

and mineral finds, or even return to the reserve in case of divorce or death. This provision, not only severs her access to social amenities from the government, but cuts off mother and child from relatives and friends as well. Yet the converse is not true. A male status Indian who marries a non status Indian loses neither his status nor access to band resources. On the contrary, he retains his status while his wife and children are likewise formally invested with (a) legal status, (b) eligibility for federal benefits and (c) entitlement to band assets. Even in divorce, the woman and her offspring retain the right to live on the reserve and collect their endowment as status Indians.

The rationale behind Section 12(1)(b) is logical, historically speaking, given the acceptance of assimilation as government policy toward Native Indians during the nineteenth century. Assimilation as policy aimed at eliminating the cultural basis of Indian society through sustained exposure to the moral and social virtues of Europe. To facilitate the Europeanisation of the Indian, the government established a system of reserves in keeping with the protectionist mentality of the day. But problems appeared regarding the issue of eligibility of residence on reserves. The government for one was worried that marriage to non Indian males, coupled with the related right of residence on the reserve, would lead to European domination over community affairs. As a consequence, Indian communities would be prevented from attaining the degree of self-sufficiency anticipated by the government. Subsequent government efforts to transform Indians into productive and prosperous farmers also would be thwarted by the existence of unscrupulous whites, interested solely in buying Indian reserve land as cheaply as possible. Indian leaders similarly concurred with the government over perception of white males as an imposition on the band's resources and autonomy. In short, both parties were anxious to keep the reserves free of male white settlers, although the influx of non Indian women was not envisaged as detrimental to the livelihood and survival of the band community. That being the case, the solution lay in section 12(1)(b): — reclassify the Indian spouses of non-Indian males as 'whites' and pre-empt both their right to reserve residency and band inheritance.

Part 2 Towards Redefinition of Non Status Indian Women

This state of affairs persisted quietly for nearly a century. During that period of time, Indian women paid a heavy price for marrying outside their 'status'. Between 1920 and 1980, nearly 15,000 women and 45,000 children were automatically enfranchised (conferred non Indian status) through inter-

marriage. In some cases the transfer was accepted without question; in other situations such as those of divorce or widowhood, these women were cut adrift, separated and suspended between the world of whites and that of the reserve. But with the emergence of Native rights movements and women's liberation during the 1960's, non status Indian women began to criticise the validity of section 12(1)(b). According to them, not only were non status Indian women deprived unfairly of federally funded social programmes in health, education and housing, but they and their children were also denied access to the cultural heritage which rightfully belonged to them. In order, therefore, to promote favourable changes in legislation, these women took their case to the Courts without significant success. Later they turned to the political arena where the issue was finally lodged at the United Nations level.

But non status Indian women failed to receive much support from status Indian organisations in their quest to repeal section 12(1)(b). The reluctance among status Indians to embrace this cause was understandable for several reasons. First, if section 12(1)(b) was shown to be discriminatory and in violation of basic human rights, other portions of the Indian Act could likewise come under scrutiny. Any subsequent termination of their special status as entrenched by the Indian Act, would result in further deterioration of Indian social and economic standing, already far below that of mainstream standards. Second, status Indians found practical reasons for rejecting moves to repeal section 12(1)(b). Fears existed that elimination of this provision, followed by steps to reinstate retroactively those Indian women who had lost their status because of intermarriage, would impose an enormous financial burden on band communities, many of which were constrained by limited resources, services and space. Third, if the offending section were to be repealed, band communities would lose the right to retain control over membership and entry onto the reserve. This loss of self-determination over their social and cultural destiny could not be tolerated, particularly in light of Constitutional concessions to protect their treaty and aboriginal rights. In light of such unfavourable implications, status Indians were inclined to endorse the discriminatory provisions of the Act, even at the expense of suspending the rights of women for equal treatment. For as one prominent spokesperson for Status Indians, Harold Cardinal, admitted in confessing to the dilemma:

We do not want the Indian Act retained because it is a good piece of legislation; it isn't. It is discriminatory from start to finish. But... we

would rather continue to live in bondage under the inequitable Indian Act than surrender our sacred rights.

Against this background wherein Indian women are victims of a law that discriminates against them on the grounds of race, sex, and marital status, the controversy over section 12 has been interpreted as a struggle between the collective rights of Indians (Indian Act) and the individual rights of women (Canadian Human Rights Bill). For some, the rights of certain individuals must on occasion be sacrificed in order to promote the survival of the endangered group. The Assembly of First Nations (formerly the National Indian Brotherhood) and the Native Women's Association of Canada are in the vanguard of this movement. Priority, they suggest, does not reside with the rights of individual Indians (who it is felt knew exactly what was entailed in marrying outside their status) but rather with the issue of Indian self-determination over band membership and allocation of resources. But for others the fundamental rights of each person, as stipulated in the Bill of Rights, take precedence. Any legislation such as section 12(1)(b) which deprives any individual of their guarantee for equality before the law, is discriminatory and unjust. Even appeals for the enhancement of group survival and integrity are insufficient to compromise the basic right of individuals for legal equality.

At another level the issue is seen as a contest between the firmly entrenched privileges of men and the long neglected rights of women. To the outsider, this statement is apparent more so in light of a pervasive male orientation underlying both the band councils and the National Indian Brotherhood. If, after all, male Indians were honest and consistent in their espousal of Indian rights, would they not exclude themselves from status upon marriage to non status Indians? Yet in refusing to consider a rewrite of the discriminatory passage, status Indians have cornered themselves into defending male privilege to the disadvantages of Indian women. While this interpretation is one dimensional, it does highlight the complexity involved in attempting to resolve the issue.

Part 3 The Politics Over the Status of Non Status Indian Women

For nearly a century following the passage of the Indian Act in 1876, Indian women have been subject to laws that discriminate against them on the basis of sex, race, and marital status. But by the early 1970's, non status Indian women had turned to the courts in an attempt to overturn the inherent bias found in section 12(1)(b). They argued that because male status Indians did not relinquish their legal standing through intermarriage, the Act