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# SOUTH ASIAN DIVORCE AND DISPUTES INVOLVING CHILDREN OF SOUTH ASIAN ORIGIN

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**SOUTH ASIAN DIVORCE**  
**AND**  
**DISPUTES INVOLVING CHILDREN OF SOUTH ASIAN ORIGIN**

by

**WILLIAM HAY**

A thesis submitted to the University of Plymouth for the degree of

**DOCTOR OF PHILOSOPHY**

Department of Sociology  
Faculty of Human Sciences

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**AUTHOR'S DECLARATION**

At no time during the registration for the degree of Doctor of Philosophy has the author been registered for any other University Award.

Signed.....*Will Hay*.....  
Date.....*21 June 2000*.....

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**William Hay**

**South Asian Divorce**

**and**

**Disputes Involving Children of South Asian Origin**

**ABSTRACT**

This thesis is concerned with two discrete but related themes that are of considerable socio-legal significance: South Asian divorce and disputes involving South Asian children. Both themes are explored empirically by means of a qualitative research study conducted in an urban and industrial area of Britain with a high South Asian population.

The thesis thus seeks to provide much needed information concerning what are currently two poorly understood social problems. The material is presented in three main sections. The first section provides the wider context to the study including a discussion of the changing face of South Asian social relations and the norms and traditions by which they are governed, together with a description of the values, principles and practices of those charged with the responsibility of dealing with disputes over the arrangements for children. The second section focuses upon the approach taken to the research and presents the empirical findings of the study. This section uses as its basis a series of semi-structured interviews that allow different perspectives on the twin themes to be compared and contrasted. The third and final section draws together the key conclusions of the study and offers an analytical and normative framework with which to understand the material generated.

The thesis places a high premium on the historical, institutional and normative dimensions of each of the themes and uses a combination of sociological and legal insights to provide a rounded picture of the nature and range of the problems studied. In so doing, it generates a range of questions that are of crucial relevance for members of South Asian communities and those engaged in research and teaching in the area of race and ethnicity. In addition, the thesis has some important conceptual, moral and practical implications for those practitioners who are involved in the dispute resolution process.

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## **PREFACE**

This thesis has two separate but related themes, representing both a general and specific investigation of two social problems affecting South Asian family relations. My broad focus is on the causes and effects of divorce on the South Asian population of Britain. My second, more specific, concern is with disputes over the arrangements for children of South Asian origin which arise during or following divorce proceedings. Both topics are examined empirically by means of a qualitative research study conducted in a large urban and industrial conurbation with a high South Asian population.

## **ORIGINS OF THE STUDY**

The genesis of the study can be traced back to research conducted by Adrian James and myself during 1987-1989 into court welfare work in six probation areas (see James and Hay 1993). The six areas had been selected to represent a cross section of probation areas in terms of: size (of service, of area, of population); geographical location; and, above all, specific approaches to the resolution of disputes over children. Two of the six areas were large, sprawling conurbations with a significant South Asian population. In speaking to welfare officers from these two areas, it quickly became apparent that there was a considerable array of practical, conceptual and moral problems facing court welfare officers when preparing reports on South Asian families, which were over and above those difficulties inherent in the court welfare task (James *et al.* 1992).

Whilst it was clear that this was an area of court welfare practice that warranted further investigation, three factors hindered such an enquiry at that time. First, we were concerned, primarily, with exploring a fairly broad set of issues involved in the organisation, management, principles and practice of court welfare work. Without in any way seeking to

lessen the considerable importance of work with South Asian families, this was not fundamental to this task. Second, the project sought to compare and contrast the court welfare practice of different probation areas. The fact that four of the six research areas did not have a significant South Asian presence severely restricted the scope to make meaningful comparisons. Third and most importantly of all, the numerous issues raised by welfare officers regarding their work with South Asian families were clearly multiple, varied and complex. It was impossible to do justice to the issues raised within the original remit. A meaningful and fully informed analysis of disputes involving South Asian children and the divorce process, more generally, required not only a separate study but also a different kind of research agenda and approach. This thesis represents the fruits of this endeavour.

## **AIMS**

There is a wealth of literature on the social relations of South Asian families. Within this body of work, particular attention has been paid to subjects as disparate as: migration (Ballard and Ballard 1977); gender (Afshar 1989; Dhanjal 1976; Drury 1991); arranged marriages (Ballard 1978); the dowry system (Werbner 1990); the Diaspora experience (Gouldbourne 1991; Parekh 1994); culture, ethnicity and class (Bachu 1991; Dahya 1974; Robinson 1988); religious identity (Knott and Khoker 1993); mobility (Robinson 1991); caste (Barot 1974; Cox 1948); business (Baker 1982; Jones 1982); and intergenerational issues (Anwar 1986; Brah 1978; Ellis 1991; Thompson 1974). Much of this literature addresses two interconnected and overlapping themes. The first seeks to cast light on what we might broadly term the internal processes of South Asian social relations: the normative basis upon which South Asian society rests including questions of family and kinship, religion and caste and systems of obligation and reciprocity. Such studies are often

concerned with what Khan (1979) has identified as the opposing and paradoxical forces of 'support' and 'stress' which seem to characterise so much of South Asian family life: the former tending to cohesion, stability and continuity, the latter leading to disruption, change and disorder. The second, equally broad, concern has focused on the ways in which South Asian relations mesh with the wider society. Attention, here, has been paid to such issues as the religious, social and cultural dynamics of South Asian communities, together with the ways in which people of South Asian origin have adapted to life in Britain. In particular observers have sought to trace and explore the changes and developments that have occurred in the lives of South Asians since the first wave of migration in the 1950s. Among the themes addressed within this body of work can be found studies on the demographic changes that have occurred in recent years, the socio-economic position that people of South Asian origin currently have reached as well as the ways in which South Asians have responded to, in Ballard's (1994: viii) words, 'the pervasive tendency to racism which is so deeply institutionalised in British society'.

Taken together, this work has considerably improved our knowledge and understanding of the complexity and nuances of South Asian social relations and identities and the socio-economic place that South Asians have come to occupy in contemporary Britain. We thus have a fairly detailed picture of the key factors that support and sustain South Asian family life as well as those which serve to divide family members and to drive wedges between them. It is perhaps surprising, therefore, that there is a dearth of information on those factors and social processes which are associated with South Asian divorce. Put simply, South Asian divorce is as yet unexplored, still less explained in anything but a rudimentary way. My first aim is thus to shed much needed light on the contributory factors and processes by which we can begin to account for South Asian divorce.

This lack of information is paralleled within the socio-legal discourse on the causation of disputes involving children of South Asian origin, still less on how such disputes should be approached or the manner in which they might be best resolved. Here again, therefore, there is a pressing need to fill several 'information gaps'. My second aim is thus to contribute to an understanding of the values, principles and practices of those charged with the responsibility of dealing with disputes over the arrangements for children, namely court welfare officers and judges as they relate to their work with South Asian families. In this regard, my research interest is centred on how key actors *make sense* of engaging with South Asian families and to do so within the context of rapidly changing ideas about divorce and the resolution of disputes over children.

The boundaries of the study do not fall neatly into a discrete academic discipline. Rather the analytic insights that are employed are derived from a variety of socio-legal sources. In this way, I seek to weave together various historical, demographic, sociological and legal threads within the context of continuity and social change. Much of the thesis is concerned with a particular form of socio-legal practice. However, whilst the normative dimensions contained in the thesis may have practical applicability, my interest is primarily theoretical and analytical. My intention, within this frame of reference, is not to prescribe what actions should be taken but rather to describe, explain and subject to critical analysis the interacting characteristics and processes that are to be found in the dispute resolution discourse. Whilst the thesis has an empirical focus, my purpose is thus heuristic as opposed to being policy-oriented. This is not to say, however, that the findings will not be of importance in meeting the needs and requirements of policy-makers and practitioners in what are clearly two pressing social problems.

## POINTS OF DEPARTURE

There is a wide-ranging debate among social theorists on the questions of neutrality and objectivity within the research process. Few agreed conclusions have emerged from the vigorous discussions that have taken place. For some, research by its very nature asks the researcher to take sides (see, for example, Becker 1967; Green 1993). This is of course a contentious point of view. What is less contentious is that *all* research is, to a greater or lesser extent, influenced both directly and indirectly by ideological and theoretical assumptions of one kind and another. It follows from this that whilst the idea is seductive, research is rarely, if ever, a neutral, value-free activity. The topics chosen, the questions asked, the methods and terminology used, the tone and tenor of the way in which the study is written up, what is omitted and what is included, and the subsequent dissemination of the results of the study all call for acts of personal judgement and reflect political interests, values and ideological assumptions. Remaining neutral is particularly difficult when the object of the study is, like this one, an examination of the traditions and cultures of a people other than one's own.

That these are all important and sensitive issues is scarcely in question and I return to them in more detail in Chapter 5. Here I wish, briefly, to draw attention to some of the key theoretical, moral and practical dilemmas that this study poses. Setting these out in this way is important for two main reasons. First I consider it to be of intrinsic importance to outline my own value orientation and theoretical starting points. The second reason is more strategic insofar as it provides me with, as Layder has put it, 'a means of giving focus to data collection and analysis' (1998: 66).

## Nomenclature

One of these dilemmas relates to the terminology that is to be used. A glance at the literature on the peoples who originate from the Indian subcontinent reveals that different views are held on whether the term 'South Asian' or 'Asian' should take priority. My preference is for the term 'South Asian' rather than 'Asian' on two main grounds. First, South Asian is a more geographically precise term. Second, for a range of important reasons, there is a need to differentiate Indians, Pakistanis and Bangladeshis from peoples from other regions of Asia.

Many issues concerning nomenclature and categorisation raised by this study relate to matters that are of general interest to social science and are applicable to the study of 'race relations' in particular. That the use of terms is both an important and sensitive issue is not in question. In any piece of research into South Asian affairs, questions need to be asked as to whether the categories that writers use reflect the diversity and heterogeneity of the South Asian population in Britain. This is far from being an easy or straightforward task. For as Peach (1996) has noted, whereas someone's birthplace is unambiguous, people's ethnic and racial identity has a less tangible, more mercurial quality. Within this context, the key concerns are likely to be: whether writings affirm South Asian identity; whether they capture the varying degree of subjugation, subordination and racism that South Asians share with other minority ethnic groups and whether the terms used are congruent with the way that the South Asian population wish to classify themselves. All of these questions, particularly those which relate to self-chosen identities (identities perceived and defined from *within* rather than from *without*) have led to widespread debate, with no clear-cut resolution to the problems posed (see, for example, Modood 1990; Mason 1990).

Observers of South Asian social relations are, as a result, divided. Some studies take the countries of origin as the key determinate, speaking of the experience of Indians (Robinson 1988), Pakistanis (Anwar 1979) and Bangladeshis (Asghar 1996). Others prefer to categorise South Asians according to their religion and thus, whilst not wishing to deny or ignore differentiation and diversity within specific religions, speak of the collective experiences of Hindus (Burghart 1987), Sikhs (Ballard 1994; Bachu 1991) or Muslims (Nielsen 1991). Yet others use categorisations based on the country or homeland region or the place of residence in the UK (Thompson 1974). Yet others still merge and permute various categories. Hence Lyon (1973) speaks of Sikhs and Gujaratis, Nye (1993) of Hindus in Edinburgh and Warriar (1994) of Hindu Gujarati Prajapati. To complicate matters still further, some writers have subdivided various categories along gender lines. Afshar (1994), for instance, has turned her attention to the lot of Muslim women in South Yorkshire.

How, then, to proceed? As Lyon (1973) has noted, people of South Asian origin clearly have a distinctive culture in so far as they interact in socially distinct ways and, despite their heterogeneity, they identify themselves with a common set of beliefs and values that constrain and direct their social practices. My use of the term 'South Asian' reflects this sense of distinctiveness without losing sight of the heterogeneity to which Lyon and others have referred. Some of the problems of classification and categorisation have, in part, been resolved by changes to the ways in which people from ethnic minorities are categorised. The 1991 Census conducted by Office of Population Censuses and Surveys (OPCS) asked people, for the first time, to place themselves within an ethnic category. The categories used by the OPCS for people of South Asian origin are Indian, Pakistani and Bangladeshi. It is these terms that, in the main, I use throughout. The phrase 'in the main' is, however,

not without importance. In the course of this study a large proportion of the South Asians and the court welfare officers and judges to whom I spoke referred to someone's religious affiliation as the key defining category rather than the person's country of origin, or were content to field questions which asked for a Hindu, Sikh or Muslim perspective on the questions posed. These terms are also thus used throughout the text.

### **Similarities and Differences**

A word also needs to be said about points of similarity and dissimilarity that exist not only between South Asian groups but also between the South Asian population of Britain, other ethnic minorities, and the white population of the UK. The reasons for divorce are, of course, manifold and will vary both in nature and intensity from family to family. From what we know about divorce in general, some of the precipitating reasons are likely to be common features in *all* families irrespective of ethnic origin, religious affiliation, political persuasion or socio-economic status. At the same time, without running ahead of the argument too much, there would seem to be good reasons for anticipating that the underlying reasons for South Asian divorce are unique to the South Asian population. In the same way, a claim can be pressed that the South Asian experience of the dispute resolution process may also be roughly similar to other classes of people. The process involved, for example, is invariably complex, comprising a series of inter-linked stages, actions and procedures which people in dispute over their children have to navigate. In short, without pre-empting the empirical findings, it seems safe to assume, on the basis of our existing knowledge of the structure and nature of South Asian familial relations that their experiences of both sets of processes will differ in a variety of important respects from that of other groups.

For these reasons, the text moves continually between two spheres of reference, speaking for the most part in the plural voice to capture the shared experiences of the South Asian populace and in the singular for when comments on specific South Asian groups is considered necessary.

### **Theoretical Concerns**

In light of my comments made at the outset of this section it is perhaps appropriate, at this point, to provide a brief outline of the theoretical premises which inform and underpin the approach that I have taken to the issues in question. The following premises, in particular, have a special relevance and bearing.

In the first instance, many factors involved in both themes, it might reasonably be assumed, are the outcome of rational decision-making processes. That is, the two topics are the result of individual choices taken from an array of alternative courses of action. Whilst this is the case, I take as my starting point the premise that there can be no simple division between ‘individual’ choices leading to divorce or disputes over children among the South Asian population and those factors that have their basis in the ‘social’ sphere. To focus only on individual reasons for divorce or a dispute over children runs the risk of obscuring the importance of a broad range of historical, political and socio-economic influences. Such factors have, to draw on Durkheim (1964), an external constraining force on individuals caught up in both sets of processes. A fully-fledged and well-directed account of each of the twin themes thus needs to take account of the structural factors, which, to varying degrees, shape individual experiences. This, in turn, requires an examination of *both* the complex interaction of individual experiences of divorce and disputes *and* the social environment within which each of these phenomena occurs.

One of my prime theoretical objectives is to establish the relationship between the macro and micro dimensions of the South Asian social world and how these two spheres interact. In these terms, I seek to offer an interpretative, 'transdisciplinary' (Cotterrell 1998) account aimed at providing an understanding of the meaning that individuals attach to South Asian divorce and disputes over children, whilst at the same time deal adequately with the systemic situations in which these takes place.

A second theoretical premise is that no discussion of our subject matter can be complete unless it is informed by, and grounded in, a knowledge of South Asian culture, particularly the *normative frameworks* and core values which govern South Asian society. The argument here is that the quest for intelligibility is dependent upon an awareness of the 'ordinary life-world' (Bauman 1992) of South Asians living and working in late twentieth century Britain. In short, I take explanatory and normative frameworks to be of equal importance with each being much the poorer without the other. The search for understanding of our subject matter, in this regard, touches as much on substantive anthropological concerns covering such areas as traditions, religion, kinship, social and cultural norms, law, morality and symbolism, as it does on mainstream socio-legal matters.

South Asian divorce and disputes over children are best conceptualised as processes rather than single, self-defining events. Each process with an initial decision – whether to separate in the case of divorce or whether to apply to the court for a particular order in the case of a dispute over arrangements for the children. With regard to divorce, the decision to leave one's husband or wife culminates, in one sense, with the *decree nisi*, with several stages in between. There is, however, a way in which the divorce process is never brought to a close insofar as the repercussions of South Asian divorce can stretch far into the future. This is self-evidently true when the divorcing couple have children. Neither the

parental rights, duties and obligations that parents have in relation to their children, nor children's rights to remain in contact with the parent who no longer lives in the same house as them, are severed at the point when the court pronounces the *decree nisi*. In recognition of this, a third theoretical premise is that South Asian divorce needs to be seen in terms of a chain of events rather than a single event; it has antecedents as well as future consequences. Seen in these terms, both themes need to be conceptualised not only as the outcome of a series of inter-linked historical processes and determinants, but also as phenomena that are in a continual state of flux and transition.

Clearly any analysis of attitudinal changes in relation to South Asian divorce needs to keep the wider issues in view, insofar as the broader context provides the backdrop that gives rise to tensions within South Asian family relations. For this reason, much of the contextual material provided as a prelude to the empirical data has been couched in historical terms, seeking to demonstrate, the importance of social change to South Asian divorce. The history of South Asian divorce allows us to chart not only the changes in the number of divorces but also changes in the perspectives on South Asian social relations.

At the centre of this thesis, then, is a concern to establish the knowledge that those who participated in this research possess about South Asian divorce and disputes over South Asian children and to present this in ways which can provide a complete picture as possible of the subject matter. Such knowledge is highly situated and contextually variable. As I shall go on to demonstrate, South Asian social relations are multiple and heterogeneous. There simply is no single typical set of South Asian social relations or identities that can be described and analysed: rather, the lives of South Asians differ enormously across a wide range of dimensions. What is more, the foundations upon which South Asian social relations rest are continually shifting.

This is not to deny that some degree of epistemic grounding is unnecessary. On the contrary, questions of what it is possible to know about the twin themes of the study and how best to acquire knowledge of the issues surrounding South Asian divorce and disputes are central to this study. Importantly, and in line with my general theoretical orientation, the study requires the integration of the 'internal' subjective meanings of those who participated in this research with their 'external' appreciation of the larger-scale processes affecting South Asian divorce. In this gender and race are important factors, although as McClennan *et al.* (1995) note, they are only single strands among many others. For as Anderson (1996) - who might easily have had the South Asian population in mind - has said, people do not experience class, gender and race as static or fixed entities but rather as multiple processes which are embedded in social contexts and encounters which shift and change over time. South Asian men and women, as we have seen in the two opening chapters act differently not just as a result of biological, cognitive and emotional differences but also for ideological and cultural reasons. In reality, as Epstein (1997) has argued, it is hard to separate gender and race from other forms of differentiation. This, in turn, means that a number of variables, factors and aspects need to be taken into account, raising probing questions about the status of each facet and the ways in which they are connected. Within this context, I thus seek to capture the complexities of the twin themes by providing the space for a *series of understandings* regarding each topic.

Of course, whilst the two themes are connected, they are also distinctive and separate from one another. The range of questions that are posed, the theoretical inferences and the empirical generalisations that I shall seek to draw from the answers that are given will thus also differ accordingly. Both themes are analysed using what Layder (1998: 95) has referred to as 'abstract general theory' to throw light on the empirical findings of the study.

Different kinds and levels of theory are, however, used at different points in the thesis depending upon their intended purpose and the kinds of empirical data examined.

## **THE STRUCTURE OF THE THESIS**

The thesis is divided into three thematic parts. The first section consists of four 'contextual' chapters which, when taken together, provide the building blocks for presenting the empirical data and the critical analysis of the two themes. As noted above, one of the central arguments of this thesis is that we cannot begin to understand the twin themes of this study without some prior knowledge of the historical, social and moral context within which questions relating to divorce and disputes involving South Asian families are raised. Chapter 1 thus begins with an account of the historical, political and socio-economic background within which South Asian attitudes and beliefs about divorce and the rearing of children need to be located. The second half of this chapter seeks to provide the social and cultural context of the two themes, drawing attention to the traditions, value-systems, ideas and institutional forms which are embedded in South Asian family life.

Chapter 2, which deals with contemporary issues, is also in two main parts. The first section presents a statistical and demographic breakdown of the family profile of those people of South Asian origin currently living in Britain. I then turn my attention to the twin themes of continuity and change. South Asians currently living in the UK have inherited a legacy of norms, rules and social practices that are of considerable relevance to both themes and which point to various paths that need to be followed. At the same time, time does not stand still and attitudes and beliefs have a way of changing. Chapter 2 provides an overview of the main changes that have affected the South Asian family.

Chapter 3 focuses upon the legal framework within which disputes involving South Asian children take place. This chapter seeks to establish the ways in which South Asian traditions and customs and the institutional aspects of the English law relate to one another. Questions about the basis of judgments involving South Asian families form a central part of this thesis. Accordingly, the chapter sets out the basic principles upon which the courts shall decide issues relating to South Asian children. The chapter then focuses on some of the sociological, political and moral dimensions which are integral to an understanding of how disputes involving South Asian children may be approached and resolved.

Chapter 4 examines the practice paradigms that court welfare officers adopt in their work with South Asian families, drawing attention to the theoretical frameworks, values, functions and skills which inform and underpin their work. The chapter in these terms extends the discussion of the legal remedies that are available to courts. Most pointedly, the chapter serves as a prelude to the empirical analysis of disputes involving South Asian children in Chapter 7.

The second section, which consists of three chapters, provides the empirical findings of the research. Chapter 5 presents the methodological approach adopted, providing details of the nature of the enquiry and its governing themes. As has been noted already, the core of this study lies in understanding South Asian attitudes to social life and how such attitudes might contribute to divorce. The chapter thus sets out to explain some of the decisions made in terms of the methodological issues that were raised during the study in pursuit of this goal.

Chapters 6 and 7 report the empirical findings of the study. Chapter 6 presents the viewpoints of South Asians and court welfare officers and judges on various aspects of South Asian divorce, and illustrates, *inter alia*, some of the causes and effects of South Asian divorce both for the families concerned and for the wider South Asian community. The chapter, in particular, seeks to establish the reasons and motives for South Asian divorce.

Chapter 7 considers, in the first instance, court welfare officers' and judges' responses to cases involving South Asian families. Court welfare work with South Asian families is a particular form of social action and practice. For the vast majority of court welfare officers and judges it is about intervening in the lives of those from a different culture and religion in order, *inter alia*, to bring about change in some way. The chapter seeks to provide insights into the ways in which court welfare officers and judges approach this task. In particular the chapter examines the knowledge, values and skills needed to work effectively with people of South Asian origin, seeking to relate these to the legal rules and the institutional framework within which court welfare officers have to operate. In addition, Chapter 6 seeks to provide evidence of how court welfare officers and judges interpret and reinterpret the nature of South Asian history, their religious and cultural heritage and the mechanisms by which South Asians situate themselves in their social world.

The third and final section comprising three chapters, seeks to draw together the main arguments and theoretical insights that have emerged from the study as a whole. This study began, in many ways, as 'a fact-finding mission on an area about which there is very little prior information' (Layder 1998: 127). As noted above, the 'social facts' surrounding South Asian divorce are presented in Chapter 6. At the heart of Chapter 8 is an extended

analysis of the reasons given for the breakdown of South Asian marriages. In particular, Chapter 8 offers an analytic framework with which to capture something of the shape and force of South Asian divorce within the context of rapid social change.

In the penultimate chapter, an attempt is made to draw together the different strands associated with disputes involving South Asian children. The chapter returns to some of the common themes that emerged in Chapter 7 and points to issues that need further exploration. In so doing, the discursive account developed seeks to locate the empirical findings concerning disputes over South Asian children both within prevailing and unfolding attitudes to the resolution of disputes. Whereas Chapter 8 is largely concerned with explanation, Chapter 9 addresses a range of normative questions raised initially in Chapters 3 and 4 and by the empirical data presented in Chapter 7. The thesis concludes with an overview of both themes and examines the broader significance and context of the material analysed.

## **THE SCOPE OF THE THESIS**

Research is an organic and pragmatic process, shaped as much by unforeseen circumstances as it is by a series of well-thought out plans and manoeuvres. It is also sometimes difficult to identify when one phase begins and another ends. Equally, it is sometimes difficult to identify specific influences. What is much more apparent is that researchers do not enter with a 'blank slate' upon which to write. Many of the theoretical ideas contained in what follows were formed well before the fieldwork began, the product of certain understandings and assumptions about the South Asian social world. Other ways of making sense of the empirical data arose out of the examination and revaluation of these very same pre-theoretical assumptions. Yet others owe their origins to various readings and conversations held long after the fieldwork was completed. What follows is thus an

attempt to present something that is not just of historical interest, but is also of contemporary and ongoing theoretical importance.

In this, the study needs to be assessed according to the composite criteria provided by Hammersley (1990) including: the degree to which substantive and formal theory are produced; the novelty of the claims made; the consistency of the claims with empirical observations; the amount of information provided; and perhaps most importantly of all the extent to which the material presented is credible to readers and to those people who participated in the study.

Above all, the study provides a rare opportunity for people of South Asian origin, court welfare officers and judges to give voice to what is increasingly a deep and weighty social theme. Seen in this light, the thesis allows us to use substantial forms of evidence to meet questions that are at the outset tentative and speculative. In these terms, the findings are of considerable importance and have a validity of their own. However, it will be apparent, from all that has been said, that I strive in this thesis to do more than report on a discrete piece of empirical research, describing what was done, by what means, and what was found. Rather, I seek to place the ethnographic work undertaken on a sound but original theoretical footing. This involves bringing together the historical, institutional and normative aspects of South Asian divorce into a composite and coherent whole. Second, I seek an empirically grounded understanding of the theoretical, moral and practical issues that are raised by disputes involving South Asian children.

In both cases I seek to pose questions and put forward subjects for deliberation rather than resolving a series of problems associated with South Asian divorce and disputes over the children of South Asian marriages or giving definitive answers to the problems raised.

Equally both themes are studied, not as if they are fixed or static issues but as dynamic social forces in motion. The thesis, in these terms, offers something more than a new map with which to travel well-worn and well-charted territory. More ambitiously, it seeks to forge a new route altogether, using a fresh set of signposts and milestones to traverse what is clearly a difficult and complex terrain.

## **PART I**

### **THE WIDER CONTEXT**

## **CHAPTER ONE**

### **LEGACIES**

The twin subjects at the heart of this study - South Asian divorce and disputes over children - are both modern day preoccupations. In later chapters the present situation and the future implications of both themes are identified and analysed in detail. However, in identifying and looking anew at the social problems that each of these themes raises it is necessary, in the first instance, to place both subjects in their wider social and historical contexts. This preliminary chapter looks back over the last forty years or so at the South Asian presence in Britain tracing, in broad outline, what I consider to be the central determinants in bringing South Asian divorce and arguments over arrangements for children of South Asian parents into being.

This chapter is divided into three sections. The first section provides a brief overview of the main strands of the South Asian settlement process. The second section examines the social, religious and cultural influences that combine to inform, influence and condition South Asian attitudes to marriage, kinship networks and family life. In the third and final section, I turn my attention to a more detailed description of the basis of South Asian marriage and highlight some of the distinctive features of South Asian divorce.

### **THE SETTLEMENT PROCESS**

There has been a South Asian presence in Britain for the last two hundred years. Migration from South Asia only began in earnest, however, in the 1950s, with the arrival of people from India and Pakistan. The initial influx of migrants from these two countries arose largely out of the synchronisation of the post-war expansionist quest for labour and the availability of cheap travel (Robinson 1996). Encouraged by the British recruitment drive

for labour, Indians and Pakistanis were drawn to conurbations with an expanding industrial infrastructure, especially the heavy industry of the West Midlands and the textile trades in Lancashire. Despite assurances that South Asian migrants should not be thought of as 'second-class citizens', the positions that Indians, Pakistanis and Bangladeshis took up in the labour market were, in the main, regarded as menial, unattractive or unremunerative (Adeney 1971).

Whilst, as I shall go on to explain, all South Asian migrants shared much in common, the pre-and post-migration experience of each of the four main groups varied considerably. The timing of arrivals, for example, differed between the groups. The Indian and Pakistani populations arrived mainly between 1965 and 1974, whereas the number of people migrating from Bangladesh peaked in the period 1980 to 1984 (Peach 1996). The arrival in the United Kingdom of South Asians from East Africa, particularly from Uganda as a result of repressive post-independence policies within Uganda which forced them to leave, dates from the 1960s. People of South Asian heritage who originate from East Africa shared a number of common features with fellow migrants from India, Pakistan and Bangladesh. East African South Asians were, for example, like their fellow South Asian migrants, part of an established community prior to their arrival to Britain. They were thus able to build up effective and powerful community ties in much the same way as Indian, Pakistani and Bangladeshi communities. Importantly, East African South Asians brought with them many of the cultural traditions and social mores of their Pakistani and Indian counterparts in terms of family structure, food and dress.

Such similarities, however, extend only so far. A number of features and characteristics can be identified which differentiated them from other South Asian migrant groups. Their pattern of migration was, for instance, markedly different from their fellow migrants from

India, Pakistan and Bangladesh. As Bachu (1984) notes, East African South Asians have, as it were, migrated twice: once from India to East Africa during the early twentieth century as indentured labour to build the Kenyan-Ugandan railways, and then to Britain. Importantly, Bachu points out, East African South Asians were also people who, despite their absence from India for over 70 years, brought with them the values and traditions they migrated with in the early part of the twentieth century. Another marked difference is that unlike the Indian and Pakistani populations, those who migrated from East Africa were mainly well qualified public and private sector workers with high levels of technical skill and business acumen. Yet another major difference, as I have already noted, is that the South Asian Diaspora from East Africa was largely the result of the expulsion of South Asians by authoritarian political means rather than the product of a voluntary process. Finally South Asian migrants from East Africa were mostly members of the Sikh religion whereas the majority of Indians were Hindus and most Pakistanis and Bangladeshis were adherents of Islam. East African South Asians formed a demographically more stable and complete population than other South Asian migrants. Importantly, they also had less 'restricted aspirations, a built in drive to social and economic mobility, and a more limited desire to retain community association' (Robinson 1986: 177).

With the exception of Ugandan and Kenyan South Asians, most migrants came from a few villages within a small number of states: the Punjab and Gujerat in India; the Sylhet district of Bangladesh; and Mirpur and that part of the Punjab belonging to Pakistan. Migration from these states came, initially, in two waves. The first phase consisted of indentured migrants and landless peasants from Utter Pradesh, Bihar, Madras and Andhra, and the second, merchant and land-owning castes from the Punjab and Gujerat in India and from Mirpur in West Pakistan (Jayawardena 1973). It has been estimated that 95 per cent of

migrants in the 1950s and early 1960s were from a rural agricultural background (Dahya 1973). Members of what might be termed the South Asian middle class were thus very much in the minority. According to Jayawardena (1973), the two groups were driven by different motivations and diverse aspirations. White collar workers and others who, when combined together, made up the rich to middle classes, he asserts, were propelled by a realistic and calculated aim of seeking to better what were tolerably satisfactory economic and social conditions, whilst the indentured emigrants were escaping from poverty and repressive conditions.

The difficulties that South Asian migrants faced and the painful adjustments that they needed to make have been well documented (Ballard 1982; Khan 1979). The inability of many South Asians to speak English, compounded their difficulties across a wide range of areas including finding accommodation, employment and contending with the complexities of the welfare benefits system. Such problems can scarcely be overstated. In the early years of settlement, all of the main groups sought to relieve the more severe stresses and strains by helping fellow family members and villagers to find employment and accommodation. An intricate system of sponsorship involving 'chains of migrants' from particular villages was thus quickly and effectively established. When a person arrived in Britain he or she would thus join relatives, friends or fellow-ex-villagers.

Whilst problems associated with the settlement process affected both sexes it is worth noting that the initial stages of migration were particularly difficult for South Asian women. The problems were particularly acute for women who came from rural areas, women who frequently had little or no experience of formal education and who were often illiterate in their own language. The breakdown in communication brought about by language difficulties, Bhatti (1976) has argued, severely restricted their social activities and

had a serious effect on social relations and their relationships with their children. Indeed, so much was this the case that they increasingly experienced their position as being, in Bhatti's words, 'that of strangers in their own homes' (1976: 115). As Bhatti has poignantly pointed out, South Asian men did not always wish this to be remedied. Bhatti provides us with two related reasons for this reticence. First that learning English involved their wives being taught in mixed groups and second, learning English had to take place in the evening. In both cases it would have meant transgressing norms, even though it was acknowledged that such a course of action would have greatly improved inter-cultural and inter-community understanding and social relations.

Before leaving this point it is important to distinguish between the experiences of women both within and between the three main South Asian groups. It is possible that Sikh women, especially those from East Africa, were less prone to the adverse effects of this segregation than their Muslim and Hindu counterparts. Many East African South Asian women who came to Britain were better educated than their counterparts from India, being well versed in Sikh history and literature (Dhanjal 1976). According to Dhanjal, this factor, combined with the equality and freedom that are accorded women within the Sikh religion has meant that Sikh women have traditionally 'been bolder and more outgoing than other Indian women' (1976: 109).

What is more certain is that South Asian migrants encountered widespread views of themselves not only as 'alien' and 'inferior' to their white counterparts but also in competition with them for jobs, housing and other resources. What is also inescapable is both the degree of negligence of the social consequences of migration that ensued and the failure of successive governments to tackle the range of problems that South Asian and other migrants faced (Foot 1965). Chief amongst these were, of course, those problems

related to the increasing racial violence and harassment fuelled amongst other things by the growth of the National Front (Hanna 1974; Fielding 1981).

In this context, there is evidence that chain migration helped to alleviate some of the racial prejudice that early settlers encountered. What is more, notes Dahya (1974), migrants associated freely with each other regardless of regional, caste or sectarian origins. However, whilst the common stresses of migration served to unite and unify the three South Asian communities, social relations both within and between the groups have never been totally cordial. Over time various underlying tensions between the three main groups rose to the surface. Gradually different communities took up residence in particular geographical areas, drawn together by religion, area of origin, caste and kinship networks and other aspects of common interest. Those Pakistanis, for example, who originated from an urban environment began to keep their distance from those who migrated from the rural villages, viewing them as uncouth and uncultivated people (Shaw 1988).

The different ways in which this move from 'fusion' to 'fragmentation' has been analysed is of considerable sociological interest. Two differing accounts of this process have been offered. In their highly influential work on Sparkbrook in Birmingham, Rex and Moore (1967) have argued that the grouping together of the different populations was largely shaped by a range and blend of inter-related socio-economic factors. Such forces, Rex and Moore claim, discriminated against South Asian and other ethnic minority communities in a variety of ways, chief amongst which was the restriction of housing tenure. Dahya (1974), on the other hand, whilst not wishing to deny or lessen the centrality of such *structural* constraints, has argued that migrants actively and consciously charted their courses of action based on cultural and other preferences. In his view, South Asian

migrants segregated themselves because they perceived their needs would be best met by means of mutual aid rather than be dispersed into the wider society.

### **Assimilation and Integration**

Whatever the power, clarity and validity of each of these theoretical positions, they provide a basis upon which to discuss the position of the South Asian population in the surrounding society. In particular, they provide an important avenue to discuss a set of thorny questions around the general issue of integration that have for some time confronted British society. As Parekh (1994) has noted no society can tolerate every practice. As he has intimated, this fact of life raises a number of vexed questions regarding the range of permissible diversity: 'how to accommodate differences without losing social cohesion, how to reconcile the apparently conflicting demands of equality of treatment and recognition of cultural differences, and how to create a spirit of common citizenship among its culturally diverse members' (Parekh 1994:199).

In the 1960s it was commonly assumed that South Asians and other minorities who had arrived in Britain from Commonwealth countries would be *assimilated* into mainstream society (Cheetham 1982). At the heart of this belief rests the notion:

that a nation is a unitary whole, politically and culturally indivisible. Immigrant groups, black or white, should thus be absorbed into the homogenous culture so that they can take an informed and equal part in the creation and maintenance of our society. While a certain respect should be encouraged for other cultures and social traditions, this should be only *a secondary concern*. In no way should it be encouraged to the point where it could possibly undermine the social and ideological basis of the dominant white culture, or threaten the stability of what was seen as the 'host' society (Mullard 1985: 40 emphasis added).

It is a matter of record that assimilationist strategies, whether consciously or unconsciously often resulted in a disturbing lack of sensitivity to the needs and requirements of South Asian communities. Tales abound of Hindu and Muslim children being forced to eat foodstuffs expressly forbidden by their religion, and other displays of impropriety and insensitivity to social and cultural mores (Mullard 1985).

For these and other reasons, the assimilation process came understandably under attack on a number of fronts and quarters. Within the academic discourse, Krausz (1972) raised some interesting questions on how best to conceptualise distinctiveness in terms of the cultural values and practices of South Asian groups. Cross (1972) meanwhile, brought hitherto unanswered questions surrounding pluralism, equality and social justice to the fore. In political terms, what was required, argued Roy Jenkins in his capacity as Home Secretary, was 'not a flattening process of assimilation but equal opportunity accompanied by cultural diversity, in an atmosphere of mutual tolerance' (cited in Reeves 1983: 98). This oft-quoted statement undoubtedly represents something of a watershed in the history of British 'race' relations. It is also, as we shall see in later chapters, of considerable conceptual, political, legal and sociological significance. However, for some observers the cracks in assimilation strategies were not only plain for all to see, but the fissures had begun to widen from the very first. The great majority of migrants effectively ruled out assimilation as a realistic and acceptable strategy as early as the end of the 1950s. South Asians and other migrants:

could not become 'white' men and women, in looks, style, culture, even if they wanted to - and few did. They could not, partly because it is simply not possible for a group or class to shed its cultural identity just by thought; partly because objectively, they stood on very different terrain, had been assigned to a significantly different social and economic universe, from those sectors of the white population who have had to provide the models of assimilation; and partly because the white society to which they would have

had to provide the models of assimilation did not, in any case, want it to happen in practice, whatever their leaders and spokesmen said (Hall *et al* 1978: 350).

Interestingly, Sivanandan (1982) has argued that in the 1960s a greater emphasis was placed on the assimilation of the South Asian population than on their fellow West Indian migrants. West Indian migrants were, according to Sivanandan, considered to be closely linked to the British way of life, wearing the same clothes, sharing the same religion and so on. South Asians, on the other hand:

with their different cultures and customs and language and dress, their extended families and a sense of community, and their peculiar preference to stay with their own kind, were a society apart... they were also a people who were industrious and responsible, anxious to educate themselves, prepared to work hard and move up the social and economic ladder, honest, diligent... They may not be assimilable, but they were certainly made for integration - a parallel society to be accommodated in a pluralist set-up (Sivanandan 1982: 115).

In the light of such conceptual and practical inadequacies, a gradual shift in consciousness and focus occurred. In the course of things, the assimilation approach gave way to the 'pluralist' outlook to which Sivanandan referred. Gradually and incrementally a recognition of difference and a commitment to the preservation of South Asian group cultures, traditions and individual histories evolved. Within this new social order Britain witnessed a proliferation of community advice and welfare centres staffed by South Asians. Two main reasons can be highlighted for this growth. First there was, at a general level, widespread mistrust among South Asian migrants of existing institutions. The second reason was the palpable failure to meet the needs of South Asian communities. The advice that was given in these centres ranged from housing and welfare benefits through to more intimate areas of social life such as marital counselling. As Newall (1975) notes, the

geographical locations of the centres enabled them to operate as self-regulating entities serving close-knit and highly structured communities.

Problems were rarely individualised, with the result that notions of solidarity and kinship were reinforced and perpetuated (Newell 1975). Other supplementary centres also came into being. In Coventry, in 1976, for instance, an African-South Asian Teachers Association was formed. In essence the programme sought *inter alia*: to enable children to communicate with their parents; to give children a clear sense of identity; to assist them to understand and hence participate more fully in their social and cultural environment; and to provide them with the knowledge for them to pass on their culture (Nagra 1982). Crucially, staff in advice centres tended to reinforce traditions, rules and customs which did not necessarily correspond to those held by the host society. Equally important, and of long-standing and on-going significance, is that native languages were spoken. As Rex has put it 'linguistic ties relate to the question of kinship. For internal purposes, for social, neighbourly and ritual purposes', he points out, 'the group's own language serves it well. It is only for the purposes of external relations that English is necessary' (1979: 228).

Like the pattern of migration in general, the initial wave of migration was confined almost entirely to men. South Asian women and children followed later. As Rex and Moore (1967) noted, Pakistani men living in Sparkbrook outnumbered women by twelve to one in 1961. The gradual introduction of women into South Asian communities in Britain effectively signalled the end of the initial stages of migration (Werbner 1981; Shaw 1988). More importantly the migration of women to Britain altered forever the whole basis of the settlement process. It put an end to what Dahya (1973) and Anwar (1979) refer to as the 'myth of return', a general feeling among the South Asian population that they were only

temporary sojourners in an alien land, there only to send money back to their homeland before returning once again to their countries of origin.

The arrival of South Asian women in Britain also had a number of other pronounced effects. In particular, the arrival of South Asian women to British shores reinforced South Asian pride in their value systems and beliefs. In this regard, their arrival provided South Asian migrants with a renewed interest in unity, thereby increasing the trend towards the creation of relatively enclosed communities and bounded networks within which to support and reinforce particular religious and cultural practices (Lyon, 1973).

This is not to say that all of the three groups were equally committed to preserving links with past traditions. Once again it is as important to note differences as it is to acknowledge similarities of experience. As Ballard (1973) has noted, Sikhs of East African origin were, for example, more committed to preserving aspects of their Indian heritage than those Sikhs originating from India themselves. Nor is to suggest, as I shall go on to demonstrate in the next chapter, that South Asian cultural links remained intact or impervious to mainstream British culture. Rather, the point to be grasped is that South Asian groups were able to adjust to the ways of life in Britain and exist as separate entities each with their own defining characteristics and qualities without being submerged into the dominant culture. In this way South Asians managed to maintain and preserve their allegiance to traditional structures and beliefs whilst, at the same time, as Ballard (1973) has put it, taking advantage of the new opportunities that they were offered. In short, as Hedayatullah (1977) has observed, South Asians adapted their customs and habits within the social and political context of co-existence and co-operation.

This necessarily brief and partial historical narrative outlines some of the ways in which South Asians have been integrated into mainstream British society without sacrificing the religious and cultural identities, traditions, values and beliefs which South Asian migrants had brought with them. It is against this background that the dynamics of everyday South Asian social relations are structured and played out. In the remainder of this chapter I want to move from these broader influences to a narrower discussion of the social, religious and cultural factors which play a major part in shaping South Asian attitudes and behaviour and which give meaning to their interpersonal relations and family life. Within this framework, I wish in particular to focus on questions of kinship and the social organisation of South Asian families. This discussion provides the means to reflect on still narrower questions of South Asian marriage and divorce which, though part of a more general whole, self-evidently requires a more detailed and extended discussion.

## **FAMILY AND KINSHIP NETWORKS**

South Asian families are imbued with a number of characteristics, traditions and social influences based on values and norms associated with the care and socialisation of children that are to be found in virtually all families. At the same time, it also appears as we shall see in the following section that South Asian families represent a particular kind of social institution which differentiates them, in a variety of ways, from other families.

### **Family Structures and Roles**

Both here and in their countries of origin, South Asian families spanning two or more generations have traditionally lived together and pooled resources. In the Indian sub-continent this is reflected in the way that village life is conducted and organised across time and space. Sikhs and Hindus, for example, have tended to form localised groups

which are arranged into wider clans (*gotras*) incorporating a number of lineages of the same caste (Ballard 1978). Similar arrangements apply in relation to the social organisation of Muslim families with kinship groups (*biradari*) living in close proximity to one another in discrete geographical areas (Shaw 1988).

Within this framework, South Asian families are structured according to a formal hierarchy with each member taking up sharply ascribed and defined roles determined by age and sex. Girls have traditionally been segregated from contact with males, especially following puberty (Cheetham (1972). As a general rule, South Asian men and women, have, both in the home and the workplace, led separate lives. The most pronounced manifestation of sex role differentiation and socio-economic stratification is to be found in the *purdah* system, the main elements of which, notes Khan (1976) were to be found among all Pakistanis who originated from a rural or orthodox background and which were imported to Britain.

South Asian men and women each have their own hierarchical structures. Among men, authority has traditionally been vested with the eldest male. In this regard, the guiding principles are patrilineal, with descent being traced from father to son. The head of the family has tended to exercise authority over all family members. This authority, derived from tradition, is bestowed on him by virtue of his age and experience and is enshrined in religious beliefs and codes of practice. As boys grow older they move increasingly under the influence of male members of the family. There is a corresponding and clearly identified hierarchy among South Asian women. Once again the nature and form of the stratification is dependent upon age and status; older women, like their male counterparts, have more authority and power than younger women of South Asian origin.

The fact that the repertoire of roles ascribed to South Asian men and women are closely associated with public and private space is an important one. Whereas traditionally South Asian men have conducted much of their social life outside of the home, it has been a long-standing belief that South Asian women should remain within the home.

If the South Asian family specifies the physical boundaries and social boundaries within which permissible behaviour takes place, it also defines the quality and nature of the relationships themselves. In this respect, South Asian women have been brought up to value the behavioural norms and roles ascribed to women generally, namely those of being a devoted wife, mother and homemaker:

The 'ideal' Indian woman is someone who models herself on the Hindu mythical heroine Sita. Sita was the wife of Ram, the Hindu God and hero of the epic Ramayana. By following her 'true' path as a devoted and obedient wife, she has come to epitomise ideal Indian womanhood. She followed her husband throughout his various trials, but always remained chaste, obedient and loyal. This image is still potent today, and has permeated other religious groups in the Asian communities, both here and in the Indian sub-continent. A virtuous woman is one who worships and obeys her husband as a 'God', whilst renouncing her own desires and needs (Southall Black Sisters 1993: 18).

South Asian family and kinship networks thus have deep cultural and religious roots, the main features of which have been learned, and are deeply ingrained in South Asian consciousness. In the words of Yinger (1994: 329), such features furnish South Asians with 'cognitive, aesthetic, and moral standards' which they may well take for granted and 'ready-made answers and responses to the recurring events of life'.

### **Values and Norms**

We can also begin to see more clearly the values that South Asians collectively hold about the sanctity of the family and which they believe are worth striving for and the norms -

what Giddens (1984) has called the *rules of behaviour* - which let South Asians know what is expected of them and which they are asked to share and observe. Central to this is the concept of *izzat* (variously pride, honour, reputation or respectability) and *sharam* (disgrace or shame) both of which are pivotal and all pervasive features of South Asian family relations. *Izzat* is a basic quality which provides the South Asian family with its identity and gives the family continuity and worth (Wilson 1978). Honour, pride and respect in these terms, are to be maintained (and disgrace avoided) at all costs. Honour and shame accrue both to individuals and groups, functioning not only to reinforce the formal hierarchy within the family but also advancing collective goals. Indeed, an individual's *izzat* 'is especially vulnerable as it is considered largely in the context of group membership' (Helweg (1979: 11). To sustain *izzat*, both men and women are expected to conform to ideal norms of behaviour (Ballard 1982). South Asian women are considered the upholders of the honour of the family (Southall Black Sisters 1993) and it is for this reason, among others that they are required to behave modestly at all times, a highly prized virtue in South Asian society.

South Asian values and norms such as *izzat* and *sharam* not only have a 'pre-existence', they are also 'external' to individuals. Importantly there is a binding and universal quality attached to such values, a sense of 'oughtness', as it were. These general observations can be well illustrated with reference to the system of *purdah* already referred to above. As Khan (1976) has explained, *purdah* is to be understood in terms of the religious and customary place it occupies in South Asian society, a tradition practised by their South Asian forefathers and thus to be maintained. It owes its origins to certain normative commitments aimed at ensuring orderly and acceptable relationships between the sexes, namely that women must do all they can to quell the predatory nature of men in order not

to succumb to sexual desire. To this end 'women must at all times be modest in dress, movement, attitude and expression to avoid attracting the opposite sex' (Khan 1976: 100). Its observance, Khan notes, can be illustrative of a perceived religious or social status, or a demonstration of conformity as well as security and pride.

What is also brought into sharp focus is the importance of religion to South Asian family life. The centrality of religion to South Asian society has been noted by a number of writers (Beckerlegge 1991; Hutnik 1985; Knott and Khoker 1993; Modood *et al.* 1994).

As Gifford (1990) has observed, the South Asian philosophy of trusting in God to guide one's life and destiny and the belief that nothing is possible without God, subtly contrasts to the Western emphasis on self-determination. Religion is also central in the self-definition of the majority of South Asian people (Modood *et al.* 1994). Each of the religions, as we have seen, played an integral part in helping the South Asian population to cope with various cultural transitions and the shift from one world to another described above, especially where their sense of identity and psychological security was threatened.

As with all religions there are points of similarity, convergence and divergence between Hinduism, Sikhism and the teachings of Islam. All three religions offer a code of moral and social conduct which permeates all aspects of the everyday life, seeking in this regard to provide both meaning and significance for what to believe and some guidance on how adherents ought to act in particular circumstances. In this sense South Asian religions are as much practical and supportive ways of life as they are systems of belief.

The values and norms which influence South Asian attitudes and beliefs towards the family, parenting, marriage and divorce are steeped in centuries of religious teaching. Maintaining the unity of the family, the sanctity of marriage and a reluctance to divorce

remain core beliefs in all three religions, although such beliefs are enshrined in different ways. Sikhs and Hindus, for example, are forbidden to marry someone of a different faith. Sikhism, Hinduism and Islam all contain both secular and divine constituents drawn, in part, from sacred texts and partly from traditions, customs and social mores. In addition there are other cross-overs. South Asian Muslims 'practice a variety of Islam encrusted with Indian myths, a consequence of centuries-old cross-contact with Hindus' (Iqbal 1977). By the same token, many Hindu religious beliefs and practices have been substantially influenced by contact with Islamic ideas and values (Yinger 1994).

## Caste

I have been concerned thus far with the close links between the religious and cultural influences on South Asian families. Central to our understanding of this relationship is the concept of caste. The origins of the South Asian caste system are lost in the mists of time. What we do know of its origins is that the system first found expression in the classical Hindu scriptures and to the concept of *varna* (see Barot 1974; Cox 1948). The *varna* serves the purpose of enabling people from widely different areas to discern each other's social identity in a national context. Although it bears some resemblance to the British class system, *caste* is not synonymous with class.

The system is closely associated with such significant lifestyle patterns and experiences as education, employment, health, housing and income. Caste also plays a large part in shaping the size of family, deciding the age at which South Asians marry and is an integral factor in determining the suitability of marriage partners. The caste system is, in these terms, a powerful cultural phenomenon, around which much South Asian social action is ordered and maintained. Although widely thought of as being restricted to Hindus, the

influence of caste permeates all South Asian religions and cultures including that of the Islamic social world.

Castes can be broken down into broad categories and ranked hierarchically according to the prestige attached to a group's socio-economic status. Historically, contact between castes has been limited, serving to stratify and divide South Asian society by establishing clear boundaries between one group and another. That said, it is generally accepted that castes, in reality, are more permeable than this suggests, allowing slippage between them. Consequently, considerable ambiguity arises over the relative status of particular castes. Perhaps for this reason castes may frequently be conceived of, in more general terms, as being either 'high' or 'low'.

The caste system is not without its critics both within and between members of the three main religious groups. Divergent attitudes are thus discernible. Sikhs, for example, deprecate the caste system mainly on the grounds that it is socially divisive (Dhanjal 1976). The concept of caste is also inconsistent with the teachings of the *Qu'ran*. What is more, notes Afshar (1994), as Muslims, Pakistanis theoretically accept equality for all members of the Islamic community (*ummat*). Muslims, therefore, ought to decry the system, though in practice this has not stopped the organisation of Muslim families into caste groupings (Shaw 1988).

## **MARRIAGE AND DIVORCE**

Marriage is generally accepted as being one of the four rites of passage, taking its place alongside birth, puberty and death. The basis of South Asian marriage rests on the fairly universal belief that marriage brings personal fulfilment, a cohesiveness to social relations and socio-economic security. As in other cultures, marriage forms the basic social unit into

which children of South Asian parents are born and nurtured. Hindus, Sikhs and Muslims all take marriage very seriously, considering it to be a life-long commitment. Indeed, marriage for Hindus was thought not only to be obligatory (Pothen 1989) but also in some strands of Hinduism, thought to be indissoluble even after death.

People of South Asian descent, both in Britain and in their countries of origin tend to marry younger than their white counterparts, although there are variations among the groups. In Britain the mean age at marriage among the Pakistani and Bangladeshi population is 24.3 years for men and 21.9 years for women compared with 25.9 for men and 23.4 years for women among the Indian population, and 27.2 and 24.0 years for white men and women respectively (Berrington 1994). Second-generation South Asians, especially those under 30 and who have been born in Britain are now more likely to remain single compared with their first-generation counterparts (Berrington 1994).

South Asian marriage rituals and ceremonies differ according to factors such as region, caste, socio-economic position and priestly traditions. For Hindus and Sikhs there is no one legally valid way of getting married (Menski 1996). Similarly, the Shariah does not insist on any particular form of contract or on any specific religious ceremony (Ibn Ally 1996). The Hindu marriage rituals, notes Menski (1996), serve to dramatise the transfer of the bride from her parental home to that of her husband, expressing a number of important expectations and obligations along the way: the thought of having children, being faithful to one another and providing mutual support in addition to respecting and loving one another.

Many South Asians, as we might expect given the centrality of religion, start from the premise that marriage serves to fulfil God's purpose for mankind (Ahmad 1974; Doi 1984),

a divinely inspired institution and a sacred act. For Hindus, the aims of marriage, as prescribed by the Vedas, are forged by *dharma* (practice of religion), *praja* (progeny) and *rati* (sexual pleasure). For Muslims, the rules of conduct relating to marriage and family responsibilities are rooted in the teachings of Islam as found in the *Qu'ran*.

The purpose of marriage (*Al-Zawaj*) for Muslims, is based on the Qu'ran's teaching that Allah created men and women as company for one another, to love one another, to procreate children and to live in peace and tranquillity with one another. The Qu'ran speaks of husbands and wives being bound together by love and tenderness, finding mutual support, comfort, protection, 'fitting into each other like a garment fits the body'. Some adherents of Islam believe that marriage is compulsory (*wajib*) for a man who has the means to pay the dower (*mahr*) and maintain a wife and children. It is also compulsory for Muslim women to marry if they have no other means of maintaining themselves.

There are complex rules about who may and may not marry (Ballard 1978), linked as we have seen to various religious and cultural imperatives. Whereas the basic spirit of the Qu'ran is towards monogamy, polygamy is allowed. The Qu'ran allows for the intermarriage of Muslims and the Ahl al-Kitab (Jews and Christians) without the precondition of conversion to Islam, although like entering into polygamous relationships, this has never been common practice. Muslims have a clear preference for marriage between cousins, whereas for Hindus and Sikhs this is forbidden. According to Shaw (1988) preference has traditionally been justified on two main grounds. First with reference to the Qu'ran, which permits first cousin marriages as a means of maintaining 'purity of the blood'. Second, in instrumental terms, it is a way of ensuring that property given as a dowry remains within the immediate family.

The extent to which caste is important in influencing choice of marriage partners varies from one group to another and depends on the status of the castes concerned. As noted above, the caste hierarchy is not necessarily pre-determined. Nonetheless, status is accorded to castes based on conceptions of worth. For Shaw (1988) has noted in her study of Pakistanis in Oxford that greater or lesser status was granted to members according to the amount of political and economic power the caste is able to exert. The marriage of two people who are of different castes of equal status may therefore be unproblematic. There are, however, important divides between castes that are never crossed without widespread social condemnation from both the immediate family circle and the wider community.

### **The Dowry**

The dowry (*daaj*) is a central component of all South Asian marriage ceremonies, rituals and rites of passage. The dowry, as Werbner (1990) has demonstrated, is part of the much broader South Asian tradition of gift exchange (*lena-dena*). This system provides financial support within the *biradari* for significant life events such as a marriage or the birth of a child and during times of financial hardship or crisis. The importance of exchanging gifts within South Asian culture, traditions and rituals cannot be overemphasised. The guiding rule of *lena dena* is that each gift should exceed the previous one. Weddings, in particular, are significant occasions for *lena dena* transactions. Importantly, *lena dena* exchanges have tended both to reinforce family connections as well as serve to 'sustain community distinctiveness and to shelter its members from Western influence' (Shaw 1988: 48). The giving of a dowry is a public affair. In Pakistan, notes Shaw (1988), the type, amount and value of gifts given towards the dowry by each family member and guest is announced openly to everyone present and entered into a notebook or ledger specially kept for this

purpose. The main expenditure, which can be considerable, is on jewellery, household utensils, appliances and furnishings.

The dowry system thus has material, pragmatic, ceremonial and ritualistic functions. The system, however, has an ambiguous status. On the one hand, it has the potential to make a significant material contribution to the families concerned. Moreover, as Brah (1978) has pointed out, the dowry system has in the past worked in favour of South Asian women insofar as the system represents both a material and symbolic acknowledgement of the woman's share of the family property. On the other hand, gifts are indicative of a family's honour status, influence and prestige. They are in this sense 'an index of social relations, inseparable from the complex daily exchanges between affines and kinsmen, or between friends and acquaintances' (Werbner 1990: 249). The system thus sets up competition between various members of the family. If gifts are few, or of little value, then this may reflect badly upon the family concerned.

Perhaps most important of all, the dowry system can have immediate and far reaching consequences:

The contents of the dowry are subject to a very critical inspection, particularly by the groom's female kin, and mocking comments about a woman's dowry, and thus implicitly about her father's *izzat*, may be used by them as ammunition against her in the future (Ballard 1978: 189-90).

For these reasons, argues Brah (1978), the dowry system has increasingly taken on an oppressive function.

## Arranged Marriages

Marriage, for all South Asians, should be for men and women who share common outlooks on life and morality. Unmarried young women are the responsibility of the family until they marry, at which point they move into the realm of their husbands' families (Cheetham 1972). The bride and groom traditionally had no say in the choice of their respective partners and at one time were not allowed to meet prior to the wedding. It is customary for the would-be bride's family to take the initiative by commencing enquiries. This is done through an intermediary (*bachola*) who then withdraws from the process once the negotiations are under way (Ballard 1978). One of the guiding principles is to ensure that marriages are arranged as much as possible to ensure the compatibility of partners. Stress is thus placed on similar personal characteristics, qualities and attributes and social backgrounds. Negotiations between the two families concerned can, therefore, be both extensive and prolonged.

Such arrangements need to be seen within the context that marriage is an alliance between families as much as a union between individual men and women (Ballard 1978). Seen in this light, South Asian marriages represent a symbolic statement of loyalty and commitment to the family system and the wider kinship network. South Asian marriages thus have much wider implications for South Asian social life and interpersonal relations than the emphasis that is placed on the attraction, personal happiness and fulfilment of one man and one woman that one finds in the West. One major corollary of the social force of such arrangements is that it is not seen as being appropriate for married couples to establish an independent lifestyle of their own. In these terms, the contractual nature of South Asian marriage very much mirrors the ways in which many marriages were once arranged in Britain (see Gibson 1994; Stone 1977).

## **Conflictual Relations and Divorce**

Thus far a picture has been painted of the pervading stress on mutuality of purpose that one finds within South Asian families and how this commitment gets translated into a series of duties and obligations. Whilst there may indeed be a stronger sense of the rightfulness and desirability of parents staying together in South Asian families than in the British society at large, it is important to note that we should not overestimate either the consensual nature of South Asian social relations, nor the extent to which South Asians feel themselves completely integrated into the prevailing social order. To put this another way, we should not see South Asian social relations as being 'overdetermined'. For as Thompson (1990) points out, individuals are never completely moulded by processes of socialisation. Rather people are always able to maintain at least some distance from the cultural and symbolic forms that are constructed for them and around them.

A space is thus opened up for disagreement and conflict. This state of affairs is openly and explicitly acknowledged within each of the religions. Despite good intentions, relations between partners cannot always remain cordial. Hearts and minds, after all, change over time in a variety of ways and for different reasons. As the general literature on divorce reveals (Burgoyne *et al.* 1987; Freeman 1996; Gibson 1994; Mortlock 1972; among others), marital breakdown is rarely the result of a single factor, but rather the result of the build-up of cluster of irritations, tensions and conflicts. The reasons for divorce may thus be many and varied, ranging from adultery, cruelty and various forms of exploitation to desertion, alcohol or drug abuse, through to the squandering of money on gambling, sexual dissatisfaction and general incompatibility or the inability to adjust to married life. Each of these factors (or some combination of them) and more may also differ between man and woman. More precise reasons for South Asian divorce are among the subjects covered in

Chapters 6 and 8. Here it is sufficient to note that enough has been said to suggest that South Asian divorce may be the result of particular pressures that are above and beyond the reasons for divorce in the white community. Shaw, for example, has noted that cultural stresses, incidents and disputes within marriages:

arise out of the fact that on the one hand there are pressures on the individual to conform to the demands of the family and biradari, while on the other hand an individual may feel pressures to respond to individual needs, sometimes conflicting with the family and its demands (1988: 180).

When such pressure become unbearable, the person may choose the path of divorce, though divorce should not be sought on flimsy or spurious grounds. It is, however, one thing to recognise that such stresses occur and for divorce proceedings to be granted legitimacy but quite another for individuals to take action. As the Southall Black Sisters have poignantly observed:

Most Asian women arrive in this country with great expectations of marriage. They make every attempt to ensure that it is successful...Only in very compelling and exceptional circumstances are they forced to end their marriage, usually as a result of physical assaults, emotional harassment and/or sexual abuse. The decision to leave abusive relationships is an agonising one. Most women will tolerate abuse for as long as possible simply because they are fearful of the consequences of being labelled 'failures' and treated as outcasts within this country and abroad. Whilst feeling shame and humiliation for having failed in marriage is common to all women, regardless of ethnic background, for some Asian women it can be so overwhelming that they risk life and health even by remaining within abusive relationships, unless they are forced out of the home (1993: 29).

All of the South Asian countries have a well-developed system of family law to deal with divorce, against which the British legal system can be compared and assessed. The key pieces of legislation affecting divorce among the Hindu population of India are the Hindu Marriage Act 1955 and the Marriage Law Amendment Act 1976. Issues pertaining to divorce between other non-Muslim groups such as Sikhs, Jains and Buddhists are

subsumed under these Acts. The two Acts contain provisions for the dissolution of marriage on specified grounds. These are:

- (i) adultery;
- (ii) cruelty;
- (iii) desertion for two years;
- (iv) conversion to another religion;
- (v) incurable lunacy or leprosy;
- (vi) venereal disease;
- (vii) renunciation;
- (viii) missing for seven years;
- (ix) no resumption of cohabitation even after the passing of a decree of restitution of conjugal rights, or judicial separation;
- (x) mutual consent.

Importantly, the grounds listed above reflect the heavily *fault-based* approach to divorce insofar as there must be due cause before a marriage involving Hindus and Sikhs can be dissolved, a requirement - as we shall see in Chapter 3 - that British law has now all but abandoned in favour of the concept of irretrievable breakdown. Significantly, notes Menski, a proposal to introduce irretrievable breakdown as a ground for divorce was mooted in India in 1982, but was subsequently withdrawn on the premise that it was thought preferable to rely on liberal interpretations of Hindu cultural traditions than legislate in this way. Especially illuminating here is Menski's view that irretrievable breakdown for many Hindus would render the sacramental concept of marriage 'totally meaningless, with disastrous consequences for society, and women and children in particular' (1996: 21).

Turning now to divorce amongst the Muslim population, the grounds for Muslim divorce are set out in general terms in the Qu'ran. In addition, Muslim jurists have developed indices of failed marriages and specified major situations that may be accepted as grounds for divorce. Islam allows divorce only in exceptional and unavoidable circumstances and only then as a last resort, frequently following an attempt at reconciliation. In words taken from the Qu'ran 'Of all the things which have been permitted, divorce is the most hated by Allah...Marry and do not divorce; undoubtedly the throne of the Beneficent Lord shakes due to divorce things' Doi 1984: 169)

The procedure for Muslims follows the Qu'ranic injunction that if there is a dispute between man and wife, then arbiters, one from each side, should be appointed to resolve it. If the matter cannot be resolved and there is no alternative but for the couple to divorce, then it is incumbent upon them 'to be charitable, kind and just to each other as if the marriage bond were still intact' (Ibn Ally 1996: 227). It might be noted that Hindus and Sikhs share similar commitments and patterns to intervention by mediators, though mediation amongst Hindus owes more to cultural influences than it does to religious duties and obligations.

Two final points can be made very briefly here, both of which connect to the resolution of disputes over children. First, according to Ibn Ally (1996), it is believed that young children of divorced Muslim parents should remain with their mother. It is the father's responsibility, meanwhile, 'to bear the full cost of the children's care and equitably compensate the mother' (Ibn Ally 1996: 237). The second point to note is that South Asian cultures in general and Islam, in particular, discourage, as much as possible, the taking of family disputes to courts of law (Doi 1984).

## SUMMARY

This chapter has provided part of the backcloth to issues surrounding South Asian divorce and disputes over children of South Asian heritage and the socio-legal issues to which they give rise. In setting this scene I have attempted to delineate many of the key themes that weave in and out of the existing literature on the South Asian presence in Britain, presenting this material necessarily in a highly generalised, condensed and edited form.

My main concern has been to capture the essence of the cultural, social and religious norms, values and aspirations that South Asians have imported to Britain and the manner and extent to which this heritage has interacted with the demands of British ways of life. Within this general framework, I have sought to establish some of the main strands and influences which have been instrumental in shaping interpersonal relations within South Asian communities in such a way that will inform the analysis of the dual themes in the chapters that follow.

As we have seen, the social changes that South Asians have experienced have been neither uniform, in the same direction, nor have they occurred at the same pace. The socio-economic shifts discussed in this chapter will thus not have the same consequences for all South Asians. In the next chapter I examine more closely the impact of social change on South Asian family networks.

## CHAPTER TWO

### CONTINUITY, STABILITY AND SOCIAL CHANGE

The preceding chapter has sought to demonstrate how, in no small way, the seeds of South Asian divorce and disputes over children are deeply and firmly rooted in the past. This chapter seeks to connect this historical legacy with present day concerns. Like its predecessor, the chapter acts as a foundation for the empirical exploration of South Asian divorce in Chapter 6 and disputes over children in Chapter 7. In terms of its structure, the chapter begins with a brief demographic profile of the South Asian population in Britain providing statistical information on the current size, shape and structure of South Asian families including the age, sex, marital status of members. I then take up some of the themes identified in the previous chapter, touching particularly upon socio-economic and intergenerational issues. The chapter closes by setting out some of the questions to be examined empirically in subsequent chapters.

### FAMILY PROFILES

Taken together, the *Fourth National Survey of Ethnic Minorities* and the 1991 *Census of Population* provide important information on the social and economic circumstances of people in the Indian, Pakistani and Bangladeshi populations. In particular, these data reveal a number of interesting differences in the age, sex, family structure and marital status of people in these three groups compared with each other, the white population of Britain and other ethnic minority groups. This section provides a basic description of each of these categories. The statistical data presented in the section has been drawn from three sources (Berrington 1994; Modood *et al.* 1997; Owen 1994).

## **Age**

In terms of age, the Indian population is, on the whole, older than people who migrated from Bangladesh and Pakistan, though all three groups are on average younger than the white population. These differences are most marked in relation to South Asian women, with Indian women being, on average, eleven years younger, Pakistani women approximately 19 years younger and Bangladeshi women roughly 22 years younger than their white counterparts. With regard to the ages of children, there are fewer 0-4 year olds than 5-9 year olds in all groups which suggests that there has been a decline in the birth rate of the South Asian population in the late 1980s. The Indian population has fewer children under the age of 15 than the Pakistani and Bangladeshi populations, just less than 30 per cent compared with just over 42 per cent for the Pakistani population and approximately 47 per cent for the Bangladeshi population. The percentage of both pre-school age and school-age children in the Pakistani and Bangladeshi populations is more than double the corresponding percentage for white people, with Indian children occupying an intermediate position.

## **People and Households**

South Asian households are roughly two-thirds larger than white households. Indian households are the smallest of the three groups, containing an average of 3.8 persons, compared with households of 4.8 persons and 5.3 persons respectively for Pakistani and Bangladeshi families. In terms of extended families, the Indian population and those South Asians from East Africa are more likely than the Pakistani and Bangladeshi populations to contain more than one family unit.

In terms of numbers of children, the mean number of dependent children for all South Asian groups is 2.5 compared with 1.8 for the white population. There are, however, differences in the numbers of dependent children between the three South Asian groups. The Indian mean is the lowest with 2.1 children per household, with Pakistani households averaging 3.0 children per household and 3.4 children within Bangladeshi households.

The percentage of the population born in the UK varies according to the South Asian group in question. 42.3 per cent of Indian males and 41.6 per cent of Indian females were born in the UK compared with 50 per cent and 51 per cent for those of Pakistani origin and 35.5 and 37.9 per cent for people of Bangladeshi origin.

### **Marital Status**

Turning now to marital status, it is well known that all three South Asian groups have a higher proportion of family units that consist of a married couple with children than the white population. There are, however, differences between the three groups concerned. Indian men and women aged between 25 and 29, for example, are less likely to be married with children than their Pakistani and Bangladeshi contemporaries. The figure for the Indian population in this regard is 57.7 per cent, for the Pakistani population 63.3 per cent and for the Bangladeshi population 55.2 per cent compared with 33.6 per cent for the white population. There are also substantial differences between the number of family units cared for by lone parents, usually women. Whereas 27 per cent of white family units are headed by women, approximately 15 per cent of South Asian family units are headed by women.

The mean age at marriage is 24.3 years for Bangladeshi and Pakistani men and 21.9 years for Bangladeshi and Pakistani women, compared with the Indian population (25.9 years and 23.4 years respectively) and the white population (27.2 years and 24.0 years

respectively). In the 25-29 age group, 80 per cent of Pakistani and Bangladeshi men are married and 90 per cent of Pakistani and Bangladeshi women, compared with 65 per cent and 80 per cent respectively for the Indian population. The corresponding figure for the white population is 49 per cent and 60 per cent respectively. South Asians are the least likely of the ethnic minority groups to marry white partners. For example, 26.8 per cent of Caribbean men, 25.4 per cent men of African origin, 14 per cent of Chinese men, and 61.4 per cent of Arabian men are married to or cohabit with a white partner, compared with 5.9 per cent, 5.1 per cent and 6.5 per cent for Indian, Pakistani and Bangladeshi men respectively. The corresponding figures for women married to white men are: 16.7 per cent of Caribbean women, 9 per cent of African women, 24.6 of Chinese women, and 24 per cent of Arabian women have white partners, compared with 4.1 per cent, 0.2 per cent and 1.7 per cent of Indian, Pakistani and Bangladeshi women respectively.

Differences can be detected between first and second generation marriages. Second-generation South Asians under the age of 30 are more likely to remain single for longer than did the first-generation of South Asians. These differences are particularly noticeable among Indian and Pakistani women in their early twenties. Whereas 62 per cent of second-generation Indian and Pakistani women were single, only 28 per cent of first-generation Indian women and 18 per cent of first-generation Pakistani women were single.

We have, of course, witnessed a growth in cohabitation in recent years throughout the Western world, whilst at the same time seeing a reduction in the number of marriages. The percentage of white partners who cohabit is much greater than the corresponding South Asian population. This is especially true for Pakistani and Bangladeshi women. The percentage of white men aged between 20 and 29 cohabiting was 11 per cent, compared with 1.3 per cent, 1.6 per cent and 3.6 per cent for Indian, Pakistani and Bangladeshi men

respectively. The corresponding figures for women were 11.4 per cent for white women compared with 1.9 per cent of Indian women. The number of cases of Pakistani and Bangladeshi women living outside of a formal marriage has been recorded as zero. There is some evidence to suggest that second-generation Indian, Pakistani and Bangladeshi men in their late twenties are more likely to live with partners outside of a formal marriage, although the differences are not marked in this direction.

Whilst the census data presented above is of considerable importance and value in placing social change within certain parameters, these data cannot tell us much about other questions such as *why* particular changes have occurred. This requires both a wider and more analytic discussion of the various shifts that have taken place. The remainder of this chapter is devoted to addressing the ways in which South Asian family profiles are changing.

## **SOCIAL AND ECONOMIC CHANGE**

A number of factors influence conformity or nonconformity to particular norms and traditions including socio-economic status. Of particular importance is the position of South Asians in the labour market and the benefits and burdens that accrue from their employment status.

### **Employment**

It has already been noted that most of the migrants to Britain during the initial wave of migration were unskilled or semi-skilled manual labourers in search of economic security and social improvement for themselves and their families. The occupational profile of the South Asian population now looks markedly different. This is particularly true of the

Indian and East African South Asian population in that the proportion of non-manual employment for Indians exceeds that of the indigenous white population.

One of the most striking features of the changes concerns the growth of an Indian 'professional class'. The proportion of Indians entering the fields of medicine and dentistry, for example, has increased dramatically in recent times (Taylor 1993). A similar story is also unfolding in other 'high status' professions such as accountancy, legal services and computing (see Jones 1993). However, the progress made by the Indian population contrasts with the progress made by Pakistanis and Bangladeshis. These two groups compare unfavourably both with their fellow South Asians and with other ethnic minorities in that they are consistently in lower level jobs and suffer higher unemployment rates than both their South Asian counterparts and the white population. Indeed, overall, the proportion of Pakistani and Bangladeshi male employees occupying positions of high status has barely changed since 1983 (Jones 1993).

We have also witnessed significant expansion and consolidation of South Asian business interests across a range of commercial ventures and trades, although once again crucial differences need to be drawn between the three major groups. Two different forms of entrepreneurship among the South Asian population can be distinguished. First, those who manage and control large commercial enterprises and second, those involved mostly in the retail and wholesale trade and other small businesses (Baker 1982; Werbner 1979). In terms of this split, it is of interest to note that Bangladeshis are heavily concentrated in the restaurant trade, whilst Sikhs are involved in a much more diverse range of enterprises.

Again we must single out East African South Asians for special attention. As Bachu (1984) has noted, many people of South Asian origin came to Britain with some degree of

capital. Indeed, faced with uncertainty over their future in East Africa, some South Asians had established accounts in Britain with certain banks and building societies with branches in East Africa before their arrival in Britain. Not only were East African South Asians able to purchase their own homes soon after arrival, unlike other South Asian migrants, they were also able to establish lifestyles and standards of living which bore close resemblance to those which they had left behind. One important corollary of this was that East African South Asians tended to settle more quickly than other migrants.

In short we have witnessed not only the birth of an Indian middle-class but also, to some extent, the creation of an Indian elite. Robinson (1988) has argued that this growth (as far as the Indian population is concerned) has occurred for three main reasons. First, the continuing immigration of skilled Indian personnel. Second, the entry of British educated second generation Indians into the labour market. Third, upward social mobility has occurred from a very low status base.

We have also witnessed changing patterns of employment with regard to South Asian women. In recent times the rate of employment amongst women of South Asian descent has increased, although there is variation between the main groups. Pakistani and Bangladeshi women, for example, have lesser rates of involvement in the labour market than Indian or South Asian women with East African connections (Jones 1993). The rise in employment rates for South Asian women is a reflection of a number of interrelated factors. These include the increasing availability of part-time jobs within South Asian industries and retail outlets, South Asian women wishing to work outside the home and various economic pressures upon South Asian women to contribute directly to the family income in order to maintain links with their country of origin, finance arranged marriages, finance their children through college and so forth. The increase in South Asian women's

employment is part of a general trend towards greater participation of women in the labour market. It is now widely recognised that involvement in the wider world of work provides women with a variety of opportunities denied them in the home. As one writer has put it:

greater employment participation by married women has provided them with more economic freedom and choice, as availability of paid work offers the opportunity to move away from dependency on the husband's earnings, and the means to separate if the marriage fails...In short, new employment patterns present greater freedom and power than ever before for wives to examine the quality and worth of their marriage, and to respond if the relationship is judged intolerable (Gibson1994:124).

Important distinctions need to be drawn between women who make up Britain's white majority and the South Asian female population. The participation in the labour market amongst women in Britain's white majority, notes Warrier (1994), clusters and peaks around the early years before childbearing and after the youngest child becomes self-sufficient. By contrast, according to Warrier (1994) South Asian women enter the labour market at the stage in the family life-cycle when domestic responsibilities and expenses are at their heaviest. Thus, remarks Warrier, many South Asian women are:

caught between two contradictory pressures: the perceived need, on the one hand, for access to more than one income to support a reasonably comfortable life-style; and on the other the pressing logistical problem of fulfilling their obligations both at work and at home, particularly caring for their children (1994: 199).

Whether the changes in employment among South Asian women have resulted in the same level of financial independence and self-confidence that white women have experienced is an open question. So, too, is the question of how the tensions that Warrier has identified affect marital relations. I thus return to these and related questions in subsequent chapters.

It now remains for me to discuss whether the changes in the labour market have affected the caste system and if so in what ways. Has the caste system continued or been widened in

any way? It would appear from the literature that the caste system remains very much in evidence. The degree to which South Asians adhere to the caste system, however, is likely to vary according to factors such as: regional location; the degree of cohesiveness; and the socio-economic status of the particular South Asian group. According to Afshar (1989: 215) 'caste roles remain as important as ever in delineating occupation and status of the immigrant Pakistanis in Britain as they do in Pakistan'. Among the Hindu population of Edinburgh, however, a group comprised largely of people who occupy 'professional' positions, there has been:

no attempt to build up wider 'caste' based alliances across the population, since there are too many differences and the situation is too fragmented... The result is, therefore, that these caste differences tend to be submerged within other more obvious differences, such as linguistic and regional identity. In many respects, the role of caste in Edinburgh is mainly used to determine *marriage and family structure*, rather than wider communal structures (Nye, 1993: 203, emphasis added).

## Education

There are, of course, close connections between the socio-economic position that South Asians have begun to occupy and educational achievement. In general, higher proportions of young people of South Asian origin, especially Indians, are staying on in full-time education after the age of sixteen than their white counterparts, although proportions differ according to the three South Asian groups. There are also gender differences. Until recently access to education among the South Asian population has largely been confined to men. However, this situation is slowly changing, particularly for the Indian population. As Bachu (1991) found in a study of Punjabi Sikh women, there is an increasing emphasis upon educating South Asian women, at least to first degree level, although there are fewer professional women than professional men both in terms of numbers and in terms of the

level of the qualifications that men have achieved. Nonetheless, the education process and changes in the socio-economic status of British-born and British-educated Punjabi women has led to them establishing clearly defined cultural patterns and identities within their families and within South Asian society more generally. In this regard, 'Their direct relationship with the labour market as wage earners has led both to an increase in their powers of consumption according to their own choices, and to an increase in their influence in the domestic domain' (Bachu 1991: 401).

The education process is, in this sense, a catalyst for change, facilitating changes to the cultural values and lifestyles that second generation South Asian women choose to accept or reject. According to Bachu (1991), British Sikh women are actively engaged in the manufacture of their identities, continually transforming and modifying their cultural traditions and practices. Interestingly, the increase in socio-economic power is further enhanced by the Sikh religion, which, she argues, is a liberating ideology affording women equal status with their men folk. All of this, she stresses, is some considerable distance from conventional and stereotypical images of the 'passive' South Asian woman. Crucially it also challenges, in her view, the myth that South Asian cultures are fixed and unchanging, rather than fluid and changing over time.

## **INTERGENERATIONAL ISSUES**

The changes that are reported above affect all dimensions of South Asian family life. Such changes are, however, of particular relevance to 'second generation' South Asians: those born in Britain or who came to Britain at an early age. It is commonplace within the media and, to a certain degree within the academic literature, to assume that different generations of South Asians are in conflict with one another. Whilst it is undeniable that generations do not always see eye to eye on a range of issues we should not simply assume that all

relations between generations are conflictual in their nature. Of course issues of intergenerational conflict are not just limited to South Asians, or indeed to ethnic minorities *per se*. There is no *a priori* reason why the degree of inter-generational conflict should be higher among South Asian families than other ethnic groups. Nor should we presume that white families do not have strong and supportive families of the kind that are said to characterise South Asian families (Brah 1992). Indeed, as Ahmad and Atkin (1996) suggest, this is a rather oversimplified assumption which is not born out either in Britain or in the home countries.

There is a growing literature on the religious and cultural norms and practices that impinge on the lives of the different South Asian generations. There are two related starting points within the literature on second generation South Asians. The first is the notion that those South Asians who have been born and raised in Britain occupy an uneasy and unstable space 'between two cultures' (Watson 1977). That is, that those born in Britain or who have arrived at an early age have a double identity; they are both South Asian and British at one and the same time, thus combining ethnic, cultural and national identities. The second is a perception that new found freedoms among the young are threatening traditional religious and cultural values such as the emphasis on kinship networks, parental authority and the commitment to marriage (Anwar 1986; Moodod *et al.* 1994). Research in this arena has, within this frame of reference, sought to answer the following questions. To what extent are the fears of the older generation of South Asians rooted in reality? How are contradictions between the two cultures managed or resolved? Are South Asian identities being sustained and preserved or are they altering beyond all recognition?

As noted above, research into intergenerational issues often has a set of similar points of departure. Two questions, in particular, are frequently posed: how do different generations

of South Asians make sense of their lives and what strategies do people of South Asian origin employ to overcome the problems that each of the generations face? The other major similarity that unites many studies is the concentration upon binary factors that seem to stand in opposition to one another for the main unit of description and analysis. Chief amongst these are: arranged marriages as opposed to love marriages; religious adherence as opposed to secularism; Western as opposed to South Asian value systems, for example. Whilst the starting points may have much in common, answers to these intricate questions, however, have been offered at a variety of theoretical levels. As I shall go on to demonstrate, some studies point to the existence of conflict between the generations, albeit of varying degrees and levels of intensity. Other studies suggest that the opposite is true and that the conflict between generations to which the literature and media direct our attention is more apparent than real. Yet other studies suggest a synthesis of the two positions or are interested in the degree to which South Asian women are pursuing feminist agendas.

Ellis's (1991) study of the Pakistani and Bangladeshi population in Coventry presents one of the clearest discussions of the nature and degree of conflictual relations that can exist between the generations. With some poignancy, Ellis speaks of many first generation Pakistanis and Bangladeshis thinking of their children as having sacrificed something of the essence of what it means to be a Pakistani or Bangladeshi. Ellis highlights three factors underlying the first generation's cause of disquiet. The first is that the younger generation suffer from the lack of contact with their 'home' culture as visits to Pakistan and Bangladesh become more and more rare as the financial commitments for weddings, burials and money sent home increasingly take preference. Second, Ellis's respondents expressed the view that there was a lack of satisfaction with traditional roles among young

Pakistani and Bangladeshi women and the lack of viable alternatives. Third, that people born in Pakistan and Bangladesh were of the opinion that the 'collective will' to teach children about Qu'ranic values and culture had lessened over the years. The importance of religion in this context cannot be overemphasised. The older generation, Ellis has argued, are influenced by the mosque and community organisations, drawing particularly on the Qu'ran for their sense of well-being and identity to give meaning to their situation in the British context, a strategy which may not hold as much appeal for the younger generation of Pakistani and Bangladeshi Muslims.

Other studies are more equivocal in their findings. Ballard and Ballard's (1977) study of Punjabi Sikhs found that in their experience many young Sikhs found themselves in conflict with their parents' values. Children in particular, they noted, faced some difficult choices. Whilst at home the emphasis was on their loyalty to the family group and respect for authority and to put others before themselves, whereas the school encouraged them to be independently minded and autonomous, taking decisions according to their own personal views and inclinations. For second-generation adolescents, the adoption of British fashions and the lack of interest in attending the temple were also identified as particular sources of strain and tension between the generations.

Whilst many young Sikhs in the 1970s went through their adolescence in a state of rebellion against the norms and values held by their parents and grandparents, the message that Ballard and Ballard convey is that the various differences of opinion should not be seen as a battle between 'traditional' oppressive parents and their freedom-seeking 'anglicised' children. Rather almost all of the second generation, to whom Ballard and Ballard's spoke, adopted a modified version of traditional cultural and religious norms. Moreover, many parents were able to explain their values and beliefs in a meaningful way

to their children. Further still, good proportions of parents were able to maintain flexible relations with them. In this way, Ballard and Ballard conclude, both first and second generation Sikhs were able to preserve a separate and distinct Sikh identity.

There is a body of work that suggests that the fears of the older generation of South Asians are not always born out by experience to any marked degree in the way that Ellis suggests. One such study is Drury's (1991) examination of young Sikh women aged between 16 and 20 years. Drury, too, found that intergenerational conflict existed and that this was clear demonstrable. However, conflictual relations between the generations were often varied and highly situational. Some of her respondents tried to abide by traditions on certain occasions whereas others attempted to comply with social, religious and cultural mores in all situations. Drury also reports gender dimensions with young women resenting the freedom that is accorded to their male counterparts. The young women interviewed wished for more 'choice' and freedom and fewer restrictions with regard to: clothing norms; recreational and social activities; boyfriends and marriage partners and domestic responsibilities.

Against this background, only a small percentage said that they resented participating in various religious and cultural practices unwillingly or under duress. For example, only six per cent of the young people in the sample said that they went to the temple to please their parents. Drury's (1991) research reveals that the majority of young Sikhs were willing to observe the essential articles of the Sikh faith which give Sikhs their distinctive religious identity. Despite long-standing reports of *unease* over traditional marriage customs, over 90 per cent of those interviewed expected to have an arranged marriage. At the same time, only 34 per cent expressed 'positive' attitudes towards arranged marriages with 58 per cent saying that they preferred a 'love marriage' although they would reluctantly agree to an

arranged marriage for two main reasons, both of which are instructive. First because of not wishing to bring dishonour to their parents and second in order to avoid conflictual relations. Only four per cent of young Sikh women interviewed by Drury said that they were intent on a love marriage irrespective of parental wishes even if this meant destroying the relationship with their parents.

Drury (1991) draws two main conclusions. First there is little evidence to suggest a wholesale rejection of cultural and religious norms. The majority of the second generation Sikhs in her sample maintained many aspects of their Sikh culture especially within the boundary constraints set by the Sikh community. Drury's second conclusion is that there is little evidence of overt conflict. Very few members of the second generation were in a state of open hostility with their parents. Drury's central point is that it is necessary to distinguish between various patterns of conformity and non-conformity, some of which are entered into willingly and others unwillingly and which are highly situational in their nature. By definition consensual conformity means that the views of first and second generations are consistent with one another. Most importantly of all, Drury points out, the willingness to conform to traditions and social mores challenges the notion that intergenerational conflict is an inevitable feature in the cultural transmission of values and beliefs from one generation to another.

Other research reports, which address intergenerational issues, are also instructive. Brah's (1978) comparative analysis of intergenerational and inter-ethnic perceptions among South Asian teenagers and parents of predominantly Punjabi origin, for example, has revealed that despite widespread changes since the first wave of immigration, the influence of value systems derived from their country of origin was still very much in evidence. In particular, whilst the younger generation thought of Britain as 'home' they saw themselves as

adopting an Indian or Pakistani identity, a finding consistent with Thompson's (1974) earlier study of young people also originating from the Punjab of school leaving age in Coventry. The younger generation was only slightly familiar with Western courtship rituals. By way of contrast, Brah found that traditional norms against liaison between different castes or religions did not seem to constitute a barrier to the young people interviewed.

What we can take from Kalra's (1980) observations on intergenerational issues is the dangers of over-generalisation. Whilst, she notes, there are a 'minority' of Sikh parents whom she describes as possessing 'Victorian and traditional values' there is also another type of 'ultra-liberal' Sikh parents. According to Kalra, this latter group want 'to follow the western culture blindly without showing an appreciation of old values, giving unlimited freedom to their children without giving thought to the philosophical concepts of freedom, responsibility, discipline and authority (1980: 77).

Meanwhile, Afshar's (1989) study of the life experiences, socio-economic aspirations and opportunities of a dozen Pakistani households, differentiated by class, caste, regional birthplace and political allegiance, has also unearthed a mixture of change and continuation. Afshar found that 'cultural ties' have proved remarkably firm. Such ties have meant that the older generation has been successful in maintaining a degree of familial control despite the relative wealth and growing independence of the younger generation and the influences that they are susceptible to as a result of their contacts with wider British society. Crucially, Afshar concludes that South Asian second generation women have not necessarily fared better than their grandmothers despite better access to educational facilities. In terms of marriage, comments Afshar, 'many mothers born and raised in Pakistan wished to send at least one daughter back to the homeland to secure

close family ties and a home base for the next generation' (1989: 211). However, whilst the younger generation accepted arranged marriages, Afshar remarks on them wishing to move nearby rather than to Pakistan.

Modood *et al.* (1994) also report fairly widespread recognition that much has changed in the nature and form of intergenerational attitudes and behaviour in the last few decades. The first generation, Modood and his colleagues have noted, see the younger generation as being much more independent and ambitious than their own generation. Interestingly, the influence of women is held to be in large part responsible for the changes. Members of each generation commented that a number of traditional social norms are recognised by both generations, although the duties and obligations that each generation have of one another are constrained by a number of factors.

Other studies into the extent to which South Asian values and traditions are being preserved and changed illustrate the lack of homogeneity. Afshar (1994), for example, reports that many young Pakistani women who participated in her study chose an Islamic identity with which to make sense of their world both within the family and outside. Her original hypothesis that the youngest generation would show the greatest resistance to traditional norms and values was not supported. Knott and Khokher (1993) report similar findings in the experience of a group of young Muslim women in Bradford. Knott and Khokher 'intuitively' characterised the young women interviewed in one of four ways: those expressing a positive interest in both religious and ethnic cultural systems; those with little interest in either; those who focused their attention on the religious domain and with little or no interest in ethnic cultural traditions and vice versa.

In this way Knott and Khokher have sought to 'map' the inter-relationship of religious and ethnic issues in the experience of young women. Some of the young women interviewed wholeheartedly embraced features of both realms. Some carried out religious practices on a regular basis, but for reasons of tradition rather than out of a religious commitment. Others articulated a more secular outlook. Of the 19 young women interviewed, five were placed in the religiously oriented/ethnically oriented sector. They were, according to Knott and Khokher (1993), well-versed in and comfortable with traditional ethnic cultural practices. They enjoyed weddings and festivals, family visits and preferred traditional dress. They expressed considerable interest in religious festivals and were dutiful in their fasting for Ramadan. Importantly they said that they would like to grow up like their parents. Three young women were placed in the ethnically oriented but not religiously oriented sector, seeing religion as peripheral to their lives. Seven young women were described as devout but not ethnically oriented in the way that their parents were. All of this group were well-versed either in scripture and associated religious practices, or both. Some of this group identified themselves as Muslim above all else including ethnic or national descriptions. Unsurprisingly, several of them were outspoken in defence of their religion. Three of the young women wore *hijab*. In general this group were critical both of traditional culture and parental attitudes to Islam which they considered nominal. Three young women were considered to be neither ethnically nor religiously oriented. None of the three had been religiously nurtured and all had little knowledge and understanding of the Qu'ran, family fasting and prayer. According to Knott and Khokher, they saw themselves as 'rebellious, and had experimented more than the other Pakistani girls with relationships, nightlife and smoking (1993: 601).

The main conclusion drawn by Knott and Khokher is that the young Pakistani women did not fit neatly into particular types or categories. Whilst conditioned to various degrees by *biradari*, class ethnic and religious background, family size and so on, their lives were not reducible to general descriptions. This was true in two respects. First they could not be categorised in terms of existing descriptive models and approaches (ie 'between two cultures', 'cultural synthesis', 'religious identity strategy' and 'anti-religious feminist strategy'). Nor, secondly did they fit either of the two identity descriptors of 'Muslim' and 'Pakistani'. Such general descriptions, Knott and Kholker argue, mask a number of internal divisions.

## SUMMARY

This chapter has sought to identify the ways in which the social order of South Asian society has, paradoxically, remained both relatively stable and altered with the socio-economic transformations that have taken place in recent years. The overview presented has allowed for a better appreciation of the role and aspirations of the South Asian family in modern Britain and for us to grasp something of what is going on in South Asian social life and the contexts in which South Asian social relations occur.

It seems fairly clear that close attachments to countries of origin, coupled with the importation of traditional attitudes, beliefs and social practices described in Chapter 1, have served to strengthen links with each group's cultural and religious heritage. Just as importantly, for all the turmoil that has taken place, certain religious and cultural concerns have remained powerful forces in preserving the sanctity of South Asian marriage as well as serving to bolster the prestige and indivisibility of the South Asian family. Of particular importance here is the preservation of the arranged marriage system involving the migration of one of the marriage partners (usually the woman) from the Indian

subcontinent. This practice spans the geographical divide, ensures continuity of key South Asian aspirations and maintains traditions to which people still feel an affinity. In this regard, the practice maintains important symbolic and material linkages between Britain and the Indian subcontinent.

At the same time, the nature and form of South Asian social relations have changed, considerably in recent years, though perhaps not so radically as to be beyond recognition. So much then is clear. What is not so apparent is how the different strands presented in this chapter connect to our twin themes. How are the social changes affecting South Asian marital relations and attitudes towards divorce? How are South Asians responding to this new climate? Is it the case that the transformations that are taking place within the South Asian social world will result in more disputes over children post divorce? These unanswered questions are the core concerns of the remainder of the thesis.

## CHAPTER THREE

### THE LEGAL FRAMEWORK

The previous two chapters have focused on the unfolding nature of South Asian family life with particular attention being paid to the cultural traditions, values and norms of South Asian family life as well as those factors which give South Asian familial relations their form and texture. What this preparatory discussion has revealed is that South Asian society continues to place a high degree of importance on marriage, long-term relationships and stability within family structures. Indeed, as we have seen, compared with white marriages it is only rarely that South Asian marriages break down completely and only then after deep and prolonged efforts to repair the rifts in the marriage. Both the rarity and undesirability of the breakdown of South Asian marriages warrant further exploration and explanation. This is the subject matter of Chapter 6. My most pressing task in this chapter, however, is to introduce the specific theme of this study: namely, disputes over arrangements for children of South Asian origin.

The chapter sets out the legal and institutional framework within which such disputes take place, providing an overview of the key pieces of legislation governing disputes over children, current legal developments and some of the changes in thinking which have influenced recent and current practice. More specifically, it offers some sense of the grounds, principles and rules that surround and flow through the provision of civil justice for children. The chapter and the next act as foundation stones upon which to base the empirical data presented in Chapter 7 and as a precursor to an extended discussion of the theoretical inferences that are drawn in Chapters 9 and 10.

## THE ENGLISH AND WELSH LEGAL SYSTEM

When a married couple with children separate or get divorced, questions inevitably arise over the arrangements for the welfare of the children. In particular two related decisions need to be made. First, parents need to decide between them who should have the day to day care and control of the child. The second decision they are required to make, flowing from the first, concerns the arrangements that need to be made in relation to the children seeing the parent who does not have this day to day responsibility. The first question is thus concerned with issues of 'residence'; the second, concerns questions relating to 'contact'. The vast majority of parents reach mutual agreement on both questions. It is easy to make the case that this is only right and proper. Separation and the arrangements over children are, after all, irrespective of the ethnicity of the children concerned, essentially a private affair between the parents, though as we have seen negotiations over the arrangements for South Asian children are more likely to involve other members of the families concerned.

Problems surface, of course, when couples, South Asian or otherwise, are unable or cannot agree on such arrangements. Fuelled by anger, bitterness, frustration, allegation and counter allegation, such disputes have a habit of spiralling out of control. As a result one or other of the parties may feel the need to resort to the law, asking the court, in effect, to adjudicate on their behalf in order that the matter is settled 'once and for all'. In resorting to law, people are making a purposive statement, *inter alia*, about their right to justice. Following such action, the court's role is to consider the conduct of both parents insofar as it affects their abilities as parents, and how well these can be harnessed to meeting the emotional and material needs of their children.

There are three courts that deal with issues involving disputes concerning children: the High Court, county court and magistrates' court. All three courts deal with a wide range of child care matters ranging from child abuse and neglect cases to adoption and domestic disputes about where children should live and the type and frequency of contact that they should have with the other parent and his or her family. Since the introduction of the Children Act 1989, all cases in magistrates' courts concerning the welfare of children are to be heard in what is now known as the Family Proceedings Court. Magistrates cannot, however, hear divorce cases, this being the preserve of registrars and judges in county courts and, in some complex cases, those senior members of the judiciary who sit in the High Court. In England and Wales all divorce proceedings are filtered through the county court, although some complex cases may be transferred to the High Court.

There are a number of points of similarity and dissimilarity between the criminal and civil jurisdictions. In terms of things held in common, the two jurisdictions share an adversarial approach to justice whereby each party is given the opportunity to present their case before the court and to cross-examine the other side. Legal representation and access to legal aid is available in both jurisdictions. Both jurisdictions have well developed systems governed by the 'rule of law' as a means of upholding 'natural justice' and ensuring impartiality and neutrality. A further commonality between the two jurisdictions is the expectation that the decisions made by the court will be followed and that failure to abide by a particular ruling will constitute 'contempt of court', although such breaches are rare in both jurisdictions.

A number of differences also exist between the two systems that are of some importance. The first thing to note is that whilst there are parallels between criminal law trials and sentencing procedures and the ways in which civil proceedings involving disputes over children are conducted, there are some qualitatively different processes at work in the two

systems. A fundamental difference is that cases involving disputes over children will be decided on the balance of probabilities, whereas in criminal cases the onus of proof rests with the prosecution to prove their case 'beyond reasonable doubt'. A second difference is that whereas judicial proceedings involving criminal matters are normally conducted in open court, since such proceedings are seen as public matters (White and Perrone 1997), the reverse is true for cases involving disputes over children. Third, the extensive legal rules that serve to determine what is admissible and what is not admissible in criminal courts are not quite the same for civil cases. The submission of hearsay evidence (evidence which is not derived from a first-hand account) is legitimate when addressing welfare issues.

The number of divorces has risen inexorably since just before the start of the second world war, rising from 6,092 decrees absolute being granted in 1938 to 145,886 in 1997 (Lord Chancellor's Department 1998). By far the vast majority of divorce applications are uncontested and are dealt with by registrars. In the main, contested cases concerning residence and the nature of contact are heard by registrars or circuit judges in County Courts. In 1990, courts in England and Wales made more than 80,000 custody orders in respect of children following divorce proceedings between parents. Women are the prime instigators of the divorce process. In 1994, 71 per cent of divorces were granted to wives where the most frequent grounds were behaviour (53 per cent) and adultery (22 per cent). For husbands adultery (37 per cent) and two years separation with consent (28 per cent) were the most frequent reasons given. These data are not however disaggregated according to defining characteristics such as 'race', ethnic origin or religion .

The procedure laid down by the Lord Chancellor's Department (1998) is for one party (the petitioner) to petition for divorce. A district judge considers the evidence and if the

grounds are proven, the provisional measure of a *decree nisi* will be granted. Six weeks later the petitioner can apply for a *decree absolute*, which is the final measure. Alternatively, the respondent (the other party) can apply a further three months later. Where children are concerned, the court has to be satisfied with the arrangements for their welfare. Proposals concerning the arrangements for meeting the welfare of the children have to be submitted in writing and will, if possible have the consent of both parents.

### **The Basis of Legal Intervention**

It is of more than passing interest that this century has seen a considerable increase in the power of civil courts to intervene in the lives of children and families on the grounds that this is beneficial for the social welfare of children and society (Geach and Szwed 1983). The case for doing so, especially where divorce is concerned, has been well put by Clulow and Vincent:

Society has an obligation to protect its weaker members. Children stand in particular need of this protection, even against their parents, to whom they are especially vulnerable. The rudiments of social justice require that they be protected from anything that may harm or impair their future healthy development. In so far as divorce is a hazardous experience, it is proper for the State to ensure that the interests of children exposed to its effects are adequately safeguarded (1987: 17).

As Cretney and Masson (1997) have observed, despite the fact that people seek 'justice' rather than 'welfare', divorce proceedings and disputes over children provide 'both the opportunity and the justification for entrusting the courts with welfare responsibilities' (1997: 697).

The two most recent pieces of legislation which govern divorce and all matters related to the welfare of children in England and Wales are the Children Act 1989 and the Family Law Act 1996. Let me deal briefly with each of these in turn.

### **The Children Act 1989**

The introduction of the Children Act 1989 has led to widespread changes in ways families experience divorce, particularly when disputes over the upbringing of children are a feature of the separation. The 108 sections of the Children Act 1989 are arranged in twelve parts. Part II of the Act, and Section 8 in particular, represents a new beginning as far as arrangements over children are concerned. The principal objective in this part is to set out in as clear and coherent a way as possible the range and types of procedures that the court may draw upon when seeking effective solutions to disputes that it is required to resolve. Section 8 of the Act spells out four types of order that are available to the court: the residence order; the contact order; the prohibited steps order; and the specific issues order. The main elements of each of these orders, together with a few brief illustrations of how each order may have an impact on disputes involving South Asian families are as follows.

A residence order is a measure imposed by the court in order to settle arrangements to be made as to the person with whom a child will live and the place where the child will receive his or her day to day care. This will usually be the home of one of the parents, though on occasions residence orders may be made to close relatives, particularly the child or children's grandparents. It is, however, possible that the court may order that the child(ren) reside at both of the parental homes, perhaps spelling out in fine detail the days and times that the child(ren) should spend in each environment. A residence order may

contain specific conditions and spell out precise instructions with which parents are expected to comply.

A contact order requires the person with whom the child will live to make arrangements for the child to remain in contact with the other parent. Such an order usually takes the form of requiring the person with whom the child lives to allow the child to visit or stay with the person named in the order in their home, or for that person and the child to have contact with each other. Once again, the court can impose specific directions and conditions with which parents are expected to comply.

Prohibited steps orders deal with specific problem areas. Such an order is, in general, to be used when the court believes it necessary to retain a supervisory role - for example, when there is a threat of a child of South Asian origin being taken out of the country.

A specific issues order is a measure available to the court which is used to decide a single issue upon which the parents cannot agree. An example here is when one parent may object to the child having to attend a particular school or place of worship. Orders may be combined. The court may therefore make a residence order with regard to a child whose father is, for example, a Sikh to a non-Sikh mother, but require that the child's mother does not cut the child's hair.

Section 1(3), focuses directly on the range of matters that judges need to take into consideration when making their decisions. These are:

- (a) the ascertainable wishes and feelings of the child concerned (considered in the light of her or his age and understanding);
- (b) the child's physical, emotional and educational needs;
- (c) the likely effect on the child of any change in the child's circumstances;

- (d) the child's age, sex, background and any characteristics of the child which the court considers relevant;
- (e) any harm which the child has suffered or is at risk of suffering;
- (f) how capable each of the child's parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting the child's needs;
- (g) the range of powers available to the court under this Act in the proceedings in question.

It has been noted that this 'checklist' is not exhaustive and that other factors may be taken into account. Nor is it meant to imply a descending order of importance (Allen 1992; Eekelaar and Dingwall 1990).

A central feature of the Children Act 1989 is that the Act should be gender, racial and culturally relevant. To this end subsequent guidance notes have made it plain that, for the first time in major legislation, a child's 'race', culture, language and religion must be taken into consideration when making decisions about a child's welfare. In providing this framework, the Act demonstrably seeks to be sensitive to the needs of ethnic minorities. Above all else, the Act restates and reinforces the moral imperative to give formal equality under the law to *all* citizens by:

- (i) seeking the most advantageous prospects for the child's development;
- (ii) reducing the impact of changes following divorce such as defining an obligation to retain contact and providing the methods to do so;
- (iii) ensuring the right of the child to express an opinion but not insulated from the values of the adult world.

Part II of the Act sets out clearly expressed principles and guidelines for the resolution of such disputes, five of which are of critical importance.

The first is what has come to be known as *the welfare principle*. This refers to the moral imperative that courts must treat the child's welfare as the paramount consideration in all

questions about his or her upbringing. That is to say, parental claims and wishes cannot take preference over the best interests of children (Wilkinson 1981). In applying the 'welfare principle' the court is concerned primarily, though not exclusively, with ascertaining and securing the best interests of the child. What is thus at stake is not simply arriving at an answer as to the question of what is just and fair in terms of settling competing claims between the parents, but how the child's best interests can be best met.

The second principle is concerned with the concept of *parental responsibility*. It has long been recognised within the law that parents have important duties, powers, obligations and rights in relation to their children (see Alston *et al.* (1992). These include:

- (i) the right to physical possession of the child;
- (ii) the right to decide upon and control the child's educational and religious upbringing;
- (iii) the right to discipline the child, including the right to administer moderate corporal punishment to the child;
- (iv) the right to consent to medical treatment for the child;
- (v) the right to withhold consent to a proposed marriage while the child is between 16 and 18 years of age;
- (vi) the right to administer the child's property and enter into contracts on behalf of the child;
- (vii) the right to act and represent the child in legal proceedings;
- (viii) the right to choose the child's names; and
- (ix) the right to the child's domestic services, ie help in the home.

As Poulter (1990) and Neale and Smart (1997) have noted, the law is increasingly taking the view that parents are really only given rights so that they can discharge their legal duties and parental responsibilities to their children. Parental rights, powers, duties and obligations to their children are now, in effect, subsumed under this term. The Act states

that each shall have parental responsibility for the child and that each of them may act alone without the other in meeting that responsibility, though these powers reduce as the child grows closer to adulthood.

Importantly, whilst, as noted above, the Children Act 1989 seeks to be sensitive to the needs and wishes of ethnic minorities, the concept of parental responsibility is presumed to have a universal application (Connolly 1994). Whilst such powers are universal, they are not unconditional. In the words of Poulter (1990: 59), 'The powers are subject to the decisions of the courts and parents may lose their powers if a court decides that these powers are being abused and the welfare of the child requires that parents be deprived of that responsibility'.

The third principle is that of parental involvement. Here the Act's concern is with the ways in which parents can be allowed to exercise their roles, responsibilities and duties in as full a way as possible. Underpinning this principle is the strong presumption that contact ought to take place unless there are overwhelming grounds why the court should not make such an order. This presumption is based, in part, on the evidence of social science research which has demonstrated the psycho-social, emotional and developmental benefits of children remaining in contact with both of their parents following separation. A second corollary of the presumption is that contact with the non-resident parent should be regarded as a basic right either for the parent or as a basic right for the child, or both.

The fourth principle is that there should be minimal but positive intervention. The basis upon which the court decides to issue an order is contained in Section 1 (5) states:

Where a court is considering whether or not to make one or more orders under this Act with respect to a child, it shall not make the order or any of the

orders unless it considers that doing so would be better for the child than making no order at all.

In other words, the court may not make an order unless it is felt that such an order would be in the best interests of the child. Orders will be kept to a minimum and only imposed when the case for intervention has been made.

The fifth principle is that there should be minimal delay in seeking a solution to the dispute. This principle is in many senses uncontroversial. Disputes over the arrangements for children post-separation are often continuous and episodic in nature and as such can be protracted and open-ended affairs. In order to mitigate against this, courts are required to draw up a timetable with a view to determining the question without delay and to give such directions as it considers appropriate for the purpose of ensuring, as far as practicable, that the timescale set is adhered to by all concerned.

### **The Family Law Act 1996**

The second piece of legislation which has a pronounced effect on the divorce process is the Family Law Act 1996. Although (at the time of writing) the Family Law Act 1996 has not been fully implemented its introduction is going to be of considerable importance to the ways in which society dissolves marriages. Until the introduction of the Family Law Act 1996 divorce was granted on the basis of irretrievable breakdown and was heavily 'fault' based. The only proof the Family Law Act 1996 requires is a formal statement that the marriage has irretrievably broken down. Whilst, 'facts' requiring allegations of fault are no longer necessary, statements of marital breakdown must be accompanied by detailed information and proposals relating to the children, home, other property and income resources of the parties.

Those who wish to make a Statement of Marital Breakdown must, except in prescribed circumstances attend an Information Meeting. Section 8(5) requires that this meeting must be conducted by an approved and qualified person who is independent of the parties concerned. Section 8(9) requires that couples be provided with a 'comprehensive information pack' which deals with *inter alia*: the purpose of the period, the procedure during it, and the options available at the end of it; the legal effects of divorce and separation; the powers and duties of the court in relation to children, financial provision and property adjustment; the nature and purposes of counselling, reconciliation, conciliation and mediation and the services available in the area; how to obtain support and assistance particularly in relation to protection against violence and above all, in line with the Children Act 1989, the importance that is attached to the welfare, wishes and feelings of children.

Of considerable importance is that the Family Law Act 1996 requires all couples to engage upon a period of reflection and consideration on whether to proceed with the divorce. Where there are children involved this period amounts to some 18 months. Underpinning this requirement are four main principles:

- (a) that the institution of marriage is to be supported;
- (b) that the parties to a marriage which may have broken down are to be encouraged to take all practicable steps, whether by marriage counselling or otherwise, to save the marriage;
- (c) that a marriage which has irretrievably broken down and is being brought to an end should be brought to an end-
  - (i) with the minimum distress to the parties and their children;
  - (ii) with questions dealt with in a manner designed to promote as good a continuing relationship between the parties and children affected as is possible in the circumstances; and

- (iii) without costs being unreasonably incurred in connection with the procedures to be followed in bringing the marriage to an end; and
- (d) that any risks to one of the parties to a marriage, and to any children, of violence from the other party should, so far as reasonably practicable, be removed or diminished (Part I, s1).

Whilst there is no requirement for mediation, the courts may give directions for parents to attend a 'mediation' meeting or a series of meetings to determine arrangements for the children and to settle financial matters (see Roberts 1997). It will not be part of the mediator's role to seek to reconcile the two parties. Rather the aim is to seek to establish an amicable settlement in light of what is recognised as the inevitable and irretrievable break up of the marriage.

Conciliation has a long history within English family law (Eekelaar and Dingwall 1988). The proposals in this sense do not reflect a radical departure from what has gone before. Rather, the current emphasis upon mediation and conciliation needs to be seen in terms of placing mediation on a firmer footing than has been the case hitherto. Bringing mediation closer to the centre of the stage, in these terms, is part of what one observer sees as 'mediation's struggle to emerge and become recognised as an independent activity distinct both from the practice of therapy and welfare professionalism and from legal practice and process' (Roberts 1997: 36).

Thus far I have been concerned to outline the socio-legal basis for decision-making, the practical difficulties in giving substance to the concept of the best interests of the child, and the problems that arise in attempting to reconcile and balance the competing interests of the child, the family and the state. Two more sets of questions remain to be addressed. The first consist of a series of issues revolving around the ways in which the two Acts

discussed above are put into operation, especially the use of legal rules, principles and discretion which permeate all areas of the legal world. The second set of questions turn on the application of the legislation to the South Asian community. Let me deal with each of these in turn.

## **JUDICIAL DECISIONS**

At the centre of the judicial process is a concern with the interplay between the moral and legal rights of the individuals who come before the court. Within this process, judges are required to prescribe objectives, indicate directions and establish legal rules and principles which can be applied in given cases. It is a hallmark of the judicial process that the decisions that judges reach cannot be taken according to whim, personal predilection, or on an arbitrary basis. On the contrary, judges are required to engage in a process of profound reflection whereby they are required to weigh competing considerations in order to arrive at a morally defensible decision (Morrison 1997). In these terms, 'judicial opinions set out the logic through which a conclusion has been reached, the evidence on which that decision was based, and the extent to which it conforms or departs from existing precedents' (Hodder-Williams 1996: 97). The law is thus a dynamic *process*, an 'enterprise in which rules have meaning only in the context of institutions and procedures, values, and ways of thought' (Berman 1983: 11).

This introduces some important considerations which are of relevance to our understanding of the legal parameters that surround cases involving South Asian families. It is thus perhaps useful, at this juncture, to explore this relationship in more detail and to examine what is meant and involved by rules, principles and other propositions of law. The accounts offered pave the way for a brief discussion on the use of discretion.

## Rules, Principles and Discretion

Much has been said about the need for judges to tread the delicate line that exists between the potentially competing demands of justice and welfare. In seeking to navigate a satisfactory way through, judges draw upon those rules that make up the substantive area of family law. In drawing upon such rules, judges are typically required to make judgments about what constitutes appropriate conduct and actions across a wide range of situations and circumstances. The rules thus serve as standards of behaviour, activities, acts or omissions. Judges, in this sense, are guided by what Twining and Miers (1982) have identified as a series of normative questions including what ought(not) to happen, what may(not) happen or what can(not) happen in relation to parental behaviour.

Whilst closely connected, there is a distinction to be made between rules and principles which, for the sake of clarity and later exposition, needs to be noted here. Legal rules, for Dworkin (1977), are applicable in an all-encompassing way; either the conditions for the rule are fulfilled or they are not. If the conditions of the rule are met, then the rule must be followed 'in an all-or-nothing fashion' (1977: 24). To put this another way, legal rules prohibit arbitrary decisions between similar cases, inducing the judiciary to decide one case in the same way as another when the two situations are similar (Langenbucher 1998).

In contrast, principles, Dworkin (1977) has argued, do not possess such a 'hard and fast' quality. Rather principles may conflict and compete with one another for supremacy. For Dworkin, 'When principles intersect...[the] one who must resolve the conflict has to take into account the relative weight of each' (1977: 26). Principles, in Dworkin's terms, thus refer to standards that *guide* rather than *determine* the course of action to be taken. Their function, for Dworkin, is to promote certain legal values, so that their contribution to the solution of a case can vary to a greater or lesser extent. Thus formulated, rules, in

Dworkin's view, have an 'all or nothing', deontological, quality. As such they determine or dictate particular outcomes, whereas principles typically involve normative arguments which require the judiciary to choose between different courses of action. The judicial role, in these terms, is a dynamic and creative one (Cotterrell 1989), requiring judges to weigh up potentially competing principles against each other as they relate to the dispute in question.

The relevance and usefulness of Dworkin's distinction is that it brings into sharp relief what I take to be a crucial aspect of the judicial process in general and the workings of family law in particular. Despite the power and value of Dworkin's distinction a note of caution needs to be sounded. As Dworkin himself notes, it is not always possible to treat rules and principles as opposing entities. Rather, it is necessary to see legal rules and principles as being both shaped and shaping each other. Judges will decide cases involving disputes over South Asian children on the basis of existing rules that are themselves informed by underlying principles. That is to say, the meaning and relevance of a particular rule is determined by the guiding principles that can be applied in any given case.

Understood in this way, the interplay between legal rules and principles has considerable significance for our understanding of judicial discretion. Apart from anything else, it is clear that the legal reasoning required of judges in dealing with the complexity of disputes over South Asian children must always extend beyond the mechanical application of a rule. Thus, whilst legal rules are framed in such a way as to make them as precise and as enforceable as possible, there is always scope for judicial discretion when exceptions to the rule are demanded or required by the force that principles can exert. Indeed, the greater the complexity of principles to be weighed in the balance, the greater the amount of discretion that is called for to reach a decision (Schneider 1992). To take the most pressing

illustration. The competing claims of each of the parents from any neutral or objective standpoint may be thought to be of equal strength and validity. At this point we might reasonably ask a fairly basic question: on what basis should a decision be made? An easy answer to this question is, however, unlikely given that the legal decision processes are complex. Thus:

the apparent straightforward decision is likely to be buffeted by a host of forces and influences, and that the clearest legal rules are shot through with discretion and will often have to compete with other norms originating in deeper social and organisational conditions (Galligan 1996: 36).

So far as decision-making is concerned, judges, in this context, not only have to contemplate making a judgment based on the nature and sufficiency of the evidence presented, they also need knowledge of the wider South Asian social environment. Put another way, decisions that judges reach do not simply arise out of the arguments that are presented within the confines of court. This internal-external dichotomy is complex and many-sided. It is to the several different kinds and levels of complexity that this divide engenders that I now turn.

### **The Internal-External Dichotomy**

In balancing this internal-external divide, the judiciary is expected to work in a pure, value-free environment, intent on an objective search for the truth in any given case, unswayed by personal or ideological considerations. At the same time, 'internal' judicial attitudes are intrinsically influenced by 'external' factors. For example, judges seeking to establish the amount of parental responsibility and child care that each of the parents should exercise following divorce are inevitably going to be enmeshed in arguments over ideology and practice relating to the roles of men and women (Eekelaar 1991; Smart 1989). Central to

the debates around this issue is the emergence of the principle of 'gender neutrality', a principle which has increasingly come 'to occupy a sentimental and sacred place in the dominant moral and legal order' (Smart 1991: 494). Once the cornerstone of legal decision-making, this reverses the view that children, especially very young children, are better off with their mother.

The key point that is being made here is that whilst judges may seek consistency and coherence in terms of internal relationships between legal rules, principles, policies and other elements associated with legal doctrine, they may disagree over their interpretation and application according to the kind of external knowledge that they bring to bear in each case. Similarly, the wider influences to which judges are exposed and susceptible to are likely to vary both in kind and intensity. In addition, judges bring a complex personal value system to bear on cases arising not only out of different personal abilities but also different social circumstances and backgrounds, which are in turn differentiated by class, race and gender.

To this extent it is difficult to maintain a rigid demarcation between internal and external influences. Neither is it easy to maintain a view of legal distinctiveness and legal autonomy that is outside of, or separate from, a much larger social reality and context. A range of ideas and concepts with which the judiciary engage in disputes over children such as justice and fairness, parental responsibility, children's rights, parental duties and obligations are all deeply infused with meaning and social significance. Whilst the judiciary is asked to make up its mind on these issues, there are different ways of approaching this task depending upon largely predetermined attitudes towards the judicial process. Inescapably, therefore, judges weigh up competing arguments and decide upon the conflicting accounts according to highly subjective preferences.

Despite this, the ultimate question for some judges is a stark normative one: is this the kind of behaviour that they want to sanction or not? (Hodder-Williams 1996). None of this is to argue that judges start with desired outcomes in mind and that they legitimise their decision in ways which have not flowed logically and rationally from the legal arguments presented. Neither is it to suggest that they do not reach their decision based upon what they consider to be positively good, virtuous or meritorious for the child. All of this said, there seems more than a glimmer of truth in Hodder-Williams' observation that judges do little more than operate according to their 'gut feeling' and their 'subjective policy preferences' (1996: 68), based upon their own views of the role and function of the family and how the family should be constituted.

## SUMMARY

Thus far I have been concerned, in a general way, to sketch the key aspects and features of the legal framework which governs disputes. In bringing this chapter to a close, I now wish to focus upon a key issue of this study: how the substantive features so far discussed bear upon procedural concerns.

The means for determining the decision in any given case are dependent upon the nature of the evidence provided and the merits and limitations of the arguments presented by the parents' legal representatives. All the indications are that interpreting and applying the law according to the range of socio-legal rules and principles associated with the best interests of South Asian children are likely to raise a range of moral, jurisprudential and practical problems that are above and beyond those that might be encountered in cases involving the children of white parents.

As noted in the two opening chapters, members of South Asian communities are intent on preserving and maintaining age-old traditions, customs and deeply held religious beliefs. This raises the deeply troublesome question of how Asian customs and traditions and the English law pertaining to divorce and the settlement of disputes involving South Asian children interact? This is, in large measure, an empirical question and I shall seek satisfactory answers to it in subsequent chapters. Here it is necessary only to set out the parameters within which this discussion needs to take place. Perhaps the first thing for us to bear in mind is that the system of British law, in institutional and procedural terms, has developed, over the centuries, out of a complex amalgam of secular and Christian influences. As Berman (1983) has noted, direct lines of descent can be drawn from the Mosaic law of the Old Testament, through the natural-law concepts embodied in medieval legal tradition, to the religious basis provided by Calvinism for modern concepts of social contract and finally to present day religious influences upon legal proceedings.

Despite this, notes Poulter, 'To a large degree Asian traditions (in all their rich diversity) and English law are perfectly compatible with one another. English law generally favours individual freedom of action and allows people to do as they wish' (1990:1). Poulter's intimation that this is true, by and large, is, however, instructive. It suggests strongly that South Asian norms, traditions and cultures will not necessarily correspond, except at certain points and times with the law. Given this, the more interesting and difficult questions that might usefully be posed here include: what South Asian social norms, rules and principles do English courts recognise and how much weight are they given? As we have seen, the Children Act 1989 enjoins the legal profession, social workers, court welfare officers and other professionals to consider a child's racial, religious and cultural upbringing before reaching a conclusion. In effect this provides the mandate for certain

groups to be dealt with differently in light of and in accordance with their particular culture or faith.

What happens when such 'clashes of culture' occur, when particular South Asian social or religious mores conflict with British values or religious doctrine? On these and related questions, Poulter is unequivocal: English law should only accommodate traditions and cultures such as those of the South Asian population which do not violate what he refers to as the 'core values' of English society. In his words:

While English law should broadly approach other cultures in a charitable spirit of tolerance and, when in doubt, lean in favour of affording members of ethnic minority communities freedom to observe their diverse traditions here, there will inevitably be key areas where minimum standards, derived from shared core values, must of necessity be maintained, if the cohesiveness and unity of English society as a whole is to be preserved intact (1998: 391).

Poulter's standpoint raises a range of controversial questions not only about the nature and basis of English law, but also the coherence and integrity of legal ideas, legal doctrine and legal reasoning within the context of a pluralistic, democratic and liberal society. Poulter's ideological stance brings two questions, in particular, to the surface. First, is it ever possible to keep law and the wider politics surrounding the standing of South Asians separate and distinct? Second, can British courts ever be impartial in their dealings with South Asian families?

These questions, in turn, are intrinsically bound up with two sets of much larger issues. The first revolves around the principles of justice and their application in terms of uniformity, impartiality and other cardinal principles reflected in the rights of South Asians to fair and equal treatment. The second set of concerns relates more broadly to questions of legitimacy and the symbolic validation of the law. Legitimacy, whilst taking many disparate and complicated forms, is a generic label that we place on factors and processes

which affect our willingness to comply with the law and its commands and judgments. Like legitimacy, compliance is an elaborate and negotiable concept, better seen as a process rather than as a condition (Hawkins 1992). The venerable, ritualistic practices of the family courts are almost universally observed, as evidenced by the relatively low numbers of cases of parents flagrantly in breach of a court decision. Whether the legal rules and principles upon which judges are likely to draw in disputes over South Asian children have legitimacy for those involved is, however, a much more subtle and open question.

Posing both sets of questions broaches the delicate subject of how far English law can accommodate the disparate religious and cultural practices that are so much part of the South Asian heritage outlined in Chapter 1. Enough has been said in this opening chapter to indicate that any individual dispute involving South Asian children will not be restricted to the parents but will be likely to involve the wider kinship network and perhaps even members of the wider community. What kind of legal culture is required to gain the allegiance of South Asian parents? As Sandberg (1989) has noted, what may be just and fair from the court welfare officer's or judge's point of view may not be clear cut or obvious to the child's parents. Within the context of this study, this requires an examination of how those responsible for decision-making chart a course between the competing and divergent claims by South Asian parents without violating the principles of equality and fairness that the law demands.

In the search for answers to this question, we might also add another of a different kind of order: to what extent can the court welfare process provide harmonious relations between court welfare officers and the South Asian population? I return, initially, to this question of procedure and others more directly related to the resolution of disputes themselves such as

how such competing rights, needs and obligations are reconciled and the basis upon which these might be best determined in Chapter 7. At this juncture, however, some initial steps in the direction of understanding the role of court welfare officers in all of this need to be taken. Such an understanding is particularly important if we are to understand the theoretical, moral and practical dilemmas and tensions that are at the heart of this study. More specifically, a full appreciation of the role of the court welfare officer is necessary if we are to understand the institutional context within which disputes involving South Asian families are mediated

## **CHAPTER FOUR**

### **THE ROLE OF THE COURT WELFARE OFFICER**

In the previous chapter I mapped out the legislative and institutional context within which South Asian disputes involving children are framed and negotiated. As we have seen the application of law in relation to the settlement of disputes involving South Asian children is to be understood as an ongoing, interpretative process rather than as a set of preordained legal rules which can be mechanically applied from some detached and external standpoint. A central corollary of this is that what constitutes a just and fair decision is thus a matter of, as Cotterrell (1989; 1992) has put it, interpretative debate, based on a combination of what those involved consider to be a reasonable process and outcome. Integral to this decision-making is the input of court welfare officers, a group of professionals who are charged at the request of a judge or a registrar with the task of investigating the circumstances of children and parents who are caught up in such disputes and to whom they are accountable. This chapter examines the role and function of court welfare officers in some detail together with the knowledge, values and skills which they draw upon in their work.

The chapter is divided into five main parts each of which pursues different aims and objectives. The first part seeks to place court welfare work in its legal and procedural framework. The second section addresses the professional context of court welfare work and explores the basis upon which court welfare officers make judgments. This leads to a discussion of court welfare practice. My aim here is to provide a general picture of the lines of enquiry that court welfare officers are likely to pursue as well as an insight into the kinds of experience that South Asian families are likely to encounter.

## THE INSTITUTIONAL FRAMEWORK

In order to understand court welfare work it is essential to grasp its relationship to the legal and procedural framework within which it is located and its remit created. Court welfare work is currently an arm of the probation service, taking up roughly ten to fifteen per cent of the probation service's budget. There are two key pieces of legislation which provide the institutional framework within which probation officers are able to act as court welfare officers: The Matrimonial Proceedings (Children) Act 1958 and The Matrimonial Causes Act 1958. The Matrimonial Proceedings (Children) Act 1958 introduced the requirement that judges satisfy themselves as to the arrangements made for the children before a decree nisi could be made absolute. This Act also introduced the term 'welfare officer', specifying that he or she should be a probation officer. The legislative framework within which the probation service operates has essentially remained the same since that time. Whilst it is possible for court welfare officers to be recruited from a variety of social welfare agencies, officers are usually seconded into the court welfare service for a specific period.

### Court Welfare Reports

The *raison d'être* for the involvement of court welfare officers in the lives of people engaged in the divorce process lies in a statutory duty to investigate and provide information to the courts on cases referred to them for adjudication. This requires the court welfare officer to prepare a welfare report that will enable the judge or magistrates to assess the nature of the relationship that the child has with her or his parents. Such issues are invariably complex and diffuse. For example, both parents may want the child(ren) to live with them but have no objection to the child having contact with their ex-partner at, say, weekends and/or holiday times. Some parents want to sever all links with their ex-

partner and do not want the other parent to see the child at all. Others may object only to the time and place of contact. Yet others may want the contact to be supervised in some way or another. The court welfare report is especially important where parental claims are finely balanced (Cretney and Masson 1997).

All disputes over children share points of similarity and dissimilarity. As we have seen in the previous chapter, disputes are either about residence or contact, or both. On the other hand, each dispute is unique, amongst other things in terms of its context, duration and intensity. In these circumstances, it is perhaps inevitable that court welfare officers will differ in the way that they write about the dispute, the way that they structure the various lines of argument presented, the order in which they provide the sections and so on. The content of court welfare reports should, however, be written in accordance to a set of National Standards (Home Office 1994). In particular, all court welfare reports must be dated and be endorsed with the words:

This report has been prepared for the court and should be treated as confidential. It must not be shown nor its contents revealed to any person other than a party or a legal adviser to such a party (Home Office 1994: 20).

Information concerning the court welfare officer writing the report is required including the court welfare officer's name, office address and telephone number. Information on the dispute should include the date of the hearing and the case reference. In addition court welfare officers are required to provide details and comments on:

- (i) the names of parties and children; addresses, ages of children and other background information (in cases where there has been violence between the parties some details, such as addresses, may have to be omitted);
- (ii) the nature of the application and the matters which are in dispute;
- (iii) an account of the present arrangements for the child;

- (iv) the enquiries undertaken, including who was seen at each interview and where;
- (v) the source of any information included in the report.

Within this framework, court welfare officers should provide reports that are clearly set out and as short and as focused as possible. Court welfare officers should also strive to balance description and background with evaluation, summary and assessment, differentiating fact from opinion. Finally they are required to present information not only with sensitivity and tact, but also in a way which is fair to both sides and in a manner which does not further exacerbate the tensions that already exist between the parties.

Above all, court welfare officers are required to give due weight and attention to the welfare checklist discussed in the previous chapter as set out in paragraph 4.7 in section 1(3) of the Children Act 1989. They should also provide:

A reasoned assessment of the options available to the court, including the parties' proposals, and their likely consequences and the wishes and feelings of the children [and] A specific, reasoned recommendation where appropriate (Home Office 1994: 21).

The standards encourage court welfare officers 'to keep the parties informed of thinking and emerging conclusions so that the final report does not hold any surprises. Whilst the welfare officer's recommendation is not binding on the court, it is thought to be good practice for the court to give good reasons if the judge does not wish to follow the recommendation. Departures from the court welfare officer's recommendation are rare, particularly as such courses of action can form the grounds for an appeal.

## **THE BASIS OF JUDGMENTS**

Court welfare officers are, then, required to make an independent assessment of complex cases which may involve them having to take a number of factors into account. On what

basis do court welfare officers go about making such assessments? How do they weigh the evidence that is presented? What realm of knowledge and theory do they draw upon to inform their practice? What skills do they need in working with people of South Asian origin?

In beginning to answer these questions, it is of critical importance to note that court welfare officers are social work trained. As such they operate in an area somewhere between:

the interests of parents and children, between the conflicting parents themselves, and ultimately, between the interests of the State and the individual. On the face of it their rules of engagement appear to be in contradiction. By training they are equipped to offer personal help, by aspiration many endeavour to secure privately ordered agreements, by statute they are charged to investigate. They stand, therefore, both to help and encourage parents to accept responsibility for themselves and their children, and to prepare the ground for courts to override and appropriate that responsibility (Clulow and Vincent 1987: 3).

The ways in which court welfare officers make sense of their work is thus conditioned by a series of inherent conflicts and tensions. Of course, court welfare officers are no strangers to this predicament, or to the ways in which such tensions can be lessened. Invariably, court welfare officers have had substantial experience as probation officers prior to their move to family work. In this capacity, they have a considerable knowledge and understanding of the complexities involved in holding the balance between the welfare oriented side of probation with its emphasis on the resolution of personal and social problems that are associated with criminal activity and its controlling, statutory function.

The body of work upon which they will seek to draw in this capacity is that which addresses theories of social work practice and in particular the knowledge, values and skills which are appropriate in the interaction between workers and clients across a wide

range of settings. Let me deal with each of these 'three pillars' of court welfare practice in turn.

## **Knowledge**

As I have just noted, the foundations of court welfare officers' knowledge have their origins in the knowledge base of social work. 'Social work', notes Cosis Brown (1996: 10) 'by its very nature has always had a significant element of pragmatism, involving itself, as it has to, with the detail of people's day-to-day existence as well as their innermost feelings'. For Cosis Brown (1996) there are three distinct areas of knowledge which practitioners draw upon to inform their work. Firstly, knowledge that informs the practitioner about the client's experience and context. Here the knowledge that informs court welfare officers is derived from theories which contribute to their understanding of personal and social behaviour.

Of particular importance are the psychological and sociological theories within the social science literature which strive to explain various facets of the human life cycle of children and how these are affected by separation and divorce. Here the work of Erikson (1968) on the ways in which children develop identities, Bowlby (1980) and KublerRoss (1970) in relation to the importance of attachment and loss to children and Winnicott (1965) on the importance of stimulation to children can be singled out, in their different ways, as making a significant contribution to court welfare officers' understanding of the cause and effects of family breakdown. In addition to these 'classic texts', there is also a burgeoning literature based on empirical research into the effects of separation and divorce on children which has seeped into court welfare officers' consciousness (for example Mitchell 1985; Cockett and Tripp 1994). Among the most well-known (and in this sense, important) of

these is Wallerstein and Kelly's (1980) six year study of the children of 60 divorced parents. As their study shows, many of the 161 children involved often felt bewildered and tried anxiously to comprehend what had happened and why, often feeling that their parents separation was, in some way or other, their fault. Unsurprisingly they were deeply affected by the experience, although the degree to which children were affected varied in intensity. Wallerstein and Kelly also found that children exhibited various behavioural problems at school, though once again differentially from child to child. Yet another important finding was that the relationship between the children and parents changed considerably and dramatically. In particular the children were especially 'vulnerable to being swept up into the anger of one parent against another' (1980: 77), leading often to conflicts of loyalty.

The second area of knowledge, for Cosis Brown (1996), consists of a body of work that helps the practitioner plan appropriate intervention. The kind of knowledge that court welfare officers draw upon here is likely to be that which focuses on ways in which the potential harmful impact of divorce on children can be mitigated. In particular, court welfare officers are likely to look for information to underpin approaches which provide continuity, stability and security for the child, together with other benefits such as the provision of positive role models and the protection and the enhancement of the child's sense of self esteem.

Two social work methods have been of particular importance in forging the nature and form of court welfare work in recent times, each of which I shall deal with summarily here. The first is the influence of family therapy techniques, an approach to resolving family conflicts which seeks to utilise and integrate psychoanalytic or psychodynamic practice and systems theory and which has its origins in the writings of Minuchin (1974). The approach has been taken up and developed subsequently by Walrond-Skinner (1981); Gorell-Barnes

(1984) and Treacher and Carpenter (1984) among others. Typically, the family is seen by two practitioners, one of whom may observe the family interactions through a mirror which does not allow the practitioner to be seen. The person behind the mirror is in contact with the practitioner conducting the interview by means of a telephone. Particular emphasis is placed upon the family's place within the wider system. One of the working hypotheses of the approach is that the family is likely to be 'stuck' in particular forms of behaviour. The aim, therefore, is to explore the potential for change in the family. Practitioners look for ways forward rather than seeking to establish what caused what to happen or to apportion blame.

The second influence stems from the growth of the conciliation and mediation movement as a way of helping separating and divorcing families deal with their conflicts while they reorganise their lives and plan for the future (Parkinson 1987). Whilst conciliation and mediation are often used interchangeably they are two different processes. Conciliation, explains Roberts (1997) describes the conciliatory approaches of court personnel such as court welfare officers and lawyers. Mediation, on the other hand, 'is a form of intervention in which a third party - the mediator - assists the parties to a dispute to negotiate over the issues which divide them' (Roberts 1997: 4). Crucially, the mediator is a neutral figure who has no power to impose a solution to the problem(s) presented, this responsibility resting solely with the parties concerned. Mediation in these terms involves the mediator having to clarify and focus upon the issues that each of the parties have brought to the dispute and assisting the parties, as far as one is able, to find an agreement.

The remaining area of knowledge utilised by court welfare officers that Cosis Brown has identified is that which clarifies the practitioner's understanding of the legal, policy, procedural and organisational context in which their practice takes place. Attention has

already been paid above to the legal, procedural and policy context within which court welfare officers work. Some brief comments about knowledge of the organisational context are, however, pertinent and useful here. As Pearce (1996: 52) has put it, 'As with all areas of practice, knowledge of the relationship between the individual viewpoint of the practitioner, the requirements of the professional role, and the overall function of the agency within the system is essential'.

It comes as a surprise to many couples who are in dispute over their children that the responsibility for providing the information required for the court should rest with the probation service, an agency which is more commonly associated in the public's eye with criminal rather than civil justice and the supervision of offenders rather than child care. As Sanders (1998) has noted, it was in the early 1950s that the need for courts to have access to information and guidance regarding the welfare of children became of particular concern. There was, at that time, he points out, some logic in giving this task to the probation service rather than to the relatively new local authority children's departments. The probation service has a long history of undertaking matrimonial work in the context of magistrates' courts (see King 1969), and the judiciary, in the main, have always held probation officers in high regard. However, as Sanders (1998) goes on to say, doubts now exist concerning both the wisdom and rationality of continuing to locate family court welfare within the probation service. There is, at the time of writing, an inquiry being conducted under the auspices of the Lord Chancellor's Department into the current provision of court welfare work with a view towards achieving a more coherent welfare and reporting service to the courts. Perhaps the key question to be posed is whether a criminal justice agency should be providing a child care service. For Sanders (1998), this question is particularly apposite given the context of the changing orientation of the

probation service with its move away from practice based on theories of social work to an emphasis on community safety and community corrections requiring a grounding in criminology and penology.

## Values

This leads to the question of values, a persistent and recurring theme within the court welfare discourse. Values, whilst arguably having an ethereal and transcendental quality, are not free-floating entities. Rather they are situated in particular contexts, perhaps paradoxically subject to change and are deeply embedded in organisational and professional cultures. In this section, I provide a necessarily brief overview of the 'fundamental' or 'core' values held by court welfare officers. This will enable us to grasp both the central philosophical and ethical aspects of court welfare practice as well as helping us better understand the recurring moral dilemmas and questions of value that court welfare officers face when dealing with South Asian families. Obviously, it is not possible in a single section to do full justice to the 'value-talk' (Timms 1989), of court welfare officers. The values selected are thus intended to represent the most significant and, to a lesser extent, the most durable values that court welfare officers *qua* social workers draw upon to inform their work.

As Timms (1989) notes, values within social work are of canonical importance. They are tied in with concepts such as rights, interests, dilemmas and preferences of one sort and another. 'Typically', he writes, "'values' are found coupled explicitly with 'ethics', 'attitude', and beliefs', and implicitly with rules (or norms) or ideals (or justifications)' (1989: 15).

What values, then, do court welfare officers hold? It is customary to answer value-related questions in terms of the moral worth and equal status of all citizens and the importance of 'client-centred' practice. Individuals are uniquely important; no one person is superior or inferior to another. Court welfare practice, like social work in general, is inextricably bound up with questions of ethics and morality. It seeks to take seriously moral injunctions such as the acceptance and tolerance of others and their views (Rogers 1967); the right to self-determination, the right to confidentiality, the right to be treated with respect and the right to be treated as a unique and valued individual rather than a category (Biestek 1961).

In presenting this material, I am not suggesting that social work values and, by extension, the values to which court welfare officers' subscribe, are unproblematic. All items in the above list have been analysed in relation to their meaning and applicability in given situations. McDermott (1975) has asked some searching questions about whether the right to self-determination is inalienable and the degree to which this value is subordinate to other claims and rights. Similar lines of argument can be applied to the other values listed. The commitment, care and concern towards others - what Rogers (1967) has called 'unconditional regard' - has, for example, been criticised for having serious theoretical and practical shortcomings when dealing with problems associated with such perplexing and troublesome events as offending behaviour and child protection. This is not merely an abstract or hypothetical point. Balancing 'care and control', reconciling competing interests and rights are, as we shall see in subsequent chapters, very much part of everyday reality for court welfare officers.

Thus far I have dealt largely with what might be termed 'traditional' social work values. In recent years a different kind of value-talk with a new vocabulary has emerged with the result that the values discussed have been overlaid with a new set of commitments. Two

concepts and themes in particular have emerged that are central to this new discourse: anti-discrimination or anti-oppressive practice and the notion of empowerment. In the space available it is not possible to capture what Denney (1996: 51) has called the 'dynamism and anger which has fuelled debates' in these areas. I seek here to provide only a rudimentary sketch of the central tenets underpinning both concepts that seem to me to have direct bearing on the twin themes.

As Denney (1996) notes, anti-discriminatory policies were developed under the aegis of the Central Council for the Education and Training in Social Work (CCETSW). These policies flow out of a number of writings in the mid to late 1980s concerning the description and critical analysis of the racialised culture which people from different races and ethnic minorities experience (Goldberg 1993). They also provide a normative account the nature and form that that work with people from different ethnic minorities, races and cultural backgrounds should take (see, for example, Ahmed, Cheetham and Small 1986; Coombe and Little 1986; Dominelli 1988; Ely and Denney 1987). Anti-discriminatory practice, for CCETSW, is an all encompassing concept requiring:

workers to combat actively discrimination on grounds of race, ethnic origin, nationality, religion, disability, sexual orientation, age, language (including sign language) social class, gender or [those] disadvantaged by conditions or requirements which cannot be shown to be justifiable (1992: 9).

Couched in these terms, anti-discriminatory practice is to be thought of as a core value of social work and should be regarded and defined as 'an attempt to eradicate discrimination from our own practice and challenge it in the practice of others and the institutional structures in which we operate' (Thompson 1993: 31-32).

The second theme that has received increasing interest among practitioners and social work theorists alike is empowerment. To talk of empowerment, for Braye and Preston-Shoot (1995) means:

- (i) extending one's ability to take effective decisions;
- (ii) individuals, groups and or communities taking control of their circumstances and achieving their own goals, thereby being able to work towards maximising the quality of their lives;
- (iii) enabling people who are disempowered to have more control over their lives, to have a greater voice in those institutions, services and situations which affect them, and to exercise power;
- (iv) helping people to regain their own power.

Increasingly the challenge for probation officers and court welfare officers has been seen to be to deliver a service which is simultaneously non-oppressive and empowering whilst at the same time retaining and adhering to the collection of core values which have informed practice hitherto.

Court welfare officers have been encouraged to move beyond a general *awareness* of racial matters, of difference and diversity and various forms of inequality. Rather the push has been for social workers to adopt a proactive stance in promoting equality and countering discrimination 'in order to enable them to work effectively within a multiracial and multicultural society' (CCETSW 1991: 40).

As Denney (1992; 1996; 1998), Humphries (1996) and others have noted, both concepts are complex, contentious and fraught with conceptual and practical difficulties. As a result there are as many unanswered questions as there are satisfactory solutions to the problems that are inevitably raised in this area, not least of which is how to translate the principles underpinning both concepts into meaningful practice.

## PRACTICE PARADIGMS

How then does all of this inform the practice dimension of a court welfare officer's work? How do court welfare officers go about their primary tasks? Which principles underpin their work? In formulating an answer to these questions it is necessary, in the first instance, to return once again to the legislative and institutional context within which court welfare officers work.

Court welfare officers, though servants of the courts - its 'eyes and ears', as some judges are wont to say - may nonetheless be required to be cross-examined on their report. In order to stand up to the rigours of the legal process, enquiries must therefore be both thorough and extensive. Court welfare officers have traditionally set about this duty by conducting enquiries with all of the key actors involved with the child(ren). This has frequently meant visiting the parents in each of their homes. The rationale for such visits is essentially twofold. First that welfare officers have thought it necessary to establish the material conditions which each of the parties can offer the child. Second, and perhaps more importantly, welfare officers have often thought it good practice to see the child with each of the parents in their own environment rather than in the confines of an office. In addition, welfare officers have made contact with personnel in agencies such as schools, social services and health services to request relevant information. Perhaps most importantly of all, as we have seen, the guiding aim has been as far as possible to ascertain what is in the best interests of the child.

The main thrust of this approach has essentially been the gathering of evidence concerning parental competence within an adversarial context. This has often resulted in court welfare officers having to *investigate* the situation in which a child finds her or himself and to make judgements about the standard of care that each of the parents is able to provide. This

judgement is then conveyed to the court by means of a 'recommendation' in the court welfare report. There is no official list of factors against which the quality of care that parents are able to offer can be measured. The form of the investigation is thus at the court welfare officer's discretion. The welfare officer may think it appropriate, for example, to include comments on the environmental and material conditions that the child will experience as well as observations on the nature of relationships between the child and her or his parents. On occasions the judge will ask the welfare officer to investigate a particular aspect of the case. There is a certain amount of disagreement amongst court welfare officers as to whether they should recommend a particular course of action. As noted above, whilst recommendations are not binding on the court, it is generally incumbent on a judge to give good reasons why she or he does not wish to follow the court welfare officer's recommendation.

The appropriateness of an adversarial response to the various problems associated with the breakdown of the family unit has, in recent years, been the subject of much debate within the socio-legal field. Robinson (1991a) has argued that once a couple has engaged a solicitor to act on their behalf, they have effectively lost control of the decisions that they themselves should be making. Moreover, for Robinson, couples who resort to the law to resolve disputes run the risk of the intimacies of their past relationship and the finer details of their separation being dissected and fought over in open court. This can have profound effects on them, their children and their families.

Other critics of the adversarial approach have portrayed law not only as cumbersome, built upon archaic principles and processes, but also costly and singularly ineffective in dealing with the very problems that it sets out to resolve. Howard and Shepherd have put these criticisms well:

[the adversarial system], it may be argued, is excellent and appropriate in matters such as criminal trials, where the primary purpose is to establish 'the facts' or 'the truth' about something which is alleged to have happened. In the matrimonial sphere, however, one is dealing far less with facts than with more nebulous areas such as perceptions, attitudes, feelings, relationships, which are dynamic not static, and not readily amenable to such proof, and which provide endless opportunities for continued argument and counter-argument (1987: 3).

Court welfare officers, Howard and Sheppard (1987) have argued, should not *collude* with a legal system which aims to determine who is the 'better parent', but rather *enable* disputing parents to resolve their differences and for them to reach a mutual agreement over arrangements for the children. In other words, welfare officers should adopt both a conciliatory approach towards the resolution of disputes through a process of mediation. Proponents of this view contend that such methods offer a number of advantages over the adversarial model. Five arguments in particular are worthy of attention here. First, a process of settlement-seeking holds out the opportunity to reduce acrimony and conflict and to defuse conflict rather than to fuel it through the adversarial process. Second, such an approach seeks to reduce the allocation of blame in disputes. Third, it is to recognise that disputes over children are essentially welfare oriented puzzles to resolve rather than legal problems requiring adjudication. Fourth, it is argued that settlement-seeking has practical utility in that the approach enables parents to retain a greater degree of control over their own lives. The process may, for example, provide a degree of emotional support at a time when people feel most vulnerable. It may even assist the parties to develop a pattern of communication and negotiation which will enable them to deal with future tensions and difficulties. Fifth, and perhaps most importantly of all, proponents of the settlement-seeking approach believe that freely arrived at agreements between the parents have more chance of being successful and are more likely to last longer rather than a solution to the dispute made by the court.

A number of quite stringent criticisms of the settlement-seeking approach have been voiced, attacking both the theoretical basis upon which the model rests and its practical application. Bottomley (1984) has emphasised the role of due process in protecting the rights of adults and children, and the danger that these rights might not be protected without recourse to adjudication. Similarly, Szwed (1983) has argued that:

Family law provides some system for the regulation of certain individual rights and obligations within the family, and is concerned with the relationships between the family and society as a whole. Since these rules of behaviour are determined by law, the business of their interpretation should be the prerogative of the courts. Experience shows that rights and obligations have a nasty way of being disregarded when they come under the aegis of agencies that are non-judicial, particularly those of a welfare orientation. The true purpose of the courts is to define and protect rights and enforce responsibilities...The advantage of retaining the judicial process is that it is a system of well established and recognisable procedures which provide the individual with legal safeguards, accountability and review (1983: 166).

We should note that many of the central facets of the arguments presented by Bottomley (1984) and Szwed (1983) are likely to find favour in the minds of the judiciary. There are two main reasons for this. The first is that agreement can be reached solely on cost-saving grounds. Second, the judiciary is likely to agree on the grounds of expediency insofar as such strategies may result in fewer contested hearings. We need also to take note of observations made by Davis (1985) who, whilst not denying that a commitment to conciliation and mediation plays an important part in the legal resolution of parental disputes, has argued that court welfare officers have 'stolen' the concept of conciliation to further their own professional interests. In a later work, Davis (1988) has also questioned whether the duality of investigation and settlement-seeking in the way this is seen by some court welfare officers is sustainable. Whilst the conciliation and mediation movement enables lawyers and social workers to speak the same language, it is Davies' contention

that they are very different approaches and emanate from incompatible ways of thinking about the problems faced.

Davies (1985; 1988), Bottomley (1984) and Szwed (1983) are not alone in their critiques. Other observers have also sought to temper what they considered to be the excessive zeal of the mediation movement. One particular concern has been the perception that court welfare officers have been able to present the issues involving parental separation in terms of an emotional crisis needing social work 'treatment' rather than a legal problem needing legal solutions. Framing the problem in this way, Fineman (1988) has argued, means that a substantial amount of decision-making is transferred from the judges and lawyers to the helping professions. The ensuing debates may thus be seen as representing a struggle over the terms of court welfare provision to the courts. As Davis has put it

The apparent bridging of this professional divide enables mediation to be construed as an attempt to marry the lawyer's awareness of issues of justice and accountability with the social worker's sensitivity to the emotional impact of divorce. The risk, of course, is that what will actually be on offer is the somewhat less attractive blend of the court's preoccupation with settlement-seeking, cost savings and administrative efficiency, and the social work profession's therapeutic aspirations and supposed child welfare expertise (1988: 208).

More recently other observers have focused on the imbalance of power that may arise between the couple. The argument here is that women are likely to find themselves, for a range of reasons, in acutely disadvantaged positions vis a vis the bargaining process. This is an important theme to which I shall return.

## **TENSIONS AND AMBIGUITIES**

It is against this background that a patchwork of court welfare practice has developed over the last decade or so largely on a piecemeal basis. The scale of this variation, and the lack of consensus around key areas of practice, reflects a number of unresolved tensions and

ambiguities within court welfare work. Ostensibly, the onus laid on welfare officers to use the welfare check-list should resolve many of the difficulties. It is possible, however, that some welfare officers may feel that the broad thrust of the check-list leans too much towards the sterility and narrowness of investigation that they have been so eager to eschew. On the other hand, the check-list appears sufficiently flexible to accommodate the diverse theoretical positions and models of court welfare practice currently in vogue. The introduction of the check-list is an attempt to secure uniformity of interpretation and application of the paramountcy principle. It would be churlish to deny that the introduction of the list represents a marked improvement on the unstated criteria and broad rules of thumb previously employed. However, given the indeterminacy and highly speculative nature of the welfare principle (Mnookin and Szwed 1983), it seems reasonable to assume that there will always be divergences of opinion between welfare officers, the parents and the legal profession, not only over what constitutes the best interests of the child, but also how such interests might be best achieved.

It should thus surprise no-one that court welfare officers disagree amongst themselves at a number of levels and to varying degrees about, *inter alia*: the aims and objectives of the task; the form of contact with parents felt to be most appropriate in achieving those aims and objectives; and the skills and knowledge needed to undertake the work. There are also differences of opinion over where, when and how children should be seen, and how old they should be before their views can be given any weight. The dilemmas posed by the questions relating to the involvement of children have always occupied the minds of court welfare officers, but they have been made all the more poignant, though not necessarily easier to resolve, by the imperative within the Children Act 1989 to take the children's wishes and feelings into consideration.

As we have seen in the last chapter, the contextual framework within which court welfare officers have to operate is governed in large part by legal requirements as well as the organisational demands of the probation service. The court welfare officer charged with preparing a report for the court is seeking to enable the court to reach a decision which is in the best interests of the child. The welfare check-list acts as a guide in this respect. In the main, the court does not prescribe (at least in any direct way) the methods by which court welfare workers conduct their work. Court welfare officers thus have considerable discretion in exercising their professional judgement about the most effective ways of working. Moreover, whilst seeking to provide uniformity of practice, the national standards nevertheless allow for a great deal of flexibility. Court welfare officers thus remain free to shape their practice in ways which are consistent with their own rationale for undertaking the work and the theoretical paradigms and value-base which underpin it. For some this will mean acting as the 'eyes and ears of the court', reporting only the information gathered which they consider central to the courts' needs and without seeking (at least in any direct or explicit way) to ameliorate the conflict. For others the aim will be to reach some kind of agreement, though as was noted in Chapter 3 this cannot be their prime objective. There is, then, considerable scope for court welfare officers to adopt different theoretical reference points and practice orientations both within and between areas.

For all that, regardless of an officer's practice orientation, court welfare officers will share similar concerns. For example, all welfare officers will be concerned to explore the capacity of the parents and the wider family in question to consent to the arrangements and to establish the will of the people concerned. Equally, court welfare officers who engage with South Asian families will be seeking to provide knowledge about: the court process;

the basis upon which decisions are made; who makes the decision and the consequences (intended and otherwise) of a particular decision. Within this context it is thus possible to identify several objectives that will satisfy the requirements of the court. Most notably these are to establish and to portray as vividly as possible:

- (i) the background to the dispute;
- (ii) parental and other family members' points of view;
- (iii) all anxieties;
- (iv) proposals for resolving the dispute;
- (v) objections to the proposals;
- (vi) where possible the children's wishes and feelings.

### **National Standards**

It is within this scenario that the Home Office (in conjunction with the Lord Chancellor's Department, Department of Health and the Welsh Office) has issued a set of National Standards. These standards:

set a framework for the work done within the probation service by the family court welfare service. They complement the standards for supervision of offenders in the community, introduced in October 1992. Their objective is to ensure that family court welfare work is carried out consistently and fairly and that all concerned with the work are clear about what to expect of it (Home Office 1994: 1).

All probation areas are required to ensure that they institute local procedures for monitoring and the attainment of standards. The standards seek to encourage good practice without being overly prescriptive.

The standards restate that the primary objective of family court welfare work is to help the courts in their task of serving the needs of children whose parents are involved in

separation or divorce. Court welfare practice thus stands in close relationship to the legislative framework that is in place for dealing with divorce and separation. Court welfare officers in this sense are bound by the principles which underpin the legal system, in particular those principles embodied in the Children Act 1989. The framework of the standards nevertheless leaves much of court welfare work to the exercise of skill and judgement on the part of individual practitioners and probation areas.

In seeking to promote the basis of good practice, the standards reassert (uncontroversially) that the role of the court welfare officer in exercising discretion is to inquire professionally and impartially into the circumstances of the case and to report clearly and concisely to the court. What is potentially more contentious are comments which relate to the purpose of the work and the place that the preparation of the court welfare report plays within this.

The purpose of the court welfare report as laid down in the National Standards is:

to provide the court with information about the child and its family which will enable the court to make decisions that are in the best interests of the children. In the course of preparing the report the court welfare officer *may identify opportunities for helping the parties to reach agreement*. These should be keenly pursued in line with the general principle of promoting parental responsibility *but the resolution of disputes is not the prime purpose of the court welfare officer* when preparing a welfare report (Home Office 1994: 15 emphasis added).

The Home Office, in these terms, has been responsive and adaptive to the court welfare environment, viewing court welfare officers as people with their own knowledge, values, ethics, expectations and agendas. In so doing the Home Office has made a series of decisions which spell out a set of formal organisational goals, rules and norms as well as reflecting a particular conception of court welfare practice and an expectation that court welfare officers will behave in particular sets of ways.

## SUMMARY

In the previous chapter I have sought to provide the socio-legal context within which court welfare work with South Asians is located. In this chapter my concern has been to set out welfare officers' roles, responsibilities and duties, paying particular attention to the knowledge, value and skill base that court welfare officers bring to their work, and setting these in their legislative, professional and organisational context. The reflections offered (both in this and the last chapter) raise a cluster of themes and problems which are likely to face court welfare officers and judges in their day to day work with South Asians. It might be helpful, therefore, to keep in mind the following considerations that can be used to judge the many different findings presented in later chapters and their implications.

Court welfare work, it is clear, is a highly complex system in which there is often a great deal of uncertainty and ambiguity not only about what it is that needs to be achieved but also about the most appropriate ways of going about this task. We may thus reasonably expect the extent to which beliefs, values, experience and the degree to which objectives are shared as well as the practice strategies that court welfare officers may employ to be variable. This raises a range of theoretical, practical and moral questions not only about the content of interviews with people of South Asian origin but also about the precise form that the interactional process takes. The identification and analysis of these and other issues through an understanding of the ways in which court welfare officers and judges make sense of (and seek to resolve) disputes involving South Asian children is the subject of Chapters 7 and 9. Before moving on, however, it is necessary to examine the choices and methods employed to conduct the research upon which these chapters are based.

**PART II**

**INVESTIGATING SOUTH ASIAN DIVORCE**

**AND**

**DISPUTES INVOLVING SOUTH ASIAN CHILDREN**

## **CHAPTER FIVE**

### **THE RESEARCH APPROACH**

This chapter provides an overview of the research strategy employed in the search to understand, describe and analyse the dual themes of the study. Its central purpose is to set out, in as clear a form as possible, the moral, strategic and practical issues that were influential in the design and implementation of the research. In seeking to do this, I have divided the chapter into four main sections. The first section sets out the main aims and objectives of the research. The second section provides details of the research process, including a discussion on questions of the choice of the research site, sampling and access. The third section is devoted to the research experience, raising themes such as reflexivity and the epistemological and ethical basis upon which the research rests. The fourth section which closes the chapter provides a commentary on the organisation, presentation and analysis of the empirical data.

### **THE RESEARCH PROCESS**

The aims of the fieldwork were essentially twofold, reflecting the dual focus of the study. Both aims can be stated fairly succinctly. My first was to explore what people thought were the reasons for divorce within South Asian society, paying particular attention to the range and depth of feelings and reactions that divorce generates. Second, I sought to explore the socio-legal issues faced by court welfare officers and judges in their dealings with South Asian families who are in dispute over arrangements for their children.

Both aims required, in the first instance, an exploration of the nature and extent of the two problems that are at the heart of the study. Is divorce on the increase within South Asian

communities and if so why? Are there differences between disputes involving South Asian children and white children and, if so, how are such differences manifested and how should problems involving South Asian children be approached? At one level, these questions require a *descriptive* response. At another, perhaps deeper level, these questions also require *explanation*. What are the significant factors involved in South Asian divorce and how (if at all) do these differ from reasons leading to divorce within wider society? Are disputes involving South Asian children markedly different - in their nature or in their intensity - from disputes involving white children? Crucially, should cases involving South Asian families be treated differently from cases involving other categories of people and if so in what ways? These questions, in turn, connect with other contemporary concerns on themes such as social justice, the nature of citizenship and the degree of legitimation that South Asians grant the British legal system.

As these questions reveal, the process of ascertaining answers to these questions cannot be straightforward. Numerous theoretical, moral and practical problems beset the process. In this section I thus set out the ways in which various problems associated with the study were tackled. I begin with a brief, preliminary discussion concerning the way in which the geographical area upon which the research is based was chosen.

## **Selecting the Research Site**

The empirical work for this study was conducted in a single probation area, a large urban, industrial county with a large South Asian population. The decision to limit the study to one area was taken both on theoretical and practical grounds. Ideally, the empirical data would have been collated from a number of probation areas with a substantial South Asian presence. Such a study would have had two main benefits. First, a study involving a range of areas allows for a more representative picture of the issues surrounding South Asian divorce to be drawn. Second, and relatedly, such a strategy would have provided a useful comparative component. However, I was located some distance from any area with a significant South Asian population. To visit any area would thus have involved a great deal of costly and time-consuming travel. It was thus necessary, as Marshall and Rosen (1989) have said of such situations, to set certain parameters on the scope of the study.

There were three main reasons underpinning the choice of the research site. First, I was guided by the wish to obtain a relatively heterogeneous sample of South Asian participants in so far as I wanted all of the three main groups to be represented. Second, I was already familiar with the court welfare work undertaken in the area, thereby lessening the problems of access. Third, as I was limited to looking at a small sample of court welfare officers, I wanted to examine a particular practice orientation: namely the conflict resolution model outlined in the previous chapter.

## **Access**

I have already noted that research with a racial dimension is fraught with a number of difficulties. It would not therefore be too surprising if the probation service and the Lord

Chancellor's Department and members of South Asian welfare agencies had reservations about opening up this area of practice to the outside world. In the event, as I go on to say below, gaining access proved relatively unproblematic. Similarly permission to interview judges was granted by the Lord Chancellor's Department without difficulty.

Gaining access, at its most basic, is a practical and pragmatic issue. It refers to the process of gaining permission for the research to be conducted. Gaining access is also about the *process* of research. As Hammersley and Atkinson (1983: 54) have put it the 'discovery of obstacles to access...provide insights into the social organisation of the setting'. In this case, I contacted the Assistant Chief Probation Officer (ACPO) with responsibility for the court welfare arm of the probation service in question, setting out the aims and objectives of the research, the methods that were to be employed and the perceived timescales. The proposal was discussed at a senior management meeting attended by the ACPO referred to above and the senior court welfare officers who had day to day managerial responsibility for the teams in the County, where it received a positive response. I was then invited to address each of the teams to discuss the proposal.

## **The Sample**

The task of constructing a sample is taken as being inherently problematic in the research methods literature. As Burgess (1984) reminds us it is never possible for a researcher to study, in any meaningful way, all of the people and all of the events in a social situation. Perhaps the first and most pressing problem, in this regard, concerned the question of who to include and who to exclude? Clearly there was a need to interview three populations: court welfare officers, judges and members of the main South Asian groups. The more difficult questions were: how many of each group and on what theoretical and practical basis should this decision rest?

Initially I intended to interview all of the court welfare officers in each of the six teams that together constituted the county's court welfare division. In the event, one team consisting of some five or six officers declined to participate in the project on the grounds that the team was experiencing the turmoil associated with a period of rapid organisational change. As the senior court welfare officer with first line management responsibility put it: 'whilst the team would normally be willing to participate, this would not be a good time'. This reduced the number of court welfare officers to a total of 34, of which 20 were women and 14 men. The numbers in each team were roughly equal with the exception of Team C which contained only three members.

With regard to the selection of judges, I provided the representative from the Lord Chancellor's Department with administrative responsibility for the Family Court in the probation area with a brief statement about the aims and objectives of the study. The administrator agreed to approach judges on my behalf. Three judges, all male, agreed to be interviewed.

The South Asian sample had to be selected as the research progressed. Here I relied on what Burgess (1984: 55) has called 'judgement and opportunistic sampling'. That is that 'informants are selected for study according to a number of criteria established by the researcher such as their status (age, sex and occupation) or previous experience that endows them with a special knowledge'.

At the outset, I was predisposed towards the idea of interviewing a sample of South Asian families who had been users of the court welfare service. People who had experienced the court welfare process at first hand would have had a unique insight into the legal system into which they would have been drawn. The time consuming nature of setting up such interviews, coupled with the problems associated with the need to use interpreters meant, however, that this idea was abandoned. Instead, I set about the process of approaching a variety of South Asian social workers, probation officers, welfare rights workers, education advisors, health workers and others working in what might loosely be termed the 'social welfare' arena. I reasoned that workers in these fields would have a detailed knowledge and understanding of the tensions currently facing South Asian family life *qua* South Asians. To this extent they would be able to bring a common sense, 'person in-the-street', knowledge and set of beliefs about marriage and divorce to the research. More importantly, South Asians working in these fields would have well informed views on disputes involving the children of their compatriots gained from first hand professional knowledge and how the socio-legal issues facing disputing parents might be best addressed.

There is a close affinity with this method and the 'snowball method' (Burgess 1984), a process of what Denzin (1980) refers to as 'on-going inclusion'. In this method, a small number of respondents are asked to nominate others who would be willing to be interviewed and who, in turn, put the researcher in touch with other informants. In this way

a *chain of respondents* was set up. The first links in this chain were forged through two sources. The first, a former probation officer now working as a director of an alcohol advice centre, put me in touch with two people, one a Sikh female and the other a Hindu male, who were both working on a project within the Centre to tackle alcohol-related problems within the South Asian community. The second source - a South Asian assistant chief probation officer, and a former probation colleague - suggested that I interview a probation officer friend of his, a Muslim male. Each of the three provided me with the names of people who they believed would have valuable insights into the twin subjects. In this way, I was able to extend and modify the sample as the research progressed according to the emergent conceptual and practical issues that were raised until I thought that saturation point had been reached.

In total 21 interviews were generated with South Asian people working within the health and social welfare field. The breakdown in terms of position occupied, generation, sex and religion of the South Asian people who participated in the research is as follows:

3 Conciliation Workers/Cultural Consultants	(three second generation, female Sikhs)
3 Interpreters/Cultural Consultants	(two second generation, female Muslims, one first generation, female Muslim)
3 Probation Officers	(two second generation, male Muslims, one second generation, female Sikh)
2 Alcohol Advice Centre Workers	(one first generation, male Hindu, one second generation, female Sikh)
2 Community Workers	(one first generation female Hindu, one first generation female Sikh)
2 Community Health Workers	(two second generation, female Sikhs)
1 Cultural Interpreter/Consultant Coordinator	(first generation, male Sikh)
1 General Practitioner (GP)	(first generation, male Muslim)

1 Mosque Elder	(first generation, male Muslim)
1 Sikh Temple Trustee	(first generation, male Sikh)
1 Welfare Rights Worker	(second generation, female Sikh)
1 Women's Refuge Worker	(second generation, female Muslim).

Whilst there are representatives in each of the three sample groups, the sample is not a representative sample in the sense of being a replica of the wider population from which one might want to generalise. Whilst the sample may not be in the same proportions as the corresponding strata are in the general population, the kinds of characteristics of people needed for the research in terms of such factors as age, sex, and religious background have, however, been taken into account. In these terms, there are no major omissions within the main segments of each of the sample groups.

## CONSTRUCTING THE RESEARCH AGENDA

The literature on research methods often discusses methodological issues in bipolar terms. Such dichotomies take a variety of forms. Rose (1982), for example, speaks of theory-testing and theory construction. The former is concerned with *deduction* and the latter with *induction*. By deduction is meant the formulation of theoretical arguments *preceding* the research, whereas the process of induction refers to propositions which are generated *after* the research is conducted (see May 1993a). However, this distinction is rarely this simple. In practice, writes Bryant (1994: 5), the search for patterns and the 'quest for intelligibility typically involves an ongoing dialectic between observation and conceptualisation, induction and deduction: theories, concepts and facts are all mutually implicated'.

Apart from the interesting observation that the dualism between deduction and induction may be more apparent than real, Bryant's comments are particularly apposite for this study. At one level, the research seeks to examine, deductively, a number of hypotheses among which is the belief that court welfare work with South Asian families is *intrinsically more difficult* than working with white families. At another, deeper level, my concern is with the reasons *why* judges and welfare officers experience such difficulties. An adequate answer to this question necessitates an *inductive* approach. It requires making sense of data derived from insiders' perspectives. Only in this way is it possible to create the kind of rich descriptions and critical analyses by which key actors perceive, interpret and act upon the social world, whilst simultaneously maintaining a sense of direction and purpose (Geertz 1973; Lincoln and Guba 1985; Miles and Huberman 1984). In particular, it requires an exploration of what Giddens (1984) has called the 'practical consciousness' and Taylor (1989) the 'practical reasoning' of court welfare officers and judges in terms of what they know, understand and believe about divorce amongst the South Asian populace.

It also involves asking questions about the methods that welfare officers adopt in their practice. How, for example, do court welfare officers interact with South Asian parents and children? Which methods are best suited to fulfilling their duties and obligations to the courts and the South Asian families with whom they come into contact? What values and beliefs inform their work? What kind of knowledge base do welfare officers and judges need and on what basis are the difficult decisions that they face to be made?

Such questions are consistent with a qualitative paradigm aimed at identifying, describing and analysing how key actors make sense of the complex situations that divorce engenders rather than by establishing fixed, pre-determined variables which can then be examined and measured according to quantitative methods. In short the interviews seek to

comprehend and portray the practical consciousness that court welfare officers and judges bring to their work, to enter what Douglas (1986) has called the *thought world* of those who participated. The nature and boundaries of people's roles together with their role-related beliefs, values, attitudes and experiences are all, in this regard, of crucial importance. For as Trigg (1985:101) has noted 'Whatever the social context and however much an individual's rational processes are influenced by it, the beliefs of individual participants in a society cannot be ignored'.

Any discussion and analysis of South Asian divorce and disputes over children necessitates an examination of both ethnicity and gender and the ways in which they intersect. In the same way, South Asian encounters with professionals such as lawyers, court welfare officers and judges take place within gendered and racialized social institutions. Thus gender and ethnicity cannot be treated simply as another dimension of South Asian experience, dealt with a sociological category - a 'traditional variable' as Strauss (1987) has put it - that needs to earn its way into the theory generated.

### **The Research Experience**

In the early stages of the project, I spent many hours in each of the areas talking over coffee to court welfare officers and their senior managers. The essence of these 'conversations with a purpose' (Burgess 1984) were 'written up' later. My guiding aim at this stage was to begin to explore and *interpret* the way that welfare officers construct the various dimensions of their work with South Asian families within particular contexts, settings and locales. Immersion in these 'field relations' also involved me accompanying welfare officers to court, sitting in on conciliation meetings, reading court reports, observing their interactions with judges, and observing their practice with families.

Given my prior working experience I was able to draw upon a great deal of what Bourdieu (1993) has called 'cultural capital'. Both as a researcher and as a practitioner I had been involved in 'prolonged engagement' (Lincoln and Guba 1985) with this area of work. This is not to say that welfare officers accepted the intrusion into their lives and work without question. Court welfare officers, meeting me for the first time, were prone to ask a range of familiar 'yes, but' questions of the kind identified by May (1993b). Some of these related to practicalities. What is expected of us? What are the resource implications? Such questions were not difficult to answer insofar as direct and unequivocal replies could be given. Other questions were more probing and potentially more contentious. I was frequently asked what is this research for? Why are you doing it? Who is financing it? What is in it for us? What will happen to the research when it is finished? Such fairly stock questions were all to be expected. My mere presence invited such lines of enquiry. Indeed, it would perhaps have been all the more surprising had such 'tinges of suspicion' been absent.

The questions that were addressed to me were posed for two main reasons. First to establish, to their satisfaction, what the research sought to do and why it was being conducted. Second, and perhaps more importantly, the questions required me to account for myself. That is to say, they were questions which, at their heart, sought to establish my credibility as a researcher. Above all, the South Asian laity, court welfare officers and judges were all making judgements of value about the *legitimacy* of the project in terms of methodological procedure, epistemological issues, and ethical considerations as well as the subject area. Much therefore depended upon the content of answers that I gave as well as their tone and tenor for the impression that is created.

The degree to which researchers engaged in empirical research should be candid about such factors as their motivation for undertaking the research, their theoretical assumptions

and predispositions towards particular models of practice is a deep and recurrent question. Such questions are all the more poignant and significant when they involve exploring cultures other than one's own. It seemed to me to be necessary to convince those whom I wished to interview of the intrinsic worth of the exercise. At times this felt analogous to 'selling' the research, stressing the benefits and playing down potential costs. Getting this part of the process 'right', however, was of crucial importance.

In terms of this, gaining the degree of trust, credibility and co-operation needed rested, to a large extent, on the impressions that were made at the initial planning stage of the research. Acceptance, however, does not follow naturally. For this reason it was something which I neither assumed nor took for granted. Making my initial presence felt thus involved the attempt to strike a comfortable balance between revealing too much and saying too little. Above all, my aim was to establish a position whereby I was accepted (as far as possible) by those who were in positions of power or who controlled access to the data without compromising the duties and obligations incumbent on me as a researcher. I thus sought to be sensitive to their concerns and to address the questions, doubts and qualms that they raised in depth and in an open and honest way. This included acknowledging my subjectivity and stressing the importance of the participatory nature of the research.

Interestingly only one court welfare officer (a male) asked whether it was appropriate for a white, middle-class male to be researching people of other 'races' and cultures, a question which has been the subject of much debate within the academic discourse (see De Vault (1995) and the exchanges between Ramazanoglu (1992), Hammersley (1992) and Gelthorpe (1992)). None of the judges nor the South Asians interviewed asked a question of this kind.

It is perhaps as well to declare that I had once been a probation officer in the county. I therefore knew some of the court welfare officers whom I wished to interview on a personal and professional footing. Importantly, it also meant that I had some insight into the organisation, management and ethos of the court welfare service in the county. As a probation officer, I prepared numerous welfare reports for the court, including those on South Asian families. I, too, have been subject to cross-examination in the witness box by barristers intent on undermining the basis of one's report. In this respect, I could lay claim to 'insider' knowledge and experience of the stark realities of court welfare practice. What is more, I also had an informed knowledge and understanding of how the county had responded in organisational terms to the changing social, economic and political climate within which court welfare work in the county had to operate.

Beyond this experience, I had observed the ways in which court welfare officers practise in six different probation areas. It is not uncommon for practitioners of a national public service such as probation to operate in ignorance of the organisational framework and decision-making processes that exist in other parts of the country. Welfare officers were thus keen to know how common issues were dealt with elsewhere. Welfare officers I spoke to invariably requested information on how the issues that tended to preoccupy them were dealt with elsewhere. Given this experience, I was thus in a position to offer information on such issues as: different methods of working; the time that it took different areas to prepare reports; the number of interviews conducted; the amount of time spent in face-to-face contact with families; the amount of time spent in court, writing reports, in team meetings, and planning for interviews and interviewing families and so on. I was not, therefore, a 'green' researcher, asking 'naive' and uninformed questions.

## **The Interviews**

Semi-structured interview schedules were used in all of the interviews. By way of introduction I explained my interest in the subject and my role, pointing out that anything that was said was confidential and asking them to draw to my attention anything that they would go on to say that they would not like quoted. Respondents were also asked if they had any objections to the interview being tape-recorded – no-one declined. The tape recorder allowed for both greater interaction and allowed me, in the words of Moser and Kalton (1971: 281) to be ‘free to concentrate on the interview’ and to make mental notes to include some particularly clearly articulated and insightful point of view at some future date.

I later transcribed the interviews myself, leaving out the usual ‘umms’ and ‘errs’, the false starts to answers and various repetitions that so often characterise research interviews. Though tedious in the extreme, this enabled me to relive the interview and to marvel once again at the eloquence of many respondents, their grasp of kaleidoscopic issues and situations, and their ability to conceptualise and articulate (in a few well-chosen words) complex sets of arguments in an integrated and coherent fashion.

Three sets of interviews were conducted (see Appendix). Each of the interview schedules contained a prescribed set of topics that were to be covered, although these varied between the three groups. The questions were framed to be as sufficiently specific as possible and expressed in everyday simple language. At the same time, the interview schedule was sufficiently flexible to allow follow up questions and for questions which seemed unclear to the respondent to be rephrased. In this way more complete and rounded answers were obtained. All of the interviews were, in this sense, discursive, resembling what might be

termed 'structured conversations', lasting from between three-quarters of an hour up to an hour and a half, with two or three interviews lasting just short of two hours.

The interviews with court welfare officers consisted of two kinds of questions. The first sought to establish court welfare officers' views on South Asian divorce including asking them whether they thought the rate of divorce among the South Asian population in their area was rising and if so for what kind of reasons and with what kind of effects. As noted above, this second set of questions turned on how they viewed their role and tasks. What views did they hold on how to approach South Asian families? Did they find working with South Asian families more difficult than working with white families and if so, in what ways? Were particular methods of working with South Asian families more appropriate than other approaches? What kind of information did they seek from the families with whom they came into contact and what information should they include in their reports?

The interviews with the three judges, in many ways, paralleled the interviews with court welfare officers. Once again the questions fell into two main categories: the first revolved around their perceptions of the cause and effects of South Asian divorce; the second related to the complexities and difficulties of reaching a judgement in which South Asian children are involved. Did they find cases involving South Asian families intrinsically more difficult than cases involving white families? What kind of information did they expect court welfare officers to provide in their reports and for what kind of reasons?

## **ORGANISING, PRESENTING AND ANALYSING THE DATA**

As indicated, this research began with a series of tentative themes and a broad range of categories with which to explore what I considered to be the relevant issues surrounding the two subject areas of this study. The questions asked generated a considerable amount

of data which, when transcribed filled just short of 300 pages. My task in subsequent chapters is essentially twofold. The first relates to the ways in which the mass of data collected is organised and presented; the second is concerned with questions of analysis and interpretation of the data, the kind of detailed, intensive and microscopic exploration of which Strauss (1987) speaks.

In this regard, my initial task is to reduce the mass of raw information obtained into a coherent and integrated form, drawing out the key characteristics, themes and patterns that emerged from the interviews. This rich source of information is presented in two data chapters, the first of which (Chapter 6) addresses the broader issues surrounding the causes and effects of divorce. The second of the data chapters (Chapter 7) is devoted to issues surrounding the cause and resolution of disputes. Both chapters collate and document the similarities and differences of opinion that existed among the three categories of respondents with regard to each of the themes.

As a way of distinguishing between respondents, dealing with epistemic issues and as a way of preserving the anonymity of those who participated in the research, I have adopted the following coding mechanisms. With regard to the South Asian sample, I have identified people in terms of their generation, sex, religion and position that they held in the organisation for whom they worked. Court welfare officers, meanwhile, have been allocated a number and the team within which they worked a letter. I have also identified court welfare officers in terms of their sex. The three judges, all male with several years experience on the Bench have simply been referred to as Judges A, B and C.

The organisation of the 'raw material' collated involved trawling through the transcripts in order to 'home in' on certain patterns, themes and categories that were of particular

relevance, isolating particular variables and regrouping others, a process which Tesch (1990) has called 'recontextualisation'. In this way the interview data were divided into various categories developed from the literature and the respondents descriptions and analyses. This open-ended process of coding allowed me to immerse myself in the data, as I had understood it at the point of collection as well as to be receptive to new themes and issues. Second, pulling out chunks of data and reassembling it in new, illuminating configurations allowed for similarities and differences in perspectives to be identified and for explanations of any given line of enquiry to be retained, altered or modified. In this way various bits of the texts were highlighted indicating various explanatory possibilities. Taken together these two chapters thus seek to communicate the range and intensity of the views expressed on South Asian divorce and disputes involving children of South Asian origin.

The second aim relates to the development of theory from the data. What do the clusters of attitudes, associations and underlying belief systems expressed by participants all mean? As intimated in the preface, I do not set out to examine or test a specific hypothesis. Rather the approach taken is to explore and analyse the twin themes of the study from a variety of different angles, drawing selectively upon a range of socio-legal sources and theoretical insights to show how particular issues connect with each other.

As with Chapters 6 and 7, there are similarities in the ways in which Chapters 8 and 9 are structured. Both Chapters 8 and 9 are concerned to make sense of participants' varying accounts of the twin themes under discussion. Similarly, the primary purpose in each of these chapters is to engage with the considerable array of analytic and explanatory problems that are raised by the contextual material presented in the first section and the

empirical data presented in section two. In Chapter 10, I seek to bring together the reflections offered at various points in the thesis to a satisfactory conclusion.

This study covers a great deal of ground and uses a variety of bearings to negotiate the complexities that each of the themes raises. Inevitably, therefore, I can portray only an edited and highly condensed version of the social reality of South Asian divorce and the experiences of those who are in dispute over their children. Similarly it is possible only to capture a small fraction of the socio-legal issues that face court welfare officers and judges in their work with South Asian families. Within these constraints I seek to convey some of the trauma and social upheaval that divorce brings to South Asian families. More particularly, the data presented seeks to capture something of the everyday, lived experience of those South Asians whose lives are affected by divorce, especially those who are engaged in disputes over their children within the context of a rapidly changing social world.

In pursuit of this, I have two overarching goals. The first is to produce as accurate a description and analysis as possible of the theoretical and practical problems that are raised by each of themes. The second is for the narrative presented to 'ring true' both for those individuals who gave so generously of their time and to their respective wider communities and institutions and organisations of which they are a part. In terms of both objectives, there is more at stake here than merely welcoming and valuing people's views and perceptions on the various questions that I seek to address. The argument here is that in order to invest the study with authenticity and experiential validity we need to go beyond abstract, speculatively imagined, South Asian social situations 'gathered either anecdotally or impressionistically' (Cotterrell 1998: 183). Instead it requires the study of the authentic voices and perspectives of the people themselves. In the discussion which follows, the

themes identified in the literature and the socio-legal analyses offered on the normative and institutional aspects of the twin themes are intertwined with participants' words detailing their respective viewpoints, often portrayed in some depth and length.

## **CHAPTER SIX**

### **SEVERING THE KNOT**

In this chapter – the first of two chapters reporting the empirical findings of this study - I present the viewpoints of South Asians, court welfare officers and judges about the scale and nature of divorce in South Asian society. Is the rate of divorce increasing among the South Asian population of Britain, and, if so, why this is the case? Why do unions held together originally by the kind of common sentiments, affinities and commitments described in Chapter 1 begin to crumble and fade? To what extent have the socio-economic changes to the structure of South Asian society discussed in Chapter 2 affected attitudes towards divorce? Do first and second generation South Asians take up different positions on divorce? These and related questions form the basic framework for the chapter.

#### **THE SEARCH FOR ANSWERS**

The material presented is concerned with various perceptions concerning what is known about the subject of South Asian divorce, particularly in relation to causation. In order to set this material into context and for comparative purposes, it is useful, at this point in the enquiry, to look at the extent and distribution of divorce within Britain generally and to explore briefly some of the reasons which may lie behind these data.

#### **The Scale of the Problem**

The rising divorce rate in Britain has become a familiar and, increasingly, a matter of fact feature of our social world. The number of divorces has risen from 25, 400 in 1961 to 171,000 in 1996 (Office for National Statistics 1999). It is now widely accepted that as many as forty-five per cent of marriages are likely to end in divorce. Interestingly, notes

Giddens (1993), rising divorce rates do not seem to indicate a deep dissatisfaction with marriage as such. Rather, he has argued, rising rates of divorce represent an increased determination to make marriage a more rewarding and satisfying relationship. Divorce among couples with young children is particularly on the increase. The number of divorces involving children under 16 in England and Wales in 1997 was 150,000. It is also the case that marriages are breaking-up earlier and earlier. In 1996, nine per cent of divorces in the UK were marriages that had lasted under three years compared with only two per cent in 1981 (Office for National Statistics 1999). We are no longer surprised at such figures.

How and why British society has witnessed such a large increase in divorce are two questions of considerable interest to the lay and academic communities as well as those responsible for divorce legislation. The quest for an explanation is of some importance given the broad consensus of opinion that exists within the psychological, sociological and medical literature regarding the emotional stress and severe financial hardship that are associated with the divorce process, particularly, we are told, when disputes arise over provision for children.

Many reasons have been advanced to account for the increases cited, including: shifts or a decline in morality; the decreased influence of religion; the effects of the women's movement; and married women's employment outside of the home (Philips 1991). Statistically, women are the prime instigators of the process. In recent times, more than two and a half times as many divorces were granted to women than were granted to men. Where the divorce was granted to the husband, the most common ground cited was that of adultery. Women, on the other hand, have tended to cite unreasonable behaviour as the most common ground (Office for National Statistics 1999).

Whilst we have substantial data on divorce, the official facts and figures do not differentiate between the different ethnic or religious groups. The failure to disaggregate data according to these variables means that we have no accurate way of knowing whether the divorce rate for Pakistanis, Indians or Bangladeshis is higher or lower than that, say, of the Chinese, Polish or African-Caribbean population in Britain. One of the first tasks is thus to establish, albeit at an impressionistic level, some idea of the extent of the problem. To this end, those interviewed were asked, in the first instance, whether they thought South Asian divorce was rising. As the following replies illustrate, whilst divorce among the South Asian population has not yet reached 'epidemic' proportions, there was a widespread belief that it was becoming more commonplace amongst all of the main religions:

In this city if you heard about a divorce then it would be heard about throughout the whole community. It was a disgrace for them. Now in each family that I have dealt with there has been a divorce case whereas at one time it was very rare to find (second generation Sikh female, community health worker).

Normally people are faithful and modest. So there is a low rate of divorce in Muslim circles. Although living in the West it is now increasing sharply. There used to be only two or three divorces five years ago. But now there are ten or fifteen cases among those families I know (first generation Muslim male, general practitioner and Mosque Elder).

I have seen a great deal of change in attitudes towards divorce. Traditionally people do not want a separation. Before, divorce was not even in the Hindu consciousness. But change is coming about because people are seeing an increase in divorce (first generation Hindu female, community worker).

Whilst these comments suggest that *all* of the main South Asian communities are experiencing an increase in divorce, people were unable to say whether the rate was increasing at a faster rate for any one group. A clearer if somewhat complex picture of the reasons underpinning the increase in divorce was, however, possible.

## **A General Overview**

In order to promote an understanding of the reasons given, it is perhaps useful to remind ourselves of the expectations that South Asian couples have of marriage. Whilst the norms which govern and shape South Asian attitudes to marriage and divorce have a particular binding quality, the degree to which people conform to these norms is likely to vary from group to group, family to family and individual to individual. In the same way, it is reasonable to assume that South Asian couples will expect different things from marriage depending on the particular situations in which they find themselves. By the same token, reasons for the decision to divorce one's husband or wife are also likely to vary according to specific circumstances: what might be tolerable for one person may be intolerable for another and vice versa.

In short, the circumstances surrounding each divorce case are unique and acutely situational. Indeed, there was rarely a single or simple explanation given to account for the increase. Moreover, as the following observations illustrate, a good number of those interviewed often thought it necessary to provide a generalised overview of the potential reasons before going on to offer specific explanations:

In looking at divorce you have to look at the differences in social expectations. It depends on what age people are when they come to this country, what sex they are, what kind of religion they hold and what kind of beliefs they hold. It also depends on whether they have been living in a rural area or whether they have come from a town or a city. People will have had different experiences (second generation Muslim male, probation officer).

It is difficult to say at the moment. There are a number of problems down to unemployment and the stress that is there because partners are both at home. In addition they might have young children as well. Then you have got the language problem. Then you have extended families. Mother or father-in-laws may cause stress...So it varies depending on who you are dealing with (second generation Sikh female, community health worker).

There are a lot of things which contribute to divorce. Wrong decisions. They feel that they are intelligent enough to make decisions but they find that their decisions do not work. It could be for religious or cultural reasons. Marrying between castes, for example. To marry is not that difficult, but to settle into two different faiths is difficult. There could be other domestic reasons. Arranged marriages. People do not understand each other, or they do not know each other when they get married. Then two different personalities try to live together and they find that this is very difficult. Sometimes they are misled before the marriage and they find out too late that what they have been told is not true. That is another reason for divorce. There are so many reasons, not just one (first generation Sikh male, interpreter/cultural consultant coordinator).

These observations cover a multitude of disparate issues and themes of widely varying degree of seriousness. Some of the explanations offered for divorce have their basis in intergenerational issues. Others relate to South Asian religions and cultural traditions such as arranged marriages and the extended family structure. Others have their roots in the migration process, whilst others would seem to have their origins deeply embedded in socio-economic factors. Still others refer to the influence of the West.

These explanations can be seen as signalling a broad range of factors that serve to define the parameters within which South Asian divorce occurs. They also serve to spell out the precipitating factors that provide South Asian divorce with a sense of distinctiveness. Before going on to discuss some of these facets in more detail, it is worthwhile to note that some respondents thought that it would be a mistake to see the factors in the break-up of South Asian marriages as being markedly different from those which cause rifts in white marriages. Couples, they intimated, grow apart irrespective of their ethnic origin, religion or 'race'. Similarly, desertion, adultery, physical and emotional abuse, or some combination thereof, which may lie at the heart of many divorces are to be found in both white and South Asian society:

In general terms it could be that the couple are not suited to each other. It could be that the female wants more freedom and the man is suppressing

that, or that he doesn't understand her wanting her freedom. That is quite common...It could be a violent husband and she can't take any more. The reasons are quite similar to the problems that white marriages face (second generation Sikh female, community health worker).

Let me now turn from general to the specific reasons alluded to in passing above which people thought might contribute to the increase.

### **Intergenerational Issues**

As noted in Chapter 1, intergenerational relations within South Asian society owe their importance to the strong normative emphasis on family obligation and the notion of 'respect' perceived to be due to parents and grandparents by the younger generation. South Asian parents and children enter into complex negotiations covering all aspects of their coexistence ranging from mundane, everyday realities to deeply spiritual matters. At one level such negotiations may be merely fraught with difficulty, the source of minor irritation. At another level they may be the source of deep-seated conflict and resentment. Many respondents thus identified infinite scope for misunderstanding, animosity and acrimony to occur between the generations. This potential was particularly true for those of South Asian origin who have been born in Britain or who arrived in Britain at an early age:

The children who have been brought up in England have different views. The older generation expect you to do things their way. The ones brought up in Pakistan are still following the ways of their parents and what their parents before them did (second generation Muslim female, interpreter/cultural consultant).

Many of those of South Asian heritage who were interviewed thought that the main sources of friction and difficulty were due to what we might, generically, call 'communication problems':

The main pressure is generated by the lack of communication between parents and offspring because of the barrier of language. Children have grown up in a different atmosphere and speaking English. So their ideas are not the same as their parents. There are, therefore, various ways in which misunderstandings can arise. The most serious one is whilst maintaining respect for parents and their traditions they have to move away from their English friends. So there develops a sort of barrier between them (first generation Muslim male, general practitioner and Mosque elder).

The biggest thing for us is communication. There is no communication within the family. No communication between husband and wife, and in-laws and daughter in law, between son and parents. There is so much business of trying to get on with life, trying to get your income support sorted out, trying to get some money out of housing benefit, that it all gets lost along the way (second generation Muslim female, South Asian Women's Refuge worker).

For some the source of problems concerning communication were located in the differential life experiences of the two generations. Some of these may date back to the language difficulties and the social isolation identified by Bhatti (1976) that many migrants, especially South Asian women experienced. In the words of this person:

We should keep in our minds that when we are talking about immigrants whether they be Muslims, Hindus or Sikhs, most of them come from backward areas of Pakistan, Bangladesh or India. They were unskilled labourers and they had poor schooling when they left their countries thirty or forty years ago. They are not only illiterate in worldly things but also in their religion. So this is a root cause of many social and other problems within Asian families (first generation Muslim male, general practitioner and Mosque elder).

Concerns over the lack of communication were frequently tied in with the influence of Western lifestyles and values. As Nielsen (1991) has pointed out, the West is often viewed by South Asians as depraved, promiscuous and lacking in moral and spiritual foundations. The implication here is that Western attitudes to the family, marriage and divorce have seeped into the collective consciousness of the South Asian population:

You have two different lives. That is what I have found. When you are at out you think western and you speak English. When you come home you

change into Asian clothes. You speak your own language and you become an Asian. You are not Western any more. It is difficult to pinpoint anything in particular. It is just a way of life (second generation Muslim female, interpreter/cultural consultant).

The younger generation like freedom in their daily life. They like to dress in Western dress, go out in the evening, not necessarily to pubs but outside the home. They like the lighter side of life, whereas the older generation talk of the traditions of life. They no longer follow what their parents say (first generation Hindu male, Hindu Temple Trustee).

The primary message conveyed from these accounts is that second generation South Asians have a series of different expectations and priorities and that their attitudes, values and lifestyles differ markedly from those held and experienced by their parents. In this person's words:

Yes, the younger generation are caught between two cultures, but it is why they are caught that is important. It is not clear and simple. On the one hand, we have people migrating from different parts of the world who bring centuries of tradition and religion. Because they have to be part of society, they are not allowed to carry on with that. But they also fear losing all that identity. So instead of being a bit loose, the older generation tighten the grip. The kids don't necessarily see this but in any case they are being pulled in other directions because of other things [such as] their need of acceptance with white society and to mix and be treated as equal. Once this happens then parents begin to panic because they see their way of life beginning to be destroyed (second generation Muslim female, South Asian Women's Refuge worker).

This is not to suggest that first and second generations are perpetually locked into conflictual relations, still less that they are unable to recognise, understand and empathise, if not be fully sympathetic to the views of others. Moreover, it has always been the case that the transmission of established values is capable of being interpreted in two different ways. For some the process can be seen as a positive force contributing to social harmony and order. The countervailing view is that the process represents a negative force which serves to inhibit growth and change.

One of the central messages that was conveyed by many of those interviewed was that time does not stand still. Intergenerational relations like other features of South Asian family life discussed in Chapters 1 and 2 are not fixed or immutable. Time, many people informed me, had a tendency to heal and change attitudes. Thus whilst several second generation South Asians declared that they had once been critical of a particular tradition or custom, or restriction placed on them by their parents, they also spoke of the tendency for such views to mellow, attenuate or even disappear with age:

I now understand the elders' views. As you get older you realise what they are going on about. When you are younger you think differently. I now realise that most of what they say is true (second generation Muslim female, interpreter/cultural consultant).

When I was younger I was not interested in the culture. As I have grown older I have begun to realise that we have very good support mechanism and that is very important. There is still a lot wrong but I now think that there is something good about arranged marriages. I would not like to see them disappear (second generation Sikh female, community health worker).

Many were thus able to put themselves 'in their parents place', as it were, though empathy of this kind was not without qualification. For example:

There is a lesson for Asian elders to learn in terms of just loosening up a bit. They will only loosen up when they are confident. It is not their fault. It is not my mom and dad's fault that they are like they are. Looking at it I would be the same in their situation (second generation Muslim female, South Asian Women's Refuge worker).

### **Arranged Marriages**

It is perhaps only to be expected that many people interviewed spoke of arranged marriages as a potential source of friction within South Asian marriages. As noted in Chapter 2, one area of life that first generation South Asians have seen changed markedly, perhaps

irrevocably, has been the ways in which marriages are arranged. The following comments provide a graphic picture of the degree of change that has occurred:

People are looking at arranged marriages very differently. Things have changed...I can still remember when my sister got married in India. When the boy came to the house all that was allowed was for them to look at each other. They went into the back room and our parents talked about the marriage in the front room. But it is not like that anymore. Now we allow our children to talk. They can find out about each other and all that. At the same time as they are doing that, both families will be keen and interested to see if there are any problems. At the end of the day it is their decision (second generation Hindu male, alcohol advice service worker and Hindu Temple trustee).

As noted in chapter 1, the system of arranging marriages has been intrinsically linked to the migratory process. Changes to the law governing migration has meant that the numbers of arranged marriages involving people from the Indian subcontinent has substantially reduced in recent years. Despite this general trend, arrangements of this kind remain fairly common. The stress of settling into an alien environment with all that this entails has already been commented upon in the opening chapter. Such difficulties, I was informed, are often compounded when there are deep-seated divisions between the couple according to such features as class, caste, education and so on, resulting in the couples having different expectations of one another:

Children that have been brought up here find it very difficult when parents arrange marriages for them involving people from India or Pakistan. They come over here and have totally different ideas. Children brought up here feel that they can go out, do their job, and these sorts of things. But people from overseas think that the woman's place is in the home. They have those sorts of values (second generation Muslim female, interpreter/cultural consultant).

## Differential Outlooks

The issue of different outlooks, expectations and values that South Asians place on marriage, and how these can lead to stresses and strains proved to be a common theme. Whether the person from the Indian subcontinent has been brought up in a rural or a suburban environment was thought to be of particular relevance and importance:

Women who come from a rural area will have a more restricted life. But in towns and cities it is slightly different...In cities women are working in the offices and in Parliament...So from the top to the bottom that it has changed. But women coming to this country from rural areas have a conflict with how they have been brought up, how they have been socialised and what their expectations are. They will have been brought up to look after the home and do all the work. But when they are out they see that things can be different. It does not have to be like this. But if she wants to do things her way then the power of the male will threaten that and a tension can arise (second generation Muslim male, probation officer).

The potential for problems of this kind may be more intense when it involves an arranged marriage in which the husband rather than the wife has migrated from the home country.

As one person put it:

There are cases where the boy has been born in India and the girl has been brought up here. The culture is different and their attitudes are different, especially when boys come from villages rather than towns. They have a narrow outlook in relation to women. At the beginning the girl will say that that is fine. But as days go by he often becomes dominating and her view of the situation changes. They are quite happy for their wives to go out to work and they are quite happy to take the wage packet. But they say that they should not do this or do that, they should not be staying out and many other things. Then girls begin to say that he has used the marriage to come to England and that he is taking advantage. This is how the clashes start (second generation Sikh female, welfare rights worker).

These views connect closely with comments made by Dhanjal (1976) about the danger of partners from India being socially and intellectually at odds with one another and the effects of this on interpersonal relations as well as more wider issues such as social mobility.

Observations of this kind were often allied to the issues that can be loosely termed 'East-West' connections and the inherent tensions that arise out of these relations:

A lot of marriages break up because of East-West conflicts. Boys from India, girls from here. The girls that have been brought up in a western society are used to independent thinking, whereas the boys think that she is a woman and she has got to do what she is told. Pressures also build up because she is probably more articulate than he is. So there is a conflict of interest there (second generation Sikh female, probation officer).

Going hand in hand with the changes to the arrangement of marriages has been the growth of so-called 'love marriages', either with non-Asians or with higher caste South Asian partners. The move towards Western ideas of marriage based on heart-felt and deep emotional attachments rather than social obligation is a trend which has affected all of the main South Asian groups (see among others Nesbitt 1994; Gardener and Shukar 1994). For some of those interviewed, the increase in the wish to marry 'for love' is to be regretted in that it poses a severe, though not necessarily terminal, threat to the cultural basis upon which Asian family life is created and maintained. Indeed, one interviewee went as far as to say that the increase in 'love matches' based on surface impressions debases the value of traditional forms of marriage whilst simultaneously losing something which borders on the sacred. In extending this argument, he saw the growth of Western style courtships, 'new ideas of self-chosen romantic love' as Gardner and Shukar (1994: 157) have put it, and eventual marriage as one of the prime reasons for the rising divorce rate. In his view:

the basis of marriage is now European rather than what has been traditional in Muslim and other Asian circles. [In South Asian society] Marriage constitutes a social contract between two persons with the help of members of the family or someone from the community. It is a social contract supported by all concerned. There is a wider circle than is generally the case in the European tradition. Personal likes or dislikes, or physical appearance were not important. The importance lay in the social contract and the precious nature of the relationship. But with the present generation marriage becomes a one-to-one relationship based on personal affection. Personal identities are not gone into so much as the physical side which ultimately

determines the nature of the relationship. Very often if you are attracted to someone you overlook many weaknesses which later come to the surface. In a traditional Muslim or Asian marriage these faults do come to the surface, but one is geared to the differences. The overall commitment was to stay with one another despite all the weaknesses. The sacredness of marriage is protected. One hardly ever thought of divorce. Now the rules are not so strict (first generation Muslim male, general practitioner and Mosque elder).

As I have noted earlier, the changes that are occurring in arranged marriages are paralleled in changes to the extended families. The reasons for this are once again manifold. Chief among them is the quest for the younger generation to live separate lives from their parents and other relatives. Whilst it is true that South Asian couples are increasingly setting up homes of their own and adopting the nuclear family of the western world, it was pointed out to me that the cultural, traditional and socio-economic traditions which have served to maintain the extended family system remain prevalent. As such they are of continuing moral and emotional force, as the following observation demonstrates:

My daughter is getting married soon and the boy is going to buy a house. But they have decided that they will come to his family's home every night to have their food with his family and then return to their own home later. This tells you how close the family ties are. It is also my responsibility to encourage my daughter to get to know the family as a whole and not just his parents. We are proud of these kind of arrangements. It is how it should be (first generation Hindu male, alcohol advice service worker and Hindu Temple trustee).

Despite this, several respondents spoke of marital clashes that they have had to deal with as a result of the pressures of living in extended families. Several cracks to the system were identified as were a number of sources of grievance. Issues revolving around the role and power of South Asian mothers in law stood out above all the rest:

Parents play a major role in marriage. They are there to fix any arguments that you may have. You have no say in it. It is difficult living with in-laws. But also if I go to my mother she always takes his side. I didn't realise how difficult and bad it all was until I came to work here. I didn't know that the mother-in-law had so much say. They have quite a sway over things, and

although it is changing it is changing very slowly. It is still very much as it was years ago (second generation Muslim female, interpreter/cultural consultant).

I have come across quite a few problems involving young women who are very much dominated by their mother-in-law. They have found it very hard to adapt to living in the extended family. I see quite a lot of that. If the girl has been brought up in this country and she is used to quite a bit of freedom and then she is married into a situation whereby people expect things to be done in a certain way, then it can cause a great deal of unhappiness (second generation Sikh female, community health worker).

Participants were asked why this should be the case. In attempting to answer this question one person replied:

I don't quite know why. Mothers-in-law feel that they are more experienced and they want to lead their daughter in law's life as well as their own. They want to exert their authority. I would say that this situation exists in sixty to seventy per cent of the cases that we have to deal with (second generation Sikh female, South Asian Conciliation Service and interpreter/cultural consultant).

Others referred to the sense of isolation, alienation and acute stress that some South Asian women may experience within extended families:

What you have to bear in mind is that a woman who has left her home country to come here will encounter something entirely different to what she has known. Even though she has come into a family, she may still feel very much alone. We should not generalise because it does not always happen. There are usually two or three members of a family who you can have some rapport with and who share an understanding. But on the whole, she would be very isolated (second generation Muslim female, interpreter/cultural consultant).

There was a strong body of opinion that much of the upheaval in South Asian family life has been brought about the struggle for emancipation, increased status and greater social prestige for South Asian women. In this regard, certain social imperatives to which South Asians have felt obligated and constrained, particularly the 'status-based marriage rules'

(Beck 1994) which have tended to dominate relations between the sexes have altered considerably in recent times:

Asian women's roles are changing with more and more women going out to work and having careers. More women are wanting more. Women are beginning to believe that everything does not stop simply because they cannot speak English. You can learn English and improve yourself (second generation Sikh female, community health worker).

One particular theme that emerged relates to double standards commented on by a number of writers that exist between the sexes (Mirza 1997; Walby 1997 among many others). Echoing a particular well-voiced theme within this literature, South Asian men, it was argued, 'could do more or less what they liked', whereas the freedom for South Asian women to engage in similar forms of behaviour was severely restricted. Interestingly, as the following comment suggests, such double standards are not confined to tensions which arise out of intergenerational relations. It is also important to note that the pace of change may vary both within and between groups. Thus:

change for women is fast, but the change for men is slow. Men do not want to give up power. My brothers are all professional workers and one would expect them to be a lot more Western in their thoughts. It is OK for them, as Sikhs, to go out with a Muslim girl, but it is not OK for me to go out with a Muslim man. It is my brothers who turn round to me and say that I am not respecting my father. They say that they are men and that they can do it. They say that they do not need Asian respect in order to live. It doesn't do anything for them (second generation Sikh female, probation officer).

It is easy to see from the explanations for divorce that have been provided why some South Asian women stay in troublesome, even violent marriages. In such situations South Asian women, like women of other groups, draw on reserves of courage and a range of coping strategies that they possess in order, as Mullender (1996) has noted, to survive on a day to day basis. The factors that might deter South Asian women in particular from seeking divorce are thus many and varied. South Asian women contemplating separation need to

weigh these in the balance. Invariably this amounts to a complex cost-benefit analysis. What is to be gained? What is to be lost? How much longer can I put up with this? For most of those contemplating divorce these are self-evidently large and vexed questions. For Bangladeshi and Pakistani women who, as we have seen in Chapter 2 are amongst the poorest members of the population, there may also be huge financial as well as emotional costs. There is also, as shall be seen in the following section, the spectre of the loss of social prestige and reputation that looms large over those who choose to divorce their husbands.

## **PERSPECTIVES ON DIVORCE**

It is impossible to discuss the reasons for South Asian divorce in isolation from the feelings and emotions that divorce generates. In this section I thus provide data drawn from what people told me about South Asian attitudes towards divorce. Once again it is useful to place the views provided into context. In particular it is important to recall the great lengths to which people of South Asian origin may go to shore up the difficulties that couples may be experiencing. In the words of this person:

Marriage is still very strong. You may hear one or two saying why worry, if you don't get on you can just finish. But within my religion, marriage is very strong and castes bring strength. If divorce is happening then the family will always try to solve the problem first. In general this has worked rather than going to marriage guidance or court. Both families will get together and try and guide them and to solve the problem. If it is difficult for parents then they will use someone who is well known in the community...I have been involved in quite a few cases and it has worked. Sometimes parents can be very forceful on such an issue and youngsters don't like it, but it is something which has to be dealt with in a family group (first generation male Hindu, alcohol advice worker and Temple Trustee).

## Stigma, Failure and Guilt

What feelings and thoughts, then, do those South Asian couples who decide to go ahead with divorce proceedings encounter? In addressing this question it is informative to bear in mind the observation made by Burgoyne *et al.* (1987) that most divorced people find that their experiences defy easy description, though feelings of anger, loneliness and depression figure highly as do feelings of failure and guilt.

At one time, not so long ago, a sense of stigma might well have been added to this list. Stigma, as Goffman (1968) has shown, plays an important part in the ways in which we categorise, conceive and talk about particular social relations. The term stigma, for Goffman, denotes an attribute that is deeply discrediting. However, prejudicial attitudes towards divorce within the wider society have diminished over the years. In part the acceptability of divorce has come about as a result of the sheer weight of numbers of people who have experienced divorce. In this regard, the experience has become part of life's regular pattern: 'a proper and normal solution' as Gibson has put it, for the tribulations of a discordant relationship (1994: 147). Whilst the stigma attached to divorce within the western world has largely withered on the vine, the same cannot be said of South Asian divorce as the following comments from someone who has herself been divorced and remarried make clear:

I think that the stigma will always remain within the person who is divorced. Because of our culture if you divorce, somewhere deep down inside, you feel yourself to be a failure. I went through an arranged marriage...Unfortunately there were a lot of problems with my mother-in-law. In the end I decided to separate and I went to London. At first I didn't come back home because I thought: how am I going to face the community? The first thing that came into my head was that I had failed in some way. When I returned the relatives got together and cried their eyes out... I wouldn't go out because I felt guilty and I lost faith in myself... Now I realise that I had nothing to feel guilty for...But at the time I just felt rejected, very lonely and isolated. A lot of women feel the same. Divorce is

a big step for Asian families. Although I now have three lovely children the scars are always there (second generation Sikh female, community health worker).

The stigma, sense of failure and guilt attached to the break-up of South Asian marriages, it would seem, is not distributed equally. Many participants stressed that the stigma attached to South Asian divorce was much greater and deeper for women:

When Asian women are divorced they are thought of the person who has done something wrong not the husband. No matter whether he is a drunk or that he beats his wife, it is always the woman to blame (second generation Muslim female, interpreter/cultural consultant).

Importantly, given the tightly knit nature of many South Asian kinship and community networks, the ripples that each of these factors generates often extend far beyond the divorcing couple's own immediate family situation:

There are all the things about honour and respectability. Marriage is a partnership of families and not just individuals. It is very deep. Even when women have left and set up independently there is always that guilt. There is so much guilt, the fact that they have failed (second generation Muslim female, interpreter/cultural consultant).

Asian women, irrespective of religion or which culture they come from, are born with an element of guilt. This continues throughout their lives. All they are told is that you have to live for your family's respect. When they get married they have to live for the respect of their husbands and children. They are never allowed to be themselves. They are not allowed to think or have feelings. If they want to divorce there is a huge element of guilt. What will the community say? What is going to happen to your brothers and sisters? If they have children what is going to happen to them? For white women the guilt isn't there. The difference with Asian women is that they are martyrs (second generation Sikh female, probation officer).

One of the main points that surfaces, here, is that South Asian choices to instigate divorce proceedings involves weighing up the consequences not only for the individual concerned, as noted above, but also second-guessing the implications of this action for others in the immediate family. The family in this regard needs to be given equal priority to the self.

Indeed, family loyalty and the need to maintain *izzat* may mean putting the family first. As noted in the opening chapter, it is also the case that much would have been done within the family to resolve the tensions that exist between the parties prior to formal divorce proceedings. Consequently there was a widespread consensus that South Asian women separate from their husbands only after considerable duress and only then, as the opening comments in this section indicate, as a last resort.

### **Ongoing Consequences**

There are various facets to this reluctance which are worth highlighting. Of course, many women contemplating separating from their partners (irrespective of racial, cultural or socio-economic background) will be reticent to embark upon such a course of action for a host of understandable reasons. Here we can cite: fear of the unknown; fear of loneliness; fear of having to find alternative accommodation; and the fear of not being able to survive financially, to name but a few. The central point, however, is that South Asian women who are considering a separation are much more likely to experience these fears to a far greater and deeper extent than other women of other groups. Consider the following observations:

It is not just where to go but how to adjust your lifestyle. If a woman leaves of her own choice saying that she is not going to be violated, it is very unlikely that she will be supported by the community. So a lot of women find that difficult. There is always this fear of what is going to happen. It also comes as a shock because you have previously been supported by the community and now you find yourself ostracised (second generation Sikh female, community health worker).

There is, in addition, the widespread and realistic fear that children of separated parents may be sent back to their country of origin to be cared for by relatives. Taking these circumstances together, it is understandable that some women may consider returning to their husbands despite the severe ill treatment that they may have suffered:

Asian women find it very difficult to live alone. When they live alone they are thought of as 'bad' women. So no matter what their husband has done to them they think that it might be better if they went back. It is always the women who are hurt in the end. Men do not actually think what women want. There is nothing for women (second generation Muslim female, interpreter/cultural consultant).

Divorced women are very isolated. The community treats them as prostitutes. If they go back to their parents they can be told that they will not be taken in. They cannot get married again. They can't do this, they can't do that. I left my husband and I had a big struggle...They have never really accepted the divorce. Sure my parents have supported me, but that support has also had an element of control (second generation Sikh female, probation officer).

## **COURT WELFARE OFFICERS' VIEWPOINTS**

Thus far the data presented has been confined to South Asian viewpoints. How do the views expressed correspond to court welfare officers' perspectives? I generally began my interviews with court welfare officers by asking them what they considered to be the key factors associated with South Asian divorce. This section reports their answers to this open-ended question and other subsequent, more specific, questions that flowed out of their replies.

In common with the South Asian perspectives portrayed above, all of the court welfare officers thought that there has been an increase in the South Asian divorce rate. For some court welfare officers this came as something of a surprise, especially those who were new to court welfare work:

I was surprised when I first came here as to how many Asian couples came through our books. I suppose I didn't expect it. I don't know why I didn't expect it. I know that divorce is possible in Islam but like any religious community I thought that it would be less than in secular society. So I have been surprised by the number of divorces. It may say something about how Islam has been affected by secular society (court welfare officer 15, white female, Team B).

Many of the explanations for the increase in the divorce rate given by the South Asians found resonance in the minds of court welfare officers. Almost all court welfare officers counselled against making too many generalisations, stressing that the issues surrounding divorce differ between the main groups. Some welfare officers also stressed that the main reasons that we have come to associate with the breakdown of marriages - infidelity, incompatibility, violence, differing expectations and so on - are as applicable to the South Asian population as they are to their white counterparts. Those who expressed this view thus counselled against painting the differences between white and South Asian families too vividly or starkly. Rather, they argued, the precipitating factors and characteristics which can be said to distinguish the two groups were more a matter of degree rather than kind:

The family dynamics are the same. You can be sidelined in such things as the Asian woman saying that 'he takes more notice of his mother and that his mother takes his pay packet off him and I am used as a slave'. But if you compare this with white families, then you find white people saying that she takes more notice of her mother than she does of me. It is about power really (court welfare officer 32, white male, Team F).

I think that the underlying reasons [for marital breakdown] are very similar but seen to be a bit more extreme. In a lot of families the difficulties in marriage are related to one of the partners being constrained by the roles and expectations of the other partner. It seems to me that in a lot of Asian families it appears that the women are expected to conform to a pattern of behaviour which is very much out of kilter with the pattern and expectations of society as a whole within which they are living. Therefore differences of view over roles tend to be particularly fraught (male court welfare officer 28, Team E).

On a similar theme but on a different note, one welfare officer from the same team was at pains to point out that, to be sure:

One does meet Asian families where the woman has almost been kept locked away. She may therefore not be given that opportunity to get to know people and the language and participate in the wider society. And

some Asian men do say that such things are a retrograde step and the source of problems, and if only women would do as they are told and so on. But I recognise that this is also widespread in British society and it is easy to overlook it. I think that it is racist to condemn it in Asian society (male court welfare officer 29 Team E).

Similarly:

Sameness and difference is a crucial issue because you can get hung up on sameness and difference to the exclusion of each other. The reality is that all people have strong feelings when they enter into intimate relationships and they don't work. That is very basic. That is what family breakdown is about, the pain, the anger, the disappointment, the abuse and all the rest of it that goes on. It is about power, and it is about how people feel about children and the place that children have in the procedure. So that is all the same. But then again, what people bring to the relationship is also influenced by culture and religion, their background, what kind of community they live in, what kind of expectations they have of marriage which are, in turn, culturally influenced. So it is a tremendous mix of those things. It is important for us to understand all of that (court welfare officer 11, white male, Team B).

And again:

Asian girls see white girls who have a lot of freedom and they think that it would be good to have more freedom...White women think of themselves as being liberalised and free. But I don't think that white women are any more free than Asian women. It is just different degrees and the way people express their freedom. And again, what is freedom? Freedom from what? (court welfare officer 10, second generation Sikh female, Team B).

Most welfare officers, however, thought that there were some reasons for the demise of South Asian marriages that were either qualitatively different or unique to the South Asian population. As one might expect, intergenerational tensions, allied closely to cultural clashes, figured prominently in this category:

One of the biggest problems is that children who have been born here and have grown up in Western society and have taken on Western roles and values and taking these home to staunch Asian traditions is causing a lot of problems (court welfare officer 26, Team E).

An important, but largely undeveloped strand in divorce studies is the connection between explanations that focus on the characteristics of the individual and those which seek to explain divorce in terms of economic differences or influences. Interestingly, and perhaps surprisingly, very few welfare officers mentioned the socio-economic situation of South Asians as a factor in the break-up of South Asian marriages as explicitly as this welfare officer:

Families who have come from the Indian sub-continent have to adapt to so many things...Families who manage to adapt, by definition, manage. Those which do not are perhaps the ones that would be unhappy anyway. There are particular difficulties for men where jobs are difficult to get or where people's qualifications are not acknowledged and used in a constructive way. Sometimes there are Asian families where women can get work and men cannot and it puts pressure on those relationships (court welfare officer 18, white female, Team A).

The tension of living within an extended family network was a recurring theme. Particular reference was made to a general lack of support for South Asian women and to the specific difficulty of establishing cordial relations with mothers in law:

There are more layers and strands to Asian marriages that have more influence than white marriages...More Asian couples break up because the mother-in-law is nasty with the wife than happens in white families. Because they are living there day in and day out, it can be a very critical factor. They can get along with their husband. He's never there. But for twelve hours a day, she can be put down by his sisters and his mother. I find that is quite common (court welfare officer 7, white female, Team A).

Very often you get cases where the wife leaves her family to go and live with his family and doesn't get on with the mother-in-law. She then says that she wants a home of her own, or says that he doesn't understand how difficult it is and that he ought to support her. Very often the husband will say 'that it is between you two women, it is nothing to do with me' when she is looking for support from her husband. And he finds that he is torn as well. You get a lot of cases like that. They are very complicated cases (court welfare officer 24, white female, Team D).

That the sense of isolation that many South Asian women may experience continues after the decision to separate was also confirmed by court welfare officers. In the words of this welfare officer:

Asian women often have a lot less support and acceptance of divorce in ways that white families experienced thirty or forty years ago. Separation is much less acceptable. Women who come over here to marry whilst their family remain in the home country have virtually no support at all. The sense of isolation and the devastation for their lives is enormously great (court welfare officer 6, white female, Team B).

For this and other reasons, the reluctance of South Asian women to take the final step to end the relationship was often cited as being a significant and powerful factor. In this regard:

A sweeping statement, but I think that Asian women are under enormous pressure to conform and step back into line. If they don't then they have to resist a great deal of pain, anguish and manipulation. Their agenda is often to try and stay afloat, as it were. That takes up so much time and nervous energy. On both sides you feel an enormous sense of the extended family. You can almost sense them sitting there behind the parents (court welfare officer 25, white male, Team D).

Welfare officers often saw such situations in terms of the harsh realities that face South Asian women who contemplate divorce and the sense of frustration that this could cause. For example, some court welfare officers referred to the pressures for South Asian women to remain and conform to the roles which they were expected to fulfil, at the same time as wanting the situation to change but being unable to bring this about:

The woman wants the man to change. She wants to leave, but if she does she knows that there will be lots of problems. Where is she going to go? She can't remarry because no-one will have her. The stigma is tremendous even now within the communities for a woman who has left her husband. She can be ostracised. So I think that Asian women are particularly ambivalent. They want changes but how do they get them? (court welfare officer 3, white male, Team A).

The lack of power to influence proceedings was also a very prominent theme in court welfare officers' accounts:

Generally Asian women are disempowered. Those Asian women who have power and want to stick with it have to pay a terrible price. Usually, in effect, to jettison their children. Men say that they either go back into the marriage or they don't see the children, or they attempt to set them up to look unreasonable. They say 'look, all you have to do is this, that and the other'. But the undertone of all of that is a message of menace and fear. That is not to say that white families do not engender similar situations, but there is a sense of finality about it with Asian families (court welfare officer 25, white male, Team D).

It is prudent to pause for a moment to reflect on the perturbing comment referring to 'undertone of menace and fear'. The tendency for some women to return to abusive husbands has been well documented in the literature on 'domestic violence' (see, for example, Dobash and Dobash 1992; Mullender 1996; Stanko 1985). Within this context it is readily understandable that court welfare officers should cite violence and other forms of ill treatment as one of the prime reasons for South Asian divorce. In the words of this officer:

An allegation of violence is something which crops up fairly regularly. The woman leaves the home because she thinks that is the only way to escape (court welfare officer 17, white female, Team B).

As Mullender (1996) has noted South Asian women have safety needs like all women. Much has been said already about the emphasis upon maintaining South Asian family values, holding the family together and preserving *izzat* at all costs. It is possible that South Asian women may stay longer in such abusive situations than their white counterparts. In elaborating upon this theme, however, welfare officers were of the impression that whilst this may be the case, they also articulated the view that the amount of violence that South

Asian women are prepared to endure before taking the decision to leave may have become less in recent years:

Talking to friends, neighbours and other parents they come to the conclusion that they do not have to tolerate certain things. I am thinking of violence and women saying that they do not have to put up with it (court welfare officer 18, white female, Team A).

It can only be impressionistic, but possibly Asian women are becoming aware of their rights and that they do not have to stand for being beaten or treated badly. And certainly young Asian women who have perhaps been educated in English schools may be more aware of what happens outside of their own culture...whether that is for good or ill (court welfare officer 33, white female, Team F).

Court welfare officers also confirmed the sense of stigma spoken of above that is attached to South Asian divorce. Allied to this they drew attention the practical dilemmas that South Asian women face. As one person put it:

It is hard for Asian women because of the lack of resources. She needs a good network. They can be torn and trapped between two cultures. She has no support from the Asian community and she is trying to understand the English way of life but she doesn't fit in there and it has been totally disastrous (court welfare officer 17, white female, Team B).

Women want to leave but if they do so they know it will create lots of problems. Where is she going to go? She can't remarry because no-one will have her. The stigma is tremendous even now within the communities of this city for a woman who has left her husband. She can be ostracised. So I think that Asian women are ambivalent about leaving. They want changes but how do they get them? (court welfare officer 3, white male, Team B).

Against this backdrop, numerous people referred to a growing trend of South Asian women seeking to extricate themselves from untenable marital situations, a process that would scarcely have been countenanced only a few years ago:

Many of the cases that we deal with here have been started by women. Even women who have not been brought up in this country are clearly not accepting what it would be like in Pakistan or India. They have left the home in the way that western women frequently do, often taking the

children with them. They are therefore much less likely now to accept the traditional role. But it is also very complex and sometimes you get an unusual mixture. In one case, I had a woman who would have accepted a second wife if he had bought a second home, but she couldn't accept the second wife in the same house (court welfare officer 2, white female, Team B).

## SUMMARY

This chapter has sought to communicate the range and intensity of the views expressed about South Asian divorce. In particular I have attempted to convey something of the ways in which participants 'typified' (Schutz 1972) the main causes and effects of South Asian divorce. It is not my intention here to repeat or elaborate on what has already been said. I take up some of the detail and complexity that lie at the heart of the perspectives presented in Chapters 8 and 10. I will focus instead upon the main areas that participants identified as having special bearing on this later analysis.

Perhaps the most striking feature of the accounts presented is that South Asian divorce is an imperfectly understood social phenomena. That said, several factors leading to the breakdown of many South Asian marriages have nonetheless been identified. Some have suggested that the reasons for the break-up of South Asian marriages parallel, or follow closely, the reasons for the failure of white marriages. In the same way, South Asian marital relationships can be fragile entities. What were once cordial relationships, it has been shown, can all too easily be transformed, sometimes imperceptibly into situations involving mutual loathing.

A second point is that South Asian divorce brings in its wake a range of demands that may stand in opposition to one another. Unsurprisingly people find it difficult to express their feelings, to put into words quite what it is that they think, believe and feel about divorce. As we have seen, there exists a range of competing pressures that are particularly difficult

for South Asian women to reconcile. The desire for South Asians to escape troublesome situations, for example, may compete with feelings of bringing shame and dishonour to their family and the community to which they belong. In the same way, feelings of gaining a sense of freedom, at one moment, may give way to feelings of depression the next. Even the security that a bad marriage provides may, for some South Asian women, outweigh the fear of what are a number of unknowns. Above all, there is the lingering feeling that the children's welfare may, after all, be better met by staying together rather by parting.

The third point that can be made by way of a general conclusion is that getting divorced within South Asian society encompasses many personal and social changes. In this regard it has been shown that it is important to look beyond the parents themselves to wider social consequences for South Asian divorce. One important aspect of this is that the divorce itself frequently disrupts the bonds that have been formed between children and their parents and other members of the family. The impact of this is likely to be heightened when the separation involves a dispute over the arrangements for the children. In such circumstances, raw nerves are exposed, tempers are all too easily lost, and the capacity for parents to make rational and logical decisions about what is best for all concerned, particularly the children, is likely to be much reduced. With frustration, anger and bitterness feeding off one another, South Asian parents in dispute over their children may find themselves caught up in an ever-increasing spiral.

Often such disputes continue long after the divorce. It is into such fraught arenas that the court welfare officers and judges are asked to step. The ways in which they approach and seek to resolve these dilemmas and tensions is the subject of the next chapter.

## **CHAPTER SEVEN**

### **PERSPECTIVES ON EXERCISING PROFESSIONAL JUDGMENT**

In Chapters 3 and 4, I set out the institutional framework which people of South Asian origin will encounter and the codes of conduct that they might expect from court welfare officers and judges. My purpose, in this chapter is to establish the principles and codes of conduct that court welfare officers and judges draw upon to meet these demands. The chapter, like its predecessor, is again structured around a series of difficult and complex questions. What issues and problems do people of South Asian origin bring to their attention and how are these to be overcome? What standards do court welfare officers and judges apply in cases involving South Asian children?

#### **STEPPING INTO THE FRAY**

Disputes over the arrangements for children in the throes of divorce or post-divorce are often prolonged, fraught and emotionally charged affairs. Couples engaged in such disputes are likely to be both angry and heavily critical of one another. Disputes also have a habit of repeatedly coming before the court and it is not unusual for court welfare officers to write several addenda. Crucially, as Hester and Radford (1996) have noted, on occasions it is also fairly common for such disputes to be accompanied by violence. Against this background, Section 64 of the Family Law Act 1996 has provided new legislative powers for providing the separate representation of children in divorce proceedings, raising the difficult issue of deciding to what extent and under what circumstances it is desirable for children to be given party status in proceedings in which they could be in direct opposition to their parents. This new power adds to the court welfare officers' dilemma identified by Cantwell and Nunnerly (1996) of how to place the child's best interests at the heart of their

enquiries in relation to ascertaining their wishes and feelings without burdening the child with what is essentially an adult responsibility for decision-making.

Court welfare officers and judges are, then, faced with and need to be aware of, and sensitive to, an array of moral, legal and practical difficulties. Both in recognition of these general difficulties, and as a way in to exploring these and other tensions, court welfare officers and judges were asked a series of questions about the process of assessment and decision-making, the first of which was whether they found working with South Asian families more difficult than working with their white counterparts. The following replies are typical of the range and depth of feelings of many of the welfare officers interviewed:

It is more difficult to use our method of work. It takes more time and you feel more drained after an interview with an Asian family because you have to concentrate more (court welfare officer 2, white female, Team B).

This is a personal feeling but I feel inadequate, if you like. I have no problems with working with other groups. Probably a lot of that comes down to language and the lack of it. I would like to be able to communicate more directly with people (court welfare officer 31, white male, Team F).

I feel more aware of my ignorance when I am working with Asian families. Although there is a great divergence among British families, I feel that I have more of a grip on them than I have on Asian families (court welfare officer 27, white female, Team E).

Moreover, what was also apparent is that the sense of unease, anxiety and general lack of confidence in one's ability to work effectively with South Asian families does not necessarily decrease with experience of working with this particular group. In the words of this officer:

I have been working with Asian families in this field for nearly a decade. Yet there is a sense in not really knowing what I'm at. Just the term 'Asian families' covers people over a vast geographical area involving a number of religions, nuances of cultures, in addition to the differences between rural and city life. I need a great deal of learning about a number of issues that I

am nowhere near getting. That is how I feel (court welfare officer 25, white male, Team D).

Before going on to explore the nature of the difficulties articulated in more detail, it is important to note that some welfare officers did not experience working with South Asian families as being, in any profound way, difficult or more anxiety provoking than working with white families:

I worry a little about what gets lost, but I don't think that working with Asian families is more difficult (court welfare officer 7, white female, Team A).

I don't experience it as being more difficult. I always feel nervous about beginning a piece of work with any family, but I don't find that I am any more anxious or worried working with Asian families (court welfare officer 11, white male, Team B).

A number of other officers said that 'difficult' was not a word that they would use. Rather they saw the problems of working with South Asian families as being somewhat 'different'. All families, they stressed, have their similarities and differences.

Each of the three judges found cases involving South Asian families more difficult to adjudicate than cases involving white families, although as the following replies illustrate, they gave different reasons for the source of this difficulty:

Of course, they are more difficult, much more difficult. The individual judge has not the same comprehension of the nuance of the case and may well have misgivings about how appropriate it is to apply solutions on the basis that they are appropriate for our society members (Judge A).

I always find such cases difficult because I have great difficulty in understanding sometimes what the parties are saying. From a judge's point of view, there is nothing more tedious than having to listen to interpreters and cases being tried through interpreters which cases involving Asians often have to be (Judge B).

One of the judges, however, was more equivocal:

They are more difficult because you have got to take into account different considerations. It is, for example, a more enclosed community. A boy needs his father more, I would have thought in the Asian community than he does in our community. It is more of a male centred community, isn't it. But in some ways they bring the same issues as white families. However, it is far more of an enclosed community. There seems to be more cases where the father is not taking any interest in the child. That is the impression I get... And when Asian families fall out, it is far more severe than white families. It presents very grave problems for contact (Judge C).

It is evident from the above that the reasons given for the difficulties that court welfare officers and judges experience in working with South Asians vary on a number of dimensions. If there is a common thread running through these accounts it is, however, the question of how to tackle various level of diversity that exists within the South Asian community. It is this to this theme that I now turn.

## COMMUNICATION AND CULTURAL DIVERSITY

There is a growing literature on cross-cultural communication between different ethnic groups which are common to a number of situations involving the provision of social care (see, for example, Kavanagh and Kennedy 1992; Lynch, and Hanson 1992; Gerrish *et al.* 1996). This body of work reveals a deep-seated anxiety amongst practitioners about the barriers to effective intercultural communication. Three concerns in particular can be identified: problems connected to the *process* of cross-cultural communication; problems associated with the *norms and rules* which govern interaction between different ethnic groups; and problems revolving around the *kind* of information that practitioners needs to be gathered.

As Kavanagh and Kennedy (1992) note communication with people whose social characteristics are markedly different from one's own starts with an intent to learn to understand, as much as possible, those cultural differences. Intercultural communication also involves breaking down cultural barriers to understanding. This entails attempting to

understand the differences between oneself and others who participate in different ways of life. In particular it involves seeking to understand people who have different values, beliefs and feelings, as well as different life experiences, different expectations of conduct, habits of speech and rules for talking to one another.

In some, perhaps most cases, this understanding can only be gained with the assistance of an interpreter. Welfare officers were thus asked what difficulties they experienced with the process of interpretation. There were two main sources of unease raised. The first concern voiced was that the process took up a great deal of time. Second, and more importantly, welfare officers referred to a range of issues that they encounter related to the subtleties of meaning, much of which can get lost in the process of translation:

I am not sure how my questions get interpreted. I understand what I am asking in English, and how I understand the question. But I am not at all sure that by the time it has been interpreted, even by [name of interpreter] who knows us so well, that the family understand what I meant when I asked it. Equally when they answer, I am not at all clear that I understand what they've said. Not the words, but the meaning behind it (court welfare officer 16, white female, Team A).

Similarly:

You are very reliant upon the interpreter. You don't really know what is said to the client is really what you want them to say. And you are never quite sure whether the translation back is what the client has said. You can pick up certain things through body language, but you are totally reliant on interpretation. You have to really trust the interpreter and the relationship that welfare officers have with interpreters is crucial (court welfare officer 33, white female, Team F).

It is apparent, however, that the process of interpreting is enacted at various levels of complexity and subtlety. Tone, cadence and nuance in the way that court welfare officers interact with South Asian families are all important in this respect. However, there is also the whole question about the use of language, the rules and conventions that are used, and

the concepts and symbolism of language that need to be explored. As Fairclough (1989) has said, talk is interwoven with gesture, facial expression, movement and posture. Visual behaviour such as nodding of the head, head shaking and the shrugging of shoulders, he notes, is an accompaniment to talk. Moreover, he goes on to say, such actions are, in some cases, a substitute for talk which helps determine the meaning of what has been said. Issues relating to the social meaning of differing speech styles, the breadth of vocabulary used and so on, together with the use of body language, thus have considerable significance for the ways in which people of South Asian origin are perceived, the status that is ascribed to them, as well as the degree of competence they are afforded.

Thus, more deeply still:

We rely entirely on what the interpreter's feedback about what is going on. We can only work on the non-verbal level as far as making judgements about a particular family and then rely on what the interpreter says is happening. I do not have a problem about tone, but what I have become increasingly aware of is that we take for granted that the translations are literal and that the concepts exist in the language and they do not. Words mean different things and they convey different concepts in different cultures. And that is a huge difficulty in communication. So I may say to Rajinder [name of cultural consultant] that I want to know such and such. She will look at me and I can see her mind turning over, saying how the hell am I going to ask that question? (court welfare officer 11, white male, Team B).

The problems associated with interpreters do not rest here. There are further difficulties that welfare officers need to face in relation to the use of interpreters. These relate, in the main, to questions about their role over and above the actual act of interpreting in the sense of providing, as far as possible, a literal translation. Welfare officers were wont to argue that, given the centrality of their role, interpreters should have a detailed knowledge and understanding of what they, as court welfare officers, are seeking to achieve and by what means. Indeed some welfare officers in the county went further and argued that interpreters

should have at least a rudimentary understanding of the theoretical base which underpins their work. In addition welfare officers pointed not only to the necessity for good working relationships to be developed on the basis of trust, but also to the need for interpreters to undergo some form of training.

All of this raises the interesting question of the degree to which congruence of views and the synchronicity of purpose exists between court welfare officers and their cultural advisers and how certain conflicts of interest may be resolved.

### **Cultural Consultancy**

Whilst this is understandable, it gives rise to a series of issues. Where should the boundaries be drawn between providing literal translations and acting in a wider capacity perhaps proffering opinions and recommendations of one's own. For some welfare officers this dilemma is fairly clear cut. That is to say, that their lack of knowledge of South Asian cultures, religions and social mores of family life necessitates them going beyond passive literal translation and for them to engage actively in a *consultative* capacity. Indeed the term 'cultural consultant' had widespread currency throughout the county. However, the use of the term to describe and convey the role of those people of South Asian origin who are recruited to help with language and other communication difficulties was for some welfare officers deeply problematic for a range of reasons.

The basis upon which cultural consultancy rests would seem to be the argument that people who share similar cultures, even if they do not share the same language or religion share common understanding of social practices. For as the work of Shutz (1972) has explained, common meanings make it possible for one person to understand another - at least in rough and ready fashion. After all, there is a strong sense in which our experience

of the social world is the same for everyone and that this 'taken-for-grantedness' is the basis for social order. As Shutz (1972) has put it, the assumptions that people share, and the stock knowledge upon which they draw, allow for a 'reciprocity of perspectives' to take place through interaction.

Common or shared meanings do not, of course, mean common agreement on all issues or even that meanings are correctly interpreted. Professional as well as practical difficulties arise over issues such as how to match cultural consultants with particular families. Is it appropriate for a Muslim to interpret and comment upon a Hindu or a Sikh family? Does gender matter? Moreover, difficulties of this kind do not rest here. What of those families whose command of the English language and their ability to understand the process is beyond question? In such cases, whilst there may not be too many concerns with regard to communication, it may still be felt to be appropriate to involve someone is able to comment authoritatively on the cultural aspects of the dispute. What is clear is that welfare officers are divided on these, and other related questions, as the following observation illustrates:

We do not use cultural consultants, we use interpreters and pick their brains. There are a lot of arguments about why we are using them. Are they just a black face to make us feel better? How powerful are they? Should they be powerful? Should they read the report? If their views are different from yours at the end of the day, should their views be incorporated in the report? Do cultural consultants want that responsibility? (court welfare officer 3, white male, Team A).

There are no simple solutions to these thorny questions. What is of particular interest is that at one time it was *de rigeur* within the county to appoint a cultural consultant for all South Asian referrals. Over time, however, welfare officers spoke of greater flexibility being introduced and built into the process.

One of the main justifications put forward by welfare officers turned on the issue that no matter how limited their knowledge of a particular religion or culture, it is always going to be greater than that possessed by the court welfare officer her or himself. Those who argued from this position drew heavily upon the experience and views of cultural consultants *qua* South Asians. They would thus be actively engaged in 'time out' sessions. At such times cultural consultants were specifically asked their views not only on various aspects of culture or religion but also on questions of process such as how they should engage with the parents or the children who may be truculent or unforthcoming with information. Perhaps most importantly of all, cultural consultants would be asked to comment on particular strategies that court welfare officers were thinking of employing to break the deadlock of the dispute.

Other welfare officers, however, disagreed profoundly. Once again the bases for such disagreements were located in different lines of argument. One of the most forceful arguments centred on the key question of whether, to all intents and purposes, the disputes that South Asian families experience are any different from those brought by their white counterparts. This welfare officer was quite clear on this score:

I never use the term cultural. It doesn't fit in with how I view the work. I use interpreters in talking about expectations and feelings. But I have a problem with the cultural bit. I accept that there is a very different culture. But when you are dealing with emotional issues within marriage, the culture is almost incidental in respect of the problem that they have as a couple...So the culture may be a red herring if we are not careful. It may appear as if it is to do with culture when really it is to do with this couple's personal emotional difficulties within the context of their relationship (court welfare officer 34, white female, Team F).

Other welfare officers queried the utility of using cultural consultants:

A cultural consultant provides some information but I think that they are of very limited use to us. The sort of depth of knowledge that we need of a

culture is much more than can be supplemented by one or two bits of information. I think that they provide reassurance to the family that an attempt is being made to understand. But the use of a cultural consultant falls well short of an adequate service in the sense that we do not provide as good a service as that which we provide for white families (court welfare officer 23, white male, Team D).

Encounters with families in general, and South Asian families in particular, are both complex and laden with ambiguity. That the nature of the difficulties that court welfare officers face in their work with South Asian families may not, however, be lessened with the help of a cultural consultant is an important point. Apart from the fact that they cannot be expected to know each and every facet that might emerge from encounters, they are themselves *qua* South Asians inextricably bound up in a transcultural world. In this regard, cultural consultants cannot stand above or outside of encounters but rather are intrinsically bound up in the process, bringing their own values, attitudes and beliefs to bear. Cultural consultants, in this sense, may be as much susceptible to, and conditioned by, current and inherited beliefs about gender issues as other members of the South Asian populace. One person spoke, for instance, of South Asian women needing:

to be aware that dressing in a way which is attractive to men may be a provocative action. In my view it is therefore better not to dress ostentatiously or in ways which seek to attract men. Equally, similar concerns emerge over alcohol. Better not to have any than one leading to many more. Also women should not put themselves into a situation whereby eye-to-eye contact is maintained – better to avert one's eyes than succumb to temptation (first generation Muslim female, interpreter/cultural consultant).

One or two court welfare officers drew attention to a certain degree of irony that exists in the status of their relationship with South Asian workers recruited to work alongside, or in conjunction with them, in any given case. One court welfare officer commented that this was:

a political problem in that we are using Asian people who are on a much lower salary. They have poor conditions of service and it is not an equal power relationship and so on. It has been a real dilemma for years (court welfare officer 6, white female, Team B).

Others referred to the different aspects of the partnership that they found deeply troublesome. Intricate questions arose, they said, when the cultural consultant is in some way critical of, or has little conception of, the broad aims and objectives of the service. Other problems, they noted occurred when the consultant wished to pursue an agenda of her or his own, consciously or unconsciously, above and beyond the task laid down. These and similar problems are well highlighted by the following observations:

There are always questions when you use untrained people as to what you are getting. When that person doesn't work with a respect for our position and seeks to take over or seeks to promote a particular viewpoint - possibly a highly political one, then you have got problems... We worked with someone once who brought radical black feminist views and did not have too much interest in other things. Much of her work was helpful... Some of her interpretations and comments on the use of words and the meaning of this and that may have been good. But I didn't feel comfortable. I didn't feel that it was a partnership or that there was mutual respect. I felt threatened. I guess there is always a question about what it is they are offering and how that is refracted through your mind (court welfare officer 14, white female, Team A).

The continuation of arranged marriages involving partners from the home country will ensure that issues surrounding language and communication will remain fixed items on the court welfare agenda.

At the same time court welfare officers were aware of the double bind of needing to rely so heavily on cultural consultants. In this regard some welfare officers argued that there are certain dangers in relying too much on your cultural consultant or taking what they have to say unquestioningly. At the end of the day court welfare officers are required to stand up in court and defend their views without the presence of the cultural consultant being there.

Others referred to a time when cultural consultants might not be so necessary, though no one person could be specific when that date will be:

I feel depressed at the thought that, forever more, white people will need cultural consultants. Surely there comes a point when, with all this training and years and years of battling away at it, we should have some ability to stand on our own two feet. We have got people in of South Asian origin who have been telling us to do and say things which in our heart of hearts we could say but need their permission to say it. So we have got to stand up and say it and not be too nervous or anxious that we are being too culturally insensitive (court welfare officer 14, white female, Team A).

### **Knowledge**

At the most basic level, court welfare officers are concerned to establish the *facts* in any given dispute. But perhaps above all else, they are concerned with making visible to the court the fruits of their investigation. Chapter 4 has outlined, in a general way, the knowledge base that court welfare officers draw upon in their work. The question that I seek to address here is what specific knowledge do court welfare officers need to be able to identify, understand and convey information on South Asian disputes? Similarly, what information do judges require in order that they can make fully informed decisions? In seeking answers to these questions, court welfare officers were asked to comment on whether they thought it appropriate to determine factors such as the religion of the couple concerned, their birthplace, or their country of origin. Judges, meanwhile, were asked what information did they expect to see provided in court welfare officers' reports.

As we have established, the Children Act 1989 places special importance on religion in ascertaining the wishes and feelings of the child in light of the child. We have also noted the significance of religion to South Asian family life in general. As the following comments illustrate, many court welfare officers acknowledged both the importance of

religion for the South Asian community and the legal requirements for them to be aware of a child's religious background. It is thus interesting to note that, with only one exception, court welfare officers did not routinely determine the couple's religion:

Sometimes it is important to establish the religion of the parties and sometimes it isn't. Sometimes it can be quite important. For example, when the couple are of different faiths it can be quite a big issue. I am thinking of a case where one party was Muslim and the other was a Sikh and their marriage made a big difference to their relationship and to members of the extended family. Sometimes it is important to understand that people may have different views on things such as the role of men and women and their faith may reflect that (court welfare officer 4, white male, Team B).

I suspect that religion is an important issue, though I cannot say that I have made it a particular issue. At the end of the day it is the child's needs that I am focusing on. I know that the religious persuasion must have an impact upon that to some degree. Perhaps it is part of my own insecurity about the lack of understanding that I have...so I tend to focus on the child's needs (court welfare officer 19, African-Caribbean female, Team B).

I certainly wouldn't see it as the most appropriate question at the outset, unless the referral made it obvious that religion was an issue between the parents. I cannot recall ever specifically asking people what their religion is. It very often will emerge. Certainly with regard to Sikhs, one doesn't know how religious they are but you generally know that they are Sikh from the names. Muslims you may sometimes know from their names but it more often emerges from things they say - they will make a reference to the mosque, or something like that (court welfare officer 1, white female, Team A).

I think that religion is important. It is more important because differences in religion are significant in family patterns, family beliefs and are particularly important to separation and children. But we should not be making assumptions that people from India necessarily all adhere to their culture or religion in a different way from white people. I guess we do not regard ourselves as a practising Christian country. We tend to think of the Indian sub-continent as more religious nations and that is probably true in some respects, but it is dangerous to make assumptions (court welfare officer 11, white male, Team B).

By way of contrast this officer replied:

I say to everyone at the beginning of an interview that I recognise that I am white and that they are black and may have different views than myself. I

also say that we have an interpreter here not only to translate but also to assist with any cultural or religious views that I need to understand. I don't believe in just waiting for things to come up...I say that because they may be strongly religious...So it would go on my list of questions to ask because it may be an issue (court welfare officer 29, white male, Team E).

Welfare officers thus stressed that the knowledge of a couple's religion should only be seen as relevant if religion is part of the dispute. Similar thoughts were also in evidence in relation to whether it was appropriate to determine a couple's birthplace and/or their country of origin:

Where someone originates from comes out in the family tree when I ask where the family live. So I do not have to have that in my mind. Obviously when one person speaks English very well and the other one doesn't, then that is an indication that one of them was brought in for the marriage. So I might ask then (court welfare officer 2, white female, Team B).

I am not sure whether it is appropriate to ask about the couple's birthplace unless it becomes an issue between them. We always have someone working with us who speaks the couple's first language. Sometimes people take offence at that - you know, people saying that I was born in this country and I was educated here and that sort of thing. So where people originate from comes out in the discussion, as it does with white families. So it depends on whether it is an issue for the parents or not whether it is an issue for us (court welfare officer 4, white male, Team A).

For this officer the question of birthplace was largely irrelevant:

Whether it is Bangladesh or South Africa is not of terrible importance to my involvement with them (court welfare officer 23, white male, Team D).

For this officer, whilst not wishing to lessen the importance of birthplace, the question was of second order significance. The more important questions, for her, revolved around socio-economic factors of the kind discussed in the two opening chapters which give 'structural' shape and force to South Asian family life and which, she believed, had a greater bearing on matters:

I don't necessarily ask which country someone is from. It is much more important to establish the family's background. For example, village life is very different from town life and whether someone is rich or poor is mainly more significant in terms of expectations than in terms of someone's nationality (court welfare officer 6, white female, Team B).

Judges were also asked what kind of information they expected to see in court welfare officers' reports. However, it should be noted that the three judges were not asked in quite such specific terms as court welfare officers, thus making a direct comparison of views difficult:

I need information that will enable me to take into account the family position especially the cultural differences. If there is a custom which is particular to that racial group then I would like to know about it, and their expectation. The surprising thing is that occasionally I come across girls who actually support chosen and arranged marriages. We tend to think that our models are perfect (Judge A).

Obviously in answering what information I need, I have the advantage of having court welfare officers who come from the same ethnic group, and who can bring to the resolution of the case a special understanding of the ethnic mores and customs (Judge B).

Actually, when I have dealt with such cases I have found comments about customs and the importance of this or that aspect of a particular culture very helpful. You have got to have regard to the religious and racial situation. And then cultural aspects are bound up with religious elements, so you have to be aware of those (Judge C).

## **PRACTICE ORIENTATIONS**

The knowledge needed of South Asian experiences thus cannot be separated from the methods of working and the skills that court welfare officers need. The welfare officer is simultaneously assessing, interpreting and making judgements about complex sets of interactions. How do parents with whom they come into contact relate to each other and their children? Which parent does the child go to most? How close do the parents sit to one

another? As these questions reveal, *how* things are said and the way that messages are conveyed may be just as important as *what* it is said.

It is apparent from both this chapter and Chapter 4 that court welfare officers differ markedly not only about the values, skills and knowledge that they draw upon in their practice, but also on the rationale and aims and objectives of court welfare work. As we have seen, these practice orientations tend to stress the primacy of conflict-resolution or settlement-seeking over procedural issues involving investigation and vice-versa with various positions being taken up in between. As noted in Chapter 4, the settlement-seeking approach seeks to bring the parents together in order to agree jointly on the solutions to the dispute. The procedural paradigm, on the other hand, involves visiting the homes of parents in order to assess (as the eyes and ears of the court) the material conditions and general ambience of the home in which the child will be residing or visiting. Court welfare officers in the area studied, in the main, subscribed to the settlement-seeking frame of reference, involving joint working with a colleague and utilising techniques borrowed from family therapy. Wherever possible they sought to establish common ground between the parties and encouraged the parties to reach an agreement.

Within this some variation of practice nonetheless existed. Some welfare officers in the area said that they did not apply hard and fast rules about visiting homes, for example. More fundamentally some officers preferred the systemic model of family therapy to its psychodynamic counterpart whereas for others the reverse was true. Those court welfare officers interviewed thus adopted particular styles of working based on different perceptions of the nature of the task and how that can best be achieved. The different modes of practice are substantially shaped by particular frames of reference. Whatever else is involved in the preparation of a report to the court, the court requires and expects

specific information without which adjudicators cannot reach as fully an informed decision as possible. The onus is upon the court welfare officer to provide this information. The court, however, is less concerned with how this is done, leaving precise methods to court welfare officers themselves. It is this responsibility perhaps more than anything else which leads some welfare officers to take the court as their primary reference point. The enquiries made, the methods used and the content of the report are all geared to the provision of evidence. The main point at issue is which method is appropriate for work South Asian families? It is to the set of issues that this question raises that I now turn.

### **Joint and Family Meetings**

Joint or family meetings lie close to the heart of the settlement-seeking approach. The main aim of holding joint meetings is to establish whatever common ground exists between the parents and to attempt to reach some kind of agreement that is acceptable to each of the parties. As marital disputes are seen to be intrinsically harmful to a child's development, a settlement is *by definition* in the best interests of all concerned. Court welfare officers and judges, in these terms, are likely to stress the positive benefits of remaining in contact with both parents on the grounds, that this provides, *inter alia*: the basis of a continuity of care following the separation; both male and female role models for the child(ren) concerned; greater stability for the child; and greater protection and enhancement of the child's sense of self-esteem. The rationale for this way of working does not, however, end here. Parents, it is thought, should be encouraged to play an active part in the decision making process. As such, they should neither abdicate this responsibility, nor leave the decision to the court by default, notions which are enshrined in the Children Act 1989 and reinforced in the Family Law Act 1996. In this sense, joint meetings have strategic, therapeutic and

symbolic value. It would be churlish to question the sentiments that the settlement-seeking approach embodies. Yet joint meetings are not unproblematic. Are joint meetings always the most appropriate way of dealing with the issues at stake? At what stage of the enquiry should a joint meeting be arranged? If parents are reluctant to meet with one another then how far should they be encouraged to do so? Such questions are of considerable importance to court welfare work with South Asian families. How, then, do welfare officers begin to construe answers for them? Let us examine first the issue of appropriateness.

The issue of holding joint meetings is a vexed question regardless of a person's socio-cultural, 'racial' or religious background. Yet for all that, most of the welfare officers interviewed proclaimed that the arguments for bringing parents together can be justified on the same grounds as those used for white families. Welfare officers were, however, frequently equivocal on the subject adding important caveats to their remarks:

It is a very difficult area. It is appropriate in that we are likely to get a rounded picture. So it is more helpful to us. But we have to take on board the idea that there will be some women who come to joint meetings here who really don't want to, especially when they feel that they will be put at a disadvantage by doing so (court welfare officer 7, white female, Team A).

Ultimately issues that flow from joint or family meetings must be placed within their religious and cultural context. Are there, for example, religious or cultural reasons why couples who are divorced, or who are in the middle of divorce proceedings, should not meet together? However, the discovery or the confirmation of such a convention cannot necessarily be taken at face value:

It has been said to me several times that in relation to Muslim divorces that it is inappropriate for ex-wives and husbands to sit together in the same room. But it is sometimes convenient to put this over as being culturally

correct. So one has to be careful with this argument (court welfare officer 14, white female, Team A).

Joint meetings may, then, indicate, or are at least capable of sending messages of equality. Yet in the final analysis it is women who tend to be heard least and feel themselves to be in a vulnerable position. Consequently it is they who are the ones more likely to compromise. In this sense, joint meetings can be seen systematically to disadvantage women, particularly, some welfare officers are wont to argue, those of South Asian origin more than women from other groups. It is easy to see how some welfare officers might argue that there are good grounds for allowing South Asian women separate interviews. Whilst for some this would seem incontrovertible, other indicated that the situation is rarely that simple. As we have seen in Chapter 2, a number of writers have pointed to the myth of the timid and subservient South Asian woman, anxious at all times to avoid conflict, even eye contact. Such observations found some resonance for a number of court welfare officers. In the words of this welfare officer:

It has happened on occasions that I've thought that I will need to make separate arrangements or go and see her at home, but nothing like as much as you might expect. In fact what I have actually found is that many Asian women give full vent to their feelings (court welfare officer 21, white male, Team C).

In reflecting upon these comments it is apparent that the appropriateness (or otherwise) of joint meetings needs to be examined within a fairly broad context.

I think that we have got to ask the question of whether it is appropriate to hold joint meetings in relation to all families. Sometimes the position of Asian women is problematic. But the position of women in white families is similarly problematic. I am reminded of a woman who was brought over for an arranged marriage to live with an established family. She lived with her husband's parents and was abused by her husband's parents. She led a victimised life. She could not speak and she was unable to make eye contact. Now it is a moot point the extent to which that is to do with her Asian-ness and the extent to which it is simply to do with the circumstances

of her marriage, her relationship with her husband's family and their relationship with her (court welfare officer 11, white male, Team B).

Joint meetings regardless of differentiating factors such as ethnicity, gender and class, thus pose a series of conceptual, moral and practical dilemmas which by their nature and depth are not subject to easy resolution or accommodation. In seeking to resolve the various problems raised, court welfare officers continually have to wrestle with the vexed problem of disentangling general *types* of case from *individual* cases which are situationally specific and subject to continual change.

Here conceptual problems become intertwined with both profoundly moral and practical dilemmas. Affidavits and court welfare reports frequently refer to allegations of violence and associated forms of abuse as one of the major reasons given for the reluctance for women to grant contact to the person with whom the child does not reside. Such accounts provide graphic accounts of the severity and duration of the violence experienced. As such, they make for sombre reading and careful reflection. On the other hand, it can be reasonably argued that the couple may have to meet at some stage if only to hand over the child for contact purposes. This can be a harrowing time for all concerned; better therefore, the argument runs, for the couple to meet and to thrash out the terms of their continuing involvement with the child in as amicable and constructive way as possible. This line of argument coincides with the sentiments which undergird the Family Law Act 1996 in which divorcing couples are expected to sort out these kind of arrangements before their divorce application can be granted. The central question can thus be fairly simply stated: to what degree should those South Asian women who have expressed a reluctance be encouraged to meet with their former partner to discuss arrangements for their children?

This is, of course, a large and taxing question to which there are no easy or simple answers. The crude use of a calculus of probabilities within the parameters of risk analysis is scarcely adequate in such circumstances. Yet decide they must. Court welfare officers are thus faced with the unenviable task of reaching a decision as to whether joint meetings are appropriate on each and every occasion.

### **The Court Experience**

There are a number of reasons why people of South Asian origin should use the British legal system to resolve their disputes. One court welfare officer intimated that people of South Asian origin often resort to the court precisely because of its adversarial and meticulous approach:

You feel [with cases involving South Asian families] that there is an intense wish not to lose face because of what the family and the community might say. So cases are enormously hard fought and there are some terrible fights. But this seems to me to be what the Asian community expect in court (court welfare officer 25, white male, Team D).

Other court welfare officers spoke of different kinds of reasons. In this court welfare officer's view:

[South Asians] come to the white court because they think that they will get a different outcome than if they use their own networks or whatever. An example I am thinking of is a woman who believed that she was more likely to get the outcome that she wants by coming to the white court because she felt that she would not get much sympathy for her views if she went to the Temple. This is particularly true of the Muslim community (court welfare officer 6, white female, Team B).

In contrast, some welfare officers said that the reality was that people of South Asian origin often had a very negative experience of the court process. Predictably, this was often

because of problems associated with the translation of material for non-English speaking people:

It is seen to be the responsibility of the court to provide translations of the [court welfare] report. The reality is that the court is not going to do that. The person who goes to court who cannot speak English will be disadvantaged because they will not know what is in the report. It will be read out to them by someone in hasty circumstances who will pick out the odd bits and pieces. So they will not see the whole balance of the report (court welfare officer 31, white male, Team F).

On a similar note:

They just do not allow the space. They say things like 'we will just talk about this and we can ask what the parents think about it later'. So you get these conversations in the court going on and they are sent outside while the matter is discussed. It is just atrocious (court welfare officer 6, white female, Team B).

Whilst such observations were quite widely held it should be noted that others thought that it was inappropriate to separate the experiences of South Asian people from other groups who seek resolution of their dispute through the judicial process. In the words of this officer:

I think that the court treats people very badly anyway and I don't think it treats Asian people any worse. They tend to treat working class people appallingly, shepherding them in and shepherding them out. Nobody knows what is going on half of the time (court welfare officer 3, white male, Team B).

Other welfare officers also made the argument that court is a bewildering and anxiety-provoking experience for all concerned. However, such a view was often followed by the observation that the stresses of appearing in court for South Asian people, especially those whose first language was not English, were in many ways more severe:

The whole system is quite threatening especially for those who cannot speak the language. It is quite something to expect people to come along

without knowing what to expect. People can be terrified...Some people go to the doctor to get some tranquillisers to stop the worry A lot of [South Asian people] they come along suspecting that they are not going to be listened to...and that because they do not speak English they will not be thought to be intelligent enough (court welfare officer 10, second generation female Sikh, Team B).

## **SOUTH ASIAN PERSPECTIVES**

In this section the views of South Asians are considered. The viewpoints presented, like those of court welfare officers and judges, are varied and diverse, reflecting *both* the highly differentiated South Asian population *and* the complexity of the subject matter upon which they were asked to comment. The section begins with some preliminary comments about the epistemological and ontological difficulties of working with South Asian families. It then proceeds to report on the kind of knowledge that those South Asians to whom I spoke considered court welfare officers and judges needed to acquire. The final part of the section is devoted to South Asian respondents' views on the appropriateness of method.

### **The Basis of Judgments**

As we have seen, the extent to which it is possible to grasp the inner world, the subjective experience, of people from another culture and religion was questioned by a number of court welfare officers. This concern was also raised by many of the South Asians that were interviewed:

A lot of court welfare officers that I have come across have felt that they have had a lot of training and that they have a lot of knowledge. But they cannot know how Asians feel about their situations. It doesn't matter how much you have been trained, unless you are an Asian with experience of our culture, and unless you see with an Asian's eyes, then you can't understand (second generation Sikh female, South Asian Conciliation Service and interpreter/cultural consultant).

You have to live being an Asian to really understand. It is very difficult. Court welfare officers can do a lot of damage. They may think that they are being sensitive. But they might misread everything (court welfare officer 10, second generation Sikh female).

Many of those interviewed pointed out that the potential for court welfare officers to misread and misinterpret the intentions, purposes and events involving South Asian families is extensive. As one person put it:

Our body language is so different. With English people you are supposed to have eye contact but Asian people don't because it is disrespectful. Women are supposed to present a demure image, whereas men can be aggressive through facial expression. A lot of facial movements are used in Asian cultures to put your point across but I am sure that court welfare officers miss them (second generation Sikh female, probation officer).

The degree to which *meanings* between the two groups can be shared and the extent to which court welfare officers and judges can understand the thoughts and behaviour of South Asians is intrinsically bound up with questions of knowledge. Some South Asians, in this regard, commented on the paucity of knowledge within the legal system:

The court has no knowledge of our culture and religion. I am really worried because if the divorce rate increases then I don't think that the court will have much understanding (first generation Hindu male, alcohol advice worker and Hindu Temple trustee).

For this person the amount that a court welfare officer can know in the time allocated to undertake an assessment was a major factor:

Court welfare officers do not really want to enquire too deeply because they have to finish their reports. How, after two meetings, can you make a decision affecting someone's whole life? That is not right... In two hours you cannot assess everything. But according to the welfare report they have spoken to the mother, for example, and they say that she cannot have access. It isn't right (second generation Sikh female, South Asian conciliation service and interpreter/cultural consultant).

This person, meanwhile pointed to the lack of opportunity that South Asians may have to put their points across, whilst simultaneously drawing attention to the symbolic power that the court is able to wield:

Asian people often cannot express their feelings. Most Asian families see all white people there. When they go to court it is all white judges and barristers. I am there I know, but I do not have much authority. Basically people from India do not know the rules and they are frightened as well (second generation Sikh female, South Asian Conciliation Service and interpreter/cultural consultant).

If someone gets divorced then first of all they have to get an Islamic divorce. So I think that I would like to see the day when Muslims have the right to resort to Muslim law through the British courts. That is my aspiration. At the moment there is a double standard...Muslims are citizens of this country and the Muslim way of life should be recognised by the British courts. Christian judges will understand (first generation Muslim male, Mosque elder).

What, then, in the eyes of the South Asian community should court welfare officers and judges know about South Asian social life, its norms and traditions and the ways in social relations are ordered? Some answered this question by asserting that court welfare officers should have a general knowledge of South Asian cultures and religions without being specific about which aspects or factors were especially important. For example:

Courts work, of course, from the law side. I am not saying that religion should come into it, but culture should do. If they don't have this knowledge then how can they make decisions? They should know about Hindu families and what culture means for them. When you talk about culture you are talking about everything. India is a massive country. It has got so many cultures (first generation Hindu male - alcohol advice worker and Hindu Temple trustee).

One South Asian argued that the knowledge required by legal personnel was not merely confined to the couple and the couple's kinship networks, but needed to extend to knowledge of the community:

They need to know more about Asian culture and the fact that you have to meet the community's needs as well. (second generation Sikh female, South Asian Conciliation Service and interpreter/cultural consultant).

It is not just about court welfare officers, it is also about judges and magistrates being made aware of the issues...I don't think that the child's needs are ever looked into where Asian families are concerned. It is always about making contact work. They say we have got to do this because the child has a right to see the father and mother rather than looking at the child's needs...What happens is that decisions are made for the adults rather than the child and without looking at the long-term effects for the child. Then there is the added dimension of racism, the element of culture, the element of religion and the element of respect that the Asian parent has to conform to (second generation Sikh female, probation officer).

Some respondents, however, were more precise in what they thought was essential knowledge. A prominent and recurrent theme was gender. A number of South Asians stressed that court welfare officers should have knowledge of how South Asian women, in particular, *experience* divorce:

They should know that it is difficult for women when they divorce especially if they have to go and live with a relative. Two, if they get back together it is nearly always for selfish reasons. Three, they should be aware that it is not the couple who have all the power but the man and his family. Women are in favour of snatching the children because all men have to do is to take them to Pakistan. It happens. It is a realistic fear (second generation Muslim female, interpreter/cultural consultant).

I think that welfare officers need to recognise the difficulties that Asian women go through. It is all right for the man. He will be all right, he can get married again. But who is going to marry a divorced woman, especially if she has a couple of children? Even if action has been brought before the court, in ninety-nine per cent of cases women will want to go back to their husbands because they know that their life is going to be hell. They can't cope on their own and if they live with their own family their life will be as a skivvy (second generation Muslim female, interpreter/cultural consultant).

It is really difficult for court welfare officers because they do not know what to do. They are in a terrible position. When people come here they first of all ask them if they want to get back together. This is because quite a lot of the time you find that women do want to get back together. When Asian women are divorced they are thought of as the person who has done something wrong not the husband. No matter whether he is drunk or that he beats his wife, it is always the woman who is to blame. So this leads them

to seek reconciliation (second generation Muslim female, interpreter/cultural consultant).

In this regard, the true value for many of the South Asian women and court welfare officers who spoke in such terms was that it brought the matter to the attention of the court. To put this another way, South Asian women may use the dispute as a means, in part, to transform what Mitchell (1975:61) has referred to as 'the hidden, individual fears of people into a shared awareness of the meaning of them as social problems'. In this way, it is suggested, South Asian women are able to release their frustration, anger, bitterness, anxiety and other pent-up emotions whilst simultaneously proclaiming the painful experiences that they are undergoing.

### **Practice Orientations**

It is apparent that the model of dispute resolution adopted by the court welfare officers in this study is based upon a set of values that they have sought to justify and defend. Underpinning this was the need to avoid conflict and to resolve the dispute as amicably as possible. How well suited is this particular practice orientation to work with South Asian families? Are the values of mutual respect, notions of fairness and equity of exchange that Roberts (1997) has identified as being integral to this mode of working one and the same for court welfare officers and South Asian parents? Do members of the South Asian population hold this method of working in the same high regard? Were there any social, religious or cultural reasons why such a meeting should not take place? To what extent did those South Asians who were interviewed have similar perceptions about the potential for this method of working to reduce conflict? As an initial way into these vital questions, South Asians were asked their views on holding joint meetings. What emerges from their answers is that there are mixed feelings about the appropriateness of holding joint

meetings. In the main, South Asian respondents replied that they could see no objection to joint meetings as a 'point of principle' either on religious or cultural grounds. In this person's words:

There is no religious hurdle to overcome which says that they should not meet to discuss the children (second generation Muslim male, probation officer).

This is not to say that there are no difficulties attached as the following comments illustrate:

Joint meetings are a good thing to arrange, but you have to look at individual circumstances. We hold meetings with families, but there are a handful of cases which we wouldn't hold meetings with the whole family because certain members would not have allowed communication to flow...There would thus have been no point...We make it quite clear that we are on no-one's side and that we are there to convene the meeting and facilitate. We stress that we want to put both parties conditions and terms on the table and to see where we can reach a compromise but there have been meetings where it has been entirely taken over by one person, usually the mother in law or the husband (second generation, Sikh female, community health worker).

For most of the South Asians interviewed, it was more a question of *when* rather than *whether* a joint meeting should be held. Whilst it was generally accepted that the timing of joint meetings was of crucial importance, there was no agreement, however, as to whether the couple should initially be seen jointly or separately. Some cultural consultants were of the view that it is very important to see people individually before seeing them together. Other cultural consultants, however, disagreed:

I think that Asians prefer home visits, especially women because it is difficult for them to get out and about...I don't think that they like joint visits because they get all heated up and they get into a fight. They are more relaxed at home. But I think that the first visit should be joint (second generation, Muslim female interpreter/cultural consultant).

These comments raise some important concerns about the court welfare process, what is of particular interest is the reasoning behind such views. If there was one theme that dominated thinking about joint meetings it was, once again, the question of gender. In this person's view:

It is more difficult for Asian women because white women would know why there has been a joint meeting, but an Asian woman might think that it is something, say, to do with immigration. They go through all kinds of trauma before going to a joint meeting. There are all kinds of psychological issues that Asian women suffer that white women don't have to go through. These are not considered or taken into account by white court welfare officers at all (second generation Sikh female, South Asian Conciliation Service and interpreter/cultural consultant).

Others identified the vulnerability that many South Asian women may experience as an issue that court welfare officers need to acknowledge and confront, linking the lack of 'a say' in the proceedings for many South Asian women with the tendency for South Asian men to dominate the interview process:

You need one joint meeting and then have separate visits for the sake of the woman. I think that is essential because they need to be heard. I doubt if they have been heard in the past. I doubt if anyone has taken any notice of what they have had to say (second generation Muslim female, interpreter/cultural consultant).

I think that joint meetings are intimidating for women. But I wouldn't say that you can't have joint meetings. I did a lot of them when I worked in court welfare. I saw it from both perspectives. I could also see it from a woman's perspective because I had been through the process myself. But I could also see it from the man's perspective (second generation Sikh female, probation officer).

### **Maintaining Contact**

As I established in Chapter 3, the court places a premium on the principle of both parents maintaining contact with their children. In general the South Asian sample placed a high value on the importance of maintaining links with the parent without day to day care of the

child and his or her wider family network. Different reasons for maintaining this link and different emphases on particular reasons were, however, given:

I think that theoretically one would be bound to look at the welfare of the children rather than the battle between the two parties. An amicable solution should be sought. So the couple should co-operate to solve the problems. But if it becomes a legalistic dispute then people fight for every inch of the soil. People can get very steamed up. (first generation Muslim male, general practitioner and Mosque elder).

For this person, the importance of maintaining contact lay in specific religious and cultural norms associated with Islam:

There must be links. The children must have the name of the father. In Islam we do not believe in the Western way of he or she taking the name of another person upon remarriage. It is not allowed. A child has the full right of being told who his father is and who his or her mother is. So a child must have access to which they are related because in Islam there is the inheritance law. They must inherit from their father and mother even if they are divorced. So there are many Islamic rules that the child must remain close to his or her parents even though they are divorced. It is very important (first generation Muslim male, Mosque elder).

Another reason proposed for the need to maintain links was that keeping in contact reinforced fathers' obligations towards their children. For this person this was of crucial importance if fathers wish the child to retain their names:

I don't think it is a good idea to break totally. There are several reasons. It is not good for the child. They should know who their father is and that he has obligations to them. Therefore children should keep their father's name. But the majority of families do not think like that. Wives think that because he did this or that, that they should not see the children and vice versa (second generation Sikh female, interpreter and cultural consultant).

This person presented the case that links should not be preserved at all cost, arguing that:

In certain circumstances it might be better for the father not to have access. It is this thing about whether the father has come to terms with the break up of the marriage. A lot of the time Asian men haven't come to terms with that. The man still wants to hold on and run things. The best way that he can

do that is via the children and try and indoctrinate them. It is also about control. He wants to know whether she is having a relationship with someone else. And then there is the whole community thing. Respect, respect, respect, that is all they live for (second generation Sikh female, probation officer).

It is of some interest that one or two of the South Asians who were interviewed had experienced the process and were thus able to talk about the stresses and strains firsthand. Others had a substantial knowledge of other members of their family, friends or clients who had such an experience. The following comments from two people in one or other of these categories bring several of the themes that have emerged thus far together:

I know people who have gone through the court system. One girl was very unhappy at the decision of the court.... I do not blame the court. What can they do? ... She finds it very difficult, all this business of the children being able to go to the other person at weekends and all that. I have heard a complaint within the family - not a complaint, dissatisfaction - at the way that they have to do it. The girl is not happy at having to go and pick the children up from his home. It is not just him, it is the whole family. I know two or three families who are in this situation. It is a struggle (first generation Hindu male, alcohol advice worker and Hindu Temple trustee).

I've been through the court welfare process. I thought how insensitive and patronising the whole system was...and I was a professional worker. All they did was to intimidate me. They had a two-way mirror and they didn't introduce me to the person behind the mirror. They had an interpreter who I thought had her own agenda which seemed to me to reflect her view that women should stay with their husbands come what may. And I felt very vulnerable being in the same room with him. I wanted a separate meeting. What they said was that it was going to be difficult, but what we could do was to keep him back after the meeting. But I thought so what?

And as she went on to say:

My husband hadn't seen my son for two years. All of a sudden he decided he wanted access. My parents were the ones who he thought of as mom and dad. That is an acceptable way within Asian families for him to have stability and not feel isolated. The divorce court welfare officers couldn't understand the concept. As far as they were concerned the father had rights to the child. I was saying that 'yes, he has rights to the child, but look at the child and the environment the child is living in. They looked on the concept of grandparents rearing children as quite negative and not fruitful for the

child. That is nonsense. That is one of the strengths of Asian culture...But they didn't think that was acceptable...It was also all white. They had an interpreter in the court who couldn't speak English too well. The magistrates didn't want to know either. I told them that he wasn't interested in my son, he was only interested in dominating me but it didn't make any difference. He saw my son once after the court case and he hasn't seen him since (second generation Sikh female, probation officer).

The above observations, which I have quoted at some length, provide a fitting conclusion to this section for the following reasons. Most obviously, the two sets of comments provide us with much needed evidence of what it feels like to go through the process from a South Asian client's perspective. In so doing the views expressed tell us a great deal about the attitudes, characteristics and expectations of court welfare officers, magistrates and judges and allow us to place other perspectives on these issues offered in this chapter into a wider and deeper context.

Beyond this they act as an appropriate commentary on the relationship of gender and power within South Asian relations. More widely still, the observations tell us much about some of the harsh realities that often lie behind many of the principles and precepts of family law outlined in Chapter 3. In many ways, the experiences outlined by the two people above tie in with research conducted by Eaton (1986) into the workings of courts. One of her central findings was that courts, supported by tradition, policy and legislation, operate within the dominant ideology which seeks to endorse and reinforce the *status quo* and in so doing perpetuate the divisions within society upon which the *status quo* is based. The two comments thus demonstrate clearly that what is at issue is not only the necessity to develop sound policies and procedures based on a detailed knowledge base of South Asian social relations, but also the importance of constructing an appropriate body of legal ideas, principles and rules to deal with cases involving South Asian families.

Finally, the two comments allow us to make a judgment, albeit a highly tentative and speculative one, as to whether this particular experience is in some way 'extreme' or whether such experiences are typical.

## **SUMMARY**

This chapter has set out to examine, in a generic way, the workings of court welfare officers and judges with the intention of shedding light on the knowledge, principles, precepts that inform and underpin their work with South Asian families. The first section has provided insights into the form that disputes involving South Asian children take and whether disputes involving South Asian children present greater difficulties for court welfare officers and judges than disputes involving white children.

The second section has considered questions of how court welfare officers and judges deal with South Asian attitudes, beliefs, values, customs, languages and forms of behaviour with which they may be unaccustomed. The pursuit of answers to these questions led easily and naturally to an examination, in the third section, of the practice orientations of court welfare officers and the rules of engagement that they seek to employ. The fourth section has sought to establish South Asian perspectives on these and other matters.

It is apparent from the accounts presented that disputes involving South Asian children are frequently highly contentious, fraught with conflict and are rarely straightforward to resolve. Of course, this is also true of disputes involving children of other races and creeds but only up to a point. For what is equally clear is that disputes involving South Asian children have more layers and strands attached to them than disputes involving other categories of children. This opens up the question of how best to formulate a theoretical response to the wealth of knowledge provided. My interpretation of the accounts offered in

this chapter and their theoretical refinement form the subject of Chapter 9. Before this it is necessary for me to return to some of the issues raised in Chapter 6 that require further elaboration and reflection.

**PART III**

**EXPLANATORY**

**AND**

**NORMATIVE FRAMEWORKS**

## **CHAPTER EIGHT**

### **CHANGING SOCIAL RELATIONS**

This thesis has mapped out in some detail many of the main characteristics of South Asian divorce and the processes that have occurred in recent times in the creation of new attitudes to divorce. The purpose of this chapter is essentially twofold. First I seek to analyse the different elements of this new social environment. Having taken this first step I turn my attention to the significance of the changes. In particular, I seek to explore the tensions, dilemmas, conflicts and other effects that the spiralling rate of divorce is likely to pose for the South Asian populace.

### **ACCOUNTING FOR CHANGE**

In the course of Chapter 6 a number of diverse and interconnected explanations have been given for the rise in the number of divorces among the South Asian population. One important question is how the diffuse and often fragmentary explanations offered by respondents might be explained. The reasons for the spiralling rate of divorce among the South Asian population of Britain are certainly not obvious. As we have seen, at times the reasons given by various groups to account for the phenomenon coincided. There was, for example, widespread agreement that South Asian divorce was in some way the result of the influence of Western values or the failure of the generations to communicate adequately. At the same time, it was not uncommon for South Asians and court welfare officers alike to place a different emphasis on the reason or constellation of reasons given, or to stress a different connection and so on. Thus despite the deployment of several recurring explanations of what is clearly a common social problem for the South Asian

community in Britain, it is not possible to assign a single or unifying explanation to the phenomenon, nor can its occurrence be analysed in a simple or direct way.

To argue that there is no general approach to be taken is not to suggest that the problem posed is beyond resolution. On the contrary, if we examine the pool of insights offered to explain South Asian divorce, it is possible to discern two theoretical frameworks which, when taken together, can provide a consistent explanatory focus for the material hitherto presented. The first projects the view that South Asian divorce is the result of the complex interaction between the personal (in terms of the action-interests of individuals) and the social (in terms of the institutional interests of the South Asian family and their wider kinship networks and communities). The second is to see South Asian divorce as the outcome of 'new' social, political and economic conditions and times arising out of the questioning of 'old' certainties, hierarchies and ways of doing things.

### **The Psychological and Systemic Divide**

If there is a general conclusion to be drawn from this study, it is that South Asian divorce is the culmination of an amalgam of complex social forces at micro and macro levels. Crucially, people of South Asian origin have been shown to arrive at a decision to divorce a husband or wife having started from different social, religious and moral vantage points, from different personal dispositions, socio-economic positions and personal histories. We can thus, at one level, understand some of the motivational forces behind South Asian divorce in terms of *individual* dispositions, personality traits, situations and beliefs. Or to put this another way, South Asian divorce seen in terms of rational choice theory is the outcome of individual decisions and choices taken within highly individualistic and unique circumstances.

At the same time, what has emerged from the historical analysis of South Asian social relations provided in the first section and with some considerable force in Chapter 6, is the macro dimensions of South Asian divorce. By this I mean the 'structural' forms within which individual decisions are embedded and which act as a constraint upon the choices that are available. On the basis of this argument, we can better understand the ways in which South Asian structures and normative frameworks continue to exert an influence over the thoughts and actions of individual South Asians, though not in ways, as we have seen, which are immediately obvious or transparent. Here we might usefully draw upon some of the writings on similarity and difference and the ways in which individual and collective identities and interests coincide and compete to illuminate our understanding of this process and its complexity.

For Tajfel (1978) it is open to the individual to improve his or her own position independently of the group. In so doing the individual, Tajfel has argued, seeks to redefine the parameters of social relations within the group and to establish new criteria by which actions should be judged. What is more, maintains Tajfel, there are important moments when, because of changes to belief structures, this ability gets translated into action. At such points, notes Wetherall (1996), questions of 'voice' or 'efforts for change' come to predominate over maintaining group norms, loyalty or cohesiveness.

In short, as Jenkins (1996) has said, individual and collective identities, similarities and differences of the kind that this study has been concerned with are irretrievably entangled. Hall and du Gay (1996) and Brah (1994) make a similar point. In this context it is useful to conceive of South Asian divorce as emerging out of a complex set of social and historical forces some of which are in tension with each other.

## **Dialectics**

Modern conditions make modern demands. After all, traditions are never wholly static but are constantly undergoing complex processes of adaptation and reinvention by succeeding generations. Certainly much of the data presented in chapter 6 draw our attention to the fluidity and changing nature of South Asian social relations and networks. However, whilst many of the respondents clearly held notions of the new and the old South Asian social world as being apart, it was also made plain that there is a sense in which new and old forms of social relations have merged together. Continuity and change, permanence and transience within South Asian social relations have been shown to stand in dialectic relationship to each other.

The changes experienced do not, in these terms, signal a clean and decisive break with South Asian socio-cultural and religious traditions that have given shape to marriage and divorce. Nor do the transformations represent a crisis of legitimacy and authority engendered by a veneration of past attitudes to marriage and divorce seen to be increasingly repressive and anachronistic by second generation South Asians, particularly South Asian women.

The principal point deriving from this reflection is that much of the driving force of South Asian divorce arises out of the tensions that arise when two opposing value systems conflict or clash. Several such tensions that require resolution have been identified: western influences versus those of the East; the secular, material and profane versus the religious and the sacred; and last but not least young versus old. Like all dichotomies, such tensions have a 'push and pull' quality and, as such, compete for allegiance among various sections and age groups of the South Asian population. We can, in these terms, usefully see each of these dichotomies in terms of making what Habermas (1981) has called a

'validity claim'. Claims for validity intrinsically invite acceptance or rejection based on the authenticity and sincerity of each claim. Importantly, claims of this kind 'draw upon shared stocks of knowledge about norms, understandings of sincere behaviour and culturally-agreed upon connections between means-ends' (Turner 1987: 177). The analytic strength of Turner's observation is that it goes some way towards explaining the reorganisation of South Asian social relations in response to various challenges without disturbing the basic structural and normative foundations upon which such relations rest.

We might also see such transitions in terms of a re-negotiation and reshaping of boundaries under discussion as manifestations of what Cooper (1994) has called the *productive* quality of power. Seen in this light, the dynamics of South Asian divorce represent a series of challenges to what Beetham (1991: 17-18) has termed the existing 'rules of power' - modes of resistance which seek to deprive such rules not only of their supporting basis but also their *moral legitimacy*.

Nowhere is this more evident than with regard to the question of South Asian gender relations. Some respondents clearly saw the traditional South Asian family as *both* the source *and* generator of unequal and oppressive relations between the sexes. A good number of divorces initiated by South Asian women may thus be explicable in terms of challenges to this dominant social and moral order. Seen in this light, South Asian divorce has become a small, but deeply significant, part of a much broader attempt to refashion existing gender relations to lead them in new directions. To this extent South Asian divorce is both the object and outcome of a set of concerted historical processes to remedy what some South Asian observers see as the subjugation of South Asian women (Wilson 1978; Southall Black Sisters 1993).

The final point to make here is that changes to South Asian normative frameworks are not entirely the result of imported 'external' pressures. Change has also come about because the legitimacy of traditional and cultural familial arrangements have increasingly been called into question from *within* as well from outside in terms of the influence of, for Western liberalism, Western materialism or Western versions of feminism. In short, whilst it is possible for analytical purposes to hold them separate, internal and external social forces both have a bearing on the increase in divorce and should not be conceived of in isolation from each other.

### **TENSIONS, DILEMMAS AND CONFLICT**

Thus far I have largely dwelt on the *reasons* which respondents believed to be instrumental in South Asian divorce. I now want to turn from questions of *aetiology* of South Asian divorce to the *consequences* of the increase in divorce for South Asian society. The remainder of the chapter is thus devoted to teasing out the conflicts facing the South Asian population of Britain as a result of the social transitions that are occurring with regard to divorce.

#### **The Redrawing of Social and Moral Boundaries**

That the social conditions now exist within South Asian society which allow for the possibility of transcending, established modes of thought on divorce is clearly evident. At the same time, what is equally clear is that South Asian values continue to exert a morally binding influence on individuals. The climate is such that the prevailing social conditions allow for changes in attitudes towards divorce although such pressures for reform are limited. The conflicts that are at the heart of South Asian divorce cannot, in these terms, simply be avoided by an appeal to South Asian core values or a so-called 'natural order of

things'. What is more, positions can no longer be justified solely in terms of shared points of reference that have historically provided South Asians in Britain with their senses of identity. For some, the growth of divorce was both welcomed and thought to be long overdue. Equally, there were others who took up the opposite view in just as vehement and impassioned a way. The story projected by some of the South Asians interviewed is that changes in attitudes towards marriage and divorce represent a threat to South Asian family life, whereas for others the opposite is true in that the changes of attitude concerning divorce open up a series of opportunities.

It thus seems fair to say, that changes are being either wholly or partially assimilated or contested and rejected. By the same token, what are looked on by some as solutions are thought of in terms of extending and deepening the problems by others. This goes some way to explaining why many of the South Asians interviewed in this study - young and old, Gujarati, Punjabi, Hindu, Sikh and Muslim, male and female - expressed the view that they stood as much to gain from accepting the traditional roles ascribed to them and the normative frameworks to which they have become accustomed as they would by rejecting them. It is thus unsurprising that the values that are attached to the maintenance of traditional forms of South Asian family life should be encouraged and threats to the status quo resisted. The need is thus to organise the new social order on a stable basis by reinforcing the concept of social unity in the quest to conserve existing institutions and traditions whilst at the same time eradicating factors which impede this process. Conflictual relations, in these terms, provide the means of securing a dialogue between the sacred and the secular, between the generations and between the sexes. It is also as a result of such relations that values come to be redefined and compromises arrived at which both

enable the preservation of social relations and kinship networks based on tradition and the more desired aspects that western attitudes and lifestyles can offer.

Nonetheless, within this ferment South Asians still hold a number of key values in common even though their individual interests may be in conflict. Positions, however, do not exist in any simple, direct or unified way but rather range across a spectrum. Somewhere along this spectrum it is possible to identify groups of South Asians who, whilst regretting the changes in attitude to divorce, have sought to rationalise them in some way or other. In so doing, this category of people seek to limit the full effects of divorce within their communities by attempting to smooth over differences and ensure South Asian family life is conducted with as few clashes between different family members as possible. Others have adopted a casual acceptance (though never indifferent) position in relation to divorce. For other South Asians, the conflicts that divorce engender are deeply troubling.

That such positions exist is not too surprising for two main reasons. First, it is a feature of social relations, South Asian or otherwise, that they consist of a complex processes of accommodation and toleration and resistance and conflict. Common convictions, interests and ideas not only bind people together, but also foster confidence in one another and in the social system. South Asians clearly do not all subscribe to the same conception of what *ought* to be the case and how particular aims and objectives might be realised. Second, it reflects the degree to which traditions are still able to bind South Asians together. Despite the upheaval of social change, collective South Asian values and beliefs continue to exist because, as Giddens might argue, their 'moral character offers a measure of ontological security to those who adhere to it' (1994:65).

Equally clearly, as I have argued above, a number of cultural moorings have been cut adrift, creating a range of new social and moral boundaries. In particular, the force of tradition associated with marriage and divorce has lost some of what has been a substantial hold on South Asian people. With this authority undermined, those South Asians who have appealed to tradition are no longer able to command the same kind of respect, and are no longer able to define the routes that fellow members of their communities should follow or the positions that they should adopt.

The accumulative effect of all this, it can be argued, is an increase in lack of clarity about the moral choices that South Asian communities are facing. In this analysis South Asians could be said to be living in an age of uncertainty and risk (Giddens 1990; Beck 1992), an era in which confidence and reliance upon traditional forms of social order within the South Asian populace based on notions of conformity and consensus have begun to break down. South Asian divorce, in this respect, is neither a temporary aberration, nor a matter of minor importance. On the contrary, South Asian divorce represents a challenge to accepted and received wisdom about the *social structure* of South Asian social relations, and also poses a threat to the some of *primary ideals and values* upon which South Asian society rests.

The social and moral transformations that divorce engenders thus present a series of ongoing dilemmas for the South Asian community in Britain which need to be addressed at both individual and collective levels. For as I have established in the opening two chapters, South Asian society is, in large measure, structured on principles and practices which aim to transcend individuals and kinship groups. What those South Asians who were interviewed seemed to be weighing in the balance were the risks that are associated with South Asian divorce at both the individual and the collective level. They did so from an

awareness of the increasing divorce rate, the socio-economic changes that have affected family life, and the changes in social relations between South Asian men and women of the kind discussed in Chapter 2.

It is at least arguable that, in this sense, the increase in divorce within South Asian society makes all South Asian marriages vulnerable. Divorce for South Asians is not just a side effect of social change. Nor is it of marginal or peripheral importance. As we have seen the more fragile the family's solidarity, the more important and more likely it is for the wider South Asian community to stress solidarity and unity of purpose. There is, in these terms, a particular resonance to Clulow and Vincent's (1987: 3) observation that 'Divorce is not simply a private transaction, but a legal and social act which removes the veil cloaking the values and assumptions of the community as a whole'. For these reasons people of South Asian origin are more likely to invoke the group identity as a means of reducing the uncertainty and anxiety that divorce brings to the South Asian population.

### **Forging New Identities**

The emphasis on the way that South Asians view themselves and the identities that they are in the process of creating is thus of some significance for this study. We know that a person's sense of him- or herself is a complex and multi-faceted entity (Taylor 1989). We also have a fairly detailed knowledge and understanding of the ways in which identity formation relates to pride, self-awareness, self-confidence and self-esteem as well as one's social positioning. Amongst other things perceptions of the self and one's essence is governed both by the range of duties and obligations that the person in question believes to be applicable to them and by how they would like to be seen by significant others. Personal and social identities are in these terms intertwined and always multiple rather than

singular. Importantly, identities are also, in the words of Wetherall (1996: 227), 'fragmented and changing rather than fixed and essential, constructed through group narratives and struggles over representation which are linked to conflicts of interest and power inequalities'.

These theoretical insights provide strong pointers to the degree of reflexivity that infuses South Asian motives and ideas about marriage and divorce. All individuals are in a position to observe and reflect upon their own motives as they experience them (Campbell 1996). South Asians and others who have to encounter South Asian divorce are actively engaged in its social representation and construction (Moscovici 1984; Potter 1996). This process involves the building up of core images and ideas about divorce, as a way of making sense of something which is both unfamiliar to them whilst, at the same time evaluating what is going on and guiding or channelling their opinions in a range of directions.

Inevitably, some attitudes have altered little, others much more so. The longer term implications of this knowledge and how this feeds into further social change is a matter for conjecture. What is evident at the present time is that South Asians are acutely aware that the decision to divorce involves the creation not only of new identities for South Asian men and women, but also new life-patterns within new social boundaries and structures. Divorce, in this regard, has led to a reappraisal of the roles which South Asian men and women, young and old, are expected to play in terms of parental authority and parental care. This re-examination has brought to the surface some troubling questions not only about what it *means* to be male and female within the contemporary South Asian family structure but how South Asian men and women should *approach* the transitions that divorce within South Asian society engenders. There are also important implications for

intergenerational issues. In particular, first generation South Asians are, consciously or otherwise, changing their ways of thinking to be consistent with their children's views, although as we have seen, there is considerable variation in the speed of change and its acceptance.

In sum, we might see such reflexive processes as being of the two kind identified by Lash (1994). The first is structural reflexivity in which South Asians as agents, set free from certain constraints of their social structures, are able to reflect on the nature and form of those structures. The second is self-reflexivity in which South Asians reflect upon themselves in terms of life narratives and social relations. In terms of the latter, the focus is on the expression of new attitudes towards their emotions, experiences and consciousness of themselves in a direct way.

### **Space and Power**

Thus far I have been concerned in this chapter to map out not only the social contexts in which South Asian divorce is located but also the ways in which attitudes to divorce are constructed and embedded within these contexts. In so doing, it has become apparent that there is an important relationship between the interactions of individuals and the 'social fields' (Bourdieu 1977) that South Asians inhabit. The point that I wish to make is that the tensions, dilemmas and conflict to which South Asian divorce gives rise are not experienced solely within the private enclaves of individual families but extend to the wider social environment. Of course this is also true for white families. However, the spatial dimensions of South Asian social life would seem to be especially important. In relation to the Pakistani population, for example, public areas operate 'in a hierarchy of progressively inclusive social spaces, from restricted inter-domestic spaces of celebration

(weddings, funerals) which mobilise friendship and extended family networks, to mass culture directed at mass audiences. At each scale of social inclusiveness different cultural narratives are negotiated' (Werbner 1996: 65).

Werbner's emphasis on the ways in which space is negotiated within South Asian communities helps us to understand some of the dynamics that are associated with the divorce process. The analysis is particularly helpful with regard to appreciating the process of ostracisation of South Asian women referred to by many respondents. Ostracisation involves complex social processes of a particular kind of social exclusion. This process revolves around the questions of who should occupy particular social spaces and who can come and go in their everyday activity and under what circumstances. These processes are typically negotiated according to the kind of normative standards and expectations of behaviour discussed in Chapters 1 and 2; what is proper and valid in any given case. Space, in these terms, demarcates a moral boundary for members of South Asian communities just as much as a physical one.

Once again power is of considerable importance. Power relations are as much grounded in 'the power of the ordinary' (Mukerji and Schudson 1991) and in everyday interactions which occur within family life as they are in the workings of state institutions. Whilst power relations are ubiquitous, they are also circumscribed and staged, to varying extents, within particular social spaces (Foucault 1977; 1980). Within these 'fields of interaction' (Bourdieu 1993) the authority that is invested in the social location of South Asians and the power associated with their positions within these social fields to control and direct cultural norms is particularly significant. On this point, certain South Asians, some participants suggested, are able to define themselves in terms of the claims that they are able to make over other members of their community, the boundaries that they are able to

draw and the rights that they are able to confer on others. The ability to exercise power thus derives from the constraints and sanctions that they are able to apply, although this ability is always dependent upon 'whether the attempts to secure power are seen as reasonable and appropriate or as disruptive and illegitimate' (Wetherall 1996: 315). This ability extends to having 'the say' both in terms of inclusion and exclusion.

In these terms, everyday, taken-for-granted activities such as going shopping, picking children up from school, attending places of worship all take on a greater degree of significance for South Asians who are divorced. On this score, it is of fundamental importance to note that a husband's sense of honour is, to some degree, dependent upon his wife's reputation and behaviour within the wider community for its maintenance. The instigation of divorce proceedings, *de facto*, will be seen as bringing dishonour to both him and his family.

The weight of evidence indicates that South Asian women's sphere of influence is on a different scale from that of South Asian men. South Asian men are instrumental not only in defining the socio-economic positions of their partners. South Asian men also occupy positions of power which enable them to maintain and control the mechanisms which reinforce inequalities. All of this means, as many respondents stressed, that South Asian women find themselves in a considerably less powerful position than their husbands and their white counterparts. As we have seen this manifests itself in a number of ways including the lack of kinship support and the lack of material support from statutory welfare organisations. State policies and traditional customs and practices thus combine to contribute to their sense of isolation and the consequences that follow from this.

To this we might usefully add elements associated with the socialisation of South Asian women. South Asian women believe that personal sacrifice is, in and of itself, a social good. Forsaking such benefits as one's career and income for the sake of one's husband and bringing up children, for example - is for many South Asian women both a necessary and honourable thing to do. These constraints serve to perpetuate disadvantage and dependency among South Asian women which, in turn, makes the decision to leave one's husband and family network all that much harder.

Of course, I doubt if any of the South Asian people that participated in this study would argue that the wish for South Asian women to extricate themselves from difficult, often violent relationships, is anything other than a legitimate aspiration. At the same time, many respondents spoke of the ways in which South Asian women who divorce are often treated with contempt and made to feel inadequate and guilty both at a personal level and more generally in terms of bringing shame to their families. Having divorced one's husband, South Asian women have to go on with their lives. What were once routine and matter-of-fact activities – shopping, for example, then become deeply distressful and the source of great anxiety affecting people's sense of confidence and worth. For these reasons, the decision for a South Asian woman to separate is thus likely to take considerable courage. This is especially true if the woman in question is contemplating taking her children with her when making the break.

## **SUMMARY**

In this chapter I have attempted to set out how particular aspects of social theory can be used to illuminate the empirical material presented in Chapter 6. This subdivision has the advantage, I suggest, of providing a nexus between the various explanations whilst at the

same time drawing attention to the limitations and deficiencies in any one explanation. In this light, my theoretical concern has been not to disentangle or deconstruct competing sets of arguments, but rather to attempt to build an integrated and complementary conceptual framework with which to account for the nature, meaning and operation of South Asian divorce within the context of rapid social change.

In the second part of the chapter I have sought to contribute to a more general analysis of the wider issues that are raised by South Asian divorce as an *emerging social problem*. The second section has provided an account of variables associated with the increase in South Asian divorce and the multiplicity of factors that need to be taken into consideration in the quest to understand and explain the phenomenon. As we have seen the changes and trends in South Asian divorce described and analysed in this thesis are the results of a number of disparate but interlocking ideas that have taken on an increasing significance in recent times.

Let me now return once more to the normative, institutional and constitutional issues concerning disputes involving South Asian children raised in Chapter 7.

## **CHAPTER NINE**

### **NEGOTIATING ARRANGEMENTS**

It will be recalled that one of the main aims of this study is to generate much needed empirical data about the ways in which court welfare officers and judges deal with cases involving children of South Asian origin. In pursuit of this aim, a number of issues concerning such disputes have been revealed. Much has been said, for example, about the amalgam of standards that court welfare officers and judges apply to cases involving South Asian children, the administrative organisation within which disputes are examined, and the decision-making processes. In pursuing this enquiry further, this chapter concentrates on how we might best make sense of this complexity. The views that I seek to develop have their point of origin in some of the ideas developed by Habermas (1979; 1981; 1996). Using these ideas as a springboard, I then seek to provide an extended analysis of the problems of putting the principles, precepts and values that underpin court welfare work with South Asian families into practice.

### **TOWARDS A THEORETICAL FRAMEWORK**

The dispute process, of which court welfare work is a crucial part, has been shown to be an activity that encompasses a range of complex socio-legal policies and procedures. As Chapters 4 and 7 have demonstrated, it is driven by certain principles and practice ideologies in order to realise a particular set of ideals. As such, court welfare work with South Asian families constitutes an elaborate and diverse network of ideologies and practices.

## Court Welfare Work as a Form of Communicative Action

The decisions concerning the welfare of South Asian children within this network are invariably taken in what Twining and Miers (1982:1) refer to as 'conditions of doubt'. Within this intricate web, court welfare officers and judges are engaged in a constant and evolving examination of the parameters of their knowledge and understanding of South Asian disputes. Within this process, court welfare officers and judges and the South Asian families are dependent upon continual and evolving processes of negotiation and re-negotiation. That is to say, relations between legal personnel and South Asian parents are transactional across and between two very different sub-cultures. This is a reciprocal and interactive process, albeit one in which relations are neither symmetrical, equal nor, necessarily, complementary.

We might usefully draw upon Habermas's (1979) general theory of 'communicative action' to understand and develop the importance of this. According to Habermas, if two or more people are to communicate effectively with each other then certain conditions - what Habermas (1979:1) calls 'general presuppositions' - need to be met. He explains these in terms of four 'validity claims'. First, those who communicate with each other assume that what is said is *comprehensible*, that is to say, intelligible. Second, that what is said is factually *true*. Third what is communicated needs to be *sincere*. Fourth and finally, those communicating with each other must come to an understanding that what is said is not merely appropriate, but *justifiable* and *legitimate* within the context of certain moral norms and conventions shared by participants. The theoretical framework that Habermas provides enables us to set out the conditions which should be in place for South Asians, court welfare officers and judges to communicate with each other in genuine and legitimate ways. In other words, the four conditions of communication - comprehensibility, truth,

sincerity and legitimacy - furnish us with a normative ideal to which court welfare officers and judges can aspire. The practical value of Habermas's theoretical formulation, meanwhile, is that it provides us with the criteria against which to measure and assess the degree to which court welfare officers and judges fulfil this aspiration.

First, then, the question of comprehensibility. Making oneself understood is, of course, directly related to the ability to present issues in such a way as to lessen the scope for misinterpretation or misunderstanding. As we have seen, court welfare officers recognise that tolerance, awareness, sensitivity and acceptance of South Asian attitudes, together with knowledge of the whole range of social issues affecting South Asian social relations are essential prerequisites for effective communication. At the same time, court welfare officers have also acknowledged that these qualities are not, in themselves, sufficient to enable them to meet this objective. Hence the use of cultural consultants.

In tandem with cultural consultants, court welfare officers are engaged in a complex process of breaking down disputes into various categories. Several features of this classification process have been identified that might usefully be summarised here. In the first instance, court welfare officers seek to define as accurately and as non-critically and in a non-judgmental a fashion as possible, their thinking and feelings about particular disputes as they relate to the problems presented by parents. From here they seek to review and summarise, as succinctly as possible, what they have observed and understood to be the central problems that the court needs to resolve.

Comprehensibility, however, takes a different turn when it comes to appearing within the court environs. The conversations and negotiations that together constitute the drama of the family courtroom are thus frequently meaningful only to legal participants and other

professionals. More than this, the interactions which take place in court settings allow a particular 'linguistic community' (Bourdieu 1991: 40) to speak with a degree of confidence and fluency. The expressive value and quality of particular words, the use of metaphor and allusion all have particular importance in courtroom settings. Such linguistic distinctions are reinforced by solemn rituals and imposing judicial figures and to challenge one element is somehow to threaten the whole edifice (Beetham 1991).

This is not to suggest that *all* South Asians are disadvantaged in terms of the linguistic exchanges that take place in courts, or that court personnel consciously set out to disempower South Asian families or to obfuscate matters. Rather, the pressure, as one welfare officer put it, 'is to get things moving'. In practice, as Chapter 7 has demonstrated, the danger is that corners may be cut in the name of expediency, the level of interpretation may not be quite as complete and/or as nuanced as it might be, some questions may inadequately framed or even omitted altogether and so on. Perhaps worst of all, decisions may be taken by legal representatives in the 'back regions' (Goffman 1959) of the court without direct reference to parental wishes.

Other difficulties have been shown to have their roots in problems associated with linguistics. As some theorists of language have attempted to show, language helps to structure the cognition of the speaker in ways that are compatible with particular cultural traditions. Language, in this way, guides and constrains particular ways of thinking about and acting within the social world. Crucially, Fairclough (1989) has argued, language is closely associated with ideology. Ideologies, in turn, notes Fairclough, are linked to power insofar as the conventions used in language are a means of validating existing social relations and differences in power. The language used inside courts is frequently arcane and esoteric. Many welfare officers were critical both of their own service to South Asian

parents and of the court process in general, drawing attention to the acute disadvantage and deep sense of alienation that South Asian parents experience within the court setting.

Turning now to the issue of truth. Court welfare officers have been shown to be 'keyed into' the legal process in a variety of ways. It is useful to contrast their position with that of lawyers. As Galligan (1986: 46) has noted 'lawyers are trained to understand the law, to be able to marshal the facts and evidence needed to present a case in its best light, and to reveal the weaknesses in the opposing case'. It is at least arguable that lawyers are less interested in establishing the 'truth' of the matter than with winning a series of battles and, ultimately, the war of attrition portrayed so vividly and with much poignancy by many of those interviewed.

Within these deep, distinctive structures and constraints of the law, both lawyers and court welfare officers are thus required 'to play the game' (Bourdieu 1993) by different kinds of rules. Within certain limits and parameters, lawyers are allowed strategies of subversion. Such strategies are readily understandable to judges. The judiciary is trained to examine both sides of a case and to try and see each argument from the point of view of both parties. Prior experience as barristers teaches judges to do precisely this (Atiyah 1995).

The parameters within which the judiciary expects court welfare officers to operate could not be more different. Faced with the task of preparing a report for the court, court welfare officers are required, first and foremost, to provide a faithful rendition of the dispute that encompasses all points of view without cause or favour. However, evidence has been presented that there may not be the secure ground upon which to 'tell it as it is'. At the same time, nothing has been unearthed in this study to suggest that court welfare officers do not strive to be anything less than open and honest in their dealings with South Asian

families. In large measure, this goes without saying. Showing respect for persons, demonstrating unconditional regard, treating people openly and honestly, affirming positives, enabling and empowering people to take charge of their own lives and decisions, acting in an anti-discriminatory way and other associated values discussed in Chapter 4 form the very foundation of court welfare practice. With these comments in mind, let me turn now to the question of sincerity.

Clearly truth and sincerity are intertwined and mutually reinforce one another. Both concepts share a deep affinity insofar as both say a great deal about the type of social relations to which we aspire and the kinds of commitments that people ideally seek to make. Taken together, truth and sincerity constitute what Habermas has referred to as communicative ethics. That is, a number of court welfare officers expressed a range of noble ideals as a key to providing justice, fairness and respect for all. The commitment to establishing harmonious working arrangements with South Asian families can thus be read as a testament to the 'extra effort' referred to in the National Standards (Home Office 1994: 4) to ensure that South Asians and other ethnic minority groups are 'not disadvantaged and that the process is professionally managed'. Whilst such ideals provide the guiding principles for practice, this study has shown, in some instances, how far short court welfare officers fall in reality.

I return to a more detailed examination of the reasons why practice falls short of these ideals below. Here, I seek to get to grips with two concerns of a different kind. The first relates to some fundamental questions concerning the legitimacy of the authority that court welfare officers and judges can command. The second revolves around the law's integrative role within Britain's multicultural society. Both of these concerns interact with

one another insofar as there is a continual interplay between socio-legal structures and socio-legal processes.

In the first case, one of the main claims for legal legitimacy is derived from the fact that the family court makes decisions on behalf of, and for, the whole society. Certain rules and principles, as we have seen in Chapter 3, govern such decisions. Such rules, as Beetham (1991: 5) has noted, can be said to be legitimate when they can be justified according to principles to which 'any rational person, upon considered and unbiased reflection, would have to agree'. That is to say, legal rules become morally binding when people accept them as standards for their conduct. The law, however, cannot secure the basis of its legitimacy simply through statute and other forms of legality. Rather, as Habermas has argued, 'modern law lives off a solidarity concentrated in the value orientations of citizens' (1996: 33). On the basis of this study, there is little reason to doubt that the 'value orientations' of the South Asian populace, at least at the level of generality, is to comply with British family law. This 'compliance effect', to use Tyler's (1990) term, seems likely to be attributable to a combination of *socialisation* and the *legitimation* of the legal process *per se*. That said, the evidence presented in Chapter 7 confirms that there will always be individual differences in compliance within the South Asian population due to some or all of the following factors: prior socialisation; the nature and depth of legitimation felt; any deterrent effect that may be present at any one time.

Nonetheless, the impression arising out of the accounts documented in Chapter 7 is that the South Asian population is more likely to acknowledge the legitimacy of court welfare officers' intervention and the courts' decisions if people of South Asian origin believe that their views are listened to and acted upon. Of course, as we have seen this is not always so, or at least not in any straightforward way. The process of listening does not, of course, by

itself guarantee legitimisation (Kavanagh and Kennedy 1992). Moreover, to paraphrase Beetham (1991), South Asians in dispute over their children may have a much clearer sense of the injustice of their exclusion from the process than of the precise form that their inclusion should take. What would seem to be clear, however, is that the granting of legitimacy by South Asian people using the courts is likely to be increased if they are secure in the knowledge that they are to be included in the process rather than excluded. From this standpoint, the key questions for many of those who participated were not *whether* South Asians are listened to, but *which* voices are listened to, where they are listened to, and what weight is attached to particular voices.

These questions are, of course, intrinsically linked to frames of reference (Goffman 1959) and the rules of engagement that court welfare officers adopt in their work with South Asian families. In particular what has been shown is that the rules and conventions that should allow and attune South Asian families to know what is going on, what to expect, how to react and how to proceed are far from clear. Some of the difficulties identified lie in the presuppositions that some South Asian parents tacitly, and perhaps unwittingly, accept by the mere fact of resorting to law. Others relate to incomplete knowledge of the rules and principles that operate in disputes. Yet others arise out of such situations as the misapprehension as to the role of court welfare officers on the part of those South Asians who believe that the court welfare officer has the power to make the decision.

What is also important is that the granting of legitimacy also extends to the practical application of court welfare officers' deliberations and the courts' decisions. That is to say, legitimacy is concerned with outcomes of courts' decisions as well as the rules and principles which inform the process. As we have seen, courts' decisions have a marked and enduring effect on South Asian families. They clearly affect a significant proportion of the

lives of all concerned, vex and frustrate many and arouse anger and annoyance in others. The ways in which court welfare officers and judges interpret and act on the principles which underpin the Children Act 1989 and the Family Law Act 1996 have, in this regard, been shown to be of fundamental importance. Having set out a general theoretical framework as a way of making sense of court welfare practice with South Asian families, let me move now to this more specific concern.

## **PRINCIPLES INTO PRACTICE**

In Chapter 3 I spelled out in some detail the ways in which the court requires court welfare officers to investigate the nature and form of any given dispute. As was noted in this chapter, court welfare work is framed in terms of responsibilities, duties and obligations not only to the courts but also to the parents and children with whom they come into contact. Within this framework, it is incumbent upon court welfare officers to provide an impartial account of the dispute and to offer the court advice on how the child's best interests may be served and met. Against this backdrop, the Children Act 1989 makes explicit the criteria by which the welfare of South Asian children is to be ascertained and gauged through a series of clearly expressed principles. In tandem with this court welfare officers are given guidance on how to go about this task through the medium of National Standards (Home Office 1994).

I have already alluded to the fact that a degree of difficulty exists in translating the principle of minimum delay, the principle of no order, the paramountcy principle and the principles of parental responsibility and involvement enshrined in the Children Act 1989 into practice. In what follows I address each of the principles in turn and seek to cast further light on why this is the case. In adopting this approach, I am seeking to understand

the *interrelationship* between each of the problems associated with the principles in question.

### **Ensuring Minimum Delay**

The principle that there should be minimum delay in resolving disputes over children referred to in Chapter 3 is perhaps the most modest of the five principles underpinning the Children Act 1989. Indeed, in some regards, the principle can be seen simply as a staging post towards tackling more fundamental issues contained in the remaining principles. As Roberts (1997) reminds us, delay in settling disputes is considered to be detrimental to children for two main reasons: it creates uncertainty and it harms the relationship between parents and their capacity to work together in the future.

In examining the comments offered by those interviewed, particularly court welfare officers and judges, there is nothing to suggest that South Asian families (any more than white families) seek to prolong cases in order to win particular battles in the war of attrition that many parents see as being fought. What has emerged, with some force, is that South Asian families bring with them an added degree of complexity which, by definition, may require more time to prepare a report than cases involving white families. Whether cases involving South Asians benefit from longer breaks between hearings in order to allow more time for them to settle down or enable courts to test out interim contact arrangements is, on the weight of evidence provided, more difficult to ascertain. The same is true with regard to whether agreements involving South Asian children made with the emphasis on speed of resolution are more likely to break down more quickly than agreements involving white children made under similar circumstances and time constraints.

### **On the Need for an Order**

As noted in Chapter 3, the Children Act 1989 makes it clear that the court shall not make an order unless it considers that doing so would be better for the child than making no order at all. The question of whether the welfare of children of South Asian origin is safeguarded or promoted by the presumption of not making an order is difficult to answer at a general level. What this study has established, however, is that using the law only as a last resort is a principle which is, in large measure, congruent with South Asian approaches to the resolution of disputes discussed in the opening chapter.

The problems associated with the decision whether or not to grant an order do not, of course, end with the decision itself. The extent to which South Asians abide by decisions made by the court will, of course, vary. Amongst other things, variance is likely to occur according to individual circumstances, a person's disposition, the depth of feeling that the decision arouses and, crucially, as we have seen, the degree of legitimacy that is accorded the decision. Yet regardless of circumstances, as Roberts (1997) reminds us, it is difficult to escape the reality that little, if anything, can be done if South Asian parents (like their white counterparts) choose to ignore or thwart a court order by making contact difficult or impossible.

### **Ascertaining the Best Interests of South Asian Children**

The legal system thus needs to ensure that, as far as possible, the decisions that are made are those which are most advantageous to the child. South Asian children, like children in general, need protection and their parents need to behave in ways which protect their interests. South Asian children, once again just like other children of different nationalities, have what might be termed 'natural rights' to love and nurture from both parents post

divorce. The fact that the child's best interests are to be paramount is thus unquestionably the fulcrum on which court welfare work with South Asians balances. What conclusions, then, can we draw from the empirical data concerning its operation?

Perhaps the first thing to note is that there was an almost unanimous view among those interviewed that couples who separate are socially and morally bound to look at the child's welfare rather than focus on the battle between the two parties. In line with this, the majority of interviewees were of the opinion that a mutually agreed solution should be sought to the dispute. Those who presented arguments according to this principle also saw an amicable settlement as the best way of achieving stability and security for the children concerned. Parents and their families, in seeking to reach this objective, should leave the past behind them and co-operate to solve future problems.

There were, however, numerous difficulties in realising this in practice. Some pointed to the parents' inability to communicate with each other in any constructive and meaningful way and the ways in which some South Asian parents project not only their dislike and suspicion, but also their anger and frustration, on to the other parent and his or her family network. In addition many spoke of the difficulties that many South Asian parents, particularly fathers, have in putting their child(ren)'s interests above their own concerns. What was particularly pertinent in such cases was that the welfare of the child was often seen to be very much secondary to the maintenance of the father's status and *izzat* in the family and the community more generally.

With all of this in mind let me now address questions of parental responsibility and the nature and form of parental involvement in the lives of South Asian children following the dissolution of their parents' marriage.

## Parental Responsibility

The principle of parental responsibility, as we have seen, has assumed doctrinal significance in the settlement of disputes over children in recent times, replacing rights-based approaches to determining the best interests of the child such as those based on status or past behaviour. Few of those interviewed argued that arrangements should be determined by the 'clean break' principle whereby the mother or the father are denied any contact with their children. On the contrary, there was a broad consensus about the need for the child to experience both male and female role models. The important thing to note, however, is that despite its hallowed place within the discourse of dispute resolution, the concept of parental responsibility has not directly replaced the *rights* of parents. Rather the concepts of parental responsibility and rights coexist and intertwine. Thus it is impossible to imagine a dispute involving South Asian children that did not focus on the part that family members have played in the lives of children within that and the interests and *rights* of family members that emerge from this contact.

Rights in general refer to the moral claims, duties and obligations that citizens have in relation to one another. Whilst 'parents do not come equally with invested rights to Court proceedings' (Ashworth 1997: 141), rights nonetheless act as an independent normative constraint on the decision-making process of family courts and as such are of central and powerful importance. Claims for a right are often 'presented as having a special kind of importance, urgency, universality, or endorsement that makes them more than disparate or simply subjective demands' (Kamenka 1988: 127). In terms of family law, claims presented as rights - in terms of what people believe they are entitled to - are derived from the requirements of what is just and fair. Questions of justice and fairness, here, refer not

only to the outcome of the decision itself with respect to merit and desert, but also in terms of the process by which that decision was reached.

Of course, rights can also be waived or forfeited. Chapter 7 has provided a number of instances whereby those South Asians interviewed expressed the view that they considered that the rights of parents, particularly the rights of South Asian women, ought to be protected much more. There were also occasions when respondents intimated that parents, particularly South Asian men, did not have an inalienable right to remain in the lives of their children. In reaching these conclusions interviewees entered into a discussion of the relationship and links between the gender and behaviour of the parties concerned in terms of the different roles that South Asian men and women play in the rearing of children. We can recognise and appreciate the nature and force of these conceptual and practical concerns more fully by way of reference to the concomitant principle of parental involvement.

### **Parental Involvement**

The significance of the doctrine of 'gender neutrality' described in Chapter 3 is that it reflects, in rights terms, a *universal* approach to the resolution of disputes. The emergence of the gender neutral premise as a way of ensuring a more equitable basis for decision-making raises a series of profound questions about the theoretical and practical basis upon which decisions involving South Asian children can rest. Underpinning the doctrine is the assumption that women and men are equally situated and thus equally able to assume child-care responsibilities. However, as we have established in the opening chapter, South Asian social relations are socially and economically asymmetrical. South Asian fathers are,

in these terms, invested with what Cooper (1994), has referred to as greater ideological and disciplinary authority.

The upshot of this is that South Asian women continue to undertake the lion's share of child-care. For this reason alone, South Asian women may experience a deep sense of injustice when fathers seek to have their children reside with them. For as Smart (1991: 494) and others have pointed out, there is a crucial distinction to be made between 'caring for' children and 'caring about' children, an observation which, as we have seen, resonated with many interviewees. In this context, it is possible to draw support for the view presented by many in this study that South Asian society systematically favours men and that fundamental social and economic inequalities exist in terms of distribution of income, distinctions in status and prestige, which affect whole lifestyles and prospects. In this crucial respect, the application of gender neutral assumption is even more problematic in relation to South Asian parents than it is for white parents.

## **SUMMARY**

This chapter has sought to do two -things. First I have attempted to offer a theoretical framework with which to account for the rationale and logic that underpins court welfare practice and the strategies that court welfare officers employ in their work with South Asian families.

Second, I have explored some of the normative features of court welfare practice. In particular I have sought to establish the substantial difficulties of translating the ideals contained in the Children Act 1989 and to a lesser extent the Family Law Act 1996 into practice. Elucidating the difficulties in this way has allowed us to gain a realistic view of the tensions that court welfare officers and judges experience when attempting to follow

the rules and principles spoken of in Chapter 3. The focus on institutional arrangements has furnished us with much needed knowledge about the degree to which court welfare officers and judges are able to keep their obligations to South Asian families and realise the kind of ideals laid out in the National Standards. In the concluding chapter let me attempt to bring many of these threads together.

## CHAPTER TEN

### CONCLUSION

In this thesis I have set out to explore the historical, normative and institutional dimensions of two contemporary social problems: the issues posed by divorce in South Asian society and the question of how to resolve disputes involving South Asian children. It has been my objective throughout this work to make the various dimensions surrounding the twin themes more visible and open to analysis. In seeking to realise this objective it has been necessary to engage in what one socio-legal theorist has termed a 'transdisciplinary enterprise' involving the socio-legal analysis of both themes inside and outside of legal spheres of thought, 'sometimes speaking through them and sometimes speaking about them, sometimes aiding, sometimes undermining them' (Cotterrell 1998: 187).

As a result, in terms of the broad theme, we now have a number of insights into the changing contours and conduct of South Asian family life and the place that divorce currently occupies within the South Asian social world. In particular, we now have a much clearer knowledge and understanding of the main contributory factors in the break-up of South Asian marriages. At one level, South Asian divorce can be explained in terms of microsociology: 'the sphere of the individual subject, grounded in and defined by her/his own personal subjective needs, desires and history' (Crowley 1992). South Asian divorce undoubtedly has its own unique, idiosyncratic and private history. At another level, South Asian divorce has been shown to be shaped by social forces and conditions. That is to say, South Asian divorce has a *creative and transformative* capacity not only to reshape cultural identities, but also normative commitments and social practices beyond that of the parents themselves. Within this context, attitudes towards South Asian marriage and divorce are being reconstructed, to varying degrees, around a set of changing social environments.

These new forms of association have been shown to have important implications that go to the heart of South Asian familial and social relations. In addition we have a much fuller appreciation of the socio-legal, moral and practical issues that disputes involving children of South Asian origin engender.

In this closing chapter it remains therefore to reflect on how the various strands of the arguments presented might be best interpreted so as to enable the whole picture to be judged. In the next section I shall offer some comments about the transformations that are taking place within the South Asian social world with regard to divorce. This will then be followed by a summary of the difficulties of resolving disputes involving South Asian children. Finally I provide a general discussion of the tensions and difficulties discussed in earlier chapters that South Asians are likely to face in the near future.

### **The new domain**

The broad historical perspective provided in the opening chapter reveals that South Asian attitudes to divorce are embedded in historical traditions and cultures with the complex clusters of meaning and value attached to divorce being handed down from generation to generation. This has allowed people of South Asian origin to lay claim to an ancestral heritage based on distinctive patterns of social relations and sets of cultural and religious beliefs around the sanctity of marriage, the centrality of the family and so on. The norms and social rules within South Asian institutional frameworks, as we have seen, transcend individuals. At the same time, South Asian social relations are clearly in the process of transformation, moving away from relatively bounded national, ethnic, cultural and geographical identities towards sets of relations which are more fluid and permeable. The main argument that has emerged from this particular part of the analysis is that various

elements, which together have traditionally composed and conditioned South Asian attitudes to divorce, have, in the population studied, altered considerably in recent times. In this new domain, attitudes towards divorce described in Chapter 1 are very different from those held by migrants in the 1950s and 1960s. Without wishing to overstate the case, what was once a fairly universal and consensual view on marriage and divorce among the South Asian population of Britain has now become a set of fragmentary and differentiated dispositions towards them both. Divorce thus signifies both in a symbolic and tangible way the dissolution of unity and of the core values to which South Asians seek to adhere. The rewards, support and security that many South Asians have traditionally associated with marriage are thus increasingly being brought into question. This is especially true with regard to South Asian women, many of whom, as we have seen, have to deal with what were once previously forbidden or ignored emotions.

### **‘Hard Cases’**

One of the central aims of this thesis has been to examine the intended purposes, aspirations and objectives of court welfare officers and judges who encounter South Asian families. That disputes involving South Asian children constitute ‘hard cases’ (Dworkin 1977) has been all too evident at a number of points in this thesis. As with all complex cases, such disputes do not lend themselves to simple or easy solutions. Most obviously, the nature, form and surrounding circumstances of the dispute, its precipitating events and other variables, all mean that individual cases need to be addressed in their own terms. In such circumstances it should come as no surprise that in terms of both the process and outcomes the resulting judgment may not be precise or satisfactory to all.

This, however, is only part of a much larger story. As we have seen, court welfare officers and judges can understand and convey to the court only a minute fraction of information gathered. In this regard, the attempt to penetrate what is going on in the lives of South Asian families and to attach meaning to disputes involving South Asian children has been shown to be immensely complicated. The act of reaching a satisfactory conclusion based on the *facts* of cases involving South Asian children, as we have seen, is particularly difficult. Invariably this involves court welfare officers and judges seeking to capture 'a sense of order and coherence where none is obvious, and interpreting social situations which appear varied and changeable' (Galligan 1996: 3).

In other instances the motives in bringing the dispute before the court are not always straightforward. As Eckelaar (1991) has observed, disputes are frequently initiated out of anger, in protest against being labelled an inadequate parent, or as a result of not recognising that the marriage is over, rather than seeking what is best for the children. From the accounts presented, it would appear that South Asian litigants are no different from other groups in this respect. South Asian parents, particularly, it would seem some (though by no means all) South Asian men, may pursue personal agendas that are at best tangential to, and, at worst, bear little relation to the best interests of their children.

Even when there is less suspicion about the motives for bringing the dispute to court, there may, however, be a range of deep-seated problems that remain to be resolved. Most obviously, judges and court welfare officers, may well be confronted with an evenly balanced set of arguments which may as well be resolved, as Elster (1989b) has provocatively intimated, by the toss of a coin as by an appeal to a rational judgment favouring one parent over another according to an agreed criteria.

On a different note, other problems arise out of the need to maintain the standards and codes of professional conduct required by court welfare officers in their work with South Asian families. Here the emphasis has been on the integrity of court welfare officers and judges and their need to be sensitive to their duties and obligations to the South Asian population. These general duties are to treat those people of South Asian origin with equal concern and respect. This notwithstanding, beyond adhering to this 'golden rule' of ethics, none of the court welfare officers and judges interviewed expressed a clear view that would gain widespread acceptance between them about how to fulfil these responsibilities. This has been shown to be particularly true with regard to rights-based considerations and how these relate to questions of justice and fairness

What is indisputable is that justice and fairness requires court welfare officers and judges to pay attention to, and show respect for, South Asian socio-cultural differences. Whether this requires what Carens (1997) has referred to as a 'hands-off' approach to South Asian culture and identity out of respect for the equality and freedom of individuals or a sensitive balancing of competing claims for recognition and support in matters of South Asian culture or, indeed, whether it is possible to disentangle these competing principles has been shown to be open to question. Finding a defensible mix that would satisfy all aspects of these conceptual and practical puzzles is likely to remain an extremely demanding task.

The twin themes of this study illustrate the shifting spirit of the times and represent crucial shifts in the social and moral landscape of the South Asian population. The South Asian community has passed a particular milestone in its attitudes and beliefs about divorce. In the longer term, divorce amongst the South Asian population of Britain is thus likely to bring about a major change to South Asian social relations. As for disputes, the weight of evidence presented in this thesis makes it highly probable that the theoretical, moral and

practical problems facing court welfare officers and judges in working with South Asian families will accentuate rather than diminish.

### **In Closing**

I began this thesis with a few observations about the deficit in our knowledge and understanding of the twin themes with which it deals. I have subsequently mapped out in a generalised way the significance of the historical development of South Asian divorce and disputes involving South Asian children, and have indicated, by means of more tightly drawn empirical evidence, some of the general effects and consequences of both issues. In marshalling the evidence, we now have a detailed picture of how South Asians conceptualise divorce and disputes over children in terms of their definition and meaning and the way in which each of the topics fits into the South Asian life course. What is more, in examining the extent, force and nature of South Asian normative attachments, personal support mechanisms, familial networks and socio-economic systems, we also have a sound grasp of how South Asians position themselves in relation to each of the themes.

This thesis has, in these terms, offered something more than a narrow account of how South Asians construct and encounter the processes and practices involved in divorce and dispute resolution. Its concern has also been with much broader social processes and the nature of social order within South Asian families on the one hand, and constitutional questions of doctrine, norms, rules, principles and other considerations of authority, integrity, fairness and justice affecting South Asian families on the other. Within this structure much has been said to shed light upon the ways in which South Asian divorce is constructed and encountered as well as upon those distinctive features of the legal order which govern disputes involving South Asian children. In terms of the latter, the thesis has

examined the legitimating principles and beliefs that characterise relations between court welfare officers and judges and the South Asian populace.

In reading the analysis presented it will have become clear that both themes comprise a series of tensions and dilemmas for South Asian social relations that remain to be settled but cannot easily be resolved. Both themes have been shown to be significant elements within the much broader picture of changes affecting marriage, divorce and the ways in which children are raised within 'modern societies'. On the other hand, the issues raised in this thesis have been shown to be *sui generis* to the South Asian population and in this sense represent something more than a small detail within a much larger tapestry.

Of course, in speaking in this way, a sense of perspective is necessary. When reflecting upon the issues raised by South Asian divorce it is possible to highlight what appears to be an increasing fragmentation of South Asian society into a series of self-contained and antagonistic social worlds. It is also possible to point to the weakening of a moral centre of gravity which was once capable of binding South Asians to an acceptable vision of familial relations based on a common set of purposes and values. At the same time, whilst the rate of South Asian divorce is rising it remains low compared with the sharp rise in divorce amongst the white population of Britain. Equally clearly, crucial shifts in the South Asian social and moral landscape have occurred, changes that are also finding certain parallels in the Indian subcontinent. It would, however, be misleading to see the increase in South Asian divorce and the growth of disputes over children of South Asian origin as indicators of a terminal decline in the normative or prescriptive forces which govern South Asian attitudes to marriage, divorce and the raising of children.

In the same way, attitudes to South Asian divorce cannot be seen in polarised terms as an ever-hardening separation of views between the two generations or sexes. To be sure, some of the younger generation of South Asians, especially second generation South Asian women, are growing increasingly frustrated, angry and impatient with the continuation of established traditions and modes of authority and are beginning to form an 'oppositional' sub-culture. For many members of the younger generation, however, the issue is not one of disaffection with the traditional social ordering of South Asian families but rather how to find a mix between the old and new social relations with which they are comfortable and which is applicable to rapidly changing socio-economic circumstances. The pushes and pulls in various directions and the exchanges and interactions between first and second generation South Asian and between the different castes and sexes thus remain precariously balanced.

Within this unfolding situation, multiple identities and realities exist in tension with one another in ever-broadening and encompassing circumstances and social spaces. Similarly, a key issue is not whether the growth in divorce is intrinsically harmful or beneficial to South Asian communities *per se*, but that South Asian divorce brings benefits and creates and imposes corresponding costs at one and the same time.

It is also important to note, at this point, that whilst much of this discussion has taken place in the *abstract*, the theoretical and moral dilemmas unearthed in this study are clearly finding *tangible* expression in the everyday lives of South Asians. In terms of the wider theme, as we have seen, the grounds upon which one party seeks divorce will vary according to a variety of factors and contexts ranging from personal qualities and dispositions through to the socio-economic situation that each of the parents occupy. Such grounds have been shown to be deeply contingent on factors such as the different hopes,

ambitions and expectations that South Asian parents hold for themselves and for their children. South Asians who are in the throes of divorce, or who have been divorced, are becoming more visible in their communities and their voices made increasingly audible. This is especially true for those South Asians who are in dispute over their children. Neither theme can thus be thought of in fleeting or passing terms. Rather, the consolidated picture that has emerged from this study is that South Asian divorce and disputes over the arrangements for children are the subject of great moral seriousness and weight. The personal and social consequences of the twin themes explored in this thesis are thus deep and wide.

In this context the thesis has covered three areas of particular significance. First, the issues in what were previously two poorly understood social problems can now be stated in a more precise manner. Related to this is that the analysis undertaken has laid the foundations for further research into the problems associated with South Asian divorce. Second, disputes involving South Asian children have been shown to be a specialised area of family law. The thesis has provided important information about the rules and principles that are in operation within this field. In addition, much needed information has been provided on the working practices of court welfare officers and judges when dealing with South Asian families. Taken together, this information has provided some strong pointers for how the problems associated with such disputes may be remedied. In particular we now have well informed views concerning the question of how common interests and peaceful compromises between South Asian parents can be reached within situations of tension and conflicts of interest.

In whatever degree court welfare officers are successful in resolving disputes, it is to their credit that in attempting to do full justice to South Asian families they seek to hear South

Asian voices in terms of their own beliefs, traditions and religious and cultural practices. This is, of course, an essential ingredient in the legitimization process. At the same time, it has been shown that court welfare officers and judges have varying degrees of empathic understanding of the issues that they are asked to resolve. Just as importantly, perhaps more so, some South Asian respondents argued forcefully and persuasively that court welfare officers and judges operate within what Eaton (1986) has termed the 'dominant ideology' which seeks to endorse and reinforce the status quo. The legal and social rights that court welfare officers and judges see South Asians possessing, for this group of respondents, were thus more rhetorical and chimerical than real. As we have seen, court welfare officers and judges are assigned central roles in the judicial process. It is crucial that this latter, albeit minority view, should also be heard to ensure the creation and promotion of best practice.

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## **APPENDIX**

### **INTERVIEW SCHEDULES**

### **Interview Schedule for People of South Asian Origin**

- (i) What changes have most affected South Asian family life in recent times?
- (ii) Do you think that divorce is on the increase among the South Asian population?
- (iii) What kind of pressures are South Asian families experiencing at the present time?
- (iv) How do these pressures affect attitudes towards divorce?
- (v) What is the relationship between religion and divorce in South Asian society?
- (vi) Do each of the main South Asian groups experience divorce in the same way?
- (vii) What are the main factors that need to be taken into consideration with regard to disputes involving children?
- (viii) What knowledge should court welfare officers possess when working with South Asian families?
- (ix) What factors should court welfare officers and judges take into consideration when dealing with South Asian families?

### **Interview Schedule for Court Welfare Officers**

- (i) Is the number of disputes involving South Asian families increasing?
- (ii) Do you find working with families from the Indian sub-continent more difficult than working with white families? If so, in what ways?
- (iii) Is it appropriate or necessary for you to determine the parents' religious affiliation and beliefs?
- (iv) Is it appropriate or necessary to determine the parents' country of origin?
- (v) Do you involve cultural consultants in your interviews with South Asian families? If so, what are the strengths and weaknesses of their involvement?
- (vi) Do you think that South Asian families have different expectations of the service that court welfare officers provide than their white counterparts?
- (vii) Do you believe that holding joint meetings is an appropriate method of working with South Asian families and what, in your view, are the strengths and weaknesses of working in this way?
- (viii) Is the task of ascertaining the wishes and feelings of a child of South Asian origin more difficult than that of a white child?
- (ix) Do you write a different kind of report for those cases involving South Asian families compared with white families and, if so, in what ways do they differ and for which kind of reasons?
- (x) What information do you consider is important to include in your report?
- (xi) What knowledge and skills do you need to work effectively with people who originate from South Asia?
- (xii) How might court welfare practice with South Asian people be improved?
- (xiii) Do you think that the problems associated with disputes involving South Asian children are becoming more pronounced and/or more severe?

### **Interview Schedule for Judges**

- (i) In your experience is the number of disputes involving South Asian families increasing and, if so, for what kind of reasons?
- (ii) Do you find disputes involving children of South Asian parents more difficult to resolve than disputes involving white children and, if so, for what kind of reasons?
- (iii) What information do you require in a court welfare report involving children of South Asian origin?
- (iv) Is it appropriate or necessary for court welfare officers to determine the parents' religious affiliation and beliefs?
- (v) Is it appropriate or necessary for court welfare officers to determine the parents' country of origin?
- (vi) Do you think that South Asian families have different expectations of the courts than their white counterparts?
- (vii) Do you believe that holding joint meetings is an appropriate method of working with South Asian families and what, in your view, are the strengths and weaknesses of working in this way?
- (viii) Is the task of ascertaining the wishes and feelings of a child of South Asian origin more difficult than that of a white child?
- (ix) Do court welfare officers write a different kind of report for those cases involving South Asian families compared with white families and, if so, in what ways do they differ and for which kind of reasons?
- (x) What knowledge and skills do you think court welfare officers need to work effectively with people who originate from South Asia?
- (xi) How might court welfare practice with South Asian people be improved?
- (xii) Do you think that the problems associated with disputes involving South Asian children are becoming more pronounced and/or more severe?