

Chapter XIII

LAW AND POPULATION

A. Introduction

The formulation and implementation of an effective national population policy demands, among other things, a review of existing laws of the country related directly to population dynamics. Such a review will help on the one hand to identify and amend or repeal those provisions which adversely affect the national population policy, and on the other to legislate new or additional provisions which will help to achieve the objectives of the said policy.

In the section that follow the existing laws of Nepal which are relevant to population dynamics are discussed under five broad categories. These are laws relating to (a) family formation and family life; (b) measures affecting quality of life; (c) direct fertility control measures; (d) collection of demographic data; and (e) other laws relevant to population dynamics. However, a cursory glance at the existing legal system as a whole would be helpful in understanding the process of law in the country.

Nepal has, since time immemorial, been practicing Hinduism and following the Hindu way of life. The act of political unification of petty principalities of the Himalayan belt into a single nation, which was achieved in the middle of the eighteenth century, was largely facilitated by the functional similarity of social and cultural life among the people inhabiting the areas which were assimilated and integrated. The body of rules collectively known as *Dharmashastra* had general application over the entire domain, although there were some local variations in usage. The king and his subjects alike followed these rules rigorously as their principal duty bound by religion and morality. The precepts of *Dharmashastra* were the laws of the land and they were implemented by the kings within the

realm as interpreted by the great *Munis* or sages, and the learned Brahmins of the Royal Court.

The Nepalese followed the sacred texts as their laws until 1867 when the task of codification of the law was completed. Although the judicial courts had existed since early days, their functional existence was distinctly recognized by this act of codification. During the Rana autocratic regime, the process of codification was made use of by the various Rana prime ministers to appoint themselves not only as the final arbiter of justice but also the supreme legislator. However, during the one century of operation of the codified legal text, an independent and indigenous legal system developed in Nepal. The end of the Rana regime and the introduction of responsible democracy in 1951 not only ushered in democratic principles of law and justice from abroad, but also provided an opportunity to imitate the legal system of India, the closest neighbour. Despite the influence exerted by the Indian and other legal systems, the traditional social and legal systems still continue to be valued in Nepal.¹

The characteristics of the judicial system introduced after 1951 differed distinctly from the system prevailing during the Rana rule. The concept of separation of powers with provisions for mutual checks and balances has consolidated the powers and functions of the judiciary. New laws were enacted to regulate new functions arising from the diversification of the way of life and commerce of its citizens. But, despite the existence of several religions, ethnic and tribal groups in the country, the provisions of law applicable to all groups were essentially based upon the Hindu systems and traditions. In fact, under the criminal law, there were variations on punishment for the same crime or offence on the basis of caste, sex or religion. However, with the

enforcement of the new *Mulki Ain* (Law of Land)² in August 1963, all crimes and penalties based upon caste and religion were abolished and equality of treatment in the operation of the law has been granted to all Nepalese citizens, irrespective of caste, creed, religion and sex.

B. Law Relating to Family Formation and Family Life

1. *Hindu Joint Family System*

since the national way of life has been essentially base on Hindu culture and traditions, the legal principles, procedures and practices have been designed and nurtured to support and sanctify the Hindu joint family system. In the constitutionally declared Hindu kingdom, the legal system is also obliged to preserve the Hindu family kinship which is organized around patrilineally related males.³ Since conception in the mother's womb, a member of the Hindu family possesses an identity, and upon birth is bestowed with rights and duties.

Under the strict rules of Hinduism, a Hindu is one who is born in the Hindu family and remains Hindu until death. There is no provision which permits conversion to Hinduism, and no person who claims to be a Hindu by conversion is accepted as a member who fails to perform any of the Hindu rites may be reprimanded, but not deprived of his religion. A non-Hindu cannot acquire membership of the Hindu community by performing any of the Hindu rites.

The Hindu joint family system regards marriage as a sacred union between a man and a woman rather than as a contractual relationship. Upon marriage, a woman becomes part of the entire family into which she is married rather than the wife of the man to whom she is married. In certain parts of the country, she becomes an additional member of the family labour force; yet in other parts she is considered to add to the family wealth through the dowry she brings in.

her role in perpetuating the family lineage by begetting a male heir is considered more important than her role as the intimate companion of the man to whom she is wedded.

2. *Marriage Customs and Formalities*

in the Hindu society, marriage is considered as a great event occurring only once in the life of a man and woman. It not only changes their status but also invests them with the responsibilities of family life. In order to sanctify the change in status, the Hindu traditions require the performance of certain ceremonies.⁴ The form and type of ceremonies to be performed vary from caste to caste and place to place; but the basic performance of the ceremony is essential for a marriage to be considered valid. Any marriage or marital relationship above or below the caste hierarchy is usually considered to be totally invalid.⁵

According to the existing laws, a marriage could be presumed to be legal only if ceremonial formalities have been observed; or on having registered in a manner prescribed by law; or on having evinced mutual behaviour as husband and wife; or on having given birth to an offspring through sexual intercourse between the man and woman concerned. There is no legal provision which declares, or provides for declaring, the establishment of husband and wife relationship or the basis of only sexual relationship between a man and a woman. Hence, any sexual or conjugal relationship which is not within the prohibited area has to be considered as a non-marital relationship or a relationship not amounting to marriage.

Prior to the enactment of the Marriage Registration Act of 1972, only those marriages which were performed ceremonially were recognized as marriage in the strict sense; all other marriages were construed only through existence of such relationship between the partners and were recognized only if they were socially acceptable. For a long time there had

existed legal differences between a married wife, an unmarried girl kept as wife, a wife brought through adultery, an openly kept mistress not brought into the husband's house and a secretly kept mistress. Such differences were done away with after the promulgation of the new code in 1963. It may be noted that the Marriage Registration Act was primarily designed to provide an alternative to the ceremonial marriage system rather than to ease the confusion in establishing the marital relationship. However, since the machinery for registering marriages has not yet been set up, it is still not improbable for a man or woman to marry unknowingly within the prohibited degree, or to marry several times through ceremonial formalities without being detected.

The law does not state specifically when a marriage could be considered to be complete. According to the Hindu system, once married, the woman is considered wife whether the marriage is consummated or not. In several areas, it is also the practice to repeat the marriage ceremony upon the "wife" attaining puberty and before she re-enters the husband's house. The non-repetition of the ceremony, however, does not deprive the bride of her status as wife, nor is it sufficient grounds for the husband either to disown the wife or refuse to consummate the union. However, the new code makes provision for either of the parties to refuse to marry the other even after the completion of traditional formalities of offer and acceptance of marriage. Hence it is doubtful whether a marriage could be considered to be complete until the departure of the bride to the groom's house and also until the consummation of the wife by the husband.

3. *Age and Consent for Marriage*

According to the new code, a marriage can be performed upon the mutual consent of the man and woman provided it is not within the prohibited degree of consanguinity, and conforms to the restrictions imposed by other sections of the

code.⁶ The code further provides that no man or woman should be married or given in marriage without his or her consent, and that any marriage performed forcibly without consent shall be null and void and the perpetrator shall be punished with imprisonment of up to two years. The code also stipulates that a boy between the ages 18 and 21 cannot marry or be given in marriage without the consent of his parents or legal guardians. Similar restrictions apply to girls aged 16 years and over and below 18 years. The Marriage Registration Act, however, does not require any consent of the guardians perhaps because the minimum age required to qualify for registration under the Act is 22 years for males and 18 years for females. Only the mutual consent expressed through their signatures in the application form and through their personal presence is considered sufficient.

The minimum age for marriage under the existing law is 16 years for girls and 18 years for boys, but the consent of parents or legal guardians should be obtained. The consent of parents or guardians is not required if the girl is 18 years of age or over and the boy is 21 years or over. The penalty stipulated for marriages of girls below the prescribed minimum is graded according to the age at which she was married, i.e., below 10 years, 10 to 14 years and 16 to 18 years. Such marriages, however, are not void *ab initio* but could become voidable if the boy or girl upon attainment of the minimum age do not agree to such marriage.

4. *Marriage and Sexual Behaviour*

(a) *Polygamy*

By and large, the Nepalese social system attaches great importance to monogamous marriages. Polygamous marriage may be said to have been practiced under exceptional circumstances such as the failure of the first wife to produce a male offspring, or as an alternative to non-harmonious

married life in the absence of a divorce system. It was largely the privilege of the rich and affluent.

Legal provisions prohibiting the marriage of more than one wife was first introduced in the new *Mulki Ain* in 1963. Section 9 of the chapter on marriage does not permit anyone to marry or keep another wife during the lifetime of the first wife or without obtaining a legal separation from the first wife, except when the first wife is a leper, or is suffering from a contagious and incurable sexual disease, or is incurably insane, or has not given birth to a child within ten years of the date of marriage, or is lame and incapable of any movement, or is totally blind. Anyone who marries another wife in contravention of the above legal provision can be punished with fines and or imprisonment, but the marriage will not be valid.

The provision enacted in 1963 were amended in 1965 to increase the punishment as well as to extent it to cover the woman who knowingly marries or becomes the second wife of the person committing the offence. However, no legal proceedings could be instituted after 35 days from the commission of the offence. Further amendments to the provision were effected in 1976 as a result of recommendations made during the International Women's Year. An important amendment permitted the man to marry another wife if the first wife claimed and received a share of the husband's property and lived separately from the husband even if she was not legally separated from him. The penalty for bigamy was also increased and made equal for both the man and the woman: fine of Rs. 1,000 to Rs. 2,000, and imprisonment from 1 to 2 months. The instituted within three months of the date of commission of the offence.

(b) *Polyandry*

Polyandry has been in existence in some parts of the country since ancient times. It is difficult to trace the reasons for the origin of this practice,

but family economic conditions and scarcity of eligible females have often been mentioned. The existing law does not permit polyandrous marriages; however, no legal proceedings are instituted against such practices among the Himalayan people.

Under the general legal provision, polyandrous practices could be tantamount to adulterous relationships. According to the relevant section, any man knowingly, or having reason to know that a woman is the wife of another man, having sexual intercourse with such woman with her consent is deemed to have committed adultery. Similarly, if a married woman or widow above the age of 16 years marries another man declaring herself to be an unmarried woman, she is liable to be punished with imprisonment up to one year and/or a fine up to NRs. 500. If a woman has sexual intercourse with anyone other than he husband, the relationship between the husband and wife is automatically severed.

(c) *Incest*

The Hindu family system takes great precaution to avoid conjugal relationship and cohabitation between persons related by consanguinity and affinity. The earlier legal provisions had covered an infinite range of relations and prohibited them from marrying each other. The laws in existence today have, however, narrowed down the prohibitive range to traceable limits, though this range is still infinite in the consanguinal line because there cannot be a *sagotri* marriage.⁷

The chapter on incest prescribes the degree of agnate relationship and the specific relations on the cognate line among whom no marriages can be performed. However, it is also provided that notwithstanding any provisions in other sections of the Chapter, any marriage or cohabitation between any two relations whose marriage or cohabitation is permitted by the traditional custom prevalent in one's caste or clan shall not be illegal or punishable. This provision thus

validates the practice of marriage between first cousins, cross-cousins, half brothers and half sister, and second and third cousins, prevalent among many tribes and ethnic groups.

In some tribes, there is a levirate or preemptive right for the younger brother to marry the widow of his elder brother.⁸ It is also common practice among the Brahmins and Chettris to marry the younger sister of the wife either bigamously or after the death of the wife. The Thakuris also have a custom of marrying maternal cross-cousins. In view of such diverse customary practices, it is practically difficult to establish whether any marriage is incestuous or not unless it is within a very close relationship.

According to section 1 of the chapter, a person who has sexual intercourse with his own mother shall be punished with imprisonment for life. The punishment for having sexual intercourse with ones sister born of the same father, or with a daughter begotten by oneself is imprisonment for 10 years. According to section 2, a person having sexual intercourse with any woman of the following relationship shall be punished with imprisonment ranging from three to six years:

(i) Stepmother; grandmother of any agnatic line or within three generations of any cognatic line; daughter-in-law; wife of daughter of own male descendants falling in any generation of oneself; wife of the brother born from one's same father; daughter or daughter-in-law of the brother born of one's same father; granddaughter or wife of the son of the brother born of one's same father; granddaughter born of one's same grandfather; daughter or wife of the brother born of one's same grandfather.

(ii) Daughter or daughter-in-law of the daughter begotten by oneself; grandmother begetting one's mother who beget oneself; great/grandmother begetting the father or mother of one's father; mother-in-law

begetting one's wife; the grandmother-in-law begetting father-in-law or mother-in-law; aunt or sister born in the same womb as one's mother; daughter of the sister, or the daughter-in-law of the sister born of one's same father; the maternal aunt, i.e., the wife of one's mother's brother born in the same womb as one's mother.

Since in some communities in Nepal, the wife of an elder brother is treated with more reverence than the wife of a younger brother, section 4 of the chapter provides that any person who has sexual intercourse with his sister-in-law shall be punished with imprisonment ranging from three to six years if she is the wife of the senior brother born of one's won father, and with imprisonment up to one year if she is the wife of other senior brothers related within seven generations by a common ancestor.

The law also prohibits sexual intercourse between half brothers and half sisters,⁹ and between adopted son and relatives of adopting father as well as between adopting father and adopted son's wife, daughter or other near relatives.

Any incestuous marriage or sexual intercourse performed knowingly or unknowingly is void *ab initio* and the law requires the couple to be separated upon knowledge of such relationship. The continuation of such relationship is considered a repetition of the offence and liable to cumulative punishment.

(d) *Adultery*

According to the old code, adultery was treated as a crime as serious as murder, treason and incest. There were five types of punishment that could be meted out to the person who was found guilty of adultery. The five forms of punishment were decapitation of the adulterer's head by the aggrieved husband,⁹ to outcaste the adulterer after shaving him and feeding him with socially inedible food except cow's meat, to have the adulterer's personal share of property confiscated

or make him pay the marriage expenses, to get the adulterer to lick the soles of the husband's feet, or to expel him from village. The law also permits the husband to kill the adulterer instantly on the bed itself if he finds him committing adultery with his wife, but does not mention anything about the punishment to be meted out to the offending wife.

According to the present law, a man is deemed to have committed adultery if he knowingly or having reason to know that the woman is the wife of another man has sexual intercourse with such woman with her consent. However, the offence of adultery will not be deemed to have been committed if the aggrieved husband himself had possessed the offending wife through adultery, or if the woman being a co-wife is carried away in adultery, or if the woman carried away in adultery is entitled to divorce or annulment of marriage according to the relevant provisions of the law.

Adultery is now considered a personal wrong, thus requiring the aggrieved husband to file a formal complaint. No person other than the aggrieved husband has the right to complain, and the offender cannot be penalized without the institution of such proceedings. Any proceedings against the accused adulterer are liable to dismissal upon the death of the complainant husband. The maximum penalty for both the man and woman involved in adultery is imprisonment ranging from one to two months and fine from NRs. 1,000 to NRs. 2,000.

(e) *Prostitution*

Under the existing law, prostitution *per se* is not illegal. Only the act of soliciting for prostitution and managing such affairs is an offence punishable with imprisonment ranging from six months to two years and/or a fine from NRs 500 to NRs 6,000. Thus, if a woman practices prostitution without any help from others, or without organized management of such affairs and perhaps without making her residence a

brothel, it is quite legal for her to carry on this business. Perhaps this may be deemed as her right falling within the constitutionally safeguarded right to personal liberty.

There are a few other legal provisions relating to prostitution. If a prostitute is raped, the rapist gets a lighter punishment (up to one year of imprisonment) compared with the three to five years of imprisonment for a similar offence committed on other woman. If a man who had left his normal residence and had been living with a prostitute dies at her residence, all his property removed to the residence of the prostitute will belong to the prostitute. Similarly, if a man keeps a prostitute as his wife and if she dies during this status, all her properties shall go to him and to her son born of him. If a childless prostitute had been residing at her parental residence or in a separate house under their maintenance, all her property upon her death shall go to the parents; if she has not resided at her parental residence or was not maintained by parents such property upon her death shall escheat to the state treasury.

The present law does not define who is a prostitute. According to the old code, a woman who had sexual relationship with four or more men was considered to be a prostitute, and thereafter any right or privilege accorded to her and to her offspring was regarded on that basis. These provisions reflected the practices of keeping a prostitute as a wife and begetting children through her. However, according to current legal provisions, a woman taken on as wife is afforded the status of wife regardless of the number of men with whom she had cohabited earlier. Today, their term prostitute may be applicable only to a woman engaged in their profession of prostitution.

5. *Registration of Marriages*

As noted earlier, in the traditional Nepalese Hindu society, marriage was considered a sacred union between man and woman, and the process was formalized through elaborate ceremonies.

These ceremonies lent social sanction and legal validity to the marriage, and there was therefore no need for keeping official or legal records of marriages. However, with the increased mobility of people and changing social needs, alternatives to traditional ceremonial form had to be evolved to provide legal sanction to marriage. To meet this expediency, the Marriage Registration Act was enacted and put into effect in December 1971.

The Marriage Registration Act does not replace the existing law on marriage nor does it invalidate or abolish the existing formalities; it merely supplements the system and provides an alternative to the traditional system of marriage. In the operation of the general law, all marriages, whether valid, invalid or void, are accomplished facts, and the law tests the legality of such marriages only after the performance. But in terms of the provisions of the Act, the legality of a marriage is tested before it is performed and a certificate of solemnization is granted only if the marriage is valid. It has also been specified that the provisions of the Act should not be deemed to affect the validity of any marriage already performed or intended to be performed according to tradition, customs or prevalent practices unless such marriage is repugnant to existing law.

The Act provides several qualifications for a marriage to be registered. In the first instance, the marriage should conform to the provisions of the existing laws of Nepal. Secondly, none of the parties to the marriage should have a living spouse. Thirdly, none of the parties should be insane. Fourthly, the male should have completed 22 years of age and the female 18 years of age.¹⁰ Besides, certain formalities have to be complied with for a marriage to be registered. Both parties have to submit an application in the prescribed form duly signed. At least one of the parties to the marriage should have resided in the registration district for a period of not less than two weeks prior to the date of marriage. During the solemnization of the marriage, both parties must

speak up separately in front of three witnesses that they accept each other as their lawfully wedded partners and should sign a declaration to this effect.

The Act also makes provisions for the registration of marriages already solemnized in accordance with the tradition, custom or prevalent practices of one's religion, caste or clan provided such marriages are not repugnant to the provisions of this Act. When registering such a marriage, the couple is not required to make the declarations mentioned earlier; however, they should sign the entry in the register in the presence of three witnesses. The actual date of marriage or the date of commencement of the marital relationship together with particulars of children born thereafter, is also recorded in the register.

The Birth, Death and Personal Events (Registration) Act 2033, which came into effect in October 1976, also deals with registration of marriages. According to section 4, sub-section (1) of this Act, it is the responsibility of the husband, and in his absence of the wife, to report the marriage in the prescribed form to the local register within thirty-five days of the solemnization if the event took place within the country, and if it took place outside the country, within sixty days of arrival in the country. The necessary information can also be reported through another authorized person. The information received is entered in the register and a certificate of registration is issued by the registrar. The chief advantage of this registration is that the certificate can be produced as proof of marriage before any court or government or government office.

It may be noted that the Birth, Death and Personal Events (Registration) Act covers all marriages, whether legal or not, and even informal marital relationships. It does not provide legality to the union; nor does it create any right against any others. One special benefit which this Act gives to the couple is that once they are married

ceremoniously, they need not go to the Marriage Office to testify to the legality of their marriage simply for purposes of registering the marriage; instead they could have their marriage registered by the local registrar without any questions raised about the propriety of their marriage.

6. *Termination of Marriage*

As noted earlier, according to the Hindu social system, marriage is considered a sacred union for life between husband and wife. By performing *Kanyadan*, and symbolically renouncing their right to and responsibility for the daughter, the parents of the wife have irreversibly given her to her husband. Since at the ceremony the husband has vowed not to leave her dejected and destitute, the responsibility to maintain the wife for life rests upon him. Probably for these reasons, the Hindu system did not make any provision for divorce. If, for some reason or other, the union could not be harmonious, the system has no alternative but to permit the man to marry another woman, or the wife to leave her husband's house or to live separately but with full support from the husband or with a share of his property.

(a) *Separation from Husband*

The law permits a woman to separate from her husband or from the joint family of her father-in-law, her claim to separation from the joint family being stronger if she is a widow with male issue or if she is above the age of 30 years. According to the law, a wife can demand and obtain her share of the husband's property if she is turned out of the house without being provided with maintenance, or is physically tortured frequently by her husband only or by the husband together with his parents, or if the husband has married another woman or is keeping a mistress elsewhere.

According to the law on partition, a wife cannot demand partition and her share of the husband's property during his lifetime without his consent.

The husband is also not permitted to desert his wife without providing maintenance for her. If he cannot provide the maintenance according to his status and income, he should grant a share of his property. The law also further provides that a wife who has had 15 years of conjugal life with her husband and is at least 35 years of age may demand and obtain her share of the husband's property and remain separate from him.

It is not clear whether a husband with no property or means or income of his own can demand a separation from his wife with maintenance or support from her personal income. However, where the husband and wife are separated, the law permits the husband to marry another wife while the first wife is alive and without divorcing her.

(b) *Divorce*

Under the old code, the right to divorce was granted only to the Newars and this right was exercised only by the wives.¹¹ In the case of the other communities, the woman was entitled only to maintenance for life or a share of the husband's property. With the enactment of the new code, *Mulki Ain*, all citizens irrespective of caste and sex have been granted the right to seek and obtain divorce in terms of a uniform set of conditions applicable to all communities. A husband could seek a divorce from the wife on the grounds of (a) desertion by the wife for three years or more; (b) any act she performs or conspires to perform that may cause danger to his life or limb or cause him acute physical pain. A wife could seek a divorce from her husband (a) keeps or marries another woman; (b) fails to support or neglects her for three years or more; (c) performs or conspires to perform any act which is likely to result in danger to her life or limb or cause her acute physical pain. As a judicial decree, divorce is also recognized for both man and woman by mutual consent. The divorce decree can be obtained only when one of the grounds specified is alleged, proved and decreed by court. According to the

new law, adultery or false confession of adultery by the wife before the court constitutes an automatic divorce. This provision is not applicable to the husband.

According to section 1A, the person seeking divorce, or both husband and wife seeking divorce on mutual grounds, should apply in person to the village or town panchayat for a dissolution of their marriage. In the first instance, the panchayat should try as far as possible to reconcile the differences between the husband and wife. If no reconciliation is possible, and if it is considered that divorce is the best solution to the problem, the panchayat should refer the matter with its recommendation within one year of application to the court competent to grant divorce.¹² Since the provision of section 1A does not refer to the procedures to be followed by a wife seeking divorce from her husband, it would appear that she can apply directly to the competent court and avoid the procedures for reconciliation at the local panchayat.

Except in cases where the divorce is granted by mutual consent, the wife who has no property or income can request the court to order the husband to pay her maintenance at a specified rate for a period of five years or until she marries, whichever is earlier. It may be noted that in regard to the payment of maintenance, the present law is favourable only to the wife. A destitute husband divorced from his wife cannot claim maintenance from her even if she is rich and has the ability to pay maintenance.

(c) *Annulment*

The Hindu family system prohibits inter-caste as well as incestuous marriages. In the former case, the marriage remains valid but the status of the high caste partner to the marriage is reduced to that of the partner from the low caste. In the case of incestuous marriages, such marriages are considered void *ab initio* and the law requires the spouses to be separated. Any refusal to obey such

orders is considered a repetition of the offence liable to cumulative punishment. However, under the new code, inter-caste marriage is not considered an offence liable to annulment or any other form of punishment, though the relevant provisions cover incestuous and some other marital offences.

According to the laws existing at present, there are two types of illegal marriages. One is void *ab initio* or that which cannot be valid. The other is voidable, or that which is illegal in normal operation of the law but can be rendered valid by fulfilling certain conditions. The law contains two sections which relate to marital relations under the first category and four sections to cover those under the second category.¹³ One instance of void marriage is marriage which falls within the prohibited degrees and in such instances, as stated earlier, the husband and wife should be separated and repetition of the offence is liable to cumulative punishment.

The other instance of void marriage is the one where an already married woman or a widow is deceptively given in marriage as a virgin. In such instances, the principal person who has given the said woman in marriage and the woman over 16 years who knowingly gets married are liable to punishment with imprisonment up to one year and/or a fine of NPs 500 and the marriage becomes void if the woman was married earlier and the husband to whom she was deceptively married does not consent to continue the marital status. Thus it will be noted that in the case of the widow deceptively married as a virgin, the marriage can be made valid at the discretion of the husband.

The marriage of a minor girl either under 10 years of age or under 16 years of age, although an offence punishable with heavy sentence, can be made valid if the girl upon reaching age 16 consents to the marriage. However, the legal situation is not very clear because the case covered by the language is slightly different and

limited only to a few aspects. According to the relevant section, if both the husband and wife were married before reaching age 16, and if they do not agree to such marriage after reaching age 16, the marriage becomes void. This section does not seem to cover the situations where the boy is married earlier than the permitted age, or if only one of the spouses does not consent to the marriage on attaining 16 years of age, or where the difference in age between the husband and wife is more than 20 years. In respect of the last instance, although the principal person and the bridegroom may be punished, the relevant provision is silent on the validity of the marriage.

There are two sections which give the wife and the husband the discretion to render the marriage void. If at the time of marriage the husband or wife had certain physical deformities (such as dumbness, leprosy, blindness, hands or legs amputated, or if there were lunatic or suffering from epileptic diseases, etc.) and this fact was not revealed to the other partner, then the other partner on learning of this after marriage could exercise the option of either accepting or rejecting the physically deformed partner. On accepting, the marriage becomes valid and on rejection the marriage becomes void.

As noted earlier, in terms of section 7 of the chapter on Marriage, no marriage could be performed or caused to be performed without the consent of both the male and the female, and if any marriage is performed without consent, such a marriage becomes void and anybody who marries or performs the marriage shall be punished with imprisonment up to two years. If this section is interpreted rigidly, the prior consent of both partners is essential to the marriage, and the marriage cannot be rendered valid if the non-consenting partner or partners consent to it afterwards. It is also possible that the non-consenting partner or partners will also be punished if the marriage is performed.

Since the conditions for annulment are also valid grounds for divorce, the law gives the spouses the option either to nullify the marriage or to terminate it through divorce. The proceedings under both options have to be commenced in the regular court, but the period to begin proceedings for annulment is three months shorter than that required for divorce, which is one year.

7. *Child and Child Welfare*

In the traditional Hindu society of Nepal, a male child is valued more than a female child. The son is considered the one who can salvage his parents and ancestors from sin through *shradha* and who can transmit family functions and beliefs to the future generations. It is believed that one who does not beget a son cannot go to heaven. Hence every attempt is made to beget a son either by marrying a number of wives or by begetting several children in the hope of begetting a son by chance or by performing religious ceremonies and sacrifices to the deities.

In most caste societies, daughters are still considered liabilities and temporary members of the family. Although during their childhood they are loved and adored by the family, they are still considered an object to be given away to a man upon their attaining puberty. Any misbehaviour on her part, or the inability to obtain a suitor for her, will be considered a disgrace to the family. In some families, the birth of a daughter is considered a ruin of the family while in others the event is hailed as bringing prosperity to the family.

The provisions of the old law reflected the traditional importance attached to the male offspring. The law was very discriminatory in terms of the sex and legitimacy of the offspring. However, with enactment of the new code, *Mulki Ain*, both sons and daughters on reaching the age of 35 years receive an equal share of the father's property.

(a) *Legal Status of Children*

In the operation of the law, a child is one who is a minor, and wherever the law refers to a child or a minor, a person below the age of 16 years is implied. Children are granted immunity from the operation of the law and their rights and obligations are deemed to begin only upon their attaining majority.

There are some specific sections in the various chapters which concern or set out in detail provisions for, the welfare and protection of children. For instance, according to section 11 of the chapter on Court Procedure, cases involving minor orphans below the age of 16 should be taken up for decision on a priority basis. The law also requires that any document prepared in the court involving a minor below the age of 16 should be prepared and signed only in the presence and with the knowledge of his guardian or *hakwala* (successor). However, if a minor is accused of murder, theft or sexual intercourse, or of abetting such offences, any documents prepared for such cases, or any recorded statements of the accused should be done in the presence of his guardian or successor if the guardian or successor is present in court.

According to the chapter on Punishment, if any act considered a crime by law is committed by a person who is below the age of 8 years at the time of commission, he is deemed not to have committed the offence and hence no punishment is imposed on him. If the minor is over 8 years but below 12 years of age, he is admonished if the crime is punishable with a fine only, and if the crime committed is punishable with imprisonment, he is imprisoned up to two months depending on the nature of the crime committed. If the minor committing the crime is above 12 years but below 16 years of age, the punishment meted out to him will be one half of the punishment that would be imposed on an adult for the same crime. If the offence is committed by a minor upon order or incitement of another

person, such person who orders or incites will be considered as having committed the crime himself and punished accordingly.

(b) *Parental Obligation*

Existing Nepalese law imposes legal obligations upon the parents to protect the child from the moment of conception. Excepting a natural miscarriage, any act of abortion or attempted abortion is considered a criminal offence punishable with imprisonment up to three years. It is also an offence to abandon a born baby alive, the punishment meted out to the accused being imprisonment for four years. If the baby dies as a result of being abandoned, the person responsible will be charge and punished for the offence of murder. If a child is abandoned with the mutual consent of both parents, then their shares of the property together with the share of the abandoned child will revert to the person who has accepted responsibility for taking care of that child. If only one of the parents committed the crime, then the share of that parent together with the share of the abandoned baby will be handed over to the new guardian. If the child was born of an adulterous relationship, the share of the property belonging to the father, the infant and the mother together with her personal property will be handed over to the person who has the care and custody of the child. Such property is to be handed over to the child on attaining majority if it has not been adopted as a son or daughter by the new guardian.

In regard to paternity, the law provides that any child born within 272 days from the date of divorce, unless proved otherwise, is considered the offspring of the divorced husband. The custody of minor children belonging to divorced parents is regulated by law as follows:

- (i) A minor below the age of five years shall be in the custody of the mother until he/she attains 5 years of age; if the mother refuses to take care of this child, then the father should.

(ii) A minor above the age of 5 shall be in the care of the mother if she is not married to another man and if she consents to take care of such minors; if she does not consent or if she is married to another man, then the father must take care of such minors.

(iii) Notwithstanding the above two provisions, if both the parents agree such minors may be in the custody of any one of the parents or alternatively as agreed between them.

(iv) Unless a situation exists which could be injurious to the minor, or cause reasonable apprehension thereof, the parent who has the custody of the minor should provide facilities for the other parent to meet the minor concerned.

(v) If the minor is in the custody of the mother, the father should provide in accordance with his status and income for the child's daily maintenance, education and medical care.

According to the law, even a son who is a minor is entitled to a share of the father's property if he is not duly cared for according to the status and income of the father. He is also entitled to marriage expenses together with his share if he happens to be unmarried at the time of partition.

(c) *Orphans*

The existing law makes very generous and elaborate provisions in regard to orphans. Although the law does not specifically define an orphan, section 1 of the chapter on Paupers purports to consider an orphan a minor who does not have any near kinsman above the age of 16 in his house. If the orphan has any properties, the local panchayat should prepare a list of such properties and entrust them for proper care to the reliable man of the area. A copy of this list should be submitted to the chief district officer.

If any kinsman, relative or other guardian agrees to bring up the orphan, the child should be given in custody to one of them; otherwise the child should be entrusted to such institution where proper rearing of the orphan would be possible. The expenses incurred in bringing up the orphan until it reaches age 16 years will be met from the income of the entrusted property. All the properties, after deducting expenses incurred for bringing up the orphan, together with statements of income from and expenditure on the property, should be handed back to the orphan within six months of his attaining the age of 16 years.

The law also makes provision for the care of the minor and his property in a situation where the mother elopes with another man when the father is either dead or lost or has gone abroad. If such a minor does not have any property or any other near adult kinsman, then the mother should take the minor along with her and bring up the child. Even if the minor below 8 years has property and or a near adult kinsman, the mother may, if she wants to, bring up the child until it reaches the age of 8. thereafter, if there is no near adult kinsman, the mother may continue to bring up the child. If the near adult kinsman of a minor between the age 8 and 16 years refuses to bring up the child, the mother may rear such a minor. If the mother takes on the responsibility for bringing up the minor either because there is no near adult kinsman in the minor's house, or because any of the near adult kinsmen refuse to bring up the child, then the mother may take custody of the minor's property.

If an orphan is neglected by the nearest kinsman or guardian, or if he does not have anyone to take care of him, and if such orphan does not have any property or whatever property he has is not sufficient for his daily maintenance, then the local panchayat should send such orphan to a place where there are facilities and provisions to take care of that orphan, and if no such place exists, the orphan should be sent to the chief district officer who will make arrangements for the care

of the orphan until he reaches the age of 16, the expenses to be met from *rajguthi* (a trust property managed by the state).

The law also provides that if a child is born to any female prisoner, either detained or imprisoned, within the premises of the jail, or if a female prisoner has any child below the age of 2 years, the mother may keep such child with herself if she so desires, despite the fact that she has someone outside the jail who can equally take care of the child. Such child, on attaining the age of 2 years, should be handed over to other members of the family living outside the jail, unless it is very necessary to keep the child with the mother. A detained or imprisoned mother is not entitled to keep with her a child over 2 years even if no other person is available outside the jail to take care of the child. Such a child shall be entrusted to an orphanage for rearing.

(d) *Unlawful Treatment of Children*

The law prohibits any financial deal or transaction with a minor, that is, a person who has not yet attained the age of 16 years. If such a deal is countersigned by the person responsible for looking after the property of the minor, then that deal becomes valid. If, however, it is proved that the guardian maliciously got the minor to enter into the transaction in order to ruin the minor's property, the guardian will be required to replenish the full amount in addition to paying a quarter of the said amount as fine. Similarly, a minor should not be allowed to become an ascetic even if he wants to.

The Alms (Prohibition) Act prevents the use of children for the purposes of begging. Any person, whether guardian or otherwise, who makes use of children for begging will be punished with imprisonment up to three months and/or a fine not exceeding NRs 75. However, the traditional religious ceremony called *chudakarma*, in which a minor is obliged to perform the act of begging alms from his mother and other relatives before

he becomes entitled to participate in all family functions, is exempted from the operation of the Alms (Prohibition) Act. The law also provides that a minor below the age of 16 years should not be separated from his legal guardian without the latter's consent, nor should such minor be induced to separate or be enticed away from his legal guardian. Any person who kidnaps such a minor or entices him away from the legal guardian will be punished with imprisonment up to three years and/or a fine of NRs 500.

The law also prescribes special punishment for unlawful detention of minors. If a minor below the age of twelve years is detained without being provided with food and water and if such a minor dies within three days, the person who detained him will be punished for murder. But if the minor who is being provided with food and water while under detention dies of other diseases, or dies in detention by refusing to eat any food provided to him, then the person holding him in detention will not be guilty of murder.

Children below the age of 14 years are also prohibited by law from being employed as labourers, while minors between 6 p.m. and 6 a.m.,¹⁴ or in factories and workplaces involving heavy and hazardous machines. The Act also requires factories employing more than 50 married female employees to provide space for a crèche, the services of a trained nurse and milk and food at prescribed rates for children under six years of age of the employed women.

(e) *Child Welfare Programme*

Minor children having no parents or guardians to take care of them and having no means of income through property of their own will be provided with the necessary means of livelihood by the chief district officer from the incomes of *rajguthi* or state-owned trust properties. Any relatives or kinsmen making claims to properties of infants and minors are also obliged by law to take responsibility for bringing up such children.

The National Co-ordinating Council for Social Services has constituted two committees, the Children Welfare Co-ordination Committee and Destitutes Welfare Committee, to co-ordinate and manage all aspects relating to children and destitutes. Under the jurisdiction of these two committees, a number of voluntary associations and agencies are attending to the welfare of orphans and destitutes, particularly by providing them with nutritious food, clothing, education, together with teaching and instructional facilities in the schools organized and run by them. The voluntary organizations also try to find suitable employment and spouses when these children attain the appropriate ages. Thus, the various social service and welfare organizations and institutions considerably assist the district administration throughout the country in looking after and protecting the interests of orphans and minors.

8. Adoption

The adoption of sons has been a traditional Nepalese Hindu custom. A boy is usually adopted as a son by those who do not have a male offspring. The purpose of adoption was largely to ensure the continuance of the family lineage and the due performance of the religious rites on the deathbed and after death. There were, however, several limitations and sanctions in regard to the eligibility of those who could adopt and those to be adopted, as well as in regard to the duties and obligations of the adopter and the adopted.

The Hindu tradition considers that the adopted son has completely severed his relations with his natural family and has completely attached himself to the adoptive family. This means that all relationships existing prior to adoption are fully reversed after the process of adoption has been completed. The present law on adoption is largely based on the old practices, but its scope has been expanded to permit the adoption of daughters, and the adoption by aliens of any Nepalese boy or girl. In order to ensure that the

family wealth remains within the family circle, the present law stipulates that the adopted son should be related as nearly as possible to the adoptive family.

The system of adoption provides a significant and worthwhile alternative to parents desperately wanting to beget a child either for personal satisfaction or for ensuring the continuity of the family lineage. It also helps to prevent parents from begetting a large number of daughters in their anxiety to have a son or *vice versa*. For these reasons, the existing law on adoption was amended recently to simplify the procedures for adoption and also to facilitate the adoption of orphans and abandoned infants.

The existing law also lays down the priority of relatives and kinsmen whose children can be adopted. If no child from the first priority category is available for adoption, then a child from the next priority category should be considered. The categories in descending order of priority are children of own brothers; children of step brothers; children of persons who are descendants of the same grandfather; sons of one's daughters; children of persons who are descendants of the same great grandfather, sons of sisters; and finally sons of relatives of the same clan or *gotra*. A child from another clan can be adopted only if a child from one's own clan is not available.

If the parent or guardian in the higher priority category refuses to give his child in adoption, a signed statement to this effect should be obtained from him before adopting a child from the next priority category. If the said parent or guardian refuses to give a signed statement, then the child from the next priority category may be adopted in the presence of the members of the local panchayat. Any adoption not conforming to the stipulated order or priority, or performed without observing the necessary procedures is illegal and the adopted child is entitled to receive his share of the property from his natural father. The law also

stipulates that a boy who is the only son or child of his parents cannot be offered for adoption by others. Such adoption becomes void.

The law also prohibits a man having his own son from adopting another son. A woman whose husband is living or who has a son of her own or from the husband's co-wife is not permitted to adopt a son. If a father who has already completed the deeds for adopting a son begets his own son subsequently, the adoption completed earlier cannot be annulled, and the adopted son will receive a share of the property equal to that of the natural son. If a person wants to adopt an orphan below the age of 6 whose father does not exist or whose paternity is not discernible, he may do so even if there are children of near relatives available for adoption. The adoption of such an orphan may be done with the consent of the orphan's mother if the mother is alive or with the consent of the guardian or of the recognized orphanage to which the child has been earlier entrusted.

Another traditional Nepalese practice has been the adoption of one's own unmarried daughter as a son. A daughter so adopted is called a *dolajee*. Only those who have daughters and no sons are permitted to adopt a daughter as son prior to her marriage. A *dolajee* is entitled to succeed to the father's property. The husband of a *dolajee* is not considered a member of the wife's family and is therefore not entitled to possess the wife's property as co-owner; nor can he make any claim to such property upon the death of the wife. He can receive only that much as granted by the property to her husband only if she has no children and has herself completed the age of 45. If the *dolajee* dies issueless, the property passes on to the relatives of her father and not to her husband and his relatives. If the *dolajee* has a daughter, that daughter can be adopted as a *dolajee* and the property transferred to her by means of a written deed.

As noted earlier, traditionally only male children were considered eligible for adoption as it was the sons who performed the last rites on the death of the parents. However, the new code permits the adoption of a daughter in addition to, and not in lieu of, a son. Apart from a man who has his own daughter and a woman who has a living husband or her own daughter, any other person can adopt a girl below the age of 10 years as a daughter by executing a written deed. There should be a difference in age of at least 25 years between the adopting parents and the adopted daughter. The rights of an adopted daughter are the same as those of a natural daughter. The adopted daughter cannot claim any rights from her natural parents. If the person who has already completed the deeds for adopting a daughter begets his own daughter, the adoption performed earlier cannot be annulled.

There are also provisions in the law for annulling an adoption. The general principle of the law is that once a person has been adopted, that adoption should not be annulled unless there are serious lapses. According to existing laws, an adoption could be annulled if the adopted son failed to take proper care of his adoptive parents in a manner consistent with their wealth and social standing, or if he has squandered the family wealth, or has caused bodily harm to the adoptive parents, or deserted them without making any satisfactory arrangements for them. When the adoption is annulled, the son so adopted becomes entitled to receive a share of the property of his natural father. On the other hand, if the adoptive parents have thrown out the adopted son or abandoned him without providing for his maintenance, then the adopted son is entitled to receive a share of the property equal to that of the natural-born son from the adoptive father.

A foreigner who wants to adopt a Nepalese boy or girl must apply to the Government giving the required particulars. The Government, after making a full investigation in regard to the character and economic standing of the applicant,

may, on the recommendation of the concerned foreign government or embassy, grant permission for the adoption of the child subject to specified terms and conditions.

9. *Inheritance and Succession*

(a) *Partition*

According to the existing laws, partition of family property can be effected among living members of the family consisting of the father, mother, and sons and widowed daughters-in-law, and the share of each of these members should be equal. In the case of sons of two or more brothers living together, the partition is first made among the fathers of such sons and the co-wives are required to distribute the shares of the husbands among the sons. If the principal person dies prior to partition, his share passes on to his wife and sons. The children of a woman having no fixed husband received the share only from their mother's property until the paternity is established. A person who has become an ascetic through the performance of *vijaya homa* cannot claim a share of the property.

The law also provides that neither the wife nor the son can compel the father to partition the property during the latter's lifetime. On the other hand, if the father does not wish to partition the property, he should continue to provide maintenance for the wife and sons in keeping with his status and income.

A widow without any male issue is not entitled to demand partition with share until she attains the age of 30 years or as long as she is adequately maintained by her successors including the provision of facilities for religious observance. An unmarried daughter over thirty five years of age is also entitled to a share of the property equal to that of the son; but if this daughter subsequently gets married or elopes with someone, her share of the property will revert back to the successors.

A recent amendment to the *Mulki Ain* recognizes the concept of private property within the joint family system. According to this amendment, all earnings of family members living together and sharing the same kitchen, accruing from common property or family occupation as well as all debts incurred in this respect have to be divided equally among the eligible members. But other personal earnings of a family member through his own knowledge or skill or effort, or any gift or reward received personally from any source, or property received in succession, becomes personal to the family member concerned and such earnings or property are not liable for partition. Similarly, any family member living and taking meals separately though on the same premises shall be considered to be living separately and any earnings made or debts incurred by such a person are personal to him.

(b) *Woman's Property*

Since the role of women in traditional Hindu Nepalese society is singular, laws relating to the management and disposal of any property belonging to a Nepalese woman are somewhat different from those applicable to a man's property. According to the existing Nepalese law, a woman may hold three kinds of property:

(i) *Daijo* or any movable or immovable property given to her by her friends and relatives on the paternal or maternal side. Any income that accrues from and any increment to such property is also considered part of *daijo*.

(ii) *Pewa* or any movable property given to her by her husband, or any of his co-sharers of property with the consent of other co-shareers, or by any other relatives and friends on the husband's side. Any income that accrues from and any increment to such property is considered part of *pewa*.

(iii) *Angsa* or the share of property received at the parent's house while remaining unmarried or received at the husband's house after marriage.

A woman is free to dispose of her *daijo* and *pewa* in any manner and at any time she pleases. She may execute a will indicating the manner in which her property should be disposed of after her death. If no such will exists, such property shall pass on to the son living with her, and thereafter to the son living separately, and if no such son exists, to the husband, and thereafter to the unmarried daughter.

Any share of the property received from the husband's side will revert back if the woman is divorced from the husband, and on the loss of chastity by the widow, such property will pass on to the successor. However, a woman, whether she is unmarried, or is married having a living husband, or is a widow, can dispose of the movable and immovable property she herself has acquired in any manner she please. In regard to the share of the property received by her, a woman irrespective of her marital status, could dispose of all movable property and one half of the immovable property without the consent of anyone; and the remaining half of the immovable property could be disposed of by her with the consent of her father if she is unmarried, and with the consent of her father if she is unmarried, and with the consent of her adult sons if she is married or is a widow. If a woman, after gifting or selling any of her property other than *daijo* and *pewa* to any male person has sexual intercourse with the same male, then such disposal becomes illegal and the property reverts back to the successor.

(c) *Succession*

An important objective of the joint family system is to ensure that the family property is retained within the family circle. The laws relating to succession have therefore stipulated the persons

entitled to the property of a deceased person. According to existing laws, the daughter is not entitled to receive the property in succession if the spouse or any son or son's son of the deceased is living. It is only in the absence of these nearest kin that the daughter becomes entitled to receive the property in succession. If the deceased has only daughters, the property is divided among them, the unmarried daughter receiving two thirds and the married daughter one third unit of the property. If the deceased had no children, then the *hakwala*¹⁵ (successor) who has been living together with the deceased person is entitled to receive the property. If the deceased was not properly looked after by the spouse or by the son or son's son, or was living separately and was taken care of by the daughter or daughter's husband, the property of such deceased parent passes on to the daughter or son-in-law.

When the son has pre-deceased the deceased father, both of them having lived together or separately, and their property is to be received in succession by their daughters, then the daughter of the father and the daughter of the son will receive equal shares of the property. If all persons in immediate succession to the property have died and the property has to pass on to the daughters of these persons, then the daughters will share the property in a manner prescribed by law. In other situations, only the daughter of the eligible person who died last will be entitled to receive the property in succession. If after the partition the parent has been living together with any of the sons or daughters-in-law, then the property upon the death of that parent passes on to the son or daughter-in-law with whom the parent has been living before death.

If the deceased person has no daughter or any near *hakwala*, the property passes on to the son of the daughter. If the parent who having gone to live with any of the sons was not properly looked after by that son and therefore moved to the house of another son and dies there, then the property of that parent passes on to the son in whose house

the parent died. If any parent living separately or with any of the sons after partition dies, then the property passes on to the other spouse. If the wife was living separately from the husband, her property will pass to the son, or to the husband if she had no son. If the husband and son had pre-deceased her, then the property will pass on to the step-sons.

10. *Old age protection*

An important virtue of the joint family system is the care and protection it ensures to people in their old age. In the absence of any old age security schemes organized by the State, the sons have traditionally played the role of benefactor for the parents in their old age. It was essentially because parents in their old age depended on their grown-up sons for support that the birth of a son was anxiously awaited by the family, and the cultural preferences for sons also tended to increase the number of children. However, there have also been numerous instances when sons have failed to take care of their parents in old age. The current law contains a few provisions which are directly related to safeguarding the interests of elderly persons.

A recent amendment to the chapter on partition makes it incumbent on the parents to mention specifically in the deed relating to the partition of the family property whether they wish to live separately from their children or with any particular son or daughter; and such son or daughter must take proper care of the parents. If the income from the property of the father or mother is inadequate to maintain them, or if none of the sons or daughters or sons' sons are living together with the parents, then the son or daughter living separately should maintain and take proper care of them. Similarly, if any old person is not looked after by the spouse or by a son or son's son who are living separately, and if the old person is taken care of by a married or unmarried daughter or by the daughter's husband, then the property of

the old person after death will pass on to the daughter or daughter's husband and not to the nearest *hakwala*.

According to existing laws, a person without property or unable to earn a living through any means or having no one to take care of them should be provided with one unit of ration monthly and two garments annually by the chief district officer upon recommendation of the local panchayat, and should be maintained in a government-approved institution from public funds.

According to the Civil Service Act and Civil Service Rules, any civil servant who has reached the age of 60 years and served for more than twenty years is entitled to receive a life-long pension computed on the basis of number of years of service and the salary received at the time of retirement. Officers not entitled to receive superannuation benefit are entitled to receive a sum as gratuity. Similar provisions also exist for payment of gratuity to employees in private enterprises and industries which have no pension schemes. Another programme designed to benefit employees in their old age is the Employees' Provident Fund. Each employee contributes 10 per cent of his salary to the Fund, the contribution being deducted compulsorily from his monthly pay. An equal amount is contributed by the employer, and the total amount contributed together with approved interest is refunded to the employee on termination of service.

C. Measures Affecting Quality of Life

The main concern of the Government, as stated in the preamble to the Constitution, is the happiness and prosperity of the people. To this end, the Government has over the years been formulating and implementing a series of public welfare programmes in the field of employment, health, education, etc. Some aspects of these programmes are discussed in the sections that follow.

1. *Employment benefit programme*

The Civil Service rules provide for security of employment and opportunities for promotion. Employees are entitled to leave with pay in addition to public holidays. Female employees are also entitled to maternity leave. Similar privileges are also available to employees of public enterprises.

The person and gratuity benefits accruing to employees have been discussed in the earlier section. It may be noted that if an employee who has completed twenty years of service and is entitled to a pension dies before reaching the compulsory retirement age of sixty, that amount of pension he or she would have been drawing had he or she been alive would be given for seven years to his or her nearest relative living together. All other benefits such as payment in lieu of accumulated leave, expenses incurred in treatment for physical disability and deformity which the deceased employer would have been entitled to are also given to the relative concerned.

If as a result of an accident while on duty an employee is grievously hurt, deformed or disabled, a disability pension in addition to his normal pension. He may also receive financial assistance up to NRs 10,000 and all medical expenses, these extra benefits being available to the employee irrespective of whether he remains in service or not. If an employee dies as a result of an accident while on duty, the next of kin will be entitled to receive a monthly pension for life and a lump sum grant. Each child of the employee will also receive an annual education stipend until he/she reaches 18 years and a monthly stipend until he/she is 21 years of age.

According to the Factory Workers Act, no labourer should be required to work for more than 44 hours per week and should be provided with a holiday for one and one half days per week. No labourer should be compelled to work for more

than eight hours per day, and in factories no labourer should be required to work for more than five hours at a stretch without a break of half an hour. If a labourer is required to work more than the stipulated hours, then the overtime work should be remunerated at one and half times the rate for normal work.

The Factory Workers Rules provide, among other things, for maternity leave with pay of 45 days before and after delivery, such leave being granted only twice during the total period of service. The law also requires factory owners to establish crèches for children under six years of female employees and to provide the services of a trained nurse and milk and feed in specified quantity. Nursing mothers should be provided with opportunities to nurse and breastfeed the infant. Females cannot be engaged for work between 6 p.m. and 6 a.m.

2. *Public health programme*

By and large, the hospitals and health facilities in Nepal are managed and regulated by the Government. Generally, health service is provided free of charge in the public hospitals of the country. Besides curative services, the Government has also launched a number of special health projects such as malaria eradication, leprosy control, smallpox eradication, family planning and maternal child health.

The existing laws also stipulate that only a doctor or *vaidiya* who has obtained the necessary qualifications and is duly certified is entitled to treat patients, prescribe medicines and perform surgery.¹⁶ Before performing any surgery, the doctor or *vaidiya* should obtain the consent of the patient if he is an adult and is in his senses, or from the guardian if the patient is senseless or is a minor.

The Drug Act was enacted recently to prevent misuse or abuse of drugs and their components, to stop any false or misleading information being

given in regard to the use and administration of such drugs, and to control the production, sale, distribution, import, export, storage and consumption of unsafe, ineffective and poor quality drugs. Similarly, the Narcotic Drugs Control Act was promulgated to control the plantation, production, manufacture, sale, purchase, storage, transportation and consumption of all types of narcotic drugs.

The Family Planning Maternal and Child Health Project of the Government and the Family Planning Association are formulating and implementing programmes for propagating and providing family planning services. The mobile units of the Project and of the Association provide advice and vasectomy and tubectomy services and distribute contraceptive devices. It may, however, be noted that while the activities of the Project which are organized under the Development Board Act have legal sanctions, the activities of the Association which is a voluntary organization have no legal basis.

3. *Public education*

Until 1972, the educational system of the country was geared to providing education for education's sake and not to meet the national needs of socio-economic development. However, with the passing of the Education Act and the Tribhuvan University Act there have been dramatic changes in the country's educational system.

The Education Act, 2028, regulates the operation of pre-primary, primary, lower secondary and secondary schools. All primary education throughout the kingdom has been provided free since 1975, and since 1979 textbooks have been distributed free of cost to the primary level students. The regulations to be made under this Act will govern examinations, extra-curricular activities, hostels, libraries, co-education, adult-education, and conditions of service of teachers and head masters.

The Tribhuvan University Act, 2028, governs the activities of Tribhuvan University which was established in 1959 for the purpose of providing the necessary manpower required for national development, encouraging the socio-economic development of the country, consolidating national unity and building up a sense of loyalty and devotion to the king and the country, and to augment learning and research in the fields of arts, science and other professions.

The Government has been conducting an intensive adult literacy programme at the local level with the co-operation of the panchayats, professional organizations and local schools. Any illiterate person over the age of 14 could enroll himself in this programme of classes over a six-month period. The programme also includes instruction on hygiene, agriculture, cottage industry, family planning and nationalism.

D. Direct Fertility Control Measures

1. *Contraception*

The traditional Hindu system regarded the act of conceiving and begetting children not as a simple human biological function but as a divine process operated through the human body. Hence any act that intervened with the natural process was considered as being against the wishes of God or as obstructing the process designed by God, and thus did not receive religious and social sanction. In such a context, the whole process of family planning is operating under the guise of medical necessity and there is no specific legislation to control, regulate or promote the production, sale, import or use of contraceptives.

Since the practice of contraception was introduced into the country through government programmes, and the contraceptives used are made available through international assistance, it was not deemed necessary to frame any rules to regulate the import and distribution of contraceptives. No customs duty or import

restrictions are at present applicable to contraceptives. However, in order to facilitate the implementation of the government programme and to establish the necessary institutional framework, the programme was brought within the Development Board Act by the issuance of appropriate notice. The pills are considered medicine and the sale, distribution and use of pills are subject to the same conditions applicable to medicines. The insertion of IUDs is carried out at medical institutions run by or in consonance with the government.

2. *Sterilization*

In Nepal, there is no specific legal provision which permits sterilization to be performed on a person by a registered medical practitioner or paramedical person. No one can compel anyone to sterilize another or oneself. Sterilization is a voluntary act on the part of both the person sterilized and the doctor performing sterilization and is done with proper care and the written consent of the persons concerned. But the law does not permit any one to cause bodily harm to another person even with his consent.

It would appear that vasectomy cannot strictly be performed since according to the new code, any act rendering any person impotent by depriving him of the effectiveness of any of his organs is considered causing grievous hurt and is punishable with imprisonment of eight years and a fine of NRs 1,000. Similarly, tubectomy may also be considered a deprivation of part of the body with a weapon causing wound and pain and would be covered by section 7 of the chapter on Assault, which states that anyone causing bodily injury other than grievous hurt by breaking, dismembering or detaching any limb or part of the body shall be punished with six months imprisonment and a fine of NRs 200 if such limb or part of the body returns to normal function, or an imprisonment of one year and a fine of NRs 400 if the limb or part of body cannot resume its normal function.

However, according to the chapter on Medical Practice, it is mandatory that all surgical operations including vasectomy and tubectomy should be performed only with the consent of the party. Hence the criminal liability of the doctor performing such surgical operation is comparatively less unless it is proved to be a negligent act. The chapter on Medical Practices also specifies that no surgical operation can be performed in premises which do not have proper sanitary and hygienic facilities.

Although by law the consent of the spouse need not be obtained for sterilization operations, the clinics run by the Maternal and Child Health Project require that the consent of the husband be obtained in regard to tubectomy operations, and that the husband must also indicate his wife's consent for vasectomy. There is no legal barrier as to the age of the person to be sterilized. Generally, it is difficult for an unmarried person or a childless person to get sterilized.

3. *Abortion*

The present law prohibits generally and permits exceptionally the act of abortion. According to the relevant provisions of *Mulki Ain*, any one who aborts or causes to abort or aids to abort shall be liable to punishment, except when the abortion is caused for benevolent reasons. So far, there does not appear to be any judicial interpretation of this section, but the wording in Nepali provides clearly that whenever an abortion is performed for benevolent reasons, it is a permissible action. Of course, the benevolent reason could be social, economic, moral, physical or psychological in nature and if these wide connotations are accepted, then any abortion could be interpreted to be legal.

The law also provides that if any act of vengeance carried out on a pregnant woman by any person results in an abortion even though there was no intention to cause abortion, that person is guilty

of the offence of abortion. The penalty imposed for abortion varies according to whether the consent of the woman was obtained or not and the number of months she was pregnant. If the abortion has been carried out without the consent of the pregnant woman, the offender is punished with imprisonment for two years if the foetus was up to six months old, and for three years if the foetus was over six months old. If the abortion was carried out with the consent of the woman concerned, then both the person performing the abortion and the woman who was aborted are punished with imprisonment for one year if the foetus was less than six months old, and for one and a half years if the foetus was over six months old. If an attempt to abort does not result in abortion, or if the child is born alive, the punishment is halved.

The Medical Council Act and the rules made under this Act have prescribed that no abortion should be carried out except for health reasons. Before performing an abortion for reasons of health, the doctor should consult and obtain the views of another doctor. The abortion can be performed only if both doctors agree that in case the pregnancy was not terminated there was every possibility of danger to the life of the mother or that the child when born would be deformed or mentally retarded.

There is no legal provision to permit abortion of the pregnancy occurring in a minor, or resulting from rape or incestuous relationship or for eugenic considerations. Although a raped woman is entitled to kill the rapist with any weapon within an hour of the offence, the law does not permit her to abort any pregnancy resulting from such rape.

E. Collection of Demographic Data

1. Census law

National censuses conducted at intervals of about 10 years are the principal source of demographic

data in Nepal. The first legislative action to authorize the collection of data through a census was the enactment of the National Census Act 2013. But it was soon replaced by the Statistics Act of 2015 which authorized the collection of data from all sources and at various intervals.

The preamble to the Statistics Act emphasizes the need for the Government to establish an institutional framework to formulate policies aimed at maximizing the people's welfare, to increase the administrative efficiency of government departments, to obtain factual knowledge of the nation's economic situation and manage the system of data collection and to compile, analyze and publish such statistics. The Act authorizes the Government to issue notice about collection of statistics and require the concerned persons to supply the statistics, to examine existing records on any person and to ask relevant questions. The Act also provides for the establishment of a Central Bureau of Statistics to perform the functions relating to the collection, analysis and publication of such information. The Bureau is also empowered to act as a clearing-house for statistical information and controller of all such activities within the kingdom and as the agency for certifying the statistical information received.

The rules of the Statistics Act specify the rights and duties of the Director and of the Bureau. The Director is responsible for conducting the national census.

2. Vital Registration Act

The task of registering births, deaths, marriages, divorces and change of residence occurring among Nepalese citizens was entrusted to the village and town panchayats in 1961 and 1962 through the laws governing these panchayats. However, the task was not performed adequately and with all seriousness by these bodies. It is even doubtful whether any registers were maintained at these offices. In order to rectify

these deficiencies and establish a firmer basis for the continuous registration of vital events, the Birth, Death and other Personal Events (Registration) Act was enacted in October 1976.

The Act may be considered to be comprehensive and complete in most respects and has defined the duties and responsibilities of the Registrar and the local registrars who have to implement the various provisions of the Act. In terms of this Act, the Government has set up a Registration Office at the central level under the Home and Panchayat Ministry and has appointed a Registrar responsible for civil and vital registration. The secretaries of the village panchayats and the chief administrative officers of the town panchayats have been designated as registrars at the local level.

3. *Other sources*

Village panchayats are expected to maintain population records and records of births and deaths. In order to carry out these functions, the village panchayat is authorized to use its funds in the manner prescribed for the purpose. The panchayat is also empowered to carry out these functions in the manner it deems fit and to impose fines on those who refuse to comply with the orders made by the panchayats in this regard. Similarly, the town panchayats have also been assigned the task of maintaining records on vital events in respect of the people coming under their jurisdiction. However, these tasks were not implemented by the local bodies because of lack of funds and trained staff as well as proper direction and control from the centre.

F. Other Laws Relevant to Population

1. *Taxation laws*

The Income Tax Act of 1974 provides for the payment of tax on incomes derived from agriculture, industry, business, profession or vocation, remuneration, building or house rent and other sources. The Act defines a "married couple" as a husband and wife having valid

matrimonial relationship, and no couple shall be regarded as married if they are actually living separately following a divorce, partition or separation granted by order of a competent court. According to the Act, a "family" includes a husband and wife and their minor sons and daughters.

In terms of the relevant provisions of the Act, the joint income of married couple is assessed and charge to the husband, and that of a family assessed and charged to the head of the family. Similarly, the income of a minor or incapacitated person is assessed and charged to the guardian or trustee or any person receiving income on behalf of such minor or incapacitated person.

A single person receiving an annual income of less than NRs 6,500 is exempted from paying income tax, while the exemption limit for a married couple with no dependents is NRs 7,500 and for a family NRs 8,500. The tax law thus seems to favour the family more than the married couple and to favour the married couple more than a single person.

2. *Land ownership*

The system of land ownership in Nepal is of particular significance from the demographic point of view because the law recognizes the family and not the individual as the unit for purposes of holding land. Prior to 1964, no attempts were made to impose any ceiling on the extent of land owned. However, the Land Act enacted in 1964 stipulates the extent of land an individual or family can hold either as landlord or tenant. For the purposes of this Act, a family is defined to include husband and wife, whether separated or not, minor sons below 16 years of age, whether separated or not from the parents and daughters who are below 35 years of age during the life of the parents. The Act is favourable to smaller families and encourages larger families with bigger land holdings to break into smaller family units in order to retain the share of land holdings.