

LAW, LABOR AND THE ECONOMIC VULNERABILITY OF WOMEN IN NYINBA SOCIETY*

Nancy E. Levine

The distribution of rights over valued and productive resources is of significance in any society and is a key factor in the assignment of economic statuses to the society's members. Furthermore, the individual's economic circumstances may be expected to have a bearing on the other social statuses open to him or her. Writers on women have pointed to the connection between statuses held in one domain and the permissible range of statuses open to them in others, and some have taken this as evidence of a causal relationship between the relevant facts. It is not necessary, however, to adopt a deterministic stance in order to examine the ways in which economic statuses interact with the statuses pertaining to the domestic and politico-jural domains. Rather such a set of relationships may be characterized in terms of processes of reciprocal interaction; and it is this latter approach to the analysis of social structure which informs the discussion to follow.

* A special note of thanks is due to Tshewang B. Lama who has acted as my research assistant from 1973 until the present and whose own interest in the problems of law served to direct my attention to matters I might otherwise have overlooked. The research, carried out from June 1973 till June 1975, was funded by the National Science Foundation and National Institute of Mental Health whose support is gratefully acknowledged. Thanks are also due to Tahir Ali and Lynn Bennett whose comments on this draft of the paper were particularly helpful.

In this paper the guiding focus and subject of major concern is the economic statuses held by women in Nyinba society. However, as we shall see, these economic considerations influence and are reflected in other aspects of social life, as is most pertinent here, in the distribution of statuses in the domestic and politico-jural domains.

The choice of this focus was guided directly by Nyinba women's own perceptions of the "problems of women" in their society. They place considerable emphasis on their economic disabilities, their restriction from inheritance and control over productive resources, and this is quite understandable. Property, especially land, is very highly valued in Nyinba society and the fact that women cannot own it places inescapable limitations on them. Thus women express grievances about this subject, and their readiness to formulate such grievances is very much in keeping with the forthrightness and independence with which women of Tibetan culture are so often credited (see, for example, Aziz 1978). These economic disabilities are tied in with and compounded by other problems, such as the insecurity of marriage in the early years and the lack of alternatives other than marriage for women in Nyinba society. The situation is made even more difficult by women's unfamiliarity with jural institutions, which is linked to their traditional separation from politico-jural affairs.

The paper will explore these interrelated problems. I shall introduce the topic by describing the local environment and economic adaptations, and shall outline relevant features of Nyinba social structure. Then I shall detail the complementary rights of men and women over property. Women's contributions to the household economy, their position within the household and their statuses within the larger community will be evaluated in light of current theories about the relationship between economic variables and women's overall position. In the

“final section, I shall examine the predicament of divorced women, cut off from household membership, propertyless, and unable to protect their own interests through the legal means open to them.

Land, Subsistence and Nyinba Social Structure

The Nyinba, a people who can be identified as Tibetan in language and culture, occupy a series of sheltered, southern valleys in a northern corner of Humla district, northwestern Nepal. They are fortunate in having fertile land located at a favorable angle to sunshine, though they are somewhat hindered by a scarcity of water sources for irrigation purposes. Intensive agricultural practices have enhanced the land's productivity and this has enabled the Nyinba to secure adequate food supplies and, consequently, a comfortable standard of living. In this regard, they present a striking contrast with the majority of far western peoples.

The Nyinba cultivate lands ranging from 8,800' to 11,600' in altitude. Crops include barley, bitter buckwheat, sweet buckwheat, wheat, amaranth, various types of millet, beans and lentils. These are supplemented by the produce of kitchen gardens: potatoes, turnips, radishes, cucumbers, pumpkins, squash, peas and corn. The bulk of the agricultural labor falls upon women, especially the more distasteful tasks such as fertilizing the fields with a mixture of hay, manure and human ordure. Women, and women alone, weed newly planted fields, as is necessary to obtain the greatest possible yields. Weeding is a backbreaking task and can absorb as much effort as the worker is willing to put into it. Men do the ploughing and sow the seed during brief periods in autumn and spring. In general people state that women are too weak to handle the oxen in

ploughing, but it is known for women without menfolk to do this and successfully as well. Both sexes work together at the busy harvest time. One can characterize the agricultural contributions of men as intensive, though intermittent, whereas women work continuously on the land during the agricultural season, that is, for at least half of the year.

Unlike many other Tibetan peoples resident in the Himalayas, the Nyinba keep few cattle. This is due to inadequate pasturelands, and people claim that if they could, they certainly would keep more. As things now stand, their few stock can be handled satisfactorily by retired men or youths of either sex. Cattle are valued, because they provide supplementary protein for an otherwise limited diet, and because excess milk products readily can be sold locally for cash.

The Nyinba are middlemen too, supplementing their agricultural income with profits gained from trade. Trading activities occupy the entire year, according to a fixed cycle, and include one person from each of the more prosperous households. The backbone of this trading cycle is the exchange of Tibetan and Indian salt for the grains produced in Nepal's middle hills. Nyinba men with their carrier goats and sheep travel back and forth from Tibet to Jumla and Bajura, as well as to Accham and the Indian border. Along with salt and grain, they carry manufactured commodities such as cotton cloth, shoes, combs, etc. The life of the trader is a hard one, and none but young men have sufficient stamina for the winter journeys south. In recent years, political changes have made this form of trade far less profitable (see Fürer-Haimendorf 1975: 264-5), and the people concerned predict its eventual end. But in the meantime it is the only means of acquiring the preferred grain, rice, and prestige goods for a community which is isolated from markets and able to afford luxuries such as these. If trade is valued more than is merited, as judged by "objective" appraisals of its

costs and relative contributions to the economy and if it is continued despite continually declining profits, it is for the reasons given above.

For purposes of discussion, Nyinba society can be described as "patriarchal". Various socially significant statuses relevant to the domains of kinship, economics, politics and ritual, are held only by men. The transmission of these statuses, characterized as descent, inheritance and succession, is through men alone. That is, membership in ranked clans is patrilineal, so that kinship through men has a double significance and is perceived to be more lasting than kinship through women. It is normative for sons rather than daughters to stay resident in their natal homes and to inherit the ancestral patrimony. As a result, men gain control over estates and the offices associated with them. Politico-jural offices are linked to household membership, ritual offices are linked to particular lineages.¹ But all pertain only to men.

It is the household which is the unit of primary social structural significance in Nyinba society. Households known as *trongba*, are loci of production and consumption. In native legal theory it is the household as a corporate group (see Fortes 1969: 292ff) which holds title to land, animals and other major forms of property.² The household is headed by men, and all of its property, or its estate and the associated offices, pass together from one generation of men to the next. The household has unambiguous rights and obligations to the village community, its identity is symbolized by its special set of guardian deities

1 These are the traditional offices of *mukhiya* or village headman, *t'alo* or tax-collector and *dangri*, priest to the local spirit medium.

2 To be precise, this is descriptive only of the landholding households and does not represent the circumstances of landless ex-slaves (discussed in Levine 1980).

which, in turn, bear a special relationship to village deities.

Households encompass one or more families and typically consist of parents, their children, children's spouses, grandchildren and occasionally great-grandchildren as well. As the marital norm in Nyinba society is fraternal polyandry, all the brothers in one generation share a single wife. There are cases in which facts of infertility or of a brother's preferences have prompted second marriages and thus there are families with two wives or even more. Since residence is normatively patri-virilocal, women come to reside in their husband's house and live under the jurisdiction of their parents-in-law.

All the brothers are counted as coparceners of the family estate. Just as they marry together, they remain together in one household, administering the estate jointly. Household partition is uncommon and is strongly disapproved of, being considered economically unsound and a breach of the ideal of fraternal solidarity. Although the brothers have equal rights in the household, the eldest is predominant and has the greatest authority in domestic affairs. By virtue of his leading role and dominance, he can be considered the household head, though he has no greater rights in the estate than any of his brothers. Elder brothers are obliged to act as administrators and coordinators of family affairs and they usually preside over family decision making. But if they wish to avoid partition, they dare not override their brothers' wishes. Men may consult their wives before they make decisions about the estate, but this is not obligatory, depending on variable, interpersonal considerations and the developmental stage of the marriage. When men reach the age of retirement, say at sixty years, they retire and pass the statuses of headship and coparcenership to their sons.

Although women have little more than influence over those decisions that concern external political or economic matters,

they do have some authority in internal household affairs. That authority is most evident in the disbursements of food within the home and in the fact that women have the final say in matters concerning the welfare of their children. The importance of these rights and obligations cannot be discounted. However they pertain only to married women in stable conjugal relationships.

When families lack male children, they can choose a daughter to remain resident in her natal home. The daughter then marries a man of her choice who comes to live with his in-laws. A matrilocally resident son-in-law or *magpa* technically is the successor to his wife's father's estate. However his rights can be challenged if not supported by written documents (unnecessary in the case of male heirs). Women who bring *magpa* would seem to have far greater influence in their homes than do their patri-virilocally married sisters, but nonetheless they are their husbands economic dependents. In a recent case, a *magpa* tried to force an allegedly adulterous wife from their home. People say that had she not been able to establish her innocence, he would have been entitled to do so.

As we have seen, Nyinba custom places control over property and external household affairs in the hands of men. Women never own land--the most valued and economically productive form of property. However they do have certain rights in the estates of their husbands and fathers and are acknowledged owners of special types of movable property. The nature and value of women's property will now be discussed.

Women and Property

Women are entitled to a grant of movable property from their father's estate upon their marriage. This property can be

considered a dowry and stands as a token of the woman's rights in the natal estate. It is the structural equivalent of the inheritance rights of men. Once she has received this property the woman is considered to have severed her membership in the natal household and to have abrogated rights to further support. The dowry, for which the Nyinba use the Nepali term *daijo*,³ consists of items such as brass dishes, drinking cups, water jugs, large copper pots, cooking ladles, knives and spoons, the iron grate used on the hearth and various agricultural implements: hoes, scythes and the like. The dowry comprises the kinds of tools a woman has to use in her everyday tasks, and it is said that the *daijo* contains a little bit or one each of the items of movable property from her natal home. Supplementing this are wedding gifts of plates, pots and so on from the woman's kin and fellow villagers. Wealthy parents are expected to favor their daughters with the gift of a domestic animal--a horse, yak or cowcrossbreed. Unfortunately not all women receive their due. When they elope secretly and against their parents' wishes, women forego the public celebrations at which their dowry is granted, and their parents and kin may choose to withhold it, temporarily or permanently.

Aside from the dowry of movable property, well-beloved daughters may be granted usufructuary rights in a small plot of land. The particular advantage of such a gift is that the woman can use its profits as she so desires. This category of property, known as *tragsi*, "marginal or adjunct land", is not considered an actual part of the dowry, but rather tends to be linked or identified with the second principal category of women's possessions, that of *kondze* or "valuables" (T. Lama 1979).

3 This is a Nepali term and refers to all types of property granted to a woman by her family, relatives and friends (Nepal Press Digest 1976a: 14).

Women's valuables chiefly consist of jewels: charmboxes of silver and gold, large turquoise earrings, necklaces of silver coins, amber, turquoise and coral. The accumulation of a store of valuables is begun by small girls. Doting fathers buy them these semiprecious stones and their mothers and grandmothers may dip into their own stores to augment the jewelry of a daughter or favorite granddaughter. Later on, husbands will add to the collection. The more acquisitive women make beer for sale or sell eggs--when the rare opportunity presents itself--to save up money for small trinkets. *Kondze* valuables differ from the other categories of exclusively female property by being appropriate to young and old, single and married women and by being publicly displayed. And it would seem that the usufructuary rights in a small plot of land are identified with these more ornamental valuables because land, like jewelry, is used for the woman's own benefit, and possibly also because younger women may use profits gained from such landholdings to buy themselves more jewelry.

The last and least important type of property controlled by women is money. When girls marry, everyone who attends the wedding is obliged to give a rupee or two to the new bride. As coin money was the only acceptable currency until recently, and since such coins were used in making rings, this form of property has come to be known as *dupser*, i.e., "rings". Even girls who elope will be given some *dupser* to do with what they like. But the store of cash never amounts to more than a few hundred rupees. (in 1974, 10.5 rupees was equivalent to one dollar).

Although the combined value of dowry, jewelry and cash may be comparatively great, its uses are limited. The major purpose of the items comprised is for display and/or for practical, day-to-day needs--items such as bronze dinner ware and gems--which are not themselves consumable. Nor would the sale of this property permit the purchase of anything but the

most marginal land, the commodity of greatest use-value in Humla.⁴ Thus even with the exceptional grant of a single domestic animal (the products of whose successful breeding accrue to the woman's marital household) or a small plot of land, women's property confers little, if any, profit and is inadequate to provide for their support. Irregardless, most women are very proud of their possessions and those of a more practical turn of mind do their best to add to their collection of valuables. Married women know which of the household stores came from their dowries and can point out the minute differences which distinguish their mother-in-law's dishes from their own.

If a married woman were to die young and childless, her parents would repossess the dowry as well as any other property given her at and prior to her marriage. They also would be expected to return her wedding gifts to the specific donors. Women who have lived out their married lives in particular households are thought to have become wholly incorporated in and identified with the household and so their dowry rightfully comes to be joined with other household property. But if a woman has no sons, she may choose to name one or more daughters as heirs to some of the more valuable items. Jewelry is often given away to daughters and daughter's daughters during the woman's lifetime--it is at her discretion. When women divorce, they take their dowries with them. However, as noted above, these items alone are inadequate to serve as the woman's sole source of support.

While some women marry late in life, relatively few never marry at all. By national law, a single woman is entitled to rights over property equal to that of her brothers after she

⁴ Good, fertile land is a rarity in Humla and accordingly, is very expensive. The entire dowry of a woman is worth no more than two fields of middling quality.

reaches the age of thirty-five. Nonetheless, women are not regarded as full coparceners with rights identical to male property holders. Their rights are limited, they cannot sell, grant or bequeath the land to others and they must remain unwed (Nepal Press Digest 1976a; see also the discussion in Bennett 1978). It is customary for unmarried Nyinba women to remain in their natal households, under the jurisdiction of first their fathers and later their brothers. This practice is in accord with local norms proscribing partitions, but it keeps the woman in a position of dependency and prevents her from enjoying even the limited control she is entitled to over her share of property.

Women are discouraged from staying home and remaining single. The Nyinba community looks down on unmarried women and labels them as unwanted and "left over". Thus there is considerable pressure to marry to prove one's worth. On top of this, the woman's family encourages her marriage for similar sorts of reasons: to avoid the disgrace of their daughter being labelled undesirable and also to preclude the possibility of out-of-wedlock pregnancies. Poorer households may worry about the burden of having an extra mouth to feed, and all mothers and fathers want to avoid the diminution of their sons' effective property shares. These pressures may cause parents to force less than promising marriages on their daughters. If and when problems arise, as they often do, the parents are not held liable. Once wed, a woman falls under the jurisdiction of her husbands and becomes their economic dependent. She loses the right to appeal to her parents for support, and they are not obliged to take her into their home again. This can produce all sorts of difficulties for divorced or separated women, women who lack any independent source of income and thus have no viable means of support. The fact of women's economic dependence and restriction from property ownership is not an uncommon phenomenon cross-culturally. In the following section I shall examine this problem and some of the reasons advanced to explain it.

homes. It is true enough that they make little contribution to the household economy and are a drain on its resources throughout their youth, and because of their need for a dowry. But no sooner have they begun to contribute in a substantial way to their families' support, than they are married off to another household.

The young girl who goes as a bride to another household has just begun to learn a woman's skills. And until she has proven herself by working hard, making the household prosperous, showing loyalty and fidelity to her husbands and, hopefully, producing sons who survive to adulthood, the wife is regarded as being of little account. Only with this and the passage of time does the woman's place in her husbands' home become truly secure.⁶ Thus one finds among the Nyinba, as elsewhere, that women are most honored when they are past their childbearing years.

The anthropological literature on women's studies has drawn attention to a possible correlation between the nature of women's economic contributions and the other statuses they hold in a society (Quinn 1977: 198-209; Rosaldo and Lamphere 1974: 11-12). Friedl, for one, has argued that:

the relative power of women is increased if women *both* contribute to subsistence *and also* have opportunities for extradomestic distribution and exchange of valued goods and services. In situations in which women either do not contribute to the food supply at all, or, while working hard and long at subsistence tasks, are not themselves, in their own right,

⁶ And a woman never feels secure, unless and until she is the only wife of her generation. The additional problems experienced by women in polygynous households deserves further attention, but this is beyond the scope of the present paper.

responsible for extradomestic distribution, their own personal autonomy and control over others is likely to be most limited (1975: 135).

As shown above, Nyinba women do work hard and are acknowledged to make a major contribution to subsistence. Men also work hard, although most of men's agricultural responsibilities and much of the herding season require only intermittent labor. The profits of the labor of men and women alike then become household property (with those few exceptions for women discussed in the previous section). And the property of the household is controlled by the co-parceners, in Nyinba custom, the men. Men determine the uses to which these profits are put and govern the extradomestic distribution of foodstuffs and so on at public ceremonies. Women, as is commonplace elsewhere, have control over the household's larder and the internal distribution of food, this being concordant with their primary symbolic association with the domestic domain.

In light of this and in view of Friedl's theory, we might expect to find that Nyinba women have little personal autonomy or control over others. However, because concepts like personal autonomy are not well-defined, it is difficult to employ them in interpretations of ethnographic data. This may have a bearing on the apparent ambiguity of the data, the fact that they appear neither to confirm nor deny the hypothesis. For while it can be said that in some regards Nyinba women have considerable freedom and power over others, there also are circumstances in which their freedom is circumscribed and they are relatively powerless. To illustrate this, a woman can marry whomever she pleases and end the marriage when she so desires, but while married, she is restricted from freely interacting with other men. (The same restrictions do not apply to men). Similarly it can be noted that women have control over the lives of their children and power over other household dependents, but

no more than influence over their husbands, brothers and fathers. As with the simplistic attempts to rank "women's status" as "low" or "high" in diverse cultures, such sweeping generalizations about the causes and attributes of women's social position are bound to founder when applied to the complex realities of social life. Women hold many different statuses and it is indeed difficult to condense and summarize these statuses, to evaluate the composite analytical construct and thereupon explain it by reference to one or more variables. Though causal factors may be difficult to isolate, there is no doubt that different statuses impinge on one another, so that Nyinba women's economic rights affect their domestic statuses and vice versa. And this is the topic to be considered in the final section of this paper.

Problems of Divorce and the Economic Insecurity of Women

The economic dependence of women on their husbands, fostered by their lack of independently held productive resources does not create any serious hardships--so long as a woman remains happily married. However, the success of a marriage is not assured for a number of years and it depends on the birth of children, especially sons. Women's comments on marriage suggest that they do not feel truly secure until their sons are grown and have assumed an active role in the running of the household.⁷ Prior to that time, the woman depends on her

⁷ The incidence of divorce does tend to decline with each succeeding year of marriage. One reason for this is that personal incompatibilities are either ironed out in the early years, or quickly provoke a divorce. Another reason is that the eventual birth of children usually helps to stabilize the marriage. Couples with children are less willing to divorce, because it would mean the separation of the child from one of its parents.

husbands' continued goodwill and on the maintenance of a satisfactory marital relationship. If the relationship deteriorates and comes to be severed, the consequences of limited property holdings all too clearly make themselves felt.

When marriages end, women have rights to no more than their dowry (*daijo*), their valuables (*kondze*), the clothes on their backs and any cash obtained through wedding gifts (*dupser*). Women who may have worked an entire season in their husbands' fields have no rights to even a portion of the harvest for which they are responsible. All the property which belonged to the estate prior to the marriage and any profits which accrued during the marriage remain with the husbands. Women are cut off from all sources of support, except in a very special set of circumstances, to be discussed below.

Although the Nyinba have recognized means to and quite commonly do terminate existing marriages, none of these means constitutes a divorce in the formal, legal sense. Marital dissolutions are carried out informally, according to customary practices, without reference to the statutes of the National Code and without recourse to expensive judicial proceedings. In the present, as in the past, women have three options or ways to end their marriages, and while it is true that such practices are not accorded legal recognition, they can be considered forms of customary divorce. Thus they will be termed modes of divorce in this paper. One may note that the Nyinba have no general term to describe such divorces, but neither do they have a term for marriage, which also always has been transacted informally in a legal sense. I shall now describe each of the three means for and typical scenarios in which women divorce their husbands.

1. Divorce Sought Voluntarily

When young girls marry, they experience rather overwhelming changes in their lives which some girls find to be intolerable. The transition is most difficult for the very young girl in an arranged marriage, and such a young bride may be allowed to return to her parents' home and to remain there for a period of months or years, until she reaches the age of sixteen or seventeen (a similar pattern is reported for the Limbu by Jones and Jones 1976). Parents will indulge their daughters until this time, but then they invariably begin pressuring them to resume their married lives. When girls continue to refuse to reside with their husbands, it is grounds for dissolving the marriage.

Women who initiate divorce in this rather passive manner never get any property settlement from their husbands, and in most cases, this is not cause for concern. The young and attractive girl is very likely to marry again, and within a short period of time. Although her reputation will have suffered somewhat, because of the negative public attention, there is no serious permanent disgrace attached to an early divorce. The parents of a young divorcee are not obliged to take her into the family again, but love and concern generally dominate over the fact that their jural responsibility for their daughter terminated upon her marriage. If the girl is older and less apt to remarry, parents must weigh the social and economic embarrassment of having to accommodate an unwanted woman for her entire life against very real emotional ties. These considerations may lead parents to withhold their support, or even to turn the daughter out of their home.

Women whose parents withhold support find themselves in serious straits, without sources of permanent shelter or food. I know of two women in this predicament, who have had to cope

with it for many years. The elder of the two travels from place to place, doing odd jobs for her temporary employers. The other has taken up residence in one village. She lives in an abandoned barn and supports herself on the proceeds of occasional labor. I do not know what caused these women to leave their husbands. But the case of Sonam (like all proper names in this paper, a pseudonym) serves to illustrate the kinds of pressures that can force a woman into such a position:

Sonam is a young woman known for her kindness, generosity and competence in women's work. Although she is from a prestigious family as well, she was unable to marry until she was nearly thirty. A large, unattractive goiter and a distracting speech impediment had lessened her marriageability. Finally, with her parents' encouragement, she decided to accept a proposal of marriage as the third wife of three brothers.⁸ The rationale for this third marriage was that the first wife who was fatally ill had never borne living sons and the pregnancies of the second wife all had resulted in stillbirths.

Shortly after Sonam was married, the equable and sympathetic first wife died. The second wife assumed the role of mistress of the household and then became pregnant. Two months later Sonam conceived, in due course, they were both delivered of sons. After she had born a child, the second wife became very conscious of her superior position and began to take advantage of her authority. Her own child was thin and sickly and this made her very jealous of Sonam's son's robust good health. So not only did she budget household resources for medicine for her child, but also began keeping the better food and denying meat and butter to Sonam. Sonam naturally complained to her husbands, but they either were unwilling

8 This is a case of polygynous polyandry or conjoint marriage. Though statistically rare, conjoint marriage is in accord with the Nyinba practice of both polygyny and polyandry.

or unable to intervene successfully.

In anger and sorrow, Sonam took her son, packed up her possessions and returned to her parents. They let her stay with them a while, but soon ordered her to her marital home. She then began to 'visit' relatives, but finally the invitations ran out. Although she publicly stated that she wanted a divorce, when it came to the point of facing poverty and homelessness, she returned to her husbands. Conversations with her reveal that her decision to return was not a final one and she may leave again.

I suspect that if Sonam had remained childless, her wealthy parents would have been willing to take her in again, despite her age. She too would have been more determined to secure the divorce. But once a child is born, divorce becomes more complicated, because the child's welfare is at stake as well. And for a divorced mother, remarriage is highly improbable.

2. Divorce Through Adultery

Economic factors and social pressures discourage women from remaining single. They are encouraged to get married and to stay married: the single woman is ill thought of and the single divorcee is both ostracized and poor. Because of this, those women whose marriages are unsatisfactory may prefer not to initiate divorces. Most women would rather wait until an opportunity for another marriage presents itself, so that they can go directly from one marriage to the next.

Women who are contemplating divorce may actively seek out potential suitors. They can flirt with marriageable men, go to courtship dances, and thus indicate their availability. Once a man has proposed and been accepted, an elopement will be arranged. It must take place at night in great secrecy. Elopement with a married woman is considered "wife-stealing" and is bound to

provoke serious quarrels between the parties concerned, i.e., the former and prospective husbands, as well as all their kin.⁹ Since it involves cohabitation and thus an implied sexual relationship between the woman and a man other than her legal husband, elopement technically constitutes an act of adultery. A man whose wife is adulterous is entitled to seek an annulment of the marriage, and any man whose wife has left him in such a fashion finds himself publicly humiliated, so that he is unlikely to want her home again. In addition, adultery with a married woman is a crime and subject to heavy penalties. The guilty parties either must be imprisoned or have to face a heavy fine. The punishment chosen is at the discretion of the former husband, and most husbands seek redress through the fine, which customarily has been and still is paid to them as compensation. This compensation is known locally as the *jari* (Nep. "adultery") payment and consists primarily of cash and valuable commodities such as domestic animals, blankets, large pots and so on. It is thought that *jari* is a custom derived from Nepalese rather than indigenous or Tibetan traditions. This, however, is immaterial to the injured husbands who wish to use whatever means available to salve their pride.

Divorce-elopements are strenuously disapproved of by the average Nyinba man and woman--in principle and in particular cases. Yet they are quite common, and at least half of the households in the Nyinba village on which my data are most complete have had to pay *jari* for one or another of their

⁹ In households with several brothers, all are polled before any such action is taken. However it is customary for only one man to participate in the actual elopement. In the event of serious opposition from the former husbands, the eloping couple hides until the furore dies down. Meanwhile the brothers who were not directly involved in the elopement try to settle the matter as expeditiously as possible.

in-married wives. The disapproval falls upon the couple who eloped and mars their reputation. Eventually the matter is "forgotten", but this takes from ten to thirty years or even more, depending on the various circumstances involved (i.e., the status of the households, the intensity of the resultant quarrels, the size of the *jari* payment etc.). But the negative repercussions are not so great as to outweigh the pressures for divorce-elopements. The latter include the fact that women are obliged to get married and are expected to stay married, the existence of a custom which provides a means of going directly from one marriage to the next, the romanticism that surrounds such escapades, wherein lovers surmount all obstacles to their marriage, and the difficulties women experience when they take their divorces into their own hands. It is also pertinent that men do not find the *jari* payment too onerous: it costs less than an elaborate wedding. Irregardless, though it fits in well with present-day Nyinba social realities, the institution of divorce-elopements and *jari* payments is the source of considerable social disruption.

3. Divorce with Maintenance

Thus far I have described divorces which result in inevitable social and economic penalties for women and which can carry certain penalties for their new husbands as well. In none of these cases is the divorced woman entitled to any further support from her husbands. Rana (1978) and Bennett (1978) have pointed out that it is when women do not adhere to the norms of proper marital behavior that they may be divorced summarily, against their will and without redress. Thus their economic security depends on their moral rectitude. The same standards are not incumbent on men. But if a man mistreats his wife, it is cause for divorce. In these circumstances and these circumstances alone, the woman has a claim to postmarital support.

The National Code specifies that a woman who is blameless (innocent of such misconduct as adultery) and who is mistreated by her husbands may sue for a legal divorce. Such a divorce entitles her to support by her husbands' estate for five years, or until she remarries. As noted above, the Nyinba do not secure legal divorces for a variety of reasons. For one thing, divorce proceedings are expensive and apt to be time-consuming. For another, they involve dealings with government offices and courts. The problems of dealing with the national judicial system are far greater for women than for men. Knowledge of the provisions of the National Code is confined to a handful of Nyinba men who are literate in Nepali; women neither have access to information about their legal rights, nor do they have the requisite experience for dealing with officials. Women's only recourse is to obtain the support of their kinsmen when their rights are violated; and, fortunately, it is not unknown for kinsmen to defend women against abusive husbands.

While Nyinba individuals do not seek legal divorces, some women have, with the help of particularly powerful kinsmen, been able to obtain what corresponds to a legal separation from their husbands. The community reaction to such separations has been to regard them as equivalent to divorces. For this reason, I shall describe this mode of ending a marriage as separation-divorce. It may be suggested that various Nyinba have chosen to pursue this sort of option because it accords more with their traditions than does a legal divorce and because it is a highly effective way for a man angered at his sister's or daughter's mistreatment to strike back at the latter's husband. Certainly, as we shall see, it is financially more advantageous for women than is legal divorce.

The National Code states that a woman who:
is denied maintenance by her parents-in-law
and/or her husband and is expelled from the
house, or is frequently beaten up and harassed,

or whose husband has brought or taken another woman as wife, shall be entitled to obtain her share of the property from her husband's share ... (Nepal Press Digest 1976a: 28).

The problem is that few women have been able to avail themselves of this legal option. A woman not only needs powerful male supporters who are familiar with the national legal system, but also must be the sort of person who is able to carry out a prolonged suit. That is, she must be patient, determined and clever--a strategist at heart. Then too she must be willing to defy social disapproval of both her ongoing divorce and the controversy surrounding it, which she instigated and for which she is considered at fault, during the proceedings and after the decision as well.

By law, men cannot force their wives out of their homes and in practice, they rarely do so. Instead they try to convince their wives to leave--by the simple expedient of making them miserable. Rarely do they have to resort to violence or to the denial of food or clothing. A man simply will snub or insult the woman, or flaunt his infidelities. When this occurs, the wife, especially if she is attractive and childless, may begin looking elsewhere. But some men do mistreat their wives, thereby providing them with grounds for a separation-divorce. Many women fail to take advantage of their right to a dissolution of the marriage with support, due to the factors discussed above and for another, very cogent reason. That is the fear that the courts will not be sympathetic to a woman and decide in her favor. We will see to what extent these fears are justified.

I know of only three cases in which a woman tried to obtain a separation-divorce by virtue of her mistreatment at the hands of her husbands. The first case took place two generations ago and was settled by traditional Nyinba judicial procedures which involved decisions reached in councils of village

leaders. Through the help of her politically powerful brothers, the woman won her suit and obtained control over a share of her husbands' property. After this, she openly carried on an adulterous relationship with a married man and bore him three children. Nonetheless the property was not reclaimed by her husbands; today it is held by the grandchildren of her lover. However this case seems to have been exceptionable, certainly it is remembered as such, and as far as I know, nothing like it took place again until recent years. Then in 1975, a young woman whose husband was trying to force her out of the house took the case to court and won rights over a share of her husbands' lands. I believe that the woman was aided by men who were powerful in the village and known to local officials. I also heard it said that she might remarry. This case and the one preceding suggest that the Nyinba regard legally constituted separations as the equivalent of divorce.

In a third case, decided recently, a woman tried to obtain a separation-divorce, but her petition was denied by the courts. Still, it was not a wholly useless effort: the courts, in trying to reconcile the spouses, demanded an assurance of better treatment for the wife. The case is an interesting one, because it is illustrative of the sorts of marital tensions which tend to result in divorce in Nyinba society. Since I know the circumstances in some detail, I can recount them here:

Yeshi, now in her mid-thirties, is attractive and considered highly competent in all manner of work. Born of a prominent family, she married three brothers from a wealthy household at an early age. She bore her husbands a son who died in infancy and then a daughter who is now in her early teens. Following upon this second childbirth, she became seriously ill and almost died. She has not been able to conceive since that time.

After some years, her husbands decided to take a second wife, as is customary when the

first wife is sterile. Yeshi opposed this, saying that their daughter could wed matrilocally and the *magpa* or son-in-law would be able to serve as successor to the estate. Quite naturally, she did not wish to accommodate herself to a co-wife. But the men were adamant--they wanted a son.

In due course, a second wife was wed and installed in the home. Yeshi continued to protest against this, and as a result, her relationship with her husbands deteriorated. The eldest began to beat her, so she left the house and took refuge in a barn nearby, in order to see her daughter daily. She said that it was her intention to convince her daughter never to wed, to avoid the possibility of a bad marriage and so that she could live independently, with property of her own.

Finally, Yeshi decided to sue for a separation-divorce. This was denied, but the fact of her mistreatment was acknowledged. As a result, the husbands were forced to sign a statement assuring Yeshi of continued residence, support and good treatment in their home.

I do not know why the courts rejected Yeshi's petition for divorce. Perhaps she was unable to bring sufficient evidence on her own behalf, or the court might have seen her opposition to her three husbands' second wife as unjustifiable. Perhaps it was a lack of influential supporters to argue on her behalf. In any event, Yeshi was granted substantial protection by the law, and, reportedly, this has led to a more tolerable marital situation for her.

One might expect that the positive results of Yeshi's suit and the outcome of the separation divorce granted in 1975 would encourage women in unsatisfactory marriages to seek to end them by legal means -- either through the formal separations which the Nyinba treat as divorce or by the less advantageous divorces granted by the courts. Whether women will begin to take advantage of their rights remains to be seen. I have

summarized the various reasons that women have avoided the courts in the past and have continued to rely on forms of informal divorce that are decidedly unfavorable to them. These reasons include lack of knowledge or misinformation about the law and the legal process. This ignorance can be remedied, but in the meantime, it is the basis of very real misgivings. Another factor is the social pressure against women taking such an action and thereby focusing public attention on themselves, as has been discussed above. Related to this is the inability of most women to convince their kinsmen to help them deal with the courts--and it would seem that such assistance is a prerequisite for success--or even to provide their support in the face of social disapproval. But an even stronger force against change may lie in the general Nyinba opposition to divorce with continued support for women which, in turn, is based in facts of Nyinba social structure.

The idea that women are entitled to property settlements if mistreated by their husbands does not seem to be regarded by many Nyinba as fitting or truly warranted; people seem to feel that the woman who has won property shares in this fashion has received more than she deserved. This may lie behind the social disapproval, the perpetuation of continued ignorance and the absence of support for women who have the right to seek this form of separation or divorce. However ultimately, these attitudes of reluctance towards use of the law would seem to be related to the lack of fit between local traditions and the statutes of the modern legal code.

In a previous section I discussed the importance of households in Nyinba social structure and the emphasis placed on maintaining household properties intact from generation to generation. The disapproval of partition is couched in both moral and pragmatic idioms, as accordant with a principle of social structure that impinges on norms of kinship, the local

economy and political organization as well. Thus we find that separate marriages by coparceners are discouraged, so as to lessen the threat of partition. Similarly, unmarried sisters are disallowed from moving off by themselves, even if the division of property would be only temporary. In light of this it is not surprising that men would try to avoid sharing property with a wife they do not like. And the acrimony involved in divorce is usually so great that, if given a choice, most men would try to avoid the financial burden of continued support of an ex-wife. Of course, it is men who control traditional judicial proceedings within the Nyinba community and who are able to deal with the courts of the national system. This explains why the custom of divorce by elopement, disapproved though it may be, is still the commonest means of ending a marriage. Such divorces may be productive of community discord, but they do not run counter to basic social structural principles.

This dilemma may well be a contributory factor to the generally disruptive character of Nyinba divorce in the present day. There is no one acceptable or easy way for a woman to obtain a divorce and no means which--from the standpoint of reputation and financial security--is satisfactory. Moving off alone invites impoverishment, elopement invites censure and the suit for property is a radical, difficult step. A complicating factor of great significance in this matter is women's lack of productive property and their resultant dependence on men for their economic security. The situation is such that a woman may spend her life working for a "corporation" from which she can be severed readily, without recompense and without any recourse, even if she is technically not at fault. There is no easy solution to this dilemma of women's rights to fair treatment, their rights to the fruits of their labor and the contradiction posed to this by a society based on the

perpetuation of undivided estates controlled by men. Although continued maintenance of divorced wives as legislated by the National Code would seem to be a satisfactory solution to the problem, the fact that a husband need not maintain his ex-wife for more than five years means that legal divorce offers women security for only a limited period of time. This would be problematic in a society where older women find it difficult to remarry. Still this might be regarded by Nyinba women as preferable to the scandal of a divorce-elopement of divorce without any sort of support and thus one would hope that in the future legal divorces become more readily available to people like the Nyinba.

REFERENCES

- Aziz, Barbara N.
1978 *Tibetan Frontier Families*. New Delhi: Vikas.
- Bennett, Lynn
1978 "Observations on Tradition and Change in The Legal Status of Nepalese Women". In *Women of Nepal: Approaches to Change*. Proceedings of a Seminar Held at Tribhuvan University.*
- Fortes, Meyer
1969 *Kinship and the Social Order*. Chicago: Aldine.
- Friedl, Ernestine
1975 *Women and Men, An Anthropologist's View*. New York: Holt, Rinehart and Winston.
- Furer-Haimendorf, Christoph von
1975 *Himalayan Traders*. London: John Murray.
- Jones, Rex L. and Shirley K. Jones
1976 *The Himalayan Woman*. Palo Alto, California: Mayfield Publishing.
- Lama, Tshewang B.
1979 *Personal Communication*.
- Levine, Nancy E.
1980 "Opposition and Interdependence: Demographic and Economic Perspectives on Nyinba Slavery". In *Asian and African Systems of Slavery*, J.L. Watson, ed. Oxford: Basil Blackwell.
- Nepal Press Digest
1976a "Adoption and Inheritance". *Nepal Law Translation Series*, vol. 16, Kathmandu.
76b "Marriage and Conjugal Relations". *Nepal Law Translation Series*, vol. 15, Kathmandu.

* Eds. note: This material was subsequently published: Bennett, Lynn, *Tradition and Change in the Legal Status of Women in Nepal*. Status of Women Vol. I, Part II, CEDA, Tribhuvan University Press, 1979.

Parker, Seymour and Hilda Parker

1979 "The Myth of Male Superiority: Rise and Demise".
American Anthropologist 81: 289-309.

Quinn, Naomi

1977 "Anthropological Studies on Women's Status". *Annual Reviews* 6: 181-225.

Rana, Madhukar S.

1978 "Status of Women in Nepal". In *Women of Nepal: Approaches to Change*. Proceedings of a Seminar Held at Tribhuvan University.

Rosaldo, Michelle Z. and Louise Lamphere

1974 "Introduction". In *Woman, Culture, and Society*. Stanford: University Press.