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## **Dazzling the World: A Study of India's Constitutional Amendment Mandating Reservations for Women on Rural Panchayats**

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# Dazzling the World:

## *A Study of India's Constitutional Amendment Mandating Reservations for Women on Rural Panchayats*

Louise Harmon† and Eileen Kaufman††

“If an ancestral treasure lying buried in a corner of the house unknown to the members of the family were suddenly discovered, what a celebration it would occasion. Similarly, women’s marvelous power is lying dormant. If the women of Asia wake up, they will dazzle the world.”

—Mahatma Gandhi<sup>1</sup>

### INTRODUCTION

In 1993, India launched a radical political experiment designed to transform the lives of women at the grassroots level: it constitutionally mandated the creation of village governing bodies known as panchayats, with at least one-third

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1. Mahatma K. Gandhi, Message to Chinese Women (July 18, 1947), <http://meadev.nic.in/Gandhi/onwomen.htm>.

of all seats reserved for women. The women of rural India had been excluded from participation in the political arena altogether, the result of centuries of social and economic inequality and subordination by their fathers, their husbands, and their sons. This bold mandate by the world's largest democracy was a deliberate attempt to empower some of the weakest members of Indian society.

Many were skeptical about this constitutional fiat mandating reservation of seats for women on the village panchayats. Some argued that women would merely stand in as proxies for their husbands. Others argued that women were uninterested in serving on panchayats, that they lacked knowledge about the world outside the home, and were incompetent to govern. Skeptics feared that women who became involved in local governance would ignore the needs of their children, their cattle, and their men. There was also the unarticulated concern that empowering the women of rural India would threaten the status quo—a status quo based on assumptions of male superiority and rightful domination.

Our research was motivated by a number of questions: What kind of historical, cultural, religious, economic, and societal conditions created such dramatic inequality between Indian men and women? What kind of a constitutional scheme would allow such a radical form of affirmative action? Surely, it must be a scheme quite different from ours. And were the skeptics right? What could we learn from the over one million Indian women who now serve on rural panchayats, helping to make decisions about building schools, roads, footpaths, and bridges, or improving sanitation and water supplies? Were these women merely serving as puppets for their husbands? Had they been uninterested in serving on panchayats? Once they were serving as members, what did the women have to contribute? Did the dire predictions of incompetence prove true? Had the mandatory reservations resulted in neglected children, cattle, and men? What were their successes? Their failures? How were these women perceived by the male members of the panchayats? Was the status quo threatened—as surely it was meant to be? Was this opportunity to participate in local governance transforming the lives of rural Indian women?

We have been fortunate enough to spend the last eight summers in India, mostly in the state of Himachal Pradesh.<sup>2</sup> It has been enough time to become familiar with Indian history and culture, the Hindu worldview, and the Indian legal system. It has been enough time to become good friends with some wonderful Indian women, men, and children. It has been enough time to visit some village panchayats and do some research in Indian libraries and institutes. It has also been enough time to fall in love with India. But it has not been enough time to answer all of our questions. That is the nature of any ambitious project about complex matters.

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2. Studying the rural panchayats of Himachal Pradesh is particularly important since it is a state with a proportionately high rural population, with 91.2% of the population living in villages or other rural sites. LIBRARY OF CONGRESS, FEDERAL RESEARCH DIVISION, INDIA: A COUNTRY STUDY 87-88 (1996) [hereinafter COUNTRY STUDY].

At a certain point in such a project, there is recognition that all the questions cannot be answered. There is also recognition that some of the questions were the wrong ones to ask in the first place. New questions emerge. Some aspects of the project that looked simple in the beginning now seem difficult; others that were perceived as difficult at the outset now seem simple. Our study has been no exception.

Always we were hindered by the language barrier. Although English is one of two official languages of India,<sup>3</sup> the women on the panchayats in Himachal Pradesh, where we did our field research, spoke only Hindi, making us translator-dependent. Even if we had shared a language, there remained a cultural chasm between us. At times we were successful in building makeshift bridges to span that chasm. At other times we were not.<sup>4</sup>

Methodological woes were likewise challenging. Roughly 74% of India's population of one billion resides in villages.<sup>5</sup> Thus, the village panchayats constitute a critical vehicle to ensure meaningful participation in local affairs and grassroots development. How was it possible to answer any of our questions when our field research occurred, of necessity, only in Himachal Pradesh and yielded mostly anecdotal information? Within India, there has been a vast amount of research by Indian scholars on the rural panchayats since mandatory reservation, but most of it has also been intensely local. Was it desirable to make a coherent whole of this patchwork of data? More to the point, was it even possible?

We were also in awe of the Indian experiment. It was such a bold step to take—such a radical solution to an ancient, insidious problem. Our awe got in the way of our objectivity at times. We wanted to be able to report that this remarkable experiment was working. We wanted to be able to report that the lives

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3. INDIA CONST. pt. XVII, art. 343(2); Official Languages Act of 1963 § 3; Official Languages Rules of 1976.

4. A body of literature in international human rights discusses whether it is either possible or desirable to bridge these chasms that exist between cultures. Two competing schools of thought, universalism and relativism, have been used to implement international human rights law. Kristin J. Miller, *Human Rights of Women in Iran: The Universalist Approach and the Relativist Approach*, 10 EMORY INT'L L. REV. 779, 781 (1996). Universalists believe that the "rights set forth by the international community are so fundamental" that deviation is intolerable. *Id.* Universalism rests on the proposition that the human condition itself is unique and universal, and that all human beings share the same inalienable rights. *Id.* A person's rights therefore cannot be conditional on attributes such as gender or national origin. *Id.* Relativists, on the other hand, argue that outsiders should not judge the morality and social institutions of other cultures. *Id.* Relativism is informed by anthropology, which is founded on the "dual premises that the observer's knowledge of a culture is limited by the observer's own cultural upbringing, and that all cultures are 'equally valid.'" *Id.* at 789 (quoting Nancy Kim, *Toward a Feminist Theory of Human Rights: Straddling the Fence Between Western Imperialism and Uncritical Absolutism*, 25 COLUM. HUM. RTS. L. REV. 49, 56 (1993)). Cultural relativism recognizes the value of different community practices and stresses tolerance of conventions different from one's own. *Id.*

5. COUNTRY STUDY, *supra* note 2, at 87-88. According to Library of Congress statistics from the early 1990s, the vast majority of Indians—nearly 625 million, or 73.9%—lived in villages of fewer than 5000 people, scattered small towns, or other rural settlements. *Id.*

of rural women of India have been transformed. Yet integrity requires a lesser claim.

We were amazed by the serious, hard-working, and competent women we met on some of the rural panchayats in Himachal Pradesh. Footpaths are being cut, wells dug, community buildings erected, boundary disputes settled peacefully, roads improved, schools built, girls encouraged to get an education. By all appearances, it looks like a grassroots revolution, a close approximation of Gandhi's vision of a decentralized India that sought to empower its weakest and most vulnerable citizens. But given the centuries of inequality and subjugation of women, it will take longer than a decade to declare a transformation. Nonetheless, what we have learned about the results of constitutionally mandating one-third of the seats on rural panchayats for women is quite remarkable. This article remarks upon it.

The article is divided into four sections.<sup>6</sup> Section I describes the status of women in India, starting with the traditional role of women in Indian society prescribed by the Hindu tradition. It also looks at how the colonial legal infrastructure affected the lives of Indian women. Section I ends by describing the guarantees of gender justice built into the Indian Constitution, expressed in terms of equality and dignity, and analyzes the extent to which the lives of women in India have changed in the post-Independence era. Section II tackles the subject of panchayats, starting with a history of caste panchayats, progressing to the post-Independence panchayats, and concluding with the recently constitutionally mandated panchayats. Section III explores the effects of mandatory reservation for women on rural panchayats, presenting an array of empirical data from various states in India. We conclude in Section IV with personal narratives about our field research in villages in the northern state of Himachal Pradesh.

We recognize that there is a debate over the desirability of employing personal narratives in legal scholarship, and we nod in the direction of that debate in a footnote.<sup>7</sup> This article has the structure and tone of traditional legal scholar-

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6. The article assumes that the reader is unfamiliar with Indian culture and history, the Indian Constitution, the institution of the panchayat, and the circumstances and status of Indian women. If that proves not to be the case, then the reader can breeze through, or skip altogether, the first two sections. The analysis of the effects of mandatory reservations for women on rural panchayats is contained in Section III, and the authors' personal narratives are contained in Section IV.

7. Many prominent feminist scholars have argued in favor of the use of personal narrative in legal scholarship. See, e.g., Lucinda Finley, *Breaking Women's Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning*, 64 NOTRE DAME L. REV. 886, 893. (1989) (arguing that law and legal reasoning reflect a male voice by emphasizing "rationality, abstraction, a preference for statistical and empirical proofs over experiential or anecdotal evidence," and "[u]niversal and objective thinking"); Margaret Jane Radin, *The Pragmatist and the Feminist*, 63 S. CAL. L. REV. 1699, 1707 (1990) (suggesting that feminism shares with pragmatism a "commitment against abstract idealism, transcendence, foundationalism, and a temporal universality; and in favor of imminence, historicity, concreteness, situatedness, contextuality, embeddedness, and narrativity of meaning"); Robin West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1 (1988). Many critical race scholars have defended the use of the narrative form in their scholarship as well. See, e.g., Derrick Bell, *The Final Report*:

ship. It has the requisite unadorned, expository prose, a logical sequence of thought, an introduction and a conclusion, sections carved out with discrete units of thought, and voluminous footnotes for those hungry for more information. While we engaged in the research, however, another set of texts emerged that did not fit into the stately progression of Sections I, II, and III. These secondary texts became personal narratives about our field research. There is no pretense of neutrality about them, no sustained analysis—indeed, no claims that warrant support or authority at all. They were rooted in the senses. Throughout the research project, the sights, sounds, smells, and feel of India were palpable.

The personal narratives also recorded the inner dialogue of the researchers. The research project was a cross-cultural exploration in many ways: two white, American women law professors studying the effects of mandatory reservations on the lives of rural, Indian women from the foothills of the Himalayas. At times, we were in despair about the deep cultural divide between ourselves and the subjects of our research. At other times, there was a merger of interests and intense sympathy between us: everyone involved in the endeavor was keenly interested in improving the status of women; everyone involved in the endeavor had a family she loved and worried about; everyone involved in the endeavor bore the burden of a female body, striving to cope with the Indian heat.

Our personal narratives are thus offered in the spirit of an alternative epistemology. Our minds are active through the article, but in the personal narratives of our field research—where we meet the women of rural India face to face—our hearts are engaged as well.

## SECTION I. WOMEN IN INDIA

### A. Women in Traditional Indian Culture and Under British Rule

The role of the traditional Indian woman is one of dependence upon and subservience to the men in her life: first her father; then her husband; and, upon her husband's death, her adult sons.<sup>8</sup> Historically, women's status was not al-

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*Harvard's Affirmative Action Allegory*, 87 MICH. L. REV. 2382 (1989); Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411 (1989). On the other side of the debate are arch-traditionalists who either reject or seek to limit the use of narratives as a legitimate form of legal scholarship. See, e.g., DANIEL A. FARBER & SUZANNA SHERRY, *BEYOND ALL REASON: THE RADICAL ASSAULT ON TRUTH IN AMERICAN LAW* (1997); Daniel A. Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narrative*, 45 STAN. L. REV. 807 (1993).

8. THE LAWS OF MANU 197 (Wendy Doniger trans., 1991) [hereinafter MANU]; see also ELISABETH BUMILLER, *MAY YOU BE THE MOTHER OF A HUNDRED SONS* 16 (1990). While this discussion is designed to present some of the history and sources of attitudes toward women, the ideas are by no means obsolete. The following statistics are revealing about the current mindset of many Indian women regarding their role in life and the degree of control that their husbands hold over them. The International Institute for Population Sciences conducted a survey of 90,000 women across the country and found that 56% of the women endorsed wife-beating on at least one of six grounds. See *Half of Indian Women Say Wife Beating Justified*, New Delhi, Reuters (Nov. 17, 2001), available at South Asian Women's

ways so abject. Some scholars believe that the Sanskrit verses of the Rig Veda, the world's oldest literature written in approximately 1500 B.C.E., hark back to a "golden age"<sup>9</sup> in which women had a higher status and were considered more on par with men.<sup>10</sup> In the Aryan society,<sup>11</sup> women played a prominent role, both in performing religious rites and in participating in economic life. Aryan women were permitted to marry late, and there is no indication that any of them lived their lives within the confines of *purdah*.<sup>12</sup>

No one is certain whether this golden age was actually a historical era, a stage in the development of Indian society, or the product of Indian historians and feminists eager to find a utopian past.<sup>13</sup> It does not much matter. There seems to be little disagreement that in the two thousand years after the Aryan invasion, Indian women were subordinate to Indian men.<sup>14</sup> Girls were married off

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NETwork, SAWNEWS: News About South Asian Women, <http://www.umiacs.umd.edu/users/sawweb/sawnet/news/news415.html>, (last modified Apr. 5, 2004). Of the women surveyed, 40% agreed that wife-beating was justified for neglecting the house or children, and 37% felt that going out without informing their husbands constituted a valid reason. *Id.* Further, 34% felt that beatings were justified for showing disrespect to in-laws, and 33% felt that suspicion of infidelity was an acceptable ground. *Id.* The other two acceptable reasons for wife-beating were having an inadequate dowry and improper cooking. *Id.*

9. This view that there was a "golden age" in ancient India when women had a high status, quite unlike that of contemporary women, was probably a product of Orientalist scholars, both Indian and British, who reconstructed the past in order for the Hindu intelligentsia to regard themselves "as a product of an 'exhausted' culture" who could feel optimistic "that despite the present circumstances they were representatives of a culture which had been 'organically disrupted by historical circumstance but was capable of revitalization.'" Uma Chakravarti, *Whatever Happened to the Vedic Dasi?*, in RECASTING WOMEN: ESSAYS IN COLONIAL HISTORY 32 (Kumkum Sangari & Sudesh Vaid eds., 1989) (quoting DAVID KOPF, *BRITISH ORIENTALISM AND THE BENGAL RENAISSANCE* (1969)).
10. See, e.g., BUMILLER, *supra* note 8, at 16. Indian civilization began somewhere around 2500 B.C.E. with the Indus Valley civilization. R. Weiler, *Introduction to Vol. 1*, in SOURCES OF INDIAN TRADITION, 3 (Ainslie T. Embree ed., 2d ed. 1988) [hereinafter SOURCES OF INDIAN TRADITION]. The centers of that civilization were two cities, Mohenjodaro and Harappa, both sophisticated, planned urban centers that evidenced a high degree of political order and culture. *Id.* Two groups of people inhabited the civilization. The Aryans were a nomadic, pastoral people who migrated into the Indian subcontinent somewhere around 2000 B.C.E. *Id.* at 4. The indigenous people were much darker skinned, and the Aryans called them "dasas," a word that later came to mean slave. *Id.* at 5. Many of the hymns in the Rig Veda, written around 1500 B.C.E., glorify the heroism and military virtues of the conquerors. *Id.* Most scholars believe, however, that many of the components of the Hindu world view—a world view generally ascribed to the Indo-European Aryans—already existed in India by the time the Aryans settled on the subcontinent. Such components include a divinity reminiscent of Shiva, ritual bathing, and the use of yoga for spiritual enlightenment. *Id.* These were probably appropriated by the Aryans and integrated into their own religious concepts. *Id.*
11. The Aryans were a nomadic, pastoral people who migrated to the Indian subcontinent around 2000 B.C.E. SOURCES OF INDIAN TRADITION, *supra* note 10, at 4.
12. See *id.* BUMILLER, *supra* note 8, at 15-16. *Purdah* refers generally to a system of secluding women. ANEES JUNG, UNVEILING INDIA 127 (1987). It can include a number of practices, including the wearing of a veil or other clothes designed to hide the face or the body, or the segregation of women in certain hidden parts of the household that are not open to men who are not part of the family. BUMILLER, *supra* note 8, at 16, 32.
13. BUMILLER, *supra* note 8, at 17.
14. *Id.*

very young<sup>15</sup> and were barred from performing religious rituals or studying the sacred texts.<sup>16</sup> Their chief purpose in life was to produce sons.<sup>17</sup> Education was denied them, as was freedom of movement and economic independence. Widows were not permitted to remarry.<sup>18</sup>

Some time around the beginning of the common era, Manu, purportedly an upper-caste codifier of law, wrote a seminal compilation of Hindu law.<sup>19</sup> Even to this day, when an Indian woman is put in her place, Manu is usually cited as authority for the subjugation. In no uncertain terms, Manu put into words society's rules of conduct for both men and women, requiring acts of assertion by one party and compliance by the other, since domination is always a dynamic relationship.

Manu found the justification for these rules of conduct in his characterization of women as weak, venal, untrustworthy, and materialistic—a slave to her

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15. RAMESH CHANDRA NAGPAL, *MODERN HINDU LAW* 59 (1983). The concept of woman as chattel is supported by the types of marriage that were recognized under Hindu and later Indian common law. *Id.* Manu, purportedly an upper-caste codifier of law, delineated eight ways of acquiring a wife, but with the passage of time, all but two became obsolete: the *Brahma* and the *Asura*. *Id.* The *Brahma* form of marriage involved a gift of the bride to the bridegroom without consideration. *Id.* In the *Asura* form, the father or guardian took consideration from the bridegroom for marrying the bride to him. *Id.* ("In substance, it is a sale of the bride and not her gift."). The courts presumed that a marriage was in the *Brahma* form. *Id.*
  16. BUMILLER, *supra* note 8, at 16.
  17. Reflected in the title of Bumiller's book, *May You Be the Mother of a Hundred Sons*, *supra* note 8, Indian culture reflects a strong preference for sons. The patrilineal family is the most basic unit of Indian society, and the most widely desired residential unit is the joint family, ideally consisting of three or four patrilineally related generations. COUNTRY STUDY, *supra* note 2, at 95. Upon marriage, a wife is expected to live with her husband's relatives. *Id.* Because patrilineal joint families include men related through the male line, along with their wives and children, there is a strong preference for male children. *Id.* Economic ramifications to having a daughter include the cost of a dowry, as well as the loss of the daughter's labor to her husband's family. *Id.* The infant mortality rate is higher for females, which can be attributed to poor health care and female infanticide. *Id.* Human rights activists have estimated at least 10,000 cases of female infanticide annually throughout India. *Id.*
  18. Under shastric law, remarriage of a widow was forbidden. BUMILLER, *supra* note 8, at 16. Manu also pointed out in several places that remarriage of a widow is nowhere prescribed, and it is not spoken of in the religious laws about marriage. *Id.* The British enacted the Hindu Widows Remarriage Act, which legalized the remarriage of widows in 1856, but "[c]oming to the law in practice, we find that widow remarriage did not find favour with the Hindus." NAGPAL, *supra* note 15, at 62.
  19. *The Laws of Manu* was more than likely the culmination of the work of several authors, which was attributed to an individual named Manu, meaning the "wise one." MANU, *supra* note 8, at xviii. The status of the text of Manu's work is that of "Smriti." *Id.* at xvii. The sources of Hindu law can be divided into three categories: the Smritis, the Shrutis, and the Puranas. NAGPAL, *supra* note 15, at 23. The Shrutis are also called the Veda. *See* V. Raghavan & R.N. Dandekar, *The Hindu Way of Life*, in *SOURCES OF INDIAN TRADITION*, *supra* note 10, at 206. The root of the word Shruti is "shru," which means to hear, and the Veda are therefore revealed texts that came directly from a divine source. *See id.* The term Smritis comes from the root "smri," meaning to remember. *See id.* Tradition had it that the Smritis "contain those portions of the Shrutis which the sages forgot in their original form and the idea of which they wrote in their own language with the help of their memory. Thus, the basis of the Smriti is the Shruti but they are human works." NAGPAL, *supra* note 15, at 23-24.



senses, her greed, and her vanity.<sup>20</sup> Men must “make their women dependent day and night, and keep under their own control those who are attached to sensory objects. Her father guards her in childhood, her husband guards her in youth, and her sons guard her in old age. A woman is not fit for independence.”<sup>21</sup> Women who were not guarded and controlled, according to Manu, were susceptible to corruption by six things: “Drinking, associating with bad people, being separated from their husbands, wandering about, sleeping and living in other people’s houses.”<sup>22</sup> The corrupted women could be led into adultery by “running after men like whores, by their fickle minds, and by their natural lack of affection.”<sup>23</sup>

Many of Manu’s themes about the base nature of women were articulated in later centuries in a variety of contexts. Women were not only deemed unfit for the study of the religious scriptures;<sup>24</sup> they were also regarded as a temptation that could distract men from achieving spiritual enlightenment.<sup>25</sup> For example, Bhartrihari, a seventh-century poet, demonstrated an ambiguous attitude toward women: they were a source of great sensual pleasure, and at the same time, they could lead a man away from the path of asceticism.<sup>26</sup> After praising the study of Vedic writings and the renunciation of worldly goods, Bhartrihari wrote:

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20. Women were supposed to look a certain way, according to Manu. MANU, *supra* note 8, at 44. He had some fairly remarkable proscriptions and prescriptions about the physical characteristics desirable in a wife for a twice-born man:

A man should not marry a girl who is a redhead or has an extra limb or is sickly or has no body hair or too much body hair or talks too much or is sallow. . . . He should marry a woman who does not lack any part of her body and who has a pleasant name, who walks like a goose or an elephant, whose body hair and hair on the head is fine, whose teeth are not big, and who has delicate limbs.

*Id.*

21. *Id.* at 197. The more complete context of Manu’s famous shibboleth was:

I will tell the eternal duties of a man and wife who stay on the path of duty both in union and in separation. Men must make their women dependent day and night, and keep under their own control those who are attached to sensory objects. Her father guards her in childhood, her husband guards her in youth, and her sons guard her in old age. A woman is not fit for independence.

*Id.*

22. *Id.* at 198. The methods of control were often subtle: “No man is able to guard women entirely by force, but they can be entirely guarded by using these means: he should keep her busy amassing and spending money, engaging in purification, attending to her duty, cooking food, and looking after the furniture.” *Id.*

23. *Id.* Manu continues: “Knowing that their very own nature is like this, as it was born at the creation by the Lord of Creatures, a man should make the utmost effort to guard them.” *Id.*

24. *Id.*

25. *Id.* at 38-39. Manu believed that not only were women themselves corrupt, but that they possessed the power to corrupt men of all stations of life:

It is the very nature of women to corrupt men here on earth; for that reason, circum-spect men do not get careless and wanton among wanton women. It is not just an ignorant man, but even a learned man of the world, too, that a wanton woman can lead astray when he is in the control of lust and anger.

*Id.*

26. Bhartrihari, *The Perils of Love, in THE HINDU TRADITION: READINGS IN ORIENTAL THOUGHT* 164 (Ainslie T. Embree ed., 1966).

It would have been an easy matter to pay for our passage over the ocean of existence if there had been no women with beautiful eyes to hinder our progress. . . . A whirlpool of uncertainty, a palace of pride, a prison of punishment, a storehouse of sin, a fraud in a hundred different respects, an obstacle placed for us before the gates of paradise, the field of deceit, a basket of illusion, the open throat of hell: such are some of the features of women, who change nectar into poison and are as a chain by which man is attached to the chariot of folly.<sup>27</sup>

While this characterization of women's nature continued to justify Manu's scheme of men's domination over and control of women, Manu also articulated a recurring theme about the ideal wife, the *pativrata*.<sup>28</sup> The ideal wife always remained faithful to her husband, no matter what his faults:

A virtuous wife should constantly serve her husband like a god, even if he behaves badly, freely indulges his lust, and is devoid of any good qualities. Apart [from their husbands], women cannot sacrifice or undertake a vow or fast; it is because a wife obeys her husband that she is exalted in heaven.<sup>29</sup>

The ideal vision of the model Hindu wife is personified by Sita, the wife of Rama, the hero of the epic Ramayana.<sup>30</sup> Sita is defined entirely by her relationship to her husband, to whom she is steadfastly and entirely devoted.<sup>31</sup> Throughout the Ramayana, Rama's welfare and reputation are always uppermost in her mind.<sup>32</sup> She is sexually faithful to him and stands by him through thick and thin<sup>33</sup>—a thin that would test the mettle of any woman. When Rama is told by his father that he will not inherit the kingdom and that he will be going into exile

27. *Id.* at 165-66.

28. MANU, *supra* note 8, at 115.

29. *Id.*

30. See TRAVELLER'S LITERARY COMPANION TO THE INDIAN SUBCONTINENT 5 (Simon Weightman ed., 1996) [hereinafter TRAVELLER'S LITERARY COMPANION]. The Ramayana, which is one of the two great Indian epics (the earlier being the Mahabharata), came into being some time between 200 B.C.E. and 200 C.E. *Id.* It was the work of a single poet, Valmiki, and, like the Mahabharata, it demonstrated the quality of theophany; the earlier epic reveals Krishna's divinity, and the Ramayana reveals the divinity of Rama, who is an incarnation of Vishnu. *Id.* Sita, Rama's wife, is often regarded as a model of feminine comportment, loyal and obedient to her husband. *Id.*

31. DAVID R. KINSLEY, HINDU GODDESSES 72 (1986) [hereinafter KINSLEY, GODDESSES].

32. *Id.*

33. DAVID R. KINSLEY, HINDUISM: A CULTURAL PERSPECTIVE 29 (1993) [hereinafter KINSLEY, HINDUISM]. When Rama defeats Ravana, Sita's loyalty to her husband is tested. KINSLEY, GODDESSES, *supra* note 31, at 73. Sita is abducted by the demon Ravana and imprisoned in Lanka until Rama comes to rescue her. *Id.* After Rama defeats Ravana, Rama renounces Sita publicly, suspecting that she had relations with Ravana during her imprisonment. *Id.* Sita protests her innocence and arranges to have herself immolated in the tradition of *sati*. *Id.* at 74. Because of her purity, Agni, the god of fire, refuses to let Sita burn in the flames and returns her to Rama unscathed; even her flower garland remains fresh, despite the heat of the *sati* fire. Rama is convinced of her purity and takes Sita back. *Id.* Things do not go well for Sita after that, however. KINSLEY, HINDUISM, *supra*, at 29-30.

in the dark forest for fourteen years, Rama makes plans to leave Sita behind.<sup>34</sup> Sita will have none of it; she is grief-stricken at the prospect of parting from him and insists on accompanying him into exile, characterizing the relationship of wife to husband as that of a devotee to a god.<sup>35</sup>

I shall willingly dwell in the forest as formerly I inhabited the palace of my father, having no anxiety in the Three Worlds and reflecting only on my duties towards my lord. Ever subject to thy will, docile, living like an ascetic, in those honey-scented woodlands I shall be happy in thy proximity, O Rama, O Illustrious Lord.<sup>36</sup>

Although Sita is aware that life in the forest will be difficult and dangerous, the hardships will “be transmuted into joys through my devotion to thee . . . separated from thee I should immediately yield up my life.”<sup>37</sup> Sita is put through a number of other ordeals in the Ramayana, but she never wavers in her devotion to Rama or in the subordination of her welfare to the welfare of her husband.<sup>38</sup>

This ideal of a woman—one who identifies her welfare with that of her husband—was carried to extremes by the tradition of *sati*, the custom of a wife voluntarily sacrificing herself on her husband’s funeral pyre.<sup>39</sup> *Sati* was a custom

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34. See KINSLEY, HINDUISM, *supra* note 33, at 29. In the Ramayana, Rama’s father, the king Dasharatha, makes a promise of a boon to his second wife. She asks him to fulfill his promise by making her son, Bharata, the king of the realm instead of his favorite son, Rama. *Id.* She also asks Dasharatha to exile Rama to the forest for fourteen years so that Bharata’s reign will go unchallenged. *Id.* at 30. Rama goes into exile willingly because he believes it is important for a king to keep his promises and to be true to his word. *Id.* For Dasharatha not to keep his promises would disturb his “sense of personal order.” *Id.* Similarly, Rama must be obedient to his father’s wishes, since this is the “proper ordering of human relations.” *Id.* The fundamental relations of subject to king and son to father must be maintained; otherwise social order will be sacrificed. *Id.* at 29-30.

35. KINSLEY, GODDESSES, *supra* note 31, at 71.

36. *Id.* (quoting 1 THE RAMAYANA OF VALMIKI 233 (Hari Prasad Shastri trans., 1957-62)) (internal quotations omitted).

37. *Id.* at 72.

38. KINSLEY, HINDUISM, *supra* note 33, at 31-32. After Rama returns to Ayodha, having rescued Sita from the demon king Ravana, his people begin to gossip about whether Sita has fallen under Ravana’s spell. *Id.* at 31. Just as the king was duty-bound to control his realm, he was duty-bound to control his wife, and Sita’s living under the roof of another man—albeit unwillingly and chastely—gave the appearance of impropriety and gave rise to complaints from his citizenry. *Id.* Rama makes a monumental sacrifice by banishing his beloved Sita from the kingdom even though he knows that she is blameless. *Id.* at 32. This story supposedly demonstrates that Rama understood the proper king’s role: that maintaining social order and the stability of the kingdom was more important than his own personal happiness. *Id.*

39. BUMILLER, *supra* note 8, at 64. A famous instance of *sati* occurred in the late 1980s. Roop Kanwar, an eighteen-year-old widow in the village of Deorala, committed *sati* in 1987 after her twenty-four-year-old husband died of a ruptured appendix. *Id.* Five thousand villagers watched as she circled her husband’s funeral pyre (no one knows if she mounted it voluntarily or was pushed) and then committed *sati*. *Id.* In the following weeks, more than half a million people paid homage to Roop Kanwar. *Id.* “They knelt and prayed on the spot where she had died, sprinkled it with flowers, burned incense sticks, and smashed coconuts. . . . A monument stands in Deorala on the dusty little mound where she died.” See Mary Anne Weaver, *Gandhi’s Daughters*, NEW YORKER, Jan. 10, 2000, at 53.

of ancient origin, but it gained acceptance in the first century of the common era as a practice of upper-caste women.<sup>40</sup> The justifications for the practice were manifold.<sup>41</sup> It reflected the belief that a wife was the deceased's most prized possession, and hence, needed to accompany him to his next incarnation.<sup>42</sup> The death of a husband, particularly if he were young or died suddenly, was also considered a source of shame for the wife: his welfare was her chief concern, and if he predeceased her, that was evidence of her neglect.<sup>43</sup> And the fact was that life for a Hindu widow was not worth living.<sup>44</sup> She could not remarry and may have faced a "miserable life of abuse from her in-laws, who frequently blamed her for her husband's death, made her sleep on the floor and kept her isolated from the rest of the family and all social functions. Many widows were beaten, denied food and forced to beg in the streets."<sup>45</sup>

The traditional roles given to the Indian woman under the Hindu world view—that of dutiful and obedient daughter, wife, mother, or widow—ensured that her domain would always be domestic.<sup>46</sup> Her inferiority was accepted as fact, and the laws, both before and after Independence, perpetuated her subordinate position. Because it was divinely ordained that she should remain under the control of her father, her husband, or her son, there was no reason to treat her equally under the law or give her any political power to improve her situation.<sup>47</sup>

British rule during the colonial period did little to achieve equality between Indian men and women.<sup>48</sup> While there were a number of legal reforms that

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40. BUMILLER, *supra* note 8, at 64. Bumiller also reports of the glamorization of *sati* by the Rajputs of the old princely states, where "it became customary for not only wives but also concubines, sisters, sisters-in-law and even mothers to hurl themselves on the pyres of their dead men." *Id.* British legislation proscribed *sati* in the middle of the nineteenth century, but there have been instances of it in modern India. See Weaver, *supra* note 39; see also RATNA KAPUR & BRENDAN COSSMAN, *SUBVERSIVE SITES: FEMINIST ENGAGEMENTS WITH LAW IN INDIA* 51 (1996).

41. See BUMILLER, *supra* note 8, at 64.

42. *Id.*

43. See *id.*

44. See *id.*

45. *Id.*

46. *Id.* at 16; MANU, *supra* note 8, at 197.

47. See BUMILLER, *supra* note 8, at 16; MANU, *supra* note 8, at 197.

48. "The period of British Administration up to Independence can be divided into two phases": the "early" administration that had "little or no Indian participation," and the "late" administration that had "shared powers between the British and Indian representatives," primarily in response to challenges by Indian nationalists. ANGELES J. ALMENAS-LIPOWSKY, *THE POSITION OF INDIAN WOMEN IN THE LIGHT OF LEGAL REFORM* 19 (1975).

[In the early 20th century] a large number of Indians . . . through their education and their joining of the civil service and military had come in close contact with the British and had adopted some western habits and ideals. Indian businessmen and a new white collar professional group of practicing lawyers, doctors, and journalists were agitating for political rights and representative government mainly through the Indian National Congress.

*Id.* at 20. Gandhi was included in this group of attorneys who had western training in the law. Dennis Dalton, *Introduction* to MAHATMA K. GANDHI, *SELECTED POLITICAL WRITINGS* 4 (Dennis Dalton ed., 1996).

sought to protect women,<sup>49</sup> women were “not assumed to be equal to men; indeed, the discourse of equality was strikingly absent from the debates, as were the voices of women themselves.”<sup>50</sup> Certainly, there was no pressure to move the women of India out of the homes and fields of their fathers, husbands, and sons into the arena of public life. In the early twentieth century, for example, the British seemed indifferent to women’s suffrage, leaving the issue to Indian men to decide.<sup>51</sup> In its first report on the Government of India Act of 1919, the Joint Elect Committee of the British Parliament stated that the question of women’s suffrage “go[es] deep into the social system and susceptibilities of India, and, therefore, [seems] to be a question which can only, with any prudence, be settled in accordance with the wishes of Indians themselves as constitutionally expressed.”<sup>52</sup> Needless to say, when the “Indians themselves” consisted entirely of Indian men, the “wishes” that the British had pledged to follow were to exclude women from the political process altogether.

Although the British brought their legal system to India, they left intact the “personal” laws or “customary” laws that governed India’s different communities.<sup>53</sup> Personal or customary law governed marriage, divorce, adoption, property, and inheritance; in short, all aspects of life that kept women subordinate.<sup>54</sup> The practice of exempting personal laws from the laws imposed by the British found expression as early as 1772 in the Hastings Plan, which created a court system in Bengal with jurisdiction asserted over the “natives,” but contained an exception permitting Hindus and Muslims to apply their own personal laws.<sup>55</sup>

There were limited exceptions to the British “hands-off” policy when it came to personal laws. One was the 1829 Sati Regulation Act prohibiting the religious practice of *sati*.<sup>56</sup> Efforts were also sporadically made to legislate

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49. See KAPUR & COSSMAN, *supra* note 40, at 45-50.

50. *Id.* at 52.

51. NIRMALA BUCH, CENTRE FOR WOMEN’S DEVELOPMENT STUDIES, WOMEN’S EXPERIENCE IN NEW PANCHAYATS: THE EMERGING LEADERSHIP OF RURAL WOMEN, 3-6 (2000) [hereinafter BUCH, WOMEN’S EXPERIENCE]. This is a published summary of the more lengthy report found in NIRMALA BUCH, CENTRE FOR WOMEN’S DEVELOPMENT STUDIES, FROM OPPRESSION TO ASSERTION: A STUDY OF PANCHAYATS AND WOMEN IN MADHYA PRADESH, RAJASTHAN AND UTTAR PRADESH (1999) [hereinafter BUCH, FROM OPPRESSION TO ASSERTION].

52. BUCH, WOMEN’S EXPERIENCE, *supra* note 51, at 3.

53. See KAPUR & COSSMAN, *supra* note 40, at 51; Marc Galanter, *Remarks on Family Law and Social Change in India*, in CHINESE FAMILY LAW AND SOCIAL CHANGE IN HISTORICAL AND COMPARATIVE PERSPECTIVE 493 (David Buxbaum ed., 1978); Martha C. Nussbaum, *India: Implementing Sex Equality Through Law*, 2 CHI. J. INT’L L. 35, 37 (2001).

54. Galanter, *supra* note 53, at 493.

55. FLAVIA AGNES, LAW AND GENDER INEQUALITY: THE POLITICS OF WOMEN’S RIGHTS IN INDIA 42-43 (1999). The British introduced the common law into India in the eighteenth century, and after the English crown assumed direct control in 1858, it introduced a “unified, hierarchical system of appeal courts with a provincial High Court system subordinate to a common court of ultimate appeal,” which was the Judicial Committee of His Majesty’s Privy Council. ALMENAS-LIPOWSKY, *supra* note 48, at 16. This system exists today, with the exception that the Supreme Court of India has replaced the Privy Council. *Id.*

56. Although this law was aimed at prohibiting the “barbaric” practice of *sati*, it ironically had

against child marriage, although this legislation had little effect.<sup>57</sup> Other pre-Independence reforms included legislation permitting the remarriage of widows and civil marriage.<sup>58</sup> However, these laws were not made to supplant Hindu law, but to serve as an alternative for those choosing to opt out of the system of personal law.<sup>59</sup> Few did.

The beginning of the twentieth century brought with it an active women's movement in India. By 1934, the All India Women's Conference demanded the elimination of legal disabilities facing women in marriage and with respect to inheritance.<sup>60</sup> The demand for a change in the personal laws proved far more controversial than demands for other rights for women.<sup>61</sup> The thought of altering legal relationships within the family was seen as fundamentally threatening to the most basic institutional unit in society.<sup>62</sup> Demands for inheritance rights for daughters, or women's equal rights regarding divorce, and an insistence on monogamy were viewed as endangering the joint family and ultimately challenging the dominant patriarchy.<sup>63</sup>

Not surprisingly, given what was at stake—"the purity of family life, the great ideal of chastity and the great ideal of Indian womanhood"—the adoption of a Hindu Code that would modify the personal laws failed when it was presented to the Indian Legislative Assembly in 1945, and again after Independence, when it was presented to the provisional parliament.<sup>64</sup> With Independence came a renewed desire in some quarters for a Uniform Civil Code, designed to replace the personal laws of the various religious communities. Indeed, Article 44 of the Constitution directs the government to work toward the enactment of a Uniform Civil Code.<sup>65</sup> No such code has yet been adopted, in large part due to the belief that while it might alter the personal laws in a way that benefits women, it would undoubtedly serve as a codification of Hindu law and thus raise profound questions about India's commitment to secularism.<sup>66</sup>

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the effect of mobilizing resistance to colonial efforts to interfere with religious traditions. KAPUR & COSSMAN, *supra* note 40, at 47. Indeed, the British used the practices of *sati* and child marriage to prove the barbarity of Indian society and the need for colonial rule. *Id.* at 45.

57. Child marriage was first addressed legislatively in 1872, when the Child Marriage Act restricted the minimum age to marry to fourteen. See MINISTRY OF EDUCATION & SOCIAL WELFARE, INDIA DEP'T OF SOCIAL WELFARE, TOWARDS EQUALITY: REPORT OF THE COMMITTEE ON THE STATUS OF WOMEN IN INDIA 111 (1974) [hereinafter TOWARDS EQUALITY]. This legislation had little effect since most marriages were based on religious law, not civil law. *Id.*

58. Galanter, *supra* note 53, at 494.

59. *Id.*

60. KAPUR & COSSMAN, *supra* note 40, at 55.

61. *Id.* at 56.

62. *Id.*

63. *Id.*

64. *Id.* at 56-57.

65. Article 44 of the Constitution of India provides: "The State shall endeavor to secure for the citizens a Uniform Civil Code throughout the territory of India." INDIA CONST. art. 44.

66. The Muslim community, as a minority community, particularly fears the establishment of a

Personal laws did not undergo substantial modification until some aspects of Hindu law were codified in the mid-1950s. The Hindu Code consists of four separate laws: the Hindu Marriage Act, the Hindu Succession Act, the Hindu Minority and Guardianship Act, and the Hindu Adoption and Maintenance Act.<sup>67</sup> This codification actually reflects a fiction that developed during colonial rule: that there was one homogenous set of religious laws that applied to all Hindus and another that applied to Muslims.<sup>68</sup> The reality was much different and reflected the fact that local customs and beliefs crossed religious lines, operating in part regionally and in part along caste, sect, or occupational lines.<sup>69</sup> “The Hindus are as diverse in race, psychology, habitat, employment and way of life as any collection of human beings that might be gathered from the ends of earth.”<sup>70</sup> Thus, customary law was the reality in India; religious law was a fiction advanced during the colonial period by the British.<sup>71</sup> The codification that took place in the 1950s represents the British perception of the Hindus as homogenous and reflects a largely Brahmanical interpretation of Hinduism.<sup>72</sup> Not only does this interpretation of Hinduism ignore the tremendous diversity of customs among Hindus, it also has served to supplant customary laws that in some respects gave women more rights.<sup>73</sup>

## B. Women in Post-Independence India

The legal disabilities suffered by women, apart from those within the realm of personal law, were eliminated as a matter of law with the adoption of the Constitution that went into effect on January 25, 1950.<sup>74</sup> The Indian Constitution re-

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Hindu state. See Nussbaum, *supra* note 53, at 45; see also RATNA KAPUR & BRENDA COSSMAN, *SECULARISM’S LAST SIGH* (2000) (discussing the debate regarding a Uniform Civil Code, secularism, and politics in India today).

67. Hindu Marriage Act of 1955; Hindu Succession Act of 1956; Hindu Minority & Guardianship Act of 1956; Hindu Adoption & Maintenance Act of 1956. Other legislation was passed to address the health problems associated with child marriage, such as the Age of Consent Act, which prohibited the consummation of marriage before a woman turned twelve. See KAPUR & COSSMAN, *supra* note 40, at 47-50; TOWARDS EQUALITY, *supra* note 57, at 111.

68. AGNES, *supra* note 55, at 43.

69. *Id.*

70. *Id.* at 24 (quoting J.D.M. DERRETT, *HINDU LAW PAST AND PRESENT* (1857)).

71. *Id.* at 43.

72. *Id.* at 26, 44.

73. See *id.* at 11-28.

74. The drafting of India’s Constitution provides an interesting contrast to the drafting of the United States Constitution and tells us something about the democracy that India set out to establish. While our Constitution was drafted in strict secrecy, India’s draft constitution was circulated to the people of India, who discussed and debated the draft and proposed more than 7000 amendments over eight months. More than 2000 of these proposals were actually discussed by the Constituent Assembly, which adopted the Constitution of India on November 29, 1949. J.N. PANDEY, *CONSTITUTIONAL LAW OF INDIA* 15-16 (1995). The document they produced is among the longest in the world, with 395 articles and twelve schedules. It has been amended approximately seventy-nine times.

The Indian Constitution reflects a number of influences from around the world: England’s parliamentary form of government; Ireland’s Directive Principles; the United States’s Su-

flects an explicit commitment to gender justice.<sup>75</sup> Like the United States Constitution, the Indian Constitution guarantees equal protection of the law to all persons<sup>76</sup> and specifically directs that women may not be discriminated against with respect to voting.<sup>77</sup> But whereas the American Constitution stops there, the Indian Constitution contains a number of specific provisions directed at ensuring equality and dignity for women. Thus, the Indian Constitution prohibits the State from discriminating on the basis of sex;<sup>78</sup> directs that there shall be no discrimination on the ground of sex with respect to public accommodations or the use of wells, tanks, or bathing ghats;<sup>79</sup> states that there shall be no discrimination based on sex with respect to public employment;<sup>80</sup> and explicitly

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preme Court and Bill of Rights; and Canada's and Australia's systems of federalism. *See id.* at 23-24. Similar to Canada but not the United States, the Indian Constitution vests the residual powers of the legislature in the central body. *Id.* Similar to Australia but not the United States, the Indian Constitution contains a detailed specification of the division of power between the central government and the states. *Id.* While some criticize the Indian Constitution as a patchwork quilt of foreign influences, others praise the final product as one that selectively incorporates those aspects of foreign democracies that were thought to best fit conditions in India. *Id.*; *See also* [http://www.indianchild.com/indian\\_government\\_and\\_politics.htm](http://www.indianchild.com/indian_government_and_politics.htm) (last visited Jan. 30, 2004).

Any student of the United States Constitution will be immediately struck by the differences between the two documents. The United States Constitution basically sets forth the structure of government and protects individual liberty by prohibiting government from engaging in certain conduct. In contrast, the Indian Constitution stands not only as an operational manual that allocates power among different branches of government and prohibits the states from interfering with basic rights, but also as an inspirational and aspirational document intended to create a new social order. Thus, for example, the Constitution not only tells the government what it may not do (Part III of the India Constitution contains the Fundamental Rights); it also directs the government positively to undertake policies designed to bring about this new social order (Part IV of the Constitution contains the Directive Principles). INDIA CONST. pts. III, IV.

The Constitution also speaks directly to its citizens, imposing fundamental duties on every citizen of India to abide by the Constitution, to follow the noble ideals that inspired the Independence struggle, to promote harmony, to appreciate India's diversity, and to renounce practices derogatory to the dignity of women. *See* INDIA CONST. pt. IVA (setting forth the Fundamental Duties).

For the leading treatises on the Constitution of India, see DURGA DAS BASU, *SHORTER CONSTITUTIONAL LAW OF INDIA* (1996); H.M. SEERVAI, *CONSTITUTIONAL LAW OF INDIA*, (1999); V.N. SHUKLA, *CONSTITUTION OF INDIA* (1994).

75. The Preamble declares justice, liberty, equality, and fraternity to be the constitutional objectives. INDIA CONST. pmbl. More specifically, the Preamble explains that the Constitution is intended to secure to all citizens "social, economic and political justice," "liberty of thought, expression, belief, faith and worship," "equality of status and opportunity," "fraternity assuring the dignity of the individual," and the unity and integrity of the nation. *Id.* The Supreme Court of India has said that the Preamble's reference to "fraternity assuring the dignity of the individual . . . has a special relevance in the Indian context because of social backwardness of some groups who have historically been looked down upon and deprived of any participation . . . [T]his requires the people of India to be bound together by a spirit of brotherhood." *Indra v. Union of India*, 1993 S.C.R. 477.
76. Article 14 provides that "[t]he state shall not deny to any person equality before the law or the equal protection of the laws." INDIA CONST. art. 14.
77. *Id.* at arts. 325, 326. In the United States, women acquired the constitutional right to vote in 1920 with the passage of the Nineteenth Amendment.
78. *Id.* at art. 15(1).
79. *Id.* at art. 15(2).



based on sex with respect to public employment;<sup>80</sup> and explicitly provides that the State may make special provision for women without offending the equality guarantee.<sup>81</sup> In addition to these fundamental rights of equality, the Indian Constitution also directs the State to work toward the emancipation of women, including equal pay for equal work,<sup>82</sup> just and humane conditions of work,<sup>83</sup> and maternity relief.<sup>84</sup> Finally, the Indian Constitution directs every citizen “to renounce practices derogatory to the dignity of women.”<sup>85</sup>

Subsection 3 of Article 15 authorizes the State to make “special provision for women and children.”<sup>86</sup> This section serves as the basis for a variety of laws designed to benefit women<sup>87</sup> and stands as one of several constitutional authorizations of affirmative action.<sup>88</sup> India’s approach has led the Indian Supreme Court to play the same role of benevolent protector of women as the United States Supreme Court played in the century after the adoption of the Fourteenth

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80. Article 16(2) of the Constitution of India provides that “[n]o citizen shall, on grounds only of . . . sex . . . be ineligible for, or discriminated against in respect of, any employment or office under the State.” *Id.* at art. 16(2).

81. Article 15(3) provides that “[n]othing in this Article shall prevent the State from making any special provision for women and children.” *Id.* at art. 15(3). This provision represents an effort to go beyond formal equality to eliminate the unequal consequences of gender differences.

82. *Id.* at art. 39(d).

83. *Id.* at art. 42.

84. *Id.* Articles 39(d) and 42 are in Part IV of the Constitution, which contains the Directive Principles of State Policy. These are principles for the State and its agencies to follow in formulating policy. The goal of the Directive Principles is to establish a new social order consisting of social, economic, and political justice. Dr. Ambedkar, the primary drafter of the Constitution, described the Directive Principles as having “great value, for they lay down that our ideal is economic democracy.” <http://www.ambedkar.org/Babasaheb/quotations.htm>. In contrast, Shri T.T. Krishnamachari referred to the Directive Principles as the “veritable dustbin of sentiment.” Anupam Gupta, *Supreme Court on Education, a Complete Turnaround*, TRIB. (India), Jan. 23, 2003, available at <http://www.tribuneindia.com/2003/20030113/edit.htm>. Unlike the Fundamental Rights, the Directive Principles are not justiciable. Article 37 provides that “[t]he provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.” INDIA CONST. art. 37.

85. Article 51A is found in Part IVA of the Indian Constitution, which contains the fundamental duties. This Part was added by the Forty-Second Amendment Act of 1976, which introduced a code of ten fundamental duties for all citizens. INDIA CONST. art. 51A, available at <http://www.constitution.org/cons/india/tamnd42.htm> (last visited Feb. 28, 2004).

86. INDIA CONST. art. 15(3).

87. See, e.g., *Choki v. State*, AIR 1957 (Raj) 10 (upholding a statute granting bail for women but not for men accused of certain serious crimes); *Shahbad v. Mohd. Abdulla*, AIR 1967 (J & K) 120 (upholding a statute excluding women from the requirement of accepting service of process); *Sager v. State*, AIR 1968 (AP) 165 (upholding a reservation of seats for women in educational institutions); *Girdhar Gopal v. State*, AIR 1953 (MB) 147 (upholding a statute that makes violating the modesty of a woman, but not a man, a crime).

88. Constitutional provisions authorizing a reservation of seats for the Scheduled Castes and Scheduled Tribes include Article 16(4), which authorizes reservations in public employment; Article 330, which authorizes reservations in the Lok Sabha (House of the People); and Article 332, which authorizes reservations in the state legislative assemblies. INDIA CONST. arts. 16(4), 330, 332.

Amendment. In other words, Indian laws that treat men and women differently will be upheld if they are seen as protecting women.<sup>89</sup>

With the stroke of a pen, these provisions in the Indian Constitution sought to remove centuries of discrimination against women. Unfortunately, words alone cannot and have not altered social reality. There remains a huge gap between the formal rights accorded women by the Constitution and their current social and economic status.

In 1974, the first important governmentally sponsored study on the status of women was published, entitled *Towards Equality: Report of the Committee on the Status of Women in India*.<sup>90</sup> The Committee on the Status of Women found that the equality principle so firmly embedded in the Constitution had struggled against the the firmly-entrenched prevailing sentiment of male privilege" and had not led to an improvement in women's health, education, or employment.<sup>91</sup> Among the trends noted in the report were an excessive mortality rate among women; a decline in the male-female ratio; a disparity between women's and men's access to health care and medical services; an increasing gap between the two sexes in terms of literacy, education, and training for employment; a decline in women's employment; and an increasing rate of migration from village to village among women in comparison to men.<sup>92</sup>

The Committee on the Status of Women also recommended reform of India's personal laws.<sup>93</sup> The personal laws remained exempt from civil and consti-

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89. If such an approach were utilized in the United States today, it would likely be criticized as smacking of paternalism. The danger of an approach reflecting the need to protect women is that it can be used to perpetuate stereotypes that ultimately hurt women more than help them. A recent example involved the award-winning author Arundhati Roy, who was held in contempt by the Indian Supreme Court for criticizing the Court. She was sentenced to only one night in prison. The Court explained that she deserved a longer sentence, but that it was being forgiving because she was a woman.

As the respondent has not shown any repentance or regret or remorse, no lenient view should be taken in the matter. However, showing the magnanimity of law by keeping in mind that the respondent is a woman . . . we feel that the ends of justice would be met if she is sentenced to symbolic imprisonment besides paying a fine of Rs. 2000/-.

In re Arundhati Roy (Mar. 6, 2002), <http://www.narmada.org/sc.contempt/judgement.060302.html>. Whether this type of double standard actually benefits women is, of course, questionable.

90. TOWARDS EQUALITY, *supra* note 57. The Committee traveled throughout India, conducted hundreds of interviews, initiated surveys, appointed task forces, hired experts, and ultimately produced a 480-page report. *Towards Equality* is a comprehensive, in-depth analysis of the full range of questions relating to the rights and status of women in India.

91. *Id.* "The gap between women's formal rights and their socio-economic status is widening." KAPUR & COSSMAN, *supra* note 40, at 20 (concluding that despite the legal reforms, there has been little improvement in women's economic, social, or political status, which is likely to worsen with increased globalization.) See also Utsa Patnaik, *The Bases for Political Empowerment of Women*, 1998 WOMEN & POL. EMPOWERMENT 69, 72 (advocating the view that India's new economic policy has had a negative impact on women). Patnaik reports that the new economic policy has resulted in drastic cuts in public expenditures on rural development, as well as subsidies for food, health, and education. *Id.*

92. TOWARDS EQUALITY, *supra* note 57, at 9-34.

93. *Id.* at 140-46.

tutional authority.<sup>94</sup> This was—and still is—a major cause of the continued subjugation of Indian women. Despite the 1954-1956 codification of Hindu personal laws governing the areas of marriage, divorce, inheritance, and adoption, the personal laws affecting Hindus continue in significant ways to ensure the economic dependency of many Indian women.<sup>95</sup>

Inheritance is a good example. The 1956 Hindu Succession Act, a code widely thought to have reformed the law and expanded women's rights, in fact protects the joint family at the expense of equality for women. It continues the all-male coparcenary with respect to ancestral property, meaning that property passes only through the males in the family, who are expected to care for the entire joint family.<sup>96</sup> The Act discriminates against women in other ways as well. For example, if a daughter dies, her property passes to her husband as opposed to her parents, whereas upon the death of a son, the property passes to his parents, not to his wife.<sup>97</sup> Further, a woman cannot demand partition of land without the willing involvement of the male heirs.<sup>98</sup> Thus, in a variety of ways, the Hindu Succession Act works to deprive women of equal rights to property.<sup>99</sup>

Muslim personal laws have remained virtually untouched since Independence.<sup>100</sup> Reform of Muslim law has proved impossible largely because of the minority status of Muslims within India.<sup>101</sup> In India, polygamy is theoretically available to Muslim men, men can divorce their wives by the mere incantation of a phrase repeated three times, and women are unable to obtain maintenance beyond the dowry they brought to the marriage.<sup>102</sup> Muslim personal laws have left many divorced women destitute, some of whom have attempted to invoke the provisions of Section 125 of the Code of Criminal Procedure, which, when the

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94. *Id.*

95. "All the systems [of personal laws] have gross sex inequalities." Nussbaum, *supra* note 53, at 40.

96. AGNES, *supra* note 55, at 81-82.

97. Archana Sridhar, *The Conflict Between Communal Religious Freedom and Women's Equality: A Proposal for Reform of the Hindu Succession Act of 1956*, 20 BERKELEY J. INT'L L. 555, 564 (2002).

98. *Id.* at 566; *see* Hindu Succession Act § 23 (1956).

99. The regime of marital property in India is currently based on the notion of separate property, where each spouse is considered to own the property to which he or she has legal title. KAPUR & COSSMAN, *supra* note 40, at 138. Each spouse is free to acquire and control his or her separate property, and upon divorce each spouse is entitled to his or her separate property; there is no notion of marital property held jointly and equitably distributed upon dissolution. *Id.* This regime of separate property is based on a model of equality and is a "step forward from the older regime which precluded married women from owning property in their own names." *Id.* However, the sexual division of labor and unequal rules of inheritance occasion unequal results. *Id.* Men are more likely to earn wages, and women are more likely to be responsible for child care and domestic labor (work that is not remunerated and that deprives women of educational and occupational opportunities). *See id.* at 138-39. Because of the "legacy of patrilineal inheritance," it is also less likely that property will be passed on to women. *Id.* at 138.

100. Nussbaum, *supra* note 53, at 44.

101. *Id.*

102. *Id.*

wife is destitute and without means of support, requires a husband upon divorce to pay his wife maintenance for life or until her remarriage.<sup>103</sup> The most famous (or infamous) Muslim woman seeking such relief was Shah Bano.

Shah Bano, a sixty-four-year-old woman from Madhya Pradesh,<sup>104</sup> was divorced by her husband, a prosperous lawyer, after a forty-four-year marriage and five children.<sup>105</sup> She received only her "dowry" and limited maintenance so she sued under Section 125 of the Code of Criminal Procedure for additional maintenance.<sup>106</sup> The case reached the Indian Supreme Court in 1985.<sup>107</sup> In a decision that outraged the Muslim minority, the Indian Supreme Court granted Shah Bano maintenance, and, quoting an Orientalist scholar's characterization of Islam as degrading to women, undertook to interpret the most holy book for Muslims—the Quran—in a way that authorized the award of maintenance.<sup>108</sup> In response to the Shah Bano case, Muslim leaders pressured the government to overrule the decision legislatively.<sup>109</sup> Rajiv Gandhi introduced and won passage of the Muslim Women's (Protection after Divorce) Act of 1986, explicitly providing that Muslim women are not entitled to maintenance under the Criminal Code.<sup>110</sup> The Shah Bano debacle seriously undermined support for a Uniform Civil Code from within the Muslim community. It has also resulted in divorced Muslim women living in poverty, their children working in order to eat instead of going to school.<sup>111</sup>

Little has changed for India's rural women since the 1974 report by the Committee on the Status of Women. Despite the funding of new economic development programs designed to address the needs of women, the status of rural women has remained relatively static, due primarily to the difficulty of changing attitudes.<sup>112</sup>

Traditional, religious, and cultural beliefs and practices still largely determine

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103. Section 125 of the Code of Criminal Procedure was intended to apply to all religious groups and to provide a "speedy and cheap" remedy, thereby preventing "starvation and vagrancy." *TOWARDS EQUALITY*, *supra* note 57, at 128-29.

104. *See Khan v. Begum*, 3 SCR 844, 850 (1985); BUMILLER, *supra* note 8, at 165.

105. *Khan*, 3 SCR at 850.

106. *Id.*

107. *Id.* at 844.

108. *Id.* at 859-60.

109. Nussbaum, *supra* note 53, at 45. Muslim women protested the enactment of this law, with one activist saying: "If by making separate laws for Muslim women, you are trying to say that we are not citizens of this country, then why don't you tell us clearly and unequivocally that we should establish another country—not Hindustan or Pakistan but Auratstan (women's land)?" *Id.* (citing Amrita Chhachhi, *Identity Politics, Secularism and Women: A South Asian Perspective*, in *FORGING IDENTITIES: GENDER, COMMUNITIES AND THE STATE IN INDIA* 74 (Zoya Hasan ed., 1994)). Pressure was also brought to bear on Shah Bano, who ultimately renounced her right to maintenance. *Id.*

110. *Id.* For a discussion of the case and of Rajiv Gandhi's decision to support passage of the Muslim Women's Act, see BUMILLER, *supra* note 8, at 167-70.

111. Nussbaum, *supra* note 53, at 45.

112. CAROL S. COONROD, *THE HUNGER PROJECT, CHRONIC HUNGER AND THE STATUS OF WOMEN IN INDIA* (1998), available at <http://www.thp.org/reports/india wom.htm>.

women's participation in the social and economic life in India. Despite regional and class differences, male domination continues to be the hallmark of male-female relationship. Prejudice against women is expressed in the practices of all religions in the country.<sup>113</sup>

Women's economic dependence bears an almost inverse relationship to their workload, which remains heavier than men's.<sup>114</sup> Consider the story of a foreign student visiting India who asked a farmer to describe his daily routine.<sup>115</sup> After responding, the student then asked the farmer about his wife's job, to which he answered that she did not have one.<sup>116</sup> Then the foreign student asked the farmer to narrate how his wife spent her day.<sup>117</sup> The answer, representative of the lives of tens of millions of rural Indian women, described a lengthy list of chores that started at daybreak and ended late in the night.<sup>118</sup> When women themselves are asked whether they work, their response is typically no.<sup>119</sup> But when asked how many of them, after finishing household chores, work in the field or bring fodder to the cattle or go out to sell homegrown vegetables, approximately 70% said yes.<sup>120</sup> Thus, between men and women, women's responsibilities remain unrecognized and uncompensated. Their contributions are not even accorded the status of work.

Gender disparities continue to be dramatic with respect to all of the major indices. India ranked 127th of 175 countries in 2003 on the Gender-related Development Index, which evaluates gender disparities in life expectancy, literacy, and income.<sup>121</sup> With respect to the Gender Empowerment Measure, which evaluates gender inequalities in terms of economic and political participation,

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113. Aradhana Parmar, *Women and the Law*, in LAW, POLITICS AND SOCIETY IN INDIA 165.

114. See Kumud Sharma, *Development with a Perspective*, 1995 WOMEN & POL. EMPOWERMENT 44.

115. A.K. Premajam, *Women as Decision-Makers*, 1998 WOMEN & POL. EMPOWERMENT 135.

116. *Id.*

117. *Id.*

118. *Id.*

119. Mrinal Pandey, *Media and the Panchayats*, 1995 WOMEN & POL. EMPOWERMENT 86, 87.

120. See *id.* During our field research, we also found that the women in rural India had a back-breaking work schedule. One woman from the Kaloond panchayat described these daily obligations: 4:00 a.m., fodder for cows, morning tea for entire family, consisting of five to twenty people, breakfast for entire family, then children to school, housekeeping; prepare lunch at 1:00 p.m., children back from school, snacks for children, laundry, clean courtyard; 4:00 p.m., fodder for cattle, husband back from field, tea and snacks; 6:00 p.m., dinner until 9:30 p.m., arrange bedding for entire family; 10:30 p.m., last meal for cattle, ask each member of family if anyone needs anything; free at 11:00 p.m. or 12:00 a.m. Interview with twenty-eight women of Kaloond panchayat, in Himachal Pradesh, India (June 18, 1999) (on file with authors). We also had to take into account that she cooked on an open fire, had to gather fuel for that fire, and had to walk a considerable distance to the well for water. When this same woman asked us to describe our workday, there was a burst of laughter when one of us reported that her husband cooked for the family. *Id.*

121. HUMAN DEVELOPMENT REPORTS, U.N. DEVELOPMENT PROJECT, GENDER-RELATED DEVELOPMENT INDEX (2003), available at [http://www.undp.org/hdr2003/indicator/indic\\_196\\_1\\_1.html](http://www.undp.org/hdr2003/indicator/indic_196_1_1.html).

India ranked 127th out of 175 countries in 2001.<sup>122</sup> No matter what statistics are scrutinized—maternal mortality rates,<sup>123</sup> illiteracy,<sup>124</sup> sex-selective abortion of female fetuses and infanticide,<sup>125</sup> domestic and other gender-based violence,<sup>126</sup> wage disparities, or nutrition<sup>127</sup>—the conclusion remains the same: Indian women are suffering the effects of widespread and systemic discrimination.

The most graphic illustration of women's inferior status appears in the sex ratio statistics. The 2001 census projected a sex ratio of 927 females to 1000 males in the zero-to-six age bracket, with a particularly sharp decline in India's prosperous northern and western states.<sup>128</sup> Female infanticide was widespread, reflecting the pressures of the dowry system,<sup>129</sup> the perceived need for a son to

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122. HUMAN DEVELOPMENT REPORTS, U.N. DEVELOPMENT PROJECT, GENDER EMPOWERMENT MEASURE (2003), available at [http://www.undp.org/hdr2003/indicator/indic\\_207\\_1\\_1.html](http://www.undp.org/hdr2003/indicator/indic_207_1_1.html) (last visited Apr. 3, 2004).

123. India's maternal mortality rate is said to be the second highest in the world. See SUJATA MADHOK, INFOCHANGE NEWS & FEATURES, BACKGROUND AND PERSPECTIVE, <http://www.infochangeindia.org/WomenIbp.jsp> (last visited Apr. 10, 2004); see also Saroj Iyer, *Maternal Deaths Are Shockingly High in India*, TIMES OF INDIA, June 1997, at A1 (reporting 570 deaths per 100,000 live births and attributing that rate of maternal deaths to poverty, gender discrimination, and lack of political commitment).

124. According to the 2001 census, India's literacy rate is 65.38%, with enormous variations from state to state. OFFICE OF THE REGISTRAR GENERAL, INDIA, CENSUS OF INDIA (2001), <http://www.censusindia.net/results/resultsmain.html> [hereinafter CENSUS OF INDIA]. For example, Kerala enjoys a literacy rate of 90.92%, whereas Bihar suffers from a literacy rate of 47.53%. *Id.* The overall literacy rate of 65.38% represents a 75.85% literacy rate among men and a 54.16% literacy rate among women. *Id.* Again, one finds tremendous variation from state to state, with Kerala boasting the highest female literacy rate (87.86%) and Bihar showing the lowest (33.57%). *Id.*

125. See Celia W. Dugger, *Modern Asia's Anomaly: The Girls Who Don't Get Born*, N.Y. TIMES, May 6, 2001; Miriam Jordan, *Among Poor Villages, Female Infanticide Still Flourishes in India*, WALL ST. J., May 9, 2000, at A1.

126. See *Women at Assault Risk from Loved Ones*, STATESMAN, June 30, 2000.

127. See U.N. DEVELOPMENT FUND FOR WOMEN, PROGRESS OF THE WORLD'S WOMEN 2000 (2000). Many women in India suffer from poor health. India has one of the highest percentages of anemia cases in the world because of malnutrition. Dorane L. Fredland, *Empowering Women in Rural India*, in WOMEN TRANSFORMING POLITICS 192, 196 (Jill M. Bystydzienski ed., 1992). About 60% to 80% of pregnant women in South India suffer from iron deficiency. *Id.* One hospital in India reported that of those suffering from severe malnutrition, 71.43% were women, and 28.57% were men; of those who had adequate nutrition, 60.2% were men, and 39.8% were women. *Id.* (Jill M. Bystydzienski ed., 1992). "Other major causes of female ill health are inadequate food intake, lack of protected water supply, chronic infections, and the aftermath of chronic debilitating diseases." *Id.*

128. See CENSUS OF INDIA, *supra* note 124; Kenan Farrell, *Where Have All the Young Girls Gone? Preconception Gender Selection in India and the United States*, 13 IND. INT'L & COMP. L. REV. 253 (2002); Dugger, *supra* note 125; Jordan, *supra* note 125, at A1. Other reports estimate the ratio as 900 to 1000, and as low as 600 to 1000 in some areas. THE HUNGER PROJECT, WOMEN IN PANCHAYATI RAJ CHANGE AGENTS FOR A NEW FUTURE FOR INDIA, <http://www.thp.org> (last visited Apr. 3, 2004).

129. Dowry refers to the practice of the bride's family giving gifts to the groom's family. Originally a phenomenon of the upper castes, it came to be replicated by other castes and increasingly used as a way of climbing the economic ladder to meet demands for motor scooters, refrigerators, cars, and cash. See Anshu Nangia, *The Tragedy of Bride Burning in India: How Should the Law Address It?*, 22 BROOK. J. INT'L L. 637, 642-43 (1997). Along with greedy demands came increased use of violence against the bride when her parents failed to comply with the demands. *Id.* at 649. Typically, the violence takes the form of kerosene "acci-

perform religious rituals such as lighting a parent's funeral pyre, and a widespread belief that a daughter's contribution to the family is less valuable than a son's.<sup>130</sup> One of the most important contributing factors to this perception is that the daughter joins her husband's family upon marriage, which is reflected in the Indian proverb that "raising a daughter is like watering a neighbor's plant."<sup>131</sup> The widespread availability of sex-selective sonograms, despite their illegality, results in an estimated three to five million abortions of female fetuses every year.<sup>132</sup>

Reports of female infanticide abound. Bihar, India's poorest state, has a sex ratio of 819 women to 1000 men in some districts. Midwives are paid fifty cents and a sack of grain for delivering a girl, more than twice that amount for delivering a boy, and as much as five dollars for getting rid of a girl.<sup>133</sup> One non-governmental organization reported that in some parts of Bihar, each midwife killed five newborn girls each month, using techniques including snapping the baby's spine, forcing rock salt down the baby's throat, or sealing the baby in a clay pot.<sup>134</sup>

With respect to educational opportunities within villages, girls suffer discrimination based on traditional patriarchal attitudes. A common practice is to withdraw girls from school at a very young age because they are useful around the house.<sup>135</sup> From approximately the age of eight, a girl "becomes a surrogate mother," looking after her siblings, doing the housework, and working in the fields.<sup>136</sup> She also gets a poorer quality of food than her brothers—and less of it.<sup>137</sup>

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dents." BUMILLER, *supra* note 8, at 47; Nangia, *supra* note 129, at 637-38. The Dowry Prevention Act of 1961 prohibited the practice of demanding or accepting dowry, but it was not enforced. BUMILLER, *supra* note 8, at 49. The law was amended and made more stringent in 1984 and 1986, at which time Section 113B was added to the Indian Evidence Act. Nangia, *supra* note 129, at 652-53. This section creates a presumption that a woman who dies of unnatural causes within seven years of marriage has been killed by her husband and in-laws. *Id.*; see also BUMILLER, *supra* note 8, at 46-62; TOWARDS EQUALITY, *supra* note 57, at 69-77.

130. Jordan, *supra* note 125, at A12.

131. *Id.* at A1.

132. *Id.* The use of sonograms for purposes of sex selection has been illegal in India since 1994. See Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, No. 57, § 6 (1994), <http://www.indialawinfo.com/bareacts/prenatal.html>.

133. Jordan, *supra* note 125, at A1.

134. *Id.* at A12.

135. Shabana Azmi, *Women as Organized Agents for Poverty Eradication*, 1998 WOMEN & POL. EMPOWERMENT 51.

136. *Id.* Despite Article 45 of the Constitution, which directs the states to implement free, compulsory education up to age fourteen, and despite the fact that primary education has been declared a fundamental right by the Indian Supreme Court, public school education has not yet been made available to every child. See INDIA CONST. pt. IV, art. 45, *available at* <http://www.constitution.org/cons/india/p04045.html> (last visited Mar. 15, 2004); Shri S.R. Bommai, *Status of Female Education: A Vision for the Future*, 1997 WOMEN & POL. EMPOWERMENT 11, 14. As of 1997, only 3.5% of India's national income was spent on education.

137. Azmi, *supra* note 135, at 51.

The lack of educational opportunities for girls in rural India necessarily contributes to the continuing disparity in literacy rates between men and women. According to the 2001 census, the literacy rate for women is 54.16%, whereas the rate for men is 75.85%.<sup>138</sup> The status of women in India is unlikely to improve dramatically until this literacy gap is closed. This was reflected in the finding by the Committee on the Status of Women that "[i]lliteracy remains the greatest barrier to any improvement in the position of women—in employment, he[al]th, the enjoyment and exercise of legal and constitutional rights, equal opportunity in education, and generally in attaining the equality of status that our Constitution has declared as the goal of this nation."<sup>139</sup>

A spate of slogans promote education of girls, including: "When you educate a female child, you educate the entire family and when you educate a family, you educate the entire village,"<sup>140</sup> "Bina akshar bhains barabar" (Hindi for "without education one is like a buffalo"),<sup>141</sup> and "Those who plan for one year sow rice, those who plan for ten years plant trees; but those who plan for a hundred years educate their children. Only by educating children can one change the world. Those who are educated change their own world."<sup>142</sup> Unfortunately, these have remained words of aspiration. The social reality lags far behind.

With respect to political empowerment, women have been dramatically underrepresented in Parliament, despite the fact that India has had a female prime minister.<sup>143</sup> Since Independence, the percentage of women in the Lok

138. See CENSUS OF INDIA, *supra* note 124.

139. TOWARDS EQUALITY, *supra* note 57, at 264. Despite the obvious truth to this statement, improving the literacy rate for women does not necessarily lead to increased political participation. Sarala Gopalan, *Women in Panchayats: Is Literacy a Precondition*, 1997 WOMEN & POL. EMPOWERMENT 61. In the Indian state of Kerala, for example, which enjoys a very high female literacy rate, the percentage of women in the state legislative assembly is surprisingly low. *Id.*; see also Pradeep Chhibber, *Why Are Some Women Politically Active? The Household, Public Space, and Political Participation in India*, 2002 INT'L J. COMP. SOC. 3. In the country of Jordan, where women are educated through the 10th grade, very few women serve in Parliament. Asma Jahangir, *Women's Struggle for Equality: India and Pakistan*, 1997 WOMEN & POL. EMPOWERMENT 19, 24. There does, however, seem to be a correlation between women's literacy and controlling population growth. See Bommai, *supra* note 136, at 15.

140. Bommai, *supra* note 136, at 15.

141. Kamla Mankekar, *Information, Education and Power*, 1997 WOMEN & POL. EMPOWERMENT 77, 80.

142. Leila Seth, *Education: A Key to Equal Status*, 1997 WOMEN & POL. EMPOWERMENT 74, 76.

143. For example, in 1993, women occupied thirty-five seats out of 504 in the Lok Sabha (the popularly elected house of Parliament); there was one female senior cabinet minister and six state ministers in a cabinet of seventy-four; and there was only one woman governor and one woman chief minister out of twenty-five. At the state level, there were forty-four women out of 241 women contestants, versus 1486 men out of 8415 contestants. Rama Patnayak, *Women in Politics: Experiences from the States*, 1995 WOMEN & POL. EMPOWERMENT, at 22-36. In 1997, women constituted 7.2% of Parliament. Mrinal Gore, *Raising Women's Awareness Through Education*, 1997 WOMEN & POL. EMPOWERMENT 65.

The proportion of women in elected positions in the United States is little better. In 2002, thirteen women served in the United States Senate and sixty in the House of Representatives. At the state level, 10% of governors are women. Adam Clymer, *In 2002, Woman's Place May Be the Statehouse*, N.Y. TIMES, Apr. 15, 2002, at 1. At the city level in 2003, women



Sabha, the popularly elected House of the People, has ranged from 3.4% to 9.0%.<sup>144</sup> Women's representation in the state legislatures has generally been even lower.<sup>145</sup> This profound underrepresentation of women has prompted a call for a constitutional amendment to reserve one-third of all seats in the Lok Sabha and in the state legislatures for women.<sup>146</sup> Despite its repeated introduction since 1996, the amendment has not yet been enacted. With respect to the judiciary, the first woman was appointed to the Supreme Court in 1990. Since then, there has

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served as mayors in only fifteen of the 100 largest cities. CTR. FOR AM. WOMEN & POLITICS, WOMEN MAYORS 2003, <http://www.cawp.rutgers.edu/Facts/Officeholders/mayors03.html> (last visited Apr. 3, 2004).

Other countries make for interesting contrasts. In 2000, in Great Britain, women comprised 17.1% of the House of Commons; in Sweden, 54% of Parliament; in France, 10.2% of the lower house and 5.9% of the upper house; in Spain, 27.1% of national Parliament; and in Portugal, 19.6% of the national Parliament. EUROPEAN DATABASE, WOMEN IN DECISION MAKING, at [www.db-decision.de/index\\_E.htm](http://www.db-decision.de/index_E.htm) (last visited Apr. 3, 2004) [hereinafter WOMEN IN DECISION MAKING].

144. 1998 WOMEN & POL. EMPOWERMENT 11 (reprinting data reported by the Centre for the Study of Developing Societies); see Shirin Rai, *Class, Caste and Gender—Women in Parliament in India*, in INTERNATIONAL IDEA, WOMEN IN PARLIAMENT (2002), <http://www.idea.int/women/parl/studies4a.htm>.
145. 1998 WOMEN & POL. EMPOWERMENT 12 (reprinting data reported by the Centre for the Study of Developing Societies). However, five women now serve as chief ministers, over a combined population of 300 million people. Ranjit Devraj, *Diverse Individuals Prove Women's "Winnability" in Polls*, INTER PRESS SERVICE, Dec. 11, 2003, <http://www.dawn.com/2003/12/11/int11.htm>.
146. The *Statement of Objects and Reasons* accompanying the bill to amend the Constitution states:

Having provided reservations for women in Panchayats and Municipalities, it is now proposed to provide reservation for women on the same lines in the House of the People and in the Legislative Assemblies of the States by amending the Constitution. The major political parties are in favour of making such reservation for women.

Sept. 4, 1996, The Constitution (Eighty-First Amendment) Bill, Bill No. 100.

Few countries require as a matter of law that seats in national or regional legislatures be reserved for women, although fifty-six political parties in twenty-four countries utilize a type of quota system in terms of the candidates they nominate. THE CENTER FOR LEGISLATIVE DEVELOPMENT, THE QUOTA SYSTEM: WOMEN'S BOON OR BANE?, 1 WOMEN AROUND THE WORLD 2, <http://www.cld.org/waw5.htm> [hereinafter THE QUOTA SYSTEM]. Eritrea stands out as requiring that 30% of seats in the national and regional legislatures be held by women (although fewer than 30% of such seats are actually occupied by women). *Id.* at 3. Several other countries have laws that require political parties to nominate a set percentage of women: Belgium (requiring that no more than two-thirds of places on electoral lists be occupied by same sex); Argentina (mandating that political parties reserve 30% of electable positions for women); Costa Rica (requiring 40% representation of women on party lists); and South Africa (imposing a penalty on parties that fail to nominate a woman to all parliamentary committees and international delegations). *Women in Decision Making*, *supra* note 143. France passed such a law in 2000, requiring political parties to nominate an equal number of men and women, although this has not resulted in more women being nominated for Parliament. Alan Cowell, *French Politics Find Little Room for Women*, N.Y. TIMES, June 7, 2002, at A3. In other countries, including Denmark, Sweden, and Norway, political parties have imposed a quota system on themselves. See THE QUOTA SYSTEM, *supra* at 3. For example, since 1944, Swedish political parties have adopted "sandwich nomination lists" whereby every second name the party nominates must be a woman. WOMEN IN DECISION MAKING, *supra* note 143.

typically been one female member on a Court of twenty-five Justices.<sup>147</sup>

This antipathy toward women's participation in politics dates back to the Constituent Assembly and the drafting of India's Constitution.<sup>148</sup> The predominantly male framers recognized the need to reserve seats in the state legislatures and in Parliament for weaker segments of the population, including the Scheduled Castes,<sup>149</sup> but were unwilling to extend this provision to women.<sup>150</sup> Although women were given equal voting rights, "this did not mean much as it was next to impossible for women to compete for political power through elections."<sup>151</sup>

It is against this tapestry of traditional views on the subservient role of the Indian woman, and of the grim realities of her life—despite constitutional aspirations of equality—that we begin our story of India's experiment with mandatory reservations for women on panchayats. This story would be a remarkable one even in a country that had a long history of women's rights and a culture that fostered gender equality. The very fact that this story takes place in India, where women have traditionally been subordinate to and dependent upon men,<sup>152</sup> makes

147. Nussbaum, *supra* note 53, at 37.

148. Nirmala Buch, *Decentralised Governance, Women's Participation and Poverty Eradication*, 1998 WOMEN & POL. EMPOWERMENT 79 (quoting M. Sisikar, *Political Participation of Women in India*, in SYMBOLS OF POWER (I. Mazumdar ed., 1979)) [hereinafter Buch, *Decentralised Governance*].

149. "Scheduled Caste," a term used in the Indian Constitution, refers to that segment of the population previously referred to as untouchables. Article 17 of the Constitution outlawed untouchability. Scheduled Castes now represent roughly 15% of the Indian population. See CLARK CUNNINGHAM & MADHAVA MENON, SEEKING EQUALITY IN MULTI-CULTURAL SOCIETIES (1997). "Scheduled Tribe," also used in the Indian Constitution, refers to India's ethnic groups that live in remote areas, who, like the Scheduled Castes, were considered outcasts in the traditional caste system. Scheduled Tribes now represent roughly 7% of the Indian population. *Id.* Pursuant to the Constitution, the government is authorized to specify a "schedule" of such castes and tribes. The Scheduled Castes and Tribes are eligible for preferential benefits under Articles 330, 332, and 334 of the Constitution. *Id.*

150. Buch, *Decentralised Governance*, *supra* note 148, at 79-80.

151. *Id.* at 80.

152. That these traditional attitudes still persist in India, justifying the subjugation of women, is evidenced by the continued persecution of Indian women for witchcraft. See *Witch killings in India*, ASSOCIATED PRESS available at <http://www.cnn.com/2000/ASIANOW/south/09/04/witchkillings.ap/index.html>. [hereinafter *Witch Killings*]. Few people are aware of how frequently women are killed in India for alleged acts of witchcraft. *Id.* According to the Free Legal Aid Committee, which seeks to punish acts of violence against women accused of witchcraft, 536 women were killed in the 1990s "in just two districts of Bihar, India's witch killing hub." *Id.*

Unofficial estimates say at least 200 women are killed as witches across India each year. . . . [M]any cases go unreported in remote areas of Bihar, an eastern state where the Ho and Santhal tribes live. . . . Women accused of witchcraft are dragged into the forest and hacked, hanged or burned to death. Heads of children have been smashed on rocks. Even nonfatal cases are ghastly. Women suffer smashed teeth, shaved heads, or chopped off breasts. Others have been forced to eat excrement or to strip and walk naked through villages.

*Id.* The Bihar government passed a law in 1999 "requiring a three-month prison term for even calling a woman a witch," and "[k]illers of women in witch cases now face the death penalty." *Id.*

it all the more remarkable.

Before describing the 1993 constitutional amendment mandating at least one-third of all seats on panchayats be held by women, we turn our attention to the history and evolution of the Indian panchayat.

## SECTION II. THE ROLE OF PANCHAYATS

### A. History of Traditional and Pre-1993 Panchayats

Panchayats are ancient institutions, having existed on the Indian subcontinent for thousands of years.<sup>153</sup> Literally, panchayat means the “coming together of five persons,” although the term has been used by scholars and by villagers throughout the ages to refer to a wide range of local, informal councils or courts assembled to resolve disputes and to determine group policy.<sup>154</sup> The history of the traditional panchayat has to be understood in the context of Indian legal history—a history marked by the imposition of British statutory and common law, along with their attendant judicial and legislative institutions, onto an already highly developed civilization with its own indigenous legal systems.<sup>155</sup>

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153. MARC GALANTER, *LAW AND SOCIETY IN MODERN INDIA* 54 (Rajeev Dhavan ed., 1989). Galanter describes the various kinds of traditional panchayats:

Some *panchayats* purported to administer a fixed body of law or custom; some might extemporize. In some places and some kinds of disputes, the process was formal and court-like. Some *panchayats* were standing bodies with regular procedures, but many of these tribunals were not formal bodies but more in the nature of extended discussions among interested persons in which informal pressure could be generated to support a solution arrived at by negotiation or arbitration.

*Id.* at 55.

154. *Id.* at 54. Regarding the indeterminacy of the term “panchayat,” Cohn notes that it is often used whenever any kind of a dispute is heard by leaders in the dominant caste:

More complex disputes and more serious breaches of village norms would appear to call for more formal juridical procedures, which can be subsumed under the term panchayat. A panchayat is frequently described in the literature as a council that puts emphasis on membership and procedure. However, here it is better to think of a panchayat as a set of related processes of arbitration and adjudication. Even the kinds of processes noted above, when one or two dominant caste men listen to a dispute, are often referred to as a panchayat.

Bernard S. Cohn, *Anthropological Notes on Disputes and Law in India*, 67 *ETHNOGRAPHY OF L.*, No. 6, pt. 2, at 82, 90 (1965).

155. While panchayats represented the most common form of government in rural villages in the late nineteenth century, in the urban areas of India, such as Calcutta, Bombay, or Pune, the British ceded a substantial amount of authority to Indian provincial administrators who were members of the educated elite. David Arnold, *Touching the Body: Perspectives on the Indian Plague, 1896-1900*, in *SELECTED SUBALTERN STUDIES* 391, 423 (Ranjit Guha & Gayatri Chakravorty Spivak eds., 1988). From time to time, however, the British would preempt that authority. *Id.* at 413. During the plague years in the late 1890s, for example, under the exceptional powers of the Epidemic Diseases Act, the British commissioner of Pune “virtually ignored the municipal council and set up his own three-man committee to run plague operations in the city.” *Id.* at 414. When these draconian plague measures (which included house and body searches, compulsory segregation and hospitalization, corpse inspections,

Before British rule, traditional panchayats existed throughout India for thousands of years; they were a "characteristic and distinctive institution of Indian civilization."<sup>156</sup> Conditions did not then exist in India for the development of a unified, modern legal system.<sup>157</sup> There was no centralized state authority, but rather myriad overlapping local jurisdictions.<sup>158</sup> While there was a highly sophisticated body of written, classical Hindu law known as the Dharmasastra, it did not serve to unify Indian law.<sup>159</sup> Other factors contributed to the failure of a modern legal system to develop: what written records existed were not readily accessible;<sup>160</sup> no institutionalized hierarchies of judicial authority existed; and no ideology of a higher, more universally applicable law that superseded local law was recognized.<sup>161</sup> Traditional panchayats thus functioned alongside other local

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and the use of troops) created the threat of violence among the Indian "natives," the British reinstated the rule of the Indian elites in municipal government, rediscovering "the political and administrative value of 'indirect rule,' and the utility of the hierarchical principle in India." *Id.* at 419.

156. See GALANTER, *supra* note 153, at 54. Most of the generalizations made about traditional tribunals such as panchayats were true not only of the political entity known as "India" today, but also of the entire subcontinent. The subcontinent is often divided into seven regions: 1) Pakistan and northwest India (main languages are Urdu, Punjabi, Kashmiri, and Sindhi); 2) the central and northern regions, incorporating Uttar Pradesh, Madhya Pradesh, and Bihar (main languages are Hindi and Urdu); 3) western India, incorporating Maharashtra, Gujarat, and Rajasthan (main languages are Marathi, Gujarati, and Rajasthani); 4) the south, incorporating Karnataka, Andhra Pradesh, Tamil Nadu, and Kerala (main languages are Kannada, Telugu, Tamil, and Malayalam); the eastern region, incorporating Bangladesh, Bengal, Orissa, and Assam (main languages are Bengali, Oriya, and Assamese); Nepal (main language is Nepali); and Sri Lanka (main languages are Sinhalese and Tamil). TRAVELLER'S LITERARY COMPANION, *supra* note 30, at xi.
157. See GALANTER, *supra* note 153, at 16. Galanter argued that governmental and shastric legal authorities were "not visualized in a way to provide either the techniques or the ideology for the ruthless superseding of local law. The system allowed for change, but did not impose it; it allowed the old to remain alongside the new." *Id.* Galanter's metaphor was that the relationship of the governmental and shastric authorities to local law was "closer to the relations that obtain between Paris designers and American departmental store fashions . . . Instead of a systematic imposition, of 'higher' law on lesser tribunals, there was a general diffusion by the filtering down (and occasionally up) of ideas and techniques, by conscious imitation and by movement of personnel." *Id.*
158. *Id.*
159. *Id.*
160. M.N. SRINIVAS, CASTE IN MODERN INDIA AND OTHER ESSAYS 117-18 (Asia Publ'g House 1970) (1962). Even though villages had no written records of the proceedings of traditional village panchayats, precedent still played some role. *Id.* at 112, 117. One Indian sociologist who did field work during the 1950s in rural India noted that, when a second case of arson occurred in a village within a few months of an earlier incident, in which a poor man's straw-rick had been burned down by a man from a neighboring village, discussion followed about how that earlier case had been resolved. *Id.* at 112. "When a dispute occurs, people's memories are stimulated and precedents are quoted. Something like case law exists, though it is not systematized." *Id.*
161. GALANTER, *supra* note 153, at 16. Galanter identifies the following as salient features of a modern legal system:
 

[u]niform territorial rules, based on universalistic norms, which apportion rights and obligations as incidents of specific transactions, rather than of fixed statuses. These rules are administered by a hierarchy of courts, staffed by professionals, organized bureaucratically and employing rational procedures . . . [enjoying] a governmentally-enforced monopoly over disputes

tribunals, and their customary law coexisted with other laws.<sup>162</sup>

The Mughals and other Muslim rulers had royal courts that exercised criminal, and sometimes commercial, jurisdiction in the cities.<sup>163</sup> Family matters were also decided by the royal courts, applying *Shari'a*, or Islamic law, although it was qualified both by custom and royal decree.<sup>164</sup> Hindus were generally allowed to resolve their own civil matters, and in cases where Hindus were subject to royal jurisdiction, Hindu law was applied.<sup>165</sup> The government courts, however, made no effort to administer law in the rural villages of India. By and large, the legal systems available to rural villagers on the subcontinent were the local, traditional panchayats and the shastric authorities.<sup>166</sup>

When the British colonists tightened their stronghold on India during the late eighteenth and nineteenth centuries, they imported their legal system almost wholesale, with its hierarchy of courts, uniform application of the common law within a designated jurisdiction, and reliance on legislation.<sup>167</sup> This resulted in a

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within its cognizance, permitting other tribunals to operate only in its interstices and subject to its supervision.

*Id.* at 15.

162. Bernard S. Cohn, *From Indian Status to British Contract*, 21 J. ECON. HIST. 613, 618 (1961), available at <http://links.jstor.org/>. Panchayats have typically been rural institutions in India. Theodore A. Mahr, *An Introduction to Law and Law Libraries in India*, 82 L. LIBR. J. 91, 96 (1990). Historically, some cities in western India had town councils or *mahajans*, in which commercial and personal disputes were settled; the head of the *mahajan*, the *nagar*, had a judicial function. Cohn, *supra* note 162, at 618. In Maharashtra, each marketplace had its own governing body to settle disputes in the commercial community, and in some areas with powerful rajas, "the raja served as an appeal court and enforcer of judgments of panchayats if they were challenged." *Id.*

163. GALANTER, *supra* note 153, at 16. The twelfth century marked the beginning of the period of Muslim domination, first in northern India and later under the Mughals, throughout the entire Indian subcontinent. This domination lasted until the British colonial period. Mahr, *supra* note 162 at 96.

164. Mahr, *supra* note 162, at 98-99.

165. GALANTER, *supra* note 153, at 17.

Hindus were generally allowed their own tribunals in civil matters. Where these matters came before the royal courts, the Hindu law was applied. . . . Presumably, the Hindu tribunals proceeded as before Muslim rule, except that whatever ties had bound these tribunals to governmental authority were weakened; there was no appeal to the royal courts.

*Id.*

166. *Id.* The status of non-Muslims in India is unique in the history of Islam. See P. Hardy, *Islam in Medieval India*, in SOURCES OF INDIAN TRADITION, *supra* note 10, at 437. In most other places, following the Islamic conquest, the majority of those conquered ended up adopting Islam. *Id.* However, in India, there was an overwhelming Hindu majority, and while there existed wide divergence regarding both the theory and practice of how the Hindus ought to be treated, other than an occasional period of severe persecution, Hindus continued to practice their religion. *Id.*

167. GALANTER, LAW & SOCIETY, *supra* note 153, at 16-19. Galanter divided the development of India's modern legal system into three distinctive, overlapping periods. The first began with Warren Hastings's organization in 1772 of a system of courts in Bengal, marking the beginning of a general expansion of the government's judicial functions. *Id.* at 17. The second period, which began around 1860, was characterized by extensive codification of the law, as well as continued systemization of the courts; the dominant source of law in this period was legislation. *Id.* at 17-18. The last period was post-Independence, when the law was

dramatic shift from local authorities to the government's courts for dispute resolution.<sup>168</sup> At first, only jurisdiction over criminal matters was turned over to the government, and the traditional tribunals were still heavily utilized.<sup>169</sup> Throughout the nineteenth century, however, villagers often sought justice in the new courts, and the authority of the village tribunals may have declined.<sup>170</sup> Indian villages became bilegal, with litigants making use of both traditional panchayats and of the formal, governmental court systems.<sup>171</sup>

One sociologist referred to the traditional, unofficial panchayats as the "submerged legal system."<sup>172</sup> There were no written records of the proceedings of these traditional panchayats throughout the British colonial period, and our knowledge of their customary law, jurisdiction, and procedures must be garnered from historical accounts and anthropological studies.<sup>173</sup> The constituency of the traditional panchayats seemed to vary widely depending on the demographics of the village—for example, whether the village had a single caste or multiple castes, with one caste dominating.<sup>174</sup> If the panchayat were a single-caste

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further consolidated and "rationalized," and a unified judicial system developed across all of India. *Id.* at 18.

168. *Id.* at 19.

169. *Id.* at 20.

170. *Id.* Galanter cites a number of reasons for this shift from local, traditional tribunals to the new governmental courts. *Id.* The tribunals lost governmental enforcement of their decrees, and villagers, availing themselves of the opportunities for social mobility under British rule, were less afraid of traditional sanctions such as outcasting. *Id.* Many found it advantageous to seek justice in the common law British courts because of the principles of equality before the law and the indifference to the social status of the respective parties. *Id.* at 19-20. Galanter writes: "Over time the modern system encroached on the traditional system: court law replaced village law on more topics of law for more groups over more territory. With this 'expropriation' of independent legal 'estates', the government's monopoly on making, finding and applying the law was extended." *Id.* at 21.

171. Robert McBeth Hayden, "No One is Stronger than the Caste"—Arguing Disputes in an Indian Caste Panchayat (1981) (unpublished Ph.D. dissertation, State University of New York at Buffalo) (on file with author). One scholar noted that the traditional panchayats were influenced by the law and procedures of the official, government courts. Not only have the official courts developed their own distinctive Indian characteristics, but:

[At] the same time many village dispute processing institutions have been heavily influenced by lawyer's law-ways . . . it is doubtful that any 'traditional' panchayat now exists that is totally unaffected by the formal legal system, knowledge of which is spread through personal contact, folklore, gossiping, and such modern mass media as the huge Indian film industry.

*Id.*

172. SRINIVAS, *supra* note 160, at 118. Srinivas urged that more scholars in the sociology of law and legal institutions try to unravel the "historico-legal riddle, the relation between the law as embodied in the sacred books of the Hindus and the law as actually observed and obeyed by the bulk of the people living in villages." *Id.* at 118-19.

173. *Id.* at 117.

174. Cohn, *supra* note 154, at 82-83. Bernard Cohn pointed out some of the difficulties of writing about village panchayats when there is no such thing as a standard Indian village. *Id.* Cohn wrote in the 1960s that villages in India differed widely in terms of size, caste composition, their political structure, how they held land, and the presence or absence of traditional councils for the adjudication of disputes. *Id.* Cohn based his classification scheme of types of villages on village size and the nature of dominance that castes could use in settling disputes. *Id.* at 83. The four types were: 1) villages with a small population of one caste; 2) multi-

panchayat, its jurisdiction would more than likely be limited to matters that were purely internal to caste, such as marriage, caste rules about pollution, or disputes over caste property.<sup>175</sup> In a multi-caste village with one caste dominating, on the other hand, the village panchayat might be intercaste and resolve disputes between members of two different castes, disputes over property, petty theft and assault, or breaches of ritual norms that might cause pollution or disruption village-wide.<sup>176</sup>

Unlike the British legal system that valued the individual and the protection of individual rights and interests, the traditional panchayats were more concerned with maintaining harmony and achieving consensus.<sup>177</sup> The tribunals did not aim to discover an ideal, absolute truth, or to declare that one of the litigants was the winner.<sup>178</sup> Rather, the purpose of the panchayats was to abate conflict and come to equitable resolutions of disputes within relatively small communities.<sup>179</sup> Furthermore, the adversarial mode of the British legal system isolated disputes from their social context.<sup>180</sup> Justice was supposed to be blind, and deci-

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caste, single-head villages; 3) multi-caste, dominant-caste villages (by far the most common kind, or at least the most commonly studied by anthropologists); and 4) multi-caste, non-dominant-caste villages. *Id.*

175. *Id.* at 91. Caste panchayats existed even in multi-caste villages having a dominant caste; they would deal with matters purely internal to a caste, such as marriage, succession when no property was involved, caste rules about pollution, and disputes over caste property. *Id.* However, disputes between members of two different castes, disputes over property, and “attempts on the part of a particular caste to challenge the hierarchical *status quo* fall within the province of the village authority systems as differentiated from the caste judicial system.” *Id.* at 103. Cohn claims that “[i]n theory, the jurisdiction between village judicial institutions, inter-caste village panchayats, village headmen, dominant-caste councils in the village and caste counsels are clear cut.” *Id.*

176. *Id.* The vast majority of Indian villages were of this type, having several castes with one dominant caste. *Id.* at 86. In these villages, the village panchayat would have a wide-ranging jurisdiction over matters that would affect the entire village. *Id.* at 90. More serious disputes, “such as those over land, debt, succession to property or office, ritual precedence, theft and assault, or breaches of ritual norms that might cause village-wide pollution, may come to the dominant caste. The participants may belong to other castes or may be from the dominant caste itself.” *Id.* at 90-91.

177. GALANTER, *supra* note 153, at 19-20.

178. *Id.* at 20.

179. Cohn, *supra* note 154, at 91.

180. GALANTER, *supra* note 153, at 119. Modern Western legal traditions espouse an ideology that justice should be impartial, impersonal, and universally applied regardless of individual differences. This ideal is graphically illustrated by the visual representation of justice as a blindfolded woman in classic garb, holding balanced scales. The reverse is true under Hindu law. First, Hindu law is based on the concept that one’s social status is central to the individual’s legal identity. Furthermore, in small village life, where those resolving disputes in local tribunals live among the litigants, it is impossible to maintain anonymity or to isolate the dispute from its social context. Bernard S. Cohn, *Some Notes on Law and Change in North India*, 3 ECON. DEV. & CULTURAL CHANGE 79, 83 (1959) [hereinafter Cohn, *Law & Change*]. As Cohn writes in his description of a modern Indian village, “Since the *khandan* (lineage) is localized in part of the hamlet and since there is little that does not take place within earshot of the other households, the *khandan* leader (the first judge) is aware of the dispute from its inception.” Lloyd I. Rudolph & Susanne Hoeber Rudolph, *Barristers and Brahmins in India: Legal Cultures and Social Change*, 8 COMP. STUD. IN SOC’Y & HIST. 24, 27 (1965) (quoting Cohn, *supra* note 154, at 82) (internal quotations omitted). Once the line-

sions were to be made by neutral, impartial judges who had no relation to the litigants or knowledge of their individual circumstances.<sup>181</sup> This was not true in the traditional panchayats.<sup>182</sup> Consistent with Hindu law, differences among men were central to their legal identity, and those differences would be acknowledged by the decision makers in a panchayat. As one sociologist wrote, "[I]n the intimate little world of the Indian village where judges live among the judged, neither thinks of impartiality in terms of 'anonymity' or impersonality suggested by Justice's blindfold or even a High Court Judge's 'distance.'"<sup>183</sup>

The constituency, procedures, and powers of the traditional panchayats varied widely, depending on the demography and caste relations in the village.<sup>184</sup> One anthropologist who studied a village in the lower Himalayas in northern India found the panchayats in that region to be "*ad hoc* rather than permanently constituted bodies."<sup>185</sup> Membership varied with circumstances, but it was "traditionally confined to the high castes, and women [were] never council members."<sup>186</sup> Within the panchayat, the discussion and decision-making processes were "quite democratic, with the expected deference to age and generation. Wealth, ability to speak and reason convincingly, and an even temper are other qualities which lend influence to a man in these situations."<sup>187</sup>

Members of the traditional panchayat would normally be familiar with the facts of the case put before them and often would already have settled opinions

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lineage heads and heads of household meet as a tribunal, "everyone who attends will have considerable knowledge of the dispute in question and know and be affected by the chain of relations and disputes which lie behind it." Cohn, *supra* note 154, at 83.

181. Rudolph & Rudolph, *supra* note 180, at 26. A modern legal system requires that the judges and jurors have no relation to the litigants, and that they know nothing of the dispute beforehand. *Id.* Jurors are meant "to be tabulae rasae upon which the adversary proceeding may inscribe its impressions. Like the judge, they have left behind all previous human baggage." *Id.*

182. *See id.* at 27.

183. *Id.* at 26-27.

184. GALANTER, *supra* note 153, at 55.

185. GERALD D. BERREMAN, HINDUS OF THE HIMALAYAS 280 (1963). The traditional panchayat that Berreman described operated alongside the formal village government panchayat, which was created according to the Uttar Pradesh Panchayat Raj Act of 1947. Berreman found that there was "little confidence in the objectivity of councils. They are thought (quite correctly) to be heavily influenced by caste, clique, and kin-ship loyalties and to be easily swayed by money and favors." *Id.* at 281-82.

186. *Id.* at 280-81. The nature of the dispute also had an effect on the constituency of the panchayat:

In intervillage disputes councils are intervillage in composition, generally with representatives from a number of neighboring villages. In an intravillage dispute they may include representatives of neighboring villages if the matter is considered to have implications which extend beyond the village, such as a breach of proper intercaste relations. For purely local matters panchayats are made up of local men, many or few depending upon interest.

*Id.* at 281.

187. *Id.* Berreman also pointed out that "clique affiliation" was important, "in that those aligned with small, unpopular, hostile groups [were] able to wield less influence than those affiliated with large, popular groups or those known to be objective or little committed to any particular group." *Id.*



as to how the dispute should be resolved. The panchayat decision was often just “a means of making official that upon which there is already general agreement. Most often they attempt to come to a mutually agreeable compromise.”<sup>188</sup> In other instances, however, the infractions were serious or the parties could not compromise. In those cases, the panchayat had considerable power to impose sanctions “under threat of physical punishment, social ostracism, or legal action. It may order a man to leave the village, to make payment or some other concession to another party, to make payment to the council itself, or to refrain from certain types of social interaction.”<sup>189</sup>

In the late nineteenth and early twentieth centuries, the British were the first to attempt to transform the notion of the traditional panchayat into official local tribunals designed to decentralize democracy and to bring political power to the rural villages of India.<sup>190</sup> These efforts were not intended to reproduce the characteristics of the traditional panchayats; indeed, “they were based on the view that revival of ancient panchayats was neither necessary nor possible.”<sup>191</sup> It seemed to be a popular view among the British that the traditional panchayats no longer existed.<sup>192</sup> Their newly formed panchayats were different; they were regarded as local governing bodies given the tasks of not only settling disputes, but also performing administrative and municipal functions.<sup>193</sup> Under the Panchayat Acts of the 1920s, which established discretionary panchayats, women typically did not have the right to vote, serve as members, or petition for the creation of a panchayat.<sup>194</sup>

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188. *Id.* In Berreman's opinion, the panchayat in this village served “mainly to coordinate and express public opinion.” *Id.*

189. *Id.* Public humiliation was another sanction, as well as public beatings, usually for sexual offenders, primarily “wife-stealers.” Berreman described one offender who was led through the village wearing a garland of worn-out shoes around his neck, an “extremely humiliating punishment because of the defiling nature of shoes as being made of cow leather. In one case the offender was then beaten with shoes.” *Id.*

190. GALANTER, *supra* note 153, at 58. A number of efforts were made to reorganize rural, local government along democratic lines, including the passage of the Mayo Resolution of 1870 on Decentralization, Lord Ripon's resolution of 1882, the Report of the Royal Commission on Decentralization, the Government of India Resolution of 1915, and the Montague-Chelmsford Report of 1918. *Id.*

191. *Id.*

192. *Id.*

193. *Id.* at 59.

194. BUCH, WOMEN'S EXPERIENCE, *supra* note 51, at 4. For example, in the Central Provinces Village Panchayat Act of 1920, women were ineligible to be elected *panches*, and a panchayat could only be established by application made to the deputy commissioner by a district counsel “or by not less than twenty adult male residents of a village.” Similarly, the Indore Village Panchayat Act of 1928 provided that only males could elect *panches*, and a panchayat could be established by an application of at least twenty males. *Id.* Finally, the Bombay Village Panchayats Act of 1920 provided that women could neither vote for nor be elected to the panchayat. *Id.* Limited progress is evident in the Indore Gram Panchayat Act of 1947, which gave every male resident the right to vote, as well as adult women who could read and write or who had immoveable property. Women who met property, tax, or primary education qualifications were eligible to run for election. In 1946, an amendment to the Central Provinces and Berar Panchayats Bill, which would have reserved seats for a Muslim, a hari-

As India shed the shackles of British colonial rule, an intense debate ensued over the desirability of village government.<sup>195</sup> Initially, the draft constitution of the newly formed Indian nation made no reference to villages or local government.<sup>196</sup> Ambedkar, the chief draftsman of the Indian Constitution, defended the omission of villages, taking the stance that "those village republics have been a ruination of India . . . . What is a village but a sink of localism, a den of ignorance, narrow-mindedness and communalism?"<sup>197</sup> On the other side of the debate was Gandhi, among others. Gandhi's utopian views about the virtues of self-governing and self-sufficient villages had tremendous influence in the decentralization of Indian democracy, as well as in the constitutionalization of village panchayats.<sup>198</sup>

Gandhi's principles of *satyagraha*, loosely translated as "truth force," were to be used to attain *swaraj*,<sup>199</sup> or self-government,<sup>200</sup> which meant not only freedom from British colonial rule,<sup>201</sup> but also the attainment of economic independence based on strong village governments.<sup>202</sup> To Gandhi, "village swaraj" meant

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jan (untouchable), and a woman. *Id.* at 6.

195. GALANTER, *supra* note 153, at 59-60.

196. *Id.* at 58.

197. *Id.* at 60. Ambedkar's attitude was dismissed as that "of an 'urban high-brow.'" *Id.*

198. Gandhi was associated with the panchayat movement quite early in his political career. See Shahid Amin, *Gandhi as Mahatma: Gorakhpur District, Eastern UP, 1921-22*, in SELECTED SUBALTERN STUDIES, *supra* note 155, at 288-89, 296. In the so-called "Gandhi Panchayats," organized in the early 1920s in the Gorakhpur District in eastern Uttar Pradesh, Gandhi was perceived by the "peasants" as a deity and worthy of devotion. *Id.* The deification of Gandhi enhanced the power of the panchayats established in his name, and any mental or physical affliction suffered by persons who were found guilty of violating panchayat decisions "was often perceived as evidence of Gandhi's extraordinary powers, indeed as something providential and supernatural rather than as a form of chastisement devised by a human agency." *Id.* at 289, 296.

199. MAHATMA K. GANDHI, *Evidence Before Disorders Inquiry Committee*, in SELECTED POLITICAL WRITINGS, *supra* note 48, at 61. In the political field, *satyagraha* consisted of acts of civil disobedience in order to vindicate the truth of the law's injustice, using no violence: "In the application of *satyagraha*, I discovered in the earliest stages that pursuit of truth did not admit of violence being inflicted on one's opponent but that he must be weaned by patience and sympathy." *Id.*

200. Ranajit Guha & Gayatri Chakravorty Spivak, SELECTED SUBALTERN STUDIES, *supra* note 155, at 433. Gandhi had a very constructive and practical program for the attainment of *swaraj*, including: 1) Hindu-Muslim or communal unity; 2) the removal of untouchability; 3) prohibition of intoxicants; 4) *khadi*, or the wearing of Indian homespun cloth; "5) other village industries; 6) village sanitation; 7) new or basic education; 8) adult education; 9) uplift of women; 10) education in hygiene"; "11) propagation of Rashtrabhasa (national language); 12) the uplifting of one's own language and love for; 13) economic equality." MAHATMA K. GANDHI, *Implications of the Constructive Programme*, in SELECTED POLITICAL WRITINGS, *supra* note 48, at 108 [hereinafter GANDHI, *Implications*].

201. See MAHATMA K. GANDHI, THE LAW AND THE LAWYERS 117-18 (S.B. Kher ed., 1962). Gandhi believed that the British imperialist presence contributed to making "India more helpless than she ever was before, politically and economically. . . . [T]he Government established by law in British India is carried on for this exploitation of the masses. . . . The law itself in this country has been used to serve the foreign exploiter." *Id.*

202. See MAHATMA K. GANDHI, *Duty, Democracy and Swaraj*, in SELECTED POLITICAL WRITINGS, *supra* note 48, at 147 [hereinafter GANDHI, *Duty, Democracy and Swaraj*]. Gandhi wrote: "If we would see Panchayat Raj, i.e., democracy established, we would regard the

that the village would operate as an autonomous, self-sufficient republic, responsible for growing its own food, providing compulsory education, maintaining waterworks, providing for sanitation (linked to recycling), taking care of health needs, and offering recreation for adults and children.<sup>203</sup> In Gandhi's view, village swaraj required economic equality, which Gandhi defined as everyone having "a proper house to live in, sufficient food to eat and sufficient khadi with which to cover himself."<sup>204</sup> Gandhi called for the revival of the spinning wheel, the development of other village industries, and collective farming.<sup>205</sup>

Consistent with his idealized view of India's immutable, historical virtues,<sup>206</sup> Gandhi had a dislike and distrust of large cities and believed that small village life created the best environment for the good life.<sup>207</sup> He sometimes used the term "Panchayat Raj" to describe the kind of democracy he envisioned, in which independence, both political and economic, began at the grassroots level.<sup>208</sup> He wrote: "Independence must begin at the bottom. Thus, every village will be a republic or panchayat having full powers. It follows, therefore, that every village has to be self-sustained and capable of managing its affairs even to the extent of defending itself against the whole world."<sup>209</sup>

In his writings about the village swaraj, Gandhi imagined that the village

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humblest and the lowliest Indian as being equally the ruler of India with the tallest in the land." *Id.*

203. GANDHI, *Implications*, *supra* note 200, at 108-10; MAHATMA K. GANDHI, *My Idea of Village Swaraj*, in PANCHAYAT RAJ 11-12 (R.K. Prabhu ed., 1959) [hereinafter GANDHI, *My Idea of Village Swaraj*]; MAHATMA K. GANDHI, *All-Round Village Development* (Aug. 18, 1940), reprinted in PANCHAYAT RAJ, *supra* [hereinafter GANDHI, *All-Round Village Development*].

204. GANDHI, *Implications*, *supra* note 200, at 110.

205. See GANDHI, *All-Round Village Development*, *supra* note 203 at 16-19; MAHATMA K. GANDHI, *Co-operative Cattle Farming*, *supra* note at 31-33; GANDHI, *My Idea of Village Swaraj*, *supra* note 203, at 11-23; MAHATMA K. GANDHI, *Other Village Industries*, *supra* note at 27-29; MAHATMA K. GANDHI, *Village Sanitation*, *supra* note at 19.

206. Gandhi wrote in 1909:

In the midst of all this India remains immovable and that is her glory. It is a charge against India that her people are so uncivilized, ignorant and stolid, that it is not possible to induce them to adopt any changes. It is a charge really against our merit. What we have tested and found true on the anvil of experience, we dare not change. Many thrust their advice upon India, and she remains steady. This is her beauty: it is the sheet-anchor of our hope.

Mahtama K. Gandhi, *Indian Home Rule*, in THE GANDHI READER 108 (Homer A. Jack ed., 1956) [hereinafter GANDHI READER].

207. *Id.* at 109. Gandhi lauded his ancestors for recognizing that:

[L]arge cities were a snare and a useless encumbrance and that people would not be happy in them, that there would be gangs of thieves and robbers, prostitution and vice flourishing in them and that poor men would be robbed by rich men. They were, therefore, satisfied with small villages. . . . The common people lived independently and followed their agricultural occupation. They enjoyed true Home Rule . . . .

*Id.*

208. See GANDHI, *Duty, Democracy and Swaraj*, *supra* note 202, at 147.

209. MAHATMA K. GANDHI, *Democracy and Non-Violence*, in SELECTED POLITICAL WRITINGS, *supra* note 48, at 149.

panchayats would consist of five persons, elected annually by "adult villagers, male and female, possessing minimum prescribed qualifications."<sup>210</sup> These local entities would have a wide jurisdiction and would serve many local governmental functions.<sup>211</sup> In Gandhi's words, the village panchayats "would have all the authority and jurisdiction required. Since there will be no system of punishments in the accepted sense, this Panchayat will be the legislature, judiciary and executive combined to operate for its year of office."<sup>212</sup>

It was no surprise that Gandhi introduced the idea of women's participation in the village panchayats.<sup>213</sup> He was an ardent advocate for the inclusion of women in the struggle for Independence.<sup>214</sup> Gandhi stated:

As long as [woman] has not the same rights in law as man, as long as the birth of a girl does not receive the same welcome as that of a boy, so long we should know that India is suffering from partial paralysis. Suppression of woman is a denial of Ahimsa.<sup>215</sup>

In a press statement about economic boycotts, Gandhi wrote:

I am preparing a message for the women of India who, I am becoming more and more convinced, can make a larger contribution than men towards the attainment of Independence. I feel that they will be worthier interpreters of non-

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210. MAHATMA K. GANDHI, *Village Swaraj*, in THE ESSENTIAL WRITINGS OF MAHATMA GANDHI 359 (Raghavan Iyer ed., 1991).

211. *Id.*

212. *Id.*

213. *See id.* In our research about panchayats before Independence, we found no mention of any women serving as members. *See* BUCH, WOMEN'S EXPERIENCE, *supra* note 51, at 3 (discussing the ineligibility of women to serve on the panchayats created in the 1920s). In his study of intercaste relations in rural India in the 1950s, Srinivas made these telling observations about women's role as scapegoats:

Partition disputes generally tend to drag on. When the idea is first mooted, it is at the end of a series of quarrels for which the women, especially those who have come in by marriage, are usually blamed. The elders who are approached to effect a division of the property among the coparceners usually advise them to stay together and keep their women in control.

SRINIVAS, *supra* note 160, at 113.

214. *See* Girija Vyas, *From Non-Cooperation Movement to 73<sup>rd</sup> Amendment*, 1995 WOMEN & POL. EMPOWERMENT 82. Gandhi also campaigned against untouchability. While classic Hindu philosophy employed the "theories of *karma* and reincarnation to justify the systematic suppression" of the untouchables, untouchability has expanded "beyond the ideological border of orthodox Hinduism. For generations both the Sikh and Christian communities have preserved untouchability despite theologies that deny the legitimacy of caste and caste hierarchy." Barbara R. Joshi, *Human Rights as Dynamic Process: The Case of India's Untouchables*, in ASIAN PERSPECTIVES ON HUMAN RIGHTS 163 (Claude E. Welch, Jr. & Virginia Leary eds., 1998).

215. GANDHI, *All-Round Village Development*, *supra* note 203, at 18. *Ahimsa* is an overarching concept of noninjury or nonviolence. It refers to the principle of not doing injury to others, including animals (requiring vegetarianism), or of not doing injury to one's self. KINSLEY, HINDUISM, *supra* note 33, at 105. Gandhi was a follower of the principles of *Ahimsa*, emphasizing "simplicity and avoidance of bodily indulgences" and leading him "to prefer those foods that needed little preparation and were easily obtainable." *Id.*

violence than men, not because they are weak as men, in their arrogance, believe them to be, but because they have greater courage of the right type, and immeasurably greater spirit of self-sacrifice.<sup>216</sup>

Gandhi's advocacy for women, as well as for a strong role for village government under the new constitutional scheme, is reflected in a number of provisions of the Indian Constitution. To promote the welfare of agricultural workers who live in rural villages, Article 43 directs the State to "endeavour to promote cottage industries on an individual or cooperative basis in rural areas."<sup>217</sup> In another village-oriented Directive Principle, Article 46 obligates the State to "promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes," who shall be protected against "social injustice and all forms of exploitation."<sup>218</sup> In Article 40, the Constitution specifically mandates that the State take steps toward organizing village panchayats, endowing them "with such powers and authority as may be necessary to enable them to function as units of self-government."<sup>219</sup>

By the time the Indian Constitution was drafted in the middle of the twentieth century, the very concept of the panchayat had undergone a transformation. For centuries, the traditional village panchayats had served a judicial function of resolving disputes, sometimes among caste members and at other times among local villagers regardless of caste membership.<sup>220</sup> The British, however, had appropriated the term "panchayats" to refer to the local entities they established in the late nineteenth and early twentieth centuries to perform both municipal and judicial functions.<sup>221</sup> It was primarily in this municipal function, as an entity of local government that would administer the upkeep of country roads and village streets and provide sanitation, electricity, and schoolhouses, that Gandhi and the drafters of the Indian Constitution used the term "panchayat."<sup>222</sup> When the Directive Principle exhorted the states to reorganize village panchayats, the intent

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216. Mahatma K. Gandhi, *The Salt March* (1930), reprinted in GANDHI READER, *supra* note 206, at 240.

217. INDIA CONST. pt. IV, art. 43.

218. *Id.* at pt. IV, art. 46.

219. *Id.* at pt. IV, art. 40.

220. See Cohn, *Law & Change in North India*, *supra* note 180, at 81-83. Bernard S. Cohn studied the dispute resolution processes of a multi-caste village in Uttar Pradesh. Whenever an extended family (a *khandan*, traced through the male lineage) could not settle a dispute easily, a panchayat would be called, including leaders of all the *khandans* in the hamlets, heads of household who were available, and "any interested persons." *Id.* at 82-83. They would assemble "in a traditional spot," usually an "open space" near a hamlet well. *Id.* No mention was made of any women attending the panchayat or participating in any of the other kinds of tribunals for dispute resolution; the only mention of women at all was disparaging: "The other people attending the meeting comment on the facts, either to support or deny the statements made, and may also comment upon human nature, the stresses of life, the evils of Thakurs, the disputatious nature of women, or general morality." *Id.* at 83.

221. GALANTER, *supra* note 153, at 57-59.

222. *Id.* at 60-61.

was to provide for grassroots local government, embodying the ideal of decentralizing the democracy and empowering rural villagers to formulate and implement their own self-rule.<sup>223</sup>

After Independence, various state governments across India passed legislation (or in some instances amended existing legislation from the British period) providing statutory authority for the creation of village panchayats.<sup>224</sup> These panchayats, which increased in number from 14,800 to 164,300 during the first ten years of Independence, were delegated a wide variety of developmental and municipal functions.<sup>225</sup> Other panchayats, referred to as *Nyaya* panchayats, were established to perform the judicial function of resolving disputes, and whatever traditional village panchayats that still existed lost their adjudicatory powers.<sup>226</sup>

Given the diversity of a country as vast as India—and the lack of empirical data—it is difficult to make generalizations about the success of these early experiments in local rural government and development.<sup>227</sup> Galanter cites a number of studies, however, that suggested dubious results at best. There were problems with interrelationships among governmental departments, caste alliances undermining the notions of democratic rule, and the specter of patronage and corruption.<sup>228</sup> One study disclosed that 97% of the villagers in the area believed that these new statutory panchayats, including the judicial *Nyaya* panchayats, had “encouraged such evils as crimes, theft, personal jealousies, favouritism, litigations, feuds and insecurity of life and property at the village level.”<sup>229</sup>

One criticism of these statutory panchayats was that they remained in the

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223. *Id.*

224. RALPH H. RETZLAFF, *VILLAGE GOVERNMENT IN INDIA* 2 (1962). Galanter described a variety of functions of these newly created, official panchayats. GALANTER, *supra* note 153, at 58-59. In addition to performance of their judicial functions, the panchayats assisted with upkeep of rural roads and village streets, sanitation, lighting, education, water supplies, and provision of medical services. *Id.* Administrative bodies were set up to demarcate jurisdiction, hold elections, and supervise these new statutory panchayats. RETZLAFF, *supra* at 2-3. “The legislation passed in the state of Uttar Pradesh was considered by the [central] [g]overnment and most of the States as a model.” *Id.* at 2.

225. GALANTER, *supra* note 153, at 62.

226. *Id.* at 63.

227. The viability of the panchayat as a political institution has gone through cycles since Independence. Ram K. Vepa, *Has Panchayati Raj Any Future?*, in *LOCAL GOVERNMENT INSTITUTIONS IN RURAL INDIA: SOME ASPECTS* 247 (R.N. Haldipur & V.R.K. Paramahansa eds., 1970) [hereinafter *LOCAL GOVERNMENT INSTITUTIONS*]. In the late 1960s and early 1970s, some analysts believed that the panchayat raj movement had “lost most of its impetus. . . . The climate at present cannot be said to be favourable to the assignment of a more dynamic role to panchayati raj institutions in the planning or implementation of developmental programmes.” Anand Sarup, *Panchayati Raj and Local Development*, in *LOCAL GOVERNMENT INSTITUTIONS*, *supra*, at 153. “If [panchayat raj] is to survive and function as an effective administrative unit, it must be analysed more critically and the defects remedied. Otherwise, there is a danger that it will slowly lose public esteem and even acceptance and finally end in a whimper.” *Id.* at 154.

228. GALANTER, *supra* note 153, at 65.

229. *Id.* (quoting K. SINGH, *RURAL DEMOCRATIZATION X-RAYED* 112 (1972)) (internal quotations omitted).

hands of the landowning upper castes, particularly in the northern states.<sup>230</sup> Although they were meant to be an organ for achieving grassroots democracy, these early panchayats replicated “rural power structures and deeply embedded patterns of dominance and inequalities.”<sup>231</sup> Thus, for example, women played virtually no role in these early statutory panchayats, although many argued that they should.<sup>232</sup> It was not until the adoption of the Seventy-Third Amendment to the Constitution that women’s participation in panchayats was mandated as a necessary “deliberate intervention . . . to break this link between social structures of inequality or exclusion and their political reflection in levels of participation and influence.”<sup>233</sup>

### B. The 1993 Constitutionally Mandated Panchayats

The Constitution was amended in 1992 to mandate the creation of a three-tier system of panchayats with at least one-third of all seats reserved for women.<sup>234</sup> On April 24, 1993, the Seventy-Third Amendment came into force in India, a date that is celebrated as Women’s Political Empowerment Day.<sup>235</sup> Rajiv Gandhi referred to the proposed amendment as “the most significant systemic transformation in the governance of the Indian polity since the Constitution entered into force.”<sup>236</sup>

The legislative history reveals that the primary purpose of the Seventy-Third Amendment was to address serious infirmities with the earlier statutory panchayats.<sup>237</sup> Although Article 40 of the Directive Principles of the Constitution

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230. BUCH, FROM OPPRESSION TO ASSERTION, *supra* note 51, at 11-12.

231. *Id.*; see Sharma, *supra* note 114, at 41-46.

232. Sharma, *supra* note 114, at 41-46. A 1958 report of the Central Council of Local Self Government concluded that panchayats should be 50% female in order to be truly representative, but that until that time two seats per panchayat should be reserved for women. See BUCH, WOMEN’S EXPERIENCE, *supra* note 51, at 4. The report noted that some states had reserved one seat for a woman but “a solitary woman is unable to express herself freely on the aspects touching women’s life in the villages.” *Id.* at 5. Despite this concern, the Council called for a mere token reservation of two seats for women even though it proposed proportional reservation of seats for the Scheduled Castes and Tribes. See *id.* The reservations contained in the Panchayat Acts of the 1950s and 1960s typically provided for only one or two seats for women. *Id.* at 4. It was not until the 1980s that effective calls for substantial reservation of seats for women in panchayats were heard and debated. *Id.* at 5. Thus, the Sixty-Fourth Constitutional Amendment Bill, which was the predecessor to the 1992 amendment, called for “as nearly as may be” 30% reservation for women. See *id.* It did not contain a provision for reservation of chairperson positions for women, nor did it require that one-third of the seats for Schedules Castes and Tribes be held by women. The Seventy-Second Constitutional Amendment Bill of 1990 called for “not less than one-third” reservation for women, but this bill also contained no reservation of chairperson positions for women. See *id.* at 6. Finally, the Seventy-Third Constitutional Amendment Bill, which was enacted in 1992, required “not less than one-third” reservation of seats and one-third reservation of chairperson positions for women. See *id.*

233. BUCH, FROM OPPRESSION TO ASSERTION, *supra* note 51, at 13.

234. Bidyut Mohanty, *Introduction*, 1997 WOMEN & POL. EMPOWERMENT 1.

235. See *id.*

236. See BUCH, FROM OPPRESSION TO ASSERTION, *supra* note 51, at 2.

237. Statement of Objects and Reasons, Sept. 10, 1991, New Delhi.

directs the states to organize panchayats and endow them with the power necessary to permit them to function as units of local self-government, the statutory panchayats had failed to acquire the "status and dignity of viable and responsive people's bodies."<sup>238</sup> Among the reasons for this failure were the "absence of regular elections, prolonged supersessions, insufficient representation of weaker sections like Scheduled Castes, Scheduled Tribes and women, inadequate devolution of powers and lack of financial resources."<sup>239</sup>

The Seventy-Third Amendment was passed in both houses in December 1992 and ratified by the legislatures of at least half the states.<sup>240</sup> It created a new Part IX of the Constitution entitled The Panchayats.<sup>241</sup> The constitutional amendment mandates the establishment in every state of panchayats at the village, intermediate, and district levels.<sup>242</sup> Section 243D provides for reservation of seats.<sup>243</sup> Pursuant to Clauses 1 and 2, panchayat seats are to be reserved for members of the Scheduled Castes and Scheduled Tribes in a number that corresponds proportionally to their population within the particular panchayat area, with at least one-third of those seats reserved for women belonging to the Scheduled Castes and Tribes.<sup>244</sup> Clause 3 provides that at least one-third of the total number of seats—including the number of seats reserved for women belonging to the Scheduled Castes and Tribes—be reserved for women.<sup>245</sup> The amendment also requires reservation in favor of Scheduled Castes and Tribes and women for the position of chairperson of each panchayat.<sup>246</sup>

Section 243G authorizes the state legislatures to endow the panchayats with "such powers and authority as may be necessary to enable them to function as institutions of self-government."<sup>247</sup> The viability of the panchayat depends on the willingness of the states to devolve significant power to the panchayats.<sup>248</sup>

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238. *Id.*

239. *Id.*

240. BUCH, WOMEN'S EXPERIENCE, *supra* note 51, at 1.

241. *Id.*

242. INDIA CONST. pt. IX, art. 243B. Other essential features of the Seventy-Third Amendment include: the creation of a gram sabha in a village or group of villages (Article 243A); direct election to all seats on the panchayats (Article 243C); fixed tenure of five years (Article 243E); devolution by the state legislature of powers and responsibilities to the panchayats with respect to the preparation of plans for economic development and social justice, and for the implementation of development schemes (Article 243G); sound finance of the panchayats from the Consolidated Fund of the State (Article 243H); establishment of a finance commission to review the financial position of panchayats (Article 243I); and provision for auditing accounts of the panchayats (Article 243J). *Id.* at pt. IX, arts. 243A, C, E, G-J.

243. *Id.* at pt. IX, art. 243D(1)-(2).

244. *Id.*

245. *Id.* at pt. IX, art. 243D(3).

246. *Id.* at pt. IX, art. 243D(4). Article 243D(4) provides that the number of chairpersons must be based on proportional representation for the Scheduled Castes and Tribes and at least one-third reservation for women. *Id.*

247. For a list of the powers relating to poverty elimination given to the panchayats by the states, see Bidyut Mohanty, *Panchayats, Women and Poverty: Some Issues*, 1997 WOMEN & POL. EMPOWERMENT 155-199.

248. *See id.*



The astonishingly broad range of subjects that states may authorize the panchayats to undertake, which are listed in the Eleventh Schedule, include poverty alleviation, education, nonconventional energy sources, libraries, cultural activities, health and sanitation, family welfare, welfare of Scheduled Castes and Tribes, agriculture, land improvement, irrigation, water management, animal husbandry, fisheries, forestry, food processing industries, rural housing, drinking water, fuel, roads, communication, and rural electrification.<sup>249</sup>

This constitutional amendment mandating the establishment of panchayats belatedly implements the Directive Principle contained in Article 40 of the Constitution; it was designed to promote Gandhi's goal of establishing grassroots democratic institutions.<sup>250</sup> Gandhi's commitment to village republics found expression in a draft constitution that he wrote the day before his assassination.<sup>251</sup> In this document, which many refer to as his last will and testament, Gandhi called for the disbanding of the Indian National Congress and the establishment of a "Lok Sevak Sangh," or association of servants of the people.<sup>252</sup> The document details the ways in which panchayats would be organized, their various functions, and the qualifications for serving on the panchayats.<sup>253</sup> Among the qualifications is the requirement that the individual believe "in the ideal of inter-communal unity, equal respect and regard for all religions, and equality of opportunity and status for all irrespective of race, creed or sex."<sup>254</sup> The panchayats established as a result of the 1993 constitutional amendment not only actualize Gandhi's vision of a decentralized democracy; they also reflect his concern about the subordination of women.<sup>255</sup>

While the adoption of the 1993 amendment was widely credited as a be-

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249. INDIA CONST. eleventh sched.

250. See INDIA CONST. amend. 73; see also *supra* notes 198-216 and accompanying text. Gandhi reportedly voiced his criticism of the fact that the proposed constitution failed to provide for panchayats, commenting that "this was an omission calling for immediate attention, if India's Independence was to reflect the voice of the people." George Mathew, *Panchayati Raj in India: An Overview*, in STATUS OF PANCHAYATI RAJ IN THE STATES AND UNION TERRITORIES OF INDIA 2000, at 5 (George Mathew ed., 2000).

251. Gandhi's "Last Will and Testament" appears on the wall of the Gandhi Smriti at 30 January Marg, New Delhi. Portions of the document appear in MAHATMA K. GANDHI, *Lok Sevak Sangh*, in PANCHAYAT RAJ 37, *supra* note 203, at 37 [hereinafter GANDHI, *Lok Sevak Sangh*].

252. See *id.*

253. *Id.*

254. *Id.* Gandhi's views about women have produced considerable debate. See, e.g., Jaya Jaitly, *Gandhi and Women's Empowerment*, in EMPOWERMENT OF WOMEN: MILES TO GO 1 (Savita Singh ed., 1999) (describing Gandhi's views toward women as being "shaped [as much] by his innate sense of compa[ssion] and justice as they were by the patriarchal albeit benevolent conservatism that was the sheet anchor of his cultural and social discourse."); Vina Mazumdar, *Editor's Note* to SYMBOLS OF POWER: STUDIES ON THE POLITICAL STATUS OF WOMEN IN INDIA xii (Vina Mazumdar ed., 1979) (characterizing Gandhi's preaching as "the pragmatic necessity of enrolling women's support to transform the nationalist struggle for the transfer of political power from British to Indian hands into a social revolution for abolishing social inequality of all kinds").

255. See INDIA CONST. amend. 73.

lated effort to heed Gandhi's call for a decentralized democracy, the reservation of at least one-third of the seats for women provoked considerable skepticism.<sup>256</sup> V.S. Rama Devi, the former governor of the state of Karnataka<sup>257</sup> and the state of Himachal Pradesh, was deeply involved in the drafting of the Seventy-Third Amendment in her capacity as secretary general of the *Rajya Sabha*, the Council of States.<sup>258</sup> She confirmed that, at the time of the amendment's adoption, there was skepticism about whether village women would actually seek the seats reserved for them.<sup>259</sup> At the 1998 celebration of Women's Political Empowerment Day, Governor Rama Devi reflected:

Who will come forward from among the scheduled caste women, they asked. Women do not even come out of their houses without the *ghunghat* (veil). I had replied that our women do not come out without the *ghunghat*, but they do go outside to work in the fields. They go to fill water, to collect fuel and fodder without the *ghunghat* being an obstruction. After all, most rural Indian women also work outside their homes. But when we want women to come forward and work for the government, then the question of the *ghunghat* as an obstruction is raised. The critics then allowed me to have my way, but added that I was speaking so vociferously for my sisters because I was a woman myself. Keep 33 per cent as reservation for women, they said, but it will not work.<sup>260</sup>

Some critics were concerned that it would be the husbands of women elected to the panchayat who would actually wield the power.<sup>261</sup> Governor Rama

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256. During a March 17, 1992 hearing of the Joint Committee on the Constitution, Shri A. Datta, from the Indian Institute of Public Administration, testified:

On the question of reservations I do not think that reservation of women will serve any useful purpose. I think the development of women is a separate problem. It is not an electoral problem. If, however, some State Governments are very keen that women should participate in an increasing way in the Panchayati Raj bodies nothing prevents them to nominate women members to the unfilled vacancies.

Even now the provision exists for it. But I think more important than this is the role of the political parties that they should increasingly encourage women candidates to stand in the election and come out during the electoral process rather than seek reservation. I think it is unduly misplaced to compare the reservation for women with reservations for Scheduled Castes and Scheduled Tribes. This should have a different matter altogether. So, on the question of reservation of women I beg to differ that women should be included here.

Joint Committee on the Constitution (Seventy-Second Amendment) Bill, 1991 Lok Sabha Secretariat, New Delhi 40 (Mar. 17, 1992) (statement of Shri A. Datta, Indian Inst. of Public Admin.).

257. V.S. Rama Devi *Demits Office*, HINDU, Aug. 21, 2002, <http://www.hinduonnet.com/thehindu/2002/08/21/stories/2002082103950400.htm>.

258. V.S. Rama Devi, *73rd and 74th Amendments: Implications for Women*, 1998 WOMEN & POL. EMPOWERMENT 18.

259. *Id.*

260. *Id.* at 21. She added, "However, we have seen that it did work and it has not been a failure. Lakhs and lakhs [tens of thousands] of women panches [chairpersons] are now in decision-making positions." *Id.*

261. *See id.*

Devi suggested that proxyism must be expected in the first few years, given women's historic subjugation.<sup>262</sup> However, within a few years, she speculated, this phenomenon would disappear as both men and women realized "that men have no right to be present in the local bodies if their women have been elected as representatives. It's just a matter of time before this happens."<sup>263</sup>

The opposition to reserving seats for women came from every political party and spanned a wide spectrum of concerns.<sup>264</sup> Besides fears about proxyism and the willingness of women to participate on panchayats, there were criticisms that this was a Western movement not suitable to India's culture, and that the reservations would create animosity within families.<sup>265</sup> Some participants in the debate expressed concern about illiterate women serving on panchayats.<sup>266</sup> One scholar responded:

[T]he inner strength, wisdom and understanding of rural women surpasses that of the educated women of our country. It is they who understand the ground realities . . . . They know what poverty is; they know how many children die every year because of lack of primary health centres in villages. They know that when poor women have to deliver a child they have to be taken on either a cycle or a bullock cart to the hospital. They understand that one has to walk five [kilometers] to get drinking water. When pumps are installed, they know that though the contractor installs a ten feet deep pump he charges for a hundred feet deep pump. They are well aware of this. That is why when they come and sit in panchayats, they have a lot to contribute.<sup>267</sup>

Not surprisingly, much of the resistance came from rural men who feared that women elected to panchayats would ignore their household responsibilities.<sup>268</sup> When the president of the All-India Mahila (Women's) Congress visited villages "in connection with women's development work," she found that the men were fearful that if women served on panchayats, they would leave the household, ignoring their children, their cattle, and their obligations at the hearth.<sup>269</sup> But "their real fear was the threat it posed to their position in these bodies. The women raised the slogan: 'We will look after the homes and also become panches and pradhans.'"<sup>270</sup>

Given the ubiquity and sharpness of the opposition to mandatory reservations of seats for women on panchayats, many scholars were curious to assess

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262. *Id.*

263. *Id.*

264. See Margaret Alva, *Women's Political Representation in Contemporary India*, 1997 WOMEN & POL. EMPOWERMENT 55, 56.

265. *Id.*

266. See *id.* at 57.

267. *Id.* at 57-58.

268. See Vyas, *supra* note 214, at 83.

269. *Id.*

270. *Id.*

the failure or success of the constitutional amendment. Have the skeptics' dire predictions about the negative effects of the experiment been realized? This is the question we examine in the following section. By and large, the answer seems to be no. The seeds of doubt have not borne fruit.

### SECTION III. A STUDY OF WOMEN ON VILLAGE PANCHAYATS

As a result of the constitutional mandate of reservation of seats for women, a full one million women have been elected and are now serving successfully on village panchayats throughout India.<sup>271</sup> There are still many who remain skeptical about the experiment. The earlier predictions about women serving on panchayats—they are uninterested, illiterate, incompetent, and unable to take care of the home and participate—still abound.<sup>272</sup> But none of these predictions seems to reflect the reality of the newly elected women's actual participation on the panchayats. Why, then, should the skepticism persist? Probably because these myths mask a fundamental resistance to the success of the experiment. The fact is, those who have a vested interest in maintaining traditional patterns of male dominance and female subordination *should* be worried. Empowering the rural women of India politically will ultimately threaten the ancient patriarchal structure.

The most in-depth empirical study of the experience of women elected to the panchayats was conducted by the Centre for Women's Development Studies in New Delhi.<sup>273</sup> The Centre sought to assess the extent to which the reservation of seats for women was achieving its goal of empowering women at the grass-roots level.<sup>274</sup> The study focused on three northern Indian states: Madhya Pradesh, Rajasthan, and Uttar Pradesh, which account for 31% of India's rural population.<sup>275</sup> The Centre chose these states because they ranked low on most social development and gender indicators.<sup>276</sup> Thus, it was thought, if the reservation of seats for women yielded any positive results in these states, the viability

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271. Bidyut Mohanty, *Panchayats, Women and Poverty Eradication: Some Issues*, 1998 WOMEN & POL. EMPOWERMENT 137, 148.

272. See e.g., BUCH, FROM OPPRESSION TO ASSERTION, *supra* note 51, at 11.

273. See *id.*

274. See *id.* at 8.

275. See *id.* at 11; BUCH, WOMEN'S EXPERIENCE, *supra* note 51, at 11. "These states also account for 1/3 of India's population living below the poverty line." BUCH, WOMEN'S EXPERIENCE, *supra* note 51, at 11.

276. In terms of political representation, the 1977 election to the Lok Sabha resulted in no women elected from Rajasthan or Madhya Pradesh, and three women elected (out of eighty-five) from Uttar Pradesh. BUCH, FROM OPPRESSION TO ASSERTION, *supra* note 51, at 15. In the 1996 Lok Sabha election, only four of the twenty-five women contesting seats from Rajasthan were elected, five of the seventy-five women from Madhya Pradesh were elected, and nine of the seventy-six women from Uttar Pradesh were elected. *Id.* The numbers did not improve in 1998: three out of twenty from Rajasthan, four out of twenty-eight from Madhya Pradesh, and nine out of fifty-six from Uttar Pradesh. *Id.* As of 1999, in the three states combined, women occupied only sixteen seats out of 150 in the Lok Sabha. The numbers are as bad in the state assemblies. *Id.*

of reservations elsewhere would be practically ensured.

The Centre's study examined such phenomena as the support that women elected to the panchayats received from their families, the community, and other social collectives; whether the women were full participants in the work of the panchayats; and whether the women's status was affected by their election to the panchayats.<sup>277</sup> The study explored the critical question of whether "women's numerical presence even in a critical mass [can] transform these structures and make them more receptive to women's needs and concerns" or whether the prevalence of patriarchy in Indian society will defeat the objectives of this experiment in inclusive politics.<sup>278</sup>

The results of the Centre's study are extremely encouraging. The study concludes that the mandated entry of women in a critical mass at the grassroots level has enormous potential for radically altering the status of women.<sup>279</sup> As the proponents of the amendment envisioned, traditional gender relations have subtly begun to shift.<sup>280</sup> Significantly, the study explores a number of deeply engrained myths about rural women's passivity, lack of interest in politics, and non-participation in political institutions.<sup>281</sup> Since more than one million women have been elected to village panchayats throughout India, in all likelihood, five times that number have run for election.<sup>282</sup> These statistics shatter the myth about women's lack of interest in serving on panchayats.

Detractors and skeptics also predicted that the husbands of women elected to panchayats would actually wield the power, but proxyism turned out to be much less problematic than anticipated.<sup>283</sup> Similarly, observers expected that only women from families with powerful political connections or women from economically advantaged families would choose to run for elections.<sup>284</sup> These expectations were not realized.

The Centre's study profiles the women elected to the panchayats in terms of their social caste or class, age, marital status, educational level, income level, and prior political activity or political connections.<sup>285</sup> The typical profile that emerges is a woman who is either illiterate or barely literate,<sup>286</sup> between twenty-

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277. See BUCH, WOMEN'S EXPERIENCE, *supra* note 51, at 1.

278. *Id.* at 3, 8. The report cites Drude Dahlrup's study of a "critical mass" of women in Scandinavian politics. *Id.* There, women occupy approximately 30%-33% of seats. *Id.* The Dahlrup study reports a change in reactions to women in politics once a critical mass is achieved, as well as changes in the women's performance, in the political culture, in political discourse, and in policy. *Id.* at 16.

279. *Id.* at 25.

280. *Id.*

281. *Id.* at 11.

282. Alva, *supra* note 264, at 56-57.

283. BUCH, WOMEN'S EXPERIENCE, *supra* note 51, at 102, 116.

284. *Id.* at 11.

285. *Id.*

286. 70.5% of the women studied by the Centre were illiterate or barely literate. *Id.* at 73. This figure includes 22.9% of illiterate chairwomen. *Id.* The Centre found the highest concentration of illiteracy among those members and chairwomen who were members of the Sched-

one and forty-five years of age,<sup>287</sup> married,<sup>288</sup> from a family living below the poverty line,<sup>289</sup> a housewife or engaged in agriculture,<sup>290</sup> without political connections, and who has never been involved in electoral politics.<sup>291</sup> Significantly, the women serving on panchayats represent a broad spectrum of castes and classes.<sup>292</sup>

The Centre's study also examines the motivation of women serving on panchayats, their attendance and participation in panchayat activities, the constraints that they experienced, and the reaction of their family and community to their election.<sup>293</sup> The results are illuminating. With respect to motivation, one of the most prevalent myths was the belief that women would simply not want to run for office.<sup>294</sup> This has proved not to be a problem in any of the states studied.

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uled Castes, followed by the Other Backward Class category and then the Scheduled Tribes. *Id.*

287. The study reports that 69% of women serving on panchayats in the three states are less than forty-five years old. *Id.* at 70.

288. Not surprisingly, the study found that 91.7% of the women were married, with 1.3% unmarried, 6.4% widowed, and 0.6% divorced or separated. *Id.* at 77.

289. *Id.* at 66, 76.

290. With respect to occupation, 37.2% of the women were housewives, 48.5% were agriculturalists (cultivators and laborers), 9.4% represented farm and non-farm wage labor, and 1% to 2% were involved in business, service, skilled trade, or livestock rearing. *Id.* at 74.

291. Ninety-seven percent of the women elected were first-time entrants to politics, and most agreed that, but for the reservations, they would not and could not have run for office. *Id.* at 64-66.

292. The following chart shows, in percentages, the social makeup of women elected to panchayats in the three states:

State	Scheduled Caste	Scheduled Tribe	Other Backward Class	General
Madhya Pradesh	25.0	40.3	26.4	8.3
Rajasthan	23.2	33.9	19.7	23.2
Uttar Pradesh	24.7	-	38.4	36.9

This chart details the breakdown of women chairpersons:

State	Scheduled Caste	Scheduled Tribe	Other Backward Class	General
Madhya Pradesh	22.8	37.0	28.4	11.8
Rajasthan	24.2	29.2	25.6	21.0
Uttar Pradesh	35.3	-	37.1	27.6

The last chart shows, for all three states combined, the social breakdown of both women chairpersons and members in percentages:

Scheduled Caste	Scheduled Tribe	Other Backward Class	General
26.6	22.6	30.0	20.8

*Id.* at 67.

293. *Id.* at 17.

294. *Id.* at 11.

Indeed, the study concludes that the mandatory reservation gave a “legitimacy and respect leading to families motivating women to contest, taking the new position as a point of entry for the family and not only for the individual woman.”<sup>295</sup>

Similarly, with regard to women’s level of participation in the panchayats, the conventional wisdom was that women would not show up at panchayat meetings or participate in the work of the panchayat.<sup>296</sup> Once again, both concerns turned out to be myth. The Centre’s study concludes that 65.5% of women elected to the panchayats attended panchayat meetings regularly—a percentage lower than that of male attendance, but considerably higher than expected.<sup>297</sup> As for the amount of time devoted to panchayat work, again we see women reporting fewer hours than men, but substantially more than critics expected.<sup>298</sup> The same findings emerge with respect to women making efforts to solve the problems and petitions brought to them by their constituents. In short, the fears that women would not be interested in running for office, that women would merely serve as proxies for their husbands, and that women would be “‘namesake’ members or illiterate, ignorant absentee members”<sup>299</sup> proved to be unfounded. Their participation on the panchayats was steady, consistent, and independent.<sup>300</sup>

Reservation of seats for women on the panchayats has altered how women are perceived in the community.<sup>301</sup> In the Centre’s study, the women who were elected to the panchayats reported a newly garnered respect from men and women alike—always an indicator of empowerment.<sup>302</sup> More than 70% of the women elected to the panchayats found a positive change in their status within their families and their communities.<sup>303</sup> Women reported being treated with new

295. *Id.* at 13.

296. *Id.* at 17-18.

297. *Id.*

298. *Id.* at 17.

299. *Id.* at 18.

300. *Id.* A far more dismal picture emerges from a study done in 1996 in Maharashtra, Gujarat, West Bengal, Andhra Pradesh, Karnataka, and Uttar Pradesh. See Chhibber, *supra* note 139, at 8. That survey reported a lower percentage of participation and interest among women. *Id.* (concluding that a woman’s participation in politics is linked to her ability to negotiate independent space for herself in the household).

301. BUCH, WOMEN’S EXPERIENCE, *supra* note 51, at 20.

302. *Id.* at 22.

303. The following chart depicts the percentage of women who perceived a positive change in their status within the communities listed in the left column. *Id.* at 24.

	Scheduled Caste	Scheduled Tribe	Other Backward Class	General	Total
Family	68.6	80.3	67.9	71.4	71.6
Neighbours	67.7	80.8	71.8	74.9	73.4
Others in community	68.2	78.2	71.0	73.1	72.4
Govt. offices	61.0	77.7	57.5	65.7	64.8
Persons	68.6	75.6	73.4	73.1	72.6
Other caste persons	62.3	66.3	65.5	67.4	65.2

respect by their husbands and other villagers, being invited to social events such as weddings in the community, and being approached for advice by members of the village.<sup>304</sup> A majority of the women also reported that they received support from within their families and from the larger community, although the data varied in the three states studied.<sup>305</sup> Finally, a significant proportion of the women surveyed reported increased levels of self-confidence, awareness of the need for education, and increased concern for rural development.<sup>306</sup> This attitudinal change has resulted in a shift in social practices, such as an increase in the number of children attending schools.<sup>307</sup> Women from the Scheduled Castes and Scheduled Tribes reported the most significant change in attitude, experiencing a dramatic increase in self-confidence and a growing interest in remaining in electoral politics.<sup>308</sup>

The major constraints facing the women elected to the panchayats included their own illiteracy, noncooperation from the community, and noncooperation from officials.<sup>309</sup> The women repeatedly requested additional training and leadership development.<sup>310</sup> In Madhya Pradesh, women were found to enter the panchayats with considerable handicaps, including illiteracy, poverty, household and family responsibilities, and ignorance of the political system.<sup>311</sup> For example, 53.88% of the women elected to the panchayats were literate, compared to 88.67% of the men elected; and 95% of the women running for office were entering politics for the first time, whereas that was true for only 69% of the men.<sup>312</sup>

The results of the Centre's study conducted in Madhya Pradesh, Rajasthan, and Uttar Pradesh are fully consistent with the conclusions reached by the authors of this article based on interviews of women elected to the panchayats in Himachal Pradesh. Over the course of several summers in Himachal Pradesh, the Himalayan state due north of Delhi, we visited a number of villages within the state's two largest districts, Shimla and Kangra. In each village, we met with

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304. *Id.*

305. In Madhya Pradesh, 61.5% of the women reported qualified support from male family members; 44% to 50% reported support from female family members, neighbors, and members of their own caste; 20% to 30% reported support from local leaders, other caste members, and women's organizations; and 4.9% reported support from nongovernmental organizations ("NGOs"). BUCH, FROM OPPRESSION TO ASSERTION, *supra* note 51, at 92. The numbers varied in the other two states. In Rajasthan, 70% reported support from family, neighbors, and members of their own caste; more than 50% reported support from other caste members; and 25% reported support from local leaders, women's organizations, and NGOs. *Id.* In Uttar Pradesh, 80% reported support from their families; 75% reported support from neighbors, members of their own caste, and the community; 59% reported support from members of other castes; and 5% reported support from neighbors. *Id.*

306. *Id.*

307. *Id.* at 22-23.

308. BUCH, WOMEN'S EXPERIENCE, *supra* note 51, at 22-24.

309. BUCH, FROM OPPRESSION TO ASSERTION, *supra* note 51, at 117.

310. BUCH, WOMEN'S EXPERIENCE, *supra* note 51, at 117.

311. BUCH, *Decentralised Governance*, *supra* note 148, at 78, 85.

312. *Id.* at 78-88 (reporting the results of a 1996 study).



many women, some of whom served as *pradhans* (chairpersons), *up-pradhans* (vice chairpersons), or members of their *gram* (village) panchayat; and others who were members of the local *mahila mandal* (women's group). While we noted some differences from village to village, several themes emerged. All applauded the increased decentralization represented by the panchayats, favored reservation of seats for women on the panchayats, agreed that women would not be elected without reservations, and adamantly believed that the presence of women on the panchayats had radically improved the status of women.

In addition to interviewing women elected to the panchayats, we also met with a number of government officials at the state, district, and block level to hear their views and opinions on the effectiveness of the reservations for women.<sup>313</sup> Among those interviewed was Mr. K.C. Sharma, the commissioner of

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313. One of the most helpful officials we met was Rajkumar Bhota, the senior auditor of the Directorate of Panchayati Raj for Himachal Pradesh. Mr. Bhota furnished us with the lists of the panchayats throughout the state, the names of the *pradhan* and *up-pradhan* for each, and the number of seats held by members of the Scheduled Castes, members of the Scheduled Tribes, and women.

We also interviewed B.M. Nanta, Additional Secretary (Deputy Director) for Rural Development in Himachal Pradesh who was very helpful in explaining the workings of the "Vigilance Committees," which are elected by the *gram sabha* (village legislative body) to supervise all work undertaken by the panchayats. The establishment of the Vigilance Committees represents a further decentralization in that they are designed to minimize bureaucratic control. When asked for his opinion about the reservation of seats for women, Mr. Nanta replied that women are more honest, more regular, more responsible, and have better attendance.

Another official interviewed was Mr. Amarjeet Singh, the Block Development Officer for the block known as Rait. This block is within Kangra District, which is the largest district in Himachal Pradesh with fifty-five panchayats, each covering five or six villages. Mr. Singh was a police officer before becoming Block Development Officer. He explained the interrelationship between the *mahila mandals* (women's groups) and the panchayats. The formation of a *mahila mandal* has to be approved by the *pradhan* of the panchayat, and the certification process proceeds through the panchayat. As of April 1, 1999, an incentive scheme was developed regarding poverty elimination programs. A grading system was developed to rank all the *mahila mandals* in the block (with the panchayats participating in the evaluation). The best ten received a considerable sum of money from the government, which uses the *mahila mandals* to carry the message of the government to every woman and to advise them of housing programs, sanitation programs, family planning programs, rural development programs, national maternity programs, and literacy campaigns. Mr. Singh also explained that the government has established a revolving fund for the Development of Women and Children in Rural Areas ("DWCRA"). Twenty-five thousand rupees are provided to groups of ten to fifteen women who choose income generating activities appropriate to the locality, such as weaving, basket making, or making plates with leaves. We visited a few such projects. In one, a teacher worked with a handful of young women teaching them how to make carpets. There were several looms in the room and a number of small square rugs that were sold through the block office. A second project involved women making plates, called "pat-tels," out of leaves. The leaves were from the Tor tree. The women stitched about ten leaves together to form a disposable plate or bowl, which were then sold in the market. Finally, Mr. Singh told us about the Jawaharlal Nehru Project, a national employment generating scheme. Until March 31, 1999, 70% of the funds were required to go to the panchayats. But now, 100% of the funds are flowing to the panchayats, which will employ local people on a wage basis to undertake panchayat rural development programs. This is helping to reduce unemployment in the villages—at least for the duration of the panchayat project. When we asked Mr. Singh whether there was resentment about the money flowing directly to the panchayats, he said it had not been a problem because along with the money, the village also receives responsibility and accountability.

elections for Himachal Pradesh.<sup>314</sup> Mr. Sharma was enthusiastic about the panchayats, expressing the belief that reservations are necessary when a society is in transition. Mr. Sharma also opined that the constitutional panchayats provided some historical continuity, even though the modern panchayats differ from the old. He explained that before the constitutional amendment, traditional panchayats existed alongside the state-created panchayats; the latter had not been truly accepted by the villages. Gradually, however, as people became more conscious of their rights and more accustomed to utilizing the state-created panchayats, the traditional panchayats all but disappeared. Increasingly people turned to the new panchayats to resolve disputes and to address problems of rural development. As proof of the legitimacy that the panchayats now enjoy, Mr. Sharma pointed to the fact that there is between 60% and 65% voter turnout for the panchayat elections, slightly higher than the turnout for parliamentary elections.

Mr. Sharma described a methodical election process that has been proceeding smoothly within the state. He explained that the constitutional amendments have provided an institutional stability to the panchayats by providing fixed five-year terms. When asked the extent to which political parties have become involved in panchayat elections, Mr. Sharma explained that, technically, panchayat elections may not be fought on party lines. Political party symbols are not even permitted on the ballot.<sup>315</sup> Despite this proscription, political parties do indeed claim certain panchayat candidates as their own and declare party victory when that candidate wins.

It was Mr. Sharma's opinion that most of the women members elected to the panchayats are literate and educated. This relatively higher literacy rate among women represents a radical departure from the recent past. According to Mr. Sharma, twenty years ago women *pradhans* would have been replaced by their husbands, mostly because the women were illiterate and uneducated. But women today in Himachal Pradesh are educated, know their rights, and are thus able to act independently as members of the panchayats.

Mr. Sharma's opinion about the improved literacy and effectiveness of women elected to the panchayats in Himachal Pradesh was not universally shared by all the state officials we interviewed. The Block Development Officer for an area within Kangra, for example, reported that in his estimation, the success of the panchayats varies depending largely on the literacy rate of the women elected.

This lack of consensus about the literacy rate of the women serving on the village panchayats of Himachal Pradesh raises interesting issues. It is not entirely clear what type of literacy is necessary for the effective participation of women in local government. The concept of literacy has various meanings. By

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[314. Interview with K.C. Sharma, Commissioner of Elections, Himachal Pradesh (June 15, 1999).

[315. Instead, names of the candidates are arranged in alphabetical order on the ballot, with symbols (such as a sparrow) used to address problems of illiteracy.

literacy, do we mean the ability to read and write, or do we mean legal literacy?<sup>316</sup> If the latter, what does legal literacy mean? Kapur and Cossman define legal literacy as education about law, which can be accomplished by three quite different approaches: by educating women about their legal rights, with the goal of promoting access to justice; by mobilizing women to support a particular political agenda, with the goal of collectively demanding law reform; or by empowering women, with the goal of developing “critical consciousness, that is, the ability to think critically about the power relationships affecting their lives, and ultimately, to take action to challenge and transform those relations.”<sup>317</sup> This last approach seems most consistent with the fundamental objective of reserving seats for women on panchayats. It is through their active participation in political decision making that women become empowered. It is not just about learning to read, but rather learning to “read the world around them.”<sup>318</sup>

What has the active participation of women on panchayats actually accomplished? Women have brought to the table practical issues that have previously gone unnoticed because they were largely invisible to the men serving on panchayats.<sup>319</sup> Women have focused not only on issues of rural development, but also on how to resolve family conflicts and land disputes, relieve social tensions, provide housing, ensure there is safe drinking water,<sup>320</sup> and employ the idle hands

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316. See *supra* note 139 (questioning whether there is a link between literacy and political empowerment).

317. KAPUR & COSSMAN, *supra* note 40, at 322-33.

318. *Id.* (quoting PAULO FREIRE & DONALDO MACEDO, LITERACY: READING THE WORD AND THE WORLD 7 (1987)). Kapur and Cossman urge a reconceptualization of law from an emphasis on outcome to an emphasis on process, such that “the value of participation is thus hardly a novel objective on thinking about law and law reform.” KAPUR & COSSMAN, *supra* note 40, at 291. With respect to law reform, the process of the campaign is arguably as valuable as winning the election in terms of empowering women. “It is during moments of strategic engagement that women are most engaged. It is during these moments that women come together, form coalitions, articulate their political demands, and participate in contests over meaning.” *Id.*

319. “[W]hen women are placed in decision-making positions, they try to deal with much more practical problems like that of accessing water. They try to solve the problem of the lack of good health care for their children. They also try to meet the challenge of . . . poverty eradication.” Azmi, *supra* note 135, at 43-44.

Political empowerment of women is necessary because women are the ones who work in their homes and hence know the problems that they have to confront in that realm. Women also work outside the house so they also become aware, to a large extent, of problems that are present outside the home. . . . [w]omen are knowledgeable about challenges on the home front and outside, they need political empowerment so that they can be in a position to do something about problems both inside and outside the home.

*Id.*

320. It is difficult to appreciate how critical a safe water supply and sanitation services are to an Indian village. Roughly 50% of all illness in India is due to poor sanitation. In rural areas, about 80% of the children are infected by parasitic worms. In the mid-1990s, approximately one million Indians died each year of diseases associated with diarrhea. Statistics in the early-1980s suggested that although 80% of the urban population had access to reasonably safe water, fewer than 5% of rural dwellers did. The statistics on sanitation services are even more shocking: in 1990, only 3% of the rural population and 44% of the urban population had access to sanitation services. COUNTRY STUDY, *supra* note 2, at 96.

of the unemployed.<sup>321</sup>

The problem of portable drinking water is of particular concern to the newly elected women on the panchayats. Collecting and transporting water has traditionally been women's work. In Rajasthan, for example, a woman could walk seven or eight kilometers to fetch water for her household, carrying it back on her head. When the men of her family would come home and ask for water, it would be there, cooling in the corner in a big brass jar. Consequently, the men would not perceive the availability of safe, clean water as a local problem that needs to be addressed. There is a certain logic to it: the person who carries the big brass jug on her head is always going to be more motivated to find a way to shorten the distance between the water's source and where the place where water is needed. As decisions are made about how to allocate funds, having women serve on panchayats ensures that a project, such as digging a local well would be given priority.<sup>322</sup>

There has also been a shift from building projects requiring outside contractors to local projects focusing on improving health care, education, and again, the water supply.

The items on women's agenda in the panchayat are small and modest but of very basic importance. The women ask for water conservation projects like farm ponds, tanks and bunds, not expensive dams or highways like their male counterparts. In [one village] . . . the women panches move from house to house to collect the arrears of water tax and resuscitate the water supply.<sup>323</sup>

In another village, the women refused to permit rural development funds to go to outside contractors, choosing instead to build a dam themselves to conserve water while saving money for other village projects.<sup>324</sup> In villages throughout Madhya Pradesh, where large sums of money were spent installing thousands of hand pumps without any instruction regarding maintenance and repair, UNICEF trained five thousand women elected to the panchayats to ensure the proper functioning of the hand pumps.<sup>325</sup>

Another issue of major concern to women is the availability of day care. Lucia, a deputy *sarpanch*,<sup>326</sup> worked to establish a day care center. Before the center was established, the women had to bring their children with them to work at the tobacco plant. Not only did this impede their labor, but the children were breathing tobacco dust every day. Lucia also negotiated with a local dairy coop-

321. See, e.g., *supra* note 319 (describing problems both inside and outside the home that women on panchayats have tried to address).

322. Alva, *supra* note 264, at 55-60.

323. Ela R. Bhatt, *Economic Strength Leads to Political Strength*, 1998 WOMEN & POL. EMPOWERMENT 32.

324. Kalpana Sharma, *India's Women Find Muscle*, *NEWSDAY* (India), Sept. 3, 2000, at B4.

325. Manu N. Kulkarni, *Women in Madhya Pradesh Panchayats: Changing Scenario*, 1997 WOMEN & POL. EMPOWERMENT 72, 73.

326. "Sarpanch" refers to the headperson of a panchayat.

erative to supply daily milk to the children at the day care center. Unquestionably, that day care center would never have been established had a woman not been elected *sarpanch*.<sup>327</sup>

Studies in Orissa, West Bengal, and Maharashtra also show that women elected to the panchayats are more concerned than their male counterparts with ensuring an adequate supply of drinking water, providing electricity, and constructing roads in order to enhance the quality of village life. Other issues these women have addressed include health care, education, and widow and old age pensions.<sup>328</sup>

Rural women are seen as “disseminators and reservoirs of traditional health knowledge”<sup>329</sup> and serve as the providers of health care in the family. Having women on panchayats ensures their participation in health-related issues, which in turn changes health care priorities. Indeed, India’s Eighth Five Year Plan (1992-1997) envisaged a role for the panchayats in making health care services more responsive to local needs.<sup>330</sup> Instead of a top-down health care delivery system in which priorities are set by the central government, the panchayats have the ability to develop health care priorities responsive to local needs: “There is no doubt that Panchayati Raj affords a unique opportunity to change, modify and correct the present top-heavy health care system which has not been able to provide the benefits of science and technology to the people, particularly the poor.”<sup>331</sup> Rural women on panchayats are now positioned to transform a health care model utilizing a “hi-tech, curative, expensive, elite institution based approach” into one that is inexpensive, emphasizes prevention, and responds to local needs.<sup>332</sup> “In a nutshell, women, by becoming effective partners in the decision-making process, will give a new direction to the health policy by laying more emphasis on community initiatives and adopting a balanced approach to

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327. See Bhatt, *supra* note 323, at 32.

328. Mohanty, *supra* note 271, at 150. Even as Indian women become more politicized, they tend to value political causes that promote the health and welfare of their families. One social scientist noted that in urban women’s associations and in grassroots movements, lower class Indian women defined their interests primarily in terms of family survival: “Participation in politics is relevant, insofar as it helps to obtain the resources necessary to provide for the basic needs of the family. . . . Women in grass-roots movements and in the urban women’s associations link issues of family survival with issues of women’s self-respect.” Jana Everett, *Incorporation Versus Conflict: Lower Class Women, Collective Action, and the State of India*, in *WOMEN, THE STATE AND DEVELOPMENT* 152, 152-68, 169 (Sue Ellen M. Charlton, et al. eds. 1989).

329. Bidyut Mohanty, *Panchayats, Women and Health: Towards a New Health Policy*, 1996 *WOMEN & POL. EMPOWERMENT* 65, 65-75.

330. *Id.* at 68. The Eighth Five Year Plan provides that “[m]echanisms will be developed to make the rural health services responsive to the needs of the rural masses and accountable to the community. [The] Panchayati Raj system would become an effective instrument for community participation in the health programme and provide supervision and support to primary health care infrastructure.” *Id.* (quoting Eighth Five Year Plan) (internal quotations omitted).

331. Ela R. Bhatt, *Health Cooperatives and Panchayats: The SEWA Experience*, 1996 *WOMEN & POL. EMPOWERMENT* 44, 48.

332. *Id.* at 44-48.

the indigenous health system.”<sup>333</sup>

The women on India's village panchayats have given priority to a wide variety of health-related concerns. One of the most pressing health care issues is discrimination against female children in the delivery of medical treatment.<sup>334</sup> Other projects that women elected to the panchayats have initiated include leprosy-eradication, immunization programs, household sanitation, and environmental sanitation.<sup>335</sup> In a campaign for the disposal of waste through proper drainage and soakage pits, women have encouraged villagers not to support any candidate for office who does not address the issue—“no drain, no vote.”<sup>336</sup>

Among the challenges facing women who are attempting to improve the delivery of health care is the inhibition among rural women to discuss certain health problems. For example, a survey revealed a very high incidence of urinary tract infections among rural women.<sup>337</sup> When women wash out the cloth used for menstrual bleeding, they are unwilling to hang it outside where it could be seen by men, who would then know that they are bleeding.<sup>338</sup> Instead, the cloth is placed under the bedding or under clothing. As a result, the cloth never dries properly and carries infections.<sup>339</sup> Village women not only lack a room of their own, they lack “even a small piece of sunshine which they can call their own and in which they can dry the cloth which they use during menstruation.”<sup>340</sup>

Virtually every panchayat woman we interviewed indicated that family planning was a top health care priority. The 2000 report of the National Population Policy of India recognized the strategic role that women elected to panchayats played in promoting family planning: “[S]ince 33 percent of elected panchayat seats are reserved for women, representative committees of the panchayats (headed by an elected woman member) should be formed to promote a gender-sensitive, multi-sectoral agenda for population stabilization, that will think, plan and act locally, and support nationally.”<sup>341</sup> The report went on to point out that it is the panchayats that can identify “area-specific unmet needs for reproductive health services, and prepare need-based, demand-driven, socio-demographic plans at the village level, aimed at identifying and providing responsive, people-centered and integrated, basic reproductive and child health care.”<sup>342</sup>

Women on panchayats have also been vocal about the enforcement of laws designed to prevent violence against women. Their efforts have been directed at

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333. Mohanty, *supra* note 329, at 74.

334. *Id.* at 67.

335. See Mira Shiva, *Women's Health and Panchayati Raj*, 1996 WOMEN & POL. EMPOWERMENT 13, 13-33.

336. *Report of Group Discussion*, 1996 WOMEN & POL. EMPOWERMENT 50, 50-63.

337. Azmi, *supra* note 135, at 44-45.

338. *Id.*

339. *Id.*

340. *Id.*

341. George Mathew, *Panchayats and Population*, HINDU, Mar. 19, 2003.

342. *Id.*

a wide range of legislation, including laws that prohibit child marriage and dowry demands, as well as laws that criminalize the abduction of girls. They have also promoted programs designed to combat alcoholism and its effect on violence against women.<sup>343</sup> Some women elected to the panchayats have reported handling problems of domestic violence. Too often, however, we sensed during our interviews—through the nuance of gesture, a turning away of the eyes, and a shrug of the shoulders—what one *pradhan* actually said out loud: even though domestic violence is a pervasive problem, it is not brought to the panchayat “because that’s the routine of it.”<sup>344</sup> There is also hope for the future that women will finally be able to address issues that no one talks about—dirty little secrets like incest, sexual molestation of girls, and infanticide.<sup>345</sup>

One recent phenomenon in Bihar, one of India’s poorest states, is the formation of *kishoris* (adolescent) panchayats. In Bochahan village, groups of young village girls between the ages of six and eighteen have formed their own panchayats and have educated their mothers, aunts, and grandmothers about the value of participatory governance and the importance of voting in panchayat elections.<sup>346</sup> The girls have successfully reached out to elderly women, home-bound women, and women in *purdah* to discuss issues of health and hygiene with them and to encourage them to participate in the panchayats.<sup>347</sup> The *kishoris* have tried to bring about change directly by convincing parents to postpone marriages of their very young daughters, by going door-to-door to inform the elderly of poverty eradication programs, and by arranging for a bus to transport girls to a distant secondary school.<sup>348</sup> In one village, the *kishori* panchayat has focused on health programs; in another, on acquiring skills such as tailoring to generate income; and in yet another on organizing girls who had dropped out of school to return.<sup>349</sup> Using poems, songs, and plays, the *kishoris* are spreading the word that money meant for the villages should be spent in the village, that one-third of the seats on the panchayats must be held by women, and that despite the obligation to do chores, girls must go to school and do their homework.<sup>350</sup>

Women serving on India’s village panchayats can also act as role models for others. In recognition of this role model function and in an effort to set a responsible family planning example for others, six Indian states have legislated

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343. See Mohini Giri, *Atrocities and Women's Health: Need for a Proactive Leadership at the Grassroots*, 1996 WOMEN & POL. EMPOWERMENT 41, 41-43.

344. Interview with Lajya Devi, Pradhan, Basnoor Panchayat, in Himachal Pradesh, India (June 16, 1999) (on file with author). In addition to rural development programs such as road construction, building a community center, and erecting a playground and boundary walls for two schools to prevent children from running out, this panchayat has attempted to settle petty disputes such as cow trespass and land disputes, although not matrimonial disputes.

345. Pandey, *supra* note 119, at 86-94.

346. Vichitra Sharma, ‘Kishori Panchayats’: Early Initiatives in Self-Help, TRIB. (Chandigarh, India), June 10, 2001, <http://www.tribuneindia.com/2001/20010610/main8.htm#3>.

347. *Id.*

348. *Id.*

349. *Id.*

350. *Id.*

that no one with more than two children is eligible to serve on a panchayat.<sup>351</sup> Himachal Pradesh has enacted such a law. Effective June 8, 2001, the Himachal Pradesh Panchayati Raj Act was amended to render ineligible for election any person who has more than two children, subject to an exception for persons having more than two children on the effective date of the amendment or within one year after the adoption of the amendment.<sup>352</sup>

Other states have various permutations of the two-child requirement. In Andhra Pradesh, for example, the Panchayat Raj Act of 1994 restricts the eligibility for election to the panchayat to individuals with no more than two children.<sup>353</sup> The provision contains an exception for a third child born within one year of the statute's enactment and an additional exception that, in effect, exempts those persons already elected so long as no additional child is born after the law's enactment.<sup>354</sup>

This version of the two-child rule was challenged in *Parthasarathi v. Andhra Pradesh*<sup>355</sup> by three individuals serving on panchayats who were subsequently disqualified upon the birth of another child.<sup>356</sup> Petitioners argued that the rule violates the constitutional right of privacy under Articles 19 and 21, that it bears no "nexus" to the objective sought, and that it constitutes an unreasonable classification in violation of the constitutional equality principle of Article 14 because it does not apply to other elected representatives.<sup>357</sup> The government defended its two-child rule on the ground that it would promote population control due to the profoundly influential status of panchayat officials.<sup>358</sup>

The court upheld the rule under Article 14, which requires only a rational basis between the governmental classification and the objective to be achieved. Inasmuch as population growth is a major problem facing India, the court declared that "any measure designed to combat it must be upheld unless it impermissibly violates some constitutionally protected right."<sup>359</sup> The court further held that the right to run for office is a statutory right, not a fundamental right, and the challenged rule did not violate any constitutionally protected privacy interest.<sup>360</sup> Despite its rejection of the constitutional arguments, the Court issued a stay for the purpose of directing the state government to consider the petitioners' applications for a waiver of the rule.<sup>361</sup>

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351. Amy Waldman, *States in India Take New Steps to Limit Births*, N.Y. TIMES, Nov. 7, 2003, at A1.

352. Himachal Pradesh Panchayati Raj (Amendment) Act, Act No. 18 (2000) (adding clause (o) to section 122(1)).

353. Andhra Pradesh Panchayat Raj Act of 1994 § 19(3).

354. *Id.*

355. *Parthasarathi v. Andhra Pradesh*, AIR 2000 A.P. 156.

356. One of the petitioners had experienced a failed vasectomy. *Id.* at 157.

357. *Id.* at 158.

358. *Id.* at 159.

359. *Id.* at 160.

360. *Id.*

361. *Id.* at 162-63.



A two-child rule has also been adopted in Haryana,<sup>362</sup> Rajasthan, Orissa, and Madhya Pradesh.<sup>363</sup> A challenge has been brought in Chhattisgarh, a state carved out of Madhya Pradesh in 2000 and subject to the Madhya Pradesh Panchayat Raj Act, in which the constitutionality of the two-child rule is at issue.<sup>364</sup> The petitioners are arguing that inasmuch as the rule only applies to panchayat officials and not to state assembly members or members of Parliament, it violates the constitutional equality guarantee.<sup>365</sup> The court granted an interim injunction staying the implementation of the two-child rule on March 15, 2002.<sup>366</sup>

The application of the two-child rule has led to considerable mischief. In an effort to avoid disqualification, panchayat officials with more than two children have resorted to aborting or disclaiming their children, in some cases arguing that a relative adopted the child before its birth or altering official birth records.<sup>367</sup> We believe that programs emphasizing education and health care are better approaches to population control, particularly at a time when too few rural women are in a position to exercise reproductive choice.<sup>368</sup> Further, initial reports suggest that the two-child rule has been operating most harshly against poor women and members of the Scheduled Castes and Tribes and has even resulted in an increase in sex-selected abortions.<sup>369</sup>

Our conclusion about the two-child rule is tentative, however. This is true of all our claims regarding the effect of reserving seats for women on the village panchayats. Too little time (only a decade) has passed for anyone to fully assess the results of the experiment. We also recognize that when the dust settles, anyone who makes a categorical claim about the experiment—either that mandating reservations for women on panchayats was a dismal failure, or that mandating reservations for women on panchayats was an unmitigated success—will be overstating the case.

But we do declare, tentatively, a degree of success. The fears of proxyism have turned out to be largely myth. Rural women in astonishing numbers are interested in running for seats on the panchayats. Once elected, whether literate or

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362. INSTITUTE OF SOCIAL SCIENCE, HARYANA, IX Panchayati Raj Update 2 (No. 3, Mar. 2002). The *Sarpanch* of Kishorpur village was removed for having more than two children. *Id.*

363. INSTITUTE OF SOCIAL SCIENCE, CHATTISGARH, IX PANCHAYAT RAJ UPDATE (No.3, Mar. 2000).

364. *Id.* at 2.

365. *Id.*

366. INSTITUTE OF SOCIAL SCIENCE, CHATTISGARH, IX PANCHAYATI RAJ UPDATE 2 (No.3, Mar. 2002).

367. INSTITUTE OF SOCIAL SCIENCE, WHOSE BABY IS THIS?, IX PANCHAYATI RAJ UPDATE 1 (No.3 Mar. 2002).

368. See “NGOs Cold to More Functions for Panchayats”, TRIB. NEWS SERV. (Shimla, India), Mar. 11, 2003, available at [www.tribuneindia.com/2003/20030312/himachal.htm#4](http://www.tribuneindia.com/2003/20030312/himachal.htm#4) (quoting Subhash Mendhapurkar, Director of SUTRA, a nongovernmental organization, as saying that “the two child norm was against women as they had little control over reproductive function decisions”).

369. See Waldman, *supra* note 351, at A1.

not, they are bringing their common sense, wisdom, and knowledge of local matters to the discussion. Serving on village panchayats is dramatically improving the status of these women within their families and within the community. Increasingly, women are identifying and addressing issues central to their lives. These conclusions are supported by the findings from the government-sponsored study and from the studies of numerous Indian scholars who have analyzed the effects of mandatory reservations in their states. Our own research in the state of Himachal Pradesh also points to similar findings. Thus, while there is reason to be tentative, there is also reason to be hopeful. From all accounts, it appears that mandating reservations for women on panchayats is having a beneficial and empowering effect on the lives of women in rural India.

### CONCLUSION

A study of the status of women in India today is as complex, multi-layered, and inconsistent as India itself. The world's largest democracy guarantees women full political, social, and economic rights, yet the reality of day-to-day life for the millions of women who live in India's villages continues to reflect gendered traditions that are thousands of years old.

India's mandated reservation of seats for women on panchayats has been called "one of the best innovations in grass-roots democracy in the world."<sup>370</sup> We do not claim to know whether this "epic social experiment"<sup>371</sup> will effectively implement Gandhi's call for a truly decentralized democracy or whether it will transform the lives of India's rural women. Serious problems, such as bureaucratic interference, insufficient funding, lack of training, or corruption, could still derail the project.<sup>372</sup>

We are convinced, however, that on a macro level, India's experiment with mandatory reservations for women on panchayats has shaken the foundations of India's patriarchy, challenged long-held beliefs about women's abilities, and legitimized issues of importance to women. We feel even more confident that on a micro level, mandatory reservations have brought a previously unknown respect and status for the women who have been elected to the panchayats. Like other researchers who have met women elected to the panchayats,<sup>373</sup> we have been extraordinarily impressed by their wisdom, their courage, and their tenacity.

More importantly, we are both profoundly optimistic about what can be ac-

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370. Celia W. Dugger, *A Woman's Place: A Special Report; Lower-Caste Women Turn Village Rule Upside Down*, N.Y. TIMES, May 3, 1999, at A1 (quoting Noeleen Heyzer, Executive Director, U.N. Development Fund for Women) (internal quotations omitted).

371. *Id.*

372. Whenever women elected to the panchayats get together to share their experiences, they agree that the chief obstacles to their success include lack of training, undue interference from the bureaucracy and from men, widespread corruption in the administrative machinery, and male prejudice. See, e.g., *Reports on Group Discussions*, 1998 WOMEN & POL. EMPOWERMENT 99, 99-116; *Reports on Group Discussions*, 1997 WOMEN & POL. EMPOWERMENT 86, 86-87.

373. See, e.g., Dugger, *supra* note 370; Weaver, *supra* note 39.

completed by a contingent of one million competent and enthusiastic women operating in 500,000 villages, where 74% of India's one billion people resides. "[T]he secret of their success [is] their awareness [that] their own requirements had an inescapable urgency—they [know] the content of their lives and the threats they [face] as no officer or engineer could. With this familiarity [comes] their strength and the will to improve things."<sup>374</sup> The secret of their success also lies in their ability to apply the skills they have perennially utilized in caring for their children, their husbands, their cattle, and their land, to the tasks facing the panchayats. "There is little difference in running a house and running the country; it is only that the house is smaller."<sup>375</sup>

Prime Minister Jawaharlal Nehru said, "You can tell the condition of a nation by looking at the status of its women."<sup>376</sup> More than any other program introduced in the fifty years of India's Independence, and more than any lofty constitutional guarantee of equality, this radical experiment holds the greatest promise for affecting the actual lives of rural women by fundamentally altering the power relationships between men and women. The mandatory reservation of seats for India's women on the rural panchayats has empowered these women politically. It has unleashed a force that could truly "dazzle the world."<sup>377</sup>

#### SECTION IV. PERSONAL NARRATIVES ABOUT OUR FIELD RESEARCH

##### A. Visit to the Kaloond Panchayat, June 18, 1999

L. Harmon

We met at Ranjan's house in the morning. Ranjan was a friend of our friend Rajiv, having been his "junior" for several years of law practice in Shimla. Ranjan lived on the outskirts of Dharamsala with his wife, his mother and father, and his three-year-old daughter, Urvi, in a yellowish brick house whose steep Victorian roof was graced with lacy, white gingerbread. It had once been the home of an English family, a military officer of high rank, and bore all the vestiges of colonialism, of a transplanted aesthetic belonging to another time and place.

We were ushered into a vast, marble-floored parlor in the front of the house and sat on low, naugahide-covered couches, drinking the sweet juice of crushed

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374. L.C. Jain, *Women in Panchayats: Towards Greater Food Security*, 1996 WOMEN & POL. EMPOWERMENT 34, 37-38.

375. Seth, *supra* note 142 at 76. In a similar vein, Kiran Bedi, the inspector general of prisons in Delhi, addressed the 1995 Women and Political Empowerment Conference and talked about the importance of women applying their household management skills and sensitivity to their roles as panchayat members. She noted that even if women are illiterate, they know how to work and how to prepare a budget for the family, even with meager earnings. She compared her role in running a prison to working as a *sarpanch*. Kiran Bedi, *Tasks Before the Panchayats*, 1995 WOMEN & POL. EMPOWERMENT 77, 77-81.

376. See COONROD, *supra* note 112.

377. Gandhi, *supra* note 1.

geraniums, waiting for Ranjan to arrive, and chatting in a desultory fashion about India, the heat, and how anxious we were about time. We were always late in India, and no one seemed to care. How were we going to make the journey to visit the women of the Kaloond Panchayat in the village of Jiya, many miles away over rough terrain and on dubious roads, and get back in time for our appointment at the monastery in McLeod Gang?

Urvi's face kept appearing between the floral curtains that separated the parlor from the hallway, having recently participated in a ritual of early youth in which her head was shaved. She had large, brown eyes, small, sharp white teeth, and a smile that lit up the dark, cavernous room. Urvi wanted to know what the "aunties" were doing, and we assured her over and over again that the aunties were doing nothing, but that she was welcome just the same.

Our conversation was witnessed by the silent and austere familial ancestors, two large black-and-white photographs of Ranjan's grandparents, which hung over the black marble fireplace, draped in a diaphanous red prayer cloth that was edged in gold metallic fringe. As is often the case in India, the presence of the dead was perceptible—of the elderly couple who looked down upon us with a gaze of impassivity, and of another family whose faces were not there, but who had built that house and once celebrated Christmas and Boxing Day in that room. We were all there, waiting for Ranjan, some of us drinking geranium juice and talking, some of us not, some of us living and some of us dead.

These are categories whose boundaries are effaced in India by too much history, too much time, and a certain closeness of air that makes it impossible to usher out the prior inhabitants. They hang around in forgotten rooms like that parlor, and before you know it you have breathed them in, and you no longer know whether your lungs are full of the past or the present. Indeed, you begin to wonder which category you belong to. Are you up on the wall with Ranjan's grandparents or poking your head through the curtains to see what the aunties are up to?

Sometimes even the question makes no sense. All those edges that are so sharp at home soften, blur, and sometimes disappear altogether. Everything seems to belong to everything else. Everyone seems to belong to everyone else, or perhaps even more confusing, everyone seems to be everyone. If you do not understand me, then you have not been to India.

Ranjan came in suddenly with two mustached men in tow and Urvi clinging to his leg. We are ready to go to Jiya, he announced, and we stood up, and before we knew it we were out the door. Wait, wait, wait, and then move quickly—that is the way things happen in India, and the forces that move us are inexorable and unseen.

We rode in a caravan of jeeps out to the village of Jiya, where we were going to interview the women from the panchayat of Kaloond. Four-wheel drive is necessary, our guide told us, because the terrain is rugged and the roads are "not always so good." That was an understatement. In the beginning of the trip, the roads were narrow and winding, but at least they were paved. Once we left the

main roads, however, and headed up higher into the mountains, the roads turned into a ribbon of dirt and rocks in front of us and a cyclone of dirt and rocks behind us.

It was easier to ride in the lead jeep because the dust had not yet been disturbed. There had been no rain for months, no glue to keep the dirt and rocks attached to the planet. With the slightest vibration—and there was nothing slight about the churning wheels of a jeep—the entire surface of the road, plus five inches beneath, lifted up and dispersed into the atmosphere in billowing clouds of brown dust. The jeeps behind the lead jeep were swallowed alive, and their passengers had to cover their mouths to keep from inhaling the airborne particles of road. Presumably, after the caravan had passed through and gravity had reasserted itself, the road settled back down to its illusory permanence. But while we were passing through (and we always were), we traveled in a tunnel of swirling detritus.

Nor was the ride a smooth one. We bumped along those roads at what seemed like breakneck speed, accelerating on inclines and never, never slowing down on the occasional steep, unexpected descents. The jeeps had straps on the side bars for the passengers to hang onto; without them, it wouldn't have been possible to stay in our seats. Even with them, it always felt as if we were at risk of being thrown out the windows. Around bends in one direction, our bones ground into the metal sides of the jeeps, and around bends in the other direction, they ground into the bones of the other human being who was hanging on for dear life several inches away.

The ride was an assault on skeletal and soft tissue alike, and it was impossible to carry on a conversation. The snorting of accelerating jeeps was too deafening, and the possibility of biting off your tongue made talking too risky. There was nothing to do but survive the trip and try to relax into the swaying, lurching, dipping, and flying of the jeep. The more rigidly you held yourself, the more likely you were to get injured. If you just gave up on having any kind of vertical integrity and resigned yourself to being jumbled about the cabin of the jeep like a bag of quivering bone-filled Jell-O, then it was possible to avoid getting crushed, cracked, or catapulted out the window.

The village of Jiya was small. A handful of buildings stood by the side of the road: a shop that sold everything from fabric to vegetables to sweets to rubber shoes; and a small *dhaba*<sup>378</sup> with open fires heating mammoth iron bowls, black with centuries of carbon from cooking rice, *dal*, *nan*, and hot milky tea for the men of the village, all of whom seemed to be standing at its threshold staring at our entourage. As is usually the case in Indian *dhabas*, there were no women in sight except those who cooked behind the counter, shadowy figures who labored silently behind a wall of steam and smoke and fire.

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378. One guidebook defines *dhaba* as “a food hall selling local dishes.” DAVID ABRAM ET AL., *INDIA: THE ROUGH GUIDE* 1226 (1996). In our experience, *dhabas* in Himachal are usually located on the roadside.

There was a monumental banyan tree at the side of the road with a trunk as big around as an elephant and covered in the same thick, grey hide, with massive, weighty limbs that stretched out in all directions, creating a pool of cool, dark shade. It was like a cathedral, that banyan tree, with its vastness and its verticality and its creation of public, sacred space.

And underneath the banyan tree, standing together so closely that it was impossible to make out a single human figure, were the women of Jiya and the surrounding area. From a distance, as our jeeps pulled into the village, they looked like a bouquet of flowers on soft, brown stalks, one brilliant silk sari or *salwar kameez* brushing up against the next, emerald green on cobalt blue, cobalt blue on electric pink, electric pink on saffron yellow that pulsed and dazzled like the morning sun. They all linked arms, and as we came closer, this gesture of familiarity and physicality, so characteristic of Indian women, created the illusion that there was one many-armed, many-headed creature standing under that tree, with skin the color of coffee and a shimmering patchwork costume—a phantasma who had not planned to be beautiful, but upon whom beauty was bestowed just the same.

The sight made me think of the creation myth in the Rig Veda, the sacrifice of the creature named the Purusha, with his many arms and his many heads, and of how the sun was made from his eyes, the moon from his mind, and the wind from his breath. But Purusha was not breathing on that day. There was no movement in the air except for the undulation of heat on the horizon. The sun was directly above us in the sky, mercilessly hot, and nothing cast a shadow except the banyan tree.

Do you think they have dressed up for us? Eileen wondered, and perhaps worried. We looked down at our clothes and at each other, suddenly seeing ourselves through someone else's eyes: four dusty, rumpled American women unfolding themselves from the confines of several jeeps, a blonde man in a madras shirt, and one outright grubby girl-child in jeans and a t-shirt with TOURO emblazoned on it. We were drab in comparison, grey-brown sparrows from the West. Unlike their glorious mosaic of silk upon silk. Visually, we were a hodge-podge, lacking any uniformity in dress except for black cameras dangling from our necks like ugly appendages.

They were shy as we approached them under the banyan tree, and we were shy too. Now that we had come all this way to talk to the women of Jiya, I had a sudden attack of why-did-we-comeness. There seemed to be such distance between us. We had our list of questions to ask, about how the panchayat was working now that women were in positions of power, about their projects, about their aspirations. But the abyss between our two groups, carved out through the eroding forces of different cultures, languages, religions, and world views, seemed wide and deep. All that we seemed to have in common—and even so, James and Nan did not qualify—were women's bodies, a shared hormonal disposition, and a feminine morphology.

We were led ceremoniously into a one-room building that stood in the cen-

ter of the village, only a stone's throw from the banyan tree. It was freshly painted white, with large, gracious windows on either side that let in the light but not the fierce heat, and on the concrete floor was a layer of bamboo mats. All of the women—and there must have been sixty or seventy of them—followed us into the room and found a place on the floor.

We were given seats of honor in wooden chairs at the front of the room. This gave us a good vantage point to see all of their faces turned up at us, but it also made us feel on display. Again, I felt such a distance between the two groups, a distance that far exceeded the several feet of elevation bestowed upon us by virtue of the chairs. Everyone was smiling, and some of the Indian women were laughing at us, although not cruelly—perhaps it was a response to their irrepressible amazement at our clothes, our hair, our shoes.

To me, it is always at the level of the foot that our differences are most dramatic. I looked down at the bare feet of the women in the front row—sturdy, rough, brown, working feet made for walking in the dusty roads we had just traveled upon, unencumbered feet except for a platform of tough leather attached by a band around the great toe. Then I looked at my own feet and my daughter's. They were encased in huge sarcophagi of suede and rubber, in sneakers bearing corporate logos, designed to provide an exoskeleton, a superstructure of support and protection. There was a feminine grace and strength to the bare feet of the Indian women that was completely lacking in our own.

They offered us water, and we all echoed the chorus of the westerner who travels through India: no thank you to *Pani*, fearing the hidden agents of disease. Then they offered us *chai*, served in small glasses, and we all assented, mentally noting that they must have boiled the water. There were delicious cookies as well, with a slight flavor of anise, and a basket of salty, crunchy yellow chips that left our fingers coated with saffron dust. Then Eileen began the interview with her characteristic quiet authority and grace.

Ranjan served as our interpreter, but he was not the only man in the room. A few mustached dignitaries from the government had accompanied us in the jeeps, and they stood near the door, erect, silent, and listening to our interchange with intense interest. Outside, men from the village perched on the ample windowsills, peering into a room that was jam-packed with women, most of them their wives, sisters, daughters, and mothers. Perhaps it was my imagination, but I felt an aura of masculine envy coming in through those windows, filtering the sunlight and bathing the happy faces of the women inside. I wondered how often that had happened in the village of Jiya: a gathering of women to the exclusion of men, and a gathering of sufficient allure to foster resentment in the hearts of the excluded.

I was also acutely aware of our own lack of independence. It was through the agency of men that we were able to interview the women of Jiya about their panchayat. Not the men from the village whose curious faces pressed against the window panes, but higher-caste, urban men, men of education who had at least two languages under their belts, men who rode in jeeps and escorted academic

American women around rural India. Despite the aura of masculine envy I felt from outside the building, there was still a lot of male power in the room—silent, except for Ranjan's able translation, but palpable just the same.

Eileen started the interview by asking to speak to the *pradhan* (chairperson) of the Kaloond panchayat. A woman toward the back of the room stood up and gave Eileen a bow, holding her hands together in the typical *namaste* gesture. Her name was Swarna Devi. Eileen asked her to sit down and Swarna Devi smiled, edging her way back down into the narrow gap that her body had left in the phalanx of sitting women. She had a handsome face, with the high cheekbones and aquiline nose characteristic of so many of the hill people. Her hands were square, rough, competent-looking, and she had sharp, dark eyes that betrayed both shrewdness and discernment. When Swarna Devi cast her penetrating gaze upon you, there was no doubt who was sizing up whom; she was open and friendly, but she looked right through you somehow, making you feel exposed, as if all your bones were showing.

Eileen began to ask Swarna Devi what kind of work was done by the panchayat now that there was a mandated one-third reservation for women. Many of their projects involved concrete. The panchayat, under her leadership, had taken the state and federally disbursed funds and overseen the construction of public toilets for several villages.<sup>379</sup> They had constructed *Angawaris*, small primary schools at the village level that were taught by local teachers. They had plans to build small bridges and paths that would link the main road with the two largest villages in the area. There was a murmur of assent when Swarna Devi said that roads and footpaths were the greatest need and that there was not enough money from the block to pay for them. She was also eager to have a new community center for the *mahila mandals* (women's groups); again, there was not enough money to accomplish her goal.

The women on the panchayat had undertaken, or planned to undertake, other projects that did not involve concrete. They were instrumental in encouraging all the girls in the villages to attend the primary schools, a recent—and to my mind revolutionary—reversal of the long and insidious trend of forcing girls to work at home instead of going to school.

I exchanged a glance of recognition with my twelve-year-old daughter who sat across the room from me. Just the week before, we had visited a girls' *ashram* in the mountains of Himachal, and she had seen what school could be like without books, without paper, without pencils, without desks, without heat. Now she was hearing that the very act of going to school—with or without the accoutrements of learning that were familiar to her as a privileged child of the West—was a right that had to be struggled for by women who probably did not them-

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379. Interview with Swarna Devi, Pradhan, Kaloond Panchayat, in Jiya, Himachal Pradesh (June 19, 1999) (on file with authors). The subsequent statements describing the panchayat's work are also based on this interview. We have not cited each sentence in order to preserve the integrity of the narrative form.



selves know how to read.

Eileen was curious about the panchayat's judicial function. The old caste panchayats had not been used as a form of local government that sought to develop and oversee public projects as Swarna Devi described; rather, they were used to settle disputes. Through her interviews of other *pradhans*, Eileen had the impression that few of the panchayats had actually heard any cases, but this proved not to be true of the Kaloond panchayat. Swarna Devi reported that the Kaloond panchayat had settled a number of disputes among villagers, mostly regarding hotly-contested property lines. The panchayat had also intervened in some family feuds, such as an argument between a husband and a wife about the husband's drinking. Divorce was unheard of, and while there was some domestic violence, the panchayat did not seem to concern itself with the issue of spousal abuse.

More often, the family feuds involved the women of the household: a fracture between a mother-in-law and a daughter-in-law, or between a sister-in-law and a daughter-in-law. These were the fault lines of disruption in an extended family, inevitable weaknesses in a substratum of human relations that bound women together by marriage and found them living under one roof and cooking in one kitchen, surviving in a complex hierarchy based on the privileges of age and status within the family.

In both roles—that of community development and dispute resolution—I was impressed by the practicality and good common sense of these women, who had recently been elected to the Kaloond panchayat. There was no waste of time with flashy proposals. They immediately took the money and tackled manageable projects to enhance the infrastructure: improved sanitation, schools, community buildings, bridges, footpaths, and roads. There was consensus about the value of education and a vocal, unified front encouraging all the girls to go to school. As people in the village began to trust the newly constituted panchayat, a wide range of property disputes and family matters were brought to the tribunal for resolution. And while it was not something that we thought to count—to render truthful by empirical verification—my intuition tells me that the women of the Kaloond panchayat brought their practicality and good common sense to bear upon the resolution of those disputes.

After spending an hour with Swarna Devi, I was tremendously impressed by her leadership qualities. This was a smart and powerful woman who had the confidence and respect of everyone in the room. If she listened to you and your mother-in-law complain about the allocation of labor in your joint household, and if she decided that both of you had to bend a little so that both of you would not break, bend you both would. Swarna Devi had that rare gift that cannot be granted by statutory mandate: moral authority. But the one-third reservation of women on the panchayats had given her political authority as well. This struck me as a very good thing and probably not something that would have happened without the coercive power of federal legislation. I don't know how the members of the two houses of Parliament in New Delhi knew that Swarna Devi was

out there in the remote hills of Himachal Pradesh, ready and able to serve. But they had put their faith in her and in her community, and from all that I learned about the Kaloond panchayat, I believe that their faith was more than justified.

### B. Meeting Leela—June 6, 1999

#### E. Kaufman

Everyone should have a friend like Rajiv Sharma, particularly when trying to negotiate a foreign culture. I have known Rajiv since 1995, when he was introduced to me as the state's most renowned public interest lawyer. Since then, he, his wife Trisha, and their daughter Mithu have become a part of my family, a part of what makes India's pull so intense. Rajiv knew of my keen interest in learning more about women elected to panchayats, and he had heard about Leela Vati Sharma, a *pradhan* (chairperson) living just outside of Shimla. As is so often true in India, the journey was as memorable as the destination. Rajiv and I drove to Shogi, a town a few kilometers from Shimla, and then traveled down, down into the valley to Leela's village. Shimla, the capital of Himachal Pradesh, is perched on a pine-covered ridge in the foothills of the Himalayas, at an altitude of close to 7000 feet. Scattered throughout these foothills are thousands of winding roads and paths, many inaccessible to vehicles, leading to incredibly pastoral villages filled with orchards bearing the fruit for which Himachal is famous.

We began our journey by car, following a road of switchbacks so sharp that the car often needed to make three-point turns in order to maneuver around the bend. As we descended, the road, which started out paved, became dirt and then little more than ruts. The cab driver, worried that he would not have enough gas for the return trip, but probably equally fearful that he would lose an axle, suggested that we walk the rest of the way. In sharp contrast to the noise of Shimla, which alternates between blaring horns, Sikh morning prayers, and raucous wedding music, our walk to Shogi village took us along paths that were absolutely still except for the cacophony of chirping birds. We were surrounded by trees literally dripping with plums, and we each ate half a dozen. Somewhere along the way, Rajiv dug up the largest radish I had ever seen, and we ate that too.

We were greeted at Leela's home by a white, furry dog, who promptly performed tricks for us, and by Leela's mother, sister, and nieces. The home was a one-story stone, cement, and wood structure, with breathtaking views of the mountains and valley. We settled ourselves in a small, plain, clean room and, of course, were immediately offered tea and sweets and were asked repeatedly to stay for a full meal. (Every trip to India reminds me that generosity is among the most relative of words.)

Leela is the *pradhan* of the Thari Gram Panchayat in Shogi Village, in Mashobra block and Shimla district. This panchayat covers a population of 1644. Shogi village is almost 100% Brahmin, with only one Scheduled Caste family. However, there are nineteen villages that comprise the Thari Gram

Panchayat, and the other villages contain a variety of castes.<sup>380</sup> The chief problem facing this area is unemployment, with the rate hovering between 75% and 80%.

Leela is thirty-eight, has completed the fourteenth standard in school, is a member of the Congress Party, and is unmarried. Since I had met remarkably few adult unmarried Indian women, I asked Leela whether her marital status was accepted by her family. Leela explained that she had little interest in getting married and that, slowly, her family was adjusting. After she finished school, Leela did some service in the block development office and had a small shop in Shogi selling ready-made garments, but her interest was always in social work. She explained, "I was born that way."

Before her election to the panchayat, Leela was a member of the *mahila mandal*, a women's group registered by the social welfare department. The *mahila mandal* had assisted roughly twenty-five women who pooled money and obtained government loans for cottage industries. Indeed, the main work of the group was to assist women in developing skills such as crafts, stitching, and typing. The *mahila mandal* also built a street, constructed a community hall, and worked on issues of family planning.

Leela was elected to the panchayat in 1996 with the support of her family. Her mother, who sat with us as we spoke, repeatedly nodded in pride at her daughter's achievement. Since the position of *pradhan* is reserved for a woman because there are more women than men in the village, Leela ran against another woman for the position. Leela campaigned by going door-to-door and, although the males in the village did not like the idea of a woman running for panchayat *pradhan*, they eventually came to accept her.

Leela's panchayat consists of seven members plus the *pradhan* and *up-pradhan*. The salary is 500 rupees per month for the *pradhan*, 400 rupees for the *up-pradhan*, and 50 rupees for each member.<sup>381</sup> There are three other women on this panchayat, one (whose name is Sharma, which in Himachal Pradesh signifies a Brahmin) who has completed the tenth grade, and two (members of the Scheduled Castes) who are illiterate. The three male members (also Sharmas) have all completed the tenth grade. When asked about the dynamics among castes on the panchayat, Leela's explanation was troubling. Although she said that all members "get along well" and everyone sits together in meetings and shares the drinking water, the untouchables are not supposed to enter the kitchen and cannot touch the utensils.

Leela's panchayat meets once or twice a month. At the very beginning,

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380. Interview with Leela Vati Sharma, Pradhan, Thari Gram Panchayat, in Himachal Pradesh (June 6, 1999) (on file with authors). Subsequent statements in this narrative are also based on this interview. We have not cited each sentence in order to preserve the integrity of the narrative form.

381. Based on the current exchange rate, 500 rupees is a little more than \$10.00, 400 rupees is approximately \$8.00, and 50 rupees is a little over \$1.00. See <http://www.xrates.com/d/INR/table.html> (last visited Feb. 24, 2004).

one husband showed up, but Leela immediately told him that he could not speak for his wife. The women are fully active and speak their mind. The panchayat's accomplishments under Leela's leadership include ensuring that all girls attend school (when Leela took office, only ten to fifteen girls were going to school); opening two more primary schools with fifty children in each; working with migratory workers regarding family planning; completing the construction of a road; repairing four ponds for potable water; and creating a day care center. The day care center serves nineteen or twenty children per day, between the ages of infancy and six years. The children are at the center from 10:00 a.m. to 1:00 p.m. and benefit from a nutritional diet and some teaching. The center also provides a nutritional diet for pregnant women. The panchayat's family planning effort, which promotes limiting families to two children, has met with no resistance. The contraception of choice is sterilization, meaning that women are sterilized because their husbands fear that an operation will interfere with their ability to work.<sup>382</sup> (Every woman I have interviewed concurred—women get sterilized, and men virtually never undergo the operation.) Future panchayat projects include creating more link roads, building two more primary schools, expanding the day care centers, and building one veterinary hospital.

The only judicial functions the panchayat has been serving relate to boundary disputes and domestic violence. The members sit in panels of three or five. In domestic violence cases, the panel attempts to persuade the husband to stop the violence and imposes fines of 500 rupees on the husband. Leela reported that the panchayat has had no problem enforcing its decrees. There is no divorce.

Leela believes that without the reservations, women would not be elected to the panchayats.<sup>383</sup> Without women on the panchayats, men would not pay attention to the issues important to many women, such as day care centers, family planning, and the importance of girls attending school. Leela believes that the status of women in the villages is improving dramatically. She attributes this success to a number of developments: the fact that girls are going to school, the fact that families are having fewer children, the fact that women are proving

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382. Sushima Sharma, the *pradhan* of Shakrah, with a population of 1531, considered her work with regard to family planning as one of her major achievements. Interview with Sushima Sharma, Pradhan, Shakrah Panchayat, in Himachal Pradesh (June 6, 1995) (on file with authors). She reported that families were having no more than three children. *Id.*

Similarly, Prabha Devi, the *pradhan* of Ghanahatti, with a population of 1260, listed family planning as a major accomplishment. Interview with Prabha Devi, Pradhan, Ghanahatti Panchayat, in Himachal Pradesh (on file with authors). She said its success was a product of the power of persuasion. *Id.* Both women agreed that without reservations, they would not have been elected. *Id.*; Interview with Sushima Sharma, *supra*. They also both expressed the opinion that reservations should be increased to 50%. Interview with Prabha Devi, *supra* note 382; Interview with Sushima Sharma, *supra*.

383. Despite her enthusiasm for reservations for women, Leela does not favor reservation of seats for the Scheduled Castes, although she readily admits that members of the Scheduled Castes would not be elected in the absence of the reservations. Interview with Leela Vati Sharma, *supra* note 380.

themselves in positions of power and are consequently treated with a newfound respect, and the fact that there are no dowry demands made in her village. Leela hopes to become a member of Parliament to further improve the status of women.

I try to visit Leela whenever I return to Shimla. She is no longer the *pradhan* of the panchayat—her five-year term expired—but she remains involved in community development activities. The last time I visited we took a long walk together, renewing our friendship and communicating well, which was more a function of her improving English than my broken Hindi. She encouraged me to return and spend the summer with her, guaranteeing that after just a few weeks, she would have me speaking Hindi fluently. One of these days . . .

### **C. Postscript—Speaking at the Women’s Empowerment Day Conference, April 24, 2002**

L. Harmon

April in India. I thought it would be cooler, but already the sun was beating down on the streets of Delhi, bleaching out the horizon to a milky, dusty brown. Eileen and I had arrived from the States in mid-morning, but even then, it was too hot to go out. Weary from the trip, we sought refuge from the heat inside the air-conditioned mausoleum that passed for our hotel, a graceless behemoth of concrete, marble, and glass. In the cool, dead silence of our room, we slept a dreamless sleep and, upon waking, ventured out into the dark.

In the night, Delhi was more than tolerable—it was inviting. While it wasn’t cool, there was a gentle breeze, and the air was redolent with honeysuckle that seemed to be in bloom everywhere, cascading over garden walls and hugging the sides of the road. Cabs lined up under the portico of the hotel, and a duet of solemn, turbaned men in full colonial regalia stood ready to call one of them, but we said we wanted to walk. At least we thought we did, until we got to the end of the driveway and were surrounded by a bevy of auto rickshaws that were hovering outside the hotel compound, just beyond a large sign that read: “No Three-Wheeled Vehicles After This Point.”

A three-wheeled vehicle was just what we wanted, and so we rode through the dark streets of Delhi, our driver dodging cars and bicycles, weaving in and out, entering roundabouts with no diminution of speed whatsoever, and then moving out again, following the flow of traffic with a confidence that life would continue, regardless of collision—a confidence engendered, I suspected, by a metaphysics I did not embrace. The distraction of imminent death took my mind off the conference, off my speech, off the dread that always accompanies my participation in any public forum.

And it wasn’t just any public forum. We had come to the other side of the planet to speak at a conference in New Delhi of women representatives from panchayats all over rural India. The conference, sponsored by the Institute of Social Sciences, was aptly named the Women’s Political Empowerment Day

Celebrations, in honor of mandatory one-third reservations for women on panchayats. We had first heard about the conference several years ago from George Mathew, the executive director of the Institute, who had come to speak at our law school. Our immediate response was: "We want to go!"

George was kind enough to issue us an invitation, and after much wheeling and begging, our dean allowed us to reschedule classes in the middle of the semester and make the journey. George had assigned us our topics: Eileen was to talk about the constitutional schemes of India and the United States, a comparison of how they hinder and help promote the interests of women, and I was to talk about women in local government in the United States, a subject to which I had never given much thought.

When academics are invited to make public speeches, the subject matter is usually related to their area of expertise. But sometimes there can be a wild randomness about subject matter, depending on the particular concatenation of events that gave rise to the invitation to speak. Once, on two weeks notice, I pinch-hit for a stricken colleague in Hungary to discuss the federal sentencing guidelines, hardly my domain. So this wasn't as bad, I thought. I had already been researching women in local government in India, so when I was asked to talk about women in local government in the United States, I shrugged my shoulders and said, "Sure, why not?" Sometimes it is what academics do: talk about subjects to which they have never given much thought.

Women in local government in the United States turned out to be a lean and mean subject to research. I found quite a lot of material on women in federal and state government, and the statistics were depressing. Despite increased involvement by women in the political arena, women were still less likely than men to hold elected office in the United States. In 2000, on the national level, women only constituted 13% of the United States Congress, and at the state level, women made up only 22% of state legislators. At the city level, women served as mayors in only 19% of the 100 largest cities. I found one study that found that only 76% of those surveyed would support a woman for president. This struck me as an incredibly discouraging statistic. It meant that I was working and raising three daughters in a society in which many believe that women are just not capable enough to run the country, the state, the town—let alone the village.

There frankly was not that much information about women in local government. I did learn that in towns and municipalities, women in this country were heavily overrepresented in public welfare jobs, those having to do with housing, health, and education. These jobs were deemed to be women's work in local government because women have traditionally been the ones to worry about the health and education of their families. Men were heavily overrepresented in financial positions. Men also dominated government jobs having to do with streets, highways, sewage, and waste control, mostly because these require education in fields typically dominated by men, such as engineering, biology, and physical sciences. Men also dominated in fire and police functions because

these are paramilitary organizations and bastions of male dominance. There were women in police and fire departments in the United States, but they were still the exception to the rule and were almost never found in the upper echelon of the organization. So I did not have a very encouraging report to make to the women in local government in India about their counterparts in this country.

The conference took place over two days in a convention center in New Delhi. About 300 women attended, all from panchayats throughout India, as well as a delegation from a panchayat in Bangladesh. The array of colors in the audience was dazzling: saffron and red silk saris from Rajasthan; *kurta* pajamas from up north and the Punjab of every color imaginable; delicate pastels of the stiff, embroidered suits from the Lucknow region; and clothes on the women from down south that I had never seen before and could never begin to describe. Eileen had dressed in her white organdy state-occasion *kurta* pajama, but I had just moved and could not locate my Indian clothes, so I ended up wearing black pants and a brown knit top, suitable perhaps for a conference in the West. I felt like a large, mangy black crow amongst flocks of vibrant tropical birds.

And the women all ran in flocks, sticking close to the members of their delegation as they moved in and out of the conference hall. Many had never been out of their villages before, and I could only speculate that they found Delhi as overwhelming as I did. There was an air of great excitement and a lot of talking. I was very pleased by how much talking there was and how animated the women were when they spoke. I had witnessed this before many times in Himachal, both with the men and the women: talking was a physical activity that involved not only the voice, but many other parts of the body. The hands often had as much to say as the words being articulated, and the head not only punctuated every sentence uttered, but participated actively in response to what was being said, nodding in a swooping L-shaped gesture of assent.

And their eyes—Indians are much more ready to give access to their inner feelings through their eyes than those of us in the West. We learn to mask emotion, to cast our eyes down if there is a risk of revelation. Indians cannot or will not do that. They are an expressive people, and their faces have integrity and a sometimes disarming honesty. Joy registers on those faces, and pain, and if I ever doubt in India which is being expressed, I have learned not to listen to their words, but to watch their eyes. Like us, they know how to hide behind words, but they almost never hide behind their eyes.

After the keynote speaker, a white male from the West—an upper-level member of the Canadian ambassadorial elite—the members of the conference broke down into small workshops for the women from panchayats all over India to come together and talk to one another about their experiences, their problems, their concerns, and their ideas for the future. We attended one of the workshops, and the Institute provided us with the necessary translator, at least for the Hindi speakers. The break-out session we attended was electrifying. One at a time, the women from the panchayats, many of them *pradhans* (chairpersons), told of their experiences getting elected, attempting to build roads and wells and School

Houses, and trying to deal with a district-level bureaucracy that seemed simultaneously benignly baroque and calculated to make them fail.

The hottest issue was disbursement of funds. The money that was supposed to flow down from the state to the district level for allocation to village panchayats was frequently stuck in an invisible man-made dam at a level somewhere above the panchayats. The women reported this phenomenon from many different areas of the country, and all of them were hopping mad.

One woman from the south argued, what good was it to give women one-third of the seats if you robbed the panchayat of the money it needed to do its work? What kind of empowerment is that, one woman asked of the group, when all that happens in the panchayat is talk, talk, talk? If they want us to do the work we were elected to do, she continued, they have to give us the rupees to hire the bricklayers and the well-diggers, to pay for the new community toilets and water system, to make some of these projects actually happen.

The other women were all nodding in consensus, and many of them were visibly angry. A few suggested that the failure to disburse funds to the panchayats was due to resentment about the reservations of seats for women and for the Scheduled Tribes and Castes. Another woman from central India speculated that there was corruption, and that the allocated money was flowing into someone's pocket, perhaps the pockets of several people, at unknown higher levels, but not into the coffers of the panchayat. The substance of their remarks was altogether discouraging, and if anyone had sat in on the group session, she would have come away thinking that the reservations on panchayats for women and for the Scheduled Castes and Tribes had been a noble idea, at least on paper, but that in practice greed, racism, and sexism were prevailing.

But the women had come together to talk about their common problems, not to brag about their successes, and I knew from our research and from the research of others that the successes of the panchayats were manifold. Throughout India, roads and sanitary facilities had been built, schools had been staffed and filled with books, water systems had been established and purified—and Indian women had had input in these decisions that had such an impact on community development and village life.

What the complaints at the conference revealed was not a failure, but a recognition that the new panchayats were imperfect institutions, and that they struggled to find their way in a country where corruption was endemic in public life and where caste and gender discrimination has had a firm stronghold for probably thousands of years. None of this was going to be wiped away by the aspirations of a constitutional amendment or by any sweeping reforms by the federal government, designed to put Gandhi's rather idealistic views about the empowerment of villages, lower castes, and women into effect. But the village panchayats, now one-third occupied by Indian women, represented more than just a noble idea, regardless of the impediments they now faced—they represented a real step forward for the rural people of India and a real step upward for the women of India.



In the afternoon we delivered our speeches, although I am not sure what the women of the rural panchayats understood. Probably less than 15% of the audience spoke any English. We had sent copies of our speeches to the Institute in advance for translation into Hindi, and there was an able woman who stood at the podium and translated our words into Hindi throughout the presentations. However, only another 20% understood the interpreter's Hindi. The rest of the audience was fractured linguistically, as is true of India itself, speaking a wide variety of languages such as Bengali, Punjabi, and Gujarati from the north; and Tamil, Malayalam, and Kannada from the south.

So the two women from the West said what they had to say, Eileen about comparative constitutional schemes and I about the sorry statistics on American women in local government. Our audience of rural panchayat women kept smiling and nodding their heads at us, manifesting more curiosity about why we were there, I suspect, than about the substance of our speeches. They watched our performance with a combination of fascination, a mysterious enthusiasm surely fueled by something other than agreement, and perhaps a painful politeness—painful because we both wondered if we were communicating anything at all.

Our frustration was due to more than the patent linguistic hurdles. It struck us both as odd that two women from the West were up at the podium, assuming positions of authority they had not earned, hogging the floor in a room of almost 400 people, speaking in a language most people in the room did not understand, comparing their Indian institutions to our own—as if anyone really cared about how things were done in the United States. Perhaps I am underestimating the intellectual curiosity of the rural women of India. Maybe they were interested in the failed Equal Rights Amendment to the United States Constitution, or in the fact that few American women headed up police departments in major urban areas in the year 2000. It's true that some people afterwards expressed interest in our talks and requested copies of our speeches, but not one was a rural Indian woman who served on a panchayat. They were either fellow academics from the Institute, policy makers, or employees of nongovernmental organizations—the panchayat studiers, the panchayat promoters, the panchayat groupies, but not any members of the panchayats themselves.

At the end of my talk, I added a bit extemporaneously. I expressed doubts about whether anything we had just said was of interest to them, or indeed whether anything two law teachers from the United States said could be of any interest to them. But I wanted to let them know how impressed we were not only with the idea of the panchayats and mandatory reservations for women, but also with how things were working out in India—in short, how impressed we were with them. In our earlier research, and at this conference in celebration of women's empowerment, we met such strong, competent women. They were so impassioned about their work on the panchayats and so determined to get the job done. They made astute observations about the problems with the current panchayat system and offered good, practical solutions about how to solve them. I could tell they were attending to business.

What struck me the most, I told them, was how much American women might have to learn from them. Due to the lobbying efforts of educated, urban Indian women and some enlightened, educated Indian men, the idea of a mandatory reservation of one-third women on the rural panchayats was implemented. This had given women at the grassroots level an opportunity to make a tremendous contribution to local governance. Mandatory reservations had created a public arena for rural women to enter—an arena that had not existed before, and one that I simply could not imagine being created in the United States.

To myself, I glumly thought: this Indian experiment to empower women was a noble idea that would never be implemented in the United States. It was simply too much power to yield to a class of people in whom no one had much faith—a class of people that men needed to keep powerless. I looked around the room at the women of the Indian panchayats and thought about their counterparts in the United States: tough, practical, rural and small-town women who were struggling to keep their children fed, clothed, and educated, and still make a contribution to the family farm or business. If Gandhi had ever visited the heartland of this country, he would have observed the same thing: here was a society that would be enriched by creating an opportunity for these women to participate in the public arena. His insights about India were proving to be true. To borrow a metaphor from the language so few of them spoke, the hard-working, competent women of rural India were rising to the occasion. I did not think their counterparts in the United States would be given such an opportunity. There are too many men who have too much invested in keeping them “where they belong.”

After the conference we returned to our hotel, this time in an air-conditioned taxi. We were tired, we were hot, our clothes were drenched, and our faces were weary from a full day of public speaking and display. We showered, we rested, and we ate. It was late and time to go to bed, when Eileen had an idea: “Let’s go out again and ride through the streets of old Delhi in an auto rickshaw. Then maybe we’ll walk around.”

I nodded in assent, and we left the hotel, with its shimmering walls of marble and polished brass and its blast of frigid air from some fictional tundra, and went out into the Indian night. The streets were full of life as people shopped, delivered goods, or just walked around and socialized—all the things that the unrelenting sun had rendered impossible during the day. Again, the night air was sweet with the smell of honeysuckle. We paid our auto rickshaw driver, tipping him generously in a gesture of noblesse oblige, and entered the narrow, winding streets of Old Delhi, teeming with commercial activity and punctuated with calls to buy this or that.

As we wound our way through the marketplace, we saw women working hard behind the counters and at the fruit stalls—solemn, focused, determined, unsmiling. They were silent and uncommunicative, these women on the streets of Old Delhi; we shared no language in common, and they did not engage our gaze. I knew there must be other times and certainly other places, perhaps within their homes, where the faces of those women too would come alive,

where they would talk with their hands and with their eyes, where they would have much to say. But that animation and energy were confined to the privacy of the family.

I kept looking up and down the streets for the confident, outspoken women we had seen at the conference, with their almost strident voices, their feet planted firmly on the ground, their words of common sense, their glorious anger. But the women from the panchayats were not there, not in the streets of Old Delhi. It suddenly struck me as quite remarkable that the world knew about their existence at all.

It was hot, and I was tired. I stopped looking for them, the women from the panchayats, and joined Eileen in a search for the perfect mango. I stopped thinking. India, with all of her sounds and smells and colors and sights of beauty and distress, had put pressure on me. I yielded to her powerful sway.