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"YEAR OF THE PERUVIAN WOMAN"

"COMPILATION AND ANALYSIS OF LAWS DISCRIMINATING AGAINST THE WOMAN IN PERU"

by

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CHAPTER I

INTRODUCTION

The present work was prepared at the courteous request of the Fletcher School of Law and Diplomacy at Tufts University, which wants to initiate action to end discrimination against the woman and, using all means, induce a fight against every measure that diminishes her dignity and her rights; such action will entail an analysis of customs and laws in relation to the woman in all nations.

In declaring 1975 "INTERNATIONAL WOMEN'S YEAR," the United Nations proposed to intensify action to achieve the triple objective of: promotion of equality of man and woman; integration of women into development; and, strengthening of world peace. Taking into account these objectives and the suggestion of the United Nations that studies and research on aspects of the woman's situation and her functions in society and in the family be carried out on the national level, we have prepared the present study, which attempts to fulfill the recommended mission and be an instrument of benefit to the Peruvian woman, not only in 1975, officially declared in Peru "YEAR OF THE PERUVIAN WOMAN," but in the future as well.

On July 28, 1974, the President of the Republic, General Juan Velasco Alvarado, made known publicly the plan of the Revolutionary Government of the Armed Forces, known as the Inca Plan. This plan refers to the Peruvian woman in item 23. It analyzes her situation, stating: "The Peruvian woman does not exercise in an effective form her rights as a citizen; that the access of women to high political and administrative positions and to other activities is very limited; that the man disposes of the property of the marriage, without the consent of his spouse; that there is discrimination against the woman in employment and in salary; that there is unjust and inhumane treatment of the unwed mother; and that the low level of culture of the masses exacerbates the abusive treatment of women by men." The Inca Plan cites as an objective: "Effective equality with men in rights and obligations," and determines and indicates the actions to be taken in favor of the woman: "To encourage the participation of women in all high-level activities and positions; to eliminate all discriminatory treatment that limits the opportunities or affects the rights and dignity of women; to promote co-education of men and women and guarantee that common property not be disposed by the unilateral decision of the husband."

The announcement of the Inca Plan signified a demonstration to the Peruvian people of the current government's proposals to grant women all the rights that are due to them, giving them the opportunities they deserve for their action and labor in society.

Subsequent to the Inca Plan, the Supreme Resolution No. 0243-74-PM/ONAJ of December 31, 1974 was passed, which, taking into consideration the fact that the General Assembly of the United Nations had declared 1975 "INTERNATIONAL WOMEN'S YEAR," declares 1975 to be in addition in this country "YEAR OF THE PERUVIAN WOMAN."

Likewise, the Revolutionary Government, considering the situation of the Peruvian woman described in the Inca Plan, and in accordance withe U.N. General Assembly's declaration of December 18, 1972, passed Law No. 21045, which creates the National Commission of the Peruvian Woman as a juridical person under public law, designating among its purposes the formulation and recommendation of a national policy on the issue of women, and instructing it to propose to the Supreme Government the legal provisions it requires for achieving its objectives in the matter of obtaining women's rights.

It was considered necessary to show at the beginning these facts, because they signify the possibility that in the near future satisfactory and definitive solutions may be found for the discriminations against women pointed out in the present work and the lack of opportunities in decision making, integral promotion, and direct participation in the development of the country.

Upon beginning a brief analysis of the historical background of the situation of the woman in Peru, we shall take as a starting point the situation of the family, because in it are found the educational, social, religious, political, economic and cultural aspects.

In the Law of the Family, the Peruvian family of the pre-Inca epoch, between 1 and 1200 A.D., had a matriarchy turned into a society dominated by women in some parts of Peru.

In the origin of the Incas the influences of the matriarchal system are notorious. Along with Manco Capac, founder of the Empire, is Mama Ocllo, his sister and wife. Various chroniclers cited by Basadre affirmed the existence in the region of the Peruvian coast of capullanas, wives of the chiefs and governors of various regions. The Incas imposed the patriarchal system, but monogamy was not implanted all at once. The change from the matriarchal to the patriarchal system took several centuries.

Marriage by purchase, La Cobada and Sirvinacuy, is an institution representative of the period of transition. Marriage by purchase existed in Peru of the Incas; in exchange for the fiancee, meat, silver, and other articles were given and distributed among the chief, the parents, and the relatives of the purchased woman. Sirvinacuy or tincunacuspa is the marriage by test among the Peruvian aborigines. The familial system predominant under the Incas was patriarchal. Patriarchy was in conjunction with male polygamy for the Inca, but not for the people.

During the colonial period and the republic, the family was been established on the basis of the Catholic marriage, which signifies monogamy and indissolubleness. In the republican epoch the traditional Peruvian family is formed under the aegis of the Catholic marriage, although legally only until October 4, 1930, when the law provided for the requirement of the civil marriage.

Let us go now to an analysis of the Peruvian woman.

According to the Census of Population and Occupation of 1972, the total population is more than 13 million inhabitants, 50% of whom are female. This half of the human resources is found to be affected by diverse forms of marginalization, whose factors derive from underdevelopment and traditional cultural patterns of domination and dependence.

In the economic respect, the economically active population reaches the level of about 4 million persons, of whom 3 million are male and only 760,00 are female, the proportion being 4 males to one female. The statistics also allow us to observe that in earnings the male has the advantage over the female. Males outnumber females in high directive positions and in the major professions; this is not true of less qualified positions, in which twice as many women are found as men.

In the Agrarian Reform, the peasant woman continues to be marginalized. The allotment of land is made in the name of the head of the family, who is generally male, thus accentuating the difference in opportunities.

In Industry, woman's presence is noted exclusively among labor, not in management, where it is very limited.

The reform of enterprise through the Workers' Communities has benefited a small number of women who work in the industrial sector, but there is discrimination regarding salary, age, civil status, etc., despite the fact that they have the same capacity as men.

In the area of education, according to the legal provisions, the female enjoys the same rights as the male. Nevertheless, if we look at the illiteracy rate, we can show that access to education is deficient for women. Even when women enjoy the same opportunities, in reality they do not have access to education because it is impeded by a number of prejudices, especially apparent in the rural zones of our mountain region. The General Law of Education passed by the Revolutionary Government in 1972 establishes co-education favoring equality of educational opportunities on all levels.

There is legal discrimination against the woman in marriage, granting greater authority to the husband than to the wife. Despite the fact that several changes have been made with respect to the disposability of property in marriage, there still exists discrimination in the fundamental rules of the Civil Code, especially in the Law of the Family.

If in the political realm the civil and political rights of the woman have been fully recognized, the literacy requirement for the right to vote constitutes a factor of discrimination and significant limitation for the woman, given the high number or illiterate women in Peru.

On the cultural level, we note the high percentage of illiteracy among women, which keeps them from benefitting much from cultural media and systems of social communication.

The current legal status of the woman restricts her decision-making capacity in the family, the institution where she performs a high proportion of her activity. This restriction does not allow her to "assume fully the responsibility of being the manager and constructor of her own life," and often creates in her attitudes of passivity and conformism. These situations sometimes cause the woman to participate in conservative political activities incompatible with the structural changes being made in the country.

In present-day Peru, profound structural modifications of the agrarian population are being made, such as the participation of workers in industrial enterprises (the industrial community), and the creation of the Social Property (productive societies with full participation). These changes provide a revealing index of the fact that the participation of women is changing and will change in a promising future, so that next to the male in the human pair she will be co-responsible and co-participant in decision making.

The dedication of 1975 in Peru as "YEAR OF THE PERUVIAN WOMAN" and the existence of an organ to coordinate the initiatives favoring the equal rights of women, allow the expectation that in the near future, as stated in the Plan of the Government, the woman will attain all her rights and the dignity and role corresponding to her in the Peruvian community.

CHAPTER II

ANALYSIS

GENERAL PROBLEMS CONCERNING THE STATUS OF WOMEN AND THE LAW

1. CONSTITUTIONAL GUARANTEES OF EQUALITY OF MEN AND WOMEN AND NON-DISCRIMINATION. --

The Political Constitution of Peru, which dates from 1933 and is currently in effect, does not discriminate against women. Its content in the totality of its articles indicates equality.

In Chapter I of National and Social Guarantees, the protection, under equal conditions, of man and woman is established.

In regard to Individual Guarantees, the Constitution maintains in effect non-discrimination for women.

2. OTHER GENERAL LEGAL GUARANTEES OF EQUALITY AND NON-DISCRIMINATION.--

Diverse organic legal devices--Decrees of Law, Supreme Resolutions, etc. --contain other legal guarantees of the equality of men and women and non-discrimination.

2.1. Following the Constitution, the Peruvian Civil Code (1931) is the most important body of laws because it regulates and orders the relations of persons among themselves and with the State.

This legal body establishes non-discrimination in its Preliminary Title, Art. XIV, which states verbatim: "No habitant of Peru may be exempt from the obligations contracted in the Republic according to the laws" and in its Articles 1 and 5.

2.2. The Penal Code of Peru (1924), in its Title I, Guarantees of Penal Law, refers to men as well as to women with respect to privation or restitution of their rights.

2.3. International Treaties.-- In the International Treaties ratified by Peru, the Universal Declaration of Human Rights, and in Treaties 100 and 111 of the O.I.T., there is no discrimination either in rights and human dignity or in labor activities.

2.4. In the First Book, First Section of the Peruvian Commercial Code, provisions of general rules of non-discrimination are established.

2.5. In the Preliminary Title and in the general provisions of the Sanitary Code (1969) rules of protection of the health of both men and women are established without discrimination.

2.6. The Code of Minors (1962), in its Preliminary Title, protects and assists in a general form the rights of minors without discrimination of any sort. This Code is inspired by international legal instruments such as the Declaration of the Rights of the Child, the Declaration of the Rights of the American Child, and the 8th Pan-American Conference of the Child.

2.7. The General Law of Education (1972) recognizes as a basic aim the integral development of the human being, in its immanent and transcendent aspects, and as such is a clear and precise expression of non-discrimination.

2.8. Decrees of Law, Supreme Resolutions, etc. which are non-discriminatory, whose texts are included in the respective annexes.

3. GENERAL REGULATIONS.--

3.1. The general regulations are given in all legal ordinance with a discriminatory character. We cite as examples articles 15, 172 and 173 of the Civil Code.

4. DISCRIMINATORY LAWS ON CUSTOMS AND PRACTICES.--

In the analysis of the various organic laws of Peru, many articles and provisions of marked discrimination have been found.

The following are cited:

4.1. Although it is certain that in a general nature the content of the Political Constitution of Peru does not discriminate against women, Article 6 protects the Peruvian woman who marries a foreigner by conserving her nationality, whereas the foreign woman who marries a Peruvian is required to adopt the nationality of the Peruvian.

4.2. In the Civil Code there are obsolete discriminatory articles still in effect, especially in the Law of the Family.

4.2. Article 5 establishes that men and women enjoy the same civil rights except for the restrictions established with respect to the married woman. This constitutes a discrimination.

Article 24 holds that the married woman has as her domicile that of her husband.

4.2.1. In regard to the Law of the Family, articles 161, 168 and 174 give sole priority to the husband to direct and represent the marital society, delegating responsibilities to the mother only when the husband suffers imprisonment or civil interdiction or is declared absent. Article 162 holds that only the husband is to set and change the marital domicile and make decisions relating to its economy.

4.2.2. In regard to the administration of property in marriage, the Revolutionary Government has carried out a significant modification in providing for the intervention of the wife when the property is burdened; article 190, however,

remains in effect, requiring of the wife the consent of the husband for administration and litigation of common property.

In accordance with article 228, referring to dowry property, the husband appears as sole administrator, leaving aside the priority that corresponds to the wife.

4.2.3. Regarding the exercise of custody articles 391, 392 and 394 are striking in their discrimination against the capacity of the wife to exercise it, limiting her action.

Article 391, in the first part, speaks of the equality of rights of father and mother, only to provide later that in the case of a disagreement, the opinion of the father will prevail.

Article 392 indicates that the legal representative of the child and the administrator of its property will be the father, despite the fact that paternal dominion is exercised by both.

Article 294, in pronouncing on the custody of illegitimate children recognized by the father, does not recognize the custody of the mother, except when the mother has made an express judicial request, in which case she is granted it in a limited form.

4.2.4. In the rule of guardianship, article 491, the mother is denied the right to exercise it without the consent of her husband; the same occurs in article 492, in which the married woman guardian is not allowed to administer the property of her minor child as long as her marriage lasts, unless the Council of the Family so determines.

4.2.5. Article 620 declares that the mother can only be a member of the Council of the Family, since she cannot administer the property of her minor children.

4.2.6. In the Law of Succession with respect to legal heirs, article 762 holds that when there are legitimate and illegitimate children, each illegitimate child will receive half of what each legitimate child receives. Jurisprudence holds that the illegitimate children of the mother cannot be made legitimate by her subsequent marriage and consequently will inherit as legitimate children from their natural father.

4.3. The Commercial Code, in various articles, limits the capacity of the married woman to act in commercial matters, always subjecting her to the decisions and authorization of the husband. The unmarried woman who was carrying on commercial activity, upon contracting marriage, will require the express authorization of the husband to continue it.

4.3.1. The cultural patterns that divide the professions into masculine and feminine have caused the Commercial Code to also consider certain activities to be only for males, denying the woman such things as entrance into the College of Agents, the job of metalworker, and other things.

4.4. Other legal instruments such as the Code of Minors, the Sanitary Code, Agrarian Legislation, the General Law of Education, Laws, Decrees, etc., consider the rights of men and women in an equal manner. However, it is fitting to note that in the agrarian legislation, passed in 1970, in respect to the legal allotment of land, article 84 indicates that to be eligible for the legal allotment of family agricultural plots, it is necessary to be "Head of the Family," which in practice is always the male. In regard to direct possession, there is no protection of the widow or the old woman, since it provides that "the land is for the one who works it."

5. CUSTOMS AND PRACTICES THAT DISCRIMINATE AGAINST WOMEN.--

As vestiges of the period of the Incas, there remain in the Law of the Family practices and customs that have endured up to the present time. These customs are accentuated in the Andean regions of Peru, creating in some cases situations of discrimination and of abuse by the prevaling machismo, and affecting the offspring of these irregular unions.

Among the prevailing customs, we cite:

5.1. "Warma-manay," or asking for the hand; "Warmichacuy;" "La Cobada," or marriage by purchase; "El sirvinacuy" or "Tincunascupa," or marriage by test, among the aborigines, and, concubinage.

5.1.1. "Warma-manay" or asking for the hand, persists up to the present in indigenous communities and consists in the custom that for the boyfriend to deserve the love of his fiancee, he must shower her with presents. This ceremony lasts for several days.

5.1.2. A very peculiar form of matrimonial union is that known as "Warmichacuy," a custom rooted in the community of Kero, Department of Puno. This custom is based on the principle that "if it is good your 'Causaypacha' (divine maker = God) will tell you to live together. Don't be a grieving daughter. Don't get yourself abandoned with a child," conclude the parents of the young girl.

After this exchange of well known phrases, the parents of the young man carefully gather branches of coca leaves and offer them to the parents of the young girl so that they may chew them, and the latter reciprocate the attention in an identical manner. This is the "K'intuy" or ceremony of the coca, which consolidates the union, and the parents prepare to

assign the inheritances of their children, who have contracted marriage.

5.1.3. "Sirvinacuy" or "Tincunacuspa" (our "encounter") is a pre-marital institution, or marriage by test. Its origin goes back to pre-Inca times, but it survived the Conquest and three centuries of Colony. It gained force in the Republican period and currently is practied in certain rural Andean zones of the country. In neither the Peruvian codification nor in jurisprudence are there legal provisions sanctioning this type of pre-marital union.

5.1.4. Concubinage. Jurisprudence defines concubinage as the sexual relations practiced by a man and a woman in a permanent and habitual form outside of marriage.

This institution, which originated in Inca times, endures to the present day, especially in the Andes region, the rural coastal zones, and among the migrant population of the so-called "young towns" of the capital.

Its characteristics are:

a) The unions must be permanent and habitual; sexual relations of a sporadic nature between man and woman cannot be considered concubinage.

b) They must be ostensible, that is to say, public.

c) Concubinage functions only between unmarried people, or people with no legal encumbrance. These characteristics facilitate access to legal matrimony.

Legal situation of concubinage:

Our Civil Code sanctions concubinage in an indirect manner in its legislation on illegitimate filiation.

In regard to property acquired during concubinage, jurisprudence holds that it does not create any union of property, for which reason the request by a concubine to separate the property and liquidate the union formed between the two must be refused. Judicial Sentence of September 25, 1968, and Civil Code, Art. 366, item 4.

In the legislation on alimentation, illegitimate children are granted the right to a food allowance. Art. 467 and 369.

5.1.5. In regard to labor jurisprudence, it has been established that the right to compensation for job-related accidents in favor of the relatives of the victim is not based on

the laws and principles of inheritance but rather on the need to prevent the accident from resulting in a sudden and significant alteration of the situation of the immediate family of the worker, whom he was feeding. (Executive Order of August 17, 1923)

In practice, when many of the legal provisions legislate the equality of both sexes, the problem is still treated on the level of regulations and questions of points of litigation, maintaining the woman in a situation of dependence and inferiority with respect to the male. See, for example, Art. 1572, of the Civil Code.

POLITICAL RIGHTS AND DECISION MAKING IN PUBLIC LIFE

1. SUFFRAGE.--

The Political Constitution of Peru (1933), in article 204, declares that women with the right to the municipal vote may be elected to the Municipal Councils. This right has only been exercised in 1963 and 1966.

Law No. 12391 (1955) modified articles 84 and 88 of the Political Constitution of Peru, establishing that: adult men and women, married couples older than 18 years of age, and those who have attained majority are Peruvian citizens. Article 86 holds that: citizens who know how to read and write enjoy the right to vote. Although women enjoy the right of suffrage, a high proportion of them do not exercise this right due to their illiteracy.

2. PUBLIC SERVICE.-- (By election or by appointment)

Women can be elected members of Parliament and of the Municipal Councils, by virtue of article 84, modified by Law No. 12391 and by the General Law of Municipalities.

According to Law No. 11377, article 47, all government employees, men and women, have equal rights and obligations.

According to the abovementioned laws, every woman in Peru can fill any position as long as she has the necessary requirements.

In practice, there is still discrimination with regard to public offices filled by women. See Tables 1-5.

TABLE NO. 1

Number of positions of public administration, on the top level, filled by women and men in 1974

JOBS	TOTAL	WOMEN	NUMBER %	MEN	%
Superior Counsel	159	1	0.6	158	99.4
General Director	63	3	4.7	60	95.3
Directors	313	13	4.1	300	95.9
Assistant Directors	455	5	1.1	450	98.9
Interrogators on the Superior Court	101	3	2.9	98	97.1
TOTAL	1091	25	2.3	1066	97.7

(*) Personal data of Dr. Chysma Roy, from a demographic work in the process of being written.

TABLE NO. 2

Proportion of women in teaching jobs in comparison to men in 1972. Official training schools.

SCHOOL	%
Primary	63.5
Secondary	42.9
Technical	41.0
Law	36.4

(*) Data of Dr. Chysma Roy.

TABLE NO. 3

Proportion of women in teaching jobs in the national universities in relation to men in 1972

CATEGORY	%
Ordinary Professors	5.8
Contracted Professors	14.4
Lab Directors and Assistants	14.5
University Authorities	5.4

(*) Personal data of Dr. Chysma Roy.

TABLE NO. 4

Proportion of offices in the Municipalities of the nation held by women in 1974

OFFICE	%
Mayoress	2.1
Councilwoman	3.9

(*) Personal data of Dr. Chysma Roy.

TABLE NO. 5

Proportion of professional women who hold administrative jobs in the Professional Colleges of Peru in relation to men in 1974

Professions	%
Dentists	11
Physicians	7
Architects	10
Lawyers	16
Pharmacists	63
Accountants	13
Engineers	2.3
Nurses	100

(*) Personal data of Dr. Chysma Roy.

3. JUDICIAL SERVICE.--

By application and derivation of article 84 of the Political Constitution of Peru, which was modified by Law No. 12391, the woman can hold and does hold offices in the judiciary system. Women have occupied the offices of judge, court reporter, public attorney, and interrogator of the Superior Court, but to a very limited extent in comparison to men who have held the same posts.

4. MILITARY SERVICE AND PARTICIPATION IN THE FORCES OF PEACE.--

Decree of Law No. 20788 (1974), in its article 1, declares that the objective of this provision is to determine the capacity of the military service in organizational, procedural and other aspects, which embrace all Peruvians, male and female, in conformity to the provisions of the Constitution of the State.

In accordance with this Decree Law, the obligatory inscription of all women reaching the age of 18 in 1975 in the Register of Military Service was initiated in 1975.

5. OTHER CIVIL RIGHTS AND DUTIES.--

Having been made equal with men in matters of citizenship, politics, and the military, women are subject to the same duties and obligations and to all the effective legal provisions.

In reality, due to the continued existence of discriminatory cultural patterns and the failure to apply many of the provisions, the woman does not hold the position to which she is entitled in civic, cultural and political activities. In recent years, and especially now in 1975, there is an apparent tendency to give the woman her deserved role. This tendency has been reinforced with the Inca Plan of the Government of the Armed Forces, mentioned above.

FAMILY LAW AND RELATED PROBLEMS

1. LEGAL CAPACITY.--

The legal capacity of persons to exercise their civil rights begins at the age of 21 years, as stipulated by article 8 of the Civil Code. This concerns the capacity of exercise, not the capacity of enjoyment. Our Code, in making this provision, refers to women as well as to men.

Peruvian legislation considers two types of incapacity: absolute and relative.

a) Absolute incapacity pertains to those of less than 16 years of age, the mentally deranged, the deaf, and those judicially declared missing.

b) Relative incapacity refers to those of over 16 years of age and the subjects of guardianship.

The Civil Code declares that the incapacity of persons older than 18 years, whether male or female, ceases: with attainment of majority, with marriage, and with obtainment of an official title authorizing the practice of a profession.

2. RIGHT OF THE FAMILY NAME OF THE WOMAN.--

In the section on Law of Persons, the right of the name is protected in a general manner, with the provisions applying to women as well as to men. Accordingly, Art. 15 states: "that no one can change his first name or last name or add to them without authorization acquired through legal channels." Likewise, Art. 14 holds that one who is harmed by the usurpation of his name has the right to initiate corresponding action to end this and request indemnification for damages and injuries caused by the usurpation. Art. 18 holds that the person damaged by an assumed name can take legal action against this within one year from the day the assumed name was proclaimed.

3. PROPERTY LAW.--

In regard to Property Law, the Peruvian Civil Code does not legislate in a clear form respecting the rules of private property, common property, and reserved property.

3.1. In regard to private property, the law holds that the woman may dispose of, contract, and administer her property without requiring the authorization of her husband; in addition, it indicates what is this property. It holds that when the husband administers the private property of the wife, his powers are only those of administrator.

3.2. Common property arises from the marriage, and in the rules on this property there is a modification mentioned above which holds that the woman may intervene when there is an attempt to burden or dispose of this property. There persists, however, discrimination against the woman in the matter of the administration of this property.

3.3. Peruvian legislation designates what is reserved property, how it is administered, the conditions of this property, and the cases when it may serve the marriage.

4. RIGHTS CONCERNING THE CONTRACTING OF MARRIAGE.--

4.1. The minimum age of marriage: with the consent of the parents: Female, 14 years; Male, 16 years.

4.2. The age requirement can be dispensed by the Judge, if the male is 16 years old and the female 14.

4.2. Without the consent of the parents: 21 years for both male and female; except in the case that majority is attained at the age of 18 years.

4.3. Legal marriages are realized with the full exercise of the liberty and consent of the contracting parties, and there exists the free choice of a partner. There is no coercion in this regard, except with illegal unions such as the sirvinacuy and concubinage, in which case the fathers often require their children to marry the man or woman whom they have chosen. In the cases of the violation of a minor, he who committed the violation contracts marriage against his will to avoid the punishment of imprisonment.

4.4. Civil matrimony is legalized in the Civil Register, by means of entries recorded in books, in which appear the general legal provisions made by the law as to contracting parties, witnesses, etc. Upon signing her respective book, the newly wedded wife will follow the stipulation of article 171 of the Civil Code: "the woman carries the name of the husband added to her name."

5. EQUAL RIGHTS OF THE SPOUSES DURING THE MARRIAGE.--

According to the stipulations of our Civil Code, during the marriage the spouses are to live together in the marital domicile, aid each other, and maintain fidelity. This fidelity persists after relative divorce.

5.1. But, in respect to the direction taken by the marriage and the setting up of the domicile, the rights of the husband are still unilateral, leaving the wife in a situation of inferiority. The husband has the obligation to administer to the wife and the family all that is necessary for life, and when he neglects his duties, the Judge can order the debtors of the husband to make their payments to the wife.

6. DUTIES OF THE PARENTS.--

6.1. Article 158 of the Civil Code establishes that by reason of marriage the parents have a mutual obligation to feed and educate their children. In addition to what is indicated, the parents should correct the children, represent them, have them in their company, direct their education, and administer their property.

The loss of paternal dominion does not alter the rights and duties of parents with children.

6.2. Rights of the parents.-- The parents have the right to make use of the services of their children, in accord with their condition and age, and appropriate the profits of their property. Parents who have lost custody or for

whom it is suspended may request its restitution, because according to article 436 of the Civil Code, the loss of the exercise of custody is not final.

7. RIGHTS PERTAINING TO THE DISSOLUTION OF MARRIAGE.--

7.1. Divorce:

The marriage bond is broken by divorce. The Civil Code specifies ten grounds for divorce. The divorced woman has the right not to use the name of her husband.

Responsibility for the care, feeding, and education of the children of the divorced parents is equally shared. When this duty is neglected by either ex-spouse, the judicial authority protects the fulfillment of the children's right at the request of one of the parents.

In regard to support and maintenance of the spouse, the legislation adds that if the divorce is declared by fault of the husband and the wife does not have any kind of property, the Judge will assign her an alimony not to exceed one third of the ex-husband's income. In the contrary case, if the fault is the woman's and if she is rich and the husband poor and unable to work, the woman is to pay the alimony.

With divorce, the inheritance rights of both spouses are terminated.

7.2. Annulment.--

Annulment renders the marriage bond ineffective. When a marriage is annuled, the Judge determines custody and matters respecting the care and sustenance of the children; the Code holds that this is to be subject to the same stipulations as divorce.

The good faith of the marriage produces effects for the spouses and the children. Jurisprudence holds that the children born of an annuled marriage inherit from the father in the same manner as do illegitimate children, unless deceit by the mother is established. The child born of an annuled marriage of which the previous bond was existent is legitimate, if one of the spouses acted in good faith. The good faith of the wife notwithstanding, she will not inherit from the bigamist, but the child of both will inherit as a legitimate child.

With respect to the couple, if there was deceit by one of them, the marriage produces no civil effects. Jurisprudence establishes that a woman who has contracted marriage in good faith with a married man is his heir along with his other heirs.

7.3. Separation.--

Separation terminates the marital rights and duties regarding bed and habitat and dissolves the legal union, leaving in existence the marital bond.

With respect to the future of the children when separation occurs, legislation establishes that the Judge is to decide on custody and matters relating to sustenance, alimony, and the education of the children, indicating that the couple is to be in agreement.

The spouse culpable for the separation loses his or her rights of inheritance.

In regard to alimony, what is agreed upon by the spouses is observed, if it (the separation) is due to mutual disagreement.

Nevertheless, it is also permitted that the one requesting the divorce renounce alimony for him or herself, but not for the children, if they remain under his or her protection. It is permitted that the wife's alimony be renounced by her, despite the prohibition of article 454.

8. RIGHTS IN REFERENCE TO THE NEW MARRIAGE.--

The mother or father who contracts a new marriage must solicit the permission of the Judge, at a convocation of the Family Council, for his decision before the new marriage; if this is not done, the person will lose the administration and usufruct of the property and the children of the previous marriage.

PENAL LAW

1. ADULTERY.--

The Penal Code punishes adultery, describing it as a crime against the family. Article 212 holds that the offended party is the only one who may initiate action; this right is denied if the party has abandoned his or her spouse, consented to the adultery, or pardoned it. The same article establishes that penal action is to be initiated after requesting divorce on the grounds of adultery.

Article 213 allows for the cessation of penal action at any time, as long as this is done at the request of the offended party.

2. ABDUCTION AND OTHER OFFENSES AGAINST THE WOMAN.--

This type of crime is sanctioned in our Penal Code in articles 228 and 229, the latter modified by Law No. 12341

of June 10, 1955 and Decree of Law No. 17388 of January 24, 1969.

The article pertaining to abduction of women cites the deceitful motives that incited the abductor and the applicable penalty in accord with the seriousness of the case.

The article pertaining to the abduction of minors has been modified in two circumstances regarding the seriousness of the case. The penalty of confinement is incurred if the kidnapper inflicted serious wounds on the minor of less than 18 years of age or made him or her undergo sexual intercourse or an unnatural sexual act. This same modifying law establishes the death penalty for cases where the abducted minor dies.

In the second modifying law the penalty is increased, applying the death penalty to one who has kidnapped a child of less than 7 years of age to exploit him or her or obtain a ransom, and establishing that the person will be punished with confinement if the minor was older.

3. OTHER SANCTIONED OFFENSES, SUCH AS DEFAMATION, VIOLATION, ABUSIVE SEXUAL ACT, AND SEDUCTION OR RAPE.--

3.1. Defamation.--

This crime is described in article 187, among the "Crimes Against Honor," which states that if by any means--such as in public documents, in writings, notices, or drawings--a person is attributed a deed, quality, or conduct that may injure his honor or reputation, the person responsible for this act will be guilty of defamation and, consequently, will be punished.

3.2. Violation.--

According to article 196, this crime is committed when someone is forced by violence or serious threat to undergo sexual intercourse outside of marriage.

The seriousness of the cases is qualified by article 197, if in order to carry out this act, the victim was put in a state of unconsciousness and made unable to resist.

This article is amplified by Decree of Law No. 17388 referring to Rape, applying article 5, which states: "those who make an assault, armed or in a group, with the intent to force sexual intercourse or an unnatural sexual act, even when the offended woman is of legal age, will be imprisoned for no less than 10 years in an Agricultural Penal Colony."

Our Code also contains crimes such as those committed against modesty, when committed against minors of less than 16 years.

The Crime of Seduction or Rape is when an act against person

is committed against a person of uncensurable conduct of less than 16 years of age; and finally, the Abusive Sexual Act is when the victim is in some establishment of repression under the authority of the person who abused her.

4. PROSTITUTION

Prostitution exists in Peru and is under a system of regulation. It constitutes an activity that denigrates the woman, debases her human condition, and submits her to a multitude of dangers against her physical and moral health. In the Census of Population and Occupation of 1972, prostitution is considered as just another of women's activities. The regulatory system permits it and it is considered a possible occupation for women. It is for this reason that many women, when declaring their occupation to the Census, cited prostitution, which was put under the rubric of "other services."

In Greater Lima, according to data obtained from official sources by the demographic researcher, Dr. Chrysma Roy, in 1972, 3,100 women were under the regulatory control of prostitution and 3,000 practiced it clandestinely.

The Penal Code (1924) contains no provision to condemn or punish prostitution. Articles 206 and 207 establish the penalties for one who, with intent to make a profit, encourages the prostitution or corruption of a minor of either sex, even if with his or her consent, and for one who exploits the dishonest earnings of a prostitute or supports himself through her, entirely or in part. Art. 208 also sets the penalties for one who compromises, seduces, or takes away a person of the feminine sex in order to hand her over to another person with the intention of sexual relations; these penalties are in accordance with diverse circumstances which aggravate the crime, such as the case where the victim has been taken out of the country or handed over to a professional

The fight against prostitution has been the object of several campaigns in Peru, but never of a system designed to eradicate it. It is necessary to employ intensive, technical and permanent action to, on the one hand, restrain any more women from dedicating themselves to this activity, and on the other, to achieve the re-education of those who do engage in it. The abolition of regulation is a measure that has been taken in other countries and has yielded beneficial results against prostitution.

5. HOMOSEXUALISM. LESBIANISM.--

There does not exist in the law any provision related to homosexualism or lesbianism. As long as these sexual deviations are carried out privately, without upsetting the public order, they are not combatted. Nor do there exist any provisions that legalize or authorize these activities.

6. TREATMENT OF OFFENDERS.--

There still exist extremely deficient prisons. We do not have sufficient economic and human resources specialized for the rehabilitation of the offender, so that he may return to society, re-adapted to it. Nonetheless, sentences are served in prisons with inadequate conditions in the Agricultural Penal Colonies and in prisons with conditions that are not in accord with human dignity.

These sentences are of confinement, imprisonment, confinement in a penitentiary, and internment, sentences which in the case of proven illness are served in Hospitals of the Police Forces and in Special Tent Clinics and Hospitals of the Republic.

RIGHTS OF THE MOTHER CONCERNING PREGNANCY AND HEALTH OF MOTHER AND CHILD

1. MEDICAL CARE AND PROTECTION OF MATERNITY.--

The Political Constitution of Peru (1933) establishes in article 51 that marriage, the family, and maternity are under the protection of the Law. This constitutes the first broad recognition of the protection of the woman who is to become mother. Law No. 2851 (1918) declares in one of its provisions that the working woman, in the private sphere, has the right to two free hours for nursing her small child during the necessary period, without this time being deducted from the mother's salary, whatever the remuneration of her job.

Law No. 11321 establishes an obligatory maternity leave for women employees for a period of 42 days before the birth and 42 days following, and grants a guaranteed subsidy for nursing, in money or milk bonds, equal to 30% of the average salary.

Law No. 13724 grants an obligatory maternity leave to women workers of 36 days before and 36 days after the birth. This provision grants shorter maternity leave to the worker than to the employee, thus establishing a discrimination between women belonging to two sectors of labor, employees and workers.

The Sanitary Code, Decree of Law No. 17505 (1969), establishes in article 15 that every person, including the unborn child, is a subject with rights in the area of health. Article 17 establishes that with conception begins human life and the right to health, and that health care during gestation applies to the mother and the conceived child. Article 25 determines that the health care of the mother during gestation is her obligation and right, in defense of her own health and the life of her child.

Article 26 declares that the protection and vigilance of the mother during gestation is the obligation of the State, realized through the offices of the Ministry of Health and officially recognized institutions. Article 27 provides that the protection and vigilance of the mother and child during gestation will be free of cost for the poor. The Supreme Decree No. 00451-74 (1974) provided that the care of the mother and child during pregnancy, childbirth, and the period immediately following will be free of cost in the establishments connected with the Ministry of Health, in the Institutions of Neonatology, and in the Societies of Public Welfare.

The Committee of National Assistance (JAN),* structured in accordance with the provisions of the Decree of Law No. 20499 (1974), serves an important purpose for the benefit of mother and child, through Family Centers, Centers of Preliminary Education, Infant Dining-Halls, and the volunteers of JAN.

Decree of Law No. 18949 (1971) created the Institute of Neonatology and Protection of Mother and Child, INPROMI,** of the Ministry of Health, with the specific objective of contributing to the solution of the maternal-infant problem in the country. INPROMI has already performed a useful activity, oriented to set norms for the care of the child, particularly the newborn child.

2. ACCESS TO CONTRACEPTIVES AND INFORMATION ABOUT FAMILY PLANNING AND SERVICES.--

The Sanitary Code, Decree of Law No. 17505 (1969) establishes in article 24 that all contraceptives are to be used under the direction of a doctor, who is directly responsible for the secondary effects of their use, and that the sale of contraceptives without a doctor's prescription is prohibited. The lack of knowledge about the use of contraceptives of a high proportion of women is the reason abortion is turned to as a means of avoiding pregnancy, abortions that are performed by nonprofessional personnel and cause the loss of numerous lives from hemorrhaging and infections as a frequent complication.

In the families of average income in this country, the question of responsible parenthood is settled by leaving family planning to the free decision of the human pair. Several private institutions provided information and campaigns for responsible parenthood with family planning, but their activities were suspended by an order of the Ministry of Health (1973).

3. TERMINATION OF THE PREGNANCY.--

The Sanitary Code, Decree of Law No. 17505, declares in article 19 that the period of gestation is to end with birth, except in the case of an unavoidable act of nature or danger to the health and life of the mother.

The same Sanitary Code declares in articles 19, 20, 21, 22 and 23 that abortion is prohibited as a means of birth control and as a eugenic device, and that the therapeutic abortion is only permitted when there is conclusive proof of danger of death of the product of conception or of the mother, in the opinion of two consulting physicians.

Consequently, the legal provisions favor and promote the normal evolution and termination of pregnancy.

EDUCATION AND TRAINING

Answering the need for an extensive reform of Peruvian education and the creation of a new efficient instrument that will embrace all the aspects and activities of the education sector in harmony with the national reality, the General Law of Education (1972) was passed, which proposes the unification of Peruvian education, with a coherent spirit and a real sense of transformation.

This law was passed after an in-depth analysis which concluded that Peruvian society, in this respect, lived immersed in problems such as: neglect of children and marginalized social groups, emphasis on oral work and memorization in the programs of study, and inadequate training and selection of teachers.

The law's inspiration is humanistic and its impulse is genuinely democratic, hence the proposal for education on the job and for the worker.

One of the most striking characteristics of the Educational Reform is the clear focus it gives to the education of women. The General Law of Education includes in its Title I, dedicated to the basic provisions, an article referring specifically to the education of women (Art. 11). Of course, this specific article does not imply that all the general provisions of the Law do not refer to women. It is rather to prevent what has so often occurred in legislation, which is that egalitarianism is circumvented and the specific situation of the woman, with all its limitations and real obstacles, is forgotten.

The text of article 11 states with reference to the education of women: "Education will be oriented toward the revaluation of the woman, offering her maximum opportunities for full and free personal development, the only authentic base for her decisive function in the family and for her creative participation in the process of transformation and perfection of Peruvian society." The Regulation of the Law pertaining to this article emphasizes the need to offer the woman's education on an equal basis with the man's, and the need to enable her to participate actively in the social process.

1. EQUAL ACCESS TO ALL INSTITUTIONS OF EDUCATION AND TRAINING ON THE PRIMARY, SECONDARY, AND PROFESSIONAL LEVELS.--

The General Law of Education establishes a new system which completely transforms Peruvian education, a system which opens educational possibilities to all Peruvians without discrimination (article 8), embraces education in general in all its aspects, and includes pre-school education.

The national educational system includes levels, cycles, and modalities.

1.1. Pre-school education is directed at assuring the integral development of the child for the first six years, enabling society and the family to provide the stimulations and experiences indispensable for his development.

The Level of Basic Education includes Regular and Labor Basic Education. Regular Basic Education is the axis of the educational system, comprehending 9 grades in three cycles, and designed for the education of children of 6 to approximately 14 years of age(adolescents).

Basic Labor Education comprehends adolescents of older than 15 years and adults who did not at the appropriate time get Regular Basic Education; it also has 9 grades and three cycles.

The Level of Superior Education comprehends three cycles:

a) The first cycle leads to the professional bachelor's degree.

b) The second cycle leads to the licenciate and the master's degree with special certificates, and gives an academic and professional training in a determined professional area.

c) The third cycle, advanced studies, leads to the doctorate.

In accordance with the provisions of the New General Law of Education, the woman enjoys the same rights as the man with regard to access in education to these levels. Articles 8 establishes this specifically.

2. <u>EQUAL TEACHING CONDITIONS AND QUALITY OF EDUCATION AT ALL LEVELS</u>.--

As stipulated in the pertinent articles of the law, in all levels of education teaching conditions and the quality of education is equal for men and women, with no discrimination of any sort.

2.1. Pre-school education is given, according to article 81, in Pre-school Education Centers, such as: nursery schools and kindergartens; non-scholastic programs aimed at children who do not attend the Pre-school Education Centers of the Communal Educational Nucleus; and programs of family education directed toward the parents and the community. Article 82 establishes compensatory and complementary services of health and nutritional care of the child.

2.2. Regular Basic Education is given in public and private educational centers.

2.3. Basic Labor Education is accommodated to the characteristics of the population, its duration is variable, and it is given in public schools, usually night schools.

2.4. Superior Education of the first cycle, or Superior Schools of Professional Education (ESEP), is realized currently in an experimental form in 10 Education Centers in the nation.

The second cycle, or masters and licenciate studies, is given in the universities, Official Schools of the Armed Forces and of the Police Forces, Religious Seminars, and other public and private institutions.

The State, through the Ministry of Education, directs annually the enrollment and national planning for entrance into these centers.

The studies are carried out according to academic programs, with a flexible curriculum and a system of credits.

The third cycle is realized in the universities and in the National Institute of Advanced Studies.

Since the new educational programs have begun to be applied since 1973 with pre-school education, the achievements will be seen in the long term.

Currently, the application of the new system is being made gradually.

The old system is still present, especially in the last years of primary education and all of secondary. For information on this we cite the scholastic index of the 1972 Census.

Of the 697,623 students who enter in one year in transition, 364,432 are males and 337,191 are females. The margin of difference increases as the school years pass; thus, beginning with the third year in rural zones, the number of males is double that of females. From this it is deduced that the school drop-out rate in this zone is primarily female.

In secondary education, of every five that enter, three are males and two are females; in the University two males enter for every female.

The statistics gathered by the Sectorial Office of Planning of the Ministry of Education, April 30, 1974, allow us to appreciate the volume of the school-age population enrolled in the Peruvian education system: it comes to a total of 4,185,813 students, of whom 3,588,600 or 85.7% attend in the public sector and the difference, 597,213, in the private sector, showing that in these statistics the participants of the ALFIN Program are not considered.

From 1973 to 1974:

a) The teaching population increased by 7,587 professors, and

b) The increase in educational centers was 1.908.

If we consider the population of 5 to 24 year olds estimated for 1974 to be the group constituting the demand for educational services, and compare this with the sector of the population that attended school in that same year, we have the scholastic index, which is on the order of 59.8%, which is greater than that of 1968, which only reached 54.0%.

Finally, we see that of the total population of 5 to 24 year olds estimated at 7,000,387 students, the educational system could only attend to 2,814,574 in 1974. This figure should concern us and stimulate us to work to achieve the incorporation of all Peruvians in the educational preparation and benefits. It is necessary that the community become aware of this possibility and organize itself to take on this task.

SOURCE: Ministry of Education, Sectoral Office of Planning, Section of Statistics. "Statistics of Education," 1974, Lima, October, 1974.

3. EQUAL OPPORTUNITIES FOR SCHOLARSHIPS AND FUNDS FOR STUDIES.--

According to article 8 cited above, there exists equality of opportunities for men and women in the acquisition of scholarships for studies and the application of funds for post-graduate work and research.

4. EQUAL ACCESS TO NON-SCHOLASTIC EDUCATION AND PROGRAMS OF LITERACY.--

Non-scholastic education and literacy programs are open to men and women without discrimination. Let us analyze the first:

4.1. Non-scholastic education is given on all levels of education and outside of the educational centers. It encompasses all the processes and forms of education and learning.

Rendering assistance to groups of free learning, dialogue centers, and other forms of work are considered a program of education. The evaluation of learning is made through periodical tests which allow for continued study and approbation, the requisite for approval of this cycle. This education is supplemented with tele-education, which is a special technique of collective education, with systematic studies on television, radio, film, through correspondence, and other comparable media.

4.2. In the Literacy Program, anyone older than 15 years who can neither read nor write is considered illiterate. According to the most recent statistical data of the Ministry of Education, of 7,200,000 persons older than 15 years, 2,140,000 are illiterate, in a proportion of 3 females to 1 male.

Currently in Peru, an interesting program of the Ministry of Education is being carried out called ALFIN, which stands for Alfabetización Integral. This means of incorporating the illiterate into society attempts to make the adult aware of the social reality in which he or she lives, while at the same time teaching reading, writing, and concepts of mathematics; and in conjunction with the learning, the subject is prepared for and enabled to work.

JOBS AND RELATED PROBLEMS

1. EQUAL ACCESS TO JOB OPPORTUNITIES OF ALL SORTS.--

The legal provisions establish in a precise manner that there exist in the country the same opportunities of employment for men and women. The Political Constitution of Peru (1933) in article 42 holds that the State guarantees the liberty of work and declares that any profession, industry or office not counter to morality, health, or public security, may be freely exercised. Similarly, article 46 declares that the law will set the conditions of labor, such as minimum salary with respect to age, sex, nature of work, and the conditions and needs of the diverse regions of the country. Article 55 establishes that no one is required to lend personal service without his or her free consent and without due recompense.

The Peruvian Civil Code (1936), in article 8, establishes that persons with capacity to exercise their civil rights are those who have reached the age of 21 years; and article 11 holds that the incapacity of persons of older than 18 years ceases with attainment of majority, marriage, and obtainment of an official title authorizing the practice of a profession or office.

Despite the fact that three decades have passed since these legal provisions relating to work opportunities for women were established, Tables 1, 2, and 3 reveal that in Peru women still have less access than men to administrative and executive positions and positions of major responsibility. In the number of professionals, for example, according to data of the Census of Population and Occupation of Peru in 1972, it was shown that of a total of 67,780 professionals of higher salary (medecine, architecture, engineering, etc.), 62,069 were male and 5,711 female, or a proportion of 11 men for each professional woman. According to the same Census, the total number of persons engaged in domestic service is 143,159, in this case the proportion being 8 women for each man; that is, women undertake in greater number a simpler type of work which requires less preparation. Recently, these workers have acquired legal protection and social rights through social security.

One of the determining causes of the fact that women have less access to higher positions and the acquisition of a professional title, is that less interest has been taken in their education and preparation. Recently, it has been observed that the entrance of women into universities has increased steadily..

2. EQUALITY OF WORKING HOURS AND CONDITIONS, INCLUDING EQUAL PAY FOR THE SAME TYPE OF WORK.--

The Peruvian Civil Code (1936), in article 1572, established a maximum 8-hour work day and equal salaries, without distinction of sex, for the same work. In this sense, this provision anticipated

Treaties 100 and 111 of the International Labor Organization.

Law No. 14222 (1962), in article 14, established as well that remuneration is to be the same, by day, and for the same labor carried out in the same conditions, without distinction of sex, except in the case where the output of the woman is less than that of the man.

Law No. 2851 (1918) treats in its articles the work of women employeed by another. It declares that the maximum work-day is eight hours; it prohibits night work for women of less than 21 years of age; it declares that there must be a 2-hour rest period in the middle of the day for women; and it establishes other provisions benefitting women, such as prohibiting women from working underground, in mines, in quarries, and at other jobs that would be dangerous to their health and morality.

Law No. 3010 (1918) prohibits work on Sundays and state holidays, and establishes a series of exceptions, stating that these do not apply to women.

Law No. 4239 (1921) modified the rules for work on Saturday afternoons, declaring that at those jobs where it is suspended and where women work, they will have leave on Monday mornings with full pay.

Although it is true that many of these legal provisions have been improved with relation to the work of women, it should be noted that the system of labor for the woman in the Andean zone is intense, that she undertakes agricultural and domestic labor and small industry, and she takes on the responsibility of the sustenance of the family. There are no studies on this reality of the labor of the woman in the Andean environment.

In addition, despite the fact that remuneration is to be the same for the same work, in many factories and workshops women are assigned the simpler tasks with less responsibility and less salary.

Supreme Resolution No. 070-74-INAP/KN (1974) established the horario corrido* and staggered hours in places of work for men and women. It declares that the horario corrido will not imply an increase or decrease of the effective work-day, nor will it cause a change in the effective salaries of the workers. The horarios corridos and staggered hour schedules are excluded from applying to activities of transportation and markets of provisions such as supermarkets, stores selling articles of essential necessity, restaurants, public exhibits, and mass media such as enterprises in journalism, radio, and television.

*The horario corrido is a schedule where the same number of hours is worked in a shorter period, such as by taking only one relatively short break at lunch-time.

TABLE NO. 6

Proportion of women in relation to men in the leadership of Syndical Institutions of Peru. 1970-1975

Position in the Syndicate	% of women
Secretary General	5.7
Assistant Secretary General	7.8
Secretary of Organization	6.4
Secretary of Defense	8.6
Assistant Secretary of Defense	7.0
Economic Secretary	15.3
Secretary of Control and Discipline	11.5
Secretary of Minutes and Records	13.7
Secretary of Social Aid	34.1
Secretary of Press and Publicity	6.3
Secretary of Culture and Sports	3.9
Secretary of Public Relations	7.4
Secretary of the Interior and Exterior	10.0
Secretary of Cooperatives	5.9

(*) Data of the Ministry of Labor. Estimates.

3. EQUAL TREATMENT BY TAX LAWS.--

All the legal provisions related to taxes make no distinction between men and women. Income taxes are in relation to acquired profits, and in this case depend on the economic profits of the declarer, whether man or woman. Taxes related to social profits and others are at the same rate for men and women.

4. EQUAL PROVISIONS FOR SOCIAL SECURITY AND OTHER HEALTH AND OLD-AGE BENEFITS.--

The first legal provisions for social security were established by Law No. 8433 (1936) which states in article 1 that Worker's Social Security protects the worker from the risks of illness, maternity, and infirmity. For the risk of illness, it grants loans for medical assistance, hospital care, medicine, and a subsidy equal to 70% of the salary, (Art. 28). This subsidy is reduced by half if the insured who receives hospital care does not have any spouse, children, or parents dependent on him in accord with Law.No. 11321, Art. 8.

Social Security for the Employee applies to public and private employees without distinction of sex, nationality, age, or salary, in accord with the provisions of Law No. 13724 (1945). It grants, according to article 63, money loans in the form of subsidies for illness; loans of assistance, such as for general and specific medical care and obstetric attention; and hospitalization, medicine, and dental care.

Decree of Law No. 20212 combined Worker's and Employee's Social Security, creating the Social Security of Peru, which performs the functions described above, for workers and employees of both sexes, and in addition administers the National System of Pensions. The Decree of Law No. 19990 (1973) established the National System of Pensions. Article 3 indicates that the following are required to be insured by the System: workers (men and women) in the private sector, in the public sector, in enterprises of socialized, cooperative, and other similar property, domestic workers, artists, and other workers who may be included by Supreme Decree.

The System grants loans and among those considered in accord with article 38 is the retirement pension, which commences for men at the age of 60 years and for women at the age of 55. The amount of pension granted (article 41) will be equivalent to 50% of salary, provided the men have 15 full years of contributions and the women 13 years. For each additional full year of contribution to the System, the percentage increases 2% for men and 2.5% for women. The provisions of the National System of Pensions favor women, since their retirement age is less and the percentage of remuneration received per year is greater.

Decree of Law No. 20530 (1974) established the system of pensions and compensations for civil services performed for the State which are not included in the National System of Pensions. According to article 5, the pensions for dismissal and for survivors are figured on the basis of the work cycle, a maximum of 30 years for men and 25 years for women. The pension for widowhood is granted (article 32) if there is only a surviving spouse, and the latter will receive the full pension, and it will be granted to the man provided he is unable to provide for himself, lacks income, and is not supported by some system of social security. In this case, the legal provisions favor the woman by establishing less time for receiving pension for dismissal and less time for various related benefits.

5. MATERNITY PROTECTION.--

The Political Constitution of Peru (1933) holds in article 51 that maternity is under the protection of the Law.

The Sanitary Code, Decree of Law No. 17505 (1969), in its Third Article, concerns the health of the mother through provisions which hold that the health care of the mother during pregnancy is an obligation and a right, and that this care will be free of cost for the poor. Supreme Decree No. 00451-74 (1974) orders that the care of the woman during pregnancy, childbirth, and immediately following, in the hospitals connected with the Ministry of Health, and the Institute of Neonatology and Mother-Child Protection, and in those of the Societies of Public Welfare, will be free of cost.

Law No. 2851 (1918) provided for measures for the protection of the woman before and after childbirth. Subsequently, Law No. 11321 (1936) of Worker's Social Security established the obligatory

maternity leave for 36 days before and 36 days following the birth and a subsidy of 70% of the salary during this period. The insured woman receives for a period of 8 months a nursing subsidy, either in money or milk bonds, equivalent to 30% of the average salary.

Law No. 13724 (1947) holds in article 68 that the pregnant employee will take a leave of 40 days before and 42 days following birth, granting her a daily subsidy equivalent to 1/30 of 70% of the base monthly salary. The nursing subsidy for the employee is 1/30 of 50% of the minimum insurable salary, for a period of 8 months starting from childbirth.

As has been noted before, both provisions favoring the woman make a distinction between workers and employees, since the pregnancy leave in one case is less than in the other, when they should be the same since they correspond to the same biological condition.

6. RIGHT TO FACILITIES FOR CHILD-CARE.--

The Sanitary Code, Decree of Law No. 17505 (1969), in its Fourth Title, establishes provisions for the adequate protection of the health of the child. Articles 29 and 30 indicate that the birth and health of her children is the great responsibility of the mother and that the mother's milk is the exclusive property of her child, and consequently, she is required to nurse the child herself. Articles 31, 32, and 33 define the concept of health protection of the child and the periods it includes, and declare that it is the responsibility of the health authority to adopt measures in defence of infancy. Article 34 holds that health care for the poor in the offices of the Ministry of Health will be free of cost. Article 35 emphasizes that the provisions of the Code do not prevent or limit the right and obligation of parents and guardians to the defence, vigilance, and protection of the child without the interference of the State.

Law No. 2851 (1918) signified a real advancement in the provisions for the improvement of child care. Article 20 provided that at every place of work where women older than 18 years are employeed, there must be a special room to attend, during work hours, to the children of women workers during their first year. This measure, which has been taken in factories, has begun to be developed by action of the Committee of National Assistance (JAN) for the children of women employees working in public administration, creating kindergartens. There has also been special emphasis made on the establishment of "Infant Guards" for the children of women workers in "Young Towns." In this way, more extensive action is being taken in favor of the child, in a period of its life in which it requires the most especial attention.

The same Law No. 2851 (1918), in article 21, declared that the mother could use two hours during her work for nursing her child. The creation of "Infant Guards" and the ever-increasing spread of artificial nursing in practice, has diminished this activity of the mother, leaving the children to the care and attention of specialized personnel.

Nevertheless, despite the progress made, there are still defficiencies in child care, especially in rural areas, which comprise 50% of the total population. Plans for penetrating the rural environment, now in execution with the construction and equipping of 25 hospitals designed especially for maternal and infant care, will permit the encompassing of a greater volume of the population.

7. LABOR ORGANIZATION AND COLLECTIVE BARGAINING.--

The provision of Law No. 11009 (1949) created the Ministry of Labor as the official organ in charge of dealing with and resolving the activities and problems of labor.

Subsequently, numerous provisions were passed for the regulation of capital and labor which establish that the presentation and procedure for individual and collective claims is to be before the permanent organs of the General Administration of Labor. Law No. 9483 (1941) established the Private Labor Court, and Decree of Law No. 14193 (1962) established that appeals of claims for social rights will not be permitted unless authorized by lawyers.

In regard to labor organization as such in Peru, Decrees of Law No. 18350, No. 18810, and No. 18880 created workers' communities, as persons of private law, constituted by steady workers who work full-time in an industrial, fishing, or mining enterprise. The workers' community intervenes and participates in the property, operations, and benefits of the enterprise.

SPECIAL PROBLEMS IN THE LEGAL SYSTEM

1. PROCEDURAL PROBLEMS.--

Proceedings are generally dilatory, harming the parties, especially women, who to defend their rights often abandon their household responsibilities.

In accordance with article 168 of the Peruvian Civil Code (1936), the husband is the representative of the marital union, and consequently, he is the one who must act as plaintiff or defendant. This brings about delays and difficulties following the proceeding or action being taken, since if the wife must intervene, she must have the prior express authorization of her husband in writing. There have been cases when this situation occurs, and, because of this requirement of procedure, the action has been delayed or prescribed. The exception to this requirement is considered in articles 174 and 192 of the Peruvian Civil Code (1936), which described the cases in which the wife assumes the direction and representation of the marital union.

Another problem that comes up in a procedural connection arises when the wife carries on a commercial or professional activity (which always requires the authorization of the husband). In this activity she may incur debts for which she and her property are liable. If it is shown that the profit of the woman's activity has redounded to the common benefit of both the marriage partners, then all the common property is liable. And it is exactly in these cases that a problem arises, since the husband, as representative of the marriage, must assume responsibility even if he was not involbed in the activity.

2. RESPONSIBILITY FOR AN ILLICIT ACT.--

In regard to penal responsibility, each of the spouses is responsible for illicit acts which have been committed. In regard to civil responsibility, it is necessary to note that the other spouse does not respond either with his or her own property or with his or her part of the common property, according to the stipulations of article 198 of the Civil Code, unless the product benefitted the family. In this case the property of the other spouse and also the common property respond, in accordance with article 183 of the Civil Code.

ADVANCEMENTS IN PERU THAT INFLUENCED WOMEN

1. SOCIALIZED PROPERTY.--

Decree of Law No. 20598 (1974), article 1, created the enterprises of socialized property, which are juridical persons with social right, consisting exclusively of workers, constituted under the principle of solidarity, with the objective of performing economic activities. Their characteristics are: full participation, socialized property of the enterprise, socialized record-keeping, and permanent capacitation.

The constitution of the enterprises of socialized property, in the year set by the above-mentioned Decree of Law, allows the intervention of women in the organization and functioning of enterprises directed toward diverse industrial production. Future experience will demonstrate the advantages of this system which grants property exclusively to the workers.

2. QUECHUA, OFFICIAL LANGUAGE OF PERU.--

Decree of Law No. 21156 of May 28, 1975 has ordered that Quechua be recognized, just as is Spanish, as official language of the Republic, and that starting in 1976 its instruction will be obligatory in all levels of education. At the same time, it declares that beginning in 1977, legal proceedings in which the parties speak only Quechua will be carried out in that language.

This measure will be of obvious benefit to more than 4 million people in Peru who speak Quechua, especially the women who feel marginalized for a variety of reasons, and who perform agricultural and domestic activities and activities in small industry, and could in the future participate in the development of the country.

CHAPTER III

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

1. The woman in Peru has still not attained all the participation due her in the process of structural change and development of the nation. Nonetheless, a greater interest and concern among women for participation in all the socio-economic sectors is evident.

2. In Peru, the presentation of the Inca Plan of the Government of the Armed Forces, the creation of the National Commission of the Peruvian Woman, and the promotion of the most important interests of women through mass informational media, are an assurance that in the INTERNATIONAL WOMEN'S YEAR, declared as well the YEAR OF THE PERUVIAN WOMAN, positive and definite objectives will be attained for incorporation of the woman in the plans for development and for the solution of discriminations that still exist against women in the nation.

3. In Peruvian legislation there exist provisions which discriminate against women.

4. The Peruvian Civil Code, in regard to the Law of the Family, maintains in effect rules which discriminate against women.

5. The Political Constitution of Peru (1933) legislates in an egalitarian manner the political and civil rights of men and women.

6. The Penal Code of Peru, in general, contains provisions protecting women, but there remain articles which constitute offenses under the principles of the respect of human dignity.

7. The Commercial Code (1902) discriminates blatantly against the woman, and it does not consider her capable of performing activities of commercial life.

8. The Sanitary Code (1969) and the Code of Minors (1962) contain adequate and precise provisions which support and protect the mother, maternity, and the child.

9. In accord with the General Law of Education (1972), the woman has the same rights as the man to receive an adequate education on all levels.

10. The legal provisions of Social Security in Peru are advanced and they protect the woman, granting her prerogatives over the man.

11. The participation of women in labor is continually increasing in the nation, but not so their possibilities in promotion, salary, and access to positions of management and high responsibility.

12. The traditional customs and especially the existing prejudices in the rural environment of the Andes and the Peruvian jungle keep the woman in a marginal state of dependency, limit her educational, labor, and social possibilities, and restrict her civil rights and her major opportunity in national development, despite the egalitarian legal provisions.

RECOMMENDATIONS

1. That in the reform of the Political Constitution of Peru it be stated explicitly that there is no difference in rights or in duties between men and women.

2. That in the revision of the Civil Code the chapters in which there exists discrimination between men and women be changed.

3. That in the Penal Code of Peru, the articles that constitute an offense to the dignity of the woman be annulled.

4. That the relevant legal provisions be established to protect the woman and her offspring in the special cases of concubinage.

5. That permanent activities of health education be developed, on the national level, which will allow the woman a greater defense of her health and that of her children.

6. That commissions, delegations, and other activities in and out of the country, public and private, include men and women.

7. That the literacy campaigns be intensified so as to include the greatest possible number of women, which at the same time will enable them to carry out their civil duties.

8. That programs be established for the capacitation and integral training of women of the various levels, which will elevate their preparation and increase their possibilities of access to better paid positions.

9. That programs of family planning with responsible parenthood be developed, which will educate the couple so that it may freely and consciously decide on the number of children.

10. That the National Office of the Woman be created, with Departmental Offices and specialized and appropriate personnel to attend to and solve as much as possible all the problems related to women, in harmony with the National Commission of the Peruvian Woman.

11. That provisions be supplemented to prevent the woman from being a means of advertising in mass media.

12. That the participation of the woman in volunteer work in the diverse public and private organizations of public welfare be promoted.

13. That an old-age pension for the woman housekeeper be considered part of the programs of social security.

14. That Peru ratify all international treaties and conventions concerning women.

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