the woman is the complement of the man, and is against being too exacting in respect of their work. Major Comins, in dealing with this question remarked that 'even when under indenture, the labour laws should not be strictly enforced against them', and this opinion has not been lost sight of.<sup>24</sup>

Occasionally it was men, especially those who claimed to be of higher castes, who would object to their wives doing field labour. One employer even attempted to claim sixpence

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<sup>23</sup> PAR CSO 509 681/1875. Telegraph from Protector (Mitchell) to Colonial Secretary & Telegraph to Resident Magistrate Pinetown 24/2/1875.

<sup>24</sup> PAR II 1/161 I 1618/08 Working of Indian women.

a day from two married men who objected to their wives working on the estate.<sup>25</sup> Some colonial officials like the Assistant Protector, who made regular visits to estates, used sex differences to justify their 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...<sup>26</sup>

The mandatory provision of food rations to women also became an issue, with many women complaining of the withholding of rations by 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.<sup>27</sup>

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.<sup>28</sup>

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. Some women were especially requested as servants involved in child-care and the like,

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<sup>25</sup> PAR II 1/58 I1254/1890 TG Colenbrander, New Guelderland: Regarding Conditions of Employment of Indentured Indian Women.

<sup>26</sup> PAR II 1/160 I1428/1908 Circular From Protector of Indian Immigrants to Estates Concerning How Estates Employ Female Indentured Indians as Labourers.

<sup>27</sup> PAR CSO 510 735/1875 Correspondence between Acting Protector and Colonial Secretary, February 1875.

<sup>28</sup> PAR CSO 510 735/1875 Memorandum 736/1875

but Indian women were rarely employed in their own capacity even though they were made to sign indenture contracts upon their arrival in the Colony.<sup>29</sup> 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.

The underlying presumption – something that would become clearer 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 and for women's reproductive capabilities.

***The Work of Reproduction: '...she is about as much use as a blister on a wooden leg'***<sup>30</sup>

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

Perhaps the main aspect of women's reproductive labour, childbearing (including pregnancy, birth and rearing), was often regarded by employers as an impediment to

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<sup>29</sup> 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.

<sup>30</sup> PAR II 1/58 I1256/90 S.W.B Griffin to Protector of Indian Immigrants 25 Nov, 1890.

productive field labour. Employers were not always sympathetic to pregnant women, as the colonial administration required that pregnant women – especially those whose pregnancies were advanced – be exempted from almost all forms of field labour. Indian women’s domestic reproductive labour in the Colony is even more significant when one considers the rate at which the Indian population of the Colony increased. The reports of the Protector of Indian Immigrants recorded a steady annual increase by birth – with the rate increasing every year<sup>31</sup>. It is notable that despite a high infant mortality rate the increase reported in the Protector’s returns are uniformly high, especially when one considers that Indians were often fined/remonstrated for not reporting the birth of children to the Protector. Given the fact that the proportion of women imported in relation to men averaged, in practice, less than 30 percent for the entire period of indenture, a relatively small number of women were responsible for a hefty annual population increase.

A typical example of the amount of time and energy that indentured women spent on childbearing may be demonstrated by the testimony of men and women who sought to register their marriages and legitimate the birth of their children. One particular couple had failed to register their marriage within the 30-day period stipulated by the 1872 Coolie Law Amendment Act and gave depositions to the Protector explaining their situation:

My name is Sellam. I am indentured to Mr Colenbrander. I am the wife of Ramasami. I married him of my own free will and consent. I have borne him three children. I married him four and a half years ago. I was married to him in the usual manner under Hindu custom.

My name is Ramasami. I am indentured to Mr. Colenbrander. My wife’s name is Sellam. I was married to her four and a half years ago according to Hindu custom. I did not register my marriage because I was indentured but I reported it to my master. I have three children now. They have been born since my marriage to Sellam.<sup>32</sup>

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<sup>31</sup> PAR II 8/6 Annual Reports of the Protector of Indian Immigrants.

<sup>32</sup> PAR II 1/53 I134/90 Depositions of Ramasami and Sellam.

The woman had been present in the Colony for approximately six months before she married Ramasami. The testimonies of the couple indicate that the woman was pregnant about half the duration of her presence in the Colony. The Protector of Indian Immigrants often had to stress to employers the illegality of forcing women to work while they were pregnant, breastfeeding or had infant children to care for, and that this time could not be made up for by lengthening indenture contracts. This meant that for women like Sellam, the time spent fulfilling the terms of indentured labour contracts was relatively small in comparison to the work of reproducing families and carrying out other forms of domestic labour (especially when one considers the simultaneity of productive and domestic reproductive labour, as women who worked on estates also cooked, cleaned and cared for husbands and children). Whether or not women themselves chose to conceive in this context remains unexplored, but the fact that their usefulness to *employers* was limited for significant periods of time due to pregnancy and child-rearing is noteworthy in the context of the aforementioned debates around women's labour.

### *Deserting Estates, Deserting Homes*

The 'hidden' labour that women were responsible for became most evident at times when this labour was contested by men. Women's domestic labour was often an issue with Indian men who were little different to colonists in expecting the labour of women, while they derided it and complained about its inefficiency. The violence in the home and the instability of personal relationships was built on struggles around women's domestic labour. Many of the cases of bigamous men were about sexual competition as well as, more importantly, for the domestic labour of women. Bigamy and multiple relationships outside of registered marriage was almost as common a charge amongst women, both those who had come to Natal already married as well as those who arrived as single women.

These cases were often discovered by the Protector when desertion occurred on estates. Cases of desertion were referred to the Protector's office for investigation. More often than not the women in question were found to be living with other men, as wives or in

some kind of domestic relationship. The depositions of these women testify to the trials of economic and emotional dependency. Some deserted with their children, while others left their children behind. Most often violence and ill-treatment were cited as reasons for deserting their husbands, and thereby the estates to which they were assigned. Desertion may have been considered by employers to be a violation of labour contracts and has often been interpreted by historians – especially Marxist labour historians – as symptomatic of the problems associated with labour exploitation, such as overwork and mistreatment. In the case of indentured women in this region it is evident that desertion was, more often than not, linked to problems within the domestic unit.

Desertion reflected not only the resistance of women to difficult, often violent domestic situations, but also the agency that they demonstrated in actively seeking out alternative sources of economic and emotional resources. In the case of women especially, it appears to be more a case of deserting abusive or unsupportive husbands or men, rather than deserting employers on the estates where women may have themselves performed waged labour. Underlining the reality that desertion was closely linked to personal and familial problems is the fact that it was one of the prominent issues that colonial officials would have to contend with in dealing, not with women's contracted labour on estates, but with disputes that arose around marriage.

### *Situating Marriage*

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 continuation/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'.<sup>33</sup> 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 women 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.<sup>34</sup>

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.<sup>35</sup> This no doubt accounted for a significant number of the marriages registered at the Immigration Depot at the Point upon disembarking in the Colony.<sup>36</sup> 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 with whom they were acquainted for 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.<sup>37</sup> The Protector often found, upon enquiry at registration, that the man had a wife in India and

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<sup>33</sup> PAR II 1/127 I 974/1904. Correspondence among Cuthbert Phipson, A.R Holme and the Protector, April 1904.

<sup>34</sup> PAR II 1/69 I 881/93. A.T Button to Protector, November, 1893.

<sup>35</sup> PAR II 1/162 I 2154/1908 Sonarie Deposition 17<sup>th</sup> September, 1908

<sup>36</sup> 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 a civil contracts in India as well as those solemnized by Hindu and Muslim religious authorities on the subcontinent.

<sup>37</sup> See for example CSO 1538 8033/1897 Magistrate of Lions River to Honourable Attorney General, 6<sup>th</sup> November, 1897.

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 would become a keenly contested legal and moral issue during indenture.

### *Validating Indian Marriages*

The first official indication of concern over demographic gender disparities and the resulting sexual mores in the colony, as well as the need for regulating personal relationships between Indian men and women came with the publication of the Report of the Coolie Commission in 1872. The report suggested the need for ‘legislation regarding Coolie marriages, and the settlement of disputes arising out of the seduction of married women.’ It recommended, also, that a careful register be made of women in the Colony, distinguishing married women from ‘concubines’ and that the validation of marriages by registration be made compulsory.<sup>38</sup> 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’.

The registration of Indian marriages thus became a legal requirement in Natal in 1872. 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 women as his wife.<sup>39</sup>

Both Indian men and women had difficulties adjusting to the different status of their marriages between India and Natal. Most were unaware, for a long time, that polygynous marriages were contrary to the law of the Colony. Colonial officials in Natal began grappling with issues of Indian marriage as these were raised by the various Commissions and by the complaints of the Protector and employers of Indians, many of

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<sup>38</sup> *Report of the Coolie Commission*. August, 1872. P.Davis & Sons: Pietermaritzburg, 1872.

<sup>39</sup> PAR II 1/141 I285/06 Protector Indian Immigrants to Attorney General, Durban 2 February, 1906.

whom sat on the Colony's Legislative Council. They had hoped that requiring the registration of Indian marriages would be as much intervention as was necessary but were proved wrong early on.

### *Polygyny and Colonial Law in Natal*<sup>40</sup>

Polygynous marriage was identified early on as an obstacle in the administration of Indians in the Colony. It was widely practiced by Indian men in India and Natal legislators were determined that such a practice had no place in the Colony.<sup>41</sup> 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.<sup>42</sup> 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.

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 contracted by Africans, restricted the practice of lobola and required that brides publicly express their assent to the marriage.<sup>43</sup> The Secretary of Native Affairs, Theophilus Shepstone, expressed that the 1869 law could

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<sup>40</sup> 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. 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.

<sup>41</sup> PAR Natal Colonial Publications (NCP) 2/1/1/5 Legislative Council Debates, 1883. Indian Divorce Bill.

<sup>42</sup> PAR NCP 5/5/4, Ordinance 17, 1846.

<sup>43</sup> David Welsh, *The Roots of Segregation: Native Policy in Colonial Natal, 1845-1910*. Cape Town: Oxford University Press, 1971. pp.67-96.

‘only favour the operation of natural causes to achieve the extinction of polygamy.’<sup>44</sup> 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.’<sup>45</sup> 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.’<sup>46</sup> Africans were thus expected to be ‘weaned of’ 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 labour as a migrant labour force in 1860 would complicate the Natal administration’s strategy around polygyny. The Natal Government would, until the 1890s, pass laws governing Indians as laws of indenture i.e. laws relating to labour. Piecemeal laws concerning aspects of personal law such as marriage were to be included in ‘Coolie Consolidation Laws’ until the end of the nineteenth century. 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.<sup>47</sup> For the better part of thirty years, however, there would be no legislation forbidding the practice amongst Indians.

The colonial administration prohibited the registration of polygynous marriages specifically amongst Indians in legislation passed in 1891. Before this time, the Protector,

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<sup>44</sup> 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](http://www.ssn.flinders.edu.au/global/afsaap/conferences/2003proceedings/martens.PDF). Accessed on 18th March, 2005.

<sup>45</sup> Keate in Martens, *Theories of Civilization* p.6.

<sup>46</sup> Keate in Martens, *Theories of Civilization* p.6

<sup>47</sup> PAR II 1/141 I285/06. Correspondence between Attorney General and the Protector.

and Resident Magistrates were confronted with numerous cases of men attempting to register multiple marriages and were 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 that dealt with the status of these relationships. 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 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.<sup>48</sup>

Unlike Africans in the Colony who were subject to Native Law, Indians were not governed by a separate legal code. It was the original intention of the colonial administration that Indian personal law would apply as it did in India – where it had begun to be codified and tied to legal precedent since 1772. The administration suggested that the personal laws of Hindus and Muslims could be applied for the duration of their residence in the Colony. However, this proved impracticable in a colony where the settler population, including British officials saw Indian personal law as ‘repugnant’ and contrary to their ‘moral sense’.<sup>49</sup> The rejection of Indian custom as ‘repugnant’ in Natal, coupled with the reluctance to legislate due to the attempts by Natal government to repatriate Indians after their ‘temporary sojourn in the Colony’, meant that legal uncertainty around issues of Indian customary law would persist until the end of the nineteenth century.<sup>50</sup>

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<sup>48</sup> PAR II 1/141 I285/06. Correspondence between AG and the Protector.

<sup>49</sup> PAR NCP 2/1/1/5 Legislative Council debates, 1883. Indian Divorce Bill.

<sup>50</sup> PAR NCP, 2/1/1/5 Legislative Council Debates, 1883. Indian Divorce Bill.

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 status of polygynous unions was keenly debated amongst the Colony's officials during indenture, resulting in the passage, repeal and amendment of marriage laws within relatively short periods of time. While the Natal administration categorically denied legal recognition to polygynous marriages at first; in 1891 the legislature acceded to the calls of the Protector and other officials directly involved in the resolution of disputes among Indians, and retrospectively legalized polygynous marriages which had been contracted in India *before* the arrival of the immigrants to Natal.

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.<sup>51</sup> The arena of personal law would prove to be the foremost battleground on which battles of colonial politics and anti-colonial nationalism would be fought. 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.<sup>52</sup> 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.<sup>53</sup> Thus, in India, women came to represent tradition in the arguments conducted among colonialists, Hindu liberals, reformers, conservatives and ultimately, nationalists.

The presumption of a body of unchanging ritual, custom and belief carried around by all Indians regardless, even, of their context would be challenged in the colonial outposts to

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<sup>51</sup> Eg. 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.

<sup>52</sup> Spivak, Gayatri Chakravorty. "Can the Subaltern Speak?" in *Marxism & The Interpretation of Culture*. Cary Nelson and Lawrence Grossberg, eds. London: Macmillan, 1988. pp. 271-313.

<sup>53</sup> Mani, *Contentious Traditions*.

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.<sup>54</sup>

One particular aspect of personal law which caused a good deal of litigation was the registration of marriages, with cases frequently having to be decided by the Protector of Immigrants. The Office of the Protector was tasked with resolving disputes amongst Indians who soon became acutely aware of the protections afforded to them under the law. Women too, took advantage of this to resist marriage and its accompanying ‘traditional’ practices. As the Acting Protector 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 to...but he has no power, even were it desirable, to compel the girl against her inclinations.<sup>55</sup>

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. Crucially, 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

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<sup>54</sup> 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.

<sup>55</sup> Y.S Meer, *Documents of Indentured Labour*. Report, for 1877, of Major Graves, Acting Protector of Immigrants. p. 592. Emphasis added.

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’, women were beginning to claim space to resist ‘customary’ practices on their own terms with Indian men, although these would become increasingly limited as the Natal colonial administration exercised greater legal intervention in Indian personal law as indenture wore on into the twentieth century.

Access to the law in general, via the Protector’s Court, enabled women to seek redress for such affronts as desertion or assault. This was certainly the case in Natal, with Indian women often seeking legal protection from abusive husbands and even the dissolution of marriages registered by the Protector. 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>56</sup>

He further 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 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 assault and murder) and desertion that often resulted.<sup>57</sup> 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.<sup>58</sup>

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<sup>56</sup> PAR II 8/4 Protector’s Annual Reports. 1876.

<sup>57</sup> PAR NCP 2/1/1/5, Legislative Council Debates, 1883. Indian Divorce Bill.

<sup>58</sup> Meer, *Documents of Indentured Labour*, pp. 594-610.

A bill providing for divorce amongst Indians was tabled 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 this 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>59</sup>

In 1891 a general attempt was made to address Indian personal law including marriage, the age of consent, adultery, bigamy and divorce.<sup>60</sup> It was a wide-ranging law, encompassing a variety of issues such as health, labour contracts and the like, and its somewhat general nature allowed for divorce proceedings to be instituted by both men and women. It 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).

In the midst of this legal ambiguity around Indian personal law in the Colony, women often took 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.<sup>61</sup> It is an illustration of the advantage that some women took of the early uncertain status of Indian personal and customary law in Natal. The case was reported at length in most of the colonial newspapers and merited a detailed analysis in the Protector’s annual report for 1899.

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<sup>59</sup> PAR NCP 2/1/1/5 Legislative Council Debates, 1883.

<sup>60</sup> PAR 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>61</sup> PAR 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’.

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 first wife! Their marriage was recorded at the emigration depot in Madras and her name was listed – correctly or not as the case may be – *after* that of Thoyi, the other women 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 their 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. Tulukanum’s actions were without precedent in Natal. Neither party in the case owned property, making it is 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 their willingness to use it in the social and political context of Natal.<sup>62</sup>

The 1891 legislation was intended to ‘provide relief’ for the Indian population in general, given the instability of Indian domestic life in the Colony at the time, but offered considerable relief to Indian women who had the possibility of legal recourse where it was denied in India and where separation from her husband would likely have resulted in severe ostracisation, and in some cases even death.<sup>63</sup> So while they may not have enjoyed equality within marriage, women had the opportunity to – and 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.

### ***Conclusions...***

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<sup>62</sup> See Prinisha Badassy, *Turbans and Top-Hats: Indian Interpreters in the Colony of Natal, 1880-1910*. Unpublished Honours dissertation, University of Natal, Durban, 2002.

<sup>63</sup> Liddle & Joshi, *Daughters of Independence*.

It is abundantly clear that women laboured, both on plantations and in the homes which they set up. It is also clear that regardless of the legal and philosophical justifications for their presence in the Colony, the discourses in which they were implicated were based overwhelmingly on expectations of women's productive and reproductive labour. The importance of this is that women should not be seen simply as a way of legitimating a system of labour, but also as agents in a system that derided their existence yet still expected – and at times even *depended on* – their labour.

Women's consent to labour was a key issue around which colonial discourses about them pivoted, and this consent was often a tool that women used to negotiate access to the resources held largely by men. As with women under slavery, they used their sexuality as a commodity to improve their own situation and that of their children.<sup>64</sup> But unlike slavery, as women's legally sanctioned presence in the Colony was primarily an attempt at legitimating indenture as a system of 'free' labour (in opposition to slavery) rather than being about extracting their *productive* labour; indentured women could use both their productive and reproductive labour to negotiate resources and better emotional and economic security in Natal.

As I have demonstrated, 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. 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.

Equally, it is necessary to place the situation of indenture in Natal within the larger British imperial project. The rise of utilitarianism in the late eighteenth and early nineteenth centuries significantly influenced debates around law, subjecthood and citizenship in British colonies. British thinkers such as John Stuart Mill made arguments connecting British rule, citizenship and the subjection of women in England, India and

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<sup>64</sup> Kathleen Wilson, 'Empire, Gender, and Modernity in the Eighteenth Century', in *Gender and Empire*, ed. Philippa Levine, Oxford: Oxford University Press, 2004, pp. 14-45.

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 agency. 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 themselves 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.<sup>65</sup>

Furthermore, it was only around the beginning of the twentieth century that Indian nationalist discourses that mobilized around the issue of indenture began to rise to prominence in the Colony. Anti-colonial nationalist struggles 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. 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 discovered opportunities for agency.

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<sup>65</sup> 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*.

