

Acknowledgements

I would like to thank my friend and guru, Dr. [Name], for stimulating my interest in Sociology.

From the beginning Dr. Adam Kuper who took keen interest in my work has contributed in numerous ways to my interest in understanding of the Hindu Community.

DISPUTE SETTLEMENT IN A HINDU COMMUNITY all his

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OF KAMPALA

was kindly awarded by the Joint Board of Graduate Studies of Makerere University by which I received as a grant towards my study of the Hindu Community in Kampala.

Rohit/Barot

My supervisor, Dr. Adam Kuper, who was giving in the Department of Sociology at Makerere College in Kampala. He has supervised me from a constant source of inspiration and guidance throughout the course of my study. I express my heart-felt gratitude to him.

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I would like to thank my friend and guru, Dr. Rashmi Desai, for stimulating my interest in Sociology.

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Thesis Synopsis

This thesis proposes to examine the dispute settlement in the Hindu community of Bakuli, Kampala. The monograph shows the way different kinds of disputes are settled in Bakuli outside the realm of national law.

Uganda constitutes a number of groups who enjoy the security provided by the state law through its judiciary and police services. The Asians, who trace their origin in India or Pakistan, have lived in Uganda since the beginning of this century. They, however, do not comprise a single homogeneous community but divide themselves into numerous groups along linguistic, religious, and other grounds. This thesis attempts to illustrate how these groups evoke, outside law courts, standardized procedures for settling differences between themselves at local level.

Disputes happen in all societies which usually employ some means of sorting out the troubles between the adversaries. The disputes occurring in Bakuli fall under the following headings:

1. The Disputes about Boys and Girls:

The Hindu communities always emphasize the polarity between sexes. The separation of sexes reduces all the possibilities of inter-group sex relationships for this may threaten endogamy on which the exclusiveness of different groups rests. Whenever such contacts between males and females become socially visible, this may generate tensions and conflicts. These may become disputes by drawing much public attention.

Whenever such a dispute among the Hindus occurs, the members of Bhajanmandali are summoned to settle the differences and to prevent outbursts of hostility

are centered at family level. Families often provide a

model to those who want to form a partnership. In absence and violence. Being influential in the neighborhood, the members of this hymn-singing religious fraternity perform a jural role in the dispute settlement process.

2. Matrimonial Disputes:

Disputes between husband and wife, often straining the relationship between the two, is a fairly common feature of life in Bakuli. More often than not, these disputes are rooted in unstable relationship between husband, his mother, and his wife. These matrimonial disputes go to different sources for their settlement. Elders in one's groups obviously provide one locus of bringing pressures on husband and wife so that they may not abandon each other and retain the unity within the joint family. Some of these disputes often go to the lawyers who may help to settle the differences between spouses rather than let them take up the matter to the law courts, for the Divorce Ordinance of Uganda does not easily permit the dissolution of marriage.

3. Rent Disputes:

Mailo land of Buganda affects the non-African residents of Bakuli. For the law requires the non-African lessee of mailo land to obtain consents from government authorities before he can let his mailo to other non-Africans. As the process of obtaining consent is often lengthy and expensive, many landlords have no consents to back up agreements they enter into with their tenants. Consequently, in disputes about collection of arrears, landlords have no legally enforceable rights. The landlords attempt to settle these differences with their tenants by calling in lawyers or their clerks who then provide a way of settling disputes.

4. Business Disputes:

The businesses in many Asian communities of Uganda are centered at family level. Families often provide a

model to those who want to form a partnership. In absence of legal agreements between the members of the family or partners, disputes can be settled only outside the law courts.

5. Police and Settlement of Disputes

In many disputes the Asians living in Bakuli call in the police constables in the initial stages of hostility. They go to the police station, not very much to use the available procedures of punishing their adversary but merely to frighten him. In a number of cases the disputants retreat from the police station and reach a compromise.

Finally, this thesis shows how a dispute settlement process is informal when the principles, procedures, and personnel involved in it vary from the national legal system.

It was Max Gluckman who pioneered the study of dispute settlement in African legal anthropology (Gluckman: 1955), by examining court cases among the Lamel of the Upper Zambezi. In the early sixties, Philip Gulliver's researches among the Arusha (Gulliver: 1963) was an outstanding contribution to the understanding of dispute settlement processes in a tribal society. Another seminal study is Paul Bohannan's analysis for the Tiv (Bohannan: 1957). Outside Africa notable works such as Malinowski's Criminals and Customs in a Savage Society (1926), Lowie's and Hoebel's Cheyenne Law (1941), Hoebel's The Law of Primitive Man (1954), and Frazier's Stagnant Societies and Their Law (1938) are the classical sources for study of the legal system of small-scale societies. These and other works demolished the notion that the "primitive" societies were lawless and emphasized how the people living in these societies applied norms, customs, and usages to regulate behavior and acted out punishment for breaches.

INTRODUCTION

1. Dispute Settlement and Customary Law in Africa

(1954). The social anthropological study of dispute settlement in Africa and elsewhere has been largely an examination of conflict resolution in small scale, non-literate tribal societies. They are said to be characterized by their small size, lack of written history, egalitarian economy and limited technology. They have provided the social anthropologists with self-contained exotic wholes and they show how, within the context of its total organization, a community would impose social control over its members applying either organized or diffuse sanctions.

Many anthropologists have treated the subject of dispute settlement in its political or jural context as a standard practice in anthropological monographs. But it was Max Gluckman who pioneered the study of dispute settlement in African legal anthropology (Gluckman: 1955), by examining court cases among the Lozi of the Upper Zambezi. In the early sixties, Philip Gulliver's researches among the Arusha (Gulliver: 1963) was an outstanding contribution to the understanding of dispute settlement processes in a tribal society. Another seminal study is Paul Bohannan's analysis for the Tiv (Bohannan: 1957). Outside Africa notable works such as Malinowski's Crime and Custom in a Savage Society (1926), Lewellyn and Hoebel's Cheyenne Way (1941), Howbel's The Law of Primitive Man (1954), and Pospisil's Kapauka Papuans and Their Law (1958) are the classical sources for study of the legal system of small-scale societies. These and other works¹ demolished the notion that the "primitive" societies were lawless and emphasized how the people living in these societies applied norms, customs, and usages to regulate behavior and meted out punishment for breaches.

a system of courts supported by the police, prison, and

The anthropologists working in Africa also took a keen interest in customary law. Rattary's Ashanti Law and Constitution (1929), Howell's A Manual of Nuer Law (1954), Elias's The Nature of African Customary Law (1956) and Schapera's A Handbook of Tswana Law and Custom (1938) were notable pioneering studies of customary law. The establishment of the system of courts in African countries has initiated interest in customary law both at governmental and academic levels. At governmental level, countries like Tanzania, Kenya, Malawi, and Zambia have set up schemes to write down and to codify African Customary laws (Allott: 1967:12).

While the social context of African customary law and its codification has been the area of interest for anthropologists and lawyers respectively, their attention has not been drawn to the settlement of disputes either among Asians and Europeans who have lived in Central and East Africa for several generations. Only in a few recent descriptive monographs on Asians (Hollingworth: 1960, Delf: 1963, Ghai: 1965, Morris: 1968, Dotson: 1968) is there material examining the relationship between law and immigrant Asians in any of the three East African Territories. The purpose of the present inquiry is to contribute further to the study of Asian communities with particular reference to the settlement of disputes at the local level.

2. The System of Courts in Uganda:

The Laws of Uganda, a mixture of English, Indian, and Ugandan legal institutions and system of courts comprise the legal framework for dispute settlement. A former Minister of Justice of Uganda states (Obwangor: 1966: 27) that an essential function of law in Uganda is the administration of justice in the country "ensuring that justice is available to every person in Uganda" through

a system of courts supported by the prison, police, and probation services. With the law remaining flexible, a contented judicial service would ensure a smooth administration of justice in the country.

Before Independence (1962) Uganda had two court systems comprising the High Court and Resident Magistrate's Court on the one hand and the African Court System on the other hand. To bring the two systems together, the African courts were to be guided by Penal Code, Criminal Procedure Code and Evidence Ordinance and not by customary rules and procedures. In 1962, the powers of African courts and Subordinate courts were equated and instead of the District Council, the Judicial Service Commission, an independent body became responsible for appointing, dismissing, and disciplining the staff of African courts.

It was the Magistrate's court Act of 1964 that instituted a unified system of courts in Uganda. At the lowest level, it provides for subordinate courts of the third class which will finally function in every sub-county in Uganda. The next grade of court is that of the Magistrates of first and second class, operating at District Headquarters, hearing criminal and civil appeals. Above these courts is the Chief Magistrate's court which hears appeals from the second class magistrates and also exercises original jurisdiction. Finally there is the High Court, where any person not satisfied with the decision of lower courts has a right to appeal. The East African Court of Appeals comprises the supreme judicial body to which a disputant may appeal in the final resort.

3. The Object of the Present Study:

This monograph aims to show how disputes can be settled outside the court. The study was conducted among groups each employing a distinct mode of settling differences within itself. The extent to which the groups

the Asians living in Bakuli - a neighborhood in Kampala - with a view to discovering the underlying social processes as they decide the outcome and settlement of disputes.

Levellyn and Hoebel rightly observe that "The success of any legal system depends upon its acceptance by the people to whom it applies. In so far as the system is an integrated part of the web of social norms development within the society's own culture, it will be accepted as a part and parcel of habit-conduct patterns in the social heritage of the people" (1941: 239). To such a homogenous group Middleton and Tait apply the idea of "jural community"; it is the widest grouping within which there is a moral obligation and a means ultimately to settle disputes peacefully. (Middleton & Tait: 1958: 9). One of the features of society in Uganda is that the population is made up of Africans, Europeans, and Asians, three distinct racial categories. Each of them is further divided into a number of smaller units. The Asians of Bakuli separate themselves into a large number of groups on the basis of language, religion and a way of life peculiar to each. The state exercises, through the arm of law, a large measure of control over a variety of activities. Nonetheless, Asian groups retain many cultural and social idiosyncracies - including a mode of settlement of certain disputes. In view of the plurality of groups, we can say that a legal system that is imposed from the top and deriving from a colonial heritage is more likely to remain distant from society than the legal system which emerges from the social values of the groups concerned. In this sense we can propose that instead of one "jural community" providing a locus for dispute settlement, we have many "jural communities" - each employing a distinct mode of settling differences within itself. The extent to which the groups

And even a conflict between a dispute, it may show such form such "jural units" outside the national legal system is an empirical issue, requiring monographic studies of disputes in plural societies. Similarly whether the national legal system manages to integrate a variety of groups harmoniously in a single "jural community" or not is a matter which can best be determined by research.

Besides the proposition that a legal system imposed from the top may not constitute a "jural community" many other factors may discourage disputants from resorting to law courts. Variables like the vast cultural, religious, and linguistic differences between groups also decide whether a dispute will go to the court or not. Sometimes the framework of law itself makes it difficult for disputants to obtain a remedy within the context of the national courts.

On the other hand, factors of social organization of the immigrant community may perpetuate certain customary practices not recognized in the law of the country. The organization of the joint family as a business corporation among the Hindus, which does not find recognition in the Company Law of Uganda, may force a joint family to seek a remedy outside the court of law should a dispute occur involving the business.

4. A Glance at the Disputes Studied:

Disputes are a feature of the social process in all human groups. A breach of norms or a threat to individual interests may generate a conflict between parties. Such norms mean ethical and moral standards of behavior which involve application of judgment of good, bad, right, wrong, honest, dishonest, etc. The interests involved mean an advantage not always morally or ethically approved. As Ralph Linton shows, interest does not imply any relation to value judgments of good or bad (Linton: 1936: 422).

And once a conflict becomes a dispute, it may draw much public attention, activating a whole set of people.

When I moved to live in Bakuli, I was at first struck by a number of conflicts involving boys and girls or men and women. The parents of daughters strictly clamped down all interaction between their daughters and outside boys. Chapter 3 shows that in contacts between girls and boys, all people see a threat to the rules of marrying within the group. They attach a strong stigma to all situations which would encourage marriages between the members of different endogenous groups. The attempts the elders in the neighborhood made to prevent meetings between their daughters and outside boys often resulted in conflicts, sometimes ending up in disputes. These drew much public interest and attention. It was during the course of these disputes that the part played by Bhajanmandali or Bhajan group - a religious association - in dispute settlement in Bakuli came to my notice.

A number of mothers-in-law further drew my attention to the ill-behavior of their sons' wives. It was the tense quality of the relationship between a man, his mother, and his wife from which the conflict between husband and wife ensued, as outlined in Chapter 4. These conflicts often became widely known in Bakuli. The disputants resorted to the leader of their group or a prominent lawyer to help settle their differences. This they did partly owing to the difficulty inherent in the Uganda Divorce Ordinance which does not permit a dissolution of marriage easily and partly due to their desire to prevent a dispute from going to court. The role of lawyers who resolve matrimonial disputes outside courts within the context of the group is an important point in the dispute settlement process.

The Mailo Land Law - a law governing all land transactions between natives and non-natives, imposes certain obligations on the non-native landlord before he can sub-

5. Informal and Formal -7- Level of Disputes

lease mailo land to other tenants in the form of flats and houses. The law requires that the landlord should obtain legal consent of the Ganda landowner and land board before subleasing mailo land to a non-native. Chapter 5 brings out how long and expensive is the process of obtaining such consent. Also considering that the tenants often change in Bakuli, many landlords do not obtain legal consent. In such circumstances, by subleasing mailo land, they enter into an unlawfully conceived contract with tenants. When disputes arise about the collection of rent arrears, in the absence of legal tenancy agreements, landlords can have no recourse to law courts to recover the arrears. They can get vacant possession of their premises on mailo land by charging the tenant as illegally occupying a piece of mailo land.

A similar trend runs through the disputes involving business partnership and the family business (Chapter 6). A partnership or a joint family business is often informally organised in that the terms of such cooperative ventures are not legally binding. Once again, whenever a dispute occurs, members may have no recourse to law. They seek corrections and remedies only outside the framework of state law. Sometimes, as in Dispute D, complex variables such as one's dubious immigration status in Uganda may generate a fear and a rejection of the national machinery of justice.

Chapter 7 clearly brings out the gap that exists between the police and the Bakuli Asians. The disputes illustrate how it becomes necessary for the Asian residents to resort to the police. In going to the police station, they exert certain pressures on their adversaries and have no desire to pursue their opponents until the latter are tried in a law court. The lack of integration between the police and Bakuli residents is obvious.

5. Informal and Formal Settlement of Disputes

Institutional conceptualisations of differences between the formal and informal settlement of disputes can be misleading for comparative sociological purposes. For example, conciliation in some of the lower courts may be heavily loaded with informality (Cf. Van Velsen: 1965) and arbitration outside the courts, involving lawyers, accounts, and professional assessors may be marked by a higher degree of formality as in the case of settlement of claims between insurance companies and their clients.

In this thesis I have adopted Raymond Apthorpe's proposed set of distinctions to assess the degree of formality or informality in dispute settlement. He makes these distinctions with regard to three dimensions which he terms jural principles (jurisprudence), jural procedures, and jural personnel involved in a dispute. This model can be applied to a study of both informal and formal dispute settlement within or without the national system of courts.

The national system in Uganda includes a concise statement of legal instruments, the principles, procedures, and personnel relevant to various legal processes and dispute settlement. The Constitution of Republic of Uganda² clearly sets out fundamental rights and freedoms of the individual. Provisions to secure protection of² law lays down a number of conditions under which a person not treated fairly by the law has recourse to instituted legal system so that justice is done to him. Besides the provisions of the Constitution of Uganda outlining the Judicature, Advocates Act,³ Civil Procedure Act, Magistrates Court Act, Police Act, and Prison Act articulate explicitly the procedures which govern the dispute settlement in courts and other bodies, determining the role of legal functionaries such as judges, advocates, disputants, and witnesses.

Choosing a Research Area

First of all, I thought the lawyers would provide

If we assume that the national legal system in Uganda works with each of the above variables defined clearly and explicitly, then we can see that outside the realm of state law and in absence of a written constitution, standardized procedures are open and can be invoked according to the case. Whenever among the Hindus of Bakuli, for example, a dispute is likely to erupt into violence, the Bhajan group steps into settle the differences between adversaries. Outside law courts, the jurisprudence of dispute settlement, procedures and personnel vary sufficiently to lend it a "different" character. The disputes in this work were studied entirely outside the jurisdiction of law courts. The features of judicial process outside state law were a focus of our interest and analysis. Since the judicial process outside the law is not equipped with the kind of sophisticated principles, procedures, and personnel that the state machinery enjoys, the extra-court settlement of disputes is often characterized by flexibility typical of the people sorting out their differences between themselves without using the national legal system. Outside the courts, the principles underlying the dispute settlement may remain constant but the procedures and personnel may vary.

As Apthorpe suggests further: "In a new state relatively weakly institutionalized a situation is presented when the arm of law, when it reaches down to the individual, may seem to be peculiarly alien." (Apthorpe: 1968a:14). This lack of relevance of national law is likely to prevail in view of plurality of cultural and ethnic groups, who, as a result, may retain ways of settlement of grievances between themselves outside of court.

6. Choosing a Research Area:

First of all, I thought the lawyers would provide

I decided to take up a job in a nearby secondary school where a large number of Bakuli boys and girls studied, the best source of studying both the disputes and its settlement. I made approaches to several lawyers who allowed me to study their files. Going through the files, I felt that they contained almost no information on the themes underlying the relationship between the disputants. Nor did the cases reveal a wider context within which the dispute may have occurred. Therefore, I found the cases of little relevance to me. It was thought that the cases would be traced to the community level and then studied in a wider perspective. In an attempt I made to follow up the cases, the disputants resented my intrusion in their life and in all cases gave me a cold shoulder.

While I was pondering where to choose a research area, my elder brother who lives in Bakuli, suggested to me that I might study disputes occurring among the Asians there. When I went out and lived with him, I discovered that I already had a few acquaintances who lived there. These included some of the pupils I had taught at school earlier. The greatest disadvantage I faced was that of looking much younger a man than I was, for most residents initially labelled me as a senior secondary school pupil. For some time they totally disregarded my presence and expressed unwillingness to enter into any contact with me. In anthropological field work, especially in an Asian neighborhood, the sex of the investigator makes a great difference to the scheme of the work. The families with young wives and daughters view the investigator with a high degree of suspicion. This makes it almost impossible for the male anthropologist to have any free communication with women. So the problems I had before me were two: I needed an identity giving me a higher status in Bakuli; secondly, I wanted to establish communication with as many females in the community as possible. To overcome the first barrier,

I decided to take up a job in a nearby secondary school where a large number of Bakuli boys and girls studied. When the residents discovered that I was a teacher, both old and young alike accepted me and gradually sought my assistance in handling their children's educational problems. After I came to know most families in the two streets, I gave up my teaching post but the Bakuli residents continued to call me "teacher", an identity which helped me to carry out my study.

To solve the problem of communication with women, I rented a house and lived there with my mother and others. It was through my mother that I came to know a number of older women from whom I was able to gather valuable information on matrimonial disputes. Some of these women felt awkward in talking to me but after initial strangeness we became friendly. Like other residents, I also used fictive kinship terms and this provided me with scores of additional linkages to other families.

I had originally decided to include in my framework the households on Hoima Road and Kyadondo Road (see the map of Bakuli, Chapter 2). But I soon discovered that this would be to attempt to study about 200 families. Besides, the families living on Hoima Road and Kyadondo Road had only peripheral contact with Bakuli and certainly did not share many joint activities taking place in the two Bakuli streets to which eventually I restricted my observation. Of the 106 families, I narrowed my research down to 48 Hindu households. It was among them that I was accepted most readily. I viewed other groups only in so far as they entered into social relationships with Hindus. The focus on the Hindu community in Bakuli is evident in the data presented in all the chapters.

Social anthropology has largely developed to the point that its "African orientation" (Dumont and Pocock; 1957: 24) has become part and parcel of its very existence as an intellectual discipline. Its African orientation consists in approaching the units of study with certain concepts and methods. Some aspects of this approach are defined and analyzed by Raymond Apthorpe in his inaugural lecture at Makerere given just before his departure (Apthorpe: 1968b: 37). The monographic studies carried out in Africa have focused their attention on clearly identifiable units. As Gluckman rightly puts, "The tradition of conducting fieldwork, usually in more or less isolated communities, and the theoretical perspectives that stem from it, would probably count for many people as one of the major contributions of social anthropology to social science" (Gluckman: 1967: 7). Such community traditionally has been a tribe - structurally, culturally, and historically isolated from other areas. The people of the tribe share common values which in various forms superimpose themselves on individuals. The social values are pre-dominant and keep the conflict external to the system so that the tribe would continue existing in its ethnographic present. The pace of social change in Africa and the facts of life in African cities contradict the older assumptions of consistency, homogeneity, and relative stability (Cf. Van Velsen: 1967: 177). Nevertheless, the scale and characteristics of simple societies have influenced the fieldworkers in approaching their units as "social wholes in themselves" as Dumont and Pocock show. These self-contained units are studied and then analyzed to bring out their contemporary functioning.

This approach cannot be fruitfully applied to overseas Indian societies which, to varying degrees, retain con-
-thropologist should become absorbed into the community

tinuity, both culturally and structurally, between their homeland and their place of residence overseas. Dumont and Pocock aptly say that "To try to understand a local Indian society as an anthropologist in the past approached a primitive society elsewhere in the world is to fail at the outset" (1957:25). For example, to understand the functioning of caste in the East African context, it is necessary to take account of the notion of caste as it operates in complex local hierarchies in India as well as at the pan-Indian level. And it is this understanding derived from a wider Indian framework that may lead to a discovery, revealing changes in caste among the Indians living overseas.

At no point in this study has Bakuli been conceptualized as an isolate along the holistic lines of thought often typical of social anthropologists in Africa. The information collected from Bakuli is viewed in a broader spectrum of Indian culture. The geographical framework imposed on the unit is purely a matter of convenience to delineate the area of study. That such a framework is not co-extensive with the social field of the people is abundantly clear from the data collected in Bakuli. The unity of Bakuli does not lie in its isolation but in its relation to a wider world over East Africa and elsewhere. Any attempt to tear it apart from this context would be to commit a "fallacy of misplaced concreteness".

7. Methodology

All the ethnographic data in this work was collected by participant observation. As a research method this meant living with the people and collecting data by developing intimate social relationship with them. As Evans-Pritchard has said (1962: 76) such physical proximity ought to have a psychological side to it in that the anthropologist should become absorbed into the community

that he studies so that he knows it from within and not only from without. To supplement participant observation, it was decided that some formal interviewing should take place. After a few unsuccessful attempts at this, however, the idea was given up. In the initial stages all the information was then collected by participant observation and interrogation. Later a number of informants well known to me agreed to formal questioning and willingly gave further information on many issues.

In a community study such as this, one is constantly exposed to what Radcliffe-Brown called "multitudinous impressions" (Buford Junker, 1960: 17). Fusion of these multiple impressions formed from conversations, observations, and participation helps one to bring out the issues involved in sharper focus.

Studying people who speak one's own language and share one's culture by and large gives the field worker certain distinct advantages, for knowing the language and the culture of people, he can bring out nuances of thought and action as these affect social relationships. A good knowledge of the vernacular is an indispensable tool. "To understand people's thought one has to think in their symbols" (Evans-Pritchard, 1962: 74). For language, besides being a carrier of culture, also articulates the reality of social structure. During the field work Hindi and Gujerati were almost exclusively used as the medium of communication, for most people used them. The use of English was restricted to delight a few school boys and clerks who insisted on using it. A study conducted in one's own society may lose an asset that John Beattie calls "stranger value" (1964: 87). It is likely that one may fail to get information by not being sufficiently strange to the community under investigation. Again, the degree

to which the field worker's own bias can influence such a study is not easy to assess. However, one hopes that western education could give one the detachment necessary to remain objective in a study carried out in an eastern culture.

Most of the disputes were collected and recorded as they happened in Bakuli. The details of the event were checked with friends and relatives of the disputer to ensure as much accuracy as possible. The descriptive technique has been used to bring out the social reality emerging from the values and interests expressed in these disputes. Such descriptive analysis may suggest hypotheses which could lead to a quantitative study of particular kinds of disputes over a wide ethnographic field. But this study was not conceived to perform this task. The methods and purpose of the present work aim to show how people make choices from the alternatives available to them and how they choose, often between conflicting norms, a course of action best suited to their interests without endangering the social relationships between them which they believe should endure. In this sense the research method employed resembles that of the extended case method and situational analysis as in British social anthropology.

FOOT NOTES

1. For a detailed bibliography see "The Ethnography of Law: A Bibliographical Survey", by Nader, Koch, and Cox, Current Anthropology, June 1966, Volume 7, No. 3.
2. See the Constitution of the Republic of Uganda, 1966, Government Press Entebbe, Uganda.
3. Advocate Act, Chapter 258, Laws of Uganda, 1964, Vol. VII, page 4191.
Civil Procedure Act, Chap. 107, Laws of Uganda, 1964, Volume IV, page 2147.
Evidence Act, Chap. 43, Laws of Uganda, 1964, Vol. II page 937.

FOOT NOTES (continued)

Magistrate's Court Act, Chapter 36, Laws of Uganda, 1964, page 650.

Police Act, Chapter 312, Laws of Uganda, Volume VIII, page 4923

Prison Act, Chapter 313, Laws of Uganda, Volume VIII, page 4988

A STREET MAP OF BAKULI



DIAGRAM 1

A SKETCH MAP OF BAKULI

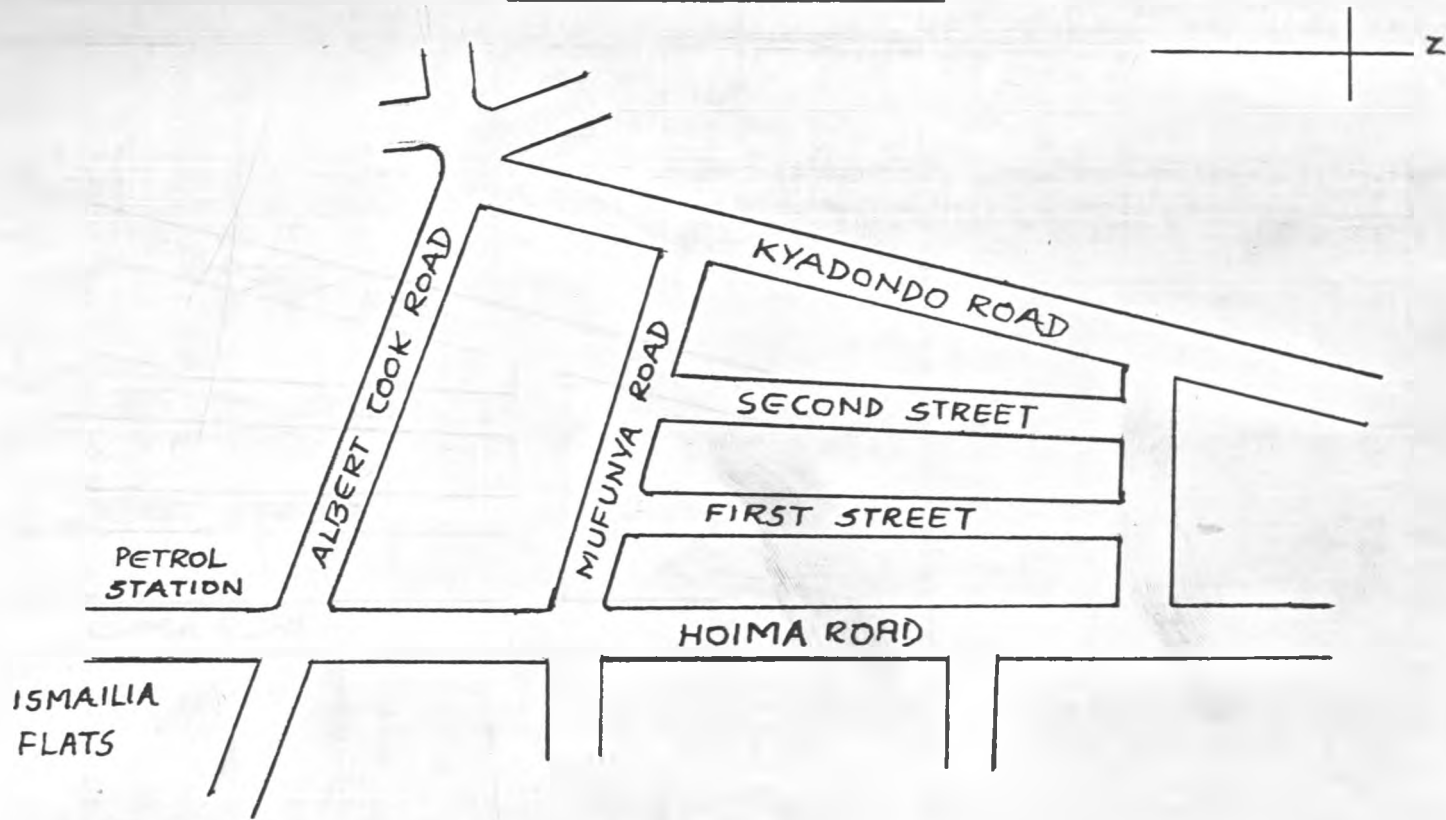


DIAGRAM 1

1. Bakuli

Bakuli used to fall outside Kampala City Council boundary under the jurisdiction of Mengo Town Council. The Mengo Town Council was abolished in 1967. Since February, 1968, the extended boundary of Kampala includes Bakuli and other areas previously under the Mengo Town Council. The map of Bakuli shows its location in Kampala. However the change of boundary is so recent that the older contrast between Kampala and Mengo remains. The transition from Kampala to Mengo marks the end of well-built tarmac roads, street lights, drainage facilities and the beginning of the badly corrugated Mufunya Road merging into Kyadondo Road at the other end of Bakuli. Bakuli means a "bowl" in Swahili. Whether this name is directly adopted from Swahili or not is not clear. An elderly Muganda told me that the name refers to Barclays, an Englishman whose name was rendered into Bakuli over a course of time. The official organizations such as Kampala District & Water Board and Uganda Electricity Board recognize the area as Namirembe Estate - a nomenclature Bakuli Asians hardly use. However, often an area larger than Namirembe Estate is known as Bakuli. For example, the houses and Ismailia flats beyond the patrol station on Hoima Road are often known as the "other" or the second, biji, Bakuli. People living in Bakuli also distinguish between themselves "our" and "their" Bakuli, as it were, by using possessives.

Two Bakuli streets have 30 blocks of residential houses, accommodating 110 Asian families. Buildings erected in Bakuli are between eight to eighteen years old. Most buildings are divided into between six to nine parts. Each part is an abode of two to three rooms. Almost all buildings have a courtyard, a space Bakuli Asians identify by using a Swahili word, sakati. This courtyard together

with a back wall, separates the buildings on the next street. Most of the day the courtyard hums with activity as children play there, women perform various domestic tasks there, and neighbors dry their washing on several lines criss-crossing at various points. Bakuli houses have a dull architectural uniformity. All of them are built of permanent cement concrete material, in the style that has all the rooms in one line, one behind the other, with a door opening and facing the street from the first room. The space of the last room is divided into a small kitchen, a toilet and a bathroom. This common design with the door of each room exactly opposite the other offers little privacy to people living in these houses. In many cases if the first door is open, passers-by can almost look through the houses into the kitchen and the courtyard. Casual acquaintances and neighbors walk with perfect ease into each other's kitchen through all the doors.

The walls of the Bakuli houses bear the trace of hot days when the red dust piles upon the window sill and discolors the walls. Kampala City Council is now forcing the landlords to improve the appearance of the buildings in Bakuli by asking them to repaint their houses. Some houses have barbed wire fences partly hidden by the growth of plants and flowers. Each street has several skeletons of discarded motor cars where children play and dogs shelter. When it rains heavily in Bakuli, Mufunya Road and the two Bakuli streets become muddy. Children playing in pools throw dirt at each other, this often leading to fighting between parents. The first street has two small shops, catering for the day to day domestic needs of the residents there. The story goes that the second shop started there because the owner of the first shop declined to sell an aspro to one of the sick Ismaili residents. In retaliation, the

about all Bakuli houses are first immigrants originating from the Gujarat comprising Gujarat, Kathiawar (or

Ismaili started a second shop, offering a wide range of goods and better credit facilities. Since then there has been some rivalry between the two shopkeepers, each accusing the other of "stealing" his customers. At the end of Mufunya Road, a bar is located in a guest house. It provides Saturday and Sunday entertainment to some Bakuli Asians who frequent it for drinks and "fun" with the barmaids. This is a better bar than two on Hoima Road which expose one to the "eye" of local residents. Each Bakuli street begins with a rubbish heap. At the end of each street twice or thrice a day houseboys unload on to the rubbish heaps all kinds of dirt which has accumulated in the houses and sakatis. Cows, dogs, hens, and curious school children searching for tidbits frequent the dirt mounds. Until Kampala City Council extended its boundary to include Bakuli, the workers of the Mengo Town Council appeared occasionally to clear the dirt away. Otherwise for days the rubbish would grow into large heaps, spreading unpleasant smells around. Rubbish heaps have shifted their positions over the course of time in Bakuli. In 1966, in the first street, a man employed a scavenger to clear away a rubbish heap close to his house and guarded the spot with a stick in his hand for three days until the neighbors began to dump their dirt on an empty plot on Mufunya Road. The rubbish in the courtyard is often a subject of disputes in the neighborhood. Frequently women start arguments and fights between themselves, accusing each other of throwing dirt in the courtyard, thus furthering sometimes already existing hostilities between them. As the workers of Kampala City Council now regularly dispose of the rubbish, the dirt mounds have almost disappeared.

2. Caste, JAT and ATAK Almost all Bakuli Asians are first immigrants originating from Maha Gujarat comprising Gujarat, Kathiawar (or

Saurashtra), Cutch, Punjab, and Goa - parts of India.

Outsiders often see the Asians as belonging to a single homogeneous community. In early years, the Protectorate Administration treated the Asians as a single group. But as time went on, each group and sect demanded separate rights in various spheres. This way they brought to the notice of the Administration the unreality of the term "Indian Community". Hindus, Muslims, Ismailis, Ithna Ashris, Sikhs, and Goans emerged as separate entities, each furthering its own interests rather than that of "Indian Community" which did not exist as a reality with a high degree of corporateness. Morris describes emergence of these groups and sects as "communal crystallization" (Morris, H.S.: 1968: 34).

Similarly the Asian population of Bakuli fragments into a large number of groups and sects based on differences of language, religion, and region of origin in India. These groups are endogamous, membership of which is ascribed at birth. Each of these social groups enjoy what Srinivas calls "horizontal solidarity" (Srinivas, M. N.,: 1952: 31) meaning by this that each group and sect has ties spreading beyond Bakuli in its respective endogamous circle. Within the group such as Lohana, besides many kinship and affinal links, in business and leisure time activities, there may be close and intimate contacts between the members apparent in a high degree of corporateness. This unity comes out especially on marriages which bring together members of endogamous group. Sometimes, Lohana, Patel and others may come together in activities of common interests, such as inviting a saint from India on the basis of religion, language, dialect, or region of origin.

Hindus in Bakuli seldom think of "caste" as meaning varna, the four-fold division of Indian society into

Brahmin, Kshatriya, Vaishya, and Shudra. In India the varna model of four-fold hierarchy is useful in sorting out the multiplicity of endogamous groups so that each unit may possess an identity discernible in an all-India framework beyond the context of complex local hierarchies. However, varna has a limited operational relevance in Bakuli. It is a latent unit of reference. For instance, during my stay there only two Lohana elders referred to themselves as Kshatriya - descendants of Rama - the hero of the Ramayan epic. And I heard no other varna mentioned at all.

It is not varna but nat (Sanskrit Gnyati) or jat (not to be confused with Jats of Punjab), the endogamous group, which is the most important operational unit among the Hindus. It is within the bounds of jat (singular jat, plural jato) that an individual may have his or her largest number of social relationships.

When one Gujarati meets another for the first time, one may ask the other,

"What is your nat?" "Tame kai nat na cho?" or
"What is your jat?" "Tame kai jat na cho?"

The answer may be,

"I am Patel" "Hun Patel Chun" or
"I am Lohana" "Hun Luvano Chun"

The questioner may ask further what one's atak is, "Tamari atak shun che?" The response will be typically as follows: My jat is Lohana and my atak is Dattani. Atak refers to a number of exogamous (as among the Lohana) or endogamous splits within the jat. The atak (usually the surname used after one's name) poses a problem for those jato who are not internally differentiated into sub-divisions. These sub-divisions may consolidate within a jat by intermarriage, with a gradual disappearance of atak. In such cases the

respondents may use jat and atak synonymously.

The Bakuli Hindus use the following scheme in conjunction with the above explanation.

1. Latent Unit
Varna/Caste

The ideal four-fold divisions of Indian society as conceptualized in Brahmin/Kshatriya/ Vaishya/ Shudra.

2. Operational Units

- a. jat or nat - The endogamous group or sub-caste
- b. atak - The sub-grouping within the jat made up of either exogamous or endogamous units.

However, not all jato can be classified and understood by reducing them to such a simple scheme. Many groups, having the same jat name, but coming from different regions in India may retain separateness on territorial grounds by prohibiting intermarriage between two sides. Patels coming from Cutch and from Charrotar illustrate this point. Sometimes an atak name may be common to more than one group. A person bearing Dasani atak may belong to Lohana jat or to Ismaili sect. Similarly a man with Desai atak may belong to Patel jat or to Vaniya jat. However, despite the great complexity of levels of divisions in various jato, Hindus in Bakuli use the above scheme as a rough and ready means to establish the jat identity of a person. In addition they see the differences between other groups, say between Ismailis and Ithna Ashris, in terms of jat and not in terms of sectarian beliefs which really divide them. For Hindus, Sikhs, Goans and other Muslim groups exist in the jat framework.

explain the subtleties of caste phenomenon in East Africa.

In Indian studies in East Africa, the term caste is often used indiscriminately in a way that marks the different sociological realities of varna, jat, or atak.

Bharati who conducted a seven-month field study of Asians in East Africa holds, "Whenever young Asians in East Africa speak about caste, they consistently use the English word, regardless of whether they are speaking English, Gujarati, Punjabi, or Hindustani. They never use the Indian term. The reasons for this practice are diffuse. In the first place, very few Asians are quite clear about the proper vernacular word" (Bharati: 1967: 288; author's italics). Here Bharati presents a picture of caste which does not correspond to the concepts Gujarati Hindus use in their vernacular language which, in Bakuli at any rate, contrary to Bharati's position, is used in various "caste" contexts. Educated Indians often use the word caste in their conversation but to suggest that Asians in East Africa never use the Indian terms grossly misrepresents empirical facts.

What is perhaps true is that the Indians in Uganda seldom use the term caste in its four-fold sense of Brahman, Kshatriya, Vaishya, and Sudra (with the exception of Goans who do group themselves on the varna basis). However, as indicated earlier, Gujarati Hindus have specific concepts such as jat or nat and atak which they use in vernacular discourse.

Elsewhere Bharati uses the term "caste group" (1965a: 13), "caste corporate group" (1965a: 15), "caste mates" (1965a: 16), and "caste surnames" (1967: 304). Whether he refers to jat or atak or to both is not clear as no distinctions are made between the two. His statement, "The caste system - whatever that means to East African Indians" (Bharati: 1965a: 17) does not go very far to explain the subtleties of caste phenomenon in East Africa.

Without the distinctions between jat and atak the term such as intercaste endogamy (Bharti: 1965a: 21) conceals the elements of social processes among the Indians of East Africa. Panjabi Hindu and Surti Hindu constitute sat caste-

In contrast to Bharti, Morris makes an explicit distinction between varna and jat on one hand and between jat as a sub-caste category and a sub-caste group. He also shows how those bearing the same jat but coming from different regions in India have come together to form caste associations (Morris: 1967: 270-271).

However, neither Bharti nor Morris record atak which is an important social entity and a commonly used term of reference between the people of different jato as well as within a jat. Though Morris has recorded Patidar and Lohana as comprising 72% of Hindu traders in Uganda (Morris: 1968: 91), he makes no reference to atak in the numerically dominant Lohana among whom atak is a crucial variable in exogamous alliances between families. The people bearing the same atak such as Ruparelia, Dattani, Kanabar, Thakker, etc. trace common ancestry and forbid marriages between those bearing the same atak.

Furthermore, in his book on Indians in Uganda, Morris, much like Bharti, uses the term jati. Even though this standard Sanskrit/Hindu term is understood in Gujarati, it is the term jat or nat that the Gujarati speakers use conversationally. Sometimes, in several contexts, they use nat-jat together. Therefore the question people pose is not "Tanari Jati shu?" (Morris: 1968: 26) but as outlined earlier, "Tame kai nat na cho?" This is usually followed by a question on atak and wherever this is relevant (as it is among the Lohana), people make explicit distinction between jat and atak.

In table six in his book Morris has included Panjabi Hindu and Surti Hindu as caste categories (Morris: 1968:

184-185). Panjabi is both a linguistic and a territorial referent and not a jat name. Though the territorial appellation are known to have been taken up as jat names, neither Panjabi Hindu nor Surti Hindu constitute jat categories. The similar use of Hindu as a jat name would seem equally confusing for as a generic term "Hindu" would subsume all those who are either Hindu or claim to follow the Hindu way of life.

We have labelled varna as a latent unit, for, although it is not commonly used, it often brings out the prestige qualities in varna classification. Morris holds that in Africa varna does not even serve this purpose (Morris: 1968: 46). But the data collected in Bakuli suggests that not only Hindus invoke varna classification from time to time but among the Goans there is considerable preoccupation with varna and people refer to each other in this dimension.

The following table divides household composition of Bakuli according to group: (A household consists of either a small family comprised of husband, wife, and their children or a joint family of husband, wife, their married sons and their children.)

TABLE 1 - BAKULI HOUSEHOLD COMPOSITION

<u>Groups</u>	<u>No. of Households</u>
Hindus	48
Ismailis	22
Goans	13
Sunni Muslims	13
Sikhs	7
Ithna Ashris	3
Total	106

Most Hindus come from Maha Gujerat comprised of Gujerat, Kathiawar (or Saurashtra) and Cutch. Further,

Morris's informant caricatures the practice of Hindu Hindus are divided into a number of jato according to the following table:

TABLE 2

HINDU JATO IN BAKULI

<u>Jato</u>	<u>No. of Households</u>
Lohana	17
Patel	14
Suthar	6
Mar	3
Brahman	2
Darji	1
Kumbhar	1
Vaniya	1
Luhar	1
Panchal	1
Soni	1
Mochi	1
TOTAL	48

Besides the above divisions in the Hindu group, Lohana who come from Kathiawar are divided into exogamous units who marry within the Lohana jat. These units in Bakuli are Sedani, Kakad, Pujara, Sad, Kotak, Jobanputra, Karia, Pattani, and Thakerar. Lohana follow the orthodox Hindu Sanatan Dharma, others the Swaminarayana sect, and some worship mother goddesses of the Hindu pantheon, such as Randel Ma, in a Lohana house. The Bakuli Hindus often invite the elderly Lohana housewife to whom mataji, the mother goddess, comes in trance. Swinging a sword, she performs a dance, manifesting a violent form of the mother goddess. Attendants seek blessings from her while she is in trance and her words bring good luck to the people.

Morris's informant caricatures the practice of Hindu religion in East Africa, this being limited to uttering "Bhagwan! Bhagwan! (Lord! Lord!) only when one had a looming bankruptcy or a police case. Morris says that the Hindu religion tends to be relegated to the sphere of women. (Morris: 1968: 54).

However, during the festival months, the Hindu temple in Kampala remains packed with both men and women in large numbers. In 1968 when two Hindu saints, Shree Shankracharya and Saibaba, paid visits to Kampala, the meetings organized to honor them comprised thousands of devout male and female Hindus. Bhajan group's religious activities (see Chapter 3) further prove that male participation in singing devotional hymns is high. While outlining Hinduism in Uganda, Morris has missed out Hirjibapa whose efforts, spreading from Nakuru in Kenya, have contributed towards temple building and formation of all male Bhajan groups all over East Africa. Similarly, Diwali, the festival of lights, is not merely a matter of a public holiday in Uganda as Morris suggests (Morris: 1968: 57). Diwali's religious aspect is manifested in prayers at the Hindu temple and in the "worship of account books" chopda puja and the worship of the goddess of wealth, lakshmi. Contrary to Morris's views, Gujerati Hindus retain a large degree of cultural continuity with India and several traditional religious festivals survive the test of time.

Patels from Charottar speak a Charottari dialect of Gujerati and Patels from Cutch and Kathiawar speak either Cutchi or a Kathiawari dialect of Gujerati. Patidar of Charottar follow the Hindu Sanatan Dharma and the Patels from Cutch and Kathiawar follow the Hindu Swaminarayana sect. Except for Suthar, Luhar,

and Panchal jato, all others originate from Kathiawar. Ismailis who speak a Cutchi dialect of Gujerati and originate from Kathiawar or Cutch are generally known as Khoja - a word originally derived from Khwaja - a term of respect meaning "an honorable person" (Cf. Fysee A. A. Asaf: 1949: 55).

Originally Hindus, Khojas were converted to Islam by Pir Sadruddin more than five hundred years ago. They are followers of His Highness the Aga Khan Prince Karim, the 49th Imam whom they hold to be a descendant of the Prophet Muhammed. Ismailis are popularly considered to be the most progressive and, at the outset, most westernized Indian social group in East Africa. With directives, firmans, from the Aga Khan the Ismailis have consolidated themselves into a strong formal corporate organization embracing health services, education, and the social welfare of all the members of the Ismaili sect. Other groups accord them the anomalous position for their alienation from Orthodox Islam and for their cultural drift away from other Indian groups in the following proverb: Gadhedano gan nahin: Donkeys have no gan (respect). Khojano varan nahin: Khojas have no varan (jat). Orthodox Hindus, often envious of the mercantile success of Khoja, hold their women in contempt for wearing western dresses and stereotype them as having low morals.

Ithna Ashri who hold sectarian beliefs different from Ismaili Khoja also originate from Cutch and Kathiawar. They regard Ismailis as heretical and materialist (Goldthorpe: 1962: 126). Popularly they are alleged to be more orthodox and conservative in outlook and have not accepted the western mode of dress for their womenfolk.

Sikhs come from Punjab and speak Punjabi. They are conspicuous as the men wear turbans and women pyjama salvar and shirt, a khamiz, with a piece of cloth to cover the breasts. Sikhs are divided between those who are Ramgarhia and those who are Jats. Intermarriage between them is forbidden. Both groups have exogamous units identifiable in their surnames. The Ramgarhia Sikhs rate Jats lower in rank as the latter have been farmers in Punjab.

Sunni Muslims share the same sectarian beliefs but come from Gujerat and Punjab. Those from Gujerat speak Gujerati and those from Punjab speak Punjabi.

Finally, the Goans come from Konkan in Maharashtra and Goa, speak Konkani and are Roman Catholics. They bear surnames such as D'Souza, Fernandes, Lobe, D'Costa, Almeida, etc., which originate from the names of Portugese priests who first baptized them. The Goan Institute and the Tailor's Club divide Goans into two groups. It is among the Goans that caste in the varna sense as dividing the community into Brahmins, Kshatriya, Vaishya, and Shudra is a current social idea. In absence of clearly defined endogamous groups on the jat model, the varna scheme of four castes provides a ready-made system of classifying occupational and status groups.

3. Is Bakuli a Community?

In view of diversity of cultural groups, to call Bakuli a community of people sharing a common culture and possessing a consciousness of separate identity would be misleading. For Bakuli represents segments of a large number of endogamous groups which are linguistically and religiously dissimilar. Even though the social group one belongs to, the jat one comes from, and a number of relatives one has dominates the extent

of one's social universe in Bakuli, this does not rule out the possibility the people have of making contacts outside their families and jato. Despite the high degree of closure of each group, people living in the two streets share an orbit of community character in many activities, deriving this from the physical fact of proximity.

When Hindus, Muslims and Goans live physically close, the situation offers to them many potentialities for building up face-to-face relationships in the neighborhood. People of different jato and groups living in the same block of building over a number of years weave intimate social relationships between them. They also extend kinship terms such as kaka (fb), mama (mb) or bhabhi (bw) to each other and give the relationship an appearance typical of blood relationship.

Neighbors cooperate and participate in activities of common interest; they organize security arrangements and share the expenses of hiring watchmen; give each other lifts to places of work and contribute sums of money to keep their surroundings clean. Whenever a marriage occurs in Bakuli, besides the relatives and the jat members of the family, many residents are invited to eat festive meals and to take part in various ceremonies. Also when a person is seriously sick, most residents visit him and provide some assistance. Similarly in the event of death, all neighbors join to mourn the dead and attend crematorium ceremonies. Neighbors absent on such occasions lose respect of the other residents. On Diwali, the Hindu festival of lights, every Hindu visits all the Hindu households in Bakuli. Besides, Muslims, Sikhs, and to a lesser degree Goans mingle with Hindus to celebrate Diwali festival. Similarly various groups come together to enjoy Christmas

and Idd. Besides some of the above links between groups, common occupation, entertainment, etc., bind people together in a large number of social relationships. The Hindu elders evoke the community image, falia from time to time whenever a conflict is about to shape into a dispute threatening violence.

The relationship of reciprocity, friendship, and cooperation between neighbors is also manifested in, what Gujerati Hindus call, vatki vyahawar, a frequent exchange of curries and other delicacies between relatives and neighbors. In Gujerati, vatki means a small bowl. Literally vyahawar means a transaction. In this context vyahawar implies a relationship between two persons characterized by a regular exchange of gifts. Such vyahawar brings to the surface the pattern in which many neighbors are related.

Cultural differences between social groups tend to disappear as the immigrants are constantly exposed to a uniform western mode of life in business, education, entertainment, and leisure-time activities (Cf. Desai: 1966: 8). Marriage within one's own social group is then one of the important ways in which the Indian immigrants can retain his identity, the "difference" vis-a-vis "others", parka, the outsiders. Any threat to group endogamy, as evidenced in the disputes in the following chapter, is subject to strong social sanctions in the neighborhood.

if a person marries across his jat, he, his wife, and his children may retain the father's jat badge; that is, all of them may identify themselves as Patel, Gother, sir, etc., but neither the husband's family and his

CHAPTER 3

Settlements of Disputes Involving Boys and Girls

"By adultery (committed by persons) of (different) castes, by marriages with women who ought not to be married, and by the neglect of the duties and occupations (prohibited) to each, are produced (sons who owe their origin) to a confusion of castes".

Manu, literally meaning x 24 The Laws of Manu.¹

1. Jat Endogamy and the Polarization of Sexes

Hindus, Sikhs, Muslims, and Goans mix freely in Bakuli and there is no notion of pollution governing day-to-day social and economic relationships between the members of different social groups. Nobody gauges the distance between himself and others by holding some above and others below himself in order of any ranking based on such a premise. Though the jat identity does not become apparent at the outset, one may reveal one's region of origin in India in the particular dialect of Gujerati one speaks. But the consciousness of jat identity comes out strongly in rigorously observed rules of endogamy. Rules of one's jat require that all members should marry within the jat. Once a person is married to a girl in his own endogamous group, such a marriage assures that both his family and that of his wife would accept their children as full members. The children accepted in this way, not only possess a jat mark like that of Patel, Suthar, Mar, etc., but also retain membership in their patrilineage. However if a person marries across his jat, he, his wife, and his children may retain the father's jat badge; that is, all of them may identify themselves as Patel, Suthar, Mar, etc., but neither the husband's family and his

kinship beyond the jat unit. This may threaten and relatives, nor his wife's family or her relatives would be willing to accept their children as full members. The wider corporate group would not be prepared to offer a wife or a husband to the children of such an inter-jat or parnat marriages to which Gujerati Hindus attach a strong sense of stigma and identify the offspring of such a union with the proverb ma qejar ne bap mulo, literally meaning "mother carrot and father radish". Normally it would be "mother carrot, father carrot" or "mother radish, father radish". The term varnasankar praja, meaning children of mixed parentage, expresses a similar repulsion for those who owe their origin to a confusion of jato".

Yalman's research data from Ceylon and his analysis of Kathleen Gough's Malabar material indicate the concern which endogamous groups express in puberty rituals and other symbols to safeguard the "purity" of jat through women (Yalman; 1963: 40). He also indicates that the jat phenomenon is likely to be linked to pre-occupations with "dangers" to pure women. Such concern in Bakuli is expressed not in elaborate puberty rituals but in the restrictions that the parents impose upon their daughters so that they may not meet any boys.

Jat, prohibiting marriages beyond its bounds, also restricts all consanguineous and affinal links within it. As Edmund Leach says, "Cultural rules of caste behavior establish a dichotomy in the total field of social relationships - political, economic, and ritual relations are external; kinship relations are exclusively internal" (Leach; 1962: 7). Therefore, increasing frequency of marriage across the jat, besides making the filiation of children anomalous, may also imply a principle of

kinship beyond the jat unit. This may threaten and undermine the basis on which the exclusiveness of endogamous groups rests.

To safeguard the "purity" and separateness of jat, ideally the members of all social groups segregate sexes - a notion ipso facto applied to all situations bringing men and women together in the family or beyond it. For the rules requiring members to marry within their own group do not permit free mixing of sexes as they exclude kinship links of all kinds with outsiders. Whenever the members of one group see a girl of their own social group with a boy from another jat, they immediately suspect her as having a "loose character", this connoting promiscuity and low morals. It is the separation between sexes that makes dating and romantic love rare as a basis of choosing a mate among the Asians. As in India, the parents and elders separate boys and girls as soon as they are about six to eight years old. "In most parts of India boys and girls are still trained for a separate adult life. They usually play together as children, but after the age of six, there is gradual separation of two sexes, until after the age of ten or twelve, segregation is almost complete" (Ross: 1961; 240). Parents go to extremes to protect their daughter's virginity from all potential sexual assaults. In one instance a Brahman mother in Bakuli scolded her adult son for staying home and bringing in an outsider while his sister was alone in the house. The mother not only regarded the outsider as a sexual threat to her daughter but even suspected the possibility of incest between the sister and the brother if they were left to themselves. In another case, a mother continually expressed a great concern

for the safety of her daughter lest "someone take our prestige away", koi apni abru lai jay to. The Gujarati word abru - prestige - means either intact virginity of the daughter or husband's exclusive right of sexual access to his wife. A sexual assault on a daughter or a wife may bring a black mark, kali tili, on the family name.

The polarity of sexes has deep roots in Hindu social life with an emphasis on protecting women from all potential sexual advances.² Bipolarity of sexes is a generalized concept and brings out the separation of sexes at all levels. The relationship between man and woman cannot exist unless it is sexual. "No mark of affection between man and woman can be either innocent or disinterested" (Dubois: 1903: 313). Within the family, it explicitly separates conjugal roles. Srinivas notes a similar separation of conjugal roles among the Coorgs in South India. "The fact of social segregation of sexes operates against the young husband and wife spending any considerable time together before bedtime."³ (Srinivas: 1952: 143).

The distance between sexes is not identical in all social groups. It varies even within the same group. Ismaili families permit forms of cross sex relations within their sect. Like the Goans they allow boys and girls to do homework together, to exchange story books and magazines and to hold mixed birthday parties and dances. By this measure, Shia Ithna Ashri, Sunni Muslims and most Hindus are orthodox in that there is no way in which boys and girls legitimately can have any relationship outside the kin group. However, western education, radio, television, and movies challenge the exclusiveness of closed social groups. The younger

The relative freedom of Shias - from ritual, their great

generation often holds different views about the kind of distance boys and girls should maintain between themselves. Boys meet girls who do not belong to their jat. As soon as their contact becomes visible, it immediately generates a large number of conflicts in the Bakuli neighborhood. In most cases, parents put a stop to interaction between their daughters and boys outside their jat. Nevertheless, some of these conflicts often drawing much public attention, turn into disputes. As the following cases illustrate, most of these are settled in Bakuli only with a minimum reference to the national legal system of courts.

2. Bhajanmandali:

Briefly the Hindus believe that there are three ways to salvation. These are the ways of knowledge, (jnana marqa or jnana yoga), of performing one's duties in life (karma marqa or karma yoga) and of devotion (bhakti marqa or bhakti yoga).

Within a wide Indian context, the way of devotion, generally associated with post-Vedic and post-Buddhist movements, is the Bhakti doctrine. This is the doctrine that it is possible to experience God's grace, not only through knowledge and ritual observances, but also by devotional worship. Several sectarian movements form groups which meet periodically to sing devotional hymns, bhajans, and to worship a deity or a saint. Bhajans are a common feature of life in Gujerat, Kathiawar and Cutch. As Srinivas records, "Bhajans are an all-India phenomenon, and were developed as an institution by the saints who sought salvation (moksha) through the pursuit of the Bhaktimarqa or the path of devotion. Bhajans are popular in both rural and urban areas and among all classes of Hindus. The relative freedom of Bhajans from ritual, their great

aesthetic and emotional appeal, and their ability to cut across caste distinctions are some of the reasons for their popularity with urban and educated Hindus" (Srinivas: 1966: 143).

Milton Singer has also described in detail how devotional songs in praise of Radha Krishna have become popular in Madras (Singer: 1960: 119). Such Bhajan groups have been transplanted to Uganda.

The chief exponent of the Bhakti marg movement in East Africa is Hirjibapa. He came to East Africa at a very young age. He lived in Nakuru in Kenya, a small town about 90 miles away from Nairobi. After he had established himself in a small business, he spent much of his time spreading the Bhakti movement in East Africa.

In the period following 1948, he established a non-profit making body called "Vishnu Lord Company"⁴ as a locus of this movement. First he encouraged the Hindus all over to take the name of Lord Rama, the hero of epic Ramayana and assisted them in writing the word "Rama" thousands of times in exercise books as part of the recital of lord's name. These books were then deposited in "Vishnu Lord Unlimited Bank" with 20 branches all over East Africa.

He soon came to recognize the need for Hindu temples in East Africa. Wherever he went, he persuaded the community of Hindu traders to raise money to build a temple in their own town. Since 1950, most of the temples built in Uganda and other parts of East Africa were the result of Hirjibapa's stimulus and inspiration. When the temple was ready, the Hindu community of that particular town invited Hirjibapa to perform its opening ceremony. This was characterized by a large gathering of bhajan groups.

Together with the building of temples, he also persuaded the Hindus to form groups to sing devotional hymns. Most Hindus coming from Kathiawar and Gujerat had some acquaintance with Bhajan groups and Hirjibapa is said to have helped the formation of 53 groups in East Africa. He has also trained a dozen African devotees who sing these hymns and follow the Hindu way of life.

There are, by a rough estimate, between six and nine groups in Kampala. The Bhajan group called Jignasu Satsang Mandal, owes its existence to Hirjibapa who inspired a number of his followers to form it in 1948. It meets every Saturday evening at an appointed place either in a private house or in the Hindu temple on festive occasions. Any Hindu can join simply by his participation in the association. The jat one belongs to does not bar one from its membership. Once a person becomes a regular at the Saturday evening meetings, he binds himself in a network of relations to other members. The Bhajan group lacks an office organization, and its membership fluctuates from time to time. It has, however, a hard core of members comprising the group leader, a harmonium player, a drum player, a tambura (a one stringed instrument) player and a few who play cymbals.⁵ On important festivals like Diwali as many as 100 members join hymn singing but on the regular Saturday meetings the number varies between 20 and 30.

Jignasu Satsang Mandal has a potential of becoming a corporate group in the sense that the members expect that it should become consolidated to look after their welfare and economic interests. An unemployed member of the association who received much sympathy and moral support from others said that the leader ought to raise a fund and create an organization to help the members in

need. For him it was not enough for members to come together to sing, to meet in the sweet shop every evening and to visit sick members. He thought the association should shoulder more responsibility and shape itself into a corporate group with a strong organization taking care of its members and assuming new functions unrelated to singing bhajans. The members of Jignasu Satsang Mandal have some jural influence over the segments of Hindu community. Some of the following disputes illustrate the way the members of the group are called into act as mediators when a dispute about the relationship between boys and girls or men and women is about to erupt into violence. Their role in settling the disputes involving violence is also further examined in Chapter 7.

3. Some Disputes

a. Rubbish in Sakati;

The following map shows the layout of the building and the courtyard where the following dispute took place:

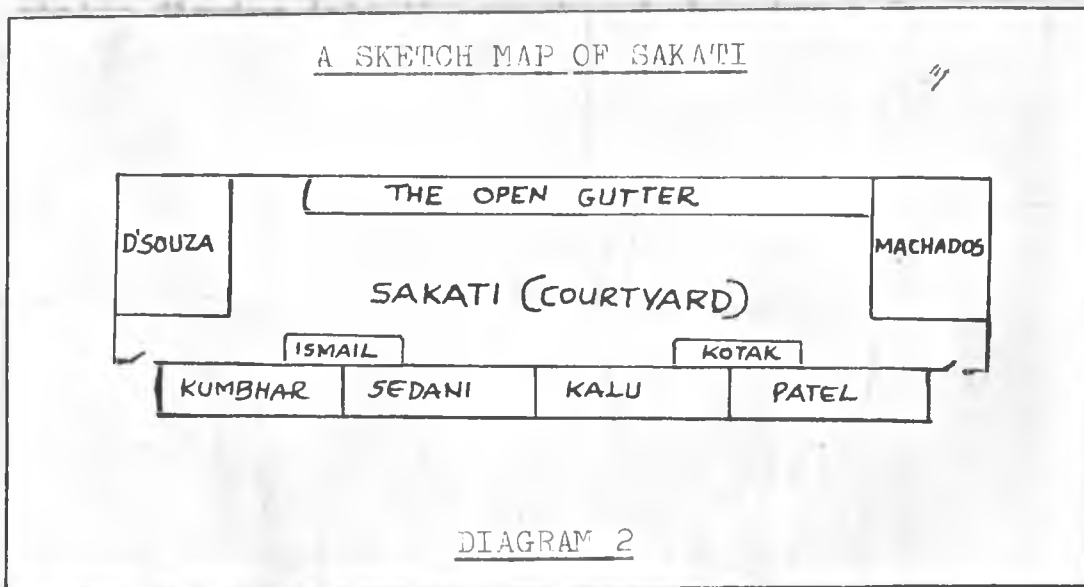


DIAGRAM 2

At the back of this building there is a courtyard separating the houses facing the Hoima Road. The women living in this building use the courtyard for drying clothes, the food stuff and for performing traditional dances during the Norta festival. Sakati, the courtyard, thus acquires a kind of corporate identity where women come together or dissent in carrying the domestic tasks and religious ceremonies. During the morning the sakati remains wet as the water from the stairs of four flats trickle into it, bringing dead cockroaches, shells of broken eggs, and other rubbish, all of which flows into the open gutter close to the wall facing the block of rooms and flats. Through an opening, the thick, pasty, liquid percolates outside the building. On rainy days especially the gutter is apt to choke up and a little pool of dirty water forms near Mary D'Souza's house. She feels very strongly about this for she suspects that the dirt causes her children to fall sick.

Phase 1:

One wet morning Mary saw the water from the back stairs flowing into the courtyard, bearing a fresh lump of excreta nearing her rooms which were only five or six inches above the courtyard floor. She shouted at the housemaid standing on the stairs and abused the neighbors whose young children defecate outside the lavatories. She added that all Goans suffered a lot because people threw their dirt carelessly into the courtyard. The housemaid on the stairs shouted to Sangeeta Patel who came out to refute the allegations, claiming that her dirt could not possibly flow towards the gutter for she always sifted it out before letting the water into the courtyard. She returned inside and sent her housemaid to call Britto, a Goan who lived outside the courtyard.

Everybody in the neighborhood called Britto masi, for she was as helpful as a mother's sister, a masi, even though she was a Goan. She had helped Sangeeta to make a large cake on her son's birthday. A Lohana family, Kotak by atak, living within the courtyard, was also friendly with Britto. Sarla Kotak got along well with her as the only English speaking Goan who mixed with all Bakuli residents. Besides knowing English, Britto also spoke fluent Gujerati, Swahili, and Luganda. If Sarla ran out of sugar, potatoes, or onions, she could rely on Britto masi to get something to cook a meal before her husband and children returned home. Britto had also helped the half-caste wife of the Italian by cooking food for her husband and children when she was expecting a baby.

When Britto entered the courtyard, Mary, her sister and daughters came close to Sangeeta's house. By this time, a small crowd of neighbors had gathered to see what was happening. In a confusing mixture of Swahili and English Mary continued accusing both Sangeeta and Sarla for throwing dirt in Sakati. Sangeeta fumed with anger and asked Britto to tell Mary that she was not the only person who would be blamed for the dirt. Also, Sarla should share part of the blame, for her six children used the courtyard as a playground and threw a lot of rubbish there. She added that Sarla had told her a few days back that Mary was going to beat her up. Sarla was standing below the stairs and listening to the charges against her. She came upstairs and confirmed that Mary was going to beat her up. After Britto masi had translated into English what Sarla had said, Mary vehemently denied the charge, adding that Sarla was creating stories of her own to cause fights between Goans and Hindus. She also pointed

out that Sarla had also made accusations against the other Goan, Machados, the bachelor, because he was alone and did not have many of his people to support him.

Sangeeta, supposed to be Sarla's friend, held that Sarla was a habitual liar and always quarrelsome. Britto masi said it was not good to blame anyone. As far as the dirt in the courtyard was concerned, she suggested that they ought to employ a sweeper, chuda, to keep the courtyard gutter clean and advised both Sarla and Sangeeta that it would be cheaper to pay 50 cents a day to an African chuda than to pay heavy bills to doctors if they did not keep the gutter clean. That is what Britto had done in her own building. She had persuaded all the tenants to pay a small amount of money to keep the courtyard gutter clean.

As Sarla went away, Mary added that Sarla had once fabricated a story against Machados who lived a few steps away from Kotak's house. Britto interjected saying that it was not necessary for anyone to make stories about others for what were people going to take with them after death. Therefore it was no good for people to fight. All Hindus and Goans should live together peacefully. If the Africans should see them fighting like this, what would they think of Indians? By this time Sangeeta had returned to her cooking and the others had gradually dispersed. Later in the evening, with the help of her house-boy, Sarla cleaned the gutter so that all the rubbish would then pass through it easily. Then she sent for Britto masi who promptly came to see her. In tears, she said she was the real sweeper of the courtyard, sakati no chudo, for everytime the courtyard was dirty, it was she who had to clean it. Masi consoled her gently and

said that all those who lived in the courtyard were responsible and that they should dispose of rubbish without fighting with each other.

Phase 2:

After a few weeks, Sarla alleged that the Goan Machados stood undressed at his window and looked at her. She had made a similar charge against him a year ago. Her husband then decided to challenge him. When the Goan returned home, he was drunk. As he stumbled into the courtyard to enter his two-roomed abode, Kotak pushed him down and beat him until he screamed with pain. Nobody rescued him in the building, for Kotak had forewarned other Goans either to advise Machados to stop looking at his wife or to allow him to punish the Goan. Even Britto masi who traced blood relationship to Machados did not interfere, for he deserved a "good hiding" for his excessive drinking. For a while he lay unconscious before he struggled into his bedroom.

This year Sarla had made a similar charge against the Goan and threatened to call her brother who would beat him. As Machados had helped Sangeeta's husband's brother to get employment in a transport company, Patels viewed the Goan as their "uncle", and gave him the support that he needed against Kotak. Sangeeta's husband's father's brother's son was Bonty, a notable troublemaker, threatened Kotak to remind his wife that she should not abuse Sangeeta. After all, Patels were not Goans who would tolerate everything. They would teach Lohana a good lesson. Kotak was upset by this challenge and later was puzzled to see Bonty, in the evening, standing in the courtyard near the stairs, arguing with his wife and wife's mother. Bonty accused Sarla of using "dirty words" against Sangeeta. If she had been abused, he

would punish Kotak by slapping him. Unable to match Bonty's sheer physical strength, Kotak said he was tired of disputes. If Bonty wanted to beat him, he could do so. He would not defend himself. After all, it was not good for men to interfere in quarrels between women which they could settle among themselves. Despite this meekness, Bonty continued threatening Kotak. He would kill anyone who abused his brother's wife, bhabhi Sangeeta. Kotak immediately interjected that he was God's man, Bhagwanno manas, and did not want to fight with anyone. Nor did he have anything to do with some of the people whom he even did not know.

The people who mattered most for him were the members of Bhajanmandali. While he was still talking to his adversary, his wife had slipped out of the sakati and informed the members of the Bhajan group that a man was going to beat her husband. In a few minutes four members arrived from across the street to see what was happening. When they entered the courtyard, Bonty asked them if they had come to fight on Kotak's behalf. If so, he would finish them off one by one. He was not like the Goan Machados who would give heed to threats. He was a Patel. The Bhajanmandali members promptly said that they had come to make peace and not to fight. They were peacemakers in the neighborhood. One, Kanjibhai, argued that it was very bad for the people of the same neighborhood, falia, to fight with each other all the time. Another member advised Bonty to pay more attention to his books than to the disputes in the neighborhood. Bonty admitted that he would have no quarrel with anyone if they did not insult Sangeeta. Patels would never tolerate insults like Goans. A third member of the Bhajan group indicated that he had friends who were also keen fighters. Seeing Kotak, one of Machados' wife's brothers threatened

and would pick up a quarrel on the slightest excuse. If Bonty wished to fight, these friends would teach him a good lesson. Considering that the matter was over, the peacemakers and others dispersed.

Phase 3:

Before the crowd in the courtyard scattered, Britto had already seen several "big" people of the neighborhood coming from Kotak's courtyard. She thought it would be a good opportunity for her to prove to all the people that Machados, the bachelor Goan, was innocent and that even if he got drunk from time to time, he was not a bad man at all. After all, most people living in Bakuli took some beer. She pointed out that the children returning from Musabhai's shop bought beer for their fathers on Saturday, which they covered in baskets to keep the beer out of sight.

Machados at that time was not home. Suspecting he was in one of the Bakuli Bars on Hoima Road, with a house-boy for an escort, she went to look for him.

Meanwhile Machados' wife's brothers who lived at the end of the first street heard that some baniyani (a derogatory Swahili stereotype of Gujerati Hindu, meaning people who are vegetarians and usually lack physical strength) were trying to beat him. Carrying hockey sticks, both the brothers came out to see if there was any fighting. As soon as they entered the sakati, they slapped two African boys, thinking that they were waiting near the entrance to beat up the Goan.

At that moment Machados returned. He was considerably drunk and shouted that he would kill at least one person before anyone took his soul away. Sarla, her husband and children came out to see what was happening. Seeing Kotak, one of Machados' wife's brothers threatened

to beat him if he attempted to assault Machados again. Similarly Bonty, who had returned to the scene, said he would fight anyone who molested his Goan "uncle". Kotak withdrew to his rooms and sent his daughter to call in the Bhajan group. When Machados' wife's brothers saw that a fight was unlikely, they left the courtyard moments before the Bhajanmandali members arrived.

Kotak and his wife emerged from their rooms bitterly complaining that they had been unnecessarily troubled after they had fallen asleep. Kanjibhai gently scolded Bonty for still not going home. Bonty simply repeated that he would fight if anyone raised his hands against his Goan "uncle". Patel's younger brother whom Machados had helped to obtain employment came out to pacify his father's brother's son, Bonty. He said Bonty was a child who often did not behave well with the elders. He further explained to the Bhajan group that Kotak's wife had misunderstood Machados and thus had allowed a dispute to ensue. Machados had not intended any sexual advances towards Sarla. Whenever he returned from work, he would stand near his door and smoke. As he needed fresh air, he could not keep his windows closed all the time. Patels were convinced that their Goan "uncle" was a respectable man in the neighborhood as well as in the transport company. After listening to this explanation, the peace-makers told Kotak to advise his wife not to create trouble by suspecting neighbors wrongly. They also thought that Machados was innocent for he proved this by showing them the wooden planks he had fixed on the window of his bathroom and toilet, so as to prevent Sarla from seeing him. One of the Bhajan elders called this an act of nobility.

Britto was standing on her doorstep while members of the Bhajan group were going home. She came forward and added to their fresh conviction that Machados did get drunk but essentially he was a harmless, nice man. They approved what she had said and admired the way she helped people by going out of her own way.

The Case of Rubbish in Sakati shows that a large number of Bakuli residents live in poorly-constructed houses with a lack of proper drainage facilities. Dirty courtyards, broken septic tanks, and over-loaded dustbins acquire primary importance in day-to-day life of the sakati residents. As it is evident in the case, besides being a dispute about the dirt in the courtyard, the Case of Rubbish in the Sakati arises out of the threat Sarla sees in alleged sexual advances of the Goan.

The dispute also brings out a number of temporary alliances in which two or more persons in a cooperative venture face an active opposition. The particular circumstances of a situation decide how long such alliances may last. In Case 1 Sangeeta Patel and Sarla Kotak, as Hindus appear united against Mary D'Souza, thus bringing out the opposition between the Goans and Hindus? The following diagram illustrates the shift in alliances as it occurs within the framework of dispute and outside it:

215). lasting for nine days. During the festival girls and boys, men and women perform dances for nine evenings in praise of mother goddesses Amba or Burna. Women erect the shrines of the goddesses and clothe them with shining garments and place ritual objects before them. They perform the dance moving in a circle, singing, and clapping their hands to an accompanying pair of drums. In Gujarat and Kathiawar men join the women. But Bakuli Hindus have abandoned this after the following dispute occurred. Before

Situation A 1 shows Sarla and Sangeeta in opposition to Mary. As soon as Sangeeta calls in Britto to act as a mediator, a rift appears between Sarla and Sangeeta. It is Britto's intervention that helps to dissolve the alliance between Sarla and Sangeeta as against Mary. Sangeeta and Mary who were opponents have joined hands against Sarla in situation A2, thus forming a new alliance, alienating Sarla, who at that point withdraws from the conflict.

Situation B occurring outside the framework of the dispute but following it shows that Sangeeta and Sarla have come together to oppose a number of women on an issue unrelated to the present dispute. All neighbors regard Sarla as quarrelsome but no one cuts off relationships with her. Instead, the residents of the courtyard pass through a large number of alliances which constantly change, depending upon the shifting interests of friends and foes. Whether these alliances are related to schism and opposition between groups in a wider context or not is a matter for further empirical inquiry.

B. A Girl, a Boy, and Cassava at Norta Festival:

Bakuli Hindus celebrate a round of festivals throughout the year. Norta or Navratri occurs in September/October (Redfield: 1958: 96; Marriot: 1955: 192, 200, 202, 215), lasting for nine days. During the festival girls and boys, men and women perform dances for nine evenings in praise of mother goddesses Amba or Durga. Women erect the shrines of the goddesses and clothe them with shining garments and place ritual objects before them. They perform the dance moving in a circle, singing, and clapping their hands to an accompanying pair of drums. In Gujerat and Kathiawar men join the women. But Bakuli Hindus have abandoned this after the following dispute occurred. Before

then Bakuli enjoyed the unique reputation for having the biggest dances during the festival of nine nights.

The nine nights have a special significance for young boys who seldom see so many girls so well dressed except on such a festive events. Elders complain that the outsiders come to Bakuli to play the fool, chedati, with their girls and the neighborhood boys join them stupidly. Some also blame the girls who freely mix with boys and men, causing much embarrassment to their parents and family.

In 1966 in Bakuli nobody wanted to construct a big platform - typical of the early and late fifties - for a large gathering. Instead the Bhajan group had decided that the performance should take place in one of the large courtyards in the first street. On the third evening of the festival, the women chose to dance until past midnight, and about 300 spectators had gathered. A large number of young men heard the following garbi: Kalivani sheriman garba ramta matoko no mar, meaning that while they were playing a garbi in an African street, the Africans came and beat them with bananas. At the end of this line, somebody from the crowd shouted, Tanne mogathi kem na marya, asking the women why they were not beaten with cassava.

Besides the members of the Bhajan group, Shamjibhai, Chimanbhai, and Maganbhai came to Hasmukh who they thought had uttered obscenities against their daughters. Shamjibhai said later that Hasmukh had used the word cassava, for mogo, implying a phallus to mean why were the women performing the dance not beaten with a big phallus. Chimanbhai came close to Hasmukh, held his shirt, and pushed him to the ground. Reacting swiftly, Hasmukh struck

between brother and sister. Cornock says that Kachha-

Chimanbhai's face. Maganbhai asked his son to bring a hockey stick whilst several spectators started beating Hasmukh. Moments later, armed with hockey stick and an iron bar, Chimanbhai and Maganbhai assaulted Hasmukh who received a fracture on his right arm and leg. By then the members of the Bhajan group had forced them apart and asked Hasmukh to return home. While going home, he said he worked for a lawyer and would see them later.

He reported the assault to the police station. When the members of the Bhajan group Kanjibhai and Ramjibhai discovered this, they met him and his parents. Hasmukh had already decided to let the police prosecute four elders who had beaten him. Kanjibhai explained to him that if the dispute went to the court it would look very bad. He even offered to meet Shamjibhai and others to persuade them to settle the matter "at home", gharman.

After Kanjibhai had met Shamjibhai and his friends he told Hasmukh that they were willing to compromise and pay his medical expenses. But Hasmukh refused to accept this solution and would withdraw the case from the police only after he had received a written apology from Shamjibhai and others plus a net compensation of 4000 shillings. Shamjibhai refused to concede to this demand and asked him to do whatever he liked, thai te kari le.

Bhajan group efforts to prevent the dispute from going to court failed. The Hindu Magistrate who disapproved of "such small matters of our people coming to the court" nonetheless convicted Shamjibhai and others for minor assault and fined them two hundred shillings.

c. A Brother, a Sister, and Rakshabandhan:

Rakshabandhan is a festival symbolizing the intimacy between brother and sister. Cormack says that Rakhsha-

bandhan "marks the beginning of the annual ritualization of the brother sister bond". (Cormack: 1961: 95-96). Raksha means protection and bandhan means a tie. On this day the sister ties on brother's right hand a red thread supposed to protect him in danger.

Men, women, boys, and girls use the Rakshabandhan device to establish relationship outside the family. However, their behavior does not approximate to the ideal set out in Rakshabandhan. They may fall in love and even marry. Cormack's informants say "It often starts with Raksha and ends in marriage."

Pramila and Anil, of Patel jat, lived in First Street in Bakuli. Anil had returned from India to renew his expiring residential permit. Pramila, who knew his elder brother's wife, often came to see her. During the course of her visits she came to know him and conferred brotherhood upon him by tying a thread, a rakhi, on his wrist on Rakshabandhan day. This act symbolized their relationship as brother and sister. They grew intimate.

Meanwhile Lalubhai was thinking of getting Pramila married for she was already 19. When she discovered this, she wrote to Anil saying that her father was throwing her away in "a gutter of marriage". If he cared for her, he ought to save her from the mess. Anil told her that he was prepared to do anything for her and would even marry her willingly. Both of them vowed to marry each other. The story that they were in love spread all over Bakuli.

As a result Lalubhai forbade Pramila from going anywhere else. He also explained to her that the boy was only a motor mechanic and they belonged to different circles of villages, gols, intermarriage between whom was forbidden. If she did not pay any heed to his words, he

would not hesitate to strangle her to death. He also scolded her for making a mockery of Rakshabandhan for if she ever thought of him as her brother, she could never marry him.

Pranila conveyed her father's message to Anil. Meanwhile he had already consulted his elder brother who said he would not mind accepting a girl from a lower gol if she was pretty and educated. Later they consulted a member of the Bhajan group who said there was no harm in talking to the girl's father if they were in love. Both brothers then went to see Lalubhai to explain that his daughter would be marrying in a higher gol without having to pay any dowry, paithan, which the father of the girl has to pay for his daughter to be married upwards, as it is a custom among the Patels. They marry their daughters to a social circle above them. Lalubhai politely refused to accept the proposal and reprimanded the elder brother for spoiling the younger one.

Pranila sought assistance from her mother's brother when he came to Kampala but despite his progressive views on marriage, he was unable to convince her father to let her marry into a different gol. If she married into a different gol, her father would cease to consider her his daughter.

Anil's friends proposed that he could elope with Pranila and have a "love marriage". However, Anil was out of work and his passport which lay with the immigration office would make his movement outside Uganda impossible. Also he had no desire to take Pranila and run away as this would bring a bad name to his as well as her family. Later Lalubhai sent Pranila away to Gulu, and Anil found a job in a coffee factory outside Kampala.

opened the door of her flat and shouted at him, abusing

d. The Shopkeeper's Daughters:

The boys hanging around Musabhai's shop in the first street would call the shopkeeper's daughters names.

Once a young man said loudly that Musabhai's daughters were "flirts" and promiscuous, chalu. The eldest daughter screamed, drawing the attention of her mother and a number of neighbors. She said that Shivji was playing mischief, chedati, with her. As she sobbed, the neighbors caught Shivji and asked him if the girl was right. He said the girl was lying. Musabhai came and slapped Shivji and dragged him towards his shop, but Shivji escaped and in a few minutes returned with his parents and relatives advancing before him. His father asked why his son had been beaten. Musabhai explained but Shivji's father said he did not think any Hindu boy would ever say what his son was alleged to have said. It was Muslims who were the cause of fights in Bakuli and of trouble everywhere, in Bakuli and in India. Musabhai retorted that most Hindu boys were notorious and chased Muslim girls. He raised his fist and dashed to assault Shivji's father. Several neighbors who intervened managed to separate them, asking them not to fight for that would spoil "our" name and both sides withdrew without further confrontation.

e. A Widow's Daughter and a Young Man:

A widow complained to her neighbors that a Mer living next to her looked at her daughters. One Saturday evening the Mer returned home from drinking at the guest house nearby and started singing loudly a song from an old Indian film:

"Come...come...come... to the rescue of my wrecked love".

Hearing these words, the widow, in greater anger, opened the door of her flat and shouted at him, abusing

him to rape his own mother rather than her daughters. Inflamed, he rushed towards the widow's abode but not before the widow bolted the door and raised the alarm. The Mer pounded her door and threatened to rape her daughters. Mer was well known to be violent, powerful, and rash in his actions. Therefore somebody went out to call the members of the Bhajanmandali. They arrived in a few minutes. Kanjibhai, the elder urged the Mer to return home but to no avail. Instead he challenged the peace-makers and told them if they had "derived manhood from their mother's milk" then they should come forward and fight with him. He would retreat only if the woman came out, bowed before him and withdrew the obscenities she had uttered against his mother. She did not and escorted him to

The situation deteriorated so Kanjibhai asked Ramjibhai to call the police. As soon as the Mer saw the constables, he moved to his room. When the police said that they were going to arrest him, Kanjibhai persuaded the police not to do anything for the man had not committed a serious offense. The police scolded Kanjibhai for wasting their time when they did not have a case against the man. After the police had left the courtyard, members of the Bhajan group explained to the Mer that if he did not behave properly next time, they would hand him over to the police. The following day the Mer vacated his flat and went away from Bakuli.

f. A Boy with a Bicycle Chain:

Hanif stood outside Mumtaz's house, calling her outside. This infuriated Mumtaz who told her mother that a Sunni boy was standing outside and troubling her. Her mother came out and told Hanif and his friends to go away and be quiet. They laughed loudly and Hanif told her that to catch him. The neighbors came out immediately, so that the honor, shru, of a Hindu girl would not be spoiled.

Bakuli roads did not belong to her and they were free to stand where they were. Mumtaz's elder brother Azim came out and slapped the young boy. Unable to cope with Azim, he ran away to call his two uncles. They were not home so he returned to Mumtaz's house with a bicycle chain instead. He threatened Azim and heaped abuse on his brother and sister. For a while Azim did not take any notice of what Hanif was saying. But when he began to abuse Azim's mother, Azim came out of his house with a hockey stick and asked him to come forward. Before Hanif could swing his bicycle chain, Azim struck with his hockey stick. Mumtaz and her mother caught him before he could hurt Hanif any further. Hanif picked up some stones but the shopkeeper Musabhai caught him and escorted him to his mother.

g. A Boy behind the Lavatory:

Madhu and Mithu used to meet at the bus stop outside Bakuli. Gradually they became very friendly and were often seen coming home together and departing from each other before coming to the first street. Madhu's mother told Kanjibhai that he should explain to the boy that he should not follow her daughter. Mithu, an Ismaili, did not respect the members of the Bhajan group, and he did not care about what Kanjibhai said. Madhu's mother also warned her daughter not to talk to boys outside. If she did not change her behavior, she would even have to give up her job and stay home.

On a Sunday morning Mithu entered the courtyard to meet Madhu. He waited for her behind a latrine, hoping to draw her attention as soon as he saw her. Instead a servant of the house saw him and asked him what he was doing there. Seeing Mithu, Madhu's mother asked the servant to catch him. The neighbors came out immediately, so that the honor, abru, of a Hindu girl would not be spoiled.

They beat him and pushed him out of the courtyard with a warning not to misbehave again.

4. Discussion:

The above cases can be analyzed in terms of kind of principles, procedures, and personnel involved in the disputes.

In the above disputes the norm of social segregation of sexes is upheld as a principle safeguarding the existence of a number of endogamous groups. It is in the interest of each of the groups to uphold the separation between sexes as a necessity to retain their exclusiveness. To maintain this interest, the groups strictly sanction all efforts aimed at reducing the distance between the sexes. The Bhajan groups and others uphold the code of good behavior to eliminate any possibility of a half caste generation or varnasankar praja. Further, the differences in language, religion, etc. support the need of marrying off the daughters within the bounds of endogamous group. The norm of keeping the sexes apart reinforces the society's interest of perpetuating the social structure as it exists.

The Bhajan group plays an important role in settling the disputes among the Hindus in Bakuli. As a group it has acquired a corporate identity over a course of time as the members' participation becomes rooted in its activities. Kanjibhai has been the member of this association for 18 years. Ramjibhai has been singing devotional hymns and playing cymbals or Indian drums for 13 years. Hindus in Bakuli have come to view Kanjibhai, Ramjibhai, and others as "belonging to devotional hymns" bhajanwallah, and as belonging to association or mandaliwallah.

However, no settlement of disputes in Bakuli involves all the members of the Bhajan group as the members are

the disputants. Often this is sufficient to deter the

territorially scattered over Kampala. But five of them who live in Bakuli derive a moral capacity to influence and alter the course of disputes. The Bhajan group elder Kanjibhai is a sacred person without political authority. The leadership role he performs is seen as a logical consequence of his membership in this religious association. He legitimizes the role of the Bhajan group by claiming to be holy and never in the wrong. For him and the bhajan group, the wrong doers are the disputants.

The Bhajan group enjoys a procedural flexibility unknown to the court of law. Unlike the law courts, members of Bhajan group do not attempt to find facts in order to determine the rights and obligations of the disputants involved. For them to suspend the hostilities, a bare outline of the dispute is enough rather than all the meticulous details of the dispute. Essentially the inquiry conducted by the members aims at bringing peace between two sides. By arresting a conflict from becoming disruptive, they persuade the disputants to accept a mutually acceptable compromise. They put a stop to the conflict rather than adjudicate or arbitrate the issues in question. An official judicial body like a court or an instituted tribunal has specific procedures to process a dispute before it, comprising the rules governing the role of legal personnel, presentation of evidence, cross-examination and the conduct of the dispute in general. But the Bhajan group does not resolve a dispute by summoning the disputants and conducting a trial by using similar procedure. Instead what is done is to intervene so that the disputants come to refrain from violence and accept some kind of compromise. They have a possibility of mobilizing the support of other members outside and neighbors. With this they threaten the disputants. Often this is sufficient to deter the

adversaries from further use of violence.

Bhajan members also have a reputation of being God's men. They claim to be impartial in the dispute and to consider it as their duty to help people sort out their differences, especially when they are about to fight. Deriving from their devotional hymns, they make references to the illusion, maya, of this life, not only to emphasize the unreality of the dispute but also of one's very existence. On the strength of the argument that "we are going to take nothing with us when we die" a member may bring friendly compulsion on the disputants to shake hands. Often they evoke the image of Hindu solidarity, the Gujerati community image, falia. In a village in Gujerat or Kathiawar, a falia is a small space round the household where the members of one's own patrilineage may live. The notion is used in Bakuli in a similar sense to emphasize solidarity between the neighbors. In this way they attempt to generate a feeling of unity and belongingness in the neighborhood by persuading and encouraging foes and friends alike to live with a spirit of brotherliness and cooperation.

The disputants, Britto Masi, members of the Bhajan group, neighbors and police comprise the personnel involved in the disputes. In the case of the Rubbish in the Sakati, to Hindu women Britto masi, a Roman Catholic Goan is socially acceptable for she is close to the complex of social activities Hindus carry out. Also her command over Gujerati, English, her desire to help the needy neighbors additionally favor her acceptance. For the Hindu women of the courtyard Britto masi is "here", namely close to the center of social activities they engage in and also "there" in the sense that Brito, by being able to speak English, has access to a world with

ies from using violence. Whenever the Bhajan members fail to exert pressure, they may fall back onto

wider horizons - a universe transcending the sakati - not a part and parcel of the courtyard. The women see Britto masi's role more as that of a good-hearted mother's sister than as a coercing agent of any kind in the neighborhood. In conflicts between women, Britto acts more as influential, impartial adviser or a consultant than a figure with any attributed authority or power. But she can patch up the differences or help to dissolve incompatibilities only if the disputants are willing to compromise to prevent a conflict from escalating any further.

The role of Bhajan people is to help disputants to go to the police or to use the police to cool the disputants and to take the injured to the hospital. However, Bhajanmandali members have influence on 48 Hindu households.⁶ As in "A Girl, a Boy, and Cassava at Norta Festival" a disputant with some knowledge and experience of legal machinery may over-ride their persuasion. Bhajan leaders do not issue commands, for the disputants, by not accepting them, may threaten their viability in settling disputes. Instead, the peacemakers of the Bhajan group persuade disputants and appeal to their sense of morality to which adversaries may yield, either by suspending a dispute or by accepting a solution. The cases of "The Widow's Daughter and a Young Man", "The Boy behind the Lavatory", and "The Shopkeeper's Daughters" fall outside the sphere of the influence of Bhajanmandali for the members would not extend their jurisdiction over other non-Hindus. Bhajan group has strong Hindu connotation with a religious bent which Goans and Ismailis would not accept. Also the social distance between these groups is wide enough for any appeal to common values to settle disputes. In such cases, neighbors intervene and prevent the adversaries from using violence. Whenever the Bhajanmandali members fail to exert pressures, they may fall back onto

the national legal system and call the police to make a show of force as in the case of "Widow's Daughter and a Young Man". The police do not see the Bhajan peacemakers as a link between themselves and the disputants. To the police, the behavior of the members and others is strange in that after calling the police to the scene of dispute, they may yet dissuade them from arresting the culprit. The police, failing to perceive the meditative role of the personnel involved, blame them (The Widow's Daughter and a Young Man) for wasting their time. The Bhajanmandali members see the police as holding the authority of the state which is a last resort in bringing further pressure on the disputants. They do not see it as an agency to whom citizens should resort to, as a course of normal practice when a crime has occurred.

This role of the Bhajan group, despite the narrow range of disputes it settles, is seen as belonging to the Hindu world as against the national courts and police in Uganda who constitute, for most Bakuli residents, an unfamiliar institution of law and order. The Bhajan group is cut off from the national legal system which may never give any recognition to the decisions made by the group. Bhajanmandali has no power or formal authority over the disputants. The members exert their influence purely in the moral capacity derived from their membership of this association. Their success and achievement in occupational and other spheres may boost their influence further. The Bhajan group decision is binding to the disputants largely in so far as they see it appropriate to accept the compromise as agreeable to them. The acceptance of their decision is also a matter of disputants' goodwill. By the respect they demand as religious people, they enforce a certain amount of

friendly compulsion on the Hindus. Also the fear of what others would say acts as a sanctioning factor against the disputants.

The fact that all Bhajan elders carry on their proceedings in Gujerati, the language spoken by Bakuli Hindus, is another factor that insulates the disputants from police and courts where they may face the people who do not understand their language and way of life.

In contrast to the Bhajan group, the Ismailia community has bodies operating on all three dimensions - principles, procedures, and personnel - that lends it a certain degree of formality outside the courts.

As the spiritual leader of the Ismailia community, His Highness the Aga Khan has absolute and unfettered authority over the Provincial Council, Territorial Council, and Supreme Council. It is with his wishes that the rules of conduct are laid down in the constitution of the Shia Imani Ismailis in Africa.⁹ These rules bind and govern the members of Ismailia community in accordance with the provisions of the constitution. The constitution has created Provincial Councils, Territorial Councils, and a Supreme Council. The Provincial Council is responsible for the welfare of members under its jurisdiction. The Territorial Council deals with the affairs of several Provincial Councils under it and the Supreme Council deals with the issues arising out of the workings of the Territorial Councils. Each Council has a judicial body called Tribunal. Hence the three Tribunals are named Provincial Tribunal, Territorial Tribunal, and Supreme Tribunal. Over the Tribunal of each Council lies the final authority of the Aga Khan. The Tribunals determine matters before it in keeping

with the constitution and principles of natural justice. The Tribunal is not bound like a law court to follow the strict rules of civil and criminal proceedings. It may admit the evidence not legally acceptable from an instituted court's point of view so long as such evidence is not contrary to the principles of justice, equality, and good conscience.

Any Ismaili plaintiff wishing to bring a case against another Ismaili, petitions either in English or Gujarati, stating the facts of his application as precisely as possible. He presents this to the secretary of the Provincial Council in quadruplicate. Then the secretary serves a copy of the petition to the respondent either personally or by registered mail. If the respondent files a reply, the secretary delivers it to the plaintiff in a similar way. The plaintiff and the respondent receive a notice three weeks in advance prior to appearing before the Tribunal.

The plaintiff and the respondent appear before the Tribunal in person. They take legal assistance of other Ismailis only. If the plaintiff does not appear at the first hearing, the case is dismissed or hearing adjourned. If the respondent fails to appear, the Tribunal hears the plaintiff or adjourns the hearing. When the evidence is taken at the hearing, the disputants and other witnesses take a religious oath administered by the chairman before they present the evidence.

The Tribunal, the Plaintiff, or the Respondent may call in witnesses. If they fail to appear without good reason or produce false evidence, they are subject to Council's disciplinary action. If an Ismaili is evading

Provincial Council for a review. Upon a notice from the

appearance in a case, an announcement asking him to appear before the Tribunal is made in all Jamatkhana within the jurisdiction of the Supreme Council. If the witness does not appear, however, the chairman may proceed to hear the evidence.

At every hearing, the plaintiff opens his case, presenting all the evidence including documents on the case. The respondent then questions the plaintiff and his witnesses. Similarly the respondent presents his case with the evidence that he may have at hand. The plaintiff in turn questions him and his witnesses. The Tribunal may adjourn and meet again before reaching the final decision.

Only those members of the Tribunal present throughout the proceedings take part in the hearing and determination of issues. A plaint is heard and determined at a session when either three or five members are present so that the chairman can cast his vote to decide the case. The opinion of the majority of the members who have heard and reached a decision on the plaint prevails. This may include a note on disciplinary action to be taken. The chairman forwards this to the Provincial Council without modifying or altering it. The Provincial Council adopts these findings and recommendations and pronounces this as its Decision or Order. If either the plaintiff or the respondent is not present then, the secretary notifies them personally or sends them a letter of notification by registered post.

A person who is aggrieved by the decision of any Provincial Council may, within twenty-one days after Council's decision, present his petition to the Territorial Council for a review. Upon a notice from the

In contrast to the Shajan group, Tribunals of secretary of the Territorial Council, the Provincial Council sends all the relevant information on the plaint to the Territorial Tribunal. The Territorial Tribunal may confirm, reverse or vary the decision of the Provincial Tribunal. If the plaintiff is not satisfied with the decision of the Territorial Tribunal and Territorial Council, he may forward this petition to the Supreme Council for a further review. If the Supreme Council is of the opinion that the plaint involves a question of any fundamental principle or tenet of Ismaili faith or question of interpretation of the Constitution, which it is unable to resolve, or a question of jurisdiction between the Supreme Council and Territorial Council or between the Territorial Council and the Provincial Council, which it cannot resolve, it recommends that the matter should be referred to His Highness the Aga Khan whose ruling on the plaint would be final and binding upon the Councils and the disputants.

The Tribunal has a chairman, who, where possible, is a person with legal qualifications and preferably a practicing advocate. There are four other members to assist the chairman in performing his jurial functions. Besides these five persons no members of the Provincial Council take part in the proceedings before the Tribunal. The Tribunal holds its sessions depending upon the number of disputes coming before it. The chairman decides the day, time, and place at which the Tribunal shall conduct its meetings. Should any member have interest in matters coming before the Tribunal, he will declare this and refrain from taking part in the judicial activity. The proceeding is open only to the members of the Ismailia community. When necessary, the Tribunal conducts its business in camera.

In contrast to the Bhajan group, Tribunals of Ismailia Councils are elaborately structured with a set of permanent procedures and personnel settling disputes involving the members of the Ismailia sect. Despite clearly delineated procedures and personnel, Ismailia Tribunals do not conduct judicial proceedings along the line of law courts and the emphasis is placed on reconciliation. But Bhajans have even less structured procedures than the Ismailia Tribunals. To settle the disputes in the way an Ismailia Tribunal does, the Bhajan group would require a wider acceptance of Hindus in Bakuli. While the Ismailia Tribunals can impose effective sanctions on a member by excommunicating him from the sect, Bhajans have no way of imposing sanctions in similar ways. The Bhajan group sanctions amount only to persuasion and often to threats. The group articulates its ability to use force only when the disputants threaten violence against each other or against the group itself.

The Bhajan group nevertheless has a range of jural influence in Bakuli. Its sensitivity as a dispute-settling mechanism is restricted to disputes occurring in Bakuli among the Hindus. However, all the disputes involving intricate transactions of business etc. typically go to other sources such as lawyers or finally to courts.

Chautha ful jais balayna haram.

"Fourth flower belongs to the garland of my heart."

As to gulab patrani nu ful.

"It is the night queen's flower"

This song shows the generalized effect of the sex separation concept. The night queen flower stands for the only contact husband and wife have after everyone else in the family has gone to bed. The husband, transposed as the night queen flower, becomes

alive for the wife during the night.

NOTES

1. The Laws of Manu, Pages 176-177, The Source Book of Indian Philosophy.
2. The ideology of sex polarization is part and parcel of Hindu social life with an emphasis on protecting women from all possible sexual threats. The Laws of Manu prescribe a strict control over women so that half-caste children, varnasankar praja, are avoided. (Laws of Manu, 5, Status and Duties of Women, Pages 189-192, The Source Book of Indian Philosophy). However, the notion influences all situations bringing man and woman together. Its effect on the organization of conjugal roles (Bott, Elizabeth, 1957, Page 53) is obvious. The independent organization of conjugal roles is one of the distinct features of the husband/wife relationship in Bakuli. The joint organization of this relationship is limited to a few occasions when the husband may take his wife and children for a ride or for a walk.
3. The separateness of husband/wife relationship is nicely symbolized in one of the contemporary Gujarati songs which says:

Mari veni man char char ful,

"My veni (a string of flowers in the hair) has four flowers".

In subsequent lines the wife describes the first three flowers, each symbolizing her relationship with three of her husband's relatives. What she says about the fourth flower - belonging to her husband - brings out the lack of contact between husband and wife among the Hindu Gujaratis.

Chothun ful jane heiyana harnu,
"Fourth flower belongs to the garland of my heart."

Ae to pelun ratrani nu ful.
"It is the night queen's flower"

This song shows the generalized effect of the sex separation concept. The night queen flower stands for the only contact husband and wife have after everyone else in the family has gone to bed. The husband, transposed as the night queen flower, becomes

alive for the wife only during the night.

4. A commercial appellation "company" attached to Vishnu Lord expresses a mercantile attribute characterizing the East-African Indians, whether a similar usage is common in Gujerat or not requires further research.
5. See appendix 1 for a plate showing the Bhajan group singing devotional hymns.
6. For a brief explanation of Norta, see the Case of "A Girl, A Boy, and Cassava at Norta Festival."
7. It is quite common among the Indians to call a man "bachelor" in absence of his wife. The neighbors confer upon the husband a state of "bachelorhood" for the period his wife is away from him.
8. Like the Leopard skin chief among the Nuer, the members of the Bhajan group enjoy a sacred position which carries no authority.
9. The Constitution of the Shia Imami Ismailis in Africa, 1962, His Highness the Aga Khan Shia Imami Ismailia Supreme Council for Africa.

... The idea of matrimonial discord is repugnant to Hindus. "The principle of divorce is alien to the social pattern in which Hindus have been living for centuries" (Spadix: 1938: 100). "Marriage is regarded as indissoluble and Hindu law knows no divorce. Neither change of religion nor loss of caste nor adultery, desertion, or prostitution on the part of the wife operates to create a dissolution of marriage" (Government of India: 1934: 42). As Hindus see marriage as an unbreakable, permanent bond, they expect husband and wife to adjust on the grounds that the other party has agreed to be

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CHAPTER 4

INFORMAL SETTLEMENT OF MATRIMONIAL DISPUTES AMONG THE
BAKULI HINDUS OF KAMPALA

1. Traditional Hindu Attitude to Divorce:

Bakuli Hindus derive their ideology of matrimonial disputes from a broader spectrum of Hindu culture. This ideology originates in Hindu scriptures which uphold the ideal of companionship between husband and wife as a life-long partnership. They believe that marriage is a sacrament lasting until one's life is over. "Marriage according to Hindu law is a sacrament and not a contract" (Government of India: 1956: 40). According to Hindu norm of matrimony, marriage is a union of two souls so pre-determined by one's previous births that a husband and wife may continue to meet each other in seven succeeding reincarnations. Once established, a marriage is reinforced by the idea of an ever-loyal faithful wife, pativrata stri. The ideal model of Hindu woman is provided by the figures of Sita, Savitri, Parvati, and other heroines who, in the great epics of Ramayana and Mahabharata, practice the ideal of chastity, faithfulness, and a complete submissiveness to their husbands.

The idea of matrimonial discord is repugnant to Hindus. "The principle of divorce is alien to the social pattern in which Hindus have been living for centuries" (Kapadia: 1958: 180). "Marriage is regarded as indissoluble and Hindu law knows no divorce. Neither change of religion nor loss of caste nor adultery, desertion, or prostitution on the part of the wife operates to create a dissolution of marriage" (Government of India: 1956: 42). As Hindus see marriage as an unbreakable, permanent bond, they expect husband and wife to adjust on the grounds that the other party has used to be Hindu by a conversion to another faith or has renounced

to each other's ideals, tastes and temperaments. For a Hindu woman, marriage is a complete fulfillment in her life - a symbol of her full identity in the society. The attitude to an unhappy relationship between husband and wife is, as an old mother said, that one should accept the page of fate as it has befallen onto you, Padyun panu nibhavi lavun iois.

2. The Divorce Act of Uganda (1904) and Hindu Marriage and Divorce Ordinance (1961).

According to Uganda's Divorce Act¹ only a person domiciled in Uganda can petition for a divorce.² Before a High Court entertains a petition for a dissolution of marriage, the petitioner has to establish the facts of his or her domicile in Uganda. A wife cannot have a domicile different from that of her husband.³ The High Court exercises its jurisdiction over a petition only after the petitioner's and respondent's domicile has been determined legally.

For Africans petitioning for a divorce, a subordinate court of the first class or chief magistrate or a magistrate grade 1 may exercise jurisdiction. But in all other cases, namely where Europeans and Asians apply for a divorce, only the High Courts can exercise jurisdiction. The Divorce Act permits dissolution of marriage,⁴ nullity of marriage,⁵ and judicial separation.⁶

A husband can apply for a dissolution of marriage on the grounds that his wife has been guilty of adultery. If a husband is a petitioner, the law⁷ requires him to name the alleged adulterer as a co-respondent to the petition.

According to Uganda's Hindu Marriage and Divorce Ordinance⁸ husband or wife may petition for a divorce on the grounds that the other party has ceased to be Hindu by a conversion to another faith or has renounced

the world by entering a religious order and has remained in such order for a period of at least three years prior to the petition. A wife can also petition for divorce if her husband has been guilty of incestuous adultery or bigamy with adultery; or rape, sodomy, bestiality, or adultery coupled with cruelty, or adultery coupled with desertion without reasonable excuse for two years or more.

A husband or a wife may apply for nullity of marriage if the respondent was permanently impotent at the time of marriage. If husband and wife fall within the prohibited degrees of consanguinity, a high court may declare such a marriage invalid on petition. The Hindu Marriage and Divorce Ordinance may not grant such a nullity on the grounds that the husband and wife fall within the prohibited degrees of consanguinity if the custom governing each party permits a marriage between them. If either the husband or wife was lunatic or idiot at the time of marriage, the court can similarly declare the marriage null and void. The court may also declare a marriage invalid if the former husband or wife of the party petitioning for divorce was alive at the time of the new marriage. But the Hindu Marriage and Divorce Ordinance does not grant nullity on this ground if the marriage was performed before the commencement of this Act. If the court finds that the consent of parties to marriage was obtained by force or fraud, the court may declare such a marriage invalid. The Hindu Marriage and Divorce Ordinance also provides for nullity of marriage on this ground.

A husband or wife may apply by petition to the High Court for a judicial separation on the grounds of cruelty or adultery or desertion without reasonable

be dissolved. This gives the Provincial Council and its excuse. If the court is satisfied that the allegations in the petition are true, and if there is a legal ground for granting the application, the court may decree a judicial separation.

The Ismailia Provincial Council enjoys jurisdiction over its Ismaili members on a number of matters under personal law. Acting as a judicial body, through its Provincial Tribunal, it awards divorces on grounds not covered in the Divorce Ordinance of Uganda. In contrast to Uganda law which provides for dissolution of marriage only on grounds of adultery or change of religion, the Ismailia Provincial Council awards divorces on the following issues besides grounds mentioned above:

- (a) respondent unknown for two years.
- (b) desertion for more than two years.
- (c) respondent's imprisonment for a period of five years or more.
- (d) respondent's failure to consummate the marriage or perform without reasonable cause, his or her marital obligations for a period of one year.
- (e) respondent either insane or subject to recurrent fits of insanity or epilepsy.
- (f) respondent suffering from a disease making marital life dangerous.

The wife in addition may petition for a divorce if her husband fails to provide her maintenance for a year or if her husband has become impotent.

The Ismailia Constitution also empowers the Provincial Council to dissolve a marriage in any case if the Council is of the opinion that in all the circumstances it is just and proper that the marriage should

be dissolved. This gives the Provincial Council and its Tribunal a procedural flexibility which the national law lacks by being archaic and rigid. Whether a high court in Uganda would recognize the divorce granted by the Ismailia Provincial Council or not - especially when the law of the community does not derive from national law - is an empirical issue for further research.

3. The Matrimonial Disputes:

The above substance of the Divorce Act of 1904 permits dissolution of marriage only where a husband or a wife can prove adultery. The judicial separation allows only that wife and husband should live apart following grounds other than adultery, namely cruelty and desertion. In addition, the Hindu Marriage and Divorce Ordinance permits spouses to petition for a divorce if the respondent has ceased to be Hindu by religion. With the law so archaic, the number of alternatives open to the spouses intending to obtain a divorce are as follows:

(a) They can obtain dissolution of marriage by proving in the high court that the other party has been guilty of adultery. The evidence in support of such petition may be genuine or fabricated.

(b) One of the spouses may desert the other.

(c) They can obtain "migratory divorce".

Hubert J. O'Gorman uses the term "migratory divorce" in his book (Lawyers and Matrimonial Disputes). As he uses the phrase, it is a divorce obtained by one of the parties moving to reside outside the jurisdiction of divorce laws of particular states or a country (O'Gorman: 1963: 16; 22-23).

following cases:

h. The Usual Mother-in-Law and a Deserted Housewife.

Case 1: (d) They can separate or reconcile outside the realm of law.

Manju's parents were greatly worried when she was seven. Of all the matrimonial disputes recorded, only one informant had been able to get a dissolution of marriage through a law court. He is alleged to have had a lawyer acting in conjunction with the lawyer representing his wife. Unless the wife had committed a de facto adultery, no Hindu husband would petition for a divorce. For, if the court proved that the wife was guilty of adultery, then she would lose her prestige in the community as well as an opportunity to re-marry. The husband convicted of adultery does not suffer the same fate. In such a case, when a petitioner desires to obtain a divorce on grounds other than adultery, the lawyers may work out the whole case, getting the wife to petition for a divorce. The lawyer in collaboration with both the spouses may produce evidence proving that the husband is guilty of adultery. Then the husband, as previously planned, may fail to appear before Court. Finally, the lawyer may apply for hearing ex parte and the court, on the strength of the evidence available, may grant a decree dissolving the marriage. Though there was no evidence to suggest that this practice, as outlined above, existed, some informants held that it did take place from time to time.

In this chapter of the four alternatives open to the spouses intending to obtain a divorce, we now turn to examining the matrimonial disputes as they occur outside the Divorce Act of 1904. In cases where adultery cannot be proved as a ground for divorce, matrimonial disputes are settled outside the framework of the instituted Uganda legal system, illustrated in the following cases:

h. The Cruel Mother-in-law and a Deserted Housewife.

Phase 1:

Manju's parents were greatly worried when she was seventeen years old, in 1958. They belonged to the Kumbhar jat which comprises only a few families which are scattered over East Africa. This often made it difficult for Kumbhar families to get spouses within East Africa. Some of these families are already linked by marriage and they are forced to seek spouses in India. Manju's father often reminded his friend Sombhai that he ought to look for a match for his daughter Manju. Sombhai knew of his mother's brother's son's son whom his mother, Induben, wanted to see married, so he suggested the match to Induben as well as to Manju's parents. After a few days' negotiations Manju and Suman were engaged. Later in 1958 they were married.

Phase 2

Manju went and lived with Suman and his mother in Mbale. Suman's mother, Induben, started complaining about the dowry Manju had brought, alleging that it was too small. She took possession of all gold ornaments and jewelry Manju had brought with her from Kampala. Induben, in addition, burdened Manju with all the housework usually done by a servant in a Hindu household. Induben also forced her from time to time to write to her parents so that they would send Manju some money towards her husband's household expenses. Manju increasingly found life intolerable as her mother-in-law resorted even to beating her and refusing to give her food. Once she gave Manju water treated with some magic formula, mantrelu pani. According to Manju, if she had taken this water, she would have become mad and Induben would have driven her out to get her son a new wife and a large dowry. The news of Manju's

SUMAN'S RELATIVES INVOLVED IN THE MATRIMONIAL DISPUTE H

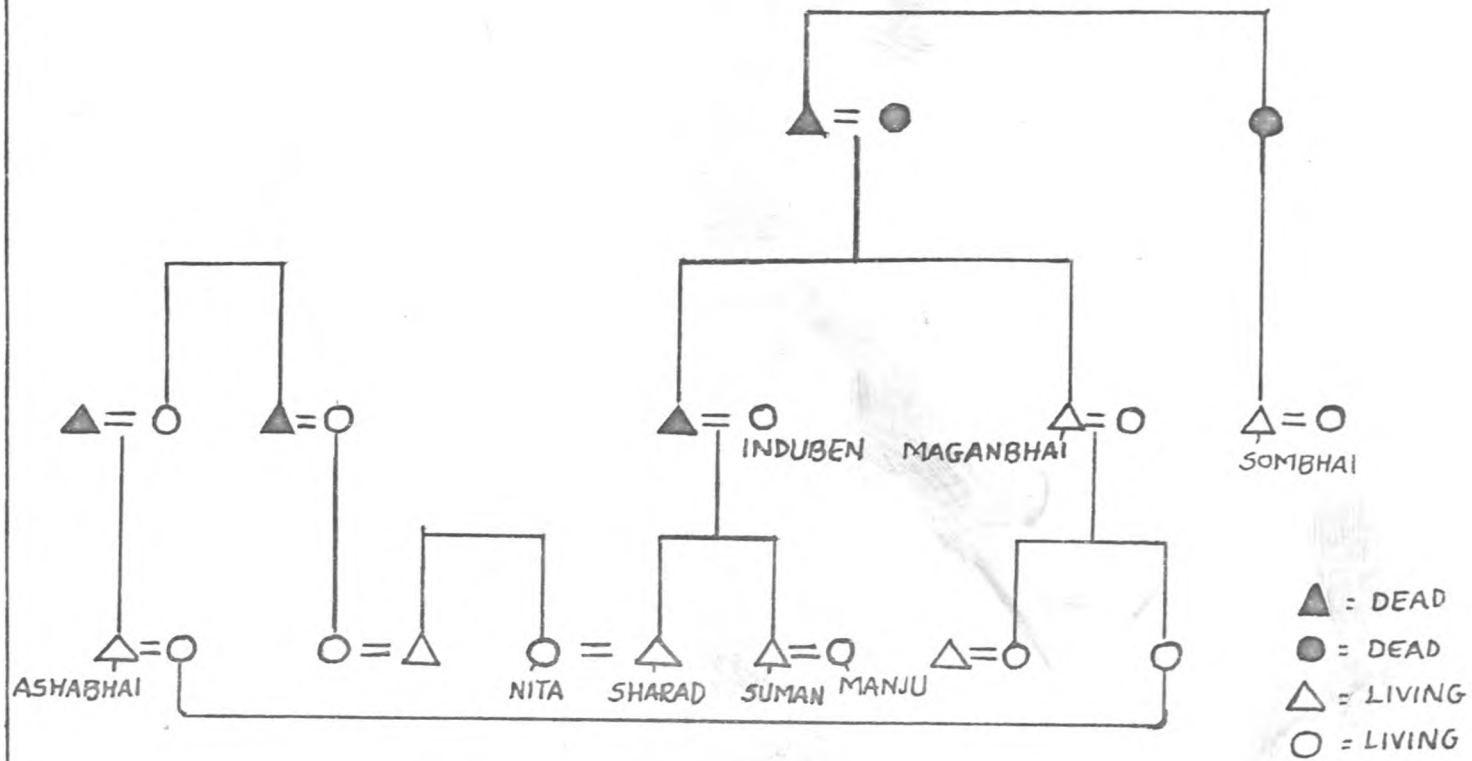


DIAGRAM 4

daughter disclosed to the in-laws in India that suffering came through relatives and friends to her parents in Kampala. They said it was her fate to suffer and they could do nothing to relieve her grief.

Suman was aware of his wife's suffering but was unable to remedy the situation. His mother was so dominating that she did not allow him a say in the issues affecting his wife's life. In any case both the husband and wife were so isolated from each other that there was little possibility for them to talk except in bed.

During the course of clashes between mother-in-law and daughter-in-law, Induben forced Manju to sign a paper saying that she had a premarital sexual relationship with a Kampala boy and that the child she was carrying did not belong to Suman. After a few months, Manju's parents received messages from friends and relatives saying that if they wished to save their daughter from "falling into the well", they must rescue her from her tyrannical mother-in-law. Manju's parents believed in the norm that once the daughter was married, her fate, happiness, and unhappiness lay with her husband and his family, no matter what happened to her. However, Manju's younger brother was much shocked and went to collect her despite his parents' refusal. Later, his mother followed him. She had decided to make no accusations against her in-laws. According to her, the "daughters parents always succumb" (to the husband and his family), dikri na mabap hamensha name. Once she was in Mbale, she alleged that she had come to fetch Manju as her father was on his death-bed. After Induben had seized her passport and other possessions, Manju was allowed to return to Kampala. Induben thrice attempted to get Suman married in India, during the period of his separation from Manju, but Suman's father's brother's

daughter disclosed to the jat members in India that Suman was already married to Manju in East Africa.

Phase 3: wife no longer married, she returned. Sharad

When Sharad, Suman's elder brother, was married to Ashabhai's mother's sister's son's daughter's husband's sister, Nita. Before Sharad and Nita were married, Sharad was already in love with a girl in Kampala. During his visits to Kampala he visited his girlfriend and lived with Manju's parents. During his stay with them, Sharad often condemned his parents, especially his mother, for her ill treatment of Manju. Thus he acquired some trust from Manju and her parents. While he was away, his girlfriend got married. Sharad, unable to believe this, wrote a letter to Manju, asking her to find out if the girl was really married. Manju's mother showed the letter to Sombhai to illustrate some of Sharad's "black doings", kala dhandha: Sombhai who was going to Mbale disclosed the matter to Sharad's mother who in turn ridiculed him. When Nita's brother discovered the story, he expressed his disapproval for what Sharad had done and threatened to take action if Sharad repeated the same mistake. Because Manju had disclosed his secret to his parents, Sharad began to see her as his enemy who had foiled his schemes.

Meanwhile Ashabhai's father died in Kampala in 1964. Sharad and his father's brother went to Kampala to attend the funeral and to offer their condolences to the family. At the same time Sharad decided to teach Manju a lesson. Having vowed that he would prevent any reconciliation between her and her husband, Sharad made every attempt to get his brother Suman a "divorce". As Manju said, he contacted Patel, a lawyer outside their jat, who drafted a letter purporting to declare Manju and Suman "divorced". Sharad tried to persuade Manju that she was no longer married, but she refused to stand with him as husband and wife. Induben retorted:

to sign the letter for a compensation of six thousand shillings, but knowing that lawyers could declare husband and wife no longer married, she refused. Sharad then attempted to get Manju's younger sister to sign the letter but failed.

Finally after conveying the threat to Manju that she would be further harassed in Kampala, Sharad returned to Mbale.

Phase 4

Nineteen-sixty-seven was Manju's ninth year of separation from her husband. Her mother often asked Ashabhai what course of action Manju ought to take. Ashabhai encouraged her to return to Mbale and to demand her rights as a wife or ask for maintenance back-dated to 1959. Ashabhai introduced her to a jat lawyer who promised to give her a letter of introduction to another lawyer of their own jat in Mbale. The Kampala lawyer explained the situation to Mbale lawyer, asking him to settle the dispute in his chambers in Mbale. Manju then went to Mbale and lived with Suman's father's brother. Then she went to Bhikhubhai, the Mbale lawyer, and gave him her marriage certificate and the photographs taken during her marriage ceremony, for she was certain that Induben might deny that her son was married to Manju. Bhikhubhai was a prominent jat leader as well as a successful lawyer. Bhikhubhai first called Suman to his office and asked him if he was willing to take Manju back. Suman had no objection to accepting Manju back if his mother agreed. Bhikhubhai's wife then called Induben to her husband's office and asked her if she would accept Manju back.

At first Induben denied any knowledge of her son Suman being married to Manju, but Bhikhubhai showed her the marriage certificate and a photograph, showing them standing as husband and wife. Induben retorted

that it was her son who was married to Manju and not she. Therefore it was entirely up to her son to decide whether he wanted to accept Manju or not. Bhikhubhai pointed out to Induben that if they did not accept Manju back, she could demand a separate household and the expenses for educating her daughter back-dated to 1959. The total sum of these expenses may amount to twenty thousand shillings. When this fact was brought home to Suman and his mother, Induben yielded to accepting Manju back. The following day Induben, Suman, Suman's father's brother, his wife, Suman's sister's husband, Ashabhai's father's brother's son and other members of Kumbhar jat gathered at Bhikhubhai's house. Men and women were separated in two different groups.

Once all the people had gathered, Bhikhubhai's wife called Manju to where the men had assembled. Bhikhubhai's wife asked her to render an apology to Suman. Manju bowed before Suman and said, "forgive my mistakes", Mari bhulo maf karo. She also similarly apologized to Induben who blessed her by putting her hands on her head. This done, Bhikhubhai's wife distributed sweets to all present, symbolizing the settlement and reconciliation between husband and wife and wife and husband's mother. At first Induben refused to eat the sweets offered. But Bhikhubhai reminded her that the matter was over and that she should forget the past. Sweets were distributed to all those who were present, the first morsel going to Induben.

Before the jat members dispersed, Bhikhubhai asked his younger brother to take Manju, Suman, and his mother to their house. Before they left, Bhikhubhai told Induben that he was going to keep spies to see that she did not mistreat Manju. If she ill-treated her, then she would have to pay a large sum of money in compensation to Manju, if she decided to stay by herself.

Manju lived with her husband for three months before he migrated to Britain. Though he has not written to Manju often, he has asked her to send their marriage certificate and their child's birth certificate so that he could obtain income tax exemption in England. Manju says the true settlement of the dispute will be realized when her husband calls her to Britain.

1. An Ill Husband:

Babu Jobanpitra and Savita Kotak, both Lohana by ist were married six years ago in Tabora, Tanzania. Babu's father's friend who happens to be a distant relative of Savita's father had arranged the marriage between them.

Soon after the marriage, Savita discovered that Babu was ill frequently and on the fourth night after their marriage, after an hysterical fit, Babu had become unconscious for a while. Savita went to accuse all Babu's family for deceiving her into marrying a sick boy. As time went on, Savita's temper grew worse. Babu could no longer take her out on Sunday evening for a walk, as he would catch cold and fall sick for a long period of time. Babu's mother says that Savita had an independent temper, for she never listened to what her mother-in-law had to say. She would perform stri charitra⁹ and pretend to remain unwell so as to avoid cooking and other household duties. After Savita had several quarrels with Babu's mother, Babu was angry. He threatened to send Savita away to her natal home. Savita, in rage, collected her belongings and went to a relative's place in Kampala from where she travelled to Tabora.

After her departure, Babu wrote several letters to her, explaining to her that if she returned to Kam-

pala, he would set up a separate household for both of them after her initial stay with his parents. This he said would have to be done; otherwise the people would say that "because the wife came, the son decided to leave the family", namely Vahu avi etle dikro chuto thai gayo. Savita's uncle came to see Babu after this correspondence and promised to arrange to send Savita as quickly as possible. However, in the end, Savita did not come. Her passport was not yet ready.

Finally Babu wrote to Lohana Mahajan, the body representing the Lohana jat in Tabora, asking them to settle the dispute. But to this date, he has not received any direction from the Lohana Mahajan. Babu thinks the Lohana Mahajan is an inactive body.

This year Babu wrote a letter to the Registrar of Uganda High Court, expressing his intention to file a divorce suit against Savita. He had received a letter from the Registrar, telling him that unless he proved adultery, the court would not grant a dissolution of his marriage. Meanwhile Babu, intending to marry another girl he had met, was uncertain as to what he should do to get a divorce from his wife. He said he may employ a lawyer to frame all the evidence in such a way that the court would grant a decree of divorce.

J. The Wooden Balls of Matrimony:

Naran, a Patel from Kathiawar, part of Maha Gujarat, was married five years ago to Lila in Bombay.

As soon as Lila came to Kampala, Naran's mother scolded her for being a "fashionable Bombay girl". Naran's mother dumped all the cosmetics Lila had brought from Bombay into the latrine pit at the back of their house. Since then Lila quarreled with her mother-in-law incessantly on small issues of household work.

Naran's efforts to make peace between them failed. He summed up Lila's problem in the following way: "Lila's wish could be summarized in three words: I want to live separately, jada rehevan che.

Naran disapproved of Lila's wish to break away from the family, for all the seven brothers lived together like the five inseparable Pandav brothers, panch pandavo, in the epic Mahabharata. Any thought of breaking away from the joint family, sanyukta kutumb, especially after his father's death, was repugnant to Naran. His mother would consider such a separation as an advantage derived from the father's death and Naran had no desire to hurt his mother.

After ten months of matrimonial conflicts, Lila went to India to attend her sister's marriage. Naran wrote to her that she should not return to Uganda and that he would write to their jat council in Bombay to grant them a divorce. The jat council, with the mutual consent of Lila and Naran, granted them a divorce, a fargati.

Naran thinks marriage always brings trouble and is very much like doing something impossible and least desirable. Even though one may think that by marrying, one has sweet balls of marriage to consume, the balls of matrimony are wooden - hard - and whether you eat them or not you always repent. As they say in Gujerati: lakdana ladu khay te pan pastay ane na khay te pan pastay.

k. The Separated Wife and a Husband:

Ambalal Kakad's daughter Meena was married to Mohan Samani of Kabale. The proposal for a marriage between them had come to Ambalal through his friend Bhagwanji,

After Meena had delivered a baby, her husband or his parents showed no desire to call Meena back to

who as a prominent figure in the Lohana jat, knew Mohan's father, Kakubhai. After meetings between elders, Mohan and Meena were allowed to "see" each other. The marriage was fixed and in due course Mohan and Meena were married.

After their marriage, Meena went to live with Mohan and his parents in Kabale. Her new role as a housewife imposed restrictions on her for she could not have her evenings out as she spent most of her time cooking food for a large family. Her husband's mother, expecting Meena to be an expert cook, thought that Meena would take over most domestic duties from her and her daughters. Like a loyal and faithful wife, pativrata stri, Meena devoted most of her time to household duties of making pickles, chutneys, and other delicacies besides baking and serving hot cakes, chapatis, to all the family three times a day. Meena said she had very little contact with Mohan for he spent most of his time in the shop. They met only at night when Meena would be fast asleep after a day's toil. Mohan's father had already discovered from a letter Meena had written to her parents that she was overworking and that no female members of the house gave her any assistance. But Mohan's father had no courage to interfere in what most people regarded as a women's quarrel. Through relatives and friends, Meena's parents discovered that she was pregnant. They wrote to Mohan's parents and asked them to send her back to Kampala where she would receive better medical treatment. When Meena came to Kampala, her father said she was exhausted.

Phase 2:

After Meena had delivered a baby, her husband or his parents showed no desire to call Meena back to

Kabale. Nor did the husband or his parents come to see the baby and give her the traditional sixth day gift, chatthi, after birth. Kakubhai wrote to Ambalal that they were not invited to see the daughter, though, according to Ambalal, they did not require such an invitation traditionally. Mohan refused to talk to Meena when she attempted to call him on the phone.

Meanwhile the rumors spread among the Lohana that Mohan had refused to call Meena back to Kabale and that they were contemplating divorce. In view of these rumors, Kakubhai asked Ambalal to send Meena back to Kabale but Ambalal refused to send her unless Mohan came to fetch her.

Phase 3: Bhagwanji, who had played a leading part in arranging the marriage between Meena and Mohan, went to Kabale about a business which he conducted in partnership with Kakubhai's sister's son, Jagdish. Jagdish asked Bhagwanji if he could settle the dispute between the two families. To him Bhagwanji said that the girl would be willing to return home only if her husband were prepared to live apart from the family.

When Jagdish came to Kampala, he met Meena and her parents to sort out the differences between the two sides. But Meena demanded that a compromise would be acceptable to her only if Mohan agreed to live away from his parents. This, Jagdish said, Kakubhai would not accept. He would rather have his son divorced than see the family break up.

On the marriage of Meena's relative, her father's brother came from Bombay and invited Kakubhai and his

wife to attend the meeting so that the two sides could discuss a settlement. After Kakubhai and Ambalal together with others had had a meal, Meena's father's brother urged them to settle their difference. After a short discussion, both sides accepted the decision that Meena should return to Kabale and live with Mohan and his parents. Then Kakubhai and his wife would go on a pilgrimage to India. During their absence Mohan and Meena would set up a separate household. After this decision, Meena's uncle asked her to bow before Mohan's parents as a mark of her submission and return to them. But Meena's mother said that the settlement would be acceptable to her only if Mohan came to collect Meena. Kakubhai and his wife were much annoyed and added that Mohan was their excreta and urine, qumutar, implying that it was their decision which was more important than Mohan's wishes which did not matter. They rejected the unreasonable demand that Meena's mother had made. Meena's uncle reprimanded Kakubhai and his wife for creating difficulties when the settlement was in view. Hurt and humiliated, Kakubhai and his wife returned to Kabale.

Phase 4

When the president of Kampala, Lohana Mahajan, went to attend a wedding in Kabale, Bhagwanji asked him to do something about the dispute. The president, who represented the Lohana jat, knew both families well and as leader of the Lohana, he could influence the disputants in accepting a settlement. He met Meena's parents after he had talked to Kakubhai and his family. He evaluated the problem and judged that both the sides were responsible for the rift created between them. He suggested the dispute was very much between the affines and not really between husband

and wife who were willing to live together. He asked Ambalal to yield in the dispute as the "daughter's father should give in", Dikrina bape namtu apvun joie. Neither side showed any willingness to settle their differences any further.

The president of the Kampala Lohana Mahajan went to attend a second marriage in Kabale. He met there the head of the Lohana Mahajan in Kabale who did not think divorce would be a correct solution for this would leave a blemish on the family name and make it difficult for Kakubhai to get his daughters married. Bhagwanji was present at the wedding and said that if Mohan's father wanted to see his daughters married, he should let Mohan and Meena live separately without jeopardizing Mohan's interest in the business. As the presidents of Kampala and Kabale Lohana Mahajan were busy attending receptions and parties, however, no settlement was realized during the course of the wedding.

For a few months Kakubhai and his wife went to India on a pilgrimage. After Kakubhai had returned from India, his greatest worry was to get his daughter Sumita married. He expressed his anxiety about Sumita's marriage to Ruparelia who had his daughter married to Bhagwanji's younger brother in Kampala. Ruparelia was willing to find Sumita a husband, but, he said, there would be a hitch in the negotiations, for the groom's family would want a detailed history of Sumita's family. This disclosure would bring Kakubhai's family a bad name.

Ruparelia suggested that Kakubhai should go to Kampala and through the offices of the president of Kampala Lohana Mahajan, settle this dispute with Ambalal and bring Meena back to Kabale. Then it would be easier

the joint family is perpetuated. Besides the four

for Kakubhai to arrange for Sumita's marriage.

When Kakubhai came to Kampala, the past and present presidents of the Kampala Lohana Mahajan assured him that they would persuade Ambalal to send Meena back to Kabale provided that Mohan and his mother treated her fairly.

At a brief meeting arranged at the past president's house Kakubhai, his wife, Ambalal, his wife, Mohan and Meena were present. The presidents of the Kampala Lohana Mahajan assured Ambalal that his daughter would suffer no ill treatment if she returned to Kabale. Kakubhai gave assurance to Ambalal that they would treat Meena fairly. The settlement between the families was symbolized by a meal they took together on the same evening. The following day, Meena and her daughter returned to Kabale to live with Mohan and his family.

4. Discussion:

a. Matrimonial dispute as derived from the conflict between son's wife and mother:

These matrimonial disputes have a special feature in that the separation between husband and wife is not derived from a discord between the two. It is the conflict between wife and husband's mother that gives rise to the dispute between husband and wife. The husband is faced with the following alternatives: First, it is either mother or wife, kan to ma kan to bairi as Naran put it in the case of "Wooden Balls of Matrimony." If the husband sides with his mother, he has to forgo his wife who will usually return to her natal home. If he sides with his wife, he has to break away from the joint family to set up a separate household. If none of these things happen, the conflict within the joint family is perpetuated. Besides the four

matrimonial disputes above, eleven instances of conflict between husband's mother and his wife were noted. Of these, seven married couples had separated from the parent family to set up their own households. Four of them, though willing to live away from their families, did not have an income large enough to support them outside the families. Of all the fifteen instances of matrimonial discord, only one case was that of a genuine conflict between husband and wife, not involving either husband's parents or wife's family.

The settlement of disputes may have regard to any one, or more, of the following: jural principles, procedures, or personnel. With regard to jural principles, matrimonial disputes described fall outside the jurisdiction of a court of law. In Uganda the high court exercises its jurisdiction over matrimonial disputes by a predetermined body of rules, an apriori corpus juris embodied in the Divorce Act of Uganda which the High Court applies to all matrimonial disputes coming before the Magistrates and the High Court, irrespective of the social group to which the disputants belong. The settlement of matrimonial disputes among the Bakuli Hindus involves the members of one's jat. The jat members or jatbhai are either consanguineous kin or affines or potential affines: it is they who help to settle the matrimonial disputes within the bounds of endogamous social group. Involvement of outsiders is limited to expression of sympathy. But, as in case A, the persons related to Manju direct her to take the steps to settle the dispute. One of them guides her to a jat lawyer in Kampala. The jat fellows elsewhere prevent Suman

the marriage that Manju should accept the pain of fate
Suman from getting married again. Finally the settle-
ment of the dispute is achieved within the context of
the jat. Similarly, the discord between Babu and Savita
(An Ill Husband), Naran and Lila (Wooden Balls of Mat-
rimony), and Mohan and Meena (The Separated Wife and
Husband) is limited to the framework of the jat group
within which the Divorce Act of Uganda has no direct
relevance.

The settlement of disputes involves ethics or
norms as much as the interest of the parties concerned.
Outside the jurisdiction of the High Court, submission
to social norms depends upon the high or low status
accorded to the spouses.

Manju's parents submit to the socio-ethical notion
that "the daughter's parents always succumb to husband
and his family", dikrina mabap hawensha nana. This is
evident in Manju's mother's unwillingness to rescue
Manju for her fate is seen as tying her in complete
submission to her husband forever. In the final settle-
ment it was Manju who had to ask for forgiveness. Neither
her husband nor mother were questioned despite the way
Suman's mother had ill-treated Manju. The settlement
conferred upon Manju the subordinate status generally
accorded to a woman in Hindu marriage. In Case k, the
president of the Kampala Lohana Mahajan makes a similar
reference to Anbalal whom he expects to give in for
"daughter's father should give in; namely, Dikrina
bape nantu apvun joie. Thus such norms of behavior
defined as things good or bad, desirable or undesirable,
right or wrong, are operative in the attainment of a
settlement.

The interests of the spouses is an equally crucial
factor in the decisions made. The norm of maintaining

the marriage that "one should accept the page of fate as it has befallen upon one's self", Padyun panu nib-havi lavun joie, does not apply to Suman and his mother with the same degree of effectiveness as they hold the upper hand in the dispute in Case h. A threat to their economic interest moves them towards a reconciliation with Manju. At this point the application of values is weakest though not absent. The potential claim of alimony that Manju has over her husband deters him and his mother from perpetuating the separation for a longer period. Similarly in Case k, the Lohana Mahajan, the body representing all members of Lohana jat, upholds the ideal of good behavior. Everybody accepts, almost as a rule, that husband's mother and wife should live in harmony by a process of give and take. If there is any disruption in the relationship between husband and wife, which may derive from a conflict between his mother and wife, they should maintain unity, samp, in the family, the kutumb. However, the events of the dispute show that the disputants often abrogate the codes of good behavior if it serves their interest. In Case k, the disputants do not compromise out of any sense of good or justice. When Kakubhai discovers that Mohan's separation from Meena would ruin opportunities for his other daughters to marry, he accepts Meena back, at the risk of bringing the conflict back into the family, to retain his family prestige by getting Sumita married subsequently.

The Uganda High Court has a definite sequence of procedures to govern the dissolution of matrimonial disputes between spouses. Magistrate's Act, Evidence Act, and Civil Procedure Act (10) predetermine the conduct of disputes and to a certain degree the administration of justice. These and other acts also decide the application of law, the presentation of evidence, and the enforcement

costs payable" (Datta 1955: 55). The Zambarda in India enjoy a considerable judicial autonomy, keeping

of court decisions as carried out by police and prison authorities. Outside the province of the judiciary, the assembly of jat members is an occasional event, for the jat members do not meet in any official fashion to take decisions in various matters. A prominent man in the jat may call fellow members to express their opinions or to influence the course of action of the disputants involved. In case of any matrimonial dispute, the Lohana Mahajan president is prompted to intervene much more by the links that he may have with the family concerned rather than by his official jural position in the Lohana Mahajan. The meetings the president has with the disputants are not derived from the authority of the president. Instead, the president appears to act whenever a joint gathering, such as a wedding, bringing the jat members together, takes place. In the two instances there is no evidence to suggest that the jat councils with elders act with the sophistication of gram panchayat, more commonly known as "village panchayat" in social anthropological literature.

Panchayat is a central council in villages in India. It comprises the members of dominant jats and other influentials. Besides shouldering the administrative responsibilities of village affairs, as Dube says, "It hears and decides minor disputes which do not go to the courts of law, criminal, or civil". (Dube: 1955: 46).

Besides village panchayats, there may be panchayats made up of endogamous sub-castes comprised of several villages. "Cases of divorce, failure in fulfilling agreements made before finalizing marriage arrangements, serious sexual lapses, and of breaches of the social norms of caste, such as incest, breaches of rules of endogamy...would be under the jurisdiction of such a caste panchayat" (Dube: 1955: 55). Thus Panchayats in India enjoy a considerable judicial autonomy, keeping

the disputes away from going into the instituted legal machinery. But in settlement of matrimonial disputes in Bakuli, it is not true to say that panchayats do not exist like "service societies (in East Africa)...acting like village panchayats" (Bharati: 1965b:137). The meetings held in the cases of Cruel Mother-in-law and a Deserted Housewife were purely affairs of jat, devoid of any official character. The assembly of jat members in a private house has no seating arrangement resembling that in a court of law in any way. The separation of males and females into two rooms in Cruel Mother-in-law and a Deserted Housewife, is sociologically decided rather than jurally. It is unusual, by and large, among the Hindus for an elderly man to speak to a young woman or a girl directly unless he is her father or her husband. The polarity between sexes as examined in Chapter 3 is retained in the assembly in A Cruel Mother-in-law and a Deserted Housewife. In both Cases h and k the aim of the assembly is to achieve a settlement. The lawyer in Case h and the president of the Lohana Mahajan in Case i do not conduct a trial, cross-examining the witnesses to uncover the truth of the matter. However, in Case h, Manju does produce her marriage certificate and photographs showing herself and Suman as husband and wife to establish the fact of her marriage. Once the husband and his mother show a desire to accept Manju back, a step is taken to symbolize the reconciliation by a distribution of sweets. Similarly, the disputants have a meal together to show that no enmity exists between the two sides in Case k. In Case h the jat lawyer enforces the settlement by asking his younger brother to take Manju to her husband's house. By threatening Suman's mother that spies would keep a watch over her, the lawyer makes an attempt to ensure that Suman's mother gives good treatment to Manju as implied in the

settlement. The president of Lohana Mahajan in Cases i and k has a weaker influence than the lawyer in Case h. An Asian lawyer belongs to the legal profession which is largely external to the average Hindu, Sikh, or Goan. However, the skill, knowledge, experience, and a degree of success a lawyer achieves in his own profession gives him prestige and standing in his jat. By his access to the legal machinery, largely alien to the disputants, he is believed to be able to influence the course of events outside the courts and to alter the decisions made. His influence may acquire an element of power if he can strongly modify the conduct of individuals by imposing some kind of diffuse sanctions, as in Cruel Mother-in-law and a Deserted Housewife. The personnel involved in the settlement in the disputes are consanguineous and affinal relatives of the spouses, jat lawyers, a wife of one of them, leaders of the jat council and other jat members. In both cases bride's parents consult the matchmakers once the brides return to their natal homes. Manju's parents consult Sombhai, Suman's father's father's sister's son, once Manju has returned home. Similarly Ambalal trusts Bhagwanji who makes attempts to direct the efforts of the presidents of the Lohana Mahajan, to arrive at a settlement with Kakubhai and his family. Though Bhagwanji is not able to impose a sanction upon Mohan, Sombhai in Case h discloses to Suman's mother the bad conduct of her elder son in Kampala. This is a diffuse sanction reminding Suman's mother that her charges of sexual promiscuity against Manju are repeated by her own son, and hence an indirect suggestion that as Suman's mother accepts her elder son, Sharad, so also she ought to accept Manju. While Sharad attempts to enforce a "divorce" over Manju, Manju firmly believes that lawyers have the authority to grant a divorce in their offices and that such a

divorce would be as legitimate as one obtained in a court of law.

That lawyers do not have authority in law was a matter unknown to all the disputants except one husband in the case of An Ill Husband who, being an accountant, had accumulated a considerable experience in dealing with the law. Part of the general ignorance of law arises because the national legal system is regarded as alien, exotic and often not catering for the specific needs of the social group concerned. Therefore one's own brother, apao bhai, who is a member of legal profession either links the disputants to the wider system of law or insulates them from it, outside the court, by providing a familiar context of kith and kin for settling the matrimonial disputes. In both the cases (Cases h and k) the lawyer and the presidents of the Lohana jat act as third party whose sole aim is to bring about a reconciliation between the disputants.

The context of one's own jat, lack of unfamiliar atmosphere of courts, understanding of Gujarati as a medium of communication between all sides, knowledge of one's kin and affines are some of the features of settlement of disputes among the Hindus and other Asian residents of Bakuli.

Notes

1. The Divorce Act of Uganda, Chapter 215, pages 3736-3746, Laws of Uganda, Volume VI, 1964. Also see The Divorce Ordinance, 1904, published in the "Official Gazette", no. 118, October 1, 1904. The Divorce Act of Uganda has a word to word similarity to Indian Divorce Act of 1869. See pages 74-76, Social Legislation, Government of India, 1956.
2. Ibid., Section 2(a) (b).
3. Manjula Vs. A. T. Vasani, High Court of Uganda Bulletin, 42/63.
Also see Malek Sultan Vs. Sherali Jeraj, Journal of African Law, 1957, Volume 1, pages 58-79.
4. The Divorce Act of Uganda, op. cit., Sections 1, 2, (a) (b).
5. Ibid., Sections 12, 13(1) (a) (b) (c) (d) (e) (2), 14.
6. Ibid., Section 15.
7. Ibid., Section 6.
8. The Hindu Marriage and Divorce Act, 1st September, 1961, Chapter 214, Pages 3727-3733, Laws of Uganda, Volume VI, 1964.
9. Stri Charitra literally means "woman's character". But in the present context it means the pretences women may make to avoid work.
10. The Magistrate's Courts Act, Chapter 36, Pages 652; Evidence Act, Chapter 43, Page 744; and the Civil Procedure Act, Chapter 65, Page 952, Laws of Uganda, Volume II, 1964.

control its allocation to non-Africans as a matter of public policy from as early as 1908.

CHAPTER 5

Rent Disputes

The relationship between landlords and tenants in Bakuli is often characterized by hostility and tension sometimes amounting to disputes about the collection of rent arrears. In this chapter these rent disputes are examined in the context of the Mailo Land Law that governs all the transactions between the native landowners and the non-natives in Buganda province of Uganda.

1. Mailo Land in Buganda:

In Buganda land is divided into two categories: Crown land and Mailo land. The land within Kampala City Council constituted part of the Crown land. Since February 1968, the extended boundary of Kampala City Council includes large areas of Mailo land. The term Mailo is derived from the English word mile, "the original allocation of land in Buganda being in square miles" (Henry West: 1964: A). However, the word connotes an estate of any area (Cf. Thomas & Scott: 1935: 104). In the beginning of this century it was thought that the coming of Europeans and Asians would encourage the development of Mailo land along the modern ideas of farming. The few sales of Mailo estates to non-Africans were not very popular in Buganda as the Baganda were not happy about the allocation of land to non-Africans on what was then known as Kenya Highlands. Consequently, the sales of Mailo estates were prohibited by 1916. The Buganda Possession of Land Law, the Native Official Estate Ordinance 1919, and the Land Transfer Ordinance 1906 and 1944 prohibited all the sales of Mailo land¹ to non-Africans. Mailo land was so categorized to of the price would be considered effective upon a European official being satisfied that purchase price

control its alienation to non-Africans as a matter of public policy from as early as 1908.

"The occupation of land by non-Africans in Buganda is regulated by two separate laws: the Possession of Land Law which is one of the native laws of Buganda and which prohibits and makes a punishable offense the permitting by an owner of a mailo of "one who is not of the protectorate" occupying his Mailo except with the approval in writing of the Governor² and the Lukiko; and the land Transference Ordinance, which is of general application throughout Uganda and prohibits the occupation of any land of which an African is a registered proprietor without the consent of the Governor".³

Evidently, in land transactions between natives and non-natives, an intention was expressed to protect the interest of native Africans from non-natives who, it was feared, would obtain land and thus undermine the indigenous tribal interests. For the sale of Mailo land, Thomas and Scott note that "necessary consent (for the transfer of Mailo land) is sparingly given, and that in respect of leases only, when the Governor is satisfied that consent will not prejudice either general tribal interests or those of the present occupiers of the particular land" (Thomas & Scott; 1935; 108).

The authorities also feared that the non-native would employ unfair means to acquire land, hence the provisional transfer agreements between non-natives and natives were made in presence of a District Commissioner who was supposed to explain the terms of an agreement to the native and "to satisfy himself that he (the native) understands them". A similar anxiety was expressed about the purchase price. The payment of the price would be considered effective "upon a European official being satisfied that purchase price

rent was obtained, he would lose two or three months' has been paid to the native" (Allen C. Raymond: 1913:9).

2. The Legal Framework of Mailo Land Law in Buganda:

The legal framework of the land law which is crucial to the argument presented here suggests that the Mailo Land Law⁴ prohibits not only non-Africans from buying it but also Africans from selling it to non-Africans. Contravention of the provisions of this Act may bring the convicted offender a fine not exceeding two thousand shillings or imprisonment for a period not exceeding twelve months or both such fine and imprisonment. Before the abolition of the Kabakaship and the Ganda Lukiko, the non-native lessee obtained the full consent⁵ undergoing an elaborate process in the following way. First of all the non-native buyer procured the consent of the native landowner. Secondly his application went to the Lukiko. Two Lukiko ministers, namely the minister of finance, Omuwanika, and the minister of justice, Omulamuzi, sanctioned it before transferring it to the Lukiko Prime Minister, the Katikiro for further approval. The Land Commission then gave the final consent. Once the Land Commission endorsed the application, the non-African could formally acquire the land leased this way. A non-native lessee of Mailo land was also required to get the consent of the native land owner, Lukiko ministers and the Central Government Land Commission if he desired to rent the premises constructed on Mailo land. However, several factors discouraged the landlords from acquiring the legal consent to effect the tenancy agreements. It took landlords usually between two to three months to obtain the consent of Lukiko ministers and the Central Government Land Commission. If the Landlord kept his premises unoccupied until the full con-

However, often natives and non-natives establish a quasi-contractual relationship, the former transferring his

sent was obtained, he would lose two or three month's rent. The cost of obtaining consent was 100 shillings per tenant in 1958 and the present charges vary between 250 to 300 shillings. First the landlord had to pay a sum of money to the Ganda landowner to obtain his consent. He also had to pay charges to acquire consents from the Lukiko ministers and the Central Government Land Board. These costs made consents expensive to obtain. Sometimes the tenants changed so rapidly that it became difficult for landlords to obtain the consents. Consequently most agreements did not have the backing of the Governor's consent.

After the abolition of the Kabakaship and the Ganda Lukiko in May, 1966,⁶ the consent mechanism had fallen in disuse. It was reported that about 2000 applications for transfers and leases were pending in the Land Office. By a statutory Instrument⁷ published on December 22, 1967, the power vested in the Lukiko and the ministers to give approval for Mailo land transfers and leases would be exercised by the Minister responsible for Mineral and Water Resources. This instrument does not dispense with the consent mechanism but empowers the Minister to grant the consent in place of Lukiko, its ministers and the Land Commission. At present, the non-native lessee requires the consent of the Ganda landowner and the minister responsible for Mineral and Water Resources to legalize the lease and tenancy agreements. Whether this change will speed up the consent-giving mechanism or not is a matter of further empirical investigation.

A Mailo land transaction contracted between a Ganda owner of the Mailo land and a non-native lessee becomes legally void without the Governor's consent. However, often natives and non-natives establish a quasi-contractual relationship, the former transferring his

Mailo to a non-African. Then they purport to have a legal contract, without the Governor's consent to support it. In case of a dispute between the Ganda land owner and the non-African lease holder, the purported contract has no legal basis. Unless such a contract is appropriately supported by the Governor's consent, the non-native lease holder would not succeed in winning a dispute even on an equitable claim originally made on the strength of the unlawful contract. The non-native can win the dispute on a legitimate claim only if the Governor's consent were obtained at the time when the Mailo land transaction was carried out. This legal requirement does not apply outside the framework of Mailo land Law. On a limited number of freehold leases created in Buganda, the lease holder is not required to have the kind of consent which makes a Mailo land transaction legal.

In any Mailo land dispute between the non-native lessee and the Ganda African landowner, if the non-native obtains the consent retroactively, this retroactive consent does not make the lease agreement legally enforceable.⁸ The Land Transfer Act is intended to benefit the African land owner as a registered Mailo owner, making it clear that a non-native should not be in the possession of land,⁹ unless he has acquired the full legal consent. The consent clause of the law affects on one hand the legal relationship between a Ganda and a non-native and also similar relationships between non-natives.

In a dispute about the specific performance of a contract between two non-natives on Mailo land, the contract would be regarded as unlawful. In a dispute between Motibhai Manji Vs. Khurshaed Begum,¹⁰ the argument was advanced that the contractual relationship between two non-natives on a Mailo did not fall

within the scope of Mailo land Law. For a law primarily intended to safeguard the native landowners, could not apply to two non-natives. However, the law court did not accept this argument. A passing allusion to the problem of land transfer between races has been made. "It is reported that there is some dissatisfaction in relation to consents for transfer of Mailo land to non-Africans as required under the Buganda Law.¹¹ But no systematic attempt has been made to specify the cause, nature, and extent of this dissatisfaction and its influence on development and urbanization on Mailo land.

3. Mailo Land Law and Rent Disputes:

The landlords saw the law as tricky, bad, and inflexible.

- a. The length of time involved in obtaining the Governor's consent.
- b. The problem of obtaining the Governor's consent when the tenants are unlikely to occupy a residence for a long time.

The landlords saw the consent clause of Mailo land law as detrimental to their own interests, because in case of a dispute they had no legally enforceable rights.

Rent has been an important issue in Bakuli. Rent control was introduced in Uganda in 1943 in the form of Rent Restriction Ordinance¹² to protect the tenants from being exploited by the landlords. The fifties were years of prosperous trade and commerce in Uganda. At this time Kampala experienced an acute shortage of housing. To off-set the losses imposed by the Rent Restriction Ordinance, the landlords usually demanded paghdi¹³ (literally "turban", meaning premium or key money) on business and residential premises within the vicinity of Kampala. However, rent control was gradually abolished in phases between 1957 and 1960.¹⁴ Pre-

ceding 1962 there was a boycott of Asian shops in Buganda when the movement to achieve independence was gathering momentum.¹⁵ Trade between Asians and Africans in Buganda came to a virtual standstill. This was a period of uncertainty pervading all sections of Asian community. The sense of insecurity was further accentuated by the disturbances in the Congo in 1961-62. Several informants held that Bakuli was empty at this time when a large number of people living in Bakuli moved as close as possible to the city center. The reason given for this movement was that the city center was likely to be more secure than peripheral areas like Bakuli, should violence on the Congo scale break out. The informants state that as a result rent dropped in Bakuli, although no evidence to support this was available. The post-independence period after 1962 in Uganda was generally a period of stability as far as the minority Asians were concerned. This is reflected in a steep rise of rents from 50% to 100% of the 1962 rent in Bakuli as it is obvious from the following table:

TABLE 3*

RENT INCREASE IN BAKULI FROM 1962 TO 1967^{1/2}

Tenant	1962	1963	1964	1965	1966	1967
Maganbhai	50/-	50/-	50/-	75/-	100/-	100/-
Chandubhai	100/-	100/-	150/-	150/-	200/-	200/-
Shanjibhai	125/-	156/-	185/-	225/-	310/-	410/-
Firozali	175/-	175/-	250/-	360/-	360/-	410/-
Kashibhai	150/-	175/-	210/-	210/-	275/-	350/-
Singh	125/-	150/-	175/-	200/-	250/-	300/-
Gulamali	100/-	110/-	110/-	110/-	170/-	175/-
Gijubhai	100/-	125/-	150/-	200/-	250/-	300/-
Laljibhai	175/-	200/-	200/-	200/-	260/-	267/-

*To get an idea of increase in rent, the above sample of tenants was chosen for they were the only ones who had been reported to have paid five thousand shillings in rent to the landlord. During the 1958-59 period

lived in Bakuli for more than five years.

The rise often created bitterness between the landlord and the tenants.

Within the framework of Mailo land law the landlord-tenant relationship could exist on the basis of one of the following forms:

- (a) An agreement backed by the Governor's consent.
- (b) An agreement unsupported by the legal backing of the Governor's consent but purported to have a legal standing nonetheless (The tenants not aware of the Mailo Land Law believed that the agreement they had with the landlord was a legal one).
- (c) Only a verbal tenancy agreement.

In the cases of (b) and (c) the dispute about collection of rent in arrears arising between the landlord and the tenant could not be settled by recourse to a court of law.

4. Some Disputes:

The following disputes illustrate the settlement of disputes in the absence of recourse to a court of law.

1. The Stubborn Tenants:

A block of flats in the second street accommodates nine families. Of the nine flats, six face the second street and three are at the back, separated from the six flats by an enclosed courtyard. Maganbhai Patel, who erected this building in 1956, says Kampala was then passing through a period of prosperity characterized by rent control, shortage of housing, and thriving business. Paying paghdi, key money or premium, was quite common. Each of the six occupants of the front flats are reported to have paid five thousand shillings in paghdi to the landlord. During the 1958-59 Buganda

boycott of Asian shops, the building stood empty. In 1958 two Mer brothers rented two front flats at a rate of one hundred and twenty shillings a month. The landlord Maganbhai Patel also asked them to find out sara bhadut - good tenants. One of the Mer brothers brought three more tenants, Gohil, Pujara, and Mistry to live there. The Mer brothers also recommended their father's brother's son to the landlord who let him one of the front flats. The rest of the tenants came to live in this building in the early sixties. Then Maganbhai sold the building to an Ismaili woman who became the owner of the house.

Natubhai Patel came to live in Bakuli after he had had to close his shop in a trading center during the boycott of Asian shops in Buganda during 1958-59. Since then his business had deteriorated and he owed 3,725 shillings to the landlady in arrears of rent. The landlady came to Bakuli once or twice a month to collect rent arrears. Though Natubhai Patel admitted that Mallo land law had enabled him to live in his flat without payment of rent, at the outset he expressed an intention of paying it.

It was in March 1967 that the landlady decided to increase the rent from 250 shillings to 450 shillings a month. The tenants decided to stop paying the increased rent under Natubhai Patel's leadership. The landlady and the lawyer's clerk Shah, who often acted on her behalf, frequently visited the tenants to reach an agreement on the rent issue. In the process of bargaining between the tenants and the landlady, Natubhai Patel and tenants managed to get the rent down from 450 shillings to 400 shillings.. Then the tenants pressed for a further reduction and the

rent first and then they should make arrangements to pay the arrears. Finally they should sign promissory

rent was lowered to 300 shillings. All the tenants agreed to pay the increase of 50 shillings in rent. However, even after accepting the decision made jointly by the tenants and the landlady, Natubhai Patel stated that an increase of 50 shillings would not be reasonable to the tenants unless the landlady carried out all the repairs in the building. The landlady refused to concede this until arrears had been paid. The lawyer's clerk, Shah, threatened the tenants by saying that he would bring on them a tanch - attachment on their property - and their bistra potla, bags and baggages, would be thrown out. Shah, the lawyer's clerk, even made a note of possession in tenants' flats vaguely indicating a possible seizure of their belongings to recover the arrears. However, the lawyer's clerk did not succeed in collecting the rent in arrears from the tenants. The tenants argued that Shah failed to collect the rent because he worked independently of his employer, charging the landlady a 10% commission on total collection. The landlady did not hand over the matter to his employer for, as she put it, this might put Shah in an embarrassing situation in relation to his employer. The landlady, disappointed in Shah, handed over the case to a lawyer known for being tough with stubborn tenants.

Phase 2:

When the lawyer took over from Shah, he served all tenants with a notice that they should vacate the building at the end of December, 1967. The lawyer visited the tenants and expressed the firmness of his intention to get them to vacate the building. He demanded from the tenants, if they wished to live in the flats, that all of them should pay October/November rent first and then they should make arrangements to pay the arrears. Finally they should sign promissory

notes which would compel them to pay rent at an appointed date every month. At first the tenants appeared united in facing this new menace. The wives of the tenants went to the lawyer in groups of threes and fours, pleading for mercy, but Joshi, the lawyer's clerk did not yield. The tenants pressed for leniency, but the lawyer refused to grant them any concessions. It seemed to the tenants that the dispute would remain unsettled and they would have to vacate the premises. In view of the housing shortage in Kampala, the threat of eviction terrified the tenants. Of the nine tenants, one of the Mer brothers moved to a house in the first street in great anxiety. The tenants held the view that once someone took a lead and settled the matter with the lawyer, then all the other tenants would follow suit - namely accept the settlement. Natubhai Patel was much worried. He was considering leaving his wife and children with his father-in-law's family on Mufunya Road. When his father-in-law discovered that Natubhai was about to leave his flat, he informed Natubhai's wife's sister's husband, Haribhai, about this. Haribhai, who is one of the lawyer's clients, offered to mediate between the lawyer and the tenants. On behalf of all the tenants and two Mer brothers (one of whom had already moved to a house on the first street but wished to return to his original flat as soon as the glimpse of an informal settlement was in view) and Natubhai went to Haribhai. Then they all went to the lawyer's office. First Haribhai had a long conversation with the lawyer after which the lawyer spoke to the tenants. One of the tenants said that he suspected that Haribhai wanted to help the lawyer to collect the rent, charging his own commission on the total rent for his labor. Natubhai and the Mer brothers wanted to settle the issue

of rent arrears for 1967. It was decided that first the tenants would pay the rent for October and November, 1967. As for the arrears of rent for 1967, the lawyer had originally proposed that each tenant pay two hundred shillings extra, besides the rent, in monthly installments as a move towards clearing the arrears. But the tenants, using Haribhai as a link between them and the lawyer, bargained and negotiated the installments down to one hundred shillings a month. The lawyer had also proposed that for 1968, from January of the same year, the tenants would pay six hundred shillings a month in rent. Natubhai and two Mer brothers argued that the sum of 600 shillings was unfair for the kind of house in which they lived. That the fixing of rent depended on the bargaining strength of the tenants was quite obvious from the way Patel and Mer brothers had brought the rent down to 350 shillings from the proposed 600 shillings a month for 1968.

The tenants returned to Bakuli and gathered in Natubhai's house. The Mer brothers, Natubhai, and Haribhai explained to all the tenants that they had settled the dispute with the lawyer. The tenants should go and pay October/November rent to the lawyer and then sign promissory notes payable in lieu of rent, at the beginning of each month in 1968.

They would also sign a fresh tenancy agreement for the same year.

A few days later the lawyer revealed that only two of the nine tenants had paid part of the arrears and no one had paid rent for the months of October and November. As they had decided, none of the tenants came to the lawyer's office to sign promissory notes. The lawyer blamed Haribhai for attempting to aid the

stubborn tenants. He suggested he might charge Haribhai for the cost of typing promissory notes and tenancy agreements. The lawyer added that the law still provided a sanction against the tenants, namely that he could file a suit against all the tenants for the vacant possession of the premises.

However, the Ismaili landlady soon discovered that the second lawyer she had employed did not collect the arrears successfully and talked about going to court. She then handed over the matter to her younger brother. To the tenants and others it seemed that the landlady was unwilling to take them to the court for she would have to pay lawyer's fees in advance with only a faint possibility of collecting the arrears.

Meanwhile Natubhai Patel and three other tenants have vacated their flats without paying the arrears to the landlady.

m. A Runaway Sub-tenant:

Soni came to live in Bakuli 2½ years ago. He lives in a semi-detached house with his wife and a child. He had already found the rent of the house too high and had decided to sublet the portion of two rooms to make ends meet. One of his friends introduced him to a primary school teacher, Dave. Dave and his younger brother decided to rent the two rooms and moved in as Soni's sub-tenants, it being mutually arranged that Dave would pay 600 shillings to Soni. Of this amount 300 shillings would go towards the cost of breakfast and meals and the services of the domestic servant. After three months, Dave started complaining to Soni's friends that his wife was giving them poor food and not giving them their money's worth. The servant did not

sweep and clean their rooms properly and often left their washing undone. When Soni paid no attention to Dave's complaints, Dave and his brother stopped eating meals with Soni, and scaled down the sum of 300 shillings they were paying towards the cost of the meals.

Soni said that he was displeased with Dave for breaking the agreement they had made. Soni asked Dave to find another place for he did not wish to have anything to do with those who broke their jaban, the word of honor. However, Dave threatened to continue living there and asked Soni to take whatever course of action he wanted to take.

One evening, Soni returned home to find that Dave had vacated the two rooms he occupied without paying Soni an outstanding sum of 270 shillings. Soni traced Dave to his new room but Dave declined to pay the debt and threatened even to beat Soni if he persisted in making the same demand.

Soni went to a lawyer, a member of his own jat, and asked him to take legal action to recover 270 shillings. The lawyer then explained to him that Soni would get his money back if Soni's landlord had a tenancy agreement with him and if this tenancy agreement were legally supported by the Governor's consent. Without such a legal agreement, there could be no recourse to a court of law. So Soni wrote a letter to Dave's headmaster and to the President of his school committee, to the effect that the school must have such dishonest teachers as to encourage a generation of spoiled children. Dave's elder brother, whom Soni contacted for the 270 shillings, refused to accept any responsibility for his younger brother's action.

Eventually Soni gave up the whole affair by saying that he would have to believe that atla paisa darman

gyata, namely, he had given away that much money (270 shillings) in charity.

n. The Cunning Carpenter: A landlord, pushing his way into A landlord in the second street rented servant's quarters to a Hindu carpenter. When the carpenter moved in, he paid two months rent in advance. Thereafter he did not pay four months' rent despite several complaints by the landlord. Otherwise he would lock

One morning the landlord discovered that the carpenter had gone away, locking the quarters in which he had lived. The landlord called the police and asked them to allow him to take the possession of carpenter's belongings to recover the rent. But the carpenter had left no things of any value, so he gave up hope of recovering the rent from the carpenter. They did not pay all the balance on the following day.

Later the landlord discovered that the carpenter, knowing the law, continued renting houses on Mailo land, paying only an initial sum and then deserting the landlord some months later. The landlord was not able to cite more than one instance of the practice the carpenter employed in living on Mailo land without paying any rent. which determines the outcome of the disputes

o. The Landlord and a Policeman: tenants outside a court

In a block of flats in the first street, a Hindu landlord came to collect rent arrears from his tenants almost every evening. One of his Patel tenants had outstanding arrears of 1200 shillings. For several days the landlord came in the evening to find that the male bread winner did not return home until midnight. Hence the landlord threatened the Patel family that he would throw them out unless Patel paid the arrears by next morning. would rent her premises and pay her rent regularly at the beginning of each month. After the

The following evening the landlord came to the courtyard with a policeman and an African purporting to be the landowner. The landlord, pushing his way into the flat, brushed the wife and children aside with his tennis racket and demanded his due. The policeman and the African supported the landlord in his claim that the residents should either pay the arrears or vacate the house. Otherwise he would lock their house and harraji, auction all their belongings. In absence of the male member of the family, other neighbors asked the landlord to show mercy on the family and assured him that they would persuade Patel to pay the arrears the following day. The policeman said that he would have to help the landlord in clearing the Patel family out of the house if they did not pay all the balance on the following day.

Before the following evening, the Patel family had already moved to biji Bakuli, to second Bakuli, to avoid further encounters with the landlord.

5. Discussion:

The above disputes illustrate a number of informal processes which determine the outcome of the disputes between the landlord and his tenants outside a court of law. In the case of the Stubborn Tenants, the present owner of the house, an Ismaili landlady, periodically came to Bakuli with Shah, the lawyer's clerk, to collect the rent in arrears from the tenants. The landlady had given the lawyer's clerk attorney's power to collect arrears, the clerk here acting entirely independently of his lawyer boss. The landlady had only a verbal understanding with the tenant that the tenants would rent her premises and pay her rent regularly at the beginning of each month. After the

tenants stopped paying the rent the law can still be of some assistance to the landlady. She can invoke the Mailo land law and allege that the tenant is a non-African occupying Mailo land without the legal consent of the Governor. But the landlord has no right to collect the rent in arrears (on which he has a legitimate claim, if not a legal claim) for the period during which the contract remained without the Governor's consent. Table 4 shows the tenants' rent in arrears up to November 1967 in the case of stubborn tenants.

TABLE 4
Table Showing Tenants' Rent in Arrears

Tenants	Rent/Mo., 1967	Rent in Arrears
1. Natubhai	Shs. 300/-	Shs. 3725/-
2. Batukbhai	Shs. 300/-	Shs. 1775/-
3. Vasantlal	Shs. 300/-	Shs. 1800/-
4. Hiralal	Shs. 300/-	Shs. 2025/-
5. Ramjibhai	Shs. 300/-	Shs. 900/-
6. Savjibhai	Shs. 300/-	Shs. 600/-
7. Abuminya	Shs. 150/-	Shs. 775/-
8. Laljibhai	Shs. 150/-	Shs. 2100/-
9. Shankerlal	Shs. 150/-	Shs. 1100/-

Initially the landlord attempts to recruit what he calls a saro bhadut, a good tenant. A saro bhadut, according to the landlord, is a man who has a family and some kind of permanent income and employment. His essential attribute as a good tenant, from the landlord's point of view, is his ability to pay rent regularly. He would have then broken his jaban (See The Runaway Sub-tenant), his word of honor. Then the landlord or his lawyer's clerk may describe the tenant's

dishonesty to his relatives and friends who may know each other. They, in turn, bring pressure on him to pay the rent. If the tenant should ignore these informal pressures, the landlord may exploit his ignorance of Mulo land law or threaten to take him to a court of law. He would usually send the tenant a lawyer's notice asking him to pay the rent in arrears or prepare to face a court action. At this point the tenant may succumb to a negotiated settlement. Or the landlord may terrify the tenant by bringing policemen to the courtyard to threaten the tenants (See Landlord with a Policeman). In order to avoid conflict with their tenants, the landlords often took a year's rent in advance. The landlord may get the tenants to write promissory notes though not in lieu of rent but for the goods sold and delivered and for the amount thus owed to the landlords.

Maganbhai Patel, the first landlord in the Case of Stubborn Tenants, had his tenants sign promissory notes on illegal contract. He admitted that the promissory notes were meant to bring further pressure on the tenants so that they may pay the rent in time rather than for taking them to court. If the tenants do not pay the rent, they have three possible courses of action open to them: The tenants may pay up the arrears by an arrangement with the landlord and his lawyer. They may not pay the arrears until eviction is legally enforced upon them. Finally, they may not pay the arrears at all and vacate the place before the eviction is legally forced upon them.

that was an incident was available) for 1966 with utmost
Discussion

With regard to jural principles, settlement disputes about arrears fall outside the jurisdiction of a court
sum of 270 shillings. The cunning Carpenter further

of law. A court of law has a body of rules in its corpus juris, delineated with specificity, application of which is determined by the legality of the issues involved in the dispute. A law court is primarily concerned with administering "justice" so that it can redress wrongs done to the disputants. It performs this task by applying the law relevant to the dispute before it. In a settlement of rent disputes in Bakuli, even in absence of an impartial third party, disputants do apply concepts of justice, nyaya, and injustice, anyaya. However, the application of these concepts differs from the way courts apply legal norms in a given situation. As illustrated in the above disputes, interpretation of nyaya and anyaya is determined by the circumstances of the dispute and the interests of the parties concerned than by a set of predetermined norms only. That these norms exist and are referred to is not denied. But the compulsion with which they are imposed in Bakuli is feeble to the extent of being ineffective.

In Dispute 1, the tenants did refer to anyaya, injustice they were doing to the landlady by withholding the payment of rent. But they made no efforts to settle the rent in arrears. Similarly, the lawyer held his client's interests to be more important than anything else. The tenancy agreements and promissory notes he made were, from the court's point of view, illegal because they were unlawful contracts. Whether the tenants viewed this as an illegal undertaking or not was not clear. But the lawyer impressed upon them the legality of the tenancy agreement (the agreement for which at that time no consent was available) for 1968 with utmost solemnity. Similarly in The Runaway Sub-tenant, Dave and his brother flout the codes of good behavior by refusing to make a payment to Soni whom they owed a sum of 270 shillings. The Cunning Carpenter further

This presentation has an official character, illustrates how people subordinate norms to suit their pecuniary interests. In the Landlord and a Policeman, Patel does not pay rent and claims that he is poor. His poverty does not arouse in the landlord any sense of sympathy or kindness for his positive view is that the poor cheat most. In addition, he uses the police for settling a civil dispute where police jurisdiction legally does not extend. All these instances show that in a context such as this, personal interests, both of the landlords and tenants may render norms of the situation weak and often inapplicable.

The court procedures have a definite sequence of order. The Procedure Act regulates the presentation of disputes to the court of law and the conduct therein of disputants, lawyers, judges, and other legal functionaries. Similarly the presentation of evidence, cross-examination of witnesses, etc. are regulated by the Procedures Act. In the court the relationship between the disputants is characterized by a lack of hostility. Also outside the court the conversations between the lawyer and the tenants were held in an atmosphere of minimum hostility. What matters most is rent. Both the lawyer and tenants have a clear-cut picture of the rent issue. The lawyer clearly puts forward the demands of the landlord to the tenants. Both the sides have an explicit understanding of the arrears as they exchange their views about it. The lawyer can transfer the dispute to a court of law. The tenant receives lawyer's notice and summons to appear before the court. Or he may decide to settle the dispute outside the court in the lawyer's office. If he does not, the dispute taken to the court becomes a matter of the legality of the issues involved in the disputes as determined by evidence, argument, and application of

law. This presentation has an official character, whereas procedures in the lawyer's office are less clearly defined and lack a fixed context typical of a law court. No set rules govern such procedures as is evident from the way in which the tenants approach the lawyer through Haribhai - the lawyer's client whose good relationship with the lawyer the tenants hoped to exploit to their advantage. The tenants resort to Haribhai for they lack resources to fight a legal battle against the landlady.

Secondly, the housing shortage in Kampala acts as a further sanction against them. For the law does enable landlords to enforce eviction upon the tenants. If a tenant cannot move elsewhere, he attempts to strike an amicable settlement with the lawyer. Haribhai is alleged to have had a commission interest in assisting the lawyer to collect the rent. The meetings between lawyer and the tenants are governed by a rule of convenience as the tenants visited the lawyer, usually after working hours at his office and, in one instance, at his home.

Even the court decision in civil suits is subject to alteration (Van Velsen, 1965). Outside courts, disputants have a greater freedom of action to change the content of the decision taken or even to disregard it. This is clear from the action the tenants follow in the first case. They have settled the dispute with the lawyer in so far as they have agreed to make payments to realize the settlement. But they have not put this decision into practice. The landlord would have been able to enforce this decision upon the tenants if he had the legal backing of a law court. The degree to which he constitutes a locus of dispute settlement outside the courts is an important area of empirical investigation.

court. The enforcement ability of the lawyer in the dispute is weak. In the absence of a legally validated contract, the lawyers have no means of enforcing tenancy agreements. In a dispute such as this, the Mailo land law does not take into account the facts of legal relationship as they may arise between the non-natives. Thus the law may fail to resolve the dispute between them within the national legal system of law courts. In Bakuli the tenants would have an upper hand in the dispute to negotiate a most favorable settlement which may not be necessarily just for both the parties. Furthermore, the housing shortage and rising rents appear to be critical variables in the situation. A law court may define and reward the winner in a dispute, getting him compensation, costs, and damages. The court may also compel the loser to pay these to the winner, thus imposing a negative sanction on him. In Bakuli winners or losers are not defined in absolute terms. Instead each side attempts to move in the manner to maximize the benefits to be gained out of the dispute.

The personnel involved in settling the dispute include lawyer's clerks, the lawyer, a policeman, the landlords, and the tenants.

The lawyer's clerk occupies an important place in linking the tenants to the lawyer. A clerk in a lawyer's office is an important person in settling disputes outside the court. Depending upon the length of his tenure, his experience, and social contacts, he could help the disputants to sort out their differences without letting the matter go further. He may be able also to insulate them from the lawyer and to operate independently as illustrated in the Stubborn Tenants. The degree to which he constitutes a locus of dispute settlement outside the courts is an important area of empirical investigation.

The disputes clearly show that the parties to the disputes are motivated by self interest as manifested in bargaining and negotiating. Such a context arises where a direct application of law is absent and no disinterested party, such as an impartial judge, is involved in evaluating the dispute legally. The absence of a third party figure is one of the features of settlement of rent disputes in Bakuli.

GOVERNOR'S CONSENT as used in the context of this chapter refers to the full consent which embodies the consent of the Ganda land owner, the Minister responsible for Mineral and Water Resources (previously Omuwanika, Omulwani, and Mutikire of Uganda).

3. *Mistry Amar Singh vs. Hofmatra Dalbaya*, (see Editor's notes) Journal of African Law, Volume 7, No. 3, 1963, Page 193.

4. Chapter 252, The Land Transfer Act, An Act to regulate the Transfer of Land by Africans, Pages 3339-3340, Law of Uganda, Volume VI, 1964. Government Printers, Box 33, Entebbe, Uganda.

5. Fiji Indians had to obtain consents to lease native land in Fiji in a quite strikingly similar manner as noted by Adrian Mayer:

"One of the first acts of the new Government was to prohibit the alienation of land by the Fijians and a Land Commission was appointed to examine the claims of freeholders to their titles" (Mayer, 1961: 22).

When the free men (Indians released from the indenture contracts) left indenture lines and decided to farm, they usually had to go to the head of Katavogali (the social group owning the land) to negotiate a lease. This was a complicated procedure - for they had first to obtain a verbal consent of Katavogali and make an application to the Government which was passed onto the Fiji Administration whose local officials finally gave their permission after contact-

Notes

1. For a detailed account of Mailo land system of land tenure, see H. W. West's "The Mailo System in Buganda", Uganda Government Press, Entebbe, Uganda.
2. "Governor's Consent" is an outdated phrase in so far as it applies to cases in independent Uganda. As almost all legal literature refers to the consent as "Governor's consent" it was thought appropriate to retain the same phrase. Governor's consent as used in the context of this chapter refers to the full consent which embodies the consent of the Ganda land owner, the Minister responsible for Mineral and Water Resources (previously Omuwanika, Omulamuzi, and Katikiro of Buganda).
3. Mistry Amar Singh vs. Wofunira Kulubya, (see Editor's notes) Journal of African Law, Volume 7, No. 3, 1963, Page 195.
4. Chapter 202, the Land Transfer Act, An Act to regulate the transfer of land by Africans, Pages 3559-3560, Laws of Uganda, Volume VI, 1964. Government Printers, Box 33, Entebbe, Uganda.
5. Fiji Indians had to obtain consents to lease native land in Fiji in a quite strikingly similar manner as noted by Adrian Mayer:
"One of the first acts of the new Government was to prohibit the alienation of land by the Fijians and a Land Commission was appointed to examine the claims of freeholders to their titles" (Mayer, 1961: 22).
6. "When the free men (Indians released from the indenture contracts) left indenture lines and decided to farm, they usually had to go to the head of Matangqali (the social group owning the land) to negotiate a lease. This was a complicated procedure - for they had first to obtain a verbal consent of Matangqali and make an application to the Government which was passed onto the Fiji Administration whose local officials finally gave their permission after contact-

Notes (continued)

12. ing the head of Matanggali. Not only did this take a long time, but the approval of the Matanggali's head had to be maintained with presents throughout the period; and as the Fijians became more sophisticated and the competition for better land became more lively, the value of presents increased..." (Mayer, 1961: 23).
- 13.
- 14.
- 15.

6. See Act 118, Subsection 2, in relation to kingdom of Buganda in the Republican Constitution of Uganda.

7. "Statutory Instrument 150 of 1967. The Local Administrations (Performance of Functions) Instrument, 1967.

IN EXERCISE of the powers conferred upon the Minister by subsection (6) of section 100 of the Local Administrations Act, 1967. This instrument is hereby made this 14th day of December, 1967.

1. The power vested in (a) the President and the Lukiko to give approval under paragraphs (c) and (d) of the Possession of Land Law and (b) the Katikiro, the Omulamuzi, and Omuwanika of Buganda, to sign an Instrument of Transfer or such other documents as may be necessary to transfer Mailo under section 5 of the Possession of Land Law shall be exercised by the Minister responsible for Mineral and Water Resources".

8. Kassamlai Nanji Vs. Kassamali Lalji, High Court Monthly Bulletin 79/63, Journal of African Law, Volume 8, No. 1, 1964, Page 48.

9. Mistry Amar Singh vs. Wofunira Kulubya, 1963, E. A. 408, Journal of African Law, Volume 5, No. 1, 1961, Pages 112-113.

10. Motibai Manji vs. Khurseed Begum, 1957. E.A. 101, Journal of African Law, Volume 2, No. 1, 1958: 52-54.

11. Notes and News: Land Tenure in Buganda, Journal of African Law, Volume 2, No. 1, 1958: 4.

Notes (continued)

12. Report of the Commission of Inquiry into the Structure and level of rents in City of Kampala, Municipalities and Towns of Uganda, Government Press, Entebbe, 1964.

13. Kiriri Cotton Co. vs. R. K. Dewani, East African Court of Appeals Reports, 1960, Page 188.

14. See footnote No. 12.

15. Ibid, Page 6.

CHAPTER 6

Business Disputes among the Bakuli Asians

1. Ethics of Kinship vs. Dynamics of Interests:

To analyze the Asian businesses in Uganda, especially the recruitment of personnel, requires an understanding of the joint family sanyukta kutumb. The word kutumb for family in Gujarati often assumes wider connotation and is used to include those members of the patrilineage who may not share residence with the family. But a Gujarati begins to see a family as a joint one when parents, grown-up sons with their wives and other unmarried sons live together. This concept of a joint family approximates Ross Aileen's description of a "small joint family". "The small joint family is, by description, composed of a household in which parents live with their married sons and other unmarried children or two brothers live with their wives and children" (Aileen Ross: 1961: 35). However, the "jointness" does not only lie where members live and eat together but also in their ability to pool together their capital and resources for a business or trade. It is in this sense that the purely kinship concept of family is further supplemented by the economic aspect, making the family a model of economic organization. For Hindus, Sikhs and Goans alike, the joint family becomes a basic unit of intense and intimate interaction. The network of kindred and affines around the family becomes a universe of reference not only for many intimate social activities but also for the economy. Desai has shown the importance of joint family as a locus of business activities, saying that "a man would start a business with his own brother rather than choose an efficient partner outside.

into coming from the same area in India and speaking

This is a norm in that the business becomes one more area in which the family reaffirms its solidarity" (Desai: 1965). Benedict has also observed a similar tendency among the Indo-Mauritian villager, "for the Indo-Mauritian villager kinship itself is a kind of economic resource" (Benedict: 1958: 213-221).

As Morris says, the concept of a joint family as a corporate body is highly developed in Hindu Law (Cf. Morris H. S. 1953). But the law in Uganda does not recognize the Hindu family as a corporation. All the same, the joint family remains an important unit of social and economic organization among all Hindus. As a result many businesses legally registered in the name of one person may in actual fact either constitute a joint family business, it being understood that others have equal shares (Cf. Dotson: 1968: 162) (see the case of The Broken Joint Family) or a business partnership with the details of each partner's rights and obligations being defined within the law or without. Sometimes the members of a joint family, especially in a prosperous business, may legally allot shares to their wives and daughters to reduce income tax and other duties (Cf. Morris: 1968: 129).

Thus a business may comprise the members of a joint family and also close consanguineous and affinal kin. Outside the family, jat constitutes an important area bringing members together in trade, commerce, or industry. This happens especially when the members of jat share the same regional affiliation in India, follow the same religious practice, speak the same language, and pursue a similar way of living. What they do is to apply the "family model" to their business activities. Theoretically a partnership between members of different jato coming from the same area in India and speaking

the same language is possible. But any business with "outsiders" - those who belong to a different jat, follow the different religion, speak different languages, and share few common values - is uncommon though not totally unknown. Such an instance was not recorded in Bakuli, however.

Persons forming a business partnership would usually have known each other for a number of years, not only in the sphere of economic activities but also outside the scope of trade and commerce as friends. Over the course of years, they would have established a close relationship on the family model which is available to define such relationships. The would-be partners may use terms such as bhai (brother), kaka (father's brother), mama (mother's brother) etc. in addressing each other and their relatives. The pseudo-kinship would even bear a facade of reciprocity and obligations typical of a Hindu joint family. One partner may consider another partner's sister as his own sister, bahen, and his wife as his brother's wife, bhabhi, performing the obligations these relationships demand in a family. It is the framework of jat, further supported by a common language, the similar way of life and region of origin in India, that shapes the course of business partnerships in Uganda.

At the outset such a partnership is normatively conceived with the view that the members are people of the same household gharna manaso. The term ghar as used in this context refers to a closed entity, home, where sentiments and emotions bind people into a group. As apparent in the disputes, such a set up, clearly revealed in the ethics of joint family, provides a necessary stimulus to the would-be partners in pooling their resources in a cooperative venture. Such business

may run smoothly, however, for only so long as the ethics implied in the relationship is coextensive with interests of each partner. When the economic interests involved are threatened, the members, in so far as they can, attempt to assert their interest claims by disregarding the moral responsibility to others. The dynamics of interests override the ethics of norms.

2. Asian Businesses in Bakuli:

The distribution of Bakuli Asians businesses in Kampala is as shown in the following table:

TABLE 5
The Number and Kind of Businesses as Run by Bakuli Asians

Transporters	12
Shopkeepers	4
Hotelier	1
Money Lender	1
Garage Owner	1
Contractor	1
Workshop Owner	1
Accountant	1
<hr/>	
TOTAL	22

Of the 22 businesses studied, 18 businesses were individually run by the people self-employed. Three shopkeepers, the hotelier and the contractor, ran their businesses on a joint family basis in that legally these were registered in the name of the eldest member of the family. Other members enjoyed de facto shares with supervisory and managerial positions. During the field work only one business (see Case p), atypical in that it was not a family business, was an attempted partnership. Cases q and n had happened prior to field work

and are not included in the above table.

The scale of business operations is limited largely at individual or family level. Even in the concerns run individually, members of the joint family provided a part of labor force. An Ismaili grocery store owner had his relatives' sons helping him during their school holidays. One of the shopkeepers supplied milk around Bakuli with the help of his two sons and a daughter who delivered milk to the customers every morning. Most of them also employed full time or part time African laborers for manual jobs but retained control over all vital tasks like accepting or placing orders, banking, delivering and receiving goods, keeping accounts, etc. The money lender, who it was felt had a large potential turnover, said that his business demanded a scrupulous attention to detail such as could not be expected of a clerk. He ran his business entirely by himself, keeping all his records in Gujerati. Whenever an occasion to use English arose, his daughters or sons translated letters and other documents for him.

The accountant and his brother preferred to work by themselves. They did not want a big office and a large staff because if things went wrong, they would not be able to wind up their business easily. As things were, they were doing well without a large establishment. And this would always permit them to leave the country immediately if they so desired.

All persons interviewed expressed a strong disapproval of business partnership. As an Ismaili shopkeeper said,

"A partnership is no good. As soon as the business starts, the partners start fighting for money or for their shares. If you want anyone as a partner, then have your own

brother, so that there is no problem." This response was typical of other informants as well.

The joint family model as restricted by jat and transposed into a business partnership compels partners to settle their differences outside the framework of the formal legal system - especially when the terms of the partnership are verbally and informally decided outside the lawyer's office.

In such contexts, businessmen view the instituted legal machinery as being alien to the social structure of the immigrant Asian community. Several businessmen and some lawyers expressed the view that "it would be better for our people to settle their disputes among themselves, avoiding the courts as far as possible." By and large, the disputants involved in the following disputes supported the above view.

3. Some Disputes:

p. The Gujerat Engineering Company:

Phase 1:

Kanubhai, Patel by jat, is a graduate teacher from India. He first taught in primary schools in Kabale and Bombo before coming over to Kampala where seven years ago he took up a job in a private school within the vicinity of Bakuli. A Hindu woman coming from his wife's village lived in Bakuli and insisted that he should live with them as a paying guest. As her husband, Ramanbhai, was unemployed at that time, he welcomed the newcomer's contribution to his family budget.

Ramanbhai's friend, Chinambhai, also a Patel, lived across the street. Kanubhai came to know him too through Ramanbhai. Chinambhai had then come to Kampala from a small trading center where his children

could not go to school. Kanubhai considered the eldest daughter as his own daughter. He taught her enough math and English so that she could be admitted to the school where he taught. Her welfare was his constant worry. The girl and her sisters started calling him mama (mb) on the model of traditional generosity of mother's brother toward his sister's sons and daughters. few months. By the time Kanubhai

Ramanbhai had remained unemployed for some time. Eventually Kanubhai advised him to go to England. He also arranged to pay for Ramanbhai's flight. Once his host's family had left Kampala, Kanubhai left Bakuli and lived briefly with Kashibhai, an old friend of his from Kabale. Living with Kashibhai, Kanubhai met his friend, Maganbhai, a Patel who also came from the Charottar part of Gujerat from where Kanubhai came as well. This common factor and a close friendship bound three of them together.

Maganbhai had had a car accident in which his right leg was permanently crippled. He said his insurance company had paid to him in compensation a sum of fifty thousand shillings - a liquid capital he wanted to invest somewhere in order to have a regular source of income. Kanubhai suggested that the most prosperous business venture would be that of a private school - a business giving a high reward at a minimum risk. Maganbhai was willing to invest twenty five thousand shillings if Kanubhai himself would put up capital of similar size. Kashibhai said that he, as a contractor, would build the school at a reasonable cost for them. Maganbhai advanced Mistry a sum of twenty five thousand shillings so that the work could begin. Kashibhai and Kanubhai bought a piece of land near Makerere for seven thousand shillings. Meanwhile the

Kanubhai applied to his insurance company for a loan of nineteen thousand shillings to contribute his share towards the construction.

Later, Kanubhai and Maganbhai discovered that Kashibhai had blocked the rest of the funds by building a residence on his plot of land but he promised to release the money in a few months. By the time Kanubhai received a loan from his insurance company, Maganbhai was already short of funds and uncertain of chances of success they would have if the school were started. Kanubhai also began to doubt the viability of running a private school outside the city boundaries. He began to consider entering into similar enterprise in Soroti. As he negotiated fruitfully with others in Soroti, their plan to run the school in Kampala collapsed. For the amount Kashibhai owed to Maganbhai, he allowed the latter to take possession of his van.

Phase 2

Kanubhai then thought to return to Bakuli for he had discovered how inconvenient it was to live away from Bakuli and to work in a school far from town. He made inquiries to find a place to live as a paying guest.

He knew Chimanbhai who lived close to his previous host's house and whose daughter had already established herself as Kanubhai's bhani, his sister's daughter and the girl regarding him as mama, mother's brother. When Kanubhai returned to Bakuli, he found his new host and his friend Shamjibhai were out of work. Kanubhai was moved to discover that Chimanbhai had no money to pay fees for his eldest daughter who had called him mama, mother's brother. When Chimanbhai and Shamjibhai approached him for financial assistance, he gave them a sympathetic hearing. Shamjibhai, a Luhar, who came from the

blacksmith jat held that he possessed some machinery with which it was possible to start a small workshop. He and Chimanbhai would do all the work; Kanubhai would make a capital investment of five thousand shillings for which he would be entitled to a share in the total profits. Kanubhai would also help them to obtain raw material on credit from hardware stores run by the Patels coming from his village. Privately Kanubhai said that he considered that the investment of five thousand shillings against the machinery Shanjibhai possessed would be a sound investment. At the same time he felt that he was helping "our own people", apna manaso. He lent them the money to rent the premises and to start a workshop to be known as the Gujerat Engineering Company. The business was registered in Chimanbhai's name for this would convince the immigration authorities that he was the man to whom citizenship should be granted. His uncertain immigration status would be no more a hazard once he were regarded as a businessman.

By this time Kanubhai had finalized negotiations with others to start a private school in Soroti. While leaving Kampala at the end of 1966, he did not think he could trust Chimanbhai and Shamjibhai running the Gujerat Engineering Company which by then was already prosperous. He suspected that both of his partners would fail to keep proper accounts. In order to keep an eye on the business, he invited his old friend, Naganbhai Patel, to join. There were two reasons for his choice of his old friend: First he felt that he was partly responsible for the way Kashibhai had blocked Naganbhai's funds when they were thinking of setting up a private school. Naganbhai alleged that he gave money to Kashibhai only because he was Kanubhai's par accounts. He also accused Shamjibhai of being a

friend. Therefore it was fair to give him a chance of making some money. Secondly, Maganbhai could keep an eye on Chimanbhai and Shamjibhai and thus act as his watchdog. Maganbhai joined the business on the condition that he would give his van to the company as his contribution towards investment. Besides his one-fourth share in the business, he would earn a salary of seven hundred shillings a month. Once this arrangement was finalized, Kanubhai invited Maganbhai to live in Bakuli at Chimanbhai's place as he was leaving to work in his new school at Soroti.

Phase 3

For a few months the Gujarat Engineering Company functioned smoothly. This period was characterized by the close relationship between the partners who spent all the time together within the business as well as outside it. The beginning of the rift between them was signalled by what Shamjibhai called "Maganbhai's grumblings." With a defective right leg, Maganbhai could not keep full watch on all Shamjibhai's movements. He grew suspicious of what Shamjibhai did outside in the town for he accepted orders, bought raw material, delivered goods, received payments, and attended to all business matters without consulting Maganbhai. He did this with an obvious assurance for, he alleged, all the machinery in the workshop belonged to him. Maganbhai found his behavior irritating and intolerable. He attempted to remind Shamjibhai that he was not the "boss", sheth. He was also responsible to other people in the workshop. Shamjibhai ignored this and other instructions and sarcasms against him. Maganbhai alleged further that Shamjibhai was swindling company's money, companina paisa, and not keeping proper accounts. He also accused Shamjibhai of being a

man of "outline", outlineno manas,¹ the term connoting lack of conformity, promiscuity, and drunkenness. In a courtyard dispute between a Lohana family and Shamjibhai's wife, Maganbhai vigorously denounced his wife and her supporters.

Finally Maganbhai threatened to quit the business if Shamjibhai did not behave properly. He would ask Kanubhai to sort out the accounts when he came to spend his school holiday in Kampala from Soroti. After that Maganbhai would have nothing to do with the Gujarat Engineering Company.

When Kanubhai came to Kampala, he discovered that Maganbhai and Shamjibhai had quarrelled so badly that the partnership was disintegrating: Kanubhai no longer had any special interest in the business for Shamjibhai had paid back the loan advanced by him at the beginning. As for his share in the business, he said that he was doing so well in Soroti that he did not care much about a small workshop in Kampala. But Maganbhai was his friend and Kanubhai would see that Maganbhai got a fair share in the remuneration for his services and van. As Maganbhai had decided to withdraw from the partnership, he wanted to complete all the accounts, hisab kitab, to see how much Shamjibhai had to pay to Maganbhai. Maganbhai demanded his salary for the months he had worked for the company and his van or its equivalent market value.

In order to settle matters, Kanubhai asked a neighbor to help them to clear the account. Later on, in a meeting comprised of the four of them, it was decided that Shamjibhai should take over the business and pay a sum of fifteen thousand shillings to Maganbhai in lieu

facto owner. Although he has ousted Chinsabhai, Chinsabhai

of his services and van. Shamjibhai agreed to pay in four monthly installments, giving two checks to Maganbhai towards the first installment. The bank did not honor them. Maganbhai threatened to go to the court if Shamjibhai did not honor the checks in a week's time.

However, Maganbhai well knew that he did not have a legally written partnership agreement either with Kanubhai or with Shamjibhai. If such an agreement existed, he would have found it impossible to resort to law for the business was registered in Chimanbhai's name and the court would hold him liable for payment. Hence, his attempts to prosecute Shamjibhai may eventually result in pinning Chimanbhai down legally. Everybody knew that Chimanbhai who was a "saint" was also a god's man, bhagvanno manas. He had nothing to do with the dispute between the two sides. Besides, Maganbhai lived in Chimanbhai's house which he had no desire to give up. By dragging him to the court, Maganbhai may not only fail to collect his dues from Shamjibhai, but also may expose Chimanbhai's uncertain status to immigration officials. In this case, the immigration authorities could even ask Chimanbhai to leave the country.

So Maganbhai said that he was waiting for Chimanbhai to become a citizen of Uganda. Then the court would hold him the lawful owner of the business and Maganbhai could hope to recover his debt by seizing the business from Shamjibhai by legalizing Chimanbhai's immigration status. However, he adds that the immigration department is difficult these days and it may take some time before knotty problems such as Chimanbhai's citizenship can be sorted out.

Meanwhile Shamjibhai runs the business as de facto owner. Although he has ousted Chimanbhai, Chiman-

bhai still succumbs to remain de jure owner of the business in the hope that one day it will help him to get proper immigration status. Nor can he threaten Shamjibhai who says the Uganda Government would be pleased to deport an illegal immigrant away from the country.

Maganbhai is bitter about the business partnership and accepts the view that such a partnership always leads one into trouble, especially if the partners do not belong to the same joint family. His first attempt to start a school with Kanubhai failed and so did his second attempt to acquire a full partnership in Gujerat Engineering Company. From "the rubber checks" in his pocket, he has little hope of recovering his dues from Shamjibhai. He now plans to start a private school in Northern Uganda entirely by himself, perhaps later asking his brother, a teacher in India, to join him as a co-partner.

q. A Broken Family Business:

Phase 1

Surendrabhai and Jesangbhai, two Lohana brothers of Jobunputra atak, came to Uganda in 1930. They set up a small shop selling textiles and other goods. Both brothers had decided to hold 25% shares each and allocated the remaining 50% at 12½% each to their four younger brothers who were then in India. By 1939 the remaining four brothers came to Uganda and joined the family business. During the war, they prospered well and set up two more shops expanding their trade. They put their profits together and the expenses to run three households were derived from the joint pool. Besides this unity in economic affairs, family solidarity was manifested in gatherings of all members at Surendrabhai's house on religious and other festive events. In all important social and economic affairs, the brothers

got together, sorting out any differences between them by making decisions mutually acceptable to all.

Phase 2

In 1951-52 Surendrabhai's son passed his School Certificate Examination and the father decided to send him to a college in India. All the brothers met to discuss the economics of the situation and to decide whether the eldest brother should pay the expenses on his own or if the family as a whole should share the expenses. Surendrabhai argued that since he had pioneered the business by giving so much sacrifice, it was only fair for him to expect the "company" to pay for the education of his son in India. One of the younger brothers retaliated by saying that Surendrabhai had five children, and if all their expenses were paid from the family pool, they would soon be bankrupt. The eldest brother was much offended and pointed out that without him and Jesangbhai none of them would be in Africa. However, he overruled the reactions of the younger brothers, and being the senior member of the family, he sent his son to India on "company" expenses.

Phase 3

Soon after this event, much misunderstanding occurred between the brothers. Surendrabhai suspected that the younger brothers avoided their business responsibilities and "dipped into the till". The wives of the four younger brothers even stopped talking to the elder brothers' wives and their exchange of curries and other delicacies, vatki vyahawar, ceased. There was only suspicion and hostility between the families.

At the same time the family business deteriorated to the point that Surendrabhai called a meeting of the

brothers, they had no desire to spoil their relationship with any one of them.

brothers to warn them of approaching bankruptcy. At the meeting the four younger brothers complained that he spent too much money on his son and on his passage to India. They also felt that it was unfair for the two eldest brothers to hold the largest shares in the business. They all should have equal amounts. Once again Surendrabhai paid no attention to this demand and confirmed that the original allocation of shares would remain valid. No acceptable agreement could be found, so they adjourned for a week.

In the second meeting, the youngest brother suggested three alternatives to sort out the differences between them:

1. The company's assets and liabilities should be split into six parts, each part allocated to each brother.
2. Two elder brothers should retire from the business, accepting a compensation for goodwill from the four younger brothers.
3. They should set up a fourth shop with 40% assets derived from the stock in the three shops, and the two elder brothers should retire from the business.

The elder brothers saw in the suggestions a scheme whereby the younger brothers would take over the business, eliminating them, the pioneers. They reprimanded the younger brothers, saying that the ethics of the joint family had been flouted. The younger brothers suggested that they should hand over the matter to their "family" auditors who belonged to their own jat and had known the family for twenty years or more. However, the auditors refused to mediate in the dispute, for they were bound to offend one side. As they had known all the brothers, they had no desire to spoil their relationship with any one of them.

Later the younger brothers threatened to report both the elder brothers to the police and government for hoarding black market cash that they had obtained during the war. This frightened Surendrabhai and Jesangbhai, and now they proposed that the president of Lohana Mahajan, himself a prominent trader, should be asked to settle the dispute between them. The rest of the brothers accepted this proposition.

For a month the president of Lohana Mahajan checked their books and interviewed each brother separately. Later, he gave his judgment on the dispute. He advised all the brothers to retain their jointness in the business so that they might prosper. If they did not wish to trade together, then the eldest brothers who established the business should receive 25% each of the shares. But this "solution" was unacceptable to the younger brothers.

After Surendrabhai's death, the four younger brothers put up separate shops, while still retaining interest in the family business. Then they demanded their original 12½% apiece from Jesangbhai who gradually paid their shares in goods and cash. Jesangbhai withdrew from the business and set himself up as a money lender in Bakuli. Surendrabhai's widow has for long fought for her husband's 25% share but no settlement has been made as yet. Jesangbhai merely hopes that one day the brothers will pay their contribution to the elder brother's widow. The widow herself wants to bring pressure on the younger brothers through the offices of Lohana Mahajan president.

r. The Safari Garage and a Lorry:

Kantibhai and Ramjibhai, Bhajan group members, were friendly and often visited each other. They came to learn that they conducted their businesses on the

same road, and more and more often had tea together. Ramjibhai ran Safari Garage at a little distance from where Kantibhai had a shop which contained second-hand clothes.

Ramjibhai and his business associate were thinking of buying a lorry to run a side business of transporting goods. Once Ramjibhai brought a lorry to Safari Garage for inspection before possibly purchasing it. Kantibhai, who was passing by, stopped and asked Ramjibhai what he was doing with the lorry. Learning that the lorry was for sale, Kantibhai said he would be interested to join Ramjibhai and his colleague as a third partner. His own business was not running well and he was prepared to work hard for Safari Garage. In turn, Ramjibhai asked Kantibhai to look for a good lorry and bring it to the garage for inspection. Eventually a lorry in good condition for sixteen thousand shillings was found. Kantibhai suggested that Ramjibhai and his associate pay half the price, and he would pay his share later in the month. However, his own money was stuck in an insurance company. So he persuaded Ramjibhai to pay his 50% share for him with the promise that he would pay back his share to Ramjibhai at the end of the month.

Meanwhile Kantibhai closed down his second-hand clothing shop and joined Safari Garage as a 50% partner in the transport business. Ramjibhai had the lorry properly repaired and spent 1,250 shillings for license and insurance. After a month, Ramjibhai demanded from Kantibhai his contribution towards the cost of the lorry. But as he had no money, he suggested that he would work for the Safari Garage and his salary thus earned should be credited as his contribution towards the cost of the

lorry. However, Ramjibhai's business associate refused to accept this arrangement and said that unless Kantibhai paid his contribution, they would no longer regard him as a partner.

Phase 2

Kantibhai was angry and accused Ramjibhai of cheating him. He even said that Ramjibhai was merely putting up a show in the Bhajan group so that all would regard him pious and holy. The following morning, he returned with four members of the Bhajan group to support his claims. Similarly Ramjibhai also asked Kanjibhai, a Bhajan elder from Bakuli, to attend the meeting. When Ramjibhai asked him what he wanted, Kantibhai replied that nothing less than a 50% share in the transport business and 800 shillings a month in salary would be acceptable. The Bhajan group members on both sides thought this was not reasonable. So Kanjibhai suggested that Kantibhai should accept 600 shillings in salary and hold only 30% share in the transport business as a third partner. Alternatively, a 50% share in the business without getting any salary would be acceptable. Kantibhai retorted in anger and said that he paid five hundred shillings in house rent and his other domestic expenses ran to about one thousand shillings a month. How could he, then, accept the lower figure. They ought to pay him six hundred shillings a month in salary and allocate to him 50% share in the transport business. Ramjibhai said the proposition was acceptable provided that Kantibhai paid all the expenses for maintenance, license, and insurance. The Bhajan group members who had come with Kantibhai considered this unfair for they said Ramjibhai overcharged Kantibhai by doing only the small repair job on the lorry.

Finally the meeting broke off for Kantibhai was not prepared to compromise and no mutually acceptable solution was found.

Later Kanubhai sent several messages to Ramjibhai demanding fifteen hundred shillings in his salary for the time he had spent with the Safari Garage. Ramjibhai said the Safari Garage had never employed him. He had come by himself. Kantibhai threatened to take up the matter with the lawyer and officials of the labor department. But, in reality, none of these actions were taken.

Phase 3

Kanjibhai, the Bhajan elder, who supported Ramjibhai in the above dispute, was his close friend. Both of them had known each other for twelve years. Kanjibhai told Ramjibhai that he would find a "good" man to run the lorry which was lying idle in the Safari Garage. He brought to the garage his mother's brother's daughter's husband, Laljibhai, who by then was unemployed and willing to transport goods. He accepted a salary of seven hundred shillings a month and a 10% share in the total profit.

He first suggested that there were excellent prospects in transporting plantain, matoke, to sell in the local market. To buy plantain he would need five hundred shillings from the Safari Garage. Ramjibhai gave him four hundred shillings to start off. Laljibhai bought some plantain and transported it to the main market in Kampala where the Kampala City Council official prevented him from selling it as he did not possess a hawker's license. He returned to the Safari Garage and asked Ramjibhai to store it until he found a customer, but after a few days it rotted and had to be thrown outside.

Finally Later, Laljibhai returned to the garage to say that there was a booming market in charcoal. He borrowed four hundred shillings from Ramjibhai and bought one hundred sacks of charcoal. After several trips in and around Kampala, he found no buyers for charcoal either. He had to ask Ramjibhai now to store the coal. Finally, they were sold at a 50% loss.

Laljibhai persuaded Ramjibhai to let him go to the sugar factory at Kakira. There he transported canes to the sugar factory and earned between sixty and seventy shillings a trip to the factory. Ramjibhai thought he made about six to seven trips a day, thus earning about four hundred shillings a day. Laljibhai worked in Kakira for two months. Ramjibhai then asked him to return to Kampala. When he came back, he said he had earned twenty-nine hundred shillings out of which he had spent twenty-five hundred shillings on repairs. He handed over four hundred shillings to Ramjibhai with a reminder that he wanted fourteen hundred shillings in salary for the two months he had worked in Kakira.

Ramjibhai decided to repair the lorry and then to sell it. A week later Laljibhai returned and expressed his desire to buy the lorry on installments. The Safari Garage asked for a price of eleven thousand shillings, five thousand shillings in cash. Laljibhai had three thousand shillings on hand. This Ramjibhai accepted on the condition that Laljibhai pay one thousand shillings every month until the full price of the lorry was paid. After taking away the lorry, Laljibhai did not pay anything for two months. When the installments were due, he said he had no money on hand. Ramjibhai asked him to sign a hire-purchase agreement, but Laljibhai refused.

Finally Ramjibhai asked him to return the lorry. After much persuasion from Kanjibhai, he returned the lorry to the Safari Garage. He demanded back the installments he had first paid for the lorry. Ramjibhai denied that there was any legal right basis to demand the installments, but he was going to pay Laljibhai's money back for the sake of his "good relationship" with Kanjibhai.

Eventually, Ramjibhai sold off the lorry for four thousand shillings and paid all the twelve thousand shillings in installments to the motor company.

4. Discussion:

The disputes bring out how the implicit interests of disputants override the explicit norms of behavior emanating from the kinship model. This model, applied to the relationship between siblings (in the case of The Broken Joint Family) or partners (In the case of the Gujerat Engineering Company) presupposes that the behavior in the joint family as conceptualized in kinship terms will correspond to an economic organization set up on the same model. Once these mores are imposed on partners or joint family members, they then are expected at the outset not only to possess a high degree of righteousness and straightness, but also to manifest this rectitude in their day-to-day relationships with their kin, relatives, neighbors, and friends. Such a system of norms, often supported by sanctions, impinges upon the society either in explicitly formulated and codified "law" in customs set by a regular observance of habit or in what Hoebel calls "jural postulates" (Hoebel: 1954: 16) upon which he says rests the existence of order in society. This enables individuals to set up some standard of "reasonable expectations" to use Max Gluckman's phrase.

Later he invests five thousand shillings in the Gujerat Engineering Company to which he lends Rajabhai who would

Some monographic studies of preliterate and small-scale societies in Africa tend to support the notion that such societies, dominated by status, regard resolution of conflict a matter of balance of rights and wrongs (Cf. Gluckman: 1965: 208). However, other ethnographic data (Gulliver: 1966) does not altogether support the pattern roughly and briefly sketched above. In a neighborhood like Bakuli where immigrants prominently participate in the cash economy of urban life, a dispute, besides involving a breach of norms, may also concern the interests of the parties as an important variable. This may profoundly affect the judicial process and the settlement with regard to the principles, procedures, and personnel involved. As illustrated in the data, the disputants use the social structure, statuses, and norms issuing from it as a base for their economic activities. In so far as the system of norms does not conflict with basic economic interests of the parties, they continue to cooperate. As soon as their economic interests begin to diverge, the norms might fall into abeyance even without demolishing the facade of kinship between the partners as illustrated.

In the case of Gujerat Engineering Company, Kashibhai helps Kanubhai and Maganbhai to buy a piece of land; however he invests most of the remaining funds to accelerate construction work on his own plot of land. The norm of friendship, namely that one should fulfill one's promises honestly and diligently, becomes less compulsive and the economic stake at hand more important. Similarly, Kanubhai leaves Maganbhai and Kashibhai to sort out the mess between them at the point of time when he is making a profitable deal to run a private school elsewhere. Later he invests five thousand shillings in the Gujerat Engineering Company to which he links Maganbhai who would

look after his interests and help him to recover a loan he had made to Shamjibhai and Chimanbhai.

A further clash of interests occurs between Maganbhai and Shamjibhai when Maganbhai joins the Gujarat Engineering Company. Maganbhai saw this as an opportunity to establish himself firmly into a prosperous enterprise with the motive of eventually controlling the whole business. He did not restrict his role to that of a salaried employee but attempted to exercise his authority in an ambiguously, verbally conceived partnership, hoping eventually to become a boss, seth. The first breach in what was an apparently harmonious partnership took place when Shamjibhai sensed that Maganbhai was more an adversary and a rival than a partner. The machinery in the workshop belonged to Shamjibhai who also controlled most of the business operations. He could take over the business if he forced Maganbhai out or subdued him to the position of an ordinary employee. In turn, as an experienced businessman Maganbhai took upon himself to conduct all the affairs of the business, reducing Shamjibhai to an East African Asian stereotype of "fundy", a mere craftsman. But Shamjibhai implemented all the major decisions excluding Maganbhai entirely. He established himself so well that, after failing to sanction his ascendancy, Maganbhai decided to withdraw from the business and Shamjibhai gained an important economic victory over him.

Shamjibhai's obligation to pay dues was an application of norms. But he knew that Maganbhai was unlikely to resort to law to enforce his rights simply because the partnership was not determined lawfully. Maganbhai would get Chimanbhai, the lawful owner of the company, into difficulties. It is in the light of this knowledge that Shamjibhai gave "rubber checks" to Maganbhai. The econom-

ic interests transcended the norms of good behavior. Despite reminders to Shamjibhai by a constant reference to niti, morality, and what he "ought to do", he has failed to meet Maganbhai's obligations. Although he does not want "money obtained by unfair means", haramna paisa, he is no longer "able" to pay Maganbhai's dues. Finally to retain absolute interest over "his" business, he exercises considerable power over Chimanbhai who remains a lawful owner of the business.

A similar manifestation of interest occurs in the cases of Broken Joint Family and The Safari Garage and a Lorry. In the case of the Broken Joint Family, four young brothers who owe much to elder pioneers cannot see the elder brother spending "company" money to educate his son. Over a course of time, their persistent demand for equal shares totally disregards explicit ethics of kinship and manifests implicit dynamics of economic interests, bringing the family business close to bankruptcy. Further, in the case of the Safari Garage and the Lorry, both Kantibhai and Laljibhai attempt to make gains and display a high degree of selfishness. Without investing a cent, Kantibhai demands a 50% share and a high salary from Ramjibhai. Laljibhai reaps similar benefits, using the Safari Garage to his advantage.

However, the above discussion does not totally deny application of norms in the disputes illustrated above. Ramjibhai's treatment of Kantibhai and Laljibhai clearly suggest that he was primarily moved by benevolent motives in lending money to both, at the end suffering a high loss. In the case of Gujerat Engineering Company Kanubhai is positively moved by ethics of kinship in lending money to Shamjibhai and Chimanbhai. The disputes illustrate at every point a complex interplay of

norms and interests. A possibility of a highly lucrative economic reward may subordinate "reasonable expectations".

In the first dispute the absence of partnership agreement implies a high degree of procedural elasticity manifested in the action of partners. Lack of clearly defined rules governing each partner's behavior enhances ambiguity of which the disputants make considerable use. The settlement of dispute involves checking up accounts. All the partners meet together, privately, and with the help of an impartial neighbor, work out the compensation Shamjibhai would have to pay to Maganbhai. A similar parallel runs through other cases as well. In the case of Broken Joint Family, it is the members of the family who comprise a locus for discussing the issues in the dispute. The discourse between brothers is highly personal, lacking a distinct mode of procedure. When the Lohana Mahajan President takes over the task of settling the dispute, it is he alone who is involved in the dispute and not a council of several members. He interviews brothers separately to make an assessment of the situation. In the third dispute, the case of Safarj Garage and the Lorry, the members of the Bhajan group on both sides intervene to point out an unreasonable demand. The members do not constitute themselves into any official capacity to settle the differences between two sides and therefore no well-defined principles or procedures emerge beyond the rudiment that everybody should get a chance to express his views.

The personnel in the disputes comprise the partners (case p), brothers (case q), and members of the Bhajan group (case r). The framework for the disputants to come together resides in regions and villages they come

from in India, common language, membership to jat and the way of living they share in common. The case of the Gujarat Engineering Company illustrates how such factors provide a scheme by which the persons link themselves to each other in Uganda.

Being a teacher, in the case of Gujarat Engineering Company, Kanubhai demands respect from others whom, in turn, he influences in the settlement of the dispute. The concept of "the people of the same household", gharna manaso, is used to keep the disputes from percolating into the legal machinery instituted at higher levels in society, beyond the household.

According to Jesangbhai, in the case of The Broken Joint Family, discussion of a dispute and its settlement within the family gives members a chance of not breaking away from each other forever. For the dispute is settled and then the reciprocity in different spheres is assumed. He argues that if a family dispute went to the court, a judgment in favor of one party may leave much bitterness and enmity between the members of the family. Similarly the members of Bhajan group said that to resort to lawyers and the court of law, besides being expensive and time consuming, would also mean an open breach of the trust members have between them.

None of the personnel involved used instituted "legal" authority to make decisions. Instead each person, evaluating the social situation, attempts to influence the adversaries so that they accept a settlement, partly under the pressure of norms and largely by maximizing their opposed economic interests.

Notes

1. Outlinena derives from the English word "outline". But used in a Gujerati context such as the above, it has totally different connotations.

Bakuli Asians settle a number of disputes outside the law courts. The system of courts as espoused in the law is not very familiar in Bakuli as a locus for dispute settlement. Nonetheless, whenever a car is stolen, a house is broken into, a fight is under way, Uganda law becomes visible in Bakuli and a number of police constables appear in the neighborhood from time to time.

Under the Ministry of Internal Affairs, the Uganda Police Force is an armed constabulary commanded by the Inspector General of Police, with its headquarters in Kampala. At district level, authority is exercised under the command of senior superintendents and assistant superintendents.¹

The old Kampala Police Station, exercising its jurisdiction over Bakuli and surrounding areas is headed by the Assistant Superintendent of Police who has under him, in succession, a police inspector, assistant inspector, a station sergeant, a sergeant, a corporal, and finally the police constable whom Bakuli Asians know well. In turn, the Assistant Superintendent of Police is responsible to Senior Superintendent of Police who derives authority from a Regional Commander and the Inspector General of Police.

The Police Act² of May 31, 1939, provides for the organization, discipline, power, and duties of the police and other matters affecting the internal security of Uganda. Subject to the provisions of this Act, the police force throughout Uganda is employed to deal with crimes in all urban areas. In rural areas police investigate

all reports of offenses CHAPTER 7 the penal code except those which may be more adequately dealt with by local government

Police & Dispute Settlement in Bakuli

1. The Uganda Police

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In theory, the police make a distinction between criminal acts and civil acts. They assume responsibility only where a criminal offense has been committed. But in practice the distinction between civil and criminal wrongs does not hold, for the Bakuli residents call in the police even when a tenant refuses to pay rent (see dispute o). Sometimes the disputants may induce the police to set right what one might call private delicts.

This chapter stresses the point that in many disputes leading to violence, disputants may resort to the police in initial stages of conflict. While the conflict builds up, the disputants express much anger and hostility against each other. If this results in a fight or an assault, there is an immediate rush to the police station where one of the adversaries lodges a complaint against the other. At this point the police invoke the system of state law to deal with the complaint. As soon as the police invoke the procedure as laid down by the Police Act, the disputants having cooled down, tend to withdraw the plaint and settle the dispute between themselves without any meditative role played by the police in the settlement. The following disputes illustrate this:

2. Some Disputes

s. Mansukh's New Car and Pyarali:

Mansukh, a Hindu, had bought a new car. One evening he was bringing home his parents and brothers. Close to his house, a lorry blocked most of the road, leaving a little ditch of water on the side. Pyarali, an Ismaili, they argued with each other and Pyarali persuaded the old

came on his scooter and stopped before his car. Mansukh asked him to reverse so that he could pass first. Pyarali said that he was not going back. Despite several appeals, Pyarali refused to budge and told Mansukh's father, Jaysukhbhai, that if he made too much noise, he would get a slap. Mansukh's father said that he had seen many tough young men, none of whom had ever dared to touch him. Hearing this, Pyarali came close to the car and slapped the old man. Mansukh, his brothers and sisters dashed out and attacked the young Ismaili. Pyarali punched Mansukh and his father on their faces. When they attacked him again, he is alleged to have used a knuckle duster which drew blood. The father asked Mansukh to take him to the hospital and to the police station. They first went to the Government doctor who gave them a certificate for the police. At the police station, they lodged a complaint against Pyarali. Late in the evening, Pyarali's sister went to Mansukh and his father. She said her brother was very rough but he was sorry for his actions and willing to pay medical expenses for the injuries that father and son had sustained. Mansukh refused to compromise adding that such rough men ought to have a little taste of the police. Later Pyarali's mother went to Jaysukhbhai and pleaded for mercy. She thought her son would get a bad reputation in the neighborhood and if his employer discovered this, he would probably lose his job. She brought Pyarali with her and he admitted that he was sorry for what he had done. Jaysukhbhai said that nonetheless they would have to go to the Police Station to make statements.

The disputants took me to the police station with them where both the sides asked me to act as interpreter. While they were giving the statements on what had happened, they argued with each other and Pyarali persuaded the old

man to give minimum details to the police officer. Jaysukhbhai, however, described vividly the case to the police, asking me to translate in English all that he said in Gujerati. Eventually, Mansukh asked his father not to say "too much" for they had already shown Pyarali what could happen if the police decided to prosecute him. But they were not interested in going to the court which would spoil their day's trade. The police officer who was taking down their statements asked them not to talk in Gujerati. Jaysukhbhai gave a full version of his story to the policeman and at the end said that he did not want to lodge a complaint against the young man for after all they all lived in the same neighborhood. It was not good to take any one to the court. The police officer told me that he wanted to put the young man "behind bars" for he had badly assaulted a man old enough to be his father.

But both Pyarali and Jaysukhbhai wanted to compromise. After I had conveyed their intention to the police officer, he added on the report that the plaint was being voluntarily withdrawn. After we left the police station, Mansukh drove us to a private doctor's dispensary where his and his father's wounds were dressed. Then Jaysukhbhai suggested that we all must have a soda together. Much of the bitterness between the adversaries melted down after they had a bottle of coca-cola together.

t. The Milkman and His Neighbor:

Kalubhai sells milk in Bakuli as his part-time occupation. He also supplied milk to his neighbor, Kashibhai, who never paid his bills in time. They argued about the overdue payments, and the milkman told Kashibhai to stop drinking milk and tea if he could not

afford to pay his bills. After this little quarrel both of them stopped talking to each other.

However, their wives continued to quarrel - over the use of the toilet and bathroom that the two families shared. Every morning each of them claimed first use of the toilet. They drew their husbands into these arguments and when they came close to blows, the neighbors did not always manage to prevent them from fighting.

Meanwhile, to lessen many petty thefts in the neighborhood, Kashibhai decided to put up an iron gate at the entrance of the courtyard. Kashibhai intended then to keep his van inside the courtyard to avoid tire thefts. However, every evening he discovered that his neighbor Kalubhai had already parked his car in the little empty space near the gate. Kalubhai claimed exclusive use of the space in front of his accommodation. Once more they argued, making threatening gestures until neighbors stepped in and separated them. The next day Kashibhai brought his workmen who removed the iron gate from the courtyard entrance. This, as Kashibhai claimed later, would teach Kalubhai a good lesson.

A few weeks later, sparks from a charcoal oven burned all the cotton that Kashibhai's wife had spread for drying in the courtyard. She was furious and told Kalubhai's wife that she would report the incident to her husband that very evening.

When Kashibhai returned home, he was drunk. As soon as his wife told him what had happened during the earlier part of the day, he came out to ask Kalubhai to "face" him if he were a real "man". His opponent, knowing that Kashibhai could be dangerous, locked his door from inside and then shouted for help. One of the neighbors

held Kashibhai and pushed him into his own house. In the course of this struggle, Kashibhai vehemently banged a door that crushed his finger. The pain and sight of blood coming out of the wound excited him only the more. He said that he would feel at peace only after he had also "bled" his enemy. Releasing himself from the hands of those who were holding him, he came out to break into his adversary's house only to see that a large crowd comprised of several of Kalubhai's relatives, two Bhajan group members, and neighbors were gathered in the courtyard. Kashibhai abused them all and asked them to get out of the courtyard. Both Kalubhai's relatives and the Bhajan people asked him to return to his accommodation so that they could settle the matter peacefully. But Kashibhai refused to do anything, speaking ill of everyone who was standing there.

Kalubhai's father's brother's son went to the Old Kampala Police Station and returned with two constables. After making a preliminary investigation, the police said they would arrest Kashibhai for behaving badly in public and for being a nuisance. The police asked both of them and other witnesses to come down to the police station. At the station, Kashibhai said that he was ready to do whatever the police asked. He even said that he did not like to quarrel. The police asked him if he was drunk at the time when the fight was about to take place. Kashibhai, who admitted his guilt, also suggested that they should compromise instead of wasting everybody's time in the police station. But Kalubhai's father's brother refused to compromise and said he wanted the police to prosecute. He also reminded the police that he had brought the news of dispute between the two earlier to their notice and it was only fair that they should "teach a lesson" to Kashibhai.

However, they were coming to the police station for the first time and they did not wish to lengthen the course of dispute. A neighbor present at the police station suggested that Kashibhai should apologize to Kalubhai and then the matter would be over. Kalubhai reacted saying that although they were all gharna manaso, people of the same household or patrilineage, he did not wish to end up the matter unless the police strongly warned Kashibhai so that he did not abuse others.

The police warned him and asked him to render an apology to Kalubhai for the bad language that he had used against him. After this, the disputants returned home. They did not speak to each other and avoided all contacts. Neighbors helped them to decide the times when each of them should use their common toilets.

u. A Fight Between Brothers:

Thanki, Brahman by jat, lives in the first Bakuli street. When his eldest son Ramnik married, there were soon quarrels between his mother and wife and eventually between himself and his mother. Ramnik's wife complained about the ill state of her health and insisted that she be taken to a doctor. But her mother-in-law alleged that she was merely pretending to be sick to avoid work and to spend unnecessarily her husband's money on "horse piss" of medicine. Her remarks inflamed Ramnik and his wife, both of whom, after a series of quarrels with the mother, left their family and set up a separate household.

Later on a Sunday morning, Ramnik returned to collect his wife's ornaments and other belongings. First his mother refused to give him anything and called him a traitor for leaving the joint family. His younger brother Manji also reprimanded him for breaking away from them. His sister cursed his wife and knew that the way Ramnik was giving "freedom" to her would soon make her a woman

The duty constable scolded both mothers for bringing of "loose character". Unable to bear these abuses against himself and his wife, Ramnik slapped his younger sister and called his mother a witch, dakan. Thereupon Manji, his brother, hit Ramnik in the chest. Both the brothers fought in the house throwing objects at each other until the noise and uproar in the house, with younger ones screaming and shrieking in fear, brought the neighbors and Bhajan group members rushing. The two brothers, bleeding profusely, were separated. Bhajan group elder, Kanjibhai, told them to stop fighting and behave like civilized people. He urged Ramnik to leave and eventually he did, telling them that he would soon return with his own "men" to collect his wife's things.

Soon after Ramnik had left, Manji went to the Old Kampala Police station where he charged Ramnik with assaulting his sister and mother. In turn, Ramnik also went to the Police Station to file a complaint against his mother and brother for withholding his wife's property and beating him.

Neighbors and the Bhajan group elders spent a long time pacifying Manji who, they insisted, should withdraw the complaint against his elder brother. They said, "If the water is beaten by a stick, it does not separate into two parts"; likewise brothers who may quarrel should not separate into two parts. Manji agreed to withdraw the complaint if Ramnik himself would stop going to the police and behave well towards his mother and sister.

One of the Bhajan elders similarly persuaded Ramnik to withdraw his complaint against his mother and sister. Later, much to the annoyance of Old Kampala Police Station authorities, Manji withdrew the charge against his elder brother but at the same time urged the police to warn him to behave well towards his parents.

The duty constable scolded both mothers for bringing their case to them and then not allowing the police to pursue the case further. He reminded them that they should call in the police only if they had a "case" against someone which could not be settled by reaching an understanding between themselves.

v. A Grandmother and Her Adopted Daughter:

When Hamida died, her husband, Sultan, asked her mother's brother's daughter's husband, Gamal, to look after his children; and Gamal did so. However, Sultan allowed him to let Hamida's mother, Zena, look after the youngest child, a girl named Zubin. Zubin grew up in her grandmother's house regarding her as the "real mother". Sultan's two sons came to Kampala twelve years later and settled in Bakuli with Abu, their father's brother's daughter's husband. Abu did not want them to live with Zena, their grandmother, for she was uncivilized and did not cook good food. He also asked Sultan to do something about Zubin; otherwise, under Zena's influence, she was going to grow up as a girl with "loose character".

When Sultan discovered this, he came to Kampala and asked Zena to return Zubin to him. However, Zena refused for, as she said, Zubin was "her" daughter and she could not live without one whom she had brought up so dearly. Sultan returned to Kisoro and asked his two sons to get hold of the daughter on the following weekend so that he could take her back home. Meanwhile, Zena, whose emotional ties with Zubin had grown strong, asked her Hindu neighbors to support her and "fight" Sultan and his sons if they came to take Zubin away. For Zubin could not live without her grandmother.

When Sultan came to collect her again, Zubin had gone to her grandmother's brother's house to play. Her

two brothers and Sultan went to fetch her. Zubin refused to come out of the house for her grandmother had warned that her father may take her away to Kisoro in Western Uganda. After a little scuffle, they dragged her out and Sultan drove her to Kisoro.

When Zena discovered that Sultan had "stolen" her "daughter" she went straight to the African M.P. who lived nearby. After she had told him what had happened, the M.P. came to Bakuli and asked the two brothers to return the girl to Zena's custody; otherwise, he would call the police. Later when nothing happened, Zena persuaded her Hindu neighbors to take her to the police station. She reported that her daughter was missing from home and that some people from Kisoro had kidnapped her, with the help of two Asians living in Bakuli. She could identify them if the police came with her to Bakuli. The constables agreed to come down to question the two brothers that evening, but one of them left Kampala to avoid the arrest he feared. According to Zena, police also questioned Sultan in Kisoro but he produced Zubin's birth certificate which proved that she was his daughter and not Zena's. In Kampala, Abu asked the two brothers not to be afraid of the police. Later he took them to Old Kampala Police Station where they explained the story of Zubin's temporary stay with Zena to the police inspector. They emphasized that it was appropriate for Zubin to go back to her father.

For days Zena argued that Aga Khan School had enrolled Zubin as her "daughter" and not as Sultan's daughter. She threatened to go to the court to show Sultan that he could not take her daughter away from her. Her brother's son explained to her that she should withdraw the complaint against Sultan and let Zubin live with her father. After much persuasion and a desire to

refrain from going to the court, (for she had no money), Zena went to the police station and withdrew the complaint against Sultan and his two sons.

3. Discussion:

The degree of informality in the above disputes can be assessed with regard to the principles, the procedures, and the personnel involved.

These disputes clearly illustrate a lack of the integration between the police and Bakuli residents - the latter regarding the former as irrelevant to them. The distance between them is maintained by an absence of social context bringing the two together. In Bakuli, the police are regarded as slow, inefficient, harsh, and uncomprehending. This stereotype is further supported by strong barriers of race and culture between Asians on one hand and the African police force on the other.

On the other hand, the constable from the Old Kampala Police Station symbolizes the coercive power of the state. The neighbors and Bhajan group elders constitute a locus of marginal influence on the disputants in that their attempts to restrain the disputants from violent quarrels may or may not succeed. But the police represent the state law and symbolizes the power it can exercise over the inhabitants. Subject to the provision of the Police Act, a police constable may conduct an inquiry to investigate a criminal offense. In practice, however, he may tread upon areas where the police jurisdiction may not extend. If he is convinced that an offense has been committed, he may arrest the wrongdoer and compel him to make a written statement. The disputants resort to the police not so much to use them as a law enforcement agency as to "show" their adversaries of a case where an elderly Hindu reported a theft to the Old Kampala Police Station. When most of his stolen

that they can be pushed into the alien territory of police and law. In the case of Mansukh's New Car and Pyarali, Jaysukhbhai has legitimate grounds to let the police prosecute Pyarali for an assault on the old. The police also express a desire to put the young man behind bars. But as soon as Jaysukhbhai thinks that his purpose - namely to frighten his adversary - has been served sufficiently, he decides to settle his differences with Pyarali right in front of the police. This is done outside the realm of the Penal Code.

Similarly, Kashibhai expresses much aggressiveness against his neighbor, the milkman. But the sight of the police cools him down. Admitting his guilt, he suggests that a compromise should be reached to avoid further entanglements. His adversaries first refuse to compromise merely to exert pressure on Kashibhai and not to let the dispute go before the law court. Eventually, on a neighbor's suggestion, after an apology is rendered, they withdraw the plaint.

A similar trend appears in A Fight Between Two Brothers and A Grandmother and Her Adopted Daughter. In both cases, neighbors and Bhajan elders together with the relatives persuade the complainant to drop the charge against his opponent.

That nobody mediates between the police and the public is quite evident. The police see the performance of their task as bringing the culprit before the law and not allowing the disputants to settle their differences in the police station. However, the police may allow the parties to reconcile if the dispute, such as a quarrel between husband and wife, falls beyond their jurisdiction. A senior police official cited an example of a case where an elderly Hindu reported a theft to the Old Kampala Police Station. When most of his stolen

was recovered, he asked the police to withdraw the charge against the thief. He feared retaliation and dreaded the idea of attending the court during his working hours. The police, as they said, find this tendency "queer" for once an offense is reported to the Central Police Station, it is difficult to withdraw the charge against the culprit. For as a matter of legal procedure, the police prosecute the offender under the Penal Code and Criminal Procedure Act.

Given the situation in which the disputes are settled within the police station, two procedural variables operate in the settlement. On the one hand, police apply the procedure as outlined in the Police Standing Order and the Police Act of Uganda. This means that where a disputant brings a complaint to the police station, the duty constable or sergeant asks him to make a full statement of facts about the dispute. Similarly, the accused may make a complete statement of facts about the dispute to the police who may then prosecute the offender in a law court following a procedure set out for doing this.

Initially, when the police invoke the official procedure; that is, when the constable begins to note down the statement of facts, the adversaries begin to talk to each other in their vernacular language, interrupting the official procedure by asking the police to drop the charges and to let them settle the matter among themselves.

This done, the disputants may settle the differences as in dispute s (Mansukh's New Car and Pyarali). In this case the latter compensated the former by paying his medical expenses. The reconciliation between the parties was further symbolized by the drink they have

together. Similarly in disputes t and u the disputants use different procedures to settle differences.

Besides the disputants, neighbors, Bhajan elders, and police - as belonging to the national legal system - comprise the personnel in dispute settlement. That the police could, and to a certain degree do, participate in settlement of disputes is obvious. The police and Indians in Bakuli belong to two different worlds. If there were an Indian constable or a sergeant at the police station, it is likely on one hand that the disputants would use the legally available procedures for settling their differences. On the other hand, the disputants may regard the Asian sergeant as one of them even if he is not a member of their own jat. Then they may resort to settling their differences within an Indian context divorced from the national law.

In a situation such as the above, role conflicts may or may not occur irrespectively of any consideration of ethnicity in the personnel concerned. And it has been the burden of this thesis to explain some influences in social processes of procedural and jurisprudential factors in addition to the relationships of the parties involved in various kinds of disputes and their settlement.

Notes

1. See Uganda Police Force Report 1962-63.

1- Law in Plural Societies

2. The Police Act, Chapter 312, Laws of Uganda, 1964, Volume VIII, Pages 4923-4987, Government Printers, Entebbe.

between law and society in Uganda. The link between the two, as H. G. Smith suggests, may vary in homogeneous and plural societies (Smith: 1965: 26-27). If a society is culturally and ethnically homogeneous, the instituted legal system may impose the norms and values of such a social structure. Thus the law deriving from the society may encompass all its members, providing a centrally available and adoptable means of settling disputes. It is in this sense that a society may constitute a "jural community" (See Chapter 1, Page 4).

In a plural society, such as those found in most parts of Africa south of Sahara, culturally and ethnically the social set-up is heterogeneous. The law attempts to bind various segments and provides, partially, means of regulating relationships of conflicts and disputes. This is usually under the realm of criminal law and law of contract, etc. where state jurisdiction needs to set wrongs right. Such a plural society may not constitute a "jural community" but several "jural communities" - each possessing a distinct mode of settling certain disputes. In plural societies characterized by colonial rule "law is legitimated, if at all, by the sovereign command of the colonial power" or "law may remain or become identified with conquest and alien rule leading to the rejection.....of law and order itself" (Kuper: 1965: 18). The legal system, comprising alien forms in the post-colonial period, may permeate over a course of time by adaptation and accommodation

EPILOGUE

1. Law in Plural Societies:

The study of dispute settlement among the Bakuli Asians reveals the kind of relationship that exists between law and society in Uganda. The link between the two, as M. G. Smith suggests, may vary in homogenous and plural societies (Smith: 1965: 26-27). If a society is culturally and ethnically homogenous, the instituted legal system may express the norms and values of such a social structure. Then the law deriving from the society may encompass all its members, providing a commonly available and acceptable means of settling disputes. It is in this sense that a society may constitute a "jural community" (See Chapter 1, Page 4).

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to various segments of a plural society. Nevertheless, a variety of cultural and structural factors, illustrated throughout, may discourage the disputants from using fully the instituted legal system. The lack of social relationships between parts of plural society may itself constitute a structural variable, setting one group distinctly apart from the other. Difference in religion, language, and a way of life add a cultural dimension to diversity. Sometimes the law itself, being formulated in certain specific ways, defining particular acts, may have unintended effects in relationships where its applicability may have no direct relevance as well as where it does have relevance. This may prevent further recourse to law courts and encourage extra-court settlement of disputes.

The Mailo land law and rent disputes (See cases l, m, n and o - Chapter 5) illustrate such difficulties where a law, primarily intended to regulate the legal relationships between "natives" and "non-natives", also impinges upon the relationships between "non-natives". This may be a wider phenomena in that the land laws in various places governing the legal relationships between natives and non-natives along the similar lines may pose similar (if not identical) problems and stimulate a comparative study or analysis of land laws governing the relationship between natives and non-natives of a place.

The Divorce Ordinance of Uganda, as applied to matrimonial disputes, provides another example of the way the national law fails to reach the segments of plural groups and even gives rise to practices which may be, from the court's point of view, either irregular

or legally questionable. The "divorces" allegedly given by the lawyers in chambers, outside the law courts may create legal puzzles when inheritance and succession are disputed in courts.

The divorces awarded by the Ismailia Provincial Council on grounds not covered by the Divorce Ordinance of Uganda also provides an example of discrepancy between the law of a religious community and the state law of divorce.

The disputes about boys and girls, especially in the context of endogamy, brings out a feature that characterizes the Asian community in Bakuli. However, many disputes between individuals of opposite sexes do not contain enough legal potential to reach as far as the national system of law. Nevertheless, some disputes which may become violent do reach the police station. The police represent the state law and disputants resort to them when the other pressures do prove inadequate. The complainant usually intends only to threaten his adversary rather than to have the police invoke the formal procedure of the law and the personnel of the court as a means to settle the grievance. After an initial escalation into the national law at the police level, the disputants retreat, cloister themselves within the fold of their own group, and strike a compromise within.

The business disputes (See cases p, q, r - Chapter 6) show the mode of social organization of business activities which do not correspond to the modes laid down by the Company law, which does not recognize the joint family as a corporation. Businesses which are organized along joint family lines do not fall within the realm of law so far as the law does not recognize interests of the family members unless such interests

are incorporated in a legal, written-down partnership agreement.

It may be likely that the integration of norms at national level will lead to integration between plural groups. But whether such integration between sections of a society can be legally engineered or not is a debatable question. Often the plurality of groups in a society is viewed as posing a lack of unity from the point of view of law, and state law may become a factor in binding various groups together. In the field of commerce, trade, and industry, where the issues in conflict or dispute do not express cultural idiosyncrasies of the groups, the national law may have a greater relevance. Whether the national law, by not being applicable to the cultural groups in certain respects encourages fissiparous tendencies or not is a challenging question.

2. Macro and Micro Legal Studies:

Professor Seidman argues that "law be employed as a means of social engineering" (Seidman: 1968: 7) and that it is macro-legal studies which help to develop, transform, and create new institutions in developing nations of Africa. He then suggests that preoccupation with the study of dispute settlement, the micro-legal approach to law, cannot answer the problems posed by developmental tasks which the new nations of Africa face. He further holds that a narrow concentration on rules themselves is hardly useful insofar as it does not stimulate desired social and economic change. Similarly the focus on law as expressing the ethos of common consciousness may narrow one's attention to customary law - to law that was.

However, a micro-legal study is not necessarily irrelevant to social engineering. A carefully chosen and systematically-conducted piece of research on a

specific legal problem may help the authorities to understand the complexity of issues involved at the macro-level. The settlement of rent disputes in Bakuli illustrates the point. The degree to which the consent clause of mailo land law has hindered the development of properties on Mailo land is shown by these disputes. As the landlords cannot collect rent arrears in the absence of legal consents, there is some unwillingness among the non-natives to invest capital on Mailo land because legal procedures for transferring leases are complicated. Analysis of problems like these contributes towards understanding the problem of land development in Buganda. This way a small-scale research suggests a hypothesis which can be elaborated with a view to transforming the instituted legal machinery so that development tasks can be accelerated.

Both micro and macro study of law and society may prove productive. These approaches are not polar opposites; nor is one primary and the other secondary. Each approach would have its own value and relevance, depending upon the kind of problem before the researcher. Whenever research is sought for social engineering, that is to outline and set up organizations and bodies to fulfill specific aims, a macro approach to investigation may prove practical. The micro approach applied to the study of legal processes may reveal incongruencies and inconsistencies in the legal procedure, hindering tasks of development.

3. Towards Informal Settlement of Disputes:

Social anthropologists tend usually to analyze the jurisprudence of dispute settlement from a normative point of view. As Bohannan says, "Anthropologists must, by studying the cases of trouble and dispute that fall within the rubric of comparative jurisprudence and

legal anthropology, also elicit from the situation the statement of norms, and ultimately the propositions about the nature of society, the world, and God, which are the unstated postulates of any set of laws. It is the task of the anthropologist, by studying cases of trouble, to discover the axioms a society assumes. Legal anthropology studies the social counteractions to breaches of norms including the events that precede and follow counteraction. It also studies the basic values that lie at the base of norms" (Bohannan: 1963: 288). The very operation of law proceeds from a breach of norms. If the breach of norms is felt to be contrary to "rightways", a whole set of procedures and personnel are activated to sanction the deviant.

Norm here means what people ought to do in given situations. These are the rules of behavior against which the actual actions of an individual are measured. The idea of reasonable expectations derives from the notion of an ideal normative pattern. This determines in advance how people should behave in various social situations, and how their deviations from such ideal patterns is sanctioned by the society through both formal and informal devices. The social norm then lays down what ought to happen rather than what actually does happen.

The concept of norm in sociology derives in particular from Durkheim who conceived of society as a kind of reality which could not be reduced to the behavior of its individual human beings. "Social fact is a thing distinct from its individual manifestations" (Durkheim: Trans. 1938: 7). For him the social facts lie above and independent of the consciousness of individuals who comprise the society. The social facts reside in rules

of behavior and norms to which individuals are expected to conform. Society, through a system of norms, imposes constraints upon the individual who should behave according to certain standards and values which he finds outside the bounds of his individual will and existence. Each man finds himself in a world of rules for the breach of which he may be punished. These rules existing beyond the control of the individual permit expressions only in conformity to shared values as a priori determined. However, as most individuals internalize these values, they feel constrained only when a norm is broken and a punishment or sanction imposed. Viewed in this perspective, the social norms and law circumscribe the individuals through legal institutions and people have no alternative but to submit to the social fact of a legal order beyond themselves.

However, not all norms are equally effective. As Lowallyn and Hoebel observe, "'norms' for conduct differ in quality and in power according as they do or do not coincide with the clearer practices of life. Practices, in turn, have variant meaning not only according to the degree, range, and sharpness of their existence, but according also to the kind and power of norms which sustain or oppose them" (1941: 22).

With regard to the informal settlement of disputes, a distinction between social and legal norm is useful. A social norm is a rule of good behavior, whereas the legal norm is codified law, written down and incorporated in volumes of Laws of Uganda. Bakuli Indians articulate their social norms verbally and to these, many different interpretations can be attached. Legal norms can be more specific although their interpretations may vary too. The social norm differs from the legal norm basical-

ly in one respect. The breach of the latter is enforced through sanctions applied by state, but breach of a social norm may be followed by diffuse sanctions only - not supported by the state power. In this respect, the provisions of the Ismailia Provincial Council, despite their specific character, are not legal norms in the above sense in so far as their enforcement cannot be made by organized force.

The cases in various chapters illustrate how social norms at various points are applied effectively, sometimes with a show of force. As illustrated in Chapter 3, for Hindus the abru of their daughter and wives is a matter of primary importance and all male approaches to females constitute a serious breach of norm, threatening the viability and exclusiveness of endogamous groups. The traditional norm supporting the sex polarization is in constant conflict with the new notions of cross-sex relationship as conceived by first and second generation Indians in Uganda. Here the norms differ and conflicts between parents and children on male/female friendship ensue. Also the norms between social groups differ, generating tensions. Hindus resent the leeway the Ismaili parents provide to their young daughters in the matter of friendship with boys. Hindus strongly disapprove this freedom - chut - and to prevent its manifestation in their own circle they exert strong informal pressures. These lie in raised eyebrows, shocked expressions on faces, ridicule, threats, and sometimes physical force. Further the fear of loss of social esteem and respect through gossip acts to maintain the polarity between sexes. The reasonable thing is to avoid females and at the outset to express complete disinterest in them.

balancing interests and in avoiding one's action to take account of others' interests (Weber: 1947: 123).

In matrimonial disputes the norm of the "right way" is applied with different degrees of effectiveness on husband and wife. Among the Hindus, the husband holds the upper-hand in disputes with his wife. Therefore even if he is at fault, it is the wife and her parents who submit to the rule that dikri na mabap ham-ansha name, that the daughter's parents always submit (to the husband). (See the cases of The Cruel Mother-in-law and A Deserted Housewife).

As against the Durkheimian notion of society conceived as "social fact" beyond individual consciousness, the Weberian perspectives begin by considering social relationships as matters of probability (Weber: 1947: 118) rather than a normative necessity. In this case, "the subjective meaning need not necessarily be the same for all the parties who are mutually oriented in a given social relationship" (Weber: 1947: 119). Social relations for Weber, then, are not necessarily coterminous with common values. By contrast, social relations for Durkheim are coextensive with common values (Apthorpe: 1964: 2).

Weber elaborates this thesis further by taking a situation in the market where the satisfaction of the economic interest of the dealers is the primary factor in orienting their action. For Weber, one's self-interest is a determining element in all other spheres of action as well. Interest-oriented action does not take into account the customary ways and devotion to norms accepted as absolute values. Instead one rationally puts one's interest prior to any unthinking acceptance of ancient custom. Then the stability of social relationship does not lie in commonly held binding values but in balancing interests and in moulding one's action to take account of others' interests (Weber: 1947: 123).

Malinowski questioned the assumption that "in primitive societies the individual is completely dominated by the group" (Malinowski: 1926: 3). He suggested that "whenever the native (Trobriander) can evade his obligations without the loss of prestige, or without the prospective loss of gain, he does so exactly as a civilized businessman would do" (Malinowski: 1926: 30). Similarly Hogbin questions the validity of the Durkheimian concept of society as a mystic entity with a consciousness all its own. He holds the view that "'society' in the last resort is composed of individuals and in every criminal case the action eventually taken is not a unanimous repudiation of the crime, but is of the product of various conflicting individual attitudes" (Hogbin: 1938: 223).

The rent and business disputes, discussed in Chapters 5 and 6, bring out a complex interplay between norms and interests of the disputants. They are resolved outside the law courts and as a result, their outcome is not the same as that of the cases tried out in the courts with a high degree of procedural and adjudicatory efficiency. Also the pecuniary gains of the parties are involved in both disputes.

When disputants settle their differences outside the law court, there are norms which lay down certain procedures they ought to follow. However, here "what ought to happen" does not always constitute social action. Instead the individuals, through their consciously felt interests, orient their actions towards maximum gain and benefit. Neither the notion of justice, nyaya, or injustice, anyaya, nor the moral precepts of how a man should reasonably behave that underlie the dispute settlement. Settlement is characterized by conflicting

interests of the parties who attempt to compromise to make the most out of the final outcome. In Chapters 5 and 6 disputes involve financial stakes and the disputants manifest interest-oriented action. This means that whenever they can, they evade the pressure of norms. Nonetheless, until the dispute occurs, the norms of the society may shape much of the course of social relationships. But in conflicts, extra-court processes may be characterized by a conscious evasion of one's moral responsibility and duty to others. However, to do this, disputants do not view norms and interests as two opposites. What happens is that interests are closely tied to norms which then are used to further purely utilitarian and practical gains.

This is clearly illustrated in both rent and business disputes (See cases l, m, n, o - Chapter 5 and cases p, q, r - Chapter 6). In rent disputes the tenants know that the landlords cannot take them to court if they did not pay their rent arrears. In the light of this knowledge, they evade payment of arrears though they periodically make statements of norms saying that it is fair and just for them to pay arrears. Landlords, tenants, and lawyers alike act so as to enhance their interests. Similarly the relationship between the partners (Case h, Chapter 6) is defined on the basis of available models of joint family norms which regulate the relationship between the partners. Later when the dispute breaks out, the normative model of joint family and the business, hitherto conceived as the same entity, separate into two distinct parts. At the outset the partners maintain the normative behavior verbally while the antagonists quarrel with regard to their shares in the business. When the normative behavior is abandoned, the social

relationship may become thin and individuals' personal motives may become distinct.

If we accept the empirical fact that the disputants do not always mould their behavior simply in terms of either interest or norm, we may add that, at an abstract level, it is unnecessary to conceptualize norms and interests as two contraries operative in social situations. This saves us from casting Durkheimian and Weberian perspectives at two irreconcilable, polar ends. At the level at which an individual makes choices, both interest and norm may blend together (although they may not). Depending upon the position of the disputant in the society, a host of other factors such as the kind and nature of dispute settling machinery, the issues in dispute, the power of norms and interests of the adversaries, etc. would decide whether or not norms or interests or a combination of both the variables would operate in the dispute settlement process.

The procedure of settling disputes within and without the courts varies considerable, extra-court settlement often being more flexible and plastic in character. In court a settlement process commences only after the dispute has taken place. The disputants, through the lawyers, present all the operative facts of the dispute, specifying the infringement of their legal rights and their claims arising out of this. This follows the legal proceedings which comprise an elaborate judicial ritual beginning with a legal notice to the defendant. After the day of hearing is fixed, various legal functionaries, the magistrate, lawyers, disputants, and their witnesses are summoned to the court. A law court is a highly structured place, defining seating arrangement that expresses supremacy of law and order. The pomp and

grandeur of the court are further enhanced by courtroom etiquette that specifies behavior of all the personnel. Generally, the lawyer presents his plaint in an official manner, outlining the facts of the dispute. To support this, he produces witnesses and oral, written or other documentary evidence. The presentation of facts is regulated by rules of evidence. The lawyer for the defendant may question the plaintiff and cross-examine his witnesses. The magistrate, acting as an impartial third party, ensures that the proceedings follow the clearly defined and delineated procedures determined legally. The magistrate or the court clerk records the proceedings of the case before the magistrate pronounces the final judgment. After a close scrutiny of the evidence and other proofs, the magistrate gives his official judgment which determines the rights and duties of the parties concerned. Refusal by a disputant to abide by the decision of the court may lead to a punishment. The court imposes organized sanctions through its prison and police services.

Through the elaborate procedural machinery of the instituted legal system, the judgment given enters into law reports and is then cited in similar cases coming before the court.

The procedures of dispute settlement in Bakuli are not sharply defined and elaborately structured like the court procedures. One of the attributes of the settlement in Bakuli is that the procedures are evoked as soon as the dispute occurs and not after it has taken place. For example, the members of Bhajanmandali find themselves in a dispute about to erupt into violence or about to happen. In a situation loaded with tension, hostility, and antagonism there may be little scope for a develop-

ment of procedural devices. Sometimes, the conflict-resolving body may not even attempt to discover the operative facts of the dispute until much later. Finding themselves in the middle of a conflict, the Bhajan group is mainly concerned with preventing hostility from turning into violence.

As against the role of the Bhajan group, the lawyers and elders involved in matrimonial disputes usually carry out a thorough inquiry into the causes of conflict. However, the mode of this inquiry is elastic for no sharply defined procedures govern its conduct and, sometimes, not to offend a party, the elders may not even press for all the operative facts so long as the husband and wife are willing to compromise and start afresh. The meeting of jat elders is devoid of any specific character as no rules govern the proceedings of the meeting. Similarly, the rent and business disputes also exhibit procedural elasticity as the law of procedure only rudimentarily manifests in the court settlement of disputes. With regard to the settlement of disputes in the police station, it is significant to note that formal and informal variables operate at the same time, the latter taking precedence over the former.

The cases happening in Bakuli clearly illustrate that the personnel involved in dispute settlement may comprise not only the disputants and their supporters but also those officials of the national system who, outside the scope of state law, participate in dispute settlement, using different procedures (Cf. Apthorpe: 1968a:15).

In the disputes about boys and girls it is Bhajanmandali that becomes instrumental in sustaining order in Bakuli among the Hindus. The peacemakers' sacred

position helps them to intervene in a conflict to prevent serious outbursts of violence. Through their persuasion and influence, the members of the Bhajan group affirm the solidarity of Hindus, especially vis-a-vis the legal system that must be avoided as far as possible.

The personnel concerned with the settlement of matrimonial disputes retain the explicit context of the jat to whom the continuity of endogamy is vital.. Those who belong to the jat association, such as Lohana Mahajan, perform the task of bringing together those families who are at loggerheads over matrimonial disputes. Sometimes, especially in view of difficulties encountered with the Divorce Ordinance of Uganda, the lawyers may resort to practices from a "practical point of view". Such a view assumes that in a matrimonial dispute where a compromise is impossible to arrive at, lawyers should find out a way of getting around the law. Outside the civil law of divorces, lawyers are alleged to award "divorces". The frequency of such "divorces" and the mechanism under which they are given opens up possibilities of further research.

Lawyers are also similarly active in disputes about collection of rent arrears - especially when the landlords have no legally enforceable rights. Once again the trend is to devise practical ways of resolving the dispute, when there is no recourse to law. Lawyers then attempt to work out solutions which landlords and tenants may accept. The solution acceptable to both sides may be legally questionable, but it provides for the continuation of landlord/tenant relationship on mailo land.

principles organizing the judicial machinery of state

Further it appears that the lawyer's clerk has an important part in the settlement of disputes in chambers. They provide a locus that may connect a client to the lawyer and to the national system of law. Or else, at the same time they may disconnect the client both from the lawyer and national law by providing a context of familiarity where disputes can be quickly settled, at lower costs with minimum delay. What kind of disputes the lawyer's clerk resolves is at present an unexplored area of research.

The joint family enjoys a certain amount of jural autonomy in so far as the members agree to abide by the decisions the family head makes. Business disputes, such as in the case of the Broken Family (Case q, Chapter 6) makes the point. When the family members do not see it in their interest to accept the decisions made at family level, the dispute may be referred to the elders or the close jat associates who may help the adversaries to compromise. When the family model is applied to a business partnership as in case p, Chapter 6, the partners, in the absence of legal agreement, may sit down together and work out a compromise.

On the other hand a number of disputes offer the disputants a chance of using the national system of law. While the dispute settlement proceeds at the police level, the adversaries, cutting themselves off from the police, persuade the police to accept the compromise they have made.

The difference between informal and formal settlement of disputes does not lie in contrast between a court settlement and extra-court settlement. However, the principles organizing the judicial machinery of state

in many ways differ from the way people settle differences between themselves. The judiciary enjoys a unique support of the state through its police, prison, and probation services. Defining the role of judiciary, the Constitution of Uganda makes it a device to which, at least in theory, all disputes could be referred. The dispute settling process in Bakuli has a less general applicability and a smaller number of disputes is settled there.

The disputes, despite their legal potential, often do not go as far as law courts. When people attempt to settle them, procedures as outlines throughout, vary from one category of disputes to the other. Each procedure applied aims at meting out a settlement which has a probability of acceptance. The state law increases the possibility of such acceptance by enforcing sanctions through organized force. In Bakuli the threat of such physical force may bring about a compromise. In cases where the disputants do not see any compulsion to accept a decision made by a body or a group of people, it is likely that they may accept the positions most favorable to them in terms of their interests. The dispute resolving devices can terminate a conflict after a decision has been accepted by two sides. This is particularly true of law courts. The extra-court settlements are not always characterized by similar procedures. These may leave the dispute open and much hostility and bitterness between the disputants may ensue. Some procedures - especially in courts - make it possible to define explicitly the loser and the winner in a conflict. In Bakuli the procedures are often not supported by authority and tend to emphasize reconciliation between sides so that social relationships are not strained and the viability of the dispute settling locus is threatened.

To the plural groups in a country like Uganda, the form of law, as imposed from the top, may appear alien in dispute settlement. The Hindu community of Bakuli, retaining its distinct structural, cultural, linguistic and religious dimensions, often favors dispute settlement characterized by principles, procedures, and personnel, much different from the state system of law.

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APPENDIX I



7



The Bhajanmandali in Progress

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