

# **FAMILY LAW AND SOCIAL WORK**

**Dr. Sandeep Kaur**



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Dr. Sandeep Kaur (Assistant Professor)  
LL.M., PhD (Law), Faculty of Law, Tania University, Sri Ganganagar



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4378/4-B, Murarilal Street, Ansari Road, Daryaganj, New Delhi-110002.  
Ph. No: +91-11-23281685, 41043100, Fax: +91-11-23270680  
E-mail: academicuniversitypress@gmail.com

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# Contents

<i>Preface</i> .....	<i>vii</i>
<b>Chapter 1 Introduction</b> .....	<b>1</b>
<b>Chapter 2 Family Dynamics and the Political Dynamics of Caste Systems</b> .....	<b>26</b>
<b>Chapter 3 Family Law</b> .....	<b>45</b>
<b>Chapter 4 Legal Framework</b> .....	<b>56</b>
<b>Chapter 5 Evolution of Family Structure Amidst Social Change</b> .....	<b>88</b>
<b>Chapter 6 Family Law and Social Structures in Traditional Contexts</b> .....	<b>106</b>
<b>Chapter 7 Child Protection</b> .....	<b>139</b>



# Preface

Family law and social work intersect in profound and dynamic ways, each playing a crucial role in addressing the complex issues that arise within families. Family law encompasses a wide range of legal matters pertaining to familial relationships, such as marriage, divorce, child custody, adoption, and domestic violence. Social work, on the other hand, focuses on providing support, intervention, and advocacy services to individuals and families facing various challenges.

In the realm of family law, social workers often serve as invaluable allies, providing vital support and intervention services to families navigating legal proceedings. They may assist in conducting assessments to determine the best interests of children in custody disputes, provide counseling to individuals going through divorce or separation, or facilitate mediation sessions to resolve conflicts within families. Social workers also play a crucial role in advocating for vulnerable family members, such as children or victims of domestic abuse, within the legal system.

Furthermore, family law and social work share common goals of promoting family stability, protecting individual rights, and ensuring the safety and well-being of all family members. By working collaboratively, professionals from both fields can develop comprehensive approaches to address the multifaceted issues faced by families. This interdisciplinary approach allows for holistic assessments and interventions that consider not only legal considerations but also the social, emotional, and practical needs of families and individuals involved.

Family Law and Social Work may cover a variety of topics, including an introduction to the intersection of these disciplines, the legal aspects of marriage,

divorce, and custody issues, child welfare and protection, domestic violence and family advocacy, collaborative approaches in family law and social work, and emerging trends and challenges in the field. Through these chapters, readers gain insights into the complex interactions between legal frameworks and social interventions aimed at supporting families and promoting positive outcomes for all members involved. Overall, the integration of family law and social work enhances the effectiveness of interventions and services aimed at strengthening families and promoting their well-being.

"In 'Family Law and Social Work: Interdisciplinary Perspectives,' readers explore the intersection of legal frameworks and social interventions aimed at promoting the well-being of families and individuals."

*–Author*

# 1

## Introduction

Families are who you love. Our families all “look” different and it's always been so. A family caregiving unit might consist of a couple; a mother, father and children; a single parent and child; grandparent and grandchildren; a sibling group; a circle of friends; or however that family defines itself. Families are the foundation of society. It's where we come into the world, are nurtured and given the tools to go out into the world, capable and healthy—or we aren't. While families have the greatest potential for raising healthy individuals, they can also wound their members in places that will never heal. When families break down and fail to provide the healthy nurturing we need, the effects impact not only our own lives, but also our communities.

In human context, a family is a group of people affiliated by consanguinity, affinity, or co-residence. In most societies it is the principal institution for the socialization of children. Anthropologists most generally classify family organization as matrilineal (a mother and her children); conjugal (a wife, husband, and children/two wives and children/two husbands and children, also called nuclear family); and consanguinal (also called an extended family) in which parents and children co-reside with other members of one parent's family. There are also concepts of family that break with tradition within particular societies, or those that are transplanted via migration to flourish or else cease within their new societies. As a unit of socialization the family is the object of analysis for sociologists of the family. Genealogy is a field which aims to trace family lineages through history. In science, the term "family" has come to be used as a means to classify groups of objects as being closely and exclusively related. In the study of animals it has been found that many species form groups that have similarities

to human "family"—often called "packs." Sexual relations among family members are regulated by rules concerning incest such as the incest taboo.

Extended from the human "family unit" by affinity and consanguinity are concepts of family that are physical and metaphorical, or that grow increasingly inclusive extending to community, village, city, region, nationhood, global village and humanism. Family is also an important economic unit. Economic aspects of family is subject of family economics branch within economics field.

The earliest proposals for a Hindu code were merely to record and systematize the existing law, incorporating some needed amendments. But by the time the matter came before the Parliament of independent India, it was clear that the code would not merely declare the law but would radically alter it. The early proposals had sought to justify themselves as incorporating the best or earliest of sastric law and as purging Hindu law of impurities introduced by British administration. But after independence the sponsors of Hindu law reform clearly abandoned sastra as their standard in favour of modernity, equality, and freedom. The revamping of Hindu personal law was regarded, not as an exercise in restoration, but, in Dr. Ambedkar's phrase, as a piece of legal "slum-clearance.") In 1955-56 the long heralded reforms became law in a series of enactments known collectively as the Hindu Code.

The institution of marriage was radically altered: polygamy was abolished; caste and gotra restrictions on partners were abolished; divorce was introduced (for the higher castes—the lower always had customary nonjudicial divorces). The position of women was vastly improved by giving them equal rights of succession and increased control over property, thus eliminating their economic dependence within the family. The preference for males was eliminated; male and female lines were equated. The Mitakshara joint family was curtailed by treating interests in it as separate for purposes of inheritance. Adoption was liberalized: the adoption of and by females was introduced. Rights of guardianship (and liability for maintenance) were extended to women. Before discussing the impact of these changes, let me make a few general observations about the implications of this large-scale reform.

First, for the first time the classical texts and commentaries have been entirely supplanted as the source of Hindu family law. Hindu social arrangements are for the first time moved entirely within the ambit of legislative regulation. Previous enactments introduced specific modifications into the framework of sastric law. But now the whole field is pre-empted by the legislature, and there is every indication that it will remain there. For purposes of Hindu law, appeal to the whole sastric tradition has been dispensed with. Second, the passage of the Code marks the acceptance of the Indian Parliament as a kind of central legislative body to the Hindus in matters of family and social life. The older notion that government had no mandate or competence to redesign Hindu society has been discarded. For the first time the bulk of the world's Hindus live under a single central authority with both the desire and the techniques to enforce changes in their social arrangements. Throughout the history of

Hinduism, no across the board reform was possible because of the absence of centralized governmental or ecclesiastical institutions. Reformers might gain acceptance as a sect, but there was no way for them to win the power to enforce changes for others. Now it is possible to have changes enforced among all Hindus by a powerful central authority.

Third, the Code subjects the Hindus to a degree of uniformity unprecedented in Hindu legal history. Regional differences, the schools of commentators, differences according to varna, customs of locality, caste, and family, distinctions of sex—all have fallen by the wayside. Some narrow scope is allowed for custom, but for the first time a single set of rules is applicable to Hindus of every caste, sect, and region. This both reflects and presages an unprecedented degree of unification and integration of the Hindus. It marks an important step in the consolidation of a single Hindu community. Fourth, it may fairly be said that the Code represents a kind of “Westernization” and secularization. Sastric notions of varna, indissoluble marriage, preference for males, inheritance by those who can confer spiritual benefit, *etc.* Are discarded and replaced by emphases on individual rights, equality of women, the nuclear family, and so forth. Considerations of unseen benefit are replaced by notions of worldly welfare.

Very few rules remain with a specifically religious foundation. Finally, the Code represents the use of law by an elite to procure a legal regime congenial to its interests and sentiments. As in other areas of law, the family law reforms are not a response to the felt needs of the generality of the law’s clientele nor an accommodation of conflicting interests. Rather they are an expression of the aspirations of those ‘advanced’ power holders who hope to use the educational and coercive powers of the law to improve the unenlightened. In this area of the law, as in many others, the Indian legal system is vastly overcommitted. There is a great disparity between the new regulations on the one hand and the resources (including the will) for inducing compliance on the other. In a multi-level system where commitments outrun resources, a gap between theory and practice is a normal and typical condition. As in other areas, a high value is put on the symbolic outputs of the law, and there is a broad tolerance of the discrepancy between the law on the books and social practice.

The educated urban elite have their desired uniformity, modernity, and individualism, while the rural and traditional populace are left to accommodate themselves to the new dispensation. It is difficult as yet to discern just what the impact of the Code on prevailing social patterns will be. For example, in the exogamous villages of the Gangetic plain, the Code’s provision for equal inheritance by daughters might mean that over time the village property would be owned largely by women residing outside the village. And the brother-sister relationship, in many places the closest and most unshakable of family bonds, would be exposed to rivalry and conflict now that sisters inherit equally with their brothers. It is too early to discern the patterns of accommodation, but there is no reason to expect that social relations will automatically align

themselves to correspond to the law's dispensation. The sheer lack of penetration of the law in a diverse, stratified society limits its impact. One very early study reported that immediate impact to be very small: changes had not been communicated to potential beneficiaries, "benefits" were not perceived as such, and the resources needed to pursue them were not available. Where the changes are known, I gather that a variety of arrangements (deeds of gift, testamentary provisions) are devised to make property arrangements that are regarded as suitable. We may anticipate then that ignorance, indifference, and avoidance will cushion any drastic effects. Rather than expecting that the population will passively conform to this new dispensation, we may expect that they will actively manipulate it to serve their own ambitions and concerns. The new law and its procedures will be used to carry on disputes and to pattern relationships in ways that depart from the intention of the law makers. The active use of government law by Indians need not be thought of as an abandonment of "tradition," for this "modern" law may be used to pursue traditional ambitions and uphold traditional values. The official law becomes entwined with indigenous norms at the same time that it modifies present social practice. For example, the criminal law has been thoroughly domesticated and has become very much a part of the life and lore of the village. The emerging patterns of accommodation in the family law area are not yet clear and badly need to be researched.

## **THE FUNDAMENTAL IMPORTANCE OF THE FAMILY**

Social life can be understood best by taking the simplest organized group of human beings and analysing its activities, its organization, and its development. The family is such a group and is, therefore, a natural basis for study. It illustrates most of the phases of social activity, it is simple in its organization, its history goes back to primitive times, and it is rapidly changing in the present. Family life is made up of the interactions of individual life, and, therefore, the individual in his social relations and not the family is the unit of sociological investigation, but until recent years the family group has been regarded as of greater importance than the individual, and in the Orient the family still occupies the place of importance. Out of the family have developed such institutions as property, law, and government, and on the maintenance of the family rests the future welfare of society. It has been claimed that "the study of the single family on its homestead would yield richer scientific knowledge and more practical results in the great social sciences than almost any other single object in the social world. Pursued historically, the student would find himself at the roots of property, separate ownership of land, inheritance, taxation, free trade and tariff, and discover the germs of international law and the state. The great questions of the day, as we call them, are little more than incidents to the working out of the great social institutions, and these are the expansions and modified forms of the family amid its unceasing support and activity."

## **THE FAMILY ON THE FARM**

The best environment in which to study the family is the farm. There the relations and activities of the larger world appear in miniature, but with a greater simplicity and unity than elsewhere. There the family gets closer to the soil, and its members feel their relation to nature and the restrictions that nature imposes upon human activity.

There appear the occupations of the successive stages of history—hunting, the care of domesticated animals, agriculture, and manufacturing; there are the activities of production, distribution, and consumption of economic goods. There a consciousness of mutual dependence is developed, and the value of cooperation is illustrated.

There the mind ranges less fettered than in the town, yet is less inclined towards radical changes. There the family preserves and hands down from one generation to another the heritage of the past, and stimulates its members to further progress. In the family on the farm children learn how to live in association with their kin and with hired employees; there much of the mental, moral, and religious training is begun; and there is found most of the sympathy and encouragement that nerves the boy to go out from home for the struggle of life in the larger community and the world.

## **PHYSICAL CONDITIONS OF FARM LIFE**

Every group, like every individual, is dependent in a measure on its physical environment. The prosperity of the family on the farm and the daily activities of its members wait often upon the quality of climate and soil and the temper of the weather.

The rocky hillsides of mountain lands like Switzerland breed a hardy, self-reliant people, who make the most of small opportunities for agriculture. A well-watered, rolling country pours its riches into the lap of the husbandman; in such surroundings he is likely to be more cheerful but less gritty than the Scottish highlander. The pioneer settlers of America, in their trek into the interior, faced the forest and its terrors, and every member of the family who was old enough added his ounce of effort to the struggle to subdue it. Their descendants enjoy the fruits of the earlier victory.

The well-trimmed woodland and fertile field are attractive to him; nature in varying moods interests him. Even on the edge of the Western desert the farmer is the master of a process of dry farming or irrigation, so that he can smile at nature's effort to drive him out. Science and education have helped to make man more independent of natural forces and natural moods, but still it is nature that provides the raw materials, that supplies the energy of wind and water and sunshine, and that hastens prosperity if man learns to cooperate with it. Success in the economic struggle of the family has always been conditioned upon the physical environment, and it will always remain one of the factors that shape human destiny.

## INHERITANCE OF FAMILY TRAITS

Another factor that enters into family life is the physical nature of its members, the quality of the stock from which the family is descended. Heredity is as important in sociological study as environment. It is well known that a child inherits racial and family traits from his ancestors, and these he cannot shake off altogether as he grows older. Families have their peculiarities that continue from one generation to another. The family endowment is often the foundation of individual success. Without physical sturdiness the man and woman on the farm are seriously handicapped and are liable to succumb in the struggle for existence; without mental ability and moral stamina members of the family fail to make a broad mark on the community, and the family influence declines. Mere acquisition or transmission of wealth does not constitute good fortune. This fact of heredity must therefore be reckoned with in all the activities of the family, and cannot be overlooked in a study of the psychic factors which are the real social forces.

## THE DOMESTIC FUNCTION OF THE FAMILY

The farm family for the purpose of study may be thought of as composed of husband and wife, children and servants, but the makers of the family are of first importance for its understanding. The family has a long history, but it exists, not because it is a long-established institution, but because it satisfies present human needs, as all institutions must if they are to survive. The family serves many ends, but as the primary social instincts are to mate and to eat, so the principal functions of the family are the *domestic* and the *economic*. The normal adult desires to mate, to have and rear children, and to make a home. To this his sexual and parental instincts impel him; they are nature's provision for the perpetuation of the race. The sex instinct attracts the man and the woman to each other, and marriage is the sanction of society to their union; the parental instinct gives birth to children and leads the father and mother to protect the child through the long years of dependence. Marriage and parenthood are twin obligations that the individual owes to the race. Celibacy makes no contribution to the perpetuation of the race, and unregulated sexual intercourse is a blight upon society. Marriage lays the foundation of the home and makes possible the values that belong to that institution. Children hold the family together; separation and divorce are most common in childless homes. Personal service and sacrifice are engendered in the care of children; therefore it is that the family without children is not a perfect family, but an abnormality as a social institution. For these reasons custom and law protect the home, and religion declares marriage a sacred bond and reproduction a sacred function.

It is the long experience of the race that has made plain the fundamental importance of the marriage relation, and history shows how step by step man and woman have struggled towards higher standards of mutual appreciation and cooperation. From past history and present tendencies it is possible to

determine values and weaknesses and to point out dangers and possibilities. As the family group is fundamental to an understanding of the community, so the relation of man and woman are essential to a comprehension of the complete family, and investigation of their relations must precede a study of the social development of the child in the home, or of the economic relations of the farmer and his assistants. Nothing more clearly illustrates the factors that enter into all human relations than the story of how the family came to be.

## **CHANGES IN THE FAMILY**

### **CAUSES OF CHANGES IN THE FAMILY**

The family at the present time is in a transition era. Its machinery is not working smoothly. Its environment is undergoing transformation. A hundred years ago the family was strictly rural; not more than three per cent of the people lived in large communities. Now nearly one-half are classified as urban by the United States census of 1910, and those who remain rural feel the influences of the town. There is far less economic independence on the farm than formerly, and in the towns and cities the home is little more than a place in which to sleep and eat for an increasing number of workers, both men and women. The family on the farm is no longer a perfectly representative type of the family in the more populous centres.

These changes are due mainly to the requirements of industry, but partly at least to the desire of all members of the family to share in urban life. The increasing ease of communication and travel extends the mutual acquaintance of city and country people and, as the city is brought nearer, its pull upon the young people of the community strengthens. There is also an increasing tendency of the women folk to enter the various departments of industry outside of the home. It is increasingly difficult for one person to satisfy the needs of a large family. This tends to send the family to the city, where there are wider opportunities, and to drive women and children into socialized industry; at the same time, it tends to restrict the number of children in families that have high ideals for women and children. Family life everywhere is becoming increasingly difficult, and at the same time every member of the family is growing more independent in temper. The result is the breaking up of a large number of homes, because of the departure of the children, the separation of husband and wife, the desertion of parents, or the legal divorce of married persons. The maintenance of the family as a social institution is seriously threatened.

### **STATIC VS. DYNAMIC FACTORS**

There are factors entering into family life that act as bonds to cement the individual members together. Such are the material goods that they enjoy in common, like the home with its comforts and the means of support upon which they all rely. In addition to these there are psychical elements that enter into their relations and strengthen these bonds. The inheritance of the peculiar traits,

manners, and customs that differentiate one family from another; the reputation of the family name and pride in its influence; an affection, understanding, and sympathy that come from the intimacy of the home life and the appreciation of one another's best qualities are ties that do not easily rend or loosen.

On the other hand, there are centrifugal forces that are pushing the members of the family apart. At the bottom is selfish desire, which frets at restriction, and which is stimulated by the current emphasis upon personal pleasure and individual independence. The family solidarity which made the sons Democrats because their father voted that party ticket, or the daughters Methodists because their mother's religious preferences were for that denomination, has ceased to be effective. Every member of the family has his daily occupations in diverse localities. The head of the household may find his business duties in the city twenty miles away, or on the road that leads him far afield across the continent. For long hours the children are in school. The housewife is the only member of the family who remains at home and her outside interests and occupations have multiplied so rapidly as to make her, too, a comparative stranger to the home life. Modern industrialism has laid its hand upon the women and children, and thousands of them know the home only at morning and night.

### **THE STRAIN ON THE URBAN FAMILY**

The rapid growth of cities, with the increase of buildings for the joint occupancy of a number of families, tends to disunity in each particular family and to a reduction in the size of families. The privacy and sense of intimate seclusion of the detached home is violated. The modern apartment-house has a common hall and stairway for a dozen families and a common dining-room and kitchen on the model of a hotel. The tenements are human incubators from which children overflow upon the streets, boarders invade the privacy of the family bedroom, and even sanitary conveniences are public. Home life is violated in the tenement by the pressure of an unfavourable environment; it perishes on the avenue because of a compelling desire to gain as much freedom as possible from household care.

The care of a modern household grows in difficulty. Although the housekeeper has been relieved of performing certain economic functions that added to the burden of her grandmother, her responsibilities have been complicated by a number of conditions that are peculiar to the modern life of the town. Social custom demands of the upper classes a far more careful observance of fashion in dress and household furnishings, and in the exchange of social courtesies. The increasing cost of living due to these circumstances, and to a constantly rising standard of living, reacts upon the mind and nerves of the housewife with accelerating force. And not the least of her difficulties is the growing seriousness of the servant problem. Custom, social obligations, and nervous strain combine to make essential the help of a servant in the home. But the American maid is too independent and high-minded to make a household servant, and the American matron in the main has not learned how to be a just and considerate mistress.

The result has been an influx of immigrant labour by servants who are untrained and inefficient, yet soon learn to make successful demands upon the employer for larger wages and more privileges because they are so essential to the comfort and even the existence of the family. Family life is increasingly at the mercy of the household employee. It is not strange that many women prefer the comfort and relief of an apartment or hotel, that many more hesitate to assume the responsibility of marriage and children, preferring to undertake their own self-support, and that not a few seek divorce.

### **FAMILY DESERTION**

While the burden of housekeeping rests upon the wife, there are corresponding weights and annoyances that fall upon the man. Business pressure and professional responsibility are wearying; he, too, feels the strain upon his nerves. When he returns home at evening he is easily disturbed by a worried wife, tired and fretful children, and the unmistakable atmosphere of gloom and friction that permeates many homes. He contrasts his unenviable position with the freedom and good-fellowship of the club, and chafes under the family bonds. In many cases he breaks them and sets himself free by way of the divorce court. The course of men of the upper class is paralleled by that of the working man or idler who meets similar conditions in a home where the servant does not enter, but where there is a surplus of children. He finds frequent relief in the saloon, and eventually escapes by deserting his family altogether, instead of having recourse to the law. This practice of desertion, which is the poor man's method of divorce, is one of the continual perplexities of organized charity, and constitutes one of the serious problems of family life. There are gradations in the practice of desertion, and it is not confined to men. The social butterfly who neglects her children to flutter here and there is a temporary deserter, little less culpable than the lazy husband who has an attack of *wanderlust* before the birth of each child, and who returns to enjoy the comforts of home as soon as his wife is again able to assume the function of bread-winner for the growing family. From these it is but a step to the mutual desertion of a man and a woman, who from incompatibility of temper find it advisable to separate and go their own selfish ways, to wait until the law allows a final severance of the marriage bond.

It is indisputable that this breaking up of the home is reacting seriously upon the moral character of the present generation; there is a carelessness in assuming the responsibility of marriage, and too much shirking of responsibility when the burden weighs heavily. There is a weakening of real affection and a consequent lack of mutual forbearance; there is an increasing feeling that marriage is a lottery and not worth while unless it promises increased satisfaction of sexual, economic, or social desires and ambitions.

### **FEMINISM**

There can be no question that the growing independence of woman has complicated the family situation. In reaction against the long subjection that

has fallen to her lot, the modern woman in many cases rebels against the control of custom and the expectations of society, refuses to regard herself as strictly a home-keeper, and in some cases is unwilling to become a mother. She seeks wider associations and a larger range of activities outside of the home, she demands the same rights and privileges that belong to man, and she dreams of the day when her power as well as her influence will help to mould social institutions. The feminist movement is in the large a wholesome reaction against an undeserved subserviency to the masculine will. Undoubtedly it contains great social potencies. It deserves kindly reception in the struggle to reform and reconstruct society where society is weak.

The present situation deserves not abuse, but the most careful consideration from every man. In countless cases woman has not only been repressed from activities outside of the family group, but has been oppressed in her own home also. America prides itself on its consideration for woman in comparison with the general European attitude towards her, but too often chivalry is not exercised in the home. Often the wife has been a slave in the household where she should have been queen. She has been subject to the passion of an hour and the whim of a moment. She has been servant rather than helpmeet. Upon her have fallen the reproaches of the unbridled temper of other members of the family; upon her have rested the burdens that others have shirked. Husband and children have been free to find diversion elsewhere; family responsibilities or broken health have confined her at home. Her husband might even find sex satisfaction away from home, but public opinion would be more lenient with him than with her if she offended. The time has come when it is right that these inequalities and injustices should cease. Society owes to woman not only her right to her own person and property, but the right to bear, also, her fair share of social responsibility in this modern world.

Yet in the process of coming to her own, there is danger that the wife will forget that marriage is the most precious of human relations; that the home has the first claim upon her; that motherhood is the greatest privilege to which any woman, however socially gifted, can aspire; and that social institutions of tried worth are not lightly to be cast upon the rubbish heap. It is by no means certain that society can afford or that women ought to demand individualistic rights that will put in jeopardy the welfare of the remainder of the family. The average woman has not the strength to carry properly the burden of home cares plus large political and social responsibilities, nor has she the money to employ in the home all the modern improvements of labour-saving devices and skilled service that might in a measure take her place. Nor is it at all certain that the granting of individual rights to women would tend to purify sex relations, but it is quite conceivable that the old moral and religious sanctions of marriage may disappear and the State assume the task of caring for all children. It is clear that the rights and duties of women constitute a very serious part of the problem of family life.

## **INDIVIDUAL RIGHTS VS. SOCIAL DUTIES**

The greatest weakness to be found in twentieth-century society is the disposition on the part of almost all individuals to place personal rights ahead of social duties. The modern spirit of individualism has grown strong since the Renaissance and the Reformation. It has forced political changes until absolutism has been yielding everywhere to democracy. It has extended social privileges until it has become possible for any one with push and ability to make his way to the top rung of the ladder of social prestige. It has permitted freedom to profess and practise any religion, and to advocate the most bizarre ideas in ethics and philosophy. It has brought human individuals to the place where they feel that nothing may be permitted to stand between them and the satisfaction of personal desire. The disciples of Nietzsche do not hesitate to stand boldly for the principle that might makes right, that he who can crush his competitors in the race for pleasure and profit has an indisputable claim on whatever he can grasp, and that the principle of mutual consideration is antiquated and ridiculous. Such principles and privileges may comport with the elemental instincts and interests of unrestrained, primitive creatures, but they do not harmonize with requirements of social solidarity and efficiency. Social evolution in the past has come only as the struggle for individual existence was modified by consideration for the needs of another, and social welfare in the future can be realized only as men and women both are willing to sacrifice age-long prejudice or momentary pleasure and profit to the permanent good of the larger group.

## **THE HISTORY OF THE FAMILY**

### **HOW THE FAMILY CAME TO BE**

The modern family among civilized peoples is based almost universally on the union of one man and one woman. There is good reason to believe that this practice of monogamy was in vogue among primitive human beings, but marriage was unstable and it was only through long experimentation that monogamy proved itself best fitted to survive. At first conjugal affection, which has become intelligent and moral, was merely a sexual desire that led the man to seek a mate and the maid to choose among her suitors. Unbound by long-continued custom or legal and ceremonial restriction, the primitive couple were free to separate if they pleased, but the instinctive feeling that they belonged to each other, the habits of association, adaptation, and cooperation, and jealousy at any attention shown by another tended to preserve the relationship. The presence of offspring sealed the bond as long as the children were dependent, and strengthened the sense of mutual responsibility. The children were peculiarly the mother's children since she gave them birth, but the father instinctively protected the family that was growing up around him, and procured food and shelter for its members, though it is doubtful if he had any realization of his part in giving life to a new generation.

During this period of social development, when the mother's presence constituted the home and the children were regarded as belonging primarily to her, descent was reckoned in the female line, the children were attached to the maternal clan of blood relatives, and such relatives began to move in bands, for the same reason that animals move in packs and herds. Some writers speak of it as a matriarchal period, but it does not appear that women governed; it is more proper to speak of the family as metronymic, for the children bore the mother's name and maternity outweighed paternity in social estimate.

### **THE PATRIARCHAL HOUSEHOLD**

When population increased and food consequently became more difficult to obtain, the domestication of animals was achieved, and nomadic habits carried the family from pasture to pasture; rival clans wanted the same regions, wars broke out, and physical superiority asserted its claims. The man supplanted the woman as the important member of the household, reduced the others to submission, added to his wives and servants by capture or purchase, and established the patriarchal system. Descent henceforth was reckoned in the paternal line, and society had become patronymic instead of metronymic. It must not be supposed that this change occurred very suddenly. It may have taken many centuries to bring it about, but as the man learned his part in procreation and his power in society, he delighted in his self-importance to lord it over the woman and her children. The marriage relation ceased to be free and reciprocal. The wife no longer had a choice in marriage. Bought or captured, she was no longer wooed for a companion, but was valued according to her economic worth. As population pressed, the domestication of plants followed the taming of animals, but the agricultural settlement of the family only made the woman's lot harder, for she was the burden bearer on the farm.

### **POLYGYNY**

A better term than polygamy—was the inevitable result of the patriarchal system. Man made the law and the law recognized no restraint upon his sexual and parental instincts. Improvements in living added to the resources of the family and made it possible to maintain large households of wives, children, and slaves. Polygyny had some social utility, because it increased the number of children, and this gave added prestige and power to the family, as slavery had utility because it provided a labour force; but both were weaknesses in ancient society, because they did not tend in the long run to human welfare. Polygyny brutalized men, degraded women, and destroyed that affection and comradeship between parents and their offspring that are the proper heritage of children. Wherever it has survived as a system, polygyny has hindered progress, and wherever it exists in the midst of monogamy it tends to break down civilization.

Another variety of marriage that has been less common than polygyny is polyandry. It is a term that signifies the marriage of one woman to several husbands,

and seems to have occurred, as in the interior of Asia, only where subsistence was especially difficult or women comparatively few. Neither polygyny nor polyandry were universal, even where they were a frequent practice. Only the few could afford the indulgence, much the largest percentage of the people remained monogamous.

### **CONFLICT AND SOCIAL SELECTION**

The supreme business of the social group is to adapt itself to the conditions that affect its life. It must learn to get on with its physical environment and with other social groups with which it comes into relation. The methods of adaptation are conflict and cooperation.

The primitive savage and his wife learned to work together, and his family and hers very likely kept the peace, until through the increase of population they felt the pinch of hunger when the supply did not equal the demand. Then came conflict. Conflict is an essential element in all progress.

There is conflict between the lower and higher impulses in the human mind, conflict between selfish ambition and the welfare of the group, conflict among individuals and races for a place in the sun. It is conceivable that the baser impulses that provoke much social conflict may give way to more rational and altruistic purpose, but it is difficult to see how all friction can be avoided in social relations. It is certainly to be reckoned with in the history of group life.

The story of human progress shows that in the social conflict those groups survive which have become best adapted to life conditions and so are fitted to cope with their enemies. In the story of the family male leadership proved most useful and was perpetuated, but the practice of polygyny and polyandry proved in the long run to be hurtful to success in the sturdy struggle for existence.

### **ANCESTOR-WORSHIP**

When a practice or institution is seen to work well it soon becomes indorsed by social custom, law, or religion. The patriarchal system became fortified by ancestor-worship, which helped to keep the family subordinate to its male head. Even the dead hand of the patriarch ruled. The paternal ancestors of the family were believed to have the power to bless or curse their descendants, and they were faithfully placated with gifts and veneration, as has continued to be the custom in China. Among the Romans the household gods were cherished at the hearth long before Jupiter became king of heaven; Æneas must save his ancestral-images if he lost all else in the fall of Troy. At Rome the worship of a common ancestor was the strongest family bond. The marriage ceremony consisted of a solemn transfer of the bride from her duties to her own ancestors over to the adoption of her husband's gods. This transfer of allegiance helped to perpetuate the patriarchal system, and the sanction of religion greatly strengthened the wedded relation, so that divorce and polygyny were unknown in the old Roman period. But the absolute patriarchal control of wife and children made the man selfish and arbitrary and weakened the bond of affection and mutual interests,

while Roman political conquest strengthened the pride and power of the imperial masters. Religion lost its prestige and the family bond loosened, until from being one of the purest of social institutions in the early days of the republic, the Roman family became one of the most degenerate. This boded ill for the future of the race and empire.

### **THE MEDIÆVAL FAMILY**

The Roman family seemed in danger of disintegrating, for the matron claimed rights that ran counter to the rights of the man, when two new forces entered Roman society and checked this tendency towards disintegration. The first was Christianity, the second was Teutonic conquest. Christianity taught consideration for women and children, but it taught submission to the man in the home, and so was a constructive force in the conservation of the family. Teutonic custom was similar to the early Roman. When Teutonic enterprise pushed a new race over the goal of race conflict and took in charge the administration of affairs in Roman society, there was a restoration of the rule of force and so of masculine supremacy. In the lord's castle and the peasant's hut the authority of the man continued unquestioned through the Middle Ages, and the church made monogamous marriage a binding sacrament; but sexual infidelity was common, especially of the husband, and divorce was not unknown. In the civilized lands of Christendom monogamy was the only form of marriage recognized by civil law, and with the slow growth towards higher standards of civilization the harshness of patriarchal custom has become softened and the rights of women and children have been increased by law, though not without endangering the solidarity of the family. Similarly, the standards of sex conduct have improved.

### **ADVANTAGES OF MONOGAMY**

The advantages of monogamy are so many that in spite of the present restiveness under restraint it seems certain to become the permanent and universal type as reason asserts its right and controls impulse. Nature seems to have predetermined it by maintaining approximately an equal number of the sexes, and nature frowns upon promiscuity by penalizing it with sterility and neglect of the few children that are born, so that in the struggle for existence the fittest survive by a process of natural selection. A study of biology and anthropology gives added evidence that nature favours monogamy, for in the highest grade of animals below man the monogamic relation holds almost without exception, and low-grade human races follow the same practice.

There are moral advantages in monogamy that alone are sufficient to insure its permanence. It is to the advantage of society that altruistic and kindly feelings should outweigh jealousy, anger, and selfishness. Monogamy encourages affection and mutual consideration, and in that atmosphere children learn the graces and virtues that make social life wholesome and attractive. Welcomed in the home, they receive the care and instruction of both parents and become socialized for the larger and later responsibilities of the social order. In the

altruism thus developed lie the roots of morals and religion. It is well agreed that the essence of each is the right motive to conduct. Love to men and to God is an accepted definition of religion, and ethics is grounded on that principle. Love is the ruling principle of the monogamic family; from the narrower domestic circle it extends to the community and to all mankind.

## **MARRIAGE LAWS**

In spite of the general practice of monogamy as a form of marriage and the noble principles that underlie the monogamic type of family, sex relations need the restraint of law. Human desires are selfish and ideals too often give way before them unless there is some kind of external control. There have been times when the church had such control, and in certain countries individual rulers have determined the law; but since the eighteenth century there has been a steady trend in the direction of popular control of all social relations.

This tendency has been carried farthest in the United States, where public opinion voices its convictions and compels legislative action. It is natural that the people of certain States should be more progressive or radical than others, and therefore in the absence of a national law, there is considerable variety in the marriage and divorce laws, but no other country has higher ideals of the married relation and at the same time as large a measure of freedom.

*At present marriage laws in the United States agree generally on the following provisions:*

- (1) Every marriage must be licensed by the State and the act of marriage must be reported to the State and registered.
- (2) Marriage is not legal below a certain age, and consent of parents must be obtained usually until the man is twenty-one and the woman eighteen.
- (3) Certain persons are forbidden marriage because of near relationship or personal defect. Such marriage if performed may be annulled.
- (4) Remarriage may take place after the death of husband or wife, after disappearance for a period varying from three to seven years, or a certain time after divorce.

In the twenty-year period between 1886 and 1906 covered by the United States Census of Marriage and Divorce slow improvements were made in legislation, but a number of States are far behind others in the enactment of suitable laws, and most of the States do not make the provisions that are desirable for law enforcement. Yet there is a limit of strictness beyond which marriage laws cannot safely go, because they hinder marriage and provoke illicit relations. That limit is fixed by the sanction of public opinion.

After all, there is less need of better regulation than of the education of public opinion to the sacredness of marriage and to its importance for human welfare. Without the restraints put upon impulse by the education of the understanding and the will, young people often assume family obligations thoughtlessly and even flippantly, when they are ill-mated and often unacquainted

with each other's characteristic qualities. Such marriages usually bring distress and divorce instead of growing affection and unity. Without education in the obligation of marriage many well-qualified persons delay it or avoid it altogether, because they are unwilling to bear the burdens of family support, childbearing, and housekeeping. Society suffers loss in both cases.

### **REFORMS AND IDEALS**

Because of all these deficiencies several remedies have been proposed and certain of them adopted. Because of the economic difficulties, it is urged that as far as possible by legislation, illegitimate ways of heaping up wealth for the few at the expense of the many should be checked, and that by vocational training boys should be fitted for a trade and girls prepared for housekeeping.

To meet other difficulties it is proposed that popular instruction be given from press and pulpit, in order that the moral and spiritual plane of married life may be uplifted. The marriage ideal is a well-mated pair, physically and intellectually qualified, who through affection are attracted to marriage and through mutual consideration are ready unselfishly to seek each other's welfare, and who recognize in marriage a divinely ordered provision for human happiness and for the perpetuation of the race. Such a marriage does not plant the seeds of discord and neighbourly scandal or compel a speedy resort to the divorce court.

## **SOCIAL CHANGE AND THE FAMILY**

### **PRE-MODERN FAMILIES**

Early hunting-and-gathering societies appear to have lived first in small nomadic bands and later, in some locations, in larger, more settled, and hierarchically organized communities (Wenke 1984). Judging from groups of !Kung, Native Americans, Australian Aborigines, and others whose lifestyles have remained relatively intact into recorded history, small kin groups of hunter-gatherers tended to be cooperative and relatively egalitarian. Although marital partnerships were formed, hunter-gatherer bands valued compatibility among their members more highly than continuous co-residence with a single band, and individuals might fluidly move from one related band to another (Quale 1988). They have been idealized by ecologists for holding values of living in harmony with other life forms instead of striving to dominate and exploit them. However, the integration of such families into modern life tends to be a long and difficult process.

Most herders and pastoral nomads tend to have patriarchal families and a tendency towards polygyny. Women's productive work tends to be limited to herding of small animals, dairying, and food processing and preparation (Quale 1988).

Where exchange relationships must be set in place over widely dispersed territories, marriage partnerships may be strategically located, and the exchange

of daughters in marriage may help to cement economic alliances. These families are difficult to integrate because their mobility interferes with the schooling of their children and the regular health care of their members. Pure forms of nomadic family types may be the exception rather than the rule. The Dinka of the Sudan, for example, grow about one-third and gather and hunt two-thirds of the food types that they use (Zeitlin 1977). Dinka women and old men tend to be sedentary year-round, while young men are nomadic pastoralists for a part of the year (Deng 1972).

Societies engaged in traditional agriculture, crafts, and trade have been broadly divided into those practicing communal land ownership and those practicing private land ownership (Caldwell and Caldwell 1990). Most populations of Europe and Asia made the transition from communal to private land ownership from 4,000 to 5,000 years ago, in response to the accumulation of significant agricultural surpluses, or possibly wealth from other sources such as copper mines. In sub-Saharan Africa, isolated by the desert, and with growing conditions that did not favour the accumulation of surplus, communal land ownership remained predominant.

Polygyny, as a family form, is well suited to a shifting agricultural system using abundant low-yielding communal land farmed by labour-intensive technologies (Caldwell and Caldwell). Each additional wife and her children permit the family to farm more territory and to achieve economies of scale in domestic labour and trade. The family unit, which is headed by the husband and the elders of his lineage, starts with one wife and adds more after accumulating the bride-wealth needed for each.

The more wives and children, the larger and more affluent this unit can become. Sexual fidelity of the wives is not a top priority, and all children born to a man's wives are legally his. Societies with this family form appear to place the highest cultural and religious value on child-bearing. According to Quale (1988), it may not be reasonable to assume that all early agricultural societies fit this model, when agriculture evolved in rich localized topsoil deposits of annually flooding rivers.

Monogamous marriage, with strong cultural safeguards for the sexual fidelity of women, is important for the maintenance of traditional subsistence agriculture on privately owned farms. Family lands must be passed to male heirs whose paternity is beyond question. For greater security in land transmission, cross-cousin marriage may be preferred. Brothers whose children marry, reunite land and other possessions separated by inheritance. Such cousin marriage has been common in many cultures, with the highest current rate of about 60 per cent of all marriages claimed for Pakistan (DHSL/Institute of Population Studies 1992). It may also reduce property-related feuds common among societies of peasant farmers in the Middle East and elsewhere (Sweet 1970).

In spite of ethnographic variations, agrarian families are recognizable as a type. Throughout the world, these settled institutional families are organized around agricultural production, traditional crafts, or other family business

ventures. They have large kinship networks and hierarchical authoritarian governance. These families are producers, employers, consumers, and social welfare agencies in one. Family management tends to be well developed. The highest family value is responsibility (Doherty 1992).

While the maximum kin that one person can keep track of fairly closely has been estimated at 50 (Quale 1988), the traditional hierarchical Yoruba lineage structure housed from 20 to 2,000 lineage members together in a single walled compound, in which the immediate family units lived and worked in public view under the watchful eye of the compound head. Marriage in institutional families is a functional partnership rather than a romantic relationship. Children tend to be valued as apprentices and next-generation managers of the family lands and enterprises.

Historical and current records indicate, however, that both former and present-day institutional farming families do not usually live in large residential units. The most common dwelling arrangement still is mother, father, and their children; or mother, her children, and others. These small traditional units differ from modern families in part in their economic interdependence with nearby family and community members, and in part in their attitudes towards family life (Hareven 1987).

### **Evolution of the Family**

As they evolve, family and community structures adapt to the physical and social conditions of production (Wenke 1984). Similar evolutionary forces lead to changes in family dynamics and in child-rearing practices. Parents adjust their child-rearing behaviour to the risks that they perceive in the environment, the skills that they expect their children to acquire as adults, and the cultural and economic expectations that they have of their children. There is a powerful interplay between a society's technology, family structure, and social values.

Yet technology is not a rigid cultural taskmaster. The same production technologies and ecological conditions accommodate variations in family organization, management style, and emotional climate. Within Indonesia, for example, the Javanese are known for their warmth towards young children whereas the Alorese are reported to be low in child nurturance. In Coastal West Africa, the Yoruba and Ibo of Nigeria have contrasting patrilineal hierarchies, family settlement patterns, and gender roles. The Akan of Ghana are matrilineal by heritage. Americans and Japanese both are industrialized but differ culturally. Similar changes in technology stimulate family change in similar directions but from different starting points and along variable pathways.

## **THE MODERN FAMILY**

### **Early History**

According to research by Stone (1977), the presence of the modern family in the West was first documented in England in the mid-1600s, at which time

the élite gradually stopped sending their infants away to be wet-nursed and swaddling of infants declined; there was heightened regard for the infant as a person and the woman's role as a mother; there were new ideals of intimacy and privacy for the couple; and there was growing emphasis on love, personal attraction, and compatibility as the basis for mate selection. Within the next hundred years, these changes gradually became predominant; the young were choosing their own mates even if resorting to pregnancy before marriage was necessary to do so.

The emphasis on emotional bonds between husband and wife set the modern family off from its predecessors (Stone 1977). The modern family is expected to be emotionally self-sufficient. Other relatives become peripheral, while the bonds among nuclear family members grow more intense and emotional. The modern nuclear family was shaped by three sentiments: romantic love between spouses rather than marriage arranged for reasons of property and social status; maternal love, or the idea that women have a maternal instinct and a need to care for young children; and domesticity, or the belief that relationships within the family are always more binding than are those outside it (Elkind 1992). As a family based on the personal satisfaction of its individual members, the modern family also has been termed the psychological family; its chief value is satisfaction (Doherty 1992).

### **Forces Driving Family Transition**

The modern family evolved in concert with industrialization, science, and technology. With the growth of specialized wage labour, economically productive work moved beyond the reach of the family compound. Individualized remuneration and liability led to a redefinition of kinship obligations. The family that was engaged in farming or crafts could be expanded because extra hands could produce extra food and other products. Its boundaries were elastic. The resources of the salaried family and the number of people who could be supported by its wage-earners were fixed. Living space in the neighbourhood of factories and other specialized worksites was expensive and non-expansive. Where neighbours were strangers, the modern family became a "haven in a heartless world" (Lasch 1977).

Even without significant industrial growth, the expansion of global markets, the mass media, the civil service, and other services such as health care, education, and transportation led to the formation of modern families in developing countries. Caldwell and Caldwell (1977) described this change in Nigeria and Ghana as "a movement towards monogamy, a strengthening of the conjugal bond over all others, a strengthening of the parent-child bond over all relationships external to the nuclear family, and ultimately an emphasis on what parents owe children rather than what children owe parents."

### **Falling Birth Rates and the Death of the Institutional Family**

Falling child death rates lead to falling birth rates, through the sequence of events known as the demographic transition (Caldwell and Caldwell 1990)

that occurs under favourable socioeconomic conditions. Wherever such fertility control is successful it brings not only fewer children but fewer extended family ties in subsequent generations of children, who have far fewer uncles, aunts, and cousins than their parents' generation. The arithmetic of the demographic transition is such that it is impossible to lower death rates to internationally acceptable levels and simultaneously to control population growth without reducing the number of children per family to an average of two (Zeitlin *et al.* 1982). With the lure of out-of-family employment, this small number of children is insufficient to sustain the farming or other business enterprises of the institutional family.

### **THE NEW EXTENDED FAMILY**

While it's true that today's extended family is often spread out across the country, and children may be walking — or even driving — before they meet some of the extended family members, most families still have some extended family nearby. Geographical isolation is far more common among upper-middle-class families, who move for occupational opportunity, than it is among middle- and lower-class families, who tend to move to cities where they already have relatives.

But even when extended family members are relatively close by, there is no escaping the fact that families do live more privately than they once did. In some cases, extended families still give each other day-to-day assistance with shopping, child care, and household tasks. More often, though, each branch of the family retains its basic independence.

What does all this mean for kids? Essentially, with fewer significant adults in their lives, children become more emotionally dependent on their parents. Don't expect your child to consider a seldom-seen relative important. Unless you find a way to open up your family's network, your children will probably be isolated from the extended family.

Some families hold regular family get-togethers or large family reunions to re-establish a more integrated sense of family. Of course, holidays and the children's birthdays provide opportunities for any family members who live close by to get together. You can help your toddler begin to understand the idea of extended family by creating a special "My Family" photo album with pictures and names. When he is a little older, you can begin to illustrate the nature of the relationships with a family tree.

Other families experiment with alternate ways to open up the family. For instance, some form baby-sitting, food, and other kinds of cooperatives. This simply means several couples pool specific resources. This lessens the burden of couples having to do everything solo.

A family cluster is a way to create a surrogate extended family. Several families meet regularly and become emotionally close. They share values, attitudes, and tasks. Often, family clusters share possessions, such as vacation homes and cars. For children, this provides an enlarged number of significant adults and playmates.

## **WORKING PARENTS**

Even among people who prefer to work, many new parents return a lot sooner after childbirth than they may want to for financial reasons. Thanks to the Family and Medical Leave Act of 1993, employers must provide up to 12 weeks of unpaid, job-protected leave to eligible employees for certain family and medical reasons. This act secures your position, salary, and benefits. Most companies base the length of paid maternity leave on long-term disability time available. Paternity leave — time off for the new father — is a wonderful concept, and, fortunately, it is becoming increasingly popular among many companies.

Other options may also be available. One or both of you may be able to negotiate returning to work part-time at first, so you'll be a little less pressured until you and your baby have your routine down. Job sharing is another option gaining ground; it means you and someone else, possibly another parent, share a full-time position. Also, take another look at your budget if you must pay for child care. Is it really worthwhile to return to work when you consider the cost of child care? Or could you come out even by tightening up a little?

### **Child-Care Benefits**

As more and more parents work full-time, corporations are becoming increasingly involved in the problems of working parents. Corporations are not altruistic; they provide benefits when it costs them more money not to. Companies are adversely affected by parental problems of finding and paying for adequate child care and sick-child care when they result in troubled and unproductive employees and in absenteeism.

Most child care benefits are provided in the form of resource and referral services and as optional child care financial assistance in employee benefits packages. (When employees pick and choose a package of benefits out of many options, the programme is said to offer cafeteria-style benefits.) Some companies in larger cities also pay for sick-child care both in and out of the home, and a few firms actually run on-site child care centres or buy slots in nearby consortium centres; a consortium is formed when several organizations buy space in and support a child care centre. In addition, companies of all sizes are beginning to respond by offering flextime (flexible working hours), flexible benefits (which may include financial help with child care), and work-at-home options.

Assuming you have decided to return to work and you have some latitude about the timing, the next question is when. If you decide to return 6 to 12 weeks after your baby is born, make sure you properly introduce your baby to her caretaker, and make sure she gets used to being held and fed by that person while you're still present. Babies can tell the difference between one person and another almost as soon as they're born. In the first 6 to 12 weeks you already know some of your baby's idiosyncrasies, and you can relate these to her caretaker. If you return to work when your child is about six months old, keep in mind your child already has a sense of who you are and a sense of her

separateness. She may really fuss when you turn her over to the child care centre, and she may cling to the teacher when you come to get her at the end of the day. It helps to find ways to make these daily transitions easier; a familiar toy or blanket or just a distraction may do the trick. But do not sneak off and leave your child without saying goodbye.

Waiting a year to return to work meets your need for time to get to know your child and share her first glimpses of the world. But returning to work at this point may actually be more of a problem than it would have been early on. Your one year old is extremely possessive of you and won't yet be able to understand why you must leave. You may need to phase her into child care gradually. It is important to see that the caretaker will give your child the same kinds of stimulation you've been providing; continuity is important to your child's emotional and developmental well-being.

### **Quality Time**

As a working parent, you have many demands and little time at the end of the day. How can you get all the household chores done, have time to spend with your child, and maybe even have some time left over for yourself?

Creativity is the key. Small children don't necessarily know the difference between work and play, so any way you can find to incorporate the two may help. For instance, one parent may put his baby in a backpack, turn on rock music, and dance while he vacuums the house. Taking your baby along while you do errands can be fun; if it's a nice day, why not take the stroller and walk? You might (watchfully) allow a toddler to play with the bubbles in the sink as you do the dishes. Toddlers can learn to set the table, and they take great pride in it. If your child begins to learn to pitch in with household responsibilities at an early age, there will be more time for everyone. The time you spend teaching him to perform these tasks can be quality time, and your child feels more valued and grown up.

Remember: Quality time does not have to be a major scheduled event. It might be the time you spend reading to your child right before bedtime, or the time you spend helping him build something with his blocks. Every task you must do with your child can be quality time: putting him to bed, getting him dressed, feeding him. The trip to and from the child care centre can be a good time for you to hear about your child's day. You can use these moments to share feelings, laugh, and even argue. Yes, you will argue because your and your child's wishes and intentions will conflict at times. When you aren't able to spend much time with your child, any conflict is painful for both of you, so it's important to sit down and talk about the conflict.

Try to save some of your sick time so you are available to be home with your child when he is ill. If the illness is not major, this time can be special for both of you. Your child cherishes being cuddled, read to, and listened to.

Make your vacations family events, but don't schedule them so heavily that they are as stressful as everyday life! Establish weekend family routines or

plans. Let your child contribute to those plans as early as possible. Trying to be a Supermom or Superdad while your children are very young can be draining. You can alleviate some of the stress by accepting that these years will be over sooner than you think. Focusing now on trying to have a perfectly kept house robs you of time you could be reserving for yourself and your children. Make the most of this special time of early childhood. You'll miss it when it's gone.

And keep in mind that "quality" time involves a reasonable "quantity" of time. Young children don't respond well to having experiences tightly scheduled into specific time slots. Flexibility and spontaneity are essential ingredients in pleasant and productive parent/child activities, so make sure you have sufficient time to include these elements.

### **Single Parents**

If you've just experienced a divorce, a separation, or the death of your spouse, you may be totally overwhelmed with your loss and with the new responsibilities that go with being a single parent. There you are, totally in charge of decision-making, finances, breadwinning, and nurturing. It's no wonder newly single parents often feel fatigue and depression.

Most single parents today are women, who may face a somewhat lower income than their male counterparts. They often must rely on child support and government subsidies. Often, they must move to smaller, less expensive quarters to make ends meet. Coupled with the financial problems they may already have is the hard truth that many employers are biased against single parents because they think they're less reliable.

The newly divorced or widowed parent doesn't face these changes alone; children also experience loss and a disruption of routine. Toddlers may be affected more by how the parent copes and by changes in routine than by the fact of the divorce or the death.

When a parent dies or leaves, children need attention, affection, and reassurance; they need to be told how important they are. Without such assurance, your child may fear losing you, as well. Do your best to maintain schedules and routines as much as possible, and don't be lax about rules because you think the situation is hard enough on your child. Children need limits to feel secure; dispensing with rules is like dispensing with routine — it's unsettling.

### **Separated or Divorced Parents**

After a divorce, try to make sure your child sees her other parent regularly. It's important for you to try to maintain a relationship with your ex-spouse for the sake of coordinating visitation. Cooperation and flexibility are essential, no matter what your personal feelings may be. It's also important that you don't say anything negative about your ex-spouse to your child. You need to support your child's contact with her other parent and with your former in-laws as well.

If you can, seek support for yourself from relatives, your church, and social groups. If you have no support, the stress of being a single parent is especially

high. Parents Without Partners, Inc., is a support group for single parents, with chapters in most communities and on the Internet. If you are what is referred to as the noncustodial parent (you don't have custody), you must also be willing to maintain contact with your ex-spouse, despite your personal feelings. You must support your child in her relationship with the custodial parent. If you are not allowed visitation, you must continue to let your child know you are there for her. This may seem futile, but at some point, when she is old enough, she will know how to contact you-and she will. If you have been granted visitation, you must find ways to continue having a parenting relationship with your child. Don't structure every moment spent with her as fun time; if you do, time spent won't be very real, and you and your child will never really know each other. The two of you need to talk quietly and be reflective and honest. An unending succession of amusement parks and zoos will make this difficult.

The concept of coparenting, or joint custody, works best when both parents live in the same community and they are able to maintain a very cooperative relationship, with high levels of communication. Joint custody is emotionally easier on fathers, who traditionally have not been granted custody. It allows them to remain involved in decision-making about their children. (Noncustodial fathers may back out of visitation and child support payments because they feel uninvolved with and unable to affect their children's lives.)

Sometimes the noncustodial parent lives in another state; this parent may still be involved with the child, but contact is limited to infrequent visits, telephone calls, and letters or e-mails. For this contact to have much of an impact, the parent must master the arts of letter writing and phone calling. Writing creative, entertaining notes the child can easily read and providing stamped return envelopes if using regular mail can keep communication going. Phone calls should be made at times convenient for everyone.

When an ex-spouse is completely uninvolved, the single parent often doesn't know what to tell the child. It's important to allow a child to continue trying to contact a parent until she realizes the parent isn't going to respond. Often, the inclination is to prevent this to protect the child from being hurt; this backfires because the child interprets this to mean one parent is trying to keep her away from the other. Once your child realizes that Mommy or Daddy is gone and isn't coming back, you can help by allowing her to talk about the parent as a way of working through her grief.

### **Never-Married Mothers**

Many of today's single mothers have never been married. An increasing number of women spend their 20s establishing themselves in their careers and do not seriously desire children until they reach their 30s. By then they may feel that if they wait until they meet a suitable marriage partner, it may be too late for childbearing. The idea of having a child outside of marriage is also becoming more widely accepted by younger women. Some women who opt for motherhood without marriage choose to become pregnant by means of artificial insemination.

But many discover that some doctors are unwilling to artificially inseminate an unmarried woman. Some who choose artificial insemination genuinely do not want to become emotionally involved with the father of the child and feel this would be inevitable if they knew him. Others, predominantly lesbian women, choose artificial insemination simply because it does not require a personal relationship with a male partner. Still others want to raise the child alone and fear that if they knew the father, he might later make claims on the child.

Some women who want a child without getting married select a partner who is willing to father the child with no strings attached. Others agree the acknowledged father will be involved in the child's life although the parents will not marry.

Whatever their choice, however, these mothers are free to raise their children according to their own ideas and values, and they reap many of the rewards of parenting. On the other hand, they undertake heavy responsibilities and risk the loneliness of parenting without a partner with whom to share both the burdens and the good times. For this reason, support groups for such single mothers have begun to spring up—at least in several major cities (and also on the Internet).

# 2

## **Family Dynamics and the Political Dynamics of Caste Systems**

The Hindu religious belief that "ALL HUMAN BEINGS ARE NOT BORN EQUAL" is deeply entrenched in the psyche of the upper-caste Hindus, leading them to see themselves as a superior race destined to rule and the out-castes (the Untouchables or Dalits) an inferior race born only to serve. This system, which has resulted in the destitution of millions of people due to racial discrimination, has not changed one iota after 50 years of Indian independence.

The basic survival of 250 million Untouchables and Tribals is at stake because of the Hindus' complete lack of respect for the Dalits' human dignity and equality. Indeed, the violation of the Dalits' fundamental human rights is a daily occurrence—rights which are laid down in United Nations' fundamental human rights instruments, including Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination, *etc.*, of which India is a Signatory, and the Liberty, Equality, Justice and Fraternity for every citizen guaranteed by Constitution of India itself.

The Ambedkar Center for Justice and Peace (ACJD) presents to the UN Committee on the Human Rights a series of case studies that illustrate various facets of the ongoing violation of the Dalits' fundamental human rights and a glimpse of the Apartheid of South Asia

The Hindu religion is based on Caste System with graded inequality, Brahmin (Priest caste) on the top, below comes Kshatriya (ruling caste), below comes

Vaishya (business caste), below stands Sudra (menial caste) to serve all 3 masters, and Untouchables are the lowest of the low-the Out-Caste. In this caste hierarchy power is in ascending order and contempt is in descending order. This is like a 5 story building with no stairs to go-water tight compartments. The top 3 castes are the ruling high caste less than 15%, but control 80 % of the power, wealth, police judiciary and 100% media. This is why West has failed to take a notice of sufferings of the Untouchables.

As India celebrates its 50th Anniversary of Independence from British Rule on 15th August 1997, for the Untouchables and Tribals, the most marginalised people of the size of USA or the combined population of France, Germany and England, this means only the change from British Masters to High Caste Hindu Masters. Even after 50 years of independence, Human Rights.

Watch, Washington Think Tank, in its 1996 report, states that there are more than 115 million children in child labour, which 20 million are working in Hazardous Working Conditions, most of these children being from the lowest caste (Untouchables and Tribals).

*"..children were in bondage in agriculture, brick kilns, stone quarries, carpet weaving, handlooms, matches and fireworks, glass bangles, diamond cutting and polishing; that child bondage and force labour were connected with trafficking, kidnapping, repression, absence of freedom of movements, beating, sexual abuse, starvation, abnormal working hours and hazardous working conditions."..82nd session, Report III, (part 4a), page 42 referring to India, ILO, 1995.*

The Hindu religious traditions in certain parts of India force 6 year old female Untouchable child to marry to temple god by coercing her parents-the landless labour, and at puberty they rape her and every year 5000-10,000 these children are secretly auctioned to the brothels of Bombay and other major cities. This system is known as Devdasi or Maidens of God. Other sanctified female child prostitution is called Jogins where a child at puberty is forced to stay with her parents as a BONDED LABOUR and the Hindu masters visit her at her house to have the sexual pleasures.

UN Commission on Social Development report 1996 states that half of the world's poor below poverty line are in South Asia, out of which 300 million are at starving level. Most of these starving people are Untouchables and Tribals.

India's 80% population lives in villages, as a landless labour 90% of Dalits live in rural India, with 80 % illiterate, totally dependent for their survival on the high caste Hindus, they are ill paid, ill fed and forced into bonded labour

*Chief Justice P.N.Bhagavati in one of his judgements on bonded labour case wrote:*

*"They are a non-being, exiles of civilization, living a life worse than that of animals, for animals are at least free to roam about as they like and they can plunder or grab food whenever they are hungry, but these OUT CASTES of the society are held in! bondage, robbed of their*

*freedom, and they are consigned to an existence where they have to live either in hovels or under the open sky and be satisfied with whatever little unwholesome food they can manage to get, inadequate though it be to fill fill their stomachs. Not having any choice, they are driven by poverty and hunger into a life of bondage, a dark bottomless pit from which, i'? a cruel exploitative society, they cannot hope to be rescued.*  
 " (Human Rights in India Today, 1992 edition, NCPHR page 177).

In villages Dalits cannot fetch a water even from the public well or the well gets polluted as per Hindu beliefs. They cannot socialise in village cafe for the fear of pollution. If they dared, there are many cases of beatings, killings by high caste Hindus. Recently there were 10 untouchables killed in cold blood who tried to assert their rights in Bihar state by the landlord army. Even Government of India's own Commission on Scheduled Caste and Scheduled Tribes (constitutional name for Untouchables and Tnbals) Report 1994 states that there were more than 62000 human rights violations. Every one recorded, nine go unrecorded. This gives the picture how big the problem is.

This may be only country on the earth where if an Untouchable landless labour lady complains to her master about unfair wages, she is stripped naked and paraded naked as it happened in Bhopal, Uttar Pradesh, and near Bombay in the last 2 years. The shock is so severe to the lady that she commits suicide later. The Hindu master wants to teach the lesson to the slave.

More than 500 children died of starvation in Melghat county, Amaravati district, Maharashtra in 1995 and they are even dying today. No provision, protection are given to these helpless Tribal women to survive.

With all the industrialization of India, less than 15% of the high caste Hindus are becoming filthy rich and on the other side our children, women and men dying hungry. THIS IS A DEMOCRACY FOR THE FEW, BY THE FEW, OF THE FEW (HIGH CASTE HINDUS).

Even the political rights cannot be enjoyed by our people. In a recent local elections in Tamil Nadu state, the reserved seats, as per provision in the constitution, were available. Our people were prevented from filling the nominations. Finally our young people got so frustrated that 7 went to the local collector's office to burn themselves alive by kerosene, 6 were prevented, but one finally died by burns. No enquiries were done or compensation given to the family.

The main jobs for our people are cleaning latrines, carrying dead animals, carrying human excrete on head, cleaning streets, landless labour, bonded labour, child labour., peons and coolies. The constitution of India provided full protection against atrocities by making the practice of Untouchability a criminal offense (Article.. 17) and provided reservations 22% in jobs from coolie (class 4) to senior bureaucrat (class 1). The low level jobs are filled by our people like peons,clerks but class 1 and 2 are not filled yet in 50 years which give the power to improve our lot. They have filled less than 5% total. There are very few judges or the secretaries of the ministries. So when the crime is

committed by the high caste hindus against helpless Untouchables, the police officer is their cousin and judge is their uncle. Therefore Justice is not served as it should be and culprits are scottfree. This Hindu Mentality has been created by the undemocratic, barbaric Laws of the MANU-Hindu Law Giver about 2000 years back.

## **THE CONFUSING CASTE SYSTEM**

The confusion in the caste system begins by the use of the word caste. The Indians in their different languages use the word 'Jat' for any community who have something common like religion, language, origin, similar geographical background and so on. The Indians also use the word 'Jat' for Varna. The Portuguese who were the first European power to arrive in India distorted the word 'Jat' into caste. The British who arrived to India much later after the Portuguese also used the word caste. The British used the word Caste instead of Jat and Varna. And so sometimes in English the caste system is explained in a confusing way according to which, the caste system consists of four castes which are divided into many castes. Sometimes in English the word caste is used for Varna and the word sub-caste for Jat. In this section to prevent confusion we will use the words Varna and Jat.

And now we will see the complication in the caste system itself.

Each Varna consists of many communities called Jats. Each Varna does consist of different Jats but many of these Jats break up into more communities and each such community refers to itself as different or unique Jat. There are different reasons for these different communities within each Jat. One reason can be the different occupations each community within the Jat professes. Other reasons can be inter-Jat political reasons. Many Jats consists of millions of people and it also causes break up of the larger community into smaller communities. There are also Jats which originate from different parts of India and profess the same profession and therefore get a common name, even though they are not one single community. For example the Jats that profess cloth washing are called collectively as Dhobi. For non-Dhobis the Dhobis are one Jat but within them they are not one community.

The hierarchy between the Varnas. All the Jats accept that the Brahman Varna is the highest Varna in the hierarchy and the untouchables are outcast and lowest in the hierarchy. But most of the Jats in different Varnas claim to be superior and higher than other Jats. Some of the Jats as stated earlier break up into smaller communities or Jats. In these Jats that break up into different communities, there are communities that look at themselves as superior or higher in hierarchy than other communities. Among the Brahman Varna, there are Jats that consider themselves as superior than other Brahman Jats. Some of the Brahman Jats break up into smaller communities, and between these communities within the Jat there also exist a hierarchy.

Among the other Varnas there also exists hierarchy phenomenon. Different Jats claim to be superior than the other Jats in their Varna. Some Jats in the

Vaishya and Sudra Varnas also claim to be closer or equal in hierarchy to the Brahman Varna. These Jats that claim this status adopted Brahman customs like vegetarian diet and strict observance of purity and cleanliness. Some Jats claim to be closer to Kshatriya, which is the warrior class of the Indian society. The Marathas in west India and Reddys in south India were among the Jats which claimed Kshatriya status.

Among the outcast there was also the superior status phenomenon in which one outcast Jat considered itself as superior and did not have physical contact with other outcast Jats which it considered as inferior. For example the Mahars in west India considered themselves superior than Dheds and they did not mingle with the Dheds.

Each Jat professes an occupation worthy of its Varna status. In most of the cases there was a connection between a person's profession and his Varna. Among the different Varnas there also developed guilds based on Jat lines, professing specific professions. In west India the Jat that professed oil pressing were called Somwar Teli. Another Jat members were the shepherds of the society and they were called Dhangar. Another Jat members were the cowherds of the society and they were called Gaoli. The Kunbis were the peasants of the society.

But some of the professions had different status in different parts of India and they were located at different levels in the caste hierarchy. For example Dhobis (washers) in north India were seen as untouchables. While in west India they had Sudra status. The oil pressers in east India were seen as untouchables, in central India they had a high status while in west India they had Sudra status.

There were also many cases where the Jat members did not profess occupation worthy of their Varna. Many Brahmans, who are supposed to be the priest and learned of the society, did not find jobs as priests or did not manage to feed their families as priests and therefore worked as simple farmers. On the other hand there were many Brahmans who were landlords and businessmen, professions supposed to belong to the Vaishya Varna.

Also among the other Varnas not all professed the occupations worthy of their Varna. In west India the Maratha were the warriors and the aristocracy. Originally the Marathas belonged to the different Jats in west India. Most of these Jats were in Sudra level. But the Marathas who became the aristocracy of west India claimed and acquired the Kshatriya status. In the 17th and the 18th century the Marathas even established an empire which ruled large parts of India. During the Maratha reign members of a Brahman Jat, Kokanastha Brahman, were ministers. From 1750 these Brahmans became the rulers of the Maratha Empire.

Like the Marathas there were other communities which, religiously did not belong to the Kshatriya status but acquired this status. The Reddy in Andhra Pradesh and Nayar in Kerala are such two examples.

Religiously marriage occurs within the Jat. The different Jats members almost always respected this rule and people who dared break this rule were outcasted. But this rule also had exceptions. Usually the higher Varnas were

very strict about this custom. But in some of the higher level Jats of the society, they used to have polygamy. In these cases, because of scarcity of women, men use to marry women from the lower levels of the society.

In some Indian societies between-jat marriage was even an acceptable feature. One such example of marriages existed in Kerala, in south India. In Kerala, Nayar women (aristocracy community) married men from Numbodiri Brahman community.

Another problem considering the Jat marriage was the internal structure of the Jats. As stated earlier some Jats break up into smaller communities. In most of the cases each such community members marry only with members of their own community and not with other community members within the Jat. In some cases there is a hierarchy between the different communities of the same Jat. In such cases a daughter from the lower community could marry a son from the higher community but not vice versa.

Each Varna had different diet. Hinduism has many strict dietary rules. In general the higher Jats are more strict about their dietary customs than the lower Jats.

The Brahman Jats have the most strict dietary customs. They will not eat in lower Jats homes or even with lower Jats (because of this reason many restaurants hired Brahman cooks). The Brahman diet is supposed to include only vegetarian food. Jats who claimed Brahman status also adopted vegetarian diet of the Brahmans. But there are some Brahman Jats who traditionally eat meat, fish, chicken and egg (which is considered non-vegetarian). Some Brahman Jats in Kashmir, Orissa, Bengal and Maharashtra traditionally eat meat. But this meat was never cattle meat.

Jat is determined by birth and it cannot be changed. In the beginning the caste system was not a strict system and people could move from one Varna to another. Indologists give different dates to this period of change. Some claim the change occurred around 500 B. C. and other claim 500 A. D. Until then, communities and even singular person moved from one Varna to another Varna, because of their desire to adopt different occupations. There were some kings who belonged the Kshatriya (warrior castes) and changed their status to become religious Brahmans. There were also who changed their status to become warriors.

And even after the caste system was organized in a strict manner there were many communities who did not always follow their status occupations. There was a case of a Jat that lost its high status because they did not profess the profession worthy of their Varna. The Kayastha of east and north east India originally belonged to the Kshatriya Varna (warrior caste). Some time in the past among warriors communities, there developed a bureaucratic unit whose job was writing and listing war events and they were called Kayasthas. Because these unit members were not warriors, they were excluded from the Kshatriya status and were given a lower status. But the Kayasthas even today claim Kshatriya status.

The Jat status. Jats like Kayastha, Reddy, Maratha, Nayar and others changed the basic fourfold hierarchy caste system. These Jats had high status but their exact status is not clear and different communities give different interpretations to their status of different Jats. As stated earlier different Jats claim theirs to be the superior than the other Jats and therefore the caste system even today is not always interpreted objectively by Indians but subjectively. For example the Kayastha claim themselves to be Kshatriya while others do not always agree with this claim. Among the Marathas the confusion is even greater. In the narrow sense the Jat of Maratha applies to 96 clans who ruled and governed the parts of west India. Originally the Maratha clans belonged to different levels of Indian hierarchy. They mostly belonged to different Jats of Sudra. But many Jats of west Maharashtra claim that they are Marathas too. Sometimes the Kokanastha Brahmans (who were ministers of Maratha empire in 18<sup>th</sup> century and later on continued the Maratha Empire and their reign) are also introduced as Marathas causing a greater confusion in Maratha definition.

The reasons stated above are among the few reasons that causes confusion in caste system.

## **DEFENCE OF JOINT FAMILY SYSTEM**

One of the recent cartoons on Boloji by our very own cartoonist Ashok Dongre was a tragic satire on the hard and cold realities of today. The cartoon was followed by a question that Ashok raised on Boloji's cafe relating to the problem of ill affordability of owning a place in the cities today. This problem is very real for many living in Indian cities where the price of owning a house as well as rental apartments and flats are sky rocketing.

Even when in a family the husband and wife both are working and earning, acquiring a house of one's own remains a distant and an almost impossible dream.

So what is the solution to this growing problem ? I believe that 'Joint Family System' could well be the answer.

Here are some of my thoughts on why, despite the fact that in this age nuclear family is the order of the day, a 'joint family system' needs to be revisited and revived and most importantly how could we possibly make the system work.

## **FAMILY STRUCTURE AND PARENTING**

The end of the above section brings us to a very important aspect of any family-parenting. And here also, one finds significant differences in the forms it takes on in a joint family set-up and in a nuclear family set up.

- In a nuclear family set up if both parents are working they may have to leave their children alone with caretakers for given lengths of time. This can mean children being brought up by care centres or domestic help. It can also mean that children are left vulnerable to sexual abuse and violence.

- Parents may also have to deal with attention-related problems which are usually by-products of nuclear family systems, where the child, finding both his parents absent, and no one else from the family, usually resorts to attention seeking behaviour. Being sad, insolent, reclusive and so on. In a joint family system families take responsibility for each others children.
- Most parents want to bring up their children with their own set of values and principles, without any “interference”. This is something that parents may find to hard to do in a joint family set up.
- Parents of nuclear families should try and make efforts so that their children are close the rest of the relatives. These efforts could include taking them on weekly visits, encouraging them to go for sleep-overs at their cousins’ houses and so on. Festivals and cultural occasions could be celebrated with extended family, as these are also times when cultural values could be passed on to the children.
- In a nuclear family, if parents are conscious of the fact that they are not being able to spend adequate amounts of time with their children, they either end up trying to discipline them in the little time that they have with them, thereby distancing themselves from their children, or they try to compensate for their absence, monetarily and materially. In a nuclear family, there is always a fear that the parents will either be indifferent or be too smothering. Either of these two extremes are not right. In a joint family, the presence of a large number of siblings and other elders means that the child is not left wanting for attention and is being disciplined regularly by other members of the family.
- Differences in discipline styles, norms of work, leisure, personal attitudes, *etc.*, are common in any family system, but in joint families diversity may not always be encouraged. There is more space for individuality and individual self-expression in a nuclear family set-up. In a joint family conflicting styles may confuse and contradict each other, leading to a child who may not always know what to trust and who to believe, especially when parenting is taken on by more than two people.
- In a joint family a child has something that is extremely crucial in its growing up years-company. One thing to be worried about is that in today’s day and age, given the restrictions of space, finances and resources, more and more parents are deciding on having just one child. This one child norm, coupled with the nuclear family phenomenon, means that the child is more often than not, lonely and thus susceptible to go looking for company elsewhere....and they could find the wrong company. Kids who are strongly connected to the family and home are less likely to go astray due to peer pressure or end up doing things that they know deep down to be wrong.

## **WOMEN IN JOINT AND NUCLEAR FAMILIES**

It would be wonderful if we could say that one family structure works better for women than another. But, the reality is that in both joint and nuclear families women can feel helpless, claustrophobic, and isolated, because of the family dynamics. Similarly, either structure could create a sense of well-being. Yet, in order to address the issue, certain generalizations would have to be made.

- First and foremost, in today's fast moving times, women have, in a joint family system, a support system that they can turn to. Of course, they also have to contend with hierarchies and power equations, which are as strong as time and tradition.
- In a joint family she has the support structure that she needs, she is surrounded by other women and she can turn to them whenever she needs help. But at the same time, when the hierarchies and the power equations are so firmly entrenched, she may find herself disadvantaged, because there are not only male members who can dominate over her, there are also older women. Women (especially new entrants) may feel more disadvantaged in a joint family system because there are many people who control her environment because they are further up in the hierarchy of decision-making.
- In a nuclear family, there is relatively more autonomy. She has the freedom to enjoy an intimacy, a closeness with her spouse and her children without having to include others. In a study, women in nuclear families reported more positive sexual relationships with their husband than did women living in extended/joint families. ("Experiences and Perceptions of Marital Sexual Relationships among Rural Women in Gujarat, India"-By Archana Joshi, Mrinalika Dhapola, Elizabeth Kurian and Pertti J. Pelto). In a joint family set up, interaction, even intimacy with one's own spouse may be governed by protocol.
- When a child is born, the woman has to commit a tremendous amount of time to looking after the child. In a nuclear family the mother may not have the help of other members of the family for looking after the child.
- In a nuclear family unit, there is less pressure on the value of an 'obedient' daughter-in-law than is often observed in most joint families. Since value is placed on the individual's own abilities and attributes, women in nuclear families may be more likely to take the initiative in carving out their own identities. On the other hand, in nuclear households, women's mobility is limited since they have to take responsibility for the full burden of housework, while there is much more sharing of tasks between women in extended households.

## **CASTE IN VARNA SYSTEM**

The Caste System or varna-ashrama has been one of the most misrepresented, misinformed, misunderstood, misused and the most maligned aspects of

Hinduism. If one wants to understand the truth, the original purpose behind the caste system, one must go to antiquity to study the evolution of the caste system.

Caste System, which is said to be the mainstay of the Hindu social order, has no sanction in the Vedas. The ancient culture of India was based upon a system of social diversification according to SPIRITUAL development, not by birth, but by his karma.

This system became hereditary and over the course of many centuries degenerated as a result of exploitation by some priests, and other socioeconomic elements of society.

However, as Alain Danielou, son of French aristocracy, author of numerous books on philosophy, religion, history and arts of India, says: "Caste system has enabled Hindu civilization to survive all invasions and to develop without revolutions or important changes, throughout more than four millennia, with a continuity that is unique in history.

Caste system may appear rigid to our eyes because for more than a thousand years Hindu society withdrew itself from successive domination by Muslims and Europeans.

Yet, the greatest poets and the most venerated saints such as Sura Dasa, Kabir, Tukaram, Thiruvalluvar and Ram Dasa; came from the humblest class of society." In the words of Sarvepalli Radhakrishnan, " In spite of the divisions, there is an inner cohesion among the Hindu society from the Himalayas to the Cape Comorin."

Caste system has been exploited against the Hindus, for the last two centuries by the British, Christian Missionaries, Secular historians, Communists, Muslims, Pre and Post-Independence Indian politicians and Journalists for their own ends. One way to discredit any system is to highlight its excesses, and this only adds to the sense of inferiority that many Indians feel about their own culture.

Caste system is often portrayed as the ultimate horror, in the media, yet social inequities continue to persist in theoretically Egalitarian Western Societies. The Caste system is judged offensive by the Western norms, yet racial groups have been isolated, crowded into reserves like the American Indians or Australian Aborigines, where they can only atrophy and disappear.

This chapter is not a justification of the abuse of caste system, rather it is a collection of interesting information. Caste system has enabled Hindu civilization to survive all invasions and made Indian society stronger. Caste system served a purpose, performed certain functions, and met the needs appropriate to the times in history.

India's caste norms may once have had a rationale; but the norms are outlived today. Caste system is not stagnant and is undergoing changes under the impact of modernization. Caste system should undergo reforms in the social arena so that unjustified discrimination and abuse is eliminated. The caste system was never a tenet of the Hindu faith.

*"The universe is the outpouring of the majesty of God, the auspicious one, radiant love. Every face you see belongs to Him. He is present in everyone without exception."-says the Yajur Veda.*

*"The Lord (The Divine) is enshrined in the hearts of all."-says the Isha Upanishad 1-1.*

*The Upanishads which are a pure, lofty, heady distillation of spiritual wisdom which come to us from the very dawn of time tell us:*

*"Reality (God) is our real Self, so that each of us is one with the power that created and sustains the universe."*

In Sanskrit, Tat tvam asi, "You are That."

*"In the depths of meditation, sages (rishis)*

*Saw within themselves the Lord of Love,*

*Who dwells in the heart of every creature."-says the Shvetashvatara Upanishad. 1-3.*

Lord Krishna expounds the unique philosophy of the Bhagavad Gita to Arjuna.

*"I am the Self seated in the heart of all creatures. I am the beginning, the middle and the very end of all beings".*

The Bhagavad Gita has influenced great Americans from Henry David Thoreau to J R Oppenheimer. In Bhagawad Gita, sloka 20, Chapter 10, Lord Krishna says, "I am the Self seated in the heart of all creatures. I am the beginning, the middle and the very end of all beings". All beings have, therefore to be treated alike. Lord Krishna as saying, in response to the question-"How is Varna (social order) determined?"

*"Birth is not the cause, my friend; it is virtues which are the cause of auspiciousness. Even a chandala (lower caste) observing the vow is considered a Brahman by the gods."*

## **A Comprehensive Look**

*Pro and Cons of the Caste System:* Hinduism believes in "Vasudhaiva Kutumbakam" (the world is one family-an ancient Vedic term).

Mahatma Gandhi (1869-1948) Was among India's most fervent nationalists, fighting for Indian independence from British rule. Gandhi was a staunch and devout Hindu and he proclaimed it proudly: "I am a Hindu because it is Hinduism which makes the world worth living."

He said that the caste system or varnashrama is "inherent in human nature, and Hinduism has simply made a science of it."

He defended the "much-maligned Brahman" and entertains "not a shadow of doubt" that "if Brahmanism does not revive, Hinduism will perish".

*"Hinduism insists on the brotherhood of not only all mankind but of all that lives."*

P. D. Ouspensky a thoughtful Western writer is of the opinion that "All the most brilliant period of history, without exception, were periods in which the social order approached the caste system." He thinks that the caste system

(varna vyavastha) "is a natural division" of society. "Whether people wish it or not, whether they recognize it or not, they are divided into four castes. There are Brahmans, there are Kshatriyas, there are Vaishyas, and there are Shudras. No human legislation, no philosophical intricacies, no pseudo-sciences and no form of terror can abolish this fact. And the normal functioning and development of human societies are possible only if this fact is recognized and acted on."

Sir George Birchwood has said: "So long as the Hindus hold on to the caste system, India will be India; but from the day they break from it, there will be no more India. That glorious peninsula will be degraded to the position of a bitter "East End" of the Anglo-Saxon Empire."

Swami Chidanand Saraswatiji of the India Heritage Research Foundation defines: "The Caste system as you see it today is not was originally simply a division of labour based on personal, talents tendencies and abilities. It was never supposed to divide people. Rather, it was supposed to unite people so that everyone was simultaneously working to the best of his/her ability for the greater service of all. In the scriptures, when the system of dividing society into four groups was explained, the word used is "Varna." Varna means "class" not "caste." Caste is actually "Jati" and it is an incorrect translation of the word "varna." When the Portuguese colonized parts of India, they mistakenly translated "varna vyavasthaa" as "caste system" and the mistake has stayed since then.

The varna system was based on a person's characteristics, temperament and their innate "nature." The Vedas describe one's nature as being a mixture of the three gunas-tamas, rajas and sattva. Depending on the relative proportions of each of these gunas, one would be classified as a Brahmin, Kshatriya, Vaishya or Shudra. For example, Brahmins who perform much of the intellectual, creative and spiritual work within a community have a high proportion of sattva and low proportions of tamas and rajas. A Kshatriya who is inclined towards political, administrative and military work has a high proportion of rajas, a medium proportion of sattva and a low proportion of tamas. A Vaishya who performs the tasks of businessman, employer and skilled labourer also has a high proportion of rajas but has relatively equal proportions of sattva and tamas, both of which are lower than rajas. Last, a shudra who performs the unskilled labour in society has a high proportion of tamas, a low proportion of sattva and a medium proportion of rajas.

These gunas are not inherited. They are based on one's inherent nature and one's karma. Therefore one's "varna" was also not supposed to be based on heredity, and in the past it was not. It is only in relatively modern times that the strict, rigid, heredity-based "caste" system has come into existence. There are many examples in the scriptures and in history of people transcending the "class" or "varna" into which they were born. Everyone was free to choose an occupation according to his/her guna and karma.

Further, according to the scriptures, there is no hierarchy at all inherent in the varna system. All parts are of equal importance and equal worth. A good example is to imagine a human body. The brain which thinks, plans and guides

represents the Brahmin caste. The hands and arms which fight, protect and work represent the Kshatriya caste. The stomach which serves as the source of energy and "transactions" represents the vaishya caste, and the legs/feet which do the necessary running around in the service of the rest of the body represent the shudra caste. No one can say the brain is better than the legs or that hands are superior to feet. Each is equally important for the overall functioning of the body system. They just serve different roles. " Look at Bhagwan Ram and Bhagwan Krishna. Both show the example of taking their food from even people of the lowest caste and going to the homes of the lower caste people. It is devotion, purity and commitment which make us great or small, not our caste.

M V Nadkarni writes: "It is necessary to demolish the myth that caste system is an intrinsic part of Hinduism. This myth is believed by orthodox elements within Hinduism and also is propagated by elements outside Hinduism with the mischievous intent of proselytising. Even Vedic and classical Hinduism-not only does not support the caste system, but has taken lots of pains to oppose it both in principle and practice, making it obvious that caste system is not an intrinsic part of Hindu canon, philosophy and even practice.

It is only in the dharmashastras (dharma sutras and smritis) that we find support to the caste system, and not in other canon. However, dharmashastras never had the same status as other canon known as shruti (Vedas and Upanishads) and it is laid down that whenever there is a conflict between the shruti and smriti literature, it is the former that prevails. It is Manusmriti, which is particularly supportive of caste system but where it conflicts with Vedas and Upanishads, the latter would prevail. Though Bhagawad Gita (Gita) is not regarded as a part of shruti, Gita is highly regarded as sacred and is very much a part of classical Hinduism. As we shall just see even the Gita is against caste system based on birth, and not supportive to it. Thus, to the extent that dharmashastras conflict with shruti and the Gita, the latter prevails. Apasthambha dharmasutra may have supported untouchability, but it seems to be read more by those who like to attack Hinduism with it than by its followers! It is hardly regarded as canon, even if any Hindu has heard of it. Vedanta philosophy declares that there is divinity in every creature. Rig Veda emphasises equality of all human beings. It goes to the extent of saying, which sounds quite modern: 'No one is superior, none inferior. All are brothers marching forward to prosperity'

John Burdon Sanderson Haldane (1892-1964) the world-renowned geneticist. In 1922, he joined Cambridge University to take up research in biochemistry. Among his significant contributions is an estimate of the rate of mutation of a human gene. Some of his famous books are *The Causes of Evolution*, *New Paths in Genetics* and *Biochemistry of Genetics*.

He immigrated to India and soon found himself attracted to Hindu culture. Himself a rationalist, Haldane told his colleagues, "I do not think that a Rationalist and Humanist need necessarily break with Hinduism." He watched

with disdain the way the socialist government machinery rooted in sycophancy and corruption, was developing a stranglehold on the budding Indian science. The stranglehold on the progress of India, as Haldane observed was of a socialist government's making and not that of the Dharma. He wrote: "The old caste system had this merit, that the richest merchant or Zamindar could not buy the status of Brahmin for his son, even if the son was learned and pious. Whatever the defects of that system-and I think that they were and are grievous-it was not subservient to wealth. The new caste system, which the university administrative authorities, with the connivance of many government officials, are trying with some success to impose upon India, has no such excuse.... In India today the unworthy successors of Durvasa and Vishvamitra actually invite governors, vice-chancellors, and the like, to address them. This may be a relic of British Rule. If so, it is a regrettable one."

Gerald Heard American thinker and writer who has studied the Indian social system, has called it "organic democracy", and suggests in his work, *Man the Master*, that it is the type of democracy the world as a whole needs today. Heard defines "organic democracy" as "the rule of the people who have organized themselves in a living and not a mechanical relationship; where instead of all men being said to be equal, which is a lie, all men are known to be of equal value, could we but find the position in which their potential contribution could be released and their essential growth so pursued." He calls the four varnas by the names "seers" (Brahmins), "politicians (Kshatriyas), "technicians" (vaishyas) and "coherers" (Shudras). "These four classes are distinguished by unmistakable psychological characteristics which suit them to their particular purpose, function and place." It is this organization that made Indian society stable, efficient and strong. It produced in India great scholars, warriors, administrators, and producers of wealth.

The caste system has been the most misunderstood, the most vilified subject of Hindu society at the hands of Western scholars and even today by "secular" Indians. The Hindu caste system has often been described as " the most cruel apartheid, imposed by the barbaric white Aryan invaders on the gentle dark-skinned natives."

The earliest reference to the four classes is in the Purusa Sukta of the Rig Veda, where they are described as having sprung from the body of the creative spirit, from his head, arms, thighs, and feet. This indicates that just as in a human body, the different organs perform different functions so also in human society different people must perform different functions, according to their predominant traits or temperament.

Man is not only himself, but is in solidarity with all of his kind. Man is not an abstract individual. He belongs to a certain social group by virtue of his character, behaviour, and function in the community. The fourfold classification is conceived in the interests of world progress.

Sir Sidney Low (1857-1932) in his book, *A Vision of India: with a frontispiece* says: "There is no doubt that it (caste) is the main cause of the fundamental

stability and contentment by which Indian society has been braced for centuries against the shocks of politics and the cataclysms of Nature. It provides every man with his place, his career, his occupations, his circle of friends. It makes him, at the outset, a member of a corporate body; it protects him through life from the canker of social jealousy and unfulfilled aspirations; it ensures him companionship and a sense of community with others in like case with himself. The caste organization is to the Hindu his club, his trade union, his benefit society, his philanthropic society. There are no work houses in India, and none are as yet needed. The obligation to provide for kinsfolk and friends in distress is universally acknowledged; nor can it be questioned that this is due to the recognition of the strength of family ties and of the bonds created by associations and common pursuits which is fostered by the caste principle. An India without caste, as things stand at present, it is not quite easy to imagine."

Nirad C. Chaudhari, (1897-1999) prominent Indian author and scholar, who rejected Western culture in an independent India, has defended the caste system on the grounds that the successive waves of migrant tribes or invaders probably made a class society inevitable in India, and that caste still has a useful function:

*"The Caste system has only organized the disparities created by historical forces and movements. By doing so, it has done great good by reducing the competition of the diversities, by freezing them within certain limits, and by making each not only legitimate but even moral....It canalized competitions and helped the coexistence of elements which otherwise would have been at war. It was a social system specially suited to a country like India, which history has made into a warehouse of civilizations, and a couloir and cul-de-sac of diverse people and cultures." He emphasized that if he considered the caste system in any danger-which he does not-he would add, "Please do not pulverize a society which has no other force of cohesion, into amorphous dust."*

Alain Danielou (1907-1994) author of several books, including *History of India and Virtue, Success, Pleasure, & Liberation: The Four Aims of Life in the Tradition of Ancient India*, writes: "It is easy to see that despite all the national and linguistic barriers, even modern Western society is fundamentally, like all societies, a caste system. The problem of Western society derive from the fact that while proclaiming the equality of men, it is entirely graded on a hierarchical system as far as the professions are concerned. Under the pretext of equality, Western lawmakers do not let the various groups cooperate among themselves while keeping their different habits, ethics, and social life. Jews, Mormons, Muslims, Celts, Basques, Albigemsoams, Pygmies, Blacks or Inuits are accorded a relative equality only on condition that they conform to our customs, losing most of their social, national, and religious characteristics and in fact abandoning their own personality."

Hindu Society is 'caste-ridden' while modern democratic society reveals the presence of 'classes', sociologist explain. They acclaim 'class' and condemn

'caste'. Caste, according to them, has its roots in Hindu (Brahmannical) religion, while 'class' has its roots in economic disparities. Mark Tully was the BBC correspondent in New Delhi and author of several books including *No Full Stops in India* and *The Heart of India*.

He points out: "The alienation of many young people in the West and the loneliness of the old show the suffering that egalitarianism inflicts on those who do not win, the superficiality of an egalitarianism which in effect means equal opportunities for all to win and then ignores the inevitable losers. For all that, the elite of India have become so spellbound by egalitarianism that they are unable to see any good in the only institution which does provide a sense of identity and dignity to those who are robbed from birth of the opportunity to compete on an equal footing-CASTE. Caste is obnoxious to the egalitarian West, so it is obnoxious to the Indian elite too."

*"The very fact that the institution of caste has survived about 3,000 years is a clear proof of the services which it must have rendered to the Hindu society in different periods of history. It is the caste system that has been largely responsible for the preservation of Hindu religion and culture. The caste brotherhoods, on account of their policy of exclusiveness, did not mix with the foreigners. So the Greeks, Huns or Muslims could not conquer Hindu culture. On the contrary, most of these foreigners were themselves absorbed into the Hindu fold."*

*"The caste system is based on the sound economic principle of division of labour which ensures efficiency of production. A person from his birth knew what profession he was to follow later on. So from the start, he devoted all his energy to the one profession of his forefathers. It was because of this reason that in every period of Indian history, there was no dearth of highly-skilled workers and scholars. Megasthenes, Hieun Tsang, Alberuni, Ibn Batuta, Babar and even the early Britishers were impressed by the talents and artistic skill of the Indians in every art and craft."*

*Note:* Mark Tully has spoken in defense of the caste system and denounced the spread of consumerism in the subcontinent. The BBC pushed him out because of his excessive identification with Indian culture.

*Michael Pym wrote:* "Caste is the secret of that amazing stability which is characteristic of the Indian social structure. It is the strength of Hinduism. Naturally, it can be abused. The moment a Brahmin treats a sweeper cruelly because he is a sweeper, he departs from his Brahminhood. He becomes a usurper and a social danger. And in due course, he will have to pay for this mistake. Because men are imperfect, and because power is a deadly intoxicant, such abuses may and do occur, but they are not inherent in the institution—they are contrary to its principles, though they may be inherent in the make up of the individual.

Caste in itself is also a protection for the individual, because it permits group action. The reason why a Hindu dreads being outcaste is analogous to

the reason why, in England say, a worker would dread being thrown out of his trade union. While Marxists and other anti-Hindu intellectuals calling themselves Secularists never miss an opportunity to denounce it, the fact of the matter is that the Indian civilization survived nearly a thousand year onslaught of Islam. Several other ancient civilizations-like those of Iran (Zoroastrian), the Byzantine Empire (Christian) and Central Asia (Buddhist) broke down under the same force over a much shortest period. This shows that they must have lacked a social order capable of protecting their societies.

The so called 'egalitarian' Buddhist society lacked the social organization which enabled the Hindu society to survive. It was the same story in Egypt, Syria, and Turkey which were part of the Christian Byzantine Empire. They lacked the strength and resilience of the Hindu society and succumbed to the Islamic invasion.

Dr. Koenraad Elst (1959-) Dutch historian, born in Leuven, Belgium, on 7 August 1959, into a Flemish (*i.e.*, Dutch-speaking Belgian) Catholic family. He graduated in Philosophy, Chinese Studies and Indo-Iranian Studies at the Catholic University of Leuven. He is the author of several books including *The Saffron Swastika, Decolonising The Hindu Mind-Ideological Development of Hindu Revivalism and Negationism in India: Concealing the Record of Islam.*

The caste system is often portrayed as the ultimate horror. Inborn inequality is indeed unacceptable to us moderns, but this does not preclude that the system has also had its merits.

Caste is perceived as an "exclusion-from," but first of all it is a form of "belonging-to," a natural structure of solidarity. For this reason, Christian and Muslim missionaries found it very difficult to lure Hindus away from their communities.

Sometimes castes were collectively converted to Islam, and Pope Gregory XV (1621-23) decreed that the missionaries could tolerate caste distinction among Christian converts; but by and large, caste remained an effective hurdle to the destruction of Hinduism through conversion. That is why the missionaries started attacking the institution of caste and in particular the Brahmin caste. This propaganda has bloomed into a full-fledged anti-Brahminism, the Indian equivalent of anti-Semitism.

T. M. P. Mahadevan wrote about the castes: "The origin of caste is lost in obscurity. Its purpose however, seems to have been the same as that of Plato's division of the State into three classes, castes, or professions, viz. philosophers-rulers, warriors and masses. The underlying principle is division of labour. Originally the castes were professional and subsequently became hereditary. The Brahmins were custodians of the spiritual culture of the race. He was friend, philosopher, guide to humanity. The Kshatriya is the guardian of society, its protector and preserver. The Vaishya is the expert in economics. His was the duty of arranging for the production and distribution of wealth. The Sudra was the worker or manual labourer. By his manual labour he places

the entire community under a debt of gratitude. The system was evolved to keep the social fabric in a harmonious condition; but in later years it became a divisive force. The original designers built the edifice of caste on the secure foundations of obligations; the lesser men who came after them produced a caricature on the shifting sands of rights.

The four classes were not meant to be warring communities but complementary classes. Mahatma Gandhi said: "It is a law of spiritual economics" "It has nothing to do with superiority or inferiority". And as the system of caste is purely a social adjustment, there is nothing that can stand in the way of its revision and readjustment except a sense of pride and obstinacy and a demand to preserve the status quo on the part of some of its members."

When Julius Caesar occupied the Celtic West of Europe, he found that the Druid class was the backbone of this society (the parallel with the Brahmins in the perception of the missionaries is quite exact): therefore, he persecuted the Druids.

Huston Smith (1919-) born in China to Methodist missionaries, a philosopher, most eloquent writer, world-famous religion scholar who practices Hatha Yoga. He has written various books, *The World's Religions*. He says: Men and women that are lining the bathing ghats are all Hindus, but how different they are. But India looked past their bodies into their minds where she found the prolificness of the infinite exploding like a Roman candle. No other civilization saw, appreciated, and classified so precisely the full spectrum of human personality types...an achievement that has earned for India-the title of the world's introspective psychologist.

"India identified four such types and once again honoured all of them. Likening society to an organism, she pictured Brahmins-its head, Brahmins are intellectuals, their chief delight in art, ideas, and things of spirit generally.

Dr. Koenraad Elst has written: "Increasingly, Hinduism is identified by the international public with the caste system and nothing but the caste system. The caste system, in turn, is painted in the ugliest colours: as a racist Apartheid system designed to oppress the native population. These notions are eagerly welcomed and amplified by outside forces such as Christian missionary centres, followed by their Islamic counterparts. Till recently, American foreign policy agencies made no secret of their designs on India's unity. When she was US ambassador to the UN, Mrs. Jean Kirkpatrick once said that "the break-up of India is one of the goals of the American foreign policy." Patrick Moynihan, who had held the same job, said more recently, "After the break-up of the Soviet Union, the artificial state India is also bound to break up."

Ronald B. Inden has pointed out: "Caste, the Western scholars held, is the type of society characteristic of India, the institution that distinguishes it from the other civilization dominated by caste from the West. The representation of India as a civilization dominated by caste are legion. Caste, considered the essence of Indian civilization, has often been treated as though it were the

unchanging agent of the civilization, from the rise of the Indus Valley culture and the arrival of the Aryans down to the present day of regionalism and caste in electoral politics. It is, thus, deeply embedded in Indological discourse. Many of the more recent accounts of caste have dropped the racialist discourse, but they have not broken with the notion that caste is a unique type of society, one that displaces the economically oriented politics of the West. Accounts of caste can and have been used as a foil to build up the West's image of itself."

*"It would lead to a greater respect for India's culture, and indeed a better understanding of it, if it were recognized that the caste system has never been totally static, that it is adapting itself to today's changing circumstances and that it has positive as well as negative aspects. The caste system provides security and a community for millions of Indians. It gives them an identity that neither Western Science nor Western thought has yet provided, because caste is not just a matter of being a Brahmin or a Harijan: it is also a kinship system. The system provides a wider support group than a family: a group which has a social life in which all its members participate."*

In the September 1989 issue of Seminar magazine, Madhu Kishwar, one of India's leading feminists, wrote, "The caste system provides for relatively greater stability and dignity to the individuals than they would have as atomized individuals. This in part explains why the Indian poor retain a strong sense of self-respect. It is that self-respect which the thoughtless insistence on egalitarianism destroys."

Caste system is often perceived to be an integral part of Hindu religion. This erroneous perception arises when people mix the ancient social tradition (caste system) with Hindu religious philosophy.

According to V. A. Smith, most of the misunderstanding on the subject of caste system has arisen from the persistent mistranslation of Manu's term "Varna" as caste, whereas it should be rendered class or order or by some equivalent term.

# 3

## Family Law

One of the first things for you to think about is the broad range of areas that are covered under the general term, "family law."

Family law includes marriage, divorce, custody, visitation, family support (spousal support, child support, domestic partners), child abuse and neglect, delinquency, adoption, estate planning, elder law, new reproductive technologies and a number of other areas.

There are rewarding jobs in private practice and with public and private agencies and law reform organizations.

When you are deciding what courses to take and whether you want to practice in this exciting, changing and challenging area of law, keep in mind that you may need to draw on a broad range of experiences and courses when you are developing your specialty area.

### **WHAT IS FAMILY LAW?**

*Family law is a practice area that encompasses the legal issues that face families. These issues include:*

- Divorce
- Spousal support
- Child support
- Custody
- Division of assets and liabilities due to divorce
- Adoption
- Termination of parental rights
- Paternity

- Dependency and child neglect
- Protection from abuse.

## **ALCOHOLISM IN FAMILY SYSTEMS**

Alcoholism in family systems refers to the conditions in families that enable alcoholism, and the effects of alcoholic behaviour by one or more family members on the rest of the family. Mental health professionals are increasingly considering alcoholism and addiction as diseases that flourish in and are enabled by family systems. Family members react to the alcoholic with particular behavioural patterns. They may enable the addiction to continue by shielding the addict from the negative consequences of his actions. Such behaviours are referred to as codependence. In this way, the alcoholic is said to suffer from the disease of addiction, whereas the family members suffer from the disease of codependence.

Alcoholism is one of the leading causes of a dysfunctional family. As of 2001, there were an estimated 26.8 million children of alcoholics (COAs) in the United States, with as many as 11 million of them under than age of 18. Children of addicts have an increased suicide rate and on average have total health care costs 32 percent greater than children of nonalcoholic families.

Adults from alcoholic families experience higher levels of state and trait anxiety and lower levels of differentiation of self than adults raised in non-alcoholic families. Additionally adult children of alcoholics have lower self-esteem, excessive feelings of responsibility, difficulties reaching out, higher incidence of depression, and increased likelihood of becoming alcoholics.

Alcoholism does not have uniform effects on all families. The levels of dysfunction and resiliency of the non-alcoholic adults are important factors in effects on children in the family.

Children of untreated alcoholics score lower on measures of family cohesion, intellectual-cultural orientation, active-recreational orientation, and independence. They have higher levels of conflict within the family, and many experience other family members as distant and non-communicative. The cumulative effect of the family dysfunction may affect the children in families with untreated alcoholics' ability to grow in developmentally healthy ways. Prevalence.

Based on the number of children with parents meeting the DSM-III-R criteria for alcohol abuse or alcohol dependents, in 1996 there was an estimated 26.8 million children of alcoholics (COAs) in the United States of which 11 million were under the age of 18. As of 1988, it was estimated 76 million Americans, about 43% of the U.S., adult population, have been exposed to alcoholism or problem drinking in the family, either having grown up with an alcoholic, having an alcoholic blood relative, or marrying an alcoholic. While growing up, nearly one in five adult Americans (18%) lived with an alcoholic. In 1992, it was estimated one in eight adult American drinkers were alcoholics or experienced problems as a consequences of their alcohol use.

## **FAMILIALITY**

Children of alcoholics (COAs) are more at risk for alcoholism and other drug abuse than children of non-alcoholics. Children of alcoholics are four times more likely than non-COAs to develop alcoholism. Both genetic and environmental factors influence the development of alcoholism in COAs.

COAs perceptions of their parents drinking habits influence their own future drinking patterns and are developed at an early age. Alcohol related expectancies are correlated with parental alcoholism and alcohol abuse among their offspring. Problem solving discussions in families with an alcoholic parent contained more negative family interactions than in families with non-alcoholics parents. Several factors related to parental alcoholism influence COA substance abuse including stress, negative affect and decreased parental monitoring. Impaired parental monitoring and negative affect correlate with COAs associating with peers that support drug use.

After drinking alcohol, sons of alcoholics experience more of the physiological changes associated with pleasurable effects compared with sons of non-alcoholics, although only immediately after drinking.

Compared with non-alcoholic families, alcoholic families demonstrate poorer problem-solving abilities, both among the parents and within the family as a whole. These communication problems many contribute to the escalation of conflicts in alcoholic families. COAs are more likely than non-COAs to be aggressive, impulsive, and engage in disruptive and sensation seeking behaviours.

### **Marital Relationships**

Alcoholism usually has strong negative effects on marital relationships. Separated and divorced men and women were three times as likely as married men and women to say they had been married to an alcoholic or problem drinker. Almost two-thirds of separated and divorced women, and almost half of separated or divorced men under age 46 have been exposed to alcoholism in the family at some time. Exposure was higher among women (46.2 percent) than among men (38.9 percent) and declined with age. Exposure to alcoholism in the family was strongly related to marital status, independent of age: 55.5 percent of separated or divorced adults had been exposed to alcoholism in some family member, compared with 43.5 percent of married, 38.5 percent of never married, and 35.5 percent of widowed persons. Nearly 38 percent of separated or divorced women had been married to an alcoholic, but only about 12 percent of currently married women were married to an alcoholic.

## **CHILDREN**

### **Prevalence of Abuse**

Over one million children yearly are confirmed as victims of child abuse and neglect by state child protective service agencies. Substance abuse is one

of the two largest problems effecting families in the United States, being a factor in nearly four-fifths of reported cases. Alcoholism is more prevalent among child abusing parents. Alcoholism is more strongly correlated to child abuse than depression and other disorders.

### **Correlates**

Children of alcoholics exhibit symptoms of depression and anxiety more than children of non-alcoholics. COAs have lower self-esteem than non-COAs from childhood through young adulthood. Children of alcoholics show more symptoms of anxiety, depression, and externalizing behaviour disorders than non-COAs. Some of these symptoms include crying, lack of friends, fear of going to school, nightmares, perfectionism, hoarding, and excessive self-consciousness.

Children of alcoholics score lower on tests measuring cognitive and verbal skills than non-COAs. Lacking requisite skills to express themselves can impact academic performance, relationships, and job interviews.

The lack of these skills do, however, imply that COAs are intellectually impaired. COAs are also shown to have difficulty with abstraction and conceptual reasoning, both of which play an important role in problem-solving academically and otherwise.

### **Treatment**

*Suggested practices to mitigate the impact of parental alcoholism on the development of their children include:*

- Maintaining healthy family traditions and practices, such as vacations, mealtimes, and holidays
- Encouraging COAs to develop consistent, stable, relationships with significant others outside of the family.

### **Pregnancy**

Prenatal alcohol-related effects can occur with moderate levels of alcohol consumption by non-alcoholic and alcoholic women. Cognitive performance in infants and children is not as impacted by mothers who stopped alcohol consumption early in pregnancy, even if it was resumed after giving birth.

An analysis of six year-olds with alcohol exposure during the second-trimester of pregnancy showed lower academic performance and problems with reading, spelling, and mathematical skills. Six percent of offspring from alcoholic mothers have Fetal Alcohol Syndrome (FAS). The risk a offspring born to an alcoholic mothers having FAS increases from six to 70 percent if the mother's previous child had FAS.

People diagnosed with FAS have IQs ranging from 20-105 (with a mean of 68), and demonstrate poor concentration and attention skills. FAS causes growth deficits, morphological abnormalities, mental retardation, and behavioural difficulties. Among adolescents and adults, those with FAS are more likely to

have mental health problems, dropping out or be suspended from schools, problems with the law, require assisted living as an adult, and problems with maintaining employment.

### **Family Therapy**

Family therapy, also referred to as couple and family therapy and family systems therapy, is a branch of psychotherapy that works with families and couples in intimate relationships to nurture change and development. It tends to view change in terms of the systems of interaction between family members. It emphasizes family relationships as an important factor in psychological health. What the different schools of family therapy have in common is a belief that, regardless of the origin of the problem, and regardless of whether the clients consider it an “individual” or “family” issue, involving families in solutions is often beneficial. This involvement of families is commonly accomplished by their direct participation in the therapy session. The skills of the family therapist thus include the ability to influence conversations in a way that catalyzes the strengths, wisdom, and support of the wider system.

In the field’s early years, many clinicians defined the family in a narrow, traditional manner usually including parents and children. As the field has evolved, the concept of the family is more commonly defined in terms of strongly supportive, long-term roles and relationships between people who may or may not be related by blood.

Family therapy has been used effectively in the full range of human dilemmas; there is no category of relationship or psychological problem that has not been addressed with this approach.

### **History and Theoretical Frameworks**

Formal interventions with families to help individuals and families experiencing various kinds of problems have been a part of many cultures, probably throughout history. These interventions have sometimes involved formal procedures or rituals, and often included the extended family as well as non-kin members of the community. Following the emergence of specialization in various societies, these interventions were often conducted by particular members of a community – for example, a chief, priest, physician, and so on – usually as an ancillary function.

*Family therapy* as a distinct professional practice within Western cultures can be argued to have had its origins in the social work movements of the 19th century in England and the United States. As a branch of psychotherapy, its roots can be traced somewhat later to the early 20th century with the emergence of the *child guidance* movement and *marriage counselling*. The formal development of family therapy dates to the 1940s and early 1950s with the founding in 1942 of the *American Association of Marriage Counsellors* (the precursor of the AAMFT), and through the work of various independent clinicians and groups-in England (John Bowlby at the Tavistock Clinic), the

US (John Bell, Nathan Ackerman, Christian Midelfort, Theodore Lidz, Lyman Wynne, Murray Bowen, Carl Whitaker, Virginia Satir), and Hungary (D.L.P. Liebermann)-who began seeing family members together for observation or therapy sessions. There was initially a strong influence from psychoanalysis (most of the early founders of the field had psychoanalytic backgrounds) and social psychiatry, and later from learning theory and behaviour therapy-and significantly, these clinicians began to articulate various theories about the nature and functioning of the family as an entity that was more than a mere aggregation of individuals.

The movement received an important boost in the mid-1950s through the work of anthropologist Gregory Bateson and colleagues – Jay Haley, Donald D. Jackson, John Weakland, William Fry, and later, Virginia Satir, Paul Watzlawick and others – at Palo Alto in the US, who introduced ideas from cybernetics and general systems theory into social psychology and psychotherapy, focusing in particular on the role of communication. This approach eschewed the traditional focus on individual psychology and historical factors – that involve so-called *linear causation* and *content* – and emphasized instead *feedback* and *homeostatic* mechanisms and “rules” in *here-and-now interactions* – so-called *circular causation* and *process* – that were thought to maintain or exacerbate problems, whatever the original cause(s). This group was also influenced significantly by the work of US psychiatrist, hypnotherapist, and brief therapist, Milton H. Erickson-especially his innovative use of strategies for change, such as *paradoxical directives*. The members of the Bateson Project (like the founders of a number of other schools of family therapy, including Carl Whitaker, Murray Bowen, and Ivan Böszörményi-Nagy) had a particular interest in the possible psychosocial causes and treatment of schizophrenia, especially in terms of the putative “meaning” and “function” of signs and symptoms within the family system. The research of psychiatrists and psychoanalysts Lyman Wynne and Theodore Lidz on *communication deviance* and *roles* (e.g., *pseudo-mutuality*, *pseudo-hostility*, *schism* and *skew*) in families of schizophrenics also became influential with *systems-communications*-oriented theorists and therapists. A related theme, applying to dysfunction and psychopathology more generally, was that of the “identified patient” or “*presenting problem*” as a manifestation of or surrogate for the family’s, or even society’s, problems.

By the mid-1960s a number of distinct schools of family therapy had emerged. From those groups that were most strongly influenced by cybernetics and systems theory, there came strategic therapy, and slightly later, Salvador Minuchin’s *Structural Family Therapy* and the Milan systems model. Partly in reaction to some aspects of these *systemic* models, came the *experiential* approaches of Virginia Satir and Carl Whitaker, which downplayed theoretical constructs, and emphasized subjective experience and unexpressed feelings (including the subconscious), authentic communication, spontaneity, creativity, total therapist engagement, and often included the extended family. Concurrently and somewhat

independently, there emerged the various *intergenerational* therapies of Murray Bowen, Ivan Böszörményi-Nagy, James Framo, and Norman Paul, which present different theories about the intergenerational transmission of health and dysfunction, but which all deal usually with at least three generations of a family (in person or conceptually), either directly in therapy sessions, or via “homework”, “journeys home”, etc. *Psychodynamic* family therapy—which, more than any other school of family therapy, deals directly with individual psychology and the unconscious in the context of current relationships—continued to develop through a number of groups that were influenced by the ideas and methods of Nathan Ackerman, and also by the *British School* of Object Relations and John Bowlby’s work on attachment. *Multiple-family group therapy*, a precursor of *psychoeducational family intervention*, emerged, in part, as a pragmatic alternative form of intervention—especially as an adjunct to the treatment of serious mental disorders with a significant biological basis, such as schizophrenia—and represented something of a conceptual challenge to some of the “*systemic*” (and thus potentially “family-blaming”) paradigms of pathogenesis that were implicit in many of the dominant models of family therapy. The late-1960s and early-1970s saw the development of *network therapy* (which bears some resemblance to traditional practices such as Ho’oponopono) by Ross Speck and Carolyn Attneave, and the emergence of *behavioural marital therapy* (renamed *behavioural couple therapy* in the 1990s) and *behavioural family therapy* as models in their own right.

By the late-1970s the weight of clinical experience—especially in relation to the treatment of serious mental disorders—had led to some revision of a number of the original models and a moderation of some of the earlier stridency and theoretical purism. There were the beginnings of a general softening of the strict demarcations between schools, with moves towards rapprochement, integration, and eclecticism – although there was, nevertheless, some hardening of positions within some schools. These trends were reflected in and influenced by lively debates within the field and critiques from various sources, including feminism and post-modernism, that reflected in part the cultural and political tenor of the times, and which foreshadowed the emergence (in the 1980s and 1990s) of the various “*post-systems*” constructivist and social constructionist approaches. While there was still debate within the field about whether, or to what degree, the *systemic-constructivist* and *medical-biological* paradigms were necessarily antithetical to each other there was a growing willingness and tendency on the part of family therapists to work in multi-modal clinical partnerships with other members of the helping and medical professions.

From the mid-1980s to the present the field has been marked by a diversity of approaches that partly reflect the original schools, but which also draw on other theories and methods from individual psychotherapy and elsewhere – these approaches and sources include: brief therapy, structural therapy, constructivist approaches (eg, Milan systems, *post-Milan/collaborative/conversational, reflective*), solution-focused therapy, narrative therapy, a range

of cognitive and behavioural approaches, psychodynamic and object relations approaches, attachment and Emotionally Focused Therapy, *intergenerational* approaches, *network therapy*, and *multisystemic therapy* (MST). Multicultural, intercultural, and integrative approaches are being developed. Many practitioners claim to be “eclectic,” using techniques from several areas, depending upon their own inclinations and/or the needs of the client(s), and there is a growing movement towards a single “generic” family therapy that seeks to incorporate the best of the accumulated knowledge in the field and which can be adapted to many different contexts; however, there are still a significant number of therapists who adhere more or less strictly to a particular, or limited number of, approach(es).

Ideas and methods from family therapy have been influential in psychotherapy generally: a survey of over 2,500 US therapists in 2006 revealed that of the ten most influential therapists of the previous quarter-century, three were prominent family therapists, and the marital and family systems model was the second most utilized model after cognitive behavioural therapy.

### Techniques

*Family therapy uses a range of counselling and other techniques including:*

- Communication theory
- Psychoeducation
- Psychotherapy
- Relationship education
- Systemic coaching
- Systems theory
- Reality therapy.

The number of sessions depends on the situation, but the average is 5-20 sessions. A family therapist usually meets several members of the family at the same time. This has the advantage of making differences between the ways family members perceive mutual relations as well as interaction patterns in the session apparent both for the therapist and the family. These patterns frequently mirror habitual interaction patterns at home, even though the therapist is now incorporated into the family system. Therapy interventions usually focus on relationship patterns rather than on analyzing impulses of the unconscious mind or early childhood trauma of individuals as a Freudian therapist would do—although some schools of family therapy, for example *psychodynamic* and *intergenerational*, do consider such individual and historical factors (thus embracing both *linear* and *circular* causation) and they may use instruments such as the genogram to help to elucidate the patterns of relationship across generations.

The distinctive feature of family therapy is its perspective and analytical framework rather than the number of people present at a therapy session. Specifically, family therapists are relational therapists: They are generally more interested in what goes on *between* individuals rather than *within* one or more

individuals, although some family therapists — in particular those who identify as psychodynamic, object relations, *intergenerational*, EFT, or *experiential* family therapists — tend to be as interested in individuals as in the *systems* those individuals and their relationships constitute.

Depending on the conflicts at issue and the progress of therapy to date, a therapist may focus on analyzing specific previous instances of conflict, as by reviewing a past incident and suggesting alternative ways family members might have responded to one another during it, or instead proceed directly to addressing the sources of conflict at a more abstract level, as by pointing out patterns of interaction that the family might have not noticed.

Family therapists tend to be more interested in the maintenance and/or solving of problems rather than in trying to identify a single cause. Some families may perceive cause-effect analyses as attempts to allocate blame to one or more individuals, with the effect that for many families a focus on causation is of little or no clinical utility.

## **SOCIAL CHANGE IN FAMILY LAW**

At the conference, it was mentioned that in a contemporary Chinese university a faculty member's divorce might well come under discussion at a faculty meeting. In India, by way of contrast, a faculty promotion may very possibly be disputed in the courts. Any Indian university, especially in the north, is likely to have several lawsuits going among members of the faculty. The readiness of Indians to take their disputes to governmental tribunals suggests that they have become, in Professor Rheinstein's term, "juridicalized" to a high degree—much more so, it appears, than is the case in China. Indians seem to have more need or willingness to resort to courts to intervene in disputes and forward their interests.

In the absence of comparative data on litigation, we may take as a rough measure of this propensity the lawyer/population ratio which is much higher than is found in Southeast and Eastern Asia. A comparison of India's 183 lawyers per million population with 70 in Japan, 58 in Taiwan, 35 in Malaysia/Singapore, and 17 in Indonesia provides some idea of the prevalence of lawyers in India. With few exceptions, they all function as "barristers" (even though there is no formal distinction of solicitors and barristers). Lawyers and clients concur in visualizing the lawyer as a man whose principal function is to argue in court. The Indian lawyer is literally to be found at the court and, typically, it is only when the client is ready to litigate that he goes to the court to engage a lawyer. In Myron Cohen's description of the ad hoc Ch'ing councils, I was struck by the definiteness of their mandate and by the clarity and thrust of their work. Indians, too, traditionally took (and take) matters to nongovernmental tribunals—they might be caste or village tribunals or other kinds—but it is my impression that the outcome was typically much more ambiguous. It was very difficult to obtain a decision that had any finality and, if you got it, the tribunal would not necessarily exert itself to enforce its decision.

Why the outcome of Indian tribunals, as compared to the Chinese, has this diffuse character can only be conjectured. I suspect it has something to do with the extreme fragmentation of Indian society, the breakdown into many, many small caste groups, cross-cut by village, sect, guild, and other groupings, each of which constitutes its own tribunals. This fragmentation is given ideological support by the traditional Indian notion that every group-caste, village, guild, or whatever—should be relatively autonomous, both in making its own rules and in applying these rules to itself. What happened, I conjecture, is that the groups became so small that they became unable in many cases to control powerful persons and factions within themselves. They were unable to invoke fixed legal principles, apply them to the case, and make their decision stick.

The decisions that they were capable of making were often little more than reflections of the current power position of the parties. When the British administration provided an opportunity to take disputes to the Government's courts, this diffuseness and indefiniteness of the unofficial tribunals led Indians to use the courts to a much greater extent than in other Asian areas where the British provided similar judicial institutions. The courts offered "more bang for your buck": a clear "all or none" decision; the matter settled with finality; and, best of all enforcement by outside authority. It was possible to have an outcome with real impact and independent of local opinion and local configurations of power. In resorting to the courts, Indians subjected themselves to the rules that prevailed in these courts, and these rules typically were at some variance with the attitudes and understandings of the locality. This gap between the norms of the courts and those of the population occurred, not only in the general criminal, civil and commercial law, where indigenous law was replaced by that of British origin or inspiration, but also in the area of family law and religious endowments where the British attempted to administer Hindu and Mus im law.

The British retained the system of personal law in matters of family law (marriage, divorce, adoption, guardianship, and so on), inheritance and succession, caste, and religious endowments. In these fields, each community had its own laws, but they were applied in the government's courts (unlike, *e.g.*, the Ottoman millet system)-and in a spirit far removed from that in indigenous tribunals. It was an established rule that custom-it could be the custom of a locality, caste, or even of a family-overrode the written law. However, custom was difficult to prove, and the attempt of the courts to deal with all Indians as if their affairs were habitually regulated by the texts undoubtedly had the result of imposing on many Hindus rules which were at variance with their customary law.

Again, the administration of Hindu law by a hierarchy of courts staffed by judges trained in the common law and interpreting the texts according to common law techniques introduced considerable changes in Hindu law. But such inadvertent change aside, the British were reluctant to institute any large scale innovations in the personal law of the Hindus. Legislative innovation during the British period can roughly be divided into three stages.

First, the British somewhat hesitantly introduced some reforms that seemed demanded by basic humanitarianism; female infanticide, immolation of widows, and slavery were all abolished in the first half of the nineteenth century. Second, there was occasional legislation protecting converts and regarding wills, remarriage of widows, and civil marriage. These measures were only permissive, designed to provide an escape for those who wished to avoid the stringencies of Hindu law; they did not alter the law for those who were prepared to adhere to it. Only in the last few decades of British rule did the legislature undertake to alter Hindu law as it applied to everyone. This third stage saw restraints on child marriage, slight changes in the rules of inheritance to favour women, the improvement of the position of widows, and the Gains of Learning Act—which provided that the fruits of an education financed by joint family funds accrued to the individual and not to the family.

These pre-independence reforms marked the successful assertion of legislative power over the Hindu law and modified it in important respects, but they left its basic structure unchanged. Until nearly the end of British rule proposals that the legislature codify and reform the entire system of Hindu law, which was conceded to be a most confusing and uncertain body of law, were rejected on the ground that the legislature had no mandate to undertake such drastic changes.

# 4

## Legal Framework

The laws and legislations do not seem to be adequate or comprehensive in dealing with the various forms of trafficking and often frees the culprit and penalises the victim. India is a signatory to several international covenants, conventions and treaties dealing with exploitation of women and children. The most important amongst these, in the case of children is the UN Convention on the Rights of the Child, 1989, ratified by India in 1992.

The CRC provides a platform for NGOs to bring their child rights concerns to notice in the form of alternate reports that can be sent to the UN Committee on the Rights of the Child for consideration. Besides, it also clearly provides for the State Parties to consult NGOs in the preparation of the Country Report to be presented before the Committee so that issues concerning children get adequately addressed.

As regards the national scene, it must be pointed out that we have a Constitution that is applauded all over the world, but, while Article 51 A in the Constitution of India makes it a fundamental obligation on all citizens to renounce practices derogatory to the dignity of women, it does not lay down the same in the case of children. Neither has one known of any trafficking case coming up before the court of law on grounds of violation of the fundamental duty laid down in the Constitution. As women and children are considered a weaker part of the society, the Constitution, following the principle of protective discrimination, allows for making and implementing laws specific to them, for their protection and well being.

The Immoral Traffic Act of 1956 is in line with this principle. Unfortunately, this Act deals only with trafficking of girls and women for prostitution. It does

not cover trafficking of boys for sexual purposes. As the laws stand, the only legal provision that can be invoked to combat trafficking of boys is Section 377 of the IPC, which deals with "unnatural offences", and covers sodomy.

The Karnataka Devadasi Prohibition Act deals with trafficking of girls for religious purposes. Some of the other laws relating to trafficking are the Juvenile Justice Act, 1986, a number of Begging Prevention laws *e.g.*, the Bombay Begging Prevention Act, the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1989, the Bonded Labour Act and so on. Besides the criminal law of India *i.e.*, the Indian Penal Code, the Criminal Procedure Code and the Indian Evidence Act provide for various forms of trafficking. However, there are enough loopholes in the laws and the legal system that result in the crime being perpetuated without fear.

## STATE CHILD LABOUR LAWS

Some states and localities have enacted their own child labour laws. For example, some states are more restrictive on the hours a child may work, include more jobs as hazardous, or require children to have permits to work. If an employer is located in a state or locality with its own child labour laws, the employer must comply with both state, local, and federal child labour laws. If a state and locality do not have their own child labour laws, employers need only comply with federal child labour laws.

## CHILD LABOUR DETERRENCE ACT

The **Child Labour Deterrence Act** was created by Senator Tom Harkin (D-IA) and ratified by Congress in April of 1995. The intention behind the act was to combat abusive child labour situations globally. The text of the act reads as follows: "to prohibit the importation of goods produced abroad with child labour and for other purposes."-S.706 104th Congress, 1995.

The bill includes civil and criminal punishments for anyone or business that defies the act. Senator Tom Harkin is involved in several other anti-child labour and sweatshop movements.

*Child Camel Jockeys:* Each year, children as young as four are trafficked from countries such as Bangladesh, Pakistan, and Sudan for use as jockeys in the Persian Gulf States' camel racing industry. While official policies are in place requiring a minimum weight of 45 kg (100 lb) of the jockey, these restrictions are ignored by most in the racing industry because those who own the camels are also the heads of states.

Child camel jockeys are often sexually and physically abused; most are physically and mentally stunted, as they are deliberately starved to prevent weight gain. According to a documentary by the American television channel HBO and the Ansar Burney Trust, many of the children are only fed two biscuits a day with water. Others are forced to wear metal helmets in the scorching heat of the desert so they bleed through their noses and lose weight that way.

Forced to work up to 18 hours a day, those children who fall asleep are punished with electric shocks while those who disobey orders are tied in chains and beaten. Each year, many are seriously injured and several are stampeded to death by camels. They are provided no medical treatment whatsoever and those who die are buried in the desert in unmarked graves. They are not allowed to leave their lives of misery and those who try to escape are killed. According to the Ansar Burney Trust, in one such incident a child camel jockey was killed when his owner ran over him in his truck. The child jockeys live in camps (called ousbah) encircled with barbed wire near the racetracks. Because the children are isolated from their families and find themselves in an unfamiliar culture, they are dependent upon their captors for survival.

The U.S., Government estimates there are thousands of trafficking victims being exploited for use as camel jockeys throughout the region. Many are unable to identify their parents or home communities in South Asia or Sudan, particularly after prolonged servitude in the Middle East. Unlike other forms of trafficking that usually involve adults or older children, child camel jockey trafficking presents enormous challenges to source country governments and non-governmental organizations (NGOs) seeking to return rescued children to their parents and original communities.

Hundreds of children have been rescued from camel farms in Oman, Qatar and UAE by the Ansar Burney Trust and taken back to their original homes or kept in shelter homes.

However, they report that in many instances the children rescued were not just abducted or trafficked victims—they were those who had been sold away by their own parents in exchange for money or a job abroad. If they were returned, the children would again be sold for the same purposes. Other children who had been abducted from their homes could not be returned because they were disabled, did not speak their native languages, or did not know how to live outside the camel farms. It is estimated that there were as many as 20,000 children working as camel jockeys in the Middle East—up to 5,000 of them working in the UAE alone. The vast majority of whom were brought from third world countries of South Asia and Africa.

After sustained pressure by human rights groups, Qatar and the United Arab Emirates finally agreed in early 2005 to abandon child jockeys — robot jockeys were used instead. At a cost of about \$5,500 and a weight of about 26 kg, the robots are remote-controlled by camel trainers who follow the camels in cars. The robots can use whips and can also shout to the camels the robots must be sprayed with a special “perfume” to allow the camel to accept them as real. Oman followed suit in May 2005.

A shelter home was established by the UAE in Abu Dhabi under the control of Ansar Burney Trust where the rescued children were to receive an education, good food, medical facilities and were to be taught how to live outside a camel farm. As of the end of 2005, it is estimated that as many as 800 children have been sent back to their home countries.

However, Ansar Burney Trust was concerned that not all former child jockeys are accounted for, and that some might still be used in illicit night-time races. The Trust stated that children were still being used in some day time races and provided video evidence to prove that night-time races were taking place with children. In September 2006, ruler of Dubai and UAE Vice President Sheikh Mohammed bin Rashid Al Maktoum and his brother Hamdan bin Rashid Al Maktoum were served with a lawsuit in US district court in Miami, Florida for the enslavement of 30,000 boys in the past three decades for use as camel jockeys. The suit was filed on behalf of parents of six victims on the basis of international laws banning slavery and the use of child labour. The case was filed in Miami because the defendants own property in Florida, including a horse ranch.

### ***Child Domestic Work***

Of the more than 200 million children working in the world, a substantial percentage are believed to be child domestic workers. The International Labour Organisation also estimates that more girl-children under 16 are in domestic service than in any other category of work.

Child domestic labour refers to situations where children under 18 years old are engaged to perform domestic tasks in the home of a third party or employer in a context within which they are exploited.

Whenever such exploitation is extreme—for example where it involves trafficking, slavery-like situations such as debt bondage, or work that is hazardous and harmful to a child's physical or mental health—it is considered one of the worst forms of child labour in terms of the International Labour Organisation Worst Forms of Child Labour Convention, 1999 (No.182).

Children who are in domestic labour are often victims of exploitation, sometimes of several different kinds. They are exploited economically by being forced to work long hours with no time off, low or no wages. They are exploited because they generally have no social or legal protection, and suffer harsh working conditions.

They often are deprived of the rights due to them as children in international law, such as the right to play, to health, to freedom from harassment of the master who has given children work, visits to or from their family, association with friends, decent accommodation, and protection from physical and mental abuse.

The above Convention requires of states that have ratified it to take steps to eliminated as a matter of urgency labour (including child domestic labour) that falls within the definition of worst forms of child labour.

## **CHILD LABOUR STUDY**

According to the Indian census of 1991, there are 11.28 million working children under the age of fourteen years in India. Over 85% of this child labour is in the country's rural areas, working in agricultural activities such as fanning,

livestock rearing, forestry and fisheries. This labour is outside the formal sector, and outside industry. Moreover, nine out of ten working children work within a family setting. Working in family-based occupations, these children also develop skills in certain traditional crafts, thus augmenting the human capital formation of India's developing economy.

India has all along followed a proactive policy in the matter of tackling the problem of child labour. India has always stood for constitutional, statutory and development measures required to eliminate child labour. The Indian Constitution has consciously incorporated provisions to secure compulsory universal elementary education as well as labour protection for children. Labour Commissions in India have gone into the problems of child labour and have made extensive recommendations.

In India, the post-independence era has seen an unequivocal commitment of the government to the cause of children through constitutional provisions, legislation, policies and programmes.

The Constitution of India in Article 39 of the Directive Principles of State Policy pledges that "the State shall, in particular, direct its policy towards securing ... that the health and strength of workers, men and women, and the tender age of children are not abused, and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength, that children are given opportunities and facilities to develop in a healthy manner, and in conditions of freedom and dignity, and that childhood and youth are protected against exploitation, and against moral and material abandonment."

As a follow-up of this commitment, and being a party to the UN Declaration on the Rights of the Child 1959, India adopted the National Policy on Children in 1974. The policy reaffirmed the constitutional provisions and stated that "it shall be the policy of the State to provide adequate services to children, both before and after birth and through the period of growth to ensure their full physical, mental and social development. The State shall progressively increase the scope of such services so that within a reasonable time all children in the country enjoy optimum conditions for their balanced growth."

India has also ratified on December 2, 1992, the Convention on the Rights of the Child which came into force in 1990. This ratification implies that India will ensure wide awareness about issues relating to children among government agencies, implementing agencies, the media, the judiciary, the public and children themselves. The Government's endeavor is to meet the goals of the Convention and to amend all legislation, policies and schemes to meet the standards set in the Convention.

India is also a signatory to the World Declaration on the Survival, Protection and Development of Children. In pursuance of the commitment made at the World Summit, the Department of Women and Child Development under the Ministry of Human Resource Development has formulated a National Plan of Action for Children. Most of the recommendations of the World Summit Action Plan are reflected in India's National Plan of Action.

India's policy on child labour has evolved over the years against this backdrop and its present regime of laws relating to child labour has a pragmatic foundation, consistent with the International Labour Conference resolution of 1979. This ILO resolution calls for a combination of prohibitory measures and measures for humanizing child labour, wherever such labour cannot be eliminated altogether in the short turn. It should also be mentioned that India is second to none in its commitment to and in the upholding of the core international labour standards such as freedom of association, collective bargaining, non-discrimination, *etc.* India is signatory to a record 36 ILO labour conventions.

The Child Labour (Prohibition & Regulation) Act, 1986 of India prohibits the employment of children below the age of 14 in factories, mines and in other forms of hazardous employment, and regulates the working conditions of children in other employment. India has announced a National Policy of Child Labour as early as 1987, and was probably the first among the developing countries to have such a progressive policy. Through a notification dated May 26, 1993, the working conditions of children have been regulated in all employment not prohibited under the Child Labour (Prohibition and Regulation) Act. Further, following up on a preliminary notification issued on October 5, 1993, the government has also prohibited employment of children in occupations such as abattoirs/slaughter houses, printing, cashew de-scaling and processing, and soldering.

The announcement by the Prime Minister on India's Independence Day in 1994 that child labour would be abolished in hazardous occupations by the year 2000, reflects a national consensus and commitment. After this declaration, several far-reaching initiatives have been taken by the Government to effectively tackle the problem.

With the setting up of the National Authority for the Elimination of Child Labour (NAECL) under the Chairmanship of the Labour Minister, Government of India, a convergence of services and schemes for eliminating child labour is being achieved. The NAECL, comprising representatives from the Central Ministries, meets the need for an umbrella organization to coordinate the efforts of the different arms of the Government for the progressive elimination of child labour.

The child labour programme in India is national in character and involves the Government of India, the governments of the States and the Union Territories of India, as well as such tripartite fora as the Indian Labour Conference and the Standing Labour Committee. A massive national and regional media campaign has been launched to sensitize society against child labour. Funds have been allocated to districts identified as child-labour endemic for surveys to identify child labour, and for awareness generation programmes among employers, parents and the working children themselves. This paper covers the significant aspects of India's constitutional and legislative provisions relating to child labour, the enforcement of these provisions, and programmes being undertaken nation-wide to eliminate child labour.

India's first act on the subject was the enactment of the Children (Pledging of Labour) Act of February 1933. This was followed by the Employment of Children Act in 1938. Subsequently, twelve additional legislations were passed that progressively extended legal protection to children. Provisions relating to child labour under various enactment such as the Factories Act, the Mines Act, the Plantation Labour Act, *etc.* have concentrated on aspects such as reducing working hours, increasing minimum wage and prohibiting employment of children in occupations and processes detrimental to their health and development.

The Child Labour (Prohibition & Regulation) Act 1986 of India was the culmination of efforts and ideas that emerged from the deliberations and recommendations of various committees on child labour. Significant among them are the National Commission on Labour (1966-69), Gurupadaswamy Committee on Child Labour (1979), and the Sanat Mehta Committee (1984).

The Act aims to prohibit the entry of children into hazardous occupations and to regulate the services of children in non-hazardous occupations.

*The Act,, in particular:*

- Bans the employment of children, *i.e.*, those who have not completed their 14th year, in specified occupations and processes (listed in the Schedule to the Act, attached at Annexure D);
- Lays down a procedure to make additions to the schedule of banned occupations or processes;
- Regulates the working conditions of children in occupations where they are not prohibited from working;
- Lays down penalties for employment of children in violation of the provisions of this Act,, and other Acts which forbid the employment of children;
- Brings uniformity in the definition of the "Child" in related laws.

## **OCCUPATIONAL DISTRIBUTION OF CHILD LABOUR**

There are some limitations and difficulties in getting an accurate picture of the number of working children. There are variations in estimated figures given by various organisations and agencies due to different notions and conceptions adopted in estimation and surveys. Other problems encountered in identifying child workers are the different patterns of employment and wages, duration of work, method of operations, *etc.* In the unorganised sector, almost all child workers do labour. As per the 1981 census 13.6 million children under 15 years of age (1.2 million as main workers and 2.4 million as marginal workers) were enumerated in various economic activities both in rural and urban areas.

The National Sample Survey Organisation conducts a periodic survey on employment and unemployment. According to its estimate 16.62 million children were found working as principal status workers and 3.40 million as subsidiary

status workers during 32nd round (1977-78). Five years later in 38th round (1983), the number increased to 15.95 million children as principal status workers and 4.51 million as subsidiary workers. An All India Survey by ORG (1983) estimated that there are 44 million child workers in India. In the 43 round of NSSO it is observed that there was a decrease in the number of child workers and work participation (1977-78 to 1988). There was, however, a slight decrease in principal status workers, but a sharp increase in subsidiary status workers. The decline in number can be attributed to efforts during this period in school enrolment.

Census divides the working children and workers in nine major industrial categories. Agricultural and allied activities account for almost 85 per cent of the child workers in both census. Next to agriculture, child workers were more concentrated in manufacturing and in plantation industry. There has been a substantial increase in the proportion of workers in the manufacturing, processing, servicing and repairs industry with source decline in the other services sector. The services sector accounted for a substantial share of workers in urban areas since it is in this sector that children are employed in large numbers as household servants. Whatever be the magnitude of child labour, engagement of children either on part time or full time in any occupation means denial of childhood to them. Child labour limits the opportunities of education.

## **NATURE OF THE PROBLEM**

Child labour has evoked great concern amongst social Scientists who link future of the Country with the present of the child. Child Labour therefore has a direct bearing on the future of the country. "Child labour as distinguished from work experience has mostly negative attribute. It can now be asserted on scientific grounds that work as a direct fulfilment of children's natural abilities and creative potentialities is also conducive to his healthy growth, but work when taken up as a means for the fulfilment of some other needs becomes enslaving in character and deleterious in its impact. Labour is a work of later type irrespective of the degree of strain or exploitation involved in it. The basic attribute of work are purpose, plan and freedom, when they are conspicuously absent, work becomes labour". Labour in case of Children is basically harmful because the energy which should have been expended on the nurturing of his latent powers is utilized for purposes of bare survival. Child labour assumes the character of social problem when it hinders child's growth, development opportunity to study, and attaining his full-blown manhood. "When the business of wage earning or of participation in self or family support conflicts directly or indirectly with the business of growth and education, the result is child labour. The function of work in childhood is primarily developmental and not economic. Children's work then as a social good is the direct anti-thesis of child labour as social evil". Child labour, when creates hindrance in the physical development, when hours of work are stretched to the extent taking

away leisure, interfere with education and rest, when his wages are not commensurate with quantum of work, and when the occupation he is engaged endangers his health and safety the labour becomes evil.

## LEGISLATION

Normatively, child labour is recognised as a social evil all the world over. There is the *Declaration of the Rights of the Child* unanimously adopted by the General Assembly of the United Nations on Nov.. 20, 1959. "Mankind owes to the child the best it has to give", the document said.

The Declaration sets down: "The child by reasons of his physical and mental immaturity needs special safeguard and care including appropriate legal protection"... "the child shall enjoy the benefits of social security"... "the child shall enjoy special protection and shall be given opportunities and facilities by law and by other means, to enable him to develop.... in a healthy and normal manner and in conditions of freedom and dignity. In the enactments of laws for this purposes, the best interests of the child shall be the paramount consideration"... the General Assembly calls upon local authorities and national governments to recognise these rights and strive for their observance".

.... "*All children without any exception whatsoever shall be entitled to these rights, without distinction or discrimination on account of national or social origin, property, birth or other status, whether of himself or of his family*".

There are also a series of ILO conventions and Recommendations adopted by it since its inception in 1919 which clearly stipulates that children below 14 years of age must not be put to work.

The Constitution of India is also very particular about the interest of the child. Article 24 lays down: "No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment". Article 39 (e) states "that the health and strength of workers, man and women and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age and strength."

Article 39 (f) proclaims "that childhood and youth are protected against exploitation and against moral and material abandonment." There are large number of legislations relating to child labour. These legislations safeguard the interest of the children.

On 29-30 September 1990 the largest gathering of world leaders in history assembled at the United Nations to attend the world summit for children adopted a Declaration on the Survival, Protection and Development of children and a plan of action for implementing the Declaration in the 1990s. These well meaning measures and declarations notwithstanding, there is an estimated number of over 30 million Indians under the age of 14 who can be lumped under the disgraceful heading of "Child Labour", children whose lives are a flagrant violation not only of the U.N. Declaration but our Country's own constitution.

## CAUSES AND CONSEQUENCES

Child labour is the cause as well as consequence of low wages paid to adult workers in the unorganised sector; cause because its cheap and readily availability weakens their bargaining power and consequence because it is employed as a source of supplementing family income. Poverty and tradition conspire to bring about the widespread employment of children. Changes in standards of living such as a greater demand for goods beyond a mere family subsistence make the poverty line elastic and at times indefinite. Poverty and child labour beget each other and tend to perpetuate themselves in families and communities. In spite of the accessibility of schools, there is a great exodus from the schools into employment. School withdrawals are more common among lower caste and class groups. Scholastic retardation is more common and pronounced among children leaving school for work at the age of 14 years than among those who stay. The child workers come in hosts from poor families and poor schools. Most of them have never reached eighth grade and have no vocational training and no real knowledge of occupational conditions. The jobs which are available to them are, for the most part, juvenile and futureless. They are monotonous, repetitive action jobs with poor opportunities for advancement. They are also no mentally stimulating.

*Exploitation of child labour may take the following forms:*

- (i) Requiring the child to work beyond his physical capacity,
- (ii) Employing him in occupations which are hazardous to his health,
- (iii) Giving him unduly low wages,
- (iv) Depriving the child of the benefits of education, recreation and rest by making him work for long hours leaving little time for these activities.

However, the National Commission on Labour 1969, found that it was the feeling of sympathy rather than the desire to exploit which weighed with child employers. It was because of this feeling that ironically enough, the inspecting officers took a lenient view of breaches of the legal provision. Child employment was also justified on the ground that it trained his fingers in the required skill. Unless the fingers were thus trained at a very early age, their adaptation later would be difficult. Child labour is work performed by children that either endangers their health or safety, interfere with or prevents their education, or keeps them from play and other activity important to their development.

It refers both to an economic practice and to the attendant social evil. Child labour as an economic practice can be measured by quantitative standards in which nothing but an age line differentiates it from adult labour. But the extent of child labour as a social evil is determinable only by methods of qualitative analysis the jobs they are engaged in, dangers to which they are exposed, the desirable opportunities they are deprived of by reason of their being gainfully occupied.

Child labour exerts a deleterious effect on the health of the child. Long hours of work, late hours or night employment, continuous standing, sitting or use of a single set of muscles, emphasis on the finer neuromuscular

coordinations with attendant nervous strain, indoor confinement in noisy factories and dusty trades, carrying heavy loads under the arm or lifting heavy weights, pressure of speed in the performance of simple mechanical acts, contact with industrial poisons, exposure to inclement weather, crawling and bending all day along rows of onions or beet plants are unsuitable occupations and provide harmful conditions for the growing child peculiarly susceptible to certain deformations and diseases. Other studies disclose not causation but aggravation of defects and ailments because of child labour such as bad posture, flat feet, cardiac weakness and defective throat or lung affections and nervous difficulties.

The transition from school to industry for children under 14 aggravates the usual emotional stress and instability of the period which are induced by environmental forces as well as by physical and organic changes. It involves breaking away from childhood dependencies and is accompanied by diverse external and internal compulsions. The new occupation may involve difficulties of adjustments in a new and complex set of relationships. The child may have left school to escape rigidities and restraints only to find himself subjected to the rigours of his job for 8 to 10 hours a day instead of 5 or 6, with a boss, instead of teacher, and machine, instead of a lesson. Fatigue, especially cumulative fatigue, which lowers the psycho-physical tone and heightens suggestibility is an important factor in the development of neurotic tendencies among working children. Repression of the normal impulses, desires and powers of children at work causes them to 'burst out' excessively in their hours of freedom seeking to have a good time or to exalt their submerged and humiliated selves. Delinquency as a phase of adolescent exaggerated propulsion in the direction of amusement, adventure and recognition.

Child labour involves the use of labour at its point of lowest productivity and is, therefore, an inefficient utilization of labour power. Child worker represents premature expenditure rather than savings. Child labour deprives the child of education, training and skills which are the necessary prerequisites of earning power and economic development. The working child discovers, after the initial interest-wears off, that the job is leading him into a blind alley, towards a dead end. He, therefore, tends to shift about frequently from one job to another. Moreover, child labour turnover brings with it idleness between jobs. Child labour also adds to the cost of industrial accidents to which children are far more liable than their elders. To sum up, child labour is economically unsound, psychologically disastrous and physically as well as morally dangerous and harmful.

### **NEED FOR ELIMINATION**

As child labour is underpaid, unscrupulously exploited and highly detrimental to the normal *development* of the child, it is imperative that not only the evils of child labour but child labour itself, be eradicated with utmost urgency and concern. "Children are the most vulnerable group in any population and in

the need of the greatest social care. On account of their vulnerability and dependence, they can be exploited, ill-treated and directed into undesirable channels by anti-social elements in the community. The State has the duty of according proper care and protection to children at all times as it is on their physical and mental well-being that the future of the nation depends. With increased industrialisation and urbanisation, the state needs to be even more alert and vigilant in this respect.”

There is a school of thought which is lukewarm towards the elimination of child labour through strict enforcement of law. In its view, when poverty is so endemic and harrowing, the state is not morally justified to deprive a child of its right to eke out his bare existence through sweated labour. In his *Labour Problems in Indian Industry*, V.V. Giri says, “When interrogated, the workers admitted that the employment of children of such tender age in the most insanitary and unhealthy surroundings was deleterious to their health but said that they could not afford to send them to school and buy books, slates, *etc.* for them.

According to them, the earnings of these children, though meagre, helped to bridge the gap between bare subsistence and starvation. In many cases, the child workers were the sole bread winners supporting an aged or infirm parent. Many social workers too argue that denying children the right to work before it is possible to provide them with other facilities would be tantamount to punishing them into delinquency. Both these arguments, however, are flawed and facile in as much as they put the onus for ameliorating his conditions on the child himself. There is not much sense in blaming the poverty stricker parents either for their desperate struggle for survival in an iniquitous and exploitative social system, they must utilise the child as an instrument of income augmentation. Whatever be the social reality and its perception, the fact remains that child labour is an unmitigated social evil, repugnant to modern conscience and dysfunctional to human and economic development. In view of our contemporary economic situation, its total eradication through legislation or even planned development does not seem to be an immediate possibility. The only pragmatic alternative, therefore, is the dissipation of undesirable conditions and practices accompanying it. Even in this limited sense, we cannot hope to succeed unless we have scientifically understood the intricate nature of the problem and its ramifications.

## **INTERVENTIONS ON TRAFFICKING IN CHILDREN**

India pays attention to the problem of trafficking through its Department of Women and Child Development as well as through the National Commission for Women. Both the Centre and the States have undertaken some initiatives to combat child trafficking.

*The Central Government’s initiatives include:*

- In pursuance of the Supreme Court Directives of 1990, the Government of India constituted a Central Advisory Committee on Child Prostitution

in 1994, comprised of government and non-governmental agencies to examine the issue of sexual exploitation of children particularly girls and identify policy and programme interventions. A desk has been set up in the Department of Women and Child Development to implement the recommendations of the Advisory Committee.

- In 1997, under the directive of Supreme Court, a Committee on Prostitution, Child Prostitution and Children of Prostitutes headed by the Secretary of Department of Women and Child Development, was set up. This committee looks into the problems of prostitution and trafficking of women and children in order to evolve suitable programmes.
- The government under section 21 of ITPA has established Protective Homes for girls and women detained under this act. Currently there are 80 such homes, which provide custodial care, education, vocational training and rehabilitation including arranging marriages for the inmates.
- A network of short stay homes under the sponsorship of the Department of Women and Child Development and juvenile homes under the Juvenile Justice Act have been established for the protection and rehabilitation of victims. Medical services and counselling are made available at these homes.
- The Central Social Welfare Board provides financial assistance to NGOs to run development and care centres for the children of prostitutes.

Some of the States have undertaken their own initiatives in addition to interventions being designed at the Central level.

*These State Government initiatives are:*

- Like the Central Advisory Committee on Child Prostitution set up in 1994, the State governments have also set up State Advisory Committees. Advisory boards of social workers and NGOs in red light districts conduct regular raids and take measures for the protection and rehabilitation of trafficked victims.
- West Bengal, Maharashtra, Uttar Pradesh, Bihar as well as some of the southern states have their own stated policies on trafficking of women and children, especially into the sex industry. Certain interventions on the part of Uttar Pradesh, West Bengal and Bihar include cross border component as well, with Nepal and Bangladesh.
- The Government of Karnataka has initiated Devdasi rehabilitation and training schemes. A component of this includes moral education and social upliftment.
- The Government of Andhra Pradesh has sanctioned a project in 1997-98 for the rehabilitation of victims of prostitution who are HIV positive.
- The Government of Maharashtra has set up special juvenile homes with facilities for counselling, vocational training and health unit for child prostitutes infected with HIV.

- The Government of Madhya Pradesh has initiated a scheme called 'Jawali Yojna' in 1992-93 targeting the 'Bedias'. The programme emphasises primary education for girls at age six, middle school, and/or vocational education and training.
- State Governments have also demonstrated their active engagement on this issue by organising raids and rescuing 'victims' of prostitution.

## **NGO INITIATIVES AND OTHER PROGRAMMES**

More than 80 NGOs in 10 states of India work actively among sex workers, and play a major role in advocacy to influence policy reforms. There are other NGOs that are working on trafficking of children for labour, against children being used for pornography and sex tourism. They are involved in investigative research, documentation, advocacy, running health and education programmes and rehabilitation efforts. Most of the studies, data and activity in the field of anti-trafficking work in the country have focussed on trafficking into the sex industry. The National Human Rights Commission has also constituted a core group only to study the problem of child prostitution in Delhi and Karnataka in order to formulate preventive and rehabilitative strategies.

A lot of research and documentation as well as interventions are being undertaken on child labour, but not within the framework of trafficking. The efforts of these groups have led to some significant prosecutions and raising of awareness. In many cases such as in Goa, NGOs are working in co-operation with the government to tackle this issue. In 1997, the Directorate of Social Welfare set up an advisory committee in Goa and notified NGOs were issued identity cards by the police and included in the committee.

NGOs have played a significant role in rehabilitation of the victims of trafficking. However, the biggest challenge before them comes when they send the victims back to their family, who do not accept them due to the social stigma. As a result the victims often fall back into the trap of getting further victimised. NGOs realise that unless there are adequate "back-up" systems, simply rescuing the victims through "raids" by the police only drives the victims further into bondage. This is true also of child labour, but even more desperate for children in prostitution.

As yet there is no formal network of groups that work on the issue of child trafficking in its entirety. This is because the nature of the problem is so vast, disparate and multi-dimensional. Some of these groups who are working on labour issues are members of the various child labour campaigns that exist in the country. The United States Administration is leading key international efforts to stop trafficking of women and children around the world.

The State Department and the U.S., Agency for International Development recently launched four new programmes totaling nearly \$1.6 million to assist non-governmental organisations in implementing prevention efforts, providing assistance to victims, and improving coordination between law enforcement officials and local NGOs. USAID has approved a \$1.3 million grant to the

U.N. Development Fund for Women for a programme to combat trafficking of women and children in South Asia. This three-year grant is to undertake regional activities that directly complement the bilateral efforts of USAID mission programmes in India, Nepal, Bangladesh, and Sri Lanka.

The grant will assist grassroots, national, and regional NGOs in South Asia to expand their advocacy activities and strengthen their networks against trafficking.

Regional prevention efforts will increase public awareness about the realities of trafficking. The UNIFEM regional office in Delhi has initiated a regional campaign on trafficking of women and children. UNIFEM will assist NGOs to design and evaluate models of successful prevention efforts.

A South Asia Anti-Trafficking Information Centre is being established in the region to promote stronger collaboration among NGOs working on anti-trafficking projects and greater exchange of information on prevention and prosecution programmes. With UNIFEM taking the initiative, it is likely that there may be more networking that will emerge between the various groups because they are also creating a database on the various groups and agencies working on this issue.

The Bureau for International Narcotics and Law Enforcement Affairs at the U.S., Department of State has approved an aid for two Indian NGO projects to develop and conduct training programmes to improve antitrafficking coordination among law enforcement officials and local NGOs. Strengthened law enforcement and prosecution of traffickers is critical because the crime remains a high-profit, relatively low-risk transnational criminal enterprise.

Improving coordination among law enforcement officials and NGOs serving victims ensures that traffickers are detected and punished, and that victims are afforded the protection and assistance they need to rebuild their lives. This funding will support interactive training for border officers, police, prosecutors and judges in Calcutta and New Delhi. Police and judicial officials will participate in workshops designed to assist in building successful prosecutions of traffickers and abettors. Border officers will also receive in-depth instruction on recognising potential trafficking situations. The State Department is contributing \$200,000 to anti-trafficking activities specifically in India.

This additional funding is part of a \$1.5 million effort in the South Asia region using Economic Support Funds. Central to the strategy in India will be: strengthening enforcement of existing laws, supporting NGO shelters for victims of trafficking, and supporting rehabilitative programmes, including skills training and income-generating activities. But, to reiterate, these efforts do not touch all forms and purposes of child trafficking and are rather limited to child prostitution or trafficking of children for sexual exploitation.

## **GAPS IN THE EXISTING LEGAL FRAMEWORK**

The existing legal framework is limited to defining trafficking only in terms of trafficking for prostitution. There is no comprehensive legal framework to

cover trafficking of children for labour, begging, pornography, *etc.* In trafficking, it is not just the "moving" of children from one place to another, it is also breach of trust and it is the pain and agony and trauma suffered by the victim both while being trafficked and thereafter. We need a law that addresses all these concerns. All other forms of trafficking other than prostitution is currently covered under the Indian Penal Code. The IPC has no specific provision on trafficking. IPC provisions that can be used to deal with a case of trafficking are the provisions relating to kidnapping and abduction, procurement and importation of minor girls for illicit intercourse, selling and buying of girls for prostitution, slavery and forced labour contained in sections 360, 361, 362, 363 A, 365, 366, 366 A, 366 B, 367, 369, 370, 371, 372, 373 and 374. The IPC does not contain any provision for abetment to trafficking or attempt to trafficking in any form whatsoever. In the case of Freddy Peats, the paedophile caught in Goa, the police initially brought the case under Section 377 of IPC dealing with unnatural offences as well as sections 291 and 293 of the IPC dealing with dissemination of obscene pictures, especially of minors.

In such cases a bail cannot be granted, but Freddy Peats managed to get released on bail. After much struggle Peat was sentenced to life. There is a need for a comprehensive legislation on child trafficking, which goes beyond child prostitution and addresses other grave forms and purposes of trafficking of children.

## **POLICIES AND PLANS**

There is a need for a comprehensive policy on child trafficking. Unlike the National Policy on Child Labour, 1986, or the National Policies on Health, Education and Nutrition, there is no National Policy to Combat Child Trafficking or Trafficking as such.

India however, does have an old National Policy for Children of 1974, which has not been changed in all these years. This policy does not contain anything specifically for child victims of trafficking though it does talk about protection of children against neglect, cruelty and exploitation.

One of the major goals of the National of Action is Improved protection of children in especially difficult circumstances, which includes tackling the root causes leading to such situations.

This category of children is comprised of physically handicapped; mentally handicapped; drug addicts, victims of natural and man-made disasters, refugee children, street children, slum and migrant children, orphans and destitutes; children suffering from AIDS, children of parents with AIDS and AIDS orphans, children of prostitutes and child prostitutes and juvenile delinquents and child labour.

Although the National Plan of Action, 1992 deals with children in prostitution and children of prostitutes in its part concerning children in especially difficult circumstances, like most other government documents it does not recognise child trafficking *per se* as an issue for action.

## SALE OF CHILDREN

It is difficult to have a definition of “sale of children” since children are not, and should not be, legally and/or morally, the objects of trade or commerce. The reality of such sales, however, proves the need for a definition. The traditional concept of sale is that it pertains only to property - real, personal or incorporeal - and that the consideration is always price in money.

In order to gain a clearer perception of the meaning of “sale” in its commercial application, it may be useful to take a look at some definitions of “sale” in general.

Black’s Law Dictionary defines it as “a contract between two parties, called, respectively, the ‘seller’ and the ‘buyer’ by which the former, in consideration of the payment or promise of payment of a certain price in money, transfers to the latter the title and the possession of property”.

Mr. Vitit Muntarbhorn, the first Special Rapporteur on Sale of Children, Child Prostitution and Child Pornography, defined “sale of children” as “the transfer of a child from one party to another, for whatever purpose, in exchange for financial or other reward or compensation”. Ms. Ofelia Calcetas Santos, in her first report as the Special Rapporteur to the General Assembly defined “sale of children” as “the transfer of parental authority over and/or physical custody of a child to another on a more or less permanent basis in exchange for financial or other reward or consideration”.

She adopted this definition in order to exclude transactions that are strictly on a temporary basis, as when a child is “rented” out, in order to obviate confusion as to whether the transaction constitutes sale or pimping, for example. The confusion created by the lack of a clear definition of what constitutes the “sale” of a child has not helped the members of the working group on the Optional Protocol to the Convention on the Rights of the Child in dealing with the sale of children, child prostitution and child pornography. One position taken by the negotiators is that a “sale” must be for the purpose of sexual exploitation; the opposing view is that it is dangerous to limit the definition of the term in that way.

## MIGRATION

While it may seem that migration and trafficking are distinct and separate, they are at the same time integrally connected. The pressing need to migrate in search of work creates a fertile ground for traffickers and unscrupulous agents to exploit this need and profit from it.

In today’s world, trafficking cannot be seen out of the context of migration as the most common form of trafficking is ‘migrant trafficking’.

A line must be drawn between trafficking and illegal migration in that trafficking, as is currently understood, involves some element of involuntariness, either through deception, force or intimidation, whereas illegal migration often occurs with the free co-operation, if not the instigation of the illegal migrant.

There are, however, linkages between the two activities. Contemporary developments have caused population movements due to war, persecution, and violations of human rights, natural disasters, or very poor economic conditions.

A number of countries have imposed more stringent measures for border control and entry requirements and have reduced opportunities for legal migration. Such measures, however, do not alter the demand in these countries for cheaper sources of labour in the informal sector which gives rise to irregular, trans-border movement.

The process of 'migrant trafficking' occurs in at least two phases - recruitment and transportation, and confinement to the site of work under exploitative conditions; when a migrant and unsuspecting victim is recruited and/or transported and delivered to a site of work which is different from the one promised by the agent involved in it or, when such migrant is subjected to such conditions of work about which she/he had no prior knowledge and therefore did not consent to.

A greater number of cases under this category are those that fall on the borderline of illegal migration, smuggling of persons and trafficking. It is difficult to distinguish between the three as they have certain common elements. One common factor is that the 'victim' is invariably a 'willing' traveller, though it is well documented that the 'willingness' is based on a variety of reasons *e.g.*, promise of a well paying job, deception and fraud. Chances are that these illegal migrants fall into bondage. Trafficking and migration for trafficking, there emerge some basic elements, which seem to be widely agreed upon.

*They include:*

- Some degree of involuntariness on the part of the person being trafficked, either through the employment of deceit or fraud.
- Coercion or actual force, abuse of authority.
- Involvement of exchange of money or any other form of consideration.
- Subjection to situations of abuse and exploitation.
- Confiscation of travel documents, or debt bondage.

One question on which the definitions are in dispute is whether trafficking for other than illicit reasons should give rise to criminal culpability and whether the situation of person is always worse than before? Trafficking of children for adoption wherein they may be adopted by a better placed family is such an example.

The Special Rapporteur Ms. Santos, firmly believes that, as in the sale of a person, trafficking of a person reduces that person to the level of a commercial commodity and is therefore inherently condemnable, regardless of the ultimate purpose for which it is carried out. Thus, the argument that in most cases of adoption the children end up in much improved living conditions, would not in any way justify the trafficking of babies and children. Another issue that still remains unsettled is whether trafficking necessarily involves movement or transportation from one place to another and, if so, if it has to be across borders.

## **IDENTIFICATION OF TRAFFICKED PERSONS AND TRAFFICKERS**

Proper identification of trafficked persons and traffickers is an essential part of the law enforcement response to trafficking. In some cases it may be difficult to distinguish trafficking from migrant smuggling, however, failure to correctly identify a trafficked person results in a further denial of the rights of the trafficked persons.

State authorities and officials such as police, border guards, immigration officials and others involved in the detection, detention, reception and processing of irregular migrants must be trained to rapidly and accurately identify trafficked persons, especially children. Lack of conceptual clarity in distinguishing between trafficking and prostitution undermines the law enforcement response to trafficking.

Legal and law enforcement may inappropriately focus only on trafficking for the purpose of prostitution and ignore trafficking for other purposes. On the other hand, inaccurate preconceptions and failure to focus on the reality of individual cases may lead the law enforcement response to treat all prostitution as trafficking or all prostitution as voluntary, neither of which leads to an effective law enforcement response. It is also necessary to identify appropriate points of intervention to ensure that migrants and potential migrants are warned about possible dangers and consequences of trafficking and receive information that enables them to seek assistance if required.

An effective law enforcement response requires all sectors of society to be educated in identifying cases of trafficking, in particular by providing training to police, prosecutors, border, immigration and judicial authorities, and social and public health workers in understanding the problem of trafficking and identifying trafficking cases. Measures also include border control measures to prevent and detect trafficking in persons, without prejudice to the right to freedom of movement.

### **INVESTIGATION OF TRAFFICKING CASES**

An effective law enforcement response requires skilled, diligent investigation of trafficking and its component offenses. Because of the hidden nature of trafficking, trafficked persons can not be set free and traffickers can not be punished unless law enforcement conducts thorough and proactive investigation of cases of trafficking.

#### **Victim Reporting**

Identification of trafficked persons must not be dependent on reporting by the person trafficked. In trafficking cases, only those who are able to escape or are rescued report the crime, and even then, not all will do so. The ratio of reporting in comparison to the prevalence of the crime is very low. One reason that trafficked persons fail to come forward to report the case is due to lack of protection and lack of confidence in prosecuting agencies. Other

reasons for low reporting include fear of social stigma, discrimination and isolation, lack of awareness of their legal rights and legal procedure, irregular immigration status, fear of arrest or deportation, physical detainment, abuse, intimidation, harassment during case proceedings, lack of compensation, lack of protection, lack of family support, lack of evidence and lack of encouragement for the victim to report the case.

Family members often do not make reports of trafficked family members because of social stigma and weak law enforcement mechanisms, as well as promises from traffickers of good return in cash or kinds. Even if family members do report, it does not necessarily constitute a concrete case against the offenders, since they are unable to produce adequate evidence. An effective legal response must address each of these and other reasons to ensure that victims are provided with adequate protection and sufficient mechanisms for reporting trafficking. Additionally, gender insensitivity among law enforcement, immigration and other relevant officials, the majority of whom are men, may result in insensitivity or even harassment, resulting in low reporting by victims. Law enforcement may decline to investigate a case because of stereotypes of perceived gender roles and stigmatized groups. For instance, law enforcement officials may refuse to investigate trafficking of women in prostitution based on the wrongful assumption that they are promiscuous and therefore “deserve” or “ask for” what happens to them.

Similarly, they may refuse to respond to forced marriage because they believe that it is a “family matter.” Such stereotypes must not be allowed to prevent the very real crime of trafficking from being suppressed.

### **Investigation by Law Enforcement Personnel**

It is the obligation of States to investigate and prosecute trafficking in persons. States may not abrogate this duty. However, many times investigators are not adequately trained in the techniques required to combat the organized crime of trafficking. Often law enforcement agencies lack physical resources and specially trained personnel.

In addition, the investigative system used is often outdated and perfunctory. Because each trafficking case presents different needs for evidence collection innovative tools must be applied to investigations. An effective law enforcement response also requires sophisticated investigation techniques.

Not all techniques are expensive, sometimes creative methods are all that is required, although appropriate law enforcement technology may also be utilized. Law enforcement, immigration and other relevant officials require adequate training in the investigation and prosecution of cases of trafficking. Failures at the investigation stage result in unsuccessful prosecutions.

*Training should include:*

- Methods used in preventing trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers,

- The practical value of providing incentives for trafficked persons and others to come forward to report traffickers,
- Consideration of human rights and child and gender sensitive issues and
- The need for cooperation with non-governmental and other relevant organizations and civil society.

In addition to being trained, officials must be empowered to conduct effective investigations, including adequate investigative powers and techniques.

*Other measures for an effective law enforcement response to trafficking include:*

- Specialist anti-trafficking units in order to promote competence and professionalism and to respond to the special needs of trafficked persons, particularly children and women.
- Proactive and comprehensive investigation beyond the initial information report, the statement of the trafficked person and the confession of accused.
- Proactive investigatory procedures that avoid over-reliance on victim testimony but to build an independent evidentiary case that is sufficient for conviction.

## **ARREST**

An effective law enforcement response means that law enforcement should not be directed against the trafficked person, but this does not mean that there should be no law enforcement. The need for strengthened law enforcement has often been taken as a threat to the rights of the victim and has been an excuse for failure of the law enforcement response. However, a rights-based law enforcement response actually protects the rights of the victim and reduces trafficking. Effective arrest practices include the following considerations.

### **Arrest of All Traffickers**

It is essential that all levels of actors be arrested, charged and prosecuted, including customers. Many times traffickers are able to avoid arrest through corruption, for example, tipoffs or being allowed to walk away. Complicit officials must be held administratively accountable or criminally accountable and not merely transferred as that merely shifts the corruption elsewhere. Arrest warrants should be made and pursued for perpetrators who are not present at the time of the initial arrest. Once again, it is vital not to arrest trafficked persons or even to take them to the police station. They should be interviewed in a non-threatening, non-detention environment, as this is not only their right, but also leads to more accurate and efficient taking of statements.

### **Charging Process**

A key part of arrest is the charging process. An effective law enforcement response will carefully consider the charging decision. It is impossible to

charge appropriately if law enforcement is not aware of the law. Improvements to national law called for by international and other instruments must be communicated to all levels of law enforcement, not just the top levels. Officials should be trained in understanding the intent and purpose of the law as well as its specific provisions. Training and training materials should be available for all levels of officials, and should be repeated frequently to keep skills fresh, as well to address personnel turnover.

The crime of trafficking should always be charged. Failure to do so will not only affect the collection of accurate statistics, but will also undermine the gravity of the crime and will exclude application of special protections for trafficked persons contained in the instruments that are the subject of this Resource Guide.

However, traffickers should also be charged with the component offenses as they are often grave and contain effective penalties themselves. The charging decision should be made in conjunction with the prosecutor's office as they will be able to consider the effect of multiple charges on the success of conviction.

For instance, the inclusion of lesser charges may provide juries or judges with an "out" if they feel that the penalty for trafficking is too harsh. Also, legislation should be harmonized to prevent against arbitrary charging. An excess of discretion in the charging process undermines the law enforcement response and potentially violates the rights of the accused.

For instance, trafficking for sexual exploitation of a child consists of numerous criminal acts, including assault, assault of a minor, sexual relations with a minor, child abuse, rape of a child and violation of child labour law. The law may provide harsher penalties, including life imprisonment for some of these offenses, and provide relatively small punishment or administrative sanctions for other, lesser offenses. The penalty for trafficking will also be completely different than the penalty from the component offenses. The crime for which the trafficker is charged will determine the extent of his liability and punishment. Thus, for the same underlying criminal activity, the penalty can range from a fine to life imprisonment depending on the discretion of the charging official. This not only undermines the integrity of the criminal justice system, it also may violate the human rights of the accused, much less diminish the severity of the impact of trafficking on the victim.

### **Detailed Complaint**

The criminal complaint should be based on a clear and detailed statement of the offense supported by evidence. The law enforcement response is undermined by ambiguous, incomplete or false complaints due to time constraints, haphazard recording of the investigation, lack of translation, failure to make the victim feel safe and discriminatory attitudes and stereotypes, among other things.

Investigation should not stop with the filing of the complaint, but should continue in consultation with prosecutors until the time of trial. Complaints should be amended as new information is received.

## Collection of Evidence

An adequate law enforcement response requires law enforcement official to be trained in evidentiary procedures and methods. The ability to successfully prosecute a case depends entirely on the evidence that is presented to the finder of fact. Evidence must be admissible to be used in court. Police must be trained in the correct procedures for the collection of admissible evidence.

Law enforcement officials must be trained in the types of evidence that must be collected. There are many types of evidence. Evidence can be testimonial or physical. Testimonial evidence is the statements of victims, the accused, witnesses and others. Physical evidence includes results of medical exams, photographs, items used in trafficking, account books, *etc.* Evidence can also be direct or indirect. Direct evidence proves an element of the crime directly, for example, an account book showing the debt in cases of debt bondage or bonded labour. Circumstantial evidence proves the element of the crime by inference, for example, locks or bars demonstrate force. Insufficient evidence collection undermines the ability to obtain convictions. In order to build a comprehensive case, law enforcement officials must work together with prosecutors at early stages in the investigation to develop an effective case. Evidence gathering must be sensitive to children and victims, and must not re-traumatize the trafficked person.

The taking of physical bodily evidence is essential, subject to the human rights of the trafficked person. However, many of these methods are invasive and intimidating and must be performed with care. An effective law enforcement response will utilize trained medical, psychological and other personnel to assist in a child and victim sensitive investigation procedure. Law enforcement officials and prosecution officials should be trained in such procedures, including techniques of effective and sensitive interviewing.

As a side-note, law enforcement officials and medical personnel may not refuse to investigate a crime or collect evidence based on the status of the victim. For example, a hospital may not refuse to perform a rape test on a trafficked person because that person has been engaged in prostitution and the hospital holds an incorrect stereotype that a prostitute cannot be raped.

## RESCUE

There has been much debate about the appropriate ways to conduct rescue and whether or not certain persons even require rescue. Inappropriate rescue procedures, including lack of appropriate measures for care and protection, can further victimize persons subject to trafficking. And taking measures for rescue and repatriation without addressing the root causes of trafficking in general and the specific needs of the trafficked person as an individual will only result in the person being rescued only to return again to another exploitative situation that may even be worse than the one they were rescued from. That States and, where applicable, intergovernmental and non-governmental organizations should consider implementing measures to ensure that “rescue”

operations do not further harm the rights and dignity of trafficked persons. Such operations should only take place once appropriate and adequate procedures for responding to the needs of trafficked persons released in this way have been put in place.

Many of the instruments discussed in this Resource Guide require the needs and opinions of the trafficked person to be considered at all stages of the law enforcement response, including the rescue stage.

## **PROTECTION**

The Recommended Principles and Guidelines provide that the “trafficking cycle cannot be broken without attention to the rights and needs of those who have been trafficked. Appropriate protection and support should be extended to all trafficked persons without discrimination.”

*Appropriate protection programmes include the following:*

- Identification of a safe place in the country of destination,
- Access to independent legal counsel,
- Protection of identity during legal proceedings,
- Identification of options for continued stay, resettlement or repatriation and
- Provision of appropriate health care, including psychological care and counseling

Protection of trafficked persons is essential throughout all stages of the trafficking spectrum to ensure that trafficked persons are not re-victimized in the process of prevention, rescue, law enforcement and repatriation, to name a few. For instance, victims of trafficking may be detained by the receiving State for many reasons including violation of immigration laws, prostitution, or even as witnesses.

Illegal migrants who are detained by the receiving State have a recognized right under international law to be treated with dignity, both before and after the determination of the lawfulness of their detention. Trafficked persons who are arrested do not necessarily receive the assistance that they need and are entitled to, under international human rights instruments. Additionally, conviction of a trafficker is difficult if not impossible if the key witness has already been deported. In many cases, strict immigration laws and procedures relating to the deportation of illegal migrants or workers hamper efforts to prosecute trafficking crimes and to protect the human rights of victims.

The threat of immediate deportation prevents victims from seeking help from police or other authorities; and victims who are arrested or otherwise escape their traffickers do not receive the assistance or protection that they need. Finally, trafficked persons often do not have the chance to lodge complaints, seek damages, assess whether it is safe to return home, collect their belongings or apply for asylum.

In these cases, the trafficked person is treated more like a criminal than a victim. They are also more vulnerable to arrest, detention and deportation

because destination countries are unwilling to recognize that they are victims of crimes. Trafficked persons are entitled to many protection measures as a matter of right.

Measures for protection and care should never be made conditional upon the capacity or willingness of the trafficked person to cooperate in legal proceedings. Children who are victims of trafficking are entitled to assistance and protection that is appropriate for their age and development. Protection measures must take full account of their special vulnerabilities, rights and needs. Protection measures must consider the best interests of the child paramount at all times.

*Measures for the protection of trafficked persons include:*

- Protection of the privacy and identity of victims including, among other things, making legal proceedings relating to such trafficking confidential,
- Effective protection from harm, threats, intimidation or retaliation by traffickers and associated persons,
- Advance warning of the difficulties inherent in protecting identities,
- Provision of information on court and administrative proceedings,
- Resentation and consideration of views and concerns of victims at criminal proceedings,
- No liability for victims of trafficking,
- Safe and adequate shelter that meets the needs of trafficked persons,
- Access to primary health care and counselling and
- Consideration of age, gender and special needs of victims of trafficking.

*Additional measures for the protection of trafficked children include:*

- Identification and location of family members in cases where children are not accompanied by relatives or guardians,
- Reunion of trafficked children with their families where this is deemed to be in their best interest,
- Provision of adequate care arrangements that respect the rights and dignity of the trafficked child in situations where the safe return of the child to his or her family is not possible, or where such return would not be in the child's best interests,
- Ensuring that a child who is capable of forming his or her own views enjoys the right to express those views freely in all matters affecting him or her and
- Adequate and appropriate training, in particular legal and psychological training, for persons working with child victims of trafficking.

## **RECOVERY, REHABILITATION AND REINTEGRATION**

An effective law enforcement response requires States, in cooperation with non-governmental organizations and other relevant sectors of civil society such as health care professions, to take measures to provide for the physical, psychological and social recovery of victims of trafficking in persons including:

- Appropriate housing,
- Counseling and information, in particular as regards their legal rights, in a language understandable to the victims,
- Medical, psychological and material assistance, and
- Employment, educational and training opportunities.

## **PROSECUTION**

The prosecution stage of the trafficking spectrum is a key stage, as offenders will not be held accountable and trafficked persons will not be vindicated if there are failures of prosecution. The prosecution process has an infinite number of considerations that are relevant for an effective law enforcement response.

These considerations fall across a number of subject areas such as evidentiary rules and procedures, the giving of testimony, victim and witness protection and prosecutorial efforts.

This part does not intend to be a comprehensive listing of all required or recommended considerations, but only serves to highlight a few for purposes of illustration.

### **Evidentiary Rules and Procedure**

Key to effective prosecution are the rules and procedures governing the giving and admission of evidence. These procedures have a significant effect on the rights and welfare of trafficked persons. There are perhaps an infinite number of possible considerations to improve the law enforcement response with respect to trafficking, including provision for in camera hearings which allow witness to give their testimony outside of the presence of the accused and courtroom observers and inadmissibility of the previous life, occupation and character of the trafficked person.

Evidentiary rules establish the types and quality of evidence required to prove the elements of trafficking and its component offenses. Evidentiary rules set the framework for the evidence that is collected and the building of a case against an offender.

It is vital to ensure that clear evidentiary rules exist to set forth the type of evidence that is necessary and sufficient to prosecute the crime of trafficking. Again, evidence rules should not focus solely on the testimony of victims, but should also give due weight to physical evidence, circumstantial evidence, photographs and medical testimony among other things. Additionally, evidentiary procedure should provide that a case will continue to go forward even if a victim recants, refuses to testify or becomes unavailable due to deportation, death or any other reason.

It must be recognized that trafficking in persons is not only a crime against the trafficked person but is also a crime against society. The presence and testimony of the victim is not required in a murder case, nor should it be in a case of trafficking.

### **Victim and Witness Testimony**

Victim and witness testimony is a related key part of the prosecution. However, an effective law enforcement response should not rely too heavily or solely on the direct testimony of victims and witness, but should also consider other forms of evidence. Victims and witnesses may be reluctant or hostile to the prosecution process. This reluctance may be due to intimidation and fear arising from an ineffective victim protection policy. The reluctance of victims to testify often causes them to have a disinterested or hostile demeanor when giving testimony. Such demeanor negatively impacts the success of the prosecution. An effective law enforcement response will provide adequate protection for the victim, including victim-friendly measures regarding the giving of testimony such as in camera hearings, closed proceedings or the use of communications technology such as video links to permit witness testimony to be given in a manner that ensures their safety.

Additionally, the victim's fear for his or her safety and the safety of his or her family members often results in the recanting or victim falsifying testimony out of fear of reprisal. One study conducted in Nepal on the impact on women of corruption in criminal justice system revealed that out of 71 victims interviewed, 10 had changed their initial statement to the police.

Out of the 32 victims who had appeared in the court, 22 reported being threatened or enticed to change their original statement made to the police. Falsification of testimony undermines successful prosecution. One response to this problem is to provide that the initial statement of the victim at the investigation phase is the most reliable and that later contradictory statements must be disregarded. While there is some merit in this assumption that trafficked persons will receive threats and intimidation after the taking of the initial statement, it is also the case that intimidation and fear of both the traffickers and the unfamiliar criminal justice system may result in an inaccurate initial statement as well. Thus retractions to the effect that the exploitation did not occur or that the initially named offender was not the real offender should be disregarded. However, the addition of additional details and information should be considered a natural and truthful response as the trafficked person grows more familiar and comfortable with the legal process, especially as they are assisted by victim/witness advocates and other trained actors.

### **Victim and Witness Protection**

An effective law enforcement response to trafficking provides for effective protection of the safety of witnesses, including victims who are witnesses.

*Victim and witness protection measures are many, including:*

- Effective protection from potential retaliation or intimidation for witnesses and their relatives and other persons close to them,
- Physical protection, including relocation and
- Non-disclosure or limitations on the disclosure of information concerning identity and whereabouts.

### **Expert Testimony**

Measures for successful prosecution include expert testimony on the causes and consequences of trafficking and the effect of trafficking on trafficked persons. Prosecutors should also consult with such experts in investigating and preparing the case.

### **Legal Proceedings**

An effective law enforcement response ensures that legal proceedings are sensitive to the rights, dignity and physical and psychological well-being of trafficked persons. Victims are to be provided with appropriate social support sufficient to meet their immediate needs as well as information on relevant court and administrative proceedings and information regarding their legal rights in a language which the victim understands. Such information should include necessary assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders.

Entitlement to such information, assistance and immediate support must not be discretionary but available as a matter of right for all persons who have been identified as trafficked. Courtroom procedures should be conducive to the giving of testimony by victims and witnesses. For instance, an open courtroom is not conducive for testifying openly about the violence they have experienced in their life, especially given the stigmatizing and shameful nature of the crime of trafficking and its component offenses. An open courtroom also infringes on the privacy of a trafficked person, sometimes in violation of his or her human rights. This is more so when members of the media are present. Furthermore, because of discrimination and lack of educational and other opportunities for women's advancement the majority of actors in the courtroom will likely be male, for instance judges. An overwhelming presence of males in the proceedings may intimidate victims and witness, especially if the male actors are not sensitive to the special needs of trafficked women and children.

### **Delayed Proceedings**

Undue delay in criminal proceedings undermines effective prosecution in many ways, including loss or decay of evidence, failure of memories of witnesses and unavailability of witnesses. It also undermines the credibility of the prosecution process and further victimizes the trafficked person. For defendants who are in custody it may also violate their human rights regarding detention.

### **Judiciary**

The judiciary is one of the most important sectors that needs to be sensitized on gender issues and violations of rights of women due to trafficking. An analysis of the attitudes of judges reveals a "protectionist approach" rather than a "substantive approach" in their judging of criminal cases against trafficking.

In addition, an effective law enforcement response requires published decisions and opinions in order to provide transparency and accountability, as well as formal and informal precedent for future cases.

### **Prosecutors**

An effective law enforcement response is dependent upon prosecutors who are diligent, innovative and proactive. Prosecutors must be well prepared and must work together with law enforcement officials from an early stage in the investigation process in order to build a strong case. Prosecutors must also be highly trained in knowledge and understanding of the law and technical skills as well as victim, gender and child sensitive procedures.

Unfortunately, even in the most developed nations, this is not the reality. Prosecutors' offices are often understaffed, overworked and under-funded. An effective law enforcement approach will take measures, including interagency cooperation and partnership with non-governmental organizations and other sectors of civil society including donor agencies, to address each of these considerations. In addition to the lack of resources, the failure of prosecutors to vigorously pursue trafficking cases also undermines the law enforcement response.

International instruments against trafficking provide that a trafficked person may appoint her or his own private lawyer to prosecute the case if the government attorney proves ineffective, as well as to appeal the case if the government attorney refuses. Such a provision is merely academic if funding is not also allocated to pay for the attorney. There are many reasons why a prosecutor would fail to diligently prosecute the case or file an appeal. One reason is a discriminatory attitude against victims of trafficking. Another reason is the inappropriate use of plea bargains merely to clear overwhelming caseloads, rather than as a legitimate tool to obtain key testimony against co-offenders.

### **Sentencing Policy**

An effective law enforcement response depends on sound sentencing policy. Just as law enforcement must be swift, certain and severe, sentencing policy must be consistent, transparent and sufficient. Inconsistent sentences violate the rights of convicted persons and undermine deterrence.

Inconsistency means that the same defendant receives different sentences each time he or she commits the same crime. It sends a message to potential traffickers that they should "roll the dice" because even if they are caught they may get off with a light sentence. Sentences rightly differ if the details of the crime are different or the sentence is enhanced because of multiple crimes or convictions.

However inconsistency based on different judges or other arbitrary reasons must be addressed. Sentencing disparity means that two defendants who are prosecuted for the same crime receive different sentences. Different sentences are appropriate if one defendant has played a greater or lesser role, or if one

case is more heinous than another. However, disparity may also exist because of favouritism or corruption. It may also be due to excessive discretion of the judiciary, failure of legislation to provide for specific sentencing guidelines or lack of coordination among the judiciary. An effective law enforcement approach will address each of these considerations.

### **Deportation of Victims and Witnesses**

An effective law enforcement response depends on the continued presence of the victim in the State through the criminal proceedings. Protection and temporary residence permits should be granted to victims and witnesses during legal proceedings.

If it is in the best interests of the trafficked person, such protection and permission should be extended after the termination of the proceedings.

### **Extradition**

An effective law enforcement response provides that trafficking, its component acts and related offences constitute extraditable offences under national law and extradition treaties.

## **PUNISHMENT**

The Recommended Principles and Guidelines provide that “Effective and proportionate sanctions shall be applied to individuals and legal persons found guilty of trafficking or of its component or related offences.”

### **The Functions of Punishment**

Punishment has four functions: retribution, rehabilitation, incapacitation and deterrence. Retribution recognizes that the offense of trafficking is a grave and legitimate offense that should be treated seriously by States. Rehabilitation seeks to reform convicted traffickers so that they will not commit similar offenses in the future.

Incapacitation prevents traffickers from committing additional crimes while they are jailed or imprisoned. Deterrence seeks to deter the individual trafficker and potential traffickers from committing the crime of trafficking because they know that they will be punished. An effective law enforcement response requires punishment of offenders that serves all of these functions of punishment.

In order to be effective, punishment must be certain. If a trafficker knows that there is a likelihood that he or she will not be punished, the deterrence function will be undermined. In actuality with respect to trafficking, the deterrent function is often seriously undermined. Lack of conceptual clarity, low prioritization of trafficking, lack of adequate resources, corruption and complicity of law enforcement and immigration officials and poor enforcement of laws all contribute to the relative certainty that traffickers in some geographical areas and traffickers for certain purposes will go unpunished. Effective punishment must also be sufficient and proportional. Sufficient means that

traffickers should be punished as severely as those who commit other serious crimes, such as murder, rape and kidnapping. The provision for a higher punishment of component offenses than for the crime of trafficking, undermines the law enforcement response. Proportional means that the punishment “fits the crime.” Punishment that is perceived to be too harsh will often result in “jury nullification” whereby the finder of fact refuses to find the trafficker guilty because of a perception that the penalty is too strong.

On the other hand, proportional means that traffickers should not merely receive a “slap on the wrist.”

Punishments must also be consistent in terms of type, length and severity. A trafficker should not receive different punishment for the same crime without good reason. Often times sentencing disparity is purely arbitrary or due to corruption.

Similarly, one trafficker should not receive a different punishment than another trafficker for the same crime without good reason. Good reason includes a record of prior offenses of one trafficker over another. Imposing different levels of punishment based on a trafficker’s status or gender or other arbitrary or discriminatory factors undermines the criminal justice response.

### **Restorative Justice**

In addition to traditional punishment, the concept of restorative justice seeks to restore the individual to his or her original position before the crime occurred. Trafficking in persons has grave effects upon the victim. Some of them are irreparable such as death and psychological and physical trauma.

However, restorative justice recognizes that traditional concepts of criminal justice in general and punishment in particular completely ignore the victim. Traditionally, crimes, including trafficking, are viewed as crimes against the State; the victim is irrelevant. This has several benefits, including that the testimony or cooperation of the victim is not required for prosecution of the offense.

The downside is that the needs of victims are not considered. This is a major problem considering the deeply personal nature of the exploitation that occurs in trafficking. A criminal justice response that does not consider and protect the victim will only exploit the victim further.

*Key concepts in restorative justice include restitution, restoration and reconciliation, discussed as follows:*

- “Restorative Justice is a justice process promoting the repair of harm caused by crime and the active involvement of victims and communities in justice processes, not simply not a programme or group of programmes.
- Restorative Justice equates toughness on crime with holding offenders accountable for making their victims whole again or ‘making things right’, to the degree possible. Specifically, restorative justice sees the need to provide victims with a sense of fairness and access to a justice

system that has few formal obligations to make things right for them. It does this through programmes such as restitution, victim offender mediation and policies that promote victims' rights.

- Similarly, restorative justice recognizes that communities are hurt by crime. It seeks to involve communities in the solutions to crime and holds communities accountable for accepting the offending party back into the community once his/her debt is paid, as well as providing an environment for victims of crime to feel safe and secure.
- Offenders are held accountable to their victims, communities and families under restorative justice. They are held responsible for making their victims whole again, to the degree possible. Offenders make community restitution to repair the harm caused to their community. By working to repair the damage done to both victims and communities, criminal offenders earn the self-respect essential to leading a productive life upon their eventual return to society.”

### **Administrative Sanctions**

Effective punishment also includes application of administrative sanctions, for example violation of child labour standards or licensing laws. Such sanctions may involve substantial fines or penalties that make it too expensive for the trafficker to continue, thus furthering the specific deterrence function of punishment. Additionally administrative sanctions provide for punishment of legal entities involved in trafficking in cases where criminal liability is unavailable.

### **Asset Confiscation**

Traffickers engage in human trafficking because it is highly “lucrative and relatively risk-free”. The freezing and seizure of the assets and the proceeds of criminal activity makes trafficking less lucrative and increases the risks. Confiscation of financial gains from trafficking has a strong deterrence effect on traffickers by preventing them from enjoying the “fruits” of their crime. To the extent possible, confiscated assets should be used to support and compensate victims of trafficking or to provide financial and resources for improvements to the law enforcement response.

# 5

## **Evolution of Family Structure Amidst Social Change**

The impact of modern social forces is evident in the change of family structure. Basically joint family system is prevalent in India in which the head of the family exercised absolute power over its members. He distributes work among family members. It is thus authoritarian which encourages collectivism rather than individualism. But due to modern forces, joint family system disintegrating. It is now exhibiting characteristics of urban family. Family authority and family ties are now gradually weakening. Now there is a trend towards the development of nuclear family.

### **FAMILY IDEALS**

In India, people learn the essential themes of cultural life within the bosom of a family. In most of the country, the basic units of society are the patrilineal family unit and wider kinship groupings. The most widely desired residential unit is the joint family, ideally consisting of three or four patrilineally related generations, all living under one roof, working, eating, worshipping, and cooperating together in mutually beneficial social and economic activities. Patrilineal joint families include men related through the male line, along with their wives and children. Most young women expect to live with their husband's relatives after marriage, but they retain important bonds with their natal families.

Despite the continuous and growing impact of urbanization, secularization, and Westernization, the traditional joint household, both in ideal and in practice, remains the primary social force in the lives of most Indians. Loyalty to family

is a deeply held ideal for almost everyone. Large families tend to be flexible and well-suited to modern Indian life, especially for the 67 percent of Indians who are farmers or agricultural workers or work in related activities. As in most primarily agricultural societies, few individuals can hope to achieve economic security without being part of a cooperating group of kinsmen. The joint family is also common in cities, where kinship ties can be crucial to obtaining scarce jobs or financial assistance. Numerous prominent Indian families, such as the Tatas, Birlas, and Sarabhais, retain joint family arrangements even as they work together to control some of the country's largest financial empires.

The joint family is an ancient Indian institution, but it has undergone some change in the late twentieth century. Although several generations living together is the ideal, actual living arrangements vary widely depending on region, social status, and economic circumstance. Many Indians live in joint families that deviate in various ways from the ideal, and many live in nuclear families—a couple with their unmarried children—as is the most common pattern in the West. However, even where the ideal joint family is seldom found (as, for example, in certain regions and among impoverished agricultural laborers and urban squatters), there are often strong networks of kinship ties through which economic assistance and other benefits are obtained. Not infrequently, clusters of relatives live very near each other, easily available to respond to the give and take of kinship obligations. Even when relatives cannot actually live in close proximity, they typically maintain strong bonds of kinship and attempt to provide each other with economic help, emotional support, and other benefits.

As joint families grow ever larger, they inevitably divide into smaller units, passing through a predictable cycle over time. The breakup of a joint family into smaller units does not necessarily represent the rejection of the joint family ideal. Rather, it is usually a response to a variety of conditions, including the need for some members to move from village to city, or from one city to another to take advantage of employment opportunities. Splitting of the family is often blamed on quarrelling women—typically, the wives of coresident brothers. Although women's disputes may, in fact, lead to family division, men's disagreements do so as well. Despite cultural ideals of brotherly harmony, adult brothers frequently quarrel over land and other matters, leading them to decide to live under separate roofs and divide their property. Frequently, a large joint family divides after the demise of elderly parents, when there is no longer a single authority figure to hold the family factions together. After division, each new residential unit, in its turn, usually becomes joint when sons of the family marry and bring their wives to live in the family home.

## **VARIATIONS IN FAMILY STRUCTURE**

Some family types bear special mention because of their unique qualities. In the sub-Himalayan region of Uttar Pradesh, polygyny is commonly practiced. There, among Hindus, a simple polygynous family is composed of a man, his two wives, and their unmarried children. Various other family types occur there,

including the supplemented sub polygynous household—a woman whose husband lives elsewhere (perhaps with his other wife), her children, plus other adult relatives. Polygyny is also practiced in other parts of India by a tiny minority of the population, especially in families in which the first wife has not been able to bear children.

Among the Buddhist people of the mountainous Ladakh District of Jammu and Kashmir, who have cultural ties to Tibet, fraternal polyandry is practiced, and a household may include a set of brothers with their common wife or wives. This family type, in which brothers also share land, is almost certainly linked to the extreme scarcity of cultivable land in the Himalayan region, because it discourages fragmentation of holdings.

The peoples of the northeastern hill areas are known for their matriliney, tracing descent and inheritance in the female line rather than the male line. One of the largest of these groups, the Khasis—an ethnic or tribal people in the state of Meghalaya—are divided into matrilineal clans; the youngest daughter receives almost all of the inheritance including the house. A Khasi husband goes to live in his wife's house. Khasis, many of whom have become Christian, have the highest literacy rate in India, and Khasi women maintain notable authority in the family and community.

Perhaps the best known of India's unusual family types is the traditional Nayar *taravad*, or great house. The Nayars are a cluster of castes in Kerala. High-ranking and prosperous, the Nayars maintained matrilineal households in which sisters and brothers and their children were the permanent residents. After an official prepuberty marriage, each woman received a series of visiting husbands in her room in the *taravad* at night. Her children were all legitimate members of the *taravad*. Property, matrilineally inherited, was managed by the eldest brother of the senior woman. This system, the focus of much anthropological interest, has been disintegrating in the twentieth century, and in the 1990s probably fewer than 5 percent of the Nayars live in matrilineal *taravads*. Like the Khasis, Nayar women are known for being well-educated and powerful within the family.

Malabar rite Christians, an ancient community in Kerala, adopted many practices of their powerful Nayar neighbours, including naming their sons for matrilineal forebears. Their kinship system, however, is patrilineal. Kerala Christians have a very high literacy rate, as do most Indian Christian groups.

## LARGE KINSHIP GROUPS

In most of Hindu India, people belong not only to coresident family groups but to larger aggregates of kin as well. Subsuming the family is the patrilineage (known in northern and central India as the *khandan*, *kutumb*, or *kul*), a locally based set of males who trace their ancestry to a common progenitor a few generations back, plus their wives and unmarried daughters. Larger than the patrilineage is the clan, commonly known as the *gotra* or *got*, a much larger group of patrilineally related males and their wives and daughters, who often

trace common ancestry to a mythological figure. In some regions, particularly among the high-ranking Rajputs of western India, clans are hierarchically ordered. Some people also claim membership in larger, more amorphous groupings known as *vansh* and *sakha*.

Hindu lineages and clans are strictly exogamous—that is, a person may not marry or have a sexual alliance with a member of his own lineage or clan; such an arrangement would be considered incestuous. In North India, rules further prohibit marriage between a person and his mother's lineage members as well. Among some high-ranking castes of the north, exogamy is also extended to the mother's, father's mother's, and mother's mother's clans. In contrast, in South India, marriage to a member of the mother's kin group is often encouraged.

Muslims also recognize kinship groupings larger than the family. These include the *khandan*, or patrilineage, and the *azizdar*, or kindred. The *azizdar* group differs slightly for each individual and includes all relatives linked to a person by blood or marriage. Muslims throughout India encourage marriage within the lineage and kindred, and marriages between the children of siblings are common.

Within a village or urban neighbourhood, members of a lineage recognize their kinship in a variety of ways. Mutual assistance in daily work, in emergencies, and in factional struggles is expected. For Hindus, cooperation in specific annual rituals helps define the kin group. For example, in many areas, at the worship of the goddess deemed responsible for the welfare of the lineage, patrilineally related males and their wives join in the rites and consume specially consecrated fried breads or other foods. Unmarried daughters of the lineage are only spectators at the rites and do not share in the special foods. Upon marriage, a woman becomes a member of her husband's lineage and then participates regularly in the worship of her husband's lineage goddess. Lineage bonds are also evident at life-cycle observances, when kin join together in celebrating births, marriages, and religious initiations. Upon the death of a lineage member, other lineage members observe ritual death pollution rules for a prescribed number of days and carry out appropriate funeral rites and feasts.

For some castes, especially in the north, careful records of lineage ties are kept by a professional genealogist, a member of a caste whose traditional task is maintaining genealogical tomes. These itinerant bards make their rounds from village to village over the course of a year or more, recording births, deaths, and glorious accomplishments of the patrilineal descent group. These genealogical services have been especially crucial among Rajputs, Jats, and similar groups whose lineages own land and where power can depend on fine calculations of pedigree and inheritance rights.

Some important kinship linkages are not traced through men but through women. These linkages involve those related to an individual by blood and marriage through a mother, married sisters, or married daughters, and for a man, through his wife. Anthropologist David Mandelbaum has termed these "feminal kin." Key relationships are those between a brother and sister, parents

and daughters, and a person and his or her mother's brother. Through bonds with these close kin, a person has links with several households and lineages in many settlements. Throughout most of India, there are continuous visits—some of which may last for months and include the exchange of gifts at visits, life-cycle rites, and holidays, and many other key interactions between such relatives. These relationships are often characterized by deep affection and willingly offered support.

These ties cut across the countryside, linking each person with kin in villages and towns near and far. Almost everywhere a villager goes—especially in the north, where marriage networks cover wide distances—he can find some kind of relative. Moral support, a place to stay, economic assistance, and political backing are all available through these kinship networks.

The multitude of kinship ties is further extended through the device of fictive kinship. Residents of a single village usually use kinship terms for one another, and especially strong ties of fictive kinship can be ceremonially created with fellow religious initiates or fellow pilgrims of one's village or neighbourhood. In the villages and cities of the north, on the festival of Raksha Bandhan (the Tying of the Protective Thread, during which sisters tie sacred threads on their brothers' wrists to symbolize the continuing bond between them), a female may tie a thread on the wrist of an otherwise unrelated male and "make him her brother." Fictive kinship bonds cut across caste and class lines and involve obligations of hospitality, gift-giving, and variable levels of cooperation and assistance.

Neighbours and friends may also create fictive kinship ties by informal agreement. Actually, any strong friendship between otherwise unrelated people is typically imbued with kinship-like qualities. In such friendships, kinship terms are adopted for address, and the give and take of kinship may develop. Such bonds commonly evolve between neighbours in urban apartment buildings, between special friends at school, and between close associates at work. The use of kinship terms enhances affection in the relationship. In Gujarat, personal names usually include the word for "sister" and "brother," so that the use of someone's personal name automatically sounds affectionate and caring.

## **FAMILY AUTHORITY AND HARMONY**

In the Indian household, lines of hierarchy and authority are clearly drawn, shaping structurally and psychologically complex family relationships. Ideals of conduct are aimed at creating and maintaining family harmony.

All family members are socialized to accept the authority of those ranked above them in the hierarchy. In general, elders rank above juniors, and among people of similar age, males outrank females. Daughters of a family command the formal respect of their brothers' wives, and the mother of a household is in charge of her daughters-in-law. Among adults in a joint family, a newly arrived daughter-in-law has the least authority. Males learn to command others within the household but expect to accept the direction of senior males. Ideally, even a

mature adult man living in his father's household acknowledges his father's authority on both minor and major matters. Women are especially strongly socialized to accept a position subservient to males, to control their sexual impulses, and to subordinate their personal preferences to the needs of the family and kin group. Reciprocally, those in authority accept responsibility for meeting the needs of others in the family group.

There is tremendous emphasis on the unity of the family grouping, especially as differentiated from persons outside the kinship circle. Internally, efforts are made to deemphasize ties between spouses and between parents and their own children in order to enhance a wider sense of harmony within the entire household. Husbands and wives are discouraged from openly displaying affection for one another, and in strictly traditional households, they may not even properly speak to one another in the presence of anyone else, even their own children. Young parents are inhibited by "shame" from ostentatiously dandling their own young children but are encouraged to play with the children of siblings.

Psychologically, family members feel an intense emotional interdependence with each other and the family as an almost organic unit. Ego boundaries are permeable to others in the family, and any notion of a separate self is often dominated by a sense of what psychoanalyst Alan Roland has termed a more inclusive "familial self." Interpersonal empathy, closeness, loyalty, and interdependency are all crucial to life within the family. Family resources, particularly land or businesses, have traditionally been controlled by family males, especially in high-status groups. Customarily, according to traditional schools of Hindu law, women did not inherit land or buildings and were thus beholden to their male kin who controlled these vital resources. Under Muslim customary law, women are entitled to inherit real estate and often do so, but their shares have typically been smaller than those of similarly situated males. Under modern law, all Indian women can inherit land.

## MAIN CHARACTERISTICS OF FAMILY

*Universality:* There is no human society in which some form of the family does not appear. Malinowski writes the typical family a group consisting of mother, father and their progeny is found in all communities, savage, barbarians and civilized. The irresistible sex need, the urge for reproduction and the common economic needs have contributed to this universality.

*Emotional basis:* The family is grounded in emotions and sentiments. It is based on our impulses of mating, procreation, maternal devotion, fraternal love and parental care. It is built upon sentiments of love, affection, sympathy, cooperation and friendship.

*Limited size:* The family is smaller in size. As a primary group its size is necessarily limited. It is a smallest social unit.

*Formative influence:* The family welds an environment which surrounds trains and educates the child. It shapes the personality and moulds the character of its members. It emotionally conditions the child.

*Nuclear position in the social structure:* The family is the nucleus of all other social organizations. The whole social structure is built of family units.

*Responsibility of the members:* The members of the family has certain responsibilities, duties and obligations. Maclver points out that in times of crisis men may work and fight and die for their country but they toil for their families all their lives.

*Social regulation:* The family is guarded both by social taboos and by legal regulations. The society takes precaution to safeguard this organization from any possible breakdown.

## **TYPES AND FORMS OF THE FAMILY**

*On the basis of marriage: Family has been classified into three major types:*

- Polygamous or polygynous family
- Polyandrous family
- Monogamous family.

*On the basis of the nature of residence family can be classified into three main forms:*

- Family of matrilocal residence
- Family of patrilocal residence
- Family of changing residence.

*On the basis of ancestry or descent family can be classified into two main types:*

- Matrilineal family
- Patrilineal family.

*On the basis of size or structure and the depth of generations family can be classified into two main types:*

- Nuclear or the single unit family
- Joint family.

*On the basis of the nature of relations among the family members the family can be classified into two main types:*

- The conjugal family which consists of adult members among there exists sex relationship.
- Consanguine family which consists of members among whom there exists blood relationship-brother and sister, father and son, etc.

## **FAMILY LIFE AND FAMILY VALUES**

In India the family is the most important institution that has survived through the ages. India, like most other less industrialized, traditional, eastern societies is a collectivist society that emphasizes family integrity, family loyalty, and family unity. C. Harry Hui and Harry C. Triandis (1986) defined collectivism, which is the opposite of individualism as, “a sense of harmony, interdependence and concern for others”. More specifically, collectivism is reflected in greater readiness to cooperate with family members and extended kin on decisions affecting most aspects of life, including career choice, mate selection, and

marriage. The Indian family has been a dominant institution in the life of the individual and in the life of the community. For the Hindu family, extended family and kinship ties are of utmost importance. In India, families adhere to a patriarchal ideology, follow the patrilineal rule of descent, are patrilocal, have familialistic value orientations, and endorse traditional gender role preferences. The Indian family is considered strong, stable, close, resilient, and enduring.

Historically, the traditional, ideal and desired family in India is the joint family. A joint family includes kinsmen, and generally includes three to four living generations, including uncles, aunts, nieces, nephews, and grandparents living together in the same household. It is a group composed of a number of family units living in separate rooms of the same house. These members eat the food cooked at one hearth, share a common income, common property, are related to one another through kinship ties, and worship the same idols. The family supports the old; takes care of widows, never-married adults, and the disabled; assists during periods of unemployment; and provides security and a sense of support and togetherness. The joint family has always been the preferred family type in the Indian culture, and most Indians at some point in their lives have participated in joint family living (Nandan and Eames 1980).

With the advent of urbanization and modernization, younger generations are turning away from the joint family form. Some scholars specify that the *modified extended family* has replaced the traditional joint family, in that it does not demand geographical proximity or occupational involvement and does not have a hierarchal authority structure. This new family form encourages frequent visits; financial assistance; aid and support in childcare and household chores; and involvement and participation in life-cycle events such as births, marriages, deaths, and festival celebrations. The familial and kinship bonds are thus maintained and sustained. Even in the more modern and nuclear families in contemporary India, many functional extensions of the traditional joint family have been retained (Nandan and Eames 1980), and the nuclear family is strongly embedded in the extended kinship matrix. In spite of the numerous changes and adaptations to a pseudo-Western culture and a move towards the nuclear family among the middle and upper classes, the modified extended family is preferred and continues to prevail in modern India (Chekki 1996; Mullatti 1995; Segal 1998).

India is an extremely pronatalistic society, and the desire to have a male child is greatly stressed and is considered by some to be a man's highest duty, a religious necessity, and a source of emotional and familial gratification (Kakar 1981). Because male children are desired more than female children, they are treated with more respect and given special privileges. Male children are raised to be assertive, less tolerant, independent, self-reliant, demanding, and domineering. Females, in contrast, are socialized from an early age to be self-sacrificing, docile, accommodating, nurturing, altruistic, adaptive, tolerant, and religious, and to value family above all. In rural areas, low-income women have always worked outside the home. In urban areas, there has been a substantial

increase in the number of middle-and upper-class women working to supplement their husbands' incomes. In a traditional Indian family, the wife is typically dependent, submissive, compliant, demure, nonassertive, and goes out of her way to please her husband. Women are entrusted with the responsibility of looking after the home and caring for the children and the elderly parents and relatives.

Childrearing practices in India tend to be permissive, and children are not encouraged to be independent and self-sufficient. The family is expected to provide an environment to maximize the development of a child's personality and, within the context of the Hindu beliefs and philosophy, positively influence the child's attitudes and behaviours.

Adolescence and young adulthood are particularly stressful and traumatic stages in the lives of Indian youths. In one way, they desire emancipation and liberation from family but residing in the matrix of the extended family makes it difficult for them to assert themselves and exhibit any independence in thought, action, or behaviour. Social changes are gradually occurring but arranged marriages are still the norm, and dating generally is not allowed. Furthermore, sex and sexuality issues are not openly discussed, sex education is not readily available, interrelationships with the opposite sex are discouraged, and premarital sex is frowned upon. In the traditional Indian family, communication between parents and children tends to be onesided. Children are expected to listen, respect, and obey their parents. Generally, adolescents do not share their personal concerns with their parents because they believe their parents will not listen and will not understand their problems (Medora, Larson, and Dave 2000).

Life expectancy for both Indian men and women is increasing. According to the 2001 Census of India, life expectancy was 61.9 years for men and 63.1 years for women (Census of India 2001). This has led to a significant increase in the population of elderly individuals. The elderly in India are generally obeyed, revered, considered to be fountains of knowledge and wisdom, and treated with respect and dignity by family and community members. Old age is a time when a person is expected to relax, enjoy solitude, retirement, pray, enjoy spending time with the grandchildren, and not worry about running the household or about finances because the oldest son is now in charge of the finances and family matters, and the oldest daughter-in-law is generally running the household. In most instances, the elderly care for their grandchildren and assist with cooking and household chores. Even adult children continue to consult their parents on most of the important aspects of life.

## **CHANGE OF CASTE SYSTEM**

Impact of modern forces is also evident in the institution of caste. Modern means of communication, growth of competitive economy and expansion of western education have shattered the traditional structure of caste. Thus is a transformation of rigid caste into modern mobile classes. Certain castes have attained the privileges of upper classes while certain castes are losing their

previous status. Besides, there is secularisation for the selection occupation. This type of change has been revealed in ever)' aspect of social life. Among high castes there is a trend towards modernisation while among low classes is a trend towards sanskritisation.

### **Changes in the Social Stratification**

The original stratification of Indian society is based on the caste system which gives exclusive importance to with rather than individual achievements. Now birth is no longer a criterion of role allocation. It is gradually being replaced by the achievement system.

Due to the impact of modern forces Indian society is being transformed from feudal system to capitalist system. Therefore, the stratification based on class system is gradually emerging. The main cause for the geneses of new classes is based on the disintegration of caste control.

### **Increasing Mobility**

In India caste system prevents the mobility of the people from one occupation to another. But the new class system has encouraged social mobility. Further, legal compulsion has also encouraged social mobility and social change.

According to Prof. S.C. Dubey, "An excellent example of social change by legal compulsion is provided by the abolition of untouchability by law in India. In a favourable social climate legislation can be a potent instrument of social change."

Changes in the marriage institution: In India, the institution of marriage has undergone a tremendous change. Formerly people used to observe endogamy as regards. The 'caste' and exogamy as regards the gotra'. But due to the impact of modern races, the endogamous restrictions are gradually declining. Among educated people, there are number of instances of the inter- caste marriage.

### **Caste and Class**

All types of societies and races have some sort of functional social stratification. The only difference is that in most cases it remains in an elementary form and elastic. The peculiar feature of the Indian caste system is that in India the aforesaid process has crystalized into watertight compartments. And it has become permanent feature of the Hindu society.

It is very difficult to give out and dried definition of caste. We may offer fairly accurate description of caste system. 'A caste is an endogamous group or collection of groups, bearing a common name and claiming a common origin, following the same traditional occupation and occupying the position of superior and inferior rank of social esteem in comparison with other group maintaining a social exclusiveness with reference to diet, marriage and observing certain ceremonies and rituals.'

The essential feature of caste are thus food, marriage restriction, hereditary, occupation, hierarchical organisation, social exclusiveness and religious

sanctions. In India social stratification has, through caste been carried to length unparalleled elsewhere. Hindu society is divided into about 3, 000 castes and each of these is segregated from every other by restriction with regard to marriage, food and sometimes even personal contact. A person's caste, his station in life, his occupation, the people with whom he may associate and among whom the caste he may marry all determined for him by the fact of his birth in a particular caste. It is pre-determined of him by the law of karma or *purva-sanchit*.

The first distinguished feature of the Indian caste system is its absolute rigidity and immobility. A man dies in the same caste in which he is born. And it is the caste that determines his station of life.

The caste system Brahmin is not allowed to eat non-vegetarian food. Kshatriyas and Vaishyas can but even for them certain kind of non-vegetarian food such as of buffalo is forbidden. But Shudra can eat any type of food.

Of all the features of caste system, endogamy is the most important one. The essence of the system is endogamy. Occupation for instance, though usually associated with caste, has never been an essential part thereof. Coles Brooke writes, 'daily observation shows even Brahmins exercising the menial profession of a Shudra. But the different castes are strictly endogamous.'

Each one must marry within his own caste and within the subgroup if there be any in that particular castes. Brahmins for instances, if inter-caste marriages become extremely difficult because two persons belonging to two different castes differ in their food-habits, cultural habits, *etc.*

Thirdly, according to the Indian caste system, the caste of *jati* is more often than not named after the hereditary profession and the son inherits the profession of his father. There are thus *jatis* such as *sutar*, *lohar*, *sonar*, *koli* according to Carpenters, Blacksmiths, Goldsmiths, Fishermen respectively.

And these occupations are for the most part hereditary and even if someone changes the occupation, the caste name remains the same and the rules of endogamy apply. The caste system however forbids *shudras* to *tapasya*, or to recite *Vedas*, *etc.* Secondly both of them are the distinguishing feature of practically every society, save the primitive savage tribe. However the two differ in most important respects.

The fourth one is the hierarchical occupation. There is definite social gradation in which the different castes are related as higher and lower. The Brahmins are at top of the ladder whereas; *Shudras* are at the lowest rung of the ladder. Brahmins are twice born, and they alone can devote exclusively to lore and learning. This gives them a position of advantage. He is placed even higher than the king whose duty is to rule. Agriculture and trade is in the hands of *Vaishyas* over whom the king rules whereas *Shudras* are properly speaking rightless mass of people. Finally this rigid stratification is sanctioned by the religion. The violation of the system is an offence. And the law of *dharma* says that the advancement of each one can be best brought by each sticking to his own station in life and doing this duty prescribed by *dharma* loyalty.

We have already described what the caste system is at the beginning of this answer. We shall presently note the difference between a caste and class. There is a resemblance between classes and castes and castes. In as much as both are the forms of social stratification implying a sort of consciousness of superior and inferior. Secondly both of them are the distinguishing feature of practically every society, save the primitive savage tribe. However the two differ in most important and respects.

Classes are elastic whereas castes are rigid. One can on his merit strive for money and success in life and with wealth he can change his social status implied in the class distinction. A man may be born in a particular class, but is not predetermined for him that they must die in the same class. There is a possibility of his moving upwards or downwards.

This is well nigh impossible in case of caste system. Once a man is born in a particular caste he remains in it for his life time and makes his children suffer the same fate. Thus classes are changeable, while castes are water-tight compartments. Secondly classes are secular in origin, they are capable of adaptation to changing environment and are determined by social needs castes, however, are believe to be divinely ordained. They are founded on religious dogmas. Finally while the class distinction have served an impetus to further progress, the caste distinction have proved a great dragon on social progress.

## **Religion**

In the Indian way of life religion plays an important role and the basis of our day-to-day life is religion. Political leaders right from the beginning felt that if there is any possibility of retaining unity in India, it should be by remaining secular. That is why Gandhiji had been preaching brotherhood among the different religious groups. Nehru was a strong supporter of secularism. Their efforts could not divorce religion from politics rather in politics the vested interests started exploiting caste and religion for gaining political advantage.

With the passage of time India was divided into Pakistan and Bharat only because two nations theory was accepted by the Britishers. Even after Independence, the religious fervour could not be finished because the trail of the memories of the partition haunted the minds of the people, Still India managed to keep the communal forces under check. But the opposition parties exploit religion and theocratic States established in Pakistan and Iran encouraged fundamentalism all over the world. Recently in Punjab religion and politics are so closely interwoven that it has become difficult to separate them.

Religious places are used for political propaganda and the religious sentiments of the people are excited in order to gain political control of the State. This emergence of religion-political party has threatened the secular character of India. It is feared that if it succeeds there is a possibility that many other political parties with caste and religion as the basis may come up.

Mixing of religion with politics is a dangerous trend because religious attitude is diametrically opposed to democratic feelings. Religion encourages fanaticism

and suspends our reasoning power and we repose full faith in leaders. We are prepared to make sacrifice because sacrifice will be considered martyrdom. This mental attitude is directly opposed to democratic spirit. Democracy demands open mindedness, universal brotherhood and thinking based upon reason and capable of taking its own decision. In such cases, there is no herd tendency and the person is liberal in outlook. If religious forces are allowed to become powerful there will be disintegration of the nation and sovereignty of the State will be in danger. There are a large number of religions, castes and sub-castes in India, and unfortunately some of them are opposed to one another as far as their practices are concerned. Under such circumstances, there is no possibility of keeping them together if once there is fragmentation.

Religion is a private affair and if it is allowed to appear in public affairs it will corrupt politics. All the crimes committed in the name of religion in the past as well as in the present one cannot forget. A large number of people have been put to death in Iran only because they do not follow the Islamic religion up to the last Point. So religion makes a man blind and it will never encourage opposition.

So if we want to consolidate democracy give firm foundations to it and make its working successful, it is necessary that the people should keep religion apart from politics. It is wrong to think that with the help of laws it is possible to divorce religion from politics. Till the attitude of the people is changed, and till they rise above the petty considerations it is not possible to keep religion and politics apart. By keeping them independent of each other, we can retain democratic set-up.

### **Language**

It is not surprising that there should be so much confusion and conflict over the issue of language. It is assumed that it is single problem with a unique solution. One group argues that English language owes its position to British imperialism and that it is inconsistent with national self-respect to continue to use it to the exclusion of our beautiful regional languages. A second group contents that, whatever the evils of British imperialism, English has helped Indian nationalism to achieve freedom; that it has been the vehicle of higher education, technology and scientific research and that it has been the invaluable link for forging the unity of India and any attempt to discard it will result in a breakdown of our educational system and take the country back by two centuries in all aspects of modern life A third group is convinced that as all regional languages of India are well developed and have worth literatures, all of them should have equal status.

There is a lot of confused thinking going on in India today over the problem of finding a universally acceptable link language for the country. The debate on the subject rages 'ad infinitum' in all available forums like the parliament, the press, the platform, *etc.*; but none of the many points of view being put forward every day appears to be gaining acceptance. That is so mainly because most of

the thinking on the subject is supercharged with emotion and the issues involved have been greatly clouded by the import of prejudices which can be traced to extra-national loyalties.

What is precisely meant by a "link language"? The term is of comparatively recent coinage. In the pre-independence years, the same connotation was sought to be conveyed through 'national language'. But the expression underwent a change in meaning when the constitution-makers of free India conferred the status of 'national language' on fourteen regional languages (now 15) in use in the country as also on Sanskrit. In the constitution, the term which came nearest to expressing the idea was 'official language'. Over the last two or three years however, even this term has been replaced with another, *viz.*, 'link language'. The change is significant. It is symptomatic of the trend of popular thinking on the subject.

The people were prepared to accept their own regional languages as the 'official' languages in their states. But when it came to accepting another Indian language for the purposes of inter-state and state-centre-communications, they were not prepared to submit to the hegemony of another Indian language. In that context, the word 'official' in the expression 'official language' snarled for imposition and they were not prepared to brook any imposition whatsoever. Hence 'official' had to yield place to 'link' which was found to be more in accord with the spirit of the times.

The context in which the problem has to be considered has radically changed since 1950 when the founding fathers laid down official policy in the matter. At that time, the problem did not appear to be so intractable. The leaders of the national movement had almost unanimously endorsed the choice of Hindi as the official language of India. They were not, however, unmindful of the difficulties involved in a sudden change-over. Therefore, they made provision that English should continue to be used for all official purposes for 15 years after the introduction of the constitution, *i.e.*, up to 1965. Even after that, the Parliament was given the option to extend the period, if necessary.

All these precautions were designed to cushion the shock of change by making it a gradual process. Even then, within a few years, the proposed change became the subject of nation-wide debate which has several times assumed the proportions of a law and order problem. In the main, it was a direct consequence of the ruling party's disproportionate pre-occupation with linguism. That led to the reorganisation of states on a linguistic basis in 1956 (and the process has continued since). The step, though taken with the object of creating conditions in which the regional languages could flourish and come into their own, encouraged separatism, and strengthened the forces of disintegration. It gave rise to a sort of linguistic patriotism which gained precedence over nationalism in the affections of a large number of people.

The constitution-makers' decision that English should be replaced with Hindi in course of time was a sound one. Being understood by the largest number of Indians (40 per cent), Hindi was no doubt in the best position to serve as the

hand maiden of all other national languages and as such, to replace English as the official language of India, But the new language consciousness injected into the body politic by the ruling party, combined with the aggressive attitude of some advocates of Hindi who insisted on calling it the national language, and a fear being at a disadvantage in the central services made the decision largely unacceptable to people whose mother tongue was not Hindi. The Dravida Munnetra Kazhagara leaders called it "a conspiracy to relegate the people of the South to the position of second class citizens."

As the deadline officially fixed for the replacement of English drew near, representatives of the 'non-Hindi speaking people' as they were called bent their energies towards making sure that it did not happen. They even put forward suggestion that the language clause in the constitution should be suspended and English retained as the official language of India for all time to come. It was to allay their fears that, the late Pt. Jawaharlal Nehru, speaking in a debate on the subject in the Lok Sabha on August 7, 1959 said that English would be retained as an alternative official language as long as those who did not know Hindi wanted it. Accordingly, the Official Languages Bill passed by the Lok Sabha in April, 1963 provided that "English may continue to be used after January 26, 1965, in addition to Hindi for all the official purposes of the Union." The measure, however, did not satisfy people belonging to regions where the language in use was not Hindi. They wanted the assurance given by Pt. Nehru to be incorporated into law.

In his life-time, Pt. Nehru had opposed the suggestion for the excellent reason that such a step would 'amount to limiting the powers of Parliament by giving only part of the members the right to decide. This notwithstanding, the demand was pressed forward by every available means-through violent agitation and otherwise. Ultimately, the government had to give in. A draft of a bill seeking to confer statutory status on Jawaharlal Nehru's assurances to non-Hindi speaking people that English would continue as the associate official language of India indefinitely was circulated to state Chief Ministers. It would have been introduced in the 1967 budget session of the Parliament, but had to be held over as comments of some Chief Ministers had not been received before the session came to an end.

From all this, what have we gained? Have we moved forward or backward in the matter? What the opponents of Hindi have managed to secure after a prolonged struggle and many sacrifices can be described as a negative gain at best. They have not been able to suggest a better alternative to Hindi from among all the national languages of India. They have been harking back to English.

How this has come about would bear scrutiny. There are at least three main factors responsible for things having come to such a pass. Most responsible for bringing about this situation has been official inaction in not preparing the country for the change-over. The Government failed to take advantage of the long period to create the necessary climate for the purpose. Its forte was inaction, and not action to support this group or that the fears entertained by people who

dip not speak Hindi, of being dominated by the Hindi-speaking people in the event of Hindi becoming the sole link language in the country were not totally unfounded.

The second factor which contributed to creating, the impasse we are facing were the protagonists of Hindi. They proved to be the worst enemies of the language for which they sought to gain acceptance as the official language. Instead of accepting it in all humility, they crowed over the role assigned to Hindi and displayed an attitude of arrogant superiority which could not but provoke adverse reaction. The third factor which added to the confusion were the chauvinists who thrived on regional and sectarian rivalries. The language issue came handy to them and they used it to whip up popular agitations out of which they made political capital.

All these currents and cross-currents of emotions and motives naturally served to cloud the real issues which, simply stated, were; (i) the fear of domination by one linguistic group over the other; and (ii) probable effect on each region's share in the central services. For lack of a positive approach to the problems, whatever is being done to resolve these issues, *viz.*, retention of English for an indefinite period; the proposed introduction of regional languages as media for U.P.S.C. examinations and lately, their adoption as media of instruction for higher education, is bound to have a distorting influence on our political life and further undermine our already brittle sense of nationhood. The genesis of peasant movements rest in the relationship patterns of different social categories. It is essential for the unity of India that graduates of all Indian Universities and technological institutes should form a single intellectual pool. Though, in the Universities of each State, the medium of instruction may be the regional language to hold on to English at present as the necessary link language at the higher level and hope that at some time in the future, Hindi may also blossom into another such language is all that a far sighted Indian patriot can hope.

### **Regionalism**

India is a large country having continental dimensions and comprising no fewer than 28 States and 7 Union Territories. It is a multi-racial, multi-lingual nation. There are scores of regional languages, various strains of culture and different loyalties, single as well as multiple. Amidst the amazing diversities, it is natural that regional feelings, regional parties, regional institutions and similar other organisations meant for voicing the aspirations of local people and providing forums for them, should emerge. Indeed, with the passage of years, the multi-faceted aspirations, which together may be described as regionalism, have gained strength.

It is not a new phenomenon. In fact, the fillip given to regionalism by the emergence of the Telegu Desam Party (TDP) in Andhra Pradesh in 1952 has a historical continuity. The growth of this trend can be traced back to the fast unto death by Potti Srivamulu over the demand for the creation of Andhra Pradesh which set in motion the reorganisation of State along linguistic lines in 1956.

In principle, regionalism need not be regarded as an unhealthy or anti-national phenomenon-unless it takes a militant, aggressive turn and encourages the growth of secessionist tendencies, (as it did in Punjab during the past five years or so). National unity is not impaired if the people of a region have a genuine pride in their language and culture. But regionalism develops into a serious threat to national unity if politicians do not go beyond their regional loyalty and claim to stand only for their regional interests if regionalism is to be regarded as an unhealthy phenomenon, decentralisation too would be objectionable, which of course it is not. So there is nothing basically contradictory between nationalism and regionalism. Nor does the growth of regional values and consolidation of regional forces as such pose a challenge to the central administration of the country.

Any attempt to counter regionalism in the erroneous belief that is not conducive to national interests, would be ill-conceived. Enforced uniformity in a huge country like India would be sheer-foolly. Regional parties do not hinder national unity and integrity as long as they do not exceed their area of activity.

Several regional political parties have merged in recent years and have gained strength for obvious reasons. The handful of national parties cannot, by the very nature of things, adequately represent and pursue regional causes. Most of the national parties have even failed to live up to the people's expectations. That explains why more State-based parties have been formed in various regions and are quite successful in their aims. Regional parties are not a new phenomenon. Several parties have been existing in the country for the last many decades. They have held power, or are still holding power, in many states such as Andhra Pradesh, Tamil Nadu, Goa, Pondicherry, Jammu and Kashmir, Assam and other States in the North-Eastern region. But never before were regional parties dubbed as anti-national or regarded as a threat to the nation's unity.

People repose confidence in regional parties because they believe that they alone can safeguard the interests of the State concerned and can fight for the legitimate rights and powers of the States without being hamstringing by their association with a national party. Regional parties naturally concentrate on safeguarding and promoting regional interests. But they do not sacrifice the larger interests of the country. It is also significant that in the Lok Sabha a regional party (Telegu Desam) now forms the largest opposition group.

Among the causes of the growth of regionalism is prolonged maladministration and neglect of an area or State by the Central, Government. There has been a creeping disillusionment against Central rule. Regional symbols, regional culture, history and in many cases a common language, all promote regionalism. The Centre's indifference to the development of certain regions has created imbalances. Some areas particularly in the North, are well developed, with adequate infrastructure while others are way behind. This explains why there is Telegu Desam in Andhra Pradesh, DMK in Tamil Nadu and the Jharkhand Movement in Bihar.

There is much concern among leaders of the Congress (I) about the growth of regionalism in the country. It is looked upon with suspicion and is even

regarded as a challenge to democracy and national integration. But this concern is largely unwarranted; Regionalism will come into conflict with nationalism only when it becomes aggressive and when members of the various regional parties tend to forget that they are Indians first and last, citizens of the same country.

Non-regional conflicts are however a cause for concern. There are constitutional means to deal with regional conflicts, while the communal and caste conflicts have often to be settled in the streets. Inter-regional or centre-region disputes have never created a serious explosion whereas communal clashes frequently cause havoc.

Unfortunately, there are important differences among the regional parties themselves in the country. The differences of approach and policy have hindered the formation of an effective, durable and viable combination of regional parties so as to facilitate the emergence of a national alternative to the ruling party at the centre. The growth of regional parties in itself is not incompatible with the process of nation-building.

In a democracy, ideological options are open in the sense that any individual or group can adopt any ideology, provided, of course, it is within the legal framework. Political parties have the freedom to compete for power and pursue their respective ideologies. Since ideologies are not respecters of geographical boundaries, they also check the exclusiveness of regional identities. In fact, it has been the decline of the party system in recent years that has inflated the role of regionalism in the country.

As for the cures, three suggestions may be made. First, there should be a greater spirit of accommodation on the part of the Central authorities. This implies a reversal of the process of concentration of power which has admittedly been much in evidence in the country, causing resentment among the opposition-governed State. Power and authority must be shared on an equitable basis between the Centre and the constituent units, of the Indian Federation. Harmonious, balanced growth should be the administration's aim, not suppression of local desires and demands. Of course, firmness is necessary when regionalism, assumes militant forms, as it has done in Punjab in the form of Operation Blue Star and Operation Thunder, where in recent years certain groups of misguided youth started running a parallel government and creating chaos. Regionalism must not be allowed to become a shield for militancy, extremism, establishing a reign of terror and carrying on other anti-national activities. The regional parties' patriotism should not be suspected, regionalism does not weaken India. The majority groups should not become arrogant or obsessed with power. They should be generous towards the minorities, religious, cultural and linguistic. Suppression of regional aspirations is not the right remedy. There are some uniting factors which need to be further promoted. The emergence of a national market, the spread of communications, the influence of all India institutions, the widening transport facilities, the vast network of the electronic media, the establishment of a common structure of formal education almost throughout the country. These factors help to counter regional tendencies.

# 6

## **Family Law and Social Structures in Traditional Contexts**

Law of India refers to the system of law in modern India. It is largely based on English common law because of the long period of British colonial influence during the period of the British Raj.

Much of contemporary Indian law shows substantial European and American influence. Various legislation first introduced by the British is still in effect in modified forms today.

During the drafting of the Indian Constitution, laws from Ireland, the United States, Britain, and France were synthesised into a refined set of Indian laws. Indian laws also adhere to the United Nations guidelines on human rights law and the environmental law. Certain international trade laws, such as those on intellectual property, are also enforced in India.

Indian family law is complex, with each religion adhering to its own specific laws. In most states, registering of marriages and divorces is not compulsory. Separate laws govern Hindus, Muslims, Christians, Sikhs, and followers of other religions.

The exception to this rule is in the state of Goa, where a Portuguese uniform civil code is in place, in which all religions have a common law regarding marriages, divorces, and adoption.

There are about 1221 laws as of May 2010. However, since there are Central laws as well as State laws, it's difficult to ascertain their exact numbers as on a given date. The best way to find out about the Central Laws in India is from the official website.

## **History of Indian Law**

Ancient India represented a distinct tradition of law, and had an historically independent school of legal theory and practice. The Arthashastra, dating from 400 BC and the Manusmriti, from 100 AD, were influential treatises in India, texts that were considered authoritative legal guidance. Manu's central philosophy was tolerance and pluralism, and was cited across Southeast Asia.

Early in this period, which culminated in the creation of the Gupta Empire, relations with ancient Greece and Rome were not infrequent. The appearance of similar fundamental institutions of international law in various parts of the world show that they are inherent in international society, irrespective of culture and tradition.

Inter-State relations in the pre-Islamic period resulted in clear-cut rules of warfare of a high humanitarian standard, in rules of neutrality, of treaty law, of customary law embodied in religious charters, in exchange of embassies of a temporary or semi permanent character. When India became part of the British Empire, there was a break in tradition, and Hindu and Islamic law were supplanted by the common law. As a result, the present judicial system of the country derives largely from the British system and has little correlation to the institutions of the pre-British era.

## **Constitutional and Administrative Law**

The Constitution of India, which came into effect from January 26, 1950, is the lengthiest written constitution in the world. Although its administrative provisions are to a large extent based on the Government of India Act 1935, it also contains various other provisions that were drawn from other constitutions in the world at the time of its creation.

The administration of both the Union and the States, and codifies the relations between the Federal Government and the State Governments.

Also incorporated into the text is a chapter on the fundamental rights of citizens, as well as a chapter on directive principles of state policy. The constitution prescribes a federal structure of government, with a clearly defined separation of legislative and executive powers between the Federation and the States.

Each State Government has the freedom to draft its own laws on subjects classified as state subjects. Laws passed by the Parliament of India and other pre-existing central laws on subjects classified as central subjects are binding on all citizens. However, the Constitution also has certain unitary features, such as vesting power of amendment solely in the Federal Government, the absence of dual citizenship, and the overriding authority assumed by the Federal Government in times of emergency.

## **Criminal Law**

The Indian Penal Code formulated by the British during the British Raj in 1860, forms the backbone of criminal law in India. The Code of Criminal

Procedure, 1973 governs the procedural aspects of the criminal law. Jury trials were abolished by the government in 1960 on the grounds they would be susceptible to media and public influence. This decision was based on an 8-1 acquittal of Kavas Nanavati in *K. M. Nanavati vs. State of Maharashtra*, which was overturned by higher courts. In February 2011, the Supreme Court of India ruled that criminal defendants have a constitutional right to counsel. Capital punishment in India is legal. The last execution was conducted in 2004, when Dhananjay Chatterjee was hanged for the rape and murder of a 14-year old girl.

### **Contract Law**

The main contract law in India is codified in the Indian Contract Act, which came into effect on September 1, 1872 and extends to all India except the state of Jammu and Kashmir. It governs entrance into contract, and effects of breach of contract. Indian Contract law is popularly known as mercantile law of India. Originally Indian Sales of Goods Act and Partnership Act were part of Indian Contract act, but due to needed amendment there acts were separated from Contract Act. Contract act is the main and most used act of legal agreements in India.

### **Labour Law**

Indian labour laws are among the most restrictive and complex in the world according to the World Bank.

### **Tax Law**

Indian tax law is an extremely complex body of law, with several different taxes levied by different governments. Income Tax is levied by the Central Government under the Income Tax Act, 1961. Customs and excise duties are also levied by the Central government. Sales tax is levied under VAT legislation at the state level. Now a time white money is must required in our country and taxation is the way to go.

### **Trust Law**

Trust law in India is mainly codified in the Indian Trusts Act of 1882, which came into force on March 1, 1882. It extends to the whole of India except for the state of Jammu and Kashmir and Andaman and Nicobar Islands. Indian law follows principles of English law in most areas of law, but the law of trusts is a notable exception. Indian law does not recognised double ownership", and a beneficiary of trust property is not the equitable owner of the property in Indian law.

### **Family Law**

Family laws in India are different when Warren Hastings in 1772 created provisions prescribing Hindu law for Hindus and Islamic law for Muslims, for

litigation relating to personal matters. However, after independence, efforts have been made to modernise various aspects of personal law and bring about uniformity among various religions. Recent reform has affected custody and guardianship laws, adoption laws, succession law, and laws concerning domestic violence and child marriage.

### **Hindu Law**

As far as Hindus are concerned Hindu Law is a specific branch of law. Though the attempt made by the first parliament after independence did not succeed in bringing forth a Hindu Code comprising the entire field of Hindu family law, laws could be enacted touching upon all major areas that affect family life among Hindus in India. Jains, Sikhs and Buddhists are also covered by Hindu law.

### **Muslim Law**

Indian Muslims' personal laws are based on the Sharia, which is partially applied in India. The portion of the fiqh applicable to Indian Muslims as personal law is termed Mohammedan law. Despite being largely uncodified, Mohammedan law has the same legal status as other codified statutes. The development of the law is largely on the basis of judicial precedent, which in recent times has been subject to review by the courts. The contribution of Justice V.R. Krishna Iyer in the matter of interpretation of the statutory as well as personal law is significant.

*The very Source of the Muslim law are divided into two categories:*

1. Primary Source
2. Secondary Source

*"Primary Source" As per Sunni Law:*

- Quran
- Sunna or Ahdis
- Ijma
- Qiyas

*As per Shia Law:*

- Quran
- Tradition
- Ijma
- Reasons

*"Secondary Source":*

- Custom
- Judicial Decisions
- Legislation

*Salient Feature of Quran:*

- Divine Origin
- First Source
- Structure

- Mixture of Religion, Law and Morality
- Different Forms of Legal Rules
- Unchangeable
- Incompleteness-Quran is not a complete code, only 200 verses deal with legal matters
- Silence of Quran-On many legal issues, Quran is silent

### **Christian Law**

For Christians, a distinct branch of law known as Christian Law, mostly based on specific statutes, applies. Christian law of Succession and Divorce in India have undergone changes in recent years. The Indian Divorce Act of 2001 has brought in considerable changes in the grounds available for divorce. By now Christian law in India has emerged as a separate branch of law. It covers the entire spectrum of family law so far as it concerns Christians in India. Christian law, to a great extent is based on English law but there are laws that originated on the strength of customary practices and precedents. Christian family law has now distinct sub branches like laws on marriage, divorce, restitution, judicial separation, succession, adoption, guardianship, maintenance, custody of minor children and relevance of canon law and all that regulates familial relationship.

### **Nationality Law**

Nationality law or citizenship law is mainly codified in the constitution of India and the Citizenship Act of 1955. Although the Constitution of India bars multiple citizenship, the Parliament of India passed on January 7, 2004, a law creating a new form of very limited dual nationality called Overseas Citizenship of India. Overseas citizens of India have no form of political rights or participation in the government, however, and there are no plans to issue to overseas citizens any form of Indian passport.

### **Law Enforcement**

India has a multitude of law enforcement agencies. All agencies are part of the Internal Affairs Ministry. At the very basic level is the local police force, which is under state jurisdiction.

## **TRADITION OF ADULTERY UNDER COMMON LAW AND IN INDIA**

Adultery is sexual infidelity to one's spouse, and is a form of extramarital sex. It originally referred only to sex between a woman who was married and a person other than her spouse. Some religious interpretation and state laws go as far as to say that even in cases of separation from one's spouse, an extramarital affair is still considered adultery. The application of the term to the act appears to arise from the idea that "criminal intercourse with a married woman... tended to adulterate the issue [children] of an innocent husband..."

and to expose him to support and provide for another man's [children]". Thus, the "purity" of the children of a marriage is corrupted, and the inheritance is altered.

The law often uses the word "adulterate[d]" to describe contamination of food and the like. Adultery is illegal in some jurisdictions. The interaction between laws on adultery with those on rape has and does pose particular problems in societies that are especially sensitive to sexual relations by a married woman and men. The difference between the offences is that adultery is voluntary, while rape is not. The term adultery has an Abrahamic origin, though the concept predates Judaism and is found in many other societies.

The definition and consequences vary between religions, cultures, and legal jurisdictions, but the concept is similar in Judaism, Christianity, Hinduism and Islam. Historically, adultery has been considered to be a serious offence by many cultures. Even in jurisdictions where adultery is not itself a criminal offence, it may still have legal consequences, particularly in divorce cases.

For example, where there is fault-based family law, it almost always constitutes grounds for divorce, it may be a factor to consider in a property settlement, it may affect the status of children, the custody of children, *etc.* Moreover, adultery can result in social ostracism in some parts of the world. Three recent studies in the United States, using nationally representative samples, have found that about 10–15% of women and 20–25% of men admitted to having engaged in extramarital sex. Other studies in the US have higher numbers.

## Definitions

In the traditional English common law, adultery was a felony. Although the legal definition of adultery" differs in nearly every legal system, the common theme is sexual relations outside of marriage, in one form or another.

For example, New York defines an adulterer as a person who "engages in sexual intercourse with another person at a time when he has a living spouse, or the other person has a living spouse." North Carolina defines adultery as occurring when any man and woman "lewdly and lasciviously associate, bed, and cohabit together."

*Minnesota law provides:*

- "When a married woman has sexual intercourse with a man other than her husband, whether married or not, both are guilty of adultery." As recently as 2001, Virginia prosecuted an attorney, John R. Bushey of Luray, for adultery, a case that ended in a guilty plea and a \$125 fine. Adultery is against the governing law of the U.S., military.

In common-law countries, adultery was also known as "criminal conversation". This became the name of the civil tort arising from adultery, being based upon compensation for the other spouse's injury. Criminal conversation was usually referred to by lawyers as "crim.con.", and was abolished in England in 1857, and the Republic of Ireland in 1976.

Another tort, alienation of affection, arises when one spouse deserts the other for a third person. This act was also known as desertion, which was often a crime as well. A small number of jurisdictions still allow suits for criminal conversation and/or alienation of affection. Because of its abuse, at least one jurisdiction has abolished the tort of alienation of affection and has made it a misdemeanor crime to file such a lawsuit.

A marriage in which both spouses agree ahead of time to accept sexual relations by either partner with others is sometimes referred to as an open marriage or the swinging lifestyle. Both are a form of non-monogamy, and the spouses would not view the sexual relations as adultery, although it could still be considered a crime in some legal jurisdictions.

In Canada, though the written definition in the Divorce Act refers to extramarital relations with someone of the opposite sex, a British Columbia judge used the Civil Marriage Act in a 2005 case to grant a woman a divorce from her husband who had cheated on her with another man, which the judge felt was equal reasoning to dissolve the union.

## **THE JOINT FAMILY —TRADITION**

I grew up in a ‘joint family’ that was trying hard to delay the inevitable.

The first twelve years of my life were spent in a huge, rambling house with a host of cousins, uncles, aunts and, of course, my parents. But because it was the cusp of the 20th and the 21st centuries, the joint family was beginning to break up. The professions of each of my uncles took them to far away cities and lands. And with them went their “nuclear families” – their wives and their children.

As a boy, the summer holidays were what I looked forward to. Because that’s when 25 Southern Avenue, our ancestral home in South Calcutta, was brimming over with family. My father had four brothers. All of them, their wives and their children would converge on our family home trying hard to keep a tradition going that the impending 21st century was destined to break up. But during those formative summers of my youth, as many as 20 of my family members would sleep under the same roof. By joint family standards, that’s quite small. It’s not unusual for a ‘joint family’ to have anything between three and five generations of the same family living together. A family size of 25 would be considered small. A family size of 125 was more like what you should expect.

The Law in India, for tax purposes, has a more exacting name for ‘joint families’: the Hindu Undivided Family. The head of the family, called the karta, is whoever is the eldest male member of the family. All the brothers, their wives and their children live together. Sure, the sleeping quarters of the husband and the wife and their infants are usually separate but what distinguishes a “Hindu Undivided Family” is the common kitchen.

A mealtime for me during those ‘joint family’ holidays was a feast for the body, mind and soul. “Big Mother” would sit all of us cousins down in our

ascending order of age and feed us, from the same large “thali”, delectable balls of rice soaked in the choicest curries. In a deft stroke of child management genius, these balls of rice would acquire their own nicknames according to their size. “That’s the sparrow’s egg for the littlest one ... that’s the pigeon egg for the next ... here’s the hen’s egg...”, she’d say. The more over-imaginative of us (and the less biologically sure) would “book” a rhinoceros’ egg or even an elephant’s egg for the next round, vying to be as big and tall and as good at sport or study as our elder siblings. Along with these magical “rice eggs” we would be fed stories from far more enduring myths: The Mahabharata or the Ramayana. Stories that formed the basis of our cultural identity.

Holiday home-work (the assignments our schools would give us to do over the holidays) was the responsibility of “Second Mother” – my natural mother – because she spoke excellent English and all of us cousins were now in “English medium schools”. But with brothers and sisters ranging from 28 years to 4 years there was never a shortage of someone who had just mastered a subject lately or knew how to find ones way out of a tangled proof of Pythagoras’ Theorem. So school work was a breeze.

All of our “mothers” had special roles. If one was in charge of feeding the brood, the other was in charge of our studies, a third might see that we stay out of mischief, a fourth might look after our clothes. I’m sure there was no organization chart but everyone knew their places and roles changed as seamlessly as a well managed football team.

The function of my uncles and my father seemed to be to dote on us children. I am sure they all had a role in keeping the family larder full but all I knew them for was an endless stream of toys and games and delightfully scary stories that would put a Hitchcock to shame. (It was later in life that I learnt that they were Hitchcock’s stories suitably adapted from a recently seen movie!)

In a true joint family, the earnings of all members go into a common pool. And the Karta has sole authority over that earning. Sure, each family member can draw from the family’s resources, but it is at the will of the “head of the family”. The joint family works well when yours is a family run business. With anywhere between 50 and 150 people living in the same household, you don’t seriously have to go looking for ‘people you can trust’ to run your business. Our family never really had a family business. My paternal grandfather had died young. Leaving his wife, five sons and one daughter to fend for themselves. The eldest of those sons worked hard as an Insurance Agent to earn enough to educate his siblings and help them grow into professionals. Now, the next generation of Roy’s is scattered all over the globe held together by the ether of the 21st century. Which reminds me. I have to send an e-greeting to my third brother’s second son. If our clan was all together in our ancestral home in Kolkata, the preparations for his birthday would have started at 5 am in the morning and would have culminated in a feast for perhaps 100 people. And that’s just the “family members” living under the same roof. Yes, I miss being in a joint family. After all, at least one third of the days in the year would have

been a “birthday feast” for someone or the other. Add to that the marriage anniversaries and the religious festivals and you’ve got a suitable occasion to celebrate life pretty much everyday!

## **JOINT FAMILY: A SPACE FOR THE AGED**

While we are talking about the young and the adventurous and the rebellious, we should spare a thought for the aged. A rapidly-growing concern in Indian societies is of care of the elderly. In a society that was known for the ways in which it cared for its elderly, one is seeing a fast rising number of old age homes. The fragmentation of the joint family system is one of the key reasons that traditional forms of care for older people are eroding.

Since in a joint family system, there are lots of people to take care of and give attention to elderly people, it has been discovered that old people living in joint family systems are generally healthier than those living in unitary families. The elderly people of a unitary family are 21.6% less likely to have good health than the elderly person living in joint families. The breaking down of the Indian Joint family has in many ways left our elders isolated, who, without the love of their grandchildren and care of other family members may feel helpless and desolate.

In the nuclear family time constraints and increased responsibilities often lead to older people being ignored more. This obviously effects the quality of care and attention that elders receive.

## **JOINT FAMILY KING SIZE (MAXIMISING THE BENEFITS OF A JOINT FAMILY SYSTEM)**

- If there are problems between the members of the family, they could try and sort it out by speaking about it. This is also important learning for children in the family, because they will learn the importance of communication and conflict resolution.
- The various heads of authority should try and put up a united front before children, even if they disagree amongst themselves. Any disunity or contradictions, especially in discipline, will give the child a scope to manipulate situations and individuals.
- The position and authority of the parents of a child should not be undermined by other family members.
- Decisions should be taken following dialogue amongst family, rather than unilateral decisions that are then imposed on others.
- While the benefits of joint family set-ups should be recognized and appreciated, it should be seen that the benefits accrue only when the members of the joint family get along with each other, respect each others and each others’ space, are affectionate towards each other and so on. If the above mentioned features are missing, the joint family system could turn out to be a curse instead of a boon. In such a scenario a nuclear unit could be much more healthy to be in.

## JOINT FAMILY AT RISK

If current trends continue, the turn of the 21st century may witness the extinction of one of society's most ancient and influential establishments, the joint family. In India, the joint family is a sacred institution deeply rooted in Hindu heritage. It has been heralded as the cultural stronghold that has borne Sanatana Dharma intact through India's inimical dominations. Lately, its prestige has plummeted. Though extended families exist in most parts of rural India and some cities, joint families are harder and harder to find.

A joint family consists of many relatives living under one roof and sharing one kitchen and often a single bank account. Extended families include members who live in other dwellings or locales, near or far. With the nuclear age's nurturance of nuclear families, most joint families have completely disintegrated. Many that have stayed together have independent kitchens, checkbooks and lifestyles, conditions contrary to the oldest customs.

Few people welcome this trend towards dissolution. But they don't lament, either. Most simply call it inevitable. However, religious leaders, elders and members of functioning joint families are apprehensive, knowing that this family structure, better than any, preserves Hindu values and attitudes irrespective of the moral turbulence that may rage outside the home's walls. To lose this safe haven of Vedic culture, they feel, would be a body blow to dharma.

The joint family forms a veritable domestic fortress, aptly symbolized in India by the giant banyan tree, whose every branch grows roots which in turn support and feed the main trunk. Joint families insure not only the biological continuity of the human race, but also the cultural continuity of society. They successfully transmit ideologies, customs, traditions, beliefs and values from generation to generation. Individuals may come and go, but the family stands as a unit. Members are publicly known more by family name than individual identity. The social security, both material and psychological, that a joint family provides is unique and inestimable. Shared responsibilities result in minimal concern over the basics of life—money, food, shelter and clothing. Such concerns typically become all-consuming in a nuclear family; a single husband, wife and their children living together.

The Harilelas of Hong Kong (left) are living proof of the joint family's value. Naroomal and Devibai Harilela came to China from Sindh in the early part of this century. In the 1930s, their family was penniless. The six brothers sold newspapers on the street to make a living. Continuously encouraged by their mother to stick together, they advanced in their profession to eventually join Hong Kong's most successful businessmen. Their Harilela Group today owns hotels, restaurants, travel agencies, real estate and stores. They have always lived as a joint family—now numbering 50—and have for many years occupied a palatial mansion in Hong Kong, defined by separate quarters, and common dining, puja and gathering spaces. Their mother taught them to pool their resources, work hard, be patient with each other and be prepared to sacrifice—the essential principles of every lasting community.

Failing families: I grew up in a joint family in Karnataka, surrounded by 13 uncles, four aunts, grandparents and other live-in relatives. The joys and pleasures of growing up in such environs are unbounded. I carry with me most wonderful memories of childhood, filled with fun, affection and care. I miss those evenings after dinner when grandfather would collect all the “grandies,” tell us a story and show us the various constellations in the sky. As I recall it now, it seems like a bygone dream. Our family disintegrated for all the reasons that a sociology text would enumerate. It’s sad, but breaking up was inevitable.

Many joint families in cities have fragmented. Even the Prabhat family, featured in *Hinduism Today* [May, 1995], has decided to part. The reasons are many. Glaringly evident are disagreements over property and assets. After the head of the family expires, the brothers dispute their shares. “This is because the elders have not inculcated the right values in the family. Growing materialism drives them to crave for more. It is as if they were waiting for the head of the family to die. It’s disgusting when you hear of such instances, which are common now,” laments Mr. Raman, a retired engineer.

“Most joint families disintegrate when the elders lose moral authority,” says Mr. A.V. Subba Rao, an advocate. “Also, there is a common tendency for the head of the family to be partial to certain children and grandchildren. Often, a glaring favouritism is shown towards the daughters and daughters-in-law. Secondly, some children are exploited, while others are coddled. This differential treatment breaks down the relationships rather than bringing about unity.”

Often it is the eldest son who selflessly supports a large family, sacrificing many of his own ambitions. Sadly, however, his sovereignty may be rescinded by younger members once they settle down independently. They fail to acknowledge his service. My father suffered immensely, both emotionally and monetarily, because of this trend. Such instances are common.

Geetha, a young lecturer, moved out of a small joint family simply because she could not get along with her sister-in-law. “My mother-in-law favours her kids,” she complained, while the employed sister-in-law said, “She would never lend a helping hand in the kitchen.” These petty differences eventually led them to part.

“With education and employment, women have become more independent, and growing individualism attracts them towards nuclear families,” opines Mrs. Shankaran, who lives alone in her Bangalore bungalow. Her two sons live separately with their wives, but visit their widowed mother frequently.

Even functional joint families are being transformed. One distinct trend in liberal families is the mother’s use of the joint family as a day-care centre to look after her children while she pursues studies or a career.

The Nanis are a well-known family of theatre artists in Bangalore. After marriage, Bhargavi joined the Nani joint family of four generations living together. “They were traditional, and there was discipline we had to abide by. For instance, a daughter-in-law had to wake up early and dress in a sari with kumkum on her forehead. None of the elders objected to my being employed.

They took care of my children. I had no worries on the home front. They would even allow me to act in plays,” says 60-year old Bhargavi. “I enjoyed living in this family immensely. It did call for a lot of adjustments, but the advantages outweighed the disadvantages,” she affirmed.

Today the Nanis continue to live as a joint family with their two sons, daughter-in-law and their children, but a basic shift has occurred in family protocol. “Those days we adjusted to our elders. Now we adjust to the youngsters,” Bhargavi revealed. “They are too individualistic. You cannot impose your views on them. You have to be broad-minded and make a lot of compromises.”

Why won't you stay? As the sun of modernization has risen, the inconveniences of a joint family now seem to eclipse its merits. The head of the family, with absolute power, may disallow an individual the liberty to express opinions or pursue creative desires. Members with such aspirations can feel constricted. If their desires exceed the commitment to family duty or the will to resolve differences, their departure is assured. “Industrialization shattered the very foundation of joint families,” asserts Mr. Venkatesh Murthy, a professor of mathematics. “But we cannot say we did not want industrialization. People are now more concerned with their rights than duties. The personal self has become all important. No wonder joint families are on their way out!” Joint families all-too-often treat women as non-entities, relegating them to the four walls of the kitchen. My mother would rarely step out of the kitchen or socialize with family members and relatives. My aunts, on the other hand, had freedom to socialize. When my mother had an opportunity to talk, she would do so shyly from behind the door. Education and women's liberation have beckoned women to break free of such shackles.

As the rural class finds new avenues to explore, enticed towards urbanization, the urban families give way to growing individualism and self-reliance. Want of privacy and consumerism induce a certain selfishness that leads towards a nuclear family system. The accelerated growth of metropolitan cities and Western influences fuel this trend.

**Reforming Family:** Ironically, the West may be approaching the other end of that materialistic road. Members of an “intentional family” essentially adopt each other and live together as a joint or extended family. They may have been total strangers before their merger, but they instinctively yearn for togetherness. Usually, these are individuals have no family of their own or who live far from their birth family. Their common desire for a safe neighbourhood and secure home environment with friendly, caring faces binds them together as a new family. The elders adopt the younger members and become their grandparents, while they in turn are looked after and given special care as they grow old.

It began in the early 1970s, a time when many felt that families were breaking down, a time of loneliness and isolation. The idea of forming new families with people who barely knew each other was a risky proposition. But many of these families survive today. Children who have grown up within these kinships are

now parents. Like a normal family, they have had to face the pain of death of family members, divorce between some couples and the loss of several who have left the group. Yet, some say they like their foster family better than their birth family.

Wherever we look, the continuance of the joint family seems precariously perched on the aspirations and allegiance of each of us. Are we out to fulfil our own interests? Or, are we willing to sacrifice a little of ourselves for the greater whole? Tradition tells us such sacrifice reaps rewards in excess of that which was forgone. It also confirms that we each learn in our own time, at our own pace. "To keep a joint family, a spirit of selfless service, tolerance and broad-mindedness is a must. In modern living, to find these virtues is extremely rare," concludes Murthy.

## **TRADITIONAL SYSTEM OF SETTLEMENT OF DISPUTE**

Alternative dispute resolution in India is not new and it was in existence even under the previous Arbitration Act, 1940.

The Arbitration and Conciliation Act, 1996 has been enacted to accommodate the harmonisation mandates of UNCITRAL Model. To streamline the Indian legal system the traditional civil law known as Code of Civil Procedure, 1908 has also been amended and section 89 has been introduced.

Section 89 (1) of CPC provides an option for the settlement of disputes outside the court.

It provides that where it appears to the court that there exist elements, which may be acceptable to the parties, the court may formulate the terms of a possible settlement and refer the same for arbitration, conciliation, mediation or judicial settlement.

Due to extremely slow judicial process, there has been a big thrust on Alternate Dispute Resolution mechanisms in India. While Arbitration and Conciliation Act, 1996 is a fairly standard western approach towards ADR, the Lok Adalat system constituted under National Legal Services Authority Act, 1987 is a uniquely Indian approach.

### **Arbitration and Conciliation Act, 1996**

Part I of this act formalises the process of Arbitration and Part III formalises the process of Conciliation.

#### **Arbitration**

The process of arbitration can start only if there exists a valid Arbitration Agreement between the parties prior to the emergence of the dispute. As per Section 7, such an agreement must be in writing. The contract, regarding which the dispute exists, must either contain an arbitration clause or must refer to a separate document signed by the parties containing the arbitration agreement.

The existence of an arbitration agreement can also be inferred by written correspondence such as letters, telex, or telegrams which provide a record of the agreement. An exchange of statement of claim and defence in which existence of an arbitration agreement is alleged by one party and not denied by other is also considered as valid written arbitration agreement.

Any party to the dispute can start the process of appointing arbitrator and if the other party does not cooperate, the party can approach the office of Chief Justice for appointment of an arbitrator.

There are only two grounds upon which a party can challenge the appointment of an arbitrator—reasonable doubt in the impartiality of the arbitrator and the lack of proper qualification of the arbitrator as required by the arbitration agreement. A sole arbitrator or a panel of arbitrators so appointed constitute the Arbitration Tribunal.

Except for some interim measures, there is very little scope for judicial intervention in the arbitration process. The arbitration tribunal has jurisdiction over its own jurisdiction. Thus, if a party wants to challenge the jurisdiction of the arbitration tribunal, it can do so only before the tribunal itself. If the tribunal rejects the request, there is little the party can do except to approach a court after the tribunal makes an award.

Section 34 provides certain grounds upon which a party can appeal to the principal civil court of original jurisdiction for setting aside the award. Once the period for filing an appeal for setting aside an award is over, or if such an appeal is rejected, the award is binding on the parties and is considered as a decree of the court.

### **Conciliation**

Conciliation is a less formal form of arbitration. This process does not require an existence of any prior agreement. Any party can request the other party to appoint a conciliator. One conciliator is preferred but two or three are also allowed. In case of multiple conciliators, all must act jointly. If a party rejects an offer to conciliate, there can be no conciliation.

Parties may submit statements to the conciliator describing the general nature of the dispute and the points at issue. Each party sends a copy of the statement to the other. The conciliator may request or communicate with the parties orally or in writing. Parties may even submit suggestions for the settlement of the dispute to the conciliator. When it appears to the conciliator that elements of settlement exist, he may draw up the terms of settlement and send it to the parties for their acceptance. If both the parties sign the settlement document, it shall be final and binding on both. Note that in USA, this process is similar to Mediation. However, in India, Mediation is different from Conciliation and is a completely informal type of ADR mechanism.

### **Lok Adalat**

It roughly means "people's court". India has had a long history of resolving disputes through the mediation of village elders. The system of Lok Adalats

is an improvement on that and is based on Gandhian principles. This is a non-adversarial system, whereby mock courts are held by the State Authority, District Authority, Supreme Court Legal Services Committee, High Court Legal Services Committee, or Taluk Legal Services Committee, periodically for exercising such jurisdiction as they think fit.

These are usually presided by retired judge, social activists, or members of legal profession. It does not have jurisdiction on matters related to non-compoundable offences.

There is no court fee and no rigid procedural requirement, which makes the process very fast. Parties can directly interact with the judge, which is not possible in regular courts. Cases that are pending in regular courts can be transferred to a Lok Adalat if both the parties agree. A case can also be transferred to a Lok Adalat if one party applies to the court and the court sees some chance of settlement after giving an opportunity of being heard to the other party.

The focus in Lok Adalats is on compromise. When no compromise is reached, the matter goes back to the court. However, if a compromise is reached, an award is made and is binding on the parties. It is enforced as a decree of a civil court. An important aspect is that the award is final and cannot be appealed, not even under Article 226 because it is a judgement by consent. All proceedings of a Lok Adalat are deemed to be judicial proceedings and every Lok Adalat is deemed to be a Civil Court.

### **Permanent Lok Adalat for Public Utility Services**

In order to get over the major drawback in the existing scheme of organisation of Lok Adalats under Chapter VI of the Legal Services Authorities Act, 1987, in which if the parties do not arrive at any compromise or settlement, the unsettled case is either returned to the Court of law or the parties are advised to seek remedy in a court of law, which causes unnecessary delay in dispensation of justice, Chapter VI A was introduced in the Legal Services Authorities Act, 1987, by Act No.37/2002 with effect from 11-06-2002 providing for a Permanent Lok Adalat to deal with pre-litigation, conciliation and settlement of disputes relating to Public Utility Services, as defined u/sec.22 A of the Legal Services Authorities Act, 1987, at pre-litigation stage itself, which would result in reducing the work load of the regular courts to a great extent. Permanent Lok Adalat for Public Utility Services, Hyderabad, India

Lok Adalat, established by the government, settles dispute through conciliation and compromise. The first Lok Adalat was held on March 14, 1982 at Junagarh in Gujarat the land of Mahatma Gandhi. Lok Adalat accepts the cases which could be settled by conciliation and compromise, and pending in the regular courts within their jurisdiction.

The Lok Adalat is presided over by a sitting or retired judicial officer as the chairman, with two other members, usually a lawyer and a social worker. There is no court fee. If the case is already filed in the regular court, the fee

paid will be refunded if the dispute is settled at the Lok Adalat. The procedural laws, and the Evidence Act are not strictly followed while assessing the merits of the claim by the Lok Adalat. Main condition of the Lok Adalat is that both parties in dispute should agree for settlement. The decision of the Lok Adalat is binding on the parties to the dispute and its order is capable of execution through legal process. No appeal lies against the order of the Lok Adalat.

Lok Adalat is very effective in settlement of money claims. Disputes like partition suits, damages and matrimonial cases can also be easily settled before Lok Adalat as the scope for compromise through an approach of give and take is high in these cases. Lok Adalat is a boon to the litigant public, where they can get their disputes settled fast and free of cost.

## **THE NUCLEAR FAMILY**

The nuclear family is thought of as the “traditional family,” with two parents and siblings. However, “traditional” does not mean “simple.”

### **SPACING OF CHILDREN**

A majority of parents want more than one child, and once the first child is here or on the way, it's natural to wonder how long you should wait to have another. It's really a personal decision. On the one hand, many parents opt to wait a few years, until the first child is no longer in the demanding infant stage. These parents might tell you the thought of dealing with two infants at once was just too overwhelming for them. On the other hand, parents who had their children in quick succession might tell you they did not have time to lose their touch between children, and having two infants at a time is easier than having an infant and perhaps a toddler or even an older child, whose conflicting needs and demands involve a lot of gear-switching. One factor to consider when you're exploring the question of how many years to leave between brothers and sisters is how you envision their roles with one another. When siblings are born several years apart, the older siblings often adopt a caretaking role with the younger siblings. Siblings born closer together are more likely to relate as peers and playmates. Of course, no matter how you envisioned their roles, all siblings fight from time to time. And whether they're of the same or opposite sex influences their relationships, too.

### **Birth Order Factor**

If you've read any pop psychology, you've probably already come across the term “birth order factor.” It refers to a child's place in the family. Certain traits seem to go hand in hand with birth order. The theory is that birth order affects not only how your child sees herself, but also how you parent your child. For instance, studies demonstrate that parents often have greater expectations of first-born children.

Research has shown consistent responses among children when they were asked for their perceptions and feelings about their rank in the birth order, so

it's wise for parents to be aware of how birth order may affect each child and how it may cause you to overlook the needs of each child. What follows are some common traits ascribed to children depending on their birth order. You may agree or disagree strongly with some of these assertions; we present them just to make you aware of some findings in this area of study.

The first-born child is the pioneer in the family and, unless a remarriage into a family with other children occurs, she always enjoys the position of the oldest. First-born children are often very dependable, responsible, loyal, and protective. They often assume a little-parent role in the family. Among adults, a high percentage of firstborns can be found in such demanding professions as medicine and politics. Firstborns often say their parents place too much responsibility on them in the family, and parental expectations for them are too high.

Since the first-born child is an only child, at least for a while, she is the one child in the family who will ever know what it's like not to have to share her parents' attention with a sibling. For this reason, it's especially difficult for some firstborns to deal with the birth of the second child. The second child may always be seen as a threat by a first-born, since if it were not for him, the first-born would still have exclusive claim to parental attention and energy. It's not unusual for a first-born child to plot ways to get rid of the second child. This may involve backbiting or actual physical attacks against the second child or attention-getting behaviours such as whining and crying.

The second child often experiences a much different world than his older brother or sister does. Second children often take the role of rebel, clown, entertainer, artist, troublemaker, peacemaker, or negotiator in families. But second children often feel they don't get enough attention from their parents and, unlike firstborns, their parents don't expect much from them. They complain they are compared with their older siblings and often express the wish that they would just be appreciated for who they are. They may resent being bossed around by their older siblings.

Some middle children express relief about being in the middle. Their parents are accustomed to parenting by the time they arrive, so some of the pressure is off. But middle children often feel unappreciated by and uninvolved with the rest of the family. They usually end up with all the hand-me-downs from the older child, which doesn't help them feel very special either (unless they happen to be the first sister or brother born into the family, a situation that changes the family dynamics a great deal).

Middle children often see themselves as dependable, self-reliant, diplomatic, and easygoing. Because they do tend to be very independent, they often end up in very independent sorts of jobs. As children, they often wish their parents would get more excited about their achievements, spend more time alone with them, and, for heaven's sake, buy them some thing new once in a while.

The baby, or youngest child in a family, usually has special status. The parents' expectations of the youngest child may be lower, and this child doesn't have to do much to get all her needs met. By the time the baby of the family is born, the

parents may have attained a healthy earning power, so the family's financial situation may be considerably easier than it was when the first child was born.

The baby may be showered with material possessions and special attention. She knows she has a special place in the family and learns to charm and manipulate other family members to get what she wants. Nonetheless these youngest children don't like being called the baby; they want to be taken seriously just like other children. They often see themselves playing the role of the little one, the cute one, the spoiled one, or the one with the temper. Some babies don't ever really grow up or shed the role they played as a child often because their parents don't ever really allow them to grow up, wanting them to forever remain their cute, precious, final child.

### **Only Children**

There are lots of reasons for having only one child-sometimes the parents plan it that way; sometimes stillbirths, miscarriages, deaths, medical problems, or other factors prevent parents from having other children. These factors affect how an only child views himself and how his parents view him.

Most only children relish their position, even if they occasionally wish they had the companionship of brothers and sisters. Unfortunately, as parents age, an only child often becomes the sole caretaker with no siblings to help out.

Only children may feel lonely for lack of peer interaction. Due to their exposure within the home to adults only, they might have difficulty being around other kids even when the opportunities for such interaction exist, or they may simply prefer to be around adults. They often feel incredible pressure from their parents, since they may be viewed as the first, last, and only hope for the future of the family. While parents of larger families may hope to fulfil their own dreams through several children, all such wishes may be focused on an only child.

### **Late-Born Only Children**

A child born several years after other siblings shares some of the experiences of an only child, especially if the older children have already grown up and left home. But he is also the baby of the family, and his role reflects this dual situation. Parents aren't as likely to pressure this child as much as they might a true only child. He does not have to share attention with his siblings but can experience the loneliness and differentness the only child feels, particularly if his parents are much older. This latter situation comes into play with special clarity when the child reaches school age and meets other children's parents. Advantages to having so-called late children are many. There is little sibling rivalry, and the older siblings may be able to help their parents with the baby. Many of the anxieties of first-time parenting are gone. For the older children, having a baby in the house may teach nurturing skills and increase their appreciation for what was once done for them. What often ensues is more open affection among everyone in the household.

## **Forging the Family Unit**

What can family members do to enhance their bonding to each other in an age when isolation of people in general may inhibit bonding within the family unit? Let's start at the beginning. Studies have shown that when a father is present for the birth of his child, his relationship with the child in the first months of life tends to be enhanced. If there are siblings, it's important they be involved, too. Many hospitals recognize this; many offer sibling programmes to help prepare children for new brothers and sisters. Families can maximize closeness and reap practical benefits by having regular family meetings to make plans and discuss problems. Even small children can take part in some family decision-making and problem-solving: where to go on vacation, how to paper-train the puppy, and so forth. When all family members feel they are valued and their voices are heard, they are more likely to cooperate with each other. When families plan activities and spend time together, they have more shared memories, which enhances their sense of family. Families can establish their own traditions and festive occasions when they enjoy particular activities, such as visiting Grandma and Grandpa on Sundays or having a picnic on the Fourth of July. When family members plan and interact together, each experiences a sense of belonging, wholeness, and dignity. The same is also true for your extended family — grandparents, aunts and uncles, and so on. Learn about the special bonds and considerations when dealing with your extended family in the next section.

## **The Extended Family**

In days past, extended families played a big part in helping new parents. Grandparents were often present to help with the new baby. Extended-family members often lived under one roof or just down the road; children saw their relatives often enough to know who was who. Today, this is frequently not the case. Modern extended families can be quite different from extended families of years past.

## **TWO MODELS OF THE MODERN FAMILY**

Parsons' book presents an intricate picture of the nuclear family in American society in the late fifties. He points out that "the nuclear family is never...an independent society, but a small and highly differentiated sub-system of a society." It was, he felt, precisely this interdependence that made it likely that both the nuclear family and the larger society would remain relatively stable. Such worrisome things like divorce were a temporary problem characteristic of childless couples: "Once people settle down to having children together there is a relatively high probability that they will stay together."

At the time he wrote, the proportion of the population married and living with their spouses was the highest the census had ever recorded. New home-building programmes seemed to overwhelmingly indicate the primacy of the

single nuclear family residence. Parsons anticipated little change in the respective roles of women—“wife, mother and manager of the household”—and men, who were “primarily anchored in the occupational world.” In his most succinct description of the relationship between modern society and the family, he stated that it is because the human personality is not “born” but must be “made” that in the first instance families are necessary.... The basic and irreducible functions of the family are two: first, the primary socialization of children so that they can truly become members of the society into which they have been born; second, the stabilization of the adult personalities of the population.

The key word is irreducible. Notwithstanding the functions lost by the extended family—defense, education, economic production, political power—the functions of civil society, marketplace, or state would never eclipse the parenting function.

The two most important tasks of the family were systemically related—that is, that children can be socialized only in the company of, and under the direct care of, their parents, and that these parents themselves mature only in the nurturing of their children.

For these reasons, Parsons felt the nuclear family would remain fairly immune to the caustic forces of modernity. Such an irreducible family, he noted, was small—small in the number of relationships operative within it, small in terms of the number of children within it, and small in terms of the number of adults interactively operational within it. Like many scholars in our day, Parsons commented on and analyzed the way in which modern, or would-be modern, societies reduce the size of their domestic units over time. He observed that the nuclear family was a consciously self-liquidating institution that ended in its own intentional dissolution. Younger members are expected to leave home, having learned, both within it and as a consequence of its liquidation, the intricate mixture of collective altruism and individualized self-regard necessary for life in modern society.

It was from this axiom of the relatively unproblematic institutional stability of the small nuclear family that Parsons, the leading American sociologist of his day, approached the complex internal dynamics of modern family life. In *The Social System*, he attempted to articulate the “web of rules” within which the nuclear family operated. Parents are clearly superordinate to children, with husband and wife having complementary roles in a functioning family system. In the mid-fifties, the nuclear family was still firmly welded together.

## **THE HINDU FAMILY**

The Hindu family today is a collage of contrasting and conflicting images embossed on the canvass of a tension ridden society. The post-independence strains of a technological onslaught, cross-cultural currents and communal discord, and of the more recent media explosion of the nineties have all drawn up against traditional Hindu value systems to give rise to these tensions. In fact, the contemporary realities of a multireligious and multicultural Indian society

in transition are such that they completely undermine the monolithic notion of an unvariegated Hindu family. The approach to the Hindu family in this chapter is not based on any particular “ism” or ideology, but is an attempt to understand it as a signifier of a particular social order with a certain ideal, in the context of its own religio-philosophical and social setting.

Deeply entrenched in a tardily changing social matrix in the midst of globalization and the information explosion, the Hindu family faces the challenge of retaining its specific cultural identity even as it participates in the process of a contemporary homogenizing globalization. On the one hand the tyrannical backward pull of the *samskaras* (early impressions/realization of past perceptions), impedes this onward march; and on the other, the revolt against authority and subjugation necessitated by the demands of a rapidly changing economy raises its head, and the need for self-expression and self-assertion often takes aggressive forms, more so in the younger generation. As a result the unquestioned security and protection provided by the family is endangered.

In addition, the Hindu is traditionally supposed to follow a path to the spiritual goal in which the family is but a stage; but in post-independence modern India, with its insurgent multicultural currents, the emphasis shifts, and the Hindu family is thrown in the travails of questioning its own identity. This study is framed as follows. It first delineates the concepts of family and marriage, the power and position of man and woman, and the sex and role relationships as envisaged in Hindu philosophy and scriptures. Then, at the level of social practice, it analyzes the subjugating strategies and the apparently arbitrary social and emotive constructs of men and women in a “traditional” Hindu family. The next section discusses a few important aspects of the social reform movement in India. Finally, in the context of the changing contemporary reality, this chapter examines the relation of modern patriarchal practices to the politics of social change; the exigencies of the rights and freedom of the individual that underlie the recasting of male and female roles, with respect to social and moral responsibility; and the strivings of modern Hindu families through the strains of experienced reality, towards renewed identity.

Hinduism is a way of life, permeated with the spiritual outlook rather than conformity to a particular concept of religion; for a Hindu may be an atheist, an agnostic, a mystic, a pantheist, a dualist, or a monist. Allowing full liberty in thought, Hinduism enjoins a strict code of conduct in social life. Accordingly, *dharma*, or right action is a very important concept. As A.B. Creel puts it, “...any genuine understanding of Hindu culture will necessarily involve considerable attention to the life and thought structured around dharma”.

Dr. Radhakrishnan too brings out various aspects of dharma: “Dharma is right action. In the Rig Veda, *ṛta* is the right order of the universe. It stands for both *satya* or the truth of things as well as dharma or the law of evolution. Dharma formed from the root *dhr*, to hold, means that which holds a thing and maintains it in being. Every group of life, every group of men has its dharma, which is the law of its being. Dharma, or virtue is conformity with the truth of

things; *adharma* or vice is opposition to it. Moral evil is disharmony with the truth which encompasses and controls the world. In addition to the ontological, natural, social and moral aspects, dharma also implies a stress on the preservation and continuity of society and conformity to old customs. S.N. Dasgupta maintains that the motive of dharma is “essentially of the nature of social preservation and the maintenance of social solidarity”. Along with this, the central norm was the preservation of *sanātana dharma*, or eternal dharma.

Dharma is closely related to the concepts of *moksa* (salvation) and *karma*, with the latter both in the general sense of action or activity, as well as the specific sense of the law of *karma* as determining one’s present character and status or the duties of one’s station in society, that is, one’s dharma.

While each individual is born with certain innate tendencies and dispositions according to his *karma*, and the present is determined, this determinism however, is not irremediable. For the future, though conditional, depends on one’s present *karma* (activity), and dharma consists in the proper functioning of one’s life, nature or constitution.. Hence the faithful performance of dharma may lead not only to the improvement of one’s present position, but through a series of incarnations, also supply a motive for *moksa* or salvation.

The twin aspects of *karma*—the social and the individual are highlighted by the theory of *varna* (profession or caste), which emphasizes the social aspect, and the theory of *Asramas* or the four stages of life, which lays down the individual aspect. Accordingly, the four castes are: *brahmin*, whose function is the study of religious texts, reading, writing, teaching, and training the young; *ksatriya*, invested with the responsibility of protecting the community and the state by means of valor or warfare; entrusted with the job of carrying out trade and commerce; and *Rudra*, allotted the task of serving the three upper castes. And the *Asramas* or the four stages, taking up approximately one-quarter of the life of a man, or twenty-five years each, are: *brahmacharya*, the period of celibacy, training and education, during which there is complete emotional and financial dependency on the parents; *grihasthya*, the stage of a householder with involvement in family life; *vanaprasthya*, the period of retreat for detaching oneself from social bonds; and finally *Sanyasa* or renunciation.

The above scheme is a system of interrelationships, and is hierarchically structured with the provision of differential norms for the proper functioning of society. Dharma in this context is social regulation. And besides the universal dharma—the norms and duties equally obligatory for all human beings—is the doctrine of the *varnasrama dharma*, comprising the differential norms corresponding to the different norms and stages. As Surama Dasgupta observes: “In case of conflict between the *sidharana dharma* or universal duties and the particular caste-duties the latter are to prevail, for example, the *ksatriya* may violate the principle of non-injury in times of war; and this has been emphasized in the *Gita* and the *Mahabharata* as well”.

The Hindu concept of the family accordingly cuts across both caste and the different stages of life with four supreme ends or motivations. These are dharma

or righteousness, *artha* or wealth, *karma* or artistic and cultural life, including desire and pleasure, and *moksa*, which is spiritual freedom or salvation, as the ultimate end. These four motivations provide a link between the realm of desire and that of spirituality, between the temporal and the eternal, indicating that the former is not to be condemned as it is a road to the latter; nor is the latter ever to be lost sight of, for that is the ultimate spiritual realization. *Artha* and *kama* answer to the demands of material reality, while the aim of *moksa* is the final release from the influence of worldly bonds through the pursuit of dharma.

Though Hinduism emphasizes the social system with the individual members subordinated to it, yet there is a realm beyond this one in which society and dharma become unreal, and the individual finds his true being in the spiritual reality. The link is provided by the *Bhagavad Gita* in the doctrine of *nishkama karma*, that is, dharma or duty for the sake of duty, whereby the individual in performing the duties of his station, without desire for the fruits, attains mastery over himself and puts himself on the path to salvation.

Against the background of such a scheme, we are concerned mainly with *grihasthya*, or the second stage of the *asrama dharma*, that of the householder. With *karma*, or the desire for pleasure or cultural life being one of the accepted ends, monastic tendencies are discouraged in this stage. The individual is encouraged, after a period of *brahmacharya*, to enter into family life through the institution of marriage.

While eight kinds of marriage were recognized by the Hindu law books, the marriages in which personal inclination is subordinated rank higher. The marriages by choice are regarded as low, the lowest being when the woman is purchased, or her modesty is ravished without her consent, in sleep or in the intoxicated state. But even these low forms of marriage are regarded as valid in order to grant the status of wives to women, and legitimacy to their offspring. And while polygamy was traditionally tolerated, monogamy was regarded as the ideal. With the ideal of marriage as a spiritual union in view, the relation of marriage was regarded as sacred and indissoluble.

In Hindu mythology the gods are also married, and the highest of the religious icons are worshipped along with their consorts: Lakshmi with Vishnu, Viva with Parvati, and Rama with Seta. Besides the image of Shiva as *ardhanarishvara*—half man, half woman—signifies both masculine and feminine functions of the supreme being. Ideally therefore, marriage implies a relationship of cooperation and complementary functions in the joint missions of procreation, ensuring continuity, and maintaining the solidarity of the society.

In actual conventional practice however, the scenario is very different. The family is controlled by the eldest male member as the *karta* or the *swami* (lord) of the family, who also provides for it. He wields the ultimate power over the women, children, and servants. The woman is regarded as *ardhangini* (half body) and *sahadharmin?* (one who helps in observing dharma), implying a man-centered society, with the man as the doer, and the woman as a helpmate with a secondary role to perform. She is supposed to have special functions and

duties. She is the *janani*; (progenitor) who gives birth to and rears offspring, and performs all the domestic chores. As such she is relieved of the economic burden. But the woman's dependence on the man in the initial division of labour takes on pivotal significance in determining the roles man and woman play in the family

With patriarchal and patrilineal practices prevalent in most parts of India a male child is much coveted, for it is the son who has to feed the funeral pyre of the father. This is regarded as indispensable in the father's journey to the other world. This is also reflected in the central role the son plays in the *shradh* ceremony (salutations to the dead), "hereafter he takes on the hardship of the family and is responsible for ensuring the solidarity and well-being of the family. So great is the importance of having a male child that even the second marriage of a man could be justified on grounds of the need for a male heir.

Gender roles are very deliberately and painstakingly constructed in Hindu society. A boy, from his very childhood is conditioned into believing that he is the future lord of the family. Accordingly, he is encouraged to develop certain attitudes towards his female siblings and view the latter as being in need of his protection and support. He is given to feel superior on the basis of his physical strength. Certain traits like valor and manliness are encouraged in him, and the selfassertive, acquisitive and aggressive tendencies are condoned to a certain degree. Also, he is allowed to express himself more openly than the girl child. He is trained to shoulder the responsibility of the family in terms of economic provisions, protection, marrying off his sisters, and taking care of old parents with the help of his wife. He is further expected to keep the name, honor and prestige of the family intact, and if possible, enhance it. The burden of his responsibilities is lightened by making certain concessions to him. His occasional incursions in the field of sex are ignored. Marrying another woman while the first wife is still alive is not strictly condemned, and widower remarriage is unambiguously encouraged. In general, it is taken for granted that he have greater freedom of expression, assertion and action than his female counterpart.

The birth of a girl is borne with equanimity, but if more than one female child is born into the family it is often considered a misfortune. The unscrupulous custom of dowry lurks in the minds of the parents, the fear being that the dowry for the daughter's marriage could deprive the family of its prosperity, if not ruin it altogether.

As the girl is to be given away in marriage, she will have to adjust to a changed environment. Hence she is trained to be compliant, conform to the established order, and be submissive and obedient. Forbearance, self-control and self-denial are encouraged in her. She is made to cultivate the virtues of sacrifice and service to the family, disregarding her own comfort and convenience. Further, she is supposed to be modest, and safeguard her chastity at any cost, lest the family name be soiled.

Apart from the strict moral codes prescribed for a woman, there is also a definite stand on the status of the embryo and abortion. The embryo enjoys a

special moral and spiritual status meriting respect and protection. The traditional medical texts state that the descent of the *jiva* (soul) in the individual abode of consciousness coincides with conception, the killing of a pregnant woman is considered equivalent to the killing of a Brahmin which is regarded as a heinous crime. As such, abortion is traditionally unacceptable to the classical Hindu view on spiritual, moral and social grounds, except in cases where the mother's life is endangered.

A widowed woman, in complete contrast to the widower, is ordained to live a simple and austere life of rigid self-control and non-indulgence, and to follow a strict moral code of self-denial at the material, social and physical levels, even to the extreme extent of abstaining from foods that are said to arouse the passions. Woman's sexuality is thus controlled through such social codes of conduct. Not only is her identity as a partner in the family, property, and power, refused to her, her very individuality as a human being is denied to her.

There is also the gender based division of work. A boy is educated and trained to be part of the productive process, or to join one of the various services and make a living for the family. He is relieved of the domestic chores. A girl is trained to do all the household work which is never acknowledged as real work. Often she is deprived of a formal or higher education on the grounds that ultimately she has to take care of the house and look after the children. In the lower classes, where she is also involved in industrial or agricultural labour, her work is doubled. She has to face exploitation within and outside the family.

Eulogizing practices often become veiled strategies for the subjugation of women. An unmarried girl before she attains puberty is made an object of worship on *Kumari pujá*, on the eighth day of the famous festival of the goddess Durga, and is also regarded as *sudha* (pure). The woman is often compared to, or even given the status of a *devi* (goddess), as *Saraswati*, the goddess of learning, Lakshmi, the goddess of wealth, or *Durga*, the embodiment of *Shakti* (power). These practices reinforce the "ideal" of womanhood and serve to legitimize the strict moral codes to which women are expected to conform.

These moral codes, thus firmly entrenched in family and society, are based on the subjugation and the submission of women. The emphasis on virginity, on a girl being *sudha*, is so strong that it has also given rise to the practice of child marriage; the girl is married off before she attains puberty. Such a marriage of course closes off all avenues of choice and freedom for the woman.

While being unmarried is a social stigma for a Hindu woman, a married woman too is conventionally denied any autonomy whatsoever. According to the *Manu Samhita*, upon which much of contemporary Hindu Law is still based, a woman is, before marriage, the property of her father; after marriage she is regarded as her husband's property; and after her husband's death, as that of her son. The father has the right to give away a daughter in marriage as charity or *dhan*; one of the marriage rituals is *kanyada?n* or the giving away of the daughter. And the extent of the husband's right over his wife is exemplified in the famous gambling episode in the *Mahabharata*, when *Yuddhisthira*, having lost all else,

*even stakes his wife Draupadi in the game. Very often a marriage is merely a means to improving the prosperity of the groom's family, for along with the bride comes the dowry—comprising exorbitant gifts and cash for the groom and his family. This dowry system, though illegal now, continues unabated in actual social practice. A young woman is thus treated not merely as a commodity that can be bought, but who is given away too along with the gifts.*

After marriage, a wife is to be a pativrata (dutiful and faithful to her husband). And Manu lays down the duties of a wife thus: “Even if he is destitute of virtue, seeks pleasure elsewhere, or is devoid of good qualities, yet a husband must be constantly worshiped as a god by a faithful wife”. As for a man, it is not a serious problem if he is not inclined towards his wife, for he may seek satisfaction elsewhere, or marry another woman. Again, though bigamy has been outlawed for more than forty years now, the practice of taking on a second wife is far from uncommon for a Hindu man. The woman, on the other hand, is bound to the life of her husband—and sometimes to his death—as his deathmate or as satī, by burning herself upon her husband's funeral pyre. With this traditional background, several attempts were made in nineteenth century colonial India by Indian social reformers to reconstruct the past, and modify traditions to make them more suitable to the demands of the changing times. And the need to confront the onslaught of the dominant western culture, which posed a challenge to the Indian value system, proved to be a catalyst for the reform movement in India.

Europeans in India engaged themselves in the rediscovery of India's past, and the Orientalists like William Jones and H.T. Colebrook highlighted the notion of a golden age which had existed in an unspecified period of India's past. This served the purpose of “reintroducing the Hindu elite to the impenetrable mystery of its ancient lore” from the western point of view. Colebrook's researches also focused on the question of women. He cited Gargi and Maitreyee as examples of the glory of ancient India's womanhood and highlighted the duties of the faithful Hindu widow. One of the most influential Orientalists was James Mill. The criterion by which he judged the level of civilization was the status it accorded to its women. On grounds of the degradation of women in the context of *sati*, the denial of education and property rights, and their subservient position in relation to men, he termed Hindu culture to be a “barbaric” culture. As Uma Chakravarty observes, these Orientalist attitudes served not just to establish the notion of British superiority, but also to provide a justification of colonial rule in India:

The degeneration of Hindu civilization and the abject position of Hindu women, requiring the ‘protection’ and ‘intervention’ of the colonial state, were two aspects of colonial politics. The third aspect was the ‘effeminacy’ of the Hindu men who were unfit to rule themselves. On all three counts British rule in India could be justified on grounds of moral superiority.

The indigenous intelligentsia were not watching the scene passively. The status of women, and Hindu culture itself became the site of struggle between

the British rulers and the Indian leaders, and this had far-reaching consequences for the Hindu family with the introduction of new legislation. In order for Indian culture to survive it had to legitimize itself in terms of the reinterpretation and authority of its scriptures and the law books. Raja Rammohan Roy's researches found the alternative to the "degenerate" Hindu civilization in the form of the *Vedas* and the *Upanishads* as the core of Hindu tradition, and chose the elements relevant to the requirements of the then social and political needs. The impartation of divine knowledge to Maitreyee by Yajnavalkya was used by Rammohan Roy to show that women were not inferior to men and that the pandits had given distorted versions of the shastras. He fought against the practice of *sati* and equated forcible cremation of a woman with her dead husband to murder. He rejected the arguments of the advocates of *sati* by pointing out that the Vedas upheld the superiority of knowledge over rites and the ultimate goal of all Hindus was seeking oneness with the divine reality which could not be attained by the practice of *sati*.

Raja Rammohan Roy also fought against the evils of polygamy and caste based marriages. With the prevalence of the rigid caste system, a high-caste Hindu would rather marry his daughter to a high-caste Hindu man having many wives than give her in marriage to a bachelor of a low caste. Roy vouched for women's rights in the ancestral property as well as the property of her husband, by quoting from the different law-givers like Yajnavalkya and Manu.

Like Rammohan Roy, another powerful social reformer from Bengal, Ishwarchandra Vidyasagar raised his voice against the evils of child-marriage and polygamy. "But his memorable stand," says Susobhan Sarkar, "was in 1855, when he caused a sensation by his outspoken advocacy of widow remarriage in the teeth of the deepest social prejudices. Like Rammohan Roy, he made out his case by a parade of scriptural authority to silence his critics.... Legislation was secured for the reform, though the upper-class society was hardly convinced of the need for such a reform".

In the context of the nineteenth and twentieth century nationalist ideology, one of the most significant changes in ideological configuration took place in the context of the nationalist glorification of motherhood. As Jashodhar B?gahi states.

The masculine occident conceived the orient as a feminine image. Ironically the nationalists conceived their own country as the great mother figure in keeping with the sanction derived from the religious practices of Hindu Bengal.

By representing the country as a Hindu mother/goddess the nationalist culture created a political image that resulted in a composite, often self-contradictory image of the mother. The human ideal was one of the all-suffering mother.... As the stable centre of a fragile colonial society, she provided constant solace to the humiliated son; on occasion her heroism acts as an inspiration to lift up the downtrodden spirit of the son. But she is also the divine ideal. In her divine form she is the destructive Shakti, ready to destroy the demon of evil.....motherhood is made to stand for the sacrosanct space not sullied by any

petty influence. Even in the sphere of education mothers were valued as the wholesome agents of education who will not allow a drastic reversal of indigenous values.

Thus, thanks to nationalist politics, while the mother was eulogized as a goddess, and raised to sacrosanct levels as the inspiring muse of nationalist spirit and the preserver of indigenous values, this was simultaneously successful in containing the woman within the household, keeping her subservient to the menfolk for all practical purposes, and denying her desires and aspirations as an individual.

Has the Hindu woman, wife or mother, really benefitted from the ideological reconstructions and the reform movements? As Uma Chakravarty says.

The nation's identity lay in the culture, and more specifically in its womanhood. In the changed political and social environment the image of woman was more important than the social reality. Historians and laymen would complete the process by ensuring, through continued writings in the twentieth century, that the image also came to be perceived as a reality.

## THE MUSLIM FAMILY

According to sociologists every society requires five subsystems referred to as "the prerequisite for society survival" or, "the functional systems for survival." As in a watch, each subsystem enables the society to function in a viable and meaningful way.

*Briefly speaking, these subsystems are:*

- The *political system* which accommodates conflicts and maintains order in the society.
- The *economic system* which produces and distributes goods and services to fulfill the needs of its members.
- The *educational system* which trains the new generations enabling them to play their roles in the society's activities.
- The *religious system* which deals with emotional crises and enables the society members to maintain a sense of purpose while facing life's hardships.
- The *family system* which is entrusted with procreation to replace the dying members of the society. It also plays the role of socializing the new generations to transmit the cultural traits and to preserve the ancestors' traditions.

The aim of this chapter is to concentrate on the family system, specifically in the context of the Islamic Faith. The writer will examine the influence of Islam on the Muslim family in the last 1500 years; its early beginnings when the faith was strong; the changes which have taken place and the factors which seem to be influencing that change. Finally, the paper will try to predict the future of the Muslim family in the light of the emergence of the new world Islamic Movement. This movement referred to as "Muslim Fundamentalism" by the West is, in fact, a return to the essentials of the faith.

## ISLAM

Since the subject under discussion is the family in the framework of the Islamic Faith, it seems appropriate to have a word about Islam. The word Islam is an Arabic word adapted from the infinitive “*silm*” which means “peace” in English. It is the message revealed to the prophet Muhammad (peace be upon him) in the seventh century after Christ. Its aim is to establish peace between man and his Creator, between man and himself and between man and his fellow men in the society. The most significant source of Islam is the holy Qur’an revealed to the prophet of Islam through the Angel Gabriel over a period of twenty-three years. To the followers of Islam, the Qur’an is a Constitution laying down the rules by which a Muslim should conduct life’s daily affairs.

This Islamic Constitution contains a complete family code organizing all the familial relationships. It defines the rights and obligations of each family member towards the other. It also includes a set of obligations and prohibitions for individual relationships as members of the larger society. This Islamic family law was in force throughout the Muslim world from the time of the rise of Islam until the breakup of the Ottoman Empire by the west.

### The Family

For the sake of this survey, the Muslim family will be dealt with as a sort of kinship carrying one last or family name. The holy Qur’an defined the family within the confines of marriage between a man and a woman whereby mankind is multiplied. It states: “O Mankind! fear your God who created you from a single soul created of a like nature his mate and from the two scattered (like seeds) countless men and women.”

This Quranic verse describes the family in terms which sociologists today call “the nuclear family.” But, before the rise of Islam, in some parts of the Arab world, the family unit was based on loyalty to different groups of kinship. These groups were organized in structured sizes as follows:

- *Qabilah* (Tribe) was the largest size of the familial groupings. It was divided into two or more sub-tribes referred to as *Ashira*.
- *Ashira* was the sub-tribe. The word “*Ashirah*” seems to be adapted from the Arabic word “*Asharah*” which means ten in English. This indicates that this group consisted of ten levels of descendants.
- *Firqah* was a sub-division of *Ashirah*.
- *Fakhith* was a sub-division of *Firqah*.
- *Hamulah* was a sub-division of *Fakhith*.
- *The extended family* was a sub-division of the *Hamulah*. Each tribe usually claims that it is made up of descendants of a single ancestor whose name they all bear.

This structural type of kinship gradually gave way to the emergence of the nuclear family. It is noteworthy that Islam did not recommend this structural type of kinship as previously stated. William Goode, in his study of the family

in the Arab world remarks: “Perhaps one of the more striking aspects of these traditional larger groupings of kinship is the very small place they occupy in Muslim Law. Although the law is concerned in great detail with the family, from the formation of the marriage to its dissolution, as well as the problems of affiliation and succession, for the most part it deals almost entirely with the small family and has not typically recognized the larger kin groupings as being of legal significance.” Whether the Muslim family is viewed as a nuclear family or a larger kinship structure, it is considered to be the most fundamental unit in the socialization process of the child. It also continues to serve as a socializing agency for adults. Usually, when one seeks to explain juvenile delinquency, exceptional eminence, profound humanitarianism or deepseated prejudice, an investigation is made into the kinds of family in which the individual was reared. For this reason, family is considered to be the first brick in the societal structure and its health or sickness reflects, in the end, upon the larger society.

### **Family Types**

In “Handbook of Marriage and The Family,” Christensen has classified the family based on:

1. *Size.*  
*Nuclear:* consisting of husband, wife and their immediate children.  
*Extended:* consisting of more than one nuclear family related to each other by blood.
2. *Formal Authority.*  
*Patriarchal:* in which the father is dominant.  
*Matriarchal:* in which the mother is dominant.  
*Equalitarian:* equal dominance of father and mother.
3. *Number of Persons United in Marriage:*  
*Monogamous:* one man marries one woman.  
*Polygamous:* one man marries more than one woman.  
*Polyandrous:* one woman marries more than one man.
4. *Lineal Descent.*  
*Patrilineal:* privileges and duties of descent follow the male line.  
*Matrilineal:* privileges and duties of descent follow the female line.  
*Bilineal:* privileges and duties of descent follow both lines.
5. *Place of Residence.*  
*Patrilocal:* the couple resides with the husband’s parents.  
*Matrilocal:* the couple resides with the wife’s parents.  
*Neolocal:* the husband and wife have their own independent residence.

### **Formation of the Muslim Family**

Upon the advent of Islam in the seventh century, the pagan Arabs were practicing many forms of marriage. These marriages led to a sort of sexual chaos. To organize the people’s sexual life, and to clearly establish the unit which serves as a solid foundation for human society, Islam initiated its own

institution of marriage, giving special attention to the family unit. Since the family is entrusted with the two most important responsibilities of replacing the old with the young, and of educating and training the new members to play their proper roles in the larger society, the Holy Qur'an and the Prophetic Traditions have laid down very specific rules for organizing and forming the family.

### **Mate Selection**

*Generally speaking, the family is formed by one of the following methods of mate selection:*

- *Arranged-Marriage:* Where the elders select the mates for their children who normally have little or no say in the matter.
- *Romantic Love-Marriage:* Where the two parties select each other with little or no say by the elders.
- *Islamic-Marriage:* Where the two parties select each other in the framework of Islam and obtain the consent and sanction of their elders.

Islam cites four criteria on which to base the mate selection. The Prophet of Islam (peace be on him) said: "a woman is married for her wealth, her beauty, her social status or for her religiosity. However, select the religious one in order to achieve success in your marital life." Based on this saying it is understood that Islam emphasizes the selection of a religious mate to ensure a successful life.

However, with time these ideals of mate selection weakened. It is very rare in our era to find a person selecting a mate on the basis of religiosity. Materialism has played a great role in changing the pattern of mate selection. Religiosity has been replaced with wealth, beauty and social status as the preferred reasons for marrying somebody. The writer, being a religious leader authorized to perform marriages, has drawn this conclusion from his personal observations and experiences.

### **Betrothal**

The second stage in the formation of the Muslim family is the betrothal. In ancient Arabia it was the duty of the father or the elder brother to find, from among the nearest male relatives, a match for a girl when she reaches puberty. The most common practice was "the cousin marriage." The betrothal was a common practice at the time of the Prophet who sanctioned it as a final step towards marriage.

In modern Muslim communities, negotiation for betrothal generally starts in the family of the boy. Customarily, word is sent to the bride's family informing them that a specific young man is interested in marrying their daughter. A meeting between the two families is then arranged. In this meeting the father or another elder of the boy's family makes the formal proposal for marriage thus: "I have come to ask for the hand of your daughter whose name is...for my son (or brother) whose name is..."

Having heard the expressed intention of the prospective groom, the girl's representative either declares his approval or declines. If the response is positive, the custom is to offer a gift to the bride from the groom. Currently, the gift usually consists of a gold ring with the groom's name engraved on it. He places the ring on her right hand which would indicate that the girl is engaged. After the legal marriage contract is signed by the two parties, the ring is moved to the left hand of the bride as an indication that she is married. It is also a custom that the groom purchases another ring for himself with his fiancée's name engraved upon it, to be worn on his right hand during the betrothal period, then moved to the left hand after marriage. It is appropriate also to mention that the betrothal meeting is held only after the approval of the girl's family as well as the girl herself; this is a change from the old unislamic pattern in which a girl had no say and her marriage was arranged by the elders.

### **Dowry**

Islam makes it incumbent upon a groom to pay a dowry to his wife. This is in contrast to the practice prevailing in some other societies, for example, in India, where the girl pays a dowry to the prospective husband. The dowry can be money, jewelry or any other item of value. The amount of the dowry is not limited and is mutually agreed upon by the two parties.

Some sociologists refer to the dowry as "the bride price" which, in the view of the writer, is incorrect. Customarily, the dowry is an amount of money agreed upon by the two families to be paid by the groom or his family to the bride's family. This money is utilized to help the bride's family pay the cost of a furnished apartment for the new couple. In practice, the bride's family usually matches the amount paid by the groom's family. In some instances, the dowry is divided; a part is paid before the marriage and the remainder is paid after divorce or death of the husband, whichever happens first. The late dowry also serves to deter the husband from divorcing his wife for no good reason.

### **Marriage Contract and Wedding**

The most important step in the process of the Islamic marriage is the marriage contract. Marriage in Islam is a sort of contract. Whatever has been written in this contract will be the future rules of the marital relationship. However, the Islamic family law as stipulated in the Holy Qur'an and the Prophet's Traditions must supersede any article cited in the marriage contract.

This contract is to be signed by the groom and the bride or by their attorneys before at least two witnesses. Publicizing the marriage is preferred and more desirable. In the Muslim traditional family, the bride would authorize her father, brother or any close relative to act on her behalf while the marriage was being performed. Women would not appear in public before the men in such a ceremony. This pattern is changing. It is customary at the present time to see Muslim brides, especially in urban areas, attending their marriage, pronouncing the vows, and signing their own marital contract.

The next step is the wedding by which is meant the consummation of marriage by the groom and bride upon assuming a common residence. This residence could be part of the groom's family, the bride's family or the independent residence of the new couple. The Muslim wedding can, and does, include some kind of entertainment. Islam prohibits the use of liquor and mixed dancing. In reality, however, some Muslim weddings of today have deviated from this rule. Dr. Mohammad Rauf states in his book *Marriage in Islam*:

True, there is nothing wrong in adopting the western customs so long as no prohibition is violated and extravagance is avoided. I must confess, however, that I was appalled when I attended a reception of this type for the first time. I loathed the appearance of some women who had applied heavy cosmetics and were indecently clothed; and I was astonished to see liquor lavishly served. I hated the sight of women dancing with strange men, close to each other, in an ecstatic mood. This sort of experience has been repeated many times, and always I have found it dull and even painful.

Like the Jews, the Muslims of North Africa ritualized the virginity test. In Islam, a virgin is defined as a person who has never been touched by a member of the opposite sex. In other words, in the case of a woman, her hymen is still intact. Though this practice has nothing to do with Islam it has been a custom in the North African countries for a long time. This ritual has been described by Patai:

“The public ascertaining of the bride's virginity has continued to be practiced in the Middle East in tradition-bound social areas down to the present day...A woman used to be stationed in front of the wedding chamber and as soon as the bridegroom had deflowered his bride, he handed to her the bloodstained napkin which she thereupon showed to all the assembled guests, proclaiming in a loud voice that the bride was found to have been a virgin.”

This custom is becoming obsolete now and is rarely practiced in the Muslim world at the present time.

# 7

## Child Protection

The term 'child protection' is used in different ways by different organizations in different situations. The term will mean protection from violence, abuse and exploitation. In its simplest form, child protection addresses every child's right not to be subjected to harm. It complements other rights that, inter alia, ensure that children receive that which they need in order to survive, develop and thrive.

Child protection covers a wide range of important, diverse and urgent issues. Many, such as child prostitution, are very closely linked to economic factors.

Others, such as violence in the home or in schools, may relate more closely to poverty, social values, norms and traditions. Often criminality is involved, for example, with regard to child trafficking. Even technological advance has its protection aspects, as has been seen with the growth in child pornography.

### **WHAT IS AT STAKE**

Violations of the child's right to protection, in addition to being human rights violations, are also massive, under-recognized and underreported barriers to child survival and development.

*Children subjected to violence, exploitation, abuse and neglect are at risk of:*

- Shortened lives
- Poor physical and mental health
- Educational problems (including dropping out of school)
- Poor parenting skills later in life
- Homelessness, vagrancy and displacement

Conversely, successful protection actions increase a child's chances to grow up physically and mentally healthy, confident and self-respecting, and less likely to abuse or exploit others, including his or her own children.

*Child protection is an issue for every child in every country of the world:*

- At any given time, more than 300,000 child soldiers, some as young as eight, are exploited in armed conflicts in over 30 countries. More than 2 million children are estimated to have died as a direct result of armed conflict since 1990.
- More than 1 million children worldwide are living in detention as a result of being in conflict with the law. In Central and Eastern Europe alone, almost 1.5 million children live in public care. Over 13 million children are estimated to be orphaned as a result of AIDS alone.
- Approximately 250 million children are involved in child labour, with more than 180 million working in hazardous situations or conditions.
- An estimated 1.2 million children are trafficked every year.
- A 1995 estimate of the number of children in the commercial sex trade indicated that 1 million children (mainly girls but also a significant number of boys) entered the multibillion-dollar industry every year. The figures may now be higher.
- Forty million children below the age of 15 suffer from abuse and neglect, and require health and social care.
- An estimated 100-130 million women and girls living in Africa today have undergone some form of genital mutilation.

Child protection is a special concern in situations of emergency and humanitarian crisis. Many of the defining features of emergencies—displacement, lack of humanitarian access, breakdown in family and social structures, erosion of traditional value systems, a culture of violence, weak governance, absence of accountability and lack of access to basic social services—create serious child protection problems. Emergencies may result in large numbers of children becoming orphaned, displaced or separated from their families.

Children may become refugees or be internally displaced; abducted or forced to work for armed groups; disabled as a result of combat, landmines and unexploded ordnance; sexually exploited during and after conflict; or trafficked for military purposes. They may become soldiers, or be witnesses to war crimes and come before justice mechanisms. Armed conflict and periods of repression increase the risk that children will be tortured.

For money or protection, children may turn to 'survival sex', which is usually unprotected and carries a high risk of transmission of disease, including HIV/AIDS. Failure to protect children undermines national development and has costs and negative effects that continue beyond childhood into the individual's adult life.

While children continue to suffer violence, abuse and exploitation, the world will fail in its obligations to children; it will also fail to meet its development aspirations as laid out in such documents as the Millennium Agenda with its Millennium Development Goals.

## ENSURING CHILD PROTECTION

The fundamental objective of child protection is to ensure that all those with a duty to safeguard the protection of children recognize that duty, and are able to fulfil it. Given the ethical and legal imperatives, child protection is the business of everyone at every level of society in every function. It creates duties for presidents, prime ministers, judges, teachers, doctors, soldiers, parents and even children themselves. These duties may be reflected in the legal standards that a country puts in place. They may also be reflected in the choices a government makes, including its allocation of resources.

## DISCRIMINATION

Discrimination is a daily reality for millions of the world's children. It can result in or exacerbate violence, abuse or exploitation. For example, many of the children involved in the worst forms of child labour come from minority or excluded groups.

*There are numerous forms of discrimination, but some of the most common are discrimination on the following grounds:*

- *Gender:* Gender-based infanticide, abortion, malnutrition and neglect are believed to be behind the 60 million to 100 million women 'missing' from the world's population. Ninety per cent of domestic workers, the largest group of child workers in the world, are girls between 12 and 17 years old.
- *Disability:* Children with disabilities make up an estimated 20 per cent of all children in institutions in Central and Eastern Europe and the Commonwealth of Independent States.
- *Ethnicity and Race:* In one Eastern European country, a 1992 study found that only half of Roma children aged 7 to 10 attended school on a regular basis. One third had never attended or had dropped out. Roma children are routinely placed in special schools for children with mental disabilities, regardless of their actual abilities.
- *Caste and Class:* In one South Asian country, the majority of the 15 million bonded child workers are from the lowest castes.

Discrimination persists despite the recognition of the equality of men and women as one of the purposes of the United Nations more than a half century ago and the proliferation of other UN and regional instruments that prohibit it. The Committee on the Rights of the Child and other international human rights bodies continue to find examples of laws that discriminate against women or particular ethnic or social groups, or which discriminate in other ways.

Discrimination goes beyond laws into the traditions, customs, attitudes and behaviour of societies, communities, families and individuals. For example, societies with higher levels of rape, child marriage and abandonment of children conceived out of marriage tend to devalue women. Women who reject traditional roles often feel the force of traditional mechanisms for enforcement of these unwritten laws, ranging from humiliation to expulsion from the family and physical violence.

Being aware of gender as a form of discrimination goes beyond an exclusive focus on girls. While many violations of the rights of the child affect girls disproportionately, boys are the main victims of some types of violations. More boys than girls are victims of homicide, especially in late adolescence. Boys greatly outnumber girls in facilities for juvenile offenders around the world.

While most victims of sexual abuse are girls, in most societies the majority of child victims of physical abuse are boys. Gender awareness requires understanding the differential impact of various types of violence, abuse and exploitation in girls and boys. It also requires making an effort to understand the underlying mechanisms and to use this knowledge to develop more effective legal, social and economic policies.

### **BUILDING A PROTECTIVE ENVIRONMENT**

The scale, extent, nature, urgency and complexity of child protection issues are daunting. Yet there are numerous examples among many countries of the varied ways in which governments, civil society actors, communities and children themselves can help prevent and respond to violence, abuse and exploitation.

It is clear that the response to child protection has to be holistic, recognize the duties of all people at all levels to respect children's protection rights and apply to all children in all circumstances without discrimination.

Achieving a world where children's protection rights are routinely respected requires ensuring that children grow up in an environment that is protective, where every element of that environment contributes to their protection and where every actor does his or her part. There is no legal or other agreed definition of what constitutes a protective environment.

*However, it should address at least the following elements:*

- *Governmental Commitment to Fulfilling Protection Rights:* Government interest in, recognition of and commitment to child protection is an essential element for a protective environment. This includes ensuring that adequate resources are made available for child protection, for example, for programmes to combat child labour. It also includes political leaders being proactive in raising protection on the agenda and acting as advocates for protection.
- *Attitudes, Traditions, Customs, Behaviour and Practices:* In societies where attitudes or traditions facilitate abuse—for example, regarding sex with minors, the appropriateness of severe corporal punishment, the application of harmful traditional practices or differences in the perceived status and value of boys and girls—the environment will not be protective. In societies where all forms of violence against children are taboo, and where the rights of children are broadly respected by custom and tradition, children are more likely to be protected.
- *Open Discussion of, and Engagement with, Child Protection Issues:* At the most basic level, children need to be free to speak up about child

protection concerns affecting them or other children. At the national level, both media attention to and civil society engagement with child protection issues contribute to child protection. Partnerships among actors at all levels are essential for an effective and coordinated response.

- *Legislation and Enforcement:* An adequate legislative framework, its consistent implementation, accountability and a lack of impunity are essential elements of a protective environment.
- *Capacity:* Parents, health workers, teachers, police, social workers and many others who care for and live, deal and work with children need to be equipped with the skills, knowledge, authority and motivation to identify and respond to child protection problems. There are other broader types of capacity that relate to the protective environment, including the provision of education and safe areas for play.
- *Children's Life Skills, Knowledge and Participation:* If children are unaware of their right not to be abused, or are not warned of the dangers of, for example, trafficking, they are more vulnerable to abuse. Children need information and knowledge to be equipped to protect themselves. Children also need to be provided with safe and protective channels for participation and self-expression. Where children have no opportunities for participation, they are more likely to become involved in crime or other dangerous or harmful activities.
- *Monitoring and Reporting:* A protective environment for children requires an effective monitoring system that records the incidence and nature of child protection abuses and allows for informed and strategic responses. Such systems can be more effective where they are participatory and locally based. It is a responsibility of government to make sure that every country knows the situation of its children with regard to violence, abuse and exploitation.
- *Services for Recovery and Reintegration:* Child victims of any form of neglect, exploitation or abuse are entitled to care and non-discriminatory access to basic social services. These services must be provided in an environment that fosters the health, self-respect and dignity of the child.

Some elements of the protective environment will overlap. For example, governmental commitment may dictate whether services for victims of abuse are provided, or whether investment is made in monitoring mechanisms. Similarly, media attention can be a key factor in influencing attitudes. There are a number of ways to build a protective environment for children.

*These include:*

- Addressing and mitigating the impact of economic and social poverty.
- National advocacy and initiating dialogue at all levels, from government down to communities, families and children themselves.
- International advocacy, including using international human rights mechanisms. This might also include pushing the protection agenda at regional meetings.

- Seeking societal behaviour change, challenging attitudes and traditions that can underpin child protection abuses and supporting those that are protective. This might involve national campaigns or working closely with the media.
- Strengthening capacity to assess and analyse protection issues. Without knowing what is happening, governments and other actors will be disadvantaged in responding to protection problems.
- Putting mechanisms in place and providing resources so that those caring for and living and working with children have the skills and knowledge to do so in a way that ensures their protection through education and training.
- Recognizing that legal standards are particularly important to child protection, and that they need to be known, understood, accepted and enforced. This can involve legislative reviews, revision of laws or even the creation of new laws. It also involves scrutiny of the actual practices of those governed by the laws to ensure that they are respected.
- Developing and reviewing national monitoring systems to ensure that they properly cover child protection issues. In particular, this may involve disaggregation of national statistics to ensure that patterns of discrimination become apparent.
- Ensuring access to services for recovery and reintegration for children who have suffered abuses.
- Promoting child participation and strengthening children's own resilience.

At the same time, it is not effective to address protection as a separate and stand-alone issue. Given the relationships between child protection and other areas, it is valuable to consider the protection aspects of any issue being considered.

*For example:*

- When considering education policy, it is necessary to consider safety and security in schools and to discourage the use of corporal punishment. This might include initiatives to address violence among children in schools, such as bullying.
- When considering the care practices of family and early childhood, parents should be discouraged from using violent forms of discipline and encouraged to ensure that their child's birth is registered.
- Any consideration of HIV/AIDS is incomplete without considering the stigma often attached to children affected by HIV/AIDS, as well as the increased protection risks faced by vulnerable children who have been orphaned by AIDS.

Thus, an appropriate response to child protection involves understanding it both as an issue in its own right and as a consideration with regard to other issues. It also requires that every actor plays his or her part in ensuring a protective environment for children.

## INTERNATIONAL STANDARDS ON CHILD PROTECTION

That children have rights has been recognized in international law as early as 1924, when the first international Declaration on the Rights of the Child was adopted by the League of Nations. Subsequent human rights instruments—both those of the United Nations, such as the Universal Declaration of Human Rights of 1948, and regional instruments, such as the American Declaration on the Rights and Duties of Man of the same year—recognized more generally the human right to be free from violence, abuse and exploitation.

These rights applied to everyone, including children, and were developed further in such instruments as the International Covenant on Civil and Political Rights of 1966. International consensus developed on the need for a new instrument that would explicitly lay out the specific and special rights of children. In 1989, the United Nations Convention on the Rights of the Child was adopted by the General Assembly. It rapidly became the most widely ratified human rights treaty in history, enjoying almost universal ratification. The Convention on the Rights of the Child advances international standards on children's rights in a number of ways. It elaborates and makes legally binding many of the rights of children laid out in previous instruments. It contains new provisions relating to children, for example, with regard to rights to participation, and the principle that in all decisions concerning the child, the child's best interests must come first. It also created for the first time an international body responsible for overseeing respect for the rights of the child, the Committee on the Rights of the Child. Recognition of the child's right to protection is not limited to the Convention on the Rights of the Child. There are a number of other instruments, both those of the United Nations and those of other international bodies, which also lay out these rights.

*These instruments include:*

- The African Charter on the Rights and Welfare of the Child of the Organization for African Unity (now African Union) of 1990
- The Geneva Conventions on International Humanitarian Law (1949) and their Additional Protocols (1977)
- International Labour Convention No. 138 (1973), which states that, in general, persons under the age of 18 may not be employed in jobs that are dangerous to their health or development, and International Labour Convention No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour
- The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children to the UN Convention on Transnational Organized Crime

### WHO IS A CHILD

Article 1 of the Convention on the Rights of the Child states that “a child means every human being below the age of eighteen years unless under the law

applicable to the child, majority is attained earlier". The prohibition of the application of the death penalty for people under 18 and, in an Optional Protocol to the Convention, the prohibition of recruitment of those under 18 into the armed forces.

Other international instruments also use 18 as the age limit for determining when a person loses the right to the special protection to which children are entitled. Furthermore, UNICEF and other key international organizations working with children use 18 as the defining age for their work. The Convention recognizes that the way children exercise their rights and the limits imposed on the exercise of their rights can and should vary according to the age of the child.

*Article 5 states that:*

- States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

*This principle is complemented by another contained in article 12 of the Convention, which states:*

- States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

However, children's rights to protection from violence, abuse and exploitation are not in any way limited or circumscribed as a result of their age. Children's limited capacity to protect themselves always means that considerations of age and capacity can only suggest stronger rights for protection, never weaker.

For example, the UN Rules for the Protection of Juveniles Deprived of their Liberty recognize in article 67 the need to interpret protection rights in an appropriate manner for children when it provides that solitary confinement of children constitutes cruel, inhuman or degrading treatment or punishment, while the principle would not necessarily hold for adults.

## **INTERNATIONAL MECHANISMS FOR CHILD PROTECTION**

One key international mechanism for child protection is the Committee on the Rights of the Child, which is made up of 18 members who are elected by the States parties to the Convention and who serve in an individual capacity. The main function of the Committee, which meets three times a year, is to review the reports that all the States parties to the Convention are required to submit periodically. The reports are expected to contain information on the laws and other measures the State has adopted which give effect to the rights recognized in the Convention and the progress made on the enjoyment of those rights. When a report has been received, the Committee invites the government to

send a delegation to present the report and answer any questions the Committee may have. Committee members may also comment on the information contained in the report, as well as other relevant information received from UN agencies and non-governmental organizations (NGOs). It then produces its 'concluding observations' and recommendations, which often concern legislation, including references to gaps in existing legislation or provisions of laws that the Committee considers incompatible with the Convention.

There are a number of other mechanisms relating to children's protection rights. Fundamentally, children enjoy all human rights, and thus all human rights mechanisms at international and regional levels must afford them protection. This applies to UN rapporteurs or regional human rights bodies such as the African Commission on Human and People's Rights. It should be remembered that the same holds true at the national level, where mechanisms for the protection of human rights, such as constitutional courts, must also ensure that they uphold children's right to protection.

### **THE LINKS BETWEEN PROTECTION AND OTHER ISSUES**

Child protection links closely to all aspects of children's well-being. Often, the same child is prone to malnutrition and illness, deprived of early stimulation, out of school and more likely to be abused and exploited. An immunized child who is constantly beaten is not a healthy child; a school-going child taunted and abused for his or her ethnicity doesn't enjoy a good learning environment; and an adolescent sold into prostitution will not be empowered to participate in and contribute to society.

Child protection is an integral part of the business of development. Protection issues arise during consideration of almost every issue facing children today. In education, sexual abuse and violence in schools can be a hidden factor behind low retention rates. In health, violence can be behind many of the unexplained injuries that are dealt with by health services, or even the cause of longer-term disability. These links have often been recognized by the Committee on the Rights of the Child.

*Referring to the problem of children and AIDS, it stated:*

- Protection and adequate care can only be provided in an environment which promotes and protects all rights, especially the right not to be separated from parents, the right to privacy, the right to be protected from violence, the right to special protection and assistance by the State, the rights of children with disabilities, the right to health, the right to social security, including social insurance, the right to education and leisure, the right to be protected from economic exploitation, from illicit use of narcotic drugs and from sexual exploitation, the right to be protected from abduction, sale and trafficking as well as torture or other cruel, inhuman or degrading treatment or punishment, and the right to physical and psychological recovery and social reintegration.

There is no issue concerning children that is not potentially in some way related to child protection. Often, protection concerns lie hidden beneath the

surface of issues that seem unrelated. For example, the protection concerns with regard to school sanitation may not be immediately apparent to those working on the issue. Yet the link between shared sanitary facilities and sexual abuse of girls requires that protection be considered.

### **AN ETHICAL IMPERATIVE**

Children's rights to protection from violence, abuse and exploitation are clearly laid out in international law, the legal standards of regional bodies and in the domestic law of most if not all countries in the world. This also reflects a basic human consensus that a world fit for children is one in which all children are protected.

At the UN General Assembly Special Session on Children in 2002, States committed themselves in the declaration of *A World Fit for Children*, the outcome document of that meeting, to building "a world in which all girls and boys can enjoy childhood...in which they are loved, respected and cherished...in which their safety and well-being are paramount and in which they can develop in health, peace and dignity". These sentiments extend beyond legal standards. Every culture in the world cherishes its children yet we continue to fail to protect them.

### **EXISTING CHILD PROTECTION MECHANISMS**

The existing institutions and programmes for child protection in India primarily stem from the provisions under the Juvenile Justice (Care and Protection of Children) Act, 2000 and National Plan of Action for Children 2005.

*These comprise several programmes and schemes implemented by different ministries and departments among which are:*

- A Programme for Juvenile Justice for children in need of care and protection and children in conflict with law. The Government of India provides financial assistance to the State Governments/UT Administration for establishment and maintenance of various homes, salary of staff, food, clothing, *etc.* for children in need of care and protection and juveniles in conflict with law. Financial assistance is based on proposals submitted by States on a 50: 50 cost sharing basis.
- An Integrated Programme for Street Children without homes and family ties. Under the scheme NGOs are supported to run 24 hours shelters and provide food, clothing, shelter, nonformal education, recreation, counselling, guidance and referral services for children. The other components of the scheme include enrolment in schools, vocational training, occupational placement, mobilizing preventive health services and reducing the incidents of drug and substance abuse, HIV/AIDS, *etc.*
- CHILDLINE Service for children in distress, especially children in need of care and protection so as to rescue them from abuse, provide shelter to them, medical services, counselling, repatriation and rehabilitation.

- Scheme for Assistance to Homes for Children (Shishu Greha) to Promote In-Country Adoption for care and protection of orphans/abandoned/destitute infants or children up to 6 years and promote their in-country adoption.
- Scheme for Working Children in Need of Care and Protection for children kept as domestic child labour, working at roadside dhabas, mechanic shops, *etc.* The scheme provides for bridge education and vocational training, medicine, food, recreation/sports equipments, *etc.*
- Rajiv Gandhi National Creche Scheme for the Children of Working Mothers in the age group of 0-6 years. The scheme provides for comprehensive day-care services including facilities like food, shelter, medical, recreation, *etc.*
- Pilot Project to Combat the Trafficking of women and Children for Commercial Sexual Exploitation in source and destination areas for providing care and protection to trafficked and sexually abused women and children. Components of the scheme include networking with law enforcement agencies, rescue operation, temporary shelter for the victims, repatriation to hometown and legal services, *etc.*
- Central Adoption Resource Agency (CARA) is an Autonomous Body under the Ministry of Women and Child Development to promote in-country adoption and regulate inter-country adoption. CARA also helps both Indian and foreign agencies involved in adoption of Indian children to function within a regulated framework, so that such children are adopted legally through recognized agencies and no exploitation takes place.
- National Child Labour Project (NCLP) for rehabilitation of child labourers. Under the scheme, Project Societies at the district level are fully funded for opening up of Special Schools/Rehabilitation Centers for the rehabilitation of child labourers. These special schools/rehabilitation centers provide non-formal education, vocational training, supplementary nutrition, stipends, *etc.* to children withdrawn from employment.

State Governments Schemes: Various State Governments are also running different state-specific schemes for institutional (residential) and non-institutional (non-residential) care of children in difficult circumstances.

In early 2006 the Department of Women and Child Development became a full-fledged Ministry and all child protection matters including implementation of Juvenile Justice (Care and Protection of Children) Act 2000, and its Amendment Act, 2006 as well as implementation of various programmes including An Integrated Programme for Street Children, CHILDLINE Service, Scheme for Assistance to Homes for Children (Shishu Greha) to Promote In-Country Adoption, Scheme for Working Children in Need of Care and Protection and CARA, were transferred to this new Ministry. This is a significant step towards consolidation of the child protection

portfolio under one Ministry. However, a range of child protection issues still remain under other government agencies. For instance, child labour issues continue to be dealt with by the Ministry of Labour and Employment. There are some schemes for the disabled persons under the Ministry of Social Justice and Empowerment. Since they do not have a child focus or specific component for children, issues of disabled children get very little attention. Some of the schemes of the Ministry of Women and Child Development under the women's welfare section address issues concerning protection of the girl child. These include Kishori Shakti Yojana, Swadhar, Short Stay Home and Relief and Rehabilitation of Rape Victims among others.

In order for child protection to be dealt with more effectively there is a need for lateral linkages between the Ministry of Women and Child Development and other relevant sectors such as Railways, Industry, Trade and Commerce, Rural Development, Urban Affairs, Tourism, Banking, Legal Affairs, Home Affairs, Health and Family Welfare and Information and Broadcasting.

## **UNDERSTANDING THE INTEGRATED CHILD PROTECTION SCHEME (ICPS)**

### **PURPOSE**

The Integrated Child Protection Scheme is expected to significantly contribute to the realization of Government/State responsibility for creating a system that will efficiently and effectively protect children. It is based on cardinal principles of "protection of child rights" and "best interest of the child". Hence, the ICPS objectives are: to contribute to the improvements in the well being of children in difficult circumstances, as well as to the reduction of vulnerabilities to situations and actions that lead to abuse, neglect, exploitation, abandonment and separation of children.

*These will be achieved by:*

- Improved access to and quality of child protection services;
- Raised public awareness about the reality of child rights, situation and protection in India;
- Clearly articulated responsibilities and enforced accountability for child protection
- Established and functioning structures at all government levels for delivery of statutory and support services to children in difficult circumstances;
- Introduced and operational evidence based monitoring and evaluation.

### **SPECIFIC OBJECTIVES**

*To institutionalize essential services and strengthen structures:*

- Establish and strengthen a continuum of services for emergency outreach, institutional care, family and community based care, counselling and support services;

- Put in place and strengthen necessary structures and mechanisms for effective implementation of the scheme at the national, regional, state and district levels;
- Define and set standards of all services including operational manuals for the functioning of statutory bodies.

*To enhance capacities at all levels:*

- Build capacities of all functionaries including, administrators and service providers, at all levels working under the ICPS;
- Sensitize and train members of allied systems including, local bodies, police, judiciary and other concerned departments of State Governments to undertake responsibilities under the ICPS.

*To create database and knowledge base for child protection services:*

- Create mechanisms for a child protection data management system including MIS and child tracking system in the country for effective implementation and monitoring of child protection services;
- Undertake research and documentation.

*To strengthen child protection at family and community level:*

- Build capacities of families and community to strengthen care, protection and response to children;
- Create and promote preventive measures to protect children from situations of vulnerability, risk and abuse.

*To ensure appropriate inter-sectoral response at all levels:*

- Coordinate and network with all allied systems *i.e.*, Government departments and Non-Government agencies providing services for children for effective implementation of the scheme.

### **To Raise Public Awareness**

- Educate public on child rights and protection;
- Raise public awareness at all levels on situation and vulnerabilities of children and families
- Inform the public on available child protection services, schemes and structures at all levels

### **GUIDING PRINCIPLES**

- *Child Protection, a Primary Responsibility of Family, Supported by Community, Government and Civil Society:* It is important that respective roles are articulated clearly and understood by all parties in the effort to protect children. Government, both Central and State, has an obligation to ensure a range and a continuum of services at all levels.
- *Loving and Caring Family, the Best Place for the Child:* Children are best cared for in their own families and have a right to family care and parenting by both parents.
- *Privacy and Confidentiality:* Children's right to privacy and confidentiality should be protected through all the stages of service delivery.

- *Non-stigmatization and Non-discrimination:* Each child irrespective of circumstances, as well as socio-economic, cultural, religious and ethnic background should be treated equally and in a dignified manner.
- *Prevention and Reduction of Vulnerabilities, Central to Child Protection Outcomes:* A major thrust of the ICPS will be to strengthen the family capabilities to care for and protect the child.
- *Institutionalization of Children, the Last Resort:* There is a need to shift the focus of interventions from an over reliance on institutionalization of children and move towards more family and community-based alternatives for care. Institutionalization should be used as a measure of last resort after all other options have been explored.
- *Child Centered Planning and Implementation:* Planning and implementation of child protection policies and service delivery should be child centered at all levels, so as to ensure that the best interest of the child is protected.
- *Technical Excellence, Code of Conduct:* Services for children at all levels and by all providers should be provided by skilled and professional staff, including a cadre of social workers, psychologists, care givers, members of statutory bodies and lawyers, adhering to an ethical and professional code of conduct.
- *Flexible Programming, Responding to Local Individualised Needs:* Customised service delivery approach is required to respond to local needs.
- *Good Governance, Accountability and Responsibility:* An efficient and effective child protection system requires transparent management and decision making, accountable and responsible individuals and institutions, performance reports at all service levels and all service providers made public, including for children themselves, through child-friendly reports.

## APPROACHES

- *Prevention:* Through an outreach programme, the scheme would identify and support vulnerable families. Trained district level functionaries through effective networking and linkages with the Village and Block Level Child Protection Committees, ICDS functionaries, NGOs and local bodies would ensure convergence of services. Community capacities for protection and monitoring shall be strengthened and child protection concerns and safeguards shall be integrated in all sectors.
- *Promotion of Family-based Care:* The scheme would pursue a conscious shift to family-based care including sponsorship, kinship care, foster care and adoption. Periodic review of children in institutional care for restoration to families would also be undertaken.
- *Financing:* As a centrally sponsored scheme financial assistance from the Central Government will be disbursed to the State Government/UT

Administration. The Central Government shall provide a predetermined percentage of the budgeted cost. The State/UT shall in turn provide grant-in-aid to voluntary organizations under the different components of the Scheme.

- *Integrated Service Provision-range of Services:* Through an interface with various sectors, including health, education, judiciary, police, and labour, among others, the scheme would strive to integrate service provisions into a range of services to cater to the multiple needs of children in difficult circumstances.
- *Continuum of Services- a Feasible Care Plan for Each Child:* The services under the scheme will be provided on the basis of an individual care plan, established through professional assessment. The care plan must be periodically reviewed and accordingly adjusted. Adequate services should be available as long as the child is in need of care, including follow up.
- *Community Based Service Delivery:* The scheme would endeavour to bring services closer to vulnerable children and families for increased access. Child care services should be available at community level integrated into a range of services with strong linkages to the PRIs and local government bodies.
- *Decentralization and Flexibility to Focus on Local Needs:* The scheme shall decentralize planning and implementation of child protection services at the State and District level based on specific needs. The allocation of human resource shall be based on protection service requirement for quality child protection services.
- *Partnership Building and Community Empowerment:* A key strategy for programme development and implementation would be developing close working relationships, information sharing and strategy building between government structures, civil society organizations including corporate and communities.
- *Quality Care, Standards for Care and Protection:* All protection services—be it public or privately provided—should adhere to prescribed standards pertaining to physical infrastructure and human resource requirements, as well as protocols, methodological instructions and guidelines for services and operational manuals for functioning of statutory bodies.
- *Building Capacities:* In order to ensure professional child protection services at all levels, the scheme would undertake regular training and capacity building of all service providers and functionaries to equip and enhance their skills, sensitivities, knowledge on child rights and standards of care and protection.
- *Monitoring and Evaluation:* The scheme would set up a child protection data management system to formulate and implement effective intervention strategies and monitor their outcomes. Regular evaluation of the programmes and structures would be conducted and course correction would be undertaken.

## TARGET GROUPS

*The ICPS will focus its activities on children in need of care and protection and children in conflict and contact with the law:*

- *Child in need of care and protection means a child who:*
  - Is found without any home or settled place or abode and without any ostensible means of subsistence;
  - Resides with a person (whether a guardian of the child or not) and such person has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out, or has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person;
  - Is a mentally or physically challenged or ill child or a child suffering from terminal diseases or incurable diseases, and/or having no one to support or look after him/her;
  - Has a parent or guardian and such parent or guardian is unfit or incapacitated to care for or supervise the child;
  - Does not have a parent/parents and no one is willing to take care of him/her, or whose parents have abandoned him/her or who is a missing and/or runaway child and whose parents cannot be found after reasonable enquiry;
  - Is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts;
  - Is found vulnerable and is likely to be inducted into drug abuse or trafficking;
  - Is being or is likely to be abused for unconscionable gains;
  - Is victim of any armed conflict, civil commotion or natural calamity.
- Child in conflict with law is one who is alleged to have committed an offence.
- Child in contact with law is one who has come in contact with the law either as victim or as a witness or due to any other circumstance.

The ICPS will also provide preventive, statutory and care and rehabilitation services to any other vulnerable child including, but not limited, to: children of potentially vulnerable families and families at risk, children of socially excluded groups like migrant families, families living in extreme poverty, scheduled castes, scheduled tribes and other backward classes, families subjected to or affected by discrimination, minorities, children infected and/or affected by HIV/AIDS, orphans, child drug abusers, children of substance abusers, child beggars, trafficked or sexually exploited children, children of prisoners, and street and working children.

## GOVERNMENT-CIVIL SOCIETY PARTNERSHIP

In order to reach out to all children, in particular to those in difficult circumstances, the Ministry of Women and Child Development proposes to combine its existing child protection schemes under one centrally sponsored

scheme titled “Integrated Child Protection Scheme (ICPS)”. The proposed ICPS brings together multiple vertical schemes under one comprehensive child protection programme and integrates interventions for protecting children and preventing harm. It does not see child protection as the exclusive responsibility of the MWCD but stresses that other sectors have vital roles to play.

The Ministry looks at child protection holistically and seeks to rationalize programmes for creating a strong protective environment for children, diversify and institutionalize essential services for children, mobilize inter-sectoral response for strengthening child protection and set standards for care and services. ICPS will function as a Government–Civil Society Partnership scheme under the overarching direction and responsibility of the Central and State Governments.

The Government is aware that improving situation of millions of India’s children in difficult circumstances requires an integrated effort and strong partnership of many stakeholders. Government cannot achieve this task alone. Therefore, the ICPS will work closely with all stakeholders including government departments, the voluntary sector, community groups, academia and, most importantly, families and children to create protective environment for children in the country. Its holistic approach to child protection services and mechanisms is reflected in strong lateral linkages and complementary systems for vigilance, detection and response.

*The scheme visualizes a structure for providing services as well as monitoring and supervising the effective functioning of child protection system, involving:*

- *Government:* Government of India (GOI) will have the primary responsibility for the development and funding of the scheme as well as ensuring flexibility by cutting down rigid structures and norms. The GOI will also create an integrated, live, web-based database on children including child tracking systems and a Management Information System. It will be the responsibility of the State Governments/UT Administrations to ensure effective implementation of the scheme by quick devolution and utilization of funds. State Governments/UT Administration will attract the best professional talent and strengthen public-private partnership. The scheme proposes to hire the services of professionals on a contractual basis. The State Governments/UT Administrations will manage the database that includes child tracking system and MIS at the state and district levels.
- Civil society organizations and individuals:
  - *Voluntary Sector:* To lobby for the protection of children of India and act as a watch-dog on the situation of children and implementation of public policies and programmes aimed at children; to provide vibrant, responsive and child friendly services for detection, counseling, care and rehabilitation for all children in need. Provide technical support for awareness raising, capacity development, innovations and monitoring. These may be financially supported by the State.

- *Research and Training Institutions:* To carry out research on the situation of children in India and capacity building of existing human resource as well as support creation of a cadre of professionals.
- *Media and Advocacy Groups:* To promote rights of the child and child protection issues with sensitivity and sustain a media discourse on protection issues.
- *Corporate Sector:* To partner with government and civil society initiatives under the scheme; financially support child protection initiatives; and contribute to Government efforts to improve the situation of children of India by adhering to the laws pertaining to child protection.
- *Community Groups and Local Leaders, Volunteers, Youth Groups, Families and Children:* To provide protective and conducive environment for children, to act as watchdog and monitor child protection services by inter-alia participating in the village and block level child protection committees.

## ICPS PROGRAMMES AND ACTIVITIES

Through ICPS, the Ministry of Women and Child Development envisages to carve out a broad and comprehensive framework for child protection in the Eleventh Plan and to set the foundation for creating a strong protective environment for children.

Every child of India has the right to be cared for by a loving and nurturing family, to live with dignity, and to be protected from separation from her family, violence, abuse, neglect and exploitation.

*The Integrated Child Protection Scheme will focus on:*

- Mapping needs and services for children and families at risk;
- Preparing child protection plans at district and state levels; the plan would be gradually extended to block and community levels;
- Strengthening service delivery mechanisms and programmes including preventive, statutory, care and rehabilitation services;
- Improving access to and quality of services provided;
- Promoting and strengthening non-institutional family based care options for children deprived of parental care, including sponsorship to vulnerable families, kinship-care, in-country adoption, foster care and inter-country adoption, in order of preference;
- Developing capacity of service providers;
- Strengthening knowledge base, awareness and advocacy;
- Establishing an integrated, live, web based data base (on children in difficult circumstance, children in care, service providers and services provided), for evidence based monitoring and evaluation and service planning decision making;
- Monitoring and evaluation;

- Building partnerships and alliances for child protection at all levels, particularly at the grassroot community and district levels.
- Strengthening linkages with other bodies and institutions such as the National/State Human Rights Commissions and National/State Commissions for Protection of Rights of the Child, *etc.*

ICPS brings several existing child protection programmes under one umbrella and initiates new interventions.

# FAMILY LAW AND SOCIAL WORK

Family law and social work intersect in critical ways, as both disciplines are deeply concerned with the well-being of families and individuals within them. Family law encompasses a broad range of legal issues related to familial relationships, including marriage, divorce, child custody, adoption, and domestic violence. Social work, on the other hand, focuses on supporting individuals and families in navigating various life challenges, including those related to family dynamics, mental health, substance abuse, and socioeconomic disparities. In many cases, social workers collaborate closely with family law practitioners to provide support and intervention services to families involved in legal proceedings. For example, social workers may be called upon to assess the needs of children in custody disputes, provide counseling to individuals going through divorce or separation, or facilitate mediation sessions to resolve conflicts within families. Furthermore, family law and social work share common goals of promoting family stability, protecting the rights of individuals, and ensuring the safety and well-being of children. By working collaboratively, professionals in both fields can leverage their respective expertise to develop holistic approaches to addressing the complex issues faced by families in crisis. This interdisciplinary approach allows for more comprehensive assessments and interventions that take into account not only legal considerations but also the social, emotional, and practical needs of families and individuals involved. "In 'Family Law and Social Work: Interdisciplinary Perspectives,' readers explore the intersection of legal frameworks and social interventions aimed at promoting the well-being of families and individuals."



**Dr. Sandeep Kaur** is a Pertinent academician presently, Dr. Kaur is serving as an Assistant professor at Tanta University, Sri Ganganagar, Rajasthan. She did her Bachelors of Laws i.e. [B.A.LL.B] from Punjabi University, Patiala (Punjab) and Masters (LL.M) from Maharaja Ganga Singh University, Bikaner (Rajasthan). She holds Ph.D. (Law) from Tanta University, Sri Ganganagar (Rajasthan). Her scholarly Achievements encompass a number of research papers reflecting her engagement with her field. Dr. Kaur's active participation in national and international seminars emphasizes her commitment to knowledge dissemination. Dr. Kaur's warm demeanor and commitment to education have earned popularity among students.

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4378/4-B, Murarilal Street, Ansari Road, Daryaganj, New Delhi-110002  
Phone : +91-11-23281685, 41043100, Fax: +91-11-23270680  
E-Mail: [academicuniversitypress@gmail.com](mailto:academicuniversitypress@gmail.com)

