

'CIVILIZING' MARRIAGE:
BRITISH COLONIAL REGULATION OF THE MARRIAGES OF INDIAN
INDENTURED LABORERS IN NATAL, 1860 – 1891

Anika Havaladar
Senior Thesis
Department of History, Columbia University
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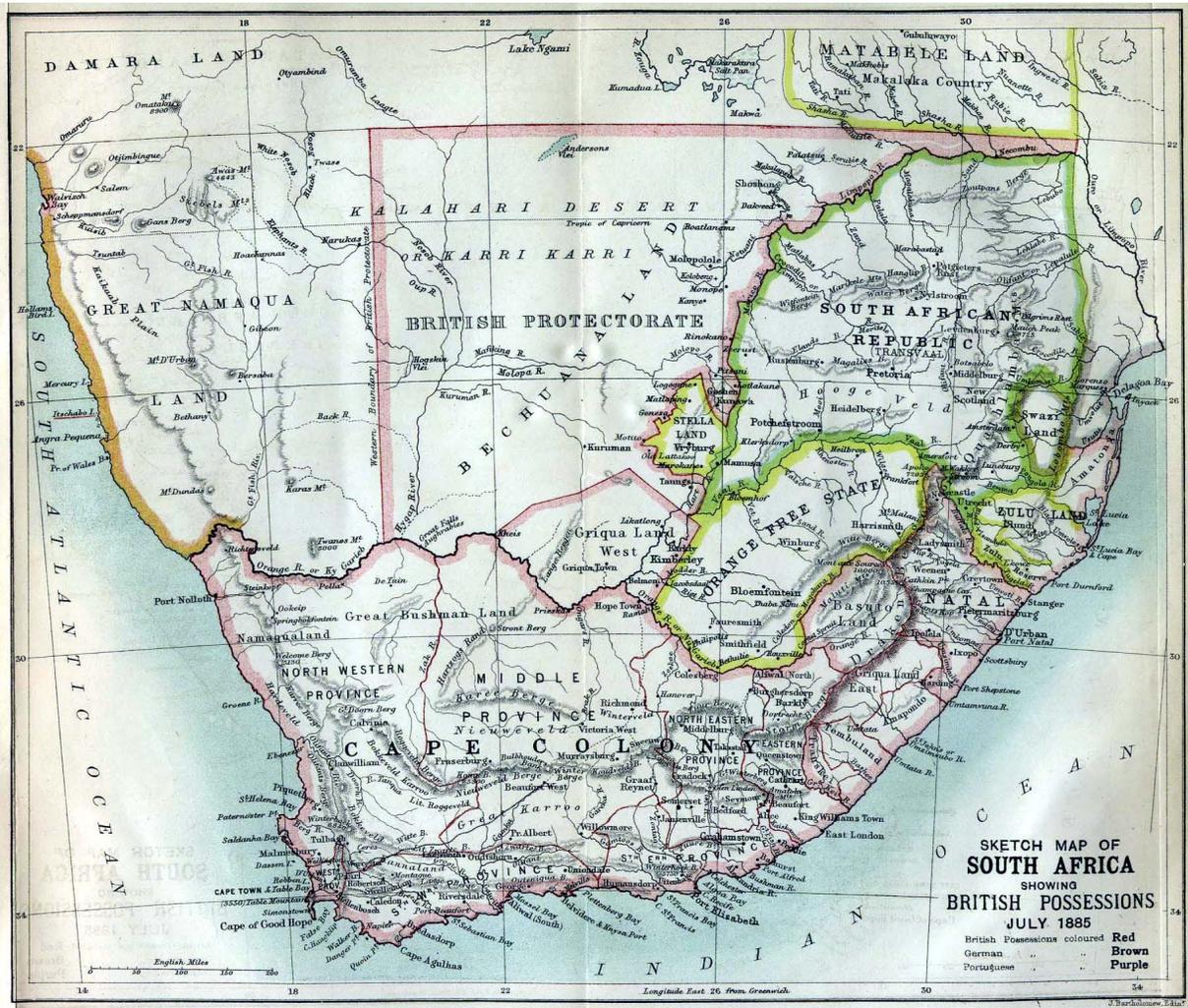
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MAP

Figure 1: Sketch Map of South Africa showing British Possessions including Natal in the South Eastern corner of the African Continent (July 1885)



(Source: <http://www.britishempire.co.uk/maproom/natal.htm>. Accessed April 1, 2015)

Introduction

Indentured Labor and Marriage in the Age of Emancipation

The British Colony of Natal began importing Indian indentured laborers in 1860, at a time when both the imperial institution of indentured labor and the status of Indian subjects within the British Empire were being contested. The indenture scheme, under which contract laborers provided cheap labor for three to five year terms, had been in place in plantations across the Empire since the abolition of slavery in 1833. Since its inception, the system had been subject to fierce moral scrutiny by British abolitionists and condemned as a “new form of slavery.”¹ Ever zealous in its attempts to differentiate indenture from slavery, the Crown pointed to the rights embedded in the indenture contract as moral justification for the system.² In the 1850s, the rights to marriage and family life were most commonly evoked as proof of the “freedom” of laborers.³ The issue of individual rights of Indian subjects was also simultaneously being debated in British India in the immediate aftermath of the Indian Mutiny of 1857. The British believed that Indian resentment toward colonial interferences in native custom was a major cause of the uprising. Thus in 1858, when two-thirds of India came under direct Crown rule, Queen Victoria actively sought to reaffirm the customary rights of Indian subjects. Indeed, her 1858 proclamation promised that British authorities would “abstain from ALL interference with the Religious Beliefs or Worship of any of [her] subjects.”⁴ British

¹ Hugh Tinker. *A New System of Slavery: The Export of Indian Labour Overseas, 1830-1920*.

² William Green. “Emancipation to Indenture: A Question of Imperial Morality,” *Journal of British Studies*, Vol. 22, No. 2, Spring, 1983, 99.

³ Madhavi Kale. *Fragments of Empire : Capital, Slavery, and Indian Indentured Labor Migration to the British Caribbean*. Philadelphia: University of Pennsylvania Press, 1998, 13 – 14.

⁴ “Copy of the Proclamation of the late Queen Victoria of the 1st Day of November 1858 to the Princes, Chiefs, and People of India dated November 9, 1908,” *India Office Records*. Accessed March 24 2015: <http://www.csas.ed.ac.uk/mutiny/confpapers/Queen%27sProclamation.pdf>

reforms of Hindu marriage-related customs such as Sati in 1829 had sparked widespread controversy in India in the first half of the century.⁵ Consequently, British authorities across the Empire exercised heightened caution in dealing with Indian marriage custom.

In determining how to regulate the marriages of Indian indentured laborers, the Natal government accordingly faced the tricky task of ensuring that the family lives of laborers upheld the “morality” of the indenture system without at all intervening in Indian personal law. In 1860, the government began with a policy of complete non-interference in marriage customs and relied exclusively on a customary law system to regulate marriages. This customary law system, which existed parallel to the civil law system that governed Natal’s settler population, was not codified. Under this system, the Natal government required colonial administrators to settle marital disputes using personal laws specific to the caste and religion of involved parties, as was done in India.⁶ Curiously, however, only thirty years later in 1891, the Natal government made a complete turnaround in its policy. In a lengthy, comprehensive law, it not only brought Indian marriages under civil regulation but also explicitly interfered in several aspects of Indian custom including child marriage and polygamy. This drastic about face in the Natal government’s policy, despite prevailing ideological currents surrounding Indian custom in the British Empire, merits investigation.

This thesis investigates how the British colonial regulation of the marriages of Indian indentured laborers in Natal shifted between 1860 and 1891. It specifically

⁵ Lata Mani, *Contentious Traditions: The Debate on Sati in Colonial India*. Berkeley : University of California Press, 1998; Nicholas B. Dirks. *The Scandal of Empire : India and the Creation of Imperial Britain*. Cambridge, Mass: Belknap Press of Harvard University Press, 2006.

⁶ At this time, British authorities in India had begun the process of codifying Indian customary laws. The administration of personal law was at this time based on legal precedent from 1772. See: “Chapter 8: Tradition,” in Nicholas Dirks, *The Scandal of Empire : India and the Creation of Imperial Britain*. Cambridge, Mass: Belknap Press of Harvard University Press, 2006.

explores how colonial administrators produced and justified a need to interfere in Indian marriage customs in direct deviance of Queen Victoria's 1858 proclamation. In studying the colonial administrators' attitudes toward these customs, I focus primarily on the treatment of what administrators termed the "collateral points" of Indian marriage law – polygamy, divorce, and child marriage.⁷ It is important to note that this paper does not present a social history of the married life of Indian indentured laborers. Rather, it is centrally concerned with characterizing the impulses driving the colonial codification of Indian marriage laws in Natal.

This thesis argues that in the eyes of Natal's colonial administrators, only a very specific type of marriage upheld the moral standards required to justify the 'morality' of the indenture system. This was essential to counteract prevailing fears in Britain that the system "would weaken the moral influence of the British government throughout the world."⁸ Colonial administrators in Natal disapproved of some Indian marriage customs, including polygamy and child marriage, and the high rates of adultery and wife abandonment amongst Indian indentured laborers. Between 1860 and 1891, colonial administrators' frustrations with the ineffectiveness of the customary law system to check such immoralities contributed to their increasingly negative perceptions of Indian marriages and gradually produced fertile grounds for legislative intervention in Indian marriage custom in 1891. Through this intervention, colonial administrators ultimately sought to morally improve the character of Indian marriages.

⁷ "Wragg Commission Report, 1885 – 1887." Document 58 in Meer, *Documents of Indenture*, 600.

⁸ British and Foreign Anti-slavery Society. *Coolie Indentured Labour: Statement of the British and Foreign Anti-Slavery Society Shewing [sic] Its Policy with Reference to the Question of Contract Labour*. (Pamphlet) London: British and Foreign Anti-slavery Society, 1888, 8.

A brief contextualization of the policy-making powers of the Natal government, as an indentured laborer-importing Colony, is in order here.⁹ In the British imperial indentured labor system, the British Indian government instituted the central policies governing the system. These included the terms of the indenture contract and the rules regarding emigration and return passage for each colony. The colony was then responsible for enacting these policies into law in order to maintain its right to import indenture. However, in issues not contemplated by the Indian government's policies, colonies had the "perfect right to legislate" as they saw fit.¹⁰ Nonetheless, the colony still needed to frame its own policies with care. The Indian government's disapproval of legislation could lead to the discontinuation of indenture to the Colony.

A short overview of the origins and mechanics of the indentured system in Natal is now imperative for understanding the stakes involved in its continuation. The Natal government began importing Indian indentured laborers in 1860 in response to immense pressure from the Colony's plantation owners.¹¹ Since 1843, when the British annexed the province of Natal, plantation owners had failed repeatedly to harness the native "Kaffir" labor.¹² Colonists' believed that Kaffirs associated agricultural work with female labor and were hence opposed to working on plantations.¹³ Beginning in 1851, planters petitioned to introduce Indian indentured laborers as alternative sources of reliable labor

⁹ For an excellent study of Indian indenture in the context of British imperialism, see: David Northrup, *Indentured Labor in the Age of Imperialism, 1838-1914*. New York: Cambridge University Press, 1995.

¹⁰ "Opinion No. 18, dated Bombay, the 26th March, 1874, by A.R. Scoble, Advocate-General," Document 58 in Meer, *Documents of Indenture*, 596.

¹¹ "Editorials, Natal Mercury, supporting the Introduction of Indentured Indian Labor, 2-5-1855, Document 3, 26 – 28," "Letter of J.R. Saunders in the Natal Mercury calling for the introduction of indentured Indian Labor, 25-4-1855, Document 2, 24 – 25," in Y.S. Meer et al, *Documents of Indentured Labor, Natal 1851 – 1917*. Durban: Institute of Black Research, 1980.

¹² Colenso, John William. *Ten Weeks in Natal. A Journal of a First Tour of Visitation among the Colonists and Zulu Kafirs of Natal*. Cambridge [Eng.]: Macmillan & co, 1855.

¹³ Ibid.

for plantations, pointing to the success of the system in Mauritius and the British Caribbean.¹⁴ At this time, the British imperial economy relied heavily on its plantations for the production of raw materials. Natal was a major hub for sugar production and a steady supply of cheap labor for its sugar plantations was crucial for its economy. As an Editorial in the *Natal Mercury* emphatically noted in 1859, “The fate of the Colony hangs on a thread and that thread is Labor.”¹⁵ Evidently, the stakes for the introduction and then continuation of indenture in Natal were extremely high. In 1859, the British Indian government approved the petition and in 1860, the first ships of laborers arrived in the Colony.

Between 1860 and 1911, around 152, 184 Indians migrated to Natal as indentured laborers.¹⁶ Colonial officials in India recruited these laborers, commonly referred to as “coolies,” mainly from rural areas surrounding the main ports of Madras and Calcutta. In large part, impoverished, landless peasants, urban street dwellers, and other “loose and thriftless characters” such as prostitutes composed these laborers.¹⁷ Throughout the period of indenture to Natal, colonists evoked the low moral character of laborers as a defense against the Indian nationalist criticisms of the indenture system as “morally corrupting.”¹⁸ These criticisms, to a large extent, led to the British Indian government’s ultimate prohibition of the system in 1911. Evidently, for the Natal government, the maintenance

¹⁴ 17 October 1851. *Durban Observer*.

¹⁵ 28 April 1859. *Natal Mercury*.

¹⁶ Surendra Bhana, *Indentured Indian Emigrants to Natal: 1860-1902: A Study Based on Ships Lists* (New Dehli: Promilla & Co, 1994), 1, 19-21.

¹⁷ Sarup, Leela Gujadhur, ed. *Facts about Indian Indentured Labor: Reports and Diaries of Major G.D Pitcher and George A. Grierson (commissioned by the Government of India)*. Kolkata: Aldrich International, 2011.

¹⁸ Hugh Tinker. *A New System of Slavery: The Export of Indian Labour Overseas, 1830-1920*. Oxford: Oxford University Press, 1974.

of the ‘moral’ image of the indenture system in Natal was integral to the continuation of the system, which in turn was crucial for the imperial economy.

British Abolitionists and Indian nationalists alike viewed the “inequality between the sexes” as the “most grossly immoral element” of the indenture system.¹⁹ In response, the British Indian government introduced a mandatory quota for the recruitment of female laborers in 1855. For Natal, this was set at fifty percent. In reality, this quota was hardly ever met because “domestic customs [were] averse to women’s emigration.”²⁰ The resultant inequality of the sexes led to a scarcity of women on Natal’s plantations and greatly affected the nature of the married lives of indentured laborers.

The historiography of the marriages of Indian indentured laborers in Natal overwhelmingly fixates on the effects of this scarcity. Three historical studies obliquely discuss the colonial regulation of these marriages. Jo Beall’s essay titled “Women Under Indenture in Natal, 1860 – 1911” primarily explores the organization of gender relations amongst Indian indentured laborers and describes the “ultra-exploitable” position of women.²¹ The essay’s brief discussion on marriage regulation thematically discusses how these laws shaped indentured women’s lives. Ashwin Desai and Goolam Vahed’s chapter “Family Matters” in their recent book *Inside Indian Indenture* attempts to anecdotally explore the agency of indentured laborers in shaping family formation and affecting marriage regulations in Natal.²² Finally, Nafisa Essop-Sheikh’s doctorate dissertation “Colonial Rites: Custom, Marriage, and the Making of Difference in Natal, 1830s –

¹⁹ British and Foreign Anti-slavery Society. *Coolie Indentured Labour: Statement of the British and Foreign Anti-Slavery Society Shewing [sic] Its Policy with Reference to the Question of Contract Labour*. (Pamphlet) London: British and Foreign Anti-slavery Society, 1888, 19.

²⁰ Ibid.

²¹ Jo Beall, “Women and Indentured Labor in Natal, 1860 – 1911,” in Walker, Cheryl, eds, *Women and Gender in South Africa to 1945*.

²² Desai, Ashwin and Vahed, Goolam. *Inside Indian Indenture: A South African Story, 1860-1914*. Cape Town, South Africa: HSRC Press; 2010

1910” adopts a thematic approach to comparatively analyze settler, Indian, and native marriage legislation.²³ None of these studies however offer an in depth chronological study of Indian marriage legislation in Natal.

Interestingly, both Beall and Desai/Vahed’s works interpret Indian marriage regulations in Natal as a part of the Natal government’s efforts to restore “traditional Indian patriarchal structures.²⁴” While both make explicit references to this process of “restoring the family,” neither fleshes out this concept fully.²⁵ This thesis, in closely studying legislation related to the marriages of Indian indentured laborers, aims both to fill this gap in the historiography and to demonstrate the inadequacy of the ‘restoration’ framework for understanding the colonial regulation of Indian marriages in Natal. Further, I argue that these regulations sought to morally improve rather than to simply restore the stability of the marriages of Indian indentured laborers.

This thesis progresses chronologically and focuses on three main time periods. Chapter I focuses on the period between 1860 and 1872 and demonstrates the problems faced by colonial administrators in regulating Indian marriages using customary law. It studies the emergence of negative perceptions of Indian marriages and how colonial administrators explained the need for civil legislation. Chapter 2 shifts to consider the Coolie Consolidation Law of 1872 and the Natal government’s experiments with a system of civil registration for Indian marriages. The chapter documents the Natal government’s rising concerns with the character of Indian marriages and traces the

²³ Nafisa Essop-Sheikh. “Colonial Rites: Custom, Marriage Law and the Making of Difference in Natal, 1830s - 1910.” Doctorate Dissertation, University of Michigan, 2012. Accessed January 17, 2015: http://deepblue.lib.umich.edu/bitstream/handle/2027.42/93815/nsheik_1.pdf?sequence=1

²⁴ Desai, Ashwin and Vahed, Goolam. *Inside Indian Indenture : A South African Story, 1860-1914*. Cape Town, South Africa : HSRC Press ; 2010

²⁵ Ibid; Jo Beall, “Women and Indentured Labor in Natal, 1860 – 1911,” in Walker, Cheryl, eds, *Women and Gender in South Africa to 1945*.

creation of a momentum toward codification and interference in Indian marriage custom. Finally, Chapter 3 provides an in depth reading and contextualization of the Natal government's intervention in Indian marriage custom by way of Law 25 of 1891. In doing so, it demonstrates the 'civilizing' impulses driving this piece of legislation.

Chapter 1

Rule of Custom, 1860 – 1872

Between 1860 and 1872, the Natal government relied exclusively on a customary law system to regulate the marriages of Indian indentured laborers in the Colony. Under this system, local magistrates were expected to adjudicate marital disputes based on the personal laws specific to the religion, caste, and community of the parties to the marriage.²⁶ British Indian authorities followed the same legal system for native subjects in India and, by 1860, had begun extensively codifying the complex personal laws of different groups.²⁷ In Natal, local magistrates and administrators relied heavily on these writings and on clarifications made through correspondence with British Indian authorities as the basis for their official decisions in marital matters.²⁸ While the British Indian government served as a source of knowledge on broader points of the law, Natal's magistrates possessed complete autonomy in administering customary laws on a daily, case-by-case basis.²⁹ In addition, no uniform marriage laws for indentured laborers across the Empire existed. As a result, despite being under regular inspection by British Indian authorities, the Natal government enjoyed relative flexibility in setting its own regulations.³⁰

²⁶ “Opinion No. 18, dated Bombay, the 26th March, 1874, by A.R. Scoble, Advocate-General,” Document 58 in Meer, *Documents of Indenture*, 596.

²⁷ These codification projects in large part represented the renewed interest in Indian tradition following Queen Victoria's 1858 proclamation. The commencement of indenture to Natal coincided with the publishing of some of the most large-scale, influential codification projects including Macaulay's Indian Penal Code in 1862.

²⁸ “Correspondence between the Governments of India, Natal, and Trinidad, dated 1874,” Document 58 in Meer, *Documents of Indenture*, 592 – 609.

²⁹ For examples of the types of clarifications made by the British Indian government, see: Ibid, 606 – 608.

³⁰ See Clause 12, “Opinion No. 18, dated Bombay, the 26th March, 1874, by A.R. Scoble, Advocate-General,” Document 58 in Meer, *Documents of Indenture*, 596.

This chapter demonstrates that between 1860 and 1872 Natal's magistrates struggled to administer this ambiguous and complex customary law system. In particular, they found it especially difficult to ascertain the validity of the numerous inter-caste and inter-religious unions in Natal, regarding which no customary laws existed in India. These administrative difficulties, coupled with the emergence of stereotypes of Indian marriages as 'loose' and 'immoral,' led colonial administrators to advocate for the introduction of civil legislation regarding coolie marriages. At this time, however, Natal's legislators were committed to a principle of non-intervention in the customary lives of Indian subjects. This chapter further argues that, by 1872, growing concerns about the low moral character of coolies and their marriages resulted in a gradual weakening of this commitment to non-interference. The chapter begins by examining the basis of the colonial administrators' adoption of the customary law system and then proceeds to discuss the factors that caused them to demand civil legislation by 1872.

First and foremost, the Natal government's adoption of a customary law system to regulate the marriages of Indian indentured laborers was informed by the expectation that these laborers would remain only temporarily in the Colony. At a practical level, it made sense to maintain uniform personal statuses for Indian subjects who were temporarily migrating between India and other colonies in the Empire. In an 1874 legal opinion sent to all indenture importing colonies, the Advocate-General of India, A.R. Scoble, insisted upon this practical consideration and stated that any "marriage [taking place in these colonies] should be binding as in India, as it would have to be (if mischief is to be

avoided) on the return of the parties to India.³¹” He further cautioned, “It should be remembered that the Indian immigrants...come from a country where their own particular laws and customs have always been religiously respected...and they may expect that those laws and customs will be continued to them in any part of the British dominions.³²” Natal’s colonial administrators, not wanting to “run the risk of being disapproved of in India,” thus willingly deferred to the customary law system adopted by the British Indian authorities.³³

In the 1860s and early 1870s, public opinion in Natal strongly supported this deference to non-interference in Indian custom, based on fears arising from the Indian mutiny of 1857. These fears manifested themselves repeatedly in references to the uprising in the Colony’s local media and legislative assembly debates. For example, an editorial in the *Natal Witness* from June 1869 responded to legislative assembly debates about the need for civil legislation regarding coolie marriages by reminding legislators of the “lessons of the Indian Rebellion.³⁴” It used the event to warn them against “too rashly interfere[ing] with customs and habits dating from time immemorial.³⁵” Another article in the *Natal Witness* from June 1871 revealed how these fears sometimes extended to the Coolies themselves. In describing a murder committed by a Coolie, the article stated, “the frightful recklessness of life, along with the passionateness and cruelty of the Coolies, recall the horrors of the Indian mutiny.³⁶” It then concluded, “we may learn a salutary

³¹ “Opinion No. 18, dated Bombay, the 26th March, 1874, by A.R. Scoble, Advocate-General,” Document 58 in Meer, *Documents of Indenture*, 598.

³² *Ibid.*, 598.

³³ “Objection of Planters to proposed Coolie Bill,” Document 43 in Meer, *Documents of Indenture*, 169 – 171.

³⁴ “Letter to Editor of Natal Witness,” *Natal Witness*. June 29, 1869.

³⁵ *Ibid.*

³⁶ *Natal Witness*. June 20, 1871.

lesson not to rouse needlessly the passions of such devils.³⁷” For Natal’s settlers, the 1857 Mutiny became a cautionary tale that warned against interferences in the customary lives of Indians, whom they considered extremely sensitive to matters regarding their customs and religions. These notions probably also loomed large in official thinking about marriage customs in this period.

An orientalist vision of the cultural integrity of Indian custom, especially relative to native Kaffir custom, further influenced the colonial administration’s stance on non-interference in Indian customs.³⁸ This vision manifested itself most clearly in the Natal legislative council’s 1869 debates about extending the application of the ‘hut tax’ to the Colony’s Indian population. The ‘hut tax’ was a type of taxation levied on the rural dwellings of the native Kaffirs. It aimed to both generate revenue for the Natal government and discourage polygamy by taxing the huts of each wife in a polygynous home. In this manner, it attempted to indirectly intervene in the customary life of the native Kaffirs. The Colonial Secretary Charles Mitchell’s rejection of the proposal to extend the application of this tax onto Indians directly exemplified the orientalist vision of the cultural integrity of Indian custom. In objecting to the tax, Mitchell remarked, “I say you have no right to call a civilized people – people who had the germs of civilization long before our ancestors had them – uncivilized, and try to civilize them by taxation.³⁹” He then qualified his remarks by stating, “We cannot call them a civilized people in the sense we understand civilization, but they are a people who have been under a certain

³⁷ Ibid.

³⁸ For an excellent study of British colonial orientalist constructions of India, see: Ronald Inden, ‘Orientalist Constructions of India’, *Modern Asian Studies*, Vol. 20, No. 3, 1986, 401- 446.

³⁹ PAR, NCP 2/1/1/5 Legislative Council Debates – ‘Taxing Indian occupants of Huts’, Reprinted Remarks in Essop-Sheikh, Nafisa. “Colonial Rites: Custom, Marriage Law and the Making of Difference in Natal, 1830s - 1910.” Doctorate Dissertation, University of Michigan, 2012. Accessed January 17, 2015: http://deepblue.lib.umich.edu/bitstream/handle/2027.42/93815/nsheik_1.pdf?sequence=1

civilized system for thousands of years.⁴⁰ Mitchell's remarks revealed that even though colonial administrators looked down upon customary practices such as polygamy, which was practiced amongst some groups of Indians, they refrained from interfering in these customs because of a belief in the cultural integrity of ancient Indian civilization.

Although Natal's colonial administrators largely supported the use of the customary law system to regulate Indian marriages in principle, they found it extremely difficult to administer. Their grievances toward the system were manifested most clearly in the Coolie Commission Report of 1872.⁴¹ This report detailed the findings of an inquiry into the living conditions of Indian indentured laborers. The British Indian Government commissioned the report in response to complaints from the first batch of laborers returning to India upon completion of their indenture terms in 1866.⁴² These complaints were evoked in debates surrounding the resumption of indenture to Natal following a hiatus in the system from 1866 to 1874 due to an economic recession in the Colony. In the report, the Commission briefly discussed difficulties arising from the customary law system and underscored the need for some civil legislation regarding coolie marriages.

The Coolie Commission Report cited difficulties in ascertaining the validity of marriages as the main shortcoming of the customary law system and the primary reason for the need for civil legislation. It described how several coolies formed "informal unions" which they "considered to be marriages" but had not performed any customary rites that could have been used as proof of the validity of the marriage.⁴³ Along these

⁴⁰ Ibid.

⁴¹ "Coolie Commission Report of 1872," Document 42 in Meer, *Documents of Indenture*.

⁴² For summary of these Coolies' Complaints, see: Ibid, 126 – 127.

⁴³ "Coolie Commission Report of 1872," Document 42 in Meer, *Documents of Indenture*, 128.

lines, it also noted how the customary law system often did not contemplate mixed inter-religious and inter-caste marriages.⁴⁴ In the case of such unions, the Commission complained that, “the difficulty that exists in proving the validity of Coolie marriages at present prevents the Magistrates from taking cognizance of such cases, and many and bitter complaints were made to us respecting the difficulty of obtaining redress in them.⁴⁵” By describing the unique circumstances and types of unions occasioned by migration to Natal, the Commission gestured toward the inadequacy of directly applying customary law from India.

Difficulties in ascertaining the validity of marriages also frequently arose in cases for which customary personal laws did exist in India. The Reports of Natal’s Attorney General M.H. Gallwey on marital disputes between 1872 and 1875 evidenced that administrators in Natal particularly struggled with ascertaining the validity of polygamous and child marriages.⁴⁶ In an 1872 report, Gallwey expressed difficulty in grasping the “Hindoo custom of ‘child marriage.’⁴⁷” He questioned, “Whether a child under 12 years of age is capable of marriage, and whether such a “marriage” is not in reality simply a betrothal.⁴⁸” In the same report, he expressed confusion about “whether bigamy or polygamy is to be recognized in this Colony” in the case of all Hindus and Muslims.⁴⁹ His analyzes of various matrimonial cases in his reports revealed the difficulty in dealing with the lack of uniformity in the application of the same custom to different communities.

⁴⁴ Ibid, 128.

⁴⁵ Ibid, 128.

⁴⁶ “Reports of Attorney General,” Document 58 in Meer, Documents of Indenture, 609.

⁴⁷ Ibid, 609

⁴⁸ Ibid, 609.

⁴⁹ Ibid, 609

Between 1860 and 1872, the emergence of a stereotype of Indian marriages as ‘loose’ and ‘immoral’ intensified administrators’ frustrations with the customary law system. This stereotype manifested itself repeatedly in various forms in the Coolie Commission Report of 1872. The Report pointed to the scarcity of female indentured laborers as a “serious” source of “evils” among coolies.⁵⁰ These evils included suicide, rape, adultery, domestic abuse, and murder.⁵¹ The Report also underscored the conspicuous incidence of bigamy and adultery in Natal and highlighted the “seduction of married women” as one of the biggest problems of indentured married life.⁵² It further characterized single, unmarried indentured women as promiscuous “concubines” and noted their swift movement from plantation to plantation.⁵³ This negative stereotype of coolie marriages also manifested itself in Natal’s local media. Prominently, the daily crime report often featured stories of graphic domestic violence between coolies. For instance, an article in the Natal Witness from September 1868 described with great horror the image of a coolie named Pardee “chastising his wife with an iron rod and kicking her.⁵⁴” The local media and Coolie Commission Report’s characterization of the widespread “immorality” and “debauch” of coolie marriages stood in stark contrast to Mitchell’s oriental vision of the cultural integrity of Indian civilization.⁵⁵

In the Coolie Commission Report, colonial administrators drew on these negative stereotypes to advocate for increased civil legislation with regards to Indian marriages. To this end, the Commission used the testimony of the only coolie quoted in the report,

⁵⁰ “Coolie Commission Report of 1872,” Document 42 in Meer, *Documents of Indenture*, 128.

⁵¹ Ibid, 139.

⁵² Ibid, 130

⁵³ Ibid, 129.

⁵⁴ Natal Witness. September 07, 1868.

⁵⁵ Ibid, 139.

Ramaswammy, to emphasize the need for an official civil marriage contract. In his testimony, Ramaswammy proposed, “After they [a male and female coolie] agree to marry, if either party refuse to marry, the Coolie agent should punish the guilty person.⁵⁶” Ramaswammy further straightforwardly stated that his coolie friend’s inability to obtain “redress” in a breach of marriage promise resulted in his committing suicide.⁵⁷ His testimony drove home the close relation between the institution of simpler procedures for settling marital disputes and the prevention of instances of coolie “immorality.” Using Ramaswammy’s testimony, the Coolie Commission provided the perfect illustration of how increased civil legislation could “operate as a check on immorality.⁵⁸”

By 1872, perceptions about the “low caste” of the majority of coolies in Natal also began to justify the need to pass some civil legislation with regards to coolie marriages. Correspondence between J. Nugent, a Resident Magistrate in Natal, and the Attorney General in 1872 typified these perceptions. Nugent stated, “The emigrants are, it may be said, all people, when Hindus of low caste and when Mussulmans, but ill acquainted with the more refined doctrines of their faith.⁵⁹” He further declared, “It may be safely assumed that those who determine to cross the water are very indifferent to the forms of caste; and do not look with apprehension to the interruption of them in a foreign land.⁶⁰” By casting coolies as religiously indifferent, Nugent de-emphasized the need to precisely respect all their customs and thus the need to adhere completely to the non-interference policy.

⁵⁶ Ibid, 139.

⁵⁷ Ibid, 139

⁵⁸ Ibid, 129.

⁵⁹ “Appendix O to Wragg Commission Report,” Document 58, in Meer, Documents of Indenture, 596.

⁶⁰ Ibid, 596.

In 1872, the findings of the Coolie Commission Report and complaints by returning indenturees about the poor quality of married life in Natal threatened the indefinite suspension of indenture to the Colony. Indeed, debates occurring in India about the resumption of indenture to Natal were centered on these complaints. Beginning in 1866, these debates prolonged the break in the importation of indentured labor to Natal that initially occurred due to an economic recession. During this period, the Natal government continued to rely on a customary law system to regulate the marriages of Indian indentured laborers in the Colony. However, the colonial administration's frustration with the ambiguity and complexity inherent in the customary law system precipitated its desire for civil legislation in marriages. The emergence of stereotypes characterizing coolie marriages as 'immoral', along with negative perceptions stemming from the low caste of coolies, further contributed to the push for change in the system. Coolie Commission Report of 1872 documented this prevailing attitude. The report unequivocally advocated for legislation specifically to remove the difficulty of ascertaining the validity of Indian marriages and to check the 'immoralities' of coolie unions.

Chapter 2

Civil Registration, 1872 – 1887

When indenture to Natal resumed in 1874, the Natal Government was under immense pressure from the British Government of India to implement the recommendations of the Coolie Commission Report. The report's findings about the poor conditions of indentured life in Natal had caused significant diplomatic rifts between the two Governments.⁶¹ In 1871, the Indian Government had even threatened to discontinue indenture to Natal altogether.⁶² Given the centrality of Indian labor to the plantation economy, the Natal Government could scarcely risk the loss of this labor supply. The degradation of married life had been a prominent criticism leveled by the report. Thus, the Natal Government promptly sought to rectify this negative image in the eyes of both the Indian Government and potential indenturees, who had often been discouraged from indenturing by the complaints of returning laborers.⁶³ At this time, the principle of non-intervention in custom continued to loom large in official thinking in both Natal and India. Natal legislators hence faced the delicate task of formalizing the regulation of Indian marriages, as per the recommendations of the Coolie Commission Report, without interfering in Indian marriage custom.

⁶¹ The diplomatic relations between the Government of India and the Natal Government were so tense that the Natal Colonial Secretary sent a contingent, led by special Agent W.M. Macleod, to India to resolve matters. "Report on Resumption of Indenturing to Natal – Government Gazette – September 22, 1874." Document 50 in Meer, *Documents of Indenture*, 204 – 205.

⁶² 4653: Introduction of Labourers from India into the Colony of the Cape of Good Hope. IOR/L/PJ/3/1117 No.18. Mar. 1875-May 1875. MS Selected India Office Records on Colonial Africa: Selected India Office Records on Colonial Africa. British Library. *Nineteenth Century Collections Online*. Web. 13 Feb. 2015.

⁶³ See Marina Carter, *Voices from Indenture: Experiences of Indian Migrants in the British Empire*. London: Leicester University Press, 1996.

Subsequently, the Natal government put in place two key measures by way of the Coolie Consolidation Law of 1872. First, as per the recommendations of the Coolie Commission Report, the new law mandated registration of all women and of all Indian marriages in Natal.⁶⁴ Indian immigrants were required to register within one month of marriage or incur a five-pound penalty for late registration.⁶⁵ Second, the law changed the bureaucratic designation of the Coolie Agent, formerly the official in charge of indentured laborers, to the Protector of Immigrants. It further extended the powers of this role and granted the Protector official jurisdiction in investigations and decisions regarding all matters related to Indian marriages.⁶⁶

This chapter demonstrates that both these measures amounted to little more than appeasement of the Indian government and were largely ineffective in removing difficulties in ascertaining the validity of marriages. Colonial administrators continued to struggle with understanding and applying the ambiguous category of Indian customary law. The Natal government, on the other hand, remained hesitant to define Indian custom or state what constituted an ‘Indian marriage.’ Between 1872 and 1887, colonial administrators’ perception of coolies and the character of their marriages became increasingly negative. The orientalist vision of the cultural integrity of Indian custom lost its salience in the minds of administrators. Administrators’ frustrations regarding the shortcomings of civil registration intensified these perceptions. This chapter further argues that the failure of civil registration and the perception of the low moral character

⁶⁴ “Government Notice No. 273, 1872” and “Government Notice No. 84, 1873.” Document 44 in Meer, *Documents of Indenture*, 172 – 173. “Colony of Natal, Indian Immigration, Laws and Regulations, Pietermaritzburg, 1875.” Document 53 in Meer, *Documents of Indenture*, 223.

⁶⁵ “Clause 14.” *Ibid*, 224

⁶⁶ “Clauses 15 – 18,” *Ibid*, 224.

of Indian marriages produced a momentum toward codifying Indian marriage custom and engendered a need to improve the moral quality of Indian marriages.

Colonial reports from the 1870s and 1880s reveal that there was widespread consensus among administrators regarding the ineffectiveness of the civil registration system. These views manifested themselves most clearly in the Wragg Commission Report of 1885 – 1887.⁶⁷ This Report detailed the findings of a second inquiry into the living conditions of indentured laborers and had been commissioned by the Natal Colonial Secretary in response to frequent complaints of ill treatment by laborers.⁶⁸ The chapter on Indian marriages and divorces comprised the lengthiest section of the extensive three hundred and eighty-page document. This chapter discussed the “present unsatisfactory state of the Law” in depth and concluded with a comprehensive list of recommended policy changes, pushing toward increased civil legislation with regards to Indian marriages.⁶⁹

One of the biggest grievances expressed in the Report dealt with Section 14 of the Coolie Consolidation Law of 1872. This section required Indian couples to have proof of a customary wedding ceremony in order to register and validate their marriages.⁷⁰ The Report repeatedly underscored the difficulties arising from this provision for mixed marriages. It noted, “In numerous cases, there can be no binding ceremony on both

⁶⁷ “Wragg Commission Report, 1885 – 1887.” Document 58 in Meer, *Documents of Indenture*, 254 – 633.

⁶⁸ *Ibid*, 254.

⁶⁹ *Ibid*, 262.

⁷⁰ “Colony of Natal, Indian Immigration, Laws and Regulations, Pietermaritzburg, 1875.” Document 53 in Meer, *Documents of Indenture*, 223.

parties to the marriage, because they are of different races, religion, and castes.⁷¹ Under the law, such marriages could not be registered. Indeed, in Natal, the Commission observed, “High caste men are married to low-caste women, Mohammedans to Hindus, men from Northern India to Tamil women from the South.⁷²” The Report further noted that such mixed marriages comprised a “very great” proportion of all Indian marriages in Natal.⁷³ This meant that the express provision for a ceremony made civil registration impossible for the majority of Indian indentured laborers.⁷⁴ The inability of these marriages to be validated under the 1872 Law stirred considerable trouble for the Protector’s Office in matters regarding marital disputes. For instance, in his Annual Report for 1882, the Deputy Protector dissatisfiedly described not being able to rely on civil registration for “[mixed marriage] cases in which nice points of law have depended on as to [whether] people were married or not.⁷⁵” In framing the 1872 Law, legislators had envisioned that civil registration would simplify ascertaining the validity of Indian marriages. However, the inclusion of the ceremony provision and resultant exclusion of several unions from civil registration meant that this purpose was largely defeated.⁷⁶

Frustrated with the problems created by Section 14, colonial administrators pushed for amendments making civil registration, without proof of ceremony, “conclusive evidence” of a marriage.⁷⁷ Both the Wragg Commission Report and the Protector’s Annual Report for 1887 evidenced this demand. The Wragg Commission

⁷¹ “Wragg Commission Report, 1885 – 1887.” Document 58 in Meer, *Documents of Indenture*, 262.

⁷² *Ibid*, 262.

⁷³ *Ibid*, 262.

⁷⁴ *Ibid*, 262.

⁷⁵ “Extract of Deputy Protector’s Annual Report,” Document 58 in Meer, *Documents of Indenture*, 262.

⁷⁶ “Wragg Commission Report, 1885 – 1887.” Document 58 in Meer, *Documents of Indenture*, 260.

⁷⁷ *Ibid*, 262.

Report straightforwardly stated that the Commission “was of the opinion that the validity of all future marriages should depend entirely upon the registration thereof without regard to any antecedent ceremony.⁷⁸” Along these lines, Charles Manning, the Protector of Immigrants in 1887, arrived at a similar conclusion in his Annual Report. He posited that for many couples that “wish to acknowledge their union and legitimize their children, marriage of such different castes being contrary to their traditions it would be very difficult except as a civil contract.⁷⁹”

The Annual Report and the Wragg Commission Report also evidenced both a shift away from the need to legitimize laws using Indian custom and a clear momentum toward codification of marriage regulations for Indian immigrants. On one hand, the Wragg Commission Report indicated that in 1872, the provision for the marriage ceremony was seen as proof of “binding effect in the minds of the parties thereto.⁸⁰” In 1887, on the other hand, colonial documents showcased no need for any such customary sanction and looked instead to the civil contract as the binding agreement. In fact, in its recommendations, the Wragg Commission Report explicitly stated that, “no ceremony, religious or otherwise, either before or after the registration shall be necessary...for the validity of any marriage so registered.⁸¹” This shift in official thinking also manifested itself in differences in the language of the recommendations put forth by the Coolie Commission Report in 1872 and the Wragg Commission Report in 1887. In 1872, the Coolie Commission Report had justified its recommendations by stating that such

⁷⁸ Ibid, 262.

⁷⁹ “Extract from Protector’s Annual Report for 1887,” Document 58 in Meer, *Documents of Indenture*,

⁸⁰ “Wragg Commission Report, 1885 – 1887.” Document 58 in Meer, *Documents of Indenture*, 259.

⁸¹ Ibid, 264.

procedures resembled those used in Indian custom. For instance, in putting forth the recommendation to extend the judicial powers of the then Coolie Agent, the Coolie Commission Report explained, “this is in accordance with very ancient usage in India, where such courts of arbitration are very common, under the name of “Punchagut.”⁸²” Conversely in 1887, the Wragg Commission Report made no such justifications and instead moved explicitly away from using Indian custom.

Another shortcoming of civil registration cited by the Wragg Commission Report was the low enforceability of the system. Between January 1883 and June 1886, only 4,971 marriages were registered.⁸³ This represented around thirty percent of all couples that considered themselves married.⁸⁴ Those not represented were either not able to register, willingly chose not to do so, or did not know about the Law. In his report for the year 1882, the Deputy Protector complained that despite his best efforts at circulating informative pamphlets in various Indian languages on estates, neither coolies nor their masters knew about the registration law.⁸⁵ He further noted that the five-pound late penalty acted as a disincentive for registration in certain situations. In this regard, he humorously recounted two examples of couples who arrived at his office in Durban to register their marriages but immediately denied “that they were married because they were told that there was a five pound penalty for their omission to register and they consequently went away still unmarried.”⁸⁶ Due to the difficulties in enforcing the Law,

⁸² “Coolie Commission Report of 1872,” Document 42 in Meer, *Documents of Indenture*, 129.

⁸³ *Ibid*, 260 – 261.

⁸⁴ Essop-Sheikh, Nafisa. “Colonial Rites: Custom, Marriage Law and the Making of Difference in Natal, 1830s - 1910.” Doctorate Dissertation, University of Michigan, 2012. Accessed January 17, 2015: http://deepblue.lib.umich.edu/bitstream/handle/2027.42/93815/nsheik_1.pdf?sequence=1

⁸⁵ “Extract from Report of Deputy Protector, 1882” in “Wragg Commission Report, 1885 – 1887.” Meer, *Documents of Indenture*, 262.

⁸⁶ “Wragg Commission Report, 1885 – 1887.” Document 58 in Meer, *Documents of Indenture*, 262.

civil registration did not, as was hoped, help to ascertain the validity of marriages in the majority of cases. Its lack of implementation was a source of agitation for colonial administrators. Consequently, the Wragg Commission looked to integrating Indian marriage regulation within the civil law system as a more feasible alternative.⁸⁷

The Wragg Commission's move toward the codification and definition of Indian marriage laws was also motivated by a strong desire to curb the Protector's discretionary power. This power was afforded to the Protector on account of ambiguities of the 1872 Law. On numerous occasions, the Commission made note of different individuals in the Protector role overstepping their jurisdiction. This was especially notable on the subject of divorce. The Report disapprovingly observed the fact that "two Protectors, considering that they had jurisdiction, have dissolved six Indian marriages [even though] under the law as it stands at present, the Protector has no power to grant divorces."⁸⁸ It recognized the ambiguous nature of the language employed in the 1872 Law and conceded that the jurisdiction of the Protector "should be specified in express words."⁸⁹ However, it posited that legislators did not "contemplate such extensive power, in civil cases, being placed in hands of the Protector."⁹⁰ It further argued that the power to grant divorce was only vested in the Supreme Court and that the Protector's jurisdiction was logically "more humble than that vested only in the highest judicial tribunal in the Colony."⁹¹ In order to avoid such breaches in the future, the Commission recommended that the law "clearly settle the grounds upon which marriages may be dissolved" and that "Resident Magistrates [and not the Protector] should have power to hear and decide such

⁸⁷ Ibid, 263.

⁸⁸ Ibid, 261.

⁸⁹ Ibid, 261.

⁹⁰ Ibid, 259.

⁹¹ Ibid, 260.

matrimonial suits.’⁹² With these recommendations, the Wragg Commission pushed the Natal government to pass decisive civil legislation clarifying the treatment of different aspects of Indian marriages including divorce, remarriage, and marriage nullification.⁹³ This clearly evidenced a momentum toward increased codification of Indian marriage laws.

Between 1872 and 1887, however, attempts to actually pass civil legislation regarding Indian marriages failed successively in the Legislative Assembly. Most prominently, in the early 1880s, the Assembly rejected the Indian Immigrants Divorce Bill on at least three occasions.⁹⁴ Newspaper reports from 1883 described the basis of these rejections. For instance, an article in the *Natal Witness* from September 1883 noted, “On more than one occasion, the Indian Immigrant’s Divorce Bill had been before the [Legislative Assembly] House; and the rather vital point of defining what an Indian marriage was could apparently not be got over.⁹⁵” Indeed, in order to pass civil legislation regarding Indian marriages, the Assembly would need to clearly define the single category of the ‘Indian marriage.’ The Assembly’s clear reluctance to define this category and failure to pass legislation likely reveal the lingering salience of the principle of non-intervention in the minds of legislators in the early 1880s.

Despite these many attempts to pass civil legislation with regards to Indian marriages, it was only in 1891 that such legislation finally passed. It is worth exploring the factors that finally tipped the scales in favor of civil legislation. The social climate in

⁹² Ibid, 262.

⁹³ Ibid, 264 – 265.

⁹⁴ September 22, 1883. *Natal Witness*; KwaZulu-Natal (South Africa). Legislative Council. *Debates of the Legislative Council of the colony of Natal*. Pietermaritzburg : Vause, Slatter & Co, 1893. Vol. 2. (1880),129.

⁹⁵ September 22, 1883. *Natal Witness*.

the 1880s presented a highly compelling explanation. In the 1880s, the attitude of colonial administrators and settlers toward Indian indentured laborers and their marriages became increasingly negative and created a need to urgently pass legislation in order to check specific ‘immoral’ behavior. For instance, colonial administrators and settlers alike widely believed that coolie men had problems with alcohol and cannabis, or “dakkha” as it was supposedly known among the Kaffirs and Indians.⁹⁶ In fact, the very first chapter of the Wragg Commission Report addressed this “dakkha” addiction.⁹⁷ Along similar lines, in 1883 letters to her cousin in England, Frances Colenso, the wife of the Bishop of Natal, described coolies as “dishonest, drunken, and of low caste” and complained that they cultivated cannabis and passed it along to the Kaffir natives.⁹⁸

In colonial official thinking, this drug and intoxication problem co-related to the high rates of disorderly conduct, domestic abuse, and wife deserting among coolies.⁹⁹ In 1874, for example, in a letter to the Attorney General, Protector MacLeod perplexedly complained about not being able to “redress” the problems created by such substance abuse.¹⁰⁰ He mentioned the case of coolies Soyrub and Mahadeo where Mahadeo had deserted Soyrub after just ten days of marriage. Protector MacLeod complained that abandonment had forced Soyrub to resort to prostitution as a means of survival. He further complained that even though Soyrub and her neighbors testified that Mahadeo “frequently gets drunk, smokes dagga, and beats [Soyrub],” he was unable to grant her a

⁹⁶ “Wragg Commission Report, 1885 – 1887.” Document 58 in Meer, *Documents of Indenture*, 256.

⁹⁷ Ibid, 256

⁹⁸ Frances Bunyon Colenso. *Colenso Letters from Natal*. Pietermaritzburg: Shuter and Shooter, 1958, 153.

⁹⁹ “Wragg Commission Report, 1885 – 1887.” Document 58 in Meer, *Documents of Indenture*, 537.

¹⁰⁰ Reprinted Letter in Ashwin Desai and Goolam Vahed, *Inside Indian Indenture: A South African Story, 1860-1914*. Cape Town, South Africa : HSRC Press ; 2010, 212.

divorce under the present Law.¹⁰¹ The Legislative Assembly minutes from 1881 demonstrate that such cases created the impetus for the Divorce Bill.¹⁰² The build up of such problems, evidenced in the Wragg Commission Report, likely produced the final push toward civil legislation.¹⁰³

Colonial administrators' increasing concerns about the character of Indian marriages also manifested themselves in discussions about venereal disease in the Colony. In the 1880s, there was a widespread panic among Natal's settlers and administrators about prostitution and the spread of venereal disease in the Colony.¹⁰⁴ In the case of Indians, colonial administrators declared the low character and promiscuity of female indentured laborers to be the primary cause of the epidemic.¹⁰⁵ The Wragg Commission Report provided ample evidence of the prevalence of this attitude. It straightforwardly noted, "The spread of these [venereal] diseases is fostered by well-known Indian prostitutes, who wander from one estate to another...We find that prostitutes are actually imported among the single women in India."¹⁰⁶ The Report also described a bizarre visit to an estate where the investigators "observed an Indian suffering so severely from syphilis that he could barely walk" only to find "the woman who infected him" living with another man "who confessed to cohabitation with her in her diseased state!"¹⁰⁷ Testimonies from settlers in Natal also echoed such perceptions. For

¹⁰¹ Ibid, 212.

¹⁰² KwaZulu-Natal (South Africa). Legislative Council. *Debates of the Legislative Council of the colony of Natal*. Pietermaritzburg : Vause, Slatter & Co, 1893. Vol. 3. (1881), 87.

¹⁰³ "Wragg Commission Report, 1885 – 1887." Document 58 in Meer, *Documents of Indenture*, 256.

¹⁰⁴ See Jeremy Martens, "Almost a Public Calamity": Prostitutes, Nurseboys, and Attempts to Control Venereal disease in Colonial Natal, 1886 – 1890."

¹⁰⁵ Chapter XX. "Venereal Diseases." Wragg Commission Report, 1885 – 1887." Document 58 in Meer, *Documents of Indenture*. 295.

¹⁰⁶ Ibid, 295.

¹⁰⁷ Ibid, 295.

example, in 1887, Mr Alfred Dumat, managing director of the Natal Central Sugar Company, reported, “some of the women on the estates are reputed to be prostitutes... A woman may be reputed to be a prostitute one day, and five days afterwards may be regularly living with a man.¹⁰⁸” Colonial administrators saw reducing the number of single women on plantations and strengthening the character of Indian marriages as solutions to this epidemic.¹⁰⁹ This would have meant increasing provisions for the dissolution of ‘loose’ marriage ties including the provision of divorce for deserted wives and simplifying the process of ascertaining the validity of marriages so as to allow swift prosecution of adultery. Thus, the social anxiety surrounding venereal disease likely made the passage of civil legislation regarding Indian marriages an urgent priority by the end of the 1880s.

The language of the recommendations presented in the Wragg Commission Report also typified colonial administrators’ increased interest in improving the character of Indian marriages and Indian marriage practices. This attitude manifested itself most unequivocally on the subject of child marriage and child betrothals. In this regard, the Report recommended the institution of a minimum age for marriage. It noted, “with the view of checking the evils arising from early betrothals, it should be lawful for an Indian male immigrant to marry when he is 16 years of age, and for a female when 13 years of age.¹¹⁰” The Commission’s phrasing revealed both a definite social moralizing impulse and an outright disapproval of Indian marriage practices. In a similar vein, in 1885, Protector Mason wrote to the Wragg Commission advocating for increased and clearer legislation penalizing “mercenary parents” of young girls for carrying out “fraudulent

¹⁰⁸ Ibid, 383.

¹⁰⁹ Ibid, 295 – 296.

¹¹⁰ Ibid, 263.

schemes” to cheat their daughters’ suitors out of money used to “purchase betrothals.”¹¹¹ He described these schemes as “instances of fraud of the most direct and indefensible nature” and noted the alarming high frequency of such cases.¹¹² In his plea to the Wragg Commission, Protector Mason showcased a clear interest in both passing increased, detailed marriage legislation and keeping in check ‘immoral’ aspects of Indian marriage practices.

By 1887, the failure of the civil registration system with its minimalist regulation and colonial administrators’ increasingly negative perception of coolies provided fertile grounds for increased civil legislation with regards to Indian marriages. Civil registration was far from being well implemented and far-reaching. Its shortcomings made evident to administrators the need to introduce a more comprehensive, standardized system for Indian marriage regulations. Simultaneously, rising concerns about the moral character of Indian marriages led colonial administrators to advocate for increased interference in Indian custom. Indeed during this period, colonial officials moved away from attempting to legitimize their policies using Indian custom to openly calling for reforms of these customs. However, although such discourse clearly evidenced a momentum toward codification and intervention in Indian custom, no legislation was successfully passed between 1872 and 1887. In fact, it was not until 1891 that the Natal government finally interfered in the marriage customs of Indian indentured laborers.

¹¹¹ Ibid, 531.

¹¹² Ibid, 531.

Chapter 3

'Civilizing' Marriage, 1891

In 1891, the Natal Government enacted the first codified, civil law affecting the familial lives of Indian indentured laborers.¹¹³ Commonly referred to as Law 25 or the Indian Immigration law of 1891 in official rhetoric, this law exhaustively addressed several aspects of personal law including marriage contracts, divorce, adultery, age of consent, and remarriage.¹¹⁴ It was notable for two main reasons. First, it made civil registration, without a customary ceremony, the sole legally accepted contract for Indian marriages.¹¹⁵ This rectified the ambiguities in the Coolie Consolidation Law of 1872 that were highlighted in the Wragg Commission Report of 1885-1887. Further, it meant that registered Indian marriages would become subject to the civil common laws of the Colony. Until then, common laws had only governed the settler population in Natal. Second, the law intervened in the customary lives of Natal's Indians for the first time. Notably, it delimited Indian personal law by prohibiting polygyny, making provisions for divorce, and setting a minimum age for marriage.¹¹⁶ In this manner, Law 25 of 1891 sought not only to codify marriage regulations but also to improve the *nature* of these relations by eliminating what the Natal Government considered immoral behavior. Historians of indenture in Natal, prominently Jo Beall, Goolam Vahed, and Ashwin Desai, have understood this colonial project of stabilizing marriages in Natal as a process

¹¹³ KwaZulu-Natal (South Africa) Legislative Council. "Index of Bills, " *Votes and Proceedings*, 1901, p. 11.

¹¹⁴ Natal (South Africa), Charles Fitzwilliam Cadiz. *Natal Ordinances, Laws, and Proclamations*. Accessed February 24, 2015. <http://archive.org/details/natalordinances00unkngoog>.

¹¹⁵ KwaZulu-Natal (South Africa). *Natal Ordinances, Law, and Proclamations*. Vause, Slatter & Company, 1890 – 1895, Law 25 of 1891, Section 71, p. 209. Accessed Feb 25 2015 via Google Books.

¹¹⁶ *Ibid*, 207 – 210.

of “restoring the [Indian] family” and its traditional patriarchal structure.¹¹⁷ This chapter however argues that the Natal government sought to morally improve rather than simply restore Indian marriages. Colonial administrators saw the civil laws governing marriages of Natal’s settlers as morally superior to Indian customary laws. The incorporation of Indian marriages into this legal system thus signified a form of moral ‘progress.’

An examination of individual sections of Law 25 of 1891 reveals that the Natal government legislatively intervened in Indian personal laws specifically where Indian customs were at odds with settler morality. Minutes of the Legislative Assembly debates and writings and letters by British settlers in Natal from the 1880s offer insight into what constituted this morality.¹¹⁸ In general, Natal’s settlers emulated Victorian puritanical virtues of domesticity, propriety, and sexual restraint. Therefore, they demonstrated special aversion to adultery, polygamy, crime, intoxication and contagious disease.¹¹⁹ In addition, they seem to have widely believed in the Christian patriarchal ideal of the husband as head of household and the wife as domestic housekeeper.¹²⁰ The remainder of this chapter analyzes and contextualizes individual sections of Law 25 of 1891 to demonstrate that this Law intervened in Indian customs to make Indian marriages more compatible with these settler ideals of marriage.

¹¹⁷ See Goolam Vahed. “Indentured Masculinity in Colonial Natal, 1860 – 1910” in Ouzgane, Lahoucine and Morrell, Robert, eds, *African Masculinities*, New York: Palgrave Macmillan, 2004.

¹¹⁸ See KwaZulu-Natal (South Africa). Legislative Council. *Debates of the Legislative Council of the colony of Natal*. Pietermaritzburg : Vause, Slatter & Co, 1893. Vols I – IV (1879 – 1883); Hattersley, Alan Frederick. *Portrait of a Colony ; the Story of Natal*. Cambridge [Eng.]: The University press, 1940; Colenso, Frances Bunyon. *Colenso Letters from Natal*. Pietermaritzburg: Shuter and Shooter, 1958.

¹¹⁹ Sara Delamont and Lorna Duffin, eds. *The Nineteenth-Century Woman : Her Cultural and Physical World*. New York: Barnes & Noble Books, 1978.

¹²⁰ Nafisa Essop – Sheikh. “Making the Personal Civil: The Protector’s Office and the Administration of Indian Personal Law in Colonial Natal, 1872 – 1907.” Presentation at the History and African Studies Seminar, University of KwaZulu-Natal, 24 May, 2006, 20. Accessed January 17, 2015:

http://deepblue.lib.umich.edu/bitstream/handle/2027.42/93815/nsheik_1.pdf?sequence=1

One of the most direct interventions in Indian marriage custom was the complete prohibition of polygamy in Section 66 of the 1891 Law. As discussed in Chapter 1, colonial administrators in Natal believed that both Hindu and Muslim customary laws permitted polygamous marriages. This belief likely did not change prior to 1891 given that between 1873 and 1887 the Protector’s Office recorded twenty-seven polygamous marriages in the Colony.¹²¹ In addition, polygamy continued to be allowed in India for both Hindus and Muslims throughout British rule.¹²² It was thus highly improbable that Natal’s legislators prohibited polygamy due to a changed understanding of what qualified as custom. The prohibition of polygamy in Section 66 therefore marked a deliberate and considered interference in marriage custom.

The uncharacteristically detailed framing of this prohibition reflected the extent to which polygamy was looked down upon in the settler community. Section 66 absolutely decreed that “no polygamous which may hereafter be contracted by Indian Immigrants in this colony shall be considered valid.¹²³” Section 68 followed up this prohibition by detailing an elaborate system of regulations to be put in place to prevent alternate forms of polygamy.¹²⁴ These included situations when married migrants from India re-marry in Natal and when men with polygamous marriages in India travel to Natal with multiple

¹²¹ “Wragg Commission Report, 1885 – 1887.” Document 58 in Meer, *Documents of Indenture*, 261.

¹²² Polygamy was permitted for Hindus under limited grounds. This also varied by regional custom. For more information on the colonial treatment of polygamy in British India, see: Tim Fulford, “Poetic Flowers/Indians Bowers,” in Michael Franklin, eds. *Romantic Representations of British India*. New York: Routledge, 2006, 61 – 63.

¹²³ *Ibid*, 208.

¹²⁴ *Ibid*, 208

wives.¹²⁵ These details ensured that polygamy was eliminated without exception and upheld a strict “standard not to be breached.”¹²⁶

Natal’s settlers and legislators undoubtedly viewed the elimination of polygamy as a way of improving the moral character of Indian marriages. Indeed, colonial documents from the 1880s clearly evidenced that they saw monogamy as a marker of ‘progress’ and polygamy as a marker of ‘backwardness.’ The discussion of polygamy in *Natal, the State and Citizen*, an 1897 civics-education manual for Natal’s youth, typified this type of Manichean thinking. British lawyer and later Chief Superintendent of Education in Natal Percy Arthur Barnett authored this manual. In a chapter titled “What Brought about the Law,” Barnett discussed the “Native Code,” the parallel set of customary laws governing Natal’s Kaffir natives instituted in 1891.¹²⁷ In his discussion, he justified the existence of separate legal systems by stating that polygamy, a practice associated with the native Kaffirs, found no place in the laws of “those who had progressed faster in civilization.”¹²⁸ He further explained that Kaffirs who entered monogamous marriages under Christian rites may be given the “privilege” of coming under the same law as the White population and “may receive a certificate to free him [them] from coming under native law.”¹²⁹ Barnett’s discussion unequivocally showed that Natal’s settlers and legislators saw both monogamy and becoming governed under settler common laws as signs of moral progress.

¹²⁵Ibid, 208.

¹²⁶ Vicki Hsueh. “Law Out of Repugnance: Governance, Sensibility, and the Limits of Deliberation.” Presentation at the Western Political Science Association 2010 Annual Meeting, Sacramento, California, 2010.

¹²⁷ KwaZulu-Natal (South Africa). *Natal Ordinances, Law, and Proclamations*. Vause, Slatter & Company, 1890 – 1895, Law 25 of 1891, Section 71, p. 209. Accessed Feb 25 2015 via Google Books, 2.

¹²⁸ Percy Arthur Barnett. *Natal, [electronic Resource] the State and the Citizen*. London: Longmans, 1904, 100-101.

¹²⁹ Ibid, 101.

Legislators further viewed the elimination of polygamy – repeatedly described as a “revolting” and “immoral” custom - as a contribution to greater civilization.¹³⁰ Minutes of the Natal Legislative Assembly debates from the 1880s clearly revealed this attitude. Senior councilmember Mr. Ackerman’s statement about polygamy in an 1880 discussion regarding Kaffir law provided the most direct example. He remarked, “Polygamy is connected with the morals of the threshold of the world’s history. It is considered expedient that this should be changed.¹³¹” This attitude towards polygamy and the civilizing impulses driving its elimination undoubtedly impelled the prohibition of polygamy in Law 25 of 1891. It follows that this prohibition sought to morally improve the character of Indian marriages.

Similar moralizing impulses manifested themselves in sections 76 and 83 of the law. These dealt with divorce and marriage nullification respectively. In particular, section 76 allowed both men and women to sue for divorce on limited grounds and section 83 laid out five provisions for the nullification of marriages.¹³² As established in Chapters 1 and 2, Natal legislators believed that Indian marriages were indissoluble and that any dissolution was uncustomary.¹³³ Indeed, as Chapter 2 discussed, in the early 1880s, the Natal Legislative Assembly had repeatedly rejected a Bill to introduce divorce for Indians in Natal due to legislators’ reluctance to intervene in Indian custom. The provision for divorce and nullification of marriages in the 1891 Law therefore clearly revealed the Natal legislature’s intention to interfere in custom.

¹³⁰ KwaZulu-Natal (South Africa). Legislative Council. *Debates of the Legislative Council of the colony of Natal*. Pietermaritzburg : Vause, Slatter & Co, 1893. Vol. 2. (1880),129.

¹³¹ Ibid. 130.

¹³² KwaZulu-Natal (South Africa). *Natal Ordinances, Law, and Proclamations*. Vause, Slatter & Company, 1890, p. 210. Accessed Feb 25 2015 via Google Books.

¹³³ “Wragg Commission Report, 1885 – 1887.” Document 58 in Meer, *Documents of Indenture*, 261.

The 1891 Law only permitted divorce and nullification on very specific and limited grounds. The choice of grounds manifested the legislators' desire to discourage behaviors repugnant to settler morality. For example, Section 76 allowed Indians to sue for divorce solely on the grounds that the other party was guilty of either "adultery" or "continuous desertation for a period of one year."¹³⁴ As demonstrated in both Chapters 1 and 2, colonial administrators expressed considerable alarm and worry about the high rates of adultery in the Colony.¹³⁵ Indeed, the entire civil registration system of the 1870s and 1880s had been set up "to operate as a check upon this immorality."¹³⁶ Similarly, as discussed in Chapter 2, colonial administrators looked down upon husbands who abandoned their wives and advocated for divorce to be made available to these women.¹³⁷ Natal's settlers idealized a male, breadwinning presence in the household and so highly disapproved of desertation.¹³⁸ In addition, as illustrated by the Protector's reaction to the case of coolies Soyrib and Mahadeo in Chapter 2, administrators viewed abandonment as a cause for the problems of vagrancy, prostitution, and the spread of venereal disease in the Colony. Section 81 of Law 1891 permitted divorcees "to marry again as if the prior marriage had been dissolved by death."¹³⁹ This meant that abandoned women could now obtain divorces and remarry, reducing the need to resort to prostitution. Evidently, Section 76 targeted behaviors that colonial administrators found immoral and repugnant

¹³⁴ KwaZulu-Natal (South Africa). *Natal Ordinances, Law, and Proclamations*. Vause, Slatter & Company, 1890, p. 210. Accessed Feb 25 2015 via Google Books.

¹³⁵ "Coolie Commission Report of 1872," Document 42 in Meer, *Documents of Indenture*, 129.

¹³⁶ *Ibid*, 129.

¹³⁷ For a remarkable case similar to that of Soyrib and Mahadeo in Chapter 2, refer to: "Remarkable Divorce Case." July 21, 1883. *Natal Witness*.

¹³⁸ For manifestations of this ideal, see: Alan Frederick Hattersley. *The British Settlement of Natal; a Study in Imperial Migration*. Cambridge [England]: University Press, 1950; For an excellent detailed analysis of settler masculinity in Natal, see: Robert Morrell, *From Boys to Men: Settler Masculinity in Colonial Natal, 1880 – 1920*. Pretoria: Unisa Press, 2001.

¹³⁹ KwaZulu-Natal (South Africa). *Natal Ordinances, Law, and Proclamations*. Vause, Slatter & Company, 1890, p. 210. Accessed Feb 25 2015 via Google Books, 210.

and expressed desires to curb. In doing so, the section sought to bring Indian marriages more in line with settler ideals of morality.

The choice of grounds upon which nullification could be obtained also revealed similar desires. Section 83 put forth five grounds for the nullification of a marriage. These were “impotency, consanguinity and affinity, mental instability, discovery of polygamy, and marriage by coercion or fraud.”¹⁴⁰ Consanguinity referred to blood ties between descendants of the same kin while affinity referred to relationships established through marriage. These grounds derived directly from canon law and matched those included in settler marriage laws in Natal and marriage laws in Britain.¹⁴¹ In addition to polygamy, Natal’s settlers especially showcased repugnance toward intermarriage based on consanguinity and affinity and marriage by coercion or fraud. Legislators’ attitudes toward the Kaffir native custom of *Ukungena*, in which widows were married to their deceased husbands’ brothers or nearest relatives, unambiguously demonstrates their repugnance toward intermarriage based on affinity. Legislators’ described this custom as “barbarous and most repulsive” and referred to it as “concubinage” rather than a valid marriage.¹⁴² Along similar lines, in discussions about the problem of “consent” and “seduction” among Indians, legislators condemned girls’ consent “obtained through

¹⁴⁰ KwaZulu-Natal (South Africa). *Natal Ordinances, Law, and Proclamations*. Vause, Slatter & Company, 1890, p. 210. Accessed Feb 25 2015 via Google Books., 211.

¹⁴¹ For a contemporaneous discussion of British Marriage Laws in the late nineteenth century, see: William Pinder Eversley. *The Marriage Laws of the British Empire*. London: Stevens and Haynes, 1910. For more information on settler marriage laws in Natal, see: Nafisa Essop-Sheikh, “Colonial Rites: Custom, Marriage Law and the Making of Difference in Natal, 1830s - 1910.” Doctorate Dissertation, University of Michigan, 2012. Accessed January 17, 2015: http://deepblue.lib.umich.edu/bitstream/handle/2027.42/93815/nsheik_1.pdf?sequence=1

¹⁴² KwaZulu-Natal (South Africa). Legislative Council. *Debates of the Legislative Council of the colony of Natal*. Pietermaritzburg : Vause, Slatter & Co, 1893. Vol. 2. (1880),129. This repugnance was also reflected in articles in the Natal Witness that condemned the fiercely debated Deceased Wife’s Sisters Bill. This Bill sought to allow a man to marry his dead wife’s sister. This was forbidden under cannon law. Natal settlers opposition to this Bill showcased their repugnance toward intermarriage based on affinity.

intimidation, starvation, and 50,000 other ways that mankind knows how to oppress a weaker subject.¹⁴³ Such statements, along with administrators' disapproval of Indian practices surrounding child marriage and child betrothals discussed in Chapter 2, established settler repugnance toward marriage by coercion or fraud. Evidently, Section 76 sought to discourage repugnant behaviors and make Indian marriage laws more compatible with settler laws and ideals of marriage.

The institution of a minimum age for contracting marriage represented yet another moralizing intervention into Indian custom. As per the recommendations of the Wragg Commission Report, Section 73 made the legal minimum age of marriage for Indian immigrants, 16 years for boys and 13 years for girls, the same as that for settlers in the Colony.¹⁴⁴ As illustrated in discussions about seduction in the Legislative Assembly minutes and about child betrothals in Chapter 2, this law stemmed directly from “the view of checking the evils arising from early betrothals.¹⁴⁵” In the 1880s, colonial administrators' protectionist and paternalistic attitudes toward ‘child-brides’ amongst Indian indentured laborers coincided with legislators' rising anxiety about ‘child-brides’ amongst the native Kaffir population.¹⁴⁶ In the case of the Kaffirs, legislators expressed the urgent need to eliminate “*lobola*”, a Kaffir custom of undertaking bride wealth.¹⁴⁷ They found the practice's placement of a “marketable value of girls” most abhorrent.¹⁴⁸ Similar concerns surfaced in discussions about Indian child-brides. In 1885, Protector

¹⁴³ Ibid, 145.

¹⁴⁴ KwaZulu-Natal (South Africa). *Natal Ordinances, Law, and Proclamations*. Vause, Slatter & Company, 1890, p. 210. Accessed Feb 25 2015 via Google Books.

¹⁴⁵ “Wragg Commission Report, 1885 – 1887.” Document 58 in Meer, *Documents of Indenture*, 262.

¹⁴⁶ “Extract from the Report, for 1877, of Major Graves, Acting Protector of Immigrants,” Document 58 in Meer, *Documents of Indenture*, 592 – 593.

¹⁴⁷ KwaZulu-Natal (South Africa). Legislative Council. *Debates of the Legislative Council of the colony of Natal*. Pietermaritzburg : Vause, Slatter & Co, 1893. Vol. 2. (1880),144.

¹⁴⁸ Ibid, 144.

Mason complained about the parents of Indian girls charging suitors “substantial money from 5 to 10 pounds” to purchase their consent to her marriage.¹⁴⁹ Through the institution of a minimum age for contracting marriage, legislators illegalized child marriages and aimed to discourage men from marrying girls under the age of 13. By eliminating the customary evil of child marriage, they clearly evidenced a desire to morally improve Indian marriage practices.

Overall, through the prohibition of polygamy, provision of divorce, and establishment of a minimum age for marriage in Law 25 of 1891, Natal’s legislators intervened in Indian marriage custom in order to eliminate behaviors repugnant to settler morality. Far from aiming to restore traditional Indian patriarchal structures, the 1891 Law aspired to make Indian marriages look more like settler marriages. In the eyes of colonial administrators, making Indian marriages more compatible with settler marriage laws and bringing them under the Colony’s civil laws both represented a form of moral improvement and progress. In this way, the process of producing civil legislation was inescapably intertwined with the moral project of ‘civilizing’ custom. Thus, in bringing Indian marriages under civil law, Law 25 of 1891 made Indian personal law more ‘civil’ in both senses of the word.

¹⁴⁹ Wragg Commission Report, 1885 – 1887.” Document 58 in Meer, *Documents of Indenture*, 531.

Conclusion

In the Introduction to his 1897 civics-education manual *Natal, State & Citizen*, Percy Arthur Barnett proudly declared, “the proper aim of an English colonist is to make the land in which he lives as good as he can and to establish in it the same manly and just institutions which have made the motherland great.¹⁵⁰” With the passage of Law 25 of 1891, the Natal government achieved precisely this goal.

In codifying numerous and disparate marriage regulations under the single legal category of “Indian marriage,” the Natal government established the marriages of Indian indentured laborers as a civil institution. From 1891 until the end of indenture in Natal in 1911, the Natal government continued to use this civil space to legislatively intervene in and shape the customary lives of Indians in Natal. In 1896, it qualified its absolute prohibition of polygamy in Law 25 of 1891 by granting legal recognition to all polygamous marriages contracted prior to the passage of the 1891 Law.¹⁵¹ More decisively, in 1907, the Natal government moved to reintroduce the civil registration system for Indian ‘customary marriages’ that existed in the Colony.¹⁵² This system had previously been introduced by way of the Coolie Consolidation Law in 1872. Prior to this 1907 legislation, the government did not legally recognize customary marriages as valid.

¹⁵⁰ Barnett, Percy Arthur. *Natal, [electronic Resource] the State and the Citizen*. London: Longmans, 1904, 6.

¹⁵¹ Great Britain Colonial Office. *Marriage and Divorce Law (colonies) [electronic Resource] : Papers Relating to the Laws of Marriage and Divorce in Self-Governing British Colonies : (in Continuation of (H.C. 144 and 145) June, 1894, and (H.C. 323 and 324) August, 1894) : Presented to Both Houses of Parliament by Command of His Majest, October, 1903*. London: Printed for H.M.S.O., by Darling & Son. Ltd, 1903.

¹⁵² Essop – Sheikh, Nafisa. “Making the Personal Civil: The Protector’s Office and the Administration of Indian Personal Law in Colonial Natal, 1872 – 1907.” Presentation at the History and African Studies Seminar, University of KwaZulu-Natal, 24 May, 2006. Accessed January 17, 2015: http://deepblue.lib.umich.edu/bitstream/handle/2027.42/93815/nsheik_1.pdf?sequence=1

With the reintroduction of the civil registration, however, the government once again sought to bring these marriages into the governable, civil realm.

In Natal, this process of establishing Indian marriage as a civil institution was explicitly moralizing. From the beginning of the indentured system in Natal in 1860, the colonial government struggled to maintain an image of the ‘morality’ of the marriages of its Indian indentured laborers. As anxieties rose about the ‘looseness’ and ‘immorality’ of Indian marriages, the Natal government gradually moved away from its non-intervention policy to explicitly intervene in Indian marriage custom in 1891. It ultimately justified this intervention as a means of moral improvement and progress. In improving the moral character of Indian marriages, the Natal sought to align these marriages with settler rather than Indian traditional ideals of marriage.

The Natal government’s interventions in Indian marriage custom conspicuously marked the moral superiority of settler laws to Indian customary ones. Further, these interventions presupposed that Indian indentured laborers needed moralizing. In order to justify the rejection of the customary rights of Indian subjects, the Natal government painted Indian indentured laborers as being of low caste and character. In legislatively intervening to shield itself from accusations regarding the moral degradation of the marriages of Indian indentured laborers, the Natal government thus attached a “stigma” to Indian marriages. In an ironic twist of fate, it was the “moral degradation” attached with this branding of inferiority that most offended Indian nationalists and ultimately led the British Indian government to abolish the Indian indentured labor system altogether in 1914.¹⁵³

¹⁵³ Hugh Tinker. *A New System of Slavery: The Export of Indian Labour Overseas, 1830-1920*. Oxford: Oxford University Press, 1974, 341.

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